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

Belgium

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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?

   Transparency of case law in Belgium is notoriously problematic.[1] Judgments of the lower courts in ordinary are not systematically published online on the *Juridat* website.[2] Relevant judgments are picked up through informal channels by law journals that are usually behind a pay wall. A useful tool to query Belgian judgments with a direct relevance to private international law are the databases compiled by Tijdschrift@ipr.be[3] or EUPILLAR.[4] Judgments of the Court of Cassation – the supreme court in ordinary – are generally readily accessible online,[5] with older precedents having been digitalised by the KU Leuven Law Library until 1970.[6] The Constitutional Court, being organisationally autonomous from the courts and tribunals in ordinary, publishes its case law on its own website.[7]

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

   The general tendency throughout the case law is that the CJEU case law allows the Belgian courts to interpret the Brussels Ia Regulation when necessary. What is more, the supreme court in ordinary has interpreted residual private international law – confined in the Private International Law Act 2004 (hereafter 'Act 2004') in light of the Brussels Ia Regulation.[8] Art 96 Act 2004, containing the rule of jurisdiction in matters relating to tort, was interpreted by reference to the *Harald Kolassa v Barclays Bank plc* judgment on Art 7(2) of the Brussels Ia Regulation.[9]

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[1] 'The EU Justice Scoreboard' <https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2019_en.pdf> figure 25 (accessed 31 July 2019)

[2] http://jure.juridat.just.fgov.be/JuridatSearchCombined/?lang=nl

[3] https://www.ipr.be/nl/databank-rechtspraak

[4] https://w3.abdn.ac.uk/clsm/eupillar/#/search/national

[5] www.cass.be

[6] https://bib.kuleuven.be/rbib/collectie/online-tijdschriften/cassatie/arresten-van-het-hof-van-cassatie

[7] www.const-court.be

[8] Act of 16 Juli 2004, *Belgian State Gazette* 27 July 2004, 57.344.

A translation of the Act 2004 by Caroline Clijmans and Paul Torremans to English can be consulted on https://sociedip.files.wordpress.com/2013/12/belgica-the-code-of-private-international-law-2004.pdf.

[9] Cass. 24 May 2018, C.17.0514.N.

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 main innovation of the Brussels Ia Regulation, that is, the abolition of the *exequatur*, has been received positively by Belgian legal scholarship, although some interpretational difficulties have been flagged – as will be discussed below.

The explicit exclusion of arbitration is deemed to be insufficient to clarify the relationship between the Brussels Ia Regulation and arbitral proceedings. More than clarifying this relationship, the Regulation confirms the issues that pervade existing case law.[10]

The implementation of a *forum non conveniens*-like *lis pendens* rule in relation to courts of third states (Art 33) is seen as a significant departure from the CJEU's *Owuso* case law.[11] The fact that its scope of applicability does not extend to the only jurisdictional grounds that have a universal territorial scope of applicability (the consumer and employment section) is experienced as contradictory.[12]

There is some uncertainty about the right interpretation of Recital (20): does it require applying the substantive law of the *forum prorogati*, or the law including the relevant conflict rules (*renvoi*).[13] Moreover, it has been noted that Recital (20), if interpreted as requiring the application of *renvoi*, undermines harmonisation since the Rome I Regulation does generally not apply to choice of court clauses.[14]

The new *lis pendens* rule that is applicable in case of a choice of court agreement is received positively, although it was noted that it does not provide any assistance when a choice of court agreement is not exclusive.[15]

[10] Geert Van Calster, 'L'EEX Nouveau (Ofte:Brussel I Bis) Est Arrivé. De Hervorming van de Moeder van Het Europees Internationaal Privaatrecht' [2015] Rechtskundig Weekblad 1443, para 15.
[11] Case C-281/02 ECLI:EU:C:2005:120.
[12] Van Calster (n 10) para 26.
[13] Jean-Louis Van Boxstael and others, 'De Bruxelles I à Bruxelles Ibis' (2015) 134 Journal des tribunaux 89, para 29. The latter solution seems to be preferred: Geert Van Calster, 'Happy Flights v Ryanair. Belgian Supreme Court (only) confirms proper lex causae for validity of choice of court under Article 25 Brussels Ia' (GAVC Law, 11 March 2019) <https://gavclaw.com/2019/03/11/happy-flights-v-ryanair-belgian-supreme-court-only-confirms-proper-lex-causae-for-validity-of-choice-of-court-under-article-25-brussels-ia/> accessed 22 July 2019.
[14] Geert Van Calster, 'Brussel I(Bis)-Verordening: Exclusieve Bevoegdheids Gronden En Forumbedingen' in Thalia Kruger and Benoît Allemeersch (eds), *Europees Burgerlijk Procesrecht* (2015) paras 38–39; Van Boxstael and others (n 13) para 29; Van Calster (n 10) para 33.
[15] Thalia Kruger, 'Parallelle Procedures' in Thalia Kruger and Benoît Allemeersch (eds), *Europees Burgerlijk Procesrecht* (2015) para 23.

