

**ANSWER by FINLAND**

**Questionnaire No 1: Collection of statistical data**

**Information received from the courts by the Ministry of Justice of Finland**

**Note:** There is no statistically recorded information available on the application of the Regulation 44/2001/EC in Finland. The answers below are based on an inquiry sent by the Ministry of Justice to the courts (Supreme Court, Appeal Courts (6) and District Courts (61)).

The Supreme Court has not yet had any cases where the Regulation would have been applied. The Appeal Courts have had only a few individual cases. Moreover, the vast majority of District Courts reported that there have not been any cases of application of the Regulation.

1.1 evaluation of the approximate number of judgments where the courts and tribunals of the Member States concerned retained jurisdiction on the basis of the rules of Regulation 44/2001/EC in one given year (2003/2004) and evaluation of the provisions mostly relied on for that purpose.

- There are no officially recorded statistics in Finland. However, according to an inquiry made by the Ministry of Justice there have been only few cases (10-20) where jurisdiction rules of the Regulation have been applied.

1.2 evaluation of the approximate number of applications for a declaration of enforceability on the basis of Regulation 44/2001/EC in one given year (2003/2004)

- On the basis of the information received from the courts it seems that the Regulation is most often applied in relation to recognition of judgements. There are approximately 20-30 applications per year.

1.3 evaluation of the approximate number of declarations of enforceability granted on the basis of Regulation 44/2001/EC in one given year (2003/2004)

- There are no official statistics but normally the applications for a declaration of enforceability (20-30 per year) are granted.

1.4 evaluation of the approximate number of declarations of enforceability which have been refused already in the first instance in one given year (2003/2004), including the principal grounds for refusal; further evaluation of the number or proportion of cases, where a subsequent improvement of the application has been asked for.

- The applications concerning declaration of enforceability are seldom refused.

- 1.5 evaluation of the approximate number of revocations of decisions containing a declaration of enforceability after an appeal in one given year (2003/2004), including the principal grounds for revocation
- There have been only 5-10 cases at the appeal level. There is no information on the outcome of the appeals.
- 1.6 evaluation of the average amount of time required/accrued for obtaining a decision containing a declaration of enforceability
- In Finland it takes approximately one or two weeks to obtain a decision containing a declaration of enforceability.
- 1.7.1 compilation of a list of the provisions of Regulation 44/2001/EC that are most frequently applied by the courts and tribunals in the Member States concerned
- There are no official records but the provisions concerning recognition and enforcement appear to be the most applied provisions.

## National Report Finland

### Questionnaire No 2: Collection of Empirical Data

#### 1. Survey

The second questionnaire covers empirical problems – especially the interfaces between Regulation 44/01/EC and the national laws of procedure. This questionnaire is distributed selectively among groups, who are concerned with the application of Regulation 44/01/EC due to their profession.

#### 2. Questions<sup>1</sup>

- 2.1 Are there conditions of recognition and enforcement of judgments, authentic instruments and court settlements which are beyond those permitted under Regulation 44/01/EC?

The answer is no in relation to other EU Member States and Contracting States to the Lugano Convention. The legislation does not allow it. The experience supports this conclusion and according to law firms there are no problems in applying these rules.

- 2.2 Are there local focal points, i. e. do cross border litigations accumulate in border regions?

The most of the cases are concentrated in the capitol area - Helsinki, Vantaa, Espoo. The questionnaires were sent to offices in Oulu and Kuopio; however, the response was that there are very rarely requests.

- 2.3 From which State of origin do titles that shall be recognized or executed in your State come from?

Various states. It seems that in law firms and debt collection agencies cases concentrate on different offices. As for debt collecting agencies Svea replied that they receive judgments mainly from Sweden (and some from Norway under the Lugano Convention). For Roschier and Holmberg, one of the largest Finnish law firms, cases come from all over European area, whereas Hannes Snellman, also one of the largest law firms, mainly deals with cases from Denmark under the Brussels Convention.

- 2.4 Can the handling of the standard form concerning Article 54 be regarded as satisfactory or do similar problems arise as regarding the standard forms concerning Regulation 1348/2000/EC? (See the respective parts of the Mainstrat-study (p. 93–98), which are attached to the questionnaire. Explanation: group 1 = members of state administration, group 2 = judges and attorneys, group 3 = *hussiers de justice* and other persons providing the service of documents.).

Not particularly. The law firms in particular have not used the standard forms provided for in the Regulation as of yet.

- 2.5 Do courts make use of the possibility provided for in Article 55 to dispense with the certificate's production?

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<sup>1</sup> These questions should be put to lawyers as well as judges. However, regarding some questions mainly lawyers are addressed.

There are no standardised rules as to what need to be included in the recognition and enforcement request. Furthermore, without published case law it is difficult to answer this question.

- 2.6 Do any language problems arise regarding recognition and enforcement – especially regarding the handling of the standard form concerning Article 54?

No problems were indicated by the law firms or debt collectors.

- 2.7 Is the production of translations required (Article 55 (2) Regulation 44/01/EC)?

