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MAIN CONNECTING FACTOR FOR TORT CLAIMS IN THE EU AND UKRAINE: LESSONS FROM THE CJEU CASE LAW FOR UKRAINIAN RECODIFICATION

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ABSTRACT

Background: *As Ukraine advances toward EU membership, aligning its private international law with the EU acquis has become an urgent legislative task. Cross-border tort disputes in the EU are governed by two key instruments: Regulation (EU) No 1215/2012 (Brussels I Recast), which addresses international jurisdiction, and Regulation (EC) No 864/2007 (Rome II), which determines the applicable law. Their operation has been shaped by the jurisprudence of the Court of Justice of the European Union (CJEU). Ukraine is currently undergoing a comprehensive recodification of its private law, including the preparation of a new Civil Code containing a dedicated Book VIII on private international law (Draft Law No. 15150, April 2026). This reform presents a critical opportunity to align Ukrainian conflict-of-laws rules with European standards ahead of accession.*

Method: *The article employs doctrinal and comparative legal methodologies, addressing jurisdiction and applicable law as distinct yet interrelated dimensions of cross-border tort*

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disputes. The analysis begins by examining the two principal connecting factors conceivable in tort conflicts, lex loci delicti commissi and lex loci damni, and the policy rationale underlying each. It then turns to the EU framework, analysing how jurisdiction under Article 7(2) of the Brussels I Recast Regulation and applicable law under Article 4(1) of the Rome II Regulation are structured and interpreted, with particular attention to the CJEU's distinction between direct damage and indirect consequences. Special consideration is given to the localisation of purely financial loss, illustrated by a series of leading CJEU judgments. Against this doctrinal background, the article evaluates the current Ukrainian Law "On International Private Law" in respect of both jurisdiction and applicable law, identifying areas of divergence from the European model. Finally, it examines the proposed solutions in Book VIII of the Draft Civil Code of Ukraine, assessing the extent to which the ongoing recodification incorporates European standards and formulating recommendations for further legislative alignment.

Results and Conclusions: *The analysis reveals significant divergences between Ukrainian law and the EU model. The current Ukrainian legislation relies on lex loci delicti commissi for applicable law, a structural departure from Rome II's lex loci damni approach, and provides excessively broad, conceptually ambiguous jurisdictional grounds. While the Draft Civil Code marks meaningful progress by adopting lex loci damni as the principal connecting factor, critical gaps remain: it lacks a codified distinction between direct damage and indirect consequences, a cornerstone of CJEU case law omits a rule equivalent to Article 17 of Rome II on safety and conduct, and fails to introduce party autonomy for non-contractual obligations. The article recommends targeted legislative adjustments to close these gaps and achieve genuine alignment with the European conflict-of-laws framework.*

1 INTRODUCTION

Private international law performs a quiet but decisive function in the architecture of cross-border economic activity. Determining which legal system governs transnational disputes reduces uncertainty, allocates regulatory authority, and shapes the incentives of private actors operating across jurisdictions. In an integrated market, predictable conflict-of-laws rules are not merely technical devices; they constitute economic infrastructure. Harmonised private international law lowers legal friction and facilitates the free movement of goods, services, capital, and persons, which are core objectives of the European Union.

The European experience demonstrates that unifying conflict-of-laws rules directly enhances market efficiency. Instruments such as the Rome Regulations replaced divergent national approaches with common connecting factors, ensuring that identical factual situations produce comparable legal outcomes regardless of the forum.[1] This predictability

1 See, Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the Law Applicable to Non-Contractual Obligations (Rome II) [2007] OJ L 199/40, recital (6). Peter Stone, *Stone on Private International Law in the European Union* (4th edn, Edward Elgar 2018) 4.

enhances mutual trust among national courts and strengthens judicial cooperation. From an economic perspective, harmonisation therefore functions as a mechanism of regulatory coordination: it reduces duplicative litigation, limits opportunistic forum selection, and improves enforcement prospects across borders.[2] Tort law illustrates these dynamics particularly clearly, as cross-border accidents, environmental harm, product liability, and online wrongdoing increasingly transcend territorial boundaries.

For Ukraine, the modernisation of private international law is not only a matter of doctrinal refinement but also a structural component of European integration. Ukraine's European aspirations entail progressive alignment with EU legal standards, including those governing judicial cooperation in civil matters. This alignment reflects both economic necessity and political commitment: integration into European markets requires legal predictability compatible with EU conflict-of-laws methodology.

A central policy framework guiding this process is the 'Rule of Law Roadmap', a comprehensive strategic document that defines reforms within the EU accession negotiation process under Chapters 23 ("Judiciary and Fundamental Rights") and 24 ("Justice, Freedom and Security").[3] Among the measures envisaged is the development and adoption of a new law on private international law to align Ukrainian conflict-of-laws rules in civil, commercial, and family matters with contemporary approaches and harmonise them with relevant EU acts.

The question of reforming Ukrainian conflict-of-laws rules arises at a particularly opportune moment in the country's recodification of private law.[4] In April 2026, the Draft of the Civil Code (Draft Law No. 15150)[5] was registered in the Ukrainian parliament. The Draft proposes a structural reorganisation of Ukrainian private law and, notably,

2 Andrew Dickinson, *The Rome II Regulation: The Law Applicable to Non-Contractual Obligations* (Oxford Private International Law Series, OUP 2010) doi:10.1093/law/9780199289684.001.0001; Ulrich Magnus and Peter Mankowski (eds), *European Commentaries on Private International Law: Rome II Regulation*, vol 3 (Otto Schmidt 2019) 6-9; Francisco J Garcimartín Alférez, 'The Rome II Regulation: On the Way Towards a European Private International Law Code' (2007) 3 The European Legal Forum 77.

3 'Rule of Law Roadmap' (*Government Office for Coordination of European and Euro-Atlantic Integration*, May 2018) [in Ukrainian] <https://eu-ua.kmu.gov.ua/wp-content/uploads/UA_Dorozhnya_karta_z_pytan_verhovenstva_prava_2.pdf> accessed 13 March 2026.

4 Anatoliy Dovgert, 'Recodification of the Civil Code of Ukraine: Driving Factors and Prerequisites for the Launch' (2019) 1 Law of Ukraine 27, doi:10.33498/louu-2019-01-027 [in Ukrainian]; Ernest Gramatskiy, 'Recodification of Civil Legislation of Ukraine and Private International Law: Concerning the Prospects' (2021) 1 Law Review of Kyiv University of Law 177, doi:10.36695/2219-5521.1.2021.33 [in Ukrainian]; Nataliia Kuznetsova (ed), *Recodification of Civil Legislation in Ukraine: Challenges of Our Time* (Helvetica 2021) [in Ukrainian]; Vasyl Tatsiy, 'Re-codification of the Civil Law of Ukraine: On the Way to European Integration' (2021) 10(1-2) Global Journal of Comparative Law 1, doi:10.1163/2211906X-10010001.

5 Draft of the Civil Code of Ukraine no 15150 of 9 April 2026 (*Verkhovna Rada of Ukraine: Bills*, 2026) [in Ukrainian] <https://itd.rada.gov.ua/billinfo/Bills/Card/69837> accessed 13 March 2026.

introduces Book VIII dedicated to private international law. Under this approach, conflict-of-laws provisions, currently contained in the separate Law "On International Private Law"[6], would be incorporated directly into the Civil Code. Such a codification project creates a unique window for reconsidering the conceptual foundations of Ukrainian private international law.