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?

   In reality, the criticism delivered in legal scholarship is generally not reflected by any mayor difficulties in the application of the Brussels Ia Regulation by the Belgian courts. The courts seem to be able to apply the Regulation with relative ease, notwithstanding occasional issues of interpretation.

   One important exception is the case law regarding Art 25 Brussels Ia. The regime governing the validity of choice of court agreements, enshrined in Art 25(1) Brussels Ia, does not seem to be applied correctly in the case law of the supreme court in ordinary. While the Court applied the *lex fori prorogati* as provided in Art 25(1) Brussels Ia, it did not apply that law comprising its conflict of laws as provided by Recital (20) Brussels Ia.[16] As a consequence, it seems advisable to either include Recital (20) in Art 25 Brussels Ia or to abandon the Recital all together.

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

   There is no evidence of such a tension in the studied case law concerning the Brussels Ia Regulation. That is not to say that the practice of the Belgian courts champions autonomous interpretation, since the case law on the Brussels I Regulation has proven to misapply or disregard the principle of autonomous interpretation in the past – e.g. in characterising actions based on unjust enrichment.[17] It is not unlikely that these issues will continue to pervade the case law of the Belgian courts on the Brussels Ia Regulation.

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

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[16] Cass. 8 February 2019, AR C.18.0354.N. Geert Van Calster, 'Happy Flights v Ryanair. Belgian Supreme Court (only) confirms proper lex causae for validity of choice of court under Article 25 Brussels Ia' (GAVC Law, 11 March 2019) <https://gavclaw.com/2019/03/11/happy-flights-v-ryanair-belgian-supreme-court-only-confirms-proper-lex-causae-for-validity-of-choice-of-court-under-article-25-brussels-ia/> accessed 22 July 2019.

Also see CoA Ghent 16 November 2016 [2018] TGR-TWVR 69.

[17] Thalia Kruger and Eline Ulrix, *De Toepassing in België van de Europese IPR-Verordeningen* (Intersentia 2016) 15.

N/A

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?

   There was no published case law about negative conflicts of jurisdiction. Should a negative conflict arise, however, Belgian residual private international law provides for a *forum necessitates* rule in Art 11 Act 2004.[18] This rule offers the Belgian courts a certain extent of leeway in resolving negative conflicts of jurisdiction.

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)?

   The majority of the rules governing relative and territorial competence are contained in the 1967 Code of Civil Procedure. Additionally, many aspects of relative and territorial competence are provided in specific statutes, such as the Act on the Use of Language in Court Proceedings,[19] the Code of Economic Law,[20] and the Companies and Associations Act.[21]

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.

   Recital (12) has sometimes been deemed to be insufficient to clarify the state of the law. Instead of providing clarity about the impact of the Brussels Ia Regulation on arbitral proceedings, the Recital was found to import the pre-

[18] *"Notwithstanding the other provisions of the present statute, the Belgian courts will exceptionally have jurisdiction when the matter presents close connections with Belgium and proceedings abroad seem impossible or when it would be unreasonable to demand that the action be brought abroad."*
[19] *Belgian State Gazette*, 22 June 1935, 4.002.
[20] *Belgian State Gazette*, 29 March 2013, 19.975 – e.g. Art XI.337, which concentrates jurisdiction over disputes concerning patents in the commercial court of Brussels
[21] Act of 23 March 2019, *Belgian State Gazette* 4 April 2019, 33.239.

existing issues that arose in the CJEU case law directly into the Brussels Ia Regulation.[22]

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.

    There have been no issues in the studied case law. Belgian legal scholarship has incidentally commented on the delineation between the Brussels Ia Regulation and the Insolvency Regulation.[23]

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

    N/A

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

    N/A

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?

    N/A

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

[22] Niuscha Bassiri, 'Article 1691' in Niuscha Bassiri and Maarten Draye (eds), *Arbitration in Belgium. A Practitioner's Guide* (2016) paras 26–27; Van Boxstael and others (n 13) para 13; Van Calster (n 10) paras 14–15.
[23] Van Boxstael and others (n 13) para 4; Geert Van Calster, 'ÖFAB: de niet steeds heldere verhouding tussen de EEX en de insolventieverordening' [2015] Tijdschrift voor Belgisch Handelsrecht (TBH) 64–66.

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'?