There are no standard rules on this. It is in the discretion of the courts to request translations. Some courts do not require translations if the judge in question understands the language of the case, for example Scandinavian languages, English, German. Whereas others, especially those which deal less frequently with recognition and enforcement of foreign judgments, might require more complete translations of the paperwork. The opinion was that in taking in use the standard forms it should be possible to lessen the need for translations.

- 2.7.1 If yes, will the translation of the operative provisions suffice or is it necessary to translate the whole judgment including the grounds for the decision?

Usually translation of the operative provisions suffices. This depends on the court and the case.

- 2.7.2 Do the costs for translations lead to less efficiency?

Yes, this takes time and other resources in the recognition and enforcement of the judgment in question. As for costs, see the next question below.

- 2.8 Which costs result from the recognition of judgments, authentic instruments and court settlements?

The standard court fee for the declaration of enforcement is 72 Euro. In addition to this, debt collection agencies take 27 Euro per notification for debtor (Svea Debt Collectors). Therefore the total sum for the creditor may be 99 Euro for the declaration of enforcement and its notification for the debtor.

The lawyers' fees for recognition and enforcement in simple cases vary from 500 to 2000 Euro. This includes court fees, translation of documents and the work done by the lawyers in the case. The time spent and the value of the case are important factors. In some law firms fees are calculated on hourly basis.

However, in controversial cases, where there is an appeal against the declaration of enforcement, fees can raise into thousands or even hundreds of thousands Euro. This depends on the complexity of the case and the time spent in a case, and if there are many complex and long documents to translate.

The only case on costs from the Supreme Court is from 2004 (KKO:2004:43). Here the Court declared with reference to the Brussels Convention that normal procedural rules apply as long as they do not contradict the wording or purposes of the Convention (or Regulation). This means that the creditor can request the court to order the debtor to compensate the creditor for the costs encrued by the process as in any other civil case where agreement is allowed. Thus, the debtor is almost always ordered to compensate the creditor for his or her costs if the creditor has so requested.

In particular:

- 2.8.1 How is Article 52 implemented?

There are no such charges, duties or fees which would be calculated under Article 52.

2.8.2 How are solicitor's charges calculated?

See above, 2.8

2.8.3 Are these costs reimbursable?

Often companies or firms and some individuals have insurance. In these cases the insurance companies will reimburse costs according to the contract for insurance.

Legal aid is available for individuals who have received legal aid in the state of origin. According to the Finnish legal aid legislation (5.4.2002/257) in principle in matters relating to applications for court such as is the one relating to recognition and enforcement of a judgment, legal aid does not cover lawyer's charges - therefore it is not possible to have a fully free legal aid for the creditor. On the other hand if the procedure is contradictory as when an appeal is lodged against an enforcement order, the legal aid normally also covers lawyers' charges. This applies also to translation or interpretation costs or costs relating to the enforcement of the judgment.

In particular:

2.8.3.1 Who calculates and verifies the amount of the reimbursable costs, which have been asserted?

It is the court hearing the case which decides on the compensation to be paid to the party of the case. The same court decides the fees to be paid to the Counsel if the party has been granted legal aid.

2.8.3.2 Is it possible to execute the reimbursable costs without bureaucratic formalities?

Only if the party has legal aid, including services of a lawyer.

2.8.3.3 Are there any delays in time due to the fact that the costs have to be calculated or due to the fact that the calculation has to be verified?

No, the court decides this simultaneously with the decision.  
The Supreme Court has declared in KKO:2004:43 that the enforcement order cannot be delayed because a decision must be made in relation to costs. Thus, the decision on compensation for legal costs is made in the first instance ex parte. The courts are obliged to use speedy process to declare on enforceability. The debtor is allowed to challenge the enforceability order where the decision relating to costs can be reconsidered.

2.9 Does the requirement to serve the party against whom enforcement is sought with the declaration of enforceability, which is provided for in Article 42 – or the practice of judicial authorities regarding the dispatch of communications in general – impair the efficiency of enforcement – in particular its surprise effect? Does this virtually obstruct the possibilities of Article 47?<sup>2</sup>

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<sup>2</sup> Please describe in detail the chronology of all steps that are carried out by the creditor and the court (including its administrative staff). For instance, in Germany the same court clerk is competent to serve the debtor and to notify the creditor. As a consequence of that, the creditor is not informed before the debtor, so that the surprise

No, there is no experience that declaration of enforceability would have such an effect. Even if this might be the case in some circumstances, if there is a fear that the debtor is attempting to hide assets, it is possible to request the court to grant interim measures. Here the debtor does not need to be heard. These can be granted ex parte.

- 2.10 Is there any experience with the granting of legal aid according to Article 50 of the Regulation?

Not as far as we are aware. As for rules see above.

- 2.11 Is there any experience with the declaration of enforceability of authentic instruments (Article 57), court settlements (Article 58) and appealable judgments (Article 37)? (See also Questionnaire No. 3, part 4.).

No.

- 2.12 Do problems arise regarding the references to national procedural laws that are included in Annex I to IV of the Regulation?

