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**Effective judicial protection in judicial cooperation in civil matters and the Court of Justice of the European Union case law:
the public policy clause and the absolute default of appearance as denial causes of judgments' recognition and enforcement in EU context**

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ABSTRACT: The Brussels I Regulation's re-foundation by the New Brussels I Regulation was thought to secure reciprocal trust on justice administration among Member States and to grant full access to justice for those who inhabit and circulate in its territory. In a Union characterized by circulation freedoms and an internal market existence, those principles justify a situation in which judgments ruled by a Member State's court are automatically recognised and enforced, in other Member-State, except when the defendant evokes the rules on denial of judgments' recognition and enforcement. There would not be judicial cooperation and integration's prosecution without trust – trust must exist among Member States' courts and it must be felt by EU citizens so they can acknowledge that EU is actively seeking to improve their life and working conditions. The European Commission made constructive efforts to promote an exequatur's abolition, making recognition and enforcement proceedings on the New Brussels I Regulation simpler (it even proposed to remove the “public policy” clause, which was not accepted). It is necessary to analyse how the CJEU applies the rules on denial of judgments' recognition and enforcement to perceive if the principle of an effective judicial protection is fulfilled under New Brussels I Regulation.

KEYWORDS: effective judicial protection – exequatur – Brussels I Regulation – New Brussels I Regulation – judicial cooperation in civil matters.

1. The role of mutual recognition and reciprocal trust principles under the Brussels I Regulation and the New Brussels I Regulation

The Brussels I Regulation¹ was the first normative instrument adopted to promote Judicial Cooperation in Civil Matters within European Union (EU) and, in that sense, to promote an Area of Freedom, Security and Justice development. It appears as a forerunner instrument in the prosecution of the following primordial objectives: to secure better access to justice in Europe and to reinforce judgments' mutual recognition in that space.

In fact, EU policies in civil matters will continue to be conducted based on those guiding principles, which also entail the *exequatur*'s suppression, so a better, wider and simpler access to justice in cross-border litigations can be achieved. The Brussels I Regulation also made possible a simplification of judgments' recognition and enforcement, in the EU, when those were issued by other Member States' courts. This can be inferred from the reciprocal trust in justice administration among Member States key-principle proclamation, deduced from the Regulation's recitals.²

In a Union characterized by fundamental circulation freedoms and the existence of an internal market, these principles justify the situation in which judgments set in a Member State are automatically recognized and enforced in another Member State, without needing any other procedure, except in those cases where the defendant evokes the rules on denial of judgments' recognition and enforcement. They also demand that it must be fast and effective. In fact, the primordial developments under mutual recognition were based on those fundamental freedoms.³

¹ Regulation 44/2001, of the Council, of 22 December 2000, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

² Cf. Brussels I Regulation's introducing recital 16.

³ Cf. Bruno Nascimbene, «Le traité de Lisbonne et l'espace judiciaire européen: le principe de confiance réciproque et de reconnaissance mutuelle», *Revue des Affaires Européennes – Law & European Affairs*, Bureau du dépôt: Bruxelles X, Trimestriel/Quartely, 18^e Année/Year, 2011, 4, Bruylant, Bruxelles, Parution avril (2012): 787.

In this scenario, and having in mind the New Brussels I Regulation⁴ (which concluded the recast procedure of the Brussels I Regulation) it provides a closer observance of mutual trust through the complete abolition of the *exequatur*. In our opinion, this leads the way in the judicial cooperation in the field of civil matters, with the necessary reduction of litigators' (individuals or enterprises) expenses in cross-border litigations,⁵ assuring a more immediate observance, in a Member State, of judgments ruled in another Member State. The referred Regulation shall apply to all litigations presented after 10 January 2015.

This matter is part of the Area of Freedom, Security and Justice – in regards to Judicial Cooperation in Civil Matters – and it is guided by three major elements: «a better access to justice»; «judgments mutual recognition» and «a greater convergence in civil law domains».⁶ In this sense, reciprocal trust was described by the Council as the cornerstone in the treatment of judgements issued in different Member States.

The mutual recognition principle gains particular importance in this area since it allows gaps' harmonization and approximation of Member State legislations, when these are not yet in a situation where they can do it by their own volition.⁷ On the other hand, the reciprocal trust principle is intrinsically related to mutual recognition.

