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Recognition and enforcement of judgments in civil and commercial matters in the Brussels I Recast and some lessons from it and the recent Hague Conventions for the Hague Judgments Project

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This article looks at the rules on the recognition and enforcement of civil and commercial judgments in the EU and internationally. It provides a detailed description of the procedure for recognition (if requested) and enforcement introduced by the new Brussels I in January 2015 and compares this with the previous procedure. The article then seeks to provide suitable recommendations for the procedure on recognition and enforcement in a future Hague Judgments Convention. In order to inform these recommendations, the article analyses the current procedures in Brussels I, the Hague Choice of Court Convention and the Hague Maintenance Convention 2007. The authors argue that the substantive grounds for non-recognition/enforcement (ie those unrelated to the jurisdictional basis of the original judgment) could be reduced to manifestly contrary to public policy and irreconcilable judgments. It would also be helpful if there were minimum harmonisation of the enforcement procedure so that national and international grounds for non-enforcement could be considered in the same set of proceedings.

Keywords: Brussels I Regulation; recognition and enforceability; Hague Judgments Project; notification of the defendant; procedural fraud; public policy; excessive damages; explanatory report; actual enforcement

A. Introduction

This paper is concerned with the recognition and enforcement of judgments in civil and commercial matters. It will give a brief history of the Brussels I Recast in the European Union and a description of its final provisions on

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recognition and enforcement of judgments from other Member States of the Union. An understanding of those provisions is of interest in its own right. The paper then utilises the provisions in the Brussels I Recast and in the two most recent Hague Conventions (Choice of Court from 2005 and Maintenance from 2007) as sources of inspiration to consider what provisions might be included in the non-jurisdictional aspects of recognition and enforcement of foreign judgments in a future Hague Judgments Convention, which has been the subject of early stage discussions in The Hague since 2010. The paper will not consider the earlier history of the Hague Judgments Project between 1992 and 2001 nor the history and significance of the Hague Choice of Court Convention 2005.[1]

B. A brief history of the Brussels I Recast, from Tampere to Nicosia via Paris, Stockholm and Warsaw

In October 1999, the European Council adopted a conclusion on "intermediate measures" concerning the recognition and enforcement of judgments given in one EU Member State in another EU Member State.[2] Intermediate measures are also known as the "exequatur" or the "declaration of enforceability". It is a procedural stage at which a foreign judgment will be turned into the equivalent of a domestic judgment for the purpose of proceeding to actual enforcement.

The Heads of Government of the Member States committed themselves "as a first step" to abolishing "intermediate proceedings" and "grounds for refusal of enforcement" in respect of "small consumer or commercial claims and for certain judgments in the field of family litigation (eg on maintenance claims and visiting rights)."

The first step has been delivered by the adoption of several instruments that remove the *exequatur* and the grounds for refusal of enforcement including public policy[3] culminating in the Maintenance Regulation that was adopted in the last part of 2008 by the French Presidency (hence the allusion to Paris in the title of this section).[4] The last instrument, however, kept in place the *exequatur*

[1]These matters and the jurisdictional issues relating to recognition and enforcement are considered in P Beaumont, "The Revived Judgments Project in The Hague" (2014) *NederlandsInternationaalPrivaatrecht* 532.

[2]See P Beaumont and E Johnston, "Can *Exequatur* be Abolished in Brussels I Whilst Retaining a Public Policy Defence?" (2010) 6 *Journal of Private International Law* 249, nn 1, 5.

[3]See Regulation 805/2004, the European Enforcement Order [2004] OJ L143/15; Regulation 861/2007, the European Small Claims Procedure [2007] OJ L199/1; and the Brussels IIa Regulation, ie Regulation 2201/2003, concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility [2003] OJ L338/1. The last of these measures abolishes *exequatur* and the grounds for refusal of enforcement in relation to aspects of child abduction and access rights.

