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

QUESTIONNAIRE
for National Reports

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CHAPTER I

Application of the Regulation – in general

1. Are judgments applying the Brussels Ia Regulation and its predecessor(s) rendered in all instances (first, appellate and in cassation) published? Are they available online?

No.

A public online database of judgments from all instances was launched on 6 January 2022. At launch, the database was limited to a selection of older judgments. In the future, the database will include new judgments as they are rendered, but initially, while the underlying organization is being build, judgments in civil cases from higher courts will be prioritised.

Until the public database becomes useable in practice, the primary reporter of case law remains the Danish Weekly Legal Journal: Ugeskrift for Retsvæsen (hereinafter abbreviated as UfR). UfR publishes all cases from the Supreme Court (SC), but only includes select – more principal – judgments from the lower courts; predominantly from the Eastern and Western High Courts (EHC and WHC, respectively), and the Maritime and Commercial High Court (MCC). Cases on the interpretation of the Brussels Ia Regulation can also be found in the journal aimed at the police and the judiciary: Fuldmægtigen (FM). Both journals are only available as paid subscriptions, however.

Since September 2009, the Supreme Court has published a number of its more noteworthy judgments online, and those with an international impact also appear in an unofficial English translation. The Maritime and Commercial High Court publishes select judgments in full, while the High Courts publish abstracts of some of their notable judgments on their websites.

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

Generally, yes.

However, Denmark has opted-out of the EU's regulation on Justice and Home Affairs and the Brussels Ia applies in Denmark under the so-called 'Parallel Agreement'; see Council Decision of 27 April 2006 concerning the conclusion of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, *OJ L 120, 5.5.2006, p. 22* (Brussels I); Agreement between the European Community and

the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, *OJ L 79, 21.3.2013, p. 4* (Brussels Ia).

When the CJEU passes judgment on the delineation between the Brussels Ia and other legal acts to which Denmark is not a party, the resulting boundary of the Regulation does not in all cases align with the delineation in Danish domestic law, and this may create unique interface issues.

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?

Most changes, e.g. the abolishment of the exequatur procedure and increased effectiveness of choice-of-court agreements, have been well received. However, the relationship between the Brussels Ia and arbitration remains mildly disputed in the doctrine.

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?

The relationship with arbitration is still not satisfactorily regulated. There are still diverging views on the enforceability on judgments, in which an arbitration clause as an incidental question has been held ineffective, and that is evidence that the regulation could be more precise -- i.e. unambiguous and not necessarily more intensively regulated.

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

The courts generally seem to interpret the Regulation autonomously.

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?

No.

Chapter 22 of the Danish Administration of Justice Act regulates territorial jurisdiction and, thus, the available venues in the concrete case. If the parties nominate an unavailable court, their agreement is interpreted to reflect the most likely possible choice.

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?

No.

If the Danish courts are competent under an international agreement, but the default domestic rules do not provide for territorial jurisdiction, it follows from Section 247(3) of the Danish Administration of Justice Act that the suit may be brought at the plaintiff's home jurisdiction in Denmark. If the plaintiff does not have home jurisdiction in Denmark, the suit may be filed at the relevant court in Copenhagen.

8. Are the rules on relative and territorial competence regulated in the same legislative act or are instead contained in different statutory laws (e.g., Code of Civil Procedure and statutory law on organisation of judiciary or other statute)?

The Danish Administration of Justice Act regulates both the organisation of the judiciary as well as the rules of civil procedure. However, special legislation may, in addition, contain jurisdiction or enforcement rules. This is, for example, the case for the laws implementing the legal acts mentioned under question 78.

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.

There is no reported case law under the Brussels Ia.

In UfR 2003.885 MCC (the Brussels Convention), the Maritime and Commercial High Court naturally held that the *res judicata* of a Swedish judgment, in which the Swedish courts refused to enforce an arbitral award from Denmark, did not prevent the Danish courts from upholding the award as valid and binding.