This is clear in Article 67(4) of the Treaty on the Functioning of the European Union (TFEU), where it is stated that «the Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters». It was developed under Article 81(1), 1st part of the TFEU, since it is stated that «the Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and decisions in extrajudicial cases». Such cooperation may include, as it is shown in its 2nd part, «the

⁴ Regulation 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.

⁵ Cf. European Commission's Proposal for a Regulation of the European Parliament and of the Council, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), COM(2010)748, Brussels, 14 December 2010
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0748:FIN:EN:PDF>

⁶ Cf. Bruno Nascimbene, *Le traite de Lisbonne et l'espace judiciaire*, 788 (translated freely).

⁷ Cf. Bruno Nascimbene, *Le traite de Lisbonne et l'espace judiciaire*, 788.

adoption of measures for the approximation of the laws and regulations of the Member States».

Bearing this in mind, we could not consider that when the EU legislator only refers the mutual recognition principle, this means that the reciprocal trust principle is being excluded. In fact, reciprocal trust derives from the Brussels I and the New Brussels I Regulations' recitals but it also integrates the meaning and the scope of mutual recognition principle. It would be difficult to imagine to establish judicial cooperation and integration «without trust».⁸

Reciprocal trust is, in this sense, the normative “component” that ensures the fundamental rights protection enshrined in the common constitutional traditions of all Member States (Article 6 of the Treaty on European Union – TEU), as it is provided by Article 67 of the TFUE. «Trust [...] is presumed and is reinforced thanks to the integration pursued by the States, by the Community, by the Union».⁹ Reciprocal trust does not demand full and complete identification of situations and legislations, but rather an equivalent treatment (substantive and/or procedural) in a way that a judgment ruled by a Member State's authority can be accepted by another Member State's authority, producing its juridical effects in that addressed Member State.¹⁰

The discussion concerning the EU's judicial common area is set around those two main principles. In this sense, the Court of Justice of the European Union (CJEU) has ruled on judgments' recognition and enforcement and developed the several dimensions of the principle of effective legal protection. It is mandatory to give those rulings the proper treatment.

⁸ Cf. Bruno Nascimbene, *Le traite de Lisbonne et l'espace judiciaire*, 789 (translated freely).

⁹ Cf. Bruno Nascimbene, *Le traite de Lisbonne et l'espace judiciaire*, 789 (translated freely).

¹⁰ Cf. Article 2(e) of the New Brussels I Regulation concerning the meaning of «Member State addressed».

2. The role of CJEU case law in the principle of effective judicial protection construction in the field of judgments' recognition and enforcement

In the topic under discussion, it is relevant to remember that Articles 34 and 35 of the Brussels I Regulation outlines all exceptional situations in which judgments' recognition can be refused, when they were ruled in another Member State; Articles 34 and 35 of the Brussels I Regulation contain the list of exceptional situations that may operate the refusal to recognize a judgment given in another Member State. Article 45(1) provides that those requirements are applicable to judgments' enforcement refusals.

In the light of the principle of effective judicial protection, preliminary rulings are usually related to the public policy clause or to the absolute default of appearance. These two refusal causes are referred in Article 34 (1) and (2) of the Brussels I Regulation.

The public policy clause justifies the refusal of judgments' recognition and/or enforcement when that decision is clearly contrary to the addressed Member State's public order.

On the other hand, there's an absolute default of appearance when the procedural act that initiated the judicial litigation in the Member State of origin – or its equivalent act – was not communicated to the defendant in sufficient time so the defendant could arrange for his defence. There is, however, an exception: even if there is this absolute default of appearance, it is possible that the refusal of recognition and/or enforcement is not going to be issued when the defendant failed to initiate proceedings to challenge the judgment, when it was possible for him to do so in the original Member State.

The first CJEU case law which we are going to analyse is *ASML*,¹¹ based on an Austrian court's preliminary ruling. In this case, *ASML* commenced proceedings, in the Netherlands, against *SEMIS* in order to convict the latter to pay a certain sum of money. *SEMIS* was, indeed, convicted to pay. However, in the referred process, *SEMIS* was cited to the act that initiated the judicial litigation about a week later from the date in which the act took place. *SEMIS* also was not notified about the final decision which stated its conviction.

¹¹ Cf. Judgment *ASML*, 14 December 2006, Case C-283/05.

Once questioned about the notion of «absolute default of appearance», the CJEU began its analysis by stating that, despite the fact that the Brussels I Regulation objectives are to establish the decisions' freedom of circulation among Member States in civil and commercial matters by simplifying its recognition and enforcement formalities so they can be faster and simpler, those goals cannot be achieved at the expense of weakening the defendant's rights. This conclusion is also stated in the Brussels I Regulation's recital 18.

