Revija za evropsko pravo: XV (2013) 1.
©Udruženje za evropsko pravo, Kragujevac

Zlatan Meškić[*]/ Dženana Radončić [**]

UDK 347(4-672EU)
347.7(4-672EU)

Str. 55-80.

BRUSSELS I RECAST AND THE SOUTH-EAST EUROPE

Abstract

The recast of the Brussels I Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters arouses interest in the region in terms of both aspects, harmonization of the national legislation with the PIL of EU and its application in the courts of the Member States on matters related to the SEE countries. The obligation to harmonize national legislation with the Brussels I Regulation in the pre-accession period is disputable, as the regulations may not be transposed in the national law and the Brussels I Regime is based on the mutual trust between Member States, with no benefits for (potential) candidate states. The national legislators of the South East Europe used the Brussels I regime as a model for the reforms of their Private International Law Acts, but also to create a regional multilateral convention with identical content as the Brussels I Regulation, which is called the Sarajevo Convention. This leads to an interesting situation where the EU Member States and the Lugano Convention parties will become third States to their own regime taken over in the Sarajevo Convention. Consequently, the reform of the status of third States in the Brussels I recast gets a new dimension for both, the SEE states and the Member States of the EU.

---

[*] PhD, ass. prof. at the University of Zenica, Bosnia and Herzegovina.

[**] Ass. at the University of Zenica, Bosnia and Herzegovina.

1. Introduction

For South East European countries which have status of candidates or potential candidates for membership in the EU, the harmonization of national legislation with EU private international law is a special challenge. Firstly, it is the area of private law in which the EU legislator was very active approaching complete codification at EU level. Secondly, the most important source of PIL of EU are regulations regarding which we shall, in the following, try to find an answer to whether there is any obligation to harmonize national legislation in the pre-accession period. In case the national legislature decides to harmonize its legislation with the EU PIL, incorporation of regulations into national codification of PIL creates the problem in terms of its scope, the individual scope of application of each regulation and interpretations in accordance with the decisions of the Court of the European Union.

With regards to the Regulation No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I)[1] additional dilemmas are placed here. Brussels I Regulation is the nucleus of Private International Law of the EU (European Conflict of Laws - ECL). The legal regime contained in the Brussels I can refer to a long legal tradition, one of the longest within the EU law in general. The European Economic Communities have, already in year 1959, ordered the Commission to initiate the start of negotiations among the Member States aiming to establish a system of simplified procedure of mutual recognition and enforcement of judicial and other decisions.[2] In such a way, a treaty signed between the six original Member States was created, laying the foundation of today's ECL, which is the Brussels Convention on jurisdiction and enforcement of judgments in civil and commercial matters of 16th of September 1968 (Brussels Convention).[3] From the point of legal sources

[1] Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Regulation or Brussels I), OJ 2001 L 12/1.

[2] J. Alihodžić, *Razvoj Evropskog međunarodnog privatnog prava: Pravci reforme zakonodavstva u Bosni i Hercegovini*, Tuzla 2012, p. 84; J. Basedow, "Die Vergemeinschaftung des Europäischen Kollisionsrechts nach dem Vertrag von Amsterdam", in J. Baur/H.-P. Mansel (ed.), *Systemwechsel im Europäischen Kollisionsrecht*, München, 2002, p. 19.

[3] Convention on jurisdiction and the recognition and enforcement of judgments in civil and

structure within the European Union, Brussels Convention did not fall either in primary nor in secondary EU law, because, until the Treaty of Amsterdam of 1999, there was no legal provision in the primary law of the EU, which would have given express authorization EU to independently adopt legal acts in the field of PIL.

However, Brussels Convention served the goals of EU Law and acceleration of Union integrative process of Union, and it is classified as so-called "ancillary EU law".[4] Such early adoption of the Brussels Convention allowed the principle of mutual recognition of judicial decisions in the European judicial area to develop along with the economic and political integration.[5] The impact of Convention continued to evolve even outside the EU, when the countries of the European Free Trade Association (EFTA) decided to initiate the signing of the Convention, which would extend the system of Brussels Convention on them.[6] In such a way, the so-called Lugano Convention of 16th September 1988 on jurisdiction and recognition and enforcement of judgments in civil and commercial matters[7] was created, almost entirely taking over the text of, then current, version of the Brussels Convention. Process of taking over the Brussels Convention into formal sources of EU law was finally completed when the Brussels Convention was transformed into the Brussels I,[8] with certain modifications.

---

commercial matters of 16th September 1988, OJ 1972, L 299 p. 43-44.

4 Ger. "begleitendes Gemeinschaftsrecht"; G. Reichelt, *Europarecht*, Wien 2002, p. 44.

5 Ch. Kohler, "Von der EuGVVO zum Europäischen Vollstreckungstitel", in G. Reichelt/W. Rechberger, *Europäisches Kollisionsrecht*, Wien 2004, p. 91.

6 First initiative came from Sweden already in 1973; See: D. Martiny, "The Idea underlying the Lugano Convention – Experience in its application and reform", *Zbornik radova sa sedme konferencije za Međunarodno privatno pravo – proširenje „Evropskog pravosudnog prostora" na države članice CEFTA*, Novi Sad 2010, p. 20.

7 OJ 1988, 319/9; amended in 2007, OJ 2007, C 339/3.

8 Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Regulation or Brussels I), OJ 2001 L 12/1; This had consequences in reformed Lugano convention, in order to avoid differences between these two regimes, so the revised Lugano Convention was signed by the European Community, Denmark, Iceland, Norway and Sweden on 30th October 2007 in Lugano.

When considering the transposition of the Brussels I into national law of SEE states, one should take into consideration that this regulation is, as the source of the procedural ECL, subject to the principle of euro-centrism rather than universalism and that it emphasizes mutual trust between Member States, only partially applying to cases with third countries.[9] The exceptions are provisions of procedural ECL governing the international jurisdiction, which are, along with the fulfillment of additional conditions, most frequently residence or habitual residence in the EU, following the principle of universality.[10] This makes it less suitable for transfer into national codification, which is, in the spirit of classic PIL, based on the principle of equality. In this scenario, for the EU member states, joining Lugano Convention seems like more suitable alternative. SEE countries have chosen more innovative approach and decided to sign regional multilateral convention with content identical to the Brussels I. Additionally, interest in the Brussels I exists in terms of its application in the courts of the Member States relating to the SEE countries, for example, when the defendants are the citizens of one of the SEE countries with residence or assets in the EU and, vice versa, EU citizens residing in SEE, where prorogation agreement is concluded in favor of the courts of one of the SEE countries or when a judgment from the SEE should be recognized in the EU. In this regard, the Brussels I has a lot of room for improvement.

