
FB JURIS LAW FIRM



INTERNATIONAL BUSINESS LAW

Legal guide to doing business internationally

5 - DOING BUSINESS IN EUROPE

4 October 2023



Franck BEAUDOIN
Avocat

Franck BEAUDOIN

Avocat

i-law.co/contact
+331 47 58 16 76

NOTICE

The content of the course is the sole responsibility of its authors: Franck BEAUDOIN, attorney-at-law (“avocat” registered in France), and the company FB JURIS (a law firm registered in France under number 511 717 787).

The schools or organisations in which the course is given have no responsibility in relation to the content of the course.

The content of the course is the exclusive intellectual property of Franck BEAUDOIN and FB JURIS, except where indicated otherwise.

I thank the schools that give me the opportunity to teach and my students who are an inexhaustible source of inspiration. FB

© FB Juris / i-law.co

MATERIALS / UPDATES

This Keynote presentation will be regularly completed, improved and updated. Find the latest version and complementary materials (notes, references, Internet links, guides, templates...) on the website i-law.co:

i-law.co/international-business-law



© FB Juris / i-law.co

i-law.co/international-business-law

LEGAL SYSTEM OF THE EUROPEAN UNION

**A sui generis legal system, intermediate between
a developed legal system instituted by a treaty
and a federal State.**

OBJECTIVES

- # Understand the differences between international law and European Union law.**
- # Remember that European Union law defines the applicable law and the competent courts within the Union.**

SUMMARY

- # The legal system of the European Union is a developed and consistent body of rules, controlled by hierarchically organised courts.**
- # European Union law contains both conflict rules and substantive rules.**

© FB Juris / i-law.co

THE MEMBER STATES OF THE EUROPEAN UNION



Council of the European Union

Rue de la Loi/Wetstraat 175
1048 Bruxelles/Brussel
BELGIQUE/BELGIË
Tel. +32 22816111
www.consilium.europa.eu

NON-CONTINENTAL AND OVERSEAS TERRITORIES OF MEMBER STATES



Reproduced with the kind permission of Lovell Johns, Oxford, UK, www.lovelljohns.com. Flags reproduced by Lovell Johns, Oxford, UK and authenticated by The Flag Research Center, Winchester, Mass., 01890, USA.

EUROPEAN UNION

1957 (6)

France 

Belgium 

Luxembourg 

The Netherlands 

Germany 

Italy 

1973 (9)

Denmark 

Ireland 

~~United Kingdom~~ 

1981 (10)

Greece 

1986 (12)

Spain 

Portugal 

1995 (15)

Austria 

Sweden 

Finland 

2004 (25)

Estonia 

Latvia 

Lithuania 

Poland 

Czechia 

Slovakia 

Hungary 

Slovenia 

Malta 

Cyprus 

2007 (27)

Bulgaria 

Romania 

2013 (28)

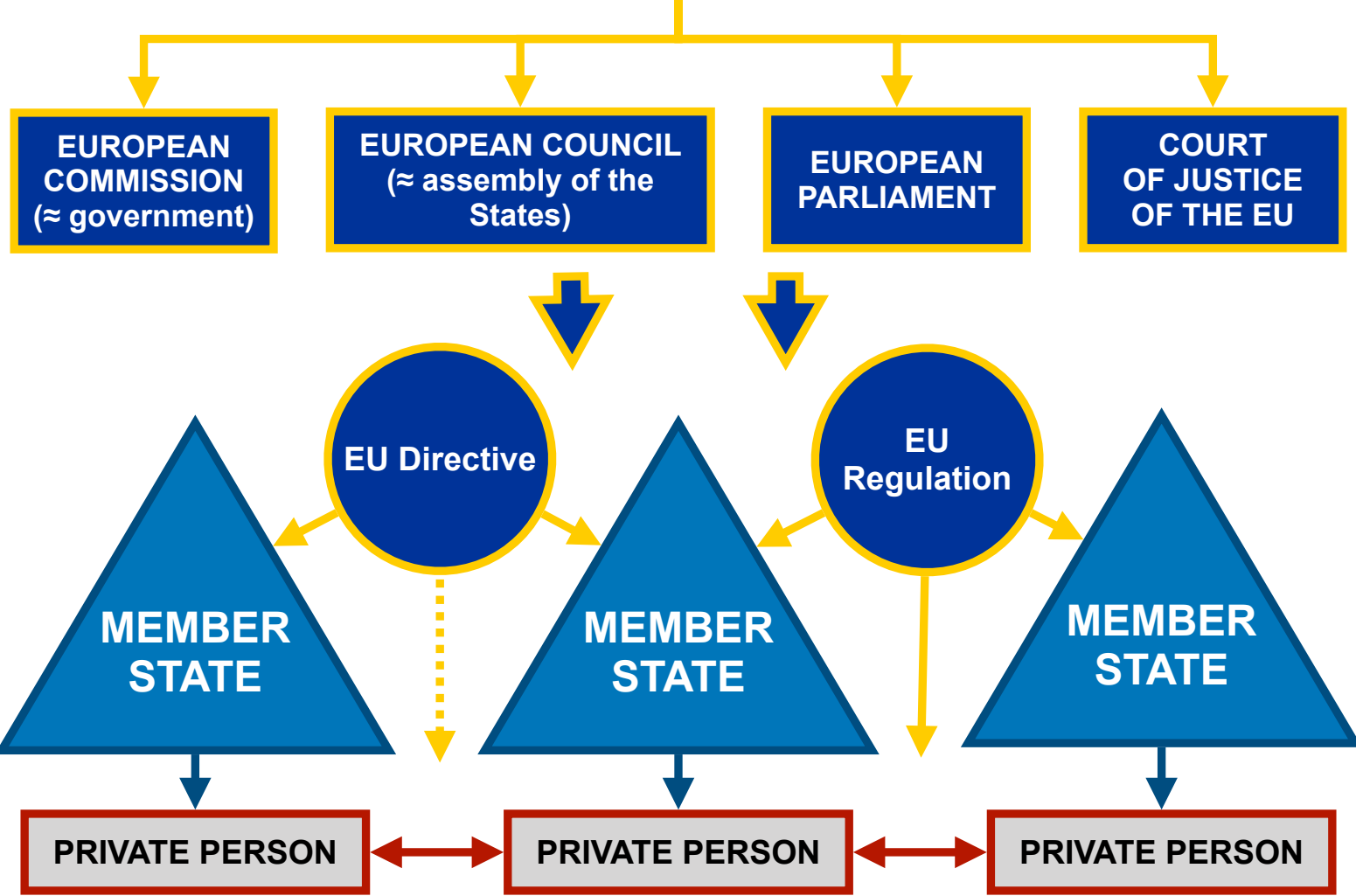
Croatia 

2020 (27)