Considering the jurisprudential developments of the European Court of Human Rights (ECHR) case law, the CJEU remembered that defence rights derive from the right to an effective remedy and to a fair trial, which demands a concrete and adequate protection suited to guarantee that the defendant can exercise his rights effectively, as it derives from the European Convention on Human Rights (ECHR).

Developing this effective judicial protection's dimension, the CJEU, demonstrated that the respect of the defendant rights when he is not able to appear in the origin Member State is guaranteed by a double control enshrined in the Brussels I Regulation:

- the origin Member State's judge must suspend his decision while he is not sure if the defendant had the opportunity to receive the act which has initiated the litigation, on time to be able to properly present his defence, or when he is not sure that all the necessary measures were made to pursue that goal;
- in the addressed Member State, if the defendant presents an appeal of the decision that recognises or enforces the judgment from the Member State of origin, the court which will be deciding the appeal has to examine if there are indeed grounds for refusing recognition and / or enforcement.

As in the case we are analysing, those situations in which the defendant was not aware of the decision's content the CJEU tells us that the defendant can only appeal a decision to which he was fully aware of. This is the case because it is only possible to present an effective appeal when the defendant knows the judgment grounds. In fact, only then, can his defence rights be completely secured.

However, when the EU legislator added an exception to the refusal cause at the end of Article 34(2), what he had in mind was to avoid a situation in which the defendant could try to excuse himself from appealing in the Member State of origin, only acting in case of decisions' recognition/ enforcement in the requested Member State. And, it is worth noting that by introducing this exceptional demand there were no further requirements imposed on the defendant. In fact, this only reinforces the CJEU's interpretation that when the defendant could not know the content of the decision, he is not required to discover it by his own means.

Therefore, the CJEU determined that the defendant would be able to appeal a judgment, as stated in Article 34.(2), *in fine*, when the defendant had been made aware of the content of the decision. Notwithstanding, it is important to clarify that, according to the CJEU, this notification does not have to entail more demanding formal characteristics than those verified for the citation of the act which initiated the litigation.

Another relevant dimension, on this issue, comes from the *Apostolides*¹² case. The main litigation involved Apostolides in contention with the Orams couple and it concerned a property right. The Orams couple were convicted in default of appearance. The competent United Kingdom court (addressed Member State) declared the judgement's enforcement and the Orams couple appealed this decision, invoking the public policy clause as the cause for the enforcement refusal.

In this case, the CJEU remembered that it cannot define «public policy of a Member State». But it can, however, oversee the limits in which the addressed Member State's court can use this clause to refuse a judgment's recognition and/or enforcement, ruled by the origin Member State's court.

The public policy clause can only be used when the decision's recognition/enforcement affects, in an unacceptable way, a fundamental principle of the addressed Member State. It must substantiate a manifest violation of an essential juridical rule or fundamental right of the addressed Member State's public order.

¹² Cf. Judgment *Apostolides*, 28 April 2009, Case C-420/07.

In this case, the mentioned court did not indicate any principle or fundamental right in its legal order which allowed for the application of that refusal cause. Therefore, the CJEU articulated the principle of effective judicial protection with another refusal cause, the public policy clause.

There is another element which we can retain from the *Trade Agency*¹³ case law. This judgment was based on a Latvian preliminary ruling request. The Latvian court wanted to know if it was possible, for the addressed Member State's court, to inquire about the accuracy of the information enclosed in the certificate which accompanied the Member State of origin's decision and the evidence means presented by the defendant. The national judge specifically wanted to know, if he had those powers since the defendant had pleaded that he was not cited to the act that initiated the judicial litigation (in the Member State of origin) but the certificate clearly stated that he was legally cited.

The CJEU specified that the addressed Member State's judge can only make a formal control of the required documents to declare the judgment's enforcement, and does not have the power to control any legal or factual aspect of the litigation decided by the Member State of origin's court. As stated in the Brussels I Regulation, in no circumstances may a judgment given in a Member State be reviewed, as to its substance, in the addressed Member State.

It is settled that the addressed Member State's judge has to check if the defendant was cited in order to evaluate the claimed refusal reason of recognition and/or enforcement of the decision. Additionally, as it was said, it is the addressed Member State's judge who does this evaluation and assesses if the defendant had sufficient time to present his defence or to take the necessary steps to avoid a default of appearance.

