

CHAPTER 10

BRIDGING THE GAPS: MUTUAL TRUST AND RECOGNITION AS TOOLS FOR COOPERATION OF EQUALS



RADOVAN MALACHTA

Abstract

This chapter assesses the formal equality of Member States of the European Union in situations where they must rely on other Member States and fully accept the other's sovereign decisions. It primarily focuses on the area of freedom, security and justice, particularly on judicial cooperation in civil and criminal matters, where the need for the recognition and enforcement of judicial and extrajudicial decisions arises. Only a marginal mention has been made of related areas. First, the focus is on developmental trends in the unification of law in this area, that is, judicial cooperation in civil and criminal matters, particularly after the Amsterdam Treaty. Subsequently, based on an analysis of the case law of the Court of Justice of the European Union, relevant EU regulations, and legal scholarship, this chapter defines and synthesises the concept of mutual trust and examines the relationship between mutual trust and mutual recognition. This issue has been discussed separately in civil and criminal matters. On the one hand is a requirement for recognition without special proceedings, and on the other hand are various regulations and framework decisions that lay the grounds for refusing the recognition of a judgment or its non-execution. All these aspects are evaluated against the background of equality or inequality between Member States, which are obliged to cooperate under EU law, even in the absence of fully uniform rules.

Keywords: equality of EU Member States, area of Freedom, security and Justice, mutual recognition, mutual trust, judicial cooperation

Radovan Malachta (2026) 'Bridging the Gaps: Mutual Trust and Recognition as Tools for Cooperation of Equals'. In: David Sehnálek (ed.) *Unequal Equals? The Status of Member States in an Integrating European Union*, pp. 317–343. Miskolc–Budapest, Central European Academic Publishing.



https://doi.org/10.54237/profnet.2026.dsuesmsieu_10

1. Introduction

The essence of the European Union as a supranational organisation lies in the fact that its Member States have voluntarily transferred the exercise of powers in certain areas to the institutions of the EU. While the Member States remain sovereign, in those areas where they have conferred powers on the European Union, whether exclusively or shared, EU institutions have the authority to adopt legally binding acts. In these areas, the European Union holds a position of supremacy over its Member States. The Treaty establishing the European Economic Community (Treaty of Rome, 1957) has created its own legal system that became an integral part of the legal systems of Member States.¹ The existence of its own legal system, which in present-day terminology can be broadly referred to as EU law, constitutes the first prerequisite for assessing the issue under examination.

The second aspect to consider is the question of equality or inequality among the Member States. Secondary acts adopted by the EU reveal the inequality, which is primarily reflected in the European Parliament, where each Member State has a different number of Members of the European Parliament depending on the State's population. Similarly, in the Council of the EU, the weight of the vote of each Member State minister varies according to that State's population. However, one could argue that despite these differences, each State has representation in EU institutions and, therefore, Member States are at least formally equal. This formal equality is further demonstrated by the fact that EU law is equally authoritative in all 24 official languages, with no language superior to any other. Finally, equality can also be seen in the fact that all Member States are equally responsible for compliance with EU law, in relation to both EU institutions and other Member States.²

At the same time, the question of equality must not be confined to an institutional level. Although the EU functions as a federation in the field of law, in terms of institutions, it does so only to a limited extent. Much of EU law, including sensitive areas such as the judiciary, is implemented by national authorities. In many domains, regulation remains purely national, with EU law merely mediating its effects. Consequently, the issue of equality between Member States must also be examined considering the national authorities responsible for implementing EU law.

The responsibility of a Member State for ensuring compliance with EU law *vis-à-vis* other Member States is particularly evident in the area of freedom, security and justice, particularly in the field of judicial cooperation in civil and criminal matters. While judicial cooperation in civil matters with cross-border implications is based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases, judicial cooperation in criminal matters is based on the principle of mutual recognition of judgments and other judicial decisions. In both cases, this cooperation entails approximation of the laws and regulations of the Member States in the areas

1 Judgment of the Court of 15 July 1964, Case 6/64.

2 Křepelka, 2021, pp. 118–119.

defined in Arts. 81 and 82 of the Treaty on the Functioning of the European Union ('TFEU').³ Mutual recognition is also evident in other areas, such as the single internal market and free movement of goods, where the different requirements for goods are recognised in the absence of EU regulations or for the recognition of professional qualifications.

The principle of mutual recognition is closely related to, or intertwined with, the principle of mutual trust. This section is particularly focused on these principles. This chapter aims to answer the following fundamental research question: Are EU Member States truly equal if they must rely on other Member States and fully accept their sovereign decisions? The chapter thus assesses developmental tendencies in the field of the unification of law and their results, covering developments since the Treaty of Amsterdam. The specific aim is to determine whether the loss of equality is a reasonable price to pay for the benefits of a common EU regime. This analysis contributes to the broader goal of the publication by identifying whether it is possible to secure closer and more integrated European cooperation among Member States while respecting their equality.

Therefore, the focus is primarily on the mutual recognition of foreign judgments in the context of the outlined issues and objectives. For completeness, this topic is briefly addressed in relation to other areas of EU law.

2. Historical Overview: Evolution of Judicial Cooperation and the Emergence of Mutual Recognition in the EU

The original objectives of the European Union (known as the European Economic Community at the time) were primarily economic. Economic integration was manifested in the establishment of a customs union and a common market, the latter evolving into a single internal market characterised by four freedoms of movement: free movement of goods, persons, services, and capital. Attention has also been paid to issues linked to economic integration, particularly the treatment of foreign judicial decisions. As early as September 1968, the Member States of the European Communities (currently the European Union), in accordance with the fourth indent of Art. 220 of the Treaty Establishing the European Economic Community, concluded the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters. The Convention dealt with the question of determining the international jurisdiction of courts and the recognition and enforcement of judgments from one Contracting State in another Contracting State in civil matters. In 1980, the Convention on the Law Applicable to Contractual Obligations was

³ Arts. 81 and 82 of the Treaty on the Functioning of the European Union.

adopted to establish conflicts of law rules. Initially, civil and commercial matters were dealt with in terms of court judgments.

The primary reason for intergovernmental treaty-based cooperation initially forming the basis of this legal framework was the limited competence of the Community as was explained in chapters 8 and 9 of this monograph. From the perspective of concluding international agreements, these powers remained unchanged even after the adoption of the Treaty on European Union ('TEU'; the Maastricht Treaty, which came into force in 1993). The Treaty introduced a three-pillar structure. This is the first time cooperation in the fields of justice (civil and criminal) and home affairs has been mentioned explicitly. This cooperation was placed within the third pillar, which rested on intergovernmental principles. To adopt rules in this area, all Member States had to reach an agreement on an international treaty. Although the Maastricht Treaty establishes an institutional framework for various EU institutions, the Amsterdam Treaty (which came into force in 1999) was of much greater significance, as it was a revision of the Maastricht Treaty. For the sake of completeness, it should be noted that, despite the existence of several proposed agreements, no international conventions in the field of judicial cooperation entered into force in the period between the Maastricht and Amsterdam Treaties.⁴

The Amsterdam Treaty is important to the topic under examination from several points of view. It establishes the area of freedom, security and justice, which consists of civil and criminal law components. Under this Treaty, judicial cooperation in civil matters was transferred from the third intergovernmental pillar to the first supranational pillar. The practical consequence of this shift was that the institutions of the European Communities/European Union could adopt legally binding secondary legislation in the field of civil cooperation, and international treaties in this area could no longer be concluded through the unanimous agreement of all Member States. This marked the end of the era of subsidiary agreements, as discussed in Chapter 8. From this moment onwards, civil judicial cooperation changed from treaty law to unilateral universalism because conventions were transformed into regulations, and new regulations in various areas were adopted.⁵ Therefore, the Brussels I Regulation was adopted in 2000 to replace the earlier Brussels Convention. Other EU regulations followed later, both in procedural matters (determining international jurisdiction, recognition, and enforcement of judgments) and in matters of conflict of law (determining applicable law). Another significant change was that the CJEU also acquired the power to interpret these acts, contributing to the uniform application and interpretation of legal concepts across the Member States. Three States retained their special positions: Denmark, Ireland, and the currently irrelevant United Kingdom. Denmark does not participate in judicial cooperation in civil matters; in other words, EU regulations in the field of European private international law do not apply to Danish courts and authorities. Bilateral treaties govern the legal

