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RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS UNDER THE BRUSSELS I REGULATION AND THE REGULATION ON A EUROPEAN ENFORCEMENT ORDER FOR UNCONTESTED CLAIMS

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Ladies and Gentlemen, dear organisers, first let me express my great pleasure and my gratitude to be here in Bucharest to discuss the European quest for free circulation of judgments and cross-border enforcement law.

1 Free circulation of judgments within the European Union - the problem and its components

But what is European cross-border enforcement law? What significance does it have in a European context? Let me start by giving you an example.

In the 1970's, a German court ruled that a Swedish company was liable to pay compensation to a German company for damages that the Swedish company had caused at a fair in Munich. The Swedish defendant had not contested the German court's jurisdiction (see NJA 1986 s. 119).

Could the German judgment be enforced in Sweden where the Swedish company had assets?

The Swedish Supreme Court said no, as – at that time – Swedish law did not include rules to that end. Therefore, the German company had to institute new proceedings in a

Swedish court to obtain a judgment enforceable in Sweden. As we shall see, the outcome today would have been different.

This case can serve as an illustration of today's topic, namely the recognition and enforcement of foreign judgments, or in other words, the free circulation of judgments in the European Union. *Why, when and how should a foreign judgment be recognized and enforced in another Member State than that of its origin?*

This question is not new; it traces back to seventeenth and eighteenth centuries' theories.

In our times, and in Europe, the conclusion of the Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ L 299/32, 31.12.1972) in 1968 could perhaps be described as the starting point for the European quest for mutual recognition and the free circulation of judgments.

The Brussels Convention was concluded by the then current Member States. The fundamental purpose of the Brussels Convention was to facilitate the free circulation of judgments between Member States in civil and commercial matters.

In the negotiations of the Convention it was thought practicable to include rules on courts' international jurisdiction to facilitate the recognition and enforcement of judgments.

If the Member States could agree on common grounds for jurisdiction, it was believed easier to accept each other's judgments, knowing that the court delivering the judgment had applied the same grounds for jurisdiction as courts in the enforcing Member State would.

Thus, the harmonization of jurisdictional rules contained in the Brussels Convention was not an end in itself. Rather, it

was believed necessary to achieve the primary objective of free circulation of judgments.

The importance of international enforcement law has gained growing importance over the years. The explanation is simple. International trade and commerce have steadily increased and the number of people living outside their native countries continues to grow.

Today, I will address the issue of free circulation of judgments within the European Union from different angels.

1. First, it is appropriate to somewhat reflect on the fundamental issue on why – or why not – a foreign judgment should be given effect in another Member State than that of its origin.

   The basic theories vary in different Member States; some have a very restrictive regime, and others are more open and lenient.

2. Second, we will address the European solutions in the area. The key instrument is the Brussels I Regulation (OJ L 12/1, 16.1.2001); the Regulation is a revised version of, and the successor of, the 1968 Brussels Convention.

   We will analyse the preconditions and the procedure for recognition and enforcement of foreign judgments, as well as the possibilities to resist enforcement under European law.

3. Third, we will compare the solutions of the Brussels I Regulation with those laid down in the 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 143/5, 30.4.2004).

2 Why should a foreign judgment (not) be recognized or enforced in another State?

Initially, I would like to pose the question on why a foreign judgment should be recognized altogether – or why not.

The point of departure is the principle of territorial sovereignty. A judgment delivered in one State cannot operate by its own force in another State without that State having agreed to it.

For States to be able to coexist and for private transactions to validly take place across their borders, it is not only necessary that they recognize each other, but it could also be argued that they have to recognize each other's judgments – perhaps – as a gesture of comity.

Critics claim that one State cannot act as another State's "prolonged arm" and waste taxpayers money on recognizing foreign judgments. Moreover, the enforcement act is then an expression of a State's public law authority, not at the disposal of foreign States.

To meet concerns like these, numerous explanations have been put forward to justify the recognition of foreign judgments.

In cross-border cases, a court normally has jurisdiction only if there is a reasonable connection to that State or *forum*.

It could be accepted that if a proper court has settled a dispute and delivered a judgment then why should not its' judgment be accepted?

An acceptance of foreign judgments could save time and litigation costs. If a foreign judgment is recognized there is no need to re-litigate the same dispute between the same parties, albeit in a different State's court.

Giving effect to a foreign judgment may also correspond to the parties' legitimate expectations and in due course avoid delay and uncertainty of result.

Moreover, it harbours an essential objective of private international law, – namely the protection of rights laid down in a judgment and acquired under a foreign State's system of law.

A superficial outlook into different Member States' enforcement laws reveals intriguing differences in approach.

Some Scandinavian countries will only allow foreign judgments into their territories if there are national laws to that end.

By and large, this usually means that an international agreement has been concluded with one or several other States where the States have agreed to recognize and/or enforce each other's judgments.

With reference to Sweden, there are virtually no such agreements concluded in the area of civil and commercial matters outside of the European Union.

The consequence is that judgments originating in States outside the European Union do not have any effect in Sweden. At most, the foreign judgment can be used as proof in new Swedish proceedings. A similar situation is prevalent in Denmark.

In other Member States, such as Great Britain, France and Germany, the state of affairs could perhaps be described as less rigid.

In brief, foreign judgments can be recognized and enforced under certain conditions, for example, if the court which heard the case is the proper court and it applied the "correct" national law under the rules of the enforcing State.

These conditions are usually coupled with a condition that the foreign judgment must not be contrary to public policy of the requested State, *i.e.* that enforcing a foreign judgment would not be offensive to fundamental values of the enforcing Member State.

Some Member States, such as Germany, also have a requirement of reciprocity, which means that if German judgments are respected in State X, then Germany will also respect judgments handed down in State X.

The European developments in the area of cross-border enforcement law call for a closer investigation into the topic of this lecture, namely why, when and how should foreign judgments be given effect in other Member States.

3 Mutual recognition and mutual trust

To fully appreciate the quest for free circulation of foreign judgments in the EU, it is necessary to refer to the atomic principles of mutual recognition and mutual trust. These are to distinct principles, yet closely intertwined.

Mutual recognition of judgments assumes mutual trust; and mutual trust should eventually lead to mutual recognition.

In its original meaning, dating back to the Cassis-judgment (120/78), mutual recognition is understood as a prohibition to

impose national controls or verifications in another Member State, if already carried out in the Member State of origin.

In the Cassis-case, the Court of Justice emphasized mutual recognition stating that: “there is no valid reason why, provided that they (alcoholic beverages) have been lawfully produced and marketed in one of the Member States, alcoholic beverages should not be introduced into any other Member State.”

Ever since the beginning of the European integration process, mutual recognition of judgments has been a vital component of civil law cooperation.

In this spirit, Art. 67(4) of the Treaty on the Functioning of the European Union provides that the “Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters”.

This is confirmed in Art. 81(1) of the same Treaty, which states that the “Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases”.

Mutual trust, in the present context, means that courts of all Member States should be trusted. Courts in one Member State are equally suited to apply a rule as courts in any other Member State.

European rules should boost mutual recognition and mirror mutual trust supposedly prevailing between the Member States.

4 What has been accomplished so far in the Brussels I Regulation – theory and practice?

What has been accomplished so far in the European Union with reference to mutual recognition and mutual trust?

The instrument of main interest today is the Brussels I Regulation. The Regulation has been said to be the most successful instrument on judicial cooperation in the European judicial area.

As we shall see today, the Regulation expresses both the principles, but not unconditionally.

The Brussels I Regulation distinguishes between recognition in Arts. 33–37 and enforcement in Arts. 38–52. These two issues are, however, closely connected.

4.1 Automatic recognition

First, we will address the issue of recognition; not all judgments have to or can be enforced, but just need to be recognized.

In respect of recognition, the Brussels I Regulation provides for automatic recognition; no particular national or formal procedure in the other Member States is needed.

The foreign judgment is effective in the other Member States the same time as in the State of origin.

And the recognition of a foreign judgment brings certain legal "qualities" to the judgment.

One effect is that the dispute is regarded as settled and is a bar from further court actions and re-litigation in the recognizing State. The issue is *res judicata.* Furthermore, – if necessary –,

another effect is that it is possible to enforce the recognized judgment in the recognizing State.

In the German/Swedish case initially referred to, this means that the German judgment can be used to raise actions or defences in Sweden (or in any other Member State for that matter) without previously having obtained a Swedish decision stating that the judgment can be recognized in Sweden.

To appreciate the automatic nature of recognition one must bear in mind that in some cases an applicant may have a legitimate interest in having the issue on recognition singled out as a principle matter.

The Brussels I Regulation then provides for a procedure, mainly the same as the one used to obtain an enforceable judgment in which a court decides, in a final manner, on the issue of recognition.

Foreign judgments may in that procedure be refused recognition if this is justified under the grounds of refusal laid down in the Regulation. I will return to the grounds for refusal in a while.

What's important is that the procedure cannot be used to obtain a decision stating that the judgment should not be recognized.

4.2 Enforcement

4.2.1 National intermediate measures = the *exequatur* procedure

But what conditions does the Brussels I Regulation impose for enforcement of a foreign judgment?

The Brussels I Regulation allows enforcement within defined limits after certain intermediate measures in the Member State of enforcement.

The intermediate measures are known as the *exequatur* procedure. A foreign judgment can only be enforced after having been declared enforceable in this separate *exequatur* procedure in the enforcing Member State.

The procedure set out in the Brussels I Regulation could be described in two stages.

