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?

The answer to this question would be no. Not all of the judgments are publicly available. Those that are, are available online.

Namely, in Croatia there is a legal obligation to make the judgments publicly available. According to Art. 43 paras 5-7 of the Law on Courts (Zakon o sudovima, Official Gazette of the Republic of Croatia No. 28/13, 33/15, 82/15, 82/16, 67/18), internal organization of the Supreme Court of the Republic of Croatia includes also the Centre for settled case law, which follows, examines and publishes settled Croatian case law. The Centre is operated by the Supreme Court judge, designated by the annual schedule of the duties. The Centre operates through regional Centres at County courts in Osijek, Rijeka, Split, Varaždin and Zagreb, whose heads are nominated by the president of the Supreme Court of the Republic of Croatia from the pool of judges of the respective court, taking into account an opinion of the president of the respective court. Internal organisation and the mode of operation are regulated by the Rules of internal working procedures of the Supreme Court of the Republic of Croatia (Poslovnik o radu Vrhovnog suda RH). Thus, in theory, everything is well settled and all the judgments should be publicly available.

In practice, things operate a bit different. There is the Croatian Supreme Court web page (https://sudskapraksa.csp.vsrh.hr/home) which, among other things, directs to the Settled case law portal (Portal sudske prakse). An introduction into the use of the Portal clearly states the following: "The Supreme Court of the Republic of Croatia publishes all its decisions (without selection) and this depot includes all of its judgments from the 1990 onwards, while the other courts publish only their most important decisions". Obviously, not all of the judgments of the lower courts are made publicly available through this portal but only the most important ones. This Portal is open for public, thus everyone has an access. Judgments are anonymised so there are no problems regarding the GDPR. Use of the page is rather simple. The interface allows the search of decisions according to several criteria and publishes the text in full.

Despite the fact that during the last seven years, Croatian Ministry of Justice has established a range of public services in the form of a web page which (nominally) encompasses case law of the Croatian Supreme Court, High

Commercial Court, Administrative Court, Constitutional Court, e-land register, e-bulletin board, etc. it is still not easy and sometimes even not possible to find all the cases. Why is it so? First and foremost they are mainly used as e-bulletin board and much less or not at all, as a case law database. Even the cases published at the e-bulletin are not always available to anyone but the parties and their legal representatives. Thus, it is still work in progress with a long way to go.

Of course, besides the Supreme Court Portal there are some other legal databases (like IUS-INFO, EDUS-INFO, Pravo i porezi, etc.), which are not free of charge but they also contain selected settled case-law.

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

Generally yes, but some of the case law has raised doubts on a national level. Most often the doubts are associated with the impact of the CJEU's case law on national law and practice.[1] In the beginning there was an impression that some judgments are going unnoticed since there is no mention of them in national judgments, but the recent case law shows that reasoning of the courts is often based on explicitly cited CJEU judgments.

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?

Interestingly, there are not so many articles discussing the Brussels Ia Regulation in Croatia.[2] It has much to do with the fact that there are only few

[1]See: Povrv-1931/17-2 Municipal Court in Novi Zagreb, 14 December 2017, followed by Gž Ovr 1338/2018-2 County Court in Varaždin, 26 November 2018; povrv 31/2018- 2 Municipal Court in Novi Zagreb, 7 February 2018, followed by Gž 1047/2018-2 County Court in Osijek; Povrv-638/2017-8 Municipal Court in Zlatar, Permanent service in Zabok, 27 September 2017, followed by Gž 2790/2017-2 County Court in Rijeka, 9 November 2018.; Povrv- 148/2017-2 Municipal Court in Novi Zgareb, 21 August 2017, followed by Gž 2829/2017-2 County Court in Rijeka, 23 September 2019;; See also: Croatian Constitutional Court Judgment U-I/1365/2017 of 9 April 2019, dealing with the (alleged) unconstitutionality of those provisions of Croatian Enforcement Act which regulate the competence of public notaries, based on misguided interpretation of CJEU judgments in cases i C-484/15 Zulfikarpašić, ECLI:EU:C:2017:199 i C-551/15 Pula Parking, ECLI:EU:C:2017:193.

[2] Babić, Davor: Vremenske granice primjene uredaba 44/2001 i 1215/2012 u Hrvatskoj, in: Europsko građansko procesno pravo:izabrane teme (Garašić, Jasnica (ed.)), Zagreb, 2013, pp. 137-146.;
Šago, Dinka: Priznanje i ovrha sudskih odluka prema Uredbi Bruxelles I br. 44/2001 i Bruxelles I bis br. 1215/2012, Zbornik radova sa međunarodnog savjetovanja „Aktualnosti građanskog procesnog prava – nacionalna i usporedna pravnoteorijska i praktična dostignuća", Pravni fakultet Split: Split, 2015, pp. 201-233

of professors dealing with PIL in Croatia, most of them stretched between the science and teaching and many other duties. There are many PPT presentations though, produced for the purpose of different educations of judges at all levels.

