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LEGAL REGULATION AND PRACTICAL IMPLEMENTATION OF ENFORCEMENT OF LITHUANIAN JUDGMENTS IN CIVIL MATTERS WITHIN EUROPEAN UNION AND OUTSIDE THE BORDERS OF THE EUROPEAN UNION: ADVANTAGES AND DISADVANTAGES

Master Thesis

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Vilnius
2017

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INTRODUCTION

The Problematic and Actuality of the Master Thesis. Commercial activity depends on the assessment and management of risk. Risk determines transaction costs, and the willingness of the parties to contract. Some risks are financial, concerning a counterparty's credit-worthiness or solvency, others are legal, concerning the effectiveness of a transaction, the nature of the remedies for default, and the enforcement of those remedies[1]. This is true of domestic transactions as much of multistate transactions – those involving a foreign counterparty or performance abroad. But the legal risks involved in multistate transactions are of a different kind, and perhaps of a different order. Litigation risk acquires a new dimension in multistate cases. It exposes the parties to the risk of proceedings in an unfavorable forum, and to the risk of parallel proceedings in different courts.

Commercial situations which are connected with more than one country are commonplace in the modern world. These may be affected by differences between the legal systems in those countries. With a view to resolving these differences, countries have adopted special rules known as "private international law" rules[2].

Even if a judgment is obtained, the cost of effective enforcement may be significant if the defendant has assets abroad, or in several jurisdictions. And it may be impossible entirely unless execution is permitted where those assets are located[3]. The mere fact that proceedings have been brought against a defendant may create such a risk of non-enforcement, but the risk is increased if the defendant holds assets, or has a presence, in a foreign country.

Since the European Union (hereinafter – **EU**) has provided its members the common market, businesses, corporations and multinationals started to move across borders and incorporate abroad for many reasons: more beneficial taxation systems and laws, bigger markets, or just for expansion of business by moving out from domestic market. Among the most central and almost sacred principles of EU law, the rules of the Treaty on the Functioning of the European Union[4] (hereinafter – **TFEU**) on the free movement of services, capital, persons and goods play a primordial role.[5] All

[1] Richard Fentiman, *International Commercial Litigation: second edition* (Oxford: Oxford university press, 2015), p. 3.
[2] The Hague Conference on Private International Law: *about organization,* accessed 01 January 2017, https://www.hcch.net/en/about.
[3] Richard Fentiman, *supra note* 1, p. 3.
[4] *Official Journal C 326 , 26/10/2012 P. 0001 - 0390.*
[5] Michael Bogdan, *Concise Introduction to EU Private International Law* (Groningen: Europa Law Publishing, 2006), p. 26.

restrictions, which may, in any way, block this freedom of movement, are normally forbidden, unless the effects of the restriction are insignificant[6].

International trade and the free movement of people and business are inevitably followed by legal disputes. Such litigants require an efficient and predictable dispute resolution mechanism capable of handling cases between diverse nationals. An essential part of such mechanism is a clearly defined process of judgment enforcement across national boundaries.[7]

When litigation involves a debtor domiciled or with assets in another country, it is important for counsel to plan in advance how to enforce abroad any money judgment that may be obtained[8]. Despite the fact there are some closeness among countries as to the requirements and procedures to enforce foreign money judgments, besides there are obvious significant differences; failure of representative or the applicant himself to properly examine these issues in advance of contract execution or in advance of commencing litigation may result in the money judgment being unenforceable in the country where the judgment debtor has assets.

"If the judgment is unenforceable, the judgment creditor will be faced with the prospect of commencing litigation a new against the judgment debtor in the foreign country, with all the inherent risks".[9] However, among EU Member States once you have obtained a judgment in your favor, that judgment must be recognized in every EU country[10]. It may be refused in only highly exceptional cases, and that is ensured by the EU authorities.

It is observable that the law of recognition and enforcement of judgments is becoming more and more important for today business and legal disputes. In a world in which persons and assets can easily be moved across borders, the recognition and enforcement of foreign judgments makes it harder for losing defendants to avoid liability. At the same time, the denial of automatic enforcement

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[6] See, for example, Procureur du Roi v. Dassonville, case 8/74, [1974] ECR 837.

[7] Larobina, Michael D.J.D., L.L.M. and Pate, Richard L.J.D., *The Status Of Recognition And Enforcement Of Judgments In the European Union*, WCOB Working Papers (2011), Paper 7, accessed April 15, 2016, http://digitalcommons.sacredheart.edu/wcob_wp/7.

[8] Philip R. Weems, *Guidelines for Enforcing Money Judgments Abroad* (*International Business Lawyer*, Volume 21, Number 11, pages 509-512), accessed April 16, 2016, http://docplayer.net/11359963-Guidelines-for-enforcing-money-judgments-abroad.html.

[9] *Ibid.*

[10] European Commission, *Recognition and enforcement of judgments*, accessed April 16, 2016 http://ec.europa.eu/justice/civil/commercial/judgements/index_en.htm.

can make it less attractive for plaintiffs to bring suit in a state where the defendant has no assets; it can thus make creative forum shopping less attractive[11].

However, enforcement is not necessarily confined to money judgments: most countries will also recognize non-monetary orders, and much law exists on the recognition of status decisions. Yet, enforcement is usually limited to civil and commercial matters. Foreign judgments in public law are rarely enforced, although there is no international law reason against it. In criminal law, States mostly prefer *extradition* to enforcement[12].

In 2008 in the doctrine of law mainly two legal instruments of enforcement of judgments were recognized: 1) *Exequatur*, which is understood as "a specific concept of the private international law and refers to the decision by a court authorizing the enforcement in that country of a judgment, arbitral award, authentic instruments or court settlement given abroad"[13]; and 2) enforcement of foreign country judgment in the same legal procedure as judgment of a national court would be enforced (without *exequatur*).[14]

From January 10, 2015 on, the Regulation (EU) No 1215/2012, of the European Parliament and of the Council of 12 December, 2012, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters[15] (**Brussels I bis** from here on), must be applied, replacing the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (hereinafter – **Brussels Regulation**)[16].

Novelty of the Brussels I bis regulation's reform is the abrogation of *exequatur*. In order to implement a judgment in another Member State, before the amendments there was required to receive a prior declaration of enforceability from a national Court (Article 38 of Brussels Regulation). With the new Brussels I bis regulation (Article 39) the *exequatur* is no longer

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[11] Ralf Michaels, *Recognition and Enforcement of Foreign Judgments*, (Heidelberg and Oxford University Press: Max Plank Institute for Comparative Public Law and International Law, 2009), accessed April 16, 2016, http://scholarship.law.duke.edu/faculty_scholarship/2076/.

[12] Commission of the European Communities Green Paper on the Approximation, *Mutual Recognition and Enforcement of Criminal Sanctions in the European Union* (2004) (EC Green Paper 2004), accessed 18 April, 2016, ec.europa.eu/justice/criminal/document/files/sanctions_delivery_en.pdf.

[13] United Nations Office on Drugs and Crime, *Digest of Asset Recovery Cases*, (United Nations, New York, 2015), p. 108, accessed 21 March 2017, http://www.unodc.org/documents/corruption/Publications/2015/15-05350_Ebook.pdf.

[14] L. Gumuliauskienė, *Užsienio teismų sprendimų pripažinimas ir vykdymas civiliniame procese*, daktaro disertacija, socialiniai mokslai, teisė (01 S). Vilnius: Mykolo Romerio Universitetas, 2008, p. 7.

[15] Regulation (EU) 1215/2015 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, *OJ L 351, 20.12.2012*.

[16] 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 L 12, 16.1.2001.

necessary. This is due to the fact that "a judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required"[17]. This implies that any judgment given by a Member State of the EU will be recognised and enforced without additional examination. The judgment will be treated as if it had been emitted by a court from the Member State in question.

Basically, in this Master Thesis author is analyzing and researching what are the main challenges and difficulties in the process of enforcement of the judgments of Lithuanian national courts in other EU countries and in the countries outside the EU borders. In this Master Thesis legal mechanisms which are applied within EU Member States and in the relationship between countries outside EU will be compared. Therefore conclusions where is more advantageous or disadvantageous procedure of enforcement of foreign judgment will be provided after all.

Scientific Research problem is lack of clarity in definition of rules for indication of enforcement procedure and it is impossible to ensure whether it is advantageous to start the proceedings of national judgment enforcement in foreign countries or there will be too much challenges and even though the claimant may face some loses in case of disapproval of foreign country to enforce the judgment.

Level of examination of the problematic and originality of Master Thesis. Brussels I bis regulation is the key instrument on jurisdiction and enforcement issues in civil and commercial matters of the European legislation. It is applied by the courts of all 28 EU Member States[18]. Recital (6) of Brussels I bis regulation establishes demand for the modern world of such regulation: "In order to attain the objective of free circulation of judgments in civil and commercial matters, it is necessary and appropriate that the rules governing jurisdiction and the recognition and enforcement of judgments be governed by a legal instrument of the Union which is binding and directly applicable"[19].

About the Brussels I bis and Brussels Regulation articles and books were published by such authors as R. Fentiman[20], Wieslaw Grajdura[21], Michael Bogdan[22], Trevor C. Hartlhey[23] and others

[17] Article 39 of Brussels I bis.
[18] The 28 Member States, which are members of the EU: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and United Kingdom.
[19] Recital 6 of Brussels I bis.
[20] Professor of Private International Law, University of Cambridge Fellow of Queens' College, Cambridge.
[21] Judge of the Regional Court in Tarnow, Poland.
[22] Professor of Comparative and Private International Law at the University of Lund, Sweden.

whose publications will be used further in this Master Thesis. Nonetheless, none of them have compared legal regulations which are applicable within EU Member States and non EU Member States in the light of enforcement of foreign judgments.

However, there is different situation with the analysis of enforcement of foreign judgments outside the EU borders. Basically, this kind of research regarding comparison of EU and non-EU legal mechanisms in respect to enforcement of foreign judgments may be one of the first one. Since we will compare two different legal systems and provide advantages and disadvantages in this Master Thesis, hence original criterion on the question under which legal system is less complicated to enforce foreign judgment will be suggested.

The Significance of the Master Thesis will reflect in given evaluation and findings of advantages and disadvantages concerning enforcement of judgments of national courts in foreign countries. It will help to understand the main procedure of enforcement of judgments in foreign countries, and additionally Master Thesis will reveal when it is convenient to initiate the procedure of enforcement and when such procedure would demand more contribution and that would lead even to loses and no benefit at all. It is believed that this Master Thesis will be helpful for both theorists and practitioners of law.

Scientific novelty. Even though regulations regarding enforcement of national judgments in foreign countries were analyzed before this Master Thesis by several researches, it has never been done in the light of advantages and disadvantages of before-mentioned procedure.

The Aim of the Master Thesis. After identifying the international legal regulations, regulating enforcement of foreign judgments, the aim of the Master Thesis is to establish if these legal mechanisms are the same and if not, to identify what are the main advantages and disadvantages of enforcement of Lithuanian judgments in civil matters within EU and outside the borders of the EU.

The Tasks of the Master Thesis:

1. To analyze provisions of Brussels I bis and other legal regulations concerning rules on enforcement of national judgments in other EU member states.
2. To indicate main problems of application rules of enforcement of national judgments in foreign countries by analysis of ECJ case law.
3. To analyze provisions of bilateral and multilateral treaties and other legal regulations which regulates enforcement of foreign judgments in non-EU countries.

[23] Professor Emeritus of Law at the London School of Economics, where he specializes in private international law and European Union law.

4. To compare legal regulations which are applicable while enforcing foreign judgment in EU Member States and non-EU countries and to find out the main advantages and disadvantages of these legal acts while comparing each to other.

Methodology. The aim and objectives of this thesis will be attained by the use of the following methods: method of systematic analysis - such method enables analyze properly the relevant positions such as the legislation, legal doctrine, and court practice (e.g, mentioned method is used to determine what are the differences between legislation and practical application of it, meanwhile the conclusions are made on the basis of such distinction), comparative method - this method is used as the measure to identify the main features (both similarities and differences) of EU and non-EU countries legislation, linguistic method - it allows understanding and interpreting the legislation in respect of the enforcement of foreign judgments procedure, and historical method is important to understand when and why regulations regarding the enforcement of foreign judgments became important for international legal relationships. However, none of the above mentioned method prevails over the other and all of them are applied in complex for the purpose of the detailed analysis of the subject.

The Structure and Structural logic of the Master Thesis. The structure of this thesis is comprised of introduction, three chapters which include subchapters and conclusions. The first one chapter will be regarding the historical foundations, main legal acts, regulating the enforcement of foreign judgments. Subchapter regarding the main legal acts will be divided into four subchapters where domestic law, international treaties, EU law and multilateral conventions and regulations will be analysed as separate legal mechanisms for enforcement of foreign judgments. In the second chapter there will be information regarding the legal regulation among the EU Member States provided. Second will be divided into three subchapters in which the main legal acts of the EU law will be analysed. Last but not least, the third chapter will be regarding the legal regulation in the non EU Member States and in its subchapter's information regarding the international conventions, bilateral agreements on legal assistance and the domestic law will be found. In the end of the Master Thesis conclusions of the research will be provided.

The Statement of the Master Thesis:

1. There are more advantages for enforcement of foreign judgments in the EU Member States rather than non-EU countries.

1. CONCEPT AND LEGAL SOURCES OF ENFORCEMENT OF FOREIGN JUDGMENTS

1.1. HISTORICAL AND DOCTRINAL FOUNDATIONS

The recognition and enforcement of foreign judgments is a relatively young phenomenon. In antiquity, local law was applied to foreigners and foreign judgments were denied any force beyond their territories. Although in Roman law no clear difference was made between foreign and local judgments – foreign judgments were freely recognized and enforced. This liberal attitude changed with the rise of sovereignty. A duty to enforce foreign judgments was rejected as an undue restraint of sovereignty in 16th century.[24]

Concerns for the national sovereignty of the recognition state are the primary reason why countries today have rules on the recognition and enforcement of foreign judgments in the first place. With the advent of the nation state in the 17th century, the view quickly spread that judicial judgments are manifestations of state power[25]. In order for a judgment to have any effects outside the rendering state's territory, it needed first to be granted those effects by the other states on their respective territories. The Dutch *comity* doctrine of the 17th century, which strongly influenced recognition practice in the United States,[26] softened this approach with a general policy (although not an obligation) in favor of recognizing foreign judgments. But European nationalism in the 19th century strengthened the view that the decision whether or not to grant foreign judgments any effects was entirely in the hands of the recognition state: "Thus, many of the continental European jurisdictions adopted a rule of not recognizing foreign judgments while dealing with the practical difficulties arising from this rule by negotiating more liberal approaches in bilateral, and later multilateral, treaties with most of their trading partners"[27].

Therefore in 1890 the dispute arose between French clothing manufacturer and a New York City store owner. French clothing manufacturer had a French judgment in the sum on $3.6 million which defendant had to pay. The issues arose when plaintiff submitted a French judgment to the

[24] Drobiševska Evita, *Recognition and Enforcement of Judgments in Civil matters in the EU,* , University of Latvia, p. 115, accessed 15 March 2017, https://dukonference.lv/files/2016_978-9984-14-760-4_DU%2058%20starpt%20zinatn%20konf%20tezes.pdf .

[25] Baumgartner, Samuel P., *Understanding the Obstacles to the Recognition and Enforcement of U.S. Judgments Abroad*, (New York University Journal of International Law and Politics (JILP), Vol. 44, 2013; U of Akron Legal Studies Research Paper No. 13-01), accessed 22 February 2017 https://ssrn.com/abstract=2196560.

[26] Hilton v. Guyot, 159 U.S. 113 (1895), accessed 24 October 2016, https://supreme.justia.com/cases/federal/us/159/113/case.html.

[27] Baumgartner, Samuel P., *supra note 31*

United States District Court to enforce it[28]. However, after the commencement of the lawsuit, the American store owner had removed all of his assets from France and taken them back to the United States. The wealthy store owner thus became judgment-proof in France. Without the help of U.S. federal courts, the manufacturer was not able to collect its damages.

First instance of U.S. court accepted the application of French clothing manufacturer and decided to start enforcement procedure. Obviously the American owner had taken its opportunity to appeal. The U.S. Supreme Court reversed on appeal.[29] The court announced: "Judgments rendered [in any] foreign country, by the laws of which our own judgments are reviewable on the merits, are not entitled to full credit and conclusive effect when sued in this country <...>".[30] French law at that time prohibited the enforcement of all foreign judgments, including those rendered in the U.S.[31]. Accordingly, the French judgment might have been valid on its merits, but under the U.S. court's decision, the French plaintiffs would have to prevail on another suit, this time in a U.S. court, if they wished to collect an award.[32]

"In refusing to recognize a foreign nation's judgment if that nation did not recognize U.S. judgments, the Court imposed what is known as a "*reciprocity*" requirement".[33] There is opinion, that since countries became sovereign and the foreign judgments became governed by the State regulation, the enforcement and recognition of foreign judgments between sovereign countries had to establish on advanced principles.[34] According to the Ralf Michaels[35] two main doctrines were developed, which are still suitable nowadays. One of such doctrine is called *comity* which was defined by the States Supreme Court in a decision denying recognition to a French judgment as: "neither a matter of absolute obligation, on the one hand, nor of mere courtesy and goodwill, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens or of other persons which are under the protection of its laws".[36]

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[28] Hilton v. Guyot, *supra note* 31.