The first stage of the procedure is *ex parte*. The parties are not entitled to make any submissions. The competent national court or authority in the enforcing Member State grants *exequatur* without hearing the judgment debtor.

Generally speaking, prior to the Brussels instruments, an application for *exequatur* could not be granted before the judgment debtor had had the opportunity to make submissions.

The second stage occurs after a declaration of enforceability has been issued, and one of the parties has appealed against it.

The proceedings then become contradictory according to Art. 43(3), and the parties may submit arguments in favour of the declaration as well as against it. Now, the parties may also invoke the grounds for refusal available in the Brussels I Regulation (Arts. 34 and 35).

The *ex parte* procedure is to retain an element of surprise and to avoid delays in the execution because of “fact finding and legal argument”.

This is a hallmark of the Regulation so as to achieve a swift procedure and to avoid delaying tactics.

The *exequatur* procedure is exclusive in the sense that the judgment creditor cannot access any other way of obtaining enforcement. Thus the creditor is barred from re-litigating the dispute in another Member State's court.

Before going into detail on the *exequatur* procedure, it is suitable to briefly reflect on the purposes that the procedure serves.

4.2.2 What purpose does the exequatur procedure serve?

An *exequatur* procedure serves different purposes.

At the outset, it is clear that the intention is to determine whether a judgment granted in a foreign State should be given extraterritorial effect and enforced in another State.

When this is the case, there is no need to re-litigate the dispute in the courts of another State.

This matrix prevents enforcement of foreign judgments rendered in violation of fundamental rights, such as the right to a fair trial, or judgments obtained by procedural fraud.

The aim is also to ensure that the defendant is cognizant of the judgment in order to be able to contest it before rights are irreversibly affected by enforcement measures.

The *exequatur* also serves to erase any doubts about the legal effect of the foreign judgment before enforcement measures can be taken in another State.

These purposes are mainly reflected in the second stage of the *exequatur* procedure defined in the Brussels I Regulation where the parties can make submissions on the enforcement issue.

4.3 The first stage of the *exequatur* procedure – just a formal check

4.3.1 The parties and the application

Let's return to our German/Swedish case as an illustration of the common European *exequatur* procedure, and the question of enforcing the German judgment in Sweden.

How should the German company obtain enforceability of the German judgment in Sweden?

The procedure for enforcement is mainly set out in Arts. 38 to 56 in the Brussels I Regulation. These provisions are important, but rather technical.

The German company has to apply for a declaration of enforceability with the competent Swedish court. In order to find the court the German company needs to consult Annex II of the Regulation. This Annex provides information on courts or authorities to which the applications may be submitted.

An application for a declaration of enforceability can be submitted by the party that can request enforcement of the judgment in the Member State of origin = the German company which is the judgment creditor.

The procedure for making the application is governed by the law of the enforcing Member State according to Art. 40(1). So in our case the procedure is governed by Swedish law.

However, national Swedish rules are only subsidiary – and complementary – to the European provisions in the Regulation. Reference to national law is only permitted if the Regulation does not state otherwise.

The Brussels I Regulation contains some provision on the procedure for making the application. According to Art. 40(2) the applicant must give an address for service of process

within the area of jurisdiction of the court applied to or appoint a representative.

The aim is to secure that the decision on the application for declaration of enforceability can be brought to the notice of the applicant (Art. 42(1)) and that a potential appeal from the opposing party can be served.

The Brussels I Regulation also contains common provisions on necessary documentation to accompany the application foreseen in Arts. 53 to 55.

The applicant shall produce

a. A copy of the foreign (German) judgment which satisfies the conditions necessary to establish its authenticity (Art. 53).

b. A specimen certificate issued by the (German) court of origin (Arts. 53(2) and 54).

   The certificate comes in a standard form, and it can be found in Annex V of the Brussels I Regulation. The certificate contains certain information, – among other things whether the judgment is enforceable in the Member State of origin (Germany), if the parties were granted legal aid, and with reference to default judgments, the date of service of claim documents.

   If the certificate is not produced, the (Swedish) court may set a time-limit to produce the certificate, or dispense with its production (Art. 55(1)).

c. If necessary, a certified translation of the documents shall be produced according to Art. 55(2). The provision only has a facultative character.

> Nevertheless, – in practice – courts in Member States have recurrently demanded translations of judgments although it might not be necessary.
>
> In our case the Swedish court would most certainly require a certified translation, as German in not a language Swedish courts or authorities would normally comprehend.

Largely, the procedure is affected by standard forms and aims at simplify and speed up the *exequatur* procedure.

One problem concerns the fact that the Brussels I Regulation does not mention consequences if the necessary documentation is not produce.

One possible solution is to dismiss the application without an examination in substance.

Another solution would be to reject the application; then it would be for the applicant to appeal that decision in accordance with Art. 43.

But a consequence of the latter solutions is that the applicant loses the right to the *ex parte* procedure in the first stage as the second stage of the procedure is contradictory.

4.3.2 The court's assessment and the decision of enforceability

When all formalities have been fulfilled, the court shall *immediately* declare the foreign judgment enforceable in that Member State following Art. 41.

The grounds to refuse enforcement (or recognition), as specified in Arts. 34, 35 and 45, cannot be taken into account by the court at the first stage according to Art. 41.

The assessment that the court does in the first stage is therefore very limited, and restricted to the formalities set in Art. 53.

Even though the Regulation is not explicit on the matter, it is also for the court in the enforcing Member State to investigate if the foreign judgment

- is granted by a court or tribunal in a Member State,
- falls within the substantive scope of the Regulation under Art. 1,
- falls within the temporal scope of the Regulation according to Art. 66,
- is a judgment in the sense of Art. 32 of the Regulation, and
- indeed is enforceable in the Member State of origin according to Art. 38(1).

  This is normally a question that can be answered by reference to the certificate issued by the court of origin (Art. 54).

Upon completion of this check, the foreign judgment shall be declared enforceable immediately. In most cases, because of the simplified formal check, the outcome will be an affirmative declaration of enforceability.

Empirical studies show that the *exequatur* procedure under the Brussels I Regulation has operated well. In 90 % of the cases, an affirmative declaration of enforceability is granted.

The applicant will be notified of the decision under Art. 42(1) (see also Art. 40(2)).

According to Art. 42(2) the decision will be served on the judgment debtor in accordance with the procedure laid down in national law.

The service plays an important role in the sense that an appeal against a declaration of enforceability must be lodged in a certain time after service according to Art. 43(5).

The time for appeal is one month after the *exequatur* decision was served on the party against whom enforcement is sought. If the party is domiciled in another Member State the time is extended to two months.

In the meantime no other measure than protective measures may be taken (Art. 47(3)).

But if the judgment debtor is domiciled in a State outside the EU, the main rule of one month apply.

So even if the distance is greater, the time is the same as if the debtor was domiciled in the Member State of origin.

This put judgment debtors domiciled in third States outside the EU in an invidious position compared to judgment debtors domiciled in the EU. One might even say discriminatory.

By and large, a decision on a declaration of enforceability means that the foreign judgment becomes equal with a judgment granted in the enforcing Member State for enforcement purposes.

So for the German company, the Brussels I Regulation definitely means an improvement; the point of departure is that the German judgment is enforceable in Sweden.

4.4 The second stage of the *exequatur* procedure – a contradictory proceeding

How are the procedural safeguards of the judgment debtor recognized under the Brussels I Regulation?

A judgment debtor who wishes to bar enforcement for whatever reason must appeal the declaration of enforceability in a second stage of the *exequatur* procedure in accordance with Art. 43.

The *exequatur* procedure then becomes contradictory and the judgment debtor as well as the judgment creditor may submit arguments in favour of the application as well as against it.

Only 1–5 % of the decisions on enforceability are appealed. In these cases, however, it is very common that the parties invoke various grounds to stop enforcement.

4.4.1 An example

Let me give you another example to illustrate the second stage of the *exequatur* procedure.

In 2003, a British court ruled that two Swedish persons, who arranged music concerts, were liable to pay damages to the American rock-group TOTO. After a formal check, a Swedish court issued an affirmative declaration of enforceability stating that the UK judgment was enforceable in Sweden over the debtors' assets.

The Swedish judgments debtors appealed the declaration of enforceability in the second stage of the *exequatur* procedure under the Brussels I Regulation.

They claimed that the British court lacked jurisdiction, and that they had not been served with the claim documents or been represented in the British proceedings.

Additionally, the Swedish debtors invoked that it would be contrary to Swedish public policy to enforce the UK judgment in Sweden.

4.4.2 Grounds for refusal

The Brussels I Regulation specifies the only defences or grounds for refusal allowed in the framework of the Brussels regime.

These European grounds for refusal are mandatory, meaning that if the prerequisites are fulfilled, a national court is obliged to deny or repeal a declaration of enforceability.

The defences against enforcement are those that also constitute reasons to refuse recognition of a judgment in Arts. 34, 35, 45 and the special circumstances covered in Art. 61. They are concerned with public policy, default judgments and certain cases of irreconcilable judgments. In general it's held that the grounds for refusal should be interpreted strictly.

Now let me introduce the European defences to enforcement.

Public policy

The first exception in Art. 34(1), also invoked by the judgment debtors in the TOTO-case, is concerned with so-called *ordre public*, *i.e.* whether enforcement of a foreign judgment would be manifestly contrary to public policy in the Member State addressed.

In this case the Swedish court bluntly stated that it would not be contrary to Swedish public policy to enforce the UK judgment.

Why this was so was not explained by the Swedish court.