However, as it follows from the available literature, the improvements with regard to consumers, workers and the prorogation in general as well as the new jurisdictional rules giving priority to a court designated by a *prima facie* valid agreement are perceived as an improvement.

With regard to shortcomings, some consider that there should have been some improvements of Art. 71 of the Brussels Ia Regulation with regard to transport conventions. Namely, the test developed by the CJEU judgments: C-406/92 *Tatry*, C-533/08 *TNT Express Netherland* and C-452/12 *Nipponkoa Insurance Co. (Europe)* in relation to Art. 71 of the Brussels Ia Regulation, does not give a decisive enough answer of the relationship between the Regulation and most of the transport conventions. All of these judgments deal with the relationship between the Brussels Ia Regulation and the CMR Convention and it is not clear which other transport conventions are included into the scope of Art. 71 and whether the CJEU will take the same view regarding the delimitation of their scope of application.[3]

Most controversial CJEU judgments which have caused a lot of debate and adjustment in Croatian national law are C-484/15 *Zulfikarpašić* and C-551/15 *Pula Parking*.[4] Namely, the fact that the writs of execution given by notary public may be enforced with regard to nationals but not with regard to foreigners (EU citizens) raised some doubts on national level with regard to reverse discrimination. There were also some doubts regarding the application of provisions of national law in cases in which public notaries did not dismiss the cross-border cases.[5] Points of contention were related with respective provisions of the Law on Enforcement (Ovršni zakon, Official Gazette of the Republic of Croatia No. 112/12, 25/13, 93/14, 55/16, 73/17), as well as some provisions of the Code on Civil Procedure (Zakon o parničnom postupku, Official Gazette of the Republic of Croatia No. 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 96/08, 123/08, 57/11, 148/11, 25/13, 89/14, 70/19).

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[3] Tuo, C.E./Carpaneto, L.: Connections and disconnections between Brussels Ia Regulation and international conventions on transport matters (Poveznice i isključenja između Briselske uredbe I.a i međunarodnih konvencija o prijevozu), Zbornik Pravnog fakulteta u Zagrebu, 66, (2-3), 2016, pp. 159-164, 172-175, 181.

[4] Uzelac, A.: Javnobilježnička ovrha i zaštita potrošača: novi izazovi europeizacije građanskog postupka, Zbornik Pravnog fakulteta u Zagrebu, 68, (5-6), 2018, pp. 637-660.
Giunio, M.A.: Javnobilježničke ovrhe u hrvatskom zakonodavstvu (povodom dviju presuda Suda EU), available at: http://www.notarius.hr/DailyContent/Topical.aspx?id=32080 .

[5] See for instance, GŽ Ovr 1239/2018-2 County Court in Zagreb, 17 April 2018, Gž Ovr 1341/2018-2 County Court in Zagreb, 15 May 2018, Gž 839/2018-2 County Court in Pula-Pola, 1 October 2018.

There is also a judgment in C-630/17 *Milivojević*, which concerns Croatian legislation restricting financial services with banks other than Croatian ones and the issue of jurisdiction under the consumer title and Article 24(1)'s exclusive jurisdictional rule. Here, points of contention were related with respective provisions of the Law on the invalidity of credit agreements featuring international elements (Zakon o ništetnosti ugovora o kreditu s međunarodnim obilježjima skolpljenih u Republici Hrvatskoj s neovlaštenim vjerovnikom, Official Gazette of the Republic of Croatia No. 72/17, 131/20).

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?

As the questionnaire will show, most of the national practice related to Regulation Brussels Ia has to do with the (in)competence of Croatian public notaries in cross-border cases, matters related to tort or delict, choice-of-court agreement in consumer contracts, and matters relating to a contract combined with matters relating to rights *in rem*.

Thus, based on available case law and literature, one could suggest the following:

- with regard to provisional measures ordered by the court having jurisdiction as to the substance - to review the right of any court having jurisdiction as to the substance to order provisional measure irrespective of the fact that no proceedings on the merits of the case have yet been initiated. The purpose such measures ought to serve is securing the decision on the merits and it is quite clear that recognition of provisional measures taken by the court not exercising its jurisdiction on the substance of the matter may be problematic for number of reasons
- with regard to provisional measures ordered by the court not having jurisdiction as to the substance – to define criteria (based on CJEU case law) which will help the national courts to distinguish which measures are acceptable (e.g. reversibility of the measure's effect, a real connecting link between the subject matter of the measures sought and the territorial jurisdiction, justification of the proposed measure, etc.)
- to envisage absolute obligation of the court seized to warn the party of their right to contest the jurisdiction of the court and of the consequences of entering or not entering an appearance and the relief. Otherwise, from the point of view of the weaker party, this provision remains useless.
- to improve clarity of Art. 17 of the Regulation with regard to other transport conventions (it is not clear which other transport conventions are

included into the scope of Art. 71 and whether the CJEU would take the same view regarding the delimitation of their scope of application)

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

   Most of the national concepts do not differ significantly from the concepts developed under the principle of 'autonomous interpretation'. However, sometimes those differences can cause tension (e.g. available case law shows some difficulties in proper classification of consumer contracts, matters related to rights *in rem*, etc.). Such tensions are usually settled by the county court rulings.

