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QUESTIONNAIRE
for National Reports

Italy

prof. dr. Ilaria Queirolo, Univ. Genova
dr. Stefano Dominelli, Univ. Genova

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CHAPTER I

Application of the Regulation – in general

1. Are judgments applying the Brussels Ia Regulation and its predecessor(s) rendered in all instances (first, appellate and in cassation) published? Are they available online?

   There is no general public database for lower courts' decisions. These are however published by online databases, provided a contract of services is concluded. Judgments of lower courts might also be published on legal journals or freely online, most often depending on the request of some of the parties to the proceedings (or of their lawyers).

   High courts' decisions are, on the contrary, freely available online – even though public databases are to some extent a recent feature.

   The supreme court (Corte di Cassazione) decisions are published here: http://www.italgiure.giustizia.it/sncass/

   The supreme administrative court decisions (Consiglio di Stato), as well as regional administrative tribunal decisions (Tribunale amministrativo regionale) are published here: https://www.giustizia-amministrativa.it/dcsnprr

   The constitutional court decisions (Corte costituzionale), published in the Italian OJ are available here: https://www.cortecostituzionale.it/actionGiurisprudenza.do

2. Has the CJEU case law generally provided sufficient guidance/assistance for the judiciary when applying the Brussels Ia Regulation?

   Yes. The case law of the CJEU is generally explicitly referenced to by Italian courts in their argumentation for the application of the Brussels regime.

   Not only, to some extent, the rules of the Brussels system guide the interpretation and application of domestic laws as well – this being the case of the domestic rule on international lis pendens, that is interpreted in conformity with the rules given in uniform EU law (cfr. Cassazione, n. 21108, 28 November 2012).

To some extent, also the changes in the personal scope of application for the protection of weaker parties has given no particular trouble, as the domestic act on private international law (law n. 218/1995) makes a renvoi to Section 2, 3 and 4, title II of the 1968 Brussels Convention. Italian court are competent according to such criteria also where the defendant is not domiciled in a Member State. Yet, some decisions still interpret this reference as in favour of the convention, rather than being in favour of the Brussels Regulations (Cassazione, full court, n. 17549, 14 July 2017). This renvoi to the Brussels Convention has recently been interpreted as being in favour of the Brussels Ibis Regulation (Cassazione 18299/2021).

In terms of guidance of the CJEU over the interpretation of concepts, the most recent case law by the Court concerning the notion of acta iure imperii has shaped approaches in domestic law. Whereas the CJ is not competent to interpret the international law of State immunity but is only competent to determined when the regulation is applicable, the interconnection of the notion of civil and commercial matters for the purposes of the application of the instrument with the concept of immunities, has determined some confunsion in the case law. In the RINA case C-641/18, the CJ has concluded that recognised organisation carrying out mixed operation do fall within the scope of application of civil and commercial matters; the Italian supreme court has followed (Sez. Un., 10 dicembre 2020, n. 28180)

3. Which changes introduced in the Brussels Ia Regulation are perceived as improvements and which are viewed as major shortcomings likely to imply difficulties in application – experience in practice and prevailing view in the literature in your jurisdiction?

   Amongst the changes introduced, the definition of the forum for "cultural objects" as defined by Directive 93/7/EEC is perceived as vague.

   Amongst the changes introduced, the clearer regime on the free movement of provisional decisions is welcomed.

4. Taking into consideration the practice/experience/difficulties in applying the Regulation in your jurisdiction and the view expressed in the literature, what are suggestions for improvement?

   Uniform rules concerning arbitration should be adopted as well.

5. Has there been a tension between concepts under national law and the principle of 'autonomous interpretation' when applying the provisions of the Regulation?

   Most of the tensions are nowadays settled, as is the case for pre-contractual liability – that was traditionally been considered more close to contractual matters under Italian law.

   A current (non)tension relates to the qualification of "court": whereas under EU law, arbitral tribunals lack the qualities to be considered courts (Case C-126/97), under Italian law they are considered as such (Corte costituzionale, 19 luglio n. 223; Cassazione full court nn. 24153, 25 October 2013). Yet this creates limited issues as arbitration falls outside the scope of application of the Regulation.

6. The majority of the rules on jurisdiction in the Regulation refer to a Member State and not to a particular competent court. Has the application of national rules on territorial jurisdiction caused difficulties in the application of the Regulation?

   The application of heads of jurisdiction providing for territorial jurisdiction seems sufficiently adequate. There are still some uncertainties in the case law when it comes to the evaluation of material elements that are necessary to determine the local court. This being most recently the example of the relevance of CIF and FOB clauses as per the "place of delivery" under current art. 7 BRIbis (Cassazione n. 32362, 13 December 2018).

7. Has it occurred or may it occur that there is no competent court according to the national rules on jurisdiction in your Member State, thereby resulting in a 'negative conflict of jurisdiction'? If so, how has this issue been addressed?

   It is very unlikely – where no EU or international instrument is applicable, art 3 law 218/1995 provides for quite extensive heads of jurisdiction. It extends the personal scope of application of Sections 2, 3 and 4, Title 2, Brussels Convention. In other cases, criteria for territorial jurisdiction become heads of international jurisdiction. Additional heads of jurisdiction, mostly in family law and personal status, are contained in the same law and strongly inspired by Mancini's theories.

8. Are the rules on relative and territorial competence regulated in the same legislative act or are instead contained in different statutory laws (e.g., Code of Civil Procedure and statutory law on organisation of judiciary or other statute)?

Law n. 218/1995 wishes to regulate all the aspects of private international law – yet heads of jurisdiction are still contained in other acts, such as international conventions, that take precedence of domestic law, and other internal acts, such as the code of navigation for maritime employment contracts (art. 603 code of navigation), insolvency matters (art 9 of the insolvency law Regio Decreto 16 marzo 1942, n. 267) or local heads of jurisdiction ground international jurisdiction if no other specific head for international jurisdiction is applicable.

Substantive scope

9. Has the delineation between court proceedings and arbitration led to particular problems in your Member State? If yes, please give examples. Please explain whether the clarification in the Recast (Recital 12) has proved helpful and/or has changed the practice in your Member State.

   Delineation between the two proceedings is clear, and recital 12 has contributed in defining the exclusion to the scope of application of the regulation.

10. Has the delineation between "civil and commercial proceedings" on the one hand and "insolvency proceedings" on the other hand led to particular problems in your Member State? If yes, please give examples. Please, explain whether the latest case law of the CJEU (e.g., C-535/17, *NK v BNP Paribas Fortis NV*) has been helpful or has created extra confusion.

