

E-COMMERCE AND THE RECOGNITION AND ENFORCEMENT OF JUDGEMENTS IN THE EU: LATEST DEVELOPMENTS

by

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On-line business increases the frequency of legal disputes. Due to the borderless nature of the Internet, both parties might originate from different jurisdictions. When a state court hears a trans-border case and renders its decision, questions regarding the recognition and enforcement of the judgement in other jurisdictions might arise, especially where the losing party has her assets. Among other concerns, this situation involves questions of predictability, efficiency and certainty of legal protection. For these reasons, private international law is highly relevant for e-commerce.

This paper has a simple aim: it outlines some recent (1999-2009) developments in the recognition and enforcement of judgements in the EU. The following instruments are discussed: the enforcement order for uncontested claims, the order for payment procedure and the small claims procedure. Having reviewed the Lisbon Treaty amendments, a few remarks on the Lugano II Convention and the proposed revision of the Brussels I Regulation are provided as well.

KEYWORDS

Private international law, judicial cooperation in civil matters, free movement of judgements, recognition, enforcement, exequatur, enforcement order, payments order, small claims procedure, Brussels I, Lugano II

1. INTRODUCTION

It has never been easier, cheaper and faster to trade all over the world. In 2009, according to Eurostat, 37% of the EU individuals aged 16-74 bought or ordered goods or services over the Internet for private use.¹ During Christ-

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¹ Eurostat 2009, *Individuals using the Internet for ordering goods or services*, table (id: tin00096), <http://ec.europa.eu/eurostat> [accessed Dec 31 2009].

mas 2009 period, Amazon shipped goods to 178 countries.² These numbers grow each year.

E-commerce increases the frequency of the cross-border disputes.³ In such cases, at least one party is required to take the litigation abroad. Let us assume that a consumer from Prague bought a book from a seller who is an on-line marketplace owned by a company registered and operating in London. The price was paid, although the book has never been delivered. The consumer wants her money back. The seller left the claim not responded and hence was sued in Prague. The consumer obtained there a default pecuniary judgement in her favour. The claim remains unsatisfied. There are no seller's assets in the Czech Republic; they are only in England.

Private international law (in common law: Conflict of Laws) deals with cases before the domestic courts which have connections with other jurisdictions (i.e. a territorial unit having its own separate system of law). Three procedural steps in the trans-border disputes include: (1) jurisdiction – which court is competent to hear the case?, (2) choice of law – what national law to apply?, and (3) recognition and enforcement – since a foreign judgement has no legal effect in a domestic legal regime. Without the recognition and enforcement, the creditor would need to start the proceedings again. In most jurisdictions, to produce such result, various intermediary proceedings (i.e. procedure of *exequatur*) are required.

Litigation ends when the final judgement is rendered. *“It is often of little use for a party to know that a Czech court can claim jurisdiction and will apply Czech law, if the subsequent judgment cannot be enforced in a forum where the other party has assets.”*⁴ It needs to be recognised (i.e. its legal effects must be extended) and enforced (executed with the assistance of the public authorities) in the respective part of the UK. (The judgement might be recognized in a foreign jurisdiction just to produce there the *res iudicata* effect in order to prevent further proceedings between the same parties in the same case.)

These facts explain the importance of private international law (PIL) for on-line business.

² Amazon 2009, *Amazon Kindle is the Most Gifted Item Ever on Amazon.com*, press release, December 26, <http://phx.corporate-ir.net/phoenix.zhtml?c=176060&p=irol-newsArticle&ID=1369429> [accessed Dec 31 2009].

³ Tang, Z. 2007, 'An effective dispute resolution system for electronic consumer contracts', *Computer Law and Security Report*, vol. 23, p. 42.

⁴ Svantesson, D. 2003, *Jurisdictional Issues and the Internet – A Brief Overview*, paper presented at the International Conference Cyberspace: Normative Framework, Brno, Czech Rep., October 2003; <http://www.svantesson.org/pub/JURISOVERV.doc> [accessed Jan 8 2010].

