

National Report Greece (Kerameus)

Questionnaire No 1: Collection of Statistical Data

The main focus of the statistical evaluation will be on the areas *lis pendens*, jurisdiction and recognition of judgments.¹ Hereby the following inquiries will be carried out:

1. Evaluation of the number of decisions concerning Regulation 44/01/EC proportional to decisions in civil and commercial matters all in all²

Impossible to answer, due to lacking respective statistics

2. 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 2003/2004 and evaluation of the provisions mostly relied on for that purpose³

Impossible to answer, due to lacking respective statistics

3. Evaluation of the approximate number of applications for a declaration of enforceability on the basis of Regulation 44/2001/EC in 2003/2004

Impossible to answer, due to lacking respective statistics

4. Evaluation of the approximate number of declarations of enforceability granted on the basis of Regulation 44/2001/EC in 2003/2004

Impossible to answer, due to lacking respective statistics

5. Evaluation of the approximate number of declarations of enforceability which have been refused already in the first instance in 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

Impossible to answer, due to lacking respective statistics

¹ In general the evaluation shall be based on official statistics. However, if no official data bases exist, an approximate number of decisions should be named, that can be asked for at courts.

² Due to the short period of application it can be expected that there are only very few decisions concerning the recognition of judgments. Therefore the evaluation shall be expanded, regarding recognition, on decisions concerning the Judgments related to the Convention of 1968 in 2003/2004.

³ All legal proceedings where the defendant is domiciled in a Member State as well as actions according to Article 22 and 23 Regulation 44/01/EC. It is aimed to evaluate the data of the year 2004 – insofar this data is statistically recorded in the Member States. It has to be admitted that the different methods of organisation and documentation within the EU Member States constitute an element of uncertainty. A separate evaluation of court records is – due to the given time and budget frame –, not possible. The evaluation of data will be carried out at the judicial authorities of the Member States by means of the European Judicial Network (EJN). Supplementary, national reporters should selectively address courts and public authorities, which are according to the reporters' knowledge concerned with the application of the Regulation. If all proceedings concerning declarations of enforceability were concentrated in one senate and had special reference numbers it would be quite easy to determine the number of proceedings by means of the last reference number which has been passed out in the respective year.

6. Evaluation of the approximate number of revocations of decisions containing a declaration of enforceability after an appeal in 2003/2004, including the principal grounds for revocation

The court of appeal in Thessaloniki has rendered solely one decision concerning an appeal according to the Regulation in the year 2003, and two in the year 2004.. ...

7. Evaluation of the average amount of time required/accrued for obtaining a decision containing a declaration of enforceability

It depends on the caseload of each court. in the Court of First Instance in Thessaloniki for instance, it takes approximately 3 to 5 months, whereas in smaller districts, such as Trikala, a decision will be issued within 10 days !

8. 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

Article 5, 27, 32, 34, 38

Regulation 44/2001/EC

On the basis of case-law provided and existing data

Questionnaire No 1

1. Existing data is not sufficient to produce an accurate evaluation. As a completely personal estimate, the number of decisions concerning the Regulation constitute about 1-2 % of decisions in civil and commercial matters all in all.

2. Approximate number of (**published** in periodicals) judgments in 2003/2004: 28-30.

Evaluation of the provisions mostly relied on for that purpose: Art. 2, 5 §2 and 7, 21, 23, 24, 27, 71.

3. Approximate number of applications in 2003/2004 (1st Instance Court of Athens and Thessalonica figures): 65.

4. Approximate number of declarations in 2003/2004 (1st Instance Court of Athens and Thessalonica figures): 35.

5. Approximate number of declarations which have been refused in 2003/2004 (1st Instance Court of Athens and Thessalonica figures): 3

Approximate number of cases, where a subsequent improvement of the application has been asked for (1st Instance Court of Athens and Thessalonica figures): 4.

The principal grounds for refusal include Art. 54 certificate and the lack of appointment of representative ad litem. The Athens Court of first instance often uses the possibility provided by Greek procedural law (Art. 254) to postpone the first hearing in order for the improvement of the application to be performed. As a rough personal estimate, around 10% of the cases of enforceability are postponed for said improvements to be effected.

6. Approximate number of revocations in 2003/2004: 2.

Principal grounds for revocation include irreconcilable judgments and said recognition being manifestly contrary to public policy in Greece.

7. Approximate time required: 4-7 months.

8. Compilation of a list of provisions most frequently applied: Art. 32-57.

Questionnaire No 2

2.1. There are no conditions of recognition and enforcement which are beyond those permitted under the Regulation. However, the Athens Court of first instance, in almost all cases, examines Art. 34 grounds for non recognition (irreconcilable judgments, service of document which institutes the proceedings and public policy) ex officio, even though said reasons belong to appeal level.

2.2. No.

2.3. Germany, Italy, United Kingdom, France, Benelux, Austria, Norway, Cyprus.

2.4. Satisfactory.

2.5. No. According to Greek procedural law (Art. 254), first hearing on recognition and enforcement is postponed for said certificate to be produced.

2.6. No.

2.7. Yes.

2.7.1. The entire judgment has to be translated.

2.7.2. According to the Translation Office of the Greek Ministry of Foreign Affairs the minimum costs for the translation of judicial documents is 11,50 Euro per page for the simple procedure and 17,50 Euro per page for express. There are no indications that these costs affect the efficiency of the system.

2.8. a) Translation's costs as above.

b) Solicitors fee approximately 200,00 Euro.

c) Other costs.