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.

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.

In UfR 2017.1940 EHC, the Eastern High Court held that 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.

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

There is one reported case: In UfR 2011.2310 SC, the court in the first instance held a German court settlement enforceable. The appeal against this ruling was dismissed by the High Court as entered too late under domestic law, but the Supreme Court held the appeal to be timely under Article 43 of the Brussels I. No subsequent cases between the parties have been reported.

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

In UfR 2012.835 EHC, the Eastern High Court held that a loan agreement notarised in Germany was an authentic instrument within the meaning of Article 50 of the Brussels Convention.

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?

The is no reported case law on the understanding 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'?

The literature notes the development in the definition of 'judgment', but the change has not sparked discussion or controversy.

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?

The literature appears to lean towards requiring the possibility to establish jurisdiction under the rules of the Regulation as sufficient.

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?

The first question has not been addressed in case law or literature; the leading commentary can arguably be read to that effect, however. The second question has not been addressed in case law or literature either.

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?

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.

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

No.

CHAPTER II

Personal scope (scope *ratione personae*)

19. The Recast introduces a number of provisions aimed at further improving the procedural position of 'weaker' parties. Thus, it widens the scope of application *ratione personae* so as to enable consumers and employees to rely on the protective provisions of the Regulation against non-EU 'stronger party' defendants (Article 6(1) referring to, *inter alia*, 18(1) and 21(2)). Are there any statistics available illustrating an increased number of suit actions filed by consumers and/or employees in your jurisdiction?

There are no publicly available statistics on this issue.

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

This question is being debated in the literature, and no clear answer has emerged.

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)?

The prevailing view considers the parties' domiciles irrelevant for the application of Articles 29 and 30.

Temporal scope

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

The entry into force of the Brussels Ia Regulation does not appear to have caused any intertemporal issues.

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?

Articles 7 and 8 are regularly applied by the courts to establish international jurisdiction. 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.

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?

One issue has been addressed several times, namely the applicability of Article 7(1) when the defendant disputes the existence of a contract, compare Judgment of 4 March 1982, *Effer SpA v Hans-Joachim Kantner*, Case 38/81, EU:C:1982:79. In UfR 1996.786 SC, the Supreme Court formulated the threshold that it must be proven with 'sufficient probability' ('tilstrækkeligt sandsynliggjort') that the defendant assumed a contractual obligation. This threshold was applied in UfR 2005.1016 WHC and reaffirmed in UfR 2005.3149 SC.

25. Is the place where the goods were 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?

The understanding of 'unless otherwise agreed' in Article 7(1)(b) is disputed.

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?

The application of Article 7(2) does not appear to have involved any of these questions before the Danish Courts.

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?

No, and no.

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

No. There are no reported cases on these issues.

Rules on jurisdiction in disputes involving 'weaker parties'

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

enforcement of a decision rendered in violation of this obligation under Article 45?

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. No authors appear to have addressed the possible consequences for enforcement.

Compare Section 339(4) of the Danish Administration of Justice Act in domestic law, which is addressed in question 49.

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

This question has primarily been addressed in relation to Article 19. Under the prevailing view, 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.

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

The literature on the Brussels Ia does not evaluate the effectiveness of these rules.

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

No cases under the Brussels Ia have been reported.

Under the Brussels I, UfR 2018.416 SC concerned the Danish courts' jurisdiction over a direct action claim against the insurer of a tugboat that allegedly caused damage to the port of the town of Assens. The insurance contract contained a choice-of-court provision in favour of the English courts. The CJEU was asked to interpret the

Regulation application in this instance and decided in its Judgment of 13 July 2017, *Assens Havn v Navigators Management (UK) Limited*, Case C-368/16, EU:C:2017:546, that:

> 'Point 5 of Article 13 of Council Regulation (EC) No 44/2001 [...], considered in conjunction with Article 14, point 2(a), thereof, must be interpreted as meaning that a victim entitled to bring a direct action against the insurer of the party which caused the harm which he has suffered is not bound by an agreement on jurisdiction concluded between the insurer and that party.'