[29] Louisa B. Childs, *Shaky foundations: Criticism of Reciprocity and the Distinction between public and private international law,* accessed 14 January 2017, http://nyujilp.org/wp-content/uploads/2013/02/38.1_2-Childs.pdf.

[30] Hilton v. Guyot, *supra note* 31, par. 227.

[31] *Ibid*. par's. 115 and 215.

[32] Louisa B. Childs, *supra note* 35, p. 2.

[33] *Ibid.*

[34] Ralf Michaels, *supra note* 11.

[35] *Ibid.*

[36] Hilton v. Guyot, *supra note* 31, at 164

The second doctrine is *reciprocity*, "the idea that State will and should grant other recognition of judicial decisions only if, and to the extent that, their own decisions would be recognized. The main justification for *reciprocity* is that it can be used to persuade other countries to enter into conventions. Both *comity* and *reciprocity* are principles not of duty but of prudence and politeness. It is polite, as between sovereigns, to treat the judgments of foreign countries with respect and deference, and to enforce them. Moreover, it is prudent to enforce the judgments of foreign sovereigns in the hope that foreign sovereigns would enforce one's own judgments".[37] It should be stressed out that *reciprocity* can create an unwelcome situation in which each country waits for the other to act first; it is problematic also because it punishes private litigants[38].

Notwithstanding, unrestricted sovereignty presents undue limits; *comity* is too vague and *reciprocity* too hard to determine to provide firm foundations. In response, countries entered into treaties. "France was the first country to enter into such treaties with Swiss communities in the year 1715 (Arts. 11-12 Renewal of the Alliance between France and the Catholic Swiss Cantons and Valais, substituted by the Convention between France and the Swiss Confederation Respecting Jurisdiction and the Execution of Civil Judgments of 15 June 1869, which lost force in 1991 when Switzerland joined the Lugano Convention), with Belgium in 1899 (Convention between Belgium and France relative to the Enforcement of Judgments etc.)"[39]. Therefore the invention of different legal mechanisms in order to develop the free movement of judgments was started and together the thoughts about creation of unified community were raised.

Even before the First World War as early as 1849, Victor Hugo already used the term "United State of Europe" to indicate a goal to be aimed at by each European country[40]. "After 1945, the idea of unity became so popular that various movements aimed at European integration were formed one after the other in nearly every European country, except those controlled by the Soviet Union"[41]. Therefore 18 April 1951, Belgium, France, the Federal Republic of Germany, Italy, Luxembourg and the Netherlands signed the Treaty establishing the European Coal and Steel Community which entered into force on 25 July 1952.

[37] Louisa B. Childs, *supra note* 35, p. 2.
[38] L. Gumuliauskienė, *supra note* 14, p. 50.
[39] Louisa B. Childs, *supra note* 35, p. 3.
[40] Zoltan Horvath , *Handbook on the European Union*, (Budapest, HVG-ORAC Publishing House Ltd., 2005), p. 25.
[41] *Ibid*., p. 26.

Five years later, the same six countries signed the treaties establishing the European Economic Community (hereinafter – **EEC**)[42] and the European Atomic Energy Community in Rome on 25 March 1957, known as the Treaties of Rome, which became effective on 1 January 1958. The Lisbon Treaty amends the Treaty on European Union (hereinafter – **TEU**) and the Treaty establishing the European Community (hereinafter – **Community**) (TEC), which is renamed "Treaty on the Functioning of the European Union" (from here on - **TFEU**)[43].

The fundamental aim of establishing the EEC was to create a common market of its Member States. The common market is an area where goods, services, capital and works move freely without any restrictions[44]. "Judicial cooperation in civil matters was not one of the objectives of the EC when the founding treaty was adopted"[45]. Yet, Article 220 of TEC established that Member States should simplify the regulation regarding recognition and enforcement of foreign judgments. One of the most significant changes were reached after the signing of the Lisbon Treaty concerned the European area for freedom, security and justice. The Treaty of Lisbon increased EU powers in the area of judicial cooperation in civil matters[46].

The Treaty of Lisbon, respectively other amended treaties *inter alia* TFEU, provided legal rules regarding judicial cooperation in civil matters. Article 81(1) of TFEU and Article 65(1) of the Treaty of Lisbon established: "The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States".

Accordingly after Community was created in the years 1968 there was adopted the Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters[47] (hereinafter – **Brussels Convention**) which was the first comprehensive legislation dealing with *inter alia* the enforcement of judgments in the EU. The purpose of the Brussels Convention was to provide for the free circulation of judgments throughout the Community[48], thereby inspiring

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[42] The History of the European Union, *A peaceful Europe – the beginnings of cooperation*, accessed 17 February 2017, https://europa.eu/european-union/about-eu/history_en.

[43] IND/DEM Group in the European Parliament, *The Lisbon treaty the readable version*, (Foundation for EU Democracy, Denmark, 2008), p. 3.

[44] Zoltan Horvath , *supra note* 46, p. 281.

[45] European Parliament, *Judicial cooperation in civil matters*, (Fact Sheets on the European Union by European Parliament, 2017), accessed 23 March 2017, http://www.europarl.europa.eu/ftu/pdf/en/FTU_5.12.5.pdf.

[46] *The treaty of Lisbon: introduction*, accessed 23 March 2017, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3Aai0033.

[47] OJ L 299, 31.12.1972.

[48] See the Preamble of the Brussels Convention.

business confidence and generally encouraging the right conditions for trade[49]. To achieve this aim there had to be harmonization of the law on jurisdiction throughout the Community[50]. Subsequently the Brussels Convention was "supplemented" by the Lugano Convention 16 September 1988 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (from here on – **Lugano Convention**), which was entered into by the six members of the European Free Trade Association[51].

As articulated in preamble Brussels' Convention ultimate goal was to promote economic growth within the Union and to harmonize the rules for cross-border enforcement of civil judgments:

"Desiring to implement the provisions of Article 220 of that Treaty[52] by virtue of which they undertook to secure the simplification of formalities governing the *reciprocal* recognition and enforcement of judgments of courts or tribunals; Anxious to strengthen in the Community the legal protection of persons therein established; Considering that it is necessary for this purpose to determine the international jurisdiction of their courts, to facilitate recognition and to introduce an expeditious procedure for securing the enforcement of judgments, authentic instruments and court settlements"[53].

None of its provisions, whether on jurisdiction or on recognition and enforcement of judgments, will apply unless the matter is within the scope of the Brussels Convention. Brussels Convention was applied to civil or commercial matters, excluding matters related to family law, insolvency, social security and arbitration[54].

On 22 December 2000, the European Council adopted Brussels Regulation which went into effect in March of 2002, effectively replacing Brussels Convention and becoming the keystone of EU procedural law.

Most of the concepts included in Brussels Regulation merely reproduce the rules already in force its predecessor. As it is indicated in its preamble, the principal aims of Brussels Regulation remain those of Brussels Convention: "Certain differences between national rules governing jurisdiction and recognition of judgments hamper the sound operation of the internal market.

[49] Sir Peter North, J. J. Fawcett, *Private International Law*, thirteenth edition, (Oxford university press, Oxford, 2004), p. 183.
[50] *Ibid.*
[51] In years 1988 the European Free Trade Association had six members, which were: Austria, Norway, Sweden, Switzerland, Iceland and Finland, accessed 20 March 2017, http://www.efta.int/about-efta/history#1986.
[52] Reference to the Treaty of the Rome establishing the European Community.
[53] OJ L 299, 31.12.1972.
[54] Article 1 of Brussels Convention.

Provisions to unify the rules of conflict of jurisdiction in civil and commercial matters and to simplify the formalities with a view to rapid and simple recognition and enforcement of judgments from Member States bound by this Regulation are essential"[55]. The preamble indicates that the Brussels Convention is only concerned with the international jurisdiction of Contracting States. It follows that it will not apply where a dispute involves no foreign element. Additionally, the rules on jurisdiction and recognition and enforcement makes it clear that they do not apply to proceedings, or issues arising in proceedings, in Contracting States concerning the recognition and enforcement of judgments given in non-Contracting States[56].

Brussels Regulation kept the framework of the Brussels Convention (but introduced a number of amendments which are outside the scope of this Master Thesis). As with Brussels Convention, Brussels Regulation was applied to all civil and commercial matters only. So it shall be clear that in Master Thesis we will be speaking solely in respect to civil and commercial matters. Matrimonial matters (divorce, legal separation, marriage annulment, parental responsibility and child abduction were eventually covered under Brussels II[57]). However, on 12 December 2012 new regulation Brussels I bis was signed which is the main legal act for the regulation of enforcement of judgments at the moment, therefore the deeper analysis of the Brussels I bis will be provided further in this Master Thesis.

To sum up, in this Master Thesis will be analyzed EU regulations, bilateral and multilateral treaties among different countries, customs (eg. *reciprocity*, *comity*) and case-law mostly of CJEU and additionally of some other countries respectively Member States and non-Member States. It is clear that in the evolution of legal acts in the EU and worldwide, countries do agree with opinion that there should be unanimous legal regulation of enforcement of foreign judgments.

1.2. MAIN LEGAL SOURCES REGULATING ENFORCEMENT OF FOREIGN JUDGMENTS

The procedure of enforcement of judgments between EU members were, in particular, governed by Brussels Regulation (for relations between Denmark and other EU member states, the Agreement between European Community and the Kingdom of Denmark on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters of 19 October 2005[58]

[55] Preamble (2) of Brussels Regulation.
[56] Case C-129/92 Owens Bank Ltd v. Bracco [1994].
[57] Council Brussels I (EC) No. 2201/2003.
[58] OJ L 149, 12.6.2009, accessed 15 January 2017, http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:22009X0612(01).

applies). A reformed regulation of Brussels Regulation, Brussels I bis, was adopted and came into force in 10 January 2015. As Brussels I bis is EU measure, the CJEU has an automatic right to interpret Brussels Regulation and Brussels I bis on a preliminary reference[59].

However, as Brussels Regulation is a re-enactment of the Brussels Convention, and Brussels I bis is re-enactment of Brussels Regulation, the case-law under the previous instruments continues to apply unless there has been a change in the text[60]. Notwithstanding, that there are more sources than only EU regulations, additionally EU Member States are bound by multiple and bilateral international treaties dealing with the *reciprocial* recognition and enforcement of foreign judgments.

There are four main choices in order to enforce Lithuanian judgments in foreign courts. Firstly, judgments of Lithuanian courts shall be enforced in countries, which are enforced by the agreements on Legal Assistance and Legal Relations in the manner how it is concluded in the agreements. Secondly, multilateral conventions are one of the legal grounds for the enforcement of Lithuanian judgments in foreign courts. Thirdly, on the grounds of EU law, to be more precisely – Brussels I bis is the main legal act which regulates legal proceedings of enforcement of foreign judgment. Lastly, if enforcement of foreign country is not regulated by some legal act in some countries and in the absent of international treaties or conventions, there is a possibility to enforce Lithuanian judgment in foreign countries on the base of *reciprocity* or domestic law of country addressed,[61]

Notwithstanding, the legal practice for civil and commercial matters is constantly being defined and refined by national courts and by the courts[62]. So in this Master Thesis we will proportionally analyse the case law of CJEU in order to determine whether in the practice is the same as in the legal acts. Hence, further on we will provide information regarding all the types of regulations which do regulate recognition and enforcement of foreign judgments.

1.2.1. DOMESTIC LAW

A judgment from a third State can only be recognized in an EU Member State under the national law of that EU Member State[63]. For instance, in the United Kingdom, the procedure leads to

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[59] Trevor C. Hartley, *International Commercial Litigation: Text, Cases and Materials on Private International Law, Second edition*, (Cambridge university press, City, 2015), p. 20.

[60] Recital 34 of Brussels I bis.

[61] L. Gumuliauskienė, *supra note* 14, p. 53.

[62] Patrick Doris, *Enforcement of Foreign Judgments in 28 jurisdictions worldwide*, (Law Business Research LTD, 2014), accessed 28 February 2017, http://www.eba-avocats.com/wp-content/uploads/2014/10/GTDT_EFJ_2015.pdf.

[63] Thalia Kruger, *Civil jurisdiction rules of the EU and their impact on third states*, (Oxford University Press Inc., New York, 2008), p. 203.

an order that the judgment can be registered for enforcement, and a separate application is necessary in each part of the United Kingdom (England and Wales; Scotland; Northern Irelands; and Gibraltar)[64]. A decision given in one part of the United Kingdom authorizing or refusing registration has no binding effect in the other parts of the United Kingdom[65]. Once the court of Member State has received a judgment, the actual measures of execution (such as seizure and sale of the judgment debtor's chattels, or garnishment of his bank account) are governed by the law of the State addressed[66]. Therefore it is obvious that national law of state addressed covers a large part of enforcement of foreign judgment.

Although countries worldwide recognize and enforce foreign judgments under some conditions, differences are vast. Some researchers believe that there are some countries which do not enforce foreign judgments in non-existence of a treaty.[67] According to the Ralph Michaels this is the case for the Netherlands – in theory, because in effect the substance of foreign judgments is not reviewed – and some Scandinavian countries.[68] In most jurisdictions in the United States, the recognition and enforcement of foreign judgments is governed by local domestic law and the principles of *comity*, *reciprocity* and *res judicata*[69].

"Moreover, foreign countries have objected to the extraterritorial jurisdiction asserted by courts in the United States. In consequence, absent a treaty, whether the courts of a foreign country would enforce a judgment issued by a court in the United States depends upon the internal laws of the foreign country and international comity"[70].

It is stressed out that the general principle of international law applicable in such cases is that a foreign state exercises the right to examine foreign judgments for four causes: (1) to determine if the court that issued the judgment had jurisdiction; (2) to determine whether the defendant was properly notified of the action; (3) to determine if the proceedings were vitiated by fraud; and (4) to establish that the judgment is not contrary to the public policy of the foreign country. While

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[64] *Ibid.*

[65] Peter Schlosser, *Report on the Convention on the Association of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Convention on jurisdiction and enforcement of judgments in civil and commercial matters and to the Protocol on its interpretation by the Court of Justice* (Official Journal Of the European Communities, signed at Luxembourg, 9 October 1978) p. 8, accessed 2 March 2017, < http://aei.pitt.edu/1467/1/commercial_reports_schlosser_C_59_79.pdf>.

[66] Case 148/84 [1985] ECR 1981, and Case 119/84 [1985] ECR 3147.

[67] Ralf Michaels, *supra note* 11.

[68] *Ibid.*

[69] Department of State, United State of America, *Enforcement of Judgments*, accessed 24 September 2016, https://travel.state.gov/content/travel/en/legal-considerations/judicial/enforcement-of-judgments.html.

[70] *Ibid.*

procedures and documentary requirements vary widely from country to country, judgments which do not involve multiple damages or punitive damages generally may be enforced, in whole or in part, upon recognition as authoritative and final, subject to the particulars cited above, unless internal law mandates a treaty obligation.[71]

An important feature of the system under the Brussels I bis (and Convention before it) is that, although it is intended to protect defendants from exorbitant jurisdiction, it grants this protection only to defendants domiciled in other EU (or Lugano) States. No protection is given to defendants from the outside world[72]. With regard to such defendants, national rules of jurisdiction apply as before, i.e. in the case of England, it is the traditional, common-law rules of jurisdiction that apply[73]. This is made clear by Article 6(1) of Brussels I bis[74].

For instance, internal legal rules in Lithuania, regulating international private law *inter alia* enforcement of foreign judgments, are established in the Code of Civil Procedure. In Lithuanian Civil code there is a paragraph regarding international private law (Paragraph No. II of book No. 1). However, the whole paragraph which is called "international private law" of the Civil code set rules regarding the applicable law.

Contrary, Code of Civil Procedure has the part which is called "International Civil Procedure" (Part of Code of Civil Procedure No. VII), and in this part is written about recognition and enforcement of foreign judgments (Articles 809-815). Apparently, Lithuanian legal acts do not provide legal rules regarding enforcement of Lithuanian judgments in other foreign countries, but they do provide regulation of foreign judgment in Lithuanian court. Since Master Thesis is regarding enforcement of Lithuanian judgments in other countries, we will not provide details or analysis of Lithuanian legal acts because they are out of the scope of this work.

However in EU Member States the priority is for the EU law. For instance, in the Germany the specialists of civil procedure enforcement of civil procedure excludes in the following respect: first of all enforcement regulates Brussels I bis (if it is applied), if not, then Lugano Convention (or bilateral treaties) and if none of them applicable, only then national law should be applied[75].

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[71] *Ibid.*

[72] Trevor C. Hartley, s*upra note* 65, p. 22.

[73] *Ibid.*

[74] 1. If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Article 18(1), Article 21(2) and Articles 24 and 25, be determined by the law of that Member State.

2. As against such a defendant, any person domiciled in a Member State may, whatever his nationality, avail himself in that Member State of the rules of jurisdiction there in force, and in particular those of which the Member States are to notify the Commission pursuant to point (a) of Article 76(1), in the same way as nationals of that Member State.

[75] L. Gumuliauskienė, *supra note* 14, p. 52.

To sum up, in this Master Thesis domestic law as one of the ground for enforcement of foreign judgments will be analysed in the chapter regarding the enforcement of foreign judgments outside the EU, since in the EU member states procedure of enforcement is regulated by EU law. Yet, national law is applicable in absence of any legal act only.

