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?**

   Judgments of the Supreme Court of Cyprus, including those applying the Brussels Ia Regulation and its predecessor are published in the Judgments of the Supreme Court (JSC) annual volumes and in particular in Part I of those volumes which contains the Civil Law cases. The volumes of the JSC have been albeit published with significant delay in the past few years. The judgments are issued and published in Greek, the official language of the Republic of Cyprus. Judgments rendered by the Supreme Court, as well as important first instance judgments, are also available online at the publicly available database www.cylaw.org which is owned and managed by the Cyprus Bar Association. Another subscription-based database www.leginet.eu also contains a comprehensive collection of both Supreme Court and lower court judgments. Both databases contain constantly updated and searchable collections of judgments and contain judgments applying the Brussel Ia Regulation and its predecessor.

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

   The Supreme Court would normally refer to the case-law of the CJEU when applying the Brussels Ia Regulation. Similarly, lower courts would in many judgments refer to the case-law of the CJEU in order to support their findings and interpretation of legal provisions. There have been no identified cases where the courts have applied to the CJEU for the interpretation of the Brussels Ia Regulation. Overall, it would seem that

the Cypriot judiciary has considered the CJEU case-law as providing sufficient guidance when applying the Brussels Ia Regulation; no cases have been identified where the Cypriot judiciary has expressed any doubts as to the sufficiency of the guidance it received from the existing case-law of the CJEU.

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 Brussels Ia Regulation was agreed during the Cypriot Presidency of the EU and accordingly enjoyed the strong support of the Cypriot government. In general the changes introduced in the Brussels Ia Regulation were well received, in particular the abolition of the exequatur.[1] However, it should be noted that Cypriot literature on the Brussels I Regulations has been rare and accordingly the issue has not been discussed at length.[2]

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?**

   Suggestions for improvement have not been addressed in the Cypriot literature in Cyprus. It is considered that it is still premature, at least if the practical experience of Cyprus is taken into account, to express specific suggestions for improvement. Court cases in Cyprus take several years to be adjudicated and accordingly the Regulation has mostly been considered so far in interim applications. The Recast is therefore still new

[1] *IPM Informed Portofolio Management AB and Dacom Ltd*, App. 546/17, District Court Judgment of 17.12.2018 (in Greek).

[2] The Regulation Brussels Ia is briefly discussed in A. Emilianides, S. Laulhé Shaelou, *Private International Law in Cyprus*, Kluwer: The Hague, 2015, but with little analysis for reasons explained therein. No other Cypriot work has dealt with the Regulation.

to most practitioners and to the judiciary and no concrete findings have been reached in so far as its actual implementation in practice is concerned.

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

   Available case-law does not indicate any specific tension between concepts under national law and the principle of autonomous interpretation. However, this may well be misleading since the Cypriot judiciary might not be yet fully accustomed to the principle of autonomous interpretation when applying the provisions of the Regulation and accordingly does not engage, with some exceptions, into any detailed distinction regarding the interpretation of concepts.

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

   The application of national rules on territorial jurisdiction do not seem to have caused any undue difficulties in the application of the Regulation.

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 have been no reported cases where there was a negative conflict of jurisdiction in civil cases in Cyprus, other than in family law cases. There are no provisions in Cypriot legislation regulating the international jurisdiction of the ordinary District Courts, as opposed to

