As business becomes more and more international, law of jurisdiction and enforcement of foreign judgments is of growing importance. This article provides an overview of the law of jurisdiction and enforcement of foreign judgments in the EU and Germany.

EU and German Law of Jurisdiction and Enforcement of Foreign Judgments

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As business becomes more and more international, law of jurisdiction and enforcement of foreign judgments is of growing importance. In the European Union ("EU") these areas of law are regulated by the Brussels I Regulation ("Brussels I").\(^1\) In cases without an EU cross-border dimension national law applies. In Germany the German Code of Civil Procedure (Zivilprozessordnung – "ZPO") is applicable. This article provides an overview of the law of jurisdiction and enforcement in the EU and Germany.

1. Sources of Law

On the EU level law of jurisdiction and enforcement of foreign judgments is regulated by the Brussels I Regulation in civil and commercial matters.\(^2\) EU regulations are directly applicable in all EU member states. In Germany, the ZPO is the main source of law regulating jurisdiction and enforcement of foreign judgments. Besides that, particular national provisions regarding family law exist.

The relationship between the different sources of law in the EU is based on a central principle: the primacy of EU law over national law. As a consequence, in case of prevailing EU law national law is not applicable.

In addition to EU regulations and national law, international conventions constitute a further source of law regarding jurisdiction and enforcement of foreign judgments. For example the Lugano Convention of 30 October 2007 regulates the law of jurisdiction and enforcement of judgments in civil and commercial matters for Iceland, Norway and Switzerland (the "EFTA" states, except for Liechtenstein).\(^3\) For the EU the Lugano Convention has lost significance since it has been replaced by the "Brussels I Regulation".\(^4\)

1.1 Law of jurisdiction and enforcement of foreign judgments under the Brussels I Regulation

The Brussels I Regulation entered into force on 1 March 2002 replacing the Brussels Convention of 1968. It is binding to all EU member states, since 2007 also to Denmark. It provides an EU wide approach with regard to jurisdiction, recognition and enforcement of judgments in civil and commercial matters.\(^5\) The Regulation requires a cross-
border dimension as an unwritten prerequisite. It is therefore not applicable to mere domestic disputes. It has to be noted that also claimants from non-EU countries can refer to it, that means for example also claimants from the US. The European Court of Justice is competent to interpret the Brussels I Regulation.

Chapter 2 of the Brussels I Regulation contains rules with regard to jurisdiction. The Brussels I Regulation differentiates between the general, the special and the exclusive jurisdiction. Art. 2 para. 1 Brussels I Regulation provides for the general jurisdiction, the so-called "Golden Rule" of the Regulation. It stipulates that persons domiciled in an EU member state shall be sued in the courts of that member state, irrespective of his or her nationality.\(^6\)

Article 5 regulates the special jurisdiction. In contractual matters Art. 5 No. 1 stipulates that a person domiciled in a member state may be sued in another member state in the courts for the place of performance of the obligation in question. Furthermore, in tort matters according to Art. 5 No. 3 a person domiciled in a member state may be sued in the courts for the place where the harmful event occurred or may occur. As a rule, the plaintiff is entitled to choose between the general jurisdiction and the special jurisdictions.

Article 22 contains a list of cases which fall under the exclusive jurisdiction. In the cases explicitly listed in Art. 22 the courts of one member state with the closest connection to the case shall have jurisdiction, for example in cases concerning immovables. Accordingly, Art. 22 No. 1 of the Brussels I Regulation stipulates that the courts of the member states in which the property is situated shall have jurisdiction. As a general principle, exclusive jurisdiction precedes both the general and the special jurisdiction. Finally, Art. 23 of the Brussels I Regulation contains rules with regard to prorogation of jurisdiction. In this case, according to Art. 23 para. 1 sentence 2 such jurisdiction shall be exclusive unless the parties have agreed otherwise. It has to be noted that prorogation is not allowed in cases of exclusive jurisdiction.

Regarding the enforcement of judgments rendered in an EU member state in another member state the Brussels I Regulation differentiates between recognition and enforcement of judgments. According to Art. 33 Brussels I Regulation recognition of foreign judgments takes place without a special procedure being required ("ipso iure"). However, Art. 34 and 35 provide for certain exceptions. Art. 34 No.1 for example states that a judgement shall not be recognised if such recognition is manifestly contrary to public policy in the member state in which recognition is sought (so-called "ordre public clause"). Besides that, under the Brussels I Regulation a judgment shall not be recognised if it was rendered violating a party's right to be heard (Art. 34 No.1) or if it is irreconcilable with earlier decisions given between the same parties (Art. 34 No. 3 and 4).