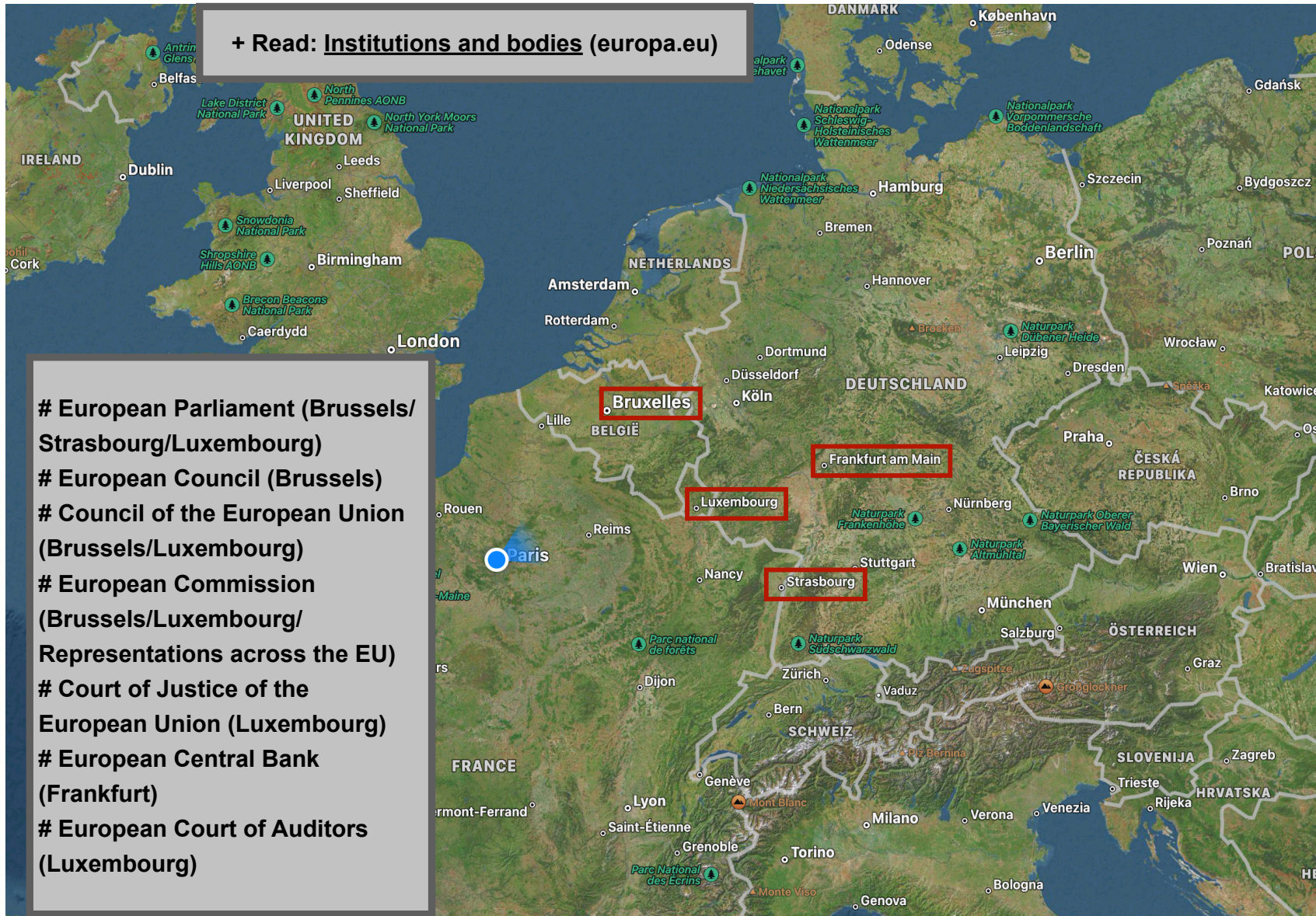
Brexit 

© FB Juris / i-law.co

EUROPEAN UNION: EU TREATIES (≈ EU CONSTITUTION)



© FB Juris / i-law.co



+ Read: [Institutions and bodies \(europa.eu\)](https://europa.eu)

- # European Parliament (Brussels/Strasbourg/Luxembourg)
- # European Council (Brussels)
- # Council of the European Union (Brussels/Luxembourg)
- # European Commission (Brussels/Luxembourg/Representations across the EU)
- # Court of Justice of the European Union (Luxembourg)
- # European Central Bank (Frankfurt)
- # European Court of Auditors (Luxembourg)

THE EUROPEAN UNION

EU CITIZENS

EU INSTITUTIONS

MEMBER STATES

**INTEGRATED
LEGAL AND
POLITICAL SYSTEM**

**SPECIAL YET WIDE
COMPETENCES**

**INTERNATIONAL
TREATIES
FOUNDED THE EU**

© FB Juris / i-law.co

EUROPEAN UNION LAW

PRIMACY

CONSISTENCY

DIRECT EFFECT

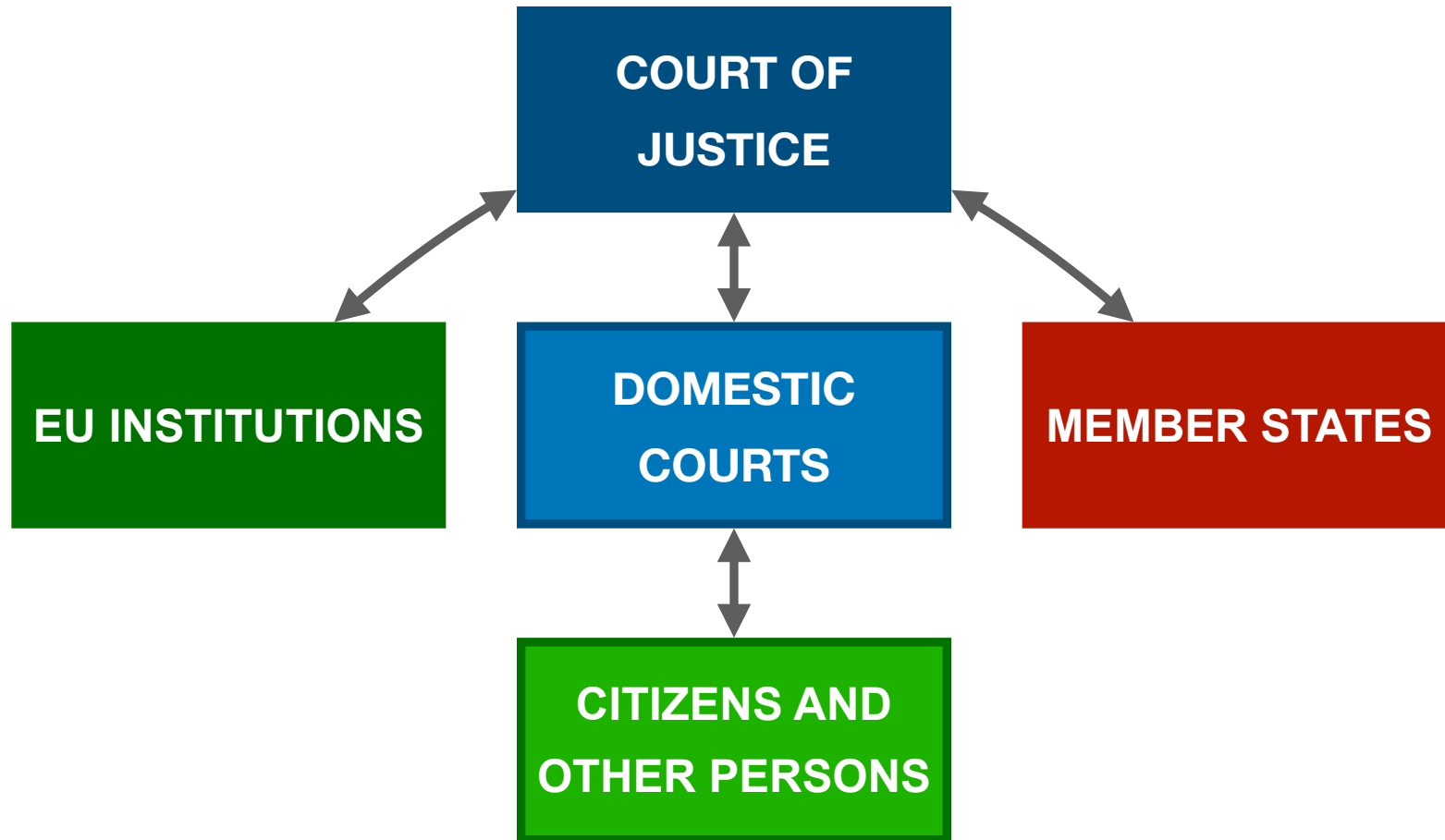
**PRIMACY OF
EU LAW OVER
DOMESTIC LAW**

**THE COURT OF
JUSTICE
HARMONISES
EU LAW**

**DIRECT EFFECT OF
EU LAW IN THE
MEMBER STATES**

© FB Juris / i-law.co

EU JUDICIAL SYSTEM



© FB Juris / i-law.co

FUNDAMENTAL PRINCIPLES OF EU LAW

- Principle of conferral (the EU has only the competences conferred on it by the Treaties);
- Direct application of EU law;
- Primacy of EU law over national law;
- Liability of Member States for breach of EU law;
- European citizens may bring an action for damages against a State which infringes a EU rule.

+ Read: [Division of competences within the European Union](#)
(eur-lex.europa.eu).

© FB Juris / i-law.co

FUNDAMENTAL RULES OF EU LAW

- Fundamental rights;
- European citizenship;
- Equal treatment and social rights;
- Freedom of movement of persons;
- Free movement of goods;
- Freedom to provide services.

© FB Juris / i-law.co

COURTS OF THE EUROPEAN UNION

- Court of Justice
- General court

The EU Courts are based in Luxembourg.

The national courts are the ordinary courts applying EU law; they shall apply it in any case.

