

**COMPARATIVE STUDY OF “RESIDUAL JURISDICTION”
IN CIVIL AND COMMERCIAL DISPUTES IN THE EU
NATIONAL REPORT FOR:**

BELGIUM

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(A) General Structure of National Jurisdictional Rules for Cross-Border Disputes

1. Main legal Sources

Apart from the European instruments (Brussels/Lugano Conventions, Brussels I Regulation), the main source for the rules of jurisdiction in civil and commercial matters is the Belgian Code of Private International Law (hereinafter, "the Code")¹. This Code has been introduced by the Belgian Act of 16 July 2004, and came into force on 1 October 2004². In a few limited matters, the rules of jurisdiction are determined by specific sector statutes (such as in distributorship agreements and in commercial agency agreements, see below, 13.d), whose application is preserved by the Code (art. 1). Belgium is also a contracting party to some bilateral treaties that include provisions pertaining to jurisdiction and enforcement of foreign judgments in civil and commercial matters (see below, 5). These treaties have priority over domestic rules, including those from the Code.

2. Specific Rules (or Not) for Transnational Disputes

The jurisdictional rules set forth in the Code are specific to transnational disputes. Together with the other rules included in specific statutes and international instruments, these rules are deemed to determine *exhaustively* the claims that may be brought before Belgian courts. As from the entry into force of the Code, the internal territorial rules allocating the venue between Belgian courts can no longer be relied upon to establish the international jurisdiction. On the other hand, when Belgian courts have international jurisdiction to hear a claim pursuant to the Code, but the local competent court cannot be identified under internal rules of jurisdiction, the connecting factors used in the Code for the international jurisdiction (for instance, the place of performance of the contract) can also be used to assess the internal jurisdiction of the courts (article 13 of the Code).

¹ Moniteur belge, 27 July 2004, p. 57344. For the legislative history and *travaux préparatoires*, see "Proposition de loi portant le Code de droit international privé", *Documents parlementaires, Sénat*, 2003, n° 3-27/1 (hereinafter, "Introduction to the Draft Code"; "rapport fait au nom de la Commission de la justice du Sénat, *Documents parlementaires, Sénat*, 2003-2004, n° 3-27/7 (hereinafter, "Senate Report"); "Rapport fait au nom de la Commission de la justice de la Chambre", *Documents parlementaires, Chambre*, 2003-2004, n° 51/1075/005 (hereinafter, "House Report"). For early commentaries of the jurisdictional rules of the Code, see, e.g., A. Nuyts, "Le nouveau droit international privé belge – Compétence judiciaire", *Journal des tribunaux*, 2005, p. 179; A. Nuyts, "Les bases de compétence générales dans le Code de droit international privé", *Revue de droit judiciaire et de la preuve*, 2004, p. 175; H. Boularbah, "Le nouveau droit commun des incidents de compétence internationale", *Revue de droit judiciaire et de la preuve*, 2004, p. 189; N. Watté, "Le contentieux économique et social", *Revue de droit judiciaire et de la preuve*, 2004, p. 199; A. Heyvaert, *De internationale rechtsmacht van de gerechten na het W.I.P.R.*, Kluwer, 2005; P. Wautelet, "Le Code de droit international privé et le procès international", in G. de Leval (ed.), *Actualités en droit judiciaire*, CUP, 2006, p. 303.

² Prior to this Act, the international jurisdiction of Belgian courts was subject to specific rules included in the Code of Civil Procedure (*Code judiciaire*, articles 635, 636 and 638, now abrogated) and, in some limited cases, to the application by extension to the international context of internal rules of jurisdiction.

3. Specific Rules (or Not) for Article 4(1) Jurisdiction

There is no specific set of rules for the purpose of the application of article 4(1) of the Brussels I regulation. The rules set forth in the Code are designed so as to determine the jurisdiction of Belgian courts for *all cross-border cases*, irrespective of whether the case falls or not under article 4(1) of the Brussels I regulation.

4. Influence of EU Law

Many of the new jurisdictional provisions introduced by the Code are inspired or at least influenced by the Brussels I regulation and/or by the case law of the European court on the Brussels Convention. This influence is particularly explicit in respect of the jurisdiction over defendant dealing through branches and agencies (art. 5§2 of the Code, mirroring art. 5(1) of the Regulation), jurisdiction over co-defendants (art. 5§1, mirroring art. 6(1) of the Regulation), third party proceedings (art. 8.1, mirroring art. 6(2) of the Regulation), counter-claims (art. 8.2, mirroring art. 6(3) of the Regulation) interim measures (art. 11, mirroring art. 31 of the Regulation), and jurisdiction in matters relating to tort (art. 96, mirroring art. 5(3) of the Regulation).

On the other hand, the Code includes some distinct rules that find no equivalent in the Brussels I regime. They include jurisdiction to avoid a denial of justice (art. 11), jurisdiction for related actions (art. 9), jurisdiction for claims *in rem* relating to movable properties (art. 85), some aspects of the jurisdiction in contractual matters (art. 96), and the special regime of choice of court agreements (art. 6 and 7).

5. Impact of Other Sources of Law

So far, the application of the rules of international jurisdiction in Belgium has been largely unaffected, in practice, by general principles derived from other bodies of law such constitutional law, human rights, or public international law (to the exception, in the respect of the later, to issues of immunity). This is not to say that such principles do not have the potential to have a bearing in this matter. There is currently a growing impact of human rights and constitutional principles on the application of *internal* procedural rules, and legal writers have suggested that such impact should logically also be felt on *international* procedural rules. Hence, it is stressed that the rules on the international jurisdiction of Belgian courts should be applied and construed in practice in such a way as to ensure compliance with some basic rights, such as the right of effective access to justice³.

6. Other Specific Features

The most specific feature of Belgian jurisdictional rules today is that these rules are strictly organized, following the structure adopted by the Code for choice of law rules. That means that in addition to the general rules of jurisdiction (to be found in Chapter I of the Code), there are specific rules of international jurisdiction for each of the individual matters that are governed by the Code, and the delimitation of these matters is identical for both jurisdiction and choice of law.

These matters are the following (following the order in which they are dealt with in the Code): status and capacity of natural persons, name of natural persons, absence, matrimonial relations, partnerships without marriage, biological paternity/maternity, adoption, alimonies, succession and wills, rights *in rem*,

³ See A. Nuyts, "Forum shopping et abus du forum shopping dans l'espace judiciaire européen", *Mélanges John Kirkpatrick*, Bruylant, Brussels, 2004, p. 745.

intellectual property, contractual obligations, non contractual obligations, quasi contractual obligations, legal persons, insolvencies, trust.

7. Reform

There is currently in Belgium no proposed change of the rules of international jurisdiction, which have already been deeply modified in 2004 (see above).

