

CIVIL JUSTICE AND THE LIMITS OF TRUST: BALANCING INTEGRATION, NATIONAL DIVERSITY, AND EQUALITY



SANJA SAVČIĆ

Abstract

The evolution of judicial cooperation in civil matters within the European Union (EU) reflects the Union's growing commitment to creating an integrated legal framework that enhances cross-border cooperation and legal certainty. Starting with the Maastricht Treaty in 1993, judicial cooperation was formalised, setting the foundation for later developments. The Amsterdam Treaty (1997) institutionalised cooperation further, particularly through Title IV of the EC Treaty, emphasising the importance of an integrated approach to justice. The Tampere European Council (1999) marked a significant shift, establishing mutual recognition of judgments as a central principle to foster trust among Member States' legal systems. This principle aimed to simplify the recognition and enforcement of legal judgments across borders, which was seen as crucial for the EU's objectives of freedom, security, and justice.

The Lisbon Treaty (2009) further cemented these efforts by incorporating judicial cooperation into Title V of the Treaty on the Functioning of the European Union (TFEU), aligning it with the ordinary legislative procedure to enhance democratic accountability and efficiency. Despite these advances, the principle of mutual trust remains one of the most ambiguous concepts in EU law, with its exact nature and limits not fully defined, particularly regarding the protection of fundamental rights and varying standards of judicial independence across Member States.

Instruments like the Brussels I Regulation and the European Small Claims Procedure have contributed to enhancing access to justice by offering streamlined, efficient mechanisms for resolving cross-border disputes, thus promoting legal certainty and fostering trust in the EU's legal system. However, challenges remain due to differing

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national interpretations of mutual trust, which can lead to legal uncertainty and inconsistencies in the application of EU law, particularly when fundamental rights protections vary between Member States. The ongoing evolution of EU legal instruments and jurisprudence from the Court of Justice of the European Union (CJEU) will be critical in addressing these challenges, ensuring that mutual trust and legal protection for individuals are consistently upheld across Member States. However, the EU continues to navigate the balance between legal integration and respect for national legal differences, aiming to strengthen the internal market and enhance the protection of rights across Member States.

Keywords: judicial cooperation, mutual recognition, mutual trust, legal certainty, national legal systems

1. Introduction

Issues of procedural law are often considered in isolation from debates that take place within the context of substantive law.¹ The core question is usually perceived to be how a particular legal relationship should be regulated. However, although it attracts less attention, procedural law serves as a key instrument for the protection of rights, entrusted to one branch of government – the judiciary. In this respect, it is difficult to discuss interpretation outside of the system within which a legal norm is to be applied.

Even before the process of Europeanisation moved decisively toward unification, it was necessary to harmonise the rules within the conflict-of-law system in order to achieve a balanced and coherent application of law. In this context, as early as the 1980s, efforts were already underway to unify conflict-of-law rules at the level of the European Union.² Nevertheless, procedural rules largely remain outside the scope of the European Union's competences. The procedural autonomy of the Member States has been constrained by various amendments in substantive law, which – through secondary legislation – has, in some Member States or specific legal areas, moved

- 1 In the field of civil procedure, certain legal instruments focus specifically on cross-border judicial cooperation – for instance, Regulation (EC) No 1206/2001 on the taking of evidence, Directive 2002/8/EC on legal aid in cross-border disputes, and Regulation (EC) No 805/2004 establishing a European Enforcement Order. In parallel, other instruments introduce optional, autonomous EU-wide procedures, such as Regulation (EC) No 861/2007 on the European Small Claims Procedure and Regulation (EC) No 1896/2006 on the European Order for Payment. Due to the cross-border requirement built into their legal bases, these EU civil procedure instruments do not apply to purely domestic cases, distinguishing them from measures adopted under Art. 114 TFEU, which are not subject to the same cross-border limitation. Maňko, 2015, p. 12.
- 2 Červenkova, 2008, p. 5.

away from traditional conceptions. Still, the primary guiding principles in the procedural domain remain equivalence and effectiveness, as established by the case law of the CJEU as early as 1976. These principles essentially mean that, in the absence of relevant EU procedural rules, national legal systems are required to establish detailed procedural provisions that ensure the enforcement of EU rights.³ Although in recent years there have been significant EU interventions aimed at harmonising procedural rules – particularly in the areas of intellectual property, competition law, and consumer protection – the EU’s general approach continues to emphasise the preservation of national procedural autonomy while developing a framework for effective judicial cooperation.⁴ On the one hand, judicial institutions play a crucial role in maintaining citizens’ trust in legal certainty, particularly regarding the enforcement and protection of their rights. On the other hand, preserving procedural autonomy serves as a safeguard for the legal traditions of the Member States, given that judicial interpretation is often rooted in the traditional values of a particular society. Nevertheless, the removal of internal borders within the European Union necessarily brings the issue of cross-border judicial cooperation to the forefront, making it a priority in the development of a coherent and functional area of justice.

The evolution of judicial cooperation in civil matters within the EU reflects a growing commitment to integrating Member States’ legal systems and enhancing cooperation. The Maastricht Treaty of 1993 initiated this process by establishing a framework for judicial cooperation. With the Amsterdam Treaty, this cooperation was further institutionalised under Title IV of the EC Treaty, emphasising the importance of an integrated approach to justice in the context of freedom, security, and justice (AFSJ).

The Tampere European Council in 1999 marked a pivotal moment by establishing mutual recognition of judgments as a fundamental principle. This principle aimed to foster trust among Member States’ legal systems, facilitating smoother cross-border judicial processes.

