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

QUESTIONNAIRE
for National Reports

31 March 2019

This project is funded by the Justice Programme
of the European Union (2014-2020)

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?

   All Supreme Court judgments are published online (www.riigikohus.ee), except the judgments made in proceedings which have been declared closed (for example, in order to protect minors, companies' business secrets and such). The Supreme Court judgments database is in Estonian and the judgments published there are also only in Estonian.

   All judgments of the lower courts should in principle be published on the web-page www.riigiteataja.ee. Note, however that due to technical or human errors this is, not often the case. This database is also in Estonian and so are the judgments contained in it.

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

   This is a question that the members of the judiciary are in a better position to answer than anyone who is merely reading the case law. However, some assumptions can still be made when reading Estonian cases as to the sufficiency of the CJEU case law for Estonian courts when applying the Regulation.

   Firstly, it seems that in most cases the judges merely apply various provisions of the Regulation and do not bother so much with the question how to interpret various provisions contained in the Regulation. Since there do not seem to be many interpretation problems of the Regulation in Estonian case-law, the case-law of the CJEU is therefore used only rarely.

   Secondly, the lower instance judges tend to refer to only these CJEU cases, which the Estonian Supreme Court has already referred to. Thus, often there is a line of cases referring to one particular CJEU case in somehow standard situations. For example, one of the most referred CJEU case in the context of the Regulation by the Estonian courts is CJEU case No C-47/14 and more precisely its para 39 where the CJEU gave guidelines on how to characterise a contract as an employment contract within the meaning of the previously applicable Brussels I Regulation 44/2001. References to CJEU case-law in Estonian lower-court judgments are therefore usually just declaratory and made in passing.

Thirdly, there is one court that seems to pay a lot attention to the CJEU case in Estonia – the Estonian Supreme Court. The Supreme Court uses the CJEU case-law to interpret the provisions of the Regulation, for example its Article 7. Considering that the Supreme Court is the last instance court for civil law matters in Estonia, it is understandable that the burden to interpret the Regulation is in practice put on the Supreme Court. The Supreme Court often analyses and compares various CJEU cases and if necessary has referred a case to the CJEU for a preliminary ruling (the CJEU case C-194/16).

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 literature on the Regulation in Estonian is almost non-existent – there is one introductory article[1] in the main Estonian law journal (Juridica) and a handful of master theses on the topic written by the students studying in the Estonian universities which teach law, mostly in the Law Faculty of the University of Tartu. In these writings the Regulation has overall received a positive assessment, but note that these writings have to a large extent been only introductory.

   No studies have been conducted in Estonia as to how the general public (or the legal profession) perceives the new Regulation. It could be assumed that since the knowledge on the PIL instruments in general is fragmented, the Regulation has not caused a lot of emotion for the practitioners. One could speculate, however, that the judges would find it rather pleasant that their workload has been reduced due to the abolition of *exequatur* in the Regulation.

   Most of the changes in the new Regulation concerning the rules on jurisdiction (for example, the possibility for the consumers to sue the Third State defendants in the consumer's home state, the possibility for the court to stay the proceedings in favour of a Third State courts, the possibility to take into account jurisdiction agreements between parties from Third States etc) have not found their application in Estonian case law. Therefore, any assessment on these provisions as 'improvements' would be only speculative.

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?

[1] M. Torga. Brüsseli I (uuesti sõnastatud) määrus: kas põhjalik muutus Eesti rahvusvahelises tsiviilkohtumenetluses (*Brussels I (Recast) Regulation – a Change in Estonian Law on International Civil Procedure*). – Juridica 2014/4, pp 304-312.

There has not been enough case-law or criticism in Estonian legal literature to answer this question. The main practical problem in Estonia seems to still be the lack of general knowledge on the private international law regulations and their relationship with national law/international treaties and the lack of knowledge on the CJEU case law among practitioners/judges. Note that in practice Estonian judges often work with the commentaries on the Regulation that are available online in English. In an ideal world there would be a commentary (with references to the relevant CJEU cases) on the Regulation in Estonian.

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

   There have been some cases where this tension could almost have arisen. For example, the questions have arisen whether the unjust enrichment[2] known under Estonian material law or the claims based on the institute of *negotiorum gestio*[3] could be fit under the concept of 'tort, delict, quasi-delict' within the meaning of Article 7(2) of the Regulation, but unfortunately these cases were dismissed for reasons which had nothing to do with Article 7(2). Similar problems with the Estonian substantive law institutes of unjust enrichment, *negotiorum gestio* and the non-contractual obligation to present a thing to the debtor have arisen in earlier case-law on the Brussels I Regulation 44/2001, the Rome I 593/2008 and II 864/2007 Regulations.

