



The relation between CMR and the Brussels I bis Regulation

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AGENDA

A. General Principles

B. Jurisdiction

C. *Lis pendens* and *res iudicata*

D. Recognition and Enforcement

A. GENERAL PRINCIPLES

- jurisdiction,
 - *lis pendens*,
 - *res iudicata*,
 - recognition, and
 - enforcement...
- ... are all dealt with by
Art. 31 CMR
- AND by the
Brussels I bis Regulation



1. Overview, geographically
2. Relationship international conventions and EU law
3. Concretely: CMR – Brussels I bis Regulation („BR“)



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EU	Member State	CMR 1956	Protocol 1978	Protocol 2008
1958	Germany	5. 2. 1962	28. 12. 1980	5. 4. 2022
	Afghanistan	5. 1. 2021	--	--
	Albania	18. 10. 2006	12. 4. 2007	--
	Armenia	7. 9. 2006	7. 9. 2006	6. 1. 2024
	Aserbaidshan	17. 12. 2006	--	27. 3. 2023
	Belarus	4. 7. 1993	27. 10. 2008	8. 5. 2019
1958	Belgium	17. 12. 1962	4. 9. 1983	--
	Bosnia and Herzegowina	6. 3. 1992	17. 9. 2020	--
2007	Bulgaria	18. 1. 1978	--	5. 6. 2011
1973	Denmark	26. 9. 1965	28. 12. 1980	26. 9. 2013
2004	Estonia	1. 8. 1993	17. 3. 1994	31. 1. 2017
1995	Finland	25. 9. 1973	28. 12. 1980	11. 4. 2019
1958	France	2. 7. 1961	13. 7. 1982	3. 1. 2017
	Georgia	2. 11. 1999	2. 11. 1999	--
1981	Greece	22. 8. 1977	14. 8. 1985	21. 1. 2024
	Iran	16. 12. 1998	16. 12. 1998	6. 2. 2018
1973	Ireland	1. 5. 1991	1. 5. 1991	--
1958	Italy	2. 7. 1961	16. 12. 1982	26. 9. 2024
	Jordania	11. 2. 2009	11. 2. 2009	--
	Jugoslawien, ex	2. 7. 1961	--	--
	Kasachstan	15. 10. 1995	--	--
	Kirgisistan	1. 7. 1998	1. 7. 1998	24. 11. 2022
2013	Croatia	8. 10. 1991	1. 5. 2017	--
2004	Latvia	14. 4. 1994	14. 4. 1994	5. 6. 2011
	Lebanon	20. 6. 2006	20. 6. 2006	--
2004	Lithuania	15. 6. 1993	15. 6. 1993	5. 6. 2011
1958	Luxemburg	19. 7. 1964	28. 12. 1980	26. 3. 2018
2004	Malta	20. 3. 2008	20. 3. 2008	--
	Morocco	24. 5. 1995	--	--
	Macedonia	17. 9. 1991	18. 9. 1997	--
	Moldau, Republic	24. 8. 1993	29. 8. 2007	12. 6. 2018

	Mongolia	17. 12. 2003	--	--
	Montenegro	3. 6. 2006	--	--
1958	Netherlands	2. 7. 1961	28. 4. 1986	5. 6. 2011
	Norway	29. 9. 1969	29. 11. 1984	9. 9. 2020
	Oman	22. 12. 2020	--	22. 12. 2020
1995	Austria	2. 7. 1961	20. 5. 1981	4. 11. 2024
	Pakistan	28. 8. 2019	28. 8. 2019	--
2004	Poland	11. 9. 1962	21. 2. 2011	11. 9. 2019
1986	Portugal	21. 12. 1969	20. 11. 1989	25. 12. 2019
2007	Roumania	23. 4. 1973	2. 8. 1981	12. 6. 2019
	Russia	1. 12. 1983	3. 5. 2016	4. 6. 2018
1995	Sweden	1. 7. 1969	29. 7. 1985	7. 6. 2020
	Switzerland	28. 5. 1970	8. 1. 1984	5. 6. 2011
	Serbia	27. 4. 1992	17. 9. 2020	--
2004	Slowakia	1. 1. 1993	20. 5. 2008	22. 5. 2014
2004	Slovenia	25. 6. 1991	19. 2. 2014	13. 11. 2017
	Soviet Union, ex	1. 12. 1983	--	--
1986	Spanien	13. 5. 1974	9. 1. 1983	9. 8. 2011
	Syria	9. 12. 2008	--	--
	Tadschikistan	10. 12. 1996	--	7. 10. 2019
2004	Czech Republic	1. 1. 1993	27. 9. 2006	13. 7. 2011
	Czechoslovakia, ex	3. 12. 1974	--	--
	Tunesia	24. 4. 1994	24. 4. 1994	--
	Turkey	31. 10. 1995	31. 10. 1995	1. 5. 2018
	Turkmenistan	17. 12. 1996	17. 12. 1996	21. 3. 2023
	Ukraine	17. 5. 2007	13. 9. 2020	8. 10. 2020
2004	Hungary	28. 7. 1970	16. 9. 1990	26. 11. 2024
	Usbekistan	27. 12. 1995	25. 2. 1997	14. 1. 2021
1973– 2020	United Kingdom	19. 10. 1967	28. 12. 1980	19. 3. 2020
2004	Cyprus	30. 9. 2003	30. 9. 2003	--