The Lisbon Treaty, effective as from December 2009, further solidified these efforts by incorporating judicial cooperation in civil matters into Title V of the TFEU. This move aligned judicial cooperation with the ordinary legislative procedure, enhancing democratic accountability and efficiency in decision-making, except for family law matters, which retain a more intergovernmental approach.

Overall, these developments underscore the EU’s commitment to creating a cohesive legal framework that promotes cooperation, mutual trust, and the protection of rights across Member States.

Importance of the often overlooked aspect of judicial cooperation in the EU is the respect of procedural diversity among Member States. The EU choose not to impose uniform procedural standards, but to acknowledge differences among States, to treat them as formally equal, and to continue the development and facilitation of effective

3 Storskrubb, 2019, p. 13.

4 Ibid., p. 15.

cross-border cooperation. Respect for national legal tradition is an approach that reflects that balance between legal diversity and unity is possible.

2. Judicial Cooperation in Civil Matters in the Maastricht Treaty (1993) Framework: Respect for National Procedural Autonomy

The Maastricht Treaty marked a significant step in the integration of the European Union, establishing the European Community (EC) and setting the stage for deeper cooperation in various fields, including justice. Judicial cooperation in civil matters was introduced in Title VI of the Treaty. With the establishment of the European Union's 'three-pillar' structure, cooperation in justice and home affairs was placed within the third pillar, underscoring its importance for the broader process of European integration.⁵ This initial framework aimed to enhance cooperation among Member States on legal issues, particularly regarding the recognition and enforcement of judgments. This approach reflected an intergovernmental model, but enhancing cooperation among Member States in the recognition and enforcement of judgments is limited by supranational oversight.

Specifically, Art. K.1 prescribed that, Member States shall regard judicial cooperation, among other areas, as a matter of common interest, for achieving the objectives of the Union, in particular the free movement of persons, and without prejudice to the powers of the European Community. Member States were required to inform and consult one another within the Council, thereby coordinating through inter-administrative action. To that end, they shall launch collaboration between the relevant departments of their administrations.⁶

In relation to judicial cooperation in civil matters, any Member State or the Commission can initiate actions within the Council. The Council may adopt joint positions, by a majority of two-thirds of the High Contracting Parties, to promote cooperation, using the appropriate form and procedures that contributes to the goals of the Union. This could involve adopting joint actions when such collaboration is more effective than individual actions Member States, due to the scale or impact of the proposes action; the Council may also decide that measures implementing joint actions should be adopted by a qualified majority. Additionally, the Council can draft conventions and recommend them to the Member States for adoption in line with

5 Weber, 2013, p. 292.

6 Art. K.3.

their respective constitutional requirements.⁷ To be precise, Art. K.3 mandates that Member States inform and consult each other within the Council to coordinate their actions effectively. The Council has the authority to adopt joint positions, developed through collaboration. When individual actions are less effective, the Council may decide on joint actions to achieve better outcomes, more effective for achieving Union objectives. This may include voting by a qualified majority in certain decisions. The Council can also draft conventions to be recommended for adoption by Member States, stipulating that the CJEU may interpret these conventions and resolve disputes regarding their application.

Further, Art. K.4 facilitates better cooperation by establishing a Coordinating Committee composed of senior officials. This Committee will not only coordinate efforts but also provide opinions to the Council, whether requested or on its own initiative. The Commission is expected to actively engage in judicial cooperation in civil matters of importance.

Pursuant to Art. K.6, the Presidency and the Commission have the responsibility to regularly inform the European Parliament about discussions in the area of judicial cooperation (and other issues of importance). They must also consult the Parliament regarding the significant aspects of their activities, allowing the Parliament to raise questions or make recommendations. An annual debate was aimed to review progress in these matters, in order to provide a platform to assess the advancements made and the challenges faced in implementing these cooperative measures. Finally, the Council, upon the initiative of the Commission or a Member State, may opt to apply broader provisions of the Treaty establishing the European Community to the areas outlined in Art. K.1. This flexibility allows for more comprehensive approaches to cooperation and requires Member States to adopt relevant decisions according to their constitutional processes.⁸

Despite the Maastricht Treaty's lack of clearly defined objectives, suitable legal instruments, and efficient decision-making mechanisms in the field of Justice and Home Affairs (JHA), it nonetheless represented a pivotal turning point in the evolution of this policy area. The Treaty laid the groundwork for structured, institutionalised cooperation among Member States, fostering the emergence of a shared understanding of key challenges and facilitating consensus on fundamental goals and principles. These early developments later enabled the swift and substantial advancement of what is now known as the Union's AFSJ – particularly after the Treaty of Amsterdam addressed many of the legal and institutional limitations that had persisted under the Maastricht framework.⁹

7 Without prejudice to Art. 220 of the Treaty establishing the European Community. Furthermore, when the Council is required to act by a qualified majority, the votes of its members are weighted as laid down in Art. 148(2) of the Treaty establishing the European Community. For the Council's to be adopted, at least fifty-four votes in favour are needed, and these must be cast by at least eight members. Art. K.4/2/3.

8 Art. K.9.

9 Monar, 2012, p. 717.

3. Transferring Civil Judicial Cooperation: From Intergovernmental to Community Framework – Amsterdam Treaty (1999)

The Amsterdam Treaty represented a major turning point by transferring judicial cooperation in civil matters from the intergovernmental pillar to the Community framework. Under Title IV of the EC Treaty (Art. 65), it became part of the AFSJ. This reposition within the ‘first pillar’ aimed to create a more coherent approach to justice, aligning it with the broader objectives of the EU, including the free movement of people and goods.

