THE CIRCULATION OF COURT DECISIONS IN THE EUROPEAN UNION: FROM MUTUAL TRUST TO THE LIMITS OF PUBLIC ORDER

Mihaela POP, PhD.
"Titu Maiorescu" University, Faculty of Law and Economic Sciences Târgu-Jiu, (Romania)
mihaela.pop@prof.utm.ro

DOI: 10.51865/JOLAS.2026.25.07

Abstract:
This article examines the circulation of court decisions within the European Union, with particular emphasis on the relationship between mutual trust and the public policy / ordre public exception. In the field of civil and commercial matters, Regulation 1215/2012, known as the Brussels I bis Regulation, establishes a simplified regime for the recognition and enforcement of judgments between Member States. This regime is based on the presumption that national judicial systems comply with EU law, fundamental rights and the common values of the Union. However, mutual trust is not absolute. The public policy exception operates as a limited safeguard, allowing the requested court to refuse recognition or enforcement where the effects of a foreign judgment would be manifestly incompatible with the fundamental principles of its legal order. The article argues that public policy must be interpreted restrictively and cannot justify a review of the substance of the foreign judgment. At the same time, it remains necessary in order to protect procedural fairness, fundamental rights and essential principles of justice. The analysis shows that the future effectiveness of judicial cooperation in civil and commercial matters depends on maintaining a delicate balance between the free circulation of judgments and the exceptional protection ensured by public policy / ordre public.
Keywords: *mutual trust, mutual recognition of judgments, public policy exception, Brussels I bis Regulation, EU private international law.*

Introduction

The circulation of court decisions constitutes one of the core elements of the development of an Area of Freedom, Security and Justice in the European Union (EU) where mutual trust plays a fundamental role. Mutual trust implies, in particular, a mutual recognition of Member States' judicial systems entailing both a trust in the quality of those systems and an automatic enforceability of their decisions. Citizens and undertakings should benefit from a European justice area characterised by the absence of obstacles to cross-border judicial interaction. Nonetheless, the question arises of whether or not circulation is also limited by public order considerations. The article argues that public

policy / ordre public operates as a limited but necessary qualification of mutual trust in the EU system of recognition and enforcement.

This article examines whether the public policy exception still functions as an effective safeguard within the EU system of mutual recognition, or whether it has been reduced to a narrow and exceptional mechanism under the logic of mutual trust.

The principle of mutual trust in union judicial systems

The circulation of court decisions within the EU aims to promote legal and judicial cooperation in the area of civil and commercial matters, thereby enhancing the overall objective of the Union: the creation of an area of freedom, security, and justice. The principle of mutual recognition, underpinned by mutual trust, is therefore essential. This principle recognises that judgments by judicial authorities in other Member States can be executed without applying the internal jurisdictional rules and conditions.

Mutual recognition is premised on trust in the effective operation of the other Member States' judicial systems, and this trust is closely connected with the standardisation of the vesting and execution of jurisdiction in cross-border situations. It is also reflected in the provision that, in principle, acts of official authority in other Member States are deemed authentic and are automatically enforceable. The development of mutual trust within the Union's judicial area is fostered through instruments facilitating the circulation of decisions and forgoing the checks on jurisdiction that would normally pertain at the enforcement stage.

In the field of civil justice, mutual trust supports the simplified recognition and enforcement of judgments between Member States. In fact, mutual recognition as a tool to enhance judicial cooperation has been inextricably intertwined with another fundamental concept, mutual trust: the presumption that national legal systems and the corresponding judicial decisions comply with EU law, in particular the Charter of Fundamental Rights and the principles they embody, and, more broadly, with the common values upon which the Union is founded, in particular, democracy, respect for human rights, and the rule of law.

Beneath this presumption, mutual recognition operates as an automatic, legally binding mechanism. Once the issuing Member State has made its determination, no

further individual examination is permitted: the act is valid not only within the reasonable confines of the judicial system of law but also ex ante and ex post, with the sole caveat of a very limited number of defined exceptions.

The Union schemes facilitating the circulation of court decisions originate in the 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, which constituted the first coherent framework for the recognition and enforcement of judgments within the European legal space. This framework was subsequently developed through the Brussels I Regulation and, at present, through Regulation 1215/2012, commonly referred to as the Brussels I bis Regulation. The latter consolidates the principle that judgments given in one Member State should circulate freely in other Member States, subject only to limited and narrowly interpreted grounds for refusal. Accordingly, the abolition of exequatur and the reduction of intermediate procedures reflect the central role of mutual trust, while the public policy exception preserves a residual safeguard for cases in which recognition or enforcement would be manifestly incompatible with the fundamental principles of the requested legal order.

