Questionnaire for national reports

Revised

General guidelines

This questionnaire addresses practical and theoretical aspects regarding the structure, contents and effects of enforcement titles in EU Member States and one Candidate Country. Each partner should provide substantive answers for their respective State/Country (or additional State/Country, if specifically stipulated by the coordinator). Certain questions require knowledge on instruments of cross-border enforcement in the EU, particularly Regulation 1215/2012 ("Brussels Ia Regulation"; hereinafter also: B IA). The latter questions address the interplay of national law and the EU regime on cross-border enforcement in civil and commercial matters.

For useful information, especially relating to B IA and cross-border enforcement in the EU, please refer, among other sources, 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]
- 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,[2]
- 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,[3]
- 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),[4]
- Report on the Application of Regulation Brussels I in the Member States (Heidelberg Report),[5]

[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(2010) 748. Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0748:FIN:EN:PDF.
[3] COM(2009) 174 final. Available at: http://ec.europa.eu/civiljustice/news/docs/report_judgements_en.pdf.
[4] http://ec.europa.eu/civiljustice/news/docs/study_residual_jurisdiction_en.pdf.
[5] 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.

- The Commission's Civil Justice Policy site,[6]
- The European e-Justice portal,[7] embedded with the European Judicial network (and the old e-Justice portal).[8] The portal features several many useful sources, e.g. Study on European Payment Order, Study on making more efficient the enforcement of judicial decisions within the European Union etc.
- The Access to Civil Justice portal[9] hosted by the University of Maribor, Faculty of Law together with the results of our previous projects and the project blog.

The structure of each individual report does not necessarily have to follow the list of questions enumerated below, however, following the structure is strongly advised. The questions raised should be dealt with within the reports, however, the authors are free to decide where this will be most suitable. If authors choose to address certain issues elsewhere within the questionnaire, then they are instructed to make cross-references and specify where they have provided an answer for the respective question (e.g. "answer to this question already provided in 1.6."). Following the structure of the questionnaire will enable and ease comparisons between the various jurisdictions.

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

Please provide representative references 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.

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: 30 April 2020.

Upload report to: "https://www.dropbox.com/request/Vw2BGUFUFRO8ukJylrfr".

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[6] https://ec.europa.eu/info/policies/justice-and-fundamental-rights/civil-justice_en.
[7] https://e-justice.europa.eu/home.do?plang=en&action=home.
[8] http://ec.europa.eu/civiljustice/simplif_accelerat_procedures/simplif_accelerat_procedures_ec_en.htm.
[9] https://www.pf.um.si/en/acj/.

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). Should be differentiated from 'claim'.

Appeal in Cassation: Second appeal in the Romanic family of civil procedure (in the Germanic family one uses "Revision" instead).

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

Civil Imprisonment: Imprisonment of a judgment debtor in order to force them 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 (England and Wales) designated as "Plaintiff". In your contributions, please only use "claimant" (the term which is also used in B IA).

Co-litigants: More than one person being considered a party or several parties on either the Claimant or the Defendant side.

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: Failure to perform the required procedural act (e.g. where the summoned defendant does not appear); failure to perform.

Defaulter: Party in a civil action who does not perform the required procedural act.

Defendant: Please use this term instead of "Respondent".

Enforcement: Use the term enforcement instead of execution.

Enforcement officer: Official involved in enforcing court rulings. Enforcement is among the duties 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 that he may exercise of his own motion.

Final judgment: Judgment that is binding on the 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 avoiding using the terminology "trial" (which in English civil procedure refers to a specific stage in litigation).

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

Joinder of Claims: The position whereby Claimant raises (either initially or after the initiation of proceedings) several claims.

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.

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 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.

Operative part: The "tenor" or "holding" part of the Judgement which contains a "finding" or "declaration" or "order" to the debtor to pay a sum of money or undertake an action. Usually denotes the obligation of the debtor, executable in enforcement proceedings. In German: *Urteilstenor*.

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 among 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 (England and Wales) reforms these documents were indicated as "pleadings". In French: "conclusions".

Statement of Claim: Document containing the claim.

Statement of Reasons: The part of the judgment that contains the grounds for the decision.

Statement of Defence: Document containing the defence.

1 Part 1: General inquiries regarding Enforcement titles

1.1 Briefly present how an "enforcement title" is defined in your national legal order.

Comment: *In addition to the definition, enumerate the domestic judicial (and other legal) instruments which conform to the above definition of an enforcement title. If there is a statutory definition, then please provide the citation to the exact article/paragraph of that law and an English translation. Provide a list of enforcement titles.*

- An enforcement title is a decision or other document issued by an authorized body, which serves as a basis for execution, unless the obligation contained therein is voluntarily fulfilled. However, the condition is that it is enforceable, which, in addition to executory and notarial records, is evidenced by the fact that the (so-called) enforceability clause is marked on it.

- Enforceable decision of civil court (§ 251 and 261 Act No. 99/1963 Coll., Civil Procedure Code ("CPC"));
- a) enforceable decisions of courts and another authorities being active in criminal proceedings where they award a right or affect assets; b) enforceable court decisions in administrative proceedings; c) enforceable decisions of arbitral tribunal and of settlements approved thereby; d) enforceable decision of state notaries and of agreements approved thereby; e) notarial records with a consent to direct enforceability made according to a special statute; f) enforceable decisions and other enforcement orders of public authorities; g) decisions of the institutions of the European Communities (EU); h) another enforceable decisions, approved settlements and documents that may be enforced by a court according to law, excluding titles enforced in administrative or tax proceedings. (§274 CPC);
- Decision of the arbitration commission of the association (§ 260 et seq. Act No. 89/2012 Coll., Civil Code ("CC") and § 106 CPC);
- List of receivables according to Act on Insolvency Proceedings (§ 197 et seq. Act No. 182/2006 Coll., on Insolvency Proceedings ("AIP").
- Enforceable decisions issued pursuant EU regulations.

1.2 How are "civil and commercial" matters defined in your national legal order?

- Pursuant EU case-law

1.3 Which bodies conform to the definition of "Courts and Tribunals" as provided for by the B IA under your domestic legal system?

- Civil courts, Criminal courts, Administrative courts

1.4 Briefly present the types of domestic decisions (e.g. Judgments, Decrees, Decisions, Orders) which may be rendered/issued under your Member State's civil procedure.

Comment: *Briefly elaborate on the meaning and effects of these of types of decisions. Please note that the word "decision" is used as a generic and neutral term, e.g. in Slovenia, "decisions" rendered by the court shall take form either of a "judgment" (Slovene: "Sodba")*

or of a decree (Slovene: "Sklep"). "Civil procedure" is to be understood as any procedure so designated by domestic law. In addition, decisions not rendered in civil procedure, but having a civil character (e.g. decision on damages in criminal procedure), should also be included. Indicate which of these decisions may be considered enforcement titles. Additionally, please state what these decisions are called in the official language of your Member State. If enforcement titles are exhaustively enumerated by statute, please provide the citation to the exact article/paragraph of that statute and an English translation.

- Decision is a generic term consisting of Judgment (Rozsudek) and Ruling (Usnesení).
- Judgment is a type of court decision which expresses in an authoritative manner the outcome of court proceedings on the merits.
- Ruling is a form of decision in where it the court does not decide by a judgment. That is, especially in procedural matters, such as the commencement of proceedings, the conditions of the proceedings, the rejection, change or withdrawal of the party's proceedings, the interruption and suspension of the proceedings, or the costs of the proceedings. However, it also approves court settlement or orders the enforcement of decisions. In proceedings pursuant Act. No. 292/2013 Coll., on special court proceedings, the court decides in form of Ruling unless specified that such form should be a Judgment, even though the decision is on its merits.
- Civil procedure is to be understood as any procedure of the deciding authority (civil court or arbitrators), participants in proceedings and other interested parties in hearing and deciding private law disputes and other legal matters. In addition, decisions not rendered in civil procedure, but having a civil character (e.g. decision on damages in criminal procedure), should also be included.
- For enforcement titles see 1.1.

1.5 Taking account of the euro-autonomous definitions of "Judgment" and "Authentic instrument" elaborated by the CJEU for the purposes of B IA, which domestic decisions and instruments conform to these definitions?

Comment: *Please explain which domestic decisions and instruments are problematic in the light of the euro-autonomous definitions and why. Explain which decisions and instruments do not fall within the definitions. If you use English translations of domestic decisions, then please also provide the domestic term in brackets next to the translation, e.g. In Slovenia, condemnatory Judgements [Sodbe] issued in litigious proceedings…".*

- Judgment [Rozhodnutí] in civil matters (or criminal and/or administrative if fulfils the scope of Brussels I bis Regulation)
- Rulling [Usnesení] in civil matters (or criminal and/or administrative if fulfils the scope of Brussels I bis Regulation)
- Public documents in civil matters [Veřejná listina] issued by courts of the Czech Republic or by another state authorities within the scope of their competence as well as documents declared by special regulations which certify that they are an order or statement of the authority that issued the document and, unless a contrary has been proved, the truthfulness of what is verified or certified therein.
- Public documents in administrative matters [Veřejná listina] issued by the courts of the Czech Republic or other state authorities or the authorities of territorial self-

governance entities within the scope of their powers as well as declared by special laws as public instruments which do confirm that they represent the declaration of the authority which issued the document.

- Notarial act with direct enforceability [Notářský zápis s přímou vykonatelností]
- Court settlement [Soudní smír]

1.6 Have the national courts of your Member State addressed any questions for a preliminary ruling (Art. 263 TFEU) to the CJEU regarding the notion of "Judgment"?