➔ in a nutshell:

- All EU member states ratified the CMR,
- but not all CMR member states are EU member states...
- ... and not all EU member states ratified both the CMR Protocols (yet...).

2. INTERNATIONAL CONVENTIONS AND EUROPEAN LAW

- International conventions are agreed by States and then integrated / transformed into the law of the respective States by their legislators.
- European law is supranational law and thereby higher-ranking than the law of the member states.
- As a consequence, European law, in principle, supersedes the internal law even where this derives from international conventions.
- But: EU wants its member states to respect the international conventions they agreed to. This is implemented by rules to „give way“.

3. RELATION CMR – BR (IN GENERAL)

❖ **Art. 71 par. 1 BR:** This Regulation shall not affect any conventions to which the Member States are parties and which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.

→ **This defines the relation between CMR and Brussels Regulation.**

- It requires applicability of the CMR. Where domestic law applies CMR rules beyond the convention's applicability, the Brussels Regulation does not cede the way! (and neither does the Rome I Regulation)

❖ **How to interpret this article 71 BR ?**

Some rules of interpretation in Art. 71 par. 2 BR:

- The courts of the EU states may assume jurisdiction also on the basis of provisions of the CMR (not only the Regulation).
 - not very relevant, but may occur
- Judgments given on the basis of “CMR jurisdiction” shall also be recognised and enforced in the other Member States in accordance with the Regulation.
 - not very relevant
- The CMR conditions for the recognition or enforcement of judgments apply, but the provisions of this Regulation concerning recognition and enforcement may also be applied (“favor executionis”).
 - i.e. also the simplified procedure!

SUPPLEMENTARY INTERPRETATION OF ART. 71 BR BY ECJ:

- ECJ has no competence to interpret the CMR... –...but it does for Art. 71 BR.
- ECJ: Art. 71 BR in principle gives way to Art. 31 CMR – but this requires that the basic principles of the BR are not hurt, namely,
 - **predictability** as to the courts having jurisdiction,
 - a **sound administration of justice**, → (any rule's goal...)
 - to **minimise of the risk of concurrent proceedings**, → CMR must not allow parallel proceedings where BR would not!
 - **mutual trust** in the administration of justice and **favor executionis**. → CMR must not disregard foreign decisions where the BR would order the recognition.

ECJ judgments:

- 4.5.2010, C-533/08 (TNT ./ Axa);
- 19.12.2013, C-452/12 (Nipponkoa ./ Inter-Zuid);
- 21.3.2024, C-90/22 (Gjensidige ./ Rhenus).



B. JURISDICTION – ART. 31 PAR. 1 CMR

In legal proceedings arising out of carriage under this Convention, the plaintiff may bring an action in any court or tribunal of a contracting country **designated by agreement** between the parties and, in addition, in the courts or tribunals of a country within whose territory:

- a) The **defendant** is ordinarily resident, or has his principal place of business, or the branch or agency through which the contract of carriage was made, or
 - b) The place where the goods were **taken over** by the carrier or the place designated for **delivery** is situated.
- and in **no other** courts or tribunals.

in comparison:

Article 25 BR

jurisdiction agreement

- with presumption of exclusivity
- certain form requirements

Article 4, 63 BR:

Seat of the **defendant** (alternatively registration or administration)

Article 7, no.1 BR

Place of performance of the contract of carriage: **delivery** and also **taking over** (ECJ 11/7/2018, Rs. C-88/17).



