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ENFORCEMENT AND ENFORCEABILITY OF COURT SETTLEMENTS IN THE EUROPEAN UNION

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Abstract Court settlements, as instruments of amicable dispute resolution, represent a flexible procedural tool that also serves as an enforcement title document. As such, these instruments are known in all of the Member States of the European Union (EU) and are included under the rules of EU's private international law regulations, which offer a legal basis for their cross-border enforcement. However, challenges persist due to varying regulation and understanding of court settlements at the national level, as well as due to the ambiguities in the EU's cross-border enforcement rules, leading to potential misinterpretations in practice. Thus, this paper firstly aims to explore what exactly constitutes a 'court settlement', both at the national and at the EU level. Based on this definition, it then examines the EU regulatory framework, specifically within the selected EU regulations, to assess whether further improvements are necessary. The answers to the research questions are found through case law analysis, exploration of academic literature, and particularly on the basis of the relevant provisions of the EU regulations that were selected for this research.

Keywords
court settlements, European Union, Brussels I Recast, cross-border enforcement, private international law

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1 Introduction

Court settlements represent instruments of amicable resolution between the parties of a certain legal dispute (Anzenberger, 2020: 150; Anzenberger, 2023: 333). As such, they can be a more flexible and effective procedural tool than a judgment, given that the parties' legal relations can be regulated more quickly, and the deadlines for the relevant performance prescribed in a court settlement may be determined as it suits the contracting parties (Vojković, 2019: 965). Although known in all of the Member States, such settlements are regulated differently under different national laws, which means that the procedure for concluding a court settlement, as well as its form and effects, will vary (Merrett, 2023: 90). Differences can also be found in terms of popularity of this type of dispute resolution in practice – while in some Member States, e.g. in Austria, court settlements represent a popular way of resolving litigation (Anzenberger, 2020: 150), in others, such as France or Belgium, they are extremely underrepresented in practice (Chang and Klerman, 2022: 82). In any case, court settlements may be viewed as potential substitutes for judgments, which are usually more prevalent in practice.

In the cross-border circulation between courts, i.e., in the rules provided in the relevant EU regulations, court settlements are given much less consideration than judgments and may seem to be mentioned only as an 'afterthought'. This could be unfortunate, considering the divergences among national systems of different Member States. On the other hand, such regulation may be explained by the limited effect of court settlements in practice. Additionally, it would be expected that the parties that conclude a court settlement will willingly fulfil their obligations.

From a legal policy perspective, it is necessary to have a clear understanding of 'court settlement', both at the national and the EU level – especially considering that the relevant EU rules, particularly those on recognition and enforcement, must be made by taking into account the national peculiarities which are especially stark with regard to enforcement. Moreover, it is necessary that the rules of the relevant regulations offer an adequate way for the easy enforcement of court settlements abroad, in the same (or at least similar) way as they do with judgments. Thus, this paper first aims to answer the following questions: what is a 'court settlement' under the national laws of selected Member States, and what is a 'court settlement' under the selected EU regulations? On the basis of the answer to these questions, the paper will then

turn to the issue of regulation at the EU level. In that sense, the paper will analyse whether the regulations selected for this research offer adequate solutions for the enforcement of court settlements, or whether some additional improvements are needed.

The answers to these questions will be found through exploration of academic literature, analysis of the Court of Justice of the EU (CJEU) and national case law (where possible), and particularly on the basis of provisions of the EU regulations selected for this research. In that sense, the research will focus on the regulations on the cross-border collection of monetary claims, as these instruments represent some of the main regulatory sources on the enforcement of court settlements. The regulations include:[1] Brussels I Recast;[2] European Enforcement Order Regulation (EEOR);[3] European Small Claims Procedure Regulation (ESCPR);[4] and Regulation on maintenance obligations (Maintenance Regulation).[5] In addition, the paper will adopt a comparative approach in certain sections, aiming to highlight the

[1] Two regulations which are not included in this research, but also fall under the scope of those regulating cross-border collection of monetary claims are Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, OJ 2006 L 399/1 and Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters, OJ 2014 L 189/59. However, the issue of enforcing court settlements as such will not have much bearing in regards to these regulations. These are aimed at issuing specific EU documents – European Order for Payment or European Account Preservation Order. Thus, court settlements as such cannot be enforced under these regulations; they can, however, serve as evidence and a basis for issuance of the specific EU orders, i.e., European Order for Payment or European Account Preservation Order.

[2] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition of judgments in civil and commercial matters (recast), OJ 2012 L 351/1 (Brussels I Recast).

[3] 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, OJ 2004 L 143/15 (EEOR).

[4] Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, OJ 2007 L 199/1 (ESCPR).

[5] Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, OJ 2009 L 7/1 (Maintenance Regulation). Maintenance Regulation is thus the only instrument selected for this research that relates to family matters, as opposed to the rest of the regulations in civil and commercial matters. This was done as its scope relates directly to monetary claims, and was previously included under the Brussels I Regulation.

peculiarities of court settlements under different national laws. In that sense, Chapter 2.1. will focus on the national laws of Germany, Italy, Croatia, and Slovenia[6] in order to assess which are the main elements that all of these Member States share in their national definitions of 'court settlement'. The remainder of the paper may occasionally feature relevant national examples, including those originating from Member States outside of the previously mentioned ones. For the purpose of comparative approach, the national reports and case-law from relevant research projects, including *IC2BE*,[7] *EFFORTS*[8] and *Diversity of Enforcement Titles in cross-border Debt Collection in EU*,[9] will be used, in addition to the relevant national laws itself.

The paper will be structured as follows: following the Introduction, in Chapter 2, a definition of 'court settlement' will be sought and discussed – both at the national and the EU level. In Chapter 3, the analysis will turn to the issue of their cross-border recognition and enforcement, which will be explored primarily based on the provisions of the selected regulations. Finally, Chapter 4 will discuss the effect of different definitions of 'court settlement' at the EU level and at the national level, and summarise *de lege ferenda* proposals for better regulation in the selected EU regulations.

2 Defining 'court settlement'

[6] These Member States were selected on the basis of their differing features, bearing in mind also the language of the legal sources. Primarily, these States differ as to whether they provide for special implementation laws on the relevant EU regulations or not. Furthermore, unlike, for example, Croatia, Germany adopted the strategy of synchronising EU instruments with pre-existing domestic ones. Additionally, the judicial systems of Germany and Italy are otherwise intensely researched on the topic of enforcement of judgments, whereas Croatian and Slovenian are not, leaving their special features comparatively unnoticed.

[7] 'Informed Choices in Cross-Border Enforcement'; financed by the European Union under the Civil Justice Programme 2014-2020. Database available at: IC2BE (uantwerpen.be) accessed June 9, 2025.

[8] 'Towards more Effective enforcement of claims in civil and commercial matters within the EU'; Project JUST-JCOO-AG-2019-881802; with financial support from the Civil Justice Program of the European Union. Reports available at: Collection of national case-law - Efforts (unimi.it) accessed June 9, 2025.

[9] 'Diversity of Enforcement Titles in Cross-Border Debt Collection in EU '; JUST-AG-2018/JUST-JCOO-AG-2018; funded by Justice Programme of the European Union. Reports available at: PF - National reports (um.si) accessed June 9, 2025.

In order to comprehend the issues that arise in the process of recognition and enforcement of court settlements in the EU, a definition of the notion of 'court settlement' must be established. Thus, the notion in the national laws of different Member States and the notion under the EU regulations will be analysed in turn.

