INDEX

ARTICLES

P. Bertoli, Virtual Currencies and Private International Law (in English) 583

C. Campiglio, National Private International Law Statutes and EU Regulations: Integration Techniques 292

S. Carrea, L. Schiano di Pepe, Insolvency and Arrest of Ships: The Interaction of International and European Union Law (in English) 895

A. Di Blase, Recognition of Filiation in Cases of Medically Assisted Procreation: Private International Law Questions 839

O. Lopes Pegna, The Notion of "Cross-Border" Dispute in the Harmonization of the EU Member States' Rules on Civil Procedure 922

A. Malatesta, Considerations towards the Recast of Law No 218/1995 with Respect to the Law Governing Contractual and Non-Contractual Obligations 318

S. Marino, Private International Law Aspects of Living Wills 608

F. Mosconi, Right to Defense and the Doctrines of *Male Captus Bene Detentus* and *Ne Bis in Idem* before the European Court of Human Rights 565

I. Queirolo, Legislative Drafting and Jurisdiction under Regulation (EU) No 650/2012 on Successions 870

F. Salerno, The Constitutionalisation of Public Policy 259

G. Serranò, The Introduction of the Crime of Torture in Italy 332

I. Viarengo, Property Consequences of Cross-Border Registered Partnerships: The New Regulation of the European Union 33

J. von Hein, Agency in the Conflict of Laws: A New German Rule (in English) 5

SHORT ARTICLES, NOTES AND COMMENTS

S. Bernasconi, Transfer Abroad of the Company's Registered Office (without Transfer of its Real Head Office) before the Court of Justice: The *Polbud* Judgment 635

G. Borgna, Unilateral Declarations of Succession in Respect of Treaties and Time Limitations for the Requesting State in Extradition Proceedings 81

V. Capasso, Dispute Boards: What if They Were Multi-Tiered Arbitration? (in English) 712

L. CARPANETO, In Search for a (New) Synthesis between the Child's Conceptual and Actual Best Interest in the Recast of the Brussels IIa Regulation 944

S. CASIGLIA, The "Injured Party" in Insurance Matters in the *MMA IARD* and *Hofsoe* Judgments 1010

G.M. FARNELLI, Treatment of Evidence and ICSID Annulment Proceedings (in English) 59

F. MAOLI, Successions, Matrimonial Property Regimes and Characterization in a Recent Judgment of the Court of Justice 676

R. MONICO, Jurisdiction over Online Defamation in Light of the *Ilsjan* Judgment 359

J. RE, Where Did They Live? Habitual Residence in the Succession Regulation (in English) 978

A. SARDU, Arbitration and Fair Trial in the Jurisprudence of the European Court of Human Rights 691

CASES IN ITALIAN COURTS

Adoption: 24.
Civil proceedings: 2, 3, 7, 10, 13, 14, 16, 23, 35, 39, 43, 49, 53, 60, 63, 74, 78, 84.
Contracts: 12, 20, 28, 33, 43.
Companies: 8.
Criminal proceedings: 15, 40.
Divorce and legal separation: 34, 48.
EC Regulation No 1346/2000: 31, 62, 74.
EC Regulation No 44/2001: 6, 26, 35, 47, 50, 51, 59, 62, 73, 79, 83.
EC Regulation No 2201/2003: 13, 17, 34, 45, 55, 63, 77, 78.
EC Regulation No 805/2004: 2.
EC Regulation No 864/2007: 23.
EC Regulation No 1393/2007: 2.
EC Regulation No 593/2008: 12, 28.
EC Regulation No 4/2009: 34.
EC Regulation No 1259/2010: 34.
EU Regulation No 1215/2012: 1, 4, 7, 10, 14, 39, 53, 65.
European Union law: 5, 11.
Filiation: 30, 38, 40, 67.
Foreigner: 21, 27, 32, 37, 41, 61
Foreign judgments and administrative acts: 3, 13, 14, 17, 54, 57, 59, 60, 70, 76, 83, 84, 85
International abduction of children: 36, 45, 49, 77.
Jurisdiction: 1, 4, 6, 8, 12, 18, 23, 25, 26, 28, 29, 31, 33, 34, 35, 38, 39, 42, 45, 46, 47, 50, 51, 52, 53, 55, 56, 58, 62, 63, 64, 65, 66, 67, 69, 71, 73, 74, 78, 79, 81, 82.
Manteinance obligation: 34
Marriage: 9.
Nationality: 75, 79.
Property: 35.

Protection of minors: 44, 63.
Public policy: 3, 28, 30, 54, 57, 68, 70.
Relations between parents and children: 9
Treaties and general international rules: 6, 11, 16, 20, 22, 29, 34, 35, 36, 42, 43, 45, 49, 50, 56, 58, 60, 63, 64, 70, 71, 72, 76, 77, 81, 82.
Trusts: 35.

1. *Bolzano Tribunal (company law division), order of 31 March 2015* 159

Pursuant to Article 7(2) of Regulation (EU) No 1215/2012 of 12 December 2012, Italian courts have jurisdiction to adopt protective measures under Article 700 of the Code of Civil Procedure against a company with registered office in Austria to bar the continuation of acts that may be qualified as unfair competition pursuant to Article 2598 of the Civil Code, since the risk of the harmful event arising from such act occurred in Italy, where the company offered its products for sale. Even if Italian courts did not have jurisdiction to decide such dispute on the merits, pursuant to Article 35 of Regulation No 1215/2012 they would still have jurisdiction to adopt protective measures since such measures, if adopted, should be enforced in Italy.
In light of what is provided at Article 35 of Regulation (EU) No 1215/2012 with regard to a court's jurisdiction to adopt protective measures in a dispute in which the same court does not have jurisdiction on the merits, pursuant to Article 30 of the same Regulation *lis pendens* does not arise between a proceeding in Italy seeking protective measures prohibiting the continuation of anticompetitive conduct in Italy and a proceeding in Austria, between the same parties, for the negative declaration of the unlawfulness of a similar conduct held in Austria (all the more since no evidence has been provided regarding the pendency of the proceeding in Austria in accordance with Article 32(1) of Regulation (EU) No 1215/2012).

2. *Corte di Cassazione, 22 May 2015 No 10543* 382

The extraordinary appeal for cassation lodged pursuant to Article 111(7) of the Constitution against a decision rejecting the motion against the denial of a request, filed under Article 10 of Regulation (EC) No 805/2004 creating a European Enforcement Order for uncontested claims, for the withdrawal of a certificate of European enforcement order is inadmissible. The function of the European Enforcement Order certificate is to declare the enforceability of the title (judgments, court settlements and authentic instruments on uncontested claims) it accedes to and the eligibility of which to circulate in the European judicial area it certifies: its function is not to solve questions or adjudicate on rights other than those stated in the judgment. Therefore, the European Enforcement Order certificate does not have a decisory nature, with the consequence that the objections concerning the debtor's right of defence must be made against the title itself either in accordance with the law of the State of origin or, in exceptional cases, by applying for a review in accordance with Article 19 of the Regulation. The revocation – against which appeal is admissible under Article 739 of the Code of Civil Procedure, but whose object is limited to the manifest want of formal requirements for issuing the certificate and therefore to the certificate's procedure of request, evaluation and issuance – cannot address any rights of the debtor as to the merit of the claim or the

accuracy of the procedure followed to issue of the decision constituting the enforceable title.
Pursuant to Articles 14 or 15 of Regulation (EC) No 1393/2007, service of judicial documents by postal service in a Member State of the European Union (Denmark excluded) is in compliance with the Regulation (where such direct service is permitted under the law of that Member State, in accordance with Article 15 of the Regulation). On the one hand, pursuant to Regulation No 1393/2007 the power to serve documents must be understood as bestowed upon all the bodies in charge of service in each Member State (provided that this type of service or direct communication is permitted under the law of the Member State); on the other hand, this power must be considered as placed on a level of full and perfect equivalence with respect to the others. Service by postal service in another Member State of the certification as European Enforcement Order of an injunction, issued pursuant to Article 633 *et seq.* of the Code of Civil Procedure and having *res judicata* effect, is in conformity with Regulation No 1393/2007, all the more since the debtor was served in sufficient time to arrange for his defence, in compliance with Article 18(2) of Regulation No 805/2004. The subsequent opposition made by the debtor against the European Enforcement Order certificate with an act which was successively declared invalid as a result of the fact that it was served by an irreparably void mean (*i.e.*, via fax) is irrelevant.

3. *Bologna Court of Appeal, order of 12 January 2016* 162

Since jurisdiction over custody disputes strictly lies with the court of the State of the children's habitual residence, pursuant to Article 64 of Law 31 May 1995 No 218 a foreign judgment which incorporates the agreement of the divorced parents *on* the father's visitation schedule and which, in accordance with the party's choice of court agreement, declares the jurisdiction of the courts of a State other than the one of the children's habitual residence is contrary to public policy. As such, the judgment is not eligible for recognition in Italy.
Pursuant to Article 30(2) of Legislative Decree 1 September 2011 No 150, Italian courts do not have jurisdiction over the enforcement of a foreign judgment if the party against whom enforcement is sought is only occasionally present in Italy, absent specific allegations regarding the presence in Italy of the party's assets.

4. *Turin Tribunal (company law division), order of 2 February 2016* 163

Pursuant to Article 7(2) of Regulation (EU) No 1215/2012 of 12 December 2012 – which, according to the reference made to it in Article 3(2) of Law 31 May 1995 No 218, is applicable against defendants domiciled in non-EU Member States – Italian courts have jurisdiction over the request for interim measures pursuant to Articles 124, 126, 129 and 131 of Legislative Decree 10 February 2005 No 30 (industrial property code) made in a proceeding concerning the use, in violation of Article 20(1)(b)-(c) of the same Legislative Decree and of Article 2598 of the Civil Code, of Italian marks by a foreign company since the facts in dispute occurred in Italy. Conversely, whether the facts in dispute may be fully ascribed to the defendant is irrelevant for jurisdictional purposes since it is a question on the merits.

5. *Corte di Cassazione (plenary session), order of 8 February 2016 No 2468* 762

The judgments of the Court of Justice of the European Union must be consi-

dered as a source of EU law, not in the sense that they establish new provisions, but in the sense that they provide the interpretation of those provisions with respect to current (i.e., not exhausted) legal relationships with erga omnes and retroactive effects in the Union. Consequently, the motion to file a reference to the Court for a preliminary ruling for the interpretation of provisions over which the Court has already provided a consolidated jurisprudence may not be granted.

6. *Ravenna Tribunal, 12 February 2016* 164

Pursuant to Articles 11 and 4(2) of Law 31 May 1995 No 218, read in conjunction with Article 17 of the Brussels Convention of 27 September 1968 (subsequently transposed in Article 23 of Regulation (EC) No 44/2001), Italian courts do not have jurisdiction over an action for the compensation of the damages to carried goods lodged by an Italian insurance company, subrogated in the rights of its insured (the recipient of the goods), against another Italian company in its capacity as agent and representative of the maritime carrier, provided the bill of lading issued by the carrier included a jurisdiction clause in favour of the Commercial Court of Marseille. On the one hand, the defendant, in filing his appearance, promptly challenged the jurisdiction of the Italian court. On the other hand, the jurisdiction clause, inserted in a the bill of lading borne by the carrier alone, appears to have been validly concluded in a form permitted by a use which the parties knew or ought to have known and which, in this commercial field, is widely known and regularly respected. This clause is also enforceable against the insurer who succeeds to the insured in the claim for damages pursuant to Article 1916 of the Italian Civil Code.

7. *Milan Justice of Peace, 13 February 2016* 166

Pursuant to Article 7(1)(b) of Regulation (EU) No 1215/2012 of 12 December 2012 (according to which, in case of provision of services, person domiciled in another Member State may be sued in the place where the services were, or ought to have been, provided on the basis of the contract), the justice of the peace situated in Busto Arsizio (Varese) – and not the one in Milan – has jurisdiction over an action for the compensation of damages incurred for the delay of a flight from Ibiza to Milan Malpensa (Varese) filed against an airline carrier domiciled in the United Kingdom. In fact, in accordance with this provision, the plaintiff may choose to bring the claim either at the place of departure (Ibiza) or of arrival (Malpensa) of the flight. On the other hand, the fact that the defendant company has a branch in Italy is not relevant for jurisdictional purposes: the ground for jurisdiction at Article 7(5) of Regulation (EU) No 1215/2012 applies only to disputes arising out of the operations of a branch, while in the instant case the contract for the carriage of passengers was concluded with the parent company domiciled in the United Kingdom. Similarly, the fact that, in his power of attorney, the plaintiff (domiciled in Rome) elected to have his address for service in Milan is irrelevant: otherwise, the rationale of Article 33(u) of Legislative Decree 6 September 2005 No 206 (Italian consumer code) to ensure that a consumer may always bring his claim before the courts of the place where he has his (actual) domicile would be defeated since the election of address for service would allow the consumer

to select the court based on a purely subjective preference (in violation of Article 25 of the Constitution).

8. *Corte di Cassazione (plenary session), 17 February 2016 No 3059* 167

Italian courts have jurisdiction over the insolvency petition filed against a limited company initially incorporated in Italy, which, after the company's crisis began, transferred its registered office abroad, if such transfer was not followed by the transfer of the company's economic activity as well as of its centre of administration and control.
Pursuant to Article 25(1) of Law 31 May 1995 No 218, it is for the judge of the place of the company's incorporation to establish, in accordance with the law, where the company's registered office is situated.
The criteria for the identification, on the one hand, of the centre of interest with the registered office and, on the other hand, of the individual who embodies the administration of the company with the foreign State are met – in a manner that is recognisable by third parties – in case the documents relating to the pre-insolvency phase were served, without any particular impediments, in the place of the company's registered office to the company's sole shareholder and legal representative residing at the place of the company's registered office.

9. *Milan Tribunal, decree of 18 February 2016* 169

The provision at Article 316(4) of the Civil Code, which regulates parental relationships in the case of children born out of wedlock, postulates that the parents are not married to each other. This requirement may not be considered satisfied if the parents have contracted abroad an act that has the effects, according to the law that regulates the act's effectiveness, of a matrimonial bond. This is without prejudice to the right to obtain, where appropriate, a decision quashing the deed itself on the grounds that it fails to satisfy the conditions that are necessary for it to be recognized as marriage by the Italian legal system

10. *Bologna Court of Appeal, decree of 20 February 2016* 169

Pursuant to Articles 58 and 60 of Regulation (EU) No 1215/2012 of 12 December 2012, the request for the declaration of enforceability in Italy of the Spanish Royal Decree appointing the new Rector of the Royal College of *San Clemente degli Spagnoli* in Bologna is inadmissible. Such act is a public act: accordingly, only the production of a certificate issued by the State of origin (and not a provisional declaration of enforceability) is required for the purposes of the declaration.
Also assuming the instant case did not fall within the scope of Regulation (EU) No 1215/2012, pursuant to Articles 67 and 68 of Law 31 May 1995 No 218 the request for a declaration of enforceability of acts issued by public authorities in a foreign State made in the context of a non-contentious proceeding cannot be granted as such declaration is necessary only in case of failure to comply with, or opposition against the content of the foreign public act, or if enforcement of the foreign public act is necessary.

