

**Regulation Brussels Ia: a standard for free circulation of judgments and mutual trust in the European Union  
(JUDGTRUST)**

***Scope of application ratione materiae: excluded matters of insolvency and of arbitration***

**Antonio Leandro**

Associate Professor of International Law

University of Bari Aldo Moro

21 April 2022

- Brussels Ia and insolvency matter: “expressed” need for coordination
  - ✓ where to look at for rightly shaping the insolvency exception
  - ✓ rethinking the Brussels Ia and the EIR scope in the era of pre-insolvency/preventive restructuring proceedings

- Brussels Ia and arbitration: the “unexpressed” need for coordination
  - ✓ the “non-intervention” in arbitration “affairs”:  
Recital 12
  - ✓ the coordination between legal sources, procedures and related deliverables: Article 73 (2)
  - ✓ efficient coordination and role of national tools against the backdrop of the equivalence between arbitration and court proceedings

## BRUSSELS IA AND INSOLVENCY

- Brussels Ia provides for an insolvency exception (Art. 1(2)(b)) ... the EIR requires interpreter to avoid regulatory loopholes with Brussels Ia (Recital (7)) ...
- ... the EIR relies on Brussels Ia as to certain jurisdictional topics (Art. 6 (2)) and the enforcement of judgments (Art. 32) ...
- **Brussels Ia + EIR:** scope delimitation and regulatory coordination so as for courts, creditors, debtors, insolvency practitioners and third parties to count on a certain and foreseeable framework when it comes to financial/commercial distresses.

## **Where to look at for rightly shaping the insolvency exception: Brussels Ia, EIR ... and/or beyond?**

- A) Proceedings
  - Rethinking the Brussels Ia scope in the era of pre-insolvency/preventive restructuring proceedings
  - Insolvency exception and Directive (EU) 2019/1023 on restructuring and insolvency

## Where to look at for rightly shaping the insolvency exception: Brussels Ia, EIR ... and/or beyond?

- B) Insolvency-related actions
  - ✓ From *Gourdain* onwards paying attention to the legal basis of the action ... i.e. to the *lex concursus*
  - ✓ Rethinking the insolvency exception also for the sake of the EIR *forum connexitatis* (Art 6)

# BRUSSELS IA AND ARBITRATION

- Recital 12: explaining the arbitration exclusion with the view of “non-intervention” in arbitration “affairs”
  - ✓ The case of a judgment/injunction rendered upon the recognition of an award: does the judgment fall outside Brussels Ia?

# BRUSSELS IA AND ARBITRATION

- Art 73 (2)
  - ✓ The “precedence” of the NY Convention
  - ✓ *Res iudicata* and the procedural public policy (through the double lens of NY Convention and Brussels Ia)



## BRUSSELS IA AND ARBITRATION

- Member States procedural autonomy and national tools for the sake of coordination
  - ✓ Helping the coordination in compliance with Brussels Ia principles
  - ✓ Handling efficiently the *exceptio compromissi*

*Thanks!*

antonio.Leandro@uniba.it