

DIFFERENCES BETWEEN THE RECOGNITION AND ENFORCEMENT OF AUTHENTIC INSTRUMENTS AND THE RECOGNITION AND ENFORCEMENT OF JUDGMENTS

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Abstract The subject of the article is to analyse and compare the specificity of judgments and authentic instruments in terms of cross-border recognition and enforcement under the Brussels I Recast Regulation framework. Particular focus has been put on the practical aspects of the definition of an authentic instrument. Selected detailed issues arising against this background have been discussed with reference to the Polish legal order as well as the case-law of the Court of Justice of the European Union (CJEU). Based on the undertaken considerations, some proposals have been formulated regarding the enhancement of the free circulation of authentic instruments within the European Union.

Keywords

Brussels I
Recast,
mutual
trust,
authentic
instruments,
recognition,
enforcement

1 Introduction

The principle of mutual trust constitutes the backbone of the Brussels I Recast Regulation.¹ Under Article 58 of the Regulation, authentic instruments in civil and commercial matters issued in one Member State can freely circulate in all Member States without the need for any special procedure. The abolition of *exequatur* with respect to authentic instruments allows that an authentic instrument which is enforceable in the Member State of origin is enforceable in the other Member States without any declaration of enforceability being required. The regime of free circulation is grounded in the principle of equality of Member States and the principle of mutual trust in the administration of justice.

In most legal systems, authentic instruments are enforcement titles that may entitle one to initiate enforcement proceedings leading to compulsory performance. It should be noted that authentic instruments are usually used to establish an indisputable claim, *i.e.* a claim for which the debtor has recognized its existence and does not raise any objections. Authentic instruments are an even more diverse group of enforcement titles than judgments. While, in principle, a judgment may be issued only by a court, an authentic document may come from a public entity that is not a court, a non-public body that only performs certain public competences within a very limited scope, as well as a private entities, which may be entitled to issue it under specific provisions.

Therefore, this paper includes analysis of and presents differences between the recognition and enforcement of judgments and the recognition and enforcement of authentic instruments.

2 Definition of authentic instrument

Each legal system has developed its own definition of an authentic instrument, nevertheless, Brussels I Recast Regulation introduces an autonomous definition of an authentic instrument applicable in regard to enforcement of authentic instruments in a state other than its state of origin. This definition is consistent with

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

the understanding of an authentic instrument within the legal systems of Member States. It should be emphasized that Brussels I did not contain definition of authentic instrument. Nevertheless, the situation in this respect has been changed with the entry into force of Brussels I Recast. The legal definition of an authentic instrument is contained in Article 2(c) Brussels I Recast, which stipulates that “authentic instrument” means a document which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which relates both to the signature and the content of the instrument as well as has been established by a public authority or other authority empowered for that purpose. The provision in question merely indicates the criteria for recognition of a specific document issued in accordance with the law of a specific member state as an authentic instrument. It should be noted that the cited definition is not entirely new, because it was first introduced in Article 4 par. 3 Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims² (Gołaczyński, 2015: para. 4). The only difference between the definition contained in the Regulation No 805/2004 and Brussels I Recast Regulation is that the EEO regulation provides that “authentic instrument” covers an arrangement relating to maintenance obligations concluded with administrative authorities or authenticated by them. Maintenance obligations are outside the scope of the regulation in Brussels I Recast Regulation and are subject to Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. Therefore, it is understandable to limit the scope of the definition of an authentic instrument used in Brussels I Recast.

Analyzing the elements that allow for recognition of a certain document as an authentic instrument, it should first be indicated that instrument should be issued by a public authority or an official. In this respect, the judgment issued by the Court of Justice of the European Union (CJEU) in case C-260/97 *Unibank A/S v Flemming G. Christensen*³ on the basis of the Brussels Convention remains relevant. The CJEU held that “acknowledgment of indebtedness enforceable under the law of the State of origin whose authenticity has not been established by a public authority or other authority empowered for that purpose by that State does not constitute an authentic

² OJ L 143, 30. 4. 2004, p. 15, hereinafter: Regulation No 805/2004.

