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Accompanying the document

The Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)

{COM(2025) 268 final}

PART 1 – DETAILED ANALYSIS OF SELECTED ITEMS

1. SCOPE OF APPLICATION

1.1. Cross-border case

Article 81 TFEU, the legal basis of the Regulation, provides for the development of 'judicial cooperation in civil matters having cross-border implications'. The Regulation does not have a specific provision clarifying that it applies only in cross-border situations, but recital (3) contains language similar to that of Article 81 TFEU.

The lack of a specific provision on this key aspect of the Regulation prompted the CJEU to interpret this requirement. Historically, the Court has had a broad interpretation of this element by looking at objective factors that indicate the international character of a legal dispute, beyond the domicile of the parties involved (see, for instance, judgments of *Owusu* (C-281/02), *Hypoteční banka* (C-327/10), *Maletic* (C-478/12)).While in some cases the Court may have focused more on the domicile of at least one of the parties in a different Member State than the one of the court seised (see *PARKING* (Joined Cases C-267/19 and C-323/19), *Commerzbank* (C-296/20), *Generalno konsulstvo na Republika Bulgaria* (C-280/20)), the Court has reaffirmed its traditional position in the most recent cases (*IRnova*, *FTI Touristik*, *Inkreal*, *BSH*). Consequently, it is well-established that the international element necessary to bring a case under the scope of the Regulation may result both from the location of the defendant's domicile and from the subject matter of the proceedings, which may be located in a third State, provided that that situation is such as to raise questions before a court of a Member State relating to the determination of international jurisdiction. On that basis, in *Inkreal* (C-566/22) the Court held that a cross-border element is present where the parties established in the same Member State chose to confer jurisdiction to the courts of another Member State in the absence of any other international element, whereas in *FTI Touristik* (C-774/22) the Court confirmed that a dispute between two parties domiciled in the same Member State concerning a package holiday to another country falls under the scope of the Regulation.

The Study revealed that a majority of Member States did not find the application of this element problematic. The survey equally revealed that generally speaking national courts look either at personal elements (the domicile and/or habitual residence of the parties in different Member States) or at objective ones, such as the place of performance of the obligation under dispute (BG, CZ, ET), the place where the damage occurred or may occur (CZ, ET) or simply whether the dispute is not entirely domestic (DE). However, in DE and HR it seems that the domicile of the parties is the main factor looked at when deciding whether a case is cross-border.

While the cross-border application of the Regulation does not seem to pose problems, the Study reveals a lack of uniformity in the application of this provision. This could be also the result of the fact that other EU instruments[1] that have the same legal basis contain a definition of cross-border cases which focuses on the domicile/habitual residence of the parties.

[1] See, for example, Regulation (EC) No 1896/2006 of the European Parliament and of the Council creating a European order for payment procedure, OJ L 399, 30.12.2006, p. 1 or Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure, OJ L 199, 31.7.2007, p. 1. It needs to be taken into account that these instruments create a separate EU-autonomous procedure for cross-border cases only and that it needs to be unmistakably clear from the outset whether this procedure is available for a given case; this may plead in favour of a simpler and more restrictive definition exclusively based on the domicile of the parties, an easily verifiable criterion.

However, as the recent judgments in *Inkreal* (C-566/22) and *FTI Touristik* (C-774/22) show, a case can have cross-border character and thus can fall under the scope of application of the Regulation even where the parties are domiciled in the same Member State. Furthermore, recently it was stipulated in Article 5(1) of the Anti-SLAPP Directive[2] that for the purpose of that instrument '*a matter is considered to have cross-border implications unless both parties are domiciled in the same Member State as the court seised and all other elements relevant to the situation concerned are located only in that Member State*'. Therefore, the focus on the domicile of the parties has the potential of failing to capture some cases under the scope of application of the Regulation and, thereby, of depriving the Regulation of its intended effectiveness (*effet utile*). This is the case primarily for the chapter on jurisdiction. In other words, while a case can safely be considered to be cross-border if the parties are domiciled in different Member States, the case law shows that there are also other elements which can point to the cross-border implications of a dispute.

