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

National Report for SLOVENIA

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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?

Judgments of first instance courts are not published.

Some, but not all, judgments of appellate courts are published (i.e.: available online with free access). The judge / panel decides whether they will submit their judgment for publication.

All judgments of the Supreme Court and of the Constitutional Court are published (i.e. available online with free-access).

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

In general, the CJEU's case law has high reputation in Slovenia. There are only few judgments that have been met with harsh criticism. Of course, numerous issues remain open, where the CJEU has thus far not yet had opportunity to offer clarification. It would be unrealistic – and indeed not even welcome – if the CJEU would be expected to build on its case law too quickly and intervene too often (as this would inevitably jeopardise the quality of its decisions as well as – perhaps even more important – make it more difficult for national judges, lawyers and academics to adequately follow and study its case law).

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?

A general remark: Concerning most of the questions it is impossible to give any reliable information as to "prevailing views in legal writing" or positions in the case law (let alone the "firm/uniform positions") about application of the Brussels I Regulation (not merely the Recast but also the "old" Regulation No. 44/2001) in Slovenia. It is inherent for a "semi-micro state" as Slovenia (2 million inhabitants) that case law develops slowly as it simply takes considerably more time in a country

with a small population that relevant issues are put before a court in the first place. The same goes for academic research and legal writing; there are only few academics who discuss issues of international private law.

There is no experience in practice thus far.

The prevailing view in the legal writing perceives the reform as positive in general. It is not that much the changes, but rather the lack of any far-reaching changes that has been perceived as positive, i.e. the moderate and the reserved approach which rejected the more ambitious initial proposals of the Commission. By not substantially departing from the existing regime, the EU legislature also ensured that the rich body of the case law of the CJEU, which has already brought several important clarifications and strengthened legal certainty in this area, remains fully relevant. Although in certain instances it seems that the Brussels I Recast effectively overrules the CJEU's case law (e.g., Bilas, GlaxoSmithKline), it should be noted that these are cases where the CJEU itself suggested that the outcomes are not necessarily preferred, but are, however, based on the clear text of the Regulation and it is therefore the responsibility of the EU legislature to intervene. By following these "hints" of the CJEU, the European legislature actually reaffirmed the preeminent position of the Court concerning the development of European civil procedure.

As far as rules of jurisdiction are concerned, the more elaborate rules on choice-of-court agreement are welcome. In principle the extension of protective rules of jurisdiction for weaker parties against the defendants from the third states is a welcome novelty as well (although new uncertainties as what this extension in fact means: minimum common EU standards, existing along the national rules or are they fully replacing national rules; in case of the latter, the extent of protection in particular for employees might be diminished rather than increased) as the safeguards concerning the tacit jurisdiction agreement.

The new system of "reverse exequatur" has been met with mixed responses. On the one hand, the abolition of exequatur was praised (though not unanimously), but fears are raised that the new system causes too numerous uncertainties and will – at least in the initial stage – result in diminishing legal safety and predictability in this area. For example one author comments that somewhat paraadoxically, the recast Brussels I Regulation leaves national legislatures more leeway than the old version, at least regarding the procedure for refusal of enforcement, even though the Regulation is intended to be a further step towards the cohesion and unification of EU private international law. The delegation of the regulation of important procedural questions to national laws could mean a step back from the mentioned goals, since states will inevitably regulate such questions differently. Additionally, this limits the possibility of intervention by the CJEU (Jerca Kramberger Škerl, THE RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN SLOVENIA: NATIONAL LAW AND THE BRUSSELS I (RECAST) REGULATION; forthcoming in: Yearbook of Private International Law, Volume 20 (2018/2019), pp. 217-231).

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?