In general it is very difficult to state, with certainty, what is contrary to public policy, and what is not. One conclusion I have drawn over the years is that public policy is determined according both to national and European standards. It is a

device to be used as a last resort in very exceptional circumstances.

Still, the public policy exception is often invoked by parties in enforcement proceedings. But national case law indicates that courts are very reluctant to apply this ground for refusal.

For good reasons, and to achieve free circulation of judgments, the public policy defence can only to be used as a last resort.

Recently, the Supreme Courts in France and Greece have used the public policy defence to bar enforcement of foreign money orders perceived as excessive and un-proportionate in relation to the damage caused.

It is actually easier to pinpoint situations where the public policy-device is not at hand, rather than to state when it can be used.

The public policy-device *cannot* be used in situations where the foreign judgment is deemed wrong as to its substance and conclusion, not even if the incorrectness is manifest (Art. 36).

The provision can only be applied when the judgment infringes the enforcing Member States public policy in the concrete case.

The mere irreconcilableness with the substantive laws of the enforcing Member State is not sufficient to assume an infringement of public policy.

The public policy control is limited by Art. 45(2), which provides that under no circumstances may a foreign judgment be reviewed as to its substance. And Art. 35(3) explicitly prohibits a review of the court of origin’s jurisdiction by reference to the criterion of public policy.

The foreign judgment is to be enforced even if the foreign court founded its jurisdiction on the wrong jurisdictional provision of the Brussels I Regulation or on national rules due to Art. 4 of the Brussels I Regulation.

Moreover, European law and the European Court of Justice may pose limits on the application of the public policy test. An excessive use of the public policy defence may be in contradiction with the purpose and aim of the Brussels I Regulation.

Case law of the Court of Justice show that the test of public policy can only be used where the foreign judgment infringes with the legal order of the enforcing Member State to an unacceptable degree, or if it would entail a manifest breach of a rule of law essential to that legal order, or if it is a breach of a fundamental right.

In the Krombach-case, the Court of Justice found that violations of the right to be effectively defended by a lawyer as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms can constitute a legitimate reason to have recourse to the public policy defence.

Default service

The defence that has had the greatest practical importance in stopping cross-border enforcement under the Brussels I Regulation is in cases of default or improper service.

According to Art. 34(2) of the Brussels I Regulation, a judgment given in default of appearance shall not be enforced if the defendant was not served with the claim document in sufficient time and in such a way as to enable him to arrange for the defence.

This is unless the defendant failed to commence proceedings to challenge the judgment when it was possible to do so.

The rule is designed to protect the defendant's right to defence and the right to a fair trial. It should be read in conjunction with Art. 26, which states that a court has to stay the proceedings until the issue on service on the defendant is determined.

The question on whether the judgment was given in default of appearance of the defendant may sometimes be problematic.

For example, if the defendant seemed to have been represented by a lawyer in the main proceedings, but the defendant claim that the lawyer lacked authority to act on his behalf.

Or if the lawyer that defended the case only did so with reference to the criminal charges, but not with reference to the civil claim for damages adjudicated in the same proceedings.

Most of the problems relates to the service of the documents instituting the proceedings, and Art. 34(2) is sometimes used for delaying tactics, where the defendant claim that there was no proper service and the preparation of the defence was not possible.

National case law shows a variety of situations.

In Swedish case law, Art. 34(2) has been applied to revoke a declaration of enforceability of an Italian judgment when the postal documents from Italy, not collected by the defendant, did not indicate that it contained claim documents.

The Finnish Supreme Court declared that the document instituting proceedings were not served in sufficient time for the defendant to prepare the defence according to Art. 34(2) as the documents instituting the proceedings were served to an

agent working for the Finnish firm and it was not clear from their agreement whether the agent could represent the firm itself in proceedings.

The proper construction of this provision is not to examine whether the service was made in accordance with the provisions of the Member State of origin, but to examine whether the defendant had a chance to acquire knowledge of the action and had sufficient time to prepare the defence.

It is for the court in the Member State of enforcement to determine whether the service was affected in sufficient time and in a suitable way so that the defendant is given proper time to prepare the defence, regardless of what the foreign judgment states.

The requirement that the judgment debtor must have been able to appeal the decision but not done so narrows the scope of application further.

Irreconcilable judgments

Art. 34(3) and (4) are concerned with the handling of irreconcilable judgments delivered in another Member State or in a third country outside the EU.

The provisions are concerned with situations where the foreign judgment is incompatible with a judgment delivered in a dispute between the same parties in the recognizing Member State (Art. 34(3)).

It is also concerned with incompatibility with an earlier judgment given in a third Member State or even in a non-Member State involving the same cause of action and between the same parties, provided that the earlier judgment is enforced in the enforcing Member State.

Only rarely have cases been reported where these defences have been used. One conceivable explanation for this may be the fact that the rules on *lis pendens* and related actions in Art. 27 to 30 are respected.

Additional grounds for refusal

In addition to these exceptions, others are also included in the Brussels I Regulation.

The jurisdiction of the court of origin may not be reviewed, except in certain specific circumstances.

This applies also to judgments passed against certain defendants in third States under the particular circumstances provided for in Art. 72.

Likewise, according to Art. 35(1), a foreign judgment shall not be enforced if it was given in contradiction to the Brussels I Regulation's mandatory jurisdictional rules on insurance disputes, consumer disputes or exclusive jurisdiction.

It is curious to note, and we will get back to the question later today, that this protection is not afforded to employees, even though the Brussels I Regulation contain special protective jurisdictional rules for these parties.

This has been explained by the fact that the employee acts as plaintiff in the great majority of employment disputes, and is generally the party interested in having a judgment enforced.

An interesting judgment was delivered in 2010 by a Swedish appellate court. It repealed a declaration of enforceability of a Spanish judgment according to Art. 35(1), because the Spanish court had founded its jurisdiction in violation of the jurisdictional rules in Section 4, namely the jurisdictional rules concerning consumer contracts in Arts. 15 and 16. (Svea

Court of Appeal's decision, 16 November 2011, Case Nr Ö 4485-11).

Generally, this is not allowed under the Brussels I Regulation. A judgment shall be enforced even if the court of origin has wrongly taken jurisdiction or misinterpreted the Regulation, and the court's jurisdiction may not be reviewed.

However, in the situations where a review is permitted, the reviewing court is still bound by the finding of the fact on which the court based its jurisdiction.

Pursuant to Art. 40, the *exequatur* procedure is governed by the law of the Member State where enforcement is sought.

Defences to actual enforcement in Member States' national laws, for example that a debt is already paid, could therefore be described as supplementary to the defences in Arts. 34 and 35.

The third stage of the *exequatur* procedure is concerned with an appeal against the decision of the appellate court. An appeal is open to the Supreme Civil Courts in the Member States pursuant to Art. 44.

4.4.3 Costs and time

Something needs to be said on costs and time involved in the *exequatur* procedure.

In an ordinary case the costs for an *exequatur* procedure range from 1.100 to 4.000 Euro.

The duration of the procedure at the first stage and the average time to obtain an *exequatur* decision is rather short.

In the Member States it varies from seven days to four months. If the application is incomplete, the time to reach a decision regarding enforcement is of course longer.

In appellate cases, the costs will increase to an average of 12.700 Euro and the time in which a decision is affirmed or revoked ranges from one month to three years.

However, these figures do not include the time the applicant needs to prepare *exequatur* proceedings. Before applying for an *exequatur*, the applicant must collect the necessary documents and organize a potential translation of the judgment and the certificate (Arts. 53 and 54).

Art. 52 of the Brussels I Regulation states that no fee may be calculated by reference to the value of the matter at issue.

However, most Member States levy costs for the declaration of enforceability. And the way that costs are calculated differs between Member States.

Some Member States require the payment of a fixed sum; others apply general provisions on court fees.

Another very important issue to a judgment creditor is the costs incurred by lawyers' fees. In some Member States, such as the United Kingdom, lawyers' fees are extremely high.

Art. 40(2) of the Brussels I Regulation impose a duty on the applicant either to designate an address for service of process in the jurisdiction of the court applied to, or to appoint a representative.

This often means that a lawyer needs to be appointed in the enforcing Member State. Normally, this will be a lawyer practicing in the enforcing Member State.

One conclusion is that cross-border enforcement will not make much sense if the amount of the judgment is just sufficient to pay the lawyer's fees and the costs for translation.

4.5 The European Enforcement Order for Uncontested Claims

4.5.1 A new approach!

One problem with the enforcement procedure in the Brussels I Regulation has been held to be the *exequatur* procedure.

The *exequatur* has been criticized as it is costly and causes delays. Even more so, when a claim is not contested.

There seems to be no compelling reasons to go to court to obtain a declaration of enforceability on a claim not in dispute.

It has been argued that if a claim is uncontested, the only proper requirement should be that the debtor is informed about the court actions against him and that he is given opportunity to contest the claim.

Under such circumstances the *exequatur* procedure may in fact be an incentive to succumb to delaying tactics and to withhold payment without legitimate reason.

In light of this, the Regulation creating a European Enforcement Order for uncontested claims was adopted (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).

It entered into force January 2005. Hereinafter, I will refer to it as the Regulation or the European Enforcement Order.

The Regulation is part of a new generation of EU Regulations that takes a new approach to cross-border enforcement to further enhance mutual trust and access to justice.

The new generation of EU instruments abolish *exequatur* in favour of a more direct and expedient enforcement.

The expression "European Enforcement Order" is somewhat misleading as it is not concerned with decisions issued by any European institution, but by national courts.