According to Art. 65 of Amsterdam Treaty, in the context of the European Union, judicial cooperation in civil matters with cross-border implications is essential for ensuring the proper functioning of the internal market. To this end, several key measures have been proposed.¹⁰

First and foremost, there is a strong emphasis on improving and simplifying various systems. This includes enhancing the processes for the cross-border service of judicial and extrajudicial documents, which is vital for ensuring that parties are appropriately informed and can participate in legal proceedings. Additionally, cooperation in the taking of evidence across borders is a priority, as it facilitates more efficient legal processes.¹¹

Another crucial area is the recognition and enforcement of decisions in civil and commercial cases. This encompasses not only judicial decisions but also those made in extrajudicial contexts, ensuring that outcomes are respected and upheld across Member States. Furthermore, promoting compatibility in the rules applicable in Member States regarding conflicts of laws and jurisdiction is essential. This helps to prevent inconsistencies and confusion that can surface when legal disputes cross borders,¹² since judgments have to be ‘checked at the entrance’ into the Member States.¹³

Lastly, there is a concerted effort to eliminate obstacles that hinder the effective functioning of civil proceedings.¹⁴ This may involve promoting the alignment of rules on civil procedure across Member States, making it easier for individuals and businesses to navigate the legal landscape.¹⁵

By implementing these measures, the EU aims to create a more cohesive and efficient judicial framework that supports cross-border legal interactions, ultimately

10 Art. 65(1).

11 Art. 65(1)(a).

12 Art. 65(1)(b).

13 Zilinsky, 2017, p. 116.

14 Effective judicial protection is inseparable from judicial cooperation in civil and commercial matters. Establishing judicial cooperation and integration would be impossible without trust. Covelo de Abreu, 2014, pp. 150, 161.

15 Art. 65(1)(c).

benefiting the internal market and enhancing legal certainty for all citizens. The EU retains national procedural autonomy, as long as compliance with the principle of equivalence and effectiveness is preserved.¹⁶ Nevertheless, the original formulation of national procedural autonomy appears to establish merely a default, permissive rule that gives away to positive EU legislation.¹⁷

One of the key outcomes of the Amsterdam Treaty was the emphasis on mutual recognition of judgments, which integrated judicial cooperation into the Community legal order. The Tampere European Council, held in October 1999, underscored this principle as a cornerstone of judicial cooperation. The idea was that if a judgment was issued in one Member State, it should be recognised and enforced in others without the need for additional procedures. This principle sought to simplify cross-border legal processes and build trust among Member States' judicial systems.

4. The Tampere Summit – Milestone in the Formation of an European Area of Civil Justice

Soon after the Amsterdam Treaty entered into legal force, the European Council held a special meeting¹⁸ on establishing an AFSJ in the European Union (Tampere Summit). The Tampere Summit was crucial in defining the EU's approach to justice and home affairs.

In the Presidency Conclusions regarding the European area of justice,¹⁹ it was highlighted that individuals and businesses should not be prevented or discouraged from exercising their rights by the incompatibility or complexity of legal and administrative systems in the Member States.²⁰

With respect to this, the European Council recognises that enhancing mutual recognition of judicial decisions and the alignment of legislation is essential for effective cooperation among authorities and for safeguarding individual rights. It emphasises that mutual recognition should serve as the foundation for judicial cooperation in both civil and criminal matters within the EU. This principle should apply not only to judicial rulings but also to decisions made by judicial authorities.²¹

In civil matters, the European Council urged the Commission to propose measures aimed at reducing the intermediate steps currently required for the recognition and enforcement of decisions in other Member States. As an initial step, it suggests eliminating these procedures for small consumer and commercial claims, as well as

16 Blazo, 2023, pp. 82–83.

17 Halberstam, 2021, p. 130.

18 Meeting was held on 15th and 16th October 1999, in Tampere (Finland).

19 European Parliament, 1999.

20 Ad 28.

21 Ad 33.

certain family law judgments, such as maintenance claims and visitation rights. This was supposed to allow such decisions to be automatically recognised throughout the Union without requiring additional proceedings or justifications for enforcement. Additionally, the establishment of minimum common standards for specific aspects of civil procedural law was encouraged, with the aim of enhancing mutual trust and ensuring the effective and consistent application of justice in cross-border cases.²²

The principle of mutual recognition should extend to pre-trial orders as well, particularly those that allow authorities to swiftly secure evidence and seize easily movable assets. Evidence collected legally by one Member State should be admissible in the courts of another, adhering to the relevant standards.²³ Furthermore, the European Council has tasked the Council and the Commission with adopting a programme of measures²⁴ to implement the principle of mutual recognition. This programme should include the development of a European Enforcement Order and establish common minimum standards for procedural law, respecting the fundamental legal principles of Member States.²⁵ Regarding the matter of civil law convergence, the European Council encourages the Council and the Commission to draft new procedural legislation for cross-border cases. This legislation should address key elements necessary for smooth judicial cooperation and improved access to law, including provisional measures, evidence gathering, payment orders, and time limits.²⁶ Finally, the Council was requested to conduct a comprehensive study on the need for harmonising substantive laws among Member States in civil matters to eliminate obstacles that hinder effective civil proceedings, with a report due by 2001.²⁷

4.1. The Impact of the Tampere Summit on EU Justice and Home Affairs

Undoubtedly, the Tampere Summit was influential in shaping policies that would facilitate cooperation among Member States in legal matters, emphasising the importance of mutual recognition as a cornerstone of judicial collaboration. The Council not only reinforced the principle of mutual recognition but also highlighted the need for common minimum standards regarding judicial cooperation. It aimed to foster a shared understanding of legal norms, thereby enhancing cooperation in civil and criminal matters. The focus on mutual recognition marked a shift from traditional notions of sovereignty towards a more integrated European legal space.²⁸

