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1. *Genoa Tribunal, 29 February 2012* 359
 If an application for the Italian citizenship as a result of marriage was filed before the entry into force of Law 15 July 2009 No 94, the right thereof is granted upon satisfaction of the preconditions laid down at Article 5 of Law 5 February 1992 No 91 at the moment of the filing of the application. Such right is actionable before the ordinary courts if the public administration does not exercise its power of control within the mandatory term of two years, as provided by Article 8(2) of Law No 91 of 1992 or does not adopt, within the same term, an order that rejects the motion for reasons other than those connected to the security of the Republic, as provided by Article 6 of the same Law.
2. *Padoa Tribunal, 3 May 2012* 362
 Pursuant to Article 23(1)(b) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts do not have jurisdiction over a claim brought against an English company for the payment of the goods owed by this company on the basis of a distribution contract if the prorogation clause in favor of Italian courts, printed on the back of the invoices issued by the seller company and referred to on the front of said invoices, may not be considered agreed upon in a manner that complies with the common practices established by the parties. Such invoices were, in fact, issued after the conclusion and performance of the single procurements, and the lack of objections thereto shall not be deemed relevant.
 Italian courts do not have jurisdiction pursuant to Article 5(1)(b) of said

Regulation where the place of delivery indicated on the invoices is in the United Kingdom and the Incoterms 2000 “carriage paid to customer warehouse” clause included in the contract is devoid of relevance, such clause affecting only the allocation of the shipping costs between the parties and not affecting the final place of delivery of the goods agreed upon by the parties.

3. *Corte di Cassazione (plenary session), 28 May 2012 No 8404* 369
 Pursuant to Article 17 of the Brussels Convention of 27 September 1968, in the absence of commercial practices characterized by particular types of agreements entered into by the parties, the clause conferring jurisdiction to English courts is invalid, and hence Italian courts have jurisdiction, if the clause was unilaterally included by the English provider company called on guarantor by the Italian seller on the invoices for the supplies which are the object of the contract, and no international practice supports the derogation to the Italian jurisdiction.
 The distinction between principal and secondary security is irrelevant with reference to the application of Article 6(2) of the Brussels Convention.
4. *Venezia Tribunal, 23 October 2012* 1015
 Reference for a preliminary ruling to the Court of Justice of the European Union to assess the compatibility of Articles 28 and 32 of the Italian Code of navigation with the Convention for the Protection of Human Rights and Fundamental Freedoms is inadmissible because the Court of Justice lacks the competence in regard of acts that do not fall in the scope of the law of the European Union.
5. *Varese Tribunal, 13 November 2012* 105
 Pursuant to Article 32 of Law 31 May 1995 No 218 and Article II of the Convention entered into by Italy and the Arab Republic of Egypt on 3 December 1977 at Cairo on the recognition and enforcement of judgments in civil and commercial matters and on personal status, Italian courts have jurisdiction over the action brought by an Italian citizen against her Egyptian husband for the dissolution of their marriage.
 Pursuant to Article 32 of Law No 218/1995, Egyptian law governs the dissolution of a marriage (which was not registered in Italy) between an Italian and an Egyptian who, after the wedding in Egypt, lived, albeit briefly, in Egypt before the husband’s disappearance. Egyptian law is not contrary to public policy in the part where it provides the repudiation on behalf of the wife or the dissolution of the marriage upon unilateral request of the wife when the other spouse disappears without justification for a period of over a year.
6. *Treviso Tribunal, 18 December 2012* 1016
 The dissolution of a marriage may be governed by Mexican law when such law was chosen by the spouses pursuant to Article 5 of Regulation (EU) No 1259/2010 of 20 December 2010.
7. *Bologna Tribunal (detached division in Imola), 21 December 2012* 107
 Pursuant to a constitutionally proper interpretation of the relevant national provisions and of the recognition of the *kafalah* pursuant to Article 20(3) of the New York Convention of 20 November 1989 on the Rights of the Child, the non-EU citizen minor in custody as a result of *kafalah* to one spouse residing in Italy and having – in addition to the Italian nationality – the same nationality as the minor, must be assimilated to a “family member”, whereas Legislative Decree of 6 February 2007 No 30, implementing Directive 2004/38/EC on the right of citizens of the Union and their family mem-

bers to move and reside freely within the territory of the Member States, is not applicable.

Pursuant to Article 28(2) of Legislative Decree No 286 of 1998, which allows the extension of its discipline to non-EU citizens – and which is more favorable than the one provided by Directive 2004/38/EC construed in the sense of excluding the equation of *kafalah* to adoption –, the motion must be granted for family reunification of a Moroccan minor, in custody under *kafalah*, filed by the Moroccan custodian spouse also having Italian nationality.

8. *Rome Tribunal, 14 January 2013* 109

As a result of the judgments of the Constitutional Court No 87 of 1975 and No 30 of 1983, Italian nationality shall be granted by Italian courts – notwithstanding the declaration of reacquisition rendered pursuant to Article 219 of Law 19 May 1975 No 151 – to the woman who lost it in accordance with Article 10 of Law 13 June 1912 No 555 as a consequence of her entering into marriage with a foreigner before 1 January 1949.

9. *Forlì Tribunal, 22 January 2013* 170

Pursuant to Article 5(1)(b) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts do not have jurisdiction over a claim for the payment of goods brought by an Italian company (seller) against a German company (buyer) where the place of delivery of the goods – not agreed upon by the parties – is not in Italy but in Germany. The place of delivery of the goods is, in fact, to be construed as the place where the physical transfer of the goods took place, as a result of which the purchaser has actual power of disposal over those goods.

10. *Tribunale di Palmi, 28 January 2013* 371

As regards *lis pendens* and in order to avoid that the claimant will “reserve” the jurisdiction of the forum most convenient to him, pursuant to Articles 16 and 19 of Regulation (EC) No 2201/2003 of 27 November 2003, the claimant has a specific duty to take all necessary steps following the lodging of the claim, in particular in order to ensure service of the claim on the respondent.

Italian courts have jurisdiction over a claim for legal separation which also addresses the issue of the custody over a minor daughter, lodged by an Italian wife residing in Italy subsequent to the lodging by her Romanian husband of an action for “divorce with minors” in Romania, when the husband has omitted to timely take the necessary steps to proceed with the proceedings previously filed under Article 16(1) of Regulation (EC) No 2201/2003. Namely, the aim to “reserve” the most convenient forum, pursued by the husband and sanctioned by this provision, may be inferred both from the husband’s patent delay in serving his wife with the claim lodged with the Romanian court (regardless of the fact that the heads of jurisdiction clearly pointed to Italian courts as the courts having jurisdiction) and from the husband’s refusal to be personally served with the claim subsequently lodged by his wife in Italy.

Pursuant to Articles 8 and 12(b) of Regulation (EC) No 2201/2003, Italian courts have jurisdiction over the claim for custody of a minor daughter lodged at the same time with the action for legal separation of the parents when, in the three years prior to the claim, the daughter was habitually resident in Italy. In fact, consistently with the best interests of the minor and lacking any clear acceptance of a different forum (in the case at issue, the Romanian forum) by both spouses, the strongest links with the life, emotional relations and daily routine of the minor are to be found in Italy.

11. *Monza Tribunal, 30 January 2013 No 47* 174
 Pursuant to Article 2(1) of Regulation (EC) No 44/2001 of 22 December 2000, whose provision is identical to the one laid down at Article 3(1) of Law 31 May 1995 No 218, Italian courts have jurisdiction over a claim concerning the unfair enforcement of a first demand guarantee against a bank having its registered office in Italy.
 Pursuant to Article 5(1)(a) of Regulation (EC) No 44/2001, referred to by Article 3(1) of Law 31 May 1995 No 218 in place of the corresponding provisions of the 1968 Brussels Convention, Italian courts do not have jurisdiction over a declaratory action for a credit claimed as a result of the performances carried out in favour of the contractor (principal), having its registered office in Qatar and over the payment resulting thereof as the place of performance of the pecuniary obligation, as agreed in the contract, is not located in Italy.
 Finally, pursuant to Article 6 of said Regulation, Italian courts do not have jurisdiction over a declaratory action for the credit mentioned above and for the award of the payment resulting thereof, as a result of the fact that the two claims – the claim for the ascertainment of the credit and for the payment, on the one hand, and the claim for the injunction against the collateral’s enforcement, on the other hand – are not related.
12. *Council of State, first division, opinion 22 February 2013 No 850* 377
 Article 1 of the Munich Convention of 5 September 1980 on the law applicable to surnames and forenames – that has priority over Article 24 of the Law 31 May 1995 No 218 – provides that, when an individual changes nationality, the law applicable to the surnames and forename is the law of the new State of nationality.
 Due to the primacy of EU law over international agreements – as resulting from Article 351(2) TFEU – national courts and public administration shall disapply the national provisions or the provisions of international conventions that conflict with the provisions of EU law.
 In light of the freedom of movement, of the prohibition of discrimination and of the fundamental right to a name (established, respectively, by Articles 18, 20 and 21 TFEU, Article 8 of the ECHR and Article 7 of the Charter of Fundamental Rights of the European Union), Article 1 last sentence of Law 9 November 1984 No 950 implementing the 1980 Munich Convention shall be disappplied.
 The foreign national who aims at acquiring the Italian nationality shall be allowed to state in his application his name as indicated in his birth certificate. The name, as indicated in the applicant’s birth certificate, shall be the name that appears in the subsequent decree bestowing citizenship on him. Because the law of the European Union ensures the right to a name to all the individuals located in the European Union, third State nationals are equally entitled to the same right.
13. *Corte di Cassazione, order 28 February 2013 No 4984* 177
 As concerns family reunification, the prohibition laid down at Article 29 para. 1-ter of Legislative Decree 25 July 1998 No 286 against the applications filed in favor of the spouse of a foreign citizen who is already registered in Italy with another spouse, applies objectively, i.e. notwithstanding the subjective features of the applicant, as it aims at avoiding polygamy in the Italian legal system, which is also contrary to Italy’s constitutional public policy.
14. *Corte di Cassazione, 21 March 2013 No 7210* 112
 The preliminary contract for the purchase of an immovable located in Italy concluded in 1993 between an Iranian citizen legally resident in Italy and

an Italian company – the promisor seller – is not void, regardless of the treatment reserved to Italian citizens by the Iranian legal system. In fact, also pursuant to the laws applicable prior to the adoption of Legislative Decree of 25 July 1998 No 286, a foreigner has the capacity, in derogation to the principle of reciprocity under Article 16 of the Preliminary Provisions to the Civil Code, to purchase such an immovable.

