

QUESTIONNAIRE

Version 2016

General guidelines

This questionnaire addresses the practical application of B IA before the national courts of member states with an emphasis on the interplay of Regulation and national rules regarding the enforcement procedure as a whole and the remedies in particular.

Please refer for existing information relating to B IA in the EU, among others to:

- 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,¹
- Green Paper on the Review of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,²
- Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,³
- Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,⁴
- Study on residual jurisdiction (Review of the Member States’ Rules concerning the ‘Residual Jurisdiction’ of their courts in Civil and Commercial Matters pursuant to the Brussels I and II Regulations),⁵
- Data Collection and Impact Analysis – Certain Aspects of a Possible Revision of Council Regulation No. 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (‘Brussels I’);⁶ with accompanying Appendix D⁷ and Appendix E,⁸

¹ OJ L 351/1, 20.12.2012. Available at:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R1215&from=EN>

² COM(2009) 175 final. Available at:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009DC0175&from=EN>

³ COM(2010) 748. Available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0748:FIN:EN:PDF>

⁴ COM(2009) 174 final. Available at:

http://ec.europa.eu/civiljustice/news/docs/report_judgements_en.pdf

⁵ http://ec.europa.eu/civiljustice/news/docs/study_residual_jurisdiction_en.pdf

⁶ http://ec.europa.eu/justice/civil/files/study_cses_brussels_i_final_17_12_10_en.pdf

⁷ http://ec.europa.eu/justice/civil/files/brussels_i_appendix_d_17_12_10_en.pdf

⁸ http://ec.europa.eu/justice/civil/files/brussels_i_appendix_e_15_12_10_en.pdf

- Report on the Application of Regulation Brussels I in the Member States ('Heidelberg Report'),⁹
- Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) Note (Study by Ilaria Pretelli),¹⁰
- The Commission's Civil Justice Documents compilation,¹¹
- European Judicial network in civil and commercial matters,¹² where other rudimentary information regarding national order for payment and small claims procedure for most Member States can also be found,¹³
- European e-Justice Portal,¹⁴
- European Judicial Network Documents, e.g. Citizens' guide to cross-border civil litigation in the European Union, Practice guide for the application of the Regulation on the European Enforcement Order, Judicial cooperation in civil matters in the European Union etc., which can be found at the web page of European Judicial Network,¹⁵
- Study on European Payment Order, Study on making more efficient the enforcement of judicial decisions within the European Union etc. All of them are available at the web page of European Judicial Network¹⁶ etc.

The structure of each individual report does not necessarily have to follow the list of questions enumerated below. The questions raised should be dealt with within the reports, however the authors are free to decide where this will be suitable. Following the structure of the questionnaire will make it easier to make comparisons between the various jurisdictions.

The list of questions is not regarded to be a conclusive one. It may well be that we did not foresee certain issues that present important aspects in certain jurisdictions. Please include such issues where suitable. On the other hand, questions that are of no relevance for your legal system can be left aside.

Please give representative reference to court decisions and literature. Please try to illustrate important issues by providing examples from court practice. If possible, please include empirical and statistical data.

⁹ B. Hess, T. Pfeiffer, P. Schlosser, Study JLS/C4/2005/03, 2007. Available at:

http://ec.europa.eu/civiljustice/news/docs/study_application_brussels_1_en.pdf

¹⁰ European Parliament Directorate-general for internal policies, I. Pretelli, 2011. Available at:

[http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-JURI_NT\(2011\)453205](http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-JURI_NT(2011)453205)

¹¹ http://ec.europa.eu/justice/civil/document/index_en.htm

¹² http://ec.europa.eu/civiljustice/simplif_accelerat_procedures/simplif_accelerat_procedures_ec_en.htm.

¹³ For case of Slovenia see:

http://ec.europa.eu/civiljustice/simplif_accelerat_procedures/simplif_accelerat_procedures_sln_en.htm.

¹⁴ For European Order for Payment procedure see:

<https://e-justice.europa.eu/contentPresentation.do?idTaxonomy=41&lang=en&vmac=r9Klvk5c5yBXTTpIFcE3eO1ILsSHvqlyFn4mfXJsyLxOwleIXN-A4iEnlghxe4PUfmlXktLJDRjq1LeHcGY6HAAAazMAAAC>.

For European Small Claims Procedure see:

<https://e-justice.europa.eu/contentPresentation.do?idTaxonomy=42&lang=en&vmac=qu-zZrpu8lja62kGDeATAFhREcgMT4qv4YmtKfdXNfmehAJtxltqZZSY2wLGuXL2B4q74ERMigBc7S447YG47wAAHccAAALd>.

¹⁵ http://ec.europa.eu/civiljustice/publications/publications_en.htm.

¹⁶ http://ec.europa.eu/civiljustice/publications/publications_en.htm.

Please do not repeat the full questions in your text. There is no limitation as to the length of the reports.

Languages of national reports: English.

Deadline: 1 November 2016.

In case of any questions, remarks or suggestions please contact project coordinator, prof. dr. Vesna Rijavec: vesna.rijavec@um.si; or Katja Drnovšek: katja.drnovsek@um.si

Terminology used in the questions

The use of a unified terminology can certainly ease the comparison between national reports. For the purposes of this questionnaire, the following definitions shall apply:

Action: Used in the sense of lawsuit, e.g. ‘bringing an action’ (starting a lawsuit, filing a suit).

Application: Request addressed to the court. Note: the term ‘motion’ is in B IA exclusively used for acts issued by the court.

Astreinte: Monetary penalties used as a means of enforcing judgments in certain civil law jurisdictions. A proper English term to describe ‘*astreinte*’ does not exist.

Authentic instrument: A document which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which:

- (i) relates to the signature and the content of the instrument; and
- (ii) has been established by a public authority or other authority empowered for that purpose

Cassation Complaint: Second appeal in the Romanic family of civil procedure (in the Germanic family one uses ‘Revision’ instead).

Civil Imprisonment: Imprisonment of a judgment debtor in order to force him to satisfy the judgment.

Claim / Defence on the Merits: Claim or defence which concerns the specific case at hand and not preliminary (procedural) issues. Opposite of preliminary defences.

Claimant: Before the Woolf Reforms designated as ‘Plaintiff’. In your contributions, please only use ‘claimant’ (the term which is also used in B IA).

Counsel: Generic term for the lawyer assisting a party. We would advise to use this terminology instead of ‘advocate’, ‘procurator’, etc.

Court of origin: The court which has given the judgment the recognition of which is invoked or the enforcement of which is sought.

Court settlement: A settlement which has been approved by a court of a Member State or concluded before a court of a Member State in the course of proceedings.

Default: Omitting the execution of the required procedural act (e.g. where the summoned defendant does not appear).

Defaulter: Party in a civil action who does not execute the procedural act which should have been executed by him.

Enforcement: Use the term enforcement instead of execution.

Enforcement officer: Official involved in enforcing court rulings. Enforcement is part of the tasks of a ‘*huissier de justice*’ in France and other jurisdictions belonging to the Romanic family of civil procedure.

Ex officio / Sua Sponte: Both ‘*ex officio*’ and ‘*sua sponte*’ are used to indicate that the judge may act spontaneously without being asked to do so by the parties. In other words, we are dealing with powers of the judge which he may exercise at his own motion.

Final judgment: Judgement, which is binding to parties and against which generally, no ordinary legal remedy is permitted.

Hearing: Session before the court, held for the purpose of deciding issues of fact or of law. For civil law jurisdictions, we would suggest to avoid using the terminology ‘trial’ (which in English civil procedure refers to a specific stage in litigation).

Interlocutory Judgment: All judgments which do not decide the merits of the case.

Interlocutory Proceedings: Proceedings which are not aimed at acquiring a final judgment on the merits in the case but aim at an intermediate, non-final decision in a pending lawsuit.

Judgment: Any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as a decision on the determination of costs or expenses by an officer of the court.

For the purposes of Chapter III, ‘judgment’ includes provisional, including protective, measures ordered by a court or tribunal which by virtue of this Regulation has jurisdiction as to the substance of the matter. It does not include a provisional, including protective, measure which is ordered by such a court or tribunal without the defendant being summoned to appear, unless the judgment containing the measure is served on the defendant prior to enforcement;

Judicial Case Management: An approach to litigation in which the judge or the court is given powers to influence the progress of litigation, usually in order to increase efficiency and reduce costs.

Main Hearing: In German: *Haupttermin*.

Means of recourse against judgments: General terminology to indicate all possible means to attack judgments, e.g. ordinary appeal, opposition, cassation, revision etc.

Member State of origin (MSO): The Member State in which the judgment has been given, the court settlement has been approved or concluded or the authentic instrument has been drawn up or registered.

Member State addressed (MSA): The Member State in which the recognition of the judgment is invoked or in which the enforcement of the judgment, the court settlement or the authentic instrument is sought.

Opposition: Act of disputing a procedural act or result, e.g. a default judgment.

Preclusion: The fact that a party is barred (precluded) from taking specific steps in the procedure since the period for taking these steps has expired (‘*Reihenfolgeprinzip*’).

Preliminary defences: ‘Exceptions’; (usually) procedural defences. Opposite of defences on the merits.

Process server: Official serving the summons on the opponent party. This is part of the tasks of a ‘*huissier de justice*’ in France and other jurisdictions belonging to the Romanic family of civil procedure.

Second instance appeal: First appeal, not to be confused with a Cassation Complaint or Revision (i.e. second appeal or third instance appeal).

Statement of Case: General terminology for the documents containing the claim, defence, reply, rejoinder etc. Before the Woolf reforms these documents were indicated as ‘pleadings’. In French: ‘conclusions’.

