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Editorial Comments and Guidelines for Contributors

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The Approaches of the European Court of Justice and the English Courts to Parallel Proceedings in Different States Where the Matter Falls within the Scope of the Brussels Regulation I

Ojibara Hameenat Bukola*

1. Introduction

This essay shows a critical assessment of the European regime under the Brussels I Regulation. It unfolds the evolution of the regime thereby giving an insight into the Brussels I Regulation; stating its development, framework, aims and objectives, scope, merits and achievements. Furthermore, it discusses the principle of parallel proceedings and how it is dealt with mainly by Articles 27-30 of the Regulation and the approaches of the European Court of Justice and the English courts. This is followed by a summation of facts encouraging the implementation of the regime.

2. Origin & Structure of the Brussels Regulation

The Brussels I Regulation (Council Regulation (EC)) No 44/2001 of 22 December 2000 on jurisdiction and the enforcement of judgments in civil and commercial matters) came into force on 1 March 2002 as a replacement of the Brussels Convention of 1968. It directly applies in all the EC Member States with the exception of Denmark.¹ The Regulation is one of a number of measures relating to judicial co-operation in civil matters having cross-border implications which are necessary for the sound operation of the internal market. Such measures fall within the wider objective the community has itself of establishing an area of freedom, security and justice, in which the free movement of persons is ensured.² It is based on the recommendations of a working party that was set up to consider reform of the Brussels and Lugano Conventions.³ The Brussels Convention though has been replaced mostly by the Brussels Regulation; it still applies in some Member States. The Brussels I Regulation is also known as the 'Judgments Regulation'.

The Brussels I Regulation is divided into three chapters; the first defines its scope; the second regulates jurisdiction; the third covers recognition and enforcement of judgments. The Regulation applies to matters within its scope and Article 1 is designed to deal with the scope of the Regulation and declares that "this Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend to revenue, customs or administrative matters." Other matters excluded from the Regulation's scope are matters relating to the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills or succession; bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings; social security; and arbitration.⁴ Questions of interpretation under the Brussels I Regulation may be referred to the Court of Justice in accordance with the terms of article 234 of the Treaty establishing the European community.⁵ This is done to enable the just disposal of proceedings where a ruling is based on the interpretation of the Regulation and there is no other judicial remedy.

3. Aims and Objectives of the Brussels Regulation

The primary objective of the Regulation is to facilitate the free flow of judgments between the member states. However, within the framework of the Regulation, cases may arise where the courts of

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¹ Cheshire, North & Fawcett, *Private International Law* (14th edn, OUP, Oxford, 2008) 204-205

² *Ibid.*

³ C.M.V. Clarkson & Jonathan Hill, *The Conflict of Laws* (3rd edn, OUP, Oxford, 2006) 55.

⁴ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of civil and commercial matters [2001] OJ L12/3.

⁵ C.M.V. Clarkson & Jonathan Hill, *The Conflict of Laws* (3rd edn, OUP, Oxford, 2006) 55.

more than one member state have jurisdiction. A list of these instances can be found in Articles 5-8 of the Regulation and are hereby discussed; for example, in a dispute arising out of a contractual obligation, proceedings may be brought either in the member state in which the defendant is domiciled (under article 2) or in a court of the place of performance of the obligation in question (under article 5(1)). Article 6(1) permits a defendant in a tortious claim to be sued in the place where the harmful event occurred.

Article 6(1) allows for co-defendants to be sued in courts where any one of them is domiciled, provided the claims against them are closely connected. Article 7 allows for special rules relating to liability from the use or operation of a ship. Also there are special rules in cases relating to insurance, consumers contract and employment. Similarly, as a defendant may be in more than one member state, more than one court may have general jurisdiction under article 2. As a result, the courts of different member states may issue conflicting judgments on the same or related questions in which the free flow of judgments is impeded.