- No

1.7 Please explain the level of judicial control (the "power of assessment") exerted by the courts when rendering default judgments in your Member State.

Comment: *The power of assessment may significantly vary. For instance, the courts may be barred from examination of the substance of the case or limited to checking compliance with mandatory rules of law.*

- If the defendant misses without reasonable and timely excuse the first hearing which was held in the matter, and provided that it is proposed by the claimant who attended the first hearing, the assertions of the claimant about the facts concerning the dispute contained in the action are deemed to be undisputed and on this basis, the court may issue a default judgment. The court will not carry out evidence, will not hear participants.

2 Part 2: General aspects regarding the structure of Judgements

2.1 Which elements are comprised in the structure of a domestic (civil) Judgment in your legal order?

Comment: *A judgment normally contains an array of (necessary) information in separate constituent parts (elements), e.g. the title; the proclamation that the Court issues the Judgment in the name of the people; the Court and the judge rendering the judgment; Parties to the dispute; the Operative part; the Reasoning; the Legal instructions etc.*

- A written execution of the judgment shall contain the words "In the name of the Republic", identification of the court, names and surnames of judges and assessors, an exact identification of the participants and their representatives, participation of a state representation, identification of the heard chase, text of the verdict, reasons, instruction of whether there is a remedy admissible except for a lawsuit for retrial and for nullity and the period and place where such remedy can be filed, instruction about the possibility of enforcement of the decision and the day and place of the declaration. Where possible, identification of the participants shall also contain their date of birth (identification number). Unless anything else is further provided, in the reasons of the judgment, the court shall state what and for what reasons was demanded by the actor (petitioner) and what was the statement of the defendant (another participant of the proceedings); the court shall briefly and clearly explain which facts were considered proved and which not, which evidence supported the factual ascertainments and what considerations were decisive in weighing the evidence; the court shall also explain why no further evidence was carried out, what conclusion about the factual state was made and how the case was considered to the legal point of view; the court must not copy factual statements of the participants and evidence from the file. The court shall

see to it that the reasons of the judgment are convincing. The reasons of an admission judgment or a default judgment shall specify only the merits of the proceedings and briefly explain the reasons why the court decided by issuing an admission judgment or a default judgment. (§ 157 CPC)

2.2 Is the structure of a Judgement prescribed by law or court rules or developed in court practice (tradition or custom convention)?

Comment: *If applicable, please provide the citation to the exact article/paragraph of the rule and an English translation.*

- Except as stated in 2.1. the Ministry of Justice prescribes certain structure of Judgment.

2.3 How standardised (regarding form and structure) do you consider judgments from your Member State to be (e.g. inadequately; adequately; standardised, although exceptions can be found)?

Comment: *If the law regulates this issue, then it is expected that judgments are standardised. However, if certain courts tend to disregard standards or if standards are too loosely defined, then please elaborate. If your Member State has multilevel governance structures (e.g. federalisation; autonomous regions) please elaborate if the different governance structures also apply different standards.*

- Adequately standardised.

2.4 How are the different elements of the Judgment separated from one another (e.g. headline, outline point etc.)?

- Usually by space between each part. An identification part as well as the verdict part form separate part to which the reasons (factual and legal combined) form separate part. Retrial, period for such and instructions about enforceability form separat part following the reasons.

2.5 If courts, other than courts of first instance, may issue enforceable judgments, how does the structure of such judgments differ from judgments issued by the courts of first instance?

Comment: *The question comes into play especially in cases where, after recourse, appellate and other courts may modify first instance judgments or decide on the claim independently. In addition to general observations, please focus on the operating part, e.g. does it make reference to first instance judgements, how does it uphold or dismiss those judgements?*

- Should appellate court review the decision of first instance, *iudex ne eat ultra petite pertium* applies. The court may 1) confirm the decision if it is materially correct. 2) change the decision if the first instance court decided incorrectly even if it has correctly ascertained the factual state. The court of appeal may change the decision also if after the evidence being completed, the factual state is ascertained in the manner that it is possible to decide on the case. 3) quash the decision. Or 4) reject the appeal. Should the court quash the decision, the case is returned either to the court of first instance, or forwards the case to the materially competent district court or regional court or, as the case may be, to a court established for hearing and deciding cases of certain type; or stay the proceedings if there is a lack of conditions of proceedings that can not be removed. (§ 219 et seq. CPC).

- Should the appellate court change the decision, the court must take into account factual proceedings of the first instance and present its own legal opinion, which differs to the first instance.
- The structure is the same as first instance.

2.6 How does the assertion of a counterclaim affect the structure of the Judgment?

Comment: *In addition, explain when a counterclaim can be entertained in the same proceedings and be decided in a single Judgment (if possible).*

- The CPC allows the defendant to bring a counterclaim and under some circumstances the court may join these proceedings together to ensure efficiency and economization.
- Vzájemná žaloba [Cross petition] (§ 97 CPC).
- (1) The defendant may exercise his rights against the actor also by a cross petition. (2) The court may exclude the cross petition to a separate proceedings if there are not conditions for connection of cases. (3) The cross petition shall be governed adequately by the provisions on the petition for commencement of the proceedings, on a change thereof and on withdrawing therefrom.

2.7 Does the Judgment include a specification of the time-period within which the obligation in the operative part is to be (voluntarily) fulfilled by the defendant? Conversely, does the judgment contain a specification of the time-period within which the judgment is not to be enforced? Does the judgment contain a specification of the time-period after which the judgment is no longer enforceable?

Comment (2.7): *If applicable, please also explain what happens if the court does not include the above time period(s). If applicable, how would the court, acting as a court of the Member State addressed, deal with a situation where a judgment is no longer enforceable after the limitation period for enforcement has expired, and this time period was not specified by the court in the Member State of origin, either because there is no obligation for the court to specify the period or because the court unintentionally omitted the specification.?*

- Time-period within which the obligation in the operative part is to be (voluntarily) fulfilled by the defendant: It may be specified. If not, § 160 and 171 CPC shall apply, thus a duty imposed by the court in a judgment must be fulfilled within three days or, in case of eviction of a flat, within fifteen days after the judgment became final and conclusive; the court may specify a longer period or decide that a money performance may happen by instalments in a specified amount and under specified payment conditions. The period of performance shall start running from the delivery of the ruling; after the lapse of this period, the ruling shall become enforceable.
- The duty is not to be fulfilled should an appeal be filed.
- Does the judgment contain a specification of the time-period within which the judgment is not to be enforced: No, it only provides a (statutory) time period for appeal.
- Does the judgment contain a specification of the time-period after which the judgment is no longer enforceable: No, the statutory limitation period is specified in other statutes.

- Enforcement of judgment issued in one Member State in other Member States in the regime of BIA depends on the certificate. Certificate conforming the enforceability in the state of origin is bounding for enforcement authorities in the Member State of enforcement. The fact that the certificate confirms an attribute (enforceability) that has ceased to be valid is not a reason for refusing recognition in the BIA regime, but can be invoked as a reason against enforcement under the national law of the executing State.

2.8 What personal information must be specified in the Judgment for the purposes of identifying the Parties to the dispute?

Comment: *For example, in Slovenia, the Judgment will list the Parties' name and surname, residence and Unique Personal Identification Number (so-called "EMŠO"). This number is provided to each citizen of Slovenia and is also a feature in other countries of the former Yugoslavia. The information is stated in the Introduction to the judgment and is usually not repeated in other parts of the judgment.*

- Usually name and surname, residence address and national id number or date of birth (natural person);
- Name, plase of business, company ID (legal person).
- The information is stated in the introduction to the decision and is usually not repeated in other parts of the decision.

2.9 How do courts indicate the amount in dispute?

Comment: *Please elaborate how this amount is specified (if this information is specified), especially in cases where amendments to claims occur during proceedings.*

- If monetary, then in amount and currency as specified in the suit. Should the actor claim accessories to the claim, such is stated as well. If amendments happen, only the final amount is specified in the verdict part. Although the court may state that the claim was submitted with different amount in the reason part of the decision.

2.10 How do courts indicate the underlying legal relationship (legal assessment of the dispute), if this circumstance bears further relevance, e.g. in enforcement proceedings.

Comment: *Take for example § 850f of the German ZPO, where enforcement is sought against earned income (wage) of the debtor. The law imposes limitations to the scope of the attachable part of the income. However, these limitations may be disregarded to an extent, if enforcement is pursued for a claim arising from an intentionally committed tort. The execution court must therefore be able to identify the legal relationship (intentional tort). Similar examples might include the indication of maintenance or annuity by way of damages.*Can the Claimant seek interim declaratory relief and what effects (if any) are attributed to the decision on this claim? How is the decision specified in the Judgment?

2.11 What kinds of decisions can a court issue in regular litigation proceedings?

Comment: *For example, in certain Member States, the court may decide on procedural issues (e.g. admission of evidence; modification of claim) with a "decree" and a "Judgment" on the merits of the case. Provisional and protective measures may or may not be tied to the proceedings.*

- See 1.4.