No experience that this would.

- 2.13 Do problems arise regarding the application of the standard forms (certificates) that are included in Annex V and VI of the Regulation?

No, but then again they are so far only rarely used.

- 2.14 Do judges have easy access to a version of the printed form concerning Article 54 of the Regulation (Annex V) in their own language, so that a translation of the completed form is dispensable?

Yes, every judge has access to Internet.

- 2.15 Are there any possibilities to improve the implementation of the Regulation within the EU? How could guidelines for an improved coordination and cooperation (at a judicial and administrative level) look like?

The Regulation works generally very well in Finland. None of the interviewees had perceived any problems in relation to the implementation of the Regulation. Especially in simple cases recognition and enforcement is a fairly simple procedure.

- 2.16 How much time does it take usually until the first enforcement measure (at least seizure of assets) is carried out – i. e. not only until the judgment – after an application for a declaration of enforceability has been submitted? How much time does it take usually after a judgment has been given in a Member State to collect all documents which are necessary to pursue the application for a declaration of enforceability in another Member State?

This depends on the court in question. In the capitol area for example it is possible to attain a declaration for enforceability in two days or at least within a week. In some other courts which do not deal as often with recognition and enforcement of judgments this can take up to a month. Meanwhile it is possible to request the court to grant interim measures.

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effect of the first enforcement measure fails. If in your country the court is competent for service: Do similar problems occur? In case your State follows the system according to which the debtor is served by order of the creditor: Does this guarantee the surprise effect?

## (Questionnaire 2)

2.17 Is there any experience with actions raising a substantive objection to the judgment claim?<sup>3</sup>

Yes, in case S 03/1437, Court of Appeal Turku, Yves Delatte v. PiLeJe S.A, the plaintiff argued that the original judgment was wrong in substance and therefore the judgment should not be recognised and enforced in Finland. The Court of Appeal confirmed the enforcement order of the lower court and the principles set out in Articles 29 and 34 of the Brussels Convention and refused to review the original judgment. The courts here therefore respect the principle of non-review by the recognising court.

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<sup>3</sup> Example: The debtor claims that he has performed in the meantime or has set off his claim against the creditor's claim or has made a compromise including the arrangement to pay by instalments. This is possible according to an explicit provision in the German implementing statute (§ 12). Does a similar rule exist in your legal system? If yes, did this lead to delays in granting declarations of enforceability?

## National Report

### Questionnaire No. 3: Legal Problem Analysis

#### 1. General Themes

- 1.1 Are there any problems in the judicial practice with the autonomous interpretation of „civil and commercial matters“ (Article 1 (1)) practised by the European Court of Justice (ECJ)?

No, there has so far been no problems with regard to this particular point.

- 1.2 Do public authorities use the Regulation to assert claims against private persons?

There is no information about this.

- 1.3 How is the delineation of the scope of application of the Regulation and other instruments concerning the judicial cooperation in civil matters?

There has so far been no problems.

In particular:

- 1.3.1 the delineation to Regulation 2201/03/EC (concerning Article 1 (2) lit. a) Regulation 44/01/EC)? Are there any problems with the assertion of claims concerning maintenance/living costs?

No.

- 1.3.2 the delineation to Regulation 1348/2000/EC (concerning Article 1 (2) lit. b)), particularly: How does the judicial practice treat the delineation of collective and single actions? Are there any problems with the delineation of actions concerning cases of insolvency and those that do not?<sup>1</sup>

Not so far.

- 1.4 Is the application of Article 4 of Regulation 1438/71/EC practical for the determination of Article 1 (2) lit. c)?

Not as far as we are aware.

- 1.5 Should the scope of application be extended, especially to incorporate arbitration and mediation proceedings?

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<sup>1</sup> In some legal systems the avoidance in insolvency proceedings has to be asserted before another court than the court of origin. Before Regulation 44/01/EC and Regulation 1346/2000/EC came into force, the proceeding was treated as one ruled by insolvency law, whose jurisdiction was ascertained by national law. Today it is said that the rules of Regulation 44/01/EC and Regulation 1346/2000/EC concerning the jurisdiction interlock. On the other hand Regulation 1346/2000/EC gives jurisdiction to a court only in the case of opening the insolvency proceedings, not in other cases concerning the law of insolvency. Does this lead to the conclusion that the avoidance of insolvency proceedings is ruled by Regulation 44/01/EC? The same problem arises with actions concerning the liability of a liquidator. Do such problems arise in your country?

No, law firms especially are against this. The 1958 New York Convention provides for appropriate rules for recognition and enforcement of arbitration agreements and arbitral awards.

- 1.6 How do the guarantees for the rights of defence provided by the Regulation work concerning jurisdiction on the one hand and recognition and enforcement on the other hand?

They work quite well.

- 1.7 Are the rules of Articles 32–58 of Regulation 44/01/EC compatible with national procedural rules? What is still left to be ruled by the Member States? Do special rules exist or do the general rules have to be used?<sup>2</sup>

Yes, they are compatible. After a declaration for enforceability, the award is enforced in accordance with national rules as with any other domestic judgment.