Therefore, the certificate which accompanies the decision cannot limit the range of appreciation for the addressed Member State's judge since there is no rule in the Brussels I Regulation that expressly forbids the addressed Member State's court to verify the accuracy of the certificate's information. The Regulation only prohibits a review as to the judgment's substance, which did not happen in this case.

¹³ Cf. Judgment *Trade Agency*, 6 September 2012, Case C-619/10.

And it is important to remember that the entity who issues that certificate might not correspond to the entity who had ruled the judgment. Consequently, the only information mentioned in that certificate concerns the date when the defendant was cited/ notified when he did not actively litigate in the procedure. In fact, other important information is left out, despite their useful nature for the addressed Member State's judge, such as: a) information that allows him to know if the defendant had the opportunity to actually know the litigation he was involved in; b) if the citation/notification was made on time; c) and if the defendant had the opportunity to exercise his defence rights.

Therefore, presenting the certificate cannot limit the judge's powers from the addressed Member State because this would undermine the useful effect of the judge's control in order to secure the defendant's rights, not only in the Member State of origin, but also in the addressed Member-State.

The importance of the *Trade Agency* case law is unquestionable because it entails a new look regarding the addressed Member State's judge powers (in the above mentioned situation). In fact, it recognises the judge's faculty to inquire about the coincidence of the declarations made in the certificate that accompanies the decision to be recognised/ enforced with the evidence presented by the defendant. With this conclusion, the CJEU further fortified the protection of defendant's rights.

The CJEU recently considered this same subject in the *Visser*¹⁴ case, based on a German request for a preliminary ruling. In this case, the preliminary ruling was presented by the origin Member-State's court since the fundamental question was related to the decision's certification as an European Enforcement Order.

The litigation concerned a decision issued in the defendant's absolute default of appearance—Visser – since there was no proof that he had actually known that a judicial action was being held against him because he was cited by edictal. Despite all the efforts made to determine the defendant's proper address, the court was unable to cite the defendant using any other means of citation.

¹⁴ Cf. Judgment *Visser*, 15 March 2012, Case C-292/10.

The CJEU tells us – and here is where the novelty of this case law resides! – that, despite the fact that all the Brussels I Regulation rules are aimed at giving the defendant all the necessary means to ensure his defence rights, their observance cannot compromise the right acknowledged to the plaintiff to have access to effective remedies before a court and to demand his rights.

In this way, the CJEU shows the confrontation that can emerge between two different dimensions of the principle of effective judicial protection: on one hand, the right to a fair trial, which includes the defendant's defence rights, and on the other hand, the right of access to effective remedies before a court in order to guarantee that the plaintiff can demand his rights

In consequence, and remembering its previous case law, the CJEU tells us that fundamental rights, such as respect for the defendant's defence rights, do not emerge as absolute prerogatives. They can be restricted as long as these restrictions correspond to general interest goals. However they cannot constitute, in the light of the pursued objectives, an unmeasured violation of that fundamental right.

The CJEU had already declared its concern for avoiding situations of complete denial of justice that the plaintiff could face due to the impossibility of locating the defendant. This is, indeed, a true general interest goal.

In spite of the defendant's edictal citation substantially reducing his defence rights, preventing judicial litigation to continue would impose a major restriction on the plaintiff 'right to effective remedies before a court. This strong protection of the plaintiff is justifiable because the defendant still has the possibility to present an appeal in the court of origin against the decision that convicted him. Afterwards he can even, present an appeal to the addressed court to avoid the judgement's recognition and/or enforcement, as stated in Article 34(2) of the Brussels I Regulation. As for the plaintiff, if it was not for the protection described above he would be prevented from reacting in any other way.

The CJEU understood that a decision in default is possible, based on edictal citation as long as the competent court is certain that all the necessary diligences to find the defendant were

pursued before ruling its final decision. Those necessary diligences are subjected to transparency and good faith principles.

On the other hand, this decision must always be submitted to a recognition/enforcement request in the addressed Member State because this is the only way the defendant's defence rights can be guaranteed since he has the chance of challenging the decision's recognition/enforcement. Therefore, the CJEU understood that, in similar cases, the European Enforcement Order shall not be issued.

3. *Exequatur's* suppression: an evolution marked by false starts?