15. *Corte di Cassazione (plenary session), 25 March 2013 No 7382* 118
 Pursuant to Article 43 of the Vienna Convention of 24 April 1963 on consular relations, Italian courts have jurisdiction over an action brought by the individual in charge of carrying out merely auxiliary activity of the institutional functions of a Consulate of a foreign State in Italy (in the case at issue, the Consul's secretary) over the payment of the secretary's salary. In fact, pursuant to this provision, Italian jurisdiction is extended to disputes on employment contracts with foreign diplomatic representations not only where the employee solely performs merely auxiliary tasks but also where they perform consular functions, if the claim aims only at the payment of the salary or, in any event, addresses patrimonial questions which do not interfere with the organization of the consular office.
16. *Corte di Cassazione (plenary session), 29 March 2013 No 7930* 121
 Appeal to the Corte di Cassazione against a judgment rendered on appeal is inadmissible when it challenges the jurisdiction of Italian courts and the Cassazione's plenary session, in the same proceedings, has already rendered a decision on jurisdiction during the preliminary ruling on jurisdiction phase (*regolamento di giurisdizione*).
17. *Corte di Cassazione (plenary session), 4 April 2013 No 8212* 124
 Italian law governs an action for damages suffered as a result of a traffic accident occurred in Slovenia in 1991 where the party allegedly liable is Italian, the damaged parties are Italian and Slovenian, the vehicle is registered in Italy and it is insured pursuant to Law No 990 of 1969 and subsequent amendments with an insurance company having its registered office in Italy. In fact, pursuant to Article 72 of Law 31 May 1995 No 218, in regard of actions brought before the entry into force of said Law, the principle laid down at Article 14 does not apply. To the contrary, the burden of indicating and proving the applicable law lies on the party that invokes the foreign law and, lacking proof thereof, the judge who is not in the position of having direct knowledge of the foreign law shall apply Italian law.
 When the party bearing the burden of proving the applicable law failed to provide indications as to the foreign applicable provisions, it may not lodge an appeal pursuant to Article 360(5) of the Code of Civil Procedure against the judgment on the merits where the court, in its ruling, did not address the contents of the foreign judgments that such party produced. Burden of proof is not satisfied where criteria for the interpretation and application of the foreign law may be inferred from the produced foreign decisions, but the party has not expressly and previously proven the applicable law.
 In light of Article 2 of the Constitution, the principle of reciprocity laid down at Article 16 of the Preliminary Provisions to the Civil Code may not be invoked with reference to the infringement of an individual's fundamental right occurred in Italy or abroad.
18. *Modena Tribunal, 9 April 2013* 384
 Pursuant to Article 5(1)(b), first indent, of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts do not have jurisdiction over a claim for

the payment of the goods delivered in Germany by the Italian seller to the German buyer. It is irrelevant that the obligation in question is that of payment.

19. *Corte di Cassazione, 15 April 2013 No 9067* 135
 No legal principle may be inferred from any source operating in cross-border employment contracts, that enjoins an employer to provide a severance package to his employee.
 The foreign law chosen by the parties to govern an employment contract to be performed abroad, which excludes a severance package, is not contrary to public policy.
20. *Corte di Cassazione (plenary session), 18 April 2013 No 9414* 139
 As the presumption laid down at Article 3 of Regulation (EC) No 1346/2000 of 29 May 2000, pursuant to which the center of main interest of a company coincides with the company's registered office, is rebuttable and may be overruled by proof to the contrary, the transfer of a company's seat to another Member State, although performed prior to the filing for insolvency, does not pre-empt the jurisdiction of Italian courts if such transfer appears to be fictitious as a result of the fact that no economic activity was actually performed in the said Member State after the transfer.
 The transfer abroad of the company's registered office, at least where the law of the country of the new registered office agrees with the principles that may be inferred from the Italian law on this issue, does not affect the legal continuity of the transferred company and hence does not lead to the termination of the company's business activity. Accordingly, the term established under Article 10 of the Italian law on insolvency (which prohibits a declaration of bankruptcy with respect to a company which was cancelled from the business registry for over one year) does not run as a result of the cancellation of a company from the Italian registry subsequent to the transfer of the company's seat abroad.
21. *Corte di Cassazione, 18 April 2013 No 9483* 386
 Pursuant to Article 64(g) of Law 31 May 1995 No 218, if an objection is raised against the automatic recognition of a foreign judgment, the court seized to ascertain whether the foreign decision is contrary to public policy shall examine the effects of the decision in the Italian legal system. It shall not, instead, examine whether the solution adopted in the foreign decision is correct pursuant to the foreign legal system or pursuant to the Italian law.
 A United States judgment which, while regulating the patrimonial consequences of divorce between two Italian spouses, grants to one spouse the property on immovables located in Italy notwithstanding the fact that the spouses opted for a separate matrimonial property, is not contrary to public policy.
22. *Corte di Cassazione, 22 April 2013 No 9677* 390
 In spite of the repealing of Article 796 last alinea of the Code of Civil Procedure by Article 73 of Law 31 May 1995 No 218, the involvement of the public prosecutor in the proceedings for the recognition of foreign divorce judgments is always mandatory under Article 70 first alinea, No 2. In a proceedings to reverse a decision that denies the recognition of a foreign divorce judgment, the motion raised by the Attorney-General for joinder of the Court of Appeal public prosecutor in the action shall be rejected if an interest in appealing the decision does not appear from the conclusions drawn by the latter in the trial proceedings and, to the contrary, the circumstances of the case give priority to the reasonable length of proceedings.

When appraising the validity of the service of process abroad for the purpose of recognising a foreign judgment in Italy, pursuant to Article 64(b) of Law No 218/1995, the Court of Appeal is not mandated to strictly apply the Italian principles on service of process. Rather, the Court shall verify all the facts alleged by the parties, without limiting itself to a *prima facie* assessment as concerns the respondent's absence, in order to shed light on whether the service of process was performed in compliance with the foreign law and the right to one's defence.

23. *Corte di Cassazione (plenary session), 22 April 2013 No 9684* 617
 Pursuant to Article 360(3) of the Code of Civil Procedure – which provides revision in cassation against judgments that decide issues raised during the proceedings without deciding, not even partly, on the merits – recourse is inadmissible against a judgment in which the Court of Appeal remanded the case to the trial court overruling a decision in which the trial court declined the jurisdiction of the Italian courts without deciding on any parts of the merits.
24. *Corte di Cassazione, 26 April 2013 No 10070* 178
 Pursuant to Article 16 of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations, Article 90 of the Argentinean Law No 20.744 is contrary to public policy where it establishes that, in case of unjustified renewal, a fixed-term employment contract is converted into a permanent one, also when such employment contract is with the public administration (in the case at hand, an Italian consulate).
25. *Corte di Cassazione, 9 May 2013 No 11021* 393
 In a proceedings for the declaration of enforceability of an English judgment during which, pursuant to the Luxembourg Protocol of 3 June 1971, referral was made to the EUCJ for a preliminary ruling on denial of recognition on the ground of the forum's public policy, as provided at Article 27(1) of the Brussels Convention of 27 September 1968, the referring court shall apply the provision of the Convention as construed by the Court of Justice and transpose integrally the criteria of interpretation provided by the Court. Accordingly, the violation of such obligation may be alleged as *error in procedendo* in the proceedings before the Corte di Cassazione to quash the enforcement decision rendered by the Court of Appeal.
26. *Milan Tribunal, 11 May 2013* 405
 An Italian company against which a claim was lodged after the transfer of its registered office abroad for the payment of telecommunication services has capacity to be sued when its cancellation from the Italian business register has taken place not upon the completion of the company's liquidation process or as a result of different circumstances which nevertheless involve the termination of the company's business activity and as a result of which the law prescribes the company's cancellation but, rather, when the cancellation is a result of the transfer abroad of the company's registered office and, accordingly, as a result of the assumption that the company will continue to exist and to conduct business activity, albeit in a different State. Consequently, such transfer, at least where the law applicable in the new registered office complies with the principles that may be inferred from the Italian law in regard to the company's capacity to be sued, does not entail the termination of the business activity, as may be inferred from Articles 2437(1)(c) and 2473(1) of the Civil Code.
 In an action for the payment of telecommunication services brought against a previously Italian company which subsequently transferred its regis-

tered office to London, Italian courts have jurisdiction pursuant to Article 4(1) of Law 31 May 1995 No 218 if the company entered an appearance without filing an objection against the court's lack of jurisdiction in its first defense. However, Italian courts do not have jurisdiction to issue a payment injunction against a foreign company and, accordingly, such injunction shall be revoked.

27. *Piacenza Tribunal, 14 May 2013* 408
 Pursuant to Article 5(1)(b), first indent, of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts do not have jurisdiction over a dispute on the sale of goods between an Italian seller and a buyer domiciled in Spain if the place of delivery is located in Spain. Any reference made in the contract to Incoterms by one of the parties in their order confirmation is irrelevant as the unequivocal will of both parties must be verified also as regards the establishment of jurisdiction.
28. *Veneto Regional Administrative Tribunal, 3rd division, 23 May 2013 No 750* 142
 The declaration of inadmissibility of an application for citizenship, filed pursuant to Article 5 of Law 5 February 1992 No 91, on the grounds that the applicant lacks legal residence in Italy – because the registration process in Italy is not completed – is illegitimate where the applicant is in Italy with a permit for family reasons, precise and consistent proof is provided of his staying on the national territory and of his will to stay in accordance to the national provisions.
29. *Corte di Cassazione, order 28 May 2013 No 13172* 421
 The existence of the objective and subjective requirements necessary to be granted a typical or atypical measure for international protection shall be based on the assessment of the current and updated situation, related to the moment when the decision is rendered, as Article 4 of Legislative Decree 19 November 2007 No 251 allows that the petition for protection be grounded also on events occurred after the petitioner left his country when it is assessed that the alleged conducts are the expression and the continuation of beliefs and orientations already manifested in the country of origin. Neither the acknowledgement of the right to be granted the status of political refugee or the intermediate measure of the subsidiary protection may be excluded in light of the reasonable possibility that the petitioner moves to a different part of the territory of his country of origin given that such precondition, provided at Article 8 of Directive 2004/83/EC, was not transposed in Legislative Decree No 251/2007.
30. *Corte di Cassazione (plenary session), order 28 May 2013 No 13181* 181
 The combined application of Arts 391-*bis* and 395(4) of the Code of Civil Procedure, in the part where they do not encompass in the grounds for the revocation of a decision the error in judgment or in evaluation of the court, does not conflict with European Union law because it does not infringe the principle of effective judicial protection. In fact, European Union law, on the one hand, acknowledges the necessity that, following the exhaustion of the available means for appeals, the judgment become *res judicata* in order to ensure the stability of the rule of law and of legal relationships, as well as the good administration of justice. On the other hand, it leaves to the legal systems of the Member States to provide how to establish *res judicata* and to implement the related principle.
31. *Treviso Tribunal, order 31 May 2013* 422
 The conditions for the termination of the proceedings pursuant to Ar-

ticles 299 et seq. of the Code of Civil Procedure are not met in case of cancellation from the business register of an Italian defendant company, as a consequence of the transfer of its registered office abroad, when such cancellation has taken place not upon the completion of the company's liquidation process or as a result of different circumstances which nevertheless involve the termination of the company's business activity and as a result of which the law prescribes the company's cancellation but, rather, when this is a result of the transfer abroad of the company's registered office (and, accordingly, as a result of the assumption that the company will continue to exist and to conduct business activity, albeit in a different state). In fact, in such circumstances the company may not be deemed cancelled.