Statement of Claim: Document containing the claim.

Statement of Defence: Document containing the defence.

Questionnaire for national reports

<u>Part 1: Main features of the national enforcement procedures for recovery of monetary claims (general overview)</u>

- 1.1. Briefly present domestic legal sources on enforcement.

The enforcement proceeding take the last part of the Greek Code of Civil Procedure (Art. 904 ff.).

- 1.2. Was there a recent reform or is there an ongoing reform in progress? If yes, please comment the changes introduced by the reform or proposed solutions.

Important amendments to the provisions of the Greek Code of Civil Procedure came into effect as from 01.01.2016 by virtue of Law 4335/2015. The principal objective of the aforementioned law is the re – establishment of a faster, more effective and fair procedure before the Civil Courts.

As regards the enforcement proceedings, according to the provisions of Law 4335/2015, the ability of the debtor to challenge the enforcement actions, which are carried out by the creditor, are significantly restricted. In particular, by virtue of the provisions of the Code of Civil Procedure, as in force today, the debtor is entitled to challenge separately each enforcement action and as a result the completion of the enforcement procedure is significantly delayed. However, by virtue of Law 4335/2015 the debtor is entitled to oppose to defects of the enforcement procedure in just two stages: the first one is set before the auction and is related to any reason of invalidity of the enforcement actions carried out before the auction, whereas the second one is set after the auction and is related to any defects, which arose from the auction until the awarding. In case that the enforcement procedure is based on a court's judgment or payment order, the litigant parties are only entitled to file a second instance appeal issued against the judgment, which has been issued in relation to the annulment petition. If the enforcement proceeding is based on another enforcement instrument, the litigant parties are also entitled to file a Cassation Complaint against the judgment, which has been issued by the Court of Appeal. Nevertheless, the debtor cannot request by the first instance court the stay of the enforcement proceedings, given that the auction will take place 7-8 months after the date of the seizure (i.e. when the judgment upon the opposition of the debtor will have been issued; the Court of Appeal can order the stay of the enforcement proceedings upon the respective request of the debtor) [Art. 937 § 1 b grCCP]. The stay of the enforcement proceedings can be ordered by the first instance court only in the case of obligations to deliver a particular movable thing (Art. 941 grCCP) or a particular immovable property (Art. 943 grCCP), namely when the whole enforcement proceeding is concentrated within one act (: direct enforcement, Art. 937 § 1 b grCCP).

Furthermore, the amendments related to the classification of creditors at the distribution price of the auction, which must take place within a deadline of eight (8) months from the date when the seizure has been imposed or within a deadline of three (3) months since the continuation statement (in case the auction does not take place on the initial date) are of

significant importance as well. Specifically, the proceeds are allocated for the satisfaction of the creditors enjoying general privileges, namely (in the following ranking order):

- i. Medical and funeral expenses of the debtor and his family that arose within the last twelve (12) months prior to the day of the public auction or the declaration of bankruptcy and compensation claims (except moral damages) due to physical disability exceeding eighty percent (80%) or more that arose until the day of the public auction or the declaration of bankruptcy.
- ii. Expenses for the necessary food of the debtor and his family that arose during the last six months before the day of the public auction or the declaration of bankruptcy.
- iii. Employee salaries, educator claims and lawyers' fees and expenses that arose within the last two years prior to the day of the first public auction or the declaration of bankruptcy. However, there is no limit set for claims raised by employees and lawyers for compensation due by reason of termination. The same rank also includes claims of the State arising out of the Value Added Tax (VAT) and any attributable or withholding taxes together with any increments and interests imposed on such claims, as well as claims of social security funds, alimony claims in case of the debtor's death and compensation claims due to disability exceeding sixty seven percent (67%) which arose up to the day of the public auction or the declaration of bankruptcy.
- iv. Claims of farmers from the sale of agricultural products, that arose within the last year prior to the day of the public auction or the declaration of bankruptcy.
- v. Claims of the State and municipalities arising out of any cause, together with any increments and interests imposed on such claims.
- vi. Claims of the Compensation Fund for investment services firms, insofar as the debtor was an investment services firm and the claims of such fund were born within the two (2) years preceding the day of the public auction or the declaration of bankruptcy.

Additionally, in case of concurrence of general and special privileges (i.e. a mortgage or a pledge) and non – privileged claims, the percentage of satisfaction of the creditors with general privileges is limited to twenty five percent (25%), whereas the percentage of satisfaction of creditors with special privileges is broadened to sixty five percent (65%). The remaining amount of ten percent (10%) of the distribution price of the auction is fortified to the non – privileged creditors. In case of concurrence of privileged and non – privileged creditors, an amount of ten percent (10%) of the distribution price of the auction is fortified to the latter. In case of concurrence of claims with general privileges and non – privileged claims, the percentage of satisfaction of the former is seventy percent (70%).

It should be also mentioned that the security bond necessary for the submission of tenders is limited to thirty percent (30%) of the starting price (instead of 100% as in force today). Generally, Law 4335/2015 simplifies the compulsory enforcement procedure related to real

estate and movable property. Inter alia, enforcement seizure can be imposed on real property, that has already been seized by another creditor, public declaration of the auction is abolished), the starting price for real estate is equated to the market value. Furthermore, the highest bidder is entitled to terminate any lease agreement within one (1) month from transfer of the adjudicative report to the land registry and in case of a commercial lease agreement the higher bidder is not any more obliged to compensate the lessee. Two (2) months upon termination, the lease agreement is cancelled.

- 1.3. Please indicate whether there exists an underlying philosophical or dogmatic framework for your system of enforcement.

Greek law has adopted, following the German and Austrian patterns and unlike the Romanic law system, the principle of “enforcement in natura”, which applies not only to money, but also to non-money claims. According to the Reporter of the Drafting Committee of the Code, the various methods and means of enforcement are designed to fulfil the satisfaction of the creditor’s claim with the least possible sacrifice of the debtor’s interests, safeguarding in this way the conflicting rights of both parties involved¹⁷.

- 1.4. Are there different types of enforcement procedures in your member state?

Comment: Does the legal framework in your member state provide for different and/or multiple types of enforcement procedures in civil or commercial matters, e.g. does it envisage special regime for enforcing money claims on the one hand and non-money claims on the other? does it envisage shortened/simplified/summary proceedings for certain claims etc? Also, explain interconnections between administrative and civil enforcement procedures, if existent and any other possible interrelation with other fields of law.

Of greater practical significance is enforcement on property to satisfy a money claim. There are four types of attachment for the purpose of bringing property under judicial control ultimately leading to a public auction and, in the meantime, suspending the debtor’s power of disposal:

- (a) enforcement on chattels (Art. 953-981 grCCP);
- (b) Enforcement on immovable, ships and aircraft (Art. 992-1016 grCCP).
- (c) Garnishment, which also includes reaching chattels of a debtor that are not in his possession (Art. 982-991 grCCP); and
- (d) Enforcement on debtor’s special assets, like copyrights, patents, and film exploitation rights (Art. 1022-1033 grCCP).

¹⁷ E. Michelakis, Draft of Civil Procedure, vol. VIII, 1959, p. 8.

There are two additional methods of execution to satisfy, directly or indirectly, a money claim. The former is a form of receivership called "compulsory administration" of a debtor's immovable or business, which are henceforth managed by an administrator appointed by the court (Art. 1034-1046 grCCP). The creditors receive quarterly distributions on their claims out of the profits of the new management. The latter method consists in the debtor's imprisonment for a period up to one year (Art. 1047-1054 grCCP). This measure is imposed by specific judicial decision only on merchants for commercial debts; it is also generally allowed for the satisfaction of tortuous claims. Imprisonment is not often utilized. Nevertheless, under the International Covenant on Civil and Political Rights, in force since March 23, 1976 and applicable in Greece since ratification by Law 2462/1997, "no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation". In interpreting this provision, Areios Pagos restricted the scope of merchant imprisonment because of non – payment of contractual obligations only to merchants who have the economic means to comply with such obligation but intentionally discard it¹⁸.

Certain rules regulate the enforcement of obligations to deliver a particular movable thing (Art. 941grCCP). The same procedure is to be applied for the enforcement of judicial decisions concerning the exercise of parental care and custody of a child after the parents' divorce or during the interruption of marital life (Art. 950 § 1 grCCP). Claims concerning the delivery of fungible goods described only by class as no name bonds are to be executed according to Art. 942 grCCP. Handling over of particular immovable objects can be enforced according to the procedure provided by Art. 943 grCCP. Claim to perform a specific act or to omit certain behaviour are to be executed following certain procedure provided by Art. 945-947 grCCP. For the enforcement of claims to perform a specific fungible act, Art. 945 grCCP is to be applied. If the debtor fails his obligation to perform a specific fungible act, the debtor carries the costs of a substitute performance (Art. 945grCCP).

If the debtor refuses to correspond to his duty for the performance of an infungible act, as it has been ordered by the court, he can be sentenced with the payment of a fine and imprisonment for a period of up to a year (Art. 946 grCCP). The debtor who does not obey to the court's order not to perform or not to oppose a specific act has to pay a fine or to loose his personal freedom for certain time (Art. 947 grCCP). The enforcement of such a judgment presupposes the issue of two judicial decisions with *res judicata* effect each. With the first judgment the court affirms the debtor's duty a described above. In case that the debtor shows no willingness to behave in accordance with the judicial order, a second judicial decision certifies such a behaviour and sentences him to the penalties mentioned above (Art. 947 § 1 grCCP).