2.8.1. There is no contradiction between Art. 52 and Greek law.

2.8.2. According to the Greek Lawyer's Code, which provides only for minimum charges.

2.8.3. Some of them are reimbursable in the payment's order.

2.8.3.1. The Judge according to Art. 746 of the Greek Code of Civil Procedure.

2.8.3.2. No.

2.8.3.3. No.

2.9. The surprise effect is guaranteed, as according to Greek procedural law the debtor is served by order of the creditor.

2.10. No.

2.11. In 6 declarations: notarial instruments, in 2 declarations: court settlements.

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2.12. No.

2.13. No.

2.14. The translation is required.

2.15. -/-

2.16 a) There is no statistical data.

b) Time required from the application's submission until the declaration's obtaining: approximately 6-7 months.

Time in which the appeal can be raised: 1 month

If the appeal is not raised, it takes 3 days before the execution.

If the appeal is raised, it takes approximately 2 years until the decision's obtaining, and then if the appeal is being refused, it takes 3 days before the execution.

c) It takes 5 days to collect all necessary documents.

2.17. There is no such experience according to collected data. Substantive objections can be raised with the appeal ("anakopi") of Art. 933 of the Greek Code of Civil Procedure.

Questionnaire No 3 Legal Problem Analysis

1. General themes

1.1 In general, there are no problems with the interpretation of ‘civil and commercial matters’. Only with regard to matters relating to maintenance, on extremely few occasions, delineation problem with Regulation 2201/2003.

1.2 According to existing data, public authorities do not use the Regulation to assert claims against private persons in civil courts. However, it is important to note that relevant jurisdiction belongs to administrative courts provided that the claim is a public law and not a private law claim.

1.3 Satisfactory.

1.3.1 All in all, there are no problems (see also 1.1). Greek courts apply both regulations satisfactorily. Also, national procedural rules (Art. 246) provide that if the main claim is based on Regulation 2201/2003, whilst counter-claim concerns maintenance, then the two claims are to be tried together.

Gemäß Art. 1 Abs 2 lit. a) VO 44/2001 findet die letztere keine Anwendung auf den Personenstand, die Rechts- und Handlungsfähigkeit und die gesetzliche Vertretung von natürlichen Personen, die eheliche Güterstände und die erbrechtlichen Angelegenheiten einschließlich des Testamentsrechts. Demzufolge wird ein Teil der Angelegenheiten, die den Personenstand betreffen (z.B. die Ehescheidung oder die Ungültigerklärung einer Ehe) von der Verordnung 2201/2003 erfaßt, die internationale Zuständigkeit, die Anerkennung und Vollstreckung von gerichtlichen Entscheidungen in Ehesachen und sorgerechtlichen Angelegenheiten betrifft. Die inhaltliche Bestimmung der Angelegenheiten, die den Personenstand betreffen, sowie der Ehesachen und darüber hinaus die Abgrenzung des Anwendungsbereichs der o.g. Verordnungen wird nach den Kriterien der autonomen Auslegung bestimmt. Leider sind aber keine Gerichtsentscheidungen verfügbar.

Die Unterhaltssachen fallen eindeutig unter dem Anwendungsbereich der Verordnung 44/2001, auch wenn sie sich aus familienrechtlichen Verhältnissen (z.B. Ehe, Scheidung, Eltern-Kindesverhältnisse) ergeben. Leider ist wieder keine Rechtsprechung verfügbar.

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1.3.2 Zu der Abgrenzung des Anwendungsbereichs der VO 44/2001 und der VO 1346/2000 existieren keine Gerichtsentscheidungen. Die Abgrenzung soll aber in allen Fällen gemäß den Kriterien der autonomen Auslegung stattfinden.

Die Abgrenzung zwischen Einzel- und Gesamtverfahren wird trotzdem u. E. keine allzu großen Schwierigkeiten bereiten, da sie auch im autonomen Verfahrensrecht üblich ist und gemäß relativ sicheren Kriterien vorgenommen wird.

1.5 Regarding arbitration, under Greek law (Art. 903 par. 5) and unlike the New York Convention of 1958, an arbitration award that is irreconcilable with *res judicata* of local judgment, cannot be recognized in Greece. If the scope of application of the Regulation is extended to incorporate arbitration, then Art. 34 reasons for non recognition will also be applied, including irreconcilability. Therefore, European rules will become more compatible with national procedural rules. However, the issue of delineation to the New York Convention remains open, if not unresolved.

1.6 Concerning jurisdiction, Greek courts examine this issue satisfactorily. Concerning recognition and enforcement and the rights of the defense, the Athens court of first instance examines the matter of service of the document which institutes proceedings as provided for by Art. 34 of the Regulation. It still remains to be seen how other possible procedural defects that might hinder the right to a fair trial (eg: service of foreign judgment itself) and which are not covered by Art. 34 of the Regulation, will be dealt with by Greek courts. All in all, Greek courts do not examine foreign procedural rules and practices regarding especially default of appearance, even under the public policy clause (Art. 34.1 of the Regulation). Still, the ECJ *Krombach/Bambarski* decision of March 2000 and its interpretation regarding the protection of the rights of the defense such as the right to be heard, form an integral part of the guarantees for the rights of defense in Greece.