In that manner, updating the Brussels I arouses interest in the region in terms of both aspects, harmonizing the national legislation with the PIL of EU and its application in the courts of the Member States on matters related to the SEE countries.

[9] K. Kreuzer, "Zu Stand und Perspektiven des Europäischen Internationalen Privatrechts - Wie europäisch soll das Europäische Internationale Privatrecht sein?", *RabelsZ* 2006, p. 58; Z. Meškić, Osnove Evropskog kolizionog prava, *Pravna misao* 2009, p. 14.

[10] *Ibid.*

2. Harmonization of SEE countries legislation with Brussels I Regulation

2.1. The obligation to harmonize national legislation with the private international law of EU

In 2004, under the Stabilization and Association Process, EU has concluded the so-called European partnership[11] with all countries in the region. Croatia, which was granted the candidate status in 2004, signed the accession treaty in December 2011,[12] and its accession in the EU, after the completion of the ratification process in the member states, is scheduled for the 1st of June 2013. Status of candidate countries have obtained Macedonia (December 2005[13]), Montenegro (December 2010)[14] and Serbia (2012[15]). Albania has also applied for membership in April 2009 for the purpose of acquiring the candidate status, but the Commission's opinion on Albania's application for membership does not contain a proposal on granting candidate status to Albania, only suggestions for further progress in the fulfillment of the Copenhagen criteria.[16] Bosnia and Herzegovina has not applied for membership in the EU yet because such request would have poor prospects until the ECHR decision in the *Sejdic-Finci against Bosnia and Herzegovina*[17] is implemented. Therefore, Albania and Bosnia and Herzegovina currently have the status of potential candidates. Obligation to harmonize legislation of SEE countries with the EU is already defined in "harmonizing clause" contained in all of the Stabilization and Association Agreement signed

---

[11] Council regulation (EC) No 533/2004 of 22 March 2004 on the establishment of European partnerships in the framework of the stabilization and association process, OJ EU 2004, L 86/1.

[12] OJ EU 2012, L 112.

[13] Conclusions of the European Council, 15th–16th December 2005, Brussels.

[14] Conclusions of the European Council, 16th–17th December 2010, Brussels.

[15] Conclusions of the European Council, 1st–2nd March 2012, Brussels.

[16] Commission, Commission Opinion on Albania's application for membership of the European Union, KOM (2010) 680.

[17] European Court for Human Rights, *Sejdic and Finci v. Bosnia and Herzegovina*, case No. 27996/06 i 34836/06; On further need for reform in the field of human rights see: H. Stokke, "Human Rights as a Mechanism for Integration in Bosnia-Herzegovina", *International Journal on Minority and Group-Rights*, 2006, 263.

between the SEE countries, Member States and the EU. The harmonization clause in the respective SAA has almost identical wording, e.g. in the SAA signed between B&H and the EU[18] it obliges B&H to "ensure that its existing laws and future legislation will be gradually made compatible with the Community *acquis*. Bosnia and Herzegovina shall ensure that existing and future legislation will be properly implemented and enforced". When speaking about the *acquis* it is clear that it includes also provisions on EU level which are adopted after the ratification of the SAA, considering that in the contrary case, B&H would at the time it becomes a full member of the EU (which could take several years) be at the legal status of 2008, which is the year of the signing of the SAA.

Consequently, the Brussels I Recast of 2012 is regarding the time of its adoption within the obligations arising out of the harmonization clause for the SEE countries. The harmonization clause provides that the approximation of laws shall be conducted "gradually". The meaning of this term is further explained in Art 70 (4) SAA, stating that "Approximation shall, at an early stage, focus on fundamental elements of the Internal Market *acquis* as well as on other trade-related areas. At a further stage Bosnia and Herzegovina shall focus on the remaining parts of the *acquis*". Therefore, the priority of the harmonization with the PIL of the EU depends on its closeness to the internal market regulation. In previous association agreements it was expressly formulated that the harmonization shall begin with areas such as customs law, company law, financial services, intellectual property law, labor law etc.[19] Although the express listing of areas is left out of the harmonization clauses of the SAAs, these areas correspond to the chapters of the SAA, while judicial cooperation in civil matters is not mentioned anywhere in the SAA. This only means that harmonization with EU law does not need to begin with PIL of the EU and not that there is no obligation of its transposition.[20] Finally the question remains open whether in the pre-

---

[18] SAA signed on 16th June 2008; *OJ of Bosnia and Herzegovina* No. 5/08, "international agreements".

[19] A. Lazowski, in A. Ott/K. Inglis, Handbook on European Enlargement: A Commentary on the Enlargement Process, 2002, p. 636.

[20] See T. Deskovski/V. Dokovski, "Latest Developments of Macedonian Private International Law", *Collection of Papers from IXth Private International Law Conference-Recent Trends in European Private International Law*, Skoplje 2011, p. 2; Z. Meškić, "Integracija Evropskog

accession periods the candidate states shall transpose regulations into their national laws, considering that the most important sources of PIL of the EU are adopted in the form of regulations. Arguments against the transposition of regulations into national laws arise from their character. Regulations are directly applicable, and therefore the legislation of the SEE states will be in line with them as soon as they become Member States.[21] In addition, according to established practice of the ECJ, the transposition of regulations into national legislation is not allowed.[22] On the contrary, it seems unreasonable that the obligation from the harmonization clause only applies to directives, where the Member States often agreed only on a minimum common content, while regulations which are binding in their entirety do not need to be transposed before the accession to the EU.

The SEE states took several different approaches towards this problem. They have already put a lot of effort to reform their Private International Law Codifications, which are three decades old or older.[23] One of the most important motives for reform was to bring their private international law provisions in accordance with the EU Law described above. Macedonia is still the only one of the ex-Yugoslav states, which did not yet become a member of the EU, who is able to present a result of its reform process, the

kolizionog prava u nacionalne kodifikacije Međunarodnog privatnog prava u regionu - nalozi primarnog prava EU", *Collection of Papers from IXth Private International Law Conference-Recent Trends in European Private International Law*, Skoplje 2011, p. 112, 121; J. Alihodžić (fn. 2), p. 238; On the contrary, I. Kunda, "The Question of an Appropriate Method: Incorporation of the Community Instrument, Invitation to Join the Lugano Convention or a New Convention?", *Collected Papers from the VIIth Private International Law Conference-Enlargement of the European Judicial Area to CEFTA Countries*, Novi Sad 2010, p. 59.

[21] *Ibid*, 2002, p. 637.

[22] Sud EU, 34/73, Fratelli Variola S.p.A. /Amministrazione italiana delle Finanze (Variola), 1973, p. 981.

