UNIVERSITY OF RIJEKA, FACULTY OF LAW

UNIVERSITY OF ANTWERP

Martina Smojver

ENFORCEMENT UNDER EU REGULATIONS ON THE CROSS-BORDER COLLECTION OF MONETARY CLAIMS

DOCTORAL DISSERTATION

Rijeka, 2026.

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Digital communication and safeguarding the parties' rights: challenges for European civil procedure – DIGI-GUARD

Project ID: 101046660 — DIGI-GUARD — JUST-2021-JCOO

Rijeka, 2026.

SVEUČILIŠTE U RIJECI, PRAVNI FAKULTET

SVEUČILIŠTE U ANTWERPENU

Martina Smojver

OVRHA U PROPISIMA EU-A O PREKOGRANIČNOJ NAPLATI NOVČANIH TRAŽBINA

DOKTORSKA DISERTACIJA

Mentorice:

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1. **_____**
2. **_____**
3. **_____**
4. **_____**
5. **_____**

Summary:

As the European Union (EU) works to create a unified judicial area where rights can be exercised across borders, enforcing monetary claims between Member States remains complex. Despite progress in simplifying cross-border cooperation through various regulations, challenges persist. Legal and practical barriers still limit the effectiveness of these instruments. This doctoral thesis explores a core tension in EU private international law: the aim of mutual trust versus fragmented legal systems and procedural differences. It focuses on the enforcement of judgments or settlements across borders – something that should function smoothly under EU law, yet often doesn't.

The research delves into why this is the case. It examines a variety of issues: how different principles that govern cross-border enforcement of judgments and settlements in the EU interact under the current system; how terms like 'judgment' or 'court settlement' are interpreted differently by Member States, creating friction; whether refusal grounds, meant to be rare, may still be improved upon; etc. Focusing on monetary claims, the thesis analyses key EU instruments: Brussels I Recast Regulation, European Enforcement Order Regulation, European Order for Payment Regulation, European Small Claims Procedure Regulation, European Account Preservation Order Regulation, and the Maintenance Regulation. These tools, though designed for different aspects of debt recovery, face common hurdles. Using doctrinal interpretation, comparative legal analysis, and case law, the study identifies gaps and proposes reforms – harmonising definitions, clarifying refusal grounds, and improving procedural alignment – to help EU civil justice deliver on its promise.

Keywords: Brussels I Recast Regulation; cross-border enforcement; European Union; EU private international law; monetary claims

Sažetak:

Kako Europska unija (EU) nastoji stvoriti jedinstven pravosudni prostor u kojem se prava mogu ostvarivati preko granica, provedba novčanih potraživanja među državama članicama i dalje ostaje složena. Unatoč napretku u pojednostavljivanju prekogranične suradnje putem različitih uredbi, i dalje postoje izazovi. Pravni i praktični problemi i dalje ograničavaju učinkovitost tih instrumenata. Ova doktorska disertacija istražuje temeljnu napetost u međunarodnom privatnom pravu EU-a: cilj međusobnog povjerenja nasuprot fragmentiranim pravnim sustavima i procesnim razlikama. Fokusira se na prekograničnu ovrhu sudskih odluka ili nagodbi – nešto što bi, prema pravu EU-a, trebalo funkcionirati glatko, ali često ne funkcionira tako.

Istraživanje se bavi razlozima zašto je to tako. Analizira se niz problema: kako različita pravna načela koja uređuju prekograničnu ovrhu unutar EU-a međusobno djeluju u okviru postojećeg sustava; kako države članice različito tumače pojmove poput „sudska odluka“ ili „sudska nagodba“, što dovodi do nesuglasica; mogu li razlozi za odbijanje priznanja ili ovrhe, iako bi trebali biti samo iznimno korišteni, biti dodatno poboljšani, itd. Usredotočujući se na novčana potraživanja, disertacija analizira ključne pravne instrumente EU-a: Uredbu Bruxelles I bis, Uredbu o europskom ovršnom naslovu, Uredbu o europskom platnom nalogu, Uredbu o europskom postupku za sporove male vrijednosti, Uredbu o europskom nalogu za blokadu računa te Uredbu o uzdržavanju. Iako su ti instrumenti osmišljeni za različite aspekte naplate dugova, suočavaju se sa zajedničkim preprekama. Korištenjem doktrinarne interpretacije, komparativne pravne analize i sudske prakse, istraživanje identificira nedostatke i predlaže reforme – usklađivanje definicija, pojašnjenje razloga za odbijanje te poboljšanje procesne usklađenosti – kako bi se omogućilo da građansko pravosuđe EU-a ispuni svoja obećanja.

Ključne riječi: Uredba Bruxelles I bis; prekogranična ovrha; Europska unija; međunarodno privatno pravo EU-a; novčane tražbine

Samenvatting:*

Terwijl de Europese Unie (EU) werkt aan het creëren van een eengemaakt gerechtelijk gebied waarin rechten grensoverschrijdend kunnen worden uitgeoefend, blijft de tenuitvoerlegging van geldvorderingen tussen lidstaten complex. Ondanks vooruitgang in het vereenvoudigen van grensoverschrijdende samenwerking via diverse verordeningen, blijven er uitdagingen bestaan. Juridische en praktische obstakels beperken nog steeds de effectiviteit van deze instrumenten. Deze doctoraatsthesis onderzoekt een fundamentele spanning binnen het Europees internationaal privaatrecht: het streven naar wederzijds vertrouwen tegenover gefragmenteerde rechtsstelsels en procedurele verschillen. De focus ligt op de tenuitvoerlegging van rechterlijke uitspraken of schikkingen over de grenzen heen – iets wat onder EU-recht vlot zou moeten verlopen, maar in de praktijk vaak niet zo vlot gaat.

Het onderzoek gaat dieper in op de oorzaken hiervan. Het bekijkt een reeks kwesties: hoe de verschillende beginselen die de grensoverschrijdende tenuitvoerlegging van vonnissen en schikkingen binnen de EU regelen, op elkaar inwerken binnen het huidige systeem; hoe begrippen zoals 'vonnis' of 'gerechtelijke schikking' verschillend worden geïnterpreteerd door lidstaten, wat wrijving veroorzaakt; of weigeringsgronden, die zeldzaam zouden moeten zijn, nog verbeterd kunnen worden, enzovoort. Met de nadruk op geldvorderingen analyseert de thesis belangrijke EU-instrumenten: de herschikte Brussel I-Verordening, de Europese Executoriale Titel-verordening, de Europese Betalingsbevelprocedure, de Europese procedure voor geringe vorderingen, de Europese Bankbeslagverordening en de Onderhoudsverordening. Hoewel deze instrumenten zijn ontworpen voor verschillende aspecten van schuldinvordering, stuiten ze op dezelfde obstakels. Door gebruik te maken van interpretatie van de rechtsleer, vergelijkende rechtsanalyse en rechtspraak, identificeert de thesis lacunes en stelt zij hervormingen voor – zoals het harmoniseren van definities, verduidelijken van weigeringsgronden en verbeteren van procedurele afstemming – om het Europees burgerlijk rechtssysteem in staat te stellen zijn beloften waar te maken.

Trefwoorden: Hervormde Brussel I-Verordening; grensoverschrijdende tenuitvoerlegging; Europese Unie; internationaal privaatrecht van de EU; geldvorderingen

* This translation of the Abstract has been written with the assistance of the AI-based language model ChatGPT (OpenAI).

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List of abbreviations

CJEU – Court of Justice of the European Union

EAPOR – European Account Preservation Order Regulation

EEOR – European Enforcement Order Regulation

EOPR – European Order for Payment Regulation

ESCPR – European Small Claims Procedure Regulation

EU – European Union

1. Introduction

The issues of cross-border recognition and enforcement of judgments, and to a lesser extent also of court settlements, have long been a significant topic of discussion in the European Union (EU). Legislators have sought to address these challenges through successive instruments aimed at harmonising procedural rules, while courts have played a key role in interpreting and applying these measures in practice. At the same time, academic discourse has critically examined the effectiveness of the existing framework and proposed avenues for further reform. None of this may come as a surprise given that many EU citizens regularly travel, work or create different types of personal relationships in different Member States.[1] Business practices between the Member States have also become a daily process that leads to the creation of many cross-border disputes, and consequently also to court decisions or court settlements that parties need to recognise and oftentimes enforce in another Member State.[2]

However, cross-border enforcement is by no means a simple procedure, which is particularly evident when considering all of the recent EU regulations, each of which provides for somewhat of a different system of recognition and/or enforcement. While some still require an exequatur procedure in order for cross-border enforcement to be carried out ('traditional model'), some do away with such procedure altogether ('advanced model'), with a so-called 'compromise model' in between, which can consist of a whole spectrum of solutions that differ from one regulation to another.[3] It can thus be seen that carrying out cross-border enforcement within the EU is complicated in itself, which becomes even more evident when taking into account the particularities of the actual enforcement procedure that are specific to each of the different Member States.[4] The complexity of this system creates fertile ground for misinterpretation,

[1] See, e.g., European Commission, Commission Staff Working Document. The impact of demographic change – in a changing environment, SWD(2023) 21 final (2023), available at: https://commission.europa.eu/system/files/2023-01/the_impact_of_demographic_change_in_a_changing_environment_2023.PDF (accessed 19 August 2025).

[2] More on the volume of such disputes in, e.g., European Commission, Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), COM(2025) 268 final, Brussels, 2.6.2025.

[3] Kunda, Ivana, Međunarodnoprivatnopravni odnosi, in: Mišćenić, Emilia (ed.), *Europsko privatno pravo: posebni dio*, Školska knjiga, 2021, pp. 486 - 555.

[4] See, e.g., Kennett, Wendy, *Civil Enforcement in a Comparative Perspective: A Public Management Challenge*, Intersentia, 2021.

misapplication, and procedural violations, thereby highlighting the need for continued scholarly inquiry aimed at critically assessing and potentially improving the system's coherence and effectiveness.

The following research is aimed at contributing to this discourse by examining the obstacles that may arise when a judgment or a court settlement dealing with monetary claims given in one Member State needs to be recognised and/or enforced in another Member State. Despite the fact that the EU strives to achieve a genuine European Judicial Area in which everyone would easily exercise across the EU their rights established in judgments or court settlements of any of the Member States,[5] challenges continue to arise in the process of recognition and enforcement of judgments and court settlements in cross-border cases. With the increased number of regulations and the introduction of special EU procedures, the necessity of a detailed study of each of the models of recognition and enforcement in different instruments, i.e., regulations, has been additionally emphasised. There are various issues that occur at the stage of recognition and enforcement abroad, such as the diversity of enforcement titles among the Member States; differences in understanding between the Member States or inability to, at an EU level, concretely define what is a 'judgment' or a 'court settlement'; difference of opinion on what grounds for refusal of recognition and enforcement should be available; what do some of the refusal grounds constitute; whether the refusal grounds should be available at all; etc. Accordingly, this doctoral research is focused on investigating the prevailing challenges and seeks to develop constructive solutions. Only with the optimum solution for cross-border recognition and enforcement can the relevant regulations governing the cross-border collection of monetary claims fully realise their potential and serve the interests of EU citizens. This doctoral research is structured around the following key research questions:

1. To what extent does the EU legal framework for cross-border recognition and enforcement of judgments reflect a coherent balance between the principles of mutual recognition, mutual trust, and effectiveness?
2. How have interpretations of key legal concepts, such as 'judgment', 'court settlement', and 'irreconcilability', evolved, and what impact does this have on cross-border recognition and enforcement of judgments in the EU?

[5] See more on the European Judicial Area and its meaning in, e.g., European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Delivering an area of freedom, security and justice for Europe's citizens. Action Plain Implementing the Stockholm Programme, COM(2010) 171 final, Brussels, 20.4.2010.

3. What are the main legal and practical challenges that undermine the effectiveness of cross-border enforcement mechanisms, and how might these be addressed through doctrinal or regulatory reform?

The research focuses on the EU regulations that govern the cross-border collection of monetary claims, i.e., claims which require the specific performance of payment of a certain amount of money.[6] Such claims have been chosen for this research given their common features, which merit their shared analysis and allow for common conclusions. The selected regulations include the following: Regulation (EU) No 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Recast),[7] including its predecessors, the 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (Brussels Convention)[8] and Council Regulation (EC) No 44/2002 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation);[9] Regulation (EC) No 805/2004 of the European Parliament and of the Council creating a European Enforcement Order for uncontested claims (EEOR);[10] Regulation (EU) No 655/2014 of the European Parliament and of the Council establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters (EAPOR);[11] Regulation (EC) No 1896/2006 of the European Parliament and of the Council creating a European order for payment procedure (EOPR);[12] Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure (ESCPR);[13] and Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance

[6] Kerameus, Konstantinos, *Enforcement in the International Context*, Collected Courses of the Hague Academy of International Law, Brill, 1997, pp. 41, 42.
[7] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition of judgments in civil and commercial matters (recast), OJ L 351/1 (2012) (Brussels I Recast).
[8] Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, OJ L 299 (1972) (Brussels Convention).
[9] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 12/1 (2001) (Brussels I Regulation).
[10] Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, OJ L 143/15 (2004) (EEOR).
[11] Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters, OJ L 189/59 (2014) (EAPOR).
[12] Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, OJ L 399/1 (2006) (EOPR).
[13] Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, OJ L 199/1 (2007) (ESCPR).

obligations (Maintenance Regulation).[14] All of these regulations govern primarily monetary claims and are chosen among the other regulations of EU private international law given the specific nature of such claims when it comes to cross-border recognition and enforcement.[15] The majority of them belong in the area of civil and commercial matters, with the Maintenance Regulation being the only exception, falling under the family matters. This choice was deemed as necessary, given that the scope of the Maintenance Regulation relates directly to monetary claims, and was previously even included under the scope of the Brussels I Regulation.[16] On the other hand, the other regulations dealing with family matters were not included in this research given their specific nature and sensitive issues that they deal with. For example, such judgments often involve coercive action towards people, including children, and were thus deemed as warranting separate research.

In terms of the methodology that is used in this research, the primary method is the doctrinal method. The research questions enumerated above are at their core legal-doctrinal; therefore, this method is indispensable in order to reach the necessary understanding of the matter itself and the relevant legal problems, as well as to find answers to specific questions. The empirical method is only partially used, particularly by the analysis of the relevant case law, as well as by reviewing existing empirical data relevant to the topic at hand. The empirical method is therefore going to be used solely for the purposes of illustration and contextualisation, while the research generally remains doctrinal.

During the research, legal sources such as legislation, regulations, case law and academic literature are used. Firstly, the analysis of the already mentioned EU regulations governing the issue of cross-border collection of monetary claims is done. Since it is the provisions of those particular regulations that are the focus of this research, a deep understanding is required before moving on to any other sources. Furthermore, the thesis also refers to the selected Member States, specifically Croatia, Slovenia, Germany and Italy,[17] especially their national laws and judicial practice related to the recognition and enforcement of cross-border judgments and court

[14] Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, OJ L 7/1 (2009) (Maintenance Regulation).
[15] Some other EU regulations could also be seen as relevant to monetary claims, such as the Insolvency Regulation (EU) 2015/848 and the Succession Regulation (EU) No 650/2012. However, these regulations are not part of this study because they deal with specific legal issues, i.e., insolvency and succession, and feature provisions that distinguish them from the regulations being considered. This research focuses exclusively on regulations that address monetary claims in civil and commercial matters, excluding those that pertain to specialised areas like insolvency or succession.
[16] Brussels I Regulation, art 1(2).
[17] For an elaboration as to the choice of these particular Member States, see infra, p. 5.

settlements. This is necessary in order to showcase the differences in the national legal systems and procedures, as well as to detect additional problems that may occur during the recognition and enforcement procedure itself. The jurisprudence of national courts is primarily collected from publicly available databases, especially court databases such as 'Sodna praksa – Vrhovno sodišće Repubike Slovenije' for Slovenia, [18] 'Corte di Cassazione' for Italy, [19] 'Bundesgerichtshof' for Germany[20] or 'Sudska praksa – Vrhovni sud Republike Hrvatske' for Croatia,[21] but also other national websites that can provide relevant information, such as 'Il Caso' for Italy[22] or IUS-INFO for Croatia.[23] In addition to the national jurisprudence of the four selected Member States, the jurisprudence of the CJEU is also analysed in detail, since it provides explanations on some of the important questions regarding recognition and enforcement. Furthermore, the databases of the previous projects that are relevant to the topic at hand are also consulted. These particularly include the EUPILLAR database[24] and the IC2BE database,[25] as they also provide national case law for specific Member States. Additionally, the results of the EFFORTS project[26] provide important and valuable source of information and case law. Finally, the academic literature relevant to the topics covered by the research is also reviewed.

As mentioned above, the four Member States that are the focus of this research are Croatia, Slovenia, Germany and Italy. These Member States are opposites in many ways, which helps to reach the necessary conclusions for the various problems that arise in such different systems. While Croatia and Slovenia are territorially smaller and younger Member States, Germany and Italy are one of the largest and oldest Member States. Furthermore, these Member States also differ on the matter of implementation of special national laws on the relevant EU regulations. In general, while Croatia and Germany do offer implementation rules, Slovenia and Italy do not. There are also differences between the implementation strategies, e.g. Croatia did not develop any particular strategy when implementing the rules, as it seems the goal was to just

[18] Sodna praksa, available at: https://sodnapraksa.si/ (accessed 19 August 2025).
[19] Corte Suprema di Cassazione, available at: https://www.cortedicassazione.it/ (accessed 19 August 2025).
[20] Bundesgerichtshof, available at: https://www.bundesgerichtshof.de/DE/Home/home_node.html (accessed 19 August 2025).
[21] Tražilica odluka sudova Republike Hrvatske, available at: https://sudskapraksa.csp.vsrh.hr/search (accessed 19 August 2025).
[22] IlCaso.it, available at: https://mobile.ilcaso.it/#gsc.tab=0 (accessed 19 August 2025).
[23] IUS-INFO, available at: IUS-INFO - Profilna stranica (accessed 19 August 2025).
[24] EU Pillar, National Case Search, available at: https://w3.abdn.ac.uk/clsm/eupillar/#/search/national (accessed 19 August 2025).
[25] IC2BE, National Case Search, available at: https://ic2be.uantwerpen.be/#/search/national (accessed 19 August 2025).
[26] Project JUST-JCOO-AG-2019-881802, Towards more EFfective enFORcemenT of claimS in civil and commercial matters within the EU (EFFORTS), available at: Homepage - Efforts (accessed 19 August 2025).

adopt EU laws as quickly as possible, while Germany's general technique is synchronising EU instruments with the pre-existing domestic ones.[27] In addition, it was expected that there will be possible interconnections between this group when analysing case law, since there is a large movement of people, goods and services between these Member States. For example, Croatia's biggest trade partners in the EU are the other three Member States from this group.[28] Finally, the official language of each selected Member State was also one of the factors for this choice because certain level of command of the original language of national decisions is a key precondition to fully understanding the primary and secondary sources.

The dissertation is written in the form of a compilation thesis – in other words, the introduction, elaboration and conclusion are accompanied by four thematically related journal articles which form the core of this doctoral research work. The papers are separated according to the main points of research: they deal with the recognition of judgments, the enforcement of judgments, the possibilities of opposing the enforcement of judgments, and the recognition and enforcement of court settlements, respectively. In this way, each paper presents a particular issue in each step of the process of cross-border enforcement under the selected EU regulations, which ultimately results in providing a full picture of various issues that arise at each step of the way when enforcing a judgment or a court settlement in another Member State.

The first paper, titled "The Interplay of Mutual Recognition and Mutual Trust with the Requirement of Effectiveness in the EU Legal Framework: Harmony or Conflict?", has been published in *Oslo Law Review*, vol. 13, no. 1 (2026). The paper deals with the general issue of mutual recognition. It delves into the intricate relationship between the principle of mutual recognition and the principle of mutual trust, which both form the core principles governing the area of recognition and enforcement of judgments and court settlements in the EU. In addition to analysing the functioning of these core principles under the relevant EU regulations, the paper also analyses the interplay with the requirement of effectiveness in the EU. This allows for establishing certain rules and detecting patterns for the aforementioned interplay of these principles at the stage of recognition and enforcement.

[27] See, e.g., EFFORTS, Collection of national implementing rules, available at: https://efforts.unimi.it/research-outputs/reports/collection-of-national-implementing-rules/ (accessed 19 August 2025).
[28] See, e.g., Trading Economics, Croatia Balance of Trade, available at: https://tradingeconomics.com/croatia/balance-of-trade#:~:text=Croatia%27s%20main%20trading%20partners%20are%20Italy%2C%20Germany%2C%20Russia%2C,trading%20partner.%20Compare%20Balance%20of%20Trade%20by%20Country (accessed 19 August 2025).

The second paper, titled “The Notion of 'Judgment' in the EU Regulations on Cross-Border Collection of Monetary Claims: A Change in Understanding?”, has been published in *European Papers*, vol. 9, no. 2 (2024). The paper discusses a particularly interesting problem that may be raised when enforcing a judgment from one Member State in another, which is the problem of defining the notion of ‘judgment’. As the understanding of this notion may sometimes vary among the Member States, it was important for this research to clearly detect shared characteristics and different features of a ‘judgment’ in EU private international law. The particular topic of the paper is also highly relevant given the recent CJEU case law, which gave rise to certain doubts on the proper understanding of a ‘judgment’.

The third paper, titled “Irreconcilable Judgments in the EU Regulations: Reforming the Ground(s) for Refusal of Enforcement”, has been published in *Cuadernos de Derecho Transnacional*, vol. 16, no. 1 (2024). The paper turns to the stage of refusal of recognition and/or enforcement. It focuses particularly on the refusal ground of irreconcilability, as it is one of the last grounds of refusal remaining even in those regulations that have otherwise abolished all possibility for refusal. Given the persistent ambiguity and uncertainty surrounding the issue of irreconcilable judgments, it is important to thoroughly analyse the possibility of their occurrence, including the potential for the subsequent refusal of enforcement, as outlined in nearly all of the selected EU regulations. Based on the conducted analysis, this paper will also propose potential reforms to address this ground of refusal.

Finally, the fourth paper, titled “Enforcement and Enforceability of Court Settlements in the EU”, has been published in *Lexonomica*, vol. 17, no. 2 (2025). The paper focuses solely on court settlements, as opposed to the other articles which generally only focus on judgments as enforcement titles. Actually, court settlements warrant being examined separately from judgments, given the substantive differences in understanding of a ‘court settlement’ in different Member States. Thus, this paper provides an extensive analysis of the notion of ‘court settlement’ and its understanding in different Member States. Moreover, the paper explores the regulation of recognition and enforcement of court settlements in the EU regulations selected for this research, ultimately providing for several proposals for reforms.

Through the abovementioned papers, the overall goal was to examine the applicable norms and determine the relevant legal elements of the cross-border enforcement. The research begins by determining and analysing the problems which arise in practice, especially in the selected Member States, and explains why is there even a place for such problems to appear. The experiences of the four Member States, as well as the general problems that are visible from the

case law of the CJEU, are compared and analysed. Based on the findings, the relevant conclusions are drawn. Finally, a normative stance is taken on how the relevant regulations should address the cross-border recognition and enforcement process, proposing new solutions to enhance the efficiency and effectiveness of the cross-border enforcement mechanism in the EU, to the benefit of EU citizens. Thus, in addition to providing an extensive analysis of the relevant regulations, therefore contributing to the understanding of the provisions themselves and potentially facilitating their application in practice, this research also offers new ideas and recommendations that should be helpful in creating the best possible approach to cross-border enforcement in the EU, as well as improving EU procedural law in general, all to the benefit of citizens whose lives and businesses have cross-border implications. In this way, scientific contribution is made to the scientific discussion that is currently ongoing in the EU legal scholarship.

2. Elaboration

2.1. Legislative framework

As established initially in the Treaty of Rome,[29] the EU is founded on the idea of a common internal market, one based on the four freedoms of movement: free movement of goods, services, persons and capital.[30] In order for these freedoms to be properly exercised by the citizens, the so-called 'fifth freedom'[31] has emerged over the years: the free movement of judgments. The core instrument which facilitated the flow of judgments between the Member States, despite the differences between the legal systems, was the Brussels Convention, followed by the Brussels I Regulation, and later by the Brussels I Recast that is currently in force. Moreover, a number of new, so-called 'second-generation instruments'[32] were presented,

[29] Treaty establishing the European Economic Community, Rome (1957).
[30] Treaty on the Functioning of the European Union (TFEU), OJ C 202/47 of 07 June 2016, Art. 26(2).
[31] Kramberger Škerl, Jerca, European Public Policy (with Emphasis on Exequatur Proceedings), *Journal of Private International Law*, vol. 7, no. 3 (2011), p. 480; Hoško, Tena, Public Policy as an Exception to Free Movement Within the Internal Market and the European Judicial Area: A Comparison, *Croatian Yearbook of European Law & Policy*, vol. 10, no. 1 (2014), p. 189.
[32] Mankowski, Peter, The impact of the Brussels Ibis Regulation on the 'second generation' of European procedural law, in: Mankowski, Peter (ed.), *Research Handbook on The Brussels Ibis Regulation*, Edward Elgar Publishing Limited, 2020, pp. 230-249. See also Von Hein, Jan, Imm, Tilman, Introduction: Practical Challenges and Research Aims, in: Von Hein, Jan, Kruger, Thalia (eds.), *Informed Choices in Cross-Border Enforcement. The*

i.e., EEOR, EOPR, ESCPR and EAPOR, which all pushed the boundaries of simplifying the recognition and enforcement of judgments in the EU. Finally, maintenance claims, previously included under the Brussels I Regulation, are now regulated by a special legal instrument, i.e., the Maintenance Regulation.[33] All of these regulations deal mostly with monetary claims and are core instruments for cross-border debt collection in the EU.

Among the aforementioned regulations, one that will apply to the highest number of situations in practice is, without a doubt, Brussels I Recast. This is so given its scope of application is the broadest – it applies to all civil and commercial matters,[34] whatever the nature of the court or tribunal.[35] On the other hand, maintenance claims, previously included under the Brussels I Regulation, are now governed by the Maintenance Regulation which provides an expedited and simplified process for enforcement, particularly important given the ongoing need to secure the timely payment of maintenance obligations. What is particularly interesting for the Maintenance Regulation is that its procedure for opposing enforcement can be described as a mixture of different systems. It differentiated two pathways, depending on whether the judgment is given in the Member State bound by the 2007 Hague Protocol[36] or in the Member State not bound by the Protocol. For the former, the exequatur is abolished and the judgment is automatically enforceable, with the only option for the defendant in the Member State of origin being the possibility of review in exceptional circumstances,[37] similar to such review under the second-generation instruments. In the Member State of enforcement there is the option of suspension or refusal on limited grounds.[38] For the latter, the exequatur procedure remains in place, and the system of the previous Brussels I Regulation is followed. It can be seen that the

European State of the Art and Future Perspectives, Intersentia, 2021, p. 4; Hess, Burkhard, The State of the Civil Justice Union, in: Hess, Burkhard, Bergstrom, Maria, Storskrubb, Eva (eds.), *EU Civil Justice. Current Issues and Future Outlook*, Bloomsbury, 2016, p. 4; Storskrubb, Eva, EU Civil Justice at the Harmonisation Crossroads?, in: Nylund, Anna, Strandberg, Magne (eds.), *Civil Procedure and Harmonisation of Law*, Intersentia, 2019, p. 18.

[33] Maintenance Regulation, art. 1.

[34] See more on the autonomous interpretation of the notion of 'civil and commercial matters' in, e.g., C-29/76, *LTU Lufttransportunternehmen GmbH & Co. KG v Eurocontrol*, EU:C:1976:137 (1976); C-814/79, *Netherlands State v Reinhold Rüffer*, EU:C:1980:291 (1980); C-271/00, Gemeente Steenbergen v Luc Baten, EU:C:2002:656 (2002); C-292/05, *Eirini Lechouritou and Others v Dimosio tis Omospondiakis Dimokratias tis Germanias*, EU:C:2007:102 (2007); C-645/11, *Land Berlin v Ellen Mirjam Sapir and Others*, EU:C:2013:228 (2013); C-302/13, *flyLAL-Lithuanian Airlines AS v Starptautiskā lidosta Rīga VAS and Air Baltic Corporation AS*, EU:C:2014:2319 (2014); C-226/13, *Stefan Fahnenbrock and Others v Hellenische Republik*, EU:C:2015:383 (2015). See also Van Calster, Geert, *European Private International Law*, 2nd edn, Hart Publishing, 2016, pp. 30-40.

[35] Brussels I Recast, art. 1.

[36] European Commission: Directorate-General for Justice and Bonomi, A., Protocol of 23 November 2007 on the law applicable to maintenance obligations – Text adopted by the twenty-first session, European Commission, 2014.

[37] Maintenance Regulation, art. 19.

[38] Maintenance Regulation, art 21.

Maintenance Regulation therefore employs two completely opposite systems based on the Member State's adoption of the Hague Protocol, which separates this regulation from the rest.

As opposed to the Maintenance Regulation which now covers issues that are out of scope of the Brussels I Recast, the second-generation instruments deal with specific issues which may sometimes also fall under the Brussels I Recast as the general instrument on recognition and enforcement of judgments in civil and commercial matters. In other words, both the Brussels I Recast and all of the second-generation instruments, i.e., EEOR, EOPR, ESCPR and EAPOR, deal with civil and commercial matters, which means that their scope of application may sometimes overlap, leaving the choice of the applicable instrument to the relevant parties.

In that vein, the EEOR facilitates recognition and enforcement of judgments on uncontested claims. This regulation simplifies the enforcement process by providing for the automatic recognition of judgments certified as a European Enforcement Order. Once a judgment is certified as such, it can be enforced across all Member States without the need for further procedures or a declaration of enforceability. While the Brussels I Recast Regulation sets out general principles for the recognition and enforcement of judgments, the EEOR specifically targets uncontested cases, which usually involve situations where a debtor does not challenge the creditor's claims. The EEOR thus intends to provide a fast-track mechanism for enforcement, reducing both time and costs for creditors seeking to enforce their judgments.

In contrast to the EEOR, the EOPR provides a special mechanism for uncontested debt recovery in cross-border cases. Like the EEOR, the EOPR allows creditors to obtain a judgment for uncontested claims, but it specifically targets situations where a creditor seeks to obtain an enforceable European Order for Payment through an expedited process. Once issued, this order is automatically recognised and enforceable in all Member States. While the EEOR applies to judgments already rendered by a court, the EOPR provides a procedural mechanism to obtain a judgment, i.e., an order for payment, in the first place. Both regulations share the goal of simplifying cross-border debt recovery, but the EEOR applies to judgments already rendered, whereas the EOPR offers a means of obtaining those judgments in the first place.

Furthermore, the ESCPR provides for a streamlined procedure for resolving small cross-border claims. The regulation covers claims up to €5,000 and is designed to be faster and more affordable than traditional court procedures.[39] Like the EEOR and the EOPR, the ESCPR ensures that judgments rendered under its framework are automatically recognised and

[39] ESCPR, art. 2.

enforceable across all Member States. What sets the ESCPR apart is its focus on small claims, making it easier for individuals and small businesses to resolve disputes across borders. Despite its focus on lower-value claims, the ESCPR adopts a similar approach to the EEOR and EOPR in terms of automatic recognition and enforcement, thus offering an accessible option for individuals seeking to resolve relatively simple disputes without enduring lengthy, complex, or costly procedures. Both the EOPR and the ESCPR are intended to be done through the use of pre-established forms that can be found in the Annex of the regulations.

Finally, the EAPOR provides a unique approach to cross-border enforcement by allowing creditors to secure the debtor's assets before a final judgment is issued. This regulation enables creditors to request a European Account Preservation Order to freeze the debtor's bank accounts across the EU, helping to ensure that assets are preserved for enforcement. In other words, it is a protection mechanism for the creditor, preventing the subsequent enforcement to be jeopardised.[40] Unlike the EEOR, EOPR, or ESCPR, which deal with the recognition and enforcement of judgments themselves, the EAPOR focuses on securing assets before enforcement is even possible. This preventive measure is significant in cases where there is risk that the debtor may move or dissipate assets before the final judgment can be enforced. The EAPOR, therefore, adds an additional layer of security for creditors, enabling them to protect their claims while the underlying legal proceedings continue. This unique feature also allows it to be additionally distinguishable from the scope of application of the rest of the aforementioned instruments. It could thus be said that the EAPOR is the most pro-creditor instrument of all.[41] For some, the level of protection of the rights of the defence is too low, which is why the UK (while it was still a Member State of the EU) opted out of the regulation.[42] However, although EAPO is issued in an *ex parte* procedure, it will only be issued when a number of requirements are met, particularly, when the *periculum in mora,* i.e., the existence of a real risk that, without the requested measure, the subsequent enforcement of the creditor's claim against the debtor will be impeded or made substantially more difficult, is proven.[43]

Despite differences in scope, specific provisions, and overall structure, the regulations can be broken down into four key aspects relevant to the research questions of this doctoral study: the

[40] EAPOR, art. 1.
[41] Cuniberti, Gilles, Migliorini, Sara, *The European Account Preservation Order Regulation: A Commentary*, Cambridge University Press, 2018, p. 32.
[42] *Ibid.*, p. 33.
[43] EAPOR, art 7(1). See more on the EAPOR in, e.g, Santaló Goris, Carlos, Searching for Debtors' Bank Accounts across the European Union: The EAPO Regulation Information Mechanism, *Max Planck Institute Luxembourg for Procedural Law Research Paper Series*, vol. 5 (2021).

rules on recognition of judgments, the rules on enforcement, i.e., enforceability, of judgments, the grounds for refusal of recognition or enforcement of judgments, and the specific rules governing court settlements. These four aspects constitute the foundation of this doctoral study, as they represent the complete legal framework underpinning cross-border civil and commercial litigation within the EU. In order to 'set the scene' for the subsequent presentation of the conducted studies, these four different aspects, i.e., the legislative framework in each of the relevant EU regulations, will be briefly presented in turn.

2.1.1. Recognition of judgments

The recognition of foreign judgments is a cornerstone of judicial cooperation in the EU, aimed at fostering smooth functioning of the internal market and ensuring access to justice. The ability for judgments rendered in one EU Member State to be automatically recognised (and enforced) in another, without the need for re-examination of the case, is essential primarily for upholding the principle of mutual recognition, which lies at the heart of EU judicial cooperation.[44] This principle eliminates the need for re-litigation of cases, providing a clear and predictable path for enforcement of foreign judgments. Under mutual recognition, once a judgment is rendered in one Member State, it is presumed to be valid and enforceable across all of the other Member States, provided it does not conflict with public policy (*ordre public*) or other refusal grounds available under the relevant regulation. In practice, this system simplifies the enforcement process and ensures that judgments do not become 'stuck' in cross-border disputes, thus fostering a more effective legal environment across the EU. The principle of mutual recognition, however, is intricately connected with another EU principle that is particularly important for the free movement of judgments – the principle of mutual trust.[45] This principle

[44] See, e.g., Arenas Garcia, Rafael, Abolition of Exequatur: Problems and Solutions. Mutual Recognition, Mutual Trust and Recognition of Foreign Judgments: Too Many Words in the Sea, in: Bonomi, Andrea, Romano, Gian Paolo (eds.), *Yearbook of Private International Law, Vol. XII 2010*, Otto Schmidt/De Gruyter European Law Publishers, 2011, pp. 351-375; Tampere European Council, 15 and 16 October 1999, Presidency Conclusions (Tampere Conclusions), no. 33; European Commission, "Towards a True European Area of Justice: Strengthening Trust, Mobility and Growth", Press Release IP/14/233 of 11 March 2014.

[45] See more in Kramer, Xandra, Cross-Border Enforcement and the Brussels I-Bis Regulation: Towards a New Balance between Mutual Trust and National Control over Fundamental Rights, *Netherlands International Law Review*, vol. 60, no. 3 (2013), p. 364; Kramer, Xandra, Cross-Border Enforcement in the EU: Mutual Trust versus Fair Trial: Towards Principles of European Civil Procedure, International Journal of Procedural Law, vol. 1, no. 2 (2011), p. 218; Moraru, Madalina, Mutual Trust from the Perspective of National Courts. A Test in Creative Legal Thinking, in: Brouwer, Evelien, Gerard, Damien (eds.), *Mapping Mutual Trust: Understanding and Framing the Role of Mutual Trust in EU Law*, EUI Working Papers, European University Institute, Max Weber Programme (2016), pp. 37, 38.

is based on the presumption that Member States trust in each other's judicial systems, particularly the fairness of their legal procedures.[46] Over time, this mutual trust has been reinforced through various EU regulations, each designed to streamline and simplify the process of recognising and enforcing judgments across borders. These regulations include all of the regulations selected for this research, i.e., the Brussels I Recast Regulation, EEOR, EOPR, ESCPR, EAPOR, and the Maintenance Regulation, but also other EU regulations that do not fall under the scope of the current research.[47] In that vein, given that Member States 'trust' each other, whether it be a reality or purely an obligation,[48] it is logical that judicial decisions given by a court of one Member State will be recognised in the courts of all of the other Member States.

All of the regulations selected for this research, however, go one step further than simply establishing the obligation of mutual recognition of judgments – they also establish that such recognition is to be automatic.[49] This means that a judgment given in one Member State will be automatically recognised in another, without any additional steps or formal proceedings that need to be done before recognition can take place.[50] This is also known as recognition 'de plano' or 'ipso iure'.[51] In accordance with the established case law of the CJEU, the recognition of judgments in the EU follows the doctrine of the extension of effects, which means that 'recognition must have the effect, in principle, of conferring on judgments the authority and effectiveness accorded to them in the Member State in which they were given'.[52] Such view is

[46] Hazelhorst, Monique, *Free Movement of Civil Judgments in the European Union and the Right to a Fair Trial*, Springer, 2017, p. 41; Kunda, Ivana, Međunarodnoprivatnopravni odnosi, in: Mišćenić, Emilia (ed.), *Europsko privatno pravo: Posebni dio*, Školska knjiga, 2021, p. 495; Malachta, Radovan, Mutual Trust as a Way to an Unconditional Automatic Recognition of Foreign Judgments, in: Rozehnalová, Naděžda (ed.), *Universal, Regional, National – Ways of the Development of Private International Law in 21st Century*, Masaryk University Press, 2019, p. 216.

[47] See, e.g., Hazelhorst, Monique, Mutual Trust Under Pressure: Civil Justice Cooperation in the EU and the Rule of Law, *Netherlands International Law Review*, vol. 65 (2018), pp. 103–130; Malachta, Radovan, Mutual Trust as a Way to an Unconditional Automatic Recognition of Foreign Judgments, in: Rozehnalová, Naděžda (ed.), *Universal, Regional, National – Ways of the Development of Private International Law in 21st Century*, Masaryk University Press, 2019, pp. 211-241.

[48] Andersson, Torbjörn, Harmonisation and Mutual Recognition: How to Handle Mutual Distrust, in: Andenas, Mads, Hess, Burkhard, Oberhammer, Paul (eds.), *Enforcement Agency Practice in Europe*, The British Institute of International and Comparative Law, 2005, p. 247; Weller, Matthias, Mutual Trust: In Search of the Future of European Union Private International Law, *Journal of Private International Law*, vol. 11, no. 1 (2015), pp. 66, 67.

[49] Brussels I Recast, art. 36(1); EEOR, art. 5; EOPR, art. 19; ESCPR, art. 20; EAPOR, art. 22; Maintenance Regulation, arts. 17, 23.

[50] Wautelet, Patrick, Article 36, in: Magnus, Ulrich, Mankowski, Peter (eds.), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary*, Verlag Dr. Otto Schmidt KG, 2023, p. 798.

[51] Ibid.

[52] C-420/07, *Meletis Apostolides v David Charles Orams and Linda Elizabeth Orams*, EU:C:2009:271 (2009), para 66. See also C-145/86, *Horst Ludwig Martin Hoffmann v Adelheid Krieg*, EU:C:1988:61 (1988), para. 11.

also supported by the Jenard Report,[53] and is in line with other provisions[54] and overall aims[55] of the relevant regulations.

Judgments issued in other Member States may be subject to recognition either within the context of a primary action for recognition, or incidentally, within another proceeding whose outcome depends on prior determination of the issue of recognition of a certain judgment.[56] It is the latter that will certainly be applied more often.[57] However, some parties may have valid reasons for applying to the court for a declaration of recognition, such as, e.g., if there are some uncertainties on whether refusal of recognition may be possible or if a certain judgment is not appropriate for enforcement.[58] Thus, 'any interested party' may apply for the issuance of a declaration of recognition. According to the Jenard report, the concept of 'any interested party' refers to 'any person who is entitled to the benefit of the judgment in the State in which it was given.'[59] This is not only limited to the parties that were involved in the proceedings in the Member State of origin – in other words, a broad understanding of the notion of 'interested party' must be taken.[60] Whether an applicant can be characterised as an 'interested party' must be assessed in line with European definition instead of national ones.[61]

Regardless of whether a party requests a declaration of recognition or whether the issue of recognition arises within the framework of another court proceeding, the interested party must fulfil certain formal requirements in order to invoke a judgment given in one Member State before the court of another.[62] Specifically, he/she must produce a copy of the judgment itself,

[53] Report by Mr P. Jenard on the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, OJ C, C/59 (1979), p. 43.
[54] Such as Article 54 of Brussels I Recast which stipulates that, 'if a judgment contains a measure or an order which is not known in the law of the Member State addresses, that measure or order shall, to the extent possible, be adapted to a measure or an order known in the law of that Member State which has equivalent effects attached to it and which pursues similar aims and interests'.
[55] See Wautelet, Patrick, Article 36, in: Magnus, Ulrich, Mankowski, Peter (eds.), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary*, Verlag Dr. Otto Schmidt KG, 2023, p. 796; Franzina in Dickinson, Lein, „The Brussels I Regulation Recast" (2015), para 13.32.
[56] Wautelet, Patrick, Article 36, in: Magnus, Ulrich, Mankowski, Peter (eds.), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary*, Verlag Dr. Otto Schmidt KG, 2023, p. 798.
[57] Ibid., p. 799, 802.
[58] Ibid., p. 799.
[59] Jenard report, p. 49.
[60] Wautelet, Patrick, Article 36, in: Magnus, Ulrich, Mankowski, Peter (eds.), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary*, Verlag Dr. Otto Schmidt KG, 2023, p. 801; Layton, Alexander, Mercer, Hugh (gen. Eds.), *European Civil Practice (Vol 1)*, 2nd edn, Sweet & Maxwell, 2004, p. 877.
[61] Wautelet, Patrick, Article 36, in: Magnus, Ulrich, Mankowski, Peter (eds.), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary*, Verlag Dr. Otto Schmidt KG, 2023, p. 801.
[62] Wautelet, Patrick, Article 37, in: Magnus, Ulrich, Mankowski, Peter (eds.), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary*, Verlag Dr. Otto Schmidt KG, 2023, p. 805.

as well as the certificate of the court of origin.[63] The copy of the judgment must satisfy the conditions necessary to establish its authenticity, which allows the court to actually verify whether the requirements for recognition are met.[64] The threshold for establishing authenticity is imposed by the Member State of origin – the Member State addressed may not impose additional standards in this sense.[65] This requirement also points to the fact that providing solely a summary of the relevant judgment or only a part of the judgment will not suffice for the purpose of cross-border recognition.[66] In terms of the certificate of the court of origin, the relevant form of the certificate may be found in the Annex of the relevant regulations. The use of the available form for the certificate is compulsory – other documents may not be used instead.[67] In addition to these two requirements, translation or transliteration of the certificate, or, if necessary, the judgment itself, may also be required,[68] but only if the information provided in the certificate is insufficient for the court or other relevant authority to proceed.[69]

2.1.2. Enforcement of judgments

In all of the regulations selected for this research, a judgment given and enforceable in one Member State is also automatically enforceable in all of the other Member States, without any special procedure or a declaration of enforceability being required.[70] The notion of 'judgment'

[63] See more in, e.g., C-347/18, *Alessandro Salvoni v Anna Maria Fiermonte*, EU:C:2019:661 (2019); C-579/17, *BUAK Bauarbeiter-Urlaubs- u. Abfertigungskasse v Gradbeništvo Korana d.o.o.*, EU:C:2019:162 (2019); C-619/10, *Trade Agency Ltd v Seramico Investments Ltd*, EU:C:2012:531 (2012); C-511/14, *Pebros Servizi Srl v Aston Martin Lagonda Ltd*, EU:C:2016:448 (2016); C-300/14, *Imtech Marine Belgium NV v Radio Hellenic SA*, EU:C:2015:825 (2015).

[64] Brussels I Recast, art. 37; EEOR, art. 20(2)(a); EOPR, art. 21(2)(a); ESCPR, art. 21(2)(a); Maintenance Regulation, art. 20(1)(a) .

[65] Wautelet, Patrick, Article 37, in: Magnus, Ulrich, Mankowski, Peter (eds.), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary*, Verlag Dr. Otto Schmidt KG, 2023, p. 806; Jenard Report, p. 55.

[66] Wautelet, Patrick, Article 37, in: Magnus, Ulrich, Mankowski, Peter (eds.), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary*, Verlag Dr. Otto Schmidt KG, 2023, p. 805.

[67] Brussels I Recast, art. 37(1)(b); EEOR, art. 20(2)(b); EOPR, art. 21(2)(a). See also Wautelet, Patrick, Article 37, in: Magnus, Ulrich, Mankowski, Peter (eds.), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary*, Verlag Dr. Otto Schmidt KG, 2023, p. 807. In terms of the Maintenance Regulation, an extract from the decision issued by the court of origin using the form set out in Annex I must be used (Maintenance Regulation, art. 20(1)(b)).

[68] See, e.g., C-21/17, *Catlin Europe SE v O.K. Trans Praha spol. s r.o.*, EU:C:2018:675 (2018).

[69] Brussels I Recast, art. 37(2); EEOR, art. 20(2)(c); EOPR, art. 21(2)(b); ESCPR, art. 21(2)(b); EAPOR, art. 23(4); Maintenance Regulation, art. 20(1)(d). See also Wautelet, Patrick, Article 37, in: Magnus, Ulrich, Mankowski, Peter (eds.), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary*, Verlag Dr. Otto Schmidt KG, 2023, pp. 808, 809.

[70] Brussels I Recast, art. 39; EEOR, art. 20; EOPR, art. 19; ESCPR, art. 20; EAPOR, art. 22; Maintenance Regulation, art. 17(2). The only exception in the Maintenance Regulation is for the judgments given in Member States not bound by the 2007 Hague Protocol, i.e., judgments from Denmark.

itself thus represents a core notion necessary for interpreting the relevant provisions on enforcement,[71] which is why it was chosen as the focus of one of the articles that this dissertation consists of and will therefore be further analysed below.[72] While all of the judgments falling under the scope of the relevant regulations will automatically acquire enforceability, i.e., the quality of being enforceable, the actual process of enforcement will be governed by the national law of the Member State addressed.[73] Thus, concepts of 'enforceability' and 'enforcement' *stricto sensu* must be clearly differentiated here.[74]

One exception from this general rule can be found in the Maintenance Regulation. As mentioned above, this regulation distinguishes between judgments given in a Member State bound by the 2007 Hague Protocol and judgments given in a Member State not bound by the 2007 Hague Protocol. In terms of the former, such judgments will be automatically enforceable in all Member States, in line with the general rule explained above.[75] In terms of the latter, however, such judgments will still be subject to the exequatur procedure. In other words, an interested party must apply for such judgment to be declared enforceable in the Member State addressed.[76] This option, however, will only apply for judgments given in Denmark, as all of the other (current) Member States are bound by the 2007 Hague Protocol, and thus fall under the first system provided by the Maintenance Regulation.

In all of the other instances where a judgment given in one Member State needs to be enforced in another, the necessary procedure is significantly simplified. For the purposes of enforcement abroad under the Brussels I Recast, the EEOR or the ESCPR, the party seeking enforcement provides the competent authority in the Member State of enforcement (i.e., a bailiff, court officer, or some other enforcement agency)[77] a copy of the relevant judgment whose authenticity can be established, as well as the relevant certificate (that can be found in the

[71] See, e.g., C-125/79, *Bernard Denilauler v SNC Couchet Frères*, EU:C:1980:130 (1980); C-39/02, *Maersk Olie & Gas A/S v Firma M. de Haan en W. de Boer*, EU:C:2004:615 (2004); C-394/07, *Marco Gambazzi v DaimlerChrysler Canada Inc., CIBC Mellon Trust Company*, EU:C:2009:219 (2009); C-456/11, *Gothaer Allgemeine Versicherung AG and others v Samskip GmbH*, EU:C:2012:719 (2012).
[72] See infra, p. 32 et seq.
[73] The actual enforcement laws and enforcement practices in different Member States may vary significantly. See more in Kennett, Wendy, *Civil Enforcement in a Comparative Perspective. A Public Management Challenge*, Intersentia, 2021.
[74] See Cuniberti, Gilles, Article 39, in: Magnus, Ulrich, Mankowski, Peter (eds.), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary*, Verlag Dr. Otto Schmidt KG, 2023, p. 819; C-379/17, *Società Immobiliare Al Bosco Srl*, EU:C:2018:806 (2018), para. 26; *Apostolides*, para. 69.
[75] Maintenance Regulation, art. 17.
[76] Maintenance regulation, art. 26.
[77] Kramer, Xandra, Cross-Border Enforcement and the Brussels I-Bis Regulation: Towards a New Balance between Mutual Trust and National Control over Fundamental Rights, *Netherlands International Law Review*, vol. 60, no. 3 (2013), p. 356.

annexes of the relevant regulations) which certifies that the judgment is indeed enforceable. The certificate in question is issued by the court of the Member State of origin of the judgment on the request of the interested party. Translation or a transliteration of the certificate may be required only if the enforcement authority is unable to proceed without it.[78] The certificate is of highest importance in the Brussels system of enforcement: it offers the enforcement agency in the Member State of enforcement all of the relevant data on the court of origin, the parties, and the judgment itself.[79] It is also an important requirement for the subsequent, actual enforcement, as it must be served on the person against whom the enforcement is sought prior to the first enforcement measure.[80] The relevant regulations do not determine at what point in time must this action be done, only that it must be done 'in reasonable time'. The French national courts have interpreted this as allowing for the possibility that it may even be done only five minutes before the enforcement.[81] From the information provided in the certificate (and in the judgment, which is served along with the certificate, if it had not been served already) the party against whom the enforcement is sought must acquire all the information about the upcoming enforcement, as well as the judgment which was rendered against him/her.[82]

A similar procedure is envisaged under the EAPOR, which states that the necessary documents for enforcement abroad include part A of the relevant Account Preservation Order, a standard form for the 'declaration',[83] and, if necessary, translation or transliteration.

In terms of the EOPR, the necessary documents that must be provided to the competent authority in the Member State of enforcement include a copy of the European Order for Payment and, if necessary, translation or transliteration.[84] Given that the EOPR establishes a

[78] Brussels I Recast, art. 42(3),(4); EEOR, art. 20(2)(c); EOPR, art. 21(2)(b); ESCPR, art. 21(2)(b); EAPOR, art. 23(4); Maintenance Regulation, art. 20(1)(d).
[79] Kramer, Xandra, Cross-Border Enforcement and the Brussels I-Bis Regulation: Towards a New Balance between Mutual Trust and National Control over Fundamental Rights, *Netherlands International Law Review*, vol. 60, no. 3 (2013), p. 357. See also Cour d'appel de Grenoble, RG n° 24/02220, 28 janvier 2025, and the subsequent commentary 'French Court Denies Enforcement for Lack of Service of Article 53 Brussels I bis Certificate', EAPIL, available at: https://eapil.org/2025/07/16/french-court-denies-enforcement-for-lack-of-service-of-article-53-brussels-i-bis-certificate/?utm_source=mailpoet&utm_medium=email&utm_source_platform=mailpoet&utm_campaign=new-contents-on-the-eapil-blog_2 (accessed 15 August 2025).
[80] Brussels I Recast, art. 43(1).
[81] See Cour de cassation, Chambre civile 1, 11 janvier 2023, 21-17092, and the subsequent commentary 'French Supreme Court Rules Certificate Provided for in Article 53 Brussels I bis May Be Served 5 Minutes before Enforcement', EAPIL, available at: French Supreme Court Rules Certificate Provided for in Article 53 Brussels I bis May Be Served 5 Minutes before Enforcement – EAPIL (accessed 19 August 2025).
[82] Brussels I Recast, art. 43(1).
[83] EAPOR, art. 25.
[84] EOPR, art. 21(2).

written procedure that is to be done solely through the use of pre-established forms,[85] additional certificate, as that provided by Brussels I Recast, EEOR or the ESCPR, is not necessary.

Finally, the Maintenance Regulation imposes an obligation to provide the competent enforcement authority in the Member State of enforcement with a copy of the decision (which satisfies the conditions necessary to establish its authenticity); the extract from the decision issued by the court of origin using the relevant form from the Annex I of the regulation; where appropriate, a document showing the amount of any arrears and the date such amount was calculated; and, where necessary, translation or transliteration of the content of the relevant form mentioned above.[86]

On certain occasions, the judgment debtor will also be entitled to seek a limitation or suspension of enforcement before the court of the Member State addressed. This will be possible at different occasions, depending on the applicable regulation,[87] but most importantly when an application for refusal of enforcement has been made.