11. *Corte di Cassazione, 7 March 2016 No 4433* 763

Since a reference for a preliminary ruling to the Court of Justice of the

European Union is admissible provided the case is governed by EU law and not by national rules alone, a reference cannot be made to the CJEU asking for the interpretation of the right to a fair trial pursuant to Article 6 of the European Convention on Human Rights (ECHR) and on the certainty of the law, the protection of legitimate expectations and the equality of arms pursuant to Article 6(2) TEU and to Articles 46 and 47 of the Charter of Fundamental Rights of the European Union. On the one hand, the clause that, pursuant to Article 52(3) of the Charter, establishes the equivalence of the Charter with the ECHR, has not led, at least for the time being, to the assimilation of the ECHR to the legislation resulting from the EU Treaties. On the other hand, the Charter is not temporally (*ratione temporis*) applicable to facts that occurred before the date of entry into force of the Treaty of Lisbon.

12. *Mantova Tribunal, 15 March 2016* 734

Pursuant to Article 3 of Law 31 May 1995 No 218, Italian courts have jurisdiction over an action, brought by a Maltese company against a company based in Italy, seeking indemnity payment for failure to give notice and for termination of service in the framework of a contract concluded between the parties and characterized by the plaintiff as an agency contract, since the defendant's registered office is in Italy.
Pursuant to Article 4 of Regulation (EC) No 593/2008 of 17 June 2008, in the absence of a choice of law by the parties, Maltese law applies to the contract according to which a Maltese company committed to an Italian company to carrying out market research and marketing activities in France, since the service provider has its habitual residence in Malta.
Pursuant to Article 1 of Directive 86/653/EEC of 18 December 1986 on self-employed commercial agents, the contract with which a Maltese company committed to promoting in France the products of an Italian company, without however committing itself to performing such promotion in an independent, stable and constant manner, does not qualify as agency contract.

13. *Bologna Court of Appeal, order of 22 March 2016* 170

The proceeding for the declaration of enforceability in Italy of a Romanian fault-based divorce decree issued in default of appearance of one of the parties and deciding, *inter alia*, on the couple's children is governed by Regulation (EC) No 2201/2003 of 27 November 2003 and takes place in a deferred contradictory. Failure to produce the certificate provided at Article 39 of the Regulation does not imply either the rejection or the inadmissibility of the appeal, since the court has the power to set a deadline for the production of such certificate pursuant to Article 55 of the same Regulation.

14. *Milan Tribunal (company law division), order of 23 March 2016* 171

In a dispute on the use of industrial secrets and know-how acquired in the context of a contractual relationship comprising confidentiality agreements, in light of the territoriality of the effects of proprietary rights on untitled intangible assets, pursuant to Regulation (EU) No 1215/2012 of 12 December 2012 – which confers direct enforceability to the judgment of a Member State provided such judgment is enforceable in the State of origin – an injunction issued in Germany alleging violations, in Germany, of the aforementioned industrial

property rights is not eligible to produce effects in Italy. The fact that, pursuant to Article 45 of Regulation No 1215/2012, the jurisdiction of the court of origin may not be reviewed is not relevant since in the instant case the German court dealt with the dispute as an internal matter.
The prohibition of review on the merits provided at Article 52 of Regulation (EU) No 1215/2012 does not entail that the judgment rendered on appeal by the German court on the unlawfulness of the conduct which took place in Germany with respect to the use of industrial secrets and know-how has a binding effect over the assessment, by an Italian court, of the probable cause requirement (*fumus boni iuris*) with a view to granting an urgent injunction, pursuant to Article 700 of the Code of Civil Procedure, against separate, and yet analogous or consequential, violations occurred in Italy. The German judgment – while binding, once it has *res judicata* effect, on the Italian court as concerns the factual findings made by the German court – may be freely assessed by the Italian court for evidentiary purposes as concerns the other facts.

15. *Corte di Cassazione (criminal division), 4 April 2016 No 13440* 176

In the context of extradition, the request for surrender of a woman living with her three-year-old daughter may not be granted without having previously established the presence, in the State of destination, of sufficient guarantees in protection of detained mothers. This principle, established to protect the primary interest of the child, forms an integral part of the Italian legal system and is also expressed in Article 18(1)(s) of Law 22 April 2005 No 69, which, in terms of European arrest warrant, contemplates such circumstance among the impediments to the surrender.

16. *Corte di Cassazione, order of 4 May 2016 No 8901* 442

In regard to claims for the compensation of damages relating to international carriage by air, Article 33 of the Montreal Convention of 28 May 1999 has the sole function of allocating jurisdiction between the courts of the Contracting States. Accordingly, the term "court" used in the provision does not entail that Article 33 of the 1999 Montreal Convention is a provision on venue: to the contrary, once the jurisdiction of the Italian courts is established, venue is established on the grounds of the criteria based on subject matter and value of the claim in accordance with the Code of Civil Procedure.

17. *Bologna Court of Appeal, decree of 5 May 2016* 443

Pursuant to Regulation (EC) No 2201/2003 of 27 November 2003, a Romanian fault-based divorce decree issued in default of appearance of one of the parties, enforceable in Romania and incidentally ruling, *inter alia*, on the maintenance obligations towards the children (and disregarding that, pursuant to Article 1(3)(e) of the Regulation, such obligations do not fall within the scope of the Regulation, *editor's note*) is eligible for recognition and enforcement in Italy provided that, per the certificate issued pursuant to Article 39 and produced in accordance with Article 55 (*rectius*: 33(5), *editor's note*) of the same Regulation, the grounds for non-recognition at Articles 22 and 23 are not met.

18. *Milan Tribunal, 16 May 2016* 444

Pursuant to Article 37 of Law 31 May 1995 No 218, Italian courts do not have

jurisdiction over an action for the recognition of a child born out of wedlock – brought by an Italian citizen residing in Italy, claiming to be the father – if the resistant mother is a citizen of a foreign State, where she also resides and the child, born in the latter foreign State, is also a citizen of such State and resides there.

19. *Corte di Cassazione, 17 May 2016 No 10072* 445

Pursuant to and by effect of Article 29(2) of Legislative Decree 25 July 1998 No 286, the right to custody over a child conferred by means of a private deed is unsuited to serve as a prerequisite for family reunification: in fact, such instance is not tantamount to the right to custody granted by a court in accordance with Italian law over children whose parents are not able to exercise parental responsibility over them and, consequently, to legally represent them.

20. *Vicenza Tribunal, 17 May 2016* 446

Pursuant to Article 32 of the Geneva Convention of 19 May 1956 on the contract for the international carriage of goods by road ("CMR"), the period of limitation for an action against the carrier of an international carriage for the compensation of damages deriving from the total loss of the goods, attributable to the carrier's negligence which is so gross as to be equivalent to wilful misconduct, is of three years.

21. *Vicenza Tribunal, 23 May 2016* 447

In regard to international carriage of goods by road, the Geneva Convention of 19 May 1956 ("CMR") is applicable when the parties have agreed to regulate their relationship in accordance with the Convention. Italian courts have jurisdiction over a dispute concerning the international carriage of goods by road when, pursuant to Article 31, the place designated for delivery of the goods is located in Italy. The loss of goods (which qualifies as apparent loss) is not considered duly notified if, at the time of delivery, the consignee takes delivery of the goods without sending the carrier reservations giving a general indication of the loss: consequently, pursuant to Article 30 CMR this taking delivery shall be prima facie evidence that the consignee has received the goods as described in the consignment note. When the total or partial loss of goods is not the result of a wrongful act or neglect on the part of the carrier, pursuant to Article 23 CMR the compensation that the latter shall pay may not exceed 8,33 special drawing rights for each kilogram of gross weight missing.

22. *Corte di Cassazione (criminal division), 22 May 2016 No 22120* 449

Article 14(5-*ter*) of Legislative Decree 25 July 1998 No 286, in the part where it prescribes detention for the unjustified disregard of an expulsion order issued by the chief of police, is no longer applicable since it does not comply with the law of the European Union.

23. *Milan Tribunal (company law division), 26 May 2016* 450

Pursuant to Articles 99 *et seq*. of Law 22 April 1941 No 633 on copyright, the proceeding instituted for the unlawful use of photographic material may take place pursuing the forms referred to in Regulation (EC) No 861/2007 of 11 July 2007 establishing a European small claims procedure provided the

amount of compensation sought is lower than the threshold established at Article 2(1) of such Regulation and, pursuant to Article 3 of the same Regulation, the dispute is cross-border, as is the case when the plaintiff lives in Germany and the defendant has its registered office in Italy. The provisions on procedure in force in the Member State in which the proceeding takes place apply to the European small claims procedure established by Regulation (EC) No 861/2007; therefore, in Italy – once the court has declared that the defendant, who has not filed an appearance within the term of thirty days from the notification of the claim, is in default and the case in set for decision pursuant to Article 7(3) of the Regulation – pursuant to Articles 291 *et seq.* of the Code of Civil Procedure the rules on evidence, known as *ficta confession*, which allows the court to infer a tacit confession from the defendant's lack of appearance and which is not expressly provided under Italian procedural law, does not apply.

24. *Corte di Cassazione, 22 June 2016 No 12962* 451

Since both individuals and *de facto* couples have standing to apply for the so-called "adoption in particular cases" regulated at Article 44(1)(d) of Law 4 May 1983 No 184, in ascertaining that the requirements and preconditions imposed by law are satisfied, both in the abstract ("the ascertained impossibility of foster care") and in concrete terms (the inquiry on the child's interest referred to in Article 57(1) No 2 of such Law), the court cannot be influenced – not even indirectly, and in conformity with the principles expressed by the European Court of Human Rights – by considerations regarding the sexual orientation of the applicant and the consequent nature of the relationship established by the applicant with his or her partner; similarly, the fact that the child is not in a situation of abandonment is not relevant.

25. *Treviso Tribunal, decree of 29 June 2016* 455

Article 9, last paragraph, of the insolvency law (Royal Decree of 16 March 1942 No 267 and subsequent amendments) confirms the rule referred to in paragraph 1 of the same Article, according to which insolvency is declared by the court of the place of the company's principal place of business. In the event of an insolvency petition filed against a foreign company with its principal place of business situated abroad and having a representative office in Italy, Article 3(1) of Law 31 May 1995 No 218, in referring to the presence in Italy of a representative of the defendant authorized to stand trial pursuant to Article 77 Code of Civil Procedure, gives jurisdiction to Italian courts only over the matters for which the powers of representation have been conferred; consequently, Italian courts do not have jurisdiction if the representative authorized to stand trial was not conferred a general power of attorney but, rather, a power of attorney limited to certain matters which do not include insolvency.

26. *Corte di Cassazione (plenary session), 1 July 2016 No 13536* 456

Pursuant to Article 154(1) and (2) of Presidential Decree 5 January 1967 No 18 and Articles 18, 19, 21 and 60(1) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over an action brought by an "employee" of the Consulate General of Italy in Cologne for the declaration of the unlawful extension of a fixed-term employment contract and, consequen-

tly, for the declaration of the existence of a permanent employment contract with the Ministry of Foreign Affairs, since the derogation clause in favour of the "local court" contained in that contract is void, both because it was entered into prior to the arising of the dispute and because its effect is not to allow but, rather, to force the employee to bring his claim to a court other than those that have jurisdiction pursuant to Regulation No 44/2001.

27. *Corte di Cassazione, order of 11 July 2016 No 14157* 457

The burden of proof to be granted the refugee status is on the applicant, who, however, is only required to prove, also in a circumstantial manner, the credibility of his allegations. For the burden of proof to be satisfied, the allegations must be precise, severe and consistent: such characters may be inferred from the information, including the documentation, submitted by the applicant.

28. *Milan Tribunal, 15 July 2016* 458

Pursuant to Article 3(1) of Law 31 May 1995 No 218, Italian courts have jurisdiction over a dispute for unlawful dismissal and reinstatement in relation to a work relationship which was entered into, executed and resolved in the United Arab Emirates, when the defendant company, domiciled in a non-EU State, has a representative in Italy authorized to stand trial pursuant to Article 77 of the Code of Civil Procedure.

Pursuant to Article 3 of Regulation (EC) No 593/2008 of 17 June 2008, in the presence of a valid choice of law, the law which governs an employment contract is that chosen by the parties (in the instant case, the law of the United Arab Emirates, in whose territory the worker habitually carried out his work in execution of the contract).

The application of UAE Labor Law, which provides for the right of the employer to withdraw from the employment relationship without prior notice during the employee's probation period, does not produce effects incompatible with the Italian public policy (*ordre public*): in fact, the Italian legal system allows employers to terminate the employment relationship during that period without the need to provide any reasons.

29. *Pordenone Tribunal, 21 July 2016* 738

Pursuant to Article 3(1) of Law 31 May 1995 No 218, Italian courts do not have jurisdiction over an action brought by an Italian citizen domiciled in Italy against an Italian citizen domiciled in China for non-contractual liability of the latter arising from the credit transferred by the former to the latter in view of a prospective purchase of a property in Italy, which was subsequently found to be fraudulent. In fact, for the purposes of jurisdiction, only the place of the defendant's domicile is relevant (to the contrary, elements such as the defendant's Italian citizenship, the location of a property in Italy or the frequency of the defendant's return in Italy are not relevant; on the other hand, the fraudulent fact which resulted in the divestment of the plaintiff's money and its transfer to the defendant's bank account took place in China). Similarly, Article 22(1)(f) of the Treaty between Italy and the People's Republic of China for Judicial Assistance in Civil Matters signed in Beijing on 20 May 1991 does not apply, since it regulates the recognition and enforcement in one country of

the decisions rendered in the other country, but it does not regulate the jurisdiction of the respective authorities.

30. *Milan Court of Appeal, order of 25 July 2016* 461

Pursuant to Article 8 of the European Convention on Human Rights, the jurisprudence of the European Court of Human Rights on a child's right to the respect for his private life has released the legal notion of "family life" from the requirement of a genetic link. Consequently, the impossibility to assess whether, for the purpose of concretely ensuring a child's right to the respect for his private life, the parent-child relationship between a child born via surrogacy and the intended parents should be safeguarded also in the context of a proceeding brought pursuant to Article 263 of the Civil Code to challenge the recognition of the parentage for lack of veracity (i.e., for lack of a genetic link) is in contrast with Article 8 of the European Convention on Human Rights and raises doubts on the constitutionality of Article 263 of the Civil Code, notably as concerns its compliance with Article 117 of the Constitution. The preliminary ruling of constitutionality does not concern the lawfulness of surrogacy itself, but the rights of the child born via surrogacy, and namely the child's right to a parent-child relationship with the intended parents. Accordingly, the prospective unconstitutionality of Article 263 of the Civil Code (in the part where it does not provide for the possibility to assess whether, for the purpose of concretely ensuring a child's right to respect for his private life, the parent-child relationship between a child born via surrogacy and the intended parents should be safeguarded) may not be dismissed on the grounds that the recognition of the parent-child relationship is in conflict with public policy for lack of a genetic link. In fact, with regard to parentage and to any other matter concerning a child, public policy is to be construed as a means to ensure the protection of the child, both concretely and in the abstract, taking into account the jurisprudence of the European Court of Human Rights on these matters.

31. *Rome Court of Appeal, decree of 1 August 2016* 765

Pursuant to Articles 3 of Regulation (EC) No 1346/2000 of 29 May 2000 and 9 of the insolvency law (Royal Decree of 16 March 1942 No 267 and subsequent amendments), Italian courts have jurisdiction over an insolvency petition filed against an Italian company which transferred its registered office abroad prior to the lodging of such petition, since the effective exercise of all or of a large part of the company's business activity did not follow from the transfer of its registered office. In this respect, the company's intent to pursue, or its declaration that it pursues, its activity in the State of transfer is not sufficient to divest Italian courts of jurisdiction over this action.