2.12 How are Judgments drafted when (if) they contain a "decision" on issues other than the merits of the case?

Comment: *Such decisions can, for example, pertain to the modification of a claim, withdrawal of a claim, joinder of parties, joinder of proceedings etc.*

- CPC states in § 167 (2) that unless anything else is further provided, the provisions concerning a judgment shall adequately apply to a ruling.
- CPC states in § 169 (1) A written execution of a ruling shall contain specification of the court the has issued it, the names and surnames of the judges and assessors, identification of the participants and their representatives and identification of the case, a verdict, reasons, instruction on whether there is a remedy against the ruling except for a lawsuit for retrial and for a nullity suit, on the period and place where it can be submitted and the day and place of issuance of the ruling. (2) A written execution of a ruling completely granting a petition opposed by nobody, a written execution of a ruling concerning conducting the proceedings and a written execution of a ruling according to § 104a shall not have to contain reasons.

2.12.1 How does this effect the operative part and/or the reasoning?

2.12.2 Which decisions (2.12) can be incorporated into the judgment?

- Change of the petition, or on settlement.

2.12.3 Can provisional and protective measures form part of a Judgment or can they only be issued separately?

- Separately in form of Ruling.
- Interim measures are used to govern the parties' relations in the interim, i.e. provisionally, or in a situation where there are concerns that the enforcement of a judicial ruling may be undermined. Generally, interim measures issued prior to the commencement of proceedings on the substance of the case are governed by Article 74 et seq. of the Code of Civil Procedure (Act No 99/1963, as amended), while interim measures issued after the commencement of such proceedings are governed by Article 102 of the Code. Special interim measures for certain specific situations are governed by the Act on Special Judicial Proceedings (Act No 292/2013), namely interim measures governing the situation faced by a minor who has not been duly cared for (Section 452 et seq.) and interim measures to provide protection against domestic violence (Section 400 et seq.). Section 12 of Act No 292/2013 also lays down certain special rules supplementing the general arrangements in place for interim measures, covering those types of proceedings that fall within the scope of that Act.

3 Part 3: Special aspects regarding the operative part

3.1 What does the operative part communicate?

- The contents of the decision on the merits of the case shall be pronounced by the court in the verdict of the judgment. In the verdict, the court shall also decide on the duty to reimburse the costs of proceedings; if the court decides only on the base of a reimbursement of costs of proceedings, the amount thereof shall be determined in a separate ruling.

3.1.1 Must the operative part contain a threat of enforcement?

Comment: *A threat of enforcement is to be understood as a legal instruction referring to the possibility of enforcement proceedings if the debtor does not voluntarily perform the obligations imposed by the judgment.*

- No.

3.1.2 Must the operative part include declaratory relief if the Claimant sought payment (e.g. if the debtor's obligation to perform is found to be due and the Claimant requested performance)?

- Yes.

3.1.3 Is the specification of the debtor's obligation finalized by the court or is it left to later procedures/authorities?

- It is finalized by the court. Should the debtor not comply with enforceable decision. Execution proceedings may be commenced in which the authorities may specify form of execution.

3.1.4 How is the operative part drafted in a the case of a prohibitory injunction (German: "Unterlassungsklage")?

- An order of the court to not perform certain activity.

3.1.5 If applicable, how is the operative part drafted in an interim judgment?

Comment: *Should a claim be in dispute both on its merits and as regards its amount, the court may take a (preliminary) decision on the merits. An interim judgement in the context of the above question should therefore be understood as a judgement on the merits (basis, grounds, liability) of the claim (e.g. a court issues a judgement regarding the liability of a defendant for tort, but leaves the amount of the damages to be decided later in a "final" judgement).*

- § 152 (2) CPC "The judgment should deal with the whole heard case. However, if it is useful, the court may first issue a judgment dealing only with a part of the case or with the base thereof." The operative part would be drafter in a same way as a judgment in a whole, but dealing with only part therein.

3.1.6 If applicable, how is the operative part drafted in an interlocutory judgment?

Comment: *Within the context of the question, an interlocutory judgement refers to a temporary decision regulating the matter of the dispute. Take for example the French "Ordonnance de référé«, which is a provisional decision made on the application of one party, the other one being there or having been called, in cases where the power to order immediately the necessary measures is vested to a judge who is not called to decide the whole case.*

- "the basis of the claim is justified"

3.1.7 How is the operative part drafted in the case of alternative obligations, i.e. where the debtor may decide among several modes of fulfilling a claim?

- Shall the substantive law allow, the actor may draft its request for relief in an alternative way. The court then orders the defendant to choose within the range of obligations (as requested by the actor) and by fullfilment of one, the other cease to apply. Should the obligation be not fulfilled, the actor may request enforcement of either of the obligations.
- A specific case of an alternative obligation is so-caled *alternativa facultas*, which is the actor's offer to alternate from primary obligation stipulated by the substantive law. The actor offers the defendant an option to deffer from its primary obligation by a payment performing secondary obligation (usually a payment of sum of money). The court may only order the party to perform the primary obligation as stipulated by the substantive law, yet the court includes the actor's prorogation regarding the option of alternative in the operative part. The defendant may fullfil either primary or alternative obligation. Should the obligation be not fulfilled, the actor may request only the enforcement of primary obligations.

3.1.8 How is the operative part drafted when a claim is wholly or partially dismissed (on substantive grounds)?

Comment: *For the purposes of the question, a "dismissal" refers to the situation where a claim appears to be without justification, either in and of itself or as the result of an objection lodged by the defendant (German: Klageabweisung).*

- Since the operative aprt must deal with the case in a whole, the court may dismiss the claim or award a part of the claim and dismiss the rest.

3.1.9 How is the operative part drafted when a claim is wholly or partially rejected (on formal/procedural grounds)?

Comment*: For the purposes of the question, a "rejection" refers to the situation where the court finds it cannot entertain a claim due to formal/procedural reasons (or lack thereof), e.g. if it lacks jurisdiction or if the prescribed time for filing the action has elapsed.*

- If the court stays the proceedings due to an irremovable lack of a condition of proceedings (§ 104 (1)) or due to the fact that the court failed to remove a lack of a condition of the proceedings (§ 104 (2)) or, as the case may be, due to other reasons provided by an act or if the court rejects a petition (§ 43 (2)), the proceedings shall be thereby terminated. (§ 144 (2) CPC).

3.1.10 How is the operative part drafted if the debtor invokes set-off? Provide an example.

Comment: *In certain jurisdiction, set-off (compensation invoked in proceedings) requires the operative part to specify how the claim and counter-claim are extinguished and to what extent. This may, for instance, be done by specifying the amount of both claims and declaring the amount to be compensated.*

- An expression of the defendant's will to sett off his receivable against the actor shall be considered a cross petition if the defendant asks the court to adjudge more than what has been sued by the actor. Otherwise, the court shall consider such expression to be merely a defense against the petition. (§ 98 PCP)

3.2 Are there specifications pertaining to the structure and substance of the operative part of the Judgment in your national legal system – set out by law or court rules or developed in court practice? If so, please provide an English translation of the relevant provisions.

- No, not by statutory provision.

3.3 Does the operative part contain elements from or references to the reasoning of the judgment (grounds for the decision/legal assessment)?

- No.

3.4 Elaborate on the wording used in your national legal system, mandating the debtor to perform.

Comment: *For instance, in Slovenia, the debtor is not specifically "ordered" to perform by the wording of the operative part, since the operative part only finds the debtor "liable to pay" a certain amount. However, in practice, it is universally understood that this "liability" is to be understood as a duty to perform and not merely as declaratory relief. Would you find such wording problematic?*

- Since the operative part is the only part which is conclusive, the operative part to perform is worded in dare, facere, omittere, pati way.

3.5 If applicable, explain how the operative part is drafted in cases of reciprocal relationships where the Claimant's (counter-)performance is prescribed as a condition for the debtor's performance? How specifically is this condition set out?

- Some performances are required to be counter-performed by law, such as order to evacuate a flat. " If a final and conclusive judgment of the court imposed a duty to evacuate a flat after obtaining security for an adequate compensatory flat, a compensatory flat, a compensatory accommodation or a shelter, the period for eviction of the flat shall start running from the day when the provided housing compensation or shelter was assured." (§ 160 (3) CPC).

3.6 How are the interest rates specified and phrased in a judgment ordering payment?

Comment: *Please provide a typical wording and the legal basis – not concerning the merits but concerning the requirement in procedural law as to how to draft the operative part.*

- E.g. The defendant is obliged to pay the plaintiff the amount of CZK XY together with interest in the amount of 3 % per month from the amount of CZK XY from DATE until payment.

3.7 Please demonstrate how the operative part differs when claims to impose different obligations on the debtor are joined (e.g. performance, prohibitory injunction etc.) or when the action is of a different relief sought (e.g. action for performance, action for declaratory relief, action requesting modification or cancellation of a legal relationship).

Comment: *Please elaborate on the second part of the question only if such a joinder of claims is admissible. Please accompany your answer by providing typical (abstracted) examples of operative parts in situations where the debtor is ordered to pay an amount of money; when he is ordered to perform an action; when a prohibitory injunction is issued against him; when he is ordered to hand over moveable property. Additionally, formulate abstracted examples of declaratory relief (including negative declaratory relief) and actions for the creation, modification or cancellation of legal relationships).*

3.8 May the operative part refer to an attachment/index (for example, a list of "tested claims" in insolvency proceedings)?

Comment: *Please explain the "technique" of drafting such operative parts and how attachments are actually attached/connected to the judgment? Which attachments can be referred to in the operative part?*

3.9 What are the legal ramifications, if the operative part is incomplete, undetermined, incomprehensible or inconsistent?