- 1.8 Is the meaning of these conventions in relation between the Member States reduced by the application of Regulation 44/01/EC?

Yes, those conventions are almost completely superseded by Brussels I Regulation, Brussels Convention or Lugano Convention.

## 2. Provisions of Regulation 44/01/EC dealing with Jurisdiction

### 2.1 General Issues

- 2.1.1 Does the Regulation guarantee, according to its overall objectives, predictability of judicial decisions and legal certainty?

The majority of interviewed responded affirmatively. The only objections were raised in relation to Article 5(1) and 5(3). According to Roschier Holmberg, Article 5(1) is either superfluous because Article 2 can be used, or contrary to the aims of the Convention by allowing the use of forum actoris. Furthermore, the old rule on identification of the place of performance of contractual obligation was considered to be very cumbersome to use (Hannes Snellman). With the new rules under the Regulation most of the simple cases can be solved in an easier manner.

Similar objections can be raised with regard to Article 5(3) which has a very wide application and rather cumbersome rules in relation to recovery of damages. (Roschier Holmberg)

However, at the same time it was recognised that the flexibility provided by these Articles does allow for the benefit of bringing in actions in the home forum and thus beneficial for plaintiffs residing in Finland.

- 2.1.2 Do the provisions on jurisdiction deal satisfactorily with the relevant issues, in particular: Do the courts of the Member States comply with the obligation as laid down by the ECJ that exclusively deal with the issues identified by Article 5 constitute a ground of jurisdiction?

So far as we know yes.

- 2.1.3 Is the catalogue of fact-specific grounds of jurisdiction sufficient?

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<sup>2</sup> Example: In Germany there is an obligation for the parties of being represented by a solicitor when taking action at the *Landgericht*. An exception is made for the order of enforcement of a foreign judgment by a rule of the national implementation law (§ 4 (2)).

Yes.

2.1.4 Does Article 4 (2) cause a discrimination in fact of third State parties?

In principle yes.

2.1.5 How are Articles 25 and 26 applied in practice? In particular: How does the examination "ex officio" work? Does such examination include grounds of jurisdiction not mentioned in Article 25? Do the courts examine ex officio if there is a valid choice-of-forum clause derogating the jurisdiction seized with the matter by reviewing the entire document of the agreement or do they demand a declaration of plaintiff that there is no derogation?

They are no reported cases.

Examination ex officio does not include examination of the grounds of jurisdiction in courts. It is not mentioned in Article 25.

The choice of forum clause has only effect if it is invoked by the defendant in limine litis, or if the defendant does not enter an appearance.

2.1.6 Is the examination of the issue of jurisdiction expensive and time-consuming? Are the same fees for the court and the attorneys to be paid as under the main proceedings? How long does it usually take to obtain a final decision on jurisdiction? Are there any complaints that courts do not decide the issue of jurisdiction separately, but only in connection with the main proceedings? In reverse, are there complaints that a separate decision on jurisdiction results in an unbearable delay of the decision in the main proceedings?

The same fees are paid for lawyers as in the main proceedings. The fees depend on the complexity of the case and value of the claim.

## 2.2 Questions regarding the various grounds of jurisdiction

2.2.1 How is the reference in Articles 2 and 59 applied? How is the term "domicile" defined? Are there any cases where the courts held that the Defendant had several domiciles?

The domicile of defendant is not defined in Finnish law. It is however generally understood more or less in the same way as the concept of habitual residence. We are not aware of any cases where the courts have held that the defendant had several domiciles.

2.2.2 Does Article 60 with its alternative connecting factors appear feasible?

Yes.

2.2.3 How does Article 5 No. 1 work? In particular: Article 5 No. 1 lit. b) 1<sup>st</sup> indent leaves open the place of fulfilment if goods are handed over to a carrier under CIF or FOB. Is the place of delivery the place where the goods are handed over to the carrier or is the place of delivery to the addressee at the latter's place? In that respect, are there any difficulties known in court practice or contract drafting?

The answer for the first question depends on the applicable incoterms laws.

The second and third questions: Article 5(1) is quite complicated. However, it seems to work. Usually contracts include a prorogation or arbitration clause, thus the problem is avoided.

The Supreme Court has had the opportunity to consider Article 5(1) of the Brussels and Lugano Conventions in two cases. In KKO:1998:138 the Court used the UN Convention on Contracts for the International Sale of Goods in order to establish the place of performance of the obligation - both Germany and Finland were parties to the Convention so therefore it was applicable. Whereas in the case KKO:2005:114 the obligation in question was the obligation to pay the debt which was to be performed in Finland. Therefore the Finnish court had the jurisdiction to hear the case.

- 2.2.4 Do courts have difficulties to determine the place where a service was provided or should have been provided?

Yes, possibly, in particular with those judges whom are less familiar with the provisions of the Regulation. However, there is no case law on this point yet.

- 2.2.5 Under Article 5 No. 1 lit. a), how is the place of performance determined in light of the jurisprudence of the ECJ?