their domestic territorial jurisdiction. This lack of specific rules has often been interpreted as implying that Cypriot courts may exercise jurisdiction in so far as they have domestic jurisdiction and provided that the defendant has been properly served with a writ of summons commencing an action. The common law rules applicable in Cyprus, pursuant to section 29 of the Courts of Justice Law 14/60, further provide that a defendant may also confer jurisdiction to Cypriot courts by submitting to them. The Cypriot traditional rules governing international jurisdiction are thus extremely wide. Section 3 of the Civil Procedure Law Cap. 6 stipulates that the Court may order service out of jurisdiction whenever the action may not be adjudicated in another forum, or it may be adjudicated more conveniently in the Republic of Cyprus than in another forum. In general for the Court to stay an action due to lack of jurisdiction it is not sufficient to show that Cyprus is not the natural or appropriate forum for the trial, but to further establish that there is another available forum which is clearly or distinctly more appropriate than the Cypriot forum.[3] The Brussels I Regulation, as an EU legislative instrument, has superior effect when compared to the domestic rules of international jurisdiction, as was confirmed by the Supreme Court of Cyprus in *Ironhold Estates*.[4] Accordingly, in principle Cypriot courts should aim to interpret national rules in a manner which does not deprive the EU rules of their efficiency so that cases of negative conflict of jurisdiction ought in principle be avoided. However, exceptional circumstances under which a specific case might arise which cannot be resolved in a satisfactory manner, are possible.

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)?**

[3] *Lexicon Shipping Company Ltd* v. *Remontowa Gdansk Shiprepair Yard* [1999] 1 CLR 1666 (in Greek).
4. *Ironhold Estates Ltd v. Travelworld Vacation Ltd* [2010] 1 CLR 452 (in Greek).

The rules on relative and territorial competence are mainly included in the same legislative act, i.e. the Courts of Justice Law 14/60 and supplemented by the Civil Procedure Rules. However, rules on competence of the special courts of the Republic (family courts, industrial disputes tribunals, rent control tribunals) are found in specific legislation governing those special courts. Furthermore, it should be noted that the Courts of Justice Law 14/60 stipulates that the principles of common law and equity apply as a source of Cypriot law. Having a substantially codified legal system, Cyprus applies common law principles where there is no Cypriot legislation in force and insofar as existing Cypriot legislation is not contradicted.[5] Private international law is an area which remains largely uncodified, other than the application of EU legislative instruments, and accordingly common law rules apply supplementary to statutory provisions.

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.**

   The delineation does not seem to have caused any particular problems. It would be premature to consider the impact that the clarification in Recital 12 had on Cypriot practice. So far the case-law does not indicate any particular change in practice.

[5] S. Symeonides, 'The Mixed Legal System of the Republic of Cyprus' 78 *Tulane Law Review* (2003): 441, A. Emilianides, C*yprus: Everything Changes and Nothing Remains Still* in *A Study of Mixed Legal Systems: Endangered, Entrenched or Blended*, in S. Farran et al eds, Aldershot: Ashgate 2014: 215.

10. **Has the delineation between "civil and commercial proceedings" on the one hand and "insolvency proceedings" on the other hand led to particular problems in your Member State? If yes, please give examples. Please, explain whether the latest case law of the CJEU (e.g., C-535/17, *NK v BNP Paribas Fortis NV*) has been helpful or has created extra confusion.**

No particular problems have been identified by the delineation between 'civil and commercial proceedings' and 'insolvency proceedings'. We have not identified any instances of Cypriot courts having considered the latest case-law of the CJEU (C-535/17).

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

No relevant case-law has been identified. This might indicate that recognition and enforcement of court settlements has so far been uncontroversial and has not led to specific disputes worth reporting.

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

No relevant case-law has been identified. This might indicate that recognition and enforcement of court settlements has so far been uncontroversial and has not led to specific disputes worth reporting.

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?

No undue difficulties have been noted in the application of the definitions provided in Article 2, nor does there seem to be any controversy in the existing literature or case-law.

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 issue is not addressed in the literature. There is one District Court judgment that considered the issue;[6] it was held that an interim judgment granting provisional measures falls within the definition of a 'judgment' for the purposes of the Recast.

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 neither case-law, nor literature analysis on this issue.

16. **Should a decision on provisional measure issued by a court of a Member State, that could base its jurisdiction on the substance of the matter according to the Regulation's rules, be considered as a**

[6] *Content Union SA* v. *Martellata Ltd and others*, Action 2061/17, District Court Judgment of 29.5.2018 (in Greek).