[23] Albanian Law on enjoyment of civil rights by foreigners and application of foreign law, *Official Gazette of the Republic of Albania*, No. 3920/64; The successor states of former Yugoslavia still apply an almost unchanged version of the Yugoslav Private International Law Act (The Act on Resolving Conflicts of Laws with Legal Provisions of other Countries in Certain Relations, *Official Journal of the Socialist Federal Republic of Yugoslavia*, No. 43/82 and 72/82).

Macedonian Private International Law Code of 2007.[24] The reform of the rules on applicable law was based on PIL of the EU (e.g. provisions from the Rome I Convention[25] and the amendments based on the Rome II Regulation[26]), the rules on jurisdiction, recognition and enforcement did not transpose any provisions from the Brussels I directly.[27] However, the reform did bring new grounds for exclusive jurisdiction and provisions on the procedure for recognition and enforcement which are similar to the Brussels I. Albania is the second state from the SEE region which adopted a new Private International Law Act in 2011.[28] Provisions on the exclusive jurisdiction, the form of the jurisdiction agreements as well as special jurisdiction were under strong influence of the Brussels I. However, it seems that the legislator has put a stronger emphasis on keeping the provisions short than making a correct transposition. The New Private International Law Act of Montenegro, which is currently in the form of a legislative proposal with good chances to be adopted until the end of 2013, took several provisions from the Brussels I.[29] Examples can be found in the provisions on the jurisdiction for delicts, the form of the jurisdiction agreements, jurisdiction for consumer and labor contracts, provisions on exclusive jurisdiction and so on. The same provisions can be found in the Draft of the Private International Law Act of Serbia, which is currently in the legislative procedure. The difference between the Draft of the PIL Act of Serbia and the

---

[24] Private International Law Act of the Republic of Macedonia, *Official Gazette of the Republic of Macedonia,* No. 87/07 and 156/10); German translation of the version of 2007 by Ch. Jessel-Holst, *IPRax* 2008, p. 158.

[25] Z. Meškić, "Private International Law in Consumer Contracts", Ch. Jessel-Holst/G. Galev (ed.), *Civil Law Forum for South East Europe*, p. 565.

[26] T. Deskovski/V. Dokovski (fn. 20), p. 2.

[27] T. Deskovski, "The New Macedonian Private International Law Act of 2007", *Yearbook of Private International Law 2008*, p. 441.

[28] Act on Private International Law (Act No. 10 428 of 2.6.2011, *Official Gazette of the Republic of Albania* No. 82/2011 from 17.6.2011); the analysis is based on an unofficial and unfinished translation of the Act in English with many thanks to prof. *Dollani* for the help in this matter.

[29] M. Kostić-Mandić, "Osvrt na novo međunarodno privatno pravo Crne Gore", *Nova Pravna Revija* 2/2011, p. 73; M. Kostić-Mandić, "Uticaj Prava Evropske unije na novo Međunarodno privatno pravo Crne Gore sa posebnim osvrtom na oblast mjerodavnog prava", *Strani Pravni Život* 3/2011, p. 345

abovementioned acts is that it did not rely on the structure of the Yugoslav PIL Act, but used the structure of the Swiss and Belgian PIL Act as a model.[30] Bosnia and Herzegovina is the only state which does not consider a revision of its Private International Law Code, because according to the current constitutional division of competences between the state and the entities (Federation of B&H and the Republic of Srpska), it might result in the adoption of two different Private International Law Codes, enacted on the entity level, and thereby cause additional conflicts of laws.[31] The reform of the PIL Acts of the SEE countries shows that every state decides to transpose at least some provisions of the PIL Regulations of the EU. However, none of the states decided to transpose whole EU Regulations into their Acts, although they did transpose most of the provisions from the Rome I and II Regulations. The SEE states used Brussels I as a role model for some questions of jurisdiction, but at least not directly for recognition and enforcement, considering that those provisions are developed specially for internal free movement of judgments within the EU.

Consequently the SEE states used the PIL Regulations of the EU as a model for the reform of certain provisions, but did not transpose entire regulations. This approach may be seen as corresponding to the gradual harmonization requested by the harmonization clause of the SAAs or as a result of voluntary harmonization. In any case, it is supported by the legal science in the region. Most authors consider the transposition of certain provisions as advisable, on the one hand because they regard that particular provisions of providing for good solutions,[32] and on the other hand because the judiciary can practice the application of EU law before accession.

---

[30] M. Živković, "Rad na novom Zakonu o međunarodnom privatnom pravu republike Srbije-početne dileme i aktuelno stanje", Collected Papers from the VIIth Private International Law Conference-Enlargement of the European Judicial Area to CEFTA Countries, Novi Sad 2010, p. 175.

[31] Z. Meškić, "Četiri osnovne slobode kao ustavni osnov za harmonizaciju entitetskih privatnopravnih propisa Ustavno-pravni razvoj Bosne i Hercegovine (1910-2010)", *Zbornik radova Pravnog fakultet Univerziteta u Tuzli 2011*, p. 355; J. Alihodžić (fn. 2), p. 221.

[32] Foremost I. Kunda (fn. 20), p. 60; J. Alihodžić (fn. 2), p. 237; Z. Meškić (2011), 112, 121; See with regards to the Rome II regulation V. Bouček, Uredba Rim II – Komunitarizacija europskog međunarodnog deliktnog prava – drugi dio: Opće poveznice deliktnog statute uredbe Rim II i harmonizacija hrvatskog mpp-a, *Zbornik radova Pravnog fakulteta u Splitu*

2.2. Sarajevo Convention

Regardless whether the SEE states completely transpose the Brussels I into their national legislation, or only use it as a role model for the reform, they do not get to enjoy the benefits which are reserved only for the Member States of the EU. Namely the Brussels I regime is understood to have created a system on jurisdiction in order to protect the defendant domiciled in the EU, and not a complete set of jurisdiction provisions.[33] The Brussels I regime does not apply in case of a prorogation clause in favor of a court outside the EU[34] and its provisions on special jurisdiction are not applicable in case when the defendant is domiciled outside the EU. In addition, in case when the defendant is domiciled within the EU, the provisions on *lis pendens* of the current Brussels I do not take into consideration a possible pending litigation before courts of the third States. This is unfortunate as the states of ex-Yugoslavia, which still apply the old Yugoslav Act on Private International Law in its unchanged form, namely Bosnia and Herzegovina, Croatia, Montenegro and Serbia, require reciprocity in order for their courts to stay their proceedings in favor of the foreign court first seized.[35] Consequently, the solution in the Brussels I regime may lead the courts of these states to the conclusion that there is no reciprocity with the Member States of the EU, or

2008, 503; T. Deskovski, The New Macedonian Private International Law Act of 2007, *Yearbook of Private International Law 2008*, p. 450.