2.1.3. Refusal of recognition and/or enforcement

The free movement of judgments, albeit a facilitator of cross-border judicial cooperation, does not equal recognition and enforcement of judgments without any limits. Despite the mutual trust that the regulations facilitating the recognition and enforcement encourage between the EU's Member States, such trust cannot be extended so far that it could be referred to as blind.[88] With many differences between legal systems and cultures still remaining, some safeguards are still necessary for the proper functioning of the EU's legal system. This is further supported by the need to uphold fundamental rights, which may be compromised during the process leading up to the issuance of judgments that must be enforced abroad. Consequently, all EU regulations governing the recognition and enforcement of judgments outline certain grounds for refusal, specifying circumstances under which recognition and/or enforcement may be denied due to irregularities that could arise during the judgment's establishment. Over the years, the goal of

[85] Onţanu, Elena Alina, *Cross-Border Debt Recovery in the EU. A Comparative and Empirical Study on the Use of the European Uniform Procedures*, Intersentia (2017), p. 28.
[86] Maintenance Regulation, art. 20.
[87] Brussels I Recast, art. 44; EEOR, art. 23; EOPR, art. 23; ESCPR, art. 23; EAPOR, art. 35(3); Maintenance Regulation, art. 21.
[88] Lenaerts, Koen, The Principle of Mutual Recognition in the Area of Freedom, Security and Justice, The Fourth Annual Sir Jeremy Lever Lecture, All Souls College, University of Oxford (2015), pp. 3, 9.

reducing the number of such grounds has been evident in all EU regulations, primarily driven by the concept of free movement of judgments across borders based on mutual trust. This objective is also supported by the continued harmonisation of rules and the enhanced cross-border cooperation among Member States. However, a limited number of grounds available to the defendant in the Member State of enforcement still remain, with some of the newer instruments also providing for additional safeguards in the Member State of origin in order to simplify the procedure of subsequent cross-border recognition and enforcement.[89]

In that vein, the judgment debtor, i.e., the person against whom enforcement is sought, may apply for refusal of recognition and/or enforcement, based on one of the available refusal grounds that are offered in the regulation in question. The refusal of recognition will only be available under Brussels I Recast and under the Maintenance Regulation (for decisions given in a Member State not bound by the 2007 Hague Protocol). In other words, only Brussels I Recast and the Maintenance Regulation offer certain grounds for refusal of recognition; the rest of the selected regulations do not offer any possibility, i.e., any grounds, for refusal of recognition. Refusal of enforcement, on the other hand, will be available in all of the EU regulations selected for this research – in other words, all of the selected regulations offer certain grounds based on which enforcement may be refused.

Although the offered refusal grounds vary depending on the regulation, in general, only four possible refusal grounds remain available in all of the regulations: public policy exception, ground for protection of the defaulting defendant, irreconcilability with other judgments, and the ground for securing certain protective rules on jurisdiction.[90] As such, these grounds have not changed significantly since the Brussels Convention was in place. Therefore, they seem to be 'time-proof'.[91]

[89] See, e.g., EEOR, Chapter III.

[90] See, however, an interesting judgment of the French court: Cour de cassation, Pourvoi n° 21-12.263, 7 septembre 2022. See also commentary by Giles Cuniberti: 'French Supreme Court Rules on Wrongful Application of Brussels I Regulation to Enforcement of a Judgment', EAPIL, available at: https://eapil.org/2023/01/05/french-supreme-court-rules-on-wrongful-application-of-brussels-i-regulation-to-enforcement-of-a-judgment/ (accessed 19 August 2025).

[91] Kramer, Xandra, Cross-Border Enforcement and the Brussels I-Bis Regulation: Towards a New Balance between Mutual Trust and National Control over Fundamental Rights, *Netherlands International Law Review*, vol. 60, no. 3 (2013), p. 363. See also European Commission, Study to support the preparation of a report on the application of Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Ia Regulation) Final Report, *Publications Office of the European Union*, 2023, p. 246.

2.1.3. 1. Public policy

The public policy exception has long been one of the integral concepts of private international law. It was conceived to protect national legal orders from foreign solutions that were incompatible with the values or interests of the state addressed.[92] Originally, each state independently defined what specific legal principles or rules form part of its public policy. However, given that EU law has now become an integral part of the legal systems of all its Member States, certain norms and principles of EU law, including those of the Council of Europe,[93] are considered part of the public policy of every EU Member State.[94] In this context, although the CJEU cannot determine the exact content of each Member State's public policy, its rulings can certainly assist in outlining the boundaries within which national courts may invoke public policy when considering the potential refusal of recognition or enforcement of a judgment from another Member State.[95]

Two distinct aspects of the public policy exception may be distinguished: substantive and procedural. In terms of the former, this aspect 'refers to the content of the foreign judgment which shall enforce substantial law considered to contradict fundamental principles or mandatory provisions of the Member State of enforcement.'[96] This means that the specific legal rule that was applied in the case at hand infringes the public policy of the Member State addressed. On the other hand, the latter, i.e., procedural, aspect refers to the infringement of certain procedural rules that are considered fundamental in the Member State addressed, and is primarily related to the infringement of the right to a fair trial.[97] Taking into account the high level of harmonisation in the fields regulated by the EU regulations selected for this research,[98]

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[92] Kramberger Škerl, Jerca, European public policy (with an emphasis on exequatur proceedings), *Journal of Private International Law*, vol. 7, no. 3 (2011), p. 461.
[93] Primarily the European Convention of Human Rights (1950).
[94] Gössl, Susanne Lilan, The public policy exception in the European civil justice system, *The European Legal Forum. Forum iuris communis Europae*, no. 4 (2016), p. 85; Mankowski, Peter, Article 45, in: Magnus, Ulrich, Mankowski, Peter (eds.), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary*, Verlag Dr. Otto Schmidt KG, 2023, p. 854; C-38/98, *Régie nationale des usines Renault SA v Maxicar SpA and Orazio Formento*, EU:C:2000:225 (2000), para. 32.
[95] Mankowski, Peter, Article 45, in: Magnus, Ulrich, Mankowski, Peter (eds.), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary*, Verlag Dr. Otto Schmidt KG, 2023, p. 854; *FlyLAL*, para. 47; C-7/98, *Dieter Krombach v André Bamberski*, EU:C:2000:164 (2000), para. 22-23; *Trade Agency*, para. 49; *Apostolides*, para. 56-57; *Renault*, para. 27-28; C-633/22, *Real Madrid Club de Fútbol, AE v EE, Société Éditrice du Monde SA*, EU:C:2024:843 (2024), para 35.
[96] Hess, Burkhard, Pfeiffer, Thomas, *Interpretation of the Public Policy Exception as referred to in EU Instruments of Private International and Procedural Law*, European Parliament, 2011, p. 29.
[97] Ibid.
[98] See, e.g., Hess, Burkhard, Procedural Harmonisation in a European Context, in: Kramer, Xandra, Van Rhee, C. H. (eds.), *Civil Litigation in a Globalising World*, T. M. C. Asser Press, 2012, pp. 159-174; Kramer, Xandra,

it is clear that the substantive aspect of public policy will rarely be raised in practice.[99] On the other hand, the procedural aspect may still prove to be important, as visible from CJEU rulings in *Krombach*,[100] *Gambazzi*,[101] *Trade Agency*,[102] but also potentially in the *H Limited* ruling that is analysed in more detail in one of the articles that form part of this dissertation.[103]

Regardless of whether referring to the substantive or procedural aspect, an important rule for application of the public policy exception is that it must be interpreted strictly.[104] This means that this refusal ground may be used only in exceptional cases, where fundamental principles have been gravely disturbed.[105] This was particularly highlighted by the Brussels I Recast and the Brussels I Regulation, which both signify that the breach of public policy must be 'manifest', as opposed to their predecessor, the Brussels Convention.[106] Such interpretation is also in line with the prohibition of review as to the substance that may be found in the selected regulations.[107] Finally, for a judgment to be refused recognition or enforcement, the actual effect of recognition/enforcement must infringe the public policy of the Member State addressed, not the substance of the judgment itself.[108]

While the public policy exception remains an important tenet of (EU) private international law, the number of regulations in which it actually applies has been decreasing. In that vein, public policy as a ground for refusal of both recognition and enforcement may be found in the Brussels I Recast, while it is solely a ground for refusal of enforcement in the EAPOR. In the Maintenance Regulation, this ground currently persists only for judgments given in a Member State not bound by the 2007 Hague Protocol, i.e., in Denmark, and is otherwise not allowed for

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Harmonisation of Civil Procedure and the Interaction with Private International Law, in: Kramer, Xandra, Van Rhee, C. H. (eds.), *Civil Litigation in a Globalising World*, T. M. C. Asser Press, 2012, pp. 121-140; Beaumont, Paul, Johnston, Emma, Can Exequatur be Abolished in Brussels I Whilst Retaining a Public Policy Defence?, *Journal of Private International Law*, vol. 6, no. 2, (2010), pp. 249-279.

[99] See, e.g., Hess, Burkhard, Pfeiffer, Thomas, *Interpretation of the Public Policy Exception as referred to in EU Instruments of Private International and Procedural Law*, European Parliament, 2011.

[100] C-7/98, *Dieter Krombach v André Bamberski*, EU:C:2000:164 (2000).

[101] C-394/07, *Marco Gambazzi v DaimlerChrysler Canada Inc., CIBC Mellon Trust Company*, EU:C:2009:219 (2009).

[102] See above, footnote 63.

[103] See infra, p. 32 et seq.

[104] Mankowski, Peter, Article 45, in: Magnus, Ulrich, Mankowski, Peter (eds.), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary*, Verlag Dr. Otto Schmidt KG, 2023, p. 856; Jenard report, p. 44; C-78/95, *Bernardus Hendrikman and Maria Feyen v Magenta Druck & Verlag GmbH*, EU:C:1996:380 (1996), para. 23; *Hoffmann*, para. 21; *Krombach*, para. 21; *Renault*, para. 26; *Trade Agency*, para. 48.

[105] Mankowski, Peter, Article 45, in: Magnus, Ulrich, Mankowski, Peter (eds.), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary*, Verlag Dr. Otto Schmidt KG, 2023, p. 856.

[106] See Brussels I Recast, art. 45(1)(a); Brussels I Regulation, art. 34; Brussels Convention, art. 27.

[107] Brussels I Recast, art. 52; EEOR, art. 21(2); Maintenance Regulation, art. 42.

[108] Mankowski, Peter, Article 45, in: Magnus, Ulrich, Mankowski, Peter (eds.), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary*, Verlag Dr. Otto Schmidt KG, 2023, p. 856.

judgments emanating from all of the other Member States. Other EU regulations selected for this research have all dispensed with this, as with the rest of the refusal grounds. Such path, however, could also be envisaged for the Brussels I Recast in the future; after all, there have been previous calls for abolishment of the public policy exception during the time when the reform of Brussels I Regulation was taking place. In that sense, while many consider it unnecessary, especially since it is rarely used in practice,[109] others view it as a guardian of different national values and a promotor of fundamental rights.[110] In view of the discussion briefly presented in one of the articles that form part of this research,[111] the author would, at the time of writing of this dissertation, likely side with the second group in terms of the Brussels I Recast as the primary instrument in civil and commercial matters.

2.1.3.2. Protection of the defaulting defendant

As explained above, the public policy may refer to procedural irregularities that are so severe that they warrant refusal of recognition or enforcement. However, the right of the defendant to a fair hearing is primarily[112] protected by the refusal ground that may be found in Article 45(1)(b) of the Brussels I Recast, as well as in Article 24(1)(b) of the Maintenance Regulation (only for decisions given in Denmark). In that vein, these provisions prescribe that recognition or enforcement of a judgment will be refused when the judgment was 'given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment [in the Maintenance Regulation, decision] when it was possible for him to do so'. This refusal

[109] See European Commission, Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), COM (2025) 268 final (2025), p. 15; Hess, Burkhard, Pfeiffer, Thomas, *Interpretation of the Public Policy Exception as referred to in EU Instruments of Private International and Procedural Law*, European Parliament, 2011.

[110] Kramberger Škerl, Jerca, European Public Policy (with Emphasis on Exequatur Proceedings), *Journal of Private International Law*, vol. 7, no. 3 (2011), p. 489.

[111] See Tičić, Martina, The Notion of 'Judgment' in the EU Regulations on Cross-Border Collection of Monetary Claims: A Change in Understanding?, *European Papers*, vol. 9, no. 2 (2024), pp. 580-581.

[112] This means that the public policy as a ground of refusal will only be used subsidiary, i.e., if the conditions of Article 45(1)b of the Brussels I Recast/Article 24(1)(b) of the Maintenance Regulation are not met. See, e.g., Mankowski, Peter, Article 45, in: Magnus, Ulrich, Mankowski, Peter (eds.), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary*, Verlag Dr. Otto Schmidt KG, 2023, p. 873.

ground thus represents an important safeguard for the protection of the rights of the defence, which cannot be in any way diminished for the aim of speedier enforcement abroad.[113]

This refusal ground, as visible from the description above, is subject to specific requirements. The first requirement that must be fulfilled in all cases is that the judgment in question was given in default of the defendant's appearance; the second concerns the proper service of the relevant document which instituted proceedings (or an equivalent one); and the third is that the defendant has previously challenged the judgment if he/she had such opportunity.

In order to fully discern what these requirements entail, several points must be discussed here. In terms of the first requirement, 'default of appearance' must be interpreted autonomously, in line with the instructions provided by the CJEU.[114] In that vein, in *Hendrikman*, the CJEU decided that 'where proceedings are initiated against a person without his knowledge and a lawyer appears before the court first seized on his behalf but without his authority (…), that person must be regarded as a defendant in default of appearance.'[115] Additionally, as noted by Kropholler, 'the defendant cannot be considered as having failed to appear as soon as he or his counsel presented arguments before the court from which it can be deduced that he had actual knowledge of the proceedings and enjoyed enough time to prepare his defence.'[116] In terms of the second requirement, specifically, the notion of 'the document which instituted the proceedings', the CJEU previously gave certain guidelines for its interpretation, stating that this notion refers to 'the document or documents which must be duly and in due time served on the defendant in order to enable him to assert his rights before an enforceable judgment is given in the State of origin.'[117] Also in terms of the second requirement, the service must be effected in sufficient time and in such a way as to enable the defendant to prepare his defence, which actually represents a twofold requirement. Although certain pointers for a proper interpretation of these requirements have been given by the CJEU[118] and others can be derived from legal

[113] Mankowski, Peter, Article 45, in: Magnus, Ulrich, Mankowski, Peter (eds.), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary*, Verlag Dr. Otto Schmidt KG, 2023, p. 873, C-70/15, *Emmanuel Lebek v Janusz Domino*, EU:C:2016:524 (2016), para. 34.
[114] Mankowski, Peter, Article 45, in: Magnus, Ulrich, Mankowski, Peter (eds.), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary*, Verlag Dr. Otto Schmidt KG, 2023, p. 878.
[115] *Hendrikman*, para. 18.
[116] Mankowski, Peter, Article 45, in: Magnus, Ulrich, Mankowski, Peter (eds.), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary*, Verlag Dr. Otto Schmidt KG, 2023, p. 878.
[117] Ibid., p. 874; C-474/93, *Hengst Import BV v Anna Maria Campese*, EU:C:1995:243 (1995), para. 19.
[118] See, e.g., C-166/80, *Peter Klomps v Karl Michel*, EU:C:1981:137 (1981); C-49/84, *Leon Emile Gaston Carlos Debaecker and Berthe Plouvier v Cornelis Gerrit Bouwman*, EU:C:1985:252 (1985).

literature,[119] the fact is that the relevant court will have conducted *in concreto* appraisal of all circumstances in order to determine whether these requirements have been met.[120] Finally, the third requirement relates to the core idea that resonates through the whole system of cross-border recognition and enforcement in the EU, which is that individuals must use all legal remedies that are available to them in the Member State of origin, as highlighted by the CJEU in *Diageo*[121] and *Meroni*.[122] This requirement, however, is subject to one limitation – available remedies must be used only when that is 'possible.' Thus, the court of the Member State addressed will have to assess whether the defendant was actually in a position to appeal in the Member State of origin.[123]

2.1.3.3. Irreconcilability with other judgments

The ground of refusal based on the irreconcilability with other judgments aims to avoid the disturbance in the legal order of the Member State of enforcement which would be created if conflicting judgments would be allowed to coexist.[124] It relates to the rule of *lis pendens*, provided in, e.g., Articles 29-32 of the Brussels I Recast, in a way that it offers a chance to resolve the problem that can arise when the provisions on *lis pendens* have not been respected in the case at hand. Since such situations are aimed to be resolved pre-emptively, it can be expected that refusal grounds based on irreconcilability will be seldom used.[125] However, the possibility of irreconcilable judgments still exists, therefore this ground of refusal still has its place among the rest. Actually, this refusal ground can even be referred to as particularly important, given that it is the last remaining refusal ground in the EEOR, EOPR, ESCPR and the Maintenance Regulation, which all otherwise abolished any possibility of refusal of

[119] Mankowski, Peter, Article 45, in: Magnus, Ulrich, Mankowski, Peter (eds.), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary*, Verlag Dr. Otto Schmidt KG, 2023, pp. 880-884.
[120] Ibid., p. 881.
[121] C-681/13, *Diageo Brands BV v Simiramida-04 EOOD*, EU:C:2015:471 (2015), para 64.
[122] C-559/14, *Rudolfs Meroni v Recoletos Limited*, EU:C:2016:349 (2016), para. 48.
[123] Mankowski, Peter, Article 45, in: Magnus, Ulrich, Mankowski, Peter (eds.), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary*, Verlag Dr. Otto Schmidt KG, 2023, p. 885.
[124] Ibid., 887.
[125] Giussani, Andrea, Grounds for refusal of recognition of foreign judgments: Developments and perspectives in EU Member States regarding public order and conflicting decisions, in: Rijavec, Vesna, Drnovšek, Katja, Van Rhee, C.H. (eds.), *Cross-Border Enforcement in Europe: National and International Perspectives*, Intersentia, 2020, p. 60.

enforcement. Despite the similar intention, irreconcilable judgments are regulated differently among Brussels I Recast and the rest of these regulations.

The Brussels I Recast actually offers two separate refusal grounds that are based on irreconcilability. The first one, found in Article 45(1)(c), relates to irreconcilable judgment in a Member State of enforcement, and provides that recognition and enforcement of a judgment will be refused if it is 'irreconcilable with a judgment given between the same parties in the Member State addressed.' The second one, found in Article 45(1)(d), relates to irreconcilable judgment in a different Member State or a third State, and provides that recognition and enforcement of a judgment will be refused if it is 'irreconcilable with an earlier judgment given in another Member State or a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed.' The same two refusal grounds may also be found in the Maintenance Regulation, for decisions given in a Member State not bound by the 2007 Hague Protocol, i.e., in Denmark.[126]

On the other hand, only one refusal ground based on irreconcilability may be found in EEOR, EOPR, ESCPR and the Maintenance Regulation (for decision given in a Member State bound by the 2007 Hague Protocol), which does not differentiate between earlier judgments given in the Member State of enforcement and earlier judgments given in other Member States or a Third State. The EEOR, EOPR and ESCPR share the same[127] provision, which provides that enforcement may be refused on the occasion that the relevant judgment is irreconcilable with an earlier judgment given in any Member State or a third State, provided that such earlier judgment fulfils three requirements: it must have the same cause of action and be between the same parties; it fulfils the conditions necessary for its recognition in the Member State of enforcement; and the irreconcilability was not and could not have been raised as an objection in the court proceedings before the court of origin.[128] Finally, the Maintenance Regulation simply states that enforcement of a judgment may be refused if it is 'irreconcilable with a decision given in the Member State of enforcement or with a decision given in another Member State or in a third State which fulfils the conditions necessary for its recognition in the Member

[126] See Maintenance Regulation, art. 24(1)(c) and (d).
[127] With minimal differences relating to the specificities of the procedures in question.
[128] EEOR, art. 21(1); EOPR, art. 22(1); ESCPR, art. 22(1).

State of enforcement.'[129] Regardless of the differences in the wording, no specific difference in the substance can be detected here.

These differences among the relevant regulations may come as a surprise, considering their similar scopes of application and shared objective. To assess whether such differences are justified, a detailed analysis of this particular ground for refusal, and its variations across the selected regulations, is given in one of the articles that forms part of this dissertation and will thus be examined in more detail below.[130]

2.1.3.4. Conflict with jurisdictional rules

One of the core principles of the recognition and enforcement regime in the relevant EU regulations is the non-review of jurisdiction of the court that issued the judgment in the Member State of origin.[131] In other words, incorrect application of jurisdictional rules is not sanctioned by the relevant regulations – on the contrary, it must be accepted.[132] However, a possibility for refusal of recognition and enforcement based on the fact that jurisdictional rules were not respected remains in the Brussels I Recast. Such possibility is, nevertheless, significantly restricted in a way that refusal is only possible on two occasions: first, if the judgment conflicts with protective jurisdictional rules for weaker parties, i.e., Sections 3, 4 or 5 of Chapter II of the Brussels I Recast, where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee was the defendant; and second, if the judgment conflicts with the rules on exclusive jurisdiction, i.e., Section 5 of Chapter II of the Brussels I Recast.

In terms of the first possibility, this refusal ground focuses on special jurisdictional rules which aim at protecting the weaker party, i.e., in insurance, consumer and labour disputes, on the occasion that the defendant in the case at hand is the weaker party. Despite the general prohibition of the review of jurisdiction, this refusal ground does not come as a surprise, given that the protection of weaker parties is of particular importance in the Brussels system.

[129] Maintenance Regulation, art. 21(2).
[130] See infra, p. 40-45.
[131] Mankowski, Peter, Article 45, in: Magnus, Ulrich, Mankowski, Peter (eds.), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary*, Verlag Dr. Otto Schmidt KG, 2023, p. 895. See also Brussels I Recast, art. 45(3).
[132] Mankowski, Peter, Article 45, in: Magnus, Ulrich, Mankowski, Peter (eds.), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary*, Verlag Dr. Otto Schmidt KG, 2023, p. 898.

Specifically, it was anticipated that the absence of this type of refusal ground would lead to 'stronger' parties, such as, e.g, entrepreneurs or employers, adopting hostile strategies by deliberately suing weaker parties before courts that best suit them, i.e., the stronger party.[133] Despite this argument, some criticism of this exception to the general rule on non-review of jurisdiction persists,[134] and it could potentially lead to the abolition of this refusal ground in the future, following the trend of second-generation instruments. This also holds true for the second possibility which allows refusal of recognition and enforcement in cases where exclusive jurisdiction from Article 24 was not respected.

2.1.4. Recognition and enforcement of court settlements

The rules on court settlements within the EU regulatory framework aim to, in the same vein as with judgments, foster cross-border cooperation, enhance the efficiency of judicial procedures, and ensure that settlements reached in one Member State are enforceable across all EU Member States. The Brussels I Recast, EEOR, ESCPR, and the Maintenance Regulation each contribute to this objective by offering specific provision on recognition and enforcement of court settlements.[135]

In that vein, court settlements are automatically recognised in all other Member States. This means that a settlement reached and confirmed by a court in a Member State is granted the same effect as a judgment, thus facilitating its enforcement in another Member State without the need for a separate declaration of enforceability. The regulation aims to ensure that cross-border legal disputes are resolved with minimal delays and procedural hurdles, allowing court settlements to be treated as final and binding across the EU. In all of the selected regulations, the rules on the recognition and enforcement of judgments will also apply for court settlements, with minimal differences in view of, e.g., refusal grounds.

[133] Ibid., p. 901.
[134] Mankowski, Peter, Article 45, in: Magnus, Ulrich, Mankowski, Peter (eds.), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary*, Verlag Dr. Otto Schmidt KG, 2023, p. 901.
[135] The issue of enforcing court settlements as such will not have much bearing in regards to EOPR and EAPOR. These are aimed at issuing specific EU documents – European Order for Payment or European Account Preservation Order. Thus, court settlements as such cannot be enforced under these regulations; they can, however, serve as evidence and a basis for issuance of the specific EU orders, i.e., European Order for Payment or European Account Preservation Order.

Free movement of court settlements, however, may raise important questions. The primary question that may be raised is what exactly is a 'court settlement' in the EU. Moreover, given that court settlements are, in the relevant regulation, clearly regulated subordinately to judgments, the question arises as to whether the relevant regulations offer adequate solutions for the recognition and enforcement of court settlements in the EU. These two questions are dealt with in one of the papers that form part of this dissertation, and will thus be showcased below.[136]

2.2. Overview of the conducted studies

2.2.1. Smojver, Martina, The Interplay of Mutual Recognition and Mutual Trust with the Requirement of Effectiveness in the EU Legal Framework: Harmony or Conflict?, *Oslo Law Review*, vol. 13, no. 1 (2026).

The first conducted study focuses on the overarching principles that govern the free movement of judgments in the EU. In this way, this first part of the thesis provides a necessary introduction to the rules on recognition and enforcement of the EU regulations that were selected for this research, and directly focuses on answering the first research question of this doctoral dissertation. Additionally, it establishes a starting point for further suggestions for improvement of such rules that are offered in the rest of the conducted studies. Given the theoretical framework of this particular article and the fact that the subject of its analysis concerns principles governing EU law, i.e., the selected EU regulations rather than national legal systems, the discussion remains strictly at the EU level and does not examine the national laws of the Member States that were otherwise selected for this research.

The article, titled „The Interplay of Mutual Recognition and Mutual Trust with the Requirement of Effectiveness in the EU Legal Framework: Harmony or Conflict?", aims to detect the governing rules of the interplay between the principle of mutual recognition, the principle of mutual trust, and the principle of effectiveness, at the stage of recognition and enforcement of judgments under the selected EU regulations. In order to do so, the paper is separated in two parts. The first part explores all of the relevant principles and the integral concepts, such as

[136] See infra, p. 46.

recognition, mutual trust, and effectiveness. Based on such analysis, the second part focuses specifically on the interplay of the governing principles under the selected EU regulations.

In the first part, mutual recognition and mutual trust are analysed in pair, given their overlapping aims and application in practice. Although both principles lack a universally accepted definition, certain common descriptions have been established through the case law of the CJEU, as well as in academic literature. In that vein, the principle of mutual recognition refers to the idea that Member States must admit goods, services or persons to their own markets, not by applying their own standards, but also by accepting, i.e., recognising, certain requirements and controls that were fulfilled in the Member State of origin.[137] This definition, initially developed in the area of EU internal market, can also be extended to the Area of Freedom, Security and Justice (AFSJ).[138] Therein, mutual recognition can be understood in the sense that a judgment given in one Member State needs to be recognised as such in all of the other Member States.[139] In other words, it is the principle of mutual recognition that allows for the free movement of judgments upon which the rules on recognition and enforcement in the selected EU regulations have been founded. As already established above, the mutual recognition is automatic in all of the EU regulations selected for this research.

On the other hand, the principle of mutual trust, despite being previously described as 'elusive' and 'lacking conceptualisation',[140] may be defined as one Member State's trust that all of the other Member States respect and ensure the same level of mutual fundamental values, i.e., it reflects the confidence in the adequate functioning of the legal systems of all Member States.[141] In a similar manner as the principle of mutual recognition, the idea of mutual trust has also initially been established in the area of the EU's internal market, but has since been extended

[137] Möstl, Markus, Preconditions and Limits of Mutual Recognition, *Common Market Law Review*, vol. 47, no. 2 (2010), p. 406.
[138] See TFEU, art. 73 *et seq*. See also Lenaerts, Koen, The Principle of Mutual Recognition in the Area of Freedom, Security and Justice, The Fourth Annual Sir Jeremy Lever Lecture, All Souls College, University of Oxford (2015).
[139] Zaphiriou, George, Transnational Recognition and Enforcement of Civil Judgments, *Notre Dame Lawyer*, vol. 53 (1978), p. 734. See also Kunda, Ivana, Međunarodnoprivatnopravni odnosi, in: Mišćenić, Emilia (ed.), *Europsko privatno pravo: Posebni dio*, Školska knjiga, 2021, p. 498.
[140] Moraru, Madalina, Mutual Trust from the Perspective of National Courts. A Test in Creative Legal Thinking, in: Brouwer, Evelien, Gerard, Damien (eds.), *Mapping Mutual Trust: Understanding and Framing the Role of Mutual Trust in EU Law*, EUI Working Papers, European University Institute, Max Weber Programme (2016), pp. 37, 38.
[141] Kunda, Ivana, Međunarodnoprivatnopravni odnosi, in: Mišćenić, Emilia (ed.), *Europsko privatno pravo: posebni dio*, Školska knjiga, 2021, p. 495; Hazelhorst, Monique, *Free Movement of Civil Judgments in the European Union and the Right to a Fair Trial*, Springer, 2017, p. 41.

also to the AFSJ. Actually, the extensive case law of the CJEU shows that the term 'mutual trust' has become quite a *leitmotiv* of EU law over the years.[142]

While it can be seen that the two principles highly overlap in their aim, scope and application, it is important to clearly distinguish the two notions. In that vein, it has been highlighted that 'trust' is a much deeper notion – it is a characteristic of a stable, reliable relationship of some sort.[143] On the other hand, recognition is only a confirmation of a certain act of a party to some sort of a relationship, which does not necessarily presuppose trust.[144] Thus, it is suggested that these principles cannot be used interchangeably, given the particular nature of each. Finally, both principles are not absolute, i.e., they may be limited to an extent. In the selected EU regulations, this is most commonly reflected through the grounds for refusal of recognition and enforcement, but also through other measures, such as minimal procedural standards that need to be respected in the Member State of origin.

After establishing the meaning, limitations and differentiations between mutual recognition and mutual trust, it was necessary to do the same for the requirement of effectiveness. In that vein, it was established that the requirement of effectiveness consists of two separate principles: principle of effective judicial protection and the principle of effectiveness, commonly referred to as the 'Rewe effectiveness.'[145] While the former is a general principle of EU law developed within the fundamental rights law, the latter refers to a test for securing effectiveness developed through the CJEU case law. The relationship between the two is, to an even greater extent than with the mutual recognition and mutual trust, somewhat elusive and has posed many challenges in practice given that the two principles are sometimes used interchangeably,[146] while other times the CJEU only refers to one or the other.[147] However, an important distinction was

[142] Düsterhaus, Dominik, Constitutionalisation of European Civil Procedure as a Starting Point, in: Gascón Inchausti, Fernando, Hess, Burkhard (eds.) *The Future of the European Law of Civil Procedure. Coordination or Harmonisation?*, Intersentia, 2020, p. 83; Weller, Matthias, *"Mutual Trust": A Suitable Foundation for Private International Law in Regional Integration Communities and Beyond?*, Collected Courses of the Hague Academy of International Law, vol. 423, 2022, p. 4.
[143] Kunda, Ivana, Međunarodnoprivatnopravni odnosi, in: Mišćenić, Emilia (ed.), *Europsko privatno pravo: posebni dio*, Školska knjiga, 2021, p. 495.
[144] Ibid.
[145] After the ruling in case C-33/76, *Rewe-Zentralfinanz eG and Rewe-Zentral AG v Landwirtschaftskammer für das Saarland*, EU:C:1976:188 (1976).
[146] C-176/17, *Profi Credit Polska S.A. w Bielsku Białej v Mariusz Wawrzosek*, EU:C:2018:711 (2018), para. 57; C-632/17, *Powszechna Kasa Oszczędności (PKO) Bank Polski S.A. v Jacek Michalski*, EU:C:2018:963 (2018), para. 43; C-483/16, *Zsolt Sziber v ERSTE Bank Hungary Zrt.*, EU:C:2018:367 (2018), para. 35; C-485/19, *LH v Profi Credit Slovakia s. r. o.*, EU:C:2021:313 (2021), para. 36; Case C-55/06, *Arcor AG & Co. KG v Bundesrepublik Deutschland*, EU:C:2008:244 (2008), paras. 170, 190, 192.
[147] In, e.g., C-536/11, *Bundeswettbewerbsbehörde v Donau Chemie and Others*, EU:C:2013:366 (2013) and C-74/14, *'Eturas' UAB and Others v Lietuvos Respublikos konkurencijos taryba*, EU:C:2016:42 (2016), the CJEU

detected: while the principle of effective judicial protection was developed under the fundamental rights law, the principle of effectiveness was construed as a limit to the Member States' procedural autonomy.[148] In that vein, while the principle of effective judicial protection implies a 'positive test', i.e., it obliges the Member States to achieve a certain result, the principle of effectiveness applies a 'minimum test', i.e., it is assessed whether procedural rules make the exercise of rights established by the EU law impossible or excessively difficult.[149]

After analysis of the notions of mutual recognition, mutual trust and effectiveness, the analysis turns to the functioning of these principles under the selected EU regulations, particularly at the stage of recognition and enforcement. It is primarily established that mutual recognition and mutual trust complement each other and comfortably work in unison. Although both of the principles allow for free movement of judgments, certain safeguards, primarily refusal grounds, are provided in the relevant EU regulations, given that the principles are not absolute. In that vein, the remaining of the paper focuses on specific areas in which effectiveness of EU law is additionally safeguarded under the EU regulations selected for this research. These areas include inconsistencies with domestic values and principles (public policy exception), violation of the protective jurisdiction rules, and severe procedural errors.

In terms of inconsistencies with domestic values and principles, the public policy exception may be considered as the most significant refusal ground aimed at protecting the effectiveness of EU law. The paper further analyses the relevant aspects of public policy as a refusal ground, as well as its development through time, especially by focusing on the CJEU case law. In that way, it is showcased that, despite its limitations, this refusal ground still serves as an important protector of effectiveness, albeit not being available in all of the relevant regulations. However, the regulations that have abolished the public policy exception as a refusal ground did so due to valid arguments, such as the specific scope of application and lower possibility of the use of public policy in practice,[150] and otherwise still offer different safeguards.

In terms of violation of the protective jurisdiction rules, the paper further analyses why certain types of specific jurisdictional rules, particularly the protective rules for weaker parties and

refers to 'effectiveness', while in, e.g., C-562/12, *Liivima Lihaveis MTÜ v Eesti-Läti programmi 2007-2013 Seirekomitee*, EU:C:2014:2229 (2014), CJEU refers to 'effective judicial protection'.

[148] Krommendijk, Jasper, Is there light on the horizon? The distinction between 'Rewe effectiveness' and the principle of effective judicial protection in Article 47 of the Charter after Orizzonte, *Common Market Law Review*, vol. 53 (2016), p. 1398.

[149] Beka, Anthi, *The Active Role of Courts in Consumer Litigation. Applying EU Law of the National Courts' Own Motion*, Intersentia, 2018, p. 38.

[150] See, e.g., Hess, Burkhard, Pfeiffer, Thomas, *Interpretation of the Public Policy Exception as referred to in EU Instruments of Private International and Procedural Law*, European Parliament, 2011.

exclusive jurisdiction, warrant particular attention in this regard. It highlights the fact that the existence of such refusal ground is in line with the general EU policies and aims, including, but not limited to, ensuring the effectiveness of EU law. That, in turn, also imposes limitations to the principles of mutual recognition and mutual trust – however, such limitations are, as confirmed in the paper, necessary for the reinforcement of the requirement of effectiveness.

Finally, in terms of severe procedural errors, effectiveness may be protected through particular refusal grounds, primarily those aimed at protecting the defaulting defendant and at avoiding irreconcilability with another judgment. Additionally, the right to a fair trial can also be protected under the public policy exception, as elaborated above. While these refusal grounds are certainly not available in all of the selected regulations, those which abolish them offer different kinds of safeguards, primarily in the Member State of origin. In this way, effectiveness is ensured at the moment of recognition and enforcement in another Member State.

To conclude, the first paper that forms part of this dissertation provides an extensive and elaborate illustration of the principle of mutual recognition, principle of mutual trust and the principle of effectiveness, including their functioning at the stage of recognition and enforcement of judgments abroad. The analysis presented in the paper showcases that effectiveness is primarily guarded at the national level, with only few possibilities for its protection in the Member State of enforcement. However, it is clearly shown that the selected EU regulations take into account the need for effectiveness and, in that vein, establish certain safeguards. Thus, while mutual recognition and mutual trust still hold the 'central spot' at the stage of recognition and enforcement abroad, i.e., in the system of rules envisaged by the relevant EU regulations, it is shown that effectiveness is still ensured and taken into account at every step of the way. Moreover, a circular interplay of these principles is highlighted, where all must work in unison in order to ensure the smooth recognition and enforcement of judgments in the EU.

2.2.2. Tičić, Martina, The Notion of 'Judgment' in the EU Regulations on Cross-Border Collection of Monetary Claims: A Change in Understanding?, *European Papers*, vol. 9, no. 2 (2024).

The second conducted study focuses both on the stage of recognition and enforcement, i.e., on some of the common issues that may come up when a judgment given in one Member State

needs to be recognised or enforced in another. The preliminary research showed that, interestingly, the core notion of 'judgment' may present a problem, given that understanding of the term may differ among the Member States. This is unsurprising when taking into account the plethora of different judicial acts that can be found in different Member States.[151] An interesting development, however, happened in 2022, when the CJEU presented two important rulings, specifically the *H Limited*[152] and *London Steam-Ship Owners*[153], which may redefine the general understanding of the notion of 'judgment' that was held in the EU until then. Thus, the aim of the second article was to clarify what exactly constitutes a 'judgment' under the selected EU regulations, as well as to assess whether that understanding is in any way redefined after the relevant CJEU rulings. This issue was particularly important in light of the second research question of this doctoral dissertation, but also for the overall doctoral research, given that the proper understanding of 'judgment', which is undoubtedly the core enforcement title instrument that is regularly presented for a recognition and enforcement abroad, is indispensable when discussing the issue of enforcement in the EU.

The article, titled „The Notion of 'Judgment' in the EU Regulations on Cross-Border Collection of Monetary Claims: A Change in Understanding?", aims to find answers to two core questions:

1. What has been established as falling under the notion of 'judgment' so far in the EU?
2. Has such notion been redefined in light of the rulings in *H Limited* and *London Steam-Ship Owners*?

The first part of the article focuses on the first research question. It is established that the first definition of the notion of 'judgment' in the relevant EU regulations on the cross-border collection of monetary claims may be found in the Brussels Convention. There, it is provided that a 'judgment' is 'any judgment given by a court or tribunal of a Contracting State (now, Member State), whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.' Such definition was retained in the subsequent Brussels I Regulation and Brussels I Recast, as well as in EEOR, EAPOR, and in the Maintenance Regulation.[154] The EOPR and the ESCPR, on the other hand, do not provide a definition of a 'judgment', which is understandable given

[151] See, e.g., the national reports provided by the project "Diversity of enforcement titles in cross-border debt collection in EU", available at: PF - National reports (accessed 19 August 2025).
[152] C-568/20, *J v H Limited*, EU:C:2022:264 (2022).
[153] C-700/20, *London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain*, EU:C:2022:488 (2022).
[154] While the Maintenance Regulation employs the term 'decision' instead of a 'judgment', it was determined that these are essentially the same concepts in terms of discussion relevant for this article/thesis.

that these regulations establish self-standing procedures which are to be done mainly through the use of pre-established forms; therefore, it was unnecessary to provide a definition of a 'judgment' for their purposes. Because of this, the two were not dealt with in the following analysis.

Based on the definition provided in the relevant EU regulations, three decisive elements of a 'judgment' were detected. These include: 'any judgment', 'given by a court or tribunal' of 'a Member State'.

In terms of the first element, i.e., 'any judgment', it is primarily established that, while this circular definition can be looked down upon,[155] this choice was not without its reasons. Indeed, the circular part of the definition is used as a way of highlighting the breadth of the notion, which is understandable given the array of different legal decisions emanating from the Member States that may fall under its scope. To further illustrate the sheer scope of such different decisions, some examples from the Member States that were selected for this research, i.e., from Croatia, Germany, Italy and Slovenia, were provided. Such comparative overview highlighted that the current definition allows for a number of different decisions, characterised by national peculiarities, to be included under the general EU notion of a 'judgment'.

In addition to the comparative overview, the development in the case law of the CJEU was analysed. Through numerous rulings in which the CJEU discussed the notion of 'judgment' and the factors that differentiate it from, e.g., court settlements or other types of decisions, it was shown how the notion of 'judgment' developed over time. Moreover, the analysis has proven that the understanding of the notion is still not set in stone; the sheer number of different decisions with national peculiarities has, through the years, kept the CJEU quite busy,[156] despite the fact that the concept of a 'judgment' may seem mundane. However, the analysis has also shown that another element, currently not explicitly mentioned in the definitions of a 'judgment' provided in the selected EU regulations, may be found – the adversarial principle. In that vein, it was shown that the CJEU, in all of the relevant rulings,[157] aims to determine whether the adversarial principle was adhered to in order to decide whether a certain decision

[155] See, e.g., Frische, Tobias, *Verfahrenswirkungen und Rechtskraft gerichtlicher Vergleiche: nationale Formen und ihre Anerkennung im internationalen Rechtsverkehr*, Müller, 2006, p. 137.
[156] See, e.g., C-125/79, *Bernard Denilauler v SNC Couchet Frères*, EU:C:1980:130 (1980); C-39/02, *Maersk Olie & Gas A/S v Firma M. de Haan en W. de Boer*, EU:C:2004:615 (2004); C-394/07, *Marco Gambazzi v DaimlerChrysler Canada Inc., CIBC Mellon Trust Company*, EU:C:2009:219 (2009); C-456/11, *Gothaer Allgemeine Versicherung AG and others v Samskip GmbH*, EU:C:2012:719 (2012).
[157] Ibid.

is included under the EU notion of 'judgment'. Such adversarial principle may thus be referred to as the fourth element of a 'judgment'.

In terms of the second element of the definition, i.e., 'a court or tribunal', it was necessary to establish what this concept entails. The interpretation of the CJEU is that decisions constituting a 'judgment' "must emanate from a judicial body of a Contracting State (now, Member State) deciding on its own authority on the issues between the parties."[158] Thus, a 'judgment' may emanate from different types of courts or tribunals, on the occasion that they exercise the judicial power in relation to the matters that are within the scope of the selected EU regulations. This allowed to distinguish certain bodies that do not fall under the concept of 'a court or tribunal', such as arbitral tribunals or administrative bodies.[159] It was also highlighted how this element additionally differentiates judgments from court settlements, while also providing some comparative illustrations from the selected Member States. Another issue that was touched upon in this part of the paper was the potential inclusion of public notaries in the notion of 'a court or tribunal.' This was particularly interesting given that the question of inclusion of Croatian public notaries in the concept of 'court' has previously come before the CJEU in the cases of *Pula Parking*[160] and *Zulfikarpašić*.[161] While in both rulings, it was determined that Croatian public notaries are not courts, further analysis questions whether conclusion may be different after the 2020 Amendments to the Croatian Enforcement Act.[162]

In terms of the third element of the definition, i.e., 'a Member State', the analysis of this concept, based particularly on the CJEU ruling in *Owens Bank*,[163] academic literature[164] and fundamental ideas behind the EU's aims of the free movement of judgments,[165] has shown that the selected EU regulations cannot apply to recognition and enforcement of any judgment

[158] C-414/92, *Solo Kleinmotoren GmbH v Emilio Boch*, EU:C:1994:221 (1994), paras 17, 18.
[159] Briggs, Adrian, *Civil Jurisdiction and Judgments*, 7edn, Informa law from Routledge, 2021, p. 719; Layton, Alexander, Mercer, Hugh (gen. Eds.), *European Civil Practice (Vol 1)*, 2nd edn, Sweet & Maxwell, 2004, 872; Sikirić, Hrvoje, Reasons for Denying Recognition and Enforcement of Court Decisions According to the Council Regulation (EC) No. 44/2001 of December 22, 2000 on Court Jurisdiction and Recognition and Enforcement in Civil and Commercial Matters, *Collected Papers of Zagreb Law Faculty*, vol 60, no. 1 (2010), p. 60.
[160] C-551/15, *Pula Parking d.o.o. v Sven Klaus Tederahn*, EU:C:2017:193 (2017).
[161] C-484/15, *Ibrica Zulfikarpašić v Slaven Gajer*, EU:C:2017:199 (2017).
[162] Zakon o izmjenama i dopunama Ovršnog zakona, Official Gazette, 131/2020 (2020).
[163] C-129/92, *Owens Bank Ltd v Fulvio Bracco and Bracco Industria Chimica SpA.*, EU:C:1994:13 (1994).
[164] See, e.g., Merrett, Louise, Article 2, in: Magnus, Ulrich, Mankowski, Peter (eds.), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary*, Verlag Dr. Otto Schmidt KG, 2023, p. 84; Briggs, Adrian, *Civil Jurisdiction and Judgments*, 7edn, Informa law from Routledge, 2021, p. 721; Sikirić, Hrvoje, Reasons for Denying Recognition and Enforcement of Court Decisions According to the Council Regulation (EC) No. 44/2001 of December 22, 2000 on Court Jurisdiction and Recognition and Enforcement in Civil and Commercial Matters, *Collected Papers of Zagreb Law Faculty*, vol 60, no. 1 (2010), p. 58.
[165] *Owens Bank*, para. 29.

whose merits were not decided by a court based on the territory of a Member State. Thus, it was explicitly highlighted that double *exequatur* is not allowed – *exequatur sur exequatur ne vaut.*[166]

After determining the constitutive elements of a 'judgment' in the EU sense of the word, the paper turns to the analysis of the new CJEU rulings in *H Limited* and *London Steam-Ship Owners*, which are discussed in turn. Through such analysis, it was intended to detect whether these rulings have any effect on the understanding of the notion of 'judgment', given that they've both dealt with the question of defining a 'judgment'.

The case of *H Limited*, from 7 April 2022, explored the enforcement of foreign judgments in the EU, specifically regarding the concept of 'double exequatur' (or 'judgment laundering'[167]). The case focused on whether an English order for payment, based on judgments from a third country (Jordan), could be recognised and enforced in Austria. This ruling led to significant developments in the interpretation of the term 'judgment' in EU law under the Brussels I Recast Regulation.

The case emerged from a dispute where H Limited, a bank, sought to enforce a debt payment from 'J', a resident in Austria. The English High Court issued an order for payment on March 20, 2019, based on two judgments from Jordan. After the order was made, H Limited applied to the Austrian courts for enforcement. The Austrian District Court granted enforcement, observing that the proceedings in the UK adhered to the adversarial principle, making the English judgment eligible for enforcement in Austria. However, the Austrian Supreme Court raised concerns about 'double exequatur' – the idea that enforcement of a foreign judgment could be facilitated through the recognition of a second foreign judgment.

The key legal issue was whether an order for payment made in a Member State (in this case, the UK) on the basis of judgments from a third state (Jordan) could be considered a 'judgment' under EU law and thus be enforceable in other EU Member States.

[166] See, e.g., Lazić,Vesna, Mankowski, Magnus, *The Brussels I-Bis Regulation*, Edward Elgar Publishing, 2023, paras. 1.171, 1.182; Hartley, Trevor, *Civil Jurisdiction and Judgments in Europe*, 2nd edn, Oxford University Press, 2023, para. 16.04; Muir Watt, Horatia, Exequatur sur exequatur vaut parfaitement, *Revue critique de droit international privé*, no. 1 (2023), p. 135; Kall, Holger Doppelexequatur: 'ne vaut' oder 'no worries'?, *Internationales Handelsrecht. Zeitschrift für das Recht des Internationalen Warenkaufs und Warenvertriebs*, no. 4 (2018), p. 137; Lutzi, Tobias, What remains of H Limited? Recognition and enforcement of non-EU judgments after Brexit, *Journal of Private International Law*, vol. 20, no. 3 (2024), p. 652.
[167] Fentiman, Richard, *International Commercial Litigation*, 2nd edn, Oxford University Press, 2015, p. 641.

The CJEU ruled that an order for payment made by a Member State's court based on final judgments from a third State qualifies as a 'judgment' under the Brussels I Recast Regulation. This ruling clarified that English summary order, despite being based on third State judgments, could be recognised and enforced in Austria. The Court highlighted that this process was legitimate as long as the proceedings were adversarial and the judgment was declared enforceable in the Member State of origin. The CJEU's decision acknowledged the need for mutual trust between EU Member States, as a restrictive interpretation of the term 'judgment' would undermine the free circulation of judgments within the EU.

The case notably touched upon the notion of 'double exequatur.' As noted above, prior to *H Limited*, it was well-established that an 'exequatur of an exequatur' was not permissible, as this could lead to forum shopping and circumvent the legal requirements for foreign judgment enforcement. However, the CJEU's broad interpretation of the term 'judgment' in this case arguably opened the door for such practices, although the ruling did not directly address 'double exequatur' in its traditional sense. Despite this, the Court emphasised that Member States still have the right to refuse enforcement based on public policy grounds, ensuring that the application of Brussels I Recast does not compromise essential legal protections. This cautious approach to the public policy exception indicates that while the ruling broadens the definition of 'judgment', it also maintains safeguards against abuse.

One concern raised by the critics was the potential for forum shopping.[168] In *H Limited*, the English courts were seen as facilitating the enforcement of a Jordanian judgment in Austria, a process that may have been harder to achieve if pursued directly through the Austrian legal system. The decision could incentivise parties to use Member State courts as a backdoor route for recognising judgments from third countries, undermining national rules on foreign judgments and potentially creating an uneven playing field between the EU Member States. However, the CJEU's ruling also reinforced the EU's commitment to mutual trust among its courts, emphasising that judgments made following adversarial proceedings should not be arbitrarily denied enforcement. The public policy exception thus remains an important safety net for Member States to refuse enforcement in cases where the judgment violates their fundamental legal principles.

[168] See, e.g., 'The CJEU on Double Exequatur', EAPIL, available at: https://eapil.org/2022/04/08/the-cjeu-on-double-exequatur/ (accessed 19 August 2025).

The ruling in *H Limited* has implications beyond the specific facts at hand, particularly in the context of the UK's departure from the EU. The ruling raises questions about the enforcement of judgments from third countries, especially in jurisdictions with different legal systems, like common law systems. The judgment could pave the way for more foreign judgments to be recognised and enforced across the EU, even though the UK has since left the EU. This problem was particularly highlighted in a recent paper by Lutzi, where it was found that similar situations as in *H Limited* may also happen in other jurisdictions, specifically in Ireland, Cyprus, Sweden and the Netherlands.[169] This development in research thus confirms that the impact of *H Limited* ruling indeed transcends the specific recognition and enforcement procedure in the UK, and remain possible in other Member States as well. In other words, the effects of the ruling will potentially be far greater than it was initially intended.

Turning to the *London Steam-Ship Owners* ruling, this case presented a complex intersection of arbitration, court litigation, and EU judicial cooperation. This case followed the sinking of the Prestige oil tanker in 2002, which led to several legal entities in Spain bringing civil claims against the owners, master, and the liability insurer, the London P&I Club. According to Spanish law, the claimants had the right to directly sue the P&I Club under Article 117 of the Spanish Criminal Code. However, the P&I Club chose not to engage in these proceedings and instead initiated arbitration in London. The Club sought two key declarations: that Spain was required to pursue its claims through arbitration, and that the P&I Club could not be held liable unless the tanker's owners paid the compensation first, per the insurance contract's 'pay-to-be-paid' clause. The Spanish legal system, however, continued its criminal proceedings and eventually ruled that the master, owner, and the P&I Club were liable for civil claims.

The English High Court later granted the P&I Club's request to enforce the arbitral award and recognised the judgment rendered in terms of the arbitral award. This led to a clash between the Spanish court's judgment and the English court's decision based on the arbitral award. The P&I Club argued that the Spanish judgment was irreconcilable with the English judgment, referring to Article 34(3) of the Brussels I Regulation, which allows for refusal of recognition and enforcement of judgments that conflict with an earlier judgment.

The key issue raised before the CJEU was whether a judgment based on an arbitral award could be considered a 'judgment' under the Brussels I Regulation. The CJEU ultimately ruled that

[169] See Lutzi, Tobias, What remains of H Limited? Recognition and enforcement of non-EU judgments after Brexit, *Journal of Private International Law*, vol. 20, no. 3 (2024).

judgments based on arbitral awards do not automatically qualify as 'judgments' under the Brussels I Regulation. This is because arbitration falls outside the regulation's scope, and decisions derived from arbitration are not granted the same free circulation within the EU as regular court judgments. However, the CJEU also reflected on the notion of 'earlier judgment', which could be relevant in cases where an arbitral award is at play, but only under certain strict conditions. In that vein, the ruling drew a distinction between the general concept of a 'judgment' under the Brussels I Regulation and the specific category of an 'earlier judgment' under Article 34(3), which deals with the refusal of recognition based on irreconcilability. The CJEU emphasised that, while an arbitral award could not be treated as a judgment for the purposes of mutual recognition and enforcement under the Brussels I Regulation, it could still be considered an 'earlier judgment' in certain cases, particularly when its recognition aligns with the EU's fundamental principles of judicial cooperation.

This approach marked a significant departure from the earlier case of *H Limited*, where the CJEU had recognised judgments stemming from third State decisions as 'judgments' under the Brussels I Regulation. Thus, *H Limited* case allowed for the recognition and enforcement of judgments based on third State judgments, expanding the notion of 'judgment' to include decisions from non-EU countries. In contrast, the *London Steam-Ship Owners* case focused on the arbitral award as the originating act and ruled that while it could potentially be recognised as an 'earlier judgment', the stricter criteria of the Brussels I Regulation made it an exception rather than the rule. This inconsistency in the treatment of judgments based on third State decisions versus arbitral awards is a central issue in the remainder of the paper. While the CJEU in *H Limited* accepted that a second-level judgment, which is based on a third-state judgment, could be recognised as a 'judgment' within the meaning of Brussels I, it imposed much stricter requirements for judgments based on arbitral awards. In both scenarios, the second-level judgment assesses the validity of the originating act (whether it is a third State judgment or an arbitral award), but the CJEU applied different standards when determining whether these second-level judgments could be considered as 'judgments' under EU law.

In *H Limited*, the CJEU focused on the second-level judgment in the EU Member State and concluded that it could be recognised and enforced despite its originating from a third State judgment. In contrast, in *London Steam-Ship Owners*, the court focused on the first-level act, i.e., the arbitral award itself, and concluded not only that such judgment cannot in any way be included under the notion of 'judgment' for the purposes of recognition and enforcement, but it also limited the scope of what qualifies as an 'earlier judgment'. This suggests a lack of

consistency in how the CJEU treats judgments based on third State judgments and arbitral awards, which is problematic from the perspective of legal certainty.

Thus, CJEU's ruling in *London Steam-Ship Owners*, while resolving some questions about the interplay between arbitral awards and judgments under the Brussels I Regulation, highlights the challenges of reconciling different types of decisions within a unified EU legal framework. The legal uncertainty stemming from the inconsistent treatment of judgments based on third State judgments and arbitral awards remains a key issue, especially as the EU moves forward with its post-Brexit legal landscape. The case underscores the difficulty in harmonising EU law with arbitration practices and third State legal systems, and it may raise questions about the future of EU judicial cooperation in civil matters. Despite this, the decision in *London Steam-Ship Owners* also confirms that judgments based on arbitral awards can still be recognised in certain circumstances but only under strict conditions that are not entirely consistent with the broader treatment of judgments under the Brussels I Regulation.

