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

QUESTIONNAIRE
for National Reports

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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?

The decisions (judgments and orders) of the ordinary courts (district courts, regional courts and courts of appeal) and of the Supreme Court are considered as the 'public data' that is available to anyone upon request [see Article 2(1) and Article 6(4)(a) of the Law on Access to Public Information of 2001].

However, the Ministry of Justice established the Ordinary Courts' Case Law Portal (Portal Orzeczeń Sądów Powszechnych, orzeczenia.ms.gov.pl) which provides application-free access to the decisions of the district, regional and appellate courts. According to the information from the Ministry of Justice, a group of judges established for this purpose decides which decisions shall be published. Moreover, the decisions that contain information a priori excluded from publication and the decisions that are irrelevant from the point of view of legal and informational values are not rendered available to the public. All decisions shall undergo anonymization prior to their publication.

Moreover, a President of an ordinary court may also decide whether and, if so, how this court's case law is published online. If this is the case, these decisions are made available to the public via a portal existing on a subdomain of this court's web site (see, for instance, http://orzeczenia.katowice.sa.gov.pl/). Some of the ordinary courts publish their case law in bulletins that are also available online.

The Supreme Court provides application-free access to its case law by a separate database that can be consulted on its website. The Supreme Court case law is also rendered available to the public via online bulletins. Moreover, the case law is published by private companies in the form of printed collections (OSNC, OSNKW, OSNP) as well as in some other commercial journals enlisted on the Supreme Court's website.

There are also other free of charge databases that provide access to the decisions of both the ordinary courts and the Supreme Court. See, for instance, the Case Law Analysis System (System Analizy Orzeczeń Sądowych, the https://www.saos.org.pl). Moreover, the commercial databases such as those operated by C.H. Beck (Legalis) and Wolters Kluwer (LEX) also collect the case law and provide their subscribers with access to numerous decisions of the ordinary courts and the Supreme Court.

All the aforementioned portals and data bases contain search engines allowing to find the decisions concerning the Brussels Ia Regulation and its predecessor. This is, of course, not the case with bulletins and collections.

All that being said, due to the selective nature of publication of the ordinary court's case law, no conclusions of a statistical character are drawn in this report.

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

Polish courts tend to take into account and make good use of the CJEU case law while applying the Brussels Ia Regulation (see also Question 10). Explicit references to the CJEU case law are usually present in the cases involving agreements conferring jurisdiction as well as in the cases where the term 'place of performance of the obligation in question' within the meaning of Article 7(1) of the Brussels Ia Regulation or the term 'place where the harmful event occurred or may occur' within the meaning of Article 7(2) this Regulation is debated by the parties.

Among other examples, it is also worth mentioning that the Polish courts did not neglect the utility of the interpretation provided by the Court in judgment of 31 January 2018 in the case *Hofsoe*, C-106/17. Not surprisingly, the Regional Court in Szczecin that referred the preliminary question that led to the Court's judgment of 31 January 2018 decided on the case according to the solution of the Court (see Regional Court in Szczecin, order of 13 March 2018, VIII Gz 81/16). Moreover, the Court's judgment proved to be useful in other cases that were pending before Polish courts (see Regional Court in Szczecin, orders of 27 April 2018, VIII Gz 159/18 and of 30 July 2018, VIII Gz 318/17, see also Regional Court in Toruń, order of 25 Feburary 2019, VI Gz 35/19).

It can be argued, however, that some rare instances of departures from CJEU case law did occur.

In the judgment of 15 March 2012, *G*, C-292/10, point 40, the Court held that the expression 'is not domiciled in a Member State', used in Article 4(1) of the Brussels Regulation [Article 6(1) of the Brussels Ia Regulation], must be understood as meaning that application of the national rules rather than the uniform rules of jurisdiction is possible only if the court seised of the case holds firm evidence to support the conclusion that the defendant, a citizen of the European Union not domiciled in the Member State of that court, is in fact domiciled outside the European Union.

However, in the judgment (not final) of 20 August 2015, XVII AmC 6565/13, the Regional Court in Warszawa applied the national rules on jurisdiction after having considered that it was unable to establish whether the defendant had his domicile in a Member State. Doing so, the national court seemed to disregard the evidence that were supporting the view that the defendant had his domicile either in Czech Republic or in Poland.

If on this basis a conclusion is to be drawn as to the impact of CJEU case law, it is important to bear in mind that the case pending before the Polish court concerned *in abstracto* review of contract terms and therefore a link with the judgment of 15 March 2012, *G*, C-292/10 may not have been evident. In the latter judgment, the issue related to Article 4(1) of the Brussels I Regulation surfaced in relation to an action for liability arising from the operation of a website.

It may therefore be argued that that example does not illustrate a lack of sufficient guidance, but rather the difficulties in identifying relevant case law and in assessing that the guidance given in a different context may be used for the purpose of resolving a particular case pending before the national court.

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?

Without doubt the abolition of exequatur is viewed as a major improvement and was warmly welcomed by both the courts and the scholars. Moreover, the broader scope of application of the Brussels Ia Regulation which, in some cases, applies even though a party or the parties are domiciled in a third state generally received a positive assessment. In fact, there is some practical evidence that the broader scope of Article 25 of the Brussels Ia Regulation that now applies regardless of the domicile of the parties already proved to be a major improvement (see Question 42). The inclusion of Articles 33 and 34 is also considered to be a positive amendment as well.

However, as for the shortcomings of the Brussels Ia Regulation, the lack of clarity of some of the solutions provided for in the Regulation seems to preoccupy the scholars (see, inter alia, Questions 15, 16, 21 and 58).

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?

As mentioned in the answer to Question 3, some clarification as to the issued referred to in Questions 15, 16, 21 and 58 would be considered as an improvement.

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

No, it seems that the principle of 'autonomous interpretation' is widely accepted by Polish courts and did not cause major issues while applying the Brussels Ia Regulation. See also Question 24.

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 national rules on territorial (local) jurisdiction did not seem to cause major difficulties in the application of the Regulation.

However, it is worth observing in the first place that there seems to be some confusion among the parties to the proceedings in regards to the actions for payment of contractual debts. It is not uncommon that one of the parties claims that such action can be brought before the courts of the Member State where the payment should have been made, providing for the jurisdiction of the *forum actoris* (see also Question 25).

This confusion is most probably due to a well-established practice developed under the national rules governing territorial (local) jurisdiction that allow a claimant to bring an action for payment

before 'the court for the place where the contract is performed' (Article 34 of the Polish Code of Civil Procedure). According to the substantive rules of Polish law, the payments must be made in the place where the creditor has his place of domicile or principal place of business [Article 454(1) of the Polish Civil Code]. In consequence, on the basis of Article 34 of the Code of Civil Procedure, read in conjunction with Article 454(1) of the Civil Code, claims for payment may be brought before the courts of the place of domicile of the claimant. Some parties to the proceedings seem to extrapolate this concept beyond the context of territorial (local) jurisdiction and apply it while arguing for a certain interpretation of the term 'place of performance' within the meaning of Article 7(1) of the Brussels Ia Regulation.

In the second place, there seems to be a little bit of confusion about the distinction between the rules of the Brussels Ia Regulation that refer to international jurisdiction and those that also determine territorial (local) jurisdiction. To illustrate this point, in the order of 27 September 2016, VI Gz 205/16, the Regional Court in Rzeszów considered that Article 7(5) of the Brussels Ia Regulation does not determine the territorial (local) jurisdiction and the national rules governing this issue have to be applied in order to determine the venue where the proceedings can be brought.

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 seems that the 'negative conflicts of jurisdiction' are effectively remedied at the national level.

This is due to the fact that the Polish Code of Civil Procedure contains the rules on forum necessitatis. Under Article 1099^1 (1) of this Code, if there are no grounds justifying jurisdiction of Polish courts in a given case and it is impossible to conduct proceedings or to request proceedings to be conducted before a court or other authority of a foreign state, the case shall fall under jurisdiction of Polish courts if this case is relevant to the Polish legal order. Moreover, according to Article 1099^1(2) of the Code, if the court finally decides that a judgment of a court or another authority of a foreign state may not be recognized in the Republic of Poland, the case in which the judgment was issued shall fall under jurisdiction of Polish courts even if there are no grounds justifying such jurisdiction, provided that the case is relevant to the Polish legal order.