32. *Corte di Cassazione, order 10 June 2013 No 14508* 413
 As a result of the referral made in Article 3(2) of Law 31 May 1995 No 218 to the Brussels Convention of 27 September 1968 and subsequent amendments, Italian courts have jurisdiction over an action for a negative declaratory judgment of counterfeiting of industrial products protected by a European Patent for Italy and Germany and lodged by a German company against two United States companies, respectively proprietor and exclusive licensee of the patent not having (even secondary) seats in Italy, because it is in Italy that both European patents could be infringed. It is irrelevant whether the referral to Article 3(2) of Law No 218/1995 is to be construed as made to the Convention or to Regulation (EC) No 44/2001 of 22 December 2000 because under both texts Article 5(3) grounds the competence of the court where the damage occurred and, pursuant to the interpretation of the EUCJ, a negative declaratory action aiming at the declaration of the absence of willful or negligent torts liability falls in the scope of this provision.
33. *Bologna Tribunal, decree 12 June 2013* 423
 As a result of the ratification of the Hague Convention of 1 July 1985, trusts are admissible in the Italian legal system: accordingly, for the purposes of Article 2645-ter of the Civil Code, a legal tutor may institute a trust for the preservation of the estate of the individual who is tutored and he may name this same individual as the beneficiary of the trust.
34. *Corte di Cassazione, order 18 June 2013 No 15234* 415
 Pursuant to Article 33 of Law 31 May 1995 No 218, a child's status is governed by his/her national law at birth, such law laying down the preconditions and the effects of such assessment. Accordingly, a child's status depends on the measures of assessment and judicial statements of the foreign State of birth and Italian courts are proscribed from superimposing foreign or Italian sources of information. This, however, does not entail that the certifying documents issued by the foreign State enjoy a privileged status pursuant to Article 2700 of the Civil Code.
 The absence of a term, in the legal system of Ghana, to register the birth of a child is not contrary to public policy under Article 16 of Law No 218/1995.
35. *Forlì Tribunal, order 18 June 2013* 424
 When an opposition against a European order for payment is lodged pursuant to Article 16 of Regulation (EC) No 1896/2006 of 12 December 2006, given that the objection per se is not apt to establish any opposition proceedings and that the claimant-creditor shall act in conformity with the provisions established for an ordinary trial proceedings, the court shall apply the civil procedure provisions that establish the general principles on the modification of the proceedings from summary to ordinary.

36. *Corte di Cassazione, 21 June 2013 No 15679* 417
 In light of Articles 3 and 24 of the law on nationality of the Republic of Macedonia of 13 November 1992, an individual who is a Macedonian national as a result of his birth on the territory of the Republic of Macedonia may not be declared stateless irrespective of the fact that he/she has not registered his “status civitatis”.
37. *Corte di Cassazione (criminal), 21 June 2013 No 27292* 424
 As regards offences perpetrated abroad, it suffices that part of the criminal conduct took place in Italy to establish the jurisdiction of Italian courts. Such jurisdiction is not affected by *lis pendens* with a proceedings before a foreign court, except where – similarly to what provided at Article 18(1)(o) of Law 22 April 2005 No 69 implementing Framework Decision 2002/584/JHA on the European Arrest Warrant – a final decision has been issued abroad.
38. *Corte di Cassazione (plenary session), 25 June 2013 No 15872* 621
 The transfer of a company’s seat from Italy to another Member State shall be deemed fictitious when it was approved and executed after the company’s insolvency had already manifested (namely, when the company’s decision to transfer its seat was recorded in the Italian business register after the application for insolvency was lodged), it was not supported by business activity reasons, and it was requested at the only aim of avoiding the opening of a proceedings for insolvency in Italy. In such circumstances, pursuant to Article 9 of the Italian bankruptcy law (as in force prior to the 2006 reform), Italian courts have jurisdiction over the insolvency of the company.
39. *Corte di Cassazione, 12 July 2013 No 17301* 693
 Pursuant to Article 33(2) of Presidential Decree 28 December 2000 No 445, a power of attorney issued abroad shall be legalized by the Italian diplomatic or consular representations, except where the issuer is a national of one of the States that acceded to the Hague Convention of 5 October 1961, and the adhesion of which was accepted by the Italian State. In such case, the duty of legalization is superseded, and the mere formality of an *apostille* – i.e., a stamp or an equivalent inscription placed by an authority having the power to certify that the document produced is compliant with the original – is sufficient. Absent both the legalization and the *apostille*, the power of attorney shall be considered void notwithstanding the authentication of the signature by the Italian attorney. In fact, the Italian attorney lacks the power, with reference to the place of issuance of the retainer agreement, to perform such certification.
 Pursuant to the Hague Convention of 18 March 1970 on the taking of evidence abroad in civil or commercial matters, the power to issue a request for the taking of evidence (in the instant case, a formal questioning) lies with the judicial authority of the requesting State which has the power to address the competent authority of another contracting State with a request for the performance of a pre-trial investigation. Hence, the letter of request provides a procedural impulse that characterizes all the sub-proceedings, and excludes the possibility of declaring the lapse of the time-limit originally established to provide the evidence as such limit was subsequently prorogated by the court on its own motion.
40. *Corte di Cassazione, 17 July 2013 No 17463* 624
 In light of the fact that a judicial decision on paternity is a “judgment”, Article 64 of Law 31 May 1995 No 218 may be applied to the recognition of a foreign decision on paternity, instead of Article 65 of the same Law. While the

mechanism laid out at Article 64 is general and may be applied to judgments rendered over any kind of disputes, including those on family matters, Article 65 lays out a recognition mechanism which is complementary to Article 64 – and non-exclusive, albeit only available for decisions addressing capacity, family matters or personality rights – and which, unlike Article 64, extends to the broader category of “judicial measures” (or “decisions”).

Pursuant to Article 64(b) of the Law No 218/1995, a judicial declaration of paternity rendered by the High Court of Asmara in violation of the principles of procedural public policy shall not be recognized in Italy because the service of process on the defendant was carried out with a procedure which, although formally compliant with the provisions applicable in the country where the proceedings were held, is inadequate to allow that the statement of claim be brought to the knowledge of the defendant who resides in Italy, as it only requires that the date of the hearing be reported on a local newspaper.

41. *Constitutional Court, 18 July 2013 No 202* 959
 Article 5(5) of Legislative Decree 25 July 1988 No 286 is unconstitutional because it conflicts with Articles 2, 3, 29, 30 and 31 of the Constitution where it holds that, if the petitioner was sentenced for certain crimes, the discretionary assessment for the renewal of the residence permit applies only to the foreigner who was granted the right to family reunification or to the reunified foreign family member, whereas it does not apply to the foreigner that has family bonds in Italy.
42. *Corte di Cassazione (criminal), 18 July 2013 No 30831* 695
 As regards the recognition of judgments rendered by foreign criminal courts, Article 733(1)(c) of the Code of Criminal Procedure, in the part where it establishes as a ground to decline recognition the fact that the defendant was not summoned, entails in its rationale the need for the Court of Appeal to assess whether in the foreign proceedings the necessary formalities have been complied with and the necessary initiatives have been taken to properly serve the defendant, inasmuch as possible.
43. *Milan Tribunal, 18 July 2013* 629
 Pursuant to Article 5(1)(b) second indent of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts do not have jurisdiction over a negative declaratory action lodged by an Italian principal company against a French agent company for the credit claimed by the latter as commissions, severance pay and contractual damages, given that the place of performance of the main obligation was located in France.
 The claimant may be sentenced pursuant to Article 96 last paragraph of the Code of Civil Procedure when he lodged a claim with (at least) gross negligence at the deliberate aim of precluding to the defendant the possibility of filing his claim before his “natural judge” (in the case at issue, the French judge), abusing of his right to legal protection and abusing of his right to legal proceedings, which are protected by the Constitution as inalienable rights of an individual, and harming his counterparty and the system of fair trial provided at Article 111 of the Constitution.
44. *Corte di Cassazione (plenary session), 23 July 2013 No 17863* 633
 Pursuant to Article 2 of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over a claim brought by the heirs of one of the joint-holders of a bank account at a bank agency in Austria against the heir of the other joint-holder, an Italian citizen residing in Italy, to ascertain the claimants’ right that the bank shall release to them the whole amount de-

- posited in said account. The exclusive choice of court clause in favour of the Austrian courts, that is stipulated in the contract with the bank, is irrelevant in this case.
45. *Corte di Cassazione (plenary session), order 23 July 2013 No 17866* 636
 As concerns all disputes on insolvency matters, pursuant to Article 3(2) last part of Law of 31 May 1995 No 218, Italian courts have jurisdiction over a defendant not domiciled in Italy (and, in the instant case, domiciled in the United Arab Emirates) on the grounds of venue.
46. *Piacenza Tribunal, 26 July 2013* 637
 Where the civil effects of a foreign criminal judgment are controversial among the parties, the recognition of said judgment is governed by the proceedings provided at Articles 64 *et seq.* of Law 31 May 1995 No 218.
 In light of the established jurisprudence of the *Corte di Cassazione* on such provisions an – albeit merely incidental and summary – assessment of the existence of the preconditions provided at Article 64 of Law 218/1995 is permitted in order to avoid that decisions that are radically inconsistent with the fundamental principles of the Italian legal system are recognized, including decisions that are incompatible with the criteria of a fair trial laid out at Articles 3, 24 and 111 of the Constitution which, *i.a.*, preclude the enforceability in Italy of a French judgment which lacks legal reasoning.
47. *Corte di Cassazione, 5 August 2013* 697
 As a result of the fact that pursuant to Article 33 of Law 31 May 1995 No 218 the legal status of filiation of a foreigner’s child is governed by the child’s national law at the moment of the birth, the proof of filiation is exclusively demanded to the measures available under the law of the foreign State at the moment of the birth.
48. *Corte di Cassazione, 22 August 2013 No 19405* 698
 Pursuant to Article 31 of the Preliminary Provisions to the Civil Code, applicable *ratione temporis* to a traffic accident occurred in Austria, Article 1327 ABGB may not be applied pursuant to Art 25(2) of the Preliminary Provisions to the Civil Code because it is contrary to public policy to the extent that it limits to property damage the compensation in favor of the relatives of persons deceased as a result of a traffic accident, therefore excluding compensation for the so-called ‘family damages’ (*danno parentale*). In fact, the death of a family member affects one’s ultimate interest to the intangibility of family relations which is ensured by Articles 2, 29 and 30 of the Constitution, by Article 8 of the European Convention on Human Rights, and by Article 7 of the Charter of Fundamental Rights of the European Union.
49. *Corte di Cassazione, 22 August 2013 No 19406* 701
 Pursuant to Articles 22 and 25 of the Warsaw Convention of 12 October 1929 for the unification of certain rules relating to international carriage by air, as amended by The Hague Protocol of 28 September 1955, the limitation of compensation to a given amount expresses the general rule on the presumed liability of the carrier for damages to goods. Such liability is however rebuttable – with the result that the cap on the compensation for damages to goods is overridden – in case of the carrier’s or his agent’s willful or grossly negligent misconduct, which shall be alleged and proved by the injured party.
50. *Bologna Court of Appeal, 2 September 2013* 643
 When the Court of Appeal has declared the enforceability in Italy of a

Tunisian judgment condemning an Italian company to the payment of an amount of money, and has grounded its decree on Articles 31 *et seq.* of the Brussels Convention of 27 September 1968 (or on Articles 38 *et seq.* of Regulation (EC) No 44/2001 of 22 December 2000), rather than – as it would have been appropriate – on the Convention on judicial assistance concluded by Italy and Tunisia on 15 November 1967, opposition to such decree shall be made in conformity with the Brussels Convention (or with Regulation (EC) No 44/2001). In fact, what appears to be the content of the challenged decision determines the type of proceedings for the appeal, regardless of the different legal characterization given by the parties to their action.