According to the Regulation, the national court delivering a judgment on an uncontested claim is approved to issue a standard certificate, in addition to the judgment itself.

The certificate makes clear that the requirements laid down in the Regulation are fulfilled.

The certificate states that the judgment is a European Enforcement Order which can be enforced in the other Member States without a declaration of enforceability, and, accordingly, without the need for an additional national scrutiny in the form of an *exequatur*.

4.5.2 A European example

Let me illustrate the Regulation with an example from the European Consumers Centres Network, the ECC Net.

A Swede travelled from Sweden to Barcelona in Spain with a Finnish airline-company. The return flight was cancelled due to problems in the European air-space.

A return ticket was booked and the Swede had to stay an additional seven days in Barcelona.

After the return to Sweden, the Swede contacted the airline-company and demanded compensation for additional costs in the array of 1,100 Euro.

The airline-company expressly agreed to the claim and never objected to it. However, the airline-company only reimbursed 250 Euro.

In Swedish court proceedings the airline-company did not object to the claim.

Does the European Enforcement Order make life easier for the Swedish plaintiff?

4.5.3 Scope of application

The first question that needs to be addressed is if the Regulation applies to situations like these?

The scope of the Regulation is mainly the same as the Brussels I Regulation as far as the subject-matter is concerned, *i.e* it covers civil and commercial matters.

This follows from Art. 2, which corresponds to Art. 1 of the Brussels I Regulation.

But how does the Swedish consumer know whether to rely on the European Enforcement Order or the Brussels I Regulation if they overlap, but contain different procedures for cross-border enforcement?

A choice between the two instruments may therefore be important with reference to time and money.

This is of course a crucial issue, overlapping scope of application of different European instruments.

As the Regulation on a European Enforcement Order is optional, it does not preclude an applicant from choosing any

other enforcement procedure available under the Brussels I Regulation or in national law.

Therefore it is for the Swedish plaintiff to decide on whether the enforcement rules in the Brussels I Regulation or in the Regulation on a European Enforcement Order shall apply.

The European Enforcement Order is, however, an independent Regulation, intended to supplement the Brussels I Regulation.

On the other hand, it sometimes needs to be complemented by the Brussels I Regulation, in particular with reference to jurisdictional rules.

According to Art. 3, the Regulation applies to judgments, court settlements and authentic instruments on uncontested claims, irrespective of the amount.

A claim is deemed uncontested if the debtor expressly has agreed to it, in most cases by admission or a settlement in court or in an authentic instrument (Art. 3(1)(a) and (d)).

A claim is also regarded as uncontested if the debtor has not objected to the claim in accordance with the procedural laws of the Member State of origin in court proceedings there (Art. 3(1)(b)).

Moreover, a claim is seen as uncontested if the debtor neither appeared nor was represented at the court hearing if that behaviour equals a tacit admission according to the law of the Member State of origin (Art. 3(1)(c)).

In addition, according to Art. 4(2), the Regulation only applies to claims for a specific sum of money that has fallen due, or when a due date is indicated in the judgment.

This means that claims for a specific performance are not covered by the scope of the Regulation.

But it means that the Regulation is applicable in our example, as the airline-company did not object to the claim.

4.5.3 The procedure in the Member State of origin - certification

Let's turn to the court procedure in Sweden, being the Member State of origin.

The Regulation does not contain rules on international jurisdiction. Therefore the Swedish court determined its jurisdiction in accordance with the provisions of the Brussels I Regulation.

Here the Brussels I Regulation is complementary to the Regulation on a European Enforcement Order.

How can the Swedish plaintiff obtain a European Enforcement Order that can be enforced against the airline-company? The Swedish court shall issue the certificate "upon application at any time".

This means that the certificate does not have to be issued at the same time as the judgment. The Swedish plaintiff may apply for a certificate later.

According to Art. 9, the European Enforcement Order certificate is issued in Swedish, which is the language of the judgment, on a standard form annexed to the Regulation (Annex I).

The judgment giving rise to the European Enforcement Order can be appealed. This is in contrast to the certificate which cannot be appealed.

However, the certificate may be corrected or withdrawn if there is a discrepancy between the certificate and the

judgment or if the certificate was granted in contradiction to the requirements of the Regulation.

This follows from Art. 10.

In order to certify a Swedish judgment as a European Enforcement Order, the judgment must meet further requirements laid down in Art. 6.

A certificate can only be issued if the judgment is enforceable in Sweden as the Member State of origin.

Furthermore, the judgment must not have been delivered in contradiction to the jurisdictional provisions on insurance disputes and exclusive jurisdiction.

If the claim is related to a consumer contract and the consumer is the debtor, the judgment must be issued by a court in the Member State where the consumer is domiciled so as to be certified as a European Enforcement Order.

A court in a member State where the consumer is not domiciled cannot issue a European Enforcement Order against a consumer. But this is not the case in our example as the issuing court is a court in the Member State where the consumer is domiciled.

Most importantly, the court proceedings leading to the judgment must meet certain procedural standards set out in Arts. 12-19.

These requirements, to which I will soon return, are mainly concerned with service on the debtor of claim documents and the information to be contained in such documents. – In other words, that the conditions for a fair trial have been observed.

However, these procedural safeguards must only be met when the claim is uncontested within the meaning of Art. 3(1)(b) or

(c), that is that the safeguards need not be complied with when the debtor has expressly agreed to the claim.

4.5.4 Procedural safeguards

As the Finnish airline-company never objected to the claim, the Swedish court must check that the procedural safeguards of the Regulation are fulfilled prior to issuing the certificate.

These procedural safeguards, or minimum standards as they are called, are found in Art. 12 to 19.

As stated previously, the procedural safeguards mainly concern service of legal documents or documents instituting the proceedings, and the information contained in the claim documents and information on the possibility to contest a claim.

Different forms of service with proof of receipt are accepted and regulated in Art. 13.

But, Art. 14 of the Regulation also accepts other forms of service without proof of receipt.

Some examples are personal service on persons living in the same household as the debtor or employed by the debtor, or service by depositing the claim documents in the debtor's mailbox or at a post office.

The Regulation also accepts service by ordinary mail without proof of receipt if the debtor has his address in the Member State of origin.

Service by e-mail can also be accepted under certain circumstances provided that the debtor has agreed to it expressly in advance.

One problem with Arts. 13 and 14 is that the provisions presuppose that the debtor has a known address. But what if the debtor's address is unknown? Is it possible to serve by advertising in a newspaper or by "nailing summons" on a door?

These methods of service are not adequate under the Regulation and do not qualify for issuing a European Enforcement Order.

Nevertheless, under such circumstances it may be possible to have the judgment enforced under the Brussels regime.

What's important are Arts. 16 and 17. To issue a certificate, the claim documents must have contained information about the amount of the claim and the reason for the claim, as well as the interest, procedural conditions for contesting the claim and the consequences of an absence of objection.

If the procedural requirements laid down in the Regulation have not been fulfilled, the Regulation provides for a cure in Art. 18.

1. First, non-compliance with the service and information conditions in Arts. 13–17 can be cured if the resulting judgment has been served on the debtor in accordance with Arts. 13 or 14, together with information on the possibility of challenging it, and the debtor could have appealed the judgment but failed to do so.
2. Second, non-compliance with Arts. 13 or 14 can be cured if the behaviour of the debtor in the court proceedings shows that he has personally received the documents in sufficient time to arrange for his defence.

Yet another criterion must be fulfilled before the court can issue a certificate. There must be a review mechanism available in the Member State of origin according to Art. 19.

A judgment can only be certified as a European Enforcement Order if the Finnish airline-company is entitled to a review mechanism under Swedish law.

The review mechanism shall be available to the debtor, provided he acts promptly and without any fault on his part, if the claim documents were served without proof of receipt as listed in Art. 14.

And, if the service was not effected in sufficient time for him to arrange for his defence.

Moreover, the review mechanism shall be available if the debtor was prevented from objecting to the claim for reasons of *force majeure* or due to extraordinary circumstances.

It is the duty of the Swedish court of origin to perform the check that all the procedural conditions have been met before it issues the certificate.

If the conditions are met, the judgment will be certified as a European Enforcement Order and the certificate indicates that the European Enforcement Order that can be enforced in other Member States without the need for a declaration of enforceability in Finland as the enforcing Member State.

4.5.5 The procedure in the enforcing Member State

If the Swedish court of origin has issued a certificate for a European Enforcement Order, what further steps needs to be taken?

According to Art. 5 of the Regulation, a European Enforcement Order will be enforced in other Member States without the need for a declaration of enforceability *and* without the possibility of opposing its recognition.

The Swedish plaintiff can turn directly to enforcement authorities in Finland as the Member State of enforcement.

The Swedish plaintiff just has to produce a copy of the Swedish judgment, a copy of the European Enforcement Order certificate, and if necessary a translation of the documents into Finnish according to Art. 20.

Finally, does the airline-company have any possibilities to resist enforcement?

The creation of the review mechanism under the Regulation has been explained by the fact that only in cases of irreconcilable judgments can the judgment debtor, the airline-company, object to enforcement.

So only in case where the Swedish certified judgment is irreconcilable with an earlier judgment given in another member State or a third State is it possible to bar enforcement.

Curiously enough, to invoke this defence the Finnish airline-company must apply for it in a Finnish court according to Art. 21 in a completely new proceeding.

It is important to emphasize that even if a Member State's national laws do not comply with the Regulation's minimum standards and that national courts therefore cannot issue European Enforcement orders, that Member State is still obliged to recognize and enforce judgments certified in other Member States.