(B) Bilateral and Multilateral Conventions

8. Conventions with Third States

Apart from the Lugano Convention, Belgium is currently not a contracting party to any multilateral or bilateral convention with third states that regulate specifically the international jurisdiction in civil and commercial matters. But Belgium is a contracting party to a number of conventions regulating *substantive issues* that also include punctual provisions dealing some jurisdictional aspects. These conventions include, *inter alia*, the following:

- Convention on the navigation on the Rhine, concluded at Mannheim on 17 October 1868, modified by the Convention concluded at Strasbourg on 20 November 1963;
- Convention for the Unification of Certain Rules Relating to International Carriage by Air, concluded at Warsaw on 12 October 1929;
- Convention on the unification of certain rules relating to the arrest of sea-going ships of 10 May 1952;
- International Convention for the Unification of Certain Rules Concerning Civil Jurisdiction in Matters of Collision, concluded at Brussels on 10 May 1952;
- Convention on damage caused by foreign aircraft to third parties on the surface, concluded on 7 October 1952;
- Convention on the Contract for the International Carriage of Goods by Road (CMR), concluded on 10 May 1956;
- Convention relating to the Liability of the Railway for Death and Personal Injury to Passengers (with Protocol), concluded at Berne on 26 February 1966.

In addition, Belgium is a contracting party to some bilateral conventions on the recognition and enforcement of foreign judgments that include jurisdictional rules, but for the purpose only of assessing the jurisdiction of the foreign court as a condition for the recognition of the ensuing judgement. Most of these conventions are concluded with other EU Member States. As for third States, one should mention the Convention between Belgium and Switzerland on the recognition and enforcement of judicial decisions and arbitral awards, concluded at Berne on 29 April 1959, which regulates the so-called *indirect* jurisdiction of the courts of origin.

9. Practical Impact of international conventions with third states

The impact of the above mentioned conventions is somewhat limited. As indicated, there is presently no convention in force in Belgium, be it multilateral or bilateral, that govern in general the issue of international jurisdiction in civil and commercial matters. In practice, except in the very specific matters indicated above, the international jurisdiction of Belgian courts is determined solely by the domestic jurisdictional rules, in addition, of course, to the rules of EC law and to the Brussels and Lugano Conventions.

(C) Applicable National Rules Pursuant to Article 4 of the Brussels I Regulation

10. Structure

The general structure of the jurisdictional rules in Belgium has been deeply modified with the entry into force of the Code of private international law. The former system of the Code of civil procedure (*Code judiciaire*), which distinguished between defendants depending on whether they were Belgian citizen or not, has been entirely abandoned. Thus, article 15 of the Civil Code, which provided jurisdiction on the basis of the citizenship of the defendant, has been repealed (article 14 of the Civil Code, providing jurisdiction on the basis of the citizenship of the plaintiff, had already been repealed in 1948).

Under the new Code, Belgian courts have jurisdiction, in principle, to hear a claim when the case either falls within one of the *general basis* of jurisdiction under articles 5 to 11 of the Code, or when the case falls within the *specific basis* of jurisdiction that govern the particular subject matter of the dispute (these matters are identified above, A.6). As an exception, however, in some particular matters the specific basis of jurisdiction are exclusive, in the sense that in these matters the jurisdiction of Belgian courts can be established only on the basis of the specific connecting factors (this is the case, *inter alia*, in certain matters of intellectual property (art. 86), legal persons (art. 109), and insolvency proceedings (art. 118), and not on the basis of the general rules.

11. General Jurisdiction

Aside from the rules discussed in the paragraphs below, the Code includes only one rule of general jurisdiction for cross-border cases: the domicile or habitual residence of the defendant in Belgium (art. 5 of the Code). In practice, when the defendant is domiciled in Belgium (or in another Member State of the European Union), the jurisdiction of Belgian courts is determined pursuant to the uniform rules of jurisdiction of the Brussels regime, and not to domestic law. As a consequence, in civil and commercial matters that are subject to the Brussels regime, the general rule of jurisdiction of article 5 of the Code will apply only when there is a divergence between the *domicile* of the defendant, based in a third state, and the *habitual residence* of such defendant, in Belgium. In such situation, Belgian courts have jurisdiction, pursuant to article 5 of the Code, to hear any claim against the defendant (save for the applicable restrictions in those matters which are subject to the exclusive rules of jurisdiction, as indicated above, 10).

12. Specific Rules of Jurisdiction

The specific rules of jurisdiction for actions against defendants domiciled in non-EU states are reviewed below. It should be noted that in accordance with the structure of the Code indicated above, 10, the jurisdiction of Belgian court can be based either on these specific rules of jurisdiction *or* on the general rules of jurisdiction included in articles 5 to 11 of the Code.

a) Contract

When the claim relates to a "*contractual obligation*", Belgian courts have jurisdiction to hear such claim either when the obligation "*arose in Belgium*" or when it "*is or should be performed in Belgium*" (art. 96(1) of the Code).

These connecting factors have been recopied from the prior rules under the Code of civil procedure (article 635(3), today repealed). The existing case law thus remains a valid source of interpretation in this matter⁴. With respect to the *place of performance* of the contractual obligation (art. 96(1)(b)), there is some hesitation in the case law as to whether it should be determined pursuant to the law governing the contract, by analogy with the *Tesilli* approach (under article 5(1) of the Brussels Convention), or on the basis of a factual assessment of the circumstances of the case⁵. It has been suggested that the later approach is now to be preferred, since it is in line with the new factual approach used in the new provisions of article 5(1)(b) of the Brussels I Regulation⁶.

With respect to the *place where the contractual obligation arose* (art. 96(1)(b)), this is a connecting factor that finds no equivalent in European law. It refers to the place where the contract was formed, meaning in practice the physical location where it has been concluded⁷. For contracts entered into between parties which are not located at the same place, reference is made to the place where the contract is "*deemed to have been concluded*"⁸, which would seem to designate the place where the contract is deemed to have been formed under the relevant governing law⁹.

⁴ See N. Watté, "Le contentieux économique et social", *Revue de droit judiciaire et de la preuve*, 2004, p. 199, at p. 201, n° 13; S. Francq, "Obligations", in "Le nouveau droit international privé belge", *Journal des tribunaux*, 2005, p. 195, n° 186. It should however be noted while former article 635(3) of the Judicial Code referred to the "*obligation which is the basis of the claim*", by analogy with article 5(1) of the Brussels Convention, today article 96(1) of the Code refers to the claim which "*concerns a contractual obligation*". Therefore, it would seem that it is sufficient that *one* of the obligations of the contract, not necessarily the obligation in question, be performed or arose in Belgium for the jurisdiction to be established for disputes relating to such contract. On the other hand, the rule nowadays applies only to obligations deriving from contracts, as opposed to any kind of obligations under the former rule.

⁵ See H. Born, M. Fallon and J.L. Van Boxstael, *Droit judiciaire international – Chronique de jurisprudence 1991-1998*, Larcier, 2001, p. 569.

⁶ N. Watté, "Le contentieux économique et social", *Revue de droit judiciaire et de la preuve*, 2004, p. 199, at p. 201, n° 14. Comp. Senate Report, 3-27/7, 2003-2004, p. 172

⁷ Introduction to the Draft Code, 3-27/1, p. 121. See also the case law quoted in H. Born, M. Fallon, J.L. Van Boxstael, *op. cit.*, p. 566.

⁸ Introduction to the Draft Code, 3-27/1, p. 121.

