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

This project is funded by
the European Union

ANALYSIS NATIONAL REPORTS EXECUTED BY IJI

VERSION OF 17 APRIL 2020 (FIN.)

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I. Introduction

1. This document contains an analysis of the national reports of Member States; one of the deliverables within the Judgtrust project. This analysis has been executed by project partner *Internationaal Juridisch Instituut*. The national reports cover all current EU Member States, including the UK.

2. The national reports are drawn up by legal specialists who aim to provide an overview of their Member State. The national reports are structured by a predetermined questionnaire. This questionnaire has been developed by the project partners and encloses 80 questions regarding the practical application of the Brussels Ia Regulation. The questionnaire is attached to this document as an annex.

3. The aim of this analysis is to provide short syntheses of the answers of the Member States to the questionnaire. These syntheses can contain summaries, main features if those were detected and/or specific examples of Member States that stand out. The submitted national reports of the EU Member States have been the only source of the analysis.

In order to be able to provide a synthesis, additionally, the *Internationaal Juridisch Instituut* has made tables in which the Member State and accompanying information per question is set out in a detailed manner. These tables are attached to this document as an annex.

II. Analysis of the national reports

Chapter 1 – Application of the Regulation – in general

Question 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?

Answer

Most of the member states systematically publish judgments (applying Brussels Ia and its predecessors) from third instance courts (supreme courts/cassation courts/constitutional courts) and they are often available via online database(s). These databases are sometimes freely accessible and sometimes they are behind a pay wall. There are also member states that do not publish judgements of third instance courts systematically, yet are rather published on the basis of a selection by judges/court panels.

Judgements from second instance courts generally seem to be less frequently published than judgements from third instance courts. However, there are member states that do systematically publish these type of judgement or make a selection. When these judgements are published, they are often available via online database(s) and, just like judgements from third instance courts, it depends on the database whether they are freely accessible or whether the user needs to pay for access.

In most of the member states judgements from first instance courts are not systematically published or not published at all. However, in some member states judgements from first instance courts all are systematically published and freely available in an online database. A notable example of this is The Netherlands; which systematically publishes judgements of all instances, first second or third, in a freely accessible online database (www.rechtspraak.nl).

Question 2

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

Answer

Most Member states consider the CJEU case law to provide sufficient guidance and assistance for the judiciary. In some reports it was noted that it is hard to answer this question, given the generally low awareness of the CJEU case law by the domestic judiciary and therefore the limited data on this matter.

There seems to be a difference in the frequency of application of CJEU case law between third instance courts and the lower instance courts. Most Member States report that third instance courts refer to CJEU case law frequently, whereas lower instance courts usually do not. Sometimes it was reported that this is only logical. Only in few Member States the CJEU case law seems to be frequently applied in all court instances.

Some Member States highlight that the scope and complexity of adopted solutions by the CJEU are not always clear and leads to debate. E.g. France points to difficulties regarding the definition of 'contractual matters' in Article 7(1) and that the CJEU's emphasis on proximity negatively affects legal certainty and enhances different interpretations between Courts and between Member States. France also stresses the fact that the coherence of the adopted solutions are a matter of concern. In this context, France refers to case law regarding the effects of choice of court agreements on third parties and the difference of approach between on the one hand C-71/83, Tilly Russ and C-387/98 Coreck Maritime and on the other hand C-542/10, Refcomp.

Ireland and the UK point to the complexity of interaction between concepts used in common law traditions and civil law traditions and that solutions adopted by the CJEU sometimes meet with criticism.

Question 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?

Answer

Member States differ severely in their opinions when answering this question and discuss a whole array of improvements and shortcomings. However, regarding some specific aspects it is possible to identify common denominators of improvements. Almost all Member States are in favour of the abolishment of the exequatur and stress the importance of this for the realisation of the EU internal market. Only one Member State highlighted that the abolishment of exequatur weakens the autonomy of the legal systems of the MS and qualified this as something negative (with the addition that this is the personal opinion of the reporter).

Other common denominators between Member States, to a certain extent, regarding improvements are: the extension of the territorial scope of Brussels Ia regarding consumer and employment matters; the clarification of choice of forum agreements and lis pendens and; tacit choice of forum agreements and the obligation to inform parties.

It was harder to identify common denominators of shortcomings.

Regarding almost all above mentioned improvements Member States reported shortcomings as well. As a shortcoming of the 'way' the exequatur was abolished, some Member States pointed out that the fact that the new rules leave more space for a Member State to refuse enforcement paradoxally impedes the goal of the new instrument to be a further step towards cohesion and unification.

The improvements regarding both the clarification of choice of forum agreements and tacit choice of forum agreements also met with criticism in some Member States. It was stated that both amended articles create new interpretation difficulties. Specifically regarding the tacit choice of forum agreements some Member States referred to the vague nature of the obligation to inform parties of their rights and the consequences of the failure to do so.

A certain amount of Member States identify shortcomings that relate to the inserted exclusion of arbitration. It was stressed that this exclusion is insufficient to clarify the relationship between Brussels Ia and arbitral proceedings.

Question 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?

Answer

Member States differ in their opinions when answering this question and have put forward many suggestions for improvement. Often heard suggestions are:

- to introduce an autonomous notion of domicile for natural persons.
- to simplify and limit the scope of the alternative grounds in art. 7 (and more particularly, to abandon the 'Tessili-approach');
- to clarify recital 12 regarding arbitration matters
- to clarify art. 25 and the validity of choice of court agreements;
- to introduce a stronger obligation on the court to inform parties of their right to contest; the jurisdiction and of the consequences ex art. 26;
- to clarify whether art. 26 is applicable also towards defendants outside the EU;
- to clarify the relationship of choice of court clauses in favour of third-state court(s) and the regulation and;
- to introduce an uniform provision for provisional matters in art. 35.

In the annex of this report all the suggestions of the Member States are categorised in a table.

Interesting is also the suggestion of Slovakia, referring to the establishment of a European register of pending proceedings, listing the specific date on which proceedings are opened in court. This proposal aims to increase the effectiveness of art. 29(2) Brussel Ia.

Question 5

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

Answer

Member States differ in their opinion when answering this question. Slightly less than half of the Member States have reported to not know about a tension between concepts under national law and under EU law.

More than half of the Member States do however report that such tensions can be identified. Various examples were put forward. E.g. there is confusion about the interpretation of: disputes concerning loans made for finance of sale of immovable property; the division of property of former spouses; consumer contracts; rights in rem (in immovable property); contractual/non contractual claims (in immovable property); unjust enrichment; negotiorum gestio; service

agreements; validity of choice of court agreements; courts as such (e.g. under Italian law arbitral tribunals are courts); 'declaration of enforceability'; and 'cause of action' in lis pendens.

Question 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?

Answer

A large majority of the Member States report that their domestic laws complement the jurisdiction rules of Brussel Ia perfectly or, in any way, do not cause any tension with the jurisdiction rules of Brussel Ia.

A small amount of Member States do however state that in certain areas some tension can be identified; such as domestic law that does not recognise other territorial competent courts or domestic law that directly interferes with Brussels Ia (e.g. in cases where art. 4 is applicable, it could happen that the particular competent court under domestic law is not the court of the place where the defendant is domiciled). It was also reported that the interpretation of concepts in domestic law can sometimes influence the interpretation of likewise concepts in Brussels Ia (e.g. causing a forum actoris in claims for payment of contractual debts). Finally, an example was given about domestic law that can prohibit choice of court agreements regarding a specific territorial competent court, whereas Brussel Ia can refer jurisdiction to this court.

Question 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?

Answer

Almost all the Member States report that a negative conflict of jurisdiction cannot occur in their legal orders, since domestic law in those situations either explicitly obligates to administer justice (sometimes to a specific court) or clearly leaves space for courts to take jurisdiction (e.g. forum necessitatis).

Some Member states do not have legal acts on this matter, but leave the case up to the third instance court to refer the case to a domestic court (with in mind that jurisdiction must be administered to prevent a negative conflict of jurisdiction).

Only few Member States report that there is not a specific approach to this matter, nor via legislation nor via a court, and that a negative conflict of jurisdiction can occur. E.g. in Bulgaria a domestic rule can exclude the forum rei which may lead to a situation where foreign claimants could be left without domestic court venue in Bulgaria. In the same vein, France reported that a negative conflict of jurisdiction can occur in a situation of a French competent court ex art. 4 Brussel Ia, but would then be considered, for the purpose of applying French rules, as subject to the exclusive jurisdiction of a foreign court (e.g. when a given claim relating to immovable

property situates outside of France is to be qualified as contractual under Brussels Ia, while it constitutes under French law an action in rem, subject to the exclusive jurisdiction of the court where the property is located).

Question 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)?

Answer

Two third of the Member States have organised their rules on relative and territorial competence in different statutory laws, whereas one third of the Member States have organised this all in the same legislative act.

Question 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.

Answer

Most Member States do not seem to experience particular problems when it comes to the delineation between court proceedings and arbitration. In a few Member States there is no case law and no literature about this delineation. In some Member States the issue is only discussed in literature, but not a problem in legal practice (France and Slovakia). However, the issue has been 'very problematic' according to the National Report from Latvia, from which follows that Latvian courts 'favour [an] absolute separation' between arbitration and the Brussels Ia Regulation, where, according to the Latvian National Reporter a more subtle separation that avoids disruption with the regime of the New York Convention should be made. The Brussels Ia Regulation is in some Member States applied in order to determine international jurisdiction for provisional measures relating to arbitration in another Member State (Bulgaria and Latvia) and to cost proceedings in an annulment procedure of an arbitral award in another Member State (Poland). German courts seem to follow the approach of the Brussel I Regulation. According to the German National Report, the ECJ 17 November 1998, C-391/95, ECLI:EU:C:1998:543 (*Van Uden*) and ECJ 10 February 2009, C-185/07, ECLI:EU:C:2009:69 (*West Tankers*) is still held as authorative by the German commentators. The risk of parallel court proceedings and arbitration under the current Brussels Ia regime is also mentioned (Germany and Romania). The width of the scope of the arbitration exclusion is added as an issue by the UK National Report with a reference to CJEU *West Tankers*. *Res judicata* (Poland an Slovakia) and *lis pendens* (Poland) are also pose particular problems when it comes to the delineation of arbitration ant the Regulation.

Whether Recital 12 is considered helpful is answered in different ways: either positive (e.g. Croatia, Czech Republic and the Netherlands), negative ('unclear' (Belgium), 'maybe even confusing' (Germany), 'contradictory', par. 1 and 3, and 'ambiguous' par. 4 (France)), or neutral (no substantive change) (e.g. Bulgaria and Cyprus). According to the French National

Report the contradiction between par. 1 and 3 is that par. 1 excludes arbitration matters, while par. 3 'suggests that a national court may exercise jurisdiction pursuant to the Regulation in order to examine the validity of an arbitration clause.' In this regard the Irish National Report notes a case about 'whether a jurisdictional challenge based on the Brussels I regulation precluded a further challenge based on an agreement to arbitrate'. The 'ambiguity' of par. 4 lies in the inadequate guidance when it comes to conflicting arbitral awards and court decisions issued in different Member States on the same matter (France). Recital 12 par. 2 is likely to affect the practice of the UK courts 'regarding enforcement of judgements whose subject matter is the applicability of an arbitration agreement'. According to the National Report from Romania Recital 12 is also not 'fully clear' on whether the decision to declare 'an arbitration clause null or issuing an anti-arbitration injunction, will be recognised, and to what extent a court decision in a Member State which is requested to discontinue an arbitration procedure or to continue with the procedure will be recognised or not according to the Brussels Ia in another Member State.'

Question 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.

Answer

In most Member States there seem to be no particular issues when it comes to the delineation between 'civil and commercial proceedings' and 'insolvency proceedings'. In a few Member States there is no case law on this particular subject matter (e.g. Croatia).

Problems that are mentioned arise both in the context of jurisdiction and recognition and enforcement. The specific circumstances and issues mentioned of the referred to case law in which the delineation had to be made, differs between the Member States. We therefore refer to the National Reports for a description of the cases. However, it can be noted that when the delineation is made, references are made to the case law of the CJEU and the 'legal basis' of the claim seems to be the criterium used in order to distinguish whether it is qualified as being of a 'civil and commercial' or of an 'insolvency' nature (e.g. Austria, Czech Republic, Portugal, Slovakia). Two CJEU cases, among others (e.g. ECJ 10 September 2009, C-292/08, ECLI:EU:C:2009:544 (*German Graphics Graphischen Maschinen*) and CJEU 19 April 2012, C-213/10, ECLI:EU:C:2012:215 (*F-Tex*), in Spain), that seem to be relied upon in several Member States are the ECJ 22 February 1979, C-133/78, ECLI:EU:C:1979:49 (*Gourdian/Nadler*) and ECJ 12 February 2009, C-339/07, ECLI:EU:C:2009:83 (*Seagon*) (cf. Czech Republic, France, Germany, Latvia, Spain). However, the French National Report indicates it is not clear whether or not the legal basis of an action is the relevant criterium and that French courts have 'struggled to reach the right solution', referring to CJEU 4 September 2014, C-157/13, ECLI:EU:C:2014:2145 (*Nickel & Goeldner Spedition)* or in the link between the action and the insolvency proceedings (see CJEU 4 December 2014, C-295/13, ECLI:EU:C:2014:2410 (*H. v. H.K.*). Some National Reports mention that the recent case law of the CJEU does not follow a principled, but a casuistic approach, which makes application of the CJEU case law to different cases hard (e.g. Austria and Germany). Denmark has opted-out of the 'EU's regulation on

Justice and Home Affairs' which also includes the Insolvency Regulation. This raises issues as to the 'Danish domestic understanding of insolvency' when it differs from the delineation as made by the CJEU. In the Netherlands legal concepts can have a 'hybrid character' which makes qualification difficult, for instance the Peeters/Gatzen-claim which led to CJEU 6 February 2019, C-535/17, ECLI:EU:C:2019:96 (*NK/BNP Paribas Fortis NV*). According to the Bulgarian National Report the issue led to CJEU 14 November 2018, C-296/17, ECLI:EU:C:2018:902 (*Wiemer & Trachte*).

CJEU 6 February 2019, C-535/17, ECLI:EU:C:2019:96 (*NK/BNP Paribas Fortis NV*) is mostly deemed to be helpful although the National Report from Portugal indicates that 'the judgment raises more doubts than provides help', because it seems 'that the proceedings at stake were based upon a specific solution of insolvency law resulting from case law'.

Question 11

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

Answer

The National Reports show that most Member States do not have any case law on this matter or that there is no information available. It is also indicated that there are no 'particular' problems with this subject (Spain). The few cases that have been mentioned by some National Reporters seem to relate to either property (Bulgaria, Romania) or maintenance (France, Greece). The decisions mentioned have been made under the Brussels Convention 1968, the Brussels I Regulation and the Brussels Ia Regulation. Certification of the settlement seems to be important for the enforceability of the court settlement (Greece and Romania). According to the National Report from France it has been decided that if a court settlement cannot be 'assimilated to a decision within the meaning of Article 25 of the [Brussels] Convention it could not be invoked by a party, on the ground of Article 27.3 of the Convention, in order to oppose the enforcement of a court decision rendered between the same parties in another Member state'. The enforcing forum is 'precluded' from adding to the settlement when it enforces a court settlement originating form a different Member State, thus the French National Report. In France partial enforcement of court settlements has taken place if not all subjects regarding the settlement fell within the scope of the Brussels Convention 1968 – in the referred to case a maintenance obligation did fall under the scope of the Convention and 'paternity' was excluded.

Question 12

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

Answer

The National Reports show that most Member states do not have case law about this subject or that this information is not available. The cases that have been mentioned are few. Several cases are about notarial deeds. A French case considered a signed and sealed official broker instrument as being an authentic instrument in the sense of Article 50 Brussels Convention

1968. Some National Reports indicate that most cases about authentic instruments concern the European Enforcement Order Regulation 805/2004 (Croatia, Estonia), e.g. 'claims connected with the paid invoices issued to the defendant in other Member States' (Croatia) .

In the National Report from Austria a case is mentioned concerning the issue about the costs relating to the 'applications for the issue of certificates under Article 59' of the Brussels I Regulation, which is according to the Austrian court not regulated by the Brussels I Regulation. Partial enforcement of an authentic instrument has taken place in French case law for the part of the instrument that fell within the scope of the Brussels Convention 1968. From other French case law seems to follow that no other conditions that are set out in Article 58 of the Brussels Ia Regulation have to be fulfilled for enforcement and the court of enforcement 'must, in particular, avoid any control of the validity of the instrument […] and cannot require any kind of legalization or similar formalities […]'. There is no *ex officio* check by the court of the conditions for enforcement according to French case law. According to the National Report from the Netherlands, a court considered to have jurisdiction with regard to enforcement of a notarial deed 'either on the basis of Article 22 (5) or Article 24 Brussels I Regulation'. In a different Dutch case it has been decided that enforcement of an authentic instrument under Article 58 Brussels Ia Regulation can take place without hearing the debtor.

Definitions

Question 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?

Answer

In many member states there seems to be no (or not a lot of) case law, discussion in literature or difficulties with regards to the application of the definitions in Article 2 Brussels Ia. If there is case law, discussion in literature and/or difficulties that are experienced, it mostly seems to concern the definition of 'judgment' in Article 2 (a) Brussels Ia.

Issues regarding the definition of 'judgment' vary depending on the Member State. The following are mentioned: (unilateral) 'provisional measures' (Bulgaria, France), recognition and enforcement of judgements concluded in Andorra (France), arbitral awards which might fall within the scope of Articles 45 (1) (c) and (d) Brussels Ia, when it comes to irreconcilable judgements (France), whether a court had 'an active role' in resolving the dispute or not (France), a European *res judicata* regime and the effect of the CJEU 15 November 2012 C-456/11, ECLI:EU:C:2012:719 (*Gothaer Allgemeine Versichering*/*Samskip*) (Germany), 'undertakings or schemes of arrangement' (Germany), ' model case decision in the framework of representative proceedings according to the German Act on the Initiation of Model Case Proceedings' (Germany), recognition of a judgment revoking a previously recognised freezing order under Article 32 Brussels I (Latvia), WCAM-settlements (Dutch Act on the Collective Settlement of Mass Damage Claims) (Netherlands), and whether a 'judgment' needs to be a 'substantive decision on the [parties'] legal relationship [...] and cannot be limited to formal aspects of the proceedings' (Poland). According to the National Report from France the ECJ 2

April 2009, C-394/07, ECLI:EU:C:2009:219 (*Gambazzi*)-case seems to indicate a large definition of 'judgment' under the Regulation. Next to the definition of 'judgment' the National Report from Croatia indicates that the definition of 'court' is considered to create tension since public notaries 'can act on behalf of a court and [a] public notary's writ of execution may be enforced'.

Other case-law and/or discussions that have been mentioned in the National Reports concern the following subjects: the recognition of foreign arbitral awards (Estonia), paternity (Estonia), child abduction (Estonia) application of the Brussels Ia to the termination of a contract by a public authority (Hungary), divorce (Romania), non-registered partnership (Slovenia), the exclusion of 'social security' (Slovenia), and arbitration matters (Spain).

Both Danish and Irish law did not know the concept of authentic instruments before the Brussels Convention

Question 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'?

Answer

In general, answers to this question range from positive and appropriate to no change because it only codifies CJEU case law (e.g. ECJ 21 May 1980, C-125/79, ECLI:EU:C:1980:130 (*Denilauler*/*Couchet*). Several National Reports indicate that there is no discussion or controversy in either case law or literature about this subject. However, there is also criticism when it comes to the definition of 'judgment' and provisional measures.

Recurring criticism involves the condition of service of the judgment for *ex parte* provisional measures (e.g. Austria, Croatia, Germany, France, Czech Republic). The service to the debtor would remove the surprise effect from the provisional measure (e.g. Austria, Croatia). The National Report from the Czech Republic even notes that Czech courts generally render provisional measures in *ex parte* proceedings that can be enforced without service to the defendant leading to the provisional measures not being certified under Article 53 Brussels Ia. The National Report from Ireland, mentions that 'the extended definition [of judgment] is likely to be welcomed', and refers to case law in which there was 'some difficulty' with regards to recognition of a Dutch *ex parte* order of 'conservatory garnishment' with immediate effect that could also be lifted, and the definition of 'judgments' under the Brussels I Regulation 'arising from dicta in [ECJ 14 October 2004, C-39/02, ECLI:EU:C:2004:615 (*Maersk Olie & Gas*)]'.

When it comes to the condition of 'jurisdiction as to the substance of the matter', both the National Report from Austria and France describe criticism, even though the positions defending/nuancing this criticism also seem to be present. According to criticism described in the National Report from Austria the condition could lead to 'considerable deterioration of the legal position of the party at risk'. The Austrian National Report points out that it could happen

that enforcement of provisional measures has to take place in a different Member State than the one in which the court took jurisdiction based on art. 35 Brussels Ia, because the object concerned was moved to another Member State after approval of the measure by the court. Not being able to recognise and enforce the provisional measure in a different Member State might increase the 'incentive' to move the object to a different member State, thus the critique according to the National report from Austria. Whether recognition and enforcement in that regard can take place under national law is 'questionable' even though this is not permissible 'according to the prevailing view' in Austria. The Austrian National Report also mentions a risk of 'divergent decisions' because of 'parallel proceedings' in different Member States regarding provisional measures for assets located in these different states, which might also lead to higher procedural costs.

The National Report from France includes criticism that shows that the definition of provisional measures is unclear, the exclusion of unilateral decisions favors the debtor, and jurisdiction to the substance of the matter as a condition that 'is sometimes considered as irrelevant insofar as decisions on provisional measures have the same nature, and shall be subject to the same regime, whether or not they originate from a court which has jurisdiction as to the substance of the matter'. The position is nuanced, according to the French National Report, because some authors consider it to be a good 'remedy against forum shopping', and provisional measures 'ordered by a court which has no jurisdiction on the substance may still have extraterritorial effects' can still be sanctioned 'when a party refuses to perform the measure abroad': as examples are mentioned 'contempt of court', 'penalty payment'.

The National Report from Slovenia expresses that the 'biggest uncertainty' relates to the requirement of jurisdiction as to the substance has to be based on the Regulation. According to the opinion of the National Reporter, jurisdiction does not necessarily have to be based on the Regulation, referring to the Article 53 and Recital 33 where the requirement of 'jurisdiction based on the Regulation' does not seem to exist.

According to the National Report from Croatia it is 'unsatisfactory' that not all uncertainties were taken away when defining 'judgment' in Article 2 (a), especially those raised in ECJ 27 April 2004, C-159/02, ECLI:EU:C:2004:228 (*Turner*/*Felix*) and ECJ 17 November 1998, C-391/95, ECLI:EU:C:1998:543 (*Van Uden*).

Finally it is noteworthy that according to the National Report from Greece the question was raised 'whether service of the decision should take place exclusively in accordance with the Service Regulation or not'.

Question 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 to the rules of the Regulation?

Answer

By far the majority of the National Reports indicate that 'jurisdiction as to the substance of the matter' should probably be understood as jurisdiction that 'can' be established to the rules of the Regulation. The positions reflected in the National Reports are based on either literature (e.g. Denmark, France) or case law (e.g. Ireland, the Netherlands) or, in the absence of both, on the opinion of the National Reporter(s) (e.g. Czech Republic, Luxembourg, Portugal). In several Member States there seems to be no case law about the interpretation of 'jurisdiction as to the substance of the matter' (e.g. Cyprus, Hungary, Italy, Malta UK). In some National Reports the interpretation is based on the wording of Article 2(a) and/or 35 Brussels Ia (cf. Finland, France, Latvia). Sometimes the possibility that cases in which the preliminary measure is made before substantial proceedings are initiated is explicitly considered (Czech Republic, Estonia).

The National Reports from Italy and Slovenia seem to tend towards the interpretation of 'jurisdiction as to the substance of the matter' as 'jurisdiction necessary to exercise' (Italy) or 'jurisdiction should already be exercised' (Slovenia). With regards to the National Report from Slovenia it should be noted that this is the opinion of the National Reporter and that the National Report starts by pointing out that this 'problem has been recognised and discussed' and that the 'prevailing view is that the issue is controversial' and should be decided upon by the CJEU.

Which court is seised first as to the substance of the matter seems to be of importance according to the National report from the Netherlands and Poland. The Dutch National Report refers to 'the prevailing approach in Dutch case law' in the context of jurisdiction: 'if a court of another Member State is seised first, and actually exercises jurisdiction as to the substance of the matter, the Dutch court seised second for preliminary measures is not considered having jurisdiction as to the substance of the matter and can only base jurisdiction on Article 35 [Brussels Ia] […][;] courts apply the *lis pendens* rule of Article 29'. Within the context of the definition of 'judgment' a similar observation is made in the National Report from Poland, referring to scholars.

The National Report from Bulgaria refers to the second view as posed in the question, but at the same time notes that jurisdiction should be established according to the rules of the regulation. The National Report from Austria seems elaborate on what a procedure as to the 'substance' is regarded as.

Question 16

Should a decision on provisional measure issued by a court of a Member State, that could base its jurisdiction on the substance of the matter according to the regulation's rules, be considered as a 'judgment' for the purposes of enforcement in your jurisdiction, when no proceedings on the merits of the case have yet been initiated? If the claim on the substance of the matter is subsequently filed with a court in another Member State also having jurisdiction under the Regulation, how would that reflect on the request for enforcement in your member State of the 'judgment' issuing the provisional measure?

Answer

The question consists of two parts.

As to the first part of the question, several National Reports show that there is neither case law nor (prevailing) legal literature in the Member State involved (e.g. Denmark, Slovakia, Slovenia). However, many National Reports seem to indicate that it is possible to consider a decision on provisional measure issued by a court of a Member State as a 'judgment' for the purposes of enforcement if no proceedings on the merits of the case have yet been initiated, either based on case law (cf. Ireland, UK), literature (e.g. Belgium, Netherlands), or, the own opinion of the National Reporter(s) (e.g. Czech Republic, France, Greece, Romania, Slovakia). This is not surprising considering that most answers to question 15 showed that 'jurisdiction as to the substance of the matter' should probably be understood as jurisdiction that 'can' be established to the rules of the Regulation. Because of the absence of case law in many Member States, the discussion in literature and the opinions expressed in the National Reports, the issue seems to be of an academic nature.

Interesting with regard to the first part of the question are the National Reports from Croatia, Cyprus and Romania. The National Reporter from Croatia is of the opinion that 'a decision on provisional measure […] should not be considered as a 'judgment for the purposes of the enforcement in any jurisdiction, when no proceedings on the merits of the case have been initiated and there is no proof that it will happen'. This limitation would serve 'predictability' and 'legal certainty', and for cases falling outside of the definition of 'judgment' there is also Article 35, thus the Croatian National Report. The opinion expressed in the National Report from Croatia differs from the described law in that report: 'if the decision is confirmed by the certificate that the court has jurisdiction as to the substance of the matter', it can be considered as a 'judgment' for purposes of enforcement. In Cyprus, according to the National Report, '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.' The National Report from Romania shows that in cases under the Brussels I Regulation Romanian courts have been reluctant to enforce provisional and protective measures from other Member States and relied on national Romanian private international law rules. It is 'likely' that this practice will continue under the Brussels Ia Regulation, thus the Romanian National report.

As to the second part of the question, there are several National Reports that indicate that filing a claim on the substance of the matter subsequently with a court in another Member State, also having jurisdiction, does not influence the request for enforcement of the 'judgment' issuing the provisional measure in the involved Member State, unless the conditions for enforcement are not met, or the preliminary measure is revoked or cannot be recognised (cf. Bulgaria, Czech Republic, Estonia, Finland, Germany, Lithuania, the Netherlands, Portugal and Sweden).

However, according to some National Reports, this issue is discussed in legal literature of some Member States (e.g. Austria, Belgium, France). The discussion in those Member States seems to be of an academic nature only.

According to the National Report from Austria some authors say Article 45 (d) applies in this regard, others that 'the provisional measures adopted by the court having jurisdiction to the substance should prevail' over other provisional measures ordered by courts 'potentially' having

jurisdiction that are of a 'supplementary nature', the latter is justified by 'strengthening' the 'court having jurisdiction as to the substance' as worded in the Regulation.

The National report from France shows that according to some authors 'if the claim on the substance of the matter is subsequently filed with a court in another Member State, also having jurisdiction according to the Regulation, […]enforcement [of the judgment ordering the provisional measure] shall be stayed and eventually refused if [the court has jurisdiction].' The position is based on the reasoning that the '*ratio legis*' of Article 2 (a) implies 'that the court ordering the provisional measures will eventually exercise jurisdiction on the substance of the matter.' Referred is to the risk of *forum shopping* and the objectives of the Regulation. However the National Report recognises that this interpretation does not follow clearly from the wording of Article 2 (a).

From the Belgian National report follows that it is argued that provisional measures should freely circulate even if a court in a different member State is subsequently seised as to the substance of the matter. Relied is on the principle of *perpetuato fori* and the provisional measure ordered by the court based on Article 35, could refuse or withdraw the certificate saying it has jurisdiction, thus the literature as quoted in the National Report.

The National report from Greece indicates that the prevailing opinion is that 'main proceedings do not have to be pending' and that the court examining the preliminary measures also decides on the 'international jurisdiction of the court that will try the merits of the case. It is the main court should decide first on its jurisdiction.' It is also noted that literature recognises that this can be considered to be inefficient and the opposing view is not fully excluded by the author of the prevailing view.

The National Report from Italy indicates that in parallel proceedings the judgments of a competent court prevails over the ones from a non-competent court.

Question 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?

Answer

In many Member states there seems to be no case law and/or literature on this particular matter. Incidentally it is indicated that there is no 'unanimous view' (Poland) or that the issue needs to be clarified (Portugal). In addition, in some National Reports the Reporters expressed their opinion on the matter (Estonia, Slovakia). The prevailing view in several Member States seems to be that review of the jurisdiction of the court of origin is not permitted, cf. Article 45 (1), (3) Brussels Ia Regulation (e.g. Austria, France, Italy, Netherlands). The courts of the Member States that are requested for enforcement may, as mentioned in some reports, only rely on the certificate pursuant to Article 53 Brussels Ia (e.g. Bulgaria, Croatia, Greece). The National Reports from the Netherlands and France leave room for certain exceptions to the prevailing view as described above: e.g. in the case of France situations falling within the scope

of Article 45 (1) (e) Brussels Ia. However, the National Report from Sweden mentions that 'situations described in Article 45 (1) (e) apply merely to the findings of fact […]', with a reference to Article 45 (2) Brussels Ia. Apart from the exceptions mentioned above, a few interesting diverging views have been presented by the National Reports.

The Austrian National Report presents a distinction between reviewing 'jurisdiction' and reviewing arguments 'as to ground of jurisdiction' from the Member State of origin. In cases of 'doubt as to what the court of origin relied upon when adopting the provisional measure, the Member State of enforcement is not prevented from reviewing the arguments contained in the judgment as to the ground of jurisdiction[…]'. According to the Report this kind of review is not prohibited by Article 45 (3) because it reviews merely the establishment of the basis of jurisdiction and not jurisdiction itself – a similar view seems to follow from the National Report from Portugal. 'If jurisdiction cannot be established, the court shall be deemed not to have based its jurisdiction on having jurisdiction as to the substance of the matter', thus the National Report from Austria. The report also refers to recognition that should be permitted under national law (treaties included).

The National Report from Belgium shows that it was argued in literature that review is possible, but to a certain extent: 'the only outcome of the verification of the jurisdiction of the court of origin can be the non-enforceability of the provisional measure'.

The National Reporter from Estonia is of the opinion that it would be peculiar to not review 'clearly wrong' certificates and that the answer to the question depends on the 'particular rule that the foreign court has based [its] jurisdiction on'.

According to the National report from Latvia, the Latvian Supreme Court seems to have left the question open when it comes to review of jurisdiction in a recognition and enforcement case concerning the English injunction, within the context of the Brussels I Regulation. The limits set by Article 45 (1) seem to be in line with the decision, however.

The National Reporters from Slovakia 'suppose that the court should be entitled to review whether the court which issued a provisional measure in the matter itself, since this is an assessment of whether a certified judgement meets the conditions pursuant to Article 2(a) of regulation Brussels Ia […] or not.'

Question 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)?

Answer

Many National Reports seem to indicate that information is either not available, that there are no issues, or that no particular attention was given to the definition of 'judgment' and 'court or tribunal' in their Member State. The National Report from Romania indicates that the reason for this might be, because in Romania only courts can issue 'judgements'. This might explain the lack of attention that the issue has been given in the other Member States, even though this is

often not indicated (cf. Poland). According to the National Report from Sweden, the reason lies partially in Article 3 (b) Brussels Ia. The French National report mentions two elements that are required to define a court or tribunal 'independence of authority and respect of the contradictory principle'. Decisions from state authorities (ministers or governmental agencies) lack independence and decisions from notaries as in CJEU 9 March 2019, C-551/15, ECLI:EU:C:2017:193 (*Pula Parking*) are not considered as decisions in France as far as 'they do not result from contradictory proceedings', thus the French National Report. In Slovenia the issue did get a lot of attention, but no similar issues were raised.

Some Member States had issues with regard to the administrative nature of a 'Notice' (Greece) or because the decision was rendered by an administrative authority, even though the certificate in accordance with Annex I Brussels Ia Regulation was attached to the decision (Slovakia). The Polish National Report mentions 'a similar issue' that arose in the context of the EU Succession Regulation 650/2012, CJEU 23 May 2019, C-658/17, ECLI:EU:C:2019:444 (*WB*). The National Report from Croatia mentions that there are decisions dealing with similar issues as in CJEU *Pula Parking*, because in that case the request for the preliminary ruling came from the Croatian judiciary.

According to the National report from Estonia the definition of 'courts' has been under scrutiny within the context of the Brussels I Regulation. However, '[t]he concept of court has […] received attention in the context of' other instruments such as Brussels II bis 2201/2003 or the Succession Regulation 650/2012, but not the Brussels Ia Regulation.

Questions 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?

Answer

The Member States do not keep statistics on actions filed by consumers and/or employees in cross border cases.

Question 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?

Answer

A large majority of the Member States report that there is no specific case law published or literature on this topic.

Most Member States state that the prevailing opinion in literature is that Article 26 applies regardless of the domicile of the defendant. In this respect some of the national reports refer to the interpretation of the corresponding Article in the 1968 Brussels Convention of Article 24 Brussels I Regulation.

Other Member States submit that there are different views in this respect.

For example, Austria reports that this is a controversial issue. It is generally felt that Article 26 is applicable irrespective of the domicile of the parties; the decisive factor is that the temporal and material scope of application has been opened up and that a court of a Member State has been seised. However, some authors are of the view that at least one of the must be domiciled in a Member State.

France reports that the prevailing view in literature is that Article 26, contrary to Article 25, does not apply regardless of the domicile of the defendant. It is noted that Article 6 does not refer to Article 26. Further, in case Article 26 would be applicable regardless of the domicile of the defendant this would excessively widen the scope of application of the Regulation.

Sweden reports that Article 26 only applies if the defendant is domiciled in a Member State.

Question 21

In a similar vein, what is the prevailing view in your jurisdiction on whether provisions on lis pendens contained in Articles 29 and 30 apply regardless of the domicile of the defendant? Is the fact that a court of a Member State has been seised first the only relevant/decisive factor for the court second seised to stay its proceedings or does the obligation to stay persist only if the court first seised has jurisdiction according to the Regulation (with respect to the claim falling within the substantive, ratione personae and temporal scope of Regulation's application)?

Answer

Most Member states apply Articles 29 and 30 regardless the domicile of the defendant. The fact that a court of a Member State has been seised first is the only relevant factor for the court second seised to stay its proceedings. In some national reports it is stressed that the second court does not examine the international jurisdiction of the first court.

In some Member States this issue is not addressed in case law or literature.

Cyprus reports that case law shows that 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). In other cases the only relevant/decisive factor is the fact that the court of the other Member State has been first seised.

In Malta in the few cases that dealt with the plea of *lis pendens*, the plea was rejected and the Malta court dealt with the case. However, the domicile of the defendant was not a material consideration in those cases.

The Spanish Report draws attention to the judgement rendered by the Tribunal Superior de Justicia de Madrid, Social, of 14 September 2015 [submission to Turkish courts], where the court considers that Article 29 is applicable when one of the courts involved is not a EU Member State.

Question 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?

Answer

Most Member States have encountered none or just minor problems regarding the temporal scope. For instance, courts have applied national law or the Brussels I Regulation instead of the Brussels Ia Regulation. One of these Member States believes that in the early years of the Regulation, the lack of knowledge of the Regulation is the main reason for these problems.

Some Member States explain that there are few (published) cases regarding this issue.

A small number of Member States identified some problems relating to the form of the certificate, that is the question which of the forms (Brussels I or Brussels Ia) should be issued.

Estonia reports that there was discussion in case the proceedings in another Member State started before the date of application of the Regulation, but the judgment was made after this date. The general view seems to be that the transitional provisions are rather clear in that sense that the initiation of the proceedings is the relevant date.

France draws the attention to two issues. First, there may be uncertainty on the definition of the date at which the proceedings are instituted. Second, it is not clear whether the abolition of exequatur applies in cases where the proceedings before the first instance court were introduced before 10 January 2015 while, at the appeal stage, the proceedings were instituted on or after this date.

Poland reports that there is case law where the courts seemed to consider that due to the fact that a regulation is directly and immediately applicable in all Member States, the Brussels Ia Regulation should have been applied instead of the Brussels I Regulation even though the proceedings were instituted before 10 January 2015.

Question 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?

Answer

A large majority of Member States reports that Article 7 is undoubtedly used most frequently. The Netherlands adds Article 25 to Article 7, as being the most applied provisions of the Regulation.

Further, a few member States reports that Article 8 is scarcely applied.

With regard to Article 9, none of the Member States have reported case law or discussion in literature.

Question 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?

Answer

Most Member States reported two issues in particular:

- the interpretation of 'matters relating to a contract' (Article 7(1)(a)).
- the localization of the place of performance (Article 7(1)(b)).

Additionally, some Member States referred to other complications in applying Article 7 (1), such as:

- the distinction between different types of contracts
- the distinction between contractual and non-contractual obligations
- the relationship between Article 7(1)(a) and 7(1)(b).
- the application of Article 7 (1) in case the defendant disputes the existence of a contract.
- problems in case of multiple places of performance

The Netherlands Report points out a case where the court decided that it could not determine the place of performance of a service contract, since the contract did not regulate this issue, the parties' will was unclear and there was insufficient proof of the actual place where the services were provided. As a consequence, the court held Article 7(1) inapplicable.

The National Report of Austria holds a broad overview of issues that came up in applying Article 7.

A few Member States have not experienced any problems in applying Article 7.

Question 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?

Answer

Most Member States emphasize the possibility of parties to agree upon the place of performance. In this respect the Italian Report emphasises that agreements on the place of delivery must be clear.

Some Member States reported that there is no case law or debate in literature regarding this issue.

The Netherlands Report spots some difference in literature and case law. Where in the literature it has been held that the provision 'unless otherwise agreed' means that the parties can agree on the place of performance for every single contractual obligation (including payment) and that the court for that place has jurisdiction in relation to disputes related to that specific obligation, case law shows a different picture. For example, in one case the court held that the place where the goods were delivered (Germany) was decisive in relation to a claim regarding payment: the court for this place had jurisdiction in relation to all obligations arising out of the contract. The fact that the parties had agreed on the place where the payment should take place was considered irrelevant within the context of (now) Article 7(1)(b).

The Czech Report explains that the phrase 'unless otherwise agreed' is interpreted by the Supreme Court, firstly, as allowing the parties to agree on this place (regardless of the conflict of law rules and law applicable) and, secondly, as a factual concept.

Regarding the meaning of 'unless otherwise agreed' the French Report explains that it is generally considered to give the parties the right to set aside Article 7 (1) (b) in favor of Article 7 (1) (a).

According to the German Report the phrase 'unless otherwise agreed' in Article 7(1)(b) is to be understood as allowing the parties to conclude agreements pertaining to the place of performance within the limits set up in the MSG judgment of the CJEU.

The Slovak Report specifies that the available case law indicates that the courts, when applying Article 7(1)(b) do not examine whether the contracting parties have agreed on a "place of payment" but consider the place of delivery of goods or services to be decisive even in actions relating solely to failure to pay the price.

Question 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?

Answer

The following issues were frequently noted as being difficult in most Member States:

- matters relating to tort, delict or quasi-delict
- place where the harmful event occurred or may occur

Some other issues were:

- infringement of intellectual property rights
- the scope of competence of each tribunal in cases the damage occurred in several Member States.
- the action for unjust enrichment.

The Netherlands Report submits that Article 7(2) Brussels Ia has given rise to several difficulties in application. Most recently, the Supreme Court (2019) has referred preliminary questions on the determination of the place of damage in collective action on behalf of shareholders with a Dutch investment account, who claim to have suffered financial losses due to the insufficient/misleading information given by BP in relation to the Deepwater Horizon oil spill in 2010. The questions not only regard the determination of the Erfolgsort as such, but also in relation to Article 305a of Book 3 of the Dutch Civil Code, containing a rule on representative group action, especially if not all victims are domiciled in the Netherlands.

Some Member States reported that the application of Article 7(2) has not given rise to particular problems. These reports sometimes refer to case law of the ECJ.

A few Member States pointed out that there is no published case law on this subject.

Question 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?

Answer

A large majority of Member States have reported that there is no case law nor debate in literature regarding Article 7(4).

According to the Polish Report, in literature the following issues are controversial with regard to Article 7(4):

- whether Article 7(4) of the Brussels Ia Regulation provides a ground of jurisdiction in regards to the actions for a negative declaration seeking to establish the absence of a rightful claim for the recovery of a cultural object. It is being observer that this solution would provide a possessor of a cultural object with forum actoris.

- the interplay between Article 7(4) of the Brussels Ia Regulation and Article 6 of the Directive 2014/60 that has repealed the Directive 93/7/EEC is viewed as not completely clear in regards to the claims introduced by a State or its emanations.

- a doctrinal discussion that boils down to the question of whether this provision may be relied on by a person domiciled in a third state who introduces a claim for the recovery of a cultural object removed from a non-Member State. According to some scholars, Article 7(4) of the Brussels Ia Regulation refers only to the definition contained in Article 1(1) of the Directive 93/7/EEC and Article 2(1) of the Directive 2014/60/EU and not to these Directives as such and therefore a third-state party could introduce a claim before the courts of a Member State where the cultural object in question is situated. Even though this view seems to be shared by scholars in other Member States, it is not clearly stated, at least in the Polish literature, how the term 'Member State' in the definition of the term 'cultural object' can be omitted in order to achieve this effect.

The French Report states that there is some discussion regarding the scope of this new provision: some authors are of the opinion that the scope is too limited.

Question 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?

Answer

A large group of Member States (15) report that there are no significant controversies in connection with other rules on jurisdiction under Article 7, 8 and 9. Some of these Member States emphasize that the case law of the CJEU is clear and followed by their national courts.

Some Member States report on issues which came up in case law and/or literature. The following is a (non exhaustive) summary of these issues, grouped per article. There were no issues reported regarding Article 9.

Article 7(3) Claims based on acts giving rise to criminal proceedings
France. Due to the insertion of a new jurisdiction rule into the French criminal code, French criminal courts now have jurisdiction over crimes and offenses committed or attempted through

an electronic communication network against a natural person residing in the Republic's territory or a legal entity registered in the Republic's territory. This provision could extend the scope of competence of French courts to civil claims of damages, which could be considered discriminatory against citizens domiciled in other Member States.

Article 7(5) Definition of "operations of a branch, agency or other establishment"
Greece. It has been settled case-law that the condition for applying Article 7(5) is that the dispute arose out of the operations of the branch, agency or other establishment *in Greece*. However, in a 2018 case before the Piraeus court between a Greek company and a UK mutual insurance organisation and its branch in Greece, that court diverted from the earlier case-law, and founded jurisdiction on the basis of Article 7(5) without examining whether the dispute arose out of the operations of the respondent's Greek branch. In casu, it sufficed that the head office in London listed the Greek branch on its website.

Sweden. There has been some discussion on whether an internet site (home page) can constitute an "establishment" within the meaning of Article 7(5), but there is no case law on this point.

France. In the French literature, the definition is considered unclear and too flexible: it is argued that it may lead to an extension of the scope of this alternative head of jurisdiction, and to favor *forum actoris*. Additionally, it is unclear whether an entity with legal personality such as a corporation be regarded as an agency, branch or establishment; or whether this status is reserved for entities with no legal personality?

Article 7(6) Claims related to trusts
France. This provision has generated discussions as to its applicability to the French 'fiducie', which was introduced in the civil code by a law of 19 February 2007.

Italy. The Italian Court of Cassation recognized that this head of jurisdiction can also be invoked by a third party to the trust for the nullity of the trust itself.

Article 8
France. There have been discussions and contradictory rulings on the issue whether choice-of-court agreements shall prevail over the provisions of Article 8, but it seems clear now that these agreements prevail.

Article 8(1): multiple defendants. Definition of "the place where any of them is domiciled"
Austria. The Court's holding in C-645/11 – according to which Article 8(1) does not apply to defendants domiciled in a third country – is largely rejected, because it disadvantages persons domiciled in the Member States. It implies that a defendant domiciled in another Member State is more likely to be sued abroad than a defendant domiciled in a third country.

The Netherlands. It has been held in the literature on intellectual property litigation that the criteria of Article 8(1) are rather complicated and the CJEU's case law is not always clear, creating legal uncertainty.

Definition of "so closely connected"

France. French authors warn against an overly strict approach, and have generally criticized the requirement adopted in *Roche Netherlands*, i.e. that the legal basis of the claims should be identical. In its most recent case law, the Cour de cassation underlines the importance of two criteria: (i) the risk of irreconcilable decisions on the one hand, and (ii) the identity of the factual and legal situation –but not of the legal bases of each claim.
Another problem relates to damages that occurred abroad and with regard to which French courts would not have had jurisdiction under Article 7(2). The current consensus is that jurisdiction under 8(1) may be exercised regardless of the place where the damage occurred.

Italy. The Court of Cassation recognised jurisdiction over multiple defendants – in casu, banks – domiciled abroad for their contractual and non-contractual liability for conducting financial transactions deleterious to the plaintiff.

Malta. In a recent case in which the claimant filed a lawsuit for breach of fiduciary obligations against 6 respondents, the Maltese First Hall Civil Court held that the requirement of 'so closely connected' was satisfied on the basis of the fact that the claims were addressed to all of the respondents, indiscriminately and jointly and severally. Additionally, it held that because the claim was based on a specific provision in Maltese law, it was more expedient for the case to be heard before a Maltese court.

Article 8(2): third-parties
Definition of "an action on a warranty or guarantee"
Austria. An important question is whether 8(2) applies only if the main action has jurisdiction under the Regulation, or whether it is sufficient for jurisdiction to arise from national law. This question is as of yet unanswered.

Belgium. The Ghent commercial court held that a direct action brought by a sub-buyer against a manufacturer does not qualify as "an action on a warranty or guarantee": that is an independent cause of action.

Third parties
Bulgaria. The Bulgarian Civil Procedural Code (Article 2019 (2)) prohibits the participation of a third party in case it has neither a permanent address in Bulgaria nor lives there. The prevailing case law applies this restriction, whereas the literature clearly argues against it.

France. In relation to the criteria used to determine whether there has been a circumvention of 8(2), the Cour de Cassation held that there could be no circumvention of the forum in cases where there is a *sufficient connection* between the original claim and the claim against a third-party. This approach seems slightly different from the one adopted by the CJEU in SOVAG, according to which the sufficient connection criterion is only one of the elements that shall be taken into account in order to determine whether there has been a circumvention of the forum.'

Article 8(3): counterclaims
Austria. The Austrian reporters repeat the ruling by the CJEU that Article 8(3) does not apply to set-off as a defence, which does not seek a judgement of the defendant and represents a pure defence.

Greece. In a 2018 case involving a counterclaim, the Thessaloniki court assumed jurisdiction over that counterclaim pursuant to Article 26, without reference to Article 8(3).

Article 8(4): combined actions; rights in rem
Croatia. Courts did not recognize the use of Art. 8(4) in cases where the plaintiff is claiming the alteration or cancellation of the security on immovable property based on related contractual obligation (most often credit agreement).

Question 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?

Answer

Question 29 was left unanswered by a few Member States.

Some (more) Member States reported that this question has not been discussed in the case-law and literature.

The other Member States have different views on this issue (no notification by the court to the weaker party): in some Member States it qualifies as a ground to oppose the recognition and enforcement, in other Member States it is not recognized as such a ground, while in again other Member States arguments can be heard for both views.

<u>Ground</u>

In *Greece*, it has been proposed to qualify it as a ground. In *Poland* and *Slovenia*, it is the prevailing view that it could indeed be qualified as such.