32. *Corte di Cassazione, order of 4 August 2016 No 16362* 767

With the comprehensive legislation put forth with Legislative Decree 19 November 2007 No 251 and Article 5(6) of Legislative Decree 25 July 1998 No 286, the right to asylum is fully implemented and regulated. These provisions take into account and regulate, respectively, the grounds for refugee status, for subsidiary protection and for the right to a humanitarian permit, so that no margin of residual direct application of Article 10(3) of the Constitution is left.

33. *Milan Tribunal, 13 September 2016* 767

Italian courts have jurisdiction over an action for contractual and non-contractual liability brought against an Italian bank and its official in connection with the signing by the plaintiff of an Interest Rate Swap contract and the related framework contract. On the one hand, Article 13 of the ISDA Master Agreement of 1992, referred to in the standard form signed by the parties, provides for the exclusive jurisdiction of the courts of England subject to the parties having chosen English law as the law applicable to their contract. However, in the instant case, according to the parties' will the contract is governed not only by English law but also by Legislative Decree 28 February 1998 No 58 and of Consob's Regulation No 11522/1998. On the other hand, the dispute may not be construed as cross-border since it is devoid of any cross-border element: the defendants are Italian nationals, domiciled in Italy; the negotiations took place and the contract was concluded in Italy; Italy is the place where the contract was to be performed and where the harmful events complained of by the plaintiff have occurred.

34. *Rome Tribunal, 16 September 2016* 769

Pursuant to Article 3(1)(a) of Regulation (EC) No 2201/2003 of 23 November 2003, Italian courts have jurisdiction over the action for legal separation between an Italian and a Hungarian, since at the time the action was lodged the parties both resided in Italy. For the same reason, pursuant to Article 8 of Regulation (EC) No 1259/2010 of 20 December 2010 the claim is governed by Italian law, absent a choice by the parties.

Pursuant to Article 3 of the Regulation (EC) No 4/2009 of 18 December 2008, Italian courts have jurisdiction over the maintenance claim brought by a Hungarian citizen against her Italian husband in the context of a proceeding for legal separation, both because Italy is the place of the defendant's habitual residence and because the maintenance claim is ancillary to the proceeding for legal separation.

Pursuant to Article 3 of the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations, referred to in Article 15 of Regulation No 4/2009, Italian law governs the maintenance claim brought by a wife (the maintenance creditor) habitually residing in Italy provided her husband (the maintenance debtor) did not object in accordance with Article 5 of the 2007 Hague Protocol.

35. *Sciacca Tribunal, 20 September 2016* 771

Pursuant to Article 22(1) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over the action, brought by the Scottish trustee and executor of a succession trust set up in 1998 by an Italian citizen, seeking the declaration of nullity or inefficacy of the deed of donation of a real estate property, located in Italy, forming part of the trust's assets, the return of the asset and the compensation for damages.

Pursuant to Articles 2, 3, 5, 6 and 12 of the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and Their Recognition – according to which, for the purpose of recognizing a trust, it is necessary to prove the agreement with which the settlor established the trust by placing the assets under the control of the trustee and to prove the law chosen by the settlor to regulate the trust, and according to which, where the trustee desires to register assets,

movable or immovable, or documents of title to them, he shall be entitled to do so in his capacity as trustee or in such other way that the existence of the trust is disclosed – a succession trust is not eligible for recognition in Italy if the 1998 deed of trust did not indicate the law chosen to regulate the trust and was not registered in Italy. Accordingly, the trustee must be denied legal standing in the dispute in question. However, pursuant to Article 704 of the Civil Code, the trustee is not precluded legal standing with respect to the nullity or inefficacy of the deed of donation and the return of the asset (but not with respect to the compensation for damages), since the trustee also acted as executor of the deceased's will.
Pursuant to Article 51 of Law 31 May 1995 No 218, a foreign deed in writing with which the trustee of a trust established in 1966 allegedly returned a real estate property located in Italy to the beneficiary of the trust, in execution of a fiduciary agreement, does not produce effects in Italy – regardless of the fact that said trust is not temporally (*ratione temporis*) governed by the 1985 Hague Convention, and that there is no evidence of the assignor's quality as a trustee or of the fiduciary agreement underlying the alleged restitution – since that deed complies with the requirement as to form pursuant to Article 1350 of the Civil Code.

36. *Corte di Cassazione, 26 September 2016 No 18846* 773

Pursuant to Article 13(2) of the Hague Convention of 25 October 1980 on international child abduction, hearing the child and taking account of his views is a necessary procedural passage, not only in terms of formal compliance with this requirement but also to substantiate the dignity and legal importance of the child's determinations and choices when expressed with a degree of maturity. When facing a child's clear objection, expressed with a sufficient degree of maturity, to being returned to his State of previous habitual residence, the court cannot order the child's return on the grounds of a different assessment performed by the authorities of that same State on the child's relationship with the parent with whom the child should live as a result of the return order, if such assessment does not include a detailed and autonomous prognosis of the risk for the child's psycho-physical development connected to the return and such prognosis does not take into accont the reasons given by the child for his objection.

37. *Consiglio di Stato (III division), 27 September 2016 No 4004* 776

Pursuant to Article 3(2) of Regulation (EU) No 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection, the transfer of an asylum applicant to Hungary cannot be made, despite the fact that the first asylum application was submitted there, because there is an actual and well-founded risk that the asylum seeker be subject to inhuman or degrading treatment in Hungary.

38. *Treviso Tribunal, 10 October 2016* 778

Pursuant to Article 37 of Law 31 May 1995 No 218, Italian courts have jurisdiction over an action for paternity disavowal when all the parties involved in the proceeding reside in Italy.

Pursuant to Article 33(1) of Law No 218/1995, Italian law governs an action for paternity disavowal if, at the time of birth, the son is an Italian citizen.

39. *Venice Tribunal, order of 10 November 2016* 779

Pursuant to Article 7(1)(b), first indent of Regulation (EU) No 1215/2012 of 12 December 2012, Italian courts do not have jurisdiction over a motion, seeking a technical legal consultancy aiming at reaching an amicable settlement and addressing the performance of certain obligations arising from a contract for the sale of goods, filed pursuant to Article 696-*bis* of the Code of Civil Procedure by two companies located in Italy against a company established in France and one based in Italy. Pursuant to Article 696-*bis* of the Code of Civil Procedure, jurisdiction lies with the court that is competent to decide on the merit: since the contract includes an "Ex Works Toulouse" clause, the place of delivery of the goods is in France, in accordance with the parties' agreement. On the other hand, the place of final destination of the goods is immaterial for establishing jurisdiction. Ultimately, Article 35 of Regulation No 1215/2012 is not applicable to the instant case, since the relief sought is not a precautionary or provisional measure.

40. *Corte di Cassazione (criminal division), 17 November 2016 No 48696* 781

A declaration of birth, made pursuant to Article 15 of Presidential Decree 3 November 2000 No 396, of an Italian citizen born via surrogacy in Ukraine, made to the Italian consular authority on the basis of a certificate, drawn up by the Ukrainian authorities, which identifies the intended parents as the father and mother of the child, in accordance with the law of the place of birth (*lex loci*), does not amount to forgery of the personal status of a newborn in the formation of the birth certificate pursuant to Article 567(2) of the Italian Criminal Code. On the one hand, the scope and preconditions for the application of Article 567(2) of the Italian Criminal Code – a provision which was originally intended to protect the child's right to his natural heritage, which is based on the act of procreation – have changed, in line with the evolution of the concept of parentage, which is no longer linked to the existence of biological link and, to the contrary, is increasingly considered as the result of a legal relationship. On the other hand, without prejudice to the fact that in Italy surrogacy is prohibited and it is also criminally sanctioned, consideration must be given to the fact that in some countries, including Ukraine, surrogacy is lawful and that a birth certificate, formed in such countries, of a child who was born via surrogacy and is an Italian citizen, must, pursuant to the Italian rules on personal status, be presented to the Italian diplomatic or consular authority for the purposes of its registration in Italy.

41. *Corte di Cassazione, order of 21 December 2016 No 26641* 785

The right to humanitarian protection cannot be granted on the mere grounds that the foreign applicant suffers from poor health conditions and it requires, instead, that the applicant suffered serious human rights violations in the State of origin.

42. *Corte di Cassazione (plenary session), order of 22 December 2016 No 26661* 787

According to the provision of international customary law that is codified at Article 11(2)(c) of the New York Convention of 2 December 2004 on the

Jurisdictional Immunities of the States and Their Property and according to the principle of restricted immunity, Italian courts do not have jurisdiction over an action for reinstatement in the workplace brought by former employees against foreign Embassies in Italy (or against the agents of the respective Foreign Ministries, as in the instant case). On the contrary, Italian courts have jurisdiction over the action for the declaration of nullity of the probationary period agreement and of the termination of the labour contract.

43. *Corte di Cassazione (plenary session), 28 December 2016 No 27072* 114

In the interpretation of a contract, the characterization process consists of two steps. The first – concerning the search and the identification of the common will of the parties – is a typical factual assessment reserved to the lower court and it may be appealed before the Court of Cassation only for defects of legal reasoning in relation to the rules of contract interpretation. The second step proceeds according to the model of subsumption, which consists in the comparison between the actual contract and the abstract type defined by the law to verify whether the first corresponds to the second.
For the purposes of the legitimacy control performed by the Court of Cassation, the first step is subject to the principles that govern an assessment of facts. The Court of Cassation is tasked with testing, from the point of view of legitimacy and of the so-called 'constitutional minimum standard of logical and formal structure' (*minimo costituzionale di struttura logica e formale*), the arguments made by the lower court, which is exclusively responsible for identifying the sources that ground its conclusions, taking and evaluating the evidence, checking its reliability and value, and selecting the evidence considered most suitable for the purpose of proving the facts.
The second step, on the other hand, involves the direct application of legal rules, without the Court being bound by the characterization made by the parties. Appeal against the lawfulness of the interpretation given by the lower court cannot be brought if it implies the request for a new evaluation of the negotiation of the contract or it addresses the disparity between the interpretation proposed by the parties and that followed by the trial judge.
If, as a result of the characterization process, the buying agency agreement between a U.S. company and an Italian company does not qualify as an agency contract, the objection invoking the rights arising from Article 1751 of the Civil Code and from overriding mandatory provisions (in accordance with Article 7 of the Rome Convention of 19 June 1980) may not be raised with respect to it. On the same grounds, the non-arbitrability of disputes arising from the contract under Article 4(2) of Law of 31 May 1995 No 218 and Article V(2)(a) of the New York Convention of 10 June 1958 also may not be invoked with respect to it.

44. *Milan Tribunal, decree of 30 December 2016* 788

The application seeking the amendment of the arrangements on parental responsibility, filed pursuant to Article 316(4) of the Italian Civil Code, with respect to children born out of wedlock is inadmissible if it is established that the children were, in fact, born in the context of a marriage validly contracted abroad between two foreign citizens pursuant to Article 28 of Law 31 May 1995 No 218 and equally validly therein dissolved with a decision which is eligible for automatic recognition pursuant to Article 64 of Law No 218/1995.

In such case the lack of registration in Italy of the marriage deed is immaterial and, to obtain a parental responsibility order, an action for the amendment to the divorce conditions has to be filed.

45. *Rome Tribunal, order of 10 January 2017* 789

Where, pursuant to Article 3(1)(a) of Regulation (EC) No 2201/2003 of 27 November 2003, the jurisdiction of Italian courts has been established over an action for legal separation between an English citizen and an Italian citizen, Italian courts also have jurisdiction over the request for provisional measures concerning the right of custody of the couple's sons both pursuant to Article 8 of the same Regulation on the alledged sons' habitual residence in Italy, and because the father, who resides in England and filed an application in Italy requesting the return of the minors to England, did not challenge the Italian decision that refused return. In fact, this conduct allows to overcome the impediment which, pursuant to Article 16 of the Hague Convention of 25 October 1980, precludes the judicial or administrative authorities of the Contracting State to which the child has been removed from deciding on the merits of rights of custody.

46. *Corte di Cassazione (plenary session), 13 January 2017 No 762* 739

Pursuant to the Italian Constitutional Court's judgment of 22 October 2014 No 238, immunity may not be claimed by the defendant and Italian courts have jurisdiction in an action for the compensation of damages brought against the Federal Republic of Germany by an Italian citizen who claims he was captured by the Nazi armed forces during WWII and deported to Germany to be used as a non-voluntary workforce serving German companies. In fact, both deportation and forced labour are characterized as war crimes and, therefore, as crimes under international law.

47. *Corte di Cassazione (plenary session), order of 19 January 2017 No 1312* 1033

Pursuant to Article 5(3) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over the claim for the declaration of invalidity, due to lack of authenticity, of a power of attorney granted to a Luxembourgish company and the claim for the declaration of the nullity of the acts performed in the exercise of the powers granted therein (establishment of a company, transfer to such company of ownership of real estate property, purchase of further real estate property), since the event giving rise to the damage – which may be identified in the decision, common to all the defendants, to draw up a counterfeited power of attorney by means of which the defendants violated the rights of the plaintiff (the otherwise legitimate heir) – occurred in Italy. In this respect, the place where the single harmful consequences to assets of the injured party occurred is immaterial. Italian courts also have jurisdiction pursuant to Article 6(1) of the same Regulation: since the defendants are jointly liable for the same fact, the claims brought against them qualify as related, including the claims (stemming from the claim for the invalidity of the power of attorney) seeking the declaration of invalidity of the contracts and corporate transactions that involved, in particular, some of the defendants. Finally, with regard to the claim for the declaration of nullity of the company established on the grounds of the powers allegedly conferred with the power of attorney, Italian courts also have jurisdiction on the basis of

Article 22(2) provided that, in accordance with this provision, the court applies "its rules of private international law" (in the instant case, Article 25 of Law 31 May 1995 No 218) to identify the company's registered office. Pursuant to Article 25 of Law 218/1995 – according to which Italian law governs a company in case the company's head-office is in Italy or if the company's place of principal operation is in Italy – in the instant case, the real seat of the company is in Italy since the company's principal operation consists of purchasing real estate in Italy, the company's assets are composed of real estate located in Italy, the company has Italian managers and has a tax representation in Italy. Italian jurisdiction may not be excluded on the grounds that the company statute comprises a clause prorogating jurisdiction in favour of the courts of Luxembourg since such prorogation is effective only as between the company and its partners.
Pursuant to Articles 3, 46 and 50 of Law No 218/1995, Italian courts have jurisdiction over claims for, respectively, the ascertainment of the status of heir, the petition for the inheritance, the report of estate's management and the payment of the increases in the estate, brought against the natural and legal persons – some of whom residing or established in Italy, others in Luxembourg – when the claim is about the succession of an Italian citizen, the succession was opened in Italy, and all the estate's assets are located in Italy.

48. *Turin Tribunal, decree of 23 January 2017* 790

Pursuant to Article 64(1)(d) of Law 31 May 1995 No 218, the recognition in Italy of a foreign judgment is predicated, *inter alia*, on the judgment being final in accordance with the law of the State of origin. Consequently, the petition for the assignment of the family home cannot be granted on the grounds of a divorce decree issued in Algeria and not registered in Italy, if the petitioner has not proven that the decree is final.

