

## **National Report Lithuania**

### **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.<sup>1</sup> 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 all<sup>2</sup>

From 1 May, 2005 there were only 5 judgements passed on the basis of Brussels I.

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 purpose<sup>3</sup>

This regulation is valid in Lithuania from 1 May, 2005 only.

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

This regulation is valid from 1 May, 2005 only.

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

This regulation is valid from 1 May, 2005 only.

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

This regulation is valid from 1 May, 2005 only.

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

## Questionnaire No. 1

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

This regulation is valid from 1 May, 2005 only.

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

The procedure of enforceability together with appeal measures takes up to 5 months.

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

It is difficult to compile the list of provisions, because there were only 6 cases in heard in total.

## **National Report Lithuania**

### **Questionnaire No 2: Collection of Empirical Data**

#### **1. Survey**

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

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

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

No

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

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

Mostly Poland, Germany and Latvia

- 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.)

Yes

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

No

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

No

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

Yes

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

- 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?

Translation of the whole judgment including the grounds for the decision is required.

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

No

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

No costs

In particular:

- 2.8.1 How is Article 52 implemented?

It is implemented fully. No fees are required.

- 2.8.2 How are solicitor's charges calculated?

According to the article 98 of the Civil Procedure Code of the Republic of Lithuania the solicitor's charges are calculated on the bases of recommendations approved by the Minister of Justice and, these charges don't exceed the recommended ones.

- 2.8.3 Are these costs reimbursable?

Yes

In particular:

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

Judge

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

Yes

- 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?<sup>2</sup>

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<sup>2</sup> Please describe in detail the chronology of all steps that are carried out by the creditor and the court (including its administrative staff). For instance, in Germany the same court clerk is competent to serve the debtor and to notify the creditor. As a consequence of that, the creditor is not informed before the debtor, so that the surprise effect of the first enforcement measure fails. If in your country the court is competent for service: Do similar

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

No

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

No

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

No, because in the Republic of Lithuania this question is solved within one court.

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

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

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

The court practise regarding this is not sufficient to answer this question fully.

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?

It probably takes 1 month until the first enforcement measure is carried out. After a judgement has been given it takes up to 20 days to collect all documents.

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

No

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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?

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

## National Report Lithuania

### Questionnaire No. 3: Legal Problem Analysis

#### 1. General Themes

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

No

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

Yes

- 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?

No

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

No

- 1.4 Is the application of Article 4 of Regulation 1408/71/EEC practical for the determination of Article 1 (2) lit. c)?

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

Yes

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

- 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?

Our opinion is that in both cases defence measures are sufficient.

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

No

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

No

## 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?

Yes

- 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?

Yes

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

Yes

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

No

- 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?

Such examination is carried out in the cases, if the Regulation foresees alternative or exclusive jurisdiction.

- 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

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

## (Questionnaire 3)

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 the issue of jurisdiction is at no cost, and it doesn't take much time (up to 2 months). Evidencies given by the Parties usually suffice.

## 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?

According to the 2.16 Article 1 part of the Civil Procedure Code the domicile is the place where a natural person mainly lives.

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

Yes

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

No court practice

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

No

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?

Yes

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

According to the practice of the ECJ

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

According to the practice of the ECJ

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

According to the practice of the ECJ

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?

Yes

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

According to the ECJ practice within the scope of this term fall all requirements of non-contractual type for compensation of the damage caused by low quality of goods, the damage to the environment, the damage of causing the greater source of danger etc.

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?

It doesn't exist any court practise

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?

no

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

sufficient

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).

It doesn't exist any court practise

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?

It doesn't exist any court practise

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?

This term is interpreted the same as the term "establishment" is used in the 5 article 5 part of the Regulation.

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)?

It doesn't exist any court practise

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

According to the ECJ explanation of rights in rem, they are absolut, and the claim should be related directly to them.

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?

It doesn't exist any court practise

2.2.20 Are there any positive or negative conflicts of competence?

no

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

It doesn't exist any court practise

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?