2 METHODOLOGY

This article examines the main connecting factor for tort claims in EU private international law and evaluates how its underlying logic may inform the reform of Ukrainian law. Substantively, the analysis addresses two interconnected issues: jurisdiction in cross-border tort disputes and the determination of the law applicable to tort claims. In the EU legal order, these two dimensions are closely interrelated and operate through the combined framework of the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)[7] (hereinafter called 'Brussels I Regulation (recast)') and the Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations[8] (hereinafter called 'Rome II Regulation'). The article examines both aspects in parallel to assess the extent to which Ukrainian private international law corresponds to the European model.

With regard to applicable law, the article focuses on the principal connecting factor under Article 4(1) of the Rome II Regulation, namely the law of the country where the damage occurs (*lex loci damni*). The analysis does not address the habitual residence clause (Article 4(2)) or the escape clause (Article 4(3)), nor does it examine the specific regimes applicable to particular categories of non-contractual obligations, such as product liability, environmental damage, or other special rules contained in the Regulation.

Within this framework, particular attention is given to the interpretation of the notion of "the place where the damage occurs", as developed in the jurisprudence of the Court of Justice of the European Union (hereinafter called 'the CJEU'). The analysis addresses, in particular, the distinction between direct damage and indirect consequences, which has become a central interpretative tool in determining the relevant connecting factor. Closely related to this issue is the problem of localising pure economic loss, which often

6 Law of Ukraine No 2709-IV of 23 June 2005 'On International Private Law' (amended 31 October 2025) <https://zakon.rada.gov.ua/laws/show/2709-15#Text> accessed 13 March 2026.

7 Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (recast) [2012] OJ L 351/1.

8 Regulation (EC) No 864/2007 (n 1).

arises in cross-border financial and investment disputes and presents significant conceptual and practical difficulties.

The study proceeds in three stages. First, it analyses how the principal connecting factor of Article 4(1) of the Rome II Regulation is formulated in EU legislation and how its autonomous meaning has been clarified by CJEU case law. Second, it evaluates whether the current Ukrainian legal framework, primarily the Law of Ukraine "On International Private Law", is aligned with the relevant EU acquis. Third, the article examines the solutions proposed in the Draft Civil Code of Ukraine (Book VIII on private international law) to determine whether the ongoing recodification of Ukrainian private law adequately incorporates European standards.

Based on this comparative analysis, the article formulates recommendations to adapt Ukrainian legislation so that it more closely reflects the approach embodied in EU instruments and the interpretative guidance provided by CJEU case law.

3 THE CONCEPT OF TORT LAW AND TWO CONCEIVABLE LINKING FACTORS

3.1. The Concept of Tort Law

Tort law may be broadly defined as the body of law governing non-contractual liability for damage. Its central function is to determine under what conditions a person who causes harm to another must compensate for that harm. Unlike contractual liability, which arises from obligations voluntarily assumed by the parties, tort liability arises independently of any prior agreement between them.

A distinctive feature of tort claims is that they often bind two legal strangers, individuals or entities who had no prior legal relationship before the harmful event occurred.[9] A typical illustration is a traffic accident. A driver from one country may negligently collide with a vehicle driven by a tourist from another country while both are travelling abroad. The resulting claim for compensation arises not from any contract between the drivers but from the wrongful act that caused damage.

In EU private international law, the concept of tort or non-contractual liability is treated as an autonomous concept, independent of national legal classifications.[10] The CJEU has repeatedly emphasised that the interpretation of conflict-of-laws instruments cannot depend on how national legal systems label a particular claim. In its judgment

9 Christian von Bar, *The Common European Law of Torts*, vol 1 (OUP 1998) 3-5; Peter Cane, *The Anatomy of Tort Law* (Hart Publishing 1997); Tony Weir, *An Introduction to Tort Law* (2nd edn, OUP 2006).

10 Magnus and Mankowski (n 2) 146.

in *ERGO Insurance SE v If P&C Insurance AS; Gjensidige Baltic AAS v PZU Lietuva UAB DK,* the Court explained:

> "As regards the concept of 'non-contractual obligation', within the meaning of Article 1 of the Rome II Regulation, it must be recalled that the concept of 'matters relating to tort, delict and quasi-delict', within the meaning of Article 5(3) of the Brussels I Regulation, includes all actions which seek to establish the liability of a defendant and are not related to a 'contract' within the meaning of Article 5(1) thereof."[11]

This autonomous understanding ensures the uniform application of EU private international law across Member States and prevents divergent national classifications from undermining the system's coherence.

3.2. Two Conceivable Linking Factors

In abstract, in cross-border tort disputes, two possible linking factors are conceivable.

The first is *lex loci delicti commissi,* the law of the place where the wrongful act was committed. Under this approach, the applicable law is that of the country in which the harmful conduct occurred. Historically, this connecting factor has played a central role in conflict-of-laws doctrine, reflecting the idea that liability should be governed by the law of the state where the wrongful conduct occurred.[12]

The second possible connecting factor is *lex loci damni,* the law of the place where the damage occurred. This approach focuses not on the location of the conduct but on the place where the harmful consequences materialise.

In many cases, these two places coincide. Consider a traffic accident occurring in Poland between two foreign tourists. The negligent act (the driver's conduct) and the resulting damage (injury and property loss) occur in the same territory. In such circumstances, both connecting factors point to the same legal system, and the choice between them is irrelevant.

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11 Case C-359/14 and C-475/14 *"ERGO Insurance" SE v "If P&C Insurance" AS and "Gjensidige Baltic" AAS v "PZU Lietuva" UAB DK* (CJEU, 21 January 2016) ECLI:EU:C:2016:40, para 45; Case C-191/15 *Verein für Konsumenteninformation v Amazon EU Sàrl* (CJEU, 28 July 2016) ECLI:EU:C:2016:612, para 37; Case C-147/12 *ÖFAB, Östergötlands Fastigheter AB v Frank Koot and Evergreen Investments BV* (CJEU, 18 July 2013) ECLI:EU:C:2013:490, para 32; Case 189/87 *Athanasios Kalfelis v Bankhaus Schröder, Münchmeyer, Hengst and Co and others* (CJEU, 27 September 1988) ECLI:EU:C:1988:459, para 17; Case C-261/90 *Mario Reichert, Hans-Heinz Reichert and Ingeborg Kockler v Dresdner Bank AG* (CJEU, 26 March 1992) ECLI:EU:C:1992:149, para 16; Case C-51/97 *Réunion européenne SA and Others v Spliethoff's Bevrachtingskantoor BV and the Master of the vessel Alblasgracht V002* (CJEU, 27 October 1998) ECLI:EU:C:1998:509, para 22; Case C-334/00 *Fonderie Officine Meccaniche Tacconi SpA v Heinrich Wagner Sinto Maschinenfabrik GmbH (HWS)* (CJEU, 17 September 2002) ECLI:EU:C:2002:499, para 21.

12 See, Hans-Jochem Lüer, 'The Lex Loci Delicti in Single Contact Cases – A Comparative Study of Continental and American Law' (1965) 12(2) Nederlands Tijdschrift voor Internationaal Recht 124, doi:10.1017/S0165070X00025821.