The courts do their best to apply it in conformity of the jurisprudence of the ECJ. There is no case law on this point.

- 2.2.6 Under Article 5 No. 1 lit. b), how is the term „provision of services“ defined and how are services localised?

There is no case law to answer this question.

- 2.2.7 How is the scope of Article 5 No. 1 lit. c) determined?

There is no case law to answer this question.

- 2.2.8 How is the line drawn between Article 5 No. 1 and Article 5 No. 3?

Generally what is not contractual is delictual. No case law on this point.

- 2.2.9 Does it provoke any problems that the ECJ does not accept annex grounds of jurisdiction? In particular: Do the courts of the Member States manage to draw a line between contractual and matters of offence in a way other than their own law?

We have so far no case law.

- 2.2.10 What falls within the scope of the term „matters relating to tort“ under Article 5 No. 3?

See 2.2.8

- 2.2.11 Taking into consideration the case law of the ECJ, how is the jurisdiction determined under Article 5 No. 3, in particular in the case of distance and multistate offences? Is the ratio of the decision of the ECJ in “Shevill” workable?

We have no case law.  
The ratio of Shevill seems workable.

- 2.2.12 Functioning and practical relevance of Article 6 No. 1 and No. 2 Regulation 44/01/EC: Are there any doubts as to the compatibility of Article 6 No. 1 Regulation 44/01/EC with Article 6 European Convention on Human Rights?

Not really if 6(1) and 6(2) are not given too broad interpretation.

2.2.13 How broad is the scope of the grounds of jurisdiction for consumer issues?

Broad enough.

2.2.14 Determination of defendant's quality, of a consumer in the sense of Article 15 (1) (in light of the case law of the ECJ).

Broad enough - similar as in Finnish national law.

2.2.15 How is the concept of an activity „directed to one or several Member States“ under Article 15 (1) lit. c) applied in practice? How is the provision construed in case of internet business?

There is no case law so far.

2.2.16 Taking into consideration the case law of the ECJ, how is the term of „establishment“ in the sense of Article 15 (2) interpreted?

There is no case law so far.

2.2.17 How do the provisions on individual contracts of employment (Articles 18–21) apply and how do they interrelate with the respective choice of law rules (in particular Article 6 Rome Convention)?

As far as we know there seems to be no problem.

2.2.18 How is the term „rights in rem“ in the sense of Article 22 construed?

In conformity of the jurisprudence of the ECJ.

2.2.19 Determination of the national practice in respect to the exclusive grounds of jurisdiction under Article 22 No. 2, in particular: In which types of cases is the provision most frequently applied in practice?

There is no case law.

2.2.20 Are there any positive or negative conflicts of competence?

Not so far.

2.2.21 To what extent does the provision comply with the ECJ's decisions on the freedom of establishment (Centros/Überseering)?

We do not see any conflict.

2.2.22 How do you draw the line between Article 5 No. 3 and Article 22 No. 4 in respect to litigation on patents? How do the national courts deal in infringement proceedings with the argument of patent invalidity?

We have no case law so far. If the defendant in infringement proceedings argues that patent is invalid, infringement proceedings are usually adjourned and the defendant has an opportunity within a specified time to request a declarative judgment on the validity of the patent in separate proceedings.

2.2.23 Are any of the exclusive grounds of jurisdiction in the catalogue of Article 22 too broad or too narrow?

Neither according to the experience. These grounds work well.  
Even though those grounds seem to work in practice, tenancies should not fall within the ambit of the provision.

There is only one case from the Supreme Court concerning Article 16 of the Lugano Convention, KKO:2001:32. This is still applicable as it discusses whether incorrectly established security deposit on immovable property falls within the scope of rights in rem. The Court decided that since the deposit did not have effects vis-à-vis third parties, Article 16(1) did not become applicable and it was possible to raise the action in Finland.

- 2.2.24 What is the relation between the respective national remedies against enforcement and the freedom of judgments (Articles 22 No. 5, 32)? In particular: What remedy does the obligor rely on if he argues that the claim has changed since the judgment or the title to enforce rendered outside courts does not base on a respective payment on the claim?

He can introduce his defence during the enforcement stage.

- 2.2.25 Questions relating to the applicability of Article 23

In particular:

- 2.2.25.1 Implementation in practice of the decisions of the ECJ by the courts of the Member States?

No case law so far.

- 2.2.25.2 Except for the issue of formal requirements, are conclusion and validity of choice-of-forum agreements determined according to the *lex causae* or the *lex fori*?

No case law but choice of forum agreement would probably be valid if it is considered valid according to *lex causae* or *lex fori*.

- 2.2.25.3 Are choice-of-forum clauses in standard form contracts subjected to judicial control?

In principle yes.

- 2.2.25.4 National practice in determining „usages“ of international trade or commerce in the sense of Article 23 (1) lit. c)?<sup>3</sup>

No case law so far

- 2.2.25.5 Applicability of Article 23 *vis-à-vis* third states?

No case law so far.

