

Table of Contents

Preface	V
List of Contributors	XIII
Bibliography	XV
List of Abbreviations	XXIII
A. Summary	1
B. Introduction	3
I. Methodology, Scope and Aim of the Study	3
II. Outline of the Study	4
1. The Different Parts	4
2. The Comparative Research	4
C. Statistical Data on the Application of the Judgment Regulation in the Member States .	11
I. Availability of Statistical Data	11
II. Available Information on the Application of the Judgment Regulation	11
1. The Application of the Jurisdictional Rules of the Judgment Regulation by National Courts	11
2. Decisions on the enforceability of foreign judgments	13
D. Report on the Application of the Judgment Regulation in the Member States	17
I. The Judgment Regulation in the Present European Law	17
1. The Judgment Regulation in the European Judicial Area	17
2. New Instruments in European Procedural Law	18
3. New Challenges for the Judgment Regulation in the European Judicial Area ...	19
II. Scope of Article 1 JR	22
1. Civil and Commercial Matters	22
2. Excluded Matters, Article 1 (2) JR	24
a) Family and Inheritance Matters	25
b) Insolvency Proceedings	26
c) Arbitration and Mediation	31
aa) The Comprehensive Exclusion of Arbitration, Article 1 (2) (d) JR	31
bb) Information Obtained from the National Reports	32
cc) Possible Ways Forward	33
dd) The Judgments Regulation and Mediation	40
3. Relationship to Special Conventions, Article 71 JR	41
III. Jurisdiction	43
1. General Issues	43
a) Overall Satisfaction	43
b) Sufficiency of the Fact-Specific Grounds for Jurisdiction	44
c) Applicability of national law under Article 4 (2) JR	45
aa) Discrimination of Non-Member State Parties	45
bb) Effect on EU claimants	46
d) Examination ex officio	47
aa) General Aspects	47
bb) Relation between Article 26 JR and Article 19 of the Service of Documents Regulation 1348/2000	48
e) Infrastructural and organisational questions	49
aa) Time and Money	49
bb) Procedural Framework – Separate and Preliminary Determination of Jurisdiction	49

Table of Contents

2. Specific Issues	50
a) Domicile – Determination Pursuant to Articles 2, 59 JR	50
aa) General Evaluation	50
bb) Domicile of Companies	52
b) Contractual Obligations. In particular: the Delineation from Matters relating to Torts and Quasi-Delicts	53
c) In particular: The Place of Performance	53
aa) General Aspects	53
bb) Place of Performance under Article 5 (1) (b) – indent 1 JR	54
cc) Place of Performance under Article 5 (1) (b) – indent 2 JR	55
d) Matters relating to Torts and Quasi-Delicts	56
aa) General Aspects	56
bb) Multi-State Cases and the Shevill-Jurisdiction	57
e) Jurisdiction in adhesion to criminal proceedings	59
f) Co-defendants under Article 6 (1) JR	60
aa) Article 6 (1) JR too wide?	60
bb) Article 6 (1) JR too narrow?	61
g) Inapplicability of Article 6 (2) and Article 11 JR in Austria, Germany and Hungary (Article 65 JR)	62
aa) The Different Systems in the Member States	62
(1) Third Party Proceedings under Article 6 (2) JR	62
(2) Third Party Notice	62
(3) Evaluation of the Different Models	64
bb) Third Party Proceedings under the Judgment Regulation	65
(1) The Legal Regime of Articles 6, 11 and 65 JR	65
(2) Practical Impacts of Article 65 JR	66
cc) Possible Improvements	68
h) Maritime Matters	70
aa) Introduction	70
bb) Jurisdiction for General Limitation Proceedings	71
(1) Jurisdiction for Setting up a Liability Fund	71
(2) Limitation of Liability and Recognition of Foreign Judgments	71
(3) Rules for Limitation Proceedings Ancillary to Individual Claims	73
cc) The Remaining Issues	74
(1) Bills of Lading	74
(2) Provisional Seizure of Seagoing Vessels	77
(3) Consolidation of Litigations	78
(4) Actions based on Tort and Contract in particular	78
(5) Collision, Salvage and General Average	78
(6) Provisional and Protective Measures	78
(7) Principal Place of Business of Ship Owners	79
(8) Forum Arresti	79
i) Insurance, Consumer and Employment Matters	79
aa) Introduction	79
bb) Section 3, Insurance Matters	79
cc) Section 4, Consumer Protection	80
dd) Section 5, Employment Matters	85
3. Exclusive Jurisdiction	89
a) General Aspects	89
b) Rights in Rem as to Immovable Property	89
aa) Exclusive Jurisdiction	89
bb) Holiday Homes	90
c) Exclusive Jurisdiction over Company Matters (Article 22 (2) JR)	90
aa) General Aspects	90
bb) Definition of the Seat	90
4. Choice of Forum Agreements	91
a) Law Applicable to a Choice of Forum Agreement	91
b) Judicial Control of Standard Terms	92

