

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

By reassessing the court practice between a period of the 1st of March 2002, when the Regulation 44/01/EC came into force, conclusion is that there have been some applications where it has been asked to declare the court judgments in unison with 44/01/EC, usually the court judgments are announced in unison with a help of a juridical agreements which are entered in a contract between countries. For the present there are no cases fully reviewed in unison with the Regulation 44/01/EC.

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

Usually all the proceedings in Latvia are definite in unison with a national juridical Regulation and therefore the Regulation 44/01/EC is not used, because the intro of the Latvian Civil Law is made so that most cases would be reviewed in Latvia and by Latvian rights. As in most cases also Regulation 44/01/EC would determine the same, it is not used, even not in references.

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

Together with a last period there have been three applications but they are still in a consideration.

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.

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

There are no court judgments for the performance of the judgement in unison with a Regulation 44/01/EC.

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

No information.

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

No information.

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

The judgement is made by the Judge alone in a period of 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

Usually *lex voluntates* principle is used in contract rights and, if it is used sometimes with Regulation 2201/2003/EC, then Regulation 44/01/EC is not used at all.

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?

No, there are none.

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

No, there are none.

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

As there are very little cases then there has been only Lithuania, United Kingdom and Italy.

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.)

In Latvia there is no other form acceptable but the one which is in a Regulation Article 54 and V addition.

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

No, courts don't use a chance to short circuit Article 55, because the Law of Latvian Civil process demands obligatory translation of the documents and a conformation for the verdicts.

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

No, there are no problems with processing a conventional forms.

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

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

- 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?

All the verdicts and other documents which are sent in Latvian court must be translated in national language in full by sworn interpreter and must be approved by a notary.

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

We assume that the translation is effective because it allows full evaluation of all the aspects of the case.

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

In particular:

- 2.8.1 How is Article 52 implemented?

In the law of Civil process it states that if a law determines that a complainant is freed from a toll, therefore it is considered that Article 52 is fully observed.

- 2.8.2 How are solicitor's charges calculated?

No, there are none.

- 2.8.3 Are these costs reimbursable?

There are no special pretext or regulations in the Civilprocess, but it is ensured in unison with a provision of the Regulation.

In particular:

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

No information.

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

No information.

- 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 information.

- 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 information.

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

No, there are no discrete provisions, which would govern such free juridical help specifically with an Article 50. Demandant can get help in common order.

- 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.).

In the law of Civilprocess it is stated how foreign court act and arbitrage is acknowledged and executed. As in Latvia court settlements are verified by court, then also foreign country verified court settlements must obey general court act acknowledgment.

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

No practice.

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

There is no problem and National normative act data do not provide any obstructions to use standard forms.

- 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 there are standard forms.

- 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?

Court judgments, settlements and other public acts which are made in Latvia are not been codified, so it is difficult to say as the problems are not been captured.

- 2.16 How much time does it take usually until the first enforcement measure (at least seizure of assets, but not only until the judgment is given) is carried out 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?

Time wise it is three months.

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?

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

No information.

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?

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

From 2005 to January of 2007 there have been about 20 decisions concerning the Regulation 44/01/EC in Latvia. It is impossible to give exact number of cases at the moment.

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

There is no information on this question in Latvia.

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

About 15 applications for a declaration of enforceability on the basis of Regulation in 2005/2006 in Latvia.

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

All applications for a declaration of enforceability were granted enforceability in Latvia.

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

There are no such cases.

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.

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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

There are no such cases.

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

It could take till 2 months to obtain a decision containing a declaration of enforceability in Latvia.

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

Mostly provisions containing declaratation of enforceability are applied in Latvia.

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?

No, there are no other conditions of recognition and enforcement of judgements, authentic instruments and court settlements.

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

Many cross border litigation cases come from The baltic Sea region: Lithuania, Estonia, Sweden.

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

Mainly titles that shall be recognized or executed in Latvia come from Lithuania, Estonia, Sweden, Finland, Germany.

- 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.)

So far no problems have risen concerning the standard form mentioned in Article 54.

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

There is no information on this question.

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

Translation is required of all the documents, so no language problems arise.

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

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

Yes, translations are required under Latvian civil procedure code.

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?

It is necessary to translate the whole judgement in Latvia.

2.7.2 Do the costs for translations lead to less efficiency?

No, costs for translations do not lead to less efficiency.

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

Lawyer's fees if the applicant has a lawyer, translation fees result from the recognition of judgements, authentic instruments and court settlements.

In particular:

2.8.1 How is Article 52 implemented?

No fee is required in order to submit an application to declare a judgement from other Member State enforceable in Latvia.

2.8.2 How are solicitor's charges calculated?

Solicitor's charges are agreed by the parties and they are not fixed by law.