Judicial decisions with *res judicata* effect based upon obligations derived from precontractual agreement and sentencing the defendant to declare his juridical will are considered as automatically enforced without the intervention of the organs of execution (Art. 949 grCCP). However, the juridical act should not be regarded as completed, if additional prerequisites are required by the substantive law, i.e. for the formation of a contract, the claimant, as a counter party, has to declare his own acceptance to the

¹⁸ AP (full bench) 23/2005, Harmenopoulos 2006, 405, AP 1597/2000 EID 2001, 1304; K. Kerameus / P. Koziris, Introduction to Greek Law, 3d revised edition, 2008, p. 375.

defendant's offer, which is considered as declared due to the judicial decision mentioned above. For the validity of the contract the claimant's acceptance has to be declared in accordance to the formal conditions provided by the substantive law, i.e. for the transfer of immovable property only the notarial acceptance is to be regarded as valid.

The Introductory Law to the Code of Civil Procedure (Art. 1, 4, 52) has abolished most of the previous special pieces of legislation dealing with enforcement proceedings. However, some special laws, introducing specific rules, when the State or special legal entities are involved, still operate. Of great practical significance are: a) The “Code of Collecting Public Revenues” (Legislative Decree 356/1974) and b) the “Special Legislation on Corporations”, which extends to Banks (Legislative Decree of 17.7.1923).

1.5. Is your system of enforcement considered to be centralized or decentralized?

Comment: Decentralization may manifest itself in various forms. For instance, in decentralized jurisdiction (both subject-matter and territorial come into play); decentralized rules of procedure (in federative states where different levels (both horizontally and vertically) of government and authorities have to be taken into account; the power and scope of the court and/or other authority/body in enforcement matters – does it hold competence in all matters enforcement or are certain acts ('steps' of the enforcement procedure) ascribed/delegated to different authorities. Please provide a general overview on the above matter. In addition, please specify which authority/body is competent in matters of (refusal of) recognition and enforcement (is there a special authority/body at the 'level of the state' which decides on said matters, or does the individual for instance – akin to countries with common law – file an action on the foreign judgment.

In the Greek Law of Enforcement no “enforcement-court” is provided. The court will not intervene in the procedure, unless it is called by the parties. In such a case it has to control the validity of the enforceable instrument, the conformity of the applied procedure with the rules of the law of enforcement or complaints concerning the creditor's claim. For this purpose a special remedy is provided by the grCCP called opposition to enforcement (Art. 933 grCCP).

1.6. The authorities/bodies and agents involved. Which authorities/bodies have competence with respect to enforcement?

In the Greek enforcement system, the main organ to levy enforcement and perform various other related functions is the Enforcement Officer, particularly defined as a “judicial functionary”. Additionally, with respect to enforcement to satisfy a money claim, a principle role is given to the notary, usually called “clerk of the public auction”. In order for an enforceable instrument to achieve its full effect, the assistance of several other persons, officials or individuals alike, may be needed, e.g. of the police to keep order during enforcement proceedings (Art. 930 § 1 grCCP), of the Land Registry or another public office to file some entries (i.e. Art. 965 § 4 grCCP), or third individuals, usually used as witnesses or appointed custodians (i.e. Art. 930 § 2, 943 § 2, 956, 963, 984 § 3, 996, 1001 grCCP).

The Enforcement Officer is the principle organ of both direct specific performance and enforcement to satisfy a money claim, with limited exceptions, related to specified types of enforcement (i.e. in judgments ordering the declaration of will, Art. 949 grCCP). On the other hand, the only authorized organ to conduct public auctions is the notary (e.g. Art. 959 § 1, 998 § 1, 1012 § 1 grCCP)¹⁹.

1.7. How 'private' is the system in actuality, if it is private at all?

Comment: *The above term 'private' refers to the role of a 'private individual' in enforcement proceeding (both the creditor, debtor and other involved persons), i.e. how much significance do his actions and omissions hold; how much does he partake in advancing the procedure to later stages; is he involved in the designation of means of enforcement etc. In other words, describe the weight that the principle of 'dispositivity' holds in your system, in contrast to the ex officio powers of the court or other authority/body.*

Enforcement is considered to be a continuation of adjudication in cases of non-voluntary compliance. Therefore, in accordance with the dispositive principle of adjudication, it is subject to party initiative, especially that of the creditor holding the enforceable instrument. However, to limit the danger of either the delay of the performance of the public auction for too long, or the suspension of the enforcement proceedings without cause by the petitioning creditor, sometimes in collusion with the debtor, several provisions have been introduced in the grCCP as regards the power of other creditors to influence the unfolding of the proceedings. In particular, suspension of the auction depends on the consent of all announced creditors (Art. 969 III grCCP)²⁰. Furthermore, not only does the precept lapse if an act of enforcement is not effected within one year, but so does the attachment, if the petitioning creditor does not proceed with the public auction of the attached property within a year (Art. 926 II grCCP)²¹. The lapse of attachment does not occur ipso jure, but must be declared by a court's decision (Art. 1019 grCCP)²².

1.8. Briefly enumerate the means of enforcement (methods which serve to procure involuntary collection of the claim).

See above under 1.4.

1.9. In short, present the underlying principles, which govern the enforcement procedure in short.

Comment: *Focus on both the principles which adhere to enforcement procedure in international capacity, e.g. territorial, sovereignty principle regarding coercive measures and the principles relating to procedural aspects in narrower terms e.g. principle of*

¹⁹ P. Yessiou – Faltsi, Civil Procedure in Hellas, 1995, p. 391-392.

²⁰ P. Yessiou – Faltsi, The principle of the Petitioning Creditor's Initiative, Harmenopoulos 1987, p. 1009 ff.

²¹ P. Yessiou – Faltsi, Civil Procedure in Hellas, 1995, p. 389.

²² P. Yessiou – Faltsi, Civil Procedure in Hellas, 1995, p. 389.

efficiency, protection of the debtor, priority principle, publicity, (non)mandatory hearing etc.

The principle of the Party's initiative and its limitations: Since enforcement is basically understood as the continuation of adjudication in cases of non-voluntary compliance, it is subject to the principle of the party's initiative (Art. 927 grCCP), namely that of the creditor holding the enforceable instrument, in accordance with the dispositive principle of adjudication. All procedural steps are to be taken, as a rule, by the creditor who started the original proceedings, and not by the Enforcement Officer or by other announced creditors²³. However, in terms of its practical results, this unlimited sovereignty of the petitioning creditor over enforcement proceedings can be detrimental to the interests of other interests.

To limit this danger the Code of Civil Procedure has introduced certain exceptional methods for other creditors to influence the unfolding of the proceedings. In particular, suspension of the auction depends on the consent of all announced creditors²⁴. Furthermore, not only does the precept lapse if an act of enforcement is not effected within one year, but so does the attachment, if the petitioning creditor does not proceed with the public auction of the attached property within a year. The lapse of attachment does not occur ipso jure, but must be declared by a court's judgment (Art. 1019 grCCP)²⁵.

Collective Character of Enforcement: In Greek Law, enforcement proceedings lead to collective results, although based on the initiative of one creditor. The rights of other creditors to participate in enforcement proceedings are safeguarded in three ways: (i) Creditors, other than the petitioning, are entitled to announce their claims (Art. 972 grCCP); (ii) Other creditors may, on special conditions, proceed to the substitution of the petitioning creditor;²⁶ (iii) another creditor can impose enforcement seizure on real property, that has already been seized by another creditor.

The principle of proportional distribution: In contrast to the Germanic system of distribution, which is governed by the criterion of the temporal priority of the multiple attachments (Präventionsprinzip), Greek Law follows the Romanic system of proportional distribution. Distribution is in principle based on equality, allotting to each creditor a proportional percentage of his claim. The system of proportional distribution is seriously affected by two kinds of priorities: a) the general priorities, which permit the preferential satisfaction of claims from all kinds of assets liquidated in the public auction (Art. 975, 1007 grCCP); and b) the special priorities, which lead to the preferential satisfaction of claims only from the liquidation of special assets which are related to the claim (Art. 976, 977, 1007 grCCP)²⁷.

- 1.10. Does the stage of 'permitting the enforcement' exist in your legal system? Please comment, e.g. German '*Titel mit Klausel*'.

²³ N. Nikas, The Law of Enforcement, vol. I, p. 126 ff.

²⁴ N. Nikas, The Law of Enforcement, vol. I, p. 130 ff.

²⁵ N. Nikas, The Law of Enforcement, vol. II, p. 252

²⁶ N. Nikas, The Law of Enforcement, vol. I, p. 61.

²⁷ N. Nikas, The Law of Enforcement, vol. II, p. 491 ff.

See under 1.16.

Comment: *The stage of 'permitting the enforcement' is a mandatory phase of the enforcement proceedings found in certain member states, in which the court examines the enforcement title and specifically checks if all the (procedural and substantive) prerequisites for enforcement are met. If all prerequisites are found to be present, then the court allows for the enforcement to be undertaken and the enforcement proceedings enter the following phase of the procedure. The court thus issues a 'decision' or 'order', permitting the enforcement. The described phase is a pre-course to further enforcement action. It can also act in the capacity of 'title import' for foreign judgements, which means that member states withholding this stage will not be as greatly affected by the abolition of exequatur as those lacking it.*

- 1.11. Subject-matter jurisdiction in enforcement proceedings. Please provide a short presentation of the judicial system - courts system.

In opposition proceedings, subject matter jurisdiction is not determined by the normal criteria of the value or the nature of the subject matter, nor is it entirely dependent on the adjudication court. The exclusive criterion for allocating oppositions to the subject matter competence of a specific court rather refers to the kind of the enforcement instrument. Art. 933 § 1 grCCP distributes subject matter jurisdiction exclusively between the one-member district courts and the justices of the peace. One member district courts have a regular subject matter jurisdiction, covering all oppositions to enforcement, whether oppositions are based on judgments or other executory titles. Nevertheless, when enforcement proceedings are based on judgments rendered by a justice of the peace, oppositions to enforcement must be brought before this same court²⁸.

