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1. *Milano Court of Appeal, 8 February 2013* 250

Pursuant to Article 14 of Law 31 May 1995 No 218, which embodies the principle *iura novit curia*, it is for the court to ascertain the content of the foreign law with a view to establishing whether the reciprocity requirement provided under Article 16 of the Preliminary Provisions to the Civil Code is satisfied. Accordingly, the contract with which an immovable situated in Italy was sold to a Swiss company is void because it fails to satisfy such condition with regard to Switzerland, given that the Swiss provisions in force at the time the contract was entered into – albeit they were subsequently partially amended – precluded an Italian company from purchasing, in the same circumstances, an immovable situated in Switzerland.

2. *Florence Tribunal, order of 21 January 2014* 182

Pursuant to Articles 2 and 24 of the Constitution, the issue of constitutionality is relevant and not manifestly unfounded with regard to: 1) the provision resulting from the transposition in the Italian legal order, as a result of Article 10(1) of the Constitution, of the customary rule of international law on the immunity of States from jurisdiction, as interpreted by the International Court of Justice in its judgment of 3 February 2012, in the part where it denies jurisdiction over actions for the compensation of damages resulting from war crimes perpetrated *iure imperii*, at least partly in the forum State, by the Third Reich; 2) Article 1 of Law 17 August 1957 No 848 in the part where, transposing Article 94 of the UN Charter, it enjoins the national [Italian] court to comply with the above mentioned judgment of the International Court of Justice; 3) Article 3 of Law 14 January 2013 No 5 in the part where it sets forth the same obligation.

3. *Belluno Tribunal, 13 February 2014* 832

Under Article 3(1)(a) of Regulation (EC) No 2201/2003 of 27 November 2003, Italian courts have jurisdiction over the divorce action of a couple of Tunisian citizens residing in Italy as a result of the applicant's habitual residence, since the plaintiff resided in Italy for no less than one year immediately before the application was made, as well as the respondent's habitual residence. Pursuant to Article 3 of such Regulation, in the event of a joint application, the courts of the Member State in whose territory either of the spouses is habitually resident have jurisdiction.
The lack of registration in the Italian civil registry of the marriage concluded abroad does not preclude a decision on the dissolution of the marriage. Also, in case of a divorce action between foreign spouses, the argument whereby the possible decision would not have effects in Italy – as a result of the fact that it could not be annotated in the civil registry since the marriage was not registered therein – does not prevent the jurisdiction of the Italian courts.
Under Article 8 of Regulation (EC) No 2201/2003, Italian courts have jurisdiction on claims over custody and access rights since the children reside in Italy with their mother. Italian courts also have jurisdiction pursuant to Article 12(1) of such Regulation on prorogation of jurisdiction as a result of the fact that such claims are connected to the divorce action, provided that the respondent father, by not raising objections, has accepted the jurisdiction of the Italian courts.
Under Articles 3(a), (b), (c) and (d) of Regulation (EC) No 4/2009 of 18 December 2008, which is applicable regardless of whether the parties are citizens of a EU Member State, Italian courts have jurisdiction over a child maintenance claim brought in Italy in the framework of a divorce action since both the applicant and the respondent habitually reside in Italy and the maintenance claim is connected to the action on the dissolution of the marriage in respect of which the respondent, by appearing before the court without raising objections, has accepted Italian jurisdiction.
Under Article 5(a)(c) of Regulation (EU) No 1259/2010 of 20 December 2010, Tunisian law governs the divorce between two Tunisian citizens since the applicant wife invoked the application of this law – albeit under the erroneous assumption that Article 31(1) of Law 31 May 1995 No 218 should apply and determine that Tunisian law governs as the common national law of

the spouses at the time the application was filed – and the respondent has agreed to it and limited his observations to the substantive provisions on divorce provided by the Tunisian law. In fact, the choice of law agreement is finalised by the spouses'designation, regardless of the underlying reasons for such common choice of law.

As concerns the conditions for the formal validity, the agreement on the applicable law is to be construed as being expressed in writing, dated and signed by both parties, in compliance with Article 7(1) of Regulation (EU) No 1259/2010, when the spouses have expressed their will in deeds signed by them. On the contrary, the formal validity of the agreement does not require that the parties'declaration be rendered contextually and in the same document, as may be inferred from the notion of "in writing" under the Regulation that encompasses any communication by electronic means which provides a durable record of the agreement. Finally, no further conditions for the formal or temporal validity of the agreement must be fulfilled since the Italian government has not availed itself of the opportunity provided in Article 17 of the Regulation to communicate to the Commission its national provisions with respect to Article 5(3) of the Regulation.

In spite of the fact that Regulation (EU) No 1259/2010 remains silent on this issue, parties shall not be precluded from choosing the applicable law provided that they are still within the terms to supplement and specify the questions of law that support their allegations. In accordance with Article 3(2) *litt.* b of Law No 898/1970, the last available moment to express the choice of the applicable law is the one of the finalization of the agreement on terms and conditions which is possible until the hearing for the submission of the final conclusions (udienza di precisazione delle conclusioni) since, under Article 5(3) of Regulation (EU) 1259/2010, it is sufficient that the judge puts the choice on the record. Therefore, the common choice of Tunisian law as the law governing the divorce expressed within the terms for the deposit of the supplemental briefs provided by Article 4(10) Law No 898/1970 is admissible in spite of the fact that it was expressed by the parties after the initiation of the proceedings.

Under Article 16 of Law 31 May 1995 No 218 and Article 12 of Regulation (EU) No 1259/2010, the application of Tunisian law does not conflict with public policy in the part where it does not subject the admissibility of the application for the dissolution of the marriage to the previous legal separation of the spouses since it is sufficient that it requires for the assessment that the spiritual and material union between the spouses may not be restored.

Italian law governs a parental responsibility claim provided that Article 36-*bis* of Law 31 May 1995 No 218 applies, such provision requiring that, in this matter, the principles of Italian law be applied in derogation from the provisions of the foreign law that would be applicable pursuant to the conflict-of-law provisions (in the case at hand, the national law of the child, i.e. Tunisian law, under Article 3 of the Hague Convention of 5 October 1961, which is applicable as a result of the reference made to it in Article 42 of Law No 218/1995).

Under Article 15 of Regulation (EC) No 4/2009 and Article 3 of the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations, the law governing the maintenance claims in favour of the minor children of a couple of Tunisian citizens is the law of the State of the creditor's habitual residence, in the case at hand, the Italian law. Such criterion may not be overridden by Article 4(3) of the 2007 Hague Protocol which provides that, in case of maintenance obligations of parents in favour of their children, if the maintenance creditor seised the authorities of the State of the debtor's

habitual residence, the lex fori applies. Nevertheless, in the case at hand the law of the State of the maintenance creditor's habitual residence, determined according to Article 3 of the 2007 Hague Protocol, coincides with the lex fori. For the purpose of determining the amount of the maintenance obligation, reference shall be also made to Article 14 of Regulation (EC) No 4/2009 whereby, regardless of the fact that the applicable law provides differently, regard shall be made to the needs of the maintenance creditor and to the resources of the debtor.

4. *Corte di Cassazione (plenary session), order of 24 February 2014 No 4324* 761

Also in light of the complexity of the claim, the reference for a preliminary ruling on jurisdiction (*regolamento preventivo di giurisdizione*) in which, in order to summarily expose the facts, photografic or digital reproductions of the documents of the proceeding on the substance are submitted to the Court, is admissible if, along with such reproductions, a brief and clear statement of the elements that are germane to solving the question of jurisdiction is also provided.
Under Article 6(2) of Regulation (EC) No 44/2001 of 22 December 2000, in a claw-back action brought over drawings and paintings by the buyer of such items, Italian courts have jurisdiction over the joinder of parties where the defendants (heirs of the seller) join in the action the heirs – domiciled in France – of the artist who originally transferred to the seller the property of the drawings and paintings in question. The distinction between "garanzia propria" (where the main action and the secondary action both relate to the same claim) and "garanzia impropria" (where the defendant seeks that a third party bears the consequences of its own non-performance of contract on the basis of a different claim than that in the main proceedings) or a claim that is coincidentally connected with the main proceedings is irrelevant since, to establish jurisdiction, it suffices to ascertain that the joinder is not preposterous, i.e. that its only aim is not to divert the defendant from its natural judge.

5. *Florence Tribunal, 6 June* 2014 844

With respect to a claim brough against a Spanish company and its warrantors for the delivery of a ship which is the object of a lease contract and for the payment of sums related to this contract, Italian courts have jurisdiction pursuant to Article 23 of Regulation (EC) No 44/2001 of 22 December 2000 as a result of the clause – included in the contract's general terms – conferring exclusive jurisdiction to the court seised for the claims arising out of the contract.

6. *Corte di Cassazione, order of 13 June 2014 No 13567* 505

In a negative declaratory action brought by an Italian company against an Italian bank and a Qatari bank for the ascertainment of their obligation to honor their warranty obligations under a performance bond, the issue of whether the proceedings that are pending before the courts of Qatar over the contract that gave rise to the obligations that are the object of the warranty

should be construed as preliminary does not amount to an issue of jurisdiction. Accordingly, the motion against the order of stay of the proceeding in Italy, rendered pursuant to Article 7(3) of Law 31 May 1995 No 218, may be brought with a so-called "improper" motion for change of venue (*regolamento c.d. improprio di competenza*) [pursuant to Article 6 of Law No 353/1990, editor's note]. Article 7(3) of Law No 218/1995 – which grants to the court discretion to exceptionally stay the proceeding before it if it deems that the foreign decision is suitable to produce effects in Italy – confers to the court the widest margin of discretion with respect to staying the proceedings: accordingly, the review of the legality of the order of stay is limited to the assessment of the comprehensiveness, accuracy and logic of the legal reasoning therein, and it does not extend to the convenience of such order.
Article 6 of Law No 218 of 1995 – according to which Italian courts have incidental competence on questions which do not fall within the scope of Italian jurisdiction if their settlement is necessary in order to decide an action brought to court – is not applicable if, as occurs in the instant case, the preliminary question is part of an action brought before a foreign court and the Italian judge lacks the power to adjudicate it (*potestas iudicandi*).

7. *Corte di Cassazione (plenary session), 19 June 2014 No 13941* 770

Under Article 5(1)(b) first alinea of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over the claim, brought against a German company, for the ascertainment of the breach of an obligation arising from a contract for the purchase of autovehicles entered into by an Italian buyer and the defendant, for the ensuing termination of the contract and the compensation of damages because, absent the indication in the contract of the place of delivery of the autovehicles, the material delivery has occurred in Italy.

8. *Pesaro Tribunal, decree of 21 October 2014* 845

The notion of marriage protected by the Constitution is the same as the one provided by the Civil Code which requires that the spouses be of different gender. Consequently, the marriage concluded abroad between same-sex individuals may not produce legal effects in Italy since it may not be characterized as "marriage" under the Italian legal system and, as such, it may not be registered.

9. *Constitutional Court, 22 October 2014 No 238* 162

The constitutionality of the rule of customary international law on the immunity of States from jurisdiction, as interpreted by the International Court of Justice in its judgment of 3 February 2012 in *Germany v. Italy* and as "transposed in our [the Italian] legal order as a result of Article 10(1) of the Constitution" is not founded. In fact, the transposed provision does not encompass the immunity of States from jurisdiction with respect to actions for the compensation of damages resulting from war crimes and crimes against humanity, which – as a result – benefit from the necessary effective judicial protection. Pursuant to Articles 2 and 24 of the Constitution, Article

1 of Law 17 August 1957 No 848 is unconstitutional, with respect to the execution of Article 94 of the UN Charter, solely in the part where it compells the Italian judge to comply with the above mentioned judgment of the International Court of Justice which prescribes to Italian judge to decline its jurisdiction over the conduct of a foreign State that amounts to war crimes and crimes against humanity.
Pursuant to Articles 2 and 24 of the Constitution, Article 3 of Law 14 January 2013 No 5 is unconstitutional in the part where it dictates to the Italian judge to decline its jurisdiction with regard to civil actions for the compensation of damages resulting from crimes against humanity perpetrated *iure imperii* by a foreign State in the Italian territory while failing to provide any other form of judicial redress.

10. *Corte di Cassazione (plenary session), order of 14 November 2014 No 24279* 194

Italian courts do not have jurisdiction pursuant to Article 5(1)(b) of Regulation (EC) No 4/2001 of 22 December 2000 over an action for the payment of the price in an international contract for the sale of goods when, under the contract, the place of delivery is the buyer's manufacture plant in Slovenia. In fact, neither the place where the carrier received the goods, nor the reference made to Incoterm EXW (Ex Works) are relevant given that the clause on the place of delivery was unilaterally included in the invoices by the party seeking to rely on it, lacking a clear acceptance of the clause by the other party. Furthermore, the generic oral proof of a term drawn from the Incoterms is insufficient to prove the parties'agreement on the place of delivery because, while Incoterms may signify an agreement on the place of delivery, the parties'determination on this issue must be clear and express, i.e. it must clearly appear from the contract.