It is true that according to some judgments, despite the precedence of the Brussels Ia Regulation, the law of a Member State can apply if two requirements are met: the provisions of the Regulation do not contain comprehensive regulation on a particular issue and they refer, in a specified range, to domestic law (see, *inter alia*, Supreme Court, order of 30 January 2018, III CSK 388/16).

However, although the Brussels Ia Regulation does not contain an explicit reference to the national law and the rules on forum necessitatis, the prevailing view is that Article 1099^1(1) of the Code applies to the proceedings falling within the scope of the Regulation.

In the order of 30 November 2012, I ACz 813/12, the Court of Appeal in Szczecin explicitly addressed the question of interplay between EU rules and national legislation and seemed to side with a view according to which Article 1099^1 of the Polish Code of Civil Procedure does apply in the proceedings covered by the Brussels I Regulation.

The same view seemed to be accepted by the Regional Court in Łódź which, by its judgment on appeal of 13 November 2017, III Ca 1334/17, validated the first instance judgment stating that the rules on jurisdiction of the Polish Code of Civil Procedure must give way to the rules of

EU law, but Article 10991[1] of this Code can still be applied, provided that it is not possible for the claimant to bring an action before a foreign court.

This was also the position held, at least implicitly, by the Court of Appeal in Katowice in its order of 24 May 2018, V AGz 290/18.

Finally, as to the negative conflicts resulting from lack of a competent court on the domestic level, according to Article 45 of the Polish Code of Civil Procedure, if territorial (local) jurisdiction cannot be determined based on the circumstances of the case in accordance with this Code, the Supreme Court shall designate a court before which an action should be brought. It is worth mentioning that a defendant can still contest the (international) jurisdiction, even if the Supreme Court has designated an ordinary court to hear the case pursuant to Article 45 of the Code (see Court of Appeal in Katowice, order of 24 May 2018, V AGz 290/18).

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)?

With the exception of the rules establishing the separation of competences among the divisions of a single court, nearly all the rules on competence are contained in the Code of Civil Procedure.

More precisely, the rules on territorial competence/territorial (local) jurisdiction ('właściwość miejscowa') that determine where an action may be brought (venue) are contained in the Code of Civil Procedure. However, some statues contain provisions on territorial (local) jurisdiction that are of a lex specialis nature in relation to the provisions of the Code. For instance, Article 20 of the Law on compulsory insurance, the Insurance Guarantee Fund and the Polish Motor Vehicle Insurance Office provides that 'actions for claims arising from compulsory insurance policies or covering claims relating to such insurance may be brought either pursuant to provisions on general jurisdiction or before the court for the place where the injured party or person entitled under the insurance policy is domiciled or has its registered office.'

The rules on competence ('właściwość rzeczowa') that determine whether a given type of action must be brought before a district or a regional court are also contained in the Code of Civil Procedure.

By contrast, the aforementioned rules on the separation of competences among the divisions of a single court according to the fields of law ('właściwość funkcjonalna') are contained in the Law on the Organisation of Ordinary Courts.

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.

Neither the scope of the exception provided for in Article 1(2)(d) of the Brussels Ia Regulation nor the delineation between court proceedings and arbitration as such seemed to lead to

particular problems. To illustrate this point, on the one hand, according to the order of the Supreme Court of 6 November 2009, I CSK 159/09, the proceedings on the review of an arbitral award were excluded from the scope of the Brussels I Regulation. On the other hand, in the order of 14 March 2016, IX Gco 46/16, the Regional Court in Kraków considered that a judgment by which a court of a different Member State had rejected an action for annulment of a arbitral award could be enforced under the rules of the Brussels Ia Regulation in so far as this judgment relates to the payment of the cost of the proceedings before this court.

In fact, it seems that major complications relating to the arbitration concern the interplay between the proceedings before the national courts and the arbitral tribunals (e.g. third paragraph of Recital 12 and the issues relating to *res iudicata* and *lis pendens* where an arbitral tribunal delivered an award before a judgment is rendered by a national court having jurisdiction under the Brussels Ia Regulation etc.).

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.

No, it seems that the national courts have not encountered major difficulties in delineating between "civil and commercial proceedings" and "insolvency proceedings". It is worth noticing that the case law of the CJEU is intensively quoted in the cases that involve the delineation in question.

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

There seems to be no case law which would address this issue in a detailed manner.

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

There seems to be no case law which would address this issue in a detailed manner.

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?

It does not seem that the definition provided in Article 2 of the Brussels Ia Regulation gave rise to particular difficulties.

However, the definition of a 'judgment' provoked some discussion in case law and literature.

According to the view prevailing in the literature, a 'judgment' within the meaning of Article 2(a) of the Brussels Ia Regulation has to contain a substantive decision on the legal relationship between the parties to the proceedings and cannot be limited to formal aspects of the proceedings.

That being said, some difficulties relating to the term 'judgment' appeared already under the Brussels I Regulation and it does not seem that the definition provided in Article 2 of the Brussels Ia Regulation allows to resolve them.

In order to be more specific, in the proceedings on the enforcement of a foreign judgment that had been rectified on the basis of a subsequent judgment, the Supreme Court recalled in its order of 30 October 2008, II CSK 158/08, the definition contained in Article 32 of the Brussels I Regulation and observed that while a formal name of a given judgment is not relevant, the Polish literature stresses not without reason that any judgment containing a substantive ruling should be considered a 'judgment'.

According to the Supreme Court, a judgment on rectification of the designation of a party to the proceedings is undoubtedly not of such character. The Supreme Court considered, however, that the second instance court should have examined this judgment in the context of grounds for refusal of enforcement (in this case: whether the defendant was served with the document or not).

Thus, it seems that for the Supreme Court it was the initial judgment in its wording resulting from the modifications introduced by the subsequent judgment on rectification that could have been potentially enforced as a 'judgment' under terms of the Regulation. However, the judgment on rectification would have been still subject to the conditions that govern the enforceability of foreign judgments.

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'?

This definition is considered to be appropriate, despite some doubts which arose in the case law. See Question 13.

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?

There does not seem to be a prevailing view on this issue. According to the scholars who explicitly address this question, where the proceedings are brought before a court having

jurisdiction as to the substance of the matter, only a decision on provisional measures rendered by the court before which the case is pending shall be considered a 'judgment' for the purposes of enforcement. By contrast, if the proceedings have not been yet instituted before a court exercising jurisdiction as to the substance of the matter, the expression 'jurisdiction as to the substance of the matter' should be understood as 'having jurisdiction that can be established according to the rules of the Regulation'.

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?

While this question has not yet received a prevailing interpretation, some scholars argue that where no proceedings on the merits have been instituted, any court having jurisdiction that can be established according to the rules of the Regulation can render a decision on provisional measure that will be considered as a 'judgment' for the purposes of enforcement (see also Question 15).

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?

There is no unanimous view on this matter at present.

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*)?

Not really. While a similar issue did arise in regards to the notaries drawing up the deeds of certification of succession (most notably due to the particular definition of the term 'court' under the EU Succession Regulation and the nature of a deed of certification of succession under Polish law; this controversy led to the referral on the interpretation of the EU Succession Regulation in the case *WB*, C-658/17), it was not the case within the scope of application of the Brussels Ia Regulation.

Leaving aside the matters of succession, it is worth mentioning that, contrary to the solution existing under Croatian law according to which the notaries have the power to give decisions by writ on application for enforcement based on authentic instruments, under Polish law the

notaries can only draw up the authentic instruments that may be used as enforceable titles [Article 777(1)(4) to (6) of the Polish Code of Civil Procedure].

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?

No, such statistics are not available.

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?

Although there are few contributions that relate to this question, the scholars presenting their view in this respect argue that Article 26 of the Brussels Ia Regulation applies regardless of the domicile of the defendant (see B. Wołodkiewicz, Ustanowienie jurysdykcji krajowej przez wdanie się w spór według rozporządzenia Parlamentu Europejskiego i Rady (UE) nr 1215/2012, PhD thesis, Warszawa 2018; K. Sznajder-Peroń, in: W. Popiołek (ed.), System Prawa Handlowego, t. 9, Warszawa, p. 842, footnote 172; see also, in relation to the 'weaker parties', K. Weitz, Ochrona strony słabszej stosunku prawnego, in: M. Boratyńska (ed.), Ochrona strony słabszej stosunku prawnego, Warszawa 2016). It is being held that the broadening of the personal scope of Article 25 of the Brussels Ia Regulation and the inclusion of the provisions that apply to non-EU defendants [Article 18(1) and Article 21(2)], bear witness to fact that some deviations from the rule according to which the parties have to be domiciled in the Member States are accepted under the Regulation.