1.7 Die Regelungen von Art. 32-58 EuGVVO werden bezüglich der Anerkennung und der Vollstreckbarerklärung von gerichtlichen Entscheidungen und anderen Vollstreckungstiteln ausschließlich angewendet und verdrängen die Verfahrensvorschriften der mitgliedstaatlichen Rechtsordnungen über denselben Gegenstand. Aber gleichzeitig ist das nationale Verfahrensrecht von herausragender Bedeutung für die effektive Anwendung der EuGVVO, sowie für die Anwendung aller, auf europäischer Ebene harmonisierten, Regelungen. Das gilt auch für das griechische Verfahrensrecht. Demzufolge wird der Antrag auf Vollstreckbarerklärung

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gemäß den Verfahrensregeln der Freiwilligen Gerichtsbarkeit gestellt und der Antragsteller muß nach Art. 40 Abs. EuGVVO einen Zustellungsbevollmächtigten gemäß den einschlägigen Vorschriften des griechischen Verfahrensrechts (Art. 142 gr. ZPO) bestellen. Weiterhin wird die Vollstreckbarerklärung gemäß dem griechischen Verfahrensrecht an den Schuldner zugestellt, wenn der letztere sich in Griechenland aufhält. Auch werden die Vorschriften bezüglich der Einlegung eines Widerspruches (Art. 585 gr. ZPO) auch für die Einlegung des Rechtsbehelfs gemäß Art. 43 EuGVVO gegen die Entscheidung über die Vollstreckbarerklärung angewendet. Schließlich fungiert das Rechtsmittel der Kassation als die Rechtsbeschwerde, die gemäß Art. 44 EuGVVO gegen die Entscheidung über den Rechtsbehelf eingelegt wird.

Anzumerken ist noch, daß Art. 47 EuGVVO auf das Recht des Vollstreckungsstaates zur Ergreifung der einschlägigen einstweiligen Maßnahmen verweist. Es werden also die entsprechenden Vorschriften des griechischen Verfahrensrechts einschließlich der Grundsätze des einstweiligen Rechtsschutzes angewendet.

1.8. Für die Angelegenheiten, die unter dem Anwendungsbereich der EuGVVO fallen, werden die bi- und multilateralen Verträge (z.B. das EuGVÜ, der deutsch-griechischer Vertrag vom 4.11.1961) nicht mehr angewendet.

2. Jurisdiction

2.1.1. Yes. The request for legal certainty in the field of international jurisdiction constitutes an expression of the dynamics of all grounds of jurisdiction, especially of the exclusive ones, where a court is chosen as the sole suitable venue for a given dispute. The specific increased “tension” which characterizes the entrenchment of legal certainty through exclusive grounds of jurisdiction is not only coordinated with the comparable and equal ratio of correct diagnosis of the substantial rights, aiming at a balanced judicial protection, but it has also reference to it, that is in the end in the fulfillment of the substantial justice, where the civil trial finds justification and its limits.

2.1.2. The absolute conversance of all of the respective legal systems with the postulate «actor sequitur forum rei» may, of course, make up a solid basis for the realization of the unification of European procedural law in the field of international jurisdiction, but the differentiations, if any, of national laws as to the field of

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implementation of the non exclusive as well as of the exclusive grounds of jurisdiction, are dulled by the adopted by the ECJ autonomous interpretation as well as the exclusion of annex grounds of jurisdiction.

2.1.3. The adequacy of the list of the grounds of jurisdiction is shown by the amplified approximation of the specific provisions towards the respective legal systems.

2.1.4. Yes, to the degree where exorbitant grounds of jurisdiction are not excluded to persons who live in third countries (Art. 40 of the Greek Code of Civil Procedure).

2.1.5. As far as internal law is concerned, the contractual exclusion of international jurisdiction of the Greek courts, that is the existence of written agreement upon future disputes, is controlled, following an objection when the defendant is present at the hearing of the case, ex officio if the defendant is not present at the hearing of the case or if it is about disputes which relate to real estates which lie abroad (Art. 4 of CCP).

2.1.6. The definition of the refundable fees for the court is given by the court, according to a list that is optionally attached to the brief by each party. The possibility of separating the hearing of procedural and substantial object of the trial is exceptionally provided by Art. 267 CCP, which has fallen into desuetude.

2.2.1. According to Art. 51 of the Civil Code, the individual's residence is where he is permanently established, while no one can have more than one residence. Nonetheless, for cases, which relate to one's profession, the individual's place where he practices his profession is considered as special residence.

2.2.2. Yes, as the possibility of raising an action against a company or a legal entity in more countries –notwithstanding the exclusive ground of jurisdiction of Art. 22 No. 2– based on the respective connective factors it may be dealt with by the application of Art. 27 of the Regulation.

2.2.3. Such cases did not occur in the pending cases. A deviation from the rule of Art. 5 No. 1 lit. b) is, nonetheless, possible with the express agreement regarding the place of fulfillment, based on the rules of Private International Law, which governs the contract.

2.2.4. No. See also the provision of Art. 664 grCCP, based upon which, the respective disputes may also be brought before the Court where the employment is being exercised etc.

2.2.5. Such cases did not occur in the pending cases. When the parties did not specify the place of performance, its determination takes place, at first, according to the lex

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causae, which is retrieved by the application of the rules of Private International Law of the forum. The place of performance may also be determined by a relevant agreement of the parties.

2.2.6. Such cases did not occur in the pending cases. The meaning of “provision of services” is autonomously interpreted, especially in the prism of Art. 50 ECC. Provided services of commercial, craftsmanship, professional etc. activities, against payment are mostly included, upon which are included those activities of freelancers, for example, lawyers, architects etc.

2.2.7. Such cases did not occur in the pending cases.

2.2.8. Such cases did not occur in the pending cases. The meaning of tort is interpreted autonomously. It includes every claim, by which a question of liability of the defendant is raised and it does not relate to contractual disputes (e.g. claims arising from culpa in contrahendo). Actio Pauliana is not considered a legal action relating to tort.