It doesn't exist any court practise

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

no

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?

A possibility of grievance foreseen during the procedure of enforcement foreseen doesn't influence the procedure of enforcement.

2.2.25 Questions relating to the applicability of Article 23

It doesn't exist any court practise

In particular:

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

It doesn't exist any court practise

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*?

It doesn't exist any court practise

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

It doesn't exist any court practise

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

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<sup>3</sup> The problematic point lies with written confirmations of orders that are issued by the provider of the non-cash contribution with reference to general conditions that encompass a clause-stipulating jurisdiction. According to the opinion of the ECJ (“Segoura”) this was not possible without written confirmation by the client. This was the reason for the implementation of today’s Article 23 (1) c) in the adapting negotiations with Denmark, Ireland and the United Kingdom. According to the leading decision of the ECJ (“Mainschiffahrtsgenossenschaft”), the meaning of “commercial customs” used by Article 23 (1) c) is a matter of fact that has to be finally decided upon by national courts. Did the courts of your State express their opinion regarding this point – in particular with regard to

It doesn't exist any court practise

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

It doesn't exist any court practise

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

It doesn't exist any court practise

2.2.27 Effect and functioning of Article 31

It doesn't exist any court practise

In particular:

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

Yes

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

Yes

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

It doesn't exist any court practise

2.2.27.4 Relation between interim protective measures and main proceedings

Provisional measures are not necessary applied during main proceedings, but this relation desirable.

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

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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?

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

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

<sup>6</sup> The provisional measures provided by the national legal systems are very different. The rules regarding the enforcement in the Member States are not applicable regarding provisional measures unknown to the national law. The problem has become a practical one in connection with the freezing order (Mareva Injunction) of the English law. This instrument prohibits the opponent from disposing over his assets. Infringements cause penalties because of contempt of court – even for third persons (e. g. banks running the account) that take part in these infringements. British courts add a clause to the world wide freezing order that persons who are not subject to the court’s jurisdiction are only covered, when this special order is declared enforceable abroad. What are the results

Provisional measures are taken by a bailiff according to the common order foreseen in the Code of Civil Procedure.

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?

It doesn't exist any court practise

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

It doesn't exist any court practise

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

no

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?

Hard criteria are not needed

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?

Sameness depends on the subject and reasons of the claim

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.

It doesn't exist any court practise

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.

It doesn't exist any court practise

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)?

It doesn't exist any court practise

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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?

(Questionnaire 3)

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

It doesn't exist any court practise

- 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 doesn't exist any court practise

#### **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?

The procedure works in common order, like the recognition and enforcement of court judgments.

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

no

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

no

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

Satisfactory; for the time of beeing relevant state programs are prepared.

- 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?

We think that reasons for objection should be refused.

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

It doesn't exist any court practiset

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

It was never referred to in the court practise.

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

## (Questionnaire 3)

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

no

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

It doesn't exist any court practise of this kind

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

no court practise exist

- 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?

no

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

No court costs are foreseen in the law; duration up to 2 months; mandatory representation is foreseen in the appeal process only.

#### 4.2 Provisional Measures according to Article 47

- 4.2.1 How does Article 47 work?

no court practise exist

- 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

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

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

no court practise exist

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

- 4.3.1 How do Articles 57 and 58 work?

no court practise exist

In particular:

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

no court practise exist

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

no court practise exist

4.3.1.3 Are the standardised forms sufficient?

yes

4.3.1.4 To which extent are Articles 34 and 35 applied?

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

no court practise exist

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?

no

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

no

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?

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

no court practise exist

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?

no court practise exist

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

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<sup>8</sup> In some States, as for instance in Germany, notarial deeds are only enforceable if the debtor has submitted to enforcement explicitly. The submission is abstract. The debtor can submit to enforcement for a sum that he does

no court practise exist
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## 5. Proposals for Improvements

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

To make this Regulation more effective the limits of autonomous explanation and the limits of application of the Regulation should be extended. At the same time it is a need to reject the institution of recognition of court judgement (declaration of enforceability).
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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?