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?

They are. Almost 100% of the judgements are available on line through the ECLI number or the CENDOJ official website of the Spanish courts (http://www.poderjudicial.es/search/indexAN.jsp).

In the field of international jurisdiction, these are the main judgments that have been rendered by Spanish Courts applying The Brussels I and Brussels Ia Regulation:

Abbreviations:

SAP = Sentencia de la Audiencia provincial (Judgment of the Appeal Court)

STS = Sentencia del Tribunal Supremo (Judgment of the Supreme Court)

ATS = Auto del Tribunal Supremo (Order of the Supreme Court)

AAP = Auto de la Audiencia provincial (Order of the Appeal Court)

STSJ = Sentencia del Tribunal superior de Justicia (Judgment of the High Court)

STS 11 febrero 2002 [RJ 2002\3107]
STS 27 octubre 2005 [RJ 2005\8153]
STS 29 septiembre 2005 [RJ 2005\7156]
STS 13 diciembre 2006 [CENDOJ 28079110012006101251]
STS 8 febrero 2007 [RJ 2007\558]
STS 5 julio 2007 [RJ 2007\5431]
STS 16 mayo 2008 [RJ 2008\3080]
STS 12 enero 2009 [RJ 2009\544]
STS 18 diciembre 2009 [RJ 2010\294]
STS 10 marzo 2010 [RJ 2010\2337]
STS 15 noviembre 2010 [RJ 2010\8871]
STS 20 julio 2011 [RJ 2011\6139]
STS 31 mayo 2012 [RJ 2012\6551]
STS 5 mayo 2016 [RJ 2016\2453]
STS 10 enero 2017 [RJ\2017\3]

ATS, Social, 11 junio 2002 [RJ 2002\7802]
ATS 8 octubre 2002 [JUR 2002\276567]
ATS 18 noviembre 2003 [CENDOJ 28079110012003205076]
ATS 21 julio 2008 [JUR 2008\320356]
ATS Civil 21 octubre 2015 [JUR 2015\301223]
ATS 12 septiembre 2018 [ECLI:ES:TS:2018:8891A]

STSJ Castilla-La Mancha 18 julio 2005 [AS 2005\2583]
STSJ Comunitat Valenciana Social 5 marzo 2009 [CENDOJ 46250340012009100502]
STSJ Andalucía Social 10 diciembre 2009, [CENDOJ 41091340012009103552]
STSJ Andalucía Social 31 octubre 2012 [AS 2013\506]
STSJ Madrid CA de 30 octubre 2013 [RJCA 2014\121]
STSJ Cataluña, Social, 25 junio 2014 [AS 2014\2229]
STSJ Madrid, Social, 14 septiembre 2015 [ECLI:ES:TSJM:2015:10428]
STSJ Madrid Social 21 julio 2016 [AS 2016\1433]

SAP Málaga 31 diciembre 1994 [REDI, 1996, pp. 294-300]
SAP Alicante 18 enero 1995 [AC 1995\164]
SAP SC Tenerife 10 septiembre 2001 [AC 2002\356]
SAP Pontevedra 14 enero 2002 [AC 2002\443]
SAP Tenerife 1 marzo 2002 [JUR 2002\137076]
SAP Guipúzcoa 25 marzo 2002 [JUR 2002\228306]
SAP Cantabria 10 julio 2002 [CENDOJ 39075370042002100252]
SAP Madrid 10 diciembre 2002 [CENDOJ 28079370132002100031]
SAP Valencia 27 enero 2003 [CENDOJ 46250370082003100044]
SAP Castellón 10 febrero 2003 [AC 2003\354]
SAP Vizcaya 7 mayo 2003 [CENDOJ 48020370042003100099]
SAP Madrid 27 junio 2003 [CENDOJ 28079370142003200003]
SAP Barcelona 30 enero 2004 [CENDOJ 08019370152004100059]
SAP Barcelona 2 junio 2004 [CENDOJ 08019370152004100201]
SAP Barcelona 20 diciembre 2004 [CENDOJ 08019370152004100383]
SAP Pontevedra 21 diciembre 2006 [CENDOJ 36038370012006100756]
SAP Pontevedra 31 julio 2007 [CENDOJ 36057370062007100357]
SAP Guipúzcoa 21 septiembre 2007 [CENDOJ 20069370032007100266]
SAP Madrid 3 julio 2008 [CENDOJ 28079370282008100143]
SAP Valencia 30 julio 2008 [CENDOJ 46250370082008100568]
SAP Barcelona 18 septiembre 2008 [CENDOJ 08019370152008200187]
SAP Valencia 16 diciembre 2008 [CENDOJ 46250370092008100374]
SAP Barcelona 26 febrero 2009 [CENDOJ 08019370142009200033]
SAP Madrid 13 marzo 2009 [CENDOJ 28079370252009100147]
SAP Barcelona 29 marzo 2010 [CENDOJ 08019370012010100149]
SAP Alicante 4 noviembre 2010 [CENDOJ 03014370052010100394]
SAP Vizcaya 26 mayo 2011 [CENDOJ 48020370042011100077]
SAP Guadalajara 20 septiembre 2011 [CENDOJ 19130370012011200303]
SAP Madrid 3 octubre 2011 [CENDOJ 28079370252011200157]
SAP Tarragona 5 marzo 2012 [CENDOJ 43148370032012100079]
SAP Madrid 19 abril 2012 [CENDOJ 28079370202012100371]
SAP Murcia 27 noviembre 2012 [CENDOJ 30030370012012100547]
SAP Alicante 15 mayo 2013 [CENDOJ 03014370062013100197]
SAP Barcelona 12 septiembre 2013 [CENDOJ 08019370152013100297]
SAP Alicante 13 febrero 2014 [CENDOJ 03014370082014100040]
SAP Alicante 24 febrero 2014 [CENDOJ 03014370082014100031]
SAP Barcelona 15 julio 2014 [CENDOJ 08019370122014100517]
SAP A Coruña 19 marzo 2015 [CENDOJ 15030370032015100081]
SAP Madrid 30 diciembre 2015 [CENDOJ 28079370252015100427]
SAP Pontevedra 19 enero 2016 [CENDOJ 36038370012016100069]
SAP Barcelona 27 enero 2016 [CENDOJ 08019370132016100035]
SAP Valencia 8 noviembre 2016 [JUR\2017\14921]
SAP Baleares 28 diciembre 2016 [JUR\2017\23509]
SAP Valencia 21 junio 2017 [ECLI:ES:APV:2017:1750A]
SAP Baleares 13 julio 2017 [ECLI:ES:APIB:2017:246A]
SAP Barcelona 25 septiembre 2018 [ECLI:ES:APB:2018:6269A]
SAP Barcelona 21 diciembre 2018 [ECLI:ES:APB:2018:12911]

