Regulation BIa: a standard for free circulation of judgments and mutual trust in the European Union (JUDGTRUST)

QUESTIONNAIRE
for Luxembourg

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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?

Judgements rendered by Luxembourg courts are not systematically published, except for the judgments of the supreme court in private law matters (*Cour de cassation*). A general database exists, but it is only available to members of the judiciary.

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

The author of this report being an academic, he is unable to answer this question on behalf of the judiciary. He is not aware of any complaint.

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?

The legal literature in Luxembourg on private international law is very limited. There are only a few legal journals, none of which focuses on private international law. It is therefore not possible to express an opinion for the view of Luxembourg practitioners or scholars.

With respect to enforcement of foreign judgments, I am grateful to the president of the national association of enforcement officers (*huissiers*) of Luxembourg for sharing his views. He reports that the Brussels Ibis Regulation is a clear improvement, but that a number of issues remain:

- Summarizing a judgment in a form is often delicate.
- Calculating interests on foreign judgments is often very complicated. Foreign rates change (monthly in some Member States), and it is often complicated to identify applicable rates. Starting points are unclear and vary depending on the various sums of money that the judgment debtor is ordered to pay.
- It would be useful to impose that all judgments issued by Member States in civil and commercial matters provide information on the various ways to challenge judgments (appeal, for instance). There is no such obligation under Luxembourg law, and debtors are typically lost.

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?

See above question 3.

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

The author of this report could not identify any such tension.

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?

No. This was unlikely in a jurisdiction as small as Luxembourg, where all major cases will be litigated in the same central district of the country.

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?

The author of this report is not aware of such issue arising in practice.

It does not seem that it could arise. Luxembourg rules of domestic territorial jurisdiction tend to coincide with European rules of jurisdiction. This is the case, in particular, in contractual matters (Luxembourg New Code of Civil Procedure – NCCP, Art 28), in tort matters (NCCP, Art 42), in employment matters (NCCP, Art 47).

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)?

Rules of domestic jurisdiction are provided in one singe instrument, namely the Luxembourg New Code of Civil Procedure.

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.

To the knowledge of this author, no such problem has arisen. Arbitration proceedings in Luxembourg are essentially concerned with enforcement of foreign awards, which is clearly settled by the present law.

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.

Luxembourg have relied on this delineation, but without identifying any particular problem (the recovery of debts by an insolvency official was held to fall within the scope of Regulation BIa).

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

To the knowledge of this author, there is no case law in Luxembourg on this issue.

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

To the knowledge of this author, there is no case law in Luxembourg on this issue.

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?

To the knowledge of this author, no such issue has arisen in Luxembourg.

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'?

To the knowledge of this author, there is no case law in Luxembourg on this issue, and the literature is inexistent.

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?

To the knowledge of this author, there is no case law in Luxembourg on this issue. In the context of Regulation 655/2014, this author has argued that 'jurisdiction as to the substance of the matter' should be understood widely and not limited to jurisdiction actually exercised, nor to the jurisdiction of the court actually seized on the merits (G. Cuniberti & S. Migliorini, 'La procedure d'ordonnance européenne de saisie conservatoire des comptes bancaires établie par le Règlement n° 655/2014 – Aspects de droit international privé', (2018) Rev. Crit. DIP 31, para no 28).

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?

See answer to Question 15 above.

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?

To the knowledge of this author, there is no case law in Luxembourg on this issue, and the literature is inexistent.

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*)?

To the knowledge of this author, there is no case law in Luxembourg on this issue, and the literature is inexistent.

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?

There are no such statistics in Luxembourg.

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?

To the knowledge of this author, there is no case law in Luxembourg on this issue and the literature is inexistent. Luxembourg courts would probably rely on French literature on the topic.

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)?

To the knowledge of this author, there is no case law in Luxembourg on this issue, and the literature is inexistent.

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?