In UfR 2018.416 SC, the Supreme Court concluded that the choice-of-court in the insurance agreement did not bar the Danish courts from exercising jurisdiction over the injured party's direct action claim under the Danish law.

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?

Prior to UfR 2020.3232 SC, we saw a significant number of cases in which major banks sought to enforce jurisdiction clauses in favour of the Danish courts against private individuals from other Member States. These individuals had entered into contracts for access to rather complex investment platforms, and the banks, therefore, challenged the customers' status as 'consumers' within the meaning of the Regulation because only a non-consumer would enter into such a complicated contract. Following the CJEU's judgment in Case C-208/18, *Jana Petruchová v FIBO Group Holdings Limited*, EU:C:2019:825, the Supreme Court refused this line of argument, UfR 2020.3232 SC.

In UfR 2021.1599 EHC, the Eastern High Court, rather surprisingly found that a choice-of-forum clause in a settlement agreement was valid under art. 19(1) Brussels Ia because the choice-of-court agreement was entered into after the dispute had arisen – even though the dispute concerned a breach of the settlement agreement itself.

34. Have the courts in your jurisdiction encountered difficulties in the application of Article 18(2), in the case of *perpetuatio fori,* occurring if the consumer moves to another State? If yes, how are these problems dealt with?

No, there does not appear to be any reported cases on this issue.

35. Have there been difficulties in applying Section 5 of the Regulation on the jurisdiction in matters relating to employment contracts, if so which aspect(s): the interpretation of the concept of 'matters relating to individual contracts of employment', the interpretation of the concept of 'branch, agency or establishment', 'place where or from where the employee habitually carries out his work', the application of the provision on the choice-of-court agreements?

No.

In UfR 2009.1412 SC, the Supreme Court held that an employee of Lloyd's Register (UK) who had worked for 20 months in Denmark, then 27 months in the UK, and finally 34 months in Norway did not have the necessary connection to Denmark for the Danish courts to exercise competence in a suit against the employer.

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?

No. The courts appear to follow the line laid down by the CJEU. The rather narrow definition of rights *in rem* has been criticised in literature, however.

There is no reported case law on the application of Article 31(1).

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?

Under Danish Private International Law, the applicable law is that at the place of establishment. For registered entities it is the law at the place of the registry.

The rules do not appear to have given rise to difficulties.

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?

There is no reported case law under the Brussels Ia.

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.

In Denmark, only the courts enforce judgments.

40. Does the removal of a conservatory third party attachment (in case of seizure) fall within the scope of 'enforcement' in the sense of Article 24 chapeau and fifth paragraph Brussels Ia leading to the exclusive jurisdiction of the court where the removal has to be enforced, or can jurisdiction of the removal be based on Article 35 leading to jurisdiction of the court that has granted leave to lay a conservatory third-party attachment (seisure)? In other words, is Article 24 interpreted extensively or narrowly in you Member State?

This question has not been answered in practice or in doctrine.

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?

There is no reported case law on the interpretation of 'internationality'.

Between parties from the same country, a choice-of-court agreement nominating a court in another country is not in itself considered sufficient to trigger the application of Article 25, unless the contract is (almost) exclusively connected to that third country.

According to the literature, the relevant internationality factors may be found in the Regulation's other jurisdictional rules; ie. the parties' domiciles, Article 4; the place of performance, Article 7(1); the place where the harmful event occurred or may occur, Article 7(2); the place where the branch, agency or other establishment is situated, Article 7(5); and the place where or from where the employee habitually carries out his work, Article 21(1)(b)(i). Citizenship may be relevant, but only if a party's domicile is unknown.

The internationality of a relationship is assessed at the time of conclusion of the choice-of-court agreement, and subsequent changes of domicile are irrelevant.

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?

There are no publicly available statistics on this.

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?