2.1 'Court settlement' in selected Member States

In Germany, a 'court settlement' (*Prozessvergleich*) can be defined as a contract by which a dispute or uncertainty of the parties with regard to a legal relationship is removed by way of mutual concession.[10] It is also a procedural contract by which the procedural situation is changed, i.e., the proceedings are terminated (Lorenz, 2000: 1). Thus, a German settlement has a dual nature (Paulus, 2017: 257),[11] which is interpreted in different ways – while some believe that the two contracts are completely independent and their effectiveness is to be assessed separately, others believe both contracts are inextricably linked (Lorenz, 2000: 1). This dual nature of a settlement is similarly acknowledged in Croatian legal theory (Vojković, 2019: 959) and practice.[12] Under Croatian law, a 'court settlement' (*sudska nagodba*) is an agreement between the parties, entered in the form of the minutes of the court proceeding and signed by the parties themselves (Kunštek et al., 2020: 44-47).[13] On the other hand, neither Slovenian nor Italian legislation provide an explicit definition of a 'court settlement' (*sodna poravnava/conciliazione*).

In order to determine what are the common elements that constitute 'court settlement' in the selected jurisdictions (as well as to detect any peculiarities), the following will be assessed: firstly, the requirements for concluding a court settlement in each of the selected jurisdictions; secondly, the procedure for concluding a court settlement; thirdly, the effects of court settlements.

[10] Art 779 Bürgerliches Gesetzbuch (BGB).

[11] See also BGH, Urteil v 14 July 2015 – VI ZR 326/14, NJW 2015.

[12] Supreme Court of the Republic of Croatia, Rev. 2351/1992-2; County court of the Republic of Croatia, Gž-4983/13-2.

[13] Croatian Civil Procedure Act (Zakon o parničnom postupku), Narodne novine 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 96/08, 123/08, 57/11, 148/11, 25/13, 89/14, 70/19, 80/22, 114/22 (2022) (Croatian CPA), arts 321, 322. See also County court of the Republic of Croatia, Gž-4983/13-2.

2.1.1 Requirements

According to German law, a number of requirements have to be met for a settlement to be concluded. As German theory classifies court settlements as mixed contracts, both material and procedural conditions must be met in order for a settlement to become valid. Thus, a court settlement must be concluded between the mutually consenting parties; about the subject matter of the dispute; before a court or a conciliation body; during a pending proceeding (Lorenz, 2000: 1; Paulus, 2017: 258-259). In addition, all requirements for an effective legal transaction according to substantive law must also be met (Lorenz, 2000: 2). Croatian legal theory also acknowledges that general conditions must be met for a court settlement to be valid: the court settlement should be concluded before the competent court; the parties should have legal interest and legal capacity for the conclusion of the settlement; the subject matter and content of the settlement must be admissible; the settlement must be concluded within the framework of legal relationships that the parties can freely dispose of; and the settlement must be in accordance with mandatory rules and rules of morality (Vojković, 2019: 963).

On the other hand, Italian legislation provides no specific requirements for its conclusion. In regard to the Slovenian 'court settlement', the law only provides that the parties cannot conclude a settlement regarding the claims that they cannot dispose of.[14]

2.1.2 Procedure

During the proceedings in all of the selected Member States, the courts will usually remind[15] the parties of the possibility of concluding a court settlement, or even urge[16]

[14] Art 306(4) Slovenian Civil Procedure Act (Zakon o pravdnem postopku), Uradni list RS, št. 73/07 – uradno prečiščeno besedilo, 45/08 – ZArbit, 45/08, 111/08 – odl. US, 57/09 – odl. US, 12/10 – odl. US, 50/10 – odl. US, 107/10 – odl. US, 75/12 – odl. US, 40/13 – odl. US, 92/13 – odl. US, 10/14 – odl. US, 48/15 – odl. US, 6/17 – odl. US, 10/17, 16/19 – ZNP-1, 70/19 – odl. US, 1/22 – odl. US in 3/22 – ZDeb (Slovenian CPA).

[15] See Art 321(3) Croatian CPA.

[16] For Germany, see Art 278(1) Zivilprozessordnung in der Fassung der Bekanntmachung vom 5. Dezember 2005 (BGBl. I S. 3202; 2006 I S. 431; 2007 I S. 1781), die zuletzt durch Artikel 19 des Gesetzes vom 22. Februar 2023 (BGBl. 2023 I Nr.51) geändert worden ist (ZPO); for Italy, see Arts

them to amicably settle the dispute. In Germany, the main trial will start with a conciliatory hearing during which the judge will seek to find an amicable agreement between the parties, unless an attempt at conciliation has already been made before or if the discussion on potential conciliation seems pointless (Berlemann and Christmann, 2019: 147).[17] Similarly, in Italy, at the first appearance hearing, the court may fix a date for a formal conciliation hearing. The attempt at conciliation may be renewed at any time during proceedings.[18]

A settlement itself may be concluded in different ways. In Germany, it can be made before a court and declared in the minutes of the hearing; by the parties submitting to the court a written proposal for a settlement; or by the parties' acceptance of a proposed written settlement by the court.[19] If the settlement was concluded by means of such written proposals, the court will determine the conclusion and content of the settlement by an order.[20] In any case, the settlement will be considered as concluded when the parties agree on the content (Lorenz, 2000: 1). It is at this point that such settlement starts producing effects. A settlement may be concluded subject to revocation of confirmation, in which case there is a suspensive condition of effectiveness until the end of the revocation period (Lorenz, 2000: 2; Leibniz Universität Hannover et al., 2020: 123).

In Italy, a settlement may be reached either before a judge, i.e., in court, or by an out-of-court agreement of the parties, through their respective lawyers (Layton and Mercer, 2004: 330). If a settlement is reached in court, it will be recorded in the *processo verbale*, i.e., in the minutes of the proceedings (Layton and Mercer, 2004: 320).[21] The minutes are then signed by the parties, by the judge and by the court clerk (Layton and Mercer, 2004: 330). In case of an out-of-court agreement, it will have to be approved by a court in order to qualify as 'court settlement' under the EU regulations.

183, 185, 185-bis Codice di procedura civile, Regio decreto 28 ottobre 1940, n. 1443 aggiornato alla Legge n. 137/2023 (CPC); for Slovenia, see Art 279c Slovenian CPA.

[17] Art 278(2) ZPO.

[18] Art 185 CPC.

[19] Arts 118(1), 278(6), 492(3) ZPO.

[20] Art 278(6) ZPO.

[21] Art 199 CPC.

Under Croatian law, as already visible from the definition given above, a court settlement is concluded by the parties before a court. The settlement is entered in the form of the minutes of the court proceeding, which are then signed by the parties. The same procedure may also be found in Slovenian law.[22] Slovenian Civil Procedure Act additionally prescribes that, similarly as in Germany, a court settlement may also be concluded by a written settlement proposal prepared by a judge and sent to the parties; in that case, the settlement will be concluded after the parties sign such proposal.[23]

2.1.3 Effects

The last aspect that influences the notion of 'court settlement' at the national level is the effect that such settlement produces under the law of the Member State of its origin. After an analysis of the laws of Germany, Italy, Croatia and Slovenia, it was found that court settlements emanating from those jurisdictions may produce the following effects: termination of litigation; finality; enforceability; and *res iudicata* effect.

