



JUST/2013/JCIV/AG/4634

Practical exercises in implementing the judicial cooperation instruments in civil and commercial matters

Methodology





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1. Overview

The project „Practical exercises in implementing judicial cooperation in civil and commercial matters“ (JUST/2013/JCUV/AG/4634) is a project supported by the European Commission (the Specific Programme Civil Justice of the European Union) that is taking place between 1 February 2014 and 31 January 2016 and is coordinated by Romanian Superior Council of Magistracy.

The Partnership brings together 7 national judicial training institutions (the School for the Judiciary from Italy, the National Institute for the Magistracy from Romania and the National School of Clerks, the Institute for Judicial Training (IFG-IGO) from Belgium, the National Institute of Justice from Bulgaria, the National School of Judiciary and Public Prosecution from Poland, the Judicial School of the General Council for the Judiciary in Spain) and the Academy of European Law (ERA).

The general objective of the project is the improvement of judicial cooperation in civil and commercial matters. It is designed to give support to Member States' judicial training institutions in their endeavour to provide a training framework where members of national judicial cooperation networks and other judges can strengthen their professional cooperation in two specific fields: matrimonial matters and insolvency matters.

2. Learning objectives

- to increase and deepen the knowledge that judges from EU Member States have in the field of judicial cooperation in civil and commercial matters;
- to help judges form and practice skills related to the use of online instruments in the field;
- to share good practices for drafting orders for preliminary references to the CJEU;
- to provide a framework where professional contacts between judges from EU Member States can be formed.
- to nurture an interactive environment for mutual trust between European judges.



3. Teaching format

The project entails the use of six task-oriented training group meetings which allow us to bring together different professional and national experiences in a format that is based on workshops on how to approach cases with EU law elements in these two fields. Each national judicial training institution will select with priority members of their similar networks of court coordinators in EU law, such as *EuRoQuod* in Romania or *Gaius* in Italy to participate in these training activities.

The core of the training events consists of 3-day workshops (4 seminars in the field of judicial cooperation in matrimonial matters and 2 seminars in the field of insolvency), supported by lectures and linguistic training sessions.

The practical exercises include a workshop on preliminary references and also focus on acquiring and developing the abilities needed for the use of on-line resources.

The linguistic training module concentrates on the meaning and use of the most frequently used terms in the interaction between courts from different Member States. Two online theme files (matrimonial issues and insolvency) were developed in the framework of the project and uploaded on the *EuRoQuod* website, in Romanian, with a short description in English. Their central feature is a step-by-step guide for the management of a file in the two fields, and is supported by national and European legislation of relevance, national and EU case law in these fields, the training materials used in the seminars and references to other relevant materials.

The final conference (with about 80 European participants) on the dissemination of the two files will be transmitted live to the benefit of all partners and the recording will be made available on the SCM and NIM websites and also to other partners at their request.

4. Construction and publication of theme files

Two files (matrimonial issues and insolvency) will be developed and uploaded on the website of *EuRoQuod*, the Romanian National Network of Judges Acting as Court Coordinators in EU law.



Each file (in Romanian with a short description in English) will include: a step-by-step guide for the management of a case in each field, in a tree structure organized along the procedural stages of a case, using for reference Romanian procedural law; national and European legislation of relevance; national and EU case law in these fields; and references to articles, notes on issues and other relevant materials.



5. Description of the seminars

5.1 Family law¹

The presentations

The presentations in the first part of the day are used to set the scene for the practical exercises which take place in the afternoon. A series of interactive lectures on Regulations (EC) No. 1393/2007 (service of documents), No. 2201/2003 (jurisdiction and enforcement in matrimonial matters) and No. 1259/2010 (applicable law) and Regulation No. 4/2009 (maintenance) provides the unifying framework for the workshops.

The premise for a presentation on **Regulation (EC) No. 1393/2007** is that on one hand, a correct service of documents is of crucial importance in judicial proceedings, and on the other, practical and unencumbered cross-border service rules are among the most important conditions for a well-functioning European civil procedural system. The presentation starts from the principle of an effective service of documents highlighted by CJEU in case C-325/11, *Alder* and leads towards a discussion on practical issues such as the cooperation between the transmitting agencies and receiving agencies, the receipt of a document by an agency, the refusal by a party to accept a document, the date of service, the situation of a defendant not entering an appearance, the role of central authorities, the costs of service.

After having set out the basis for correct judicial proceedings, the presentation on **Regulation (EC) No. 2201/2003** is meant to remind and go deeper into the rules of establishing jurisdiction in family law cases. In the context of an increase in the number of international couples in the EU due to free movement of persons, this Regulation is the most significant EU instrument in the area of cross-border family disputes. The lecturers and the participants discuss the various factual possibilities encountered in practice against the rules of establishing jurisdiction concerning divorce, annulment of marriage and legal separation, and also the exercise of parental responsibility, in light of the case-law of the CJEU.

¹ For the template agenda, see Annex no. 1.1.



Establishing the applicable law is the logical next step after establishing jurisdiction, therefore the presentation of Regulation (EC) No. 2201/2003 is followed by a presentation on **Regulation (EC) No. 1259/2010**. It highlights its nature as an instrument adopted under enhanced cooperation and offers the opportunity for discussion on the material and territorial scope of this Regulation, the relationship with existing international conventions, the choice of applicable law by the parties, the rules of applicable law in the absence of a choice by the parties, the establishment of the content of foreign law.

The presentation on **Regulation (EC) No. 4/2009** has the purpose of conveying the importance of this instrument to the simplification and acceleration of the settlement of crossborder disputes concerning maintenance obligations arising from a family relationship, parentage, marriage or affinity. The participants and lecturers discuss the issues of establishing jurisdiction, conflicts of law, recognition and enforceability of judgments, legal aid and cooperation between Member States.

The **presentation on the preliminary references procedure provided by Article 267 TFEU** consists of an overview of the fundamental tenets of this procedure and opens the discussion around the drafting techniques used in different Member States for orders for preliminary references.

The seminar concludes with a **presentation on current challenges and perspectives** in the development of European Union law in judicial cooperation in civil matters, which has mainly an informative value.

The learning goals of these presentations are:

- to remind the participants of the main rules in the field;
- to review the key elements in the case-law of the CJEU that helps interpret various notions that are not defined in the Regulations but must receive an autonomous meaning across the EU;
- to share good practices for drafting orders for preliminary references.



The linguistic session

The presentations are rounded off with one or two linguistic training sessions focusing on the meaning and use of the most frequently encountered terms in the interaction between courts of different Member States, in an endeavour to help surmount the language barrier in a multilingual Europe.

The sessions comprise a variety of exercises in general legal terminology, civil and civil procedural law, and advanced grammar, morphology and syntax exercises, for example on word formation, irregular verbs, correct use of complex prepositions, Latin phrases, formal expressions and connectors, compound prepositions and adverbs, words belonging to a higher register in English, passive sentences placing emphasis on the result rather than the agent, long and complex phrases.

The warming-up session may begin with a revision of the most frequently used general terms that illustrate the substantive differences between the English and continental legal systems. English legal terminology expresses concepts and institutions that, on one hand, are particular to the common law system, and on the other hand, differ from general English. Some of the exercises are, therefore, designed to break the habit of non-native speakers to ‘adapt’ words from their language which appear to be similar in form to certain words in English, but actually have a completely different meaning and thus are liable to impair communication between judicial authorities.

In order to illustrate the differences between legal English and general English, a whole set of exercises may be utilised to practice the use of terms strictly relating to particular branches of law, court language and the legal profession.

The different designs of the exercises have the objective of improving a particular aspect or developing a particular skill. The ‘matching’, ‘multiple choice’, ‘word formation’, ‘gap fill’ and ‘reading’ exercises are aimed at enriching the speakers’ vocabulary or at activating the passive vocabulary. Exercises dealing with particles, modal verbs or other grammatical structures are designed to improve the speakers’ fluency in English. Other exercises are meant to help speakers use their language skills (including the new terms and structures acquired) in situational (work related) contexts.



The workshops

For the workshops (one focused on the Regulations and the other on drafting an order for a preliminary reference to the CJEU), the participants are distributed in mixed nationality groups, each of them forming a national “court”. The number of actual participants from each country participating in the Project may not be the same, but it is important that each group have at least one participant of the nationality of the designated “court”, in view of the fact that one of the tasks is to explain the national procedure applicable.