No further reform is needed on the short term regardless of whether there is room for improvement. It is much more valuable that the law stabilises, that the addressees can properly study and get acquainted with the current Regulation and that case law stabilises, following the guidance of the CJEU. Too frequent reforms of the Brussels I Regime should be avoided. This seems to be the prevailing view in Slovenia. a conservative approach is preferred when it comes to the reform of such a successful instrument as the Brussels I Regulation undoubtedly proved to be. Therefore, it should not be seen as regretful that certain more ambitious plans for large-scale reform were rejected.

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

The concept of "cause of action" (within the framework of rules on lis pendens) is one such example. The distinction between disputes concerning rights in rem in immovable property on the one hand and disputes arising out of contracts or torts concerning immovable property is the other.

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

No. The rules on territorial jurisdiction in Slovenian Civil Procedure Code provide for corresponding territorial jurisdiction for all instances where the Brussels I Regulation vests international jurisdiction with a Slovenian court. No gap has been discovered/reported so far.

In fact, bigger tensions might exist in certain instances where the Brussels I Regulation directly determines not merely international but also territorial jurisdiction ("courts for the place..."; e.g. Art. 7, 8, 18...). For certain types of disputes the Slovenian law provides for the so called "general prorogation"; e.g. for antitrust and unfair competition litigation as well as disputes concerning intellectual property rights only the District Court in Ljubljana has jurisdiction, wheras for maritime disputes only the District Court in Koper has jurisdiction. In light of the CJEU's positions in Sanders (C-400/13 and C-408/13) such national rules of exclusive territorial jurisdiction are not entirely unproblematic when the EU Regulation directly determines territorial jurisdiction (in some other place in the same state). However, in my opinion, the "Sanders test" (necessary for the proper administration of justice") would pass and in addition, unlike in Sanders (maintenance) no weaker party protection is at stake here.

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?

Not in my knowledge. If such "negative conflict" occurred (i.e. the Brussels I regulation would determine international jurisdiction of a Slovenian court, whereas there would be no basis for territorial jurisdiction in Slovenian Civil Procedure Act, the instrument of "ordination fori" would be used. The prospective claimant (or the court, where the action was brought) could request from the Supreme Court to designate a court with jurisdiction for such case (Art. 68 Civil Procedure Act).

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)?

Territorial jurisdiction: Civil Procedure Act

Subject matter jurisdiction: Courts Act, Civil Procedure Act

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.

No case law, no discussion in legal writing

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 case law, no discussion in legal writing

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

No

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

No

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?

exclusion of social security has caused uncertainties with regard to public health care services
exclusion of matrimonial property regime and matrimonial regime of registered partnerships has resulted in doubts as to whether the exclusion could be extended to cover also property regime of non-registered couples (pursuant to Slovenian law, the property consequences of such non-registered couples (partners living together for a longer period) are the same as for married couples. After certain period of uncertainty the view prevailed that the exclusion does not cover such non-registered partnerships and they thus fall within the scope of applicability ratione materiae of Brussels I Regulation

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'?

A clear rule that provisional measures are considered judgments within the meaning of Art. 2 Brussels I has generally been met with approval as well as the important distinction whether the court issuing the measure had jurisdiction on the merits or pursuant to national law. The biggest uncertainty however relates to the additional requirement in Art. 2 that the jurisdiction as to the merits had to come by virtue of this (i.e. the Brussels I) Regulation. This makes it uncertain how to treat cases where the court had jurisdiction on the merits, however not pursuant to the Brussels I Regulation but pursuant to national international private law (as the defendant was domiciled in a third country) or pursuant to national civil procedure law (as there was no cross-border element as to the merits).[1]

[1] *Examples : A) Proceedings against a defendant, domiciled in Russia, are pending in a Slovenian court as a court where the harmful event occured. Since the defendant is from a non-EU country, the Slovenian court based its jurisdiction on its national law (Slovenian International Private Law Act). In course of proceedings the Court issued a provisional measure – freezing of the defendant's bank account in Cyprus.*

