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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?

In Bulgaria there is a general obligation for publication of all judgments on the internet site of the respective court (Article 64 of the Judicial Power Act). The Supreme Judicial Council maintains a centralized website https://legalacts.justice.bg/ with different search functions, including key words, unfortunately not very precise. It is only in Bulgarian. The website of the Supreme Court of Cassation judgments is http://www.vks.bg/vks_p15.htm. The judgments there are also only in Bulgarian.

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

The CJEU case law provides sufficient guidance for the judiciary when the judiciary is aware of its existence and of its applicability to the respective case. The main source of structured CJEU case law is a Bulgarian commentary - "Brussels I Regulation", Ciela, 2012 (referred further as the "Commentary").

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 improvement based on Brussels Ia Regulation perceived as improvement in Bulgaria concerns the abolition of the declaration of enforceability prior to enforcement in the Member State addressed. That change made the cross-border litigation less time-consuming and costly. The amendments clarifying the free circulation of provisional matters are considered as helpful in practice due to the consolidation of the CJEU case law in the legislative text.

The courts face difficulties when they have to inform the weaker defendants (the policyholder, the insured, the beneficiary of the insurance contract, the injured party, the consumer or the employee) of their right to contest the jurisdiction of the court and of the consequences of entering or not entering an appearance (paragraph 2 of Article 26). The courts use standard notices that do not include special reference to this possibility and quite often miss this obligation.

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?

N/A

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

The Bulgarian case law is quite confused in qualifying disputes concerning loans made for finance of sale of immovable property in Bulgaria provided by Bulgarian banks to natural persons domiciled in another Member State. The debtors concluded the contracts in Bulgaria in person or via representatives whereas the banks never acted in the debtor's domicile Member State nor directed any activity to that Member State or to several States including that Member State. The Bulgarian courts tend to go for consumer contract qualification considering the national Consumer protection Act implementing the Consumer Directive 2014/17 than checking the conditions under paragraph 1 of Article 17[1]. In this context some judges qualify loans made to finance sale of immovable property as loans made to finance sale of goods (letter b), paragraph 1 of Article 17.)[2].

Another problematic qualification concerns the division of property of former spouses. Under the Bulgarian family law in case of divorce the former spouses become joint owner of the property subject to partition rules applicable to classical coownership. The specific matrimonial property aspects may be considered as preliminary questions whereas the subject matter of the case under the Bulgarian understanding remains the right *in rem*. This concept lead to judgments[3] applying Brussels Ia Regulation to those kind of disputes. The issue was resolved recently by CJEU in *Iliev* C-67/17 ECLI:EU:C:2017:459.

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

The Bulgarian Supreme Court of Cassation shares the view that the territorial jurisdiction within Bulgaria is a matter of the national procedural law[4].

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[1] ОПРЕДЕЛЕНИЕ № 446 ОТ 31.10.2018 Г. ПО Ч. Т. Д. № 2222/2018 Г., Т. К., I Т. О. НА ВКС.

[2] ОПРЕДЕЛЕНИЕ № 696 ОТ 27.02.2018 Г. ПО Ч. ГР. Д. № 818/2018 Г. НА АПЕЛАТИВЕН СЪД – СОФИЯ.

[3] ОПРЕДЕЛЕНИЕ № 27 ОТ 21.01.2012 Г. ПО Ч. ГР. Д. № 603/2011 Г., Г.К., I Г. О. НА ВКС, В ПОДОБЕН СМИСЪЛ И ОПРЕДЕЛЕНИЕ № 395 ОТ 09.08.2010 Г. ПО Ч. ГР. Д. № 140/2009 Г., .Г.К., I Г. О. НА ВКС.

[4] ОПРЕДЕЛЕНИЕ № 258 ОТ 17.04.2019 Г. ПО Ч. Т. Д. № 842/2019 Г., Т. К., II Т. О. НА ВКС, ОПРЕДЕЛЕНИЕ № 247 ОТ 12.04.2019 Г. ПО Ч. Т. Д. № 854/2019 Г., Т. К., II Т. О. НА ВКС.