Comment: *Explain whether this presents a ground for appeal or other legal remedy. Explain how this affects enforcement proceedings.*

- At any time and even without a petition, the chairman of the panel shall correct mistakes in writing or numbers in the judgment as well as any other obvious mistakes. If the correction concerns the verdict of the decision or unless the correction can be carried out in copies of the decision, the court shall issue a correcting ruling that shall be delivered to the participants; in case of correction of a verdict of a decision, the court may put off enforceability of the judgment until the correcting ruling becomes final and conclusive. (§ 164 CPC). So-called general correction.

- (1) Unless the court has decided in a judgment on a part of the case, on the costs of proceedings or on the provisional enforceability, the participant may within fifteen days after the delivery of the judgment propose that the judgment be completed. A judgment that has not yet become final and conclusive may be completed by the court even without a petition. (2) Completing the judgment by a part of the case shall be done by the court by a judgment governed analogously by the provisions on a judgment; in other cases, the judgment shall be completed by a ruling. Unless the court grants the participant's petition for completing the judgment, the court shall dismiss the petition by a ruling. (3) The petition for completing shall affect neither finality and conclusivity nor enforceability of verdicts of the original judgment. (§ 166 CPC). So-called additional correction.

3.10 May the operative part deviate from the application as set out by the claimant? If so, to what extent? In other words, how much discretion does the court enjoy when formulating the operative part?

- The court may award less than what was sought in the claim, not more.

4 Part 4: Special aspects regarding the reasoning

4.1 If applicable, how does the law or court rules or legal practice govern the structure and content of the reasoning of the judgment?

- Each decision must, by law, consist of two parts - factual findings and legal assessment. Factual findings is the basis for legal assessment. The law does not prescribe that such parts should be divided, therefore the distinction between those two might be problematic, as one influences other. While this might be problematic, it is important to distinguish both as some remedial measures only allow appellation to one or other.

4.1.1 Is there a specific order to be followed when drafting the reasoning?

Comment: *The reasoning usually contains both factual and legal grounds for the decision. Should these aspects follow a predetermined order or may they intertwine?*

- They usually interwine.

4.1.2 How lengthy/detailed is the reasoning?

- Depending on the complexity of case presented. Type of decision is also predominant factor. Meroitory decision is usually reason heavily, contrary to procedural decision. Default judgment as well as judgment for recognition does not have to be reason in length.

4.1.3 Do you find the reasoning to be too detailed?

- The reasoning in the Czech Republic is usually very detailed.

4.1.4 Are the parties' statements (adequately) summarised in the grounds for decision?

- The court usually pinpoints main statements of the parties in the beginning of the reasoning.

4.1.5 Is it possible to distinguish between the parties' statements and the court's assessment (the problem of an unclear distinction between the parties' statements and the court's findings and interpretation)?

- Yes. By the wording, it is clear which part is parties statements and which is the reasoning of the court.

4.2 In the reasoning, do the courts address procedural prerequisites and applications made after the filing of the claim?

Comment: *Prerequisites are to be understood as all criteria necessary to initiate the proceedings correctly under national law, e.g. jurisdiction, standing, party capacity etc.*

- In some cases, yes. Usually, such is more reasoned by appellate courts, as such proceedings bear further procedural prerequisites (such as period to file the appeal, or ground which are allowed to be appealed).

4.3 Are independent procedural rulings properly re-addressed in the judgment?

- No. They form separate decisions and do not have to be further specified in the meritory judgment.

4.4 What legal effects (if any) are attributable to the reasoning, e.g. is the reasoning encompassed within the effects of the finality of the Judgment?

- The reasoning is subject to appeal, either on factual findings or legal assessment. Should the court omit any evidence, without specifying why the evidence was not taken into account or dismissed, such may be appealed for unreviewability.

5 Part 5: Effects of judgments – the objective dimension of res judicata

5.1 A final judgment will, in most Member States, obtain res judicata effect.[10] With regard to this point, please answer the following questions:

5.1.1 What are the effects associated with res judicata in your national legal order?

Res iudicata is associated with the finality and conclusivity of a decision (legal force), based on the theory, procedural and substantive relations coexist side by side. Legal force (formal) represents the finality of a decision in the sense of § 159 CPC, ie a judgment which is delivered and which cannot be challenged by a proper appeal is in legal force. It results in material side of legal force, ie the decision becomes unchangeable and is considered res iudicata. Immutability concerns only substantive decisions (decision on meritsú. Therefore, res iudicata does not occur in the case of decisions of a procedural nature which terminate the proceedings (eg a ruling to stay the proceedings).

5.1.2 What decisions in your Member State have the capacity to become res judicata? Judgments and arbitral awards.

5.1.3 At what moment does a Judgment become res judicata?

Comment: *Pinpoint the time and/or requirements when the judgment meets the criteria for becoming res judicata*.

The decision must be served and the period for lodging a proper appeal must lapse. Delivery must be carried out in the manner prescribed by law - primarily in person (§ 158 (2) PCP), alternative delivery is also permissible). Delivery is not valid should it be carried in contrary to PCP. If the party to the proceedings is represented by a legal representative or a representative with a power of attorney relating to the entire proceedings, delivery must be made to the representative. The condition of lapse of the period for lodging an appeal (15-day period) is relevant only for a first-instance decision against which a proper appeal can be lodged. Decisions of the court of first instance against which no appeal may be lodged and decisions of the appellate court shall take effect on the date of delivery. The said delivery does not have to be made on the same day to all parties to the proceedings - thus the legal force may may be different for individual parties to the proceedings.

[10] If your national legal order does not operate with the principle of res judicata, then please thoroughly describe the alternative doctrine governing finality of judgements. Please answer the questions in this Part of the questionnaire by mutatis mutandis applying your respective doctrine. If this is not possible, please approximate the answers as far as possible or provide additional explanations.

The arbitral award shall become in legal force upon delivery. In arbitration proceedings, Czech law does not allow for an appeal. However, the parties may request a review of the arbitral award by other arbitrators within 30 days of proper delivery. This possibility must be enshrined in the former arbitration agreement. There are several opinions in the Czech doctrine as to the impact of the second arbitral award on the original one - the majority opinion is that the original award is not annulled, it still exists, it only does not produce legal effects.

5.1.3.1 How (if at all) does the exercise of the right to appeal/the exercise of legal remedies affect this moment?

The lodging of an appeal has suspensive effects, ie the acquisition of legal force is postponed until the appelate court decides on the appeal. As a rule, enforceability is also postponed.

5.1.3.2 How does the answer to this question differ depending on whether the remedies being invoked are considered "ordinary" or "extraordinary" under your domestic law – is the classification of remedies into one of these two categories dependent on these effects? Ordinary remedies may be lodged against a decision which is not in legal force yet. Extraordinary remedies are those, which are lodged against a decision which is in force and enforceable. Thus, extraordinary remedies do not possess suspensive effect.

5.1.4 Is res judicata restricted to the operative part of the judgment in your legal system or does it extend to the key elements of the reasoning or other parts of the judgment? Yes, res judicata is restricted to the operative aprt only, not to the reasoning. This is also enshrined in statutory prescription that no appeal may be lodged only against the reasoning.

5.1.4.1 Are courts bound by prior rulings on preliminary questions of law?

Comment: *A court in Member State A has to rule whether a seller must deliver goods. In its decision, the court argues that the contract between the seller and the buyer is null and void because of some errors of will. If the seller in Member State B later submits an action for the payment of the purchase price, does a court in Member State B have to dismiss that claim, as it is bound by the reasoning in the judgment of the court in Member State A, which argued that there had been an error of will? Will this be the case in your Member State? In other words, does finality pertain to preliminary questions on points of law? If it does, how are preliminary questions decided upon? Does the decision on preliminary issues form part of the operative part or reasoning? How are they elaborated in the Judgment?*
According to § 135 (1) PCP "*The court shall be bound by the decision of the competent authorities that somebody has committed a crime, trespass or another administrative offence that can be prosecuted according to special regulations and who has committed them as well as by a decision of personal status; however, the court shall not be bound by a decision issued in block proceedings.*"

§ 135 (2) PCP "*Other issues falling within the competence of another authority may be considered by the court on its own. However, if a decision on such issue has already been issued by the competent authority, the court shall proceed therefrom.*"
The court is not bound by a decision issued in another country, unless recognized in the Czech Republic. For courts to which jurisdiction is allocated in line with Brussels I bis Regulation, lis pendens mas be taken into account.

5.1.4.2 Does your legal order operate with the concept of "claim preclusion"?

Comment: *Claim preclusion bars a claim from being brought again on an event, which was the subject of a previous legal cause of action that has already been finally decided between the parties. Consider the following examples.*

First example: A claimant files suit for damages he incurred in a traffic accident, alleging that the defendant acted negligently. The court dismisses the claim. The claimant then files a second action for damages arising from the same traffic accident; however, this time he alleges battery (intentional tort) on defendant's side. Is the second action admissible?

Second example: A claimant files suit for personal injury (non-material damages) he incurred in a traffic accident. The court awards the claimant the relief sought. The claimant then files a second action, wherein he claims material damages from the same traffic accident. Is the second action admissible or should the claimant have requested all damages in the first action?

5.1.4.3 Are courts bound by the determination of facts in earlier judgements?

Comment: *Consider the following example. A claimant files suit for personal injury (non-material damages) he incurred in a traffic accident. The court finds that the claimant correctly observed traffic rules and drove through a green light. The court awards the claimant the relief sought. The claimant then files a second action, wherein he claims material damages. In these proceedings, however, the court finds that the claimant drove through a red light. Is this a permissible finding or should the court give effect to the findings of the first judgement?* See 5.1.4.1.