Belgian legal scholarship has commented that Art 2(a), second paragraph Brussels Ia has codified the limitation to the free circulation of provisional measures issued by a court that has jurisdiction to decide on the merits developed in C-125/79 *Denilauler*. There, circulation was barred for judgments ordering provisional matters handed down following unilateral proceedings that had not been served to the defendant.[24] Going further, that provision has been nuanced by Recital (33) (containing a carve out for the recognition and enforcement under the national law of the Member State where enforcement is sought) and Art 40 Brussels Ia (which, in combination with 42(2)(c) and 43(3), allows to use the protective measures that exist in the national law of the Member State where enforcement is sought).[25]

The reform concerning provisional measures has not been met with any apparent criticism by the majority of legal scholarship.[26] Much more than the technical modalities of the reform of Art 2, it was argued that the modifications implemented too much harmonization. It has been argued that the need for harmonization was not pressing, because the pre-existing CJEU case law did not excessively impede the free circulation of provisional measures within the EU.[27]

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

    There is limited evidence that Art 2(a) Brussels Ia requires that a court should establish its jurisdiction on the merits to be within the regime of enforcement and recognition. The Antwerp commercial court, Hasselt section, seized with an action aimed at obtaining the provisional payment of a debt, held that it should first 'establish its jurisdiction over a possible suit on the merits' for that

[24] Case C-125/79 ECLI:EU:C:1980:130, para 13, 15, 17.
[25] Arnaud Nuyts, 'Cross-Border Provisional Measures: Stepping Backwards in the Brussels I Recast' [2019] European Private International Law at 50 83, 93; Van Boxstael and others (n 13) paras 70–71.
[26] Van Boxstael and others (n 13) para 70.
[27] Van Calster (n 10) paras 42–43.

measure to be covered by Art 2(a) Brussels Ia.[28] This statement is based on practical considerations. The court held that the 'certificate concerning the enforcement of a judgment in civil and commercial matters' (Annex I Brussels Ia) is usually completed by the court's registrar or a specialized judge in the court. This person would not be able to assess whether the court issuing the provisional measure has jurisdiction on the merits, as required by item 4.6.2.2. of the certificate.[29]

The Antwerp court of appeals, seized with an action on the merits, did not determine its jurisdiction on the merits before ordering a provisional measure prior to hearing the case. It held that the assessment of jurisdiction on the merits was to be performed following the submission of the written pleadings by the parties in accordance with the schedule agreed by the parties.[30]

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?

    There is no relevant Belgian case law on this subject. NUYTS argued that provisional measures could benefit from the regime of recognition and enforcement contained in the Brussels Ia Regulation, even if the court issuing the measures was not seized with a claim on the merits. It would suffice that the court issuing the measures could hypothetically exercise jurisdiction on the merits, irrespective of whether the court effectively did. Support for this point of view was found in the text of Art 2(a) Brussels Ia:

    > "Article 2(a) requires only that the court of origin has, by virtue of the Regulation, jurisdiction as to the substance of the matter, *without requiring that a substantive claim has already been brought before that court.*"[31] [Emphasis added]

[28] Comm. Antwerp (Hasselt section) 2 July 2015 [2015] Tijdschrift@ipr.be 62 para 13. See on this judgment also Geert van Calster, 'The Rome Regulations in Belgian legal practice', in Emmanuel Guinchard (ed.), *Rome Regulations* (Intersentia, forthcoming 2019).
[29] ibid (Antwerp commercial court).
[30] CoA Antwerp 26 October 2017 [2019] TBH 121.
[31] Nuyts (n 25) 89–90.

It was also argued that "[if] the court before which an application for provisional measures was made was already seized at the time that proceedings on the substance were brought before the court of another Member State, the provisional measures should freely circulate. By application of the principle of *perpetuario fori*, the court which was competent under Article 35 at the time of the bringing of the application for provisional measures should have the power to issue (and/or to refuse to withdraw) the certificate stating that it has jurisdiction as to the substance of the matter."[32]

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?

NUYTS argued that such a review is possible to the extent that the only outcome of the verification of the jurisdiction of the court of origin can be the non-enforceability of the provisional measure. In support of this statement, reference was made to the case law of the CJEU on the Brussels I Regulation and on the Brussels II*bis* Regulation.[33]

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*)?

N/A

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?

[32] ibid 90.
[33] ibid.

The litigation practice in the Belgian courts does not seem to be influenced by the universalization of the consumer and employment sections of Brussels Ia Regulation. One of the explanations may be that the quantitatively most significant part of B2C litigation involves intra-EU disputes.

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?

    N/A

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)?