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?

   National rules on territorial jurisdiction are contained in Arts. 46-70 of the Code on Civil Procedure and in the Law of the areas and the seats of the courts (Zakon o područjima i sjedištima sudova, Official Gazette of the Republic of Croatia No. 67/18). Once it has been established that Croatian courts have international jurisdiction it is rather easy to determine which national court has territorial jurisdiction. Therefore, the application of national rules on territorial jurisdiction does not cause any 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?

   So far it has not occurred that there is no competent court according to the national rules of jurisdiction. Nevertheless, the new PIL Act (Zakon o međunarodnom privatnom pravu, Official Gazette of the Republic of Croatia No. 101/17) has entered into force on 29th of January 2019. It is not to be expected that there will be any such problems regarding the new PIL Act since, in relation to civil and commercial matters, it envisages extended application of the Brussels Ia Regulation to all cases. There is also a provision

on *forum necessitatis* (Art. 58 – "Should the application of the provisions of this Law or other Croatian laws or international agreements in force in Republic of Croatia fail to establish jurisdiction with regard to the defendant having his domicile in a non-EU Member State, and the proceedings cannot be brought abroad or it is not a reasonable expectation, Croatian courts may assume jurisdiction if there is a sufficient connection with Republic of Croatia which makes it appropriate.").

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 on Civil Procedure and statutory law on organisation of judiciary or other statute)?

There are general rules on relative competence in the Law on Courts but with regard to civil proceedings rules on relative as well as rules on territorial competence are regulated in the Code on Civil Procedure. Relative competence is regulated in Arts 33-44 and territorial competence in Arts. 46-70.

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.

I did not manage to find the case law which shows some problems with the delineation between court proceedings and arbitration.[6] However, the clarification in the Recast (Recital 12) is undoubtedly an improvement and useful guidance, especially in jurisdictions which are used to judicial positivism and low level of judicial interpretation.

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.

[6] Although, I have found one judgment (P-25/18-24 County Court in Zagreb, 22 May 2020) which claims that Brussels Ia Regulation applies to arbitral decisions also. I blame it on superficial reading ignorance of recitals.

There are very few articles regarding "civil and commercial matters" in light of CJEU case law.[7] It is difficult to know whether there were some problems in practice since, so far, there are very few publicly available cases related to proceedings in cross-border insolvency proceedings. There were only some cases in which enforcement was sought by a virtue of Brussels Ia of a judgment delivered in an insolvency case abroad[8] and one in which first instance court misapplied Brussels Ia instead of Insolvency Regulation.[9]

In my view, the aforementioned judgment should be helpful since the CJEU explicitly refers to relevant criteria for the classification of the action (paras. 28-37), thus it does not leave much room for 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.

According to the judges, there are very few such cases. They were not able to provide the judgment.

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

There are also only few cases, but mainly related with the Regulation 805/2004. They relate to claims connected with the unpaid invoices issued to the defendant in other Member States.

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?

According to the available case law, courts in the Republic of Croatia did not encounter many difficulties when applying the definitions provided in Article 2. The biggest tension relates to the concepts of the 'court' and of the

[7] Čuveljak, J.: Sudska praksa Europskog suda u pogledu koncepta „građanskih i trgovačkih stvari", available at: http://www.iusinfo.hr/DailyContent/Topical.aspx?id=21313 .

[8] See for instance: R1-eu-3/2017-4 Commercial Court in Zagreb, 13 July 2017, followed by Pž 5635/2017-2 High Commercial Court, 18 September 2017.

[9] Ovrv-9766/2016-5, 30 March 2017. Municipal Court in Rijeka, Permanent service in Crikvenica followed by Gž Ovr 563/2017-2 County Court in Rijeka.

"judgment" since, according to the national law in certain cases public notaries may act on behalf of a court and public notary's writ of execution may be enforced.

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 prevailing view is generally positive. Such widened definition has eliminated some of the doubts concerning the possibility of recognition and enforcement of foreign provisional measures as well as whether it includes all sorts or only some foreign provisional measures.
    Exclusion of provisional measures delivered in an *ex parte* proceedings is considered as a drawback since it removes an element of surprise for the debtor.
    The fact that it did not remove all the uncertainties, especially those addressed in C-159/02 *Turner vs. Felix* and C-391/95 *Van Uden* is also considered unsatisfactory.[10]

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?

    '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.

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?

[10] Kunštek, E.: Privremene mjere u Uredbi Brisel I, in: Europsko građansko procesno pravo – izabrane teme (Garašić. J. (ed.)), Narodne novine, Zagreb, 2013, pp. 133-135.