In *Slovenia*, it is the prevailing view that the purpose and context of the rule in Article 26(2) implies that a violation of the obligation to provide adequate information to the weaker party could result in the sanction of non-recognition of the judgment delivered by the court where the weaker party entered an appearance without contesting jurisdiction (given that this court in fact lacked jurisdiction). The rapporteur for Slovenia submits an additional point of contention concerning the new provision. Doubts have been expressed concerning the fact that new rule does not unambiguously answer the question how precise and explicit the court's instruction to (or information for) the defendant should be. The wording of the rule suggests that it is sufficient for the court to reiterate, in rather abstract terms (although probably in plain language understandable to legally unrepresented parties) the relevant provision of the Regulation concerning the consequences of failure to object the lack of jurisdiction, leaving it for the consumer to (possibly) discover by himself whether the claim was indeed brought in a court lacking jurisdiction. It does not follow from the wording that the court should go one step further and positively advise the consumer that it lacks jurisdiction under the Regulation in the first place. The practical effect of this issue should not be underestimated. If an (unrepresented)

consumer or employee is merely advised of the consequences of entering an appearance, leaving it for the defendant to determine whether there is a lack of jurisdiction in the first place, it can be expected that not many defendants would actually engage in research on the jurisdictional regime. This would especially be the case if "information" were given in written form and in a formulaic ("copy-paste") manner (particularly nowadays, when documents served by the court are already accompanied by such an amount of instructions and information that many parties no longer even read all of them carefully).

No ground

It is not recognized as a ground in *Bulgaria* and *the Netherlands* [the latter because Article 45 does not attach any effects to a violation of Article 26(2)]. Moreover, the rapporteurs for *Lithuania* submitted that they believe that an argument for recognizing it as a ground would not be very persuasive in Lithuanian courts. Likewise, the rapporteur for *Sweden* submitted that, although there is as of yet no case-law on the issue, it would not constitute a ground.

The *French* rapporteur argues that it is highly doubtful that it would qualify as a ground. Firstly, there is no explicit provision in the Regulation. Secondly, allowing it as a ground would amount to introducing a new case of revision of the decision, as it would allow the court of the forum to review the jurisdiction of the court of origin.

Both views

In *Austria*, *Germany*, *Italy* and *Poland*, arguments are submitted for both sides. The prevailing view in *Germany* is that it should not be recognised as a ground. However, there is a strong current [to which the rapporteur subscribes] in which it is argued that, in light of the effet utile of Article 26(2), any violation of that provision would, in fact, entail a refusal of recognition under Article 45(1)(e)(i).

The rapporteur for *Croatia* expressed the view that – notwithstanding the CJEU case-law that renders it unlikely to be qualified as a ground – it should be qualified as a ground: otherwise, "from the point of view of the weaker party," Article 26(2) is useless.

The rapporteur for *Romania* notes that it has been discussed in the literature that Article 45(1)(e) in conjunction with Article 45(2) could provide a ground. However, this view is constrained by the fact that the application and interpretation of Article 45(2) should be restrictive, and should be limited to blunt mistakes or oversights.

Additionally, the national rapporteur for *Finland* notes that it may be assumed that Article 45 contains an exhaustive list of grounds. There is no explicit provision which stipulates that the omission of a court to inform the weaker party is a ground. Yet he proposes that one could argue that, since an omission of the court to inform the weaker party has the consequence that there is no de facto tacit prorogation, it could constitute a ground under Article 45(1)(e)(i) because it conflicts with the provisions in Section 3, 4 or 5 of Chapter II.

The rapporteur for Poland provided a rather lavish overview of the debate in the Polish literature, which can be summarized as follows. According to one school, it stems from the CJEU judgment in ČPP Vienna Insurance Group that a court must declare itself to have jurisdiction even though the proceedings fall within the scope Sections 3, 4 and 5. Entering an

appearance grants jurisdiction per se to the court in question, while a ground for refusal provided in Article 45(1)(e)(i) applies only if a judgment was rendered by a court lacking jurisdiction to hear the case. Most commentators, however, adhere to the view that a court does not acquire jurisdiction if an appearance was entered but the defendant had not been informed of his right to contest the jurisdiction of the court and of the consequences of not doing so. The proponents of this view consider that an omission to inform weaker parties ex Article 26(2) qualifies as a ground for refusal of enforcement. In 2017, the Polish Supreme Court held, by way of obiter dictum, that in cases involving weaker parties, jurisdiction cannot be established under Regulation Brussels Ibis when the defendant enters an appearance without having been previously informed of the consequences of entering an appearance. A court's omission would hence qualify as a ground.

Question 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?

Answer

Question 30 was left unanswered by a few Member States.

Some other Member States reported that there is no literature nor case-law available on this issue.

A majority of Member States submits that it is the prevailing view that 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. A different interpretation – the Austrian reporter notes – would create the possibility to easily counteract the purpose of these rules. The rapporteurs for Greece and the Netherlands substantiate this view with a referral to Mahamdia/Algeria. The Finnish Report argues that it can be assumed that they apply, because the need to protect a 'weaker party' is the same irrespective of whether the chosen court is inside or outside the EU.

There seem to be different views regarding this issue in Portugal. The rapporteur argues that derogation to third state courts is limited by the exclusive heads of jurisdiction laid down by the Regulation, as well as Articles 15, 16, 19 and 23. Other authors have advocated, in the context of the Brussels Convention, that "such an effect depend[s] only on the domestic law of the Member State at stake."

The rapporteur for Italy notes that "It is usually excluded that the regulation has an effect reflect".

Question 31

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

Answer

Question 31 was left unanswered by the rapporteurs for two Member States.

Some Member States answered that this question has not been discussed in the literature.

A large group of Member States submits that it is the prevailing view that the provisions in Sections 3, 4 and 5 do provide effective protection to 'weaker parties'.

The rapporteur for the Netherlands submits that that this is too difficult to determine.

The prevailing view in Lithuania is that 'weaker party' protection would be effective if courts would always apply these rules and would be active in such cases, i.e. would properly inform the 'weaker party' of its rights.

Some Austrian commentators have proposed to extend the protection. For example, they argue that the wording of Article 45 "precludes recognition and enforcement even if the defendant is the economically weaker and less experienced party to the proceedings but has prevailed in the proceedings." It is argued that the wording of that provision "should be reduced teleologically and an infringement should not lead to a refusal of recognition and enforcement." Additional improvements are proposed in the French literature, too.

The rapporteur for Slovenia submits that: they provide effective protection for consumers; they mostly provide effective protection for employees; and they in certain instances provide too much protection for beneficiaries of insurance contracts – in particular where the insured is a professional.

In Poland, the overall assessment of the effectiveness of weaker parties' protection is positive. What seems to be preoccupying the scholars is not related, in fact, to the effectiveness of protection – but the clarity of some of the solutions provided for in Sections 3, 4 and 5 of the Regulation. For instance, it is not clear whether Article 31(4) renders Article 31(2) and (3) inapplicable to the matters referred to in Sections 3, 4 or 5.

Question 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?

Answer

Most national reports submit that there are no significant difficulties. Further a few rapporteurs mention that there is no reported case-law.

In Greece, several decisions of Areios Pagos (Άρειος Πάγος) have applied the CJEU's holding in FBTO Schadeverzekeringen NV and followed the CJEU's line literally.

The French Report emphasizes that the most significant difficulties that have arisen in the application of Section 3 concern actions brought directly by the injured party against the insurer of the person responsible for the damage. One issue is to determine the law governing the admissibility of such direct actions. Another issue is whether the injured party may seize the courts of its own domicile pursuant to Article 11 (2), or whether it may only seize the same court as the insured insofar as he exercises the rights of the latter.

In Germany, 'the place where the harmful event occurred' is interpreted as meaning the same as in Article 7(2). The same is reported for Italy. However, that latter rapporteur points out that this interpretation means that the court of the injured party might apply a law different from the lex fori – "whereas the interplay between protective heads of jurisdiction and applicable law usually leads to the application of the lex fori where the proceedings are initiated by the contractually weaker party."

Question 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?

Answer

About seven rapporteurs report there are no (significant) difficulties.

Other Member States submit there is some case law.

The Estonian Report describes a typical Estonian private international law case: 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-behind 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. Under Estonian national rules of jurisdiction to which Article 19(3) of the Regulation refers, choice-of-court agreements are only allowed in this context if they were concluded specifically for a case in which the consumer plans to move. In practice, this is rarely the case, so the courts decline jurisdiction in these cases.

As for choice-of-court agreements, the French Report mentions a recent Facebook decision (Paris Court of Appeal, 12 February 2016, n°15/08624) in which an agreement designating a Californian judge was considered as an unfair term given it obliged the consumer to seize a court with no significant connection to the dispute thereby incurring financial costs that were out of proportion with the stake of the dispute. The rapporteur states that the Regulation was wrongly applied in this case.

The Romanian Report draws attention to the fact that there is currently an outstanding request for a preliminary ruling from the Tribunal ul Specializat Cluj (Cluj Specialized General Court) to the CJEU where one of the questions concerns of application of Article 17(1)(c) or alternatively Article 7(2). This clarification is required in order for the way the national judge should proceed

in assessing his competence: namely, by interpreting/taking into consideration the substantive law basis invoked by the claimant or based on his status as consumer.

Question 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?

Answer

Question 34 was left unanswered by some rapporteurs, while some others refer to their answers to question 33.

Several rapporteurs noted no difficulties.

Most reports mentioned there is no case law available regarding this issue.

The French Report explains that, although there is no significant case on this issue, it is nevertheless clear among French authors that the domicile of the consumer shall, for the purpose of Article 18(2), be determined at the time of the introduction of the proceedings and not at the time of the contract.

The rapporteur for Czech Republic submits that it seems from the available case-law that judges are still inconsistent in their application of Article 18(2). These inconsistencies were further discussed in the literature, where all authors agree that the only binding interpretation is to be provided by the CJEU.

The rule of perpetuation fori applies according to the Slovenian Report. Only the place of the consumer's domicile in the moment when the lawsuit is brought is relevant. The rapporteur for Slovenia furthermore states that, in case both consumer and trader who were domiciled in the same member state in the moment when the contract was concluded, Article 19(3) "gives a possibility of a sufficient protection to the trader."

Question 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?

Answer

Several reports note no (significant) interpretative difficulties. A few (other) reports explicitly reported that there was as of yet no case-law available.

The rapporteur for Poland notes that – in some rare instances – the national courts invoked multiple grounds of jurisdiction in order to justify their jurisdiction in a given case.

Article 20(1): "matters relating to individual contracts of employment"

The rapporteur for Estonia emphasizes that Estonian courts' standard reference to CJEU case-law is to Holterman Ferho Exploitatie and Others paragraph 39, in which the Court provided guidelines on how to characterise a contract as an employment contract.

The German Report mentions that a German intermediate labour court recently commented on the relationship between Section 5 and jurisdiction relating to torts under Article 7(2).

In Italy, agency employment contracts have been excluded.

The Maltese First Hall Civil Court included a training agreement signed between the claimant employer and the respondent employee.

The rapporteur for the United Kingdom submits that the main difficulties in the application of Section 5 have arisen out of the definition of "matters relating to individual employment contracts". They include two aspects: (i) the inclusion of legally "independent" workers in the definition of "employees", where they de facto operate as employee, and (ii) whether some claims could be classified as "matters relating to individual contracts of employment" and therefore come within Section 5.

Article 20(2): "branch, agency or other establishment"

The rapporteur for Greece reports that, on various occasions, the Piraeus courts assumed international jurisdiction against foreign maritime companies by accepting that their actual seat and centre of interests is located in Piraeus.

One Latvian case concerned a claim of a former employee against the Consulate of the Embassy of the Russian Federation. The court of first instance referred extensively to Mahamdia. It concluded that (i) the consulate's actions through private law did not benefit from diplomatic immunity; (ii) the consulate was an establishment of the state it represented; (iii) an entity with a branch, agency or establishment in a Member State is considered to be domiciled in that Member State even if the entity itself was domiciled outside the EU. Hence, the Latvian courts assumed jurisdiction.

The Irish Report draws attention to the decision (2005) of the Irish Court of Appeal where the court assumed jurisdiction under Article 18(2) of Brussels I in a dispute involving Turkish nationals who had been seconded to their Turkish employer's Irish subsidiary.

Article 21(1)(b)(i): "place where or from where the employee habitually carries out his work"

The rapporteur for Austria notes difficulties with determining the habitual place of work for mobile workers, e.g. when the employee is a pilot, flight attendant, truck driver, etc.

Denmark's Supreme Court held that an employee who had worked for 20 months in Denmark, then 37 months in the UK, and then 34 in Norway did not have the necessary connection to Denmark for the Danish courts to exercise competence in a suit against the employer.

The French rapporteur for French notes that interpreting this concept gave rise to "an extremely significant number of cases". French courts follow the CJEU when interpreting the concept: they tend to adopt an extensive and flexible approach, with an eye to optimise employee protection.

In Italy, difficulties arise in the context of "moving workers". For instance in the case of seafarers, the element of the flag has witnessed a loss of importance for determining that place.

Article 23: choice-of-court agreements

The Croatian Report states that in some cases, Croatian courts correctly declined jurisdiction on the basis of Article 23 where there were no other grounds for their competence available and the choice-of-court agreement was entered into before the dispute has arisen.

The French rapporteur draws attention to a recent case, where the French Cour de cassation decided to set aside a 'choice-of-court agreement in favour of the courts of a third State that did not abide by Article 23', because the employee habitually carried out his work in France.

The rapporteur for Latvia reports an inconsistent application of Article 23.

Exclusive jurisdiction

Question 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?

Answer

Almost none of the Member States were able to answer this question, since there are no or little (published) decisions on art. 24(1). Consequently, many Member States report to not have experienced many difficulties in this context. However, regarding one specific matter some Member States referred to doubts in cases of a repartition of co-owned property of former spouses and whether this can be qualified under art. 24(1). Member States add that this matter is often dealt with outside art. 24(1).

Only Cyprus reports to experience difficulties regarding distinguishing between disputes which have as their object 'rights in rem' from those that merely relate to such rights. It was mentioned that the Cypriot courts have not applied the criteria of the CJEU in a consistent manner.

None of the Member States reported on art. 31(1), because there are no (published) decisions on art. 31(1).

Question 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?

Answer

Many Member States report to use a rule of private international law that is a combination of the real seat, incorporation, registered and statutory seat theories. Some Member States mainly uphold an incorporation rule, yet add to this rule that if the real seat is within their territory their domestic rules apply anyway.

Most Member States seem to use (a variation of) the statutory seat as a connecting factor in their rules of private international law.

Interestingly, Belgium, as a notorious 'real seat' member state, reports to recently have switched to the statutory seat theory, due to, i.a., the CJEU case law regarding Centros, Überseering, Inspire Art etc…

Question 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?

Answer

Many Member States report that there is no (published) case law on the matter, however at the same time highlight broad criticism on the CJEU GAT case, since it would enable abuse via so-called 'torpedo' claims. E.g. Article 24(4) can lead to the seised court declaring itself not competent as a result of the defendant putting forward a defence on nullity of the IP right.

Question 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.

Answer

Many Member States report that there is no (published) case law on the matter. In some Member States there is domestic legislation that specifies which measures and procedures fall within the scope of art. 24(5) and which do not. Other Member States have express legislation regarding enforcement proceedings, but do not specify anything regarding art. 24(5). There

seems to be disagreement on the interpretation of art. 24(5), namely whether this article should be interpreted restrictively or more lenient.

Some Member States elaborately specify the measures that fall under the scope of art. 24(5); we refer to the national reports for the details.

Question 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 (seizure)? In other words, is Article 24 interpreted extensively or narrowly in you Member State?

Answer

Many Member States report that there is no (published) case law on the matter. Most of the Member States that were able to answer, agree that this example does not fall under Article 24(5) and stress that Article 24(5) needs to be interpreted narrowly. However, a more lenient approach to Article 24(5) has been reported as well. E.g. Germany reports that the example falls within the scope of 'enforcement' ex Article 24(5) and that this article should not be interpreted too narrowly. The Netherlands identify a 'debate' on the matter and state that their third instance court already referred the matter to the CJEU.

Prorogation of jurisdiction and tacit prorogation

Question 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?

Answer

Many Member States report that there is no (published) case law nor literature on the matter. Most Member States that were able to answer, point to wide disagreement in a situation that the choice of court is the international element of the case (e.g. two parties from the same Member State choose a court in another Member State). Some Member States seem to accept that this situation falls under art. 25 Brussels Ia an do not seem to require an element of internationality. Another, seemingly, equal amount of Member States however state that this situation does not fall under the scope of art. 25 Brussel Ia and require certain minimum requirements of internationality (see national reports for more details about the various reported requirements).

Question 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?

Answer

Almost all Member States report either that there is no (published) case law on the matter or that no increase can be identified. Some Member States report to expect no differences, since previously applicable domestic law does not differ much substantively. Other Member States point to the general unattractiveness of their courts and subsequently do not expect much increase in number of litigations. Not one single Member State report to have noticed an increase in number of litigations. Poland is the only Member State that explicitly reports to expect an increase in cases.

Question 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?

Answer

Member states replied extensively to this question. Many Member States report on issues of the formal validity of choice of court clauses that are contained in general terms and conditions attached to invoices or the single reference to general terms and conditions in invoices. Another reported issue is the effects of choice of court agreements on third parties.

France replied that particularly Article 25 section 1 sub b and c Brussels Ia are problematic. They ought to be extremely imprecise, and to some extent too flexible. This creates a lot of uncertainty around the formal validity of choice of court agreements. E.g. the definition of practices which the parties have established between themselves; the definition of 'particular trade or commerce concerned'; uncertainty regarding types of agreements that may be deemed valid.

To acquire a more detailed view on the difficulties in Member States, we highly suggest to have a closer look at the national reports for many elaborative overviews.

Question 44

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

Answer

Many Member States report that there is no (published) case law on the matter. Most Member States that were able to answer state that no such case law exists. Interesting is the view taken by Ireland. Irish courts tend to take the approach that Article 25 Brussels Ia simply requires evidence of 'consensus' (as an autonomous EU standard) and of satisfaction of one of the three formal requirements (a-c). It was stated that there is no sense that national law can have any role to play in determining the validity of a choice of court agreement.

Question 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?

Answer

Many Member States report that there is no (published) case law on the matter. Most Member States that were able to answer point to various existing ambiguities regarding the term 'null and void'. It remains unclear what exactly it encompasses. Some member states interpret lack of capacity, violations to public policy and the existence of simple consent as matters falling under the term 'null and void'.

Additionally, Belgium states that is unclear how the terminology used in Article 25 section 1 Brussels Ia relates to the distinction between 'material validity', 'formal validity' and 'admissibility'. E.g. legislation prohibiting the insertion of a choice of court clause in certain types of contracts is traditionally regarded as concerning admissibility. It is unclear whether, for the purpose of Article 25 section 1 Brussels Ia, that legislation should be regarded to be concerned with nullity.

Question 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?

Answer

A part of the Member States report that there is no (published) case law on the matter. Some Member States argue that there are no difficulties in this context.

France however refers to discussions and states that the recital poses many difficulties in practice. It is stated that the recital requires a very complex reasoning from the court, especially where it belongs to a Member State other than the court mentioned in the choice of court agreement. This complexity is increased by the fact that the determination of the rules of private international law applying to the substantial validity of the clause, which is not covered by Rome I, proves extremely difficult in practice.

In Germany this recital created a legal gap. Following the entry into force of Rome I, the German legislator has abolished the domestic private international law rules. However, as Rome I does not apply to choice of court agreements, and, consequently, domestic private international law rules come into play, a gap in German law arises. In literature the analogue application of Rome I is suggested to fill this gap.

Question 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?

Answer

Almost all Member States report that there is no (published) case law on the matter, nor a discussion in literature. A small amount of Member States point to discussions and suggested solutions in literature to the rather complex test of substantive validity (see the national reports for more detail).

Question 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?

Answer

A large group of Member States reply that the express inclusion of this doctrine merely confirmed a principle that had already been firmly established and accepted in domestic theory and practice. Some Member states point to CJEU case C-269/95 (Benincasa).

Other Member states report that the issue was not clearly settled under domestic law or case law and endorse the inclusion in Article 25 Brussel Ia for the sake of legal certainty.

Question 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?

Answer

Many Member States reply that no difficulties are experienced regarding the application Article 26 Brussels Ia in this context. Some Member States however point to specific difficulties when Article 26 Brussels Ia is applied in an EOP context and how the filling of an opposition form by a defendant to an EOP can be categorised exactly. The predominant view on this is that an opposition to an EOP can be considered as entering an appearance. Austria however makes a distinction and accepts the predominant view with the addition that 'an unfounded objection' to an EOP issued in district court proceedings and/or in labour court proceedings 'cannot be interpreted as an entry of appearance in the proceedings'.

Another notable difficulty was reported by Slovenia. It was stated that some Slovenian courts violated Article 26 Brussels Ia by applying domestic law which provides that the court has to declare itself lacking jurisdiction ex officio even before the claim is served on the defendant. It was stated that courts have difficulties in accepting that it must be left to the defendant's choice whether it will accept jurisdiction via entering an appearance, even though that that court has no jurisdiction pursuant to Brussels Ia.

NB Various Member States describe concrete cases in case law in which 'entering an appearance' was or was not accepted; please consult the national reports for this information.

Examination jurisdiction and admissibility; Lis pendens related actions

Question 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).

Answer

Most Member States reported either that there were no problems or that there was no case law to provide an answer. Some Member States point to a rather broad interpretation of the CJEU, but that this does not necessarily mean that this creates problems. One Member State does however state that the domestic courts not always follow the broad interpretation.

France states that the CJEU interprets the definition 'too extensively' and that it creates confusion about lis pendens and related actions. The most debated situation in France is when a claim for damages is filed before the courts of one Member State that conflicts with a declaratory claim of non-liability filed by the defendant in another Member State. Most French authors state this situation should not be analysed as a case of lis pendens but rather as a hypothesis of related actions: deciding otherwise would indeed encourage delaying tactics. However, French courts have followed the broad interpretation of the CJEU and apply lis pendens to this example. Other case law however shows reluctance to embrace broad interpretation.

NB Some Member States provided elaborative overviews of case law applying Article 26; please consult the national reports for this information.

Question 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?

Answer

The Member States that answered this question all report that there are no standardised internal procedural guidelines. It was often added that it is up to the parties to invoke the defence of lis pendens and to provide all proof and evidence to substantiate this defence. It could be derived from the answers that it is seen as 'logical' that courts do not have to examine a merely theoretical possibility of parallel proceedings if there is no indication of such situation provided by parties.

Bulgaria addresses several obstacles, such as the unawareness, the overload of work, the linguistic barrier and the doubt in the functioning of the communication network.

Question 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)?

Answer

Most of the Member States that answered report that a court is considered seised when the document instituting the proceedings or 'equivalent document' is lodged with the court (a). Some point to further organisational or administrative requirements. E.g. in Germany a claimant has to file a certain number of copies of the statement of claim and pay an advance on the court fees; the court will not be deemed to be seised unless such requirements were met.

A small group of Member States report that a court is considered seised when the document instituting the proceedings or 'equivalent document' document is received by the authority responsible for service (b).

Question 53

Do subsequent amendments of claims in any way affect the determination of the date of seising in your Member State? Is any differentiation made in that respect between cases where a new claim concerns facts known at the date of the original proceedings and amendments based on facts which have only emerged after the date of the original proceedings?

Answer

Almost all of the Member States that answered report that subsequent amendments of claims cannot affect the determination of the date of seising (while often mutually stressing that in principle amendments are not allowed, but in exceptional circumstances).

Question 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))?

Answer

Almost all Member States report that there is no available data to answer this question.

From some answers a cautious view can be deducted, favouring a rather narrow application of Article 30(2) Brussels Ia. E.g. French courts tend to be reluctant to decline jurisdiction on the ground of Article 30(2) Brussels Ia. Most courts refuse to decline jurisdiction, invoking the lack of a sufficient connection between the claims. Also, the third instance court ruled that, even though the court seized had to examine the elements presented by the parties in order to determine whether the existence of the different actions raise a risk of irreconcilable decisions, it leaves the inferior courts free to rule on the existence of related actions: this issue falls under their 'sovereign power of appreciation'. In the same vein, Polish courts are making cautious use of Article 30(2) Brussels Ia by interpreting the term 'related actions' rather strictly, which excludes automatically the possibility to decline jurisdiction on the basis of this provision.

Irish courts tend to exercise their discretion in favour of using Article 30 Brussels Ia where it is applicable – but in most existing cases in point, stays were granted under Article 30(1) Brussels Ia and the Irish judges did not decline jurisdiction under Article 30(2) Brussels Ia. In some cases it was clear that the judge in the Member State first-seised did not have jurisdiction over the action in question – while in other cases the jurisdiction of the court first-seised was unclear.

Question 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?

Answer

Almost all Member States report that there is no available data to answer this question. Some Member States point to risks of misuse ('reverse torpedo').

An example of the application of Article 31(2) Brussels Ia in this context was provided by the Netherlands. In the Netherlands Article 31(2) Brussels Ia is generally regarded as a 'hard and fast' rule. In one case before the Court of Amsterdam, the defendant had alleged that the parties had chosen the court of Stuttgart as the competent court. The court held that, pursuant to Article 31(2) Brussels Ia, the question whether the parties had concluded a choice of forum agreement and whether the dispute fell under its scope, had to be answered by the Stuttgart court. According to the court, the fact that the application of Article 31(2) Brussels Ia would lead to a delay in the Dutch proceedings was not sufficient to constitute an abuse of right. In this context, the Amsterdam court made reference to the CJEU case CDC/Akzo in relation to an abuse of (now) Article 8(1) Brussels Ia Regulation.

Question 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?

Answer

Almost all Member States report that there is no available data to answer this question. Some Member States highlight that the provisions generally are welcomed. Other Member States doubt whether the provisions will contribute to greater procedural efficiency and increase legal certainty.

Question 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?

Answer

Almost all Member States report that there is no available data to answer this question.

Cyprus answers the question affirmative. In one case a court distinguished between cases where it has discretion to dismiss pursuant to Article 34(3) Brussels Ia 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 pursuant to Article 33(3) Brussels Ia 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.

The UK refers to a case where the court addressed all the factors in Recital 24 and then all other circumstances, taking specifically into account: whether the related proceedings in Malaysia would obviate the need for the English action to be resumed, and whether it would be proper for shareholders whose right's may be affected to claim compensation in Malaysia, rather at the company's seat in England.

Question 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?

Answer

Many Member States report that there is no available data to answer this question. A large group of Member States answer affirmatively however and underline that both provisions

amount to a sufficiently flexible mechanism. Some Member States also criticize this mechanism, i.a. by pointing to the 'extremely flexible' criteria laid down in Articles 33 and 34 Brussels Ia that would lead to a risk of diverging appreciations between courts of different Member States. Other Member States are of the opposite opinion and point to 'strict' provisions that 'do not provide much flexibility'. It was also pointed out that it is unclear whether Articles 33 and 34 Brussels Ia are meant to exhaustively regulate the relationship between proceedings in a Member State and a non-Member State, or whether there is still scope for applying national law (e.g. in case of parallel proceedings, in case of an exclusive choice of forum clause for a third state court and this court being seised second).

Question 59

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

Answer

Several National Reports describe in which cases and how Article 35 Brussels Ia is interpreted (e.g. Belgium, Czech Republic, Estonia, Greece, Ireland, Italy, Malta, Slovakia, Spain). ECJ cases that are mentioned in some National Reports in that regard are ECJ 17 November 1998, C-391/95, ECLI:EU:C:1998:543 (*Van Uden*) and ECJ 28 April 2005, C-104/03, ECLI:EU:C:2005:255 (*St. Paul Dairy*). The National Report from Poland also mentions recital 25 Brussels Ia Regulation as 'useful in so far as it clarifies at least some of the measures […]'.

Other National Reports do describe difficulties. These difficulties are addressed in case law and/or literature.

The National Report from Austria indicates that in legal literature it is controversial 'whether the term provisional measure can only subsume those measures the adoption of which presupposes particular urgency' and 'whether orders of acquiescence and injunctions should also be subsumed under the concept of provisional measures'.

The National Report from France mentions several difficulties: i) 'decisions on interim payments made by the president of the tribunal in accordance with [French national procedural law], to which decisions the approach in ECJ 17 November 1998, C-391/95, ECLI:EU:C:1998:543 (*Van Uden*) and ECJ 27 April 1999, C-99/96, ECLI:EU:1999:202 (*Mietz*) is transposed by the French courts; ii) 'the qualification of decisions on preparatory measures' as either 'provisional within the meaning of in Article 35' or as 'requests for the performance of taking of evidence' falling within the scope of Regulation 1206/2001 – in that regard 'there are debates as to the correct interpretation of [ECJ 28 April 2005, C-104/03, ECLI:EU:C:2005:255 (*St. Paul Dairy*)]' (the Cour de cassation seems to depart from the ruling according to the French National Report); iii) whether to include 'in the category of provisional measures […] enforcement measures which aim at freezing the assets of the defendants in order to guarantee the compliance with a prior decision' (this has been answered positively by the Cour the cassation concerning the English *Mareva* injuction/freezing order, but it is according to the French National Report not sure whether this solution is compatible with ECJ 26 March 1992 , C-261/90, ECLI:EU:C:1992:142 (*Reichert II*).

The National Report from Italy notes that in the past problems concerning 'the [seizure] of foreign internet domains' were raised at court.

The National Report from Latvia notes that it has been 'argued [in literature] that the Recast should do more on harmonizing the available provisional measures, to avoid disparity among Member States'. Problems relating to Article 35 Brussels Ia pointed out by the National Report from Latvia concern the difference between ad hoc and institutional arbitration proceedings, and how national law on anticipatory requests and non-anticipatory requests of provisional measures 'could paralyze the function of [Article] 35 [Brussels Ia]'. We refer to this National Report for further elaboration.

The National Report from Luxembourg points out unclarity as to the scope of provisional measures 'in the meaning of art. 35 [Brussels Ia]' and 'judicial expertise' or '[whether the appointment of] an expert for the purpose of merely establishing facts and gathering information is a provisional measure, or whether [this latter situation] 'would only be [a provisional measure] if the task of the expert was to protect evidence which otherwise be lost […]'. A case concerning 'payment orders' that were 'excluded from the scope of [Article] 35 [Brussels Ia]' by the Court of Appeal, are according to the National Report from Luxembourg, 'clearly contrary to the case law of the CJEU as initiated in [ECJ 17 November 1998, C-391/95, ECLI:EU:C:1998:543 (*Van Uden*)]'.

The National Report from the Netherlands indicates CJEU case law 'has provided some clarity as to whether certain measures, procedures or actions are covered by Article 35 [Brussels Ia]' and that ECJ 27 April 1999, C-99/96, ECLI:EU:1999:202 (*Mietz*) 'has been important for Dutch legal practice'. 'However, not all issues have been resolved': referred is to a case about a 'request for a preliminary expert opinion and a request to give access to bank statements', which were not considered to fall within the scope of Article 35 Brussels Ia.

The National Report from Romania notes that precautionary seisure or attachment in Romanian national law does not fall within the definition of Article 2a Brussels Ia, but '[i]n practice, courts might […] be willing to issue such precautionary measures based on Article 35 Brussels Ia'.

Question 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?

Answer

How the 'real connecting link' condition in ECJ 17 November 1998, C-391/95, ECLI:EU:C:1998:543 (*Van Uden*) is interpreted in case law and doctrine is described in several National Reports. Some National Reports (e.g. Austria and Italy, the latter one referring to the answer to question 59) give an extensive overview of how this condition is interpreted. Overall, it seems that the 'location of the subject/object' of the measure, and thus where the measure should be executed, is of main importance when it comes to the interpretations of the condition (e.g. location of the property, assets, location parties), partly citing as examples the National

Reports from Bulgaria, France, Austria, the Netherlands, Poland, Slovenia, and UK. However, this cannot always be clearly derived from case law (e.g. National Reporter from Greece). We refer to the following National Reports for further particularities and/or elaboration and/or examples on how the condition is interpreted, either in case law or according to literature: Austria, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece (referring to the answer to question 59), Italy, (referring to the answer to question 59), Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden and the UK.
Other noteworthy remarks are doubts as to the application of the condition 'real connecting link' (e.g. Germany, Slovenia (concerning the latter National Report 'if the jurisdiction to grant protective measures is based on domestic laws') and 'additional conditions formulated by the ECJ' (e.g. Austria) to the Brussels Ia Regulation. According to the National Reports of some Member States the condition is interpreted broadly (Lithuania) while in other Member States it seems to be interpreted narrowly (Czech Republic, The Netherlands). The National Report from Lithuania mentions that case C-91/95 is usually cited. Further, the National Report from Latvia notes that ECJ 17 November 1998, C-391/95, ECLI:EU:C:1998:543 (*Van Uden*) was not followed in a case concerning property and a a bank account. In addition, according to the National Report from Latvia 'in practice [ECJ 17 November 1998, C-391/95, ECLI:EU:C:1998:543 (*Van Uden*)] has been used in a reverse manner to justify enactment of provisional measure with extraterritorial effects […]'.

The National Reports from Luxembourg and Spain show that provisional measures in those Member States are limited to the territory of those Member States and cannot be extra-territorial.

Question 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.

Answer

Many National Reports indicate that no case law has been found with regard to the question. Some indicate that there is no information available. The National Report from Germany refers to a case in which the convention was considered, but not applied because it fell outside of its temporal scope. The National Report from the Netherlands mentions a case in which the convention was – according to the National Report – wrongly applied (instead of the Brussels Ia Regulation): it concerned the courts of two Member States and fell outside the temporal scope of the convention.

Question 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?

Many National Reports indicate that there is either no data available in order to answer this question or that there are no published cases. Some reports seem to suggest that these procedures are rare (e.g. Finland, Germany, Hungary, Sweden). In the National Report from

France it is mentioned that authors have underlined that the success of the procedure under Article 36 (2) might be limited due to the contradictory nature of it. In Malta the procedure was used once in 2019 and currently there is a pending case. The Lithuanian National Report mentions one case that was found in 'the system'.

Question 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?

Answer

Several National Reports show that (to the knowledge of the National Reporters) no specific training or instruction on how to deal with enforcement requests based on judgments from other Member States has been received by agents or members of national enforcement agencies (e.g. Cyprus, Czech Republic, Hungary Ireland, Luxembourg, Malta, Portugal, Spain). Some National Reporters have no information or knowledge on this point (e.g. Slovakia, Italy). The National Reporter from Greece gives a reason for the absence of specific training: '[t]he scarcity of cases in practice, coupled with other existential problems of the profession of enforcement agents work as a disincentive to any initiative towards this direction.'

However, some National Reports indicate that there is general form of instruction in which enforcement of judgments originating from other Member States is included (e.g. Belgium, Finland, Latvia). According to the National Report from Belgium the Belgian 'National Chamber of Court Bailiffs offers training on EU instruments and enforcement, including the Brussels Ia Regulation' through an e-learning platform which was developed in corporation with counterparts of The Belgian National Chamber of Court Bailiffs in other Member States: 'France, Italy, Luxembourg and Poland'. The French National Report also mentions an e-learning platform: **'**the EJL (European Judicial officer's) e-learning project […] developed by the CEHJ (Chambre européenne des huissiers de justice/European Bailiffs foundation) in partnership with ENP (Ecole nationale de la Procédure/National School of Procedure) and the ENM (Ecole nationale de la magistrature/National School of the Judiciary'. 'The Council of Sworn Bailiffs' organises the training in Latvia, according to data provided to the National Reporter.

From the Austrian and Croatian National Report follows that in general training courses are available for judicial enforcement agents. In Croatia these are carried out annually by the 'Croatian Judicial Academy'.

In Estonia, special training was organised, but within the context of other Regulations: 'the European Enforcement Order Regulation, the European Order for Payment Regulation, the European small Claims Regulation'. The training was organised by the Faculty of Law at the University of Tartu.

The National Reports from Bulgaria, Germany, Lithuania, Poland and Sweden indicate that specific training has been and/or still is organised with regard to enforcement requests based

on judgments originating from other Member States. The main trainings in Bulgaria were organised by 'the Bulgarian Chamber of Private Enforcement Agents and by the European School on Enforcement'. The National Report from Romania considers it likely that specific training was received or that participating in workshops has taken place concerning the Brussels Ia Regulation and the 'abolition of the exequatur' and mentions that these 'are usually part of continuing training events organised by Romanian professional organisations that judges and bailiffs belong to, the National Magistracy Institute, the European Judicial Training Network, and/or universities and legal editing houses'. The National Report from Germany indicates that instruction is not mandatory and that can be chosen from different topics. A similar remark concerning the non-mandatory nature of the (supposed) instruction is made in the National Report from Romania. The National Report from Poland mentions that the data to answer the question was provided by the judiciary and enforcement agents. However, it does not explicitly mention who provided for the training.

Overall, training seems to be organised by Baliff Chambers/Councils (e.g. Belgium, Bulgaria, France, Latvia), Academy's for the Judiciary (e.g. Croatia, France, Germany), universities (Estonia, Romania) a National school of procedure and resp. a European school on enforcement (France resp. Bulgaria), a national lawyers organisation (Estonia) or a combination of one of these.

Finally we highlight the following remarks that have been made in some of the National Reports. According to the National report from the Netherlands, empirical research shows that 'more than one fourth of the survey respondents (Dutch practitioners) were not or only limited aware of the changes brought by the Brussels Ia Regulation and the Implementing Act'. The National Report from Sweden indicates that, apart from 'some training', 'additional advice [is] provided in an internal handbook of the Enforcement Agency'. In Austria, Denmark and Slovenia the courts are still involved in enforcement.

Question 64

Has there been a concentration of local jurisdiction (venue) at the national or regional level in your jurisdiction institutionalizing specialized enforcement agents for the enforcement of judgements rendered in other Member States?

Answer

There seems to be no concentration of local jurisdiction (venue) at the national or regional level in almost all of the Member States. The National Reporter from Austria elaborates on the Austrian local rules of jurisdiction, which determine the jurisdiction of district courts. These district courts are competent when it comes to enforcement proceedings. According to the National Report from Belgium, first instance courts have jurisdiction, but it is unclear where 'actions aimed against enforcement of a judgment should be brought': from a 'territorial perspective' the court was not specified, the National Reporter refers to the declaration under Article 75 (a) Brussels Ia. The Belgian National Report shows, with a reference to literature, that: '[i]t is submitted that a more precise drafting of the Brussels Ia Regulation could have avoided this issue.' According to the National Report from the Czech Republic 'at present a concentration does not exist': '[e]xecution is administered by the executor 'designated in the execution motion by the entitled person and recorded in the Register of commenced executions

[…].' However, in the Czech Republic it is being discussed to implement the principle of territoriality when it comes to enforcement ('local jurisdiction of executors'), thus the Czech National Reporter. Even though it is indicated that this discussion does not specifically relate to 'the enforcement of judgments rendered in other Member States'. The National Reports from Estonia and Luxembourg note that these countries are small and therefore do not need a concentration of local jurisdiction. On the other hand, according to the National Report from Luxembourg, practice shows, that 'the vast majority of cases are brought to the courts of Luxembourg city', making that the most specialised court within that Member state. In Sweden, the 'Swedish Enforcement Authority (Kronofogden) is a single agency with competence for the whole country' [but has] '23 local offices'.

The only National Report indicating a concentration of local jurisdiction for certain situations is the Italian National Report: '[f]or companies there is a territorial concentration at the regional level ([…] some regions might have two bodies – Tribunale delle imprese).

Question 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?

Answer

The National Reports indicate that in many member states there are no, or there is no knowledge of, other specific legislative or administrative measures that possibly facilitate the direct access of creditors or applicants from other Member States to the enforcement agents.

The Austrian National Report does refer to 'special provisions' in the Austrian Enforcement Code, 'which take [into] account […] the provisions of [the] Brussels Ia [Regulation]'. Article 404 Enforcement code is about the 'adaption of foreign enforcement titles', and Article 418 about the 'refusal procedure' of Article 46 Brussels Ia. We refer to the National Report from Austria for an elaboration on these Articles. In Lithuania, according to the National Report, '[t]here is a special law […] for the implementation of EU and other international laws on civil procedure'. These rules are about 'measures courts can take', but it is also 'mentioned that creditors can initiate enforcement procedures with the help of a bailiff', see the Lithuanian National Report. The National Report from Sweden refers to the website of the 'Enforcement Authority' which is available in eleven different languages 'including English'.

Other noteworthy comments that can be found in the National Reports are the following. In the Czech Republic Directive 2003/8/EC 'to improve access to justice in cross-border disputes', is implemented in national law ('Act no 629/2004 Coll. On securing […] legal assistance in cross-border disputes in the framework of the EU'), but does not contain 'specific rules facilitating the direct access of creditors from other Member States to the enforcement agents', see the National Report from the Czech Republic. The National Report from Estonia indicates that the Member State was involved in the 'EU's e-codex project', but that it 'does not seem to deal with the [Brussels Ia] Regulation'. The National Report from France indicates that even though the reporter does not have any knowledge of specific measures, enforcement proceedings in France are considered to be 'efficient and fast'. The National report from Germany shows that in

maintenance cases the 'Federal office of Justice (Bundesamt für Justiz)', as 'exclusive Central Authority' in the Member State, offers free assistance when it comes to 'the enforcement of foreign titles'. However 'such assistance' is absent when it comes to 'civil and commercial matters'. In Romania, '[t]here is a law to indicate which courts are competent' when it comes to 'contesting and/or refusing' recognition and enforcement requests and the issuance of the certificate.

Question 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?

Answer

None of the National Reports contain references to statistics. It is mentioned that statistics are not available, not known of by the National Reporters, or do not show information on enforcement of foreign judgements within the Member States or in other Member States (Denmark). In the National Report from Estonia it is mentioned that assessment of the Brussels Ia Regulation causing 'enforcement disputes' is 'too early because such cases have […] not yet reached the courts'. The National Report from France suggests that the number of enforcement attempts of judgements rendered in other Member States 'may not enhance much' due to the transgression to direct enforcement, while 'enforcement proceedings were already efficient and fast under the Brussels I [Regulation]'. The National Report from Romania indicates that '[between 2014-2016] the courts were not involved in any request for enforcement due to the amendments of the New Code of Civil Procedure […], unless the enforcement actions were contested. The National Report from Greece indicates that 'the landscape is pretty vague', but that it can go two ways: enhancement of enforcement 'without oppositions filed by the debtors', or not 'given Grexit and the ensuing lack of confidence from foreign creditors to engage into business with Greek entities or entrepreneurs'. According to the National Report from Malta enforcement attempts concerning foreign judgements are 'usually influenced by the presence of assets in Malta'.

Some National Reports do indicate, even though there are no available statistics, that on the one hand the 'available data does not indicate an enhancement in the number of attempts to enforce judgments rendered in other Member States' (Cyprus) or that this 'does not seem to have increased due to the transgression to direct enforcement' (Poland), or, on the other hand, there is an increase of the number of attempts to enforce foreign judgments (Lithuania and Luxembourg). The National Report from Lithuania refers to information from the 'Chamber of Bailiffs [stressing] that the overall number of cross-border enforcements has increased', for which two reasons are mentioned: 'amendments in Brussels Ia' and 'the fact that there are more cross-border disputes'. The National Report from Luxembourg refers to information from the 'president of the national association of enforcement officers (*huissiers*) of Luxembourg', who indicates that the number has 'significantly increased'.

Question 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?

Answer

Many National Reports show that no particular problems have arisen (yet). However, some National Reports explicitly indicate that future problems are assumed (Greece), or 'very likely' (Portugal), if no legislation is implemented, which does not seem to be the case in Greece, even though, according to the Greek National Report problems have been 'highlighted' by legal scholars. The National Report from Greece shows that in a few cases 'exequatur proceedings are still mistakenly initiated'. In the Czech Republic there were problems with 'the declaration of enforceability, which legal […] institution [was] unknown to Czech law', see the National Report from the Czech Republic.

According to some the National Reports there are controversies in legal writing (e.g. Austria, Slovenia). The National Report from Austria addresses a discussion whether the courts can take more grounds for refusal into account than the ones relied upon in the application for refusal of enforcement. A distinction is made between grounds for refusal: i) 'reasons which serve the interest of the state and are beyond the control of the parties' and ii) 'free disposition of the parties'. The first group, including, 'manifest breach of public policy', 'infringement of place of jurisdiction ex Article 24', and the grounds in Article 41 (1) (c) and (d) about 'irreconcilable judgments between the same parties in the addressed Member State or an earlier judgement given in another Member State or third State which fulfils the conditions for recognition', have to be exercised *ex officio*. To the second group, including Article 45 (1) (b) and (e) (i) 'e.g. by not exercising the right to be heard or by refraining from pleading lack of jurisdiction', the 'principle of mediation' seems to apply and these grounds have to be invoked by the applicant. Another discussion addressed in the National Report from Austria is whether national grounds for refusal can also be relied upon in a procedure for refusal of enforcement that falls within the scope of the Brussels Ia Regulation. Three positions are discerned: 'only the grounds for refusal […] in Article 45 Brussels Ia can be examined', 'other, national grounds for refusal can also be invoked', and 'other grounds can only be invoked […] if they are undisputed'.

The National Report from Slovenia also identifies this latter discussion as being argued in legal writing: the question is whether both national grounds for refusal and the ones from the Article 45 Brussels Ia, can be 'simultaneously invoked in the same set of proceedings'. Invoking the grounds for refusal from Article 45 Brussels Ia Regulation in national proceedings and invoking national grounds for refusal in a procedure for refusal under the Brussels Ia, are both 'controversial'; the possibility of both options 'or at least the latter' are argued. According to the opinion of the National Reporter from Slovenia 'neither [option] is possible': the first is 'incompatible with Art. 45 et seq […]' of the Brussels Ia Regulation – referring to the measures in Article 44 – and the second, 'while favoured in Recital 30 of the Regulation, is not compatible with the legal system of Slovenia already because of split jurisdiction […]'. We refer to the National Report from Slovenia for further elaboration.

The National Report from Belgium refers to a judgment from the Constitutional Court about seising the 'assets of a foreign state' in Belgium, which according to 'Art.1412quinquis of the

Belgian code of civil procedure […] cannot be [done]', and the compatibility of that Article with Article 39 Brussels Ia saying that 'judgements shall be enforceable without any declaration of enforceability being required'. The National Report shows that according to the Court '[t]he provision was […] compatible with the Brussels Ia Regulation, because it did not impede the enforcement of a judgment and complied with the customary rules of international law'.

The Estonian National Report mentions a case that dealt with the question 'whether the enforcement title within the meaning of Estonian enforcement law was the foreign judgment or the certificate […] issued by a foreign court'. However, the question is considered to not have 'much practical value as both documents are presented together to the enforcement officer'.

The French National Report indicates that there are two problems in France: one problem concerning Article 41 (2), the report refers to the answer to question 68 of the questionnaire in that regard, and another problem concerning Article 44 (1) and the absence of a criterion to decide upon and to choose between the three optional measures mentioned in Article 44 (1), in short: (a) 'limitation of enforcement proceedings to protective measures, (b) enforcement conditional on the provision of security determined by the court, or (c) suspension, partly or wholly, of the enforcement proceedings. There is a '[risk] that diverging practices will be adopted by the courts and tribunals of the different Member States on this key issue'.

The Italian National Report indicates that '[in] general terms, the abolishment of material norms on the opposition procedure raises some doubts and concerns'. What seems to be 'dubious, according to the Italian National Report is how the court 'materially […] [makes] recourse ex officio to suspension of proceedings under Article 38 [Brussels Ia] where the execution of the foreign judgment is an ancillary or connected question. And '[w]here the execution of the foreign judgement is the main action of the proceedings', whether with reference to Article 36 (2) Brussels Ia 'a purely anticipatory judgement' stating that there are no grounds for refusal in the sense of Article 45 Brussels Ia 'is allowed' and, whether with reference to Article 46-47, 'a purely anticipatory judgement to obtain a pre-emptive negative declaration on the enforcement', is not allowed. Also mentioned are issues relating to the competence of the courts for enforcement under national law and enforcement under the Brussels Ia Regulation regarding 'pre-emptive notification of the title' as imposed by domestic law in order to allow for 'access to the enforcement proceedings'. We refer to the Italian National Report for further elaboration.

According to the National Report from Romania, there are divergent practices of courts relating to the competence of courts: 'as regards to the type of courts competent to issue the writ of execution in order for bailiffs to proceed to the enforcement of decisions certified in accordance with Brussels Ia'. The issue finds its basis in the national Romanian law that only seems to contain provisions concerning enforcement under the Brussels I Regulation. We refer to the Romanian National Report for further elaboration.

Question 68

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

Answer

Article 41 (2) Brussels Ia does not seem to have attracted specific attention in many Member States (yet). The National Report from Croatia submits as a reason 'that there are no grounds for refusal or suspension of enforcement which are incompatible with the grounds referred to in Art. 45 [Brussels Ia]'. The National Report from Portugal indicates that the Article will be interpreted in accordance with relevant case law from the CJEU.

Some National Reports, however, do indicate that Article 41 (2) has attracted specific attention. The 'attention' that is given to the Article seems to revolve around the question whether national rules limiting or suspending enforcement can be applied when enforcement under the Brussels Ia Regulation is sought. Article 41 (2) seems to be unclear within these Member States and can be illustrated by the following National Reports.

The National Report from Belgium mentions that it is said that it is 'unclear whether the enforcement judge can apply new grounds for refusal emanating from residua private international law alongside the grounds [for] refusal contained in [Article] 45 Brussels Ia'. What has also been argued according to the National report from Belgium, is 'that the National grounds [for] refusal may only be examined during the stage of actual enforcement'.

According to the National report from Estonia, Article 41 (2) has 'in a way' attracted specific attention in Estonian legal literature within the context of the European Enforcement Order Regulation. There is a discussion whether limitations concerning enforcement of judgments under the European Enforcement Order Regulation from national law, apply. The National Reporter from Estonia notes that from this discussion '[o]ne could derive […] that it is not exactly sure which Estonian rules on national enforcement could be applied when enforcing judgments under the [Brussels Ia] Regulation'.