[4]The EC Maintenance Regulation, Regulation 4/2009, [2009] OJ L7/1. But one ground for non-enforcement of judgments coming from any EU Member State apart from Denmark

and the grounds for refusal of enforcement in relation to judgments from Denmark and the UK in other EU Member States because the abolition of *exequatur* and the removal of the grounds for non-enforcement were made conditional on the harmonisation of the applicable law rules by ratifying the Hague Protocol on the Law Applicable to Maintenance Obligations 2007.

In December 2009, the European Council adopted the Stockholm Programme.[5] Significantly it no longer refers to abolition of the "grounds for refusal of enforcement" and paved the way to see the abolition of *exequatur* as eliminating the procedural stage while leaving intact the substantive grounds for refusal of enforcement. The Heads of Government were committed during the Stockholm Programme (2010–2014) to continuing the process of "abolishing all intermediate measures (the exequatur)".

The Commission proposal for the recast of Brussels I was made in December 2010.[6] The complete abolition of *exequatur* (the declaration of enforceability) was proposed for all subjects within the scope of the Regulation except for cases of defamation and other non-contractual obligations relating to privacy and personality rights, and for certain types of collective redress claims.[7] In the areas where *exequatur* was to be abolished, the Commission proposed the deletion of the public policy defence in Article 34(1) of the original Brussels I. However, the Commission proposed to replace the public policy defence with a narrower defence in the country of enforcement based on the "fundamental principles underlying the right to a fair trial". The Commission proposed the retention, in Article 43 of the Recast, of the defences relating to irreconcilable judgments in Article 34(3) and (4) of the original Brussels I. The Commission also proposed the deletion of the special defence in Article 34(2) of the original Brussels I where a judgment was given in default of appearance and the courts of enforcement could judge whether service on the defendant was done in such a way that he could not arrange for his defence and where he was unable to challenge the judgment in the country of origin. The Commission proposed that this ground cease to exist in the country of enforcement and be replaced by a new review mechanism in the country of origin that would have the same content as Article 34(2) of the original Brussels I.[8]

and the UK is retained, irreconcilability with another judgment, but moved to the actual enforcement stage, see Art 21(2). For further information see L Walker *Maintenance and Child Support in Private International Law* (Hart Publishing, 2015) ch 7, ss II–V; and I Viarengo, "The Enforcement of Maintenance Decisions in the EU: *Requiem* for Public Policy? Family Relationships and the (Partial) Abolition of *Exequatur*", in P Beaumont, B Hess, L Walker and S Spancken (eds) *The Recovery of Maintenance in the EU and Worldwide* (Hart Publishing, 2014) 473.

[5]The Stockholm Programme – *An open and secure Europe serving and protecting the citizens* [2010] OJ C115/1.

[6]COM(2010) 748 final (referred to as the "Commission Recast" in this paper).

[7]See Art 37(3) of the Commission Recast.

[8]See Art 45 of the Commission Recast. One additional ground for review was added by the Commission: where the defendant "was prevented from contesting the claim by reason of

At the Justice and Home Affairs Council of the EU meeting on 13 and 14 December 2011 under the Polish Presidency (hence the reference to Warsaw in the title), political guidelines were adopted on the abolition of *exequatur* in the recast of Brussels I.[9] As anticipated earlier,[10] the Council fulfilled the mandate set for it by the European Council of abolishing *exequatur* by seeing it as the abolition of a stage in the process rather than as a requirement to abolish the "grounds for refusal of enforcement".[11] By doing so it has been able to agree to abolish the *exequatur* in all cases covered by Brussels I including those relating to privacy and personality rights and collective redress. No longer will there be a declaration of enforceability stage of proceedings at which only the Brussels I grounds for non-enforcement can be invoked but instead all grounds for non-enforcement (those in Brussels I and the national ones) can be heard together. This will have the effect of reversing the outcome of the decision of the Court of Justice of the European Union (CJEU) in *Prism Investments*.[12] In that case the defendant alleged that he had already paid the debt that he owed but the CJEU decided that this was not a defence under Brussels I and therefore could not be raised at the declaration of enforceability stage but only later at the actual enforcement stage. This seems to be a very impractical and unwise decision by the CJEU. In a case where the defendant is arguing full or partial payment of the debt but has an alternative EU ground for non-enforcement that he may wish to argue,[13] the defendant under the old Brussels I had to make a tactical decision whether to invoke the EU grounds at the declaration of enforceability stage[14] or only contest the judgment at the actual enforcement stage, relying on the prior payment of the debt and losing the EU defences. Dealing with all the relevant defences in one procedure is surely more economical in terms of time and costs for both parties and removes the need for difficult tactical decisions by the defendant.[15]