National courts or tribunals dealing with litigations involving EU law may, and sometimes must, submit questions to the Court of Justice for a preliminary ruling. The Court of Justice gives its interpretation or reviews the legality of rules of EU law.

+ Read: [Court of Justice](https://curia.europa.eu) (curia.europa.eu)

© FB Juris / i-law.co

CROSSWORDS

VERTICALLY

B - One of the two continents on which Istanbul is built.

D - The principle according to which EU law shall prevail over the laws of the Member States.

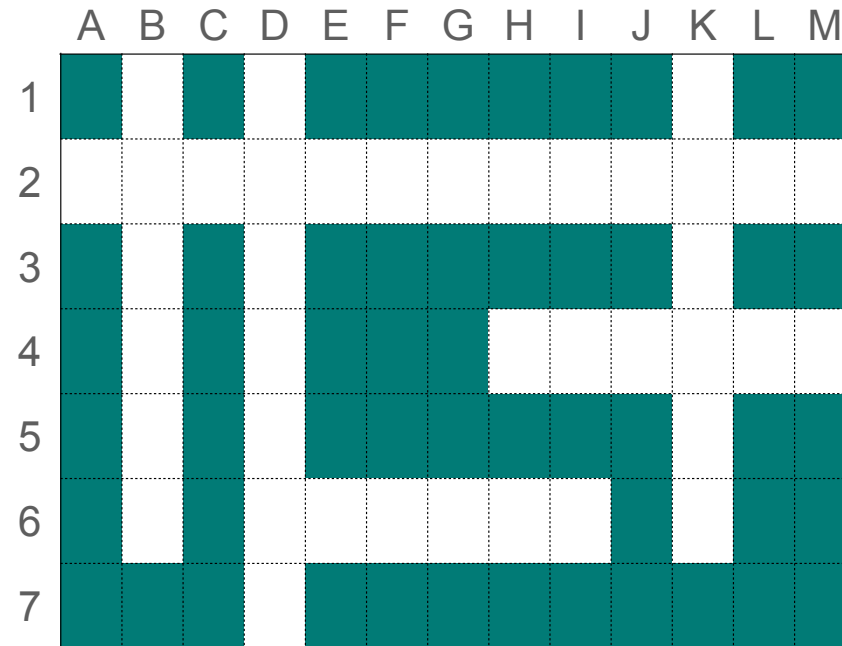
K - The principle according to which a litigant may invoke EU law before a court (1/2).

HORIZONTALLY

2 - A rule of the European Union that applies directly in the Member States.

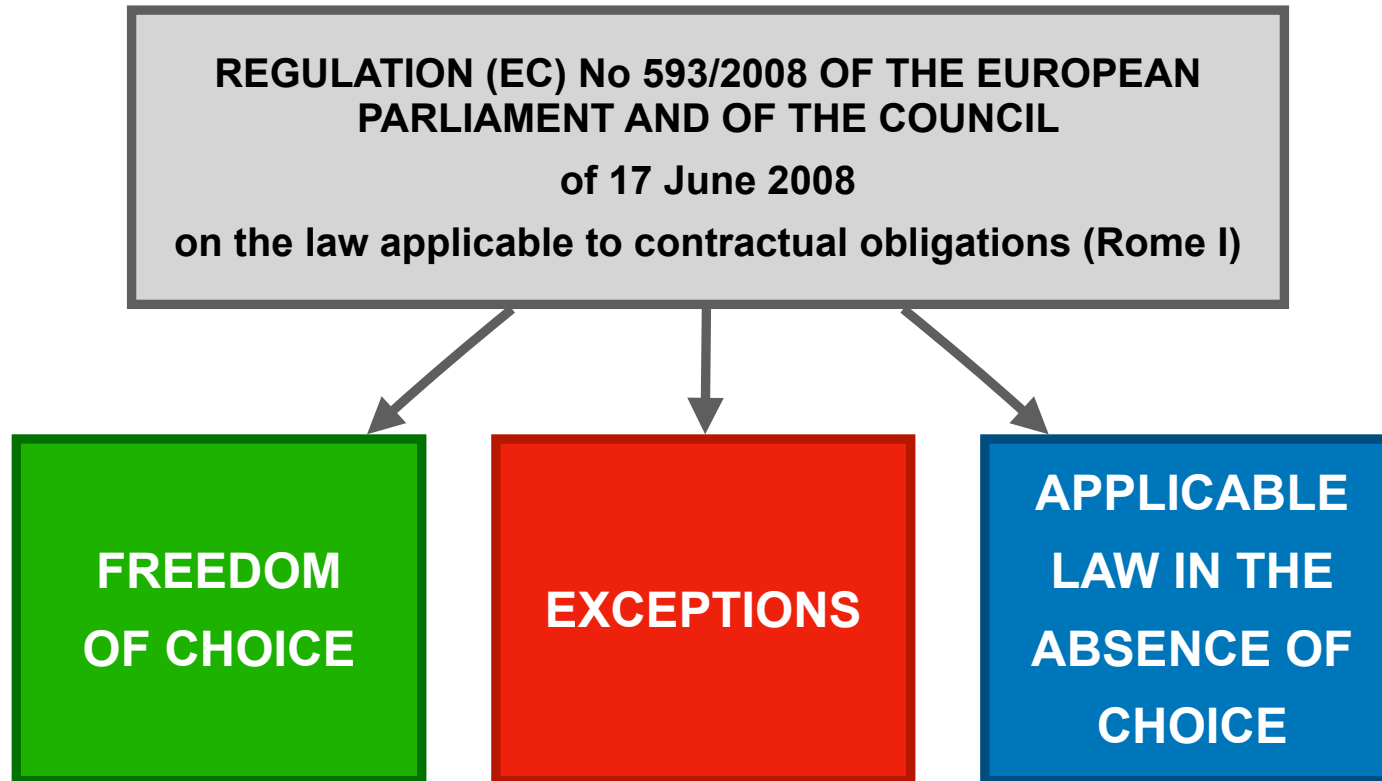
4 - The principle according to which a litigant may invoke EU law before a court (2/2).

6 - The institutions that control the application of law.



© FB Juris / i-law.co

APPLICABLE LAW IN THE EU



© FB Juris / i-law.co

APPLICABLE LAW IN THE EU

APPLICABLE LAW IN THE ABSENCE OF CHOICE

**CONTRACT FOR
THE SALE OF
GOODS**

Law of the country where the seller
has his habitual residence

**CONTRACT FOR
THE PROVISION
OF SERVICES**

Law of the country where the service
provider has his habitual residence

© FB Juris / i-law.co

APPLICABLE LAW IN THE EU

APPLICABLE LAW IN THE ABSENCE OF CHOICE

**FRANCHISE
CONTRACT**

Law of the country where the franchisee has his habitual residence

**DISTRIBUTION
CONTRACT**

Law of the country where the distributor has his habitual residence

**CONSUMER
CONTRACT**

Law of the country where the consumer has his habitual residence

© FB Juris / i-law.co

APPLICABLE LAW IN THE EU

APPLICABLE LAW IN THE ABSENCE OF CHOICE

OTHER



Contract of carriage, consumer contract, insurance contract, employment contract, immovable property...

© FB Juris / i-law.co

APPLICABLE LAW IN THE EU

APPLICABLE LAW IN THE ABSENCE OF CHOICE

Where the contract is not covered by article 4, paragraph 1, or where the elements of the contract would be covered by more than one of points (a) to (h) of paragraph 1, the contract shall be governed by the law of the country where the party required to effect the characteristic performance of the contract has his habitual residence.

Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2 of article 4, the law of that other country shall apply.

Where the law applicable cannot be determined pursuant to paragraphs 1 or 2, the contract shall be governed by the law of the country with which it is most closely connected.

© FB Juris / i-law.co

APPLICABLE LAW IN THE EU

OVERRIDING MANDATORY PROVISIONS (ART. 9)

1. Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.
2. Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum.
3. Effect may be given to the overriding mandatory provisions of the law of the country where the obligations arising out of the contract have to be or have been performed, in so far as those overriding mandatory provisions render the performance of the contract unlawful. In considering whether to give effect to those provisions, regard shall be had to their nature and purpose and to the consequences of their application or non-application.