'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?

Neither case-law, nor literature currently exists analysing the situation described above. It should be noted, however, that there is currently no mechanism under which a Cypriot court can issue a decision on provisional measures when no proceedings on the merits of the case have been initiated.

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?**

No case-law, or literature has been identified precisely on this point.

18. **Has the definition of the 'judgment' and the 'court or tribunal' attracted particular attention in your jurisdiction (e.g., raising issues similar to those in CJEU case C-551/15, *Pula Parking d.o.o. v Sven Klaus Tederahn*)?**

No particular attention has been given to the above issues.

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?**

    There are no official statistics available. However, from the available data it would seem that there has been no such increase in the number of actions filed by consumers and/or employees. There is one relevant judgment of the Industrial Disputes Tribunal, which is not, however, very helpful for this purpose, since the Tribunal decided that on the specific facts of the case it had no jurisdiction to adjudicate the claim brought by the employee.[7]

20. **As to the scope of application *ratione personae*, has it been dealt with in case law or discussed in the literature whether Article 26 applies regardless of the domicile of the defendant, considering that Article 6 does not specifically refer to Article 26?**

    No case-law or literature has been identified addressing this issue.

21. **In a similar vein, what is the prevailing view in your jurisdiction on whether provisions on *lis pendens* contained in Articles 29 and 30 apply regardless of the domicile of the defendant? Is the fact that a court of a Member State has been seised first the only relevant/decisive factor for the court second seised to stay its proceedings or does the obligation to stay persist only if the court first seised has jurisdiction according to the Regulation (with**

[7] *Adamou* v. *Joannou & Paraskevaides (Oman) LLC*, App. 237/17, IDT Judgment of 12.9.2018 (in Greek).

respect to the claim falling within the substantive, *ratione personae* and temporal scope of Regulation's application)?

There is a District Court judgment that is helpful in this regard.[8] The District Court effectively held that the provisions on lis pendens contained in Articles 29 and 30 should apply unless the court second seised has exclusive jurisdiction in accordance with Article 24 in which case the judgment of the court first seised would not be subject to recognition pursuant to Article 45(e). It was accordingly held that in other cases the obligation to stay should persist with the only relevant/decisive factor being the fact that the court of the other Member State had been first seised and it was clarified that even in cases of jurisdiction pursuant to Article 25 the lis pendens rule should prevail.[9] The District Court further reiterated that unless expressly provided, the jurisdiction of a court should not be reviewed by a court in another member state.[10]

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?**

Reported cases indicate that the Cypriot courts have not faced any difficulties with the temporal scope of the Brussels Ia Regulation.[11]

[8] *EMD Trust Ltd* v. *Sharma and others*, App. 68/17, District Court Judgment of 31.10.2018 (in Greek).
[9] The District Court specifically referred to C-438/12, *Weber* ECJI:EU:C:2014:12 and C-116/02, *Gasser* ECLI:EU:C-2003:657 in this respect.
[10] The District Court specifically referred to C-351/89, *Overseas Union Insurance Limited* ECJI:EU:C:1991:279 in this respect.
[11] *Kompas Overseas Inc* v. *Public Joint Stock Company Northern River Shipping Lines*, App. 3/17, District Court Judgment of 26.6.2018 (in Greek), *Everglades Shipping Corp. and others* v. *Bank of Cyprus Ltd*, Action 3644/13, District Court Judgment of 29.8.2018 (in Greek), *Finsbury Trust Corporation Ltd and others* v. *Magnus Europe Ltd and others*, Action 6767/11, District Court Judgment of 16.11.2018 (in Greek).

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?**

There is case-law applying alternative jurisdictional grounds, predominantly the rules regarding tortious liability.[12] The issue has not so far caused any special problems or discussion.