B) Janez, domiciled in Ljubljana, Slovenia, brought proceedings against Peter, domiciled in Maribor, Slovenia in a court in Maribor, Slovenia. The case concerns contractual obligation and has no cross-border implications. The court based its jurisdiction on Slovenian national law (Slovenian

In my opinion though, it is sufficient that the courts had jurisdiction as to the substance and that it was not decisive whether this jurisdiction was based exactly on the Brussels I Regulation. Art. 42 BIA provides that the certificate issued pursuant to Article 53, contains a description of the measure and certifies that: (i) the court has jurisdiction as to the substance of the matter – thereby however, there is no additional requirement of "by virtue of this Regulation". Equally, Recital 33 refers to provisional, including protective, measures, which are ordered by a court of a MS not having jurisdiction as to the substance of the matter and which effect should be confined to the territory of that Member State. Thereby as well, no additional requirement that the jurisdiction should exist "by virtue of this Regulation" is imposed. Nevertheless it is regrettable that the drafters of the Regulation did (apparently) not notice the ambiguity of the text insofar it expressly adds that "jurisdiction must be by virtue of this regulation". The "way out" by construing that by virtue of Art. 6 Brussels I all national rules of jurisdiction are in the same time Brussels I Rules seems artificial and is not convincing.

15. Within the context of including certain decisions on provisional measures in the definition of a 'judgment', how is 'jurisdiction as to the substance of the matter' to be understood/interpreted – jurisdiction actually exercised or jurisdiction that can be established according to the rules of the Regulation?

The problem has been recognized and discussed, but no firm positions are adopted. The prevailing view is that the issue is controversial and it warrants the intervention/clarification by the CJEU. Personally I would advocate the narrower interpretation: jurisdiction should actually already be exercised.

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?

No case law, no discussion in legal writing

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?

Civil Procedure Act – domicile of the defendant). In course of proceedings the Court issued a provisional measure – freezing of the defendant's bank account in Cyprus.

No case law, the prevailing view is that the confirmation in the certificate that the court had jurisdiction as to the merits may not be reviewed

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*)?

No. The Pula Parking case has received much attention in Slovenia (as it has important implications for enforcement of Croatian "judgments", however no similar problems(triggered by "out-sourcing" judicial functions to non-judicial or quasi judicial bodies or by setting up tribunals, established by law and with a releatively permanent mandate, which however are not part of the state judiciary system, exist in Slovenia.

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 statistics, no reported cases against defendants from the non-EU states pursuant to the Brussels I Recast yet

On a negative side, the recast also brought some new dilemmas and uncertainties, perhaps due to its poor drafting, in particular regarding the question whether the rule concerning extension of applicability against non-EU based employers and traders provides merely for an EU-wide minimum standard or removes and replaces jurisdiction rules of member states' national laws.

The extension of the applicability of the Brussels I regime to third-state defendants could also produce detrimental effects to the weaker party. For instance, some national laws provide for even more claimant-friendly rules on international jurisdiction. This concern, which is not particularly relevant for consumer disputes, is much more relevant for disputes relating to employment contracts. Here the protective jurisdictional rule in the Brussels I Regulation (now Art. 21(2)) does not go as far as to establish a proper forum actoris. Rather, the place where the employee habitually carries out his work is where an action can be brought. In most cases, this

place will correspond to the place of the employee's domicile, but not necessarily. In addition, unlike in consumer cases, most national laws of the EU Member States have traditionally contained special protective rules of jurisdiction over employment contracts. Often these rules are considerably more employee-friendly than those determined in the Brussels I Regulation. They offer jurisdictional bases such as forum actoris (based on either the nationality or domicile of the employee) or they provide for a jurisdictional basis when at least a part – although not a predominant or even a significant one – of the work was performed within the jurisdiction. Moreover, generally applicable exorbitant bases of jurisdiction could also be invoked, thus enabling the employee to bring a lawsuit in his own country (such as the presence of the defendant's assets within the jurisdiction). Hence, if Art. 21(2) of the Brussels I Recast is interpreted as eliminating and replacing the national laws of the Member States, an employee whose habitual place of work is not in the EU (and who was not engaged by a business situated in an EU Member State) can no longer establish the jurisdiction of any court in the EU against an employer without a domicile or a deemed domicile in the EU.