There are no persistent outstanding issues.

The case law appears to be in line with that of the CJEU: In UfR 2001.1529 SC, the Supreme Court held that a party's signature on an order confirmation constituted assent to a pre-printed choice-of-court clause. In UfR 1992.886 WHC, the Western High Court held that a choice-of-court provision contained in a set of standard terms and conditions that the other party did not receive – or knew the content of – did not meet the threshold

under Article 25. In UfR 2006.1321 WHC, the Western High Court ruled that an acceptance that referred to the offeree's own standard terms, which contained a jurisdiction clause, could not be considered to constitute a written choice-of-court agreement under Article 25. Similarly, UfR 2020.4264 MCC, in which the court held that a forum selection clause contained in standard terms that had been sent with the offer, but not referenced in the offer (or later), had not been agreed upon. The Western High Court has held that one prior agreement is insufficient to establish a practice between the parties; UfR 2006.1321 WHC. In UfR 1998.728 MCC, two Danish parties had contracted five times based on the seller's German supplier's standard terms and conditions. The Maritime and Commercial High Court held that the choice-of-court in favour of the German court contained in the supplier's terms was not agreed upon.

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?

There are no reported cases. UfR 1998.728 MCC (see question 43) was decided on the basis of a failure to incorporate rather than the clause being invalid.

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

No, there are no reported cases on this issue.

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

No.

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?

No.

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?

Yes.

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?

No.

Challenges to jurisdiction in the second submission have been allowed in a few cases, see the answer to question 29. In addition, it can be mentioned that defendants without lawyer representation may rely on the court to advise on how to safeguards their interests, Section 339(4) of the Danish Administration of Justice Act. In a few cases where the court did not inform the defendant of the possible challenge to jurisdiction before its first submission, the belatedness of the challenge was considered excusable and the challenge was, therefore, allowed, UfR 1993.792 WHC; UfR 2000.706 EHC.

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).

No.

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?

A colleague at the judiciary has informed me that there are no standardised procedures or guidelines for the courts. Instead, the parties themselves are expected to raise the issue and procure sufficient evidence of the parallel proceeding.

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)?

The Danish courts apply Article 32(1)(a), compare Section 348(1) of the Danish Administration of Justice Act. Consequently. Consequently, a court is seised within the meaning of the Regulation when the document instituting the proceedings is lodged with the court.

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

No. Counter-claims become part of the case, when they are entered.

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))?

There are no reported cases on this issue.

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?

At the time of writing, there are no reported cases on this issue.

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

In theory, yes. In practice, the impact has been insignificant because the Danish courts will only recognise and enforce foreign judgments if there is a legal basis for doing so – and such bases are very few within the area of commercial and civil disputes.

One case may be read as granting a possibility to enforce judgments from a foreign court that bases its jurisdiction on a choice-of-court agreement, UfR 2001.1949 EHC. The broader consequences of this judgment are debated, however.

In tandem with the Hague Choice of Court Convention, Articles 33 and 34 may come to play a larger role in the years to come.

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?

There is no reported case law on this issue, but the literature notes the possibility of including such factors.

58. Does the application of both provisions in your view amount to a sufficiently 'flexible mechanism' (see further Recital 23) to address the issue of parallel proceedings and *lis pendens* in relation to third states?

Yes. It is considered commendable that the Regulation allows the Member States to respect possible obligations toward third countries.

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?

There is no reported case law on this issue.

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?

No case law found. The literature mentions that, for example, the presence of goods in a Member State would represent sufficient connection for the local courts to apply Article 35 and order a seizure.

Relationship with other instruments

61. Has the Hague Convention on Choice of Court Agreements to your knowledge ever been relied upon in declining jurisdiction in your Member State and allocating jurisdiction to third states party to that Convention? Please provide examples from case-law with a short summary.

No. (See the answer to question 79.)

CHAPTER III

Recognition and Enforcement

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

No reported cases found.

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?

Foreign judgments are enforced by courts only.