The article concludes by claiming that the concept of 'judgment' in the EU legal framework, where judgments from all 27 Member States should circulate freely, remains unclear and difficult to define. This lack of clarity arises from the diverse range of judicial decisions in different Member States, which has prompted courts to seek clarification from the CJEU. Although the CJEU's rulings since 1968 have improved understanding, recent rulings in the *H Limited* and *London Steam-Ship Owners* cases highlight that more work is needed to enhance legal certainty. While the *H Limited* case confirmed the broad interpretation of 'judgment', *London Steam-Ship Owners* tightened the criteria for recognising judgments based on arbitral awards. The CJEU's reasoning in these two cases seems inconsistent, which results in conflicting interpretations that create uncertainty and confusion in EU law, and particularly the inconsistency in the interpretation of the EU's notion of 'judgment'.

2.2.3. Tičić, Martina, Irreconcilable judgments in the EU Regulations: Reforming the ground(s) for refusal of enforcement, *Cuadernos de Derecho Transnacional*, vol. 16, no. 1 (2024).

The third conducted study focuses on the stage of refusal of recognition and/or enforcement in the relevant EU regulations. When preliminarily assessing the available refusal grounds, a lack of academic studies on the refusal ground based on irreconcilability, as opposed to other refusal

grounds, was detected. Additionally, this refusal ground is the only one which remains in almost all of the EU regulations selected for this research, even the ones that have otherwise abolished all possibility of refusal. Thus, the third article, titled "Irreconcilable Judgments in the EU Regulations: Reforming the Ground(s) for Refusal of Enforcement", aims to examine how irreconcilability of judgments is treated across different EU regulations dealing with cross-border monetary claims. By analysing the relevant regulations, as well as the CJEU case law, this study aims to identify inconsistencies in their approach to irreconcilable decisions and irreconcilability as a refusal ground, and ultimately propose a more unified regulatory framework. In this way, the article contributes to addressing both the second and third research questions of this doctoral dissertation. In light of the need to conduct a general analysis of the concept of 'irreconcilable judgments' and the development of refusal grounds based on irreconcilability, the article occasionally refers to some of the selected Member States as illustrative examples, without engaging in a comprehensive comparative analysis, which was neither necessary for the purposes of this study nor feasible within its defined scope.

After initial illustration of the historical development of the rules on refusal of recognition and enforcement in the EU, the article focuses on two different, albeit intertwined, points: first, it analyses the core notion of 'irreconcilable judgments', and secondly, it analyses irreconcilability as a refusal ground in the relevant EU regulations.

Focusing first on the former, an in-depth analysis of the concept of 'irreconcilable judgments' within the context of EU private international law is provided. It delves into the central notions of 'judgment' and 'irreconcilability' to understand when enforcement can be refused due to conflicting judgments.

In addressing the notion of 'judgment', the article refers to and further builds on the findings of the previous article which analyses the term in greater detail, noting that the concept is generally broad and encompasses any decision rendered by a court or tribunal of a Member State. This includes various forms of legal determinations such as decrees, orders, decisions, or writs of execution. Notably, the Maintenance Regulation uses the term 'decision' instead of 'judgment,' which is attributed to the specific matters under its scope. A key point made is the ambiguity surrounding the definition of a 'third State judgment', as the relevant EU regulations primarily focus on judgments originating from Member States. The article argues that, by analogy, the definition of a 'third State judgment' should align with the definition provided for Member States. In terms of enforcement, the article notes that the judgment in question must be one that has already been rendered (i.e., it cannot be merely a pending or anticipated ruling). This is

reinforced by the language of Article 45(1)(c) and (d) of the Brussels I Recast, which emphasizes that only a judgment that has been formally given is relevant in the context of irreconcilability.

The article also explores whether a judgment must be *res iudicata*, meaning final and not subject to appeal, to trigger irreconcilability. Some commentators argue that the judgment need not be *res iudicata* for the irreconcilability grounds to apply, as long as it has been given and produces legal effects.[170] This interpretation is drawn from the CJEU's ruling in *Italian Leather*,[171] which dealt with interim measures, suggesting that the status of *res iudicata* is not a strict requirement. However, the article raises concerns about situations where a judgment that is still subject to appeal could be deemed irreconcilable with a final judgment, particularly given the discretion left to national courts in determining whether judgments should be considered irreconcilable. The article also acknowledges that in cases where a conflicting judgment is based on a different legal framework (such as arbitration awards), it may still be taken into account under certain conditions. The *London Steam-Ship Owners* case is cited as an example where the CJEU interpreted an arbitral award entered in the form of a court judgment as a potential bar to the recognition of another judgment, though the enforcement could be denied if the arbitral award was not in compliance with EU principles of judicial cooperation.

On the other hand, when assessing the concept of 'irreconcilability,' the article emphasises that the term refers to situations where two judgments produce mutually exclusive legal consequences. In essence, if two judgments would have conflicting legal effects, such as awarding the same party opposing outcomes, they are considered irreconcilable, and enforcement of one may be refused on the basis of this conflict. The interpretation of irreconcilability is guided by analogy to the concept of *lis pendens*, as set out in Article 29 of Brussels I Recast. For irreconcilability to exist, the judgments must concern the same cause of action, which is broadly understood to include the underlying facts and the legal rules applied, even if the claims themselves differ. Several examples are given to illustrate 'irreconcilable judgments,' including cases where one judgment awards maintenance based on a marriage, while another judgment dissolves the same marriage. Such judgments are irreconcilable because their effects on the parties' legal status are mutually exclusive. Other examples involve

[170] Mankowski, Peter, Article 45, in: Magnus, Ulrich, Mankowski, Peter (eds.), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary*, Verlag Dr. Otto Schmidt KG, 2023, p. 888.
[171] C-80/00, *Italian Leather SpA v WECO Polstermöbel GmbH & Co*, EU:C:2002:342 (2002).

conflicting judgments on contract validity or liability for damages, where one judgment may declare a contract void while another enforces its terms.

The article also discusses the situation where one of the judgments is provisional or interim in nature. It is clarified that interim measures, while typically not having the same legal effects as final judgments, can still lead to irreconcilability when they conflict with a final judgment. In these cases, enforcement of the final judgment may be refused based on its irreconcilability with the provisional measure. This can happen particularly when the provisional judgment has been issued by a court within the same Member State where the enforcement is being sought. Furthermore, the article points out that while judgments may be in conflict, they do not necessarily have to be of equal status in terms of their legal effect. For example, an interim measure issued by a court may not automatically be irreconcilable with a final judgment, as the interim measure is typically meant to have a temporary effect and will cease once a final judgment is issued. An important point raised by the article is the potential confusion in determining the irreconcilability of judgments when one judgment is final (*res iudicata*) and the other is still under appeal or provisional. Here, it is highlighted that the enforcement court has discretion in determining whether the judgments are irreconcilable. This may result in varying interpretations across Member States, which could lead to inconsistency in the application of the rules.

One of the more complex scenarios discussed is when conflicting judgments arise from different types of legal proceedings, such as a court judgment and an arbitral award. While arbitral awards are generally outside the scope of EU regulations like Brussels I Recast, the article notes that, under certain circumstances, they may still affect the recognition and enforcement of other judgments. This was demonstrated in the *London Steam-Ship Owners* case, where the CJEU ruled that an arbitral award could be considered as an ‘earlier judgment’ under the Brussels I Regulation, provided that its enforcement did not conflict with the underlying principles of EU judicial cooperation.

The article then turns to irreconcilability as a refusal ground, with a specific focus on Brussels I Recast and its distinctions from other EU legal instruments. The chapter explores whether differences in the grounds for refusal based on irreconcilability are justified and if a unified approach is possible. In that vein, it is noted that, while many EU regulations on the cross-border collection of monetary claims offer a single ground for refusal based on irreconcilable judgments, Brussels I Recast stands out by offering two distinct grounds. The first applies to irreconcilability with judgments from the Member State where enforcement is sought (domestic

judgments), and the second applies to irreconcilability with judgments from other Member States or third States. The article analyses each of these grounds in detail, comparing them to the provisions in other EU instruments.

In terms of the first of the two abovementioned grounds, Article 45(1)(c) of Brussels I Recast provides that enforcement or recognition of a judgment may be refused if it conflicts with a judgment issued in the Member State where the enforcement is sought, involving the same parties. This provision prioritises domestic judgments over foreign judgments, regardless of when the judgments were issued. A key issue with this provision is that it gives priority to a domestic judgment even if it was issued after the foreign judgment. This raises concerns about the compatibility of this rule with the EU's goal of mutual trust and the free movement of judgments, as it could undermine the automatic recognition of foreign judgments. It has been suggested that Brussels I Recast should reconsider this preference for domestic judgments to ensure a more balanced approach.

In terms of the second ground for refusal under Brussels I Recast, which may be found under Article 45(1)(d), this ground applies when the judgment conflicts with a judgment from another Member State or a third State. This provision is stricter, requiring that the earlier judgment meet several conditions, including involving the same parties, the same cause of action, and fulfilling the necessary conditions for recognition in the Member State where enforcement is sought. The provision emphasises a chronological priority, where the earlier judgment takes precedence. However, the application of this provision raises practical challenges. The date of priority can be difficult to determine, especially when judgments are rendered in different jurisdictions. In cases involving judgments from third States, the question becomes even more complex, as third State judgments are not automatically recognised. Thus, it is suggested that the most appropriate date for assessing priority is when the judgment starts producing legal effects, which may differ depending on the laws of the State of origin.

When comparing the two previously mentioned refusal grounds in the Brussels I Recast with the second-generation instruments, it is clear that these instruments offer a more unified approach to refusing enforcement based on irreconcilability. These regulations have stricter conditions than Brussels I Recast, notably eliminating the automatic priority given to domestic judgments. Instead, they prioritise the earlier judgment, whether it comes from a Member State of enforcement or other states. Moreover, EEOR, EOPR, and ESCPR specify that irreconcilability may be raised only if the earlier judgment was not raised as an objection in the original court proceedings. This provision discourages forum shopping, where parties might

attempt to exploit different jurisdictions to delay proceedings. Additionally, the second-generation instruments apply the same criteria for irreconcilability regardless of whether the judgment comes from a Member State or a third State. One key point in these instruments is the requirement that the conflicting judgments must involve the same cause of action and the same parties. This ensures that only truly irreconcilable judgments are rejected, reducing the risk of unjustly denying enforcement of valid claims.

Based on the previous analysis, it is concluded that the approach taken in Brussels I Recast with respect to the refusal of enforcement based on irreconcilable judgments, especially its preference for domestic judgments, is outdated and potentially undermines EU's goal of mutual recognition and the free movement of judgments. The second-generation instruments provide a more modern and balanced approach by prioritising the earlier judgment without automatically favouring domestic decisions. Although these are EU procedures, which limits potential divergences between judgments from the Member State of enforcement and those of other Member States, this does not justify systematically prioritising domestic judgments under any circumstances, including those governed by the Brussels I Recast, as it contradicts the principle of mutual trust and equal recognition of judicial decisions across the EU, and risks undermining legal certainty and uniform application of EU law. Thus, it is suggested that the legal framework in Brussels I Recast could benefit from incorporating elements of the second-generation instruments, such as the chronological priority of all judgments and the stricter conditions for irreconcilability. Specifically, the author proposes a reform that would merge the provisions of Articles 45(1)(c) and 45(1)(d) into a single, more unified ground for refusal based on irreconcilability. This would align Brussels I Recast with the broader goal of promoting judicial cooperation within the EU while maintaining consistency and fairness in cross-border enforcement. In the long term, harmonising the rules on irreconcilability across the various EU instruments could help prevent inconsistencies and improve the efficiency of cross-border legal proceedings. The priority given to domestic judgments in Brussels I Recast should be reconsidered in favour of a more neutral and consistent approach that promotes the free movement of judgments within the EU and encourages greater mutual trust among Member States.

2.2.4. Smojver, Martina, Enforcement and Enforceability of Court Settlements in the EU, *Lexonomica*, vol. 17, no. 2 (2025).

The fourth and final conducted study focuses on the recognition and enforcement of court settlements in the relevant EU regulations. When preliminarily assessing the recognition and enforcement of court settlements, a lack of research on court settlements as enforcement title documents in the EU, as opposed to such research on judgments, was detected. Thus, the fourth article, titled "Enforcement and Enforceability of Court Settlements in the EU", aims to examine what actually characterises a 'court settlement', both at the national and EU level, as well as determine whether the current regulation offers adequate solutions for the recognition and enforcement of these enforcement title documents. Accordingly, this article provides insights relevant to both the second and third research questions of this doctoral dissertation.

The paper first focuses on finding a definition of 'court settlement', which is indispensable for any further discussion relating to the regulation in the selected EU instruments. Two types of definitions are differentiated: 'court settlement' at the national level, i.e., in selected Member States, and 'court settlement' at the level of the EU.

In terms of the former, the notions found in the national laws of the Member States selected for this research, i.e., of Germany, Italy, Croatia and Slovenia, were analysed in order to find commonalities, as well as differences. In that vein, requirements for issuance, procedure and effects of court settlements in each of the selected Member States was assessed. It was found that requirements and procedure are fairly similar in all of the Member States, with only slight differences that do not have important consequences for the subsequent recognition and enforcement of court settlements abroad. On the other hand, the effects of court settlements in different national systems may vary significantly. Four potential effects of court settlements were found: termination of litigation; finality; enforceability; and the *res iudicata* effect. While the first three may be found in all of the selected Member States, the last effect, i.e., the *res iudicata* effect, may be found only in Croatia and Slovenia.

In terms of the latter, it was highlighted that the notion of 'court settlement', which is applicable under all of the relevant EU regulations, is subject to Euro-autonomous interpretation.[172] The

[172] Kunda, Ivana, Tičić, Martina, Authentic instruments and court settlements under the Twin Regulations, in: Ruggeri, Lucia, Limantė, Agne, Pogorelčnik Vogrinc, Neža (eds.), *The EU Regulations on Matrimonial Property and Property of Registered Partnerships*, Intersentia, 2022, p. 171.

definition itself may actually be found under some of the selected regulations, including the Brussels I Recast,[173] Maintenance Regulation[174] and ESCPR,[175] which provide that a court settlement is 'a settlement which has been approved by a court of a Member State or concluded before a court of a Member State in the course of proceedings.' Thus, three elements of the EU definition may be differentiated: agreement between the parties; involvement of a court; and distinction from judgments.[176] The paper then delves deeper into each of these elements, stipulating that, in terms of the first element, the parties must come to a mutual agreement on a certain legal issue, which allows us to differentiate settlements from, e.g., judgments, as established in *Solo Kleinmotoren*.[177] The second element points to the necessary assistance of a court, which allows us to differentiate private agreements from court settlements in the sense of the word. Finally, the third element is particularly important one, as certain documents characterised as 'court settlements' under national law may actually be considered a 'judgment' under EU law. Such are the 'court settlements' stemming from Croatia and Slovenia, which, as noted above, produce the *res iudicata* effect. In that sense, Croatian and Slovenian court settlements will actually be considered judgments in the EU sense of the word. Actually, the analysis showed that this particular effect of *res iudicata* is crucial for distinguishing whether certain document can be characterised as 'court settlement' or a 'judgment' at the EU level.

After determining the definition(s) of court settlement, both at the national and at the EU level, the paper turns to the rules on the recognition and enforcement of court settlements in the EU regulations selected for this research.

In terms of the rules on recognition of court settlements, it has been noted that the issue of recognition is regulated differently under the relevant regulations. In that vein, while the ESCPR and the Maintenance Regulation establish that court settlements will be recognised in the same way as judgments, the Brussels I Recast and the EEOR actually do not provide the possibility of recognition of court settlements.[178] After the assessments of potential reasons for such choice, it is concluded that any potential arguments remain unclear; therefore, it is proposed that recognition of court settlements should be allowed under Brussels I Recast and

[173] Brussels I Recast, art. 2(b).
[174] Maintenance Regulation, art. 2(1)(2).
[175] ESCPR, art. 23a.
[176] Kunda, Ivana, Tičić, Martina, Authentic instruments and court settlements under the Twin Regulations, in: Ruggeri, Lucia, Limantė, Agne, Pogorelčnik Vogrinc, Neža (eds.), *The EU Regulations on Matrimonial Property and Property of Registered Partnerships*, Intersentia, 2022, pp. 171-175.
[177] See *Solo Kleinmotoren*, para 18.
[178] As visible particularly from Brussels I Recast, arts. 58-59, and EEOR, art. 24(3).

EEOR, which would truly enable the free movement of court settlements, in the same way as it is done for judgments.

In terms of the rules on enforcement of court settlements, the paper further illustrates the reliance on the rules provided for the enforcement of judgments in the relevant regulations. In that vein, no significant differences can be found, except for one – the available refusal grounds. For the purposes of enforcement of court settlements, only few refusal grounds remain in all of the relevant EU regulations. Under the Brussels I Recast, enforcement of court settlements may only be refused on the basis of public policy exception.[179] On the other hand, the EEOR abolishes any possibility of refusal for court settlements.[180] Finally, the ESCPR and the Maintenance Regulation only provide for refusal based on irreconcilability with other judgments.[181] It is highlighted that these differences may be unnecessary given the often overlapping scope of applications, the rare use of any of the refusal grounds (and generally, rare problems with the recognition/enforcement of court settlements in the EU), etc. Thus, it is suggested that the current approach to refusal of enforcement of court settlements should be reassessed. In that sense, reasons as to why court settlements should be allowed refusal of enforcement are severely limited, which is why it is proposed that the approach taken by the EEOR should also be taken in the Brussels I Recast and the ESCPR, with certain additional clarifications in terms of irreconcilability with another judgment. An exception is made for the Maintenance Regulation which, due to the different nature of the proceedings and the sensitivity of the issue of maintenance, may warrant a different approach.

To summarise, the fourth article that this dissertation consists of represents a comprehensive overview of the regulation of court settlements, both at the EU level and at the national level, in German, Italian, Croatian and Slovenian legal system. Through the analysis and comparison of national and EU rules, the differences in the understanding and characterisation of 'court settlements' are showcased, and the deciding elements pinpointed. Furthermore, potential areas where improvement of the legal norms of the selected EU regulations may be needed are highlighted, with certain solutions suggested. Thus, this paper provides a comprehensive conclusion to the topic of enforcement within EU regulations governing the cross-border collection of monetary claims. While primarily focused on judgments, these regulations also promote the free movement of court settlements, which must be viewed as equally important

[179] Brussels I Recast, arts. 58-59.
[180] EEOR, art. 24.
[181] ESCPR, arts. 22, 23a; Maintenance Regulation, art. 48.

as judgments. The research presented here was necessary to highlight this parallel and underscore the significance of court settlements in the EU.

2.2.5. Integration of findings

The enforcement of judgments in the EU represents a complex and evolving area of legal theory and practice, underpinned by various EU regulations and case law. The findings of this dissertation provide a nuanced understanding of the existing framework, revealing both its strengths and weaknesses. The central topic of this dissertation was the cross-border recognition and enforcement of judgments and court settlements under the selected EU regulations which deal primarily with monetary claims. In that vein, the four articles that this dissertation consists of focus on three different steps in the process of cross-border enforcement of judgments, those being the process of recognition, the procedure for actual enforcement, and the potential refusal of enforcement. Additionally, the fourth article focused on particular issues related to all the steps of the procedure for court settlements.

As presented above, the articles provide a detailed analysis of the problems that may occur at every step of the process abroad. Throughout the course of this doctoral research, a comprehensive analysis of the relevant rules on enforcement of judgments and court settlements abroad has revealed several areas where improvements could be made. Based on these findings, a number of targeted solutions have been proposed to address the identified challenges and enhance the overall effectiveness of the system.

Starting from a general and conceptual perspective, it was detected that the general principles governing the enforcement of judgments, i.e., principle of mutual recognition, principle of mutual trust, and the principle of effectiveness, are functioning effectively and as intended. Their interplay suggests a circular relationship where one principle reinforces another, contributing to the stability of the overall system. However, despite these strengths, several emerging issues have surfaced, which merits closer examination.

One key observation is the continued ambiguity surrounding the notion of a ‘judgment’ and ‘court settlement’. These terms remain broadly defined in the relevant regulations, which is warranted by the national differences, but can also create confusion in practice. This issue highlights the need for further clarification and alignment in both legal terminology and the

criteria used to determine what constitutes a judgment or a court settlement for enforcement purposes. A detailed analysis of these notions has thus been done in two of the articles that this dissertation consists of.

Another critical finding is the role of the case law of the CJEU. While the CJEU's rulings have undoubtedly provided valuable guidance in many respects, they have also introduced new complexities. This was the case with the rulings in *H Limited* and *London Steam-Ship Owners*, which both resulted in raising new questions and creating space for new issues to arise in practice, as visible from various papers on these specific rulings that have been published so far.[182] The second article of this doctoral dissertation offers one perspective on the issues that were raised, and thus adds to the ongoing academic discussion. One general observation that can be shared is that this cyclical pattern of the CJEU's case law suggests that, rather than resolving certain issues, the rulings can sometimes perpetuate uncertainty, creating a need for more definitive legal standards to ensure coherence and consistency across the EU.

Finally, it is necessary to consider the current EU regulatory landscape and whether the existing frameworks adequately address the practical challenges that may be faced by legal practitioners. The multiplicity of rules and regulations that govern the enforcement of judgments in different jurisdictions can lead to a fragmented and inconsistent approach. Therefore, a reassessment of the relevant regulations is necessary in order to explore whether it is possible to develop common solutions to specific questions that continue to generate confusion. Such a reassessment could help harmonise the enforcement mechanisms and foster a more efficient legal environment. In the relevant articles, specific proposals for improvement are suggested, particularly in terms of amending the refusal of enforcement based on irreconcilability and the potential for refusal of enforcement of court settlements in general.

[182] See, e.g., Lutzi, Tobias, What remains of H Limited? Recognition and enforcement of non-EU judgments after Brexit, *Journal of Private International Law*, vol. 20, no. 3 (2024); Hess, Burkhard, Arbitration and the Brussels I bis Regulation: London Steam-Ship Owners' Mutual Insurance Association, *Common Market Law Review*, vol. 60, no. 2 (2023); Alba Fernández, Manuel, Nuevo hito en el caso Prestige: Nota sobre la sentencia de la high court ofjustice (commercial court) de 6 de ocubre de 2023 en el litigio entre el london steam-ship owers'mutual insurance association limited y el reino de Espana, *Cuadernos de Derecho Transnacional*, vol. 16, no. 1 (2024); Gómez Fasanella, Oriana, De España Valenzuela, Enrique, La odisea judicial entre London Steam-Ship Owners-Mutual Insurance Association Limited y el Reino de España: Una aventura legal que está lejos de concluir, *Cuadernos de Derecho Transnacional*, vol. 16, no. 1 (2024); Arenas Garcia, Rafael, Arbitraje y jurisdicción en el espacio judicial europeo. A propósito de la sentencia del Tribunal de Justicia (Gran Sala) de 20 de junio de 2022, London Steam-Ship Owners' Mutual Insurance Association, *Revista de Derecho Comunitario Europeo*, vol. 73 (2022); Vlček, Filip, Crying Over Spilled Oil: The Brussels I Regulation and the Judicial Enforcement of Arbitral Awards, in: Drličková, Klára, Malachta, Radovan, Provazník, Patrik (eds.), *Cofola International 2023. Conference Proceedings*, Masaryk University Press, 2023.

3. Conclusion

The state of the art on cross-border recognition and enforcement of judgments and court settlements in the EU reflects significant progress, but also highlights certain ongoing complexities. EU regulations that were selected for this research, i.e., the Brussels I Recast, EEOR, EOPR, ESCPR, EAPOR, and the Maintenance Regulation, all provide frameworks for the free movement of judgments across Member States, aiming to ensure their recognition and enforcement without the need for re-examination. Despite this, preliminary research showed that various challenges still remain, including, but not limited to, diversity of enforcement titles among the Member States; differences in understanding of core notions such as 'judgment' or 'court settlement'; difference of opinion on what grounds for refusal of recognition and enforcement should be available and what do some of the refusal grounds may constitute or whether they should be available at all. Recent case law from the CJEU has sought to clarify some of these issues, but inconsistencies and ambiguities persist. The evolving jurisprudence and ongoing research underscore the need for further refinement to achieve a more uniform and efficient system for cross-border enforcement.

Thus, the primary focus of this doctoral research was to analyse the current legislative framework for cross-border recognition and enforcement in the relevant EU regulations on the cross-border collection of monetary claims. Moreover, the research aimed not only to contribute to the current understanding of some of the core concepts and the proper application of the relevant provisions in practice, but also to propose new ideas and potential solutions for improving the existing rules. In order to do so, four articles were written, each on the specific topic/area which was preliminary determined as important, but also potentially problematic. Each of the article thus presented unique ideas and findings, while also contributing to the general research as a whole. In short, the articles dealt with recognition of judgments ('The Interplay of Mutual Recognition and Mutual Trust with the Requirement of Effectiveness in the EU Legal Framework: Harmony or Conflict?'); enforcement of judgments ('The Notion of "Judgment" in the EU Regulations on Cross-Border Collection of Monetary Claims: A Change in Understanding?'); refusal of enforcement of judgments ('Irreconcilable Judgments in the EU Regulations: Reforming the Ground(s) for Refusal of Enforcement'); and the recognition and enforcement of court settlements in general ('Enforcement and Enforceability of Court Settlements in the EU'). In the following, each article and its findings will thus be presented in turn.

The first article establishes the basis for further research that is done in the following articles. It questions the proper functioning of the governing principles for cross-border enforcement – while these primarily include the principle of mutual recognition and the principle of mutual trust, it was detected that the requirement of effectiveness also has an important role for the optimal operation of the free movement of judgments. Through an extensive analysis of each of the principles, as well as their interplay under the relevant EU regulations, it was detected that such interplay is indeed circular, and that one principle must reinforce another in order for the whole system to function properly. It is evident that the system of recognition and enforcement established by the selected EU regulations is designed not only to facilitate the free movement of judgments but also to ensure the effective application of the law at each stage of the process. In other words, the governing principles are complementary, working together to guarantee the seamless recognition and enforcement of judgments across the EU.

The second article highlights that the notion of 'judgment' in the EU judicial area remains unclear, as perpetuated by the broad definitions provided in EU regulations on cross-border enforcement. The variety of judicial decisions across Member States has led to frequent requests for clarification from the CJEU. Recent rulings in *H Limited* and *London Steam-Ship Owners* demonstrate that, while progress has been made, further clarity is needed. The *H Limited* ruling broadens the understanding of 'judgment' by including English payment orders, thus diminishing the principle of the prohibition of double exequatur, while *London Steam-Ship Owners* clarifies that judgments given in terms of an arbitral award, while not falling under the general notion of 'judgment', can still qualify as 'earlier judgments', but only on some occasions. These rulings reveal conflicting directions: one expanding the scope of 'judgment', and the other imposing additional restrictions on 'earlier judgment'. Ultimately, these cases contribute to confusion and inconsistencies in the interpretation of the term, underscoring the need for further research and potential legislative reforms to improve clarity and legal certainty in cross-border enforcement within the EU.

The third article suggests that irreconcilability as a ground for refusal of enforcement may increasingly be seen as unnecessary and could potentially be abolished, as it is rarely used in practice. Despite this, irreconcilable judgments can still arise, even with coordination mechanisms like *lis pendens*, making it appropriate for such checks to remain at the enforcement stage. The use of this ground does not seem to negatively impact the cost-effectiveness or length of cross-border enforcement procedures. Instead of abolishing irreconcilability, attention should thus be focused on improving its application, particularly by

addressing the inconsistencies between different regulations, such as Brussels I Recast and other second-generation instruments. Notably, Brussels I Recast's provisions create interpretational issues, especially with the outdated prioritisation of domestic judgments over foreign ones. There is no clear justification for this prioritisation, nor for the stricter requirements for irreconcilability in cases involving judgments from other Member States. Thus, aligning the provisions across regulations and addressing these gaps could improve clarity and effectiveness. In that vein, a proposal of merging Articles 45(1)(c) and 45(1)(d) of the Brussels I Recast into a single, unified irreconcilability refusal ground is put forward. This unified approach could align with the provisions of EEOR, EOPR, and ESCPR, supporting the EU principle of automatic recognition of judgments. Including such a provision in Brussels I Recast would modernise the regulation, ensuring consistency across different instruments. Moreover, standardising the irreconcilability ground would promote uniform application in Member State courts, improve legal certainty, and streamline cross-border enforcement by addressing current inconsistencies in handling similar issues.

The fourth article provides an extensive analysis of the notion of 'court settlement', both at the national and at the EU level. This allows to detect certain important differences between the national understandings of the notion, particularly in terms of the effects of court settlements. The relevant effects that court settlements produce under the law of the Member State of origin will thus affect whether court settlement will be categorised as such also under the relevant EU regulations. Through the course of the research, it was showed that 'court settlements' from Croatia and Slovenia would actually be categorised as 'judgments' at the EU level, and would subsequently be recognised and enforced as such. This is because these settlements produce the effect of *res iudicata* which is commonly afforded only to judgments. This effect should be considered the key factor when determining how a specific national 'court settlement' should be classified for cross-border enforcement purposes. When discussing the specific provisions on enforcement of court settlements in the relevant regulations, the article also suggests that certain clarifications and amendments would be advisable, particularly in terms of the possibility of recognition of court settlements and potential alignment of refusal grounds in all of the relevant regulations.

Taken together, the conclusions of each article not only offer novel insights and actionable recommendations within their respective scopes, but also collectively contribute to addressing the overarching research questions that guided this doctoral research. While each study stands independently in terms of its specific aims and findings, their combined implications form a

coherent response to the broader themes and challenges identified at the outset of this dissertation. In this way, the individual contributions serve a dual purpose: they advance knowledge within their subfields, and simultaneously, they interlock to support a more comprehensive understanding of the central issues explored throughout this dissertation. In the following, I will thus draw on the insights from all of the articles in order to directly answer each of the general research questions, demonstrating how the cumulative findings of this doctoral research contribute to the field.

Addressing the first research question – "To what extent does the EU legal framework for cross-border recognition and enforcement of judgments reflect a coherent balance between the principles of mutual recognition, mutual trust, and effectiveness?" – the first article contributes the most direct insights, engaging deeply with its underlying issues. As it is visible from the article itself, it is concluded that the EU system of recognition and enforcement rests on key legal principles, those of mutual recognition, mutual trust and effectiveness, which are intended to operate in unison. In that vein, effectiveness is primarily guarded at the national level, in the process of delivering a judgment. On the other hand, the provisions of the relevant EU regulations that were selected for this research rest mainly on the governing principles of mutual recognition and mutual trust, which dominate at the stage of cross-border recognition and enforcement in the EU. Regardless, the aim to ensure effectiveness at this stage is still reflected in the relevant provisions, most prominently by imposing certain grounds for refusal. In other words, it is visible that the EU legal framework for cross-border recognition and enforcement of judgments strives to strike a coherent balance between the principles of mutual recognition, mutual trust, and effectiveness. While this balance is well-articulated in principle, it is not without tension. The framework establishes a structured and integrated system that promotes judicial cooperation and legal certainty across Member States. However, in practice, this balance can be tested, particularly in situations involving fundamental rights concerns or procedural deficiencies. Such challenges are, to some extent, inevitable in a legal order built on the interaction of diverse national systems, each with its own legal traditions and procedural safeguards. Crucially, the possibility of occasional friction does not detract from the overall coherence of the framework; rather, it underscores the need for a degree of flexibility in its application, allowing for the contextual reconciliation of its (sometimes competing) principles.

The second research question – "How have interpretations of key legal concepts, such as 'judgment', 'court settlement', and 'irreconcilability', evolved, and what impact does this have on cross-border recognition and enforcement of judgments in the EU?" – is addressed more

holistically, drawing on findings and implications from all of the four articles to form a cohesive response. The articles each examine a different legal concept, collectively addressing several key elements essential to the functioning of the cross-border recognition and enforcement system in the EU. As was already noted above, the first article provides a detailed analysis of the notions of 'mutual recognition', 'mutual trust' and 'effectiveness', laying the groundwork for understanding their role in cross-border recognition and enforcement framework in the EU. The second article focuses on the notion of 'judgment', highlighting the practical implications of different understandings of the notion. Moreover, the third article adds to the discussion on the notion of 'judgment' and additionally explores in detail the notion of 'irreconcilability', offering a critical perspective on its interpretation and application in practice. Finally, the fourth article considers the challenges surrounding the notion of 'court settlement', offering a comparative perspective that highlights divergences in national approaches. The analysis presented in all of the articles illustrates that the interpretations of key legal concepts relevant to cross-border recognition and enforcement of judgments in the EU have evolved significantly over time, shaped by both legislative developments and the jurisprudence of the CJEU. While the evolving interpretations of key legal concepts have brought certain benefits, such as greater clarity regarding their scope and the accommodation of diverse legal traditions across Member States, they have also introduced new challenges. On one hand, this evolution facilitates a more inclusive and adaptable legal framework; on the other, it increases complexity and creates potential uncertainty in practical application. Notably, it is striking that despite ongoing judicial and academic engagement, some core concepts continue to lack precise definition, leaving room for ambiguity and inconsistent interpretation across jurisdictions.

Finally, the third research question – "What are the main legal and practical challenges that undermine the effectiveness of cross-border enforcement mechanisms, and how might these be addressed through doctrinal or regulatory reform?" – is addressed across the second, third and fourth article, which together provide complementary perspectives that enrich the understanding of this issue. In conclusion, while the general principles of cross-border enforcement in the EU function effectively, ambiguities in key legal concepts, unresolved issues in case law, and regulatory fragmentation present significant challenges. Addressing these issues through more precise definitions, clearer case law, and a reconsideration of the regulatory framework could offer substantial improvements in both legal theory and practice, moving towards a more integrated and coherent system for the enforcement of judgments across the EU. In order to enhance the effectiveness of the current framework and contribute to the broader

discourse on cross-border enforcement in the EU, the following targeted legislative proposals are put forward to amend certain provisions of the relevant EU regulations:

1. Clarify the core definitions of ‘judgment’ and ‘court settlement’ to address interpretative challenges highlighted in recent case-law and to avoid any confusion that may result from divergences in national legal systems.

2. Merge articles 45(1)(c) and 45(1)(d) of the Brussels I Recast into a single refusal ground based on irreconcilability, aligning it with the approach in the EEOR, EOPR, and ESCPR, to ensure coherence and promote legal certainty across instruments.

3. Explicitly provide for the recognition of court settlements in all relevant regulations, including Brussels I Recast and EEOR, following the model already established in other EU instruments.

4. Reassess the grounds for refusal of court settlements to establish a clearer and more predictable enforcement framework, potentially removing the public policy exception and clarifying priority rules where court settlements and judgments are irreconcilable.

The proposed changes aim to improve legal certainty, ensuring that EU citizens and businesses can rely on a more predictable and streamlined process for the enforcement of judgments and court settlements across borders.

Taking all of the above into account, this doctoral research makes a scientific contribution in both theoretical and practical aspect, offering a comprehensive analysis of the cross-border recognition and enforcement of judgments and court settlements within the EU. The theoretical contribution is rooted in a detailed examination of the underlying principles governing the enforcement mechanisms, providing valuable insights into the complex legal framework that shapes the free movement of judgments. On a practical level, this thesis interprets key notions and identifies areas where amendments to the current regulations could enhance their clarity and effectiveness. By addressing both the theoretical and practical aspects, this work contributes to the current body of scientific knowledge, offering an enriched understanding of the relevant legal questions. Ultimately, this research also provides a foundation for future legal reforms that will benefit EU citizens by fostering greater legal clarity and ensuring a more efficient and harmonised legal system within the EU.

While this research offers a detailed and structured analysis of the relevant issues identified through the research questions, certain limitations must be acknowledged. As noted in the

introduction, national case law was reviewed where available; however, access to such case law remains limited, particularly because many national decisions on these matters are not published openly. Moreover, there is a general scarcity of national case law addressing some of the key legal issues, which restricts a fuller comparative analysis. Additionally, the research focused on a limited number of national jurisdictions chosen for their representativeness, which means that the full spectrum of legal diversity across the EU could not be comprehensively covered. Furthermore, the research adopts a predominantly doctrinal and comparative approach, which, while well-suited to identifying conceptual and legal inconsistencies, does not provide empirical data on how these legal uncertainties impact actual enforcement practices on the ground. These limitations, while not diminishing the value of the findings, point to areas where further research would be valuable.

Building on this foundation, future research could build on this study in several important directions. First, expanding the scope of comparative analysis to include a broader range of Member States would allow for a more comprehensive understanding of divergent national approaches and their impact on the uniformity of cross-border enforcement. Second, empirical research methods, such as practitioner interviews, surveys, or case studies, could offer valuable insights into the real-world application of the legal framework and the challenges encountered by enforcement authorities. Finally, examining the potential influence of technological advancements, including the digitalisation of judicial cooperation, could provide foresight into how cross-border enforcement mechanisms may develop in the coming years.

Ultimately, the evolving framework for cross-border recognition and enforcement of judgments within the EU embodies both significant legal complexity and a fundamental commitment to judicial cooperation. This dissertation has clarified critical obstacles and identified practical avenues for enhancing coherence and effectiveness in enforcement mechanisms. As the EU's legal landscape continues to develop, prioritising targeted reforms and fostering collaboration among the Member States will be essential to overcoming persistent divergences and ensuring reliable cross-border judicial outcomes. While challenges remain, advancing seamless recognition and enforcement is crucial to reinforcing the EU's legal unity and safeguarding the rights of individuals and businesses across its diverse jurisdictions.

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The Interplay of Mutual Recognition and Mutual Trust with The Principle of Effectiveness in The EU Legal Framework: Harmony or Conflict?

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Abstract
The principles of mutual recognition and mutual trust are essential for judicial cooperation in the European Union (EU), particularly in the context of cross-border recognition and enforcement of judgments. Instruments such as the Recast Brussels I Regulation and the European Enforcement Order Regulation exemplify the EU's reliance on these principles to facilitate legal integration and uphold the functioning of the internal market. At the same time, the principle of effectiveness requires that EU law be implemented in a way that ensures its full practical impact. This article thus analyses how these principles interact, especially when recognition and enforcement obligations may raise concerns related to fundamental rights or the integrity of national legal systems. Drawing on legislative texts and the case law of the Court of Justice of the EU, the study critically examines the legal and practical challenges that emerge in applying these principles in tandem across diverse legal contexts. The article argues that the EU system of recognition and enforcement of judgments is built on a delicate balance between the aforementioned principles, where refusal grounds – though seemingly limitations – ultimately serve to uphold and reinforce the proper functioning of the overall system by ensuring compliance with EU law.

Keywords
mutual recognition, mutual trust, effectiveness, European Union, Brussels I Recast

1. Introduction

Since the inception of the European Union (EU), the idea of mutual recognition has had a prominent place in the construction of its legal system. It influenced all of the EU's facets to such a degree that it can be referred to as one of the main principles upon which the EU was built.[1] The 'recognition' in question originally pertains to admission of goods, services and persons in all of the Member States without applying individual standards.[2] In addition to its relevance for the functioning of the internal market, the principle of mutual recognition

1 Rafael Arenas Garcia, 'Abolition of Exequatur: Problems and Solutions. Mutual Recognition, Mutual Trust and Recognition of Foreign Judgments: Too Many Words in the Sea', in Andrea Bonomi and Gian Paolo Romano (eds),*Yearbook of Private International Law* (Otto Schmidt/De Gruyter European Law Publishers 2011).

2 Markus Möstl, 'Preconditions and Limits of Mutual Recognition' (2010) 47(2) *Common Market Law Review* 406 <https://doi.org/10.54648/cola2010019> accessed 22 July 2025.

is equally relevant as a cornerstone of judicial cooperation in the EU.[3] As the free movement of judgments has long been one of the EU's goals, a number of instruments have been created in view of supporting it.[4] Currently, judgments can move freely across the EU, and are automatically recognised in all of the Member States, often without the need for an *exequatur*.[5] This goal of establishing automatic recognition of judgments as the norm has also been visible throughout the EU's development.[6] Thus, the free movement of judgments has become the EU's 'fifth freedom'.[7]

This process, however, has been gradual, owing to the fact that automatic recognition within the EU was not easily achieved. One of the main principles, on which the EU legislator, along with the Court of Justice of the EU (CJEU), has built the idea of automatic mutual recognition of judgments, is mutual trust. This principle must be differentiated from the principle of mutual recognition, despite their strong connection. It can be said that mutual recognition relies on the pre-existing mutual trust among the Member States.[8] Although such trust is presupposed, it is questionable whether it exists in reality.[9] Regardless, mutual recognition of judgments among the Member States is dependent on it. This is visible from the case law of the CJEU, which in its rulings on the recognition and enforcement[10] of judgments oftentimes relies on the principle of mutual trust.[11] It does not mean that such trust is blind.[12] This is why recognition can be refused in certain circumstances, limited to the enumerated refusal grounds.

3 Tampere European Council, 15 and 16 October 1999, Presidency Conclusions (Tampere Conclusions), no 33. The notion of 'recognition' refers to the acceptance by the courts of a Member State that a judicial decision given in another Member State has the same legal effects as if it had been rendered domestically, without re-examining the substance of the case.

4 Boban Misoski and Ilija Rumenov, 'The Effectiveness of Mutual Trust in Civil and Criminal Law in the EU' (2018) 1 *EU and Comparative Law Issues and Challenges Series (ECLIC)* 364 <https://doi.org/10.25234/eclic/6537> accessed 22 July 2025.

5 In the exequatur procedure, a certificate of enforceability of a foreign judgment is issued, assuming that all necessary conditions are fulfilled. The notion of 'automatic' mutual recognition refers to the system established by the relevant EU regulations where judgments from one Member State are recognised in another without the need for a separate recognition procedure.

6 Tampere Conclusions (n 3) no. 34.

7 Jerca Kramberger Škerl, 'European Public Policy (with Emphasis on Exequatur Proceedings)' (2011) 7(3) *Journal of Private International Law* 480 <https://doi.org/10.5235/jpil.v7n3.461> accessed 22 July 2025.

8 Torbjörn Andersson, 'Harmonisation and Mutual Recognition: How to Handle Mutual Distrust' in Mads Andenas, Burkhard Hess and Paul Oberhammer (eds), *Enforcement Agency Practice in Europe* (The British Institute of International and Comparative Law 2005) 247.

9 Matthias Weller, 'Mutual Trust: In Search of the Future of European Union Private International Law' (2015) 11(1) *Journal of Private International Law* 66–67 <https://doi.org/10.1080/17536235.2015.1033203> accessed 22 July 2025.

10 The notion of 'enforcement' refers to the process by which a recognised judgment from another Member State is executed in the Member State of enforcement, typically involving measures like seizure of assets or payment orders to give effect to the judgment. For clarity and consistency, the term 'recognition' is used in this article when referring specifically to the process or legal act of acknowledging a foreign judgment or award without addressing its enforceability. Similarly, 'enforcement' is used when referring solely to the process of compelling compliance with such a judgment or award. The combined phrase 'recognition and enforcement' is employed when the discussion applies equally or interchangeably to both recognition and enforcement, or when the distinction between them is not material to the point being made.

11 See, eg, Case C-536/13, *"Gazprom" OAO v Lietuvos Respublika*, Grand Chamber, judgment of 13 May 2015 (ECLI:EU:C:2015:316) paras 37–39; Case C-341/04, *Eurofood IFSC Ltd*, Grand Chamber, judgment of 2 May 2006 (ECLI:EU:C:2006:281) para 39; Case C-159/02, *Gregory Paul Turner v Felix Fareed Ismail Grovit, Harada Ltd and Changepoint SA*, Full Court, judgment of 27 April 2004 (ECLI:EU:C:2004:228) paras 24, 25.

12 Weller (n 9) 100, 101.

Both the principle of mutual recognition and the principle of mutual trust can be referred to as main principles that govern cross-border recognition and enforcement of judgments in the EU. While comfortably working in unison, they still hold a certain amount of ambiguity, and need to be balanced against the EU's other interests. In that sense, much scholarly attention has focused on their interplay with the need to protect fundamental rights, especially the right to a fair trial.[13] This article, however, aims to focus on a lesser-researched area – the interplay of principles of mutual recognition and mutual trust with the principle of effectiveness of EU law in EU civil procedure.

The principle of effectiveness obliges Member States to ensure that the claims based on EU law can be properly enforced without excessive difficulties owing to particular national procedural rules.[14] At the stage where a judgment given in one Member State needs to be recognised and enforced in another, the principle of effectiveness gives way to the principles of mutual recognition and mutual trust. Any opportunity for remedying possible mistakes in applying EU law will be severely limited at this stage, and the effectiveness of EU law could be called into question. This does not mean that these principles are always going to be in opposition. Ideally, where Member States fully comply with EU law and mutual trust is strong, effectiveness is preserved. In practice, however, tensions arise. Maintaining balance between these principles is essential – their interaction functions like a scale. If one side outweighs the other, the legal framework may fail to function as intended. This paper thus examines the patterns in which such a balance is found in both theory and practice. After clarifying the scope and meaning of each principle, the analysis focuses on how they interact, and when one may prevail over another. The discussion is centred on the recognition and enforcement of judgments in the EU – an area where this balancing is particularly consequential. Since the enforceability of a judgment depends on how these principles are weighed under specific EU instruments, identifying consistent patterns in their interplay is key to ensuring the effective operation of the rules governing the free movement of judgments.

For reasons of concision and consistency, this research is focused on the EU regulations dealing with cross-border collection of monetary claims: Brussels I Recast[15] and its predecessors Brussels Convention[16] and Brussels I Regulation;[17] European Enforcement Order Regulation (EEOR);[18] European Order for Payment Regulation (EOPR);[19] European Small Claims Procedure Regulation (ESCPR);[20] European Account Preservation Order Regulation

13 See Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, in force 3 September 1953) 213 UNTS 221 (European Convention on Human Rights), Article 6; Charter of Fundamental Rights of the European Union [2012] OJ C 326/391, Article 47.

14 Emilia Mišćenić, *Europsko privatno pravo. Opći dio* (Školska knjiga 2019) 179.

15 Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition of judgments in civil and commercial matters (recast), OJ L 351/1 (2012) (Brussels I Recast).

16 Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, OJ L 299 (1972) (Brussels Convention).

17 Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 12/1 (2001) (Brussels I Regulation).

18 Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, OJ L 143/15 (2004) (EEOR).

19 Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, OJ L 399/1 (2006) (EOPR).

20 Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, OJ L 199/1 (2007) (ESCPR).

(EAPOR);[21] and the Maintenance Regulation.[22] Despite different approaches in regard to the abolition of *exequatur*, these regulations share common features which enable parallel analysis and conclusions. In terms of the methodology, the research employs the doctrinal method by relying on legislation, case law and academic literature. Especially relevant is the CJEU case law, which shows how the balance between the relevant principles is achieved.

Following the Introduction, Section 2 aims to provide definitions and further examination of the integral concepts of mutual recognition, mutual trust and effectiveness. After establishing the general scope and idea behind the principles, their interplay at the stage of recognition and enforcement in the selected EU regulations is discussed in Section 3. Finally, Section 4 draws conclusions on the pattern for the aforementioned balance of the principles in the selected regulations.

2. Mutual Recognition, Mutual Trust and Effectiveness: Exploring The Integral Concepts

2.1. Mutual Recognition and Mutual Trust

The core principles for recognition and enforcement of judgments in the EU are the principle of mutual recognition and the principle of mutual trust, which are in many ways interdependent. For this reason, they are discussed together after their individual features are analysed separately.

2.1.1. Principle of Mutual Recognition

Although there is no uniform definition of the principle of mutual recognition,[23] it refers to the idea that the Member States ought to admit goods, services or persons to their own markets, not by applying their own standards, but through recognising requirements and controls that were previously fulfilled in the country of origin.[24] As such, the principle has initially been established as the cornerstone of the EU's internal market.[25] Particularly important in that regard was the *Cassis de Dijon* ruling on the free movement of goods, where the CJEU held that a product meeting the standards of the Member State of origin must be accepted across the EU under mutual recognition.[26]

Eventually, the principle of mutual recognition has been extended to a different policy area – the Area of Freedom, Security and Justice (AFSJ).[27] As a facet of AFSJ, mutual recognition has first been mentioned in the Founding Treaties, specifically in the current Article 81 of the Treaty on the Functioning of the EU (TFEU) for the civil matters, as well as in Article 82 for the criminal matters.[28] As these articles present the legal basis for judicial

21 Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters, OJ L 189/59 (2014) (EAPOR).

22 Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, OJ L 7/1 (2009) (Maintenance Regulation).

23 Christine Janssens, *The Principle of Mutual Recognition in EU Law* (Oxford University Press 2013) 4.

24 Möstl (n 2) 406.

25 Janssens (n 23) 2.

26 Case C-120/78, *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein*, Full Court, judgment of 20 February 1979 (ECLI:EU:C:1979:42).

27 Möstl (n 2) 406.

28 Treaty on the Functioning of the European Union (TFEU) [2012] OJ C 326/47.

cooperation in both civil and criminal matters,[29] the importance of mutual recognition in forming such a basis is clear. In this respect, 'recognition' means that a final and conclusive judgment given in one Member State will be recognised as such in other Member States as well,[30] ie it allows and encourages free movement of judgments.

Considering that the EU seeks to promote the close cooperation between its Member States, it is not surprising that, in line with the principle of mutual recognition, the EU from its beginnings seemed to favour automatic recognition of judgments.[31] This has been the case ever since the Brussels Convention, which stated that 'a judgment given in a Contracting State shall be recognised in the other Contracting States without any special procedure being required'.[32] In other words, a judgment given in one Member State will be recognised in all of the other Member States without the need for any intermediate procedures.[33] Thus, a party may directly rely on a foreign Member State's judgment without going through a validation procedure in the Member State of enforcement.[34] A direct consequence of this type of recognition also lies in the legal effect given to the foreign judgment – as soon as the judgment is given in one Member State, it will be deemed to be effective, for the purposes of its recognition, in all of the other Member States.[35] There is also an indirect consequence that arises as a result of automatic recognition – the party who has obtained a judgment in one Member State is precluded from raising the same issue again in another Member State.[36] Thus, once it occurs under the law of the Member State of origin, the *res iudicata* effect is extended from that Member State to all other Member States.[37]

The principle of automatic mutual recognition has maintained a consistent position in the systems on cross-border recognition and enforcement of judgments in the EU. Both the Brussels I Regulation and the most recent Brussels I Recast contain the rule that has remained unchanged since the Brussels Convention. The respective provisions differ neither in the 'second generation'[38] instruments, ie, EEOR, EOPR, ESCPR, and EAPOR, nor in the Maintenance Regulation. These instruments all provide for automatic recognition as well.[39]

29 Marek Zilinsky, 'Mutual Trust and Cross-Border Enforcement of Judgments in Civil Matters in the EU: Does the Step-by-Step Approach Work?' (2017) 64 *Netherlands International Law Review* 116 <http://dx.doi.org/10.1007/s40802-017-0079-0> accessed 22 July 2025.

30 George Zaphiriou, 'Transnational Recognition and Enforcement of Civil Judgments' (1978) 53 *Notre Dame Lawyer* 734.

31 Dulce Lopes, 'Recognition – A Story of How Two Worlds Meet' in Poomintr Sooksripaisarnkit, Dharmita Prasad (eds), *Blurry Boundaries of Public and Private International Law. Towards Convergence or Divergent Still?* (Springer 2022) 41 <https://doi.org/10.1007/978-981-16-8480-7_3> accessed 22 July 2025.

32 Brussels Convention, Article 26.

33 Brussels I Recast, Article 36(1); EEOR, Article 5; EOPR, Article 19; ESCPR, Article 20; EAPOR, Article 22; Maintenance Regulation, Articles 17, 23.

34 Patrick Wautelet, 'Section 1: Recognition' in Ulrich Magnus and Peter Mankowski (eds), *European Commentaries on Private International Law: Volume I Brussels Ibis Regulation* (Verlag Dr. Otto Schmidt 2016) 818.

35 ibid 818.

36 ibid 818.

37 The *res iudicata* effect is limited if there is an irreconcilable domestic decision in the Member State of enforcement.

38 Burkhard Hess, 'The State of the Civil Justice Union', in Burkhard Hess, Maria Bergstrom and Eva Storskrubb (eds), *EU Civil Justice. Current Issues and Future Outlook* (Bloomsbury 2016) 4.

39 EEOR, Article 5; EOPR, Article 19; ESCPR, Article 20; EAPOR, Article 22; Maintenance Regulation, Articles 17, 23.

2.1.2. Principle of Mutual Trust

The term 'mutual trust' was first used in CJEU's Opinion 1/75[40] in the sense of the duty of sincere cooperation, and further developed in a number of internal market cases.[41] It is not a legislative principle of EU law – there is no mention of it in the Founding Treaties[42] – and, like mutual recognition, it lacks a clear definition[43] and has been described as 'elusive'.[44] In the private international law scholarship, it is described as one Member State trusting that all of the other Member States uphold shared values and that their legal systems function properly,[45] ie that both substantive law will be correctly applied and that fair trial guarantees will be upheld in national courts. This rests on the premise that all Member States share the EU's founding values, thus justifying mutual trust in their protection.[46] This principle is, therefore, of crucial importance as it allowed for the EU's area without internal borders to be established.[47] Thus, judgments given in one Member State must, in principle, be recognised in all of the other Member States without any special procedure being required.[48] This stretches also to the effects of enforceability, with great effort being put into simplifying the enforcement procedure in cross-border cases. However, recognition (and enforcement) may still be refused in exceptional cases where core fair trial guarantees, such as the right to be heard, have been breached.[49]

The majority of the selected regulations in this study explicitly mentions the reliance on mutual trust, as highlighted in the Preambles of Brussels I Recast,[50] EEOR[51] and EOPR.[52] It is interesting to note that, while there is an explicit reference to mutual trust in the current

40 Opinion of the Court of 11 November 1975 given pursuant to Article 228 of the EEC Treaty. – Avis 1/75, ECLI:EU:C:1975:145 (1975) 1364.