2. EU PRIVATE INTERNATIONAL LAW

The EU has set for itself the objective of developing the internal market and the area of freedom, security and justice. One of the means to achieve these goals is the judicial cooperation in civil matters having cross-border implications (hereinafter: the judicial cooperation). In order to establish the free movement of judgements, the recognition and enforcement of judicial decisions in the EU have been substantially simplified.

The 1968 Brussels Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, concluded on basis of Art. 293 [220] of the Rome Treaty, was the first major Community PIL instrument. Since the Amsterdam Treaty and the Tampere Conclusions⁵ (1999), the EU PIL has been substantially strengthened. To ensure efficiency, the judicial cooperation has been transferred from the third pillar (as provided by the Maastricht Treaty) to the first one. In 2003, the Nice Treaty replaced unanimity by the co-decision procedure with the qualified majority voting (short of the family matters). Before the Lisbon Treaty, the PIL measures were enacted by virtue of Art. 65 of the EC Treaty, aiming at “*improving and simplifying (...) recognition and enforcement of decisions in civil and commercial cases, including (...) extrajudicial cases.*”

The recent developments include:

- Brussels I Regulation⁶ (and Lugano II Convention),⁷
- European enforcement order for uncontested claims,⁸
- European order for payment procedure,⁹
- European small claims procedure.¹⁰

⁵ Cf. paragraphs 34-35 of the Tampere European Council 15 and 16 October 1999: Presidency Conclusions, http://www.europarl.europa.eu/summits/tam_en.htm [accessed Jan 10 2010].

⁶ Council Regulation No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. This Regulation amended and replaced the 1968 Brussels Convention and therefore the unofficial name “Brussels I” has been kept.

⁷ Convention of 30 October 2007 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. It is a parallel instrument to Brussels I. The 1988 Lugano Convention was a parallel instrument to the 1968 Brussels Convention. It was applicable between the EC-15 and Poland, Switzerland, Norway and Iceland. In 2007, the new Lugano Convention has been concluded and it entered into force on January 1, 2010 in relations between the EU, Norway and Denmark. The Swiss and Icelandic ratifications are pending. Cf. the Swiss Federal Department of Foreign Affairs, <http://www.eda.admin.ch> [accessed Jan 3 2010].

⁸ Regulation No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims.

⁹ Regulation No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.

¹⁰ Regulation No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European small claims procedure.

In addition, the following instruments might play an auxiliary role:

- Council Regulation No 1346/2000 of 29 May 2000 on insolvency proceedings,
- Council Regulation No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters,
- Council Decision No 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters,
- Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes,
- Regulation No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation No 1348/2000.

The Lugano II Convention has been signed by the EC (i.e. not EU Member States), Denmark and most of the EFTA states (see *infra*). During the preparatory works, on February 7, 2006, the ECJ delivered its opinion that the conclusion of such a convention “falls entirely within the sphere of exclusive competence of the European Community.”¹¹ The Member States are bound by Lugano II simply by virtue of its conclusion by the EC.

On April 3, 2007 the EC became a Member of the Hague Conference on Private International Law (HCCH).¹² On April 1, 2009 the EC signed the 2005 Hague Convention on Choice of Court Agreements.¹³ It provides some uniform rules on the recognition and enforcement of judgements which are given by a court of a contracting state designated in an exclusive choice of court agreement. The Convention has yet to enter into force.¹⁴ It is encouraging that the U.S. expressed its wish to become bound by this Convention and has also signed it.¹⁵

¹¹ Opinion 1/03, operative part.

¹² Council Decision 2006/719/EC of 5 October 2006 on the accession of the Community to the Hague Conference on Private International Law.

¹³ Council Decision 2009/397/EC of 26 February 2009 on the signing on behalf of the European Community of the Convention on Choice of Court Agreements. The EU ratification is pending.