    Under domestic rules on jurisdiction in matters of insolvency, liability actions against former managers have been considered at first "civil and commercial matters", thus falling under the scope of application of the of general domestic rules on jurisdiction (Trib. Milano 4 ottobre 2013; Cass. n. 5241/1981, Trib. Nola 18 giugno 2009), whereas another approach of the supreme court qualifies such actions as "insolvency" in nature, thus falling within the scope of application of domestic rules in insolvency proceedings (Cass. n. 15487/2000; Cass. n. 6187/1984). In this sense, in the perspective of the application of the Brussels I bis and the EIR, the BNP Paribas Fortis NV case seems sufficiently adequate to offer proper guidance on the scope of application of the regulations.

11. Is there case law in your Member State on the recognition and enforcement of court settlements? If yes, please provide information about these.

    Not to our knowledge

12. Is there case law in your Member State on the recognition and enforcement of authentic instruments? If yes, please provide information about these.

    Not to our knowledge

Definitions

13. Have the courts in your jurisdiction encountered difficulties when applying the definitions provided in Article 2? If yes, how are these problems dealt with? Is there any controversy in the literature concerning (some of) these definitions?
    Article 2 offers nowadays little room for diverging interpretations.

14. Whilst largely taking over the definition of a 'judgment' provided in Article 32 of the Regulation Brussels I, the Recast in Article 2 widens its scope so as to expressly include certain decisions on provisional measures within the definition of a 'judgment' in Article 2(a) for the purposes of the recognition and enforcement. What is the prevailing view in the literature or jurisprudence in your jurisdiction on the appropriateness of the definition of 'judgment'?
    There are no decisions – yet – on the interpretation of the notion of judgment under new Art 2 BRIbis. Domestic literature however welcomes the "correction" the new provision has made to the previous case of law of the ECJ.

15. Within the context of including certain decisions on provisional measures in the definition of a 'judgment', how is 'jurisdiction as to the substance of the matter' to be understood/interpreted – jurisdiction actually exercised or jurisdiction that can be established according to the rules of the Regulation?
    The matter is more generally invoked at the recognition and enforcement stage: whereas the matter is not clearly dealt with in the case law, it seems that it is necessary to exercise jurisdiction according to the rules of the regulation. In sovereign debt cases, the exclusion of the Brussels rules is determined by its scope of application – and jurisdiction is controlled as on the competence rather than on actual proceedings, as under Italian law (art. 64, law 218) jurisdiction of foreign courts must be established in conformity with internal heads of jurisdiction, rather than being a mere "excised competence".

16. Should a decision on provisional measure issued by a court of a Member State, that could base its jurisdiction on the substance of the matter according to the Regulation's rules, be considered as a 'judgment' for the purposes of enforcement in your jurisdiction, when no proceedings on the merits of the case have yet been initiated? If the claim on the substance of the matter is subsequently filed with a court in another Member State also having jurisdiction under the Regulation, how would that reflect on the request for enforcement in your Member State of the 'judgment' issuing the provisional measure?
    To our knowledge, there is no case on this specific matter. Should it however happen, the provisional decision of the court competent as to the matter would most probably move according to the rules even if no proceedings on the merit is yet opened abroad. Should a proceedings subsequently be opened abroad before a non-competent court, ever a tacit prorogation of jurisdiction is possible, the new judgements, also interim, would supersede the previous provisional measure. Should a tacit prorogation, a final decision allowed to move under the regulation would supersede the previous provisional measure. Should, in addition, parallel proceedings be instructed, one before the competent court and one before the non-competent court, the judgements of the competent court should prevail.

17. When deciding on the enforcement of a decision issuing a provisional measure, are the courts in your jurisdiction permitted to review the decision of the court of a Member State confirmed by the certificate that the court has jurisdiction as to the substance of the matter? What is the prevailing view on this point?
    It is generally accepted that it is admissible for courts to determine ex officio the applicability of the regulation for the purposes of enforcing a foreign judgment, with respect of art. 45 (3).

18. Has the definition of the 'judgment' and the 'court or tribunal' attracted particular attention in your jurisdiction (e.g., raising issues similar to those in CJEU case C-551/15, *Pula Parking d.o.o. v Sven Klaus Tederahn*)?
    The main attraction it has received concerned the distinction between "courts" and arbitral tribunals (see supra).

CHAPTER II

Personal scope (scope *ratione personae*)

19. The Recast introduces a number of provisions aimed at further improving the procedural position of 'weaker' parties. Thus, it widens the scope of application *ratione personae* so as to enable consumers and employees to rely on the protective provisions of the Regulation against non-EU 'stronger party' defendants (Article 6(1) referring to, *inter alia*, 18(1) and 21(2)). Are there any statistics available illustrating an increased number of suit actions filed by consumers and/or employees in your jurisdiction?
    To our knowledge, there are no statistics on the point.

20. As to the scope of application *ratione personae*, has it been dealt with in case law or discussed in the literature whether Article 26 applies regardless of the domicile of the defendant, considering that Article 6 does not specifically refer to Article 26?
    The only decision mentioning the provision at hand (Cassazione 19473, 30 September 2016) still interprets former art 24. The decision confirms the applicability of art. 24 as both parties have their domicile in Member States. Yet, part of the scholarships argues, from the changes introduced as per the express choice of court agreements, that art 26 should be applied as well regardless of the European domicile of both parties to the proceedings.

21. In a similar vein, what is the prevailing view in your jurisdiction on whether provisions on *lis pendens* contained in Articles 29 and 30 apply regardless of the domicile of the defendant? Is the fact that a court of a Member State has been seised first the only relevant/decisive factor for the court second seised to stay its proceedings or does the obligation to stay persist only if the court first seised has jurisdiction according to the Regulation (with respect to the claim falling within the substantive, *ratione personae* and temporal scope of Regulation's application)?

    The matter has not been significantly addressed – if it is however accepted that art 26 applies now regardless to the domicile of the parties, the same should hold true for connected claims, provided that these are applicable if the regulation is applicable to the proceedings.

Temporal scope

22. Have your courts or other authorities had difficulties with the temporal scope of the Brussels Ia Regulation? E.g., have they found it clear when the abolition of *exequatur* applies and when not?

    No significant matter has emerged yet.

Alternative Grounds of Jurisdiction

23. In general, have the provisions containing alternative jurisdictional grounds in Article 7, 8 and 9 triggered frequent discussion on the interpretation and application of these provisions in theory and practice? Which rules have been relied upon most frequently? Which have proved to be particularly problematic?

In general, alternative heads of jurisdiction have been correctly applied in the case law. Amongst the issues most consistently dealt with, the (im)possibility to apply contractual heads of jurisdiction in case of sub-buyer where the producer and the sub-buyer have no direct contractual relationship (Cassazione 18 December 2009, n. 22643; however, where the change of contractual parties finds its source in the contract itself, a direct contractual relationship is deemed to exist: Cassazione full chamber 2009, n. 19445).

Nonetheless, the structure of art 7 is perceived as complex.

Within the scope of application of this provision, one question that has raised particular debate is whether actions for annulment of the contract do fall within the

scope of application of the provision (against: Cassazione full chamber, 29 November 1989, n. 5224; in favor, Cassazione full chamber, 27 November 2015, n. 24244).