   There have also been cases where the conflicts have arisen between the Estonian procedural law concepts and the autonomous concepts found in the regulation. For example, in one pending case, the courts had to scrutinise whether a non-declaratory action to determine that there is no contract can be considered as contractual within the meaning of Article 7(1) of the Regulation.

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

   Estonia has four first instance civil courts and only approximately 1.3 million inhabitants. Combining this with the fact that the Estonian Code of Civil Procedure (*Tsiviilkohtumenetluse seadustik*) provides rather clear rules on national jurisdiction and that there is a rather thorough commentary[4] in Estonian language on these rules, the problems on domestic jurisdiction have rarely

[2] See for example: Tartu Circuit Court 30.08.2016 order in a civil case No 2-16-4767.
[3] See for example: Tartu Circuit Court 18.05.2016 order in a civil case No 2-16-2695; Tartu Circuit Court 02.09.2016 order in a civil case No 2-16-2695.
[4] V. Kõve jt.(toim). Tsiviilkohtumenetluse seadustik. Juura 2017-2018.

occurred in case-law, if at all. There are some cases where the national rules on jurisdiction have been interpreted by Estonian courts, but these cases had nothing to do with the Regulation.

One aspect that the Estonian practitioners often seem to forget is that sometimes the Regulation determines national jurisdiction. Since, however, the relevant rules in the Regulation are in line with Estonian national rules of jurisdiction, there have been no problems which have reached the courts on this matter.

In practice, the majority of the commercial cases (the main cases including private international law element) are submitted to the court in the capital (Harju County Court) where the majority of the trade is conducted and most of Estonian companies have registered address and where circa third of the population is living. Hence, the problems with the national rules on jurisdiction are unlikely to actually arise.

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?

This situation where a claimant cannot sue in any country has occurred in Estonian case law, but not in the context of the Regulation and not even in the cases which would fall under the substantive scope of the Regulation. There have been some succession law cases falling under the Estonia-Russia legal assistance treaty of 1993 under which such situations could occur due to somehow old-dated jurisdiction rules. The courts often apply the legal assistance treaty to the letter, but this has been criticised[5] in Estonian legal literature where the the re-negotiation of the referred treaty has been proposed. It is also possible that other practitioners (notaries) would have chosen a more practical approach and perhaps not abide by the treaty, but these cases have not reached the courts.

It should be noted that the mentioned Estonian-Russia legal assistance treaty (and also the Estonia-Ukraine legal assistance treaty) have a priority of application over the Regulation. This means that these treaties would apply in Estonian courts also in cases which could fall under the substantive scope of application of the Regulation, for example in contractual or company disputes. The application of these treaties could theoretically lead to the situation where a person is unable to bring his claim in Estonia or in the other Contracting Party to these treaties. It would be the best, if the European Union would take steps to try to renegotiate these types of treaties on behalf of the Member States with

[5] More generally on this probleem, see for example in English: M. Torga. The conflict of conflict rules – the relationship between European regulations on private international law and Estonian legal assistance treaties concluded with third states. University of Tartu 2019. Available online: https://dspace.ut.ee/handle/10062/63311.

the relevant Third Countries. Note, that similar bilateral treaties have been concluded between the Member States and Third Countries belonging to the former Soviet block, for example, between Finland-Russia, Latvia-Russia, Lithuania-Russia etc.

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)?

   There are no specialized civil courts in Estonia, only the (general) county courts, which hear all civil matters, such as family-, commercial-, succession- and any other civil disputes. The Estonian Code of Civil Procedure (*Tsiviilkohtumenetluse seadustik*) regulates the procedure of these county courts.

   If by the 'rule on relative competence' you mean a rule which determines whether an administrative or civil court would have jurisdiction, then yes the rules on 'relative' and 'territorial' jurisdiction are in the same legal act – § 1 of the Code of Civil Procedure provides that civil courts hear civil cases and also contains various rules on territorial jurisdiction.

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.

   This issue has not been touched upon in Estonian legal literature or case law.

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.

    This issue has not been problematic in Estonian case law, but it has been dealt with in the Estonian legal literature - there is an article[6] published in the main Estonian legal Journal (Juridica) on the European Insolvency (Recast) 2015/848 Regulation. In this journal article the relationship between the Regulation and the Insolvency (Recast) Regulation was analysed.

[6] K. Jürgenson, M. Torga. Maksejõuetusmenetluse (uuesti sõnastatud) määrus – samm tervendamise ja rahvusvahelise koostöö suunas (The New Insolvency (Recast) Regulation, a step towards restructuring and International cooperation). – Juridica 9/2015, pp 624-635.

In three cases the courts explained that the Regulation does not apply if the Insolvency (Recast) Regulation does, but these were in very typical insolvency cases, so do not have much interpretative value.[7]

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

    No.