However, modern cross-border interactions often give rise to situations in which the place of the wrongful act and the place of damage are geographically distinct. In such cases, the choice of connecting factor becomes decisive.

An illustration is provided by the judgment of the Court of Justice in *Handelskwekerij G. J. Bier BV v Mines de potasse d'Alsace SA*.[13] In that case, a French mining company discharged large quantities of saline waste into the Rhine River in France. The pollution travelled downstream and allegedly damaged horticultural crops belonging to a Dutch company in the Netherlands. The wrongful conduct occurred in France, whereas the economic damage manifested itself in the Netherlands.

Another illustration arises in cross-border defamation cases. In *Shevill v Presse Alliance SA*[14], a newspaper article published in the United Kingdom allegedly harmed the claimant's reputation in several other countries where the publication circulated. The act giving rise to the harm, the publication, occurred in one state, while reputational damage was suffered in multiple jurisdictions.

More recent developments illustrate the same structural problem in the context of digital technologies.[15] Online infringements often involve conduct performed in one state while the harm manifests in another, sometimes simultaneously across several jurisdictions. This was evident in *Bolagsupplysningen OÜ v Svensk Handel AB*[16], where allegedly defamatory information about an Estonian company was published on a Swedish website and remained accessible throughout the European Union. The operator responsible for the content was based in Sweden, yet the claimant argued that the reputational and economic damage occurred primarily in Estonia, where the company conducted most of its business.

These examples demonstrate how the two connecting factors may lead to different applicable laws. Each connecting factor reflects a different policy intuition. The traditional preference for *lex loci delicti commissi* rested on the idea that individuals should be subject to the legal standards of the place where they act. This approach promotes foreseeability for potential tortfeasors and reflects the regulatory interests of the state where the conduct occurs.

13 Case 21-76 *Handelskwekerij GJ Bier BV contra Mines de potasse d'Alsace SA* (CJEU, 30 November 1976) ECLI:EU:C:1976:166.

14 Case C-68/93 *Fiona Shevill, Ixora Trading Inc., Chequepoint SARL and Chequepoint International Ltd v Presse Alliance SA* (CJEU, 7 March 1995) ECLI:EU:C:1995:61.

15 Lenka Karbanová, 'Lex Loci Damni Infecti – Applicability to Non-contractual Obligations in Cyberspace in the Jurisprudence of French Courts' (2011) 5(1) Masaryk University Journal of Law and Technology 47; Nataliia Filatova-Bilous and Tetiana Tsuvina, 'Online Accounts – Comparative and Private International Law Aspects' (2023/2024) 25 Yearbook of Private International Law 301, doi:10.9785/9783504389222-022.

16 Case C-194/16 *Bolagsupplysningen OÜ and Ingrid Ilsjan v Svensk Handel AB* (CJEU, 17 October 2017) ECLI:EU:C:2017:766.

In contrast, *lex loci damni* emphasises the protection of the victim and the legal environment in which the harmful consequences are felt.[17] It may better reflect the social and economic interests affected by the damage. At the same time, reliance on the place of damage can generate complexity, particularly when harm spreads across several jurisdictions or manifests itself indirectly.

The tension between these two connecting factors has shaped the evolution of tort conflict-of-laws rules. Historically, many legal systems adhered to the *lex loci delicti commissi* as the traditional rule. Contemporary European private international law, however, has recalibrated this approach by prioritising the place of damage while preserving mechanisms that ensure the regulatory interests of the place of conduct are not entirely disregarded.

4 JURISDICTION AND APPLICABLE LAW: TWO DISTINCT QUESTIONS

In cross-border tort disputes, the analysis must distinguish between two closely related but conceptually distinct issues:

1. Jurisdiction: that is, the question of which court has the authority to hear a dispute concerning compensation for non-contractual damage containing a foreign element; and
2. applicable law: that is, the question of which substantive law the court must apply when deciding the merits of the tort claim.

Although these questions arise together in practice, they are governed in EU law by different legal instruments and different connecting factors.

Jurisdiction is governed by the Brussels I Regulation (Recast). The Regulation establishes that persons domiciled in a Member State must be sued in the courts of that Member State (Article 4). In addition, Article 7(2) introduces a special jurisdictional rule for tort claims. Under that provision, a person domiciled in a Member State may be sued in another Member State "in the courts for the place where the harmful event occurred or may occur."

In contrast, the issue of applicable law is governed by the Rome II Regulation, which determines the substantive law governing non-contractual obligations. Article 4(1) of that Regulation establishes the general rule that tort claims are governed by "the law of the country in which the damage occurs." The provision further clarifies that this rule applies "irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur."

17 Magnus and Mankowski (n 2) 42.

It is therefore important to note that the two regulations rely on different connecting factors. The Brussels I Regulation uses the formula "the place where the harmful event occurred or may occur," whereas the Rome II Regulation refers to "the country in which the damage occurs." Although these expressions may appear similar, they reflect different legal logics.

The CJEU has repeatedly emphasised that the interpretation of these connecting factors must remain autonomous within each regulatory framework. In its judgment in *Kainz v Pantherwerke AG*[18], the Court explained that the objective of consistency between the two instruments does not justify interpreting the jurisdictional rules of the Brussels I Regulation in light of the conflict-of-laws rules of the Rome II Regulation.

In the context of jurisdiction, the expression "the place where the harmful event occurred or may occur" has acquired a specific meaning in the case law of the Court. According to settled jurisprudence[19], where the place of the causal event and the place where damage occurs are not identical, the concept covers both locations. Thus, the claimant may choose to bring proceedings either before the courts of the place where the damage occurred or before the courts of the place where the event giving rise to the damage took place. This interpretation was reaffirmed, inter alia, in *Verein für Konsumenteninformation v Volkswagen AG*[20], where the Court reiterated that the phrase is

> "intended to cover both the place where the damage occurred and the place of the event giving rise to it, with the result that the defendant may be sued, at the option of the applicant, in the courts for either of those places."

The logic underlying this approach is primarily procedural. The jurisdictional rule seeks to ensure a close connection between the dispute and the court hearing the case, while also granting the claimant a certain degree of procedural flexibility. The CJEU has explained that special jurisdiction in matters relating to tort is justified "for reasons relating to the sound administration of justice and the efficacious conduct of proceedings",[21] since the court of the place where the harmful event occurred is normally best placed to adjudicate the dispute "on the grounds of proximity of the dispute and ease of taking evidence."[22]

18 Case C-45/13 *Andreas Kainz v Pantherwerke AG* (CJEU, 16 January 2014) ECLI:EU:C:2014:7, para 20.

19 Case C-189/08 *Zuid-Chemie BV v Philippo's Mineralenfabriek NV/SA* (CJEU, 16 July 2009) ECLI:EU:C:2009:475, para 23; Case C-451/18 *Tibor-Trans Fuvarozó és Kereskedelmi Kft v DAF TRUCKS NV* (CJEU, 29 July 2019) ECLI:EU:C:2019:635, para 25; Case C-375/13 *Harald Kolassa v Barclays Bank plc* (CJEU, 28 January 2015) ECLI:EU:C:2015:37, para 45; Case C-12/15 *Universal Music International Holding BV v Michael Tétreault Schilling and Others* (CJEU, 16 June 2016) ECLI:EU:C:2016:449, para 28.