At the heart of the discussions was the principle of mutual recognition, which asserts that judicial decisions made in one Member State should be recognised and enforced in others. This principle is crucial for fostering trust between different legal

22 Ad 34.

23 Ad 36.

24 This activity was to be completed within a short time, by December 2000.

25 Ad 37.

26 Ad 38.

27 Ad 39.

28 Weller, 2015, pp. 75–77.

systems, enabling individuals and businesses to operate more freely across borders. By reinforcing this principle, the Council aimed to create a more integrated legal environment within the EU, where citizens could expect their rights to be upheld consistently, regardless of where they were in the Union.²⁹

In addition to encouraging mutual recognition, the Summit addressed the need for common minimum standards in judicial cooperation. By establishing these common guidelines, the Summit aimed to streamline legal processes, making it easier to navigate cross-border disputes and reduce the complexities that often arise in international legal contexts.

The focus on mutual recognition and common standards marked a significant withdrawal from traditional notions of national sovereignty. Rather than viewing legal authority as confined within the borders of particular states, the Tampere Summit encouraged the development of a more integrated European legal space. Moreover, the decisions made at the Tampere Summit laid the foundation for various initiatives aimed at enhancing judicial cooperation. This included efforts to improve the efficiency of cross-border legal proceedings, to facilitate the exchange of information among judicial authorities, and to establish mechanisms for better coordination in handling legal matters that span multiple jurisdictions.³⁰

Overall, the Tampere Summit was a transformative occasion that significantly impacted the EU's approach to justice and home affairs. By prioritising mutual recognition and common minimum standards, the summit not only strengthened the legal framework within the Union but also fostered a sense of solidarity among Member States. Even though not explicitly, settled guidelines provide a framework for strengthening the Union further, rather than sustaining the traditional approach of each Member State.

5. Mutual Trust in the Context of Judicial Cooperation

Mutual trust represents one of the key principles of European Union law, playing a central role in guiding relations between Member States and ensuring the coherence of the EU legal system. This principle is generally considered the cornerstone of the EU's internal policy. However, cooperation with third countries – which is highly relevant for trade outside the EU – remains unjustifiably neglected.³¹ The fact that this has been identified as a 'blind spot' in foreign trade additionally highlights the importance of a well-functioning system of justice in the context of internal trade. While mutual trust is recognised as a fundamental pillar in many

29 Hamenstädt, 2021, pp. 9–10.

30 Cambien, 2017, pp. 99–102.

31 Weller, 2018, p. 63.

aspects of the EU's functioning, the precise nature, limits, consequences, and scope of this principle have yet to be fully defined by the CJEU. For this reason, mutual trust is often described as one of the most ambiguous concepts in EU law, and its deeper understanding and clarification remain a challenge for legal theorists and practitioners.³² In its most simplified form, the concept of mutual trust may be understood as the presumption that all Member States are committed to and endorse the same fundamental values.³³

In academic literature, most research focuses on specific areas of the application of this principle, particularly in the context of the protection of fundamental rights, which are crucial in many areas of EU law, including the freedom of movement, justice, security, and the internal market.³⁴ The concept of mutual trust is also often analysed in relation to specific legal instruments, among which is the mutual recognition of judicial decisions between Member States.

However, despite its widespread application in various fields, a comprehensive analysis of mutual trust as a general principle, which integrates all relevant legal and societal aspects and considers the broader implications of its application across different areas of EU law, is still lacking.³⁵ Furthermore, the specific nature of this principle remains a subject of various interpretations, which creates room for different approaches to its application, thereby contributing to legal uncertainty.

One of the key challenges related to the application of mutual trust lies in the lack of consensus among Member States about what this principle actually entails. The absence of clearly defined guidelines for applying mutual trust can cause uncertainty in the legal system and complicate the legal protection of individuals who rely on the stability and predictability of the law. In this sense, the challenges surrounding the application of mutual trust raise serious questions regarding the effectiveness and cohesion of EU law.³⁶ Nevertheless, mutual trust implies respect for differences, which is a key element of the principle 'united in diversity'.³⁷

6. Mutual Recognition of Judicial Decisions

One of the most concrete aspects of the application of mutual trust within the EU is the institution of the mutual recognition of judicial decisions between Member States. This institution enables judicial decisions made in one Member State to be recognised and enforced in other Member States, which is crucial for the efficient

32 Boháček, 2022, p. 105.

33 Bárd, 2022, p. 210.

34 Boháček, 2022, p. 105.

35 Wischmeyer, 2016, p. 344.

36 Arroyo Jimenez, 2021, pp. 354–355; Cherednychenko, 2023, pp. 456, 457.

37 Prechal, 2017, p. 84.

functioning of the internal market and the protection of individuals' rights. Mutual trust is recognised here as the fundamental principle that ensures that judicial decisions are treated equally, and there are no obstacles to their recognition, except in very specific cases, such as the serious violation of fundamental rights.³⁸ Apart from its direct effect, mutual recognition has been seen by European scholars as a means of spontaneous harmonisation. This form of harmonisation is considered a 'low-level' approach, in contrast to full harmonisation, which involves replacing national laws with a unified European legal framework.³⁹

In the European Union, the process of enforcing a judgment across borders has been simplified significantly, allowing for more efficient cross-border legal cooperation within the EU. Under EU law, a judgment rendered in one Member State can be directly enforced in another Member State without the need for an additional intermediary procedure, known as *exequatur* (which used to be required to recognise a foreign judgment as enforceable).