Some authors submit that the Articles 18(1) and 21(2) of the Recast Brussels I Regulation merely lay down additional bases (an EU-wide "minimum standard") for jurisdiction against third-state defendants, without abolishing the possibility for the employees to invoke broader jurisdiction rules in the national law. The opposite view is that national rules of jurisdiction do not apply if the matter falls within the scope of Arts. 18(1) or 21(2).

Some authors believe that the wording in Arts. 17 and 20 – that the jurisdiction norms in the chapters concerning consumers and employees are "without prejudice to Article 6" – leaves no doubt that national jurisdiction rules can still be relied on as stipulated in Art. 6. However this is not the case. The reference to Art. 6 in Arts. 17 and 20 of the Brussels I Recast indeed means that this Article remains applicable also in consumer and labour disputes. Yet the problem is that there is now a certain restriction of the scope of its applicability in Art. 6. Article 6(1) reads as follows: "If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to (emphasis added) Articles 18(1), 21(2) [....] be determined by the law of that Member State." Articles 18 and 21 contain jurisdiction rules for disputes against non-EU based traders and employers. So the decisive question concerns the relation, in light of the phrase "subject to", between Art. 6, on the one hand, and Arts. 18(1) and 21(2), on the other. It could represent an exception to the general rule that a non-EU based defendant can be sued pursuant to national jurisdiction rules. Yet it can also be construed as providing merely for an additional option for the claimant. In any case, the grammatical interpretation calls primarily for construction of the wording "subject to Art. 18(1), 21(2)" in Art. 6(1) and not merely the wording "without prejudice to Art. 6" in Arts. 17 and 20.

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?

No case law, no discussion in legal writing

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)?

No case law, no discussion in legal writing as to this issue

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?

The rules of Paras 1 and 2 Art 66 Brussels I (Recast) do not seem to cause uncertainties in practice.

With regard to Regulation No. 44/2001 it was very controversial in Slovenia how to construe the condition that the Regulation applies to judgments issued after the coming into force of the Regulation. The controversy related to the situation in new member states (Slovenia joined EU in 2004); for example should an Austrian judgment issued in 2003 (thus after the coming into force of the 44/2001 Regulation in general) be recognized/enforced in 2005 in Slovenia pursuant to the Brussels I regulation or not. While in my opinion it was always clear that the answer should be negative (since in 2003 the Brussels I Regulation was not in force in Slovenia and since it is also beyond doubt that a Slovenian judgment, issued in 2003 would not be enforced in Austria in 2005 pursuant to the Brussels I regime) the prevailing view in case law was affirmative. This erroneous practice was only brought to the end with the CJEU's judgment in Wolf Naturprodukte[2]*, which clarified that the rules only apply if the proceedings started after the entry into force of the Regulation <u>both</u> in the state of origin of the judgment and in the state where its enforcement is sought.*

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?

[2] CJEU, *Wolf Naturprodukte GmbH v SEWAR spol. s r. o.*, C-514/10 of 21 June 2012.

Art. 7 often (place where the harmful event occurred and the place of performance of contractual obligation), Art. 8 rarely, Art. 9 never (in my knowledge).

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?

uncertainty whether the contract for lease (of movable property) should be considered a contract for provision of services (where the euroautonomous definition of place of performance applies) or a contract which is neither for provision of services nor for sell of goods (where the Tessili formula still applies).

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?

No case law or/and views adopted in the literature on this issue

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?

Interpretation of the "place of the damage" in case of a set of causal events and in case of pure economic loss causes most uncertainties (and has led to some manifestly erroneous results). In certain instances, a court where merely a consequential, indirect, damage occurred assumed jurisdiction.

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?