49. *Corte di Cassazione, 8 February 2017 No 3319* 120

Although this power is not expressly stated in Article 7 of Law of 15 January 1994 No 64 implementing the Hague Convention of 25 October 1980 on the civil aspects of international child abduction, pursuant to the joint reading of such provision with Article 69 of the Code of Civil Procedure a public prosecutor in a family court has the power to lodge an appeal in Cassation against the decree of the same family court ordering the return to Ireland, country of habitual residence of the entire family unit until a few weeks prior to the filing of the abduction claim, of a child brought in Italy by her mother following the cessation of her cohabitation with the father.
In the procedure for international child abduction, the child's hearing (which may be conducted by third parties other than the judge, providing the hearing is conducted according to the procedures established by the court) is mandatory pursuant to Article 315-*bis* of the Italian Civil Code, introduced by Law 10 December 2012 No 219. The fact that Article 7(3) of Law No 64/1994 does not expressly mandate such hearing does not hinder the fact that holding such hearing is, in fact, compulsory. In fact, pursuant to Articles 3 and 6 of the Strasbourg Convention of 25 January 1996 on the exercise of children's rights hearing the child (as already provided at Article 12 of the New York Convention of 20 November 1989 on the rights of the child) has become com-

pulsory in the procedures concerning children's rights. Among such procedures is the one for international child abduction, which, pursuant to Article 13(2) of the Hague Convention of 25 October 1980, aims to provide, *inter alia*, the opportunity to assess the possible opposition of the child to the return, unless compelling reasons to the contrary – which the lower court must specifically state – recommend otherwise. Consequently, the decree in which the family court ruled in favour of the return of the child omitting to state the reasons why the child's hearing was not ordered shall be quashed and remanded to the lower court.

50. *Corte di Cassazione (plenary session), order of 10 February 2017 No 3558* 791

Pursuant to Article 5(1)(b), first indent of Regulation (EC) 44/2001 of 22 December 2000, Italian courts do not have jurisdiction over an action, brought by a company established in Italy against a company established in The Netherlands, for the payment of the price in a contract for the international sale of goods according to which the place of delivery is in Amsterdam. In fact, only absent a contractual provision establishing the place of delivery, the place of delivery is the place where the goods were or should have been materially, and not only legally, handed over to the buyer, while Article 31 of the 1980 Vienna Convention is immaterial for this purpose. Finally, the fact that the defendant filed, in the alternative, a counterclaim for damages may not be treated as an implicit choice to submit to the jurisdiction of Italian courts.

51. *Corte di Cassazione (plenary session), order of 10 February 2017 No 3559* 123

Pursuant to Article 23 of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts do not have jurisdiction over an action for the payment of the countervalue of the packaging of sold drinks, which the purchaser failed to return in violation of an express surrender pact, brought against a French company and its unlimited liability partners (also French companies) if the invoices and delivery notes included a prorogation clause stating that jurisdiction shall lie with Italian courts (notably, the Court of Genoa) – a clause which, to be valid, must be in writing and signed by the company's legal representative (if a company is a party to the contract). Since such acts were formed after the contract which is the object of the dispute was entered into, they are unsuited to regulate jurisdiction with *ex ante* effect and were countersigned by personnel lacking the power to represent the company recipient of the goods.

52. *Corte di Cassazione (plenary session), order of 17 February 2017 No 4218* 124

Italian courts have jurisdiction over an action for the payment of repair and maintenance services of vessels brought by the curator of an Italian insolvent company against an English company. On the one hand, the distribution agreement containing a clause assigning exclusive jurisdiction to the English courts invoked by the defendant was stipulated between the defendant and another Italian company, which only subsequently set up, while retaining total control over it, the plaintiff company that actually performed the services of assistance covered by the contract (while the sales services remained entrusted to the parent company). On the other hand, under the applicable Italian law

the facts of the instant case do not qualify as a sub-entry of the defendant into the contract and into the jurisdiction clause.

53. *Corte di Cassazione (plenary session), order of 20 February 2017 No 4308* 391

The proposition of a reference for a preliminary ruling on jurisdiction (*regolamento di giurisdizione*) is not precluded by the fact that the court seised on the merits proceeded on a request for a precautionary measure, even if, for the purposes of such a ruling, a question relating to jurisdiction was solved in the affirmative or negative sense or a decision was rendered on the objection against the precautionary measure; in fact, the provision made on the request for a precautionary measure does not constitute a ruling and the decision on the complaint maintains the provisional character that is typical of a decision on a precautionary measure.
Regulation (EU) No 1215/2012 of 12 December 2012 governs temporally (*ratione temporis*) the action brought on 30 April 2015 for unlawful dismissal by an Italian employee against the employer company based in the Czech Republic. Pursuant to Article 21(1)(b)(ii) of such Regulation, Italian courts have jurisdiction over the claim in light of the fact that, in the instant case, the employee did not habitually carry out his activity in a single country and that the address, located in Reggio Emilia (Italy), used by the employer with the public administration offices to acknowledge receipt of communications regarding such employment relationship may be construed, for the purposes of jurisdiction, as the "place of business" in which the employee was hired.

54. *Trento Court of Appeal, order of 23 February 2017* 792

Pursuant to Article 67 of Law 31 May 1995 No 218, a foreign judicial decision that assigns parental rights to the partner of the legally recognized biological father of two children, born via gestational surrogacy by implantation of a donor's oocyte fertilized with the genetic material of the father, is eligible to be declared effective in Italy. The recognition and registration in Italy of such decision does not conflict with public policy (*ordre public*). In fact, public policy is the expression of the fundamental rights which may be inferred from the Constitution, i.e. of those principles that cannot be ordinarily overthrown by the legislator: as such, the mere fact that a foreign law differs in content from one or more provisions of national law that are not an expression of these principles does not amount to a violation of public policy. Moreover, the protection of the child's best interests amounts to a principle of public policy and mandates the recognition of a parent-child relationship validly formed abroad, unless it conflicts with interests and values of primary constitutional importance which are binding on the legislator: the prohibition of surrogacy does not amount to such an interest or value. The lack of a genetic link between the children and one of the fathers is not an obstacle to the recognition of the parentage relationship established by the foreign court, since in the Italian legal system legal parentage is not premised exclusively on the existence of a biological link between a parent and a child.

55. *Milan Tribunal, order of 24 February 2017* 126

Pursuant to Article 19(1) of Regulation (EC) No 2201/2003 of 27 November 2003, an action for legal separation commenced in Italy by a spouse must be stayed due to the prior initiation of a divorce action brought by the other

spouse in England. According to the interpretation of the notion of *lis pendens* – as extended by the Court of Justice of the European Union while interpreting other Regulations, in accordance to which the case of actions that are merely related according to domestic law qualifies as *lis pendens* and which is supported by the comparison between paragraphs 1 and 2 of the aforementioned provision – *lis pendens* occurs when an action for legal separation and an action for divorce are commenced before the courts of different Member States.

56. *Corte di Cassazione (plenary session), order of 27 February 2017 No 4882* 1068

According to the theory of restricted immunity, as implemented in Italian law pursuant to Article 10 of the Constitution, Italian courts have jurisdiction over the claim brought by the former public relations manager of a foreign embassy located in Italy against the same embassy and seeking payment of outstanding wage claims. In fact, the immunity of foreign States from jurisdiction is overridden not only in case of claims concerning an employee's activities that are merely auxiliary to the embassy's institutional functions, but also in case of disputes brought by employees whose duties were strictly related to the aforementioned institutional functions, provided the decision requested to the Italian court is not capable of interfering with the exercise of these functions since it is confined to monetary aspects only. Such interference does not arise in the instant case, in which the sensitivity and confidentiality of the tasks performed in the past by the employee have lost relevance as a result of the fact that the employment relation has ended.

57. *Florence Family Court, decree of 8 March 2017* 129

The recognition in Italy of an adoption decree issued abroad in favour of two Italian same-sex spouses residing abroad for more than two years – a case regulated by Article 36(4) of Law 4 May 1983 No 184 – is not, in general, contrary to public policy, provided it is concretely assessed that the recognition of the adoption, and therefore of all the rights and duties arising from such relationship, correspond to the best interests of the child to a family life with both parental figures and to the continuity of the parental relationship formed abroad. The fact that the foreign law under which the adoption decree was issued is different from Italian law (which does not provide for same-sex marriage or the possibility for same-sex couples to adopt children) does not constitute a reason for refusal. In fact, the purpose of the proceeding assessing the compatibility of a foreign decision with public policy is not to directly transpose in Italy the foreign law, as an autonomous and innovative source of regulation of the subject. Rather, its purpose is simply to recognise in Italy the effects of a foreign act or measure relating to a particular legal relationship between certain individuals.

58. *Corte di Cassazione, order of 23 March 2017 No 7615* 742

Pursuant to Article 7(1) of Law 31 May 1995 No 218, *lis pendens* arises out of two parallel proceedings for the compensation of damages caused by a traffic accident between a motorcycle driven by the injured and a car owned by persons residing in San Marino, where one action is brought in San Marino by the injured party against the owners of the car and their insurer, and the other action is brought at a later time in Italy by the injured against the same

parties and her own insurer. Although the plaintiff's insurer was not part of the proceeding pending in San Marino, the joinder of the plaintiff's insurer made him a party in such proceeding. Furthermore, pursuant to Article 64 of Law No 218/1995 and Article 5(3) of the Rome Convention on Friendship and Good Neighbourhood concluded between Italy and the Republic of San Marino on 31 March 1939, it is plausible that the judgment rendered by the court in San Marino will satisfy the conditions for recognition in Italy.

59. *Corte di Cassazione, 12 April 2017 No 9350* 145

Pursuant to Regulation (EC) No 44/2001 of 22 December 2000, once an enforcement procedure is commenced in Italy on the basis of a judicial or contractual enforcement title (in the instant case, the contract for the purchase of a share of property ownership) formed in Germany and recognized in Italy, the recognition in Italy of a subsequent German judgment affecting the enforceability of the title may not be denied on the ground that, pursuant to Article 22(5) of said Regulation, the courts of the Member State in which the judgment is to be enforced (Italy) shall have exclusive jurisdiction over the enforcement. In fact, the effects of the German judgment on the Italian enforcement procedure are indirect, since they may only arise further to an appeal against enforcement: as such, recognition may not be denied under Article 35(1) of the Regulation (notably, on the ground that the German judgment conflicts with section 6 of Chapter 2 of the Regulation).

60. *Trento Court of Appeal, (Bolzano division), decree of 15 April 2017* 1069

Since, pursuant to Article 39 of the Brussels Convention of 27 September 1968 (which is temporally applicable (*ratione temporis*) to the instant case), the decision declaring, in a Contracting State, the enforceability of a judgment rendered in a different Contracting State implies the authorization to proceed in the requested State with protective measures, it is not necessary to issue, in the context of a proceeding for the enforcement of a French monetary judgment, a separate ruling aimed at authorizing protective measures to safeguard the interests of the creditor.

61. *Corte di Cassazione, order of 26 April 2017 No 10212* 1070

Pursuant to Article 19(5) of Legislative Decree 18 August 2015 No 142 implementing Directive 2013/33/EU laying down standards for the reception of applicants for international protection and Directive 2013/32/EU on common procedures for granting and withdrawing international protection, the court of the place where the first reception centre is located has jurisdiction to appoint the temporary guardian of an unaccompanied foreign minor who has illegally entered in Italy so that the latter can properly exercise his rights to apply for international protection and for a residence permit. On the other hand, family courts have jurisdiction to appoint a guardian if a procedure is pending for the declaration of the minor's adoptability.

62. *Corte di Cassazione (plenary session), order of 26 April 2017 No 10233* 151

For the purposes of Regulation (EC) No 1346/2000 of 29 May 2000, an action shall be construed as deriving directly from the insolvency proceedings and as closely related to them when it is exercised in the context of insolvency

proceedings and on the basis of provisions which derogate from the general provisions of law.
When filing an ordinary clawback action pursuant to Article 66 of the insolvency law (Royal Decree of 16 March 1942 No 267, amended by Law 11 December 2016 No 232) the curator acts as an organ of the procedure: he does not replace the insolvent, but rather operates "against" the latter in order to recover the assets that were allegedly transferred to the detriment of creditors. The curator's legal standing arises from a provision intended for curators exclusively in the context of insolvency proceedings.
The fact that an ordinary clawback action has the same requirements of an action for fraudulent transfer (*actio pauliana*) regulated at Article 2901 of the Civil Code and that the latter action is available even in the absence of an insolvency procedure does not exclude the possibility to classify the action among those directly resulting from the insolvency and to regulate it pursuant to Regulation (EC) No 1346/2000 instead than pursuant to Regulation (EC) No 44/2001.
Pursuant to Regulation (EC) No 1346/2000, Italian courts have jurisdiction over an ordinary clawback action filed pursuant to Article 66 of the insolvency law against a bank established in another EU Member State by a the curator appointed in the context of an insolvency procedure opened in Italy.

63. *Corte di Cassazione (plenary session), order of 5 June 2017 No 13912* 155

The order issued by the President of the Tribunal for the amendment of the conditions of a legal separation of spouses which, in scheduling the appearance of the parties for the purpose of adopting the necessary pre-trial measures, formulates incidental remarks concerning the question on jurisdiction raised by the defendant (a question that is for the court – and not the President – to decide), does not preclude a subsequent reference for a preliminary ruling on jurisdiction (*regolamento di giurisdizione*). The function of such order is the same as that – merely provisional and *ad interim* and, therefore, devoid of decisive character – of the measures adopted in accordance with Article 708 of the Code of Civil Procedure.
The acceptance of the jurisdiction of the Italian courts in the context of a proceeding for the legal separation of spouses does not have any effects on the subsequent proceeding to amend the conditions of the separation brought by one of the spouses seeking custody of the children. On the one hand, this latter proceeding (as also inferred from Article 12(2)(a) of Regulation (EC) No 2201/2003 of 27 November 2003) is new and autonomous (albeit related – on the basis of its *res judicata* effect – to the final decision or to the court's order incorporating the spouses' agreement on the separation by mutual consent which has acquired *res judicata* effect). On the other hand, the ground of jurisdiction of the child's habitual residence, which is based on proximity and dictated in the child's best interests, is of such importance that it preempts the validity of a parent's consent to prorogate the jurisdiction.
For the purposes of the allocation of jurisdiction, the case of a child with dual, Italian and foreign, citizenship is governed by the principle according to which the measures concerning the child must be assessed bearing in mind their function. Therefore, the measures that (as is the case of custody measures), while influencing the exercise of parental responsibility, pursue the goal of protecting the child, fall within the scope of Article 42 of Law 31 May 1995 No 218, which refers to the Hague Convention of 5 October 1961 on the

protection of children. In these cases, however, Article 4 of the Convention, pursuant to which the measures adopted by the authorities of the State of the child's nationality prevail, cannot be applied and the criterion of the child's habitual residence – which, safeguarding the child's affective and relational continuity, does not contrast with, but rather enhances, the pre-eminent interest of the child – prevails.