51. *Corte di Cassazione (plenary session) 10 September 2013 No 20700* 647
 Pursuant to Article 5(3) of Regulation (EC) No 44/2001 of 22 December 2000, Italian courts have jurisdiction over a negative declaratory action for the alleged liability from which would stem a right to compensation in favour of the defendant – a company with seat in France – for the production and trade by the claimant company of goods that are identical to those manufactured by the defendant. Pursuant to the same provision, Italian courts also have jurisdiction over an action for compensation for the damages suffered as a result of the interruption of the distribution of the goods, as the damage may only have occurred – or may only occur in the future – in the place where the goods are manufactured and sold, *i.e.*, in Italy, where the claimant company has its legal, administrative and managing seat. In fact, it is irrelevant that the similarity among said goods was ascertained at a fair in Germany and that an injunction was here issued in an *ex parte* proceeding at the defendant’s motion, prohibiting the manufacturing and distribution of the goods and suspending – as a precautionary measure – the claimant’s activity in Germany.
 In an alleged tort and competition infringement arisen from an advertisement of a product on the Internet, Italian courts have jurisdiction both because the conduct was carried out in Italy, at the place where the server is situated, and because the seat of the advertiser is in Italy, as this has to be construed as the place where the company has its registered office.
52. *Corte di Cassazione (plenary session), order of 10 September 2013 No 20701* 1017
 The financial interests of the European Union shall be treated as the national ones: hence, States shall act with the same means and measures prescribed by their domestic law for the protection of the same legal rights. Further the Court of Audits shall have jurisdiction over all direct or indirect damages caused by all tax frauds against the European treasury.
53. *Corte di Cassazione (plenary session), 16 September 2013 No 21108* 144
 The application for authorization to enter in the Italian territory for family reunification, filed in the interest of a minor who is not a citizen of the European Union and is in custody – as a result of a *kafalah* issued by a foreign judge – of an Italian citizen residing in Italy, may not be denied when the minor is supported by the Italian citizen or lives in the State of origin with the Italian citizen or, again, when severe health reasons demand that he be personally assisted by the Italian citizen.
 A *kafalah* issued pursuant to the law applicable in the State of origin of the minor, after a judicial authority or a public authority verified the guardian’s suitability, is not contrary to public policy. In fact, even after the reunification with the Italian citizen has taken place, the *kafalah*’s only purpose is to justify the guardian’s provision of material and affective care to the minor with the exclusion of any parental relationship or legal representation of the child.

54. *Corte di Cassazione (plenary session), 23 September 2013 No 21672* 654
 Pursuant to Article 64(a) of Law 31 May 1995 No 218, a judgment of the Supreme Court of New South Wales, that was adopted following the defendant's tacit acceptance of jurisdiction, may not be recognized. In fact, pursuant to Articles 3 and 4 of the same Law, derogation of Italian jurisdiction is excluded where such derogation is not evidenced in writing.
55. *Corte di Cassazione, 25 September 2013 No 21896* 656
 Service of process on a respondent who is an Italian citizen residing abroad is proper if the respondent is served at his own firm, located in Italy, provided that the seat of the respondent's firm is considered – on the grounds of a factual assessment – as the respondent's domicile by the court which decides on the merits. If sufficiently motivated, such factual assessment falls outside the scope of the powers of judicial review of the *Corte di Cassazione*.
56. *Corte di Cassazione, order of 27 September 2013 No 22305* 1019
 The case of an expellee married and living with a pregnant woman falls in the scope of Article 19(2)(d) of Legislative Decree 25 July 1998 No 286 which lays down the grounds against the expulsion of a non-EU citizen, subject to such relationship (which, in the instant case, is a marriage celebrated with a ROM rite) being recognized in the State of origin of the foreigner. A different interpretation of the provision, which would extend the scope of the provision beyond reasonableness, would be in contrast with the national interest to immigration control.
57. *Corte di Cassazione, 30 September 2013 No 22338* 659
 In order to characterize an arbitration as international, Article 832 of the Code of Civil Procedure subsequently repealed by Article 25 of Legislative Decree 2 February 2006 No 40, requires that a significant part of the obligations, arising out of the contract to which the dispute refers, be performed abroad. Such objective criterion is to be assessed on the basis of the situation existing at the time the contract was entered into or on the basis of the arbitration clause.
 International arbitration falling within the temporal scope of Article 832 of the Code of Civil Procedure is binding regardless of any different characterization given by the parties.
58. *Trieste Criminal Court, 4 October 2013* 154
 The application to register in the Italian public records the Ukrainian birth certificates of twins born in Ukraine as a result of an international surrogacy agreement entered into by an Italian couple of spouses does not amount to criminal offence. Nonetheless, the issue whether the Ukrainian law on this issue is contrary to public policy remains unresolved.
59. *Corte di Cassazione (plenary session), order 25 October 2013 No 24153* 663
 Pursuant to the combined provisions at Articles 4(2) and 11 of Law 31 May 1995 No 218, the motion to dismiss for lack of jurisdiction pursuant to an international arbitration clause in a contract may be raised in any phase and degree of proceedings subject to the precondition that the defendant has not expressly or tacitly accepted the jurisdiction of Italian courts. Accordingly, the motion may be raised only when the defendant has raised in his first statement of defense an objection against the jurisdiction of the Italian court.
 The motion to dismiss for lack of jurisdiction in favour of international arbitration may be filed with the *Corte di Cassazione* by means of the special proceedings for a preliminary ruling on jurisdiction (*regolamento di giurisdiz-*

ione): in fact, as may be further inferred from Law of 5 January 1994 No 25 and Legislative Decree of 2 February 2006 No 40, a motion in favor of a foreign arbitrator's competence to decide the dispute may not be raised by challenging the venue, this being possible only when such issue arises between a national court and an Italian arbitrator.

As concerns international arbitration, under the New York Convention of 10 June 1958 it is for the seized court to preliminarily assess the validity, effectiveness or applicability of an arbitration clause before addressing the issue of jurisdiction with a decision without *res judicata* effect for arbitrators or foreign courts on the basis of the motion of the party that invokes the existence of the arbitration clause, and if such assessment confirms the validity of the arbitral clause, to remand the party to the arbitrators. *Vice versa*, where the court states that it has jurisdiction, its decision on the validity of the arbitration clause will have *res judicata* effect.

When the parties have designated the law governing their contract, such law is applicable also to the validity and effectiveness of the arbitration clause therein.

60. *Rome Tribunal, decree 5 November 2013* 674
- Pursuant to Article 8 of Regulation (EC) No 2201/2003 of 27 November 2003, Italian courts have jurisdiction on the custody of a minor habitually resident in Italy, regardless of the fact that the minor and his parents are third-state nationals.
- Pursuant to Articles 1 and 2 of The Hague Convention of 5 October 1961, referred to by Article 42 of Law 31 May 1995 No 218 and to be construed pursuant to The Hague Convention of 19 October 1996, Italian law governs an action for the custody of a minor habitually residing in Italy.
- Pursuant to Article 3 of Regulation (EU) No 4/2009 of 18 December 2009 on maintenance obligations, Italian courts have jurisdiction to hear a maintenance claim where the habitual residence of both the defendant and the claimant is in Italy.
- Pursuant to Article 4 of the Hague Protocol of 27 November 2007 on the law applicable to maintenance obligations, referred to by Article 15 of Regulation (EU) No 4/2009, Italian law governs a claim on maintenance where the maintenance creditor seized the Italian court, *i.e.* the court for the place where the defendant is habitually resident.
- The proceedings pursuant to Article 710 of the Code of Civil Procedure is appropriate to issue the decisions on the custody and maintenance of a minor not decided in a foreign divorce judgment, which is recognizable in Italy pursuant to Articles 64 *et seq.* of Law No 218/1995.
61. *Corte di Cassazione, 8 November 2013 No 25212* 965
- A Cuban citizen who, having emigrated under the *ley migración* No 1312 of 1976, was deprived of the so-called “right to residence”, and consequently lost the Cuban citizenship, shall be declared stateless. In fact, an individual who is in a country of which he is not a citizen and comes from a different country of which he has formally or substantially lost the citizenship qualifies as stateless.
62. *Corte di Cassazione, 12 November 2013 No 25410* 968
- Pursuant to Article 2 of the Brussels Convention of 23 April 1970 on International Travel Contracts, the Convention applies to any travel contract entered into by a travel organization or an intermediary whose legal seat or work seat is situated in a Contracting State.

63. *Belluno Tribunal, decree of 12 November 2013* 973
 Regulation (EC) No 4/2009 of 18 December 2008 applies to a maintenance claim lodged in favour of her daughter by a Moroccan national habitually residing in Italy against her Moroccan husband also habitually residing in Italy; in fact, pursuant to Article 1 of such Regulation, the notion of maintenance obligations, in the autonomous interpretation provided by EU law and in light of the prevailing aim of providing support to the party in need, applies to “maintenance obligations arising from a family relationship, parentage, marriage or affinity” including the maintenance obligations provided by Italian law.
 Pursuant to Article 3(a)-(b) of Regulation (EC) No 4/2009, Italian courts have jurisdiction – to be assessed by the court of its own motion pursuant to Article 10 of the same Regulation – over a maintenance claim lodged in favour of her daughter by a Moroccan national habitually residing in Italy against her Moroccan husband also habitually residing in Italy provided that, on the basis of a factual assessment, at the moment the claim is lodged each party has actually and stably established in Italy their centre of main interests and relations, being irrelevant that they are third-state nationals.
 With reference to the same dispute, Italian courts have jurisdiction also pursuant to Article 5 of Regulation (EC) No 4/2009 provided that the defendant filed an appearance without contesting jurisdiction, thus tacitly prorogating Italian jurisdiction.
 Pursuant to Article 3 of The Hague Protocol of 23 November 2007 (referred to by Article 15 of Regulation (EC) No 4/2009 and provisionally applicable as indicated by Article 76 of the same Regulation) such dispute is governed by Italian law as the habitual residence of the creditor is in Italy. Pursuant to Article 4(3) of the same Protocol, Italian law also applies as *lex fori*. Pursuant to Article 14 of the same Protocol, in establishing the amount of maintenance, both the needs of the creditor and the debtor’s resources shall be taken into account by the court, regardless of the fact that the applicable law provides differently.
64. *Corte di Cassazione, order of 18 November 2013 No 25873* 1020
 Forcing a woman into marriage is a serious violation of her dignity and a degrading treatment pursuant to Article 14(b) of Legislative Decree 19 November 2007 No 251, and it meets the requirement for serious damage in view of granting subsidiary protection.
65. *Rome Tribunal, 25 November 2013 No 23658* 359
 To acquire the Italian citizenship as a result of marriage, the petitioner must possess – on the date of the filing of his petition – the prerequisites laid down at Article 5 of Law 5 February 1992 No 91. Accordingly, pursuant to Article 8(2) of the law on citizenship, the foreign spouse acquires the Italian citizenship when the Italian public authorities do not exert their power of control within a two-year term.
66. *Corte di Cassazione (plenary session), order of 2 December 2013 No 26937* 978
 A power of attorney conferred by means of a notary’s public record in a Contracting State of the Hague Convention of 5 October 1961, which features an *apostille* contextually authenticated, is valid even where it is not in Italian regardless of the fact that Article 122(1) of the Code of Civil Procedure prescribes the use of the Italian language. In fact, such provision refers to the acts issued during – and not before – judicial proceedings.
 Regardless of the fact that it encompasses a decision on the jurisdiction, an injunction issued pursuant to Article 186-ter of the Code of Civil Procedure