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?**

No specific problems have been reported in the interpretation of the concept 'matters relating to contract', the distinction between types of contracts, the principle of autonomous interpretation or the determination of the place of performance. This is primarily due to the lack of case-law directly dealing with these issues.

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**

[12] *Hadjikoumparou* v. *Hatzipanayi and others*, App. 912/14, District Court Judgment of 29.11.2018 (in Greek), *Kyprianou and another* v. *Fund Limited*, Action 3342/16, District Court Judgment of 15.11.2018 (in Greek), *EMD Trust Ltd* v. *Sharma and others*, App. 68/17, Judgment of 31.10.2018 (in Greek), *Stavrinou* v. *Panteli and others*, Action 743/17, Judgment of 29.5.2018 (in Greek).

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

No case-law or literature discussion has been reported dealing with this question within the context of the Recast Regulation.

26. **Has Article 7(2) given rise to difficulties in application, if so which particular aspect(s): the wording 'matters relating to tort, delict or quasi-delict', the wording 'place where the harmful event occurred or may occur'/locating the place of damage, cases where the place of wrongful act is distinct from the place where the damage has been sustained, types of claims and actions falling within the scope of this provision, identification of the 'centre of interests' in cases of the infringement of personality rights/privacy, application of the requirement of 'immediate and direct damage' in the context of financial loss, interplay between the rules on jurisdiction contained in other EU legal instruments and in the Regulation especially in the context of infringement of intellectual property rights?**

Article 7(2) has been frequently applied by Cypriot Courts but does not seem to have given rise to difficulties and no detailed interpretational analysis of the questions referred to above has arisen.

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

There has been no application or discussion of this new provision in Cyprus.

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

No specific controversies have been identified. This is primarily due to the lack of case-law directly dealing with these issues.

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?**

There is neither case- law, nor literature analysis addressing this issue.

30. **According to the prevailing view in your jurisdiction, do the provisions limiting effectiveness of prorogation clauses in cases involving 'weaker parties' apply to choice-of-court agreements providing for jurisdiction of a court in a country outside the EU?**

This issue has not been addressed in either case-law or literature.

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

    This issue has not so far been addressed in the literature.

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

    No specific cases have been reported regarding difficulties in applying Section 3 of the Regulation. This is primarily due to the lack of case-law directly dealing with these issues.

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?**

    There have been a number of cases concerning consumer contracts. However, these did not deal at length with any controversial issues.[13] Accordingly, it would not seem that particular difficulties have so far been reported.

[13] See *Papaleontiou* v. *Polskie Linie Lotnicze SA*, Action 1/2017, District Court Judgment of 26.7.2017 (in Greek), *Taramides* v. *Abecrombie & Kent Ltd*, Action 8328/12, District Court Judgment of 29.5.2015 (in Greek).

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?**

No case-law considering this issue has been identified.

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 difficulties have been reported in applying Section 5 of the Regulation in matters relating to employment contracts. This is primarily due to the lack of case-law directly dealing with these issues.

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?**

Case-law primarily refers to cases of banking contracts with consumers which referred to the sale of immovable property. It would seem that Cypriot courts have taken a restrictive approach on the issue considering that they have jurisdiction as the courts of the country where the property that was sold.[14] However, no specific analysis regarding the distinction between rights in personam and rights in rem pursuant to the CJEU case-law seems to have been carried out by the courts. Whereas, there are cases where the case-law of the CJEU on Article 24(1) has been briefly considered, these related to relatively uncontroversial issues and without any detailed analysis of the criteria for the distinction.[15] One District Court judgment in particular, however, carried out a thorough and precise analysis of the CJEU case-law and the principles for distinguishing between rights in rem and rights in personam with regards to Article 24(1).[16] It could accordingly be argued that Cypriot courts 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 and have not applied the criteria of the CJEU in a consistent manner. No case-law on Article 31(1) has been identified.