64. *Corte di Cassazione (plenary session), 6 June 2017 No 13980* 1071

According to the theory of restricted immunity, as implemented in Italian law pursuant to Article 10 of the Constitution and resulting from Article 11 of the New York Convention of 2 December 2004 on the jurisdictional immunities of States and their property, Italian courts do not have jurisdiction over the dispute brought by a former employee of a foreign embassy in Italy against the same embassy seeking the declaration of inexistence, nullity and ineffectiveness and, in any case, the illegitimacy of the employment termination, as well as seeking reintegration in the workplace, since such claim directly involves the embassy's exercise of the public powers. On the other hand, Italian courts have jurisdiction over the monetary claims directly or indirectly related to the claims brought against the employment termination, such as the request for payment of wage differences, since the potential acceptance of these claims does not affect the independence and public powers of the foreign entity, provided that no security reasons occur pursuant to Article 11(2)(d) of the New York Convention.

65. *Bologna Tribunal, order of 6 June 2017* 1073

Pursuant to Article 25 of Regulation (EU) No 1215/2012 of 12 December 2012, Italian courts do not have jurisdiction over an action brought by a Luxembourgish company against an Italian company – which, subsequent to a merger by incorporation, succeeded to a Luxembourgish company – in relation to the credit accrued in respect of a bond issued by the latter company, if on the verse of the certified bearer bonds is a clause prorogating the jurisdiction in favour of the Luxembourg courts. This clause must be considered as approved by the parties, since it is not disputed that the companies' legal representatives signed the front of the certificate, which forms an inseparable whole with the verse. In making opposition against the payment order that the Luxembourgish company obtained in Italy regardless of prorogation clause, the Italian company promptly challenged the jurisdiction of the Italian court on the first available occasion following the production of the certificates (such production entailing that the Italian company have access, for the first time, to the verse of the certificate where the prorogation clause was written).

66. *Corte di Cassazione (plenary session), order of 13 June 2017 No 14649* 398

The function of arbitration is to substitute for the judiciary: therefore, a motion to challenge the jurisdiction of a court on the ground of a foreign arbitration clause gives rise to a question of jurisdiction that can be assessed by means of a reference for a preliminary ruling on jurisdiction (*regolamento di giurisdizione*) pursuant to Article 41 Code of Civil Procedure.

The motion to challenge the jurisdiction of the court in favour of foreign arbitration can be raised in any state and degree of the proceeding by the

defendant who has not expressly or tacitly accepted the jurisdiction of the Italian courts.
The fact that, pursuant to Article 10 of Law 31 May 1995 No 218, an Italian judge exercised jurisdiction over the request for a provisional measure on the grounds that the requested measure had to be enforced in Italy, does not preclude that a motion to challenge jurisdiction be filed during the proceeding on the merit, since the provisional measure does not constitute a judgment on the merit and, therefore, is not likely to acquire *res judicata* effect.
The adoption of a provisional measure does not preclude a motion against jurisdiction, also by means of a reference for a preliminary ruling on jurisdiction (*regolamento di giurisdizione*), regardless of whether, for the purposes of the ruling on the provisional measure, the judge has implicitly resolved in the affirmative or in the negative a question pertaining to jurisdiction.
A reference for a preliminary ruling on jurisdiction (*regolamento di giurisdizione*) is not precluded by the prior issuance of an arbitral award, since recourse to such reference is conditioned only upon the pendency of the proceeding on the merit in the context of which the question of jurisdiction was raised. The same is true if a foreign court has rendered a prior decision on the merit: in such instance, the need for coordination between the two jurisdictions is ensured by the relevant and applicable provisions.
The fact that a request for a provisional measure was brought in Italy is irrelevant for the purpose of establishing whether Italian courts have jurisdiction on the merit. In fact, a distinction is to be drawn between *interim* jurisdiction and jurisdiction on the merit. Such distinction transpires also from the Code of Civil Procedure: on the one hand, Article 669-*ter* the Code of Civil Procedure regulates the case where Italian courts have *interim* jurisdiction also in cases where they do not have jurisdiction on the merit; on the other hand, Article 669-*novies*, fourth paragraph, of the Code of Civil Procedure holds that a provisional measure shall lose effectiveness if a foreign court is seised on the merit or the dispute is devolved to foreign or domestic arbitration.
Italian courts do not have jurisdiction over a dispute subject to a valid foreign arbitration agreement.

67. *Corte di Cassazione (plenary session), order of 15 June 2017 No 14861* 402

The function of arbitration is to substitute for the judiciary: therefore, a motion to challenge the jurisdiction of a court on the ground of a foreign arbitration clause gives rise to a question of jurisdiction.
With the introduction of Article 14(4) of Law 9 December 1998 No 431, the Italian legislator has repealed the prohibition (originally established at Article 54 of Law 27 July 1978 No 392) against the insertion of arbitration clauses in lease contracts, hence giving the parties the possibility to devolve to arbitrators disputes over, *i.a.*, the rent, regardless of the use made of the leased asset.
With regard to leases of urban non-residential property, the prohibition against arbitration clauses cannot be inferred from the mandatory nature of the laws that regulate the rent's increases. The mandatory nature of rules designed to protect certain interests does not necessarily entail that the underlying legal positions may not be regulated through party autonomy.
Italian courts do not have jurisdiction over a dispute concerning the increase of the rent of non-residential property located in Italy if an arbitration clause was inserted in the lease contract deferring the decision of any dispute arising

from the contract to arbitration seated in Paris and governed by the rules of arbitration of the International Chamber of Commerce.

68. *Corte di Cassazione, 15 June 2017 No 14878* 408

Public policy (*ordre public*), which, according to Article 18 of Presidential Decree 3 November 2000 No 396, grounds the refusal against the request for the transcription in Italy of civil status documents formed abroad, aims at the protection of fundamental rights which may be inferred from the Constitution, the EU treaties and the Charter of Fundamental Rights of the European Union, as well as from the European Convention on Human Rights. The transcription in Italy of a civil status document validly formed abroad stating the birth of a child from two mothers does not conflict with public policy, even though such instance is not regulated or forbidden by Italian laws; the provision at Article 269 of the Civil Code, according to which a child's mother is the one who gives birth to the child, does not introduce a fundamental and substantial principle and, rather, must be interpreted, in light of the child's best interests, exclusively as a provision on evidence of parentage.

69. *Rome Tribunal, 10 August 2017* 747

Pursuant to Article 5(3) of Regulation (EC) No 44/2001 of 22 December 2000 – to which the reference made in Article 3(2) of Law 31 May 1995 No 218 to the Brussels Convention of 27 September 1968, applicable to defendants not domiciled in the European Union, is construed as implicitly made – Italian courts have jurisdiction over an action brought by an Italian company and its legal representative in relation to the allegedly defamatory information disseminated by an Albanian broadcasting company by means of the broadcasting of a TV report and its uploading onto the website of the same company. With respect to the infringement of personality rights via mass media (Internet, television), the place of the tort (*locus commissi delicti*), for the purposes of jurisdiction, is the place of the centre of the interests of the injured (in this case in Italy) notwithstanding the fact that the information in question was disseminated exclusively in Albanian, via information channels targeting an essentially Albanian audience.

70. *Genoa Family Court, decree of 8 September 2017* 414

The adoption decree issued by the judicial authority of a foreign country in which the adopter, a non-cohabiting Italian citizen, has resided and stayed continuously for at least two years at the time the adoption decree was issued is regulated by Article 36(4) of Law 4 May 1983 No 184: since this provision, by reason of its specialized nature, prevails over the provisions commonly applicable, the automatic recognition mechanism provided at Article 64 of Law 31 May 1995 No 218 does not apply to the case at hand.
The Hague Convention of 29 May 1993 on protection of children and cooperation in respect of intercountry adoption, implemented by Law 31 December 1998 No 476 amending Law No 184/1983, does not reserve adoption to married couples only. Therefore, in accordance with Article 36(4) of Law No 184/1983, the recognition of the adoption of a child by an unmarried person does not, in itself, contrast with the principles of the Convention. The general clause at Article 35 of Law No 184/1983 – according to which a transcription in the civil registries cannot be made if it contrasts with the

fundamental principles of family law – must be interpreted in a manner consistent with the consolidated jurisprudence of the European Court of Human Rights and, in particular, with the principle according to which the fundamental right to respect for private and family life (Article 8 of the European Convention on Human Rights) implies the cross-border continuity of family status validly and permanently established abroad.
According to the jurisprudence of the European Court of Human Rights, the cross-border continuity of family status may be subject to restrictions only on the grounds of public policy (*ordre public*) principles. Such principles are commonly shared by the States that are party to the European Convention on Human Rights and do not encompass limiting access to adoption to married couples only.

71. *Corte di Cassazione (plenary session), order of 18 September 2017 No 21541* 418

Pursuant to Article 11 of the Lateran Treaty of 11 February 1929 between the Holy See and Italy, Italian courts have jurisdiction over the dispute brought by a former teacher against the Pontifical Lateran University seeking the reinstatement in the work position, payment of salary and social security differences, and compensation for damages, since this University is not included among the "central bodies" of the Catholic Church to which the aforementioned provision assigns (restricted) sovereign immunity from jurisdiction.

72. *Corte di Cassazione, 29 September 2017 No 22834* 427

Since it does not amount to tort under European Union law, the violation of a right protected by the European Convention on Human Rights cannot ground an action for the compensation of damages brought by an individual before national courts. EU law and the European Convention on Human Rights do not constitute two mutually exclusive systems of rules. On the one hand, EU law becomes part of the Italian legal system as a result of Article 11 of the Constitution and is susceptible of direct application by national courts. On the other hand, as a source of international law, the European Convention on Human Rights prevails over the norms established by ordinary laws or legislative acts, however it cannot be directly applied by national courts. To solve any conflicts between national provisions and the Convention, national courts must interpret the national provisions in a manner which is consistent with the provisions of the Convention, without prejudice to the possibility of raising questions of unconstitutionality of the national provisions for the violation of Article 117 of the Constitution in case an interpretation of the national provisions in conformity with the Convention is not possible.

73. *Corte di Cassazione (plenary session), order of 3 November 2017 No 26145* 750

Pursuant to Article 6(1) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over a clawback action brought, to revoke the transfer of real estate property to a company, against a person domiciled in Italy and a Maltese company before an Italian court other than the court for the place where the Italian defendant is domiciled and, therefore, in violation of the rules on venue pursuant to the Regulation. Notably, Article 6(1) of Regulation No 44/2001 regulates not only jurisdiction, but also venue: however, this provision leaves it to the *lex fori* to regulate the proposition of the action and the challenges against venue if the court seized is not one that

has the power to adjudicate pursuant to the Regulation. In fact, with a view to challenging jurisdiction the violation of Article 6(1) of Regulation No 44/2001 is relevant only provided the defendant has been summoned before the court of a Member State other than the Member State that has jurisdiction according to the Regulation. On the other hand, since a clawback action is a unitary action that has to be necessarily brought against all the contracting parties, for the purposes dismissing an action for want of jurisdiction it is not necessary to establish that a defendant was involved in the action on a pretext, for the sole purpose of displacing the venue. On the other hand, the jurisdiction of Italian courts is not affected by the presence, in the contract which is the target of the clawback action, of a clause prorogating jurisdiction in favour of a Maltese court since Article 23 of the same Regulation does not allow, in principle, to extend the effectiveness of a prorogation clause to individuals that were not party to the contract (as is the case with the plaintiff in the instant case).

74. *Corte di Cassazione (plenary session), order of 17 November 2017 No 27280* 434

A reference for a preliminary ruling on jurisdiction (*regolamento di giurisdizione*) filed by a company with the registered office in an EU Member State which, prior to the plenary ruling of the Court of Cassation, was declared insolvent in that State is inadmissible due to supervening lack of standing. Pursuant to Articles 16 and 17(1) and (2) of Regulation (EC) No 1346/2000, the judgment opening insolvency proceedings is recognized in all the other Member States and produces in them, with no further formalities and without possibility to appeal, the same effects as under the law of the State of the opening of proceedings.

75. *Constitutional Court, 7 December 2017 No 258* 108

Article 10 of Law 5 February 1992 No 91 on citizenship conditions the transcription in the civil registry of the acquisition of the Italian citizenship by naturalization to the taking the oath to be faithful to the Republic and respect the Italian Constitution and laws. By its own nature, taking such oath is a personal act which is directly related to constitutional law, due to the values it embodies. As such, pursuant to the Civil Code, such act cannot be performed by a legal representative in substitution for the person concerned. The acquisition of citizenship is precluded if the person is unable to take the oath due to severe mental disability.

Article 10 of Law No 91 of 1992 is unconstitutional, with respect to Articles 2 and 3(2) of the Constitution, in the part where it does not exonerate from the oath requirement an individual who is unable to satisfy it due to a serious and ascertained disability. Furthermore, the provision is unconstitutional – also with respect to Article 38 of the Constitution – regardless of the "type" of legally relevant incapacity: in fact, failure to acquire the citizenship that would otherwise follow can result in a form of social exclusion which unreasonably deprives the individual suffering from a serious disability of the enjoyment of citizenship, on which the individual's general sense of belonging to a national community is premised. Moreover, such exclusion can determine a further form of marginalization, also with respect to other family members who have acquired citizenship.

76. *orte di Cassazione, order of 12 December 2017 No 29668* 1037

Pursuant to Article 41(2) of Law 31 May 1995 No 218, Articles 64-66 of such

Law do not apply to the recognition of foreign adoption decisions, such matter being governed, rather, by the special provisions contained, in particular, in Law 4 May 1983 No 184, as amended by Law 31 December 1998 No 476, in accordance to which the power to rule on the recognition of decisions issued abroad on the adoption of foreign children lies with the family court and not with the court of appeal. The fact that the adopters, who are nationals of the child's State of origin, reside in Italy is immaterial.
The principle, established at Article 36(1) of Law No 184/1983, according to which the intercountry adoption of minors coming from States that have ratified the Hague Convention of 29 May 1993 can only take place with the procedures and the effects foreseen by said Law is not absolute, as proven by the possibility, foreseen by way of exception at Article 32(3) of the same Law, to convert a foreign adoption into an adoption that results in the termination of all ties with the family of origin (even if the foreign adoption decision did not intend to produce such effect), provided such conversion complies with the 1993 Hague Convention.
The fact that forms of foster care that do not follow the complex procedure provided at Articles 29 et seq. of Law No 184/1983 are eligible for recognition in Italy does not, in and of itself, entail that their recognition is exempt from compliance with the principles put forth by the same Law and, first of all, the principle established at Article 35(2) of the same Law according to which the adoption must not be contrary to the fundamental principles that govern family law, assessed with respect to the child's best interests.

77. *Corte di Cassazione, order of 14 December 2017 No 30123* 1042

Pursuant to Article 3 of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, as well as to Regulation (EC) No 2201/2003, the theory whereby a child too young to have a social life of his own (in this case, a child who was twenty-one months old the day the court was seized) does not have an habitual residence and must, rather, be considered habitually resident in the place where the parents planned to live, even if, in fact, they never actually lived there, may not be espoused. For the purposes of identifying a child's place of habitual residence, the child's registered residence or domicile as well as the residence agreed to by the parents are irrelevant: the habitual residence should be determined by looking at the child's real situation, regardless of the life plans made by the adults who are in charge of him. In determining the habitual residence of a very young child, the parents' intention to settle in a Member State may serve as a projection of the child's interests when transposed in tangible acts such as renting an accommodation: however, it cannot be decisive in and of itself.
In the context of international abduction, a child's habitual residence is in the place where the child has consolidated or is in the process of consolidating a network of affections and relationships that are conducive to his harmonious psycho-physical development. A merely quantitative parameter (for example, the temporal proximity of a transfer, the length of stay) is not enough for the purpose of determining such place; instead, especially in case of a child's recent transfer, a prognosis should be performed on whether the new residence was suitable to become the child's stable and lasting centre of affections and interests, and an assessment should be made that the transfer did not amount to an expedient to remove the child from the other parent or to an attempt to artificially alter jurisdiction. Thus, where it appears that, before the

request for return to the United Kingdom lodged by the father, a child spent several months with his mother in Italy (where he also has other close relatives who look after him, such as his grandparents), while he spent only a few weeks in the United Kingdom exclusively to allow an attempt at mediation between the parents, the Italian court's decision dismissing that the child could be considered as habitually residing in London and rejecting the request for return of the child to the United Kingdom is to be upheld.