11. *Corte di Cassazione, 5 December 2014 No 2573* 199

Pursuant to Article 3 of the Rome Convention of 19 June 1980 (applicable to contractual obligations as a result of Article 57 of Law 31 May 1995 No 218), in a contract otherwise governed by Italian law, the parties – by making use of dépeçage – may designate English law as the one governing the classification clause in an insurance contract against damages deriving from a shipwreck, such choice being in compliance with the Second Council Directive 88/357/EEC of 22 June 1988.
Since, pursuant to Article 15 of Law No 218/1995, the Italian judge shall apply the foreign law in compliance with the criteria for interpretation employed in the legal system of the foreign law, such clause shall be interpreted as a promissory warrant, i.e. not as a clause limiting the liability of the insurer and rather as an agreed delimitation of the object of the insurance contract. Consequently, its violation signifies a breach of warranty which causes the insurance coverage to be ineffective.

12. *Verona Tribunal, order of 10 December 2014* 846

In implementing Directive 2004/38/EC of 29 April 2004 on the right of

citizens of the Union and their family members to move and reside freely within the territory of the Member States which establishes, inter alia, the duty for Member States to facilitate entry and residence for the partner with whom the Union citizen has a durable relationship, duly attested, Article 3 of Legislative Decree 6 February 2007 No 3 has provided that such pre-requisite is fulfilled where the relationship is durable and duly attested, such latter requirement being satisfied by the registration of the union which has taken place in a State that recognizes such institution (in the case at hand, Germany) three years prior to the request for entry and residence.

13. *Vercelli Tribunal, order of 18 December 2014* 203

Pursuant to Article 8 of Regulation (EC) No 2201/2003 of 27 November 2003, Italian courts have jurisdiction over a dispute on the right of custody of children of foreign spouses where such children, at the moment the claim is filed, have their habitual residence in Italy.
Pursuant to Article 15 of Regulation (EC) No 2201/2003, in case – in the context of a dispute on the right of custody and pending the proceedings – the children have been relocated to a Member State where they have lived for over a year and in which it is reasonable to assume that they have established their habitual residence, the Italian judge can ask the foreign judge to retain jurisdiction over the dispute when he considers that it is in the best interests of the children that the foreign judge hears the case.
Pursuant to Article 15(2) of Regulation (EC) No 2201/2003, in case the transfer of proceedings is made of the court's own motion and only one of the parties has appeared before the court, the transfer must be accepted by that party. To this aim, the case must be adjourned for additional preliminary hearings and such party must be summoned.
In case the party denies its consent to the transfer pursuant to Article 15 of Regulation (EC) No 2201/2003, the evidence to render a judgment which pursues the best interests of the children must be taken abroad, where necessary also on in accordance with Regulation (EC) No 1206/2001 of 28 May 2001.

14. *Belluno Tribunal, 23 December 2014* 206

Pursuant to Article 3(1)(a) of Regulation (EC) No 2201/2003 of 27 November 2003, Italian courts, in addition to having jurisdiction pursuant to the other criteria laid down in such provision, have jurisdiction over a divorce action between two Tunisian nationals both habitually resident in Italy; the lack of the transcription of their marriage in the Italian registers is irrelevant.
Pursuant to Article 8 of Regulation (EC) No 2201/2003, Italian courts have jurisdiction over the claims for custody rights and the exercise of access rights over children resident in Italy. Italian courts also have jurisdiction over the same claim pursuant to Art 12(1) of the Regulation, which requires that at least one of the parents has parental responsibility in relation to the child (para. a) and that the jurisdiction of the courts has been accepted expressly (or otherwise in an unequivocal manner) by the parents, at the time the court is seised, and is in the superior interests of the child (para. b).
Pursuant to Article 3(a) and (b) of Regulation (EC) No 4/2009 of 18 December 2008, Italian courts have jurisdiction over the claim for child mainte-

nance in a divorce action because both the defendant-spouse and the maintenance-creditor children are habitually resident in Italy. Italian courts also have jurisdiction pursuant to Article 5 of the same Regulation because the defendant, who filed an appearance in court, has not raised a motion to challenge the jurisdiction.
Pursuant to Article 5(1)(c) of Regulation (EU) No 1259/2010 of 20 December 2010, a valid choice of law may be inferred from the fact that the spouses have by mutual consent invoked, as the law applicable to the substance of the case, the law of the State of their common nationality. It is irrelevant that such plea was made by the spouses under the assumption that the applicable private international law rule was Article 31 of Law 31 May 1995 No 218 – which in fact is not applicable any longer. Such choice of law must be considered valid also as to the form pursuant to Article 7(1) of Regulation (EU) No 1259/2010 even if it is contained in separate procedural documents, since such documents are in writing, dated and signed by each of the spouses.
Having regard to Article 5(3) of Regulation (EU) No 1259/2010, in the proceedings brought in Italy the spouses may choose the applicable law to their personal separation or divorce even after the expiration of the terms for lodging the additional statement provided under Article 709(3) Code of Civil Procedure and Article 4(10) of the Law 1 December 1970 No 898 (or until the subsequent term under Article 183(6)(1) of the Civil Procedure Code). If the divorce proceeding is converted from judicial into consensual, the last moment for such choice is that of the finalization of the agreement on the divorce, which may take place until the final hearing.
Pursuant to Article 12 of Regulation (EU) No 1259/2010 the effects that stem from the application of Tunisian law, providing for divorce without prior legal separation, do not conflict with public policy.
Pursuant to Article 2 of the Hague Convention of 5 October 1961 on the protection of infants [to which Article 42 of Law No 218/1995 refers, editor's note] Italian law governs the measures of protection (such as the right of custody and of access) of Tunisian children habitually resident in Italy. Moreover, as regards parental responsibility the provisions at Article 36-bis of Law No 218/1995 – which is an overriding mandatory rule – supersede the application of Tunisian law (which is otherwise applicable according to Article 3 of the Convention).
Pursuant to Article 3 of The Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations, to which Article 15 of Regulation (EU) No 4/2009 refers, Italian law governs the maintenance obligations towards a child habitually resident in Italy.

15. *Corte di Cassazione, 30 December 2014 No 27547* 219

In order for the judge to raise of its own motion the issue of the law applicable to a contract, the case must be connected with a foreign State, e.g. as a result of the nationality of the parties, the parties' habitual residence in different States, the fact that the contract was concluded abroad or that the obligations stemming thereof have arisen or must be performed abroad. With regard to a purely domestic case – which, as such, is governed by Italian law – the issue of the applicability of the foreign law chosen by the parties is the object of a motion governed by the same rules that apply to any other private agreement, the effects of which must be alleged and enclosed by the party who is seeking to rely on it. The court may not sua sponte validate

agreements negotiated by the parties in their own private interest if the parties do not show their concrete and actual interest in invoking them.
The motion concerning the applicability of a foreign law is a motion broadly speaking which – although it is not subject as such to estoppels, must in any case be raised within reasonable time and in particular in a manner that is consistent with the principles whereby proceedings must be concluded within a reasonable period of time, in compliance with due process and right of defence.

16. *Salerno Tribunal, 13 January 2015* 253

For the Geneva Convention of 19 May 1956 on the Contract for the International Carriage of Goods by Road ("CMR") to be applicable, the parties to the contract must have expressed their intention to regulate their relationship under the special rules set forth with the Convention. Consequently, lacking proof of such intention, Article 1693 of the Civil Code applies instead.

17. *Rome Tribunal, 20 January 2015* 254

For the purposes of acquiring the stateless status, the applicant is not required to prove that no State considers him as its citizen. To the contrary, it is sufficient a circumstantial proof that the applicant has not acquired the nationality of any of the States with which he has entertained relationships that may entail an abstract connection relevant to acquire their nationality.

18. *Rome Tribunal, 22 January 2015* 255

With regard to the action for the compensation of the damages suffered by the sender in the context of an international carriage of goods on road from The Netherlands to Italy, Italian courts have jurisdiction pursuant to Article 31 of the Geneva Convention of 19 May 1956 ("CMR") because the place of delivery of the goods is in Italy. As concerns the rights deriving from the carriage contract, including the right to damages for the loss of the goods, pursuant to Art 13 CMR, once the delivery has taken place, the sender and the recipient have alternative legal standing against the carrier by reason of the prejudice that they have suffered.

19. *Verona Tribunal, order of 27 January 2015* 225

Pursuant to Article 8 of Regulation (EU) No 1259/2010 of 20 December 2010, the divorce of two foreign spouses habitually resident in Italy is governed, in the absence of a choice pursuant to Article 5 of the Regulation, by Italian law, being irrelevant that the spouses have a common (namely, the Romanian) nationality. Article 8 provides, in fact, a list of connecting factors whereby the preceding connecting factor excludes the operation of the following ones so that, if the first connecting factor (that of the habitual residence of the spouses at the time the court is seized) is applicable, the fol-

lowing connecting factors – including the one on the spouses'common nationality at the time the court is seized – may not be applied.
When, in accordance with a foreign law, a divorce action is filed without prior legal separation and the court assesses of its own motion that the issue is actually governed by Italian law (which does not provide for the possibility of obtaining a divorce without prior legal separation), the court shall adjourn the case for pre-trial examination in accordance with Article 101(2) Code of Civil Procedure.

20. *Corte di Cassazione, 2 February 2015 No 1843* 1076

Article 41 of Law 31 May 1995 No 218 on the recognition of foreign adoptions does not apply to the recognition in Italy of a Moroccan decision homologating a *kafalah* based on mutual agreement because such institute, in light of its role in the legal systems that provide it, may not be traced back to the institute of adoption.
Under Article 67 of Law 31 May 1995 No 218, the recognition in Italy of a decision rendered by a Moroccan tribunal and homologating a *kafalah* based on mutual agreement does not conflict with public policy because such institute is designed to provide alternative care options for children; it should instead be compared to foster care.
Under Article 3(2)(a) of Legislative Decree 6 February 2007 No 30, and in light of the United Nations Convention of 20 November 1989 on the rights of the child and of the Hague Convention of 19 October 1966 on the international protection of children, permission to enter Italy for family reunion may not be refused to a minor non-EU citizen given in custody to an Italian citizen residing in Italy by means of a *kafalah* based on mutual agreement and homologated by the foreign judge, if the minor is financially supported by or lives in the State of origin with the Italian citizen or, again, the minor's serious health conditions require that he be personally assisted by the Italian citizen.
An interpretation of the provisions of Legislative Decree No 30 of 2007 that barred completely the possibility, for an Italian Muslim citizen, to be reunited with an underage non-EU citizen whose custody he was granted by means of a *kafalah* would trigger a suspicion of unconstitutionality as a result of the conflict with the principle of equality arising from the difference in the treatment of minors in need for protection that are citizens of States that proscribe adoption on religious grounds.

21. *Corte di Cassazione (plenary session), 6 February 2015 No 2243* 553

Italian courts have jurisdiction over the declaration of insolvency of three companies having their registered office in other Member States of the European Union if the centre of main interests of the enterprise that they collectively conduct is in Italy. In fact, the presumption under Article 3(1) of Regulation (EC) No 1346/2000 of 29 May 2000 is rebuttable and, as such, every time the registered office and the real seat of a company are located in different States, the place of company's real seat prevails for the purposes of establishing jurisdiction. Nor does the presence in the mentioned Member States of offices in which activity is actually carried out displace the jurisdic-

tion of Italian courts, assuming that such activity was originally planned in and directed from Italy.

22. *Padua Tribunal, 6 February 2015* 848

Pursuant to Article 3 Regulation (EC) No 2201/2003 of 27 November 2003, Italian courts have jurisdiction over the claim for legal separation brought by a Romanian national against her husband, also a Romanian national, in light of the fact that the spouses are habitually resident in Italy, where they lived since their marriage. Italian courts have jurisdiction also over the application for the declaration of the other spouse's exclusive fault, since such claim is ancillary to the principal claim of legal separation and it may not be filed autonomously.
The law that governs the legal separation is determined pursuant to Regulation (EU) No 1259/2010 of 20 December 2010 which, at Article 8, in the absence of a choice by the spouses, establishes that the law that governs the legal separation is the law of the State where the spouses are habitually resident at the time the court is seised.
Under Article 8 of Regulation (EC) No 2201/2003, Italian courts have jurisdiction in matters of parental responsibility over the child of Romanian spouses, in light of the fact that the child is habitually resident in Italy. Under Article 2 of the Hague Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants, Italian courts having jurisdiction over the parental responsibility matters shall apply Italian law.
Under Article 3(d) of Regulation (EC) No 4/2009 of 18 December 2008, Italian courts have jurisdiction in matters relating to maintenance obligations since, in the case at hand, the child maintenance claims are ancillary to the principal claims over parental responsibility. In light of the reference made in Article 15 of Regulation (EC) No 4/2009, by Article 8(1)(d) of the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations, maintenance obligations are governed by the law which governs the legal separation.