The distinguishing between contracts of sales and contracts of services sometimes requires a careful argumentation, strongly relied on the case law of the ECJ: for example, the activity of bounding of books whose content is given by the client, has been qualified as contract of service (Tribunale Padova 31 January 2014). However, in some (dubious) cases activities concerning the development, production, delivery, installation and maintenance of goods have been qualified as contract of sales (Tribunale Monza, 30 January 2013; Tribunale Varese 27 October 2012 – re the Lugano Conv.).

As per the localization of the place of delivery, after a first phase where this was determined according to the lex contractus, the supreme court has adopted a factual approach: Cassazione 5 October 2009, n. 21191 (thus making a change in the case law, but prior to Car Trim Case C-381/08; however, most recently contra Tribunale Mantova 15 March 2013).

A current debate now relates to agency contract and the head of jurisdiction as interpreted by the ECJ, giving jurisdiction to the MS where the agent, as the party obliged to perform the characteristic obligation, has its domicile. This head of jurisdiction, in particular in the era of the internet of things, might have a complete overlap with the general head of jurisdiction, thus erasing the possibility for the client-actor to have an additional fora that is particularly close to the case, rather than to a party (for the application of Wood Floor Case C-19/09, Tribunale Milano 18 July 2013).

As for the place of delivery, part of the case law has excluded that, absent specific agreement on the place of delivery within the contract, clauses contained in international forms have on the delivery can be used for the purposes of art. 7 Brussels I bis Regulation (cfr Tribunale Novara 6 June 2011). On a similar matter, the supreme court –most recently- has excluded that clauses whose intent is to regulate the transfer of the risk for perils on the goods (such as CIF clauses) automatically have a direct relevance to determine the place of delivery for the purposes of jurisdiction: the parties must clearly identify within the contract that the clause for the transfer of the risk also intends to identify the place of delivery for the purposes of international and local jurisdiction (Cassazione full chamber 13 December 2018, n. 651823; on "ex works" clauses, see Cassazione full chamber 14 November 2014, n. 24279).

As per the qualification of "contractual" or "non-contractual" matters, the case law follows the indication of the ECJ, however cases of abuse of "economic dependency" under Italian law have been qualified as "contractual matters" (Cassazione full chamber 25 November 2011, n. 24906 – with possible doubts of compatibility with ECJ Case C-548/12). Refusals to establish e temporary association of enterprises (associazione temporanea di imprese) have been qualified as pre-contractual

liability, thus "non-contractual" (Cassazione full chamber 27 February 2012, n. 2926, and 17 December 2007, n. 26479).

For financial instruments, the place of the damage has been identified with the place of trade of the instruments (Cassazione full chamber 22 May 2012, n. 8079; on financial torts, see Cassazione full chamber 27 December 2011, n. 28811; 28 April 2015, n. 8571). It is however clear that the place of damage does not per se coincide with the place of domicile of the damaged party – which would make the head of jurisdiction of the forum actoris (Cassazione full chamber 5 July 2011, n. 14654).

24. Which issue(s) proved particularly problematic in the context of Article 7(1): interpretation of the concept 'matters relating to a contract', distinction between the types of contracts, principle of 'autonomous interpretation' of the Regulation, determination of the place of performance? How were the difficulties encountered dealt with?

See supra.

25. Is the place where the goods were delivered or services provided decisive for determining jurisdiction even when the place of payment is agreed upon and a failure to pay the price has solely given rise to the dispute? If so, what is the prevailing view in the literature and case law on how the wording 'unless otherwise agreed' in Article 7(1)(b) is to be understood?

See supra. Agreements on the place of delivery must be clear. Under art. 7, the challenge of payment only does not allow for a competence different than the place of delivery of goods. Yet, the place of execution of the obligation deducted in proceedings is relevant in cases falling outside the scope of the legal presumption established under art. 7.1.b.

26. Has Article 7(2) given rise to difficulties in application, if so which particular aspect(s): the wording 'matters relating to tort, delict or quasi-delict', the wording 'place where the harmful event occurred or may occur'/locating the place of damage, cases where the place of wrongful act is distinct from the place where the damage has been sustained, types of claims and actions falling within the scope of this provision, identification of the 'centre of interests' in cases of the infringement of personality rights/privacy, application of the requirement of 'immediate and direct damage' in the context of financial loss, interplay between the rules on jurisdiction contained in other EU legal instruments and in the Regulation especially in the context of infringement of intellectual property rights?

In case of online defamation (Cass., sez. un., ordinanza 17 dicembre 2021, n. 40548, ECLI:IT:CASS:2021:40548CIV), the Supreme Court argued that Italian jurisdiction is given if in Italy the place of damage or harmful event can be located; this criteria are respected if the website is accessible in Italy, regardless of the language of the defamatory content. Only the place of dissemination of the content has been deemed to be relevant.

As per the place of localization for financial torts have received quite attention. Violation of personality rights by way of defamation as well are those where usually there is a disconnection between the place of the conduct and the place of the damaged, determined according to the first impact rule.

A recent judgment has however touched upon purely financial damages (Cass., sez. un. civ., ordinanza 30 ottobre 2020, n. 24110). By making reference to the case law of the Court of Justice of the European Union C-343/19, the Supreme Court has argued that the place of the harmful event for financial instruments (whose fundings have been diverted) is to be considered Italy, where the sums have been collected from investors in the first place.

27. The Recast introduced a new provision on jurisdiction regarding claims for the recovery of cultural objects as defined in Directive 93/7/EEC. Has this triggered discussion in the literature or resulted in court cases?

The provision has been widely commented, but, to our knowledge, there is no specific case law yet.

28. Have there been any significant controversies in connection with other rules on jurisdiction under Article 7, 8 and 9, if so which particular rule: regarding claims based on acts giving rise to criminal proceedings [*We would not say there is any significant controversy on this*], interpretation of 'operations of a

branch, agency or other establishment [*We would not say there is any significant controversy on this*], claims relating to trusts [*Cassazione full chamber 29 June 2014, n. 14041 – re Brussels I – recognised that this alternative head of jurisdiction can be invoked by a third party to the trust for the nullity of the trust itself*], claims relating to salvage of a cargo or freight, proceedings involving multiple defendants [*Cassazione full chamber 27 February 2012, n. 2926, and 2 December 2013, n. 26937 – recognised Italian jurisdiction over multiple defendants –banks- domiciled abroad for their contractual and non-contractual liability in conducting financial transaction disastrous to the damaged of the plaintiff*], third-party proceedings, counterclaims, contractual claims related to a right *in rem* on immovable property, limitation of liability from the use or operation of a ship?

As per connected actions, the rules of the regulation allow under Italian law to ground jurisdiction also between principal and accessory claim, which might not necessarily be a case of "necessary concentration" under Italian law.