This streamlined process is particularly beneficial for creditors seeking to recover debts. For instance, if a creditor is owed money by someone in another EU country, they can have the judgment from their home country recognised and enforced in the country where the debtor has assets. This means that the creditor can bypass lengthy procedures and directly approach the enforcement authorities in the country where the debtor resides or where their assets are located.

To initiate the enforcement process, the creditor must provide the relevant enforcement authority with two key documents: a certificate issued by the court that rendered the original judgment, which confirms that the judgment is enforceable and provides the necessary details about the judgment, as well as a copy of the judgment itself.

However, the debtor has the right to challenge the enforcement in the country where the enforcement is sought. If the debtor believes that enforcing the judgment would violate the public policy principles of the country in question, they can apply to the local court to have the enforcement rejected. Public policy exceptions are generally limited,⁴⁰ but they provide a safeguard to ensure that enforcement does not contravene fundamental principles of law in the country where enforcement is being sought.⁴¹ This mechanism ensures that the process respects the legal and con-

38 Ralli, 2017, pp. 7–9.

39 Smits, 2006, p. 66.

40 Although the concept of 'public policy' within EU law retains a degree of inherent ambiguity, the CJEU has consistently applied a restrictive interpretation. The threshold for invoking the public policy exception is set at a notably high level, rendering it challenging in practice to establish that this criterion has been met successfully. Pozdnakova, 2018, p. 9.

41 Variance should be to an unacceptable degree with the legal order of the State in which enforcement is sought. See: Judgment CJEU of the Court (Grand Chamber) of 28 April 2009, *Meletis Apostolides v David Charles Orams and Linda Elizabeth Orams*, Case C-420/07, Judgment of the Court (Fifth Chamber) of 11 May 2000. *Régie nationale des usines Renault SA v Maxicar SpA and Orazio Formento*, Case C-38/98.

stitutional standards of each Member State while facilitating smoother enforcement of judgments across borders.⁴²

This system simplifies the enforcement process, making it faster and more predictable for creditors while also protecting the interests of debtors by allowing them to challenge enforcement under specific conditions.

In addition, this approach should reaffirm that the Member States are ‘different, but equal’. From the perspective of constructing a single market and harmonising legal standards within the EU, the mutual recognition of judicial decisions is designed to overcome the obstacles to deeper integration that arise when Member States operate within different legal frameworks or standards. The recognition of judicial decisions across borders is essential for facilitating cooperation and ensuring legal certainty in cross-border situations.⁴³

Thus, the importance of mutual recognition is especially emphasised in areas of law that have not been fully harmonised within the EU. This includes legal domains where differences still exist in national legal systems, practices, or substantive laws. The assumption underlying this process is that Member States can trust each other’s legal systems to uphold certain core principles, such as the protection of fundamental rights, fair trials, and the overall integrity of the legal process.

It is implied that the successful implementation of mutual recognition rules relies heavily on the principle of mutual trust among Member States. This principle assumes that each Member State’s legal system ensures an adequate level of legal protection and that judicial decisions in one Member State will be respected and enforced in another. Mutual trust is based on the expectation that every Member State guarantees a sufficient level of fairness, legal safeguards, and respect for human rights, regardless of the potential differences in their legal cultures or procedural approaches.

Even though the Amsterdam Treaty put mutual trust in the ‘first pillar’ of the EU law, there was and still is insufficient understanding about what the mutual trust exactly means in practice.

To some extent, the CJEU provided an interpretation in its Opinion No. 2/13.⁴⁴ Namely, in Opinion 2/13, as well as in subsequent rulings in various areas of EU law, the CJEU adopted a universalistic approach to justify the principle of mutual trust. The Court’s reasoning is based on the idea that the European Union is founded on fundamental values specified in Art. 2 of the Treaty on European Union (TEU), such as democracy, the rule of law, freedom, and respect for human rights. These values are considered common to all EU Member States. As the Court explains, this common foundation ‘implies and justifies the existence of mutual trust’ between Member States. Specifically, this mutual trust is based on the belief that each Member State respects these fundamental values and, in turn, complies with EU laws designed to enforce them.

42 Ruehl, 2018, p. 2.

43 Düsterhaus, 2015, p. 156.

44 European Union, 2014.

Although the language used by the CJEU may initially seem to suggest that the principle of mutual trust functions more as an expectation than an obligation, the Court clarifies that this is not the case. On the contrary, the CJEU holds that this principle imposes a strong duty on each Member State.

However, mutual trust should not be considered equal to blind trust. As the CJEU explains in cases such as *N.S. and Aranyosi and Căldăraru*, trust must be ‘earned’ by the Member State of origin through effective compliance with EU fundamental rights standards.⁴⁵ Nevertheless, any limitations on the principle of mutual trust must remain exceptional. This approach aims to strengthen legal cooperation and provide certainty in the application of EU law. Even though these goals are in functional cohesion to the idea of EU and integration in EU itself, it was obvious at first glance that the principle of the mutual trust would not be out of scepticism. The reason lies in the fact that trust is not a matter of rules, even legal rules, but the process that could take time to be completed. In addition to this, a more sociological aspect of mutual trust, which is demonstrated through the mutual recognition of decisions, raises concerns among legal minds experts. They worry that recognising foreign decisions without a prior approval process could jeopardise sovereignty and weaken legal certainty in the receiving state.

To observe the scope of the principle of mutual trust in civil law matters, some illustrative cases will be presented.

7. CJEU Cases of Relevance for Understanding ‘Mutual Trust’

In the *Achmea* case,⁴⁶ the CJEU issued a ruling that had a significant impact on the interpretation and application of the principle of mutual trust within the EU. The Court ruled that the bilateral investment agreement between two EU Member States posed a serious risk to this fundamental principle. The agreement, which allowed for arbitration outside the EU legal framework, was considered a threat to the autonomy of EU law, as it could undermine the alignment of Member States with EU legislation.