- 1.12. Territorial jurisdiction in enforcement proceedings. Please provide a short description in this regard.

Territorial jurisdiction for proceedings in opposition depends on the stage of enforcement, and more particularly on the specific act which is being attacked by the opposition. When an opposition seeks the declaration of nullity solely of the precept, which has been served on the debtor, while no further enforcement proceedings have been initiated, territorial jurisdiction is determined as though the opposing debtor is the defendant in normal proceedings. The opposition is then brought before the courts, either of the debtor's domicile, or of other exclusive or concurrent jurisdiction²⁹. As soon as other enforcement acts, next to the service of the precept, have been effected, e.g. attachment, an exclusive jurisdiction of the place of execution is established (Art. 933 § 3 grCCP), to satisfy the prevailing need for concentrating all litigation related to enforcement before the court where this unfolds³⁰.

- 1.13. How are conditional claims enforced in your member state?

²⁸ N. Nikas, The Law of Enforcement, vol. I, p. 574.

²⁹ N. Nikas, The Law of Enforcement, vol. I, p. 575

³⁰ N. Nikas, The Law of Enforcement, vol. I, p. 575.

Enforcement proceedings are not allowed when the claim seeking enforcement depends on a suspensive condition or a term (Art. 915 grCCP). Enforcement acts may otherwise be nullified, unless fulfilment of the condition or expiration of the term has in advance been proven by a public or a private document having a probative effect against the debtor (Art. 915b and 924a grCCP)³¹.

- 1.14. Legal succession after the enforcement title was obtained: What has to be done to proceed with the enforcement against the successors? How about the creditor's successors, are any changes required in the enforcement title?

Subjective limits of the enforceability of an executor title are determined following the respective provisions involving the subjective limits of *res judicata* (Art. 919 grCCP). Furthermore, the enforcement proceedings may not be initiated or continued if the precept is not served on the successor. Initiation or continuation of the enforcement proceedings by the creditor's successors requires also the service of all documents evidencing their respective power on the debtor³².

- 1.15. Enforcement titles: Decisions (judgments and other court decisions), settlements, public documents. Please elaborate – how does your system define enforcement titles, e.g. via enumeration, general clause etc.? Also, provide a short commentary.

According to Art. 904 § 1 grCCP, enforcement titles are: a) Final judgments which are formal *res judicata* and judgments of every Greek court which have been declared as provisionally enforceable; b) Arbitral awards; c) Minutes of proceedings before any Greek courts embodying a conciliation or allocation of court costs; d) Notarial documents; e) Orders of payment rendered by Greek judges; f) Foreign titles declared as enforceable; g) Orders or acts recognised by statute as enforcement titles. The above list is evidently not restrictive, due to its last provision, which allows additional categories of enforcement titles. Nevertheless, it still has a binding effect in the sense of prohibiting the creation of enforcement titles through private agreements.

- 1.16. Requirements for issuing the certificate, certifying that the judgment is enforceable (confirmation of enforceability) - procedural steps. Which procedural steps must be undertaken, to obtain the certificate?

In order for enforcement proceedings to be commenced, an enforcement title must carry the executory formula. This contains an official command addressed to the organs of enforcement in the name of the Greek people to execute the title (Art. 918 grCCP). In the case of judicial instruments, the inscription of the executory formula on the title is effected by the judge, who has rendered the title, or the president of the court (Art. 918 § 2a grCCP). A complete copy of the enforceable instrument, bearing the executory formula, is issued to the creditor who claims a legal interest (Art. 918 § 3 grCCP), by the court clerk. The issue of more than one copy is permissible for good cause (Art. 918 § 3b grCCP). In the case of a refusal involving the right to obtain one or more authorized

³¹ N. Nikas, *The Law of Enforcement*, vol. I, p. 380 ff.

³² N. Nikas, *The Law of Enforcement*, vol. I, p. 417 ff.

copies of the enforcement title, the matter is brought before the one-member district court (Art. 918 § 5 grCCP) ³³.

- 1.17. Service/notifications of documents and decisions (provide a wholesome picture of service and notification in the enforcement proceedings). Please present an overview of said activity, e.g. which documents are served and the method of service, how notifications are made.

Initiation of enforcement proceedings is marked by the service of a precept on the debtor, comprising a formal notice inviting him to voluntary enforcement (Art. 924 grCCP). This is included at the end of the certified copy of the enforceable instrument issued to the creditor, which is served on the debtor. If the debtor does not comply within the following three working days (Art. 926 § 1 grCCP), the creditor may proceed to the provided acts of enforcement ³⁴.

1.18. Division between enforcement and protective measures.

- 1.18.1. What and/or which provisional measures are possible (are provided for) in your member state? Enumerate and briefly describe.

The greek Code of Civil Procedure integrates all measures previously known as either preventive, or conservatory, or provisional under the unified term of “Provisional Remedies”. Greek legal theory accordingly distinguishes within the scope of provisional remedies between two main categories: a) Conservatory measures, which tend to secure the future satisfaction of a substantive right (Art. 704 – 727, 737-738 grCCP); and b) Regulatory provisional remedies, granted in order to provisionally arrange disputed situations through orders for specific acts, omissions or indulgences, e.g. in disputes related to possession, unfair competition, family relations etc. (Art. 731-736 grCCP). A particular kind of this second category is the provisional adjudication of claims (i.e. related to maintenance, salaries, damages etc.) for the prompt relief of the weak parties (Art. 728-730 grCCP).

The specific conservatory measures for securing enforcement, which have been included in this special part, are: a) Judicial security (Art. 704-705 grCCP); b) Prenotice on Mortgage Records of a Real Mortgage (Art. 706 grCCP); c) Conservatory Attachment (Art. 707-724 grCCP); d) Judicial Custody (Art. 725-730 grCCP); and e) Sealing, Unsealing, Inventory, Public Deposit of Property (Art. 737-738).

- 1.18.2. Difficult requirements for protective measures. Which provisional measures are possible (are provided for) in your member state and what are the requirements

³³ N. Nikas, The Law of Enforcement, vol. I, p. 452 ff.

³⁴ N. Nikas, The Law of Enforcement, vol. I, p. 487.

for issuing them? Please accompany the answer with a comment on the ‘difficulty’ of actually meeting those requirements.

Provisional remedies, under the explicit wording of Art. 682 § 1 grCCP, may be granted in order to secure or conserve a substantive right, having already become or expected to eventually become the object of litigation in normal proceedings through a principal action. Hence the first condition of provisional remedies lies in its reference to a private right, including those dependent on a condition or term (Art. 682 § 1b grCCP), which thus becomes the underlying foundation of provisional legal protection³⁵. Nevertheless, according to a distinct tendency in some judgments, when the specific remedy for the provisional arrangement of an urgent situation (Art. 731-736 grCCP) comes into question, it should not necessarily need to refer to a specific substantive right. It is sufficient that the whole situation is connected to a legal relationship, even in a wide sense, and is capable of producing rights and obligations in the future³⁶. On the other hand, provisional remedies are understood, according to the prevailing opinion, as teleologically connected with the principal action rather than with the underlying substantive right³⁷.

The second and more difficult condition of provisional remedies lies either with the existence of an urgent situation or with the avoidance of an imminent danger (Art. 682 § 1 grCCP). Despite some expressed doubts as to whether a distinction between the above notions is necessary or even attainable³⁸, it is now accepted that, while an urgent situation refers to circumstances demanding a prompt provisional arrangement, the avoidance of an imminent danger, as a condition of provisional remedies, covers the need to secure future enforcement. The above distinction results practically in the granting of relief through conservatory measures, even in situations referring to the future³⁹.

- 1.19. Comments and critical approach to your legislation. Please identify deficiencies of your national system, e.g. length of enforcement proceedings; success rate of enforcement; interconnectivity and over-lapping to other areas of law (insolvency proceedings).

See above under 1.2.

<u>Part 2: National procedure for recognition and enforcement of foreign judgements</u>
--

³⁵ K. Georgiou, Provisional measures, 2015, p. 41 ff.

³⁶ One-member district Court of Athens 14720/1989 Diki 1990, p. 155; K. Kerameus, Der einstweilige Rechtsschutz vom Standpunkt der neuen griechischen ZPO, Volume in honour of Em. Michelakis, 1973, pp. 417 ff. (418).

³⁷ K. Kerameus, op. cit. (note 36), p. 417.

³⁸ G. Timagenis, Diki 1974, p. 261; V. Nikopoulos, Diki 1971, p. 199.

³⁹ K. Beis, Civil Procedure, Commentary by Article, vol. XIV, 1983, Article 682, p. 32.

- 2.1. Which of the three systems is enacted in your system, disregarding EU or other international acts: (1) *Révision au fond*; (2) *Contrôle limité*; (3) *Ex lege*.

1. Recognition of foreign judgments

A judgment of a foreign civil court is recognised and has the binding effect of *res judicata* according to Greek Law (Art. 323 grCCP) automatically (*ipso jure*), e.g. without the need of a supplementary procedure, with the exception of judgments concerning the personal status, provided that the following conditions are met:

- a) The foreign judgment has the effects of *res judicata* according to the Law of the State where it was rendered.
- b) The case would be subject to the jurisdiction of the court, which rendered the judgment, if Greek law had applied ("mirror-examination").
- c) The defeated party has not been deprived of the right to defend himself/herself and to be heard, unless the deprivation occurred according to a rule applying also for the nationals of the state of the court.
- d) If the judgment is not contrary to a judgment of a greek Court, rendered in the same case and having the effects of *res judicata* for the parties between which the judgment of the foreign court was rendered.
- e) If the foreign judgment is not contrary to the morality or to public policy⁴⁰.