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

    Not under the Regulation. There have, however, been cases made under the European Enforcement Order Regulation 805/2004 on the authentic instruments. The most prominent of these is the Supreme Court case[8] where the Supreme Court explained the concept and said that a document issued by a Lithuanian notary could be considered as an authentic instrument within the meaning of the European Enforcement Order Regulation.

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, the definitions in Article 2 of the Regulation have not found interpretation in Estonian case law.
    In the earlier case law, Estonian courts sometimes used the old Brussels I Regulation to determine jurisdiction in paternity cases or to recognize foreign arbitral awards. However, such earlier cases were clearly result of the lack of understanding of the EU rules and no deep thoughts on interpreting the definitions should be derived from these cases. Unfortunately, in rare cases Estonian courts very surprisingly still apply the Regulation in cases not falling into the material scope of the Regulation, such as in the area of child abduction.[9] This is hopefully just an anomaly.

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

[7] Tallinn Circuit Court 28.02.2017 order No 2-15-2681; Tallinn Circuit Court 29.09.2017 order in a civil case No 2-15-2681; Tallinn Circuit Court 2-16-15716 order in a civil case No 2-16-15716.
[8] Estonian Supreme Court 01.12.2010 case No 3-2-1-117-10.
[9] Tallinn Circuit Court 12.05.2017 case No 2-16-7156.

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'?

There is no prevailing view on the appropriateness of this in the legal literature/practice. Note, however, that before the new Regulation, this was an issue which caused confusion in practice – the claimants sometimes tried to enforce in Estonian foreign orders on provisional measures without the defendants being given an opportunity to be heard. After such problems arose, the relevant rules were explained in Estonian legal literature[10], which seems to have avoided further disputes on this point.

Under the new Regulation this issue has not caused problems.

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?

Rather the latter, because (at least in Estonia), it is sometimes[11] possible to apply for a provisional measure before the (main) proceedings have been taken place/before the claimant submits his claim to the court. So the jurisdiction does not have to be actually exercised for there to be a judgment on provisional measures.

Please note, however, that the latter formulation provided in your question might not be entirely correct in all the situations - it could also be possible to apply for a provisional measure in Estonia even if Estonian/foreign court would determine its jurisdiction under some other legal act than the Regulation, if such act has precedence over the Regulation (for example the Lugano 2007 Convention, the bilateral treaties concluded with third countries, such as with the Russian Federation).

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?

Yes, provided that the conditions for the enforcement provided by the Regulation are met. As an illustration, a similar opportunity to order provisional measures before the main proceedings is provided by § 382 of the Estonian Civil

[10] G. Lepik, M. Torga. - Hagi tagamine ja esialgne õiguskaitse tsiviilasjades. Rahvusvaheilne mõõde (*The International divisions of provisional measures taken by civil courts*). – Juridica 2013/10, pp 742-751.

[11] Estonian Code of Civil Procedure § 382 allows this possibility.

Procedure Code, so there would be nothing new in such situation for Estonian lawyers.

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?

Again, depending on whether the conditions on enforcing the judgment are met, there should not be any problems, especially if the two judgments are not irreconcilable and especially if the two courts both would have jurisdiction over the main case.

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?

There is no prevailing view on this and this problem has not arisen in case law. It is my personal opinion that the answer to this question might depend on the particular rule that the foreign court has based his jurisdiction on. For example, if the foreign court claims to have jurisdiction under a rule on exclusive jurisdiction dealing with immovable property, but the property in question is situated in some other country, it would be somehow peculiar if the (clearly wrong) certificate should be taken at face value.

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*)?

The definition of a judgment in the EU instruments has not caused any problems in Estonia.

The definition of a 'court' has not been under scrutiny in Estonia in the context of the Brussels I instruments, including the new Regulation. The concept of a 'court' has, however, received attention in the context of some other EU PIL regulations, such as the Brussels II bis 2201/2003 and the Succession 650/2012 Regulations, because Estonian notaries exercise certain public functions in the areas falling under the substantive scopes of these regulations. These debates, however, have no influence on applying the Regulation.

CHAPTER II

Personal scope (scope *ratione personae*)

19. The Recast introduces a number of provisions aimed at further improving the procedural position of 'weaker' parties. Thus, it widens the scope of application *ratione personae* so as to enable consumers and employees to rely on the protective provisions of the Regulation against non-EU 'stronger party' defendants (Article 6(1) referring to, *inter alia*, 18(1) and 21(2)). Are there any statistics available illustrating an increased number of suit actions filed by consumers and/or employees in your jurisdiction?
    No such statistics are available and when one reads the cases available in the public databases, it looks like the new rules have not been used by the consumers/employees to sue the Third State defendants.