78. *Corte di Cassazione (plenary session), 22 December 2017 No 30877* 435

Pursuant to Article 32 of Law 31 May 1995 No 218, Article 3(b) of Regulation (EC) No 2201/2003 and Articles 41 and 42 of the Code of Civil Procedure, a reference for a preliminary ruling on jurisdiction (*regolamento di giurisdizione*) filed to challenge a decision staying a proceeding on grounds of *lis pendens* is inadmissible. Such decision – having as its object the assessment of the procedural preconditions for lispendency and the assessment of which court was first seised and is to have priority in the cause of action – does not address the question of jurisdiction but, rather, questions of merit: as such, pursuant to Article 42 of the Code of Civil Procedure a petition for transfer of the case on the ground of venue may be filed against it, instead. However, a reference for a preliminary ruling on jurisdiction may be converted into a petition for transfer of the case on the ground of venue if preconditions – such as compliance with the petition's thirty-day term, which runs from the notification at the request of a party or from the communication by the clerk of the decision – are satisfied.

79. *Corte di Cassazione (plenary session), order of 28 February 2018 No 4731* 1047

Pursuant to Article 5(1)(a) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over a dispute brought by an Italian company under extraordinary administration against some Irish companies for the return of the security deposits paid by the first in relation to leasing agreements signed between the parties and subsequently dissolved by decision of the extraordinary commissioners of the first company. On the one hand, the issue – being a contractual matter – falls within the scope of said provision; on the other hand, the fact that the payment claimed by the plaintiff had to be carried out at the plaintiff's domicile (situated in Italy) was not an object of contention in the instant case.

80. *Milan Tribunal, 28 February 2018* 757

Since, pursuant to Article 54(3) of Legislative Decree 18 August 2000 No 267, the State functions of maintaining civil and population registers are delegated to the Mayor in his capacity as a government official, and this delegation entails that acts concerning citizenship are immediately referable to the State – and notably to the Ministry of the Interior – the municipality in which an individual resides lacks passive legal standing in a dispute concerning the individual's acquisition of the Italian citizenship.

To protect the legitimate expectations created by the public administration, the right must be granted to a foreign citizen to belatedly acquire, upon application, the Italian citizenship pursuant to Article 4(2) of Law of 5 February 1992 No 91 (so-called acquisition by choice), provided the conditions relating to birth and continuous residence in Italy are satisfied, regardless of

the fact that the interested party did not submit her application upon becoming of age, because she was misled, at that time and subsequently, by documents issued by the municipality of residence which identified her as Italian citizen. The fact that the same individual was adopted by an Italian couple once she became of age and that the law does not provide for the automatic acquisition of the Italian citizenship on this ground is not relevant.

81. *Rome Tribunal, 20 March 2018* 1049

Italian courts do not have jurisdiction in an enforcement proceeding concerning a real estate property located in Italy, which houses the embassy of a foreign country, even if the occupant must vacate the property for failure to execute the preliminary contract of purchase which establishes the legal foundation for the presence of the embassy in the building. The foreign embassy may claim immunity from jurisdiction, provided the conduct held by the diplomatic agent (who occupied the premises of the mission) was instrumental to the public powers underlying the exercise of the right to mission, in accordance with the distinction between *acta iure privatorum* and *iure imperii* put forth, *inter alia*, at Article 31(1)(c) of the Vienna Convention of 18 April 1961 on diplomatic relations.

82. *Corte di Cassazione (plenary session), 15 May 2018 No 11849* 1053

Italian courts have jurisdiction over a dispute, concerning the separation from the personal estate of the defendants (Italian nationals) of movable assets that the defendants inherited from their mother (an Italian national residing in Switzerland, where she also died), brought by an Italian creditor of the deceased. In fact, Article 3 of Law 31 May 1995 No 218 regulates the scope of Italian jurisdiction only with respect to a foreign defendant, whereas it does not apply as a limit to the jurisdiction of Italian courts over an Italian national. Italian courts may also establish jurisdiction pursuant to the Establishment and Consular Agreement concluded between Italy and Switzerland in Bern on 22 July 1868: in fact, on a proper construction of Article 17 of the Agreement the court of the place of the deceased's last domicile in his or her country of origin has jurisdiction to decide all disputes relating to the succession *mortis causa* of an Italian or Swiss national who died in any of the two contracting States and in any event arising between the heirs, the legatees or other individuals interested in the succession.

83. *Corte di Cassazione, order of 20 June 2018 No 16290* 1058

To declare the enforceability of a judgment rendered in a dispute related to a deed acknowledging the existence of a debt which was issued and is enforceable in Germany, the Italian court must verify that the judgment satisfy the conditions laid out at Article 53 of Regulation (EC) No 44/2001 of 22 December 2000. It follows that – where, during the proceeding brought in Italy to challenge the exequatur of such judgment, the proceeding is stayed pursuant to Article 46 of the Regulation and, subsequently a decision is rendered in Germany which reforms the judgment that is the object of the exequatur proceedings, thus replacing it – the Italian court will have to renew its assessment pursuant to Article 53 of the Regulation with reference to the appeal judgment.

84. *Corte di Cassazione, order of 27 June 2018 No 16990* 1062

Pursuant to the joint reading of Articles 35(1) and 27(1) of Law 4 May 1983 No 184, the decision rendered by a family court on the recognition of a foreign decision on adoption concurs to attributing to the child the status of adopted child in the Italian legal system, even if issued in form of a decree. In fact, such decree is decisory and final and, as such, it has the substantial value of a judgment; moreover, it may acquire *res judicata* effects and, therefore, it may not be revoked pursuant to Article 742 of the Code of Civil Procedure.

85. *Corte di Cassazione, order of 29 August 2018 No 21367* 1065

Since, pursuant to Article 64(1)(d) of Law 3 May 1995 No 218, recognition of a foreign judgment mandates that such judgment be final, the petition, filed pursuant to Article 67 of Law No 218/1995, seeking the ascertainment of the requirements for the recognition of a divorce decree, which also provides on child custody, issued by a Moroccan court, must be declared inadmissible when it appears that the decision in question was not final at the time the petition was filed. The Italian court seised with such petition cannot extend ex officio the object of the foreign judgment to take account of the subsequent Moroccan decision rendered, while the recognition proceeding was pending in Italy, at the end of the appeal brought in Morocco against the judgment whose recognition is sought and by which the Moroccan dispute was conclusively decided.

EU CASE-LAW

Access to justice: 15.
Competition: 16, 30.
Consumer protection: 8, 10.
Contracts: 1.
External Relations: 6.
EC Regulation No 1346/2000: 29.
EC Regulation No 44/2001: 9, 11, 12, 14, 20, 22, 24, 38, 42, 43.
EC Regulation No 2201/2003: 37, 46.
EC Regulation No 805/2004: 33, 40.
EC Regulation No 864/2007: 22.
EC Regulation No 4/2009: 37, 45.
EU Citizenship: 5.
EU Law: 2, 4, 17, 21, 25.
EU Regulation No 650/2012: 26, 41.
EU Regulation No 1215/2012: 27, 36, 39, 44.
EU Regulation No 1259/2012: 35.
*Freedom of establishment:*19, 28.
Freedom of movement of persons: 7, 13.
Freedom to provide services: 34.
Intellectual property: 12, 22.
Judicial proceedings before the Court of Justice: 3, 18, 31.
Right to privacy: 23.
Treaties and general international rules: 32.

1. *Court of Justice, 16 February 2017 case C-555/14* 192

Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions, and Article 7(2) and (3) thereof in particular, must be interpreted as not precluding national legislation which allows a creditor to waive his right to interest for late payment and compensation for recovery costs in exchange for immediate payment of the principal amount of debts owed, on condition that such a waiver is freely agreed to, this being a matter for the referring court to verify.

2. *Court of Justice, 16 February 2017 case C-507/15* 185

Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents and the Agreement establishing an Association between the European Economic Community and Turkey, signed in Ankara on 12 September 1963 by the Republic of Turkey, on the one hand, and by the Member States of the EEC and the Community, on the other, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 must be interpreted as not precluding national legislation transposing that Directive into the law of the Member State concerned, which excludes from its scope of application a commercial agency contract in the context of which the commercial agent is established in Turkey, where it carries out activities under that contract, and the principal is established in that Member State, so that, in such circumstances, the commercial agent cannot rely on rights which that Directive guarantees to commercial agents after the termination of such a commercial agency contract.

3. *Court of Justice, 15 March 2017 case C-3/16* 194

1. The third paragraph of Article 267 TFEU must be interpreted as meaning that a court against whose decisions there is a judicial remedy under national law may not be regarded as a court adjudicating at last instance, where an appeal on a point of law against a decision of that court is not examined because of discontinuance by the appellant. (*Omissis*)
2. The third paragraph of Article 267 TFEU must be interpreted as meaning that a court adjudicating at last instance may decline to refer a question to the Court for a preliminary ruling where an appeal on a point of law is dismissed on grounds of inadmissibility specific to the procedure before that court, subject to compliance with the principles of equivalence and effectiveness.

4. *Court of Justice, 4 May 2017 case C-17/16* 187

Article 3(1) of Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community must be interpreted to the effect that the obligation to declare laid down in that provision is applicable in the international transit area of an airport of a Member State.

5. *Court of Justice, 10 May 2017 case C-133/15* 187

1. Article 20 TFEU must be interpreted as meaning that for the purposes of assessing whether a child who is a citizen of the European Union would be compelled to leave the territory of the European Union as a whole and thereby deprived of the genuine enjoyment of the substance of the rights conferred on

him by that article if the child's third-country national parent were refused a right of residence in the Member State concerned, the fact that the other parent, who is a Union citizen, is actually able and willing to assume sole responsibility for the primary day-to-day care of the child is a relevant factor, but it is not in itself a sufficient ground for a conclusion that there is not, between the third-country national parent and the child, such a relationship of dependency that the child would indeed be so compelled were there to be such a refusal of a right of residence. Such an assessment must take into account, in the best interests of the child concerned, all the specific circumstances, including the age of the child, the child's physical and emotional development, the extent of his emotional ties both to the Union citizen parent and to the third-country national parent, and the risks which separation from the latter might entail for the child's equilibrium.
2. Article 20 TFEU must be interpreted as not precluding a Member State from providing that the right of residence in its territory of a third-country national, who is a parent of a minor child that is a national of that Member State and who is responsible for the primary day-to-day care of that child, is subject to the requirement that the third-country national must provide evidence to prove that a refusal of a right of residence to the third-country national parent would deprive the child of the genuine enjoyment of the substance of the rights pertaining to the child's status as a Union citizen, by obliging the child to leave the territory of the European Union, as a whole. It is however for the competent authorities of the Member State concerned to undertake, on the basis of the evidence provided by the third-country national, the necessary enquiries in order to be able to assess, in the light of all the specific circumstances, whether a refusal would have such consequences.

6. *Court of Justice, Opinion of 16 May 2017 case C-2/15* 189

The Free Trade Agreement between the European Union and the Republic of Singapore falls within the exclusive competence of the European Union, with the exception of the following provisions, which fall within a competence shared between the European Union and the Member States:
the provisions of Section A (Investment Protection) of Chapter 9 (Investment) of that agreement, in so far as they relate to non-direct investment between the European Union and the Republic of Singapore;
the provisions of Section B (Investor-State Dispute Settlement) of Chapter 9; and
the provisions of Chapters 1 (Objectives and General Definitions), 14 (Transparency), 15 (Dispute Settlement between the Parties), 16 (Mediation Mechanism) and 17 (Institutional, General and Final Provisions) of that agreement, in so far as those provisions relate to the provisions of Chapter 9 and to the extent that the latter fall within a competence shared between the European Union and the Member States.

7. *Court of Justice, 8 June 2017 case C-541/15* 193

Article 21 TFEU must be interpreted as precluding the registry office of a Member State from refusing to recognise and enter in the civil register the name legally acquired by a national of that Member State in another Member State, of which he is also a national, and which is the same as his birth name, on the basis of a provision of national law which makes the possibility of

having such an entry made, by declaration to the registry office, subject to the condition that that name must have been acquired during a period of habitual residence in that other Member State, unless there are other provisions of national law which effectively allow the recognition of that name.

8. *Court of Justice, 14 June 2017 case C-75/16* 477

Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) must be interpreted as not precluding national legislation which prescribes recourse to a mediation procedure, in disputes referred to in Article 2(1) of that Directive, as a condition for the admissibility of legal proceedings relating to those disputes, to the extent that such a requirement does not prevent the parties from exercising their right of access to the judicial system.

On the other hand, that Directive must be interpreted as precluding national legislation which provides that, in the context of such mediation, consumers must be assisted by a lawyer and that they may withdraw from a mediation procedure only if they demonstrate the existence of a valid reason in support of that decision.

9. *Court of Justice, 28 June 2017 case C-436/16* 178

Article 23(1) of Council 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 jurisdiction clause in a contract between two companies cannot be relied upon by the representatives of one of them to dispute the jurisdiction of a court over an action for damages which aims to render them jointly and severally liable for supposedly tortious acts carried out in the performance of their duties.

10. *Court of Justice, 13 July 2017 case C-133/16* 806

Article 5(1) and the second subparagraph of Article 7(1) of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees must be interpreted as precluding a rule of a Member State which allows the limitation period for action by the consumer to be shorter than two years from the time of delivery of the goods where the Member State has made use of the option given by the latter of those two provisions, and the seller and consumer have agreed on a period of liability of the seller of less than two years, namely a one-year period, for the second-hand goods concerned.

11. *Court of Justice, 13 July 2017 case C-368/16* 178

Point 5 of Article 13 of Council 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 conjunction with Article 14, point 2(a), thereof, must be interpreted as meaning that a victim entitled to bring a direct action against the insurer of the party which caused the harm which he has suffered is not bound by an agreement on jurisdiction concluded between the insurer and that party.

12. *Court of Justice, 13 July 2017 case C-433/16* 179

1. Article 24 of Council 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 a challenge to the jurisdiction of the court seised, raised in the defendant's first submission in the alternative to other objections of procedure raised in the same submission, cannot be considered to be acceptance of the jurisdiction of the court seised, and therefore does not lead to prorogation of jurisdiction pursuant to that article.
2. Article 82 of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs must be interpreted to the effect that actions for declaration of non-infringement under Article 81(b) of that Regulation must, when the defendant is domiciled in an EU Member State, be brought before the Community design courts of that Member State, except where there is prorogation of jurisdiction within the meaning of Article 23 or Article 24 of Regulation No 44/2001, and with the exception of the cases of *litis pendens* and related actions referred to in those Regulations.
3. The rule on jurisdiction in Article 5(3) of Regulation No 44/2001 does not apply to actions for a declaration of non-infringement under Article 81(b) of Regulation No 6/2002.
4. The rule on jurisdiction set out in Article 5(3) of Regulation No 44/2001 does not apply to actions for a declaration of abuse of a dominant position and of unfair competition that are connected to actions for declaration of non-infringement, in so far as granting those applications presupposes that the action for a declaration of non-infringement is allowed.