1.2.2. INTERNATIONAL TREATIES

There is a belief that we live in the age of treaties[76]. The main legal mechanism for the regulation of international legal relationship is international treaty[77]. Increasingly, bilateral and multilateral written agreements are used for the creation of new international legal standards. For political reasons, states are decreasingly less willing to rely upon customary international law for the regulation of legal matters[78].

At the moment one of the options to enforce Lithuanian judgments in other country is on the grounds of agreements on Legal Assistance and Legal Relations in the manner how it is concluded in the agreements[79].

Bilateral recognition treaties usually serve three purposes: they shift the basis from unsure grounds like *comity* to legal rules, they provide a firm basis for reciprocity, and they expand the scope of recognizable judgments. The *Institut de Droit international* addressed the issue in its first two resolutions in 1874 and adopted resolutions for bilateral treaties in its sessions of 1878 and 1924; in 1950 it adopted principles for criminal judgments. Around the same time, the *International Law Association* addressed the issue several times between 1899 and 1924, inspired especially by the 1899 Convention between Belgium and France relative to the Enforcement of Judgments. Bilateral treaties between various countries are too numerous to discuss individually here, but some generalities appear.

First, countries with more restrictive domestic rules, particularly those requiring *reciprocity*, tend to enter into more bilateral treaties: France has close to 40, while the United States has none. Second, treaties typically exist between countries with close relations, for example between France

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[76] Linderfalk Ulf, *On the Interpretation of Treaties:The Modern International Law as Expressed in the 1969 Vienna Convention on the Law of Treaties*, (Lund University, Sweden, 2007) p. 1.

[77] Jakulevičienė Lyra, *Tarptautinių sutarčių teisė*, vadovėlis, (VĮ Registrų centras, Vilnius, 2011), p. 19.

[78] *Ibid.*

[79] Lithuania has agreements on legal assistance and legal relations maintenance with these countries: Republic of Azerbaijan, Republic of Belarus, Republic of Kazakhstan, People's Republic of China, Republic of Poland, Republic of Moldova, Russian Federation, Republic of Turkey, Ukraine, Republic of Uzbekistan; and there is a tripartite agreement between Republic of Lithuania, the Republic of Estonia and the Republic of Latvia on Legal assistance and legal relations, accessed 10 January 2017, https://www.urm.lt/default/lt/uzsienio-politika/tarptautines-sutartys/dvisales-sutartys.

and its former colonies (*Decolonization: French Territories*), between various Arab States, and between *China* and *Hong Kong*. Third, treaties are more frequent between States sharing similar legal techniques and ideologies, for example between the former Socialist States[80].

To conclude, all the international agreements on legal assistance and legal relations which Lithuania has signed are almost the same and of standard form[81], therefore in separate chapter regarding bilateral and multilateral agreements, we will choose one or two such agreements and analyze them more deeply.

1.2.3. EU LAW

A binding legal system ultimately enforceable by public law enforcement authorities is the basis of the operation of every state. Even though the European Union is by no means a state, and has no public powers similar to those of states, the tasks it has been entrusted with are quite similar to tasks that are normally the responsibility of states. A legal system was necessary if the EU was to perform these tasks[82].

European Union law is grounded on different sources. The founding treaties of the European Union, legal acts adopted by EU institutions, judgments and interpretative rulings of the ECJ, international agreements concluded by EU and the Member States and general principles of law are all sources of European Union law[83]. Among the legal sources, TFEU and other treaties establishing Community and European Union, as well as subsequent amendments, occupy a central role. These founding treaties, their amendments and other supplementary treaties based thereon are also known as primary legislation under the framework treaty structure[84]. Secondary legislation consists of legal instruments based on primary legislation and produced by EU institutions.

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[80] Ralf Michaels, *supra note* 11.
[81] L. Gumuliauskienė, *supra note* 14, p. 65.
[82] Zoltan Horvath, *supra note* 46, p. 247.
[83] *Ibid*., p. 250.
[84] Primary sources of law, in other words the founding treaties and subsequent amendments, include (the first date in brackets is the date the treaty was signed, the second date is when it came into effect):

- The Treaty of Paris establishing the European Coal and Steel Community (18 April 1951; 25 July 1952);
- The Treaty of Rome establishing the European Economic Community (25 March 1957; 1 January 1958);
- The Treaty of Rome establishing the European Atomic Energy Community (25 March 1957; 1 January 1958);
- The Treaty establishing a Single Council and a Single Commission of the European Communities – Merger Treaty (8 April 1965; 1 July 1967);
- The Single European Act (18 February 1986; 1 January 1987);
- The Treaty on European Union – Treaty of Maastricht (7 February 1992; 1 November 1993);
- The Treaty of Amsterdam (2 October 1997; 1 May 1999);
- The Treaty of Nice (26 February 2001; 1 February 2003).

Within its sphere of jurisdiction, the EU can pass legislation[85]. This is normally done by the Council and the Parliament acting together, with the Commission making proposals. The legal basis for European private international law has evolved[86].

Since the very beginning of the EU one of the first legal act of the EU was Treaty establishing the European (Economic) Community (hereinafter – **EEC**). Article 220 of EEC established[87]: "Member State shall, so far as is necessary, enter into negotiations with each other with a view to securing for the benefit of their nationals: <…> - the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals and of arbitration awards"[88].

Second was the Maastricht Treaty. Title VI of Maastricht Treaty was called – Provisions on cooperation in the fields of justice and home affairs. Article K.1 provided such legal rule: "For the purposes of 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 shall regard the following areas as matters of common interest: <…> 6. Judicial cooperation in civil matters;"[89].

According to the author of this Master Thesis the main agreement, which made the most input in to the cross-border matters was the third one – Treaty of Amsterdam. Article 65 of Treaty of Amsterdam established: "Measures in the field of judicial cooperation in civil matters having cross-border implications, to be taken in accordance with Article 67 and in so far as necessary for the proper functioning of the internal market, shall include:

(a) Improving and simplifying:
   - The system for cross-border service of judicial and extrajudicial documents,
   - Cooperation in the taking of evidence,
   - The recognition and enforcement of decisions in civil and commercial cases, including decisions in extrajudicial cases;

(b) Promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction;

[85] Trevor C. Hartley, *supra note* 65, p. 19.
[86] Geer Van Calster, *European Private International Law,* (Hart Publishing, United Kingdom, 2013), p. 9.
[87] The Treaty of Rome establishing the European Economic Community (25 March 1957; 1 January 1958).
[88] Udo BUX, *Judicial cooperation in civil matters*, (EU Fact Sheets, 01-02-2017), accessed 17 March 2017, http://www.europarl.europa.eu/thinktank/en/document.html?reference=04A_FT(2013)051205.
[89] The Maastricht Treaty Article K.1.

(c) Eliminating obstacle to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States"[90].

Additionally, in Article 67 part 5 point 2 of the Treaty of Amsterdam the legal basis for Brussels I bis was written: <…> the Council shall adopt <…> the measures provided for in Article 65 with the exception of aspects relating to family law.

After more than 16 years from the communitarisation of private international law, it is possible to start evaluating the results achieved by the EU legislator also from a methodological standpoint. Indeed, the quantity of acts adopted clearly shows the serious intention of achieving as soon as possible the realization of an area of freedom, security and justice in order to ensure that the persons subject to the jurisdiction (broadly speaking) of the Member States will enjoy the protection clearly delineated since the European Council at Tempere.[91]

TFEU Article 67 part 4 implies such legal regulation: The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matter. Even more precise legal rule is in Article 81[92] which regulates judicial cooperation in civil matters having cross-border implications.

The creation of consistent system of uniform rules of private international law, however, calls also for a strategy and a general vision which must be carefully verified, as indicated in the European Parliament in its Resolution on the Action Plan implementing the Stockholm

[90] Treaty of Amsterdam, Article 65.

[91] Bariatti Stefania, *Cases and material on EU private international law*, (Hart publishing, Oxford and Portland, Oregon 2011), p. 41.

[92] TFEU Article 81: 1. The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member states. 2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring: (a) the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases; (b) the cross-border service of judicial and extrajudicial documents; (c) the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction; (d) cooperation in the taking of evidence; (e) effective access to justice; (f) the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States; (g) the development of alternative methods of dispute settlement; (h) support for the training of the judiciary and judicial staff.

Programme[93], possibly with the final aim of a comprehensive codification of private international law[94].

As the successive treaties texts mentioned above shows, EU policy on private international law has changed quite dramatically. From a mere and superfluous reference to the possibility for the Member States to conclude Treaties in the private international law area, EU competence has now grown to a more or less standard competence, subject only to the general limits to EU heads of power, including subsidiarity and proportionality[95].

EU private international law is today comprised of a vast number of binding acts and various instruments relevant only for interpretative purposes, which use various methods to resolve conflicts of laws and jurisdiction issues[96]. These methods are, in part, derived from the private international law tradition and are faithful to it, and differ in part in order to take into consideration the characteristics of the legal system of the EU, in which the rules are elaborated and to which they belong, even though they apply and are implemented through national legal systems.

Article 220 of the EEC Treaty merely required the Member States to simplify the formalities governing the recognition and enforcement of judgments within the EU. This could easily have been done by the adoption of a traditional judgments-recognition convention[97]. We must not forget that the rules of the EU prevail over the domestic laws of the Members States, but they are not self-sufficient either within the European legal system, or vis-à-vis other legal system.[98]

Brussels I bis lays down a system of jurisdiction in actions *in personam* which is intended to apply throughout the EU[99]. Brussels I bis is one of the main legal act regulating enforcement of foreign judgments.

Notwithstanding, there is Lugano Convention, which regulates analogous legal relationships as Brussels I bis. The Lugano Convention is a treaty which was originally signed in the Swiss city of Lugano on 16 September 1988[100]. The original parties were then Member States of the EU and certain other European States that were members of a free-trade organization called EFTA

[93] European Parliamanet Resolution of 23 November 2010 on civil law, commercial law, family law and private international law aspects of the Action Plan Implementing the Stockholm Programme (2010/2008/INI), P7_TA-PROV(2010)0426, Recital D.
[94] Bariatti Stefania, *supra note* 97, p. 42.
[95] Geer Van Calster, *supra note* 92, p. 13.
[96] Bariatti Stefania, *supra note* 97, p. 42.
[97] *Ibid*., p. 21.
[98] *Ibid*., p. 42.
[99] *Ibid.*
[100] The original text may be found in OJ 1988, L 319/25.

(European Free Trade Association)[101]. The idea was to extend to these States the system applicable to the EU Member States.

All the EU Member States were parties to the original Lugano Convention. A new version of the Lugano Convention was adopted on 30 October 2007[102] (from here on - **Lugano Convention 2007**), but the EU system was then amended by Brussels I bis.

All the EU Member States were parties to the original Lugano Convention. Before Lugano 2007 was signed, the CJEU decided in the so-called "Lugano case"[103], that the conclusion of the new Lugano Convention 2007 fell within the exclusive competence (jurisdiction) of the Union. This meant that the Member States could not be parties to it. On the Union side, only the Union itself could be a party. However, the EU Member States would be bound by it because the Union had concluded it. This follows from Article 216(2) TFEU. In addition to the EU, the parties are Iceland, Norway and Switzerland[104]. These latter three countries are the current "Lugano States".

All in all, it is obvious that judicial co-operation in civil and commercial matters was highly prioritized in the EU since the very beggining. However, since Brussels I bis and Brussels Regulation are main legal acts regulating enforcement of foreign judgment, these two legal acts will be the focus in the part regarding enforcement of judgments in the EU Member States.

1.2.4. MULTILATERAL CONVENTIONS AND REGULATIONS

The Hague Conference on Private International Law (hereinafter – **HCCH**, for *Hague Conference/Conférence de La Haye)* is the preeminent organization in the area of private international law. With 82 Members representing all continents, the HCCH is a global inter-governmental organisation. A melting pot of different legal traditions, it develops and services multilateral legal instruments, which respond to global needs[105].

The statutory mission of the HCCH is to work for the "progressive unification" of these rules. This involves finding internationally-agreed approaches to issues such as jurisdiction of the courts, applicable law, and the recognition and enforcement of judgments in a wide range of areas, from commercial law and banking law to international civil procedure and from child protection to matters of marriage and personal status[106].

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[101] Trevor C. Hartley, *supra note* 65, p. 20.
[102] OJ 2009, L 1475/5.
[103] Opinion 1/03, [2006] ECR I-1145.
[104] Trevor C. Hartley, *supra note* 65, p. 21.
[105] *About HCCH*, accessed 14 March 2017, https://www.hcch.net/en/about.
[106] *Ibid*.

Between 1951 and 2008, the HCCH adopted 38 international Conventions, the practical operation of many of which is regularly reviewed by Special Commissions. Even when they are not ratified, the Conventions have an influence upon legal systems, in both Member and non-Member States of HCCH. They also form a source of inspiration for efforts to unify private international law at the regional level, for example within the Organization of American States or the European Union.

The HCCH has currently 82 Members: 81 States and 1 Regional Economic Integration Organization[107]. Yet, there are some members of HCCH who are not members of the EU. Therefore there is analogous HCCH convention to Brussels Convention which is called Convention of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (hereinafter – **Hague Convention**)[108] and is applied among the contracting states of HCCH.

There is one on-going legislative project of HCCH called the "Judgments Project" since 1992[109]. The "Judgments Project" refers to the work undertaken by the Hague Conference since 1992 on two key aspects of private international law in cross-border litigation in civil and commercial matters: the international jurisdiction of courts and the recognition and enforcement of their judgments abroad. Initially, the Judgments Project focused on developing a broad convention, which was subsequently scaled down to focus on international cases involving choice of court agreements. This led to the conclusion of the Hague Convention of 30 June 2005 on Choice of Court Agreements ("Choice of Court Convention")[110].

In 1992 United States of America proposes a new convention on jurisdiction, and the recognition and enforcement of foreign judgments. The proposal is novel insofar as it calls for the new convention to harmonize only certain grounds of jurisdiction, allowing each Contracting State to determine other grounds of jurisdiction in accordance with its own law, provided that these grounds are not prohibited by the convention. This model is to be referred to as amixed convention[111].

The Permanent Bureau of HCCH responds to the US proposal by recommending a convention on recognition and enforcement as a starting point for discussions. In its response, the Permanent Bureau acknowledges the lack of success of the *Hague Convention of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters*

[107] HCCH members, accessed 03 April 2017, https://www.hcch.net/en/states/hcch-members/.
[108] Entry into force: 20-VIII-1979.
[109] The Judgment Project, accessed 20 March 2017, https://www.hcch.net/en/projects/legislative-projects/judgments.
[110] *Ibid.*
[111] *Ibid.*

("Enforcement Convention") and its *Supplementary Protocol*, which it attributes to the subsequent success of regional instruments and the unusual and complex form of the Enforcement Convention[112].

Legal practitioners have commented that progress towards a global approach to enforcement would give parties greater certainty and confidence that any judgment obtained from an EU court would be enforced by non-EU states. This would provide a further incentive for parties to negotiate jurisdiction clauses in favour of EU courts. Given the increase in cross-border trade globally, commercial parties will increasingly have to look to enforce their judgments against their counterparties' assets outside the EU. The lack of enforceability in non-EU states is a significant problem as a successful litigant before an EU court may have no effective remedy if the judgment debtor's assets are located in a jurisdiction which does not recognize judgments from EU courts (e.g. the People's Republic of China)[113].

During the discussions of Judgments Project, there was said: "The CCBE is supportive in principle of the work to agree an international approach in this field of private international law. This would be beneficial as it would provide greater legal certainty to parties in the case of international disputes. The continuation of the project would also follow the recent agreement of the European Parliament and Member States on the recast of the Brussels I Regulation on jurisdiction and recognition and enforcement of judgments in civil and commercial matters. The EU would therefore be well-placed to provide valuable input into these international negotiations. Increased legal certainty internationally might also encourage a broader range of litigants to elect to use EU courts to resolve disputes"[114].

To sum up, in the chapter regarding the enforcement of foreign judgments outside the EU we will review multinational conventions and ongoing projects as one of the legal ground for enforcement of foreign judgments when there are not any of bilateral agreements on legal assistance and when EU law is not applicable. Yet it is obvious that modern world needs a legal regulation regulating enforcement of foreign judgments worldwide, that proves the international projects within the countries outside the EU.

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[112] *Ibid*.

[113] Council of Bars and Law Societies of Europe, *CCBE position paper on the Judgments Project concerning jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*, (Bruxelles, 29 November 2013), p. 2, accessed 28 February 2017, https://assets.hcch.net/docs/26b703e0-fdb0-4c75-9a4e-80a311436fb4.pdf.

[114] *Ibid*., p. 1.

2. PRACTICAL IMPLEMENTATION OF ENFORCEMENT OF LITHUANIAN JUDGMENTS IN CIVIL MATTERS WITHIN EU

The European Council held a special meeting on 15 and 16 October 1999 in Tampere on the creation of an area of freedom, security and justice in the EU[115]. "A high profile was given to the creation of a common asylum and immigration policy and the development of European institutions for tackling transnational crime. The Presidency conclusions also contain important policy objective in the area of civil procedure and in particular access to justice and the transfrontier enforcement of judgments"[116]. It was hoped that this will assist lawyers to engage with their European partners in an attempt to identify ways of overcoming the obstacles to the free movement of judgments and to develop an area in which the rights guaranteed by European law can be given their full effect.