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?
    This problem has not arisen in practice. Article 26 has, however, been used in cases where the address of the defendant was not known exactly in the EU, but it was presumed that the defendant had a domicile in the EU.[12]

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?
    There is no discussion on this in Estonian legal literature, but it is my personal opinion that yes, these articles apply regardless of Article 6.
    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)?
    The first option should be considered as correct. For example, Estonian courts often assume jurisdiction based on Estonia-Russia legal assistance treaty, because there is a considerable Russian minority in Estonia. If the other EU courts would not stay their proceedings in favour of earlier Estonian proceedings, there would be irreconcilable European proceedings which is not in anyone's interest.

Temporal scope

[12] See the most prominent case on this (under the old Brussels I Regulation): Estonian Supreme Court order of 21.11.2012, No 3-2-1-123-12.

22. Have your courts or other authorities had difficulties with the temporal scope of the Brussels Ia Regulation? E.g., have they found it clear when the abolition of *exequatur* applies and when not?

The problems with this are only theoretical. Due to the small number of cases this issue has not really arisen. Although there have been quite many cases touching the issue of the temporal scope of application of the new Regulation, these cases are not very controversial – the courts have used the old Brussels I Regulation to declare a foreign judgments enforceable and have only referred to the new Regulation and its transitional provisions and explained why the new Regulation does not apply.[13] Estonian case law is silent on what to do if the proceedings in another Member State started before the date of application of the Regulation, but the judgment was made after this date. There has been some debates on this during the trainings of the judges, but the general view seems to be that the transitional provisions are rather clear that the initiation of the proceedings is the relevant date.

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?

The rules on special jurisdiction contained in the Regulation have not found much attention in Estonian legal literature.

Article 7(1) and (2) of the Regulation have sometimes been applied (and sometimes even) interpreted by Estonian courts (most recently Article 7(2)), other subsections of Article 7 and Articles 8 and 9 have not been applied or interpreted.

The cases concerning the interpretation of Article 7(1) and (2) are the following. Firstly, the Estonian Supreme Court has asked for a preliminary ruling from the CJEU in one Article 7(2) case involving the damage caused to a company through comments published online (CJEU case C-194/16). This is the most controversial case on the rules on special jurisdiction of the Regulation that reached Estonian courts. The CJEU answered Estonian Supreme Court the following:

> *Regulation Art 7(2) must be interpreted as meaning that a legal person claiming that its personality rights have been infringed by the publication of incorrect information concerning it on the internet and by a failure to remove comments relating to that*

[13] See for such a standard formulation, for example: Harju County Court 16.02.2016 order in a civil case No 2-16-2269; Tallinn Circuit Court 01.02.2017 order in a civil case No 2-16-10942

person can bring an action for rectification of that information, removal of those comments and compensation in respect of all the damage sustained before the courts of the Member State in which its centre of interests is located. When the relevant legal person carries out the main part of its activities in a different Member State from the one in which its registered office is located, that person may sue the alleged perpetrator of the injury in that other Member State by virtue of it being where the damage occurred.

Regulation Art 7(2) must be interpreted as meaning that a person who alleges that his personality rights have been infringed by the publication of incorrect information concerning him on the internet and by the failure to remove comments relating to him cannot bring an action for rectification of that information and removal of those comments before the courts of each Member State in which the information published on the internet is or was accessible.

In the same case the Supreme Court later followed the CJEU decision and found that the centre of interest of the company in question was located in Sweden.[14]

In addition, the lower courts have had troubles[15] determining whether the claims on *negotiorum gestio*[16] and unjust enrichment could fall under Article 7(2) (unfortunately, these issues were not settled by the courts). However, the Supreme Court has held that certain claims based on Estonian law (the claim that someone has violated your right and by that has enriched) of unjust enrichment can fall under Article 7(2).[17]

In one case involving a claim of the creditor of a loan contract against the debtor, the court interpreted Article 7(1) and found somewhat surprisingly that within the meaning of this provision, in the case of a loan agreement 'the place of the obligation in question' is the place where the loan contract is concluded and signed. Why the court decided this way, was not elaborated further.[18]

In one case a court stated in passing that in the context of Article 7(2) damages to natural person cannot be considered to take place in a Member State where the person does not live.[19]

In addition, there have been some other references to Article 7(1)and(2) in lower case law, but these have been the cases where Article 7 was not interpreted, but simply applied (for example, in cases where there was no dispute that the goods were delivered in Estonia[20] under a sales contract, that services were rendered in Estonia under a sales contract[21] or where there was no dispute that a harmful event (traffic accident) took place in Estonia[22]).