These 4-6 “courts” (depending on the number of participants) are paired by two in the sense that every two “courts” will deal with a different scenario² involving the same parties. At the beginning of the afternoon each court receives a case file and a sheet of tasks they need to work on that afternoon and also a list of tasks for the oral presentation of the results taking place the following morning. The cases are drafted by the Romanian experts and finalised with the help of the comments from the other experts taking part in the Project. The input of all the experts is essential in order to make the cases as close to each national reality as possible. One of the tasks is invariably to serve documents to one or both of the parties in the case, thus focusing on acquiring and developing abilities to use on-line resources which are of the essence of communication on such proceedings, the Judicial Atlas in Civil Matters and the e-Justice Portal. One workshop is entirely dedicated to drafting an order for a preliminary reference. After the presentation of a model for drafting a reference that is based on the guidelines issued by the CJEU and a short session of discussions on the most important issues surrounding this topic, the participants work in groups in the same manner as before. The preliminary questions are built around the cases already discussed or on new cases, the latter option allowing for more freedom as to the identification of potential problems of interpretation of the Regulations that would warrant a preliminary reference. A similar session of presentation of results takes place in the morning of the third and final day of the seminar, rounded off with a last session on legal English.

² See Annex no. 2



The “courts” work in separate rooms and have access to a laptop connected to the internet for any searches they might find necessary and to a printer.

The participants’ interactions are guided and moderated by the trainers, ideally each for their own jurisdiction corresponding to the location of the “court”. The idea behind the workshops is to let the participants work alone as much as possible and to intervene only if they depart from the correct application of the law in a way that could not be interpreted as a legitimate legal opinion.

Spokespersons from each “court” present the results of the work during the morning of the second day, in a succession that allows the reconstruction of the whole chain of events and walks the participants through various stages of a case in this field. The conclusions drawn by the trainers after this session of presentation of results and debates conclude the first phase of the seminar.

5.2. Commercial law³

The presentations

The presentations in the first part of the day are used to set the scene for the practical exercises which take place in the afternoon.

Presentation of Regulation (EU) No. 1215/2012 on jurisdiction and recognition and enforcement of judgments in civil and commercial matters focused on the main aspects of the new regime of the recast Brussels I, mainly: autonomous definition of judgments according to the CJEU’s jurisprudence; new jurisdiction rule in claims regarding recovery of cultural objects; extension of jurisdiction rules protecting weaker parties to disputes involving third States defendants; formal provision to the separability of the choice-of-court agreement from the contract in which it is contained; new obligation to inform protected parties to insurance, consumer, employment contracts of their right to contest the courts’ jurisdiction and of the consequences of entering an appearance without challenge; the adaptation of prior tempore *lis pendens* rule to cases where the

³ For the template agenda see Annex no. 1.2.



court was seized in breach of an exclusive choice-of-court agreement (prevention of the so-called “*Italian torpedo*”); discretionary *lis pendens* and related actions – rules concerning third States litigation; abolition of *exequatur*; the application for refusal of recognition issued by the interested party.

Regulation (EC) No. 1346/2000 on cross-border insolvency was presented from a comparative perspective with the recast version, Regulation (EU) No. 2015/848. An important part of the presentation is allocated to the CJEU’s case law criteria of determination of the centre of main interest of the debtor (COMI). The applicable law and the recognition and the enforcement of judgements are also discussed by reference to national and international case law.

Presentation of Regulation (EC) No.805/2004 (European enforcement order for uncontested claims) focused on the advantages of the certificate which enables judgments, court settlements and authentic instruments on uncontested claims to be recognized and enforced automatically in another Member State, without any intermediate proceedings.

The presentation of Regulation (EC) No. 1896/2006 European order for payment procedure insisted on the practical way of using the standard forms in order to make this procedure more accessible and efficient.

The seminar concludes with a **presentation on current challenges and perspectives** in the development of European Union law in judicial cooperation in civil matters, which has mainly an informative value.

A first topic of this presentation is the new Regulation (EU) No. 655/2014 establishing an European Account Preservation Order. The presentation has the purpose to make the participants more familiar with this new instrument, which is given to the creditor as an alternative to procedures existing under national law. It is argued that it would allow creditors to preserve funds in bank accounts under the same conditions in all Member States of the EU (except the UK and Denmark where the new EU rules will not apply) and, most importantly, there would be no change to the national systems for preserving funds. The main features of the new procedure, which is an interim protection procedure, are also presented.

A second topic is the new regime of the cross-border insolvency procedures under Regulation 848/2015. The main aspects of the recast version are discussed, including: extension of scope of the regulation to cover hybrid and pre-insolvency proceedings; codification of determination of



centre of main interests for the opening of main insolvency proceedings; the fact that secondary proceedings where a company has an establishment will no longer be limited to liquidation proceedings; the definition of “establishment” was amended; the fact that the insolvency practitioner in the main proceedings is now expressly permitted to provide undertakings to treat local creditors as they would be treated under secondary proceedings; closely linked actions; registers of insolvency proceedings and Group Companies – the framework of cooperation across the group.

The learning goals of these presentations are:

- to remind the participants of the main rules in the field;
- to review the key elements in the case-law of the CJEU that helps interpret various notions that are not defined in the Regulations but must receive an autonomous meaning across the EU;
- to reveal the main difficulties for the national judges in the application and the interpretation of this legal instruments.

The linguistic session

The presentations are rounded off with one or two linguistic training sessions focusing on the meaning and use of the most frequently encountered terms in the interaction between courts of different Member States, in an endeavour to help surmount the language barrier in a multilingual Europe (*for a detailed presentation of the concept, see the explanations from the Family law*).

The workshops

For the workshops (one focused on Regulation Brussels I and the other on Regulation (EC) No. 1346/2000), the participants are distributed in 3 mixed nationality groups, each of them forming a national “court”. The number of actual participants from each country participating in the Project may not be the same, but it is important that each group have at least one participant of the nationality of the designated “court”.



For the workshop on Regulation Brussels I, three different case studies⁴ are designed, dealing with different aspects: the scope of application of the Regulation, jurisdiction and applicable law in contractual matters and in matters of tort, grounds for refusal of recognition and enforcement. These 3 “courts” deal with a different scenario according to the 3 case studies.

For the workshop on Regulation (EC) No. 1346/2000 a single case study is designed, but with different tasks for each group: Group 1 – Jurisdiction; Group 2- Applicable law; Group 3- Procedural aspects.

At the beginning of the afternoon each court receives a case file and a sheet of tasks they need to work on that afternoon and also a list of tasks for the oral presentation of the results taking place the following morning. The cases are drafted by the Romanian experts and finalised with the help of the comments from the other experts taking part in the Project. The input of all the experts is essential in order to make the cases as close to each national reality as possible.

The “courts” work in separate rooms and have access to a laptop connected to the internet for any searches they might find necessary and to a printer.

The participants’ interactions are guided and moderated by the trainers. The idea behind the workshops is to let the participants work alone as much as possible and to intervene only if they depart from the correct application of the law in a way that could not be interpreted as a legitimate legal opinion.

Spokespersons from each “court” present the results of the work during the morning of the second day, in a succession that allows the reconstruction of the whole chain of events and walks the participants through various stages of a case in this field. The conclusions drawn by the trainers after this session of presentation of results and debates conclude the first phase of the seminar.

⁴ See Annex no. 3



6. Description of the final conference⁵

National experiences in applying EU instruments of cooperation in family law

The scope of the conference is to offer an interactive presentation of the national experiences in the practical application of the relevant Regulations in the field of family matters, namely, Regulation (EC) No. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility and Regulation (EC) No. 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

The contribution of the experts from the Member States will offer a basis for an interactive discussion for all the participants sharing their experience in the field of family matters.

The practical cases presented by the experts will introduce some of the problems frequently encountered in the daily practice of the judges from States involved in the project, such as, the interpretation of the provisions of Article 6 of the Regulation no. 2201/2003 establishing the exclusive nature of jurisdiction under Art. 3, 4, 5, the practical elements to establish the habitual residence of the spouses in a divorce case involving a cross-border element and the challenges of establishing jurisdiction of the court in a distinct manner for each matter/complaint of the case. Additionally, other cases involving maintenance obligation might be presented to the participants in order to offer an overview of the challenges encountered by a national judges when dealing with such cases.