⁹ It is difficult to see how this place could be determined on the basis of a purely factual assessment of the situation, since by definition there is not in this case a single place where the contract was physical concluded. Comp. however N. Watté, *op. cit.*, p. 202, n° 15.

b) Tort

When the claim relates to "*an obligation arising from a harmful event*", Belgian courts have jurisdiction either "*when the event giving rise to the obligation has arisen or threaten to arise, in all or in part, in Belgium*", or "*when and to the extent that the harm has been suffered or threaten to be suffered in Belgium*" (article 96(2) of the Code).

As stressed in the preparatory work of the Code¹⁰, this provision is inspired by the case law of the Court of justice under article 5(3) of the Brussels Convention. When the event giving rise to the damage is or is to be located on the Belgian territory, the victim can bring proceedings in Belgium to claim compensation for the *entire harm* that has been suffered (in Belgium or abroad). It is enough that one of the constituting elements of the event giving rise to the damage be located in Belgium.

When the event giving rise to the damage is entirely located abroad, the victim can still bring proceeding in Belgium when the harm was or is to be suffered, in all or in part, in Belgium. In such case, however, the jurisdiction of Belgian courts is restricted to the claim for compensation of the harm that is located in Belgium¹¹. For the purpose of the localisation of the place where the harm is suffered, reference is to be made only to the "*place of impact*" of the tort, irrespective of the place where the consequences of the harm are finally felt¹². Such restriction would seem to be in line with the *Marinari*¹³ ruling of the Cour of justice. However, it has been suggested that Belgian courts could be more flexible and should accept to entertain jurisdiction for claims brought by "Belgian" victims for tort committed by parties domiciled in third states when the consequences of the tort are felt in Belgium¹⁴.

It should be noted that the Code also includes a specific rule of jurisdiction for "*quasi contractual obligations*", which could include actions for restitution such as those based on "unjust enrichment". Under article 96(3) of the Code, Belgian courts have jurisdiction when "*the fact which generates such obligation is located in Belgium*".

c) Criminal Proceedings

There is no specific rule of international jurisdiction for the civil claim of the victim that arises out of the commission of a criminal act. As a consequence, while the court seized of a criminal proceedings can in principle entertain the civil claim brought by the victim, it would seem to appear that the international jurisdiction of such court for the civil claim must be established in accordance with the normal rules applicable in the matter. In practice, however, the Belgian court seized of a criminal proceedings will most of the time also have international jurisdiction to hear the civil claim on the basis of the location in Belgium of either the event giving rise to the damage or of the harm that was suffered (art. 96(2) of the Code, see above). Should both of these elements be located abroad, and the defendant be domiciled in a third State, Belgian courts could still potentially entertain jurisdiction to hear the civil claim under the *forum necessitatis* of article 11 of the Code, provided that all the conditions stated therein are satisfied (see below, 16).

¹⁰ Introduction to the Draft Code, 3-27/1, p. 121.

¹¹ See Introduction to the Draft Code, 3-27/1, p. 121.

¹² Senate Report, p. 174.

¹³ ECJ, 19 September 1995, 364/93, ECR, I-2733.

¹⁴ N. Watté, "Le contentieux économique et social", *Revue de droit judiciaire et de la preuve*, 2004, p. 199, at p. 205, n° 30.

d) Secondary Establishment

The Code provides for a specific rule of jurisdiction for claims arising out of a "*secondary establishment*" located in Belgium. Under article 5(2) of the Code, legal persons which are domiciled and have their habitual residence abroad (in practice, in third states) can be sued in Belgium when "*the claim concerns the business carried out by the secondary establishment of the legal person*", provided that such secondary establishment is based in Belgium at the time of the introduction of the claim.

This provision, again, is directly inspired by European law, and more particularly by article 5(5) of the Brussels I Regulation. The meaning of this rule should therefore be determined by reference to the case law of the Court of justice¹⁵.

It should be noted that this jurisdictional rule cannot be relied upon for disputes relating to the internal operations of the legal person, even if they relate to the functioning of the secondary establishment. These disputes are subject to a separate rule (art. 109 of the Code), which provides jurisdiction to the Belgian courts only when the *principal* establishment or the statutory seat of the legal person is located in Belgium. Thus, in practice, claims relating to the secondary establishment in Belgium of a foreign legal person can be brought in Belgium only for actions concerning the civil and commercial activities carried out by the legal person through its Belgian establishment.

e) Trust

While the trust is an institution which is not organized as such in Belgian internal law, the Code includes specific rules of private international law in this matter. In addition to choice of law rules, the Code provides a specific rule of jurisdiction for claims brought "*in the relations between the settler, the trustee, and the beneficiary*" (art. 123 of the Code). Belgian courts have jurisdiction to hear such claims either when "*the trust is administered in Belgium*" or when "*the claim concerns assets located in Belgium when (the claim) was introduced*" (art. 123(1) of the Code), in addition to the general rules of jurisdiction of articles 5 to 11 of the Code.

With respect to choice of court agreements, it is provided that the rules governing the validity and effect of such agreement are to be applied "*by analogy*" to agreements included in the trust instrument (art. 123(2) of the Code).

¹⁵ See A. Nuyts, "Les bases de compétence générales dans le Code de droit international privé", *Revue de droit judiciaire et de la preuve*, 2004, p. 178, n° 10.

f) Arrest and/or location of Property

Prior to the adoption of the Code, there was a specific provision in the Code of civil procedure giving jurisdiction to Belgian courts for claims relating to the validity or lifting of the arrest of assets located in Belgium in the hands of third parties, or of any other provisional and protective measures (art. 635(5) of the *Code judiciaire*). This provision has been repelled by the Code of private international law, and replaced by two separate rules. The first one provides jurisdiction to Belgian courts, in case of urgency, to take any provisional or protective measures concerning persons or things located in Belgium when the proceedings was commenced (art. 10 of the Code). This provision allows, in practice, for the arrest of property located in Belgium, but only for the purpose of taking provisional and protective measures.

The second provision that is relevant in this matter is article 85 of the Code, which provides jurisdiction for Belgian courts to entertain any claim "*relating to rights in rem on properties*" when the property is located in Belgium. This provision goes further than the parallel rule of European law in that it applies to rights *in rem* not only in immovable properties, but also in movable properties. As a consequence, Belgian courts have jurisdiction to hear claims against defendants domiciled in third states for the purpose for instance of the restitution of the possession and/or the declaration of ownership of any thing or asset located in Belgium¹⁶.

13. Protective Rules of Jurisdiction

Belgian law provides for a number of specific rules designed to guarantee a jurisdictional protection to certain categories of parties that are deemed to be weaker. Such rules are included both in the Code of private international law and in specific statutes.

a) Consumer Contracts

In consumer contracts, the Code includes protective jurisdictional rules for consumers who have their habitual residence in Belgium. Such consumers can bring proceedings in Belgium against defendants domiciled in third states not only on the basis of the general and specific jurisdictional rules identified above, but also on the basis of their habitual residence in Belgium, provided however than a certain connection exists with Belgium. Such connection can be established by the fact either that the consumer "*has taken in Belgium the steps necessary for the conclusion of the contract*", or that the provision of the thing or service to the consumer "*was preceded by an offer or by advertising in Belgium*" (art. 97(1) of the Code). These requirements are different from the one used in the Brussels I regulation, under which it must be shown that activities have been directed towards the State of the residence of the consumer (art. 15 of the Brussels I Regulation). The requirements used by the Belgian legislator are inspired instead by the connecting factors used in article 5 of the Rome Convention.