4 Rozehnalová, 2018, pp. 25–26.

5 Fallon and Kruger, 2013, p. 16.

rules between Denmark and the European Union. Ireland (and previously the United Kingdom) can opt-in to individual adopted acts, and the EU secondary acts are then applicable before Irish courts.⁶

Police and judicial cooperation in criminal matters remained within the third pillar. This cooperation was implemented through framework decisions aimed at harmonising the laws of the Member States.⁷ However, with the abolition of the third pillar by the Lisbon Treaty, this cooperation was also integrated into the area of freedom, security and justice.⁸ Nevertheless, the Amsterdam Treaty had an impact on judicial cooperation in criminal matters, at least to the extent that this area was governed by the Schengen Agreement on the gradual abolition of checks at their common borders (1985) and the Convention implementing the Schengen Agreement (1990).⁹ The Schengen agreements and their implementing rules were incorporated into EU law (the Schengen *acquis*) through the Protocol on the Schengen *acquis* integrated into the framework of the European Union.¹⁰

The final significant change introduced by the Amsterdam Treaty was the establishment of the institute of enhanced cooperation. Under Art. 20 of the Treaty on European Union, Member States can integrate more quickly in certain areas under specific conditions. The institute of enhanced cooperation is most often used in the area of judicial cooperation in both civil and criminal matters.¹¹ Examples include the Regulation implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office,¹² the Regulation implementing enhanced cooperation in the area of the law applicable to divorce and legal separation,¹³ and the Regulation implementing enhanced cooperation in the area of jurisdiction, applicable law, and the recognition and enforcement of decisions in matters of matrimonial property regimes¹⁴ and in matters of the property consequences of registered partnerships.¹⁵ Since the latter two Regulations also lay down rules on the recognition of judgments, it is relevant to note here that integration among certain Member States is deeper, and those participating in enhanced cooperation demonstrate a higher level of mutual trust.

6 Rozehnalová, 2021, pp. 377–378.

7 Mádr, 2022, p. 289.

8 Týč, 2017, p. 212.

9 Syková, 2019, pp. 375–377.

10 Craig and de Búrca, 2020, p. 997; Týč, 2017, p. 213.

11 Kadlec and Malachta, 2024, pp. 124–149.

12 Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO').

13 Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation.

14 Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes.

15 Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships.

The Treaty of Nice did not introduce any significant changes relevant to this topic, and the impact of the Lisbon Treaty has already been mentioned. Currently, the EU has shared competence in the area of freedom, security and justice.¹⁶ Legal acts in the field of judicial cooperation in both civil and criminal matters are adopted through the ordinary legislative procedure, except for specific exceptions (e.g., in family law with cross-border implications).¹⁷

It should be noted that mutual trust and mutual recognition are not only matters of the area of freedom, security and justice but also concern other areas of the Union. For example, in the area of the single internal market and the free movement of goods, changes were seen in the transformation of the common market into an internal market. The key difference was the elimination of internal border controls on goods concerning technical, safety, sanitary, or other standards, as well as the abolition of formalities at internal borders for statistical and tax purposes.¹⁸ The abolition of controls presupposes mutual trust between Member States. This happens in a situation where the requirements for goods may differ from one Member State to another. These differences or varying requirements for goods placed on the market, including imported goods, are dealt with in two ways. First, through legal harmonisation, where the conditions of standards are approximated; this means EU legislation exists (based on Art. 114 TFEU). Second, in the absence of EU legislation, the principle of mutual recognition applies, under which the importing state recognises the standards of the producing state, even if each state has its own regulations and standards. Thus, differences are eliminated without harmonisation. The principle of mutual recognition was originally an unwritten principle derived from the case law of the CJEU. At present, it is reflected in the Regulation on the mutual recognition of goods lawfully marketed in another Member State.¹⁹ This regulation had its predecessors; however, in this version, the preamble, for the first time, explicitly mentions the mutual trust in this area.²⁰ The shift towards mutual recognition and trust can also be seen in the historical development in this mentioned area.

Historical developments are reflected even further in the context of mutual trust and mutual recognition. The following subchapter deals with the concept of mutual trust as defined by the case law of the CJEU and the scholarly literature.

16 Art. 4 of the Treaty on the Functioning of the European Union.

17 Arts. 81 and 82 of the Treaty on the Functioning of the European Union.

18 Týč, 2017, p. 169.

19 Regulation (EU) 2019/515 of the European Parliament and of the Council of 19 March 2019 on the mutual recognition of goods lawfully marketed in another Member State and repealing Regulation (EC) No 764/2008.

20 Ibid., recital 48.

3. Mutual Trust and Mutual Recognition Explained

First, there is no widely accepted definition of mutual trust in the context of the EU law,²¹ particularly in civil matters.²² Second, it cannot be simply stated whether mutual trust is a legal or a political concept, as both perspectives are feasible. Arenas García defines mutual trust on the one hand as a legal obligation and on the other as a fact. The former implies that all authorities of a Member State trust the authorities of another Member State. The latter refers to the issue of whether Member States genuinely trust each other.²³ It is only one definition, a rather general one at that. It should be noted that different expert authors use this term differently and address mutual trust either within specific areas of EU law (judicial cooperation in civil and criminal matters, the internal market, competition) or from the perspective of constitutional law and human rights protection.²⁴

Although mutual trust is referred to in several secondary law provisions (see below), it is not explicitly mentioned in primary law. Generally, the principle of mutual trust is derived from Art. 2 TEU. This article states that the Union is founded on values, such as respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, which are values common to all Member States.²⁵ Art. 2 TEU is frequently referenced in connection with mutual trust in numerous judgments, in which the Court of Justice emphasises that mutual trust between the Member States and, in particular, their courts and tribunals is based on the fundamental premise that Member States share a set of common values on which the European Union is founded.²⁶ Art. 2 TEU does not merely state policy guidelines or intentions, but also contains values that are an integral part of the very identity of the European Union as a common legal order – values that are given concrete expression in principles containing legally binding obligations for the Member States.²⁷ This premise implies and justifies the existence of mutual trust between Member States. It also ensures that Member States recognise these values and respect the EU law that implements them. It also signifies the trust of Member States in the capacity of their national legal systems to provide equivalent and effective protection for the fundamental rights recognised by the Charter of Fundamental Rights of the EU, including Arts. 1 and 4 of the Charter, which enshrine one of the fundamental values

21 Kramer, 2011, p. 218; Hazelhorst, 2017, p. 27.

22 Kramer, 2013, p. 364.

23 Arenas García, 2011, p. 372.

24 Boháček, 2024, pp. 17–18.

25 Art. 2 of the Treaty on European Union.

26 Judgment of the Court (Grand Chamber) of 21 December 2021, joined Cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/1, para. 160; Judgment of the Court (Grand Chamber) of 15 July 2021, Case C-791/19, para. 50; Judgment of the Court (Grand Chamber) of 20 April 2021, Case C-896/19, para. 62; Judgment of the Court (Grand Chamber) of 27 February 2018, Case C-64/16, para. 30; Judgment of the Court (Grand Chamber) of 5 June 2023, Case C-204/21, para. 66.

27 Judgment of the Court (Grand Chamber) of 5 June 2023, Case C-204/21, para. 67; Judgment of the Court (Grand Chamber) of 16 February 2022, Case C-156/21, para. 232.

of the European Union and its Member States, namely human dignity.²⁸ It also applies to newly acceding States, which join the EU legal system on the basic premise that each Member State shares a set of common values with all others and recognises that the other Member States share these values.²⁹

Some authors derive the principle of mutual trust from another articles of the TEU. Prechal believes that mutual trust could be subsumed under the principle of sincere (loyal) cooperation. Such a principle is expressed in Art. 4, para. 3 of the Treaty on European Union.³⁰ Kramer also points to the connection with Art. 4, para. 3 TEU, but in conjunction with mutual respect.³¹ It should be noted, however, that a review of case law reveals that the Court of Justice does not refer to Art. 4 para.3 TEU in its rulings on the principle of mutual trust. If we consider that case law refers to Art. 2 TEU, while legal scholarship sometimes points to Art. 4 TEU, it may be concluded that the principle of mutual trust is indirectly derived from the primary law of the European Union.