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B. JURISDICTION – ISSUE NUMBER 1: DIRECT CLAIMS

In “legal proceedings arising out of carriage under this Convention”, the plaintiff may bring an action

- not only claims on the basis of CMR
- but also contractual and even non-contractual claims under domestic law.
- Also direct claims against liability insurers?
- → German BGH (29/5/2019 – I ZR 194/18): (+)
- That seems very far reaching...
- but crucial question: IS THAT IN LINE WITH THE BR?
- Under Art. 10 BR, the insurer could be sued „where the harmful event occurred“ → place of delivery (+);
- not at place of taking over (-)
- but „fundamental principle of BR“?
- Predictability ? – not less than place of delivery...

B. JURISDICTION – ISSUES NUMBER 2 AND 3: AGREEMENTS

Art. 31 par. 1 read together with Art. 41 CMR: Agreements on exclusive jurisdiction are not allowed under the CMR.

→ Is that in line with the fundamental principles of the BR?

- ECJ (21/3/2024, C-90/22 „Gjensedige“): did not decide the question, but it appears from its reasoning that apparently the ECJ had no major concerns against the CMR's approach.

Art. 31 par. 1 allows jurisdiction agreements – but says nothing about the way to agree or form requirements. Does Art. 25 BR apply when courts of EU member states decide on a jurisdiction agreement?

→ Judgment of the Hamburg appeal court Sept/2026 (+) !

B. JURISDICTION – ISSUE NUMBER 4: TERRITORIAL JURISD.

Where CMR determines only the INTERNATIONAL jurisdiction, does the BR play a role for the determination of the TERRITORIAL jurisdiction?

- territorial jurisdiction generally determined domestic law
- BR in some articles *additionally* is on territorial jurisdiction.
- Does BR then substitute domestic law for determination of territorial jurisdiction *only* ?
→ Germany (+), Austria (-) ?

Arguments PRO

→ Art. 71 BR („*shall not affect* “)

Arguments CONTRA

- Hist. development BR (terr. jur. as „annex“)
- Systematic arg.: BR closed system / then no more extraordinary jurisdiction
- Differences in detail (BR: actual place of delivery vs. CMR: agreed pod)



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C. LIS PENDENS AND RES IUDICATA – ART. 31 PAR. 2 CMR

(2) Where in respect of a claim referred to Par. 2 deals with two issues in paragraph 1 of this article **an action is pending** before a court or tribunal competent under that paragraph, or where in respect of such a claim **a judgement has been entered** by such a court or tribunal

→ **no new action** shall be started

- **between the same parties**
- **on the same grounds**

unless the judgement of the court or tribunal before which the first action was brought is not enforceable in the country in which the fresh proceedings are brought.

(UNFORTUNATELY WITHOUT DISTINCTION):

1. procedural blocking effect of *lis pendens*
(→ coordination of *proceedings*)
2. the *procedural blocking effect* of a final judgement / *res iudicata*
(→ coordination of *decisions*)

→ What does „on the same grounds“ mean?

→ narrow concept (BGH) vs. broad concept (core elements) (ECJ)

→ decided by ECJ judgment





C. LIS PENDENS – RES IUDICATA : NECESSARY DISTINCTION !

(2) Where in respect of a claim referred to in paragraph 1 of this article **an action is pending** before a court or tribunal competent under that paragraph, or where in respect of such a claim **a judgement has been entered** by such a court or tribunal

→ **no new action** shall be started

- **between the same parties**
- **on the same grounds**

unless the judgement of the court or tribunal before which the first action was brought is not enforceable in the country in which the fresh proceedings are brought.

→ **no new action** shall be started **on the same grounds**:

1. in case of ***lis pendens*** : Procedural blocking effect on the basis of the ECJ's broad understanding is in order.

2. In case of ***res iudicata*** : Procedural blocking effect only where case of ***ne bis in idem*** → i.e. only if **the very same action is brought again**, the same „core elements“ should not be sufficient

→ then only binding force (par. 3), see below... (arg: enforceability req.)

→ That should also be the understanding of ECJ 30/11/1976 42/76 *Wolf / de Cox*.

D. RECOGNITION AND ENFORCEMENT

– ART. 31 PAR. 3 (AND 4) CMR

(3) When a **judgement** entered by a court or tribunal of a contracting country in any such action as is referred to in paragraph 1 of this article has become **enforceable** in that country,

it shall **also** become **enforceable in each of the other contracting States**, as soon as the **formalities** required in the country concerned have been complied with.

These formalities shall not permit the merits of the case to be re-opened.

Par. 3 also deals with two issues:

1. the **recognition** – as a lesser consequence of the enforceability, including the **binding force (*res iudicata*)** in respect of the contents and
2. the **enforceability** itself.

Requirements:

- „enforceability“ , i.e. judgment must be final;
- „formal“ requirements (no *révision au fond* allowed).



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Thank you very much
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