force majeure or due to extraordinary circumstances without any fault on his part". It is wise to assume that this additional ground is covered in the final version of Brussels I by the public policy defence in the country of enforcement because the Member States in the Council wanted a wider basis for review than that offered by the Commission and wanted it to be concentrated in the country of enforcement to save the costs and time involved for a defendant in having to initiate a review in the country of origin and raise defences in the country of enforcement.

[9]See http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/126932.pdf, accessed 1 August 2012, at p 22 of the press release. Unfortunately, neither the press release nor the background note that was referred to in it give the reader any information about the nature and content of the political guidelines.

[10]See Beaumont and Johnston, *supra* n 2 at 250, 273 and 278–9.

[11]*Ibid* at 249–50.

[12]Case C-139/10 [2011] ECR I-9511.

[13]Public policy, irreconcilable judgments, or unable to defend himself properly in a default judgment case.

[14]Possibly losing the argument and the costs associated with it.

[15]The German Government specifically asked the CJEU to allow for such procedural economy by dealing with the EU grounds and the national grounds for non-enforcement

Encouraging the possibility of EU and national defences being heard in the same procedure is one of the improvements achieved by the revised Brussels I.

In the political guidelines on Brussels I that were agreed by the Council in December 2011 it was clear that all of the grounds for refusal of enforcement contained in Article 34 of Brussels I would be retained in the revised Brussels I. In particular, substantive as well as procedural public policy would be retained as a defence.

The Council and European Parliament reached a deal on the conclusion of the recast of Brussels I which was finalised under the Cypriot Presidency in December 2012 (hence the reference to Nicosia in the title).[16] This deal follows the political guidelines on the recognition and enforcement aspects of the Regulation agreed under the Polish Presidency in December 2011.

It seems likely that the abolition of the grounds for refusal of enforcement (in particular public policy) will not happen in the EU beyond the few areas that were specified at Tampere.

C. Recognition under the new Brussels I

1. *Automatic*

The system is very similar to that under the current Brussels I. The key point is identical in Article 36(1) (new) and Article 33(1) (old). Recognition is automatic and no special procedure is required to achieve it.

2. *Interested party invoking recognition*

Although recognition is automatic under both versions of Brussels I it is possible under the old Brussels I (Article 33(2)) and the new Brussels I (Article 36 (2)) for "any interested party" to get a judgment in the recognising State confirming that the judgment is recognised there. The procedure for doing so under the old Brussels I was similar to the *exequatur* procedure (declaration of enforceability) but under the new Brussels I it is the actual enforcement procedure (see Articles 46–51). Under the new Brussels I (Article 37) the party invoking recognition must submit to the court (designated under Article 75 in a communication from the Member State of enforcement to the Commission) an authentic copy of the judgment from the State of origin and a certificate from the court of origin (in the form set out in annex I). The court addressed will almost certainly at least require a translation of the certificate but it may instead require a translation of the judgment "if it is unable to proceed without such a translation."

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at the same time, Case C-139/10, *supra* n 12, para 41, but this was rejected by the Court, paras 42–3.

[16] See Regulation 1215/2012 [2012] OJ L351/1.