In secondary law provisions, mutual trust is explicitly expressed. However, it is found in the preambles of individual acts, some of which are listed below. Preambles are not legally binding. They primarily serve as an interpretative guide. The concept of mutual trust is therefore most extensively developed in the case law of the CJEU, with the understanding that its judgments carry argumentative authority.

Based on the research, it can be stated that, thus far, many of the Court of Justice's judgments relate to the area of freedom, security and justice, specifically judicial cooperation in civil matters, followed by judicial cooperation in criminal matters, which is closely linked to the aforementioned human rights. Mutual trust is also mentioned to a lesser extent in other areas, such as asylum policy and the customs union. In the context of judicial cooperation, mutual trust is intrinsically linked to the principle of mutual recognition of judicial and extrajudicial decisions.

Moraru points out that, within the area of freedom, security and justice, the mandate of national courts of the Member States is significantly more complex than in other areas of law. This is primarily because, when granting effect to foreign judgments, they must step outside their own legal order and possess an understanding of other legal systems. At the same time, EU law and the case law of the CJEU attribute different meanings and effects to mutual trust, depending on the specific field of application within the area of freedom, security and justice. In relation to human rights, national courts must also contend with the differing case law of the CJEU and the ECtHR.³²

28 Judgment of the Court (Second Chamber) of 19 December 2024, joined Cases C-185/24 and C-189/24, para. 30; Judgment of the Court (Second Chamber) of 30 November 2023, joined Cases C-228/21, C-254/21, C-297/21, C-315/21 and C-328/2, para. 130.

29 Judgment of the Court (Full Court) of 16 February 2022, Case C-157/21, para. 143.

30 Prechal, 2017, pp. 91–92.

31 Kramer, 2013, p. 364.

32 Moraru, 2016, s. 37.

The principle of mutual trust between Member States is therefore of fundamental importance in EU law, as it enables the creation and maintenance of an area without internal borders. In particular, in the context of the area of freedom, security and justice, this principle specifically requires each Member State, except in exceptional circumstances, to presume that all other Member States comply with EU law, especially the fundamental rights recognised by EU law.³³ However, the principle of mutual trust is not in itself a standard of review and does not create legal effects. The principle is applied together with the provisions of secondary law where specific measures are established.³⁴

The principle of mutual trust is not only an objective of the area of freedom, security and justice but also of the entire integration project. This project is built on trust, solidarity, and respect, and integration itself requires assistance and cooperation among Member States, which would be unlikely without mutual trust and solidarity. In the EU, Member States share common principles and values and are interconnected through an elaborate institutional framework. This explains why a high level of trust exists or should exist within the Union, facilitating a high degree of cooperation among Member States through the principle of mutual recognition.³⁵

Boháček distinguishes three ‘faces’ of mutual trust – the existing genuine trust among Member States, which serves as the basis for EU legislation legitimising the legal framework governing mutual recognition; the process of building genuine mutual trust between Member States to ensure the smooth practical functioning of mutual recognition rules; and the legal principle of mutual trust, which requires Member States to operate on the assumption of compliance – that is, the presumption that Member States comply with EU law when applying mutual recognition. These ‘faces’ presuppose the equivalence of the legal systems of all Member States. The last face, however, is particularly relevant at the application level of mutual recognition, where the presumption of compliance should be considered. According to the author, this is not a matter of real trust but rather a legal presumption of compliance. This presumption can be rebutted through the procedure under Art. 7 TEU, by exceptions to mutual recognition in legislation, and by the case law of the Court of Justice.³⁶

In general, this principle reflects the trust that all Member States comply with EU law, particularly the fundamental rights recognised by it,³⁷ as well as the recognition of the values set out in Art. 2 TEU and, accordingly, of the EU law that implements those values.³⁸ The trust in compliance with EU law is further specified for each area.

33 Judgment of the Court (Second Chamber) of 19 December 2024, joined Cases C-185/24 and C-189/24, para. 31; Judgment of the Court (Full Chamber) of 29 April 2022, Case C-665/20 PPU, para. 53.

34 Prechal, 2017, p. 79.

35 Janssens, 2013, pp. 150–151.

36 Boháček, 2024, pp. 228–233; Boháček, 2022, pp. 49–63.

37 Janssens, 2013, pp. 150–151.

38 Judgment of the Court (Full Court) of 16 February 2022, Case C-157/21, para. 143.

3.1. *Civil Law Area*

In the context of judicial cooperation in civil matters, this refers (according to the judgments of the Court of Justice) to the trust that Member States have in each other's legal systems and judicial institutions,³⁹ or in the administration of justice in the EU.⁴⁰ It is the trust that Member States accord to each other's legal systems and judicial institutions.⁴¹ The case law of the Court of Justice largely reproduces the formulation found in some (though not all) preambles of EU regulations, namely, that mutual trust in the administration of justice within EU is a fundamental principle.⁴²

Mutual trust is reflected in cases where the courts of the Member States are required to apply common rules on jurisdiction.⁴³ It is precisely this mutual trust that has enabled a compulsory system of jurisdiction to be established. All courts are obliged to respect it and it is closely linked to the abandonment by Member States of their national rules on recognition and the exequatur procedure in favour of a simplified mechanism for the recognition and enforcement of foreign judgments.⁴⁴ Personally, this consideration should extend to all common rules within this field that have been adopted through the ordinary or special legislative procedure by the institutions of the European Union, resulting in the adoption of binding legal acts. Even though some Member States may have been outvoted, or may be in the future, on the basis of majority or qualified majority voting, this method of decision-making is one to which all Member States agreed either when establishing the European Union or when they joined the Union. It is the set of uniform rules of the EU that is the necessary condition for mutual trust to be established and applied between the courts of the Member States.⁴⁵

39 Judgment of the Court (Third Chamber) of 7 September 2023, Case C-590/21, para. 24

40 Judgment of the Court (Third Chamber) of 8 June 2023, Case C-567/21 para. 45; Judgment of the Court (Fourth Chamber) of 16 February 2023, Case C-393/21, para. 41; Judgment of the Court (Grand Chamber) of 20 June 2022, Case C-700/20; paras. 56 and 57; Judgment of the Court (Third Chamber) of 7 April 2022, Case C-568/20, para. 26; Judgment of the Court (First Chamber) of 12 December 2019, Case C-433/18, para. 23; Judgment of the Court (Sixth Chamber) of 6 June 2019, Case C-361/18, para. 29 and many others.

41 Judgment of the Court (First Chamber) of 25 May 2016, Case C-559/14, para. 47.

42 See, e.g., Recital 26 of the Preamble to the 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 ('Brussels I bis Regulation'); Recital 27 of the Preamble to the Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure ('European Payment Order Regulation'); Recital 18 of the Preamble to the Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European enforcement order for uncontested claims ('European Enforcement Order Regulation').

43 Judgment of the Court (Third Chamber) of 8 June 2023, Case C-567/21, para. 45.

44 Judgment of the Court (Second Chamber) of 26 April 2012, Case C-92/12 PPU, para. 103; Judgment of the Court (Second Chamber) of 15 July 2010, Case C-256/09, para. 72; Judgment of the Court (First Chamber) of 21 January 2010, Case C-444/07, para. 28.