Not yet

28. Have there been any significant controversies in connection with other rules on jurisdiction under Article 7, 8 and 9, if so which particular rule: regarding claims based on acts giving rise to criminal proceedings, 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?

No

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?

In general, a violation of this protective jurisdictional regime precludes recognition of the judgment in other Member States. The problem is that while Art. 45(1) of the Brussels I Recast (which enumerates the cases in which violations of jurisdictional rules constitute grounds for denial of recognition and enforcement) refers to Sections 2, 3, and 4 of Chapter II, it does not explicitly include a breach of Art. 26(2), which lies in section 7.

The prevailing view in Slovenia is that the purpose and the context of the rule would imply that a violation of the obligation to provide adequate information to the weaker party could result in the sanction of non-recognition of the judgment delivered by the court where the weaker party entered an appearance without contesting jurisdiction (given that this court in fact lacked jurisdiction).

The wording of the Regulation does not preclude such an interpretation. It should be noted that in the Bilas case the CJEU already held that a submission by entering an appearance (tacit jurisdiction agreement) is an available basis for jurisdiction in disputes involving weaker parties notwithstanding the fact that the rule on submission is neither contained nor referred to in the three sections containing protective jurisdictional rules.[3] However, it follows from this reasoning that although after the adoption of the Brussels I Recast, jurisdiction by submission is not per se in conflict with Sections 2, 3, and 4 of the Brussels I Regulation, it nevertheless is in such

[3] See, e.g., *Grušić*, 2011, 947.

conflict if it was assumed without previously giving adequate information to the weaker party.

Doubts have also been expressed concerning the fact that new rule does not unambiguously answer the question how precise and explicit the court's instruction to (or information for) the defendant should be. The wording of the rule suggests that it is sufficient for the court to reiterate, in rather abstract terms (although probably in plain language understandable to legally unrepresented parties) the relevant provision of the Regulation concerning the consequences of failure to object the lack of jurisdiction, leaving it for the consumer to (possibly) discover by himself whether the claim was indeed brought in a court lacking jurisdiction. It does not follow from the wording that the court should go one step further and positively advise the consumer that it lacks jurisdiction under the Regulation in the first place. The practical effect of this issue should not be underestimated. If an (unrepresented) consumer or employee is merely advised of the consequences of entering an appearance, leaving it for the defendant to determine whether there is a lack of jurisdiction in the first place, it can be expected that not many defendants would actually engage in research on the jurisdictional regime. This would especially be the case if "information" were given in written form and in a formulaic ("copy-paste") manner (particularly nowadays, when documents served by the court are already accompanied by such an amount of instructions and information that many parties no longer even read all of them carefully).

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?

    Yes. Argumentum a fortiori.

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

    For consumers yes, for employees mostly, for beneficiaries of insurance contracts in certain instances even too much (in particular where the insured is a professional).

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?

    No

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?

It has been reported that it is very difficult for the court to realize whether the claim concerns a consumer contract from the outset (based solely on the information provided by the claimant – the trader). In certain instances it is practically impossible to detect whether a transaction (e.g. the bank's loan) was for private or for professional purpose (e.g. with a purpose of starting a professional activity). Yet the requirements imposed on the court, in the very early stage of proceedings (e.g. informing the consumer defendant about consequences of entering appearance), are already significant. The problem gets aggravated in case of passive defendant, where – if it relates to consumer – the court must examine ex officio the fairness of general contract terms invoked by the claimant.

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?

Art. 18(2) seems sufficiently clear – Consumer may bring the lawsuit in the place of his domicile (thus: not in the place of his "former domicile" or place of domicile "in the moment when the contract was concluded"). The rule of perpetuation fori applies. Only the place of the consumer's domicile in the moment when the lawsuit is brought is relevant. In case of consumer and trader who were domiciled in the same member state in the moment when the contract was concluded, Art. 19/3 gives a possibility of a sufficient protection to the trader.

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?