5.2 If part of a civil claim is being claimed in civil proceedings, how does this affect the remainder of the claim, taking into account res judicata effects?

The decision may be partialy final - res iudicata concerns only the part in which the decision was made final.

5.3 In the case of a negative declaratory action, what is the effect of a finding that the matter is res judicata?

Comment: *For example, A initiates an action against B for a declaration that he does not have to pay B 1000 EUR (negative declaration). If the court dismisses the claim, does the judgment at the same moment declare that A does have to pay B 1000 EUR? If the dismissal of a negative declaratory action is the equivalent of a declaration of the converse (in inter partes proceedings), is such a judgment enforceable for the creditor (in this case: B)?*

Such actions are referred to as declaratory actions, regardless of whether the court has to decide whether or not a certain legal relationship exists. They have declaratory nature. The Czech Supreme Court has ruled that, while a final judgment on an action for determination does not normally constitute a res judicata to a judgment pending on an action for performance based on the same factual basis, a final judgment on an action for performance constitutes a res iudicata obstacle to proceedings for a declaratory. Decision on action for performance always contains a positive or negative solution to the question of the existence of a right or legal relationship which might otherwise be resolved by an action for a declaration and is therefore based on the same factual basis as an action for a declaration (20 Cdo 2931/99). A decision on a negative declaration action constitutes a res iudicata on the issue which is the subject of the action.

5.4 If a court issues an interim judgment concerning the well-foundedness of a claim, does this judgment have any effects outside of the pending dispute?

Comment: *Can a party rely on the res judicata effects of such a judgment in separate proceedings (is the court in another set of proceedings bound by the judgment) or are these effects confined to the dispute in which the judgment was rendered? Note: an interim judgment on the well-foundedness of a claim refers to a judgment finding the liability of the defendant to pay, but leaves the amount of payment to be determined in a subsequent judgement (the same as under question 3.1.5).*

5.5 Suppose the following hypothetical. If, in Member State Y, a seller (S) as claimant is suing the buyer (B) as defendant for payment of the purchase price, B will not be able to sue S in Member State Z for liability on a warranty at the same time due to lis pendens rules under B IA.
No, lis pendes according to Art. 29 Brussels I bis relates solely to proceedings on the same merits. The above example does not have the same merits (breahcx of different contractual obligations).

5.5.1 Is it possible for B to sue S in Member State Z after the case in Member State Y has been decided with res judicata effect? What is the position regarding this question in your Member State?

- Yes, it is possible to sue S in Member State Z due to different subject matter of the claim.

5.5.2 If it is possible for B to sue S in Member State Z (in the above situation), will the court in State Z be bound by the reasoning in the judgment from the court in Member State Y? What is the position on that question in your national legal order:

Binding force of reasoning is not possible. Brussels Ibis Regulation regulates two situations - either lis pendens, which is not the case, or an objection to recognition for res iudicata. EU law precludes the application of national rules of private international law.

5.5.2.1 If in domestic cases you do not extend res judicata effect to the elements of a court's reasoning (Question 5.1.4)?

- Court is only bound by a legally binding judgment of criminal court that a crime has been committed. Other issues falling within the competence of another authority may be considered by the court on its own. However, if a legally binding decision on such issue has already been issued by the competent authority, the court shall proceed therefrom. [Sec. 135 of Act. No. 99/1963 Coll., Civil Procedure Act]

- We do not extend res judicata effect to the element of a court's reasoning [Judgment of the Supreme Court of March 24, 1999, file no 25 Cdo 1751/98]

5.5.2.2 If res judicata effect is extended to elements of the reasoning in the Member State of origin but not in the Member State addressed?

- Ibid.

5.5.2.3 If res judicata effect is not extended to elements of the reasoning in the Member State of origin but is in Member State addressed?

- Ibid.

5.5.3 How do you handle the limitation period problem in the scenario described above? The lis pendens case law of the CJEU prevents the filing of a warranty liability claim in State Z as long as a payment claim is pending in State Y. How can the buyer prevent the limitation period from running in State Z (your home State) without making the warranty case pending?

- As both claims arise from the same contract, yet different claim, lis pendens would not apply.

6 Part 6: Effects of judgements - res judicata and enforceability

6.1 What is the relation of res judicata to enforceability, i.e. can a judgment be enforced before it is res judicata?

Comment: *Does your legal order operate with the institution of "provisional enforceability", i.e. the enforceability of judgments that are not (yet) res judicata, but have nonetheless been endowed, either by the decision of a court or by operation of law, with the attribute of enforceability? Do you think such (foreign) judgments might be controversial from the perspective of the (procedural) legal order of your Member State, if the creditor attempted to enforce them? For an example of provisional enforceability, see §§704, 708, 709 of the German ZPO).*

Legal force and enforceability are two different characteristics of a decision. The basic condition for enforceability is the lapse of period for performance (parity period), which is set by the PCP at three days from the legal force of the decision. At default legal force is a necessary condition for enforceability. Preliminary enforceability, ie the enforceability of a decision not in legal force, is considered an exception statutory allowed in cases of Judgments adjudging to payment of maintenance or of a work remuneration (§ 162 (1) PCP) or performance judgment if the participant would be otherwise endangered by a hardly reparable or serious injury, upon court decision (§ 162 (2) PCP). In case of provisionally enforceable judgments, the court shall specify the period of performance from the delivery thereof to the person being to perform (§ 160 (4) PCP).

6.1.1 Is provisional enforceability suspended (by operation of law or at the discretion of the court) if an appeal is lodged?

The suspension of enforceability is granted by court upon request of, and after cosideration, the liable party.

6.1.2 Who bears the risk if the provisionally enforceable judgement is reversed or modified?

The return of such performance is resolved as unjust enrichment (performance whose legal reason has lapsed).

6.1.2.1 Must the judgment creditor provide security before the judgment can be enforced? No. A deposit may be required at the expense of enforcement by execution.

6.1.2.2 Must the creditor compensate the debtor for damages he has suffered by the judgement being enforced, or by the payments he had to make, or any other actions he had to take in order to avert enforcement?

The costs associated with the enforcment are borne by the debtor. Any damage caused by incorrect performance, is not the problem of the creditor, but of the person who performed the enforcement, ie either the bailiff or the court, ie the state. If the

decision is amended or revoked and enforcement has already taken place, then unjust enrichment is in place and shall be dealt with accordingly.

6.1.2.3 Does the answer to the previous question (6.1.2.2) vary, if the debtor voluntarily payed (performed) the claim?
No

6.1.2.4 Does the answer to the previous question (6.1.2.2) vary, if the judgement was a default judgement, by a first instance court or a court of appeals?
No

6.1.2.5 What is the scope of the compensation? Is it limited to direct loss or is indirect loss also covered?
Compensation for damage is only possible in the cases where state's liability for damage in the exercise of public power by a decision or incorrect official procedure exists pursuant to Act no. No. 82/1998 Coll. on liability for damage caused within the exercise of public authority by a decision or incorrect administrative procedure. According to this law, damage caused by a decision issued in civil court proceedings can be recovered. Compensation can only be enforced if a final decision has been revoked or amended for illegality.

6.1.2.6 Does your legal order prescribe a suspensive period within which the judgement creditor cannot initiate the enforcement proceedings? For example, must the judgement creditor first demand payment from the debtor before he can move to enforcement (execution of the judgement)?

Comment: *The question is framed in general terms regarding enforcement of judgements, not in relation to provisional enforceability. If answered in the positive, please indicate what are the legal consequences of the suspension, i.e. is the judgement by operation of law not considered enforceable within this period or does the judgement creditor merely take on the risk of bearing costs for enforcement.*

Enforcement may be ordered only after the lapse of the period for voluntary fulfillment of the obligation, which its default is 3 days.

6.2 Does the judgment incorporate elements akin to the French "command and order to the enforcement officer" (*Mandons et ordonnons a tous huissiers de justice à ce requis de mettre le present jugement à execution*) and what are its effect?
Rozhodnutí stanoví povinnost, mechanismy výkonu jsou stanoveny občanským soudním řádem či exekučním řádem. Volba příslušného mechanismu se řídí těmito předpisy.

The decision stipulates only the obligation. The mechanisms of enforcement are determined by the CPC or the Execution Procedure Act. The choice of the appropriate mechanism is governed by these regulations.

6.3 How would your legal order deal with foreign enforcement titles, which involve property rights or concepts of property law unknown in your system?
V případě rozhodnutí v režimu B IA nevyplývá odpověď z českého práva, ale z přednostně aplikovatelného unijního předpisu, tj. B IA, art. 54 - povinnost adaptace na opatření nebo příkaz sledující obdobný účel a zájem s rovnocennými účinky.

In the case of a decision issued under the regime of Brussles I bis regulation, the answer does originate from Czech law, but from a preferably applicable EU regulation, ie Brussels I bis Regulation, art. 54 - the obligation to adapt to a measure or order pursuing a similar purpose and interest having equivalent effect.

7 Part 7: Effects of Judgments – Personal boundaries of res judicata

7.1 How are co-litigants and third persons (individuals who are not direct parties of the proceedings) affected by the judgment (e.g. alienation of a property or a right, which is the subject of an ongoing litigation; indispensable parties)?

7.2 Do certain judgments produce in rem (*erga omnes*) binding effects?

No. Judgments have inter partes effects. Indirectly, the effects of erga omnes might occur if the decision concerns a right in rem as an absolute right. Even so, a decision has effects only inter partes, erga omnes has only a substantive right which may be the subject of a decision.