AAP Sevilla, Sec.6ª, 20 julio 1993 [RJ 1993\6027]
AAP Barcelona, 27 mayo 1995 [RJC, 1995, pp.1034-1035, REDI, 1996, p. 315]
AAP Cádiz 16 diciembre 2002 [CENDOJ 11012370072002200028]
AAP Cantabria 6 mayo 2003 [CENDOJ 39075370022003200042]
AAP Cádiz 27 mayo 2003 [CENDOJ 11012370072003200090]
AAP Lugo 16 enero 2004 [CENDOJ 27028370012004200008]
AAP Madrid 22 marzo 2004 [CENDOJ 28079370252004200097]
AAP Madrid 30 abril 2004, [CENDOJ 28079370112004200073]
AAP Tarragona 10 junio 2004 [CENDOJ 43148370012004200054]
AAP Valencia 9 septiembre 2004 [CENDOJ 46250370112004200044]
AAP Barcelona 16 marzo 2005, [CENDOJ 08019370152005200039]
AAP Madrid 21 marzo 2005 [CENDOJ 28079370112005200044]
AAP Zaragoza 19 octubre 2005 [CENDOJ 50297370022005200138]
AAP Las Palmas 13 enero 2006 [CENDOJ 35016370032006200017]
AAP Guipúzcoa 10 octubre 2006 [CENDOJ 20069370022006200276]
AAP Las Palmas 1 febrero 2007 [CENDOJ 35016370042007200007]
AAP Granada 23 febrero 2007 [CENDOJ 18087370032007200027]
AAP Zaragoza 11 octubre 2007 [CENDOJ 50297370042007200031]
AAP Barcelona 19 diciembre 2007 [CENDOJ 08019370192007200162]
AAP Madrid 27 marzo 2008 [CENDOJ 28079370282008200082]
AAP Barcelona 22 abril 2008 [CENDOJ 08019370182008200112]
AAP Alicante 28 mayo 2008 [CENDOJ 03014370052008200072]
AAP Barcelona 8 julio 2008 [CENDOJ 08019370162008200151]
AAP Islas Baleares 23 septiembre 2008 [CENDOJ 07040370032008200069]
AAP Barcelona 9 octubre 2008 [CENDOJ 08019370162008200169]
AAP Barcelona 3 diciembre 2008 [CENDOJ 08019370172008200220]
AAP Barcelona 18 febrero 2009 [CENDOJ 08019370032008200376]
AAP Barcelona 3 marzo 2009 [CENDOJ 08019370172009200058]
AAP Barcelona 5 marzo 2009 [CENDOJ 08019370142009200049]
AAP Barcelona 28 mayo 2009 [CENDOJ 08019370172009200095]
AAP Baleares 9 junio 2009 [CENDOJ 07040370042009200016]
AAP Barcelona 19 junio 2009 [CENDOJ 08019370152009200105]
AAP Pontevedra 24 septiembre 2009 [CENDOJ 36038370012009200152]
AAP Pontevedra 4 febrero 2010 [CENDOJ 36038370012010200038]
AAP Barcelona 17 marzo 2010 [CENDOJ 08019370012010200060]
AAP Madrid 23 abril 2010 [CENDOJ 28079370282010200057]
AAP Madrid 6 mayo 2010 [CENDOJ 28079370132010200114]
AAP Madrid 29 junio 2010 [CENDOJ 28079370102010200152]
AAP Barcelona 14 septiembre 2010 [CENDOJ 08019370042010200077]
AAP Madrid 18 noviembre 2010 [CENDOJ 28079370282010200159]
AAP Zaragoza 6 mayo 2011 [CENDOJ 50297370042011200026]
AAP Santa Cruz de Tenerife 8 julio 2011 [CENDOJ 38038370012011200104]
AAP Sevilla 21 julio 2011 [CENDOJ 41091370052011200161]
AAP Zaragoza 16 diciembre 2011 [CENDOJ 50297370052011200022]
AAP Madrid 16 enero 2012 [CENDOJ 28079370282012200003]
AAP Alicante 26 abril 2012 [CENDOJ 03014370082012200035]
AAP Madrid 27 junio 2012 [CENDOJ 28079370212012200196]
AAP Madrid 11 octubre 2012 [CENDOJ 28079370092012200257]
AAP Madrid 25 octubre 2012 [JUR 2012\373751]

AAP Madrid 21 diciembre 2012 [CENDOJ 28079370282012200177]
AAP Madrid 6 febrero 2013 [CENDOJ 28079370102013200019]
AAP Madrid 18 octubre 2013 [CENDOJ 28079370282013200024]
AAP Cantabria 24 septiembre 2015 [CENDOJ 39075370022015200060]
AAP Madrid 29 enero 2016 [CENDOJ 28079370282016200006]
AAP Zaragoza 19 enero 2017 [JUR\2017\27700]
AAP Huelva 27 julio 2017 [ECLI:ES:APH:2017:714A]
AAP Málaga 29 septiembre 2017 [ECLI:ES:APMA:2017:382A]
AAP Barcelona 3 noviembre 2017 [ECLI:ES:APB:2017:7087A]
AAP Castellón 1 diciembre 2017 [ECLI:ES:APCS:2017:529A]
AAP Pontevedra 22 diciembre 2017 [ECLI:ES:APPO:2017:3366A]
AAP Barcelona 17 enero 2018 [ECLI:ES:APB:2018:66A]
AAP Barcelona 16 abril 2018 [ECLI:ES:APB:2018:1323A]
AAP Alicante 12 septiembre 2018 [ECLI:ES:APA:2018:274A]
AAP Cádiz 13 noviembre 2018 [ECLI:ES:APCA:2018:763A]
AAP Madrid 16 noviembre 2018 [ECLI:ES:APM:2018:5001A]
AAP Barcelona 18 diciembre 2018 [ECLI:ES:APB:2018:8244A]
AAP Cádiz 8 enero 2019 [ECLI:ES:APCA:2019:36A]
AAP Barcelona 13 febrero 2019 [ECLI:ES:APB:2019:395]
AAP Barcelona 18 marzo 2019 [ECLI:ES:APB:2019:849A]

> ***In the field of extraterritorial validity of judgments, these are the main judgments that have been rendered by Spanish Courts applying The Brussels I and Brussels Ia Regulation:***

STS 12 noviembre 1999 [R.8864]
STS 31 diciembre 1999 [RJ 1999\9494]
STS 5 noviembre 2001 [R.233/2002]
STS 24 abril 2002 [CENDOJ 28079110012002102025]
STS 23 julio 2003 [CENDOJ 28079110012003102520
STS 4 abril 2006 [CENDOJ 28079110012006100363]
STS 5 septiembre 2006 [CENDOJ 28079110012006100867]
STS 13 diciembre 2006 [CENDOJ 28079110012006101251]
STS 14 marzo 2007 [CENDOJ 28079110012007100323]
STS 17 mayo 2007 [CENDOJ 28079110012007100552]
STS 28 noviembre 2007 [CENDOJ 28079110012007101212]
STS 16 julio 2008 [CENDOJ 28079110012008100790]