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.
In my view (especially having in mind Art. 35 of the Regulation), 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 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. Namely, not all reliefs are temporary or reversible which means that they can affect the outcome of the decision on the merits. Since the purpose such measures ought to serve is securing the decision on the merits, it is quite clear that recognition of provisional measures taken by the court not exercising its jurisdiction on the substance of the matter may be problematic. There is also a question of recognition of the irreconcilable subsequent provisional measure, or even a final judgment, taken by the court exercising jurisdiction on the substance of the matter, since, according to Art. 45 of the Regulation, irreconcilable subsequent 'judgments' cannot be recognized (C-80/00 *Italian Leather*).
In practice, this problem could partially be mitigated through the extension of the double-condition test already developed by CJEU case law (C-261/90 *Reichert II*, C-391/95 *Van Uden*, C-99/96 *Mietz*) related to interim measures from jurisdiction deprived of the power to decide the merits, which, among other things, requires the reversibility of the measure's effect. This, however, does not solve the problem of recognition of the irreconcilable subsequent 'judgment'. Irreconcilability could also be partially mitigated by actually treating the judgment given in another Member State as if it had been given in the Member State of enforcement (Recital no 26) , i.e. by giving the priority to the final decision over a provisional decision, but these are all just bypasses and not the solution to the problem.
In any case, predictability as well as legal certainty would best be served by limiting recognition 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.

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?

    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 in the

Republic of Croatia are not permitted to review the decision. This is also 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 Parking d.o.o. v Sven Klaus Tederahn*)?

    Considering that the request for a preliminary ruling in this particular case was submitted by Croatian judiciary it is no surprise that there are number of decisions dealing with the same question as the one in case C-551/15 *Pula Parking*.

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 statistics available but there is a significant increase of consumer disputes regarding credit agreements, especially after CJEU case C-630/17 *Milivojević*, due to the fact that many of those credit agreements were concluded with a non-authorized international lender/creditor.

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?

    It has been touched upon in literature, with the conclusion that at least one of the parties has to have their domicile on the territory of a Member State. 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.[11]

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 is that Arts. 29 and 30 apply regardless of the domicile of the defendant. The fact that a court of a Member State has been seised first is the only relevant/decisive factor for the court second seized to stay its proceedings.

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?

    There were problems with the temporal scope of the Regulation, mainly at Municipal courts. There are some cases where the courts have applied national law or the Brussels I Regulation instead of the Brussels Ia Regulation.[12] It should not always be interpreted as the difficulties in application but also as misconception with regard to certain legal institutes.[13] Namely, there is still

[11] Šago, D.: Prorogacija nadležnosti u hrvatskom pravu i pravu EU, Zbornik radova pravnog fakulteta u Splitu, god. 53, 4/2016, str. 1053-1078.

[12] See: Povrv-526/2016-14 Municipal Court in Zlatar, 6 February 2017, corrected by Gž 1833/2017-2 County Court in Osijek, 25 October 2017; P-30/2016 Municipal Court in Velika Gorica, 28 March 2017, corrected by Gž 1555/2017-4 County Court in Rijeka, 3 January 2018; P-647/17-16 Municipal Court in Pula-Pola, 22 August 2017, corrected by Gž 2321/2017-2 County Court in Rijeka, 24 May 2018; P-3596/19-9 Municipal Court in Rijeka, 31 October 2019, corrected by Gž 50/2020-2 County Court in Varaždin, 5 September 2020; P-637/2019-8 Municipal Court in Zadar, 28 June 2019, corrected by Gž 117/2020-2 County Court in Varaždin, 17 July 2020; P-394/15-2 Municipal Court in Bjelovar, Permanet service in Križevci, 3 September 2015, corrected by Gž 8/2016-2 County Court in Bjelovar, 7 September 2017, etc.

[13] For instance: P-751/2017-2 Municipal Court in Rijeka, Permanent service in Opatija, 19 September 2017, corrected by Gž 32/2018-2 County Court in Pula, 14 March 2018; or P-1030/1027-3 Municipal Court in Rijeka, 27 September 2017, corrected by Gž 2471/2017-2 County Court in Osijek, 10 May 2018, etc. There are also: P-801/2016-50 Municipal Court in Osijek, 17 December 2017 and following Gž 342/2020-2 County Court in Pula-Pola which both failed in identifying Brussels Ia Regulation as a relevant ground for jurisdiction.

only moderate number of cases in Croatia yet. Most of the available ones have to do with the factual circumstances similar to the Pula Parking case, only some with contracts, provision of services, immovables, etc. Despite many educations each year some judges still lack sufficient knowledge of the EU law because these educations are not obligatory for all judges. They are elective and every judge chooses which education s/he wants to attend. In all cases, mistakes are corrected by the County court.

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?