The only way for a party to oppose recognition when an interested party invokes recognition is if that party becomes aware of it and gets involved in the recognition proceedings (there is no guarantee that any party will become aware of the recognition proceedings). If a Member State wants to ensure that any particular party whose rights will be affected by the recognition of a judgment has the opportunity to oppose the recognition, in proceedings by an interested party to invoke recognition, then it will have to create procedures to achieve this under its own law relying on its power to do so under Article 47(2) of the new Brussels I. Member States also have discretion to decide whether there is only one or two levels of appeal in relation to decisions on recognition as the principal question (compare Articles 49 and 50 of the new Brussels I). It is only the court of first instance that has to decide "without delay" (Article 48).

3. *Recognition arising as an incidental question*

If the issue of recognition arises as an incidental question in proceedings designed to determine a different principal question then under the old Brussels I (Article 33 (3)) it was clear that the court dealing with the principal question had jurisdiction to determine the incidental question of recognition of the foreign judgment. Under the new Brussels I (Article 36(3)) such a court only has jurisdiction to decide on the refusal of recognition as an incidental question. The assumption probably is that if the court dealing with recognition of a foreign judgment as an incidental question decides that the judgment is to be recognised it is merely accepting the norm that judgments from one Member State are automatically recognised in any other Member State. Thus it should only "have jurisdiction over the question of recognition" if the incidental question is one of refusal of recognition. This is important in States where judges do not deal with issues *ex officio* (as in the UK). The judge cannot raise the issue of the recognition of a judgment from another EU Member State as an incidental question, nor can he adjudicate on it if it comes up from the party seeking to invoke the recognition as an incidental question and no other party to the proceedings seeks the refusal of the recognition. The recognition in such cases is automatic.

4. *Grounds for refusal of recognition*

The grounds for refusal of recognition remain largely the same under the new Brussels I (Article 45) as under the old Brussels I (Articles 34 and 35). There are a few subtle differences. An additional ground for non-recognition is added in the new Brussels I and that is where an employee is the defendant and the judgment conflicts with Section 5 of Chapter II laying down the jurisdiction rules in cases of individual employment contracts. This strengthens the protection of weaker parties. Although Article 72 is not expressly mentioned in the new Article 45, unlike the old Article 35, it is clear that if a judgment conflicts with one of the agreements referred to in that Article (ie agreements between the UK

and Canada and the UK and Australia) those agreements prevail (see Recital 29 last sentence). Furthermore the same is true of any judgment that conflicts with the other instruments that are given priority over the Regulation by Articles 67–73. It is also true of the situation outlined in the last sentence of the new Article 64 (old Article 61) – a civil judgment linked to a criminal offence where jurisdiction is based on Article 7(3) (old Article 5(4)) and the defendant does not have an opportunity to arrange for his defence – as stated in Recital 29 second last sentence.

Some key elements remain the same:

(1) Public policy is a ground for non-recognition but it cannot be applied to the rules relating to jurisdiction.
(2) A review of the jurisdiction rules is only permitted in relation to the exclusive jurisdictions in the new Article 24 (old Article 22) and to the protective jurisdictions on consumers, insured persons and employees in the new Articles 10–23 (old 8–21) (as noted above, the scrutiny of employee jurisdiction is new). Even here the reviewing court is bound by the findings of fact on which the court of origin based its jurisdiction.
(3) The lack of review of the jurisdiction rules has been construed by the CJEU as meaning that a judgment in one Member State declining jurisdiction on the basis of a valid jurisdiction clause granting jurisdiction to a third State has to be recognised in all other Member States and that this extends to giving *res judicata* effect to the *ratio decidendi* of the foreign judgment (in this case the validity of the clause granting exclusive jurisdiction to the Icelandic courts).[17]
(4) A review of the substance of a foreign judgment is not permissible (new Article 52, old Article 36).