³ Case C-260/97, *Unibank A/S v Flemming G. Christensen*, ECLI:EU:C:1999:312.

instrument within the meaning of Article 50 of the Brussels Convention”. In other words, for a document to be considered an authentic instrument, its authentication by a public authority or an entity expressly authorized to do so is required. In addition, the public authority or official has to be empowered to authenticate in respect of authentic instruments. Authentication has to be done through an authentication procedure, which follows from certain provisions concerning the issuing of authentic instruments. The document must follow the relevant rules on the formalities for drawing up and issuing authentic instruments. A key element of a document allowing it to be recognized as an authentic instrument is legal effect resulting that the authentic instrument provides conclusive proof of the content of the instrument.⁴

An example of an authentic instrument with the most practical significance is a notarial deed in which the debtor submits to enforcement. A public notary is not a public authority, but nevertheless is an official empowered to draw up authentic instruments. The CJEU, in case C-42/92 *Adrianus Thijssen v Controledienst voor de verzekeringen*⁵ as well as in case C - 52/08 *European Commission v. Portuguese Republic*,⁶ pointed out that the enforceability of an authentic instrument does not confer on a notary any powers relating to a direct and specific participation in the exercise of official authority. The enforceability of a notarial deed depends, in particular, on the debtor's consent to submit to a possible compulsory enforcement under this act without initiating prior proceedings. It follows that the notarial deed is not enforceable without the consent of the debtor.

It should be pointed out that in some legal systems also private entities not exercising public authority were entitled to issue documents that could constitute grounds for execution. In Poland according to Article 96 of the Banking Act of August 29, 1997, banks were entitled to issue bank enforcement titles up to November 27, 2015. Nevertheless, the Constitutional Tribunal found that granting a special privilege to banks as private entities concerning facilitation of the pursuit of claims was incompatible with the Polish Constitution, and it found Article 96 sec. 1 and Article 97 sec. 1 of the Banking Act of August 29, 1997 inconsistent with Article 32 sec. 1

⁴ Comparative study on authentic instruments national provisions of private law, circulation, mutual recognition and enforcement, possible legislative initiative by the European Union, PE 408.329, available on [27.09.2020] [https://www.europarl.europa.eu/RegData/etudes/STUD/2008/408329/IPOL-JURI_ET\(2008\)408329_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2008/408329/IPOL-JURI_ET(2008)408329_EN.pdf).

⁵ Case C-42/92, *Adrianus Thijssen v Controledienst voor de verzekeringen*, ECLI:EU:C:1993:304.

⁶ Case C-52/08, *European Commission v. Portuguese Republic*, ECLI:EU:C:2011:337.

of the Polish Constitution.⁷ The Constitutional Tribunal found that the right of banks to issue bank enforcement titles constitutes a violation of Article 32 sec. 1 of the Polish Constitution, particularly the principle of equality in relation to their clients. The conclusions of the Constitutional Tribunal are consistent with the CJEU's ruling in case C-260/97 *Unibank A/S v Flemming G. Christensen*⁸ that, in fact, banks are not public authorities and do not exercise public powers in regard to bank enforcement titles.

3 Differences between the recognition of authentic instruments and the recognition of judgments

3.1 The notion of recognition

The Brussels I Recast Regulation does not provide a definition of what is meant by “recognition”. However, the relevant definition has been created in the subject literature⁹ (Mankowski, 2016a: 814) and in the case-law of the CJEU¹⁰ in the context of the recognition of judgments. In accordance with those sources, recognition means conferring on judgments the authority and effectiveness accorded to them in the state in which they were rendered. Recognition involves accepting to give a foreign document legal effects, in other words: the Member State addressed accepts to consider that the document constitutes a valid determination of the rights and obligations of parties. As a result, in the context of judicial proceedings, it implies procedural effects too, with *res iudicata* being one of the most important of them. Recognition, as indicated, has therefore both substantial and procedural consequences.