[33] R. Hausmann, in Ch. Reithmann/D. Martini, *Internationales Vertragsrecht*, Köln 1996, 1602; The Proposal of the Commission contained in a new Recital 17 a contrary statement, that "The Regulation shall establish a complete set of rules on international jurisdiction of the courts in the Member States". However, even for the Proposal of the Commission this was not true, as many important questions were left to the national law, e.g. jurisdiction agreements in favor of the courts of a third state. The proposed statement was not adopted in the final version of the reformed Brussels I Regulation.

[34] ECJ, C-387/98, *Coreck Maritime GmbH v Handelsveem BV and Others*, 2000, I-9337, para. 19; J. Kropholler, *Europäisches Zivilprozessrecht-Kommentar zu EuGVO und Lugano-Übereinkommen*, Heidelberg 2002, Art. 23, 279; U. Magnus, "Prorogation of jurisdiction", in U. Magnus/P.Mankowski, *Brussels I Regulation, European Commentaries on Private International Law*, München 2011, Art. 27, p. 385.

[35] Art. 80 of the The Act on Resolving Conflicts of Laws with Legal Provisions of other Countries in Certain Relations, *Official Journal of the Socialist Federal Republic of Yugoslavia*, No. 43/82 and 72/82.

at least not in the case when the defendant is domicile within the EU.[36] In the reformed Private International Law Act of Macedonia, the reciprocity has been deleted as a requirement in the provision on *lis pendens*.[37] Possible reflective effect of the Brussels I regime on the national legislation of the Member States and changes that the Brussels I Recast might bring with this regards when it enters into force, will be discussed later below.

While the jurisdiction system of the Brussels I only partially covers cases connected to third States, the recognition and enforcement system is exclusively reserved for the judgments given in a Member State.[38] In addition, unlike the freedom of goods, persons, services and capital, even when the judgment of a third State is recognized and enforced in one Member State and thereby legally enters the European Judicial Area, it does not enjoy the right to free movement within the EU. The ECJ has not yet ruled on this question, but the legal science almost unanimously holds that there is no "exequatur of exequatur" (no "double exequatur", "*exequatur sur exequatur ne vaut*"), even if this solution is often criticized.[39] Consequently, a judgment given by a court of an SEE state needs to fulfill the requirements of the national legislation for recognition and enforcement of each Member state, regardless if it is already recognized in one of the Member States.

Obviously, the transposition of the Brussels I into the national legislation of the SEE states, regardless of it complete or partial transposition does not put the SEE states in a better position than any other third state whose legislation is independent of EU Law. Within the European Judicial Area there is no "enhanced trust" between the Member States of the EU and the (potential)

---

[36] V. Pavić, "European Judicial Area" in Civil and Commercial Matters and the CEFTA Countries, Collected Papers from the VIIth Private International Law Conference-Enlargement of the European Judicial Area to CEFTA Countries, Novi Sad 2010, p. 39.

[37] Art. 93 of the Macedonia Private International Law Act, *Official Gazette of the Republic of Macedonia,* No. 87/07 and 156/10.

[38] Art. 36 (1) of the Brussels I Regulation 1215/2012; The wording of Art. 32 of the Brussels I Regulation No 44/2001 is "judgments given by a court or tribunal of a member state".

[39] J. Kropholler, *Internationales Privatrecht*, Tübingen 2001, 618;V. Pavić (fn. 36), p. 38; P. Hay, Recognition of a Recognition Judgment Within the European Union-"Double Exequatur" and the Public Polic Barrier, P. Wautelet, "Recognition", in U. Magnus/P. Mankowski, *Brussels I Regulation, European Commentaries on Private International Law*, München 2011, Art. 32, p. 545.

candidates for the membership. That is the reason why the most prominent representatives of the legal science in the region met at the conference under the name "Enlargement of the European Judicial Are to CEFTA Countries" in Novi Sad (Serbia) in 2009. *Kunda* analyzed three possible options: transposition of the Brussels I, accession to the Lugano Convention or conclusion of a new regional convention which would regulate the issues within the scope of the Brussels and Lugano Regimes.[40] Some of the SEE followed the first option, but it did not contribute to the harmonization within the region, or to enjoying the benefits of the European Judicial Area. The second option was highly supported by the legal science, but there were doubts raised whether the SEE states would manage to establish trust of the parties to the Lugano Convention in their judiciary.[41] The trust in the judiciary of the SEE states is according to Art. 72 (1) (c) of the Lugano Convention a requirement for their consent to the accession of the SEE states to the Lugano Convention. Considering that the conference was a regional initiative, it seemed that not every participating state would be able to access the Lugano Convention at the same time and that some, like Croatia, would become members of the EU before they would become a party to the Lugano Convention. Therefore the third option seemed to correspond to the regional idea the most and enables the SEE states to find a solution on legislative level, without having to improve the judiciary which would take much more effort.

The regional convention brings the advantage of practicing the Brussels I Regime with states within the region, where a certain level of mutual trust and similarity in legislation, at least between ex-Yugoslav states, is already established. Of course, just like the first option, it can only indirectly bring the states closer to the European Judicial Area, by showing the EU that the judicial system is capable of applying the Brussels I Regime. Another important aspect is that the conclusion of regional agreements is one of the obligations arising from Art. 1 of the respective SAA for all of the (potential) candidate states from the region.

---

[40] I. Kunda (fn. 20), p. 47.

[41] M. Stanivuković, "Umjesto zaključka - o potrebi pristupanja Luganskoj konvenciji", Collected Papers from the VIIth Private International Law Conference-Enlargement of the European Judicial Area to CEFTA Countries, Novi Sad 2010, 93.

At the initiative of Ministry of Justice of Serbia and its Council for Private International Law, the first official meeting of the ministries and representatives of legal science from every CEFTA state took place in Sarajevo in 2011. That is why the unofficial name of the future regional convention is Sarajevo Convention, while the full name is taken from its role model and is "Convention on Jurisdiction and the Mutual Recognition and Enforcement of Judgments in Civil and Commercial Matters". The starting point of the preparatory work was the fact that the most of the participating states already signed bilateral treaties which regulate recognition and enforcement of judgments without differentiation between certain areas of civil law. Two possible approaches for the new regional convention were to take only the basic concepts of the Brussels I (Brussels I regime adapted to regional needs) or to completely transpose it (copy-and-paste approach). In favor of taking only the basic concept spoke the fact that its scope of application is somewhat narrower that the one of the bilateral treaties and its text is several times larger than the one of the bilateral treaties. However, the political impact of a shorter version would be much lower, and the states of the region would not do much for harmonization with EU law nor for practicing the application of EU law before accession. Even when basically decided to copy paste the Brussels I into the Sarajevo Convention, there were suggestions to improve the text based on the Brussels I Recast. It seemed intriguing to apply the enhanced version of the Brussels I regime even before it enters into force in the EU, but that was exactly the argument against the orientation towards the new regime. Another argument was that most of the preparatory work for the Sarajevo Convention was finished before the Brussels I Recast was finally adopted. The result of these consideration was Protocol No. 3 to the Sarajevo Convention where it is stated that "The Contracting Parties undertake to observe the changes in the Council Regulation (EC) N.44/2001 of 22 December on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and to harmonize the provisions of the Sarajevo Convention with these changes, to the extent possible." The final draft of the version is identical to the Brussels I of 2001, with certain adaptations of the wording to the fact that it is a multilateral convention, and with inspiration for Protocols and Annexes drawn from the Lugano Convention.[42] One of the influences from