Table of Contents

c) National Practice in Determining Usages of International Trade or Commerce under Article 23 (1) (c) JR	93
d) Applicability of Article 23 JR vis-à-vis Third States	95
e) Precedence of Article 27 JR over Exclusive Choice of Forum Agreements ..	95
f) Hague Convention on Choice of Forum Agreements	95
aa) General Remarks	95
bb) Possible effect on Art. 23 JR	96
5. Jurisdiction by Appearance (Article 24 JR)	97
6. Summary of Questions of Jurisdiction	98
IV. Lis Pendens and Similar Proceedings	100
1. The Framework of the Regulation	100
a) The Underlying Policy	100
b) Cornerstones in the Case Law of the ECJ	101
aa) The “same cause of action” under Article 27 JR	101
bb) The “same persons” under Article 27 JR	101
cc) Exclusion of Any Exceptions to the Priority under Article 27 JR	102
dd) Exclusion of Anti-suit Injunctions to Enforce Jurisdictional Rules by the Court Second Seized	103
ee) The Exercise of Discretion under Article 28 JR	103
2. The Implementation in the Member States	104
a) “Proceedings” under Articles 27 and 28 JR	104
b) The “same cause of action” under Article 27 JR	105
c) The “same persons” under Article 27 JR	107
d) Exclusion of Any Exceptions to the Priority under Article 27 JR	107
aa) Tensions in the Implementation of the Member States	108
(1) Corporate Loan Litigations	108
(2) Patent Litigations	109
(3) Purely Domestic Litigations	109
bb) Legal Evaluation	110
cc) Policy Considerations	112
(1) Exclusive Choice-of-Court Agreements	112
(2) Other Grounds of Exclusive Jurisdiction	116
(3) General Public Policy Exception	116
(4) Limitation in Time of Priority	116
e) Exclusion of Anti-Suit Injunctions – Exclusion of Damages?	117
f) The Exercise of Discretion under Article 28 JR	117
g) The Interpretation of Article 30 JR	120
h) The Resolution of Negative Competence Conflicts	122
3. Summary of Policy Considerations and Recommendations	124
V. Free Movement of Judgments	126
1. Exequatur Proceedings	126
a) The Framework of the Regulation	126
b) The Implementation of the Judgment Regulation in the Member States ...	128
c) The Efficiency of Exequatur Proceedings	130
d) Possible Improvements	135
2. Enforceable Decisions	135
a) The Concept of Article 32 JR	135
b) The Application of Article 32 JR in the Member States	136
3. Reasons for Non-Recognition	137
a) The Concept of Articles 34 and 35 JR	138
b) Public Policy	139
c) Practical Problems with other Grounds for Non-Recognition	146
4. Remedies (Articles 43 and 44 JR)	147
a) Appeal Procedures	147
b) The Admissibility of Defences against the Substantive Claim	148
c) Efficiency	150
d) Costs and Fees	150

Table of Contents

5.	Provisional Measures in Chapter III of the Judgment Regulation	152
a)	Protection of the Debtor, Articles 46 and 47 (3) JR	152
b)	Article 47 JR	153
6.	Free Movement of Injunctions	156
7.	The Cross-border Enforcement of Court Settlements and Notarial Deeds	159
a)	Court Settlements, Article 58 JR	160
b)	Authentic Instruments	161
8.	Proposals for Further Improvements	163
a)	The First Alternative: Developing the Existing System	163
b)	The Second Proposal: Abolition of Exequatur Procedures	165
c)	Cross-border Injunctions	167
VI.	Provisional Measures	167
1.	Introduction	167
2.	Case Law	167
a)	The Case Law provided by the Court of Justice	167
b)	Case Law of National Courts (in alphabetical order)	169
aa)	Austria	169
bb)	Belgium	169
cc)	France	170
dd)	Germany	170
ee)	Greece	171
ff)	Ireland	171
gg)	Italy	172
hh)	The Netherlands	172
ii)	The United Kingdom (England and Wales)	172
3.	Crucial Issues in the Context of Provisional Measures	176
a)	The Diversity of Provisional Measures provided for in Domestic Legislation	176
b)	International Jurisdiction for Provisional Measures	177
c)	Extraterritorial Effect of Measures (including Recognition and Enforcement abroad)	180
d)	Interaction of the Court seized or to be seized for the Substance of the Matter with the Court issuing Provisional Measures	182
e)	Anti-Suit Injunctions	184
f)	“Provisional” Measures given simultaneously- or even subsequent - to the Rendering of the Final Judgment.	184
g)	Measures for obtaining Information	185
h)	Does an Arbitration Agreement really have an Impact on the Courts’ Jurisdiction to Order Provisional or Protective Measures?	187
i)	Protective trans-border attachment of bank accounts	187
4.	Policy Recommendations	187
VII.	Intellectual Property Rights	189
1.	The Problem of Preventive Torpedo Actions	190
2.	The Defence based on the Alleged Invalidity of a Patent the Issue of which is Claimed to be for the Exclusive Jurisdiction under Article 22 (4) JR	193
3.	Consolidation of Proceedings against Several Alleged Infringers of Segments of a Munich Patent Bundle	195
4.	Taking Point 4 (Enforcement of Cross-Border Interim Injunctions) and Point 5 (Efficient Provisional Relief to outweigh the Deficiencies of a Multitude of Litigation Proceedings?) together	196
a)	Interim Restraining Injunctions	197
b)	Provisional Damages	199
5.	Measures for Obtaining Information	199
6.	Concluding Recommendations	201
E.	Overview Policy Recommendations	203
I.	Function and Scope of Application	203
II.	Jurisdiction	204

Table of Contents

III. Lis Pendens	205
IV. Free Movement of Judgments	207
1. The First Alternative: Evolving the Existent System	208
2. The Second Proposal: Abolition of Exequatur Procedures	209
3. Cross-border Injunctions	210
V. Provisional Measures	210
VI. Intellectual Property	211
Annex	213
I. Questionnaire No. 1: Collection of Statistical Data	213
II. Questionnaire No. 2: Collection of Empirical Data	215
III. Questionnaire No. 3: Legal Problem Analysis	217
Index	225