© FB Juris / i-law.co

APPLICABLE LAW IN THE EU

**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)**

**Cases of tort (a wrong under civil law)
and delict (civil liability)**

© FB Juris / i-law.co

COMPETENT COURTS IN THE EU

**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**

(Bruxelles I bis)

**GENERAL
PROVISIONS**

**SPECIAL
JURISDICTION**

© FB Juris / i-law.co

COMPETENT COURTS IN THE EU

GENERAL PROVISIONS

PERSONS DOMICILED IN A MEMBER STATE SHALL, WHATEVER THEIR NATIONALITY, BE SUED IN THE COURTS OF THAT MEMBER STATE.

PERSONS WHO ARE NOT NATIONALS OF THE MEMBER STATE IN WHICH THEY ARE DOMICILED SHALL BE GOVERNED BY THE RULES OF JURISDICTION APPLICABLE TO NATIONALS OF THAT MEMBER STATE.

© FB Juris / i-law.co

COMPETENT COURTS IN THE EU

SPECIAL JURISDICTION

A person domiciled in a Member State may be sued in another Member State

CONTRACT

Courts for the place of performance of the obligation in question

TORT, DELICT, QUASI-DELICT

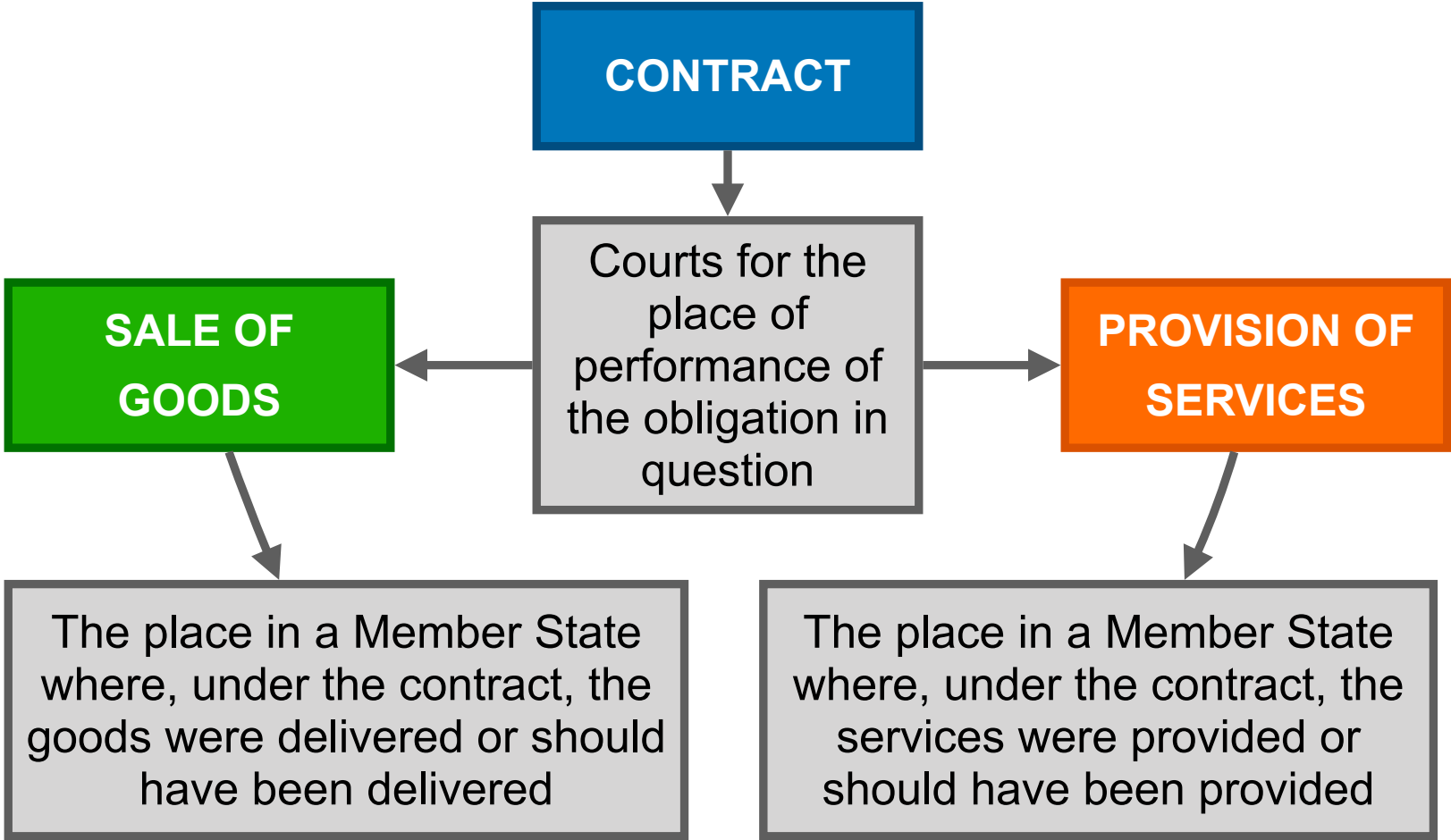
Courts for the place where the harmful event occurred or may occur

OTHER

Companies, insurance, employment contract, immovable property, IP...

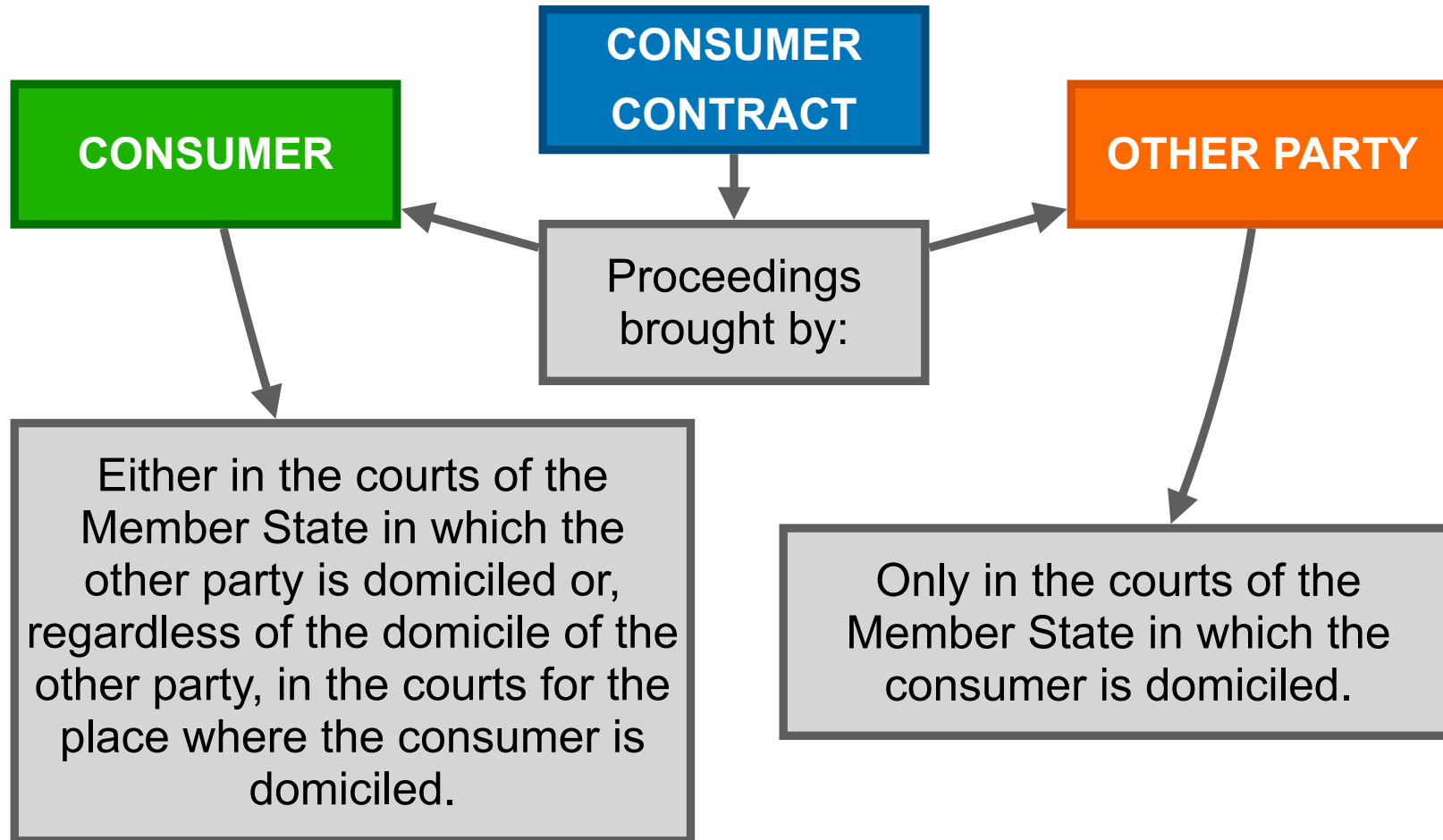
© FB Juris / i-law.co

COMPETENT COURTS IN THE EU



© FB Juris / i-law.co

COMPETENT COURTS IN THE EU



© FB Juris / i-law.co

COMPETENT COURTS IN THE EU

PROROGATION OF JURISDICTION (article 25 of EU REGULATION No 1215/2012)

If the parties, regardless of their domicile, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction, unless the agreement is null and void as to its substantive validity under the law of that Member State. Such jurisdiction shall be exclusive unless the parties have agreed otherwise.