The participants will be encouraged to express their opinion and to share their national perspective and experience in this field in order to nurture an interactive dialogue between European judges.

⁵ For the template agenda, see Annex no. 1.3



Regulation 1215/2012. New trends and key changes

This panel includes a number of experts from the different Member States involved in the project.

This presentation does not aim to repeat the presentation from the former seminars. Its aim is rather to challenge the participants to introduce as discussion topics three of the most debated aspects during the process of recasting Brussels I: the anti-suit injunctions; consumer protection and provisional matters.

The panel is designed to be an interactive one, moderated by an expert whose role is to create opportunities for the other speakers from the panel to intervene on the topic presented by the other two. The participants are encouraged to express their opinion from the national perspective. The recent case law of CJEU on these topics and its evolution in the future ought to be discussed in the new framework of the recast version of Regulation Brussels I.

Challenges of EU instruments of civil and commercial cooperation in practice

This panel is designed to bring the input of the participants to the project (5-10 minute presentation of current challenges by judges from partner countries followed by a summing up by a trainer).

The panel is to be moderated by an expert, who has the role to create the connections between the different members of the panels and to give consistency to this session. The judges may present an example of how the training sessions of the project they attended is applicable in the daily activity of a national judge and to offer an overall view on how the project succeeded in reaching its goals. They may choose to present concrete cases where they first encountered problems of cross-border insolvency, or where they interacted with the CJEU, or the influence that a particular case had on their national procedure etc.



Looking to the future – Current challenges and perspectives in development of the European Union law in family matters

The topics to be approached during this panel are related to the future reform of the Brussels IIa Regulation and to the two relevant proposals made in the field of matrimonial matters, namely, the proposed regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (“matrimonial regimes”) and the proposal for a regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships (“registered partnerships”).

Each of the experts involved in the project presents to the audience the main aspects of the future reforms in the field of family matters inviting the participants to comment on the necessity, relevance and the improvements foreseen.

Looking to the future – Current challenges and perspectives in development of the European Union law in insolvency matters

This panel includes a number of experts from the different Member States involved in the project. This presentation does not aim to repeat the presentation of Regulation (EU) No. 2015/848 from the former seminars.

It may include a short introduction made by the moderator about the main changes in the new regime.

However, its main purpose ought to be an analysis of how the former Regulation worked in practice and how things can be improved in the current regime. This presentation may include concrete examples.



National experiences regarding the request for a preliminary ruling

This session starts with a brief introduction of the key procedural aspects of the preliminary ruling request in order to set the scene for the practical exercises proposed in the field of family matters and commercial matters.

The scope of this panel is to invite all the participants to share good practices from their national experience in drafting orders for preliminary references to the CJEU.

The practical dimension of this session is assured by the case-studies which will be distributed to the participants (2 in connection with each field⁶) underlying the challenges encountered by the national judges when deciding whether or not to request a preliminary ruling on behalf of CJEU. This approach will offer the possibility to the participants to be actively involved in this activity. The Romanian template of the procedural document to be drafted by the national courts when asking a preliminary question will be presented to the audience. Additionally, other templates used at domestic level by the participants in this project might be presented. The structure and the main differences between the Romanian and other national templates will be commented by the participants from the other countries from a comparative perspective.

Launching of the theme files and conclusions

In this section, the theme files are introduced step by step to the participants.

Each of the coordinator makes a practical demonstration of the main facilities of this electronic tool underlying the important advantages for the daily work of a judge dealing with a cross-border case in family matters or in insolvency matters.

The presentation aims at introducing the logical steps to be followed in each particular type of claims, the tree structure of the information based on the procedural stages of a case in the Romanian civil procedure.

⁶ See Annex no. 4



Also, the sections of the files containing the national and European legislation, the national and EU case law in these fields and the practical cases included in the theme files will be presented to the audience.

The participants are encouraged to give feedback on the structure of the theme files. The session might be used as an opportunity to test whether or not the theme files have a user friendly structure, and if the judges find the information presented in such format useful in their daily practice. The coordinators will ask the participants to submit any observations, comments and suggestions for the improvement of the content of the theme files.



Annex no. 1.1 - Template Agenda for family matters

DAY 1

9:00 – 9:15	Welcome speech
9:15 – 10:00	Presentation of Regulation 1393/2007 (service of documents) and of the Judicial Atlas
10:00 – 11:00	Presentation of Regulation 2201/2003 (matrimonial)
11:00 – 11:30	Coffee break
11:30 – 13:30	Cooperating on the basis of EU Regulations in multiple languages: session on legal English
13:30 – 14:30	Lunch
14:30 – 15:30	Presentation of Regulation 1259/2010 (applicable law)
15:30 – 15:45	Coffee break
15:45 – 17:00	Workshops - division in as many groups as participating States, each with a task within the scope of application of the above Regulations

DAY 2

9:00 - 11:00	Presentations of spokespersons from each group Conclusions – drawing up the case from the beginning to the end, according to the findings of the groups. Additional questions
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11:00 - 11:30	Coffee break
11:30 - 13:00	Presentation of Regulation 4/2009 (maintenance)
13:00 – 14:00	Lunch
14:00 – 14:45	Preliminary references to the CJEU – setting the scene
14:45 – 17:00	Workshops - division in as many groups as participating States, each with a task within the scope of application of the above Regulation – main focus: drafting the plan of a preliminary reference

DAY 3

9:00 – 11:00	Presentations of spokespersons from each group Conclusions. Additional questions
11:00 – 11:30	Coffee break
11:30 – 12:30	Cooperating on the basis of EU Regulations in multiple languages: session on legal English
12:30 – 13:15	Current challenges and perspectives in development of the European Union law in civil matters
13:15 – 14:15	Lunch



Annex no. 1. 2 - Template Agenda for commercial matters

DAY 1

9:00 – 9:30	Welcome speech and presentation of the participants
9:30 -11:00	Cooperating on the basis of EU Regulations in multiple languages: session on legal English
11:00 - 11:15	Coffee break
11:15 – 12:45	Presentation of Regulation 1215/2012 on jurisdiction and recognition and enforcement of judgments in civil and commercial matters
12:45-14:00	Lunch
14:00 – 15:30	Workshops - division in as many groups as participating States, each with a task regarding jurisdiction and recognition and enforcement of judgments in civil and commercial matters
15:30 – 15:45	Coffee break
15:45 – 17:00	Conclusions of the first workshop

DAY 2

9:00 - 10:00	Presentation of Regulation 805/2004 European enforcement order for uncontested claims Presentation of Regulation 1896/2006 European order for payment procedure
10:00 - 11:00	Cooperating on the basis of EU Regulations in multiple languages: session on legal English



11:00 - 11:30	Coffee break
11:30 – 13:00	Presentation of Regulation 1346/2000 on cross-border insolvency
13:00 – 14:00	Lunch
14:00 – 15:30	Workshops - division in as many groups as participating States, each with a task within the scope of application of Regulation 1346/2000
15:30 – 15:45	Coffee break
15:45 – 17:00	Workshops on application of Regulation 1346/2000 – continuation

DAY 3

9:00 – 11:00	Presentations of spokespersons from each group Conclusions. Additional questions
11:00-11:30	Coffee break
11:30-13:00	Current challenges and perspectives in development of the European Union law in commercial matters
13:00 – 14:00	Lunch



Annex no. 1. 3 - Template Agenda for final conference

DAY 1

9:00 – 9:15 Registration of participants

Welcome speech

9:15 – 9:30 Presentation of the general framework of the Project, methodology in implementation

Panel I

9:30 – 11:00 National experiences in applying EU instruments of cooperation in family law

11:00 – 11:30 Coffee break

Panel II

11:30 – 13:00 Regulation 1215/2012. New trends and key changes

13:00 – 14:00 Lunch break

14:00 – 15:00 Challenges of EU instruments of civil and commercial cooperation in practice. The input of the participants to the project (5-10 minute presentation of current challenges by judges from partner countries followed by a summing up by a trainer)

15:00 – 15:30 Coffee break

15:30 – 16:30 Looking to the future – Current challenges and perspectives in development of the European Union law in family matters