[42] It cannot be excluded that some amendments will be made before ratification at one of the

the conference from Novi Sad of 2009 is that the original Contracting Parties shall be members of the Central European Free Trade Agreement (CEFTA). Another influence is the Protocol No. 2 on the uniform interpretation of the Convention and on the Standing Committee, which is inspired by the Protocol. No. 2 to the Lugano Convention.[43] The Sarajevo Convention is expected to be ratified by the end of 2013 and will be open for ratification for members of CEFTA and the parties to the Lugano Convention according to a simplified regime and any other states under the additional requirements taken from the Art. 72 of the Lugano Convention. The official explanatory report was prepared by Dr. Christa Jessel Holst.[44]

3. Brussels I Recast

Amending act, which works well in practice and whose significance through Lugano Convention, and in the future possibly additionally through Sarajevo Convention, goes beyond the EU, must be justified legally as well as economically and politically.[45] Because of that, EU is, perhaps for the first time, faced with a situation that quality and tradition of the established regime at EU level is becoming an obstacle for high pace of legislative activity, particularly because, until now, that kind of resistance existed only at the level of Member States. The Commission was preparing a proposal

beforestanding meetings of the Ministries of Justice this year before ratification.

[43] According to Art 1 of the Protocol No. 2. The courts of the Parties to Sarajevo Convention when applying and interpreting this Convention shall pay due account to the principles laid down by any relevant decision concerning the provision(s) concerned or any similar provision(s) in the Brussels Convention, Brussels I Regulation or the Lugano Convention, rendered by the Court of Justice of the European Union and by the courts of the Member States of the European Union and of States bound by the Lugano Convention; Such provision, which is inspired by the Protocol with the same name to the Lugano Convention, is the result of the comparable position between the SEE states and the state parties to the Lugano Convention with regards to the jurisprudence of the ECJ at the time of the signing of the Convention; H. D. Tebbens, "Die eineitliche Auslegung des Lugano-Übereinkommens", in G. Reichelt (ed.), *Europäisches Kollisionsrecht*, Frankfurt am Main 1993, p. 49.

[44] Max Planck Institute for Comparative and International Private Law.

[45] A. Dickinson, "The Proposal for a Regulation of the European Parliament and of the Council on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Recast) ("Brussels I bis" Regulation), Euroepan Parliament (2011), p. 3: http://ssrn.com/abstract=1930712.

following the vision of the EU legal space in which the judgment freely circulate, where access to justice is facilitated, with improved efficiency of prorogation agreement and coordination between the Regulation and international arbitration law.[46] Consequently, in September 2009 Commission undertook a concrete step and presented the proposal of the Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,[47] and the Council, taking into considering the limited number of proposed amendments by the Commission, adopted a new version of the Brussels I Regulation, on 6th December 2012 (Brussels I Recast).[48] When taking into account the previously emphasized success of the Brussels I regime, the Commission's Proposal contained significant changes, out of which four can be sorted out: 1. expanding the scope of provisions on jurisdiction of the courts of EU Member States in way to include persons who are not domiciled in the EU (the universal jurisdiction); 2. increasing the effectiveness of prorogation agreements in cases of international parallel litigation; 3. abolition of exequatur (the procedure of recognition and enforcement of judgments from other EU member states) and 4. expanding the scope of the arbitration agreements. Hereinafter the Commission Proposals will be analyzed from the perspective of third countries, with emphasis on those changes that were included in the adopted version of the Brussels I Recast.

---

[46] I. Pretelli, "Proposal for a Regulation of the European Parliament and of the Council on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Recast)", Directorate-general for Internal Policies, Policy Department C: Citizen's Rights and Constitutional Affairs, Legal Affairs: http://www.academia.edu/1532197/Proposal_for_a_regulation_of_the_European_Parliament_and_of_the_Council_on_jurisdiction_and_the_recognition_and_enforcement_of_judgments_in_civil_and_commercial_matters_recast.

[47] European Commission, Proposal for a Regulation of the European Parliament and of the Council on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Recast), Brussels, 14th December 2010, COM(2010) 748 final.

[48] 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 (recast), OJ EU 2012, L 351/1.

3.1. General, special and exclusive jurisdiction

Despite the successful functioning of the Brussels regime, certain shortfalls and inconsistencies arising from the literal application of the Regulation have become evident. The basis for general jurisdiction[49] in form of residence of the defendant, although generally accepted as a basic rule of universal jurisdiction, is showing its shortcomings in relation to third countries. Under this provision, the jurisdiction of a Member State may be established on the basis of the Regulation, if the defendant is domiciled on the territory of that Member State, without having to exercise any other gravity contact with the territory of the same State. For the defendant residing in a third State, this means that the jurisdiction would not be evaluated on the basis of the Brussels I, but the rules of the 27 national regimes of the Member States.[50] The exceptions are situations in which the conditions for the exclusive jurisdiction of the Member States, in accordance with Art. 22 of the Regulation, are fulfilled, when the residence of the defendant is irrelevant, even if it is located in the territory of a third State, or the existence of prorogation agreement in favor of the court of a Member State. Because of these issues, in its Proposal, Commission casted out the controversial condition in Art. 4 para. 1 of the Regulation and provided the possibility for the defendant, non-EU resident, to be submitted to the rules on special jurisdiction. This solution was modified by preserving the possibilities for applying two subsidiary bases for jurisdiction,[51] through which the Commission has sought to extend the reach of the rules of Regulation,

[49] Provided in Art. 2 para. 1 of the Regulation.

[50] In accordance with Art. 4 para. 1 of the Regulation.

