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Rethinking Enforcement: The CJEU's H Limited Ruling and its Strategic Value for Creditors in the EU

HÉCTOR SBERT, PH.D.



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Héctor Sbert Ph.D.
ECIJA

Introduction

For practitioners dealing with cross-border disputes, the recognition and enforcement of non-EU judgments has often been a source of delay and uncertainty. The CJEU's ruling in *H Limited* (C-568/20) offers a potentially game-changing interpretation: a judgment issued in an EU Member State that enforces a third-country decision may itself be recognised and enforced throughout the EU under Brussels Ia. This opens strategic opportunities for creditors who might otherwise face fragmented national barriers.

The recognition and enforcement of third-state judgments—those issued by courts outside the EU—has long posed legal and practical challenges. With the UK's withdrawal from the European Union, one might have expected the impact of English court decisions to recede within the EU framework. Yet the Court of Justice of the European Union (CJEU), in its landmark and controversial *H Limited* decision, appears to have reopened a backdoor for third-country judgments to enter the EU's judicial space.

This article explores the legal reasoning and practical consequences of the *H Limited* ruling, a landmark step that could help facilitate the recognition and enforcement of

third-country judgments within the EU. While some voices in the academic debate have raised concerns, the decision opens up new avenues for judgment creditors to access EU enforcement mechanisms through innovative litigation strategies. Building on the relevant case law, this piece examines how *H Limited* redefines enforcement opportunities post-Brexit and how Member States can adapt to this evolving landscape.

Legal Background: The Hard Border of Brussels Ia

The Brussels Ia Regulation (Regulation (EU) No. 1215/2012) sets out a unified regime for the recognition and enforcement of judgments across EU Member States. Article 36(1) provides for automatic recognition, and Article 39 allows for enforcement without any special procedure—so long as the judgment was rendered in a Member State.

By contrast, judgments from non-EU countries must be recognized and enforced under national law. This often involves an exequatur procedure and compliance with additional conditions: international jurisdiction of the foreign court, due process, absence of public policy violations, and sometimes reciprocity.

Historically, the CJEU held in *Owens Bank* (C-129/92) that enforcement decisions concerning judgments from third states did not fall under the Brussels regime. This reflected a consensus that ‘*exequatur sur exequatur ne vaut*’—that is, a judgment enforcing a non-EU judgment could not itself circulate under Brussels Ia.

The Decision in *H Limited*

In *H Limited*, the CJEU held that an English “confirmation judgment”—a judgment rendered by the English High Court confirming a Jordanian judgment—qualified as a judgment under Article 2(a) of the Brussels Ia Regulation and was thus subject to automatic enforcement in Austria.

The English confirmation judgment had been rendered after adversarial proceedings. The English court did not examine the merits of the Jordanian judgment but verified its finality, jurisdiction, and compatibility with English public policy.

The CJEU emphasized the Regulation’s goal of ensuring the free circulation of judgments and held that the nature or origin of the claim was irrelevant, provided the judgment had been or could have been issued through adversarial proceedings.

This broad reading raised concerns among scholars and practitioners alike: would this allow creditors to transform unenforceable non-EU judgments into EU judgments through Member States like England?

Strategic Enforcement Opportunities Post-*H Limited*

Instead of framing *H Limited* as a loophole or risk, legal practitioners should consider its utility. The decision enables parties to obtain a local confirmation judgment in a Member State with favorable procedures—such as Ireland or the Netherlands—and use it as a springboard for EU-wide enforcement. This is particularly valuable in cases where direct exequatur might be unavailable or impractical. In an age of asset mobility, creditors need access to fast and effective enforcement paths. *H Limited* makes that possible.

The *H Limited* decision has been met with lively academic discussion. While it departs from the earlier precedent in *Owens Bank*, many view it as a pragmatic recognition of evolving litigation realities in a globalised legal environment. The ruling enables creditors to overcome the fragmented and often uncertain procedures for enforcing third-country judgments in the EU by using Member States that convert such judgments into new domestic titles. Rather than undermining the Brussels Ia regime, this may be seen as harmonising outcomes and promoting access to justice through practical solutions.

Of course, some commentators have raised concerns about potential abuse—such as 'judgment laundering' or the use of a 'Trojan horse' strategy to gain enforcement in stricter Member States via more lenient ones. However, these risks should be balanced against the need for cross-border commercial certainty and creditor protection. In a post-Brexit legal landscape, providing mechanisms for effective enforcement of foreign judgments is both timely and aligned with the EU's broader goals of judicial cooperation and efficiency.

Even though the UK is no longer part of the Brussels Ia system, *H Limited* remains relevant. The mechanism it validated may now be replicated in other Member States with similar procedural frameworks.

The Two Conditions for *H Limited* to Apply

For a national enforcement decision to fall within *H Limited*'s scope under Brussels Ia:

- It must be a new judgment on the foreign debt, not merely a declaration of enforceability (i.e., not an exequatur); and
- It must result from (or be capable of) adversarial proceedings.