DAY 2



9:30 – 11:00 National experiences regarding the request for a preliminary ruling

11:00 – 11:30 Coffee break

11:30 – 13:00 Looking to the future – Current challenges and perspectives in development of the European Union law in insolvency matters

13:00 – 14:00 Launching of the theme files and conclusions

14:00 Lunch



Annex no. 2 - Practical cases in family matters

Workshop no.1

First Instance Court

11 July 2014

2 Vitosha Blvd.,

Sofia 1000, Bulgaria

MR. PRESIDENT OF THE COURT,

I, the undersigned, **Hristo Petrov**, Bulgarian citizen, domiciled in Sofia, Ulitsa "Knyaz Boris I" 7, 1463, Bulgaria, I hereby petition the court against the defendants:

1. **Iordan Petrov**, Romanian and Bulgarian citizen, domiciled in Romania, Bucharest, sector 5, Calea 13 Septembrie no. 97, Bl. 93, ap. 7, zip code 050715
2. **Elena Ionescu**, Romania citizen, domiciled in Romania, Bucharest, Bulevard Bd. Regina Elisabeta, nr. 53, sector 5, zip code 050014, and respectfully ask the court to establish the following:

1. that I am not the father of the first defendant, **Iordan Petrov** (as I am contesting the paternity of this defendant)
2. to state that I am entitled to receive maintenance from the second defendant, **Elena Ionescu**, (maintenance between former spouses)

Facts:

After the chute of the communist regime in Bulgaria, I was looking to a better life and I decided to take advantage of my skills as a specialized engineer and to work abroad. In 1990, I started working for a local firm in Giurgiu, Romania.

On that occasion, I met **Elena Ionescu**, a Romanian citizen. As our relationship was very good and we both shared the wish to found a family we moved together. After a while, on 10 of



April 1991, my partner gave birth to a boy. As I was convinced that he was my son, I recognized Jordan as my child. In this respect, I was registered in the birth certificate issued by the Romanian competent authorities as being the father of that child.

After two years, I was transferred by my company in Sofia at a local branch of the company. Our family moved and established in Sofia and Elena and I got married in Sofia – Bulgaria in 1993.

Nevertheless, as I was travelling a lot for my job, our relationship began to deteriorate. After some time, the misunderstanding between us reached a point where living together became impossible and we decided to separate for a while.

As all our attempts for reconciliation failed, on 23 November 2013 we divorced and the Bulgarian Court dissolved the marriage due to the common fault of the spouses.

In all this time, I had a very closed relationship with Jordan Petrov, my son who moved with his mother in Romania, in Bucharest were they are living. I regularly transferred him money, around 500 Euros per month as maintenance, until some months ago.

In spring 2014, I found out that one of my friends, Aleksandar Manolov had for many years a close relationship with my former wife, Elena Ionescu. Based on the testimony of Aleksandar Manolov and some letters written by Elena Ionescu Petrov, in which she explicitly acknowledge that she lied to me when she told me that I am the father of Jordan, I have strong reasons to believe that he is not my son.

For all these reasons, I respectfully ask the Court to grant my first claim that I am not the father of Jordan Petrov.

Secondly, I ask the court to state that all the relevant national provisions for awarding maintenance from my former wife, Elena Ionescu, are fulfilled in this case.

Law

Based on the provisions of Bulgarian Civil Code, Code of Civil Procedure, Regulation no. 4/2009.



Evidence

Evidence – documents, witnesses, interrogation of the defendants, DNA expert opinion.

I hereby respectfully ask the court to award my application as mentioned before.

Respectfully yours,

Hristo Petrov



First Instance Court of the 5th District of Bucharest

16 September 2014

Romania

Strada Splaiul Independentei, nr. 5, sector 4 Bucuresti

MR. PRESIDENT OF THE COURT,

I, the undersigned, **Iordan Petrov**, Romanian and Bulgarian citizen, domiciled in Romania, Bucharest, sector 5, Calea 13 Septembrie no. 97, Bl. 93, ap. 7, zip code 050715 I hereby petition the court against the defendant **Hristo Petrov**, Bulgarian citizen, domiciled in Sofia, Ulitsa "Knyaz Boris I" 7, 1463, Bulgaria and respectfully ask the court to establish a

MAINTENANCE OBLIGATION

Facts:

I was born on 10 of April 1991 in Giurgiu, Romania, where my mother, Elena Ionescu, a Romanian citizen, lived at that time. My father, Hristo Petrov – a Bulgarian citizen, worked at that time as an engineer in Romania. He recognized me as his child and he was registered as my father in my birth certificate issued by the Romanian competent authorities.

After two years, my parents got married in Sofia – Bulgaria, where my father was transferred by his company. Nevertheless, as my father travelled a lot, my parents separated few years after their marriage.

In 2011, I lived in London for 4 months, where I studied in order to pass the entrance exams at Queen Mary University. Pursuant a settlement sanctioned by court, my father was under the obligation to pay 500 euro/month maintenance until my 21st birthday.

My parents finally divorced in 2013 and the Bulgarian Court which decided my parents' divorce did not establish any maintenance obligation to be paid for myself as I was 22 years old at the time.



Recently, I was accepted as a student at the Law Faculty of this prestigious University. Nevertheless, the living and tuitions costs in this country are consistent. My father promised me that he will continue to support me as I was in need. He regularly transferred me money after my 21st birthday, around 500 Euros per month.

Nevertheless, four months ago he suddenly stopped any payments and refused to talk to me, rejected my phone calls and did not answer my e-mails. I must underline the fact that we used to have a very close relationship; we were in touch using modern means of communication, he visited me in spring and we were planning to spend Christmas holydays together in Romania.

My situation is very critical today as I do not have financial means to support myself and to pay my university fees, not even for the second term, which will begin in January 2015. My mother, who continues to work and live in Romania, contributes financially as well, but it is not enough by far.

Law

Based on the provisions of Regulation no. 4/2009 and of the Romanian Civil Code – Article 499 paragraph 3, and based on other relevant legislation, I kindly ask the Court to order the defendant to pay a monthly amount up to $\frac{1}{4}$ of my father income as maintenance obligation.

Evidence

Evidence – documents (among which a request of information from the Bulgarian company where my father works) witnesses, interrogation of the defendant.

I hereby respectfully ask the court to award my application as mentioned before.

Respectfully yours,

Jordan Petrov



Workshop no.1

TRIBUNALE DI ROMA

Ricorso ex artt. 337 quinquies c.c. e 4, 2° comma, l. 54/2006

On behalf of

ANTONIO CAMPESE, born on 4 June 1974, in Rome, Italy, domiciled for the purposes of this case at the offices of Avv. Mario Rossi, corso Garibaldi, n. 1, Roma, who is also instructed to represent him on the terms of the special power of attorney hereby attached;

Claimant

versus

ADRIANNA Lima born on 2 September 1980, in Madrid, Spain, Spanish citizen, domiciled in Rua da Bouza , 4 , 3, 27002- LUGO, Spain

Defendant

Whereas

Ms. Adrianna Lima married Mr. Antonio Campese on 31 of December 2003.

The spouses lived in Rome, Italy and two children were born there:

- Roberto, in 2007, the 28th of February
- Sandrine, in 2009, the 8th of August

By the time their second child was born, their misunderstandings reached a point where living together became impossible so the spouses legally separated in January 2010.

By judgment delivered on 21 April 2013, the Tribunale di Roma dissolved the marriage upon mutual agreement of the two spouses, who also agreed before the court on the measures concerning the children:

- Joined parental responsibility for both children;
- Residence of the children with the mother, in Rome, in the family apartment;



- Rights of access for the father, once every two weekends, and an equal division of the time spent during the parents' holidays;
- No spousal support;
- Child maintenance to be paid monthly by the father.

During their legal separation and after the divorce, Ms. Lima continued to live with the children in their family home in Rome. Occasionally, she spent periods of time at her parents' home in Lugo, taking the children with her, with the consent of the defendant. In the meantime, Ms. Lima communicated to the plaintiff that she started actively to look for employment in Lugo, with good prospects, and that she considers moving permanently to Spain, together with the children. The longest period of time that she spent in Spain together with the children is since the end of June 2013 to the present time. Thus, at the end of June 2013 she collected all her belongings and the children's from the apartment in Rome where she had lived so far.

