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**National Reports of the Judgtrust project
Session 3: Rules on Jurisdiction and
Common Provisions
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Structure of presentation

- Research methodology National Reports
- Some findings on Rules on jurisdiction



Research methodology

- Interviews with experts of all Member States
- Predetermined questionnaire
- Questionnaire is attached as an annex to the final report
<https://www.asser.nl/judgtrust/about-judgtrust/outputs-results/>



Question I alternative jurisdiction

Q 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?



Question I Article 7(1)

Article 7 (1) (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question; (b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be: in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered, in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided; (c) if point (b) does not apply then point (a) applies;



Question I the outcome

Most MS reported two issues:

- the interpretation of 'matters relating to a contract': France, Ireland.
- the localization of the place of performance: Finland, France, Greece, Portugal, Sweden.



Question I the outcome

Some MS referred to other complications:

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



Question II exclusive jurisdiction

Q 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?



Question II Article 24 (2)

Article 24

The following courts of a Member State shall have exclusive jurisdiction, regardless of the domicile of the parties:

(2) in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or the validity of the decisions of their organs, the courts of the Member State in which the company, legal person or association has its seat. **In order to determine that seat, the court shall apply its rules of private international law;**



Question II the outcome

Most MS use (a variation of) the statutory seat.

Many MS use a rule of private international law that is a combination of the real seat, incorporation, registered and statutory seat theories.

Some MS uphold an incorporation rule, yet add to this rule that if the real seat is within their territory their domestic rules apply anyway.

Examples: Belgium, The Netherlands, Poland, Spain, Portugal.



Question III choice-of-court clauses

Q 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?



Question III choice-of-court clauses

Article 25 states “.. regardless of their domicile..”



Question III the outcome

Almost all MS report either that there is no (published) case law on the matter or that no increase can be identified.

Some MS report to expect no differences, since previously applicable domestic law does not differ much substantively.

Other MS point to the general unattractiveness of their courts and subsequently do not expect much increase in number of litigations (France).



Thank you for your attention!