The first effect, common to all the selected national legal systems, is the effect of termination of litigation (Lorenz, 2000: 2; Vojković, 2019: 962). Naturally, the parties are free to conclude a settlement regarding the subject of their dispute during the entire procedure before the court[24] – as mentioned above, conclusion of a settlement is even encouraged. If a settlement is achieved, the legal effect of ending the litigation occurs at the moment that such settlement is concluded. This effect of termination of litigation is direct – no additional action, such as a statement on the withdrawal of the claim, is necessary (Vojković, 2019: 963; Lorenz, 2000: 2).[25]

The second effect is the effect of finality. In other words, after a court settlement is concluded, it becomes final and thus legally binding for the parties. The moment when a court settlement starts producing the effect of finality should usually be the

[22] Art 307 Slovenian CPA.

[23] Art 307 Slovenian CPA.

[24] See e.g., Art 321(1) Croatian CPA.

[25] Also visible from Arts 185, 199 CPC, and Arts 306-309a Slovenian CPA.

same as when it starts producing the previous effect, i.e., the effect of termination of litigation.[26]

In terms of the third effect, a court settlement fulfilling the necessary requirements and concluded in the way prescribed by the national procedural law of a particular Member State will acquire the effect of enforceability. In that vein, court settlements, as understood under the laws of Germany, Italy, Croatia and Slovenia, will all constitute an enforcement title document (Layton and Mercer, 2004: 320; Giussani, 2018: 15).[27] The moment in which a court settlement becomes enforceable will depend on the procedural rules of the Member State in question. For example, a Croatian court settlement will become enforceable at the same moment as when it starts producing the two previously noted effects, i.e., when the court minutes in which the content of the settlement is entered has been signed by the parties, on the assumption that the claim is due (Vojković, 2019: 965). According to the Slovenian Enforcement Law, the settlement becomes enforceable when the claim arising from the settlement is due.[28] In Italy, when the parties reach a settlement, a report of the agreement is drafted, which constitutes an enforceable title.[29] On the other hand, according to ZPO, a German court settlement will become enforceable after it has been concluded and after it has been certified as an enforceable execution copy of the court settlement (Leibniz Universität Hannover et al., 2020: 123).[30] The enforceable copy is issued by the court clerk of the registry of the court (Leibniz Universität Hannover et al., 2020: 123).

Finally, the fourth effect that court settlements may produce is the *res indicata* effect. Out of the four selected Member States, such an effect was detected in Croatian and Slovenian court settlements, and is reflected in their national laws.

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[26] As reflected in all of the relevant provisions of ZPO, CPC, Slovenian CPA and Croatian CPA, that were previously mentioned above.

[27] Art 794(1) ZPO; Arts 185, 322 CPC; Art 23 Croatian Enforcement Act (Ovršni zakon), Narodne novine 112/12, 25/13, 93/14, 55/16, 73/17, 131/20, 114/22, 06/24; Art 17 Zakon o izvršbi in zavarovanju, (Uradni list RS, št. 3/07 – uradno prečiščeno besedilo, 93/07, 37/08 – ZST-1, 45/08 – ZArbit, 28/09, 51/10, 26/11, 17/13 – odl. US, 45/14 – odl. US, 53/14, 58/14 – odl. US, 54/15, 76/15 – odl. US, 11/18, 53/19 – odl. US, 66/19 – ZDavP-2M, 23/20 – SPZ-B, 36/21, 81/22 – odl. US in 81/22 – odl. US).

[28] Art 20 Zakon o izvršbi in zavarovanju.

[29] Arts 185, 199 CPC.

[30] Arts 795, 724(1) ZPO.

Under Croatian law, a court settlement is, due to its legal nature, in certain aspects equated to a final court judgment (Vojković, 2019: 963).[31] It acquires the effect of *res iudicata* at the moment of its conclusion, i.e., when the parties sign the minutes of the proceeding. Afterwards, there is no possibility of re-litigation of a claim between the same parties (*ne bis in idem*). This *res iudicata* effect that is awarded to Croatian court settlements is not expressly determined by the provisions of the Croatian legal acts; however, it is derived from the interpretation of the provisions of civil procedural law. Primarily, the Croatian Civil Procedure Act prescribes that the court *ex officio* monitors whether proceedings are pending in a case on which a court settlement was previously concluded. Any lawsuit filed on the subject of the dispute in which the court settlement was concluded will be dismissed as inadmissible (Vojković, 2019: 966).[32] Moreover, if a decision has been made on a claim on which a court settlement has already been concluded, this constitutes an essential violation of the provisions of civil procedure, and it is one of the reasons for contesting the court judgment.[33]

The effects awarded to Slovenian court settlements overlap with the effects awarded to Croatian court settlements.[34] As confirmed by Slovenian courts, court settlement is *res transacta*, which enjoys the same effect as *res iudicata*.[35] In other words, the procedural objection of *res iudicaliter transactae* is the same as the more commonly known *res iudicatae* objection (Vojković, 2019: 964; Kunda and Tičić, 2022: 174). This holds true both in Slovenian and Croatian law. Thus, the same rules apply in regards to settlements as in regards to final judgments (Rijavec, 2023: 56). This makes court settlements and judgments much more similar in these legal systems, as *res iudicata* effect is usually given only to judgments. Such effect will thus be of particular importance for distinguishing court settlements from judgments at the EU level, which will be further discussed below.

[31] See also County court of the Republic of Croatia, Gž-4983/13-2.

[32] Art 323 Croatian CPA.

[33] Art 354(2)(9) Croatian CPA.

[34] See Arts 306-309a Slovenian CPA.

[35] Republika Slovenija, Vrhovno sodišće, Sklep II Ips 877/2009, ECLI:SI:VSRS:2012:II.IPS.877.2009 (2012), no. 8; Republika Slovenija, Vrhovno sodišće, Sklep II Ips 268/2011, 03. 04. 2011, ECLI:SI:VSRS:2014:II.IPS.268.2011 (2011), nos. 8-10.

In terms of German and Italian settlements, these do not produce the *res iudicata* effect (Lorenz, 2000: 2; Leibniz Universität Hannover et al., 2020: 120; Ferrari, 2014: 91). This means that, while they resolve the dispute and may have enforceable terms, they do not preclude the re-litigation of the same issues unless the parties adhere to the terms of the agreement. In other words, while these settlements resolve the legal dispute and may create binding substantive legal agreements, they do not carry the formal legal status of *res iudicata*.

2.2 'Court settlement' in the EU

The notion of 'court settlement' under the EU regulations is subject to Euro-autonomous interpretation (Kunda and Tičić, 2022: 171), and is defined as 'a settlement which has been approved by a court of a Member State or concluded before a court of a Member State in the course of proceedings'.[36] Such a definition represents a certain development from the previous definition that can be found in the previous version of the Brussels I Regulation,[37] which referred to court settlements only as settlements, which have been approved by a court of a Member State in the course of proceedings.[38] Although the change was not significant, it was done in order to clarify the provision, as well as in view of other changes to the system of enforcement in Brussels I Recast (Kramer, 2023: 953).

Following the author's previous research on this topic in the context of the Twin Regulations,[39] the following paragraphs are dedicated to these elements of the definition: agreement between the parties; involvement of a court; and distinction from judgments (Kunda and Tičić, 2022: 170-175).

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[36] Art 2(b) Brussels I Recast. Maintenance Regulation also employs the same definition, while also adding that the settlement must be in matters relating to maintenance obligations; see Art 2(1)(2) Maintenance Regulation. A similar definition (with some additions) is also employed in Art 23a ESCPR.