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?**

The Republic of Cyprus has traditionally adhered to the incorporation theory for determining the domicile of a legal person. Cypriot law would

[14] E.g. *Hellenic Bank Public Company Ltd* v. *Jones and others*, Action 5654/14, District Court Judgment of 31.1.2017 (in Greek).
[15] *Arip* v. *Trustee Services Ltd and others*, App. 5/18, District Court Judgment of 24.10.2018 (in Greek).
[16] *Stylianou* v. *Karasiazis and another*, Action 5928/15, District Court Judgment of 19.8.2016 (in Greek).

therefore determine the applicable company law on the basis of the State of incorporation, as the domicile of the legal person would be in its State of incorporation. No specific difficulties of the Cypriot courts in applying Article 24(2) have been reported. This may primarily be due to the relevant dearth of case-law directly addressing the issue.[17]

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?**

This specific rule has not yet been considered by the Cypriot courts. Article 24 (4) has been applied in a case where it was held that disputed property rights with respect to websites and domain names do not fall under Article 24(2). It was held that the fact that the above property rights are registered in a specific registry in each state does not mean that Article 24(4) is applicable to them.[18]

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.**

[17] See indirect reference in *Pivovary Lobkowicz Group AS and others* v. *Chayon Sava (Cyprus) Ltd and others*, App. 2978/12, District Court Judgment of 24.4.2019 (in Greek).
[18] *XL Media PLC and others* v. *Hughes*, Action 1430/17, District Court Judgment of 13.6.2018 (in Greek).

Existing case-law has not developed specific criteria to be used in order to decide whether a particular procedure falls under the scope of Article 24(5). This may be due to the lack of case-law directly addressing the issue.[19]

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?**

There is no case-law addressing this specific issue.

Prorogation of jurisdiction and tacit prorogation

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

Whereas, there is case-law applying and/or discussing Article 25, the relevant judgments have not set out any threshold or criteria on the matter of a minimum degree of internationality.[20] There is no literature on the issue.

[19] *Arip* v. *Trustee Services Ltd and others*, App. 5/18, District Court Judgment of 24.10.2018 (in Greek).

[20] *The Cyprus Phassouri Plantations Co Ltd* v. *Hapag – Lloyd AG*, App. 38/16, Supreme Court Judgment of 21.6.2018 (in Greek), *XL Media PLC and others* v. *Hughes*, Action 1430/17, District Court Judgment of 13.6.2018 (in Greek).

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

No such increase in litigation has been identified.

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

No particular examples in which the formal requirements for validity of choice-of-court agreement caused difficulties in application for the judiciary or debate in literature have been identified. Existing case-law which considered such issues did not contain any specific analysis of the requirements.[21] It should be noted that in one case the Court considered that the choice-of-court agreement was not binding on the plaintiff who was not, however, a party to the agreement.[22]

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**

[21] *XL Media PLC and others* v. *Hughes*, Action 1430/17, District Court Judgment of 13.6.2018 (in Greek).

[22] *EMD Trust Ltd* v. *Sharma and others*, App. 68/17, District Court Judgment of 31.10.2018 (in Greek).

choice of court agreement was held invalid from the point of view of substantive validity due to a lack of consent? If the answer is in the affirmative, what were the considerations made by the court?

No such case-law has been identified.

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

No such cases have been reported.

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

No relevant discussion has taken place in the literature, nor has case-law addressing this question been identified.

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

There is no relevant discussion in the Cypriot literature or case-law.

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?

There was no settled position in either theory or practice about this issue prior to the express inclusion of the doctrine in Article 25(5).

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?**

It would not seem that the Cypriot courts have encountered any undue difficulties in applying the rules as to 'entering an appearance' for the purposes of applying Article 26. However, it should be noted that there is a dearth of case-law interpreting the concept within the framework of Brussels Ia.