The territorial jurisdiction for claims against insurer under the Bulgarian Civil Procedural Code follows the permanent or current address of the claimant, its seat or the place of occurrence of the insured event (Article 115, par. 2). This provision causes difficulties for foreign claimants seizing the court of the insurer's domicile as it is considered as exclusive not allowing reference to the main territorial jurisdiction based on the defendant's domicile[5].

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?

As stated above in point 6 the territorial jurisdiction for claims against insurer under the Bulgarian Civil Procedural Code envisaged in Article 115, par.2 excludes the general rule based on the defendant's domicile and may lead to situation where foreign claimants could be left without domestic court venue in Bulgaria.

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)?

In Bulgaria the rules on relative and territorial competence are to be found in the Civil Procedural Code.

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.

It cannot be said that the delineation between court proceedings and arbitration led to grave problems in Bulgaria. According to the prevailing case law of the Bulgarian courts Brussels Ia Regulation is not applicable for recognition and enforcement of foreign arbitration awards[6]. One Bulgarian court applied Brussels Ia Regulation for determining the international jurisdiction for rendering provisional, including protective, measures related to arbitration proceedings in another Member State[7]. As long as there were no significant questions raised before the Bulgarian courts in sense of the court-arbitration competition no crucial effect of Recital 12 have be established.

[5] ОПРЕДЕЛЕНИЕ № 258 ОТ 17.04.2019 Г. ПО Ч. Т. Д. № 842/2019 Г., Т. К., II Т. О. НА ВКС, ОПРЕДЕЛЕНИЕ № 170 ОТ 08.04.2019 Г. ПО Ч. Т. Д. № 221/2019 Г., Т. К., I Т. О. НА ВКС.

[6] РЕШЕНИЕ № 1758 ОТ 27.08.2018 Г. ПО Т. Д. № 1265/2017 Г. НА СОФИЙСКИ ГРАДСКИ СЪД, РЕШЕНИЕ № 200 ОТ 09.02.2015 Г. ПО В. ГР. Д. № 2380/2014 Г. НА ОКРЪЖЕН СЪД – ВАРНА, РЕШЕНИЕ № 162 ОТ 27.01.2014 Г. ПО Т. Д. № 7744/2012 Г. НА СОФИЙСКИ ГРАДСКИ СЪД.

[7] ОПРЕДЕЛЕНИЕ № 3520 ОТ 01.11.2018 Г. ПО В. ГР. Д. № 5417/2018 Г. НА АПЕЛАТИВЕН СЪД – СОФИЯ.

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.

The delineation between "civil and commercial proceedings" on the one hand and "insolvency proceedings" on the other hand led to some problems in Bulgaria in cases concerning claims for setting aside of contracts lodged by foreign insolvency administrators against Bulgarian companies in Bulgaria. Some courts referred to Art. 3, paragraph 1 Regulation (EU) 1346/2000[8]. In other decision the legal bases was drown from Bulgarian Code on Private International Law[9]. In addition, some courts considered avoidance action against defendant in other Member States as falling within the scope of application of Brussels I Regulation[10]. The Bulgarian Court of Cassation established international jurisdiction for avoidance claim lodged in Bulgaria by the liquidator appointed in a main proceedings in Germany by reference to Art. 18, paragraph 2 of Regulation (EU) 1346/2000. No secondary proceedings were initiated in Bulgaria in that case11. The latter case lead to the preliminary ruling of CJEU in *Wiemer & Trachte*, C-296/17, ECLI:EU:C:2018:902.

Unfortunately the latest case law of the CJEU in C-535/17, *NK v BNP Paribas Fortis NV* is not reflected neither in the literature nor the case law so far.

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

Sofia Appellate court[12] allowed recognition and enforcement of court settlement concerning property of former spouses in Bulgaria and in Finland referring to Brussels I Regulation. Plovdiv Appellate court rejected to issue the certificate under Article 60 of Brussels Ia Regulation with the reasoning that interested party was already provided with national enforcement title and thus is not allowed to acquaint a second one[13].