© FB Juris / i-law.co

FINDINGS

Although the European Union was instituted by international treaties, today it is much more than a traditional international organisation. The European legal system is not fundamentally different from that of a federal State.

European Union law and the legal systems of the Member States are fully integrated.

The judges of the Member States are the ordinary European judges.

The judicial organisation guarantees that there can be no positive or negative conflict of jurisdictions and that European Union law is applied consistently in the Union.

© FB Juris / i-law.co

QUIZZ

In case of litigation relating to a contract entered into between parties residing in different Member States of the European Union, if the parties did not choose the governing law, the applicable law shall be determined by:

- A** - a European regulation;
- B** - an international convention (treaty);
- C** - the laws of the Member States.

© FB Juris / i-law.co

PRACTICAL CASE



A French company and a German company entered into a contract under which the French company shall manufacture in France products that it will deliver in Germany to the German company, which should pay the price. The contract does not specify the governing law.

Which law governs the contract?

© FB Juris / i-law.co

PRACTICAL CASE



A French company and a Spanish company entered into a contract under which the French company shall provide advisory services to the Spanish company, which should pay fees.

The contract does not specify the governing law.

Which law governs the contract?

© FB Juris / i-law.co

PRACTICAL CASE



An Italian company and a Portuguese company entered into a contract under which the Italian company shall provide products to the Portuguese company. The products shall be delivered in Spain.

In case of litigation, before which courts can the Italian company sue the Portuguese company?

© FB Juris / i-law.co

PRACTICAL CASE



A French company has a 100% owned subsidiary in Japan. The subsidiary is an operational company. The decision-making centre is located in France. The group manufactures products in China. The French company decides that its Japanese subsidiary (seller) will enter into a contract for the sale of products with an Australian company (buyer). The buyer will pay the price of the products after delivery.

- 1 - Which Incoterm should the seller propose?**
- 2 - Which guarantees should the seller ask to the buyer?**
- 3 - Which governing law and jurisdiction should the seller propose?**

© FB Juris / i-law.co

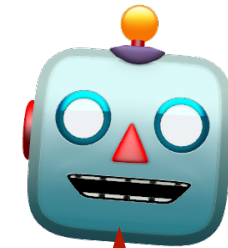
PROCESSING PERSONAL DATA IN THE EUROPEAN UNION

GDPR

SUBSTANTIVE LAW

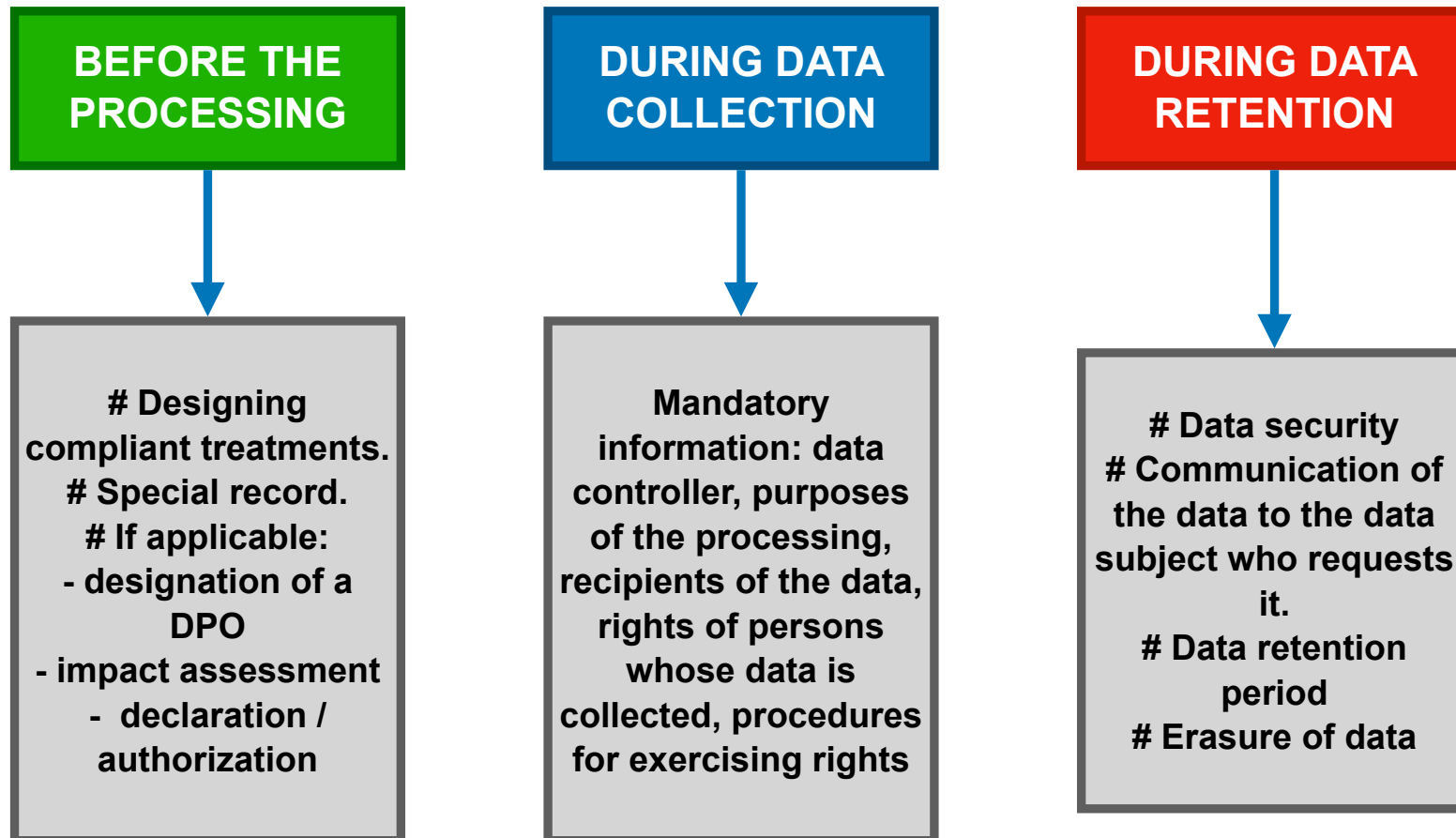
Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

+ [Link](#)