7.3 How are (singular and universal) successors of parties affected by the judgment?

Comment (7.3): *Explain how succession of parties occurs after the rendering of the judgment as well as in potential enforcement proceedings, and what acts, if any, must be undertaken for interested persons to demonstrate succession. In addition, explain whether there are circumstances in which succession is not possible, e.g. succession to non-pecuniary damages claims.*
Universal succession has procedural consequences in procedural succession (both during the proceedings as well as for already issued court decision). The court takes the universal succession into account *ex officio*. The nature of the proceedings (decision) must allow for succession, i.e. the duty arising out of the decision must not be linked to a specific person.
On the other hand certain procedural steps are needed in order for singular succession's procedural consequences to occur. he original creditor must make a procedural motion for the transferee to take his place in the proceedings as a party to the proceedings. The court will grant the entry when the alleged legal facts are proved and the new creditor agrees to enter the position of a party to the proceedings(§ 107a CPC).

8 Part 8: Effects of Judgments - Temporal dimensions

8.1 Can changes to statute or case-law affect the validity of a judgment or present grounds for challenge?

- Not in general. Should the constitutional court declare any act null (negative law-making), the subject concerned may lodge a suit for retrial (§ 228 et seq. PCP).

8.2 If the judgment requires the debtor to pay future (periodic) instalments (e.g. maintenance or an annuity by way of damages), how can the judgment be challenged in order to amend the amount payable in each instalment?

- The party seeking the change must lodge a suit in which it is the change claimed. The court then may issue new decision which alters the previous decision.

8.3 Can facts that occur after the last session of the main hearing and are beneficial to the defendant (debtor), be invoked in enforcement proceedings with a legal remedy?

- No. They may be used in appelate proceedings or in the suit for retrial.

8.4 Can set-off of a judicial claim be invoked by the debtor in enforcement proceedings, even if the debtor's counterclaim already existed during the original proceedings?

- Offsetting may also take place in enforcement proceedings (in the execution of a decision), regardless of whether the mutual claim arose before the issuance of the decision which is the basis for the enforcement of the decision / execution or only after its issuance. If the exempt receivable has expired as a result of the set-off, the execution proceedings may be in place in the sense of the provisions of § 268 par. 1 let. g) o. s. ř., or the provisions of § 268 par. 1 let. h) o. s. ř., if there was a meeting of receivables eligible for set-off before the decision was issued, to stop the expired receivable. The defense of the entitled party in the form of "set-off against set-off" in the intentions of the execution proceedings conducted for the recovery of an already extinguished receivable is not possible ex tunc. (20 Cdo 5443/2015)

9 Part 9: Lis pendens and related actions in another Member State and irreconcilability as a ground for refusal of recognition and enforcement

9.1 The B IA Regulation uses the concept of a "cause of action" for the purposes of determining lis pendens.

9.1.1 How does your national legal order determine lis pendens?

- Primarily § 83 (1) CPC "*Commencement of the proceedings shall prevent other proceedings concerning the same case from being conducted before a court.*"
- Secondary § 83 (2) CPC "Commencement of proceedings

  a) to refrain from unlawful conduct or to eliminate a defective situation in matters of protection of rights violated or endangered by unfair competition,

  b) refraining from infringements in matters of consumer protection,

  c) in matters of compensation for damage or adjustment of the amount of consideration pursuant to the Act on Takeover Bids or in matters of review of consideration for the redemption of participating securities,

  d) in other matters stipulated by special legal regulations,

  also prevents further proceedings from being brought before a court against the same defendant in respect of actions brought by other claimants seeking the same claims from the same conduct or situation.

9.1.2 How does the B IA concept of a "cause of action" correspond to any similar domestic concept in your national legal order? Describe how your national legal order establishes the identity of claims.

The subject-matter of the proceedings is the same if the new proceedings are of the same claim based on the same legal ground, provided that this ground arises from the same facts as in the previous proceedings. [Judgment of the Supreme Court of March 24, 1999, file no 25 Cdo 1751/98]. At the same time, from the point of view of determining the existence of an impediment to the initiated proceedings, it is - given the identical factual basis of the case - irrelevant to the legal assessment of the applicant's claim (Cdo 19/2011, 11.4.2012). A comprehensive assessment is provided the decision of the Supreme Court of 31 January 2001, file no. No. 22 Cdo 463/99 "The same subject-matter of the proceedings is given where the same claim as defined by the petition follows from the same factual allegations with which it was asserted (from the same act). The essence of an act (factual action) can be seen primarily in the action and in the consequence caused by it; the consequence is essential because it makes it possible to define, from the expressions of will of the persons acting, those actions which constitute the act. It follows that the identity of an act is preserved if at least the identity of the conduct or the identity of the consequence is preserved. It is irrelevant, for the purposes of assessing whether res judicata to a final decision exists, the factuality of how the act which was the subject of the proceedings was assessed from a legal point of view by the court. Res judicata to a final decision is given even if the act was assessed incorrectly or incompletely by the court (eg the act was assessed as a rcontractual relationship, although in fact it was a liability for unjust enrichment). The identity of parties is not in itself significant, even if the same party has different procedural status in different proceedings (eg defendant in one proceeding and a plaintiffs in the other). The same applies even if in the subsequent proceedings the legal successors (due to universal or singular succession) of the persons who are (were) participants in the previously initiated proceedings appear."

The definition of 'cause of action' therefore appears to be as broad as that used by the ECJ in Decision 144/86 Gubisch Maschinenfabrik KG v Giuliu Palumbo: the concept of lis pendens pursuant to Article 21 of the Convention of 27 September 1968 covers a case where a party brings an action before a court in a contracting state for recission or discharge of an international sales contract whilst an action by the other party to enforce the same contract is pending before a court in another contracting state.

9.1.3 Does your national legal order allow a negative declaratory action? If so, how is this action treated in relation to contradictory actions (e.g. for (payment of) damages)?

- Yes, such action does exist. Negative declaratory action and action for payment are mutually excluding with preference to action for payment. This is based on prejudicial character of action for payment, in which the court must assess whether the legal relationship exists or not. A final decision on an declaratory action addresses the question of its existence in a binding manner for a subsequent action for performance of the same legal relationship. Consequently, it is not applicable otherwise.

9.1.4 How do you determine the identity of parties in national proceedings and how (if at all) does the methodology differ from that of the B IA?

These are the same persons, legal succession is also considered in the case of singular and universal succession. The assessment of whether they are the same persons is not affected by whether they hold different procedural positions in different proceedings (claimant, defendant). We do not see a difference compared to the Brussels I bis Regulation.

9.1.5 How should we understand the requirement that judgments need to have "the same end in view" as expressed by the CJEU?

- The same subject-matter of the proceedings is given where the same claim or condition as defined by the same petition stems from the same basic factual allegations. The basic factual allegations are those circumstances which identify the substantive provision on which the claim is based. [Svoboda K., Smolík P., Levý J., Šínová R. a kol. Občanský soudní řád. Komentář. 2. vydání. Praha: C. H. Beck, 2017, § 83]. See also 9.1.2.

9.2 Does your national legal order operate with the notion of "related actions"? If so, what are the effects it ascribes to them? Please accompany the answer with relevant case law.

- No, related actions are not operated by law. The only notion is the requirement to interrupt the proceedings where the decision depends on an issue that the court is not authorized to solve in these proceedings (§ 109 (1) (b) CPC).

9.3 Has your Member State experienced cross-border cases involving related actions within the meaning of the B IA?

Not to our knowledge. This issue has not been resolved in courts of higher instances. The case law of the courts of first instance is still not completely publicly available. Therefore, in this respect, the answer might not be fully correct.

9.3.1 How have your courts defined irreconcilability for the purpose of related actions? See 9.3

9.3.2 How have your courts exercised the discretion to stay proceedings? See 9.3

10 Part 10: Court settlements

10.1 What are the prerequisites for the conclusion of a court settlement?

- Court settlement may be entered into prior to commencement of the proceeding (*praetor settlement*) (§ 67 et seq. CPC) or during the proceedings (§ 99 CPC).
- The merits of the case must be subjected to civil procedure, thus jurisdiction of civil courts must be give. (R 63/1966, 5 Cz 31/66).
- Court settlement may only be concluded in matters in which the parties may freely dispose with their rights and obligation pursuant substantive law (usually matters in which parties may dispose with dispositive norms of substantive law). (25 Cdo 2039/2008)
- Court settlement may not be invoked in
  - matters of personal status;
  - matters which require constitutive court decision, unless the law allows for settlement.

10.1.1 Describe the necessary elements a court settlement must contain.

- Ruling for approval of the settlement. Contains all parts as usual decision and the text of the settlement. In the reasoning, the court specifies that the parties agreed to settle amicably pursuant substantive law.

10.1.2 What formal requirements must be satisfied (e.g. signature of the parties; service)?

- Court approval, services per CPC

10.1.3 How are the parties identified?

- Re. 2.1.

10.1.4 What (substantive) legal relationships can be settled in a court settlement?

- Court settlement may only be concluded in matters in which the parties may freely dispose with their rights and obligation pursuant substantive law (usually matters in which parties may dispose with dispositive norms of substantive law). (25 Cdo 2039/2008)
- Court settlement may not be invoked in
- matters of personal status;
- matters which require constitutive court decision, unless the law allows for settlement.

10.2 When does a court settlement become enforceable?

- In the time a period for performance lapses per § 171 CPC.