At the same time, safeguarding national public order constitutes a recognised limitation. This duality reflects the vested interest of EU Member States in promoting circulation while preventing judicial overreach by other States. The core concern pertains to the possible dissemination of decisions issued in violation of fundamental rights. Such a risk may justify the application of the public policy / ordre public exception, but only in narrowly defined circumstances. The requested court may not review the substance of the foreign judgment; it may refuse recognition or enforcement only where the effects of that judgment would be manifestly incompatible with the fundamental principles of its legal order. Restricted circulation grounds should therefore be understood primarily in relation to procedural fairness, proper service of documents, irreconcilable judgments and manifest incompatibility with the fundamental principles of the requested Member State’s legal order. Court decisions may also become subject to procedural instead of substantive scrutiny.

Public policy / ordre public as a limit to mutual recognition

In EU private international law, public policy / ordre public operates as an exceptional ground for refusing the recognition or enforcement of a judgment delivered in another Member State. Under Regulation 1215/2012, this exception must be interpreted restrictively, since the system is built on mutual trust and the free circulation of judgments. Public order constitutes an important limiting principle on mutual recognition in European Union (EU) judicial cooperation. This term encompasses all cases where the execution of a decision from other Member States poses a serious threat to fundamental rights, Union values, or the core values of the national or regional legal system [1]. Challenges concerning the rule of law and the protection of fundamental rights have contributed to renewed debates on the scope of public policy as a ground for refusing recognition or enforcement [2].

The case law of the Court of Justice of the European Union confirms that the public policy exception must be interpreted strictly. It cannot justify a review of the substance of the foreign judgment and may be relied upon only where recognition or enforcement would be manifestly contrary to a fundamental rule of law in the requested Member State. This restrictive approach reflects the need to preserve mutual trust while allowing national courts to react in exceptional cases involving serious procedural or substantive incompatibility with the forum's basic legal principles.

The European Union's (EU) principle of mutual trust among Member States, regarded as one of the foundations of the European integration process, is increasingly challenged. Such practices of restricting mutual trust in the circulation of judicial acts are alarming because they may erode the seminal basis on which EU policy has been built. To enumerate the comprehensible legal framework provided by Member States that limits the circulation of judicial decisions under public-order defences, this section classifies the legal categories and outlines the legal criteria that have been elaborated through case law in framing public-order defences within the EU context. Court decisions have shaped the current understanding of the limits of public order and the movement of judicial acts. There is substantial variation in national case law concerning public-order defences. The concept of public order is an elementary tenet of the legal system in most democratic states; it serves as a formidable barrier for the enforcement and circulation of judicial

decisions. Contributing legal elements, such as those that identify the classification of public-order defences invoked against the circulation of judicial acts and the corresponding criteria, have been widely analysed [3].

The European Union's principle of mutual trust underpins the circulation of judgments among its Member States. This section highlights relevant case law of Member States that furnish guidance on the limits set to circulation. The case law reveals a growing intersection between public order and fundamental rights regarding mutual recognition. National courts reference the European Convention on Human Rights and European Union Charter of Fundamental Rights as foundational elements of the rule of law, espouse proportionality in the public order analysis, and specify necessary prerequisites and procedural safeguards in certain circumstances. Following Aranyosi and Caldararu, the European Court of Justice underscores that mutual trust remains intact even when national courts delineate their interpretation of it.[4] Domestic jurisprudence regarding the circulation of judgments is evolving along a trajectory that remains coherent with the jurisprudence of the European Court of Justice. Member States generally do not contend that mutual trust is absent. National courts instead affix threshold standards, framing specific conditions attached to the circulation of judgments. [2]

Balancing mutual trust and public order

The concept of public order plays a crucial role in the dynamics of judicial cooperation within the European Union (EU) across the civil domain that rely on mutual recognition and automatic enforceability of decisions between Member States. Member States of the Union confront the significant challenge of effectively balancing mutual trust between national judicial authorities and public order requirements when determining whether EU court judgments or other coercive cross-border measures issued by the judiciary of another member state must be enforced. The Court of Justice of the European Union (CJEU) is regularly called upon to safeguard the application of EU law and, in parallel, to evaluate the compatibility of national law and procedures with this higher legal order. An analysis of the overall content of CJEU rulings and the central debates surrounding them reveals the significant tensions that persist. Proportionality and necessity are often at the forefront of these discussions, along with the consideration of

protection measures for fundamental rights in the context of ongoing restrictions on the transmittal of court decisions.