    Yes they have, much more in practice than in theory. Rules which should have been relied upon most frequently are rules in Art. 7 but in some cases courts did not recognize Art. 7(1) as a relevant article. Instead they relied upon Art. 4(1) of the Regulation. Also, there were some misunderstandings regarding Art. 8(4).[14]

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?

    There were some difficulties regarding the concept 'matters relating to a contract' but 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.[15]

[14] See, note 19.

[15] Most of the cases relate to the unpaid home owners association fees. See for instance: P-2307/2016, 27 March 2017, and P-eu-67/2016, 15 June 2016, both Commercial Court in Zagreb followed by Pž 3245/2018-5 High Commercial Court, 5 November 2018; Pl-7/2019 Commercial Court in Zagreb, 14 February 2019, followed by Pž 1529/2019-3 High Commercial Court, 30 August 2019; P-1612/2018-9 Commercial Court in Zagreb, 18 April 2019, followed by Pž 3287/2019-3 High Commercial Court, 29 August 2019. Matter was finally resolved by the Supreme Court Judgment, Rev 3480/2019-4 of 17 December 2019, which cited a number of CJEU judgments, namely C-12/76 *Industrie Tessili Italiana Como v. Dunlop AG*, C-288/92 *Custom Made Commmercial v. Stawa Metallbau*, C-256/00 *Besix*, C-385/05 *Confédération générale du travail and Others*, C-533/07 *Falco Privatstiftung and Rabitsch*, C-519/12 *OTP Bank*, C-196/15 *Granarolo*, C-25/18 *Kerr* and C-200/19 *INA and Others*.

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?

    The prevailing view in the literature is that the place where the goods were delivered or services provided comes into play only 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. Thus, it is necessary to first interpret contractual agreement.[16]

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?

    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.).[17] Many of the CJEU judgments have been elaborated in literature which is also helpful.[18]

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[16] Eichel, F.: Noviji razvoj u pravilima o međunarodnoj nadležnosti za donošenje odluka prema Uredbi Brisel I, in: Europsko građansko procesno pravo – izabrane teme (Garašić. J. (ed.)), Narodne novine, Zagreb, 2013, pp. 65-66;
Stürner, M.: Sporazumi o nadležnosti i mjestu ispunjenja obveze u europskom građanskom procesnom pravu, in: Europsko građansko procesno pravo – izabrane teme (Garašić. J. (ed.)), Narodne novine, Zagreb, 2013, pp. 89-95.

[17] See for instance:
- with regard to the infringement of intellectual property rights, P-1403/2015 Commercial Court in Zagreb, 30 May 2018, followed by Pž 4784/2018-5 High Commercial Court, 21 August 2020, which elaborates its ruling using the CJEU case law, namely joined cases C-509/09 and C-161/10 *eDate Advertising and Others*, C-523/10 *Wintersteiger*, C-228/11 *Melzer*, C-170/*12 Pinckney* and C-441/*13 Hejduk*;

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?

    Yes, it has triggered some discussion in the literature.[19] There are no available 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?

    There were some problems with the application of Art. 8(4), i.e. contractual claims related to a right *in rem* on immovable property. In the beginning, 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).[20]

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

- with regard to the traffic accidents, Gž 3386/2017-2 County Court in Split, citing namely C-364/93 *Marinari*, C-463/06 *FBTO Schadeverzekeringen*, joined cases C-509/09 and C-161/10 *eDate Advertising and Others*, C-441/13 *Hejduk.*

[18] Kunda, I./Vrbljanac, D.: Jurisdiction in internet defamation cases and CJEU's policy choices, in: Economic integrations, competition and Integration, cemafi International (Kandžija, V./Kumar, A.), 2016, pp. 738-756.

[19] Poljanec, K.: Restitucija kulturnog predmeta i europsko građansko procesno pravo, Pravni vjesnik, god. 33, br. 3-4, 2017, pp. 131-150.

[20] See for instance:P 145/16-5 Municipal Court in Varaždin, 9 december 2016, followed by Gž 344/17-2 County Court in Varaždin, 6 March 2017. See also: P-6125/816-29 Municipal Civil Court in Zagreb, 6 November 2020, followed by Gž 2762/2020-2 County Court in Zagreb, 18 December 2020, explaining the concept of Art. 8(4) using CJEU case law, namely C-438/12 *Weber*, C-605/14 *Komu and Others*, C-417/15 *Schmidt* and C-630/17 *Milivojević*.

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

There are no views expressed in domestic literature but according to the existing CJEU case law (C-463/06 *Schadeverzekeringen*, para. 28 and C-111/09 *Ceská podnikatelská pojištovna as* paras. 29 and 30) 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.[21]
In my view, and having in mind the explicit obligation of the court seized to warn the party of their right to contest the jurisdiction of the court and of the consequences of entering or not entering an appearance, 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.

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?

    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.

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

    Yes, they do.