[51] These additional bases for jurisdiction of Member States are provided for two situations. According to Art. 25 of the Proposal, the first one provides a basis for jurisdiction of the courts of the Member State where property belonging to the defendant is located, provided that the value of the property is not disproportionate to the value of the claim and the dispute has a sufficient connection with the Member State of the court seised. The second one is specified in Art. 26 which provides *forum necessitatis*, as a safe net, if the right to a fair trial or the right to access to justice so demands, and if the case itself has, according to Regulation, suffiecient connection with Member State. It is obvious that these are rather vague criterias, leaving considerable discretion to Member States. However, these provisions have not found their place in the final version of the Regulation. Eliminating these changes, the Commission attempts to fill the existing legal gap have failed.

leaving no room for the application of national legislation on conflict of jurisdiction.[52]

Considering such objectives of the Commission Proposal aiming to allow the application of the Regulation in situations in which the defendant is not domiciled in the EU, the proposed amendments are gaining its *ratio* if they are understood as a Commission's logical response to EU case law, specifically to the *Owusu*[53] judgment. Seeking to ensure the application of the Regulation's rules even in cases of exclusive jurisdiction of third States, the ECJ held that Member State court has duty to accept jurisdiction, as long as there is a possibility for application of any basis of jurisdiction within the Regulation. This is true regardless of whether the conditions for the jurisdiction of the courts of a third State are fulfilled, following the same rules of the Regulation. This "obligation" of accepting jurisdiction, as long as there is basis for it in the Regulation, has its confirmation in the above mentioned judgment *Owusu* of the ECJ. The English court, applying the rules of *forum non conveniens* doctrine, declined its jurisdiction in favor of the court in Jamaica. Such declining was assessed inadmissible by the ECJ, because the English court had general jurisdiction pursuant to the Regulation, thus confirming the imperative nature of provisions on general jurisdiction.

It appears that the mentioned *Owusu* judgment leaves many unresolved issues. On the one hand, it is hard to resist the impression that the protectionist attitude of the ECJ towards the domicile of the defendant as the unquestioned basis for general jurisdiction of a Member State against any sort, or even manifestly closer connection with a third State, is not in accordance with the Brussels regime, which aims at better judicial cooperation and the establishment of an effective system of recognition and enforcement of judgments.[54] Purpose of this rule is to facilitate the defendant to defend himself, or, as some authors say, to play a "home game".[55] This

---

[52] J. Weber, "Universal Jurisdiction and Third States in the Reform of the Brussels I Regulation", *RabelsZ* 2011, p. 637.

[53] ECJ, C-281/02, Andrew Owusu/N.B. Jacksonowner ot the company 'Villa Holidays Bal-Inn Villas' and others, 2005, I-1383.

[54] P. de Verneuil Smith, et al., "Reflections on Owusu: The Radical Decision in Ferrexpo", *Journal of Private International Law*, Vol. 8 No. 2, 2012, p. 394.

[55] Th.C.J.A. van Engelen, "Jurisdiction and Applicable Law in Matters of Intellectual

basic solution is valid when the rules of a special jurisdiction do not provide a basis for the plaintiff to bring proceedings in another Member State.[56] On the other hand, the unilateral jurisdiction rules cannot prevent the initiation of a parallel proceeding against the same defendant in a third State, leading to the risk of several irreconcilable judgments regarding the same issue. Even the existence of prorogation agreement in favor of a third State cannot endanger the jurisdiction of the Member States under the rules of the Regulation. In addition, it is stressed out that Regulation lays obligation for establishing the jurisdiction of a Member State, even if it is contrary to its national provisions, meaning that such provisions shall apply in the case of the defendant domiciled outside the EU. The scope of these provisions, as such, applies between Member States.

Thus, irrational situation is created in the heart of the Brussels regime, where the court of a Member State is obliged to accept its jurisdiction, which would, in the case of reflective effect of Regulation on third countries, had to give up or at least have such possibility.[57] Reflective effect of the Regulation's provisions implies their analog application on the disputes with third countries, which would not otherwise be applied since they enable jurisdiction of the third State to be established. The possibility of reflective effect of Regulation Brussels I is being discussed, in the legal science and practice, precisely concerning those respects which the Brussels I leaves unresolved in their relations with third countries, such as:

the provisions on exclusive jurisdiction,[58] whose analogous application would establish an exclusive jurisdiction of the courts of third States. In this case, declining jurisdiction by the Member States in favor of the exclusive jurisdiction of third countries seems reasonable, because otherwise it would jeopardize the recognition and enforcement of such a decision in a third State.

Property", *Electronic Journal of Comparative Law*, Vol. 14.3, 2010, p. 4.

[56] P. Cachia, "Recent Developments in the Sphere of Jurisdiction in Civil and Commercial Matters", *Elsa Malta Law Review*, Edition I, 2011, p. 71.

[57] See more: P. de Verneuil Smith, et al. (fn. 5), p. 397.

[58] Art. 22 of the 2001 Regulation.

prorogation agreements[59] in favor of third countries, and

if the litigation first commenced before a court of a third State, in which case a court of a Member State would decline jurisdiction leaving the court of third State to decide in a particular dispute.[60]

Thus, even in situations where, exclusive jurisdiction of a third State is based in accordance with the provisions of the Regulation on exclusive jurisdiction, the courts of the Member States remain generally competent, forming, in this way, attitude on non-existence of (direct) reflective effect. In addition, criticism of the provisions of the Regulation according to which domicile in the Member State is sufficient for the general jurisdiction is deemed to be justifiable,[61] as for the basis for a special jurisdiction, although they reflect close connection with the concrete court, they are not sufficient to establish jurisdiction, regardless of domicile.[62] According to the provisions contained in Art. 4 para. 1 of the Regulation, defendants who do not reside in the territory of a Member State shall be subject to the rules of national provisions on conflict of laws of each of the Member states. It seems that this solution is not adequate neither for the plaintiffs domiciled in the territory of a Member State, nor for the defendant domiciled in a third State. The first benefit from the Brussels regime only when the defendant is domiciled in the territory of the Member States, because the application of the Regulation is considered as the protection provided for the defendant in the EU, compared to the extensive rules on jurisdiction, which may be contained in the legal systems of the Member states.[63] Others are subject to the rules of the 27 national legal

---

[59] Art. 23 of the 2001 Regulation.

[60] J. Weber (fn. 52), p. 630.

[61] General jurisdiction is set as a rule, and other provisions on jurisdiction are only exception to this rule, therefore must be interpreted restrictively, as the ECJ has already held on several occasions (ECJ, C-412/98, Group Josi Reinsurance Comp/UGIC, 2000, I-5925, para. 35–7; ECJ, C-51/97, Réunion européenne SA and Others/Spliethoff's BevrachtingskantoorBV, 1998, I-6511, para. 16.).

[62] J. Weber (fn. 52), p. 625.