    N/A

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 studied published case law contained three judgments about the temporal scope of applicability of the Brussels Ia Regulation. The first of which established *ex officio* the temporal applicability of the Brussels Ia Regulation to determine jurisdiction to issue a provisional measure.[34] Another judgment applied the Brussels I Regulation despite the fact that the proceedings were introduced after 10 January 2015 (namely by a writ of summons of 7 July 2015).[35] The third and final judgment applied the Brussels Ia Regulation despite

[34] Comm. Antwerp (Hasselt section) 2 July 2015 [2015] Tijdschrift@ipr.be 62 para 12.
[35] CoA Antwerp 22 March 2017 [2017] Rechtspraak Antwerpen Brussel Gent (RABG) 1380.

the fact that the suit was started before 10 January 2015 (by writ of 17 November 2014).[36]

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 Brussels Ia appeared to be the most frequently applied provision, which confirms the trend in the pre-existing practice under the Brussels I Regulation.[37] There are few precedents about Art 8 Brussels Ia.

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?

    Two issues arise relatively frequently in the case law of the Belgian courts. The first one is the interpretation of the concept of 'matters relating to a contract', which delineates the scope of applicability of Art 7(1) Brussels Ia. A recent example is the preliminary reference to the CJEU by the first instance court of Dinant regarding the characterization of the compulsory membership of a law society. [38] The frequency of issues regarding the interpretation of the concept of 'matters relating to a contract' under Art 5(1) Brussels Ia is indicative that similar question will arise under Art 7(1) Brussels Ia. Another issue pertaining characterization arose in a case before the first instance court of Gent was seized with an action regarding a loan agreement. Referring to the CJEU's *Kareda* ruling, the court first held that the 'service' concept requires the provision of a service in return for a remuneration. Applying this definition to the loan agreement, the court held that the agreement at issue did not constitute a service because the granter was not entitled to obtain a remuneration.[39]

[36] Comm. Antwerp 8 July 2015 [2017] RABG 339.
[37] See Kruger and Ulrix (n 17).
[38] The Case is C-421/18, with the Opinion of the AG having been released on 29 July 2019, advising that the membership is caught by the Regulation, and is of a contractual nature. See Geert Van Calster, 'Dinant Bar v maître JN. Bar membership fees. Saugmansdgaard ØE on whether they are at all 'civil and commercial' and if so, whether they are 'contractual'', www.gavclaw.com, 21 August 2019.
[39] FI Gent 20 December 2017 [2018] Tijdschrift@ipr.be 70.

The second relatively frequent issue is the localization of the place of performance under Art 7(1)(b) Brussels Ia. In the context of B2C litigation not covered by the consumer section, there is case law about the application of Art 7(1) to contracts for the carriage of passengers by air – mostly concentrated in the territorial jurisdiction of the Charleroi courts given the presence of the Airport of Charleroi/Brussels South. This case law, while being relatively significant in terms of quantity, does not unveil any particular issues in applying Art 7(1)(b) Brussels Ia. It generally applies the CJEU's *Rehder* case law regarding the determination of the place where a service was provided in case of multiple places of provision.[40] The Antwerp commercial court (Hasselt section) ruled that the reference in the general terms and conditions to the *ex works* Incoterm should be understood as an agreement on the place of performance of a sales agreement within the meaning of Art 7(1)(b) Brussels Ia.[41]

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?

    N/A

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?

    Art 7(2) has been the subject of two judgments in the context of Brussels Ia. The Commercial Court of Antwerp ruled that the fact that the content of a

[40] JP Charleroi 31 January 2018 [2019) Tijdschrift van de Vrederechters (T.Vred.) 144; JP Charleroi 4 January 2017 [2018] T.Vred. 30.
[41] Comm. Antwerp 23 November 2016 [2017] DAOR 131.

website is partially but not exclusively targeted to consumers in Belgium suffices to conclude that the *locus delicti commissi* is in Belgium.[42]

Additionally, the Supreme Court in ordinary has interpreted a provision of residual private international law (Art 96 Act 2004) in terms of the CJEU case law relating to Art 7(2), relying on the CJEU's *Harald Kolassa v Barclays Bank plc* judgment.[43]

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

The studied case law did not contain any judgments regarding the recovery of cultural objects.[44]

28. Have there been any significant controversies in connection with other rules on jurisdiction under Article 7, 8 and 9, if so which particular rule: regarding claims based on acts giving rise to criminal proceedings, interpretation of 'operations of a branch, agency or other establishment, claims relating to trusts, claims relating to salvage of a cargo or freight, proceedings involving multiple defendants, third-party proceedings, counterclaims, contractual claims related to a right *in rem* on immovable property, limitation of liability from the use or operation of a ship?