2.8.3 Are these costs reimbursable?

Cost can be reimbursable according to the general provisions in Latvian civil procedure code. There is no information how it is applied in practice.

In particular:

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

The court verifies the amount of the reimbursable costs and the parties calculate the amount of the reimbursable costs.

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

No, there is no such possibility.

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 information on this question.

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

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efficiency of enforcement – in particular its surprise effect? Does this virtually obstruct the possibilities of Article 47?²

The requirement to serve the party against whom enforcement is sought with the declaration of enforceability impairs surprise effect but it is necessary in order to protect rights of the party whom enforcement is sought.

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

No information on this question.

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 information on this question.

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

No problems have risen so far in Latvia.

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 problems have risen so far in Latvia.

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?

Judges have access to a version of the printed form of Annex V in latvian language.

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?

There should be clarification of Article 55 (2) in the way that a translation of the judgment should be exceptional.

2.16 How much time does it take usually until the first enforcement measure (at least seizure of assets, but not only until the judgment is given) is carried out 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?

It can take from 2 weeks up to a month usually until the first enforcement measures are carried out. It can take up to a month to collect documents which are necessary to pursue the application for a declaration of enforceability in another Member State.

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?

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

There is no information that there is some experience on this question in Latvia.

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?

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)?

There have been so far not many cases concerning the implementation of the Regulation in Latvia, so till now Latvian courts apply autonomous interpretation of "civil and commercial matters" quite successful and did not have any problems.

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

Public authorities do not use the Regulation to assert claims against private persons in Latvia.

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

So far latvian courts have not faced problems to delineate the scope of application of the Regulation and other Regulations of the European Council that are binding on Latvia. But overall courts are still more used to apply the Hague Conventions than the Regulations.

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?

The delineation between Regulation 2201/03/EC and Regulation 44/01/EC is quite satisfactorily.

- 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

So far there have not been problems in this area.

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

So far there have not been problems in this area.

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 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?

Questionnaire No. 3

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

The scope of application should not be extended to incorporate arbitration proceedings. The New York Convention provides efficient mechanism to recognize and enforce arbitral awards. The New York Convention is successfully applied in Latvia. Also it is too early to extend application of the Regulation to mediation proceedings as it is not clear exact definition of the mediation Latvia and how it should be conducted.

- 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?

Rights of defence are guaranteed appropriately in the Regulation 44/01/EC in jurisdiction and in recognition and enforcement matters.

- 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

Code of civil procedure was made compatible with Regulation 44/01/EC on the 1st of May 2004 than Latvia joined EU. The whole detailed procedure how a judgement should be enforceable in Latvia is ruled by Latvian code of civil procedure. The general rules on recognition and execution of a foreign judgement is used. Of course it is said in Section 5 of the CPC that if the relevant issue is regulated by legal norms of the European Union, which are directly applicable in Latvia, the Latvian law shall applied insofar as it allows the legal norms of the European Union.

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

It is thought The Hague Maintenance Convention reduces the application of Regulation. Also courts are used more to apply other Hague Conventions instead of the Regulation 44/01/EC.

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 Regulation guarantees predictability of judicial decisions and legal certainty. Since Latvia has begun to apply the Regulation, legal certainty has really increased.

- 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 Latvian courts do not have any problems with provisions on jurisdiction and comply with the Article 5.

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)).

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

The catalogue of fact-specific grounds of jurisdiction is sufficient.

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

So far no problems risen with this article in Latvia, but in general third State domiciliaries are in less advantageous position.

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?

The examination includes only grounds mentioned in Article 25. In Latvia courts reviews only documents presented by the parties to court.

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 examination of jurisdiction is not expensive in Latvia and there are no special fees in regard to determination of jurisdiction. There is no information to say how long it usually takes to obtain a final decision on jurisdiction, but some practitioners complain that the examination of the court if it has jurisdiction over the case delays substantially the main proceedings.

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?

"Domicile" is defined in Civil Code of Latvia and is defined as the place where a person is voluntarily dwelling with the express or implied intent to permanently live or work there. There is no information if there are any cases where the courts held that the Defendant had several domiciles.

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

Article 60 with its alternative connecting factors appear feasible. But there are some doubts as if it is necessary to have three quite different connecting factors in Article 60.

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?

No information on this question.

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

So far there have not been problems to determine the place where a service was provided or should have been provided.

- 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?

No case law on this question.

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

No case law on this question.

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

No case law on this question.

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

No case law on this question.

- 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?

No case law on this question.

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

Definition of matters relating to torts could cover a very broad range of cases in Latvia.

- 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?

The case law of the ECJ is a good compromise between the interests of the victim on one side and the interests of the possible wrongdoer on the other side.

- 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?