[63] A classic example of such rules can be found in Art. 14 and 15 of the French Civil Code, according to which the French courts have jurisdiction over actions brought by or filed against a French citizen or a company from France. With revised Regulation, such provision will be available to the plaintiffs in the EU only in respect of the defendant from Third countries. (H.Lovells/Ch.Coslin, "The position of the Council of the European

regimes, which is an unfortunate solution, especially because of the jeopardized legal certainty of the potential defendant and his problems with predicting its own legal risk, since the acquaintance with national rules on conflict of jurisdiction is related with many difficulties.[64] Taking this into consideration, the Commission proposed the deletion of the provisions on application of national regimes in regard of defendant residing outside the EU, as well as the discharge of condition of defendant's domicile in the territory of Member States for the application of provisions on special jurisdiction, which would set uniform rules for all actors of the Internal market and stimulate subjects from third countries to engage in business activities within the EU. However, these Commission's efforts are not motivated with the protection of defendants from third countries. Goal is to ensure ease and predictable access to a court of a Member State for plaintiff residing within the EU, which is seen as the weaker party in the consumer and employment law disputes, hence needed to be protected against the defendants outside of EU.[65]

However, the adopted text of the revised Regulation preserves the traditional solutions, both in terms of distinguishing the regime for defendants residing in a third State, as well as in the chapter governing special jurisdiction, where it retains previous solutions providing, as the first condition for the establishment of jurisdiction, domicile of the defendant in one of the Member States. In accordance with Art. 6 para. 1 of the Brussels I Recast, the only change refers to the extension of the appliance of Regulation on defendant residing outside the EU in the case of consumer and labor law disputes. For citizens of SEE countries residing outside the EU, previously stated means that the potential dispute in which the plaintiff is employee or consumer with domicile in EU, matters concerning exclusive jurisdiction[66] or

---

Union on the recast of the regulation "Brussels I": a new step forwards or backwards?", Globe Business Publishing Ltd, 2012).

64 M. Stanivuković, "Recasting Brussels I a Regulation and it's Impact upon Third Countries, in Particular Serbia", *Zbornik radova Pravnog fakulteta u Novom Sadu*, 2/2011, p. 93.

65 K. Takahashi, "Review of the Brussels I Regulation: A Comment from the Perspectives of Non-Member States (Third States)", *Journal of Private International Law*, Vol. 8 No. 1, 2012, p. 4.

66 Art. 24 para. 1 of the revised Regulation.

prorogation agreement in favor of a Member State,[67] if the same are found in the defendant's position, the jurisdiction of the court of a Member State shall be determined by the Brussels I Recast.

3.2. Joining proceedings

Brussels I Recast contains identical formulation to that of the Brussels 2001 regarding joining of procedures in case of multiple defendants.[68] Its specific function is to allow for the joining before a single court of closely connected claims over which several different courts would ordinarily be competent under the Regulation, where the only basis for joining of procedures is close connection between claims.[69] Related claims may be brought before a single court when they are "so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings", as ECJ held in *Kalfelis/Bankhaus Schröder*[70] case. Criticism of such solution is concerning unjustifiable exclusion of defendants from third countries, due to the possibility that other condition for establishing jurisdiction is being fulfilled. This solution threatens the position of the subjects within the EU, taking into account the risk of irreconcilable decisions is not consistently excluded.[71] The Commission Proposal did not make any substantial change, seeing that in the text of the revised Regulation requirement of defendant's domicile was not expelled in order to perform jurisdiction by attraction.

3.3. Prorogation agreements

Regret for not including the possibility of concluding prorogation agreements in favor of third States in the Brussels I Regulation recast. Given the general lack of provisions on the reflective effect of the rules of the Regulation, Art. 25 of Brussels I Recast could hardly be provided with direct

---

[67] Art. 25 of the revised Regulation.

[68] Art. 8 para. 1 (1) of the revised Regulation.

[69] H. Muir Watt, "Special jurisdictions", in U. Magnus/P.Mankowski, *Brussels I Regulation, European Commentaries on Private International Law*, München 2011, Art. 6, p. 238.

[70] ECJ, C-189/87, Kalfelis/Schroder, 1988, I-5565.

[71] J. Weber (fn. 52), p. 628.

reflective effect.[72] In this way, following the express wording of the mentioned article, it is still not possible to make a choice of court agreement in favor of a third State, given the provisions of Brussels I Recast. Therefore, the prorogation agreements in favor of third countries continue to be governed by national law of the Member States,[73] although the precise demarcation of the scope of the Brussels I Recast and the national legislation, regarding the various issues that may be raised in this respect, is not possible. It should be noted that room for partial reflective effect of provisions of the Regulation still exists, as will be elaborated hereafter, which is a possibility, but not the obligation for Member States.

Hence, when there is any basis, within the Regulation, for the jurisdiction of a Member State Court, such jurisdiction cannot be rejected, even if the circumstances of the case indicate that the exclusive jurisdiction of third countries exists.[74] However, the reflective effect of the Regulation provisions relating to the exclusive jurisdiction, prorogation of jurisdiction and *lis pendens* can be provided, but in a mitigated form, as English court did in the *Ferrexpo*[75] case. It is the so-called partial reflective effect in situations when the universal application of, above mentioned, Regulation provisions is in favor of a third county, and additionally national rules on jurisdiction, of the same third county, provide basis for establishing jurisdiction. *Ferrexpo* decision relates to the long-lasting dispute over ownership of the Ukrainian company between the English company, of the one part, and Swiss companies, of the other part. The dispute originally started in Ukraine, then continued in England, which took the opportunity to reconcile *common law principles*, according to which the Ukraine courts should be given priority, and the provisions of the Regulation, according to which there was obligation of establishing jurisdiction based on the defendant's domicile, regardless of the litigation originally initiated in the Ukraine. The stated decision is important to the issue of parallel proceedings including third countries, because it indicates the willingness of the English Court to provide

---

[72] *Ibid*., p. 630.

[73] J. Kropholler (fn. 34), Art. 23, p. 279; U. Magnus (fn. 34), Art. 27, p. 385.

[74] See more: M. Stanivuković (fn. 64), p. 99.