41 See, eg, Case C-46/76, *W. J. G. Bauhuis v The Netherlands State*, Full Court, judgment of 25 January 1977 (ECLI:EU:C:1977:6); Case C-5/94, *The Queen v Ministry of Agriculture, Fisheries and Food, ex parte: Hedley Lomas (Ireland) Ltd*, Full Court, judgment of 23 May 1996 (ECLI:EU:C:1996:205). See also Dominik Düsterhaus, 'Constitutionalisation of European Civil Procedure as a Starting Point', in Fernando Gascón Inchausti, Burkhard Hess (eds) *The Future of the European Law of Civil Procedure. Coordination or Harmonisation?* (Intersentia 2020) 83.

42 Luisa Marin, 'Only you: The Emergence of a Temperate Mutual Trust in the Area of Freedom, Security and Justice and its Underpinning in the European Composite Constitutional Order' (2017) 2 *European Papers* 142 <https://www.europeanpapers.eu/en/system/files/pdf_version/EP_eJ_2017_1_10_Article_Luisa_Marin_00140.pdf> accessed 22 July 2025.

43 Xandra Kramer, 'Cross-Border Enforcement in the EU: Mutual Trust versus Fair Trial: Towards Principles of European Civil Procedure' (2011) 1(2) *International Journal of Procedural Law* 218 <https://doi.org/10.1163/30504856-00102003> accessed 22 July 2025.

44 Madalina Moraru, 'Mutual Trust from the Perspective of National Courts. A Test in Creative Legal Thinking' in Evelien Brouwer, Damien Gerard (eds), *Mapping Mutual Trust: Understanding and Framing the Role of Mutual Trust in EU Law* (European University Institute 2016) 37, 38.

45 Ivana Kunda, 'Međunarodnoprivatnopravni odnosi' in E Mišćenić (ed), *Europsko privatno pravo: Posebni dio* (Školska knjiga 2021) 495; Monique Hazelhorst, *Free Movement of Civil Judgments in the European Union and the Right to a Fair Trial* (Springer 2017) 41 <https://doi.org/10.1007/978-94-6265-162-3> accessed 22 July 2025.

46 Opinion 2/13 of the Court of Justice of the EU (Full Court), ECLI:EU:C:2014:2454 (2014) 168.

47 ibid 191.

48 Brussels I Recast, recital 26.

49 See more on fair trial guarantees in, eg, Case C-619/10, *Trade Agency Ltd v Seramico Investments Ltd*, First Chamber, judgment of 6 September 2012 (ECLI:EU:C:2012:531); Case C-279/09, *DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v Bundesrepublik Deutschland*, Second Chamber, judgment of 22 December 2010 (ECLI:EU:C:2010:811).

50 Brussels I Recast, recital 26.

51 EEOR, recital 18.

52 EOPR, recital 27.

Brussels I Recast, there was no mention of mutual trust in the Brussels Convention. There are various ways to explain this. One is relying on chronology: given that the 1968 Brussels Convention predates the CJEU's Opinion 1/75, it may be said that the principle of mutual trust in its current form has been established later than the principle of mutual recognition,[53] and even partially derived therefrom. The other approach contrasts the legal nature of the Brussels Convention and its sequels: the lack of the notion of mutual trust in the Brussels Convention, results from the fact that the Brussels I Regulation was part of the secondary EU law, while the Brussels Convention was not. However, the CJEU case law suggests otherwise. The CJEU's first reference to the principle of mutual trust in the area of cross-border civil procedure was in *Gasser*, where it was stated that the Brussels Convention is based on trust between the Member States in 'each other's legal systems and judicial institutions'.[54] Finally, another approach is to view the emergence of the notion of mutual trust as a simple domain transfer that although originally developed in a different area of law, the concept of mutual trust has been adopted into another. Regardless, it is evident that the idea of mutual trust has existed since the early days of the EU's AFSJ, although it was not clearly articulated at the time. Since then, it has solidified and has been explicitly incorporated in the EU regulations, as well as repeatedly mentioned by the CJEU in the context of a cross-border recognition and enforcement of judgments.[55]

While the term 'mutual trust' has become a *leitmotiv* and a 'buzzword' of EU law over the years,[56] its existence in reality remains questionable.[57] Indeed, mutual trust in the EU is a legal obligation[58] rather than a genuine state of affairs, which leads to criticisms, as 'trust must be earned and maintained', while 'obligation to trust equals prescribed ignorance'.[59] Still, even if it is partially a fiction, mutual trust is useful for the EU legal system as it 'justifies, explains and facilitates mutual recognition'[60] and may help build real trust over time.[61]

53 Kunda (n 45) 495.

54 Case C-116/02, *Erich Gasser GmbH v MISAT Srl*, Full Court, judgment of 9 December 2003 (ECLI:EU:C:2003:657) paras 67, 72.

55 See, eg, Case C-420/07, *Meletis Apostolides v David Charles Orams and Linda Elizabeth Orams*, Grand Chamber, judgment of 28 April 2009 (ECLI:EU:C:2009:271); Case C-456/11, *Gothaer Allgemeine Versicherung AG and Others v Samskip GmbH*, Third Chamber, judgment of 15 November 2012 (ECLI:EU:C:2012:719); Case C-157/12, *Salzgitter Mannesmann Handel GmbH v SC Laminorul SA*, Fourth Chamber, judgment of 26 September 2013 (ECLI:EU:C:2013:597); Case C-568/20, *J v H Limited*, Third Chamber, judgment of 7 April 2022 (ECLI:EU:C:2022:264).

56 Düsterhaus (n 41) 83; Matthias Weller, *"Mutual Trust": A Suitable Foundation for Private International Law in Regional Integration Communities and Beyond?* (Collected Courses of the Hague Academy of International Law, vol. 423, 2022) 4 <https://doi.org/10.1163/1875-8096_pplrdc_A9789004514119_02> accessed 22 July 2025.

57 This is visible primarily from the CJEU case law, eg, Case C-491/10 PPU, *Joseba Andoni Aguirre Zarraga v. Simone Pelz*, First Chamber, judgment of 22 December 2010 (ECLI:EU:C:2010:828) (2010); Joined Cases C-411/10 and C-493/10, *N.S. and M.E. and others*, Grand Chamber, judgment of 21 December 2011 (ECLI:EU:C:2011:865) (2011); Case C-292/10, *G v Cornelius de Visser*, First Chamber, judgment of 15 March 2012 (ECLI:EU:C:2012:142) (2012); Case C-300/14, *Imtech Marine Belgium NV v Radio Hellenic SA*, Fourth Chamber, judgment of 17 December 2015 (ECLI:EU:C:2015:825) (2015).

58 Arenas Garcia (n 1).

59 Weller (n 56) 11; Michael Schwarz, 'Let's Talk About Trust, Baby! Theorizing Trust and Mutual Recognition in the EU's Area of Freedom, Security and Justice' (2018) 24 *European Law Journal* 135 <https://doi.org/10.1111/eulj.12268> accessed 22 July 2025.

60 Matti Pellonpää, 'Reflections on the Principle of Mutual Trust in EU Law and Judicial Dialogue in Europe' in Katja Karjalainen, Iina Tornberg, Aleksi Pursiainen (eds), *International Actors and the Formation of Laws* (Springer, 2022) 61 <https://doi.org/10.1007/978-3-030-98351-2_3> accessed 22 July 2025.

61 ibid 14.

2.1.3. Relationship Between Mutual Recognition and Mutual Trust

The above discussion highlights a strong correlation between mutual trust and mutual recognition, though they remain distinct. Trust reflects a reliable, developed relationship, while recognition simply confirms and acts within a relationship, without implying trust.[62] As the explicit mention of the principle of mutual recognition preceded that of mutual trust, the latter may be seen as evolving from the former. Conversely, recognition can be seen as a 'practical application' of trust.[63] Only mutual trust, built on inter-state reliance, can lead to mutual recognition of judgments. Though not formally articulated early on, the idea of mutual trust likely underpinned mutual recognition. Ultimately, while closely connected and mutually reinforcing, the two principles are distinct and should not be used interchangeably.[64]

2.1.4. Limitations of Mutual Recognition and Mutual Trust

Given that any legal principle is rarely, if ever, absolute, it is not surprising that the principles of mutual recognition and mutual trust are subject to certain limitations. In other words, a 'dimension of control' must always exist, whether prior or subsequent.[65] This is due to several factors – incomplete EU harmonisation of substantive law and procedural rules, potential violations of human rights, especially the right to a fair trial, and the difficulty of aligning diverse national legal systems. This is partially evident in the difficulty of reforming traditional, long-standing provisions of the relevant EU legal instruments, with certain initially set limitations surviving until today.[66]

Generally, the aforementioned 'dimension of control' can be effectuated in the Member State of enforcement, in the Member State of origin, or in both. The first type, *ex post* control, occurs after a judgment is made. When a judgment from one Member State is brought to another for enforcement, that Member State can refuse to recognise or enforce it if certain refusal grounds are met.[67] The second type, *a priori* control, happens before the judgment is issued. It involves applying minimum procedural standards during the original trial. These standards are consistent across all Member States and must be followed to ensure the judgment can later be recognised elsewhere. As is more often the case in EU legislation in civil matters, the two segments are combined: *a priori* standards ensure fair trials in the Member State of origin, while *ex post* control allows for enforcement checks in the Member State where recognition is sought.[68] The introduction of the *a priori* segment has enabled the reduction of the number of refusal grounds especially in the 'second generation' instruments, yet their complete elimination is still outside the reach. In this way, the role of the Member State of origin in guaranteeing access to justice and effectiveness of EU law is being strengthened, in contrast with the role given to the Member State of enforcement, which clearly demonstrates elevation of mutual trust in comparison to the original recognition and enforcement regime such as that in the Brussels Convention.

62 Kunda (n 45) 495.

63 Hazelhorst (n 45) 41.

64 See such use, eg, in the Opinion of AG Sharpston, C-467/04, *G. Francesco Gasparini and Others* (ECLI:EU:C:2006:406) (2006) para 107, footnote 87.

65 Lopes (n 31) 32.

66 An illustrative example can be found in the refusal grounds outlined in the Brussels Convention and the subsequent regulations.

67 See, eg, Brussels I Recast, Article 45(1).

68 See, eg, EEOR, Articles 12–19; EOPR, Articles 13–15.

Additionally, in the *ex post* segment, the abolition of *exequatur* in instruments like the Maintenance Regulation and Brussels I Recast signifies a further shift. Although Brussels I Recast retained the number of refusal grounds, it introduced automatic recognition of effects, including enforceability, and a more limited, 'opt-out'-like option for refusal. This change signals increased mutual trust, as enforceability decisions are no longer a prerequisite. Previously, trust was limited – recognition required formal confirmation. Now, judgments produce full legal effects automatically, and refusal grounds may be raised only afterwards. This shift improves the overall efficiency of recognition and enforcement procedures.

2.2. Effectiveness of EU Law

It may be said that any law which lacks effectiveness holds no true purpose.[69] The law of the EU is no different; thus, its efficient application by the Member State authorities is crucial to maintaining the EU legal order. From this assumption, the principle of effectiveness of the EU law was born.

Though based on a simple idea, the principle is complex and has been previously labelled as 'messy', 'elusive' and 'difficult to conceptualise and contextualise',[70] similarly to mutual trust. It encompasses various doctrines aimed at ensuring the 'full effect' of the EU law in the Member State.[71]

Despite lacking explicit Treaty basis, its roots are often traced to the *pacta sunt servanda* principle of international law and the duty of loyal cooperation, as established in Article 4(3) of the TFEU.[72] Since 1957, the CJEU has used terms such as full effect,[73] effectiveness,[74] practical effect,[75] and *effet utile*[76] to express this idea. The principle of *effet utile* first appeared in *Steenkolnmijnen Limburg* in 1961, where the CJEU stated that the EU can only 'impinge on national sovereignty in cases where, because of the power retained by the Member State, this is necessary to prevent the effectiveness of the Treaty from being considerably weakened and its purpose from being seriously compromised'.[77] Throughout the development that followed, effectiveness became a foundation for key doctrines such as primacy, direct applicability, indirect effect and Member State liability for breaches of EU law, helping to create a coherent EU legal system across diverse national traditions.[78]

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69 Elvira Méndez-Pinedo, 'The Principle of Effectiveness of EU Law: A Difficult Concept in Legal Scholarship' (2021) 11(1) *Juridical Tribune* 13 <https://www.tribunajuridica.eu/arhiva/An11v1/1.Elvira%20Mendez%20Pinedo.pdf> accessed 15 November 2025.

70 ibid 18, 25.

71 Mišćenić (n 14) 174.

72 ibid 174; Méndez-Pinedo (n 69) 13.

73 See, eg, Case C-106/77, *Amministrazione delle Finanze dello Stato v Simmenthal SpA*, Full Court, judgment of 9 March 1978 (ECLI:EU:C:1978:49); Case C-144/04, *Werner Mangold v Rüdiger Helm*, Grand Chamber, judgment of 22 November 2005 (ECLI:EU:C:2005:709); Case C-204/21, *European Commission v Republic of Poland*, Grand Chamber, judgment of 5 June 2023 (ECLI:EU:C:2023:334).

74 See, eg, Case C-6/64, *Flaminio Costa v E.N.E.L.*, Full Court, judgment of 15 July 1964 (ECLI:EU:C:1964:66); *Simmenthal* (n 73); Case C-8/81, *Ursula Becker v Finanzamt Münster-Innenstadt*, Full Court, judgment of 19 January 1982 (ECLI:EU:C:1982:7); *Mangold* (n 73).

75 See, eg, Case C-70/72, *Commission of the European Communities v Federal Republic of Germany*, Full Court, judgment of 12 July 1973 (ECLI:EU:C:1973:87).

76 See, eg, *Simmenthal* (n 73); Case C-152/84, *M. H. Marshall v Southampton and South-West Hampshire Area Health Authority (Teaching)*, Full Court, judgment of 26 February 1986 (ECLI:EU:C:1986:84); *Mangold* (n 73).

77 Case C-30/59, *De Gezamenlijke Steenkolenmijnen in Limburg v High Authority of the European Coal and Steel Community*, Full Court, judgment of 23 February 1961 (ECLI:EU:C:1961:2) para 24.

78 Méndez-Pinedo (n 69) 14, 10.

2.2.1 Principle of Effective Judicial Protection

For the principle of effectiveness and the aim of achieving the 'full effect' of EU law, of utmost importance is the principle of effective judicial protection. Proclaimed as a general principle of the EU law[79] and 'a pillar of the EU constitutional architecture',[80] it comprises different rights, eg the right of access to court, the right to a fair trial, the right of defence, the right to comprehensive judicial review.[81] It follows that the principle of effective judicial protection has been developed within the fundamental rights law, and is as such enshrined in Article 47 of the Charter of Fundamental Rights of the EU.[82] The principle was also added to the text of the Treaty on the European Union after the amendments in the Treaty of Lisbon; Article 19 proclaims that Member States 'shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law'.[83] Thus, its function is two-fold: it works both as a fundamental right and a normative vessel for the protection of the rule of law in the EU.[84]

The effective judicial protection must be ensured both at the national and EU level, as seen from CJEU case law. For example, in *Johnston*, it was shown that the principle of effective judicial protection employs an important incentive to offer procedural guarantees for the proper application of EU law and the possibility to pursue legal claims based on EU law before national authorities of each Member State.[85] On the other hand, in *Kadi*, the principle of effective judicial protection allowed for an EU measure, ie, a measure used by EU institutions, to be proclaimed as incompatible with EU law.[86] Thus, the principle works both ways – it secures effectiveness of EU law in the Member States, as well as in the EU itself. As mentioned above, the effectiveness is protected mainly through procedural guarantees for proper application, supported with sufficient remedies for any issues that may arise.

2.2.2 The 'Rewe Effectiveness'

In line with the principle of effective judicial protection, another similar test for securing effectiveness was developed throughout the CJEU case law. It comprises two principles: the principle of equivalence and the principle of effectiveness. It first appeared in the *Rewe* ruling,[87] after which the concept itself is named as '*Rewe* effectiveness'[88] or the '*Rewe/Comet*

79 Anthony Arnull, 'The Principle of Effective Judicial Protection in EU Law: An Unruly Horse?' (2011) 36 *European Law Review* 54.

80 Giulia Gentile, 'Effective Judicial Protection: Enforcement, Judicial Federalism and the Politics of EU Law' (2023) 2 *European Law Open* 128 <https://doi.org/10.1017/elo.2022.48> accessed 22 July 2025.

81 Luis Arroyo Jiménez, 'Effective Judicial Protection and Mutual Recognition in the European Administrative Space' (2021) 22 *German Law Journal* 346, 347 <https://doi.org/10.1017/glj.2021.12> accessed 22 July 2025.

82 Charter of the Fundamental Rights of the European Union, OJ C 326/391 (2012).

83 Treaty on the European Union, OJ C 326/13 (2012).

84 Gentile (n 80) 128.

85 Case C-222/84, *Marguerite Johnston v Chief Constable of the Royal Ulster Constabulary*, Full Court, judgment of 15 May 1986 (ECLI:EU:C:1986:206).

86 Joined Cases C-402/05 P and C-415/05 P, *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities*, Grand Chamber, judgment of 3 September 2008 (ECLI:EU:C:2008:461).

87 Case C-33/76, *Rewe-Zentralfinanz eG and Rewe-Zentral AG v Landwirtschaftskammer für das Saarland*, Full Court, judgment of 16 December 1976 (ECLI:EU:C:1976:188).

88 Jasper Krommendijk, 'Is there light on the horizon? The distinction between 'Rewe effectiveness' and the principle of effective judicial protection in Article 47 of the Charter after Orizzonte' (2016) 53 *Common Market Law Review* 1395-1418 <https://doi.org/10.54648/cola2016120> accessed 22 July 2025.

formula'[89] (based on CJEU's ruling in *Comet*[90]). In *Rewe*, the CJEU presented the two aforementioned principles as possible limitations to the procedural autonomy of the Member States, stating that 'the right conferred by Community [now, Union] law must be exercised before the national courts in accordance with the conditions laid down by national rules' while 'the position would be different only if conditions and time-limits made it impossible in practice to exercise the rights which the national courts are obliged to protect'.[91] While the principle of equivalence requires that 'detailed procedural rules governing actions for safeguarding an individual's rights under Community [now, Union] law must be no less favourable than those governing similar domestic actions', the principle of effectiveness implies that procedural rules 'must not render practically impossible or excessively difficult the exercise of rights conferred by Community [now, Union] law'.[92] In that sense, equivalence and effectiveness can be seen as 'practical expressions' of the EU doctrine of primacy and direct effect.[93]

Both aspects of this dual test, equivalence and effectiveness, have been criticised in the past, mostly for their inconsistency and obscurity. In relation to the former, perhaps the most important problem relates to the comparison that must be done in order to assess equivalence of a certain legal rule – such exercise, performed by the CJEU, requires sufficient knowledge of the national law in question, which may oftentimes be lacking.[94] In relation to the latter, the 'practical impossibility' or 'excessive difficulty' reservations can make the principle of effectiveness 'without internal limits', and thus subject to another balancing exercise which can be difficult to perform.[95]

2.2.3 The Interplay of Different Notions

The relationship between the principle of effective judicial protection and the '*Rewe* effectiveness' has perplexed both the CJEU and scholars. The CJEU case law provides no definite answer as to which principle should be applied in a particular case or whether there is a certain hierarchy between them.[96] On the contrary, the CJEU's stance on the interplay of the principles has been quite inconsistent throughout time. While in some rulings the CJEU invokes only one or the other principle,[97] in others it uses both.[98] Additionally, while

89 Koen Lenaerts, Kathleen Gutman and Ignace Maselis, *EU Procedural Law* (Oxford University Press, 2014) 118.

90 Case C-45/76, *Comet BV v Produktschap voor Siergewassen*, Full Court, judgment of 16 December 1976 (ECLI:EU:C:1976:191).

91 *Rewe* (n 87), para 5.

92 Case C-432/05, *Unibet (London) Ltd and Unibet (International) Ltd v Justitiekanslern*, Grand Chamber, judgment of 13 March 2007 (ECLI:EU:C:2007:163) (2007) para 43.

93 Lenaerts, Gutman and Maselis (n 89) 109.

94 Michal Bobek, 'Why There is No Principle of 'Procedural Autonomy' of the Member States' in Bruno de Witte and Hans Micklitz (eds), *The European Court of Justice and the Autonomy of the Member States* (Intersentia, 2011) 312.

95 ibid 313.

96 Anna Van Duin, *Effective Judicial Protection in Consumer Litigation. Article 47 of the EU Charter in Practice* (Intersentia, 2022) 58 <https://doi.org/10.1017/9781839702501> accessed 23 July 2025.

97 See, eg, Case C-536/11, *Bundeswettbewerbsbehörde v Donau Chemie and Others*, First Chamber, judgment of 6 June 2013 (ECLI:EU:C:2013:366); Case C-74/14, *'Eturas' UAB and Others v Lietuvos Respublikos konkurencijos taryba*, Fifth Chamber, judgment of 21 January 2016 (ECLI:EU:C:2016:42); Case C-562/12, *Liivima Lihaveis MTÜ v Eesti-Läti programmi 2007-2013 Seirekomitee*, Fourth Chamber, judgment of 17 September 2014 (ECLI:EU:C:2014:2229).

98 Case C-63/08, *Virginie Pontin v T-Comalux SA*, Third Chamber, judgment of 29 October 2009 (ECLI:EU:C:2009:666); Case C-268/06, *Impact v Minister for Agriculture and Food et al.*, Grand Chamber, judgment of 15 April 2008 (ECLI:EU:C:2008:223); *Unibet* (n 92).

sometimes the notion of effective judicial protection is used synonymously with effectiveness,[99] in other cases they are clearly differentiated.[100] The confusion is evident also in the opinions of different Advocate Generals. Some opinions tend to subsume the principles of equivalence and effectiveness under the principle of efficient judicial protection,[101] yet others observe it as if it were the other way around.[102] The latter position seems to be prevalent in the CJEU case law.[103] Thus, even careful reading of the CJEU case law fails to establish clarity in understanding the interplay of the aforementioned principles. This is confirmed in the scholarship, which nevertheless attempts to shed some light on the matter. It has been submitted that, although similar, the principles are to be constructed differently, with the principle of effective judicial protection being developed under the fundamental rights law, while the '*Rewe* effectiveness' was construed as a limit to the Member States' procedural autonomy.[104] In that sense, the principle of effectiveness entails a 'minimum test', ie, procedural rules may not make the exercise of rights established by EU law impossible or excessively difficult. On the other hand, the principle of effective judicial protection implies a 'positive test' by establishing a Member-State obligation to achieve a particular result.[105] Consequently, subsuming one principle under the other or using them as synonyms is to be avoided. As distinct as they are, these principles can converge and reinforce each other.[106]

3. Interplay of the Principles Under The Selected EU Regulations

3.1. Inconsistencies With Domestic Values and Principles

The previous chapter established that the governing principles do not operate in isolation; rather, they reinforce one another, forming a dynamic interplay central to the coherence and application of EU law. To determine whether this theoretical alignment holds in practice, this chapter examines how these principles interact on a practical level, focusing on how they are applied in the selected EU regulations, particularly through the available refusal grounds for recognition and enforcement of judgments.

99 Case C-176/17, *Profi Credit Polska S.A. w Bielsku Białej v Mariusz Wawrzosek*, Second Chamber, judgment of 13 September 2018 (ECLI:EU:C:2018:711) para 57; Case C-483/16, *Zsolt Sziber v ERSTE Bank Hungary Zrt.*, Second Chamber, judgment of 31 May 2018 (ECLI:EU:C:2018:367) para 35; Case C-485/19, *LH v Profi Credit Slovakia s. r. o.* First Chamber, judgment of 22 April 2021 (ECLI:EU:C:2021:313) para 36.

100 Case C-12/08, *Mono Car Styling SA v Dervis Odemis and Others*, Fourth Chamber, judgment of 16 July 2009 (ECLI:EU:C:2009:466) para 49; Joined Cases C-317/08, C-318/08, C-319/08 and C-320/08, *Rosalba Alassini v Telecom Italia SpA* (C-317/08), *Filomena Califano v Wind SpA* (C-318/08), *Lucia Anna Giorgia Iacono v Telecom Italia SpA* (C-319/08) and *Multiservice Srl v Telecom Italia SpA* (C-320/08), Fourth Chamber, judgment of 18 March 2010 (ECLI:EU:C:2010:146).

101 Opinion of AG Jääskinen, C-61/14, *Orizzonte Salute — Studio Infermieristico Associato v Azienda Pubblica di Servizi alla persona 'San Valentino' — Città di Levico Terme and Others* (ECLI:EU:C:2015:307) (2015) para 24; Opinion of AG Bot, C-93/12, *ET Agrokonsulting-04-Velko Stoyanov v Izpalnitelen direktor na Darzhaven fond 'Zemedelie' – Razplashtatelna agentsia* (ECLI:EU:C:2013:172) para 30.

102 Opinion of AG Kokott, Case C-75/08, *The Queen, on the application of Christopher Mellor v Secretary of State for Communities and Local Government* (ECLI:EU:C:2009:32) para 28.

103 Case C-61/14, *Orizzonte Salute – Studio Infermieristico Associato v. Azienda Pubblica di Servizi alla persona San Valentino – Città di Levico Terme and Others*, Fifth Chamber, judgment of 6 October 2015 (ECLI:EU:C:2015:655) para 48; Case C-628/15, *The Trustees of the BT Pension Scheme v Commissioners for Her Majesty's Revenue and Customs*, Second Chamber, judgment of 14 September 2017 (ECLI:EU:C:2017:687) para 59.

104 Krommendijk (n 88) 1398.

105 Anthi Beka, *The Active Role of Courts in Consumer Litigation. Applying EU Law of the National Courts' Own Motion* (Intersentia, 2018) 38 <https://doi.org/10.1017/9781780687674> accessed 23 July 2025.

106 Van Duin (n 96) 122.

In that vein, perhaps the most significant refusal ground demonstrating incompleteness of mutual trust among Member States and protecting the effectiveness of EU law is the public policy (*ordre public*) exception. Initially a strictly national category, this exception was intended to safeguard the domestic legal orders from foreign solutions that were unacceptable to the legal order of the recipient country.[107] While of significant importance, this refusal ground must not be used lightly. It is to be used only in 'exceptional cases',[108] ie only when the judgment in question is 'manifestly' contrary to the public policy of the Member State being addressed.[109] As visible from the CJEU case law,[110] this moderates the scope of situations in which this ground could be invoked?

When discussing the interplay between the relevant principles, an important question concerns whether a misapplication of EU law in the original proceedings justifies the refusal of recognition and enforcement under the public policy exception. This issue was tackled in several cases. In *Renault*, the CJEU recalled that the public policy exception must be interpreted strictly, and that the court of the Member State being addressed cannot review the accuracy of the findings of law or fact made by the court of origin,[111] as previously established in *Krombach*.[112] In regard to the potential refusal of recognition based on the fact that the EU law was misapplied, the CJEU refused such a possibility in its entirety, stating that the aim of the regulation in question would be undermined.[113] Moreover, it was highlighted that the system of legal remedies in each Member State, along with the preliminary ruling procedure, affords a sufficient guarantee to individuals.[114] Such a conclusion highlights the prevalence of the principles of mutual recognition and mutual trust at the stage of cross-border recognition and enforcement. On the other hand, the burden to ensure the protection of other rights conferred by EU law, ie, to ensure effectiveness of EU law in general, is primarily on the national courts when deciding on the merits of a case.[115]

The same reasoning and conclusions in *Renault* were upheld in later rulings, eg in *Apostolides*[116] and *FlyLAL*,[117] in which the CJEU also specifically recalls that the rules on recognition and enforcement laid down by the Brussels I Regulation are based on mutual trust.[118] Following the same line of reasoning, in *Diageo*, the CJEU once again explicitly emphasised that

107 Kramberger Škerl (n 7) 461.

108 Case C-145/86, *Horst Ludwig Martin Hoffmann v Adelheid Krieg*, Full Court, judgment of 4 February 1988 (ECLI:EU:C:1988:61), para 21; Case C-78/95, *Bernardus Hendrikman and Maria Feyen v Magenta Druck & Verlag GmbH*, Fifth Chamber, judgment of 10 October 1996 (ECLI:EU:C:1996:380), para 23; Case C-633/22, *Real Madrid Club de Fútbol, AE v EE, Société Éditrice du Monde SA*, Grand Chamber, judgment of 4 October 2024 (ECLI:EU:C:2024:843), para 34.

109 Brussels I Recast, Article 45(1)(a).

110 See, *Hoffmann* (n 108); *Hendrikman and Feyen* (n 108); *Real Madrid* (n 108).

111 Case C-38/98, *Régie nationale des usines Renault SA v Maxicar SpA and Orazio Formento*, Fifth Chamber, judgment of 11 May 2000 (ECLI:EU:C:2000:225) paras 26, 29.

112 Case C-7/89, *Dieter Krombach v André Bamberski*, Full Court, judgment of 28 March 2000 (ECLI:EU:C:2000:164) paras 21, 36.

113 *Renault* (n 111) para 33.

114 ibid para 33.

115 ibid para 32.

116 *Apostolides* (n 55).

117 Case C-302/13, *flyLAL-Lithuanian Airlines AS, in liquidation v Starptautiskā lidosta Rīga VAS, Air Baltic Corporation AS*, Third Chamber, judgment of 23 October 2014 (ECLI:EU:C:2014:2319).

118 ibid para 45; *Apostolides* (n 55) para 73.

> the fact that a judgment given in a Member State is contrary to EU law does not justify that judgment's not being recognised in another Member State on the grounds that it infringes public policy in that State where the error of law relied on does not constitute a manifest breach of a rule of law regarded as essential in the EU legal order and therefore in the legal order of the Member State in which recognition is sought.[119]

Several arguments support such a conclusion. First, the public policy exception is only to be used in exceptional cases. Its narrow interpretation is necessary, as it functions as a barrier to the free movement of judgments in the EU.[120] Second, allowing the effective application of EU law to be re-examined in all enforcement proceedings would not only undermine the principles of mutual recognition and mutual trust but would also undermine the particular aims and the effectiveness of the regulations themselves. Third, the *Diageo* ruling aligns with the notion that the free movement of judgments forms part of the public policy of all Member States [121]; thus, a breach of EU law does not always equal a breach of public policy. A careful reading shows that the public policy exception protects the principle of effectiveness only in cases of serious violations of EU law. One such instance was identified in *Real Madrid*,[122] where the CJEU held that refusal of enforcement may be justified if it would lead to a manifest breach of fundamental rights – specifically, freedom of the press. Outside such exceptional cases, mutual recognition and mutual trust take precedence.

The CJEU has also addressed whether procedural violations of EU law can trigger the public policy exception, as can best be seen in *Liberato*[123] and *Gjensidige*.[124] In both cases, it was the legal norm of the Brussels I Regulation itself that was ignored. In *Liberato*, the *lis pendens* rule was disregarded, and the second-seized court was quicker to hand down the decision. That judgment acquired the force of *res iudicata* and was subsequently brought for recognition in the Member State of the court that had been seized first. In *Gjensidige*, the Dutch court proceeded with the case and issued a judgment despite the choice-of-court clause in favour of Lithuanian courts. Once the Dutch judgment was presented before the Lithuanian court for enforcement, the issue of refusal arose. In both situations it was necessary to examine whether a violation of procedural provisions of EU law, one relating to *lis pendens* and the other to prorogation of jurisdiction, could be regarded as contrary to public policy. The CJEU answered in the negative. Reminding that the public policy exception is to be interpreted strictly, the CJEU in *Liberato* explained that an error in application of EU law does not mean that the recognition of the judgment in question would be *manifestly* contrary to public policy. Moreover, the CJEU stressed that jurisdiction of the court of the Member State of origin may not be reviewed in any circumstance. Finally, the Regulation itself is based on the idea that the recognition and enforcement of judgments given in a Member State should rely on the principle of mutual trust and the grounds for non-recognition should be kept to the minimum.[125] In *Gjensidige*, the CJEU invoked mutual recognition and explained that the mere fact that an action is not heard by the court

119 Case C-681/13, *Diageo Brands BV v Simiramida-04 EOOD*, First Chamber, judgment of 16 July 2015 (ECLI:EU:C:2015:471) para 68.

120 Burkhard Hess, Thomas Pfeiffer, *Interpretation of the Public Policy Exception as referred to in EU Instruments of Private International and Procedural Law (Study)* PE 453.189 (2011) 30.

121 Kramberger Škerl (n 7) 480.

122 *Real Madrid* (n 108).

123 Case C-386/17, *Stefano Liberato v Luminita Luisa Grigorescu*, First Chamber, judgment of 16 January 2019 (ECLI:EU:C:2019:24).

124 *Gjensidige ADB*, First Chamber, judgment of 21 March 2024 (ECLI:EU:C:2024:252).

125 *Liberato* (n 123) paras 45, 46, 54, 55.

designated in a choice-of-court agreement and that, as a result, it is not ruled upon under the law of the Member State to which that court belongs, cannot be regarded as a sufficiently serious breach of the right to a fair trial to render recognition of the judgment in that action manifestly at odds with the public policy of the Member State being addressed.[126] These rulings show that errors in applying the EU law, including the norms of the same regulation that governs the subsequent recognition and enforcement, do not always warrant refusal. In these situations, mutual recognition and mutual trust overrode the effective application of EU law. Interestingly, the CJEU relied on an argument in *Gjensidige* that nothing in the documents suggests that that recognition of the Dutch judgment would be at variance with the Lithuanian legal order to an unacceptable degree inasmuch as it would breach a fundamental principle.[127] This seems to suggest that the CJEU left room for a different outcome in cases where the error in law could be as unacceptable as to reach the level of a breach of the fundamental principles that constitute national public policy.

As evident from the above rulings, recognition and enforcement must be viewed in a different light than the actual proceedings prior to the deliverance of a judgment. Although effective application of EU law is of utmost importance during the proceedings leading up to the deliverance of a judgment, including appeals, at the stage of recognition and enforcement in another Member State, the principle of effectiveness may give way to the principles of mutual trust and mutual recognition. This means that the courts must turn a blind eye to certain – not all – errors of law. This threshold is not easily achievable, as *Libertato* and *Gjensidige* demonstrate. Furthermore, as evident from *Renault* and *Apostolides*, the effectiveness must in principle be guarded at the national level; otherwise, the free movement of judgments would come into question. Thus, the CJEU repeatedly emphasises that public policy exceptions may only be used in the most extreme situations. Despite their infrequent use in practice, public policy exceptions still provide a safety net for situations in which effectiveness has to a large degree been marginalised.

Interestingly, as opposed to Brussels I Recast and EAPOR, EEOR, EOPR, ESCPR and the Maintenance Regulation[128] do not offer public policy exceptions. The reasons for this lie in the additional safeguards that are put in place in the latter category of regulations. They were created with the intention of simplifying and accelerating cross-border litigation in specific areas where this was deemed appropriate given the matters that are being regulated, such as uncontested and small claims, or those that were deemed particularly sensitive and thus in need of speedy procedures, such as maintenance claims.[129] For this purpose, they contain much more detailed rules on the procedures before the courts than Brussels I Recast, which reduces the risk of public policy violations. As a result, in the latter regulations, the principles of mutual recognition and mutual trust enjoy stronger power than the principle of effectiveness.

3.2. Violation of The Protective Jurisdiction Rules

Besides the public policy exception, effectiveness can also be guarded through other refusal grounds, such as those pertaining to the protection of specific jurisdictional rules. These rules serve to protect both exclusive jurisdiction and the interests of weaker parties.

126 *Gjensidige* (n 124) paras 72, 75.

127 Ibid para 74.

128 A public policy ground of refusal can also be found in the Maintenance Regulation, but only as an exception from the general rule, ie, only for judgments given in Denmark.

129 Tampere Conclusions (n 3) no. 30, 34.

Exclusive jurisdiction occupies the highest hierarchical position under the Brussels I Regulation.[130] A clear example is Article 24(1)(1) of Brussels I Recast, which grants jurisdiction to the courts of the Member State where the property is located, in proceedings concerning rights *in rem* in immovable property or tenancies thereof. The rationale behind exclusive jurisdiction lies in the strong interest of the relevant Member State in adjudicating such matters. This is particularly evident in cases involving rights *in rem*, given the fundamental importance of land and property to national interests. This is also the point at which mutual trust is at its weakest. Recognition and enforcement may be refused solely on the basis of an incorrect application of a jurisdictional rule – whether it concerns exclusive jurisdiction or protective jurisdiction designed for weaker parties – without any further justification being necessary. With regard to weaker-party protection, the selected EU instruments identify consumers, employees, and parties to insurance contracts (including policyholders, insured persons and beneficiaries) as requiring special safeguards.[131] Owing to their structural informational disadvantage and potential economic or social dependence, these individuals warrant protectionnot only in substantive law, but also within the framework of private international law.[132]

Consumers represent the paradigmatic example of weaker parties in EU law. This is reflected both in the TFEU[133] and in the steadily expanding body of EU consumer legislation.[134] Correspondingly, EU private international law instruments also recognise the need to afford consumers special protection. The consumer-protective approach may seem at odds with the generally *pro creditore* orientation of the selected EU regulations, particularly Brussels I Recast, EEOR, EOPR, ESCPR and EAPOR.[135] However, this orientation is arguably justified by the fact that additional safeguards are available in the Member State of origin. These include, for instance, the *ex officio* application of certain provisions from consumer protection directives,[136] as well as the requirement to meet minimum procedural standards.[137] Still, further protection of consumers – and other categories of weaker parties – is also available at the stage of recognition and enforcement in another Member State.

It goes without saying that certain provisions aimed at protecting weaker parties will inevitably form part of EU public policy discussed in the previous section. However, to

130 Geert van Calster, *European Private International Law* (Hart Publishing, 2nd edition, 2016) 71.

131 See Brussels I Recast, Articles 10–23.

132 Giesela Rühl, 'The Protection of Weaker Parties in the Private International Law of the European Union: A Portrait of Inconsistency and Conceptual Truancy' (2014) 10(3) *Journal of Private International Law* 343–346 <https://doi.org/10.5235/17441048.10.3.335> accessed 23 July 2025.

133 TFEU, Articles 4(2)(f), 12, 114(3), 169.

134 See, eg, Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ L 95/29 (1993); Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules, OJ L 328/7 (2019); Directive (EU) 2024/825 of the European Parliament and of the Council of 28 February 2024 amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and through better information, OJ L (2024).

135 Fernando Gascón Inchausti, 'Ensuring Adequate Protection in Cross-Border Enforcement for Debtors, Especially Consumers', in Jan Von Hein and Thalia Kruger (eds), *Informed Choices in Cross-Border Enforcement. The European State of the Art and Future Perspectives* (Intersentia, 2021) 431 <https://doi.org/10.1017/9781839701306.019> accessed 23 July 2025.

136 ibid 435, 437, 449.

137 See, eg, Case C-289/17, *Collect Inkasso OÜ and Others v Rain Aint and Others*, Seventh Chamber, judgment of 28 February 2018 (ECLI:EU:C:2018:133).

ensure a more effective and specific protection, the Brussels I Recast Article 45(1)(e) offers an additional ground for refusing recognition and enforcement based on a violation of protective jurisdiction rules. Under this provision, consumers, employees, and parties to insurance contracts are granted a specific ground for refusal if those special jurisdiction rules were not respected. This mechanism enhances the effectiveness of EU law by ensuring that the protective jurisdictional rules embedded in the relevant instruments are not circumvented.[138] The rationale is clear: a violation of these rules can significantly impair a weaker party's ability to enforce their substantive rights. As such, this refusal ground operates as a necessary limitation on mutual recognition and mutual trust, while at the same time reinforcing the overarching principle of effectiveness in EU law.

It is important to note, however, that this specific refusal ground is found only in Brussels I Recast. The other regulations – namely, the EEOR, EOPR, ESCPR and EAPOR – do not contain equivalent provisions. This omission is based on the same rationale that led to the abolition of the public policy exception in those regulations: the existence of multiple safeguards in the Member State of origin significantly reduces the likelihood that such a refusal ground will be needed in practice. Additionally, the Maintenance Regulation does not include such a ground given its particular scope of application.

3.3. Severe Procedural Errors

Finally, the effectiveness may also gain power at the stage of recognition and enforcement through the refusal grounds that protect against severe procedural errors. These particularly include the special ground aimed at protecting the defaulting defendant and the ground of irreconcilability with another judgment.

The right to a fair trial, as a facet of the principle of effective judicial protection, is safeguarded not only through public policy but also through the special refusal ground in the Brussels I Recast, aimed at protecting the defaulting defendant. Article 45(1)(b) provides that recognition of a judgment will be refused 'when the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so.'[139] Although this ground deals with a specific situation in which a judgment was given in default of appearance, it is the only ground which aims specifically to protect the right to a fair trial.[140] In fact, the public policy exception is much broader in scope, also encompassing procedural errors which amount to violations of the right to a fair trial. When analysing the relation between these two grounds for refusal, scholars conclude that the public policy exception cannot be used for the same situations where the ground on the protection of the defaulting defendant would apply, ie, that this ground is of subsidiary character.[141]

138 See, eg, Brussels I Recast, sections 3–5.

139 See also, eg, Case C-70/15, *Emmanuel Lebek v Janusz Domino*, Second Chamber, judgment of 7 July 2016 (ECLI:EU:C:2016:524) (2016); Case C-283/05, *ASML Netherlands BV v Semiconductor Industry Services GmbH (SEMIS)*, First Chamber, judgment of 14 December 2006 (ECLI:EU:C:2006:787) (2006); Case C-327/10, *Hypoteční banka a.s. v Udo Mike Lindner*, First Chamber, judgment of 17 November 2011 (ECLI:EU:C:2011:745) (2011); *Trade Agency Ltd* (n 51).

140 Peter Mankowski, 'Article 45' in Ulrich Magnus and Peter Mankowski, *European Commentaries on Private International Law. Commentary. Brussels Ibis Regulation* (Verlag Dr. Otto Schmidt KG, 2nd edition, 2023) 872.

141 ibid 873.

The other selected regulations do not offer such refusal ground, but instead include necessary safeguards in the Member State of origin. This reinforces mutual trust, but at the account of effectiveness of EU law. In that way, smoother recognition and enforcement abroad is guaranteed. In other words, if error occurs, it can only be rectified in the country of origin.

Additionally, all regulations protect against the possibility of irreconcilable judgments through special refusal grounds. The aim of such refusal ground is to avoid the disorder in the legal system of a certain Member State that would be created if two judgments with irreconcilable effects would be allowed to coexist.[142] In that vein, this refusal ground directly relates to the rules of *lis pendens*. As noted above, misapplication of such rules does not equal to a breach of public policy; however, the regulations still offer the irreconcilability refusal ground which will solve undesirable situations that can happen when *lis pendens* rule has been breached, or in other situations where such rule is not applicable. The fact that this refusal ground is the last one remaining in the majority of the selected EU regulations[143] merely affirms that trust has its limits; specifically, it must not lead to serious disruption in the Member State of enforcement. Since the current rules of the selected regulations, as well as the national rules of the Member State, still allow for a certain degree of irreconcilability to occur, it is necessary that the principle of effectiveness is still safeguarded through these particular refusal grounds in order to remedy potential errors in the Member State of enforcement.

4. Conclusion

The EU system of recognition and enforcement of judgments rests on key legal principles. While the principles of mutual trust and mutual recognition allow for a judgment given in one Member State to be recognised in other Member States without imposing additional challenges, as it is assumed that Member States trust in each other's legal systems, the principle of effectiveness ensures uniform respect of EU law. Though these principles often align, they may come into conflict. This conflict has been resolved by the EU legislator and the CJEU, taking into account that a supranational organisation of 27 Member States with different legal systems requires a certain balance between strictness and flexibility in legal regulation.

From the above analysis, it is clear that effectiveness is primarily guarded at the national level, in the process of delivering a judgment. Given that the principle of effectiveness was developed in order to ensure that national authorities verify that the EU law is complied with in the Member States, it is no surprise that the selected Regulations also try to reinforce this principle through their rules on recognition and enforcement. However, at this point, effectiveness will be limited by the operation of the principles of mutual recognition and mutual trust. In some instances, effectiveness may be lost in the course of the proceedings in a Member State and may only be brought to the attention later, in another Member State. This opportunity is primarily reflected through the refusal grounds, which help restore effectiveness, but also mend mutual trust that could otherwise be broken, and, in turn, jeopardise mutual recognition. These refusal grounds are aimed at protecting certain areas that hold most 'value' in the EU legal system, and are deemed as crucial for the proper functioning of the system of recognition and enforcement. Thus, while refusal

142 ibid 887.

143 Brussels I Recast, Article 45(1)(c) and (d); EEOR, Article 21; EOPR, Article 22; ESCPR, Article 22; Maintenance Regulation, Article 21(2).

grounds represent the limits to the principles of mutual recognition and mutual trust, in the end, they actually ensure that the overall trust and the system of mutual recognition is retained. In other words, what may be seen as a limit to the principles actually guarantees the proper functioning of the overall system.

Returning to the 'scale' analogy set out in the Introduction, the selected Regulations clearly aim to maintain balance. While mutual recognition and mutual trust dominate the recognition and enforcement stage, the principle of effectiveness remains protected – both through earlier national proceedings and built-in safeguards. Moreover, even the limitations on mutual recognition and trust help ensure their proper and consistent application. Ultimately, the recognition and enforcement framework is not only essential for ensuring the free movement of judgments, but also for safeguarding the effective application of EU law throughout the entire cross-border process.

5.2. Tičić, Martina, "The Notion of 'Judgment' in the EU Regulations on Cross-Border Collection of Monetary Claims: A Change in Understanding?", *European Papers*, vol. 9, no. 2 (2024)

ARTICLE

THE NOTION OF "JUDGMENT" IN THE EU REGULATIONS ON CROSS-BORDER COLLECTION OF MONETARY CLAIMS: A CHANGE IN UNDERSTANDING?

MARTINA TICIC*

ABSTRACT: In the area of cross-border recognition and enforcement, judgments present the most important type of decisions that enjoy free movement within the European Union. The notion of a "judgment" may seem fairly obvious at first. However, given the broad definitions of EU's private international law instruments, the concept quickly proves to be much more complex. This became particularly clear after the recent rulings of the Court of Justice of the EU: the rulings in *H Limited* (C-568/20 ECLI:EU:C:2022:264) and *London Steam-Ship Owners* (C-700/20 ECLI:EU:C:2022:488). In light of the new case-law, this *Article* aims to answer the question as to what exactly constitutes a "judgment" in EU private international law, as well as determine whether the notion has been redefined after these rulings. The questions are answered with reference to the EU regulations dealing with monetary claims, while diverging aspects constituting a "judgment" under national laws of different Member States are highlighted as well.

KEYWORDS: notion of "judgment" – free movement of judgments – private international law – EU law – civil procedure – Brussels I Recast.

I. INTRODUCTION

Cross-border judicial cooperation in civil matters within the European Union (EU) is one of the fastest-expanding areas of EU law in the last decade or so. Initially one of the less-

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regulated ones, now it receives much attention from both the EU and its Member States. Aiming to ensure that natural and legal persons are not prevented or discouraged from exercising the four freedoms of movement due to incompatibilities between legal systems, it is founded on the principle of mutual recognition and enforcement among Member States to make sure that judgments as well can freely move across the EU.[1] Judgments are without a doubt the most important type of documents which represent an enforcement title in the Member States.[2] Although at first it may seem that the concept of a "judgment" is fairly obvious, even after years of applying the rules on the free movement of judgments, the question is still very much relevant today: what actually constitutes a "judgment" in the EU private international law?

The concept is defined very broadly in the EU's legislative instruments on civil and commercial matters. There is a reason for that, it being the need for inclusion of a broad spectrum of various judicial decisions emanating from different Member States. While it may be expected that such a broad concept should make the job easier for the national court,[3] the reality is that many courts have struggled to find the appropriate approach. This is also apparent from rich case law of the Court of Justice of the EU (CJEU). Recently, the question of defining a "judgment" has been addressed by the CJEU in the cases of *H Limited* (C-568/20)[4] and *London Steam-Ship Owners* (C-700/20).[5] The former ruling seems to go into an intricate territory of "double exequatur", *i.e.*, recognition of a Member State's judgment which constitutes a decision validating a foreign judgment's *res iudicata*. As it has long been thought that double exequatur is strictly forbidden,[6] this ruling opens up new questions on the matter and creates space for different interpretations of the notion of "judgment" in the EU. The latter CJEU ruling deals with the thorny interplay between the Brussels I Recast Regulation and arbitration, in the context of the recognition in the United Kingdom of a judgment given by a Spanish court. It requires examination as to the extent to which the scope of the notion of "judgment" is influenced by the notion of "earlier judgment". Additionally, the conclusions deriving from both rulings seem to clash

[1] Treaty on the Functioning of the European Union [2016] (hereinafter, TFEU), arts 67(4), 81.

[2] W Kennett, *Civil Enforcement in a Comparative Perspective. A Public Management Challenge* (Intersentia 2021) 27.

[3] W Kennett, *The Enforcement of Judgments in Europe* (Oxford University Press 2000) 216.

[4] Case C-568/20 *J v H Limited* ECLI:EU:C:2022:264.

[5] Case C-700/20 *London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain* ECLI:EU:C:2022:488. The notion of "judgment" has also been addressed in case C-646/20 *Senatsverwaltung für Inneres und Sport, Standesamtsaufsicht v TB* ECLI:EU:C:2022:879. This case, however, will not be analysed in this *Article* as the research does not focus on the regulations on family matters that do not primarily concern monetary claims, as explained further on in the Introduction.

[6] K Kerameus, *Enforcement in the International Context* in *Collected Courses of the Hague Academy of International Law* (Brill 1997) 20; F Garau Sobrino, 'The Automatic Enforceability Statement. Towards a New General Theory of Exequatur' (2004) Anuario Espanol Derecho Internacional Privado 101, 104.

at a certain point, particularly in terms of the possibility of including judgments upon judgments under the EU notion of "judgment".

Against the background of these developments, this *Article* aims to analyse what has been established as falling under the notion of "judgment" and whether, in light of the new case law, the general notion of "judgment" has been redefined. These questions are answered here specifically with reference to the regulations dealing with monetary claims, which due to their common features merit being examined separately from other judgments. In fact, with monetary claims, plaintiffs seek satisfaction expressed in monetary terms and such judgments are executed differently than non-monetary ones, as they require the specific performance of monetary payment.[7] The regulations which apply to such claims are:[8] Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Recast)[9] and its predecessors 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (Brussels Convention)[10] and its updated versions, and Council Regulation (EC) 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation);[11] Regulation (EC) 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a Eu-

[7] K Kerameus, *Enforcement in the International Context* cit. 41, 42.

[8] Although dealing with monetary claims, Regulation (EC) 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (European Order for Payment Regulation) and Regulation (EC) 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (European Small Claims Procedure Regulation) are not dealt with in this analysis since they do not contain the definition of a "judgment". Those regulations establish a self-standing, mainly written procedure which is to be done through the use of forms, therefore it was not necessary to define a "judgment" for their purposes. Additionally, certain other EU regulations could also be viewed as dealing with monetary claims. These include *e.g.* Insolvency Regulation [Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast)] or Succession Regulation [Regulation (EU) 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession]. However, these regulations are not included in the research as their scope of application concerns specific areas, *i.e.*, they contain special features, which distinguishes them from the rest of the regulations included in this research. In other words, only the regulations which are primarily dealing with monetary claims in civil and commercial matters, and do not regulate special matters such as insolvency or succession, are included.

[9] Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition of judgments in civil and commercial matters (recast), (hereinafter, Brussels I Recast).

[10] Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, (hereinafter, Brussels Convention).

[11] Council Regulation (EC) 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, (hereinafter, Brussels I Regulation).

ropean Enforcement Order for uncontested claims (European Enforcement Order Regulation);[12] Regulation (EU) 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters (European Account Preservation Order Regulation);[13] and Council Regulation (EC) 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (Maintenance Regulation).[14] Although technically an instrument dealing with family matters, unlike the rest of the previously mentioned regulations in civil and commercial matters, the latter is listed here because its scope (matters relating to maintenance obligations) relates directly to monetary claims, and has previously been included under the scope of Brussels I Regulation.[15] The remaining regulations on family matters, which do not primarily concern monetary claims, will therefore not be included.[16]

Following the introduction, section II offers a comprehensive overview of the leading CJEU rulings that shaped the meaning of "judgment". In doing so, the *Article* relies not only on the pertinent CJEU case law but also takes on a comparative approach, since the aspects constituting a "judgment" can be vastly different under different national laws. Due to the scope of this *Article*, the comparative analysis may only be done by way of example limited to laws of Germany, Italy, Slovenia and Croatia.[17] Section III focuses specifically on the recent CJEU rulings in *H Limited* and *London Steam-Ship Owners*, and aims to examine whether, as a consequence of the rulings, new issues arise for the future interpretation of the term and consequently, the mechanisms of recognition and enforcement. Finally,

[12] Regulation (EC) 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, (hereinafter, European Enforcement Order Regulation).

[13] Regulation (EU) 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters, (hereinafter, European Account Preservation Order Regulation).

[14] Regulation (EC) 4/2009 of the Council of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, (hereinafter, Maintenance Regulation).

[15] Additionally, maintenance is also included under the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Lugano Convention).

[16] Nevertheless, such regulations can in some cases also concern monetary claims, such as in *e.g.*, case C-4/14 *Christophe Bohez v Ingrid Wiertz* ECLI:EU:C:2015:563.

[17] These Member States are selected on the basis of their differing features, having in mind also the objective limitations as to paper volume and language of the legal sources. Importantly, these States differ as to whether they provide for special implementation laws on the relevant EU regulations or not. Furthermore, unlike for example Croatia, Germany adopted the strategy of synchronizing EU instruments with pre-existing domestic ones. Additionally, the judicial systems of Germany and Italy are intensely researched on this topic, whereas Croatian and Slovenian are not, leaving their special features comparatively unnoticed. On top of that, possible interconnections between these selected Member States are expected, since there is a large movement of people, goods, services and capital between these Member States (*e.g.*, Croatia's biggest trade partners in the EU are precisely the other three Member States from this group).

in section IV, conclusions are drawn concerning the currently operational definition of "judgment", and its consistency is evaluated.