ATS 20 febrero 1996 [R.2906 [1998]
ATS 10 septiembre 1996 [R.3555 [1998]
ATS 15 julio 1997 [R.9147]
ATS 24 abril 2002 [JUR 131457]
ATS 18 noviembre 2003 [CENDOJ 28079110012003205076]
ATS 25 mayo 2004 [CENDOJ 28079110012004201896]
ATS 13 junio 2018 [ECLI:ES:TS:2018:6528A]
ATS 12 septiembre 2018 [ECLI:ES:TS:2018:8891A])
ATS 12 diciembre 2018 [ECLI:ES:TS:2018:13314A]

SAP Alicante 24 julio 1997 [REDI, pp. 174-175]

SAP Guipúzcoa 8 febrero 2000 [REDI, pp. 187-189]
SAP Madrid 12 febrero 2002 [CENDOJ 28079370012002105154]
SAP Zaragoza 30 marzo 2004 [JUR 137114]
SAP Las Palmas 1 septiembre 2004 [CENDOJ 35016370042004100502]
SAP Baleares 14 octubre 2004 [CENDOJ 07040370052004100399]
SAP Barcelona 20 diciembre 2004 [CENDOJ 08019370112004100719]
SAP Guadalajara 2 noviembre 2006 [CENDOJ 19130370012006100366]
SAP Murcia 22 noviembre 2007 [JUR 2008\75479]
SAP Alicante 24 enero 2008 [CENDOJ 03014370042008100012]
SAP Girona 3 junio 2009 [CENDOJ 17079370022009100178]
SAP Pontevedra 10 octubre 2011 [CENDOJ 36057370062011100835]
SAP Murcia 5 julio 2012 [CENDOJ 30030370042012100510]
SAP Tenerife 10 septiembre 2013 [CENDOJ 38038370032013100276]
SAP Girona 13 enero 2014 [CENDOJ 17079370012014100022]
SAP Baleares 18 julio 2014 [CENDOJ 07040370042014100292]
SAP Baleares 17 julio 2015 [CENDOJ 07040370032015100211]
SAP Valladolid 19 octubre 2016 [CENDOJ 47186370032016100277]
SAP Barcelona 25 julio 2018 [ECLI:ES:APB:2018:4558A]

AAP La Rioja 19 octubre 2001 [CENDOJ 26089370012001200305]
AAP Navarra 15 enero 2002 [CENDOJ 31201370022002200003]
AAP Alicante 1 marzo 2002 [AC 2002\779]
AAP Cádiz 7 marzo 2002 [CENDOJ 11012370082002200410]
AAP Valencia 13 junio 2002 [CENDOJ 46250370062002200046]
AAP Madrid 12 septiembre 2002 [CENDOJ 28079370012002201030]
AAP Baleares 31 diciembre 2002 [CENDOJ 07040370042002200010]
AAP Madrid 9 junio 2003 [CENDOJ 28079370142003200014]
AAP Barcelona 14 octubre 2003 [CENDOJ 08019370152003200025]
AAP Zaragoza 30 marzo 2004 [CENDOJ 50297370022004200047]
AAP Las Palmas 6 abril 2004 [CENDOJ 35016370052004200071]
AAP Las Palmas 26 abril 2004 [CENDOJ 35016370032004200048]
AAP Madrid 11 octubre 2004 [CENDOJ 28079370182004200171]
AAP Madrid 22 diciembre 2004 [CENDOJ 28079370202004200198]
AAP Zaragoza 8 febrero 2005 [CENDOJ 50297370022005200021]
AAP Alicante 16 febrero 2005 [CENDOJ 03014370052005200020]
AAP Madrid 16 mayo 2005 [CENDOJ 28079370092005200077]
AAP Baleares 13 octubre 2005 [CENDOJ 07040370032005200113]
AAP Madrid 3 noviembre 2005 [CENDOJ 28079370092005200291]
AAP Alicante 23 febrero 2006 [CENDOJ 03014370052006200025]
AAP Madrid 30 marzo 2006 [CENDOJ 28079370132006200039]
AAP Madrid 28 abril 2006 [CENDOJ 28079370212006200203]
AAP Baleares 20 junio 2006 [CENDOJ 07040370032006200108]
AAP Sevilla 22 junio 2006 [CENDOJ 41091370022006200142]
AAP Castellón 10 julio 2006 [CENDOJ 12040370032006200067]
AAP Madrid 5 octubre 2006 [CENDOJ 28079370242006200118]
AAP Madrid 17 abril 2007 [CENDOJ 28079370102007200088]
AAP Teruel 20 marzo 2007 [CENDOJ 44216370012007200016]
AAP Cádiz 12 julio 2007 [CENDOJ 11004370072007200008]
AAP Las Palmas 31 julio 2007 [CENDOJ 35016370042007200129]

AAP Madrid 21 febrero 2008 [CENDOJ 28079370282008200020]
AAP Gipúzcoa 25 febrero 2008 [CENDOJ 20069370022008200026]
AAP Sta Cruz de Tenerife 11 marzo 2008 [CENDOJ 38038370032008200036]
AAP Barcelona 15 julio 2008 [CENDOJ 08019370152008200159]
AAP Valladolid 22 julio 2008 [CENDOJ 47186370012008200064]
AAP Barcelona 29 julio 2008 [CENDOJ 08019370012008200169]
AAP Almería 30 julio 2008 [CENDOJ 04013370032008200170]
AAP Barcelona 22 octubre 2008 [CENDOJ 08019370152008200217]
AAP Tarragona 20 febrero 2009 [CENDOJ 43148370032009200031]
AAP La Rioja 27 febrero 2009 [CENDOJ 26089370012009200015]
AAP Baleares 9 junio 2009 [CENDOJ 07040370042009200016]
AAP Barcelona 15 marzo 2010 [CENDOJ 08019370152010200023]
AAP Madrid 26 marzo 2010 [CENDOJ 28079370112010200044]
AAP Madrid 8 julio 2011 [CENDOJ 28079370112011200119]
AAP Barcelona 19 julio 2011 [JUR 2011\364175]
AAP Sevilla 21 julio 2011 [CENDOJ 41091370052011200161]
AAP Islas Baleares 20 septiembre 2011 [CENDOJ 07040370032011200058]
AAP Pontevedra 26 septiembre 2011 [CENDOJ 36057370062011200126]
AAP Islas Baleares 10 octubre 2011 [CENDOJ 07040370032011200065]
AAP Madrid 2 diciembre 2011 [CENDOJ 28079370092011200198]
AAP Madrid 16 diciembre 2011 [CENDOJ 28079370252011200202]
AAP Girona 23 enero 2012 [CENDOJ 17079370012012200001]
AAP Girona 19 marzo 2012 [CENDOJ 17079370012012200040]
AAP Barcelona 24 mayo 2012 [CENDOJ 08019370152012200067]
AAP Madrid 24 octubre 2012 [CENDOJ 28079370102012200282]
AAP Cádiz 6 noviembre 2012 [JUR 2013\45054]
AAP Barcelona 14 mayo 2015 [CENDOJ 08019370132015200073]
AAP Baleares 2 marzo 2017 [JUR\2017\145679]
AAP Alicante 1 junio 2017 [ECLI:ES:APA:2017:159A]
AAP Barcelona 28 junio 2018 [ECLI:ES:APB:2018:3802A]
AAP Barcelona 23 julio 2018 [ECLI:ES:APB:2018:4567A]
AAP Cádiz 13 noviembre 2018 [ECLI:ES:APCA:2018:763A]

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

In my humble opinion, not only the CEUE case law are a fundamental guidance for the courts but also the judgements rendered by the CJUE are systematically followed by the Spanish courts due to the high quality of these decisions.