2.2.9. Such cases did not occur in the pending cases.

2.2.10. See above under 2.8.

2.2.11. Not only does it shrink, through the splitting of the damage, the jurisdictional range, but also the ground of the forum delicti is wholly disdained in cases of offences against the right of personality. As stated by Professor *Kerameus*, “the victims of offences committed by the Press are usually public persons, names found everywhere, so that even their moral presence in a place is enough for the requirements of connective factors.

2.2.12. Such cases did not occur in the pending cases. The specific provision is compatible to Art. 6 par. 1 European Convention on Human Rights due to contribution, on the one hand of the positive prerequisite of the especially “close relation” (Art. 6 number 1) and on the other hand of the negative prerequisite of deceitful removal of the guarantor or the garnished party by the court which would have international jurisdiction in their case (Art. 6 No. 2).

2.2.13. The range of the specific grounds of jurisdiction is considered to be sufficient, as the meaning of the term “consumer” is always determined according to nature and the ratio of the specific provision (see Court of Appeal of Athens 6401/2002 DEE 2003, 412, which considers as a consumer the client of a bank / investor of non stock exchange derivatives, who exercises commercial activity).

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2.2.14. Such cases did not occur in the pending cases. In order for an individual to be considered as a consumer, the object for which he is contracted must be foreign to every type of professional activity (see the relevant provision of Art. 1 par. 4 of Law 2251/1994 “Protection of the consumers”, according to which, the above-mentioned object does not constitute part of the meaning of the term “consumer”).

2.2.15. Such cases did not occur in the pending cases.

2.2.16. Such cases did not occur in the pending cases.

2.2.17. The connective factor of Art. 19 is justified by the need of proximity to the proofs and easy access to the court for the employee, also according to the interpretation of Art. 6 I of the European Convention on Human Rights.

2.2.18. Through the autonomous interpretation of the term “rights in rem”, the rights upon real estates, which are effective erga omnes (must) fall within the aforesaid ground of jurisdiction (see the non-classification of the Actio Pauliana in the regulative scope of Art. 22 number 1).

2.2.19. Such cases did not occur in the pending cases. As far as internal law is concerned, the provision of Art. 22 No. 2 is most frequently applied to cases regarding the validity of company decisions.

2.2.20. Such cases did not occur in the pending cases. But there may be an issue of positive conflict between the grounds of jurisdiction of Art. 22 No. 1 and 2.

2.2.21. Such cases did not occur in the pending cases.

2.2.22. Exclusive grounds of jurisdiction are not provided by Greek Law, with regard to patents, while with regard to trade marks, jurisdiction has already been transferred to the administrative courts.

2.2.23. See above under 2.1.3. Over and above that, the uppermost meaning, according to the Regulation, of the defendant’s residence, as a fundamental defense guarantee, allows better understanding of the narrower – in comparison (also) to Greek law – range of exclusive grounds of jurisdiction.

2.2.24. The Appeal (“Anakopi”) against the enforcement proceedings (Art. 933 of grCCP).

2.2.25. Claims arising from torts fall firstly within the concept of contractual relationship, especially when the tort also constitutes a breach of contractual obligations.

2.2.25.1. Such cases did not occur in the pending cases.

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2.2.25.2. As procedural contract, it is determined by lex fori.

2.2.25.3. Yes. Such cases did not occur in the pending cases.

2.2.25.4. Such cases did not occur in the pending cases.

2.2.25.5. The specific provision is applied even when one of the contracting parties and the agreed court are in the same contracting country, while the other contracting party resides in a third country.

2.2.25.6. Such cases did not occur in the pending cases.

2.2.27 Article 31 provides that a court can order provisional, including protective, measures, that are available under national law, even if the courts of another Member State have jurisdiction as to the substance of the matter. Under national procedural rules, jurisdiction regarding provisional including protective measures depends on the territorial competence of the national court. Therefore, the ECJ's Van Uden/Mietz prerequisite with regard to the territorial connection to the State of the forum is compatible to Greek procedural rules and can be applied without particular interpretation problems by the Greek courts. The real problem lies with the second requirement set by the ECJ in Mietz for the claimant to grant sufficient securities in case said claimant is defeated in the proceedings of the main action.

2.2.27.1 Yes

2.2.27.3 None

2.2.27.4 Interim measures must be followed by a main action within 30 days.

2.2.28 There is definitely case law on Article 24 Brussels I. Said case law is contradictory, meaning the greek courts sometimes apply Article 24 whilst on other occasions they have refused jurisdiction if said jurisdiction does not exist regarding proceedings in the main action.

3. Lis pendens and Similar proceedings

3.1. Greek courts satisfactorily apply Art. 27 of the Regulation especially regarding the case law of the ECJ. Case law by other Member States' courts is not known to Greek courts and therefore not applied.

3.2. No, according to available data.

3.3. According to available data, no.

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3.4. Available data is not sufficient to produce an exact evaluation. A positive differentiation by hard criteria could be useful due to the absence of relevant case law of the ECJ especially in the case where the parties are not identical.

3.5. In order to decide whether pending actions concern the same claim between parties, Greek courts examine the dispute in its entirety, i.e. the legal relationship as a whole, taking into consideration relevant case law of the ECJ, mainly if this is put forward by the parties to the dispute.

3.6. According to available data Greek courts do not face grave practical problems regarding the application of Art.s 27 to 30 with actions of several parties.

3.7. The loss of efficiency in such a case is inevitable. Nevertheless available data does not indicate that such tactics are practiced also in Greek courts. In any event new Art. 30 of the Regulation definitely reduces the problems and dangers stemming from such tactics.