⁷ OTK-A 2015/4/46.

⁸ Case C-260/97, *Unibank A/S v Flemming G. Christensen*, ECLI:EU:C:1999:312.

⁹ Jenard report on the convention on jurisdiction and the enforcement of judgments in civil and commercial matters, Official Journal 1979, c 59, pp. 42-43.

¹⁰ See e.g. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61986CJ0145> (“recognition must therefore have the result of conferring on judgments the authority and effectiveness accorded to them in the state in which they were given”).

3.2 Automatic recognition vs. automatic acceptance

Article 36 of the Brussels I Recast Regulation establishes the principle of the automatic recognition of foreign judgments. It provides that judgments issued in one Member State are automatically recognized in other Member States without any prior proceedings or formal steps. Article 58 of the Brussels I Recast Regulation on authentic instruments, on the contrary, does not refer to the recognition of authentic instruments.¹¹ And unlike Article 59 of Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession,¹² the Brussels I Recast Regulation does not provide a procedure for the acceptance of authentic instruments. As a result, the Brussels I Recast Regulation does not describe grounds for refusing to recognise an authentic document, *e.g.* when it is manifestly contrary to public policy (*ordre public*) in the Member State concerned. Notwithstanding the above, it is said that under the Brussels I Recast Regulation, for the purpose of enforcing the obligations flowing from authentic instruments, their content is accepted (Vekas, 2016: 984).

According to Article 61 of the Brussels I Recast Regulation, no legalisation or other similar formality shall be required for documents issued in a Member State in the context of this Regulation. This provision prohibits Member States from requiring legalization or other similar formalities for documents, such as a judgment or notarial act, issued in one Member State for the purpose of using it (for instance for the recognition or enforcement) in another Member State (Mankowski, 2016b: 989). The formulation of the provision generally refers to all documents that are issued in the context of the Brussels I Recast Regulation. The expression “documents issued in a Member State in the context of this Regulation” is broad in its application, but

¹¹ Whereas *e.g.* Article 48(1) of the Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ L 7, 10.1.2009, p. 1–79) or Article 46 of the Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ L 338, 23.12.2003, p. 1–29) allow authentic instruments to be recognised in another Member State under the same conditions as judgments.

¹² Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (OJ L 201, 27. 7. 2012, p. 107–134).

it includes the notion of “authentic instrument” as defined in Article 2(c) of the Regulation (Gołaczyński, 2015).

Article 61 of the Regulation corresponds with Article 1138 of the Polish Code of Civil Procedure,¹³ which states that foreign authentic instruments have the same probative value as Polish authentic instruments. In accordance with Article 244 of the Polish Code of Civil Procedure, authentic instruments drawn up in the form prescribed by relevant public authorities and other state authorities constitute proof of the facts officially stated therein. Thus, foreign authentic instruments benefit from the presumptions of authenticity and truthfulness. The first presumption implies that whoever questions the authenticity of an authentic instrument has the burden of proving that it is not authentic (that it has been falsified). The second presumption means that everyone is obliged to assume that the official statement comports with reality. An exception applies to foreign authentic instruments involving the transfer of ownership of immovable property located in the Republic of Poland and documents whose authenticity is denied by a party. Pursuant to Article 1138, these documents should be certified by a Polish diplomatic mission or consular office. In this context, it is notable that the Polish legal system does not possess any legal rule which establishes an overt “recognition” stage for a foreign authentic instrument.