45 Judgment of the Court (Grand Chamber) of 10 February 2009, Case C-185/07, para. 15.

In this context, a question might arise on whether it is trust in justice or trust in legislation. According to the CJEU, it concerns trust in justice. Likewise, the literature emphasises that Member States should trust the legal systems of other Member States and their courts, particularly the courts in their application of EU law rather than national law.⁴⁶ According to *Dickinson*, mutual trust would prevent any review of the jurisdiction of the court of origin and preclude any challenge to the judgment based on a failure by the court of origin to apply EU law correctly. However, mutual trust cannot prevent a review based on grounds unrelated to EU law.⁴⁷ In the field of civil cooperation, this includes, for example, the institution of the public policy exception of the requested Member State. It is therefore a trust in justice that the national courts are applying the law correctly. This trust reaches a higher level when decisions are made based on unified EU law rules, which is the case in judicial co-operation, as this area is primarily governed by EU regulations. In my view, trust in legislation is therefore a prerequisite or a stepping stone to trust in justice. It is important to recall that in the area of freedom, security and justice, the European Union has shared competence.⁴⁸

Such mutual trust then allows automatic recognition of judgments given in a Member State and leads to judgments not being reviewed on their merits.⁴⁹ The emphasis is that this is not merely about recognising the judgment of one Member State in another Member State without further conditions, but rather about ensuring that a procedure for enforcement in the latter is both efficient and rapid. This is why the review should be limited strictly to a formal examination of the required documents.⁵⁰ However, this is not entirely automatic recognition, as there are grounds on which the recognition of a foreign judgment may be refused. These grounds vary to some extent from one regulation to another. Nonetheless, in general, such grounds or exceptions to the principle of mutual recognition must be interpreted restrictively.⁵¹

Here, a close connection and overlap with the principle of mutual recognition can be observed. Mutual recognition presupposes mutual trust,⁵² or mutual recognition implies the practical application of mutual trust.⁵³ While some point out that mutual

46 Dickinson, 2012, pp. 141–142; Kramer, 2013, pp. 364–365.

47 Dickinson, 2012, pp. 141–142.

48 Malachta, 2019, pp. 215–216.

49 Judgment of the Court (Third Chamber) of 8 June 2023, Case C-567/21, para. 46.

50 Judgment of the Court (First Chamber) of 12 December 2019, Case C-433/18, para. 23; Judgment of the Court (Third Chamber) of 23 October 2014, Case C-302/13, para. 45; Judgment of the Court (Sixth Chamber) of 6 June 2019, Case C-361/18, para. 29; Judgment of the Court (Fourth Chamber) of 26 September 2013, Case C-157/12, para. 32; Judgment of the Court (First Chamber) of 6 September 2012, Case C-619/10, para. 40 and many others.

51 Judgment of the Court (Third Chamber) of 8 June 2023, Case C-567/21, para. 46.

52 Storskrubb, 2016, p. 16.

53 Hazelhorst, 2017, p. 41.

trust is the factual and political justification for implementing mutual recognition,⁵⁴ others perceive mutual trust to be a consequence of mutual recognition.⁵⁵

As I have stated in another study,⁵⁶ the latter perspective is also true in the context of the development of European integration. Mutual recognition can be found in the Treaty establishing the European Economic Community, signed in 1957, whereas the concept of mutual trust has been discussed only since the turn of the millennium. The principle of mutual recognition has been regarded as the cornerstone of judicial cooperation in both civil and criminal matters since the European Council meeting in Tampere in 1999, where this principle was formally endorsed. However, the principle of mutual trust was not explicitly mentioned at that meeting. The importance of building trust and mutual trust was subsequently emphasised in the 2004 Hague Programme (a multiannual programme for 2005–2009), the 2010 Stockholm Programme (a multiannual programme for 2010–2014), and the EU Justice Agenda 2020. The focus of these programmes was generally on strengthening mutual confidence. The objective of the Justice Agenda was to ensure trust regardless of the Member State in which a decision was rendered. According to this Agenda, respect for fundamental rights, judicial training, operational cooperation (rapid and secure exchange of information), and codification of existing legislation and procedures are essential to strengthen trust.⁵⁷

Mutual trust and mutual recognition are the two main principles of judicial cooperation. In my view, it is immaterial whether mutual trust serves as the justification for mutual recognition or whether mutual trust is the result of mutual recognition. Clearly, the principle of mutual recognition was explicitly promoted much earlier than the principle of mutual trust. From this perspective, mutual trust appears to be a consequence of recognition. Alternatively, it is the justification for mutual recognition. If we trust in the proper application of EU law, it constitutes a reason for mutual recognition.⁵⁸

Case law, often referring to the preambles of individual EU regulations, emphasises that both the principle of mutual trust and the principle of mutual recognition are of fundamental importance in EU law, as they enable the creation of an area without internal borders⁵⁹ or are essential for the proper functioning of the internal market.⁶⁰ The principle of mutual recognition of judicial decisions is thus a cornerstone in the creation of a genuine judicial area, and such recognition should be based on the principle of mutual trust.⁶¹

54 Arenas García, 2011, p. 361.

55 Weller, 2015, pp. 74–75.

56 Malachta, 2019, pp. 219–222.

57 Ibid., and the literature cited therein.

58 Ibid., p. 223.

59 Judgment of the Court (Second Chamber) of 9 March 2017, Case C-551/15, para. 51.

60 Judgment of the Court (Grand Chamber) of 4 May 2010, Case C-533/08, para. 50.

61 Judgment of the Court (Second Chamber) of 15 July 2010, Case C-256/09, paras. 70 and 71.

Regarding the mutual recognition of decisions, the principle of state sovereignty generally prevails, implying that a decision produces legal effects only within the territory of the state in which it is rendered (principle of territoriality). However, the area of freedom, security and justice is precisely where extraterritorial effects are granted. Such extraterritorial effects require a high level of trust between the authorities of the Member States.⁶²

Nevertheless, a decision does not automatically have such effects. It must first be recognised in the requested state and subsequently enforced. In some cases, an intermediate step may also be required between recognition and enforcement, namely, a declaration of enforceability. It depends on the individual regulations governing recognition and enforcement in civil law matters. Generally, decisions given in a Member State should be recognised in all Member States without the need for special proceedings. In practice, this means that recognition is considered within the framework of other proceedings, such as enforcement proceedings. Although the wording of the various regulations differs slightly, it is recognition without a special procedure that is common to all Member States.⁶³

Some regulations require *exequatur* (a declaration of enforceability) and specific grounds for refusal of recognition (this applies to the Succession Regulation, the Matrimonial Property Regimes Regulation, and the Regulation on the Property Consequences of Registered Partnerships). In other regulations, a declaration of enforceability is not required, but grounds for refusal of recognition remain (this is the case for the Brussels I bis Regulation and the Brussels II ter Regulation). Neither *exequatur* nor grounds for refusal of recognition are provided for in most cases in the Maintenance Regulation – that is, for decisions given in a Member State bound by the 2007 Hague Protocol, in the cases of the Regulation on the European Enforcement Order for uncontested claims, in the Regulation on Small Claims Procedure, and in the Regulation on the European order for payment. For the latter three, minimum standards, such as rules governing the service of documents, have been established to ensure legal proceedings and the right to a fair trial in the Member State where the decision was given; hence, there are no grounds for refusal of recognition. In other words, the level of mutual trust varies across different legal regulations.

Although mutual recognition happens without special proceedings, certain regulations establish grounds on which recognition may be refused. In such cases, recognition is not entirely automatic but rather semi-automatic – the decision is recognised until a ground for refusal is applied.⁶⁴ Mutual recognition implies that a Member State can rely on the decision of another Member State without necessarily having to follow any formal procedure or register the decision.⁶⁵

62 Mitsilegas, 2012, p. 322.

63 Malachta, 2019, pp. 224–226.

64 Siehr, 2017, p. 384.

65 Wautelet, 2016, p. 818.

In the group of three legal regulations where the minimum standards are set, no grounds for refusal of recognition are provided. Although, in practice, these minimum standards may not be respected despite the existence of unified procedural rules, they contribute to mutual trust.⁶⁶ In the case of the Maintenance Regulation for States bound by the 2007 Hague Protocol, no grounds for refusal of recognition are established. As a result, recognition is fully automatic. In the Insolvency Regulation, only one ground has been established for refusal of recognition of insolvency proceedings, which is that the effects of such recognition are manifestly contrary to the public policy of the State in which recognition is sought. By contrast, all other regulations, in addition to manifest incompatibility with the public policy of the requested State, provide further grounds for refusal of recognition, typically relating to procedural aspects. These include, for example, failure to serve the document instituting proceedings on the defendant, incompatibility with a judgment given in the requested State between the same parties, incompatibility with an earlier judgment between the same parties in the same subject matter, or breach of rules on jurisdiction.

Public policy constitutes a ground for refusal of recognition, but its application undermines trust between Member States. It can be applied (either upon request or ex officio, depending on the applicable regulation) only in exceptional cases where the effects of the decision are manifestly contrary to the public policy of the requested State. Although the concept of public policy is not defined anywhere, in general, it refers to the values or principles that a State abides by unconditionally. Its content is thus determined by each State individually. Consequently, while one Member State may recognise a decision from another Member State without reservation, another may refuse to recognise it because its effects may be manifestly contrary to its public policy. Recognition therefore depends on the values of the State in question and, to some extent, on the discretion of the deciding authority. The purpose of this mechanism is to remedy any inconsistencies in the requested State that emerged in the State of origin due to differences between legal systems that persist despite unified EU regulations.