20 Case C-343/19 *Verein für Konsumenteninformation v Volkswagen AG* (CJEU, 9 July 2020) ECLI:EU:C:2020:534.

21 Case C-12/15 (n 19) para 26; Case C-360/12 *Coty Germany GmbH v First Note Perfumes NV* (CJEU, 21 November 2013) ECLI:EU:C:2014:1318, para 47; Case C-47/14 *Holterman Ferho Exploitatie BV and Others v FLF Spies von Büllesheim* (CJEU, 10 September 2015) ECLI:EU:C:2015:574, para 73.

22 Case C-12/15 (n 19) para 27; Case C-47/14 (n 21) para 74; Case C-352/13 *Cartel Damage Claims (CDC) Hydrogen Peroxide SA v Evonik Degussa GmbH and Others* (CJEU, 21 May 2015) ECLI:EU:C:2015:335, para 40.

The approach adopted by the Rome II Regulation is different. In determining the applicable law, Article 4(1) focuses exclusively on the place where the damage occurs, thereby establishing the classical conflict-of-laws connecting factor, the *lex loci damni*.[23] The rule explicitly disregards the location of the event that caused the damage and excludes consideration of places where only indirect consequences occur. In practical terms, this means that the governing law is the law of the country where the direct and immediate injury materialises, rather than the place where the wrongful conduct was performed or where secondary consequences later unfold.

This principle is illustrated by the recent judgment of the CJEU in *NM and OU v TE*.[24] The dispute arose from online gambling losses sustained by TE, an Austrian resident, who, between November 2019 and April 2020, played games of chance on the website of Titanium Brace Marketing Limited (TBM), a Maltese company operating without an Austrian licence. TE transferred funds from his Austrian bank account to a player account maintained by TBM in Malta and lost EUR 18,547.67. He brought a tort claim against NM and OU, the directors of TBM, before the Austrian courts, alleging personal liability for violations of Austrian gambling legislation. The defendants contested Austrian jurisdiction and argued that both the event giving rise to the damage and the damage itself occurred in Malta, making Maltese law applicable.

The Court rejected that reasoning. It held that the damage alleged by TE manifested itself in Austria, where he participated in the online games of chance offered in breach of a prohibition applicable in that Member State. Given the intangible nature of online gambling, the Court determined that the games must be regarded as having taken place where the player is habitually resident. In contrast, the conduct of TBM and its directors, operating from Malta, constituted merely the event giving rise to the damage and was therefore irrelevant for the purposes of Article 4(1) of the Rome II Regulation. Equally, the financial losses recorded on the player account in Malta or on TE's Austrian bank account were characterised as only indirect consequences of the damage and could not determine the applicable law. The Court, therefore, concluded that, in claims for damages arising from participation in online games of chance offered without the required licence, the damage must be deemed to have occurred in the Member State where the player is habitually resident, and the law of that state governs the non-contractual obligation.

The distinction between jurisdiction and applicable law means that the court hearing a case will not necessarily apply its own national law. In practice, the interaction between the Brussels I Regulation and the Rome II Regulation may lead to situations in which a dispute is heard by the courts of one state while being decided under the law of another.

23 Magnus and Mankowski (n 2) 41-2; Xandra E Kramer, 'The Rome II Regulation on the Law Applicable to Non-Contractual Obligations: The European Private International Law Tradition Continued Introductory Observations, Scope, System, and General Rules' (2008) 4 Nederlands Internationaal Privaatrecht (NIPR) 421-2.

24 Case C-77/24 *NM and OU v TE* (CJEU, 15 January 2026) ECLI:EU:C:2026:1.

Suppose that a technology company established in Germany releases a software update that negligently contains malicious code, exposing users' personal data. An Italian user installs the update while residing in Italy, and as a result, their personal data is accessed and misused, causing financial loss and reputational harm in Italy. The negligent conduct, namely the development and release of the defective software, occurred in Germany, whereas the damage materialises in Italy, where the affected user experiences the consequences of the data breach.

Assume that the injured Italian user brings an action against the German software developer before a German court. Even though the case is heard in Germany, Article 4(1) of the Rome II Regulation requires the court to apply the law of the country where the damage occurred. Since the damage materialised in Italy, the German court would therefore have to determine the content of Italian tort law and apply it to resolve the dispute.

The result is a typical configuration of modern European private international law: a German court applying Italian tort law. This example illustrates how the jurisdictional rules of the Brussels I Regulation and the conflict-of-laws rules of the Rome II Regulation operate in tandem yet independently, each addressing a different aspect of the cross-border dispute.

5 DAMAGE VS. INDIRECT CONSEQUENCES

Although the Brussels I Regulation and the Rome II Regulation employ different connecting factors, they share an important conceptual premise. Both instruments rely on the distinction between direct damage and indirect consequences. Only the direct damage constitutes the relevant connecting factor. Indirect consequences, even if economically or emotionally significant, do not influence the localisation of the tort for the purposes of either jurisdiction or applicable law.

The CJEU has repeatedly reaffirmed this principle. In *ZK v BMA Braunschweigische Maschinenbauanstalt AG* the Court emphasised:

> "The place where the direct damage occurred is the relevant connecting factor for the determination of the applicable law, regardless of the indirect consequences of the harmful event."[25]

Likewise, in *Verein für Konsumenteninformation v Volkswagen AG,* the Court warned against an overly expansive understanding of damage:

> "The concept of the 'place where the harmful event occurred' cannot be construed so extensively as to encompass every place where the adverse consequences of an event, which has already caused damage occurring elsewhere, can be felt.

25 Case C-498/20_*ZK v BMA Braunschweigische Maschinenbauanstalt AG* (CJEU, 10 March 2022) ECLI:EU:C:2022:173, para 58.

> Consequently, that concept cannot be construed as including the place where the victim claims to have suffered financial damage following initial damage arising and suffered by him in another state."[26]

The importance of this distinction is illustrated by the decision in *Florin Lazar v Allianz SpA*.[27] The case arose from a tragic road traffic accident in Italy in which a young Romanian woman lost her life after being struck by an unidentified vehicle. Her father, Mr Lazar, who resided in Romania, brought proceedings seeking compensation for the material and non-material harm he personally suffered because of his daughter's death. The victim's mother and grandmother, Romanian nationals residing in Italy, also intervened in the proceedings with similar claims.

The referring Italian court faced a delicate question of private international law. Under Italian substantive law, the death of a close relative is treated as giving rise to a personal injury to the relatives themselves, meaning that the emotional and economic harm suffered by family members may qualify as direct damage. If this characterisation were accepted for the purposes of Article 4(1) of the Rome II Regulation, the relevant damage for the father's claim could be considered to have occurred in Romania, where he resided and experienced the consequences of the loss.

However, the Court of Justice rejected this approach. It held that, for the purposes of Rome II, the relevant damage was the initial physical injury leading to the victim's death, which occurred in Italy. The emotional and economic harm suffered by family members was therefore characterised as indirect consequences of the accident. As a result, the applicable law was Italian law, the law of the country where the direct damage occurred.