Luxembourg courts have held that the rule in Art 66 also governs the temporal scope of the Regulation for exequatur (CA, 2 October 2017, case no 44303). It is unknown and unclear whether the issue was found to be difficult.

To the knowledge of this author, no other issue arose with respect to the temporal scope.

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 virtually all cases that this author could access, the dispute was contractual in nature and the parties had stipulated a choice of court agreement. As a consequence, most cases address issues related to jurisdiction clauses, and none discuss issues related to other rules. In the only case where no jurisdiction clause had been included, the defendant was domiciled in Luxembourg: the Luxembourg court relied on Art 4 of the Brussels Ia Regulation.

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 answer to Question 23 above.

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 answer to Question 23 above.

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?

See answer to Question 23 above.

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?

To the knowledge of this author, there is no case law in Luxembourg on this issue, and the literature is inexistent.

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, interpretation of 'operations of a branch, agency or other establishment, claims relating to trusts, claims relating to salvage of a cargo or freight, proceedings involving multiple defendants, 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?

See answer to Question 23 above.

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?

To the knowledge of this author, there is no case law in Luxembourg on this issue, and the literature is inexistent.

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?

To the knowledge of this author, there is no case law in Luxembourg on this issue, and the literature is inexistent.

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

To the knowledge of this author, the literature in Luxembourg on this issue is inexistent.

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?

To the knowledge of the author of this report, there have been no difficulties. The cases applying those provisions were straightforward.

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?

To the knowledge of this author, there is no case law in Luxembourg on this issue, and the literature is inexistent.

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?

To the knowledge of this author, there is no case law in Luxembourg on this issue.

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?

To the knowledge of this author, there is no case law in Luxembourg on this issue, and the literature is inexistent.

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?

To the knowledge of this author, there is no case law in Luxembourg on this issue.

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?

Luxembourg company law applies the real seat doctrine. Article 1300-2 of the Luxembourg *Commercial Companies Act* 1915 provides that "*Any company whose central administration is situated in the Grand Duchy is subject to Luxembourg law (...)*". The central administration designates the place of effective direction of the company (*siège de direction effective*). It is to be distinguished from the place where the business is run, such as the main plant or the main mine of the company (see generally Pierre-Henri Conac & Gilles Cuniberti, 'National Report on Luxembourg', in *The Private International Law of Companies in Europe* (C. Gerner-Beuerle, M. Siems, E.P. Schuster, F. Mucciarelli eds., Becks/Hart, 2019).

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?

To the knowledge of this author, there is no case law in Luxembourg on this issue.

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.

To the knowledge of this author, there is no case law in Luxembourg on this issue.

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?

The question is complex from the perspective of Luxembourg, as the widely used third party attachment procedure (*saisie-arrêt*) has two steps. The first is conservatory, and the second has an enforcement purpose (forced payment of the creditor). There is thus no neat distinction between protective and enforcement for this particular measure. Luxembourg courts are conservative and have always insisted on the territoriality of this procedure.

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?

To the knowledge of this author, the issue was neither litigated, nor discussed in literature.

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?

In the absence of statistics in Luxembourg, it is not possible to answer this question.

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?

The issue which was the most frequently litigated was that of choice of court agreements appearing in a written document which was not formally accepted (signed) by one of the parties. Examples include a contract drafted by one party, but never signed by the other (see, under Reg. 44/2001, CA, 27 April 2017, case no 42589) or a clause included in general conditions of one of the parties which appeared on the back of an invoice (CA, 24 May 2017, case no 43532). Luxembourg courts resolved the issue by ascertaining whether the other party had implicitly consented to the clause, whether by performing the contract (case no 42589) or by paying invoices without challenging the application of general conditions appearing on the back of them (implicit acceptance: see case no 43532; jurisdiction clause requires specific consent: CA, 15 November 2017, case no 44677).

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?