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

[21] However, flexible interpretation of the Law on Civil Procedure, more precisely of its Art. 354 para 2(3)- „if, concerning the objections of the parties, the court has erred in deciding that it has real or territorial jurisdiction", may be helpfull. More precisely, it could serve as a ground for appeal due to the lack of the court's inactivity. Judging by the existing court practice, which allowes for an appeal in case where court declares itself incompetent without serving the petition to the defendant for response, such solution should be acceptable. See for instance: P-1357/2016-3 Commercial Court in Zagreb, 9 September 2015, followed by Pž 7170/2016-2 High Commercial Court, 3 September 2019.

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?

Some difficulties have been encountered with the identification of the competent court as well as with regard to choice-of-court agreements. Namely, 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. In some cases they failed to notice that the choice-of-court agreement was concluded before the dispute has arisen.

33. Have there been difficulties in applying Section 4 of the Regulation on the jurisdiction in matters relating to consumer disputes, if so which aspect(s): requirements for a transaction to be considered as a 'consumer contract' as defined in Article 17, the application of the norms on the choice-of-court agreements?

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 (despite owning a company and using the credit for the expansion of the business) (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.

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, they have not encountered any such difficulties.

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?

There were 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.

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?

    According to the available case law there are more difficulties in distinguishing cases falling under Art. 8(4) from those falling under Art. 4(1) than in distinguishing between disputes which have 'as their object' 'rights *in rem'* from those that merely relate to such rights. Namely, in cases regarding credit agreements secured by the charge on immovable property where the applicant filed for removal of that security from the respective registry courts based their jurisdiction on Art. 4(1) instead on Art. 8(4).
    There are no available case law regarding Art. 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?

    According to Art. 6 of the Croatian PIL Act: 'The seat of the company is a place which is designated as such in a company's statute or other analogous act. If the seat of the company cannot be determined in such way, than it is deemed to be in a place of the company's head office'.
    Available case law does not show any difficulties in the application of this provision.

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?

All of the publicly available case law dealing with intellectual property concerns internal cases only. Thus, there is no available case law dealing with Art. 24(4).

39. Given the variety of measures in national law that may be regarded as 'proceedings concerned with the enforcement of judgements', which criteria are used by the courts in your Member State to decide whether a particular procedure falls under the scope of Article 24(5)? Please elaborate and provide examples.

According to the Law on Enforcement, 'proceedings concerned with the enforcement of judgments' concern applications to oppose enforcement, i.e. different adversary proceedings in which the debtor (Arts. 50 to 55) or the third party (Arts. 59 and 60) oppose enforcement, based on the express grounds contained in the Law on Enforcement (e.g. expiry of the statutory time-limit for enforcement, contestation of the existence of the claim of other creditor(s), its sum and the rank in priority of payment, etc.).

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 your Member State?

According to the Law on Enforcement, yes it does. I have not been able to find the case law dealing with this question, but according to Arts. 331 and 340 of the Law on Enforcement Art. 24 should be interpreted narrowly.

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?

It has been addressed in literature but in a minimum degree. Comments mainly refer to the fact that according to the rules of the new Regulation it is not necessary that at least one of the parties has his/her domicile on the territory of Member State.[22]

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?

    According to the available case law, no.

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 some cases dealing with the formal requirements for validity of choice-of-court agreements. According to Art. 70(3) and (4) of the Code on Civil Procedure, choice-of-court agreement must be in writing, related to particular dispute or more of them if they are based on the same legal basis. Written form is considered to be satisfied if the agreement is concluded in the form of an exchange of letters, telegraph, telex or other kind of telecommunications media which leaves written proof of the concluded agreement. In practice, with regard to 'in writing or evidenced in writing' main problem seems to be whether there is an agreement or there is just an offer for the agreement.
    There is no available case law with regard to other questions.

[22] Stürner, M.: Sporazumi o nadležnosti i mjestu ispunjenja obveze u europskom građanskom procesnom pravu, in: Europsko građansko procesno pravo – izabrane teme (Garašić. J. (ed.)), Narodne novine, Zagreb, 2013, p. 97;
Šago, D.: Prorogacija nadležnosti u hrvatskom pravu i pravu EU, Zbornik radova pravnog fakulteta u Splitu, god. 53, 4/2016, str. 1053-1078.

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?

    I have not been able to find such cases.

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?

    I have not been able to find such cases.

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?

    It has led to limited discussion in literature.[23] There were no problems in practice.

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

    There is no such literature in my country.

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, it has.

[23] Eichel, F.: Noviji razvoj u pravilima o međunarodnoj nadležnosti za donošenje odluka prema Uredbi Brisel I, in: Europsko građansko procesno pravo – izabrane teme (Garašić. J. (ed.)), Narodne novine, Zagreb, 2013, pp. 65-66.

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?

    Not to my knowledge.

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).

    There are no such examples.