Exequatur's suppression implies that an origin decision is recognised and enforced, in the addressed Member State, in the same conditions that this State would recognise and enforce a decision issued by one of its courts – Articles 33(1) of the Brussels I Regulation and 36(1) of the New Brussels I Regulation. Alternatively, resorting to a similar concept, the decision must be accepted as it would be if it had been issued by the courts of the addressed Member State (recital 16 of the Brussels I Regulation and recital 26 of the New Brussels I Regulation). New Brussels I Regulation enshrines, in a more obvious way, the «principle of assimilation of a judgment issued in the origin Member-State as a decision given by the Member-State addressed».¹⁵

Having in mind the Green Paper's introduction on the review of the Brussels I Regulation,¹⁶ we can identify that the *exequatur's* suppression was needed since «it is difficult to justify, in an internal market without frontiers, the fact that citizens and businesses have to undergo the expenses in terms of costs and time to assert their rights abroad [even if] applications for declarations of enforceability are almost always successful and recognition and enforcement of foreign judgments is very rarely refused».¹⁷ Nevertheless, the same Green Paper reminded that the «abolition of the *exequatur* should, however, be accompanied by the necessary

¹⁵ Cf. Arnaud Nuyts, « La refonte du règlement Bruxelles I », *Revue critique de droit international privé*, 1, Trimestrielle, Tome 102, Dalloz, Janvier/ Mars (2013): 23 (translated freely).

¹⁶ Cf. Green Paper on the review and application of the Regulation 44/2001 on jurisdiction, recognition and enforcement of judgments in civil and commercial matters, COM(2009), 175 final, Brussels, 21.04.2009 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0175:FIN:EN:PDF>

¹⁷ Cf. Green Paper on the review and application of the Regulation 44/2001, 2.

safeguards»,¹⁸ as can be read from our case law analysis concerning the principle of effective judicial protection.

The Exequatur's suppression was the European Commission's (EC) “war-horse” since its purpose was to show European citizens that «Europe is active and materially improves their life and working conditions».¹⁹ The EC intended to promote reciprocal trust among Member States in a more effective way and reduce the costs associated with cross-border litigations. In fact, the expression «reciprocal trust» appears in the recital 26 of the New Brussels I Regulation, in its French version, leaving the commonly used expression «mutual trust» aside, as it appears in the English version.

Many authors question if that reference was a translation mistake and, if that was the case, whether that error resulted from the French or from the English²⁰ version. This dissidence's importance is questionable, especially when it is unanimously recognized among the legal doctrine that there is a reciprocal trust principle. In any case, the use of the expression «reciprocal trust» in the French version embodied the hope that the accurate expression was adopted, at least in one of the Regulation's official versions.

The EC Regulation proposal detected four main gaps, among which we would like to underline the following one (since it clearly reflects the importance of the present issue): «the procedure for recognition and enforcement of a judgment in another Member State ("exequatur") remains an obstacle to the free circulation of judgments which entails unnecessary costs and delays for the parties involved and deters companies and citizens from making full use of the internal market».²¹

¹⁸ Cf. Green Paper on the review and application of the Regulation 44/2001, 2.

¹⁹ Cf. Catherine Kessedjian, «Commentaire de la refonte du règlement n.º 44/2001», *RTDeur – Revue Trimestrielle de droit européen*, n.º 1, Dalloz, Janvier/Mars (2011): 128 (translated freely).

²⁰ In the Regulation's Portuguese version we can also find the correspondent expression «confiança mútua», which literal translation corresponds to the English expression «mutual trust» rather than to the one contemplated in the French version - «reciprocal trust».

²¹ Cf. European Commission's Proposal for a Regulation of the European Parliament and of the Council, on jurisdiction, 3.

Member States agreed that a true judgments' freedom of circulation should be created.²² But, in order to secure the *exequatur*'s suppression effectiveness, it is necessary that fundamental rights, namely the defendant's right to a fair trial and other defence rights, are protected as provided in Article 47 of the Charter of Fundamental Rights of the European Union (CFREU). There were, however, different opinions on the means to safeguard those fundamental rights.²³

The main reasons concerning refusal of recognition and enforcement of judgments were maintained as provided in Articles 34 and 45(1) of the Brussels I Regulation. However, concerning the EC proposal, there was an absolute novelty: the public policy clause was going to disappear as a reason of recognition and enforcement refusal. The EC justified this option stating that «the time and costs of the *exequatur* procedure will be saved while the necessary protection of defendants will remain ensured».²⁴

However, this EC proposal was understood as aiming at something greater than what could be achieved at the time since, as Catherine Kessedjian states, removing the public policy clause goes further than the original law, in regards to the internal market.²⁵ The CJEU recently had the opportunity to elaborate on this subject in the *Liga Portuguesa de Futebol Profissional and Bwin Internacional*²⁶ case. In fact, the public policy clause was maintained in Article 45(1)(a) of the New Brussels I Regulation.

