

A Judgment is a Judgment is a Judgment? How (and Where) to Enforce Third-State Judgments in the EU After Brexit



In the wake of the CJEU's controversial judgment in *H Limited* (Case C-568/22), which appeared to open a wide backdoor into the European Area of Justice through an English enforcement judgments (surprisingly considered a 'judgment' in the sense of Art. 2(a), 39 Brussels Ia by the Court), international law firms had been quick to celebrate the creation of 'a new enforcement mechanism' for non-EU judgments.

As the UK had already completed its withdrawal from the European Union when the decision was rendered, the specific mechanism that the Court seemed to have sanctioned was, of course, short-lived. But crafty judgment creditors may quickly have started to look elsewhere.

In a paper that has just been published in a special issue of the *Journal of Private International Law* dedicated to the work of Trevor Hartley, I try to identify the jurisdictions to which they might look.

In essence, I make two arguments:

First, I believe that the CJEU's unfortunate decision can best be explained by the particular way in which foreign decision are enforced in England, i.e. through a new action on the judgment debt. Unlike continental *exequatur* proceedings, this action actually creates a new, enforceable domestic judgment, albeit through proceedings that closely resemble the former. It follows, I argue, that only judgments that result from a new action based on the judgment debt (rather than a mere request to confirm the enforceability of the foreign judgment) can be considered 'judgments' in the sense of Art. 2(a) and the Court's decision *H*

Limited (which also requires the decision to result from ‘adversarial proceedings’). Among many reasons, I find such a limited reading easier to reconcile with the Court’s earlier decision in *Owens Bank* (Case C-129/92) than a wider understanding of the decision.

Second, I believe that several European jurisdictions still offer enforcement mechanisms through which third-state judgments could realistically be transformed into European judgments (clearing both the requirement of creating a new judgment and resulting from adversarial proceedings). This applies to Ireland and Cyprus (but not Malta) as well as to the Netherlands (through its so-called *verkapte exequatur*) and Sweden.

The full paper is available [here](#); a preprint can also be found on SSRN.