4.5.6 A brief assessment

The simplified solutions in the European Enforcement Order find justification in the fact that the Regulation is very limited in scope, coverage and depth as compared to the Brussels I Regulation.

We can all agree that there seems to be no compelling reasons to require *exequatur* where a debt is not in dispute, if the defendant debtor was given fair time to contest the claim.

The Regulation may, however, give rise to concerns, – in particular with regard to legal certainty.

The application of the Regulation can easily be thwarted just by a simple objection to the claim.

The review mechanism with the court of origin and an application for refusal of enforcement with the court where enforcement is sought only applies in very narrow and exceptional cases.

For these reasons, particularly in cases of procedural fraud and where a certificate has been inappropriately issued, a party may lose rights due to lack of further remedies.

Remarkably, in some Member States, the Regulation has had limited practical impact so far. Instead, the parties usually rely on the Brussels I Regulation for enforcement purposes.

In Sweden, 30 European Enforcement Orders were enforced and issued in 2011.

The exception appears to be Great Britain with 5783 EEO's to enforce and 307 to issue in the years 2009 to 2012.

It is unclear whether the absence of cases in which the Regulation has been invoked can be ascribed to a lack of awareness of the existence or the complexity of applying the Regulation.

Information from enforcement authorities indicate that it is difficult to find reliable information about assets and problems in finding the correct enforcement authorities.

Instead creditors sell their claim to private debt collection companies.

One could argue that several instruments which deal in part with the same questions and overlap with the Brussels I Regulation but contain different solutions, add to the complexity in the choice of “enforcement regime”, rather than improving efficiency and access to justice.

Thank you Ladies and Gentlemen for your attention!

UPPSALA
UNIVERSITET

2013-10-31

THE WAY FORWARD: REVISION OF THE BRUSSELS I REGULATION

1 On a quest for free circulation of judgments

Ladies and Gentlemen, I'm going to continue where we left off this morning, namely on a quest for free circulation of judgments.

This afternoon, I will address the European way forward with reference to the Brussels regimes.

In December 2012 the new Brussels I Regulation (recast) or the Brussels I *bis* Regulation was adopted.

The new Brussels I Regulation is intended to repeal and replace the present Brussels I Regulation in its entirety, and was adopted after extensive consultations.

The new Regulation will be directly applicable in the Member States beginning on January 2015.

The new Regulation introduces a new form of European enforcement procedure without the intermediate judicial scrutiny of *exequatur*, and is designed to further enhance mutual recognition of judgments.

Put in other words, compared to the current Brussels I Regulation, an important novelty in the new Brussels I Regulation is the abolition of *exequatur*, *i.e.* judgments delivered in another Member State no longer need to be declared enforceable after a certain judicial intermediate control in the enforcing Member State.

1. This afternoon we will first take a contextual approach on the new Regulation looking at some of the arguments for and against abolishing *exequatur* in international enforcement law.

   The European Commission has been a strong advocate of complete abolition of the *exequatur* procedure and limiting grounds to refuse enforcement. In academia, more hesitant voices have been heard.

2. Second, we will address the European solutions adopted in the new Brussels I Regulation. We will analyse the preconditions and the procedure for enforcement of foreign judgments as well as the possibility to resist enforcement.

   From a Union perspective, one relevant issue is the following: *does the abolition of exequatur in the new Brussels I Regulation bring about a real change, making the free movement of judgments more effective or should concerns be raised that no improvement is achieved?*

   The question appears justified because the currently applicable grounds under which enforcement of foreign judgments can be refused in the Brussels I Regulation are in fact upheld in the new Brussels I Regulation, although applicable only at a different stage of the enforcement procedure.

   With this in mind, the essence of the *exequatur* procedure in the field of civil and commercial law within the EU merits special reflection. Comparisons with reference to changes and novelties will be made with the current Brussels I Regulation.

3. Finally, we will also have a look at some relevant changes with reference to jurisdictional rules, namely the extension of certain provisions to defendants in third countries and choice-of-court agreements. *Are the changes improving access to justice for persons and economic operators, and do the changes enhance mutual recognition?*

2 The European Commission's approach to *exequatur* – a look in the rear-view mirror

Let's have a look in the rear-view mirror and reflect on the reasons behind abolishing *exequatur* in the EU.

In the years 1999 and 2000, the European law maker decided to reform the European *exequatur* procedure, and to reduce national intermediate measures necessary for enforcement of foreign judgments.

The aim is to abolish *exequatur* for all judgments in civil and commercial matters, irrespective of the Member State of origin.

Abolishing *exequatur* has been a long term project set up gradually.

The on-going European simplification of cross-border enforcement and the abolition of national intermediate measures, originates in the multiannual programmes of the European Council.

In the Tampere Conclusions of 1999, the European Council emphasized that mutual recognition is the cornerstone of judicial cooperation in civil matters.

And furthermore it was stressed that intermediate measures had to be reduced.

In the Stockholm Programme of 2010, the European Council reiterated that "the process of abolishing all intermediate measures should be continued".

But what are the underlying reasons to put an end to the European *exequatur*?

To the average European citizen or company it's difficult to explain why a judgment is directly enforceable in the Member State of origin, but not in another Member State without ado.

And if most applications lead to affirmative declarations, is there a need for an *exequatur*?

The more precise reasons put forward by the European lawmaker are mainly two-fold. One justification is economical, and the other is political.

Time and again it has been explained that the *exequatur* procedure brings additional costs and delays in cross-border enforcement. This is true.

Any judgment creditor must go through an additional procedure to obtain a declaration of enforceability, and this is of course costly and time-consuming, considering that the creditor will need to spend time and resources on translations, court fees levied to process the application, expenses to serve the declaration of enforceability on the defendant, and legal counselling, etc. And, - the European conclusions are that it is not coherent with an area built on mutual trust.

The other justification for suppressing *exequatur* is political and has to do with the creation of a genuine European area of justice.

The European freedoms granted to citizens and economic operators also demands that judgments can circulate freely and are respected throughout the Union.

Additional arguments in this debate are that the abolishment of *exequatur* may correspond to the parties' legitimate expectations. This may in turn affect the confidence in the internal market.

Moreover, the free circulation of judgments harbours an essential objective of private international law, – namely the protection of rights laid down in a judgment and acquired under a foreign State's system of law, ensuring the continuity of enforcement for anyone who has obtained a favourable judgment.

In a Report from 2009, adopted by the European Commission, it was held that the Brussels I Regulation functioned satisfactory, but some functions could be improved.

The flaws mainly concerned the procedure for recognition and enforcement. The accompanying Green Paper stressed difficulties to justify, that citizens and businesses have to undergo the expenses in terms of costs and time to assert their rights abroad in the internal market without frontiers.

To abolish the *exequatur* procedure would also follow the European Council's multiannual programs pronouncing that European judgments in civil and commercial matters gradually should be respected and enforced throughout the Union without intermediate measures or judicial control.

In late 2010 the European Commission presented a proposal for a new Brussels I Regulation.

The proposal suggested an abolition of the *exequatur* procedure for most judgments, save judgments in defamation and compensatory collective redress cases.

The reason for singling out certain judgments was, part and parcel, diverging national laws.

Judicial control of the judgment in the enforcing Member State was to be replaced by a registration procedure in the Member State of origin.

Abolishment of intermediate measures in the Member State of enforcement was, however, to be coupled with three limited procedural safeguards in the interest of the party against whom enforcement was sought.

First, it was proposed that the opposing party had the right to apply for non-enforcement in the court of the enforcing Member State in cases of irreconcilable judgments.

The opposing party was, second, permitted to apply for a review of the judgment with the court of origin in certain cases of inappropriate service on the defendant, and where that party by reason of *force majeure* or due to extraordinary circumstances was prevented from contesting the claim without any fault on his part.

These parts of the proposal mirror the solutions found in the European Enforcement Order.

Third, it was proposed a right for the opposing party to apply for non-enforcement with a court in the enforcing Member State if "enforcement would not be permitted by the fundamental principles underlying the right to a fair trial".

It was believed that the proposed safeguards would render the public policy exception superfluous.

However, the proposal was generally held as premature and it has given rise to scholarly debate, particularly regarding two concerns.

The first regards the exclusion of the public policy exception. The European Commission aimed, specifically, to make the *force majeure* defence narrower by design compared to the

public policy ground existing under the current Brussels I Regulation.

To some scholars, the public policy defence was perceived as a distinctive and important remedy against violations of fundamental rights, in situations where the European Convention on Human Rights and the European Charter on Fundamental Rights would not alone suffice.

The other concern focused on the dual system for enforcement: one for judgments that benefit from abolition of *exequatur*, and one for judgments where an *exequatur* procedure was retained.

In addition, the proposal of the European Commission diverged from the ideas encompassed in the 2010 European Parliament Resolution concerning the Brussels I Regulation.

The Resolution advocated a more limited simplification of the enforcement procedure than the European Commission's proposal.

Most importantly, it supported a registration procedure as a precondition to final enforcement measures in the Member State addressed, and coupled the abolition of *exequatur* with defences similar to the ones available in the Brussels I Regulation.

3 The new Brussels I Regulation

3.1 New provisions

So what news does the Regulation carry with it?

The amended recognition and enforcement provisions are mainly found in Arts. 36 to 57 of the new Brussels I Regulation.

All in all, Chapter III is recast, as compared to the current Brussels I Regulation.