The principle of *res judicata* requires that, unless the proceedings were flawed in some way, the successful party should not have to fight the case again. Once it is decided, that should be the end of the matter.

In the international context, this mean that unless there is a legitimate objection to the proceedings, a litigant should be able to rely on a judgments obtained in another country[117]. If the judgment is for the defendant, the claimant should not be able to sue him again. If the judgment is for the claimant, he should be able to enforce it. In neither case should the matter be reopened[118].

A distinction is generally drawn between the recognition of a foreign judgments and its enforcement. "*Recognition* means accepting the determination of the rights and obligations made by the court of origin; *enforcement* means ensuring that the judgment-debtor obeys the order of the court of origin"[119]. It is important to understand that by saying *judgment* we mean "any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as a decision on the determination of costs or expenses by an officer of the court"[120].

Therefore in this chapter we are going to discuss more deeply the legal mechanisms regarding the enforcement of foreign judgment between the Member States, we will stress out the

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[115] W. A. Kennet, *Enforcement of Judgments in Europe*, (United States by Oxford University Press Inc., New York: 200), p. 3.
[116] *Ibid*.
[117] Trevor C. Hartley, *supra note* 65, p. 349.
[118] *Ibid.*
[119] *Ibid.*
[120] Article 2(a) of Brussels I bis.

challenges of enforcement of foreign judgments. Additionally the procedure of submitting application, requirements of application for enforcement of foreign judgments will be overviewed and according to the analysis the advantages and disadvantages of enforcement legal regulation will be identified.

2.1. ENFORCEMENT OF FOREIGN JUDGMENTS ACCORDING TO BRUSSELS I BIS REGULATION – ABOLISHMENT OF *EXEQUATUR*

Brussels Regulation has become an important source of regulation of international litigation. It is generally regarded as a successful convention in the sense that it has removed many of the difficulties and uncertainties of litigating in Europe and has enormously improved the prospects for the enforcement of judgments[121].

Figures concerning the number of judgments "moving freely" around the EU are not easy to come by, but in 2007 "it was reported that about 700 judgments of other Contracting States had been granted an order for *exequatur* (registration) by the Tribunal de Paris, and that about 600 such judgments had been granted an order for *exequatur* in the Netherlands. In England and Wales 99 applications for registration of judgments under the Brussels and Lugano Conventions were made in 1996"[122]. However, it should be noted that information about *exequatur* proceedings was not readily available, because such judgments were generally straightforward and rarely reported[123].

While Brussels Regulation was applicable, the uniform procedure for obtaining an order for *exequatur* was publicly criticized[124]. Basically, the length of the procedure was one the biggest disadvantages at the time. Time needed for the *exequatur* procedure varied enormously from one state to another. For instance, in England the equivalent procedure could have been completed in less than a week, whereas in other jurisdictions a judgment creditor had to wait even several months for his application to be dealt with because of the constraints of court schedules[125]. It is said, that the creditor of the judgment "may already have waited a long time to obtain a judgment on the merits and should not be obliged to wait for longer. Thus reforms of the law relating to conservatory measures and of the rules concerning *exequatur* are equally necessary, even though at times one procedure may duplicate the function of the other"[126]. Since the issue of expanded and indefinite

[121] W.A. Kennet, *supra note* 121, p. 21.
[122] *Ibid*, p. 21-22.
[123] *Ibid*.
[124] WA Kennet, *Reviewing Service: Double Check or Double Fault?*, (1992) 11 Civil Justice Quarterly 115-156.
[125] W.A. Kennet, *supra note* 121, p. 23.
[126] *Ibid*, p. 24.

procedure of the issuing an *exequatur* was overloaded in the courts, it follows that it should have been thinking about some authorized authority in order to deal with *exequatur*. This would have speed up the issuance of *exequatur* and the whole procedure of enforcement of foreign judgments fundamentally. However, it was not the only one issue of the Brussels Regulation and the amendments of latter were necessary.

Brussels Regulation that has been governing questions of jurisdiction and the recognition and enforcement of judgments in civil and commercial matters within the EU for more than 10 years was repealed and replaced by Brussels I bis on January 10, 2015. Brussels I bis apply to all new proceedings brought before courts of the EU Member States, starting from January 10, 2015[127]. Therefore if a party has a judgment which was issued before the 10 January 2015 regarding to civil and commercial matters and the debtor is located in other Member State, in order to enforce such judgment the Brussels Regulation will be applicable. Apparently, in such case the need of *exequatur* remains and the creditor first of all will have to submit the application for declaration of such judgment as enforceable (*exequatur* procedure).

Notwithstanding, the question regarding the recognition under Brussels Regulation is the same, that is to say that the judgments which are issued in Member States shall be recognized in other Member States without any special procedure[128]. Nonetheless, the procedure of enforcement of foreign judgments differs essentially under Brussels Regulation and Brussels I bis. Under Brussels Regulation before the enforcement of foreign judgment first of all it must be declared enforceable[129]. In order to declare a judgment enforceable primarily there should be the application of interested party[130]. The main issue that the court in which enforcement is sought checks is whether the judgment can be executed in the country of issue. This is checked using a form referred to in Articles 54 and 58 of the Brussels Regulation, which is attached to the Brussels Regulation as Annex V and is required to be supplied by the court of the country of issue. The application shall be submitted to the court or competent authority indicated in the list in Annex II of Brussels Regulation, besides the procedure for making the application shall be governed by the law of the Member State in which enforcement is sought[131]. Obviously, such a requirement takes a time and during such procedure there is a possibility that debtor may sell or hide all of his asset, therefore in the results the creditor will face issues regarding the recovery of the awarded sum of money.

[127] Article 66(1) of Brussels I bis.
[128] Article 33(1) Brussels Regulation.
[129] Article 38(1) Brussels Regulation.
[130] *Ibid.*
[131] Articles 39(1) and 40 of Brussels Regulation.

It was settled in a French case that an e*xequatur* can be awarded if certain requirements and formalities were satisfied. These requirements were specified in the case of *Cornelissen and Co Avianca 2007*[132], where it was held that before a foreign judgment is recognized and enforced in another Member State, it must be ensured that three conditions are satisfied. "These are firstly that the claimant/ party should establish consistency and uniformity with the international public policy and procedural requirements. Secondly, it should be proved that there is no fraud in the law. Thirdly, that there should be an indirect jurisdiction of the foreign courts to approve and give permission for enforcing a judgment which has been delivered in a foreign European Union Member State"[133]. Such clarification of the court demonstrates the complexity of the *exequatur* procedure. However, there are even more disadvantages of the *exequatur* like costs incurred in the procedure of the application for the *exequatur*.

Even though it is written: "In proceedings for the issue of a declaration of enforceability, no charge, duty or fee calculated by reference to the value of the matter at issue may be levied in the Member State in which enforcement is sought"[134] it should be mentioned that the judgment creditor however will face some legal costs. For instance one of example may be the fees of lawyers and legal representatives in the Member State which issued the judgment. In case claimant wants to enforce a judgment in another Member State it must receive "declaration of enforcement" in order to obtain such a declaration an application shall be submitted to the court. From here on it is obvious that a claimant, if he is not a professional lawyer by himself, it is expected that the claimant will have to choose a local legal representative in order to commence the court procedures, and to represent before the enforcing authority. For all related persons, costs incurred in enforcement of foreign judgment cases among Member States would consist of: "the ground work needed in preparing the required documents, translating the Member States judgments, assigning a lawyer in the state of enforcement, etc"[135].

In result it should be noted, that for example Article 52 of Brussels Regulation is just declarative and is not working properly in the practice. It clearly shows that before the procedure of enforcement of foreign judgment first of all it is essential to assess all the risks, e.g. to make preliminary calculations of possible costs for legal services, to submit a query for the translation bureau how much it would cost to translate judgment and other relevant documents. In the result it

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[132] Zainer Aumir, *The Abolishment of Exequatur From the Brussels Regulation*, accessed on 10 April 2017, http://courtingthelaw.com/2015/09/03/commentary/the-abolishment-of-exequatur-from-brussels-regulation/.
[133] *Ibid.*
[134] Article 52 of Brussels Regulation.
[135] Zainer Aumir, *supra note* 138.

may turn out that there are no economic benefits to commence the procedure of the enforcement of foreign judgment if the sum of money awarded by the judgment is not high enough.

Among the key differences of Brussels Regulation and Brussels I bis one of them is the opportunity to appeal enforcement of foreign judgment. Under Brussels Regulation the court addressed issues a decision whether the judgment is enforceable. After such decision both parties (creditor and debtor) may appeal such decision whether it was affirmative for the creditor and the judgment was declared enforceable[136]. As a consequence, the procedure of enforcement of foreign judgment becomes even lengthier, wherefore it is one of the disadvantages among other disadvantages of the Brussels Regulation and *exequatur* itself.

Although Brussels I bis is more a recast of the former regulation than an entirely new legislative text, it introduces a number of important changes. In particular, the new regulation:

1) Abolishes the "*exequatur*" procedure, streamlining the enforcement of foreign judgments;
2) Introduces an exception to the general *lis pendens* rule, in favor of the Court chosen by the parties through an exclusive jurisdiction clause, so as to prevent abusive litigation tactics ("Italian Torpedo");
3) Extends the application of the rules regarding jurisdiction agreements also to cases where neither of the parties is domiciled in the EU;
4) Introduces an international *lis pendens* rule;
5) Improves the interrelation between arbitration and litigation[137].

The basic principle of Brussels I bis, laid down in Articles 36 and 39 of Brussels I bis, is that all judgments granted by a court in a Member State which are within the subject-matter scope of the Brussels I bis must be recognized and enforced in all other Member States. In the past, judgments from another Member State could not be enforced unless a declaration of enforceability had firstly been obtained. This constituted a kind of "passport" or "visa" permitting the foreign judgment to enter the country.

As it was mentioned before, Brussels I bis abolished the costly and time-consuming procedure *exequatur*. Although the Court of the place of enforcement carried out a merely formal evaluation of the decision to be enforced, the procedure was in any case time and cost consuming, and the debtor had the chance to object to the recognition for various reasons (*e.g.*, breach of the public order, lack

[136] Article 43(1) of Brussels Regulation.

[137] Francesa Petronio, Fabio Cozzi *New Rules on Jurisdictions and Enforcement of Foreign Judgments in the EU to Streamline and Enforcement of Court Decisions and Prevent Dilatory Tactics*, Paul Hastings LLP, 2015.

in the service of the writ of summons in case of judgment issued in default of appearance of the defendant, etc.)[138].

The new regulation radically changes that approach. No more preliminary evaluation (even merely formal) of the Court of the place where enforcement is sought. The creditor can apply directly to the authority competent for the enforcement, simply filing a copy of the judgment to be enforced and a form certificate[139]. It is up to the debtor to apply to the designated court of the State of enforcement to oppose the enforcement (but this opposition can be made on limited grounds only). In theory, a judgment from other Member State is automatically effective: this is laid down in Article 39 of Brussels I bis. In the words of Recital 26 of Brussels I bis, "A judgment given by the courts of a Member State should be treated as if it had been given in the Member State addressed"[140]. So it means that no discrimination regarding the country of origin of the judgment is tolerated and it shall be no matter whether judgment was obtained in other European Union country. As well as the court of country addressed shall rely on the court which issued the judgment, since no evaluation of given judgment is needed. Additionally hereby it is encouraged a relationship of trust between countries.

As it was said before, this is the way how the legal rule is formulated, but in the practice, however, there are important exceptions. In particular, it is possible for the person against whom enforcement is aimed, who must be informed before any enforcement measures are taken[141], to apply to the court of the Member State addressed for a decision refusing recognition or enforcement. This is a kind of "reverse" *exequatur*. Since courts in the countries in which the enforcement is sought do not examine given judgment and acknowledges such judgment as enforceable without any examination, consequently the need of appeal for the creditor is unnecessary.

The most important grounds on which reverse *exequatur* may be obtained are set out in Article 45 of Brussels I bis[142].

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[138] *Ibid.*

[139] The standard form is provided in Annex 1 of Brussels I bis.

[140] Recital 26 of Brussels I bis.

[141] Brussels I bis, Article 43.

[142] These grounds of refusal apply to both recognition and enforcement.

1. On the application of any interested party, the recognition of a judgment shall be refused:
   (a) if such recognition is manifestly contrary to public policy (*ordre public*) in the Member State addressed;
   (b) where the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;

First of all, if there is the application of interested party, the enforcement or recognition, of a judgment shall be refused if the proceedings of recognition or enforcement are manifestly contradictory to a public policy (*ordre public*) in the Member State addressed[143]. It is obvious, that creditor would not appeal his own application, so it seems that the formulation of such legal provision may be corrected and the "application of interested party" could be change in the words like "application of the debtor". In such way it would be more clearly that the possibility to appeal is given only to the creditor. Yet, it is expressly laid down in Article 45 part 3 that the public policy clause may not be used as an indirect way of ensuring that the court granted the judgment had jurisdiction.

There was a wide measure of agreement among researchers that public policy as a defense to recognition should be abolished: "the scope of application of the Convention should not give rise to judgments whose recognition and enforcement can be said to be "a genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society""[144]. Nevertheless, the Member States wished to retain this ground of non-recognition to allow control to be exercised in extreme cases.

Public policy operates as a safeguard against provisions of foreign law and as a protection for the fundamental values of European Member States only as a last resort. The concept of "public policy" in the EU law context must be interpreted broadly, so that its scope cannot be determined unilaterally by each Member State without any control by the EU institutions[145]. Thus, public policy

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(c) if the judgment is irreconcilable with a judgment given between the same parties in the Member State addressed;

(d) if the judgment is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed; or

(e) if the judgment conflicts with:

(i) Sections 3, 4 or 5 of Chapter II where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee was the defendant; or

(ii) Section 6 of Chapter II.

2. In its examination of the grounds of jurisdiction referred to in point (e) of paragraph 1, the court to which the application was submitted shall be bound by the findings of fact on which the court of origin based its jurisdiction.

3. Without prejudice to point (e) of paragraph 1, the jurisdiction of the court of origin may not be reviewed the test of public policy referred to in point (a) of paragraph 1 may not be applied to the rules relating to jurisdiction.

The application for refusal of recognition shall be made in accordance with the procedures provided for in Subsection 2 and, where appropriate, Section 4.

[143] Article 45 part 1 point a of Brussels I bis.

[144] W.A. Kennet, *supra note* 121, p. 221.

[145] Case C-36/02, 14 October 2004, paragraph 30.

may be relied on only if there is a genuine and sufficiently serious threat to a fundamental interest of society[146].

CJEU heard civil case *Krombach v. Bamberski*[147] which is one of the fundamental cases regarding the principle of public policy. This case concerned two men, Krombach (a German) and Bamberski (a Frenchman). Mr. Krombach was the subject of a preliminary investigation in Germany following the death in Germany of a 14-year-old girl of French nationality, who was the daughter of Mr. Bamberski. That preliminary investigation was subsequently discontinued. However, in response to a complaint by Mr. Bamberski, the father of the young girl, a preliminary investigation was opened in France, the French courts declaring that they had jurisdiction by virtue of the fact that the victim was a French national. At the conclusion of that investigation, Mr. Krombach was, by judgment of *the Chambre d'Accusation* (Chamber of Indictments) of the *Cour d'Appel de Paris* (Paris Court of Appeal), committed for trial before the *Cour d'Assises de Paris*.

The judgment and notice of the introduction of a civil claim by the victim's father were served on Mr. Krombach. Although Mr. Krombach was ordered to appear in person, he did not attend the hearing. *The Cour d'Assises de Paris* thereupon applied the contempt procedure governed by Article 627 et seq. of the French Code of Criminal Procedure[148]. Pursuant to Article 630 of that Code, under which no defense counsel may appear on behalf of the person in contempt, the *Cour d'Assises* reached its decision without hearing the defense counsel instructed by Mr. Krombach.

By judgment of 9 March 1995 the *Cour d'Assises* imposed on Mr. Krombach a custodial sentence of 15 years after finding him guilty of violence resulting in involuntary manslaughter. By judgment of 13 March 1995, the *Cour d'Assises*, ruling on the civil claim, ordered Mr. Krombach, again as being in contempt, to pay compensation to Mr. Bamberski in the amount of FRF 350 000 (approximately 53 360 EUR[149]).“

On application by Mr. Bamberski, the President of a civil chamber of the Landgericht (Regional Court) Kempten (Germany), which had jurisdiction *ratione loci*, declared the judgment of 13 March 1995 to be enforceable in Germany. Following dismissal by the Oberlandesgericht (Higher Regional Court) of the appeal which he had lodged against that decision, Mr. Krombach brought an appeal on a point of law ('Rechtsbeschwerde’) before the Bundesgerichtshof in which he

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[146] Case C-54/99 *Église de Scientologie* [2000] ECR I-1335, paragraph 17.

[147] Case C-7/98, [2000] ECR I-1935.

[148] Code of Criminal Procedure of France, accessed 7 April 2017, https://www.legifrance.gouv.fr/content/download/1958/13719/version/3/file/Code_34.pdf.