II. The notion of "judgment" in the EU regulations on cross-border collection of monetary claims prior to *H Limited* and *London Steam-Ship Owners*

Before examining whether the two recent CJEU rulings have changed the notion of "judgment", it is necessary to first establish the general understanding of the notion that was held prior to those rulings. The first definition of a "judgment" in the EU regulations on the cross-border collection of monetary claims came with the Brussels Convention in 1968, which provides that, for its purposes, a "judgment" presents "any judgment given by a court or tribunal of a Contracting State [now, Member State], whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court".[18] The same definition was retained in the Brussels I Regulation as well,[19] and included in the European Enforcement Order Regulation in 2004[20] and the European Account Preservation Order Regulation in 2014.[21] Owing to the nature of the matters under its scope,[22] the Maintenance Regulation uses the notion of "decision" rather than "judgment" but the definition provided shows that it is essentially the same concept as the "judgment".[23] Therefore, both notions are analysed jointly.

The final step in the phraseological development of the rule is the additional paragraph inserted in the Brussels I Recast, to clarify that for the purposes of section III on recognition and enforcement, the notion of a "judgment" "includes provisional, including protective, measures ordered by a court or tribunal which by virtue of this Regulation has jurisdiction as to the substance of the matter. It does not include a provisional, including protective, measure which is ordered by such a court or tribunal without the defendant being summoned to appear, unless the judgment containing the measure is served on

[18] Art. 25 Brussels Convention cit.

[19] Art. 32 Brussels I Regulation cit.

[20] Art. 4 European Enforcement Order Regulation cit.

[21] Art. 4(8) European Account Preservation Order Regulation cit. There is only a minor difference – the absence of the term "tribunal" which has no significance in this context.

[22] As the cultural dimension is particularly prominent in the maintenance law, with substantive differences in terms of legal tradition, religion, language, culture and different areas with which maintenance is associated with, *e.g.*, family law or social security law, the term "decision" was more suited. See E Jayme, 'Cultural Dimensions of Maintenance Law from a Private International Law Perspective' in P Beaumont and others (eds), *The Recovery of Maintenance in the EU and Worldwide* (Hart Publishing 2014) 3, 14.

[23] Art. 2 Maintenance Regulation cit.: a "decision" means "a decision in matters relating to maintenance obligations given by a court of a Member State, whatever the decision may be called, including a decree, order, judgment or writ of execution, as well as a decision by an officer of the court determining the costs or expenses. For the purposes of Chapters VII and VIII, the term "decision" shall also mean a decision in matters relating to maintenance obligations given in a third State.

the defendant prior to enforcement".[24] This comes as a result of the CJEU case law, namely, the landmark ruling in *Denilauler*,[25] which will be further discussed below.

Based on the definition, several decisive elements of a "judgment" can be differentiated and are discussed in turn.

II.1. "ANY JUDGMENT"

The definitions all commence by stating that a "judgment" means "any judgment". This circular part of the definition is not owed to bad drafting or alike, but is actually intended to underline the breadth of the concept by using the word 'any' and the related clarification that follows: "whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court". The list is exemplary as evident from the wording of the provision itself. Thus, it may include various other judicial decisions regardless of their designation.[26]

The reason why the EU legislator opted for a broad definition of "judgment" is that there is a whole array of different types of decisions in different Member States.[27] To illustrate, some of the examples from national laws may be highlighted here. Focusing particularly on the national legal systems of Croatia, Slovenia, Germany and Italy, one may notice many similarities – the general understanding of the notion is the same, as a "judgment" usually pertains to a decision rendered by a court after certain proceeding, *i.e.*, a trial, has taken place before that court. Additionally, judgments are acts of state sovereignty, and its original effects are usually limited to the territory of the state of the court in question.[28] A "judgment" is usually issued when deciding on the merits of the

[24] Art. 2 Brussels I Recast cit.

[25] Case C-125/79 *Bernard Denilauler v SNC Couchet Frères* ECLI:EU:C:1980:130 para. 18. See also I Pretelli, 'Provisional and Protective Measures in the European Civil Procedure of the Brussels I System' in V Lazić and S Stuij (eds), *Brussels Ibis Regulation. Changes and Challenges of the Renewed Procedural Scheme* (T.M.C. Asser Press 2017) 114, 115.

[26] The broadness of the definition of "judgment" is also affirmed by the courts of the Member States, who have to determine whether a certain instrument is to be qualified as "judgment". See, *e.g.*, J von Hein and H Dittmers, 'Germany' in P Beaumont and others (eds), *Cross-Border Litigation in Europe* (Hart Publishing 2017) 150; S Bariattiand others, 'Italy' in P Beaumont and others (eds), *Cross-Border Litigation in Europe* cit. 177.

[27] J Caramelo Gomes and T Keresteš, 'Enforcement Titles in the EU: Common Core After All?' in V Rijavec and others (eds), *Diversity of Enforcement Titles in the EU* (Springer 2023) 77; S Leible, 'Artikel 2' in T Rauscher (ed.), *Europäisches Zivilprozess-und Kollisionsrecht EuZPR / EuIPR. Kommentar* (Verlag Dr. Otto Schmidt KG 2021) 181.

[28] H Linke and W Hau, *Internationales Zivilverfahrensrecht* (Verlag Dr. Otto Schmidt KG 2021) 244.

case,[29] while other types of decisions are reserved for other cases.[30] The types of judgments which can be found under the national laws can slightly differ. While all systems recognise, *e.g.*, partial judgments, interim judgments, waiver judgments or judgments by confession, some peculiarities can also be found. In that sense, Croatian courts can render a judgment without trial (*presuda bez održavanja rasprave*),[31] while Slovenian courts also issue similar type of judgments "based on the state of the file" (*sodba na podlagi stanja spisa*).[32] In Germany, a distinction between the types of judgments is made according to the content; the effect on the instance; and the criterion of conditionality, with many different types of judgments falling under each category.[33] Additionally, while all of these Member States also recognise default judgments, Croatia actually differentiates between two types of such judgments – *presuda zbog ogluhe*[34] and *presuda zbog izostanka*.[35] Additional difference in regards to default judgments can also be found in Germany – as opposed to the judgments from Croatia,[36] Slovenia[37] and Italy,[38] it seems that a German default judgment will be solely based on claimant's factual allegations, regardless of whether it is reasonably supported by evidence.[39] Differences can also be found in terms of the structure of a judgment. In some Member States, such as in Germany, Croatia and Slovenia, the reasoning of a judgment comes last in place; on the other hand, in Italy, the reasoning comes before the operative part.[40] Moreover, in some Member States, including Germany and Italy, reasoning can be further divided into different

[29] An exception may be found in Germany, where the court can render a so-called "procedural judgment" (*Prozessurteil*). More in Leibniz Universität Hannover, Institute for Procedural Law and Attorney Regulations, C Wolf, N Kurth and K Mieszaniec, *National Report Germany* (Project EU-En4s – JUST-AG-2018/JUST-JCOO-AG-2018 2020) 16; S Grubbs (ed.), *International Civil Procedure* (Kluwer Law International 2003) 252.

[30] Primarily decrees, orders and rulings.

[31] Croatian Civil Procedure Act (Zakon o parničnom postupku), Narodne novine 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 96/08, 123/08, 57/11, 148/11, 25/13, 89/14, 70/19 (2019) (hereinafter CCPA), art. 332(a).

[32] Slovenian Civil Procedure Act (Zakon o pravdnem postopku) Uradni list Republike Slovenije, n. 73. (2007) (hereinafter SCPA), art. 282.

[33] Leibniz Universität Hannover, Institute for Procedural Law and Attorney Regulations, C Wolf, N Kurth and K Mieszaniec, *National Report Germany* cit. 16.

[34] CCPA cit. art. 331(b).

[35] *Ibid*. art. 332.

[36] *Ibid*. art. 331(b).

[37] SCPA art. 282.

[38] Codice di Procedura Civile, aggiornato con le modifiche apportate dal D.L. 2 marzo 2024, n. 19 convertito, con modificazioni, dalla L. 29 aprile 2024, n. 56 (hereinafter CPC), arts 290-294.

[39] S Huber, 'The German Approach to the Globalisation and Harmonisation of Civil Procedure: Balancing National Particularities and International Open-Mindedness' in XE Kramer and CH van Rhee (eds), *Civil Litigation in a Globalising World* (T.M.C. Asser Press 2012) 299; German Code of Civil Procedure (Zivilprocessordnung), BGBI. I S. 3202; 2006 I S. 431; 2007 I S. 1781; 2023 I Nr. 51 (2005), (hereinafter, ZPO) art. 331.

[40] K Drnovšek, 'Comparative View on the Divergence of Structure and Substance of Judgments' in V Rijavec and others (eds), *Diversity of Enforcement Titles in the EU* cit. 118.

parts.[41] Additionally, in some Member States, such as in Croatia, the structure itself is regulated in Court Ordinance,[42] while in others, such as in Slovenia, more detailed standards in regards of structure have been formed through case law.[43] Regardless of national peculiarities, all of these types of decisions would fall under the EU notion of "judgment" as well. Thus, what is considered as judgment under national law, will oftentimes be also considered as an EU "judgment". On the other hand, other types of decisions that can be found in the national systems, such as orders, decrees and rulings, will usually not fall under the EU notion. However, certain deviations are possible, *e.g.*, Croatian decree on the protection of possession[44] and a German order that costs have to be fixed[45] would both qualify as "judgment" in the sense of the EU notion.

It is visible that, phrased in the current way, the definition ensures that all decisions, regardless of their formal characterisation under the national procedural law, can produce legal effects and be recognised and enforced throughout the EU, thus facilitating the free movement of judgments.[46] However, the national examples do not clearly show what would be the common denominator of a "judgment", as there are always certain exceptions and peculiarities. Thus, an answer as to what is the constituting element of the EU notion of "judgment", regardless of categorisation in the Member States, must be found. While the CJEU was never asked such question directly, an answer crystalized over time in its case law.

The constituting element was first presented in the previously mentioned *Denilauler* ruling, where the CJEU stated that decisions which fall under the scope of "judgment" must be "judicial decisions which, before the recognition and enforcement of them are sought in a State other than the State of origin, have been, or have been capable of being, the subject in that State of origin and under various procedures, of an inquiry in adversary proceedings".[47] Thus, the adversarial principle, *i.e.*, the principle of *audi et alteram partem*, is highlighted as the constituting element of a "judgment". Adversarial nature of the proceedings can be described as "compliance with the rights of the defence and assurance given to the defendant in the proceedings".[48] Based on such understanding, it

[41] *Ibid*. 117, 118.

[42] Sudski poslovnik, Narodne novine 37/2014-663 (2014) cit. art. 62.

[43] K Drnovšek, 'Comparative View on the Divergence of Structure and Substance of Judgments' cit. 115, 116.

[44] E Kunštek and others, *National Report for Croatia* (Project EU-En4s – JUST-AG-2018/JUST-JCOO-AG_2018 2020) 7.

[45] Leibniz Universität Hannover, Institute for Procedural Law and Attorney Regulations, C Wolf, N Kurth and K Mieszaniec, *National Report Germany* cit. 18.

[46] M Requejo Isidro (ed.), *Brussels I Bis. A Commentary on Regulation (EU) No 1215/2012* (Edward Elgar Publishing Limited 2022) 38; V Rijavec, 'Enforcement Titles Under Brussels I bis Regulation from National to EU Frameworks' in V Rijavec and others (eds), *Diversity of Enforcement Titles in the EU* cit. 9, 10.

[47] *Bernard Denilauler v SNC Couchet Frères* cit. para. 13.

[48] L Vogel, *Jurisdiction and Enforcement of Judgments* (2nd edn Bruylant 2020) 113.

was held that provisional and protective measures ordered without prior notice to the defendant do not come within the system of recognition and enforcement.[49]

The importance of the adversarial principle was soon highlighted again. In *Maersk*,[50] the CJEU was met with a question of whether an order to establish a liability limitation fund falls under the EU notion of "judgment". Referring back to the same definition previously given in *Denilauler*,[51] the CJEU once again underlined the importance of the adversarial principle for any national decision to fall under "judgment" in the sense that it noted that the order in question "could have been the subject of submissions by both parties" and that "such an order does not have any effect in law prior to being notified to claimants".[52] Thus, an order such as the one referred to in the case at hand can also be considered as "judgment".

Not long after the ruling in *Maersk*, the notion of "judgment" was addressed again in *Gambazzi*.[53] Here, the inclusion of default judgments in the notion of "judgment" was questioned as, according to the claimant, they are "adopted in infringement of the adversarial principle and the right to a fair trial".[54] The CJEU, noting that the (then applicable) Brussels Convention refers to all judgments given by a court or tribunal of a Member State without distinction, once again repeated the previously given definition,[55] and concluded that a default judgment was given "in civil proceedings which, as a rule, adhere to the adversarial principle".[56] The inclusion of default judgments also becomes somewhat obvious when taking into account the articles regulating the refusal of recognition,[57] which allow for refusal of recognition of judgments which were given in default of appearance, in cases where the defendant was not duly served with the document that instituted the proceedings or an equivalent in sufficient time which would enable him/her to arrange defence. This would suggest that, in cases where the defendant was in fact duly served with the relevant document in time sufficient for the arrangement of the defence, refusal of recognition would not be possible solely because the judgment was given in default of appearance.[58]

This ruling further validated the adversarial principle as a constituting element of a "judgment", and removed the focus off of any national peculiarities when assessing whether particular decision constitutes a "judgment". To illustrate, particularly in terms of default judgments, a short comparison between the notions and effects of default

[49] *Bernard Denilauler v SNC Couchet Frères* cit. para. 18.

[50] Case C-39/02 *Maersk Olie & Gas A/S v Firma M. de Haan en W. de Boer* ECLI:EU:C:2004:615.

[51] *Ibid*. para. 50.

[52] *Ibid*. paras 50, 51.

[53] Case C-394/07 *Marco Gambazzi v DaimlerChrysler Canada Inc., CIBC Mellon Trust Company* ECLI:EU:C:2009:219.

[54] *Ibid*. para. 21.

[55] *Ibid*. para. 23.

[56] *Ibid*. paras 22, 25.

[57] Brussels Convention cit. art. 27; Brussels I Regulation cit. art. 34; Brussels I Recast cit. art. 45.

[58] *Marco Gambazzi v DaimlerChrysler Canada Inc., CIBC Mellon Trust Company* cit. para. 24.

judgments between some national systems can be shown. If we take the example of the German legal system, default of appearance of a party is equated to an admission, *ficta confessio*.[59] The German Civil Procedure Act prescribes that, in the case of plaintiff's petition for a default judgment (*Versäumnisurteil*) against the defendant who did not appear at the hearing, the facts submitted by the plaintiff are considered as admitted.[60] On the other hand, in the Italian legal system, in cases when the defendant fails to appear at the first hearing, the court will declare him/her to be in default.[61] This fact of nonparticipation by a party in a procedure is called *contumacia*.[62] It does not introduce any shift of the burden of proof, neither does any presumption or admission follow from the defendant's absence.[63] Traditionally, the defendant's default was even qualified as *ficta contestatio*.[64] In Croatia, as already mentioned above, two types of default judgments are differentiated in the law.[65] Despite the fact that these differences may seem significant, what matters for the inclusion of these decisions under the notion of "judgment" is precisely the adherence to the adversarial principle.

Finally, in *Gothaer Allgemeine*, [66] the question arose of whether the so-called "procedural judgment" also qualifies as "judgment". In German legal doctrine, a "*Prozessurteil*" is a judgment dismissing the action as inadmissible based on the fact that it failed to satisfy the requirements necessary to deliver a judgment on the merits.[67] Although designated as "procedural judgment" in German law, it is merely a judgment in which jurisdiction is

[59] CG Paulus, *Zivilprozessrecht. Erkenntnisverfahren, Zwangsvollstreckung und Europäisches Zivilprozessrecht* (6th edn Springer 2017) 185; C Crifo, *Cross-Border Enforcement of Debts in the European Union, Default Judgments, Summary Judgments and Orders for Payment* (Kluwer Law International 2009) 183.

[60] ZPO cit. art. 331(1).

[61] A Layton and H Mercer (gen eds), *European Civil Practice (Vol 2)* (Sweet & Maxwell Limited 2004) 323; M Cappelletti and JM Perillo, *Civil Procedure in Italy* (Springer Science+Business Media 1965) 298.

[62] CPC cit. arts 291-294; C Crifo, *Cross-Border Enforcement of Debts in the European Union, Default Judgments, Summary Judgments and Orders for Payment* cit. 48, 227; M Cappelletti and JM Perillo, *Civil Procedure in Italy* cit. 297.

[63] C Crifo, *Cross-Border Enforcement of Debts in the European Union, Default Judgments, Summary Judgments and Orders for Payment* cit. 227; M Cappelletti and JM Perillo, *Civil Procedure in Italy* cit. 299.

[64] This means that the defaulting defendant was presumed to contest the plaintiff's claim. This has, however, been changed in 2009, with law n. 60, which established that "the defendant now has a burden to specifically contest facts which he alleges not to be true". See more in MA Lupoi, 'Recent Developments in Italian Civil Procedure Law' (2012) Civil Procedure Review.

[65] E Kunštek and others, *National Report for Croatia* cit. 6.

[66] Case C-456/11 *Gothaer Allgemeine Versicherung AG and others v Samskip GmbH* ECLI:EU:C:2012:719. See also commentary by E D'Alessandro, 'L'influenza esercitata dal diritto nazionale nell'elaborazione di concetti 'europei' ad opera della Corte di giustizia. Il caso Gothaer' in D Dalfino (ed.), *Scritti dedicati a Maurizio Converso* (Roma Tre-Press 2016).

[67] L Merrett, 'Article 2', in U Magnus and P Mankowski (eds), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary* (Verlag Dr. Otto Schmidt KG 2023) 81; M Klöpfer, 'Unionsautonome Rechtskraft klageabweisender Prozessurteile – Paradigmenwechsel im Europäischen Zivilverfahrensrecht' (2015) Zeitschrift für das Privatrecht der Europäischen Union 210.

denied on the basis of a jurisdiction clause in favour of a court in another country. Such judgment, under German law, is not considered as capable of recognition. Although not explicitly referring to the adversarial requirement, the CJEU once again ruled in favour of including such judgment under the EU notion. The issue here was not actually about the specific requirement for inclusion under "judgment", more so the particular national categorisation which brings into question its quality for such inclusion.[68] What was explicitly confirmed here, is the fact that national categorisation of certain decisions does not matter – the EU conditions set by both definition and the case law do.

This overview of the case law demonstrates that the adversarial principle currently forms a core element for determining whether a decision falls under the notion of "judgment", although not explicitly included in the definitions. The importance of such principle is understandable given that the EU regulations operate on the basis of mutual recognition, which is subject to strict conditions – primarily, the respect of fundamental rights such as the right to a fair trial,[69] which is reinforced precisely through the adversarial principle. Its significance will be further discussed below, as it will also be relevant when analysing the notion of "court or tribunal".

Based on this understanding, it is clear that it does not matter whether decision itself is final and provisional, appealable and non-appealable.[70] The form of the decision is not relevant either – even decisions made by a court in an abbreviated form or not containing an explanation could be included[71] (although this could potentially be regarded as a ground for refusal of enforcement by reason of public policy).[72] It is interesting to note that some Member States took note of the difficulty of recognising and enforcing a judgment in an abbreviated form abroad; for example, the German Code of Civil Procedure explicitly prohibits judgment in an abbreviated form, if it is expected that it will have to be enforced abroad.[73]

[68] *Gothaer Allgemeine Versicherung AG and others v Samskip GmbH* cit. para. 26.

[69] K Lenaerts, 'The Principle of Mutual Recognition in the Area of Freedom, Security and Justice' (2015) The Fourth Annual Sir Jeremy Lever Lecture, All Souls College, University of Oxford 4. See also I Kunda, 'Međunarodnoprivatnopravni odnosi' in E Mišćenić (ed.), *Europsko privatno pravo. Posebni dio* (Školska knjiga 2021) 504.

[70] M Requejo Isidro (ed.), *Brussels I Bis* cit. 38; R Fentiman, *International Commercial Litigation* (2nd Oxford University Press 2015) 640; J Caramelo Gomes and T Keresteš, 'Enforcement Titles in the EU' cit. 77; S Leible, 'Artikel 2' cit.183.

[71] S Leible, 'Artikel 2' cit. 182; H Sikirić, 'Reasons for Denying Recognition and Enforcement of Court Decisions According to the Council Regulation (EC) No. 44/2001 of December 22, 2000 on Court Jurisdiction and Recognition and Enforcement in Civil and Commercial Matters' (2010) Collected Papers of Zagreb Law Faculty 54.

[72] A Layton and H Mercer (gen eds), *European Civil Practice (Vol 1)* (Sweet & Maxwell Limited 2004) 871.

[73] ZPO cit. arts 313a (4), 313b (3). See also S Leible, 'Artikel 2' cit. 183.

Many other examples of decisions included in the notion can be given: interlocutory orders, injunctions and decrees of specific performance;[74] orders made in the German *Mahnverfahren* proceedings;[75] an *astreinte*, *i.e.*, an order for penalty payments for non-compliance with the court's order;[76] etc. Recently, the CJEU delivered a new ruling in *Starkinvest*,[77] which dealt with the possibility of an *astreinte* to be included under the notion of "judgment" for the purposes of the European Account Preservation Order Regulation. The ruling established that, for the purposes of that regulation, an *astreinte* could not qualify as "judgment" in terms of its art. 7.[78] Certain deviations between the understanding of the notion in different regulations on cross-border collection of monetary claims are therefore visible. Possible independent interpretation in the regulation relevant for the case at hand must thus always be taken into account.[79]

II.2. "A COURT OR TRIBUNAL"

The next element of the definition is that a "judgment" must emanate from "a court or a tribunal", or, according to the CJEU's interpretation, a decision constituting a "judgment" "must emanate from a judicial body of a Contracting State deciding on its own authority on the issues between the parties".[80] It is understood that this notion of "judicial body" covers "any judicial authority acting independently from other organs of the State and whose decisions are taken following a procedure having the characteristics of judicial proceedings, *i.e.*, based on the respect for the principle of due process".[81] Therefore, a "judgment" may be given by different types of courts or tribunals if they fulfil the necessary requirement of exercising judicial power in relation to the matters that are within

[74] A Briggs, *Civil Jurisdiction and Judgments* (7edn Informa law from Routledge 2021) 719; R Fentiman, *International Commercial Litigation* cit. 640.

[75] A Layton and H Mercer (gen eds), *European Civil Practice (Vol 1)* cit. 870.

[76] A Briggs, *Civil Jurisdiction and Judgments* cit. 720. For more information on *astreinte*, see also: K Kerameus, *Enforcement in the International Context* cit. 79, 80; W Kennett, *The Enforcement of Judgments in Europe* cit. 240; A Galič, 'Enforcement by Means of Periodic Penalties (Astreinte) in Slovenia: A Transplant Gone Wild' in A Uzelac and CH van Rhee (eds), *Transformation of Civil Justice. Unity and Diversity* (Springer 2018) 25-39; MP Michell, 'Imperium by the Back Door: The *Astreinte* and the Enforcement of Contractual Obligations in France' (1993) University of Toronto Faculty of Law Review 252; G Glos, '*Astreinte* in Belgian Law' (1985) International Journal of Legal Information 17; etc.

[77] Case C-291/21 *Starkinvest SRL* ECLI:EU:C:2023:299.

[78] *Starkinvest SRL* cit. para. 56. This is related to the requirement of proving the *fumus boni iuris* for the purposes of issuing the European Account Preservation Order. Given that multiple articles in the regulation explicitly refer to "amount specified in the judgment", it seems correct to conclude that a "judgment" in question needs to contain a specific amount of claim, which an *astreinte* does not fulfil. Therefore, the claimant will still need to provide sufficient proof that he/she will likely be successful on the merits of the claim against the debtor.

[79] A Layton and H Mercer (gen eds), *European Civil Practice (Vol 1)* cit. 868.

[80] Case C-414/92 *Solo Kleinmotoren GmbH v Emilio Boch* ECLI:EU:C:1994:221 paras 17, 18.

[81] P Wautelet, 'Recognition. Article 32' in U Magnus and P Mankowski (eds), *European Commentaries on Private International Law. Brussels I Regulation* (Verlag Dr. Otto Schmidt KG 2007) 537.

the scope of the relevant regulations on the cross-border collection of monetary claims.[82] Hence, neither decisions of arbitral tribunals,[83] administrative bodies[84] nor any other decisions of private tribunals would qualify as "judgment".[85] The requirements, established primarily through the CJEU case law, thus significantly help with defining the otherwise broad notion of a "court", which can also differ substantially among the Member States.[86]

This element further differentiates judgments from other types of decisions. Particularly important is the differentiation from court settlements, as ruled in *Solo Kleinmotoren*, decided in the context of the Brussels Convention. As court settlements are contractual in their essence, they cannot be included under the notion of judgments, since the latter includes solely judicial decisions given by a court or a tribunal of a Member State, *i.e*., a judgment must emanate from a judicial body.[87] As a result, the separation between judgments and court settlements is even clearer in the subsequent Brussels I and Brussels I Recast regulations, as both clearly distinguish between these types of decision, placing them under different recognition and enforcement regimes in separate chapters.[88] As provided in Brussels I Recast, court settlements enforceable in the Member State of origin shall be enforced in other Member States without any declaration of enforceability being required; possibility of refusal is only available if enforcement is manifestly contrary to public policy of the Member State addressed.[89]

The national approaches to court settlements vary greatly depending on the type and extent of the court's involvement which results also in lesser or stronger legal effects. Under German law, court settlements are in principle not enforceable. Instead, if there is a dispute

[82] A Briggs, *Civil Jurisdiction and Judgments* cit. 719; S Leible, 'Artikel 2' cit. 190.

[83] A Briggs, *Civil Jurisdiction and Judgments* cit. 719.

[84] A Layton and H Mercer (gen eds), *European Civil Practice (Vol 1)* cit. 872; H Sikirić, 'Reasons for Denying Recognition and Enforcement of Court Decisions According to the Council Regulation (EC) No. 44/2001 of December 22, 2000 on Court Jurisdiction and Recognition and Enforcement in Civil and Commercial Matters' cit. 60.

[85] A Layton and H Mercer (gen eds), *European Civil Practice (Vol 1)* cit. 871.

[86] See A Uzelac, 'Harmonised Civil Procedure in a World of Structural Divergences? Lessons Learned from the CEPEJ Evaluations' in XE Kramer and CH van Rhee (eds), *Civil Litigation in a Globalising World* (T.M.C. Asser Press 2012) 179, 180.

[87] *Solo Kleinmotoren GmbH v Emilio Boch* cit. paras 17, 18; L Merrett, 'Article 2' cit. 85; T Domej, 'Recognition and Enforcement of Judgments (Civil Law)' in J Basedow and others (eds), *Encyclopedia of Private International Law, (Vol 2)* (Edward Elgar Publishing 2017) 1473; L Vogel, *Jurisdiction and Enforcement of Judgments* cit. 112; W Kennett, *The Enforcement of Judgments in Europe* cit. 65; H Sikirić, 'Reasons for Denying Recognition and Enforcement of Court Decisions According to the Council Regulation (EC) No. 44/2001 of December 22, 2000 on Court Jurisdiction and Recognition and Enforcement in Civil and Commercial Matters' cit. 55.

[88] See ch. IV Brussels I Regulation cit.; ch. IV Brussels I Recast cit.

[89] Art. 59 Brussels I Recast cit.

between the parties, they must bring an action before a court on the basis of such settlement.[90] On the opposite end are the court settlements originating from Croatia and Slovenia, which actually fall under the notion of "judgment" in the Brussels I Recast. As explained elsewhere, such qualification is due to the special features of these court settlements.[91] In Croatia, a court settlement (*sudska nagodba*) represents parties' agreement made before the court and entered in the minutes of the proceedings.[92] Signed by all parties, the court settlement becomes final and enforceable in the same vein as the judgment (including the *res iudicata* effect). In the process, the court must *ex officio* ensure that there are no ongoing proceedings on the same case matter as the one on which the court settlement has been reached. The same is true for the Slovenian legal system and its concept of court settlements (*sodna poravnava*).[93] Such national court settlements are referred to as the "consent judgments", *e.g.*, in the Heidelberg Report, where the authors also advocated their qualification as judgments rather than court settlements.[94]

The term "court or tribunal" can also include authorities other than courts provided they exercise a judicial function. The Brussels I Recast, in its art. 3, expressly provides two options which include Hungarian public notaries (*közjegyző*) in summary proceedings concerning orders for payment (*fizetési meghagyásos eljárás*),[95] as well as Swedish Enforcement Authority (*Kronofogdemyndigheten*) in their summary proceedings concerning orders for payment (*betalningsföreläggande*) and assistance (*handräckning*).[96] This list of bodies that are included under the notion of "court or tribunal" is exhaustive;[97] however, this did not stop the preliminary questions referred to the CJEU regarding the potential inclusion of some other types of authorities under the notion.

[90] T Domej, 'Recognition and Enforcement of Judgments (Civil Law)' cit. 1473.

[91] I Kunda and M Tičić, 'Authentic Instruments and Court Settlements Under the Twin Regulations' in L Ruggeri and others (eds), *The EU Regulations on Matrimonial Property and Property of Registered Partnerships* (Intersentia 2022) 72-74.

[92] CCPA cit. arts 321, 322.

[93] SCPA cit. arts 306, 307. For more information on court settlements in Slovenia, see, *e.g.*, A Galič, 'Vloga sodnika pri spodbujanju sodnih poravnav' (2002) Zbornik znanstvenih razprav.

[94] Heidelberg report - Report (JLS/2004/C4/03) on the application of the Brussels I Regulation in the Member States presented by B Hess, T Pfeiffer and P Schlosser, Study JLS/C4/2005/03, Final version September 2007, Ruprecht-Karls-Universität Heidelberg, 66, 277. See also A Layton and H Mercer (gen eds), *European Civil Practice (Vol 1)* cit. 869; I Kunda and M Tičić, 'Authentic Instruments and Court Settlements Under the Twin Regulations' cit. 72-74.

[95] Art. 3(a) Brussels I Recast cit.

[96] *Ibid*. art. 3(b).

[97] P Mankowski, 'Article 3' in U Magnus and P Mankowski (eds), *European Commentaries on Private International Law. Brussels Ibis Regulation – Commentary* (Verlag Dr. Otto Schmidt KG 2023) 93; S Leible, 'Artikel 2' cit. 190.

Whether public notaries from other Member States may be included in the concept of "court" in the sense of Brussels I Regulation and European Enforcement Order Regulation was at issue in *Pula Parking*[98] and *Zulfikarpašić*.[99] Under the then Croatian Enforcement Act, Croatian notaries had the standalone authority to issue writs of execution on the application for enforcement based on a "trustworthy document" (*vjerodostojna isprava*).[100] After the writ is issued by a notary, it is served on the debtor who may lodge an opposition. In that case, the notary must transfer the file to the court which decides on the opposition. In both rulings, the CJEU refused to include the Croatian public notaries under the notion of "court", pointing particularly to the fact that they are not mentioned in the regulation (as opposed to the Hungarian and Swedish notaries);[101] that there are fundamental differences between judicial and notarial functions;[102] and that the principle of *audi et alteram partem* was not complied with.[103] This reasoning, however, may be questioned[104] when taking into account that Hungarian notaries, which operate in the same manner as the Croatian ones,[105] do fall under the notion of 'court' in the Brussels I Regulation. The difference lies in the simple fact that Hungarian notaries are explicitly mentioned in the Brussels I Regulation as included in the notion of "court".[106] As Croatia did not participate in the negotiations on the amendment of Brussels I Regulation (since

[98] Case C-551/15 *Pula Parking d.o.o. v Sven Klaus Tederahn* ECLI:EU:C:2017:193.

[99] Case C-484/15 *Ibrica Zulfikarpašić v Slaven Gajer* ECLI:EU:C:2017:199.

[100] Croatian Enforcement Act (Ovršni zakon) of 2020, art. 31(1). For more on the enforcement on the basis of "trustworthy document", see *e.g.* J Borčić, 'Notaries Public and Distraint Proceedings' (2009) Collected Papers of Zagreb Law Faculty 1251-1320. Additionally, the notion of "trustworthy instrument" can also be found in the Slovenian system: see Zakon o izvršbi in zavarovanju, Uradni list RS, št. 3/07 – uradno prečiščeno besedilo, 93/07, 37/08 – ZST-1, 45/08 – ZArbit, 28/09, 51/10, 26/11, 17/13 – odl. US, 45/14 – odl. US, 53/14, 58/14 – odl. US, 54/15, 76/15 – odl. US, 11/18, 53/19 – odl. US, 66/19 – ZDavP-2M, 23/20 – SPZ-B, 36/21, 81/22 – odl. US in 81/22 – odl. US, art. 23; M Bratković, 'Reorganisation of Enforcement on the Basis of a Trustworthy Document in Slovenia' (2015) Collected Papers of Zagreb Law Faculty 1025-1050.

[101] *Pula Parking d.o.o. v Sven Klaus Tederahn* cit. para. 46; *Ibrica Zulfikarpašić v Slaven Gajer* cit. para. 36.

[102] *Pula Parking d.o.o. v Sven Klaus Tederahn* cit. para. 47; see also case C-53/08 *Commission v Austria* ECLI:EU:C:2011:338 para. 103; case C-32/14 *ERSTE Bank Hungary Zrt. v Attila Sugar* ECLI:EU:C:2015:637 para. 47; case C-392/15 *Commission v Hungary* ECLI:EU:C:2017:73 para. 111.

[103] *Pula Parking d.o.o. v Sven Klaus Tederahn* cit. paras 54, 58; *Ibrica Zulfikarpašić v Slaven Gajer* cit. paras 43, 46, 48.

[104] See also P Poretti, 'The Role of Notaries in EU Law with Reference to Case Law' (2019) Javni bilježnik 9-12.

[105] For more on the notarial order for payment procedure in Hungary, see, *e.g.*, V Harsági, 'The Notarial Order for Payment Procedure as a Hungarian Peculiarity' in R Geimer and R Schütze (eds), *Recht Ohne Grenzen. Festschrift für Athanassios Kaissis zum 65. Geburtstag* (Otto Schmidt/De Gruyter european law publishers 2012) 343-354; M Mantovani, 'Notaries and their Debt-Collection Writs under the Brussels Ia Regulation. A Difficult Characterisation' (2019) Journal of Private International Law 410-412.

[106] M Bratković, 'Why Croatian Notaries are not the Court. On Interpretation of Regulation No. 805/2004 and Regulation Brussels I bis in Judgements Zulfikarpašić and Pula parking' (2017) Collected Papers of Zagreb Law Faculty 307; M Mantovani, 'Notaries and Their Debt-Collection Writs under the Brussels Ia Regulation' cit. 397.

it was not yet a Member State), and has not requested such amendment upon entering the EU,[107] its notaries cannot be regarded as "court" in that sense.

However, with the 2020 Amendments to the Croatian Enforcement Act,[108] it appears that the Croatian notaries in these proceedings would be qualified as "courts" for the purposes of the of Brussels I Regulation and European Enforcement Order Regulation. Namely, the applications for enforcement on the basis of a "trustworthy document" must now be submitted to the municipal court according to the residence of the enforcement debtor, after which they are evenly assigned to public notaries, which are explicitly appointed as commissioners of the court.[109] This differs from the previous solution, where applications were to be submitted directly to the notary of choice – a solution which was previously often critiqued, regardless of the developments on the EU level.[110] Moreover, after receiving the application and assessing whether it is admissible and orderly, the notary notifies the enforcement debtor of the possibility to fulfil the obligation within fifteen days.[111] In that way, the rights of the debtor are protected, in line with the principle of *audi et alteram partem*, which was previously lacking, according to the CJEU. The debtor also has the opportunity to object the enforcement decision, after which the case is referred to court, as was the case before the amendments.[112] While these amendments would allow the Croatian notaries to be included under the notion of "court",[113] it remains to be seen whether the reform of the Brussels I Recast will bring additional changes.[114]

What *Pula Parking* and *Zulfikarpašić* show, in addition to clarifying the concept of "court or tribunal", is the importance of the previously discussed adversarial principle. In fact, it is visible that such principle is a *conditio sine qua non* when defining not only the "any judgment" part of the definition, but also when interpreting the "court or tribunal" part. In that sense, any orders or decisions given by a court or tribunal, but obtained and

[107] H Hoblaj, 'Prorogation of Jurisdiction in Civil and Commercial Matters According to Regulation no. 1215/2012' (2022) Javni bilježnik 78; M Bratković, 'Why Croatian Notaries are not the Court. On Interpretation of Regulation No. 805/2004 and Regulation Brussels I bis in Judgements Zulfikarpašić and Pula parking' cit. 307, 308.

[108] Act on the Amendments to the Enforcement Act (2020).

[109] Croatian Enforcement Act cit. art. 39(a)(4).

[110] A Maganić, 'Dejudicialisation of the Enforcement Procedure in Croatia and Some Neighbouring Countries' (2018) Collected Papers of Zagreb Law Faculty 711.

[111] Croatian Enforcement Act cit. art. 281(1).

[112] *Ibid*. art. 282.

[113] H Hoblaj, 'Prorogation of Jurisdiction in Civil and Commercial Matters According to Regulation no. 1215/2012' cit. 79.

[114] Proposals for reform in other directions are also possible, particularly in light of the recent Working Paper on the reform of the Brussels I Recast, in which the authors suggest that neither Croatian nor Hungarian notaries should qualify as "court", *i.e*., that art. 3(a) of the Brussels I Recast should be removed. See B Hess and others, 'The Reform of the Brussels Ibis Regulation' (MPILux Research Paper 6-2022). See also B Hess, 'La Reforma del Reglamento Bruselas I bis. Posibilidades y Perspectivas' (2022) Cuadernos de Derecho Transnacional 19.

"designed to be obtained *ex parte* or without notice to the defendant" do not qualify as "judgments",[115] *e.g.*, freezing injunctions obtained without notice to the defendant.[116]

II.3. "A MEMBER STATE"

Another element relates directly to the one formerly addressed: a "judgment" emanates from the court or tribunal of "a Member State". This narrows the scope of the notion of "judgment" to those rendered by the court or tribunal in the territory of a Member State, and to an organ of the state which exercises the juridical function of the state.[117] Even by simple grammatical interpretation, such wording suggests that any decision emanating from a Third State cannot constitute a "judgment" for purposes of the regulations. This was questioned early on in the CJEU's ruling in *Owens Bank*.[118] The CJEU stated that the Brussels Convention "does not apply to proceedings, or issues arising in proceedings, in Contracting States concerning the recognition and enforcement of judgments given in civil and commercial matters in non-contracting States".[119] Therefore, the merits of a "judgment" must have been determined in a Member State, not a Third State.[120] Additionally, as the "essential purpose" of a decision by a Member State on an issue arising in the proceedings for the enforcement of a judgment given in a Third State is to determine whether that judgment may be recognised or enforced, such decision cannot be separated from the question of recognition and enforcement, *i.e.*, such decision cannot be deemed as falling under the notion of "judgment" for the purposes of recognition and enforcement under the Brussels regime.[121] In this way, the ruling followed the opinion of Advocate General Lenz in which he stated that the "double exequatur" is also not allowed in situations when the Third State judgment is not declared enforceable as such in the Member State, but is "made on the basis of civil proceedings".[122] Following this ruling, the commentators concluded that decisions of a Member State incorporating the foreign decisions can therefore not qualify as "judgments".[123]

[115] A Briggs, *Civil Jurisdiction and Judgments* cit. 720; R Fentiman, *International Commercial Litigation* cit. 640.

[116] A Briggs, *Civil Jurisdiction and Judgments* cit. 720. See also: A Dickinson, 'English Private International Law Aspects of Provisional and Protective Measures' in M Andenas, B Hess and P Oberhammer (eds), *Enforcement Agency Practice in Europe* (British Institute of International and Comparative Law 2005) 292.

[117] L Merrett, 'Article 2' cit. 83; A Layton and H Mercer (gen eds), *European Civil Practice (Vol 1)* cit. 871.

[118] Case C-129/92 *Owens Bank Ltd v Fulvio Bracco and Bracco Industria Chimica SpA.* ECLI:EU:C:1994:13.

[119] *Ibid*. para. 37.

[120] L Merrett, 'Article 2' cit. 83.

[121] *Owens Bank Ltd v Fulvio Bracco and Bracco Industria Chimica SpA.* cit. para. 29.

[122] Case C-129/92 *Owens Bank v Fulvio Bracco and Bracco Industria Chimica SpA.* ECLI:EU:C:1993:363, opinion of AG Lenz, para. 23.

[123] L Merrett, 'Article 2' cit. 84.

This ruling may seem obvious taking into account the idea behind the EU's free movement of judgments. In the EU's Area of Freedom, Security and Justice,[124] a judgment emanating from one Member State is recognised and directly enforceable in a different Member State, with limited grounds for refusal available. However, the problem can emerge in a situation in which a judgment emanating from a Third State is recognised in one Member State, and is to be enforced in another Member State. If "double exequatur" were possible, *i.e.*, if the second Member State were obliged to recognise and enforce a decision of the first Member State which basically recognises a Third State's judgment on the merits, this would increase the possibility of forum shopping, where the creditors of the foreign judgment could first try to recognise their judgment in the Member State with the least strict requirements.[125] Other Member States with stricter requirements as to the acceptance of foreign judgments would have no choice but to recognise the decision of the Member States which are more open to foreign judgments and have their rules completely disregarded by the creditors in the respective Third State. As a solution, "double exequatur" is prohibited, or as French would say "*exequatur sur exequatur ne vaut*", both in national laws of some of the Member States,[126] as well as at the EU level.[127] According to some authors, this prohibition includes not only decisions by a court of a Member State recognising a Third State judgment, but also any other judgments of Member States upon judgments of the Third States.[128] This approach, however, has been a matter of reconsideration in the CJEU ruling in *H Limited* discussed below. This ruling comes into clash with the previously mentioned scholarly positions on whether judgment of a Member State made upon judgment of Third States falls under the notion of "judgment" in the EU.

III. The notion of "judgment" in the EU regulation on cross-border collection of monetary claims after the *H Limited* and *London Steam-Ship Owners*

As explained above, the notion of judgments under EU law is to be interpreted broadly, but not without certain limits. As opposed to the differentiations that may exist between types of decisions under national law of a particular Member State, a "judgment" as interpreted in terms of EU regulations allows for a variety of such decisions, many of which

[124] Art. 67 TFEU in conjunction with art. 81 TFEU.

[125] M Holger Kall, 'Doppelexequatur: "ne vaut" oder "no worries"?' (2018) Internationales Handelsrecht. Zeitschrift für das Recht des Internationalen Warenkaufs und Warenvertriebs 141.

[126] For the development on the "double exequatur" in Germany, see M Holger Kall, 'Doppelexequatur: "ne vaut" oder "no worries"?' cit. 108.

[127] S Leible, 'Artikel 2' cit. 188; V Rijavec, 'Enforcement Titles Under Brussels I bis Regulation from National to EU Frameworks' cit. 19; E Bylander and M Linton, 'Types of Judgments According to Different Criteria' in V Rijavec and others (eds), *Diversity of Enforcement Titles in the EU* cit. 91.

[128] A Briggs, *Civil Jurisdiction and Judgments* cit. 721; H Sikirić, 'Reasons for Denying Recognition and Enforcement of Court Decisions According to the Council Regulation (EC) No. 44/2001 of December 22, 2000 on Court Jurisdiction and Recognition and Enforcement in Civil and Commercial Matters' cit. 58.

fall under this notion. However, some of the latest CJEU rulings may have additionally blurred the demarcation line between what does and what does not constitute a "judgment" in the EU private international law. In order to examine whether there are changes to the notion of "judgment" that was presented in the previous Chapter, the relevant rulings are discussed in turn.

III.1. *H LIMITED*: IS "DOUBLE EXEQUATUR" NOW ALLOWED?

On 7 April 2022, the CJEU delivered its ruling in *H Limited*, a case dealing specifically with the notion of "judgment" in Brussels I Recast. It particularly addressed the issue of the process of enforcing a judgment of a different Member State, which allowed the enforcement of a judgment of a Third State for the payment of a debt. This brings us to the slippery territory of "double exequatur", or, metaphorically termed, "judgment laundering",[129] previously unimaginable in the EU. Following this ruling, the notion of a "judgment" in the EU regulations has gained wider contours, whereas the notion of "double exequatur" has been narrowed down.

a) Dispute in the national proceedings

The dispute emerged after the English High Court ordered "J", a natural person with residence in Austria, to pay H Limited, a bank, approximately 9 200 000 euro, by the order for payment of 20 March 2019.[130] Although the UK has since left the EU, the case reached the CJEU as UK was still a Member State at the time.[131] The issue is owed to the fact that the order for payment was delivered pursuant to two different judgments by the courts of a Third State – Jordan.

After *H Limited* applied for the enforcement of the order for payment in Austria, the District Court in Austria granted the enforcement of the English judgment. The Austrian court particularly observed the fact that the proceedings in England had complied with the adversarial principle and the order for payment is therefore eligible for enforcement in Austria. The Regional Court confirmed such stance and refused an appeal by "J". The

[129] R Fentiman, *International Commercial Litigation* cit. 641.

[130] England and Wales High Court of 14 2019 [2019] EWHC 860 (Comm) *Arab Jordan Investment Bank Plc & Anor v Sharbain* www.bailii.org.

[131] The UK has officially left the EU in January 2020, while the transition period lasted until 31 December 2020. With the end of that transition period, the Brussels I Recast Regulation became inapplicable in the relation between the UK and the EU. The case at hand, however, occurred while the UK was still a Member State of the EU, therefore the EU regulations still applied. As stated in the Withdrawal Agreement, Brussels I Recast Regulation "shall apply to the recognition and enforcement of judgments given in legal proceedings instituted before the end of the transition period" (art. 67(2)(a)). For more information on the legislation regulating "Brexit", see: Council Agreement XT/21054/2019/INIT of 12 November 2019 on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community; Trade and Cooperation Agreement Between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, on the other part of 30 April 2021.

Austrian Supreme Court, however, did not support such decision based on its view that the exclusion of "double exequatur" applies also to the orders for payment, which are made by court of a Member State based on the action for enforcement of a judgment emanating from a Third State.[132] Given the emerging doubts, the Supreme Court decided to stay the proceedings and refer preliminary questions to the CJEU.

The questions concern the notion of a "judgment", particularly whether arts 2(a) and 39 of the Brussels I Recast need to be interpreted

> "as meaning that a judgment that is to be enforced exists even if, in a Member State, the judgment debtor is obliged, after summary examination in adversarial proceedings, albeit relating only to the binding nature of the force of res iudicata of a judgment given against him in a Third State, to pay to the party who was successful in the Third State proceedings the debt that was judicially recognised in the Third State, when the subject matter of the proceedings in the Member State was limited to examination of the existence of a claim derived from the judicially recognised debt against the judgment debtor".[133]

In case of a negative answer to the first question, the Supreme Court of Austria questions whether enforcement must be refused if the judgment under review is not a "judgment" within the meaning of the relevant provisions of Brussels I Recast, or if the application of the Member State of origin does not fall within its scope, irrespective of the existence of one of the refusal grounds.[134] In case of an affirmative answer to the second question, the question remains whether in the proceedings for refusal of enforcement, the court of the Member State addressed must assume that a judgment falling within the scope of Brussels I Recast exists, based solely on the information provided in the certificate issued pursuant to art. 53.[135]

In short, the CJEU stated that "an order for payment made by a court of a Member State on the basis of final judgments delivered in a Third State constitutes a judgment and is enforceable in other Member States if it was made at the end of adversarial proceedings in the Member State of origin and was declared to be enforceable in that Member State".[136] The CJEU also highlighted the possibility to apply for a refusal based on one of the refusal grounds referred to in art. 45 of Brussels I Recast.

b) Prohibition of "double exequatur" circumvented?

Although it was the settled CJEU case law that an "exequatur of an exequatur" is not permitted,[137] diverse methods of enforcement of foreign judgments in some Member States may still raise doubts in borderline cases like *H Limited*. The CJEU's first task in this case

[132] *J v H Limited* cit. para. 2.
[133] *Ibid*. para. 20.
[134] *Ibid*.
[135] *Ibid*.
[136] *Ibid*. para. 47.
[137] See *J v H Limited* cit. para. 38 and references contained therein.

was to provide interpretation as to whether the English summary order, *i.e.*, the object of recognition in Austria, falls under the notion of "judgment". The English summary order was given following a particular procedure which relates to a specific method of enforcement based in common law. While the concept of exequatur is used in the civil legal systems for the recognition and enforcement of foreign judgments, the approach differs in the legal systems of common law.[138] For a better understanding of the case at hand, a short overview of the English system of recognition and enforcement of foreign judgments is in order.

As opposed to the method of exequatur, the English law differentiates between recognition and enforcement of foreign judgments by virtue of rules of common law, or by virtue of one of the available statutory schemes, *e.g.*, Civil Jurisdiction and Judgments Act 1982, Administration of Justice Act 1920 or the Reciprocal Enforcement of Judgments Act 1933.[139] If a foreign judgment is not enforceable or recognisable under these statutory schemes, it may still be possible under the rules of common law by an "action on the judgment".[140] The idea behind this notion is that a foreign decision provides for a substantive obligation on the judgment debtor, which in itself can form a cause of action in debt which differs from the original cause of action.[141] This option will be available if the judgment is *in personam*, given for a sum of money, is final and conclusive, as well as under the condition that court which gave it had jurisdiction under the rules corresponding to the English private international law ones.[142]

This method was used in the case which prompted the *H Limited* ruling. The claimant applied for a summary judgment on the debt without trial. In such proceedings, the claimant must only prove that the defendant has "no real prospect of success"[143] and that there is "no other compelling reason for a trial".[144] In such cases, there exist a number of defences to the enforcement proceedings, including that a foreign judgment was obtained by fraud or that the proceedings in which the judgment was obtained were in breach of natural justice.[145] It was these two defences that the defendant raised in the

[138] Besides the "exequatur" method, common to the civil legal systems, two more methods for recognition and enforcement of foreign judgments can be distinguished: "registration" method and "transformation" method. While the former requires a registration of a foreign judgment under certain conditions, the latter requires the foreign judgment to be incorporated into a new, domestic one. See more in J Valdhans and T Kyselovská, 'Selected Issues of Recognition and Enforcement of Foreign Judgments from the Perspective of EU Member' in V Rijavec (ed.), *24th Conference Corporate Entities at the Market and European Dimensions (Conference Proceedings)* (University of Maribor Press 2016) 157-173.

[139] A Layton and H Mercer (gen eds), *European Civil Practice (Vol 1)* cit. 226.

[140] *Ibid*. 226; S Grubbs (ed.), *International Civil Procedure* cit.197.

[141] A Layton and H Mercer (gen eds), *European Civil Practice (Vol 1)* cit. 864, 865.

[142] *Ibid*. cit. 226.

[143] R Fentiman, *International Commercial Litigation* cit. 620.

[144] England and Wales High Court of 14 2019 [2019] EWHC 860 (Comm) *Arab Jordan Investment Bank Plc & Anor v Sharbain* cit. para. 10.

[145] P Barnett, *Res Iudicata, Estoppel and Foreign Judgments* (Oxford University Press 2001) 36, 37.

proceedings before the English High Court, particularly by alleging a fraudulent obtainment of the Jordanian judgments and lack of power of attorney by H Limited, which also related to the point that there was a breach of natural justice in the Jordanian courts which allegedly prejudiced "J".[146] The High Court, however, ruled that there is no real prospect of a successful defence to the claim to enforce the Jordanian judgments.

The crux of the issue at hand is in the peculiarity of the method of an action on a judgment. Although being a method of enforcing a foreign judgment, and despite the fact that throughout the proceedings in question, all of the questions were considered having regard to the Jordanian judgments in question and Jordanian law in general, the final decision was issued as a decision on its own, not a decision on recognition or enforcement of the Jordanian judgments, as is the case with the exequatur method. However, before the ruling in *H Limited*, scholars did not perceive the distinction in the methods as sufficient to treat the decisions brought by an action on the judgment in England as "judgment" under the Brussels regime.[147]

The CJEU, however, ruled otherwise. Its conclusion was reached after consideration of a number of relevant points of the case, starting from two interrelated arguments: first, that the concept of "judgment" is broad in light of the principle of mutual trust,[148] and second, that this concept is not linked to the content of the judgment or else it would jeopardize their free circulation.[149]

The CJEU relied on the mutual trust, stating that it would be undermined if a decision such as one from the English High Court would be denied as a "judgment".[150] This, in the CJEU's opinion, is in line with the broad definition of a "judgment", whereas a restrictive interpretation of the term would create a category of acts which the courts would not be required to enforce.[151] While the existence of mutual trust is one of EU's most important goals,[152] and while it has become a "leitmotiv" of judicial cooperation in the EU,[153] the

[146] England and Wales High Court of 14 2019 [2019] EWHC 860 (Comm) *Arab Jordan Investment Bank Plc & Anor v Sharbain* cit. paras 21-25, 102.

[147] A Layton and H Mercer (gen eds), *European Civil Practice (Vol 1)* cit. 865.

[148] *J v H Limited* cit. para. 29.

[149] *Ibid*. para. 28.

[150] *Ibid*. paras 29, 30.

[151] *Ibid*. para. 31.

[152] See, *e.g*., Communication COM(2014) 144 final from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 11 March 2014, The EU Justice Agenda for 2020 – Strengthening Trust, Mobility and Growth within the Union; European Council Conclusions of 26-27 June 2014.

[153] M Safjan and D Düsterhaus, 'De l'encadrement de l'ordre public procédural des États membres à l'ordre procédural autonome de l'Union' in B Hess and K Lenaerts (eds), *The 50th Anniversary of the European Law of Civil Procedure* (Baden-Baden Nomos Hart Publishing 2020) 60; M Weller, *"Mutual Trust": A Suitable Foundation for Private International Law in Regional Integration Communities and Beyond?* in *Collected Courses of the Hague Academy of International Law* (Brill 2022) 138.

level of such trust is certainly not as high as it may be perceived.[154] It is questionable whether decisions such as one in the case at hand strengthen the idea of mutual trust in the EU, or they actually have the opposite effect by raising suspicions among Member States about appropriateness of their procedures.