Article 6 No.1 and No.2 of Regulation is compatible with Article 6 of European Convention on Human Rights. Courts should be able to apply Article 6 as necessary in order to safeguard potential defendants. Article 65 implements the third party notice at the European level. Presently Latvia is not included. However, the national provisions on third party notices contained in the procedural laws of Latvia apply at the European level. Scope of the provision shall also include Latvia.

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

The scope of the grounds of jurisdiction for consumer issues is sufficient and the rights of consumers are well protected.

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- 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).

There is no case law on this question in Latvia.

- 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 on this question so far in Latvia.

- 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 on this question so far in Latvia.

- 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 case law on this question so far in Latvia.

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

There is no case law on this question so far in Latvia.

- 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?

No information about such cases in Latvia.

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

There is no case law on this question so far in Latvia.

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

There is no case law on this question so far in Latvia.

- 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?

There is no case law on this question so far in Latvia.

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

Grounds of exclusive jurisdiction are quite satisfactorily.

- 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?

According to Section 632 of Latvian civil procedure code a debtor may appeal the actions of a bailiff in executing a judgment or the bailiff's refusal to perform

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such actions to the district (city) court according to the official appointment location of the bailiff within 10 days from the day when the actions appealed from are taken or the day when a complainant, who has not been notified of the time and place of actions to be taken, becomes informed of such actions. There is no special remedies for obligor to rely on if he argues that the claim has changed since the judgement.

2.2.25 Questions relating to the applicability of Article 23

Requirements stated in the Article 23 of the Regulation for a valid choice of form agreement could be described as somewhat restrictive. But generally it does not raise any big difficulties, unless the choice of court clause is badly formulated.

In particular:

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

No information on this question.

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*?

Conclusion and validity of choice-of-forum agreements are determined according to *lex causae* in Latvia.

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

Choice-of-forum clauses in standard forms are subjected to judicial control in Latvia and courts consider whether there is consent between the parties and whether the formal standards of control are met.

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 case law on this question in Latvia.

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

No information on this question.

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

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?

There is no case law which could indicate that there are problems with the Article 26 of the Regulation 44/01/EC in Latvia.

2.2.27 Effect and functioning of Article 31

There is no information how often so far Article 31 of the Regulation 44/01/EC has been used in Latvia. Perhaps lawyers also only rarely use the possibility to use provisional measures. The problem is variety of provisional measures in every Member country, so courts should have a right to adapt to its own legal system any provisional measure used by a court of another Member State.

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

There is no information about case law in Latvia on this question.

2.2.27.2 Territorial connection with the State where the measure was rendered⁵

No case law on this question.

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

No information on this question.

2.2.27.4 Relation between interim protective measures and main proceedings

The securing of a claim may be allowed at any stage of the proceedings, as well as prior to the bringing of court action.

2.2.27.5 Enforcement of provisional measures under national law⁶

According to Section 137 of Latvian CPC if there is reason to believe that the execution of a court judgment in a matter may become

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 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?

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problematic or impossible, a court or a judge may, pursuant to a reasoned application by the plaintiff, take a decision regarding the securing of a claim. There shall be set out in an application regarding the securing of a claim, the means by which the claim is to be secured.

Securing of claims may be allowed only in claims of a financial nature. The securing of a claim may be allowed at any stage of the proceedings, as well as prior to the bringing of court action. There is a possibility to enforce freezing order in Latvia but it is not specified how it should be enforced. Section 142 (4) of CPC states that a decision regarding the securing of a claim by attachment of the property of the defendant, which is in the possession of third parties or monetary funds due to the defendant from third parties, shall be executed by a bailiff.

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

No information if there is case law on this question in Latvia.

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?

Article 27 and principle of *Lis pendens* achieves his goals and helps to achieve legal certainty in the Member States.

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

Principle of *lis pendens* should not cause an incentive to "race to the court room" in practice normally but there could be some occasions of such practise.

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

Article 30 of the Regulation considerably improved the situation but there still could be problems between different law systems.

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?

Article 28 of the Regulation could be applied successfully and more precise criteria are not indispensable.

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?

No case law on this question in Latvia.

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.

So far there have been no problems on this question in Latvia.

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.

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Latvia so far has not had problems with “torpedos” so there are no big concerns on this problem now.

- 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)?

Such possibility is unlikely in Latvia nowadays, perhaps such problems could arise in countries which have more cross-border cases.

- 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

There have not been such cases so far in Latvia.

- 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?

It is possible to assert action of infringement when the objection is raised that several elements of the 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?