3.3 Differences

Under the Brussels I Recast Regulation judgments are automatically recognized, while authentic instruments are not. Authentic instruments are at most automatically accepted, as Article 61 of the Regulation prohibits any form of legalisation procedures or other similar formalities. At the same time, the Brussels I Recast Regulation does not provide for a specific procedure of acceptance of authentic instruments, unlike Article 59 of the Succession Regulation. As a result, two types of free circulation in civil and commercial matters (free circulation of judgments and free circulation of authentic instruments) are similar in many ways, as they allow to give a foreign document legal effects in other Member States, but differ in many aspects – in the context of recognition, one of the most important is the procedural consequence in the form of *res iudicata*. The concept of mutual recognition cannot simply be transferred from judgments to authentic instruments, since authentic

¹³ Code of Civil Procedure Act of 17 November 1964 (unified text: Journal of Laws of 2019, item 1460).

instruments do not produce *res iudicata* effect (Fitchen, Kramer, 2015: para. 14.31). Binding effect (the lack of the possibility of further judicial review) is considered to be unsuitable for authentic instruments.¹⁴ The existence of an authentic instrument does not preclude court proceedings questioning the validity of the instrument or the underlying transaction.

Table 1: Differences between Judgment and Authentic instrument

Judgment	Authentic instrument
Automatic recognition	No automatic recognition
Grounds for refusing to recognise a judgment (Article 45 of the Regulation)	No grounds for refusing to recognise or to accept an authentic document
<i>Res iudicata</i> effect	No <i>res iudicata</i> effect

4 Differences between the enforcement of authentic instruments and the enforcement of judgments

4.1 Abolition of exequatur

One of the most significant changes brought about by the Brussels I Recast Regulation is the abolition of exequatur for the purpose of enforcement, which is connected with the introduction of the system of automatic enforcement. These rules apply both to judgments and authentic instruments.

4.1.1 Judgments

With regard to judgments, pursuant to Article 39 of the Brussels I Recast Regulation, a judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required. As a result, by eliminating the requirement that an authority of the Member State of enforcement declares enforceable the foreign judgment, the enforceability of the judgment has been extended to the whole territory of the European Union. This furthers the EU's objective of free movement of judgments (Cuniberti, Rueda, 2016a: 836, 839; Frąckowiak-Adamska, 2018: 446).

¹⁴ Comparative study on authentic instruments national provisions of private law, circulation, mutual recognition and enforcement, possible legislative initiative by the European Union, PE 408.329, p. V, 133-134, 141, available on [27.09.2020]
[https://www.europarl.europa.eu/RegData/etudes/STUD/2008/408329/IPOL-JURI_ET\(2008\)408329_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2008/408329/IPOL-JURI_ET(2008)408329_EN.pdf).

As follows from the general principle expressed in the above provision, it is the domestic law of the Member State of origin that decides on the enforceability of a judgment. Similarly, in procedural terms – as a rule – judgments issued in another Member State are subject to the same procedure of enforcement as domestic judgments. According to Article 41(1) of the Brussels I Recast Regulation, the procedure for the enforcement of judgments given in another Member State shall be governed by the law of the Member State addressed. A judgment given in a Member State which is enforceable in the Member State addressed shall be enforced there under the same conditions as a judgment given in the Member State addressed (Cuniberti, Rueda, 2016b: 846).

The applicant seeking enforcement of a judgment in another Member State is required to provide the competent enforcement authority with documents specified in Article 42 of the Brussels I Recast Regulation. The aforementioned documents differ depending on the character of the judgment to be enforced. As far as judgments on the merits are concerned, the applicant shall provide two documents: (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity, and (b) the certificate issued pursuant to Article 53, certifying that the judgment is enforceable and containing an extract of the judgment as well as, where appropriate, relevant information on the recoverable costs of the proceedings and the calculation of interest (Article 42(1) of the Brussels I Recast Regulation). With respect to judgments ordering provisional, including protective, measures, it is required that the following documents be provided: (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; (b) the certificate issued pursuant to Article 53, containing a description of the measure and certifying that: (i) the court has jurisdiction as to the substance of the matter; (ii) the judgment is enforceable in the Member State of origin; and (c) where the measure was ordered without the defendant being summoned to appear, proof of service of the judgment (Article 42(2) of the Brussels I Recast Regulation) (Cuniberti, Rueda, 2016c: 850–851; Frąckowiak-Adamska, 2018: 447).