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?

There is not sufficient available data to answer that 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?

No.

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

The available statistics do not show any numbers concerning enforcement of judgments abroad or of foreign judgments in Denmark.

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?

No, this does not appear to be the case.

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

No.

69. Article 46 introduced the so called 'reverse procedure'. Are there any statistics available in your jurisdiction on the absolute frequency and the relative rate of such proceedings, the latter in comparison to the number of attempts to enforce judgments rendered in other Member States? If so, may you please relay the said statistics?

There are no such statistics available.

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

There are no reported cases under the Brusselles Ia Regulation.

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?

There are no reported cases under the Brusselles Ia Regulation.

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

There are no reported cases.

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

There are no reported cases.

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?

The courts will only require a translation if it is necessary for the process. A translation may, for example, be necessary if the judgment 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.

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?

Annexe (1)(q) of the Unfair Contracts Terms Directive (UCTD) supplements Section 245(2) of the Danish Administration of Justice Act, which was added in 1986 and prohibits jurisdiction agreements entered into before the dispute has arisen.

This provision – and Articles 17-19 of the Brussels Ia – act as the courts' primary legal basis for dismissing choice-of-court agreements in consumer relationships.

It should be noted, however, that the Annexe of the UCTD has not been implemented verbatim into Danish law as the content of the Annexe was considered to be already encompassed by the general reasonableness assessment of contractual provisions under Section 36 of the Danish Contract Act.

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

Before its accession to the European Communities, Denmark did not have relevant conventions with the other EC States apart from Germany.

Concerning Germany, the recognition and enforcement of judgments and public settlements of claims within specific areas of private law (outside the sphere of the

Brussels Ia Regulation) is regulated by government decree no 148 of 13 April 1938 – which was reaffirmed for West Germany by government decree no 118 of 18 August 1938 and remains in force today. No reported cases found, however.

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

No.

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

The Kingdom of Denmark partakes in, inter alia:

- Convention for the Unification of Certain Rules Relating to International Carriage by Air (Warsaw, 12 October 1929). Convention Supplementary to the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person other than the Contracting Carrier (Guadalajara, 18 September 1961)
- International Convention Relating to the Arrest of Sea-Going Ships (Brussels, 10 May 1952)
- Convention of 1 March 1954 on civil procedure (Hague, 1 March 1954)
- Convention on the Contract for the International Carriage of Goods by Road (CMR) (Geneva, 19 May 1956)
    - Article 71 was triggered in UfR 2003.2490 SC
- Convention on Third Party Liability in the Field of Nuclear Energy (Paris, 29 July 1960)
- International Convention on Civil Liability for Oil Pollution Damage (Brussels, 29 November 1969)
- Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (PAL), inclusive of the 2002 Protocol (Athens, 13 December 1974)
- Convention concerning International Carriage by Rail (COTIF) (Bern, 9 May 1980).

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?

No. In UfR 2022.347 MCC, the Copenhagen Maritime and Commercial Court saw its jurisdiction challenged in a dispute concerning the alleged breach of an agreement to deliver services and pay royalties. The court performed a multistep test: First, the court tested whether a choice of the Danish courts had been made under Article 25 Brussels Ia. A clause to that effect was contained in the standard terms of one of the parties, but the court found this insufficient for incorporation as no reference to these terms had been made. Second, the court examined if it had an obligation to dismiss the suit under Article 6 of The Hague Convention on Choice-of-Court agreements because a related but separate contract contained a choice-of-court clause in favour of the English courts. The court found that the proof of any purported intention to incorporate this clause was insufficient to trigger Article 6 of The Hague Convention on Choice-of-Court agreements – and because the application of the Convention would be immaterial to the outcome regarding competence for the Danish courts, the court decided to abstain from addressing that question (in light of Brexit). Third, the court found that the place of performance was in Denmark and that the Danish courts, therefore, were competent under Article 7(1)(b) Brussel Ia.

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

No.