[149] Currency converter: FRF to EU, accessed 7 April 2017, http://www.xe.com/currencyconverter/convert/?Amount=350000&From=FRF&To=EUR.

submitted that he had been unable effectively to defend himself against the judgment given against him by the French court. The Federal Supreme Court (Bundesgerichtshof) made a reference to the CJEU, asking two questions while only one is relevant for this Master Thesis: "May the provisions on jurisdiction form part of public policy within the meaning of Article 27, point 1, of the Brussels Convention where the State of origin has based its jurisdiction as against a person domiciled in another Contracting State (first paragraph of Article 2 of the Brussels Convention) solely on the nationality of the injured party (as in the second paragraph of Article 3 of the Brussels Convention in relation to France)?"[150].

In other words, it asked whether the public policy clause may be used to deny recognition to a judgment from another Contracting State for civil damages in a criminal case if the State of origin took jurisdiction on the ground that the victim was one of its citizens. The point about this question is that Article 3 of the Brussels Convention[151] expressly forbade France from assuming jurisdiction on the basis of Article 14 of the French Code[152]. Notwithstanding, if a French court took jurisdiction in a criminal case on the ground that the victim was a French citizen, and if a civil claim was joined to the criminal proceedings, the end result would be that the French courts could take jurisdiction over a defendant domiciled in another Contracting State on the ground of the victim's (or claimant's) French nationality. In other words, Article 5(4) could provide a means of circumventing the ban on this ground of jurisdiction[153].

CJEU answering this question provided such statement: "It follows that the public policy of the State in which enforcement is sought cannot be raised as a bar to recognition or enforcement of a judgment given in another Contracting State solely on the ground that the court of origin failed to comply with the rules of the Convention which relate to jurisdiction"[154].

To sum up, this judgment makes clear that, if a court of a Member State takes jurisdiction over a defendant domiciled in another Member State on grounds prohibited by the Regulation, there is nothing that other Member States can do about it. They cannot use public-policy clause to block enforcement.

Secondly, recognition and enforcement would be refused if the defendant was not served with the documents which instituted the proceedings or the time given for preparation of defense was not enough. Shortly, the ground for refusing of recognition of judgment is where the judgment was

[150] *Supra note* 153.
[151] A similar provision is laid down in Article 5(2) of Brussels I bis.
[152] Trevor C. Hartley, *supra note* 65, p. 360.
[153] *Ibid.*
[154] Case C-7/98, [2000] ECR I-1935, point 32.

given in default of appearance[155]. Such provision offers defendants the possibility of resisting recognition or enforcement on purely technical grounds[156]. "A defendant may rely on Article 34(2) [Brussels Regulation] even though the original court considered issues of service and sufficiency of time under Article 26. Therefore, even though original court concludes that the defendant was served in sufficient time, this conclusion is not binding on the "recognizing-court"[157],,[158].

"It would appear that reliance on Article 45(2) by a defendant is largely a question of fact rather than a law"[159]. Notwithstanding, it may seem that the issue of service of documents is to be dealt with by the judgment granting court, while, the issue of whether the defendant had enough time is for the judgment recognizing court[160]. CJEU analyzed Article 45(2)[161] of Brussels I bis in *Minalmet GmbH v. Brandeis Ltd*[162] and decided that where the proceedings did not come to the notice of the defendant in time to defend himself in a trial, there is no compliance with Article 45(2) of Brussels I bis, even if the defendant learnt of the judgment in time to apply to have it set aside. Hence, an English default judgment which was obtained by *Minalmet GmbH v. Brandeis Ltd* in the following circumstances was not enforceable in Germany: a notice informing the recipient that the documents commencing litigation were available at the local post office had been pushed through the door of the company's premises, however, the company claimed to have been unaware of this. At the time, Article 5(a) of the Hague Convention on the Service of the Judicial and Extrajudicial Documents Abroad provided that the German Civil Law governed service of the documents; and under that law substituted service was only possible when the notice of the documents' presence at the post office was left at the private address of a director of the company rather than its business address[163].

"Nor did it make a difference that Minalmet had subsequently learnt of the judgment and it was still open to it to apply to the English court to set aside the default judgment. There had not been "due service" for the purposes of Article 45(2)"[164]. Author of the Master Thesis do agree with such decision, because if the legal entity was right it had not learnt of the impeding proceedings before

[155] Article 45 part 1 point b Brussels I bis.
[156] Case C-305/88, [1990] ECR I-2725.
[157] Case C-228/81, [982] ECR 2723.
[158] Charles Wild, Stuart Weinstein, Neil MacEwan and Neal Geach, *Electronic and Mobile Commerce Law: an analysis of trade, finance, media and cybercrime in the digital age*, University of Hertfordshire Press, 2011, p. 66.
[159] *Ibid*.
[160] Klomps v. Michel C-166/80 [1981] ECR 1593.
[161] That time Article34(2) Brussels Regulation.
[162] Case C-123/91 [1992].
[163] *Ibid*.
[164] Charles Wild, Stuart Weinstein, Neil MacEwan and Neal Geach, *supra note* 164, p. 67.

they took place through a failure of proper service, then they had been deprived of the opportunity to defend themselves which Article 29(3) of Brussels I bis defended. The ability to apply to set aside the judgment is no substitute for that[165].

Additionally, it should be stressed out, that the defence is only available in circumstances where the judgment was given in "default of appearance", i.e. if after the judgment being made against him, he will lose the defence, if after the judgment he has failed to take an opportunity to challenge judgment in the country of origin. If the defendant took part in the proceedings then Article 45(2) cannot be relied upon[166]. Note though, that if there is no such possibility to challenge the judgment, then Article 45(2) will still be available to the defendant[167].

To sum up, this legal ground for refusing of enforcement of foreign judgment is logical, since the right to defend you in the court is one of the fundamental rights. In Lithuanian such right is provided in the supreme legal act of Lithuania – Constitution of the Republic of Lithuania.

Thirdly, the foreign judgment would not be enforced in the case if there is already a judgment between the same parties regarding the same dispute in the Member State addressed and such judgment is irreconcilable with latter[168]. It does not matter whether the local judgment was given before or after the judgment of which recognition is sought[169] i.e. the recognizing court, it does not need to give preference to the foreign judgment over one of its own. CJEU in the civil case *Hoffmann v. Krieg*[170] explained the meaning of the irreconcilable: "In order to ascertain whether the two judgments are irreconcilable within the meaning of Article 27(3) (*authors note*, Article 45(1)(c) of Brussels I bis), it should be examined whether they entail legal consequences that are mutually exclusive"[171].

There was a straightforward application of *Hoffman v. Krieg* by the English courts in *Macaulay v. Macaulay* [1991] 1 All ER 865 where an Irish maintenance order against the husband was held to be irreconcilable with an English divorce decree.

Forth, Article 45(4) Brussels I bis provide a legal institute for dealing with two foreign judgments (whether granted by the courts of Member States or non-Member States). The idea of this provision is that the courts shall not recognize a judgment if it is irreconcilable with an earlier

[165] *Ibid.*
[166] Case C-172/91 [1993] ECR I-1963.
[167] Charles Wild, Stuart Weinstein, Neil MacEwan and Neal Geach, *supra note* 164, p. 67.
[168] Article 45(3) Brussels I bis.
[169] Trevor C. Hartley, *supra note* 65, p. 369.
[170] Case 145/86, [1988] ECR 645.
[171] Case 145/86, [1988] ECR 645, paragraph 22.

judgment given in a Member State or non-Member State involving the same cause of action and the same parties. However, this is provided that the earlier judgment fulfils the conditions necessary for its recognition under the recognizing-court law. Therefore, as in the English court analyzed case *Clarkson and Hill* and provided a conclusion within the example of two conflicting foreign judgments in civil and commercial matters. In the example it was said that the dispute is being heard in the English court, and both parties provided two foreign judgments – one granted by the court of New York, and the other by the Italian Court. And at this moment the issues arose: "In order to determine, whether the Italian judgment is entitled to recognition or enforcement under Chapter III, the court must consider the effect of the New York judgment under the common law. If judgment satisfy both the conditions of recognition and enforcement <…> the English court must give priority to the earlier judgment. If the New York judgment was granted first, Article 34(4) provides that the Italian judgment shall be refused recognition. Similarly, if the English court faces with two Member State judgments, Article 34(4) gives priority to the earlier judgment – as long as it satisfies the conditions for the recognition under the Brussels Regulation"[172].

Therefore, such a legal rule works somehow similar to *lis pendens* rule, which implicates that if two different courts hear the same dispute between the same parties, second one shall suspend its procedure until the first one will adopt a decision. So it does not matter in which country the judgment was adopted, but it does matter the fact of time, which one was the first one, and secondly it matters whether it satisfies the conditions of recognition and enforcement.

So apparently in the Brussels I bis there are legal grounds for refusal of foreign judgment recognition and/or enforcement strictly under these before-mentioned four legal grounds. This is the main difference from Brussels Regulation which allowed both parties after the declaration of enforcement to submit an appeal under no legal grounds. However, the further appeal procedure is regulated under the law of the Member State addressed[173] therefore we will not get in to details regarding further appeal procedure.

To sum up, enforcement of Lithuanian judgments in other Member States seems simple procedure, but we should mention that the provisions of Brussels I bis regarding the enforcement still may be improved, because there is still the issue of translation which is costly for the creditor. Nonetheless, the procedure of enforcement is still simpler and is more advantageous in comparison the enforcement of foreign judgment in non-Member States.

[172] *Clarkson and Hill CASE*.
[173] Article 47 of Brussels I bis.

It should be stressed out, that under the EU law there is one of the advantages regarding the enforcement of foreign judgment, if to be more precise it is possible to apply interim measures. Such measures prevents of the debtors actions which can be made in the matters of asset: dissipated, concealed or destroyed his assets or have disposed of them under value, to an unusual extent or through unusual action increase the possibility to collect the money awarded by the judgment and to protect creditor that the decision will be executed fairly.

Additionally, on 24 October 2006, by way of the "Green Paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts", the Commission launched a consultation on the need for a uniform European procedure for the preservation of bank accounts and the possible features of such a procedure. Therefore Regulation establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters[174] (from here on – **Preservation Order Regulation**) was adopted.

Preservation Order Regulation like other analysed EU regulations in this Master Thesis shall be applicable to cross-border cases only[175]. The main idea why it is important for this Master Thesis is because the procedure for a Preservation Order is available to a creditor wishing to secure the enforcement of a later judgment on the substance of the matter prior to initiating proceedings on the substance of the matter and at any stage during such proceedings. It should be also available to a creditor who has already obtained a judgment, court settlement or authentic instrument requiring the debtor to pay the creditor's claim[176].

However, the creditor should be required in all situations, including when he has already obtained a judgment, to demonstrate to the satisfaction of the court that his claim is in urgent need of judicial protection and that, without the Preservation Order, the enforcement of existing or a future judgment may be impeded or made substantially more difficult because there is a real risk that, by the time the creditor is able to have the existing or a future judgment enforced, the debtor may have dissipated, concealed or destroyed his assets or have disposed of them under value, to an unusual

[174] 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 and commercial matters.

[175] For the purposes of Preservation Order Regulation, a cross-border case should be considered to exist when the court dealing with the application for the Preservation Order is located in one Member State and the bank account concerned by the Order is maintained in another Member State. A cross-border case should also be considered to exist when the creditor is domiciled in one Member State and the court and the bank account to be preserved are located in another Member State (Recital 10 of Preservation Order Regulation).

[176] Recital 11 of the Preservation Order Regulation.

extent or through unusual action.[177] Therefore the Preservation Order Regulation established a procedure enabling a creditor to obtain a European Account Preservation Order which prevents the subsequent enforcement of the creditor's claim from being jeopardized through the transfer or withdrawal of funds up to the amount specified in the order which are held by the debtor or on his behalf in a bank account maintained in a Member State[178].

The Preservation Order Regulation is applicable from 18 January 2017[179] in all EU Member States other than the United Kingdom and Denmark. Thus United Kingdom and Denmark have opted out the Preservation Order Regulation, with the effect that bank accounts there will not be subject to the Preservation Order Regulation, it will be possible for a creditor in a participating Member State to apply for an preservation order against the bank account of a British or Danish entity which is located in another Member State.

The Preservation Order "can be crucial in debt recovery proceedings because it would prevent debtors from removing or dissipating their assets during the time it takes to obtain and enforce a judgment on the merits"[180]. There is a belief that such regulation the procedure of freezing of debtors bank account will make it less cumbersome, lengthy and costly for a creditor to obtain provisional measures to preserve assets in bank accounts of their debtor located in another Member States[181].

On all applications (regardless of whether the creditor has already obtained a judgment), the creditor will need to submit "sufficient evidence to satisfy the court that there is an urgent need for protective measures in the form of because there is a real risk that, without such a measure, the subsequent enforcement of the creditor's claim against the debtor will be impeded or made substantially more difficult"[182]). The recitals of the Preservation Order Regulation make it clear that the creditor will have to show a real risk that the debtor will conceal or dissipate its assets "*to an unusual extent*" or "*through unusual action*"; non-payment of the claim or evidence of the debtor's financial difficulties will not be enough.

Where the creditor has not yet obtained judgment, it must also "submit sufficient evidence to satisfy the court that [it] is likely to succeed on the substance of [its] claim against the debtor"[183]. It

[177] Recital 14 of the Preservation Order Regulation.
[178] Article 1 of Preservation Order Regulation.
[179] Article 54 of Preservation Order Regulation.
[180] European Commision, *Preservation of bank accounts,* accessed on 10 April 2017, http://ec.europa.eu/justice/civil/commercial/freeze-accounts/index_en.htm.
[181] *Ibid.*
[182] Article 7(1) of Preservation Order Regulation.
[183] Article 7(2) of Preservation Order Regulation.

is unclear what "*likely*" would mean in this context, for example whether the creditor has to show a greater than 50% chance of success.

Notwithstanding, this Preservation Order Regulation is a huge advantage and a big step-up in the enforcement of foreign judgments regarding the EU Member States. It clearly shows that in the near future it will be much easier to enforce foreign judgment in other Member States since the authorities of EU are working hard to provide more legal mechanisms in order to defend the rights of creditors and to prevent fraudulent debtors.

To sum up, after provided analysis it is concluded that Brussels I bis is progressed and improved legal regulation which provides a strictly regulated procedure in respect to enforcement of foreign judgment. Therefore it should be noted that such procedure is advantage for EU Member States because it is easier to start and to proceed the procedure of the enforcement of foreign judgment.

2.2. EUROPEAN ENFORCEMENT ORDER FOR UNCONTESTED CLAIMS

On 21st April 2004 the EC Parliament and Council adopted Regulation 805/2004 creating a European Enforcement Order for Uncontested Claims (from here on – **EEO Regulation**)[184]. EEO Regulation is applicable for all the Member States except Denmark[185]. In Article 33 of EEO Regulation is provided that it enters into force on 21 January 2004, however it applies only since 21 October 2005. EEO Regulation obviously intended to function as a complement to the Brussels Regulation, mainly by introducing an alternative, simplified enforcement procedure with regard to uncontested claims irrespective of the amount. It does not limit itself to enforcement though, as it simplifies also the recognition of judgments regarding such claims[186]. Obviously, such possibility to choose between some of legal acts under which the creditor would like to enforce a foreign judgment is accounted as advantage for the EU Member States.

EEO Regulation does not affect the possibility of seeking recognition and enforcement in accordance with the Brussels Regulation or Brussels I bis[187]. "By Article 22, the Uncontested Claims Regulation does not affect agreements by which Member States undertook, prior to the entry into force of the Brussels I Regulation, pursuant to Article 59 of the Brussels Convention, not to recognize certain judgments given, in particular in other Contracting States to the Brussels

[184] *OJ L 143, 30.4.2004.*
[185] Recitals 24 and 25, and Article 2(3) of the EEO Regulation.
[186] Michael Bogdan, *supra note* 5, p. 83.
[187] Peter Stone, *EU Private International Law. Harmonization of Laws*, Edward Elgar Publishing Limited, 2006, p. 251.

Convention, against defendants domiciled or habitually resident in an external country"[188]. This means that there is no competition between EEO Regulation and Brussels Regulation or Brussels I bis and if creditor would like he do have a possibility to enforce a foreign judgment under both legal regulations or in the case if under one of them State in which the enforcement is sought refuses to enforce, there is a second option to enforce the same foreign judgment.

Bearing in mind that in the years 2005 Brussels Regulation was being applied regarding the recognition and enforcement of foreign judgments in civil and commercial matters, it is assumed that EEO Regulation was drafted in order to simplify the enforcement procedure. Brussels Regulation at the time imperatively demanded *exequatur* while EEO Regulation procedure was more uncomplicated and issuance of standardized certificate, which showed that all conditions imposed by EEO Regulation were fulfilled, enabled the judgments, thus certified as a European Enforcement Order, to be enforced in the other Member States without the need for any declaration of enforceability and to be recognized there without any possibility of opposing the recognition[189].

The term "European Enforcement Order" appears to be somewhat misleading, as neither the judgment itself nor the certificate is issued by any European institution but merely by the national court of origin of the judgment in question. "The certificate is issued "upon application at any time", which means that is does not have to be issued simultaneously with the judgment itself, but can be applied for late, for example, when the judgment creditor finds out that the debtor has assets in another Member State"[190]. The European Enforcement Order is issued in the language of the judgment, using a standard form annexed to the EEO Regulation (Article 9 of EEO Regulation). It should be noted that the certificate, in contrast to judgment itself, may not be appealed, however, it may be rectified or even withdrawn pursuant to the law of the Member State of origin if there is a discrepancy between the certificate and the judgment or if the certificate been granted in violation of the conditions imposed by EEO Regulation (Article 10).