The National Report from France mentions criticism with respect to three points relating to Article 41 (2) Brussels Ia: 1) discussion about application of national grounds for refusal or suspension of enforcement: 'even tough Article 41 (2) may clarify a solution which was already adopted under [the] Brussels I Regulation [referred is to CJEU 13 October 2011, C-139/10, ECLI:EU:C:2011:653 (Prism Investments)], it results in a paradoxical situation'. According to the French National Report, the solution seems to be, 'to a certain extent, in opposition with one of the goals of the [Brussels Ia Regulation] which, through the suppression of the exequatur, sought to facilitate the movement of decisions within the European judicial area'. Additionally the French National report mentions 2) limits on enforcement coming from national law, 'may very between the Member States', and 3) 'the test of compatibility' between national grounds and Article 45 Brussels Ia grounds for refusal or suspension of enforcement 'may prove difficult to implement in practice'. It is mentioned that the only example which is cited in French literature as compatible national ground for refusal 'is the fact that the decision has already been executed', again with a reference to CJEU 13 October 2011, C-139/10, ECLI:EU:C:2011:653 (Prism Investments).

The National Reports from Poland and Slovenia mention discussions in doctrine/legal writing. The discussion in Poland 'focusses mainly on the interplay between the actions leading to the opposition proceedings, and the (third party) interpleader actions. It is claimed that these actions may be brought by, respectively, a debtor or a third party as long as these actions do

not conflict with the grounds for refusal of enforcement provided for by the Brussels Ia Regulation.' Slovenian legal writing concludes that Article 41 (2) is unclear, and the opinion is added 'that none of the grounds for refusal of enforcement in Slovenian national law are incompatible with the grounds referred to in Article 45 [Brussels Ia]'.

The Austrian National Report refers to its answer to question 14.

Question 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?

Answer

Specific statistics on this matter have not been mentioned in the National Reports. Some National Reports mention there are no public judgements on the 'reverse procedure' (e.g. Austria). However, the National Report from Lithuania indicates there are general statistics on recognition and enforcement and only a few cases concerned the 'reverse procedure' of Article 46 Brussels Ia. The attempts to use the procedure have all been refused. 'Some judges in the Lithuanian court of appeals ([which] is responsible for hearing cases on recognition and enforcement of foreign judgments) mentioned that they almost forgot that such [a] procedure is possible according to the [Brussels Ia] Regulation', thus the Lithuanian National Report. According to the National Report from Luxembourg there are statistics that 'reveal how many exequatur cases were handled by the President of the Main First Instance court and [that] such cases likely include Art 46 procedures'. The National Report from Luxembourg also indicates that it is not possible to find out which procedure was used at a given time due to the temporal scope of the Brussels Ia Regulation. The National Report from the Netherlands indicates that examples in which Article 46 Brussels Ia is applied are 'sparse' and elaborates on a case in which it was decided that appellate proceedings in France that were still pending, 'did not have a suspensory effect' on the French decision for which enforcement was sought in the Netherlands. '[T]he decision was considered enforceable […] [and] [t]he enforcement of the (enforceable) decision [did] not constitute a manifest violation of public policy'. The National Report from France remarks that in even though statistics are absent 'enforcement proceedings [are] in general considered quick and fast [in France]'.

Question 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 event of the 'reverse procedure' (Article 46)? Has the rate of success invoking either of them changed?

Answer

Many National Reports indicate that there is not enough data, in the form of, statistics or published judgements, to state whether there is a change in invoking Article 45 (1) (a) and (b) Brussels Ia due to the 'reverse procedure' of Article 46 or a change in their success rate. Some National Reports however indicate that there is no change (e.g. Croatia), that review of case law does not show a change (e.g. Cyprus), that to the knowledge of the National Reporter there is no significant change (e.g. Italy), or that there is no reason to assume that there is a change (e.g. Finland, France, Italy, Poland, Sweden). The National Report from Bulgaria indicates that in Bulgaria Article 45 (1) (a) and (b) Brussels Ia are still the most invoked grounds for refusal of recognition and enforcement. According to the National Report from Poland, these grounds were often invoked under the Brussels I Regulation, but that the court proceeded 'with caution' and refusal of recognition on these grounds was 'rarely' successful.

Other than assumed in the question, the National Reports from Estonia, Italy and France mention that public policy is not often relied upon in general (Estonia, basing its information on experience of judges), under the Brussels I Regulation (Italy), or that both grounds are rarely invoked (France). The instances in which it was successfully invoked were even smaller (Italy) or low (France). The National Report from the Netherlands refers to the database of the T.M.C. Asser Institute (NIPR) that, according to the report, 'shows only two cases referring to Article 45 [Brussels Ia[[…] both times not leading to a to refusal of recognition [or] enforcement', and that 'the database only shows a limited number of cases applying Article 34 Brussels I' (in two lower court judgements application of the provision was dismissed).

Some National Reports indicate that public policy has been subject to a restrict interpretation, also under the Brussels I Regulation (e.g. Czech Republic). This can also be derived from the National Reports from Hungary and Spain, which respectively describe case law or give an example on how the grounds for refusal are dealt with. The Hungarian National Report described a case about service of documents: '[t]he court held that in the recognition stage it may be examined only whether the service of the document occurred "in sufficient time and in such a way" that it did not impair the defendant's right of defence. The Spanish National Report elaborates on how public policy is to be understood when it comes to recognition and enforcement: no assessment of how the decision was reached in the Member State of origin; 'recognition may affect public policy of the requested Member State only when the ruling and other legal pronouncements contained in the recognised resolution disturbs, damages and seriously harms the fundamental legal principles of the requested Member State'; only the decision has an influence on the public policy requirement, not the facts or the 'legal-intellectual process that led to the [decision]'. The National Report from Greece refers to a decision from the Supreme Court outside of the scope of the Brussels Ia Regulation 'dismissing [violation of] public policy allegations'.

Interesting is the National Report from Belgium, stating that there exists an absolute violation of public policy in Belgian law in case of 'enforcement of judgments in favour of "vulture funds"'. It is argued that such an absolute of public policy violation infringes Article 45 Brussels Ia, that, according to the National Report, follows a 'case-specific' approach.

Question 71

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

Answer

Many National Reports indicate there is no information (e.g. because of absence of statistics or case law) available in order to answer this question. The National Reporters from Italy and Luxembourg indicate that they are not aware of such an alteration in the frequency, or the approach to, enforcing judgements in employment matters in the respective Member States. Even though the extension of Article 45 (i)(e) Brussels Ia to employment matters was positively welcomed in France, because there was no reason to distinghuish 'insurance and [consumer] matters on the one hand, and employment matters on the other', the National Report also indicates that the change will have 'very limited impact in practice' since the employee has to be the defendant in the initial proceedings and 'moreover', when the defendant is domiciled in a third country and the defendant in the initial proceedings, the French Labour Code does not 'confer exclusive jurisdiction [to] the French court in employment matters' and not abiding by this code and seizing a court in another member State 'will not constitute a ground for refusal of recognition and enforcement'. The National Reporter from Latvia mentions that based on his own practice such cases do not often involve employment matters, but more often have a commercial nature.

The National Report from Malta indicates that '[n]o 'material difference was observed' and the Swedish National Report states that no practical alterations have been noted.

Question 72

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

Answer

The National Reports of many Member States indicate that the prohibition of *révision au fond* is complied with (explicitly referring to case law within the context of the Brussels I Regulation, e.g. Czech Republic, Greece, Latvia). The National Reports from Latvia and Luxembourg mention that enforcement agents there do not review foreign decisions, but only enforce them. Several National Reports show that the prohibition of *révision au fond* was already a principle within national private international law (e.g. Czech Republic, France, Poland). In France, according to the National Report, the prohibition is applied 'very strictly by French courts', even though there are some old decisions that form exceptions. However, *révision au fond* is permitted only exceptionally in order to assess whether there is a ground for refusal. A similar position can be deduced from the National Report from Poland, that mentions that 'deviations are only admissible under the public policy clause provided in the Regulation'. In the situations in which *révision au fond* is permitted the Cour the cassation still remains 'extremely strict', thus the National Report from France. Refusal of recognition and enforcement is rare in France

and the National Report refers to some cases in which recognition was refused do to violations of public policy.
The following issues with regard to the prohibition of *revision au fond* are mentioned. The French National Report mentions the 'discussions as to whether the court, when seized with a claim for recognition and enforcement of a decision originating from a court which ruled it had jurisdiction according to the Regulation is entitled to verify the applicability of the Regulation before the court of origin'. The National Reports from Italy, the Netherlands and Slovenia address the tension between *révision au fond* and assessing the public policy exception. In addition, the National Report from the Netherlands mentions a Supreme Court case in which the meaning of the prohibition of *révision au fond* was addressed within the context of 'national (unwritten) rules'.

According to the National Report from Ireland the Irish courts 'have not always complied with this strict prohibition'. The report mentions case law with respect to the 'justification of invocation of public policy' and differences in domestic law between the Member States in which it 'is arguable that the High Court did not observe the ECJ's guidance in [ECJ 28 March 2000, C-7/98, ECLI:EU:C:2000:164 (*Krombach/Bamberski*) and ECJ 11 May, C-38/98, ECLI:EU:C:2000:225 (*Renault/Maxicar*)'. One case concerned substantial public policy and the other the violation of procedural rights within the context of evidence, see the Irish National Report. The National Report from Lithuania mentions that problems with *révision au fond* sometimes arise when 'other international conventions are applied'.

Question 73

Article 54 introduced a rule for adaptation of judgements 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 judgement gets adapted, how frequently is such adaption challenged by either party?

Answer

Many National Reports indicate that there is either no information available to answer this question or that there are no (published) cases concerning Article 54 Brussels Ia. The National Report from Estonia indicates that the main issues regarding enforcement 'seem to belong to the area of family law/children/abduction and not to the area [of the Regulation]'. In the National Report from Lithuania it is mentioned that even though the National reporter did not find the information to answer the question, '[u]sually the measures are quite well known in other Member States'.

In Slovenia two issues have been addressed in literature concerning Article 54 Brussels Ia: '(1) which court in the country of enforcement has jurisdiction for such [a] measure (and appeal against) and (2) whether the adaptation should occur ex officio or only upon [the] creditor's motion'.

According to the National Report from France, there is French case law in which the issue of adaption has been discussed. This took place within the context of a *Mareva* injunction/ freezing order and the periodic penalty payment; regarding the latter subject the National Report refers

to ECJ 12 April 2011, C-235/09, ECLI:EU:C:2011:238 (*DHL Express France*). See the National Report from France for a detailed description of the adaptation issues concerning these topics.

The Swedish National Report mentions a case in which 'the Supreme court adapted an Italian protective measure' under the 1988 Lugano Convention.

Question 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 judgement or seeking its enforcement to provide a translation of the judgment?

Answer

Information does not always seem to be available in order to answer the question 'how often' courts or enforcement agents require the party invoking the judgement or seeking its enforcement to provide a translation of the judgement.
In case there was information available the answers seems to differ. For example, answers that can be distinguished are that a translation is 'always' required (e.g. Croatia), 'practically always and automatically' required (Slovenia), 'normally' required (e.g. Cyprus), 'expected' to be submitted by the parties while submission is a 'standard procedure' (e.g. Czech Republic), required if 'necessary for the process' (e.g. Denmark), required 'rather frequently' (e.g. France), required 'regularly' (e.g. Hungary), there is a 'tendency' (e.g. Italy), 'quite often' (Lithuania, only regarding bailiffs), 'practice' to 'produce' a translation (e.g. Malta), or, 'not' frequently required (Bulgaria), 'typically' not required 'unless the form is incomprehensible' (e.g. Luxembourg, only regarding enforcement officers), does not seem to be 'often' required (Romania), and assumed that it happens 'rather seldom' (e.g. Finland). According to some National Reports, parties and/or their lawyers already provide for translations themselves (e.g. Bulgaria, Cyprus, Romania). According to the National Report from France providing a translation is the 'customary duty for the parties, which is firmly established in French judicial practice'.

Some National Reports mention the reasons for the requirement to provide a translation of the judgment. Named are national legislation concerning the language of court proceedings (e.g. Croatia) or 'judicial language' (e.g. Bulgaria). In addition, the language of the original judgment and alphabet are also considered. According to some National Reports it seems judgments written in the language from (nearby) other countries (Czech Republic, Denmark, Italy, Sweden) or the English language (e.g. Cyprus, Estonia, Italy) (usually) do not have to be translated. The National Report from Denmark refers to the Nordic Language Convention in that regard and additionally mentions that a translation may be necessary 'if the judgement is printed in a non-Latin alphabet or the operative part requires the court to do something else than enforce a money claim'. The National Report from the Czech Republic mentions that 'participants possess the right to act in their mother tongue before the Czech court at court hearings' and that '[t]he court shall appoint an interpreter [if needed] […]'.

Regarding the costs of the translation, according to the National Report from Denmark '[i]f a translation into Danish is requested by the other party or considered necessary by the court, it

will procure the translation, and the Danish state will carry the expenses […]'. The National report from Sweden indicates that 'the Supreme Court held that the costs of translation are in principle to be borne by the parties themselves' within the context of enforcement under the Brussels I Regulation.

Question 75

Which impact has Annex (1)(q) of Directive 93/13/EEC (Unfair Terms in Consumer Contracts) generated in your jurisdiction?

Answer

Some National Reports do not show any, or do not have information about, the impact generated by Annex (1)(q) of Directive 93/13/EEC (Unfair Terms in Consumer Contracts). Several National Reports however mention the relationship of the validity of arbitration agreements and consumer contracts (e.g. Austria, Czech Republic, Finland, Hungary, Germany Latvia, Slovakia, Slovenia, Sweden) and the relationship between choice-of-court agreements and consumer contracts (e.g. Denmark, France, Latvia, Poland, Portugal, Slovenia) as examples addressed in case law or literature. Most of these National Reports are overall quite detailed in their description and focus on different particularities concerning these issues. We therefore refer to the specific National Reports for further details. The National Report from Romania describes the issue more broadly as the restriction of 'the consumer in his possibilities of initiating legal actions or the courts before which he could bring his claim'. The courts 'consider distance between the place of residence of the consumer and that of the court established in the contract is such as to make it particularly difficult for the consumer to reach […] or travel to [the] court' Other less frequent subjects that have been raised within the context of the question are the review of arbitral awards (Slovakia) and enforcement of judgments (Spain).

Question 76

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

Answer

Many National Reports indicate that no or hardly any examples can be identified. According to the National Report from Poland the reason for the absence of examples is 'most probably due to lack of publication of first instance courts' decisions that have not given rise to appeal or do not contain an in-depth analysis of a particular legal problem'.
If examples are mentioned then these are mostly treaties (bilateral) concerning for instance legal assistance/cooperation (e.g. Czech Republic, Greece, Latvia, Slovakia) and recognition and enforcement (e.g. Denmark, Greece, Slovakia). The subjects mentioned differ: e.g. family, civil, commercial, labour (only Slovakia) and/or criminal matters (e.g. Greece, Slovakia), or more specifically, among other subjects, legal capacity (e.g. Czech Republic, Germany, Latvia), matrimonial property (e.g. Germany, Greece), civil status (Germany), succession (Germany, Greece). Some National Reports explicitly note that the subjects of these treaties fall outside of the scope of the Brussels Ia Regulation or other European Regulations (e.g. Czech Republic, Denmark, Latvia). For more detailed information on the treaties we refer to the particular National Reports.

In addition, the National Report from Greece indicates that the 'vast majority of cases relates to personal status, family, succession, maintenance and matrimonial property matters'. The National Report from Latvia mentions that the treaties 'may affect application' of Article 25 Brussels Ia within the context of the 'substantive validity' of choice-of-court-agreements. The National Report from Bulgaria mentions as example 'claims based on the Convention on the Contract for the International Carriage of Goods by Road (CMR)'.

Question 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?

Answer

Many National Reports mention that the precedence of Art. 351 TFEU to Article 71 Brussels Ia.

The National Report from France indicates that the 'only practice consequence from these decisions and especially from [ECJ 19 December 2013, C-452/12, ECLI:EU:C:2013:858 (*Nipponkoa Insurance Co. (Europe) Ltd v Inter-Zuid Transport BV)*], is that French courts are precluded from adopting an interpretation of Article 31 (2) CMR [Convention on the Contract for the International Carriage of Goods by Road]'. 'French courts shall decline jurisdiction under the CMR in cases where an action for a negative declaration or a negative declaratory judgement is pending before the court or tribunal of another Member State competent under Article 31 (1) CMR. The same holds true when a judgement has been entered by such a court or tribunal on this action', thus the French National Report.

National Reports from other Member States, also mention the relation between the Brussels Ia Regulation and the CMR addressed in court cases (e.g. Latvia, Poland, Romania) or in literature (e.g. the Netherlands). However, this does not mean that the CJEU cases concerned are also cited (e.g. Latvia). According to the National Report from Estonia, the CMR is often applied by courts instead of the Brussels Ia Regulation when the case falls within the CMR's scope, 'but there is no dispute that is how it is supposed to be'. The National Report from the Czech Republic mentions a Supreme Court case within the context of the Brussels I Regulation in which [ECJ 4 May 2010, C-533/08, ECLI:EU:C:2010:243 (*TNT v AXA*)] was cited relating to the 'Hague Convention on the recognition and enforcement of decisions relating to maintenance obligations of 1973'. The National Report from Latvia also mentions there is case law concerning bilateral treaties on 'judicial assistance with third states' in that regard.

According to some National Reports there is discussion in literature (e.g. Austria, Czech Republic, the Netherlands, Slovakia). Some of the issues addressed concern legal certainty and predictability (e.g. Austria, Czech Republic, Slovakia), *lis pendens* (Austria, the Netherlands), choice-of-court agreements (the Netherlands) and violation of obligations under international law (e.g. Austria).

Question 78

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

Answer

The National Reports from the following Member States provided for (sometimes extensive) lists of international Conventions that have triggered Article 71 in their jurisdiction: Austria, Bulgaria, Croatia, Czech Republic (refers to answer to question 77 and 80), Denmark, France, Germany, Hungary, Ireland, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia. We refer to the answers in the particular National Reports. The CMR or other conventions on transportation are often mentioned. The National Report from France indicates that there is a controversial decision from the Cour de cassation in which 'precedence [is given] to the Brussels I Regulation over the Convention of 9 may 1980 concerning International Carriage by Rail (COTIF), as amended by the Vilnius Protocole of 3 June 1999 […]'. The National Report from Latvia notes that 'courts sometimes ignore the rule of precedence of "special" international conventions dealing with jurisdiction', giving as example that article 31 CMR is sometimes overlooked by Latvian courts when this is applied (no cases were identified, according to the National Report from Latvia, in which Article 71 Brussels Ia 'would come into play either in respect of the CMR or any other convention').

Question 79

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

Answer

Only the National Reports from France and the Netherlands mention respectively three and one decision(s) concerning the Hague Convention on Choice-of-Court agreements. According to the National Report from France the three decisions are 'not of great significance and interest'. The National Report from the Netherlands mentions a decision in which The Hague Convention on Choice-of-Court agreements was applied, but the Brussels Ia Regulation was not considered, see also answer question 61. According to the National Report from Germany Article 26 of the Convention is criticised 'as being too complex'. The National Report from Portugal notes that the delineation between Article 25 and the Convention is 'briefly addressed' in the textbook written by the National Reporter.

Question 80

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

Answer

Taking into consideration the National Reports, either the articles do not seem to have been applied or there is not enough information available to answer the question, or the question is not answered (sometimes because the question does not seem to be clear). The National Report from the Czech Republic refers to Article 71 (1) in connection to the CMR and the National Report from France to Article 71 (a) in connection with the answer to question 78 and Article 72 (2) (b), concerning this latter Article the National Reporter knows of no decisions in France.

ANNEX

I. Questionnaire for National Reports – March 2019

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?

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

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?

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?

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

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?

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)?

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.

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, *BNP Paribas Fortis NV*) has been helpful or has created extra confusion.

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

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

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?

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'?

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?

16. Should a decision on provisional measure issued by a court of a Member State, that could base its jurisdiction on the substance of the matter according to the Regulation's rules, be considered as a 'judgment' for the purposes of enforcement in your jurisdiction, when no proceedings on the merits of the case have yet been initiated? If the claim on the substance of the matter is subsequently filed with a court in another Member State also having jurisdiction under the Regulation, how would that reflect on the request for enforcement in your Member State of the 'judgment' issuing the provisional measure?

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?

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 Parkin*g)?

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?

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?

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

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?

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?

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?

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?

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?

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?

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?

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?

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?

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

32. In general, have there been difficulties in applying Section 3 of the Regulation on the jurisdiction in matters relating to insurance, if so which aspect(s): definition of 'branch, agency or other establishment' in the identification of the competent court, the

identification of 'the place where the harmful event occurred', the definition of 'injured party', the application of the provisions of Articles 15 and 16 relating to choice-of-court agreements?

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?

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?

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?

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?

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?

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?

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. 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 (seizure)? In other words, is Article 24 interpreted extensively or narrowly in you Member State?

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?

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?

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?

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

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?

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?

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?

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?

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?

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).

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?

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)?

53. Do subsequent amendments of claims in any way affect the determination of the date of seising in your Member State? Is any differentiation made in that respect between cases where a new claim concerns facts known at the date of the original proceedings and amendments based on facts which have only emerged after the date of the original proceedings?

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))?

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?

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?

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?

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?

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 Brussels Ia?

60. In the *Van Uden* 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?

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.

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?

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?

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?

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?

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?

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

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

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?

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?

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?

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

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?

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?

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?

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

77. Has the precedence of Art. 351 TFEU to Article 71 Brussels Ia, as established by the CJEU in *TNT v AXA* (C-111/14) and *Nipponkoa Insurance Co. (Europe) Ltd v Inter-Zuid Transport BV* (C-452/12) prompted any practical consequences in your jurisdiction?

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

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

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

II. Tables

Question 1

Austria	Judgements of third instance courts are systematically published. Some judgments of second instance courts are published. Judgments of first instance courts are rarely published. Judgements of third instance courts and some of first/second instance courts can be found in online databases.
Belgium	Judgments of the third instance courts are normally published and they are published in an online database. Judgements of first/second instance courts are not systematically published. There are various online databases.
Bulgaria	All judgments should be published and they should be published in an online database, as a general obligation of law. It was not reported whether these judgements in practice actually are systematically published.
Croatia	Not all judgements are systematically published. Those that are, are available in an online database. It seems that judgments of third instance courts are more systematically published.
Cyprus	All judgments of third instance courts are systematically published and they are published in i.a. an online database. It was not reported whether judgements of first and second instance courts are published.
Czech	Only judgments of third instance courts are systematically published and they are published in an online database.
Denmark	Judgements are not systematically published. Some second and third instance court judgements have been published and they have been published in an online database.
Estonia	All judgements of third instance courts are systematically uploaded and they are uploaded in an online database. Judgements of first and second instance courts are less regularly uploaded. For these judgements there is an online database as well.
Finland	Judgements of third instance courts are published systematically and they are published in an online database. Judgements of third instance courts are hardly ever published or available online.
France	Judgements of third instance courts are systematically published and they are published online. Judgements of second instance courts seem to be published as well. Judgements of first instance courts are usually not published.
Germany	Only a small number of judgements are published; which then regard second and third instance courts. Generally, all judgments are seen as 'public data' that can be requested by anyone.
Greece	Judgements are frequently published; mostly third instance rulings. There are two online, seemingly extensive, databases.
Hungary	Judgements are published. Court orders (e.g. court denying jurisdiction) not.

Ireland	Most judgments of second and third instances are published, but not all. There are two online databases.
Italy	Second and third instance judgements are published. First instance judgments less frequent. There are online databases.
Latvia	All judgments need to be published and they need to be published online. However, not all judgements re Ia are 'judgements' but rather 'decisions' (denying jurisdiction/recognition)
Lithuania	All judgments of all instances are published and can be found in an online database.
Luxembourg	Judgments of third instances are published. Judgments of other instances are not systematically published. A general database exists, but is only available to members of the judiciary. It was not reported whether there is an online database.
Malta	All judgements are published and they are published in an online database.
The Netherlands	All judgments of all instances are published and in extensive databases; rechtspraak.nl and Asser database
Poland	It depends on the instance; supreme court's decisions are published more systematically. Ordinary court's case law is published more selectively. Regarding all instances there are online databases. Generally, all judgments are seen as 'public data' that can be requested by anyone.
Portugal	Only judgments that are rendered in second/third instances are normally published. They are available in an online database.
Romania	Judgements of all instances are published, however on the basis of a selection. It was not reported whether there is an online database.
Slovakia	Judgements of third instance courts are systematically published. Some judgements of first and second instance courts are published. They are available in online databases.
Slovenia	Judgements of third instance courts are systematically published. Some judgements of second instance courts are published (on the basis of a selection by the judge/panel). No judgements of first instance courts are published.
Spain	Judgments that are rendered in second/third instances are normally published. They are available in an online database. It was not reported whether first instance judgements are never published.
Sweden	Judgments of the third instance courts are normally published. A small selection of judgements of second instance are published and some first instance judgements are published as well. Regarding all instances there are online databases.
UK	There is not a systematic publication of judgements. Various magazines and online databases contain judgements.

Question 2

Austria	Yes; ongoing dialogue between CJEU and Austrian courts is welcomed by Austrian legal writers.
Belgium	Yes; CJEU case law allows the Belgian courts to interpret the Brussel Ia Regulation when necessary; even domestic private international law is interpreted with inspiration of the CJEU case law.
Bulgaria	Yes; CJEU case law provides sufficient guidance for the judiciary (when the judiciary is aware of its existence and of its applicability to the respective case)
Croatia	Generally yes; but some of the case law has raised doubts on a national level regarding the impact of the CJEU case law. Additionally, sometimes judgements are going unnoticed since there is no mention of them in national judgments.
Cyprus	Yes; overall it would seem the judiciary considers the CJEU case law as providing sufficient guidance. It is common practice for courts to refer to the CJEU case law.
Czech	Generally yes; it is common practice for courts to refer to the CJEU case law.
Denmark	Generally yes (even with its special EU constitutional opt-out position)
Estonia	Generally yes; however lower instance courts generally don't refer to CJEU case law. CJEU case law is only referred to if the third instance court has done it before.
Finland	Yes; since only the third instance Court refers preliminary questions it was pointed out that also lower courts should do that, considering the useful guidance/assistance of CJEU case law.
France	Yes and no. Yes; CJEU case law is rather well perceived by judiciaries. No; the scope and complexity of adopted solutions are not always clear and leads to debate (e.g. 'contractual matters' ex Article 7(1) – emphasis on proximity negatively affects legal certainty and enhances different interpretations between Courts and between Member States). Moreover, coherence of the adopted solutions are a matter of concern (e.g. case law regarding the effects of choice of court agreements on third parties and the difference of approach between on the one hand C-71/83, Tilly Russ and C-387/98 Coreck Maritime and on the other hand C-542/10, Refcomp).
Germany	Generally yes.
Greece	Yes; however the appearance of CJEU case law in Greek case law is not frequent.
Hungary	Yes; the CJEU case law is generally considered to be detailed.

Ireland	Generally yes; however on some topics there is difficulty regarding the interpretation of various concepts (e.g. lis pendens, entitlement of national courts whose jurisdiction is contested to grant provisional orders in aid of the resolution of the jurisdiction dispute and whether Brussels Ia can confer jurisdiction in circumstances where the claimant has not initially pleaded jurisdiction under Brussels Ia).
Italy	Yes; the CJEU case law is generally explicitly referred to by Italian courts.
Latvia	Yes; the CJEU case law is generally explicitly referred to by the third instance court.
Lithuania	Yes; the CJEU case law is generally explicitly referred to by the third instance court. Reporter suggests that courts in first instances should also make more use of it.
Luxembourg	Reporter points out inability to answer the question, since reporter is an academic.
Malta	Generally yes; Maltese courts frequently refer to CJEU case law.
The Netherlands	Generally yes; courts in all instances regularly refer to CJEU case law.
Poland	Yes; Polish courts tend to take into account and make good use of CJEU case law.
Portugal	Hard to say; the number of Portuguese published judgments applying Brussels Ia is still limited. Reasons: 1. Unawareness Portuguese courts of case law; 2. Not very concrete CJEU case law.
Romania	Hard to say; more research needed on this topic. Sometimes courts refer to CJEU case law (in the case lawyers use it to argue their cases).
Slovakia	Yes; CJEU case law provides sufficient guidance to the courts. Courts refer to CJEU case law.
Slovenia	Yes; CJEU case law has a high reputation in Slovenia. Only few judgements have been met with harsh criticism.
Spain	Yes; CJEU case law provides fundamental guidance to the courts and CJEU case law is systematically followed by the Spanish courts due to the high quality of these decisions.
Sweden	Generally yes; to the extent such case law exists.
UK	Yes and no; English common law concepts deeply differ from the civil law-based autonomous concepts used by Brussels Ia. Authors have pointed out the lack of guidance in Brussels Ia and sometimes criticised the interpretation given by the CJEU to fill such gaps.

Question 3

Austria	I: extension territorial scope re consumer/employment matters; art. 7(4) aimed at legal protection; reference to art. 8 in art. 20 because it improves protection of workers; possibility of obtaining a remedy when appearance without objections, even in weaker party cases; clarification about parallel procedures in third countries; ordre public being kept as one of the grounds of refrusal. S: new version of art. 24(4); vague nature of the obligation to inform parties of their rights and the consequences of the failure to do so ex art. 26(2); definition 'null and void' in art. 25; provisional legal protection; art. 41(2) only partly moderates relationship between EU and national law. Disagreement on abolishment of exequatur.
Belgium	I: abolishment of the exequatur; lis pendens rule in case of choice of court agreement. S: exclusion of arbitration is insufficient to clarify the relationship between Brussels Ia and arbitral proceedings; implementation of a forum non conveniens-like lis pendens rule in relation to courts of third states creates confusion and contradictions; recital 20 causes interpretation difficulties.
Bulgaria	I: abolishment of the exequatur. S: vague nature of the obligation to inform parties of their rights and the consequences of the failure to do so ex art. 26(2)
Croatia	I: new rules on consumers/workers; prorogation in general; new jurisdictional rules giving priority to a court designated by a prima facie valid agreement. S: no improvements added re art. 71 with regard to transport conventions (not clear which other transport conventions, aside CMR, are included into the scope and whether the CJEU will take the same view regarding the delimitation of their scope of application as in C-406/92, Tatry; C-55/08, TNT Express Netherland; C-452/12 Nipponkoa Insurance Co); no clarification after fall out C-484/15 and C-551/15 (writs of execution given by notary public may be enforced against nationals but not against EU citizens.
Cyprus	I: abolishment of the exequatur.
Czech	I: abolishment of the exequatur; lis pendens rule in case of choice of court agreement; clarification scope re arbitration.
Denmark	I: abolishment of the exequatur; lis pendens rule in case of choice of court agreement. S: failing clarification scope re arbitration.
Estonia	I: abolishment of the exequatur
Finland	I: lis pendens rule in case of choice of court agreement
France	I: extension scope Brussel Ia re consumers and employees; reference to art. 8 in art. 20 because it improves protection of workers; introduced protection ex art. 26(2); lis pendens rule in case of choice of court agreement; clarification about parallel procedures in third countries; inclusion refusal ground recognition when employment matter; extra protection consumers/workers ex art. 45(1); abolishment of the exequatur and the new rules in general. S: exclusion of arbitration is insufficient to clarify the relationship between Brussels Ia and arbitral proceedings; clarifications art.

	25 results in a very complex regime; art. 41(2) creates limits to enforcement and these limits may very between MS; art. 44(1) not clear enough and this lack of precision creates the risk of diverging approaches among MS.
Germany	I: abolishment of the exequatur; reform choice of court agreements; partial extension scope Brussels Ia to third states. S: art. 31(2) gives rise to 'inverse torpedoes'; lack of regulation re recognition and enforcement of third state decisions; art. 26(2) is unclear; art. 54 is too complex for the relevant authority.
Greece	Too limited data to tell.
Hungary	No general criticism against amendments.
Ireland	I: abolishment of the exequatur and general rules relating to that matter
Italy	I: clearer regime on the free movement of provisional decisions. S: definition of the forum for 'cultural objects' ex Directive 93/7/EEC is vague
Latvia	Too limited data to tell.
Lithuania	I: abolishment of the exequatur; clearer rules of choice-of-court agreements.
Luxembourg	I: generally a clear improvement. S: summarising a judgment in a form is often delicate; calculating interest on foreign judgements if very complicated; lack of requirement to provide information on various ways to challenge judgements (e.g. appeal).
Malta	No major shortcomings were detected.
The Netherlands	I: abolishment of the exequatur; lis pendens rule in case of choice of court agreement; reform choice of court agreements. S: shortcoming reform choice of court agreements as well (uniform rule would have been better).
Poland	I: abolishment of the exequatur; extension scope art. 25; amendments art. 33/34. S: Lack of clarity re provisional matters; lis pendens.
Portugal	I: generally in favour of amendments. S: personal opinion reporter that abolishment of exequatur weakens the autonomy of the legal systems of the MS; personal opinion reporter that possibility of control on the grounds for refusal of enforcement at the enforcement stage is on the person against whom enforcement is sought also weakens the autonomy of the legal systems of the MS.
Romania	I: generally in favour of amendments; abolishment of the exequatur; lis pendens rule in case of choice of court agreement; amendments on art. 25; art. 26(2). S: art. 24(4) is not very clear what the provisions mean in practice (e.g. such as the possibility for the owner of a trademark to go abroad to sue an infringer and the infringer would then be able to challenge the validity of the trademark by way of counterclaim and the matter whether the court remains competent); lack of timeframe within the courts should recognise the judgments from other MS (sometimes takes 2-3 months).

Slovakia	I: generally in favour of amendments; abolishment of the exequatur; amendments on art. 25; amendments on art. 29(2).
Slovenia	I: generally in favour of lack of any far-reaching changes (i.e. the moderate and the reserved approach which rejected the more ambitions initial proposals of the EC); rules on choice of court agreements; extension scope Brussel Ia re consumers and employees; safeguards tacit jurisdiction agreement art. 26(2); S: reverse exequatur causes too numerous uncertainties and will result in diminishing legal safety and predictability (e.g. paradox new rules more space for MS to refuse enforcement, whereas new rules intended to be a further step towards cohesion and unification)
Spain	S: lack of clarification concept of habitual residence (in particular compared to 'domicile' in the Spanish view).
Sweden	I: general evaluation is positive
UK	I: rules on lis pendens; rules on choice of court agreement. S: failing clarification re arbitration; uncertainty re relationship with third coutries.

Question 4

Austria	Use of defendant's domicile instead of habitual residence (leaves loopholes); to introduce an uniform provision for provisional matters in art. 35.
Belgium	To clarify art. 25 and validity of choice of court agreements (suggestion to include recital 20 into art. 25 or abandon the recital altogether)
Bulgaria	N/A
Croatia	to introduce an uniform provision fpr provisional matters in art. 35; to introduce a stronger obligation on the court to inform parties of their right to contest the jurisdiction and of the consequences; to clarify art. 71 in its relation to transport conventions.
Cyprus	Too soon to tell.
Czech	To introduce of a lis pendens rule favouring the prorogation of jurisdiction art. 31(2) (to prevent a party to invoke an invalid choice of court clause (which was probably never agreed between the parties) before a court with the sole purpose to hinder proceedings before a court with jurisdiction; to clarify whether the relationship between the domicile of the consumer (as defendant) at the moment when the court is seised is a condition for the application of art. 18(2); to clarify whether art. 26 is applicable also towards defendants outside the EU; to clarify the relationship of choice of court clauses in favour of third-state court(s) and the regulation.
Denmark	To clarify the relationship with arbitration (in particular re the enforceability on judgments, in which an arbitration clause as an incidental question has been held ineffective)

Estonia	Hard to tell.
Finland	No.
France	To simplify the spatial scope of Brussels Ia; to provide an autonomous definition of the domicile of natural persons; to simplify and limit the scope of the alternative grounds in art. 7; the introduction of forum necessitatis to prevent denials of justice; to simplify choice of court clauses ex art. 25 (requirement of internationality + conditions of validity of these agreements); to clarify recital 12 regarding arbitration matters; to clarify the relations with third states ('mirror effect' of art. 24 and 25: where, according to those criteria, jurisdiction is granted to the courts of a third state, shall the courts of the EU MS decline jurisdiction, even though they could prima facie be competent on the ground of other provisions (e.g. art. 4)?; the introduction of a time limit in the case of lis pendens.
Germany	To clarify recital 12 regarding arbitration matters; to simplify the scope of the alternative grounds in art. 7; to clarify the relations with third states
Greece	Hard to tell.
Hungary	N/A
Ireland	To clarify the relations with third states; to introduce an uniform provision of provisional matters in art. 35.
Italy	To clarify recital 12 regarding arbitration matters.
Latvia	To cancel the Tessili approach re art. 7; art. 24(2) and 25(1) and to introduce autonomous definitions; to clarify recital 12 regarding arbitration matters; to clarify whether application of art. 26 is dependent on the domicile of the defendant in a MS; to introduce an autonomous notion of domicile for natural persons; to complement Brussels Ia with the introduction of general rules for third country defendants; to clarify whether special jurisdiction grounds also determine domestic jurisdiction; to introduce an explicit rule as to the transferability of the choice of court agreements via succession, assignment, subrogation etc.
Lithuania	N/A
Luxembourg	To clarify how to summarise a judgment in a form is often delicate; to clarify how to calculate interest on foreign judgements if very complicated; to introduce a requirement to provide information on various ways to challenge judgements.
Malta	N/A
The Netherlands	To bring art. 7(1), 7(2) and 25 up to date with 'modern-day' cases, e.g. involving the transfer of intangible property (such as bonds) and prospectus liability; to introduce rules on the issue of collective action/mass damage claims.
Poland	To clarify provisional matters; to clarify lis pendens.

Portugal	To introduce control ex officio of the grounds for refusal of recognition and enforcement concerning public interests; to clarify the place of delivery of goods ex art. 7(1)(b); to clarify the validity of choice of court agreements ex art. 25(1).
Romania	Too limited data to answer.
Slovakia	Establishment of a European register of pending proceedings, listing the specific date on which proceedings are opened in court. This proposal aims to increase the effectiveness of Article 29(2); transfer of a special rule of jurisdiction in matters of posting of workers from Article 6 of Directive 96/71/EC directly to the text of the Brussels Ia Regulation.
Slovenia	No; too frequent reforms of Brussel Ia shoud be avoided.
Spain	To introduce a time limit to deny enforcement.
Sweden	N/A.
UK	To clarify recital 12 regarding arbitration matters (with due regard to the risks of parallel proceedings and conflicting judgements); to clarify the relationship with third states (re both exclusive jurisdiction and lis pendens); To clarify the validity of choice of court agreements; to improve the dichotomy between 'abolition of exequatur' and the grounds for refusal of recognition and enforcement.

Question 5

Austria	No
Belgium	No
Bulgaria	Yes. Confusion about qualifying disputes concerning loans made for finance of sale of immovable property; confusion about qualifying the division of property of former spouses (solved by CJEU C-67/17, Iliev)
Croatia	Yes. Confusion about qualifying consumer contracts; confusion about qualifying rights in rem.
Cyprus	Too soon to tell.
Czech	Yes. Confusion about qualifying contractual/non contractual claims; confusion about qualifying consumer contracts.
Denmark	No.
Estonia	Yes. Confusion about qualifying unjust enrichment; confusion about qualifying negotiorum gestio (is it tort, delict, quasi-delict?); confusion about qualifying a non-declaratory action to determine that there is no contract (is it a contract ex art. 7(1)?)

Finland	No.
France	Yes. Confusion about qualifying contracts; confusion about qualifying service agreements; confusion about putting limits to the validity of asymmetrical choice of court agreements.
Germany	No.
Greece	No.
Hungary	Yes. Confusion about putting limits to the validity of choice of court agreements.
Ireland	No.
Italy	Yes. Confusion about qualifying 'court' (under Italian law arbitral tribunals are courts)
Latvia	Yes. Confusion about qualifying 'consumer contracts'.
Lithuania	No.
Luxembourg	No.
Malta	Yes (no examples given)
The Netherlands	Yes. Confusion about qualifying the 'Peeters/Gatzen' claim, having both insolvency and tort characteristics (solved by CJEU C-535/17, NK v BNP)
Poland	No.
Portugal	No.
Romania	Yes. Confusion about qualifying 'declaration of enforceability'.
Slovakia	Yes. General note: it is necessary to stress the autonomous character of the provisions in Brussel Ia. Also the Slovak language version of art. 7(1) Brussel Ia is more narrow than the definition in Brussel Ia.
Slovenia	Yes. Confusion about qualifying 'cause of action' in lis pendens; confusion about qualifying rights in rem in immovable property; confusion about qualifying claims arising from contracts or torts concerning immovable property.
Spain	Yes. Confusion about qualifying 'habitual residence', 'consumer', 'procedure', 'divorce', 'lis pendens', 'related actions', 'provisional matters' etc.
Sweden	No.
UK	Yes. Confusion about the sharp division between public and private law; confusion about the sharp division between contracts and torts; confusion about qualifying 'constructive trutst'.

Question 6

Austria	No.
Belgium	N/A
Bulgaria	Yes; tension between domestic law for claims against an insurer (it doesn't recognise other territorial competent courts).
Croatia	No.
Cyprus	No.
Czech	No.
Denmark	No.
Estonia	No.
Finland	No.
France	Yes; domestic law sometimes interferes with Brussels Ia (e.g. in cases where art. 4 is applicable, it could happen that the particular competent court under domestic law is not the court of the place where the defendant is domiciled)
Germany	No.
Greece	No.
Hungary	No.
Ireland	No.
Italy	No.
Latvia	No.
Lithuania	No.
Luxembourg	No.
Malta	No.
The Netherlands	No.
Poland	Yes; interpretation concepts in domestic law can sometimes influence the interpretation of likewise concepts in Brussels Ia (e.g. causing a forum actoris in claims for payment of contractual debts)
Portugal	Yes; domestic law can prohibit choice of court agreements regarding a specific territorial competent court, whereas Brussel Ia can refer jurisdiction to this

	court (in this case the court held correctly that according to Brussels Ia the agreement should be fully respected).
Romania	No.
Slovakia	No.
Slovenia	No.
Spain	No.
Sweden	No.
UK	N/A

Question 7

Austria	No; domestic rule obligates to administer justice (where Austria has international jurisdiction under Brussel Ia, a locally competent court must be made available).
Belgium	No; domestic rule leaves space to take jurisdiction
Bulgaria	Yes; a domestic rule can exclude the forum rei which may lead to a situation where foreign claimants could be left without domestic court venue in Bulgaria.
Croatia	No; domestic rule leaves space to take jurisdiction.
Cyprus	No; domestic rule leaves space to take jurisdiction.
Czech	No; in a cases where Czech courts are internationally competent under Brussels Ia, but there is no court with territorial jurisdiction, the third instance court designates the court: which is usually the requesting court (exceptional cases).
Denmark	No; domestic rule leaves space to take jurisdiction.
Estonia	No.
Finland	No; domestic rule obligates to administer justice (to the Helsinki District Court)
France	Yes; it can happen that a matter ex art. 4 Brussel Ia allows the claimant to seize French courts, but would then be considered, for the purpose of applying French rules, as subject to the exclusive jurisdiction of a foreign court (e.g. when a given claim relating to immovable property situates outside of France is to be qualified as contractual under Brussels Ia, while it constitutes under French law an action in rem, subject to the exclusive jurisdiction of the court where the property is located).

Germany	Yes; in cases where the court seised finds that, pursuant to its national law (art. 62) the place of habitual residence of the defendant is in another MB while pursuant to the pertinent national law of that MS the opposite is true.
Greece	No.
Hungary	No (but is theoretically possible)
Ireland	No.
Italy	No; domestic rule leaves space to take jurisdiction.
Latvia	No; domestic rule obligates to administer justice.
Lithuania	No.
Luxembourg	No.
Malta	No.
The Netherlands	No.
Poland	No; domestic rule leaves space to take jurisdiction.
Portugal	No.
Romania	No.
Slovakia	The concept of "a negative conflict of international jurisdiction" appears in Slovak literature, however this question is not dealt with in detail. The one of proposed solutions includes e.g. application of the principle of prohibition of denegatio iustitiae.
Slovenia	No; in a cases where Slovenian courts are internationally competent under Brussels Ia, but there is no court with territorial jurisdiction, the third instance court designates the court.
Spain	Yes; if so, Spanish courts have declared the lack of jurisdiction and tend to affirm that the case should be solved by a third state court.
Sweden	No; domestic rule obligates to administer justice (to the Stockholm District Court)
UK	N/A.

Question 8

Austria	Different statutory laws.
Belgium	Different statutory laws.

Bulgaria	Same legislative act.
Croatia	Different statutory laws.
Cyprus	Different statutory laws.
Czech	Different statutory laws.
Denmark	Different statutory laws.
Estonia	Same legislative act.
Finland	Different statutory laws.
France	Different statutory laws.
Germany	Different statutory laws.
Greece	Same legislative act.
Hungary	Different statutory laws.
Ireland	Same legislative act.
Italy	Different statutory laws.
Latvia	Different statutory laws.
Lithuania	Same legislative act.
Luxembourg	Same legislative act.
Malta	Different statutory laws.
The Netherlands	Different statutory laws.
Poland	Different statutory laws.
Portugal	Different statutory laws.
Romania	Same legislative act.
Slovakia	Different statutory laws.
Slovenia	Different statutory laws.
Spain	Same legislative act.
Sweden	Same legislative act.
UK	Different statutory laws.

Question 9

Austria	'The interpretation does not cause any difficulties in practice.' In Austria the opinion is that the following exceptions are included: - The arbitration proceedings themselves including the arbitral tribunals' decision on jurisdiction. - Proceedings before state courts in support of arbitration. - Procedure for determination of the place of arbitration. - Procedure for extending decision, limitation or exclusion periods. - Procedures in which an arbitral tribunal can have issues legal issues decided in advance by a state court. - Procedure for revocation, amendment, certification, recognition or enforcement of arbitral awards. - Actions for determination of the (in)effectiveness of arbitration agreements. […] From the Austrian perspective Recital 12 shows that in these circumstance the incidental determination of the invalidity, ineffectiveness or non-performance of the arbitration agreement alone cannot be the subject of recognition. […]'
Belgium	'Recital (12) has sometimes been deemed to be insufficient to clarify the state of the law. Instead of providing clarity about the impact of the Brussels Ia Regulation on arbitral proceedings, the Recital was found to import the pre-existing issues that arose in the CJEU case law directly into the Brussels Ia Regulation.' [Includes references to literature, IJI]
Bulgaria	'[…] The delineation between court proceedings and arbitration [has not] led to grave problems […]. According to the prevailing [Bulgarian case law] the Brussels Ia regulation [does not apply to] recognition and enforcement of foreign arbitration awards [includes references to case law, IJI]. One Bulgarian court applied the Brussels Ia Regulation for determining the international jurisdiction for rendering provisional, including protective, measures related to arbitration proceedings in another Member State [Includes reference to case law, IJI]. As long as there were no significant questions raised before the Bulgarian courts in sense of the court-arbitration competition no crucial effect of Recital 12 have be established.'
Croatia	The National Reporter has found no case law that show problems 'with the delineation between court proceedings and arbitration.' Recital 12 in the Brussels Ia is considered to be an 'improvement and useful guidance, especially in jurisdictions which are used to judicial positivism and low level of judicial interpretation.'