23. *Corte di Cassazione (plenary session), 9 February 2015 No 2360* 226

Pursuant to Article 6(1) of the Brussels Convention of 27 September 1968 – according to which, in case of multiple defendants, the person domiciled in the territory of a Contracting State may be sued before the court of the place where one of the defendants is domiciled – the condition that the actions be related must be considered as satisfied if the action brought against defendants domiciled in Italy is based on the same claim (*causa petendi*) that is brought against the defendants domiciled abroad, regardless of the parties'allegations.
As concerns the salary earned by seafarers on foreign ships, in regard of the effects provided by Article 16 of Law 31 My 1995 No 218, a public policy principle requiring that the minimum salary provided in the Italian collective agreement is always respected may not be established insofar as – in light of the treatment overall acknowledged to the employee – the employee is paid a sufficient and proportionate salary.

24. *Corte di Cassazione, 9 February 2015 No 2400* 236

The obligation to extend the legal framework of marriage to same-sex unions cannot be grounded on the Constitution nor on the European Convention on Human Rights (as interpreted by the European Court of Human Rights). The rights granted to same-sex couples may be inferred from Article 2 of the Constitution (recognizing and guaranteeing the inviolable rights of all men, as individuals, and in social groups). In light thereof, whenever the fundamental rights arising from such unions are violated as a result of the lack of a legislative framework, the relationship of affection and partnership at the core of such unions may – by means of an adaptation process which may also be performed by the court deciding on the merits – enjoy a protection which is comparable to the one granted in the context of marriage.

25. *Corte di Cassazione, 12 February 2015 No 2830* 256

The foreigner charged with a generic crime is not eligible for the status of political refugee but only for subsidiary protection under Article 2(g) of Legislative Decree 19 November 2007 No 251 in the event that the court has founded reasons to believe that, in case the applicant were to return to his State of origin, he would face a real risk of suffering serious harm.

26. *Forlì Tribunal, 20 February 2015* 555

Pursuant to Article 13 of the Hague Convention of 1 July 1985 on the law applicable to trusts and on their recognition, a trust constituted, in accordance with the law of Jersey, by the liquidator of an Italian listed company in the context of the company's liquidation is not eligible for recognition in Italy if some clauses of the deed of trust unlawfully alter the liquidation procedure, which aims at the protection of public interests, and preclude the shareholders'meeting from revoking the state of liquidation.

27. *Udine Tribunal, 28 February 2015* 556

Pursuant to Article 13 of the Hague Convention of 1 July 1985 on the law applicable to trusts and on their recognition, two trusts that would qualify as wholly domestic except for the law chosen by the settlors to govern the trust (in the instant case, the law of Jersey) are not eligible for recognition in Italy. Accordingly, pursuant to Article 2740(2) of the Civil Code, the two deeds of trust shall be considered void for legal inexistence of the object in that they aim at creating a form of separation of the estate which is neither available nor permitted in the Italian legal system.

28. *Corte di Cassazione, 3 March 2015 No 4262* 257

The burden of proof on the applicant for a stateless status must be construed as attenuated since the applicant, in addition to benefitting from the rights

that individuals are entitled to regardless of their nationality, benefits – on the basis of a constitutionally proper interpretation of the law currently in force – from a legal treatment that is equivalent to the one enjoyed by foreign nationals who have been granted a measure of international protection. Consequently, any missing information or need for procedural integration aiming at satisfying the above mentioned burden of proof may be met by using *ex officio* the duty-powers of the judge, who may request information or documents to the competent Italian public authorities, to the public authorities of the State of origin or of the State with which the applicant has a meaningful connection.

29. *Corte di Cassazione (plenary session), order of 9 March 2015 No 4686* 509

The jurisdiction over the action brought directly against the insurer domiciled in Croatia for the compensation of damages arising from the collision between two ships in Croatian waters is established pursuant to the Brussels Convention of 10 May 1952 relating to the arrest of sea-going ships. On the one hand, the action is grounded on the law and not on the insurance contract: as such, it does not fall within the exclusions from scope provided in Article 6 of the Convention. On the other hand, according to Article 71(1) of Regulation (EC) No 44/2001 of 22 December 2000, the Convention prevails over said Regulation since it is in force between Italy and Croatia and it provides on jurisdiction in a special matter in a manner which is not incompatible with the objectives and principles of the Regulation.
Pursuant to Article 1 of the 1952 Brussels Convention, Italian courts do not have jurisdiction over an action for the compensation of damages arising from the collision between two ships if all the defendants reside or have their legal seat in Croatia, in whose waters the accident occurred and where the ship responsible for the accident could have been seized.

30. *Corte di Cassazione, 19 March 2015 No 5488* 241

From the definitions provided at Article I and the provisions at Articles II and III of the Brussels Convention of 25 August 1924 on the Unification of Certain Rules of Law relating to Bills of Lading, as amended by the Brussels Protocols of 23 February 1968 and of 21 December 1979 (the so-called "Hague-Visby Rules") it may be inferred that the object of said Convention is the carriage of goods by sea, i.e. a contractual relationship which has its initial moment in the preliminary activities of loading of the goods (see Article III) and its final moment in their unloading (which comprises the end-to-end and instant unloading and delivery of the goods). Consequently, the case where the recipient of the goods fails to turn up to receive the goods at the moment of the unloading and, pending the delivery, the carrier deposits the goods in a warehouse is not governed by the Convention and it is, rather, governed by the general Italian provisions on private international law.

32. *Corte di Cassazione (criminal), 20 March 2015 No 11648* 259

The question of the violation of Article 6 of the Convention for the protection

of human rights and fundamental freedoms, as interpreted by the European Court of Human Rights, may be raised by the court of its own motion, also in the proceedings before the court of last instance (and not only in the proceedings on the merits). Accordingly, the fact that a specific aspect on the violation of the right to due process (namely, requesting a new hearing of the witnesses in the appeal proceedings) was not raised on appeal may not preclude a judicial intervention aiming at removing, during the proceedings and of its own motion, a situation of illegality deriving from such a violation, since to fulfil the requirement for the exhaustion of the domestic remedies it suffices that the interested party has, in any event, appealed the judgment.

32. *Milan Court of Appeal, decree of 27 March 2015* 512

Pursuant to Article 24 of Law 31 May 1995 No 218, the existence and the content of personality rights, including the rights that relate to the identity of an individual with respect to name and gender, are governed by the law of the individual's State of nationality.
The deed of a marriage celebrated in Argentina between two individuals of the same gender, an Italian and an Argentinian, may be registered in the Italian registry of civil status if, after the wedding, a gender-change court order was issued in Argentina in favour of the Argentinian spouse and in compliance with the laws of Argentina. In these circumstances, such marriage must be considered as between persons of different gender, at least as of the date when the gender-change order became effective. Consequently, such marriage does not conflict with public policy and the effects it produces are those of a properly constituted marriage.

33. *Florence Court of Appeal, 30 March 2015* 558

Pursuant to Articles 2 and 7 of Legislative Decree 19 November 2007 No 251, the refugee status entails the ascertainment of acts of persecution suffered by the applicant as a result of his political affiliation. To this aim, it is not sufficient that the acts of persecution involved a family member of the applicant. Moreover, the applicant may not be granted subsidiary protection on the grounds of Article 2 and 14 of the same Legislative Decree absent individual and contextualized allegations which include detailed, consistent and consequential factual elements by which it may be reliably inferred that the applicant would likely run a real risk of serious damage upon returning to his State of origin.

34. *Naples Tribunal, 31 March 2015* 559

Pursuant to Article 23(5) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over a dispute on the construction, validity, and effects of a trust governed by English law if the deed of trust includes a choice-of-court clause. In addition to being binding on the settlor, such clause is binding on the administrator and on the beneficiaries of the trust, but not on third parties.

35. *Corte di Cassazione, 10 April 2015 No 7201* 1108

In the framework of a dispute over international carriage of goods by road, the Geneva Convention of 19 May 1956 ("CMR") is not applicable in the absence of adequate proof of a specific agreement by the parties to that effect.

36. *Corte di Cassazione, 15 April 2015 No 7613* 514

Pursuant to Article 49 of Regulation (EC) No 44/2001 the relevant moment for the assessment of the finality requirement of a foreign judgment sanctioning the payment of a penalty (astreinte) is not that of the issuance of the enforceability decree; rather, it is when the court of appeal renders its decision on the objection against the enforceability.
Pursuant to Article 45 of Regulation (EC) No 44/2001, the Belgian judgment which imposes a penalty (astreinte) for each day of non-compliance with a judgment does not conflict with public policy and may be declared enforceable in Italy. On the one hand, such judgment embodies a coercive indirect measure which is not unknown to the Italian legal system. On the other hand, no conflict with public policy may be inferred from the Constitution or similar sources, insofar as the amount due as a penalty increases depending on the length of non-compliance and the measure – imposed to protect the judgment creditor's right to the debtor's compliance with the main performance, ascertained by means of a judicial decision – aims to insure the respect of fundamental and common principles such as the right to a fair (civil) trial, to be construed as reasonable length of enforcement proceedings and effective implementation of the measures established in the judgment, and the right to free economic initiative.

37. *Bologna Tribunal, order of 21 April 2015* 560

The question of legitimacy of Article 649 of the Code of Criminal Procedure for violation of Article 117(1) of the Constitution is admissible, with regard to Article 4 of Protocol No 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, in the part where the provision does not provide the applicability of the ne bis in idem principle if, in the context of an administrative proceeding, a penalty, construed as criminal under the Convention, has already been imposed on the defendant for the same set of facts.

38. *Roma Tribunal, 24 April 2015 No 3147* 562

Since, pursuant to Article 3(1), second sentence, of Regulation (EC) No 1346/2000 of 29 May 2000, the centre of main interests of a debtor-company is identified by giving priority to the place of administration of the company as determined on the basis of elements that are objective and recognizable by third parties, the registration of the cessation of the activity of a company that does not perform any activity on the territory of the Member State where its seat is formally situated must be deleted from the registry of companies if the simulated and/or fictitious nature of the transfer abroad of its seat has been

assessed by a judgment rendered by the insolvency court, being irrelevant in this respect that appeal has been brought against the declaration of insolvency.

39. *Corte di Cassazione, order of 7 May 2015 No 9210* 521

The declaration of enforceability of a French judgment which states the right of the employee – whose employer is insolvent – to receive from the National Social Welfare Institute (*Istituto Nazionale della Previdenza Sociale*), on its funds, the performance of the same obligations that pertain to the insolvent employer for whom the Institute fills in under the law, by means of an aggregate (cumulative) assumption of debt, falls within the scope of Regulation (EC) No 44/2001 (which, pursuant to Article 66(2) of Regulation (EU) No 1215/2012, is applicable to proceedings commenced before 10 January 2015). In fact, the performance of such obligations does not fall in the definition of social security laid down at Article 4 of Regulation (EEC) No 1408/71 which, in the interpretation given by the Court of Justice of the European Union, must be taken as term of reference in the effort to determine the notion of social security under Regulation (EC) No 44/2001 to identify, pursuant to Article 1(2)(c), the matters excluded from its scope of application.

40. *Monza Tribunal, 13 May 2015* 1109

Article 2 of the Hague Convention of 1 July 1985 provides that, for a trust to be recognized, an autonomous power must be bestowed upon the trustee, granting him the power and the duty to manage, employ or dispose of the assets in accordance with the terms of the trust. Thus, in the event that the trust settlor only apparently relinquished his control over the assets placed into a trust, such trust must be considered as a sham trust.
The objective pursued with a trust settlement aimed at undermining the interests of creditors over the assets of the trust settlor does not qualify for legal protection. Accordingly, under Article 15 of the Hague Convention of 1 July 1985 such trust – rather than being construed as void – should be construed as not eligible for recognition.

41. *Genoa Court of Appeal, 15 May 2015* 564

An action brought on 20 April 2002 for the compensation of damages suffered for the passing away of a relative in a traffic accident in Romania is governed *ratione termporis* by Regulation (EC) No 44/2001 of 22 December 2000. Since the defendant-companies are registered in Italy, Italian courts have jurisdiction pursuant to Article 2 of such Regulation, whilst Romanian courts do not have jurisdiction pursuant to Article 5(3) of the same Regulation because Romania was not a Member State of the European Union at the time the Regulation entered into force. Pursuant to Article 62(2) of Law 31 May 1995 No 218, such action is governed by Italian law since only Italian nationals were involved in the accident.