A judgment delivered in another Member State is still recognised without any special procedure pursuant to Art. 36(1).

However, according to Art. 36(2), an interested party may apply for a decision stating that there are no grounds to refuse recognition of the judgment, under a special procedure concerned with non-enforcement of judgments, to which I will return.

With reference to enforcement of foreign judgments, the *exequatur* has indeed been abolished in the new Brussels I Regulation.

A judgment enforceable in the Member State of origin shall be enforceable *and* enforced in other Member States without a declaration of enforceability being required according to Art. 39.

The actual procedure for enforcement is, however, regulated by national law, if not regulated in the new Regulation.

Of course, this change was a natural sequel to the European Council's multiannual programs and the developments already seen in other European Regulations, such as the European Enforcement Order.

Besides, the elimination of an additional judicial control in the enforcing Member State follows the proposal of the European Commission, as well as the Resolution of the European Parliament.

3.2 Endorsement

Let's look at the new certification procedure.

The judicial control of the judgment is “transferred” from the Member State of enforcement to the Member State of origin.

The court in the Member State of origin that delivered the judgment endorses or certifies its judgment on a specimen certificate annexed to the new Brussels I Regulation.

Consequently, courts of the enforcing Member State have no mandate to check the foreign judgment.

The certificate verifies, *inter alia*, whether the judgment is enforceable in the Member State of origin, and it contains an extract of the judgment.

It also provides information about service on the defendant, recoverable costs of the proceedings and, if appropriate, the calculation of interest.

The information to be provided by the court of origin under the new Brussels I Regulation is more elaborate than the information contained in the certificate under the current Brussels I Regulation. It will, thus, be more demanding to complete.

On the other hand, the purpose of using certificates is the same under both Regulations: to streamline the procedure and to easily determine the enforceability of the judgment concerned.

3.3 Necessary documents and information

What documents does the judgments creditor have to produce in the enforcing Member State? Does the new Brussels I Regulation entail a simplification with reference to necessary documents and information to be provided?

The party seeking enforcement of a judgment shall provide the competent enforcement authority with:

a) A copy of the foreign judgment. This is to verify the judgment's authenticity.
b) The certificate issued by the court of origin pursuant to Art. 42.
c) If necessary, the applicant may be required to translate the certificate or to provide a translation of the judgment according to Arts. 37(2) and 57.

According to the latter provision translations shall be made by an authorized translator.

Under Art. 55(2) of the current Brussels I Regulation, a translation is also required if it is deemed necessary. The provision is accordingly of a facultative nature.

However, courts in the Member States have regularly applied this provision as if it was mandatory, and requested translations of the judgment.

It seems crucial that national courts only demand a translation where necessary, under the provision in Art. 37(2).

Inevitably, under the new Regulation, language barriers may still produce costs and delays to certain applicants who want to obtain cross-border enforcement.

The costs relating to translation of documents are accordingly still present in the new Regulation. But, in most cases, a translation of the operative part of the judgment is expected to be sufficient for a proper understanding of the enforceable obligation in the enforcing Member State.

An improvement with reference to costs is the change pending in Art. 41(3) of the new Brussels I Regulation. The applicant is no longer required to have a postal address or a

representative in the enforcing Member State as is required by Art. 40(2) of the current Brussels I Regulation.

This new provision can be foreseen to improve efficiency of cross-border enforcement – at least in theory – as this condition in the enforcement procedure has been deleted.

But if this is so in practice remains to be seen.

In several cases it will probably still be necessary to have legal counselling in the enforcing Member State, bearing in mind that creditors often have difficulties in finding the correct enforcement authority, and have difficulties in obtaining reliable information on the debtor's assets in the enforcing Member State.

3.4 Service of documents

If we are heading towards a more automatic enforcement, how does the new Brussels I Regulation safeguard the interests of the judgment debtor?

Prior to the first enforcement measure, the certificate – and if necessary, the judgment, shall be served on the person against whom enforcement is sought according to Art. 43(1).

The objective is to make sure that the judgment debtor is informed before assets are seized and disposed of.

According to Recital 32 of the Regulation, this information shall be provided in "reasonable time" before the first enforcement measure.

The meaning of "reasonable time" is not determined by the Regulation, and will most certainly give rise to differences.

What's important is that this "cooling-off period" should provide adequate time for the party against whom

enforcement is sought to decide on a prospective application against enforcement of the judgment.

4 Grounds for refusal remain

For all aspects of the abolition of *exequatur*, the most significant debate during the recast focused on what procedural safeguards should protect the rights of the judgment debtor, compared to the solutions of the current Brussels I Regulation.

Direct enforcement of a foreign judgment must not jeopardize the judgment debtor's rights of defence.

4.1 The "European" defences

The outcome finally adopted in the new Brussels I Regulation combines the abolition of *exequatur* with certain grounds for refusal (or defences) listed in Art. 45, to be read in conjunction with Art. 46.

An analysis of the provisions confirms the fact that they are modelled on the defences in Arts. 34 and 35 of the current Brussels I Regulation, with only slight adjustments.

The defences are those that also constitute reasons to affirm that there are no grounds for refusal of recognition of a judgment pursuant to Art. 36(2) of the new Brussels I Regulation.

The grounds for refusal are mandatory, which means that enforcement shall be denied if one (or several) of the grounds are at hand.

Art. 45(1)(a) is concerned with the traditional *ordre public* defence, that is whether enforcement of a foreign judgment

would be manifestly contrary to public policy in the Member State addressed.

The public policy exception is often invoked by parties in enforcement proceedings. As we have seen earlier today, European courts have been very reluctant to apply this ground for refusal for good reasons.

The necessity for a public policy defence in European legislation has been debated for a long time.

It is of course tempting to ask whether these defences are compatible with mutual trust.

On the one hand, it could be argued that the need for a public policy exception is no longer present in a European context, as the Member States have a “legislative common core”, and are also covered by both the European Convention on Human Rights and the European Charter of Fundamental Rights.

In contrast, considering that procedural rules of the Member States demonstrate profound differences and that case law of the European Court of Justice and the European Court of Human Rights still display violations of fundamental rights in European States, the defence has been retained to allow such control to be exercised in exceptional cases.

Therefore the public policy defence was kept in the new Regulation as a last resort and an “escape-device”.

The public policy control is limited by Art. 52, which provides that under no circumstances may a foreign judgment be reviewed as to its substance, and by Art. 45(3), which prohibits a review of the court of origin’s jurisdiction by reference to the criterion of public policy.

This is the same under the current Brussels I Regulation.

According to Art. 45(1)(b) of the new Brussels I Regulation, a foreign judgment will not be enforced in cases of missing or improper service of process.

The provision is almost identical to the current defence on default service in Art. 34(2) of the Brussels I Regulation. This is the defence that has had the greatest practical importance in stopping cross-border enforcement under the current Brussels I Regulation.

Save linguistic improvements, there are no substantive reforms in relation to the handling of irreconcilable judgments covered in Art. 45(1)(c) and (d).

Only rarely have cases been reported under the current Brussels I Regulation where these defences have been used.

In addition to these well-known exceptions, others are also included in the new Brussels I Regulation.

Corresponding to the Brussels I Regulation, the jurisdiction of the court of origin may not be reviewed, except in certain specific circumstances.

According to Art. 45(1)(e)(i) – first indent, judgments granted in non-compliance with the mandatory jurisdictional rules concerning insurance contracts, consumer contracts and individual employment contracts shall not be enforced if the policy holder, the insured, a beneficiary, the injured party, the consumer or the employee was the defendant.

The weaker parties get the benefit of extra protection at the enforcement stage if a court of a Member State took jurisdiction contrary to the mandatory jurisdictional rules of the new Regulation.

In contrast to Art. 35(1) of the Brussels I Regulation, Art. 45(1)(e)(i) – first indent of the new Regulation increases protection for employees at the enforcement stage.

The absence of protection afforded to employees in the current Brussels I Regulation has been explained by the fact that the employee acts as plaintiff in the great majority of employment disputes.

Now this extra protection at the enforcement stage has been extended to employees.

Moreover, judgments rendered in contradiction to exclusive jurisdiction are not enforceable pursuant to Art. 45(1)(e)(ii) – second indent.

This applies also to judgments passed against certain defendants in third States under the particular circumstances provided for in Art. 72.

This is corresponding to the current state of affairs. The corresponding provisions in the Brussels I Regulation are found in Art. 35(1) and Art. 72.

But why uphold the grounds for refusal? Why not follow the solutions of the European Enforcement Order or the proposal of the European Commission –, all in the name of mutual trust?

Maintaining these grounds for refusal could be viewed as a response to the concerns raised in the process of revising the current Brussels I Regulation of not going too far, too quickly.

The time was not yet ripe for more comprehensive mutual trust in respect of Member States' legal systems.

4.2 Defences in national law

To add to the complexity, the new Brussels I Regulation also opens up for an application of defences to enforcement found in national laws of the Member States.

Art. 47(2) of the Brussels I *bis* Regulation confirms that the procedure for refusal of enforcement is governed by national law, if not covered by the Regulation.

A judgment shall be enforced in the requested Member State under the same conditions as a judgment delivered in that State under Art. 41(1).

Grounds for refusal in the law of the enforcing Member State, for example, that a debt is paid or that the judgment debtor has a valid counterclaim, apply to actual enforcement.

In this setting, Art. 41(2) is new. It provides, *inter alia*, that grounds for refusal under the law of the Member State addressed shall apply only if they are "not incompatible" with the defences referred to in Art. 45.