Moreover, the interpretation according to which Article 26 of the Regulation applies to non-EU defendants implies that the national rules will not apply in this respect, preventing therefore the application of two different systems to assess a similar issue in relation to EU and non-EU defendants.

There seems to be, however, no case law explicitly addressing this question. It is true that in order of 25 February 2019, VI Gz 35/19, the Regional Court in Toruń indicated that entering an appearance constitutes a tacit conclusion of an agreement conferring jurisdiction. On the basis of this assumption, it could be argued that since the Regulation does not require the parties to

be domiciled in the Union in order to conclude a jurisdiction agreement, this requirement does not apply to Article 26 either. Nevertheless, the assumption according to which an entrance of appearance is tantamount to the conclusion of a jurisdiction agreement is controversial and does not seem to be widely accepted in the literature. Moreover, such parallelism between Articles 25 and 26 of the Regulation could result in involuntary application of the rules of the Regulation crafted in order to govern the choice-of-court agreements in regards to the situations where the defendant enters an appearance.

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)?

There does not seem to be any case law or literature taking a clear position on this issue. However, bearing in mind that the rules on jurisdiction provided for in the Brussels Ia Regulation apply, in some instances to the proceedings involving the defendants domiciled in the third States (see Question 20), a solution according to which the provisions on *lis pendens* contained in Article 29 and 30 apply regardless of the domicile of the defendant seems more convincing, provided that the court first seised has jurisdiction under this Regulation.

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?

In the first years following the date of application of the Brussels Ia Regulation some minor difficulties did indeed occur. However, where an appeal was brought, the few errors resulting from these difficulties were usually remedied by the second instance courts. It should be kept in mind however that the case law of the ordinary courts is published on a selective manner (see Question 1) and therefore no decisive conclusion can be drawn on the basis of available data.

Nevertheless, to be more specific, in the first years following the date of application of the Regulation some courts seemed to consider that due to the fact that a regulation is directly and immediately applicable in all Member States, the Brussels Ia Regulation should have been applied instead of the Brussels I Regulation even though the proceedings were instituted before 10 January 2015 (see, inter alia, Supreme Court, order of 30 June 2017, I CSK 668/16; Court of Appeal in Warszawa, judgment of 31 March 2016, I ACa 971/15; Regional Court in Szczecin, judgment of 25 September 2017, VIII Ga 273/17).

In this vein, some courts tended to consider that a judgment rendered under the Brussels I Regulation didn't need to be declared enforceable within Polish territory due to the exequatur being abolished by the Brussels Ia Regulation.

For instance, in the case that led to the order of the Court of Appeal in Kraków of 1 September 2015, I ACz 1349/15, the first instance court issued a decision on discontinuing the proceedings due to the fact that, according to this court, after the entry intro application of the Brussels Ia Regulation, there was no need to declare enforceability of a French judgment of 23 October 2014. However, the Court of Appel varied the order of first instance court and indicated that, according to Article 66 of the Brussels Ia Regulation, the Brussels I Regulation should have been applied in order to declare enforceability of the judgement of 23 October 2014.

It is worth mentioning in this context that in the order of 20 March 2018, I ACz 164/18, the Court of Appeal in Katowice agreed with the first instance court as to the point that there was no need to declare enforceability of a foreign decision that the claimant was intending to enforce in Poland. It was, however, not completely clear when the proceedings that led to this decision had been instituted. Nevertheless, deciding in favour of the application of the Brussels Ia Regulation, the Court of Appeal court held that it was rather improbable that the proceedings had been instituted before 10 January 2015 and, moreover, this Regulation facilitates the proceedings for the creditors and therefore is more beneficial for him.

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?

Without doubt, among the alternative grounds of jurisdiction, those provided for in Article 7, points 1 and 2, of the Brussels Ia Regulation are most commonly recurring in case law. As to the particular problems related to their application, see Questions 25 and 26.

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?

The analysis of case law has not revealed major problems in relation to this provision. To illustrate this point, in particular the principle of autonomous interpretation is observed by the courts. For instance, in the order of 14 August 2012, VII Gz 130/12, the Regional Court in Białystok held that Article 7(1) of the Brussels Ia Regulation is subject to autonomous interpretation and the results of this interpretation are not a priori influenced by definitions provided for in the directive 2006/112 on the common system of value added tax, despite the EU law provenance of these definitions.

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?

The place where the goods were delivered or services were provided is usually considered to be decisive even if a failure to pay the price has given rise to a dispute.

For instance, in the orders of 29 March 2017, VIII Gz 12/17, and of 3 January 2019, VII Gz 219/18, the Regional Court in Szczecin indicated that the fact that the parties had agreed on the bank account onto which the payment had to be made was irrelevant as to whether the parties had 'agreed otherwise' within the meaning of Article 7(1)(b) of the Regulation. The same interpretation was adopted, inter alia, in the judgment of Regional Court in Bydgoszcz of of 19 April 2018, VIII Ga 298/17 and in the order of the Court of Appeal in Katowice of 4 December 2017, V ACz 1018/17.

As to the understanding of the wording 'unless otherwise agreed' it is worth noticing that, at least in some instances, the courts seemed to apply directly the requirements applicable to the existence of parties consent under Article 25 of the Brussels Ia Regulation in order to establish whether the parties 'agreed otherwise' within the meaning of the Article 7(1)(b) of the Regulation.

To illustrate this point: in the order of 13 September 2018, VIII Gz 119/18, the Regional Court in Bydgoszcz recalled the case law on Article 25 of the Brussels Ia Regulation and considered that the parties had not 'agreed otherwise' within the meaning of Article 7(1)(b) of the Regulation. In the case which led to the order of 14 February 2017 of the Court of Appeal in Kraków, I ACz 2731/16, the claimant whose claim was rejected due to the lack of jurisdiction of Polish courts brought and appeal before the second instance court and claimed that the parties had 'agreed otherwise' within the meaning of Article 7(1)(b) Brussels Ia due to the fact that the defendant had agreed to pay the price for delivered goods to a Polish bank account and had afterwards partially paid the sales price to that bank account. Despite the clear intention of that claimant that could have been inferred from his appeal, reproduced in the order of 14 February 2017, the second instance court considered that the claimant was trying to convince the court that the parties had entered into a jurisdiction agreement under Article 25 Brussels Ia Regulation.

This view is also partially reflected in some controversy that arose in relation to the effects of the Incoterms clauses and the existence of parties arrangement on the place of performance of the obligation. According to the case law, an Incoterms clause does not, on its own, meet the requirements necessary to consider that the parties have 'agreed otherwise' within the meaning of the Article 7(1)(b) of the Regulation.

In this proceedings leading to the order of 13 September 2018 of Regional Court in Bydgoszcz, VIII Gz 119/18, the claimant contended that by introducing an Ex Works (EXW) clause in the invoices issued by the seller (claimant), the parties did 'agree otherwise' within the meaning of Article 7(1)(b) of the Brussels Ia Regulation. The second instance court sided with first instance court and indicated that an Ex Works (EXW) clause determines the transfer of ownership and risks related with a sale of goods. In order for this court to consider that the requirement of the parties arrangement on the place of performance was met and parties did in fact 'agree

otherwise', the claimant would have to prove that by the EXW clause the parties had not only wished to determine the transfer of ownership and risk but also to specify the place of delivery of goods. In this vein, according to the order of 4 February 2016 of Regional Court in Kraków, I ACz 126/16, what stems out of an Incoterms clause has to be confronted with other contractual provisions in order to establish that they are not contradictory as to the place of delivery of goods. If such contradiction occurs and it is not possible to establish unequivocally that the parties did decide on the place of delivery accordingly to the clause, it cannot be argued that the parties did 'agree otherwise' within the meaning of Article 7(1)(b) Brussels Ia Regulation.