The Code also provides that choice of court agreements are valid against consumers only when they are concluded after the dispute has arisen.

b) Individual Employment Contracts

¹⁶ The rule also applies to claims relating to *in rem* on receivables (*créances*). The receivable is deemed to be located in Belgium when the debtor is domiciled or habitually resident in Belgium at the time of the institution of proceedings (art. 85, *in fine*, of the Code).

In individual employment contracts, the Code provides that for the purpose of the application of article 96 (see above, 12.(a)), the contractual obligation is deemed to be performed in Belgium when the employee "*habitually carries out his work in Belgium*" (art. 97(2) of the Code). This connecting factor is inspired by European law, and should be construed in light of the case law of the Court of justice interpreting this concept under article 5(1) of the Brussels Convention (now article 19 of the Brussels I Regulation). However, there are several differences between the two regimes. First, while the Brussels I Regulation reserves the benefit of this rule to the employee, the Code allows both the employee and the employer to bring proceedings in Belgium when the employee habitually carries out his work in Belgium.

Second, as opposed to the Brussels I Regulation which refers to the places where the employee "*habitually carries out his work or (at) the last place where he did so*", the Code refers only to the place of habitual work "*at the time of the dispute*". This would seem therefore to refer to the second criteria used in European law, to the exception of the first one.

Third, the Code does not include the alternative rule of the Brussels I Regulation referring, in the event the employee does not carry out his work in any one country, to the situation of the business which engaged the employee. This is logical, for when the business which has engaged the employee is located in Belgium, the jurisdiction is subject in principle to the Brussels I Regulation, even when the employer is domiciled in a third State (see article 18(2) of the Regulation). But even when the employee does not habitually carry out his work in Belgium and the business which has engaged the employee is located in a third State, proceedings may still be initiated in Belgium against a defendant domiciled in a third State on the basis of the fact that the employment contract was concluded in Belgium (see article 96(1)(a) of the Code, above, 12(a)).

The Code also provides (like in consumer contracts) that a choice of court agreement will be effective against an employer only when it is concluded after the dispute has arisen (art. 97(3) of the Code).

c) Insurance Contracts

Unlike consumer contracts and employee contracts, insurance contracts are *not* subject to specific rules of jurisdiction in the Code of private international law. In principle, disputes relating to insurance contracts are therefore governed by the normal jurisdictional rules of the Code under articles 5 to 11 (general rules of jurisdiction) and 96(1) (specific rule for contracts, see above, 12(a)). However, there is a derogation from the normal jurisdictional rules for choice of court agreements. Under article 19ter of the Act of 9 July 1975 on the Control of Insurance Undertakings, choice of courts agreements are prohibited "*in all disputes relating to insurance contracts*" when they "*provide jurisdiction to foreign courts, to the exclusion of the Belgian judge*". In practice, such provision invalidates agreements appointing the jurisdiction of courts in third states, while the effect of agreements appointing courts in other EU Member States is subject to European law¹⁷.

d) Distribution Contracts

Distribution contracts are subject to specific jurisdictional rules that are designed to ensure the protection of the distributor, which is deemed to be the weaker party in the contractual relation. These rules are to be found in specific statutes that regulate three categories of contracts or contractual relations. In these matters, the normal jurisdictional rules of the Code are displaced to the extent that they are not in agreement with the specific statutory regime (the possibility for such displacement is expressly

¹⁷ Provided that at least one of the parties be domiciled in the EU : see article 23(1) of the Brussels I Regulation.

envisioned in article 2 of the Code, which provides that the Code applies "*save for the application of international treaties, European law and provisions included in particular statutes*").

(i) Distributorship agreements are subject to the Act of 27 July 1961 concerning the unilateral termination of exclusive distribution contracts concluded for an indefinite period. Under article 4 of this Act, as soon as the distributorship agreement "*produces its effects in all or part of Belgium*", the distributor "*is in any event entitled to sue the principal, in Belgium*". In practice, that means that Belgian distributors are always entitled to bring proceedings in Belgium against defendants domiciled in third States, irrespective of the existence of a choice of court clause in the contract appointing the courts of such third States. It should be noted that as soon as the Belgian courts are seized of the claim of the distributor, they are also required to apply the substantive mandatory rules of the Act of 27 July 1961, which provide for the payment of substantial indemnities to the distributor further to the termination of the contract.

(ii) Commercial agent agreements are subject to the Act of 13 April 1995 concerning commercial agent contracts, which implements in Belgium the Commercial Agents Directive 86/635/CEE of 18 December 1986. While this Directive does not include any rule of private international law, the implementing legislation in Belgium includes a rule that provides that subject to international (including European) law, "*any activity carried out by a commercial agent having his principal establishment in Belgium is subject to Belgian law and to the jurisdiction of Belgian courts*" (art. 27 of the Act of 1995). Again, in practice, that means that Belgian agents are entitled to bring proceedings in Belgium against defendants domiciled in third States, irrespective of the existence of a choice of court clause in the contract appointing the courts of such third States.

(iii) Franchise agreements are subject to the Act of 19 December 2005 concerning the pre-contractual information in commercial partnership agreements. This scope of this Act is quite broad, since it applies to any agreement involving the granting, against payment, of the use of a "commercial formula" for the purpose of the provision of goods or services (art. 2). The Act clearly applies to franchise agreements, but it can also apply to other partnership agreements, including potentially the other distribution agreements discussed above. Under article 9 of the Act, the pre-contractual relationship between the parties "*is subject to Belgian law and to the jurisdiction of Belgian courts, provided that the party who receives the right is exercising the activity covered by the agreement principally in Belgium*". Again, in practice, that means that any party exercising its activities in Belgium is entitled to bring proceedings in Belgium against defendants domiciled in third States for any claim relating to the application of the Act, irrespective of the existence of a choice of court clause in the contract appointing the courts of such third States.

e) Protective Rules in Other Matters

In addition to the above-mentioned statutes, Belgian case law has also developed a restriction to the effect of choice of court agreements in matters of maritime contracts. Thus, most courts in Belgium hold that a foreign choice of court clause contained in a bill and lading is effective only insofar as it also provides for the application of Belgian law, more particularly of the provisions of article 91 of the Belgian Maritime Law (Act of 21 August 1879 containing Book II of the Code of Commerce)¹⁸.