Another example is *MOL Magyar Olaj és Gázipari Nyrt. v Mercedes-Benz Group AG*[28] – the case where the dispute arose from the well-known "Trucks cartel" uncovered by the European Commission.[29]

The applicant, MOL, is a Hungarian parent company that controls several subsidiaries established in different Member States, including Croatia, Italy, Austria, and Slovakia. During the period of the cartel infringement identified by the Commission (1997–2011), those subsidiaries purchased or leased seventy-one trucks from Mercedes-Benz. MOL

26 Case C-343/19 (n 20) para 26. See also, Case C-364/93 *Antonio Marinari v Lloyds Bank plc and Zubaidi Trading Company* (CJEU, 19 September 1995) ECLI:EU:C:1995:289, paras 14, 15; Case C-451/18 (n 19) para 28.

27 Case C-350/14 *Florin Lazar, représenté légalement par Luigi Erculeo v Allianz SpA* (CJEU, 10 December 2015) ECLI:EU:C:2015:802.

28 Case C-425/22 *MOL Magyar Olaj- és Gázipari Nyrt. v Mercedes-Benz Group AG* (CJEU, 4 July 2024) ECLI:EU:C:2024:578.

29 See, Summary of Commission Decision of 19 July 2016 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement (Case AT.39824 – Trucks) (notified under document C (2016) 4673) [2017] OJ C 108/6.

subsequently brought an action for damages before the Budapest High Court in Hungary, claiming compensation for the economic harm caused by the artificially inflated truck prices. The parent company argued that the Hungarian courts had jurisdiction under Article 7(2) of the Brussels I Recast Regulation because its registered office in Hungary constituted the centre of the group's economic interests and therefore the place where the "harmful event" occurred.

However, the trucks were not purchased by MOL itself but by its subsidiaries in several other Member States. MOL nevertheless maintained that, since competition law treats a parent company and its subsidiaries as forming a single economic unit, the place where the parent company is established should be regarded as the place where the damage occurred.

The Court rejected that reasoning. It emphasised that, for the purposes of Article 7(2), the concept of the place where the harmful event occurred cannot extend to locations where only secondary financial repercussions are felt. The direct harm in the case consisted of the overpayment for trucks purchased at cartel-inflated prices, and that harm was suffered by the subsidiaries that acquired the vehicles. Consequently, the relevant courts were those of the Member State where the subsidiary purchased or leased the affected trucks, or, where purchases occurred in several locations, the courts of the subsidiary's registered office.

In contrast, the financial loss claimed by MOL at the parent company level represented only a derivative economic impact arising from its subsidiaries' losses. Such consequences could not serve as a jurisdictional connecting factor. The Court therefore held that the registered office of the parent company does not constitute the "place where the harmful event occurred" where the direct damage was suffered exclusively by its subsidiaries.

The judgment in *MOL Magyar Olaj és Gázipari Nyrt. v Mercedes-Benz Group AG* should be contrasted with the earlier CJEU decision in *Verein für Konsumenteninformation v Volkswagen AG*.

The latter case arose out of the well-known "diesel emissions scandal",[30] involving the installation by Volkswagen AG of software designed to manipulate emissions data in vehicles equipped with the EA 189 engine. The software enabled the vehicles to pass regulatory emissions tests while emitting significantly higher levels of pollutants under normal driving conditions.

Proceedings were brought in Austria by the Austrian consumer association VKI, which had been assigned claims by 574 consumers who had purchased vehicles equipped with the manipulated engines. According to the claimants, the purchasers had suffered damage because, had they known about the manipulation, they would either not have bought the

30 See, Mark Dziak, 'Volkswagen Emissions Scandal ("Dieselgate")' (*EBSCO Research Starters*, 2021) <https://www.ebsco.com/research-starters/business-and-management/volkswagen-emissions-scandal-dieselgate> accessed 13 March 2026; Marco Frigessi de Rattalma (ed), *The Dieselgate: A Legal Perspective* (Springer 2017) 218.

vehicles or would have paid a significantly lower price. The alleged loss, therefore, consisted of the difference between the price actually paid and the vehicles' real value, which were defective from the outset.

The referring Austrian court expressed doubts as to whether the Austrian courts could assume jurisdiction under Article 7(2) of the Brussels I Recast Regulation. It questioned whether the alleged damage suffered by the consumers should be characterised merely as consequential financial loss, which, according to the Court's established case law, cannot determine the place where the harmful event occurred. The Court rejected that interpretation. It held that the relevant damage occurred when the vehicles were purchased for a price exceeding their actual value. Importantly, the Court emphasised that the harm at issue was not purely financial, even though it could be expressed in monetary terms. The defect affected a tangible asset, the vehicle itself, whose value was diminished by the presence of unlawful emissions-manipulation software. Consequently, the loss constituted initial damage rather than a secondary financial consequence.

As a result, the place where the damage occurred could be in the Member State where the consumers purchased and received the defective vehicles, in the case at hand, Austria, thereby enabling the Austrian courts to have jurisdiction.

Read together with *MOL*, this judgment further clarifies the Court's approach to the notion of damage in cross-border tort litigation. While derivative economic losses suffered by third parties (such as parent companies or other economically connected entities) are treated as indirect consequences, the reduction in value of a defective tangible asset acquired by the claimant constitutes direct damage capable of determining the relevant connecting factor under Article 7(2) of the Brussels I Recast Regulation.

6 LOCALISATION OF FINANCIAL LOSS

Identifying the place where damage occurs becomes significantly more complex when the harm takes the form of purely financial loss.[31] Unlike bodily injury or damage to tangible property, economic loss lacks a physical manifestation that could anchor the analysis geographically. Lehmann famously describes the challenge as comparable to "nailing jelly to the wall": the legal system must identify a geographic location for something that has no inherent spatial dimension.[32]

31 See, Laura van Bochove, 'Purely Economic Loss in Conflict of Laws: The Case of Tortious Interference with Contract' (2016) 3 Nederlands Internationaal Privaatrecht 456; Matthias Lehmann, 'A New Piece in the Puzzle of Locating Financial Loss: The Ruling in *VEB v BP* on Jurisdiction for Collective Actions Based on Deficient Investor Information' (2022) 18(1) Journal of Private International Law 1, doi:10.1080/17441048.2022.2060347; Matthias Lehmann, 'Where does Economic Loss Occur?' (2011) 7(3) Journal of Private International Law 527, doi:10.5235/jpil.v7n3.527.

32 Lehmann, 'Where does Economic Loss Occur?' (n 31).

This difficulty becomes particularly visible in several recurring categories of disputes. Examples include situations involving misleading financial information, false prospectuses or financial statements, mismanagement of invested assets, breaches of regulatory duties, or cases in which a person is induced to enter into an unfavourable contract with a third party.[33] In all these scenarios, the claimant's loss is monetary rather than physical, and the economic consequences may be felt in several places simultaneously, such as where the investor resides, where the investment account is maintained, or where the underlying transaction took place.

One particularly prominent illustration is the so-called prospectus liability problem.[34] When an issuer publishes misleading information in a prospectus, and investors subsequently acquire securities in secondary markets, the resulting losses may materialise in multiple jurisdictions. Investors may reside in different states, securities may be traded on foreign exchanges, and the financial instruments may be held through intermediated accounts located elsewhere. Since the Rome II Regulation contains no specific rule governing prospectus liability, courts must rely on the general rule of Article 4(1) and identify the place where the damage occurs, an exercise that can produce considerable uncertainty.