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?

It seems that there are some doubts relating to the scope of Article 7(2) of the Brussels Ia and the action for unjust enrichment. While such actions are considered to fall within the scope of Article 7(1) of this Regulation insofar as they purport to involve a contractual exchange, it is not clear whether actions not of such nature should be qualified as 'quasi-delicts' for the purpose of Article 7(2). The doctrine is rather in favour of a negative answer to this inquiry. However, the Regional Court in Częstochowa held in its order of of 3 August 2017, VI Cz 817/17, that this ground of jurisdiction does apply in this respect.

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?

There seems to be no existing case law on Article 7(4) of the Brussels Ia Regulation. Nevertheless, the introduction of this provision did indeed lead to some doctrinal discussion.

Firstly, it is being debated whether Article 7(4) of the Brussels Ia Regulation provides a ground of jurisdiction in regards to the actions for a negative declaration seeking to establish the absence of a rightful claim for the recovery of a cultural object. It is being observer that this solution would provide a possessor of a cultural object with *forum actoris*.

Secondly, the interplay between Article 7(4) of the Brussels Ia Regulation and Article 6 of the Directive 2014/60 that has repealed the Directive 93/7/EEC is viewed as not completely clear in regards to the claims introduced by a State or its emanations.

Finally, thirdly, Article 7(4) of the Brussels Ia Regulation has triggered a doctrinal discussion that boils down to the question of whether this provision may be relied on by a person domiciled

in a third state who introduces a claim for the recovery of a cultural object removed from a non-Member State. According to some scholars, Article 7(4) of the Brussels Ia Regulation refers only to the definition contained in Article 1(1) of the Directive 93/7/EEC and Article 2(1) of the Directive 2014/60/EU and not to these Directives as such and therefore a third-state party could introduce a claim before the courts of a Member State where the cultural object in question is situated. Even though this view seems to be shared by scholars in other Member States, it is not clearly stated, at least in the Polish literature, how the term 'Member State' in the definition of the term 'cultural object' can be omitted in order to achieve this effect.

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?

The analysis of case law has not revealed significant controversies in these areas.

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?

The doctrine is not unanimous on the consequences of omitting to inform the defendant of the possibility to contest the jurisdiction.

On the one hand, some scholars consider that the omission of a court to inform a 'weaker party' of the right to contest the jurisdiction does not qualify as a ground for refusal of recognition and enforcement. According to these scholars, it stems from the judgment of CJEU in case *ČPP Vienna Insurance Group*, C-110/09, that a court must declare itself to have jurisdiction even though the proceedings fall within the scope of protective provisions of the Brussels Ia Regulation. Entering an appearance grants jurisdiction to the court in question, while a ground for refusal provided in Article 45(1)(e)(i) of the Brussels Ia Regulation applies only if a judgment was rendered by a court lacking jurisdiction to hear the case (see, inter alia, J. Zatorska, Komentarz do rozporządzenia nr 1215/2012 w sprawie jurysdykcji i uznawania orzeczeń sądowych oraz ich wykonywania w sprawach cywilnych i handlowych, LEX/el. 2015, article 26,

pkt 10). For the sake of completeness, there doesn't seem to be any discussion, inspired by recital 30 of the Regulation, on whether a ground for refusal that would determine the consequences of failure to inform a 'weaker party' about its rights could be introduced on the national level.

On the other hand, most commentators consider that a court does not acquire jurisdiction if an appearance was entered but the defendant had not been informed of his right to contest the jurisdiction of the court and of the consequences of not doing so. The proponents of this view consider that an omission to inform 'weaker parties' about this right and such consequences qualifies as a ground for refusal of enforcement. Moreover, according to a variation of this view, in such situation the jurisdiction could be only established in a defective manner and, as a consequence, it may be challenged in the course of the proceedings (see J. Kudła, Badanie przestrzegania przepisów o jurysdykcji krajowej w sprawach konsumenckich w świetle rozporządzenia Nr 1215/2012, in: M. Królikowska-Olczak, B, Pachuca-Smulska, Ochrona prawna konsumenta na rynku mediów elektronicznych, Warszawa 2015, p. 298-299; idem, Jurysdykcja krajowa w sprawach dotyczących ubezpieczeń według rozporządzenia Parlementu Europejskiego i Rady (UE) nr 1215/2012, PhD thesis, Warszawa 2018, p. 331). However, at least some proponents of the view according to which the jurisdiction is not established if the defendant was not informed about the right to contest the jurisdiction admit that this is a far-reaching interpretation of Article 26(2) of the Brussels Ia Regulation and therefore it has to be balanced by the possibility to remedy the first instance court's omission, e.g. a second instance court could inform the defendant about his rights and allow him to contest the jurisdiction (see B. Wołodkiewicz, Ustanowienie jurysdykcji krajowej przez wdanie się w spór według Rozporządzenia Parlamentu Europejskiego i Rady (UE) nr 1215/2012, PhD thesis, Warszawa 2019, p. 204 et seq.).

In its order of 3 February 2017, II CSK 254/16, the Supreme Court sided, by way of an *obiter dictum*, with the view according to which the jurisdiction cannot be established when the defendant enters an appearance without having been previously informed of the consequences of entering an appearance. In this case on enforcement of a foreign judgment the defendants have not been considered as a 'weaker party'. However, in response to their plea that they had not received any information on possibility to contest the jurisdiction, the Supreme Court pointed out that the provision of such information is not a requirement for effective conferral of jurisdiction, as it is the case under Article 26(2) of the Brussels Ia Regulation.

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?

In the literature the view seems to prevail that where a 'weaker party' is domiciled in a Member State, the jurisdiction of the courts of the Member States may be derogated from in favour of the courts of a third state only in so far as this does not affect the limitations resulting from Articles 15, 16, 19 and 23 of the Brussels Ia Regulation (see K. Weitz, Ochrona strony słabszej stosunku prawnego, in: M. Boratyńska (ed.), Ochrona strony słabszej stosunku prawnego, Warszawa 2016, see also P. Grzegorczyk, Misja dyplomatyczna jako filia, agencja lub inny oddział państwa - pracodawcy. Glosa do wyroku TSUE z 19 lipca 2012, C-154/11, Polski Proces Cywilny 2013, no 3, p. 415-416). This conclusion seem to be inferred from the CJEU case law and the lecture of aforementioned provisions in conjunction with Article 25(4) of the Regulation.

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

The proponents of the view according to which the omission of a court to inform the weaker party defendant about the right to contest jurisdiction does not result in any sanction (see Question 29) consider this solution to be a pitfall of the Brussels Ia Regulation.

That being said and bearing in mind that this is not a prevailing view on the issue, the overall assessment of the effectiveness of weaker parties' protection is positive. What seems to be preoccupying the scholars is not related, in fact, to the effectiveness of protection but the clarity of some of the solutions provided for in Sections 3, 4 and 5 of the Regulation. For instance, it is not clear whether Article 31(4) of the Brussels Ia Regulation renders Article 31(2) and (3) of this Regulation inapplicable to the matters referred to in Sections 3, 4 or 5 of the Regulation, (see K. Weitz, Ochrona strony słabszej stosunku prawnego, in: M. Boratyńska (ed.), Ochrona strony słabszej stosunku prawnego, Warszawa 2016).

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?

The major discussion on the jurisdiction in matters relating to insurance concerned an issue that received a final answer in the judgment of 31 January 2018 in the case *Hofsoe*, C-106/17 (see also Question 1). It is quite common in Poland that, under a contract of assignment, a victim of a road accident transfers his right to damages to a third party whose professional activity consists in recovering these claims from liability insurers of the tortfeasors. In such circumstances, in cases that involve a certain degree of internationality due to the presence of an insurer established in a Member State other than Poland, the question on international jurisdiction of Polish courts arises when an assignee brings a claim against this insurer.

Besides this particular issue, a question whether Section 3 of the Regulation applies or not in a particular case seems to arise rather often before the national courts. These issues are usually solved according to the principle that the provisions of this section apply only to the cases involving a 'weaker party'.