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[8] РЕШЕНИЕ № 34 ОТ 05.04.2013 Г. ПО ВЪЗЗИВНО ТЪРГОВСКО ДЕЛО № 62/2013 Г. НА АПЕЛАТИВЕН СЪД – БУРГАС, РЕШЕНИЕ № 1745 ОТ 03.08.2015 Г. ПО ТЪРГОВСКО ДЕЛО № 4650/2013 Г. НА АПЕЛАТИВЕН СЪД – СОФИЯ.

[9] РЕШЕНИЕ № 1342 ОТ 15.08.2014 . ПО ТЪРГОВСКО ДЕЛО № 3414/2010 СОФИЙСКИ ГРАДСКИ СЪД.

[10] ОПРЕДЕЛЕНИЕ № 8271 ОТ 06.08.2014 Г. ПО ТЪРГОВСКО ДЕЛО № 5655/2013 Г. НА СОФИЙСКИ ГРАДСКИ СЪД

[11] ОПРЕДЕЛЕНИЕ № 90 ОТ 28.01.2013 ПО ТЪРГОВСКО ДЕЛО № 846/2012 ВЪРХОВЕН КАСАЦИОНЕН СЪД.

[12] РЕШЕНИЕ № 2829 ОТ 01.12.2018 Г. ПО В. ГР. Д. № 1794/2018 Г. НА АПЕЛАТИВЕН СЪД – СОФИЯ.

[13] ОПРЕДЕЛЕНИЕ № 488 ОТ 12.10.2016 Г. ПО В. Ч. Т. Д. № 634/2016 Г. НА АПЕЛАТИВЕН СЪД – ПЛОВДИВ.

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?

Bulgarian court had to decide under Brussels I Regulation about the recognition and enforcement of Rumanian provisional measure issued in *ex parte* procedure where the measure become enforceable prior to the service to the defendant. In the given case the defendant had the right to oppose its enforcement after the commencement of the enforcement procedure. The first and second instance courts did not considered the measure as "judgment"[14], whereas the Supreme Court of Cassation ruled in favor of "judgment" qualification[15]. The judgments referred to Article 2(a) of Brussels Ia Regulation for the purpose of underlying the case law of CJEU and its incorporation in the Recast.

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'?

The definition of "judgment" in Article 2(a) for the purposes of the recognition and enforcement embodying the case law of CJEU is considered as helpful both in literature[16] and in the jurisprudence. As stated in point 14 even before the date of application of Brussels Ia Regulation the court used to refer as a reasoning linked the case law of CJEU to Article 2(a).

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?

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[14] РАЗПОРЕЖДАНЕ ОТ 09.06.2014 Г. ПО ГР. Д. № 4920/2014 Г. НА СГС, РЕШЕНИЕ № 486 ОТ 12.03.2015 Г. ПО ГР. Д. № 3427/2014 Г. НА АПЕЛАТИВЕН СЪД - СОФИЯ

[15] РЕШЕНИЕ №98 ОТ 23.03.2016 Г. ПО ГР. Д. №3166/2015. Г.О., IV, ВКС.

[16] *Musseva*, B. Reform of jurisdiction and exequatur in civil and commercial matters in the EU Member States (Regulation Brussels Ibis), in: Commercial Law, 4/2014, 22-23.

The Bulgarian literature shares the second view - the jurisdiction should be established according to the rules of the Regulation[17].

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?

In the first case the provisional measure incorporated in a judgment stemming from another Member State would be considered as "judgment" even though it is connected with a claim on the substance matter that has to be lodged subsequently. In the second case the judgment shall be effective unless its execution is suspended or excluded in the Member State of origin.

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?

According to the case law the Bulgarian courts rely on the information contained in the certificate issued pursuant to Article 53 and do not review the decision of the court of the other Member State[18].

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

[17] *Popova*, V., Actual Problems of the European Civil Procedure and Part VII of CPC, 2011, Ciela, p. 34.