A leading illustration of the difficulties surrounding the localisation of purely financial loss is the CJEU's judgment in *Kronhofer v Maier*.[35]

The dispute arose after an Austrian investor, Mr Kronhofer, was contacted by telephone by foreign brokers who persuaded him to invest in highly speculative call options linked to shares traded on the London Stock Exchange. The brokers allegedly failed to warn him about the risks associated with the transaction. Acting on their advice, Kronhofer transferred USD 82,500 from Austria to an investment account in Germany, from which the options were purchased. The investment performed poorly, and he recovered only part of the capital invested.

Kronhofer brought an action for damages before the Austrian courts, arguing that jurisdiction existed under Article 5(3) of the Brussels Convention because the financial loss had affected his assets at his place of domicile in Austria.

33 ibid

34 See, Danny Busch, Guido Ferrarini and Jan Paul Franx (eds), *Prospectus Regulation and Prospectus Liability* (Oxford EU Financial Regulation Series, OUP 2020) doi:10.1093/law/9780198846529.001.0001; Danny Busch and Matthias Lehmann, 'Uniform Prospectus Liability Rules for Europe' (2023) 14 (2) Journal of European Tort Law 113, doi:10.1515/jetl-2023-0009; Paola Lucantoni, 'Prospectus Liability in Europe: The Relevant Breach of Duties' (2023) 14(2) Journal of European Tort Law 156, doi:10.1515/jetl-2023-0011; Thomas Thiede and Steffen Lorscheider, 'International Jurisdiction for Investor Claims Based on Prospectus Liability following CJEU 12.9.2018, C-304/17, Löber/Barclays' (2021) 12(1) Journal of European Tort Law 65, doi:10.1515/jetl-2021-0001.

35 Case C-168/02 *Rudolf Kronhofer v Marianne Maier and Others* (CJEU, 10 June 2004) ECLI:EU:C:2004:364.

The CJEU reiterated that the concept of the place where the harmful event occurred cannot be interpreted so broadly as to include any place where the economic consequences of damage are felt. In the case at hand, both the event giving rise to the damage and the direct manifestation of the loss related to the investment transaction executed through the German account. The mere fact that the financial consequences were reflected in the claimant's assets in Austria was insufficient to establish jurisdiction there.

Allowing jurisdiction on that basis would render the connecting factor unpredictable and, in practice, lead to jurisdiction being systematically attributed to the claimant's domicile, contrary to the structure of the Brussels regime.

A related but structurally different situation was examined by the CJEU in *ZK v BMA Braunschweigische Maschinenbauanstalt AG*[36], which concerned collective financial losses suffered by creditors following a company's bankruptcy.

The dispute arose within a corporate group. A Dutch company, BMA NL, had received approximately EUR 38 million in financing from its German "grandparent" company, BMA AG, between 2004 and 2011. At the beginning of 2012, BMA AG abruptly terminated its financial support. Shortly thereafter, BMA NL entered bankruptcy proceedings, leaving numerous creditors unpaid. The liquidator brought a Peeters-Gatzen action, a collective tort claim under Dutch law, alleging that the parent company breached its duty of care toward the subsidiary's creditors by withdrawing financial support, thereby rendering bankruptcy inevitable.[37]

The referring Dutch court faced a difficulty familiar in cases of economic loss: creditors affected by the bankruptcy were located in several countries, meaning the financial consequences of the insolvency were dispersed across multiple jurisdictions. It asked whether jurisdiction under Article 7(2) of the Brussels I bis Regulation should be determined by reference to the places where individual creditors suffered their losses.

The Court rejected that approach. Drawing on earlier case law, it held that the relevant connecting factor is the place most closely linked to the company whose insolvency caused the loss and its activities and financial situation. In the present case, that place was the state where the bankrupt company was established, since it was there that the company's financial deterioration materialised and where the alleged breach of the parent company's duty of care could be assessed most effectively.

The Court emphasised that the individual losses suffered by creditors in other states constitute only indirect damage and therefore cannot determine jurisdiction. Accordingly, it concluded that the courts of the Member State where the bankrupt company had its

36 Case C-498/20 (n 25).

37 See, *Peeters/Gatzen* (Hoge Raad, 14 januari 1983) ECLI:NL:HR:1983:AG4521; Case C-535/17 *NK v BNP Paribas Fortis NV* (CJEU, 6 February 2019) ECLI:EU:C:2019:96, paras 17-19, 31-32.

establishment have jurisdiction to hear a collective tort action brought by the liquidator against a third party alleged to have caused the creditors' losses.

Another important example arose in litigation connected to the 2010 disaster on the Deepwater Horizon oil drilling platform[38], one of the most notorious industrial accidents in recent history. The resulting securities litigation reached the CJEU in *Vereniging van Effectenbezitters v BP plc*.[39]

Following the explosion on the Deepwater Horizon in the Gulf of Mexico, which caused deaths, injuries, and extensive environmental damage, the market value of shares in BP plc declined significantly. A Dutch investors' association, Vereniging van Effectenbezitters (VEB), brought a collective action before Dutch courts on behalf of investors who had bought, held, or sold BP shares between 2007 and 2010 through investment accounts maintained in the Netherlands. VEB argued that BP had disseminated misleading or incomplete information regarding the accident and its consequences, thereby artificially maintaining the share price until the true extent of the disaster became known. Once the information was corrected, the price fell, resulting in losses for investors.

The central jurisdictional question was whether the place where the financial loss was recorded in investors' securities accounts in the Netherlands could be regarded as the place where the damage occurred under Article 7(2) of the Brussels I bis Regulation. The claimant relied on earlier case law recognising that financial loss recorded in an investment account may, in certain circumstances, constitute the place of damage.

The Court adopted a restrictive approach. It reiterated that the concept of the place where the damage occurs cannot extend to every location where the financial consequences of an event are felt. While losses were indeed reflected in Dutch investment accounts, that factor alone was insufficient. The decisive consideration was whether the issuer of the securities could reasonably foresee being sued in that jurisdiction. For a listed company such as BP, foreseeability depends primarily on the jurisdictions in which it has complied with statutory disclosure obligations to list its securities on stock exchanges.

Because the mere presence of investors' accounts in the Netherlands did not establish such a connection, the Court held that the occurrence of purely financial losses in those accounts does not, in itself, confer jurisdiction on Dutch courts. Jurisdiction based on the place where damage occurs may instead arise in the Member States where the issuer fulfilled its listing-related disclosure obligations and could therefore reasonably anticipate potential liability.

38 See, Richard Pallardy, 'Deepwater Horizon Oil Spill' *Encyclopaedia Britannica* (updated 18 May 2026) <https://www.britannica.com/event/Deepwater-Horizon-oil-spill> accessed 13 March 2026.

39 Case C-709/19 *Vereniging van Effectenbezitters v BP plc* (CJEU, 12 May 2021) ECLI:EU:C:2021:377.

7 CURRENT UKRAINIAN LAW

The relevant jurisdictional and conflict-of-laws provisions are contained in the Law of Ukraine "On International Private Law"[40], which diverges in important respects from the system established in EU instruments and from the interpretative case law of the CJEU.