1.2. Civil and commercial matters

Ever since this notion was introduced in the 1968 Brussels Convention[3], the most important question which was raised is under which conditions an action to which a public authority is a party can be classified as civil and commercial.

The Court has given a constant reply to this question ever since the first case on this issue in 1976 - *LTU v Eurocontrol* (C-29/76). First, the Court considers that this concept should be interpreted autonomously, not in accordance with a particular national legal system, but rather by reference 'to the objectives and scheme of the convention and, secondly, to the general principles which stem from the corpus of the national legal systems'. Second, the Court has consistently considered that whether an action to which a public authority is a party would fall under the scope of application depends on whether that authority acted in the exercise of its public powers (*acta iure imperii*). If it did, the case would not be captured by the Regulation. This established case law prompted the legislator to amend Article 1 of the Regulation in order to bring this clarification.

The Study revealed that a vast majority of the respondents found no issue with the interpretation of the notion of 'civil and commercial matters'. Only some Member States seem to have certain difficulties to reconcile this well-established case law of the Court with national concepts, in particular the concept of public interest, which is essential in these Member States in order to decide whether an authority acted in the exercise of its public powers. Finally, in two isolated cases an interpretation in accordance with national law seems to have been chosen.

This well-established concept has been consistently interpreted for many years by the CJEU and by national courts and, despite some difficulty inherent in the interpretation of any legal concepts, in particular those that require an autonomous interpretation, the use of this scope provision in practice seems to function well.

1.3. The exclusion of insolvency-related claims

The exclusion of insolvency proceedings from the scope of application has raised some questions as to which types of claims in the context of insolvency are covered.

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[2] Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation'), OJ L, 2024/1069, 16.4.2024.

[3] See the 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, OJ L 299, 31.12.1972, p. 32 (hereinafter, 'the Brussels Convention').

The CJEU has interpreted this exclusion already under the Brussels Convention. The formula developed in *Gourdain* (133/78), still valid today, states on this issue that "it is necessary, if decisions relating to bankruptcy and winding-up are to be excluded from the scope of the Convention, that they must derive directly from the bankruptcy or winding-up and be closely connected with the proceedings for the '*liquidation des biens'* or the '*reglement judiciaire*' (para. 4 of the judgment). A further clarification was brough by the CJEU in the more recent case *Nickel & Goeldner Spedition* (C-157/13), where it specified that in deciding whether a claim is insolvency-related one has to consider the legal basis of the right or the obligation under dispute, namely whether 'the basis of the action finds its source in the common rules of civil and commercial law or in the derogating rules specific to insolvency proceedings' (para. 27 of the judgment).

Since 2000 the Union has rules specific to insolvency proceedings laid down in the Insolvency Regulation[4]. These rules should be interpreted as much as possible so as to avoid overlap or gaps with the Regulation (see *Nickel & Goeldner Spedition* (C-157/13) and *Feniks* (C-337/17)). This means that insolvency-related proceedings, excluded from the scope of application of the Regulation, are to be covered by the Insolvency Regulation[5].

The Study showed that the majority of respondents did not see any issues with the delineation of insolvency-related claims. While the majority of Member States had little or no case law on this matter or the application of the CJEU interpretation did not raise any issues, some specific issues were mentioned in this context related for instance to restructuring proceedings, claims brought by the employees in the context of insolvency proceedings or parallel proceedings.

Despite the fact that the delineation of insolvency-related claims seems to pose some practical questions that generate cases both at the national and at the CJEU level, generally speaking it is rather clear how to interpret this exclusion in practice and the issues detected regard specific matters have been solved on a case-by-case basis, taking into account the existing rule and its interpretation[6].

2. JURISDICTION

2.1. Derived special jurisdiction (Article 8)

Article 8 of the Regulation was not amended during the recast and aims at facilitating the sound administration of justice, reducing the possibility of concurrent proceedings, and consequently avoiding irreconcilable decisions. In a wider perspective, the Study highlights that academics and practitioners have welcomed two developments related to Article 8(1): the extended reach of Article 8(1) through the amendment of Article 20(1) that enabled the employees to rely on Article 8(1) when suing multiple employers; and the confirmation by the CJEU in *CDC Hydrogen Peroxide SA* (C-352/13) and numerous subsequent judgments that the victims of competition law infringements may sue, on the basis of Article 8(1), all the tortfeasors in a Member State where any one of them is domiciled.