Cyprus	'The delineation does not seem to have caused any particular problems', but it would be 'premature' to consider 'the impact' of the effect of the clarification recital 12 in Cyprus. Case law does not indicate particular changes in practice.
Czech	'[…] Recital (12) has in principle confirmed the existing practice.' […] 'Problems with the delineation between court proceedings and arbitration emerged in connection with the possibility to recognise a decision of an Austrian court on an application to set aside an arbitral award. The arbitral award was issued by the Czech Arbitration Court' and the place of arbitration was in Austria: 'the arbitral award was rendered in Austria and the *lex arbitri* was the Austrian law.' According to Czech law this award was a foreign arbitral award. The Austrian court dismissed the application to set the award aside. The question has arisen whether this decision of the Austrian court can be recognised by Czech courts. Recital 12 paragraph 4 Brussel Ia explicitly confirms that the regulation should not apply to any judgment concerning the annulment, review appeal, recognition or enforcement of an arbitral award. The Supreme Court in the Czech Republic had to rule in a case in which this occurred, but did not address the question of the applicability of the Brussels I regulation. 'Under this viewpoint, the insertion of the Recital should be positively assessed.'
Denmark	'There is no reported case law under the Brussels Ia.' Under the Brussels Convention 'a Swedish Judgment on the enforceability in Sweden of an arbitral award rendered in Denmark was unenforceable in Denmark.'
Estonia	Estonian legal literature or case law has not 'touched' on this issue.
Finland	'The delineation between court proceedings and arbitration has not led to particular problems in Finland. The clarification in the Recast (Recital 2) has most probably not changed the practice in Finland but may be helpful for some practitioners.'
France	This issue has 'sparked' debates among authors, but has not given rise to significant problems in practice yet. '[…] [w]here the existence of an arbitration clause is alleged', French courts apply French rules on arbitration without interference of the regulation. These rules of arbitration 'give a clear precedence to the arbitration proceedings over state court proceedings. Because of Article 1448 of the French code of Civil Procedure , which is strictly interpreted by the courts, in almost all cases jurisdiction is declined in cases involving arbitration agreements. 'The risk, raised by the West Tanker ruling (ECJ 10 February 2009, case C-185/07), that the rules of the Regulation could ascribe jurisdiction to national courts in order to examine the validity of the arbitration clause, has, for this reason, not materialised in France.' From a French point of view it is clear that the Regulation does not apply to recognition and enforcement of arbitral awards, nor to state court decisions on the annulment or enforcement thereof. Recital 12 has not clarified the issue. There is a contradiction between paragraph 1 and 3. Paragraph 1 is 'being interpreted as ruling out the implementation of the Regulation in arbitration matters,' while paragraph 3 'suggests that a national court may exercise jurisdiction pursuant to the Regulation in order to examine the validity of an arbitration clause.' Paragraph

	4 is 'deemed ambiguous and does not provide adequate guidance for handling conflicts between arbitral awards and decisions issued in other Member States on the same matter.'
Germany	'The courts seem to follow the approach as advocated under the Brussel I Regulation. Recital 12 is mostly seen as being not very helpful, maybe even confusing.' Pertinent changes in the visible in the recitals seem not to be satisfactory. 'Generally commentators are of the opinion that the old case law of the CJEU (e.g. van Uden, West Tankers) is still authorative.' There still exists a risk of parallel arbitral and court proceedings under the regime of the Bussels Ia Regulation.
Greece	There is no published case law on this issue. 'Legal scholars doubt […] the added value of Recital 12 […].' Friction will continue to appear in practice, the novelty serves as a framework on which the CJEU shall have to base its interpretation in the future, and stressed is the danger of conflicting decisions and arbitral awards [references to literature are made]. Four decisions 'remotely related to arbitration'' under the Brussels Ia regulation were found by the National reporter. Three about article 35 Brussels Ia and the Greek civil procedural code. Also court proceedings were suspended because of pending ICC arbitration. No reference was made to the Brussels Ia Regulation, but the case does fall within the scope of the Regulation. Article 249 of the Greek Civil Code was applied.
Hungary	'No such problems emerged in the context of Regulation BIa.'
Ireland	'The Irish courts have given some consideration to the delineation between court proceedings and arbitration [citation of case law], 'whether a jurisdictional challenge based on the Brussels I regulation precluded a further challenge based on an agreement to arbitrate'. There is no 'substantial engagement with the issues sought to be resolved by Recital 12.'
Italy	The delineation is clear 'and recital 12 contributed in defining the exclusion to the scope of application of the regulation'.
Latvia	This issue is considered to be very problematic. Recital 12 does not bring substantive changes. In one Supreme court Judgment it was decided that '1) arbitration was excluded from the scope of the Regulation; 2) the exclusion applied both to jurisdictional rules and rules on protective measures; 3) if the matter was not covered by the Regulation, it could not be used for recognition and enforcement of provisions measures.' In one Supreme Court Judgment recital 12 was used to interpret the Lugano convention, because Article 1(2)(d) Brussels Ia was not changed. Judicial expenses in a court proceeding related to arbitration is excluded from the scope from the Lugano convention according to the Supreme Court. Based on these two Supreme Court decisions the National reporter concludes 'that Latvian courts favour absolute separation between arbitration and the Recast. This is not needed according to the National reporter. What is needed is 'a subtle exemption from the scope of the recast of arbitration issues […] to

	avoid any disruption of the regime of the New York Convention.' Court decisions for instance on provisional measures that only assist arbitration and are not covered by the NYC in any way, do fall within the scope of the Regulation. This balance is clearly expressed in the text of the Regulation and should be found. 'Latvian practice shows that Recital 12 is not enough to achieve this objective.'
Lithuania	Even though there were several cases concerning this questions, no big problems have arisen. Arbitration has priority over court proceedings if an arbitration agreement has been signed.
Luxembourg	No problems have arisen. Arbitration proceedings are, in Luxembourg, mainly concerned with enforcement of foreign awards and are clearly settled by present law.
Malta	No problems relating to the Brussels I or Brussels Ia Regulation.
The Netherlands	'The clarification in Recital 12 of the Recast has received a positive response in the literature' and has been relied on in case law in order to clarify the delineation between court proceedings and arbitration [references to literature and case law added].'
Poland	No particular problems. Cost of proceedings before the court in an annulment procedure were deemed to fall within the scope of the Brussels Ia Regulation, according to the Regional Court in Kraków. '[…] [M]ajor complications relating to the arbitration concern the interplay between the proceedings before the national courts and the arbitral tribunals (e.g. third paragraph of Recital 12 and the issues relating to res judicata and lis pendens where an arbitral tribunal delivered an award before a judgment is rendered by a national court having jurisdiction under the Brussels Ia Regulation etc.).'
Portugal	The National reporter is only aware of one judgment in which it was decided that the Bussels I Regulation 'is not applicable to the recognition of part of a judgment confirming an arbitral award [reference to case law added]. Recital 12 of the Brussels Ia Regulation is considered helpful, but there is some criticism regarding the duty to recognize judgments that disregard valid arbitration agreements which can lead to arbitral awards that shall also be recognized under the New York Convention [reference to literature added].'
Romania	The delineation has so far not led to particular problems. Recital 12 has been to some extend helpful, but controversy remains about aspects such as anti-arbitration and anti-suit injunctions, which is not settled with regard to recognition. In literature difficulties with parallel proceedings in front of courts and arbitral tribunals are signalled [reference to literature added]. According to some practitioners, even though the Recital clarifies some aspects 'the new text is still not fully clear in establishing to what extent a court decision declaring an arbitration clause null or issuing an anti-arbitration injunction will or can be recognised, and to what extent a court decision in a Member State which is requested to discontinue an arbitration procedure or to continue with

	the procedure will be recognised or not according to the Brussels Ia in another Member State.'
Slovakia	'The issue of delineation between court proceedings and arbitration is discussed in the Slovak literature e.g. in the context of whether a court judgment constitutes a res iudicata impediment with respect with respect to an arbitration award.' A question analysed by the authors is: 'in the event that a court of another EU Member State renders a preliminary decision on invalidity of an arbitration agreement and at the same time rules on the merits of a case, should such a foreign court judgement provided that the prerequisites for recognition under Brussels Ia Regulation are met) take precedence over foreign arbitration award?' According to the authors based on Article 73 Brussels Ia priority should be given to application of the New York Convention and recognition of the foreign arbitral award instead of a court judgement of another EU Member State [references to literature added].
Slovenia	There is no case law and no discussion in legal literature about this matter.
Spain	No particular problems. The Spanish Supreme court Judgment of 7 May 2019 follows the lines showed by the CJEU of 12 February 2009, C-339/07, Christopher Seagon vs. Deko Mary Belgium NV, FD 22-23 and CJEU 19 April 2012, C-213/10, F-Tex SIA.
Sweden	No particular problems '[…] a court Appeal found the 1988 Lugano Convention inapplicable to an action for a negative declaratory judgment declaring that the claimant was not bound by an arbitration agreement.'
UK	'The width of the scope of the arbitration exception has raised problems in the UK. The well-known West Tankers saga – regarding the possibility for an English court to issue an anti-suit injunction to protect an arbitration agreement from parallel proceedings in another Member State – is a well known example of such problems [references to case law added].' Its seems that the Brussels Ia recast will not affect the practice of the English courts. In 2018 an English commercial court followed the West Tankers decision of the ECJ. 'Conversely, Recital 12, par 2, is likely to affect the practice of the English courts regarding enforcement of judgments whose subject matter is the applicability of an arbitration agreement.' In an English Judgment from 2009 decided under the Brussels I Regulation, 'the English Court of Appeal had held that a judgement issued in another Member State on the preliminary issue of the validity and existence of an arbitration agreement was to be recognized and enforced under the rules of the Regulation. Courts will likely not be able to reach the same conclusion under the Recast Regulation.'

Question 10

Austria	The delineation causes difficulties in Austria 'when it comes to insolvency-related individual proceedings that emerge directly from the insolvency proceedings or are closely related to them'. 'According to the views held by the Austrian legal writers, all proceedings qualify as insolvency proceedings that could not have arisen with the same objective and without the opening of insolvency proceedings and which directly serve the purpose of insolvency

	proceedings. Disputes for which the opening of insolvency is merely the reason or only the status of the party (by the exercise of the administrative and disposal authority by the liquidator) and the details of the claim content change, but which can also be pursued outside the insolvency proceedings are covered by the scope of Brussels I bis. It is therefore not sufficient if the asserted claim is only affected by the opening of the insolvency proceedings and is adapted accordingly to the proceedings; rather, it must have its legal basis in the insolvency proceedings or exist under general law, but be modified by the insolvency proceedings in such a way that it is shaped by insolvency law as a whole, so that the insolvency law provisions and idiosyncrasies determine its character.' […] 'Overall the delineation is problematic and rather than principled, the approach has mostly been quite haphazard. Judgment C-535/17 'brings some certainty, because it creates the basis for some inductive conclusions. In the meantime the cases presented have become so specific that it is seldom possible to draw reliable inductive conclusions for further scenarios from the concrete cases. Overall, the judgment can be described as helpful.'
Belgium	No issues in studied case law. In legal scholarship the delineation between the Brussels Ia Regulation and the Insolvency regulation is only incidentally commented on.
Bulgaria	The delineation has led to some problems 'in cases concerning claims for setting aside of contracts lodged by foreign insolvency administrators against Bulgarian companies in Bulgaria. Some courts refer to art. 3 par. 1 Insolvency Regulation, some to The national Bulgarian code on private international law and others to the Brussels I Regulation. The Bulgarian Court of Cassation established jurisdiction based on art. 18 par. 2 Insolvency Regulation, 'which led to the preliminary ruling of the CJEU in *Wiemer & Trachte*, C-296/17, ECLI:EU:C:2018:902.' Judgment C-535/17 has not been reflected upon in literature or case law.
Croatia	Hard to know whether there are problems in practice due to the absence of case law. Judgment C-535/17 'should be helpful since the CJEU explicitly refers to relevant criteria for the classification of the action […], thus it does not leave much room for confusion.'
Cyprus	No particular problems and no cases in which Judgement C-535/17 was considered.
Czech	In general the delineation may cause problems. In a Supreme Court case the issue was whether the declaration of enforceability of a judgement should be regulated by the Brussels I or the Insolvency Regulation and 'whether the Brussel I regulation can be applied in the proceedings on declaration of enforceability of an execution title which immediately comes out from the insolvency proceedings' or whether in that case the Insolvency Regulation applies. According to the Czech Supreme Court 'the scope of the Insolvency Regulation should not be interpreted extensively: whether the exclusion from the scope of the BI shall apply depends on whether the claim is based on specific rules on insolvency or narrowly connected with

	insolvency, or whether it is based on a general regulation and is only deferred from the insolvency (referring to German Graphics C-292/08, Gourdian v. Nadler C-133/78 and SCT C-11/08 and to the Czech commentary on Brussels I).' '[U]nder Art 25 (1) of the Insolvency Regulation judgements handed down by a court whose judgment on opening of proceedings is recognised in accordance with Article 16 and which concerns the course and closure of the insolvency proceedings, shall also be recognised with no further formalities. Such Judgments shall be enforced in accordance with Articles 31-51 of the Brussels Convention.' Another Judgement on jurisdiction from an appellate court is mentioned in which the declaratory action (debtor in insolvency 'is owner of immovables at hand as the respective sales contract is absolutely null and void') was assessed to not fall within the scope of the Insolvency Regulation. Proceedings had been opened in Slovakia. There are no cases on the recasts of both regulations 'in their mutual relationship'. Judgement C-535/17 'has been assessed positively, but only in academic papers'. It has not yet been applied.
Denmark	'Denmark's opt-out of the EU's regulation on Justice and Home Affairs encompasses the EU Insolvency Regulation. Consequently, when the CJEU strives to align the sphere of application of the Brussels Ia and Insolvency regulation to avoid gaps, it may create interface issues when the Danish domestic understanding of insolvency does not follow this boundary.' According to a case a 'suit concerning closeout netting due to bankruptcy fell within the exception in Article 1 (2) (b) of the Brussels Ia. A choice-of-court clause in the agreement was, consequently, not subject to Article 25 of the Brussels Ia – and under Danish law, the clause was not binding for the estate.'
Estonia	The issue is not problematic in case law, but has been dealt with in literature.
Finland	No particular problems. Judgement C-535/17 has been helpful.
France	The delineation has raised problems, 'especially to identify actions which "derive directly from the bankruptcy or winding-up and [are] closely connected with the [insolvency proceedings]" within the meaning of the Gourdian decision (ECJ 22 February 1979 case 133/78, point 4). When it comes to defining those actions it is unclear whether the relevant criterion is to be found in the legal basis of the action – ie is it based upon specific rules of insolvency proceedings ? (see ECJ 4 September 2014, case C-157/13 Nickel & Goeldner Spedition) or in the link between the action and the insolvency proceedings (see ECJ 4 december 2014, case C-295/13, H. v. H.K.). 'Given those two critera may lead to different results, French Courts have sometimes struggled to reacht the right solution.' An example relates breach of employment contracts following the opening of insolvency proceedings. One case fell under the scope of the Insolvency Regulation, another under the scope of the Brussels I regulation.

	Judgement C-535/17 'might contribute to clarify the solutions: indeed, it seems to give clear precedence of the criterion of the legal basis of the action of the procedural context of the action […]'.
Germany	'The approach of the CJEU taken in Gourdian v. Nadler and later in Christopher Seagon v Deko Marty Belgium is generally seen as providing helpful guidance. However, the subsequent case law has been criticized for being too casuistic and not paying enough attention to a principled approach.'
Greece	No case law has been published. General remark: 'cross border "insolvency proceedings" are a sheer rarity in Greece'.
Hungary	No case law.
Ireland	Considered briefly in a number of cases, but has not led to particular problems.
Italy	Italy refers to domestic rules on jurisdiction. '[L]iability actions against former managers' are considered by the Supreme court to have an 'insolvency' nature. Judgement C-535/17 'seems sufficiently adequate to offer proper guidance on the scope of application of the regulations'.
Latvia	Judgement C-535/17 has not been referred to in publicly available case law. The Supreme Court has addressed the delineation in the context of recognition of an Estonian decision. It was argued that the choice-of-court agreement for Latvian courts was made and therefore the Estionian court did not have jurisdiction under the Brussels I Regulation. The Supreme Court quoted the CJEU case-law extensively and concluded that 'the Estonian ruling was made under the Insolvency Regulation and the Estonian court had the competence to take the decision'. The circumstances were similar to the CJEU C-339/07, Christopher Saegon case. Based on the CJEU reasoning the supreme court the case fell under the Insolvency Regulation. Based on art. 3 (1) Insolvency Regulation 'the Estonian court had jurisdiction.'
Lithuania	There are difficulties for courts to understand when to apply either the Brussels Ia Regulation or the Insolvency Regulation. Especially in an insolvency case concerning a bank in Lithuania.
Luxembourg	This delineation is relied on, but there are no particular problems. '[T]he recovery of debts by an insolvency official was held to fall within the scope of Regulation BIa.'
Malta	No. The distinction has been made on numerous occasions. 'Judgements on the recognition and enforcement of foreign judgments which fell squarely within the scope of the Insolvency Regulation […] were made on the basis of both the Insolvency Regulation and [the Brussel I Regulation]'. In no cases has been referred to C-535/17.

The Netherlands	Dutch legal concepts can be hard to qualify because some have a hybrid character. An example is the Peeters/Gatzen claim, which has 'both insolvency and tort characteristics'. In judgment C-535/17 it was decided this claim should be considered as a civil and commercial matter (the Brussels Ia Regulation applies). 'This interpretation will make it more difficult for a liquidator to file a Peeters/Gatzen claim in the Dutch court'. [Referred to answer to question 5]
Poland	No major difficulties. Case law of the CJEU is 'intensively quoted' in cases that involve the delineation.
Portugal	Three cases are mentioned. 'The first case concerned the provisional seizure of assets of a company that was subject to insolvency proceedings in another Member State'. The Insolvency Regulation was applicable, art. 15. '[D]eclaration for nullity of a mortgage on a immovable, initiated by the mortgagor after being subject to insolvency proceedings', fell under the Brussels I Regulation, art. 22. 'The decisive criterium […] should be based on whether the proceedings were based upon common rules of civil or commercial law or upon specific rules of insolvency law.' Judgment C-535/17 'is in line with this criterium, but according to [par.] 17, it seems that the proceedings at stake were based upon a specific solution of insolvency law resulting from case law. Therefore, by holding that they were subject to Brussels I regulation, the judgement raises more doubts than provides help.
Romania	No significant problems to practice, but there is case law available. 'Some of these claims are related to the certification of a judgment or the recognition and enforcement of such decisions and whether the concerned decision fall within provisions of Brussels I/Ia or the European Insolvency Regulation.' Judgement C-535/17 has not received 'significant' attention in literature yet.
Slovakia	The issue has been dealt with by both literature in judicial authorities. In literature an example that is mentioned that 'where a trustee whishes to bring not only an insolvency proceeding action (e.g.) a counteraction) against a debtor, but also another related civil or commercial action falling within the scope of Brussels Ia Regulation (for example an action for damages against a debtor under the rules of general delictual law) and adds that both actions may , in his view, be brought before a court having jurisdiction under Brussels Ia Regulation […].' An unjust enrichment case did not fell within the scope of the Brussels Ia regulation, because 'the proceedings conducted by the bankruptcy trustee against the bankrupt debtor are not proceedings conducted under the Bankruptcy and Restructuring Act. The mere fact that a cross action for unjust

	enrichment was brought […] does not mean that it is a dispute arising or related to a bankruptcy'. The Supreme Court found that recognition and enforcement of a judgement on the costs in a insolvency procedure abroad against a third (not the defendant), feel within the scope of the Brussels I Regulation 'basing its decision on, inter alia, a certificate issued by the authority of the state of origin of the foreign decision in accordance with Annex V of the Brussels I Regulation.'
Slovenia	No case law, and no discussion in legal literature.
Spain	No particular problems. The Spanish Supreme Court followed the lines of the CJEU 12 February 2009, C-339/07, Christopher Seagon vs. Deko Marty Belgium and 19 April 2012, C-213/10, F-Tex SIA.
Sweden	No particular problems.
UK	Discussions took place under the Brussel I Regulation and are still relevant under the recast. Judgement C-535/17 'should not create confusion as it is aligned with the position of the English courts'.

Question 11

Austria	There are no relevant published judgements.
Belgium	Not available.
Bulgaria	Recognition and enforcement of a court settlement 'concerning the property of former spouses in Bulgaria and in Finland referring to [the] Brussels I Regulation.' In another case a court refused to issue a certificate under Article 60 Brussels Ia Regulation 'with the reasoning that [the] interested party was already provided with [a] national enforcement title and thus is not allowed to acquaint a second one'.
Croatia	'According to judges, there are very few such cases. They were not able to provide the judgement.'
Cyprus	No relevant case-law. 'This might indicate that recognition and enforcement of court settlements has so far been uncontroversial and has not led to specific disputes worth reporting.'
Czech	'The recognition and enforcement of foreign court settlements as such is in principle acceptable and does not bring any problems. […] Czech judges are familiar with the possibility to recognise and enforce foreign court settlements [the possibility exists in Czech 'autonomous' private international law when it comes to recognition and enforcement of foreign court settlements on right an obligations, Section 14 PIL act].' The judgement needs to be final (confirmed by a certificate from the foreign court and recognised).

	No decisions available.
Denmark	One reported case. A German court settlement was enforceable in Denmark. The Supreme Court decided that based on Article 43 Brussels I, appeal was made timely.
Estonia	No.
Finland	No case law.
France	There are only a few decisions. One by the Cour de cassation under the Brussels Convention of 27 September 1968. 'It stated that, insofar as a court settlement could not be assimilated to a decision within the meaning of Article 25 of the Convention, it could not be invoked by a party, on the ground of Article 27.3 of the Convention, in order to oppose the enforcement of a court decision rendered between the same parties in another Member state.' A 'judicial order by the president of the Paris first instance Tribunal' of 26 February, considering that 'when requested to enforce a court settlement concluded before the court of another Member State, a court of the forum is precluded from adding to the settlement.' A decision of the Paris Court of Appeal of 11 April 2002, 'in which the Court which was seized on the ground of the Brussels Convention of 1968, award only partial enforcement to a court settlement relating to two series of matters, some of them, relating to maintenance obligation, being included in the scope of the Convention, while others, purporting to the establishment of a paternity link being excluded from the realm of the Convention.'
Germany	No reported case law.
Greece	One case prior to the entry into force of the Maintenance Regulation. It concerned a German court settlement on maintenance payment by the father for his children living their mother, which was recognised and enforced. The settlement was enforceable based on the certificate issued by the German court pursuant to Art. 53-54 Brussels I. However, '[t]he court examined erroneously the whole catalogue of the grounds for refusal with respect to the judgment preceding the court settlement [and] […] embarked on verifying the foreign court's international jurisdiction.'
Hungary	No case-law.
Ireland	No case-law.
Italy	No case-law.
Latvia	No case-law.
Lithuania	No case-law.
Luxembourg	No case-law.

Malta	No case law.
The Netherlands	Information not available.
Poland	No case-law which would address the issue in a detailed manner.
Portugal	No case-law.
Romania	There is some case law on this matter. One case was about the 'recognition and registration in the Land Registry of a transaction contained in a judicial decision issued by an Austrian Court […] [relating] to a change of ownership of […] property situated in Romania and concluded between two former spouses. The particularity of the decision is given by the fact that the settlement seemed to have been certified in accordance with Annex No 2 of Regulation 44/2001 as well as a certification based on Article 3 (1) Regulation No 805/2004 (EEO Regulation).'
Slovakia	No case-law.
Slovenia	No case-law.
Spain	No particular problems.
Sweden	No case-law, but the National Reporter notes that the Regulation only provides for enforcement of court settlement, not for recognition.
UK	No answer given.

Question 12

Austria	One relevant published judgment. The question was 'whether the applicant was entitled to costs for applications for the issue of certificates under Article 59 and which court or body would have to decide on a possible award of costs.' The Brussels I Regulation 'did not contain any provisions regarding the question' and 'also does not regulate the reimbursement of costs for the application for exequatur […]. This is exclusively governed by national law. These costs cannot be claimed in the original proceedings.'
Belgium	Not available.
Bulgaria	Not available.
Croatia	There are a few cases, but those mainly relate to Regulation 805/2004: 'claims connected with the unpaid invoices issued to the defendant in other Member States.'
Cyprus	No case-law. This might indicate that the subject is 'uncontroversial and has not led to specific disputes worth reporting'.

Czech	No decisions available, but subject 'should not bring any particular problems'.
Denmark	'A loan agreement notarised in Germany was an authentic instrument within the meaning of Article 50 of the Brussels Convention, see case of Eastern High Court 2012.
Estonia	Not under the Brussels Ia Regulation. There are cases under the European Enforcement Order Regulation 805/2004 on authentic instruments. 'The most prominent of these is a Supreme Court case 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.'
Finland	No reported cases.
France	Decision Court of Appeal 2 March 2000: '[..] an instrument signed and sealed by a Spanish commercial broker, member of the Official order of the Brokers of Madrid, constituted an authentic instrument within the meaning of Article 50 of the Brussels Convention.' Two other decisions (Cour de cassation and court of Appeal): 'partial enforcement of authentic instruments addressing several issues, some […] being included in the scope of the Brussels Convention, others falling out of its realm.' In others decisions (Cour of appeal and Cour de Cassation) 'have insisted on the fact that no conditions other than those laid down in Article 58 of the Regulation (former Article 50 of the Convention and 57 of Brussels I Regulation) had to be met by an authentic instrument established in another Member State in order to be enforced […] […]. The enforcement judge must, in particular, avoid any control of the validity of the instrument […] and cannot require any kind of legalization or similar formalities of the instrument by French authorities.' '[T]he Cour the Cassation ruled that it was up to the defendant to allge that the authentic instrument did not meet some of the conditions set for its enforcement and that if he remained silent, the court had no obligation to undertake this examination *proprio motu*.'
Germany	Sparse case-law. 'One decision concerns an authentic instrument relating to maintenance drawn up by the competent Swedish authority' and 'has been declared enforceable (OLG Düsseldorf 2002). 'recognition has been denied in a case where the Swedish authority has not been involved' (OLG Karlsruhe 2007).
Greece	One case. 'Decleration of enforceability pursuant to Art. 57 Brussels I Regulation about '[r]ecognition of debt out of a lease contract, and promise to proceed to payment certified by a German notary's deed'.
Hungary	No case-law.
Ireland	No case-law.

Italy	No case-law.
Latvia	No case-law.
Lithuania	'There have been attempts to challenge recognition and enforcement of authentic instruments, but such attempts were not successful.'
Luxembourg	No case-law.
Malta	No case-law.
The Netherlands	In one case (Rechtbank Rotterdam 2017), in which the Brussels I Regulation was applied '[t]he court held it had jurisdiction either on the basis of Article 22 (5) of that Regulation, or, if this provision would not apply in relation to the enforcement of a notarial deed, on the basis of Article 24 (voluntary appearance). In this case it did not concern corss-border enforcement and therefore the rules of the Regulation did not apply, the court applied national enforcement provisions. In a different case the Rechtbank Amserdam 'relied on Article 58 of the Brussels Ia regulation in relation to the enforcement of a German notarial deed. […] The court ruled that […] authentic instruments can be enforced without the debtor having been heard.' Enforcement in this case was not manifestly contrary to public policy within the meaning of Article 58.
Poland	No case law which would address the issue in a detailed manner.
Portugal	Judgment rendered by the Supremo tribunal de Justica 'concerning the application of Article 57 Brussels I Regulation. The decision held that, within the scope of application of Brussels I Regulation, an authentic instrument enforceable in the Member State of origin only is enforceable in Portugal in accordance with Article 57 of the Regulation, even if according to Portuguese domestic law no exequatur would be required.'
Romania	No case-law.
Slovakia	Yes, example: decision District Court of 30 April 2019 relating 'to a motion for enforcement, where a notarial deed was prepared before a notary in Poland as an enforcement instrument, to which a judgment of a Polish court granting it for this enforcement instrument was attached.'
Slovenia	No case-law.
Spain	No problems have arisen with regard to this issue.
Sweden	No public case law, but the National Reporter notes that the Regulation only provides for enforcement of authentic instruments, not for recognition.
UK	Question not answered.

Question 13

Austria	No difficulties and no differences of opinion about interpretation.
Belgium	Not available.
Bulgaria	'[R]ecognition and enforcement of a Rumanian provisional measure issued in *ex parte* procedure where the measure became enforceable prior to the service to the defendant', was considered to be a 'judgment' by the Supreme Court of Cassation with reference to Article 2 (a) Brussels Ia to underlie case law of the CJEU and its incorporation in the recast.
Croatia	Not many difficulties experienced by the courts. 'The biggest tension relates to the concepts of the "court" and of the "judgment" since, according to the national law in certain cases public notaries act on behalf of a court and public notary's writ of execution may be enforced.'
Cyprus	No difficulties noted in application and no controversy in literature or case law.
Czech	No case law.
Denmark	No case law. Danish law did not know the concept of 'authentic instrument' before the Brussels Convention and adopted the autonomous understanding.
Estonia	No case law. Before the Brussels I regulation was used 'to determine jurisdiction in paternity cases or to recognize foreign arbitral awards'. This was the result of lack of understanding of EU law. Still Estonian courts apply the Regulation in cases falling outside the material scope such as in the area of child abduction.
Finland	No difficulties encountered by the courts when applying the definitions in Article 2.
France	Under the Brussels Convention the Cour de cassation decided that 'judgements entered by Andorran courts could not benefit from the enforcement provision of the Brussels Convention insofar as they were not issued on behalf of a sovereign Member State.' These decision are still highly criticized. '[A]rbitral awards cannot be regarded as decisions from courts of other Member State[s] since arbitral tribunals have no forum.' It has been suggested that arbitral awards shall be considered as decisions under Articles 45 (1) (c) and (d) on irreconcilable judgments. This view is challenged by most French authors, but might be supported by recital 12 par. 3. If a court did not have 'an active role' in resolving the dispute, but rather registered an act/claim or automatically ruled in favour of a party [default judgements]', there are 'hesitations' when it comes to the definition of 'judgment'. 'Some authors believe that if the court only has a passive role, the

	qualification of judgment shall be ruled out, while others advocate a broad definition of judgments, encompassing "all judicial interventions which have effects on the parties or on their goods, rights and obligations". If the *Gambazzi*-case (ECJ 2 April 2009, c-394/07) is followed, 'the definition of judgment under the regulation is rather large'. '[T]he inclusion of certain provisional measures in Article 2 is bound to entail the same kind of difficulties as under section 10 of the Regulation'. Even the notion of provisional measures already raises difficulties in France. The exclusion unilateral decisions on provisional measures (ECJ 21 May 1980, C-125/79 Denilauler v. Couchet and the art. 2 (a) Brussels Ia raises much difficulties. The Cour the casssation recognised and enforced an English freezing order despite its unilateral nature. The definitions of court settlements and authentic certificates is clear due to abundant literature on these notions.
Germany	Considerable discussion 'on the effect of the CJEU decision in Gothaer Allgemeine Versicherung v Samskip. While it is uncontroversial that decision rejecting a claim as inadmissible fall within the scope of Article 2 (a), most commentators argue that this judgments does not entail a European res iudicata regime. Furthermore, there are doubts as to whether or not undertakings or schemes of arrangements fall within the scope of Article 2 (a). It is also questionable whether a model case decision in the framework of representative proceedings according to the German Act on the Initiation of Model Case Proceedings in the Capital Markets may be regarded as a decision in the sense of Article 2 (a).'
Greece	No case law. No controversy in literature.
Hungary	The Brussels Ia Regulation has been applied by the Supreme Court 'to an administrative authority's termination of a sponsorship contract, as the authority did not act in its capacity as a public authority.'
Ireland	No controversy and no difficulties in the courts. 'The definition of "authentic instrument" is welcomed by the Irish literature […] this concept is unfamiliar to common law legal systems and caused some confusion.'
Italy	'Article 2 offers nowadays little room for diverging interpretations.'
Latvia	No cases about interpretation or application of Article 2 Brussels Ia. The court of first instance has discussed the meaning of 'judgment'' in the sense of Article 32 Brussels I Regulation. An English judgment that revoked a worldwide freezing injunction fell under the definition of Judgment in the sense of Article 32 Brussels I Regulation.
Lithuania	No difficulties.
Luxembourg	No issues.

Malta	No difficulties.
The Netherlands	Is a WCAM-settlement (Dutch Act on the Collective Settlement of Mass Damage Claims) a judgment or a court-settlement? 'The prevailing opinion is that a WCAM-settlement declaring binding by the court should not be understood as court settlement, since it is concluded first by the parties and therefore not reached in the course of proceedings. Instead it should be regarded as "judgment".'
Poland	No particular difficulties. Definition of Judgment provoked discussion in case law and literature. According to Polish literature 'judgment' within the meaning of Article 2(a) 'has to contain a substantive decision on the legal relationship between the parties to the proceedings and cannot be limited to formal aspects of the proceedings.' The problems relating to 'judgment' already appeared under the Brussels I Regulation and seem to have not been resolved by the recast. 'According to the [Polish] Supreme Court, a judgment on rectification of the designation of a party to the proceedings is undoubtedly not of a [substantive ruling] character.' Such a judgment is however 'still subject to the conditions that govern enforceability of foreign judgments'. This was decided interpreting Article 32 Brussels I.
Portugal	No case-law or controversy in literature.
Romania	No extensive problems follow from case law or literature. No difficulties for judges. There does seem to be some confusion about the scope of the Brussels Ia regulation and the recognition of decisions related to matrimonial relationships. In one case 'the recognition of a divorce decision issued on the mutual agreement of the parties' was motivated on the basis of Articles 26, 27 and 29 Brussels Ia. This matter is excluded from the application of the Brussels Ia Regulation Article 1(2)(a) and is covered by the Brussels IIa Regulation.
Slovakia	No decisions on this issue.
Slovenia	Uncertainties regarding public health care because of exclusion of social security. Exclusion of matrimonial property regime and matrimonial regime of registered partnerships created doubts about the extent of the exclusion for the property regime of non-registered couples. Currently the view prevails that exclusion does not cover non-registered partnership, thus this subject does fall within the material scope of the Brussels I Regulation.
Spain	No particular problems in case law. In literature the concept of 'arbitration matters' has deeply been discussed.
Sweden	No difficulties or controversies.

UK	No answer given.

Question 14

Austria	There is 'some criticism that only provisional measures ordered by the court having jurisdiction as to the substance of the matter are' considered to be judgments in the sense of the Brussels Ia Regulation. It could lead to a 'considerable deterioration of the legal position of the party at risk'. It may be necessary to enforce provisional measures in another state than in the one where the court took jurisdiction based on art. 35, 'for example, in cases where the opponent of the party at risk brings the object of the measure to another member State after the provisional measure has been adopted'. This would create a greater incentive to move the object of the measure abroad. There also exists a risk of 'divergent decisions' because of parallel proceedings in different Member States regarding provisional measures if a defendant has assets in several states. This might also lead to higher costs, which would be 'contrary to the stated aim of Brussels I bis to facilitate legal proceedings.' 'It is questionable whether […] measures adopted by a court having jurisdiction under Article 35 can also be recognised and enforced under the autonomous law of the Member States. […][I]n the absence of an express provision, recourse to the rules of national law or to the provisions in recognition and enforcement agreements is no longer permissible in Austria, according to the prevailing view.' Being able to recognise and enforce *ex parte* measures under certain conditions is 'generally considered to be useful'. There is critique on 'the restriction that it must have been served beforehand and that this service must be confirmed'. This would 'thwart' the surprise effect. For the surprise effect the provisional measure must 'be applied for in the state in which it is to be implemented', but this has downsides when there are assets in more than one Member State: the defendant would be warned by the first measure. The restriction of the court needing jurisdiction as to the substance of the matter is also advocated.
Belgium	In scholarship it is noted that Art. 2 (a) Brussels Ia codified the ruling in *Denilauler* C-125/79. The provision 'has been nuanced by Recital (33)' carving out recognition and enforcement under national law of the Member State and 'art. 40 Brussels Ia (which, in combination with 42 (2)(c) and 43(3), allows to use the protective measures that exist in the national law of the Member State where enforcement is sought)'. 'The reform concerning provisional measures has not been met with any apparent criticism by the majority of legal scholarship. […] [I]it was argued that the modifications implemented too much harmonization.' This need was not pressing because the free circulation of provisional measures within the EU was not impeded.

Bulgaria	The definition of 'judgment' is considered helpful both in literature and case law. Case law of the CJEU was used in the reasoning of the court to link this to Article 2(a), before the application date of the Brussels Ia Regulation.
Croatia	'The prevailing view is generally positive.' Doubts have been eliminated by the widened definition. 'Exclusion of provisional measures delivered in an ex parte [procedure] is considered as a drawback since it removes an element of surprise for the debtor'. It is also considered unsatisfactory that it did not remove all uncertainties, especially the ones in C-159/02 Turner vs. Felix and C-391/95 Van Uden.
Cyprus	Issue not addressed in literature. One District court judgment holding 'that an interim judgment granting provisional measures falls within the definition of a 'judgment' for the purposes of the Recast'.
Czech	Main issue is incompatibility with Czech law on preliminary measures. 'Generally, preliminary measures are taken by Czech courts in ex parte proceedings and are enforceable without service to the defendant.' Most Czech decisions on preliminary measures cannot be certified under Article 53 Brussels Ia.
Denmark	The development of the definition of judgment is noted in literature, but no discussion or controversy.
Estonia	No prevailing view in literature or practice and no problems. Before the Brussels Ia Regulation this did cause confusion in practice, relating to defendants not being given the opportunity to be heard after trying to enforce Estonian foreign orders on provisional measures. Literature explained the relevant rules because of this confusion.
Finland	No views in literature or case law have been expressed.
France	Inclusion generally regarded as appropriate. But there is criticism: - Definition of provisional measures remains unclear. - Exclusion of unilateral decisions criticised as being too favourable for debtor. - Jurisdiction to the substance of the matter as condition 'is sometimes considered as irrelevant insofar as decisions on provisional measures have the same nature, and shall be subject to the same regime, whether or not they originate from a court which has jurisdiction as to the substance of the matter'. Some authors however consider it to be a good 'remedy against forum shopping'. Provisional measures 'ordered by a court which has no jurisdiction on the substance may still have extraterritorial effects (court remains power to sanction in its wn

	legal order when a party refuses to perform the measure abroad: e.g. contempt of court, penalty payment.
Germany	Changes to the Brussels Ia Regulation are relatively minor. 'In essence they mirror the CJEU case law. Criticism concerns the exclusion of ex parte decisions from recognition and enforcement.'
Greece	No deviation from course opted by the Regulation. Criticism views the provision as a step back and that the formulation is wrong. No issue worthy of criticism by scholars 'as long as the decision on provisional measures has been served prior to execution'. A question raised was 'whether service of the decision should take place exclusively in accordance with the Service Regulation or not'. Fictitious service is rejected by the prevailing view, but favors both direct and indirect service and 'the application of domestic rules in case of unknown residence of the recipient. No reported case law on the matter.
Hungary	No criticism.
Ireland	'The extended definition is likely to be welcomed.' The Irish High Court 'experienced some difficulty in determining whether it was entitled to recognise Dutch orders of conservatory garnishment where they had been made ex parte and had immediate legal effect – but where the defendant, once notified, could apply to have the order lifted in an inter partes hearing.' The court decided the orders could be recognised even if they would have immediate legal effect. The doubt about the qualification as 'judgments' in the sense of Article 32, 'arose from dicta in Case C-39/02 Maersk.'
Italy	No decisions yet. Literature welcomes the 'correction' to the previous ECJ case law.
Latvia	Not discussed in literature and no court practice.
Lithuania	Repetition of definition if question arises in case law.
Luxembourg	No case law and no literature.
Malta	In at least one case provisional measure were considered on a prima facie basis, as judgment.
The Netherlands	No controversy.
Poland	Definition considered appropriate, but some doubts in case law. Refers to question 13.
Portugal	Definition not questioned in case law or literature.

Romania	No specific views expressed, and available judgments do not generally discuss this aspect.
Slovakia	Confirms and reflects on existing CJEU case law on provisional measures, according to Slovak authors.
Slovenia	A clear rule on provisional measures is generally met with approval 'as well as the important distinction whether the court issuing the measure had jurisdiction on the merits pursuant to national law'. Biggest uncertainty relates to requirement that jurisdiction to the merits has to be based on the Regulation. It is uncertain how to treat cases where the court had jurisdiction to decide on the substance, but not based on the Regulation (because of a third country where the defendant was domiciled or a national situation). According to the opinion of the National Reporter, jurisdiction does not necessarily have to be based on the Regulation, referring to the Article 53 and Recital 33 where the requirement of 'jurisdiction based on the Regulation' does not exist.
Spain	No particular problems.
Sweden	The clarification is useful.
UK	Generally the English courts interpreted the concept of Judgements broadly. 'The change in Article 2(a) so to include provisions measures, seems to have raised no particular concern'.

Question 15

Austria	Opinion in Austria: 'this refers to the procedure in which a final decision is to be taken on the claim to be secured or on the legal relationship to be regulated', […] it is not sufficient that the main proceedings affect the claim to be secured or regulated merely indirectly.
Belgium	'There is limited evidence that Art 2(a) Brussels Ia requires that a court should establish its jurisdiction on the merits to be within the regime of enforcement and recognition.' The National report explains this through case law.
Bulgaria	Bulgarian literature: The jurisdiction should be established according to the rules of the regulation (second view).
Croatia	'Jurisdiction as to the substance of the matter is to be understood/interpreted as jurisdiction that can be established according to the rules of the Regulation.
Cyprus	No case law nor literature on this issue.
Czech	No case law.

	Opinion of the National Reporters: jurisdiction that can be established according to the rules of the Regulation 'in order to cover also cases where a preliminary measure is made prior to opening of proceedings on substance'.
Denmark	Literature leans 'towards the possibility to establish jurisdiction under the rules of the Regulation as sufficient'.
Estonia	Jurisdiction can be established to the rules of the Regulation. In Estonia it is sometimes possible to apply for a provisional measure before main proceedings or submitting a claim. The National Reporter notes that 'it could also be possible to apply for a provisional measure [even if the court] would determine its jurisdiction under some other legal act than the Regulation, if such act has precedence over the Regulation' e.g. Lugano Convention 2007, bilateral treaties with third countries such as the Russian Federation.
Finland	Jurisdiction that can be established according to the rules of the Regulation. 'This view seems to be supported by the wording of Article 35'.
France	Prevailing view in French literature: jurisdiction that can be established according to the rules of the Regulation. The interpretation is based on the wording of Article 2 (a) Brussels Ia.
Germany	The latter: jurisdiction that can be established according to the rules of the Regulation.
Greece	'For the purposes of Article 2(a) the latter applies [jurisdiction that can be established according to the rules of the Regulation].' The provisional measure is confined to the country if jurisdiction is based on national rules.
Hungary	No case law.
Ireland	Refers to a court case in which was decided: '[…] the Dutch courts, issuing the orders of conservatory garnishment, had jurisdiction "as to the substance of the matter" because they had jurisdiction under Articles 2 and 4 of Regulation 44/2001 (and did not need to rely on Article 31).'
Italy	No case law in which this was clearly dealt with. '[I]t seems that it is necessary to exercise jurisdiction according to the rules of the regulation.' 'In sovereign debt cases, the exclusion of the Brussels rules is determined by its scope of application – and jurisdiction is controlled as on the competence rather than on actual proceedings, as under Italian law(art. 64, law 218) jurisdiction of foreign courts must be established in conformity with internal heads of jurisdiction, rather than being a mere "excised competence".'
Latvia	No decisions/court practice. 'However, pursuant to […] a leading Latvian expert on private international law, the notion "jurisdiction as to the substance of the matter" in the context of art. 35 is implicitly understood to refer to the court that potentially could exercise the jurisdicition under the Recast. By analogy, it would seem that the language of Art. 2 (a) could be interpreted in the same way.'

Lithuania	Jurisdiction that can be established according to the rules of the Regulation.
Luxembourg	No case law. 'In the context of Regulation 655/2014, [the author of the National Report] has argued that "jurisdiction as to the substance of the matter" should be understood widely and not limited to jurisdiction actually exercised, nor to the jurisdiction of the court actually seized on the merits.'
Malta	Not decided upon. Cases where provisional measures were issued *ex parte in* terms of on Article 35. The authors are not aware of any challenges to the issue of such provisional measures.
The Netherlands	Jurisdiction that can be established according to the rules of the regulation. Views may differ, but 'the prevailing approach in Dutch case law is that if a court of another Member State is seised first, and actually exercises jurisdiction as to the substance of the matter, the Dutch court seised second for preliminary measures is not considered having jurisdiction as to the substance of the matter and can only base jurisdiction on Article 35. In this respect, the courts apply the *lis pendens* rule of Article 29.'
Poland	No prevailing view. According to scholars: If a court has taken jurisdiction as to the substance of the matter, 'only a decision on provisional measures rendered by [this] court […] shall be considered a "judgment" for the purposes of enforcement.' If this is not the case then it is jurisdiction that can be established according to the rules of the Regulation.
Portugal	No position taken by authors. In view of the National Reporter: 'jurisdiction that can be established according to the rules of the Regulation even before the initiation of the main proceedings'.
Romania	Jurisdiction that can be established according to the rules of the regulation.
Slovakia	No case law or literature. National reporters suppose: jurisdiction that can be established according to the rules of the Regulation.
Slovenia	Problems has been recognised and discussed, but no firm position adopted. Prevailing view: issue is controversial and warrants clarification by the CJEU. National Reporter: jurisdiction should actually already be applied.
Spain	No particular problems.
Sweden	Jurisdiction can be established according to the rules of the regulation.
UK	Not addressed directly by a court. Only court seized would have jurisdiction as to the substance was discussed before the Recast but not adopted.

Question 16

Austria	It is possible to enforce a provisional measure without initiating main proceedings. Legal authors are split on the second question. Some authors say Article 45 (1) (d) applies. Others that 'the provisional measure adopted by the court having jurisdiction to the substance of the matter should prevail'. The latter is

	justified by the 'court having jurisdiction as to the substance' as worded in the Regulation. Preliminary measures issued by other courts are of a supplementary nature. 'It is, therefore, appropriate that the provisional measures adopted by the court actually conducting the main proceedings, whether ordered by a domestic or foreign court, should take precedence over the provisional measures adopted by the court potentially having jurisdiction as to the substance of the matter.'
Belgium	No relevant case law on this subject. It is 'argued that provisional measures could benefit from the regime of recognition and enforcement contained in the Brussels Ia, even if the court issuing the measures was not seized with a claim on the merits.' Hypothetically exercising jurisdiction is enough. Support was found in an a contrario interpretation of the text of Article 2 (a). What was also argued was: '[if] the court before which an application for provisional measures was made was already seized at the time that proceedings on the substance were brought before the court of another member State, the provisional measures should freely circulate. By application of the principle of perpetuato fori, the court which was competent under Article 35 at the time of the bringing of the application for provisional measures should have the power to issue (and/or to refuse to withdraw) the certificate stating that it has jurisdiction as to the substance of the matter'.
Bulgaria	'[First] the provisional measure incorporated in a judgment stemming from another Member State would be considered as "judgment" even though it is connected with a claim on the substance matter that has to be lodged subsequently.' '[Second] the judgment shall be effective unless it its execution is suspended or excluded in the Member State of origin.'
Croatia	'If the decision is confirmed by the certificate that the court has jurisdiction as to the substance of the matter, the answer is yes. The destiny of any subsequent judgment will depend on Art. 45 of the Regulation.' According to the opinion of the national Reporter '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, should not be considered as a 'judgment' for the purposes of the enforcement in any jurisdiction, when no proceedings on the merits of the case have yet been initiated and there is no proof that it will happen.' […] '[…] predictability as well as legal certainty would best be served by limiting recognition only to provisional decisions of the competent courts only to provisional decisions of the competent courts which have already been seised with regard to the merits of the case. Otherwise there is Art. 35.'

Cyprus	No case law nor literature. In Cyprus '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.'
Czech	No case law. Opinion National Reporters: 'nothing in the regulation prevents the enforcement of a foreign provisional measure issued prior to the opening of proceedings on merits when it fulfils the requirements set by the Regulation for enforcement. The preliminary measure shall, in principle, remain enforceable until the decision on the substance is issued by the competent court or this court withdraws the preliminary measure.'
Denmark	First question not addressed in case law or literature. '[T]he leading commentary can arguably be read to that effect […]'. The second question has not addressed in case law or literature.
Estonia	To the first question: '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 [art.] 382 of the Estonian Civil Procedure Code, so there would be nothing new in such situation for Estonian lawyers.' To the second question: '[…] depending on whether the conditions on enforcing the judgment are met, there should not be any problems, especially if the two courts both would have jurisdiction over the main case.'
Finland	'A decision on provisional measure issued by a court, which by virtue of the Regulation has jurisdiction as to the substance of the matter, should be considered as a "judgment" for the purposes of Chapter III, even when no proceedings on the merits of the case have yet been instituted.' 'A condition is, however, that the "judgment" is enforceable in the Member State in which it was issued.' '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, the provisional measure would still be enforceable, unless the court where the claim on the substance of the matter is subsequently filed orders something else.'
France	'[…] French authors generally consider that the decision on provisional measure may be considered as a 'judgment' for the purpose of enforcement in France even though no proceedings on the merits have yet been inititated. However, if the claim on the substance of the matter is subsequently filed with a court in another member State, also having jurisdiction according to the Regulation, some authors believe that enforcement shall be stayed and eventually refused if this court considers it has jurisdiction.' This thesis is supported by the ratio legis of Article 2 (a) implying 'that the court ordering provisional measures will eventually exercise jurisdiction on the substance of the matter. Otherwise the risk of forum shopping will remain high

	and the objectives of the Regulation, which is to put brakes on provisional measures with extraterritioral effect will be out of reach.' This does not follow cleary from the wording of Article 2 (a) though.
Germany	First question: affirmative Second question: 'enforcement of the decision on a provisional measure will still be possible provided that the court could base its jurisdiction on the substance of the matter according to the Regulation's rules.'
Greece	Prevailing opinion: 'main proceedings do not [have to be] pending; [i]t lies with the court examining the application for provisional measures to decide on the international jurisdiction of the court which will try the merits of the case […]. It is the main court which should decide first on its jurisdiction.' This solution does cause inefficiency and the opposite view is not fully excluded by the author of the prevailing opinion.
Hungary	No case law.
Ireland	First question: Same case as under question 15: '[…] it seemed that the Dutch courts, issuing the orders of conservatory garnishment, were not yet seised of proceedings on the merits of the case. Nonetheless the orders were recognized in Ireland as "judgments under Article 32 of Regulation 44/2001.' Second question: no Irish authority on this point.
Italy	No case law. '[…] [T]he provisional decision of the court competent as to the matter would most probably move according to the rules even if no proceedings on the merit is yet opened abroad.' If proceedings are 'subsequently opened abroad before a non-competent court, ever a tacit prorogation of jurisdiction is possible, the new judgements, also interim, would supersede the previous provisional measure.' If parallel proceedings are instructed, before the competent and non-competent court, 'the judgements of the competent court should prevail.'
Latvia	Refers to answer to question 15.
Lithuania	The 'claim on the substance of the matter filed in the court in another Member State would [usually] not influence the procedure [on issuing 'judgment' on provisional measures.'
Luxembourg	Refers to answer to question 15.
Malta	No decisions. 'As explained in [the] response to question 15, provisional measures are generally issued in Malta in support of foreign judicial

	proceedings in the EU which have been initiated or will be in a span of 20 days from the issue of the provisional measure by a Maltese court.'
The Netherlands	As to the first question: '[…] it is not necessary that proceedings on the merits of the case have been initiated.' As to the second question: if the lis pendes rule is applied 'the fact that a claim on the substance of the matter is subsequently filed with a court in another Member State also having jurisdiction under the regulation, should have no consequences on the request for enforcement […] of the judgment issuing the provisional measure, which was granted by the court previously seised (subject to the exceptions for choice of forum or exclusive jurisdiction.'
Poland	No prevailing interpretation. It is argued by scholars 'that where no proceedings on the merits have been instituted, any court having jurisdiction that can be established according to the rules of the Regulation can render a decision on provisional measure measure that will be considered as a 'judgment' for the purposes of enforcement.' Refers to the answer to question 15.
Portugal	First question: see answer question 15. Second question: '[in the view of the National Reporter], the filing of the claim in another Member State has no relevance for the enforcement of a provisional measure issued in a Member State with jurisdiction as to the substance off the matter.'
Romania	No case law. 'The criteria set by Van Uden v. Deco Line (C-391/95) will be assessed by the court on a case by case basis.' The court of enforcement will not review the jurisdiction of the court issuing the judgment. The court enforcing needs to verify whether a decision is a 'judgment' in accordance with Article 2 (a) brussels Ia, 'thus, whether the court that issued the decision appears to have jurisdiction on the substance in accordance with Brussels Ia provisions. In decisions to which the Brussels I regulation applied courts were relucatant to enforce provisional and protective measures from other Member States refusing on the basis of other private international law provisions. It is ilikey that this will continue under the Brussels Ia. No case law or literature. National Reporters 'suppose that it is not necessary to initiate proceedings in the matter itself'.
Slovakia	No case law or literature. National Reporters 'suppose that it is not necessary to initiate proceedings in the matter itself'.
Slovenia	No case law, no discussion in literature.
Spain	No particular problems.
Sweden	First question: yes.

