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## Asymmetric Choice of Court under Brussels Ibis

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# THESIS PROPOSITIONS

Nischa Vreeling

15 July 2024

1. Asymmetric choice of court agreements are compatible with the ratio and purpose and of Brussels *Ibis* and should be enforced in the EU.
2. Asymmetric choice of court agreements are generally compatible with the system set out by Article 25 Brussels *Ibis*.
3. Article 25 Brussels *Ibis*' reference to the *lex fori prorogati* should be interpreted as designating the law of the exclusively chosen court except in those cases where the beneficiary of the agreement seizes a prorogated court, in which case the law of the seized court should apply.
4. Article 31(2) Brussels *Ibis* on reverse *lis pendens* operates under the assumption that choice of court agreements are either exclusive or non-exclusive to prevent irreconcilable judgments and is therefore incompatible with asymmetric choice of court agreements.
5. Brussels *Ibis*' provisions on *lis pendens* should be amended to provide a specific rule for asymmetric choice of court which preserves the benefits those agreements intend to confer on the beneficiary while precluding the possibility of incompatible judgments.
6. Legal frameworks must address four aspects to effectively regulate choice of court: 1) admissibility, 2) form requirements, 3) contractual validity and 4) enforceability.
7. Brussels *Ibis* does not make a clear distinction between the admissibility and enforceability of choice of court and in that regard provides a suboptimal framework for the regulation of such agreements.
8. US law provides more protection to small businesses who are party to choice of court agreements than Brussels *Ibis*.
9. To regulate enforceability of choice of court, a connection should be established between Brussels *Ibis* and Article 42 of the European Charter of Fundamental Rights on the right to access to justice and an effective remedy.
10. Asymmetric choice of court agreements do not fall within the scope of the Hague Choice of Court Convention and are incompatible with its ratio and system.