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[4] See Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings OJ L 160, 30.6.2000, p. 1, repealed by Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings OJ L 141, 5.6.2015, p. 19.

[5] See also Recital 7 of the Insolvency Regulation.

[6] Some issues, such as the coverage of restructuring proceedings by the Insolvency Regulation, could conceivable be addressed in the Insolvency Regulation.

The Study however stresses that national courts face some difficulties when applying the connectedness requirement in Article 8(1). In particular, it has been suggested that the CJEU has established rather strict rules for the assessment of connectedness[7], which at the same time are rather vague and leave considerable room for uncertainty. As a result, it is claimed that national courts are left with a difficult task to strike a balance between the requirement to examine the criteria of connectedness already when deciding on jurisdiction on one hand, and to ensure the predictability of rules on jurisdiction on the other hand.

The CJEU has already provided some clarification of the connectedness criterion in Article 8(1) in the context of competition cases. Most recently, in judgment *Athenian Brewery and Heineken* (C-393/23), the CJEU clarified that under Article 8(1) of the Regulation, a parent company and its subsidiary can be jointly sued at the place where one of them is domiciled if the parent company exercises decisive influence on the economic activity of the subsidiary. The Court has also reiterated that concepts from public enforcement, such as the concept of joint and several liability of all legal entities that are part of the infringing undertakings, applicability of the presumption of decisive influence also apply for private enforcement and are hence relevant to determine jurisdiction.

Nevertheless, similar connectedness-related questions are being asked in other pending referrals to the CJEU from the Dutch courts dealing with the power cables and the Italian cardboard cartel in *Electricity & Water Authority of the Government of Bahrain and Others* (Joined Case C-672/23 and C-673/23). In these referrals, just like in case *Athenian Brewery and Heineken* (C-393/23)[8], the Dutch courts specifically ask the CJEU to clarify the interpretation of the connectedness requirement in situations that differ from those previously brought before the CJEU.

These referrals show that it remains difficult to establish close connection in certain cases. Moreover, the referrals also reveal that the predictability of jurisdiction in competition cases is a matter of concern[9]. In particular, the application of Article 8(1) could result in a multiplication of competent courts insofar as each legal entity that is part of an undertaking that has infringed Article 101 TFEU is jointly liable for the damage. As a result, a large number of courts might be competent to deal with a particular matter. For instance, one of the questions at issue in *Electricity & Water Authority of the Government of Bahrain and Others* is whether a claim that is strongly connected with Italy can be brought in the Netherlands because one of tortfeasors has an intermediate holding in the Netherlands, which is a case for many international companies for tax purposes.

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[7] In assessing the close connection and the risk of irreconcilability of judgments rendered in separate proceedings, the CJEU holds that the fact that there is a divergence in the outcome of the dispute is not sufficient to classify the decisions as contradictory. It is further required that the divergence must also arise in the context of the same situation of law and fact.

[8] In this case, the Dutch court asked whether the conclusions of *CDC Hydrogen Peroxide* with regard to several defendants constituting different undertakings which the Commission had decided that all committed a single and continuous infringement of Article 101(1) TFEU could be extended to a situation where one of the defendants is the parent company of a legal person held liable for an infringement of the European competition rules in a decision adopted by a national competition authority. Just to remind that in *CDC Hydrogen Peroxide*, the CJEU ruled that the requirement of a close connection was fulfilled, i.e. the condition of the existence of the same factual and legal situation is satisfied, in the context of an action for damages seeking a declaration that several defendants constituting different undertakings which the Commission had decided had all committed a single and continuous infringement of Article 101(1) TFEU.

[9] In *Smurfit Kappa Europe and Others* and *Electricity & Water Authority of the Government of Bahrain and Others,* the referring court explicitly asks whether the foreseeability is a separate criterion for the national court to assess when applying Article 8(1) of the Regulation, i.e. whether the principles developed in paragraph 23 of *CDC Hydrogen Peroxide* must be applied to other types of competition cases.