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

raise always difficult problems to the judiciary in Spain. The concept of habitual residence remains as one of the most complicated issues for the Spanish courts specially compared to "domicile" in a continental view.

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? ***Limitation of national grounds to deny enforcement has been considered as a real necessity to improve the efficiency of Regulation Brussels Ia.. See: A.-L. CALVO CARAVACA / J. CARRASCOSA GONZÁLEZ / C.M. CAAMIÑA DOMÍNGUEZ, Litigación internacional en la Unión Europea I: el Reglamento Bruselas I-bis, ISBN: 978-84-9177-215-6. Ed. Aranzadi, Pamplona, 2017 (768 pp.); AA.VV. (Coord. P. BLANCO-MORALES LIMONES, F.F. GARAU SOBRINO, M.L. LORENZO GUILLÉN, F.J. MONTERO MURIEL), Comentario al Reglamento (UE) nº 1215/2012 relativo a la competencia judicial, el reconocimiento y la ejecución de resoluciones judiciales en materia civil y mercantil (Reglamento Bruselas I refundido), Aranzadi-Thomson Reuters, 2016; R. ARENAS GARCÍA, "Del Reglamento Bruselas I al Reglamento Bruselas I bis", REDI, 2013, pp. 377-382; F. GASCÓN INCHAUSTI, "Reconocimiento y ejecución de resoluciones judiciales extranjeras en la ley de cooperación jurídica internacional en materia civil", CDT, 2015, pp. 158-187; F. GASCON INCHAUSTI, Reconocimiento y ejecución de resoluciones extranjeras en el nuevo reglamento Bruselas I Bis, Valencia, Tirant lo Blanch, 2016; F.J. GARCIMARTIN ALFEREZ / S. SANCHEZ FERNANDEZ, "El nuevo Reglamento Bruselas I: qué ha cambiado en el ámbito de la competencia judicial", Civitas. Revista española de derecho europeo, n. 48, 2013, pp. 9-35; Mª Á. RODRIGUEZ VAZQUEZ, "Una nueva fórmula para la supresión del exequátur en la reforma del reglamento Bruselas I", CDT, 2014, vol. 6, Nº 1, pp. 330-348; A.-L. CALVO CARAVACA / J. CARRASCOSA GONZÁLEZ, "Medidas provisionales y cautelares y Reglamento Bruselas I-bis", RDIPP, 2015, pp. 55-78; M. GÓMEZ JENE, "Anti-suit injunction en forma de laudo arbitral (a propósito de la Sentencia Gazprom del TJUE)", CDT, 2015, pp. 440-447; M. REQUEJO ISIDRO, "El Derecho internacional privado y el Derecho procesal civil europeo en la jurisprudencia del tribunal de justicia", AEDIPr, T. XIV-XV, 2014-2015, pp. 55-89; A. FERNÁNDEZ PÉREZ, "Cláusulas escalonadas multifunción en el arreglo de controversias comerciales internacionales", CDT, 2017, pp. 99-124; I. LORENTE MARTÍNEZ, "Cláusula atributiva de competencia en favor de tribunales de terceros estados y sumisión tácita a favor de tribunales de un estado miembro: el dilema", CDT, 2017, pp. 444-453;***

5. Has there been a tension between concepts under national law and the principle of 'autonomous interpretation' when applying the provisions of the Regulation? ***Of course it has been and it still is, every day. Concepts such as "habitual residence", "consume", "procedure", "divorce", "lis pendens", "related actions", "provisional measures" and others, always generate problems and certain Spanish courts - not all, fortunately - tend to define them according to Spanish law and not according to European law, as it should be***.

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? ***It has. Within the European Area of (Civil) Justice, there is a contradiction due to the fact that the Regulation Brussels Ia still solves a conflict of jurisdictions between judicial bodies of all the Member States, whereas it should not be so. The Regulation should directly designate the territorially competent court in the EU. It is not a matter of deciding whether the competent courts to hear an international contract case are the Spanish or the Greek, but to indicate to the citizens that move in the European Area of Justice, what is the specific court to which they must address to obtain a judgement after the breach of contract.***

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? Occasionally it has happened, not very often. If so, the Spanish courts have declared the lack of jurisdiction and tend to affirm that the case should be solved by a third State court***.

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)? ***All of them are codified in the Ley de Enjuiciamiento Civil (Spanish code of civil procedure), Law-Act 1/2000.***

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. ***Not particular problems have arisen with regard to the issue. Recital 12 is useless in practice because courts and academic literature do not consider that text as compulsory.***

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. ***Not particular problems have arisen with regard to the issue. I will underline that the Spanish Supreme Court judgement of 7 may 2019, concerning a "convenio concursal" (see: ECLI:ES:TS:2019:1447) has followed the lines showed by the CJUE of 12 February 2009, C-339/07, Christopher Seagon vs. Deko Marty Belgium NV, FD 22-23 and CJUE 19 April 2012, C-213/10, F-Tex SIA.***

11. Is there case law in your Member State on the recognition and enforcement of court settlements? If yes, please provide information about these. ***Not particular problems have arisen with regard to the issue.***

12. Is there case law in your Member State on the recognition and enforcement of authentic instruments? If yes, please provide information about these. ***Not particular problems have arisen with regard to the issue.***

Definitions

13. Have the courts in your jurisdiction encountered difficulties when applying the definitions provided in Article 2? If yes, how are these problems dealt with? Is there any controversy in the literature concerning (some of) these definitions? ***Not particular problems have arisen with regard to the issue in the Spanish case law. Academic literature have deeply discussed the concept of "arbitration matters". See: A.P. ABARCA JUNCO / M. GÓMEZ JENE,***

"Arbitraje familiar internacional", Cuadernos de Derecho Transnacional CDT, 2012-II-II, pp. 5-19; M. GÓMEZ JENE, "Propuestas de inclusión del arbitraje en el Reglamento 44/2001", CDT, 2010, vol 2, n. 1, pp. 339-358; M. GÓMEZ JENE, "Concurso y arbitraje internacional", CDT, 2010, pp. 92-103; M. GÓMEZ JENE, "Anti-suit injunction en forma de laudo arbitral (a propósito de la Sentencia Gazprom del TJUE)", CDT, 2015, pp. 440-447.