Separating the notion of "judgment" from the respective contents entails that swift and simple recognition and enforcement may take place between Member States. This is the basis for the CJEU to conclude that the concept of "judgment" "also includes an order for payment made by a court of a Member State on the basis of final judgments delivered in a Third State".[155] The decisive factor for "judgment", as highlighted in the previous section, is the existence of an adversarial nature of the proceedings that led to the decision in question.[156] However, it is precisely in these English proceedings where the adversarial quality of the proceedings may itself be disputed. In such cases, no full trial takes place.[157] The defendant, when taking part in an action on a judgment proceeding, cannot present his/her case fully, but in view of only few defence grounds. As stated by the English High Court, final and conclusive foreign judgment for a definite sum is unimpeachable for error of law or fact, with only few exceptions, such as fraud, public policy, natural justice and penalties.[158] It is questionable whether this is enough for a proper defence,[159] and consequently, whether these are truly adversarial proceedings. Actually, such restricted defences seem logical given that the proceedings essentially aim at enforcement of a foreign judgment. In fact, the English proceedings were limited to examination of the existence of a claim derived from the debt judicially recognised in Jordan.[160] Not only is the English summary order fairly similar to a judgment enforcing Jordanian judgments, but such action on these judgments is actually a method of enforcing other judgments by "transforming" them into a new, domestic one. From the point of view of the purpose and contents of the English proceedings, it appears highly questionable whether the English judgment was actually an "original determination", rather than a validation of a foreign

[154] See, *e.g.*, Communication COM/2022/234 final from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions of 19 May 2022, 2022 EU Justice Scoreboard; Communication COM/2021/389 final from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions of 8 July 2021, 2021 EU Justice Scoreboard. See also M Weller, 'Mutual Trust: In Search of the Future of European Union Private International Law' (2015) Journal of Private International Law.

[155] *J v H Limited* cit. para. 25.

[156] *Ibid*. para. 26. See also *Bernard Denilauler v SNC Couchet Frères* cit. para. 13; *Marco Gambazzi v DaimlerChrysler Canada Inc., CIBC Mellon Trust Company* cit. para. 23.

[157] R Fentiman, *International Commercial Litigation* cit. 620.

[158] England and Wales Hight Court of 13 February 2014 [2014] EWHC 271 (Comm), *JSC VTB Bank v Skurikhin & Ors*, paras 18-20.

[159] P Lorenz Eichmüller, 'H Limited – The Austrian Sequel' (25 July 2022) EAPIL Blog eapil.org.

[160] *J v H Limited* cit. para. 20.

decision.[161] However, from the formal perspective, which the CJEU takes, it is possible to argue that no "double exequatur" *per se* happened in this scenario since an action on a judgment is indeed considered a separate procedure.

c) Public policy exception as a safety net

Aware of the concerns about the fact that its approach to defining the "judgment" incentivises forum shopping[162] and brings in the risks related to inadequate adversarial guarantees, the CJEU in *H Limited* confirms availability of the remedies, including public policy exception, against such English "judgment".[163] Why state the obvious?

Truth is that without the public policy exception, the judgment which is basically a replica of a Third State judgment would be allowed to enter the EU legal order. This case demonstrates the importance that the public policy exception, notwithstanding continuing calls for its abolishment.[164]

However, this solution is insufficient to prevent issues such as that of "double exequatur". After the *H Limited* ruling, the Austrian Supreme Court decided not to rely on the public policy to refuse enforcement.[165] As the Court found that "J" had the opportunity to oppose the claims in the English proceedings, the enforcement of English "judgment" was not refused in Austria.[166] Some may view this in positive light, particularly due to the fact that the public policy exception was used cautiously.[167] However, this may also be seen as a missed opportunity, as it is questionable whether the Jordanian judgments would even be enforced in Austria if not for the easy access provided by the English law. According to the Austrian law, for a foreign judgment to be enforced in Austria, one of the two core requirements[168] is that the reciprocity is guaranteed in the state of origin (in this case in Jordan), followed by a number of other conditions,[169] as well as additional grounds

[161] See A Briggs, *The Conflict of Laws* (Oxford University Press 2002) 118.

[162] It should be noted that since UK is no longer a Member State, this risk has been reduced. See more on the phenomenon of "forum shopping" in F Ferrari, 'Forum (and law) shopping' in J Basedow and others (eds), *Encyclopedia of Private International Law, (Vol 2)* (Edward Elgar Publishing 2017) 789; F Ferrari, *Forum Shopping Despite Unification of Law* in *Collected Courses of the Hague Academy of International Law* (Brill 2019).

[163] *J v H Limited* cit. para. 46.

[164] W Kennett, *The Enforcement of Judgments in Europe* cit. 221; T Keresteš, 'Public Policy in Brussels Regulation I: Yesterday, Today and Tomorrow' (2016) Lexonomica 82; G Mäsch and M Peiffer, 'New Enforcement Regime under the Brussels I bis Regulation: Does the Paradigm Shift Help Judgment Creditors?' in J von Hein and T Kruger (eds), *Informed Choices in Cross-Border Enforcement. The European State of the Art and Future Perspectives* (Intersentia 2021) 39, 40; J Kramberger Škerl, 'Evropeizacija javnega reda v mednarodnem zasebnem pravu' (2008) Pravni Letopis 351.

[165] The Austrian Supreme Court of Justice, 19 May 2022, 3 Ob 71/22w.

[166] *Ibid*. 19, 20.

[167] P Lorenz Eichmüller, 'H Limited' cit.

[168] Austrian Enforcement Code (Exekutionsordnung), RGBl No 79/1896, BGBl No I 100/2016 (2016), art. 406.

[169] *Ibid*. art. 407.

for refusal.[170] The reciprocity between the states must be expressly provided by a formal certificate, *i.e*., in a bilateral or multilateral treaty,[171] which does not currently exist between Austria and Jordan.[172] It follows that Jordanian judgments could not as such be enforced in Austria, which points to the fact that the issue in *H Limited* was a deliberate instance of forum shopping, and a successful one at that. The English procedure was, indeed, "used as a Trojan horse to enter Austria".[173] Given the generally universal negative stance towards the phenomenon of forum shopping,[174] the CJEU's decision in *H Limited* seems even more surprising.

As visible from the above, stressed between the broad notion of "judgment" and narrow notion of "double exequatur", the loosing parties to the proceedings in the Third States may experience disadvantage, especially in the form of uncertainty when eventually the judgment is brought before EU national courts for the purpose of recognition or enforcement. With UK no longer in the EU, the mentioned uncertainty is reduced. However, the possibility of similar issues still remains as the common law system of enforcement of judgments is also used in Ireland.[175] In a similar vein, some authors point to the possibility that this ruling may actually prompt some Member States to incorporate merger judgments into national laws in view of attracting foreign creditors.[176] Additionally, with the UK outside of the EU, the number of cases from the Third States might be on the rise. As the epilogue of the case *H Limited* in Austria clearly demonstrates, the advantage, however, of this constellation of circumstances is in the potential for wider acceptance of the same Third State's judgment across the EU and additionally unifying the EU legal order beyond individual Member States.

d) Impact of H Limited *on the notion of "judgment"*

It follows from the former CJEU's rulings, that in addition to the elements in the law provision itself, the notion of "judgment" entails that it is rendered by an independent authority following the adversarial proceedings between the parties. The judgment in *H Limited* confirmed the broad notion of "judgment", while also stressing the importance of the adversarial principle. While independent of the content, the notion of "judgment" is ra-

[170] *Ibid*. art. 408.

[171] H Heiss, 'Austria' in J Basedow and others (eds), *Encyclopedia of Private International Law, (Vol 2)* (Edward Elgar Publishing 2017) 1893.

[172] N Bremer, 'Seeking Recognition and Enforcement of Foreign Court Judgments and Arbitral Awards in Egypt and the Mashriq Countries' (2018) Journal of Dispute Resolution 130.

[173] V Richard, 'The CJEU on Double Exequatur' (8 April 2022) EAPIL Blog eapil.org.

[174] See F Ferrari, 'Forum Shopping in the International Commercial Arbitration Context: Setting the Stage' in F Ferrari (ed.), *Forum Shopping in the International Commercial Arbitration Context* (Otto Schmidt/De Gruyter European Law publisher 2013).

[175] See, *e.g*., W Binchy, 'Ireland' in J Basedow and others (eds), *Encyclopedia of Private International Law, (Vol 2)* cit. 2183-2192.

[176] B Hess and others, 'The Reform of the Brussels Ibis Regulation' cit. 18; V Rijavec, 'Enforcement Titles Under Brussels I bis Regulation from National to EU Frameworks' cit. 19.

ther formalistic in line with the overall purpose of the EU private international law regulations being free circulation of judgments. Thus, a decision based on a Third State's judgment, such as English summary order, is included in the notion of "judgment".

Although the CJEU's tone in *H Limited* does not suggest that there is any change in the notion of "judgment" or the prohibition of "double exequatur", the sentiment that the latter is thereby breached remains strong. This is particularly so as earlier scholarly opinions stated that any judgments upon judgments emanating from Third States would not qualify as "judgment" in the sense of the relevant EU regulations. Thus, it could be said that the general understanding of the notion of "judgment" is changed, *i.e.*, broadened by the new ruling. At the same time, the notion of "double exequatur" becomes narrower.

Whatever the case may be, the current understanding of the notion of "judgment" is too broad. This is particularly so given that the circumvention of the Austrian national rules on recognition and enforcement of foreign judgments by way of English procedural facet admittedly fits very badly with the prohibition of "double exequatur" settled in the EU private international law. The purpose of the prohibition, *i.e.*, avoiding the forum shopping tactics, is disregarded by this ruling precisely because of the broadness of the current notion of "judgment". This new understanding of the notion also deprives the Member States of their right to assess foreign adjudications based on their own national rules on foreign judgments.

This ruling comes at an interesting time coinciding with the European Commission's assessment of the Brussels I Recast.[177] An opportunity is provided for a closer look at this matter to determine whether similar situations are possible under the laws of any of the Member States, now that UK has left the scene. Depending on the result of this analysis, there might or might not be a practical need to react on the EU level by codifying the rules.

III.2. *London Steam-Ship Owners*: New Rules of Interplay between Judgments and Arbitral Awards

a) Facts of the case

Not long after the decision in *H Limited*, the CJEU presented another ruling dealing with the meaning of "judgments" and their interplay with arbitral awards. The ruling in *London Steam-Ship Owners* ensued after long proceedings following the sinking of the *Prestige* oil tanker in 2002. After a criminal investigation was launched in Spain, several legal entities brought their civil claims against owners and the master of the tanker, as well as against the liability insurer, *i.e.*, the London P&I Club. Pursuant to art. 117 of the Spanish Criminal Code, the claimants had the right to a direct action against the P&I Club.[178] The Club,

[177] Art. 79 Brussels I Recast cit.

[178] Ley Orgánica 10/1995 of 23 November 1995 of Penal Code «BOE» n. 281, of 24 November 1995, art. 117.

however, did not enter an appearance in those proceedings. Instead, it commenced arbitration proceedings in London, in which it sought two declarations.[179] First, that the Kingdom of Spain needed to pursue its claims in the arbitration proceedings pursuant to the arbitration clause which was included in the insurance contract between the owners of *Prestige* and the P&I Club. Second, that it could not be held liable to the Kingdom of Spain in those matters, as the insurance contract stipulated that the insured party must first pay the injured one the compensation, which is in line with the "pay to be paid" clause common to all the insurance contracts concluded with P&I Clubs.[180] The Kingdom of Spain did not participate in the arbitration proceedings.

The arbitral tribunal delivered an award before the Spanish court. It held that the claims for damages by the Kingdom of Spain needed to be referred to arbitration in London, as well as that the P&I Club was not liable in the absence of prior payment of the damages by the owners of *Prestige*. Afterwards, the High Court of Justice in England granted the P&I Club leave to enforce the award and handed down a judgment in terms of the award, despite the opposition from the Kingdom of Spain.

The Spanish court, on the other hand, delivered a judgment in criminal proceedings and acquitted the master of the *Prestige* in regards to the charges of offence against the environment and convicted him of the offence of serious disobedience towards authorities. After appeals brought by multiple parties, the court convicted the master of the offence of negligence against the environment, held both master and the owners, as well as the P&I Club liable in respect of civil claims, amount of which was to be determined by the Provincial Court of Corunna. That court later held the master, owner and the P&I Club liable to over 200 parties.

After the Spanish judgment was submitted to the High Court of Justice in England for recognition, which was granted, the P&I Club lodged an appeal, claiming that this judgment was irreconcilable with the order and judgment by the High Court, within the meaning of art. 34(3) of Brussels I Regulation. This is where the referring court raised the question of whether a judgment given under Section 66 of the Arbitration Act 1996,[181] such as the one in the present case, falls under the notion of "judgment" within the meaning of art. 34(3) of the Brussels I Regulation. The court also wondered whether a judgment entered in terms of award can fall under the notion of "judgment" of the Member State in which recognition is sought. Finally, the court asked whether, in case that the art. 34(3)

[179] *London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain* cit. para. 26.

[180] More on the "pay to be paid" clause in *e.g.*, N Ronneberg Jr., 'An Introduction to the Protection & Indemnity Clubs and the Marine Insurance They Provide' (1990) University of San Francisco Maritime Law Journal; J Kimball, 'The Central Role of P&I Insurance in Maritime Law' (2013) TulLRev.

[181] United Kingdom's Arbitration Act 1996, 'An Act to restate and improve the law relating to arbitration pursuant to an arbitration agreement; to make other provision relating to arbitration and arbitration awards; and for connected purposes' ch. 23, section 66.

does not apply, it is permissible to rely on the public policy exception in Brussels I Regulation as a ground for refusal of recognition and enforcement, or do arts 34(3) and (4) provide exhaustive grounds in terms of *res iudicata* and irreconcilability.[182]

Going against the opinion of the Advocate General Collins,[183] the CJEU ruled that

> "a judgment entered by a court of a Member State in terms of an arbitral award does not constitute a "judgment", within the meaning of that provision, where a judicial decision resulting in an outcome equivalent to the outcome of that award could not have been adopted by a court of that Member State without infringing the provisions and the fundamental objectives of that regulation, in particular as regards the relative effect of an arbitration clause included in the insurance contract in question and the rules on lis pendens contained in Article 27 of that regulation, and that, in that situation, the judgment in question cannot prevent, in that Member State, the recognition of a judgment given by a court in another Member State".[184]

In terms of the last question, the CJEU considered that a judgment cannot be refused recognition and enforcement as being contrary to the public policy "on the ground that it would disregard the force of *res judicata* acquired by the judgment entered in terms of an arbitral award".[185]

b) "Judgment" in London Steam-Ship Owners as compared to "Judgment" in H Limited

London Steam-Ship Owners, without a doubt, creates changes to the concept of "earlier judgment". However, before moving on to these new requirements and the question of whether this change also potentially influences the general understanding of "judgment", it is important to view the notion of "judgment" as understood here, and compare it with the conclusions given by the CJEU in its prior judgment of *H Limited*, as the two rulings seem to be incoherent.

As explicitly stated, arbitration falls outside the scope of the Brussels I Recast.[186] The same was the case with its predecessors, Brussels I Regulation and Brussels Convention. This exception covers all matters related to arbitration and excludes it in its entirety, including the ancillary proceedings brought before national courts.[187] As established in *Gazprom*,[188] proceedings for recognition and enforcement of arbitral awards are covered

[182] *London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain* cit. para. 40.

[183] Case C-700/20 *The London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain* ECLI:EU:C:2022:358, opinion of AG Collins.

[184] *London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain* cit. para. 81.

[185] *Ibid*.

[186] Art. 1(2)(d) Brussels I Recast cit.; recital 12 of the Preamble of the Brussels I Recast Regulation.

[187] Case C-190/89 *Marc Rich & Co. AG v Società Italiana Impianti PA* ECLI:EU:C:1991:319 para. 18. See also T Hartley, 'Arbitration and the Brussels I Regulation – Before and After Brexit' (2021) Journal of Private International Law 70.

[188] Case C-536/13 *"Gazprom" OAO v Lietuvos Respublika* ECLI:EU:C:2015:316 para. 41.

by the national and international law, such as the New York Convention on the recognition and enforcement of foreign arbitral awards,[189] applicable in the Member State in which recognition and enforcement are sought. It is because of the (almost) universal acceptance of the New York Convention that the arbitration exception was included in the Brussels Convention in the first place.[190]

Since all matters relating to arbitration fall within this exception, it has been held that judgments entered in terms of arbitration awards do not enjoy the benefits of mutual trust and cannot circulate freely within the EU judicial area in a way that "judgments" do. Scholarly opinions[191] and Member States' domestic case law[192] agree that the judgments entered in terms of arbitral awards do not fall within the notion of "judgment". Given that the similar opinion related to the judgments upon judgments of the Third States proved to be false by the CJEU's ruling in *H Limited*, may this by analogy extend also in regards to judgments entered in terms of arbitration awards?

Both judgments entered in terms of arbitral awards and judgments upon judgments of Third States are ancillary in nature – they are dependent on a prior adjudication, *i.e.*, an originating act.[193] Both aim to assess the validity of the originating act, whether it be a foreign judgment or an arbitral award, as well as determine its effects in the Member State in question.[194] In *H Limited*, "judgment" was made upon the judgment of a Third State in a matter within the scope of the Brussels I Recast, while in *London Steam-Ship Owners*, the original decision was an arbitral award. Hence, in comparison with the former ruling, the decision in the latter can be viewed as a reduction of the scope in the broad understanding that was reaffirmed there, this reduction being the result of the limitation in the scope *ratione materiae* of the Brussels I Recast, and not the notion of "judgment" *per se*.[195]

[189] The New York Arbitration Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, New York.

[190] L Radicati di Brozolo, 'The Relation between Courts and Arbitration: Support or Hostility' (2012) Opinio Juris in Comparatione 1, 2; Report C 59/72 by Professor Dr Peter Schlosser on the Convention of 9 October 1978 on the Association of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters and to the Protocol on its interpretation by the Court of Justice, para. 61.

[191] A Briggs, *Civil Jurisdiction and Judgments* cit. 721; Report C 59/72 cit. para. 65; A Layton and H Mercer (gen eds), *European Civil Practice (Vol 1)* cit. 362.

[192] See, *e.g.*, a 2009 decision by the German Federal Court of Justice, in which this Court decided that a judgment by a court of a Member State, which incorporated a foreign arbitral award, according to the merger doctrine cannot be enforced under the Brussels I regime. German Federal Court of Justice (Bundesgerichtshof), 2 July 2009, IX ZR 152/06.

[193] M Scherer, 'Effects of Foreign Judgments Relating to International Arbitral Awards: Is the "Judgment Route" the Wrong Road?' (2013) Journal of International Dispute Settlement 607.

[194] *Ibid*.

[195] B Hess, 'Arbitration and the Brussels I bis Regulation: London Steam-Ship Owners' Mutual Insurance Association (2023) CMLRev 538.

However, stating that judgments entered in terms of arbitral awards cannot fall under the notion of "judgment" because arbitration is excluded from the scope of Brussels I Recast is not enough to warrant the different treatment of judgments which similarly confirm a Third State's judgment, as seen in *H Limited*. There, the CJEU focuses on the second level judgment in England to establish it is a "judgment" under Brussels I (Recast), and not on the originating acts – the two judgments from Jordan, *i.e.*, a Third State. On the other hand, in *London Steam-Ship Owners*, the mere possibility of recognising or enforcing the judgment entered in terms of arbitral awards through Brussels I (Recast) is not even considered, while the same judgment could fall under the notion of "earlier judgment" only under strict requirements. Here, the originating act, that being the arbitral award, is clearly of utmost importance for the possibility of its inclusion under "judgment". Why was the same standard not held for judgments whose originating act is a Third State judgment? After all, recognition and enforcement of a Third State judgment under Brussels I Recast is not possible – national rules of the Member State of enforcement apply here. It has been previously noted that arbitral awards do not change their nature nor function by being approved by a court of a Member State, *i.e.*, the arbitral awards still remain outside of the scope of the Brussels I (Recast).[196] This argument can be equally expanded to Third State judgments – while such judgment can be recognised and enforced in a certain Member State (even if it may be through the English procedure of "action on a judgment"), it does not change their nature and origin, which stems from a State whose judgments do not benefit from the free movement of judgments allowed through the relevant regulation such as the Brussels I (Recast). Other Member States must still retain their right to assess whether the originating act, *i.e.*, a Third State judgment, can be recognised and/or enforced according to their own rules on recognition and enforcement of foreign decisions. Thus, arbitration being out of scope of Brussels I (Recast) is not a proper argument, as enforcing Third State judgments is also outside of its scope.

When dealing with the situations such as the ones at hand, there should either be consistent focus on the second level judgment in a Member State (without looking back at the originating act), or the first level judgment, *i.e.*, the originating act. In the former case, merger judgments and any judgments upon judgments would be allowed recognition and enforcement under the relevant EU regulations, if the second level judgment, which is rendered in the Member State, falls under the scope of application. In the latter case, if the originating act cannot fall under the notion of "judgment", neither should the second level act. The biggest issue that arises when comparing the rulings in *H Limited* and *London Steam-Ship Owners* is precisely the fact that CJEU does not take a consistent, coherent stance in regards to judgments upon judgments. While one ruling focuses on the first level judgment, therefore prohibiting its recognition or enforcement under the EU regulation, the other focuses on the second level judgment, allowing it to freely move among the other Member States in the future.

[196] K Kerameus, *Enforcement in the International Context* cit. 20.

These rulings highlight the lack of consistency in the interpretation of "judgment", especially in view of decisions stemming from common law systems. If a judgment based on an arbitral award does not constitute a "judgment", neither should a judgment based on a Third State's judgment. This is primarily because the second level judgment does not decide on the merits "afresh" – as the dispute in question is decided by the first level judgment, it is that judgment that should be taken into account.[197] The additional reasons against inclusion of judgments based on Third States' judgments under the EU notion of "judgment" have already been described above. On the occasion that the ruling in *H Limited* is to be deemed as the proper understanding, and the first level judgment should not matter for the sake of inclusion under "judgment", the same criteria should be held also for judgments entered in terms of arbitral awards. This position, however, would open a Pandora's box in terms of the interplay of judgments and arbitral awards, as well as in terms of the purpose of arbitral exception in Brussels I Recast. Moreover, it would also bring additional changes to the general notion of "judgment" due to the new requirements in terms of the notion of "earlier judgment", which will be further elaborated below.

The only option left, which is the current state of affairs, is leaving this inconsistent interpretation of "judgment" as it is, and hoping it does not lead to any more issues in the future. This option may be appealing, particularly due to the fact that all of the problems brought to the surface through these two rulings are a product of England, *i.e.*, of its common law system which at points comes at a clash with the civil law system. After Brexit, the relevance of these rulings for the future is undoubtedly diminished. At the same time, common law is still used in Ireland, therefore the possibility of similar issues is not completely erased. Regardless of the practical repercussions, it is regretful that the CJEU has not given these issues a proper conclusion.

c) Extending the principles of EU judicial cooperation in civil matters to arbitral tribunals

Regardless of the previously presented inconsistencies in interpretation between *H Limited* and *London Steam-Ship Owners*, the impossibility of including judgments entered in terms of arbitral awards under "judgment" in terms of Brussels I (Recast) was taken as a fact in the CJEU's ruling in *London Steam-Ship Owners*. However, a distinction was made between the general notion of "judgment" and the notion of "earlier judgment" in the sense of art. 45(1)(c) of the Brussels I Recast (formerly, art. 34(3) Brussels I Regulation), which provides the ground for refusal of recognition and enforcement based on irreconcilability. In contrast to the notion of "judgment" in general, the notion of "earlier judgment" within the ground for refusal must therefore be interpreted in a way that it also covers judgments entered in terms of an arbitral award. Such bar to the recognition and enforcement remains possible as the fact that an "earlier judgment" is outside of the

[197] M Scherer, 'Effects of Foreign Judgments Relating to International Arbitral Awards' cit. 611.

scope of the EU regulation does not make a conflict of two judgments acceptable, as long as they are both valid in the relevant legal system.[198] Thus, some have interpreted this to cause the notion of "earlier judgment" to expand outside of the material scope of the Brussels I (Recast) regulation itself.[199] This view, however, does not entail that also the notion of "judgment" is expanded indirectly to arbitral awards. It is to note that the focus is not on the arbitral award (or the Third State judgment as in the CJEU's ruling in *H Limited*). This was regarded as one of the positives of the CJEU's ruling in *London Steam-Ship Owners*: it confirmed a different understanding of the notion of "judgment" within different contexts of the Brussels I Recast and its predecessors, thereby additionally consolidating the differing interpretation of the relevant notions.[200]

What is not regarded as positive are conditions that the CJEU sets for arbitral awards to be included within the concept of "earlier judgment". After concluding that a judgment entered in terms of an arbitral award is fully capable of constituting an "earlier judgment",[201] the CJEU goes on to establish that this is dependent on certain factors. It states that "the position is different where the award in the terms of which that judgment was entered was made in circumstances which would not have permitted the adoption, in compliance with the provisions and fundamental objectives of that regulation, of a judicial decision falling within the scope of that regulation".[202] As an argument for this stance, the CJEU recalls that interpretation of a provision of EU law must be done by considering the context of that provision and all of the objectives that are pursued by the relevant regulation. Therefore, the principles underlying judicial cooperation in civil matters in the EU must be kept in mind.[203] In the case at hand, the CJEU highlights two of those principles that were infringed by the judgment entered in terms of an arbitral award: the relative effect of an arbitration clause included in an insurance contract, and the principle of *lis pendens*.

These requirements were unforeseeable. With regards to the first principle, the CJEU recalls that "a jurisdiction clause agreed between an insurer and an insured party cannot be invoked against a victim of insured damage who, where permitted by national law, wishes to bring an action directly against the insurer, in tort, delict or quasi-delict, before the courts for the place where the harmful event occurred or before the courts for the place where the victim is domiciled",[204] as previously established in *Assens Havn*.[205] The *Assens Havn* ruling, however, stems from the need to uphold the objective pursued by the

[198] T Hartley, 'Arbitration and the Brussels I Regulation' cit. 72.

[199] B Hess, 'Arbitration and the Brussels I bis Regulation: London Steam-Ship Owners' Mutual Insurance Association' cit. 538; A Mourre, 'Is Commercial Arbitration Entering in Dangerous Waters in the European Union' (2023) Asian International Arbitration Journal 3.

[200] *London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain* cit. para. 53.

[201] Within the meaning of art. 34(3) of the Brussels I Regulation.

[202] *London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain* cit. para. 54.

[203] *Ibid*. para. 58.

[204] *Ibid*. para. 60.

[205] Case C-368/16 *Assens Havn v Navigators Management (UK) Limited* ECLI:EU:C:2017:546 paras 31, 40.

regulation, namely its ch. II, section 3.[206] Such objectives cannot be expected to be upheld in regards to matters outside of the scope of the regulation itself, *i.e.*, it is questionable how in the matter explicitly excluded from the scope of the regulation, account should be taken of the fundamental rules of that same regulation.

With regards to the principle of *lis pendens*, the CJEU stated that "the minimisation of the risk of concurrent proceedings is one of the objectives and principles underlying judicial cooperation in civil matters in the European Union".[207] Because of this, a judgment entered in terms of arbitral award cannot prevent recognition and enforcement of a judgment from a different Member State. However, *lis pendens* between arbitration and court proceedings is hardly ever regulated, primarily because an arbitration agreement usually confers exclusive jurisdiction and derogates court jurisdiction.[208] It has been suggested that "*lis pendens* in favour of judicial proceedings has no place in arbitration"[209] as "arbitration and court proceedings belong to separate worlds".[210] Along these lines are also provisions on *lis pendens* in Brussels I Recast as they do not apply to arbitration, only to parallel proceedings before the courts.[211] The CJEU's argument is also questionable considering the ruling in *Liberato*, where the CJEU stated that a breach of the *lis pendens* rule cannot in itself justify non-recognition of a judgment on the ground that it is manifestly contrary to public policy in that Member State.[212] Although this was stated in the context of the public policy exception, it still indicates that the *lis pendens* rule does not carry such an "importance" to cause refusal of recognition and enforcement of a judgment. This being the case for judgments, why should it be any different for arbitral awards?[213]

If the rules relevant for recognition and enforcement of "judgments" in the EU should now be extended to arbitral awards, this would point to the fact that judgments enjoy higher importance than arbitral awards, as some of the well-known rules of arbitration are being disregarded in order to allow enforceability of judgments over arbitral awards on the same matter. Though not explicitly, a hierarchy among different types of decisions would be made. Indication of such hierarchy could perhaps have been sensed from the

[206] *Ibid*. para. 41.

[207] *London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain* cit. para. 70.

[208] Z Nový, 'Lis Pendens Between International Investments Tribunals and National Courts' (2017) Czech Society of International Law 542; E Gaillard, 'Abuse of Process in International Arbitration' (2017) ICSID Rev 28.

[209] G Bermann, *International Arbitration and Private International Law General Course on Private International Law* in *Collected Courses of the Hague Academy of International Law* (Brill 2016) 85.

[210] Z Nový, 'Lis Pendens Between International Investments Tribunals and National Courts' cit. 539.

[211] *Ibid*. 538.

[212] Case C-386/17 *Stefano Liberato v Luminita Luisa Grigorescu* ECLI:EU:C:2019:24.

[213] G Cuniberti, 'London Steam-Ship Owners: Extending Lis Pendens to Arbitral Tribunals?' (23 June 2022) EAPIL Blog eapil.org.

CJEU's previous ruling in *West Tankers*,[214] where the rules of the Brussels I Regulation were set above those of the New York Arbitration Convention.[215] In any case, these requirements for judgments entered in terms of arbitral awards to qualify as "judgments" in the sense of art. 34(3) could not have been foreseen.[216] Going by the previously established elements necessary for a decision to qualify as "judgment",[217] as well as the previously established understanding that even the decisions not falling under the general notion of "judgment" may still qualify as an "earlier judgment" under art. 34(3) of Brussels I and 45(1)(c) of Brussels I Recast, the judgment entered in terms of arbitral award should have been capable of constituting an "earlier judgment" in the sense of art. 34(3) of Brussels I and art. 45(1)(c) of Brussels I Recast.[218] As it stands now, it may seem that the political happenings at the time,[219] as well as financial repercussions[220] that would follow if siding with the AG's Opinion, had an influence on the CJEU's ruling. Regretfully, this has been done at the cost of legal certainty.

Although the notion of "earlier judgment" has undoubtedly been changed, *i.e.*, significantly restricted, it remains left to inspect whether this has any effect on the general notion of "judgment". Going by the assumption that (regardless of the contrasting conclusion in *H Limited*) judgments whose originating act was an arbitral award do not fall under the notion of "judgment", this change in the notion of "earlier judgment" does not affect the general notion of "judgment". This is due to the former's broader scope – what falls under "earlier judgment" does not necessarily fall under "judgment".

IV. Conclusion

It is quite difficult to grasp that in the EU judicial area in which judgments from all of the 27 Member States should circulate without frontiers, the notion of "judgment" is still not sufficiently clear. Although the broadness of definitions given in the EU regulations on

[214] Case C-185/07 *Allianz SpA and Generali Assicurazioni Generali SpA v West Tankers Inc.* ECLI:EU:C:2009:69.

[215] R Brand, *Transaction Planning Using Rules on Jurisdiction and the Recognition and Enforcement of Judgments* in *Collected Courses of the Hague Academy of International Law* (Brill 2013) 238.

[216] Also pointed in A Briggs, 'Humpty-Dumpty, Arbitration, and the Brussels Regulation: A View from Oxford' (23 June 2022) EAPIL Blog eapil.org.

[217] As established in section II of this *Article*.

[218] As supported in *The London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain*, opinion of AG Collins, cit.

[219] Particularly referring to the United Kingdom leaving the EU.

[220] On the basis of the Spanish judgment, the master, owners and the London P&I Club were "liable to over 200 separate parties, including the Spanish State, in sums in excess of EUR 1.6 billion, subject, in case of the Club, to the global limit of liability of USD 1 billion". However, on the basis of the London award, "in the absence of prior payment of the insured liability by the owners, the Club was not liable to the Spanish State in respect of the claims". See *London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain* cit. paras 18, 22.

cross-border collection of monetary claims is understandable, additional criteria are often necessary to conclude whether a certain decision falls under this notion. This is the result of the vast variety of judicial decisions in different Member States not known in others, which prompted their courts in multiple instances over the years to seek the CJEU's clarification. Although the line of cases improved general understanding of the notion of "judgment" in the EU since 1968, there is more to be done to enhance legal certainty. This has only been confirmed by the recent CJEU's rulings in *H Limited* and *London Steam-Ship Owners*. While these cases directly address the notion of "judgment", they also touch upon some of the particularly intricate matters of "double exequatur" and the interplay of judgments and arbitral awards.

Common to both CJEU rulings is that they affect the previous understanding of the notions of "judgment" or "earlier judgment", the former in the general context of recognition and enforcement, and the latter in the special context of refusal of recognition and enforcement on the grounds of irreconcilability. The ruling in *H Limited* explains that the notion of "judgment" covers also an English payment order issued in the special summary contested examination of a judgment given in a Third State. This ruling effectively distorts the general idea of the "double exequatur" as understood previously, allowing for its circumvention if the Member State's national law provides for a respective type of proceedings. As the UK has since left the EU, the threat of a wave of such cases is lessened, but some cases might still come along, particularly from Ireland. As a matter of principle, the notion of "judgment" is overly broad, at the expense of the prohibition of "double exequatur". The CJEU held that the risks associated with the adversarial nature of the proceedings may be counter-balanced by means of the public policy clause. Despite the fact that no qualitative conclusion can be drawn from the fact that in the case at hand the Austrian court found no reasons to invoke public policy, this mechanism is extremely rarely used and may prove insufficient.

In *London Steam-Ship Owners*, the difference between "judgment" in the process of recognition and enforcement according to the provisions of the EU regulations, and the "earlier judgments" being the grounds of refusal of recognition and enforcement of a "judgment", has been established. While the CJEU ruling clearly establishes that judgments entered in terms of arbitral awards do not fall under the former notion, they can fall under the latter one under certain conditions. This conditionality substantially changes the previous understanding and establishes additional requirements that were unforeseeable. Thus, the ruling revised understanding of the interplay between judgments and arbitral awards in the EU. This was done, however, based on highly questionable reasoning.

Following the two CJEU rulings in 2022, the notion of "judgment" has undergone changes in different directions. On the one hand, *H Limited* confirms the sheer broadness of the notion by including the English payment orders given after a limited examination of a Third State judgment, and subsequently diminishing the relevance of the principle of the prohibition of double exequatur. Here, the CJEU focused on the ancillary judgment, *i.e.*, a

second level judgment, without giving much thought to the originating act, *i.e.*, a first level judgment which was rendered in a Third State and as such was not susceptible to recognition and enforcement under the Brussels regime. In that sense, the notion seems to have become over-encompassing. On the other hand, *London Steam-Ship Owners* confirms the exclusion of judgments entered upon arbitral awards from the general notion of "judgment", while at the same time introducing significant restrictions to decisions that can fall under the notion of "earlier judgment" in the sense of articles on refusal of recognition and/or enforcement. In that sense, the general notion of "judgment" has not undergone additional changes, while the notion of "earlier judgment" has gotten additionally restricted. At the same time, the logic of *H Limited* is severely diminished by this ruling as here, the CJEU does not even consider the fact that an ancillary, second level judgment such as judgment entered in terms of arbitral award could be included under the notion of "judgment" for the purpose of recognition and enforcement under Brussels I (Recast) – in this case, the originating act, *i.e.*, the arbitral award, is the only thing that matters.

While acknowledging that the root cause of the issues in interpreting the notion of "judgment" in both cases arose due to peculiarities of the English, *i.e.*, common law, legal system, it can still be concluded that the case law continues to be the source of confusion and uncertainty for the parties. Establishing that, further research into the extent of those uncertainties is necessary and could provide basis for conclusion regarding the possible legislative actions at the EU level. As it stands now, the rulings only brought confusing and inconsistent interpretation of the EU notion of "judgment".

5.3. Tičić, Martina, "Irreconcilable judgments in the EU Regulations: Reforming the ground(s) for refusal of enforcement", *Cuadernos de Derecho Transnacional*, vol. 16, no. 1 (2024)

Irreconcilable judgments in the EU Regulations: Reforming the ground(s) for refusal of enforcement*

Decisiones irreconciliables en los reglamentos UE: Reforma de los motivos de denegación de la ejecución

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Abstract: Despite the fact that the abolition of exequatur seems to have become the norm under the EU regulations dealing with monetary claims, all of the regulations that fall under this category still preserve some grounds for refusal of enforcement of judgments. One of the refusal grounds which remained, even in the regulations which otherwise abolished all possibility of refusal, is the ground of irreconcilability with another judgment. Despite its importance, this refusal ground can sometimes still be quite complex to interpret. This paper thus analyses the notion of 'irreconcilable judgments', clarifying the remaining difficulties in interpretation. Moreover, it compares the diverging solutions offered in different regulations, and ultimately proposes a potential reform.

Keywords: Irreconcilable judgments, refusal of enforcement, Brussels I Recast, second-generation instruments, private international law.

Resumen: A pesar de que la abolición del exequátur parece haberse convertido en la norma en los reglamentos de la UE que tratan de créditos monetarios, todos los reglamentos que entran en esta categoría aún conservan algunos motivos para denegar la ejecución de decisiones. Uno de los motivos de denegación que persiste, incluso en los reglamentos que de otro modo abolían toda posibilidad de denegación, es el motivo de incompatibilidad con otra decisión. A pesar de su importancia, este motivo de denegación a veces puede resultar bastante complejo de interpretar. Por lo tanto, este artículo analiza la noción de "decisiones irreconciliables", aclarando las dificultades de interpretación restantes. Además, compara las soluciones divergentes ofrecidas en diferentes regulaciones y, en última instancia, propone una posible reforma.

Palabras clave: Decisiones irreconciliables; denegación de ejecución, Reglamento 1215/2012, instrumentos de 'segunda generación', derecho internacional privado.

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I. Introduction

1. As established initially in the Treaty of Rome,[1] the European Union (EU) is founded on the principle of a common internal market, based on the four freedoms of movement: free movement of goods, services, persons and capital.[2] Over the years, a 'fifth freedom'[3] emerged – the free movement of judgments. The core instrument which facilitated the flow of judgments in civil and commercial matters between the Member States was the Brussels Convention,[4] followed by the Brussels I Regulation,[5] and by the Brussels I Recast,[6] which is currently in force. Other instruments have since been introduced as a way to expand the possibilities for judgments to be recognized and enforced freely throughout the EU. Not only did this facilitate the circulation of judgments, but it also allowed for judicial cooperation between the Member States.

2. The free movement of judgments, however, does not currently equal the recognition and enforcement of judgments without frontiers. Despite the mutual trust that is encouraged between the Member States, such trust is not blind.[7] With remaining differences between Member States' legal systems and cultures, safeguards are still necessary for the proper functioning of the EU's legal system. This is also corroborated by the need to respect the fundamental rights which can be impaired in the procedure preceding the deliverance of the judgment which needs to be enforced in another Member State. Furthermore, Member States have an interest in preserving the essential coherence within their own legal system. As a result, all EU regulations provide for a 'check point' at the point of entry of judgments originating from other Member States. Thus, recognition and enforcement of a judgment can be refused because of certain irregularities that had occurred prior to the deliverance of a judgment or otherwise jeopardise the highest legal principles in the Member State of enforcement. Over the years, the aim of minimising the number of refusal grounds can be detected, primarily due to the idea of moving towards cross-border enforcement of judgments without frontiers[8] on the basis of mutual trust, but also owing to further harmonisation of rules and previously mentioned stronger cross-border cooperation between the Member States. In that regard, different possibilities for refusal of enforcement can be found in different regulations.

3. As there have been contrary opinions over which grounds for refusal of enforcement should be kept and which abolished, and particularly due to the fact that the revision of Brussels I Recast as the instrument of main reference[9] in terms of recognition and enforcement of judgments is currently underway, the time is proper to revisit the refusal grounds of the EU regulations. While some grounds of refusal, particularly the public policy ground, have previously received much scholarly attention,[10] the

[1] Treaty establishing the European Economic Community, Rome (1957).

[2] Treaty on the Functioning of the European Union, OJ C 202/47 of 07 June 2016, Art. 26(2).

[3] J. Kramberger Škerl, "European Public Policy (with Emphasis on Exequatur Proceedings)", *Journal of Private International Law*, n° 7(2), December 2011, p. 480; T. Hoško, "Public Policy as an Exception to Free Movement Within the Internal Market and the European Judicial Area: A Comparison", *Croatian Yearbook of European Law and Policy*, n° 10(1), December 2014, p. 189.

[4] Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, OJ L 299/32 of 31 December 1972 (Brussels Convention).

[5] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 12/1 of 16 January 2001 (Brussels I Regulation).

[6] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition of judgments in civil and commercial matters (recast), OJ L 351/1 of 20 December 2012 (Brussels I Recast).

[7] K. Lenaerts, "The Principle of Mutual Recognition in the Area of Freedom, Security and Justice", available at: https://www.law.ox.ac.uk/sites/default/files/migrated/the_principle_of_mutual_recognition_in_the_area_of_freedom_judge_lenaerts.pdf.

[8] As visible from certain attempts made in this direction, e.g. in the Maintenance Regulation (Regulation No 4/2009) or in the uniform procedures such as European Order for Payment Procedure (Regulation No 1896/2006) or European Small Claims Procedure (Regulation No 861/2007), etc.

[9] B. Hess, "Towards a More Coherent EU Framework for the Cross-Border Enforcement of Civil Claims ", in J. Von Hein, T. Kruger (eds.), *Informed Choices in Cross-Border Enforcement. The European State of the Art and Future Perspectives*, Cambridge, Intersentia, 2021, p. 390.

[10] See e.g., O. Meyer (ed.), *Public Policy and Private International Law. A Comparative Guide*, Cheltenham, Edward Elgar Publishing Limited, 2022; T. Keresteš, "Public Policy in Brussels Regulation I: Yesterday, Today and Tomorrow", *Lexonom-*

irreconcilability of judgments received less such attention. This may be so because it is seldom visible through case law;[11] however, it remains one of the most important grounds, which is clear from the fact that it is the only ground kept in some of the newer regulations which otherwise abolished all possibility of refusal of enforcement.[12] Regardless of its omnipresence in the EU regulations, irreconcilability of decisions as a refusal ground is regulated differently in the regulations that this paper focuses on. Moreover, it suffers from certain interpretational difficulties, exacerbated by the recent case law of the Court of Justice of the EU (CJEU).[13] Therefore, the aim of this paper is to identify reasons for different regulatory approaches in the regulations dealing with monetary claims, clear out the issues regarding their interpretation, and investigate whether a universal provision on irreconcilability could replace the existing ones.

4. The research focuses on the EU regulations dealing with cross-border collection of monetary claims, as they share common features, including similar refusal grounds, which allows for joint conclusions.[14] The selected regulations include: Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Recast)[15] and its predecessors 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (Brussels Convention)[16] and Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation)[17]; Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (EEOR)[18]; Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (EOPR);[19] Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (ESCPR);[20] Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial

ica, n° 8(2), December 2016; T. Hoško, *cit.*; B. Hess, T. Pfeiffer, *Interpretation of the Public Policy Exception as referred to in EU Instruments of Private International and Procedural Law (Study)*, Brussels, European Parliament, 2011; J. Kramberger Škerl, *cit.*; P. Beaumont, E. Johnston, "Can Exequatur be Abolished in Brussels I Whilst Retaining a Public Policy Defence?", *Journal of Private International Law*, n° 6(2), August 2010; A. Mills, "The Dimensions of Public Policy in Private International Law", *Journal of Private International Law*, n° 4(2), August 2008; D. de Roover, "Public Policy as a Refusal Ground: Well Regulated?", *Tilburg Foreign Law Review*, n° 8(1), January 1999; etc.

[11] Heidelberg report - Report (JLS/2004/C4/03) on the application of the Brussels I Regulation in the Member States presented by B. Hess, T. Pfeiffer and P. Schlosser, Study JLS/C4/2005/03, Final version September 2007, Ruprecht-Karls-Universität Heidelberg, p. 563.

[12] See e.g., Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, OJ L 143/15 of 30 April 2004; Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, OJ L 399/1 of 30 December 2006; Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, OJ L 199/1 of 31 July 2007.

[13] In particular, see CJEU, C-700/20, *London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain*, 20 June 2022, ECLI:EU:C:2022:488.

[14] In addition, monetary claims have a different enforcement mechanism from that of the enforcement for other types of judgments, e.g. where children are involved. The irreconcilability ground of refusal in such Regulations are often reversed, in the sense that the latter judgment takes precedence over the earlier one (e.g. Art. 39(1)(d) of the Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast), L 178/1 of 02 July 2019).

[15] Brussels I Recast, Arts. 45-51.

[16] Brussels Convention, Arts. 27, 28, 34.

[17] Brussels I Regulation, Arts. 34, 35, 45.

[18] Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, Official Journal of the European Union, L 143/15 of 30 April 2004 (EEOR), Art. 21.

[19] Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, OJ L 399/1 of 30 December 2006 (EOPR), Art. 22.

[20] Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, OJ L 199/1 of 31 July 2007 (ESCPR), Art. 22.

matters (EAPOR)[21]; and Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (Maintenance Regulation).[22]

5. Following the Introduction, Chapter II. sets the scene with an overview of historical development of grounds of refusal under the EU regulations dealing with monetary claims. In Chapter III., the notion of 'irreconcilable judgments' is defined, while Chapter IV. focuses specifically on the features of the irreconcilability ground of refusal in the above listed regulations. Their provisions are analysed along with the CJEU and national case law, including that collected within the *EFFORTS Project*[23] and the *IC2BE Project*[24]. This gives way for a proposal to improve the irreconcilability refusal ground. Finally, in Chapter V., conclusions are drawn on the general functioning of the ground in the current system, and summary of the *de lege ferenda* proposals is put forward.

II. Historical overview

6. The dates of 15 and 16 October 1999 mark an important turning point in the development of the rules on recognition and enforcement of judgments among the Member States. It was at this point that the European Council adopted conclusions in Tampere, with the aim of gradual abolishment of intermediate measures, *i.e.*, the exequatur procedure in cross-border recognition and enforcement of judgments in the EU.[25] While the process was in no way easy, it could be said that the goal of the Tampere Council was achieved in the regulations concerned with monetary claims, despite differences among the regulations, which result from a particular stage of development of free movement of judgments in the EU.[26] The greatest leap was made by abolishing the exequatur in Brussels I Recast, while the

[21] Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters, OJ L 189/59 of 27 June 2014 (EAPOR), Art. 34.

[22] Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, OJ L 7/1 of 10 January 2009 (Maintenance Regulation), Art. 21. The Maintenance Regulation is thus the only instrument selected for this research that relates to family matters, as opposed to the rest of the regulations in civil and commercial matters. This was done as its scope relates directly to monetary claims, and was previously included under the Brussels I Regulation. Although some additional regulations could also be regarded as dealing with monetary claims, such as e.g. Insolvency Regulation [Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast), OJ L 141/19 of 05 June 2015], Succession Regulation [Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, OJ L 201/107 of 27 July 2012] or Twin Regulations [Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, OJ L 183/1 of 08 July 2016; Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships, OJ 183/30 of 08 July 2016], these are not included in this research due to the fact that either their scope of application is specific to areas that are not primarily concerned with monetary claims as such and could thus be regarded only in part, or they concern specific areas that, due to their particular features, should be analysed separately from the rest.

[23] 'Towards more Effective enforcement of claims in civil and commercial matters within the EU'; Project JUST-JCOO-AG-2019-881802; with financial support from the Civil Justice Program of the European Union. Reports available at: Collection of national case-law - Efforts (unimi.it).

[24] 'Informed Choices in Cross-Border Enforcement'; financed by the European Union under the Civil Justice Programme 2014-2020. Database available at: IC2BE (uantwerpen.be).

[25] Tampere European Council, 15 and 16 October 1999, Presidency Conclusions, available at: https://www.europarl.europa.eu/summits/tam_en.htm. See also P. Beaumont, E. Johnston, *cit.*, p. 249; P. Beaumont, L. Walker, "Recognition and enforcement of judgments in civil and commercial matters in the Brussels I Recast and some lessons from it and the recent Hague Conventions for the Hague Judgments Project", *Journal of Private International Law*, n° 11(1), June 2015, p. 32.

[26] S. Huber, "Koordinierung europäischer Zivilprozessrechtsinstrumente", in R. Geimer, R. Schütze (eds.), *Recht ohne Grenzen. Festschrift für Athanassios Kaissis zum 65. Geburtstag*, Berlin/Boston, Otto Schmidt/De Gruyter european law publishers, 2012, p. 428.

Maintenance Regulation was enacted without such requirement from the outset. In addition, a number of new, so-called 'second-generation instruments'[27] (*i.e.*, EEOR, EOPR, ESCPR and EAPOR), which did not require a declaration of enforceability, were passed – most of them even before Brussels I Recast and the Maintenance Regulation.[28] This approach may be attributed to the distinguishing feature of the second-generation instruments – their regulatory scheme, which each integrates rules on a special civil procedure and rules on recognition and enforcement, and which, coupled with the set of predefined forms, contributes to the uniformity in the respective procedures in all Member States and thus reduces the need for recognition and enforcement 'check points'. In this way, the free movement of judgments was established in (almost) full sense of the word. By improving efficiency of cross-border enforcement, this regulatory advancement should contribute to the general welfare in the EU.[29]

7. Despite the significant progress, mutual trust between the Member States is still not as strong as it may seem.[30] It functions as a presumption, which is rebuttable based on the limited number of refusal grounds in a particular regulation.[31] The purpose of retaining the respective 'check point' or a 'judgment inspection',[32] is primarily to address certain procedural irregularities and to ensure that the defendant had a fair trial.[33] Regardless of which grounds remain available, it is seen as an exception to the general principle of free movement of judgments,[34] and should thus be interpreted restrictively.[35] The highest number of refusal grounds remains in the Brussels I Recast: public policy exception, irreconcilability with other judgments, guarantee of due process, and security of certain protective jurisdictional rules. As such, these grounds seem to be 'time-proof' as they have not changed much since the Brussels Convention was in place.[36] In the rest of the regulations, only some of these grounds remain – in majority of the regulations,[37] the ground of irreconcilability is the last one standing.

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[27] P. Mankowski, "The impact of the Brussels Ibis Regulation on the 'second generation' of European procedural law", in P. Mankowski (ed.), *Research Handbook on The Brussels Ibis Regulation*, Cheltenham, Edward Elgar Publishing Limited, 2020, pp. 230-249. See also J. von Hein, T. Imm, "Introduction: Practical Challenges and Research Aims", in J. von Hein, T. Kruger (eds.), *Informed Choices in Cross-Border Enforcement. The European State of the Art and Future Perspectives*, Cambridge, Intersentia, 2021, p. 4; B. Hess, "The State of the Civil Justice Union", in: B. Hess, M. Bergstrom, E. Storskrubb (eds.), *EU Civil Justice. Current Issues and Future Outlook*, Bloomsbury Publishing, 2016, p. 4; E. Storskrubb, "EU Civil Justice at the Harmonisation Crossroads?", in A. Nylund, M. Strandberg (eds.), *Civil Procedure and Harmonisation of Law*, Cambridge, Intersentia, 2019, p. 18.

[28] J. von Hein, T. Imm, *cit.*, p. 7.

[29] G. Cuniberti, "The Recognition of Foreign Judgments Lacking Reasons in Europe: Access to Justice, Foreign Court Avoidance, and Efficiency", *International and Comparative Law Quarterly*, n° 57(1), January 2008, p. 47.

[30] M. Weller, "Mutual Trust: In Search of the Future of European Union Private International Law", *Journal of Private International Law*, n° 11(1), May 2015, pp. 66, 67.

[31] I. Kunda, "Međunarodnoprivatnopravni odnosi", in E. Mišćenić (ed.), *Europsko privatno pravo. Posebni dio*, Zagreb, Školska knjiga, 2021, p. 497.

[32] M. Hazelhorst, *Free Movement of Civil Judgments in the European Union and the Right to a Fair Trial*, The Hague, T.M.C. Asser Press, 2017, pp. 51, 52.

[33] As provided in the European Convention on Human Rights (European Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, available at: https://www.refworld.org/docid/3ae6b3b04.html, Art. 6) and Charter of Fundamental Rights of the European Union (Charter of Fundamental Rights of the European Union, OJ C 326/391 of 26 October 2012), Art. 47).

[34] T. Keresteš, M. Repas, "Grounds for Refusal of Recognition and Enforcement in the Brussels I Recast", in V. Rijavec, W. Kennett, T. Keresteš, T. Ivanc (eds.), *Remedies Concerning Enforcement of Foreign Judgements. Brussels I Recast*, Alphen aan den Rijn, Wolters Kluwer, 2018, p. 196.

[35] CJEU, C-414/92, *Solo Kleinmotoren GmbH v Emilio Boch*, 2 June 1994, ECLI:EU:C:1994:221, para. 20; CJEU, C-7/89, *Dieter Krombach v André Bamberski*, 28 March 2000, ECLI:EU:C:2000:164, para. 21; CJEU, C-38/98, *Régie nationale des usines Renault SA v Maxicar SpA and Orazio Formento*, 11 May 2000, ECLI:EU:C:2000:225, para. 26. See also H. Sikirić, "Razlozi za odbijanje priznanja i ovrhe sudskih odluka po Uredbi Vijeća (EZ) br. 44/2001 od 22. prosinca 2000. o sudskoj nadležnosti i priznanju i ovrsi odluka u građanskim i trgovačkim predmetima", *Zbornik Pravnog fakulteta u Zagrebu*, n° 60(1), February 2010, p. 62.

[36] X. Kramer, "Cross-border enforcement and the Brussels I-bis regulation: Towards a new balance between mutual trust and national control over fundamental rights", *Netherlands International Law Review*, n° 60(3), November 2013, p. 363. See also *European Commission*, Study to support the preparation of a report on the application of Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Ia Regulation) Final Report (Publications Office of the European Union, 2023), p. 246.