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).**

It would not seem that Cypriot courts have experienced any particular problem when interpreting the 'same cause of action' within the meaning of Article 29(1). It was recently held that the term should be interpreted on the basis of autonomous criteria and independently of the interpretation given by national courts. It was further held that the term should not amount to entirely identical cause of action. It was accordingly reiterated that the term should be interpreted broadly so as to cover in

principle all situations of lis pendens before the courts in the interests of the proper administration of justice, to prevent parallel proceedings before the courts of different Member States and to avoid conflicts between decisions which might result therefrom.[23] The Court referred to CJEU case-law and properly derived guidance from it[24] and held that in both the Cypriot and English proceedings the subject-matter of the claim was the trust in question. In the English proceedings the objective was to amend the trust, whereas in the Cypriot proceedings the aim was to declare that the trust was valid and could not be amended. It was held that the two proceedings referred to the same cause of action. In another case, however, it was held that the Cypriot proceedings referred to different actionable right against different persons and requesting for different remedies compared to the Czech proceedings and that accordingly the two proceedings did not refer to the same cause of action.[25]

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?**

It would not seem that there exists a standardized procedure for informing the courts of the other Member State. This is mainly due to the

[23] *EMD Trust Ltd* v. *Sharma and others*, App. 68/17, District Court Judgment of 31.10.2018 (in Greek).
[24] C-111/01, *Gantner Electronic* ECLI:EU:C:2003:257, C-406/92, *Tatry* ECLI:EU:C:1994:400, C-144/86, *Gubisch Maschinenfabrik KG* v. *Giulio Palumbo* ECLI:EU:C:1987:528.
[25] *Pivovary Lobkowicz Group AS and others* v. *Chayon Sava (Cyprus) Ltd and others*, App. 2978/12, District Court Judgment of 24.4.2019 (in Greek).

fact that Cyprus adopts a purely adversarial system and accordingly the court would generally rely on the evidence provided by the parties rather than contact the courts of another Member State on its own motion.

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)?**

A first instance judgment held that the fact that the proceeding was lodged before the court following leave to do so, was sufficient for the court to be seised of the case and that accordingly a proceeding subsequently lodged to the United Kingdom did not have priority.[26] This would imply that the fact that the document instituting the proceeding is lodged before the court in accordance with the provisions of the Civil Procedure Rules would be sufficient for the court to be seised, irrespective of service of the document instituting the proceeding to the defendant, or any additional administrative/organisation steps having been taken. Accordingly, the moment of filing a suit with the court seems to determine 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**

[26] *Hellenic Bank Public Company Ltd* v. *Jones and others*, Action 5654/14, District Court Judgment of 31.1.2017 (in Greek).

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?

The Supreme Court recently held that where a defendant is added or substituted, through amendment of the claim, he shall be considered as having originally been a defendant. Accordingly, it was held that since the new defendant is retrospectively made a defendant, the join of such defendant would not be time-barred pursuant to the statute of limitations.[27] It could be argued that the same principle would be expected to apply with regards to amendments based on facts known at the date of the original proceedings, but not with regards to amendments based on facts which have emerged after the date of the original proceedings. However, there is no case-law addressing this distinction, or considering the implications of potential amendments for the purpose of the determination of the date that a court has been seised. The issue thus remains open.

54. **Do courts in your Member State tend to decline jurisdiction if the court seised previously had jurisdiction over the actions in question 'and its law permits the consolidation thereof' (see Article 30(2))?**

No case law on this point has been identified.

[27] *Neofytou* v. *Malak and another*, Civil App. 118/2012, Supreme Court Judgment of 21 June 2018 (in Greek).

55. **Has the application of Article 31(2) proved to be counterproductive and resulting in delaying the proceedings by the obligation of the court seised to stay the proceedings until a designated court has decided on the validity of a choice- of- court agreement, even when a prorogation clause has never been entered into or is obviously invalid?**

No cases have been reported where this has been an issue.