Since that time (June 2013), access of the plaintiff to his children has been significantly reduced. Despite his repeated pleadings, the defendant has not allowed the children to visit their father and their family in Italy, to whom they are very close. At first she agreed to their travelling to Italy, but kept postponing the trip for various reasons and in the end, she refused to send them over claiming that they would not like to be separated from her at such a great distance. In addition, each of the four times that the plaintiff travelled to Lugo to visit his children, she refused to allow them to spend time alone with him and was present every time.

Taken into account that in all this time she has not yet secured employment in Spain and still lives in her parents' house together with the children, and that from her conversations with the plaintiff it is not clear yet whether she will remain or not in Spain, Mr. Antonio Campese requests you to decide a modification of the measures taken in the dissolution of marriage judgment, which do not fit any longer the present situation or the best interests of his two children.

Requests

That the Tribunale di Roma orders a change in the rights of access over the children Roberto and Sandrine so that both children will visit their father without supervision one weekend per month, the whole Christmas and Easter holidays, alternating yearly, and half of the summer holidays.



The following documents are produced in evidence:

- copy of the marriage certificate
- copy of birth certificates of children Roberto and Sandrine
- decision for the dissolution of marriage

Roma, 1 November 2013

Signature: Antonio Campese



REQUEST FOR A CHANGE REGARDING A CHANGE IN THE RESIDENCE OF A CHILD and CHILD MAINTENANCE

TO MR OR MRS FAMILY LAW JUDGE IN THE COURT OF KRAKOW

Ms. Adrianna Lima, born in 1980, 2 September, in Madrid Spain, Spanish national, business assistant, domiciled at Rua da Bouza , 4 , 3, 27002- LUGO

IS HONOURED TO PRESENT THE FOLLOWING

Facts:

Ms. Adrianna Lima got married with Mr. Antonio Campese, an Italian citizen, in 2003, the 31 December.

The spouses lived in Rome, Italy and two children were born there:

- Roberto, in 2007, the 28th of February
- Sandrine, in 2009, the 8th of August

By the time their second child was born, their misunderstandings reached a point where living together became impossible so the spouses legally separated in January 2010.

By judgment delivered on 21 April 2013, the Tribunale di Roma dissolved the marriage upon mutual agreement of the two spouses, who also agreed before the court on the measures concerning the children:

- Joined parental responsibility for both children;
- Residence of the children with the mother, in Rome, in the family apartment;
- Rights of access for the father, once every two weekends, and an equal division of the time spent during the parents' holidays;
- No spousal support;
- Child maintenance to be paid monthly by the father.



During their legal separation and after the divorce, Ms. Lima continued to live with the children in their family home. Occasionally, she spent periods of time at her parents' home in Lugo - Spain, taking the children with her, with the consent of the defendant. In the meantime, Ms. Lima started actively to look for employment in Lugo with good prospects and, having decided to leave Italy permanently, finalised her moving out of the family home to her parents' house in Lugo at the end of June 2013, together with the children, with the consent of the defendant.

Despite Ms. Lima's repeated pleas, the defendant refused to increase his contribution for the children's needs at a time when the move to a new country and their age demands increased expenses. The children have now reached ages where various development opportunities are open to them.

Considering this set of new elements, Ms. Adrianna Lima requests you to decide a change in the measures taken in the divorce's judgment, which do not correspond anymore to the present needs of her two children.

FOR THESE REASONS

The applicant asks the family law judge to

Be so kind as

- To call Mr Antonio Campese at the following address

-----Salita di Castel Giubileo, 00138, Rome, Italy -----

In order that he appears in court, to be heard on the current request for the court:

- To order a change in the residence of the children to Rua da Bouza , 4 , 3
- 27002- LUGO, Spain
- To order an increase of the monthly amount paid by the defendant as child support;
- To decide that the fees and expenses of the current procedure will be taken in charge by the defendant Mr. Antonio Campese.

Lugo, 25 November 2013

Signature: Adrianna Lima



Tasks for the courts

“BULGARIAN COURT”

The Honourable members of the court are:

Judges:

Tasks for Workshop 1:

Day 1, afternoon session (workshop):

1. Please serve the necessary documents to respondents Elena Ionescu and Iordan Petrov according to Regulation 1393/2007.
2. Determine whether your court has jurisdiction to hear the case. Make a decision regarding the relevance of the civil complaint of *Iordan Petrov vs Hristo Petrov* filed before the Romanian Court.
3. Write the procedural act whereby you decide whether you establish your jurisdiction (Bulgarian participant kindly asked to provide national specificities)
4. If you establish jurisdiction, what are the rules by which you decide which is the applicable law to the case?

Day 2, morning session (workshop results):

1. Please choose a spokesperson to summarise *in plenum* the facts of the case for the benefit of the others and to walk the audience through the process of serving documents according to Regulation 1393/2007.
2. Choose another member of your court to describe the process of establishing or not jurisdiction on the matter.
3. The Bulgarian participant is kindly asked to present, if any, the particularities of the Bulgarian procedural act whereby the decision on jurisdiction was made.
4. Please choose another member of the court to explain your reasoning concerning the applicable law.



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Specific Programme Civil Justice
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Please save your work on the laptop that is provided for your group.



“ROMANIAN COURT”

The Honourable members of the court are:

Judges:

Tasks for Workshop 1:

Day 1, afternoon session (workshop):

1. Please serve the necessary documents to respondent Hristo Petrov according to Regulation 1393/2007.
2. Determine whether your court has jurisdiction to hear the case.
3. Write the procedural act whereby you decide whether you establish or not jurisdiction (Romanian participant kindly asked to provide national specificities).
4. If Iordan Petrov produces a certificate from the Bulgarian court whereby the latter dismissed his father’s contesting paternity, please decide over jurisdiction and applicable law.

Day 2, morning session (workshop results):

1. Please present the annex filled in at point 1 above.
2. Please choose a spokesperson to summarise *in plenum* the facts of the case for the benefit of the others and to walk the audience through the process of serving documents according to Regulation 1393/2007.
3. Choose another member of your court to describe the process of establishing or not jurisdiction on the matter.
4. A Romanian participant is kindly asked to present, if any, the particularities of the Romanian procedural act whereby the decision on jurisdiction was made.
5. Please choose another member of the court to explain your reasoning regarding jurisdiction and applicable law in the event described at point 5 above.

Please save your work on the laptop that is provided for your group.



“Spanish COURT”

The Honourable members of the court are:

Judges:

Clerk:

Tasks for Workshop 1:

Day 1, afternoon sessions (workshop):

1. Please serve the necessary documents to respondent Antonio Campese according to Regulation 1393/2007.
2. Determine whether your court is competent to hear the case.
3. Write the procedural act whereby you decide whether you establish your competence (Spanish participant kindly asked to provide national specificities)
4. If you establish jurisdiction, what are the rules by which you decide which is the applicable law to the case?

Day 2, morning sessions (workshop results):

1. Please choose a spokesperson to summarise *in plenum* the facts of the case for the benefit of the others and to walk the audience through the process of serving documents according to Regulation 1393/2007.
2. Choose another member of your court to present the reasoning of the decision to establish or not jurisdiction on the matter, including possible relevant judgments of the CJEU.
3. The Spanish participant is kindly asked to present the procedural act whereby a decision on jurisdiction was made and explain the particularities of Spanish procedure.
4. Please choose another member of the court to explain your reasoning concerning the applicable law.

Please save your work on the laptop that is provided for your group.

“ITALIAN COURT”



The Honourable members of the court are:

Judges:

Tasks for Workshop 1:

Day 1, afternoon session (workshop):

1. Please serve the necessary documents to respondent Adrianna Lima according to Regulation 1393/2007.
2. Determine whether your court has jurisdiction to hear the case.
3. Write the procedural act whereby you decide whether you establish your competence (Italian participant kindly asked to provide national specificities)
4. If you establish jurisdiction, what are the rules by which you decide which is the applicable law to the case?
5. If you establish jurisdiction, issue a certificate concerning the plaintiff's rights of access.