3.8. Yes this is possible.

3.9. No.¹

3.10. No, this action can only concern and the seized court will be competent to decide only on the patent's Greek national elements infringed by this strategy.

4. The recognition and enforcement of judgments, authentic instruments and court settlements

4.1.1 Well. However, the Athens Court of first instance, in almost all cases, examines Art. 34 grounds for non recognition (irreconcilable judgments, service of document and public policy) ex officio, even though said reasons belong to appeal level.

4.1.2. No.

4.1.3. Not in practice.

4.1.4. In practice non-existent.

4.1.5 It would seem advisable not to increase or decrease the number of reasons for objection. Also, the ECJ *Krombach/Bamberski* decision of March 2000 and its

¹ Disputes concerning the nullity or the infringement of a patent fall under the common jurisdiction of the Greek courts. A special court for patents does not exist. Furthermore, according to Greek procedural law the objection of the nullity of the patent can be raised in a dispute concerning the infringement of the patent. In that case the same court is competent to decide on both the nullity and the infringement of the patent.

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interpretation regarding the protection of the rights of the defense such as the right to be heard show the necessity for the public policy objection to be maintained.

4.1.6. The provisions of Art. 53-56 satisfy the requirements of Greek Courts.

4.1.7 On at least one occasion, reservation of public policy has been successfully raised regarding the effective application of a Greek law combined with irreconcilability of judgments.

4.1.8. No.

4.1.9. Until now, no Greek court has been faced with such a case. However, the two objections are not identical. According to Art. 116 of the Greek Code of Civil Procedure the parties have to act in good faith and avoid abusive tactics. Abusive tactics may even, under certain circumstances, constitute a violation of public policy.

4.1.10. It is assumed that it works well since available data does not indicate that this is a problematic provision. A disproportionate administrative fine can nevertheless constitute a violation of public policy.

4.1.11. No.

4.1.12. The relevant case law of the ECJ is considered to be necessary as it allows the system introduced by the Regulation to work more efficiently. An anti-suit injunction would also contradict the Greek constitution (Art. 20) and would certainly be regarded as a violation of public policy.

4.1.13. Under Greek procedural law (Art. 94 par. 1 CCP), it is mandatory to be represented by a lawyer before the Court of Appeal. Duration is approximately one year whilst costs vary depending on the nature of the case and fees.

4.2.1 Problem arises to what extent it is necessary for the Greek court to follow national procedural requirements for urgency/ necessity of protective measures.

4.2.2 Yes.

4.2.4 No.

4.3.1. These provisions work satisfactorily without any particular practical problems.

4.3.1.1. Greek courts apply Art. 57 without any further interpretation of this term.

4.3.1.2. There is no such experience according to existing data.

4.3.1.3. Yes, they are.

4.3.1.4. They are applied sufficiently by the Court of Appeal.

4.3.2.1. There is no data regarding this issue. Such a situation cannot however be ruled out.

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4.3.2.2. On a theoretical level, obviously.

4.3.2.3. No, according to existing data.

4.3.3.1. There haven't been any such cases. In such a situation the debtor would have to file an appeal according to Art. 934 paragraph 1 a) of the Code of Civil Procedure.

4.3.3.2. No.

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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. Questions¹

- 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?

Practitioners in Greece keep on filing with the court a certificate issued from the secretary of the court, where the application for declaration of enforceability is pending, which certifies that no other decision concerning the same parties has been rendered by this court in the past. This is an old prerequisite, emanating from the provisions of the Brussels Convention and the respective Greek provisions (Art. 323 of the Greek Code of Civil procedure) as well. There is no case law known, that has rejected an application under Reg. 44/2001, because the applicant failed to present the above certificate.

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

By way of comparison based on decisions published in Greek legal reviews, one could mention the regions of Athens, Piraeus and Thessaloniki.

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

Mostly from the Federal Republic of Germany and Italy, followed by the United Kingdom and France

- 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.).

[2] There are no problems reported, arising from the use of the standard form mentioned.

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

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

There is no such case law reported.

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

There are no similar problems reported.

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

As a rule, courts do require a translation of all documents filed in the official court language, i.e. Greek.

- 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 a translation will be provided for the whole text of the foreign judgment. There is no similar practice used by Greek practitioners.

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

Although translation costs are leading to increased expenditures for the applicant, there is no evidence to support the assumption made by the question.

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

Attorney's fees, translation costs, and at a later stage, the process server's fees for service of the Greek decision to the debtor. All in all, and depending on the bulk of documents that need to be translated, the costs will not supersede the amount of 900 €.

In particular:

- 2.8.1 How is Article 52 implemented?

In order to start execution proceedings in Greece, a certain amount is to be paid to the state depending on the sum due (approximately 6/1000). However, such an obligation is not provided for foreign judgments, because the creditor has already paid a similar charge to the state of origin.

- 2.8.2 How are solicitor's charges calculated?

A decision of the Ministries for Finance and Justice stipulates the minimum fees of solicitors. The minimum charges for an application before the Court of First Instance (voluntary proceedings), which is the procedure followed for the recognition and declaration of enforceability of foreign judgments, are 210 €.

- 2.8.3 Are these costs reimbursable?

Yes, according to Art. 746 of the Greek Code for Civil Procedure.

In particular:

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

The judge who renders the decision.

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

No, if one understands under the expression "bureaucratic formalities" the notification of the decision to the debtor and the involvement of a process server, who would take the necessary execution measures.

- 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

- 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?²

No

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

Not that I am aware of

- 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.).