The Antwerp court of appeal held that in the application of Art 8(1) Brussels Ia account should be given to the domicile of the administrator of a company that went into receivership, instead of the seat of the company itself. It was held that a company in receivership no longer has a corporate seat (pursuant to Belgian law). As a consequence, service has to be done to the domicile of the administrator of the company.[45] The court sits uneasily with the requirement that the Brussels Ia Regulation's provisions require that the domicile of legal persons should be interpreted autonomously from national law.[46]

The Ghent commercial court held that a direct action brought by a sub-buyer against a manufacturer[47] could not be considered to be 'an action on a warranty

[42] Comm. Antwerp 6 June 2018 [2018] RABG 1569; Comm. Antwerp 8 July 2015 [2017] RABG 339.
[43] Cass. 24 May 2018, AR C.17.0514.N.
[44] Under Belgian residual private international law, see V Sagaert, 'De lotgevallen van een oude Breughel in het IPR-goederenrecht' (note) [2007] RW 965-968.
[45] CoA Antwerp, 17 May 2018, [2019] Tijdschrift voor Rechtspersoon en Vennootschap - Revue pratique des sociétés (TRV-RPS), para 6.
[46] Recital (15 Brussels Ia).
[47] See Case C-26/91 *Jakob Handte v TMCS*.

or guarantee' in the meaning of Art 8(2) Brussels Ia.[48] The action was found to be an independent cause of action.

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?

    N/A

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?

    N/A

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

    In general, the appropriateness of these provisions is not questioned. The expansion of the territorial scope of application of the consumer and employment section was met with some positive comments.[49] VAN CALSTER noted that the consumer section of Brussels Ia is more fit to ensure a more effective protection of consumers, since litigation involving e-traders which are incorporated in a third state will be subject to the same jurisdictional rules throughout the EU.[50] Nuancing the positive effects of the expansion of the territorial scope of applicability of the consumer and employment section, BOULARBAH observed that the national rules of jurisdiction may provide a more effective protection. Ironically, the potential positive effects in litigation involving third state businesses of employees of more protective national

[48] Comm. Gent 19 April 2016 [2016] TGR-TWVR 277.
[49] Fieke Van Overbeeke, 'Brussel I(Bis)-Verordening Inzake Niet Uitsluitende Bevoegdheidsgronden En Zwakke Partijen' in Thalia Kruger and Benoît Allemeersch (eds), *Europees Burgerlijk Procesrecht* (2015) paras 9–10.
[50] Van Calster (n 10) para 22.

grounds of jurisdiction have been eclipsed by the universalization of the scope of applicability of the consumer and employment sections of Brussels Ia – in these cases, consumers and employees can no longer benefit from the provisions of residual PIL even if they are more beneficial than the rules contained in Brussels Ia[51]

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

    The Charleroi first instance court held that Article 11 Brussels Ia applied to a heir who entered into the rights resulting from an insurance policy concluded by a deceased person.[52]

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?

    The justice of the peace of Charleroi assessed jurisdiction in a B2C dispute under the consumer section, despite the fact that the defendant (the professional)[53] did not raise an objection as to the court's adjudicatory jurisdiction.[54] In doing so, the court preferred applying the consumer section *ex officio* instead of qualifying the lack of objection on the part of the defendant as a submission to the forum within the meaning of Art 26 Brussels Ia.

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?

    N/A

[51] Van Boxstael and others (n 13) para 19.
[52] FI Charleroi 31 August 2016 [2018] Revue du notariat belge 511.
[53] The defendant's professional capacity cancelled out the application of Art 26(2) Brussels Ia. As a consequence, Art 26(1) Brussels Ia could have been applied without reservation.
[54] JP Charleroi 1 August 2017 [2018] T.Vred. 257.

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 published case law did not provide any evidence of such difficulties. Applying the Brussels I Regulation, one court explicitly welcomed the insertion of a ground of jurisdiction for connected actions in Art 20(1) Brussels Ia, observing the lack of such a jurisdictional basis in Art 18(1) Brussels I.[55]

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?

    In one case there was doubt as to the *in rem* nature of an action. The case concerned an action brought between former partners who shared a common residence. Under Belgian law, their relationship is subject to the common rules of property law. Following the termination of the relationship, a dispute concerning the repartition of co-owned property arose. Consequently, an action for the judicial, that is, forced repartition of the property was brought before the court. The question was whether this action resorted under Art 24(1) Brussels Ia. The court of appeals found that the action for repartition was not an action *in rem,* because the forced repartition of co-owned property was merely a modality of the action for repartition.[56]

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

[55] ECoA Brussels 3 March 2015 [2016] RABG 184.
[56] CoA Antwerp 22 March 2017 [2017] RABG 1380.

the courts in your Member State experience difficulties in this respect and, if so, how are these problems dealt with?

Belgian law relies on the statutory seat theory, since recent reforms of company law (Art 110 Act 2004). Historically, until the recent overhaul of company law including PIL aspects of company law in 2018, Belgian law relied on the real seat, complemented with an additional fall-back rule should the application of the real seat principle lead to a negative conflict of laws. The real seat theory has been abandoned in the context of a major overhaul of Belgian company law, because it was argued that it hindered the free movement of companies within the EU.[57] Critics of this legislative reform argued that the real seat theory fulfilled an important function in debtor protection, which cannot be fulfilled by the statutory seat theory.[58]

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?