10.3 How are (singular and universal) successors of parties affected by the judgment?

Comment: *Explain how succession of parties occurs after the rendering of the judgment as well as in potential enforcement proceedings, and what acts, if any, must be undertaken for interested persons to demonstrate succession. In addition, explain whether there are circumstances in which succession is not possible.*

- Should the settlement be concluded on in rem matter, the singular and universal succession is unaffected.
- Succession is not possible in in persona matters.

10.4 If applicable, describe how the legal relationship, once settled, can be amended?

- Only in line with 3.9.

10.5 If applicable, describe how (under what circumstances) a court settlement can no longer be considered enforceable?

- § 99 (3) CPC "*An approved settlement shall have the effects of an approved judgment. However, the court may quash by a judgment the ruling on approval of the settlement if the settlement is null according to the provisions of substantive law. The petition may be submitted within three years after the ruling on approval of the settlement became final and conclusive.*"
- The enforcement is postponed shall the suit for retrial be lodged (§ 228 CPC) and shall the court allow retrial.

- The enforcement ceases to apply shall the suit for nulity be lodged (§ 229 CPC) and shall the court nulify the decision.

10.6 If applicable, describe how errors in a court settlement can be remedied and the recourses that are available against a notarial act, whether independently or during enforcement proceedings.

- Only in line with 3.9.

11 Part 11: Enforceable notarial acts

11.1 Briefly describe the competence the notary holds in civil and commercial matters in your Member State.

- acting as judicial commissioners, i.e. as agents of the court, for inheritance matters
- drawing up notarial deeds – official records of legal acts, of annual general meetings and meetings of legal persons, of other acts and situations
- drawing up contracts
- notarial custody
- drawing up notarial acts permitting enforcement
- drawing up and depositing wills
- drawing up premarital agreements (which must be in the form of notarial deed), surety agreements, and registering sureties
- authenticating documents.

11.2 Is (can) a notarial act be considered an enforcement title in your respective Member State/Candidate Country? If so, briefly present, how the concept of a notarial act as an enforcement title is defined in your national legal order.

Comment: *If the definition is provided by a provision of law, then please provide the citation to the exact article/paragraph of that rule and an English translation.*

- notarial acts with consent to enforceability[Notářský zápis s přímou vykonatelností].
- § 71a-71c Act. no. 358/1992 on notaries and their work activities (Notarial Code) ("NC").
- Section 71a

  (1) Notarial record on legal act by which a participant shall undertake to pay a debt of a second participant arising from the emerging legal relationship based on obligation may contain a consent of the obliged participant to impose and execute the decision (execution) under such record and to use such a notarial record as a power of execution unless he/she meets his/her obligation duly and on time. The content of the legal act on which such a notarial record has been drawn up must also include the amount of the debt and the deadline for its payment.

  (2) A notarial record on legal act which is recognition of a monetary debt may contain a consent of the obliged participant to impose and execute the decision (execution) under such record and to use such a notarial record as a power of execution unless he/she meets his/her obligation duly and on time. The content of the legal act on which such a notarial record has been drawn up must, besides the amount of the debt, the legal reason of the debt and the identity of the creditor, also indicate the deadline for paying the debt and the obligation of the participant to pay the debt by the deadline.

  Section 71b

  (1) At a request, a notary draws a notarial record of agreement by which a participant shall undertake to pay a debt or other claim of a second participant

arising from a legal relationship based on obligation, in which he/she gives consent to impose and execute the decision (execution) under such record and to use such a notarial record as a power of execution unless he/she meets his/her obligation duly and on time.

(2) The agreement between the parties must contain

a) identification of the person who undertook to pay the debt or other claim (obliged person),

b) identification of the person whose debt or other claim is to be paid (entitled person),

c) the facts on which the debt or other claim is based,

d) subject matter of the fulfilment,

e) fulfilment date,

f) declaration of the obliged person regarding the permission to execute the record.

(3) The agreement between the parties may also contain terms and conditions or time clauses and/or mutual obligations of the entitled person which must be fulfilled before the provision of the subject matter of the fulfilment.

Section 71c

Under the terms and conditions laid down directly by the applicable regulations of the European Union, a notarial record on legal acts under Sections 71a and 71b confirms, according to the Code of Civil Procedure, as a European enforcement title.

11.3 Is, according to your domestic legal order, a notarial act an enforcement title *per se* or must it contain additional conditions/clauses to be considered as such?

Comment: *For instance, in Slovenia, notarial acts are considered enforcement titles only if they contain a so called 'direct enforceability clause'.*

- It must contain a consent of the obliged participant to impose and execute the decision (execution) under such record and to use such a notarial record as a power of execution unless he/she meets his/her obligation duly and on time.

11.3.1 If there is a certain clause (that constitutes the notarial deed an enforcement title) please set out an example of such a clause (cite an example clause). Furthermore, explain if there a difference in said clause if the deed refers to monetary or non-monetary claims?

- "Dlužník souhlasí a svoluje v souladu s § 71a odst. 2 notářského řádu, aby podle tohoto notářského zápisu byl nařízen a proveden výkon rozhodnutí (exekuce) a aby byl takový notářský zápis exekučním titulem, jestliže dlužník svou povinnost řádně a včas nesplní." (The debtor agrees and authorizes, in accordance with sec. 71a (2) of the Notarial Code, that the enforcement of the

decision (execution) be ordered and executed in accordance with this notarial record and that such notarial record be a writ of execution if the debtor fails to fulfill his obligation properly and in time.)

11.3.2 Is the debtor's consent to direct enforceability considered to be part of a notarial act?

- Yes.

11.3.3 If the previous question is answered in the positive, can such consent be of a general nature or specific and concrete to the debtor's obligations arising from the notarial act?

- It is of general nature relating solely to the obligation arising out of the notarial act.

11.4 How is a notarial act structured in your domestic legal order? What elements must it contain?

Sec. 71b (2) NC - The agreement between the parties must contain

a) identification of the person who undertook to pay the debt or other claim (obliged person),

b) identification of the person whose debt or other claim is to be paid (entitled person),

c) the facts on which the debt or other claim is based,

d) subject matter of the fulfilment,

e) fulfilment date,

f) declaration of the obliged person regarding the permission to execute the record.

11.5 What personal information must be specified in the notarial act for the purposes of identifying the Parties?

- Name, surname, ID number or date of birth, residential address

11.6 Must a notarial act, considered to be an enforcement title, contain a threat of enforcement?

- No. Only the agreed declaration of the obliged person.

11.7 If applicable, how lengthy and important is the part of the notarial act, which contains warnings and explanations by the notary?

- N/A

11.7.1 Is the notary obliged to explicitly warn the parties about the direct enforceability of the act?

- No.

11.7.2 Is there a need for parties and/or the notary to sign each page of a notarial act, to be considered valid?

- No

11.8 What are the consequences if the parties fail to meet the formal requirements for a valid notarial act?

- The notarial act is subjected to notary review, thus it should meet the formal requirements. Should not, the notarial act is null.

11.9 What kind of (substantive) obligations, arising out of legal relationships and contained in a notarial act can become directly enforceable, according to your domestic legal order (e.g. mortgage)? Conversely, are there legally valid obligations, which cannot become directly enforceable due to restrictions in legislation or due to judicial decisions?

Comment: *For instance, in Slovenia, taxes, which arise from the claim-enforcement procedure, cannot be directly enforced by the creditor. The same applies to some bank products.*

- Notarial act with consent to enforceability may only be issued:
  - on legal act by which a participant shall undertake to pay a debt of a second participant arising from the emerging legal relationship based on obligation,
  - on legal act which is recognition of a monetary debt,
  - on agreement by which a participant shall undertake to pay a debt or other claim of a second participant arising from a legal relationship based on obligation.

11.10 Is it possible that conditional claims, contained in a notary act are directly enforceable? If so, are there any special conditions, which have to be met in notarial acts or in enforcement procedure?

- Sec. 71b (3) NC "The agreement between the parties may also contain terms and conditions or time clauses and/or mutual obligations of the entitled person which must be fulfilled before the provision of the subject matter of the fulfilment"

11.11 Can obligations, contained in a directly enforceable notary deed, be contained in attachments to the notarial act or must they be set out specifically within the text of the act?

- Within the notarial act.

11.12 Is it possible for parties to conclude a contract wherein they set up a legal (contractual) relationship and only later bring said contract to the notary in order to confirm the direct enforceability of obligations, arising out of the contract?

- Yes.

11.13 Must the notarial act include the specification of the time period in which the obligation of the debtor is to be performed? In conjunction, is there the possibility that a notarial act is directly enforceable even if the time period has not yet expired? If so, under what conditions?

- Yes - Sec 71b (2) (e) NC.
- No, there are no such conditions.

11.14 Disregarding EU legislation, are there any special restrictions regarding recognition and enforcement under the private international law of you Member State, pertaining specifically to foreign notarial acts?