51. Do you know whether the courts of the other Member State are typically contacted immediately once sufficient evidence has been gathered which suggests or confirms that courts in the other Member State may have been seised of the 'same cause of action'? Is there a standardised internal procedural guideline which is followed by the courts of your Member State? And are there any practical (for example, linguistic, cultural or organisational) obstacles or considerations which may hinder contact between the courts of your Member State and the other Member State?

    The available case law does not refer to such situations. There are no standardised internal procedural guidelines for the courts to follow. Regarding the practical difficulties, they are associated mainly with linguistic limitations. Namely, there are still judges who are not fluent in foreign languages, which prevents them from contacting their fellow judges in another jurisdictions.

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)?

According to Art. 185 of the Code on Civil Procedure, a court in Croatia is considered to be seised "when the document instituting the proceedings is lodged with the court".
According to Art. 194(1) of the Code on Civil Procedure: 'The proceeding is deemed pending when the document instituting proceedings is received by the defendant.' According Art. 194(2) of the same Article: 'With regard to the claim presented by the party in the course of proceedings, the proceeding is deemed pending from the moment the defendant has been notified of the claim.'.

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?

Croatian Code on Civil Procedure allows for objective as well as subjective subsequent amendments of the claim. Neither of them affect the date of seising of the court with the original proceedings.
With regard to the objective subsequent amendments, according to Art. 190(1) of the Code on Civil Procedure, subsequent amendments of the claim include: change of equivalence of the claim, amplification of the existing claim or addition of the new claim to the existing one. In practice it is often difficult to conclude whether it is a subsequent amendment or something else.[24] According to paras. 2 and 3 of the same Article, objective subsequent amendments are allowed during the preliminary hearing, exceptionally until the end of the main hearing if the plaintiff was, without any fault on his part, unable to do it until the end of the preliminary proceedings. Any amendments after the service of the original claim to the defendant must be approved by the defendant, except in those cases in which it is considered to be relevant for the final resolution of the relationship between the parties, in which the court can allow it even when the defendant disagrees.
There is some differentiation between the 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. Namely, according to Art. 191(2) of the Code on Civil Procedure, if the

[24] Katić, D.: Preinaka tužbe, povlačenje tužbe, novi dokazi i nove činjenice, teret dokazivanja, test razmjernosti (čl. 6. Europske konvencije za zaštitu ljudskih prava i temeljnih sloboda), in: VSRH/PA: Građansko pravo – sporna pitanja i aktualna sudska praksa – 2018., Zbornik radova, pp. 31 -49;
Aras Kramar, S./Maganić, A.: Preinaka tužbe u sporovima radi naknade štete – neki problemi, in: Zbornik radova s međunarodne znanstveno-stručne konferencije Hrvatski dani osiguranja 2017 (Ćurković, M./Krišto, J./Zorić D. (eds.)), Zagreb, 2017, pp. 134-148.

amendments are based on facts which have emerged after the date of seising of the court and the plaintiff, based on original claim, requires another object or a sum of money, defendant is not allowed to oppose.
With regard to the subjective subsequent amendments, according to Art. 192(1) of the Code on Civil Procedure, until the end of the preliminary hearing plaintiff is allowed to amend his claim in a way that instead of the original defendant (s)he sues another person. According to the Code on Civil Procedure subjective subsequent amendments also include the following situations: when one of the parties (plaintiff or defendant) is replaced by the person who acquired the disputed object or right (Art. 195(2)); when the claim is extended to the new defendant besides the original defendant or when the new defendant acceded with the original defendant (Art. 196(2)); when the intervener replaces the party (s)he acceded to (Art. 208(5)); and when the designated predecessor replaces the defendant (Art. 210(2)). In all these cases subsequent amendments are allowed until the end of the main hearing.[25]

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))? 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?

    There is no available case law.

55. 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?

    Yes, it has.

56. 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?

[25] Katić, D.: Preinaka tužbe, povlačenje tužbe, novi dokazi i nove činjenice, teret dokazivanja, test razmjernosti (čl. 6. Europske konvencije za zaštitu ljudskih prava i temeljnih sloboda), in: VSRH/PA: Građansko pravo – sporna pitanja i aktualna sudska praksa – 2018, Zbornik radova, p. 50.

Until recently, there was no obligation under national law to take such circumstances into account so, typically, they are not taken into account. However, under Art. 60(1) of the new PIL Act: 'If proceedings are pending before a court of a third State at the time Croatian court is seised of an action involving the same parties and the same cause of action, Croatian court will stay the proceedings until the court of the third State gives its judgment, unless it cannot be expected that the court of the third State will, within a reasonable time, give the judgment eligible for recognition and enforcement in Republic of Croatia.' Thus, it is to be expected that the court practice will change.

57. 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?

There is no doubt that there is a sufficiently 'flexible mechanism' in place. In my view, the real question is how long it will take for the national courts to act upon it. Namely, judging of the circumstances listed in Rec. 24 of the Regulation requires a good knowledge of the case and the legal system of the respective third state. Considering that, due to various obstacles, even judicial cooperation between the courts of Member States is still 'work in progress' execution of the requirements addressed in Rec. 24 for the time being seems rather idealistic.