The so-called public policy exception (*ordre public*) remains a national legal concept. Although there is some consideration of Union public policy or international public policy of the European Union, its existence cannot yet be affirmed.⁶⁷ The Court of Justice of the European Union does not have the competence to define the content of the concept of public policy of a Member State. However, it does have the authority to control the limits within which a national court may invoke the public policy exception to refuse recognition of a decision.⁶⁸ In particular, the concept of

⁶⁶ Hazelhorst, 2017, p. 393.

⁶⁷ Malachta, 2023, pp. 129–149.

⁶⁸ Judgment of the Court of 28 March 2000, Case C-7/98, para. 23; Judgment of the Court (Third Chamber) of 7 September 2023, Case C-590/21, para. 34; Judgment of the Court (First Chamber) of 21 March 2024, Case C-90/22, para. 64.

public policy must be interpreted restrictively,⁶⁹ which is one of the reasons for this ground not being frequently applied and not often addressed before the CJEU.

3.2. Criminal Law Area

In the context of criminal law, particularly with regard to the principle of *ne bis in idem* and the Convention implementing the Schengen Agreement, case law has held that there is mutual trust in the criminal justice systems of the Contracting States to the Convention and the trust that each of them consents to the application of the criminal law in force in the other Member States even when the outcome would be different if its own national law were applied.⁷⁰ Mutual trust requires the relevant competent authorities of one Member State to accept at face value a final decision communicated to them, which has been decided in another Member State,⁷¹ or that the Member State of recognition agree to consider relevant legal information that they might receive from the Member State of origin of the case.⁷² It is this inseparable link between mutual trust and mutual recognition that first appears in the area in question in the 2003 decision.⁷³

The most significant instrument in the field of EU criminal law, superseding previous instruments, is the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States. The European arrest warrant mechanism is founded on a high degree of mutual trust among Member States, as explicitly stated in the preamble to the Framework Decision.⁷⁴ It is precisely this trust that has enabled the establishment of a simplified system for the surrender of individuals convicted or suspected of criminal offences between Member States, for the purpose of enforcing a judgment or initiating

69 Judgment of the Court (Third Chamber) of 7 September 2023, Case C-590/21, para. 32; Judgment of the Court (First Chamber) of 21 March 2024, Case C-90/22, para. 62.

70 Judgment of the Court (Third Chamber) of 19 October 2023, Case C-147/22, para. 42; Judgment of the Court (First Chamber) of 12 October 2023, Case C-726/21, para. 56; Judgment of the Court (Grand Chamber) of 28 October 2022, Case C-435/22 PPU, para. 93; Judgment of the Court (Grand Chamber) of 12 May 2021, Case C-505/19, para. 80; Judgment of the Court (Grand Chamber) of 29 June 2016, Case C-486/14, para. 50; Judgment of the Court (First Chamber) of 28 September 2006, Case C-150/05, para. 43; Judgment of the Court (First Chamber) of 28 September 2006, Case C-467/04, para. 30; Judgment of the Court (Second Chamber) of 9 March 2006, Case C-436/04, para. 30; Judgment of the Court of 11 February 2003, joined Cases C-187/01 and C-385/01, para. 33.

71 Judgment of the Court (Third Chamber) of 19 October 2023, Case C-147/22, para. 42; Judgment of the Court (Grand Chamber) of 28 October 2022, Case C-435/22 PPU, para. 93; Judgment of the Court (Grand Chamber) of 12 May 2021, Case C-505/19, para. 81; Judgment of the Court (Grand Chamber) of 29 June 2016, Case C-486/14, para. 51.

72 Judgment of the Court (First Chamber) of 12 October 2023, Case C-726/21, para. 56.

73 Judgment of the Court of 11 February 2003, joined Cases C-187/01 and C-385/01, para. 33; Janssens, 2013, p. 141.

74 Recital 10 of the Preamble to the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

criminal prosecution. The mutual recognition of the European arrest warrant is, in principle, automatic as the grounds for refusing execution are narrowly defined.⁷⁵

However, it would be more accurate to characterise this recognition as semi-automatic, as the Framework Decision sets out both mandatory and optional grounds on which the executing judicial authority must, or may, refuse to execute the warrant.⁷⁶ The case law of the CJEU has consistently emphasised that the principle of mutual recognition is grounded in mutual trust, namely, the presumption that the legal systems of all Member States are capable of ensuring equivalent and effective protection of fundamental rights as recognised at the Union level. However, this principle may be limited under exceptional circumstances.⁷⁷

A related instrument is the Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union. This instrument similarly refers, in its preamble, to the concept of mutual trust – described as a ‘special mutual confidence’ in the legal systems of the Member States, which underpins the recognition of judicial decisions across borders. Procedural rights in criminal proceedings are critical components of building and maintaining mutual trust.⁷⁸ However, as in the case of the European arrest warrant, recognition under this framework is not fully automatic. The instrument sets specific grounds for refusing the recognition and enforcement of judgments.⁷⁹

Interestingly, in another Council Framework Decision of the same date, applying the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, no reference to mutual trust is found even in the preamble.⁸⁰ Similarly, there is no reference to mutual trust in the Framework Decision on the application of the principle of mutual recognition to financial penalties.⁸¹

In 2018, the Regulation on mutual recognition of freezing orders and confiscation orders was adopted. It establishes the rules under which a Member State

75 Rizcallah, 2022, p. 83.

76 Arts. 3 and 4 of the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

77 Judgment of the Court (Grand Chamber) of 5 April 2016, joined Cases C-404/15 and C-659/15 PPU, para. 77-78.

78 Recital 5 of the Preamble to the Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

79 Art. 9 of the Council Framework Decision 2008/909/JHA.

80 Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions.

81 Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.

recognises and executes in its territory freezing and confiscation orders issued by another Member State in the context of criminal proceedings.⁸² The preamble provides that cooperation between Member States is based on the principle of mutual recognition and the immediate execution of judicial decisions. This cooperation presupposes confidence that decisions will always be in compliance with the principles of legality, subsidiarity, and proportionality. Such a specification does not appear in the existing preambles. The Regulation further provides in its preamble that the area of freedom, security and justice is based on mutual trust and the presumption of respect for EU law, in particular fundamental rights, by other Member States.⁸³ Again, recognition is not automatic, as the Regulation establishes grounds for refusing recognition and execution of both freezing and confiscation orders.⁸⁴

Nevertheless, some authors imply mutual trust even in legislative acts where it is not explicitly mentioned. This is the case of the Regulation implementing enhanced cooperation for the establishment of the European Public Prosecutor's Office.⁸⁵ Růžicková derives the principle of mutual trust from this regulation, including its limits, as well as mutual recognition. She distinguishes them into three categories: limitations (a) established directly in the regulation itself; (b) comprising rules laid down in the legal instruments providing for the mutual trust and mutual recognition mechanisms, whose scope and content may differ according to the particular legal source; and (c) imposed by the case law of the Court of Justice.⁸⁶

It should be noted that the principle of mutual trust does not entail blind or unlimited trust, thus distinguishing it from pure loyalty. In exceptional cases, the outcome of another Member State's legal system may not be trusted.⁸⁷

3.3. *Asylum Policy*

In the area of the common asylum policy, measures are adopted under the Common European Asylum System based on Art. 78 TFEU. Currently, the Dublin III regulation⁸⁸ is in force, which deals with the responsibility of a particular Member State to examine an application for asylum or another form of international protection submitted by a third-country national in a Member State. The purpose is to prevent an asylum seeker from submitting their application simultaneously or

82 Art. 1, para. 1 of the Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders.

83 Recitals 15 and 34 of the Preamble to the Regulation 2018/1805.

84 Arts. 8 and 19 of the Regulation 2018/1805.

85 Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO').