[18] РЕШЕНИЕ № 59 ОТ 07.04.2017 Г. ПО Т. Д. № 36/2017 Г. НА ОКРЪЖЕН СЪД – РУСЕ.

ratione personae so as to enable consumers and employees to rely on the protective provisions of the Regulation against non-EU 'stronger party' defendants (Article 6(1) referring to, *inter alia*, 18(1) and 21(2)). Are there any statistics available illustrating an increased number of suit actions filed by consumers and/or employees in your jurisdiction?

No

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?

Yes, it was discussed in the literature in sense of both Brussels I Regulation[19] and Brussels Ia Regulation[20]. Following the reasoning that Article 26 is conditioned to Article 25 regarding the scope of application *ratione personae* it is considered as applicable regardless of the domicile neither of the defendant nor of the claimant.

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 Bulgaria Articles 29 and 30 (as well as Articles 28 and 29 Brussels I Regulation) are dealt with in the literature as covering *lis pendens* cases concerning claims in different Member States falling within the scope of the Regulation but not subjected to its jurisdiction rules, i.e. possible application regardless of the domicile of the defendant[21].

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?

It was difficult to establish the temporal scope of application of the Brussels Ia Regulation in situations where the decision from a different Member State falling within the scope of application of Brussels I Regulation was wrongly accompanied by a certificate issued pursuant to Article 53 Brussels Ia Regulation. The certificate under

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[19] Commentary, p. 289, Musseva, B., Through the Labyrinth of the International Jurisdiction for Civil and Commercial Matters, in: Juridicheski Svjat, 2/2006, p. 56-57.

[21] Musseva, B., Coordination of Parallel Proceedings before Courts of the EU Member-States, in: Juridicheski Svjat, 1/2010, p. 65.

Article 53 Brussels Ia Regulation did not contain any information about the institution of the legal proceedings. Usually the decision subject to recognition and enforcement is rendered by the upper instance and does not contain information about the initial date of the procedure before the first instance.

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?

Article 7, point 1 and 2.

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) matters relating to a contract – qualification of unjustified enrichment and *negotiorum gestio* qualified under the national law even when related to contract[22]. In some of these cases Article 7(2) was applied, in other the Bulgarian Code on Private International Law. The obligations of owners of property in a building relating to maintenance costs for communal areas rased the issues decided in *Ker*, C-25/18, ECLI:EU:C:2019:376.
    b) distinction between different type of contracts raised problems concerning: loans made for finance of sale of immovable property in Bulgaria provided by Bulgarian banks to natural persons domiciled in another Member State qualified as consumer contracts even though the condition of Article 17 were not met (see point 5 above).
    c) determination of the place of performance: loan agreement between private persons provided via bank transfer – place of performance linked to the "habitual domicile of the creditor"[23];

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

[22] ОПРЕДЕЛЕНИЕ № 5169 ОТ 12.10.2017 Г. ПО В. Ч. ГР. Д. № 766/2017 Г. НА ОКРЪЖЕН СЪД – БЛАГОЕВГРАД, ОПРЕДЕЛЕНИЕ № 5074 ОТ 09.10.2017 Г. ПО В. Ч. ГР. Д. № 758/2017 Г. НА ОКРЪЖЕН СЪД – БЛАГОЕВГРАД, ОПРЕДЕЛЕНИЕ № 4991 ОТ 04.10.2017 Г. ПО В. Ч. ГР. Д. № 726/2017 Г. НА ОКРЪЖЕН СЪД – БЛАГОЕВГРАД.

[23] ОПРЕДЕЛЕНИЕ № 129 ОТ 20.03.2018 Г. ПО В. Ч. ГР. Д. № 132/2018 Г. НА АПЕЛАТИВЕН СЪД – ПЛОВДИВ.

failure to pay the price has solely given rise to the dispute? If so, what is the prevailing view in the literature and case law on how the wording 'unless otherwise agreed' in Article 7(1)(b) is to be understood?