42. *Corte di Cassazione, 18 May 2015 No 10124* 772

Under Article 14 of Regulation (EC) No 1393/2007 of 13 November 2007, service by mail to the defendant residing in Spain of an appeal before the Corte di Cassazione constitutes appropriate notice where the parcel, brought by the bailiff to the post office for delivery, was not collected by the recipient and was returned to the sender as unclaimed parcel.
The "agent for the claim settlements" (*mandatario per la liquidazione dei sinistri*) under Article 152 of Legislative Decree 7 September 2005 No 209, which puts forth the Code of Private Insurance, is an agent with an ex officio power of representation of the foreign insurance of the person who bears liability for the damage. As such, he may act and be sued in the name and on behalf of the damaging party, subject to the rules on jurisdiction and venue. In fact, he has the power of representation in court under the domestic rules, both per se, and because they have to be interpreted consistently with the law of the European Union and namely Directive 2000/26/EC of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (now transfused in Directive 2009/103/EC of 16 September 2009), in light of both the directive itself, its working documents and its goals, as well as the interpretation of the directive provided by the Court of Justice of the European Union.
According to the joint reading of Articles 9(1)(b) and 11(2) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction in a claim for the damages resulting from a traffic accident in Spain to an individual habitually residing in Italy brought by this individual against the "agent for the claim settlements" appointed by the foreign insurance of the person who bears liability for the damage.
In the context of an action brought by the victim, who resides in Italy, of a traffic accident that occurred in Spain against the "agent for the claim settlements" of the foreign insurance of the person who bears liability, the applicable law is determined in accordance with Article 4 of Regulation (EC) No 864/2007 of 11 July 2007.

43. *Milan Tribunal, decree of 20 May 2015* 523

The Italian judge may not decide a claim seeking the amendment of the right to the family home, the right of custody of the children and the children's maintenance obligations decided in a divorce judgment rendered in Ukraine lacking the registration of said judgment in Italy. Although such registration is not constitutive of the rights that arise as a result of the judgment, it is nevertheless necessary pursuant to Law 21 May 1995 No 218 (which has introduced the system of automatic recognition of foreign judgments) to assess whether the requirements at Article 64 of said Law have been satisfied. Such assessment pertains to the duties of the registrar and, other than in the cases provided at Article 67 of the Law, may not be performed in the context of a proceeding aiming to amend the conditions laid down in the divorce judgment.

44. *Corte di Cassazione, 29 May 2015 No 11165* 525

Pursuant to Article 12 of Law 31 May 1995 No 218, the power of attorney submitted in a proceeding before Italian courts, irrespective of whether it was issued abroad, is governed by the Italian law of civil procedure which, however, in the part where it allows the use of an authentic instrument or a certified private deed, refers to the substantive law. Accordingly, in such cases, the validity of the power of attorney shall be established, as to the form, pursuant to the law of the place where the power of attorney was issued (*lex loci*). However, in order for it to be effective in Italy, such instruments must exist under the foreign applicable law and be regulated by it in a manner that does not conflict with Italian law. In particular, as concerns the certified private deed, the declaration by the public authority that the document was signed before him and the previous ascertainment by him of the identity of the signee are pre-requisites for the validity of the power of attorney.
According to the Hague Convention of 5 October 1961 abolishing the requirement of legalisation for foreign public documents, as well as to the Italian-German Convention of 7 June 1969, the power of attorney issued in Germany and submitted in the civil proceedings in Italy is exempt from the need for legalization by the Italian consular authority, as well as for a so-called apostille. Nonetheless, such power of attorney is void if it is not accompanied by a translation and by the proof of the authentication performed by the public notary, i.e. the certification by the public notary that the document was signed before him by a person whose identity he verified.

45. *Corte di Cassazione, 29 May 2015 No 11225* 1113

The judgment with which, further to the ascertainment of plagiarism of music work, an injunction is issued pursuant to Article 156 of Law 22 April 1941 No 633 on the protection of copyright and neighbouring rights produces its effects in the forum State but may also be enforced abroad, subject to an exequatur issued by the courts or authorities of the foreign States where recognition is sought.

46. *Catania Court of Appeal, decree of 3 June 2015* 1115

Under Article 8 of Regulation (EC) No 2201/2003 of 27 November 2003, Italian courts have jurisdiction over an action brought by an Italian citizen (father) for the sole custody of the minor born out of wedlock with a Romanian woman provided that the habitual residence of the child has always been in Italy, where the child was born, where he always lived until his unlawful retention abroad and where, since he was born, was registered in the national health system; it is irrelevant that he was in Romania for a short time to allow him to meet his maternal grandmother.
Under Article 10 of Regulation (EC) No 2201/2003, Italian courts have jurisdiction over the action for the sole custody of a child habitually residing in Italy, regardless of the child's short stay in Romania, since the retention of the child in Romania by the mother occurred absent the father's consent. This amounts to unlawful retention, unless the conditions at paragraphs a and b of Article 10 were satisfied, which – in the case at hand – was not the case since the father timely filed a request for the return of the child. Acquiescence to the retention or consent to the jurisdiction of Romanian courts may not be inferred from the application submitted by the father to the Romanian courts

for a provisional measure on access rights since, under Article 20 of Regulation (EC) No 2201/2003, the application for provisional measures, in urgent cases, may be submitted also to the authorities that do not have jurisdiction on the substance of the matter, and the adoption of such provisional measures does not entail exercise of jurisdiction. Accordingly, the father's petition does not displace the jurisdiction on the substance of the matter. Similarly, for the purposes of Article 10 it is irrelevant that the Romanian authority, seised in the meantime by the mother, rendered a decision on parental responsibility since such decision is provisional in nature. Jurisdiction of the Romanian courts on the substance of the matter does not ensue from such decision, since it was given pursuant to Article 20 of Regulation (EC) No 2201/2003 with limited effects until "the court of the Member State having jurisdiction under this Regulation as to the substance of the matter has taken the measures it considers appropriate".

47. *Corte di Cassazione, 26 June 2015 No 13203* 527

Pending before the court deciding on the merits an inheritance action which requests the termination of the hereditary joint ownership that resulted from the opening of the succession in Italy and which incidentally seeks a declaration of the ineffectiveness and/or the invalidity of the settlement reached abroad with another heir, the plaintiff may not amend the relationship previously alleged between the above mentioned claims, so as to convert the incidental claim into a main claim, if, subsequent to the preliminary ruling on jurisdiction (*regolamento di giurisdizione*) pursuant to Article 41 Code of Civil Procedure, the Corte di Cassazione has declared the Italian jurisdiction over such actions. In fact, such amendment would conflict with the internal *res iudicata* effect arising as a result of the decision of the plenary session of the Corte di Cassazione, in that such amendment would directly affect the assessment of jurisdiction which is grounded precisely on the main question. According to the right to a trial within a reasonable time the court shall avoid or prevent, subject to compliance with the right to defense, procedural activities that hinder a rapid decision. Among these activities is staying of proceedings pursuing a preliminary reference to the plenary session of the *Corte di Cassazione* for the interpretation of Article 60 Law 31 May 1995 No 218 with regard to a power of attorney issued abroad, on the grounds that said document is void, if the ensuing stay of proceedings entails a lengthening of the proceeding and is devoid of any benefits for the procedural rights of the parties.

48. *Corte di Cassazione, 14 July 2015 No 14665* 782

With respect to a contract for the international carriage of goods by road, if the carrier, on its own initiative, tasks another carrier with the full or partial execution of the carriage, who therefore becomes a sub-carrier, the consignee may claim damages for the loss of the goods against the sub-carrier pursuant to Article 13 of the Geneva Convention of 19 May 1956 ("CMR"). The legal standing of the sub-carrier as defendant is not precluded by the fact that, as provided at Article 3 of said Convention, "the carrier shall be responsible for the acts or omissions of his agents and servants and of any other persons of whose services he makes use for the performance of the carriage".

49. *Corte di Cassazione (plenary session), order of 21 July 2015 No 15200* 541

A motion for a preliminary ruling on jurisdiction (*regolamento di giurisdizione*) raised by the creditor pursuant to Article 41 of the Code of Civil Procedure and seeking the declaration of the exclusive jurisdiction of the arbitral tribunal seated in France over the assessment of the credit which was included in the liabilities subject to pre-emptive rights (*con riserva*) in the proceedings for extraordinary administration (*amministrazione straordinaria*) opened in Italy against the debtor-company is not admissible. In fact, on the one hand the question of the effects of the insolvency declaration over the arbitral proceeding pending at the time of such declaration relates to the merits of the claim and falls ipso facto within the jurisdiction of the court seised by the creditor objecting to the decree which made the insolvency status executive. On the other hand, Article 83-bis of the insolvency law provides that, if at the time of the declaration of insolvency an arbitral proceeding is pending, such proceeding may be continued only if the contract is still in force. If, as in the instant case, the contract was no longer in force between the parties at the time the insolvency was declared, the actions that are based on it are subject to the general rule pursuant to Articles 43(3) and 52 of the insolvency law. As such, the arbitration proceeding must be discontinued, and the question of the arbitral tribunal's jurisdiction must be considered settled.

Subsequent to the opening of the proceedings for extraordinary administration, the claims of the creditor whose registered office is in Egypt may not be brought in the arbitral proceeding and, rather, have to be brought exclusively before the insolvency court. Infact the jurisdiction of the arbiters, which arises as a result of the arbitration agreement included in the contract which gave rise to the credit, is in any event barred by the effect of attraction exercised by the special and compulsory proceeding for the assessment of the liabilities (*procedimento di verificazione dello stato passivo*) over the actions for the assessment of a credit which is part of the insolvent estate.

The effects of the insolvency proceeding on the foreign arbitral proceeding opened in France and addressing a credit – claimed by a company registered in Egypt and conditionally admitted in the insolvent estate in the framework of an extraordinary administration proceeding opened in Italy against an Italian company – are not governed by French law and fall in the exclusive jurisdiction of the insolvency court. In fact, Regulation (EC) No 1346/2000 of 29 May 2000 applies only to the relationships arising from an insolvency procedure opened between parties having their residence or seat in the European Union. Moreover, such effects are not governed by Articles 4(f) and 15 of said Regulation which deal with the law applicable to the effects of the insolvency proceeding on individual procedures over a specific item or right which was seised from the debtor.

The issue of jurisdiction over actions strictly related to such procedures or arising from such procedures is not governed by Regulation (EC) No 1346/2000: in fact, Article 25 of said Regulation only regulates the automatic recognition of such judgments. However, with its case-law the Court of Justice of the European Union has endorsed the solution whereby all the claims directly connected to the insolvency of an enterprise may be concentrated before the courts of the Member State which has jurisdiction over the opening of the procedure. A similar solution is reached pursuant to Article 3(2), last part, of Law 31 May 1995 No 218: since insolvency is a matter excluded from the scope of the Brussels Convention of 27 September 1968, jurisdiction is to be established according to the domestic rules on venue.

50. *Corte di Cassazione, 3 September 2015 No 17519* 785

With respect to Articles 83 and 75(3) of the Code of Civil Procedure, as well as to Article 12 of Law 31 May 1995 No 218, the power of attorney issued, in the context of a proceeding brought in Italy, in favour of the legal counsel of a U.S. company by an individual assumed to lack power of representation may not be considered void if, in light of a power of attorney subsequently deposited to supplement the previous power of attorney pending the proceeding, such powers were certified as existing from the beginning by a U.S. public notary in such a manner as to amend retroactively previous irregularities.
Under Articles 64(1) and 67 of Law 218/1995, a judgment rendered by the District Court of Georgia (United States), which lacks the judge's signature as a result of the fact that it was deposited electronically and legalized by apostille according to the 1961 Hague Convention, is eligible for recognition in Italy.
Under Articles 64(1)(g) and 67 of Law 218/1995, the recognition in Italy of a U.S. default judgment does not conflict with public policy if the defendant, who was notified of the proceeding by email although he had not agreed to this, appears beyond any doubts to have had knowledge of the document instituting the proceeding and has forsaken the right to defend himself. The pre-condition of lack of conflict with public policy, to be assessed in light of a global appraisal of the foreign proceedings and of all the circumstances of the case at hand, does not encompass the manner with which the fundamental guarantees in favour of the parties are regulated or express themselves in the single case. With regard to the public policy ground, the right of defence may, in fact, be subject to minor limitations provided that the defendant had the opportunity to actively participate in the proceedings.

51. *Corte di Cassazione, 7 September 2015 No 17712* 789

Since the procedure provided at Articles 839 and 840 of the Code of Civil Procedure is referred exclusively to arbitral awards, the application for the recognition in Italy of a foreign judicial decision rendered in the State of the seat of arbitration which – partially granting the appeal brought there against the award – amended the substance of the award, is inadmissible.
Article 840(3) No 5 of the Code of Civil Procedure, which provides for the refusal of recognition and enforcement of the award when the award has been vacated or suspended by the authority of the State of the seat of arbitration, does not allow to review the merits of the judicial decisions rendered as a result of an appeal against the award and to draw a distinction between nullity, annulment, reform or correction of the award with a view to assessing the existence of the grounds for non-recognition.
Under Articles 839 and 840 of the Code of Civil Procedure, an award which was vacated, albeit only partly, by the competent authority may not be declared enforceable.
In light of the objectives of the New York Convention of 10 June 1958 on the recognition and enforcement of foreign arbitral awards – i.e. uniformity and predictability of recognition procedure of arbitral awards – Article 5 of such Convention must be construed in a way that the grounds therein provided for the refusal of recognition of an award are the only grounds for refusal.