¹⁴ Cf. the ratification status on the HCCH website, <http://www.hcch.net> [accessed Jan 2 2010].

¹⁵ Alder, M. & Zarychta, M. 2007, ‘The Hague Convention on Choice of Court Agreements: The United States Joins the Judgment Enforcement Band’, *Northwestern Journal of International Law & Business*, vol. 27, no. 1, p. 1.

The Lisbon Treaty broadened the scope of the judicial cooperation. It became more complete and transparent.¹⁶ Its legal basis now is found in Title V of the Treaty on the Functioning of the EU, especially in Art. 81. The EU shall adopt “*measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring (...) the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases.*” These provisions also aim at ensuring “*effective access to justice,*” “*approximation of the laws*” and “*elimination of obstacles to the proper functioning of civil proceedings,*” among others. These point out the direction of development.

3. SCOPE OF APPLICATION

All discussed instruments are applicable in relations between the EU Member States. Nevertheless, the UK, Ireland and Denmark have several opt-outs from some policies of the EU.¹⁷ The UK and Ireland expressed their wish to be bound by all these instruments, but almost none of them are applicable to Denmark. By virtue of a separate agreement, from July 1, 2007 Denmark is bound by Brussels I.¹⁸ An analogous agreement extends the scope of the Regulation 1393/2007 (service of documents, see *supra*) therein.¹⁹ The Lugano II Convention binds the EU, Denmark (signed separately due to its opt-out) and three EFTA states: Norway, Iceland and Switzerland. (Liechtenstein is not a contracting party to this Convention.)

The scope of application is limited to the “civil and commercial matters”. This term has not been defined in any of these instruments. To ensure uniform application, this notion must be considered independently from the national legal systems and interpreted in an autonomous way.²⁰

However, a few areas have been explicitly excluded:

- *acta iure imperii* (included are the cases when a public authority acts in a private law capacity),²¹
- revenue, customs and administrative matters,
- rights in property arising out of a matrimonial relationships, maintenance, wills and successions,

¹⁶ Storskrubb, E. 2007, *Civil Procedure and EU Law. A Policy Area Uncovered*, OUP, Oxford, p. 45.

¹⁷ Cf. Protocols Nos. 21 and 22 [ex. 4 and 5, respectively] to the Treaty on the Functioning of the EU.

¹⁸ Council Decision 2006/325/EC.

¹⁹ Council Decision 2005/794/EC and the Commission’s notification at OJ L 331, 10.12.2008, p. 21.

²⁰ Vlas, P., Ibili, F. *et al.* 2009, ‘Civil Jurisdiction and Enforcement of Judgments in Europe’, *Netherlands International Law Review*, vol. 56, p. 249; Magnus, U. & Mankowski, P. (eds) 2007, *Brussels I Regulation*, European Law Publisher, München, pp. 51-56. Also cf. e.g. cases C-29/76 *LTU v. Eurocontrol* and C-814/79 *Netherlands v. Rüffer*.

²¹ Although *acta iure imperii* are not explicitly mentioned in Art. 2 of Brussels I, they are clearly not of a civil or commercial nature. This has been confirmed by the ECJ in cases, *inter alia*, C-292/05 *Lechouritou et al. v. Germany*. Cf. pending case C-406/09 *Realchemie v. Bayer*; Storskrubb, E., *op. cit.*, p. 156.

- insolvency,
- social security.

Besides that, particular instruments have their own exclusions:

Matters excluded	Brussels I Lugano II	enforcement order	payment order	small claims
status/legal capacity of natural persons	X	X		X
non-contractual obligations			X ²²	
arbitration	X	X		X
employment law				X
tenancies of immovable property				X ²³
privacy, personality rights, defamation				X

There are no limits as to the legal status of persons. These instruments are applicable between both natural and legal persons, e.g. in B2B or B2C relationships. Consumers benefit from the protective jurisdiction rules under Arts. 15-16 of Brussels I. The nature of the court or tribunal is irrelevant, i.e. all types (civil, criminal or administrative) fall within the scope as long as they deal with cases of civil or commercial nature.