The BG case law follows the place where the goods were delivered or services provided even when the place of payment is agreed upon and a failure to pay the price has solely given rise to the dispute[24]. 'Unless otherwise agreed' in Article 7(1)(b) is not discussed from this point of view.

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?
    a) the wording 'matters relating to tort, delict or quasi-delict' – see 24 a).
    b) 'place where the harmful event occurred or may occur' – Bulgarian court dealt with jurisdiction in a case related to obligation arising from a road traffic accident leading to the death of a person in such an accident which took place in another Member State where as the damages were sustained by close relatives of that person who reside in Bulgaria. The Bulgaria court follwed an approach similar to Lazar Case of CJEU C-350/14 sticking to the place of the directly sustaind damage insted to the place of the habitual residence of the family member of the person who died as a result of a road traffic accident[25].
    c) infringement of intellectual property rights – The Bulgarian court tend to relay on Brussesl Ia Regulation[26];

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?

N/A

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[24] Commentary, p. 70, ОПРЕДЕЛЕНИЕ № 359 ОТ 31.05.2018 Г. ПО В. Ч. Т. Д. № 269/2018 Г. НА АПЕЛАТИВЕН СЪД – ВАРНА.

[25] ОПРЕДЕЛЕНИЕ № 342 ОТ 10.07.2017 Г. ПО Ч. Т. Д. № 1435/2017 Г., Т. К., I Т. О. НА ВКС.

[26] РЕШЕНИЕ № 1327 ОТ 25.06.2018 Г. ПО Т. Д. № 1432/2017 Г. НА СОФИЙСКИ ГРАДСКИ СЪД, ОПРЕДЕЛЕНИЕ № 1778 ОТ 22.01.2019 Г. ПО В. ГР. Д. № 10412/2018 Г. НА СОФИЙСКИ ГРАДСКИ СЪД

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?

From Bulgaria we can report a controversy in connection with the third-party proceedings due to a special limitation in the Civil Procedural Code (Article 2019 (2)) prohibiting participation of a third party in case it has neither a permanent address in Bulgaria nor it lives there. The prevailing case law[27] applies this restriction whereas the literature clearly argues against it[28].

Rules on jurisdiction in disputes involving 'weaker parties'

29. In the newly introduced paragraph 2 in Article 26, the Recast imposes the obligation upon the courts in Member States to inform 'weaker parties' of the right to oppose jurisdiction according to the protective provisions of the Regulation, but does not expressly regulates consequences of a court's failure to do so. What is the prevailing view in your jurisdiction on the point whether the omission of the court qualifies as a ground to oppose the recognition and enforcement of a decision rendered in violation of this obligation under Article 45?

In the Bulgarian literature a view on the matter states that the omission of the court to inform 'weaker parties' of the right to oppose jurisdiction under paragraph 2 in Article 26 does not constitute a ground to oppose the recognition and enforcement of a decision rendered in violation of this obligation under Article 45[29].

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?

[27] ОПРЕДЕЛЕНИЕ № 101 ОТ 15.06.2016 Г. ПО В. Ч.Т.Д. № 146/2016 Г. НА АПЕЛАТИВЕН СЪД - ВЕЛИКО ТЪРНОВО, ОПРЕДЕЛЕНИЕ № 77 ОТ 05.05.2016 Г. ПО В. Ч. Т. Д. № 104/2016 Г. НА АПЕЛАТИВЕН СЪД - ВЕЛИКО ТЪРНОВО, ОПРЕДЕЛЕНИЕ № 62 ОТ 05.04.2016 Г. ПО В. Ч.Т.Д. № 88/2016 Г. НА АПЕЛАТИВЕН СЪД - ВЕЛИКО ТЪРНОВО, ОПРЕДЕЛЕНИЕ № 69 ОТ 25.02.2016 Г. ПО В. Ч. Т. Д. № 58/2016 Г. НА АПЕЛАТИВЕН СЪД – БУРГАС.

[28] Stalev, Tz, A. Mingova, O.Stamboliev, V.Popova, R. Ivanova, Bulgarian civil procedural law, 9 ed., Sofia, Ciela, 2012, p. 407.