52. *Corte di Cassazione (plenary session), 29 October 2015 No 22093* 792

If main insolvency proceedings are opened by a French court against a limited liability company – which has its statutory seat and production location in Italy and is part of a group of subsidiaries wholly-owned by a Belgian financial holding – on the grounds that, pursuant to Article 3(1) of Regulation (EC) No 1346/2000 of 29 May 2000, the company's main centre of interests is situated in France, the opening of such proceedings does not preclude an Italian court from subsequently opening against the same company secondary insolvency proceedings according to Article 3(2) of said Regulation, provided that such company qualifies as subsidiary according to the joint reading of Articles 2(h) and 3(2) of the Regulation, consistently with the interpretation given by the Court of Justice of the European Union with respect to the liquidation of a company in a Member State other than the one where the company has its legal seat.

53. *Corte di Cassazione, order of 5 November 2015 No 22608* 806

In light of the constitutional relevance of the right to nationality, in order to bestow the citizen status, the judge shall verify the pre-conditions required under the law for the acquisition or loss of such status making use, where necessary, of the powers ex officio made available to him.
In order to establish that an Italian woman, who in 1950 married an Egyptian and moved to Egypt, has spontaneously acquired her husband's citizenship and subsequently lost her Italian citizenship pursuant to Article 8 of Law 13 June 1912 No 555, it is necessary to verify, in light of the overall provisions applicable at that time (including Article 10 of said Law, which bans a married woman from having a citizenship other than her husband's), the reasons that have led the woman to express her will to reacquire the Italian citizenship. The retroactive effects of the woman's declaration rendered according to Article 17 of Law 5 February 1992 No 91, shall be assessed in light of such inquiry. The same applies to the ascertainment of the woman's citizenship at the time of the birth of her son for the purposes of bestowing the Italian citizenship upon her son iure sanguinis.

54. *Milan Tribunal, order of 5 November 2015* 244

Since, pursuant to Articles 16 and 22 [*rectius*: 13 and 17] of the Paris Convention of 22 November 1928 establishing the "Bureau international des expositions", the Section Commissioner-General of a State participating in an international exhibition is a government agent, service of documents upon such individual made in a manner other than the one provided for foreign States, i.e. via diplomatic channels or at the Embassy, is void.

55. *Corte di Cassazione, 11 November 2015 No 22992* 1088

Italian courts have jurisdiction over an action brought by a U.S. company against an Italian company for the payment of invoices relating to a contract between the parties, regardless of the clause included in said contract dero-

gating to the Italian jurisdiction in favour of the courts of Washington State. In fact, such clause, entered into between an Italian and a foreigner, grants to the latter the possibility to avail itself of the clause but does not deprive it of the possibility of seizing the Italian courts under Article 3(1) of Law 31 May 1995 No 218, which provides that Italian courts have jurisdiction if the defendant is domiciled in Italy.
Under Article 12 of Law No 218/1995, the evidentiary value of the abstract of a U.S. public notary, stamped with an apostille, stating that the invoices that are the object of the dispute are registered in the defendant company's financial books must be assessed in light of Article 2710 of the Civil Code. Consequently, such abstract is equivalent to the extract provided at Article 634 of the Code of Civil Procedure, in compliance with the principle whereby entries in financial books, although properly kept, lack full legal evidentiary value in favour of the entrepreneur who registered them since, under Article 116(1) Code of Civil Procedure, it is always for the judge to freely assess their evidentiary value. The judge's assessment, provided it is properly substantiated, may not be appealed on grounds of law before the *Corte di Cassazione*.

56. *Corte di Cassazione, 13 November 2015 No 23291* 1090

Under Article 1 of the Munich Convention of 5 September 1980 on the law applicable to surnames and forenames – the application of which, under Article 2 of Law 31 May 1995 No 218, is not precluded by Articles 24 and 31 of the same Law – the right to maintain, after a divorce, the name acquired by a woman having dual nationality (Russian and Swedish) subsequent to her marriage to an Italian citizen is governed by Swedish law since this is the law of the State of nationality of the woman (and being irrelevant that Sweden is not a Party to the Convention) and with which she has the strongest connection in compliance with Article 19 of Law No 218/1995.
Also in light of the constitutional protection warranted to personality rights, Swedish law does not conflict with public policy in the part where it grants the divorced spouse the unilateral right to maintain the husband's surname with which she replaced her maiden surname at the time of marriage. In fact, in balancing the competing interests, such provision favours the right to the continuity of a personality right such as one's right to one's surname.

57. *Belluno Tribunal, 29 December 2015* 1096

Provided that Article 50 of Law 31 May 1995 No 218 puts forth several alternative grounds for jurisdiction so as to ensure a greater access to Italian courts in succession cases and given that it is sufficient that in the case at hand one of the criteria is met to ground the jurisdiction of Italian courts, pursuant to paragraph 1(a) of such provision Italian courts have jurisdiction over an action aimed at the ascertainment of the plaintiffs as the only heirs to an individual who resided in Belgium at the time of his death and whose assets include movables and immovable situated both in Italy and in Belgium, because the deceased was an Italian citizen at the time of his death, being irrelevant that part of his assets were situated abroad.
In light of the principle of the unity of succession, under Article 46(1) of Law 31 May 1995 No 218 Italian law governs the whole succession of an Italian citizen who resided in Belgium at the time of his death, and whose assets

include movables and immovable situated both in Italy and in Belgium since Italian law is the national law of the deceased at the time of his death. Such law governs the whole estate, regardless of the place where the single assets are located.
Under Article 83(1) of Regulation (EU) No 650/2012 of 4 July 2012, the succession of an Italian citizen who resided in Belgium at the time of his death does not fall within the scope of application *ratione temporis* of the Regulation because the person whose succession is concerned died on 15 February 2010 while the Regulation applies to successions of persons who died on or after 17 August 2015.

58. *Mantova Tribunal, 19 January 2016* 1102

Under Article 32 of Law 31 May 1995 No 218, Italian courts have jurisdiction over a divorce action between Chinese citizens and connected actions provided that the wedding took place in Italy. Italian courts also have jurisdiction under Article 3(1)(a) of Regulation (EC) No 2201/2003 of 27 November 2003 – applicable to non-EU citizens who have sufficiently strong connections with the territory of a Member State – since, at the time the claim was lodged, the applicant was formally residing in Italy, in the same municipality where both spouses previously habitually resided.
Under Article 8(b) of Regulation (EU) No 1259/2010 of 20 December 2010 – which overrides Article 31 of Law 31 May 1995 No 218 and whose applicability is not precluded by the fact that both parties are Chinese citizens – Italian law governs the divorce as a result of the fact that, at the time the application was lodged, only the applicant was still habitually residing in Italy (while the respondent could not be traced in Italy) and that the common residence did not end more than one year before the court was seized. However, since Italian law does not provide for an "immediate divorce", i.e. divorce in the absence of prior legal separation, the application for the dissolution of the marriage must be declared inadmissible. Moreover, since a decision on the status of the spouses may not be rendered in this case, the further claims on child custody and maintenance filed in the action for "immediate divorce" are inadmissible, since they, too, are premised on the prior dissolution of the marriage.

59. *Corte di Cassazione, 25 January 2016 No 1260* 1106

The remedy provided at Article 43 of Regulation (EC) No 44/2001 of 22 December 2000 to file an appeal against the decree with which the Court of Appeal declared the enforceability of a foreign judgment must comply with the formal requirements of a summons to court where the applicant indicates the date of the hearing (*citazione a udienza fissa*). Such a construction is confirmed by the adversarial (as opposed to *ex-parte*) nature of the application – which aims at the solution of a dispute over rights – and by the Regulation's aim to simplify the necessary formalities to ensure a swift recognition and enforcement of judgments rendered in Member States; the use at Article 43(5) of the Regulation, of the term *ricorso* (in the English version of the Regulation, simply: appeal) is to be considered as irrelevant for such purposes. However, an appeal lodged by means of a *ricorso* is not inadmissible provided that the document instituting the proceeding and the decree

fixing the hearing are served within such term.
The service of the document lodging an appeal against the declaration of enforceability of a foreign judgment is subject to the mandatory term provided at Article 43(5) of Regulation No 44/2001.

60. *Milan Tribunal, 12 March 2016* 246

Pursuant to Articles 16 and 22 [*rectius*: 13 and 17] of the Paris Convention of 22 November 1928 establishing the "Bureau international des expositions" and Article 160 of the Code of Civil Procedure, the service of writs in the framework of the proceedings established by Article 1(48) of Law 28 June 2012 No 92 (so-called "Fornero proceedings") brought against the Section Commissioner-General of a State participating in an international exhibition and aiming at the plaintiffs' reintegration in their original work position is void if service has not been performed via the diplomatic channels. In fact, the Commissioner – who acts as a State agent – benefits from the same guarantees granted to State agents by international law.
Having considered the international customary law provision which is embodied in Article 11(2)(c) of the New York Convention of 2 December 2004 on Jurisdictional Immunities of States and Their Property, Italian courts lack jurisdiction over the above mentioned proceeding because such proceeding aims at imposing on the foreign State an employment relationship by means of a judicial order. Such measure is apt to interfere with the actions of a State entity, through which the foreign State pursues, albeit indirectly, its institutional goals. In this respect, the fact that, pending the proceeding, the plaintiff has opted in favour of the replacement allowance under Art 18 of Law 20 May 1970 No 300 is irrelevant, since such claim entails that the original claim for the reintegration of the employee in his original work position be positively assessed.

61. *Constitutional Court, 7 April 2016 No 76* 754

The issues of constitutional legitimacy of Articles 35 and 36 of Law 4 May 1983 No 184 on the right of the child to a family, raised with respect to Articles 2, 3, 30, 31 and 117 of the Constitution (as concerns, in particular, Article 117 the question was raised in connection to Articles 8 and 14 of the European Convention of Human Rights). In a proceeding for the recognition and enforcement of a foreign step-child adoption in favour of the same-sex spouse of the child's parent (regardless of the fact that the subsequent marriage produced legal effects in Italy) shall be declared inadmissible as a result of the insufficient identification, by the requesting court, of the provisions whose constitutionality is questioned.

62. *Bologna Family Court, decree of 17 May 2016* 809

In light of the judgment of the Constitutional Court of 7 April 2016 No 76, according to which questions of constitutional legitimacy of Articles 35 and 36 of Law 4 May 1983 No 184 on the child's right to a family raised in a proceeding over the recognition of a foreign step-child adoption by the pa-

rent's same-gender spouse are inadmissible, and which has identified in Article 41(1) of Law 31 May 1995 No 218 (that makes reference to Articles 64, 65 and 66 of such Law) the provision that governs the issue of the recognition, the application for the recognition of said adoption brought before the family courts shall be declared inadmissible. In fact, under Article 41(1) said adoption is eligible for an "automatic" recognition and the request for recognition may be submitted directly to the registrar for registration.

63. *Corte di Cassazione, 30 September 2016 No 19599* 813

The Italian judge, asked to assess the compatibility with public policy of a foreign certificate on status (in the case at hand, a birth certificate), for which recognition in Italy is sought under Articles 16, 64 and 65 of Law 31 May 1995 No 218, is not to verify whether the foreign certificate is governed by a law that is in line with Italian provisions (regardless of whether they are imperative or overriding mandatory provisions). Rather, the judge must assess if the foreign certificate conflicts with fundamental human rights, which may be inferred from the Constitution, the Treaties of the European Union and the Charter of Fundamental Rights, as well as from the European Convention of Human Rights. The judge will look in particular into the protection of the child's superior interest, also from the viewpoint of the child's personal and social identity and in general into the individual's right to self-determination and to have a family – such rights being provided in the Constitution (Articles 2, 3, 31 and 32) and the protection of which is strengthened by the supranational sources which concur in building public policy principles.
The recognition and registration in the Italian civil status registries of a foreign act, validly formed in Spain, which certifies the birth of a child from two women married one to the other – and namely from an Italian woman who donated an ovum to a Spanish woman who carried and delivered the child – does not conflict with public policy only because the Italian legislator does not provide for or expressly prohibits such a practice in Italy. In fact, attention shall be given to the constitutional principle, that is paramount, of the child's superior interest, which is substantiated in the child's right to the continuity of his status as a child of the couple (*status filiationis*) and that was validly acquired abroad (in the case at hand, in another EU Member State). The foreign birth certificate, valid under the law of the Member State where it was made, which certifies the birth of a child from two mothers, does not conflict with public policy as a result of the fact that the reproduction technique employed for the child's conception is not recognised in Italy under Law 19 February 2004 No 40. Furthermore, such technique, which entails that a woman donates her ovum to her partner, who then carries and delivers a child conceived with an unknown male donor's gamete, does not amount to surrogacy.
Under Article 269(3) of the Civil Code, the rule whereby the mother is she who delivered the child does not amount to a fundamental constitutional principle. Further, a public policy principle may not be inferred whereby the Constitution imposes a constraint or prohibition which prevents same-sex couples from having children: in fact, the fundamental and general freedom of individuals to self-determination and to have a family may not be discriminated against by being regulated in a different manner for same-sex and different-sex couples.