To illustrate this point, according to well-established case law, an insurer who is subrogated to the rights of an injured party and who afterwards brings an action against the tortfeasor cannot be deemed to be a 'weaker party' that could rely on the provisions of Section 3 of the Brussels Ia Regulation (see, inter alia, order Court of Appeal in Katowice of 25 May 2017, I ACz 420/17). This point was further clarified in the order of 19 December 2018, V CSK 513/17, in which Supreme Court held that the provisions of Sections 3 of the Regulation indeed do not apply in similar situation and the proceedings have to be considered as falling within a scope of Article 5(3) of the Brussels I Regulation [Article 7(2) of the Brussels Ia Regulation].

Finally, even though this issue seems to attract some concerns, there have been no particular difficulties with distinguishing between insurance that fall within the scope of Section 3 of the Regulation and other institutions providing some kind of legal coverage. For instance, in the

order of 30 September 2016, I ACz 761/16, the Court of Appeal in Szczecin held that a German judgment which requires the defendant to pay the claims on unpaid social security contributions concerns a dispute that falls within the scope of the Brussels Ia Regulation but cannot be considered as a dispute in matters relating to insurance.

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?

Analysis of the case law has not revealed any major difficulties in applying these provisions. The national courts seem to apply them in accordance with the objective of protecting the weaker party.

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?

The analysis of the case law did not reveal any instances of application of Article 18(2) of the Brussels Ia Regulation or Article 16(2) of the Brussels I Regulation in proceedings that would require recourse to the principle of *perpetuation fori*. The prevailing view in the literature is that only the circumstances existing at the time of bringing the action are relevant (see, inter alia, M. Pilich, in: K. Osajda (ed.), Rozporządzenie Parlamentu Europejskiego i Rady nr 1215/2012 w sprawie jurysdykcji i uznawania orzeczeń sądowych oraz ich wykonywania w sprawach cywilnych i handlowych, Warszawa 2019, komentarz do art. 18, pt 5.4).

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?

The analysis of the case law has not revealed any major difficulties in applying the provisions in question.

It is worth noticing, however, that also in the context of the jurisdiction in matters relating to employment contracts, in some rare instances the national courts invoked multiple grounds of jurisdiction in order to justify their jurisdiction in a given case (see order of the Regional Court in Gliwice of 5 November 2018, VIII Pz 53/18 with references to the Articles 21 and 25 of the Brussels Ia Regulation as well as to the national rules on jurisdiction; concerning this tendency, see also Question 49).

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?

Acknowledging the need of autonomous interpretation, the doctrine stresses that right *in rem* have to be effective in relation to an unidentified group of persons, i.e. they must produce *erga omnes* effects.

According to the case law, in order for Article 24(1) of the Brussels Ia Regulation to apply, an action has to be *directly* related to a right *in rem*. Therefore, the actions that are only *indirectly* related to right *in rem*, such as action on reimbursement of a sum paid under estate sales contract before the buyer made a declaration of avoidance of this contract, does not fall within the scope of this provision (Supreme Court, judgment of 9 February 2017, III CSK 60/16).

Even before the Supreme Court took a clear position on this issue in the judgment of 9 February 2017, III CSK 60/16, the ordinary courts seemed to already favor this line of reasoning.

For instance, a dispute relating to a sum paid in advance as a deposit under a preliminary real estate contract cannot be considered as the proceedings having 'as their object' a 'right *in rem*' within the meaning of Article 24(1) Brussels Ia (judgment of the Regional Court Warszawa-Praga in Warszawa of 11 April 2016, II C 1026/15).

Moreover, a dispute on the obligation of the owner of a residential unit to pay for the management of the joint property does not have, as its object, a right *in rem* (judgment of the Regional Court in Łódź of 13 November 2017, III Ca 1334/17). It is worth noticing that this judgment seems to be compatible with CJEU judgment of 8 May 2019 in case *Kerr*, C-25/18 as to the non-proprietary qualification of such claim.

Finally, the analysis of the case law did not reveal any cases of judgments concerning the relationship between Articles 24(1) and 31(1) of the Brussels Ia Regulation.

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?

So far, the doctrine has not reached an unanimous position on the issue of determining the seat for the purposes of Article Article 24(2) of the Brussels Ia Regulation.

The most far-reaching view is that the Polish Private International Law Act of 4 February 2011 does not contain a conflict-of-law rule on that issue and therefore a provision of Polish substantive law providing that the registered office of a legal person is the place where its

managing body has its registered office, shall be applied for this purpose (see J. Gołaczyński, Jurysdykcja, uznawanie orzeczeń sądowych oraz ich wykonywanie w sprawach cywilnych i handlowych. Rozporządzenie Parlamentu Europejskiego i Rady (UE) Nr 1215/2012. Komentarz, Warszawa 2015, article 24, pt 12).

Some authors do not address explicitly the Polish Private International Law Act of 4 February 2011 and confine themselves to stating that, in the light of the case law of the CJEU on companies' mobility, the law of the country in which the company is incorporated should be applied in order to determine this company's seat (A. Mucha, Transgraniczna mobilność spółek kapitałowych w świetle prawa unijnego i polskiego, Kraków 2019, PhD thesis, p. 55 and 178).

However, the view according to which no provision of the Polish Private International Law Act of 4 February 2011 can be applied in order to determine a company's seat is not fully convincing.

In the first place, the Polish Private International Law Act of 4 February 2011 contains an auxiliary conflict-of-law rule in its Article 67. According to this provision, in the absence of a conflict-of-law rule, law of the state to which such relationship is most closely connected shall be applied. Yet, it is not clear whether the determination of the seat could be qualified as a determination of the law applicable to a 'relation'.

In the second place, while it is true that the Act of 4 February 2011 does not contain a rule created solely for the purpose of determination of a company's seat, it does contain a rule on the determination of the law applicable to the internal affairs of a company (*statut personnel*). Article 17(1) of this Act provided that 'a legal person shall be governed by the law of the state in which the person has its seat'. Moreover, according to Article 17(2) 'if the law indicated in [Article 17(1)] stipulates that the law of the state under which a legal person was established shall be applicable, the law of this state shall apply'. It was already held in the literature that this provision could be applied in order to determine the 'domicile' of a trust under Article 7(6) of the Brussels Ia Regulation read in conjunction with its Article 63(3) (see M. Zachariasiewicz, Jurysdykcja krajowa w sprawach z zakresu trustów na podstawie przepisów rozporządzenia Bruksela I bis, in: T. Ereciński, J. Gudowski, M. Pazdan, M. Tomalak (eds.), Ius est a iustitia appellatum. Księga jubileuszowa dedykowana Profesorowi Tadeuszowi Wiśniewskiemu, Warszawa 2017). It seems that the same logic could be applied in order to determine the seat of a company for the purposes of Article 24(2) of the Brussels Ia Regulation. Nevertheless, it is still debated whether Article 17(1) of the Polish Private International Law Act of 4 February 2011 concerns the real or the formal seat of a company. Currently, the latter view seems to prevail in the literature.

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 analysis of the case law has not revealed any difficulties in applying this provision.

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.

The following criteria emerge or can be inferred from the analysis of case law: the proceedings deemed to be regarded as the 'auxiliary methods of enforcement' are to be considered as 'proceedings concerned with the enforcement of judgements'. The proceedings that seek to cancel or alter enforceability of a decision within the territory of a Member State where the creditor sought enforcement fall within the scope of Article 24(5) of the Brussels Ia Regulation. In this regard, the proceedings are concerned with the enforcement of judgments when the enforcement proceedings already took place within the territory of a Member State, irrespectively of the results of these proceedings.

To be more specific and provide background illustrating this points:

According to the order on appeal of the Regional Court in Toruń of 12 May 2017, VIII Gz 387/17, the proceedings on disclosure of debtor's assets fall within the scope of application of Article 24(5) of the Brussels Ia Regulation. This second instance court seemed to share the view that, due to the fact that the proceedings on disclosure of debtor's asset are commonly regarded as an 'auxiliary method of enforcement', they are to be considered as 'proceedings concerned with the enforcement of judgements' under Article 24(5) of the Brussels Ia Regulation. Moreover, it is insignificant that the enforcement proceedings conducted previously in Poland were found to be ineffective. Irrespectively of their result, in order to consider the 'judgment has been enforced' in a Member State within the meaning of Article 24(5) of the Brussels Ia Regulation it is sufficient that the enforcement proceedings took place in that Member State.