One of the main legal ground for application of EEO Regulation is that judgment, court settlement or other authentic instrument must be uncontested (Article 3)[191]. In this context Recital 5

[188] *Ibid.*

[189] Article 5 of the EEO Regulation.

[190] Michael Bogdan, *supra note* 5, p. 84.

[191] A claim shall be regarded as uncontested if: (a) the debtor has expressly agreed to it by admission or by means of a settlement which has been approved by a court or concluded before a court in the course of proceedings; or
(b) the debtor has never objected to it, in compliance with the relevant procedural requirements under the law of the Member State of origin, in the course of the court proceedings; or

explains that the concept of "uncontested claims" should cover all situations in which a creditor, given the verified absence of any dispute by the debtor as to the nature or extent of a pecuniary claim, has obtained either a court decision against the debtor, or an enforceable document which requires the debtor's express consent, being a court settlement or an authentic document.

Chapter II (Articles 5-11) of EEO Regulation provides for a judgment on an uncontested claim to be certified by the court of origin as a European Enforcement Order. The certificate granted in the State of origin replaces the declaration of enforceability which would have to be obtained in the State of enforcement under the Brussels Regulation[192]. Therefore Article 5 of EEO Regulation specifies that a judgment which has been certified as a European Enforcement Order in the Member State of origin shall be recognized and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition. So it is the same as Brussels I bis after the abolition of *exequatur* – all the judgments issued in the Member State should be recognized and enforced without any proceedings.

However, while in Brussels I bis there are more than 4 legal grounds for refusing to enforce foreign judgments, EEO Regulation is uncomplicated and has only two legal grounds for refusing of enforcement. The sole grounds for refusal of enforcement of a certified judgment in the State addressed are specified by Articles 21(1) and 22. By Article 21(1), upon application by the debtor, enforcement would be refused firstly, if the certified judgment is irreconcilable with an earlier judgment involved the same cause of action and was between the same parties, and the earlier judgment was given in the Member State of enforcement or fulfils the conditions necessary for its recognition in the Member State of enforcement, and, secondly, if the irreconcilability was not and could not have been raised as an objection in the court proceedings in the Member State of origin.

Taking into account these legal provisions it may be said that EEO Regulation is more advantageous than Brussels I bis since there are less legal grounds for refusing of enforcement. However, since EEO Regulation is applied among Member States, it is concluded that it is more advantageous to enforce Lithuanian foreign judgment in Member States than non-Member States since, as it is obvious, among Member States are more options how to enforce Lithuanian judgment and the European Enforcement Order is one of them.

(c) the debtor has not appeared or been represented at a court hearing regarding that claim after having initially objected to the claim in the course of the court proceedings, provided that such conduct amounts to a tacit admission of the claim or of the facts alleged by the creditor under the law of the Member State of origin; or
(d) the debtor has expressly agreed to it in an authentic instrument.

[192] Geer Van Calster, *supra note* 92, p. 256.

Notwithstanding, there is a procedure upon which the certificate is issued (by Article 9, the certificate follows the standard form contained in Annex I of EEO Regulation, and uses the same language as the judgment). Article 6(1) specifies the conditions to which the issue of the certificate by the court of origin is made subject. Firstly, Article 6(1)(a) requires that the judgment is enforceable in the Member State of origin, and Article 11 restricts the effect of the certificate to the extent of the enforceability of the judgment.

Secondly, certain jurisdictional rules shall have been respected. By Article 6(1)(b), the judgment must not conflict with the rules on jurisdiction laid down in sections 3 and 6 of Chapter II of the Brussels Regulation[193] (which deal with insurance contracts and with exclusive jurisdiction by subject-matter). Moreover, by Article 6(1)(d), where the claim relates to a contract concluded by a person (the consumer) for a purpose which can be regarded as being outside his trade or profession, and the debtor is the consumer, and the claim is uncontested by reason of the debtor's failure to object or subsequent non-appearance, the certificate must be issued only where the judgment was given in the Member State of the debtor's domicile within the meaning o the Brussels I bis[194].

Thirdly, where the judgment is uncontested by virtue of the debtor's failure to object or subsequent non appearance, article 6(1)(c) of EEO Regulation requires that the court proceedings in the Member State of origin should have met the requirements set out in Chapter III of the EEO Regulation, which lays down minimum standards for uncontested claims procedures.

The simplified mechanism set up for European Enforcement Order is always optional for the creditor, who may prefer to use the system under the Brussels I bis instead. It must also be noted that EEO Regulation creating a European Enforcement Order does not impose any legal obligation on the Member States to adapt their national procedural law, in particular the rules regarding the service of documents, to the minimum standards set out in EEO Regulation Articles 12-19. However, in those cases where those standards are not met, the judgment must not be certified as being a European Enforcement Order and can only be enforced pursuant to the Brussels I bis[195].

Another thing to keep in mind is that even those Member States, which do not always comply with the minimum standards and are consequently sometimes unable to certify their judgments as European Enforcement Orders are obliged to recognize and enforce judgments so certified in the other Member States[196].

[193] Sections 4 and 6 under the Brussels I bis.
[194] Geer Van Calster, *supra note* 92, p. 254.
[195] Michael Bogdan, *supra note* 5, p. 87.
[196] *Ibid*.

To sum up, EEO Regulation is not compatible with the Brussels I bis but it is as additional option for the creditor to enforce a foreign judgment in other EU Member State. Therefore EEO Regulation is simpler and more strictly legal regulation regarding the Brussels I bis, however it may be a great opportunity to enforce a foreign judgment for the creditor if it was refused to enforce under the Brussels I bis. At the moment when the EEO Regulation was drafted Brussels Regulation was in force, so under the Brussels Regulation there was *exequatur* procedure, so it was a belief that EEO Regulation will be used more frequently since it was drafted without the *exequatur*. Yet, it was much more useful until Brussels I bis came in to force, because now enforcement of foreign judgment under the Brussels I bis is more simplified and without the procedure of *exequtur* same as in the EEO Regulation. However, we do believe that EEO should be very useful as the "plan B" if under Brussels I bis it was refused to enforce a foreign judgment.

2.3. SIMPLIFIED AND ACCELERATED PROCEDURES IN EU CIVIL PROCEDURE

The simplification of rules concern all phases of a procedure, e.g. the rules which lay down the form by which a claim can be introduced, or on whether or not you need to employ a lawyer. Also rules concerning the time frame in which the parties can present their arguments, concerning the necessity of a hearing or on how evidence is to be taken are simplified. This is also the case for rules with respect to a possible conciliation, the question of which party has to pay the costs of the proceedings after the judgment has been given, and of whether there is a possibility to appeal against the judgment.[197]

Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure[198] (hereinafter – **EOP Regulation**) created the first genuine European civil procedure – the European Order for Payment procedure. It was preceded by EEO Regulation, the major achievement of which to abolish *exequatur* for the enforcement of judgments issued in another Member State of the EU in certain categories of civil cases, subject to observance of certain procedural guarantees, which has to be confirmed by an appropriate authority in a prescribed certificate.

However, the European enforcement order is a certificate which relates to a judgment (or authentic act or court settlement) issued in a national procedure, while the EOP can be issued only in

[197] European Commission, *Specific procedures may help you in order to obtain a judgment more easily and faster*, accessed on 26 March 2017, http://ec.europa.eu/civiljustice/simplif_accelerat_procedures/simplif_accelerat_procedures_gen_en.htm.
[198] *OJ L 399, 30.12.2006.*

a single procedure common to all Member States. National law is applicable, on a subsidiary basis, to questions, which are not regulated in the EOP Regulation. Shortly after the EOP Regulation, another Regulation creating a European civil procedure was adopted, namely the Regulation establishing a European Small Claims Procedure[199] (from here on – **ESCP Regulation**).

All three regulations mentioned above put into practice the principle of mutual recognition of judgments in civil matters. Their main aim is to simplify and speed up the cross-border recognition and enforcement of creditors' rights in the EU. In this respect they contribute both to building a genuine area of justice in the EU, and to implementing Single Market[200].

EOP Regulation is applicable for all Member States except Denmark[201].The purpose of EOP Regulation is firstly, to simplify, speed up and reduce the costs of litigant in cross-border cases, and, secondly to permit free circulation of European orders for payment throughout the Member States[202]. European order for payment procedure shall be established for the collection of pecuniary claims for a specific amount that have fallen due at the time when the application for a EOP is submitted (Article 4 of EOP Regulation).

One of the steps in the procedure of issuance of EOP is completion or rectification. In the Article 9 of EOP Regulation is provided that if the basic requirements which are set in the Article 7 are not met and unless the claim is clearly unfounded or the application is inadmissible, the court shall give the claimant the opportunity to complete or rectify the application.

Important legal rule is set in Article 3, which provides the meaning of cross-border cases. Under the EOP Regulation the cross-border case is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seized. Therefore it is concluded that even applicants from the non-EU countries may submit application for the EOP if the debtor is domiciled or habitually resident in that Member State.

Secondly, ESCP Regulation established a uniform, simple and fast procedure for the cross-border recovery of claims with a value which do not exceed EUR 2000 (Article 2(1) ESCP Regulation). The aim of ESCP Regulation is quite similar to the EEO Regulation, EOP Regulation and even Brussels I bis: is to enhance cross-border enforcement in the EU and to increase access to justice. Recovering small claims, particularly in cross-border cases often incurs disproportionate high costs, proceedings take long, litigation is complex and there are substantial differences between

[199] Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, *OJ L 199, 31.7.2007*.
[200] Recital 1 of EOP Regulation.
[201] Recital 32, Article 2(3) of EOP Regulation.
[202] Article 1 of EOP Regulation.

national procedures in the Member States[203]. The basis for this instrument is Article 81(f) TFEU (formerly Article 65(c) EC Treaty), regarding measures eliminating obstacles to the good functioning of civil proceedings. The Regulation has been applicable since 1 January 2009 in all EU Member States, except Denmark[204].

The main advantage of ESCP Regulation is that it provides a uniform procedure, which is conducted through standard forms. Additionally, the resulting judgment is automatically enforceable in other EU Member States[205]. While analyzing ESCP Regulation in the light of others analogous regulations (Brussels I bis, EOP Regulation, EEO Regulation) we should stress out that judgments obtained in national procedures in civil and commercial matters under the Brussels I bis are enforced more complicated, while for uncontested claims there is a must of certification in the Member State of origin under EEO Regulation. So taking in to account, the most simply procedure to enforce a foreign judgment is under ESCP Regulation, of course, if some requirements are met.

To sum up, there are 5 main legal acts regarding the enforcement of foreign judgments between EU Member States: Brussels Regulation, Brussels I bis, EEO Regulation, EOP Regulation and ESCP Regulation. Additionally for easier enforcement of foreign judgment Preservation Order Regulation is applicable. Obviously, such a variety of legal instruments provides more possibilities for the creditor, therefore the amount of legal acts regarding the enforcement of foreign judgments between the EU Member States is accounted as advantage.

Separately, the simplest enforcement of judgment in other EU country is under the ESCP Regulation, but it is strictly limited to the amount of 2000 EUR. Secondly, creditor may choose to enforce a foreign judgment under the EOP or EEO Regulation since all the forms needed are provided and in most cases the services of lawyer will not be needed. And lastly, Brussels Regulation or Brussels I bis (according to the of the issuance of the judgment) should be taken in to account. After the amendments Brussels I bis has improved because costly and lengthy procedure of the *exequatur* was abolished and now creditor may enforce a foreign judgment even faster.

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[203] Xandra Kamer, *Introduction in the European Small Claim Procedure*, accessed on 30 March 2017, https://www.google.lt/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&cad=rja&uact=8&ved=0ahUKEwj007qgjP7SAhUDjiwKHU-TCekQFgg0MAQ&url=https%3A%2F%2Fwww.era-comm.eu%2FEU_Civil_Justice_Training_Modules%2Fkiosk%2Fcourses%2FSmall_Claims_Procedure%2Fkiosk%2Fdocuments%2Fprint_module_1.pdf&usg=AFQjCNE8dw--ybLo9KSPLE0d0dTgkKG_fA&sig2=_CVB6i7YiMKeMNv2ocl-gg&bvm=bv.151426398,d.bGg.

[204] Recital 38, Article 2(3), Article 29 of ESCP Regulation.

[205] Xandra Kamer, *supra note* 209, p. 4.

3. PRACTICAL IMPLEMENTATION OF ENFORCEMENT OF LITHUANIAN JUDGMENTS IN CIVIL MATTERS OUTSIDE THE EU BORDERS

Different legal grounds and the most common legal acts of enforcement of foreign judgments between the Member States have been analyzed so far. Since the aim of this Master Thesis is to compare different legal systems and to find out advantages and disadvantages, from here on we will discuss legal grounds for enforcement of Lithuanian judgments in non-EU Member States.

It was mentioned before that there is Lugano Convention, which is applicable to EU member states and plus Iceland, Norway and Switzerland and HCCH which should be applicable between countries which are not EU Member States in order to enforce and recognize foreign judgments in civil and commercial matters.

Additionally, there was mentioned that one of the option for enforcement of foreign judgments are bilateral agreements on legal assistance and legal aid. In this chapter we will choose one or two of such agreements and will analyze the grounds for enforcement of foreign judgments and ground for refusal of enforcement and other peculiarities of such legal instruments.

Lastly, in absence of any convention or bilateral agreement on legal assistance and legal aid, national law of country in which request for enforcement was submitted is applicable. Therefore, in this Master Thesis we will choose one or two countries which are not the Member States and they are not the parties of the Lugano Convention and HCCH, and, obviously where there is no any bilateral agreement on legal assistance and legal aid between Lithuania signed.

3.1. MULTILATERAL CONVENTIONS REGARDING ENFORCEMENT OF FOREIGN JUDGMENTS

The Brussels Regulation was generally considered to be a success, and even those Western European countries that were not members of the EU (at the given moment EC), in particular members of the EFTA, wished to join the system, created by the "Brussels rules"[206]. As direct accession to the Brussels Convention was not open to these countries, a solution was found in the form of the parallel Lugano Convention. These rules of the Lugano Convention are in almost all respects identical to those of the Brussels Convention. It essentially applies the provisions of the Brussels Regulation as between the EU and the Lugano States. However, the recast of Brussels

[206] Michael Bogdan, *supra note* 5, p. 34.

Regulation does not affect the Lugano Convention[207]. As before the EU courts, the Lugano Convention will therefore continue to govern matters when it applies[208].

One of the biggest difference is that question on the interpretation of the Lugano Convention cannot be submitted to the CJEU[209]. However, a special protocol (Protocol No. 2) and two declarations attached to the Lugano Convention make it clear that this Convention is to be interpreted paying due account to the CJEU case law concerning the Brussels rules and "there is a practically unanimous consensus that the CJEU precedents on those rules are more-or-less automatically to be followed even for the interpretation of the Lugano Convention, except in those rare cases where the wording of the Lugano Convention differs from that of the Brussels rules"[210].

Since the Lugano States are not bound by the Brussels I bis and Brussels Regulation, a court in such a State will apply only the Lugano Convention[211]. In the Lugano Convention similarly it is specified that Lugano Convention shall apply exclusively only in civil and commercial matters whatever the nature of the court or tribunal[212]. The main objective of the Lugano Convention is to unify the rules on jurisdiction in civil and commercial matters and expand the applicability of the Brussels Regulation and Brussels I bis to the relations between Member States of the EU on the one hand and Norway, Iceland and Switzerland on the other[213]. The Lugano Convention came into force on 1 January 2007[214], 1968 Lugano Convention was applicable before.

One of the innovations after the Lugano Convention was signed was that in Denmark became effective the same legal rules as in the Member States which are governed by the Brussels Regulation and Brussels I bis. As Denmark has opted out from the Brussels I bis, the said regulation did not apply to on its territory until the Lugano Convention. That is why Denmark is separately mentioned in the summary as a contracting party[215].

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[207] Article 73(1) of Brussels I bis.

[208] From the perspective of the EU court the Lugano Convention applies to determine matters of jurisdiction whenever a defendant is domiciled in Lugano State, the case involves exclusive jurisdiction of a Lugano State, the case involves a jurisdiction agreement in favour of a Lugano State, or there is a *lis pendens* before a Lugano State court. Likewise it governs the recognition and enforcement of a judgment form the Lugano States (Article 64 of the Lugano Convention).

[209] *Ibid.*

[210] *Ibid.*

[211] Trevor C. Hartley, *supra note* 65, p. 30.

[212] Article 1 of the Lugano Convention.

[213] *Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matter*, accessed on 2 April 2017, http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?redirect=true&treatyId=7481.

[214] *Ibid.*

[215] *Ibid.*

In consideration of the close links it has with the Brussels Regulation, the Lugano Convention seeks to provide a precise delimitation of the scope of the two instruments, in a specific provision in Article 64. This article largely reproduces the contents of the provision in the 1988 Convention that governed the relationship between that Convention and the Brussels Convention (Article 54B)[216], taking in to account of developments in Community legislation in the meantime. As before, the first two paragraphs of the provision are essentially addressed to the courts of Member States of the Community bound by the Brussels Regulation, which are the courts that may find themselves having to apply both instruments, since courts of States bound only by the Lugano Convention are obliged to apply the Lugano Convention in any event. Paragraph 3 is broader, since it is also addressed to courts in States that are bound only by the Lugano Convention. But the provision can offer clarification to any court, particularly on matters of *lis pendens* and related actions as well as the recognition of judgments[217].