Art. 38 to 42 of the Brussels I Regulation provide for rules regarding the enforcement of judgements. Enforcement in the first place requires an application of enforceability (so-called "exequatur procedure"). As a

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\(^6\) By contrast, Art. 22 of the Brussels I Regulation is applicable irrespective of the parties' residence (e.g. regarding immovables).
prerequisite for the declaration of enforceability the respective judgment must be at least provisionally enforceable. After the declaration of enforceability has been issued, the judgment may be enforced just like a domestic judgement. The enforcement itself is taking place pursuant to the domestic laws of the executing state.

1.2 Law of jurisdiction and enforcement of foreign judgments under the German ZPO

The scope of application of the ZPO remains in all cases, without a cross-border dimension. Sec. 12 to 34 ZPO contain rules with regard to local jurisdiction. However, the German Federal Court of Justice (Bundesgerichtshof – "BGH") recognizes the "double functionality" of the local jurisdiction, indicating the international jurisdiction.

Like the Brussels I Regulation the ZPO differentiates between general, special and exclusive jurisdiction. The general jurisdiction is regulated in Sec. 12 et seq. ZPO. Sec. 12 ZPO stipulates that the court within the jurisdiction of which a person has his general venue is competent for all actions that may be brought against that person, unless an exclusive venue has been established for court actions. According to Sec. 13 ZPO the general venue of a person is determined by his place of residence and according to Sec. 17 ZPO for legal persons by their registered seat.

The special jurisdiction is regulated by several provisions. According to Sec. 21 ZPO for example, all actions relating to the operation of the place of business may be brought against that person at the court of the location at which the place of business is situate. Furthermore, Sec. 23 ZPO stipulates that for actions relating to property law brought against a person who has no place of residence in Germany the court shall be competent in the jurisdiction of which assets belonging to that person are located. For disputes arising from a contractual relationship according to Sec. 29 ZPO the court of that location shall have jurisdiction at place of performance. For tortious acts Sec. 32 ZPO stipulates that the court in the jurisdiction of which the tortious act was committed shall have jurisdiction. Plaintiffs shall be allowed to select among several general and special jurisdictions (Sec. 35 ZPO). On the other hand, e.g. Sec. 24 and 29a ZPO regulate exclusive jurisdiction in legal disputes concerning immovables. In both cases, the court where the immovable is located may be competent (so-called "forum rei sitae"). Sec. 38 refers to prorogation of jurisdiction.

As regards enforcement of foreign judgments, the German ZPO applies to cases without an EU cross-border dimension. Under the ZPO foreign judgments in civil and commercial matters are automatically recognized without special proceedings being necessary, save one of the exceptions stipulated in Sec. 328 ZPO applies. Sec. 328 No. 4 ZPO contains the so-called "public policy clause" according to which recognition of a judgment handed down by a foreign court shall be ruled out if the recognition of the judgment would lead to a result which is obviously incompatible with essential principles of German law, and in particular if the recognition is not compatible with fundamental rights. For example, according to the German Federal Court of Justice (BGH), US American judgments granting punitive damages fall under this clause. However, the part of the judgment granting compensatory damages remains
According to Sec. 722 para. 1 ZPO enforcement of a foreign judgment requires that enforcement is ruled admissible by a judgment for enforcement. An application has to be filed with the German Local or District Court at the debtor's general place of jurisdiction. Under Sec. 723 para. 1 ZPO the judgment for enforcement is to be delivered without a review of the decision's legality is performed. Under the German ZPO a so-called "révision au fond" does not take place. However, according to Sec. 723 para. 2 sentence 2 ZPO the judgment for enforcement is not to be delivered if the recognition of the judgment is ruled out pursuant to Sec. 328 ZPO which contains exceptions similar to Art. 34 of the Brussels I Regulation.

2. Recent developments

In December 2010 the European Commission published a proposal for a recast of the Brussels I Regulation.\(^7\) This proposal suggested several very innovative changes to the Brussels I Regulation, i.a. the abolishment of the exequatur proceedings and the general extension of its rules on jurisdiction to non-EU defendants. In June 2012 the Council of the European Union adopted a "general approach" adding changes to the text of the Commission's recast proposal. Especially the Commission's proposal to generally extend the Brussels I Regulation's rules on jurisdiction also to non-EU defendants was not supported by the Council. As a next step, the European Parliament is expected to review the Council's "general approach".

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