Under the Article 638 of Latvian civil procedure code an application for the recognition and declaration enforceable of a judgement of a Member State shall be submitted for adjudication to a district (city) court on the basis of the place of execution of the adjudication or also on the basis of the place of residence of the defendant. Translation of the judgement is required. If an application does not conform to the requirements of Section 638, a judge shall leave the application not proceeded. A decision regarding the recognition and execution of the application shall be taken by a judge sitting alone on the basis of the submitted application and the documents appended thereto within a period of 10 days from the day of submission of the application without inviting the parties. A decision by a first instance court in an adjudication of a recognition and enforcement matter, an ancillary complaint to the regional court may be submitted, and a decision by the regional court in respect of an ancillary complaint may be appealed to the Senate by submitting an ancillary complaint. A participant in the matter whose place of residence or location is in Latvia, may submit the complaints within a period of 30 days from the day of receipt of the true copy of the decision, but a participant in the matter whose place of residence or location is not in Latvia – within a period of 60 days from the day of receipt of the true copy of the decision.

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?

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It should be said that there are no special rules on recognition and declaration of enforceability of Member States judgements in Latvia. The same rules are applied to judgements from European Union Member States and from other countries. National provisions also do not address the fees of the proceedings for declaration of enforceability of judgments, settlements and authentic instruments.

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

Form of Annex V of the Regulation could be extended that it could make enforcement in other member State immediately after presenting the title and the form.

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

So far term "judgement" has not lead to any difficulties in Latvia.

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

So far there are no possibilities to access the courts by electronic means in Latvia.

- 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?

The reasons for objection that are laid down in Articles 34 and 35 are not appropriate and just contradict the general principle of mutual trust between Member States.

- 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 are no exactly defined criteria for foreign titles in Latvia. But judges are not used usually with the enforcement proceedings, so mostly they require the applicant to produce other appropriate legal provisions.

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

There is no information about case law on this question in Latvia.

- 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?

There could not be found any examples of that.

- 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?

There is no information about case law on this question in Latvia.

- 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 on this question in Latvia.

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- 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?

So far there are no practical experience nor theoretical discussion about such situation in Latvia.

- 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 inadmissibility of "anti-suit injunctions" can be seen as an interference for the efficiency of legal protection.

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

A decision by a first instance court in an adjudication of a recognition and enforcement matter, an ancillary complaint to the regional court may be submitted, and a decision by the regional court in respect of an ancillary complaint may be appealed to the Senate by submitting an ancillary complaint. A participant in the matter whose place of residence or location is in Latvia, may submit the complaints within a period of 30 days from the day of receipt of the true copy of the decision, but a participant in the matter whose place of residence or location is not in Latvia – within a period of 60 days from the day of receipt of the true copy of the decision. No court costs are determined by law in Latvia. There is no mandatory representation in the appellate proceedings in Latvia. The remuneration for lawyers is by the parties, not fixed in the law. The appellate proceedings generally last 2-6 months.

4.2 Provisional Measures according to Article 47

- 4.2.1 How does Article 47 work?

There is no case law which could show that Article 47 is applied in Latvia.

- 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?

There is no case law on this question in Latvia.

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

There is no case law.

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

The judge who is competent for declaration of enforceability is competent to decide on provisional measures.

4.3 Cross-border Enforcement of Court Settlements and Notarial Deeds

- 4.3.1 How do Articles 57 and 58 work?

Article 57 and Article 58 of the Regulation achieve their goals, because these articles widen the scope of the documents which can be enforceable in other Member State in accordance with the Regulation. The most significant part of authentic instruments constitute court settlements and notarial deeds.

In particular:

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

So far no case law on this question in Latvia.

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?

So far there have been no problems with interpretation of the term "Settlement approved by a court" in Latvia.

4.3.1.3 Are the standardised forms sufficient?

Form of Annexes of the Regulation could be extended that it could make enforcement of authentic instruments and court settlements in other member State immediately after presenting the title and the form.

4.3.1.4 To which extent are Articles 34 and 35 applied?

There is no information about case law on this question in Latvia.

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

These articles help creditors documents drawn up in one Member State to enforce them in other Member State easier. These possibilities help to achieve more efficiency of legal protection in European Union.

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?

So far there have been no such situations in Latvia.

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

These Articles of the Regulation help to achieve higher efficiency of legal protection.

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?

So far there have been no such oppressive situations in Latvia, but on the whole there is such possibility that excessive enforcement measures can be carried out.

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

There is no information on specific problems concerning court settlements, enforceable instruments, provisionally enforceable judgements in Latvia.

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

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carried out? How can enforcement measures be set-aside in such a situation?

So far there have been no such cases in Latvia where a court of a higher instance has reversed a foreign judgement after enforcement measures had been carried out. According to general rules of Latvian CPC (Section 635) if a court of appellate instance reverses a judgement, it shall, together therewith, decide the issue regarding the reversal of execution of the judgment.

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

So far there have been no such kind of problems in Latvia.

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.

Scope of the Article 65 should also include Latvia.

Standard form of Annex V should be extended that it could make enforcement in other member State immediately after presenting the title and the form.

Procedure of granting the declaration of enforceability should be simplified even more.

Translation of the a judgment should be made more exceptional than a rule.

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?