Doubts were raised with regard to employees/seamen on high seas vessels. It is doubtful whether the standard of the "base" as decisive for determination of habitual place of work that has been adopted with regard to truck drivers[4] *is really adequate for high seas vessels*[5] *– given the otherwise paramount importance (also e.g. in regard to substantive law safeguards adopted in International Labour Association conventions)*

[4] Judgment of the Court (Grand Chamber), 15 March 2011, C-29/10, *Heiko Koelzsch v État du Grand-Duché de Luxembourg.*

[5] Judgment of the Court of 15 December 2011, Case C-384/10, *Jan Voogsgeerd v Navimer SA*

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?

No problems have so far appeared in the practice.

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?

Pursuant to Art. 17 of the Slovenian Private International Law and Procedure Act it is not the seat, but the place of incorporation that determines the law governing the status of the legal entity.

If the actual head office of a legal entity is in a country other than the country in which it was founded, and under the law of this other country also belongs to it, it shall be considered that it belongs to this other country.

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?

Concerns were raised in legal writing as to whether the rule may result in disproportionately aggravating the Claimant's position in claims for damages for breach of IP right if the lawsuit is brought e.g. in the country of the defendant's domicile, whereas the country of registration of the IP right is different. The Claimant cannot always anticipate what defence will be invoked. If however the defendant chooses to invoke a defence of nullity of the IP right – the case will be dismissed, the claimant will need to pay all costs of proceedings (for own and for the opponent's legal representation) and start proceedings anew in the country of registration.

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.

No experience yet. The only case reported concerns the Actio Pauliana. The court – correctly – found that Actio Pauliana does not concern enforcement.

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?

No case law or/and discussion in literature

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?

No case law or/and discussion in literature

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

No data, but unlikely, given the short time-frame

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?

No case law or/and discussion in literature

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?

    No case law reported

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?

    No case law reported

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

    There is no explicit rule in Slovenian law as to the law applicable to the validity of choice of court agreement (similar problem arises concerning the law applicable to arbitration agreement). The issue has not yet been clarified in the case law. Two views have been expressed in discussions in academic circles; some believe that (1) the law of the seat of the chosen court should apply as to the choice-of-court agreement. The alternative view however submits that (2) the law which governs the underlying contract should govern also the validity of the choice of court agreement, at least where the parties have expressly determined the law applicable to the underlying contract (as this would, according to this view, correspond most likely to the implicit will of the parties).

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?

    No

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. There has never been doubt that the principle of separability applies also to jurisdiction agreements (just like it applies to arbitration agreements).

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?

No. In Slovenian civil procedure, the filing of the defense plea is obligatory (more precisely: failure to file a defense plea exposes the defendant to the risk of a default judgment being issued against him). It is thus clear that any defense plea, which addresses the merits of the claim, but which does not raise a plea of lack of jurisdiction will be considered as accepting jurisdiction (tacit jurisdiction agreement).

Some courts have erroneously applied the national law which provides that the court has to declare itself of lacking jurisdiction ex officio even before the claim is served on the defendant (Slovenian Civil Procedure Act). So it has happened, not rarely, that the claim would be dismissed for lack of jurisdiction even before the claim was served on the defendant (and although the case did not concern exclusive jurisdiction). It is clear that this was incompatible with Art. 26 Brussels I and this has in the meantime been confirmed by the Slovenian Supreme Court. Yet, some courts have difficulties in accepting that it must be left to the defendant's choice whether it will accept jurisdiction by entering an appearance, although, pursuant to the Brussels I Regulation, that court has no jurisdiction.

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).

No reported cross-border cases yet. One can anticipate though tht the concept of the same cause of action will cause difficulties. This goes on account of the fact that in national civil procedure law the concept is interpreted entirely differently. For example, it is well established and firm rule that a filing of a negative declaratory action never establishes a lis pendes effect with regard to a (later) action for a condemnatory relief (for performance of the contract). In national law, a concept of the "sameness of prayer for relief" applies, not the "core question" concept.