shall not be considered as a decision on the merits. Such an injunction is in fact governed by Articles 177 and 178 of the Code of Civil Procedure and as such it does not preclude the possibility to file a preliminary ruling on jurisdiction (*regolamento di giurisdizione*) which, pursuant to Article 41 of the Code of Civil Procedure, may be filed until the dispute has not been decided on the merits in the first instance of the proceedings.

Pursuant to Article 6(1) of the Brussels Convention of 27 September 1968, as referred to by Article 3(2) of Law 31 May 1995 No 218, Italian courts have jurisdiction on related actions involving contractual and non-contractual liability brought against a plurality of defendants domiciled in Italy and third States for a financial fraud when it appears *prima facie* from the claim that each defendant is actually related to such claim and that joinder of proceedings is not aimed at removing parties from the proper jurisdiction.

67. *Corte di Cassazione (plenary session), order of 10 December 2013 No 27495* 983

Italian courts have jurisdiction on a claim brought by an Italian claimant residing and domiciled in Italy against his former spouse, also an Italian citizen residing and domiciled in Italy, for the payment of half of the amount received for the sale, concluded after the marriage was ended, of an immovable located in Malta and formerly owned in joint property by the spouses. In fact, such claim falls in the scope of the matrimonial property regime between the two former spouses, such matter being excluded, at Article 1(2)(a) of the Regulation (EC) No 44/2001 of 22 December 2000, from the scope of Regulation itself. On the other hand, if the claim was meant to assert a right on the immovable, the court of the Member State where the immovable is situated would have exclusive jurisdiction under Article 22(1) of said Regulation.

68. *Corte di Cassazione, 11 December 2013 No 27734* 987

The ground for the denial of recognition and enforcement of a foreign arbitral award provided at Article 840(3) alinea 2 of the Code of Civil Procedure (Article V(1)(b) of the New York Convention of 10 June 1958) consisting in the prejudice of the defendant's rights of defence in the arbitral proceedings is not met for the mere fact that a specific procedural rule in force in the applicable foreign law has been violated. In fact, on the one hand it is necessary that the right to one's defence be actually violated; on the other hand, the fact that a specific procedural rule in force in the applicable foreign law has been violated represents a failure of the arbitral proceedings that may be raised in the foreign legal system with the remedies provided therein.

In the proceedings for the recognition and enforcement of a foreign arbitral award, pursuant to Article 840(1)(1) of the Code of Civil Procedure (Article V(1)(a) of the 1958 New York Convention) the party against which recognition of the award is sought may raise as defence (and has the duty to prove) that the arbitral agreement was 'not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made'. Consequently, in the recognition proceedings the defence stating that the arbitral agreement was not included in a subsequent contract for novation may not be raised as it is only for the arbitrators to verify whether the arbitration agreement is still in force or whether it was terminated as a result of the novation.

69. *Bologna Tribunal, decree 7 January 2014* 679

Pursuant to Article 14 of Law 31 May 1995 No 218, when the Italian judge is to apply foreign provisions he shall either know them directly or acquire their knowledge, if necessary cooperating with the parties to this aim.

Pursuant to Article 28 of Law No 218/1995, a marriage entered into inter

absentes by means of electronic technology between an Italian woman located in Italy and a Pakistani man located in Pakistan before witnesses and in a Pakistani court, in accordance with an Islamic procedure which is regarded by Pakistani law as having civil effects, is valid.

Pursuant to Article 16 of Law No 218/1995, a marriage entered into inter absentes according to Pakistani law is not contrary to public policy and, as such, it may be recorded in the Italian registry of identification and civil status. In fact, Article 111 of the Civil Code, as well, provides this form of marriage; moreover, the existence of consent freely and willfully given by the spouses is the core issue as concerns the validity and the possibility to recognize a marriage; finally, because the foreign law's provision on repudiation does not preclude the Italian wife from filing for divorce pursuant to Article 31 of Law No 218/1995.

70. *Milan Criminal Court, 13 January 2014* 157
 Pursuant to Article 15 of Presidential Decree 3 November 2000 No 396, birth declarations made by Italian citizens abroad must be made to the local authorities in compliance with the law of the country where the declaration is made.
 In light of the legal provisions of the majority of the Member States of the European Union and of the jurisprudence of the European Court of Human Rights, it is to be excluded that the prohibition against artificial insemination by donor is part of the principles founding international public policy.
 The application to register in the Italian public records the Ukrainian birth certificate of a minor born in Ukraine as a result of an international surrogacy agreement entered into by an Italian couple of spouses does not amount to criminal offence for status alteration pursuant to Article 567 of the Criminal Code, whereas it amounts to the lesser offence of false certification or declaration of personal data under Article 495(2)(1) of the Criminal Code.
71. *Florence Court of Appeal, 15 January 2014* 170
 Pursuant to Article 8 of Regulation (EC) No 2201/2003 of 27 November 2003, Italian courts have jurisdiction over a dispute between two English spouses on the custody of their son, habitually resident in Italy, if an exceptional situation justifying the transfer of the competence to the English courts pursuant to Article 15 does not occur.
 An order aiming at protecting the personality of a minor is governed by Article 42 of Law 31 May 1995 No 218, rather than by Article 36 of the same Law. Under Article 42 – which refers to the Hague Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants – the court which has jurisdiction shall take the measures provided by its domestic law (Article 2 of the 1961 Hague Convention).
72. *Mantova Tribunal, 16 January 2014* 995
 The refusal of the Italian registrar to publish banns of marriage due to one of the spouses' lack of eligibility to marry is justified pursuant to Articles 116(2) and 86 of the Civil Code as the marriage previously entered by the petitioner, a Somali national, with a compatriot and celebrated with Somali rite at the Somali embassy in Rome, is to be considered valid.
73. *Corte di Cassazione (plenary session), order of 20 January 2014 No 1005* 996
 Pursuant to Article 41 of the Code of Civil Procedure, in the presence of an arbitration agreement the filing for a preliminary ruling on jurisdiction (*regolamento di giurisdizione*) is admissible as the arbitration defence is to be considered as a procedural defence in light of the jurisdictional nature of arbitration resulting from the combined proviso at Law 5 January 1994 No 5 and

Legislative Decree 2 February 2006 No 40, so long as the defendant has not expressly or tacitly accepted the jurisdiction of Italian courts.

The arbitration clause included in a Memorandum of Understanding for the constitution of a temporary association of undertakings is effective, and implies the declaration of the lack of jurisdiction of Italian courts, regardless of the fact that the Memorandum of Understanding confined the effectiveness of such arbitration clause to the conclusion of the agreement for the constitution of a temporary association of undertakings.

74. *Corte di Cassazione, 24 February 2014 No 4392* 998

Pursuant to Articles 27 and 34 of the Lugano Convention of 16 September 1988, a Swiss judgment of restitution of an amount unlawfully withdrawn from a Swiss bank account, given in default of appearance but accompanied by the certificate provided by Annex V to Regulation (EC) No 44/2001 of 22 December 2000 declaring that the default defendant was properly summoned, shall be enforced.

As concerns the respect of the right of defence under Article 27(2) of the 1988 Lugano Convention, the motion to assess the validity of the service of the writ of summons, which the defendant claims to be incomplete, shall be filed pursuant to the law of the State that rendered the decision for which enforcement is being sought in light of a general principle of private international law which is inferred from Articles 12 and 64(1)(b) of Law 31 May 1995 No 218.

Articles 27 and 34 of the 1988 Lugano Convention must be interpreted in the sense that, where the defendant brings an action against the declaration of enforceability of a judgment rendered in default of appearance in the Contracting State of origin claiming that he has not been served with the document instituting the proceedings, the certificate pursuant to Annex V to the Regulation (EC) No 44/2001 issued by the rendering court that the default defendant was properly summoned does not prevent the court of the Contracting State in which enforcement is sought from verifying on its own motion that the information in that certificate is overall consistent with the evidence.

As for the assessment of the validity of the writ of summons transmitted abroad for the purpose of service pursuant to Article 27(2) of the 1988 Lugano Convention, the checks and activities indicated in the service of process and performed by the bailiff may not be disavowed.

In regard of Article 27(1) of the 1988 Lugano Convention, the objection that the imposition of an escrow prescribed by the law of the State where the decision was rendered conflicts with procedural public policy is inadmissible where it was not raised in the proceedings against the *exequatur*. Furthermore it may not be addressed on appeal of the decision on *exequatur* as it pertains to the merit of the claim.

Article 27(1) of the 1988 Lugano Convention must be interpreted narrowly and may be applied only in exceptional cases of manifest and serious violation of the defendant's right to a fair trial, as provided at Article 47 of the Charter of Fundamental Rights of the European Union. Consequently, the issue – not addressed by the Court of Appeal – of whether a default judgment rendered abroad merely acquiescing with the plaintiff's claim may be considered as conflicting with procedural public policy may not be examined by the *Corte di Cassazione* as it would entail a decision on the merits, proscribed by Article 34 of the Convention.

75. *Corte di Cassazione, 12 March 2014 No 5710* 686

Although, pursuant to Article 64(g) of Law 31 May 1995 No 218, the foreign law that gives exclusive relevance to the spouses' will to prove the ending

of the common conjugal life and the impossibility of re-establishing it is not contrary to public policy, a divorce judgment rendered in Santo Domingo in favor of two Italian spouses residing in Italy – where the marriage was also celebrated – may not be recognized in Italy pursuant to Article 64(a) of the same Law. In fact, the jurisdiction of Italian courts may not in the instant case be derogated from because it concerns the modification of a personal status which is exclusively governed and may only be governed by Italian law. Accordingly, Article 4 of Law No 218/1995 – which allows derogation from the jurisdiction of Italian courts when certain requirements are met and when the dispute is on alienable rights – may not be applied in the instant case.