Rules on jurisdiction in disputes involving 'weaker parties'

29. In the newly introduced paragraph 2 in Article 26, the Recast imposes the obligation upon the courts in Member States to inform 'weaker parties' of the right to oppose jurisdiction according to the protective provisions of the Regulation, but does not expressly regulates consequences of a court's failure to do so. What is the prevailing view in your jurisdiction on the point whether the omission of the court qualifies as a ground to oppose the recognition and enforcement of a decision rendered in violation of this obligation under Article 45?

There are different opinions as per the possibility to include a violation of art. 26.2 within the exhaustive list of grounds to refuse recognition and enforcement under art. 45.

30. According to the prevailing view in your jurisdiction, do the provisions limiting effectiveness of prorogation clauses in cases involving 'weaker parties' apply to choice-of-court agreements providing for jurisdiction of a court in a country outside the EU?

It is usually excluded that the regulation has an effect reflect.

31. According to the prevailing literature in your Member State, do provisions in Sections 3, 4 and 5 provide effective protection to ‘weaker parties’?

Whereas some technical rules might be enhanced, it is generally acknowledge that the regime is acceptable.

32. In general, have there been difficulties in applying Section 3 of the Regulation on the jurisdiction in matters relating to insurance, if so which aspect(s): definition of ‘branch, agency or other establishment’ in the identification of the competent court, the identification of ‘the place where the harmful event occurred’, the definition of ‘injured party’, the application of the provisions of Articles 15 and 16 relating to choice-of-court agreements?

Not significantly. It is also acknowledge that the notion of “harmful event” should be interpreted in line with art. 7 – leading however to the consequence that the court of the damaged party might apply a law different than the lex fori – whereas the interplay between protective heads of jurisdiction and applicable law can most often lead to the application of the lex fori where the proceedings is stated by the contractually weaker party.

33. Have there been difficulties in applying Section 4 of the Regulation on the jurisdiction in matters relating to consumer disputes, if so which aspect(s): requirements for a transaction to be considered as a ‘consumer contract’ as defined in Article 17, the application of the norms on the choice-of-court agreements?

As per e-commerce, it has been clearly stated that the mere accessibility of online messages from a given State does not suffice to argue that an activity is “directed” to the Member State of domicile of the consumer (Tribunale Milano, intellectual property section 16 March 2009).

34. Have the courts in your jurisdiction encountered difficulties in the application of Article 18(2), in the case of *perpetuatio fori,* occurring if the consumer moves to another State? If yes, how are these problems dealt with?

Not to our knowledge.

35. Have there been difficulties in applying Section 5 of the Regulation on the jurisdiction in matters relating to employment contracts, if so which aspect(s): the interpretation of the concept of 'matters relating to individual contracts of employment', the interpretation of the concept of 'branch, agency or establishment', 'place where or from where the employee habitually carries out his work', the application of the provision on the choice-of-court agreements?

As per employment contracts, the "place of activity" has been subject to particular attention for seafarers, where the element of the flag has witnessed a loss of importance to determine the place of activity – for such a case, the element of the habitual place of activities, in as much as it should automatically overlap with the State of the flag, is not suited to identify that legal order that with the case has the most close connection which justifies the exercise of jurisdiction (Cassazione full chamber 14 July 2017, n. 17549; cfr however Cassazione 29 April 2011, n. 9517). In this sense, "moving workers" always impose particular attention upon courts in the determination of the place of activity for the purposes of international jurisdiction.

Agency employment contracts have been excluded from the scope of application of protective heads of jurisdiction (Tribunale Pesaro 11 July 2008).

Exclusive jurisdiction

36. Article 24(1) uses the expression rights '*in rem*', but provides no definition. The same holds true for case-law of the CJEU, even though it has to some extent clarified the concept by holding that it is not sufficient that the action merely concerns a right *in rem* or is connected with such right. Do the courts in your Member State experience difficulties in distinguishing between disputes which have 'as their object' 'rights *in rem*' from those that merely relate to such rights and accordingly do not fall within the exclusive jurisdiction? If so, how are these problems solved? Have there been any problems with applying Article 31(1) in this respect?

On the matter there appears to be few case law. Overall the problems dealt with appear to be mainly solved, with little practical problems as per the application of the rules on lis alibi pendens.

Art. 22 Brussels I Regulation has been interpreted in the sense that the exclusive competence of the court of the State where the immovable property is located only refers to actions which determine the extension, consistency, property or possession

of immovable property or the existence of other rights in rem. For example, the claim against the former spouse, domiciled in Italy, to be ordered to pay half of the amount obtained for the sale of an immovable property located in Malta, part of the community property regime between spouses, does not fall within the scope of application of art. 22 (Corte di Cassazione (IT) 10.12.2013 – 27495, in unalex IT-713; cfr also Cassazione full chamber 10 December 2013, n. 27495).

The provision has been subject to restrictive interpretation, as it has not been deemed applicable to ordinary claw-back actions (Tribunale Milano 5 February 2014).

A per the right to use, a contract relating to the purchase of the right to use immovable properties on a timeshare basis has been considered a contract on tenancies of immovable property for the purposes of Article 22 Brussels I Regulation (Corte di Cassazione (IT) 18.06.2010 – 14702, in unalex IT-891)).

37. For the purposes of applying Article 24(2), which rule of private international law applies for determining the seat of the company in your legal system? Do the courts in your Member State experience difficulties in this respect and, if so, how are these problems dealt with?

The provision has been subject to restrictive interpretation, as it has not been deemed applicable to claw-back actions for goods conferred to a company (Corte d'Appello di Milano, 27 October 2009). Similarly, proceedings related to abuses of the quality of shareholder or director have been considered falling outside the scope of application of the exclusive head of jurisdiction (Cassazione full chamber 12 January 2005, n. 385).

As per the determination of the seat, art. 25 law n. 218/1995 is applicable, but no particular judgment has been found. However, the provision is constructed as a conflict of laws rule, providing that companies are governed by the law of the State of incorporation (save some cases where Italian law applies nonetheless), and is not constructed for the purposes of international jurisdiction as results from art. 24 Brussels I bis Regulation. In this sense, it is argued that the rules of the provision that still favor the application of Italian law over other cannot find application where the article serves to identify the competent court in the European union if incorporation, comi and real seat are located in different States, as preferring the Italian court might be incompatible with the regulation.

38. In cases concerning the violation of an intellectual property right, the invalidity of the patent may be raised as a defence. In *GAT v Luk* (C-4/03) the CJEU ruled that for the exclusive jurisdiction it should not matter whether the issue is raised by way of an action or as a defence. This rule is now incorporated in the text of Article 24(4). Do the courts in your Member State

experience any particular difficulties when applying the provision regarding the validity of the rights covered by Article 24(4)? If so, how are these dealt with?