In addition to the aforementioned difficulties, the findings of the Study and the JUDGTRUST project suggest that some concerns are still being raised regarding the potential consequences of an overly stringent application of Article 8(1) in intellectual property disputes, particularly following the judgment in *Roche Nederland* (C-539/03). Although the CJEU appears to have moved away from this approach in *Painer* (C-154/10), where it held that the application of Article 8(1) is not prevented simply because actions against multiple defendants for substantially identical copyright infringements are based on different national legal frameworks across Member States, the findings of the JUDGTRUST project indicate that academic opinions still remain divided on whether this requirement still holds significance in cases involving intellectual property rights[10].

In conclusion, Article 8, by and large, is applied without major difficulties. However, the Study and recent referrals to the CJEU show that the application of Article 8(1), and, in particular, of the connectedness requirement, still raises interpretative questions. This is particularly true in disputes relating to competition law and intellectual property rights. However, the CJEU is expected to provide further clarity on these matters.

2.2. Protective jurisdiction

2.2.1. Matters relating to insurance

A well-balanced system of jurisdiction rules in insurance matters, except for minor editorial adjustments, was left intact by the Regulation. The small number of referrals for preliminary rulings from national courts, along with the responses from Member States, indicates that there are no significant issues concerning the application of these rules.

Nevertheless, it appears that several specific difficulties raised prior to the recast of the Regulation, but not addressed by it, persist. As questions referred to the CJEU show, national courts face difficulties when:

a) delineating the material and personal scope of application of the rules on insurance contracts; and

b) qualifying the claims arising in a complex, often tripartite, relationship.

As far as the personal scope of application is concerned, Articles 13 (direct actions) and 15 (choice-of-court agreements) appear to raise most questions.

In its case law on these matters, such as in judgment in *BT v Seguros Catalana Occidente* (C-708/20), the CJEU clarified that a claim brought by the injured person against the policyholder or the insured cannot be automatically considered to be an insurance claim and held that an injured person cannot bring an action against the insured on the basis of Article 13(3) of the Regulation.

It also follows from the case-law (see *inter alia Balta* (C-803/18), *MMA IARD* (C-340/16), *T.B. y D* (C-393/20), *CNP* (C-913/19) that the mere existence of an insurance contract is not sufficient to trigger the application of the rules in Section 3 and that the application of those rules should be restricted to parties in need of protection. According to the case-law, a professional in the insurance sector is a person who carries out a professional activity recovering insurance indemnity claims against insurance companies, in his or her capacity as contractual assignee of such claims; a social security institution, which is the statutory assignee of the rights of the person, cannot be considered as such. In contrast, where the statutory assignee of the rights of the directly injured party may himself be considered a

[10] For more details see the Handbook of JUDGTRUST project, pages 202-204.

weaker party such an assignee should be able to benefit from special rules on the jurisdiction of courts laid down in those provisions. This is particularly true in the situation of heirs of the injured person and of an employer, which continued to pay the salary of its employee absent as the result of a road traffic accident and who has been subrogated to the employee's rights with regard to the company insuring the civil liability resulting from the vehicle involved in that accident.

2.2.2. Individual contracts of employment

Section 5 of the Regulation contains a system of rules that aim at protecting the employees under individual contracts of employment.

A recurrent issue relating to the application of those rules identified by the Member States relates to the determination of the place where or from where the employee habitually carries out his or her work ('*locus laboris'*) of highly mobile workers such as pilots, flight attendants and other crew members or truck drivers for the purposes of Article 21(1)(b)(i).

The CJEU has adopted a broad interpretation of the *locus laboris*. In line with that case-law[11], the national courts must establish the effective centre of a highly mobile employee's working activities based on various factors, such as the 'home base' of the airline staff. The solution provided by the CJEU however seems to leave open some questions of interpretation.