Accordingly, the regulation contains provisions which are designed to reduce the possibility of such conflicts; addressed in Section 9 of Chapter II (articles 27 to 30) of the Regulation. The Brussels Regulation⁷ draws a distinction between two types of situation. First, there are cases within article 27 concerning parallel proceedings or *lis pendens* - where the same parties are involved in litigation on the same issue in two or more member states. Secondly, article 28 deals with situations where proceedings are being pursued in two or more member states. The general approach of the regulation is to give precedence to the court 'first seised'; Article 29 provides that where proceedings fall within the exclusive jurisdiction of the court of more than one member state, any court other than the one first seised is required to decline jurisdiction.⁸ The Regulation lays down a uniform rule for determining the court at which a court is deemed to be seised.⁹ As a general rule, a court is seised when the document instituting the proceedings is lodged with the court; however, the court will not be regarded as having been seised at this time if the claimant subsequently fails to take the steps required to have service effected on the defendant- Article 30(1).¹⁰

4. Parallel Proceedings and the Application of the Regulation

The term Parallel proceeding is used interchangeably as Concurrent proceeding or *lis pendens*. The principle of *lis alibi pendens* (Latin for "dispute elsewhere pending") applies to municipal law, public international law, and private international law to address the problem of potentially contradictory judgments. If two courts were to hear the same dispute, it is possible they would give inconsistent decisions. To avoid the problem, there are two rules. *Res judicata* provides that once a case has been determined, it produces a judgment either *inter partes* or *in rem* depending on the nature of the dispute, i.e. although there can be an appeal on its merits, neither party can re-litigate the matter of the dispute. If this rule were not in place, then litigation on the same set of facts in another court. If this rule were not in place, then litigation on the same set of facts in another court would never come to an end.

The second rule is that proceedings on the same facts cannot be commenced in the second court if the *lis* i.e. action, is already *pendens*, i.e. pending, in another court. *Lis alibi pendens* is a principle of international comity and it permits a court to refuse to exercise jurisdiction when there is already litigation pending in another state.¹¹ Article 27 provides:

"Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member states, any

⁶ Council Regulation (EC) No 44/2001 of 22 December 2000

⁷ Council Regulation (EC) No 44/2001 of 22 December 2000

⁸ C.M.V. Clarkson & Jonathan Hill, *The Conflict of Laws* (3rd edn, OUP, Oxford, 2006) 97.

⁹ Mance [2004] 120 I.Q.Rev 357, 360

¹⁰ C.M.V. Clarkson & Jonathan Hill, *The Conflict of Laws* (3rd edn, OUP, Oxford, 2006) 98.

¹¹ Ekaterina Ivanova, "Choice of Court Clauses and *Lis Pendens* under Brussels I Regulation", *Utrecht Journal of International and European law* <http://www.merkourios.org/index.php/mj/article/view/2/10> accessed 20/10/2013.

court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court".¹²

Where there are parallel proceedings in different states, there is an obvious need for a provision to deal with the problems of forum shopping, concurrent proceedings and conflicting judgments in the courts of different member states.¹³ Whilst Article 27 is limited to concurrent proceedings in Member states, it should be noted that it is not limited to proceedings under the bases of jurisdiction set out in the Regulation. Article 27 will apply where proceedings involving the same cause of action and parties have been commenced in two member states under their traditional rules on jurisdiction (the bases of jurisdiction under the Regulation being inapplicable).¹⁴ The Court of Justice following a reference from the Court of Appeal held in *Overseas Union Insurance Ltd v New Hampshire Co*¹⁵ that there is no requirement that either party be domiciled in a Member state.¹⁶ Of course for Article 27 to apply, the proceedings have to be within the scope of the regulation.¹⁷ It should be noted that Article 27 is a purely mechanical rule. The court of the Member state first seised of the matter takes priority, and any court of another member state must of its own motion decline jurisdiction, once the jurisdiction of the court first seised is established in that state. The court seised second normally cannot examine the jurisdiction of the court first seised. This is so even when the court "seised second" has Article 23 exclusive jurisdiction. There is no discretion given to the courts of either Member state as to whether they should take jurisdiction.¹⁸ However, a mechanical rule tends to produce certainty which is an attribute of Article 27 of the Brussels I Regulation. The elements of Article 27 i.e. the proceeding must possess the same cause of action and the same parties shall be discussed in the subsequent paragraphs.