The limited available case law (Tribunale Bologna 23 June 2014, and Cassazione full chamber 10 June 2013, n. 14508) has dealt with negative declarations for intellectual property infringements, conforming to the GAT case law. Pre-emptive negative declaration for non-violation of non-Italian patent rights have been declared to fall outside the exclusive jurisdiction of Italian courts.

39. Given the variety of measures in national law that may be regarded as 'proceedings concerned with the enforcement of judgements', which criteria are used by the courts in your Member State to decide whether a particular procedure falls under the scope of Article 24(5)? Please elaborate and provide examples.

It is generally acknowledged that such head of jurisdiction must be subject to a restrictive interpretation, being the main criteria the necessity employ the use of public force/coercion (for example, recourse to a public auction for the sales of goods) to realise the content of a decision or other executive acts. Moreover, the provision only finds application for judgments adopted by a Member State of the European Union – or that has been issued under the Lugano Convention. The head of jurisdiction is not deemed applicable for provisional judgments, where the jurisdiction of Italian courts is determined according to the relevant rules.

The provision is applicable for all proceedings whose aim is to refuse recognition and enforcement of a foreign judgment.

The provision is not deemed to be applicable where counter-claims on the merits are proposed by one party.

40. Does the removal of a conservatory third party attachment (in case of seizure) fall within the scope of 'enforcement' in the sense of Article 24 chapeau and fifth paragraph Brussels Ia leading to the exclusive jurisdiction of the court where the removal has to be enforced, or can jurisdiction of the removal be based on Article 35 leading to jurisdiction of the court that has granted leave to lay a conservatory third-party attachment (seisure)? In other words, is Article 24 interpreted extensively or narrowly in you Member State?

Provisional measures are understood to fall within the scope of application of art. 35, as art. 24 is subject to a restrictive interpretation.

Prorogation of jurisdiction and tacit prorogation

41. Application of Article 25 requires a minimum degree of internationality. Is there any particular case-law and/or literature, in your Member State in which this minimum degree of internationality has been discussed and/or a certain threshold has been set? If yes, what are the considerations and/or arguments that have been made?

It is generally acknowledged that the case requires a cross-border element – it is however required by some scholars that the case is at least potentially international due to objective criteria, meaning that in commercial and tort matters elements such the different nationality (unless the domicile of the person is not known) does not bear relevance to argue for the internationality of the case. It is settled that the mere will of the parties does not suffice to characterise the case as international (Cassazione full chamber 14 February 2011, n. 3568). Where the parties had their domicile both in Italy, the general approach followed by Italian courts is to argue for the non application of the regulation, with consequential application of the domestic laws on prorogation and derogation of international jurisdiction (ie art 4 law 218/1995; Cassazione full chamber 30 November 1998, n. 12907; and Cassazione full chamber 14 February 2011, n. 3568; Tribunale Ascoli Piceno 8 May 2002).

There are however different positions in the scholarship as per the possibility of the parties to validly derogate, in particular under domestic laws that are generally interpreted in line with EU law, domestic courts where there are no international elements. Such positions are also argued bearing in mind that the Rome I Regulation allows for the will of the parties to, to some extent, raise a conflict of laws issues.

42. The requirement that at least one of the parties to the choice-of-court agreement must be domiciled in a member state, as stated in Article 23 Brussels I, has been deleted in Article 25 Brussels Ia. Has this amendment resulted in an increase of a number of litigations in which jurisdiction has been based on choice- of- court agreement falling under the Regulation?

There is no statistical data on this point. However, in light of the previous case where the matter was mainly derogation of Italian jurisdiction in favour of courts of other Member States or court of third States, there is no significant reason to believe that the new scope of application will determine a significant raise in the number of cases started in Italy. This is also due to the fact that domestic law is generous in allowing non-resident for a prorogation of Italian courts in civil and commercial matters.

There has also been a case by the Supreme Court dealing with a very specific issue: multiple parties bound by multiple contracts and choice of court agreements inconsistent one with the other. Here the Court (Cass., sez. un., ordinanza 14

dicembre 2020, n. 28384, ECLI:IT:CASS:2020:28384CIV). Here, by confirming that it is fort the court prorogated to rule on the (contested) validity of choice of court agreement regardless of any chronological order, the court argues that between the courts seised under conflicting choice of courts agreements, called to rule on the same matter, competence to rule on the validity of choice of court agreement rests with the prorogated court first seised.

43. Are there particular examples in which the formal requirements for validity of choice-of-court agreements (Article 25(1)(a-c)) caused difficulties in application for the judiciary or debate in literature? Which requirement has appeared most problematic in practice? When applying the respective requirements of an agreement 'in writing or evidenced in writing', 'practice which the parties have established between themselves' and 'international trade usages', which facts do the courts and/or literature deem decisive?

As per the evidence in writing requirement, the most recent problems address by Italian courts related to online contracts and e-choice of court agreements made available with link. Such form has been deemed to be "in writing" and available for future recoding (Cassazione full chamber 19 September 2017, n. 21622). Choice of court agreement per relatio perfecta are generally admissible (Cassazione full chamber 9 March 2012, n. 3693).

Choice of court agreements, even where in writings, have been deemed void where consent of both the parties have not been determined. This has in particular raised the issue of the consent of corporations: choice of court agreements included in specific post-contractual documents have been considered void for the lack of consent where such agreements have not been signed by the legal representative of the company (Cassazione full chamber 10 February 2017, n. 3559). Signature of such agreements by employees of the company who have not representation powers make the choice of court agreement void for lack of consent (Cassazione full chamber 18 October 2012, n. 17845).

As per maritime transport, the existence of international usages have led courts to argue for the existence of choice of court agreements even absent explicit acceptance of unilateral choice of court agreements (Tribunale Genova 29 May 2010;Cassazione full chamber 11 June 2001, n.7854).

Verbal choice of court agreements have been deemed valid where these have been followed by a written communication from one party to the other, and this last one has not raised any challenge to the choice of court agreement in proper times and manner (Cassazione full chamber 2 April 2007, n. 8095; Cassazione full chamber 3 January 2007, n.6), or where the contract has been executed by the parties (Cassazione full chamber 28 February 2007, n. 4634).

Choice of court agreements have been deemed invalid where the clauses where as such to make objectively uncertain the court whose jurisdiction has been prorogated (Cassazione full chamber 20 February 2007, n. 3841).

A recent case – decided in the context of the 1988 Lugano Convention – has declared nullity of a choice of court agreement (Cass., sez. un., sentenza 28 gennaio 2020, n. 1868 – ECLI:IT:CASS:2020:1868CIV). A notary bought shares of a Swiss company, whose activity was offering homes to sharesholders. The contract has been deemed concluded with a 'consumer', and the choice of court agreement contained in the sales of stock has been considered null and void because not *concluded after the controversy between the party was arisen.*

44. Is there case-law in your Member State in which the formal requirement(s) of Article 25 (1)(a-c) have been fulfilled, but the choice of court agreement was held invalid from the point of view of substantive validity due to a lack of consent? If the answer is in the affirmative, what were the considerations made by the court?