As regards the certificate referred to in Article 53 of the Brussels I Recast Regulation, it is obligatory that the document be submitted in the form set out in Annex I to the Regulation. The information contained in the certificate shall provide the enforcement authority with a sufficient basis to initiate and conduct the enforcement

proceedings. This is supposed to prevent the need for translation of the judgment (Zalisko, 2015b: para. 2).

4.1.2 Authentic instruments

By virtue of Article 58(1) sentence 1 of the Brussels I Recast Regulation, an authentic instrument which is enforceable in the Member State of origin shall be enforceable in the other Member States without any declaration of enforceability being required. Thus, the condition of enforcement of an authentic instrument is its enforceability in the Member State of origin, which, in line with the CJEU's case-law, refers to formal terms and not to all circumstances in which such an instrument may be enforced in the Member State of origin (Zatorska, 2015).¹⁵

The enforcement of authentic instruments shall be subject to the respective provisions of the Regulation relating to the enforcement of judgments as appropriate (Article 58(1) sentence 3 of the Brussels I Recast Regulation). Among the applicable enforcement provisions, Article 41(1) of the Regulation can be mentioned. In accordance with the rule set out therein, an authentic instrument enforceable in the Member State of origin should be enforced under the same conditions as would a domestic authentic instrument (Kramer, 2016: 983–984).

With respect to the formal requirements regarding documents to be provided, pursuant to Article 60 of the Brussels I Recast Regulation, the competent authority or court of the Member State of origin shall, at the request of any interested party, issue the certificate using the form set out in Annex II containing a summary of the enforceable obligation recorded in the authentic instrument or of the agreement between the parties recorded in the court settlement.

¹⁵ See also judgment of the Court of 29 April 1999 in the case C-267/97 *Eric Coursier v. Fortis Bank and Martine Coursier, née Bellami*, ECR 1999 I-02543.

4.2 Refusal of enforcement

As stated in Recital 29 of the preamble to the Brussels I Recast Regulation, the direct enforcement in the Member State addressed of a judgment given in another Member State without a declaration of enforceability should not jeopardise respect for the rights of the defence. Therefore, alongside the system of automatic enforcement, the Regulation offers protection to persons against whom enforcement is sought in the form of the grounds for refusal that can prevent enforcement requests when any of the expressly provided means is fulfilled (Zalisko, 2015a: para. 1; Kramer, Ontanu, de Rooij et al., 2018: 25). The grounds for refusal are regulated separately with respect to judgments and authentic instruments.

4.2.1 Judgments

According to Article 46 of the Brussels I Recast Regulation, on the application of the person against whom enforcement is sought, the enforcement of a judgment shall be refused where one of the grounds referred to in Article 45 is found to exist. Article 45 of the Regulation provides that on the application of any interested party, the recognition of a judgment shall be refused:

- (a) if such recognition is manifestly contrary to public policy (*ordre public*) in the Member State addressed;
- (b) where the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;
- (c) if the judgment is irreconcilable with a judgment given between the same parties in the Member State addressed;
- (d) if the judgment is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed; or
- (e) if the judgment conflicts with:

- (i) Sections 3, 4 or 5 of Chapter II where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee was the defendant; or
- (ii) Section 6 of Chapter II (see further Francq, 2016: 863 ff).

4.2.2 Authentic instruments

As follows from Article 58 of the Brussels I Recast Regulation, enforcement of the authentic instrument may be refused only if such enforcement is manifestly contrary to public policy (*ordre public*) in the Member State addressed.

Each Member State defines the public policy clauses in accordance with the national concept thereof, within the limits determined by the CJEU (Zatorska, 2015).¹⁶ It also should be noted that the refusal of enforcement of an authentic instrument under the Regulation does not exclude the possibility of applying the grounds for refusal under the national law of the Member State addressed to the extent that they are not inconsistent with EU law (Article 58(1)sentence 3 in connection with Article 41(2) of the Brussels I Recast Regulation) (Zalisko, 2015c: para. 9).