13. *Court of Justice, 18 July 2017 case C-566/15* 476

Article 45 TFEU must be interpreted as not precluding legislation of a Member State under which the workers employed in the establishments of a group located in the territory of that Member State are deprived of the right to vote and to stand as a candidate in elections of workers' representatives to the supervisory board of the parent company of that group, which is established in that Member State, and as the case may be, of the right to act or to continue to act as representative on that board, where those workers leave their employment in such an establishment and are employed by a subsidiary belonging to the same group established in another Member State.

14. *Court of Justice, 20 July 2017 case C-340/16* 181

Article 9(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, read together with Article 11(2) thereof, must be interpreted as meaning that an employer, established in one Member State, which continued to pay the salary of its employee absent as the result of a road traffic accident and to which have passed the employee's rights with regard to the company insuring the civil liability resulting from the vehicle involved in that accident, which is established in a second Member State, may, in the capacity of 'injured party', within the meaning of Article 11(2), sue the insurance company before the courts of the first Member State, where a direct action is permitted.

15. *Court of Justice, 26 July 2017 case C-670/15* 475

Articles 3, 8 and 12 of Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes, read together, must be interpreted as meaning that legal aid granted by the Member State of the court hearing the particular case, in which a natural person domiciled or resident in another Member State has submitted a legal aid application in the context of a cross-border dispute, also covers the costs paid by that person for the translation of the supporting documents necessary for the processing of that application.

16. *Court of Justice, 6 September 2017 case C-413/14 P* 805

EU competition rules set out in Articles 101 and 102 TFEU are intended to prevent collective or unilateral conduct of undertakings limiting competition within the internal market. As regards the application of Article 101 TFEU, the fact that an undertaking participating in an agreement is situated in a third country does not prevent the application of that provision if that agreement is operative on the territory of the internal market. Moreover, if the applicability of prohibitions laid down under competition law were made to depend on the place where the agreement, decision or concerted practice was formed, the result would obviously be to give undertakings an easy means of evading those prohibitions. The qualified effects test pursues the same objective, namely preventing conduct which, while not adopted within the EU, has anticompetitive effects liable to have an impact on the EU market. The argument that the qualified effects test cannot serve as a basis for the Commission's jurisdiction is therefore incorrect.

The qualified effects test allows the application of EU competition law to be justified under public international law when it is foreseeable that the conduct in question will have an immediate and substantial effect in the European Union. It is necessary to examine the conduct of the undertaking or undertakings in question, viewed as a whole, in order to determine whether the Commission has the necessary jurisdiction to apply, in each case, EU competition law. It must be pointed out, first, that it is sufficient to take account of the probable effects of conduct on competition in order for the foreseeability criterion to be satisfied. Secondly, since the conduct of the dominant undertaking *vis-à-vis* its competitor formed part of an overall strategy intended to ensure that no competitor's notebook would be available on the market, including in the EEA, the conduct of the undertaking was capable of producing an immediate effect in the EEA.

In light of the undertaking's strategy aimed at foreclosing the competitors' access to the most important sales channels, it is appropriate to take into consideration the conduct of the undertaking viewed as a whole in order to assess the substantial nature of its effects on the market of the EU and of the EEA. To do otherwise would lead to an artificial fragmentation of comprehensive anticompetitive conduct, capable of affecting the market structure within the EEA, into a collection of separate forms of conduct which might escape the European Union's jurisdiction.

17. *Court of Justice, 7 September 2017 case C-506/16* 474

Council Directive 72/166/EEC of 24 April 1972 on the approximation of the

laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability, Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, as amended by Directive 2005/14/EC of 11 May 2005, and Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, must be interpreted as not precluding national provisions which allow exclusion of the right of a driver of a motor vehicle responsible, by his own fault, for a traffic accident as a result of which his spouse, a passenger in that vehicle, has died, to receive compensation for the material harm which he has suffered as a result of that death.

18. *Court of Justice, Order of 7 September 2017 joined cases C-177/17 and C-178/17* 478

In order to determine whether national legislation involves the implementation of EU law for the purposes of Article 51 of the Charter, some of the points to be determined are whether that legislation is intended to implement a provision of EU law, the nature of that legislation and whether it pursues objectives other than those covered by EU law, even if it is capable of indirectly affecting EU law, and also whether there are specific rules of EU law on the matter or capable of affecting it.

In the present case, the national provision at issue in the main proceedings concerns the procedure to recover amounts owed by the State by way of fair compensation for the excessive length of legal proceedings, provided for in Article 5*sexies* of Law No 89/2001. The referring court explains that, although Law No 89/2001 cannot be considered to be a measure taken in application of Articles 81 and 82 TFEU, nor under a specific Regulation or Directive, it ensures the proper working of the Union area of justice by pursuing the objective of circumscribing the duration of any kind of legal proceedings. It does this by preventing the value of the mutual recognition of judgments, upon which judicial cooperation in civil and criminal matters in the Union is based, being utterly nullified as a result of the excessive duration of legal proceedings. The referring court also points out that, as the main proceedings concern bankruptcy proceedings the excessive duration of which led to the State being ordered to pay compensation, they fall within an area in which the European Union has already exercised its competence by adopting several laws, among which features, in particular, Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings. However, it must be noted that the provisions of TFEU referred to by the referring court impose no specific obligations on the Member States as regards the recovery of sums owed by the State by way of fair compensation for the excessive duration of legal proceedings, and that, as it currently stands, EU law includes no specific rules in this field. Accordingly, it is clear that, in the present case, there is nothing to suggest that Law No 89/2001, which is general in nature, was intended to implement a provision of EU law relating to judicial cooperation, and that, even if that law is likely indirectly to affect the functioning of the area of justice in the European Union, it pursues objectives other than those covered by the provisions cited in the orders for reference. It follows from this that there is nothing to indicate that the dispute in the main proceedings relates to the interpretation or application of a rule of EU

law other than those set out in the Charter. When a legal situation does not come within the scope of EU law, the Court has no jurisdiction to rule on it and any provisions of the Charter relied upon cannot, of themselves, form the basis for such jurisdiction.

19. *Court of Justice, 14 September 2017 case C-646/15* 1087

The provisions of the FEU Treaty relating to freedom of establishment preclude, in circumstances where the trustees, under national law, are treated as a single and continuing body of persons, distinct from the persons who may from time to time be the trustees, legislation of a Member State, such as that at issue in the main proceedings, which provides for the taxation of unrealised gains in value of assets held in trust when the majority of the trustees transfer their residence to another Member State, but fails to permit payment of the tax payable to be deferred.

20. *Court of Justice, 14 September 2017 joined cases C-168/16 and C-169/16* 182

Article 19(2)(a) 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 the event of proceedings being brought by a member of the air crew, assigned to or employed by an airline, and in order to establish the jurisdiction of the court seised, the concept of 'place where the employee habitually carries out his work', within the meaning of that provision, cannot be equated with that of 'home base', within the meaning of Annex III to Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation, as amended by Regulation (EC) No 1899/2006 of the European Parliament and of the Council of 12 December 2006. The concept of 'home base' constitutes nevertheless a significant indicium for the purposes of determining the 'place where the employee habitually carries out his work'.

21. *Court of Justice, 14 September 2017 case C-503/16* 475

Article 3(1) of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability, Article 1(1) and Article 2(1) of the Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, as amended by Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005, and Article 1a of the Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicle, as amended by Directive 2005/14, must be interpreted as precluding national legislation which excludes from coverage under compulsory insurance against civil liability with respect to the use of motor vehicles and, therefore, compensation by means of that insurance the personal injuries and property damage sustained by a pedestrian victim of a motor vehicle accident, on the sole ground that that pedestrian was the insurance policy-holder and the owner of the vehicle that caused those injuries and that damage.

22. *Court of Justice, 27 September 2017 joined cases C-24/16 and C-25/16* 468

1. Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs, read in conjunction with Article 6(1) of Council 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 whenever the international jurisdiction of a Community design court seised of an action for infringement is based, with regard to one defendant, on Article 82(1) of Regulation No 6/2002 and, with regard to a second defendant established in another Member State, on that Article 6(1) read in conjunction with Article 79(1) of Regulation No 6/2002, because the second defendant makes and supplies to the first defendant the goods that the latter sells, that court may, on the applicant's request, adopt orders in respect of the second defendant concerning measures falling under Article 89(1) and Article 88(2) of Regulation No 6/2002 also covering the second defendant's conduct other than that relating to the abovementioned supply chain and with a scope which extends throughout the European Union.

2. Article 20(1)(c) of Regulation No 6/2002 must be interpreted as meaning that a third party which, without the consent of the holder of the rights conferred by a Community design, uses, including via its website, images of goods corresponding to such designs when lawfully offering for sale goods intended to be used as accessories to the specific goods of the holder of the rights conferred by those designs, in order to explain or demonstrate the joint use of the goods thus offered for sale and the specific goods of the holder of those rights, carries out an act of reproduction for the purpose of making 'citations' within the meaning of Article 20(1)(c), such an act thus being authorised under that provision provided that it fulfils the cumulative conditions laid down therein, which is for the national court to verify.

3. Article 8(2) of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations ('Rome II') must be interpreted as meaning that the 'country in which the act of infringement was committed' within the meaning of that provision refers to the country where the event giving rise to the damage occurred. Where the same defendant is accused of various acts of infringement in various Member States, the correct approach for identifying the event giving rise to the damage is not to refer to each alleged act of infringement, but to make an overall assessment of that defendant's conduct in order to determine the place where the initial act of infringement at the origin of that conduct was committed or threatened by it.

23. *Court of Justice, 27 September 2017 case C-73/16* 479

1. Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that it does not preclude national legislation, which makes the exercise of a judicial remedy by a person stating that his right to protection of personal data guaranteed by Directive 95/46/EC of the European Parliament and of the Council 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, has been infringed, subject to the prior exhaustion of the remedies available to him before the national administrative authorities, provided that the practical arrangements for the exercise of such remedies do not disproportionately affect the right to an effective remedy before a court

referred to in that article. It is important, in particular, that the prior exhaustion of the available remedies before the national administrative authorities does not lead to a substantial delay in bringing a legal action, that it involves the suspension of the limitation period of the rights concerned and that it does not involve excessive costs.
2. Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as precluding that a national court rejects, as evidence of an infringement of the protection of personal data conferred by Directive 95/46, a list, such as the contested list, submitted by the data subject and containing personal data relating to him, if that person had obtained that list without the consent, legally required, of the person responsible for processing that data, unless such rejection is laid down by national legislation and respects both the essential content of the right to an effective remedy and the principle of proportionality.
3. Article 7(e) Directive 95/46 must be interpreted as not precluding the processing of personal data by the authorities of a Member State for the purpose of collecting tax and combating tax fraud such as that effected by drawing up of a list of persons such as that at issue in the main proceedings, without the consent of the data subjects, provided that, first, those authorities were invested by the national legislation with tasks carried out in the public interest within the meaning of that article, that the drawing-up of that list and the inclusion on it of the names of the data subjects in fact be adequate and necessary for the attainment of the objectives pursued and that there be sufficient indications to assume that the data subjects are rightly included in that list and, second, that all of the conditions for the lawfulness of that processing of personal data imposed by Directive 95/46 be satisfied.

24. *Court of Justice, 5 October 2017 case C-341/16* 471

Article 22(4) of Council 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 not applying to proceedings to determine whether a person was correctly registered as the proprietor of a trade mark.

25. *Court of Justice, 10 October 2017 case C-413/15* 805

1. Article 288 TFEU must be interpreted as meaning that it does not, in itself, preclude the possibility that provisions of a Directive that are capable of having direct effect may be relied on against a body that does not display all the characteristics listed in paragraph 20 of the judgment of 12 July 1990, Foster and Others (C-188/89, EU:C:1990:313), read together with those mentioned in paragraph 18 of that judgment.
2. Provisions of a Directive that are capable of having direct effect may be relied on against a private law body on which a Member State has conferred a task in the public interest, such as that inherent in the obligation imposed on the Member States by Article 1(4) of Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, as amended by the Third Council Directive 90/232/EEC of 14 May 1990, and which, for that purpose, possesses, by statute, special powers,

such as the power to oblige insurers carrying on motor vehicle insurance in the territory of the Member State concerned to be members of it and to fund it.

26. *Court of Justice, 12 October 2017 case C-218/16* 184

Article 1(2)(k) and (l) and Article 31 of Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession must be interpreted as precluding refusal, by an authority of a Member State, to recognise the material effects of a legacy 'by vindication', provided for by the law governing succession chosen by the testator in accordance with Article 22(1) of that Regulation, where that refusal is based on the ground that the legacy concerns the right of ownership of immovable property located in that Member State, whose law does not provide for legacies with direct material effect when succession takes place.

27. *Court of Justice, 17 October 2017 case C-194/16* 473

1. Article 7(2) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a legal person claiming that its personality rights have been infringed by the publication of incorrect information concerning it on the internet and by a failure to remove comments relating to that person can bring an action for rectification of that information, removal of those comments and compensation in respect of all the damage sustained before the courts of the Member State in which its centre of interests is located. When the relevant legal person carries out the main part of its activities in a different Member State from the one in which its registered office is located, that person may sue the alleged perpetrator of the injury in that other Member State by virtue of it being where the damage occurred.
2. Article 7(2) of Regulation No 1215/2012 must be interpreted as meaning that a person who alleges that his personality rights have been infringed by the publication of incorrect information concerning him on the internet and by the failure to remove comments relating to him cannot bring an action for rectification of that information and removal of those comments before the courts of each Member State in which the information published on the internet is or was accessible.

28. *Court of Justice, 25 October 2017 case C-106/16* 1087

1. Articles 49 and 54 TFEU must be interpreted as meaning that freedom of establishment is applicable to the transfer of the registered office of a company formed in accordance with the law of one Member State to the territory of another Member State, for the purposes of its conversion, in accordance with the conditions imposed by the legislation of the other Member State, into a company incorporated under the law of the latter Member State, when there is no change in the location of the real head office of that company.
2. Articles 49 and 54 TFEU must be interpreted as precluding legislation of a Member State which provides that the transfer of the registered office of a company incorporated under the law of one Member State to the territory of

another Member State, for the purposes of its conversion into a company incorporated under the law of the latter Member State, in accordance with the conditions imposed by the legislation of that Member State, is subject to the liquidation of the first company.

29. *Court of Justice, 9 November 2017 case C-641/16* 467

Article 3(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as meaning that an action for damages for unfair competition by which the assignee of part of the business acquired in the course of insolvency proceedings is accused of misrepresenting itself as being the exclusive distributor of articles manufactured by the debtor does not fall within the jurisdiction of the court which opened the insolvency proceedings.

30. *Court of Justice, 23 November 2017 case C-547/16* 000

Article 16(1) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 TFEU] and [102 TFEU] must be interpreted as meaning that a commitment decision concerning certain agreements between undertakings, adopted by the European Commission under Article 9(1) of that Regulation, does not preclude national courts from examining whether those agreements comply with the competition rules and, if necessary, declaring those agreements void pursuant to Article 101(2) TFEU.