In one case, the parties had been in a business relationship for more than 10 years during which, it seems, one had sent invoices which always included, in general conditions appearing on the back, a jurisdiction clause. Where a dispute arose, Luxembourg courts refused to hold that the practices between the parties included the jurisdiction clause. It held that although the client had paid the invoices for years, it did not mean that it had implicitly accepted the jurisdiction clause. The clause was not enforced for lack of consent: CA, 15 November 2017, case no 44677.

In other cases, however, Luxembourg courts did not rule that jurisdiction clauses benefited from any specific regime and held that the existence of past business relationships where invoices with the same general conditions had been sent entailed

that the client had accepted them, including the jurisdiction clause (see TA Lux, 5 December 2018, TAL 2018 06699. See also CA, 24 May 2017, case no 43532).

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?

Cases discussed above Question 43 directly determined whether the parties had consented to the clause. They did not first determine the law governing the issue. Implicitly, they thus stand for the proposition that the existence of consent (and of an agreement) does not belong to substantive validity and thus does not fall within the scope of the choice of law rule applicable to substantive validity of choice of court agreements.

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?

In a contribution published in a collective book (Gilles Cuniberti, "La clause attributive de jurisdiction", in Collectif, *Le banquier luxembourgeois et le droit international privé*, Anthemis, 2017, p. 74-75), it was submitted that the rationale for Recital 20 is to recognize the higher legitimacy of the designated court to rule on the substantive validity of a choice-of-court agreement. As a result, other courts of the Member States are asked to rule as if they were the designated court and thus apply its entire system of PIL. The model here is that of double renvoi, or foreign court theory. It is not that of "*renvoi au premier degré*" or "*renvoi au second degré*" known in the civil law tradition.

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?

In a contribution published in a collective book (Gilles Cuniberti, "La clause attributive de jurisdiction", in Collectif, *Le banquier luxembourgeois et le droit international privé*, Anthemis, 2017, p. 74-75), it was submitted that the test should be applied alternatively, and not cumulatively. Two situations should be distinguished. The first is where the forum is one of the chosen courts. It is then enough that its own substantive law validates the jurisdiction clause. If it does, the forum should retain jurisdiction, and it is irrelevant whether the designation of other courts was invalid, as they have not been seized. The second situation is where the forum is not one of the chosen courts. It

is then enough if one single chosen court would retain jurisdiction under the jurisdiction clause to strip the forum from any jurisdiction it may otherwise have. Again, it is irrelevant if another chosen court would find that the clause is invalid. The mere fact that one chosen court would retain jurisdiction suffices to strip the forum from its jurisdiction.

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?

To the knowledge of this author, the issue was not clearly settled under Luxembourg law, if only because it was long not either under French law. The clarification in Article 25 is thus an improvement for legal certainty in Luxembourg.

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?

In a case where two German creditors sued a Luxembourg based debtor in Luxembourg courts in violation of a choice of court agreement, the debtor was found to have waived his right to challenge the jurisdiction of the Luxembourg court for involving a third party as a guarantor before challenging jurisdiction. Such action against the third party was found to be a defence on the merits: CA, 19 December 2018, case no CAL-2017-00064

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).

An interesting question has arisen in respect of loan contracts which involved investing part of the borrowed monies. After the investment was lost, the borrower initiated, on the one hand, criminal proceedings in France against the lender seeking compensation for the loss of the investment (swindle, *escroquerie*) and, on the other hand, civil proceedings in Luxembourg aiming at enforcing the same contract. In a series of cases involving the same lender, the Luxembourg Court of Appeal held that both claims did not have the same cause of action, as the first action was focused on the formation of the contract, while the second was focused on performance (CA, 16 March 2016, case no 41043; 27 April 2016, cases no 37 351 and 37352, unpublished).

The court declined to address the issue of whether the claims would have been the same had the borrower initiated in Luxembourg proceedings to set aside the contract (on the ground of misrepresentation, for instance). The Court held that the claim for setting aside the contract was to be considered to be inadmissible as it was not formulated clearly enough in the written pleadings of the borrower and a clearer formulation at the hearing could not suffice.