[37] With the exception of EAPOR.

8. The reason for omnipresence of the irreconcilability ground of refusal may be found in its purpose. It aims to avoid the disturbance in the legal order of the Member State of enforcement which would be created if conflicting judgments would be allowed to coexist.[38] In other words, it is justified by the aim of avoiding *bis in idem* in cross-border litigation,[39] whereby it assures the coherence among parties' rights and obligations within a legal system of individual Member States. Thus, it ensures the smooth functioning of the EU's area of freedom, security and justice.[40]

9. The situation in which the irreconcilable judgments are given in two different EU Member States relates to the failure of the courts to respect the rule of *lis pendens*, provided in Articles 29-32 of the Brussels I Recast or Article 12 of the Maintenance Regulation. The *lis pendens* rule aims to resolve such situations pre-emptively, which explains why this refusal ground is seldom relied on.[41] However, the rules of *lis pendens* in the Brussels I Recast do not cover the related proceedings pending before the courts of a Third State – in such cases, Brussels I Recast only provides a margin of discretion for the judges of a court in a Member State to stay the proceedings.[42] Thus, the risk of irreconcilable judgments in EU rises. Additionally, if the proceedings in a Third State commence after those in a Member State, the risk of conflicting judgments rises again, as Third States are not bound by the EU rules on *lis pendens*. Here, the risk of conflicting judgments may still be mitigated in instances where international conventions which regulate *lis pendens*, *e.g.* Lugano Convention,[43] are applicable.

10. Regardless of the fact that irreconcilable judgments will oftentimes be avoided beforehand, the risk of parallel proceedings cannot be regarded as trivial,[44] as such situations still occur, and when they do, it is necessary to provide means to deal with them. Considering that the enforcement of conflicting and mutually exclusive judgments is practically impossible,[45] it does not come as a surprise that this ground of refusal still holds its place even in the regulations that otherwise abolished all refusal grounds.

III. Irreconcilable judgments

11. Before dealing with specific provisions in the regulations, this Chapter aims to offer analysis of the concept of 'irreconcilable judgments' by addressing in turn the notions of 'judgment' and 'irreconcilability'.

A) The notion of 'judgment'

12. In the course of recognition and enforcement, two judgments confront each other: the judgment whose enforcement is sought and the judgment with which the first one is irreconcilable.

[38] P. Mankowski, "Article 45", in U. Magnus, P. Mankowski (eds.), *European Commentaries on Private International Law. Commentary. Brussels Ibis Regulation*, Köln, Verlag Dr. Otto Schmidt KG, 2nd edition, 2023, p. 887; T. Keresteš, M. Repas, *cit.*, p. 214.

[39] P. Orejudo Prieto de los Mozos, "La incompatibilidad de decisiones como motivo de denegación de la ejecución de los títulos ejecutivos Europeos", *Anuario Español de Derecho Internacional Privado*, n°9, 2009, p. 272.

[40] J. Kuipers, "The Right to a Fair Trial and the Free Movement of Civil Judgments", *Croatian Yearbook of European Law and Policy*, n° 6, December 2010, p. 32.

[41] A. Giussani, "Grounds for refusal of recognition of foreign judgments: Developments and perspectives in EU Member States regarding public order and conflicting decisions", in V. Rijavec, K. Drnovšek, C. H. van Rhee (eds.), *Cross-Border Enforcement in Europe: National and International Perspectives*, Cambridge, Intersentia, 2020, p. 60.

[42] Brussels I Recast, Art. 33(1).

[43] Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Lugano Convention), OJ L 339/3 of 21 December 2007.

[44] Y. Farah, S. Hourani, "Frustrated at the interface between court litigation and arbitration? Don't blame it on Brussels I! Finding reason in the decision of West Tankers, and the recast Brussels I", in P. Stone, Y. Farah (eds.), *Research Handbook on EU Private International Law*, Cheltenham, Edward Elgar Publishing Limited, 2015, p. 120.

[45] M. Hazelhorst, *cit.*, pp. 46, 55.

a) 'Judgment' whose enforcement is sought

13. For the purpose of interpreting the notion of 'judgment' whose enforcement is sought, one should turn to the autonomous definition of 'judgment' provided in the regulation relevant in the case at hand.[46] Regardless of certain particularities, the definitions provided in the EU regulations on monetary claims only contain minimal differences; thus, it could be stated that a 'judgment' equals 'any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.'[47] The Maintenance Regulation in its Art. 2(1)(1) uses the same definition, but employs the term 'decision' instead of 'judgment'. This may be prescribed to the specific nature of the matters that fall under the scope of the Maintenance Regulation, as opposed to the rest. Regardless, the identical definition points to the fact that the concept of 'decision' in the Maintenance Regulation, and the concept of 'judgment' in the rest of the regulations, are essentially the same.

14. In Brussels I Recast, another element is added specifically in regard to its Chapter III on recognition and enforcement, stating that the notion of 'judgment' 'includes provisional, including protective, measures ordered by a court or tribunal which by virtue of this regulation has jurisdiction as the substance of the matter. It does not include a provisional, including protective, measure which is ordered by such a court or tribunal without the defendant being summoned to appear, unless the judgment containing the measure is served on the defendant prior to enforcement'.[48]

15. While the concept of 'judgment' is certainly broad, there must be an actual judgment – a court settlement or an arbitral award do not qualify as 'judgments'.[49] The notion of 'judgment', however, will include the 'consent judgments',[50] typically found in the legal systems of some Member States, such as Croatia[51] and Slovenia.[52] While such judgments are referred to as 'court settlements' in national laws of those Member States, this notion should not be confused with the notion of 'court settlements' under the EU private international law, in particular under Article 2(b) of Brussels I Recast, because they do not have the same meaning. Owing to their special features, including the *res iudicata* effect, the 'consent judgments' warrant the inclusion under the notion of 'judgments' within the meaning of both Article 2(a) and Article 45 of Brussels I Recast.[53]

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[46] For Brussels I Recast, Art. 2; for EEOR, Art. 4; for EAPOR, Art. 4(8). The Maintenance Regulation employs a different terminology and uses the term 'decision', but the definition provided in its Art. 2 shows that it is essentially the same concept as the term 'judgment', and can be used interchangeably. The EOPR and ESCPR do not provide the definition of 'judgment' as it was unnecessary due to the self-standing, written nature of these particular procedures.

[47] Brussels I Recast, Art. 2; EEOR, Art. 4(1); EAPOR, Art. 4(8), leaves out the word 'tribunal' and the offered examples ('decree, order, decision or writ of execution').

[48] Brussels I Recast, Art. 2. This addition represents the codification of the finding in the ruling in CJEU, C-125/79, *Bernard Denilauler v SNC Couchet Frères*, 21 May 1980, ECLI:EU:C:1980:130. Decisions within the EAPOR are of no relevance in this context because the CJEU provides an interpretation about the quality of a judgment which makes it apt for enforcement and not about the notion of judgment itself (CJEU, C-555/18, *K.H.K. v B.A.C., E.E.K.*, 7 November 2019, ECLI:EU:C:2019:937, para. 44; CJEU, C-291/21, *Starkinvest SRL*, 20 April 2023 ECLI:EU:C:2023:299, para. 56).

[49] See CJEU, C-414/92, *Solo Kleinmotoren GmbH v Emilio Boch*, 2 June 1994, ECLI:EU:C:1994:221, para. 20.

[50] Heidelberg report - Report (JLS/2004/C4/03) on the application of the Brussels I Regulation in the Member States presented by B. Hess, T. Pfeiffer and P. Schlosser, Study JLS/C4/2005/03, Final version September 2007, Ruprecht-Karls-Universität Heidelberg, p. 66, 277. See also A. Layton, H. Mercer (gen. eds.), *European Civil Practice (Vol 1)*, London, Sweet & Maxwell, 2nd edn, 2004, p. 869; I. Kunda, M. Tičić, "Authentic Instruments and Court Settlements Under the Twin Regulations", in L. Ruggeri, A. Limantė, N. Pogorelčnik Vogrinc (eds.), *The EU Regulations on Matrimonial Property and Property of Registered Partnerships*, Cambridge, Intersentia, 2022, pp. 72-74.

[51] Croatian Civil Procedure Act (Zakon o parničnom postupku), Narodne novine 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 96/08, 123/08, 57/11, 148/11, 25/13, 89/14, 70/19 (2019) Arts. 321, 322.

[52] Slovenian Civil Procedure Act (Zakon o pravdnem postopku) Uradni list Republike Slovenije, No. 73. (2007) Arts. 306, 307. See also A. Galič, "Vloga sodnika pri spodbujanju sodnih poravnav", *Zbornik Znanstvenih Razprav*, n° 62, 2002.

[53] I. Kunda, M. Tičić, *cit.*, pp. 73-74: The court settlements in Croatia and Slovenia represent an agreement by the parties which is made before the court, entered in the minutes of the proceedings and signed by all parties. The court ensures that there are no ongoing proceedings on the same matter. Only then does the court settlement becomes final and enforceable, and also acquires the *res iudicata* effect.

16. What remains unnoticed by the relevant regulations is the definition of a Third State 'judgment'. As visible from the above, the definition of 'judgment' is only given in relation to those originating from another Member State.[54] For the purpose of the notion of a 'judgment' from a Third State, no guidance is given in any of the EU regulations dealt with in this paper nor in the CJEU case law. While turning to international conventions may be possible at some instances,[55] in others, there is no clear answer. Therefore, by analogy, the definition of 'judgment' from a Third State should be the same as of a Member State 'judgment'.

b) The conflicting 'judgment'

17. To trigger the irreconcilability refusal ground there needs to be an actual judgment standing in conflict with the one whose enforcement is sought. Conversely, a pending proceeding that could potentially lead to an irreconcilable judgment does not warrant refusal of enforcement of an already existing judgment. This holds true even if proceedings are pending in the Member State of enforcement, as correctly held by the decisions of the French[56] and Spanish[57] courts. This requirement has been expressed in both provisions in Article 45(1)(c) and (d) of Brussels I Recast using the phrase 'judgment given'. A clear prerequisite of a 'given' judgment is that such judgment must be already rendered by the court at the stage where enforcement is sought, whether that be by the Member State of enforcement, other Member States or in a Third State.[58] A judgment can be considered as 'given' when it produces legal effects according to the law of the Member State or Third State of origin.[59]

18. A question that inevitably follows is whether a 'judgment given' must have become *res iudicata* at the point where the enforcement of an irreconcilable judgment is being sought. Some commentators point out that, in a view of the lack of any provision to that effect in the regulations, the judgment does not have to acquire the status of *res iudicata*. They state that the judgment only has to be 'given' and that the request for *res iudicata* would thus qualify as an additional requirement and would expand the conditions provided by applicable legal provision.[60] Such conclusion is drawn on the bases of the CJEU's ruling in *Italian Leather*, which dealt with irreconcilable decisions on interim measures. The CJEU stated that 'it is unimportant whether the judgments at issue have been delivered in proceedings for interim measures or in proceedings on the substance' and that 'as Article 27(3) of the Brussels Convention [now, Article 45(1)(c) of the Brussels I Recast] (…) refers to 'judgments' without further precision, it has general application'.[61] This ruling cannot, however, provide basis for the above conclusion on *res iudicata* as it only confirms that decisions on interim measures are included under the notion of 'judgments' in the provisions providing for irreconcilability as a refusal ground – this is clear given that the case dealt with two decisions on interim measures.[62]

19. Further arguments to the contrary may also be made. It appears counterintuitive that a judgment which acquired the status of *res iudicata* may be denied enforcement on the basis of its irreconcilability with an 'earlier' judgment which is still subject to an appeal, and may soon be overturned.[63] In

[54] See Brussels I Recast, Art. 2(a); EEOR, Art. 4(1); EAPOR, Art. 4(8); Maintenance Regulation, Art. 2(1)(1).

[55] See e.g. Lugano Convention, Art. 32.

[56] EFFORTS Project, Report on French Case Law, available at: D2.11-Report-on-French-case-lawCONFIRMED.pdf (unimi.it), p. 36.

[57] INDUKERN S.A. Roj: AAP B 4357/2008 - ES:APB:2008:4357A, IC2BE National Case Database, available at: IC2BE INDUKERN S.A. Roj: AAP B 4357/2008 - ES:APB:2008:4357A (uantwerpen.be).

[58] P. Mankowski, "Article 45", *cit.*, p. 888.

[59] P. Mankowski, "Article 45", *cit.*, p. 894.

[60] P. Mankowski, "Article 45", *cit.*, p. 888.

[61] CJEU, C-80/00, *Italian Leather SpA v WECO Polstermöbel GmbH & Co.*, 6 June 2002, ECLI:EU:C:2002:342, para. 41.

[62] The question of whether there is a possibility of a different outcome were the decisions not of an equal status will be dealt in the following Chapter.

[63] In such situations, however, it may be advisable for the enforcing court to stay its proceedings. See e.g. A. Layton, H. Mercer, *cit.*, p. 921; P. Mankowski, "Article 45", *cit.*, p. 893.

addition, according to the Jenard Report, discretion in regards to taking into account the differing status of irreconcilable judgments is left to the court before which the enforcement is sought.[64] Therefore, the resolution of this question could vary among the Member States. This interpretation is certainly not without problems – not only for the reason of potentially differing interpretations between the Member States, but also because it does not resolve the above-described scenario. Based on the current understanding, however, such scenario may not be fully excluded.

20. Lastly, it has been noted by some authors that the scope of 'judgment given' which may prevent enforcement of another judgment based on irreconcilability is broader than the scope of 'judgment' whose enforcement is sought – it expands also to some decisions that would not otherwise fall under the general notion, *i.e.*, to decisions outside of the material scope of the regulation in question.[65] An example of irreconcilable judgments is: a judgment awarding maintenance on the ground of paternity and a judgment which does not recognise the paternity.[66] This is justified by reason of unacceptability of simultaneous legal effects of conflicting judgments in the same legal system, regardless of the fact that these judgments do not fall under the scope of the same regulation.[67] Recognising that this extension should be accepted as justified means of resolving the conflict between the judgments, it is submitted that it does not alter the notion of 'judgment' as such, but only enables the court to take account of the earlier judgment which is outside the material scope of the regulations applicable to enforcement in a particular case.

21. As a rule, arbitral awards do not qualify as 'judgments' relevant for the purpose of irreconcilability because arbitration is outside the scope *ratione materiae* of Brussels I Recast[68] and arbitral awards are recognised and/or enforced among the Member States under the applicable convention.[69] However, under certain conditions established in *London Steam-Ship Owners*,[70] arbitral awards can still stand on the way of recognition or enforcement of judgment from another Member State. In this case, the CJEU interpreted the notion of 'judgment' under Article 34(3) of the Brussels I Regulation (now, Article 45(1)(c) of Brussels I Recast). The case dealt with the procedural aftermath of the sinking of the oil tanker *Prestige*. While criminal proceeding with the attached civil claims were pending before Spanish courts, arbitration proceedings were commenced in London, at the initiation of the London P&I Club, *i.e.*, liability insurer of the *Prestige*. Two judgments were delivered: 1) the London arbitral award was delivered first, and concluded that the London P&I Club is not liable before the damages are paid by the owners of the Prestige;[71] importantly, the judgment in terms of this award was handed down by the English court, and 2) the Spanish judgment ordering the Club payment of damages. After the Spanish judgment was submitted for recognition in England, a question of whether the English judgment entered in terms of the London arbitral award falls under the notion of 'earlier judgment' in Article 34(3) of the Brussels I Regulation.

22. The CJEU stated that an English judgment entered in terms of the arbitral award could be regarded as an 'earlier judgment' within the meaning of Article 34(3) of the Regulation if a judicial

[64] *European Council*, Report on the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, OJ C 59/1 of 05 March 1979, p. 45.

[65] B. Hess, "Arbitration and the Brussels I bis Regulation: London Steam-Ship Owners' Mutual Insurance Association. Case C-700/20, London Steam-Ship Owners' Mutual Insurance Association v. Kingdom of Spain, Judgment of the Court of Justice (Grand Chamber) of 20 June 2022, EU:C:2022:488", *Common Market Law Review*, n° 60, April 2023, p. 538; A. Mourre, "Is Commercial Arbitration Entering in Dangerous Waters in the European Union", *Asian International Arbitration Journal*, n° 19(1), May 2023, p. 3.

[66] P. Mankowski, "Article 45", *cit.*, p. 892.

[67] T. Hartley, "Arbitration and the Brussels I Regulation – Before and After Brexit", *Journal of Private International Law*, n° 17, May 2021, p. 72.

[68] Brussels I Recast, Art. 1(2)(d).

[69] The New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10 June 1958.

[70] CJEU, C-700/20, *London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain*, 20 June 2022, ECLI:EU:C:2022:488.

[71] In accordance with the 'pay to be paid' clause which can be found in all of the insurance contracts concluded with the P&I Clubs.

decision resulting in an outcome equivalent to the outcome of that award could not have been adopted by a court of that Member State without infringing the provisions and the fundamental objectives of the Regulation. Because in the case at hand the arbitral award in terms of which that English judgment was entered violated the relative effect of an arbitration clause included in an insurance contract and the rules of *lis pendens* in the Brussels I Regulation, this English judgment did not constitute an 'earlier judgment' within the meaning of Article 34(3) of the Regulation, and could not act as an obstacle to the recognition and/or enforcement of the Spanish judgment.[72] This was hardly the end of the *Prestige* legal saga since the second arbitral proceedings were still pending at the time the CJEU judgment was made, and the High English Court ruled in October 2023 not to be bound by the CJEU judgment, finding it to be *ultra vires*.[73]

23. Regardless of these developments and criticism directed against the CJEU judgment, as well as the fact that UK is no longer a Member State, *London Steam-Ship Owners* still requires analysis because it casts a different light on the interpretation of irreconcilability ground of refusal. On the one hand, the ruling confirms that the notion of 'judgment' irreconcilable with the one whose enforcement is sought is broader than the notion of 'judgment' whose enforcement is sough, and includes judgments entered in terms of arbitral awards. On the other hand, this is limited by additional requirement – that the arbitral award in terms of which the judgment is entered must not have been made 'in circumstances which would not have permitted the adoption, in compliance with the provisions and fundamental objectives of that regulation, of a judicial decision falling within the scope of that regulation'.[74] This means that, in case of alleged irreconcilability of judgments, the court of the Member State of enforcement will have to determine whether the arbitral award in question was delivered in accordance with the principles underlying EU judicial cooperation in civil matters which would have been applicable if, instead of the arbitral tribunal, the matter was decided by a court.

24. It is worth assessing whether this CJEU ruling should be codified in by the future amendments of Brussels I Recast, given such practice in the past. Codifications of this sort serve either as corrections[75] or reminders[76] to assure proper interpretation by the national courts. However, it is submitted that the ruling in *London Steam-Ship Owners* need not be so codified in future for the following reasons. Rather than serving the above-mentioned purposes, the additional clarification of legal situation of judgments entered in terms of arbitral awards would unnecessarily burden the legislative text which otherwise does not enumerate individual situations dealt with in the CJEU case law on grounds for refusal. In addition, these situations seem to be not only extremely rare, but also unknown in many Member States. Hence, any corresponding amendment might potentially confuse the national courts rather than clarify the situation. Having said that, if it is established that there is a need to make the courts particularly aware of this CJEU ruling, an option of including such clarification in the recitals remains as a viable alternative to codification.

B) The notion of 'irreconcilability'

25. Another concept whose understanding is indispensable in the context of the analysed ground of refusal is the notion of 'irreconcilability'. This notion is to be interpreted autonomously and means

[72] CJEU, C-700/20, *London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain*, 20 June 2022, ECLI:EU:C:2022:488, paras. 43, 53, 54, 59.

[73] English High Court, *The London Steam-Ship Owners' Mutual Insurance Association Limited v The Kingdom of Spain* (M/T 'Prestige') [2023] EWHC 2473 (Comm), paras. 214-233.

[74] CJEU, C-700/20, *London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain*, 20 June 2022, ECLI:EU:C:2022:488, para. 54.

[75] For instance, Art. 31(2) of Brussels I Recast changed the previous interpretation of CJEU in case C-116/02, *Erich Gasser GmbH v MISAT Srl.*, 9 December 2003, ECLI:EU:C:2003:657.

[76] For instance, the second part of Art. 2(a) on provisional measures was added to Brussels I Recast as a result of the CJEU ruling in case C-125/79, *Bernard Denilauler v SNC Couchet Frères*, 21 May 1980, ECLI:EU:C:1980:130.

that judgments are irreconcilable if they 'entail legal consequences that are mutually exclusive'.[77] Actually, the conditions of irreconcilability are to be interpreted by analogy with those for *lis pendens* in Article 29 of the Brussels I Recast.[78] The 'same cause of action' requirement is to be interpreted liberally,[79] and comprises of 'the facts and rule of law relied on as a basis of the action.'[80] At the same time, it must be assessed what question 'lies at the heart of the two actions' which are in conflict.[81] This concept is therefore not restricted to cases where applicable substantive laws are the same.[82] What matters is that subject-matter is equal, while claims can differ.[83] Additionally, for the assessment of whether two claims have the 'same cause of action', account should be taken only of the respective claims, and not on the defence submitted by the defendant.[84]

26. *Hoffmann* provides an illustration of the above point.[85] The case dealt with one decision concerning maintenance (which at the time was under the scope of the Brussels Convention), and other concerning divorce. The decisions were still deemed irreconcilable, as the maintenance was one party's conjugal obligation and dependent on the existence of marriage, which was dissolved by the decision on the divorce.[86] Other examples of irreconcilable judgments in the national case law include the decision of the French Court of Appeal in which it held that an Italian order for payment was irreconcilable with a French judgment ordering the debtor to comply with a settlement agreement which was signed between the parties beforehand, as both were dealing with the same claim.[87] Further such cases include judgment awarding damages for failure to perform a contract and a judgment between the same parties which declares that the contract in question is invalid;[88] a judgment concluding that a person is liable for damage to someone's cargo and a judgment denying such liability;[89] an interim order urging the defendant to stop using a certain trade name could be irreconcilable with a judgment that dismisses application for equal relief.[90]

27. The irreconcilability between the judgments must therefore arise in terms of their effects, not differences among provisions of substantive or procedural law, as they may not necessarily be irreconcilable solely based on that.[91] The requirement of irreconcilability was deemed as not met in the case before the Court of Appeal of Versailles,[92] which clarified that certificate issued under the Brussels I Regulation is not irreconcilable with the withdrawal of the certificate issued under EEOR, although both certificates were given in relation to the same claim.[93] Further examples of judgments that are not deemed irreconcilable include judgments between the same parties, but concerning different

[77] CJEU, C-145/86, *Horst Ludwig Martin Hoffmann v Adelheid Krieg*, 4 February 1988, ECLI:EU:C:1988:61, para. 22.

[78] P. Mankowski, "Article 45", *cit.*, p. 894.

[79] A. Layton, H. Mercer, *cit.*, p. 776.

[80] CJEU, C-406/92, *The owners of the cargo lately laden on bord the ship 'Tatry' v The owners of the ship 'Maciej Rataj'*, 6 December 1994, ECLI:EU:C:1994:400, para. 39.

[81] CJEU, C-144/86, *Gubisch Maschinenfabrik KG v Giulio Palumbo*, 8 December 1987, ECLI:EU:C:1987:528, para. 16.

[82] A. Layton, H. Mercer, *cit.*, p. 776.

[83] CJEU, C-144/86, *Gubisch Maschinenfabrik KG v Giulio Palumbo*, 8 December 1987, ECLI:EU:C:1987:528, para. 17.

[84] CJEU, C-111/01, *Gantner Electronic GmbH v Basch Exploitatie Maatschappij BV*, 8 May 2003, ECLI:EU:C:2003:257, para. 32.

[85] CJEU, C-145/86, *Horst Ludwig Martin Hoffmann v Adelheid Krieg*, 4 February 1988, ECLI:EU:C:1988:61, paras. 3, 4.

[86] CJEU, C-145/86, *Horst Ludwig Martin Hoffmann v Adelheid Krieg*, 4 February 1988, ECLI:EU:C:1988:61, para. 24.

[87] EFFORTS Project, Report on French Case Law, available at: D2.11-Report-on-French-case-lawCONFIRMED.pdf (unimi.it), pp. 18, 36.

[88] See by analogy to the *lis pendens* situation, CJEU, C-144/86, *Gubisch Maschinenfabrik KG v Giulio Palumbo*, 8 December 1987, ECLI:EU:C:1987:528, paras 16, 17; *European Council*, Report on the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, OJ C 59/1 of 05 March 1979, p. 45; A. Layton, H. Mercer, *cit.*, p. 919.

[89] A. Briggs, *The Conflict of Laws*, New York, Oxford University Press, 2002, p. 126.

[90] A. Briggs, *Civil Jurisdiction and Judgments*, Abingdon, Informa law from Routledge, 7th edn, 2021, p. 743.

[91] A. Layton, H. Mercer, *cit.*, p. 919.

[92] EFFORTS Project, Report on French Case Law, available at: D2.11-Report-on-French-case-lawCONFIRMED.pdf (unimi.it), p. 48, 49.

[93] This is due to the fact that, according to Art. 27 of the EEOR, the EEOR does not affect the possibility of seeking recognition and enforcement in accordance with the Brussels I Regulation. Therefore, some inconsistent decisions delivered on the basis of the EEOR and Brussels I Regulation (or Brussels I Recast) may exist, but do not necessarily qualify as irreconcilable judgments.

contracts;[94] judgments accepting jurisdiction of the court of the forum and a different judgment on the merits;[95] judgments which are based upon different findings of facts;[96] a judgment ordering the seller to compensate for damage due to the lack of goods and a judgment ordering the buyer to pay the price of the purchase (as both can be executed simultaneously via set-off);[97] a judgment that a party is liable for damage to cargo and a judgment ordering payment of damages for short delivery.[98]

28. The notion of 'irreconcilability' also raises an issue of the assessment of the status of the judgments which are in conflict. As previously established, judgments which are in conflict need not be of equal status, e.g. one may be a *res iudicata*, while another may still be under appeal. According to the current rules, there seems to be no 'hierarchy' of decisions when assessing their irreconcilability. In a situation of conflict between a judgment on the merits and a provisional decision, commentators have concluded that these do not necessarily have to be irreconcilable, as their consequences may be different.[99] This may generally be true, as a judgment on the merits and an interim judgment do not produce the same effect; on the contrary, interim measure will usually cease to have effect after a judgment on the merits is issued.[100] This is certainly the case where interim measure is issued by the court of a Member State which has jurisdiction as to the substance of the matter. However, interim measures can also be issued by other courts, which do not have jurisdiction as to the substance.[101] Although such measures do not benefit from the EU rules on mutual recognition and enforcement,[102] it does not mean that they cannot be enforceable under the national rules. As confirmed in *TOTO*, there is no hierarchy between different grounds of jurisdiction for issuing such measures, which in turn allows for variance of interim measures to be issued by different courts, from different Member States.[103] Thus, irreconcilability can arise between an interim judgment and a judgment on the merits.[104] On such occasion, could the enforcement of judgment on the merits be refused based on the ground of irreconcilability with the provisional measure? As provisional measures do fall under the notion of 'judgment', the answer seems to be affirmative. In cases where the conflicting interim judgment is a domestic one, *i.e.,* rendered by a court in the Member State of enforcement, the possibility of refusal on the basis of Article 45(1)(c) of the Brussels I Recast is even greater. This solution is unfortunate; however, as stated above, it will depend on the court of the Member State of enforcement, which will have discretion over this issue.[105]

IV. Irreconcilability ground(s) of refusal

29. After analysing the notion of 'irreconcilable judgments', the following analysis will focus in more detail on the provisions of the selected regulations, with the aim of detecting whether variations in

[94] P. Mankowski, "Article 45", *cit.*, p. 892.

[95] P. Mankowski, "Article 45", *cit.*, p. 892.

[96] A. Layton, H. Mercer, *cit.*, p. 919.

[97] H. Sikirić, *cit.*, p. 87.

[98] A. Briggs, *The Conflict*…, *cit.*, p. 126.

[99] A. Layton, H. Mercer, *cit.*, p. 920; P. Mankowski, "Article 45", *cit.*, p. 892.

[100] X. Kramer, "Case C-80/00, Italian Leather SpA v. WECO Polstermöbel GmbH & Co., European Court of Justice, 6 June 2002", *Common Market Law Review*, n° 40, August 2003, p. 961.

[101] Brussels I Recast, Art. 35. See also V. Rijavec, "Cross-border Effects of Provisional Measures in Civil and Commercial Matters", in V. Rijavec, T. Ivanc, *Cross-border Civil Proceedings in the EU (Conference Papers)*, Maribor, Univerza v Mariboru, Pravna fakulteta, 2011, p. 85.

[102] Brussels I Recast, Art. 2(a); recital 33 of the Preamble.

[103] CJEU, C-581/20, *Skarb Państwa Rzeczypospolitej Polskiej reprezentowany przez Generalnego Dyrektora Dróg Krajowych i Autostrad v TOTO SpA - Costruzioni Generali and Vianini Lavori SpA*, 6 October 2021, ECLI:EU:C:2021:808. See also G. Cuniberti, "CJEU Rules on Parallel Interim Litigation", available at: CJEU Rules on Parallel Interim Litigation – EAPIL.

[104] P. Vlas, M. Zilinsky, F. Ibili, "Civil Jurisdiction and Enforcement of Judgments in Europe", *Netherlands International Law Review*, n° 49(1), May 2002, p. 128.

[105] *European Council*, Report on the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, OJ C 59/1 of 05 March 1979, p. 45.

this ground of refusal are justified and whether there is a possibility of a single solution which would be in line with the regulations' common objectives.

30. While majority of the regulations on the cross-border collection of monetary claims provide only one ground for refusal of enforcement on the basis of irreconcilability, regardless of the origin of the irreconcilable judgment in question, Brussels I Recast offers two grounds for refusal of recognition and enforcement related to irreconcilability of judgments. The first one, contained in Article 45(1)(c), provides for refusal of recognition or enforcement in case of a judgment of the Member State Addressed, while the second provision can be found in Article 45(1)(d), and relates to judgments from other Member States and Third States. The two are discussed in turn, with simultaneous comparison to the singular provision offered in the rest of the regulations.

C) Irreconcilable judgment of the State Addressed

31. Article 45(1)(c) of Brussels I Recast provides that the recognition or enforcement shall be refused 'if the judgment is irreconcilable with a judgment given between the same parties in the Member State addressed'. Thus, this provision only refers to irreconcilability with domestic judgments. The only requirement here is that judgments must be given between the same parties. This requirement would also be fulfilled in case of a different party in the first and second proceedings, if that party succeeded to the rights of one of the initial parties.[106]This, however, differs from situation where the subrogation already took place and the first creditor, which is not entitled to pursue the claim anymore, attempts to enforce the relevant judgment. Such situation is visible on the example from the Higher Regional Court Koblenz, which decided on the question of irreconcilable judgments dealing with maintenance claims which were subrogated from the first creditor to the public maintenance fund.[107] In a situation where the public maintenance fund attempted to enforce the judgment which was previously denied enforcement to the first creditor (who was not entitled to pursue the claim due to subrogation), the court ruled that such judgment is not irreconcilable with the previous judgment refusing enforcement, as the judgments were not 'between the same parties'.

32. This provision of Article 45(1)(c) automatically prioritises the domestic judgment with which the judgment whose recognition or enforcement is sought is irreconcilable. It does not matter whether the domestic judgment was given before or after the one whose recognition or enforcement is sought – what matters is that it exists at the time this is being sought.[108] This is certainly a delicate issue, as the irrefutable priority given to a domestic decision may be contradicting the idea of free movement of judgments and their automatic recognition. It is thus questionable whether this can be reconciled with the idea of mutual trust between the Member States, considering that a provision biased in favour of domestic judgments clearly discriminates against other Member States' judgments. This is especially the case when the domestic judgment was issued later than the one from another Member State whose recognition and/or enforcement is sought. Some initially believed that this situation is not even addressed by Brussels I Recast (as it only states that the judgment must be 'given') and, furthermore, since foreign judgments receive automatic recognition, that a domestic judgment is not able to affect their status.[109] However, on the basis of the ruling in *Hoffmann*, where the CJEU considered that a domestic judgment, although given later in time, prevails over the foreign one,[110] authors maintain that Article 45(1)(c) produces *ex nunc* effect from the date the domestic judgment is adopted.[111] This points to the fact that domestic judgment would

[106] P. Mankowski, "Article 45", *cit.*, p. 893; T. Keresteš, M. Repas, *cit.*, p. 215.

[107] EFFORTS Project, Report on German Case Law, available at: D2.10-Report-on-German-case-law.pdf (unimi.it), p. 4.

[108] A. Briggs, *Civil*…, *cit.*, p. 742; T. Keresteš, M. Repas, *cit.*, p. 215. For an example from national courts, see also e.g. EFFORTS Project, Report on French Case Law, available at: D2.11-Report-on-French-case-lawCONFIRMED.pdf (unimi.it), p. 36.

[109] P. Mankowski, "Article 45", *cit.*, p. 893.

[110] CJEU, C-145/86, *Horst Ludwig Martin Hoffmann v Adelheid Krieg*, 4 February 1988, ECLI:EU:C:1988:61, para. 23.

[111] P. Mankowski, "Article 45", *cit.*, p. 893.

be given priority even if it is rendered after the foreign one. Such conclusion should perhaps be reconsidered after the abolition of exequatur in the Brussels I Recast and the immediate enforceability that is awarded to judgments. However, the wording of the provision did not change and still results in refusal of enforcement if a domestic judgment between the same parties is irreconcilable with the judgment whose enforcement is being sought. Thus, at the moment the domestic judgment is given, the judgment from another Member State ceases to be entitled to automatic recognition and enforceability.[112]

33. Another issue related to Article 45(1)(c) is the fact that domestic judgments are automatically given priority even when they are not *res iudicata*, and that, even if the domestic judgment is only provisional, it can be given priority over the foreign one.[113] From the national court's point of view, it is perhaps understandable to give preference to the judgment given in its own Member State, regardless of the fact that it may still undergo appeals. However, from an EU perspective, preference of domestic judgments in cases where the judgments in question are not of equal status, *i.e.*, if a foreign judgment is *res iudicata* and the domestic one is still appealable and thus may be overturned, is opposing the core idea behind the EU's area of freedom, security and justice. This issue, however, is not limited to Article 45(1)(c), as the question of irreconcilability of judgments which are not of equal status is not resolved in any of the regulations relevant for the purpose of this paper. Regardless, this provision of Brussels I Recast and its explicit favouritism towards domestic judgments has been met with much criticism, and was even referred to as an 'expression of obsolete nationalism and chauvinism'.[114]

34. In light of the above, a change of Article 45(1)(c) would be welcome. A better solution can be found in the second-generation instruments. Although these regulations opted for a more restrictive approach to refusal of enforcement, almost all of them still kept the refusal ground for irreconcilable judgments. This is understandable considering the previously mentioned practical impossibility of enforcing conflicting and mutually exclusive judgments. As opposed to Brussels I Recast, only one ground for irreconcilability is offered in each of these regulations, with the same standard for any 'judgment given', regardless of where it was issued but with clear priority to earlier one. This represents a modernisation reflecting higher level of mutual trust.

35. Before analysing the refusal ground for irreconcilability in the second-generation instruments, however, it is necessary to assess whether a similar solution may be applicable to Brussels I Recast, or the reasoning for different solution lies in the specific features of these procedures. In that vein, EOPR and ESCPR form uniform, self-standing EU procedures which result in an EU order/title. Although these specific regulations may only be applied in cross-border cases, parties still have the possibility to opt for their national counterparts, which exist alongside them.[115] Thus, the possibility of irreconcilability of such EU title with a domestic judgment remains possible. The same is true for EEOR, which was envisioned as a way to certify an existing judgment as an EEO, subsequently allowing such judgments to circulate freely, without intermediate measures, among the Member States.[116] This was particularly important as this regulation came to existence at the time when the exequatur was still not abolished within the Brussels regime. After this has changed in the Brussels I Recast, the relevance of EEOR itself is questioned by some authors.[117] In any case, EEOR can be viewed as a potential substitute for enforcement of judgments under the Brussels I Recast. Against the backdrop of the ambitious changes in Brussels I Recast in regards to the abolition of exequatur, the reason why the refusal grounds for irreconcilability remained the same is not quite clear. The uniformness of specific EU rules or the procedures itself may have prompted the initial departure from the specific position of domestic judgments in terms of irreconcilability under the second-

[112] A. Layton, H. Mercer, *cit.*, p. 925.
[113] P. Mankowski, "Article 45", *cit.*, p. 892.
[114] P. Mankowski, "Article 45", *cit.*, p. 893.
[115] EOPR, Art. 1(2); ESCPR, Art. 1.
[116] EEOR, Art. 1.
[117] See e.g. B. Hess, D. Althoff, T. Bens, N. Elsner, I. Järvekülg, "The Reform of the Brussels Ibis Regulation", *Max Planck Institute Luxembourg for Procedural Law Research Paper Series*, n° 6, November 2022, pp. 30, 31.

generation instruments – at the same time, this does not explain why the same was not done in regards to Brussels I Recast. The unjustifiableness of different treatment of irreconcilable judgments has already been noted by some authors,[118] especially in terms of unconditional priority of domestic judgments, which 'serves neither comity nor judicial economy'.[119] As mentioned above, such provision should find no place in the system which is founded on the principle of mutual recognition of judgments and aims to further facilitate the free movement of judgments, without frontiers.

36. In that vein, it should be noted here that a change of Article 45(1)(c) would not in any way affect the general system of recognition and enforcement that is employed in Brussels I Recast. For example, if one party tries to enforce a judgment from a Member State A in the Member State B, the enforcement would be refused if there is a conflicting domestic judgment from the Member State B. This refusal, however, would not be dependant solely on the fact that both judgments were given between the same parties, but would also have to involve the same cause of action This should not be viewed as an issue, given that this additional requirement should not be hard to fulfil on the rare occasion that the judgments in question are actually irreconcilable. It would, however, remove the special status of domestic judgments and bring them to the same footing as the judgment emanating from different Member States. Once again, this should not be viewed as an issue, given that there is no particular need to protect national interest in these types of situations which are, after all, not common in practice. Moreover, the free movement of judgments in the EU places judgments of all Member States on an equal footing; therefore, any provision of the EU regulations which places domestic decisions above decisions of another Member State, without a particularly important reason, should be viewed as 'outdated'.[120]

37. For the purpose of comparison, EEOR, EOPR and ESCPR, with minor variances,[121] provide that enforcement shall be refused if the judgment whose enforcement is sought 'is irreconcilable with an earlier judgment given in any Member State or in a third country' if it fulfils three additional requirements: a) the earlier judgment must have involved the same cause of action and was between the same parties; b) it was either given in the Member State of enforcement or it fulfils the conditions for its recognition in the Member State of enforcement; and c) the irreconcilability was not and could not have been raised as an objection in the court proceedings in the Member State of origin.[122]

38. Apparently, the conditions in the second-generation instruments are somewhat stricter than in Brussels I Recast, particularly compared to Article 45(1)(c). Here, no priority is given to domestic judgments; instead, a chronological priority of judgments is instituted.[123] This removes problems linked to favouring domestic judgments. Such 'chronological requirement' at an enforcement stage may also be praised simply as a matter of principle, as it discourages the bad-faith litigation tactics of delaying the procedure, *i.e.*, the 'Italian torpedo' strategy.[124] In terms of EEOR, it is important to differentiate the moment of issuance of the judgment in question and the moment in which the certification as an EEO

[118] S. Huber, "The Reform of the European Small Claims Procedure. Foreign Body or Puzzle Piece within the System of European Civil Procedure?", in J. von Hein, T. Kruger (eds.), *Informed Choices in Cross-Border Enforcement. The European State of the Art and Future Perspectives*, Cambridge, Intersentia, 2021, p. 100; B. Hess, D. Althoff, T. Bens, N. Elsner, I. Järvekülg, *cit.*, p. 27; S. Leible, „Art. 45 Brüssel Ia-VO", in T. Rauscher (ed.), *Europäisches Zivilprozess-und Kollisionsrecht EuZPR / EuIPR Kommentar*, Köln, Verlag Dr. Otto Schmidt KG, 2021, p. 1077.

[119] F. Juenger, "The Recognition of Money Judgments in Civil and Commercial Matters", *The American Journal of Comparative Law*, n° 36(1), 1988, p. 26.

[120] As pointed in e.g. B. Hess, D. Althoff, T. Bens, N. Elsner, I. Järvekülg, *cit.*, p. 27.

[121] The differences lie in the fact that EOPR differs in a way that it also provides for irreconcilability with an earlier decision 'or order previously given…'. Additionally, the same regulation differs as it provides that it is necessary only that 'irreconcilability could not have been raised as an objection in the court proceedings in the Member State of origin'.

[122] EEOR, Art. 21; EOPR, Art. 22; ESCPR, Art. 22.

[123] S. Huber, "The Reform…, *cit.*, p. 100.

[124] C. Crifò, *Cross-Border Enforcement of Debts in the European Union, Default Judgments, Summary Judgments and Orders for Payment*, Alphen aan den Rijn, Kluwer Law International, 2009, p. 98. For more on the 'Italian torpedo' strategy, see e.g., D. Kenny, R. Hennigan, "Choice-of-Court Agreements, the Italian Torpedo, and the Recast of the Brussels I Regulation", *International and Comparative Law Quarterly*, n° 64, January 2015.

was issued. For the sake of determining which of the conflicting judgments came earlier, the moment of issuance of the judgment itself is relevant.[125]

39. In terms of the last requirement under c), EOPR differs slightly, as it provides only that irreconcilability could not have been raised as an objection in the Member State of origin. This is so as the EOP is structured in a way that its issuance is dependent on there being no objections.[126] Nonetheless, this condition can sometimes be hard to fulfil, as it can be difficult for the Member State of enforcement to certify whether the objection could have been raised in the Member State of origin.[127]

40. The only regulation from the selected ones which does not allow for a refusal of enforcement based on the irreconcilability ground is EAPOR. Generally, it establishes a system in which any violation of the conditions for issuance of the order may be challenged solely in the Member State of origin.[128] Its Article 16 explicitly states that 'the creditor may not submit to several courts at the same time parallel applications for a Preservation Order against the same debtor aimed at securing the same claim',[129] and that the creditor, when applying for EAPO, must declare whether he has lodged any additional applications for equivalent national order against the same debtor.[130] Depending on the information provided, the court will then consider whether the issuance of EAPO is still appropriate.[131] Because of this requirement, conflicting decisions are unlikely. There are, however, still possibilities for such situations, *e.g.*, if there is an order which rejects an application for EAPO as unfounded and a subsequent order which allows the same application.[132] In these circumstances, it seems that the issue could not be raised in the Member State of enforcement, which leaves space for future challenges. The question arises as to whether one could rely on the public policy exception, which has been preserved in EAPOR in cases of irreconcilability. Although this seems possible in some international conventions,[133] this should not be so under EAPOR. Firstly, the legislator's intention seems not to allow such interpretation, given that EU regulations generally separate the question of irreconcilability from the public policy exception. Secondly, the CJEU, when interpreting the provisions of the Brussels Convention and the Brussels I Regulation, held that the use of the 'public policy' concept is precluded when the issue in question is whether a foreign judgment is compatible with a national judgment.[134] In any case, with EAPOR's limited practical application so far,[135] this issue appears to have merely theoretical relevance.

41. Finally, the Maintenance Regulation provides that the enforcement of the decision may be refused 'if it is irreconcilable with a decision given in the Member State of enforcement or with a decision given in another Member State or in a third State which fulfils the conditions necessary for its recognition in the Member State of enforcement'.[136] This is applicable to decisions given in the Member States that are bound to the 2007 Hague Protocol, *i.e.,* every Member State except Denmark. For deci-

[125] P. Orejudo Prieto de los Mozos, *cit.*, p. 276.

[126] C. Crifò, *cit.*, p. 143.

[127] C. Crifò, *cit.*, p. 143.

[128] G. Cuniberti, S. Migliorini, *The European Account Preservation Order Regulation: A Commentary*, Cambridge, Cambridge University Press, 2018, p. 229.

[129] EAPOR, Art. 16(1).

[130] EAPOR, Art. 16(2).

[131] EAPOR, Art. 16(4).

[132] G. Cuniberti, S. Migliorini, *cit.*, p. 232.

[133] *European Council*, Report on the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, OJ C 59/1 of 05 March 1979, p. 45.

[134] CJEU, C-145/86, *Horst Ludwig Martin Hoffmann v Adelheid Krieg*, 4 February 1988, ECLI:EU:C:1988:61, para. 21; CJEU, C-700/20, *London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain*, 20 June 2022, ECLI:EU:C:2022:488, para. 78.

[135] See e.g., EFFORTS Project, Report on Croatian Case Law, available at: D2.13-Report-on-Croatian-case-law.pdf (unimi.it), p. 6; EFFORTS Project, Report on Italian Case Law, available at: D2.9-Report-on-Italian-Case-law.pdf (unimi.it), p. 70; EFFORTS Project, Report on German Case Law, available at: D2.10-Report-on-German-case-law.pdf (unimi.it), p. 1.

[136] Maintenance Regulation, Art. 21(2). In the same provision, it is added that 'a decision which has the effect of modifying an earlier decision on maintenance on the basis of changed circumstances shall not be considered an irreconcilable decision'.

sions given in Denmark, exequatur is not abolished, and in terms of irreconcilability as a refusal ground, it is the same as in Brussels I Recast.[137] In practice, this refusal ground seems to be only of limited importance as it is rarely used.[138] When comparing with the provisions in other above analysed regulations, the provision in Maintenance Regulation is surprisingly minimalistic. No additional requirements, such as the ones in EOPR, ESCPR and EEOR, are laid down. This difference, however, may be warranted by the special ways the decisions in the sphere of family law are rendered and then changed depending on the subsequent changes of the relevant facts.

D) Irreconcilable judgment of another Member State or a Third State

42. The second provision dealing with irreconcilable judgments in Brussels I Recast in Article 45(1)(d) provides that the recognition or enforcement shall be refused 'if the judgment is irreconcilable with an earlier judgment given in another Member State or in a Third State[139] involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed'. Clearly, it contains stricter conditions than in cases of conflicts with domestic judgments. Several additional requirements must be fulfilled: the conflicting judgment is given 'earlier', in a different Member State or a Third State; it involves the same cause of action; it is given between the same parties; and it fulfils the conditions required for its recognition in the Member State addressed. Due to the additional requirements, this provision bears more similarities with the respective provisions in EOR, EOPR and ESCPR.

43. The first condition refers to temporal priority – whichever judgment is given first will have priority. While the chronological hierarchy of judgments is welcome, the moment relevant for this assessment is not certain in all situations.[140] Situation is simple where both judgments are given in two different Member States, because effects of both judgments are automatically recognised and the date when recognition or enforcement is sought holds no importance. Taking into consideration the date of the commencement of the proceedings would be wrong, as Article 45(1)(d) is 'not a sanction of the violation of Article 29' on *lis pendens* (which obliges any court other than the one first seized to stay the proceedings of its own motion), and the issue of the relevant moment for assessment 'should be solved with respect to the logic followed in Article 36' (which established the automatic recognition of any judgment given in a Member State).[141] Since judgment cannot be automatically recognised before it starts producing relevant legal effects in the Member State of origin, this date (the date on which the judgment starts producing such legal effects) would be the most appropriate one for the assessment in question.[142] This date can be the same as the date on which the judgment was rendered, but need not be,[143] which of course depends on the national law of the Member State of origin.

44. For situations in which there is a Third State judgment, the question of the relevant date for the assessment of priority seems more complicated, as Third State judgments do not benefit from automatic recognition.[144] However, careful reading of Article 45(1)(d) provides a solution. Since this provision

[137] Maintenance Regulation, Art. 24(c) and 24(d).

[138] *European Commission*, Study on the application of Regulation (EU) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, Final Report, JUST/2019/JCOO/FW/CIVI/176 (2020/05), p. 56.

[139] The opposite situation of a recognition and enforcement of a Third State judgment and possible refusal for the reason of irreconcilability is outside the scope of Brussels I Recast, and subject to national (or international) law in force in the State Addressed.

[140] P. Mankowski, "Article 45", *cit.*, p. 894.

[141] P. Mankowski, "Article 45", *cit.*, p. 894.

[142] P. Mankowski, "Article 45", *cit.*, p. 894.

[143] P. Mankowski, "Article 45", *cit.*, p. 894.

[144] With an exception in cases where the Member State of enforcement offers automatic recognition to all foreign judgments, e.g. in the case of Belgium. See P. Mankowski, "Article 45", *cit.*, p. 895.

states that a judgment must fulfil the conditions necessary for its recognition, and not actually be recognised in the Member State of enforcement, the date relevant for assessment is the date when the judgment starts producing relevant legal effects which again will depend on the national law of the State of origin.

45. Once the priority is established, further conditions to be met for recognition depend on whether the judgment originates from a Member State or a Third State. If it originates from a Member State, the Brussels I Recast applies to all issues; if it originates from a Third State, conditions for recognition will be found either in national law or in an international convention applicable in the Member State addressed.[145] Once it is established that the earlier judgment is recognised, the issues of irreconcilability will of course depend only on Brussels I Recast (or another EU instrument) hence the reference is made to the above discussion.

46. Another important condition in Article 45(1)(d) is that irreconcilable judgments must be given in different Member States or a Member State and a Third State. If two irreconcilable judgments are given in the same Member State, their conflict falls outside the scope of the Brussels I Regulation and should be resolved in that Member State, in line with the available national legal remedies.[146] This was confirmed by the CJEU in *Salzgitter*.[147] This solution has been criticized by some scholars,[148] as it does nothing to prevent possible problems, such as the one in *Salzgitter*, where the defendant did try to raise his objections before the national courts, but was still blocked every time, which led to the existence of two conflicting judgments in the same Member State. It appears that such situations are still occurring in practice, as in a case before the Luxembourgish court which rejected the argument of irreconcilability based on the fact that the two judgments in question were both rendered in Belgium.[149] However, rather than being the problem of EU cross-border civil cooperation, it is one that needs to be resolved within the national legal and judicial system of the State of origin.

47. The twofold approach which differentiates between the judgments rendered in the Member State addressed and judgments rendered in any other State, was not deemed necessary in the second-generation instruments. The same provision that was mentioned above in relation to the domestic judgments applies also to judgments from other Member States or Third States. However, it departs from Article 45(1)(d) in two ways. Firstly, the conflicting judgments can also originate from the same Member State as evident from the wording itself, since the earlier judgment can be given in 'any' Member State. Secondly, the requirement is that the irreconcilability was not and could not have been raised in the Member State of origin. The objective here is clearly to avoid opportunistic behaviour of debtors who can raise the same ground in the proceedings in different Member States.[150] While useful, the second requirement can also result in some difficulties for the Member State of enforcement in certifying whether there was an opportunity to raise objections in the Member State of origin. Then again, this is the issue to be resolved by the national law of the respective Member State of origin.

48. It is visible from the analysis above that Article 45(1)(d) is mostly in line with the singular refusal ground in the second-generation instruments. Even so, the second-generation instruments still opted for a modernised approach in view of the inclusion of irreconcilable judgments originating from the same Member State, and in view of the added requirement that irreconcilability was not and could not have been raised in the Member State of origin. As already noted above, the specific features of

[145] P. Mankowski, "Article 45", *cit.*, p. 895.

[146] P. Mankowski, "Article 45", *cit.*, p. 891.

[147] CJEU, C-157/12, *Salzgitter Mannesmann Handel GmbH v SC Laminorul SA*, 26 September 2013, ECLI :EU:C:2013:597, para. 40.

[148] See A. Briggs, *Civil*…, *cit.*, p. 744; S. Leible, *cit.*, p. 1079; G. Mäsch, "EuGVVO: Keine Anwendbarkeit von Art. 34 Nr. 4 auf unvereinbare Entscheidungen aus demselben Mitgliedstaat", *Europaische Zeitschrift fur Wirtschaftsrecht*, 2013, p. 905.

[149] EFFORTS Project, Report on Luxembourg Case Law, available at: Microsoft Word - 24NovDefReportLuxembourgischCase Law.docx (unimi.it), p. 5.

[150] P. Orejudo Prieto de los Mozos, *cit.*, p. 277.

EEOR, EOPR and ESCPR do not warrant such different solution as opposed to Brussels I Recast. Actually, both Brussels I Recast and the second-generation instruments overlap in the scope of application *ratione materiae* and, thus, the second-generation instruments refer to Brussels I Recast in terms of jurisdiction.[151] Moreover, they all share the same goal of facilitating the free movement of judgments. In particular, the refusal grounds also serve the same purpose and thus warrant the aligned interpretation. Finally, the provision on irreconcilability refusal ground in the second-generation instruments does not in any way simplify the necessary conditions for irreconcilable judgments; actually, the conditions may even be stricter in some instances, as especially visible when comparing requirements of Article 45(1)(c) with the refusal ground in EEOR, EOPR and ESCPR. While it is true that these regulations represent different stages of the development of EU rules on free movement of judgments, [152] at this point it would be appropriate to consider all of the rules and incorporate the best approaches into Brussels I Recast as the main instrument of reference.

V. Proposed reform

49. Irreconcilability as a refusal ground could be seen as the last one standing in some of the more 'ambitious' regulations in terms of the rules on enforcement. From the example of EAPOR, however, it can also be seen that it is not irreplaceable. Since the case law shows that irreconcilability is rarely used as a ground of refusal in practice, the possibility for its abolishment is even greater. However, irreconcilable judgments can still occur, regardless of the rules on the coordination of the proceedings in substance through the rules of *lis pendens*. Thus, it is appropriate that 'checks' remain at the enforcement stage as well. Since the case law analysis does not indicate that this refusal ground is being used as a means to prolong the procedure in any way, it can also be concluded that it does not have a particular negative effect in terms of cost-effectiveness and lengthiness of the cross-border enforcement procedure.

50. Instead of aiming for its abolition, attention should therefore be paid to the ways in which it may be improved. Important differences can be detected among the provisions of the selected regulations, particularly between Brussels I Recast and the rest of the regulations. This can, in turn, create interpretational issues. As there is no reason as to why such differential treatment would be necessary, a possibility of alignment of all of these provisions should therefore be taken into account.