This means the decision must involve a genuine judicial assessment, albeit limited, of the enforceability of the foreign judgment, with an opportunity for the debtor to be heard.

Candidate Jurisdictions for Enforcement 'Through the Backdoor' after Brexit

Tobias Lutzi¹ identifies four such jurisdictions:

1. *Ireland*: Irish courts enforce foreign money judgments through an action on the judgment debt. The process is adversarial and closely resembles the English method. This makes Ireland an attractive venue for crafting an EU-compatible judgment.
2. *Cyprus*: Following common law, Cypriot courts allow actions on foreign judgments, though enforcement is generally limited to debtors resident in Cyprus.
3. *Netherlands*: Dutch law requires a new action under Article 431(2) CCP when no treaty applies. The Dutch Supreme Court's *Gazprombank* ruling allows recognition of a foreign judgment as *res judicata*, leading to a new enforceable Dutch judgment without reviewing the original merits.
4. *Sweden*: In limited cases, particularly where there is a jurisdiction agreement, Swedish courts may render a new decision based on a third-country judgment, provided due process was observed.

The Role of Public Policy and Procedural Safeguards

While the CJEU invoked the public policy exception in Article 45 Brussels Ia as a safeguard, such mechanisms should be viewed as fallback protections rather than barriers to enforcement. The reality is that confirmation judgments, though based on third-country decisions, go through judicial review—however limited—and reflect a modern approach to balancing procedural safeguards with enforcement efficiency.

Rather than weakening national control, the system preserves key safeguards by allowing Member State courts to reject enforcement where core principles are violated. However, in most cases, courts are well-positioned to assess the enforceability of these judgments and support the free movement of justice across borders.

But this safeguard may prove ineffective. If the confirming court does not examine the substance (as is typical in confirmation judgments), the debtor's only remedy is to raise a public policy objection—shifting the burden of proof and undermining national control over foreign judgment enforcement.

¹ Lutzi, T. (2024). What remains of *H Limited*? Recognition and enforcement of non-EU judgments after Brexit. *Journal of Private International Law*, 20(3), 651–667. Available at: <https://doi.org/10.1080/17441048.2024.2439152>

Implications and Outlook

H Limited represents a significant step forward in enabling the effective enforcement of third-country judgments within the EU. For judgment creditors, it creates a pragmatic route to convert judgments into enforceable titles within the internal market—without excessive duplication of legal proceedings.

This new pathway empowers parties who may otherwise face dead ends in enforcement due to fragmented national regimes. Rather than undermining legal coherence, it contributes to the progressive adaptation of EU private international law to transnational economic realities.

Looking ahead, Member States may wish to clarify procedural criteria, but the core opportunity created by *H Limited*—facilitating legitimate enforcement in complex international cases—deserves to be embraced.

This raises complex questions:

- Should EU law permit such indirect enforcement of third-country judgments?
- Does the Regulation’s mutual trust principle extend to judgments enforcing non-EU judgments?
- Is further legislative reform required to clarify the scope of Brussels Ia?

Hypothetical Scenarios: Strategic Use of *H Limited*

To better understand how the *H Limited* ruling might be used in practice, it is helpful to consider two hypothetical case studies:

Scenario 1: Enforcement via Ireland

A creditor obtains a final and conclusive money judgment from a Canadian court. The debtor holds assets in Germany but is unlikely to satisfy the judgment voluntarily. Instead of seeking recognition directly in Germany—where exequatur requirements may pose challenges—the creditor initiates an action on the judgment in Ireland. The Irish court, applying common law principles, renders a new Irish judgment confirming the Canadian debt. Armed with this EU judgment, the creditor seeks automatic enforcement in Germany under Brussels Ia.

Scenario 2: Judgment Shopping in the Netherlands

A U.S. investor wins a judgment in New York against a French defendant but faces resistance in French courts due to procedural objections. The investor initiates proceedings in the Netherlands under Article 431(2) CCP. The Dutch court, recognizing the finality and enforceability of the U.S. judgment, issues a new Dutch

decision granting the same relief. This Dutch decision, now an EU judgment, is enforced in France under Brussels Ia, bypassing domestic barriers.

These examples illustrate the strategic potential unlocked by the *H Limited* precedent. While national courts retain control through public policy exceptions, the decision invites creative litigation planning and challenges Member States to harmonize their responses to third-country enforcement strategies.

Doctrinal Debate and Legislative Perspectives

The doctrinal response to *H Limited* reflects a healthy debate about the future of enforcement within the EU. While some scholars advocate for caution, many practitioners see the decision as a welcome development that aligns legal practice with the realities of cross-border commerce and dispute resolution.

Rather than calling for restriction, some voices suggest harmonisation—ensuring that all Member States apply consistent criteria when converting third-state judgments into domestic ones. This could involve legislative fine-tuning or broader adoption of instruments like the 2019 Hague Judgments Convention.