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'? ***Not particular problems have arisen with regard to the issue. Anyway, see A.-L. CALVO CARAVACA / J. CARRASCOSA GONZÁLEZ / C.M. CAAMIÑA DOMÍNGUEZ, Litigación internacional en la Unión Europea I: el Reglamento Bruselas I-bis, ISBN: 978-84-9177-215-6. Ed. Aranzadi, Pamplona, 2017 (768 pp.); AA.VV. (Coord. P. BLANCO-MORALES LIMONES, F.F. GARAU SOBRINO, M.L. LORENZO GUILLÉN, F.J. MONTERO MURIEL), Comentario al Reglamento (UE) nº 1215/2012 relativo a la competencia judicial, el reconocimiento y la ejecución de resoluciones judiciales en materia civil y mercantil (Reglamento Bruselas I refundido), Aranzadi-Thomson Reuters, 2016; R. ARENAS GARCÍA, "Del Reglamento Bruselas I al Reglamento Bruselas I bis", REDI, 2013, pp. 377-382.***

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? ***Not particular problems have arisen with regard to the issue.***

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? ***Not particular problems have arisen with regard to the issue.***

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? ***Not particular problems have arisen with regard to the issue.***

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 particular problems have arisen with regard to the issue.***

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? ***Not particular problems have arisen with regard to the issue.***

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? ***Not particular problems have arisen with regard to the issue.***

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)? ***In the judgement rendered by the Tribunal Superior de Justicia de Madrid, Social, of 14 September 2015 [submission to Turkish courts], the court commits a profound error in estimating that art. 29 is applicable when one of the courts involved does not belong to the EU. See: STSJ Madrid, Social, 14 septiembre 2015 [ECLI:ES:TSJM:2015:10428]***

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? Spanish courts usually deal very well with these clauses of "entrey into force" and application in time of Brussels regulation. See: AAP Santa Cruz de Tenerife 8 julio 2011 [Italian judgement]; AAP Castellón 1 diciembre 2017 [judgement from Romania]).

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? ***Art.7.2 is and stilli and will be the most problematic one. The Spanish Supreme Court (TS) maintains a doubtful position with regard to the follow-on actions arisen by the so calle truck cartel: (ATS 19 March 2019 [truck cartel]; ATS 7 May 2019 [truck cartel]; ATS 9 April 2019 [truck cartel]; ATS 2 April 2019 [truck cartel]). The Spanish TS affirms that art. 7.2 RB I-bis only leads to the Spanish courts in the case that the truck was acquired in Spain but territorial jurisdiction is determined by the LEC (Spanish internal rules of territorial jurisdiction), which is neither true nor necessary. In such perspective, seen that the art. 52.1.12 º LEC leads to the court of the place where the defendant has his establishment and he has no***

establishment in Spain nor domicile or place of residence, the TS affirms the power of the elective forum for the plaintiff: place where the act was performed or where produce their effects. This leads to a relevant estimate of the place of production of effects, that is, the place where the claimant has passed the surcharge, and which can be identified without additional problems with the place of acquisition of the vehicle (Article 52.1.12º LEC).See: ATS 19 marzo 2019 [ECLI:ES:TS:2019:3430A]; ATS 2 abril 2019 [ECLI:ES:TS:2019:4967A] ; ATS 9 abril 2019 [ECLI:ES:TS:2019:4165A]; ATS 7 mayo 2019 [ECLI:ES:TS:2019:5015A].

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? ***A) Concept of "contract": Some case law also considers that the creditors' agreements entered into in the framework of an insolvency constitute "contractual matter" (SAP Pontevedra 28 July 2016 [Norwegian Law]). B) Some contracts are excluded from the concept of "sale of goods" for the purposes of art. 7.1.b): purchase contracts that are part of a wider commercial distribution operation (SAP Valencia 2 January 2008 [resolution of contract and compensation of customers in distribution contract]). C) Art. 7.1.b RB-I requires that the contract contain an accuracy of the "place of delivery" of the goods and "place of delivery" is understood to be the place where the merchandise is placed, materially, at the physical disposal of the buyer, not of another subject, as the transporter. See: SAP A Coruña 10 November 2016 [transport destination Galicia and CIF]). D) The "obligation that serves as the basis for the claim" is the "provision of the service". The place of provision of services will be agreed by the parties to the contract. Consequently, it is competent to hear the contractual disputes arising from contracts for the provision of services, the court in the place of the Member State in which the services must be provided (Article 7.1.b) second part BR Ia). The place where the payment must be made is irrelevant for the purposes of art. 7.1.b (SAP Barcelona October 31, 2012 [management contract and services to be performed in Spain]). E) The concept of "contract for the provision of services" includes, among many other, agency contracts (SAP Islas Baleares 27 June 2016 [architect services lease contract]), charter (SAP Pontevedra 21 December 2006 [contract of charter to be executed, according to the contract, in Vigo]), supply contract, loan, health benefits contracts, education contract, construction contract with supply of materials (AAP Barcelona 17 November 2005), leasing, leasing of personal property if This includes active obligations for the lessor, transport contracts, management contracts (SAP***

Barcelona October 31, 2012 [management contract and services to be performed in Spain]). NOTE: SAP = "sentencia de la Audiciencia Provincial" means: "Judgement of the Court of Appeal".

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

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? ***The alleged injured party may also bring proceedings before the court of the place of the Member State in whose territory a content published on the Internet is, or has been, accessible. That is also the "place of the harmful event". These courts are competent to hear only the damage caused in the territory of that Member State: SAP Madrid October 24, 2011 [defamation against a Spanish victim residing in Spain conducted by Internet in the French language and contained in the Moroccan digital newspaper]).***

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? ***As far as I know, no judgment has been rendered with regard to the issue.***

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? ***Not particular problems have arisen with regard to the issue.***

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? ***As far as I know, no judgment has been rendered with regard to the issue.***

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? ***Not particular problems have arisen with regard to the issue.***

31. According to the prevailing literature in your Member State, do provisions in Sections 3, 4 and 5 provide effective protection to 'weaker parties'? ***Spanish academic literature have pointed out that in certain matters, the submission agreements must respect certain substantive and formal limits, in order to prevent the strong part of a legal relationship from imposing a certain competent court election on the "weak party" of the same legal relationship. This is the case with regard to trust cases, contracts concluded by consumers (Article 19 RB I-bis), insurance matters (Article 15 RB I-bis), and individual work contracts (Article 23). This should be more than enough to protect the so called weaker parties.***

32. In general, have there been difficulties in applying Section 3 of the Regulation on the jurisdiction in matters relating to insurance, if so which aspect(s): definition of 'branch, agency or other establishment' in the identification of the competent court, the identification of 'the place where the harmful event occurred', the definition of 'injured party', the application of the provisions of Articles 15 and 16 relating to choice-of-court agreements? ***Not particular problems have arisen with regard to the issue.***

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? ***Not particular problems have arisen with regard to the issue.***

34. Have the courts in your jurisdiction encountered difficulties in the application of Article 18(2), in the case of *perpetuatio fori*, occurring if the consumer

moves to another State? If yes, how are these problems dealt with? ***Not particular problems have arisen with regard to the issue.***