86 Růžicková, 2022, pp. 81–83.

87 Cambien, 2017, p. 103.

88 Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

successively in several Member States and thus to avoid the examination of several applications by the same person in several States. The Regulation sets out the criteria and their order for determining the Member State responsible for examining an application for international protection.⁸⁹ Its preamble emphasises the development of mutual trust among Member States, which is closely linked to solidarity. To improve and implement concrete measures supporting genuine and practical solidarity with Member States, aimed at assisting the concerned Member States and asylum seekers in particular, a process for early warning, preparedness, and the management of asylum crises should be established.⁹⁰ Among other things, the previous regulation governing the same matter (Regulation 343/2003) was adopted precisely because of the principle of mutual trust.⁹¹

In the legal literature, this system is recognised as relying on a high level of mutual trust, based on respect for fundamental rights by EU Member States. Certain rules and criteria for determining responsibility have been adopted based on mutual trust, whereby all Member States fulfil their obligation to respect human rights established by international human rights law and EU law. Member States trust each other to such an extent that there is no room for questioning each other's compliance with legal requirements. However, under very strict and extreme circumstances, the presumption of mutual trust may be limited, specifically in cases of violations of Art. 3 of the European Convention on Human Rights or Art. 4 of the Charter of Fundamental Rights of the EU, where the applicant believes he/she would face a real risk of inhuman or degrading treatment in the applicant's relocation decision.⁹² The Court of Justice also addressed mutual trust and its potential limitations in its judgment from December 2024. However, it did not find a systemic deficiency in the fact that a Member State had unilaterally suspended taking charge of and taking back these applicants.⁹³

4. Equality vs. Inequality of Member States and the Absence of Uniform Rules?

Despite the supremacy of EU law (and the consequent inequality of States in the adoption of secondary acts), a principle of equality exists between Member States, which is explicitly laid down in Art. 4, para. 2 TEU, from which, *inter alia*, mutual

⁸⁹ *Ibid.*, Arts. 7 to 15.

⁹⁰ Recital 22 of the Preamble to the Regulation (EU) No 604/2013.

⁹¹ Judgment of the Court (Grand Chamber) of 21 December 2011, joined Cases C-411/10 and C-493/10, para. 79.

⁹² Xanthopoulou, 2020, pp. 28–29.

⁹³ Judgment of the Court (Second Chamber) of 19 December 2024, joined Cases C-185/24 and C-189/24, para. 47.

trust is derived (see above). Member States are thus equal before EU law. It is presumed that, based on this equality, they comply with EU law and the values set out in Art. 2 TEU. The Court of Justice also refers to this provision when deriving the principle of mutual trust, which in turn presupposes that Member States duly apply EU law within their territories. Therefore, on the grounds of equality of States, one Member State cannot claim the right to judge another Member State in the application of EU law.⁹⁴ Such mutual trust between Member States is fundamental to the European Union. However, this trust can only be built and maintained if all Member States respect the rule of law. For any violation of the values of the rule of law, which would eventually undermine the very foundations of the EU and the trust between Member States, the European Union has provided a mechanism of prevention and sanctions, in Art. 7 TEU.⁹⁵ Rizcallah further points out that the principle of mutual trust lies at the crossroads of unity, diversity, and equality between Member States. Despite differences in national substantive and procedural legal norms, the borders between Member States are, in a sense, artificially blurred, as a legal solution adopted in one Member State encounters no obstacles in another Member State. In this way, the principle of mutual trust unifies divergent national legal orders while maintaining their equivalence.⁹⁶

However, equality among Member States is a nuanced concept that reflects the balance between national sovereignty and the powers conferred on EU institutions. It is not the same type of equality known from public international law, where states are equal and operate on the principle of sovereign equality (see Chapter 1 for a more detailed explanation). In the field of public international law, the adoption of international treaties typically requires the unanimous agreement of all states, with each state having one vote. There is no transfer of competences (powers) to an international organisation. In international law, therefore, the decision of a state to enter an international relationship with another state or other states rests entirely with the state itself. Within the European Union, however, this competence is practically delegated to the institutions of the Union, with all the consequences that such delegation entails. Within the European Union, reciprocity (neither formal nor material) is not required, as this is determined by the very nature of the Union. As a consequence of this, Member States are not entirely equal.

Furthermore, inequality can also be manifested in the process of recognition of a foreign decision. As mentioned above, recognition is not automatic but semi-automatic for most rules – there are grounds on which recognition can be refused. Applying these grounds to refuse recognition is left to the discretion of the authorities of the respective Member State. On some grounds for refusing recognition, all authorities can be expected to decide in the same way (e.g., failure to serve the document instituting proceedings on a defendant, incompatibility with a judgment

94 Rizcallah, 2022, pp. 448–449.

95 European Commission, 2014.

96 Rizcallah, 2021.

given in the requested state between the same parties, incompatibility with an earlier judgment between the same parties in the same subject matter, or breach of the rules on jurisdiction). However, a higher degree of discretion may be expected with regard to the ground of manifest incompatibility with the public policy of the addressed Member State, as the content of this concept – namely, what constitutes public policy – is a matter that concerns each State individually. Therefore, theoretically, it may be a case where the decision of a court of Member State A is recognised in Member State B but not in Member State C, because in State C the effects of recognition would be manifestly contrary to public policy in that State.

A certain degree of inequality, albeit permitted by primary law, can also be observed in the area of enhanced cooperation. Some Member States may initiate advanced or deeper integration or cooperation in areas where the Union does not have exclusive competence, and where the objectives of such cooperation cannot be achieved within a reasonable timeframe by the Union as a whole, under the conditions set out in Art. 20 TEU. This results in what is often referred to as a ‘two-speed Europe’. Member States may have various reasons for not participating in enhanced cooperation. Consequently, the regulations adopted within the framework of enhanced cooperation are not binding on non-participating Member States and are therefore not applied before their courts. As noted above, such regulations exist even in the field under discussion. It can therefore be concluded that, in certain areas, mutual trust between certain Member States is higher, because they allow for the recognition and enforcement of foreign judgments in a wider range of matters (e.g., the Regulation on matrimonial property regimes and the Regulation on the property consequences of registered partnerships). Interestingly, although these rules are based on the principle of mutual recognition, they do not explicitly mention mutual trust in their preambles.

Equality of states can certainly be a topic of discussion (although the author acknowledges the logical inconsistency, this can be described as the ‘higher’ equality of states if there were unified procedural and substantive legal rules. To some extent, this is a matter of conferred competences, since the EU does not have the power to adopt legally binding rules in certain areas. There is no such thing as a Union civil code, a Union labour code, or a Union criminal code. Likewise, there is no comprehensive procedural law, and no such thing as a Union civil procedure code. In such a scenario, the essence of mutual trust, the fact that each Member State trusts other Member States to apply EU law correctly, would take on a new dimension. However, such a situation is utopian. Nevertheless, for the present, fully unified rules are absent. They are partly laid down, as mentioned above – for determining international jurisdiction of courts and for the recognition of foreign judgments, with some of them setting minimum standards and other rules. For now, states rely on the correct application of these unified rules while simultaneously trusting national legal systems, at least to the extent that they do not contradict EU law and do not violate fundamental human rights or, more broadly, the values and principles of the rule of law. To provide further context, this is relevant not only to the recognition of judicial

decisions but also to the mutual recognition of products, which essentially operates on the same principle – either the regulation is harmonised or unified, or the principle of mutual recognition applies. However, a question remains: if legislation were fully harmonised or unified, would mutual trust (and mutual recognition) really be necessary?

5. Conclusion

In evaluating the question posed in the introduction, it is necessary to look at the issue more comprehensively. First, it is necessary to consider the nature of the European Union as a supranational organization has authority over the Member States – at least in the areas where Member States have conferred the exercise of powers on the European Union. This is also the case in the area of freedom, security and justice, where the European Union has shared competence with the Member States in terms of adopting secondary legislation – particularly regulations and Council framework decisions, which are relevant to the issue under examination. As a result, the legal framework is unified. Assuming that the rules were only harmonised (through EU directives), the law might not be the same in all Member States, which could then affect mutual trust and equality between States as well.

Secondary acts are adopted based on primary law to which all Member States have agreed (either at the time of adoption or by accepting it upon accession to the European Union). They have also agreed to the legislative procedures for adopting secondary law acts, which, in the area of freedom, security and justice, are mostly adopted through the ordinary legislative procedure. Therefore, inequality of Member States arises at the stage of adopting these acts; however, this is a consequence of voluntary membership in the EU and voluntary acceptance of the principles and functioning of the European Union.