Day 2, morning session (workshop results):

1. Please choose a spokesperson to summarise *in plenum* the facts of the case for the benefit of the others and to walk the audience through the process of serving documents according to Regulation 1393/2007.
2. Choose another member of the Italian court to describe the process of establishing or not jurisdiction on the matter.
3. The Italian participant is kindly asked to present, if any, the particularities of the Italian procedural act whereby the decision on competence was made.
4. Please choose another member of the court to explain your reasoning concerning the applicable law.
5. Please present the certificate concerning the plaintiff's rights of access.

Please save your work on the laptop that is provided for your group.



Workshop 2 – Preliminary ruling

CASE STUDY 1

You are a court legally seized by RN, Bulgarian citizen, 15.03.2013, with a request to give the plaintiff rights of sole custody over CN, a minor, and to order a visitation schedule for the defendant AN only in the presence of the plaintiff.

In her petition, the plaintiff showed in essence that the minor was born on 4.12.2012 in Oxford, England, pursuant her relationship with the defendant, a British citizen. During the pregnancy, it became clear that the relationship had irreparably deteriorated, so much so that as soon as she recovered after childbirth, she left their common residence together with their newborn and went to live with a female friend. When the little girl was able to travel, the plaintiff left England and returned home in Bulgaria with her.

Absent an understanding with the minor's father, the plaintiff seeks an order of the court to determine parental rights, including a visitation schedule.

In his counterclaim filed on 10.06.2013, the defendant indicates in essence that after their daughter's birth, the plaintiff's behaviour changed, culminating with an attitude of absolute rejection of him and of the baby. Not being able to reach an understanding with the plaintiff, the defendant asks for the court to make a determination over parental rights in his favour, and to set a visitation schedule for the plaintiff in the presence of a social worker. In the end of his counterclaim, the defendant states that he actually would like to present his request before a British court, as he does not wish to argue them before the present court, which he considers lacks jurisdiction, because his daughter is a British citizen and was born in the UK.

You are the court legally seized with the above case and you need to decide whether you have jurisdiction.

The plaintiff asks you to send a preliminary reference to the CJEU with the following question:

“Which are the criteria to determine the habitual residence of the child under Article 8 paragraph (1) of Regulation (EC) 2201/2003, especially in the case of a very small child?”

Tasks:



1. Please decide whether you will send the reference to the CJEU. If you agree with its substance, you may reformulate it if you deem appropriate.

2. Please draft the plan of your procedural act whereby you grant or refuse this request.

Workshop 2

CASE STUDY 2

Jorge and Maria, Spanish citizens, a married couple, have one child, Nicholas, born on 27 November 2006 in Madrid, Spain.

From March 2010, Jorge found a very good job in Constanța, Romania, and left his family behind, with the understanding that as soon as he made the appropriate arrangements he would bring them over. However, the difficulties of this situation put a heavy burden on an already strained relationship and, after two months, only Nicholas visited his father in Romania. Maria continued to live and work in Madrid and, for a while, she got along with her partner about a visitation schedule with respect to their son, whereby Nicholas would spend every other month with his father. It happens quite often that the child spends more than one month continuously with his father, with the consent of his mother. While he is with him, Jorge enrolls him on different activities for small children. In the spring of 2013, he enjoys so much his time in day care that his mother agrees to let him stay until the beginning of summer.

During the summer of 2013, Maria joins her partner and her son for a vacation at the Black Sea. The parents have intense discussions about the future of the child who, for the time being, stayed with his father in Romania.

On 24 September 2013, Maria seized the competent court in Madrid, Spain, asking for divorce, full custody of the child and maintenance. She argued that Nicholas should be raised in his home country, has difficulties learning Romanian and agreed to stay in Romania only to please his father.

Finding out from a friend that his wife instituted proceedings against him, on 29 September 2013, Jorge made a separate application to the same court in Madrid, asking for divorce and full custody of the child. At the same time, he made a similar application to the competent court in Constanța. He declared that he had registered Nicholas for school in Constanța in that autumn,



had brought his mother over to live with them and help with the care of his son, and made other arrangements for his social integration.

You are the Spanish court.

Jorge argues in court that he recognizes the jurisdiction of the Spanish court on divorce, but he opposes its jurisdiction regarding parental responsibility on the grounds that he actually did not accept expressly “or otherwise in an unequivocal manner” its jurisdiction. He filed his counterclaim with the Spanish court only to make sure that he will not miss out on procedural delays, but he thinks it is in the best interest of the child that the Romanian court has jurisdiction regarding parental responsibility, which is proven by his filing his application with the Romanian courts in the same day.

Tasks:

- 1. Please decide whether you think a reference to the CJEU is necessary for you to decide over the matter.**
- 2. Please draft the plan of your procedural act whereby you explain why you made your decision.**

Potential question: the interpretation of “otherwise in an unequivocal manner” in art. 12 (1) (b) R2201/2003.

Necessity for the case: the Spanish court has jurisdiction over divorce (both Spanish nationals, art. 3 (1) (b)). The Spanish court’s jurisdiction over custody is dependent upon the fulfilment of two conditions in article 12 (1) (a) and (b). While (a) is fulfilled, (b) is dependent upon the meaning of what is an „unequivocal acceptance of jurisdiction” (and then if it is in the superior interests of the child).

Particularity of the case: same day he files in both countries (of course he had no choice, as she had filed first, so no matter what, this is his only chance to bring the suit in Romania)

Can it be interpreted that he actually did not accept jurisdiction because of that, so (b) is not fulfilled?

Previous jurisprudence C-656/13, L/M, question 2:



56. It follows from the foregoing that the answer to Question 2 is that Article 12(3)(b) of Regulation No 2201/2003 must be interpreted as meaning that it cannot be considered that the jurisdiction of the court seised by one party of proceedings in matters of parental responsibility has been ‘accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings’ within the meaning of that provision where the defendant in those first proceedings subsequently brings a second set of proceedings before the same court and, on taking the first step required of him in the first proceedings, pleads the lack of jurisdiction of that court.



Annex no. 3 - Practical cases in commercial matters

WS1 - Case 1

Mr B. sells luxury watches. In 2005, he concluded a contract with a master watchmaker, Mr F., then resident in France, pursuant to which the latter undertook to develop movements for luxury watches, intended for mass marketing, on behalf of Mr B. Mr F. carried out his activity with F M N, company of which he was sole shareholder and manager. Since 2010, Mr F. has been domiciled in Switzerland.

Mr B. paid all costs relating to the development of the two watch movements which were the subject of the contract.

In addition to the work relating to those two movements, Mr F. and F M N also developed, in parallel, other watch movements, cases and watch faces, which they exhibited in their own names at the world watch show in Basel (Switzerland) during April and May 2009. They marketed them in their own names and on their own behalf, whilst advertising the products online in French and German.

Mr B. submits that, by those activities, the defendants breached the terms of their contract. According to Mr B., Mr F. and F M N had undertaken to work exclusively for him and, therefore, might neither develop nor make use of, in their own names and on their own behalf, watch movements, whether or not identical to those which were the subject of the contract.

Mr B. seeks an order that the activities in question be terminated and that damages be awarded in tort against the other parties to the contract, on the basis, in German law, of the Law against Unfair Competition (Gesetz gegen den unlauteren Wettbewerb) and Paragraph 823(2) of the Civil Code (Bürgerliches Gesetzbuch); he submits that, by their conduct, the defendants breached business confidentiality, disrupted his business and committed fraud and breach of trust.

The defendants submit that the court should dismiss the action. They also submit a counterclaim in which they argue that the disputed calibre movements were, at all events, of a construction different from that which was the subject of the contract and that they were not



covered by any right of exclusivity. The defendants also raise a plea of lack of jurisdiction on the basis that only French courts have jurisdiction, under Article 5(1) of Regulation No 44/2001, to determine all the applications made by Mr B., as both the place of performance of the contract at issue and of the allegedly harmful event were situated in France.

Questions:

1. Does the dispute in the present case falls within the scope of Regulation No 44/2001?
2. Which rules of jurisdiction are applicable? Which courts have jurisdiction?
3. Which law is applicable in the dispute?

WS1 - Case 2

P. AG is an undertaking established in Germany which manufactures and sells bicycles. On 3 November 2007, Mr K., who is resident in Salzburg, purchased a bicycle manufactured by P. AG from F. GmbH, a company established in Austria. On 3 July 2009, while riding that bicycle in Germany, Mr K. suffered a fall and was thereby injured.