In the judgment of 19 July 2018, I ACa 324/18, the Court of Appeal in Szczecin considered that the proceedings on cancellation of the enforceability of a foreign title due to an event that took place following the issuance of the title (Article 840(1)(b) Polish Code of Civil Procedure) fall within the scope of Article 24(5) of the Brussels Ia Regulation. While the Court of Appeal did not explain in details the reasoning of this ascertainment, this court did stress, however, the fact that this type of proceedings is intended to cancel the enforceability only within the Polish territory. The importance of the link with the territory of a Member State where the enforcement is sought was also pointed out in the judgment of 15 May 2008, I CSK 541/07, in which the Supreme Court adopted a different views as to this type of proceedings, what can, however, be explained by the fact that this judgment concerned the Brussels I Regulation.

Moreover, according to the academic writings, the opposition proceedings as well as those based on Article 46 Brussels Ia fall within the scope of Article 24(5) of the Brussels Ia Regulation (see J. Gołaczyński, Jurysdykcja, uznawanie orzeczeń sądowych oraz ich wykonywanie w sprawach cywilnych i handlowych. Rozporządzenie Parlamentu Europejskiego i Rady (UE) Nr 1215/2012. Komentarz, Warszawa 2015, commentary to article 24, point 23; see also A. Okońska, Europejski tytuł egzekucyjny: Polska jako państwo wykonania, Problemy Prawa Prywatnego Międzynarodowego 2007, t. II, pp. 149-176, p. 173).

In this context, it is worth mentioning the order on appeal of the Court of Appeal in Katowice, 24 May 2018, V AGz 290/18, which concerned a claim brought against a company established in Netherlands, by which the claimant was seeking to establish ownership of movable property that was put into deposit in the course of criminal investigation procedure conducted by the

Polish authorities. The first instance court considered that according to Article 4 of the Brussels Ia Regulation, the Dutch courts have jurisdiction to rule on the claim. The claimant contested this decision by an appeal. In his view, the proceedings in question fall within the scope of Article 24(5) of the Brussels Ia Regulation. The Court of Appeal sided with the first instance court and considered that the proceedings on establishment of ownership are independent in nature and they cannot be considered as a 'realisation' or fulfilment of a decision rendered previously within a criminal investigation procedure, 'all the more so since this decision did not contain an order to establish ownership of the deposited property'.

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?

This issue has not yet been addressed explicitly in the case law. On the one hand, it can be argued the order of 24 May 2018 of Court of Appeal in Katowice, V AGz 290/19, that concerned a claim brought against a company established in Netherlands, by which the claimant was seeking to establish ownership of movable property that was put into deposit in the course of criminal investigation procedure, allows to plead against application of Article 24(5) of the Brussels Ia Regulation in the situation in question (see Question 39). On the other hand, although some scholars consider this to be a highly controversial issue, they nevertheless argue that Article 24(5) of the Brussels Ia Regulation should be applied in relation to the actions for removal of a conservatory third party attachment.

For the sake of completeness, it is widely acknowledged that the rules on exclusive jurisdiction provided in for Article 24 of the Regulation have to be interpreted narrowly. For instance, in the order of 8 December 2016, III CSK 21/16, the Supreme Court held that, given that the objective of Article 24(2) of the Brussels Ia Regulation is to centralize jurisdiction, this provision has to be interpreted narrowly.

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?

The analysis of the case law has not revealed any judgments directly concerned with the requirement of internationality.

However, it is worth noticing that in the order of 21 January 2016, V ACz 52/16, the Court of Appeal in Katowice considered that the parties had not been empowered to conclude a choice-

of-court agreement conferring exclusive jurisdiction to the Polish courts since both of the parties had been domiciled in Poland at the time of contracting. The Court of Appeal did not invoke in this regard to the degree of internationality but to the fact that due to the domicile of the parties in Poland, the courts of this Member State already had jurisdiction to rule on the disputes between the parties and therefore no jurisdiction agreement could have been concluded. Therefore, the Court held that the agreement of the parties was to be considered as an agreement conferring territorial (local) competence, even though it was argued that the defendant had his domicile in United Kingdom when the proceedings had been instituted.

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?

While there is currently no clear data allowing to address this question directly, it can be predicted that an answer that could be given to it within few years will most probably be affirmative.

Moreover, the broadening of personal scope of Article 25 of the Brussels Ia Regulation may allow to maintain effectiveness of the jurisdiction agreements concluded prior to the date of application of this Regulation in the event of subsequent change of domicile of both of the parties. For instance, in the order of 23 March 2018, I CSK 3363/17, the Supreme Court acknowledged that the fact that both parties are domiciled in non-EU states does not render the agreement conferring jurisdiction ineffective even though the agreement was entered into by the parties before the date of application of the Brussels Ia Regulation.

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?

It does not seem that the formal requirements for validity of choice-of-court agreements have provoked significant problems. As to the facts which the courts and literature deem decisive when applying the formal requirements provided for in Article 25 of the Brussels Ia Regulation, it is worth mentioning the following considerations:

A choice-of-court agreement is not concluded ‘in writing or evidenced in writing’ within the meaning of Article 25(1)(a) of the Brussels Ia Regulation when, in order to establish that the parties conferred jurisdiction to the courts of a Member State, it would be necessary to take into account the circumstances situated outside the content of the written contractual clause, which do not so much specify the content expressed in writing but actually result in conferral of jurisdiction to these courts (Supreme Court, order of 23 March 2018, I CSK 363/17).

In order to consider that the requirement relating to 'international trade usages' is met, it is necessary to establish that a form in question is *commonly* and *consistently* used in a particular branch of trade.

It is worth noticing that although the courts tend to assess the existence of a practice established by the parties [Article 25(1)(b) of the Brussels Ia Regulation] on the basis of evidence provided by the party arguing for the existence of choice-of-court agreement, the 'international trade usages' [Article 25(1)(c) of the Regulation] seem to be largely *ex officio* assessed by the courts.

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?

At the outset, it should be noted that according to the case law, if the consent was lacking, the parties did not conclude a choice-of-court agreement (see Supreme Court, orders of 23 March 2018, I CSK 363/17; and of 5 October 2018, I CSK 611/17).

As to the second part of the question concerning the considerations made by the courts in the event of lack of consent, it is worth mentioning the following arguments articulated by the Supreme Court in its order of 23 March 2018, I CSK 363/17:

While according to the principle *qui elegit iudicem elegit ius* an agreement conferring jurisdiction to the courts of a Member State may, in some instances, imply that the parties decided to designate the law of this Member State as the applicable law, this principle does not operate in the opposite direction. The choice of law applicable of a Member State should not be understood as a conferral of jurisdiction to the courts of this Member State. The Brussels Ia Regulation does not establish a connection between the jurisdiction and the applicable law.

It cannot be considered that the parties have agreed to confer jurisdiction to the courts of a Member State under the Article 25 of the Regulation where the agreement in question does not use the words 'jurisdiction' or 'national jurisdiction'. Indeed, it is quite the contrary, where the agreement concerns a territorial (local) competence ('właściwość rzeczowa', see, on this notion, Question 8), which traditionally does not refer to international jurisdiction of the court or courts in question. However, in order of 7 April 2016, II CSK 489/15, the Supreme Court held that that the parties consent can lead to the conferral of jurisdiction to the courts of a Member State and to the determination of a territorially (locally) competent court within territory of this Member State, even if the parties expressed their consent in a single phrase which did not distinguish clearly between the international and territorial (local) competence.

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?

The analysis of case law did not reveal any problems with the term in question (see also Question 46).

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?

Already under the Brussels I Regulation it was acknowledged that none of the national conflict-of-laws rules governs the substantial validity of the jurisdiction agreements. Therefore, to the extent not governed by the autonomous concepts of the Regulation, Polish substantive law was applied in that respect (see, Court of Appeal in Wrocław, orders of 2 December 2015, I ACz 2565/15, and of 30 March 2016, I ACz 700/16).

It is worth observing, however, that in order of 8 March 2017, IV CSK 304/16, the Supreme Court seemed not to take a clear stance as to the delineation between the issues related to the substantial validity governed by the *lex fori* and the issues governed by the Regulation itself. The Supreme Court held that its consideration according to which the parties had not reached an agreement on jurisdiction remained valid irrespective of whether the assessment of this issue would have been carried out on the basis of national law or EU law.