See supra. Additionally, the issue of consent has been approached by the case law in particular in the event of a new party entering a previous contract containing a choice of court clause. This has been done for example with regard of air transport claims sold to a collection company who was opposed by the air carrier a choice of court agreement contained in the flight ticket bought by the passenger.

With order 36371 of 24 November 2021[1], the Supreme court correctly argued that the validity of a choice of court agreement must be evaluated against the background of the original contract, not the contract of sales of credit. In its evaluation, the Supreme Court argues that the original clause remains applicable between the new parties as the buyer of the credit cannot have a different position from the one of the party selling the credit ('la [clausola] di proroga della giurisdizione contenuta in un contratto rimane applicabile anche se il credito scaturente dal vincolo sia stato ceduto, non potendo il cessionario assumere una posizione contrattuale diversa o deteriore rispetto a quella del cedente'[2]). This seems to possibly create tension with the principle that the *lex causae* should govern the new position. More correct seems the approach of other case law where for 'cessioni *pro soluto*' it has been argued that the principle of protection of the debtor is applied at the choice of court as well, which still stands if and only after the existence of a consent has been determined according to law (il 'principio di tutela dell'affidamento del debitore ceduto ... si applica anche alla clausola di proroga di competenza che, una volta accettata mediante la prestazione del consenso nelle forme previste dalla legge, rimane immutata, salvo una diversa ed alternativa pattuizione tra ceduto e cessionario'[3]). Here the case law has more extensively dwell on the existence of a substantive consensus between the parties.

[1] Cass. civ. S.U., 24 novembre 2021, ordinanza 36371, ECLI:IT:CASS:2021:36371CIV.
[2] Cass. civ. S.U., 24 novembre 2021, ordinanza 36371, cit., punto 5.
[3] Cass. civ. S.U., 7 aprile 2020, setenza n. 7736, ECLI:IT:CASS:2020:7736CIV, punto 6.2.

From a different angle, the Supreme Court has also questioned the effects of a choice of court agreement of the party selling the contract, to determine if the once originally party if ‘freed’ from the clause[4]. With an *a contrario* argument, the Court concludes that if the new party is bound by the clause, the old party is freed from it (‘pur essendo la controversia insorta tra le parti originarie [del] contratto, il contratto è stato ceduto, e [il cedente], non essendone più parte contraente non può esserne vincolat[o], neanche in relazione alla clausola invocata’[5]).

45. Are there cases in which the courts in your Member State experienced problems with the term ‘null and void’ with regard to the substantive validity of a choice-of-court agreement?

It is held null and void where the clause renders impossible to determine the prorogated court (Cassazione full chamber 20 February 2007, n. 3841).

46. Article 25(1) Brussels Ia has been revised so as to explicitly state that the substantial validity of a choice-of-court agreement is determined by the national law of the designated court(s). Recital 20 clarifies that the designated court is to apply its own law including its private international law rules. Has the reference to private international law in this context led to discussion in literature or difficulties in application for the judiciary in your Member State?

There is no specific case law on the matter. The new text has however contributed in the debate of the nature of choice of court agreements, whether these must be considered as contracts, procedural acts, or as contracts with procedural effects, with the consequences as per the applicable law, as procedural acts are governed as to the substance by the lex fori processus.

47. Is there particular case law or literature in your Member State in which the test of substantive validity of non-exclusive choice-of-court agreements was discussed? If yes, how is dealt with the substantial law of the different designated Member States?

The matter of substantive validity of non-exclusive choice of court agreements has not been dealt with, however asymmetric choice of court agreements have been considered valid as long as they allow for a punctual pre-identification of the competent court (ie the competent State) (most recently: Cassazione full chamber 31 July 2018, n. 20349).

[4] Cass. civ. S.U., 9 febbraio 2021, ordinanza n. 3125, ECLI:IT:CASS:2021:3125CIV.
[5] Cass. civ. S.U., 9 febbraio 2021, ordinanza n. 3125, cit., punto 6.1.

48. Has the express inclusion of the doctrine of severability of choice-of-court agreements, as mentioned in Article 25(5) Brussels Ia merely confirmed a principle that had already been firmly established and accepted in theory and practice within your Member State?

Law 218/1995 is strongly based upon the Brussels Convention 1968 – so principles are very similar.

49. Do the courts in your Member State experience difficulties in applying the rules as to defining 'entering an appearance' for the purposes of applying Article 26 Brussels Ia?

Not particularly – the moment by which international jurisdiction must be challenged is the deposit of the first defensive pleas.

Examination jurisdiction and admissibility; *Lis pendens* related actions

50. Have courts in your Member State experienced any particular problems when interpreting the 'same cause of action' within the meaning of Article 29(1) (e.g. a claim for damages for breach of contract and a claim for a declaration that there has been no breach ('mirror image')? Please elaborate and provide examples from your own jurisdiction (if any).

Where it comes to the application of EU law, the approach in the interpretation of the "same cause of action" is quite extensive and gives particular regard to the substance of the case, rather than to the formal pleadings of the parties. It has already been established that lis pendens rules must find application where the claims of the parties – even though different, as being for example one contractual and one non-contractual in nature for damages following breach of contract – do fall within the definition of the "same cause of action", with the consequence that rules on lis pendens must be applied ex officio by the court (Cassazione full chamber 15 October 1992, n. 11262). What is of relevance for the application of the provision is the centre of the controversy *between the parties, rather than the legal and material allegations made by them in course of proceedings (Cassazione 25 May 1999, n. 293; 18 November 2008, n. 27389; 19 May 2009, n. 11532).*

Also, distinction between action in personam and in rem that are made under domestic laws are deemed irrelevant for the purpose of application of art. 29 (Tribunale Torino 27 marzo 2007; Cassazione 18 November 2008, n. 27389).

This extensive approach is not necessarily followed at the domestic level: with regard to internal cases of parallel proceedings, one criminal and one civil, where the same facts are under scrutiny of two different courts, no rule for the suspension proceedings is given as these are deemed to be autonomous (Cassazione 28 December 1998, n. 12855), where at the international level art. 7.3 would stop the civil proceedings open as second.

The domicile of the defendant in a State bound by the regulation is not necessary for the application of the rule on lis pendens (Cassazione 25 May 2004, n. 10005).

51. Do you know whether the courts of the other Member State are typically contacted immediately once sufficient evidence has been gathered which suggests or confirms that courts in the other Member State may have been seised of the ‘same cause of action’? Is there a standardised internal procedural guideline which is followed by the courts of your Member State? And are there any practical (for example, linguistic, cultural or organisational) obstacles or considerations which may hinder contact between the courts of your Member State and the other Member State?