7.1. Jurisdiction

Jurisdiction in cases involving foreign elements is governed by Article 76 of the Law of Ukraine "On International Private Law". Several provisions are relevant for tort claims. Ukrainian courts may assume jurisdiction, inter alia, where:

(1) the defendant has a domicile, property, branch, or representative office in Ukraine (Art. 76(2));

(2) the damage was caused on the territory of Ukraine (Art. 76(3));

(3) in cases concerning compensation for damage, the claimant has a domicile in Ukraine or the defendant legal entity is domiciled in Ukraine (Art. 76(5));

(4) the act or event giving rise to the claim occurred on the territory of Ukraine (Art. 76(7)).

This structure offers a broad range of alternative jurisdictional grounds. In particular, Ukrainian law allows jurisdiction based on the defendant's domicile, the claimant's domicile, the place where damage "was caused", or the place where "the act or event giving rise to the claim occurred". Such multiplicity of connecting factors contrasts with the more structured system of special jurisdiction established in the Brussels regime.

Such a model risks encouraging forum shopping and undermines the objective of legal certainty that underpins the Brussels system. The EU approach deliberately restricts the jurisdictional bases so that both the claimant and the defendant can reasonably foresee which courts may hear the dispute.

In addition, the wording of Article 76(3) of the Ukrainian law, referring to cases where damage "was caused on the territory of Ukraine", is conceptually ambiguous. It is unclear whether this provision refers to the place where the damage occurs (*lex loci damni*) or to the place where the harmful act was committed (*lex loci delicti commissi*). Unlike the European framework, where the distinction between these two connecting factors has been carefully elaborated by the CJEU, Ukrainian courts have not developed a comparable body of jurisprudence clarifying the meaning of the provision. As a result, the localisation of damage under Ukrainian jurisdictional rules remains uncertain.

40 Law of Ukraine No 2709-IV (n 6).

7.2. Applicable Law

A further divergence arises regarding the determination of the applicable law. Article 49(1) of the Law of Ukraine "On International Private Law" provides that matters of torts are governed by "the law of the state in which the act or other circumstance giving rise to the claim for compensation occurred". In other words, the Ukrainian rule relies on the connecting factor of *lex loci delicti commissi*, the law of the place where the harmful act occurred.[41]

This approach differs fundamentally from Article 4(1) of the Rome II Regulation, which establishes as a rule the application of the *lex loci damni*. The shift from the place of the act to the place of the damage reflects a deliberate policy choice within EU private international law. The rationale is that the place where the damage materialises usually represents the legal system most closely connected to the dispute and most affected by its harmful consequences. Moreover, focusing on the place of damage ensures that the applicable law corresponds to the location where the victim's interests are directly impaired.

The Ukrainian reliance on *lex loci delicti commissi,* therefore, creates a structural divergence from the Rome II framework. In modern cross-border tort scenarios, particularly those involving financial loss, online activities, or complex chains of conduct, the place where the harmful act is committed may differ significantly from the place where the damage materialises. By prioritising the place of conduct, Article 49(1) risks applying the law of a jurisdiction that has only a limited connection to the actual harm suffered.

8 THE APPROACH OF THE DRAFT CIVIL CODE

The recodification of private law is currently ongoing in Ukraine. In April 2026, the Draft Civil Code of Ukraine (Draft Law No. 15150) was registered in the Ukrainian parliament. The Draft proposes a substantial structural reorganisation of Ukrainian private law and, notably, introduces Book VIII dedicated to private international law. This book is intended to replace the existing Law of Ukraine "On International Private Law" and to integrate conflict-of-laws rules directly into the Civil Code.

An important question, therefore, arises as to whether the approach embodied in the Draft brings Ukrainian private international law closer to the model established in the European Union and interpreted by the CJEU.

41 Yevhen M Bilousov and Ivan V Yakoviuk (eds), *Private International Law* (Pravo 2021) 152 [in Ukrainian].

8.1. Jurisdiction

Article 1903 of the Draft Civil Code establishes the bases for the jurisdiction of Ukrainian courts in cases involving a foreign element. In matters relating to compensation for damage, jurisdiction may arise, inter alia, where:

- The defendant has a domicile or property in Ukraine (Art. 1903(2)).
- The event that led to the damage occurred in Ukraine (Art. 1903(3)).
- The claimant, if a natural person, has a domicile in Ukraine (Art. 1903(5)).
- The act or event that gave rise to the claim took place in Ukraine (Art. 1903(7)).

Compared with the current Law "On International Private Law", the Draft refines some of the connecting factors and clarifies their wording. Article 1903(3) explicitly refers to the "event that led to the damage". This formulation clearly indicates a connecting factor based on *lex loci delicti commissi*. In this respect, the Draft is more precise than Article 76(3) of the current law, whose wording leaves open whether it refers to the place of the act or the place where the damage materialises.

However, despite these improvements in drafting, the overall structure of the jurisdictional rules remains unchanged. The Draft still provides a wide range of jurisdictional bases. This multiplicity of connecting factors diverges from the more restrained approach embodied in Article 7(2) of the Brussels I Regulation (recast). Importantly, the CJEU has consistently rejected attempts to expand jurisdiction to locations where the victim merely suffers the economic consequences of the damage. In particular, the Court held that the claimant's domicile cannot serve as a connecting factor simply because financial loss is felt there.

Against this background, Article 1903(5) of the Draft, which grants jurisdiction based on the claimant's domicile, remains problematic. Such a rule risks encouraging forum shopping and undermining the predictability of jurisdiction, two concerns central to the CJEU's jurisprudence.

Furthermore, Article 1903(7) of the Draft reproduces almost verbatim the wording of Article 76(7) of the current law by referring to situations where "the act or event giving rise to the claim occurred in Ukraine." This formulation remains conceptually vague. It is unclear whether it refers to the same connecting factor as Article 1903(3) or whether it introduces a separate ground of jurisdiction. Unlike the EU framework, where the distinction between the place of the causal event and the place of the damage has been carefully clarified in case law, the Draft leaves significant interpretative uncertainty.

In sum, although the Draft refines certain formulations, it preserves the broad, fragmented structure of jurisdictional connecting factors characteristic of current Ukrainian legislation.

8.2. Applicable Law

A more significant change appears in the rules governing the applicable law. Article 1859(1) of the Draft provides that obligations arising from inflicting damage are governed by the law of the country in which the damage occurs, regardless of the place where the legal fact giving rise to the damage took place. This provision clearly introduces the principle of *lex loci damni*, which constitutes the cornerstone of Article 4(1) of the Rome II Regulation. In this respect, the Draft represents an important step toward alignment with the European model.

At the same time, however, the Draft does not incorporate a crucial refinement developed in the CJEU's case law, namely, the distinction between direct damage and its indirect consequences.

The absence of such a distinction may create interpretative uncertainty, particularly in cases involving purely financial loss. Without clear guidance, courts might be tempted to treat the place where financial consequences are recorded, such as the claimant's bank account or domicile, as the place of damage. This could lead to an overly expansive application of the rule and undermine the predictability objective that underlies the Rome II framework.

A further divergence concerns the absence of a rule equivalent to Article 17 of the Rome II Regulation, which requires courts to consider the rules of safety and conduct in force at the place and time of the event giving rise to liability. This provision serves an important balancing function. Article 17 ensures that the assessment of the defendant's conduct considers the regulatory environment in which that conduct took place. In cross-border tort cases, this prevents the defendant from being judged solely by the standards of another legal system that may impose different or more stringent requirements. The rule thus strikes a balance between the interests of the claimant, whose damage occurred in a particular state, and the legitimate expectations of the defendant, who acted under the regulatory framework of another jurisdiction. The absence of a comparable provision in the Draft weakens this equilibrium and may produce outcomes that insufficiently reflect the regulatory context of the defendant's conduct.