A comparative analysis of the contested nature of mutual trust reveals both differences and similarities across Member States. Fundamental differences arise in the persistence of reservations based on mutual recognition; the freedom of courts to engage in an examination of equivalence; the significance placed on specific domestic social and geographical contexts; and the development of a common EU legal culture in both judicial and legal professional circles in response to the particular case raised. Convergence appears across assessments of whether core principles of the European Convention on Human Rights constitute a minimum standard that would permit further scrutiny of the issue. The adoption of different forms of constitutional loyal cooperation and the articulation of a global vision of trust that engages with the constitutional traditions of the Treaties and with the national principle of the rule of law further illustrate this trajectory. Eventually, the compatibility of fundamental rights with the content of the decision serves as a litmus test to specify the threshold beyond which the transmittal of court decisions becomes constitutionally intolerable.

Comparative perspectives reveal important subtexts in the safeguarding of fundamental rights under enforcement instruments based on the principle of mutual trust. Several constitutions affirm the supremacy of human rights or enumerated rights in their respective legal orders. Varied legislative choices reflect differing legal parameters and may be deployed in opposition to further European integration. Some courts emphasise that national constitutional traditions do not permit the absolute disregard of fundamental rights for policy or technical reasons, disallowing the invocation of European assurance of respect for fundamental rights in justification of their transposition. These courts remain open to mutual recognition, but stipulate that such arrangements cannot provide a carte blanche for disregard of Constitution-level guarantees offering greater protection than corresponding European provisions.

The public policy exception cannot be reduced exclusively to the values listed in Article 2 TEU, although those values inform its interpretation. In civil and commercial matters, national courts retain a limited margin of assessment, but that margin must be exercised restrictively and consistently with the objectives of mutual recognition.

The examination of limitations on the circulation of decisions that respect public order reinforces the view that the principle of mutual trust within the European Union's judicial systems is subject to nuanced, but not absolute, constraints established at the national level. Public-order defences can be framed and interpreted in a way that avoids broad restrictions on the circulation of national decisions. Court decisions have circulated across borders with few limitations, even in difficult circumstances, and in practice it has become apparent that public-order constraints impose few, if any, real limits on the circulation of decisions of a purely civil nature. National authorities remain free to intervene if and when they consider such interventions proportional and necessary. Several aspects of the jurisprudence continue to evolve, and further clarity would benefit both other authorities within the national systems concerned and parties to proceedings of various kinds.

Although public policy remains a national concept, its application is influenced by EU law. National courts may invoke it only in exceptional circumstances, where recognition or enforcement would clearly conflict with fundamental principles of the forum.

Procedural and substantive implications for enforcement

Alongside Brussels I bis, instruments such as the European Order for Payment Regulation and the European Small Claims Regulation contribute to the broader objective of simplifying cross-border judicial cooperation in civil and commercial matters. However, Regulation 1215/2012 remains the central instrument for the recognition and enforcement of judgments between Member States.

In cross-border situations, the effects of national decisions on legal instruments depend on the type of measure issued and on whether the measure is classified within the formal framework of a judgment or judicial decision. In the first instance, the framework is that of the cross-border recognition and enforcement of judgments; whether the measure is a provisional measure or not determines if national procedures apply. In the second case, and if the issuing State does not act within the framework set by specific EU instruments for the circulation of decisions, it cannot be excluded that additional national stages occur within the deciding State prior to any enforcement operation [5].

The relevant remedies are subject to significant variation, and substantial procedural diversity continues to be witnessed between Member States in the practice of granting cross-border injunctions. With regard to enforcement at the cross-border level - namely, execution where the parties to an enforcement act are located within different territories or Member States - no uniform definition of a common enforcement title is presently available. The absence of such a definition precludes an automatic, system-wide solution at the enforcement level and sustains the integration of national doctrines centred on enforceability, a development that generates recital- and content-related complications in enforcement scenarios. The requirement that domestic enforcement statutes, applicable to the local circulation of the judgment, remain still in place reflects the fact that the Member State in which enforcement is sought has no obligation through Union law to ascertain whether the cross-border judgment is also enforceable in the Member State in which it originated. The scope of judgments that qualify for publicity-based enforcement remains similarly dependent on Member-State national law. The diversity of procedural rules, templates, and formalities characterising the Union has escalated the demand for harmonisation within circulation or enforcement systems and constitutes the operational rationale underlying the enactment of instruments such as the Brussels I Regulation.

At present, the functioning of the Common Area of Justice is materially dependent upon the fundamental requirement that national proceedings, encompassing both substance and procedure, should not breach the standards established by the Court of Justice of the European Union.