N/A

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.

N/A

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

[57] Art 14 Act of 23 March 2019, *Belgian State Gazette* 4 April 2019, 33.239; Gillis Lindemans, 'Breaking news: Wetboek Vennootschappen en Verenigingen goedgekeurd door ministerraad' (Corporate Finance Law) <https://corporatefinancelab.org/2018/05/25/breaking-news-wetboek-vennootschappen-en-verenigingen-goedgekeurd/> accessed 22 July 2019; Marc Van de Looverbosch, 'Real seat theory vs incorporation theory: the Belgian case for reform' (Corporate Finance Law) <https://corporatefinancelab.org/2017/02/21/real-seat-theory-vs-incorporation-theory-the-belgian-case-for-reform/> accessed 22 July 2019.

[58] Joeri Vananroye and Gillis Lindemans, 'Ook dwang moet dwingend zijn. De werkelijke zetel als schuldeisersbescherming' (Corporate Finance Law) https://corporatefinancelab.org/2017/04/06/ook-dwang-moet-dwingend-zijn-de-werkelijke-zetel-als-schuldeisersbescherming/ accessed 31 July 2019.

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?

N/A

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?

    N/A

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?

    As far as a survey of the publically available case law allows to assess, there has been no increase. VAN CALSTER has argued that this modification is desirable as it will offer more legal certainty and attract litigation to the courts of the Member States of the EU.[59]

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 particular issue in Belgian practice is the formal validity of choice of court clauses contained in the general terms and conditions attached to invoices (pertaining Art 25(1)(b) Brussels Ia). The Leuven commercial court applied the

[59] Van Calster (n 10) para 30.

general rule of Belgian commercial rule according to which B2B general terms and conditions, including choice of court, are binding if they have been tacitly accepted.[60] Here, the absence of an objection against the general terms and conditions can constitute a tacit acceptance.

The Antwerp court of appeals held that a party who signed a complementary agreement is not bound by a choice of court clause contained in the main agreement to which it was not privy (Art 25(1)(a) Brussels Ia).[61]

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?

N/A

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

It has been signalled that it is unclear how the terminology used in Art 25(1) Brussels Ia relates to the distinction between 'material validity' (comprising issues concerning the existence of a clause), 'formal validity' (comprising issues of form), and 'admissibility' (issues regarding the question whether parties are allowed to agree on a choice of court agreement). For example, legislation prohibiting the insertion of a choice of court clause in certain types of contracts is traditionally regarded to concerning admissibility. It is unclear whether for the purpose of Art 25 Brussels Ia that legislation should be regarded to be concerned with nullity.[62] Another example are formal requirements that aim at ensuring that a clause has been consented to: do challenges based on these formal requirements concern the substantive validity of a choice of court agreement?[63]

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

[60] Comm. Leuven 19 November 2018 [2019] Tijdschrift@ipr.be 81.
[61] CoA Antwerp 17 May 2018 [2019] TRV-RPS para 5.
[62] Van Boxstael and others (n 13) para 30.
[63] ibid.

to private international law in this context led to discussion in literature or difficulties in application for the judiciary in your Member State?

FRANCQ observed that Recital (20) is unclear as to the national law to be applied. The Recital refers to the law of the *forum prorogati* including its conflict rules (*renvoi*). This two-pronged reference is contradictory, as applying the conflict rules of the *forum prorogati* may exclude applying the substantive law of the *forum prorogati*.[64] Others interpret Recital (20) as entailing *renvoi*.[65]

The Supreme Court in ordinary has not applied Recital (20) as entailing renvoi. It held that the validity of a choice of court agreement conferring jurisdiction to the Irish courts was subject to Irish law. It then went on to apply Irish consumer law, excluded Irish conflict of laws. As a consequence, the case law of the Supreme Court provides a precedent for the lower courts to apply the *lex fori prorogati* excluding the private international law.[66] The ruling has been criticised for misapplying Recital (20) Brussels Ia.[67]

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

There is only one published precedent concerning the validity of a non-exclusive choice of court agreement under the Brussels I Regulation, which was assessed autonomously from substantive national law.[68] In respect of Brussels Ia, it has been suggested that the parties to a non-exclusive choice of court agreement can chose the law governing the validity of an optional choice of court agreement.[69]

The Ghent court of appeals applying Art 25 Brussels Ia held that a unilateral choice of court agreement is materially invalid and hence null under Belgian