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?

No standardised internal procedural guidelines are in place.

I have no knowledge of such attempts of contacts with foreign courts and of practical obstacles or considerations in that regard.

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 Slovenian civil procedure, a claimant files a claim with the court, and it is then the court's responsibility to serve the claim on the defendant. thus, it is the time when the document instituting the proceedings or 'equivalent document' is lodged with the court that establishes the lis pendens effect (for cross-border cases; in purely national cases, it is only when the claim is served on the defendant that produces the effect of lis pendens).

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?

Pursuant to national civil procedure law, in case of subsequent amendment of the claim the lis pendens effect applies separately for each claim or for the additional part, added to the initial claim, from the moment on when it is invoked. Thereby it is not relevant whether the amendment of the claim occurred following the emergence of new facts and evidence, or whether it is based on facts and evidence, which have already been known from the outset.

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))?

No such cases are reported and none exist, to my knowledge

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?

Too early to speak of practical effects of the new rule

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?

Not considerably. Slovenian International Private Law Act already contained adequate provisions concerning lis pendens (and was before the Recast applicable with regard to proceedings in a non-member states.

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?

No experience yet

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

Yes

Provisional measures, protective measures

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

No. But there is very little (reported) case law so far.

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?

First it should be noted that doubts are raised whether the "Van Uden" condition that if the jurisdiction to grant protective measures is based on domestic law, there must be a real connecting link between the subject matter of the measure sought and the territorial jurisdiction of the court, before which this measure is sought still applies after the Recast. Since it is now in any case clear that a protective measure issued pursuant to national rules of jurisdiction has no cross-border effects, it is doubtful whether this additional restriction still applies.

There is no case law concerning the issue yet and neither is there any case law relating to the 44/2001 Regulation concerning the interpretation of real connecting link. In legal writing it has been commented that domicile of either of the parties (especially if the subject matter of the protective measure is injunction) or situs of assets/property at which the protective measure aims (e.g. freezing of the account) would form such sufficient and real connecting factor.

Relationship with other instruments

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

Not to my knowledge.

CHAPTER III

Recognition and Enforcement

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

No available data

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?

In Slovenia, a court of law is involved in the enforcement proceedings from its commencement as it is necessary for the creditor to apply for a court order authorizing the enforcement. The creditor must file a motion for enforcement (Article 40 Enforcement of Judgments and Provisional Measures Act) with the enforcement court (court, competent for enforcement proceedings), and this court shall issue an warrant of execution (sklep o izvršbi) by which it shall verify the title and order enforcement measures (Article 44, EJPMA). The warrant of execution is granted by a court's clerk in an ex parte proceedings, and the debtor is also not notified in advance that attachment will occur. In order to achieve a surprise-effect, the warrant of execution is served to the debtor only in the time of attachment (Article 45, EJPMA). The warrant of execution entails the creditor to proceed with physical measures of enforcement – with the methods of enforcement and to the extent, authorized in the warrant of execution. After the warrant of execution has been rendered, the enforcement proceedings remain in the domain of the enforcement court in certain types of enforcement (e.g., garnishment of debts, enforcement against real estate and enforcement of certain non-monetary claims such as injunction judgments). For certain other types of enforcement (enforcement into movable property and enforcement of certain non-monetary claims such as eviction of a tenant who does not have or no longer has a legal right of occupation), the responsibility for physical actions of enforcement is allotted to private enforcement agents (bailiffs).

It follows from the above that foreign creditors initially do not address Slovenian enforcement agents (bailiffs, huissiers, enforcement agencies) but courts (local court). When a bailiff gets involved in the proceedings in the second stage, the procedure does not differ from the one concerning domestic titles (perhaps with exeption of possible suspension of enforcement proceedings pursuant to Art. 44 Brussels I)

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

No, all local courts are vested with jurisdiction over enforcement matters. Rules of territorial jurisdiction, set out in the Enforcement of Judgments and Provisional Measures Act apply.