76. *Reggio Emilia Tribunal, 22 March 2014* 690
 An action for legal separation filed by a Moroccan wife against her Moroccan husband shall be dismissed as moot when a divorce judgment is rendered by a Moroccan court in the respect of the parties' right to defense. On the other hand, the divorce judgment (already recorded in the national registry of identification and civil status) that applied the new Moroccan family law may be recognized pursuant to Articles 64 and 65 of Law 31 May 1995 No 218 and is fully compliant with the fundamental principles of public policy.
77. *Grosseto Tribunal, decree of 9 April 2014* 1007
 The marriage concluded in the State of New York by two male Italian citizens shall be registered in the Italian registry as such marriage does not conflict with public policy; Articles 84-88 of the Civil Code do not require gender diversity as a precondition for marriage; and, finally, the marriage is valid as to form and it produces legal effects in the State it was entered into.
78. *Florence Court of Appeal, decree of 23 September 2014* 1010
 Pursuant to Article 354 of the Code of Civil Procedure, the recourse against the Italian registrar's refusal to record a marriage concluded in the State of New York by two male Italian citizens and filed against the municipality instead of the mayor, who remained *in absentia* in his capacity as delegate of the government in maintaining the register, shall be remanded to the court of first instance.
79. *Pordenone Tribunal, 14 October 2014* 1011
 Pursuant to Article 3(1)(a) of Regulation (EC) No 2201/2003 of 27 November 2003, Italian courts have jurisdiction over a divorce proceedings between an Italian wife and a United States husband if, at the time the claim is lodged, the wife has re-established her habitual residence in Italy for more than six months.
 Pursuant to Articles 5(1)(c) and 7(1) of Regulation (EU) No 1259/2010 of 20 December 2010, the choice made in writing by both spouses in favour of the national law of one of them as the law that governs the divorce is valid.
 Pursuant to Article 14(c) of Regulation (EU) No 1259/2010, when the spouses choose as the governing law the law of a non-unified legal system (in the instant case, the U.S.A.), the governing law shall be the one of the State with which the spouses had the strongest connection (in the instant case, the State of Pennsylvania).
 Pennsylvania's divorce law – which allows, subject to certain conditions, the dissolution of the marriage without previous legal separation – does not conflict with public policy.
 Pursuant to Articles 29(2) and 30(1) of Law 31 May 1995 No 218, the law that governs marital property of spouses having different nationalities in a divorce proceedings is the law where the matrimonial life was mainly located.

EU CASE-LAW

Consumer protection: 16, 26.

Co-operation in criminal matters: 12.

External Relations: 3, 42.

EC Regulation No 1346/2000: 22, 41.

EC Regulation No 44/2001: 8, 9, 13, 14, 18, 20, 23, 25, 29, 34, 35, 37, 40.

EC Regulation No 805/2004: 15.

EU Citizenship: 5, 27, 33.

EU Law: 2, 5, 10, 19, 21, 31, 32, 36, 39.

Freedom of establishment: 39.

Freedom of movement of capitals: 6.

Freedom of movement of persons: 28.

Freedom to provide services: 11, 38.

Intellectual property: 24, 37.

Judicial proceedings before the Court of Justice: 1.

Prohibition of discrimination: 17, 30.

Rome Convention of 1980: 7.

1. *Court of Justice, 15 January 2013 case C-416/10* 435

Article 267 TFEU must be interpreted as meaning that a national court is obliged to make, of its own motion, a request for a preliminary ruling to the Court of Justice of the European Union even though it is ruling on a referral back to it after its first decision was set aside by the constitutional court of the Member State concerned and even though a national rule obliges it to resolve the dispute by following the legal opinion of that latter court.

Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control, as amended by Regulation (EC) No 1666/2006 of the European Parliament and of the Council of 18 January 2006, must be interpreted as meaning that it: requires that the public concerned have access to an urban planning decision, such as that at issue in the main proceedings, from the beginning of the authorisation procedure for the installation concerned; does not allow the competent national authorities to refuse the public concerned access to such a decision by relying on the protection of the confidentiality of commercial or industrial information where such confidentiality is provided for by national or European Union law to protect a legitimate economic interest; and does not preclude the possibility of rectifying, during the administrative procedure at second instance, an unjustified refusal to make available to the public concerned an urban planning decision during the administrative procedure at first instance, provided that all options and solutions

remain possible and that regularisation at that stage of the procedure still allows that public effectively to influence the outcome of the decision-making process, this being a matter for the national court to determine.

Article 15(a) of Directive 96/61, as amended by Regulation No 166/2006, must be interpreted as meaning that members of the public concerned must be able, in the context of the action provided for by that provision, to ask the court or competent independent and impartial body established by law to order interim measures such as temporarily to suspend the application of a permit, within the meaning of Article 4 of that Directive, pending the final decision.

A decision of a national court, taken in the context of national proceedings implementing the obligations resulting from Article 15a of Directive 96/61, as amended by Regulation No 166/2006, and from Article 9(2) and (4) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005, which annuls a permit granted in infringement of the provisions of that Directive is not capable, in itself, of constituting an unjustified interference with the developer's right to property enshrined in Article 17 of the Charter of Fundamental Rights of the European Union.

2. *Court of Justice, 30 May 2013 case C-604/11* 436

Article 19(9) of Directive 2004/39/EC of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC must be interpreted as meaning, firstly, that an investment service is offered as part of a financial product only when it forms an integral part thereof at the time when that financial product is offered to the client and, secondly, that the provisions of European Union legislation and the common European standards referred to by that provision must enable there to be a risk assessment of clients and/or include information requirements, which also encompass the investment service which forms an integral part of the financial product in question, in order for that service no longer to be subject to the obligations laid down in Article 19.

Article 4(1)(4) of Directive 2004/39 must be interpreted as meaning that the offering of a swap agreement to a client in order to cover the risk of variation of interest rates on a financial product for which that client has subscribed constitutes investment advice, as defined in that provision, provided that the recommendation to subscribe to such a swap agreement is made to that client in his capacity as an investor, it is presented as suitable for that person or based on a consideration of the circumstances of that person and it is not made solely through distribution channels or intended for the public.

It is for the internal legal order of each Member State to determine the contractual consequences where an investment firm offering an investment service fails to comply with the assessment requirements laid down in Article 19(4) and (5) of Directive 2004/39, subject to observance of the principles of equivalence and effectiveness.

3. *Court of Justice, 18 July 2013 case C-414/11* 432

Article 27 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, constituting Annex 1C to the Agreement establishing the World Trade Organisation (WTO), signed at Marrakesh on 15 April 1994 and approved by Council Decision 94/800/EC of 22 December 1994 concerning

the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994), falls within the field of the common commercial policy.

Article 27 of the Agreement on Trade-Related Aspects of Intellectual Property Rights must be interpreted as meaning that the invention of a pharmaceutical product such as the active chemical compound of a medicinal product is, in the absence of a derogation in accordance with Article 27(2) or (3), capable of being the subject-matter of a patent, under the conditions set out in Article 27(1).

A patent obtained following an application claiming the invention both of the process of manufacture of a pharmaceutical product and of the pharmaceutical product as such, but granted solely in relation to the process of manufacture, does not, by reason of the rules set out in Articles 27 and 70 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, have to be regarded from the entry into force of that agreement as covering the invention of that pharmaceutical product.

4. *Court of Justice, 10 October 2013 case C-86/12* 188
 Articles 20 TFEU and 21 TFEU must be interpreted as meaning that they do not preclude a Member State from refusing to allow a third-country national to reside in its territory, where that third-country national has sole responsibility for her minor children who are citizens of the European Union, and who have resided with her in that Member State since their birth, without possessing the nationality of that Member State and making use of their right to freedom of movement, in so far as those Union citizens do not satisfy the conditions set out in Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, or such a refusal does not deprive those citizens of effective enjoyment of the substance of the rights conferred by virtue of the status of European Union citizenship, a matter which is to be determined by the referring court.
5. *Court of Justice, 10 October 2013 case C-306/12* 187
 Article 21(5) of Directive 2009/103/EC of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, must be interpreted as meaning that the claims representative's sufficient powers must include authority validly to accept service of judicial documents necessary for proceedings for settlement of a claim to be brought before the court having jurisdiction.
 In circumstances where national legislation has reproduced word for word the provisions of Article 21(5) of Directive 2009/103, the referring court is required, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by domestic law, to interpret national law in a way that is compatible with the interpretation given to the directive by the Court.
6. *Court of Justice, 17 October 2013 case C-181/12* 435
 Articles 56 EC and 58 EC must be interpreted as precluding legislation of a Member State relating to the calculation of inheritance tax which provides that, in the event of inheritance of immovable property in that State, in a case

where, as in the main proceedings, the deceased and the heir had a permanent residence in a third country, such as the Swiss Confederation, at the time of the death, the tax-free allowance is less than the allowance which would have been applied if at least one of them had been resident in that Member State at that time.

7. *Court of Justice, 17 October 2013 case C-184/12* 182
 Articles 3 and 7(2) of the Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980 must be interpreted as meaning that the law of a Member State of the European Union which meets the minimum protection requirements laid down by Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents and which has been chosen by the parties to a commercial agency contract may be rejected by the court of another Member State before which the case has been brought in favour of the law of the forum, owing to the mandatory nature, in the legal order of that Member State, of the rules governing the situation of self-employed commercial agents, only if the court before which the case has been brought finds, on the basis of a detailed assessment, that, in the course of that transposition, the legislature of the State of the forum held it to be crucial, in the legal order concerned, to grant the commercial agent protection going beyond that provided for by that directive, taking account in that regard of the nature and of the objective of such mandatory provisions.
8. *Court of Justice, 17 October 2013 case C-218/12* 184
 Article 15(1)(c) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that that it does not require the existence of a causal link between the means employed to direct the commercial or professional activity to the Member State of the consumer's domicile, namely an internet site, and the conclusion of the contract with that consumer. However, the existence of such a causal link constitutes evidence of the connection between the contract and such activity.
9. *Court of Justice, 17 October 2013 case C-519/12* 184
 An action in which national legislation renders a person liable for the debts of a company which he controls, where that person did not comply with the reporting obligations following the acquisition of that company, cannot be regarded as concerning 'matters relating to a contract' for the purposes of Article 5(1)(a) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
10. *Court of Justice, 24 October 2013 case C-85/12* 189
 Articles 3 and 9 of Directive 2001/24/EC of 4 April 2001 on the reorganisation and winding up of credit institutions must be interpreted as meaning that reorganisation or winding-up measures in regard to a financial institution, such as those based on the transitional provisions in point II of Law No 44/2009, are to be regarded as measures adopted by an administrative or judicial authority for the purposes of those articles of Directive 2001/24, where those transitional provisions take effect only by means of judicial decisions granting a moratorium to a credit institution.
 Article 32 of Directive 2001/24 must be interpreted as not precluding a national provision, as Article 98 of Law No 161/2002 on financial institutions, as amended by Law No 129/2008 of 13 November 2008, which prohibited or

suspended any legal action against a financial institution once it benefitted from a moratorium, from being effective in regard to interim protective measures, such as those at issue in the main proceedings, adopted in another Member State before the declaration of the moratorium.