[37] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ 2001 L 12/1 (Brussels I Regulation).

[38] Art 58 Brussels I Regulation.

[39] Council 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, OJ 2016 L 183/1; Council 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, OJ 2016 L 183/30.

2.2.1 Agreement between the parties

The first part of the definition provides that a settlement must be concluded between the parties. In other words, the parties must come to a mutual agreement in regards to a particular legal issue. This requirement, although set broadly, allows us to distinguish settlements from other types of documents. This delineation was established early on in *Solo Kleinmotoren* ruling, where the CJEU made a distinction between court settlements and judgments, stating that 'settlements in court are essentially contractual in that their terms depend first and foremost on the parties' intention',[40] while judgments must 'emanate from a judicial body of a Contracting State [now, Member State] deciding on its own authority on the issues between the parties.'[41] In that vein, 'the authority of the law does not lie behind a court settlement as it does in the case of a court judgment'.[42] Thus, 'settlements' are at their core contractual instruments established on the basis of the parties' intentions.

However, a settlement, i.e., a private agreement between the parties, does not equal a 'court settlement'. In order to qualify as such, a court's involvement is indispensable, as reflected in the second part of the definition.

2.2.2 Involvement of a court

The second requirement for the characterisation of 'court settlement' allows us to distinguish settlements in the sense of private agreements between the parties from actual court settlements. As it is clear from literal interpretation, the court's involvement is a necessity for the latter. Such involvement will relate to one of the two possibilities: either to *ex post* approval of a settlement that was reached between the parties outside of court proceedings; or to the conclusion of a court proceeding by an agreement between the parties, rather than the court's decision. With regard to the former, a settlement reached outside of a court will have to be in accordance with domestic law and formally approved by the court.[43] Here, the court's

[40] Case C-414/92 *Solo Kleinmotoren GmbH v Emilio Boch* (1994) EU:C:1994:221, no. 18.

[41] *Solo Kleinmotoren*, no. 17.

[42] Opinion of Advocate General Gulmann, Case C-414/92 *Solo Kleinmotoren GmbH v Emilio Boch* (1944) EU:C:1994:110, no. 29.

[43] Art 2(b) Brussels I Recast; Art 24(1) EEOR; Art 23a ESCPR; Art 2(1)(2) Maintenance Regulation.

involvement does not consist merely of rubber-stamping; instead, an active review of the settlement is necessary (Kramer, 2023: 954). In regard to the latter, such settlement will often be the result of a judicial attempt to resolve the case brought before the court through a mutual agreement (Kramer, 2023: 953). As shown above, many Member States actually oblige their courts to urge the parties to try to find an amicable solution to their dispute. Even if the parties initially refuse to settle, this may still happen afterwards in the course of the procedure before the court. In that vein, parties may eventually resort to a settlement due to financial pressure, excessive length of court procedure, reputation damage or similar issues.

2.2.3 Distinction from judgments

Despite the two requirements elaborated above, the definition of 'court settlement' in the instruments of EU private international law has previously been described as 'vague' and 'rather suboptimal from the legislative point of view' (Anzenberger, 2020: 152; Anzenberger, 2023: 338). A first criticism can be related to the usage of a circular definition (Anzenberger, 2020: 152; Anzenberger, 2023: 338), which is also used when defining 'judgment'.[44] This choice, while leaving space for difficulties in interpretation, is understandable as both definitions were drafted with the intention to include all of the different types of decisions that can be found in the national systems of the Member States. The second criticism points to the fact that 'there are no positive criteria for identifying what legal acts may be considered a court settlement' (Anzenberger, 2020: 152; Anzenberger, 2023: 338). Some answers to this issue may be found in the CJEU case law, as shown above, as well as in the national laws themselves, as most of the Member States are well-acquainted with the notion of court settlement; therefore, a more detailed definition may seem redundant. Regardless of these reasons, the definition does leave room for certain examples of national instruments which fall somewhere between a 'court settlement' and a 'judgment'.

The most prominent examples of such instruments are the so-called 'consent judgments'. While this term originates from the concept in English law,[45] these types

[44] See e.g., Art 2(a) Brussels I Recast; Art 4(1) EEOR.
[45] Opinion of Advocate General Gulmann, no. 29.

of judgments can also be found under the laws of Member States such as Belgium, Luxembourg or Ireland (Merrett, 2023: 90). Such 'consent judgments', although similarly resulting from the parties' intention to conclude an agreement, can produce the effect of *res iudicata*, which is not accorded to court settlements as understood under the EU notion (Rijavec, 2023: 46; Kunda and Tičić, 2022: 173; Briggs, 2021: 755; Hess, Pfeiffer and Schlosser, 2007: 277; Layton and Mercer, 2004: 869). Instead, such effect is regularly accorded to 'judgments'. This differentiation has been noted by AG Gulmann in the *Solo Kleinmotoren* opinion, where he dismissed the arguments made by some of the parties claiming that these two different ways of dispute resolution differ only in minor details, as well as the arguments claiming that the result of both court settlements and consent judgments was the same in practice.[46] Afterwards, the inclusion of 'consent judgments' under the notion of 'judgment' instead of 'court settlement', as understood under the EU private international law regulations, was also explicitly confirmed in the Heidelberg report (Hess, Pfeiffer and Schlosser, 2007: 277).

With regard to CJEU rulings, since the aforementioned *Solo Kleinmotoren* ruling, there has been little case law specifically addressing the effects of court settlements. This is an unsurprising trend, given the general scarcity of case law on settlements as opposed to judgments, as well as the expectation that a settlement ordinarily precludes further litigation. Nonetheless, occasional references to the principle of *res iudicata* in other CJEU rulings may suggest that such effects are typically reserved for judgments.[47] In contrast, according to scholarly writings, the view that only judgments (and not court settlements, at least as understood in the EU context) should carry such effect has been reaffirmed over the years (Hess et al., 2024: 2-3; Tičić, 2024: 627; Tičić, 2024a: 570; Hess, 2022: 5-6; Kunda and Tičić, 2022: 173).

The argument that court settlements lack *res iudicata* effect is persuasive, particularly given how the system of recognition and enforcement in the selected EU instruments treats judgments. In that vein, judgments can be refused enforcement if they clash with another judgment.[48] Court settlements, on the other hand, benefit

[46] *Ibid.*, no. 30.

[47] See, e.g., Case C-700/20, *London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain* (2022) EU:C: 2022:488, nos 74-80.

[48] Art 45(1)(c) and (d) Brussels I Recast; Art 21 EEOR; Art 22 ESCPR; Art 21(2) and Art 24(c) and (d) Maintenance Regulation.

from a far more restrictive approach: under the Brussels I Recast, they may only be refused enforcement if they violate public policy,[49] while EEOR does not allow for any refusal grounds at all.[50] This suggests that court settlements are not meant to have *res iudicata* effect; otherwise, the system would be inconsistent, as outcomes based on party agreements would escape a rule meant to prevent conflicting decisions (Kunda and Tičić, 2022: 173-174). Such interpretation supports the EU's goal of a coherent judicial space where enforceable rights don't contradict across borders. In light of the preceding analysis of the notion of 'court settlement', both under the laws of selected Member States and under EU law, and in line with the established findings in academic literature, it becomes evident that the documents referred to as court settlements in the Croatian and Slovenian legal systems are, in fact, more accurately classified as 'consent judgments'. As demonstrated throughout this discussion, these instruments are distinctive precisely because they produce the effect of *res iudicata* – a legal consequence that, under EU private international law, is reserved exclusively for judgments. This doctrinal and practical distinction has been recognised in academic commentary and is also supported (though less overtly) by the jurisprudence. Thus, for the purposes of recognition and enforcement under the relevant EU regulations, Croatian and Slovenian 'court settlements' must be regarded as 'judgments' or 'decisions'.' Accordingly, it may be inferred that any national instrument that produces *res iudicata* effect cannot be characterised as 'court settlement' in the EU private international law regulations selected for this research.