The main obstacle is that the code of civil procedure does not clearly allow courts to have direct communication with foreign courts – judges thus, whilst being active as long as informal communication is at stake, and to the extent of their personal skills, tend to rely on writs of foreign proceedings that are produced by the party invoking the application of art. 29.

52. When should a court in your Member State be considered to be seised for the purposes of Article 32 Brussels Ia? Is this when the document instituting the proceedings or ‘equivalent document’ is lodged with the court (a) or when such document is received by the authority responsible for service (b)? Does the moment of filing a suit with the court determine the moment as from which a proceeding is deemed pending or the proceeding is considered to be actually pending at a later point after certain administrative/organisational steps have been taken (see e.g., circumstance in C-173/16 *M.H. v. M.H.* relating to this issue under Regulation Brussels IIbis)?

In Italy, service of documents instituting proceedings set the date for the purposes of lis pendence – notably, the date of service is not the date of effective service, but the day of the formal request for service made to the competent authority (as Italy follows as dual regime of preclusions connected to service of document – ie the date of service for the recipient is usually that of effective service – Cassazione 15 February 2007, n. 3364). However, this was true only for those proceedings where the writ of

summons has to be served upon the defendant prior to the deposit of the file with the court registry. Where, on the contrary, the file has to be lodged with the court before service so as to have an order of appearance from the judge, the date of filing the case was deemed to set the rules on parallel proceedings. In any case, both date where conditional to further tasks – in the first case the day was that of service only where the file had been lodged with the registry, in the second case, the day was that of lodging only if the court order was then served upon the defendant.

This is consistent with art. 32 Brussels I bis (and art. 30 Brussels I), but was already accepted under the Brussels convention.

The problem is that such rules are deemed applicable for judgments on the merits – it does not find application between proceedings on the merit and provisional or proceedings (Tribunale Bolzano order 31 March 2015).

53. Do subsequent amendments of claims in any way affect the determination of the date of seising in your Member State? Is any differentiation made in that respect between cases where a new claim concerns facts known at the date of the original proceedings and amendments based on facts which have only emerged after the date of the original proceedings?

To our knowledge, there is no specific case law on this point. However, consequential claims could be deemed to be covered by the original proceedings, whereas new and unrelated claims would need a new introductory act (with a new application of art. 32 BIIb). The claim is, in fact, set by the introductory acts of the parties, and cannot be extended by them in course of proceedings.

54. Do courts in your Member State tend to decline jurisdiction if the court seised previously had jurisdiction over the actions in question 'and its law permits the consolidation thereof' (see Article 30(2))?

As art. 30(2) does not oblige the foreign court to assume jurisdiction, as derogation is conditional upon the possibility of the foreign court to hear the case, the general approach, in particular in scholarly writings, is cautious due to the possibility of a double negative conflict of jurisdiction.

55. Has the application of Article 31(2) proved to be counterproductive and resulting in delaying the proceedings by the obligation of the court seised to stay the proceedings until a designated court has decided on the validity of a choice- of- court agreement, even when a prorogation clause has never been entered into or is obviously invalid?

To our knowledge, there is not case law on this specific provision yet.

56. Has the combined application of Articles 33 and 34 in your view contributed to greater procedural efficiency and accordingly diminished the risk of delays in resolving disputes as well as the risk of irreconcilable judgments between a third state and your Member State?

To our knowledge, there is no case law on this specific provision yet. It could however in theory serve purposes of procedural economy and efficiency.

57. Apart from concerns regarding procedural efficiency, are connections between the facts of the case and the parties in relation to the third state typically also taken into account by the courts in your Member State in determining their jurisdiction under Articles 33 and 34, bearing in mind the aims as expounded by Recital 24 of the Regulation?

To our knowledge, there is no case law on this specific provision yet. It could however in theory serve purposes of procedural economy and efficiency. Such provisions are similar to those for international coordination of proceedings under domestic law.

58. Does the application of both provisions in your view amount to a sufficiently ‘flexible mechanism’ (see further Recital 23) to address the issue of parallel proceedings and *lis pendens* in relation to third states?

Yes.

Provisional measures, protective measures

59. Do the courts in your Member State experience difficulties defining which ‘provisional, including protective, measures’ are covered by Article 35?

To our knowledge, there are currently no decisions on art. 35 Brussels I bis regulation. It is however acknowledged that the adoption of provisional and protective measure requires a territorial connection with the case (usually determined by the localisation of the movable or immovable good – Tribunale Roma 22 January 1998, and Tribunale Avellino 24 February 2000), and are to no prejudice to the merit of the matters. Problems have been however raised in the past in the case of seizure of foreign internet domains (Tribunale Roma 2 February 2000).
As per seizure of sums against third parties for debts of the debtor, it is necessary that the sums are localised within the State, regardless of where the debtor is (Cassazione 5 November 1981, n. 5827), as goods to be seised must be within the territorial availability of the court (Tribunale Udine 21 July 2000).
On the contrary, for injunctions, ie order not to do something (non facere), what is of relevance is the localisation within the territory of the person subject to the order (Tribunale Rovereto 6 March 1998; Tribunale Bologna 29 August 2007).
The court for the provisional order, absent a judgment on the merit, should also evaluate the element of the fumus boni iuris according to the lex causae applicable to the merits of the matter (Tribunale Roma 22 January 1998), so long as the ascertainment of the foreign law is to no prejudice the provisional and protective measure (in such a case the element at hand should be addressed under the lex fori – Tribunale Modena 12 August 1996; Tribunale Modena 11 July 1998). However, some courts have argued that the element of urgency should in any case be evaluated in light of the international element of the case, as decisions of other courts might already satisfy the need for protection (Tribunale Latina 19 April 1994).
Some courts have also taken into consideration the problem of protective measure being adopted absent proceedings started before the competent court – in such a case some courts have argued that the provisional measure should be subject to a "deadline" within which the foreign proceedings should be started for the measure to remain in force (and after the beginning of the merit proceedings the life of the measure is determined by the court competent on the merits) – Tribunale Venezia 19 August 2003.
It is also generally accepted (see supra) that provisional measures have no relevance for the rules on parallel proceedings on the merits.

60. In the *Van Uden Maritime v Deco-Line and Others* case (C-391/95) the CJEU introduced a requirement of territorial connection between the subject matter of the measures sought and the territorial jurisdiction of the Member State's court to issue them. How is the 'real connecting link' condition in *Van Uden* interpreted in the case-law and doctrine in your Member State?

See supra.

Relationship with other instruments

61. Has the Hague Convention on Choice of Court Agreements to your knowledge ever been relied upon in declining jurisdiction in your Member State and allocating jurisdiction to third states party to that Convention? Please provide examples from case-law with a short summary.

Not to our knowledge.

CHAPTER III

Recognition and Enforcement

62. How frequently is the optional procedure, established in Article 36(2), to apply for a decision that there are no grounds of refusal of recognition employed in your jurisdiction?