[75] Commercial Court, Ferrexpo AG/Gilson Investments Ltd & Ors [2012] EWHC 721; [2012]1 Lloyd's Rep. 588.

a reflective effect of the provisions of the Regulation on parallel proceedings in favor of third countries, namely Ukraine, considering the circumstances it was a matter of legal personality and registration in foreign public register.[76] This modified version of the reflective effect theory represents an attempt to prevent the absurd situation of universal application of the rules of the Regulation in favor of a third State, when there is no general basis for jurisdiction in Private International Law of that same country. [77]

3.4. Lis pendens

Completed reform of the Brussels I only gives answer to one question of reflective effect, namely when in international parallel proceedings the litigation first began before third county court. The Brussels I Recast provides the possibility of suspension of proceedings in favor of previously commenced proceedings before the court of the third State. This question had not been regulated by the Brussels I of 2001, therefore there were attempts to find a solution using the "reflective effect" of the provisions governing dual international parallel proceedings within the EU.[78] As one case of reflective effect will become a provision in force, there is a reasonable doubt whether the direct reflective effect may apply in the two other cases, the exclusive jurisdiction and the prorogation agreements.[79] In the Brussels I Recast, there is an explicit provision that allows court of a Member State to stay its proceedings, if the court of a third State is first seized regarding proceedings that involve the same cause of action and between the same parties (Art. 33, para. 1 of the Brussels I). The prerequisite for the stay of proceedings is that the Member State court has based its jurisdiction on provisions governing general jurisdiction (Art. 4 of the Brussels I) or one of the special jurisdiction stipulated in Art. 7-9 of Brussels I, excluding in that way the application of this provision in cases of exclusive jurisdiction, prorogation agreements as well as consumer contracts, individual contracts

---

[76] S. Trimmings/C. Sanderson, „The Impact of The English Court's Decision in FERREXPO AG v. Gilson Investment LTD, et al. in Parties Involved in Cross-Border Litigation", *Newsletter - TerraLex Practice Groups*, 2012, p. 7.

[77] See more in P. de Verneuil Smith, et al. (fn. 54), p. 397.

[78] R. Fentiman, "Lis pendens – related actions" in U. Magnus/P.Mankowski,*Brussels I Regulation, European Commentaries on Private International Law*, 2011, p. 557.

[79] J. Weber (fn. 52), p. 630.

on employment and matters relating to insurance. Additional requirement is that it can be expected that the judgment of the third Sate court can be entitled to recognition and possibly enforcement in the Member States, so that the stay of proceedings is necessary for the proper administration of justice (German: *geordnete Rechtspflege*). The condition of necessity for proper administration of justice introduces a discretionary right for a court of the Member State, which seems to be inspired by the *forum non conveniens* theory and thus sets up a regime for third countries which as such does not exist for cases within the EU.[80] Similar conditions are provided in new Art. 34 of the Brussels I Recast, according to which national courts may stay its proceedings associated with the proceedings before the court of the third State, if it would be appropriate to conduct joint proceedings and render a single decision for both lawsuits. Notwithstanding the stringent approach towards related proceedings before the courts of third States, Art. 33 and 34 of Brussels I represents a significant improvement in terms of coordination and cooperation with the third State courts.[81]

3.5. Recognition and enforcement of foreign judgments

With respect to the defendant outside the EU, the problem lies in the fact that the judgment based on exorbitant grounds of jurisdiction[82] has capacity to be recognized and enforced in another Member States under the liberal Brussels regime.[83] Therefore, if a Member State establishes its jurisdiction over the defendant residing in a third State on the basis of exorbitant rules, such judgment would, mainly without any major problems, be recognized and enforced in another Member State in accordance with the Regulation. This solution may be unfavorable for the defendant whose assets are suitable for enforcement and situated within the EU. At the same time, Member State courts may not establish its jurisdiction on such exorbitant rules against defendants residing in the EU, but only according to the Brussels I.[84] Since these rules are only applicable to the Member States, in the case of a third

---

[80] *Ibid.*, p. 636.

[81] M. Stanivuković (fn. 64), p. 100.

[82] These bases are contained in Annex I of the Regulation.

[83] K. Takahashi (fn 65), p. 1.

[84] Art. 3 para. 2 of the 2001 Brussels I Regulation.

country judgment, it will subject to regime of recognition and enforcement of foreign court judgments as governed by the national law of a Member State.[85]

The issue of recognition and enforcement of third country judgments did not found its place in the Commission's proposal for the reform of the Brussels I and therefore is not introduced in the adopted version of the Brussels I Recast. Uniform attitude on the EU level towards the third country judgments has been left for future reforms. This solution particularly affects countries in the region which continue to work towards full membership in the EU, but without the chance of having the privilege of free circulation of judgments prior to membership.

4. Conclusion

The Brussels I found a variety of ways to influence the rules on jurisdiction, recognition and enforcement of foreign judgments in civil and commercial matters in the SEE countries. Notwithstanding the fact that solutions contained in Brussels I were tailored for strengthening the mutual trust of the Member States and are therefore characterized by Europeanism instead of universalism, the regulation of special and exclusive jurisdiction, prorogation agreements, and partly procedural aspects of the recognition and enforcement of foreign judgments, inspired lawmakers in the region to accept these provisions during legislative reforms. Desire to increase the EU's confidence in the ability of national courts to apply the EU Law, as well as the quality and practical significance of solutions contained in the Brussels I have encouraged the CEFTA countries to draft the Sarajevo convention which has almost identical wording to that of the Brussels I. Therefore, the provisions of the Brussels I Regulation No. 44/2001 will continue to apply through the Lugano Convention as well as the Sarajevo Convention even after the Brussels I Regulation No. 1215/2012 comes into force. However, it is expected that both conventions will align with conducted reform over the

[85] Except for the obvious problem relating to the application of national recognition and enforcement regime, with all the requirements that national law provides, the position of the defendant from third countries is even worse since such judgment must be recognized in each Member State separately, according to the rules of that Member State, causing the costs and the time required for execution of the judgment to increase dramatically.

next few years, especially since the Sarajevo Convention contains explicit provision in the Protocol No. 3 regulating this issue. This creates an interesting situation where two identical regimes of jurisdiction, recognition and enforcement of foreign judgments will, separately from one another, apply between the Member States and the Lugano Convention signatories on the one hand, and the regional countries, aiming to join the EU, on the other hand, in a way that both regime contain unfavorable solutions for the other group of countries, as they are considered third states. Thus, the EU Member States shall have the opportunity to feel the "third side" of the Brussels regime on their own skin. Taking into account prolongation of pre-accession period, it seems that time has come for the EU to provide privileged relations with candidate countries in the area of freedom, security and justice through the SAA. The reform of the Brussels I Regulation has led to some improvements with regards to the status of citizens residing outside the EU, but leaving aside the *lis pendens* solution, progress still remains modest. Thereby, the complex issues of reflective effect of provisions on exclusive jurisdiction and prorogation agreements, as well as the problem of delimitation between the Brussels I and national legislations will, in form of many questions, arise for the citizens of the SAA before the national courts applying the Sarajevo Convention, as well as the Member States courts and signatories of Lugano convention. The first reform of the Brussels I Regulation has shown that one should not have too high expectations concerning future changes, because the changing of EU legislation does not fight only against the tradition of national legislation, but the tradition of its own legal acts as well.