Despite the difficulties that sometimes arise, according to the prevailing view, the 'existence' of a prorogation clause, i.e., the fact that the parties have reached an agreement on the choice of the court having jurisdiction, should be assessed on the basis of the Regulation only (see, by way of analogy, Supreme Court, order of 26 August 2005, I CK 263/05). This interpretation was already confirmed by the Supreme Court in its case law on the Brussels Ia Regulation (see Supreme Court, orders of 23 March 2018, I CSK 363/17; and of 5 October 2018, I CSK 611/17).

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?

There is no case law addressing this issue. Neither does the literature delve into the details related to the substantive validity of non-exclusive choice-of-court agreements.

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?

Yes, the case law illustrates that the national courts apply the principle enshrined in Article 25(5) of the Brussels Ia Regulation without much hesitation. It might be due to the fact that it was already clearly established under national rules pre-dating the Regulation (Articles 1103 et seq. of the Polish Code of Civil Procedure). For instance, in the order of 17 February 2017, I ACz 1054/16, the Court of Appeal in Rzeszów clearly acknowledged the doctrine of

severability, invoked Article 25(5) Brussels Ia. More interestingly, this Court has indicated that although the prorogation clause does not share the fate of the contract in which it is physically located, its location within the contract terms is not irrelevant for the interpretation of this clause and its scope.

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?

As a preliminary matter, it should be pointed out that, contrary to English, French and German versions of the Brussels Ia Regulation, Polish version of the Regulation uses different terms in Articles 26 and 28. While the latter concerns the entering an appearance by a defendant ('nie stawi się'), the former refers to a defendant entering a dispute ('wda się w spór'). While this discrepancy is apparent also to the courts (see order of the Regional Court in Szczecin of 16 March 2016, VIII Gz 235/15), it did not provoke any difficulties.

It is worth noticing, however, that some courts tended to adopt a precautionary standpoint and refer to Article 26 of the Regulation alongside another provision of the Regulation which would in itself be sufficient to establish these courts' jurisdiction (see, *inter alia*, Regional Court in Wrocław, judgment of 28 December 2018, XII C 50/18).

That being said, the case law is rather consistent as to the appreciation of entrance of an appearance.

For instance, it is commonly accepted that a defendant is entering an appearance within the meaning of Article 26 Brussels Ia also when appearance is entered to contest the application of national rules on territorial (local) jurisdiction (see Regional Court in Bydgoszcz, judgment of 19 April 2018, VIII Ga 298/17; see also Supreme Court, order of 3 February 2017, II CSK 254/16). It is also considered that where a defendant lodges a defence contending the action and this defence is subsequently ruled to be inadmissible because of its formal irregularities it cannot be considered that he had entered an appearance within the meaning of Article 26 of the Brussels Ia Regulation (Regional Court in Bydgoszcz, order of 29 September 2015, VIII Gz 93/15).

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).

The analysis of case law has not revealed any instances of particular problems when interpreting the 'same cause of action' within the meaning of Article 29(1) of the Brussels Ia Regulation.

The courts did not seem to have difficulties with mirror image proceedings. This is most probably due to the fact the existence of *lis pendens* in regard to this type of proceedings was already confirmed by the case law under national rules pre-dating the Brussels I Regulation.

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?

There is no data concerning the information provided by the court of the Member State as to their seizure of the 'same cause of action'.

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 Poland it is the hypothesis provided for in Article 32(1)(a) of the Brussels Ia Regulation that is deemed to be applicable.

While it is true that some authors claim that a court is seised at the time of commencement of a substantive examination of the case by a member of judiciary to whom the case has been assigned (see, inter alia, J. Puchała, Zawisłość spraw wszczętych przed sądami różnych państw członkowskich w świetle rozporządzenia nr 1215/2012, EPS 2016, no 11, p. 13), this interpretation cannot be considered as the one that is prevailing.

According to the case law, the moment of filing a suit with the court determines the moment as from which the proceedings are considered to be pending (see, inter alia, Supreme Court, order of 24 March 2017, I CSK 374/16; Regional Court in Rzeszów, order of 13 January 2015, VI Gz 324/14), provided that no formal irregularities of the suit resulting in its admissibility occurred or, if they did, that the claimant has remedied the irregularities (see, by way of analogy, order of the Regional Court in Bydgoszcz of 11 December 2017, VIII Gz 195/17, on the temporal scope of application of the Regulation 2015/848). It is still debated in the literature whether under Article 32 of the Regulation the fact of remedying the irregularities has *ex tunc* effects which are provided for in the national law.

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?

At the outset it should be clarified that, under Polish law, subsequent amendments of claims may occur only before the court of first instance. A minor clarification of the factual basis of a claim is, however, not considered as its amendment.

According to the literature, for the purposes of the Brussels Ia Regulation, the date of seising is determined independently in regard to the modified or extended claims according to the same principles which apply in respect to the initial claim (J. Mucha, Zawisłość sprawy w procesie cywilnym, Warszawa 2016, p. 427). There is no prevailing view on whether it is necessary to distinguish between amendments based on already known and new facts.

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))?

There is no data allowing to address this question. However, it is worth observing that Polish courts are making cautious use of Article 30(2) of the Brussels Ia Regulation by interpreting rather strictly the term 'related actions', what excludes automatically the possibility to decline jurisdiction on the basis of this provision.

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?

No major delays seemed to occur due to the application of this provision where a prorogation clause has never been entered into or was obviously invalid. Precautionary concern about delays has, however, surfaced in the doctrine. It is pointed out that Article 31(2) of the Brussels I Regulation should not be automatically applied when it is manifestly evident that the agreement was not entered into or when it is argued that the parties have concluded a non-written jurisdiction agreement.

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?

Under Polish law, the national rules on parallel proceedings and *lis pendens* in relation to third states pre-dated the Brussels Ia Regulation. These rules seem to favor the stay of proceedings to a greater extent than those of the Regulation. To be more specific, the condition related to the 'proper administration of justice' is not included in the national legislation. Therefore, while the introduction of Article 33 and 34 has been welcomed by the doctrine, this provisions may not alter largely the current procedural efficiency. Moreover, it is unclear whether, due to the exclusion of some grounds of jurisdiction from the scope of Article 33 and 34, the national rules on parallel and *lis pendens* in relation to third states can still remain applicable, what would lead to co-existence of two separate regimes relating to the similar issues.

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?

The analysis of case law did not reveal any instances of application of these provisions.

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?

Flexibility as such does not seems to be an issue with Articles 33 and 34 of the Brussels Ia Regulation. Quite the contrary, it can be argued that, at least within the recitals, the legislator could have been more specific about the interpretation of the terms 'involving the same cause of action', 'related action' and 'proper administration of justice'. It is not clear whether these terms should receive the same meaning as those used in the context of intra-EU situations and whether references to the concepts developed under national law in relation to third-state proceedings are excluded.

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?

No difficulties relating to the definition in question surfaced in the case law. It might be added that the explanation of the term 'provisional, including protective, measures' provided for in recital 25 is considered to be useful in so far as it clarifies that at least some of the measures aimed at obtaining information or preserving evidence are covered by this term, thereby preventing excessive interpretation of the judgment of the CJEU of 28 April 2005, *St. Paul Dairy*, C-104/03.

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?

Where the assets are located within a territory of a Member State, it is considered that the courts of this Member State have jurisdiction to issue provisional, including protective, measures (see, inter alia, concerning the measures by which an applicant was seeking to prevent the pledgee from taking action in regard to the shares in a limited liability company established under Polish law and registered in Polish commercial register, Court of Appeal in Kraków, order of 18 December 2013 of the, I ACz 2287/13).

Moreover, some commentators consider that the 'real connecting link' between the subject matter of the measures and the territorial jurisdiction of the Member State's court exists when the measures sought concern a person (i.e. injunctions) who is present within a territory of that Member State.

Finally, the 'real connecting link' condition was incidentally addressed by the Court of Appeal in its order on appeal of 11 October 2017, I ACz 1333/17. In this order, the second instance court invoked the judgment in *Van Uden* case (C-391/15) and stated that the court of the place where the assets subject to the measures sought are located maintains its jurisdiction to grant a provisional measure under Article 35 of the Brussels Ia Regulation despite fact that the main proceedings are currently pending before a court of a different Member State. Thus, it can be inferred from this order that a 'real connecting link' with one Member State is not affected by the proceedings instituted before the courts of another Member State, even though they are exercising jurisdiction as to the substance of the matter.