2. Recognition of foreign judgments concerning the personal status

The *res judicata* effect of a judgment concerning the personal status, e.g. divorce judgments, judgments pronouncing marriage annulment, judgments on paternity suits, is not recognised automatically (*ipso jure*). It has to be declared by the one-member District Court. The conditions that have to be met are the same for the *ipso jure* recognition (Art. 905 § 4 grCCP)⁴¹.

3. Enforcement of foreign judgments

Unlike the automatic recognition of the *res judicata* effect, foreign enforceable instruments need to be vested with a domestic *exequatur*, in order to be enforced in Greece, if following conditions are met (Art. 905 grCCP):

⁴⁰ K.Kerameus / D. Kondylis / N. Nikas (- S. Kousoulis), Interpretation of the Code of Civil Procedure, 2000, vol. I, 2000, Article 323, p. 644 ff.

⁴¹ P. Yessiou – Faltsi, The Law of Enforcement, III, 2006, pp. 142 ff.

- a) The enforceable instrument must be enforceable under the law of the state in which it has been rendered⁴²;
- b) The enforceable instrument must not be contrary to Morality and to Public Policy⁴³.
- c) If the foreign enforceable instrument is a judgment, the conditions stipulated of for the recognition of the res judicata of a judgment (supra, under 1) must be met additionally.

2.2. What is the concept of 'recognition' and 'enforcement' of foreign judgements in your member state?

Comment: *Please firstly evaluate the terms on their own and later-on conduct a comparison. In doing so, refer to the established theories on the subject-matter which strive to provide an explanation on the effects of decision on recognition and/or enforcement (does the decision hold constitutive effects; does the decision provide for a extension of effects from the state of origin and state of enforcement; does it cumulate both effects).*

Greek law clearly distinguishes between recognition and enforcement. Since recognition refers to the binding effects of a foreign judgment attributed basically by foreign law, these are understood as automatically extending to Greece at the time they have been produced abroad. Recognition of a res judicata effect, therefore, does not need to be declared through a special proceeding. In principle, this may be effected by any court or other authority (: judicial, administrative etc.) even incidentally, ex officio and automatically, when the interested party bases his request on the binding force of the foreign judgment (Art. 323 grCCP). On the other hand, since enforceability of a foreign instrument may not be regarded as ipso jure extending in Greece, but rather requires a constitutive domestic act to move the coersive mechanismus of the State, enforcement of a foreign judgment must be declared through a special proceeding (Art. 905 grCCP), which results in vesting the foreign title with a local exequatur⁴⁴.

While recognition mainly involves the effects of foreign declaratory and constitutive judgments, which may thus be integrated within the domestic legal order automatically, the enforcement of a foreign judgment ordering the performance of a certain act or omission additionally requires declaration of its enforceability.

2.3. Main features of 'delibation' (*procedura di delibazione*) or 'incidenter' procedure – type of procedure. Which type of procedure is provided for in your system? Accompany the answer with commentary.

Comment: *On the continent usually two distinct civil procedures exist. One is a separate non-contentious civil procedure especially tailored for recognition and enforcement of foreign judgements in Italy called 'procedura di delibazione'. However, in certain*

⁴² P. Yessiou – Faltsi, The Law of Enforcement, III, 2006, pp. 101 ff.

⁴³ P. Yessiou – Faltsi, The Law of Enforcement, III, 2006, pp. 117.

⁴⁴ P. Yessiou – Faltsi, Civil Procedure in Hellas, 1995, p. 435.

countries a possibility also exist that the foreign judgement is recognised and enforced directly within the procedure of enforcement (in the meaning of the execution) (in France called ‘incidenter’ procedure).

The exequatur proceeding provided by Art. 905 § 1 grCCP has been considered as exclusive, in the sense that any new action before a domestic forum seeking a judgment of the same nature based on the foreign proceeding, for the purpose of substituting the foreign judgment with a domestic one, would be rejected as inadmissible⁴⁵. The results obtained through this proceeding can thereafter not be invalidated in another kind of proceeding.

A request for enforcement is not subject to time limitations⁴⁶. A delayed application seeking a domestic exequatur does not as such entail an abuse of rights on the part of the creditor⁴⁷.

The exequatur proceeding operates under the specific rules designed for matters of voluntary jurisdiction (Art. 905 § 1b, 740 to 781 grCCP)⁴⁸. The defendant does not need to be summoned. The judge may, however, order his summoning (Art. 748 § 3 grCCP)⁴⁹, a practice followed rather infrequently. If the defendant does not appear, his absence is not deemed as a confession of the assertions included in the application (Art. 754 § 2 grCCP)⁵⁰.

The application to obtain an exequatur must be supported by: a) the foreign instrument accompanied by a Greek translation; b) assertions and evidence concerning its enforceability in the country of origin, i.e. an official certificate from the foreign court’s officer stating that no methods of review have been used; c) in case of a default judgment, evidence of the notification on to the defendant. If the defendant appears, he may only contest the exequatur’s prerequisites. On the contrary, he may not admissibly bring objections against the claim under enforcement, i.e. assert subsequent payment. Such objections may only be raised through an opposition to enforcement⁵¹.

The judgment, which grants a domestic exequatur, is of a constitutive nature. Beyond revocation (Art. 558 grCCP), it is subject to all methods of review provided for cases of voluntary jurisdiction, i.e. to a second instance appeal (Art. 761-766 grCCP), to a reopening (Art. 767-768 grCCP), to a cassation complaint (Art. 769-772 grCCP), and, additionally, in the case of the defendant not having participated in the proceeding, to third-party opposition (Art. 773-775 grCCP)⁵².

⁴⁵ P. Yessiou – Faltsi, Civil Procedure in Hellas, 1995, p. 445.

⁴⁶ P. Yessiou – Faltsi, Civil Procedure in Hellas, 1995, p. 445.

⁴⁷ Court of Appeal of Athens 143/1971 Harmenopoulos 1971, p. 533; Court of Appeal of Athens 1390/1970 Harmenopoulos 1972, p. 7

⁴⁸ P. Yessiou – Faltsi, Civil Procedure in Hellas, 1995, p. 445.

⁴⁹ P. Yessiou – Faltsi, Civil Procedure in Hellas, 1995, p. 445.

⁵⁰ P. Yessiou – Faltsi, Civil Procedure in Hellas, 1995, p. 445.

⁵¹ P. Yessiou – Faltsi, Civil Procedure in Hellas, 1995, p. 445.

⁵² P. Yessiou – Faltsi, Civil Procedure in Hellas, 1995, p. 446.

- 2.4. Jurisdiction in matters of recognition and enforcement (substantive and territorial). Provide a short description.

Exclusive subject matter competence has been allocated to the one-member district courts of first instance for requests to obtain a Greek exequatur. Territorial competence, on the other hand, belongs either to the courts of the debtor’s domicile or, if this is absent, of the debtor’s residence; in cases where the debtor is neither a domiciliary nor a resident of Greece, the request is brought in the one-member single member district court of Athens (Art. 905 § 1 grCCP). Relevant for legal entities is their seat.

- 2.5. Type of decision. Explain types of procedure and types of decision in your member state? Highlight any possible atypical procedures/decisions and their effects.

A decision is termed as final, when it concludes the proceeding in the court, which has rendered it. Such decision is delivered if the case appears ripe (Art. 308 § 1 grCCP) and cannot be revoked by the court after it has been published (Art. 309a grCCP). A non-final decision, on the other hand, merely decides over incidental or other preparatory measures during the course of a proceedings, e.g. orders the taking of evidence. A non-final decision may be revoked by the court, on its own motion or at the request of a party, until a final decision has been pronounced (Art. 309b grCCP). Accordingly, non-final decisions cannot, as a rule, be attacked through methods of review (Art. 513, 539, 553 grCCP)⁵³.

The decision to issue a provisional remedy, or to reject such an application, is also a genuine judicial decision (Art. 691 § 1 grCCP). Therefore, it must include extensive reasoning, according to Art. 92 § 3 of the Greek Constitution. In the context of provisional remedies, the interim order (Art. 691 A grCCP) is the most powerful interim measure a Judge can order. According to this provision, the Judge can issue an interim order just after the filing of the application, even ex officio, in case there is such need, in order to preserve a right or to regulate a situation⁵⁴.

Part 3: Recognition and Enforcement in B IA

3.1. Certification or declaration of enforceability in Member States of origin (Art. 53. B IA).

“Article 53

The court of origin shall, at the request of any interested party, issue the certificate using the form set out in Annex I.”

⁵³ K.Kerameus / D. Kondylis / N. Nikas (- K. Makridou), Interpretation of the Code of Civil Procedure, 2000, vol. I, 2000, Article 309, p. 615 ff.

⁵⁴ K.Kerameus / D. Kondylis / N. Nikas (- K. Makridou), Interpretation of the Code of Civil Procedure, 2000, vol. II, 2000, Article 691, p. 1347 ff.

3.1.1. Requirements. Provide a critical assessment on the requirements regarding the certification.

The right of the debtor to be heard at this stage of the procedure should be safeguarded, at least in case of conditional claims or of legal succession after the enforcement title was obtained.

3.1.2. Does a specific legal remedy exist to challenge the certificate of enforceability in the Member State of origin? If yes, how does it influence the course of civil enforcement?