As a result, this provision of the Brussels I *bis* Regulation constrains national procedural laws of the Member States and demands that national procedural grounds for non-enforcement comply with the European defences to enforcement in the Regulation.

Before enforcement takes place, and assets are seized, enforcement authorities should be obliged to ascertain that national grounds for non-enforcement abide by those of the EU.

It is tempting to ask whether diverging national defences are compatible with mutual recognition between Member States and the equal treatment of judgment creditors.

4.3 Accessing the defences

To access the defences the opposing party must submit an application to a court in the enforcing Member State in a new proceeding, and invoke the existence of one or several defences as a bar to enforcement.

To put the same point another way: the judgment debtor has the right to apply for refusal of enforcement of the judgment in a new special proceeding in the enforcing Member State.

It's interesting to note that the formal procedure seeking to obtain a declaration of enforceability, which is initiated by the judgment creditor in the enforcing Member State, has been abandoned.

Instead the burden of an additional procedure has been placed on the party who wish to stop enforcement in the enforcing Member State.

Pursuant to Art. 46 enforcement of a judgment under the Brussels I *bis* Regulation can only be refused where one of the defences in Art. 45 is found to exist.

According to the current Brussels I Regulation, the grounds for refusal are accessible to the opposing party only after a decision on enforceability has been granted, and then appealed.

So under the current Brussels I Regulation the real review of the foreign judgment occurs after a foreign judgment has been declared enforceable, and the declaration appealed.

In addition, problems arise in relation to the national grounds for refusal as anticipated in the aforementioned Art. 41(2). When can national grounds for refusal be invoked by the opposing party?

Recital (30) of the Brussels I *bis* Regulation explains that a party challenging the enforcement of a foreign judgment in the enforcing Member State should "to the extent possible" be able to invoke national grounds for refusal in addition to the grounds for refusal in the Brussels I *bis* Regulation in the same procedure.

In the case of Sweden, on the contrary, it has been proposed that national defences should only be applied by national enforcement authorities.

The reason for this is that in the eyes of the Regulation only courts can apply the European grounds for refusal and enforcement authorities do not qualify as courts.

The grounds for refusal in the Regulation would, therefore, only be accessible to the judgment debtor in court proceedings for non-enforcement.

To the average judgment debtor, the proposed Swedish solution appears complicated as certain defences would be available at the first enforcement stage with the enforcement authority, whereas others would not.

But this is of course a problem that will be solved differently under the different Member States laws.

An additional problem with the enforcement rules in the Brussels I *bis* Regulation is that the opposing party can be forced to pursue parallel proceedings in different Member States.

An ordinary appeal may have been lodged on the merits in the Member State of origin, and another for the refusal of enforcement in the requested Member State.

In addition, in case of appeal against any provisional measures, yet another one may be lodged in the court of the Member State of enforcement.

To counteract this problem somewhat, Art. 51(1) allows the court in the Member State of enforcement to stay the proceedings in certain circumstances.

Yet another difficulty relates to the costs of accessing the defences. Art. 47(1) states that an application for non-enforcement shall be submitted to a court in the Member State concerned.

But the Brussels I *bis* Regulation is silent regarding the fees levied to process an application, whereas Art. 52 of the Brussels I Regulation provides that no charge, duty or fee calculated by reference to the value of the matter may be levied.

The manner in which costs are calculated in the Member States differs considerably. Some Member States require the payment of a fixed sum, others impose regular court fees.

To the typical opposing party, the new right of access to grounds for refusal in a new proceeding will suffer from a relative lack of transparency, foreseeability and openness with regard to fees.

Finally, the Brussels I *bis* Regulation contains certain provisions regarding appeal of decisions on the application for refusal of enforcement in the order described in Arts. 49 to 51.

The provisions give the general outline of the appellate procedure, but need to be supplemented by national rules, *inter alia* concerning time-limits.

5 A brief critical appraisal

In conclusion, the enforcement rules of the new Brussels I Regulation will have an important and longstanding practical impact for the European Union, its citizens and businesses.

The formula used in the new Brussels I Regulation is a combination of approaches.

The formal procedure of *exequatur* is eliminated and replaced by a control, consisting of a certification procedure carried out in the Member State of origin.

Basically, additional judicial scrutiny is available in the Member State of enforcement only if the party opposing the enforcement applies for it in a special court procedure.

Practical concerns, as well as the aspiration of finding the best possible solution in safeguarding the defendant's interests, characterises the enforcement provisions in the new Brussels I Regulation.

The revised rules echo the development envisaged in other European instruments in the area of civil and commercial matters.

Nevertheless, the abolition of *exequatur* in the new Brussels I Regulation cannot be understood in the same way as in earlier instruments, because the defences to non-enforcement have a wider scope of application under the new Brussels I Regulation than in other European regulations where *exequatur* has been abolished.

The question initially raised was whether the new Brussels I Regulation improves the free movement of judgments or if the changes are marginal in comparison to the present state of affairs, meaning in essence a confirmation of a *status quo*.

It could be argued that the new Brussels I Regulation is an improvement for parties and businesses seeking transnational enforcement on the internal market in being more efficient.

In a straightforward case, the abolition of intermediate measures regarding enforcement reduces costs and delays, while still ensuring the continuity of enforcement for anyone who has obtained a favourable judgment.

In contrast, it could be held that some or possibly all defences included in the new Regulation are not compatible with the idea of a mutual trust between Member States and a duty for mutual recognition of judgments within the EU.

As soon as the opposing party decides to apply for non-enforcement we are very close to the "old Brussels I enforcement order", although in a new procedure initiated by the party who wish to contest enforcement.

Moreover, the new Regulation has not managed to overcome the "cost-argument" in transnational enforcement, which was an important argument to abolish *exequatur*. Due to language-barriers and the necessity of translations the costs are still there.

In spite of all talk to the contrary, the level of mutual trust between the Member States' judicial and administrative systems has not reached a sufficient "depth" to eliminate the desire for grounds for refusal.

At most, the new Brussels I Regulation has limited the scope of the European *exequatur*.

And the pivotal question remains: Should irregularities be remedied in the Member State of origin or in the Member State of enforcement?

6 Courts' international jurisdiction

6.1 The connection between jurisdiction and enforcement

Let's move on to the jurisdictional rules of the new Brussels I Regulation. Some of the jurisdictional rules in the current Brussels I Regulation have been affected by the recast, others were left untouched.

The Brussels instruments are all double instruments, meaning that they contain provisions both concerning international jurisdiction and rules on recognition and enforcement of foreign judgments.

The reason for this originates in the 1968 Brussels Convention. At the time, it was believed easier to recognize and enforce foreign judgments knowing that the foreign court had applied the same grounds for jurisdiction as courts in the enforcing Member State would.

And it's important to emphasize the general connection between the question on jurisdiction and the question on recognition and enforcement.

If judgments delivered in one State cannot be enforced in the Member State where the judgment debtor has assets, there is no point in instituting proceedings in that State.

Or put in other words, the plaintiff must reconsider where to institute proceedings.

In the following I would like to address some of the most important changes to come, in particular with reference to the extension of "EU-jurisdiction" to non-EU defendants, and also how the new Brussels I Regulation have dealt with the problems relating to abusive litigation tactics and choice-of-court agreements.

6.2 The current regime

With some important exceptions to which I soon will return, the current Brussels I Regulation provides that jurisdiction over defendants domiciled in a Member State can only be determined by the Regulation.

The main rule in Art. 2 provides that proceedings against defendants domiciled in a Member State shall be instituted in the courts of the defendant's domicile.

Art. 4(1), however, provides that jurisdiction over defendants not domiciled in ta Member State is determined by national provisions on jurisdiction in the court of the Member State seized of the dispute.

There are some important exceptions to this regime. I'm just going to mention three.

1. In cases of exclusive jurisdiction, Art. 22 apply regardless of domicile as soon as the conditions laid down in that provision are fulfilled and the relevant connection to a Member State exists.

2. Art. 23 provides that the parties may, by agreement, designate the competent court in a Member State if either the plaintiff or the defendant is domiciled in a Member State.

   By and large, the effect of the agreement could superficially be described as courts in Member States otherwise competent to try the dispute are deprived of their competence.

3. Arts. 8 to 21 of the current Regulation contains certain jurisdictional bases for weaker parties. They are concerned with insurance contracts, consumer

contracts and employment contracts and allow certain weaker parties to institute proceedings at home, regardless if the weaker party is the plaintiff or defendant.

However, this delegation only applies to counterparties domiciled in a Member State.

6.3 The proposal of the European Commission

In its proposal for a new Brussels I Regulation, the European Commission suggested that the Regulation's jurisdictional rules should be applied also to non-EU-defendants.

The result would be that Member State's national provisions on jurisdiction are displaced by common European provisions.

The underlying reasons presented by the Commission were that Art. 4 of the current Regulation was perceived to distort competition on the market because of the diversity between Member States jurisdictional rules.

The European Commission also forwarded that many Member States lacked national rules for weaker parties allowing them to sue in their home jurisdiction, with the risk of losing protection of EU legislation.

These parts of the proposal was relentlessly criticized; first for putting non-EU defendants in an unfair position, secondly, for extending jurisdiction to weaker parties to situations where there is no relevant connection to the EU, besides the domicile of the weaker party.

A general principle in private international law is that jurisdiction should be attributed to a court which has some connection to the legal relationship.

What's more, European rules should cover proceedings that affect the functioning of the European area. One could argue that the proposal goes too far in this respect.

The proposal was not accepted by the European Parliament or the Council.