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<sup>3</sup> The problematic point lies with written confirmations of orders that are issued by the provider of the non-cash contribution with reference to general conditions that encompass a clause-stipulating jurisdiction. According to the opinion of the ECJ (“Segoura”) this was not possible without written confirmation by the client. This was the reason for the implementation of today’s Article 23 (1) c) in the adapting negotiations with Denmark, Ireland and the United Kingdom. According to the leading decision of the ECJ (“Mainschiffahrtsgenossenschaft”), the meaning of “commercial customs” used by Article 23 (1) c) is a matter of fact that has to be finally decided upon by national courts. Did the courts of your State express their opinion regarding this point – in particular with regard to confirmations of orders to which general conditions are attached? Are there any complaints from representatives of the economy who claim that there are no workable and reliable possibilities anymore to achieve choice of forum agreement for certain kinds of business?

2.2.26 How does Article 26 function, in particular in comparison with Article 19 of Regulation 1348/2000/EC?

No case law so far.

2.2.27 Effect and functioning of Article 31

No case law so far.

In particular:

2.2.27.1 Term of „provisional measures“. According to the practice of the courts of your Member State, do measures resulting in the provisional fulfilment of the claim fall within the ambit of “provisional measures”?<sup>4</sup>

Not under Finnish law.

2.2.27.2 Territorial connection with the State where the measure was rendered<sup>5</sup>

Finnish courts are very reluctant of making universal provisional orders.

2.2.27.3 Problems in applying autonomous provisions on jurisdiction in cross-border transactions

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2.2.27.4 Relation between interim protective measures and main proceedings

No problems have occurred so far. Interim protective measures cannot constitute a substitute for main proceedings.

2.2.27.5 Enforcement of provisional measures under national law<sup>6</sup>

Enforcement of provisional measure rendered abroad has not so far been requested in Finland.

2.2.28 Is there any case law relying on Article 24 Brussels I Convention (jurisdiction by appearance)?

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<sup>4</sup> According to the rulings of the ECJ (“van Uden”, “Mietz”) a provisional measure according to Article 31 can only be assumed when the repayment of the granted amount is guaranteed to the claimant for the case of the claimant being defeated in the proceedings of the main action. Are there any opinions of the judicial practice or legal writers concerning the meaning of “guaranteed”? Does it only mean the existence of a substantive claim for a payment or does it mean the obligation of the claimant to grant sufficient securities?

<sup>5</sup> In the judgments quoted above, the ECJ has set up the requirement that a provisional measure issued by a court that has no jurisdiction on the proceedings of the main action must have a territorial connection to the State of the forum. The question is, whether this criterion is also capable in cases, where the provisional measure shall impose or interdict an action to the opponent, e. g. not to distribute goods, which have been produced by infringements of the legal protection of industrial property. Are there any experiences concerning such cases in your State?

<sup>6</sup> The provisional measures provided by the national legal systems are very different. The rules regarding the enforcement in the Member States are not applicable regarding provisional measures unknown to the national law. The problem has become a practical one in connection with the freezing order (Mareva Injunction) of the English law. This instrument prohibits the opponent from disposing over his assets. Infringements cause penalties because of contempt of court – even for third persons (e. g. banks running the account) that take part in these infringements. British courts add a clause to the world wide freezing order that persons who are not subject to the court’s jurisdiction are only covered, when this special order is declared enforceable abroad. What are the results of such a declaration of enforceability? Is there a possibility of enforcement in your State, when an English freezing order has been declared enforceable? To the national reporter of the UK: Do English courts demand to impose “contempt of court”-penalties on foreign banks because of account dispositions in the State of question after the declaration of enforcement of the freezing order?

No.

### 3. *Lis Pendens* and Similar Proceedings

- 3.1 How does Article 27 work concerning the principle of *lis pendens*, particularly in the light of the case law of the ECJ and the courts of the Member States?

No experience. It will probably work, there is no fundamental conflict with Finnish principles.

- 3.2 Does the principle of *lis pendens* ("first seized") cause an incentive to "race to the court room" in the judicial practice?

Yes, in some cases. It seems obvious that this will occur in some cases.

- 3.3 Are there any frictions between Civil Law- and Common Law-systems caused by the different procedural cultures?

No, we have not experienced any problems.

- 3.4 How does Article 28 work with actions that have close connections to each other? Would a positive differentiation by hard criteria be useful?

There is no experience on this.

- 3.5 Within the Articles 27 to 30, how is it determined whether pending actions concern the same claim between the parties, particularly taking into consideration the case law of the ECJ?

There is no experience on this.

- 3.6 Do practical problems arise regarding the application of Articles 27 to 30 with actions of several parties? If yes, please indicate which problems arise in your State.

There is no experience on this.

- 3.7 Is there a loss of efficiency because of the tactics of taking negative actions for a declaratory judgment at courts without jurisdiction ("torpedos")? Please give a short description of these tactics.

There is no experience on this in Finland. As experience from some other countries shows, the Regulation makes it possible.