3 Enforcement of court settlements

After determining what constitutes a 'court settlement' in the EU and in the Member States, the analysis will now turn to the process of enforcement of court settlements under the regulations selected for this research. As visible from the overview above, while the general definition of 'court settlement' may be fairly similar in the regulations and in the Member States, the effects these settlements produce can differ significantly, so much so that some national 'court settlements', as noted above, will not be classified as such for the purposes of enforcement under the EU regulations. In view of these differences, it is important to question whether the rules provided in the regulations adequately regulate the issue of cross-border

[49] Art 58(1) and Art 59 Brussels I Recast.
[50] Art 24 EEOR.

enforcement of court settlements, or do such rules leave space for problems in practice. This question will be answered based on the following analysis of different steps of the procedure for cross-border enforcement of court settlements.

3.1 Recognition of court settlements under selected regulations

Instead of moving directly to the question of enforcement of court settlements, the preceding step of recognition warrants some attention. To start with, it may be observed that the issue of recognition of court settlements is regulated differently in the selected regulations. In ESCPR and Maintenance Regulation, court settlements will be recognised under the same conditions as judgments.[51] On the other hand, under Brussels I Recast and EEOR, it seems that court settlements are not subject to recognition.

In terms of Brussels I Recast, this is visible from the provisions on court settlements, which otherwise refer only to the provisions on the enforcement of judgments, and not also the recognition.[52] Similarly, in terms of EEOR, its Article 24(3) refers to the provisions on the enforcement of judgments, while excluding referral to Article 5 on automatic recognition. This would mean that the status between the parties that is agreed in the settlement will not be recognised as such. The reason for this choice may be that the court settlements lack the recognisable authoritative effects that are regularly displayed by judgments (Layton and Mercer, 2004a: 1047).

Even if such reasoning is accepted, it remains questionable why this choice was made only in relation to some instruments – if a court settlement is recognised under ESCPR and under Maintenance Regulation, why is the same not possible under Brussels I Recast or EEOR? Actually, even the Heidelberg Report on the application of Brussels I Regulation noted that court settlements 'must be recognised in all Member States' (Hess, Pfeiffer and Schlosser, 2007: 276), which is questionable given the abovementioned provisions which clearly disallow such a possibility. Such lack of the possibility of recognition may also weaken the 'attractiveness' of concluding a court settlement in cross-border cases (Anzenberger, 2023: 347). It is also problematic that a certain case may fall under the scope of different regulations,

[51] Art 23a ESCPR; Art 48(1) Maintenance Regulation.

[52] Arts 58, 59 Brussels I Recast.

e.g., under both ESCPR and Brussels I Recast/EEOR;[53] however, the possibility of recognition of a court settlement would then be subject to different recognition regimes, depending on the regulation in question, which may lead to legal uncertainty (Anzenberger, 2023: 347). Moreover, court settlements are usually subject to less stringent conditions for their enforcement as opposed to judgments.[54] It seems counterintuitive to simplify the enforcement process on the one hand, but remove the possibility of recognition whatsoever on the other. Thus, allowing recognition would lead to simplified utilisation of a court settlement for the parties – e.g., if a party wants to register certain ownership right based on an existing court settlement, it should be possible to do so without any further steps necessary.

It could be that the EU legislator wanted to avoid the recognition of various effects that court settlements produce in different Member States (Anzenberger, 2023: 345), such as the *res iudicata* effect. However, as it was shown above, national 'court settlements' that produce such effect would be qualified as 'judgments.' Therefore, this possibility seems unlikely. However, a court settlement may also produce other effects that may be worthy of recognition abroad, such as, e.g., the effect of substituting formal requirements or a constitutive effect (Anzenberger, 2023: 345). It thus remains questionable whether such effects should actually be allowed recognition abroad. On that note, an argument in favour of recognising court settlements, specifically their effect of enforceability, has been made before (Anzenberger, 2020: 159). It has also been noted that enforcement itself could 'implicitly be regarded as recognising the contractually agreed status between parties' (Kramer, 2023: 955). If this is the case, it is even more unclear why the recognition of court settlements is explicitly excluded under some regulations, while allowed under others, which all regulate civil matters, particularly monetary claims.

Thus, in order to clarify any interpretational issues and equate the effects of court settlements under the selected EU regulations, it would be beneficial to allow recognition of court settlements also under Brussels I Recast and EEOR. This would help amend the issue of fragmentation of the legal framework for court settlements in the EU (Anzenberger, 2023: 335) and truly enable the free circulation of court settlements in the same way as judgments. Moreover, it would also be beneficial in

[53] See Art 2 Brussels I Recast; Art 2 EEOR, Art 2 ESCPR.
[54] See Art 58(1) and Art 59 Brussels I Recast; Art 24 EEOR.

view of promoting consensual conflict resolution in the EU (Anzenberger, 2023: 333). This improvement could be done by the addition of relevant provisions on the recognition of judgments when referring to the application of rules regarding judgments. On the occasion that court settlements under Brussels I Recast and EEOR are deemed as not worthy of recognition because of, e.g., not having authoritative effects in the same way as judgments, it would still be beneficial to clarify this in the relevant regulations, given that, as shown above, different interpretations on the concept of recognition may be found

3.2 Enforcement of court settlements under selected regulations

The enforcement of court settlements under the selected regulations will mostly follow the rules relevant for the enforcement of judgments. Regardless, some peculiarities of court settlements as an instrument for enforcement can be detected.

3.2.1 Requirements for enforcement

All of the selected EU regulations refer to the applicability of the provisions on the enforcement of judgments also for the enforcement of court settlements.[55] For example, Article 59 of Brussels I Recast prescribes that 'a court settlement which is enforceable in the Member State of origin shall be enforced in other Member States under the same conditions as authentic instruments.' The previous article, which regulates authentic instruments, points out that the relevant provisions on the enforcement of judgments[56] shall apply as appropriate also in relation to the enforcement of court settlements.[57] Thus, the rules for the enforcement of judgments also apply here.

In order for a court settlement to be enforced in another Member State, it must be authentic and enforceable.[58] The requirement of authenticity is visible from Article 42(1)(a), as the competent enforcement authorities in the Member State of enforcement will have to be presented with the court settlement whose enforcement

[55] Art 59 Brussels I Recast; Art 24(1) EEOR; Art 23a ESCPR; Art 48 Maintenance Regulation.
[56] Specifically, the provisions of Section 2, Subsection 2 of Section 3, and Section 4 of Chapter III.
[57] Art 58 Brussels I Recast.
[58] Art 42(1)(a) and Art 59 Brussels I Recast.

is being sought. Such a settlement will have to satisfy the necessary conditions for the establishment of its authenticity in the requested Member State. The authenticity relates not only to the court's approval, but also to the content of the settlement (Layton and Mercer, 2004a: 1048). The requirement of enforceability is visible from Article 59, which explicitly mentions that the settlement itself must be enforceable. This relates to 'abstract enforceability', i.e., a court settlement will still be enforceable if it lacks 'concrete enforceability' in the Member State of origin due to, e.g., lack of assets in that State (Anzenberger, 2020: 155). If the enforceability depends on a provision of security or a similar matter, this remains a prerequisite for the enforcement in another Member State as well (Anzenberger, 2020: 155).