14. Rules for the Consolidation of Claims

By analogy with article 6 of the Brussels I Regulation, the Code includes jurisdictional rules for the consolidation of claims with respect to multiple defendants (below, a), third party actions (b) and counterclaims (c). Unlike European law, the Code also provides a general basis of jurisdiction for related claims (below, d).

a) Co-Defendants

Under article 5(1) of the Code, when there are multiple defendants, Belgian courts have jurisdiction to hear the claims against all of them provided that at least one of the defendants be domiciled or have his habitual residence in Belgium. In practice, this provision allows to bring proceedings against co-defendants domiciled in third States, while the jurisdiction against the party domiciled in Belgium is based on article 2 of the Brussels I Regulation.

The application of article 5(1) of the Code is subject to a statutory restriction: jurisdiction will not be entertained by Belgian courts if the claim has been instituted "*solely with the object of removing a defendant from the jurisdiction of his home court*". This restriction is inspired by the case law of the Court of justice under article 6(1) of the Brussels Convention, and is designed to avoid an abuse of process. The Code does not include the requirement, which is found in European law, that the claims against the various defendants be closely connected. Such connection should however be required, in accordance with prior Belgian case law under article 635(10) of the Judicial Code¹⁹.

b) Third Party Proceedings

Under article 8(1) of the Code, when Belgian courts have jurisdiction to hear a claim, they also have jurisdiction to entertain the action on a warranty or guarantee or in a third party proceedings. The application of this rule is also subject to the abuse of process safety clause: the proceedings cannot be instituted "*for the sole object of removing (the third party) from the jurisdiction of the court which should normally be competent*". While the requirement of "close connection" between the two claims is, again, not mentioned in the Code, it should still be relevant in this matter.

c) Counter-Claims

¹⁸ See Cass., 2 Feb. 1979, *Bibby Line v. Berkshire*, *Jurisprudence du port d'Anvers*, 1979-1980, p. 37; H. Born and M. Fallon, "Droit judiciaire international Chronique 1978-1982", *Journal des tribunaux*, 1983, p. 219, n° 165; H. Born, M. Fallon and J.L. Van Boxstael, *Droit judiciaire international – Chronique de jurisprudence 1991-1998*, Larcier, 2001, p. 553.

¹⁹ See A. Nuyts, "Les bases de compétence générales dans le Code de droit international privé", *Revue de droit judiciaire et de la preuve*, 2004, p. 179, n° 12.

Under article 8(2) of the Code, when Belgian courts have jurisdiction to hear a claim, they also have jurisdiction to entertain any counter-claim, provided that such counter-claim "*arises from the same fact or act on which the original claim was based*". This time, the requirement of "close connection" between the claims is provided expressly.

d) Related Claims

In addition to the above-mentioned rules, the Code still provide a catch-all provision for the consolidation of cases when the claim is "*so closely connected (with the claim for which Belgian courts have jurisdiction) that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings*". Here, the "close connection" requirement, whose definition is inspired by the rule of the Brussels regime for multiple defendants (art. 6(1)), becomes as such a basis of the jurisdiction, allowing the consolidation of the claims. As a consequence, as against defendants domiciled in third States, plaintiffs can bring in Belgium any claim that is related to a claim for which Belgian courts have jurisdiction on another basis. There is no such rule in European law.

e) Any Problems Pertaining to Lack of Harmonisation

The lack of harmonisation of these rules means that, when the proceedings involves both EU defendants and non-EU defendants, Belgian courts must use different sets of rules in the same case. In practice, the difference in the legal basis is not so much of importance with respect to actions against multiple defendants, third party action, and counter-claims, for the Belgian domestic rules are directly inspired by European law and should lead in practice to the same results. However, the lack of harmonisation has much more significance with respect to the last "catch-all" rule of consolidation: the absence of such rule in European law, combined with its presence in Belgian domestic law, means that the possibilities to consolidate actions against non-EU domiciliaries are much larger than against EU domiciliaries.

15. Rules of Jurisdiction Pursuant to Annex I of Brussels I

a) The rules listed in annex I

As from 1 October 2004, there is no longer any "exorbitant" rule of jurisdiction in force in Belgium in the sense of articles 3(2) and 4(2) of the Brussels I Regulation.

It should be noted that Belgium is still formally listed in text of Annex I of the Brussels I Regulation, which purports to mention all the domestic rules referred to in articles 3(2) and 4(2) of the Regulation. The rules for Belgium that are mentioned are respectively article 15 of the Civil Code (jurisdiction based on the Belgian citizenship of the defendant), and article 638 of the Judicial Code (jurisdiction based on the domicile or residence of the claimant in Belgium, subject to a condition of reciprocity). However, both of these provisions have now been repelled.

b) Practical use of the rules listed in Annex I

Prior to its abrogation, article 15 of the Civil Code was applied mainly in family and matrimonial law matters²⁰. It was seldom used in civil and commercial matters that are governed by the Brussels I

²⁰ See the case law reporter by H. Born and M. Fallon, "Droit judiciaire international Chronique 1986-1990", *Journal des tribunaux*, 1992, p. 430, n° 105.

Regulation, which is not surprising since by definition, its application in these matters would be restricted to claims against Belgian nationals domiciled in third States. On the contrary, article 638 of the Judicial Code was regularly used both outside and within the Brussels I matters. For instance, this jurisdictional basis has been used by employees domiciled in Belgium to sue employers domiciled in third states, even when the employment contract had not been performed in Belgium²¹.

c) Extension of jurisdiction pursuant to article 4(2) of Brussels I

As a consequence of the abrogation of the above-mentioned rules, article 4(2) of the Brussels I Regulation has become moot for Belgium, in the sense that there is no “exorbitant” rule in Belgium that plaintiffs domiciled in other Member States can rely upon to bring proceedings against third state domiciliaries. In any event, even before such change, specific reliance on article 4(2) of the Brussels was not required for plaintiffs domiciled in other Member States to bring proceedings on the basis of the “exorbitant” rules of jurisdiction mentioned above, since these rules were not based on the citizenship of the plaintiff (but only of the defendant under article 15 of the Civil Code, at least since the abrogation of article 14 of the Civil Code in 1948). As for the jurisdiction based on the domicile of the plaintiff in Belgium (former article 638 of the Judicial Code), it could be relied upon both by Belgian and foreign plaintiffs.

16. Forum necessitatis

Unknown to Belgian law until the adoption of the Code, the *forum necessitatis* is now the subject of a specific statutory rule. Under article 11 of the Code, “Belgian courts have, exceptionally, jurisdiction for cases having close contacts with Belgium, when bringing proceedings abroad proves to be impossible or when it cannot be reasonably requested that the claim be brought abroad”. This provision can be relied upon when there is no other basis for the jurisdiction of Belgian courts under the other rules. It is designed to ensure the “right of access to justice” as guaranteed by article 6(1) of the Human Rights Convention²².

For this provision to apply, two basic conditions must be satisfied. First, it must be evidenced that bringing proceedings abroad would be impossible or unreasonable. This means, in practice, that the provision covers not only the case where the foreign courts do not have jurisdiction, under the local rules, to hear the claim, but also the case where there is no guarantee that the parties would get a fair trial abroad²³. Reference should be made to the meaning of this requirement under the case law of the Human rights court in Strasbourg²⁴. It has however been suggested that a finding of lack of fair trial abroad could be easier to make than a finding of infringement of article 6 of the Human Rights Convention

According to the preparatory work of the Code, proceedings can be brought in Belgium when the cost of bringing proceedings before the foreign competent court is “out of proportion” with the financial interests involved in the case²⁵. The plaintiff must however establish that such disproportion has the effect, in practice, to deprive him from effective access to the foreign court²⁶.