[29] Musseva, B. Reform of jurisdiction and exequatur in civil and commercial matters in the EU Member States (Regulation Brussels Ibis), in: Commercial Law, 4/2014, 11.

In the Bulgarian literature a view on the matter in connection with insurance contract expressly argues in favor of applicability of the limitations even to choice-of-court agreements providing for jurisdiction of a court in a country outside the EU[30].

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 Bulgaria there is rather a positive attitude towards the effectiveness of the protection to the '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?

See point 6 above regarding the domestic venue and the jurisdiction;

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?

See point 5 above.

The obligations of owners of property in a building relating to maintenance costs for communal areas raised the issues decided in *Ker* C-25/18. The consumer contract qualification was considered by some Bulgarian courts in similar cases[31].

Based on the case law analysis it could be established that the Bulgarian courts are very much influence by the domestic understanding of consumer contract implementing the

[30] Commentary, p. 149.

[31] ОПРЕДЕЛЕНИЕ № 321597 ОТ 24.01.2018 Г. ПО ГР. Д. № 10516/2017 Г. НА СОФИЙСКИ РАЙОНЕН СЪД

Consumer Directive and quite often do not check precisely the requirements defined in Article 17 [32]. Some courts check only Article 17 save letter a), b) and c)[33].

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

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?

No

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?

As stated above in point 5 Bulgarian courts faced difficulties in classifying claims for partition of property of former spouses as under the Bulgarian substantive law the matrimonial property transforms after the divorce to classical joint property. The Bulgarian Supreme Court of Cassation used to consider these partition claims as falling

[32] ОПРЕДЕЛЕНИЕ № 7490 ОТ 25.03.2019 Г. ПО ГР. Д. № 3013/2018 Г. НА СОФИЙСКИ ГРАДСКИ СЪД

[33] РЕШЕНИЕ № 1474 ОТ 30.11.2018 Г. ПО В. ГР. Д. № 2133/2018 Г. НА ОКРЪЖЕН СЪД – ПЛОВДИВ, ОПРЕДЕЛЕНИЕ № 321597 ОТ 24.01.2018 Г. ПО ГР. Д. № 10516/2017 Г. НА СОФИЙСКИ РАЙОНЕН СЪД, ОПРЕДЕЛЕНИЕ № 2650 ОТ 09.11.2017 Г. ПО В. Ч. ГР. Д. № 2473/2017 Г. НА ОКРЪЖЕН СЪД – ПЛОВДИВ, ОПРЕДЕЛЕНИЕ № 2527 ОТ 24.10.2017 Г. ПО В. Ч. ГР. Д. № 2382/2017 Г. НА ОКРЪЖЕН СЪД - ПЛОВДИВ

within the scope of application of Brussels I/Ia Regulation[34]. This understanding was confronted by a regional judge with a reference to CJEU for preliminary ruling leading to the decision in *Iliev* C-67/17.

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?

Bulgarian courts apply Article 56-59 of the Bulgarian Code on Private International Law. No problems in this regard are established so far.

38. In cases concerning the violation of an intellectual property right, the invalidity of the 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.

Proceedings concerning the enforcement of judgments in Bulgaria are all procedural activities that can take place after the start of the enforcement (Articles 404-529 Civil Procedural Code). The enforcement procedure usually starts on the basis of a writ of execution issued by the court that decided the case on the first instance. The enforcement measures subject to judicial control are enlisted in Article 435.

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?

[34] ОПРЕДЕЛЕНИЕ № 27 ОТ 21.01.2012 Г. ПО Ч. ГР. Д. № 603/2011 Г., Г.К., I Г. О. НА ВКС, ОПРЕДЕЛЕНИЕ № 395 ОТ 09.08.2010 Г. ПО Ч. ГР. Д. № 140/2009 Г., .Г.К., I Г. О. НА ВКС.

A removal of a conservatory third party attachment if used as a security shall be treated in Bulgaria as provisional, including protective measure, i.e. the jurisdiction can be based on Article 35. No extensive interpretation of Article 24 is advocated in Bulgaria.