Such complains can be brought before the court, by the general legal remedy of Art. 933 grCCP (“opposition”). Nevertheless, the debtor cannot request by the first instance court the stay of the enforcement proceedings, given that the auction will take place 7-8 months after the date of the seizure (i.e. when the judgment upon the opposition of the debtor will have been issued; the Court of Appeal can order the stay of the enforcement proceedings upon the respective request of the debtor) [Art. 937 § 1 b grCCP]. The stay of the enforcement proceedings can be ordered by the first instance court only in the case of obligations to deliver a particular movable thing (Art. 941 grCCP) or a particular immovable property (Art. 943 grCCP), namely when the whole enforcement proceeding is concentrated within one act (: direct enforcement, Art. 937 § 1 b grCCP).

3.1.3. What happens if the court of the Member State of origin certifies the enforceability for a judgment, which has not yet acquired this effect (e.g. in Slovenia the time limit for voluntary fulfilment of the claim in the legally binding judgment (a prerequisite for enforceability) has not yet expired)? Can the court thereafter repeal the certificate? In connection: What happens if the judgment was served to the wrong address or to the wrong person? Does this constitute a ground for withdrawal of certificate of enforceability in the Member State of origin?

This case constitutes a ground on which an opposition of Art. 933 grCCP can be founded.

3.1.4. B IA does not provide, neither for withdrawal of certificate nor for a certificate of non-enforceability. How would the domestic court thereafter deal with unlawfully issued certificates due to deficiencies of requisites (e.g. certificates issued where the claim has not yet actually acquired the attribute of enforceability; where the judgment was served to the wrong person etc.)?

Comment: *In addition to certificate of enforceability, the Regulation does not include any provisions related to rectification or withdrawal of certificate (cf. Art. 10 of Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for*

uncontested claims). This issue is therefore governed by domestic law in the Member state of origin. Moreover, certificate of non-enforceability unfortunately does not exist (Art. 6(2) Reg. 805/2004), which could ease termination or suspension of enforcement procedure in Member State of enforcement in cases where a judgement has ceased to be enforceable or its enforceability has been suspended or limited. Is it a technical matter that can be handled by the clerk?

This case constitutes a ground on which an opposition of Art. 933 grCCP can be founded. Furthermore, given that in the Greek legal order the certificate of enforceability is issued by the court (see above under 1.16), a provision similar to Art. 6 (2) Reg. 805/2004 would be appropriate.

- 3.1.5. What are the effects of the certificate in your legal order in the Member State of origin (e.g. Germany – ‘Klausel’)? Comment on the type of procedure/decision and the effects it produces.

Greek legal order does not provide for specific rules as regards the certificate of Art. 53. Therefore, in the case of judicial instruments, the certificate is issued by the judge, who has rendered the title, or the president of the court (Art. 918 § 2a grCCP). A complete copy of the Certificate, is issued to the creditor who claims a legal interest (Art. 918 § 3 grCCP), by the court clerk. The issue of more than one copy is permissible for good cause (Art. 918 § 3b grCCP). In the case of a refusal involving the right to obtain one or more authorized copies of the Certificate, the matter is brought before the one-member district court (Art. 918 § 5 grCCP)⁵⁵.

- 3.1.6. Control and Correction. What options are available for challenging errors?

This case constitutes a ground on which an opposition of Art. 933 grCCP can be founded.

- 3.1.7. Plurality of certificated documents (number of copies of certificate). Provide a comment on said subject and possible problems which may stem from it.

The issue of more than one copy is permissible only for good cause (Art. 918 § 3b grCCP).

- 3.1.8. Legal nature of the certificate of enforcement. The relation between B IA and national rules. Please comment on possible discrepancies and similarities.

See above, under 3.1.5.

⁵⁵ N. Nikas – E. Sachpekidou, European Civil Procedure, 2016, Article 53, p. 635-636.

- 3.1.9. *Post festum* cancelation or withdrawal of certificate of enforceability in Member State of origin. How should such an event be treated and what effects, if any, are to be ascribed to it?

Post festum cancelation of certificate of enforceability constitutes a ground on which an opposition of Art. 933 grCCP can be founded. Withdrawal of certificate of enforceability is not possible.

- 3.1.10. Does the certificate need to be served to the defendant at all? Does it have to be served within a specific timeframe? Note that these questions refer to the Member State of origin.

The certificate does not need to be served to the defendant at all.

- 3.1.11. Service of declaration of enforceability, if it is foreseen in the national law. How is the service conducted? Describe the conditions for and methods of service.

See above under 1.17.

- 3.1.12. Although Art. 40 of the B IA enables the creditor to apply for any protective measures which exist under the law of the Member State addressed prior to the first enforcement measure, this interim step requires additional costs and can cause delays. Please provide a critical assessment.

“Article 40

An enforceable judgment shall carry with it by operation of law the power to proceed to any protective measures which exist under the law of the Member State addressed.”

Comment: *One of the major concerns which relates to certificate of enforceability (Art. 53). According to Article 43 (1) where enforcement is sought of a judgment given in another Member State, the certificate issued pursuant to Article 53 shall be served on the person against whom the enforcement is sought prior to the first enforcement measure. Mentioned provision does not sufficiently take into account the surprise effect of enforcement. Seizure or attachment of debtor's property is usually the first enforcement measure, which freezes debtor's property and precludes debtor's to dispose with its assets. If the certificate of enforceability is served on the debtor prior to the first enforcement measure, there is no surprise effect of enforcement. What is more, in that way the court even warns the debtor that creditor attempts to attach his assets and debtor can dispose of his assets and prevent the recovery of debts.*

The surprise effect of enforcement is sufficiently taken into account by the Greek law, given that, according to Art. 724 grCCP based either on a provisionally enforceable judgment or on an order for payment, a creditor may avail himself of specific provisional measures to secure the amount of the order. The

provisional measures provided in this article are prenotation of mortgage and preliminary attachment or garnishment. The same article stipulates, though, that the court that rendered the order for payment may order the stay or limitation of the provisional measure's enforcement, upon request of the debtor.

3.1.13. Certifying the amount of interests. Provide a comment on possible problems and solutions.

Comment: *Regarding the enforcement of interests, the certificate of enforceability does not contain easily discernable data where a judgment refers to statutory interests which are calculated in accordance with (most commonly) domestic law of the Member state of origin (e.g. Point 5.2.1.5.2.1 of certificate). In some member states, the interest rate of (default) interests is determined by statute and changes from time to time (e.g. Slovenia every 6 months). If an enforcement agent in Slovenia (Member State of enforcement) has to enforce a foreign judgment, in terms of speedy (efficient) procedure, he is not interested in the foreign (for example Italian) statute governing the interests rate. Contrary, the enforcement agent is interest in the exact amount of interests or - at the very least - a precise calculation formula to calculate them. In that regard, Points 5.2.1.2. and 5.2.1.3. contained in certificate under Regulation (EC) No 805/2004 are much more suitable for these purposes, because they enable the enforcement authority in the Member State of enforcement to calculate the amount of interests very easily. Replacing Annex of Brussels I Recast with a new, more detailed Annex would be very appropriate.*

Replacing Annex of Brussels I Recast with a new, more detailed Annex would be very appropriate.

3.1.14. How does party succession affect the content of the certificate and the overall procedure?

Party succession does not affect the content of the certificate. However, the succession should be proven by the applicant, as a procedural prerequisite of his legal interest.

3.2. Recognition and Enforcement in Member State of enforcement.

3.2.1. The concept of 'recognition' (Art. 36/1). Provide your understanding.

*"Article 36
1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required."*

See above under 2.2.

3.2.2. The scope of a judgement's authority and effectiveness. Do you see any national (problematic) issues considering the doctrine of spreading the effects of a judgment from the Member State of origin to the Member State of enforcement?

-

3.2.3. Having in mind Art 43/1, is it possible to begin with the first enforcement measure and limit the enforcement proceedings to protective measures, when the certificate issued pursuant to Article 53 has not been served on the defendant (debtor) yet? Should this matter be clarified by the CJEU?

The limitation of the enforcement proceedings to protective measures should be considered as self-evident, in the context of the Greek law, given that the grCCP clarifies explicitly that the stay of the enforcement proceedings, ordered by the Court, does not entail the stay of the provisional measure's enforcement, which requires a special request of the debtor.

“Article 43

1. *Where enforcement is sought of a judgment given in another Member State, the certificate issued pursuant to Article 53 shall be served on the person against whom the enforcement is sought prior to the first enforcement measure. The certificate shall be accompanied by the judgment, if not already served on that person.”*

“Article 53

The court of origin shall, at the request of any interested party, issue the certificate using the form set out in Annex I.”

Comment: *In some jurisdictions (e.g. Slovenia and Austria) the first enforcement measure and protective measure overlap. For instance, when enforcing debtor's movable property, the first enforcement measure is seizure of certain movables (e.g. vehicle). Seizure of a certain movable is a protective measure. The following problem may therefore come to fruition: taking into account Art 43/1; may a protective measure which, in certain member states overlaps and is considered as the initial step in enforcement procedures, be regarded as a 'first enforcement measure', thus requiring the service of the certification and thereby stripping the protective measure of self-standing effect?*

Declaration of enforceability is now issued in the Member State of origin and is compared to declaration of enforceability according to Art. 38 of B I (44/2001), which was issued in Member State of enforcement.

