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FACULTY OF LAW

Prorogation under the New Brussels I Regulation

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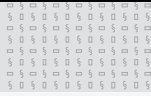
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Changes concerning prorogation agreements

- 1) Personal scope of Article 23
- 2) Rule on substantive validity
- 3) *Lis pendens* rule

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Personal scope of Article 23

- Present situation
 - Domicile of one of the parties
 - Prorogation from outside not covered
 - Prorogation agreements in favour of third state
 - ❖ Mandatory nature of Regulation
 - ❖ Reflexive effect
- The Proposal
 - Universal application
 - Prorogation agreements in favour of third state
 - ❖ Reflexive effect excluded by new *lis pendens* rule in Article 34?



Substantive validity

- Present situation
 - Article 23 expressly regulates form
 - The existence of consent - covered by Article 23 itself?
 - Limited applicability of Article 23 to substantive validity
 - Application of national law => differences
- The Proposal
 - Uniform conflict rule
 - Law of the state whose court is chosen
 - Only substantive law x also conflict rules
 - Space for autonomous application of Article 23?

Lis pendens

- Present situation
 - Conclusions of *Gasser* case
 - Critique of *Gasser* case
 - ❖ Undermines effects of prorogation agreements
 - ❖ Disrespects party autonomy
 - ❖ Dilatory tactics - torpedo actions
- The Proposal
 - New rule in Article 32(2)
 - Precedence of chosen court
 - Increase the effectiveness of prorogation agreements
 - Eliminate dilatory tactics
 - Strict rule - no discretion of courts



Thank you for your
attention!