Before the Landesgericht Salzburg (Regional Court, Salzburg), on the basis of a claim founded on liability for defective products, Mr K. sought from P. AG the payment of EUR 21 200 plus interest and associated costs, and a declaration of liability on the part of that company for any future damage arising from the accident. According to Mr K., his fall from the bicycle was caused by the fact that the fork ends had detached themselves from the wheel fork. P. AG, as the manufacturer of the product, was, he claimed, liable in respect of that manufacturing defect.

For the purposes of establishing the jurisdiction of the court seised, Mr K. relies on Article 5(3) of Regulation No 44/2001. The place of the event giving rise to the damage is, he claims, located in Austria as the bicycle was brought into circulation there, in the sense that the product was there made available to the end user by way of commercial distribution.

P. AG contests the international jurisdiction of the Austrian courts. The place of the event giving rise to the damage is, in its view, located in Germany. First, the process for the manufacture of the product took place in Germany and, second, the product was brought into circulation in that Member State when it was dispatched from that company's place of business.



1. Does the dispute in the present case falls within the scope of Regulation No 44/2001?
2. Which rules of jurisdiction are applicable?
3. How should be interpreted the “place where the harmful event occurred or may occur” in Article 5(3) of [Regulation No 44/2001]?
4. Which law is applicable in the case?

WS1 - Case 3

By an action pending before the Lithuanian Court of Appeal, FL seeks compensation for damage resulting, first, from the abuse of a dominant position by A B on the market for flights from or to Vilnius Airport (Lithuania) and, second, from an anti-competitive agreement between the co-defendants. To that end, the applicant in the main proceedings applied for provisional and protective measures.

By a judgment of 31 December 2008, the Lithuanian Court of Appeal granted that application and issued an order for sequestration, on a provisional and protective basis, of the moveable and/or immovable assets and property rights of A B and S L R in an amount equivalent to 199 830 000 Lithuanian Litai (LTL) or 40 765 320 Latvian Lats (LVL) (EUR 58 020 666.10).

By a decision of 19 January 2012, the District Court of Vidzeme in the City of Riga, Latvia decided to recognise and enforce that judgment in Latvia, in so far as the recognition and enforcement related to the sequestration of the moveable and/or immovable assets and property rights of A B and S L R. The application by FL for a guarantee of enforcement of that judgment was rejected. On appeal, that decision was confirmed by Civil Division of the Riga Court of Appeal, Latvia.

Appeals were brought against the decision of the Civil Division of the Riga Court of Appeal, Latvia. S L R and A B submit that the recognition and enforcement of the judgment of the Lithuanian Court of Appeal of 31 December 2008 are contrary to both the rules of public international law on immunity from jurisdiction and Regulation No 44/2001. They argue that the present case does not fall within the scope of that regulation. Since the dispute relates to airport charges set by State rules, it does not, they submit, concern a civil or commercial matter within the meaning of that regulation. That judgment should be neither recognised nor enforced in Latvia. It argues, in effect, that a judgment ordering provisional and protective measures may be



recognised on the basis of that regulation only if the case in which those measures have been requested is a civil or commercial matter within the meaning of that regulation.

Additionally, even if the Court would take the view that the dispute in the main proceedings falls within the scope of Regulation No 44/2001, the defendants argue that the question of exclusive jurisdiction will then arise. Article 22(2) of that regulation provides for such a rule of jurisdiction in proceedings which have as their object the validity of the decisions of the organs of companies or other legal persons in favour of the courts of the Member State concerned. The reduction in airport charges is applied by way of decisions taken by organs of commercial companies. Consequently, the jurisdiction of the Lithuanian courts was not correctly established and, as Article 35(1) of Regulation No 44/2001 precludes recognition of judgments if they infringe rules of exclusive jurisdiction, the decision can't be recognised and enforced in Latvia.

On the other hand, they claim that the public-policy clause contained in Article 34(1) of the Regulation is applicable, because, in the present case, the recognition of a judgment adopting provisional and protective measures is contrary to the public policy of a Member State, since, firstly, the principal ground for the adoption of the provisional and protective measures is the considerable size of the amount requested without a well-founded and substantiated calculation having been made. Secondly, the recognition and enforcement of that judgment may cause the defendants damage for which the applicant, a company which is in liquidation, will not be able to provide compensation in the event that the claim for compensation is dismissed, which might affect the economic interests of the State in which recognition is sought, and thereby jeopardise the security of the State, in view of the fact that the Republic of Latvia holds 100% of the shares in SLR and 52.6% of the shares in AB.

Questions:

1. Does the dispute in the present case falls within the scope of Regulation No 44/2001?
2. Which rules of jurisdiction are applicable? Do you consider that the jurisdiction of the Lithuanian courts was correctly established?
3. Is Article 35(1) of Regulation No 44/2001 applicable in the present case? Is the public-policy clause contained in Article 34(1) of the Regulation applicable?



WG 2

S. was constituted in the legal form of a ‘società a responsabilità limitata’ under Italian law and had its registered office in Monopoli (Italy). On 18 July 2001, its registered office was transferred to London (United Kingdom). On the same date, it was removed from the register of companies of the Italian State. Following the transfer of its registered office, S. was registered with the United Kingdom register of companies and entered in the register as an ‘FC’ (Foreign Company).

According to the statements made by S. as set out in the order for reference, at the same time as the transfer of its registered office, it was engaged in transactions which concluded in S. being acquired by the British group Canopus, contracts being negotiated and entered into for the transfer of a business concern. According to S., a few months after the transfer of its registered office, the title to properties which it owned in Taranto (Italy) was transferred to Windowmist Ltd, as part of the assets of the business transferred. S. also stated that it was removed from the United Kingdom register of companies on 22 July 2002.

On 28 October 2003, an Italian creditor filed a petition with the Tribunale di Bari for the opening of bankruptcy (‘fallimento’) proceedings against S..

S. challenged the jurisdiction of that court on the ground that, as a result of the transfer of its registered office to the United Kingdom, only the courts of that Member State had jurisdiction to open insolvency proceedings. On 13 December 2003, S. requested that the Corte suprema di cassazione give a ruling on the preliminary issue of jurisdiction.

On 24 May 2004, without waiving for the decision of the Corte suprema di cassazione and taking the view that the objection alleging that the Italian courts did not have jurisdiction was manifestly unfounded and that it was established that the undertaking in question was insolvent, the Tribunale di Bari ordered that S. be wound up.

On 18 June 2004, S. lodged an appeal against the winding up order before the Corte suprema di cassazione.

On 20 May 2005, the Corte suprema di cassazione adjudicated by way of order on the preliminary issue of jurisdiction referred to it and held that the Italian courts had jurisdiction. It took the view that the presumption in the second sentence of Article 3(1) of the Regulation that the centre of main interests corresponded to the place of the registered office could be rebutted as



a result of various circumstances, namely the presence of immovable property in Italy owned by S., the existence of a lease agreement in respect of two hotel complexes and a contract concluded with a banking institution, and the fact that the Bari register of companies had not been notified of the transfer of S.'s registered office.

Group 1: International jurisdiction. Main proceeding

1) Is the term “the centre of a debtor’s main interests” in Article 3(1) of [the] Regulation ... to be interpreted in accordance with Community law or national law, and, if the former, how is that term to be defined and what are the decisive factors or considerations for the purpose of identifying the “centre of main interests”?

2) Can the presumption laid down in Article 3(1) of [the] Regulation ..., according to which “[i]n the case of a company ... the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary”, be rebutted if it is established that the company carries on genuine business activity in a State other than that in which it has its registered office, or is it necessary, in order for the presumption to be deemed rebutted, to establish that the company has not carried on any business activity in the State in which it has its registered office?

3) If a company has, in a Member State other than that in which it has its registered office, immovable property, a lease agreement concluded by the debtor company with another company in respect of two hotel complexes, and a contract with a banking institution, are these sufficient factors or considerations to rebut the presumption laid down in Article 3(1) of [the] Regulation ... that the place of the company’s “registered office” is the centre of its main interests and are such circumstances sufficient for the company to be regarded as having an “establishment” in that Member State within the meaning of Article 3(2) of [the] Regulation ...?

4) Is the ruling on jurisdiction issued by the Corte [suprema] di cassazione in accordance with the ECJ jurisprudence?