[64] ibid 25. See CoA Ghent 16 November 2016 [2018] TGR-TWVR 69.
[65] Van Calster (n 10) para 32.
[66] Cass. 8 February 2019, AR C.18.0354.N.
[67] Geert Van Calster, 'Happy Flights v Ryanair. Belgian Supreme Court (only) confirms proper lex causae for validity of choice of court under Article 25 Brussels Ia' (GAVC Law, 11 March 2019) <https://gavclaw.com/2019/03/11/happy-flights-v-ryanair-belgian-supreme-court-only-confirms-proper-lex-causae-for-validity-of-choice-of-court-under-article-25-brussels-ia/> accessed 22 July 2019.
[68] CoA Ghent 14 January 2009 [2011] RABG 291.
[69] Michiel Poesen, Geert Van Calster, 'Optional Choice of Court Agreements: Legal Uncertainty despite a Modern Legal Framework' in Mary Keyes (ed), *Optional Choice of Court Agreements* (Springer 2019), forthcoming; Geert van Calster, *European Private International Law* (2nd edn, Hart Publishing 2016) 126.

law because of its 'pure potestative' nature, meaning that it gives one of the parties the complete discretion to act in a certain manner.[70]

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?

    N/A

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?

    The application of Art 26 Brussels Ia does not appear to be problematic.[71]

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).

    N/A

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?

    N/A

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

[70] CoA Ghent 16 November 2016 [2018] TGR-TWVR 69.
[71] Comm. Antwerp 11 December 2018 [2019] Tijdschrift@ipr.be 71.

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)?

It has been argued that the a court should be seized in Belgium when the document instituting the proceedings is received by the authority responsible for service.[72]

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?

N/A

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))?

N/A

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?

N/A

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?

Article 33 Brussels Ia has been criticized for having a too restrictive scope of applicability, in that is does not apply to the consumer and employment sections.

[72] Michael Traest, 'Artikel 7' 64 (2004) Artikelsgewijze commentaar gerechtelijk recht 106, para 7.

Those sections having a universal territorial scope of applicability would call for the applicability of a mechanism such as the one contained in Article 33 Brussels Ia.[73]

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?

    N/A

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, with the caveat concerning its limited scope of applicability that excludes consumer and employment disputes (see item n° 56 above).

Provisional measures, protective measures

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

    The Belgian courts generally do no encounter major difficulties in determining whether a measure is covered by Art 35 Brussels Ia. There are only two types of questions relating to the provisional nature of a measure that seems to give rise to litigation in the Belgian courts. The first type are measures aimed at preserving evidence. Here, the Court of Cassation confirmed that the appointment of a court expert in expedite proceedings with the aim of conserving evidence is a provisional measure covered by Article 35 Brussels Ia.[74]

    The second type of issue relates to the extent to which a provisional measure can result in circumventing the normal grounds of jurisdiction contained in Brussels Ia. The Antwerp commercial court held that Article 35 Brussels Ia does not allow to issue a measure that is not admissible under the law that would be applicable to the merits.[75]

[73] Van Calster (n 10) para 26.
[74] Cass. 3 May 2018, AR C.17.0387.N, para 8.
[75] Comm. Antwerp (Hasselt section) 2 July 2015 [2015] Tijdschrift@ipr.be 62 para 18.

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?

    N/A

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.

    N/A

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?

    N/A

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?

    The National Chamber of Court Bailiffs (*Nationale Kamer van Gerechtsdeurwaarders*; *Chambre nationale des huissiers de justice*) offers training about the EU instruments relevant to enforcement, including the Brussels Ia Regulation. The training is offered within the context of a so-called e-learning platform, developed in cooperation with the National Chamber's counterpart in France, Italy, Luxembourg, and Poland (https://www.gerechtsdeurwaarders.be/europees).

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?

    It is unclear to where the competence to hear actions aimed against the enforcement of a judgment should be brought in Belgium. The Belgian federal government has declared that 'the first instance court' has jurisdiction, without

specifying the relevant court from the perspective of territorial jurisdiction (declaration under Art 75(a) Brussels Ia). It is submitted that a more precise drafting of the Brussels Ia Regulation could have avoided this issue.[76]

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?

N/A

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?

N/A

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?

The Constitutional Court issued a judgment on the compatibility of Art 1412*quinquies* of the Belgian code of civil procedure that confirms that the assets of a foreign state in Belgium cannot be seized. The claimant alleged that this provision violated the principle implemented by Brussels Ia according to which judgments shall be enforceable without any declaration of enforceability being required (Art 39 Brussels Ia). The provision of the code of civil procedure was found to be compatible with the Brussels Ia Regulation, because it did not impede the enforcement of a judgment and complied with the customary rules of international law.[77]

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

COUWENBERGH noted that it is unclear whether the enforcement judge can apply the grounds of refusal emanating from residual private international law alongside the grounds of refusal contained in Art 45 Brussels Ia.[78] Some argue that the national grounds of refusal may only be examined during the stage of actual enforcement.[79]

[76] Ilse Couwenberg, 'European Private International Law and the National Judge. Some General Refl Ections by a Belgian Judge' [2019] European Private International Law at 50 123, 134, fn 75.
[77] Const. 27 April 2017, nr. 48/2017, paras B.30.1.–B.30.2.
[78] Couwenberg (n 76) 134.
[79] Thalia Kruger, 'The Disorderly Infiltration of EU Law in Civil Procedure' (2016) 63 Netherlands International Law Review n 96.