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.

While in some instances the national courts have drawn inspiration from the Hague Convention on the Choice of Court Agreements in order to illustrate general tendencies of private international law (see Supreme Court, order of 11 October 2013, I CSK 697/12) or to conduct *a contrario* reasoning (Supreme Court, resolution of 7 September 2018, III CZP 38/18), the analysis of case law has not revealed any instances of declining jurisdiction in favor of third states party to this Convention.

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?

The analysis of case law has not revealed any instances of application of this provision.

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?

According to the data provided by the bodies both of judiciary and enforcement agents (*huissiers*), the modifications brought by the Brussels Ia Regulation were presented and discussed during numerous workshops and training courses. These workshops and training courses were organized before and after the date of application of this Regulation.

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?

There is no concentration of local jurisdiction (venue) at the national or the regional level.

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, it does not seem that there have been other specific legislative measures facilitating the direct access to the enforcement agents.

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?

There is no data available to answer this question. Nevertheless, it does not seem that the number of attempts to enforce judgments rendered in other Member States increased due to the transgression to direct enforcement.

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?

No, no particular problems seem to have been generated by the interface between the Brussels Ia Regulation and national rules on enforcement.

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

There is no case law concerning this provision. The doctrinal discussion focuses mainly on the interplay between the actions leading to the opposition proceedings and the (third party) interpleader actions. It is claimed that these actions may be brought by, respectively, a debtor or a third party as long as these actions do not conflict with the grounds for refusal of enforcement provided in for by the Brussels Ia Regulation.

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?

Such statistics are not kept.

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?

While under the Brussels I Regulation the public policy and denial of a fair trial to the defaulting defendant were often invoked by the parties as a ground for refusal of enforcement, the national courts were proceeding with caution and rarely refused enforcement on these grounds. Despite the advent of the 'reverse procedure', it does not seem that the statistical chance of success of a party invoking these grounds has been altered. However, there is not enough data to give a precise answer to this question.

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?

There is no case law allowing to answer this question.

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

The prohibition of *révision au fond* is observed by the national courts. It is being held that the deviations from this prohibition are admissible only under the public policy clause provided for in the Regulation (see, inter alia, Supreme Court, order of 9 December 2010, IV CSK 224/10). The lack of difficulties in this respect is probably due to the fact that this prohibition was recognized under national rules pre-dating the Brussels Ia Regulation (see, inter alia, P. Grzegorczyk, Stosowanie rozporządzenia Rady (WE) nr 44/2001 w sprawach dotyczących uznawania i wykonywania orzeczeń sądów państw obcych na tle polskiej praktyki sądowej, Europejski Przegląd Sądowy 2016, no 10, p. 20).

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?

There is no data indicating whether Article 54 found its practical application.

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 available data allowing to answer this question.

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?

Annex (1)(q) of the Directive 93/13 is relied on in the context of the territorial (local) jurisdiction governed by the national rules as well as in relation to the choice-of-court agreements concluded on the basis of Article 25 of the Brussels Ia Regulation. However, it cannot be argued

that the courts are abusing this provision of the Directive or that they are giving it an excessive interpretation.

According to the prevailing view, a clause conferring territorial (local) jurisdiction the court of the place where the professional has his registered office, and therefore the most advantageous as the closest to him, undoubtedly infringes consumers' interests.

Furthermore, according to the resolution of the Supreme Court of 19 October 2017, III CZP 42/17, a situation in which the contract does not contain a clause relating to the territorial (local) jurisdiction, but regulates the legal relation between the parties in such a way that the professional has full freedom to choose a court before which the action must be brought by determining the place of performance of the obligation, is identical to the situation in which the contract would contain an abusive clause corresponding to the description provided for in Annex (1)(q) of the Directive.

As to the disputes involving a degree of internationality, according to the literature the protective regime of the Brussels Ia Regulation does not exclude the review of a jurisdiction agreement in the light of the Directive 93/13. It is being held that Article 67 of the Brussels Ia Regulation allows to plead in favour of parallel application of the Regulation and of the Directive (see M. Pilich, in K. Osajda (ed.), Rozporządzenie Parlamentu Europejskiego i Rady (UE) nr 1215/2012 w sprawie jurysdykcji i uznawania orzeczeń sądowych oraz ich wykonywania w sprawach cywilnych i handlowych (wersja przekształcona). Komentarz, Warszawa 2019, commentary to Article 19, points 4.1 and 4.2).

Furthermore, Annex (1)(q) of Directive 93/13 plays an important role in the cases where the protective regime of the Regulation does not apply pursuant to its Article 17(3).

It can be inferred from the order of the Regional Court in Kraków of 23 November 2017, XII Gz 749/17, that a clause conferring jurisdiction to the courts of a Member State where an air carrier is established is not binding to the passenger. Such clause creates a significant imbalance in the rights and obligations of the parties to the detriment of the consumer. The consumer has to bring an action in a geographically remote court and in a foreign language in order to enforce his claims against the carrier, whereas the carrier can bring an action in the court with jurisdiction over his place of establishment and in his own language in order to enforce his claims against the passenger. It is more difficult for a consumer to pursue a claim against a carrier than for a carrier to pursue a claim against a consumer. In this context, the court invoked the national dispositions transposing Annex (1)(q) of the Directive 93/13. While this case was far more complex as it concerned an assignee who brought a claim against the air carrier, it seems that the substantial validity of the jurisdiction agreement was assessed on the basis of the provisions transposing the Directive in question. As a side note it might be added that the court seemed to consider that the validity of this clause had to be assessed under the law applicable chosen by the parties to the air transport contract. It is also unclear whether the court has noticed and duly taken into account the doctrine of severability.

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

The analysis of the case law did not reveal any evident examples for an application of Article 70. It is most probably due to the lack of publication of the first instance courts' decisions that have not given rise to an appeal or do not contain an in-depth analysis of a particular legal problem (see Question 1).

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?

The analysis of case law has not revealed any instances of obvious restrictions superimposed by the reference to Article 351 TFUE.

However, in the case that led to the order of 28 February 2017 of the Regional Court in Częstochowa, V Gz 24/17, the first instance court found that the parties had concluded a jurisdiction agreement in relation to the contract of carriage. According to first instance court, by this agreement the parties had agreed that the court in an another Member State would have jurisdiction to deal with disputes relating to the contract. Given that the contract in question was falling within the scope of the Convention on the Contract for the International Carriage of Goods by Road ('CMR'), the first instance court has based its decision on Article 31 of the CMR as well as Articles 81 and 25 of the Brussels Ia Regulation.

The claimant contested this decision. According to his view, Article 31 of CMR is self-sufficient. There was therefore no need to supplement this provisions by those of the Brussels Ia Regulation. Moreover, Article 71 Brussels Ia explicitly provides that the Regulation shall not affect certain conventions.

In its order on appeal, the Regional Court in Częstochowa held that due to the silence of CMR as to the form of choice-of-court agreements, this issue needs to be addressed according to the general rules on jurisdiction. In this regard, the court invoked the rules on the form of such agreements that are established by the Brussels Ia Regulation and the Lugano II Convention. Finally, the court held that the parties entered into a jurisdiction agreement according to the practice widespread in international transport of goods by road.

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

CMR, Convention on the Contract for the International Carriage of Goods by Road (see, inter alia, with clear reference to Article 71 of the Brussels Ia Regulation, the judgment of the Regional Court in Rzeszów of 6 September 2018, VI Ga 568/17).

1952 Arrest Convention, International Convention for the unification of certain rules relating to Arrest of Sea-going Ships (see, order of the Supreme Court of 28 February 2014, IV CSK 202/13, while this convention was not deemed applicable due to the limitations of its scope *ratione materiae*, the Supreme Court held that the 1952 Arrest Convention falls within the scope of application of Article 71 of the Brussels I Regulation).

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?

In the absence of case law on the Convention (see Question 61), it could not be concluded that such difficulties have arisen.

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

Analysis of the case law has not revealed any cases where these provisions have been applied.