35. Have there been difficulties in applying Section 5 of the Regulation on the jurisdiction in matters relating to employment contracts, if so which aspect(s): the interpretation of the concept of 'matters relating to individual contracts of employment', the interpretation of the concept of 'branch, agency or establishment', 'place where or from where the employee habitually carries out his work', the application of the provision on the choice-of-court agreements? ***The worker can sue the employer before the courts of the place where the worker habitually performs his work or before the court of the last place where he performed it (Article 21.2.a RB I-bis) (STSJ Catalonia, Social, 25 June 2014 [jure gestionis work contract to be developed in Spain by Italian workers], STSJ Madrid, Social, March 24, 2006, Sent. Cass, Soc. France March 31, 2009). To determine the "usual place of service provision", "factual criteria" should be considered, without referring to the Law of any State. The place in which or from which the worker complies "in fact" with the essentials of his obligations with respect to his company must be taken into account (Sentencia juzgado de lo social of Asturias 26 June 2002). The place where "mainly" the labor benefit is developed is the place where the worker has the "effective center of his professional activities", which is the "place from which he plans and organizes his work". And this place is specified by a "temporary criterion": it is the place where the worker spends "most of his working time" on behalf of his company, regardless of the nature or importance of the work (STSJ Catalonia Social March 26 2010 [work contract to be lent at Gerona airport for Irish airline]). The "sequence of reasoning" is, then, this: place of "usual provision of services" = "place of main provision of services" = place of "effective center of professional activities" of the worker = place where the worker passes " most of his work time "(STSJ Madrid Social 12 May 2008 [professional cyclist contract that is mostly trained in Spain and article 5.1 CLug.]). Only if it is shown that the case presents "closer links" with another country in which the labor benefit is executed, may it be sued before the courts of that Member State. In the case of workers employed as members of the flight staff of an airline or a post at their disposal who carry out their work both on board and on the ground, "all the circumstances that characterize the activity of the worker" must be taken into account. In these cases, the STS 24 January 2019 [dismissal of a foreign worker who works in Girona] understands that the place of usual provision of services by the worker is the place where his "base" is located, but because it is the same place from where depart and to which the flights arrive in relation to which said worker renders his services. The works developed in schools or other***

entities located in Spain but that depend on foreign States should be considered as works whose place of performance is located in Spain (STSJ Madrid, Social, December 2, 2015 [Italian school in Spain], STSJ Madrid, Social, December 23, 2015 [Italian school in Madrid], STSJ Madrid, Social, November 16, 2015 [Italian school in Madrid].

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? ***I will modestly underline the problems arisen with regard to Art. 24.5 The courts of a Member State may adopt "enforcement measures", such as a freezing order, on assets located in other countries. However, only the courts of the Member State in whose territory the decision is to be enforced will be competent, exclusively, to resolve the disputes arising around the realization of the "enforcement measure" that must be fulfilled in that territory. State and that, as it has been said, it may be a measure "agreed" by a judge from another Member State (Article 24.5 RB I-bis) (AAP Madrid 21 March 2005). The art. 24.5 RB I-bis applies in relation to the execution of "national" or "foreign" decisions (SAP Valencia 21 June 2017, AAP Cádiz 13 November 2018 [ruling issued in French Antilles]). In the event that the judicial decision could be enforced in several Member States, the concurrence of jurisdictions should be avoided. Therefore, the courts of the Member State that are "in a better position" or in a "more propitious situation" for the execution of the judicial resolution, are the competent ones according to art. 24.5 RB I-bis, since the ultimate objective of the Regulation is to facilitate the real execution of judicial decisions (Cons. [4] RB I-bis) (STS 18 December 2009 [execution in Spain of English order in which it is available the forced sale of shares of Spanish companies]).***

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? ***Articles 8 and 9 of the General Companies Act (Real Decreto Legislativo 1/2010, de 2 de julio, por el que se aprueba el texto refundido de la Ley de Sociedades de Capital (BOE núm. 161 de 3 julio 2010). The place or registration criterion is commonly followed by Spanish courts without specific problems.***

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? ***Not particular problems have arisen with regard to the issue.***

39. Given the variety of measures in national law that may be regarded as 'proceedings concerned with the enforcement of judgements', which criteria are used by the courts in your Member State to decide whether a particular procedure falls under the scope of Article 24(5)? Please elaborate and provide examples. ***See answer to question 37.***

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? ***Not particular problems have arisen with regard to the issue.***

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? ***Sure. See: A. FERNÁNDEZ PÉREZ, "Cláusulas escalonadas multifunción en el arreglo de controversias comerciales internacionales", CDT, 2017, pp. 99-124; I. LORENTE MARTÍNEZ, "Cláusula***

atributiva de competencia en favor de tribunales de terceros estados y sumisión tácita a favor de tribunales de un estado miembro: el dilema", CDT, 2017, pp. 444-453.

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?

Not particular problems have arisen with regard to the issue.

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?

a) If the requirements of form contemplated by art. 25.1, the submission agreement is formally valid, without it being necessary to comply with other supplementary requirements required by the national procedural law of the Member State whose courts are aware of the matter (SAP Alicante February 24th, 2014 [international tourism contracting and express submission clause drafted in English]).

b) Jurisdiction agreements contained in some "standard forms" are valid only if the contract, which must be valid and binding on the parties, expressly refers to such "general conditions" (STS 20 July 2011 [clause of express submission in favor of German courts]).

c) Submission agreements contained in the "back of a contract" are not valid and have not been signed by the parties (AAP Pontevedra 4 February 2010 [submission on the back of an invoice]).

d) Jurisdiction agreements contained in a standard form of the contract to which a document signed and accepted by only one of the parties refers (AAP Tarragona June 10, 2004) are not valid.

e) There is express submission in the case of a document containing an express submission, a document signed by one party, and a different document containing the acceptance of such express submission signed by the other party (with very doubtful criteria: AAP Tarragona June 10, 2004).

f) Art. 25 does not require that the express submission clause be signed by both parties either in a handwritten form or electronically. It is sufficient that the parties have expressed in writing their willingness to submit their legal disputes to a specific court or courts of a member state (SAP Alicante February 24, 2014 [international tourism contract and express submission clause drafted in English], AAP Madrid 16 January 2012 [transport of prawns from India to Spain], AAP Madrid November 18, 2010 [transport contract and express submission to London courts]). The agreement must be written and the parties must have knowledge of it and have consented to it. Consequently, it is not necessary that said "written agreement" be signed by both parties (AAP Madrid 21 December 2012 [damage suffered by merchandise and maritime transport from India to Vigo]).

f) Art. 25 requires that the election of the competent court be "in writing". The fact that, due to "printing problems", it is difficult to read, does not mean that the clause of election of the court is null. As indicated by the SAP Alicante February 24, 2014 [express submission clause drafted in English: "In the event of any such dispute concerning the provisions of Clause 3 hereof, such provisions shall be governed for all purposes by and be interpreted in accordance with English law and the parties shall renounce their own jurisdiction and submit to the jurisdiction of the English Courts"], such a defect is innocuous to question the validity and effectiveness of the clause because it does not impede its reading ". Consequently, the requirement that the choice of court be made "in writing" implies the need for it to be read by persons with average or normal diligence. Only if the clause is written but can not be read, will it be null by default.