This proposal was ambitious and even if for some legal doctrine, it appeared as «premature»:²⁷ The Brussels I Regulation created mechanisms that actually work and, in the

²² Cf. European Commission's Proposal for a Regulation of the European Parliament and of the Council, on jurisdiction, 6.

²³ Cf. European Commission's Proposal for a Regulation of the European Parliament and of the Council, on jurisdiction, 5. In fact, this document states that «views differed on the extent of such safeguards and on the place where such safeguards should be available (Member State of enforcement or Member State of origin)».

²⁴ Cf. European Commission's Proposal for a Regulation of the European Parliament and of the Council, on jurisdiction, 6.

²⁵ Cf. Catherine Kessedjian, *Commentaire de la refonte du règlement n.º 44/2001*, 129.

²⁶ Cf. Judgment *Liga Portuguesa de Futebol Profissional e Bwin Internacional*, 8 September 2009, Case C-42/07.

²⁷ Cf. Catherine Kessedjian, «Commentaire de la refonte du règlement n.º 44/2001», 130 (translated freely).

end, there were not as many controversial topics as one might think. In this sense, there are some authors who understand that the EC proposal, especially concerning the public policy clause exclusion, was pursuing a political agenda rather than the Regulation's actual functional operability – «in practice, the Regulation works well and the need of recast derives more of political choices made by the Commission, not all of them justified, such as [...] in the total suppression of the public policy control in decisions' enforcement».²⁸

From the case law analysis, we can conclude that the public policy clause has been used, by the defendant, when he requests for the denial of the decision's recognition and/or enforcement, even when the proper requirements are not filled. Defendants always use the denial cause, almost as an alternative plea to the one that the situation relates to. The public policy clause was rarely applied by national courts.²⁹ These proposals in the line with others presented by the EC, was not fully accepted because «they were too radical to a large number of Member States» which concluded that «the existing system was working reasonably well».³⁰

4. Conclusions

The CJEU has a prevailing role in keeping the balance between the maturation of the reciprocal trust on justice administration among Member States and the strict observance of the principle of effective judicial protection in all its dimensions.

The CJEU has acknowledged the recognition and the enforcement of other Member States decisions when this does not entail a complete and unbearable violation of the fair trial rights accorded to the defendant or the right to effective remedy before a court to be given to the plaintiff.

²⁸ Cf. Catherine Kessedjian, «Commentaire de la refonte du règlement n.º 44/2001», 130 (translated freely).

²⁹ Cf. Peter Arnt Nielsen, «The new Brussels I Regulation», *Common Market Law Review*, Vol. 50, Number 2, 50th Anniversary, Wolters Kluwer Law & Business April (2013): 527; B. Hess, «The Brussels I Regulation: Recent case law of the Court of Justice and the Commission's proposed recast», *Common Market Law Review*, Vol. 49, Number 3, Wolters Kluwer Law & Business, June (2012): 1103-1105.

³⁰ Cf. Peter Arnt Nielsen, «The new Brussels I Regulation», 527 (translated freely).

Despite the fact that the Brussels I Regulation and the New Brussels I Regulation expressly refer, in their recitals, to the right to a fair trial, the CJEU does not forget the other dimensions of the principle of effective judicial protection, proclaiming the importance of the right to an effective remedy before a court when, in a particular case, this can be damaged if the defence rights are pursued blindly.

In a context where the New Brussels I Regulation entirely suppresses the *exequatur*, it was the principle of effective judicial protection that justified maintaining all the denial reasons to decisions' recognition and/or enforcement in the addressed Member-State.³¹

The principle of effective judicial protection is inseparable from judicial cooperation in civil and commercial matters. That principle simultaneously softens and promotes the referred judicial cooperation, and in an era where the reciprocal trust paradigm is defined mostly by the *exequatur*'s suppression, the CJEU has a defining role in declaring and proclaiming the principle of effective judicial protection as a general principle of EU law.

³¹ Cf. Peter Arnt Nielsen, «The new Brussels I Regulation», 527.