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?

To my knowledge, the only source of information of courts on proceedings pending in other Member States will be provided by the parties in general, and by the defendant in the Luxembourg proceedings in particular.

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)?

To the knowledge of this author, the issue has not been discussed in Luxembourg.

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 the knowledge of this author, the issue has not arisen in Luxembourg (see, however, Question 50, for the issue of raising a different claim at a later stage of the 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))?

To the knowledge of this author, this provision was not applied in Luxembourg. There are cases, however, where a Luxembourg court stayed proceedings on the ground of Art 30(1): TA Luxembourg, 10 January 2019, case no 179 297.

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 my knowledge, this provision has not been applied in Luxembourg.

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 my knowledge, this provision has not been applied in Luxembourg.

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 my knowledge, this provision has not been applied in Luxembourg.

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?

The question is surprising. The provisions on parallel litigation are inspired by the civil law tradition, which has never addressed the issue with flexibility. The CJEU did not show any openness to flexibility in its *Owusu* decision.

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?

The issue of determining when judicial expertise is to be characterised as a provisional measure in the meaning of Art 35 is not clearly settled. In particular, it is unclear whether Luxembourg courts consider that appointing an expert for the purpose of merely establishing facts and gathering information is a provisional measure, or whether this would only be the case if the task of the expert was to protect evidence which otherwise be lost (see the contradictory statements of the Court of Appeal in CA, 15 November 2017, case no 45295; CA, 28 November 2018, case no CAL-2018-00576). As other national reports will no doubt reveal, the issue exists in many other Member States (in France, in particular).

The Court of Appeal has also excluded provisional payment orders (*référé provision*) from the scope of art 35 on the ground that such orders require an assessment of the merits of the case (CA, 15 November 2017, case no 44677). This is clearly contrary to the case law of the CJEU as initiated in the *Van Uden Maritime v Deco-Line and Others* case (C-391/95), which laid down a much more sophisticated test.

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?

Luxembourg courts have traditionally ruled that all provisional measures should be territorial and that they thus lack power to order extra-territorial measures. In the context of the Brussels Ibis Regulation, they still essentially rely on the traditional rule, and only mention in passing that the reasons given by the CJEU to justify the existence of Art 35 support the Luxemburgish traditional rule (see, e.g., CA, 15 November 2017, case no 45295; CA, 28 November 2018, case no CAL-2018-00576).

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 the knowledge of this author.

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?

Judicial statistics in Luxembourg are not precise enough to answer this question.

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?

No such training was organized.

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?

No. The country is too small to consider such move. In practice, however, the vast majority of cases are brought to the courts of Luxembourg city, which in effect is the most specialized in the country.

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?

No.

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?

The president of the national association of enforcement officers (*huissiers*) of Luxembourg reports that the number of attempts to enforce foreign judgments has significantly increased. There are no statistics, however.

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?

Not to the knowledge of this author.

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

Not to the knowledge of this author.

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?

Statistics in Luxembourg are not so precise. They only reveal how many exequatur cases were handled by the President of the Main First Instance court, and such cases likely include Art 46 procedures. Given the rule determining the temporal scope of the Regulation, there is no way to know which procedure was used in a given case at the present time.

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?

See answer to question 69 above.

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?

I am not aware that this reform has changed the frequency or approach to enforcing such judgments.

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

Courts certainly do. I am not sure how enforcement agents could review foreign judgments on the merits. They would only enforce the actual order of the foreign court.

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 the knowledge of this author, this provision has not been applied in Luxembourg.

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?

The president of the national association of enforcement officers (*huissiers*) of Luxembourg reports that enforcement officers typically do not require such translation, unless the form is incomprehensible. No information is available with respect to court practice.

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?

Not to the knowledge of this author.

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?

Not to the knowledge of this author.

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

To the knowledge of this author, none.

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?

Not to the knowledge of this author.

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

Not to the knowledge of this author.