The CJEU emphasised that the existence of such an arbitration mechanism could weaken the legal coherence and cohesion that is essential for the functioning of the EU. Arbitration proceedings that do not take place within the EU legal system could challenge the effectiveness and integrity of the EU’s legal framework, as they might create parallel legal pathways that are not aligned with EU law. In this context, the

⁴⁵ Lenaerts, 2017, p. 805.

⁴⁶ Judgment of the Court (Grand Chamber), of 6 March 2018 (request for a preliminary ruling from the Bundesgerichtshof – Germany) – *Slowakische Republik v Achmea BVC*-284/16.

Court held that such a system could seriously undermine the core principles of EU law, including the principle of mutual trust among Member States.

This ruling underscores the CJEU's position that any challenge to the perceived compliance with EU law, particularly in relation to fundamental rights, can have broad consequences for the functioning of the Union. When there are doubts about a Member State's adherence to EU legislation, this not only threatens the trust between Member States, but could also destabilise the EU's legal structure, potentially jeopardising the very foundation of the Union. The Court thus sent a strong message that any practice that could undermine the integrity of EU law, and particularly weaken mutual trust among Member States, must be seriously reconsidered.

In the *Eurofood IFSC* (2005) case,⁴⁷ which concerned insolvency proceedings, a key area of judicial cooperation in civil matters, the CJEU once again reaffirmed its traditional approach based on the principle of mutual trust between Member States. The case dealt with the issue of the recognition and enforcement of judicial decisions within the EU, which is crucial for effective judicial cooperation within the Union, especially in areas such as insolvency, where cross-border legal proceedings are common.

In this case, the Court clarified that the simplified mechanism for recognising and enforcing judgments between Member States is not merely an administrative procedure but is based on the deep trust that the judicial systems and procedures of other Member States are aligned with the fundamental values of the EU, such as fairness, impartiality, and transparency. Essentially, the EU assumes that all Member States have developed and reliable judicial systems that respect legal rules and human rights, thereby ensuring the smooth functioning of the internal market and judicial cooperation.

This ensures that judicial decisions, such as those made in insolvency proceedings, can have legal force and be effectively enforced in other Member States without the need for re-examining their legality or content. The reasoning in the *Eurofood IFSC* (2005) case highlights another important aspect in the interpretation of the principle of mutual trust, particularly in relation to the mutual recognition of judgments. Namely, the Court emphasised that the starting assumption for mutual recognition is based on the responsibility of the court in the Member State of origin to ensure that it has jurisdiction over the insolvency of the entity concerned in accordance with the relevant EU regulations. As the Court stresses, this check must be carried out in compliance with basic procedural guarantees to ensure a fair legal process. However, the court in the Member State of destination, where the insolvency judgment is recognised, does not have the authority to review the jurisdictional assessment made by the court in the Member State of origin. Through this approach, the CJEU essentially lays the foundation for the interpretation of the principle of mutual trust: on the one hand, this principle obliges the court in the Member State of origin to confirm its

47 Judgment of the Court (Grand Chamber), of 2 May 2006, *Eurofood IFSC Ltd.*, C-341/04.

jurisdiction, so that the court in the Member State of destination can automatically recognise the judgment.⁴⁸

8. Lisbon Treaty (2009) and the Institutionalisation of Cooperation Without Uniformity

With the entry into force of the Lisbon Treaty in December 2009, judicial cooperation in civil matters was significantly integrated into the broader framework of the European Union. Specifically, it was moved to Title V of the TFEU, which deals with the AFSJ. This shift marked an important institutional change, as judicial cooperation in civil matters is now subject to the ordinary legislative procedure (OLP), alongside other areas of EU policy, as defined in Art. 289 TFEU. This procedure requires that key legislative measures in the field of judicial cooperation be adopted through a co-decision procedure, involving both the European Parliament and the Council of the European Union, which aims to create greater democratic accountability and transparency in the decision-making process.

The explicit legal basis for judicial cooperation in civil matters under the Lisbon Treaty is found in Art. 81 TFEU, which provides the framework for measures in areas such as the recognition and enforcement of judgments, conflicts of law, and the harmonisation of judicial procedures. According to Art. 81(1) TFEU, the EU aims to 'ensure the proper functioning of the internal market' by establishing minimum rules that enhance judicial cooperation between Member States in cross-border civil and commercial matters. This cooperation is designed to improve access to justice for EU citizens and businesses, fostering legal certainty and mutual trust across Member States.⁴⁹

In addition to Art. 81 TFEU, the Lisbon Treaty also maintained a differentiated approach when it comes to family law. While judicial cooperation in civil matters is now part of the community method, family law issues continue to be dealt with through a more intergovernmental method. This exception is explicitly recognized in Art. 81(3) TFEU, which allows Member States to decide unanimously whether

48 The CJEU further reinforced its commitment to the principle of mutual trust between EU Member States in its *MG Probud* decision of 2010. This ruling emphasised the balance between judicial responsibility and the limitations on judicial review of judgments rendered in other Member States. In its judgment, the CJEU clarified that mutual trust in the judicial systems of EU Member States is a foundational principle of the EU's system of mutual recognition. The Court reaffirmed that this trust entails limitations on the ability of national courts to review the substance of judgments issued by courts in other EU countries, reinforcing the importance of respecting the effectiveness of cross-border judicial cooperation. See: Judgment of the Court (First Chamber) of 21 January 2010, *MG Probud Gdynia sp. z o.o.*, C-444/07.