4. OVERVIEW OF THE INSTRUMENTS

The Brussels I Regulation is the basic and the most prominent EU instrument in the field of the recognition and enforcement of judgements (court settlements, authentic instruments) among all Member States. It has superseded all bilateral and multilateral agreements between Members States in relation to matters where this Regulation apply (Art. 69). The enforcement order, payment order and small claims procedure are complementary to Brussels I. The creditor is free to choose which mechanism to use to have her claim satisfied. For example, if the judgement cannot be certified as the

²² Excluded are claims arising from non-contractual obligations, unless e.g. they have been the subject of an agreement between the parties or there has been an admission of debt. Cf. Art. 2(2)(d).

²³ With the exception of actions on monetary claims. Cf. Art. 2(2)(g).

European enforcement order, the applicant can seek the enforcement under Brussels I.

4.1. BRUSSELS I

Under Chapter III (Arts. 31-56), the automatic recognition of the enforceable judgements without any special procedure (*ipso iure*, Art. 33) is guaranteed. The procedure of *exequatur* is required for the enforcement (Art. 38). If a question arises as to whether a foreign judgement should be *recognised*, the issue can be resolved either by declaratory proceedings (Art. 33(2)) or incidentally, in the framework of other proceedings (Art. 33(3)).

Grounds for refusal have been substantially limited to: (1) *ordre public*, only if the judgement is “manifestly contrary,” (2) the issuance of the judgement in default of appearance or without proper service of documents, (3) *res iudicata*, and (4) the lack of jurisdiction by the court (exceptionally).

4.2. EUROPEAN ENFORCEMENT ORDER FOR UNCONTESTED CLAIMS

The European enforcement order for uncontested claims introduces a procedure of certification of the enforceable judgement, court settlement or authentic instrument for the purpose of its execution in any Member State (except Denmark) without any intermediary proceedings. There is no time limit for the application for such a certificate. The debtor cannot oppose its issuance.

The substantive scope of this instrument is limited. A claim must be pecuniary and has to fall due (or due date must be indicated). A claim is considered uncontested if the debtor: (1) has expressly agreed to it in the course of court proceedings, or (2) has never objected to it in such proceedings, or (3) has not appeared or been represented in court, or (4) has expressly agreed to it in an authentic instrument. Partial enforcement order certificate is permitted, if only the parts of the judgment fulfil these conditions.

To ensure a fair trial, the so-called minimum standards must be observed in order to issue the certificate, short of the debtor’s explicit consent to the claim. The court is to examine whether the requirements as to the proper service of documents (Arts. 13-15), due information about the claim (Art. 16) and procedural steps necessary to contest it (Art. 17) have been observed. If the proceedings have not met the minimum standards, some limited measures to cure of non-compliance are provided (Art. 18).

4.3. ORDER FOR PAYMENT AND SMALL CLAIMS PROCEDURES

The European order for payment procedure can be used to obtain satisfaction for the uncontested pecuniary claims for the specific amount due. Unless the claim is clearly unfounded or the application inadmissible, the order is issued solely on the basis of the information provided by the claimant and is not verified by the court. Rejection of application cannot be appealed, but it does not preclude the use of other instruments. If the defendant's statement of opposition is not lodged within 30 days, the order becomes enforceable in all Member States (excluding Denmark) and the court issues the declaration of enforceability. Opposition results in ordinary civil proceedings, albeit the claimant can refuse such a transfer (this results in the termination of the proceedings).