	Second question: provisional measure probably remains valid.
UK	'[…] [A] provisional measure […] shall not affect in any way the ability of the court having jurisdiction as to the substance of the matter to deal with the matter as it deems fit [reference to case law]. It is also mentioned in case law 'that any interim measure granted under Article 35 shall remain consistent and compatible with the future decision on the matter.'

Question 17

Austria	No relevant decisions. Prevailing view: bound by jurisdiction provision if jurisdiction is specified by Member State of origin: Article 45 (3), jurisdiction of the court of origin may not be reviewed. Doubt about jurisdiction when adopting the provisional measure Member State of enforcement not prevented from reviewing the arguments as to the jurisdiction from the Member State of origin. This is not precluded by Article 45 (3), because 'it is not a question of review of jurisdiction, but merely of establishing the basis.' 'The Member State of enforcement is not required to ask the Member State of origin on what basis the measure was adopted'. Are the requirements in Article 20 satisfied? Recognition under national law is permitted in this case (including treaties), otherwise recognition and enforcement is not possible.
Belgium	An author argued 'that such a review is possible to the extent that the only outcome of the verification of the jurisdiction of the court of origin can be the non-enforceability of the provisional measure. In support of this statement, reference was made to the case law of the CJEU on the Brussels I Regulation and the Brussels IIbis Regulation.'
Bulgaria	Courts 'rely on the information contained in the certificate pursuant to Article 53 and do not review the decision of the court of the other Member State.
Croatia	'If the decision of the court of a Member State is confirmed by the certificate that the court has jurisdiction as to the substance of the matter, courts […] are not permitted to review the decision. This is also the prevailing view on this point.'
Cyprus	No case law, no literature.
Czech	No case law, no literature.
Denmark	'The literature only states that enforcement follows from chapter III of the Regulation, which does not allow for a review of the original court's jurisdictional basis.'
Estonia	No prevailing view and no case law. Opinion national reporter: answer depends on the 'particular rule that the foreign court has based [its] 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).'
Finland	No case law, no literature.
France	Prevailing view: 'refrain from examining whether the court which issued the measure had jurisdiction as to the substance of the matter, unless the matter falls under one of the cases where this control is allowed (see Article 45 (1) (e) of the Regulation).
Germany	Not commonly addressed in pertinent literature.
Greece	No case law. Formal control of certificate. '[…] [A] review of the decision has not been proposed in literature.'
Hungary	No case law.
Ireland	In same as in answers to questions 15 and 16 mentioned case law the Irish court seems to determine the jurisdiction of the Dutch court as to the substance of the matter.
Italy	'It is generally accepted that it is admissible for courts to determine ex officio the applicability of the regulation for the purposes of enforcing a foreign judgment, with respect of art. 45 (3).'
Latvia	No prevailing view or discussion. Supreme court had to decide on recognition of an English 'Mareva Injuction', the Supreme court implicitly reviewed the decision, but later 'specifically underlined that it was prohibited to review a foreign decision as to the merits of the case, leaving it open whether it was possible to do that regarding the jurisdiction of the foreign [court].' It seems to be in line with the reasoning of the Supreme Court that current Art. 45 (1) Brussels Ia sets limits to review.
Lithuania	'The court would most likely want to review the decision, but legal doctrine prohibits this.'
Luxembourg	No case law, no literature.
Malta	No decisions.
The Netherlands	Prevailing view: 'pursuant to Article 45 (3), the jurisdiction of the court of origin may not be reviewed (subject to limited exceptions).'
Poland	No unanimous view on this matter.
Portugal	Issue needs to be further clarified, 'but it seems that the Member State courts may control if the court of origin has based its jurisdiction on the rules of the Regulation or if this basis can be inferred from the content of the judgment.'

Romania	No specific view point or position. 'The Romanian courts will most probably not proceed to review the decision of a court of another Member State. (refers to answer previous question).
Slovakia	No decisions no literature. National Reporters 'suppose that the court should be entitled to review whether the court which issued a provisional measure in the matter itself, since this is an assessment of whether a certified judgement meets the conditions pursuant to Article 2(a) of regulation Brussels Ia […] or not.'
Slovenia	No case law, prevailing view is that the confirmation in the certificate may not be reviewed.
Spain	No particular problems.
Sweden	Issue has not arisen, 'but it is submitted that the certificate should be respected.' '[…] [S]ituations described in Article 45 (1) (e) apply merely to the findings of fact on which the court of origin based the certificate (see Article 45 (2).
UK	No answer given.

Question 18

Austria	'No similar issues in Austria.'
Belgium	N/A
Bulgaria	N/A
Croatia	There are 'number of decisions dealing with the same question as the one in case c-551/15 Pula Parking', '[c]onsidering that the request for a preliminary ruling [in that case] was submitted by the Coratian judiciary'.
Cyprus	No attention given to the issues.
Czech	No case law no discussion in literature.
Denmark	No.
Estonia	No problems definition of judgment. Defintion of court under scrutiny. Other instruments have no influence on this definition in the sense of the Brussels Ia Regulation.
Finland	'The definition of judgment, court or tribunal has not attracted particular attention in Finland.'
France	Definition of 'judgment' on the one hand and of the 'court or tribunal' on the other hand, has not triggered much debate.'

	Court or tribunal two elements required: 'independence of authority and respect of the contradictory principle'. Decisions from state authorities are not considered to be judgments from a court or tribunal due to the lack of independence. Decisions issued by notaries as in Pula Parking, not considered as decisions in France insofar they do not result from contradictory proceedings.
Germany	Refers to answer to question no. 13.
Greece	No attention under Brussels Ia, but two cases under Brussels I. 'a Notice of the National Association of Statutory Health Insurance Physicians inn Rhineland-palatinate', was not declared enforceable, because of its administrative nature.
Hungary	No case law.
Ireland	No, only the case decided as described in the previous (15-17 questions).
Italy	It has received attention in the distinction between courts and arbitral tribunals.
Latvia	No particular attention and no rise to similar issues as Pula Parking.
Lithuania	No big discussions regarding the definition of 'judgment'.
Luxembourg	No case law, no literature.
Malta	Not aware of such decisions.
The Netherlands	Refers to answer to question 13.
Poland	'Not really', a similar issue did arise in the context of the EU succession Regulation in the case WB C-658/17, but not within the context of application of the Brussels Ia Regulation. 'Under Polish law notaries can only draw up authentic instruments that may be used as enforceable titles'
Portugal	Definition 'judgment' did not attract particular attention.
Romania	No particular attention. 'This is probably because in Romania only courts can issue judgements and there is no similar situation to the one discussed in the Pula Parking case.' Judgement issued under Czech administrative procedure act, but with certificate according to Annex I Brussels Ia attached to it. Brussels Ia could

	not be applied even if the certificate was attached. The certificate was irrelevant because it was not issued by the competent authority.
Slovakia	Judgement issued under Czech administrative procedure act, but with certificate according to Annex I Brussels Ia attached to it. Brussels Ia could not be applied even if the certificate was attached, because it was decided by an administrative authority. The certificate was irrelevant because it was not issued by the competent authority.
Slovenia	No. Pula Parking has received much attention, but no similar problems.
Spain	No particular problems.
Sweden	No particular attention, 'partially due to Article 3 (b) which declares Swedish enforcement authorities to be courts for the purposes of the Regulation when acting in summary proceedings on payment orders and assistance.'
UK	Question not answered.

Question 19

Austria	No relevant statistics are available.
Belgium	The litigation practice in the Belgian courts does not seem to be influenced by the universalization of the consumer and employment sections of Brussels Ia Regulation.
Bulgaria	No statistics are available.
Croatia	No statistics are available.
Cyprus	No statistics are available.
Czech	No statistics are available.
Denmark	No statistics are available.
Estonia	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.
Finland	Not answered
France	No statistics are available. It is however worth noting that, before the entry into force of the Regulation and of these new provisions benefiting to weaker parties, French rules of private international law were already leading to the same types of results From a French viewpoint, those provisions have therefore not improved significantly the position of consumers and of employees. It is true though that they have been instrumental in unifying solutions within the European judicial area..
Germany	No statistics are available. In general, claims against foreign defendants are rare. In 2017 (the latest statistical survey available), in 1.4% of all claims

	disposed of at the local courts (Amtsgerichte) the defendant had his/her place of habitual residence/seat in an EU country, while 0.5% came from a non-EU country (see Statistisches Jahrbuch, Fachserie 10, Reihe 2.1 – Rechtspflege Zivilgerichte, 2018, p. 30, available at https://www.destatis.de/DE/Themen/Staat/Justiz-Rechtspflege/Publikationen/Downloads-Gerichte/zivilgerichte-2100210177004.pdf?__blob=publicationFile).
Greece	No statistics are available.
Hungary	No statistics are available.
Ireland	No statistics are available.
Italy	No statistics are available.
Latvia	No statistics are available.
Lithuania	No statistics are available.
Luxembourg	No statistics are available.
Malta	No statistics are available.
The Netherlands	*N/A*
Poland	No statistics are available.
Portugal	No statistics are available.
Romania	No statistics are available.
Slovakia	No statistics are available.
Slovenia	No statistics are available. See for an elaborated view the National Report.
Spain	Not answered
Sweden	No statistics are available.
UK	Not answered

Question 20

Austria	This is a controversial issue in Austria. It is argued that because of the close connection between the agreed jurisdiction and the jurisdiction based on an appearance without contesting the jurisdiction, the requirements of Article 25 also apply to Article 26 (seeRechberger/Simotta, Grundriss des österreichischen Zivilprozessrechts, 9th edi-tion [2017] paragraph 126). Article 26 is, therefore, applicable irrespective of the domicile of the parties; the decisive factor is that the temporal and material scope of application has

	been opened up and that a court of a Member State has been seised. Some legal writers are of the view that at least one of the parties (Wallner-Friedl in Czer-nich/Kodek/Mayr, Europäisches Gerichtsstands- und Vollstreckungsrecht4 Art 26 [2015] Rz 12) must be domiciled in a Member State. The reason given for this is that Article 26 - unlike Article 25 - does not expressly state that the provision applies to parties irrespective of their domicile
Belgium	N/A
Bulgaria	Following the reasoning that Article 26 is conditioned to Article 25 regarding the scope of application *ratione personae* it is considered as applicable regardless of the domicile neither of the defendant nor of the claimant.
Croatia	In literature is was alleged that at least one of the parties has to have their domicile on the territory of a Member State. However, taking into consideration CJEU case law (C-412/98 Group Josi and C-111/09 Ceská podnikatelská pojištovna as), this conclusion might not be the right one.
Cyprus	No case law or literature has been identified addressing this issue.
Czech	Article 26 is, according to the published case law, applied regardless of the domicile of the defendant. The Czech commentary to the Brussels I Regulation written by Pavel Simon (Supreme Court judge) states that this issue is not clear and will stay unclear till the CJEU clarifies it. The commentary leans toward applying Article 26 (former Article 24) also in cases where the defendant has his domicile outside of EU.
Denmark	The interpretation is uncertain. In literature this question is subject to debate.
Estonia	Article 26 has 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.
Finland	The question whether 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 seems neither to have been dealt with by the courts or in the literature. It can, however, be assumed that those provisions also apply to choice-of-court agreements providing for jurisdiction of a court in a country outside the EU.
France	No case law on this issue. The prevailing view in literature is that Article 26, contrary to Article 25, does not apply regardless of the domicile of the defendant. There are two reasons for this. First, the solution is not laid down in the Regulation since Article 6 does not refer to Article 26. Second, admitting that Article 26 would be applicable regardless of the domicile of the defendant would excessively widen the scope of application of the Regulation: the connection between the case end the European Union is indeed very weak in such a case, and even weaker than under Article 25, which at least requires an agreement of the parties as to the court designated.

Germany	No case law on this issue. The predominant opinion in German literature argues in favour of an application of Article 26 regardless of the place of habitual residence of the defendant.
Greece	The question has not been examined either in the practice of the courts or in literature.
Hungary	No case law on this issue.
Ireland	No case law or literature dealing with this issue.
Italy	No specific case law or literature. The prevailing view is that Article 26 applies regardless the domicile of the parties.
Latvia	No case law or literature dealing with this issue.
Lithuania	No case law on this issue.
Luxembourg	No case law or literature dealing with this issue. The National Reporter believes that Luxembourg courts probably rely on French literature on this issue.
Malta	No case law on this issue.
The Netherlands	This issue has been addressed in the literature and the prevailing opinion appears to be that Article 26 applies regardless of the defendant's domicile. However, for the Netherlands, this issue has limited relevance since the rules on international jurisdiction in the Dutch Code of Civil Procedure contain a comparable provision.
Poland	No case law on this issue. Although there are few contributions that relate to this question, the prevailing opinion appears to be that Article 26 of the Brussels Ia Regulation applies regardless of the domicile of the defendant. Moreover, the interpretation according to which Article 26 of the Regulation applies to non-EU defendants implies that the national rules will not apply in this respect, preventing therefore the application of two different systems to assess a similar issue in relation to EU and non-EU defendants.
Portugal	The prevailing opinion is that the inclusion of Article 26 in Section 7 following Article 25, which is applicable regardless of the domicile of the parties, supports the view that the provision is applicable regardless of the domicile of the parties
Romania	There is little literature. The prevailing opinion appears to be that Article 26 applies regardless of domicile of the parties, including the situation when the defendant is domiciled in a third country.
Slovakia	The prevailing opinion is that Article 26 cannot be applied where the defendant is domiciled in a non-member state. The other view is based on par. 45 case Group Josi and states that it is not necessary for the defendant to be domiciled in an EU Member State.
Slovenia	No case law or literature dealing with this issue.

Spain	No particular problems have arisen with regard to the issue.
Sweden	It is submitted that Article 26 applies only if the defendant is domiciled in a Member State.
UK	In literature, the question of whether the defendant must be domiciled in a Member State for article 26 to apply has been debated (see, e.g., See Garcimartin in Dickinson & Lein, The Brussels I Regulation Recast, OUP, 2015 (9.99)) although it is noted the CJEU suggested the corresponding provision in the 1968 Brussels Convention applies irrespective of the domicile of the defendant (Case C-412/98, Group Josi Reinsurance Co SA v Universal General Insurance Co (UGIC) ECLI:EU:C:2000:399)

Question 21

Austria	The prevailing view in Austria is that Articles 29 and 30 apply irrespective of the domicile of the parties; the only decisive factor is that proceedings are conducted in different Member States. It is also irrelevant whether the courts of the Member States concerned have acted in accordance with the rules of jurisdiction laid down in the Regulation or in national law. The interpretation of transitional law has been under discussion. It is undisputed that the new version should be applied whenever two proceedings involving the "same cause" within the meaning of Article 29 have been initiated in different Member States on or after 10 January 2015. On the other hand, Article 29 does not apply if both proceedings have been initiated before 10 January 2015.There has been different opinions whether the applicability of Article 29 et seq. is contingent upon concurrent proceedings having been brought after the applicability of Brussels I bis
Belgium	*N/A*
Bulgaria	Articles 29 and 30 are dealt with in the literature as covering *lis pendens* cases concerning claims in different Member States falling within the scope of the Regulation but not subjected to its jurisdiction rules, i.e. possible application regardless of the domicile of the defendant.
Croatia	Articles 29 and 30 apply regardless the domicile of the defendant. The fact that a court of a Member State has been seised first is the only relevant factor for the court second seised to stay its proceedings.
Cyprus	There is few case law on this issue. However, case law shows that 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.

Czech	Legal practice has not been confronted with this issue.
Denmark	The prevailing opinion is that the parties' domiciles are irrelevant for the application of Articles 29 and 30.
Estonia	There is no discussion on this issue. The fact that a court of a Member State has been seised first is the only relevant factor for the court second seised to stay its proceedings.
Finland	The prevailing view is most probably that the provisions on lis Pendens in Article 29 and the provisions on related actions in Article 30 apply regardless of the domicile of the defendant. It seems that the fact that a court of a Member State has been seised first is the only relevant/decisive factor for the court second seised to stay its proceedings. Thus it is for the court first seised to decide whether it has jurisdiction according to the Regulation.
France	The prevailing view is that Articles 29 and 30 apply regardless the domicile of the defendant. The only relevant factor for the court second seized to stay its proceedings is therefore that a court of another Member Stat was seized first of the same case between the same parties, whether it has jurisdiction according to the Regulation or pursuant to its own rules of private international law.
Germany	The prevailing view in German literature is that Articles 29 and 30 apply regardless the place of habitual residence of the defendant.
Greece	According to Greek literature domicile is irrelevant: even if one or both parties live outside the EU. Regarding the second question, the second court does not examine the international jurisdiction of the first court. There is no case law on this issue.
Hungary	There is no case law or literature regarding this issue.
Ireland	There is no case law or literature regarding this issue.
Italy	The matter has not been significantly addressed – if it is however accepted that art 26 applies now regardless to the domicile of the parties. The same should hold true for connected claims.
Latvia	There is no case law or literature regarding this issue.
Lithuania	Usually courts apply lis pendens rules if the court first seized has jurisdiction according to the Regulation. In legal doctrine and in the material to train judges different views are expressed.
Luxembourg	There is no case law or literature regarding this issue.

Malta	There are only a few cases that dealt with the plea of lis pendens and in all of those cases the plea was rejected and the Malta court continued to hear the case. However, it must be said that the domicile of the defendant was not a material consideration in those cases.
The Netherlands	The prevailing view in the literature is that Articles 29 and 30 apply regardless of the defendant's domicile. Courts may sometimes refer to the parties' domicile as an element relevant to the applicability of the Brussels Ia Regulation, including the provisions on lis pendens.
Poland	There is no case law or literature regarding this issue. It is believed that the provisions in lis pendens contained in Articles 29 and 30 apply regardless of the domicile of the defentdant, provided that the court first seised has jurisdiction under the Regulation.
Portugal	According to the CJEU case law regarding the Brussels Convention, the provisions on lis pendens and related actions are applicable regardless of the domicile of the parties.
Romania	The prevailing view in the literature is that Articles 29 and 30 apply regardless of the defendant's domicile. A court decision is mentioned where the court decided to stay proceedings brought to verify whether the court first seised was the Tribunal de commerce de Paris and what was the object of the filed claim. The verification did not seem to involve a verification of the fact the court first seised had actually jurisdiction.
Slovakia	No consistent opinion in literature.
Slovenia	There is no case law or literature regarding this issue.
Spain	The report identifies the judgement rendered by the Tribunal Superior de Justicia de Madrid, Social, of 14 September 2015 [submission to Turkish courts], where the court considers that Article 29 is applicable when one of the courts involved does not belong to the EU. See: STSJ Madrid, Social, 14 septiembre 2015 [ECLI:ES:TSJM:2015:10428]
Sweden	The lis pendens rules apply regardless of the domicile of the defendant and irrespective of whether the court of the Member State first seised had jurisdiction pursuant to the Regulation (an exception follows from Article 31(2)).
UK	According to literature the conditions of application of Article 29 are considered to be merely the identity of parties, object and cause, without any further requirements, such as domicile.

Question 22

Austria	There have not been any difficulties in determining the temporal scope. See the answer to question 21.
Belgium	There is few case law. One judgement established ex officio the temporal applicability of the Brussels Ia Regulation to determine jurisdiction to issue a provisional measure. Another judgment applied the Brussels I Regulation despite the fact that the proceedings were introduced after 10 January 2015. The third and final judgment applied the Brussels Ia Regulation despite the fact that the suit was started before 10 January 2015.
Bulgaria	The report identifies some difficulties to establish the temporal scope of application of the Brussels Ia Regulation in situations where the decision from a different Member State falling within the scope of application of Brussels I Regulation was wrongly accompanied by a certificate issued pursuant to Article 53 Brussels Ia Regulation.
Croatia	There were problems with the temporal scope of the Regulation. Courts have applied national law or the Brussels I Regulation instead of the Brussels Ia Regulation. It should not be interpreted as the difficulties in application but as the lack of knowledge of EU law.
Cyprus	There have not been any difficulties in determining the temporal scope.
Czech	In some cases, courts of lower instances applied the old Regulation 44/2001 instead of the recast 1215/1012 in proceedings initiated after 10. 1. 2015, however, these mistakes were corrected by appellate courts (e.g. decision of the Municipal Court Prague 39 Co 397/2016. There is no available case law on transitional provision in the context of recognition and enforcement.
Denmark	There have not been any difficulties in determining the temporal scope.
Estonia	Case law shows no difficulties. There are cases touching the issue of the temporal scope of application of the new Regulation. 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. There has been some debate 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. The general view seems to be that the transitional provisions are rather clear that the initiation of the proceedings is the relevant date.
Finland	There have not been any difficulties in determining the temporal scope.
France	There have not been any difficulties in determining the temporal scope. The prevailing view is that it applies, pursuant to Article 66.1, to legal proceedings introduced on or after 10 January 2015. Regarding determining whether or not the abolition of exequatur applies: it is considered that the Recast applies only if the proceedings were instituted on or after 10 January 2015. Two difficulties are nonetheless worth mentioning.

	First, the definition of the date at which the proceedings are instituted remains a source of hesitation: shall it be determined through the national rules of civil procedure, or should the solution adopted for lis pendens and related action also be applied to define the temporal scope of the Regulation? The latter solution is generally considered as more appropriate, but it is not supported by the letter of the Regulation. Second, it is not clear whether the abolition of exequatur applies in cases where the proceedings before the first instance court were introduced before 10 January 2015 while, at the appeal stage, the proceedings were instituted on or after this date. One may consider that, given the fact that the proceedings before the court of appeal are distinct from the proceedings before the first instance court, the abolition of exequatur shall apply.
Germany	There do not seem to be difficulties relating to Article 66 itself. However, for the judgments which fall under the scope of Article 66(2), there is a gap in German law since the previous rules pertaining to the modalities of exequatur (AVAG) have been abolished. The Federal Court of Justice has decided to apply these rules by analogy (Bundesgerichtshof, 17 May 2017 – VII ZB 64/15, in Deutsche Gerichtsvollzieher-Zeitung (DGVZ) 2017, 202).
Greece	There is minimal confusion as to the proper regime to be followed. Cases pertinent to the abolition of exequatur and/or direct enforcement are almost inexistent in Greece for the time being. The first sample demonstrates however confusion: An application for declaration of enforceability concerning a German payment order (issued in May 2015) was filed with the CFI Thessaloniki. The court correctly dismissed the application, because there was no standing to sue [CFI Thessaloniki 1308/2018, Armenopoulos 2018, pp. 809 et seq.].
Hungary	There is no available case law on this issue.
Ireland	There have not been any difficulties in determining the temporal scope.
Italy	There have not been any difficulties in determining the temporal scope.
Latvia	There is no available case law on this issue.
Lithuania	There have not been any difficulties in determining the temporal scope.
Luxembourg	Luxembourg courts have held that the rule in Art 66 also governs the temporal scope of the Regulation for exequatur. (CA, 2 October 2017, case no 44303). No other issue arose with respect to the temporal scope.
Malta	In Fabrizio Pirello versus Bare Sport Europe Limited and other delivered First Hall Civil Court on 15 October 2018 (Ref. 849/2018/GM), the Court wrongly held that that the abolition of exequatur applies to any judgments delivered AFTER 10 January 2015 although the judicial proceedings leading to it were instituted in 2004. This matter was not overturned at appeal, however, during the appeal proceedings other procedural pleas was raised and considered. In Maltrad (Holdings) Limited versus Norbert Coll delivered by the Court of Appeal on 27 March 2015 (Ref. 832/2009/1) it held that Regulation 1215/2012

	applied to judicial proceedings initiated in 2009 on the basis that rules of procedure are held to be apply to pending proceedings once they come into force. The Court of Appeal also remarked that Article 7 and Article 5 are very similar in any case.
The Netherlands	There are few cases where the Regulation's application in time is in question. However, in one case, the court explicitly addressed Article 66, holding that proceedings were instituted in 2013 in Italy and the rules on enforcement of the Brussels Ia Regulation are temporally inapplicable. Instead, the enforcement is governed by the Brussels I Regulation. In another case, decided by the court of appeal, the question was whether proceedings were instituted before or after 10 January 2015, since the document instituting proceedings was sent to the receiving foreign agency on 7 January 2015, but the defendant was actually notified one week later. The court held that, with reference to the Service Regulation, the latter date was decisive.
Poland	In the first years following the date of application of the Brussels Ia Regulation some minor difficulties did indeed occur. However, where an appeal was brought, the few errors resulting from these difficulties were usually remedied by the second instance courts. Some courts seemed to consider that due to the fact that a regulation is directly and immediately applicable in all Member States, the Brussels Ia Regulation should have been applied instead of the Brussels I Regulation even though the proceedings were instituted before 10 January 2015. In this vein, some courts tended to consider that a judgment rendered under the Brussels I Regulation didn't need to be declared enforceable within Polish territory due to the exequatur being abolished by the Brussels Ia Regulation.
Portugal	There have not been any difficulties in determining the temporal scope.
Romania	There has been some uncertainty regarding which of the certificate forms should be issued – Brussels I or Brussels Ia – or cases in which a Brussel I certificate was provided to the court and the court requested a Brussels Ia format of the certificate.
Slovakia	Problems with the identification of the temporal scope of the Regulation appeared in judgements of lower courts, but are eliminated by decisions of courts of appeal or reviewing courts.
Slovenia	There have not been any difficulties in determining the temporal scope. The report refers to the uncertainty with regard to Regulation No 44/2001.
Spain	There have not been any difficulties in determining the temporal scope.
Sweden	There have not been any difficulties in determining the temporal scope.
UK	N/A

Question 23

Austria	In Austria, Article 7 is very important, there are only a few published judgements relating to Article 8, Article 9 has no practical significance in Austria. Regarding Article 7 many ussies were addressed, such as: Whether there may be cases in which the court having jurisdiction under Article 7(1) may also rule on the tort claims. Whether and to what extent the parties may agree on a place of performance, which differs from that laid down in Article 7(1)(b). If, according to the contract services are to be provided in several states, there is a separate place of performance for each service or a single place of performance should be determined.
Belgium	Art 7 Brussels Ia appeared to be the most frequently applied provision, which confirms the trend in the pre-existing practice under the Brussels I Regulation. There are few precedents about Art 8 Brussels Ia.
Bulgaria	Article 7, point 1 and 2.
Croatia	In some cases Article 4(1) was applied instead of Article 7. Also, there were some misunderstandings regarding Art. 8(4).
Cyprus	There is case-law applying alternative jurisdictional grounds, pre-dominantly the rules regarding tortious liability. Further, there are no any special problems or discussions.
Czech	The Supreme Court decided (after 10. 1. 2015) at least six cases on contractual obligations (Art. 7/1), one case on non-contractual obligations (Art. 7/2) and one case on counter-claim (Art. 8/3). The lower courts have applied mostly Art. 7/1. In some cases, lower courts did not apply Art. 7/1 correctly, when they requested the Supreme Court to determine the local jurisdiction
Denmark	Article 7(1) and to a lesser extent (2) are the most relied upon, whereas the other subsections in Article 7 do not appear to have been applied extensively. Article 8 is regularly applied.
Estonia	Article 7(1) and (2) of the Regulation have sometimes been applied or interpreted in national case law, other subsections of Article 7 and Articles 8 and 9 have not been applied or interpreted.
Finland	Article 7, 8 and 9 have not triggered frequent discussion on the interpretation and application of these provisions in theory and practice.
France	The provisions containing alternative jurisdictional grounds in Articles 7, 8 and 9 have generated many discussions and difficulties. The rules which have been relied upon most often are Articles 7 (1) and 7 (2).

Germany	The most important provision seems to be Article 7(1). At the same time this head of jurisdiction is widely criticized for being too complex. Article 7(3) has only little practical importance in Germany. Article 8(2) does not apply in Germany (Article 65).
Greece	Most case law refer to Article 7(1) & (2), followed by Article 8. No case law has been reported as to Article 9.
Hungary	Articles 7, 8 and 9 have been frequently applied. However, two thirds of them (17 out of 29) raised no substantive issue and could be solved by the mechanical application of the Regulation.
Ireland	Article 7(1) and (2) are often invoked – the rest of these provisions are not.
Italy	The structure of art 7 is perceived as complex. However, these alternative grounds of jurisdiction seem to have been correctly applied. Issues in case law: - whether actions for annulment of the contract do fall within the scope of application of the provision - making a clear distinction between contracts of sales and contracts of services sometimes required a careful argumentation, strongly relied on the case law of the ECJ - as per the qualification of "contractual" or "non-contractual" matters, the case law follows the indication of the ECJ, however cases of abuse of "economic dependency" under Italian law have been qualified as "contractual matters" See case law to illustrate these issues mentioned in NR
Latvia	No discussion in literature. See NR for practical experience of reporter.
Lithuania	Art. 7 (1) a or (2) are used most frequently.
Luxembourg	In virtually all investigated cases the dispute was contractual in nature and the parties had stipulated a choice of court agreement. As a consequence, most cases address issues related to jurisdiction clauses, and none discuss issues related to other rules. In the only case where no jurisdiction clause had been included, the defendant was domiciled in Luxembourg: the Luxembourg court relied on Art 4 of the Brussels Ia Regulation.
Malta	In most cases where there is no jurisdiction agreement, none of the special rules under Section 3 would apply and no grounds for exclusive jurisdiction exits, Article 7 tends to be the more frequent basis for jurisdiction.
The Netherlands	Articles 7(1), 7(2) and 25 are among the most applied provisions of the Regulation.
Poland	Article 7 (1) and (2) have been frequently applied.

Portugal	Article 7(1)(b)
Romania	There are no official statistics available to show which of the three articles is most frequently. From available case law there is an indication that Article 7 Brussels Ia is exponentially the most often relied upon in practice from the three indicated articles.
Slovakia	Article 7 is the most frequently discussed and applied provision.
Slovenia	Art. 7 often (place where the harmful event occurred and the place of performance of contractual obligation), Art. 8 rarely, Art. 9 never.
Spain	Article 7 is the most problematic one. See detailed description of case law mentioned in NR.
Sweden	No statistics, however Article 7(1)(b) is generally considered to be difficult to apply.
UK	Not answered

Question 24

Austria	Debatable are the following issues: 4. - can all persons jointly liable for the performance of a certain contractual obligation sue or be sued at the place of jurisdiction of the place of performance? (mostly in the affirmative) 5. - do contracts with protective effect for the benefit of third parties also fall within the scope of Article 7(1)? (mostly in the negative) 6. - are claims arising from unjust enrichment as a result of a void or ineffective contract within the scope of application if the breached or unfulfilled primary obligation is to be classified as a contractual obligation? (mostly in the affirmative) 7. - does this include claims arising from liability for creating a legal appearance of a contract? (mostly in the affirmative) 8. - does this cover legal action (under company law) for compensation and damages pursued against executive bodies (management board members, managing direc-tors, supervisory board members, etc.) in the qualified de facto group? (mostly in the affirmative) 9. - does this include the dependent company's requests to take action against the dominant company if there is a control and profit transfer agreement? (mostly in the affirmative) 10. - does this cover actions arising from so-called quasi-contracts, such as manage-ment without a mandate? (mostly in the negative)

	11. - are claims arising from statutory obligations covered? (mostly in the negative) 12. - oes this include cheque holder's right of redress against the issuer? (mostly in the negative) 13. - how is the place of performance determined if, according to the contract, the goods are not to be delivered to the buyer, but directly to a third party? (it is generally assumed that the place of performance is the location where the goods were handed over to the third party or should have been handed over in accordance with the contract) 11. - does a change of creditor lead to a change in international jurisdiction if, in accord-ance with the lex causae of the State of the court seised, the purchase or service agreement or the place of performance agreement, when this depends on circum-stances related to the person of the creditor, such as the creditor's domicile or place of business? (mostly in the negative)
Belgium	Two issues arise relatively frequently in the case law of the Belgian courts. The first one is the interpretation of the concept of 'matters relating to a contract', which delineates the scope of applicability of Art 7(1) Brussels Ia. The second relatively frequent issue is the localization of the place of performance under Art 7(1)(b) Brussels Ia. There is case law about the application of Art 7(1) to contracts for the carriage of passengers by air. See the CJEU's Rehder case law regarding the determination of the place where a service was provided in case of multiple places of provision. The Antwerp commercial court (Hasselt section) ruled that the reference in the general terms and conditions to the ex works Incoterm should be understood as an agreement on the place of performance of a sales agreement within the meaning of Art 7(1)(b) Brussels Ia.
Bulgaria	a) matters relating to a contract – qualification of unjustified enrichment and negotiorum gestio qualified under the national law even when related to contract . In some of these cases Article 7(2) was applied, in other the Bulgarian Code on Private International Law. b) distinction between different type of contracts raised problems concerning: loans made for finance of sale of immovable property in Bulgaria provided by Bulgarian banks to natural persons domiciled in another Member State qualified as consumer contracts even though the condition of Article 17 were not met. c) determination of the place of performance: loan agreement between private persons provided via bank transfer – place of performance linked to the "habitual domicile of the creditor" ;
Croatia	There have been a lack of clarity concerning the concept 'matters relating to a contract'. It seems that the basis of the problem was the national vs. autonomous interpretation, so it had more to do with the lack of familiarity with the CJEU case law than with the Article itself.
Cyprus	There is no case-law directly dealing with these issues.

Czech	Regarding matters relating to a contract : determination who is a party of a contract (which person was legally bound by a contract) was not found as an action falling under Art. 7/1 by an appellate court. Distinction between the types of contracts, principle of 'autonomous interpretation'.
Denmark	One issue has been addressed several times, namely the applicability of Article 7(1) when the defendant disputes the existence of a contract. According to the Supreme it has be proven with 'sufficient probability' that the defendant assumed a contractual obligation
Estonia	Among others the following issues were addressed: - the damage caused to a company through comments published online (preliminary question: (CJEU case C-194/16) - whether the claims on negotiorum gestio and unjust enrichment could fall under Article 7(2) - the place of the obligation in question' in a loan contract
Finland	The place of performance in a sales contract (in connection with CISG) was an issue in case law. See case law mentioned in NR Further, the interpretation of Article 6(2) Regulation 44/2001, now Article 8(2), has been an issue. Does is covers an action on a warranty or guarantee or an-other equivalent claim closely linked to the original action, which is brought by a third party, as permitted by the national law, against one of the parties with a view to its being heard in the same proceedings.
France	The notion of 'matters relating to a contract' remains quite unclear: it often proves difficult in practice to determine whether the matter is contractual or extra-contractual within the meaning of the Regulation. Complicated are claims relating to both contractual and extra-contractual matters: for instance, when a claimant alleges fraudulent misrepresentation during the negotiation process and the resulting voidness of the contract. Other issues are: - the identification of the 'obligation in question' - the definition of provisions of services and sales of goods - identification of the place of performance within the meaning of Article 7.1 b - case law shows that it has been to identify the place of performance of services, such as consultancy, that are conceived in one Member State and aimed at clients domiciled in another Member State. The *Cour de cassation* has eventually ruled that the place of performance was the final destination of the service.

Germany	The distinction between contractual and non-contractual obligations is not always easy to handle. There is a bulk of case law on that issue. The *Brogsitter* judgment of the CJEU seemed to create some uncertainty. Another issue in case law: cases in which there are multiple places of performance.
Greece	Determination of the place of performance is the cardinal issue in Greek case law. See case law mentioned in the National Report. Amongst other issues, the co-existence with CISG was relevant in some cases.
Hungary	Articles 7(1) and 7(2) of Regulation BIa were interpreted in the context of pre-contracts. In case of pre-contracts, the place of the conclusion of the contract is to be regarded as the place of performance under Article 7(1).
Ireland	The boundary-line between matters relating to a contract/tort (Article 7(1) vs Article 7(2)) the place of provision of services under Article 7(1)(b) the nature of the contract at issue – most notably in cases concerned with exclusive distribution agreements. the characterisation of the contract concluded between a commercial user of an airline website (alleged to be engaged in "screen scraping" or unauthorized data extraction) and the airline.
Italy	As per the localization of the place of delivery, after a first phase where this was determined according to the lex contractus, the supreme court has adopted a factual approach A current debate now relates to agency contract and the head of jurisdiction as interpreted by the ECJ, giving jurisdiction to the MS where the agent, as the party obliged to perform the characteristic obligation, has its domicile. As for the place of delivery, part of the case law has excluded that, absent specific agreement on the place of delivery within the contract, clauses contained in international forms have on the delivery can be used for the purposes of art. 7 Brussels I bis Regulation
Latvia	See NR for experience reporter
Lithuania	Usually, courts try to apply case law of CJEU or case law of Lithuanian Supreme Court. "Matters relating to a contract" is interpreted quite narrowly and Supreme Court of Lithuania suggests to interpret it quite narrowly.
Luxembourg	*N/A*
Malta	See case law mentioned in NR, for instance regarding:

	- the place of performance of a letter of credit was held to be the place where the payment under it was to be made which was held to be Malta. - the travel agents had a an agreement with the airlines in question to sell air tickets in Malta and this constituted a service which is being performed in Malta
The Netherlands	Courts often refer to the CJEU case law for the interpretation of Article 7(1). In one case the court decided that it could not determine the place of performance of a service contract, since the contract did not regulate this issue, the parties' will was unclear and there was insufficient proof of the actual place where the services were provided. As a consequence, the court held Article 7(1) inapplicable. Sometimes the relationship between Article 7(1)(a) and Article 7(1)(b) causes confusion.
Poland	The analysis of case law has not revealed major problems in relation to this provision. To illustrate this point, in particular the principle of autonomous interpretation is observed by the courts.
Portugal	The most problematic issue is the determination of the place of performance under (1)(b). In some cases, provisions of the contract regarding the place of performance were not respected or correctly understood. Namely, it has happened that resort was made to the place of final destination of the goods in cases in which another place of performance was agreed.
Romania	No specific problems regarding the issues mentioned in the question.
Slovakia	Discussion in literature regarding the interpretation of the concept "matters relating to contract". Case law is mentioned in National Report.
Slovenia	Uncertainty whether the contract for lease (of movable property) should be considered a contract for provision of services (where the euro autonomous definition of place of performance applies) or a contract which is neither for provision of services nor for sell of goods (where the Tessili formula still applies).
Spain	A) Concept of "contract" B) Some contracts are excluded from the concept of "sale of goods" for the purposes of art. 7.1.b) C) Art. 7.1.b RB-I requires that the contract contain an accuracy of the "place of delivery" of the goods and "place of delivery" is understood to be the place where the merchandise is placed, materially, at the physical disposal of the buyer, not of another subject, as the transporter. D) The "obligation that serves as the basis for the claim" is the "provision of the service".

	E) The concept of "contract for the provision of services" includes, among many other, agency contracts, charter, supply contract, loan, health benefit contracts, transport contract, management contracts. See detailed description of case law mentioned in NR.
Sweden	Article 7(1)(b) has given rise to doubts regarding the determination of the place of performance in situations where it has not been designated by the contract and no performance has taken place. The NR refers to the case of Saey v. Lusavouga, (C-64/17).
UK	(i) The distinction between tort and delict, which implies the exclusivity in definition of jurisdictional categories, and the need to determine whether a claim falls either under Art. 7(1) or Art. 7(2), has triggered debate in court and in the literature. (ii) In JEB Recoveries LLP v Binstock [2016] EWCA Civ 1008, the English Court of Appeal reviewed EU and English precedents and gave indications as to the determination of the place of performance under Art. 5(1) of the Brussels I Regulation (which is also applicable under Art. 7(1) of the Brussels Ia Regulation). The court has pointed out the essential guidelines for the establishment of the place of performance under Article 5(1) of the Brussels I Regulation (today: Article 7(1) of the Brussels I a regulation).

Question 25

Austria	In Austria, it is argued that place of performance agreements are permissible for purchase agreements relating to movable property and service contracts, even if they would not be permissible under the applicable lex causae of the State of the court seised. For other contracts, the permissibility of place of performance agreements depends on whether the relevant lex causae of the State of the court seised permits such agreements. In general: if the parties wish to agree on different places of performance for the delivery of and payment for goods or for the provision of and payment for services, this should be allowed.
Belgium	*N/A*
Bulgaria	The BG case law follows the place where the goods were delivered or services provided even when the place of payment is agreed upon and a failure to pay the price has solely given rise to the dispute. 'Unless otherwise agreed' in Article 7(1)(b) is not discussed from this point of view.
Croatia	The prevailing view in the literature is that the place where the goods were delivered or services provided only becomes involved in the absence of the 'otherwise agreed' contractual option. Due to party autonomy parties can agree on the place of performance of the obligation which does not correspond with the real place of performance of the obligation.

Cyprus	No case-law or literature discussion has been reported dealing with this question.
Czech	The place where the goods were delivered or services provided are decisive for determining jurisdiction for all obligations arising out of the contract. The wording 'unless otherwise agreed' is interpreted by the Supreme Court, firstly, as allowing the parties to agree on this place (regardless of the conflict of law rules and law applicable) and, secondly, as a factual concept. When the place is not agreed in the contract, it has to be determined in the place where goods were physically delivered.
Denmark	The understanding of 'unless otherwise agreed' in Article 7(1)(b) is disputed.
Estonia	No case-law or literature discussion has been reported dealing with this question.
Finland	The question how the wording "unless otherwise agreed" in Article 7(1)(b) is to be understood has not been dealt with in Finnish case law. Neither has this question been dealt with in the literature.
France	Under Article 7 (1) (b), French authors are of the view that the place where the goods were delivered or the services provided remain decisive even when the place of payment is agreed upon and the dispute is solely based upon the failure to pay the price. There are much debate in France as to the meaning of the wording 'unless otherwise agreed'. It is generally considered to give the parties the right to set aside Article 7 (1) (b) in favor of Article 7 (1) (a).
Germany	The prevailing opinion holds that the factual place of performance is decisive even though the parties had a different arrangement before. The wording 'unless otherwise agreed' in Article 7(1)(b) is to be understood as allowing the parties to conclude agreements pertaining to the place of performance within the limits set up in the MSG judgment of the CJEU.
Greece	No case law reported
Hungary	No case law reported
Ireland	No case law reported
Italy	See Q 23 and 24 Agreements on the place of delivery must be clear.
Latvia	See NR for practical experience reporter
Lithuania	There have been several cases where jurisdiction has been established taken into account that services were delivered in Lithuania. It was not possible to find cases where question about "unless otherwise agreed" was discussed.

	In some cases courts stressed that Lithuanian courts have jurisdiction, because payments were made to the bank account in Lithuania
Luxembourg	*N/A*
Malta	The matter of interpretation of "unless otherwise agreed" has not been specifically dealt with
The Netherlands	In the literature it has been held that the provision 'unless otherwise agreed' means that the parties can agree on the place of performance for every single contractual obligation (including payment) and that the court for that place has jurisdiction in relation to disputes related to that specific obligation. However, Dutch case law shows a different picture. For example, in one case the court held that the place where the goods were delivered (Germany) was decisive in relation to a claim regarding payment: the court for this place had jurisdiction in relation to all obligations arising out of the contract. The fact that the parties had agreed on the place where the payment should take place was considered irrelevant within the context of (now) Article 7(1)(b).
Poland	The place where the goods were delivered or services were provided is usually considered to be decisive even if a failure to pay the price has given rise to a dispute. As to the understanding of the wording 'unless otherwise agreed' it is worth noticing that, at least in some instances, the courts seemed to apply directly the requirements applicable to the existence of parties consent under Article 25 of the Brussels Ia Regulation in order to establish whether the parties 'agreed otherwise' within the meaning of the Article 7(1)(b) of the Regulation. An issue in this respect has been the effects of the Incoterms clauses and the existence of parties arrangement on the place of performance of the obligation.
Portugal	In general, within the scope of Brussels I and Ia Regulations the place of delivery of the goods or of provision of the services was considered decisive regarding the sale of goods and the provision of services even if the payment of the price was at stake. Portuguese literature has not taken any position regarding the expression "unless otherwise agreed". In the case law, it has been understood as a reference to a jurisdiction agreement.
Romania	No case-law or literature discussion has been reported dealing with this question.
Slovakia	There is discussion in literature how to apply Article 7(1)(b). Attention is drawn to the difference between Article 7(1)(b) and the general rule in Article 7(1)(a).
Slovenia	No case-law or literature discussion has been reported dealing with this question.

Spain	The NR refers to Question 24
Sweden	The agreement of the parties on the place of performance prevails.
UK	The NR refers to JEB Recoveries LLP v Binstock [2016] EWCA Civ 1008, as described in answer to question 24.