Not for the time being

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

Greece has followed the pattern used under the Brussels Convention. Insofar there is no indication of problems arising out of the Annexes I to IV.

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

Court clerks are not particularly familiar with those forms, since its use is sporadic, compared with the overall caseload of the courts. Nevertheless, there will be always a competent clerk at the respective court of first instance, who will assist the lawyer in preparing the standard forms aforementioned. Finding that clerk is sometimes time-consuming, judging from my door to door experience in the Thessaloniki court of first instance.

- 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?

² 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 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?

From my experience with similar standard forms of Reg. 1348/2000, I noticed that the format of the forms has been changed. Upon my question on how they get access to such forms, a secretary replied that these forms are sent from the Ministry of Justice. Therefore I suppose that nobody did come up with the idea of downloading and printing the forms from their original site [EUR-LEX]. However I am not in position to support the same for judges.

- 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?

Certification of foreign decisions via e-mail through the secretaries. Let us take as example a German Urteil that needs to be declared enforceable in Thessaloniki, Greece, where the debtor has assets. Upon application of the creditor, the secretary of the German court would prepare a certified copy of the domestic decision and send it through electronic communication to the secretary of the Court of First Instance in Thessaloniki and to the attorney of the creditor in Thessaloniki. Soon afterwards an application for the declaration of enforceability would be filed. Should any problem arise with regard to the validity and / or enforceability of the decision in the state of origin, then the secretary of the second state would be able to get in direct contact with the respective secretary of the first state, in order to solve the problem fast and without bureaucratic formalities. However, a similar solution would augment the workload of the court clerks, which - under the present conditions - seems to be unbearable...

- 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?

a) It depends on the clarity of the debtor's assets. Usually a lawyer would have traced already the debtors assets before filing the application, in order to assess the effectiveness of declaring the foreign judgment enforceable in Greece. In this case, it takes less than a week to institute seizure proceedings against the debtor's assets.

b) It depends on the collaboration of the creditor and /or the creditor's lawyer. Usually a month would be the latest. However, one can file the application and collect the necessary documents until the time of the hearing, which in most court districts follows after 10-30 days, with the exception of Athens and Thessaloniki, where one could have to wait more than two months until the hearing takes place.

- 2.17 Is there any experience with actions raising a substantive objection to the judgment claim?³

Not until now.

³ 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 Greece (Kerameus)

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)?

Not until today.

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

There is no case law evidence to support an answer to this question. However there is hardly any case law involving public authorities as claimants.

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

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?

Before the Regulation 44/2001 entered into force, there was case law according to which the Brussels Convention was not to be applied in rights in property arising out of a matrimonial relationship [Multimember Court of first instance Athens 12478/1995, Hellenic Justice 1997, p. 1172]. There was also case law concerning maintenance issues: The court of appeal Athens separated the issue of filiation from that of maintenance, by excluding the application of the Brussels Convention as regards the first issue. Regarding the second issue the court applied the Convention between Greece and Germany and not the Brussels Convention, because the German decision was rendered before Greece's accession to the Convention aforementioned [Court of appeal Athens 5591/1998, Legal Tribune 1999, p. 1139]. In a recent case, the Thessaloniki first instance court [Nr. 21387/2004, Harmenopoulos 2005, 269 et seq.], the court separated correctly the issue of parental responsibility from that of child maintenance, applying the predecessor of Regulation 2201/2003, namely Regulation 1347/2000 for the former, and the Brussels Regulation for the latter issue.

- 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?¹

¹ 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

There is no case law reported with regard to the issue.

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

There is no case law reported with regard to the issue.

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

Greece does not have any mediation proceedings for the time being.

- 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?

Greek courts apply the provisions of the Regulation, as it was the case during the time that the Brussels Convention was in force. The rights of the defendant are protected and guaranteed within the scope provided for by the Regulation.

- 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?²

1. The rules are fully compatible with domestic law
2. National law is applied with regard to the proceedings followed, according to Art. 40 Para. 1 of the Regulation.
3. Recognition and declaration of enforceability are subjected to voluntary proceedings, Art. 739 et seq. in conjunction with Art. 905 Code of Civil Procedure. There is no special rules governing the application of the Regulation, as it is the case for example in Germany or the UK.

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

I imagine that the question refers to bilateral conventions concluded between member states on the same issues where the Regulation is applicable. As it is obvious from Art. 69 of the Regulation, Greece has signed only one bilateral convention with an EC-member state, namely the Convention between Greece and Germany for the Reciprocal Recognition and Enforcement of Judgments, Settlements and Authentic Instruments in Civil and Commercial Matters, signed in Athens on 4 November 1961. Regarding this convention there is strong evidence to support that the Regulation and the Brussels Convention have seriously reduced the importance of the above bilateral convention.

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

2.1 General Issues

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?

² 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)).

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

Admittedly, the Regulation has established a safe foundation, upon which residents of the European Union can rely, when it comes to a case with foreign element. The abolition of exorbitant bases is another important factor towards legal certainty. On the whole, it is beyond any doubt that the Regulation is going towards that direction.

- 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?

Greek courts do apply Art. 5 of the Regulation very often. In fact it might be the provision most used until now. The existing case law shows the compatibility with ECJ case law.

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

By all means yes. Greek law has for example no specific bases for insurance and consumer contracts.

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

This issue has been thoroughly discussed and criticised, especially by writers coming outside the EU. However, there are also significant arguments in favour of the view followed by Art. 4 (2).

- 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?

Greek courts examine ex officio all aspects that deal with jurisdiction and competence, whether territorial or material, i.e. they do examine the grounds provided for both by the Regulation and the respective domestic provisions. A choice-of-forum clause would be examined ex officio by the court, if it can be traced from the file, irrespective of the parties' attitude.