31. *Court of Justice, Order of 29 November 2017 case C-603/17* 797

The request by the Supreme Court of the United Kingdom for Case C-603/17 to be subject to the expedited procedure provided for in Article 105(1) of the Rules of Procedure of the Court of Justice is dismissed.

In that regard, it should be recalled that economic interests, as important and legitimate as they may be, are not capable of justifying, in themselves, use of the expedited procedure. Next, the fact that the request for a preliminary ruling was made in the context of proceedings that are, in the national system, urgent and in which the referring court is required to do everything possible to ensure that the case in the main proceedings is resolved swiftly, is not in itself sufficient to justify the use of the expedited procedure.

In that context, the legal uncertainty affecting the parties in the main proceedings, and those who are parties to similar proceedings, and their legitimate interest in knowing as quickly as possible the meaning of the rights that they derive from EU law does not constitute an exceptional circumstance that could justify use of such a procedure. Finally, according to the Court's settled case-law, the large number of persons or legal situations potentially concerned by the decision that the referring court must make after referring a question to the Court for a preliminary ruling is not capable as such of constituting an exceptional circumstance that could justify the use of an expedited procedure. The same is true as regards the large number of cases that may be stayed pending the determination by the Court of the preliminary reference.

In the present case, it must first of all be noted that the *interim* measures ordered against the defendants, and the other natural and legal persons cove-

red by the claim for compensation, are purely economic. Next, those measures apply only to assets situated within a specific geographical area, namely England and Wales, with the result that they do not affect the assets held by the defendants outside that geographical area, in particular in the State in which they are domiciled. Moreover, those measures were adopted by the High Court of Justice (England & Wales), Queen's Bench Division (Commercial Court) on 15 February 2015, which is more than two and a half years before the referring court decided to refer the present request for a preliminary ruling to the Court. While that period of waiting may have been prejudicial to the interests of those whose assets are frozen in the United Kingdom, it also puts into perspective the degree of urgency that characterises the dispute. (paragraphs 8-15 and dispositive part).

32. *Court of Justice, 2 December 2017 case C-467/16* 466

Articles 27 and 30 the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed on 30 October 2007, which was approved on behalf of the Community by Council Decision 2009/430/EC of 27 November 2008, must be interpreted as meaning that, in the case of *lis pendens,* the date on which a mandatory conciliation procedure was lodged before a conciliation authority under Swiss law is the date on which a 'court' is deemed to be seised.

33. *Court of Justice, 14 December 2017 case C-66/17* 472

Article 4(1) and Article 7 of Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims must be interpreted as meaning that an enforceable decision on the amount of costs related to court proceedings, contained in a judgment which does not relate to an uncontested claim, cannot be certified as a European Enforcement Order.

34. *Court of Justice, 20 December 2017 case C-434/15* 1086

Article 56 TFEU, read together with Article 58(1) TFEU, as well as Article 2(2)(d) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, and Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and Regulations and of rules on Information Society services, as amended by Directive 98/48/EC of the European Parliament and of Council of 20 July 1998, to which Article 2(a) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') refers, must be interpreted as meaning that an intermediation service the purpose of which is to connect, by means of a smartphone application and for remuneration, non-professional drivers using their own vehicle with persons who wish to make urban journeys, must be regarded as being inherently linked to a transport service and, accordingly, must be classified as 'a service in the field of transport' within the meaning of Article 58(1) TFEU. Consequently, such a service must be excluded from the scope of Article 56 TFEU, Directive 2006/123 and Directive 2000/31.

35. *Court of Justice, 20 December 2017 case C-372/16* 801

Article 1 of Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation must be interpreted as meaning that a divorce resulting from a unilateral declaration made by one of the spouses before a religious court does not come within the substantive scope of that Regulation.

36. *Court of Justice, 20 December 2017 case C-649/16* 802

Article 1(2)(b) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that it applies to an action for liability in tort brought against the members of a committee of creditors because of their conduct in voting on a restructuring plan in insolvency proceedings, and that such an action is therefore excluded from the scope *ratione materiae* of that Regulation.

37. *Court of Justice, Order of 16 January 2018 case C-604/17* 800

Council 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 a court of a Member State with jurisdiction, under Article 3(1)(b) of that Regulation, to hear and determine an application for divorce between two spouses who are nationals of that Member State does not have jurisdiction to rule on rights of custody and rights of access in respect of the spouses' child in the case where, at the time when the court is seised, that child is habitually resident in another Member State, that the conditions for such jurisdiction, under Article 12 of that Regulation, are not satisfied by that court, and that, on account of the circumstances of the main proceedings, it follows that neither does that court have such jurisdiction under Articles 9, 10 or 15 of that Regulation. Furthermore, that court does not satisfy the conditions, laid down in Article 3(d) of Council 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, for having jurisdiction to rule on an application relating to maintenance.

38. *Court of Justice, 25 January 2018 case C-498/16* 798

1. Article 15 of Council 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 activities of publishing books, lecturing, operating websites, fundraising and being assigned the claims of numerous consumers for the purpose of their enforcement do not entail the loss of a private Facebook account user's status as a 'consumer' within the meaning of that article.
2. Article 16(1) of Regulation No 44/2001 must be interpreted as meaning that it does not apply to the proceedings brought by a consumer for the purpose of asserting, in the courts of the place where he is domiciled, not only his own claims, but also claims assigned by other consumers domiciled in the same Member State, in other Member States or in non-member countries.

39. *Court of Justice, 31 January 2018 case C-106/17* 804

Article 13(2) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, read in conjunction with Article 11(1)(b) of that Regulation, must be interpreted as meaning that it may not be relied on by a natural person, whose professional activity consists, *inter alia*, in recovering claims for damages from insurers and who relies on a contract for the assignment of a claim concluded with the victim of a road accident, to bring a civil liability action against the insurer of the person responsible for that accident, which has its registered office in a Member State other than the Member State of the place of domicile of the injured party, before a court of the Member State in which the injured party is domiciled.

40. *Court of Justice, 28 February 2018 case C-289/17* 800

Article 17(a) and Article 18(1)(b) of Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims must be interpreted as meaning that a court judgment delivered without the debtor having been informed of the address of the court to which to respond or before which to appear, or, as appropriate, before which an appeal can be lodged against such a decision, cannot be certified as a European Enforcement Order.

41. *Court of Justice, 1 March 2018 case C-558/16* 1083

Article 1(1) of Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession must be interpreted as meaning that a national provision which prescribes, on the death of one of the spouses, a fixed allocation of the accrued gains by increasing the surviving spouse's share of the estate falls within the scope of that Regulation.

42. *Court of Justice, 7 March 2018 joined cases C-274/16, C-447/16 and C-448/16* 1076

1. The second indent of Article 5(1)(b) of Council 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 not applying to a defendant domiciled in a third State, such as the defendant in the main proceedings.
2. Article 5(1)(a) of Regulation No 44/2001 must be interpreted as meaning that the concept of 'matters relating to a contract', for the purposes of that provision, covers a claim brought by air passengers for compensation for the long delay of a connecting flight, made under Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, against an operating air carrier with which the passenger concerned does not have contractual relations.
3. The second indent of Article 5(1)(b) of Regulation No 44/2001 and the second indent of Article 7(1)(b) of Regulation (EU) No 1215/2012 of the

European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in the case of a connecting flight, the 'place of performance' of that flight, for the purposes of those provisions, is the place of arrival of the second leg, where the carriage on both flights was operated by two different air carriers and the action for compensation for the long delay of that connecting flight under Regulation No 261/2004 is based on an irregularity which took place on the first of those flights, operated by the air carrier with which the passengers concerned do not have contractual relations.

43. *Court of Justice, 7 March 2018 case C-560/16* 1078

Article 22(2) of Council 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 review of the reasonableness of the consideration that the principal shareholder of a company is required to pay to the minority shareholders of that company in the event of the compulsory transfer of their shares to that principal shareholder comes within the exclusive jurisdiction of the courts of the Member State in which that company is established.

44. *Court of Justice, 8 March 2018 case C-64/17* 1084

1. Article 25(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, subject to the verifications to be made by the referring court, a jurisdiction clauseset out in the general conditions of sale mentioned in invoices issued by one of the contracting parties does not satisfy the requirements of that provision.
2. Article 7(1) of Regulation No 1215/2012 must be interpreted as meaning that the court with jurisdiction, by virtue of that provision, to hear a claim for compensation relating to the termination of a commercial concession agreement concluded between two companies established and operating in two different Member States for the distribution of goods on the domestic market of a third Member State in which neither of those companies has a branch or establishment, is that of the Member State in which the place of the main supply of services, as is clear from the provisions of the contract and, in the absence of such provisions, the actual performance of that contract, and where it cannot be determined on that basis, the place where the agent is domiciled.

45. *Court of Justice, Order of 10 April 2018 case C-85/18 PPU* 1080

Article 10 of Council 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, and Article 3 of Council 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 interpreted as meaning that, in a case in which a child who was habitually resident in a Member State was wrongfully removed by one of the parents to another Member State, the courts of that other Member State do not have jurisdiction to rule on an application relating to custody or

the determination of a maintenance allowance with respect to that child, in the absence of any indication that the other parent consented to his removal or did not bring an application for the return of that child.

46. *Court of Justice, 19 April 2018 case C-565/16* 1081

In a situation where the parents of a minor child, who are habitually resident with the latter in a Member State, have lodged, in the name of that child, an application for permission to renounce an inheritance before the courts of another Member State, Article 12(3)(b) of Council Regulation 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:

- the joint lodging of proceedings by the parents of the child before the courts of their choice is an unequivocal acceptance by them of that court;
- a prosecutor who, according to the national law, has the capacity of a party to the proceedings commenced by the parents, is a party to the proceedings within the meaning of Article 12(3)(b) of Regulation No 2201/2003. Opposition by that party to the choice of jurisdiction made by the parents of the child in question, after the date on which the court was seised, precludes the acceptance of prorogation of jurisdiction by all the parties to the proceedings at that date from being established. In the absence of such opposition, the agreement of that party may be regarded as implicit and the condition of the unequivocal acceptance of prorogation of jurisdiction by all the parties to the proceedings at the date on which that court was seised may be held to be satisfied; and
- the fact that the residence of the deceased at the time of his death, his assets, which are the subject matter of the succession, and the liabilities of the succession were situated in the Member State of the chosen courts leads, in the absence of matters that might demonstrate that the prorogation of jurisdiction was liable to have a prejudicial impact on the child's position, to the conclusion that that prorogation of jurisdiction is in the best interests of the child.

DOCUMENTS

Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships 195

New German provision on the law applicable to voluntary representation (Law 11 June 2017) 225

Resolution of the Institute of International Law at the Hyderabad session 227

Italian implementation of Directive 2015/637/EU of 20 April 2015 on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries and repealing Decision 95/553/EC (Legislative Decree 22 December 2017 No. 234) 481

Convention on mutual assistance in criminal matters between EU Member States (Brussels, 29 May 2000) 485

Italian rules implementing the Convention on mutual assistance in criminal matters between EU Member States (Legislative Decree 5 April 2017 No. 52) 503

Amendments to Book XI of the Italian Code of Criminal Procedure on jurisdictional relationships with foreign authorities (Legislative Decree 3 October 2017 No. 149) 511

Convention on mutual assistance in criminal matters between Italy and Panama (Panama, 25 November 2013) 808

Corrigendum to Regulation (EU) No. 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession 820

Amendments to Law 5 February 1992 No. 91 on Italian Nationality (Legislative Decree 4 October 2018 No. 113) 1089

Directive 2018/957/EU of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services 1090

Circular note of the Italian Ministry of Justice of 22 May 2018 on jurisdictional competence in family matters and the issuance of the certificate pursuant to Article 39 of Regulation (EC) No. 2201/2003 1102

CURRENT EVENTS AND RECENT DEVELOPMENTS

S. SPANCKEN, Report on Recent German Case-Law Relating to Private International Law in Family Law Matters 229

R. RAFFELSIEPER, Report on Recent German Case-Law Relating to Private International Law in Civil and Commercial Matters 821

A. LANG, The Agreement on the Withdrawal of the UK from the EU and the Possibility To Revoke the Decision to Withdraw 1105

Legislative, judicial and international practice. International treaties coming into force in Italy (according to the Official Journal from November to March 2018) – Contracting Parties of the Hague conventions in force – Towards an agreement on «*Brexit*» – EU Regulation on unjustified geo-blocking and other forms of discrimination based on customers' nationality – New EU Regulation on cooperation between national authorities responsible for the enforcement of consumer protection laws – Handbook on the 1996 Hague convention of the protection of minors – Proposal for a EU directive on credit servicers, credit purchasers and the recovery of collateral – Italian rules on international protection – Italian Supreme Court to rule on the registration in

Italy of a Canadian decision concerning the indication of two fathers – New ECHR judgment in the case of *Krombach v. France* 238

Legislative, judicial and international practice. International treaties coming into force in Italy (according to the Official Journal from April to June 2018) – «*Brexit*» negotiations continue – EU Parliament study on the consequences of a «*Hard Brexit*» – Judgment of the Italian Constitutional Court on the non-revocability of domestic final judgments in civil or administrative matters in case of contrast with ECHR judgments – ECHR judgment in the case of *M.L. and W.W.* v. *Germany* on the right to access information stored on the Internet, to anonymity and to be forgotten – Proposal for a EU directive on representative actions for the protection of the collective interests of consumers – EU Parliament resolution on common minimum standards of civil procedure – Report from the EU Commission on the application of the EU directive on liability for defective products – Circular note of the Italian Ministry of Justice on the tutorship on non-accompanied minors – UK Supreme Court Judgment on jurisdiction on non-contractual obligations pursuant to Article 5(3) of the 2007 Lugano convention – 2017 Activities of the Italian Central Authority – EU Justice Scoreboard 2018 – New edition of the ECHR Handbook on European data protection law 529

Legislative, judicial and international practice. International treaties coming into force in Italy (according to the Official Journal from 2 July to 22 October 2018) – New Annexes A and B to EU Regulation No. 2015/848 on insolvency proceedings – Proposal for a regulation amending Regulation (EC) No. 1393/2007 on the service of documents – Proposal for a regulation amending regulation (EC) No. 1393/2007 on the service of documents – Proposal for a EU regulation on a mechanism to resolve legal and administrative obstacles in a cross-border context – Amendments to the rules of procedure of the General Court – Italian Constitutional Court to rule on the formation in Italy of a birth certificate indicating two mothers – New French rules on divorce agreements formed abroad 826

Legislative, judicial and international practice. International treaties coming into force in Italy (according to the Official Journal from 23 October to 15 December 2018) – EU Regulation on the mutual recognition of freezing orders and confiscation orders – Institution of the EU Agency for Criminal Justice Cooperation – EU Regulation on a framework for the free flow of non-personal data in the European Union – Amendments to the Practice Rules for the Implementation of the Rules of Procedure of the General Court – Decision of the Court of Justice on the lodging and service of procedural documents by means of e-Curia – Italian provisions on international protection – Developments in the ELI/UNIDROIT project «From Transnational Principles to Common Rules of Civil Procedure» – French Supreme Court requests the first opinion by the ECHR on subrogated maternity 1119

Notices. The 2018 summer courses of the Hague Academy of International Law 255

Book Reviews
(See Italian Index)