Question 26

Austria	The following issues are controversial: - - Does Article 7(2) cover legal action for financial losses? - Does it cover actions, which seek to establish direct liability of shareholders of a legal entity for misuse of this instrument or on the basis of external liability of the group, in so far as they are not attributable to a control and profit transfer agreement? (mostly in the affirmative) - Does it cover action for a negative declaration to establish the absence of an in-fringement, e.g. a patent infringement, or tortious liability? (mostly in the affirmative) - Are pure preparatory acts sufficient? (mostly in the negative) - Where did the harmful event occur in the case of purely financial losses? (It is generally assumed that the place where the loss occurred is the place where the impaired assets are located. - Where did the harmful event occur in the case of anti-competitive price agreements? (It is generally assumed that it is the location from which the customer paid the excessive price). In practice, determining the place where the harm arose poses major practical difficulties, particularly in the case of offences committed online. See detailed description of case law in NR
Belgium	Art 7(2) has been the subject of two judgments in the context of Brussels Ia. The Commercial Court of Antwerp ruled that the fact that the content of a website is partially but not exclusively targeted to consumers in Belgium suffices to conclude that the locus delicti commissi is in Belgium. Additionally, the Supreme Court in ordinary has interpreted a provision of residual private international law (Art 96 Act 2004) in terms of the CJEU case law relating to Art 7(2), relying on the CJEU's Harald Kolassa v Barclays Bank plc judgment.
Bulgaria	a) the wording 'matters relating to tort, delict or quasi-delict' (the NR refers to the answer on question 24) b) 'place where the harmful event occurred or may occur'

	c) infringement of intellectual property rights
Croatia	According to the available case law, Art. 7(2) did not raise any particular difficulties. Almost every judgment refers to the relevant CJEU case law (e.g. C-354/93 Marinari, C-509/09 eDate Advertising and Others, C-161/10 Martinez and Martinez, C-441/13 Hejduk, etc.). Many of the CJEU judgments have been elaborated in literature which is also helpful.
Cyprus	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
Czech	The Supreme Court has determined as the place where the harmful event occurs in case of alleged unlawful publication of personal data in an internet database the place of the habitual residence of the claimant (decision of the Supreme Court No. 30 Nd 7/2017). The Municipal Court Prague decided that the place where the harmful event occurs in case of damages sued against a Slovak insolvency practitioner arising from the obligation to recover the cost of proceedings on declaratory action is the place of the seat of the court seised with the declaratory action (decision of the Municipal Court 39 Co 340/2017).
Denmark	The application of Article 7(2) does not appear to have involved any of these questions before the Danish Courts.
Estonia	See question 23
Finland	Article 7(2) has not so far given rise to difficulties in application.
France	The main difficulties encountered for the application of Article 7.2 pertain to the definition of 'matters relating to tort, delict or quasi-delict', to the identification of the place where the damage occurred or may occur and to the scope of competence of each tribunal in cases the damage occurred in several Member States. The identification of the place where the damage occurred or may occur is especially difficult in cases of financial damages. It proves difficult for courts to determine clearly the scope of their competence in cases where the damage occurred in several Member States and where, as a consequence, their competence is limited to the fraction of the damage that occurred on their territory
Germany	Two issues in this respect: - the wording 'matters relating to tort, delict or quasi-delict' - the determination of the place where the damage has been sustained, e.g. in the case of pure economic loss, the violation of personality rights, or IP rights.
Greece	Article 7(2) is frequently applied by Greek courts:

	Issues are: - Locating the place of damage - Cases where the place of wrongful act is distinct from the place where the damage has been sustained. - Place where the harmful event occurred or may occur'
Hungary	No case law reported
Ireland	- the meaning of "matters relating to tort" - the place where the harmful event/damage occurred
Italy	See S 23 and 24 There is a debate regarding the place of financial torts
Latvia	No case law reported
Lithuania	In most cases legal norm "matter relating to delict" is applied.
Luxembourg	*N/A*
Malta	*N/A*
The Netherlands	Article 7(2) Brussels Ia and its predecessors have given rise to several difficulties in application. As a consequence, the Dutch Supreme Court regularly refers preliminary questions on the interpretation of this provision to the CJEU, resulting in decisions such as Holterman Ferho and Universal Music.
Poland	Uncertainty with regard of the scope of Article 7(2) of the Brussels Ia and the action for unjust enrichment.
Portugal	No case law reported.
Romania	No case law reported.
Slovakia	See case law mentioned in report.
Slovenia	Interpretation of the "place of the damage" in case of a set of causal events and in case of pure economic loss causes most uncertainties (and has led to some manifestly erroneous results). In certain instances, a court where merely a consequential, indirect, damage occurred assumed jurisdiction.
Spain	The alleged injured party may also bring proceedings before the court of the place of the Member State in whose territory a content published on the Internet is, or has been, accessible. That is also the "place of the harmful event". These courts are competent to hear only the damage caused in the territory of that Member State

Sweden	There are a few cases dealing with jurisdiction in disputes on infringements of intellectual property rights, but they concerned forum delicti pursuant the previous Brussels I Regulation of 2000 and the Lugano Convention, and complied with the judgments of the CJEU.
UK	(i) the wording 'matters relating to tort (NR refers to reply to question 24, part (i)) (ii) the wording 'place where the harmful event occurred or may occur' Se case law mentioned in NR

Question 27

Austria	In Austria, there is neither case law nor a comprehensive opinion in the legal literature on this jurisdiction.
Belgium	No case law reported
Bulgaria	*N/A*
Croatia	This issue has triggered some discussion in the literature. There are no available court cases.
Cyprus	There has been no application or discussion of this new provision in Cyprus.
Czech	There is no literature and no case law on this issue.
Denmark	There is no literature and no case law on this issue.
Estonia	No discussion regarding cultural property in this respect.
Finland	No case-law or literature discussion has been reported dealing with this question.
France	No case-law and not much debate in literature has been reported dealing with this question. For some authors, the scope of this new provision is nevertheless too limited: it only concerns cultural objects within the meaning of Directive 93/7 CE and does not apply neither to claim for damages against the author of a despoliation nor to a legal action brought by the possessor of a cultural object in order to obtain a declaratory judgment that he is the legal owner of this object.
Germany	No reported case law or broader discussion.
Greece	No case-law or literature discussion has been reported dealing with this question.
Hungary	No case law reported

Ireland	No case-law or literature discussion has been reported dealing with this question.
Italy	No case law reported; there is discussion in literature.
Latvia	No case law reported
Lithuania	No case law reported
Luxembourg	*N/A*
Malta	No case law reported
The Netherlands	No case law or information reported
Poland	No case law on Article 7(4). Discussion in literature.
Portugal	No case law on Article 7(4).
Romania	There is no literature and no case law on this issue.
Slovakia	No case law available.
Slovenia	There is no literature and no case law on this issue.
Spain	No case law reported
Sweden	No
UK	Not answered

Question 28

Austria	The question at issue is whether Article 8(2) applies only if the main action has juris-diction under the Regulation or whether it is sufficient for jurisdiction to arise from na-tional law. See detailed description of case law in NR
Belgium	The Antwerp court of appeal held that in the application of Art 8(1) Brussels Ia account should be given to the domicile of the administrator of a company that went into receivership, instead of the seat of the company itself. It was held that a company in receivership no longer has a corporate seat (pursuant to Belgian law). As a consequence, service has to be done to the domicile of the administrator of the company. The Ghent commercial court held that a direct action brought by a sub-buyer against a manufacturer could not be considered to be 'an action on a warranty

	or guarantee' in the meaning of Art 8(2) Brussels Ia. The action was found to be an independent cause of action.
Bulgaria	The NR draws attention to a controversy in connection with the third-party proceedings due to a special limitation in the Civil Procedural Code (Article 2019 (2)) prohibiting participation of a third party in case it has neither a permanent address in Bulgaria nor it lives there. The prevailing case law applies this restriction whereas the literature clearly argues against it.
Croatia	There were some problems with the application of Art. 8(4), i.e. contractual claims related to a right in rem on immovable property. Courts did not recognize the use of Art. 8(4) in cases where the plaintiff is claiming the alteration or cancellation of the security on immovable property based on related contractual obligation (most often credit agreement).
Cyprus	There is no case-law directly dealing with these issues.
Czech	No significant controversies.
Denmark	There is no case law on this issue.
Estonia	No case law
Finland	No significant controversies.
France	The NR indentifies a number of issues: Article 7 (3) of the Regulation, which states that 'as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seized of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings' raises difficulties, especially since the introduction of a new rule of jurisdiction in Article 113-2-1 of the French criminal code by a law of 3 June 2016 (n°2016-731). With respect to Article 7 (5), the main controversy lies within the definition of a 'branch, agency, or other establishment'. Article 7 (6), relating to disputes arising out of a trust has generated discussions as to its applicability to the French 'fiducie', which was introduced in the civil code by a law of 19 February 2007. However, French authors now tend to consider that, while the fiducie shares some common characteristics with the trust, it remains different from the latter and shall therefore be considered as a contractual matter within the meaning of Article 7 (1). As regards Article 8 (1), the definition of the 'close connection' between the claims brought against co-defendants remains problematic. Another problem regarding Article 8.1 relates to damages that occurred abroad and with regard to which French courts would not have had jurisdiction under Article 7(2).

	As regards Article 8 (2), there have been debates in France as to the criteria which shall be used to determine whether there has been a circumvention of Article 8 (2). Finally, there have been discussions and contradictory rulings on the issue whether choice-of-court agreements shall prevail over the provisions of Article 8 but it seems clear now that these agreement prevail and paralyse Article 8. See case law mentioned in NR.
Germany	There is some discussion on Article 8(1), in particular pertaining to the wording 'so closely connected'. Further, some authors argue that abusive claims should not fall under this provision, as the CJEU case law seems to suggest.
Greece	See National Report for case law regarding Article 7(5) and Article 8.
Hungary	In a case which came before the High Court of Appeal of Szeged, the defendant wanted to set off its claim for compensation for legal costs it was awarded in a procedure in the Czech Republic against the same plaintiff concerning the same subject-matter. It was held by the court that Article 8(3), as "from greater to smaller", also covers set-off claims (argumentum a maiore ad minus).
Ireland	No case-law or literature discussion has been reported dealing with this question.
Italy	Two remarks in this respect: - claims relating to trusts: this alternative head of jurisdiction can be invoked by a third party to the trust for the nullity of the trust itself; - proceedings involving multiple defendants: Supreme Court recognised Italian jurisdiction over multiple defendants –banks- domiciled abroad for their contractual and non-contractual liability in conducting financial transaction disastrous to the damaged of the plaintiff,
Latvia	No significant controversies.
Lithuania	No significant controversies.
Luxembourg	The NR refers to the answer on Question 23
Malta	No; see judgment mentioned in NR
The Netherlands	It has been held in the literature that the criteria of Article 8(1) (multiple defendants), one of the key provisions in IP infringement proceedings, are rather complicated and the CJEU's case law is not always clear, creating legal uncertainty.
Poland	No significant controversies.

Portugal	No significant controversies.
Romania	No significant controversies.
Slovakia	There is no case law on this issue.
Slovenia	No significant controversies.
Spain	No significant controversies.
Sweden	There has been some discussion on whether an internet site (home page) can constitute an "establishment", but there is no case law on this point.
UK	Solution developed by the courts to specific issues relating to the mentioned grounds of jurisdiction, they are all in line with the ECJ case-law, where available. No significant controversy with respect to such provisions.

Question 29

Austria	This is a controversial issue in Austria. Some legal commentators argue that an infringement of Article 26(2) must be taken into account in the recognition and enforcement of the judgment in another State; Article 45 may preclude the recognition and enforcement of the judgment. Others consider Article 26(2) to be a provision without sanction; an infringement can therefore no longer be taken into account in recognition and enforcement
Belgium	*N/A*
Bulgaria	In the Bulgarian literature a view on the matter states that the omission of the court to inform 'weaker parties' of the right to oppose jurisdiction under paragraph 2 in Article 26 does not constitute a ground to oppose the recognition and enforcement of a decision rendered in violation of this obligation under Article 45
Croatia	There are no views expressed in domestic literature but according to the existing CJEU case law it does not seem likely that such omission of the court can qualify as a ground to oppose the recognition and enforcement of a decision rendered in violation of this obligation under Article 45. The reporter states that any future CJEU's reasoning should uphold the view that such omission presents a reason for refusal of the recognition and enforcement of a decision rendered in violation of this obligation under Article 45. Otherwise, from the point of view of the weaker party, this provision remains useless.
Cyprus	No case law, no literature
Czech	No case law, no literature
Denmark	According to the prevailing opinion, an omission by the court suspends the cut-off effect of the first submission on the merits. The defendant may

	challenge the jurisdiction once the court's instruction under Article 26(2) has been given.
Estonia	No case law, no literature However, the Estonian Supreme Court has drawn attention to the court's obligation to inform the defendant on the proceedings before declining jurisdiction. 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
Finland	No case law, no literature It may be assumed that Article 45 contains an exhaustive list of the grounds on which recognition of a judgment may/shall be refused.
France	There are debates in France as to how the new requirement introduced in §2 of Article 26 shall be sanctioned. However, it seems highly doubtful that the omission of the court to inform weaker parties would qualify as a ground to oppose the recognition and enforcement of a decision. Apart from the fact that this ground is not provided for in the Regulation, this solution would amount to introduce a new case of révision of the decision, and to allow the court of the forum to review the jurisdiction of the court of origin.
Germany	Most commentators to take the view that a violation of the duty to inform the weaker party will not bear any consequences as to the jurisdiction of the court. There is however a strong current in the German literature to argue that any violation will entail a refusal of recognition under Article 45(1)(e)(i). Such view is based on an extensive teleological interpretation of that provision.
Greece	It has been proposed to make use of Art. 45 in the exact fashion mentioned in the question asked.
Hungary	*N/A*
Ireland	No case law, no literature
Italy	There are different opinions as per the possibility to include a violation of art. 26.2 within the exhaustive list of grounds to refuse recognition and enforcement under art. 45.
Latvia	No case law, no literature
Lithuania	No case law, no literature
Luxembourg	No case law, no literature
Malta	*N/A*

The Netherlands	Since Article 45 nor any other provision attaches effects to a violation of the duty to inform the weaker party ex Article 26(2), the prevailing opinion is that such a violation does not constitute a ground of refusal at the stage of recognition/enforcement
Poland	Different opinions in literature Some scholars consider that the omission of a court to inform a 'weaker party' of the right to contest the jurisdiction does not qualify as a ground for refusal of recognition and enforcement. Most commentators consider that a court does not acquire jurisdiction if an appearance was entered but the defendant had not been informed of his right to contest the jurisdiction of the court and of the consequences of not doing so. The proponents of this view consider that an omission to inform 'weaker parties' about this right and such consequences qualifies as a ground for refusal of enforcement. Moreover, according to a variation of this view, in such situation the jurisdiction could be only established in a defective manner and, as a consequence, it may be challenged in the course of the proceedings. Some of them admit that this is a far-reaching interpretation of Article 26(2) of the Brussels Ia Regulation and therefore it has to be balanced by the possibility to remedy the first instance court's omission, e.g. a second instance court could inform the defendant about his rights and allow him to contest the jurisdiction In its order of 3 February 2017, II CSK 254/16, the Supreme Court sided, by way of an obiter dictum, with the view according to which the jurisdiction cannot be established when the defendant enters an appearance without having been previously informed of the consequences of entering an appearance.
Portugal	No case law, no literature
Romania	No case law. According to literature, a possible ground for opposing recognition and enforcement of such decision could be Article 45(1)(e) in conjunction with Article 45(2) Brussels Ia; however, the application and interpretation of Article 45(2) should be restrictive when it comes to the verification of the competence of a court of another Member State and should be limited to blunt mistakes or oversights.
Slovakia	No discussion on this issue.
Slovenia	In general, a violation of this protective jurisdictional regime precludes recognition of the judgment in other Member States. The problem is that Art. 45(1) of the Brussels I Recast (which enumerates the cases in which violations of jurisdictional rules constitute grounds for denial of recognition and

	enforcement) does not explicitly include a breach of Art. 26(2). The prevailing view in Slovenia is that the purpose and the context of the rule would imply that a violation of the obligation to provide adequate information to the weaker party could result in the sanction of non-recognition of the judgment delivered by the court where the weaker party entered an appearance without contesting jurisdiction (given that this court in fact lacked jurisdiction). Doubts have been expressed concerning the fact that new rule does not unambiguously answer the question how precise and explicit the court's instruction to (or information for) the defendant should be. The wording of the rule suggests that it is sufficient for the court to reiterate, in rather abstract terms (although probably in plain language understandable to legally unrepresented parties) the relevant provision of the Regulation concerning the consequences of failure to object the lack of jurisdiction, leaving it for the consumer to (possibly) discover by himself whether the claim was indeed brought in a court lacking jurisdiction. The practical effect of this issue should not be underestimated. If an (unrepresented) consumer or employee is merely advised of the consequences of entering an appearance, leaving it for the defendant to determine whether there is a lack of jurisdiction in the first place, it can be expected that not many defendants would actually engage in research on the jurisdictional regime.
Spain	No case law
Sweden	The issue has not arisen in practice, but it is submitted that such an omission does not constitute a ground for refusal of recognition and enforcement
UK	*N/A*

Question 30

Austria	The prevailing view is that the limits on prorogation of jurisdiction also apply where the parties have agreed on a court in a third country to have jurisdiction.
Belgium	*N/A*
Bulgaria	In the Bulgarian literature a view on the matter in connection with insurance contract expressly argues in favour of applicability of the limitations even to choice-of-court agreements providing for jurisdiction of a court in a country outside the EU.
Croatia	Due to the fact that, according to Art. 46(1) and (2) of the Croatian PIL Act relevant provisions of the Brussels Ia Regulation apply also with regard to the defendants domiciled in a third country, respective provisions apply also to choice-of-court agreements providing for jurisdiction of a court in a country outside the EU.

Cyprus	No case law, no literature
Czech	No case law In literature it is defended that prorogation agreement concluded by parties in favour of a court or courts of a non-EU Member State would not fall within Article 23 of Brussels I (Article 25 of Brussels Ia).
Denmark	Article 19 is, in principle, limited to choice-of-court agreements in favour of a court in another Member State. Such a limitation may, however, lead to undesirable results and the prevailing view, therefore, argues that Article 19 must apply by analogy to choice-of-court agreements nominating a court in a third country.
Estonia	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.
Finland	No case law, no literature The reporter assumes that those provisions also apply to choice-of-court agreements providing for jurisdiction of a court in a country outside the EU. The need to protect a "weaker party" is the same irrespective of the fact, whether a choice-of court agreement provides for jurisdiction of a court in a country outside the EU or within the EU.
France	The prevailing view in France is that the provisions limiting effectiveness of prorogation clauses in cases involving 'weaker parties' indeed apply to choice-of-court agreements providing for jurisdiction of a court of a Third State.
Germany	That seems to be the dominant view in German literature.
Greece	No case law, no substantial debate in literature.
Hungary	No case law.
Ireland	Yes.
Italy	It is usually excluded that the regulation has an effect reflect.
Latvia	No defined opinion on this issue.
Lithuania	Yes.
Luxembourg	No case law, no literature.

Malta	No case law, not literature. The reporter does not see why Article 23 may not be applied as to a jurisdiction agreement in favour of a third country.
The Netherlands	Yes, the reporter refers to C-154/11 Mahamdia/Algeria.
Poland	In the literature the view seems to prevail that where a 'weaker party' is domiciled in a Member State, the jurisdiction of the courts of the Member States may be derogated from in favour of the courts of a third state only in so far as this does not affect the limitations resulting from Articles 15, 16, 19 and 23 of the Brussels Ia Regulation.
Portugal	The reporter is of the opinion that the derogation of the courts of a Member State jurisdiction in favor of the courts of a third State is limited by the exclusive heads of jurisdiction laid down by the Regulation and by the limits to the effectiveness of jurisdiction agreements in cases involving 'weaker parties'. Other authors have advocated, regarding the Brussels Convention, that such an effect depend only on the domestic law of the Member State at stake.
Romania	No case law, no literature
Slovakia	No discussion in literature. The reporter is of the opinion that these provisions shall also apply in relation to a choice-of-non-member state court agreements as indicated by the CJEU judgment in Mahamdia.
Slovenia	Yes.
Spain	No problems regarding this issue.
Sweden	The limitations on prorogation, imposed by Articles 15(1-2), 19(1-2) and 23, should apply even when the prorogation clause provides for the jurisdiction of a country outside the EU.
UK	*N/A*

Question 31

Austria	In Austrian legal literature, the protection of the party who is economically weaker and less experienced in legal matters is advocated by jurisdictional rules. Some commentators have proposed to extend the protection.

Belgium	In general, the appropriateness of these provisions is not questioned in literature. The expansion of the territorial scope of application of the consumer and employment section was met with some positive comments. Nuancing the positive effects of the expansion of the territorial scope of applicability of the consumer and employment section, it is observed that the national rules of jurisdiction may provide a more effective protection. Ironically, the potential positive effects in litigation involving third state businesses of employees of more protective national grounds of jurisdiction have been eclipsed by the universalization of the scope of applicability of the consumer and employment sections of Brussels Ia – in these cases, consumers and employees can no longer benefit from the provisions of residual PIL even if they are more beneficial than the rules contained in Brussels Ia
Bulgaria	Yes, there seems to be a positive attitude towards the effectiveness of the protection to the 'weaker parties'.
Croatia	Yes, they do.
Cyprus	This issue has not so far been addressed in the literature.
Czech	No case law. In literature it is argued that Sections 3, 4 and 5 provide more favourable rules for the weaker parties.
Denmark	No literature.
Estonia	No literature.
Finland	No case law, no literature.
France	These provisions are generally considered as providing sufficient protection to weaker parties. However, some improvements may be introduced, such as the extension of the protection provided to consumers and employees to extra-contractual matters and the clarification of the respective scope of 17.1 and Article 24.1 regarding claims which may theoretically fall under those two provisions. Moreover, the option granted to the employee who does not or did not habitually carry out his work in any one country, to seize the courts for the place where the business which engaged the employee is or was situated may be considered as insufficiently protective of the employee.
Germany	Yes that seems to be the general view.
Greece	Case law is still scarce. In literature the prevailing view is that provisions in Sections 3, 4 and 5 provide effective protection.

Hungary	Yes, they are considered to be effective in terms of protecting "weaker parties" as to questions of jurisdiction.
Ireland	No literature.
Italy	It is generally acknowledged that the regime is acceptable.
Latvia	No literature. The reporter draws attention to the fact that legal literature regarding private international law in Latvia is at its early stage of development. Although Latvia joined the EU and the cross-border mobility has become extensive, academic literature is still mostly focused on domestic law.
Lithuania	Usually it is said that protection would be effective to 'weaker party' if courts would always apply these rules and would be active in such cases, would inform 'weaker party' properly.
Luxembourg	*N/A*
Malta	*N/A*
The Netherlands	Too difficult to determine.
Poland	The overall assessment of the effectiveness of weaker parties' protection is positive. What seems to be preoccupying the scholars is not related, in fact, to the effectiveness of protection but the clarity of some of the solutions provided for in Sections 3, 4 and 5 of the Regulation.
Portugal	In general, the Portuguese literature makes a positive evaluation of the provisions of Sections 3, 4, and 5.
Romania	The prevailing view is that the provisions contained in Sections 3, 4, and 5 provide in general effective protection for weaker parties.
Slovakia	The prevailing view is that the provisions generally provide effective protection for weaker parties
Slovenia	For consumers yes, for employees mostly, for beneficiaries of insurance contracts in certain instances even too much (in particular where the insured is a professional).
Spain	Spanish academic literature have pointed out that in certain matters, the submission agreements must respect certain substantive and formal limits, in order to prevent the strong part of a legal relationship from imposing a certain competent court election on the "weak party" of the same legal relationship. This is the case with regard to trust cases, contracts concluded by consumers

	(Article 19 RB I-bis), insurance matters (Article 15 RB I-bis), and individual work contracts (Article 23). This should be more than enough to protect the so called weaker parties.
Sweden	In general the answer is yes.
UK	The common law did not provide any specific regime for 'weaker parties' before the entrance into force of the Brussels system, so this particular issue has not been discussed significantly.

Question 31

Austria	In the judgement of 30 October 2018, 2 Ob 189/18k () the OGH ruled that Article 13(2) in conjunction with Article 11(1)(b) only established jurisdiction of the court at the dom-icile of the injured party under Other questions that are controversial are the following: o Does Article 12 apply only if the harmful event occurred in a Member State other than that in which the defendant (insurer) or claimant are domiciled? o Does Article 13(1) apply where the insured person's court of jurisdiction is deter-mined by national jurisdiction? o Does Article 14(2) only apply to actions brought by the insurer against the policy-holder, insured person, beneficiary or any other party involved in the insurance re-lationship, or is the (defendant) insurer also entitled to a make a counterclaim? applicable law against the liability insurer.
Belgium	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?
Bulgaria	Issues: the domestic venue and the jurisdiction
Croatia	Some difficulties have been encountered regarding choice-of-court agreements. There are few cases in which Croatian courts declined their jurisdiction on the basis of their absolute incompetence despite the existence of choice-of-court agreement in favor of Croatian courts

Cyprus	No specific cases available due to the lack of case-law directly dealing with these issues.
Czech	No case law.
Denmark	No case law (under Brussel I a).
Estonia	There is no case law where such difficulties could have arisen.
Finland	There is almost no case law where such difficulties could have arisen. The report mentions one reported case.
France	The most significant difficulties that have arisen in applying Section 3 of the Regulation concern the actions brought directly by the injured party against the insurer of the person responsible for the damage. One issue is to determine the law governing the admissibility of such direct action. Another issue is whether the injured party may seize the courts of its own domicile pursuant to Article 11.2, or may only seize the same court as the insure insofar as he exercises the rights of the latter.
Germany	The wording 'the place where the harmful event occurred' is interpreted as meaning the same as in Article 7(2).
Greece	A number of rulings of the Greek Supreme Court have been rendered on the issue of jurisdiction in matters relating to insurance. Issues: - The identification of the competent court. - The definition of 'injured party. See report for case law.
Hungary	*n/a*
Ireland	Article 16 (then Article 12a of the Brussels Convention) has caused some difficulty. , The Supreme Court had to determine whether a jurisdiction clause contained in an insurance contract covering transport and storage risks for goods was precluded by Article 12 (now 15) – or whether it was valid and binding pursuant to Article 12a (now 16).
Italy	No specific issues. It is acknowledged that the notion of "harmful event" should be interpreted in line with art. 7.
Latvia	No case law.

Lithuania	So far there have not been many cases concerning matters relating to insurance. There have been several cases concerning definitions of branch.
Luxembourg	*n/a*
Malta	No specific issues.
The Netherlands	The number of cases where the court applies the jurisdiction rules of Section 3 Brussels Ia Regulation is limited; no apparent difficulties found.
Poland	The major discussion on the jurisdiction in matters relating to insurance concerned an issue that received a final answer in the judgment of 31 January 2018 in the case Hofsoe, C-106/17 (see also Question 1). Further, according to well-established case law, an insurer who is subrogated to the rights of an injured party and who afterwards brings an action against the tortfeasor cannot be deemed to be a 'weaker party' that could rely on the provisions of Section 3 of the Brussels Ia Regulation
Portugal	No difficulties in applying Section 3 by Portuguese courts.
Romania	Based on available case law, none of these indicated difficulties seemed to have been encountered or dealt with by Romanian courts.
Slovakia	No case law available.
Slovenia	No
Spain	Not particular problems have arisen with regard to the issue.
Sweden	There have been no difficulties.
UK	With respect to choice-of-courts agreements, in Lackey v Mallorca Mega Resorts SL & Anor [2019] EWHC 1028, the Court stated that if the insurer has already accepted the jurisdiction of English courts, the existence of the claim against the insurer permitted an additional, related, claim against the insured. See: Hoteles Pinero Canarias SL v Keefe[2015] All ER (D) 213 (Jun)

Question 33

Austria	Issues are: o How many partial payments must be made for the transaction to qualify as pur-chase on instalment credit terms,

	o Whether a claim brought to enforce an isolated promise of financial benefit, which does not depend on an order of goods, also falls under Article 17(1)(c), o Whether pure loan agreements also count as service agreements, o Whether Article 17 is also applicable where the consumer's domicile and the branch of his contractual partner who is the defendant are located in the same Member State.
Belgium	The justice of the peace of Charleroi assessed jurisdiction in a B2C dispute under the consumer section, despite the fact that the defendant (the professional) did not raise an objection as to the court's adjudicatory jurisdiction. JP Charleroi 1 August 2017 [2018] T.Vred.
Bulgaria	Referral to question 5. Based on the case law analysis it could be established that the Bulgarian courts are very much influenced by the domestic understanding of consumer contract implementing the Consumer Directive and quite often do not check precisely the requirements defined in Article 17.
Croatia	Difficulties encountered relate to classification of a transaction as a 'consumer contract', in cases in which one of the parties of the credit agreement claims to be a consumer based on the fact that (s)he entered into the credit agreement as a private person. In some other cases courts failed to notice that the choice-of-court agreement was concluded before the dispute has arisen.
Cyprus	There have been a number of cases concerning consumer contracts. However, these did not deal at length with any controversial issues.
Czech	From the available case law of the courts of lower instances it is obvious that classification of a contract as consumer contract in the sense of Art. 17/1, lit. c) and the perpetuatio fori under Art. 18/2 might create problems and that the courts are not consistent in this respect.
Denmark	At present there is a significant number of cases in which major banks seek to enforce jurisdiction clauses in favour of the Danish courts in agreements with private individuals from other Member States. Because the contracts concern access to rather complex investment platforms, the banks challenge their customers' status as 'consumers' within the meaning of the Regulation.
Estonia	Article 17 has often been applied by Estonian courts. Issues: - a choice-of-court agreement in favour of Estonian courts,

	- the meaning of the term 'consumer': a natural person who concludes a contract outside his trade or profession, e.g. orders a packet travel. In some cases the courts have stressed that the notion of 'consumer' should be interpreted narrowly.
Finland	No difficulties in applying Section 4 of the Regulation on the jurisdiction in matters relating to consumer disputes.
France	Several difficulties resulting from Section 4 of the Regulation: the definition of consumer the exclusion of transportation contracts from the scope of Section All in all the scope of the section, as regards the consumers and the contracts concerned, is considered as too narrow. The articulation between Article 17.1 and Article 24.1 is also debated: French authors wonder which of these two rules shall prevail regarding matters included in the scope of both of them. The implementation of the rules on jurisdiction laid down in Article 18 has not resulted in significant difficulties in France.
Germany	The jurisprudence of the CJEU (e.g. Pammer and Hotel Alpenhof, Mühlleitner, Emrek) has provided ample guidance.
Greece	Case law regarding: - Requirements for a transaction to be considered as a 'consumer contract' - Application of the norms on the choice-of-court agreements.
Hungary	See case law mentioned in report.
Ireland	The Irish courts have deliberated at some length on the scope of application of Section 4 of Chapter II of Regulation 44/2001 – in Harkin v Towpik [2013] IEHC 351 and McDonald v AZ Sint Elisabeth Hospital [2014] IEHC 88. Two particular points of difficulty emerged from these cases: *first,* the meaning of "matters relating to a contract" (under what is now Article 17(1), then 15(1)) insofar as Irish law often characterizes consumer claims as tort rather than contract claims, and *second*, the meaning of "pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State".

Italy	As per e-commerce, it has been clearly stated that the mere accessibility of online messages from a given State does not suffice to argue that an activity is "directed" to the Member State of domicile of the consumer.
Latvia	There do not seem to be particular problems. See some cases mentioned in report.
Lithuania	There are some cases where it was not clear what rules to apply if a person, domiciled in other Member State, rented car in Lithuania for personal purposes and caused some damages. Some courts decided that it was a consumer dispute and consumer jurisdiction rules must be applied, in other cases different decisions were taken and Art. 7 (2) applied.
Luxembourg	*n/a*
Malta	No available case law
The Netherlands	The databases show several cases of courts examining whether the contract at hand is a consumer contract within the meaning of Article 17(1).
Poland	No major difficulties in applying these provisions. The national courts seem to apply them in accordance with the objective of protecting the weaker party.
Portugal	No major difficulties in applying these provisions.
Romania	Some difficulties of interpretation.
Slovakia	No significant difficulties were identified in decisions of Slovak courts.
Slovenia	It has been reported that it is very difficult for the court to realize whether the claim concerns a consumer contract from the outset (based solely on the information provided by the claimant – the trader). Sometimes it is practically impossible to detect whether a transaction (e.g. the bank's loan) was for private or for professional purpose (e.g. with a purpose of starting a professional activity).
Spain	No particular problems have arisen with regard to the issue.
Sweden	No difficulties.
UK	The question of whether an investor is a consumer for the purposes of Articles 17 and 18 of the Recast Brussels Regulation has been considered in a number of cases. See case law mentioned in report.

Question 34

Austria	The legal writing points out that the principle of forum perpetuum applies even if the defendant is a consumer. If, on the other hand, the consumer changes

	his domicile only after the action was brought (i.e. after the court was seised), the jurisdiction once established will remain in accordance with the principle of perpetuatio fori. This issue has not yet become virulent in case law.
Belgium	*n/a*
Bulgaria	*n/a*
Croatia	No
Cyprus	No case-law considering this issue has been identified
Czech	The available case law is still inconsistent. In legal literature different approaches to this inconsistency can be detected. However, all authors were uniform in one conclusion – the only binding interpretation is to be provided solely by the CJEU.
Denmark	No case-law
Estonia	See the answer to the question No 33.
Finland	No difficulties in the application of Article 18(2), in the case of perpetuatio fori, occurring if the consumer moves to another State.
France	No significant case on this issue.
Germany	What matters is the place of habitual residence of the consumer at the time of initiation of proceedings (Klageerhebung). The fact that the consumer moves to another State later does not change jurisdiction.
Greece	No case law reported.
Hungary	No case law reported.
Ireland	No discussion in the Irish case-law or literature.
Italy	No difficulties.
Latvia	There are no cases applying Art. 18(2) of the Recast.
Lithuania	No case law
Luxembourg	No case law
Malta	No case law

The Netherlands	*n/a*
Poland	The analysis of the case law did not reveal any instances of application of Article 18(2) of the Brussels Ia Regulation or Article 16(2) of the Brussels I Regulation in proceedings that would require recourse to the principle of perpetuation fori. The prevailing view in the literature is that only the circumstances existing at the time of bringing the action are relevant.
Portugal	See question 33
Romania	No case law available.
Slovakia	No case law available.
Slovenia	Art. 18(2) seems sufficiently clear – Consumer may bring the lawsuit in the place of his domicile (thus: not in the place of his "former domicile" or place of domicile "in the moment when the contract was concluded"). The rule of perpetuation fori applies.
Spain	No particular problems.
Sweden	No difficulties.
UK	*n/a*

Question 35

Austria	The legal literature and case law both find it difficult to determine the habitual place of work of mobile workers. Issues: - determining the habitual place of work where the employee is a pilot, flight attendant, truck driver, etc. - It is also disputed whether the provisions also apply in the case of individual or total legal succession.
Belgium	The published case law did not provide any evidence of such difficulties.
Bulgaria	No.
Croatia	There are some cases regarding choice-of.-court agreements concluded in the contract of employment. Courts correctly declared that they have no jurisdiction since there were no other grounds for their competence available and the choice-of-court agreement was entered into before the dispute has arisen.

Cyprus	No difficulties.
Czech	No case law.
Denmark	No.
Estonia	The courts have sometimes applied the provisions on jurisdiction in employment matters. No interpretation problems have, however, arisen.
Finland	No difficulties.
France	In order to limit the adverse effects of this decision of GlaxoSmithKline, the Cour de cassation has admitted that employees could bring their actions against both a parent company and its subsidiary provided that the employee was under the supervision of both companies or that there was a confusion of interests, activities and management between the two companies. Another issue is the definition of the place where or from where the employee habitually carries out his work, and of the last place where he did so within the meaning of Article 21 of the Brussels I a Regulation (former Article 19 of the Brussels I Regulation). As for the last place where the employee habitually carried out his work, the Cour de cassation ruled that it designated the last place where, according to a clear agreement between the employer and the employee, the employee would carry out his work in a stable and durable manner (see. Cass. Soc. 27 November 2013, n°12-24.880, Bull. 2013, V, n°294). This requirement proves rather demanding in practice.
Germany	In a recent decision (Landesarbeitsgericht Niedersachsen, 29 June 2016) the relationship between Section 5 of the Regulation on the jurisdiction in matters relating to employment contracts and jurisdiction relating to torts under Article 7(2) has been addressed.
Greece	Place where or from where the employee habitually carries out his work The interpretation of the concept of 'branch, agency or establishment' In various occasions, the Piraeus courts assumed international jurisdiction against foreign maritime companies by accepting that their actual seat and center of interests is located in Piraeus.
Hungary	No case law.
Ireland	See case law mentioned in report.
Italy	As per employment contracts, the "place of activity" has been subject to particular attention for seafarers.

	Agency employment contracts have been excluded from the scope of application of protective heads of jurisdiction.
Latvia	No case law regarding: - place where or from where the employee habitually carries out his work. - matters relating to individual contracts of employment. Some case law regarding branch, agency or establishment In one case, the Appellate Court had to invalidate a choice-of-court agreement due to its incompatibility with the Brussels I Regulation. The contract provided for jurisdiction in the flag state (Panama). However, the employee brought the case before a Latvian court. Referring to the Mahamdia case, the Appellate Court ruled that notwithstanding the choice-of-court clause, the employee had a right to sue in Latvia as it was both: the place of employee's and employer's domicile.
Lithuania	*n/a*
Luxembourg	*n/a*
Malta	No.
The Netherlands	In an employment case the court of Rotterdam accepted jurisdiction pursuant to Article 25, since the parties had agreed on the jurisdiction of this court. The court did not refer to Article 23. However, it is unclear from the facts whether the choice of forum was made before or after the dispute had arisen. Moreover, the weaker party (employee) was the party commencing the proceedings in the Netherlands
Poland	No major difficulties in applying the provisions in question.
Portugal	No major difficulties in applying Section 5 by Portuguese courts.
Romania	Available case law related to Section 5 of the Regulation does not indicate that Romanian courts had specific difficulties in interpreting these provisions.
Slovakia	No significant difficulties were identified in decisions of Slovak courts.
Slovenia	Doubts were raised with regard to employees/seamen on high seas vessels.
Spain	See case law in report. Issues: - To determine the "usual place of service provision", "factual criteria" should be considered, without referring to the Law of any State. - The place where "mainly" the labour benefit is developed is the place where the worker has the "effective centre of his professional

	activities", which is the "place from which he plans and organizes his work": it is the place where the worker spends "most of his working time" on behalf of his company, regardless of the nature or importance of the work - The works developed in schools or other entities located in Spain but that depend on foreign States should be considered as works whose place of performance is located in Spain. Case law: Italian school in Spain.
Sweden	No difficulties.
UK	The main difficulties in the application of Section 5 have arisen out of the definition of "matters relating to individual employment contracts" and they regard two aspects: (i) the inclusion of legally "independent" workers in the definition of "employees", where they de facto operate as if they were employee; (ii) whether some claims could be classified as "matters relating to individual contracts of employment" and therefore came within Section 5.

Question 36

Austria	No. Art. 24(1) hardly causes any difficulties. No (published) decisions on art. 31(1).
Belgium	No; however one case raised doubt (repartition of co-owned property of former spouses). Art. 31(1) N/A.
Bulgaria	No; however one case raised doubt (repartition of co-owned property of former spouses). Art. 31(1) N/A.
Croatia	No. No (published) decisions on art. 31(1).
Cyprus	Yes; 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 have not applied the criteria of the CJEU in a consistent manner. No (published) decisions on art. 31(1).
Czech	Too limited data to tell.
Denmark	No. No (published) decisions on art. 31(1).
Estonia	No; however one case raised doubt (repartition of co-owned property of former spouses). Art. 31(1) N/A.
Finland	No. No (published) decisions on art. 31(1).
France	No (previous problems have been solved). No (published) decisions on art. 31(1).

Germany	Yes; some difficulties as to whether or not a right in rem relates to moveable or to immoveable property. Art. 31(1) N/A.
Greece	N/A
Hungary	No (published) decisions on art. 24(1). No (published) decisions on art. 31(1).
Ireland	No (published) decisions on art. 24(1). No (published) decisions on art. 31(1).
Italy	No; however one case raised doubt (repartition of co-owned property of former spouses). Art. 31(1) N/A.
Latvia	No (published) decisions on art. 24(1). No (published) decisions on art. 31(1).
Lithuania	No (published) decisions on art. 24(1). No (published) decisions on art. 31(1).
Luxembourg	No (published) decisions on art. 24(1). No (published) decisions on art. 31(1).
Malta	No (published) decisions on art. 24(1). No (published) decisions on art. 31(1).
The Netherlands	No (third instance court refuses to apply art. 24(1) in relation to a claim on the division of immovable property, since such claim should be regarded as a personal right)
Poland	No. No (published) decisions on art. 31(1).
Portugal	No; however one case raised doubt (repartition of co-owned property of former spouses). Art. 31(1) N/A.
Romania	No. No (published) decisions on art. 31(1).
Slovakia	Slovakia's application practice with respect to Article 24(1) can be illustrated on the example of the Ruling of Regional Court in Prešov (21Co/138/2018) of 10 September 2018, in which the Court, as the court of appeal, decided on an action for substitution of declaration of will of defendants who, in the plaintiff's view, failed to fulfil their obligation to enter into a purchase agreement with the plaintiff with respect to immovable property owned by such defendants as joint owners. The immovable property is located in the territory of the Slovak Republic, with the defendants domiciled in the territory of another Member State. On the basis of an analysis of the CJEU case law, the court of appeal concludes that in this case the subject-matter of the proceedings is not the right in rem with respect to immovable property but the question of substitution of declaration of will and thus the exclusive jurisdiction of the Slovak courts under Article 24 of the Regulation shall not apply in this case. In view of the court of appeal, Article 24(1) shall not be applied to all actions relating to rights in rem in immovable property but only to those seeking to determine the extent, composition of ownership or possession of the immovable property or the existence of other rights in rem. This was not the case here; No (published) decisions on art. 31(1).
Slovenia	No (published) decisions on art. 24(1). No (published) decisions on art. 31(1).
Spain	N/A.

Sweden	No (published) decisions on art. 24(1). No (published) decisions on art. 31(1).
UK	No; no.

Question 37

Austria	Real seat.
Belgium	Statutory seat.
Bulgaria	Answer could not be identified.
Croatia	Statutory seat.
Cyprus	Statutory seat.
Czech	Statutory seat.
Denmark	Statutory seat.
Estonia	Statutory seat.
Finland	Statutory seat.
France	Statutory seat.
Germany	Statutory seat.
Greece	Statutory/real seat.
Hungary	N/A.
Ireland	Statutory seat/real seat.
Italy	Statutory seat.
Latvia	N/A.
Lithuania	N/A.
Luxembourg	Real seat.
Malta	Statutory seat.
The Netherlands	Statutory seat.
Poland	Statutory seat.
Portugal	Statutory seat/real seat.

Romania	Statutory seat/real seat.
Slovakia	Statutory seat.
Slovenia	Statutory seat.
Spain	Statutory seat/real seat.
Sweden	Statutory seat.
UK	Statutory seat/real seat.

Question 38

Austria	No (published) case law
Belgium	N/A
Bulgaria	N/A
Croatia	No (published) case law
Cyprus	No (published) case law
Czech	No (published) case law
Denmark	No (published) case law
Estonia	No (published) case law
Finland	No (published) case law
France	No (published) case law; however in an arbitration matter: Paris Court of Appeal 28 February 2008. The Court took the opposite stance in the case similar to Gat v. Luk; the Court considered that in a dispute relating to the breach of a contract, the arbitrators had jurisdiction to decide on the validity of a patent which was challenged by the defendant incidentally.
Germany	N/A.
Greece	No relevant (published) case law.
Hungary	No (published) case law
Ireland	No (published) case law
Italy	Limited available case law, however conforms GAT. Pre-emptive negative declaration for non-violation of non-Italian patent rights have been declared to fall outside the exclusive jurisdiction of Italian courts.

Latvia	One case; third instance court ruled that art. 24(2) did not apply to a claim asking a declaration of invalidity of the assignment of a trade mark.
Lithuania	No (published) case law
Luxembourg	No (published) case law
Malta	No (published) case law
The Netherlands	Courts do not seem to experience particular difficulties. In a number of cases, the Dutch court have relied on the ruling of CJEU Solvay/Honeywell. The court before which interim infringement proceedings have been brought in which the invalidity of a European patent has been raised, makes an assessment as to how the court having jurisdiction under art. 24(4) would rule in that regard.
Poland	No (published) case law
Portugal	No (published) case law
Romania	No (published) case law
Slovakia	Problems with the application of Art. 24(4) were pointed out in the past by Husovec, who commented on the resolution of the Supreme Court of the Slovak Republic, file ref. No. 2Ndob 44/2010 of 17 February 2011. (HUSOVEC, M.: Právomoc slovenského súdu v patentovom spore s cudzím prvkom. http://www.lexforum.cz/445).
Slovenia	No (published) case law
Spain	N/A
Sweden	One case that followed GAT (even though it led to a competent USA court)
UK	Case law but no special difficulties.

Question 39

Austria	Domestic law specifies which measures and procedures fall within the scope of art. 24(5) and which do not (see country report for a detailed list).
Belgium	N/A
Bulgaria	Proceedings concerning the enforcement of judgements in Bulgaria are all procedural activities that can take place after the start of the enforcement (art. 404-529 CPC)
Croatia	Domestic law specifies which measures and procedures fall within the scope of art. 24(5)
Cyprus	No (published) case law available.

Czech	Scope does not only include proceedings on the enforcement of a decision or an execution but also other narrowly related proceedings.
Denmark	N/A
Estonia	No (published) case law available.
Finland	Proceedings concerned with enforcement of judgements are proceedings relating to matters which are directly related to regional enforcement authorities activities, e.g. whether assets allegedly belonging to a third person can be subject to enforcement.
France	No (published) case law available. Definition shall be interpreted restrictively since the ratio legis of this provision is solely to protect the sovereignty of the Member State where these measures are to be performed. Art. 24(5) therefore only applies to disputes relating to the implementation of enforcement measures.
Germany	Definition is usually construed not too narrowly since it is meant to protect the territoriality principle when it comes to the enforcement of a judgment. It encompasses all the proceedings concerning the actual operation of enforcement of a title (e.g. seizure of a good, realisation through foreclosure).
Greece	No (published) case law available.
Hungary	No (published) case law available.
Ireland	No (published) case law available.
Italy	Definition shall be interpreted restrictively, with the main criteria the necessity to employ the use of public force/coercion to realise the content of a decision or other executive acts.
Latvia	No (published) case law available.
Lithuania	No (published) case law available.
Luxembourg	No (published) case law available.
Malta	No (published) case law available.
The Netherlands	Claims to cancel, suspend or limit an enforcement order fall under the scope of art. 24(5), which is regulated in art. 438 Dutch Code Civil Procedure. A second instance court held that pursuant to art. 24(5) it had jurisdiction in relation to an injunction against the enforcement in other Member States during the period the enforcement in the Netherlands is stayed. Whether or not the removal by the court of a conservatory third party attachment falls within the scope of art. 24(5) is subject to debate. However, it is clear that a claim against the defendant to bring about such removal does not fall within the scope of art. 24(5).
Poland	Within the scope of art. 24(5): proceedings deemed to be regarded as the 'auxiliary methods of enforcement' such as proceedings that seek to cancel or

	alter enforceability of a decision within the territory of a Member State where the creditor sought enforcement.
Portugal	There is controversy on the criteria in case law (see national report for details).
Romania	Within the scope of art. 24(5): writ of execution issued by the court on request of the bailiff; the enforcement actions to be taken by the bailiff; action contesting execution measures; contesting decision for the distribution of the amounts resulting from execution; requests relate to the suspension or delay of execution measures. No express criteria re art. 24(5).
Slovakia	No (published) case law available; disputes arising from the specific nature of the enforcement proceedings are likely to fall within the scope of that provision.
Slovenia	No (published) case law available; just that action Pauliana does not fall into the scope.
Spain	Art. 24(5) applies in relation to the execution of 'national' or 'foreign' decisions. In the event that the judicial decision could be enforced in several MS, the concurrence of jurisdictions should be avoided and the 'better' court should be competent.
Sweden	No (published) case law available.
UK	One case that a committal order falls under art. 24(5).

Question 40

Austria	No exclusive jurisdiction of the court where the removal has to be enforced. Art. 24(5) is interpreted narrowly.
Belgium	N/A.
Bulgaria	No exclusive jurisdiction of the court where the removal has to be enforced. Art. 24(5) is interpreted narrowly.
Croatia	No exclusive jurisdiction of the court where the removal has to be enforced. Art. 24(5) is interpreted narrowly.
Cyprus	No (publicly) available case law.
Czech	No (publicly) available case law.
Denmark	No (publicly) available case law.
Estonia	No (publicly) available case law.
Finland	No (publicly) available case law.

France	Removal of a conservatory third party attachment falls within the scope of 'enforcement' ex art. 24(5); Art. 24(5) is (however) interpreted narrowly.
Germany	Removal of a conservatory third party attachment falls within the scope of 'enforcement' ex art. 24(5); Art. 24(5) is interpreted not too narrowly.
Greece	No exclusive jurisdiction of the court where the removal has to be enforced.
Hungary	No (publicly) available case law.
Ireland	No (publicly) available case law.
Italy	No exclusive jurisdiction of the court where the removal has to be enforced. Art. 24(5) is interpreted narrowly.
Latvia	No (publicly) available case law.
Lithuania	No (publicly) available case law.
Luxembourg	Complex question from the perspective of Luxembourg, as the widely used third party attachment procedure has two steps. The first is conservatory, and the second has an enforcement purpose. There is thus not neat distinction between protective and enforcement for this particular measure. Luxembourg courts are conservative and have always insisted on the territoriality of this procedure.
Malta	No (publicly) available case law.
The Netherlands	Debate. Third instance court has referred preliminary question to the CJEU on this matter.
Poland	No (publicly) available case law. Art. 24(5) is interpreted narrowly.
Portugal	No (publicly) available case law.
Romania	Art. 24(5) is interpreted narrowly.
Slovakia	No (publicly) available case law The Slovak authors state that 'the mere choice of jurisdiction cannot be regarded as a sufficient international element in assessing the scope of applicability of Article 25 of the Regulation, since the choice of jurisdiction of court of another state is in this case a disputed question which the court attempts to resolve. However, in case of choice of jurisdiction of a court of another state in contractual matters between parties domiciled in one Member State, it will normally suffice if the transaction itself contains a sufficient international element. For example, the determination of the place of performance of a contractual obligation in the territory of another state could be considered as such element of a transaction (justifying the application of Article 25 of the Regulation).'
Slovenia	No (publicly) available case law
Spain	No (publicly) available case law

Sweden	No (publicly) available case law
UK	Not answered

Question 41

Austria	Connected to art. 1. Big discussion. Older case law opted for rather narrow approach (two parties domiciled in the same MS agree on court other MS does not fall under scope). Criticism on that. Newer case law more lenient view.
Belgium	N/A
Bulgaria	Connected to art. 1. No case law. View literature: application when relation with more than one state.
Croatia	To a minimum degree addressed in literature. Comments mainly refer to the fact that acc to Brussels Ia it is not necessary that at least one of the parties has his/her domicile on the territory of MS.
Cyprus	No relevant (public) case law available; no literature.
Czech	Third instance case; both plaintiff Czech and choice of forum Belgium. Third instance court ruled that it is relevant to find out whether the terms and conditions (in which the choice was made) form part of the contract and in not there is not international element.
Denmark	No (public) case law available. It is not sufficient to trigger application of art. 25 when parties are from the same country.
Estonia	No (public) case law available; no literature.
Finland	No (public) case law available.
France	Much debate. Disagreement of criteria. Some authors accept that internationality can be based upon the willingness of the parties; some reject that and require stronger elements.
Germany	No (public) case law available. Purely domestic agreements do not fall under art. 25.
Greece	Purely domestic agreements do not fall under art. 25.
Hungary	No (public) case law available. Purely domestic agreements do not fall under art. 25.
Ireland	No (public) case law available; no literature.
Italy	Purely domestic agreements do not fall under art. 25; case is at least potentially international due to objective criteria.