- 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?

1. Not particularly.
2. Usually no special proceedings are taking place solely for resolving jurisdictional matters, although the Code of Civil Procedure provides for such a possibility [Article 267]. Therefore no fees issue arise.
3. Exactly the same time that it is needed to render a decision on the merits.
4. The only complaint one could put forward, is that courts could save a lot of time, if they separate the issue of jurisdiction in cases where it seems that an

examination on the merits might not be needed, because of lacking jurisdiction. I had a similar experience, representing a German defendant on a divorce case before the Thessaloniki courts. I petitioned the court to hear the issue of international jurisdiction according to Reg. 1347/2000 separately, and render a respective decision thereupon, before entering into the merits of the case. My petition was rejected. The hearing continued with witness examination on behalf of the other party. Six months later the court published its decision, dismissing the action due to lack of international jurisdiction...

5. This was the argumentation put forward by the court, when dealing with my petition.

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?

There is no available case law regarding the application of the articles aforementioned until today.

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

Greek jurisprudence has repeatedly shown its preference to the central administration connecting factor. The rather recent decision of Areios Pagos Nr. 2/1999 [Hellenic Justice 1999, 272] verifies this position undoubtedly. However, there is legal authority, supporting the view, that after the coming into force of the Regulation, a certain change has to follow. In particular, Prof. Makridou indicated that all three connecting factors have to be incorporated into the Greek legal system, without any special preference. She also pointed out that, so as the situation is at the moment, one cannot exclude the following scenario: A Greek court asserts international jurisdiction over a company with its statutory seat in Greece, but fails at the same time to find the appropriate venue within Greek territory, because the company has its central administration abroad. In order to avoid similar discrepancies, a full implementation of Art. 60 seems to be the best solution, even in terms of local venue.

- 2.2.3 How does Article 5 No. 1 work? In particular: Article 5 No. 1 lit. b) 1st 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?

Pursuant to two decisions the place of delivery is the place where the goods are handed over to the carrier. In particular, the Athens court of appeal refused to assert jurisdiction over a claim, because the parties had agreed that the goods would be delivered under CIF. The seller had handed over the goods in the port of Antwerp, Belgium. Therefore the court lacked jurisdiction over the issue [Court of Appeal Nr. 8723/1995, Commercial Law Review 1995, 674]. In a similar fashion, the Multimember Court of first instance in Thessaloniki dismissed an action as lacking of jurisdiction due to a FOB clause, which stated as the place delivery a place outside Greece [case number 16787/1998, Harmenopoulos 1998, 1238]. Both decisions however emanate from the time of the Brussels Convention.

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

Apparently not, judging from the existing case law.

- 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?

Greek courts are constantly following the position of the ECJ as pictured in the Tessili/Dunlop case, see for instance Areios Pagos 788/1994, Hellenic Justice 1995, 831, Court of Appeal Athens 4973/1993, Hellenic Justice 1996, 1672, and Court of Appeal Thessaloniki 754/1991, Harmenopoulos 1992, 367.

- 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 relevant reported case law until now.

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

The issue has not yet been raised before the courts.

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

In accordance with the Kalfelis/Schroeder case.

- 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?

Greek court did not have the opportunity to tackle with the matter up to date.

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

Judging from the existing case law, mainly traffic and maritime accidents, and medical liability issues. Nevertheless there is also case law connected to unfair competition.

- 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?

There is no reported case law concerning the matter. However a number of claims have been raised regarding award for damages resulting from defamation through the press or the media on a national level. Within this field there is a certain tendency to prefer the venue of the defendant, in order to avoid jurisdictional complications.

- 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?

There is no similar doubt expressed by the courts up to date.

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

This is a rather interesting topic in Greece. There is a tendency in Greek literature to extend the notion of the consumer even to contracts concluded among professionals. This tendency emanates from material law (law 2215/1994 for the protection of consumers), but it has serious repercussions on

civil litigation as well. So far there is no case law in favour of the broad interpretation, however one cannot exclude a change in the future.

- 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).

See my answer the question 2.2.13.

- 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 application of Art. 15 (1) lit. c) in practice for the time being.

- 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?

Same answer

- 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)?

There is no respective case law available at the moment.

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

Greek courts interpreted the notion during the application of the Brussels Convention, stating that a declaratory action that a contract for loan was not concluded, falls outside the scope of Art. 16 of the Brussels Convention [Multimember court of first instance Kavala 175/1995, Harmenopoulos 1995, p. 925].

- 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 concerning the matter.

- 2.2.20 Are there any positive or negative conflicts of competence?

Not yet evidenced in practice.

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

As of itself, Art. 22 no. 2 relies on the seat of companies. The seat of a company implies the existing seat at the relevant time. From this perspective, Art. 22 no. 2 is not inconsistent with the freedom of establishment.

- 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?

No case law reported for the time being.

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

The catalogue of Art. 22 is not far away from the median line connecting quite a number of national laws. Insofar, this catalogue corresponds well to a sort of European *acquis*.

- 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?

I do not understand the question. Still, there is solely one case reported in connection with Article 16 No 5 of the Brussels Convention, now 22 No. 5 of the Regulation, which excludes actions seeking the annulment of fraudulent transfer contracts from its scope of application [Multimember Court of first instance Thessaloniki Nr. 585/1993, Harmenopoulos 1994, 308 et seq.].

- 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?

Yes.

- 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*?

According to the *lex fori* [see Multimember court of first instance Piraeus 827/1994, Maritime Law Review 1995, p. 74].