49 Fillers, 2018, p. 478.

to adopt EU measures in the area of family law. This exemption reflects the sensitive nature of family law, which involves deeply rooted national values and traditions, including those related to marriage, custody, and inheritance. For this reason, family law remains largely within the control of Member States, with EU action limited to areas where cooperation can be achieved without interfering with national sovereignty.

In practice, this means that family law remains subject to unanimity among Member States, as stipulated in Art. 81(3) TFEU, which states:

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt measures in the field of judicial cooperation in civil matters, except in the field of family law, where such measures are adopted by the Council acting unanimously.

This preserves the sovereign rights of Member States over family law, while still facilitating cooperation where necessary, such as in matters involving cross-border child custody or divorce cases with an international element.

This differentiated approach demonstrates the balance between national sovereignty and the EU's objective to create a more harmonised legal framework across Member States. The EU recognises the importance of respecting national identities and cultural practices in family law matters, even as it promotes greater legal certainty and coordination in civil matters more broadly.

9. Current Developments and the Impact of Judicial Authority in a Diverse Union: Developments and Effects Post-Lisbon

Since the Lisbon Treaty, the European Union has adopted numerous regulations and directives designed to enhance judicial cooperation in civil matters. These legal instruments aim to ensure the free movement of judgments, foster legal certainty, and streamline judicial processes across borders, to reach efficiency of the cooperation system in the community justice, figuratively named an 'Esperanto in the world of law'.⁵⁰ Notable examples include the Brussels I Regulation (recast), which deals with jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, and the European Small Claims Procedure, both of which exemplify the EU's ongoing commitment to improving cross-border legal processes.

⁵⁰ Costache, 2009, p. 1.

9.1. Brussels I Regulation (Recast)

The Brussels I Regulation (Regulation (EU) No 1215/2012) is one of the key pieces of legislation in the area of judicial cooperation in civil matters. It provides a framework for determining which courts have jurisdiction in civil and commercial disputes between parties in different EU Member States. Additionally, it establishes mechanisms for the recognition and enforcement of judgments across the EU, eliminating the need for re-examination of judgments in the country of enforcement. Under Art. 36 of the Brussels I Regulation, judgments given in one Member State are automatically recognised in all other EU countries, subject to certain exceptions, such as public policy concerns. The recast of this regulation, which entered into force in 2015, aimed to simplify and clarify procedures, making cross-border legal disputes more efficient.

The Brussels I Regulation (Recast) also enhances legal certainty by providing clear rules on jurisdiction, which determine which court has authority over a case based on factors such as the location of the defendant, the place where the contract was performed, or the location of the damage. By establishing these rules, the regulation reduces the likelihood of forum shopping (the practice of selecting a court perceived to be more favourable) and contributes to a predictable legal environment for individuals and businesses engaged in cross-border activities. Furthermore, it ensures that judgments rendered in one EU country can be enforced in another without the need for complex and time-consuming procedures, thus encouraging greater legal efficiency and cooperation among Member States.

9.2. European Small Claims Procedure as a Reflection of Unity in Judicial Diversity

Another important development is the European Small Claims Procedure (Regulation (EC) No 861/2007), which aims to simplify and expedite the process for individuals pursuing small claims in cross-border disputes within the EU. The procedure allows for claims of up to €5,000 to be dealt with through a streamlined process, minimising the need for costly and lengthy litigation. By providing a simplified procedural framework, the European Small Claims Procedure grants easier access to justice for individuals and small businesses engaged in cross-border trade and contractual relationships.

This regulation is significant because it enhances access to justice by providing a clear, low-cost, and efficient alternative to traditional legal proceedings. Apart from simplifying the procedure, the key feature of this model lies in its emphasis on judicial cooperation with the parties and the proactive role of the court in managing proceedings.⁵¹ Additionally, the small claims procedure further promotes the EU's internal market, encouraging individuals and businesses to engage

⁵¹ Mesquita and Marques, 2022, p. 10.

in cross-border transactions without fear of lengthy or expensive legal processes. It represents a key aspect of the EU's effort to create a legal environment that supports economic activity and facilitates the free movement of goods, services, and people within the Union.

Although the European Small Claims Procedure introduced a simplified framework, it has drawn criticism on the ground that courts risk being perceived merely as debt-recovery agencies. Critics argue that the low monetary value of a claim does not necessarily imply procedural or legal simplicity, as such cases may still involve complex factual or legal issues.⁵²

9.3. Legal and Economic Consequences of Fragmented, Yet Functioning Judicial Cooperation in the EU

These developments have profound legal and economic implications for individuals and businesses operating within the EU. By creating a legal framework that facilitates the recognition and enforcement of judgments, the EU ensures that individuals and businesses can rely on cross-border legal processes to resolve disputes, thereby reducing uncertainty. For businesses engaged in cross-border trade and commercial transactions, this predictability is essential for efficient planning and risk management. The EU's efforts in this area help in creating a more integrated internal market, where legal barriers to trade and business activities are minimised.

For individuals, the clearer procedures offered by instruments like the Brussels I Regulation and the European Small Claims Procedure enhance access to justice, especially in cross-border cases. Whether resolving contractual disputes, enforcing judgments related to personal injury, or addressing family law matters with a transnational element, these regulations provide more accessible and efficient mechanisms for resolving legal issues. This not only strengthens legal certainty but also fosters a sense of trust in the EU's legal system.

By enhancing cooperation between Member States' judicial systems, these measures support the EU's overarching goal of promoting freedom, security, and justice, as outlined in Title V of the TFEU. They contribute to the achievement of the EU's vision of an internal market where individuals and businesses can operate across borders with confidence, knowing that there are clear and predictable legal avenues for resolving disputes.