²¹ See the judgment of 18 May 1994 of the Employment Appeal Court of Brussels, *Revue de droit social*, 1993, p. 361.

²² Senate Report, p. 31.

²³ Introduction to the Draft Code, p. 36.

²⁴ See P. Wautelet, “Le Code de droit international privé et le procès international”, in G. de Leval (ed.), *Actualités en droit judiciaire*, CUP, 2006, p. 337.

²⁵ Introduction to the Draft Code, p. 36.

²⁶ A. Nuyts, “Les bases de compétence générales dans le Code de droit international privé”, *Revue de droit judiciaire et de la preuve*, 2004, p. 175, at p. 182.

Second, the case must have "*close contacts*" with Belgium. It is agreed that this requirement is not to be understood too strictly, for by definition cases which are not subject to the normal jurisdictional rules will most of the time not have a very strong connexion with the Belgian territory²⁷. The requirement should certainly be satisfied when the plaintiff is a Belgian national²⁸, but also when he is domiciled or habitually resident in Belgium. Any other element of the case can serve to establish the required connection with Belgium, including for instance the location of assets on the Belgian territory²⁹.

(D) National Jurisdiction & Enforcement of Non-EU Judgments

17. National rules of jurisdiction barring the enforcement of a non-EU judgment

Under article 25(1)(7) of the Code, the judgment of a non-EU State cannot be recognized and enforced in Belgium when "*Belgian courts had sole jurisdiction to hear the claim*". This is the case, in particular, for disputes relating to the registration or validity of intellectual property rights which are subject to be deposited or registered (art. 86, para. 2 and art. 95), and for disputes relating to the validity, functioning, dissolution or liquidation of legal persons having their principal establishment in Belgium (art. 109 and 115). In addition, it has been suggested – but there is not (yet) any case law to that end, and the matter is debated in the legal literature³⁰ – that Belgian courts may be deemed to have sole jurisdiction to hear claims that are subject to an agreement appointing Belgian courts.

On the other hand, there is *no* formal rule barring the enforcement of third state judgments relating to rights *in rem* in immovable property situated in Belgium, or relating to the validity of entries in public registers. In this respect, Belgian law is more liberal than European law (see art. 22(1) and (3) of the Brussels I Regulation).

²⁷ See A. Nuyts, op. cit., p. 182; P. Wautelet, op. cit., p. 338.

²⁸ Senate Report, p. 31.

²⁹ See A. Nuyts, op. cit., p. 183.

³⁰ See P. Wautelet, "Le nouveau régime des décisions étrangères dans le Code de droit international privé", *Revue de droit judiciaire et de la preuve*, 2004, p. 208, at p. 215. The writer considers that it would be preferable to follow the example of European law and to consider that the infringement of a jurisdiction agreement appointing the local courts does not constitute an absolute bar against the enforcement of foreign judgments.

(E) Declining Jurisdiction

18. Forum Non Conveniens

There is no general rule or practice in Belgium allowing a court having jurisdiction to hear a claim to decline the exercise of such jurisdiction for reasons of convenience or inappropriateness of the jurisdiction³¹, though Belgian judges have an inherent power to stay their proceedings for a certain time, provided that such stay does not lead to a denial of justice³². The doctrine of *forum non conveniens* is unknown in Belgian law, save for a narrow exception clause with respect to choice of court agreements (see below, 19(a)).

19. Declining Jurisdiction when the Defendant is Domiciled in a Third State

a) Non-EU Jurisdiction Agreements

Belgian law provides for the enforcement of foreign choice of court agreements, through the requirement in that case for Belgian courts to stay their proceedings (article 7 of the Code). Such requirement is however subject to certain conditions. First, the agreement must be “validly” concluded, a condition that is to be assessed under the law governing the agreement. Second, the agreement must relate to a subject matter in which the parties have the “free disposition of their rights”. This is the case, in practice, for most of the civil and commercial matters that are governed by the Brussels I regulation, but not for matters relating to the personal status of individuals.

Third, the decision of the foreign court appointed by the parties must be subject to be recognized and enforced in Belgium. Since any such decision, by definition, has not yet been rendered, Belgian courts are required to assess whether it can be *anticipated* that the foreign judgment will meet the conditions to be recognized and enforced in Belgium. If this is not the case, Belgian courts must disregard the jurisdiction agreement and will proceed with the claim.

Finally, foreign choice of court agreement will not be upheld if the jurisdiction of Belgian court is claimed under the *forum necessitatis* (art. 11 of the Code, see above, 16). That means, in practice, that Belgian courts can be seized of a claim notwithstanding a foreign choice of court agreement when it is established that bringing the claim before the chosen court would be impossible or unreasonable.

In practice, since EU choice of court agreements are subject to article 23 of the Brussels I regulation, the above domestic regime only applies to third state jurisdiction agreements.

b) Parallel Proceedings in a non-EU court

Belgian courts may stay their proceedings when a foreign court is already seized of the same dispute (art. 14 of the Code). Like the *lis pendens* rule of article 27 of the Brussels I Regulation, this provision is based on the *prior tempore* principle, in the sense that Belgian courts can stay their proceedings only when the other court has been seized of the dispute *before* the Belgian court. In line also with European law, article

³¹ See A. Nuyts, *L'exception de forum non conveniens – Etude de droit international privé comparé*, Bruylant, Brussels, 2003, par. 143 s.

³² A. Nuyts, *op. cit.*, par. 559.

14 of the Code applies only when the parallel proceedings involves the same parties and have the same object and the same cause.

On the other hand, unlike European law, the *lis pendens* rule is not mandatory: Belgian courts *may* stay their proceedings, but they are not required to do so. The Code provides that the decision to stay or not the proceedings must take into account the requirements of "*good administration of justice*". Belgian courts have therefore a certain discretion in this matter.

Another distinctive feature of the Belgian regime, as opposed to the Brussels I Regulation, is that the Belgian courts can stay their proceedings only when it can be anticipated that the foreign judgment will be recognized and enforced in Belgium. This requirement is identical to the requirement to give effect to foreign choice of court agreements (see above, 18).

c) "*Exclusive*" Jurisdiction in a non-EU State

In certain particular matters, Belgian courts have jurisdiction *only* if the dispute has a certain connection with Belgium. This is the case for disputes relating to the registration or validity of intellectual property rights which are subject to be deposited or registered (it is required that the rights be deposited or registered in Belgium: see art. 86), and for disputes relating to the validity, functioning, dissolution or liquidation of legal persons (it is required that the legal person has its principal establishment in Belgium: see art. 109). In both cases, Belgian courts have *no jurisdiction* to hear the claim when the relevant connection is with a foreign state. Thus, Belgian courts are *required* to decline jurisdiction, even ex officio, when the dispute relates to the validity or registration of an intellectual property registered abroad, or to the validity or functioning of a legal person having its principal establishment outside Belgium.