Latvia	One third instance case: two persons domiciled in one MS are allowed to make a binding choice of court agreement in favour of a court of another MS; so ruled out any requirement of internationality.
Lithuania	N/A.
Luxembourg	No (public) case law available; no literature.
Malta	Evident international dimension required.
The Netherlands	Courts disagree. One case ruled that two parties domiciled in the same MS agree on court other MS does not fall under scope; one case ruled opposite.
Poland	One case: two parties domiciled in the same MS agree on court other MS does not fall under scope.
Portugal	Case law requires a minimum degree of internationality. Internationality can result from the close connection between the contract at stake, whose elements are located in Portugal, and another contract with foreign connecting factors and from the intervention of one of the parties as a multibranch party, which may act through subsidiaries located abroad.
Romania	Purely domestic agreements do not fall under art. 25; there has to be an additional element to that of the choice parties made such as their domicile in different MS, the place of execution of the contract, the place where the damage was caused, the existence of an international transport.
Slovakia	No (public) case law available; no literature.
Slovenia	No (public) case law available; no literature.
Spain	Answer could not be identified.
Sweden	No (public) case law available; no literature.
UK	No (public) case law available. Debate about the minimum degree of internationality element is the choice of court agreement. An authoritative view is that art. 25 would apply where the only international element is the choice of court itself. It is pointed out the Brussels Ia does not expressly restrict the application of art. 25 to cases of international jurisdiction.

Question 42

Austria	No statistics; however does not differ much with domestic law: no increase expected.
Belgium	No (publicly) available case law.
Bulgaria	No change can be identified.
Croatia	No change according to the available case law.

Cyprus	No change can be identified.
Czech	No (publicly) available case law.
Denmark	No (publicly) available case law.
Estonia	No (publicly) available case law.
Finland	No (publicly) available case law.
France	Too soon to tell.
Germany	No (publicly) available case law.
Greece	No change can be identified.
Hungary	No (publicly) available case law.
Ireland	No change can be identified.
Italy	No (publicly) available case law.
Latvia	No (publicly) available case law.
Lithuania	Impossible to tell.
Luxembourg	No (publicly) available case law.
Malta	So far no.
The Netherlands	N/A.
Poland	No (publicly) available case law.
Portugal	No change can be identified.
Romania	No (publicly) available case law.
Slovakia	E.g. the Judgment of the Regional Court in Bratislava (2Cob/53/2013) of 20 January 2015. In the present case, the draft purchase contract, which also contained an choice-of-court clause, was not signed by the defendant, but was submitted to the plaintiff by the defendant. According to the Court, it is irrelevant that the contract is not signed by the party that submitted the contract. Adoption by the plaintiff shall be sufficient.
Slovenia	No (publicly) available case law.
Spain	N/A
Sweden	No (publicly) available case law.

UK	N/A.

Question 43

Austria	In general no practical difficulties re formal requirements; only controversial issue is whether choice of court agreements drawn up in a foreign language are effective. See national report for very elaborative reply re art. 25(1)(a-c).
Belgium	Issue of formal validity of choice of court clauses contained in general terms and conditions attached to invoices (art. 25(1)(b)).
Bulgaria	Issue of formal validity of choice of court clauses contained in general terms and conditions attached to invoices (art. 25(1)(b)). Another issue is the effect of choice of court agreements towards third parties.
Croatia	There are some specific requirements under domestic law that agreement must be in writing.
Cyprus	Issue of the effect of choice of court agreements towards third parties.
Czech	No relevant (available) case law; no literature.
Denmark	No outstanding issues; case law seems to be in accordance with EU law
Estonia	No relevant (available) case law
Finland	No relevant (available) case law
France	Particularly sub b and c problematic. Extremely imprecise, and to some extent too flexible. This creates a lot of uncertainty around the formal validity of choice of court agreements. E.g. definition of practices which the parties have established between themselves; definition of 'particular trade or commerce concerned'; uncertainty regarding types of agreements that may be deemed valid.
Germany	Considerable part of case law in choice of court agreements concerns the validity of such agreement in standard terms.
Greece	Issues regarding subjective boundaries of choice of court agreements. See national report for overview.
Hungary	Issue of formal validity of choice of court clauses contained in general terms and conditions attached to invoices
Ireland	No particular difficulties. See national report for details.
Italy	Evidence in writing causes problems related to online contracts; choice of court agreements included in specific post-contractual documents have been considered void for the lack of consent; verbal choice of court agreements have been deemed valid where these have been followed by a written communication.

Latvia	No (available) case law
Lithuania	No (available) case law
Luxembourg	Issue of formal validity of choice of court clauses contained in general terms and conditions attached to invoices; issue of formal validity in the case the contract was not signed.
Malta	Issue of formal validity of choice of court clauses contained in general terms and conditions that was referred to in invoices
The Netherlands	Issue of formal validity of choice of court clauses contained in general terms and conditions attached to invoices.
Poland	No special problems. See national report for details.
Portugal	Issue when choice of court is contained in a document sent by one of the parties to the other and there is no written acceptance by the other party.
Romania	National formal requirements for validity of choice of court agreements are stricter than art. 25(1) Brussels Ia. Such clauses are considered to be not customary clauses and require an additional form attesting the counter party actually expressed its consent/agreement with regard to a choice of court agreement. No indication difficulties in case law.
Slovakia	No (available) case law
Slovenia	No (available) case law
Spain	No special difficulties. See national report for elaborative overview.
Sweden	No problems.
UK	N/A.

Question 44

Austria	No.
Belgium	N/A
Bulgaria	N/A
Croatia	No.
Cyprus	No.
Czech	N/A
Denmark	No (available) case law.

Estonia	No (available) case law.
Finland	No answer could be identified.
France	No (available) case law.
Germany	No relevant (available) case law. Formal validity of an agreement provides an indication for its substantive validity. There is no case law in which a court found a lack of consent while the formal requirements were fulfilled.
Greece	No relevant (available) case law.
Hungary	No (available) case law.
Ireland	Domestic case law does not tend to separate out formal validity and substantive validity. Courts tend to take the view that art. 25 simply requires evidence of 'consensus' (as an autonomous EU standard) and of satisfaction of one of the three formal requirements (a-c). There is no sense that national law can have any role to play in determining the validity of a choice of court agreement.
Italy	N/A.
Latvia	No (available) case law.
Lithuania	No (available) case law.
Luxembourg	No consistent case law.
Malta	No (available) case law
The Netherlands	N/A.
Poland	According to the case law, if the consent was lacking, the parties did not conclude a choice of court agreement.
Portugal	There are cases in which a jurisdiction clause, fulfilling the formal requirements was considered excluded from the particular contract by operation of the domestic rules on incorporation in the particular contract of general conditions of contract. In general, this approach is not followed by most recent judgements.
Romania	No (available) case law
Slovakia	No (available) case law
Slovenia	No (available) case law
Spain	N/A
Sweden	N/A

UK	No relevant (available) case law

Question 45

Austria	It can be concluded from the wording of art. 25 that the substantive validity of the agreement is to be presumed, so that the burden of proof and presentation of the invalidity lies with the party invoking it. Substantive nullity, however, does not include the question of the existence of simple consent of the parties; in this respect, art. 25 applies.
Belgium	Unclear how the terminology used in art. 25(1) relates to the distinction between 'material validity', 'formal validity' and 'admissibility'. E.g. legislation prohibiting the insertion of a choice of court clause in certain types of contracts is traditionally regarded to concerning admissibility. It is unclear whether for the purpose of art. 25 that legislation should be regarded to be concerned with nullity.
Bulgaria	N/A
Croatia	No (public) available case law.
Cyprus	No (public) available case law.
Czech	No (public) available case law.
Denmark	No (public) available case law.
Estonia	No (public) available case law.
Finland	No (public) available case law.
France	No (public) available case law.
Germany	One case that found that only detects relating to the conclusion of the choice of court agreement such as lack of capacity or violations of public policy fall under the notion of 'null and void'.
Greece	No (public) available case law.
Hungary	No (public) available case law.
Ireland	No (public) available case law.
Italy	One case that found an agreement null and void where the clause renders it impossible to determine the chosen court.
Latvia	No (public) available case law.
Lithuania	No problems

Luxembourg	Case that hols that the existence of consent does not belong to substantive validity and thus does not fall within the scope of the choice of law rule applicable to substantive validity of choice of court agreements.
Malta	No (public) available case law.
The Netherlands	Inconsistent case law.
Poland	No problems
Portugal	No problems
Romania	No (public) available case law.
Slovakia	No (available) case law
Slovenia	No (available) case law
Spain	N/A
Sweden	No problems.
UK	One case found that null and void refers to issues such as capacity, fraud and mistake (and not to the question whether kinds of choice of court agreements are permitted under the regulation).

Question 46

Austria	N/A
Belgium	Third instance court did not interpret recital 20 as entailing renvoi. It held that the validity of a choice of court agreement conferring jurisdiction to the Irish courts was subject to Irish law. It then went on to apply Irish consumer law, excluded Irish conflict of laws. As a consequence, the case law of the third instance court provides a precedent for the lower courts to apply the lex fori prorogati excluding private international law.
Bulgaria	N/A
Croatia	No (publicly) available case law.
Cyprus	No (publicly) available case law; no literature.
Czech	One case that applied rules of private international law in connection with art. 25(1)
Denmark	No.
Estonia	N/A

Finland	No (publicly) available case law; no literature.
France	This reference has led to discussions and poses many difficulties in practice. It requires a very complex reasoning from the court, especially where it belongs to a MS other than the court mentioned in the choice of court agreement. This complexity is increased by the fact that the determination of the rules of private international law applying to the substantial validity of the clause, which is not covered by Rome I, proves extremely difficult in practice.
Germany	Following the entry into force of Rome I the German legislator has abolished the domestic private international law rules. However, as Rome I does not apply to choice of court agreements, and, consequently, domestic private international law rules come into play, a gap has to be filled in German law (analogue applicable Rome I)
Greece	The matter has been critically discussed in literature.
Hungary	No (publicly) available case law
Ireland	N/A.
Italy	No (publicly) available case law. However started a debate about the nature of choice of court agreements (contracts, procedural acts, contracts with procedural effects?)
Latvia	No (publicly) available case law
Lithuania	No discussion.
Luxembourg	N/A.
Malta	No (publicly) available case law
The Netherlands	Question whether a choice of law clause in the agreement also determines the law applicable to the choice of forum, keeping in mind the doctrine of separability.
Poland	View that the 'existence' of a prorogation clause, i.e., the fact that the parties have reached an agreement on the choice of court having jurisdiction, should be assessed on the basis of Brussels Ia only.
Portugal	No difficulties.
Romania	No discussion.
Slovakia	No (available) case law
Slovenia	No
Spain	Answer could not be identified.
Sweden	No.

UK	N/A

Question 47

Austria	N/A
Belgium	One case concerned the validity of a non-exclusive choice of court agreement under Brussel I, which was assessed autonomously from substantive national law. Court held that a unilateral choice of court agreement is materially invalid and hence null under Belgian law because of its 'pure potestative' nature, meaning that it gives one of the parties the complete discretion to act in a certain manner.
Bulgaria	N/A
Croatia	N/A
Cyprus	N/A
Czech	N/A
Denmark	N/A
Estonia	N/A
Finland	N/A
France	N/A
Germany	N/A
Greece	N/A
Hungary	N/A
Ireland	N/A
Italy	N/A
Latvia	Not clear whether the 'substantive validity' also covers interpretation. If the 'substantive validity' covers 'interpretation' this should be stated clearly in the provision. Otherwise Latvian courts will ignore this rule for a long time.
Lithuania	N/A
Luxembourg	The test should be applied alternatively, and not cumulatively. Two situations: 1. Forum is one of chosen courts; it is then enough that its own substantive law validates the jurisdiction clause. If it does, the forum should retain jurisdiction, and it is irrelevant whether the designation of other courts was invalid, as they have not been seized. 2. Forum is not one of the chosen courts; is then enough if one single chosen court would retain jurisdiction under the jurisdiction clause to strip the forum from any jurisdiction it may otherwise have. Again, it is irrelevant if another chosen court would find that the clause

	is invalid. The mere fact that one chosen court would retain jurisdiction suffices to strip the forum from its jurisdiction.
Malta	N/A
The Netherlands	N/A
Poland	N/A
Portugal	N/A
Romania	N/A
Slovakia	No (available) case law
Slovenia	N/A
Spain	N/A
Sweden	N/A
UK	N/A (only assymetrical)

Question 48

Austria	According to the prevailing view in case-law and legal theory, the effectiveness of the choice of court agreement should be examined separately from the main contract; no further criteria have been formulated by case law and legal theory.
Belgium	N/A
Bulgaria	Yes. C-269/95 Francesco Benincasa as well as the same principle in arbitration proceedings are considered.
Croatia	Yes it has.
Cyprus	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)
Czech	Yes. C-269/95 Francesco Benincasa.
Denmark	Yes.
Estonia	Yes.
Finland	Yes.
France	Yes.
Germany	Yes.
Greece	Yes.

Hungary	Yes.
Ireland	Yes.
Italy	Yes.
Latvia	N/A. no general opinion on this question in Latvian theory or practice.
Lithuania	Yes.
Luxembourg	Not sure; issue was not clearly settled under Luxembourg law. Clarification in art. 25 is an improvement for legal certainty in Luxembourg.
Malta	N/A
The Netherlands	Yes.
Poland	Yes.
Portugal	Not sure whether this was firmly established in Portugal but at least implicitly accepted.
Romania	Yes.
Slovakia	Yes, in relation to the Brussels I Regulation, the author states that "Article 23 of the Regulation contains own conditions of the formal validity of choice-of-court agreements. If the main contract does not correspond to the formal requirements of the legislation by which it is governed, and is therefore invalid, this fact is without prejudice to the formal validity of the choice-of-court agreement. The validity of the choice-of court agreement will be assessed exclusively on the basis of the requirements of Article 23 of the Regulation. Thus, if the agreement of parties meets the requirements of Article 23, it is valid and a possible dispute about the validity of the main contract will be resolved before the court or courts which it designates."
Slovenia	Yes.
Spain	Yes.
Sweden	Yes.
UK	Yes.

Question 49

Austria	Yes it is controversial, e.g. in an EOP context. Even though it is an autonomous concept, domestic law decides which claim is to be characterised as the first defence (submission of defence in EOP via standard form, or do you need to show up in oral hearings?)
Belgium	No. Does not appear to be problematic.
Bulgaria	Case law is quite pragmatic. In literature discussion: Broad interpretation suggests considering all procedural actions aiming at rejecting the claim.

	Narrow interpretation stressed the need of opposing only to the substance of the dispute.
Croatia	No.
Cyprus	No.
Czech	Third instance court in EOP context: ruling opposition to EOP can be considered as entering an appearance.
Denmark	No.
Estonia	No (and there is case law in which art. 26 is applied)
Finland	No.
France	No.
Germany	There is scope for interpretation as to the latest possible point in time. Authors argue that the rationale of art. 26 does not cover an approach according to which the jurisdiction may be always contested in the first oral hearing.
Greece	No.
Hungary	No.
Ireland	Yes, when a defendant has entered an unconditional appearance. Uncertainty as to when ad defendant should be considered to have waived any jurisdictional objection (and as to the steps which create such implication). Particular difficulty where the plaintiff makes a claim which is wider than that suggested in the original summons.
Italy	No.
Latvia	No.
Lithuania	No.
Luxembourg	No.
Malta	No.
The Netherlands	No.
Poland	No.
Portugal	No.
Romania	No.
Slovakia	No. E.g. judgment of the District Court of Prešov, file ref. No. (10C/28/2017-86) of 16 August 2018, in which the Court specified that such requirement was

	not satisfied, since the defendant had not provided any defence pleading with respect to duly served action at the request of the Court.
Slovenia	Yes, in violation of art. 26, some courts have applied the national law which provides that the court has to declare itself lacking jurisdiction ex officio even before the claim is served on the defendant. Courts have difficulties in accepting that it must be left to the defendant's choice whether it will accept jurisdiction by entering an appearance, even though that court has no jurisdiction pursuant to Brussels Ia.
Spain	No.
Sweden	No.
UK	No.

Question 50

Austria	No (even though domestic law deviates from Brussels Ia) – see national report for an elaborative overview of cases
Belgium	N/A
Bulgaria	N/A
Croatia	N/A
Cyprus	No difficulties.
Czech	Not clear. See national report for provided example.
Denmark	No.
Estonia	No.
Finland	No.
France	Yes. France considers Art. 29 to be interpreted too extensively by the CJEU (C-144/86 Gubish and C-406/92 Ship Tatry). Confusion between lis pendens and related actions. Most debated issue is when a claim for damages is filed before the courts of one MS that conflicts with a declaratory claim of non-liability filed by the defendant in another MS. Most French authors state this situation should not be analysed as a case of lis pendens but rather as a hypothesis of related actions: deciding otherwise would indeed encourage delaying tactics. However, French courts have followed the broad interpretation of the CJEU apply lis pendens to this example. Other case law however shows reluctance to embrace broad interpretation.
Germany	No German courts follow the functional approach (following the broad interpretation of the CJEU)
Greece	N/A

Hungary	N/A
Ireland	No.
Italy	Yes. Broad interpretation of CJEU is not necessarily followed at domestic level.
Latvia	N/A
Lithuania	N/A
Luxembourg	Not sure; not too broadly interpreted. Civil/criminal cases.
Malta	No.
The Netherlands	No.
Poland	No.
Portugal	Clear answer could not be identified.
Romania	No.
Slovakia	No available case law.
Slovenia	No cases yet; but problems are expected. Well established and firm domestic rule that a filing of a negative declaratory action never establishes a lis pendens effect.
Spain	No.
Sweden	Clear answer could not be identified.
UK	Clear answer could not be identified.

Question 51

Austria	N/A
Belgium	N/A
Bulgaria	Bulgarian courts do not act swiftly in contacting their foreign colleagues. There is no internal procedural guideline to be followed. The main obstacles are the unawareness, the overloading, the linguistic barrier and the doubt in the functioning of the communication network.
Croatia	No standardised internal procedural guidelines. There are linguistic limitations.
Cyprus	No standardised internal procedural guidelines.
Czech	Standardised procedure through EJN.

Denmark	No standardised internal procedural guidelines. Parties themselves are expected to raise the issue and procure sufficient evidence of the parallel proceeding.
Estonia	No standardised internal procedural guidelines.
Finland	No standardised internal procedural guidelines. No practical obstacles or considerations which may hinder contact between the courts of Finland and the other MS.
France	No standardised internal procedural guidelines. Acc to case law of the third instance court the duty lies with the parties to establish a lis pendens.
Germany	In a system of party autonomy it is for the parties to raise the defence of lis pendens in second proceedings. Court does not have to examine a merely theoretical possibility of parallel proceedings.
Greece	No standardised internal procedural guidelines. Without legislative interventions, courts are not going to do that.
Hungary	No case law.
Ireland	No standardised internal procedural guidelines. Appears to be for parties.
Italy	Main obstacle is that code of civil procedure does not clearly allow courts to have direct communication with foreign courts; courts do not do it, only when parties invoke the defence.
Latvia	No standardised internal procedural guidelines.
Lithuania	National traditions of civil procedure make it necessary that the documents should be received by the court.
Luxembourg	Will be provided by parties.
Malta	No standardised internal procedural guidelines.
The Netherlands	Parties have to provide information on which court has to decide.
Poland	No case law.
Portugal	If elements provided by parties is not enough, courts will contact other courts.
Romania	No standardised internal procedural guidelines. Parties have to provide information on which court has to decide. No indication that practical obstacles would hinder contact with other courts, but this does not seem to be a usual practice for Romanian judges.
Slovakia	No available case law.

Slovenia	No standardised internal procedural guidelines. No indication that practical obstacles would hinder contact with other courts.
Spain	No issues.
Sweden	No standardised internal procedural guidelines. Parties have to invoke the defence.
UK	N/A.

Question 52

Austria	Receipt of document at the entry point of the court seised qualifies as filing before the court ex art. 232(1)ZPO. Not sufficient to send the complaint by throwing it into a letterbox, by handing it over at a post office or by handing it over to a messenger service. The loss of the claim is for the sender.
Belgium	Seised when document instituting proceeding is received by the authority responsible for service.
Bulgaria	Seised when the document instituting the proceeding is lodged with the court.
Croatia	Seised when the document instituting the proceeding is lodged with the court.
Cyprus	Seised when the document instituting the proceeding is lodged with the court; irrespective of service of the document instituting the proceeding to the defendant, or any additional administrative/organisation steps having been taken.
Czech	Seised on the day on which the court received the action. This can be sent by means of the public data network and the electronic application for delivery of such action (data boxes).
Denmark	Seised when the document instituting the proceeding is lodged with the court.
Estonia	Seised when the document instituting the proceeding is lodged with the court.
Finland	Seised when the document instituting the proceeding is lodged with the court.
France	Seised when document instituting proceeding is received by the authority responsible for service. However it must also be lodged with the secretary of the court in order for the proceedings to be considered as pending.
Germany	Seised when the document instituting the proceeding is lodged with the court. Further organisational or administrative requirements: claimant has to file a certain number of copies of the statement of claim and pay an advance on the court fees. The court will not be deemed to be seised unless such requirements were met.
Greece	Seised when the document instituting the proceeding is lodged with the court.

Hungary	No case law.
Ireland	Seised when the document instituting the proceeding is lodged with the court.
Italy	Seised when the document instituting the proceeding is lodged with the court/ in cases first service, date of service.
Latvia	Seised when the document instituting the proceeding is lodged with the court.
Lithuania	Seised when the document instituting the proceeding is lodged with the court + administrative steps.
Luxembourg	No discussion issue in Luxembourg.
Malta	Seised on day on which the action is physically filed at the Registry of the Civil Courts of Malta.
The Netherlands	Seised when document instituting proceeding is received by the authority responsible for service.
Poland	Seised when the document instituting the proceeding is lodged with the court.
Portugal	Seised when the document instituting the proceeding is lodged with the court.
Romania	Seised when the document instituting the proceeding is lodged with the court.
Slovakia	Seised when the document instituting the proceeding is lodged with the court.
Slovenia	Seised when the document instituting the proceeding is lodged with the court.
Spain	No problems.
Sweden	Seised when the document instituting the proceeding is lodged with the court.
UK	Seised when the document instituting the proceeding is lodged with the court.

Question 53

Austria	If a substantive motion is filed only during the proceedings (in the form of an extension or amendment of a statement of claim or an interim motion for a declaratory judgment), the case shall become pending before the court with the assertion at the oral hearing or, in the case of a written assertion, with the receipt of the pleading at the court. Although the parties are required to submit all the facts and evidence at the beginning of the proceedings, Article 179(1) ZPO grants them the procedural right to continue to submit new allegations of fact and to request the admission of evidence until the end of the oral proceedings. From then on, new facts or allegations can no longer be submitted. In accordance with the second sentence of Article 179 ZPO, however, new arguments of fact are no longer to be considered if, in particular, with regard to the discussion of the arguments of fact and of law, they were not

	brought forward earlier intentionally or negligently and if their admission would considerably delay the discharge of proceedings.
Belgium	N/A
Bulgaria	No subsequent amendments of claims in any way affect the determination of the date of seising in Bulgaria. The facts concerned do not reflect the seizure of the court.
Croatia	Objective nor subjective amendments affect the date of seising of the court with the original proceedings.
Cyprus	Not sure.
Czech	In general, subsequent amendments of claims cannot affect the determination of the date of seising.
Denmark	No.
Estonia	Subsequent amendments of claims cannot affect the determination of the date of seising.
Finland	Subsequent amendments of claims cannot affect the determination of the date of seising.
France	Subsequent amendments of claims cannot affect the determination of the date of seising.
Germany	Not sure.
Greece	Subsequent amendments of claims cannot affect the determination of the date of seising.
Hungary	No case law.
Ireland	No Irish authority on the impact of subsequent amendments.
Italy	No case law.
Latvia	Subsequent amendments of claims cannot affect the determination of the date of seising.
Lithuania	Subsequent amendments of claims cannot affect the determination of the date of seising.
Luxembourg	No issues.
Malta	No.
The Netherlands	N/A

Poland	Subsequent amendments of claims cannot affect the determination of the date of seising.
Portugal	Subsequent amendments of claims cannot affect the determination of the date of seising.
Romania	Subsequent amendments of claims cannot affect the determination of the date of seising.
Slovakia	This issue has not been discussed in detail in the Slovak literature. However, it is possible to draw attention to the legal opinion concerning the provisions of the Brussels I Regulation. 'Since Articles 27 and 28 of the Brussels I Regulation use the general concept of 'proceedings', which may be conducted with respect to more than one claim, such fact implies that the extension of the motion to commence the proceedings for a further claim could also be considered as part of ongoing proceedings. However, Articles 27 and 28 further specify the concept of 'proceedings' by requiring them to be dealt with in a particular identifiable matter. A specific case can be determined on the basis of identification of the parties and the subject-matter of the proceedings, that is to say, the facts and the legal basis of the asserted claim. Since the extension of the motion does not change the parties to proceedings, only the question of identicalness of the subject-matter of the initial and the extended motion shall be decisive for determining the opening time of the proceedings. If the subject-matter of the initial and extended motion is identical, the proceedings for extended motion may be deemed to have been commenced already at the time the proceedings for initial motion have been commenced within the meaning of Article 30. However, if the initial and the extended motion are based each on different facts (for example, where such facts arose after opening of the proceedings for initial motion) or are based on a different legal basis, the proceedings for extended motion shall be considered to have commenced only at the time of extension of the initial motion.
Slovenia	Subsequent amendments of claims cannot affect the determination of the date of seising.
Spain	No issues.
Sweden	Subsequent amendments of claims cannot affect the determination of the date of seising.
UK	Subsequent amendments of claims cannot affect the determination of the date of seising.

Question 54

Austria	No available data to tell.
Belgium	N/A
Bulgaria	N/A
Croatia	No available data to tell.

Cyprus	No available data to tell.
Czech	No available data to tell.
Denmark	No available data to tell.
Estonia	No available data to tell.
Finland	No available data to tell.
France	French courts tend to be reluctant to decline jurisdiction on the ground of art. 30(2). Most courts refuse to decline jurisdiction, invoking the lack of a sufficient connection between the claims. Also, the third instance court ruled that, even though the court seized had to examine the elements presented by the parties in order to determine whether the existence of the different actions raise a risk of irreconcilable decisions, it leaves the inferior courts free to rule on the existence of related actions: this issue falls under their 'sovereign power of appreciation'.
Germany	No available data to tell.
Greece	No available data to tell.
Hungary	No available data to tell.
Ireland	Irish courts tend to exercise their discretion in favour of using art. 30 where it is applicable – but in most existing cases in point, stays were granted under art. 30(1) and the Irish judges did not decline jurisdiction under art. 30(2). In some cases it was clear that the judge in the MS first-seised did not have jurisdiction over the action in question – while in other cases the jurisdiction of the court first-seised was unclear.
Italy	No available data to tell (literature: cautious application because of double negative conflict of jurisdiction)
Latvia	No available data to tell.
Lithuania	No available data to tell.
Luxembourg	No available data to tell.
Malta	No available data to tell.
The Netherlands	N/A
Poland	Polish courts are making cautious use of article 30(2) by interpreting rather strictly the term 'related actions', what excludes automatically the possibility to decline jurisdiction on the basis of this provision.
Portugal	No available data to tell.
Romania	Romanian courts observe the lis pendens rules when the court first seised has jurisdiction.
Slovakia	No available data to tell.

Slovenia	No available data to tell.
Spain	No problems.
Sweden	No available data to tell.
UK	N/A

Question 55

Austria	Scholars point to the risk of misuse.
Belgium	N/A
Bulgaria	N/A
Croatia	Yes it has.
Cyprus	No data to tell.
Czech	No data to tell.
Denmark	No data to tell.
Estonia	No data to tell.
Finland	No data to tell.
France	Scholars point to the risk of misuse.
Germany	No data to tell.
Greece	No data to tell.
Hungary	No data to tell.
Ireland	No data to tell.
Italy	No data to tell.
Latvia	No data to tell.
Lithuania	Greater efficiency if all right steps are taken.
Luxembourg	No data to tell.
Malta	So far no.
The Netherlands	Article 31(2) is generally regarded as a 'hard and fast' rule. In one case before the Court of Amsterdam, the defendant had alleged that the parties had chosen the court of Stuttgart as the competent court. The court held that, pursuant to Article 31(2), question whether the parties had concluded a choice

	of forum agreement and whether the dispute fell under its scope, had to be answered by the Stuttgart court. According to the court, the fact that the application of Article 31(2) would lead to a delay in the Dutch proceedings was not sufficient to constitute an abuse of right. In this context, the Amsterdam court made reference to the CJEU case CDC/Akzo in relation to an abuse of (now) Article 8(1) Brussels Ia Regulation.
Poland	Scholars point to the risk of misuse.
Portugal	No data to tell.
Romania	No indication that the application of art. 31(2) has been counterproductive based on the available case law.
Slovakia	
Slovenia	No data to tell.
Spain	No problems.
Sweden	No data to tell.
UK	N/A

Question 56

Austria	Provisions are welcomed. Criticism however that they are complex and application will likely cause problems.
Belgium	N/A
Bulgaria	No data to tell.
Croatia	Until recently, there was no obligation under national law to take such circumstances into account, so typically there are not taken into account. It is expected that the court practice will change.
Cyprus	No data to tell. But provisions have potential to contribute to greater procedural efficiency
Czech	No data to tell.
Denmark	In theory yes. In Danish practice impact insignificant.
Estonia	No data to tell.
Finland	No data to tell.
France	No data to tell. However provisions are welcomed.
Germany	No data to tell. Probably it has contributed to greater procedural efficiency.
Greece	No data to tell.
Hungary	No data to tell.

Ireland	No data to tell. However provisions are welcomed.
Italy	No data to tell. In theory yes.
Latvia	No data to tell. However important addition to the Brussels Regime. Latvian legislation, court practice and even doctrine are not sufficiently developed in the area of private international law so the Latvian legal system greatly benefits from a more complete and elaborated regime of the EU legislation in this area. The provisions, in a long run, add to legal certainty and efficiency and will diminish the risk of irreconcilable judgments. In a short run, until these provisions are interpreted by the third instance rout, their efficiency may suffer from the inexperience of local courts.
Lithuania	No data to tell.
Luxembourg	No data to tell.
Malta	No data to tell.
The Netherlands	In combination with the discretionary power of the court inherent to the wordings of Article 33(1)(b) and 34(1)(c) (court is satisfied that a stay is necessary for the proper administration of justice), it is doubtful whether the provisions will contribute to greater procedural efficiency and increase legal certainty.
Poland	While provisions are welcomed, they may not alter largely the current procedural efficiency.
Portugal	No data to tell.
Romania	No data to tell but welcomed.
Slovakia	No data to tell.
Slovenia	Not considerably.
Spain	No problems.
Sweden	No data to tell.
UK	Yes, but several issues not addressed (e.g. property located third state)

Question 57

Austria	The last sentence of Recital 24 is of particular importance in Austria. In Austria, it is argued with respect to Brussels I that, if the defendant is domiciled in a Member State, the general provisions on jurisdiction would apply; however, for reasons of international fairness - Article 22 Brussels I also applies to parties domiciled in third countries - this Article will also apply in a mirror image if the decisive criterion of jurisdiction under Article 22 Brussels I is in a third country. Accordingly, the court having jurisdiction under Article 2 or Article 5 et seq. of the Brussels Regulation, in particular, if the third country has a corresponding compulsory jurisdiction in its law and would refuse the recognition and enforcement of the judgement from the state having jurisdiction according to Article 2 et seq. of the Brussels I Regulation, must

	reject the action on the grounds that, analogous to Article 22 of the Brussels Regulation, the courts of the third country have international (exclusive) jurisdiction. The OGH denies such a reflex effect of Article 22 Brussels I. In the case of an action for payment of a rent for a field situated in a third country (then Hungary), the OGH justified this by stating that a denial of Austrian international jurisdiction would lead to an unjustified impairment of the rights of the foreign creditor who wishes to enforce a pecuniary claim against an Austrian in Austria and, therefore, has to execute the enforcement in Austria as a whole. In any case - according to the OGH - Austrian jurisdiction should be given, despite the fact that the property is situated in a third country, if, as in the present case, a judgment given in the land in which the property is situated does not apply in Austria could be.
Belgium	N/A
Bulgaria	No data to tell.
Croatia	Change expected.
Cyprus	Yes. In one case a court distinguished between cases where it has discretion to dismiss pursuant to Article 34(3) Brussels Ia 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 pursuant to Article 33(3) Brussels Ia 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.
Czech	No data to tell.
Denmark	No case law; but literature notes the possibility of including such factors.
Estonia	No data to tell.
Finland	No data to tell.
France	No data to tell. According to French authors, the connection between the facts of the case and the parties in relation to the third state is bound to become an important criterion under Articles 33 and 34. A parallel is sometimes drawn in this regard with the forum non conveniens doctrine. Some French authors have however defended the idea that this connection is not a relevant factor of proper administration of justice, and turns out to be important only for the purpose of ordering provisional measures. The development of arbitration, and of choice-of-court agreements, under which no connection whatsoever is required between the seat of the tribunal and the dispute supports the latter opinion.
Germany	No data to tell.
Greece	No data to tell.
Hungary	No data to tell.

Ireland	No data to tell.
Italy	No data to tell.
Latvia	No data to tell.
Lithuania	No data to tell.
Luxembourg	No data to tell.
Malta	No data to tell.
The Netherlands	N/A
Poland	No data to tell.
Portugal	No data to tell.
Romania	In determining their jurisdiction, the Romanian courts consider also other elements such as the ones provided by Recital 24 and not only elements of procedural efficiency and connections between facts and parties in relation to the third state.
Slovakia	We suppose that the EU's accession to the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgements in Civil or Commercial Matters or the unification of the conditions for the recognition of judgements of third states in civil or commercial matters in the European Union will contribute to an increase in the effectiveness of the provisions of Articles 33 and 34.
Slovenia	No data to tell.
Spain	No problems.
Sweden	No data to tell.
UK	In Blomqvist v Zavarco Plc [2015] EWHC 1898 the court addressed all the factors in Recital 24 and then all other circumstances, taking specifically into account: whether the related proceedings in Malaysia would obviate the need for the English action to be resumed, and whether it would be proper for shareholders whose right's may be affected to claim compensation in Malaysia, rather at the company's seat in England.

Question 58

Austria	Q56
Belgium	Yes, with the caveat concerning its limited scope of applicability that excludes consumer and employment disputes.

Bulgaria	No data to tell.
Croatia	Yes, this is generally a sufficiently flexible mechanism.
Cyprus	Yes, this is generally a sufficiently flexible mechanism.
Czech	No data to tell.
Denmark	Yes.
Estonia	No data to tell.
Finland	No data to tell.
France	The criteria laid down in Articles 33 and 34 are generally considered as extremely flexible, and, for some of them, imprecise. This is especially the case of the references to a 'reasonable time' and to 'the proper administration of justice', which remain vague despite the indications provided for in recital 24. This lack of precision raises the risk of diverging appreciations between the courts of different Member States as to whether the criteria to stay the proceedings are met.
Germany	Yes.
Greece	No data to tell.
Hungary	No data to tell.
Ireland	See Q56
Italy	Yes.
Latvia	Yes.
Lithuania	Yes.
Luxembourg	The question is surprising. The provisions on parallel litigation are inspired by the civil law tradition, which has never addressed the issue with flexibility. The CJEU did not show any openness to flexibility in its Owusu decision.
Malta	No data to tell.
The Netherlands	The requirements laid down in these provisions to stay proceedings in favour of proceedings in a non-Member State are strict and do not provide much flexibility. It is unclear whether Articles 33/34 are meant to exhaustively regulate the relationship between proceedings in a Member State and a non Member State, or whether there is still scope for applying national law (e.g. in case of parallel proceedings, in case of an exclusive choice of forum clause for a third state court and this court being seised second).
Poland	Flexibility as such does not seems to be an issue with Articles 33 and 34 of the Brussels Ia Regulation. Quite the contrary, it can be argued that, at least within the recitals, the legislator could have been more specific about the

	interpretation of the terms 'involving the same cause of action', 'related action' and 'proper administration of justice'. It is not clear whether these terms should receive the same meaning as those used in the context of intra-EU situations and whether references to the concepts developed under national law in relation to third-state proceedings are excluded.
Portugal	Articles 33 and 34 are, in my opinion, an important innovation introduced by Brussels Ia Regulation. The admissibility of a margin of discretion regarding the relevance of lis pendens and pending related actions in third States courts is welcome. In any case, it should be combined with a limited reflexive effect of exclusive heads of jurisdiction established by the Regulation in order to take into account, within certain limits, the exclusive jurisdiction of third States courts, even if there is no pending action.
Romania	The mechanism is necessary and sufficiently flexible giving the national courts a margin of appreciation that is more extensive than the provisions involving similar situations with courts of other Member state. In view of the EU competence, when it comes to situations involving third countries, this more extensive level of appreciation is welcomed also in consideration of the possibility for the court that stayed proceedings to decide to continue proceedings at a subsequent moment in time in accordance with the situations established by Articles 33(2) and 34(2).
Slovakia	No data to tell.
Slovenia	No data to tell.
Spain	No problems.
Sweden	No data to tell.
UK	N/A

Question 59

Austria	Interpretation Article 35 controversial in writing. Debatable is: - Whether the term provisional measure can only subsume those measures the adoption of which presupposes particular urgency - Whether orders of acquiescence and injuctions should also be subsumed under the concept of provisional measures. Interpretation of case law hardly poses any problems.
Belgium	Court generally no. Two types of questions relating to provisional measures give rise to litigation in Belgian courts.

	1. Measure aimed at preserving evidence. Appointment of court expert in expedite proceedings with the aim of conserving evidence is a provisional measure covered by Article 35 Brussels Ia. 2. extent to which a provisional measure can result in circumventing the normal grounds of jurisdiction contained in Brussels Ia.
Bulgaria	No.
Croatia	No available judgements deal with this.
Cyprus	No undue difficulties so far.
Czech	Link or connection should be interpreted restrictively, in conformity with Van Uden (C-391/95).
Denmark	No reported case law.
Estonia	Issue found some attention in case law. Supreme Court found (as derived from the CJEU C-391/95) That 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. No real connecting link with the property.
Finland	No difficulties.
France	Several difficulties: - Interim payments made by the president of the tribunal. French courts have decided to transpose to these interim payment awards the approach adopted by the ECJ in the Van Uden C-391/95) and Mietz C-99/96). - Discussions regarding the qualification of decisions on preparatory measures (provisional as in Article 35 or performance of taking of evidence Regulation no. 1206/2001.) ECJ C-104/03 seems to exclude assimilation of these decisions to rpvisional measures within the meaning of Article 35, there are debates as to the correct interpretations of this decision. COur de cassation seems to depart from ECJ ruling. - Debates whether to include the catogery of provisional enforcement measures which aim at freeing the assets of defendants in order to guarantee the compliance with a prior decision. (positive answer Cour de cassation concerning the Mareva injuction/freezing order from

	London. It is not sure whether this solution is compatible with ECJ C-261/90.
Germany	No.
Greece	Greek courts apply the rule with respect to: - The arrest of ships - Temporary restraint - Domain name attachment
Hungary	No case law.
Ireland	No particular difficulty. Supreme court referred to CJEU 104/03 ST Paul's Dairy disclosure order was not type of measure that falls within Article 31 Regulation 44/2001.
Italy	No decisions. Adoption of provisional or protective measure requires a territorial connection with the case and are of no prejudice to the merit of the matters. Problems raised in the past in the case of seizure of internet domains. Gives an elaboration on what is required for provisional measures to be adopted.
Latvia	No cases found. However in literature argued that the Recast should do more on harmonizing the available provisional measures, to avoid disparity among Member States. Difficulties National law could paralyze the functioning of Article 35.
Lithuania	No big problems.
Luxembourg	Issue when judicial expertise is to be characterised as a provisional measure in the meaning of Article 35 is not clearly settled. In particular, it is unclear whether Luxembourg courts consider that appointing an expert for the purpose of merely establishing facts and gathering information is a provisional measure, or whether this would only be the case if th task of the expert was to protect evidence which otherwise be lost. Provisional payment orders were excluded from the scope of art. 35 by the Court of Appeal on the ground that such orders require an assessment of the

	merits of the case. This is clearly contrary to the case law of the CJEU as initiated in Van Uden Deco line C-391/95.
Malta	Does not appear to be the case. A court set three separate criteria to apply. (First Hall Civil Court).
The Netherlands	CJEU case law provided some clarity. Mietz intership yachting important for Dutch legal practice. Not all issues resolved. Preliminary expert opinion and a request o give access to bank statements.
Poland	No difficulties relating to the definition. Refers to CJEU C-104/03
Portugal	No difficulties. Only few cases published.
Romania	Case law shows no difficulties. Precautionary seizure or attachment is not covered by the definition of Article 2(a) Brussels Ia, because the defendant is not summoned to appear prior to the seizure. In practice, courts might at time be willing to issue such precautionary measure based on Article 35 Brussels Ia.
Slovakia	Decision described
Slovenia	No, but very little reported case law so far.
Spain	Article 35 is applicable when the provisional measure must be complied with in the Member State. Also applicable when an arbitrator hears the matter.
Sweden	No difficulties.
UK	No answer.

Question 60

Austria	Enforcement law subtext. 'the real connecting link therefore only exists to the courts of the Member State in whose territory the provisional measure is to be taken. The enforcement measure must be promising '

	'Specific movable tangible or immovable object' the real link exists if the object concerned is located in the State of the court seised'. Claim real link where the third-party debtor is domiciled or country where the bank is domiciled. Act: where the act is to be carried out. 'IN Austria, it is argued with regard to Brussels I bis that the additional conditions "formulated" by the ECJ are no longer necessary within the scope of application of the recast version. The need to protect other Member States and their Nationals as in d=the Van Uden case is no longer necessary under the Brussels Ia Regulation.
Belgium	N/A.
Bulgaria	localisation of the subject matter of the measures. In literature only the debtor: domicile of the debtor.
Croatia	No available judgements deal with this. Literature reiterates case law CJEU.
Cyprus	First instance court: 'crucial requirement of territorial connection between subject matter of the (interim) measures sought and the territorial jurisdiction of the member state's court to issue them.'
Czech	Subject matter of the measure sought and territorial jurisdiction of the court. Real connecting link narrowly interpreted.
Denmark	No reported case law. Literature: presence of goods.
Estonia	Answer previous question.
Finland	Assets subject to the matter located in Finland or that the measure for some other reason can be enforced in Finland. Not dealt with by courts or literature.
France	Abundant discussions. Among authors. Property or more largely the object of the provisional measure is situated on the territory of the Member States whose courts have been

	requested to issue the measure. (this view adopted by the cour de cassation is several cases. Injuction in personam (Mareva injuction/freezing order: where the person resides but property is located elsewhere.
Germany	No settled case law. Some authors doubt whether the 'real connecting link' condition in Van Uden is still to be applied.
Greece	- Real connecting link not clearly interpreted in Greek case law. Examples follow in three different groups: lack of jurisdiction, international jurisdiction confirmed, international jurisdiction confirmed, application dismissed on other reasons.
Hungary	No case law.
Ireland	No Irish authority on this.
Italy	Refers to previous answer.
Latvia	Literature Article 35 and arbitration . location of the debtor and his or her property. Courts go against Van Uden where territorial link would be sufficient to satisfy the territorial link requirement. In practice Van Uden used in a reverse manner to justify enactment of provisional measure qith extraterritorial effect by the appellate court.
Lithuania	Case 91/95 is usually cited. Connection interpreted broadly. For instance if goods are sold in Lithuania, provisional measures can be applied there.
Luxembourg	Traditionally ruled by courts that all provisional measure should be territorial and that they thus lack the power to order extra-territorial measures. This rule is still applied.
Malta	Has been considered by Maltese courts. 'it went on to add that Maltese civil procedural law allows the issue of interim measures in support of international arbitration proceedings without requiring that the debtor is present here or otherwise that the First Hall Civil Court has Jurisdiction.
The Netherlands	Court seems to interpret the link in a narrow manner. Lack of real connecting link when defendant not in the Nethelrands (Rotterdam court). There will be a real connecting link with the Dutch territory if the measure sought has to be executed in the Netherlands.
Poland	Where assets are located within the territory of a Member State.

	Authors: when a person is present within a territory of a member state (injuction). IN case law: court of the place where the assets subject to the measure under Article 35 of the Brussels Ia Regulation despite fact that the main proceedings are currently pending before a court of a different Member State. It can be inferred that a 'real connecting link' with one Member State is not affected by the proceedings instituted before the courts of another member State, even though they are exercising jurisdiction as to the substance of the matter.
Portugal	Only one judgement: conclusion based on Van Uden: no jurisdiction for the provisional seizure of a bank account located abroad.
Romania	Territorial connection.
Slovakia	Refers to Supreme Court decision.
Slovenia	Doubts raised whether it still applies after the recast: 'Van Uden condition that if the jurisdiction to grant protective measures is based on domestic laws there must be a real connecting link between the subject matter of the measure sought and the territorial jurisdiction of the court'. Since it is now in any case clear that a protective measure issued pursuant to national rules of jurisdiction has no cross-border effects, it is doubtful whether this additional restriction still applies. No case law concerning the issue yet and no case law within the context of brussels Ia. In legal writing: domicile of either of the parties, situs of assets/property at which the protective measure aims (e.g. freezing of the account) would form such sufficient and real connecting factor.
Spain	Provisional measures only ordered if executed in Spanish territory.
Sweden	No decisions and literature describes merelyt he case law of the CJEU.
UK	Literature: interpretation of 'real' discussed. Does the Van Uden requirement extent to all types of provisional measures or to apply only provisional measures that take effect in rem. It is suggested the Van Uden requirement applies to all types of provisional measures, irrespective of their nature. Real connecting link considered in English courts. Location of assets, parties or activities at stake and where the order must be executed.

	The court declined to make an order for disclosure of assets outside England and Wales, citing the lack of connecting link between the territorial jurisdiction of the court and the foreign assets. IN other case similar rational: no control over assets.

Question 61

Austria	No statistics, no judgements.
Belgium	N/A.
Bulgaria	No.
Croatia	Not to the knowledge of the reporter. Case law does not even mention the convention.
Cyprus	No instances identified.
Czech	No relevant case law.
Denmark	No.
Estonia	No. But has led to brainstorming with judges.
Finland	Never relied upon.
France	Convention not yet applied.
Germany	One reported decision, but convention not applicable due to temporal scope.
Greece	No case law reported so far.
Hungary	No case law.
Ireland	No not applied yet.
Italy	Not to the knowledge of the national reporter.
Latvia	No cases identified.
Lithuania	No cases found.

Luxembourg	Not to the knowledge of the National Reporter.
Malta	As far as the reporters are aware: no.
The Netherlands	One case in which the convention was applied. The Dutch court declined jursidictionin favour of the court in Antwerp. The court was mistaken in applying the convention instead of the Brussels Ia Regulation and was also mistaken in the temporal scope of application.
Poland	Inspiration drawn from by courts, but no situation as the question.
Portugal	No case law applying the convention.
Romania	No decision.
Slovakia	No decisions found.
Slovenia	No to the knowledge of the National Reporter.
Spain	No particular problems.
Sweden	Not so far.
UK	No answer.

Question 62

Austria	No statistics or published judgments available. A court was asked and `indicated that such proceedings are hardly ever carried out in Austria.
Belgium	N/A
Bulgaria	N/A
Croatia	Difficult to keep track of one particular type of judgment.
Cyprus	No reported cases.
Czech	No application submitted so far.
Denmark	No reported cases.
Estonia	No case law no literature.
Finland	No statistics, but assumed that it is hardly ever employed.

France	Difficult to tell, but procedure is well known in French private international law and that one is regularly resorted to. Authors have underlined that the procedure under Article 36 (2) is not unilateral but contradictory, which may limit the success of this new procedure.
Germany	No reported case law. Such an application seems quite rare.
Greece	Did not appear in court practice.
Hungary	Not aware of statistical data. With exequatur procedure not many objections.
Ireland	Not aware of statistical data.
Italy	Not aware of statistics.
Latvia	No cases identified.
Lithuania	One case was found in 'the system'
Luxembourg	Judicial statistics are not precise enough to answer the question.
Malta	Used once in 2019 and one case pending.
The Netherlands	Information N/A.
Poland	Analysis has not revealed any instances of application of this provision.
Portugal	Never addressed in a published Portugese case.
Romania	No statistics available.
Slovakia	No statistics available.
Slovenia	In Slovenia a court of law is involved initially when it comes to foreign creditors. Elaborate description.
Spain	No instructions.
Sweden	There has been some training. Additional advice is provided in an internal handbook of the enforcement authority.
UK	No answer.

Question 63

Austria	Judicial enforcement approval is required; enforcement is carried out by court employees. There are regular and advanced trainng courses available.

Belgium	National Chamber of Court Bailiffs offers training about EU instruments including Brussels Ia. E-learing platform developed in cooperation with National Chambers counterpart in France Italy, Luxembourg and Poland.
Bulgaria	No specialization of local jurisdiction for enforcement of judgements.
Croatia	Croatian Judicial Academy organizes life-long learning courses for the judiciary (with regard to judicial enforcement agents). With other agents it is not so transparent whether they have received specific training.
Cyprus	It does not seem so.
Czech	To knowledge of the National reporters, no specific training.
Denmark	Foreign judgments are enforced by courts only.
Estonia	Yes, but in the context of other regulations (the European Enforcement Order Regulation, the European Order for Payment Regulation, the European small Claims Regulation), organised by the University of Tartu, Faculty of law. Also other trainings organised by a non-profit Estonian Lawyers Association (Juristide Liit).
Finland	No special training But the general training program includes lectures on such enforcement requests.
France	Main initiative that Reporter is aware of: European Judicial officer's e-learning project (EJL) developed by the CEHJ Chambre europeenne des huissiers de justice in partnership with ENP Ecole nationale de la magistrature. This proposes an e-learning platform for all judicial officiers/enforcement officers of the Member States encompassing Brussels Ia Regulation.
Germany	Specific measures run by Federal states. Judicial Academy in Northrine Westphalia offers a course on cross-border enforcement for enforcement agents. Generally such courses are not mandatory, the individual can choose from a range of topics.
Greece	No training ever scheduled or even perceived as a possibility.