The same cause of action and the same subject-matter (object). The cause of action refers to the 'facts and the rule of law relied on as the basis of the action'.¹⁹ Parallel proceedings have the same object where, for example, the question whether a contract is binding lies at the heart of the two sets of proceedings or where the issue of liability is central to both sets of proceedings. To determine whether the two claims pending before the courts of two member states have the same subject-matter, the court should take into account only the claims of the two claimants, to the exclusion of the defence submissions raised by the defendants.²⁰ Parallel proceedings involve the same cause of action where they are both based on the same contractual relationship or where the same facts and the same rule of law are relied on as the basis of each claim. So, a contractual claim cannot involve the same cause of action as a tortious claim even if both claims arise out of the same overall factual situation.²¹ Similarly, an application for provisional measures in one member state (under article 31) does not involve the same cause of action as substantive proceedings in another member state.²²

In *Gubisch Maschinenfabrik KG v. Palumbo*,²³ a German 'seller' started proceedings in Germany against an Italian 'buyer' to enforce the terms of a disputed contract and the 'buyer' subsequently started proceedings in Italy with a view to obtaining a declaration that the alleged contract was not binding on him. The Court of Justice ruled that the conditions of what is now article 27 were satisfied and that the

¹² Council Regulation (EC) No 44/2001 of 22 December 2000, OJ L12/9.

¹³ Case 42/76 *De Wolf v Cox* [1976] ECR 1759.

¹⁴ Articles 3 and 4.

¹⁵ [1991] E.C.R. I-3317

¹⁶ Case C- 351/89 [1992] I QB 434.

¹⁷ *Toepfer v. Societe Cargill* [1998] 1 Lloyd's Rep 379, CA.

¹⁸ Cheshire, North & Fawcett, *Private International Law* (14th edn, OUP, Oxford, 2008) 305.

¹⁹ Case C-406/92 *The Owners of the Cargo Lately Laden on Board the Ship Tatry v. The Owners of the Ship Maceij Rataj* [1994] ECR I-543; [1999] QB 515.

²⁰ C-111/01 *Gantner Electric GmbH v Basch Exploitatie Maatschappij BV* [2003] ECR I-4207 (Para 26).

²¹ *Bank of Tokyo-Mitsubishi v. Baskan Gida Sanayi Ve Pazarlama* [2004] 2 Lloyd's Rep 395.

²² C.M.V Clarkson & Jonathan Hill, *The Conflict of Laws* (3rd ed., Oxford University Press, Oxford, 2006) 99.

²³ Case 144/86 (1987) ECR 4861.

Italian court was required to decline jurisdiction. Had the Italian proceedings been commenced first, however, the German court would have had to decline jurisdiction. Article 27 lays down a strict 'first come, first served' rule; it makes no difference whether the proceedings in the court first seised involve a positive claim by A to establish the liability of B or a claim for a declaration of non-liability of B against A.²⁴

It is not necessary that the cause of action should be absolutely 'identical': so proceedings for specific performance of a contract may be regarded as based on the same cause of action as proceedings seeking the annulment of the relevant contract. Actions *in personam* and *in rem* may be related as resting on the same cause of action if the subject matter and object of the proceedings do in fact coincide.²⁵ On the other hand, an action for infringement of a trade mark and an action for passing off have been held not to be the same cause of action.²⁶

The Second element says that parties in the proceeding should be the same. The two sets of proceedings must be between the same parties. The European Court of Justice in *Overseas Union Insurance Ltd. v New Hampshire Insurance Co.*²⁷ that Article 27 applies to all proceedings commenced in the courts of the European Union regardless of the habitual residence or domicile of the parties. Article provides for the court first seised to have priority in the same cause of action between the same parties without giving a second court the right to examine the first court's grounds for accepting jurisdiction with Article 27(2) imposing a mandatory duty on the second court to decline any jurisdiction unless the first court determines not to accept jurisdiction. This places a duty on the first court to make the decision expeditiously.²⁸

In *Turner v. Grovit*,²⁹ an English court being the first court seised, issued an injunction to restrain one of the parties from pursuing the proceedings they had commenced in Spain. Even where the defendant is acting in bad faith with the intention of frustrating the existing proceedings, the issue of an injunction was inconsistent with the Regulation.³⁰

Article 27 raises difficult questions in multi party cases where the interests of different parties overlap. In any particular situation it may be difficult to determine whether or not the interests of the parties are congruent.³¹ However in multi-party actions, the subsequent court is obliged to decline jurisdiction between the same parties, i.e. new parties may intervene and be heard in subsequent proceedings. But the courts are careful to look at the substance of the relationship between each set of parties. Thus, because an insurer has the right to use subrogation, the insurer and the insured would be considered the same person since they are both interested in achieving the same outcome. Similarly, a wholly owned subsidiary company is the same as its parent.³²

Article 28 is designed to deal with situations not falling within the strict confines of article 27.³³ Article 28(1) provides:

"Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings".

²⁴ Case C-406/92 *Owners of the cargo lately laden on board the ship Tatry v. Owners of the ship Maceij Rataj* [1994] ECR I-5439.