[14] Estonian Supreme Court 21.12.2017 order No 2-16-4631.
[15] See footnotes 2 and 3.
[16] In one case, the court put such claims under Article 7(2): Tartu Circuit Court order of 14.01.2014 in a civil case No 2-13-39410.
[17] Estonian Supreme Court 19.04.2017 order No 3-2-17-17.
[18] See: Harju County Court 13.02.2018 order No 2-17-16956.
[19] Viru County Court 28.02.2019 order in a civil case No 2-18-17121.
[20] Tallinn Circuit Court 03.07.2017 order in a civil case No 2-17-7329; Viru County Court 09.04.2018 order in a civil case No 2-17-14923.
[21] Tartu Circuit Court 19.09.2018 order in a civil case No 2-18-4182.
[22] Viru County Court 03.01.2017 order in a civil case No 2-16-117175.

In one pending case, the courts also deal with the case whether the non-declaratory action to determine that there is no contract concluded between the parties could be considered as a contractual within the meaning of Article 7(1).

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?
Please see the answer to question No 23 which gives overview on the Article 7(1) case law.

25. Is the place where the goods were delivered or services provided decisive for determining jurisdiction even when the place of payment is agreed upon and a failure to pay the price has solely given rise to the dispute? If so, what is the prevailing view in the literature and case law on how the wording 'unless otherwise agreed' in Article 7(1)(b) is to be understood?
This question has not received any attention in Estonian case law or legal literature.

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?
Please see the answer to question No 23.

27. The Recast introduced a new provision on jurisdiction regarding claims for the recovery of cultural objects as defined in Directive 93/7/EEC. Has this triggered discussion in the literature or resulted in court cases?
Not at all and this is not an issue which is likely to arise in Estonian case law. Estonian cultural property seems to mostly contain either of the things which are stored away in the museums or of a bunch of old ordinary looking rocks which nobody would be tempted to remove from Estonia and which location most of the people probably don't even know.

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, there have not. Note, that according to the publicly available database there are only circa[23] 240 Estonian cases where the Regulation has been applied and in most of them the Regulation was just applied, not interpreted and often only just referred to (when the courts, for example, decided to use the old Brussels I Regulation based on the transitional provisions contained in the new Regulation).

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 no prevailing view on this – it is not dealt with in legal literature or case law. Note, however, that Estonian Supreme Court has drawn attention to the court's obligation to inform the defendant on the proceedings before declining jurisdiction.[24] In addition, the circuit courts have often used Article 26 to send cases back to lower courts and order them to hear the defendants before declining jurisdiction.[25]

[23] As explained in the very beginning of this questionnaire, some Estonian cases might not have been published, so this number is an estimation. At the time of answering this questionnaire (30.07.2019), 230 cases where the Regulation was referred to were published.

[24] This, however, was done under the old Brussels I Regulation: Estonian Supreme Court order of 21.11.2012, No 3-2-1-123-12.

[25] See for example: Tartu Circuit Court 30.08.2016 order in a case No 2-16-4767; Tallinn Circuit Court 19.08.2016 order in a case No 2-16-107916; Tartu Circuit Court 18.05.2016 order in a case No 2-16-2695.

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?
    The jurisdiction agreements in favour of Third State courts do not have any effect in Estonian court proceedings, except the ones concluded in favour of the Lugano 2007 Convention Courts, in favour of the courts of the States that are the Contracting Parties to Estonian bilateral treaties or to the Hague 2005 Choice of Court Convention. In these types of cases, these instruments provide the exact requirements for such choice of court agreements. Any other jurisdiction agreements in favour of Third State courts the Estonian courts would just ignore.

31. According to the prevailing literature in your Member State, do provisions in Sections 3, 4 and 5 provide effective protection to 'weaker parties'?
    There is no literature on that in Estonia.

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?
    There is no case law where such difficulties could have arisen.

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?
    While Article 17 has often been applied by Estonian courts, it has rarely been interpreted. A typical Estonian private international law case would be the following: Estonian company concludes a consumer contract (usually a contract for the service or for a loan) with a consumer living in Estonia. Soon after, the consumer moves somewhere in the EU. The left-beind professional now wishes to sue the consumer in Estonia. What the courts do in these types of situations is that they decline jurisdiction, because the consumer does not have a domicile in Estonia when the proceedings are initiated.
    Sometimes the parties to a consumer contract have concluded a choice-of-court agreement in favour of Estonian courts, but under Estonian national rules of jurisdiction (Code of Civil Procedure § 104(3)2) to which Article 19(3) of the

Regulation refers to, such agreements are only allowed if they were concluded specifically for the cases when the consumer plans to move. In practice, this is rarely the case, so the courts decline jurisdiction in these cases.[26]
In one case the court also interpreted the meaning of the term 'consumer', stating that a consumer is a natural person who concludes a contract outside his trade or profession, e.g. orders a packet travel.[27] In another the court interpreted a term of 'consumer contract' and found that it did not include a contract concluded by the director of the company to secure the loan of the company.[28]
In some cases the courts have stressed that the notion of 'consumer' should be interpreted narrowly, the court referred on this point to CJEU C-498/16.[29]

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?
See the answer to the question No 33.