11. *Court of Justice, 7 November 2013 case C-522/12* 433
 Article 3(1)(c) of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, is to be interpreted as meaning that it does not preclude the inclusion in the minimum wage of elements of remuneration which do not alter the relationship between the service provided by the worker, on the one hand, and the consideration which he receives by way of remuneration for that service, on the other. It is for the national court to verify whether that is the case as regards the elements of remuneration at issue.
12. *Court of Justice, 14 November 2013 case C-60/12* 713
 The term ‘court having jurisdiction in particular in criminal matters’, set out in Article 1(a)(iii) of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, is an autonomous concept of Union law and must be interpreted as covering any court or tribunal which applies a procedure that satisfies the essential characteristics of criminal procedure. The Unabhängiger Verwaltungssenat in den Ländern (Austria) fulfils those criteria and must for that reason be regarded as coming within the scope of that term.
 Article 1(a)(iii) of Framework Decision 2005/214, as amended, must be interpreted as meaning that a person is to be regarded as having had the opportunity to have a case tried before a court having jurisdiction in particular in criminal matters in the situation where, prior to bringing his appeal, that person was required to comply with a pre-litigation administrative procedure. Such a court must have full jurisdiction to examine the case as regards both the legal assessment and the factual circumstances.
13. *Court of Justice, order 14 November 2013 case C-469/12* 185
 The second indent of Article 5(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a contract relating to the storage of goods constitutes a contract for the ‘provision of services’ within the meaning of that provision, given that the predominant element of a storage contract is the fact that the warehouse-keeper undertakes to store the goods concerned on behalf of the other party to the contract. Accordingly, that commitment entails a specific activity, consisting, at the least, of the reception of goods, their storage in a safe place and their return to the other party to the contract in an appropriate state.
14. *Court of Justice, 14 November 2012 case C-478/12* 185
 The concept of ‘other party to the contract’ laid down in Article 16(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that it also covers the contracting partner (or agent) of the operator, operator with which the consumer concluded a contract for a package holiday and which has its registered office in the Member State in which the consumer is domiciled (different from the State of the registered office of the agent).

15. *Court of Justice, 5 December 2013 case C-508/12* 186
 Article 6(1)(d) of Regulation (EC) No 805/2004 of 21 April 2004 creating a European Enforcement Order for uncontested claims must be interpreted as meaning that it does not apply to contracts concluded between two persons who are not engaged in commercial or professional activities.
16. *Court of Justice, 5 December 2013 case C-413/12* 715
 Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts and the principles of equivalence and effectiveness must be interpreted as not precluding national procedural rules under which actions for an injunction brought by consumer protection associations must be brought before the courts where the defendant is established or has its address and whereby no appeal lies against a decision declining territorial jurisdiction handed down by a court of first instance.
17. *Court of Justice, 12 December 2013 case C-267/12* 434
 Article 2(2)(a) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as precluding a provision in a collective agreement under which an employee who concludes a civil solidarity pact with a person of the same sex is not allowed to obtain the same benefits, such as days of special leave and a salary bonus, as those granted to employees on the occasion of their marriage, where the national rules of the Member State concerned do not allow persons of the same sex to marry, in so far as, in the light of the objective of and the conditions relating to the grant of those benefits, that employee is in a comparable situation to an employee who marries.
18. *Court of Justice, 19 December 2013 case C-9/12* 428
 Article 2 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, where the defendant is domiciled in a Member State other than that in which the court seised is situated, it precludes the application of a national rule of jurisdiction such as that provided for in Article 4 of the Law of 27 July 1961 on Unilateral Termination of Exclusive Distribution Agreements of Indefinite Duration, as amended by the Law of 13 April 1971 on Unilateral termination of distribution agreements.
 Article 5(1)(b) of Regulation No 44/2001 must be interpreted as meaning that the rule of jurisdiction laid down in the second indent of that provision for disputes relating to contracts for the supply of services is applicable in the case of a legal action by which a plaintiff established in one Member State claims, against a defendant established in another Member State, rights arising from an exclusive distribution agreement, which requires the contract binding the parties to contain specific terms concerning the distribution by the distributor of goods sold by the grantor. It is for the national court to ascertain whether that is the case in the proceedings before it.
19. *Court of Justice, 19 December 2013 case C-174/12* 717
 Articles 12, 15, 16, 18, 19 and 42 of Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 48 EC, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent, as amended by Council Directive 92/101/EEC of 23 November

1992, must be interpreted as not precluding national legislation which, in the context of the transposition of: Directive 2003/71/EC of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC; Directive 2004/109/EC of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC; and Directive 2003/6/EC of 28 January 2003 on insider dealing and market manipulation (market abuse), first, provides that a public limited liability company, as an issuer of shares, may have a liability to a purchaser of shares in that company based on a breach of the information requirements laid down in those Directives, and, secondly, imposes, under that liability, an obligation on the company concerned to repay to the purchaser a sum equivalent to the purchase price of the shares and to redeem those shares.

Articles 12 and 13 of Directive 2009/101/EC of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 EC, with a view to making such safeguards equivalent, must be interpreted as not precluding national legislation which, in circumstances such as those of the main proceedings, provides for the retroactive cancellation of a share purchase contract.

Articles 12, 15, 16, 18, 19 and 42 of the Second Directive 77/91, as amended by Directive 92/101, and Articles 12 and 13 of Directive 2009/101 must be interpreted as meaning that the liability established by the national legislation at issue in the main proceedings is not necessarily restricted to the value of shares, calculated according to the price of those shares if the company is publicly listed, at the time when the claim is brought.

20. *Court of Justice, 19 December 2013 case C-452/12* 430
 Article 71 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that it precludes an international convention from being interpreted in a manner which fails to ensure, under conditions at least as favourable as those provided for by that Regulation, that the underlying objectives and principles of that Regulation are observed.
 Article 71 of Regulation No 44/2001 must be interpreted as meaning that it precludes an interpretation of Article 31(2) of the Convention on the Contract for the International Carriage of Goods by Road, signed in Geneva on 19 May 1956, as amended by the Protocol signed in Geneva on 5 July 1978, according to which an action for a negative declaration or a negative declaratory judgment in one Member State does not have the same cause of action as an action for indemnity between the same parties in another Member State.
21. *Court of Justice, 15 January 2014 case C-176/12* 711
 Article 27 of the Charter of Fundamental Rights of the European Union, by itself or in conjunction with the provisions of Directive 2002/14/EC of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, must be interpreted to the effect that, where a national provision implementing that directive, such as Article L.1111-3 of the French Labour Code, is incompatible with European Union law, that Article of the Charter cannot be invoked in a dispute between individuals in order to disapply that national provision.
22. *Court of Justice, 16 January 2014 case C-328/12* 427

Article 3(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as meaning that the courts of the Member State within the territory of which insolvency proceedings have been opened have jurisdiction to hear and determine an action to set a transaction aside by virtue of insolvency that is brought against a person whose place of residence is not within the territory of a Member State.

23. *Court of Justice, 16 January 2014 case C-45/13* 431

Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in the case where a manufacturer faces a claim of liability for a defective product, the place of the event giving rise to the damage is the place where the product in question was manufactured.

24. *Court of Justice, 13 February 2014 case C-479/12* 714

On a proper construction of Article 11(2) of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs, it is possible that an unregistered design may reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the European Union, if images of the design were distributed to traders operating in that sector, which it is for the Community design court to assess, having regard to the circumstances of the case before it.

On a proper construction of the first sentence of Article 7(1) of Regulation No 6/2002, it is possible that an unregistered design may not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the European Union, even though it was disclosed to third parties without any explicit or implicit conditions of confidentiality, if it has been made available to only one undertaking in that sector or has been presented only in the showrooms of an undertaking outside the European Union, which it is for the Community design court to assess, having regard to the circumstances of the case before it.

On a proper construction of the first subparagraph of Article 19(2) of Regulation No 6/2002, the holder of the protected design must bear the burden of proving that the contested use results from copying that design. However, if a Community design court finds that the fact of requiring that holder to prove that the contested use results from copying that design is likely to make it impossible or excessively difficult for such evidence to be produced, that court is required, in order to ensure observance of the principle of effectiveness, to use all procedures available to it under national law to counter that difficulty, including, where appropriate, rules of national law which provide for the burden of proof to be adjusted or lightened.

The defences of the extinction of rights over time and of an action being time-barred that may be raised against an action brought on the basis of Articles 19(2) and 89(1)(a) of Regulation No 6/2002 are governed by national law, which must be applied in a manner that observes the principles of equivalence and effectiveness.

On a proper construction of Article 89(1)(d) of Regulation No 6/2002, claims for the destruction of infringing products are governed by the law of the Member State in which the acts of infringement or threatened infringement have been committed, including its private international law. Claims for compensation for damage resulting from the activities of the person responsible for the acts of infringement or threatened infringement and for disclosure, in order to determine the extent of that damage, of information relating

- to those activities, are governed, pursuant to Article 88(2) of that Regulation, by the national law of the Community design court hearing the proceedings, including its private international law.
25. *Court of Justice, 27 February 2014 case C-1/13* 703
 Article 27(2) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, except in the situation where the court second seised has exclusive jurisdiction by virtue of that Regulation, the jurisdiction of the court first seised must be regarded as being established, within the meaning of that provision, if that court has not declined jurisdiction of its own motion and none of the parties has contested its jurisdiction prior to or up to the time at which a position is adopted which is regarded in national procedural law as being the first defence on the substance submitted before that court.
26. *Court of Justice, 27 February 2014 case C-470/12* 716
 Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, in particular Articles 6(1), 7(1) and 8 of that directive, read in conjunction with Articles 38 and 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding national legislation which does not allow a consumer protection association to intervene in support of a consumer in proceedings for enforcement, against the latter, of a final arbitration award.
27. *Court of Justice, 12 March 2014 case C-456/12* 711
 Article 21(1) TFEU must be interpreted as meaning that where a Union citizen has created or strengthened a family life with a third-country national during genuine residence, pursuant to and in conformity with the conditions set out in Article 7(1) and (2) and Article 16(1) and (2) of Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, in a Member State other than that of which he is a national, the provisions of that Directive apply by analogy where that Union citizen returns, with the family member in question, to his Member State of origin. Therefore, the conditions for granting a derived right of residence to a third-country national who is a family member of that Union citizen, in the latter's Member State of origin, should not, in principle, be more strict than those provided for by that directive for the grant of a derived right of residence to a third-country national who is a family member of a Union citizen who has exercised his right of freedom of movement by becoming established in a Member State other than the Member State of which he is a national.
28. *Court of Justice, 12 March 2014 case C-457/12* 1048
 Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 must be interpreted as not precluding a refusal by a Member State to grant a right of residence to a third-country national who is a family member of a Union citizen where that citizen is a national of and resides in that Member State but regularly travels to another Member State in the course of his professional activities.