D. Enforcement under the New Brussels I

1. *Abolition of the declaration of enforceability and the consequences for protective measures*

The declaration of enforceability is abolished in the new Brussels I (Article 39). This means that from the moment a person receives an enforceable judgment in the court of origin he is able to "proceed to any protective measures which exist under the law of the Member State" where he hopes to enforce the judgment (new Article 40). Thus he can take the local law measures to ensure that there

[17]See Case C-456/11 *GothaerAllgemeineVersicherung AG and others v Samskip GmbH*, judgment of 15 November 2012, ECLI:EU:C:2012:719, paras 39–41. See the analysis of this case by E Torralba-Mendiola and E Rodríguez-Pineau, "Two's Company, Three's a Crowd: Jurisdiction, Recognition and *Res Judicata* in the European Union" (2014) 10 *Journal of Private International Law* 403.

will be sufficient assets in the jurisdiction to enforce the judgment. At present, under the old Brussels I, this power to proceed to protective measures comes with the declaration of enforceability (Article 47(2)) but it must be noted that Article 47(1) of the old Brussels I was designed to ensure the availability of national law protective measures even before the declaration of enforceability on condition that the judgment must be recognised under the Regulation. Given that recognition was automatic under the old Regulation, unless contested, at least in countries where judges cannot raise issues *ex officio*, it would seem that in *ex parte* proceedings for protective measures Article 47(1) was sufficient legal basis for a party to get protective measures before the declaration of enforceability.

2. *Actual enforcement (substance)*

(a) *All existing EU grounds for refusal of enforcement plus any not incompatible national grounds*

The actual enforcement stage under the new Brussels I envisages the combination of the EU grounds for refusal of enforcement (new Article 45) with any national grounds for refusal or suspension of enforcement "in so far as they are not incompatible with the grounds referred to in Article 45" (new Article 41(2)). It is not yet clear which grounds of national non-enforcement would not be compatible with the EU grounds. The grounds that are envisaged as being compatible are where the person has already paid the amount required in the judgment (see *Prism Investment* discussed above) or the person is too poor to be able to satisfy the full amount of the judgment without him or his family being made destitute. National grounds for non-enforcement would have to be applied in a non-discriminatory way and would have to not be seen as a means of widening the public policy exception. Recital 30 to the Brussels I Recast does leave room for national law to decide but it strongly encourages being able to plead national grounds for non-enforcement in "the same procedure" as EU grounds.[18]

(b) *Adaptation*

Another new principle introduced by the new Brussels I is the concept of "adaptation". This is explained in Recital 28 and given effect to in Article 54. The idea

[18]Unfortunately, there are countries where the national grounds of refusal are first dealt with by an enforcement agency rather than a court (eg in Sweden) and therefore the national and EU grounds for non-enforcement cannot necessarily be pleaded in the same procedure. We are grateful to Professor Hellner for pointing out that in Sweden the desirability of national and EU grounds being dealt with together was recognised by giving the jurisdiction to deal with EU grounds to the courts that hear appeals from the enforcement agency that deals with national grounds. It is hoped that the courts hearing EU grounds will wait to deal with them together with the national grounds if it looks as though an appeal will be forthcoming from the *enforcement* agency.

is that if a foreign judgment contains a measure or an order not known in the law of the State addressed it should be adapted by the competent authority chosen by the Member State addressed (provided there is at least a procedure for appeal or judicial review of the adaptation decision before a court in the Member State addressed) "to a measure or an order known in the law of that Member State which has equivalent effects attached to it and which pursues similar aims and interests" . However the consequence of adaptation must not be to produce greater effects for the judgment than in the country of origin.

(c) *Priority of other instruments over the Regulation*

It is worth highlighting that the new Brussels I Regulation clarifies that in the event of a clash between the recognition and enforcement of a valid judgment from a Member State and a valid arbitration award under the New York Convention the latter should prevail (see Recital 12, para 3 last sentence, and Article 73(2)).

3. *Actual enforcement (procedure)*

(a) *The law of the State addressed applies in the absence of harmonisation*

The procedure for the enforcement of judgments given in another Member State is governed by the law of the Member State addressed subject to the procedural provisions set out in Section 2 of Chapter III of the Recast (Article 41(1)). The procedure for the refusal of enforcement is governed by the law of the Member State addressed in so far as it is not covered by the new Brussels I Regulation (Article 47(2)).