EU CASE-LAW

Consumer protection: 7.

Contracts: 10, 34.

EC Regulation No 1346/2000: 6, 19, 26.

EC Regulation No 44/2001: 5, 8, 11, 22, 29, 30, 33, 36, 38, 40, 41, 44, 46.

EC Regulation No 2201/2003: 4, 8, 17, 18, 20, 24, 47.

EC Regulation No 805/2004: 27.

EC Regulation No 1896/2006: 21, 36.

EC Regulation No 864/2007: 10, 25, 32.

EC Regulation No 1393/2007: 12, 23, 42.

EC Regulation No 4/2009: 2.

EU Regulation No 1259/2010: 43.

EU Citizenship: 45.

EU Law: 13, 14, 16, 35, 37, 39.

Freedom of establishment: 26.

Freedom of movement of persons: 2.

Intellectual property rights: 5.

Judicial proceedings before the Court of Justice: 1, 6, 9, 15, 46.

Liability of Member States: 9.

Prohibition of discrimination: 28

Rome Convention of 1980: 31, 39.

1. *Court of Justice, 4 June 2015 case C-5/14* 281

Article 267 TFEU must be interpreted as meaning that a national court which has doubts as to whether national legislation is compatible with both EU law and with the Constitution of the Member State concerned neither loses the right nor, as the case may be, is exempt from the obligation to submit questions to the Court of Justice of the European Union concerning the interpretation or validity of that law, on the ground that an interlocutory procedure for review of the constitutionality of that legislation is pending before the national court responsible for carrying out such review.
Article 14(1)(a) of Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity and Article 1(1) and (2) of Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive

92/12/EEC are to be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which levies a duty on the use of nuclear fuel for the commercial production of electricity.
Article 107 TFEU must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which levies a duty on the use of nuclear fuel for the commercial production of electricity.
The first paragraph of Article 93 EA, Article 191 EA, in conjunction with the first paragraph of Article 3 of the Protocol (No 7) on the Privileges and Immunities of the European Union annexed to the EU, FEU and EAEC Treaties, and the second paragraph of Article 192 EA, in conjunction with the second paragraph of Article 1 EA and Article 2(d) EA, are to be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which imposes a duty on the use of nuclear fuel for the commercial production of electricity.

2. *Court of Justice, 16 July 2015 case C-184/14* 278

Article 3(c) and (d) of Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations must be understood as meaning that, in the event that a court of a Member State is seised of proceedings involving the separation or dissolution of a marital link between the parents of a minor child and a court of another Member State is seised of proceedings in matters of parental responsibility involving the same child, an application relating to maintenance concerning that child is ancillary only to the proceedings concerning parental responsibility, within the meaning of Article 3(d) of that Regulation.

3. *Court of Justice, 16 July 2015 case C-218/14* 279

Article 13(2) of Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC must be interpreted as meaning that a third-country national, divorced from a Union citizen, whose marriage lasted for at least three years before the commencement of divorce proceedings, including at least one year in the host Member State, cannot retain a right of residence in that Member State on the basis of that provision where the commencement of the divorce proceedings is preceded by the departure from that Member State of the spouse who is a Union citizen.
Article 7(1)(b) of Directive 2004/38 must be interpreted as meaning that a Union citizen has sufficient resources for himself and his family members not to become a burden on the social assistance system of the host Member State during his period of residence even where those resources derive in part from those of his spouse who is a third-country national.

4. *Court of Justice, order 16 July 2015 case C-507/14* 271

Article 16(1)(a) of Regulation (EC) No 2201/2003 on jurisdiction of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that a court is seised at the time the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take all the steps he was required to take to have service effected on the respondent; to this extent, it is irrelevant that the applicant himself, soon after the lodging, had obtained a temporary suspension in order to try an amicable arrangement (*accord amiable*).

5. *Court of Justice, 16 July 2015 case C-681/13* 266

Article 34(1) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that the fact that a judgment given in a Member State is contrary to EU law does not justify that judgment's not being recognised in another Member State on the grounds that it infringes public policy in that State where the error of law relied on does not constitute a manifest breach of a rule of law regarded as essential in the EU legal order and therefore in the legal order of the Member State in which recognition is sought or of a right recognised as being fundamental in those legal orders. That is not the case of an error affecting the application of a provision such as Article 5(3) of Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, as amended by the Agreement on the European Economic Area of 2 May 1992. When determining whether there is a manifest breach of public policy in the State in which recognition is sought, the court of that State must take account of the fact that, save where specific circumstances make it too difficult or impossible to make use of the legal remedies in the Member State of origin, the individuals concerned must avail themselves of all the legal remedies available in that Member State with a view to preventing such a breach before it occurs.
Article 14 of Directive 2004/48/EC of 29 April 2004 on the enforcement of intellectual property rights must be interpreted as applying to the legal costs incurred by the parties in the context of an action for damages, brought in a Member State, to compensate for the injury caused as a result of a seizure carried out in another Member State, which was intended to prevent an infringement of an intellectual property right, when, in connection with that action, a question arises concerning the recognition of a judgment given in that other Member State declaring that seizure to be unjustified.

6. *Court of Justice, order of the President, 2 September 2015 case C-353/15* 264

The application by the Bari Court of Appeal that the accelerated procedure provided for in Article 105(1) of the Rules of Procedure be applied to the case C-353/15 is rejected, since the economic interests to which the national court refers, although significant and legitimate, are not of such a nature as to establish the existence of exceptional urgency (in the present case, the main proceeding is referred to the opposition to the judgment declaring bankrupt-

cy and the preliminary questions is related to Article 3 of Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings).

7. *Court of Justice, 3 September 2015 case C-110/14* 280

Article 2(b) of Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that a natural person who practises as a lawyer and concludes a credit agreement with a bank, in which the purpose of the credit is not specified, may be regarded as a 'consumer' within the meaning of that provision, where that agreement is not linked to that lawyer's profession. The fact that the debt arising out of the same contract is secured by a mortgage taken out by that person in his capacity as representative of his law firm and involving goods intended for the exercise of that person's profession, such as a building belonging to that firm, is not relevant in that regard.

8. *Court of Justice, 9 September 2015 case C-4/14* 271

Article 1 of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that that Regulation does not apply to the enforcement in a Member State of a penalty payment which is imposed in a judgment, given in another Member State, concerning rights of custody and rights of access in order to ensure that the holder of the rights of custody complies with those rights of access.
Recovery of a penalty payment – a penalty which the court of the Member State of origin that gave judgment on the merits with regard to rights of access has imposed in order to ensure the effectiveness of those rights – forms part of the same scheme of enforcement as the judgment concerning the rights of access that the penalty safeguards and the latter must therefore be declared enforceable in accordance with the rules laid down by Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000. In the context of Regulation No 2201/2003, a foreign judgment which orders a periodic penalty payment is enforceable in the Member State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the Member State of origin.

9. *Court of Justice, 9 September 2015 case C-160/14* 280

Article 1(1) of Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees'-rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses must be interpreted as meaning that the concept of a 'transfer of a business' encompasses a situation in which an undertaking active on the charter flights market is wound up by its majority shareholder, which is itself an air transport undertaking, and the latter undertaking then takes the place of the undertaking that has been wound up by taking over aircraft

leasing contracts and ongoing charter flight contracts, carries on activities previously carried on by the undertaking that has been wound up, reinstates some employees that have hitherto been seconded to that undertaking, assigning them tasks identical to those previously performed, and takes over small items of equipment from the undertaking that has been wound up. In circumstances such as those of the case in the main proceedings, which are characterised both by the fact that there are conflicting decisions of lower courts or tribunals regarding the interpretation of the concept of a 'transfer of a business' within the meaning of Article 1(1) of Directive 2001/23 and by the fact that that concept frequently gives rise to difficulties of interpretation in the various Member States, the third paragraph of Article 267 TFEU must be construed as meaning that a court or tribunal against whose decisions there is no judicial remedy under national law is obliged to make a reference to the Court for a preliminary ruling concerning the interpretation of that concept. EU law and, in particular, the principles laid down by the Court with regard to State liability for loss or damage caused to individuals as a result of an infringement of EU law by a court or tribunal against whose decisions there is no judicial remedy under national law must be interpreted as precluding a provision of national law which requires, as a precondition, the setting aside of the decision given by that court or tribunal which caused the loss or damage, when such setting aside is, in practice, impossible.

10. *Court of Justice, 9 September 2015 case C-240/14* 275

Article 2(1)(a) and (c) of Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in respect of the carriage of passengers and their baggage by air, as amended by Regulation (EC) No 889/2002 of 13 May 2002, and Article 1(1) of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999 and approved on behalf of the European Union by Decision 2001/539/EC of 5 April 2001, must be interpreted as meaning that they preclude a determination on the basis of Article 17 of that Convention of a claim for damages brought by a person who – whilst she (i) was a passenger in an aircraft that had the same place of take-off and landing in a Member State and (ii) was being carried free of charge for the purpose of viewing from the air a property in connection with a property transaction planned with the pilot of that aircraft – was physically injured when the aircraft crashed.
Article 18 of Regulation (EC) No 864/2007 of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) must be interpreted as meaning that, in a situation such as that of the case before the referring court, a person who has suffered damage is entitled to bring a direct action against the insurer of the person liable to provide compensation, where such an action is provided for by the law applicable to the non-contractual obligation, regardless of the provision made by the law that the parties have chosen as the law applicable to the insurance contract.

11. *Court of Justice, 10 September 2015 case C-47/14* 268

The provisions of Chapter II, Section 5 (Articles 18 to 21) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, in a situation such

as that at issue in the main proceedings in which a company sues a person, who performed the duties of director and manager of that company in order to establish misconduct on the part of that person in the performance of his duties and to obtain redress from him, must be interpreted as meaning that they preclude the application of Article 5(1) and (3) of that Regulation, provided that that person, in his capacity as director and manager, for a certain period of time performed services for and under the direction of that company in return for which he received remuneration, that being a matter for the referring court to determine.
Article 5(1) of Regulation No 44/2001 must be interpreted as meaning that an action brought by a company against its former manager on the basis of an alleged breach of his obligations under company law comes within the concept of 'matters relating to a contract'. In the absence of any derogating stipulation in the articles of association of the company, or in any other document, it is for the referring court to determine the place where the manager in fact, for the most part, carried out his activities in the performance of the contract, provided that the provision of services in that place is not contrary to the parties' intentions as indicated by what was agreed.
In circumstances such as those at issue in the main proceedings in which a company is suing its former manager on the basis of allegedly wrongful conduct, Article 5(3) of Regulation No 44/2001 must be interpreted as meaning that that action is a matter relating to tort or delict where the conduct complained of may not be considered to be a breach of the manager's obligations under company law, that being a matter for the referring court to verify. It is for the referring court to identify, on the basis of the facts of the case, the closest linking factor between the place of the event giving rise to the damage and the place where the damage occurred.

12. *Court of Justice, 16 September 2015 case C-519/13* 276

Regulation (EC) No 1393/2007 of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Regulation (EC) No 1348/2000, must be interpreted as meaning that: the receiving agency is required, in all circumstances and without it having a margin of discretion in that regard, to inform the addressee of a document of his right to refuse to accept that document, by using systematically for that purpose the standard form set out in Annex II to that Regulation, and the fact that that agency, when serving a document on its addressee, fails to enclose the standard form set out in Annex II to Regulation (EC) No 1393/2007, does not constitute a ground for the procedure to be declared invalid, but an omission which must be rectified in accordance with the provisions set out in that Regulation.

13. *Court of Justice, 1 October 2015 C-230/14* 866

Article 4(1)(a) of Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data must be interpreted as permitting the application of the law on the protection of personal data of a Member State other than the Member State in which the controller with respect to the processing of those data is registered, in so far as that controller exercises, through stable arran-

gements in the territory of that Member State, a real and effective activity – even a minimal one – in the context of which that processing is carried out. In order to ascertain, in circumstances such as those at issue in the main proceedings, whether that is the case, the referring court may, in particular, take account of the fact (i) that the activity of the controller in respect of that processing, in the context of which that processing takes place, consists of the running of property dealing websites concerning properties situated in the territory of that Member State and written in that Member State's language and that it is, as a consequence, mainly or entirely directed at that Member State, and (ii) that that controller has a representative in that Member State, who is responsible for recovering the debts resulting from that activity and for representing the controller in the administrative and judicial proceedings relating to the processing of the data concerned. By contrast, the issue of the nationality of the persons concerned by such data processing is irrelevant. Where the supervisory authority of a Member State, to which complaints have been submitted in accordance with Article 28(4) of Directive 95/46, reaches the conclusion that the law applicable to the processing of the personal data concerned is not the law of that Member State, but the law of another Member State, Article 28(1), (3) and (6) of that Directive must be interpreted as meaning that that supervisory authority will be able to exercise the effective powers of intervention conferred on it in accordance with Article 28(3) of that Directive only within the territory of its own Member State. Accordingly, it cannot impose penalties on the basis of the law of that Member State on the controller with respect to the processing of those data who is not established in that territory, but should, in accordance with Article 28(6) of that Directive, request the supervisory authority within the Member State whose law is applicable to act.
Directive 95/46 must be interpreted as meaning that the term '*adatfeldolgozás*' (technical manipulation of data), used in the Hungarian version of that Directive, in particular in Articles 4(1)(a) and 28(6) thereof, must be understood as having the same meaning as that of the term '*adatkezelés*' (data processing).