Prorogation of jurisdiction and tacit prorogation

41. Application of Article 25 requires a minimum degree of internationality. Is there any particular case-law and/or literature, in your Member State in which this minimum degree of internationality has been discussed and/or a certain threshold has been set? If yes, what are the considerations and/or arguments that have been made?

No case law. In the context of Article 25 the shared view in the literature bases the application of the provision with a relation connected with more than one state[35]. The cross-border connection is discussed further in conjunction with Article 1. The intensity of the internationality is not treated in details there. In the literatures the degree of internationality is suggested to be measured according to a test of reasonableness based on the level of connection with two or more countries[36].

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?

From Bulgaria we cannot report any change in the number of litigations in which jurisdiction has been based on choice- of- court agreement falling under the Regulation.

43. Are there particular examples in which the formal requirements for validity of choice-of-court agreements (Article 25(1)(a-c)) caused difficulties in application for the judiciary or debate in literature? Which requirement has appeared most problematic in practice? When applying the respective requirements of an agreement ‘in writing or evidenced in writing’, ‘practice which the parties have established between themselves’ and ‘international trade usages’, which facts do the courts and/or literature deem decisive?

The most discussed issue in the case law and in the literature concerns choice-of-court agreements included in general terms[37]. Another aspect that caused difficulties

[35] Commentary, p, 268.

[36] Musseva, B., The assignment in the Private International Law, book, Sibi, Sofia, 2014, 50-51.

[37] ОПРЕДЕЛЕНИЕ № 689 ОТ 21.11.2017 Г. ПО Ч. Т. Д. № 2134/2017 Г., Т. К., II Т. О. НА ВКС, Commentary, p. 284-284, Musseva, B., The assignment....., p. 81-84.

concerns the effect of the choice-of-court agreement towards third parties[38]. In cases of assignment the courts tend not to consider the binding effect of the choice of court agreement towards the assignee[39].

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?

N/A

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?

Yes, it was discussed in the literature[40]. In Bulgaria the rules of the Code on Private International Law (Article 93 ff) would lead to the closest connection principle, i.e. to the law applicable to the contract containing the choice-of-court agreement. The same result would be achieved in Rome I Regulation had been applied. Unfortunately no case law on the matter could be found.

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?

N/A

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?

[38] Musseva, B., The assignment..., 91-108.

[39] ОПРЕДЕЛЕНИЕ № 204 ОТ 30.04.2018 Г. ПО Ч. Т. Д. № 389/2018 Г., Т. К., I Т. О. НА ВКС.

[40] Musseva, B., The assignment..., 87-90.

Yes. C-269/95 *Francesco Benincasa* as well as the same principle in arbitration proceedings are considered.

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 case law follows quite pragmatic approach – Article 26 allies if the defendant takes part in the proceedings and does not contest the jurisdiction with the answer to the claim[41]. The literature discusses in more details the possible form of procedural behavior that can lead to 'entering an appearance'. The broad interpretation suggests considering all procedural actions (to the substance of the claim, to the admissibility etc.) aiming at rejecting the claim[42]. The narrow interpretation stresses the need of opposing only to the substance of the dispute[43].

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?

The Bulgarian courts do not act expeditiously in contacting their foreign colleagues. There is no internal procedural guideline to be followed. The main obstacles are the unawareness, the overloading, the linguistic barrier and the doubt in the functioning of the communication network.

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[41] ОПРЕДЕЛЕНИЕ № 120 ОТ 14.03.2019 Г. ПО Ч. ГР. Д. № 4497/2018 Г., Г. К., IV Г. О. НА ВКС, ОПРЕДЕЛЕНИЕ № 432 ОТ 22.11.2017 Г. ПО Ч. ГР. Д. № 3834/2017 Г., Г. К., III Г. О. НА ВКС

[42] Todorov, T., Private International Law, 2d ed, 2009, Sofia, Sibi, p., 101, Musseva, B., Though the labyrinth …..57.

[43] Commentary, p. 290.