Where enforcement is sought of a judgement given in another Member State, the certificate issued pursuant to Article 53 shall be served on the person against whom the enforcement is sought prior to the first enforcement measure (Art. 43/1). That is why for the debtor it is crucial that declaration of enforceability is served to him prior to the beginning of enforcement. This is the German solution. The Slovenian and Austrian solution differs – declaration of enforceability is not ex officio served to debtor. That is why a creditor with an Austrian or Slovenian

enforceable title can only apply for protective measures according to Art. 40 (in Slovenia predhodne odredbe, in Austria Exekution zur Sicherstellung according to par. 373 EO).

Could this be ground for preliminary ruling for the Court of Justice of the EU? (e.g. ‘Is a national law, such as the one in the case at hand, where a self-standing protective measure overlaps with a first measure of enforcement, compatible with the Regulation’).

In the context of the Greek Law declaration of enforceability is not ex officio served to debtor. The CJEU should clarify, whether a protective measure which, in certain member states is considered as the initial step in enforcement procedures, should be regarded as a ‘first enforcement measure’, thus requiring the service of the certification.

- 3.2.4. A key question is whether the certificate on standard form B IA was served before commencing enforcement. Comment.

Comment: *Standard form does not allow and does not have a rubric that certificate was served. It is very convenient for the creditor that the service is done in the Member State of origin, not in Member State of enforcement.*

If the service was done in the Member State of origin, the respective certificate of service should be submitted to the Enforcement Officer who is the organ of enforcement. The Regulation should provide that any service of the certificate taken place in the Member State of Origin should be mentioned in the certificate.

- 3.2.5. Although the *ex-ante* exequatur has been abolished, the challenge stage is retained as a result of negotiations. How is the residual stage regulated in your member state? How does your system enable the debtor to invoke a challenge? What kind of procedural instruments are at his disposal?

Comment: *By initiating a procedure in accordance with the national law of the Member State (of enforcement) the grounds for refusal of enforcement listed in Art 45 can be invoked by any interested party. However, the particularities are scarce and much is left desired – seeking introspective into national law.*

See above under 3.1.2.

--

Part 4: Remedies

4.1. General observations on the systemization and availability of national remedies. Provide a short explanation of legal remedies in the national civil procedure of your member state. How is your domestic system of legal remedies structured (e.g. a division between ordinary and extraordinary remedies)?

4.2. Remedies in enforcement procedure.

4.2.1. Provide a concise description of all the remedies (and other recourse, i.e. separate enforcement claims) available throughout the enforcement procedure (and separate/adjacent procedures), for all involved persons. Therein, specify the requirements for each remedy.

See above 1.2. & 3.1.2.

4.2.2. Characteristics of legal remedies in enforcement procedure. Remedies differ in effect and the way in which they exert that effect. Herein focus on the nature and attributes of different remedies in your system, e.g. does invoking a certain remedy suspend the proceedings for the time being; which body/authority is equipped with the competence on rendering a decision in remedial procedures (hierarchy of competence); is a given remedy unilateral or bilateral (does the opposing party have the option of supplying an answer); what powers does the appellate body/authority have, e.g. cassation complaint.

4.2.3. See above 1.2. & 3.1.2.

4.2.4. Should objections be brought up in enforcement or in separate procedure?

Objections should be brought up exclusively in the context of enforcement proceeding.

4.3. Opposition in enforcement.

4.3.1. If a separate judicial procedure to enforce claims from judgements is not foreseen in your member state, what options does the debtor have in order to challenge inadmissibility of particular enforcement on the grounds that appeared (came into being) after the enforcement title was acquired (*nova producta*) or due to the inadmissible way of performing enforcement?

4.3.2. On which grounds does opposition against an enforcement decision have to be substantiated? In case no substantiation is queried, does an 'assertion' of opposition suffice?

4.3.3. Are the grounds for enforcement exhaustively listed or encompassed by a general clause or described in exemplary fashion? If a general clause is present, how is it formulated and what is its relation to exemplary listed grounds. Are the

grounds subdivided into 'categories', e.g. Slovenian and to a certain extent Austrian theory incorporate an understanding of 'impugnation' and 'opposition' grounds; while the first refer to situations where a creditor possesses a valid enforcement title and an existent claim but cannot enforce it (due to a timely preclusion for instance), the latter refer to situations where the creditor holds a valid enforcement title, however a fact, which has arisen after the title attained the attribute of enforceability (see above *nova product*), prevents the enforcement (for instance due to the extinguishing of the claim because of compensation, voluntary fulfilment by the debtor etc.).

See above under 1.5.

4.4. Remedies in international private procedure, i.e. remedies foreseen in national law, relating to recognition and enforcement of foreign judgments under private international law (cross-border situations), excluding B IA .

4.4.1. Types and main features of legal remedies.

In case the foreign instrument is a judgment, its enforceability is declared by the one-member district court provided that it is enforceable in accordance with the law of its origin and it is not contrary to good morals or public policy (Art. 905 § 2 grCCP) and on the additional condition that the requirements of recognition are fulfilled (Art. 905 § 3 grCCP) [see above under 2.1.].

4.4.2. Grounds for challenging foreign judgement.

4.4.3. Please indicate what are the differences compared to the grounds in B IA.

The grounds provided for in Art. B IA (d) and (e) are not foreseen in Art. 905 grCCP.

4.5. Remedies concerning Enforcement of Foreign Judgements according to B IA following the abolishment of exequatur.

4.5.1. Remedies in the Member State of origin regarding the enforcement title itself. Do these remedies influence the enforcement procedure in the Member State of enforcement?

The objections of the debtor against the enforcement proceedings could be based on the (ex post) lack of enforceability or even on the (ex post) annulment of the enforcement title itself.

4.5.2. Refusal of enforcement. What and/or which are the proceedings in your Member State (of enforcement)? Present the procedural aspects of the application for refusal and the role of national procedural law (Art. 47).

“Article 47

- 1. The application for refusal of enforcement shall be submitted to the court which the Member State concerned has communicated to the Commission pursuant to point (a) of Article 75 as the court to which the application is to be submitted.*
- 2. The procedure for refusal of enforcement shall, in so far as it is not covered by this Regulation, be governed by the law of the Member State addressed.*
- 3. The applicant shall provide the court with a copy of the judgment and, where necessary, a translation or transliteration of it.*

The court may dispense with the production of the documents referred to in the first subparagraph if it already possesses them or if it considers it unreasonable to require the applicant to provide them.
In the latter case, the court may require the other party to provide those documents.
- 4. The party seeking the refusal of enforcement of a judgment given in another Member State shall not be required to have a postal address in the Member State addressed. Nor shall that party be required to have an authorised representative in the Member State addressed unless such a representative is mandatory irrespective of the nationality or the domicile of the parties.”*

The respective objections should be brought up exclusively by an opposition of Art. 933 grCCP⁵⁶. Unfortunately, until today, given that the Greek legislator has not defined, neither the procedure which will be applicable for the application of refusal and the time period for filing such a remedy nor the competent court if the applicant does not reside in Greece⁵⁷, the place where the enforcement takes place should be crucial⁵⁸. Furthermore, the Greek legislator should also take the necessary measures in order to safeguard the effectiveness of Art. 48 (“The court shall decide on the application for refusal of enforcement without delay”).

4.5.3. What are your own specifics regarding required documents?

4.5.4. Service of documents and representation in your member state. How will service of documents pursuant to B IA be conducted in your member state? Please elaborate.

Parties to a civil action who are vested with the capacity to conduct proceedings in their own name or through their legal representative must be represented in court by a lawyer, with the exception of (a) litigation before the justices of the peace, when the small claims procedure is applicable (b) an imminent danger to be avoided (Art. 94 grCCP).

⁵⁶ N. Nikas – E. Sachpekidou, European Civil Procedure, 2016, Art. 47, p. 623.

⁵⁷ See § 1115 ZPO.

⁵⁸ N. Nikas – E. Sachpekidou, European Civil Procedure, 2016, Art. 47, p. 623-624.

- 4.5.5. Opposition by the defendant (objection against recognition and enforcement of foreign judgement) – prerequisites and procedure. Does the law envisage ‘*incidenter*’ or separate procedure. Separate procedure at the first instance/at the second instance. Elaborate on the particularities of the herein provided issues.

See above under 4.5.2.

- 4.5.6. Second appeal, (third instance appeal) as a remedy – is it to be utilized only in cases of violation (of procedural or substantive law) or can it be used for control of facts as well?

Comment: In Slovenia the law provides for appeal (*pritožba*) or revision (*revizija*). Whilst the former generally encompasses the control of facts, the latter does not permit for such control.

The Cassation Complaint is the “ultimate” extraordinary remedy in Greek Law. It follows the pattern of the French “*pouvoir en cassation*” rather than the German Revision. Therefore, crucial for the concept of the Cassation Complaint in Greek Law is the distinction between fact and law. As in French law, the Cassation Complaint, aiming to secure the correct and uniform application of the substantive law, is reserved only for specific legal faults of the judgment (Art. 559 grCCP)⁵⁹.

- 4.5.7. Who is eligible to apply for a refusal of recognition or enforcement? How do you understand the euro-autonomous interpretation?

It seems self-evident, that the defeated in the main proceedings defendant (or his successors) is eligible to apply for a refusal of recognition or enforcement.

- 4.5.8. Suspension and limitation of enforcement proceedings (Art. 44). How is it regulated in your legislation?

“Article 44

1. In the event of an application for refusal of enforcement of a judgment pursuant to Subsection 2 of Section 3, the court in the Member State addressed may, on the application of the person against whom enforcement is sought:
- (a) limit the enforcement proceedings to protective measures;
 - (b) make enforcement conditional on the provision of such security as it shall determine; or
 - (c) suspend, either wholly or in part, the enforcement proceedings.”

See above under 4.5.2.