²⁵ C-406/92 *The Tatry* [1994] ECR I-5439.

²⁶ David McClean & Kisch Beevers, Morris: *The Conflict of Laws* (7th edn, Sweet and Maxwell, London, 2009) 103-104.

²⁷ Case C-351/89 *Overseas Union Insurance v New Hampshire Insurance Co* [1991] E.C.R. I-3317.

²⁸ Ekaterina Ivanova, "Choice of Court Clauses and *Lis Pendens* under Brussels I Regulation", *Utrecht Journal of international and European law*, <http://www.merkourios.org/index.php/mj/article/view/2/10> accessed 26 March 2013.

²⁹ C-159/02 [2005] 1 AC 101 at [32].

³⁰ Fentiman, in Nuyts/Watte (eds.), *International Civil Litigation in Europe & relations with Third States* (2005), p.83, 127

³¹ C.M.V. Clarkson & Jonathan Hill, *The Conflict of Laws* (3rd edn, OUP, Oxford, 2006) 100.

³² http://en.wikipedia.org/wiki/Lis_alibi_pendens accessed 4 November 2009.

³³ C.M.V. Clarkson & Jonathan Hill, *The Conflict of Laws* (3rd edn, OUP, Oxford, 2006) 102.

There is also the power under Article 28(2) for the court seised second to decline jurisdiction if the court first seised has jurisdiction over the related actions in question and the law permits its consolidation thereof.³⁴ Also, on the application of one of the parties, the court second seised may decline jurisdiction if both actions are pending at first instance and, under the law of the court first seised, the two actions can be consolidated.³⁵

Related actions are defined as ones which are so closely connected that it is expedient to hear them together to avoid irreconcilable judgments from separate proceedings³⁶ in courts of different Member States.³⁷

The Court of Justice has held that this definition must be broadly interpreted³⁸ and covers all cases where there is a risk of conflicting decisions, even if, because the parties are different, the judgments can be separately enforced and their legal consequences are not mutually exclusive. The concern is to prevent conflicting judgments, albeit only as regards their reasoning, and the court second seised should be able to use Article 28 whenever it considers that the reasoning of the court first seised may concern issues likely to be relevant to its own decision.³⁹ The House of Lords applied these principles in *Sarrio SA v. Kuwait Investment Authority*⁴⁰ and, reversing the decision of the Court of Appeal,⁴¹ held that no distinction is to be drawn between the primary or essential issues necessary to establish a cause of action and other matters not essential to the court's conclusion.⁴² Whether actions pending in different courts are related should not turn on a sophisticated and different exercise of legal analysis; rather there should be a broad commonsense approach to whether the actions in question are related.⁴³

In principle, when the court is considering whether or not to stay proceedings under article 28, the degree of risk of irreconcilable judgments should be the major factor. However, the appropriateness of the competing fora is also a factor which may be taken into account. Where the court second seised has jurisdiction by virtue of the parties' agreement, that court may exercise its discretion against granting a stay under article 28 (thereby upholding the agreement).⁴⁴ The court may also consider matters such as the extent of the relatedness, the stage reached in each set of proceedings and the proximity of each Court to the subject matter of the case. This involves considerations of *forum non conveniens*.⁴⁵

Article 28 is concerned with situations that fall outside Article 27, i.e. the cause of action and subject matter, or the parties, or even both will not be the same. There is no risk of irreconcilable judgments if there is no intention of pursuing the proceedings, commenced in two different Member States, anywhere other than in one Member State, or if one set of proceedings has been definitely terminated, or if one action is for provisional measures and the other is as to the merits. It is not permissible to examine whether the courts of another Member State have exercised properly their jurisdiction under the Regulation when determining whether actions are related. It seems to be implicit from the part of the definition of related actions that refers to it being expedient to hear the two actions together that the court first seised is able to try both actions together, not just in relation to Article 28(2), which makes this an express requirement, but also in relation to Article 28(1); where this is not the case the action cannot come within Article 28. At the same time it is important to note that Article 28 itself

³⁴ Cheshire, North & Fawcett, *Private International Law* (14th edn, OUP, Oxford, 2008) 312-313.

³⁵ Article 28(2).

³⁶ Article 28(3).

³⁷ Cheshire, North & Fawcett, *Private International Law* (14th edn, OUP, Oxford, 2008) 313.