52 Silvestri, 2018, p. 14.

10. Conclusion

In conclusion, since the Lisbon Treaty, the EU has made significant strides in improving judicial cooperation in civil matters through the enactment of regulations such as the Brussels I Regulation (Recast) and the European Small Claims Procedure. These instruments reflect the EU's commitment to creating a more efficient, predictable, and accessible legal framework for cross-border activities. By ensuring the recognition and enforcement of judgments and providing clear procedural mechanisms, the EU has fostered greater legal certainty, encouraged economic activity, and improved access to justice across its Member States, ultimately contributing to a more integrated and cohesive internal market.

This expanded version incorporates key legal references and explains the broader legal and economic implications of EU regulations aimed at improving judicial cooperation in civil matters. Additionally, it provides a deeper understanding of the practical significance of these regulations for individuals and businesses within the EU, highlighting how they promote legal certainty and economic integration.

The evolution of judicial cooperation in civil matters within the EU illustrates a gradual shift from a predominantly intergovernmental approach to a more integrated, community-based framework. The principles established through the Maastricht, Amsterdam, and Lisbon Treaties reflect the EU's commitment to fostering mutual trust, cooperation, and the protection of rights among Member States. As the EU continues to navigate complex legal landscapes, the time ahead of us will provide the answer whether the ongoing development of judicial cooperation will play a vital role in ensuring a cohesive and effective legal system across Europe.

The application of mutual trust without safeguards may expose the EU legal system to risks that could undermine its founding values. These include situations where a Member State's legal system does not comply with the EU's core values, such as respect for fundamental rights, freedom of movement, or non-discrimination. For example, if a judicial decision issued in one Member State involves a violation of the right to a fair trial or freedom from torture (as enshrined in Art. 6 of the TEU and the EU Charter of Fundamental Rights), its enforcement in another Member State could violate EU law.⁵³

In the field of judicial cooperation in civil and commercial matters, the principle of mutual trust plays a crucial role in ensuring the recognition and enforcement of judgments across EU Member States. However, this principle is not without its complexities and challenges, particularly in light of value disagreements between Member States. These disagreements, especially in areas related to the rule of law and fundamental rights, can have significant implications regarding the effectiveness of mutual trust in judicial cooperation.

It is noteworthy that the AFSJ is built on the foundation of shared values, including respect for democracy, the rule of law, and fundamental rights as outlined in

53 Ozoráková, 2022, p. 198

the TEU and the Charter of Fundamental Rights of the European Union. These values underpin the principle of mutual trust, which assumes that all EU Member States uphold these core principles in their national legal systems.

However, value disagreements can pose challenges to this trust. In particular, Member States that are perceived to be experiencing a deterioration in the rule of law or failing to adequately protect fundamental rights may undermine confidence in the judicial decisions emanating from those states. This can create tensions when one Member State is requested to recognise and enforce judgments of another that may be seen as falling short of the EU's standards on fundamental rights.

The CJEU has been grappling with these issues, and while it has so far maintained a relatively strict interpretation of mutual trust, there is growing recognition that the relationship between mutual trust and fundamental rights protection needs to be more nuanced, particularly in civil and commercial matters. The question of limits to the application of mutual trust becomes, particularly relevant when the state of the rule of law in a Member State deteriorates as this could affect the fairness and legality of judgments issued by national courts.

One of the most important safety valves in the AFSJ that can address these challenges is the public policy exception (*ordre public* clause). This exception allows a Member State to refuse to recognise or enforce a foreign judgment if doing so would violate its fundamental principles, particularly regarding fundamental rights.

While the public policy exception serves as an important safeguard, it is crucial to note that its application must not be abused or used as a blanket excuse to challenge judgments based on perceived differences in legal systems or values. The CJEU has consistently maintained that this exception should be applied narrowly and only in extreme cases, where the judgment clearly violates core EU values. A lenient interpretation could allow for a more contextual approach to the recognition and enforcement of judgments, where fundamental rights considerations are weighed more heavily in cases of serious rule of law concerns. The idea behind this more lenient interpretation is that the protection of fundamental rights should be the cornerstone of mutual trust. In other words, mutual trust cannot be blind or unconditional; it must be contingent on the adherence to EU values, particularly those enshrined in the TEU and the EU Charter of Fundamental Rights.

The relationship between mutual trust and the protection of fundamental rights is not merely a legal or procedural issue; it is a matter of ensuring that the EU legal order remains consistent with the Union's founding values. The mutual recognition of judicial decisions is important for the functioning of the internal market, but it must not come at the cost of justice or individual rights.⁵⁴

The analysis presented in this chapter emphasises that the EU's approach to judicial cooperation primarily aims to ensure the effective protection of rights in civil and commercial matters through mutual trust and recognition of court decisions. In doing so, the formal inequality between different national procedural systems

54 Ozoráková, 2022, p. 200.

is relativised, while the efficiency of the EU internal market is preserved precisely through the retention of traditional procedural rules of the Member States.

The benefits arising from facilitated cross-border legal protection and the faster enforcement of judgments largely outweigh the disadvantages. In other words, the broader interest in legal certainty and economic efficiency within the Union justified the diversity among equal members.

It is true that the EU does establish uniform procedural rules in specific areas – such as consumer protection – particularly where there is a clear need to safeguard individual rights or maintain market balance.⁵⁵ However, such targeted harmonisation does not undermine the EU's fundamental commitment to achieving functional efficiency through respect for the legal diversity of its Member States.

⁵⁵ Barnard and Mišćenić, 2019, pp. 127–130.

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