3.2.2 Certification

On the occasion that the court settlement is indeed enforceable, the competent authority in the Member State of origin will issue a certificate.[59] In terms of Brussels I Recast and EEOR, such a certificate will be different than the certificate for judgments, as these regulations offer a specific certificate for court settlement.[60] The competent authority in question does not have to be a court – the designation of such authority is left entirely to the Member States. The identity of such authority may remain somewhat invisible, as Brussels I Recast does not require the Member States to communicate who the competent authority actually is, as opposed to the requirement of notification of the authorities competent for enforcement.[61] However, it seems that usually the competent authority for issuance of the certificate is the same authority that approved the settlement whose enforcement is sought (Buzzoni and Santaló Goris, 2022: 9) – i.e., a court. After the certificate is issued, it can then be presented to the competent enforcement authorities in the Member State of enforcement – the information on the competent enforcement authority in a particular Member State may be found on the e-Justice website.[62] Along with the certificate, the court settlement itself must be presented for the assessment of its authenticity,[63] as mentioned above. The enforcement itself will then continue according to the appropriate rules of the Member State of enforcement.

[59] Art 60 Brussels I Recast; Art 24(1) EEOR; Art 20(2) ESCPR; Art 48(3) Maintenance Regulation.
[60] See Annex II of the Brussels I Recast and Annex II of the EEOR.
[61] See Art 74 Brussels I Recast.
[62] See "e-Justice", accessed June 9, 2025. European e-Justice Portal (europa.eu).
[63] Art 60 Brussels I Recast.

3.2.3 Enforcement

As with judgments, the enforcement procedure itself is governed by the national law of the Member State addressed. The issues that may occur in relation to the enforcement of judgments, e.g., the issue of adapting unknown measures (Anzenberger, 2020: 158),[64] can also emerge when enforcing a court settlement. These issues, however, will not be any different than with judgments; therefore, a different approach to court settlements in those cases is not necessary.

3.2.4 Refusal of enforcement

An important difference from the enforcement of judgments lies in the possibility of refusal of enforcement. As opposed to a number of refusal grounds listed in terms of enforcing a judgment,[65] refusal of the enforcement of a court settlement under the Brussels I Recast will only be possible on the ground of public policy exception.[66] Such a review is possible only in regard to procedural matters, i.e., conditions under which a court settlement is concluded/approved (Kramer, 2023: 954), and not to the substance of the settlement, as Brussels I Recast explicitly refers to Article 52, which prohibits review on the substance in terms of judgments.[67] At the same time, it seems that some confusion on whether review of the substance is in fact possible here remains (Kramer, 2023: 954). As public policy exception is to be interpreted strictly (Kramer, 2023: 954; Mankowski, 2023: 856), and in line with the prohibition of review on the substance, it seems that the only potential substantive issue that may potentially be reviewed is whether the parties concluded the settlement on the matters they can actually dispose of. Regardless, given that court settlements may indeed be concluded only on the matters that the parties can freely dispose of, and given that such a settlement will have to be confirmed by a court, it is clear that court settlements must always conform to certain legal standards. It is therefore unlikely that a refusal on the basis of public policy exception will be possible. As has been noted before, successful refusal of enforcement (of both judgments and court

[64] Art 54(1) Brussels I Recast.

[65] See Art 45 Brussels I Recast.

[66] Arts 59, 58(1) Brussels I Recast.

[67] Arts 52, 58, 59 Brussels I Recast.

settlements) on the basis of public policy is very rare in practice (Hess, Pfeiffer and Schlosser, 2007: 242).[68]

A potential problem may arise if the court is faced with a conflict between a court settlement and an earlier judgment. As stated above, Brussels I Recast does not offer the possibility of refusal of enforcement of a court settlement on the basis of it being irreconcilable with an earlier judgment[69] – this may be because, if an agreement is reached between the parties, such an agreement should trump a prior court decision on the matter. However, some authors have commented on this (Beaumont and Walker, 2015: 42), stating that a court may, in such situations, actually exercise its discretion and may even give priority to an earlier judgment. This interpretation seems incorrect, considering that Brussels I Recast excludes this ground of refusal for court settlements; therefore, it is questionable why the courts would still go into an assessment of which decision should be given priority. On the other hand, given that court settlements, in the EU sense of the notion, do not produce the *res iudicata* effect, while judgments do, it may be questionable whether the judgments should actually have precedence over court settlements. It may thus be opportune to clarify this in the relevant regulations.

As opposed to court settlements under Brussels I Recast, enforcement of court settlements certified as a European Enforcement Order will not be subject to any possibility of refusal of enforcement.[70] This differs from the possibility of refusal of enforcement of judgments, where EEOR still provides for the refusal ground based on irreconcilability with another judgment.[71] Since EEOR regulates only the uncontested claims and employs additional minimum standards that must be respected in order for a court settlement to be certified as a European Enforcement Order,[72] as well as given the fact that such settlements are the result of amicable agreement, it seems that this refusal ground may indeed be unnecessary when enforcing court settlements as opposed to judgments.

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[68] See also IC2BE database, accessed June 9, 2025. IC2BE (uantwerpen.be); EFFORTS reports, accessed June 9, 2025. Collection of national case-law - Efforts (unimi.it).

[69] Art 58(1) and Art 59 Brussels I Recast.

[70] Art 24(3) EEOR.

[71] Art 21(1) EEOR.

[72] See, e.g., LG Karlsruhe, Beschluss vom 17.12.2012 – 6 O 419/10, accessed June 9, 2025. IC2BE LG Karlsruhe, Beschluss vom 17.12.2012 – 6 O 419/10 (uantwerpen.be).

In ESCPR, there are no exceptions similar to those in Brussels I Recast or in EEOR.[73] This primarily means that, for the court settlements enforced under ESCPR, there will be a possibility of refusal under the one remaining ground for judgments, i.e., on the basis of irreconcilability with another judgment.[74] Similarly, the exception of irreconcilable decisions[75] for the enforcement of court settlements is also provided in the Maintenance Regulation.[76] The decision to remove almost all possibility of refusal is significant, but was to be expected given that maintenance is one of the fields in which the EU has long strived for 'simplified and accelerated cross-border litigation',[77] as well as 'further reduction of the intermediate measures.'[78] The importance of the field of maintenance is certainly warranted by its special features, particularly given that maintenance is not a mere monetary claim – instead, it 'guarantees the creditor's welfare and has a direct impact on public funds' (Hess and Spancken, 2014: 331). Thus, the specificities of decisions rendered in family matters must be taken into account when comparing the refusal grounds of the Maintenance Regulation with the rest of the selected regulations that govern civil and commercial matters.

Although the differences may be subtle, it is certainly interesting that these instruments regulate court settlements differently, as all of them regulate connected subject matter and sometimes even overlap in scope. Although the regulations indeed represent different stages of development of the rules on recognition and enforcement in the EU (Huber, 2012: 428), there seems to be no factual justification for the current differences (Anzenberger, 2023: 345). This is most starkly visible

[73] Art 23a ESCPR.