The European small claims procedure is designed for the collection of the claim whose total value does not exceed € 2000 at the time when the application is received by the competent court (all interests, expenses etc. are excluded). The claim can be of pecuniary nature or not (e.g. delivery of goods). If the claim falls outside the scope of this procedure, the litigation will be continued under the ordinary civil proceedings, unless the application is withdrawn by the claimant. The court serves on the defendant the claim form within 14 days and she has 30 days to submit the response. The counterclaim is allowed. The judgement is enforceable in all Member States (excluding Denmark) notwithstanding any possible appeal (such a possibility is left to *lex fori*).²⁴

These two instruments share some common characteristics. First of all, they are applicable only to the trans-border cases, i.e. when at least one party is domiciled (*cf.* Arts. 59-60 of Brussels I) in a Member State other than the State of the court seized. Jurisdiction is determined in accordance with Brussels I. Second, they constitute an alternative to the respective national types of civil proceedings and – in some sense – to Brussels I. Third, these procedures are predominantly written (the use of standard forms is often required) and the legal representation is not mandatory. Fourth, the claimant can complete or rectify the application in a specified time, if asked by the court. Fifth, the minimum standards for information and the service of documents must be observed (see *supra*). Finally, the procedure of *exequatur* has been abolished. There is no possibility to oppose the recognition and enforcement of the judgement (order) in question, short of *res iudicata*.

²⁴ However, most Member States have allowed the appeals. They are not available e.g. in Greece or in Northern Ireland. *Cf.* the European Judicial Atlas in Civil Matters (see *infra*).

5. ENFORCEMENT PROCEDURE

Procedure of *exequatur* under Brussels I and Lugano II consist of the following steps. Any interested party might apply for the recognition and enforcement of the judgement (entirely or partially) in a Member State where the recognition is sought, providing: an authentic copy of the judgement, a certificate on a standard form (issued by the court that rendered the judgement) and their translation if necessary. Annexes II and III to the Regulation list the competent courts in each Member State for application and appeal, respectively.²⁵ The court issues the declaration of enforceability simply if the formal requirements are fulfilled. There is no review as to the possible grounds of refusal on that step. The decision is served to the applicant (if the declaration of enforceability granted or not) and to the defendant (only if granted). Both parties have a possibility to appeal (within one month); the court examines the grounds of refusal invoked by the party contesting the decision.

In other discussed instruments, the recognition and enforcement (execution) is substantially simplified. To start such a procedure, the applicant shall produce: an authentic copy of the judgement (court settlement, authentic instrument, order), a relevant certificate and their translation if necessary.

In any case, no review of a foreign judgment as to its substance is allowed. The enforcement (execution) is governed by *lex fori*. No security, bond or deposit (however described) is required from the applicant. The translation, if necessary, shall be certified by a person authorised in a respective Member State. No legalisation or other similar formality is required.

In trans-border cases, the question of the proper language might arise. Member States are free to choose what languages they accept in such proceedings. Most of them require litigation be proceeded in the language of the venue. If so, there might be a need to translate the documents. However, a few also accept English. For example, to start the execution proceedings under the framework of the European enforcement order, France accepts documents in French, English, German, Spanish or Italian.

The European Judicial Network in Civil and Commercial Matters (ec.europa.eu/civiljustice) and the European Judicial Atlas in Civil Matters (ec.europa.eu/justice_home/judicialatlascivil) contain, *inter alia*, up-to-date information about accepted languages and competent authorities for each of these instruments.

²⁵ The Annexes are subject to changes when necessary. The latest amendments have been done by the Commission Regulation (EC) No 280/2009.

To sum up, the diagram below illustrates all discussed procedures step by step:

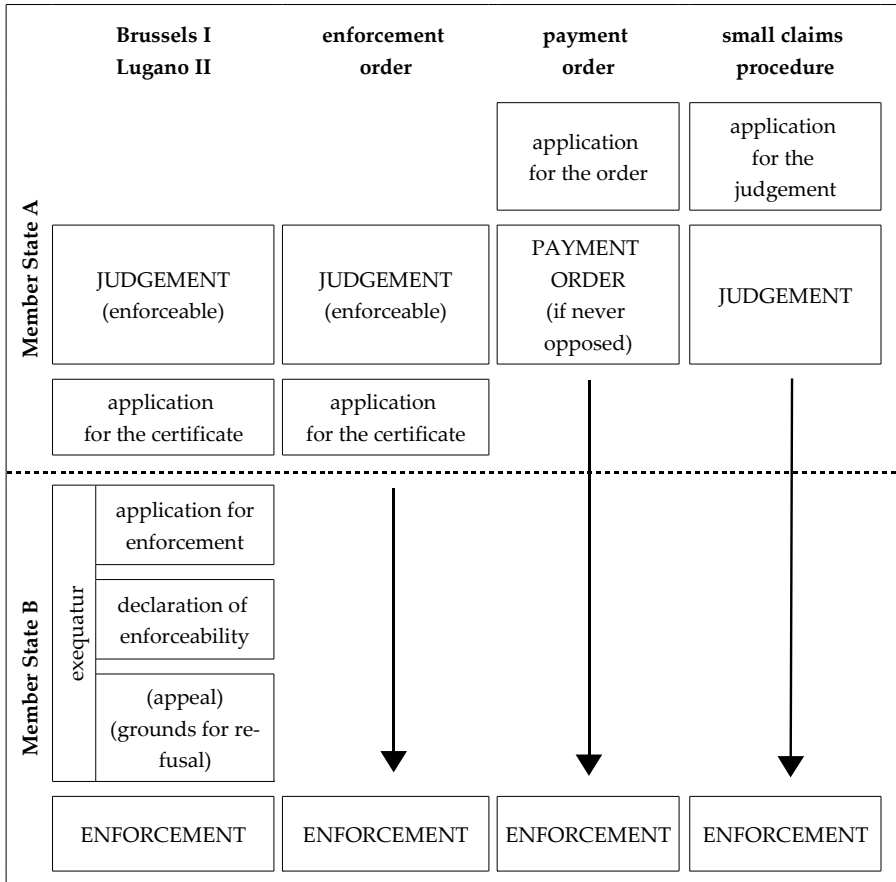


Fig. 1. Overview of the selected enforcement procedures in the EU.

6. FURTHER PROPOSALS

Recently, the Commission has submitted a few green papers concerning the judicial cooperation: the attachment of bank accounts²⁶ (2006) and the transparency of debtors' assets²⁷ (2008), among others. The first initiative suggests some measures to block fund movements or to freeze bank accounts. Due to the frequent lack of information on the debtor's assets, the latter proposal aims at improving the recovery of debts through, for example, registers and debtor declarations.

²⁶ Green Paper of 24 October 2006 on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts, COM(2006) 618 final.

²⁷ Green Paper of 6 March 2008 on the effective enforcement of judgments in the European Union: the transparency of debtors' assets, COM(2008) 128 final.

The most important proposal is the Brussels I Regulation's review²⁸ (2009). This includes, *inter alia*, the abolition of *exequatur* and the interface between the Regulation and arbitration. The Commission pointed out that the recognition and enforcement of foreign judgments "*is very rarely refused.*" For instance, Art. 17 of Regulation 4/2009 (maintenance obligations)²⁹ already abolished any intermediary proceedings. If so, would we need any other specific legal measures for the recognition and enforcement of judgments in the EU?

Presently, Art. 1(2)(d) explicitly excludes arbitration from the scope of the Regulation. Thus the creditor must obtain satisfaction for a foreign arbitral award under the framework of 1958 New York Convention.³⁰ To complement that system, the Green Paper proposes the deletion of the arbitration exception, at least partially. For example, it is argued "*to grant the Member State where an arbitral award was given exclusive competence to certify the enforceability of the award (...) after which the award would freely circulate [in the EU]*" and to refuse "*the enforcement of a judgment which is irreconcilable with (...) arbitral award.*"

7. FINAL REMARKS

Uniformity of law is economically beneficial. These instruments have substantially simplified and speeded up the cross-border litigation in civil and commercial matters. Litigants benefit from a coherent, comprehensive and predictable judicial system. They save time and costs.