³⁸ Case C-406/92 *The Owners of the Cargo Lately Laden on Board the Ship Tatry v. The Owners of the Ship Maceij Rajaj* [1994] ECR I-543; [1999] QB 515.

³⁹ Cheshire, North & Fawcett, *Private International Law* (14th edn, OUP, Oxford, 2008) 312-313.

⁴⁰ [1999] 1 AC 32.

⁴¹ [1997] 1 Lloyd's Rep 113.

⁴² Cheshire, North & Fawcett, *Private International Law* (14th edn, OUP, Oxford, 2008) 313.

⁴³ *Sarrio SA v. Kuwait Investment Authority* [1999] 1 AC 32 at 40-1 (Lord Saville).

⁴⁴ *JP Morgan v. Primacom* [2005] 2 All ER (comm.) 764; C.M.V. Clarkson & Jonathan Hill, *The Conflict of Laws* (3rd edn, OUP, Oxford, 2006) 103.

⁴⁵ *The Spikale* [1986] A.C. 460 (H.L.); Cheshire, North & Fawcett, *Private International Law* (14th edn, OUP, Oxford, 2008) 315.

does not confer jurisdiction.⁴⁶ In particular, it does not accord jurisdiction to a court of a member State to try an action which is related to another action in respect of which it has jurisdiction under the Regulation.⁴⁷ It also does not expand jurisdiction of the court first seised to stay proceedings in a situation in which it has prima facie jurisdiction. For example, where A sues B in France and C sues B in England. If the English court grants a stay under article 28 on the basis that the English proceedings are related to the earlier French proceedings, the fact that the English court has granted a stay does not thereby confer jurisdiction on the French court in relation to C's claim against A.⁴⁸

Article 29 provides for conflicts of exclusive jurisdiction. Where two courts have exclusive jurisdiction regardless of domicile, Article 29 provides that the court seised second must decline jurisdiction in place of the first court. Although a court with jurisdiction is said by Article 23 to have exclusive jurisdiction.⁴⁹ Under Article 16 some courts are granted exclusive jurisdiction over a cause, e.g. under Article 16(4) the courts of the place of registration of patent have exclusive jurisdiction on issues of validity and infringement, but if a party has already commenced proceedings in another state, Article 27(2) obliges the second court to dismiss the second suit.⁵⁰

The new Article 30 seeks to introduce an autonomous interpretation of the concept of 'seisin'. The original rule identified the time of commencement by reference to the local rules in each Member State. This could lead to difficulties when a second state had different rules as to when an action commenced because it might allow a second action to overtake the first on a technicality (e.g. in some states the rule was that an action had not commenced until it was served, whereas others held that an action commenced on the day the pleadings were lodged or registered in the court office. The new Article 30 now provides that an action commences when the plaintiff/claimant takes the necessary steps to continue the proceedings which will usually be service and the system will, for the most part, avoid unfairness.⁵¹

5. The European Court of Justice & the English Courts

The approach of the European court of Justice and the English courts⁵² are different where the matter falls under exclusive jurisdiction article 22⁵³ and parallel proceedings under article 27.

The European court of Justice fully applies the provision of article 27 and stressed in *Overseas Union Insurance Ltd v. New Hampshire Insurance Co.*,⁵⁴ in no case is the court second seised in a better position to determine whether the latter has jurisdiction: either the jurisdiction of the court first seised is determined directly by the Brussels I Regulation (which is common to both member states) or derived by virtue of article 4, from the traditional rules of the state of the court first seised.⁵⁵ The English High Court decision in *JP Morgan v. Primacom*⁵⁶ demonstrates that *Lis alibi pendens* has crystallised a legal framework within the EC⁵⁷ and raises a controversy whether article 23 should prevail over article 27. In *Continental Bank NA v. Aeakos Compania Naviera SA*⁵⁸ the Court of Appeal considered that jurisdiction derived from the parties' agreement takes precedence over the provisions relating to parallel and related

⁴⁶ Fentiman, in Nuyts/Watte (eds), *International Civil Litigation in Europe & relations with Third States* (2005), p. 157.

⁴⁷ Cheshire, North & Fawcett, *Private International Law* (14th edn, OUP, Oxford, 2008) 314.

⁴⁸ C.M.V. Clarkson & Jonathan Hill, *The Conflict of Laws* (3rd edn, OUP, Oxford, 2006) 103.

⁴⁹ Adrian Briggs, *The Conflict of Laws* (2nd edn, OUP, Unites States) 89.