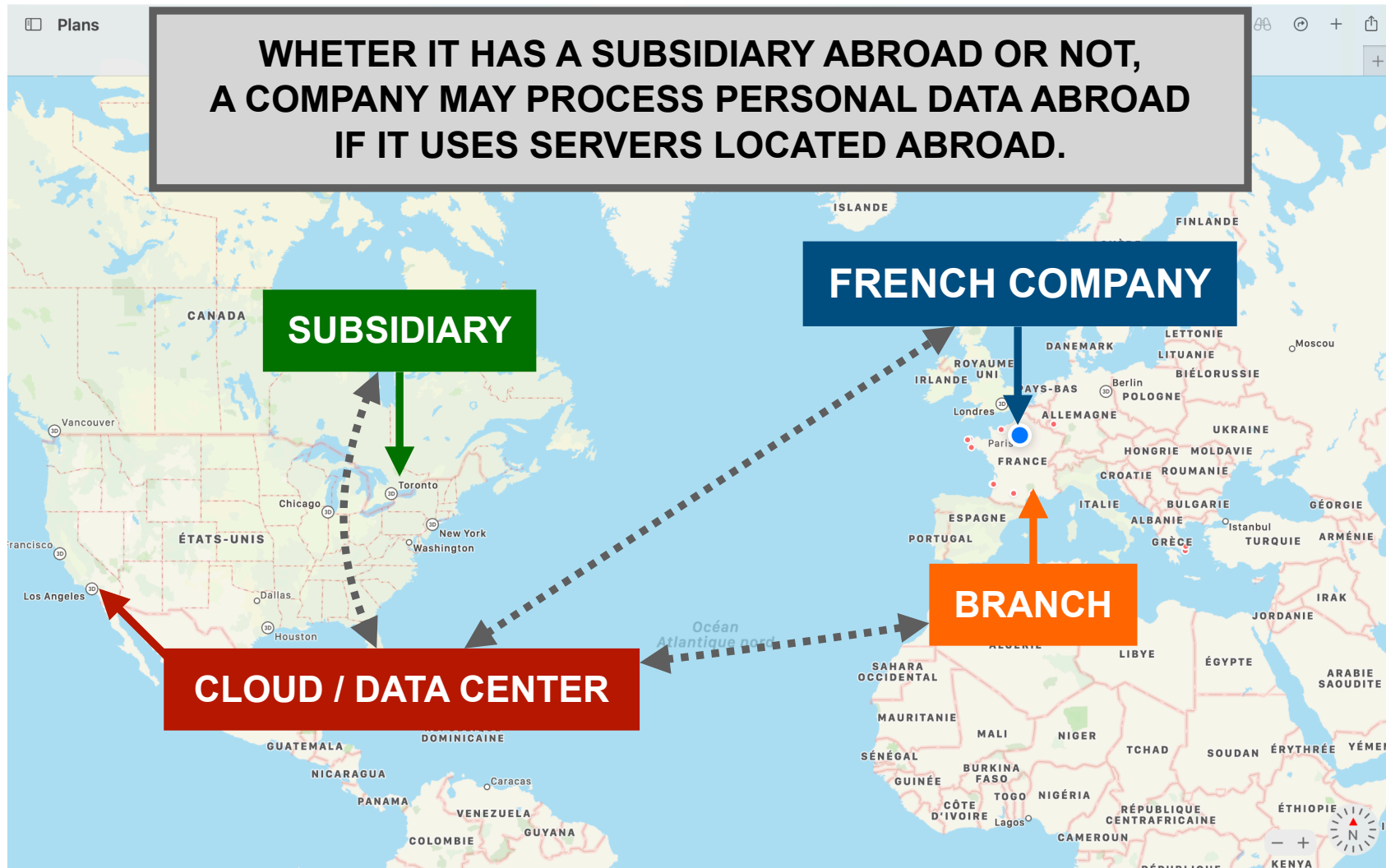
Let's take a closer look!