[74] Art 22 ESCPR.

[75] See Arts 21, 24, and 48 Maintenance Regulation.

[76] An important distinction, relevant also in terms of judgments, is that Maintenance Regulation provides for a two-track system of enforcement. Thus, court settlements emanating from Member States bound by the 2007 Hague Protocol will be automatically enforceable, with a limited number of possibilities of refusal. On the other hand, court settlements emanating from Member States not bound by the 2007 Hague Protocol will be subject to an exequatur procedure.

[77] Tampere European Council, 15 and 16 October 1999, Presidency Conclusions, accessed June 9, 2025. Tampere European Council 15-16.10.1999: Conclusions of the Presidency - European Council Tampere 15-16.10.1999: Conclusions of the Presidency (europa.eu), point 30.

[78] *Ibid.*, point 34.

from the different refusal grounds, with some regulations offering only one[79] or more[80] refusal grounds, whether it be public policy exception or the refusal based on irreconcilability with earlier judgment, while other abolish all possibility of refusal.[81] This may point to the possibility that court settlements are indeed regulated only as an afterthought, when compared to the regulation of the enforcement of judgments. At the same time, some of the differences in the treatment of court settlements in the mentioned regulations also exist in terms of judgments. Regardless, it is questionable whether such different treatment is necessary.

In line with the abovementioned suggestions in terms of recognition, it is also advisable to reassess the current approach in terms of enforcement. The possibility of creating a uniform legal regime for all court settlements in one EU regulation instead of the current, somewhat scattered approach has actually been acknowledged before (Anzenberger, 2023: 337). However, a less radical approach would be to align the existing provisions in order to equate the legal framework for recognition and enforcement of court settlements. This would particularly affect the refusal grounds – in that sense, the reasons as to why court settlements should be allowed refusal of enforcement seem to be limited.

As established above, court settlements will be concluded as an agreement between the parties, with the assistance of a court, which must actively review the settlement in question. It goes without saying that court settlements cannot be concluded on matters that the parties cannot dispose of. Thus, the instances where a court settlement could be refused on the basis of a public policy exception are low, perhaps even lower than for judgments. The rarity of refusal on the basis of public policy in general is also reflected in case law and literature, as already noted above. Similar lack of case law may also be found in terms of refusal on the ground of irreconcilability with another judgment. While not all case law is published, the available cases and reports do usually make a good pointer to the relevant issues. Additionally, all of the abovementioned reasons for why it would be rare for a court settlement to be refused enforcement also apply in terms of irreconcilability. However, here it may be opportune to clarify, in the regulations, whether an earlier

[79] Arts 58(1) and 59 Brussels I Recast; Arts 22(1) and 23a ESCPR.
[80] Arts 21, 24 and 48 Maintenance Regulation.
[81] Art 24(2) EEOR.

judgment (which has the *res iudicata* effect) has priority over a court settlement (which does not produce such effect) or there is no space for assessing priority at all, as the current wording of Brussels I Recast suggests.

In that vein, the approach taken by the EEOR should also be taken by the Brussels I Recast and ESCPR, with additional clarification in terms of irreconcilability with earlier judgment. In terms of the Maintenance Regulation, however, the different nature of the proceedings, i.e., the particularly sensitive issue of maintenance that 'goes beyond a mere monetary claim' (Hess and Spancken, 2014: 331), may warrant differences in the approach to court settlements. Thus, further research into EU regulations on family law should be done in order to detect whether the approach in the Maintenance Regulation should be more aligned with the rest of those regulations, rather than the regulations that this paper focuses on.

4 Conclusion

As practical instruments of amicable dispute resolution, court settlements are rightfully represented in the relevant regulations available for their recognition and enforcement in the EU. However, cross-border enforceability and enforcement of court settlements, as well as the mere definition of 'court settlement' in the EU and its Member States, are open to some challenges. This paper aimed to explore such challenges and bring them to the forefront for the possibility of clarifying the remaining interpretational difficulties and proposing new solutions if necessary.

It has been primarily showcased that the notion of 'court settlement' at the EU level and the notion of 'court settlement' at the national level, i.e., under the laws of selected Member States, must be differentiated. In that regard, while the definition of 'court settlement' at the national level may be fairly similar, the procedure for concluding a court settlement may slightly vary, with some Member States only providing one way of concluding a settlement, and others acknowledging multiple such ways. These divergences, however, are not such that they will have an effect on the inclusion of national 'court settlements' under the EU notion. Instead, it is the effects that national court settlements produce that may vary significantly, and that will, subsequently, affect whether national 'court settlements' will also be categorised as such under the relevant EU regulations. In that vein, it was detected that 'court settlement', as understood in national laws of Croatia and Slovenia, produces the *res*

iudicata effect, and may thus not be included in the EU notion of 'court settlement', but instead qualified as 'judgments.' As noted above, there are other Member States that also recognise such 'consent judgments.' The parties must thus be careful when seeking enforcement abroad, as 'court settlement' under the relevant EU private international law instruments cannot produce the *res iudicata* effect. This effect should thus be regarded as the determining factor when questioning how a particular national 'court settlement' should be characterised for the purposes of cross-border enforcement.

This could pose a particular problem in instances where parties may try to enforce their court settlements abroad without the assistance of a lawyer. For example, ESCP explicitly aims to encourage parties to engage in the proceedings without the assistance of a lawyer.[82] Even with the help of a lawyer, these particularities of EU versus national notions may still be lost on legal practitioners who do not regularly work on cross-border cases. Thus, it is necessary for all parties assisting in a cross-border procedure of enforcement, including parties, representatives, the court, etc., to be alert in order to detect possible mishaps such as wrong characterisation as a 'court settlement' or a 'judgment'.

In regards to the specific provisions on recognition and enforcement of court settlements, all of the regulations selected for this research refer to the relevant provisions on the recognition and/or enforcement of judgments. This choice reflects the fact that judgments are the most regularly used documents, based on which the relevant rules have originally been drafted. The scarcity of court settlements enforced abroad, which was detected when researching national case law, may point to the fact that the current reference to the general rules on the enforcement of judgments is functioning well. However, some clarifications regarding the recognition of court settlements would be beneficial, considering that some of the selected regulations, as mentioned above, leave out the possibility of recognition of court settlements without a visible reason. As suggested above, recognition of court settlements should be allowed in all regulations. Moreover, it could also be beneficial to opt for an aligned approach in the regulations, especially those on civil and commercial matters, particularly in regards to the refusal grounds

[82] As visible from Recital 15 of the Preamble of ESCPR, as well as the instructions accompanying the relevant forms that can be found in the Annexes of the ESCPR.

which differ unnecessarily. In that vein, it has been suggested to remove the possibility of refusal of enforcement of court settlements on the basis of the public policy exception, while also clarifying the rules on priority between a judgment and a court settlement that are irreconcilable. This would lead to a clearer framework on the enforcement of court settlements abroad, which is a step forward in the intricate web of the EU private international law provisions. Moreover, it would promote amicable dispute resolution, which generally seems to be the aim of the EU legislator.[83]

References

Anzenberger, P. (2020). The cross-border enforcement of court settlements within Brussels IA regulation: From a European and an Austrian perspective. *Lexonomica*, 12(2), 149-162. https://doi.org/10.18690/lexonomica.12.2.149-162.2020.