In matters of the recognition and enforcement of judgments, the Lugano Convention is to be applied in all cases where either the State of origin or the State addressed does not apply the Brussels I Regulation. Consequently, the Convention applies when both States are parties to the Lugano Convention alone or when only one of the States is a party to the Convention and the other is bound by the Regulation[218]. Such a decision is taken because in most cases the country which is a party of Brussels I bis is a party of Lugano Convention and not contrary (there are some countries who are the parties of Lugano Convention but not the parties of the Brussels I bis).

Title III of the Lugano Convention is accordingly founded on the principle that the declaration of enforceability must be in some measure automatic, and subject to merely formal verification, with no examination at this initial stage of the proceedings of the grounds for refusal of recognition provided for in the Convention. At this stage, therefore, the State of origin is trusted to act properly, an approach that also finds expression in other areas of the rules governing the European common market. Examination of the grounds for refusal of recognition is deferred until the second stage, at which a party against whom a declaration of enforceability has been obtained, and who decides to challenge it, must show that such grounds exist.[219] This means, that under the Lugano Convention

[216] Report by Mr P. Jenard and Mr G. Möller on the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters done at Lugano on 16 September 1988, paragraphs 14-17, accessed on 2 April 2017, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.1990.189.01.0057.01.ENG&toc=OJ:C:1990:189:TOC.

[217] Fausto Pocar, *Explanatory report on the Lugano Convention 2007 (2009/C 319)*, paragraph 18, accessed 10 April 2017, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009XG1223(04).

[218] *Ibid*, par. 20.

[219] *Ibid*, par. 129.

exequatur procedure still exists and it is one of the disadvantages of enforcement of Lithuanian judgments in non-EU countries (Lugano states if to be more precise).

"Section 2 of Title III of the Convention, on enforcement, comprises a set of rules which, have been greatly changed by the revision, in order further to simplify the procedures on the basis of which judgments are declared enforceable in the State addressed - and also recognised, if recognition is raised as the principal issue under Article 33(2), which refers to the procedures provided for in Sections 2 and 3 of Title III."[220] Even after the amendments which changed enforcement of foreign judgments and made such procedure easier, it is still easier to enforce a foreign judgment under the Brussels I bis, therefore the Lugano Convention shall be amended one more time as it was done in the Brussels Regulation.

A declaration of enforceability can therefore be given only for a judgment already enforceable in the State in which it was delivered, and only upon application by an interested party. Once declared enforceable, the judgment can be enforced in the State addressed: in the United Kingdom however, a judgment must be registered or enforcement[221]. The same like under Brussels I bis, application for the enforcement of foreign judgment must be submitted to the court or the competent authority indicated in the list in Annex II of the Lugano Convention and the procedure of the enforcement shall be governed by the law of the State in which enforcement is sought[222]. Notwithstanding it is clear that if under Brussels Regulation the *exequatur* procedure was lengthy and costly it will be the same under the Lugano Convention. We should stress out this procedure as disadvantage of the enforcement of foreign judgments in non-EU Member States.

The Convention expressly indicates the courts or authorities competent in the States bound by the Convention to receive applications to have foreign judgments declared enforceable. They are now listed in an annex (Annex II), rather than in the body of the Convention, a change which simplifies the presentation of the procedure (regarding the reasons for moving the list of competent courts or authorities to an annex).

As in the 1988 Convention, the procedure for making the application is to be governed by the national law of the State addressed, taking in to account, however, of the rules laid down directly in the Convention. The Convention continues to provide that the applicant must give an address for service of process within the area of jurisdiction of the court applied to, and that if the law of the State in which enforcement is sought does not provide for the furnishing of such an address, he must

[220] *Ibid*, par. 142.
[221] P. Jenard, G. Möller, *supra note* 222, par. 68-69.
[222] Articles 39(1) and 40(1) of the Lugano Convention.

appoint a representative *ad litem*[223]. Article 40 of the Lugano Convention additionally indicates that documents which are referred to in Article 53 of the Lugano Convention shall be attached to the application. According to the Article 53 it is obvious that the procedure is simple and there is a need only of a copy of the judgment which satisfies the conditions necessary to establish its authenticity and a party applying for a declaration of enforceability shall also produce the certificate referred to in Article 54. Before-mentioned article indicates that the court of authentic authority of a State bound by the Lugano Convention where a judgment was given shall issue, at the request of any interested party, a certificate using the standard form in Annex V of the Lugano Convention.

"There was a great deal of discussion regarding the advisability of requiring the applicant to produce a certificate rather than actual documents. This arrangement is motivated by the general approach in favour of excluding any review of the foreign judgment at this first stage. The certificate meets the two objectives of simplifying the position of the creditor, who has to produce a single document, and of enabling the court addressed rapidly to pick out the information regarding the judgment that it needs in order to deliver the declaration of enforceability"[224].

It seems that the Article 55(2) causes some issues in the practice. That is to say that there is a requirement to submit a translation of previously mentioned documents. This means that the creditor will suffer additional expenses and has no guarantees that he will receive the amount of money awarded by the court in the case if decision to refuse enforce a given judgment will be adopted.

While analyzing the international conventions regarding the enforcement of foreign judgments it should be mentioned briefly, that Parliament of the Republic of Lithuania under the law of 2 April 2002 has ratified the Convention of 2 October 1973 on the recognition and enforcement of decisions relating to maintenance obligations. Before-mentioned convention shall apply to a decision rendered by a judicial or administrative authority in a Contracting State in respect of a maintenance obligation arising from a family relationship, parentage, marriage or affinity, including a maintenance obligation towards an infant who is not legitimate[225]. Since this Master Thesis is regarding civil and commercial matters only, just of research incentives it is interesting to glance over the ground for refusal of enforcement of such judgments.

Convention on the recognition and enforcement of decisions relating to maintenance obligations provides the list of grounds under which recognition or enforcement of a decision may be refused: 1) if recognition or enforcement of foreign judgment is incompatible with public policy

[223] Fausto Pocar, *supra note* 223, par. 145.
[224] *Ibid*, par. 146.
[225] Article 1 of Convention.

of the state addressed (*ordre public*); 2) if the judgment was obtained by fraud; 3) if proceedings between the same parties and regarding the same issue are pending before an authority of the State addressed and those proceedings were the first to be instituted; and 4) if the decision is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed.[226] So the legal grounds are the same as in EU law or other conventions regarding the recognition and enforcement of foreign judgments in civil and commercial matters.

To sum up, the Lugano Convention is like Brussels Regulation for non EU Member States. However as it was analysed in the Lugano Convention there still *exequatur* procedure exists which is costly and lengthy procedure, apparently it is one of the disadvantages. However, the Lugano Convention is applicable for EU Member State and Norway, Iceland and Switzerland. In the results the Lugano Convention is applicable only in the matters regarding these three countries. It shall be said that Lugano Convention is better than no international conventions, but in comparison with EU legal regulations it is more disadvantageous.

3.2. BILATERAL AND MULTILATERAL AGREEMENTS ON LEGAL ASSISTANCE AND LEGAL RELATIONS

Lithuania has agreements on legal assistance and legal relations with these countries: Republic of Azerbaijan, Republic of Belarus, Republic of Kazakhstan, People's Republic of China, Republic of Poland, Republic of Moldova, Russian Federation, Republic of Turkey, Ukraine, Republic of Uzbekistan; and there is a tripartite agreement between Republic of Lithuania, the Republic of Estonia and the Republic of Latvia on Legal assistance and legal relations[227].

Therefore we can analyze the agreement on legal assistance and legal relations which is signed between Lithuania and Moldova[228]. In this context, we should note that the procedure for recognition and enforcement of foreign judgments and foreign arbitral decisions in the Republic of Moldova is regulated by the Moldovan legislation and the international treaties and conventions to which the Republic of Moldova is a party.[229] In Moldova there are three types of filing the

[226] Article 5
[227] *Supra note* 85.
[228] Bilateral agreement on Legal assistance and legal relationship between Lithuania and Moldova, 1995-03-03, Nr. 19-440, accessed on 1 April 2017, https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.19806.
[229] Anatolie Mereuta, *Analysis of the Institution for the Recognition and Enforcement of Foreign judgments in domestic and community legal system, in the context of association of Moldova to the European Union,* p. 3, accessed 05 April

recognition and enforcement of judgments provided in bilateral agreements to which Moldova is a party.

One of the ways, which is relevant for this Master Thesis, can be found in the agreement between Lithuania and Moldova[230]. Under such treaty the request for recognition and enforcement of the judgment is to be submitted to judicial body which examined the case in the first instance[231]. That court in turn forwards the application with all the materials attached to the central authority, which in Republic of Moldova is the Ministry of Justice. The Ministry of Justice examines the set of materials related to its compliance with the relevant international instruments and, where appropriate, shall submit to the central authority of the State in which enforcement is claimed or returns it to the initiating court for making the necessary corrections.[232] Shortly, such a procedure is unnecessarily inconvenient, e.g. documents should be sent to the Ministry of Justice, this authority examines the documents, after that they send these documents to other institution. In other words, they are acting as intermediaries and it clearly unnecessary.

The further procedure of enforcement of Lithuanian judgment in Moldova, the national legislation of the Republic of Moldova in civil procedure regulates the recognition of the effects of foreign judgments and foreign arbitral awards and declaration of enforcement of foreign judgments and arbitral decisions in the Republic of Moldova, the conditions under which the recognition and declaration of enforceability is allowed, as and the grounds for refusal of recognition and declaration of enforceability.

To recognize and enforce in the Republic of Moldova a judicial decision (transaction) the foreign judgmentt must be issued by a state court, however described, including the specialized courts. They must be defined in the law of that foreign country as courts, which are part of the judiciary system[233]. "Foreign judgment may be filed for enforcement in the Republic of Moldova within three years from the date it becomes final, according to the law of the state where it was issued. Restoring the omitted term can be decided by the court based on justified reasons according

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2017, https://www.google.lt/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0ahUKEwipkt6f2I3TAhWFIpoKHQk-CywQFggeMAE&url=ftp%3A%2F%2Fftp.repec.org%2Fopt%2FReDIF%2FRePEc%2Frau%2Fclieui%2FFa14%2FCLI-FA14-A26.pdf&usg=AFQjCNE7iEbjea5yJWYE18fp7gMSMfUJIw&sig2=YpQgyG7BGq9G7GB6zgRIhg.

[230] *Ibid.*

[231] Article 54 of the agreement on legal assistance and legal relations which is signed between Lithuania and Moldova.

[232] Anatolie Mereuta, *supra note* 235, p. 3.

[233] *Ibid.*

to the art.116 CCP of Republic of Moldova. The foreign judgment is enforceable in the territory of Moldova after it becomes final."[234]

It is important to compare the refusal grounds for recognition and enforcement of Lithuanian judgments in Moldova according to Moldovan civil code of procedure. "The refusal to approve the enforcement of foreign judicial decision along with the refusal to recognize the judicial decision is governed by art.471 CCP and is admitted in one of the following cases:

a) foreign judicial decision under the law of the State on whose territory was given, did not become final or enforceable;

b) the party against whom foreign judicial decision was issued did not have the possibility of attending the legal process not being legally notified of the place, date and time of the examination of the case;

c) examination of the case is within the exclusive jurisdiction of the courts of the Republic of Moldova;

d) there is a foreign judicial decision, even not final, the court issued Moldova dispute between the same parties on the same subject and on the same grounds or procedure Moldovan court judicial decision is a cause in the dispute between the same parties on the same subject and on the same grounds the date of referral foreign court;

e) the foreign judicial decision may prejudice the sovereignty, may threaten the security of the Republic of Moldova or they may be contrary to public order;

f) the prescription term has expired for submission of decision for enforcement and creditor's request for reinstatement was not satisfied by the court of the Republic of Moldova;

g) the foreign judicial decision is the result of fraud committed in the foreign proceedings;

h) through the judicial decision is disposed submission of bank shares licensed in Moldova.

In this case, recognition of enforcement of the foreign judgment is permitted only on presentation of National Bank permission for holding a significant share in the share capital of the Bank or National Bank opinion on the possibility of shareholder without prior permission."[235]

Therefore we find out that EU regulations and other conventions (e.g., Lugano Convention) has the same legal ground for refusal of enforcement, however in the above-mentioned bilateral agreement there are some additional legal grounds. Notwithstanding, we shall analyze step-by-step all the legal ground for refusal of enforcement of foreign judgments.

[234] *Ibid.*
[235] *Ibid.*

Firstly, in the agreement is written that judgment must be final and not appealed in the Lithuania. This legal ground is found in EEO, EOP, ESCP regulations too – the judgment must be not appealed and final.

Secondly, principle of good faith shall be adapted. This means, that the debtor of the judgment must have been informed properly in order it has opportunity to prepare for the hearing of the case properly.

Thirdly, one of the grounds is exclusive jurisdiction of Moldova. This means that if the court of foreign country heard the case which had not the jurisdiction and the Moldova had exclusive jurisdiction, the Moldova would not enforce such Lithuanian judgment and the dispute shall be analyzed one more time in the court of Moldova.

Forth, if the same dispute between the same parties is or have already been heard in the court of Moldova.

Fifth, this one ground is supplemented legal ground as is in all the EU regulations, if a judgment is contrary to the public order. However, in the agreement of legal assistance and legal relationship between Moldova and Lithuania there is supplemented that the judgment will not be recognized and enforced if it is contrary to the public order or it may threaten the security of the Moldova. Though, we do believe that such provision is surplus, since the definition *public order* is understood very broadly and the security of the country is included in such definition.

Sixth, differently from EU law in the agreement there is a prescription – the defined period of time, when creditor may submit application for the recognition and enforcement of foreign judgment. As it is mentioned before the prescription is 3 years after judgment became final and enforceable under the State law which issued the judgment (in this case when judgment became final in Lithuania. In Lithuania judgment is final if during the neither one of the parties have submitted the appeal or after the judgment which was given by the Supreme Court of Lithuania).

Seventh, if the judicial decision is the result of the fraud. According to us, this legal rule means if the judgment was given by committing a fraud, for example if there was a bribery of a judge in the process of adoption of such judgment.

Last but not least, if the subject of given foreign judgment the object is bank shares of the Bank of Moldova.

Hence, we see that all the main legal grounds which are set in the EU law regulations are provided in the bilateral agreement on legal assistance too. Yet, parties concluded some additional legal provisions, since the agreements are up to the will of parties and parties are free to conclude whatever they decide, regarding the recognition and enforcement of foreign judgment,

notwithstanding, according to us, we do believe that there are some legal provisions which are surplus and there is no need of them.

Consequently, we analyzed and other bilateral agreement on legal assistance and legal relationship which Lithuania has signed with other countries, yet mostly all agreement has the same legal grounds for refusal to recognize and enforce foreign judgments. Basically, there are four legal grounds under which parties refuses to enforce submitted foreign judgments: 1) the judgment is not final and enforceable; 2) if the debtor was not informed properly before the hearing and the documents were not served properly in order debtor had a possibility to prepare for defense; 3) the earlier judgment was given in the state party and such judgment fulfils the conditions necessary for its recognition and enforcement in the foreign state; 4) if the hearing of the case belongs to other country's exclusive jurisdiction; and in some agreements 5) if the prescription of the enforcement is due date (for instance bilateral agreement on legal assistance and legal relationship between Belorussia and Lithuania)[236].

To sum up, Lithuania has signed more than 10 bilateral agreements on legal assistance and legal relationship, however mostly all of them has the same legal provisions regarding the enforcement and recognition of judgments. Yet, in absence of any legal regulation between such countries, the agreements on legal assistance and legal relationship are helpful and useful, therefore since in such relationship the Ministries of Justice acts as a intermediaries, it should be stressed out that procedures according such agreements becomes lengthy which is quite a disadvantage.

3.3. NATIONAL LAW IN ABSENCE OF ANY CONVENTION OR BILATERAL AGREEMENT

In absent of any applicable special regime in the countries which fall outside the scope of the special EU and other statutory regimes are dealt under domestic law of country addressed. For instance in the England and Wales the procedure for enforcement of foreign judgments is set out in Part 74 of English Civil Procedure Rules[237].

[236] Bilateral agreements on legal assistance and legal relationship between the Republic of Belarus, People's Republic of China, etc.

[237] *The international Comparative Legal Guide to: Enforcement of foreign judgments 2017, 2nd edition,* accessed on 10 April 2017 https://www.google.lt/url?sa=t&rct=j&q=&esrc=s&source=web&cd=11&cad=rja&uact=8&ved=0ahUKEwj5ldDwiYvTAhUBsywKHa3PBcA4ChAWCBcwAA&url=https%3A%2F%2Fwww.cov.com%2F-%2Fmedia%2Ffiles%2Fcorporate%2Fpublications%2F2017%2F01%2Fengland_and_wales.pdf&usg=AFQjCNH0sciJJS1H9rB2U8uQVb6gNwKkfg&sig2=G4H_qNogGvnSXZurtHlwOw&bvm=bv.151426398,d.bGg.