4.3 Differences

As is apparent from the brief analysis of the Brussels I Recast Regulation's enforcement regimes regarding judgments on the one hand, and authentic instruments on the other, they demonstrate remarkable similarities, particularly with regard to direct enforcement. By contrast, the same cannot be said for the refusal of enforcement. The Regulation provides an exhaustive list of grounds upon which an application for refusal of enforcement of a judgment may be based, whereas, when it comes to authentic instruments, the only ground for refusal is manifest contradiction with public policy in the Member State addressed.

¹⁶ See also judgments of the Court of: 28 March 2000 in the case C-7/98 Krombach v. André Bamberski, ECR 2000 I-01935; 2 April 2009 in the case C-394/07 Gambazzi v. DaimlerChrysler Canada Inc. and CIBC Mellon Trust Company, ECR 2009 I-02563.

Table 2: Differences between Judgment and Authentic instrument

Judgment	Authentic instrument
Directly enforceable; no declaration of enforceability required (Article 39 of the Regulation)	Directly enforceable; no declaration of enforceability required (Article 58 of the Regulation)
Grounds for refusal of recognition applicable (Article 45 in connection with Article 46 of the Regulation)	Contradiction with public policy (Article 58 of the Regulation)

5 Summary

The Brussels I Recast Regulation deals with the recognition and the enforcement of court judgments in two separate sections of Chapter III (Section 1 “Recognition” and Section 2 “Enforcement”), while for authentic instruments, rules only deal with enforcement, not recognition. Article 58 of the Brussels I Recast Regulation merely declares which common provisions of Chapter III in respect of enforcement are applicable as appropriate. However, it does not refer to the specific rules on the recognition of court decisions contained in Section 1 of Chapter III.

Although the general concept underlying the EU approach with regard to free circulation is the same in respect of judgments and authentic instruments, the question arises as to whether the concept of mutual recognition as part of this general approach is likewise applicable to authentic instruments. The present paper demonstrates the opposite. While valid judgments are subject to both a recognition and an enforcement stage, authentic instruments are only subject to an enforcement stage (which is very similar to the enforcement of judgments; the only difference is the limited scope of grounds for refusal of recognition for authentic instruments¹⁷). However, unlike judgments, authentic instruments do not benefit from cross-border recognition. As a result, the practical problem remains: under Brussels I Recast Regulation there are no preconditions for refusal of the recognition of an authentic instrument. Consequently, the EU legal system does not establish rules and procedures to refuse or diminish the probative value of authentic instruments (*e.g.* in case of serious doubts as to the authenticating authority, the procedure, or the form of the instrument). Therefore, it would be reasonable to introduce to the

¹⁷ The only express ground for refusal, assuming the authentic instrument to be valid, is that such enforcement would be contrary to public policy within the receiving legal system.

Brussel I Recast Regulation at least one ground for the refusal of recognition or acceptance, i.e. when the authentic instrument is contrary to the public policy (*ordre public*) of the state of destination. In that case, a Member State addressed would not be obliged to accept an authentic instrument issued in another Member State, if the content conflicts with public policy, regardless of national regulation.

Free circulation of authentic instruments should be considered as the only right course of action in the context of maintaining and developing an area of freedom, security, and justice in the EU. There are still challenges to be faced, however. Automatic acceptance of legal effects of authentic instruments, on the one hand, strengthens evidentiary and enforcement effects, but on the other hand, it may make the system as a whole more vulnerable to fraud. Enforcement authorities are not necessarily always well-equipped to verify the authenticity of the foreign documents being processed, or extract the relevant information from them (even with foreign judgments). This problem is further exacerbated as authentic instruments (and court settlements) are also included within the scope of the abolition of exequatur. For this reason, there is a need for strengthened forms of cooperation between the respective competent authorities in the Member States, the establishment of secure and expedient mechanisms for verification of documents presented, and provision of information about their legal effects.

Note

Hereinafter: EU.

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