The criteria used by the national courts for this purpose diverge. In some Member States (AT, BE, EL, FR, IE), the ratio spent in one Member State is pivotal to determining where the worker habitually carries out his or her work. In some others (IE, NL, PL), in addition to the amount of working time spent in one Member State, the place where a worker starts and ends their working day, the place where he or she receives work instructions, the place where the aircraft is stationed, and the place where the family of the worker reside are taken into account. Finally, few Member States (IT, EL) consider that the *locus laboris* of mobile workers coincides with the place where the business that engaged the employee is situated, for example, the seat of the company for tax purposes or the location of the employer's infrastructure. In other words, in the most complicated cases, some national courts tend to rely, directly or indirectly, on the fallback criterion of the seat of business in Article 21(1)(b)(ii). This may highlight the risk of a more systematic application of the subsidiary criterion – place of the business – to highly mobile workers due to the impossibility to establish the *locus laboris* contrary to the intention of this only being a fall-back option.

The Study and the National Reports identified some additional difficulties relating to the application of the rules in Section 5, reported by a small number of Member States. Those difficulties mainly concern the determination of the habitual place of work in cases where the 'contractual' place differs from the effective one (LU, EL); and the qualification (or not) of certain contracts, as 'individual employment contracts' in accordance with the criteria established in the case-law of the CJEU[12] (CY, CZ, DE, MT, PT, SL).

Future case-law can be expected to further clarify the interpretation of the rules in Sections 3 and 5.

2.3. Prorogation of jurisdiction (Articles 25 – 26)

The rules on the prorogation of jurisdiction are not new in the Brussels 'regime'; they were introduced by the very Brussels Convention and survived all subsequent revisions.

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[11] See the summary of the case law on p. 166-167 of the Study.

[12] See, for example, judgments in *Holterman Ferho Exploitatie and Other*, C-47/14, and *Bosworth and Hurley*, C-603/17.

Compared to its predecessors, the Regulation has further enhanced party autonomy and the impact of choice of court agreements. First, the Regulation removed the requirement for at least one of the parties to a choice of court agreement to be domiciled in a Member State thus widening the territorial scope of application of Article 25. In addition, in its recent judgment in *Inkreal*[13] the CJEU further clarified that the applicability of the Regulation can be triggered by the mere choice of the courts of another Member State, even though the parties are both domiciled in the same Member State and that no other connecting factor links the case to the Member States whose courts were chosen.

Second, the Regulation inserted into Article 25 provisions on the law governing the substantive validity of prorogation clauses and on the separability or severability of a choice of court agreement.

The basic rule on tacit prorogation in Article 26(1) was not amended during the recast. The Regulation has only inserted a new provision in Article 26(2) to adjust that rule in disputes involving a weaker party, following the suggestion of the CJEU in *ČPP Vienna Insurance Group* (C-111/09)[14]: the court seised is now obliged to ensure that a weaker party (defendant) is informed of the right to contest jurisdiction and of the consequences of failing to do so.

Last, but not least, the Regulation amended the *lis pendens* rule in Article 31(2) with a view to enhancing the effectiveness of choice of court agreements. The non-designated court is now required to stay the proceedings in favour of the designated court even if the latter court is seised second. However, since that provision establishes no deadline for the court to stay the proceedings, significant delays can be encountered in practice as it was the case in the so-called *Airberlin*[15] case where it took the court in Berlin almost 14 months to stay the proceedings as prescribed by Article 31(2).

According to the Study, most of the Member States are generally satisfied with the operation of the rules governing explicit or tacit prorogation of jurisdiction. In none of the Member States has any increase of litigation based on choice of court agreements been noticed. The current regime of the Regulation is further reinforced by the 2005 Hague Judgments Convention, which applies to exclusive jurisdiction agreements designating the courts of other contracting States.

Nevertheless, some Member States raised some issues relating to the application of both Articles 25 and 26.

2.3.1. Article 25

Despite the CJEU has already provided some guidance[16], some Member States still consider assessing the substantive validity of choice of court agreements and their effects on third parties to be the most challenging aspects of applying Article 25. These difficulties are highlighted by several recent referrals to the CJEU.

For example, in its referral in case *E. B.SP.* (C-682/23), the Romanian court doubts whether the requirement of third-party consent to the prorogation of jurisdiction is fulfilled in the case

[13] However, this did not prevent the Austrian court from referring a question to the CJEU in case C-540/22 to clarify whether *Inkreal* rule applies in situations where both parties to the choice of court agreement are domiciled in third country (a Member State at the moment of conclusion of the agreement) and the choice of court and of applicable law are the sole criteria that link the dispute in the main proceedings to the EU.