g) Jurisdiction agreements clauses contained in the standard forms, provided they have been accepted by both parties, are perfectly valid and jurisdictional submission is also valid (SAP Alicante February 24, 2014 [international tourism contract and express submission clause written in English]). The national rules of the Member States that regulate the submission clauses agreed between parties that operate in international trade and that are neither "workers", nor "consumers" nor "are not applicable to contracts subject to general conditions of contracting. insured ", within the meaning of the Brussels I-bis Regulation. In this way, the national rules of the Member States that protect the small merchant or other subjects against the big commercial companies are inapplicable to the submission clauses regulated by art. 25, even if they are contained in general conditions of contracting or in a contract drafted by only one of the parties (= "adhesion contracts") (AAP Barcelona January 17, 2018 [submission to Zurich courts]; Mercantile Court Madrid 13 September 2016 [submission to London courts in bill of lading], SAP Alicante 24 February 2014 [international tourism contract and express submission clause drafted in English].

h) The legal rules of the Member States regarding the protection of consumers against the conditions imposed by an employer (= anti-abusive clauses legislation) are not applicable to these clauses of submission, since they are contracts "between merchants", And not of contracts "concluded with consumers" (Auto Juzgado Mercantil Madrid 13 September 2016 [submission to London courts in bill of lading], AAP Madrid 16 January 2012 [contract for the transport of frozen prawns from India to Spain under the regime of bill of lading], AAP Madrid 18 November 2010 [transport contract and express submission to London courts], AAP Madrid 6 May 2010 [banking contracts between Spanish and Swiss banking and Lugano Convention], AAP Madrid 23 April 2010 [submission to an English court under the bill of lading clause], AAP Pontevedra 4 February 2010 [submission on the back of an invoice], AAP Las P souls February 1, 2007, SAP Pontevedra July 31, 2007 [trailer contract and submission to English court]).

i) In relation to Spain, neither the norms on general contracting conditions and abusive clauses in contracts entered into by consumers are applicable (Articles 80-91 TRLGDCU 2007), nor is art. 54.2 LEC (= "The express submission contained in contracts of adhesion, or that contain general conditions imposed by one of the parties, or that have been concluded with consumers or users"), which is a territorial jurisdiction norm, is not valid. of international competence (with a big big mistake, see: AAP Madrid 25 October 2012 [contract and submission to the courts and the laws of Morocco]). Neither is applicable, in the Spanish case, art. 22 bis LOPJ, because the existence of a clause of express submission regulated by art. 25 Brussels Regulation is exclusively governed by this provision (SAP Alicante 24 February 2014 [international tourism contract and express submission clause drafted in English], AAP Madrid 18 November 2010 [transport contract and express submission to London courts]).

j) There are consumers who are not protected by Section 4 of Chapter II of the Brussels I-bis Regulation. This is the case of "active consumers" (article 17.1.c a contrario sensu) or of passengers of airlines (article 17.3 RB I-bis). In these cases, doubts arise about the validity of clauses of submission to arbitration or courts that are contained in the general conditions of the contract applicable to the contract in question. In these cases, it must be remembered that the law applicable to these contracts is the law chosen by the parties (articles 3 and 5 RR-I). However, there is a plethora of European Directives applicable to these accession contracts that protect the "active" adherent-consumer. In this sense, art. 67 TRLGCU 2007 indicates that the Spanish norms of protection against abusive clauses (= development of European regulations) contained in arts. 82 to 91 TRLGCU, both inclusive, are applicable to consumers and users, whatever the law chosen by the parties to govern the contract, "when it maintains a close relationship with the territory of a Member

State of the EEA". Having noted this, Art. 90 TRLGCU 2007 declares the clause of submission to foreign courts "abusive" and, therefore, null and void. The contract, closely linked to Spain, must be purged of its abusive clauses in accordance with Spanish law. When this court selection clause is eliminated, the competent courts are determined in accordance with the general rules of the Brussels I-bis Regulation (STSJ Madrid CA of 30 October 2013 [air transport and consumers]). Thus, the courts of the Member State in which the defendant is domiciled (Article 2) or the court in the place of the Member State in which the service is provided (Article 7.1) are competent).

k) In these cases, the parties agree orally to submit their legal differences to a specific court or tribunals. Subsequently, one of the parties collects in writing the aforementioned verbal agreement. Consequently, it is sufficient that the written confirmation is made only by one of the parties, provided that the other party receives confirmation without raising objections. Requiring that the oral submission was confirmed in writing by both parties would be absurd, because then it would be a submission "in writing", already regulated by art. 25.1 separately (very correct: AAP Madrid 11 October 2012 [oral agreement of submission confirmed in writing in favor of German courts]: "Article 23.1 RB-I [today Article 25 RB I-bis] does not require that both parties have written down their acceptance, but that it must be understood that the written record of the terms of the verbal agreement is sufficient without any of the parties having expressed their opposition or disagreement with those terms.".

l) Oral submission, even if it exists, has no legal effect (SAP Guipúzcoa September 21, 2007 [exclusive distribution contract and oral submission]).

m) In the lasting and repeated commercial relations between the same companies, it is fair that they are considered applicable to them, the "normally observed" contracting conditions, in which an express submission clause may have been inserted. This saves costs of drafting the contract and makes the "habit" an element of legal security (AAP Valencia 9 September 2004, SAP Barcelona 2 June 2004).

n) The "use of international trade" must be proven. Certain case law indicates that the use must be proved by the court (SAP Pontevedra January 14, 2002, SAP Barcelona June 2, 2004). It must be "international trade operations", as well as "habitual operators" in this type of trade (STS July 5, 2007 [submission and transport from Barcelona to Port Said, Egypt]). The use must be "widely known and regularly observed" not only by the parties, but by the "merchant community of the commercial sector in which the contracting parties exercise their activity". It is admitted that the use is known by the parties or even that "should be known" by the parties (AAP Madrid 6 May 2010 [banking contracts between Spanish and Swiss banking], AAP Alicante 26 April 2012 [submission in favor of the courts From london]).

ñ) It is not necessary that the agreement of submission be documented and be signed by both parties: it can be contained in a bill of lading, which are "adhesion contracts drafted and signed by one of the parties" (AAP Barcelona 19 June 2009 [submission to London courts and bill of lading], AAP Pontevedra September 24, 2009 [submission to foreign courts], SAP Cantabria July 10, 2002, SAP Madrid December 10, 2002, AAP Huelva 15 September 2003, AAP Las Palmas January 13, 2006, AAP Las Palmas 1 February 2007). In effect, the bill of landing has legal effects and binds the shipper even if he does not sign it. With its acceptance by the shipper at the time of receipt when the cargo is delivered for transport. The acceptance of the bill of lading is a "global" acceptance that includes all its clauses, including submission to certain courts in litigation cases.

o) Submission to the courts of the Member States contained in a bill of landing is governed by the Brussels I-bis Regulation and not by art. 468 Law 14/2014, of July 24, on Maritime Navigation, as indicated by this same precept in primis (AAP Barcelona 18 March 2019 [goods delivered in Liverpool], AAP Cádiz 8 January 2019 [submission to English courts], AAP Barcelona 13 February 2019 [maritime transport and submission to London]). The art. 468 LNM does not add additional requirements to those expressly set by art. 25 RB I-bis. art. They also prevail over art. 468 LNM the provisions contained in international agreements in force for Spain in relation to submission to foreign courts or to private international arbitration (Madrid Commercial Court 13 September 2016 [submission to London courts in bill of lading]).