35. Have there been difficulties in applying Section 5 of the Regulation on the jurisdiction in matters relating to employment contracts, if so which aspect(s): the interpretation of the concept of 'matters relating to individual contracts of employment', the interpretation of the concept of 'branch, agency or establishment', 'place where or from where the employee habitually carries out his work', the application of the provision on the choice-of-court agreements?
The courts have sometimes applied the provisions on jurisdiction in employment matters. No interpretation problems have, however, arisen. Perhaps the closest thing to an interpretation is the standard reference in case law[30] to the CJEU case No C-47/14 para 39 where the CJEU gave guidelines on how to characterise a contract as an employment contract within the meaning of the previously applicable Brussels I Regulation 44/20.

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

[26] See for example: Viru County Court 19.12.2016 order in a civil case No 2-16-116570; Tallinn Corcuit Court 16.12.2016 order in a civil case No 2-16-116650; Viru County Court 24.11.2016 order in a civil case No 2-16-106437.
[27] Pärnu County Court 26.05.2017 order in a civil case No 2-16-13465.
[28] Tallinn Circuit Court 27.10.2017 order No 2-17-12354.
[29] Tallinn Circuit Court 26.08.2019 order No 2-19-4599; Tallinn Circuit Court 12.06.2018 order in a civil case No 2-16-8748.
[30] See for example: Tallinna Circuit Court 27.04.2016 order in a civil case No 2-15-15660; Harju County Court 29.01.2016 order in a civil case No 2-15-15660.

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?

There has been some cases where Article 24(1) was interpreted by Estonian courts.[31] In one case the owner of an immovable had pledged his immovable as a security for the loan received by one other person (the debtor) from the third person (the creditor). Since the debtor did not pay the creditor, the owner of the immovable paid to the creditor instead of the debtor and then later sued the debtor to get his money back. The owner of the immovable based his claim on Estonian Law on Property Act (*Asjaõigusseadus*) § 349(3) and wanted to come to Estonian court under Article 24(1) of the Regulation because the immovable in question was situated in Estonia. Estonian court, however, found that Article 24(1) was not applicable to determine jurisdiction in this case because the claim of the owner of the immovable was based on the law on obligations. Since the debtor/defendant had his domicile in Sweden, Estonian courts did not have jurisdiction.

In one other case, the Supreme Court briefly mentioned in passing that Article 24(1) would not cover contractual claims to get the ownership of an immovable and referred in this point to CJEU C-294/92.[32]

In another case a lower instance court found that Article 24(1) cannot be applied in a case where one owner of the immovable has fulfilled the obligation of the other owner of the immovable and then claims for the remuneration for this from the first owner, according to court, such claim would be contractual.[33]

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 relevant rule is § 14 of the Estonian Private International Law Act (*Rahvusvahelise eraõiguse seadus*) according to which the law applicable to a company is the law of the country where the company is established, except when it is directed from Estonia or if its main activity takes place in Estonia – in these cases the Estonian law is applied.

Under Estonian substantive rules, the seat of a company is generally considered to be in the place determined by its articles of association.[34]

[31] Tartu County Court 10.08.2016 order in a civil case No 2-16-9608.
[32] See: Estonian Supreme Court 05.04.2017 order in a civil case No 3-2-1-12-17.
[33] Viru County Court 26.10.2017 order in a civil case No 2-17-11582.
[34] See: The Law on the General Part of the Civil Code Act (Tsiviilseadustiku üldosa seadus) § 29(1)[1].

The interpretation of Article 24(2) has not arisen in Estonian case law, but has been explained in Estonian legal literature.[35] The topic got attention in Estonia because of the Estonian e-residence project which is aimed at foreigners establishing companies in Estonia and directing these companies from abroad.
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You did not ask about it, but there is a case in Estonia on the question which disputes fall under Article 24(2). In one case a court decided that this Article would cover a situation where the claimant asks the court to decide that the defendants are not members of the board of the company. The court found that this meant the evaluation of the decision to appoint the members of the board and that dismissing a member of the board has in Estonian case law been considered as an action for declaring the decision of the board of a company invalid.[36] In one other case the court found that Art 24(2) does not cover claims made based on the sale of shares in a company.[37]

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?
Estonian courts have not dealt with Article 24(4).

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.
40. Estonian courts have not dealt with Article 24(5).

41. 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?

[35] M. Torga. E-residentsuse projekti tsiviilõiguslike riskide kaardistamine. 2015, pp 26-28.
[36] Tallinn Circuit Court 29.03.2019 order in a civil case No 2-17-11639.
[37] Tallinn Circuit Court 30.11.2017 order in a civil case No 2-17-3269.

Estonian courts have not dealt with this issue.