Ultimately, the decision provides an opportunity to modernise EU law while safeguarding fairness, due process, and mutual trust across jurisdictions.

From a doctrinal standpoint, the CJEU's expansive reading of Article 2(a) Brussels Ia has been accused of conflating form with substance. A judgment, under Brussels Ia, should arguably reflect a determination of rights and obligations under EU or Member State law, not a procedural validation of a third-country decision. This concern is particularly acute considering procedural disparities across jurisdictions. For example, a summary judgment based on *res judicata* may not guarantee the same level of procedural fairness or substantive review as a full *exequatur*.

These concerns have led some scholars and practitioners to call for legislative clarification. One option would be to amend Article 2(a) to explicitly exclude judgments that are based solely on foreign decisions. Another would be to create a distinct mechanism—akin to an enhanced *exequatur*—for recognising such hybrid judgments, with safeguards tailored to address public policy and procedural equity. Furthermore, the Commission could consider a new initiative for harmonising the recognition of third-state judgments, inspired by international instruments such as the 2019 Hague Judgments Convention. Though the EU has signed the Convention, its implementation remains pending. Aligning Brussels Ia with Hague standards could offer a more coherent, transparent, and mutually respectful approach to cross-border recognition and enforcement beyond the EU.

Comparative Insights and Future Litigation Risks

From a comparative standpoint, *H Limited* reflects global best practices in judgment enforcement. Jurisdictions like Ireland and the Netherlands have long allowed actions on foreign judgments. Rather than promoting forum shopping, this flexibility strengthens the overall enforceability of international claims, enabling commercial actors to recover debts efficiently.

Rather than creating litigation risk, the decision highlights the need for proactive strategy. Creditors and their counsel must now consider a broader set of enforcement tools, including jurisdictional planning and asset targeting. This fosters a more integrated legal space, where legitimate claims can be pursued with confidence across borders.

National courts remain fully empowered to filter abusive cases through existing legal safeguards. The key message of *H Limited* is not vulnerability, but opportunity—if supported by thoughtful legal design.

Moreover, the asymmetry between the recognition of intra-EU and third-state judgments raises concerns about legal predictability. A judgment creditor may, by exploiting favorable national laws, gain access to EU-wide enforcement without undergoing the substantive scrutiny required in the target jurisdiction. Such inconsistencies can disproportionately impact debtors, particularly in states with stricter procedural safeguards or different views on international jurisdiction.

From a litigation risk perspective, *H Limited* complicates cross-border asset protection strategies. Debtors may now face enforcement actions in jurisdictions they did not anticipate, initiated through indirect pathways. Litigants must increasingly monitor not only the original foreign proceedings but also any secondary enforcement attempts in Member States susceptible to confirmation-based recognition.

Practitioners must therefore advise clients not only on the merits of the primary case, but also on the enforcement landscape within the EU. Due diligence should include a mapping of potential Member States where a third-state judgment could be converted into an EU judgment. Strategic pre-litigation planning, including asset location analysis and jurisdictional risk assessment, will be more critical than ever.

Finally, given the CJEU's reluctance to restrict the formal definition of 'judgment', national courts may need to play a more active role in applying public policy exceptions under Article 45 Brussels Ia. This creates an opportunity—and a burden—for Member State courts to safeguard procedural integrity while respecting the spirit of mutual recognition.

Conclusion

H Limited offers a pragmatic route for judgment creditors navigating the post-Brexit enforcement landscape. While safeguards such as public policy exceptions remain in place, the ruling encourages creditors to take a proactive, cross-jurisdictional approach. Legal advisors should include *H Limited*-based strategies in their enforcement playbook—especially when non-EU judgments are involved and strategic asset recovery across the EU is on the table.

The *H Limited* ruling signals a new chapter for the enforcement of third-country judgments in the EU. Rather than fearing its consequences, stakeholders should see it as a practical and principled evolution of the Union's private international law framework.

Judgment creditors now have greater clarity and access to enforcement mechanisms. This enhances legal certainty, promotes efficiency, and aligns with the cross-border realities of modern commercial litigation.

With appropriate procedural safeguards in place, and possible future legislative refinements, *H Limited* has the potential to serve as a model for integrating external judgments into the EU's internal legal space.

Judgment creditors, especially after Brexit, may continue to exploit this route through carefully selected jurisdictions. Whether this amounts to 'judgment laundering' or practical legal strategy depends on one's view of legal coherence and the integrity of EU private international law.

Further judicial and legislative clarification is needed. Until then, *H Limited* remains a powerful—if controversial—tool in the arsenal of transnational enforcement.

This article examines the practical implications of the CJEU's decision in *H Limited*, a case that reshapes how non-EU judgments can be enforced across the European Union. Rather than a purely academic controversy, *H Limited* offers real-world tools that litigators and creditors can deploy to navigate complex enforcement environments. With post-Brexit uncertainties still unfolding, this decision opens new possibilities for accessing the EU enforcement framework via Member States that convert foreign judgments into domestic orders.