- Sec. 4 of Act. No. 91/2012 Coll., on private international law, "***The stipulation of public order.*** *The provisions of any foreign body of laws which are supposed to be used in accordance with the provisions of this Act cannot be applied, if the effects of any such application would clearly contravene public order. Likewise, it is also not possible to recognise any foreign judgements, foreign court settlements, foreign notary or other public documents or foreign arbitration judgements or to implement any procedural acts requested from abroad or to recognise any legal relations or any facts which have arisen abroad or according to a foreign body of laws on the same grounds."*
- Sec. 14 "*The judgements of the courts of a foreign state and the rulings of the authorities of a foreign state concerning any rights and obligations, whose private law nature would mean that they were subject to the jurisdiction of the courts in the Czech Republic, as well as foreign judicial settlements and foreign notary or other instruments concerning these matters (hereafter simply referred to as "foreign judgements") will be effective in the Czech Republic, if they have come into legal force according to the confirmation of the appropriate foreign authority and if they have been recognised by the Czech public authorities.*"

11.15 Is it possible to bring grounds of objection in enforcement proceedings, concerning not only enforcement proper (execution), but opposition to the claim itself? In other words, can the debtor raise grounds against the claim contained in the notary act in enforcement proceedings?

- The debtor may only lodge a suit to stay of the enforcement of the decision on the ground that the enforcement of the decision is inadmissible because of another reason for that the decision can not be enforced. (§ 268 (1) (h) CPC).
- 20 Cdo 2910/2007
- 20 Cdo 3120/2007, 20 Cdo 977/2003 - no review to substantial grounds.

11.16 If your domestic legal order does not operate with enforceable notarial acts, how would you enforce a foreign enforceable notarial act?

- Czech Republic legal order does operate with such.

11.17 Are there other authentic instruments under your domestic legal order, which are considered enforcement titles?

- Re. 1.1.

Instructions for contributors

1. References

As a rule, specific references should be avoided in the main text and, preferably, should be placed in the footnotes. Footnote numbers are placed after the final punctuation mark when referring to the sentence and directly after a word when referring to that word only. We humbly invite our authors to examine carefully our sample references which are preceded by [•]. These sample references put the theory of our authors' guidelines into practice and we believe that they may serve to further clarify the preferred style of reference.

1.1. Reference to judicial decisions

When citing national judicial authorities, the national style of reference should be respected. References to decisions of European courts should present the following form:

[Court] [Date], [Case number], [Party 1] [v] [Party 2], [ECLI] (NB: the "v" is not italicised)

- ECJ 9 April 1989, Case C-34/89, Smith v EC Commission, ECLI:EU:C:1990:353.
- ECtHR 4 May 2000, Case No. 51 891/9, Naletilic v Croatia.

1.2. Reference to legislation and treaties

When first referring to legislation or treaties, please include the article to which reference is made as well as the (unabbreviated) official name of the document containing that article. The name of a piece of legislation in a language other than English, French or German should be followed by an italicised English translation between brackets. In combination with an article number, the abbreviations TEU, TFEU, ECHR and UN Charter may always be used instead of the full title of the document to which the abbreviation refers. If the title of a piece of legislation constitutes a noun phrase, it may, after proper introduction, be abbreviated by omission of its complement. Thus:

- Art. 2 Protocol on Environmental Protection to the Antarctic Treaty (henceforth: the Protocol).
- Art. 267 TFEU.
- Art. 5 Uitleveringswet [Extradition Act].

1.3. Reference to books

1.3.1 First reference

Any first reference to a book should present the following form: [Initial(s) and surname(s) of the author(s)], [Title] [(Publisher Year)] [Page(s) referred to]

- J.E.S. Fawcett, The Law of Nations (Penguin Press 1968) p. 11.

If a book is written by two co-authors, the surname and initials of both authors are given. If a book has been written by three or more co-authors, 'et al.' will follow the name of the first author and the other authors will be omitted. Book titles in a language other than English, French or German are to be followed by an italicised English translation between brackets. Thus:

- L. Erades and W.L. Gould, The Relation Between International Law and Municipal Law in the Netherlands and the United States (Sijthoff 1961) p. 10 – 13.
- D. Chalmers et al., European Union Law: cases and materials (Cambridge University Press 2010) p. 171.
- F.B. Verwayen, Recht en rechtvaardigheid in Japan [Law and Justice in Japan] (Amsterdam University Press 2004) p. 11.

1.3.2 Subsequent references

Any subsequent reference to a book should present the following form (NB: if more than one work by the same author is cited in the same footnote, the name of the author should be followed by the year in which each book was published):

[Surname of the author], [supra] [n.] [Footnote in which first reference is made], [Page(s) referred to] Fawcett, supra n. 16, p. 88.

- Fawcett 1968, supra n. 16, p. 127; Fawcett 1981, supra n. 24, p. 17 – 19.

1.4. Reference to contributions in edited collections

For references to contributions in edited collections please abide by the following form (NB: analogous to the style of reference for books, if a collection is edited by three or more co- editors only the name and initials of the first editor are given, followed by 'et al.'):

[Author's initial(s) and surname(s)], ['Title of contribution'], [in] [Editor's initial(s) and surname(s)] [(ed.) or (eds.)], [Title of the collection] [(Publisher Year)] [Starting page of the article] [at] [Page(s) referred to]

- M. Pollack, 'The Growth and Retreat of Federal Competence in the EU', in R. Howse and K. Nicolaidis (eds.), The Federal Vision (Oxford University Press 2001) p. 40 at p. 46.

Subsequent references follow the rules of 1.3.2 supra.

1.5. Reference to an article in a periodical

References to an article in a periodical should present the following form (NB: titles of well-known journals must be abbreviated according to each journal's preferred style of citation):

[Author's initial(s) and surname(s)], ['Title of article'], [Volume] [Title of periodical] [(Year)] [Starting page of the article] [at] [Page(s) referred to]

- R. Joseph, 'Re-Creating Legal Space for the First Law of Aotearoa-New Zealand', 17 Waikato Law Review (2009) p. 74 at p. 80 – 82.
- S. Hagemann and B. Høyland, 'Bicameral Politics in the European Union', 48 JCMS (2010) p. 811 at p. 822.

Subsequent references follow the rules of 1.3.2 supra.

1.6. Reference to an article in a newspaper

When referring to an article in a newspaper, please abide by the following form (NB: if the title of an article is not written in English, French or German, an italicised English translation should be provided between brackets):

- [Author's initial(s) and surname(s)], ['Title of article'], [Title of newspaper], [Date], [Page(s)]: T. Padoa-Schioppa, 'Il carattere dell' Europa' [The Character of Europe], Corriere della Serra, 22 June 2004, p. 1.

1.7. Reference to the internet

Reference to documents published on the internet should present the following form: [Author's initial(s) and surname(s)], ['Title of document'], [<www.example.com/[...]>], [Date of visit]

- M. Benlolo Carabot, 'Les Roms sont aussi des citoyens européens', <www.lemonde.fr/idees/article/2010/09/09/les-roms-sont-aussi-des-citoyens-europeens_1409065_3232.html>, visited 24 October 2010. (NB: 'http://' is always omitted when citing websites)

1.8. Cross-references

In referring to other chapters and sections of the text, as well as to other footnotes, supra is used to refer to previous sections of the contribution, whereas infra is used to refer to subsequent sections. Cross-references should never refer to specific page numbers. Thus:

- See text to n. 10 supra.
- See text between n. 10 and n. 12 infra.
- Compare n. 10 supra.

2. Spelling, style and quotation

In this section of the authors' guidelines sheet, we would like to set out some general principles of spelling, style and quotation. We would like to emphasise that all principles in this section are governed by another principle – the principle of consistency. Authors might, for instance, disagree as to whether a particular Latin abbreviation is to be considered as 'common' and, as a consequence, as to whether or not that abbreviation should be italicised. However, we do humbly ask our authors to apply the principle of consistency, so that the same expression is either always italicised or never italicised throughout the article.

2.1 General principles of spelling

- Aim for consistency in spelling and use of English throughout the article.
- Only the use of British English is allowed.
- If words such as member states, directives, regulations, etc., are used to refer to a concept in general, such words are to be spelled in lower case. If, however, the word is intended to designate a specific entity which is the manifestation of a general concept, the first letter of the word should be capitalised (NB: this rule does not apply to quotations). Thus:
- [...] the Court's case-law concerning direct effect of directives [...]

- The Court ruled on the applicability of Directive 2004/38. The Directive was to be implemented in the national law of the member states by 29 April 2006.
- There is no requirement that the spouse, in the words of the Court, 'has previously been lawfully resident in another Member State before arriving in the host Member State'.
- Avoid the use of contractions.
- Non-English words should be italicised, except for common Latin abbreviations.

2.2. General principles of style

- Subdivisions with headings are required, but these should not be numbered.
- Use abbreviations in footnotes, but avoid abbreviations in the main text as much as possible.
- If abbreviations in the main text improve its legibility, they may, nevertheless, be used. Acronyms are to be avoided as much as possible. Instead, noun phrases are to be reduced to the noun only (e.g., 'the Court' for 'the European Court of Human Rights'). If this should prove to be problematic, for instance because several courts are mentioned in the text (e.g., the Court of Justice and the European Court of Human Rights), we ask our authors to use adjectives to complement the noun in order to render clear the distinction between the designated objects (e.g., the Luxembourg Court/the European Court and the Strasbourg Court/the Human Rights Court). As much will depend on context, we offer considerable liberty to our authors in their use of abbreviations, insofar as these are not confusing and ameliorate the legibility of the article.
- In English titles, use Title Case; in non-English titles, use the national style.

2.3. General principles of quotation

- Quotations are to be placed between single quotation marks, both in the main text and in the footnotes (thus: 'aaaaa').
- When a quotation forms part of another quotation, it is to be placed between double quotation marks (thus: 'aaaaa "bbbbb" aaaaa').
- Should a contributor wish to insert his own words into a quotation, such words are to be placed between square brackets.
- When a quotation includes italics supplied by the contributor, state: [emphasis added].