	'The scarcity of cases in practice, coupled with other existential problems of the profession of enforcement agents work as a disincentive to any initiative towards this direction.'
Hungary	Not aware of any special program.
Ireland	Not aware of any such training programme.
Italy	No direct knowledge on this point.
Latvia	Information of council of sworn Bailiffs: twice a year council organises different trainings for bailiffs that sometimes also deal with recognition of foreign rulings, but no exclusive focus on the recast.
Lithuania	Some training when it came into force and also now.
Luxembourg	No training was organised.
Malta	As far as the reporters are aware: no.
The Netherlands	According to empirical research indicates that more than one fourth of the suvey respondents (Dutch practicioners) were not or only limited aware of the changes brought by the Brussels Ia Regulation and the implementing act.
Poland	'Workshops and training courses' organised before and after the date of application of the Regulation (data provided by judiciary and enforcement agents).
Portugal	Not aware of any specific training or instruction.
Romania	It is likely that no compulsory training has been organised. But it is likely some have received pecific trainings or participated in workshops. Such events are usually part of continuing trainng eventsvorganised by Romanian professional organisations that judges and bailiffs belong to, the National Magistry Institute, the European Judicial Training Network, and/or universities and legal editing houses.
Slovakia	No information available.
Slovenia	Courts initially involved in foreign proceedings.
Spain	No instructions so far.
Sweden	Some training and additional advice provided in an internal handbook of the Enforcement Agency.
UK	No answer.

Question 63

Austria	Judicial enforcement approval is required; enforcement is carried out by court employees. There are regular and advanced training courses available.
Belgium	National Chamber of Court Bailiffs offers training about EU instruments including Brussels Ia. E-learning platform developed in cooperation with National Chambers counterpart in France Italy, Luxembourg and Poland.
Bulgaria	'Only few trainings took place. The main trainings were organized by the Bulgarian Chamber of Private Enforcement Agents and by the European School on Enforcement.'
Croatia	Croatian Judicial Academy organizes life-long learning courses for the judiciary (with regard to judicial enforcement agents). With other agents it is not so transparent whether they have received specific training.
Cyprus	It does not seem so.
Czech	To knowledge of the National reporters, no specific training.
Denmark	Foreign judgments are enforced by courts only.
Estonia	Yes, but in the context of other regulations (the European Enforcement Order Regulation, the European Order for Payment Regulation, the European small Claims Regulation), organised by the University of Tartu, Faculty of law. Also other trainings organised by a non-profit Estonian Lawyers Association (Juristide Liit).
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France	Main initiative that Reporter is aware of: European Judicial officer's e-learning project (EJL) developed by the CEHJ Chambre europeenne des huissiers de justice in partnership with ENP Ecole nationale de la magistrature. This proposes an e-learning platform for all judicial officiers/enforcement officers of the Member States encompassing Brussels Ia Regulation.
Germany	Specific measures run by Federal states. Judicial Academy in Northrine Westphalia offers a course on cross-border enforcement for enforcement agents. Generally such courses are not mandatory, the individual can choose from a range of topics.

Greece	No training ever scheduled or even perceived as a possibility. 'The scarcity of cases in practice, coupled with other existential problems of the profession of enforcement agents work as a disincentive to any initiative towards this direction.'
Hungary	Not aware of any special program.
Ireland	Not aware of any such training programme.
Italy	No direct knowledge on this point.
Latvia	Information of council of sworn Bailiffs: twice a year council organises different trainings for bailiffs that sometimes also deal with recognition of foreign rulings, but no exclusive focus on the recast.
Lithuania	Some training when it came into force and also now.
Luxembourg	No training was organised.
Malta	As far as the reporters are aware: no.
The Netherlands	Empirical research indicates that more than one fourth of the survey respondents (Dutch practitioners) were not or only limited aware of the changes brought by the Brussels Ia Regulation and the implementing act.
Poland	'Workshops and training courses' organised before and after the date of application of the Regulation (data provided by judiciary and enforcement agents).
Portugal	Not aware of any specific training or instruction.
Romania	It is likely that no compulsory training has been organised. But it is likely some have received specific trainings or participated in workshops. Such events are usually part of continuing training events organised by Romanian professional organisations that judges and bailiffs belong to, the National Magistry Institute, the European Judicial Training Network, and/or universities and legal editing houses.
Slovakia	No information available.
Slovenia	Courts initially involved in foreign proceedings.
Spain	No instructions so far.
Sweden	Some training and additional advice provided in an internal handbook of the Enforcement Agency.
UK	No answer.

Question 64

Austria	'In Austria, district courts have jurisdiction over enforcement approval and enforcement proceedings. Local jurisdiction is determined in accordance with Article 18 EO.' National reporter elaborates on the rules of jurisdiction.
Belgium	'It is unclear to where competence to hear actions aimed against enforcement of a judgement should be brought in Belgium.' The first instance court has jurisdiction, but it was not specified which 'court from the perspective of territorial jurisdiction was named (declaration under Article 75(a) Brussels Ia. 'It is submitted that a more precise drafting of the Brussels Ia Regulation could have avoided this issue.'
Bulgaria	No concentration and no specialization of local jurisdiction.
Croatia	No concentration of local jurisdiction; '[a]ll municipal and county courts in Croatia are competent to act in such cases.'
Cyprus	No.
Czech	'Implementation of the territoriality principle (local jurisdiction of executors) is being discussed, but does not relate specifically to the enforcement of judgments rendered in other Member States.' 'At present, such a concentration does not exist.' Execution is administered by the executor 'designated in the execution motion by the entitled person and recorded in the Register of commenced executions (section 28 of the Execution Order).'
Denmark	No sufficient data to answer the question.
Estonia	'No. Estonia is a small country so there is no need for that.'
Finland	No concentration of local jurisdiction.
France	Not that the National Reporter knows of.
Germany	No.
Greece	There is absolutely no reported practice of enforcement under the Brussels Ia Regulation. No steps taken to specialise by 'Federation of Bailiffs.
Hungary	No.
Ireland	Not aware of any such measure.
Italy	For companies there is a territorial concentration at the regional level (some regions might have two bodies – Tribunale delle impresse)
Latvia	No concentration of specialised enforcement agents for foreign judgments.
Lithuania	All bailiffs can enforce the judgments, no specialized bailiffs.

Luxembourg	No the country is too small to consider such a move. In practice the majority of the cases are brought to the courts of Luxembourg city, which is therefore the most specialized in the country
Malta	As far as the reporters are aware: no.
The Netherlands	No.
Poland	No concentration.
Portugal	No. There are no specific legislative or administrative measures regarding the enforcement under the Brussels Ia Regulation.
Romania	No concentration. 'However, the tribunalurile (general courts) are usually the ones dealing with such issues in Romania'.
Slovakia	No reported practice under the Brussels Ia Regulation.
Slovenia	'No, all local courts are vested with jurisdiction. Rules of territorial jurisdiction, set out in the Enforcement of Judgments and Provisional Measures Act apply.'
Spain	Not at all.
Sweden	'The Swedish Enforcement Authority (Kronofogden) is a single agency with competence for the whole country, even though it has 23 local offices.'
UK	No answer.

Question 65

Austria	'In Austria, there are special provisions in the Enforcement Code (EO) which take account of the provisions of Brussels Ia.' 404 EO: adaption foreign enforcement titles. 418 EO: regulations for the refusal procedure under Article 46.
Belgium	N/A
Bulgaria	No writ of enforcement.
Croatia	No such measures.
Cyprus	No, there have not.
Czech	Act no 629/2004 Coll. On securing of legal assistance in cross-border disputes in the framework of the EU which implements directive no 2003/8/EC to improve access to justice in cross-border disputes, applies. It includes general rules in accordance with the Directive, but there are no specific rules

	facilitating the direct access of creditors from other Member States to the enforcement agents.
Denmark	No.
Estonia	Active in EU's e-codex project, but it does not seem to deal with the regulation.
Finland	No other measures.
France	Not that the National Reporter knows of, but it is often underlined that enforcement proceedings in France are efficient and fast.
Germany	'Federal office of Justice (Bundesamt für Justiz) offers free assistance 'for the enforcement of foreign titles in the field of maintenance. It is the exclusive Central Authority for the assertion of claim both in and out of court in maintenance cases. IN civil and commercial matters there is no such assistance.'
Greece	Nothing.
Hungary	No.
Ireland	Not aware of any such measure.
Italy	Not to the knowledge of the National Reporters.
Latvia	No, there are no such measures.
Lithuania	Special law for implementation of EU and other international laws on international civil procedure. The rules of the law are mainly devoted to the measures courts can take, only it is mentioned that creditors can initiate enforcement procedures with the help of a bailiff.
Luxembourg	No.
Malta	As far as the reporters are aware: no.
The Netherlands	Information N/A.
Poland	Seems not.
Portugal	No. There are no specific legislative or administrative measures regarding the enforcement under the Brussels Ia Regulation.
Romania	No. There is a law to indicate which courts are competent to deal with matters relating to contesting and/or refusing recognition and enforcement requests in Romania and the courts that are competent to issue the certificate.
Slovakia	No reported practice under the Brussels Ia Regulation.
Slovenia	No.

Spain	No specific measures.
Sweden	Website of the Enforcement Authority is accessible in 11 linguistic versions, including English.
UK	No answer.

Question 66

Austria	No statistical analysis available to answer the question.
Belgium	N/A
Bulgaria	Information not structured and therefore not available.
Croatia	No available statistics.
Cyprus	No, statistics available. Available data does not indicate any enhancement in the number of attempts to enforce judgments rendered in other Member States.
Czech	No statistics available.
Denmark	The available statistics do not show enforcement of judgments abroad or of foreign judgements in Denmark.
Estonia	No statistics on that and no way to assume any information on it. Too early to assess because have just not yet reached the courts.
Finland	No statistics available.
France	Not aware of data or statistics. But since enforcement proceedings were already efficient and fast under Brussels the transgression may not enhance much the number to attempt enforcement.
Germany	No statistics available.
Greece	Landscape is pretty vague. It can be speculated in two ways. Either enhanced or not (not because of 'Grexit and 'the ensuing lack of confidence from foreign creditors to engage into business with Greek entities or entrepreneurs.
Hungary	No statistics available.
Ireland	Not aware of any such statistics.
Italy	To the knowledge of the National Reporters no specific statistics.
Latvia	No, public available statistics. Impossible to make an evalutation.

Lithuania	No official statistics. The Chamber of Bailiffs only stressed that the overall number of cross-border enforcements has increased. They believe this has to do with the amendments in Brussels Ia Regulation, but also with the fact that there are more cross-border disputes.
Luxembourg	President national association of enforcement officers (huissiers) of Luxembourg reports that the number of attempts to enforce foreign judgments has significantly increased. There are no statistics however.
Malta	As far as the reporters are aware: no. Usually influenced by presence of assets in Matla. No such data available.
The Netherlands	Information N/A.
Poland	No data available. However, the number does not seem to have increased due to the transgression of direct enforcement.
Portugal	Not aware of enhanced number.
Romania	No statistics available. Between 2014-2016 courts no involved in any request for enforcement due to the amendments of the New Code of Civil Procedure.
Slovakia	No statistics available.
Slovenia	No available data yet.
Spain	No particular answers have arisen with regard to the issue.
Sweden	There are no available statistics.
UK	No answer.

Question 67

Austria	No special problems. 'Individual questions are controversial in legal writing.' 'debatable whether court can take more into account more grounds for refusal into account than relied upon in the application for refusal of enforcement'. Largely argued distinction between the individual grounds for refusal should be made. 'Reasons which serve the interests of the state and which are beyond control of the parties – such as a manifest breach of public policy', must be exercised ex officio, i.e. irrespective of whether the applicant invokes this ground for refusal. An infringement of a place of jurisdiction laid down in Article 24 must also be taken into account ex officio because exclusive place of jurisdiction are excluded from the parties' disposition.' Furthermore, the grounds for refusal

	in Article 45 (1) (c) and (d) – i.e. if the judgment is irreconcilable with a judgement given between the same parties in the Member State addressed or with an earlier judgement given in another Member State or in a third State, which fulfills the conditions for its recognition – must be exercised ex officio. In contrast, Article 41 (1)(b) and Article 45(1)(e)(i) concern aspects which the parties may dispose of (e.g. by not exercising the right to be heard or by refraining from pleading lack of jurisdiction); for this reason, the application of the principle of negotiation seems appropriate here; an examination is, therefore, not carried out ex officio, but only on condition that the applicant invokes the ground for refusal.' 'It is also disputed whether grounds other than those referred to in Article 45 may also be invoked in the proceedings for refusal of enforcement. According to the views held by some legal writers, only the grounds for refusal laid down in Article 45 can be examined in the context of the proceedings for refusal of enforcement; others argue that other grounds leading to refusal of enforcement under national law can also be invoked in the proceedings for refusal of enforcement. According to the views of other legal writers , other grounds can only be invoked in proceedings for refusal of enforcement if they are undisputed.
Belgium	'The constitutional Court issued a judgement on the compatibility of Art 1412*quinquis* of the Belgian code of civil procedure that confirms that the assets of a foreign state in Belgium cannot be seized. The claimant alleged that this provision violated the principle implemented by the Brussels Ia according to which judgments shall be enforceable without any declaration of enforceability being required (Art 39 Brussels Ia). The proivision of the code of civil procedure was found to be compatible with the Brussels Ia Regulation, because it did not empede the enforcement of a judgement and complied with the customary rules of international law [reference to literature made].'
Bulgaria	N/A
Croatia	Not to the knowledge of the National Reporter.
Cyprus	Issue not yet properly addressed in case law or literature. No particular problems so far reported.
Czech	So far, no particular problems. However there were some problems with the declaration of enforceability, which was a legal institution unknown to Czech law.
Denmark	No, this does not appear to be the case.
Estonia	Issue not dealt with in case law or literature. 'In one case an issue arose whether the enforcement title within the meaning of Estonian enforcement law was the foreign judgement or the certificate issued about the judgement by a foreign court, but this question does not have much practical value as both documents are presented together to the enforcement officer.'

Finland	So far no particular problems.
France	Two series of problems: 1 Article 41 (2) (see next question) 2. Article 44(1) It has been underlined that this provision gives full latitude to the court in order to decide whether to: a) limit the enforcement proceedings to protective measures b) make enforcement conditional on the provision of such security as it shall determine; or c) suspend either wholly or in part, the enforcement proceedings'. 'No criterion is given in order to decide upon such measures and to choose between the three optional measures provided for. The risk is therefore that diverging practices will be adopted by the courts and tribunals of the different Member States on this key issue.'
Germany	No.
Greece	'Given that no case law exists, the problems are yet to come. This assumption is based on the omission of state to pass implementing legislation, in spite of the grave problems highlighted by legal scholars. Waiting for first case to cope with the issue. For the time being, and in spite of sufficient publications on the matter, confusion prevails in practice. In the scarce cases, […] judgement creditors are still applying the old regime. In other words, we are still face with mistakenly initiated exequatur proceedings […]'
Hungary	No case law.
Ireland	Not aware of any particular problems.
Italy	'In general terms, the abolishment of material norms on the opposition procedure raises some doubts and concerns.' It remains dubious how materially the court will make recourse ex officio to the suspension of the enforcement under Art. 38 of the Brussels I bis Regulation where the execution of the foreign judgment is an ancillary or connected question. Where the execution of the foreign judement is the main action of the proceedings, a purely anticipatory judgment of the absence of grounds to refuse recognition and enforcement (Art. 36.2) is allowed a purely anticipatory judgment to obtain a pre-emptive negative declaration on to enforcement (Art. 46-47) is not allowed.

	The lack of material provisions in the new regulation does not prejudice the principle of effectiveness of national procedures. Nonetheless, even though enforcement of foreign judgments is the final aim, renvoi to domestic laws imposes also pre-emptive notification of the title along with the order to pay or execute the foreign decision in a given time. Only after the expiration of this deadline *usually minimum 40 days), access to enforcement proceedings is allowed. Competence over such proceedings have given to tribunals, rather than to court of appeals as was under the regulation 44/2001. Competence of tribunals is non-derogable, and cannot be shared with other first instances courts that might have competence for the value of the claim, as is for justices of the peace. Under Italian law, within the tribunal, if execution has not already begun (art 615 code of civil procedure), territorial competence is regulated by art. 27 of the code; if execution is materially already begun, the territorial competence rests with the court before which the enforcement proceedings is started. However, where enforcement under the Brussels I bis regulation is at stake, the ordinary tribunal is the sole competent for both pre-emptive positive declarations and for opposition to enforcement.'
Latvia	So far no problem in practice.
Lithuania	So far no big problems.
Luxembourg	Not to the knowledge of the author.
Malta	So far no.
The Netherlands	Information N/A.
Poland	No particular problems.
Portugal	Not aware of any problems, but it is very likely that they will occur in the lack of implementing rules.
Romania	Some divergent practices of courts 'as regards to the type of courts competent to issue the writ of execution in order for bailiffs to proceed to the enforcement of decisions certified in accordance with Brussels Ia. The problem seem to be generated by the interaction between national procedureal rules (Article 1103 and Article 666 NCPC), O.U.G. No 119/2007 (Article 1[4 and 12) and the provisions Brussels Ia with regard to the court competent to issue the writ of execution. In some decisions, the courts consider this to be the competence of the tribunal (general court) in some this is the judecatoria (district court). The situation is generated by the fact Article 114 of the O.U.G. No 119/2007 does not contain a dedicated provision to the execution, but this is the case with the provisions concerning the previous text of the Regulation Brussels I (Article I2 O.U.G. No 119/2007).'

Slovakia	No reported practice under the Brussels Ia regulation.
Slovenia	'So far only in legal writing. Opinions differ whether grounds for non-enforcement under national law ("enforcement law objections") and grounds for denial of enforcement of the Brussels I regulation ("international private law objections") can be simultaneously invoked in the same set of proceedings. It is controversial both whether (1) grounds of "international private law objections" can be invoked in enforcement proceedings as well as (2) whether grounds of ("enforcement law objections") can be invoked in proceedings with application for refusal of enforcement pursuant to Art. 45. Some authors opine that both (or at least the latter) is possible.' In the opinion of the National Reporter neither is possible. See National Report.
Spain	No particular problems.
Sweden	No.
UK	No answer.

Question 68

Austria	Refers to answer question 14.
Belgium	'Couwenbergh noted that it is unclear whether the enforcement judge can apply the new grounds of refusal emanating from residua private international law alongside the grounds of refusal contained in Art. 45 Brussels Ia. Some argue that the national grounds of refusal may only be examined during the stage of actual enforcement.'
Bulgaria	N/A
Croatia	'No, because according to the Law on enforcement there are no grounds for refusal or suspension of enforcement which are incompatible with the grounds referred to in Art. 45 Brussels Ia.'
Cyprus	Issue not addressed in case law or literature.
Czech	Not so far been dealt with.
Denmark	No.
Estonia	Yes in a way.

	Discussion in Estonian legal literature about a somehow similar rule contained in the European Enforcement Order Regulation. Some think rules limiting enforcement as contained in Estonian national law can be used when enforcing judgements under the European Enforcement Order, others think that these rules cannot be used as they are not in line with the European Enforcement 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 Ia Regulation.'
Finland	Seems not to have attracted specific attention.
France	Criticism for three main reasons" 1. The opportunity to provide for the application of the grounds for refusal or of suspension of the enforcement under the law of the Member State whose court is seized is debetaed: even though Article 41 (2) may only clarify a solution which had already been adopted under Brussels I Regulation – see in this regard CJEU 13 October 2011, C-139/10, Prism Investment – it results in a paradoxical situation. Indeed it seems, to a certain extent, in opposition with one of the goals of the Recast, which, through the suppression of the exequatur, sought to facilitate the movement of decisions within the European judicial area. 2. Limits may vary between Member States since they stem from their national law. 3. test of compatibility of the grounds 'may prove difficult to implement in practice'. Only example cited in French literature of a compatible ground for refusal 'is the fact that the decision has already been executed, with reference to Prism Investment.
Germany	Not so far.
Greece	From a court practice point of view, not yet.
Hungary	No case law.
Ireland	No.
Italy	To the knowledge of the National Reporter not in case law.
Latvia	So far it does not seem to have been discussed in academic literature or invoked publicly in case law.
Lithuania	No problems could be found.
Luxembourg	Not to the knowledge of the author.
Malta	So far no.
The Netherlands	No case law found.

Poland	No case law. Discussion in doctrine focuses mainly on the interplay between the actions leading to the opposition proceedings, and the (third part) interpleader actions. It is claimed that these actions may be brought by, respectively, a debtor or a third party as long as these actions do not conflict with the grounds for refusal of enforcement provided in for by the Brussels Ia Regulation.
Portugal	Mentioned in textbook, but no specific attention to the knowledge of the author in case law or literature. It seems that this provision shall be interpreted in line with the CJEU case law regarding enforcement.
Romania	No decision could be identified and no specific attention from scholars.
Slovakia	No reported practice under the Brussels Ia regulation.
Slovenia	Only in legal writing: with a conclusion that the rule is unclear and with opinion that none of the grounds for refusal of enforcement in Slovenian national law are incompatible with the grounds referred to in Art. 45.
Spain	Not at all.
Sweden	No.
UK	No answer.

Question 69

Austria	No statistics or published judgements available.
Belgium	No statitics.
Bulgaria	N/A
Croatia	No such statistics.
Cyprus	No relevant statistics available.
Czech	Not so far been dealt with, to the knowledge of the National Reporter.
Denmark	No such statistics available.
Estonia	No case law, no literature, no statistics.
Finland	No statistics.
France	No statistics, but enforcement proceedings in general considered quick and fast.
Germany	No statistics.
Greece	No reported or unreported cases.

Hungary	Not aware of statistics.
Ireland	Not aware of any such statistics.
Italy	To the knowledge of the National Reporter no specific statistics.
Latvia	Impossible to determine the number of cases.
Lithuania	Exact statistics are very difficult to find. General statistics on recognition and enforcement is only collected. Only a few attempts could be found that a procedure according to Article 46 has been used. All attempts have not been successful. Some judges in the Lithuanian court of appeals (which is responsible for hearing cases on recognition an enforcement of foreign judgments) even mentioned that they forgot that such procedure is possible according to Brussels Ia.
Luxembourg	Statistics not so precise in Luxembourg. They only reveal how many exequatur cases were handled by the President of the Main First Instance court and such cases likely include Art 46 procedures. Given the rule determining the temporal scope of the Regulation, there is no way to know which procedure was used in a given case at the present time.
Malta	No.
The Netherlands	Sparse examples In which Article 46 is being applied. In one case it was decided that appeal in France of a judgement, was no reason to suspend enforcement based on a manifest violation of public policy. 'The court held that since the appellate proceedings in France did not have suspensory effect, the decision was considered enforceable. The enforcement of the (enforceable) decision does not constitute a manifest violation of public policy''.
Poland	Such statistics are not kept.
Portugal	No statistics available regarding proceedings for refusal of enforcement.
Romania	No available statistics.
Slovakia	No statistics available.
Slovenia	No available data yet.
Spain	Not at all.
Sweden	No available statistics.
UK	No answer.

Question 70

Austria	No statistics or published judgements available.
Belgium	'It has been argued that Article 45 generelly is infringed by Belgium's Statute qualifying enforcement of judgements in favour of ''vulture funds'. The Statute provides that such enforcement is per se against Belgium's ordre public. Applicants argued inter alia that a per se violation infringes Brussels Ia's requirement that ordre public refusals be case-sepcific. The Constitutional Court, however, did not engage with these European issues in its rejection of the complaint.'
Bulgaria	'Article 45(1)(a) and 9 (b) continue to be the mostly invoked grounds for refusal of recognition and enforcement. The rate of success unfortunately cannot be evaluated considering the lack of statistics and comprehensive publicly accessible case law data base.
Croatia	No it has not.
Cyprus	No data or statistics available. Review of available case law would not indicate any changes since the advent of the reverse procedure.
Czech	Not so far been dealt with, to the knowledge of the National Reporter. 'Public policy as a ground for refusal of recognition has always been interpreted restrictively' also in relation to Brussels I.
Denmark	No reported cases under Brussels Ia.
Estonia	Issue not been dealt with in Estonian case law or literature. Experience of Estionian courts 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 Estonian PIL instrument, such as the New York Convention on Arbitral Awards, but these are rare.
Finland	No statistics. No indication that there is a change.
France	No clear empirical data, but according to National Reporter will likely not change. Grounds rarely invoked in French courts and success rate remains low.
Germany	Hard to tell in the absence of empirical data.
Greece	No reported or unreported cases so far. Supreme court did once dismiss public policy allegation in recognition and enforcement of French ordonnance case.
Hungary	Case about service of documents: ' In case of an error of service, the primary question is whether the error was grave enough to deprive the defendant of the possibility to defend himself.

	'in the recognition and enforcement stage, the court may not inquire whether the service of the document instituting the procedure comply with the rules, thus, the debtor cannot abuse its rights and evade enforcement if there is merely a formal error of service that did not hinder him in his right of defence. If the defendants right of defence was impaired during the service of the document instituting the procedure, he is expected to exhaust the legal remedies available to him. If he fails to do so, the error of service does not entail the refusal of recognition. According to the court, in the recognition and enforcement stage, it is not necessary to examine whether the service complied with the rules, the mere fact that an error occurred is not susceptible of triggering the refusal of recognition. The court held that in the recognition stage it may be examined only whether the service of the document occurred "in sufficient time and in such a way" that it did not impair the defendant's right of defence.'
Ireland	Not aware of any such statistics or data.
Italy	To the knowledge of the National Reporter no significant shift in numbers – already prior to the abolition of exequatur, under the Brussels I regime, numbers in civil and commercial and civil matters were nonetheless quite small, and even smaller where such grounds have been successfully invoked.
Latvia	Impossible to find information on any change in number of challenges or their success after the introduction of the 'reverse procedure'.
Lithuania	No successful challenges could be found.
Luxembourg	Refers to answer question 69.
Malta	No, not able to remark anything on this matter. No cases of decided of such challenges within the context of Brussels Ia. Numerous cases in Brussels I.
The Netherlands	Refers to PIL database Asser Institute shows only two cases referring to Article 45 both not leading to refusal of recognition or enforcement. Database shows only a limited number of cases applying Article 34 Brussels I Regulation, application of provision dismissed in two lower court cases in 2013/2014.
Poland	Under Brussels I often invoked, the national courts proceeded with caution and rarely refused recognition on these grounds. The statistical chance of success does not seem to have been altered with Brussels Ia. However there does not seem to be enough data to give a precise answer to this question.
Portugal	No published Portuguese case involving Article 45 (1) and no other data on its application by Portugese courts.
Romania	No available statistics.
Slovakia	No statistics available.
Slovenia	No available data yet.

Spain	No change observed. How the decision was reached in the Member State of origin can not be assessed to oppose public policy to the recognition of the decision in the requested member State. Recognition may affect the public policy if the requested Member State only when the ruling and other legal pronouncements contained in the recognised resolution disturbs, damages and seriously harms the fundamental legal principles of the requested Member State. Only decisions are recognised, not facts or the legal-intellectual process that led to the decision.
Sweden	No available statistics, but answer should probably be no.
UK	No answer.

Question 71

Austria	No statistics or published judgements available.
Belgium	N/A
Bulgaria	No information available to rely on.
Croatia	No such statistics.
Cyprus	Issue not addressed in case law or literature. No changes have been observed.
Czech	Not so far been dealt with, to the knowledge of the National Reporter.
Denmark	No reported cases under Brussels Ia.
Estonia	Issue not been dealt with in Estonian case law or literature.
Finland	No available data.
France	Extension hailed in France as positive, no reason for distinction with insurance or consumer matters. However it will have very limited impact in practice insofar as it only concerns cases where the employee was the defendant in the initial proceedings. And when employee was not domiciled in a member state but a third country, no exclusive jurisdiction based on French Labour code. Not abided no grounds for refusal.
Germany	No statistics available.
Greece	No reported or unreported cases so far.
Hungary	Not aware of any statistics so far.

Ireland	Not aware of any such statistics or data.
Italy	Not to the knowledge of the National Reporter.
Latvia	No publicly available case law. Own practice shows that these cases do not occur often, usually commercial cases.
Lithuania	No cases could be found.
Luxembourg	Not aware of a change due to reform.
Malta	No material difference observed.
The Netherlands	Information N/A.
Poland	No case law allowing to answer this question.
Portugal	No published Portuguese cases and no other data on its application by Portugese courts.
Romania	No available statistics to asses this.
Slovakia	No statistics available.
Slovenia	No experience yet.
Spain	No particular problems.
Sweden	No.
UK	No answer.

Question 71

Austria	No statistics or published judgements available.
Belgium	N/A
Bulgaria	No information available to rely on.
Croatia	No such statistics.
Cyprus	Issue not addressed in case law or literature. No changes have been observed.
Czech	Not so far been dealt with, to the knowledge of the National Reporter.
Denmark	No reported cases under Brussels Ia.

Estonia	Issue not been dealt with in Estonian case law or literature.
Finland	No available data.
France	Extension hailed in France as positive, no reason for distinction with insurance or consumer matters. However it will have very limited impact in practice insofar as it only concerns cases where the employee was the defendant in the initial proceedings. And when employee was not domiciled in a member state but a third country, no exclusive jurisdiction based on French Labour code. Not abided no grounds for refusal.
Germany	No statistics available.
Greece	No reported or unreported cases so far.
Hungary	Not aware of any statistics so far.
Ireland	Not aware of any such statistics or data.
Italy	Not to the knowledge of the National Reporter.
Latvia	No publicly available case law. Own practice shows that these cases do not occur often, usually commercial cases.
Lithuania	No cases could be found.
Luxembourg	Not aware of a change due to reform.
Malta	No material difference observed.
The Netherlands	Information N/A.
Poland	No case law allowing to answer this question.
Portugal	No published Portuguese cases and no other data on its application by Portugese courts.
Romania	No available statistics to asses this.
Slovakia	No statistics available.
Slovenia	No experience yet.
Spain	No particular problems.
Sweden	No.
UK	No answer.

Question 72

Austria	In Austrian law prohibition was recognised before Austria joined the EU and there are no violations of this rule.
Belgium	N/A
Bulgaria	Yes.
Croatia	Yes.
Cyprus	Yes, generally complied with.
Czech	Traditional principle in Czech private international law and has been explicitly observed in case law relating to the Brussels regulations.
Denmark	No reported cases.
Estonia	Yes.
Finland	Yes.
France	Key principle in French private international law and is applied very strictly even though some older decisions disregard the princinple. 'Moreover, even though revision au fond is exceptionally admitted for the purposes of deciding whether there is a ground for refusal of recognition and enforcement of the decision, the Cour the cassation remains extremely strict in this situation as well, and makes sure that refusals of recognition and enforcement by inferior courts remain exceptional, refers to rare examples of refusal of recognition based upon public policy. Besides, there are discussions as to whether the court, when seized with a claim for recognition and enforcement of a decision originating from a court which ruled it had jurisdiction according to the Regulation is entitled to verify the applicability of the Regulation before the court of origin. It proves more difficult to assess the practice of enforcement agents but [the guess of the national reporter is] that they also refrain from revising foreign judgments.'
Germany	Yes, no reported case law to indicate the contrary.
Greece	No reported or even unreported cases available so far, but courts always complied in the previous regimes. Refers to case law.
Hungary	Yes, widely recognised and complied with.
Ireland	Irish courts not always complied with this strict prohibition, case law mentioned in relation to the justification of invocation opf public policy and differences in domestic law in which it 'is arguable that the High Court did not observe the ECJ's guidance in (C-7/98 Krombach/Bamberski and C-38/98 Renault/Maxicar)'

	Danish law admission of evidence conditional and this prevented an Irish party to rely on an expert report. Procedural rights violated.
Italy	Usually complied with and particular attention is given to the substantive public policy exception, so as to avoid a revision of the foreign judgement.
Latvia	Supreme court decided that decisions cannot be reviewed on merits (Brussels I Regulation). No information found that this position was ignored by other courts. In principle enforcement agents cannot review, due to their function, which is to enforce and not to assess the legality or correctness of the decision.
Lithuania	Regarding EU regulations they do comply, according to the opinion of the National Reporter. Such problems sometimes arise when other international conventions are applied.
Luxembourg	They certainly do. Not sure how enforcement agents could review judgements on the merits.
Malta	No case law to suggest otherwise.
The Netherlands	Tension has been noted in literature between public policy exception and revision au fond. In the context of National unwritten rules the Dutch Supreme Court decided that revision a fond not being permitted means that a foreign decision that is considered 'incorrect' is still eligible for recognition. However, the court does not carry out a revision au fond if it refuses to recognise a foreign judgement on the ground that in view of the way the decision was established or its contents , such recognition would be contrary to fundamental Dutch principles and values.
Poland	Observed by the National courts. Deviations are only admissible under the public policy clause provided in the regulation. The lack of difficulties in this respect is probably due to the fact that this prohibition was recognised under national rules pre-dating the Brussels Ia Regulation.
Portugal	Complied with by courts as far as the National Reporter knows.
Romania	Courts comply. Available case law indicates Romanian judges reject any claim seeking to contest enforcement that would lead to a review of the substance of the judgement issued by a court in another Member State.
Slovakia	No decision found.
Slovenia	'On the level of principle and general statement, the prohibition of revision au fond is often invoked by the courts deciding on (non-)recognition of foreign judgments pursuant to the Brussels I Regulation.' The real question is, to the opinion of the national reporter 'whether the courts have been consistent with sufficiently restrictive interpretation of public policy (both substantive as well as procedural). Not much remains of a strict application of prohibition of revision au fond if practically the same effect is achieved by insufficiently restrictive examination of public policy violations.

	Regretfully, Slovenian courts seem to have, on couple of occasions, overstepped the narrow concept of public policy.'
Spain	No particular problems.
Sweden	Yes.
UK	No answer.

Question 73

Austria	No statistics or published judgements available.
Belgium	N/A
Bulgaria	No case law.
Croatia	No statistics no case law.
Cyprus	No reported cases.
Czech	To the knowledge of the National reporter, issue so for not been dealt with.
Denmark	No reported cases.
Estonia	Issue not dealt with in Estonian case law or legal literature. Main problems with enforcing foreign judgements seem to belong to the area of family law/children/abduction and not the to area of the Regulation.
Finland	No case law.
France	Issue has been discussed in French case law in the context of a Mareva injuction/ freezing order and the periodic penalty payment, with reference to ECJ 12 April 2011, C-235/09).
Germany	No statistics available.
Greece	No reported or even unreported cases available so far.
Hungary	No case law.
Ireland	No statistics/data on the frequency.
Italy	No specific statistics, nor has the provision been applied yet to the knowledge of the national reporter.
Latvia	No decisions, based on publicly available databases.
Lithuania	Not possible to find such information. Usually the measures are quite well known in other Member States.

Luxembourg	Provision not applied to the knowledge of the author.
Malta	Not aware that the defence was raised or the Article dealt with.
The Netherlands	Information N/A.
Poland	No data indicating whether Article 54 found its practical application.
Portugal	No published case law and no other data.
Romania	No statistics available.
Slovakia	No statistics available.
Slovenia	No reported cases yet. 'Legal writing points to the problems that it is not clear (1) which court in the country of enforcement has jurisdiction for such measure (and appeal against) and (2) whether the adaptation should occur ex officio or only upon Creditor's motion.'
Spain	No particular problems.
Sweden	No statistics and no published case law. 'But when applying the 1988 Lugano convention in NJA 1995, p. 495, the Supreme court adapted an Italian protective measure.
UK	No answer.

Question 74

Austria	No statistics or published judgements available.
Belgium	N/A
Bulgaria	Translation is not needed. 'Nevertheless there is a general rule in our Civil Procedural Code stating that the official judicial language is Bulgarian (Article 4). The parties and their attorneys prefer to provide in advance all documents in Bulgarian in order not to hinder and slow the procedure. Thus the requests for translation on behalf of the court or the bailiffs are not frequent.'
Croatia	'Croatian courts or enforcement agents always require the party invoking the judgement or seeking its enforcement to provide a translation of the judgment. Namely, according to Art. 6 of the Code on Civil Procedure: 'Civil proceedings are conducted in Croatian language and using the Latin alphabet, unless, for the use in some courts, law itself allows some other language or other alphabet.'

Cyprus	'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 judgement is in English in which case the court may be familiar with the language.
Czech	'Pursuant to section 18 of the Civil Procedure Code, participants possess the right to act in their mother tongue before the Czech court at court hearings. The court shall appoint an interpreter to the participant in the proceedings whose mother tongue is other than Czech as soon as such need appears in the proceedings. Pursuant to Bia, translation of the original judgement is optional but the courts and executors in the Czech Republic expect that the submitted foreign document would be translated into the Czech language (except for Slovak language), the submission of a translation of a foreign judgement is a standard procedure.'
Denmark	'The courts will only require a translation if it is necessary for the process. A translation may, for example, be necessary if the judgement is printed in a non-Latin alphabet or the operative part requires the court to do something else than enforce a money claim. Additionally, according to the Nordic Language Convention (Svaneke, 17 June 1981), nationals of Finland, Iceland, Norway, and Sweden may use the language of their domicile before the Danish courts, Section 149(3) of the Danish Administration of Justice Act. If a translation into Danish is requested by the other party or considered necessary by the court, it will procure the translation, and the Danish state will carry the expenses, Section 149 (4) of the Danish administration of Justice Act.'
Estonia	No data available. Personal observation: practitioners positively inclined to accept various documents in English, but not in other languages.
Finland	Information N/A. It can be assumed that this happens rather seldom.
France	'French courts and enforcement agents tend to require translation rather frequently under the Regulation insofar as it is already the usual practice under French private international law. Although there is no provision in the French code of civil procedure making this translation mandatory, it amounts to a customary duty for the parties, which is firmly established in French judicial practice. One may also note that translation is also required for the enforcement of arbitral awards drafted in a foreign language. This requirement is laid down in Article of the French Code of civil procedure.'
Germany	No statistics available.
Greece	No reported or even unreported cases available so far.
Hungary	To the knowledge of the National Reporter courts regularly require a translation of the judgement.
Ireland	No statistics/data on the frequency.
Italy	No official statistics. However, in particular where the foreign language is not English or French it seems that there is a tendency to require translations'.

Latvia	No such information.
Lithuania	Bailiffs quite often as for a translation.
Luxembourg	Enforcement officers typically do not require such translation, unless to form is incomprehensible. No information is available with respect to court practice.
Malta	Not specifically dealt with in judgements relating to Article 37(2) Brussels Ia, however it is practice to produce a translation of that judgment in English.
The Netherlands	Information N/A.
Poland	No available data.
Portugal	One published case regarding translation in the context of recognition and enforcement of judgements in other Member States that was found regards the Lugano 1988 Convention. Inthis case the court just held that translation was not mandatory. No other relevant data.
Romania	No statistics available. 'From available case law it does not seem to be often the case that a Romanian court will ask also a translation of the original judgement. At times such translation appears to have been deposited by the interested party of his own motion and not upon the court's request.
Slovakia	No statistics available.
Slovenia	Practically always and automatically, which is reported) (which is not in compliance with the text and the intention of the Regulation; the matter has been raised often in training programmes for judges, but to little avail so far).
Spain	No particular problems.
Sweden	No statistics. Documents in English, Danish or Norwegian are usually accepted in Sweden without translation. Concerning the enforcement under Regulation Brussels I, the Supreme Court held that the costs of translation are in principle to be borne by the parties themselves. This means that attempting the enforcement of judgements concerning small amounts may sometimes be unreasonable from an economic point of view.
UK	No answer.

Question 75

Austria	Impact, in particular with respect to arbitration agreements between consumers and businesses.

	Disputes already arisen.
Belgium	N/A
Bulgaria	No special reference.
Croatia	Two complementary sets of rules regarding unfair terms in consumer contracts after implementation of the directive.
Cyprus	Issue not addressed in case law or literature.
Czech	Arbitration clauses not permitted in consumer contracts
Denmark	Directive article supplements Danish National law and 'prohibits jurisdiction agreements entered into before the dispute has arisen.' In connenction with Articles 17-19.
Estonia	This issue has not been dealt with in Estonian case law or legal literature.
Finland	A term in a contract concluded before a dispute arises, under which a dispute between a business and a consumer shall be settled in arbitration, shall not be binding on the consumer.
France	Rather limited in France. See National Report.
Germany	None. Arbitration and consumers and national law.
Greece	No impact in regards to the Brussels Ia.
Hungary	Unfairness of arbitration clauses based on a general contractual term or individually not negotiated term in consumer contracts. The Hungarian Supreme Court held that arbitration clauses based on a general contractual term or individually not negotiated term in consumer contracts are unfair and, hence, automaticlally invalid; the court has to perceive the term's invalidity ex officio; however, it can establish invalidity only if the consumer, upon the court's call, refers to this.
Ireland	No impact on the Brussels Convention/Regulation practice.
Italy	The annex is not always consistently mentioned in the case law related to jurisdiction.
Latvia	Used by domestic courts on a number of occasions to nullify arbitration agreement in the contract. But there is also a case in which a choice of court agreement was rendered invalid.
Lithuania	No information found.
Luxembourg	Not to the knowledge of the National Reporter.
Malta	None.

The Netherlands	Information N/A.
Poland	Choice of court agreements article 25. Article 17 (3).
Portugal	Annex never invoked in published case law. 2 judgements that say that jurisidictions agreements under the Brussels I are also governed by this directive (the implementation of it).
Romania	Loan and mortgage contracts. Assessing unfair terms in consumer contracts restricting the consumer in his possibilities of initiating legal actions or the courts before which he could bring his claim. The Courts proceed to consider on a case by case basis whether the distance between the place of residence of the consumer and that of the court established in the contract is such as to make it particularly difficult for the consumer to reach the court or to travel to court.
Slovakia	When reviewing arbitral awards and arbitration agreements. Particular decision by Slovakian Constitutional Court.
Slovenia	Arbitration agreement for consumer disputes only admissible after the materialisation of a dispute. Ex officio examination by the court. And choice-of court agreements.
Spain	Grounds for opposition to the execution of Member State judgement. Public deed of mortgage loan granted in another Member state contains abusive clauses.
Sweden	No unfair clauses of this kind would be recognised by Swedish procedural law. Arbitration clause in consumer contract may not, as a main rule, be relied on when it was entered into prior to the dispute.
UK	No answer.

Question 77

Austria	No relevant judgements. But three issues in literature: impairment of legal certainty and predictability of jurisdiction of the courts Member States are forced to violate their obligations under international law. Difficult to make a comparison of benefits in the context of lis pendens.
Belgium	N/A

Bulgaria	No.
Croatia	No.
Cyprus	No.
Czech	Issue is known and rather critically assessed in literature. Conditions for application of this TNT formula are somewhat unclear and in opinion of one of the authors of the report do not attribute to legal certainty and predictability. TNT formula was applied within the context of the Brussels I Regulation. Supreme Court held that the Hague Convention on the recognition and enforcement of decisions relating to maintenance obligations of 1973 is to be considered a convention in particular matters in sense of the Article 71 (1) Brussels I. The Supreme Court cited the TNT decision and concluded that the purpose-made interpretation of Article 71 is just suitable for the application of section 63 of the PIL Act, as such solution observes a weaker party's position and is in conformity with the best interest of the child. The application of this provision secures a prompt and more effective enforcement of the maintenance decision.
Denmark	No.
Estonia	No, CMR applied instead of Brussels I in cases falling within scope of CMR, but no dispute on how it is supposed to be.
Finland	No.
France	CMR mentioned. Only practical consequence of these decisions, and especially from the Nipponkoa Insturance Co. ruling, is that French courts are precluded from adopting an interpretation of Article 31 (2) of the CMR according to which an action for a negative decleration or a negative declaratory judgement in one Member State does not have the same cause of action as an action for indemnity between the same parties in another Member State. French courts shall decline jurisdiction under the CMR in cases where an action for a negative declaration or a negative declaratory judgement is pending before the court or tribunal of another Member State competent under Article 31 (1) CMR. The same holds true when a judgement has been entered by such a court or tribunal on this action. Precise consequences remain debated and no clear solution in sight.
Germany	No reported case law.
Greece	No reported or unreported cases available so far.

Hungary	No answer.
Ireland	No.
Italy	No decision on article 71 Brussels Ia.
Latvia	Large number of cases concerning the CMR and occasional practice on bilateral treaties on judicial assistance with third states. No court decision where CJEU cases are mentioned.
Lithuania	No practical consequences.
Luxembourg	Not to the knowledge of the author.
Malta	None.
The Netherlands	Describes problematic situation. Exclusive choice of forum and multimodal transport agreement. Lis pendens and parallel proceedings and ultimately conflicting judgements.
Poland	The analysis of case law has not revealed any instances of obvious restrictions superimposed by the reference to Article 351. Case mentioned in which both CMR and Brussels Ia were used jurisdiction on in a choice-of court case.
Portugal	No practical conseuqences so far.
Romania	The precedence in relation to Article 71 discussed in court decision relating to CMR. No particular practical consequences prompted or extensive discussion in literature.
Slovakia	Slovak authors drew attention to the above-mentioned decisions, and a legal opinion appeared on which the conditional priority of the Convention over the Brussels Ia Regulation can, in the application practice, cause uncertainty for contracting parties as to which source will be applied in a particular case. No decisions of Slovak courts which would refer to the above-mentioned decisions of the CJEU have been found.
Slovenia	No.
Spain	No particular problems.
Sweden	No.
UK	No answer.

Question 78

Austria	Extensive list provided for.
Belgium	N/A
Bulgaria	CMR.
Croatia	CMR, Warsaw, COTIF, CIM.
Cyprus	No case law.
Czech	Refers to question 77 and 80: CMR and maintenance convention the Hague.
Denmark	Provides for a list.
Estonia	No case law.
Finland	No.
France	List of conventions and controversial ruling Cour de cassation 'to give precedence to the Brussels I Regulation over the Convention of 9 may 1980 concerning International Carriage by Rail (COTIF), as amended by the Vilnius Protocol of 3 June 1999.
Germany	Provides for list of treaties (extensive).
Greece	No reported or unreported cases available so far.
Hungary	CMR.
Ireland	Seagoing ships Collision.
Italy	No decision on article 71 Brussels Ia.
Latvia	CMR, but not in relation to article 71 and sometimes article 31 CMR is ignored. 'Hence, we can observe that courts sometimes igonore the rile of precedence of "special" international conventions dealing with jurisdiction".
Lithuania	Brussels I was already in force when Lithuania joined the EU in 2004.
Luxembourg	None to the knowledge of the author.
Malta	None.
The Netherlands	CMR, limitation of liability for maritime claims
Poland	CMR and 1952 arrest convention.

Portugal	CMR.
Romania	CMR.
Slovakia	Convention on the Contract for the International Carriage of Goods by Road or The Convention concerning International Carriage by Rail.
Slovenia	Bilateral legal assistance treaties.
Spain	No particular problems.
Sweden	None.
UK	No answer.

Question 79

Austria	No, there are no (published) judgements involving delineation issues.
Belgium	N/A
Bulgaria	N/A
Croatia	Not so far.
Cyprus	No case law.
Czech	No problems known to authors.
Denmark	No reported cases.
Estonia	No case law.
Finland	So far no problems.
France	Not generated difficulty, few decisions not of great significance and interest.
Germany	Article 26 criticised as too complex, further no problems in practice.
Greece	No reported or unreported cases available so far.
Hungary	No case law.
Ireland	Not applied yet.
Italy	No specific case law.
Latvia	No cases found.
Lithuania	No cases found.

Luxembourg	Not to the knowledge of the author.
Malta	So far no.
The Netherlands	Only one case, in that case the court did not take the Brussels Ia Regulation into account.
Poland	In absense of case law it could not be concluded that such problems have arisen.
Portugal	No case law. But delineation between the scope of Article 25 and the convention in textbook.
Romania	No information available.
Slovakia	No decisions found.
Slovenia	No.
Spain	No particular problems.
Sweden	No.
UK	No answer.

Question 80

Austria	No, there are no (published) judgements involving delineation issues.
Belgium	N/A
Bulgaria	N/A
Croatia	Not to the knowledge of the National Reporter.
Cyprus	No occurrences revealed.
Czech	Application CMR based on Article 71 (1) the defendant being domiciled in another Member State bound by the Convention.
Denmark	No.
Estonia	No.
Finland	Articles not found.
France	Decision answer to question 78 issued in application of Article 71 (2) (a) No decision in which Article 71 (2) (b) is applied. No Articles 71 (c) or (d).

Germany	No.
Greece	No reported or unreported cases available so far.
Hungary	No case law.
Ireland	No answer.
Italy	Not to the knowledge of the National Reporter. One case in database on the relationship between the Brussels I Regulation and the temporal scope of application.
Latvia	No cases found.
Lithuania	No cases found.
Luxembourg	Not to the knowledge of the author.
Malta	So far no.
The Netherlands	Question unclear, provisions not found.
Poland	No cases in which provisions have been applied.
Portugal	No case law.
Romania	No case law.
Slovakia	No decisions found.
Slovenia	No.
Spain	No particular problems.
Sweden	No.
UK	No answer.

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