It should be noted that there is no formal rule in the Code providing that Belgian courts must abstain to entertain proceedings relating to rights *in rem* in immovable property located abroad. Prior to the adoption of the Code, the Court of cassation had held that Belgian courts could refuse to entertain claims relating to foreign immovable properties³³. Belgian courts had therefore seemingly a certain discretion in this matter³⁴. It is yet unclear whether this case law can be maintained further to the adoption of the Code.

20. Declining Jurisdiction When the Defendant is Domiciled in the EU

Belgian law does not distinguish between the situation where the defendant is domiciled in the EU and where he is domiciled in a third state. Thus, under the Code, the rules requiring/permitting the courts to decline jurisdiction in the three above-mention cases (choice of court agreement, *lis pendens* or exclusive jurisdiction in a third state) apply also when the defendant is domiciled in Belgium. This solution, which already applied under the prior case law³⁵, is justified in the Belgian literature by the reflexive effect (*effet réflexe*) doctrine³⁶, which allows EU courts to decline jurisdiction in favour of non-EU courts in the same cases as when they are entitled to decline jurisdiction in favour of EU courts under the uniform rules of the Brussels I regulation.

³³ Cass., 31 October 1968; Pas., 1969, I, p. 227.

³⁴ See A. Nuyts, *L'exception de forum non conveniens – Etude de droit international privé comparé*, Bruylant, Brussels, 2003, par. 327, note 598.

³⁵ See H. Born and M. Fallon, "Chronique de jurisprudence - Droit judiciaire international (1986-1990)", J.T., 1992, p. 416, par. 59.

³⁶ See A. Nuyts, « La théorie de l'effet réflexe », in *Le droit processuel et judiciaire européen, la charte – die keure*, 2003, p. 73.

This traditional solution has not been challenged in Belgium further to the ruling in *Owusu*³⁷, notwithstanding the fact that the European court held in that case that there can be no derogation from the jurisdiction of the court of the domicile of the defendant except in the cases expressly provided for by the text, and that no exception is expressly provided for non-EU choice of court agreements, *lis pendens* or “exclusive” jurisdiction in third states.

(F) The Adequate Protection (or lack thereof) of EU Nationals and/or Domiciliaries through the Application of Domestic Jurisdictional Rules

21. Use of National Jurisdictional Rules to Avoid an Inadequate Protection in Non-EU Courts

To our knowledge, there is no published case (in civil and commercial matters subject to the Brussels I Regulation) where Belgian courts have exercised jurisdiction on the basis of domestic rules in circumstances where it was shown that the plaintiff would not get a fair hearing or an adequate protection in the courts of non-EU States. However, the absence of any reported cases does not mean that such a situation would be entirely theoretical. The Belgian legislature has expressly envisioned for such possibility to arise in practice when providing, in the Code, for a specific jurisdiction based on the impossibility or unreasonableness of bringing proceedings abroad (article 11 of the Code, see above, 16).

22. Lack of Jurisdiction Under National Rules Having the Effect to Deprive EU Plaintiffs of an Adequate Protection

a) Claims from EU Consumers against non-EU defendants

To our knowledge, there is no recent case or practice where Belgian courts have declined jurisdiction with respect to a claim brought by an EU consumer against a defendant domiciled in a third State. As from the entry into force of the Code, the habitual residence of the consumer in Belgium establishes jurisdiction for actions against defendants domiciled in third states, provided that a sufficient connection exists with Belgium (art. 97(1) of the Code, see above, par. 13(a)). Any choice of court clause appointing the courts of foreign states are invalid. In practice, since the Code became applicable, Belgian consumers enjoy therefore a jurisdictional protection similar to the protection given to consumers in intra-community relations.

³⁷ Case C-281/02, Judgment of 1 March 2005.

b) Claims from EU Employees against non-EU Employers

To the best of our knowledge, there is no case or practice where Belgian courts have declined jurisdiction with respect to a claim brought by an EU employee against an employer domiciled in a third State. Under the Code, an employee habitually carrying out his work in Belgium can bring proceeding in Belgium, irrespective of the existence in the contract of a foreign choice of court clause (art. 97(2) of the Code, see above, par. 13(b)). Such principle only confirms a principle which was already upheld in prior case law. The right of employees carrying out their work in Belgium to bring proceedings in this country has sometimes been justified by the necessity to ensure the enforcement of the mandatory rules of Belgian labor law³⁸. Such justification is no longer needed since the adoption of the Code, which provides for the jurisdiction of Belgian courts in this matter irrespective of the applicable law.

c) Claims from EU Plaintiffs in Community Regulated Matters

In principle, Belgian private international law draws a clear distinction between the *forum* and the *ius*, with the consequence that the jurisdiction (or lack thereof) of Belgian courts is normally not influenced by the applicable law³⁹. As a consequence, the fact that the dispute arises in regulatory matters which are the subject of domestic or Community mandatory rules does not justify, in principle, any derogation from the normal jurisdictional rules, including the principle of validity of foreign choice of court agreements. Such principle is absolute within the scope of the Brussels I Regulation, where Belgian courts uphold agreements appointing the jurisdiction of the courts of other Member States even when the effect of such agreement is to deprive a Belgian plaintiff of the application of Belgian *lois de police*⁴⁰.

However, the principle is less absolute *outside* the scope of the Brussels I Regulation. In several instances, the Belgian Court of cassation has subjected the validity of jurisdiction or arbitration agreements to the condition that their enforcement does not lead to the infringement of substantive mandatory rules of the *lex fori*. This restriction has been applied in matters of distributorship agreements⁴¹, in maritime matters⁴², and also, by lower courts, in employment law matters⁴³. To our knowledge, there is not yet any reported case where such kind of restriction has been applied in Community regulated matters. But conversely, there is no reported case that we are aware of where Belgian courts would have declined their jurisdiction with the consequence that the plaintiff would be deprived of the protection of mandatory rules of Community law. It is therefore difficult, on the basis of the current case law, to assess the importance of the risk, if any, that the application of Belgian jurisdictional rules could lead to deprive an EU litigant of an adequate protection in Community regulated matters.

³⁸ See H. Born and M. Fallon, "Chronique de jurisprudence - Droit judiciaire international (1983-1985)", J.T., 1987, p. 482, par. 87. Comp. H. Born, M. Fallon and J.L. Van Boxstael, *Droit judiciaire international – Chronique de jurisprudence 1991-1998*, Larcier, 2001, p. 551, par. 287.

³⁹ See H. Born, M. Fallon and J.L. Van Boxstael, *op. cit.*, p. 49, par. 29.

⁴⁰ See Cass., 21 June 2001, *Ducati Motor*, Pas., I, par. 385, where the Court of cassation has upheld an Italian choice of court agreement which, according to the distributor, had the effect and was designed to avoid the application of the international mandatory rules of the 1961 Belgian Act on the Unilateral Termination of Exclusive Distributorship Agreements for an Indefinite Period.

⁴¹ Cass., 28 June 1979, *Audit-NSU*, Pas., 1979, I, p. 1260.