(b) *Harmonised rules on address for service and representative ad litem*

One small harmonisation of procedural requirements that represents a change from the old Brussels I is found in the new Article 41(3). Under the old Brussels I (Article 40(2)) the applicant had to give an address for service within the area of jurisdiction of the court applied to (this means that the applicant often had to get a lawyer even for the simplest case just to have an address for service) unless the local law does not provide for the furnishing of such an address, in which case the applicant has to appoint a representative *ad litem*. The new provision saves the applicant costs because he does not have to provide a postal address in the Member State addressed (his own postal address in another Member State is sufficient). He will only be required to have an authorised representative in the Member State addressed if such a representative is mandatory in that State "irrespective of the nationality or the domicile of the parties". The party seeking refusal of enforcement is put in the same position by Article 47(4) of the new Brussels I.

(c) *No rule on local jurisdiction*

One useful reduction in harmonisation of procedure is the repeal of the rule in Article 39(2) of the old Brussels I that tried to give a uniform rule as to which

court in the Member State addressed had "local jurisdiction" to deal with an application for recognition or a declaration of enforceability. The uniform rule was not very clear as it referred to either the place of domicile of the party against whom enforcement is sought or to the place of enforcement. The matter is now left to the national law of the Member State addressed (a good example of subsidiarity). The main problem with using "domicile" as a connecting factor is that in relation to businesses it is not capable of providing a local jurisdiction within a country if the company concerned is domiciled in that country but has no local domicile there, eg because it has its statutory seat in that country.

(d) *The certificate*

Another significant change is in the nature of the certificate provided by the court of origin relating to the judgment (the new Article 53 and Annex I) that applicants for enforcement have to provide. It must be issued by the court of origin whereas under the old Brussels I it could be issued by a competent authority or a court. The new certificate has to be issued by a court because in a money judgment there has to be a short description of the subject matter of the case and the amount to be paid and to whom it is to be paid including any provisions on interest, in provisional and protective measures there has to be a short description of the subject matter of the case and the measure ordered, and in all other types of judgment there has to be a short description of the subject matter of the case and the ruling by the court. The idea is that the enforcement court should be able to enforce the judgment on the strength of the certificate (or at most a translation of the certificate) if enforcement is not opposed. If a translation of the judgment is needed, it should be because enforcement is being opposed and therefore the costs of the translation will be borne by the losing party. If translation is made routine, the costs of it will be borne by the applicant in cases where the party against whom enforcement is sought does not resist enforcement. However, the text of the Regulation could be clearer. Article 42(1)(b) of the new Regulation refers to the certificate "containing an extract of the judgment" but no such extract is expressly referred to in Annex I to the Regulation. Perhaps "extract" should be construed here as meaning the short description of the subject matter plus the amount ordered, or the measure ordered or the ruling of the court referred to in the Annex.[19]

(e) *Service on the person against whom enforcement is sought*

The certificate is more important under the new Brussels I because it forms the basis of the right to the defence of the person against whom enforcement is sought. This is clear from Recital 32 which states that:

[19]See Annex I, paras 4.6.1.1, 4.6.1.2, 4.6.2.1, 4.6.2.2 and 4.6.3.1.

> "In order to inform the person against whom enforcement is sought of the enforcement of a judgment given in another Member State, the certificate established under this Regulation, if necessary accompanied by the judgment, should be served on that person in reasonable time before the first enforcement measure. In this context, the first enforcement measure should mean the first enforcement measure after such service."

The intention in the Recital is given effect to by Article 43 of the new Regulation. The certificate will be served with the judgment unless the judgment has already been served on the person against whom enforcement is sought – but this can be an untranslated copy of the judgment. The onus is on the person against whom enforcement is sought to ask for a translation of the judgment (he cannot ask for it when it is in a language he understands or an official language in the place in the State where he is domiciled). Where the defendant asks for a translation of the judgment, only protective measures can be taken against him until the translation has been provided to him. No service of the certificate is required prior to taking protective measures or enforcing a protective measure in a foreign judgment because the element of surprise must be maintained to avoid the defendant removing himself and/or his assets from the jurisdiction.