Provisional measures, protective measures

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

None of the available judgments deals with 'provisional, including protective, measures'.

59. 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?

As previously stated, there is no available case law regarding provisional measures. With regard to doctrine, it mainly reiterates the words of the CJEU's judgment, without entering into further explanations.

Relationship with other instruments

60. 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.

    Not to my knowledge. Publicly available case law as well as the case law supplied by the judges does not even mention Hague Convention on Choice of Court Agreements.

CHAPTER III

Recognition and Enforcement

61. 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?

    According to the Court's Rules of Procedure (Sudski poslovnik, Official Gazette of the Republic of Croatia No. 37/14, 49/14, 08/15, 35/15, 123/15, 45/16, 29/17, 33/17, 34/17, 57/17, 101/18, 119/18), there are two separate records for EU cases – Register for objects of enforcement and security based on judgments rendered in other Member States (Ovr-eu) and Register for the issuance of certificates and recognition and enforcement of judgments rendered in other Member States (R1-eu). These registers are kept at the municipal and county courts and are used for keeping records of all incoming European judgments (i.e. based on Regulations 44/2001, 1215/2012, 2201/2003, 4/2009, 650/2012, 805/2004, 1896/2006 and 86/2007). Thus, it is a rather difficult to keep track of one particular type of judgments.
    However, there is a recent judgment dealing with such application.[26] In this case, first instance court accepted application for enforcement and ordered enforcement of a monetary claim on the account of the debtor, based on: final and enforceable judgment/writ of execution given by Municipal Court in Ljubljana (Slovenia), certificate of finality and enforceability of the judgment and certificate based on Art 53 BIa given by the same court. On an appeal, the party seeking the refusal of enforcement, among other things, claimed that

[26] Ovr-eu-1/2021 Municipal Civil Court in Zagreb, 22 January 2021, followed by Gž Ovr 569/2021-2, County Court in Zagreb, 24 May 2021.

there are grounds for refusal contained in Art. 45 BIa. County Court reminded of the CJEU judgments in C-139/10 *Prism Investments*, C-579/17 *Gradbeništvo Korana*, C-681/13 *Diageo Brands* and C- 559/14 *Meroni* which advocate restrictive approach in order to avoid "initiating a new procedure" (since Art. 45 was not invoked in first instance), but due to some procedural omissions of the first instance court decided to quash first instance judgment and return the case to the first instance court for new ruling.

62. 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?

    With regard to judicial enforcement agents (sudski ovršitelji), Croatian Judicial Academy (Pravosudna akademija) annualy organizes life-long learning courses for the judiciary. It acts independently but is open to suggestions from the judiciary with respect to the subject matter of the future educations.
    With regard to other enforcement agencies, it is not so transparent whether they received specific training or instruction or not.

63. 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 judgments rendered in other Member States?

    No, there is no such concentration of local jurisdiction. All municipal and county courts in Croatia are competent to act in such cases.

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

    No, there are no such measures.

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

There are no available statistics in our jurisdiction.

66. 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?

    Not to my knowledge.

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

    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. of the Regulation.

68. 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?

    No, there is no such statistics.

69. 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?

    No, it has not.

70. 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 such statistics.

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

    Yes, they do.

72. 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 such statistics. None of the available case law refers to Art. 54.

73. 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?

    Croatian courts or enforcement agents always require the party invoking the judgment 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.'

CHAPTER VII

Relationship with Other Instruments

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

    Currently, there are two complementary sets of rules regarding unfair terms in consumer contracts. Before implementation of the respective Directive in Croatian legal system, verification of standard contract terms was regulated by provisions of the Law on Obligations (Zakon o obveznim odnosima) which are applicable to all sorts of contractual relations (B2C, B2B, B2P, P2P). After the implementation of the Directive, through the provisions of the Law on Consumer Protection (Zakon o zaštiti potrošača), consumer contracts are primarily regulated by that Law while provisions of the Law on Obligations apply only subsidiary and only with regard to B2C contracts.
    Art. 3 as well as the respective Annex (thus, including (1)(q)) of the Directive 93/13/EEC are incorporated in their entirety as Art. 49 and Art. 50 of the Law on Consumer Protection.

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

    No.

76. 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.

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

    There are some judgments related to:
    - the Convention on the Contract for the International Carriage of Goods by Road (CMR)(1956)
    - the Convention for the Unification of Certain Rules Relating to International Carriage by Air (Warsaw Convention)(1929)
    - the Convention Concerning International Carriage by Rail (COTIF)(1980) and the Uniform Rules concerning the Contract of International Carriage of Goods by Rail (CIM)(2016)

    None of the judgments refers to Art. 71 of the Brussels Ia Regulation.

78. 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?

    Not for now, because the Hague Convention on Choice-of-Court Agreements has never been applied so far.

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

    Not to my knowledge.