In order for a foreign judgment to be recognized and enforced at common law, it must be final, binding and conclusive. If a foreign judgment is the subject of appeal in that jurisdiction, the English courts are likely to grant a stay on enforcement proceedings pending the outcome of that appeal. Only final judgments for payment of a definite sum of money (save for taxes, fines or penalties) can be enforced under common law. This means, for example, that injunctions, interim orders and other judgments obtained from foreign courts for specific performance or a declaration/dismissal of a claim/counterclaim can be recognized but cannot be enforced under English common law.[238]

For example a judgment given by a foreign court in a civil or commercial matter is recognized and enforced in Finland *only* if the enforcement can be based on an international agreement or a national provision of law. Hence, judgments given in other EU Member States, countries signatory to the Hague Convention on Choice of Court Agreements 30.6.2005 or the Nordic countries are recognised and enforceable, but judgments given in other countries are not, unless the enforcement can be based on a treaty or specific legislation. Although foreign judgments, at the outset, are thus not recognised and enforced in Finland, they may carry significant evidentiary weight if the matter, for instance, is re-heard in a Finnish court in order to obtain an enforceable judgment.[239] Quite similarly Under Article 436 of the RV (*Reglement of de Rechtsvordering* – an Indonesian civil procedural regulation from the colonial era), a foreign court judgment cannot be enforced in Indonesia directly. To enforce one, a new lawsuit must be filed in an Indonesian court. The foreign court judgment may be introduced as evidence in the new proceedings, although in principle the Indonesian court will not be bound by the findings of the foreign court.[240]

Meanwhile, the enforcement of judgments in civil law issues in Liechtenstein is exclusively based on the Liechtenstein Enforcement Act of 24 November 1971 (*Exekutionsordnung*, "EO"). According to the EO, a formal recognition and thus an enforcement of a foreign judgment in Liechtenstein is contingent upon *reciprocity* and thus generally not possible.[241]

As it was written before The United States is not a party to any treaty on the recognition and enforcement of foreign judgments, nor does it have federal laws governing foreign judgments. The applicable legal framework for enforcing foreign judgments in the United States is found in the local laws of the different states. This local law must be the first stop for any practitioner seeking

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[238] *Ibid.*

[239] *Enforcement of foreign judgments 2017, comparative legal guide,* Finland, accessed on 20 April 2017, https://iclg.com/practice-areas/enforcement-of-foreign-judgments/enforcement-of-foreign-judgments-2017/finland.

[240] https://iclg.com/practice-areas/enforcement-of-foreign-judgments/enforcement-of-foreign-judgments-2017/indonesia

[241] *Enforcement of foreign judgments 2017, comparative legal guide,* Liechtenstein, accessed on 20 April 2017, https://iclg.com/practice-areas/enforcement-of-foreign-judgments/enforcement-of-foreign-judgments-2017/liechtenstein.

recognition and enforcement of a foreign judgment in the U.S. The various state laws, however, share certain fundamental principles. Courts will, for example, generally accord foreign judgments substantial deference under the principle of *comity*, as expressed by the U.S. Supreme Court in *Hilton v. Guyot*, 159.[242]

Therefore it should be well decided before the enforcement of foreign judgment in the countries which are not the part of the international conventions or do not have international agreements regarding legal assistance and legal aid. In the result credit may face non enforcement of foreign judgment which would even cause losses. It is clear that in such case first of all the creditor shall apply to the lawyer in order to analyse the domestic law of the country and to identify the possibility that foreign judgment would be enforced. Sometimes it is even more advantageous not to enforce the judgment which was obtained in the civil and commercial matters because the enforcement may cost even more than the sum under the judgment is awarded.

Notwithstanding according to the short analysis provided above in such cases when there are no any bilateral agreements or national conventions almost all the countries indicates that the principle of *reciprocity* is taken into account. In such case the Lithuanian judgment in foreign country would be enforced only under the national law of State addressed and certainly the probability that Lithuanian judgment in such country would be enforced is lower.

Since in such case there is no any legal regulation providing legal rules regarding the enforcement of Lithuanian judgment countries may enforce foreign judgment under the rules of *comity* and *reciprocity* if national law of State addressed do not forbid such possibility (especially that under the Civil Code of Procedure of the Republic of Lithuania Article 810 allows the Court of Appeal recognize and enforce a foreign judgments every foreign country)[243]. This really improves the possibility of enforcement of Lithuanian judgment since there are some countries which strictly points out that they will recognize and enforce foreign judgment exclusively if the country which issued a judgment would recognize and enforce judgments of country in which the enforcement is sought. For example in years "2007 the Ministry of the Justice of Germany stressed out for Lithuanian Ministry of the Justice that according to the Article 810 of the Civil Code of Procedure of the Republic of Lithuania Germany would recognize and enforce Lithuanian judgments (which

[242] *Enforcement of foreign judgments 2017, comparative legal guide,* United States of America, accessed on 20 April 2017, https://iclg.com/practice-areas/enforcement-of-foreign-judgments/enforcement-of-foreign-judgments-2017/usa.
[243] L. Gumuliauskienė, *supra note* 15, p. 93.

do not fall under the scope of the Brussels I bis or other EU regulations) just because Lithuania would enforce the judgment of Germany either"[244].

Regarding the enforcement of foreign judgments in the countries which have not signed any bilateral agreements we should recur one more time about the Hilton v. Guyot case. This case is important since in this case USA created a strong precedent and it was concluded that even if there are no any bilateral agreement of legal assistance or other international conventions, the comity principle is applicable and State addressed do have a possibility to enforce a foreign judgment. In the meantime the court have deeply analysed the practice of worldwide countries and concluded that there are no such country which would declare a foreign judgment final without any review. In the conclusions was expressed: "For instance, France, Norway, Portugal, Greece, Monaco it is available to hear a case and to review the facts of dispute, just assessing such dispute while providing a *prima facie* proof for foreign judgment only. However, in the greater part of the European countries – Belgium, Netherlands, Denmark, Sweden, Germany, Switzerland, Russia, Poland, Romania, Austria, Hungary, Italy, Spain, Mexico, foreign judgments acquires the same legal effect in the Countries mentioned before only if the judgments of those countries would be enforced and recognized equally as domestic judgments in the Countries which submits an application for foreign judgment"[245].

To sum up, after our analysis it seems that even in the non-EU Member States there is a possibility to enforce a Lithuanian judgment. In some, in which Lugano Convention is applicable is easier and the procedure is regulated, in others – which are not the parties to international conventions or in the absence of bilateral agreement on legal assistance, it is possible to enforce a foreign judgment either, however only on the good will of the State addressed or under the principles of *comity* or *reciprocity*. Therefore it is obvious that the main disadvantage of enforcement of Lithuanian judgments in such countries it is uncertainty whether the judgment will be enforced. As it was mentioned before, the creditor will face costs regarding the enforcement procedure, and in the case when foreign judgment refuses to enforce foreign judgments the creditor will suffer a loss.

[244] L. Gumuliauskienė, *supra note* 15, p. 94.
[245] *Ibid*, p. 98.

CONCLUSIONS

1. EU law provides four legal acts regulating recognition and enforcement of foreign judgments: Brussels Regulation and Brussels I bis; European Enforcement Order for Uncontested Claims Regulation; European Order for Payment Procedure Regulation and European Small Claims Procedure Regulation.

2. European Enforcement Order for Uncontested Claims Regulation does not affect the possibility of seeking enforcement in accordance with Brussels Regulation or Brussels I bis. Therefore the enforcement of Lithuanian judgment in European Union Member States is more advantages for the creditor since the creditor have a possibility to enforce foreign judgments under two separate legal regulations.

3. During the procedure of the enforcement of foreign judgment in the EU Member States creditor may ask for the interim measures under the Preservation Order Regulation even before the issuance of the judgment. Such procedure measure will be crucial in debt recovery proceedings because it will prevent debtors from removing or dissipating their assets during the time it takes to enforce a judgment on the merits.

4. Abolishment of *exequatur* procedure when recognizing foreign judgments within EU was decided in order to provide more advantages for creditors. Hence, the Lugano Convention has more disadvantages in comparison with European Union legal acts, since it has the *exequatur* procedure still. There is a unanimous opinion that *exequatur* is lengthy and costly procedure which overloads the procedure of the enforcement of foreign judgment, therefore enforcement in the non-EU member states takes longer and requires more resources

5. In absence of international convention or bilateral agreement between countries on legal assistance and legal relationship it is still possible to enforce a foreign judgment, however the State in which enforcement is sought may enforce a foreign judgment under the good *will, comity* or *reciprocity* principles and therefore they are not obliged to do so. Additionally national law of the country in which enforcement is sought is one of the grounds for enforcement. However, in some non-EU countries under the national law there is no possibility

to enforce a foreign judgment without a separate court procedure and the case must be re-heard in the national court in order to obtain an enforceable judgment.

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ANNOTATION

Vitauskas L., Legal Regulation and Practical Implementation of Enforcement of Lithuanian judgments in Civil and Commercial matters within European Union and outside the borders of the European Union: advantages and disadvantages. Supervisor: dr. Laura Augytė-Kamarauskienė – Vilnius: Mykolas Romeris University, Faculty of Law, 2017.

In the Master Thesis there is given the analysis of legal acts regarding the enforcement of foreign judgments (in particularly Lithuanian judgments) within EU countries and in non-EU countries.

Therefore in the result advantages and disadvantages of both legal systems are pointed out. In this Master Thesis is given detailed overview of main legal acts, case-law of ECJ and national courts. The main focus is to find out whether there are more advantages of enforcement in EU countries or in non-EU countries and where and why it is more disadvantageous to enforce a foreign judgment.

In the result, the performed research has disclosed that more advantageous legal regulation is for enforcement of foreign judgment in the EU countries. The main aspect of such decision is the abolition of the *exequatur* procedure which is time consuming and costly procedure and the possibility to choose under which legal act to enforce a foreign judgment since EU law provides not only one option.

Keywords: *enforcement, recognition, Brussels Regulation, Lugano Convention, EU law, foreign judgment.*

ANOTACIJA

Vitauskas L., Lietuvos teismų sprendimų vykdymo Europos Sąjungoje ir už Europos Sąjungos ribų teisinis reglamentavimas ir praktinis įgyvendinimas: privalumai ir trūkumai. Magistrinio darbo vadovė: dr. Laura Augytė-Kamarauskienė – Vilnius: Mykolo Romerio universitetas, Teisės fakultetas, 2017.

Šiame magistro studijų baigiamajame rašto darbe analizuojami teisės aktai, reglamentuojantys užsienio teismų sprendimų pripažinimo ir vykdymo procedūrą Europos Sąjungos šalyse narėse ir trečiosiose šalyse (už Europos Sąjungos ribų). Atlikus lyginamąją teisės aktų bei teismų sistemų analizę, pateikiamos išvados apie konkrečių teisės aktų bei valstybių teisines sistemas privalumus ir trūkumus.

Be teisės aktų analizės šiame magistro studijų baigiamajame rašto darbe be kita ko pateikiama ir Europos Sąjungos Teisingumo Teismo jurisprudencijos analizė, kitų šalių nacionalinių teismų praktikos analizė. Rašto darbo esminis tikslas nustatyti kur yra daugiau privalumų vykdyti Lietuvos teismų sprendimus – Europos Sąjungos šalyse narėse ar už Europos Sąjungos ribų bei nustatyti kur ir kodėl yra daugiau trūkumų bei sunkumų inicijuoti Lietuvos teismų sprendimo pripažinimo ir vykdymo procedūrą.

Atsižvelgiant į analizės rezultatus, darytina išvada, jog daugiau privalumų ir paprasčiau inicijuoti Lietuvos teismų sprendimų vykdymo procedūrą Europos Sąjungos šalyse narėse. Pagrindinis aspektas kodėl darytina tokia išvada yra tai, jog tarp Europos Sąjungos šalių narių, buvo panaikinta *egzekvatūros* procedūra, kuri kaip pripažinta Europos Komisijos, teisės mokslininkų bei Europos Sąjungos nacionalinių teismų, laikytina daug laiko užimančia ir išlaidų reikalaujančia procedūra.

Reikšmingi žodžiai: *vykdymas, pripažinimas, Briuselio reglamentas, Lugano konvencija, ES teisė, užsienio teismo sprendimas*.

SUMMARY

After EU has provided its members the common market, corporations started to move across borders and incorporate abroad for many reasons. International trade and the free movement of people and business are inevitably followed by legal disputes. Such litigants require an efficient and predictable dispute resolution mechanism capable of handling cases between diverse nationals.

When litigation involves a debtor domiciled or with assets in another country, it is important for counsel to plan in advance how to enforce abroad any money judgment that may be obtained. In this case the creditor has different options how to act. Firstly it is important to analyse where the judgment is going to be enforced, e. g. in the EU Member State or non-EU country. There are different legal systems under which foreign judgments may be enforced.

Before the amendments of the Brussels Regulation, the creditor faced legal issue which was called *exequatur* procedure. Abolishment of *exequatur* procedure was mandatory since such legal mechanism was acknowledged time consuming and costly procedure. After abolishment creditors have gained more freedom regarding the enforcement of foreign judgments, therefore in the result it occurred not only in the shorter procedure but the enforcement of foreign judgment became less costly.

The research disclosed that in the relationship between the non-EU countries even if there are not any legal regulations between the countries, there is still a possibility to enforce a foreign judgment. The principles *reciprocity* and *comity, national law* are still applied nowadays in the legal relationships where any legal acts are absent.

Finally, on the grounds of the legal research it was found that there more advantages to enforce a foreign judgment in the EU Member States than in non-EU Member States. As it was mentioned before, one of the main aspects of such conclusion is the abolishment of the *exequatur* from the Brussels Regulation. Likely abolishment of the *exequatur* from the Lugano Convention would be useful and necessary in order to adapt legal acts to contemporary business environment.

SANTRAUKA

Europos Sąjungai įkūrus bendrąją rinką, korporacijos pradėjo plėstis į kitas Europos Sąjungos šalis dėl įvairiausių priežasčių. Tačiau, tarptautinė prekyba ir laisvas asmenų bei verslo judėjimas neišvengiamai susijęs su tarptautiniais teisiniais ginčais. Tokiems ginčams reikalingas įsigilinimas į tarptautinę teisę ir tinkamiausias teisinio ginčo sprendimo planas, atsižvelgiant į tai, jog toks ginčas nagrinėjamas tarp dviejų skirtingų valstybių, kuriose vyrauja skirtingi teisiniai reglamentavimai.

Kuomet skolininkas yra kitos valstybės gyventojas ar jo turtas laikomas kitoje valstybėje, kreditoriaus atstovui, ar kreditoriui pačiam, svarbu iš anksto numatyti kokių veiksmų bus imtasi, siekiant įvykdyti nacionalinį sprendimą, išsiieškant iš skolininko, esančio kitoje valstybėje. Gavus nacionalinio teismo sprendimą, svarbu tinkamai pasirinkti sprendimo vykdymo strategiją, kadangi kreditorius turi net keletą pasirinkimų. Visų pirma, svarbiausia nuspręsti, kurioje šalyje bus prašoma vykdyti sprendimą, t. y. valstybėje Europos Sąjungos narėje ar valstybėje, esančioje už Europos Sąjungos ribų.

Prieš priimant Briuselio Reglamento pakeitimus, kreditorius susidurdavo su teisinio mechanizmo problema – *egzekvatūra*. Šios procedūros panaikinimas yra sveikintinas, tai buvo reikalinga, atsižvelgiant į tai, jog teisės mokslininkai gana plačiai ir dažnai diskutavo, jog *egzekvatūra* yra ilgas ir brangus procesas. Todėl panaikinus šią procedūrą kreditoriai gali dažnesniu atveju siekti sprendimo vykdymo, kadangi sprendimo vykdymo procedūra iš esmės tapo pigesnė ir greitesnė.

Tyrimo rezultatai atskleidė, jog teisiniuose santykiuose tarp ES šalių ir šalių už ES ribų, net ir nesant jokių teisės aktų patvirtintų abiejų šalių, yra galimybė pateikti teismo sprendimą vykdymui. *Reciprocity* ir *comity* principų bei nacionalinės teisės pagrindu kreditorius vis dar turi galimybę prašyti įvykdyti užsienio teismo sprendimą.

Apibendrinant, buvo nustatyta, kad daugiau privalumų vykdyti užsienio teismo sprendimą yra vykdant Europos Sąjungos šalies valstybėje, nei pateikti vykdymui teismo sprendimą trečiojoje šalyje. Kaip jau ir buvo nurodyta, tokia išvada darytina, visų pirma, dėl *egzekvatūros* panaikinimo iš Briuselio reglamento. Tikėtina, jog *egzekvatūros* panaikinimas iš Lugano konvencijos būtų naudingas ir būtinas, siekiant teisės aktams tinkamai prisitaikyti prie greitai kintančios ir nepastovios verslo aplinkos.

CONFIRMATION OF INDEPENDENCE OF WRITTEN WORK

15 May, 2017

Vilnius

I, Mykolas Romeris University (hereinafter referred as the University), Law faculty, European and International Business Law study program student, Lukas Vitauskas, herby confirm that this Master's final thesis "Legal Regulation and Practical Implementation of Enforcement of Lithuanian judgments in Civil and Commercial matters within European Union and outside the borders of the European Union: advantages and disadvantages":

1. Has been accomplished independently by me and in a good faith;
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Lukas Vitauskas