- 3.8 Or could the client with an action taken quickly for a declaratory judgment turn away an oppressive action of a claimant in a foreign country (for example in a country with extremely high costs)?

Finland is not one of those. Court costs or judicial fees are here relatively low in straight forward cases. Also this maybe be possible.

- 3.9 Are there any cases of actions concerning the infringement of a patent that were delayed by the objection of nullity of the patent?<sup>7</sup>

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<sup>7</sup> In Germany the judgment of an action concerning the nullity of a patent does not ascertain the nullity of the patent, but furthermore abolishes it. In such cases only the special court for patents has jurisdiction. The objection of the nullity of the patent cannot be raised in an action concerning the infringement of the patent. So the action of infringement must be suspended until a decision is made in the action concerning the nullity of the patent, when such an objection is raised. How far is the court that is concerned with the action of infringement of the patent able to decide whether the announced action concerning the nullity of the patent in the foreign country is serious?

According to information from some practitioners this is not unknown in Finland.

- 3.10 In the case of a European patent: Can a consistent action of infringement be asserted in your country when the objection is raised that several elements of this European patent are infringed by a consistent strategy of marketing?

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#### **4. The Recognition and Enforcement of Judgments, Authentic Instruments and Court Settlements According to Regulation 44/01/EC**

##### 4.1 Questions regarding the free movement of judgments

- 4.1.1 How does the procedure regarding the recognition and enforcement of judgments, authentic instruments and court settlements work?

We are not aware of any problems.

- 4.1.2 Are the establishment of additional standard forms, e. g. for applications for a declaration of enforceability, desirable?

Not at this stage, there were no complaints about the recognition and enforcement procedure and standard forms that have already been drafted are not generally being used.

- 4.1.3 Did the term "judgment" in Article 32 lead to difficulties in your State?

No.

- 4.1.4 Please describe the status of the accessibility of courts by electronic means.

Every court has access to email and internet. Thus every court can be reached by email.

- 4.1.5 Are the reasons for objection that are laid down in Articles 34 and 35 appropriate? Is there a possibility to decrease the number of reasons for objection or is it – on the contrary – necessary to increase this number?

Yes, the objections are appropriate. They are used only very rarely and the general sentiment is that there is a need for safeguards. The courts should be able to refuse recognition if the recognition would be manifestly contrary to public policy (applicable in any case under customary international law) and if the defendant has not been aware of the original proceedings. It could also be argued that if for example Article 34, rights of defence, would be abolished, it would arguably widen the scope of the public policy to include situations now covered by latter part of Article 34. Therefore it possibly is clearer to use the specific provisions in cases of defence rather than widening the scope of public policy provision.

As for Article 35, this only becomes applicable when the court of origin has violated the principles of the Regulation. This is still a limited right of review by the recognising court, it only applies in specific cases, where there would have been exclusive jurisdiction in another court; or when the court of origin has breached the rules established for protection of weaker parties, employees or consumers.

There are only two cases that have reached the Supreme Court on Article 34 (ex Article 27.2), rights of defence. In case KKO:1998:72 the Court overturned

## (Questionnaire 3)

the Court of Appeal's decision not to enforce the judgment and the judgment was enforceable in Finland. The basis here was that the documents were duly served as according to French law.

The only decision by the Supreme Court where the enforcement has been denied is case KKO:2002:34. Here the Court declared that since the documents were served to an agency working for the Finnish firm and it was not clear from their agreement whether the agent could represent the firm itself in proceedings, the documents instituting proceedings were not served in sufficient time for the defendant to prepare the defence.

In Appeal Courts there are four cases, none of which has been successfully appealed to the Supreme Court.

In case S 05/1574, Pajakulma v. F.lli Ferrari Srl, both Articles 34(1) and 34(2) were argued by the defendant. There were some irregularities in the service of the judgment to the defendant. It was established, however, that the service was accordingly made at the writ stage and therefore Article 34(2) did not apply. Furthermore, the irregularities were not such a nature that the defendant could rely on Article 34(1) - ordre public. Therefore the Court decided that the judgment was to be recognised and enforced in Finland.

In case S 00/370, Pertti Sippola v. Fontaine Engineering und Maschinen GmbH, the Helsinki Court of Appeal applied Article 27(1) (of the Convention). Here the Court decided that Article 27(1) cannot be applied in a case where the defendant questions the correctness of the original judgment. There was no evidence presented that such procedural errors had occurred in the court of origin that Article 27(1) would become applicable.

In case 552 (96/408), Valkom Stevedoring v. Amstelstraat Management Co, the Helsinki Court of Appeal decided on the basis of evidence provided that there had been due service and that judgment was to be recognised and enforced in Finland.

The only successful appeal was in case S 01/1594, Lako Oy v. UTC Gesellschaft für Maschinen- und Fahrzeugbau mgH, where Turku Appeal Court decided on basis of evidence that there was no due service. In this case the documents instituting proceedings in Germany were taken from the German Embassy by an employee of the firm who had no right to sign for documents relating to court proceedings. Furthermore, it was established that the company director was not aware of the proceedings in Germany. The appeal was held and recognition and enforcement refused.