(f) *Suspension or limitation of enforcement*

On an application of the person against whom enforcement is sought, the competent authority in the Member State addressed is required to suspend the enforcement proceedings when the enforceability of the judgment[20] is suspended in the Member State of origin (new Article 44(2)). This flows from the general proposition in Article 39 of the new Regulation that it is "enforceable" judgments from one Member State that are enforceable in another Member State without a declaration of enforceability.

On an application for refusal of enforcement of a judgment, the court in the Member State addressed (new Article 44(1)) has a discretion, on the application of the person against whom enforcement is sought, to:

(1) Limit enforcement to protective measures;
(2) Make enforcement conditional on the provision of such security as it shall determine; or
(3) Suspend, either wholly or in part, the enforcement proceedings.

[20]It is worth noting that the CJEU has recently given a very broad and uniform construction to the word "judgment" in the context of the old Brussels I (Art 32) and nothing in the new Brussels I would change that broad meaning even though the definition has been moved to Art 2(a), see Case C-456/11, *supra* n 17, particularly paras 22–32. It is also worth noting that "judgments" given in legal proceedings instituted before 10 January 2015 will be governed by the old Brussels I, see Art 66(2).

(g) *Courts hearing applications for refusal of enforcement*

The other aspect of procedural harmonisation of the enforcement process is that Member States are required by Article 75 of the new Brussels I Regulation to notify the Commission, which in turn has to make the information publicly available through any appropriate means, in particular through the European Judicial Network, about which courts hear applications for refusal of enforcement under Article 47(1), which courts hear appeals under Article 49(2) and finally which courts, if any, hear any further appeal under Article 50.

4. *Enforcement of authentic instruments and court settlements*

Finally, like its predecessor, the new Brussels I Regulation has rejected any notion of the recognition of foreign authentic instruments and court settlements. Instead, these instruments and settlements can be enforced throughout the EU subject only to the public policy exception (see Articles 58–60). However, it should be understood that a court faced with a conflict between an authentic instrument or court settlement and a court judgment is not obliged to give priority either to the instrument/settlement or to the judgment but is free to exercise its discretion on a case-by-case basis.

E. What can be learned from the Brussels I Recast and the Hague Choice of Court and Maintenance Conventions for recognition and enforcement in the new Hague Judgments Project?

The Hague Judgments Project has been ongoing for many years. The initial proposal was made back in 1992 and ended in a failed interim text of a Judgments Convention in 2001.[21] The second phase of the project, between 2002 and 2005, resulted in a Convention on Choice of Court Agreements designed to protect party autonomy in business-to-business relationships and to provide a parallel for court-based adjudication to that provided for arbitration by the New York Convention.[22] The latest phase of the Judgments Project began in

[21]See http://www.hcch.net/index_en.php?act=text.display&tid=149, accessed 15 August 2014. See also the definitive official materials on the first part of the Hague Judgments Project from 1992 to 2001 in *Proceedings of the Twentieth Session, Tome II, Judgments* (Intersentia, 2014). For a brief history see Beaumont, *supra* n 1 and P Beaumont, "Hague Choice of Court Agreements Convention 2005: Background, Negotiations, Analysis and Current Status" (2009) 5 *Journal of Private International Law* 125, 127–33.

[22]See http://www.hcch.net/index_en.php?act=text.display&tid=134 and http://www.hcch.net/index_en.php?act=text.display&tid=151, accessed 15 August 2014. See also the definitive official materials in *Proceedings of the Twentieth Session, Tome III, Choice of Court* (Intersentia, 2010). For analysis of the Convention see T Hartley and M Dogauchi, *Explanatory Report on the Choice of Court Agreements Convention* (HCCH, 2013) available at http://www.hcch.net/index_en.php?act=publications.details&pid=3959&dtid=