6.4 The outcome

As the proposal was perceived by extensive consultations of various opinions the final outcome was indeterminate.

Pursuant to Art. 6(1) of the new Brussels I Regulation, defendants domiciled outside of EU are still subject to national rules of the Member State concerned.

National jurisdictional rules thus continue to complement the Regulation.

But, this there are exceptions to this.

Whereas 18 of the new Regulation states that weaker parties should be protected by rules of jurisdiction more favourable to his interests than the general rules.

In order to further enhance the protection of weaker parties, the new Regulation contains provisions that shall apply regardless of where the defendant is domiciled.

Art. 18(1) and Art. 21(2) of the new Regulation makes clear that the protective jurisdictional rules applicable to consumer contract and employment contracts apply also to counterparties not domiciled in the EU.

Thus, the bases of jurisdiction for consumer contracts and employment contracts apply when either the consumer/employee or the seller/employer is domiciled in the EU.

This means that the new Regulation has, to a certain extent, been expanded also to include defendants from

third countries outside the EU. And there is no room for national jurisdictional rules.

The current rules only apply when the defendant is domiciled in the EU.

This final outcome means that regardless of whether the consumer or the employee is defendant or plaintiff, the weaker party is entitled to pursue proceedings at home.

Therefore, if the dispute concerns a consumer contract or an individual employment contract, defendant parties domiciled in third countries are subject to the European jurisdictional rules and can be forced to defend his case in a foreign European court.

In other situations jurisdiction against defendants domiciled in third countries are determined by national rules.

Some reflections: whether this really improves weaker parties' access to justice can be discussed, at least in reference to consumer disputes which are rarely tried in courts but in other forms of alternative dispute resolution.

Nevertheless, let's assume that an American e-company sells particular goods to consumers domiciled in Europe across the internet, something goes wrong and the consumer institutes proceedings in the Member State where he is domiciled.

Why should the American seller answer in a court in a European Member State, if it has no assets there?

Taking into account also that only in certain circumstance can European judgment be enforced in the US.

Most likely, a judgment from a court in a Member State will not be enforced in the US, if an American court finds that the court of origin based its jurisdiction on excessive grounds and that there were no real connection between

the dispute and the selected court besides the domicile of the consumer.

One could argue that the extension of EU-jurisdiction may have a negative impact on consumers' access to merchandise. Sellers in third countries may be less inclined to sell to European consumers.

6.5 Choice-of-court agreements

An important incentive to international trade is the parties' possibility to choose the competent court. This is acknowledged both in the current and the new Regulation, but in different manners.

The chosen court has exclusive jurisdiction if the parties have not agreed otherwise. The parties' agreement consequently bars other courts' jurisdiction.

Art. 23 of the current Brussels I Regulation is limited to cases were at least one party is domiciled in a Member State, whereas the new Art. 25, also concerned with choice-of-court agreement, has been expanded to cover clauses designating the courts of a Member State, regardless of the parties domicile.

Art. 25 of the new Regulation lays down that the parties, regardless of domicile, can agree that a court or courts of a Member State are to have jurisdiction to settle disputes arising out of a particular legal relationship.

The revised provision is also an answer to the problems that the current Brussels I regime provide.

The current Brussels I Regulation has opened up for abusive litigation tactics, where a court not designated in an exclusive choice-of-court agreement has been seized of proceedings and the designated court is seized

subsequently of proceedings involving the same cause of action and between the same parties.

Let me illustrate the problem by turning to the Gasser-case.

Simplifying the facts, the Austrian company Gasser had a breakdown in its business relations with the Italian company MISAT.

MISAT brought proceedings against Gasser before an Italian court.

Thereinafter, Gasser brought proceedings against MISAT before an Austrian court, invoking a choice-of-court clause designating the Austrian court as exclusively competent.

The conflict concerned the Brussels rules on prorogation agreements and the rules concerning *lis pendens* – related actions.

Art. 23 states that "if the parties have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise."

Art. 27 provides that "where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member State, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

So here we have an inherent conflict between two provisions in the current Regulation.

The problem was if the Italian court had jurisdiction as the court first seized or if the Austrian court had jurisdiction as the designated court.

Should Art. 23 or Art. 27 triumph, if a non-designated court is seised first?

The Court of Justice said first come, first serve and ruled in favour of the Italian court.

According to the Court of Justice, the court second seised, *i.e.* the Austrian court, whose jurisdiction has been claimed under an agreement conferring jurisdiction, must stay proceedings until the court first seised, i.e. the Italian court, has declared that it has no jurisdiction.

This is so even if the duration of proceedings in the court first seised is excessively long.

The Italian torpedo in this case was that the Italian court system was extremely slow and the use of the Italian court system could bar proceedings for a long time to come.

As we know, there are some courts before which it's possible to stall proceedings for a very long time.

There are even Italian lawyers specializing in the slowness of the system, soliciting their services instituting proceedings in Italian courts to delay a final solution of a legal dispute urging disputing parties to institute proceedings in Italian courts.

In Gasser, there was a fear that it would take the Italian court years to solve the jurisdictional issue, possibly in infringement with Art. 6 of the European Convention on Human rights.

The consequence of the Gasser-solution is that the parties cannot rely on a choice-of-court agreement, and besides, it is not possible to oppose recognition of the judgment of a judgment delivered by the court first seised.

Part of the European Union's endeavours to enhance the effectiveness of choice-of-court agreements and to avoid

abusive litigation tactics as was probably the case in Gasser, has affected the provisions of new Brussels I Regulation.

Now, Art. 29, under the heading of *lis pendens* and related action, has been made subordinate to Art. 31(2).

Art. 31(2) provides that "any court of another Member State shall stay the proceedings until such time as the court seised on the basis of the agreement declares that it has no jurisdiction under the agreement".

It seems to be a situation of reversed *lis pendens*, as the court first seised has to wait until the designated court has declared that it has no jurisdiction.

But can the designated court proceed without waiting for the court first seised to decline jurisdiction?

Recital 22 of the new Regulation provides the answer.

Sketchily, the recital states that in order to enhance the effectiveness of exclusive choice-of-court agreements and to avoid abusive litigation tactics, it is necessary to deal with situations in which concurrent proceedings may arise.

This is the case where a court not designated in an exclusive choice-of-court agreement has been seised of proceedings and the designated court is seised subsequently of proceedings involving the same cause of action and between the same parties.

In such a case, the court first seised should be required to stay its proceedings to ensure that the designated court has priority.

So, the designated court should be able to proceed irrespective of whether the non-designated court has already decided on the stay of proceedings.

In the words of Prof. Hartley, it seems as though the Italian torpedo final has sunk!

7 The way forward

Some final words on the way forward.

The European private international law is still being constructed, it's harmonized, yet fragmented.

My understanding of the new Brussels I Regulation is that it is moving towards common European rules in the field of civil and commercial matters regarding jurisdiction and recognition and enforcement of foreign judgments.

And it seems that EU law has taken yet another step towards universality, but still hesitating, not wanting to go too far too fast.

There are also important issues that are still unsolved that the EU needs to address; in particularly I'm thinking of the approach to foreign judgments issued in third States.

Should we be content with national diversity and the different ways that Member States treat foreign judgments from third States, or are third country judgments affecting the functioning of the European area in the sense that we need a common approach towards third country judgments?

Currently, we seem to be heading down the conventional route, which in turn raises difficult issues on the division of competence between the EU and its Member States.

Ladies and Gentlemen, thank you for your attention!

Assorted literature

R. Arenas García, "Abolition of Exequatur: Problems and Solutions. Mutual Recognition, Mutual Trust and Recognition of Foreign Judgments: Too Many Words in the Sea", in *Yearbook of Private International Law*, Vol. XII 2010. Sellier European Law Publishers 2011, pp. 351–375.

M. Bogdan, *Concise Introduction to EU Private International Law*. 2nd ed. Europa Law Publishing 2012.

A. Briggs, What should be done about jurisdiction agreements? in in *Yearbook of Private International Law*. Vol. XII 2010. Sellier European Law Publisher 2011, pp. 311–332.

A. Dickinson, "The Revision of the Brussels I Regulation. Surveying the Proposed Brussels I *bis* Regulation – Solid Foundations but Renovation Needed", in *Yearbook of Private International Law*. Vol. XII 2010. Sellier European Law Publisher 2011, pp. 247–309.

M. Fallon & T. Kruger, The spatial scope of the EU's rules on jurisdiction and enforcement of judgments: from bilateral modus to unilateral universality? in *Yearbook of Private International Law*, Vol. XIV 2012/2013, Sellier European Law Publishers, Munich 2013, pp. 1–35.

J. Fawcett and J. M. Carruthers, *Cheshire, North & Fawcett on Private International Law*. 14th ed. Oxford University Press 2008.

Jänterä-Jareborg, Maarit, Foreign Law in National Courts – A Comparative Perspective in *Recueil des Cours*, Volume 304 (2003), Martinus Nijhoff Publishers 2004.

W. Kennett, *The Enforcement of Judgments in Europe*, Oxford University Press 2000, 215

Pålsson, Lennart, *Bryssel I-förordningen jämte Bryssels och Luganokonventionerna. Domstols behörighet samt erkännande och verkställighet av domar i privaträttsliga ämnen inom EU/EFTA-området.* Norstedts Juridik 2008.

Study JLS/C4/2005/03, *Report on the Application of Regulation Brussels I in the Member States* by B. Hess, T. Pfeiffer and P. Schlosser (the Heidelberg Report).