Prorogation of jurisdiction and tacit prorogation

42. 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?
    This issue has not found attention in case law or legal literature.

43. 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, there have been no cases involving parties who would both be from a Third State and in which courts would have applied Art 25.

44. 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?
    This issue has not found attention in case law or legal literature.

45. 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?
    This issue has not found attention in case law or legal literature.

46. 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?
    In one case, Estonian judge declared that he does not have an obligation to check the substantive validity of a choice-of court agreement concluded in favour of

another Member State and that it is up to the court in another Member State to do that. The judge derived this conclusion from a piece of legal literature which, however, did not deal with the Regulation, but Estonian national rules of civil procedure, so was perhaps not the best source for such a declaration. However, note that in this case the parties did not present to the court any reasoning on why the choice-of-court agreement should have been considered as invalid under the relevant applicable foreign law and there was no suspicion that the agreement should have been invalid.[38]

47. 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?
This issue has not found attention in case law or legal literature.

48. 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?
This issue has not found attention in case law or legal literature.

49. 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?
Note that this issue has not found attention in case law or legal literature. Note also, that yes – the principle of separation is well accepted in Estonian legal literature on other PIL instruments (mainly the Estonian commentary on the Code of Civil Procedure).

50. 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?
While Article 26 has been referred to in case law, the courts have not had problems interpreting it.

Examination jurisdiction and admissibility; *Lis pendens* related actions

[38] Tallinn Circuit Court 25.10.2017 order in a civil case No 2-17-2381.

51. 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).

    This issue has not found attention in legal literature, but there was one case on this topic: a court stressed that the claims have same cause of action if one asks for the declaration that the contract is invalid and the other asks the performance of the contract.[39]

52. 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?

To my knowledge, there have not been any *lis pendens* cases under the new Regulation. There is no standard guide on that and I think the solution would be practical - the Estonian court would request the parties for the proof that there are proceedings pending somewhere else.

53. 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)?

    The national rules do not specify this, but the general agreement seems to be that it is the option a. Please also see the comment on below as to why neither (a) nor (b) is a good solution for Estonia.

    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)?

    Under Estonian civil procedure law, the court always makes a special written ruling on whether or not the proceedings are initiated (Code of Civil Procedure Article § 372). This ruling is served on the parties and it must be done 'within a reasonable time', which in practice means a couple of days after the claimant

[39] Harju County Court 20.06.2018 order in a civil case No 2-18-3939.

submits his claim to the court. This is somehow unique practice in the EU, but at least in Estonia, it makes it very clear to decide when the proceedings are started within the meaning of Estonian national law. The Regulation somehow complicates things for Estonia, because the date of submitting the claim is something that does not have much effect in Estonia, except for deciding about prescription/limitation periods and whether the appeals were submitted in time.

54. Do subsequent amendments of claims in any way affect the determination of the date of seising in your Member State?
Please see the answer to the question No 53. It is possible to amend the claim during the time after the pre-trial phase, but this does not influence the date of commencement of the proceedings, because the commencement is determined by this special ruling that a court makes about the commencement. The general idea here is to offer the claimants surety that the court has received their claim and is proceeding with it.
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?

55. 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))?
This issue has not found attention in case law or legal literature.

56. 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?
    This issue has not found attention in case law or legal literature.

57. 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?
    This issue has not found attention in case law or legal literature. From Estonian point of view these Arts are a welcomed addition to the Regulation, because similar rules are contained in Estonian national rules on jurisdiction (Estonian Code of Civil Procedure). It is good if different PIL instruments are in line with each other.

58. 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?
    This issue has not found attention in case law or legal literature.

59. 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?
    This issue has not found attention in case law or legal literature. It is my personal opinion that these Arts are welcomed addition to the Regulation.

Provisional measures, protective measures

60. Do the courts in your Member State experience difficulties defining which 'provisional, including protective, measures' are covered by Article 35?
    This issue has found some attention in case law. Namely, the Estonian Supreme Court has interpreted this provision and has found that (as derived from the CJEU C-391/95) there should be a real connecting link between the court and the measure in order for Estonian courts to order provisional measures under

their national rules in conjunction with Article 35.[40] In a nutshell this case was the following: There were main proceedings pending in Finland. The claimant of these proceedings submitted a claim to Estonian court where he asked the Estonian court to freeze possible sale of certain shares in a Finnish company. The claimant reasoned that since the directors of the Finnish company lived in Estonia, Estonian court should have jurisdiction to prohibit such possible sale. The Supreme Court, however, did not agree with this and found that there was no 'real connecting link' with the property (the shares in a Finnish company belonging to the defendants in Finnish proceedings) in question and Estonia.

61. 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?
Please see the answer to the previous question.

Relationship with other instruments

62. 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, but the possible application of it has caused a lot of brainstorming in judge trainings.