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

Certainly. They are literally scrutinized.

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

No national case law reported for the time being.

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

The prevailing opinion in Greek practice is that choice of forum agreements in favour of a court of a third state are to be examined

³ 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?

according to the Brussels Convention (today the Regulation), thus excluding the application of domestic law [court of appeal Piraeus 193/1997, Maritime Law Review 1997, p. 52, 1240/1996, Piraeus Jurisprudence 1997, p. 37, 554/1998, Corporations and Companies Law 1999, p. 771, and 1146/1998, Maritime Law Review 1998, p. 467, court of appeal Patras 193/1997, Maritime Law Review 1997, p. 52].

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

Courts are examining the requirements set forth by the Service of Process Regulation, when dealing with actions involving defendants residing abroad; they do not hesitate to stay proceedings, as they did according to Art. 15 of the Hague Convention, when evidence of actual service of process is missing.

2.2.27 Effect and functioning of Article 31

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”?⁴

No case law dealing with the matter.

2.2.27.2 Territorial connection with the State where the measure was rendered⁵

Not yet reported.

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

No similar problems have been shown until now.

2.2.27.4 Relation between interim protective measures and main proceedings

The usual one.

2.2.27.5 Enforcement of provisional measures under national law⁶

⁴ 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?

⁵ 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?

⁶ 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

There is no reported case law regarding the enforcement of foreign interim measures unknown to domestic law.

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

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?

Although there is little case law concerning the Brussels I Regulation, the principle of *lis pendens* is well respected and repeatedly applied by Greek courts.

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

There is no such case law at the moment, in order to support a similar attitude by litigants in Greece.

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

There were no problems reported during the application of the Brussels Convention. After the amendments brought by the Regulation, it is to be expected that no frictions will appear in the future as well.

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?

Greek courts have not yet tackled with the matter.

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 case law available at the moment. However, the Piraeus court of appeal issued on 1994 a decision contrary to the Gubisch/Palumbo case [case Nr. 351/1994, Legal Tribune 1996, 658].

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.

No problems until now.

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.

No comments.

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?

- 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)?

see above

- 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?⁷

No cases reported.

- 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?

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?

Presumably with no frictions. There are scarcely cases reported, where the application was denied.

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

It might make things easier, although one could support the view that in practice, applications look more or less the same.

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

Not particularly. For instance, there was no dispute as to the enforceability of Vollstreckungsbescheide, or Kostenfestsetzungsbeschlüsse from Greek courts [see e.g. court of first instance Thessaloniki 33114/1995, Harmenopoulos 1996, 363].

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

With one word: Poor

- 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?

⁷ 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?

To my mind, the grounds for refusal are reduced to the minimum. There is of course always the controversy about the public order clause, however the Krombach case has given Art. 34 No 1 a reason to survive after the critics of the past.

- 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?

1. Certificate of enforceability according to the state of origin, or at least a respective stamp, signed by a court official, upon the title.
2. The same with regard to the definite character of the judgment. It goes without saying, that the above has to be translated into Greek.

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

Too often referred, hardly accepted. Exception: Court of first instance Drama 251/2000, Harmenopoulos 2001, p. 535. A foreign judgment contravenes public order, if the defendant was considered to be of unknown residence, although the petitioner was aware of his whereabouts.

- 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?

Negative.

- 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?

A minimal one. There is no case law supporting the above view. Nevertheless, I have seen appeals against recognition and/or enforcement, mingling public policy and abuse of process as a ground for refusal, apparently with no result.

- 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?

There is no case law at all.

- 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.

- 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?

The Greek legal order had no opportunity to tackle with the matter until now.

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

1. Costs: Minimum 600 €.

2. Duration: Depending upon the district, for instance more than a year in Athens, between 6 to 10 months in Thessaloniki, less than 6 months in the remaining districts.

4.2 Provisional Measures according to Article 47

4.2.1 How does Article 47 work?

Generally smoothly, although there is a decision that caused some questions. In particular, the Thessaloniki first instance court dismissed a petition for protective measures, based on a final English judgement, which was on its way to become enforceable in Greece as well (an application for declaration of enforceability was already filed during interim proceedings), because, i. there was no immediate and imminent danger, a requirement stipulated under Art. 682 of the Greek Code for Civil Procedure, and ii. the English judgement was not yet enforceable under Greek law [Court of first instance Thessaloniki 4826/2004, Harmenopoulos 2004, 736 et seq.]. The decision has been criticised as ignoring the basic concepts of the Brussels Regulation.

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. Still, initially there was a certain misunderstanding, when judgments were brought before the register of deeds, in order to register a notice for mortgage. Land Registrars were very sceptical, asking for legal authorities upon the matter. The Greek Supreme Court solved the matter in the year 2001 [see Areios Pagos 109/2001]

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?

The above decision of the Supreme Court clarified the issue, by stipulating that no separate decision is to be rendered within the recognition and enforcement proceedings. At the same time, the question regarding the appropriate interim measure is to be decided according to domestic procedural law.

4.3 Cross-border Enforcement of Court Settlements and Notarial Deeds

4.3.1 How do Articles 57 and 58 work?

There is no case law reported.

In particular:

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

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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?

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4.3.1.3 Are the standardised forms sufficient?

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4.3.1.4 To which extent are Articles 34 and 35 applied?

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

Insignificant.

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?

There is no such case reported.

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

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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?

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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?

Not that I am aware of.

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

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⁸ 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 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?

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.

The question is too broad. Answering it implies an extensive stock-taking across most of the provisions of Regulation 44/2001.