⁴² Cass., 2 February 1979, *Bibby Line*, Pas., 1979, I, p. 634. On these cases, see M. Fallon, "La dérogation volontaire de compétence internationale", *Revue critique de jurisprudence belge*, 2003, p. 271 s., at p. 306 s.

⁴³ See above.

23. Lack of Adequate Protection as a Consequence of Transfer of Domicile to or from a Third State

The jurisdiction of Belgian courts is assessed, in principle, at the time of the *commencement of the proceedings*. This rule is expressly provided in most jurisdictional rules of the Code, including with respect to the domicile or habitual residence of the defendant, which must be determined at the time of the filing of the claim (art. 5 of the Code). Though this rule of timing is not mentioned expressly in the Brussels I Regulation, it is recognized that it also applies for the purpose of the application of article 2 of this Regulation (jurisdiction of the domicile of the defendant)⁴⁴. This is an application of the *perpetuatio fori* principle, under which the jurisdiction, when established through a given connecting factor at the moment of the introduction of the action, remains valid and effective throughout the proceedings, irrespective of any further change to such connecting factor.

The corollary of this principle is that the jurisdiction of Belgian courts is non-existent if the connecting factor (such as the domicile of the defendant in Belgium) is not present at the moment of the introduction of the action, even if such connecting factor existed at an *earlier stage*, for instance when the activities from which the claim arises were carried out or when the dispute arose. In practice, however, to our knowledge, there is no reported case where Belgian courts would have declined their jurisdiction because the defendant would have transferred his domicile to a third State before the introduction of the action.

24. The Risk that EU Rules and Principles be Put in Jeopardy Because of the Application of National Jurisdictional Rules

To the best of our knowledge, there is no reported case where the application of Belgian jurisdictional rules has put in jeopardy the application of mandatory Community legislation, the proper functioning of the internal market, or the adequate judicial protection of EU nationals or domiciliaries. In practice, the risk that such situation arises is alleviated by the fact that the new Code of private international law has built-in safeguard rules, including the right to bring proceedings in Belgium, under certain conditions, when bringing proceedings in a third state would be impossible or unreasonable (art. 11), and the requirement, for Belgian courts to enforce a third state jurisdiction clause, that the judgment from the chosen court be subject to be recognized and enforced in Belgium.

(G) Residual Jurisdiction under the new Brussels II Regulation

25. Applicable National Rules Pursuant to article 14 of the New Brussels II Regulation (Parental Responsibility)

Under the Code, Belgian courts have jurisdiction to hear claims in matters of parental responsibility in the following cases:

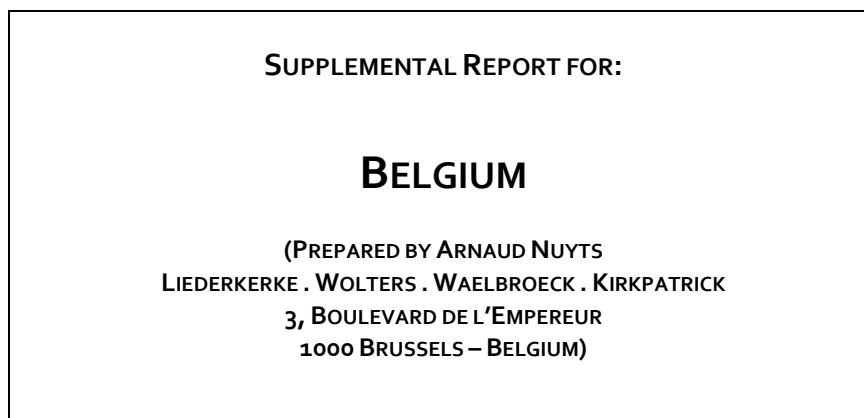
- (i) the child has his/her habitual residence in Belgium when the claim is filed (art. 32(1) and 33);
- (ii) the child is a Belgian citizen when the claim is filed (art. 32(2) and 33);
- (iii) the Belgian courts are seized of a request for nullity, divorce or separation of the parents (art. 33, par. 3);
- (iv) urgent measures need to be taken concerning a person present in Belgium (art. 33, par. 4)
- (v) the defendant (such as one of the parents) is domiciled or has his/her habitual residence in Belgium (art. 5(1));

⁴⁴ See H. Gaudemet-Tallon, *Compétence et exécution des jugements en Europe*, 3rd ed., par. 83.

- (vi) the case has any other close connection with Belgium and bringing proceedings abroad would be impossible or unreasonable (art. 11, see above, par. 16).

Most of these rules are unlikely to apply in practice, because under the jurisdictional rules of the Brussels IIBis Regulation the jurisdiction shall already be given to Belgian or other Member State's courts. However, some of these rules may still provide residual jurisdiction to Belgian courts where none of the uniform rules apply. For instance, when the child is a Belgian citizen, this is enough to provide jurisdiction to Belgian courts even if there is no other connection whatsoever with Belgium, and such jurisdiction exists even if there is no agreement of all the parties for the Belgian courts to exercise jurisdiction (on the other hand, such agreement is required under article 12(3) of the Brussels IIBis Regulation).

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26. NA

27. Conventions with Third States in Matters of Parental Responsibility (and maintenance of children)

What are the international (and in particular bilateral) conventions concluded between your country and non-EU countries that include rules of jurisdiction in matters of parental responsibility (and maintenance of children)?

Belgium is a contracting party to a limited number of conventions that include provisions dealing with parental responsibility and maintenance of children, including the following.

A. Multilateral Conventions

- Hague Convention of 12 June 1902 relating to the settlement of guardianship of minors;
- Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction
- Hague Convention of 24 October 1956 on the law applicable to maintenance obligations towards children
- Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children

B. Bilateral Conventions

- Consular Convention between Belgium and USSR, signed in Brussels on 12 July 1972 (M.B., 9 August 1975);
- Consular Convention between Belgium and Yugoslavia signed in Belgrade on 30 September 1969 (M.B., 20 December 1973);
- Convention between Belgium and Yugoslavia on the recognition and enforcement of judgments in matters of maintenance obligations, signed in Belgrade on 12 December 1973 (M.B., 8 March 1976)

28. Jurisdiction as a Ground for Resisting the Enforcement of non-EU Judgment in Matters of Parental Responsibility

Can the judgment of a non-EU State relating to matters of parental responsibility (for instance, a judgment given the guardianship of a child to one of the parents) be denied recognition or enforcement in your country on the basis that the courts of your country are the only ones who have jurisdiction to entertain the matter? If so, what is (are) the ground(s) of these "exclusive" rules of jurisdiction (e.g., habitual residence of the child in your country, citizenship of one or several of the parties, etc.)

In Belgium, there is no rule of "exclusive" jurisdiction in matters of parental responsibility. As a consequence, the judgment from a non-EU State relating to matters of parental responsibility cannot be denied recognition and enforcement in Belgium for the sole reason that it goes against the jurisdiction of the Belgian courts to determine the matter. The grounds to deny recognition and enforcement of non-EU judgments in this matter are the same as those which apply in general under the rules of the general part of the Code of private international law (Chapter I, Section 6).

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