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?

    There are no statistics.

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

    It has been argued that Article 45 generally is infringed by Belgium's Statute qualifying enforcement of judgments in favour of 'vulture funds'. The Statute provides that such enforcement is per se against Belgium's *ordre public*. Applicants argued inter alia that a per se violation infringes Brussels Ia's requirement that *ordre public* refusals be case-specific. The Constitutional Court, however, did not engage with these European issues in its rejection of the complaint.[80]

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?

    N/A

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

    N/A

[80] Const. 31 May 2018, nr. 61/2018, https://www.const-court.be/public/n/2018/2018-061n.pdf. See Geert Van Calster, 'Belgian Constitutional Court's ruling on vulture funds fails properly to answer arguments on the basis of EU law', 21 August 2018, https://gavclaw.com/2018/08/21/belgian-constitutional-courts-ruling-on-vulture-funds-fails-properly-to-answer-arguments-on-the-basis-of-eu-law/, and Geert Van Calster, 'Do not kick them while they are down. Vulture finds in private international law', in André-Pierre André-Dumont, Inez De Meuleneere, Anne-Sophie Pijcke (eds.), *The increasing impact of human rights law on the financial world*, Cahiers AEDBF /EVBFR no.28 (Intersentia 2016) 53–67.

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?

    N/A

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?

    N/A

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?

    N/A

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

    N/A

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?

    N/A

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

    N/A

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?

    N/A

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

    N/A

Annex I. Abbreviation of names of Belgian courts

Abbreviation	Full name (English)	Full name (Dutch/French)
Const.	Constitutional court	Grondwettelijk Hof/Cour Constitutionnelle
Cass.	Court of Cassation	Hof van Cassatie/Cour de Cassation
CoA	Court of appeals	Hof van beroep/Cour d'appel
ECoA	Employment court of appeals	Arbeidshof/Cour de travail
FI	Court of first instance	Rechtbank van eerste aanleg/Tribunal de première instance
Comm.	Commercial court	Rechtbank van koophandel/Tribunal de commerce Ondernemingsrechtbank/Tribunal des entreprises *since 1 November 2018*
JP	Justice of the peace	Vredegerecht/Justice de la paix

Annex II. References of cases

Court	Date	Reference[81]	Relevant provision Brussels Ia
Const.	31 May 2018	nr. 61/2018[82]	Art 45
Const.	27 April 2017	nr. 48/2017	Art 39
Cass.	8 February 2019	AR C.18.0354.N[83]	Art 25; Recital (20)
Cass.	24 May 2018	AR C.17.0514.N	Art 7(2)
Cass.	3 May 2018	AR C.17.0387.N	Art 35
ECoA Brussels	3 March 2015	[2016] RABG 184	Art 20(1)
CoA Antwerp	17 May 2018	[2019] TRV-RPS 401	Art 25; Art 8(1)
CoA Antwerp	26 October 2017	[2019] TBH 121	Art 2; Art 35
CoA Antwerp	22 March 2017	[2017] RABG 1380	Art 66
CoA Ghent	16 November 2016	[2018] TGR-TWVR 69	Art 25
Comm. Antwerp	11 December 2018	[2019] Tijdschrift@ipr.be 71	Art 26
Comm. Leuven	19 November 2018	[2019] Tijdschrift@ipr.be 81	Art 25
Comm. Antwerp	6 June 2018	[2018] RABG 1569	Art 7(2)
Comm. Antwerp	23 November 2016	[2017] DAOR 131	Art 7(1)

[81] A list of abbreviations of law journals published in Belgium can be consulted on https://www.law.kuleuven.be/apps/rechtsaf/afkortingen/index.
[82] www.const-court.be
[83] www.cass.be

Comm. Gent	19 April 2016	[2016] TGR-TWVR 277	Art 8(2)
Comm. Antwerp	8 July 2015	[2017] RABG 339	Art 7(2); Art 66
Comm. Antwerp	2 July 2015	[2015] Tijdschrift@ipr.be 62	Art 35; Art 66
FI Ghent	20 December 2017	[2018] Tijdschrift@ipr.be 70	Art 7(1)
FI Charleroi	31 August 2016	[2018] RNB 511	Art 11
JP Charleroi	31 January 2018	T. Vred.	Art 7(1); Art 26
JP Charleroi	1 August 2017	T. Vred.	Art 18
JP Charleroi	4 January 2017	T. Vred.	Art 7(1)