5). If the ruling on jurisdiction by the Corte [suprema] di cassazione in the aforementioned Order ... would be based on an interpretation of Article 3 of [the] Regulation ... which is at variance with that of the Court of Justice ..., how could assure the Tribunal of Bari assure the



application of that provision of Community law, as interpreted by the Court of Justice, since the rulings on jurisdiction by the Corte [suprema] di cassazione are final and binding?’

Group 2: International jurisdiction. Secondary proceeding

1) A day before the opening of the procedure by the Tribunal of Bari, S. transferred EUR 50 000 to an account with KBC Bank in Düsseldorf in the name of D., a company with its seat in Belgium. By application to the Tribunal of Bari, Mr S., in his capacity as liquidator in respect of S.’s assets, requested that court, by way of an action to set a transaction aside by virtue of the debtor’s insolvency, to order D. to repay the money.

Does this action in the context of the insolvency to set a transaction aside fall within Article 1(2)(b) of Regulation [No 44/2001]?’

The Tribunal of Bari, where the insolvency proceeding regarding the debtor’s assets has been opened, has also international jurisdiction under Regulation [No 1346/2000] in respect of an action in the context of the insolvency to set a transaction aside that is brought against a person whose registered office is in another Member State?

2) The presence of immovable property in Italy owned by S., the existence of a lease agreement in respect of two hotel complexes and a contract concluded with a banking institution in Italy could constitute, for Tribunal of Bari, the relevant elements in order to determine the international jurisdiction for opening of a secondary proceedings?

3) Is Article 27 of [the Regulation] to be interpreted as meaning that the national court dealing with an application for the opening of secondary insolvency proceedings may never examine the insolvency of a debtor in respect of whom main insolvency proceedings have been opened in another State, or rather that the national court may in certain situations examine the existence of the debtor’s insolvency – particularly where the main proceedings are protective proceedings in which the court has established that the debtor is not insolvent ?

4) Does interpretation of Article 27 of [the Regulation] permit secondary insolvency proceedings, the nature of which is specified in the second sentence of Article 3(3) of [that] regulation, to be opened in the Member State in which the whole of the assets of the insolvent person are situated, when the main proceedings, which are subject to automatic recognition, are of a protective nature, a scheme of payment has been accepted and confirmed in those



proceedings, that scheme is being implemented by the debtor and the court has forbidden the disposal of the debtor's assets?'

5) Where a court in a Member State opens the main insolvency proceedings in respect of a debtor, on the view that the centre of the debtor's main interests is situated in the territory of that Member State, could the court join to those proceedings a company whose registered office is in another Member State solely on the basis of a finding that the property of the debtor and the property of that company have been intermixed?

Could the court of the Member State first seised assume that the proof of the insolvency of the second company is to be inferred solely from the finding that the property of the two companies has been intermixed?'

Group 3: Procedural matters

1) How would you check the national law applicable in the case?

2) Is there any electronic register available to the public free of charge via the internet where you could check the court opening the insolvency proceedings, the date of opening, the date of closing proceedings, the type of proceedings, the debtor, the liquidator appointed, the deadline for lodging claims etc.?

3) Assuming the international jurisdiction of Tribunal of Bari, how would you notify the opening of the procedure to the creditors? Are there any standard forms for the notice to be sent to creditors and for the lodging of claims?

4) Which would be the deadline, following the publication of the notice of opening of proceedings, for the creditors, to lodge their claims?

5) Would be mandatory for the court seised with a request to open secondary proceedings to hear the liquidator of the main proceedings prior to taking its decision? If yes, how would you conduct these hearings? Which other coordination measures would be appropriated between the main and the secondary proceeding?



Preliminary ruling - Commercial matters

Case 1

X, a Romanian company seeks before the Tribunal of Brasov the annulment of the contested decision issued by the Minister of Finance in administrative proceedings in tax matters.

In the meantime, on 15.01.2015 Tribunalul Arges opened insolvency proceedings against X. Therefore, the Tribunal of Brasov decided to stay its proceedings according to Article 243 (1) of the Romanian Code of Civil Procedure. The Minister of Finance appealed this decision. The decision was quashed by the Court of Appeal Brasov, and the case was referred back to the Tribunal of Brasov.

In the insolvency case opened against X, the Minister of Finance as tax creditor, lodged his claim, including the tax imposed by the administrative decision which was the subject of the action for annulment brought by X before Tribunal of Brasov.

At this point, the Tribunal of Brasov decided to stay its proceedings and to refer to the ECJ the following preliminary question:

Article 47 paragraph 2 of the Charter of Fundamental Rights and article 15 of Regulation no. 1346/2000 must be interpreted as precluding a national decision of a court against which there is no judicial remedy under national law and which does not comply with the requirements imposed by the applicable national law and thus manifestly violate the right to a fair trial of one of the parties ?

The referring court observes that, following the decision of the Court of Appeal Brasov on the appeal brought by the Minister of Finance, the legality of the same tax decision is examined in two separate proceedings, namely the one before the administrative courts in tax matters and the other in civil court in the insolvency proceedings and, because of the exclusive jurisdiction of both courts on these specific matters, the two actions cannot be joined.

In this regard, the court considers that the decision of the Court of Appeal Brasov was given in breach of Article 243 (1) of the Romanian Code of Civil Procedure, which provides that the court has to automatically stay its proceedings at the moment of the opening of insolvency



proceedings and therefore in breach of Article 15 of Regulation No. 1346/2000. However, under Article 315 of the Romanian Code of Civil Procedure, the decision of the Court of Appeal is binding.

The national court considers that, in those circumstances, that X's right to a fair trial under Article 47 (2) of the Charter was breached.

Question:

Do you think that the preliminary question referred by the Romanian judge respects the Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings?

Preliminary ruling Commercial matters

Case 2

On 5 October 2006 the applicants in the main proceedings concluded a credit agreement with BCR for the sum of EUR 17 200 for the purchase of immovable property located in Pitesti (Romania).

That agreement provided that the rate of interest was fixed for the first year after the credit was made available. After that period, it was to be the variable reference rate calculated on the basis of the rate posted at the bank's headquarters, increased by the variable referred to as 'service of the borrower's debt', which reflects the latter's ability to meet payment deadlines, expressed in terms of days of delay in payment beyond the due date.

On 12 May 2009 the bank notified the applicants in the main proceedings that they had failed to comply with their contractual obligations, since they had not made certain repayments under the credit agreement. They were therefore given seven days' notice, from the date of the notification, to repay the amount of EUR 233.91. In case of non-payment the whole outstanding balance would become payable and the bank would institute enforcement proceedings.



On 15 March 2013 a bailiff issued an order for the recovery of an amount of EUR 16 980.75, on the basis of the loan agreement, guaranteed by a mortgage, entered into by the applicants in the main proceedings.

On 13 June 2013 the applicants brought an action before the Judecătoria Pitesti opposing all the enforcement measures. They seek the annulment of the enforcement measures as well as the order for payment.

The referring Court examined the compatibility of clauses determining interest rates of the type contained in the credit agreement at issue in the main proceedings with Directives 93/13 and 2008/48, and the compatibility of Article 120 of Emergency Decree No 99 with Articles 49 TFEU and 56 TFEU and Article 47 of the Charter.

In those circumstances the Judecătoria Pitesti decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Can terms such as those concerning “service of the borrower’s debt”, that refer to the existence of delays in payment on the part of the debtor, and those relating to the increase in the rate of interest after one year, after which the rate is the variable reference rate of the Banca Comercială Română, posted at the bank’s headquarters, increased by 1.90 [percent], be considered to be unfair within the meaning of [Directive 93/13]?’

(2) Does the principle of effective judicial protection of the rights that individuals derive from EU law, as guaranteed by Article 47 of the Charter ..., preclude a provision of national law, such as that laid down in Article 120 of Emergency Decree No 99 ..., which recognises the enforceability of a bank credit agreement concluded by private agreement and without allowing the terms thereof to be negotiated with the debtor, under which, with brief verification and after obtaining authorisation for enforcement in a non-contentious procedure, and with limited scope for the court to assess the amount of the debt, a bailiff may seize the debtor’s assets?’

Question:

How would you decide on the admissibility of this preliminary question?