51. The above comparison between the provisions of Brussels I Recast, *i.e.*, Articles 45(1)(c) and 45(1)(d), and the provisions of the 'second-generation' instruments, shows that the most prominent issue is the outdated refusal ground of irreconcilability in the Brussels I Recast. This regulation differentiates two situations dealing with irreconcilable judgments, based on whether the judgment seeking enforcement is in conflict with a domestic judgment or a judgment emanating from different Member State or a Third State. In that sense, Article 45(1)(c) gives priority to domestic decisions, even when they were not actually given prior to the judgment whose enforcement is sought. The regulation also intentionally leaves out the situations when both conflicting judgments were rendered in the same Member State, which once again only shifts the problem to the national sphere.

52. There seems to be no justification for retaining priority status for domestic judgment, regardless of whether such judgment was given before or after the judgment whose enforcement is sought. Likewise, there is no justification for stricter requirements in Article 45(1)(d) for irreconcilability for judgments other than domestic. However, the latter provision still does not deal with conflicting judgments originating from the same Member State, nor does it provide for the condition that the irreconcilability was not (and could not have been) raised in the Member State of origin, which helps to prevent the opportunistic behaviour of debtors and minimises the possibility of raising the same ground over again.

[151] E.g. in terms of the rules on jurisdiction. See EOPR, Art 6 and ESCPR, Annex I.
[152] S. Huber, "Koordinierung…, *cit.*, p. 428.

53. Therefore, merging Articles 45(1)(c) and 45(1)(d) in a single irreconcilability refusal ground would be opportune. Such ground could reflect the provisions of EEOR EOPR and ESCPR, which seem to be more in line with the current EU principles, especially in view of the principle of automatic recognition of judgments within the EU. These instruments were on the right track when introducing new, modernised version of the provision on the irreconcilability as a refusal ground. It would be a missed opportunity not to include similar type of provision into Brussels I Recast as well, considering that it is still the main instrument for recognition and enforcement of judgments in civil and commercial matters in the EU, while EEOR, EOPR and ESCPR have only had limited success. Additionally, having the same (or nearly the same) provisions on irreconcilability refusal ground in all analysed regulations would facilitate uniform application before the Member State courts, and avoid the unnecessary differential treatment of irreconcilable judgments among the selected regulations. Such 'egalitarian' approach[153], *i.e.* consolidation of irreconcilability as ground of refusal, could contribute to legal certainty and effective enforcement of judgments in the EU.[154] After all, these regulations deal with similar questions in different ways, sometimes for no apparent reason. Thus, a modernisation in view of the proposal suggested above is welcome.

[153] K. Kerameus, *Enforcement in the International Context*, Collected Courses of the Hague Academy of International Law, vol. 264, 1997, p. 107.

[154] S. Huber, "Koordinierung…, *cit.*, p. 428.

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ENFORCEMENT AND ENFORCEABILITY OF COURT SETTLEMENTS IN THE EUROPEAN UNION

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Abstract Court settlements, as instruments of amicable dispute resolution, represent a flexible procedural tool that also serves as an enforcement title document. As such, these instruments are known in all of the Member States of the European Union (EU) and are included under the rules of EU's private international law regulations, which offer a legal basis for their cross-border enforcement. However, challenges persist due to varying regulation and understanding of court settlements at the national level, as well as due to the ambiguities in the EU's cross-border enforcement rules, leading to potential misinterpretations in practice. Thus, this paper firstly aims to explore what exactly constitutes a 'court settlement', both at the national and at the EU level. Based on this definition, it then examines the EU regulatory framework, specifically within the selected EU regulations, to assess whether further improvements are necessary. The answers to the research questions are found through case law analysis, exploration of academic literature, and particularly on the basis of the relevant provisions of the EU regulations that were selected for this research.

Keywords
court settlements, European Union, Brussels I Recast, cross-border enforcement, private international law

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1 Introduction

Court settlements represent instruments of amicable resolution between the parties of a certain legal dispute (Anzenberger, 2020: 150; Anzenberger, 2023: 333). As such, they can be a more flexible and effective procedural tool than a judgment, given that the parties' legal relations can be regulated more quickly, and the deadlines for the relevant performance prescribed in a court settlement may be determined as it suits the contracting parties (Vojković, 2019: 965). Although known in all of the Member States, such settlements are regulated differently under different national laws, which means that the procedure for concluding a court settlement, as well as its form and effects, will vary (Merrett, 2023: 90). Differences can also be found in terms of popularity of this type of dispute resolution in practice – while in some Member States, e.g. in Austria, court settlements represent a popular way of resolving litigation (Anzenberger, 2020: 150), in others, such as France or Belgium, they are extremely underrepresented in practice (Chang and Klerman, 2022: 82). In any case, court settlements may be viewed as potential substitutes for judgments, which are usually more prevalent in practice.

In the cross-border circulation between courts, i.e., in the rules provided in the relevant EU regulations, court settlements are given much less consideration than judgments and may seem to be mentioned only as an 'afterthought'. This could be unfortunate, considering the divergences among national systems of different Member States. On the other hand, such regulation may be explained by the limited effect of court settlements in practice. Additionally, it would be expected that the parties that conclude a court settlement will willingly fulfil their obligations.

From a legal policy perspective, it is necessary to have a clear understanding of 'court settlement', both at the national and the EU level – especially considering that the relevant EU rules, particularly those on recognition and enforcement, must be made by taking into account the national peculiarities which are especially stark with regard to enforcement. Moreover, it is necessary that the rules of the relevant regulations offer an adequate way for the easy enforcement of court settlements abroad, in the same (or at least similar) way as they do with judgments. Thus, this paper first aims to answer the following questions: what is a 'court settlement' under the national laws of selected Member States, and what is a 'court settlement' under the selected EU regulations? On the basis of the answer to these questions, the paper will then

turn to the issue of regulation at the EU level. In that sense, the paper will analyse whether the regulations selected for this research offer adequate solutions for the enforcement of court settlements, or whether some additional improvements are needed.

The answers to these questions will be found through exploration of academic literature, analysis of the Court of Justice of the EU (CJEU) and national case law (where possible), and particularly on the basis of provisions of the EU regulations selected for this research. In that sense, the research will focus on the regulations on the cross-border collection of monetary claims, as these instruments represent some of the main regulatory sources on the enforcement of court settlements. The regulations include:[1] Brussels I Recast;[2] European Enforcement Order Regulation (EEOR);[3] European Small Claims Procedure Regulation (ESCPR);[4] and Regulation on maintenance obligations (Maintenance Regulation).[5] In addition, the paper will adopt a comparative approach in certain sections, aiming to highlight the

[1] Two regulations which are not included in this research, but also fall under the scope of those regulating cross-border collection of monetary claims are Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, OJ 2006 L 399/1 and Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters, OJ 2014 L 189/59. However, the issue of enforcing court settlements as such will not have much bearing in regards to these regulations. These are aimed at issuing specific EU documents – European Order for Payment or European Account Preservation Order. Thus, court settlements as such cannot be enforced under these regulations; they can, however, serve as evidence and a basis for issuance of the specific EU orders, i.e., European Order for Payment or European Account Preservation Order.

[2] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition of judgments in civil and commercial matters (recast), OJ 2012 L 351/1 (Brussels I Recast).

[3] Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, OJ 2004 L 143/15 (EEOR).

[4] Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, OJ 2007 L 199/1 (ESCPR).

[5] Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, OJ 2009 L 7/1 (Maintenance Regulation). Maintenance Regulation is thus the only instrument selected for this research that relates to family matters, as opposed to the rest of the regulations in civil and commercial matters. This was done as its scope relates directly to monetary claims, and was previously included under the Brussels I Regulation.

peculiarities of court settlements under different national laws. In that sense, Chapter 2.1. will focus on the national laws of Germany, Italy, Croatia, and Slovenia[6] in order to assess which are the main elements that all of these Member States share in their national definitions of 'court settlement'. The remainder of the paper may occasionally feature relevant national examples, including those originating from Member States outside of the previously mentioned ones. For the purpose of comparative approach, the national reports and case-law from relevant research projects, including *IC2BE*,[7] *EFFORTS*[8] and *Diversity of Enforcement Titles in cross-border Debt Collection in EU*,[9] will be used, in addition to the relevant national laws itself.

The paper will be structured as follows: following the Introduction, in Chapter 2, a definition of 'court settlement' will be sought and discussed – both at the national and the EU level. In Chapter 3, the analysis will turn to the issue of their cross-border recognition and enforcement, which will be explored primarily based on the provisions of the selected regulations. Finally, Chapter 4 will discuss the effect of different definitions of 'court settlement' at the EU level and at the national level, and summarise *de lege ferenda* proposals for better regulation in the selected EU regulations.

2 Defining 'court settlement'

[6] These Member States were selected on the basis of their differing features, bearing in mind also the language of the legal sources. Primarily, these States differ as to whether they provide for special implementation laws on the relevant EU regulations or not. Furthermore, unlike, for example, Croatia, Germany adopted the strategy of synchronising EU instruments with pre-existing domestic ones. Additionally, the judicial systems of Germany and Italy are otherwise intensely researched on the topic of enforcement of judgments, whereas Croatian and Slovenian are not, leaving their special features comparatively unnoticed.

[7] 'Informed Choices in Cross-Border Enforcement'; financed by the European Union under the Civil Justice Programme 2014-2020. Database available at: IC2BE (uantwerpen.be) accessed June 9, 2025.

[8] 'Towards more Effective enforcement of claims in civil and commercial matters within the EU'; Project JUST-JCOO-AG-2019-881802; with financial support from the Civil Justice Program of the European Union. Reports available at: Collection of national case-law - Efforts (unimi.it) accessed June 9, 2025.

[9] 'Diversity of Enforcement Titles in Cross-Border Debt Collection in EU '; JUST-AG-2018/JUST-JCOO-AG-2018; funded by Justice Programme of the European Union. Reports available at: PF - National reports (um.si) accessed June 9, 2025.

In order to comprehend the issues that arise in the process of recognition and enforcement of court settlements in the EU, a definition of the notion of 'court settlement' must be established. Thus, the notion in the national laws of different Member States and the notion under the EU regulations will be analysed in turn.

2.1 'Court settlement' in selected Member States

In Germany, a 'court settlement' (*Prozessvergleich*) can be defined as a contract by which a dispute or uncertainty of the parties with regard to a legal relationship is removed by way of mutual concession.[10] It is also a procedural contract by which the procedural situation is changed, i.e., the proceedings are terminated (Lorenz, 2000: 1). Thus, a German settlement has a dual nature (Paulus, 2017: 257),[11] which is interpreted in different ways – while some believe that the two contracts are completely independent and their effectiveness is to be assessed separately, others believe both contracts are inextricably linked (Lorenz, 2000: 1). This dual nature of a settlement is similarly acknowledged in Croatian legal theory (Vojković, 2019: 959) and practice.[12] Under Croatian law, a 'court settlement' (*sudska nagodba*) is an agreement between the parties, entered in the form of the minutes of the court proceeding and signed by the parties themselves (Kunštek et al., 2020: 44-47).[13] On the other hand, neither Slovenian nor Italian legislation provide an explicit definition of a 'court settlement' (*sodna poravnava/conciliazione*).

In order to determine what are the common elements that constitute 'court settlement' in the selected jurisdictions (as well as to detect any peculiarities), the following will be assessed: firstly, the requirements for concluding a court settlement in each of the selected jurisdictions; secondly, the procedure for concluding a court settlement; thirdly, the effects of court settlements.

[10] Art 779 Bürgerliches Gesetzbuch (BGB).

[11] See also BGH, Urteil v 14 July 2015 – VI ZR 326/14, NJW 2015.

[12] Supreme Court of the Republic of Croatia, Rev. 2351/1992-2; County court of the Republic of Croatia, Gž-4983/13-2.

[13] Croatian Civil Procedure Act (Zakon o parničnom postupku), Narodne novine 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 96/08, 123/08, 57/11, 148/11, 25/13, 89/14, 70/19, 80/22, 114/22 (2022) (Croatian CPA), arts 321, 322. See also County court of the Republic of Croatia, Gž-4983/13-2.

2.1.1 Requirements

According to German law, a number of requirements have to be met for a settlement to be concluded. As German theory classifies court settlements as mixed contracts, both material and procedural conditions must be met in order for a settlement to become valid. Thus, a court settlement must be concluded between the mutually consenting parties; about the subject matter of the dispute; before a court or a conciliation body; during a pending proceeding (Lorenz, 2000: 1; Paulus, 2017: 258-259). In addition, all requirements for an effective legal transaction according to substantive law must also be met (Lorenz, 2000: 2). Croatian legal theory also acknowledges that general conditions must be met for a court settlement to be valid: the court settlement should be concluded before the competent court; the parties should have legal interest and legal capacity for the conclusion of the settlement; the subject matter and content of the settlement must be admissible; the settlement must be concluded within the framework of legal relationships that the parties can freely dispose of; and the settlement must be in accordance with mandatory rules and rules of morality (Vojković, 2019: 963).

On the other hand, Italian legislation provides no specific requirements for its conclusion. In regard to the Slovenian 'court settlement', the law only provides that the parties cannot conclude a settlement regarding the claims that they cannot dispose of.[14]

2.1.2 Procedure

During the proceedings in all of the selected Member States, the courts will usually remind[15] the parties of the possibility of concluding a court settlement, or even urge[16]

[14] Art 306(4) Slovenian Civil Procedure Act (Zakon o pravdnem postopku), Uradni list RS, št. 73/07 – uradno prečiščeno besedilo, 45/08 – ZArbit, 45/08, 111/08 – odl. US, 57/09 – odl. US, 12/10 – odl. US, 50/10 – odl. US, 107/10 – odl. US, 75/12 – odl. US, 40/13 – odl. US, 92/13 – odl. US, 10/14 – odl. US, 48/15 – odl. US, 6/17 – odl. US, 10/17, 16/19 – ZNP-1, 70/19 – odl. US, 1/22 – odl. US in 3/22 – ZDeb (Slovenian CPA).

[15] See Art 321(3) Croatian CPA.

[16] For Germany, see Art 278(1) Zivilprozessordnung in der Fassung der Bekanntmachung vom 5. Dezember 2005 (BGBl. I S. 3202; 2006 I S. 431; 2007 I S. 1781), die zuletzt durch Artikel 19 des Gesetzes vom 22. Februar 2023 (BGBl. 2023 I Nr.51) geändert worden ist (ZPO); for Italy, see Arts

them to amicably settle the dispute. In Germany, the main trial will start with a conciliatory hearing during which the judge will seek to find an amicable agreement between the parties, unless an attempt at conciliation has already been made before or if the discussion on potential conciliation seems pointless (Berlemann and Christmann, 2019: 147).[17] Similarly, in Italy, at the first appearance hearing, the court may fix a date for a formal conciliation hearing. The attempt at conciliation may be renewed at any time during proceedings.[18]

A settlement itself may be concluded in different ways. In Germany, it can be made before a court and declared in the minutes of the hearing; by the parties submitting to the court a written proposal for a settlement; or by the parties' acceptance of a proposed written settlement by the court.[19] If the settlement was concluded by means of such written proposals, the court will determine the conclusion and content of the settlement by an order.[20] In any case, the settlement will be considered as concluded when the parties agree on the content (Lorenz, 2000: 1). It is at this point that such settlement starts producing effects. A settlement may be concluded subject to revocation of confirmation, in which case there is a suspensive condition of effectiveness until the end of the revocation period (Lorenz, 2000: 2; Leibniz Universität Hannover et al., 2020: 123).

In Italy, a settlement may be reached either before a judge, i.e., in court, or by an out-of-court agreement of the parties, through their respective lawyers (Layton and Mercer, 2004: 330). If a settlement is reached in court, it will be recorded in the *processo verbale*, i.e., in the minutes of the proceedings (Layton and Mercer, 2004: 320).[21] The minutes are then signed by the parties, by the judge and by the court clerk (Layton and Mercer, 2004: 330). In case of an out-of-court agreement, it will have to be approved by a court in order to qualify as 'court settlement' under the EU regulations.

183, 185, 185-bis Codice di procedura civile, Regio decreto 28 ottobre 1940, n. 1443 aggiornato alla Legge n. 137/2023 (CPC); for Slovenia, see Art 279c Slovenian CPA.

[17] Art 278(2) ZPO.

[18] Art 185 CPC.

[19] Arts 118(1), 278(6), 492(3) ZPO.

[20] Art 278(6) ZPO.

[21] Art 199 CPC.

Under Croatian law, as already visible from the definition given above, a court settlement is concluded by the parties before a court. The settlement is entered in the form of the minutes of the court proceeding, which are then signed by the parties. The same procedure may also be found in Slovenian law.[22] Slovenian Civil Procedure Act additionally prescribes that, similarly as in Germany, a court settlement may also be concluded by a written settlement proposal prepared by a judge and sent to the parties; in that case, the settlement will be concluded after the parties sign such proposal.[23]

2.1.3 Effects

The last aspect that influences the notion of 'court settlement' at the national level is the effect that such settlement produces under the law of the Member State of its origin. After an analysis of the laws of Germany, Italy, Croatia and Slovenia, it was found that court settlements emanating from those jurisdictions may produce the following effects: termination of litigation; finality; enforceability; and *res iudicata* effect.

The first effect, common to all the selected national legal systems, is the effect of termination of litigation (Lorenz, 2000: 2; Vojković, 2019: 962). Naturally, the parties are free to conclude a settlement regarding the subject of their dispute during the entire procedure before the court[24] – as mentioned above, conclusion of a settlement is even encouraged. If a settlement is achieved, the legal effect of ending the litigation occurs at the moment that such settlement is concluded. This effect of termination of litigation is direct – no additional action, such as a statement on the withdrawal of the claim, is necessary (Vojković, 2019: 963; Lorenz, 2000: 2).[25]

The second effect is the effect of finality. In other words, after a court settlement is concluded, it becomes final and thus legally binding for the parties. The moment when a court settlement starts producing the effect of finality should usually be the

[22] Art 307 Slovenian CPA.

[23] Art 307 Slovenian CPA.

[24] See e.g., Art 321(1) Croatian CPA.

[25] Also visible from Arts 185, 199 CPC, and Arts 306-309a Slovenian CPA.

same as when it starts producing the previous effect, i.e., the effect of termination of litigation.[26]

In terms of the third effect, a court settlement fulfilling the necessary requirements and concluded in the way prescribed by the national procedural law of a particular Member State will acquire the effect of enforceability. In that vein, court settlements, as understood under the laws of Germany, Italy, Croatia and Slovenia, will all constitute an enforcement title document (Layton and Mercer, 2004: 320; Giussani, 2018: 15).[27] The moment in which a court settlement becomes enforceable will depend on the procedural rules of the Member State in question. For example, a Croatian court settlement will become enforceable at the same moment as when it starts producing the two previously noted effects, i.e., when the court minutes in which the content of the settlement is entered has been signed by the parties, on the assumption that the claim is due (Vojković, 2019: 965). According to the Slovenian Enforcement Law, the settlement becomes enforceable when the claim arising from the settlement is due.[28] In Italy, when the parties reach a settlement, a report of the agreement is drafted, which constitutes an enforceable title.[29] On the other hand, according to ZPO, a German court settlement will become enforceable after it has been concluded and after it has been certified as an enforceable execution copy of the court settlement (Leibniz Universität Hannover et al., 2020: 123).[30] The enforceable copy is issued by the court clerk of the registry of the court (Leibniz Universität Hannover et al., 2020: 123).

Finally, the fourth effect that court settlements may produce is the *res indicata* effect. Out of the four selected Member States, such an effect was detected in Croatian and Slovenian court settlements, and is reflected in their national laws.

[26] As reflected in all of the relevant provisions of ZPO, CPC, Slovenian CPA and Croatian CPA, that were previously mentioned above.

[27] Art 794(1) ZPO; Arts 185, 322 CPC; Art 23 Croatian Enforcement Act (Ovršni zakon), Narodne novine 112/12, 25/13, 93/14, 55/16, 73/17, 131/20, 114/22, 06/24; Art 17 Zakon o izvršbi in zavarovanju, (Uradni list RS, št. 3/07 – uradno prečiščeno besedilo, 93/07, 37/08 – ZST-1, 45/08 – ZArbit, 28/09, 51/10, 26/11, 17/13 – odl. US, 45/14 – odl. US, 53/14, 58/14 – odl. US, 54/15, 76/15 – odl. US, 11/18, 53/19 – odl. US, 66/19 – ZDavP-2M, 23/20 – SPZ-B, 36/21, 81/22 – odl. US in 81/22 – odl. US).

[28] Art 20 Zakon o izvršbi in zavarovanju.

[29] Arts 185, 199 CPC.

[30] Arts 795, 724(1) ZPO.

Under Croatian law, a court settlement is, due to its legal nature, in certain aspects equated to a final court judgment (Vojković, 2019: 963).[31] It acquires the effect of *res iudicata* at the moment of its conclusion, i.e., when the parties sign the minutes of the proceeding. Afterwards, there is no possibility of re-litigation of a claim between the same parties (*ne bis in idem*). This *res iudicata* effect that is awarded to Croatian court settlements is not expressly determined by the provisions of the Croatian legal acts; however, it is derived from the interpretation of the provisions of civil procedural law. Primarily, the Croatian Civil Procedure Act prescribes that the court *ex officio* monitors whether proceedings are pending in a case on which a court settlement was previously concluded. Any lawsuit filed on the subject of the dispute in which the court settlement was concluded will be dismissed as inadmissible (Vojković, 2019: 966).[32] Moreover, if a decision has been made on a claim on which a court settlement has already been concluded, this constitutes an essential violation of the provisions of civil procedure, and it is one of the reasons for contesting the court judgment.[33]

The effects awarded to Slovenian court settlements overlap with the effects awarded to Croatian court settlements.[34] As confirmed by Slovenian courts, court settlement is *res transacta*, which enjoys the same effect as *res iudicata*.[35] In other words, the procedural objection of *res iudicaliter transactae* is the same as the more commonly known *res iudicatae* objection (Vojković, 2019: 964; Kunda and Tičić, 2022: 174). This holds true both in Slovenian and Croatian law. Thus, the same rules apply in regards to settlements as in regards to final judgments (Rijavec, 2023: 56). This makes court settlements and judgments much more similar in these legal systems, as *res iudicata* effect is usually given only to judgments. Such effect will thus be of particular importance for distinguishing court settlements from judgments at the EU level, which will be further discussed below.

[31] See also County court of the Republic of Croatia, Gž-4983/13-2.

[32] Art 323 Croatian CPA.

[33] Art 354(2)(9) Croatian CPA.

[34] See Arts 306-309a Slovenian CPA.

[35] Republika Slovenija, Vrhovno sodišće, Sklep II Ips 877/2009, ECLI:SI:VSRS:2012:II.IPS.877.2009 (2012), no. 8; Republika Slovenija, Vrhovno sodišće, Sklep II Ips 268/2011, 03. 04. 2011, ECLI:SI:VSRS:2014:II.IPS.268.2011 (2011), nos. 8-10.

In terms of German and Italian settlements, these do not produce the *res iudicata* effect (Lorenz, 2000: 2; Leibniz Universität Hannover et al., 2020: 120; Ferrari, 2014: 91). This means that, while they resolve the dispute and may have enforceable terms, they do not preclude the re-litigation of the same issues unless the parties adhere to the terms of the agreement. In other words, while these settlements resolve the legal dispute and may create binding substantive legal agreements, they do not carry the formal legal status of *res iudicata*.

2.2 'Court settlement' in the EU

The notion of 'court settlement' under the EU regulations is subject to Euro-autonomous interpretation (Kunda and Tičić, 2022: 171), and is defined as 'a settlement which has been approved by a court of a Member State or concluded before a court of a Member State in the course of proceedings'.[36] Such a definition represents a certain development from the previous definition that can be found in the previous version of the Brussels I Regulation,[37] which referred to court settlements only as settlements, which have been approved by a court of a Member State in the course of proceedings.[38] Although the change was not significant, it was done in order to clarify the provision, as well as in view of other changes to the system of enforcement in Brussels I Recast (Kramer, 2023: 953).

Following the author's previous research on this topic in the context of the Twin Regulations,[39] the following paragraphs are dedicated to these elements of the definition: agreement between the parties; involvement of a court; and distinction from judgments (Kunda and Tičić, 2022: 170-175).

[36] Art 2(b) Brussels I Recast. Maintenance Regulation also employs the same definition, while also adding that the settlement must be in matters relating to maintenance obligations; see Art 2(1)(2) Maintenance Regulation. A similar definition (with some additions) is also employed in Art 23a ESCPR.
[37] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ 2001 L 12/1 (Brussels I Regulation).
[38] Art 58 Brussels I Regulation.
[39] Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, OJ 2016 L 183/1; Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships, OJ 2016 L 183/30.

2.2.1 Agreement between the parties

The first part of the definition provides that a settlement must be concluded between the parties. In other words, the parties must come to a mutual agreement in regards to a particular legal issue. This requirement, although set broadly, allows us to distinguish settlements from other types of documents. This delineation was established early on in *Solo Kleinmotoren* ruling, where the CJEU made a distinction between court settlements and judgments, stating that 'settlements in court are essentially contractual in that their terms depend first and foremost on the parties' intention',[40] while judgments must 'emanate from a judicial body of a Contracting State [now, Member State] deciding on its own authority on the issues between the parties.'[41] In that vein, 'the authority of the law does not lie behind a court settlement as it does in the case of a court judgment'.[42] Thus, 'settlements' are at their core contractual instruments established on the basis of the parties' intentions.

However, a settlement, i.e., a private agreement between the parties, does not equal a 'court settlement'. In order to qualify as such, a court's involvement is indispensable, as reflected in the second part of the definition.

2.2.2 Involvement of a court

The second requirement for the characterisation of 'court settlement' allows us to distinguish settlements in the sense of private agreements between the parties from actual court settlements. As it is clear from literal interpretation, the court's involvement is a necessity for the latter. Such involvement will relate to one of the two possibilities: either to *ex post* approval of a settlement that was reached between the parties outside of court proceedings; or to the conclusion of a court proceeding by an agreement between the parties, rather than the court's decision. With regard to the former, a settlement reached outside of a court will have to be in accordance with domestic law and formally approved by the court.[43] Here, the court's

[40] Case C-414/92 *Solo Kleinmotoren GmbH v Emilio Boch* (1994) EU:C:1994:221, no. 18.

[41] *Solo Kleinmotoren*, no. 17.

[42] Opinion of Advocate General Gulmann, Case C-414/92 *Solo Kleinmotoren GmbH v Emilio Boch* (1944) EU:C:1994:110, no. 29.

[43] Art 2(b) Brussels I Recast; Art 24(1) EEOR; Art 23a ESCPR; Art 2(1)(2) Maintenance Regulation.

involvement does not consist merely of rubber-stamping; instead, an active review of the settlement is necessary (Kramer, 2023: 954). In regard to the latter, such settlement will often be the result of a judicial attempt to resolve the case brought before the court through a mutual agreement (Kramer, 2023: 953). As shown above, many Member States actually oblige their courts to urge the parties to try to find an amicable solution to their dispute. Even if the parties initially refuse to settle, this may still happen afterwards in the course of the procedure before the court. In that vein, parties may eventually resort to a settlement due to financial pressure, excessive length of court procedure, reputation damage or similar issues.

2.2.3 Distinction from judgments

Despite the two requirements elaborated above, the definition of 'court settlement' in the instruments of EU private international law has previously been described as 'vague' and 'rather suboptimal from the legislative point of view' (Anzenberger, 2020: 152; Anzenberger, 2023: 338). A first criticism can be related to the usage of a circular definition (Anzenberger, 2020: 152; Anzenberger, 2023: 338), which is also used when defining 'judgment'.[44] This choice, while leaving space for difficulties in interpretation, is understandable as both definitions were drafted with the intention to include all of the different types of decisions that can be found in the national systems of the Member States. The second criticism points to the fact that 'there are no positive criteria for identifying what legal acts may be considered a court settlement' (Anzenberger, 2020: 152; Anzenberger, 2023: 338). Some answers to this issue may be found in the CJEU case law, as shown above, as well as in the national laws themselves, as most of the Member States are well-acquainted with the notion of court settlement; therefore, a more detailed definition may seem redundant. Regardless of these reasons, the definition does leave room for certain examples of national instruments which fall somewhere between a 'court settlement' and a 'judgment'.

The most prominent examples of such instruments are the so-called 'consent judgments'. While this term originates from the concept in English law,[45] these types

[44] See e.g., Art 2(a) Brussels I Recast; Art 4(1) EEOR.
[45] Opinion of Advocate General Gulmann, no. 29.

of judgments can also be found under the laws of Member States such as Belgium, Luxembourg or Ireland (Merrett, 2023: 90). Such 'consent judgments', although similarly resulting from the parties' intention to conclude an agreement, can produce the effect of *res iudicata*, which is not accorded to court settlements as understood under the EU notion (Rijavec, 2023: 46; Kunda and Tičić, 2022: 173; Briggs, 2021: 755; Hess, Pfeiffer and Schlosser, 2007: 277; Layton and Mercer, 2004: 869). Instead, such effect is regularly accorded to 'judgments'. This differentiation has been noted by AG Gulmann in the *Solo Kleinmotoren* opinion, where he dismissed the arguments made by some of the parties claiming that these two different ways of dispute resolution differ only in minor details, as well as the arguments claiming that the result of both court settlements and consent judgments was the same in practice.[46] Afterwards, the inclusion of 'consent judgments' under the notion of 'judgment' instead of 'court settlement', as understood under the EU private international law regulations, was also explicitly confirmed in the Heidelberg report (Hess, Pfeiffer and Schlosser, 2007: 277).

With regard to CJEU rulings, since the aforementioned *Solo Kleinmotoren* ruling, there has been little case law specifically addressing the effects of court settlements. This is an unsurprising trend, given the general scarcity of case law on settlements as opposed to judgments, as well as the expectation that a settlement ordinarily precludes further litigation. Nonetheless, occasional references to the principle of *res iudicata* in other CJEU rulings may suggest that such effects are typically reserved for judgments.[47] In contrast, according to scholarly writings, the view that only judgments (and not court settlements, at least as understood in the EU context) should carry such effect has been reaffirmed over the years (Hess et al., 2024: 2-3; Tičić, 2024: 627; Tičić, 2024a: 570; Hess, 2022: 5-6; Kunda and Tičić, 2022: 173).

The argument that court settlements lack *res iudicata* effect is persuasive, particularly given how the system of recognition and enforcement in the selected EU instruments treats judgments. In that vein, judgments can be refused enforcement if they clash with another judgment.[48] Court settlements, on the other hand, benefit

[46] *Ibid.*, no. 30.

[47] See, e.g., Case C-700/20, *London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain* (2022) EU:C: 2022:488, nos 74-80.

[48] Art 45(1)(c) and (d) Brussels I Recast; Art 21 EEOR; Art 22 ESCPR; Art 21(2) and Art 24(c) and (d) Maintenance Regulation.

from a far more restrictive approach: under the Brussels I Recast, they may only be refused enforcement if they violate public policy,[49] while EEOR does not allow for any refusal grounds at all.[50] This suggests that court settlements are not meant to have *res iudicata* effect; otherwise, the system would be inconsistent, as outcomes based on party agreements would escape a rule meant to prevent conflicting decisions (Kunda and Tičić, 2022: 173-174). Such interpretation supports the EU's goal of a coherent judicial space where enforceable rights don't contradict across borders. In light of the preceding analysis of the notion of 'court settlement', both under the laws of selected Member States and under EU law, and in line with the established findings in academic literature, it becomes evident that the documents referred to as court settlements in the Croatian and Slovenian legal systems are, in fact, more accurately classified as 'consent judgments'. As demonstrated throughout this discussion, these instruments are distinctive precisely because they produce the effect of *res iudicata* – a legal consequence that, under EU private international law, is reserved exclusively for judgments. This doctrinal and practical distinction has been recognised in academic commentary and is also supported (though less overtly) by the jurisprudence. Thus, for the purposes of recognition and enforcement under the relevant EU regulations, Croatian and Slovenian 'court settlements' must be regarded as 'judgments' or 'decisions'.' Accordingly, it may be inferred that any national instrument that produces *res iudicata* effect cannot be characterised as 'court settlement' in the EU private international law regulations selected for this research.

3 Enforcement of court settlements

After determining what constitutes a 'court settlement' in the EU and in the Member States, the analysis will now turn to the process of enforcement of court settlements under the regulations selected for this research. As visible from the overview above, while the general definition of 'court settlement' may be fairly similar in the regulations and in the Member States, the effects these settlements produce can differ significantly, so much so that some national 'court settlements', as noted above, will not be classified as such for the purposes of enforcement under the EU regulations. In view of these differences, it is important to question whether the rules provided in the regulations adequately regulate the issue of cross-border

[49] Art 58(1) and Art 59 Brussels I Recast.
[50] Art 24 EEOR.

enforcement of court settlements, or do such rules leave space for problems in practice. This question will be answered based on the following analysis of different steps of the procedure for cross-border enforcement of court settlements.

3.1 Recognition of court settlements under selected regulations

Instead of moving directly to the question of enforcement of court settlements, the preceding step of recognition warrants some attention. To start with, it may be observed that the issue of recognition of court settlements is regulated differently in the selected regulations. In ESCPR and Maintenance Regulation, court settlements will be recognised under the same conditions as judgments.[51] On the other hand, under Brussels I Recast and EEOR, it seems that court settlements are not subject to recognition.

In terms of Brussels I Recast, this is visible from the provisions on court settlements, which otherwise refer only to the provisions on the enforcement of judgments, and not also the recognition.[52] Similarly, in terms of EEOR, its Article 24(3) refers to the provisions on the enforcement of judgments, while excluding referral to Article 5 on automatic recognition. This would mean that the status between the parties that is agreed in the settlement will not be recognised as such. The reason for this choice may be that the court settlements lack the recognisable authoritative effects that are regularly displayed by judgments (Layton and Mercer, 2004a: 1047).

Even if such reasoning is accepted, it remains questionable why this choice was made only in relation to some instruments – if a court settlement is recognised under ESCPR and under Maintenance Regulation, why is the same not possible under Brussels I Recast or EEOR? Actually, even the Heidelberg Report on the application of Brussels I Regulation noted that court settlements 'must be recognised in all Member States' (Hess, Pfeiffer and Schlosser, 2007: 276), which is questionable given the abovementioned provisions which clearly disallow such a possibility. Such lack of the possibility of recognition may also weaken the 'attractiveness' of concluding a court settlement in cross-border cases (Anzenberger, 2023: 347). It is also problematic that a certain case may fall under the scope of different regulations,

[51] Art 23a ESCPR; Art 48(1) Maintenance Regulation.

[52] Arts 58, 59 Brussels I Recast.

e.g., under both ESCPR and Brussels I Recast/EEOR;[53] however, the possibility of recognition of a court settlement would then be subject to different recognition regimes, depending on the regulation in question, which may lead to legal uncertainty (Anzenberger, 2023: 347). Moreover, court settlements are usually subject to less stringent conditions for their enforcement as opposed to judgments.[54] It seems counterintuitive to simplify the enforcement process on the one hand, but remove the possibility of recognition whatsoever on the other. Thus, allowing recognition would lead to simplified utilisation of a court settlement for the parties – e.g., if a party wants to register certain ownership right based on an existing court settlement, it should be possible to do so without any further steps necessary.

It could be that the EU legislator wanted to avoid the recognition of various effects that court settlements produce in different Member States (Anzenberger, 2023: 345), such as the *res iudicata* effect. However, as it was shown above, national 'court settlements' that produce such effect would be qualified as 'judgments.' Therefore, this possibility seems unlikely. However, a court settlement may also produce other effects that may be worthy of recognition abroad, such as, e.g., the effect of substituting formal requirements or a constitutive effect (Anzenberger, 2023: 345). It thus remains questionable whether such effects should actually be allowed recognition abroad. On that note, an argument in favour of recognising court settlements, specifically their effect of enforceability, has been made before (Anzenberger, 2020: 159). It has also been noted that enforcement itself could 'implicitly be regarded as recognising the contractually agreed status between parties' (Kramer, 2023: 955). If this is the case, it is even more unclear why the recognition of court settlements is explicitly excluded under some regulations, while allowed under others, which all regulate civil matters, particularly monetary claims.

Thus, in order to clarify any interpretational issues and equate the effects of court settlements under the selected EU regulations, it would be beneficial to allow recognition of court settlements also under Brussels I Recast and EEOR. This would help amend the issue of fragmentation of the legal framework for court settlements in the EU (Anzenberger, 2023: 335) and truly enable the free circulation of court settlements in the same way as judgments. Moreover, it would also be beneficial in

[53] See Art 2 Brussels I Recast; Art 2 EEOR, Art 2 ESCPR.
[54] See Art 58(1) and Art 59 Brussels I Recast; Art 24 EEOR.

view of promoting consensual conflict resolution in the EU (Anzenberger, 2023: 333). This improvement could be done by the addition of relevant provisions on the recognition of judgments when referring to the application of rules regarding judgments. On the occasion that court settlements under Brussels I Recast and EEOR are deemed as not worthy of recognition because of, e.g., not having authoritative effects in the same way as judgments, it would still be beneficial to clarify this in the relevant regulations, given that, as shown above, different interpretations on the concept of recognition may be found

3.2 Enforcement of court settlements under selected regulations

The enforcement of court settlements under the selected regulations will mostly follow the rules relevant for the enforcement of judgments. Regardless, some peculiarities of court settlements as an instrument for enforcement can be detected.

3.2.1 Requirements for enforcement

All of the selected EU regulations refer to the applicability of the provisions on the enforcement of judgments also for the enforcement of court settlements.[55] For example, Article 59 of Brussels I Recast prescribes that 'a court settlement which is enforceable in the Member State of origin shall be enforced in other Member States under the same conditions as authentic instruments.' The previous article, which regulates authentic instruments, points out that the relevant provisions on the enforcement of judgments[56] shall apply as appropriate also in relation to the enforcement of court settlements.[57] Thus, the rules for the enforcement of judgments also apply here.

In order for a court settlement to be enforced in another Member State, it must be authentic and enforceable.[58] The requirement of authenticity is visible from Article 42(1)(a), as the competent enforcement authorities in the Member State of enforcement will have to be presented with the court settlement whose enforcement

[55] Art 59 Brussels I Recast; Art 24(1) EEOR; Art 23a ESCPR; Art 48 Maintenance Regulation.
[56] Specifically, the provisions of Section 2, Subsection 2 of Section 3, and Section 4 of Chapter III.
[57] Art 58 Brussels I Recast.
[58] Art 42(1)(a) and Art 59 Brussels I Recast.

is being sought. Such a settlement will have to satisfy the necessary conditions for the establishment of its authenticity in the requested Member State. The authenticity relates not only to the court's approval, but also to the content of the settlement (Layton and Mercer, 2004a: 1048). The requirement of enforceability is visible from Article 59, which explicitly mentions that the settlement itself must be enforceable. This relates to 'abstract enforceability', i.e., a court settlement will still be enforceable if it lacks 'concrete enforceability' in the Member State of origin due to, e.g., lack of assets in that State (Anzenberger, 2020: 155). If the enforceability depends on a provision of security or a similar matter, this remains a prerequisite for the enforcement in another Member State as well (Anzenberger, 2020: 155).

3.2.2 Certification

On the occasion that the court settlement is indeed enforceable, the competent authority in the Member State of origin will issue a certificate.[59] In terms of Brussels I Recast and EEOR, such a certificate will be different than the certificate for judgments, as these regulations offer a specific certificate for court settlement.[60] The competent authority in question does not have to be a court – the designation of such authority is left entirely to the Member States. The identity of such authority may remain somewhat invisible, as Brussels I Recast does not require the Member States to communicate who the competent authority actually is, as opposed to the requirement of notification of the authorities competent for enforcement.[61] However, it seems that usually the competent authority for issuance of the certificate is the same authority that approved the settlement whose enforcement is sought (Buzzoni and Santaló Goris, 2022: 9) – i.e., a court. After the certificate is issued, it can then be presented to the competent enforcement authorities in the Member State of enforcement – the information on the competent enforcement authority in a particular Member State may be found on the e-Justice website.[62] Along with the certificate, the court settlement itself must be presented for the assessment of its authenticity,[63] as mentioned above. The enforcement itself will then continue according to the appropriate rules of the Member State of enforcement.

[59] Art 60 Brussels I Recast; Art 24(1) EEOR; Art 20(2) ESCPR; Art 48(3) Maintenance Regulation.
[60] See Annex II of the Brussels I Recast and Annex II of the EEOR.
[61] See Art 74 Brussels I Recast.
[62] See "e-Justice", accessed June 9, 2025. European e-Justice Portal (europa.eu).
[63] Art 60 Brussels I Recast.

3.2.3 Enforcement

As with judgments, the enforcement procedure itself is governed by the national law of the Member State addressed. The issues that may occur in relation to the enforcement of judgments, e.g., the issue of adapting unknown measures (Anzenberger, 2020: 158),[64] can also emerge when enforcing a court settlement. These issues, however, will not be any different than with judgments; therefore, a different approach to court settlements in those cases is not necessary.

3.2.4 Refusal of enforcement

An important difference from the enforcement of judgments lies in the possibility of refusal of enforcement. As opposed to a number of refusal grounds listed in terms of enforcing a judgment,[65] refusal of the enforcement of a court settlement under the Brussels I Recast will only be possible on the ground of public policy exception.[66] Such a review is possible only in regard to procedural matters, i.e., conditions under which a court settlement is concluded/approved (Kramer, 2023: 954), and not to the substance of the settlement, as Brussels I Recast explicitly refers to Article 52, which prohibits review on the substance in terms of judgments.[67] At the same time, it seems that some confusion on whether review of the substance is in fact possible here remains (Kramer, 2023: 954). As public policy exception is to be interpreted strictly (Kramer, 2023: 954; Mankowski, 2023: 856), and in line with the prohibition of review on the substance, it seems that the only potential substantive issue that may potentially be reviewed is whether the parties concluded the settlement on the matters they can actually dispose of. Regardless, given that court settlements may indeed be concluded only on the matters that the parties can freely dispose of, and given that such a settlement will have to be confirmed by a court, it is clear that court settlements must always conform to certain legal standards. It is therefore unlikely that a refusal on the basis of public policy exception will be possible. As has been noted before, successful refusal of enforcement (of both judgments and court

[64] Art 54(1) Brussels I Recast.

[65] See Art 45 Brussels I Recast.

[66] Arts 59, 58(1) Brussels I Recast.

[67] Arts 52, 58, 59 Brussels I Recast.

settlements) on the basis of public policy is very rare in practice (Hess, Pfeiffer and Schlosser, 2007: 242).[68]

A potential problem may arise if the court is faced with a conflict between a court settlement and an earlier judgment. As stated above, Brussels I Recast does not offer the possibility of refusal of enforcement of a court settlement on the basis of it being irreconcilable with an earlier judgment[69] – this may be because, if an agreement is reached between the parties, such an agreement should trump a prior court decision on the matter. However, some authors have commented on this (Beaumont and Walker, 2015: 42), stating that a court may, in such situations, actually exercise its discretion and may even give priority to an earlier judgment. This interpretation seems incorrect, considering that Brussels I Recast excludes this ground of refusal for court settlements; therefore, it is questionable why the courts would still go into an assessment of which decision should be given priority. On the other hand, given that court settlements, in the EU sense of the notion, do not produce the *res iudicata* effect, while judgments do, it may be questionable whether the judgments should actually have precedence over court settlements. It may thus be opportune to clarify this in the relevant regulations.

As opposed to court settlements under Brussels I Recast, enforcement of court settlements certified as a European Enforcement Order will not be subject to any possibility of refusal of enforcement.[70] This differs from the possibility of refusal of enforcement of judgments, where EEOR still provides for the refusal ground based on irreconcilability with another judgment.[71] Since EEOR regulates only the uncontested claims and employs additional minimum standards that must be respected in order for a court settlement to be certified as a European Enforcement Order,[72] as well as given the fact that such settlements are the result of amicable agreement, it seems that this refusal ground may indeed be unnecessary when enforcing court settlements as opposed to judgments.

[68] See also IC2BE database, accessed June 9, 2025. IC2BE (uantwerpen.be); EFFORTS reports, accessed June 9, 2025. Collection of national case-law - Efforts (unimi.it).
[69] Art 58(1) and Art 59 Brussels I Recast.
[70] Art 24(3) EEOR.
[71] Art 21(1) EEOR.
[72] See, e.g., LG Karlsruhe, Beschluss vom 17.12.2012 – 6 O 419/10, accessed June 9, 2025. IC2BE LG Karlsruhe, Beschluss vom 17.12.2012 – 6 O 419/10 (uantwerpen.be).

In ESCPR, there are no exceptions similar to those in Brussels I Recast or in EEOR.[73] This primarily means that, for the court settlements enforced under ESCPR, there will be a possibility of refusal under the one remaining ground for judgments, i.e., on the basis of irreconcilability with another judgment.[74] Similarly, the exception of irreconcilable decisions[75] for the enforcement of court settlements is also provided in the Maintenance Regulation.[76] The decision to remove almost all possibility of refusal is significant, but was to be expected given that maintenance is one of the fields in which the EU has long strived for 'simplified and accelerated cross-border litigation',[77] as well as 'further reduction of the intermediate measures.'[78] The importance of the field of maintenance is certainly warranted by its special features, particularly given that maintenance is not a mere monetary claim – instead, it 'guarantees the creditor's welfare and has a direct impact on public funds' (Hess and Spancken, 2014: 331). Thus, the specificities of decisions rendered in family matters must be taken into account when comparing the refusal grounds of the Maintenance Regulation with the rest of the selected regulations that govern civil and commercial matters.

Although the differences may be subtle, it is certainly interesting that these instruments regulate court settlements differently, as all of them regulate connected subject matter and sometimes even overlap in scope. Although the regulations indeed represent different stages of development of the rules on recognition and enforcement in the EU (Huber, 2012: 428), there seems to be no factual justification for the current differences (Anzenberger, 2023: 345). This is most starkly visible

[73] Art 23a ESCPR.

[74] Art 22 ESCPR.

[75] See Arts 21, 24, and 48 Maintenance Regulation.

[76] An important distinction, relevant also in terms of judgments, is that Maintenance Regulation provides for a two-track system of enforcement. Thus, court settlements emanating from Member States bound by the 2007 Hague Protocol will be automatically enforceable, with a limited number of possibilities of refusal. On the other hand, court settlements emanating from Member States not bound by the 2007 Hague Protocol will be subject to an exequatur procedure.

[77] Tampere European Council, 15 and 16 October 1999, Presidency Conclusions, accessed June 9, 2025. Tampere European Council 15-16.10.1999: Conclusions of the Presidency - European Council Tampere 15-16.10.1999: Conclusions of the Presidency (europa.eu), point 30.

[78] *Ibid.*, point 34.

from the different refusal grounds, with some regulations offering only one[79] or more[80] refusal grounds, whether it be public policy exception or the refusal based on irreconcilability with earlier judgment, while other abolish all possibility of refusal.[81] This may point to the possibility that court settlements are indeed regulated only as an afterthought, when compared to the regulation of the enforcement of judgments. At the same time, some of the differences in the treatment of court settlements in the mentioned regulations also exist in terms of judgments. Regardless, it is questionable whether such different treatment is necessary.

In line with the abovementioned suggestions in terms of recognition, it is also advisable to reassess the current approach in terms of enforcement. The possibility of creating a uniform legal regime for all court settlements in one EU regulation instead of the current, somewhat scattered approach has actually been acknowledged before (Anzenberger, 2023: 337). However, a less radical approach would be to align the existing provisions in order to equate the legal framework for recognition and enforcement of court settlements. This would particularly affect the refusal grounds – in that sense, the reasons as to why court settlements should be allowed refusal of enforcement seem to be limited.

As established above, court settlements will be concluded as an agreement between the parties, with the assistance of a court, which must actively review the settlement in question. It goes without saying that court settlements cannot be concluded on matters that the parties cannot dispose of. Thus, the instances where a court settlement could be refused on the basis of a public policy exception are low, perhaps even lower than for judgments. The rarity of refusal on the basis of public policy in general is also reflected in case law and literature, as already noted above. Similar lack of case law may also be found in terms of refusal on the ground of irreconcilability with another judgment. While not all case law is published, the available cases and reports do usually make a good pointer to the relevant issues. Additionally, all of the abovementioned reasons for why it would be rare for a court settlement to be refused enforcement also apply in terms of irreconcilability. However, here it may be opportune to clarify, in the regulations, whether an earlier

[79] Arts 58(1) and 59 Brussels I Recast; Arts 22(1) and 23a ESCPR.
[80] Arts 21, 24 and 48 Maintenance Regulation.
[81] Art 24(2) EEOR.

judgment (which has the *res iudicata* effect) has priority over a court settlement (which does not produce such effect) or there is no space for assessing priority at all, as the current wording of Brussels I Recast suggests.

In that vein, the approach taken by the EEOR should also be taken by the Brussels I Recast and ESCPR, with additional clarification in terms of irreconcilability with earlier judgment. In terms of the Maintenance Regulation, however, the different nature of the proceedings, i.e., the particularly sensitive issue of maintenance that 'goes beyond a mere monetary claim' (Hess and Spancken, 2014: 331), may warrant differences in the approach to court settlements. Thus, further research into EU regulations on family law should be done in order to detect whether the approach in the Maintenance Regulation should be more aligned with the rest of those regulations, rather than the regulations that this paper focuses on.

4 Conclusion

As practical instruments of amicable dispute resolution, court settlements are rightfully represented in the relevant regulations available for their recognition and enforcement in the EU. However, cross-border enforceability and enforcement of court settlements, as well as the mere definition of 'court settlement' in the EU and its Member States, are open to some challenges. This paper aimed to explore such challenges and bring them to the forefront for the possibility of clarifying the remaining interpretational difficulties and proposing new solutions if necessary.

It has been primarily showcased that the notion of 'court settlement' at the EU level and the notion of 'court settlement' at the national level, i.e., under the laws of selected Member States, must be differentiated. In that regard, while the definition of 'court settlement' at the national level may be fairly similar, the procedure for concluding a court settlement may slightly vary, with some Member States only providing one way of concluding a settlement, and others acknowledging multiple such ways. These divergences, however, are not such that they will have an effect on the inclusion of national 'court settlements' under the EU notion. Instead, it is the effects that national court settlements produce that may vary significantly, and that will, subsequently, affect whether national 'court settlements' will also be categorised as such under the relevant EU regulations. In that vein, it was detected that 'court settlement', as understood in national laws of Croatia and Slovenia, produces the *res*

iudicata effect, and may thus not be included in the EU notion of 'court settlement', but instead qualified as 'judgments.' As noted above, there are other Member States that also recognise such 'consent judgments.' The parties must thus be careful when seeking enforcement abroad, as 'court settlement' under the relevant EU private international law instruments cannot produce the *res iudicata* effect. This effect should thus be regarded as the determining factor when questioning how a particular national 'court settlement' should be characterised for the purposes of cross-border enforcement.

This could pose a particular problem in instances where parties may try to enforce their court settlements abroad without the assistance of a lawyer. For example, ESCP explicitly aims to encourage parties to engage in the proceedings without the assistance of a lawyer.[82] Even with the help of a lawyer, these particularities of EU versus national notions may still be lost on legal practitioners who do not regularly work on cross-border cases. Thus, it is necessary for all parties assisting in a cross-border procedure of enforcement, including parties, representatives, the court, etc., to be alert in order to detect possible mishaps such as wrong characterisation as a 'court settlement' or a 'judgment'.

In regards to the specific provisions on recognition and enforcement of court settlements, all of the regulations selected for this research refer to the relevant provisions on the recognition and/or enforcement of judgments. This choice reflects the fact that judgments are the most regularly used documents, based on which the relevant rules have originally been drafted. The scarcity of court settlements enforced abroad, which was detected when researching national case law, may point to the fact that the current reference to the general rules on the enforcement of judgments is functioning well. However, some clarifications regarding the recognition of court settlements would be beneficial, considering that some of the selected regulations, as mentioned above, leave out the possibility of recognition of court settlements without a visible reason. As suggested above, recognition of court settlements should be allowed in all regulations. Moreover, it could also be beneficial to opt for an aligned approach in the regulations, especially those on civil and commercial matters, particularly in regards to the refusal grounds

[82] As visible from Recital 15 of the Preamble of ESCPR, as well as the instructions accompanying the relevant forms that can be found in the Annexes of the ESCPR.

which differ unnecessarily. In that vein, it has been suggested to remove the possibility of refusal of enforcement of court settlements on the basis of the public policy exception, while also clarifying the rules on priority between a judgment and a court settlement that are irreconcilable. This would lead to a clearer framework on the enforcement of court settlements abroad, which is a step forward in the intricate web of the EU private international law provisions. Moreover, it would promote amicable dispute resolution, which generally seems to be the aim of the EU legislator.[83]

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[83] As visible from other EU acts such as, e.g., Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, OJ 2008 L 136/3.

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Povzetek članka v slovenskem jeziku (abstract in Slovene language):

Sodne poravnave kot instrumenti sporazumnega reševanja sporov predstavljajo prilagodljivo postopkovno orodje, ki služi tudi kot izvršilni naslov. Kot takšni so ti instrumenti znani v vseh državah članicah Evropske unije (EU) in so vključeni v pravila mednarodnega zasebnega prava EU, ki zagotavljajo pravno podlago za njihovo čezmejno izvrševanje. Vendar pa izzivi ostajajo zaradi različnih predpisov in razumevanja sodnih poravnav na nacionalni ravni ter zaradi nejasnosti v pravilih EU o čezmejni izvršbi, kar v praksi vodi do morebitnih napačnih razlag. Zato je prvi cilj predmetnega prispevka raziskati, kaj točno predstavlja „sodna poravnava“ na nacionalni ravni in na ravni EU. Na podlagi te opredelitve prispevek nato naslovi regulativni okvir EU, zlasti v izbranih uredbah EU, za ugotovitev ali so potrebne nadaljnje izboljšave. Odgovori na raziskovalna vprašanja temeljijo na analizi sodne prakse, preučitvi znanstvene literature ter zlasti na podlagi ustreznih določb uredb EU, ki so bile izbrane za to raziskavo.