14. *Court of Justice, 6 October 2015 case C-69/14* 869

European Union law, in particular the principles of equivalence and effectiveness, must be interpreted as not precluding, in circumstances such as those in the dispute in the main proceedings, a situation where there is no possibility for a national court to revise a final decision of a court or tribunal made in the course of civil proceedings when that decision is found to be incompatible with an interpretation of EU law upheld by the Court of Justice of the European Union after the date on which that decision became final, even though such a possibility does exist as regards final decisions of a court or tribunal incompatible with EU law made in the course of administrative proceedings

15. *Court of Justice, 6 October 2015 case C-203/14* 865

Article 1(8) of Directive 2004/18/EC of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts must be interpreted as meaning that the term 'economic operator' in the second subparagraph of that provision en-

compasses public authorities, which may therefore participate in public tendering procedures if and to the extent that they are authorised to offer certain services in return for remuneration on a market.
Article 52 of Directive 2004/18 must be interpreted to the effect that – although it includes certain requirements with regard to the determination of the conditions for registration of economic operators on the national official lists and for certification – it does not exhaustively define (i) the conditions for registration of those economic operators on the national official lists or the conditions for their certification or (ii) the rights and obligations of public entities in that respect. In all events, Directive 2004/18 must be interpreted as precluding national rules under which, on the one hand, national public authorities that are authorised to offer the works, products or services covered by the contract notice concerned may not be registered on those lists, or may not obtain certification, while, on the other hand, the right to participate in the tendering procedure concerned is afforded only to operators which are included on those lists or which have obtained certification.

16. *Court of Justice, 6 October 2015 case C-362/14* 868

Article 25(6) of Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data as amended by Regulation (EC) No 1882/2003 of 29 September 2003, read in the light of Articles 7, 8 and 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that a decision adopted pursuant to that provision, such as Commission Decision 2000/520/EC of 26 July 2000 pursuant to Directive 95/46 on the adequacy of the protection provided by the safe harbour privacy principles and related frequently asked questions issued by the US Department of Commerce, by which the European Commission finds that a third country ensures an adequate level of protection, does not prevent a supervisory authority of a Member State, within the meaning of Article 28 of that Directive as amended, from examining the claim of a person concerning the protection of his rights and freedoms in regard to the processing of personal data relating to him which has been transferred from a Member State to that third country when that person contends that the law and practices in force in the third country do not ensure an adequate level of protection. Decision 2000/520 is invalid.

17. *Court of Justice, 6 October 2015 case C-404/14* 273

Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that the approval of an agreement for the sharing-out of an estate concluded by a guardian ad litem on behalf of minor children constitutes a measure relating to the exercise of parental responsibility, within the meaning of Article 1(1)(b) of that Regulation and thus falls within the scope of the latter, and not a measure relating to succession, within the meaning of Article 1(3)(f) thereof, excluded from the scope thereof.

18. *Court of Justice, 6 October 2015 case C-489/14* 569

In the case of judicial separation and divorce proceedings brought between the same parties before the courts of two Member States, Article 19(1) and (3) of Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that, in a situation such as that at issue in the main proceedings in which the proceedings before the court first seised in the first Member State expired after the second court in the second Member State was seised, the criteria for *lis pendens* are no longer fulfilled and, therefore, the jurisdiction of the court first seised must be regarded as not being established.

19. *Court of Justice, 15 October 2015 case C-310/14* 264

Article 13 of Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as meaning that, after taking account of all the circumstances of the case, the article applies provided that the act at issue cannot be challenged on the basis of the law governing that act (*lex causae*).
For the purposes of the application of Article 13 of Regulation No 1346/2000 and in the event that the defendant in an action relating to the voidness, voidability or unenforceability of an act relies on a provision of the law governing that act (*lex causae*) under which that act can be challenged only in the circumstances provided for in that provision, it is for the defendant to plead that those circumstances do not exist and to bear the burden of proof in that regard.
Article 13 of Regulation No 1346/2000 must be interpreted as meaning that the expression 'does not allow any means of challenging that act...' applies, in addition to the insolvency rules of the law governing that act (*lex causae*), to the general provisions and principles of that law, taken as a whole.
Article 13 of Regulation No 1346/2000 must be interpreted as meaning that the defendant in an action relating to the voidness, voidability or unenforceability of an act must show that the law governing that act (*lex causae*), taken as a whole, does not allow for that act to be challenged. The national court before which such an action is brought may rule that it is for the applicant to establish the existence of a provision or principle of the *lex causae* on the basis of which that act can be challenged only where that court considers that the defendant has first proven, in accordance with the rules generally applicable under its national rules of procedure, that the act at issue cannot be challenged on the basis of the *lex causae*.

20. *Court of Justice, 21 October 2015 case C-215/15* 570

An action in which one parent asks the court to remedy the lack of agreement of the other parent to their child travelling outside his Member State of residence and a passport being issued in the child's name is within the material scope of Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regu-

lation (EC) No 1347/2000, even though the decision in that action will have to be taken into account by the authorities of the Member State of which the child is a national in the administrative procedure for the issue of that passport.
Article 12(3)(b) of Regulation No 2201/2003 must be interpreted as meaning that the jurisdiction of the courts seised of an application in matters of parental responsibility may not be regarded as having been 'accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings' within the meaning of that provision solely because the legal representative of the defendant, appointed by those courts of their own motion in view of the impossibility of serving the document instituting proceedings on the defendant, has not pleaded the lack of jurisdiction of those courts.

21. *Court of Justice, 22 October 2015 case C-245/14* 859

Article 20(2) of Regulation (EC) No 1896/2006 of 12 December 2006 creating a European order for payment procedure, as amended by Commission Regulation (EU) No 936/2012 of 4 October 2012, must be interpreted as precluding, in circumstances such as those at issue in the main proceedings, a defendant on whom a European order for payment has been served in accordance with that Regulation from being entitled to apply for a review of that order by claiming that the court of origin incorrectly held that it had jurisdiction on the basis of allegedly false information provided by the claimant in the application form.

22. *Court of Justice, 22 October 2015 case C-523/14* 567

Article 1 of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a complaint lodged with an investigating magistrate seeking to join a civil action to proceedings falls within the scope of that Regulation in so far as its object is to obtain monetary compensation for harm allegedly suffered by the complainant.
Article 27(1) of Regulation No 44/2001 must be interpreted as meaning that proceedings are brought, within the meaning of that provision, when a complaint seeking to join a civil action to proceedings has been lodged with an investigating magistrate, even though the judicial investigation of the case at issue has not yet been closed.
Article 30 of Regulation No 44/2001 must be interpreted as meaning that, where a person lodges a complaint seeking to join a civil action to proceedings with an investigating magistrate by means of the lodging of a document which need not, under the applicable national law, be served before that lodging, the time which must be chosen for the purposes of holding that magistrate to be seised is the time when that complaint was lodged.

23. *Court of Justice, 11 November 2015 case C-223/14* 863

Article 16 of Regulation (EC) No 1393/2007 of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil

or commercial matters, and repealing Regulation (EC) No 1348/2000, must be interpreted as meaning that the concept of an 'extrajudicial document' referred to in that Article encompasses not only documents drawn up or certified by a public authority or official but also private documents of which the formal transmission to an addressee residing abroad is necessary for the purposes of exercising, proving or safeguarding a right or a claim in civil or commercial law.
Regulation No 1393/2007 must be interpreted as meaning that service of an extrajudicial document, pursuant to the detailed rules laid down by that Regulation, can be effected even where the applicant has already effected an earlier service of that document through a means of transmission not provided for in the Regulation, or through another of the means of transmission put in place by it.
Article 16 of Regulation No 1393/2007 must be interpreted as meaning that, where the conditions of that Article are satisfied, it is not necessary to ascertain, on a case-by-case basis, whether the service of an extrajudicial document has cross-border implications and is necessary for the proper functioning of the internal market.

24. *Court of Justice, 19 November 2015 case C-455/15 PPU* 571

Article 23(a) of Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that, in the absence of a manifest breach, having regard to the best interests of the child, of a rule of law regarded as essential in the legal order of a Member State or of a right recognised as being fundamental within that legal order, that provision does not allow a court of that Member State which considers that it has jurisdiction to rule on the custody of a child to refuse to recognise a judgment of a court of another Member State which has ruled on the custody of that child.

25. *Court of Justice, 10 December 2015 case C-350/14* 574

Article 4(1) Regulation (EC) No 864/2007 of 11 July 2007 on the law applicable to non-contractual obligations ('Rome II'), must be interpreted, in order to determine the law applicable to a non-contractual obligation arising from a road traffic accident, as meaning that the damage related to the death of a person in such an accident which took place in the Member State of the court seised and sustained by the close relatives of that person who reside in another Member State, must be classified as 'indirect consequences' of that accident, within the meaning of that provision.

26. *Court of Justice, 10 December 2015 case C-594/14* 850

Article 4 of Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as meaning that Article 4 of Regulation No 1346/2000 must be interpreted as meaning that an action directed against the

managing director of a company established under the law of England and Wales, forming the subject of insolvency proceedings opened in Germany, brought before a German court by the liquidator of that company and seeking, on the basis of a national provision such as the first sentence of Paragraph 64(2) of the Law on limited liability companies, reimbursement of payments made by that managing director before the opening of the insolvency proceedings but after the date on which the insolvency of that company was established, falls within its scope.
Articles 49 and 54 TFEU do not preclude the application of a national provision, such as the first sentence of Paragraph 64(2) of the Law on limited liability companies to a managing director of a company established under the law of England and Wales which is the subject of insolvency proceedings opened in Germany.

27. *Court of Justice, 17 December 2015 case C-300/14* 573

Article 19 of Regulation (EC) No 805/2004 of 21 April 2004 creating a European enforcement order for uncontested claims, read in the light of Article 288 TFEU, must be interpreted as not requiring Member States to establish in their national law a review procedure such as that referred to in Article 19 of that Regulation.
Article 19(1) of Regulation No 805/2004 must be interpreted as meaning that, in order to certify a judgment delivered in absentia as a European enforcement order, the court ruling on such an application must satisfy itself that its national law effectively and without exception allows for a full review, in law and in fact, of such a judgment in the two situations referred to in that provision and that it allows the periods for challenging a judgment on an uncontested claim to be extended, not only in the event of force majeure, but also where other extraordinary circumstances beyond the debtor's control prevented him from contesting the claim in question.
Article 6 of Regulation No 805/2004 must be interpreted as meaning that the certification of a judgment as a European enforcement order, which may be applied for at any time, can be carried out only by a judge.

28. *Court of Justice, 17 December 2015 case C-407/14* 865

Article 18 of Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation must be interpreted as meaning that, in order for the loss and damage sustained as a result of discrimination on grounds of sex to be the subject of genuine and effective compensation or reparation in a way which is dissuasive and proportionate, that article requires Member States which choose the financial form of compensation to introduce in their national legal systems, in accordance with detailed arrangements which they determine, measures providing for payment to the person injured of compensation which covers in full the loss and damage sustained.

29. *Court of Justice, 17 December 2015 case C-605/14* 568

The first paragraph of Article 22(1) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action for the termination of co-ownership in undivided shares of immovable property by way of sale, by an appointed agent, falls within the category of proceedings 'which have as their object rights in rem in immovable property' within the meaning of that provision.

30. *Court of Justice, 23 December 2015 case C-297/14* 852

Article 15(1)(c) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, read in conjunction with Article 16(1) of that Regulation, must, in so far as it relates to the contract concluded in the context of a commercial or professional activity 'directed' by the professional 'to' the Member State of the consumer's domicile, be interpreted as meaning that it may be applied to a contract concluded between a consumer and a professional which on its own does not come within the scope of the commercial or professional activity 'directed' by that professional 'to' the Member State of the consumer's domicile, but which is closely linked to a contract concluded beforehand by those same parties in the context of such an activity. It is for the national court to determine whether the constituent elements of that link are present, in particular whether the parties to both of those contracts are identical in law or in fact, whether the economic objective of those contracts concerning the same specific subject-matter is identical and whether the second contract complements the first contract in that it seeks to make it possible for the economic objective of that first contract to be achieved.