- 4.6.** 2. The competent authority in the Member State addressed shall, on the application of the person against whom enforcement is sought, suspend the enforcement proceedings where the enforceability of the judgment is suspended in the Member State of origin.

⁵⁹ *K. Kerameus / D. Kondylis / N. Nikas (- M. Margaritis)*, Interpretation of the Code of Civil Procedure, 2000, vol. I, 2000, Article 559, p. 995 ff.

4.7. Protective measures.

4.6.1. Which protective measures are available, in National perspective, according to Art. 40?

a) Judicial security (Art. 704-705 grCCP); b) Prenotice on Mortgage Records of a Real Mortgage (Art. 706 grCCP); c) Conservatory Attachment (Art. 707-724 grCCP); d) Judicial Custody (Art. 725-730 grCCP); e) Sealing, unsealing, inventory and public deposit of property (Art. 737-738 grCCP)⁶⁰.

4.6.2. What are the prerequisites for these protective measures?

The probability of the existence of an urgent situation or of the avoidance of an imminent danger (Art. 690 § 1 grCCP)⁶¹.

4.6.3. How long do protective measures last (duration period)?

According to Art. 695 grCCP, a provisional measure has a provisional binding effect and it does not influence the main proceedings⁶². Consequently, a provisional measure is mandatorily revoked, either by the judge who has issued it, or by the judge before whom main proceedings are pending: a) when a final judgment against the applicant has been rendered in main proceedings and is no longer subject to ordinary methods of appeal, or has been already enforced even provisionally⁶³; b) when a conciliation has been agreed; c) 30 days after termination of main proceedings through an alternative method (Art. 698 § 1 grCCP)⁶⁴.

4.6.4. Effects of protective measures - *Auszahlungsverbot (Verfügungsverbot)* or pledge (mortgage).

Judicial security: When the debtor obtains an executor title, the conservatory measure of judicial security, upon the rendering of a special judicial order (Art. 168 grCCP), is hence transformed into a means of enforcement (Art. 727 grCCP). Satisfaction of the secured claim then follows the general rules for the privileged position of the real right of pledge.

Prenotice of mortgage: The prenotice of a mortgage secures only a priority right for obtaining a mortgage (Art. 1277 nr. a of the Greek Civil Code)⁶⁵. Prenotice is thus expected to convert to a mortgage as soon as a final judgment

⁶⁰ N. Nikas – E. Sachpekidou, European Civil Procedure, 2016, Art. 40, nr. 2.

⁶¹ K. Georgiou, Protective measures, 2015, Art. 690, p. 166 ff.

⁶² Areios Pagos (Plenum) 497/1978 NoB 26, 1968, Court of Appeal of Athens 2050/1982 EID 23, 312; K. Beys, The provisional binding effect of the protective measures, Diki 9, p. 420 ff, K. Georgiou, Protective measures, 2015, Art. 695, p. 260 ff.

⁶³ Court of Appeal of Athens 5140/1998 EID 39, 1346.

⁶⁴ K. Georgiou, Protective measures, 2015, Art. 698, p. 359 ff.

⁶⁵ P. Yessiou – Faltsi, Civil Procedure in Hellas, 1995, p. 377.

for the secured claim has been obtained⁶⁶. In such a case, mortgage is deemed as inscribed as from the date of the prenotice (Art. 1277 nr. b grCC). Prenotice of a mortgage, in contrast to attachment, does not hinder transfer of ownership or other real rights⁶⁷.

Conservatory attachment: Attachment, by suspending the debtor’s power of disposal (Art. 715 § 1 grCCP), results in prohibiting transfer of the seized property. Unlike both prenotice and judicial security, attachment does not lead to the establishment of a real right security, neither of a real mortgage, nor of a pledge⁶⁸.

Custody: Beyond appointment of a custodian by the court and subordination of the involved property under his administration (Art. 726 grCCP), custody leads to a provisional prohibition of the transfer of this property (Art. 727, 715 § 1 grCCP). Similarly to attachment, such suspension of the debtor’s capacity to dispose off his property is exceptionally subject to the condition that the main action is brought before the competent court within the following thirty days. Otherwise, the conservatory measure automatically expires (Art. 727, 715 § 5 grCCP)⁶⁹.

- 4.6.5. Can an enforcement motion be refused entirely due to the objection regarding foreign enforcement title or is this just limited to the security measures?

By virtue of Law 4335/2015, the debtor cannot request by the first instance court the stay of the enforcement proceedings, given that the auction will take place 7-8 months after the date of the seizure (i.e. when the judgment upon the opposition of the debtor will have been issued; the Court of Appeal can order the stay of the enforcement proceedings upon the respective request of the debtor) [Art. 937 § 1 b grCCP]. The stay of the enforcement proceedings can be ordered by the first instance court only in the case obligations to deliver a particular movable thing (Art. 941 grCCP) or a particular immovable property (Art. 943 grCCP), namely when the whole enforcement proceeding is concentrated within one act (: direct enforcement, Art. 937 § 1 b grCCP).

4.8. Grounds for refusal.

- 4.7.1. What are the past characteristics in your member state regarding grounds for refusal of recognition? Do you see any new problems regarding grounds for refusal?

⁶⁶ Ap. Georgiadis, Property Law, 1993, § 82, p. 178 ff.; P. Yessiou – Faltsi, Civil Procedure in Hellas, 1995, p. 378.

⁶⁷ K. Beys, Civil Procedure, vol XV, Provisional Remedies II, 1990, p. 330.

⁶⁸ P. Yessiou – Faltsi, Civil Procedure in Hellas, 1995, p. 381.

⁶⁹ P. Yessiou – Faltsi, Civil Procedure in Hellas, 1995, p. 382-383.

In practice, the most important provision for objecting to the recognition of a foreign judgment was Art. 34 (2) B I⁷⁰. Furthermore, Art. 34 (1) B I is often referred to but seldom successful⁷¹.

- 4.7.2. What is your opinion on the fact that the grounds for refusal in the B I (44/2001) apply in B IA as well?

Grounds for refusal laid down in Art 45 B IA are generally appropriate.

- 4.7.3. Please comment on the most problematic grounds in your member state in more detailed manner.

See above under 4.7.1.

- 4.7.4. Grounds regarding related actions and irreconcilable judgements. Do you find any open issues in your member state in this regard?

⁷⁰ Areios Pagos (Plenum) 6/1990 EID 1990, 552, Areios Pagos 496/1997 EID 1998, 95, Court of Appeal of Athens 10601/1995 Diki 1996, 913, Court of Appeal of Thessaloniki 3836/1996 Harmenopoulos 1997, 823, 1257/2011 EPolD 2011, 766, Court of Appeal of Piraeus 110/2004 Diki 2005, 831

⁷¹ Areios Pagos 7/2009 EID 2009, 494 = EPolD 2009, 480, Court of Appeal of Athens 1356/2007 EID 2008, 1498, Court of Appeal of Thessaloniki 434/2010 EPolD 2011, 199, 1257/2011 EPolD 2011, 766.

Part 5: Final critical evaluation of B IA – what necessary adaptations to national legislations need to be done?

- 5.1. Does B IA in your opinion actually simplify, speed up and reduce the costs of litigation in cross-border cases concerning monetary claims and eases cross-border enforcement of judgments?

The aim of making cross-border litigation less time-consuming and costly is fulfilled. In any case, although the application of B IA does not affect neither lawyers statutory fees, which are freely negotiable between the parties⁷² nor bailiff fees, which are determined by the Ministerial Decision Nr. 21798/11.3.2016, the issuance of the enforcement order, being a certified copy of the enforceable title bearing the relevant order (Art. 918 par. I grCCP), for which the corresponding enforcement fees with a rate between 0,5% and 3% - depending on the amount awarded by the court plus interest and the nature of the civil litigation – should be paid in advance, is no longer necessary!

- 5.2. Which is, from the creditor's point of view, the most convenient alternative in your member state in case of cross-border collection of debts in the EU?

The European Order for Payment (Regulation 1896/2006).

- 5.3. Language issues: Is it possible or advisable to choose the form in the language of the debtor?

It is advisable to draft the form in the language of the debtor, in order to avoid the application of Art. 54 (3) of B IA.

- 5.4. Do you anticipate that the principle of national procedural autonomy shall be adversely affected by the provisions of B IA?

Comment: The principle (in essence) provides that member states are free to choose the remedies and procedures which govern the enforcement of EU law. The principle is not confined to the enforcement of substantive rights, even more so, its importance is revealed in cases such as the one at hand. B IA (in part) relies on remedies provided by national procedural law. The latter must therefore conform the euro-autonomous nature of B IA and provide for adequate remedies in terms of interpretation, effectiveness, effective judicial protection of non-discrimination. If these prerequisites are not duly respected, certain corrections to national procedural law are in order, perhaps even ad hoc introduction of new remedies.

Costs. Since the recognition and enforcement of foreign judgements no longer requires *exequatur*, what is your take on the costs which will incur with respect to enforcing judgments under B IA in comparison to enforcing them under BI? Will it be more cost – effective?

⁷² While the existing regulations determine only their lower fees.

A possible way forward could be the introduction of coordinated review proceedings in the Member State of origin and in the Member State of enforcement.

Comment: *Try to indicate the specific costs which may arise in relation to the procedure envisaged under the B I A. Tariffs, lawyer's fees, etc.*

See above under 5.1. Furthermore, the average costs which arise in relation to an auction procedure are the following:

- (a) Bailiff fees: €250,00 (+ VAT 24%) for the service of documents,
- (b) Lawyer fees, corresponding to the court fees awarded by the court, provided that
- (c) Notary's fees: 0,75% (+ VAT 24%) of the value of the property.