CHAPTER III

Recognition and Enforcement

63. 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?

This issue has not been dealt with in Estonian case law or legal literature.

64. 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

[40] Estonian Supreme Court 16.02.2016 order in a civil case No 3-2-1-176-15.

enforcement requests based on judgments rendered in other Member States? If so, who undertook the effort and who seized the initiative?

Yes, they have, but in the context of other regulations (the European Enforcement Order Regulation, the European Order for Payment Regulation, the European Small Claims Regulation). The trainings were organised by the University of Tartu, Faculty of Law and there have been some other trainings organized by a non-profit Estonian Lawyers Association (*Juristide Liit*).

65. 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. Estonia is a small country so there is no need for that.

66. 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?

Estonia has been rather active in the EU-s e-codex project, though this one (at least according to its web-page) does not seem to deal with the Regulation. See: https://www.e-codex.eu/faq-e-codex.

67. 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 statistics on that and unfortunately no way to assume any information on that. It is too early to assess whether the new Regulation has caused any enforcement disputes to arise, because such cases have just not yet reached the courts.

68. 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 been dealt with in Estonian case law or legal literature.
In one case an issue arose whether the enforcement title within the meaning of Estonian enforcement law was the foreign judgment or the certificate issued about the judgment by a foreign court, but this question does not have much practical value as both documents are presented together to the enforcement officer.[41]

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

Yes in a way it has. Namely, there is a discussion in Estonian legal literature about a somehow similar rule contained in the European Enforcement Order Regulation ture. Some people think that the rules on limiting the enforcement

[41] See: Tallinn Circuit Court 07.01.2019 order in a civil case No 2-18-10222.

as contained in Estonian national law can be used when enforcing judgments under the European Enforcement Order, others think that these rules cannot be used as they are not in line with the European Enforcement Order Regulation. One could derive from this that it is not exactly sure which Estonian rules on national enforcement could be applied when enforcing judgments under the Brussels I (Recast) Regulation.

70. 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?
    This issue has not been dealt with in Estonian case law or legal literature and there is no statistics on it available.

71. 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?
    This issue has not been dealt with in Estonian case law or legal literature. Also, the experience of Estonian courts rather is that public policy is not often relied upon by the parties and even less often by the courts. There are only a few public policy cases under other Estonian PIL instruments, such as the New York Convention on Arbitral Awards, but these are rare.

72. 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 dealt with in Estonian case law or legal literature.

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

74. 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?

This issue has not been dealt with in Estonian case law or legal literature. The main problems with enforcing foreign judgments seem to belong to the area of family law/children/abduction and not to the area of law where the Regulation is applicable.

75. 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?

There is no data on this available. It is my personal observation that the practitioners are positively inclined to accept various documents in English, but not in any other languages.

CHAPTER VII

Relationship with Other Instruments

76. 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 dealt with in Estonian case law or legal literature.

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

Estonia-Poland legal assistance treaty, Estonia-Latvia-Lithuania legal assistance treaty.

Similar treaties would fall under Article 73(3) – Estonia-Russia and Estonia-Ukraine legal assistance treaty.

78. 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. The courts often apply CMR instead of the Regulation in the cases falling under the CMR, but there is no dispute that this is how it is supposed to be.

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

Article 71 has not been referred to in case law.

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

No.

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

No.

Lastly, there have been some problems which the Regulation has raised, but which you did not ask about. These are the following:

- Estonian courts have had trouble determining which territories are considered as the Member States of the EU, if the relevant territories are located in rather exotic places (e.g. British Virgin Islands, which is an overseas territory of the UK. Th Estonian court found that the Regulation did not apply in the case of defendants from these territories.[42]).
- Estonian courts have had some problems with the translations of the term 'domicile' to Estonian. The word 'domicile' is translated to Estonian in a way that it only refers to a natural person (the direct translation to Estonian is a 'living place', but a company does not 'live'). The courts have settled this problem by blaming it on the peculiarities of Estonian language and have considered (correctly) that a company can have a domicile within the meaning of all articles of the Regulation.[43]
- Since the vast majority of the cases that have reached Estonian courts under the Regulation concern the defendants/consumers who have moved to the other EU Member States, the courts have often had troubles determining the domicile of the defendant in another Member States (the problems, with both, finding the relevant foreign national rules on domicile and getting evidence on such domicile). This is a big problem in practice – how to locate the address/determine the actual domicile of a person abroad. Perhaps this problem could be assessed if the Evidence and Service Regulations are revised.

[42] See: Tallinn Circuit Court 15.11.2016 order in a civil case No 2-16-15532.
[43] See: Tallinn Circuit Court 05.10.2016 oeder in a civil case No 2-15-11285; Tallinn Circuit Court 21.08.2017 order in a civil case No 2-17-870.