In the area under review, these are rules governing, *inter alia*, mutual recognition of judicial or extra-judicial decisions in civil and criminal matters in the field of judicial cooperation. Mutual recognition of decisions is based on the assumption of mutual trust between Member States. A close relationship exists between these two principles, which sometimes overlap. However, the level of mutual trust varies from one area of legislation to another.

Based on the preambles of the relevant EU legal instruments and a thorough analysis of the case law of the Court of Justice, mutual trust primarily concerns trust in the judicial systems, legal systems, and the administration of justice within the Union. Member States are expected to trust that the courts of another Member State will correctly apply EU law while respecting fundamental human rights and freedoms. This trust stems from the values shared by all Member States and recognised by the Union. It should be noted that mutual trust is not explicitly mentioned

in primary law; it is merely implied. In secondary law, it is addressed only in legally non-binding preambles of certain legal instruments – only some, as not all instruments governing mutual recognition refer to it.

A Member State thus ‘admits’ into its territory a decision of a court from another Member State, leading to the extraterritorial extension of its effects. However, as long as grounds for refusal of recognition or the requirement for a declaration of enforceability remain, recognition is not truly automatic or unconditional. As a result, a certain level of distrust may exist between the Member States. Nonetheless, these grounds for refusal should be applied restrictively to avoid obstructing the purpose and objectives of the European Union. At the same time, this approach confirms that mutual trust is not unlimited, and mechanisms are provided by law and case law for not ‘allowing’ another Member State’s decision into its territory. The State of origin of the decision may be at fault.

Member States also apply their national law, both substantive and procedural, or the substantive rules of the applicable law, in judicial (or extrajudicial) proceedings. This is because EU law does not regulate these norms in all areas. The legal systems of the Member States are therefore different – if they were not, conflicts of laws would not arise. It is precisely the absence of unified rules that ‘forces’ states to cooperate. This is where the European Union plays a role – through its legal framework, it facilitates and accelerates such cooperation. However, this comes at the cost of Member States not having the same degree of sovereignty as traditionally understood in international law. Nevertheless, even within the European Union, there is at least formal equality, although considerations of factual inequality are entirely justified. This equality is also reflected in the fact that Member States are responsible for compliance with EU law – both in relation to other Member States and in relation to the institutions of the European Union.

The central thesis of this study – that, despite the absence of fully unified rules, Member States remain distinct yet equal and cooperative – can indeed be confirmed. This cooperation appears to be in the interests of the Member States, even though they are not equal within the European Union in the same sense as under public international law. Therefore, it is not accurate to speak of ‘full’ equality – Member States trade it, to some extent, for the benefits of effective cooperation within the EU legal framework. It is a compromise that appears to suit them, as evidenced by their continued engagement. This is demonstrated not only by the long history of accepting foreign decisions, but also by the creation and adoption of new rules regulating particular areas of law, albeit some within the framework of enhanced cooperation. In this chapter, the development and adoption of the most important regulations and framework decisions in the area under review have been presented, with new regulations continuing to be adopted in practice. This demonstrates the willingness of States to not only cooperate in new areas, but also facilitate cooperation in revising existing regulations when accepting another Member State’s decision. It can be reasonably expected that these trends will continue. The existence

of a common regime brings advantages in this area, not just for the Member States, but for the individuals whose rights are at stake.

References

Bibliography

- Arenas García, R. (2011) 'Abolition of Exequatur: Problems and Solutions – Mutual Recognition, Mutual Trust and Recognition of Foreign Judgments: Too Many Words in the Sea' in Bonomi, A., Romano, G.P. (eds.) *Yearbook of Private International Law 2010*. Vol. XII. Lausanne: Swiss Institute of Comparative Law, Munich: Sellier European Law Publishers, pp. 351–375; <https://doi.org/10.1515/9783866539488.351>.
- Boháček, L. (2024) *Vzájemná důvěra v právu Evropské unie*. Brno: Masarykova univerzita, dissertation thesis.
- Boháček, L. (2022) 'Tři tváře vzájemné důvěry v uniijním právu', *Právník*, 161(1), pp. 49–63.
- Cambien, N. (2017) 'Mutual Recognition and Mutual Trust in the Internal Market', *European Papers*, 2(1), pp. 93–115 [Online]. Available at: <https://doi.org/10.15166/2499-8249/142> (Accessed: 1 March 2025).
- Craig, P., de Búrca, G. (2020) *EU Law: Text, Cases, and Materials*. 7th edn. Oxford: Oxford University Press; <https://doi.org/10.1093/he/9780198856641.001.0001>.
- Dickinson, A. (2012) 'Free Movement of Judgments in the EU: Knock Down the Walls but Mind the Ceiling' in Lein, E. (ed.) *The Brussels I Review Proposal Uncovered*. London: The British Institute of International and Comparative Law, pp. 135–164.
- European Commission (2014) 'Communication from the Commission to the European Parliament and the Council: A new EU Framework to Strengthen the Rule of Law', *COM/2014/0158 final* [Online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0158> (Accessed: 1 March 2025).
- Fallon, M., Kruger, T. (2013) 'The Spatial Scope of the EU's Rules on Jurisdiction and Enforcement of Judgments: From Bilateral Modus to Unilateral Universality?' in Bonomi, A., Romano, G.P. (eds.) *Yearbook of Private International Law 2012/2013*, Vol. XIV. Lausanne: Swiss Institute of Comparative Law, Munich: Sellier European Law Publishers, pp. 1–35; <https://doi.org/10.1515/9783866539778.1>.
- Hazelhorst, M. (2017) *Free Movement of Civil Judgments in the European Union and the Right to a Fair Trial*. The Hague: T.M.C. Asser Press; https://doi.org/10.1007/978-94-6265-587-4_3.
- Janssens, Ch. (2013) *The Principle of Mutual Recognition in EU Law*. Oxford: Oxford University Press; <https://doi.org/10.1093/acprof:oso/9780199673032.001.0001>.
- Kadlec, J., Malachta, R. (2024) 'Účast České republiky na posílené spolupráci v EU v oblasti evropského mezinárodního práva soukromého' in Malachta, R., Janovec, M. (eds.) *Cofola 2024. Část 7*. Brno: Masarykova univerzita, pp. 124–149.
- Kramer, X. (2013) 'Cross-Border Enforcement and the Brussels I-Bis Regulation: Towards a New Balance between Mutual Trust and National Control over Fundamental Rights', *Netherlands International Law Review*, 2013/60, pp. 343–373 [Online]. Available at: <https://doi.org/10.1017/S0165070X12001295> (Accessed: 1 March 2025).
- Kramer, X. (2011) 'Cross-Border Enforcement in the EU: Mutual Trust versus Fair Trial: Towards Principles of European Civil Procedure', *International Journal of Procedural Law*, 1(2), pp. 202–230 [Online]. Available at: <https://doi.org/10.1163/30504856-00102003> (Accessed: 1 March 2025).
- Křepelka, F. (2021) 'Povaha Unie' in Tomášek, M., Týč, V. (eds.) *Právo Evropské unie*. 3rd edn. Praha: Leges, pp. 117–119.
- Mádr, P. (2022) 'Článek 67' in Tomášek, M., Šmejkal, V. (eds.) *Smlouva o EU. Smlouva o fungování EU. Listina základních práv EU. Komentář*. Praha: Wolters Kluwer ČR, pp. 289–294.