Anzenberger, P. (2023). The European Dimension of Court Settlements: Open Issues and Regulatory Needs. In V. Rijavec, W. Kennett, T. Keresteš and T. Ivanc (eds.), *Diversity of Enforcement Titles in the EU* (pp. 333-349). Springer.

Beaumont, P. and Walker, L. (2015). Recognition and enforcement of judgments in civil and commercial matters in the Brussels I Recast and some lessons from it and the recent Hague Conventions for the Hague Judgments Project. *Journal of Private International Law*, 11(1), 31-63. https://doi.org/10.1080/17536235.2015.1033197.

Berlemann, M. and Christmann, R. (2019). Determinants of in-court settlements: empirical evidence from a German trial court. *Journal of Institutional Economics*, 15(1), 143-162. https://doi.org/10.1017/S1744137417000637.

Briggs, A. (2021). *Civil jurisdiction and judgments*. Informa Law.

Buzzoni, M. and Santaló Goris, C. (2022). *EFFORTS project: Report on Practices in Comparative and Cross-Border Perspective.* Max Planck Institute Luxembourg for Procedural Law.

Chang, Y. and Klerman, D. (2022). Settlement around the world: Settlement rates in the largest economies. *Journal of Legal Analysis*, 14(1), 80-175. https://doi.org/10.1093/jla/laac006.

Ferrari, F. (2014). The Judicial Attempt at Conciliation: The New Section 185-bis of the Italian Code of Civil Procedure. *Russian Law Journal*, 2(3), 80-95. https://doi.org/10.52783/rlj.v2i3.238.

Giussani, A. (2018). *Cross Border Enforcement of Monetary Claims – Interplay of Brussels I A Regulation and National Rules. National Report: Italy*. University of Maribor Press.

Hess, B. (2021). Reforming the Brussels Ibis Regulation: Perspectives and Prospects. *Max Planck Institute for Procedural Law Research Paper Series*, 2021(4), 1-18.

[83] As visible from other EU acts such as, e.g., Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, OJ 2008 L 136/3.

https://www.mpi.lu/fileadmin/user_upload/MPILux_WP_2021_4__Reforming_Brussels_1bis_BH.pdf.

Hess, B., Althoff, D., Bens, T. and Elsner, N. (2024). The Reform of the Brussels Ibis Regulation – Academic Position Paper. *Vienna Research Paper*. https://dx.doi.org/10.2139/ssrn.4853421.

Hess, B. and Spancken, S. (2014). Setting the Scene – The EU Maintenance Regulation. In P. Beaumont, B. Hess, L. Walker and S. Spancken (eds.), *The Recovery of Maintenance in the EU and Worldwide* (pp. 331-336). Bloomsbury Publishing.

Hess, B., Pfeiffer, T. and Schlosser, P. (2007). Report (JLS/2004/C4/03) on the application of the Brussels I Regulation in the Member States. https://www.europarl.europa.eu/cmsdata/173086/20121011ATT53426.pdf.

Huber, S. (2012). Koordinierung europäischer Zivilprozessrechtsinstrumente. In R. Geimer and R. A. Schütze (eds.), *Recht ohne Grenzen. Festschrift für Athanassios Kaissis zum 65. Geburtstag* (pp. 413-430). Otto Schmidt Verlagskontor.

Kramer, X. (2023). Article 59. In U. Magnus and P. Mankowski (eds.), *European Commentaries on Private International Law (Commentary): Brussels Ibis Regulation* (pp. 952-955). Sellier European Law Pub.

Kunda, I. and Tičić, M. (2022). Authentic instruments and court settlements under the Twin Regulations. In L. Ruggeri, A. Limantė and N. Pogorelčnik Vogrinc (eds.), *The EU Regulations on Matrimonial Property and Property of Registered Partnerships* (pp. 157-190). Intersentia.

Kunštek, E., Kunda, I., Mihelčić, G. and Vrbljanac, D. (2020). National report for Croatia. https://pf.um.si/site/assets/files/5926/croatia.pdf.

Layton, A., and Mercer, H. (2004). *European Civil Practice (Vol 1)*. Sweet & Maxwell.

Layton, A., and Mercer, H., (2004). *European Civil Practice (Vol 2)*. Sweet & Maxwell.

Leibniz Universität Hannover, Institute for Procedural Law and Attorney Regulations, Wolf, C., Kurth, N. and Mieszaniec, K. (2020). National Report Germany. https://www.pf.um.si/site/assets/files/5926/germany.pdf.

Lorenz, S. (2000). Übersicht Prozeßvergleich. C:\TEXTE\AUGSBURG\Höchstrichterliche Rspr 1999 2000\Folien und Übersichten\Übersicht Prozeßvergleich.PDF.

Mankowski, P. (2023). Article 45. In U. Magnus and P. Mankowski (eds.), *European Commentaries on Private International Law (Commentary): Brussels Ibis Regulation* (pp. 842-918). Sellier European Law Pub.

Merrett, L. (2023). Article 2. In U. Magnus and P. Mankowski (eds.), *European Commentaries on Private International Law (Commentary): Brussels Ibis Regulation* (pp. 79-93). Sellier European Law Pub.

Paulus, C. G. (2017). *Zivilprozessrecht. Erkenntnisverfahren, Zwangsvollstreckung und Europäisches Zivilprozessrecht*. Springer.

Rijavec, V. (2023). Enforcement Titles Under Brussels I bis Regulation from National to EU Frameworks. In V. Rijavec, W. Kennett, T. Keresteš and T. Ivanc, *Diversity of Enforcement Titles in the EU* (pp. 3-70). Springer.

Tičić, M. (2024). The Notion of 'Judgment' in the EU Regulations on Cross-Border Collection of Monetary Claims: A Change in Understanding?. *European Papers*. 9(2), 557-592. https://doi.org/10.15166/2499-8249/771.

Tičić, M. (2024). Irreconcilable judgments in the EU Regulations: Reforming the ground(s) for refusal of enforcement. *Cuadernos de Derecho Transnacional*, 16(1), 621-640. https://doi.org/10.20318/cdt.2024.8438.

Vojković, L. (2019). Pravna priroda sudske nagodbe. *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 40(2), 957-970. https://doi.org/10.30925/zpfsr.40.2.12.

Povzetek članka v slovenskem jeziku (abstract in Slovene language):

Sodne poravnave kot instrumenti sporazumnega reševanja sporov predstavljajo prilagodljivo postopkovno orodje, ki služi tudi kot izvršilni naslov. Kot takšni so ti instrumenti znani v vseh državah članicah Evropske unije (EU) in so vključeni v pravila mednarodnega zasebnega prava EU, ki zagotavljajo pravno podlago za njihovo čezmejno izvrševanje. Vendar pa izzivi ostajajo zaradi različnih predpisov in razumevanja sodnih poravnav na nacionalni ravni ter zaradi nejasnosti v pravilih EU o čezmejni izvršbi, kar v praksi vodi do morebitnih napačnih razlag. Zato je prvi cilj predmetnega prispevka raziskati, kaj točno predstavlja „sodna poravnava" na nacionalni ravni in na ravni EU. Na podlagi te opredelitve prispevek nato naslovi regulativni okvir EU, zlasti v izbranih uredbah EU, za ugotovitev ali so potrebne nadaljnje izboljšave. Odgovori na raziskovalna vprašanja temeljijo na analizi sodne prakse, preučitvi znanstvene literature ter zlasti na podlagi ustreznih določb uredb EU, ki so bile izbrane za to raziskavo.