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

No.

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

No available data yet

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?

So far, only in legal writing. Opinions differ whether grounds for non-enforcement under national law ("enforcement law objections") and grounds for denial of enforcement under the Brussels I Regulation ("international private law objections") can be simultaneously invoked in the same set of proceedings. It is controversial both whether (1) grounds of "international private law objections" can be invoked in enforcement proceedings as well as (2) whether grounds of "enforcement law objections") can be invoked in proceedings concerned with application for refusal of enforcement pursuant to Art. 45. Some authors opine that both (or at least the latter) is possible.

In my opinion though neither is possible.

Invoking grounds of international private law objections within enforcement proceedings in incompatible with Art. 45 et seq. Brussels I. The system envisaged in the new Brussels I seems to be clear: enforcement proceedings itself should not be burdened or automatically suspended on account of grounds for refusal of enforcement pursuant to Art. 45 Brussels I. Separate proceedings for refusal must be initiated (Art. 45), which do not automatically have any effect on enforcement (only measures set out in Art. 44 may be invoked).

Invoking grounds of enforcement law objections within Art. 45 Brussels I proceedings, while favoured in Recital 30 of the Regulation, is not compatible with the legal system of Slovenia, already because of split jurisdiction (national enforcement: local courts + appellate courts; Art. 45 Brussels I proceedings: District court + Supreme Court. The condition "to the extent possible and in accordance with the legal system of the member state addressed" (Recital 30) seem no to be fulfilled in Slovenia.

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

Only in legal writing; with a conclusion that the rule is unclear and with opinion that none of the grounds for refusal of enforcement in Slovenian national law are incompatible with the grounds referred to in Art. 45.

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?

    No available data yet

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?

    No available data yet

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?

    No experience yet

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

    On the level of principle and general statement, the prohibition of revision au fond is often invoked by the courts deciding on (non-)recognition of foreign judgments pursuant to the Brussels I Regulation.

    The real question, in my opinion, however is whether the courts have been consistent with sufficiently restrictive interpretation of public policy (both substantive as well as procedural). Not much remains of a strict application of prohibition of revision au fond if practically the same effect is achieved by insufficiently restrictive examination of public policy violations. Regretfully, Slovenian courts seem to have, on couple of occasions, overstepped the narrow concept of public policy.

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?

No reported cases yet. Legal writing points to the problem that it is not clear (1) which court in the country of enforcement has jurisdiction for such measure (and appeal against) and (2) whether the adaptation should occur ex officio or only upon Creditor's motion.

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?

It is reported that practically always and automatically (which is not in compliance with the text and the intention of the Regulation; the matter has been raised often in training programmes for judges, but to little avail so far).

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?

Pursuant to Arbitration Act, Arbitration agreement for consumer disputes is only admissible after the materialisation of a dispute. In compliance with the Unfair Terms Directive an arbitration tribunal must examine ex officio whether the arbitration agreement is void. The problem however is that this applies merely in case of a passive consumer as a defendant. If a consumer enters appearance on the merits, the arbitration agreement is deemed to have been concluded tacitly. Since the reform of Civil Procedure Act 2017 the same applies to choice-of-court agreements in consumer disputes without cross-border implications.

Iura novit curia applies in Slovenian law. Thus, at least in principle, there should be no tension between the requirement of ex officio examination of fairness of general contract clauses in consumer contracts (which is a question of law) on the one hand and procedural instruments such as payment order on the other hand.

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

No

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

No

78. Which Treaties and international Conventions have triggered Article 71 in your jurisdiction?
The Treaty between the Republic of Slovenia and the Republic of (North) Macedonia on legal assistance in civil and criminal matters (1996)

The Treaty between the Republic of Slovenia and the Russian Federation on legal assistance in civil, family and criminal matters (1962)

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?

No

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

No