- Malachta, R. (2019) 'Mutual Trust as a Way to an Unconditional Automatic Recognition of Foreign Judgments' in Rozehnalová, N. (ed.) *Universal, Regional, National – Ways of the Development of Private International Law in 21st Century*. Brno: Masaryk University, pp. 211–241; <https://doi.org/10.5817/CZ.MUNI.P210-9497-2019>.
- Mitsilegas, V. (2012) 'The Limits of Mutual Trust in Europe's Area of Freedom, Security and Justice: From Automatic Inter-State Cooperation to the Slow Emergence of the Individual', *Yearbook of European Law*, 31(1), pp. 319–372 [Online]. Available at: <https://doi.org/10.1093/yel/yes023> (Accessed: 1 March 2025).
- Moraru, M. (2016) "'Mutual Trust" from the Perspective of National Courts A Test in Creative Legal Thinking' in Brouwer, E., Gerard, D. (eds.) *Mapping Mutual Trust: Understanding and Framing the Role of Mutual Trust in EU Law. EUI Working Paper MWP 2016/13*. San Domenico di Fiesiole: European University Institute, pp. 37–58.
- Prechal, S. (2017) 'Mutual Trust Before the Court of Justice of the European Union', *European Papers*, 2017/1, pp. 75–92.
- Rizcallah, C. (2021) *The Principle of Mutual Trust in EU law in the Face of a Crisis of Values* [Online]. Available at: <https://eapil.org/2021/02/22/the-principle-of-mutual-trust-in-eu-law-in-the-face-of-a-crisis-of-values/> (Accessed: 1 March 2025).
- Rizcallah, C. (2022) *The Principle of Mutual Trust in European Union Law*. Brussels: Bruylant.
- Rozehnalová, N. (2018) 'Evropský justiční prostor ve věcech civilních' in Rozehnalová, N., Valdhans, J., Drličková, K., Kyselovská, T. (eds.) *Mezinárodní právo soukromé Evropské unie*. 2nd edn. Praha: Wolters Kluwer ČR, pp. 17–41.
- Rozehnalová, N. (2021) 'Prostor práva – justiční spolupráce ve věcech civilních' in Tomášek, M., Týč, V., Malenovský, J., Pelikánová, I., Petrlík, D., Křepelka, F., Pítrová, L., Šmejkal, V., Kunertová, T., Sehnálek, D., Smolek, M., Svobodová, M. (eds.) *Právo Evropské unie*. 3rd edn. Praha: Leges, pp. 376–382.
- Růžičková, V. (2022) 'The Role of Mutual Trust and Mutual Recognition in the Functioning of the European Public Prosecutor's Office', *Časopis pro právní vědu a praxi*, 30(1), pp. 67–89 [Online]. Available at: <https://doi.org/10.5817/CPVP2022-1-3> (Accessed: 1 March 2025).
- Siehr, K. (2017) 'Art. 21' in Magnus, U., Mankowski, P. (eds.) *European Commentaries on Private International Law (ECPIL). Commentary Brussels Ibis Regulation*. Köln: Verlag Dr. Otto Schmidt KG, pp. 281–287.
- Storskrubb, E. (2016) 'Mutual Trust and the Limits of Abolishing Exequatur in Civil Justice' in Brouwer, E., Gerard, D. (eds.) *Mapping Mutual Trust: Understanding and Framing the Role of Mutual Trust in EU Law. EUI Working Paper MWP 2016/13*. San Domenico di Fiesiole: European University Institute, pp. 15–22.
- Syková, A. (2019) 'Schengenský prostor jako součást prostoru svobody, bezpečnosti a práva' in Jelínek, J., Gřivna, T., Romža, S., Tlapák Navrátilová, J., Syková, A. (eds.) *Trestní právo Evropské unie*. 2nd edn. Praha: Leges, pp. 355–381.
- Týč, V. (2017) *Základy práva Evropské unie pro ekonomy*, 7th edn. Praha: Leges.
- Wautelet, P. (2015) 'Art. 35' in Magnus, U., Mankowski, P. (eds.) *European Commentaries on Private International Law (ECPIL). Commentary Brussels Ibis Regulation*. Köln: Verlag Dr. Otto Schmidt KG, pp. 813–834.
- Weller, M. (2015) 'Mutual Trust: In Search of the Future of European Union Private International Law', *Journal of Private International Law*, 11(1), pp. 64–102 [Online]. Available at: <https://doi.org/10.1080/17536235.2015.1033203> (Accessed: 1 March 2025).
- Xanthopoulou, E. (2020) *Fundamental Rights and Mutual Trust in the Area of Freedom, Security and Justice: A Role for Proportionality?*. Oxford, New York: Hart Publishing; <https://doi.org/10.5040/9781509922284>.

Legal sources

- Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.
- Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.
- Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.
- Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions.
- Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO').
- Judgment of the Court of 15 July 1964, Case 6/64.
- Judgment of the Court of 20 February 1979, Case C-120/78.
- Judgment of the Court of 28 March 2000, Case C-7/98.
- Judgment of the Court of 11 February 2003, joined Cases C-187/01 and C-385/01.
- Judgment of the Court (Second Chamber) of 9 March 2006, Case C-436/04.
- Judgment of the Court (First Chamber) of 28 September 2006, Case C-150/05.
- Judgment of the Court (First Chamber) of 28 September 2006, Case C-467/04.
- Judgment of the Court (Grand Chamber) of 10 February 2009, Case C-185/07.
- Judgment of the Court (First Chamber) of 21 January 2010, Case C-444/07.
- Judgment of the Court (Grand Chamber) of 4 May 2010, Case C-533/08.
- Judgment of the Court (Second Chamber) of 15 July 2010, Case C-256/09.
- Judgment of the Court (Grand Chamber) of 21 December 2011, joined Cases C-411/10 and C-493/10.
- Judgment of the Court (Second Chamber) of 26 April 2012, Case C-92/12 PPU.
- Judgment of the Court (First Chamber) of 6 September 2012, Case C-619/10.
- Judgment of the Court (Fourth Chamber) of 26 September 2013, Case C-157/12.
- Judgment of the Court (Third Chamber) of 23 October 2014, Case C-302/13.
- Judgment of the Court (Grand Chamber) of 5 April 2016, joined Cases C-404/15 and C-659/15 PPU.
- Judgment of the Court (First Chamber) of 25 May 2016, Case C-559/14.
- Judgment of the Court (Grand Chamber) of 29 June 2016, Case C-486/14.
- Judgment of the Court (Second Chamber) of 9 March 2017, Case C-551/15.
- Judgment of the Court (Grand Chamber) of 27 February 2018, Case C-64/16.
- Judgment of the Court (Sixth Chamber) of 6 June 2019, Case C-361/18.
- Judgment of the Court (First Chamber) of 12 December 2019, Case C-433/18.
- Judgment of the Court (Grand Chamber) of 20 April 2021, Case C-896/19.
- Judgment of the Court (Grand Chamber) of 12 May 2021, Case C-505/19.
- Judgment of the Court (Grand Chamber) of 15 July 2021, Case C-791/19.
- Judgment of the Court (Grand Chamber) of 21 December 2021, joined Cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/1.
- Judgment of the Court (Grand Chamber) of 16 February 2022, Case C-156/21.
- Judgment of the Court (Full Court) of 16 February 2022, Case C-157/21.
- Judgment of the Court (Third Chamber) of 7 April 2022, Case C-568/20.
- Judgment of the Court (Full Chamber) of 29 April 2022, Case C-665/20 PPU.

- Judgment of the Court (Grand Chamber) of 20 June 2022, Case C-700/20.
- Judgment of the Court (Grand Chamber) of 28 October 2022, Case C-435/22 PPU.
- Judgment of the Court (Fourth Chamber) of 16 February 2023, Case C-393/21.
- Judgment of the Court (Grand Chamber) of 5 June 2023, Case C-204/21.
- Judgment of the Court (Third Chamber) of 8 June 2023, Case C-567/21.
- Judgment of the Court (Third Chamber) of 7 September 2023, Case C-590/21.
- Judgment of the Court (First Chamber) of 12 October 2023, Case C-726/21.
- Judgment of the Court (Third Chamber) of 19 October 2023, Case C-147/22.
- Judgment of the Court (Third Chamber) of 19 October 2023, Case C-147/22.
- Judgment of the Court (Second Chamber) of 30 November 2023, joined Cases C-228/21, C-254/21, C-297/21, C-315/21 and C-328/2.
- Judgment of the Court (First Chamber) of 21 March 2024, Case C-90/22.
- Judgment of the Court (Second Chamber) of 19 December 2024, joined Cases C-185/24 and C-189/24.
- Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European enforcement order for uncontested claims.
- Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.
- Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation.
- 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.
- Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.
- Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law, and the recognition and enforcement of decisions in matters of matrimonial property regimes.
- Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law, and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships.
- Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders.
- Regulation (EU) 2019/515 of the European Parliament and of the Council of 19 March 2019 on the mutual recognition of goods lawfully marketed in another Member State and repealing Regulation (EC) No 764/2008.
- Treaty on European Union.
- Treaty on the Functioning of the European Union.