52. When should a court in your Member State be considered to be seised for the purposes of Article 32 Brussels Ia? Is this when the document instituting the proceedings or 'equivalent document' is lodged with the court (a) or when such document is received by the authority responsible for service (b)? Does the moment of filing a suit with the court determine the moment as from which a proceeding is deemed pending or the proceeding is considered to be actually pending at a later point after certain administrative/organisational steps have been taken (see e.g., circumstance in C-173/16 *M.H. v. M.H.* relating to this issue under Regulation Brussels IIbis)?

In Bulgaria the court is considered to be seised when the document instituting the proceedings is lodged with the court. The moment of filing of the suit with the court determines the moment as from which a proceeding is deemed pending.

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?

No subsequent amendments of claims in any way affect the determination of the date of seising in Bulgaria. The facts concerned do not reflect the seizure of the court.

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?

As there is no case law on the matter it is not possible to share a view on the effectiveness of Articles 33 and 34.

57. Apart from concerns regarding procedural efficiency, are connections between the facts of the case and the parties in relation to the third state typically also taken into account by the courts in your Member State in determining their jurisdiction under Articles 33 and 34, bearing in mind the aims as expounded by Recital 24 of the Regulation?

No case law to be found.

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?

As there is no case law on the matter it is not possible to share a view.

Provisional measures, protective measures

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

No

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?

In both the case law and the doctrine the 'real connecting link' is considered as stemming from the localisation of the subject matter of the measures in Bulgaria[44]. The literature discusses the measure addressing only the debtor (refraining from action) and suggests conditioning the 'real connecting link' to the domicile of the debtor[45].

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

[44] РЕШЕНИЕ № 1066 ОТ 26.05.2016 Г. ПО Т. Д. № 60/2016 Г. НА АПЕЛАТИВЕН СЪД – СОФИЯ, *Popova*, V., Actual Problems ……, p. 34.

[45] *Popova*, V., Actual Problems ………….p. 35, Commentary, p. 403.

jurisdiction to third states party to that Convention? Please provide examples from case-law with a short summary.

No

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?

Only few trainings took place. The main trainings were organized by the Bulgarian Chamber of Private Enforcement Agents and by the European School on Enforcement.

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?

In Bulgaria there is no concentration and no specialization of local jurisdiction (venue) at the national or regional level for the enforcement of judgments rendered in other Member States.

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?

The enforcement of judgments rendered in other Member States pursuant to Brussels Ia Regulation starts without domestic writ of enforcement envisaged for the enforcement of judgment under Regulations 4/2009, 805/2004, 1896/2006 and 861/20017. This step towards quicker and cheaper enforcement facilitates the direct access of creditors or applicants from other Member States to the enforcement agents.

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

The information in this regard is not structured thus is not available.

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?

N/A

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

N/A

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?

N/A

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?

Article 45(1)(a) and (b) continue to be the mostly invoked grounds for refusal of recognition or enforcement. The rate of success unfortunately cannot be evaluated considering the lack of statistics and comprehensive publicly accessible case law data base.

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

No information available to rely on.

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

Yes

73. Article 54 introduced a rule for adaptation of judgments containing a measure or an order which is not known in the law of the Member State addressed. How frequently or regularly does such adaptation occur in practice in your jurisdiction? In the event that the judgment gets adapted, how frequently is such adaptation challenged by either party?

No case law where adaptation was needed and invoked.

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?

By virtue of Article 37(2) or Article 54(3) translation is not needed. Nevertheless there is a general rule in our Civil Procedural Code stating that the official judicial language is Bulgarian (Article 4). The parties and their attorneys prefer to provide in advance all documents in Bulgarian in order not to hinder and slow the procedure. Thus the requests for translation on behalf of the court or the bailiffs are not frequent.

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?

No special reference in the context of Brussels Ia Regulation could be found.

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

Claims based on the Convention on the Contract for the International Carriage of Goods by Road (CMR)

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

No.

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

Convention on the Contract for the International Carriage of Goods by Road (CMR)

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