⁵⁰ Harris Jonathan, *The Brussels I Regulation and the Re-Emergence of the English Common Law*, *The European Legal Forum* (E) 4-2008, 181-189.

⁵¹ Mayer Brown, *Cross Border issues & disputes: Jurisdiction, forum selection and parallel proceedings*. <http://www.mayerbrown.com/files/Publication/Cross-Border-Issues-Vol1.pdf>.

⁵² The Kribi. [2001] 1 Lloyd's Rep. 76 (Q.B.D, Aikens.J)

⁵³ Council Regulation (EC) No 44/2001 of 22 December 2000, OJ L12/9

⁵⁴ Case C-351 [1991] ECR I-3317.

⁵⁵ C.M.V. Clarkson & Jonathan Hill, *The Conflict of Laws* (3rd edn, OUP, Oxford, 2006) 101.

⁵⁶ [2005] 2 All ER (Comm.) 764.

⁵⁷ <http://conflictoflaws.net/2009/brussels-i-review-choice-of-court-agreements/> accessed 7 December 2009.

⁵⁸ [1994] 1 WLR 588.

proceedings. This was a widely criticised decision as it was inconsistent with the principle laid down by the Court of Justice in the *Overseas Union Insurance case*.⁵⁹

The European Court of Justice's decision in *Erich Gasser GmbH v. Misat Srl*⁶⁰ confirms that the *lis alibi pendens* provision in the Brussels I regime cannot be excluded or overridden by a choice of court agreement.

The European regime under the Brussels Regulation I, is worthy of emulation as a result of its proven ability and accomplishments. The Regime established by the Regulation is founded upon a principle of "mutual trust [between Member states] in the administration of justice" in each other's jurisdictions. This mutual trust allows for the recognition and enforcement of judgment automatically without the need for procedure or a perusal of the merit of the case except in cases of dispute. Thus, aids a rapid and efficient enforcement of judgment.

The Regime aims at facilitating the sound administration of justice⁶¹ through a system of highly predictable jurisdictional rules which are generally based on the defendant's domicile. This serves as a protection for the weaker party especially in relation to insurance, consumer contracts and employment by rules of jurisdiction which are familiar and favourable to his interests.

The Regulation currently includes in Articles 33-37⁶² a number of safeguards designed to protect the defendant's interests under certain circumstances. Thus, for example, judgments from another Member State will not be recognised where this would be manifestly contrary to public policy in the State in which recognition is sought, or where the judgment was given in default of appearance and the defendant has not been served with the claim documentation in time to enable him to arrange for his defence, unless it was possible for him to challenge the judgment in the State giving it.

The Regulation has promoted the harmonious administration of justice in Member States by minimising the possibility of concurrent proceedings and ensuring that irreconcilable judgments are not given on the same facts from differing jurisdictions. There is a clear and effective mechanism under Article 27-30 for *lis pendens* and related actions and also, laid down uniform rules to settle conflicts of jurisdiction and facilitates the mutual recognition and enforcement of judgments, court settlements and authentic instruments within the EU in civil and commercial matters.

A further interesting development lies in the application of Article 6 which provides for multi-party proceedings and allows a person domiciled in a Member State to be sued in the state of any one of the defendants so long as there is a real connection between the cause of action and that state.

6. Conclusion

A cursory look at the justification of the major provisions of the Brussels Regulation especially that of Article 6 where an action involving many defendants and states can be consolidated and a single judgment enforced in all the relevant states; is one of efficiency. It has helped to save costs and time in which some Member States are now issuing cross-border injunctions in Intellectual Property (IP) disputes also.⁶³

The Regulation is a highly successful instrument, which has facilitated cross-border litigation and the free movement of persons in Member States through an efficient system of judicial cooperation based on comprehensive and common jurisdiction rules. It also promotes the coordination of parallel proceedings and provides rules to ensure the circulation of irreconcilable judgments within Member States.

⁵⁹ C.M.V. Clarkson & Jonathan Hill, *The Conflict of Laws* (3rd edn, OUP, Oxford, 2006) 101.

⁶⁰ Case C-116/02 [2004] ILPr 132.

⁶¹ *Golder v United Kingdom* [1979] 1 EHRR 524 para. 36

⁶² Council Regulation (EC) No 44/2001 of 22 December 2000, OJ L12/9

⁶³ http://en.brussels.org/wiki/Lis_alibi_pendens accessed 4 November 2009.