[14] Paragraph 32.

[15] *Etihad Airways PJSC v Flöther* [2020] EWCA Civ 1707; Bundesgerichtshof, 15 June 2021, II ZB 35/20, DE:BGH:2021:150621BIIZB35.20.0.

[16] See, among others, the recent judgment in *Maersk* (Joined Cases C-345/22 to C-347/22).

of an assignment of claim agreement where there is no full succession to the original contracting party's rights and obligations.

Likewise, in its referral in case *Societa Italiana Lastre* (C-537/23), the French Supreme Court asked the CJEU to clarify what the 'substantive validity' referred to in Article 25(1) encompasses and whether asymmetrical choice of court clauses could be regarded as incompatible with that Article. In addition, the French court asked which law has to be applied to determine the validity of the choice of court clause in cases where the court seized is not the one designated by the parties and whether that law encompasses conflict of laws rules[17].

Likewise, despite the CJEU has already provided some useful guidance first in *El Majdoub* (C-322/14) as regards online contracts concluded by means of a 'click-wrapping agreement', and later in *Tilman* (C-358/21) as regards the validity of a jurisdiction clause included in the general terms and conditions set out on a web page, to which the B2B contract signed by the parties make reference via a hyperlink text without box-ticking mechanism, some Member States still report uncertainties over the formal validity of choice of court clauses, in particular in cases concerning clauses contained in general terms and conditions attached to invoices, and those contained in online contracts.

Future case-law can be expected to provide further clarity on the interpretation of Article 25.

2.3.2. Article 26

The National Reports of the JUDGTRUST project show that opinions diverge on the interpretation of Article 26 in general, and of its newly introduced paragraph 2 in particular. In some Member States the prevailing view is that a violation of the obligation of the court in Article 26(2) presents a ground to refuse the recognition and enforcement under Article 45(1)(e)(i). In others, a judgment rendered in violation of Article 26(2) does not qualify as a ground to refuse the enforcement. In several Member States both views are put forward by different courts.

A similar divergence of views exists in respect of the personal scope of application of Article 26. Most Member States apply this Article regardless the domicile of the defendant, but some others (FR, SE) consider that Article 26 only applies where the defendant is domiciled in a Member State due to the lack of indications in Article 6(1) in this respect.

2.3.3. Conclusion

In conclusion, most Member States are largely satisfied with the operation of Articles 25 and 26. The case-law of the CJEU provides useful guidance for the application of these Articles, including for online contracts. Nevertheless, certain residual uncertainties relating to the operation of those Articles were reported by the Member States or raised in the referrals to the CJEU. It could thus be further explored whether, for example, there is a need to codify the requirements laid down by the CJEU in respect of the effect of the choice of court agreements on third parties or to clarify the effects of violation of the court's obligation in Article 26(2).

[17] In its judgment of February 27, 2025, the CJEU ruled that the validity of asymmetric choice of court clause is covered by the Regulation, and that, in principle, such clause is valid, as long as it is limited to the courts of EU or Lugano States. Moreover, the CJEU clarified that the validity of the choice of court clauses is to be assessed in light of autonomous criteria without any reference to national law.

3. RECOGNITION AND ENFORCEMENT

3.1. The certificates

The Regulation establishes two types of certificates: one that accompanies a judgment and another one used for authentic instruments or court settlements. The former is needed not only in order to enforce a judgment, but also when invoking a foreign judgment for the purposes of recognition.

The Court has interpreted different aspects related to the issuance of the certificate. It concluded on several occasions that the issuing court must ascertain whether the Regulation is applicable if such an assessment was not made by the adjudicating court (*Gradbeništvo Korana*, C-579/17, *Weil*, C-361/18). By issuing the certificate the court of origin implicitly confirms that the judgment falls within the scope of application of the Regulation (*Gradbeništvo Korana*).

The Study shows that ten Member States found no particular issue with the certificate (AT, EE, EL, FI, HU, IE, LV, PT, SE, SK). However, five Member States (CY, HR, IT, PL, SL) detected difficulties regarding the requirement to serve the certificate on the person against whom enforcement is sought before the first enforcement measure.