To our knowledge, there are no specific statistics.

63. Abandoning *exequatur,* Section 2 of Chapter III grants direct access to national enforcement agents (in a wide sense, including particularly courts and *huissiers*) or enforcement agencies. Have such agents or members of such agencies in your jurisdiction received specific training or instruction on how to deal with enforcement requests based on judgments rendered in other Member States? If so, who undertook the effort and who seized the initiative?

We have no direct knowledge on this point.

64. Has there been a concentration of local jurisdiction (venue) at the national or regional level in your jurisdiction institutionalising specialised enforcement agents for the enforcement of judgments rendered in other Member States?

For companies, there is a territorial concentration at the regional level (whereas some regions might have two bodies – Tribunale delle imprese).

65. Have there been other specific legislative or administrative measures in your jurisdiction possibly facilitating the direct access of creditors or applicants from other Member States to the enforcement agents?

Not to our knowledge.

66. Has the transgression to direct enforcement enhanced the number of attempts to enforce judgments rendered in other Member States? Are there any respective statistics available in your jurisdiction? If so, may you please relay them?

To our knowledge, there are no specific statistics.

67. Section 2 of Chapter III has created a specific interface between the Brussels Ia Regulation and national rules on enforcement. Has this generated particular problems in your jurisdiction?

In general terms, the abolishment of material norms on the opposition procedure raises some doubts and concerns.

It remain dubious how materially the court will make recourse ex officio to the suspension of the enforcement under Art. 38 of the Brussels I bis Regulation where the execution of the foreign judgment is an ancillary or connected question.

Where the execution of the foreign judgment is the main action of the proceedings,

a purely anticipatory judgment of the absence of grounds to refuse recognition and enforcement (Art. 36.2) is allowed

a purely anticipatory judgment to obtain a pre-emptive negative declaration on to enforcement (Art. 46-47) is not allowed.

The lack of material provisions in the new regulation does not prejudice the principle of effectiveness of national procedures. Nonetheless, even though enforcement of foreign judgments is the final aim, renvoi to domestic laws imposes also pre-emptive notification of the title along with the order to pay or execute the foreign decision in a given time. Only after the expiration of this deadline (usually minimum 40 days), access to enforcement proceedings is allowed.

Competence over such proceedings have been given to tribunals, rather than to court of appeals as was under the regulation 44/2001. Competence of tribunals is non-derogable, and cannot be shared with other first instances courts that might have competence for the value of the claim, as is for justices of the peace.

Under Italian law, within the tribunal, if execution has not already begun (art 615 code of civil procedure), territorial competence is regulated by art. 27 of the code; if execution is materially already begun, the territorial competence rests with the court before which the enforcement proceedings is started. However, where enforcement under the Brussels I bis regulation is at stake, the ordinary tribunal is the sole competent for both pre-emptive positive declarations and for opposition to enforcement.

68. Has Article 41(2) in particular attracted specific attention in your jurisdiction?

To our knowledge, not in the case law.

69. Article 46 introduced the so called 'reverse procedure'. Are there any statistics available in your jurisdiction on the absolute frequency and the relative rate of such proceedings, the latter in comparison to the number of attempts to enforce judgments rendered in other Member States? If so, may you please relay the said statistics?

To our knowledge, there are no specific statistics.

70. Public policy and denial of a fair trial to the defaulting defendant in the state of origin (now Article 45(1)(a) and (b) respectively) have a certain tradition of being invoked rather regularly as grounds for refusal of recognition or enforcement. Has this changed in your jurisdiction following the advent of the 'reverse procedure' (Article 46)? Has the rate of success invoking either of them changed?

To our knowledge, there has not been a significant shift in numbers – already prior to the abolition of exequatur, under the regime of the regulation 44/2001, numbers in commercial and civil matters where nonetheless quite small, and even smaller where such grounds have been successfully invoked.

71. Has the extension of now Article 45(e)(i) to employment matters practically altered the frequency of, or the approach to, enforcing judgments in employment matters in your jurisdiction?

Not to our knowledge.

72. Article 52 strictly and unequivocally inhibits *révision au fond*. Do courts or enforcement agents in your jurisdiction comply with this in practice?

They usually do, and particular attention is given to the substantive public policy exception, so as to avoid a revision of the foreign judgment.

73. Article 54 introduced a rule for adaptation of judgments containing a measure or an order which is not known in the law of the Member State addressed. How frequently or regularly does such adaptation occur in practice in your jurisdiction? In the event that the judgment gets adapted, how frequently is such adaptation challenged by either party?

To our knowledge, there are no specific statistics, nor has the provision been applied yet.

74. Translation of the original judgment is optional, not mandatory by virtue of Article 37(2) or Article 54(3) respectively. How often require courts or enforcement agents in your jurisdiction the party invoking the judgment or seeking its enforcement to provide a translation of the judgment?

There is no official statistics on that – however, in particular where the foreign language is not English or French, it seems that there is a tendency to require translations.

CHAPTER VII

Relationship with Other Instruments

75. Which impact has Annex (1)(q) of Directive 93/13/EEC (Unfair Terms in Consumer Contracts) generated in your jurisdiction?

    The annex is not always consistently mentioned in the case law related to jurisdiction.

76. Can you identify examples for an application of Article 70 in your jurisdiction?

No.

77. Has the precedence of Art. 351 TFEU to Article 71 Brussels Ia, as established by the CJEU in *TNT v AXA* (C-533/08) and *Nipponkoa Insurance Co. (Europe) Ltd v Inter-Zuid Transport BV* (C-452/12) prompted any practical consequences in your jurisdiction?

Some decisions mention the 1999 Montreal Convention – albeit the proper legal basis should be Article 67 of the Regulation, as the convention may be considered as being another EU law instrument.

78. Which Treaties and international Conventions have triggered Article 71 in your jurisdiction?

Some decisions mention the 1999 Montreal Convention – albeit the proper legal basis should be Article 67 of the Regulation, as the convention may be considered as being another EU law instrument.

A recent approach, following the case law of the CJUE should be mentioned in regard to the Montreal Convention. In decision 24632/20, the Italian Supreme court changes its previous understanding of the Convention as it concedes that rules on jurisdiction therein enshrined are not merely rules on international jurisdiction, but are also rules on territorial competence (point 6, reasoning in law; consistent with Case C-213/18; overrules Cassazione 3561/2020).

79. Have there been problems in your Member State with the delineation of the application of Article 25 Brussel Ia and the The Hague Convention on Choice-of-Court agreements?

There is no specific case law on the point.

80. Have Articles 71(a) – 71(d) been already applied in your jurisdiction?

Not to our knowledge.

There is only case available in public databases on the relationship between the Brussels I regulation, refers to its temporal scope of application, with a solution that is rather plain (Tribunale Padova 10 gennaio 2006).