Article 45 TFEU must be interpreted as conferring on a third-country national who is the family member of a Union citizen a derived right of residence in the Member State of which that citizen is a national, where the citizen resides in that Member State but regularly travels to another Member State as a worker within the meaning of that provision, if the refusal to grant such a right of residence discourages the worker from effectively exercising his rights under Article 45 TFEU, which it is for the referring court to determine.

29. *Court of Justice, 13 March 2014 case C-548/12* 704
 Civil liability claims such as those at issue in the main proceedings, which are made in tort under national law, must nonetheless be considered as concerning ‘matters relating to a contract’ within the meaning of Article 5(1)(a) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, where the conduct complained of may be considered a breach of the terms of the contract, which may be established by taking into account the purpose of the contract.
30. *Court of Justice, 18 March 2014 case C-628/11* 1047
 Article 18 TFEU, which enshrines the general principle of non-discrimination on grounds of nationality, is applicable to a situation in which a first Member State requires an air carrier holding an operating licence issued by a second Member State to obtain an authorisation to enter the airspace of the first Member State to operate private flights in non-scheduled traffic from a third country to that first Member State, although such an authorisation is not required for air carriers holding an operating licence issued by that first Member State.
 Article 18 TFEU must be interpreted as precluding legislation of a first Member State which requires, on pain of a fine, an air carrier holding an operating licence issued by a second Member State to obtain an authorisation to enter the airspace of the first Member State to operate private flights in non-scheduled traffic from a third country to that first Member State, although such an authorisation is not required for air carriers holding an operating licence issued by that first Member State, and which makes the grant of that authorisation subject to production of a declaration confirming that the air carriers holding an operating licence issued by that first Member State are either not willing to operate those flights or are prevented from operating them.
31. *Court of Justice, 18 March 2014 case C-167/12* 1043
 Article 3 of Directive 98/5/EC of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained must be interpreted as meaning that no abuse can be identified in the fact that a national of a Member State who after successfully obtaining a university degree travels to another Member State in order to acquire there the professional qualification of lawyer and returns to the Member State of which he is a national in order to practise there the profession of lawyer under the professional title obtained in the Member State where that professional qualification was acquired.
32. *Court of Justice, 18 March 2014 case C-363/12* 1044
 Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, in particular Articles 4 and 14 thereof, must be interpreted as meaning that a refusal to provide paid leave equivalent to maternity leave to a female worker who as a commissioning mother has had a

baby through a surrogacy arrangement does not constitute discrimination on grounds of sex.

The situation of such a commissioning mother as regards the grant of adoptive leave is not within the scope of that Directive.

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that a refusal to provide paid leave equivalent to maternity leave or adoptive leave to a female worker who is unable to bear a child and who has availed of a surrogacy arrangement does not constitute discrimination on the ground of disability.

The validity of that Directive cannot be assessed in the light of the United Nations Convention on the Rights of Persons with Disabilities, but that Directive must, as far as possible, be interpreted in a manner that is consistent with that Convention.

33. *Court of Justice, 27 March 2014 case C-322/13* 713
 Articles 18 TFEU and 21 TFEU must be interpreted as precluding national rules which grant the right to use a language other than the official language of that State in civil proceedings brought before the courts of a Member State which are situated in a specific territorial entity, only to citizens of that State who are domiciled in the same territorial entity.
34. *Court of Justice, 3 April 2014 case C-387/12* 705
 Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, where there are several supposed perpetrators of damage allegedly caused to rights of copyright protected in the Member State of the court seised, that provision does not allow jurisdiction to be established, on the basis of the causal event of the damage, of a court within whose jurisdiction the supposed perpetrator who is being sued did not act, but does allow the jurisdiction of that court to be established on the basis of the place where the alleged damage occurs, provided that the damage may occur within the jurisdiction of the court seised. If that is the case, the court has jurisdiction only to rule on the damage caused in the territory of the Member State to which it belongs.
35. *Court of Justice, 3 April 2014 case C-438/12* 706
 Article 22(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, must be interpreted as meaning that there falls within the category of proceedings which have as their object ‘rights in rem in immovable property’ within the meaning of that provision an action such as that brought in the present case before the courts of another Member State, seeking a declaration of invalidity of the exercise of a right of pre-emption attaching to that property and which produces effects with respect to all the parties.
 Article 27(1) of Regulation No 44/2001 must be interpreted as meaning that, before staying its proceedings in accordance with that provision, the court second seised is required to examine whether, by reason of a failure to take into consideration the exclusive jurisdiction laid down in Article 22(1) thereof, the decision of the court first seised will be recognised in the other Member States in accordance with Article 35(1) of that Regulation.
36. *Court of Justice, 13 May 2014 case C-131/12* 708
 Article 2(b) and (d) of Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the

free movement of such data are to be interpreted as meaning that, first, the activity of a search engine consisting in finding information published or placed on the internet by third parties, indexing it automatically, storing it temporarily and, finally, making it available to internet users according to a particular order of preference must be classified as ‘processing of personal data’ within the meaning of Article 2(b) when that information contains personal data and, second, the operator of the search engine must be regarded as the ‘controller’ in respect of that processing, within the meaning of Article 2(d).

Article 4(1)(a) of Directive 95/46 is to be interpreted as meaning that processing of personal data is carried out in the context of the activities of an establishment of the controller on the territory of a Member State, within the meaning of that provision, when the operator of a search engine sets up in a Member State a branch or subsidiary which is intended to promote and sell advertising space offered by that engine and which orientates its activity towards the inhabitants of that Member State.

Article 12(b) and subparagraph (a) of the first paragraph of Article 14 of Directive 95/46 are to be interpreted as meaning that, in order to comply with the rights laid down in those provisions and in so far as the conditions laid down by those provisions are in fact satisfied, the operator of a search engine is obliged to remove from the list of results displayed following a search made on the basis of a person’s name links to web pages, published by third parties and containing information relating to that person, also in a case where that name or information is not erased beforehand or simultaneously from those web pages, and even, as the case may be, when its publication in itself on those pages is lawful.

Article 12(b) and subparagraph (a) of the first paragraph of Article 14 of Directive 95/46 are to be interpreted as meaning that, when appraising the conditions for the application of those provisions, it should *inter alia* be examined whether the data subject has a right that the information in question relating to him personally should, at this point in time, no longer be linked to his name by a list of results displayed following a search made on the basis of his name, without it being necessary in order to find such a right that the inclusion of the information in question in that list causes prejudice to the data subject. As the data subject may, in the light of his fundamental rights under Articles 7 and 8 of the Charter, request that the information in question no longer be made available to the general public on account of its inclusion in such a list of results, those rights override, as a rule, not only the economic interest of the operator of the search engine but also the interest of the general public in having access to that information upon a search relating to the data subject’s name. However, that would not be the case if it appeared, for particular reasons, such as the role played by the data subject in public life, that the interference with his fundamental rights is justified by the preponderant interest of the general public in having, on account of its inclusion in the list of results, access to the information in question.

37. *Court of Justice, 5 June 2014, case C-360/12* 1041

The concept of ‘the Member State in which the act of infringement has been committed’ in Article 93(5) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark must be interpreted as meaning that, in the event of a sale and delivery of a counterfeit product in one Member State, followed by a resale by the purchaser in another Member State, that provision does not allow jurisdiction to be established to hear an infringement action against the original seller who did not himself act in the Member State where the court seised is situated.

Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in the event of an allegation of unlawful comparative advertising or unfair imitation of a sign protected by a Community trade mark, prohibited by the law against unfair competition (Gesetz gegen den unlauteren Wettbewerb) of the Member State in which the court seised is situated, that provision does not allow jurisdiction to be established, on the basis of the place where the event giving rise to the damage resulting from the infringement of that law occurred, for a court in that Member State where the presumed perpetrator who is sued there did not himself act there. By contrast, in such a case, that provision does allow jurisdiction to be established, on the basis of the place of occurrence of damage, to hear an action for damages based on that national law brought against a person established in another Member State and who is alleged to have committed, in that State, an act which caused or may cause damage within the jurisdiction of that court.

38. *Court of Justice, 19 June 2014, in joined cases C-53/13 and C-80/13* 1047
 Article 56 TFEU precludes legislation, such as that at issue in the main proceedings, under which companies established in one Member State using workers employed and seconded by temporary employment agencies established in another Member State, but operating in the first Member State through a branch, are obliged to withhold tax and to pay to the first Member State an advance payment on the income tax due by those workers, whereas the same obligation is not imposed on companies established in the first Member State which use the services of temporary employment agencies established in that Member State.
39. *Court of Justice, 17 July 2014, in joined cases C-58/13 and C-59/13* 1045
 Article 3 of Directive 98/5/EC of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained must be interpreted as meaning that no abuse can be identified in the fact that a national of a Member State who after successfully obtaining a university degree travels to another Member State in order to acquire there the professional qualification of lawyer and returns to the Member State of which he is a national in order to practise there the profession of lawyer under the professional title obtained in the Member State where that professional qualification was acquired.
40. *Court of Justice, 4 September 2014, case C-157/13* 1042
 Article 1(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action for the payment of a debt based on the provision of carriage services taken by the insolvency administrator of an insolvent undertaking in the course of insolvency proceedings opened in one Member State and taken against a service recipient established in another Member State comes under the concept of ‘civil and commercial matters’ within the meaning of that provision.
 Article 71 of Regulation No 44/2001 must be interpreted as meaning that, in a situation where a dispute falls within the scope of both that Regulation and the Convention on the Contract for the International Carriage of Goods by Road, signed in Geneva on 19 May 1956, as amended by the Protocol signed in Geneva on 5 July 1978, a Member State may, in accordance with Article 71(1) of that Regulation, apply the rules concerning jurisdiction laid down in Article 31(1) of that Convention.

41. *Court of Justice, 4 September 2014, case C-327/13* 1039
 Article 3(2) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted to the effect that, where winding-up proceedings are opened in respect of a company in a Member State other than that in which it has its registered office, secondary insolvency proceedings may also be opened in respect of that company in the other Member State in which its registered office is situated and in which it possesses legal personality.
 Article 29(b) of Regulation No 1346/2000 must be interpreted to the effect that the question as to which person or authority is empowered to seek the opening of secondary proceedings must be determined on the basis of the national law of the Member State within the territory of which the opening of such proceedings is sought. The right to seek the opening of secondary proceedings cannot, however, be restricted to creditors who have their domicile or registered office within the Member State in whose territory the relevant establishment is situated, or to creditors whose claims arise from the operation of that establishment.
 Regulation No 1346/2000 must be interpreted to the effect that, where the main insolvency proceedings are winding-up proceedings, whether the court before which the action seeking the opening of secondary insolvency proceedings has been brought may take account of criteria as to appropriateness is governed by the national law of the Member State within the territory of which the opening of secondary proceedings is sought. However, when establishing the conditions for the opening of secondary proceedings, Member States must comply with EU law and, in particular, its general principles, as well as the provisions of that regulation.
42. *Court of Justice, opinion 14 October 2014 No 1/13* 1023
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