PROCESSING PERSONAL DATA



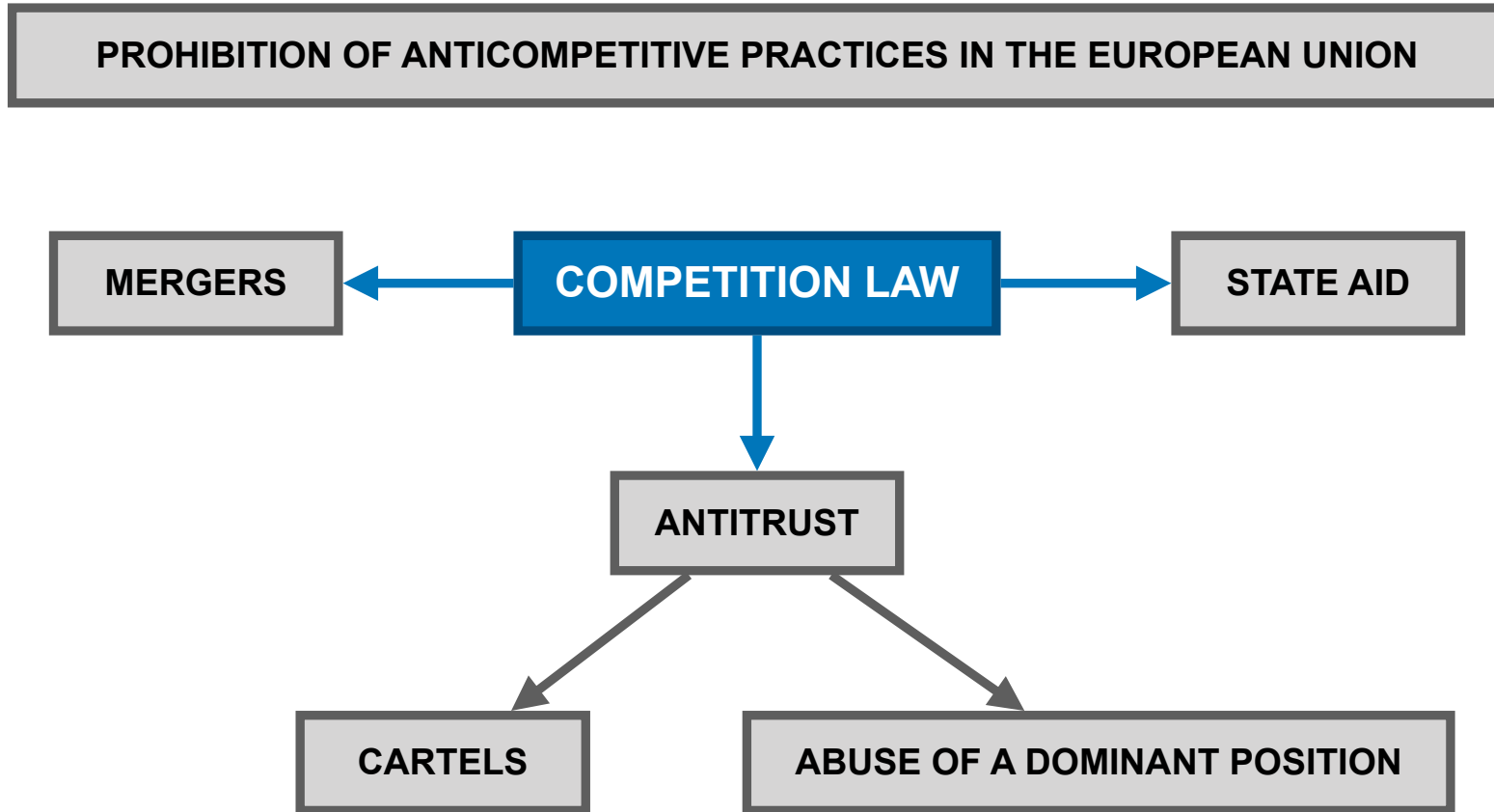
© FB Juris / i-law.co

PROCESSING PERSONAL DATA



COMPETITION LAW IN THE EUROPEAN UNION

COMPETITION LAW



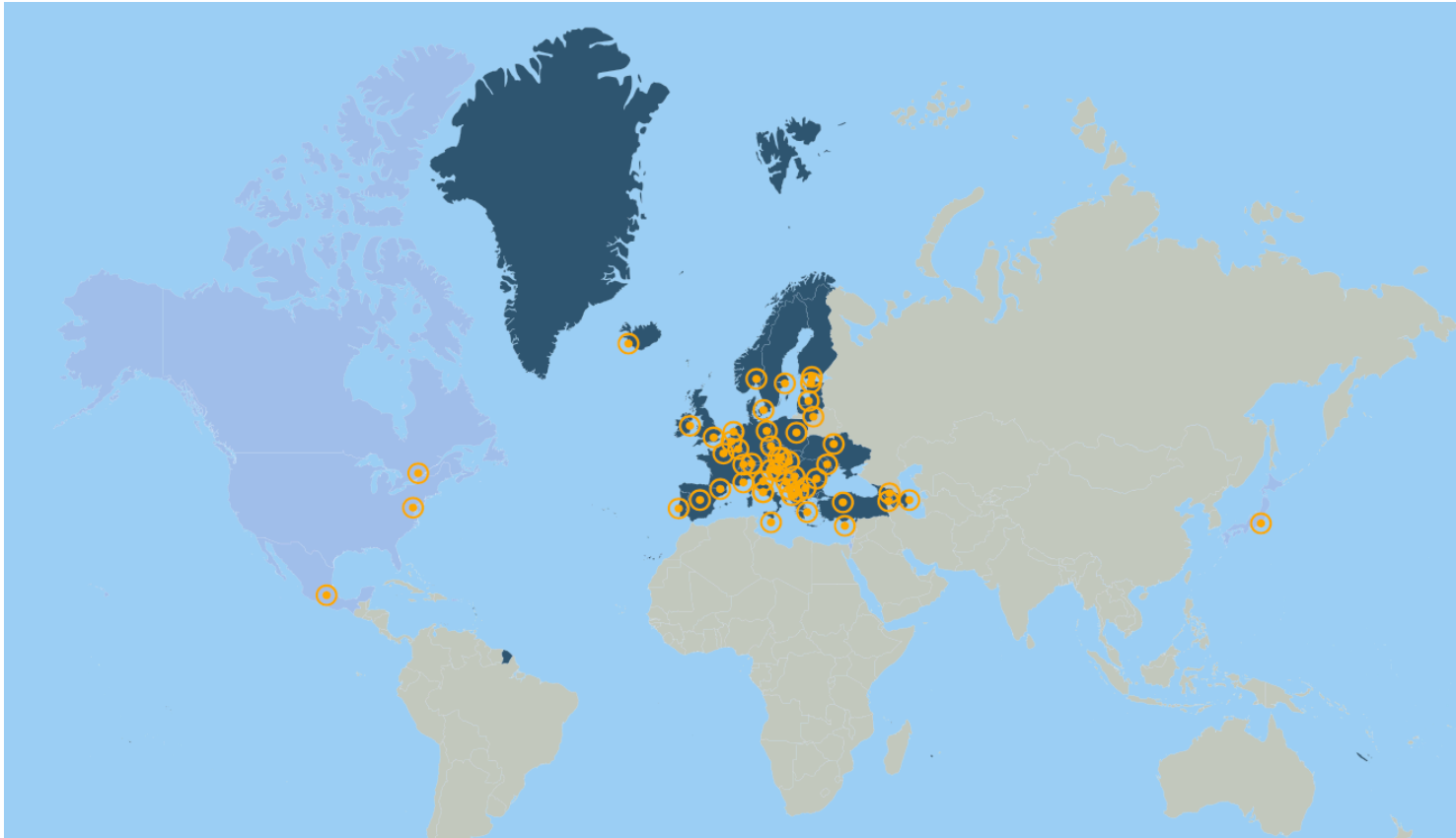
© FB Juris / i-law.co

THE COUNCIL OF EUROPE

Human rights organisation.

**European Convention on Human Rights:
a treaty designed to protect human rights,
democracy and the rule of law.**

COUNCIL OF EUROPE: MEMBER STATES



<https://www.coe.int/en/web/about-us/our-member-states>

COUNCIL OF EUROPE

- Founded in 1949.
- 46 member States, 27 of which are members of the European Union (the Russian Federation ceased to be a High Contracting Party to the Convention on 16 September 2022)
- European Court of Human Rights based in Strasbourg.
- This Convention is an international treaty under which the member States of the Council of Europe undertake to secure fundamental civil and political rights, to everyone within their jurisdiction.

+ Read: [European Convention on Human Rights](https://www.echr.coe.int) (official website echr.coe.int)

© FB Juris / i-law.co

EU-UK AGREEMENT

The EU-UK Trade and Cooperation Agreement signed on 30 December 2020 is an international agreement applied provisionally as of 1 January 2021, which entered into force on 1 May 2021.

OBJECTIVES

Perceive the differences between the legal system of the European Union and a relatively developed international treaty.

Know the main features of the dispute settlement mechanism provided for in the treaty.

SUMMARY

The United Kingdom is (so far) the only State which has left the European Union.

The international treaty entered into between the EU and the UK underlines the differences between the EU and a developed international treaty.

© FB Juris / i-law.co

THE EU-UK TRADE AND COOPERATION AGREEMENT

Signed on 30 December 2020
Applied provisionally as of 1 January 2021
Entered into force on 1 May 2021

**FREE TRADE
AGREEMENT**

**JUDICIAL
COOPERATION IN
JUDICIAL AND
CIVIL LAW
MATTERS**

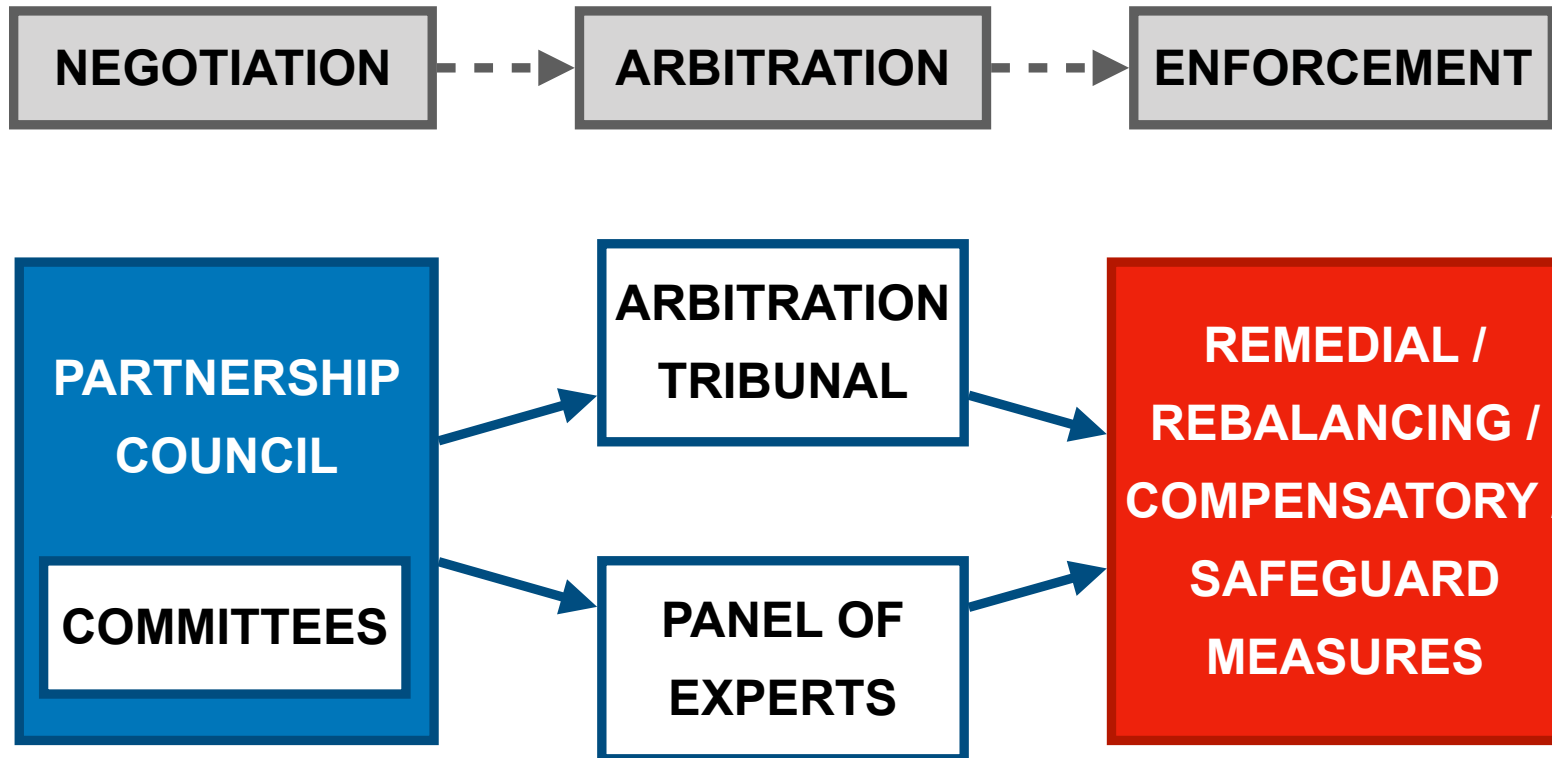
**GOVERNANCE:
BINDING
ENFORCEMENT
AND DISPUTE
SETTLEMENT
MECHANISMS**

[Official website of the European Union](#)

[Official website of the United Kingdom](#)