Policy implications and future prospects

The relation between mutual trust and public order remains a longstanding challenge in the evolution of cooperation between national judicial systems, and thorough guidance is necessary to establish the conditions under which trust-based circulation is compatible with the safeguarding of public order. In particular, achieving a balance requires clarifying the limits that may be imposed for public order reasons on the circulation of civil and commercial judgments. The relationship between mutual trust and public policy remains a continuing challenge in the development of judicial cooperation

between Member States. Future developments should clarify the conditions under which public policy may justify refusing recognition or enforcement, while ensuring that this exception remains proportionate, exceptional and compatible with the objectives of Regulation 1215/2012. There is also a need to explore the possibility of a more far-reaching collective notion of public order applicable across the EU to facilitate trust-based circulation, along with related safeguards.

Efforts to safeguard certain public order aspects already adopted within the Union can assist in balancing protection and trust. Possible measures include refining existing or creating new instruments to formally define specific limits to mutual recognition and circulation, for instance by instituting supplementary bases for non-recognition or non-circulation, supplemented by a proportionate necessity test. Systematic assessment of framework agreements on the recognition of judicial decisions can further identify remaining divergences in the definition and scope of such contracts, facilitating convergence on their adoption or substance. Mechanisms compatible with EU law are likely available to promote convergence in national protection of non-circumvention duties applied to mutual recognition of court decisions [6]; [7].

Conclusion

The circulation of court decisions constitutes an essential mechanism for the cooperation of judicial systems operating across national boundaries. The enhancement of judicial cooperation is one of the major objectives stated in the Treaty on European Union and is closely connected with the creation of a common area of freedom, security and justice. Within this framework, mutual trust among Member States supports the recognition and enforcement of judgments and contributes to the effective functioning of the European judicial area.

Nevertheless, since national systems and legal traditions still include substantial differences, facilitating circulation while preserving the fundamental principles of the requested legal order remains both a necessity and a challenge. Regulation 1215/2012 reflects this balance by promoting the free circulation of judgments in civil and commercial matters, while preserving limited grounds for refusing recognition or enforcement. Among these grounds, the public policy / ordre public exception occupies a particular position, as

it allows national courts to prevent the effects of a foreign judgment that would be manifestly incompatible with the basic principles of their legal order.

The public policy exception must, however, remain exceptional. It cannot be used as a means of reviewing the substance of the foreign judgment or as a general mechanism for protecting national legal particularities. Its function is rather to operate as a residual safeguard in cases where recognition or enforcement would seriously affect procedural fairness, fundamental rights or essential principles of justice. In this respect, the balance between mutual trust and public policy depends on a restrictive and proportionate interpretation of the grounds for refusal.

The Area of Freedom, Security and Justice is built on mutual trust, a principle reflected in Article 81 of the Treaty on the Functioning of the European Union. Yet mutual trust cannot be understood as blind trust. The circulation of court decisions remains legitimate only insofar as it is accompanied by safeguards capable of protecting the fundamental values of the requested legal order. Therefore, the future of judicial cooperation in civil and commercial matters depends on maintaining this delicate balance between the effectiveness of mutual recognition and the exceptional protection ensured by public policy / ordre public.

References:

[1] Bárd, P. (2018). Saving EU Criminal Justice: Proposal for EU-wide supervision of the rule of law and fundamental rights. CEPS Paper in Liberty and Security in Europe No. 2018-01, April 2018. https://doi.org/10.26530/20.500.12657/40047

[2] Saenz Perez, C. (2022). What about fundamental rights? Security and fundamental rights in the midst of a rule of law breakdown. https://doi.org/10.1177/20322844221140871

[3] Giussani, A. (2019). Grounds for Refusal of Recognition of Foreign Judgment: Developments and Perspectives in EU Member States on Public Order and Conflicting Decisions. https://doi.org/10.14276/1825-1676.2047

[4] Łazowski, A. (2018). The Sky Is Not the Limit: Mutual Trust and Mutual Recognition après Aranyosi and Caldararu. DOI:10.3935/cyelp.14.2018.313

[5] Azoulai, L. (2018). Editorial Comments: EU law between common values and collective feelings. Common Market Law Review, 2018, 55 (5), pp.1329 - 1340. ⟨hal-03230233v1⟩ https://sciencespo.hal.science/hal-03230233v1

[6] Danov, M. & Beaumont, P. (2016). Measuring the effectiveness of the EU civil justice framework: Theoretical and methodological challenges. DOI: 10.9785/9783504385163-008

[7] Rita Sousa Covelo Abreu, J. (2020). O sentido amplo de Contencioso da União Europeia e a justiça eletrónica europeia – a tutela jurisdicional efetiva como pressuposto e finalidade: breves apontamentos. DOI:10.21814/1822.73489

[8] 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. 1–32.