56. **Has the combined application of Articles 33 and 34 in your view contributed to greater procedural efficiency and accordingly diminished the risk of delays in resolving disputes as well as the risk of irreconcilable judgments between a third state and your Member State?**

It is considered that the combined application of Articles 33 and 34 has the potential to contribute greater procedural efficiency. However, lengthy delays in the Cypriot justice system and the relative rarity of cases do not allow for a proper overall evaluation of their effect in practice.

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?**

It would seem that they are typically taken into account, In a published case the Court distinguished between cases where it has discretion to dismiss the proceedings that pursuant to Article 34(3) if the proceedings in the third state have been concluded and have resulted to a judgment which could be recognized in Cyprus and cases where it should dismiss

the proceedings pursuant to Article 33(3) because the action before it is related to the proceedings in the third state. It was held that the proceedings before the Russian courts were still pending before the appellate courts and that the Cypriot proceedings aimed to also settle questions not raised before the Russian courts. Accordingly, the Court declined to stay the action.[28]

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, this is generally a sufficiently flexible mechanism.

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?**

It would not seem that the Cypriot courts have experienced so far any undue difficulties defining which 'provisional, including protective, measures' are covered by Article 35 of Brussels Ia Regulation.[29]

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?**

[28] *Tanberg Investments Ltd and others* v. *UCF Invest Ltd and others*, Action 2263/18, District Court Judgment of 21.3.2019 (in Greek).
[29] *Trafalgar Developments Ltd and others* v. *Uralchem Holdings PLG and others*, Civil App. 331/17, Supreme Court Judgment of 21.2.2019 (in Greek).

A first instance judgment has been identified where the Court referred to *Van Uden Maritime v Deco-Line and Others* and effectively adopted its reasoning and conclusion that there is a crucial requirement of territorial connection between the subject matter of the (interim) measures sought and the territorial jurisdiction of the member state's court to issue them.[30]

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.**

No instances have been identified where the Hague Convention on Choice of Court Agreements has been relied upon in declining jurisdiction in Cyprus.

CHAPTER III

Recognition and Enforcement

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

No cases have been reported or identified where the optional procedure has been used. It may well be the case that such cases exist, but have been uncontroversial and accordingly were not reported.

[30] *Tanberg Investments Ltd and others* v. *UCF Invest Ltd and others*, Action 2263/18, District Court Judgment of 19.2.2019 (in Greek).

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?**

    It would not seem that Cypriot agents or members of agencies have received specialized training or instruction on how to deal with enforcement requests based on judgments rendered in other Member States.

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

    No, there has not.

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

    No, there have not.

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

There are no respective statistics available in Cyprus. However, available data does not indicate any enhancement in the number of attempts to enforce judgments rendered in other Member States.

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?**

This issue has not yet been properly addressed in either the case-law or the literature. However, no particular problems have so far been reported.

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

The issue has not been addressed in either case-law or literature in Cyprus.

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 relevant statistics available in Cyprus.

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?**

There are no respective data or statistics available in Cyprus. Review of the available case-law would not indicate any changes since the advent of the reverse procedure.

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?**

This issue has not been addressed in the case-law or literature in Cyprus. No changes have been observed.

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

Yes, this is a provision that is generally complied with by the judicial authorities and enforcement agents.

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

There have been no reported cases of such an adaptation taking place before the Cypriot courts.

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?

In practice the parties would furnish a translation of the official judgment on their own. If not, courts would normally require translation to be provided, unless the judgment is in English in which case the court may be familiar with the language.[31]

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?**

This issue has not been addressed in the case-law or literature in Cyprus.

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

No examples of an application of Article 70 have been identified.

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

The issue has not been considered and accordingly has not prompted any practical consequences in Cyprus.

[31] *Ellinas*, App. 66/18, District Court Judgment of 28.2.2019 (in Greek).

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

The issue has not so far been raised in the case-law.

79. **Have there been problems in your Member State with the delineation of the application of Article 25 Brussel Ia and the Hague Convention on Choice-of-Court agreements?**

No specific cases where this has been an issue have been identified.

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

No occurrences have been revealed.