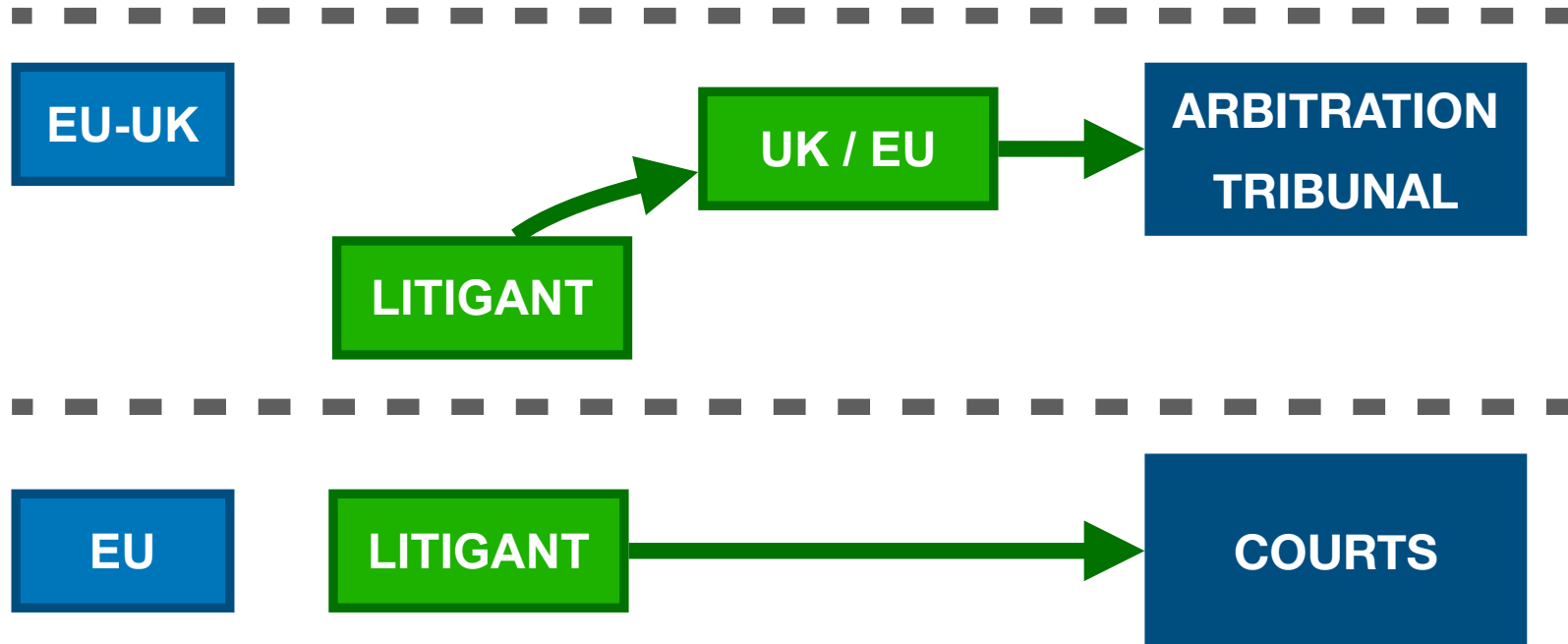
© FB Juris / i-law.co

THE EU-UK TRADE AND COOPERATION AGREEMENT



© FB Juris / i-law.co

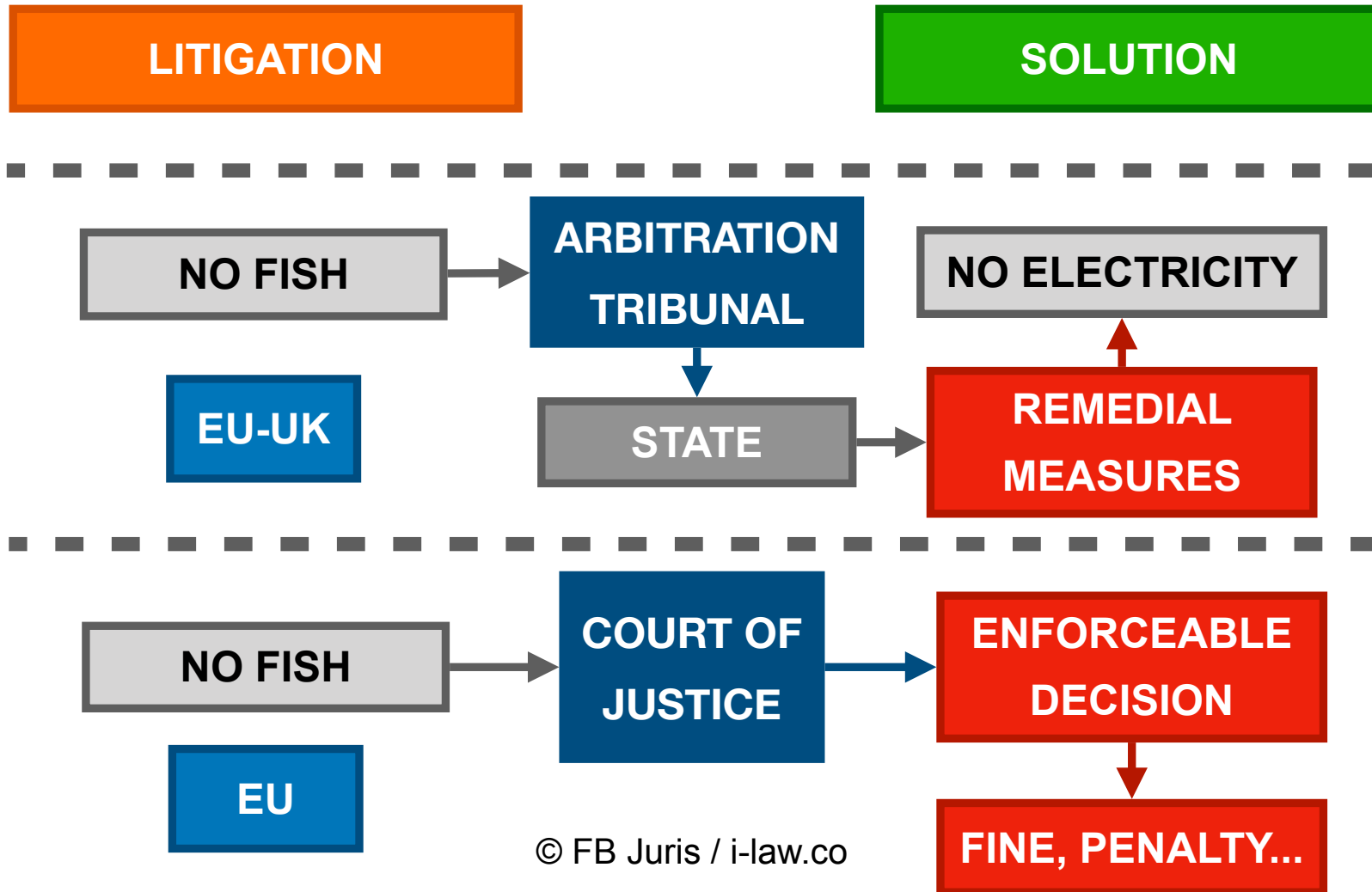
EU-UK AGREEMENT VS EUROPEAN UNION



IN THE EU, THE LITIGANTS CAN DIRECTLY BRING AN ACTION BEFORE A COURT AND REQUEST THE APPLICATION OF EU LAW. IN THE EU-UK AGREEMENT, ONLY THE PARTIES TO THE AGREEMENT MAY BRING AN ACTION BEFORE THE ARBITRATION TRIBUNAL.

© FB Juris / i-law.co

EU-UK AGREEMENT VS EUROPEAN UNION



FINDINGS

The scope of the EU-UK Trade and Cooperation Agreement is much narrower than that of European Union law.

The dispute resolution mechanism is very limited in the EU-UK agreement.

Citizens, companies and organisations cannot bring an action before the arbitration tribunal of the EU-UK Agreement. Only the parties to the Agreement (i.e., the EU and the UK) can bring such action.

© FB Juris / i-law.co

FB JURIS LAW FIRM

Franck BEAUDOIN

Lawyer



+331 47 58 16 76

www.i-law.co

Law firm registered in France with the Hauts-de-Seine Bar
SELAS with a variable capital - Register of companies of Nanterre (France) n° 511 717 787
Registered office: 166 rue du Président Wilson, 92300 Levallois, France