- 4.1.6 What is the criteria regarding the requirement of clarity and definiteness of foreign titles have to comply with according to Article 38?

There is no case law or experience on this.

- 4.1.7 How often is the reservation of public policy (Article 34 No. 1) referred to and with which result?

There have been no cases in the Supreme Court in this so far. Public policy is sometimes evoked in courts but almost always without success.

- 4.1.8 Did the non-recognition of judgments given in your State (in particular due to incompatibility with the public policy in the respective Member State) lead to amendments of laws?

No.

- 4.1.9 What kind of interrelation exists between the rule of public policy and the general objection of abuse of the process of the court?

See above point 4.1.7

- 4.1.10 How does Article 49 work with regard to the enforcement of foreign decisions, which are aimed at the payment of an administrative fine to the creditor and what is the practical significance of this provision?

No experience on this.

- 4.1.11 Is there any practical experience or is there a theoretical discussion among legal writers regarding the enforcement of titles which are aimed at the specific performance of an obligation or which are framed as a prohibitory injunction by means of penalties for contempt of court?

No, there is none.

- 4.1.12 Does the inadmissibility of “anti-suit injunctions” which has been stated by the ECJ have any consequences for the efficiency of legal protection?

No.

- 4.1.13 How does the practical implementation of appeals work in your State (costs, duration, mandatory representation by lawyers)?

If the proceedings are only written, the costs are very low.  
Duration, normally around 6 months. This is difficult because it depends on the complexity of the case.  
Representation by lawyers is not mandatory.

#### 4.2 Provisional Measures according to Article 47

- 4.2.1 How does Article 47 work?

Article 47 works well.

- 4.2.2 Do law enforcement authorities consider – within the scope of Article 47 – the reasons to refuse recognition that are laid down in Articles 34 and 35?

No, only courts.

- 4.2.3 If yes, on the basis of which factual criteria?

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- 4.2.4 Does the judge who is competent for declarations of enforceability have competence for provisional measures (Article 47) as well?

Yes, in Finland there are no special courts on the matter.

#### 4.3 Cross-border Enforcement of Court Settlements and Notarial Deeds

- 4.3.1 How do Articles 57 and 58 work?

In particular:

- 4.3.1.1 Is there any experience regarding the interpretation of the term “authentic instrument” in Article 57?

No, this term in general is not known in Finland.

- 4.3.1.2 Is there any experience regarding the interpretation of the term “settlement approved by a court” in Article 58? Did the wrong English version (“court approved” instead of “*conclus devant le juge*”) lead to difficulties?

No.

- 4.3.1.3 Are the standardised forms sufficient?

They seem to be sufficient.

- 4.3.1.4 To which extent are Articles 34 and 35 applied?

We have no experience on this.

- 4.3.2 Please describe the practical significance of Article 57 and Article 58

- 4.3.2.1 Did the situation occur that declarations of enforceability against the debtor have been applied for in several States at the same time?

We are not aware of such cases.

- 4.3.2.2 For creditors` lawyers: Was it possible to achieve a higher efficiency of legal protection by means of this?

Yes, this allows for the seizure of debtor's assets in cases where the debtor has assets in many States.

- 4.3.2.3 For debtors` lawyers: Did oppressive situations arise out of this? Did this lead in particular to the result that excessive enforcement measures have been carried out?

We are not aware of such cases.

- 4.3.3 Specific problems regarding court settlements, enforceable instruments and provisionally enforceable judgments

- 4.3.3.1 Are there any known cases, where a court of a higher instance has reversed a foreign judgment after enforcement measures had been carried out? How can enforcement measures be set-aside in such a situation?

We are not aware of any such situations.

- 4.3.3.2 Are there – from the debtor's point of view – any problems with documents that are not valued?<sup>8</sup>

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<sup>8</sup> In some States, as for instance in Germany, notarial deeds are only enforceable if the debtor has submitted to enforcement explicitly. The submission is abstract. The debtor can submit to enforcement for a sum that he does not owe at all or does not owe to the stated amount. If the creditor pursues the enforcement nevertheless, the debtor is entitled to claim restitution of the unjust enrichment – if necessary in a separate legal proceeding. Therefore, there is a risk that the enforcement is carried out first for a much higher amount than the debtor has to pay (especially regarding interests). In Germany there exists – regarding cases without a foreign element – a very

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## 5. Proposals for Improvements

Do you see, based on your experience with Regulation 44/01/EC, any necessity to improve the regulation, in particular regarding the rules on jurisdiction, *lis pendens*, provisional measures and recognition and enforcement? If yes, please make proposals.

Not at this stage. However, Article 5(1) could be abolished.
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differentiated system of provisions of security and provisional stay of execution or limitations in its contents (only seizure of assets), which ensures a balance between the interests of both sides – the creditor as well as the debtor. Does the problem of titles that are not valued exist also in other States? Are cases known, where an excessive enforcement has taken place and the debtor was unable to obtain judicial remedy in time?