In these procedures, it is important for the creditor to be able to enforce the judgment against the debtor. For this to happen, a speedy process is essential. The requirement of service of the Article 53 certificate[18] on the debtor prior to any enforcement measures can slow down the whole process, and even delay it indefinitely if the debtor takes steps to move its assets elsewhere. The absence of the service requirement does not mean that the judgment debtor is not well protected, as it can always challenge the enforcement.

As a result, while the issuance of the certificate functions rather well in practice, a number of technical issues, such as the need for service prior to the first enforcement measure, remain.

3.2. Application of refusal grounds based on national law

The Regulation introduced a novelty in paragraph 2 of Article 41 by allowing the application of refusal grounds based on the national law of the Member State of enforcement, as long as they are not incompatible with those listed in Article 45. Recital (30) further explains this provision by mentioning that such grounds can be invoked in relation to enforcement, but that for the refusal of recognition only the grounds listed in the Regulation can be resorted to.

While this provision has not been widely applied in practice, the reports of the JUDGTRUST project point out some questions related to the lack of clarity of this provision, raised in particular in some Member States (BE, ET, FR, PL, SL). Indeed, it has been argued that this provision seems to be somewhat at odds with the overall objective of the Regulation to simplify enforcement and also that it seems to depart from the rationale of the CJEU's judgment in *Prism Investments* (C-139/10) which excluded the application of any additional refusal ground other than those listed in Articles 34 and 35 of the Brussels I Regulation[19].

[18] The same requirement existed in the Brussels I Regulation with regard to the service of the declaration of enforceability, prior to the abolishment of the need for *exequatur*.

[19] While the judgment in *Prism Investments* is relevant in this context, it should be noted that it was given under the Brussels I Regulation and the question related to the specific situation of the *exequatu*r procedure and the actual procedure for enforcement.

PART 2 – THE CASE-LAW OF THE CJEU BY ORDER OF MENTIONING

1. The Report

Judgment of 2 June 2022, *London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain*, C-700/20, EU:C:2022:488.

Judgment of 21 May 1980, *Bernard Denilauler v SNC Couchet Freres*, C-125/79, EU:C:1980:130.

Judgment of 9 March 2017, *Pula Parking d.o.o. v Sven Klaus Tederahn*, C-551/15, EU:C:2017:193.

Judgment of 11 April 2013, *Land Berlin v Ellen Mirjam Sapir and Others*, C-645/11, EU:C:2013:228.

Judgment of 7 March 2018, *flightright GmbH v Air Nostrum, Líneas Aéreas del Mediterráneo SA, Roland Becker v Hainan Airlines Co. Ltd and Mohamed Barkan and Others v Air Nostrum, Líneas Aéreas del Mediterráneo SA*, Joined Cases C-274/16, C-447/16 and C-448/16, EU:C:2018:160.

Judgment of 4 October 2018, *Feniks Sp. z o.o. v Azteca Products & Services SL*, C-337/17, EU:C:2018:805.

Judgment of 28 November 2024, *VariusSystems digital solutions GmbH*, C-526/23, ECLI:EU:C:2024:985.

Judgment of 6 October 1976, *Industrie Tessili Italiana Como v Dunlop AG*, C-12/76, EU:C:1976:133.

Judgment of 3 May 2017, *Color Drack GmbH v Lexx International Vertrieb GmbH*, C-386/05, EU:C:2007:262.

Judgment of 9 July 2009, *Peter Rehder v Air Baltic Corporation*, C-204/08, EU:C:2009:439.

Judgment of 11 March 2010, *Wood Floor Solutions Andreas Domberger GmbH v Silva Trade SA*, C-19/09, EU:C:2010:13.

Request for a preliminary ruling of 18 January 2024 from Rechtbank Amsterdam (Netherlands), in case *Stichting Right to Consumer Justice and Stichting App Stores Claims*, C-34/24.

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Judgment of 28 January 2015, *Harald Kolassa v Barclays Bank plc*, C-375/13, EU:C:2015:37.

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