Finally, Ukrainian law diverges from the European model regarding party autonomy in non-contractual obligations. Article 14 of the Rome II Regulation establishes a genuine principle of party autonomy for non-contractual obligations.

Ukrainian law departs significantly from this model. Current Law "On International Private Law" contains only a general provision on party autonomy, Article 5 of the current law, which allows the parties to choose the applicable law only "in cases provided by law." In Ukrainian legislation, such an enabling rule exists only for contracts (Article 43). No equivalent provision authorises a choice of law for non-contractual obligations.

The Draft Book VIII does not remedy this structural limitation. Although it refines the general clause on party autonomy, it retains the same restrictive formulation according to

which party autonomy operates only "in cases provided by law." (Article 1801 of the Draft). In the absence of a specific rule allowing the choice of law for non-contractual obligations, the freedom of choice remains inoperative in this field.

9 CONCLUSIONS

Brussels I (Recast) and the Rome II Regulation will become directly applicable in Ukraine upon accession to the European Union. The ongoing recodification of Ukrainian private law, particularly the preparation of Book VIII of the Draft Civil Code, therefore, offers a timely opportunity to align Ukrainian rules on cross-border tort disputes with European standards already at the pre-accession stage. To achieve genuine alignment, Ukrainian legislators should consider not only the text of these instruments but also their interpretation in the CJEU's case law.

Regarding international jurisdiction, Ukrainian legislators should narrow the range of available connecting factors. The current law provides an excessively broad and conceptually unclear set of jurisdictional bases, which reduces legal predictability and facilitates forum shopping, outcomes that the Brussels I system is specifically designed to prevent. The Draft Civil Code refines some of these formulations but preserves the same structural breadth, including jurisdiction grounded in the claimant's domicile. This ground should be reconsidered and, if retained, clearly delimited so as not to extend to cases where the claimant merely experiences the financial consequences of damage that occurred elsewhere.

Regarding applicable law, the Draft's introduction of *lex loci damni* as the principal connecting factor is a welcome and necessary step that Ukrainian legislators should maintain and build upon. However, the Draft should be supplemented in three important respects. First, it should expressly codify the distinction between direct damage and indirect consequences, which has proven central in CJEU case law and is essential to prevent courts from localising damage at the place where secondary financial repercussions are felt. Second, the Draft should incorporate a rule equivalent to Article 17 of the Rome II Regulation, requiring courts to consider the rules of safety and conduct in force at the place where the harmful act occurred. Without such a provision, defendants risk being assessed solely by the standards of a foreign legal system, upsetting the balance between the parties' interests. Third, Ukrainian legislators should introduce an explicit party autonomy clause for non-contractual obligations, modelled on Article 14 of Rome II. The current legislation permits choice of law only in cases expressly authorised by statute, and tort claims fall outside that category. The Draft does not remedy this gap. Addressing it would bring Ukrainian private international law into structural conformity with the Rome II framework and enhance legal certainty for parties engaged in cross-border transactions.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

ГОЛОВНА КОЛІЗІЙНА ПРИВ'ЯЗКА ДЛЯ ДЕЛІКТНИХ ПОЗОВІВ У ЄС ТА УКРАЇНІ: УРОКИ ІЗ ПРАКТИКИ СУДУ СПРАВЕДЛИВОСТІ ЄС ДЛЯ УКРАЇНСЬКОЇ РЕКОДИФІКАЦІЇ

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АНОТАЦІЯ

Вступ. *У міру просування України до членства в ЄС узгодження її міжнародного приватного права з acquis ЄС стало нагальним законодавчим завданням. Транскордонні деліктні спори в ЄС регулюються двома ключовими інструментами: Регламентом (ЄС) № 1215/2012 («Брюссель I» у новій редакції), що стосується міжнародної юрисдикції, та Регламентом (ЄС) № 864/2007 («Рим II»), який визначає застосовне право. Практика їхнього застосування значною мірою визначається прецедентами Суду справедливості ЄС (CJEU). В Україні наразі триває комплексна рекодифікація приватного права, у рамках якої підготовано проєкт нового Цивільного кодексу, що містить окрему Книгу VIII, присвячену міжнародному приватному праву (Законопроект № 15150, квітень 2026 р.). Ця реформа створює важливу нагоду привести українські колізійні норми у відповідність до європейських стандартів перед вступом до ЄС.*

Методи. *У статті застосовується доктринальна та порівняльно-правова методологія, при цьому питання юрисдикції та застосовного права розглядаються як два окремі, але взаємопов'язані аспекти транскордонних деліктних спорів. Аналіз розпочинається з розгляду двох основних потенційно можливих колізійних прив'язок у деліктних спорах – lex loci delicti commissi та lex loci damni – а також міркувань правової політики, що лежать в основі кожної з них. Наступна частина дослідження присвячена правовій системі ЄС: тут аналізується, як структуровані, так як інтерпретуються правила юрисдикції за статтею 7(2) Регламенту Брюссель I та питання застосовного права за статтею 4(1) Регламенту Рим II, особливу увагу звернено на розмежування, підкреслюване Судом справедливості ЄС, між прямою шкодою та опосередкованими наслідками. Особлива увага приділяється проблемі локалізації чистих фінансових збитків, з ілюстраціями через провідні рішення Суду справедливості ЄС. На цьому доктринальному тлі здійснюється оцінка чинного Закону України «Про міжнародне приватне право» як у контексті питання юрисдикції, так і щодо питання застосовного права, визначаються розбіжності із європейською моделлю. Насамкінець, у статті аналізуються підходи, запропоновані у Книзі VIII Проєкту Цивільного кодексу України, оцінюється, наскільки поточна рекодифікація враховує європейські стандарти, та формулюються рекомендації щодо подальшого узгодження законодавства.*

Результати та висновки. *Дослідження виявляє суттєві розбіжності між українським законодавством та європейською моделлю. Чинне українське законодавство у контекст питання застосовного права бере за основу принцип lex loci delicti commissi, що є системним відхиленням від підходу lex loci damni, закріпленого в Регламенті Рим II, а також встановлює надмірно широкі та концептуально нечіткі підстави для визначення юрисдикції. Хоча проект Цивільного кодексу*

свідчить про значний прогрес завдяки сприйняттю принципу lex loci damni як основної колізійної привязки, все ж залишається низка критичних прогалин: у Проєкті відсутнє кодифіковане розмежування між прямою шкодою та опосередкованими наслідками (наріжний камінь прецедентного права CJEU), відсутня норма, еквівалентна статті 17 Регламенту Рим II щодо стандартів безпечної поведінки, а також не визнається автономія сторін щодо позадоговірних зобов'язань. У статті рекомендуються цілеспрямовані законодавчі зміни для усунення цих прогалин та досягнення реалістичної узгодженості з європейською системою колізійного права.

Ключові слова: *недоговірна відповідальність, делікти, lex loci damni, lex loci delicti commissi, міжнародне приватне право ЄС, чисті економічні збитки, рекодифікація, адаптація до права ЄС.*