31. *Court of Justice, 13 January 2016 case C-397/15* 850

Pursuant to Article 2 litt. (a) and (b) of the First Protocol concerning the interpretation by the Court of Justice of the 1980 Rome Convention on the law applicable to contractual obligations, the German jurisdictional authorities that may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before them and concerning interpretation of the provisions contained in such a Convention are represented by the federal courts ('*die obersten Gerichtshöfe des Bundes*') and any other court when acting as appeal court. Therefore, the EU Court of Justice is manifestly lacking jurisdiction to answer the questions referred by the *Landgericht Itzehoe* (Regional tribunal of Itzehoe), since the same is not falling within said legitimized authorities.

32. C*ourt of Justice, 21 January 2016 joined cases C-359/14 and C-475/14* 861

Article 14(b) of Directive 2009/103/EC of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability must be interpreted as meaning that that provision does not contain any specific conflict-of-law rule intended to determine the law applicable to the action

for indemnity between insurers in circumstances such as those at issue in the main proceedings.
Regulation (EC) No 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I) and Regulation (EC) No 864/2007 of 11 July 2007 on the law applicable to non-contractual obligations must be interpreted to the effect that the law applicable to an action for indemnity between the insurer of a tractor unit, which has compensated the victims of an accident caused by the driver of that vehicle, against the insurer of the trailer coupled to it at the time of that accident, is to be determined in accordance with Article 7 of Regulation No 593/2008 if the rules of liability in tort, delict and quasi-delict applicable to that accident by virtue of Articles 4 et seq. of Regulation No 864/2007 provide for an apportionment of the obligation to compensate for the damage.

33. *Court of Justice, 21 January 2016 case C-521/14* 854

Article 6(2) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted to the effect that its scope includes an action brought by a third party, in accordance with national law, against the defendant in the original proceedings, and closely linked to those original proceedings, seeking reimbursement of compensation paid by that third party to the applicant in those original proceedings, provided that the action was not instituted solely with the object of removing that defendant from the jurisdiction of the court which would be competent in the case.

34. *Court of Justice, 17 February 2016 case C-429/14* 1132

The Convention for the Unification of Certain Rules for International Carriage by Air, concluded at Montreal on 28 May 1999, in particular Articles 19, 22 and 29 thereof, must be interpreted as meaning that an air carrier which has concluded a contract of international carriage with an employer of persons carried as passengers, such as the employer at issue in the main proceedings, is liable to that employer for damage occasioned by a delay in flights on which its employees were passengers pursuant to that contract, on account of which the employer incurred additional expenditure.

35. *Court of Justice, 25 February 2016 case C-292/14* 1128

Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer must be interpreted as meaning that, subject to the possible application of Article 1(2) of the Directive, seamen living in a Member State who were engaged in that State by a company with its registered office in a non-member country but its actual head office in that Member State to work as employees on board a cruise ship owned by the company and flying the flag of the non-member country under an employment contract designating the law of the non-member country as the law applicable must, after the company has been declared insolvent by a court

of the Member State concerned in accordance with the law of that State, be eligible for the protection conferred by the Directive as regards their outstanding wage claims against the company.
Article 1(2) of Directive 80/987 must be interpreted as meaning that, as regards employees in a situation such as that of the defendants in the main proceedings, protection such as that provided in Article 29 of Law 1220/1981 supplementing and amending the legislation relating to the Piraeus port authority in the event that seamen are abandoned abroad does not constitute 'protection equivalent to that resulting from [the] Directive' within the meaning of that provision.

36. *Court of Justice, 10 March 2016 case C-94/14* 855

EU law must be interpreted as meaning that, in circumstances where a court is seised of a procedure, such as that in the main proceedings, concerning the designation of the court of the Member State of origin of a European order for payment having territorial jurisdiction and examines, in those circumstances, the international jurisdiction of the courts of that Member State to hear the contentious proceedings concerning the debt which gave rise to such an order for payment against which the defendant has entered a statement of opposition within the time-limit prescribed for that purpose: since Regulation (EC) No 1896/2006 of 12 December 2006 creating a European order for payment procedure does not provide any indications as to the powers and obligations of that court, those procedural questions continue, pursuant to Article 26 of that Regulation, to be governed by the national law of that Member State; Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters requires the question of the international jurisdiction of the courts of the Member State of origin of the European order for payment to be decided by application of procedural rules which enable the effectiveness of the provisions of that Regulation and the rights of the defence to be guaranteed, whether it is the referring court or a court which the referring court designates as the court having territorial and substantive jurisdiction to hear a claim such as that at issue in the main proceedings under the ordinary civil procedure which rules on that question; if a court such as the referring court rules on the international jurisdiction of the courts of the Member State of origin of the European order for payment and finds that there is such jurisdiction in the light of the criteria set out in Regulation No 44/2001, that Regulation and Regulation No 1896/2006 require such a court to interpret national law in such a way that it permits it to identify or designate a court having territorial or substantive jurisdiction to hear that procedure; and, if a court such as the referring court finds that there is no such international jurisdiction, that court is not required of its own motion to review that order for payment by analogy with Article 20 of Regulation No 1896/2006.

37. *Court of Justice, 17 March 2016 case C-161/15* 1132

EU law must be interpreted as meaning that where, in accordance with the applicable national law, a plea alleging infringement of national law raised for the first time before the national court hearing an appeal on a point of law is admissible only if that plea is based on public policy, a plea alleging infringe-

ment of the right to be heard, as guaranteed by EU law, raised for the first time before that same court, must be held to be admissible if that right, as guaranteed by national law, satisfies the conditions required by national law for it to be classified as a plea based on public policy, this being a matter for the referring court to determine.

38. *Court of Justice, 17 March 2016 case C-175/15* 858

Articles 23(5) and 24 of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in a dispute concerning the non-execution of a contractual obligation, in which the applicant has brought proceedings before the courts of the Member State in which the defendant has its seat, the jurisdiction of those courts may stem from Article 24 of that Regulation, where the defendant does not dispute their jurisdiction, even though the contract between the two parties contains a clause conferring jurisdiction on the courts of a third country.
Article 24 of Regulation No 44/2001 must be interpreted as precluding, in a dispute between parties to a contract which contains a clause conferring jurisdiction on the courts of a third country, the court of the Member State in which the defendant has its seat, which has been seised, from declaring of its own motion that it does not have jurisdiction, even though the defendant does not contest the jurisdiction of that court.

39. *Court of Justice, 7 April 2016 case C-483/14* 1131

EU law must be interpreted as meaning that: the law applicable following a cross-border merger by acquisition to the interpretation of a loan contract taken out by the acquired company, such as the contracts at issue in the main proceedings, to the performance of the obligations under the contract and to how those obligations are extinguished is the law which was applicable to the contract before the merger; the provisions governing the protection of the creditors of the acquired company, in a case such as that at issue in the main proceedings, are those of national law which were applicable to that company.
Article 15 of Third Directive 78/855/EEC of 9 October 1978 based on Article 54(3)(g) of the Treaty concerning mergers of public limited liability companies, as amended by Directive 2009/109/EC of 16 September 2009, must be interpreted as granting rights to holders of securities, other than shares, to which special rights are attached, but not to the issuer of such securities.

40. *Court of Justice, 20 April 2016 case C-366/13* 1119

Article 23 of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that: where a jurisdiction clause is included in a prospectus concerning the issue of bonds, the formal requirement laid down in Article 23(1)(a) of Regulation No 44/2001 is met only if the contract signed by the parties upon the issue of the bonds on the primary

market expressly mentions the acceptance of that clause or contains an express reference to that prospectus; a jurisdiction clause contained in a prospectus produced by the bond issuer concerning the issue of bonds may be relied on against a third party who acquired those bonds from a financial intermediary if it is established, which it is for the referring to verify, that (i) that clause is valid in the relationship between the issuer and the financial intermediary, (ii) the third party, by acquiring those bonds on the secondary market, succeeded to the financial intermediary's rights and obligations attached to those bonds under the applicable national law, and (iii) the third party had the opportunity to acquaint himself with the prospectus containing that clause; and the insertion of a jurisdiction clause into a prospectus concerning the issue of bonds may be regarded as a form which accords with a usage in international trade or commerce, for the purpose of Article 23(1)(c) of Regulation No 44/2001, allowing the consent of the person against whom it is relied upon to be presumed, provided inter alia that it is established, which it is for the referring court to verify, (i) that such conduct is generally and regularly followed by the operators in the particular trade or commerce concerned when contracts of that type are concluded and (ii) either that the parties had previously had commercial or trade relations between themselves or with other parties operating in the sector in question, or that the conduct in question is sufficiently well known to be considered an established practice.
Article 5(1)(a) of Regulation No 44/2001 must be interpreted as meaning that actions seeking the annulment of a contract and the restitution of sums paid but not due on the basis of that contract constitute 'matters relating to a contract' within the meaning of that provision.
Article 6(1) of Regulation No 44/2001 must be interpreted as meaning that where two actions – which have different subject-matters and bases and which are not connected by a link of subordination or incompatibility – are brought against several defendants, the fact that the upholding of one of those actions is potentially capable of affecting the extent of the right whose protection is sought by the other action does not suffice to give rise to a risk of irreconcilable judgments within the meaning of that provision.

41. *Court of Justice, 21 April 2016 case C-572/14* 1122

Article 5(3) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a claim seeking to obtain payment of remuneration due by virtue of a national law, such as that at issue in the main proceedings, implementing the 'fair compensation' system provided for in Article 5(2)(b) of Directive 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, falls within 'matters relating to tort, delict or quasi-delict', within the meaning of Article 5(3) of that Regulation.

42. *Court of Justice, order, 28 April 2016 case C-384/14* 1126

Regulation (EC) No 1393/2007 of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Regulation (EC) No 1348/2000, must be interpreted to the effect that, when serving a document on

its addressee residing in the territory of another Member State, in a situation where the document has not been drafted in or accompanied by a translation in either a language which the person concerned understands, or the official language of the Member State addressed, or, if there are a number of official languages in that Member State, the official language or one of the official languages of the place where service is to be effected: the court seised in the transmitting Member State must ensure that the addressee has been properly informed, by means of the standard form in Annex II to that Regulation, of his right to refuse to accept that document; where that procedural requirement has not been complied with, it falls to that court to return the proceedings to a lawful footing in accordance with the provisions of that Regulation; it is not for the court seised to prevent the addressee from exercising his right to refuse to accept that document; it is only after the addressee has effectively exercised his right to refuse to accept the document that the court seised may verify whether that refusal was well founded; for that purpose, that court must take into account all the relevant information on the court file in order to determine whether or not the party concerned understands the language in which the document was drafted; and where that court finds that the refusal by the addressee of the document was not justified, it may in principle apply the consequences under its national law in such a case, provided that the effectiveness of Regulation No 1393/2007 is preserved.

43. *Court of Justice, order, 12 May 2016 C-281/15* 1128

The Court of Justice of the European Union has no jurisdiction to answer the request for a preliminary ruling on the interpretation of Regulation (EU) No 1259/2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation referred by the *Oberlandesgericht München* (Higher Regional Court, Munich), seized with a request for recognition of a decision on divorce rendered by a religious authority of a third State. In fact, neither the provisions of Regulation (EU) No 1259/2010, mentioned by the referring judge, nor those of Regulation (EU) No 2201/2003 or of any other legal act of the EU are applicable to dispute in the main proceedings.

44. *Court of Justice, 25 May 2016 case C-559/14* 1123

Article 34(1) of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, considered in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that the recognition and enforcement of an order issued by a court of a Member State, without a prior hearing of a third person whose rights may be affected by that order, cannot be regarded as manifestly contrary to public policy in the Member State in which enforcement is sought or manifestly contrary to the right to a fair trial within the meaning of those provisions, in so far as that third person is entitled to assert his rights before that court.

45. *Court of Justice, 2 June 2016 case C-438/14* 1130

Article 21 TFEU must be interpreted as meaning that the authorities of a Member State are not bound to recognise the name of a citizen of that Member State when he also holds the nationality of another Member State in which he has acquired that name which he has chosen freely and which contains a number of tokens of nobility, which are not accepted by the law of the first Member State, provided that it is established, which it is for the referring court to ascertain, that a refusal of recognition is, in that context, justified on public policy grounds, in that it is appropriate and necessary to ensure compliance with the principle that all citizens of that Member State are equal before the law.

46. *Court of Justice, order of the President, 8 June 2016 case C-242/16* 1124

The application made by the *Supremo Tribunal de Justiça* (Supreme Court, Portugal) for hearing the case C-242/16 with the accelerated procedure provided for in Article 105(1) of the Rules of Procedure is rejected, since the economic interests to which the national court refers, although significant and legitimate, are not of such a nature as to establish the existence of exceptional urgency (in the present case, the preliminary ruling on interpretation refers to Article 19(2) litt. (a), (b) and (c) of Regulation (EC) No 44/2001 of 22 December 2000 jurisdiction and recognition of judgments in civil and commercial matters).

47. *Court of Justice, order, 22 June 2016 case C-173/16* 1125

Article 16(1)(a) of Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted to the effect that the 'time when the document instituting the proceedings or an equivalent document is lodged with the court', within the meaning of that provision, is the time when that document is lodged with the court concerned, even if under national law lodging that document does not of itself immediately initiate proceedings.

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