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

    See answer 43.

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?

    See answer 43.

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?

See: A.-L. CALVO CARAVACA / J. CARRASCOSA GONZÁLEZ / C.M. CAAMIÑA DOMÍNGUEZ, Litigación internacional en la Unión Europea I: el Reglamento Bruselas I-bis, ISBN: 978-84-9177-215-6. Ed. Aranzadi, Pamplona, 2017 (768 pp.); AA.VV. (Coord. P. BLANCO-MORALES LIMONES, F.F. GARAU SOBRINO, M.L. LORENZO GUILLÉN, F.J. MONTERO MURIEL), Comentario al Reglamento (UE) nº 1215/2012 relativo a la competencia judicial, el reconocimiento y la ejecución de resoluciones judiciales en materia civil y mercantil (Reglamento Bruselas I refundido), Aranzadi-Thomson Reuters, 2016; R. ARENAS GARCÍA, "Del Reglamento Bruselas I al Reglamento Bruselas I bis", REDI, 2013, pp. 377-382; F. GASCÓN INCHAUSTI, "Reconocimiento y ejecución de resoluciones judiciales extranjeras en la ley de cooperación jurídica internacional en materia civil", CDT, 2015, pp. 158-187; F. GASCON INCHAUSTI, Reconocimiento y ejecución de resoluciones extranjeras en el nuevo reglamento Bruselas I Bis, Valencia, Tirant lo Blanch, 2016; F.J. GARCIMARTIN ALFEREZ / S. SANCHEZ FERNANDEZ, "El nuevo Reglamento Bruselas I: qué ha cambiado en el ámbito de la competencia judicial", Civitas. Revista española de derecho europeo, n. 48, 2013, pp. 9-35; Mª Á. RODRIGUEZ VAZQUEZ, "Una nueva fórmula para la supresión del exequátur en la reforma del reglamento Bruselas I", CDT, 2014, vol. 6, Nº 1, pp. 330-348.

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? ***See previous answer.***

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?

Not particular problems have arisen with regard to the issue.

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

Not particular problems have arisen with regard to the issue.

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).

Not particular problems have arisen with regard to the issue.

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?

Not particular problems have arisen with regard to the issue.

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)?

Not particular problems have arisen with regard to the issue.

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?

Not particular problems have arisen with regard to the issue.

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))?

Not particular problems have arisen with regard to the issue.

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?

Not particular problems have arisen with regard to the issue.

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 particular problems have arisen with regard to the issue.

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?

Not particular problems have arisen with regard to the issue.

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?

Not particular problems have arisen with regard to the issue.

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?

Art. 35 RB I-bis is applicable when the provisional measure must be complied with in that Member State. The domicile of the parties is irrelevant for these purposes. Consequently, Art. 35 RB I-bis is applicable even if an arbitrator hears the merits of the matter (ATS 8 October 2002). In spite of this, the courts of the Member State where the assets are located and where the precautionary measure must be executed, will be competent to adopt the provisional measures provided for in the Procedural Law of the Member State to which the court belongs.

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? ***Under Spanish Law, the courts may only order provisional measures if they have to be executed in the Spanish territory (Art . 22 LOPJ (Ley orgánica del Poder Judicial 1/1985))***

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 particular problems have arisen with regard to the issue.***

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?

Not particular problems have arisen with regard to the issue.

63. Abandoning *exequatur,* Section 2 of Chapter III grants direct access to national enforcement agents (in a wide sense, including particularly courts and *huissiers*) or enforcement agencies. Have such agents or members of such agencies in your jurisdiction received specific training or instruction on how to deal with enforcement requests based on judgments rendered in other Member States? If so, who undertook the effort and who seized the initiative? ***No instructions have been elaborated as far as I know***.

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?

Not at all.

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 specific measures have been taken with regard to this issue.***

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?

Not particular problems have arisen with regard to the issue.

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

Not particular problems have arisen with regard to the issue.

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

Not at all.

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?

Not particular problems have arisen with regard to the issue.

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 change has been observed. What art. 45.1.a considers the cause of refusal of recognition is that it (= the recognition), is contrary to public policy of the requested State. It is not that the "resolution" rendered in another Member State is contrary to public order. It is, solely, to prevent the introduction of a resolution in the legal order of the requested Member State resulting in a violation of the fundamental legal principles of it. Therefore, the terms of the contradiction are (i) "recognition" and (ii)***

"public policy". In accordance with that, as the AAP Barcelona 14 May 2015 [loan contract] explains, what happened before the ruling (= the "how the decision was reached" in the Member State of origin) can not be assessed to oppose public policy to the recognition of the decision in the requested Member State. Recognition may affect the public policy of the requested Member State only when the ruling and other legal pronouncements contained in the resolution (= what is "recognized") disturbs, damages and seriously harms the fundamental legal principles of the requested Member State. The legal-intellectual process that led to the ruling in the Member State of origin (= everything that happened in the procedure developed there) is not recognized, so that in no case may it violate the public order of the requested State. The facts given by proven can not damage the public order of the requested Member State either. Only the "decisions of the foreign resolution" are recognized. Only when the text of the Brussels I-bis Regulation authorizes it is it possible to "enter into the procedure" carried out in the Member State of origin and to refuse recognition for that reason.

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

Not particular problems have arisen with regard to the issue.

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

Not particular problems have arisen with regard to the issue.

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?

Not particular problems have arisen with regard to the issue.

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?

Not particular problems have arisen with regard to the issue.

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?

    Under Spanish Law, the grounds for opposition to the execution of Member State judgement are included in Arts. 556 LEC (for judicial decisions), Art. 557 (non-judicial or arbitration resolutions) Art. 558 LEC (specific case of pluspetition) and Art. 599 (opposition due to procedural defects), all these rules contained in the LEC 1/2000. Thus, the defendant may invoke the circumstance that a public deed of mortgage loan granted in another Member State contains "abusive clauses" (Article 557.1.7º LEC).

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

    See previous answser.

77. Has the precedence of Art. 351 TFEU to Article 71 Brussels Ia, as established by the CJEU in *TNT v AXA* (C-533/08) and *Nipponkoa Insurance Co. (Europe) Ltd v Inter-Zuid Transport BV* (C-452/12) prompted any practical consequences in your jurisdiction? ***Not particular problems have arisen with regard to the issue.***

78. Which Treaties and international Conventions have triggered Article 71 in your jurisdiction? ***Not particular problems have arisen with regard to the issue.***

79. Have there been problems in your Member State with the delineation of the application of Article 25 Brussel Ia and the The Hague Convention on Choice-of-Court agreements? ***Not particular problems have arisen with regard to the issue.***

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

Not particular problems have arisen with regard to the issue.