Lack of recognition and enforcement impedes smooth international trade. The most important advantage of these instruments is either a significant facilitation of procedures (Brussels I and Lugano II), or a complete abolition of intermediary proceedings. Thanks to the enforcement order, the payment order and the small claims procedure, there is no need to apply separately for the enforcement in each Member State. This is advantageous if the creditor wishes to enforce a judgement (order) in several jurisdictions.³¹

It is beneficial that the creditor has various possibilities to obtain satisfaction to her claim. However, all these measures constitute a fairly complic-

²⁸ Green Paper of 21 April 2009 on the review of Council Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, COM(2009) 175 final.

²⁹ Council Regulation No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

³⁰ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, June 10, 1958. As of 2009, it has 144 contracting parties, including all EU Member States. This convention requires the procedure of *exequatur* to recognize and enforce a foreign arbitral award (Art. III *ff*).

³¹ Storskrubb, E., *op. cit.*, p. 163.

ated system. Apart from “very general” Brussels I and Lugano II, each of the instruments has rather limited scope (either to uncontested claims or to a particular value)³² and the applicant will need to choose the right one rather carefully. It might be difficult without any professional assistance (which is not mandatory). Only the small claims procedure explicitly requires the support of the court staff in filling in the forms (Art. 11).

A lot of essential procedural issues (i.e. application for the certificates or methods of execution) are governed by *lex fori* and not harmonized. Proceedings by electronic means (e-courts), highly relevant for the e-commerce, although strongly encouraged, are not yet available in all jurisdictions.

It is argued that these instruments favour the creditor rather than the debtor. This might raise some questions about the fairness of the trial. The European Court of Human Rights explicitly includes the enforcement of judgements within the scope of Art. 6 ECHR (cf. e.g. case *Hornsby v. Greece*). On the other hand, the mutual trust in the Member States’ judicial systems ensures the observance of the fair trial principle.

It is edifying that some instruments contain a review clause (e.g. Art. 28 of the Regulation 861/2007). By its virtue, the Commission is required to present a detailed report on their application and the revision proposals, if necessary.

Despite all these developments, some special measures (although highly limited) are still required to produce legal effects of a judgement in a foreign jurisdiction. A recent trend to facilitate the movement of judgements in civil and commercial matters can be observed. At the European level, the Lisbon Treaty and the Green Paper on Brussels I revision promise, *inter alia*, a further substantial simplification of recognition and enforcement. European litigants eventually would benefit from a framework similar to the American “Full Faith and Credit” clause (Art. IV Sec. 1 of the U.S. Constitution),³³ concerning the judicial decisions rendered in the U.S. sister States. This is possible mainly due to the common core of European private law³⁴ and the mutual trust in the judicial systems.

In parallel, at the international level, the 2005 Hague Convention on Choice of Court Agreements is the first crucial measure towards such facilitation. Since most international trade begins with a contract, and since most of those contracts contain dispute resolution clauses, this Convention may

³² Technically speaking, the substantive scope is limited to the consent between the EU institutions and Member States.

³³ Lookofsky, J. & Hertz, K. 2003, *Transnational Litigation and Commercial Arbitration*, Juris Publishing, New York, p. 724.

³⁴ Cf. e.g. Bussani, M. & Mattei, U. (eds) 2003, *The common core of European private law*, Kluwer Law International, the Hague; Hesselink M.W. 2002, *The New European Private Law. Essays on the Future of Private Law in Europe*, Kluwer Law International, the Hague.

constitute a great advance in this area.³⁵ However, its success depends on its international acceptance.

To sum up, the discussed instruments increase confidence to take part in trans-border business, including e-commerce transactions.³⁶

³⁵ Woodward, W.J. 2008, 'Saving the Hague Choice of Court Convention', *University of Pennsylvania Journal of International Law*, vol. 29, p. 657.

³⁶ However, in disputes concerning very small values, arising from e.g. single B2C relations, the amicable dispute resolution methods, especially arbitration, seem to be more efficient.