Brussels I Regulation (recast) – provisional measures, recognition and enforcement – and the European Enforcement Order[1]

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Case study

"Info", a computer company with its statutory seat in Warsaw enters into a contract with "Auditur" with its statutory seat in Hamburg. According to this contract, Info is supposed to create a particular accounting software for Auditur and install it on Auditur's computers. The contract contains a choice of court agreement in favour of the tribunal of Hamburg.
The first tests are performed after a few months and it appears that the software does not function properly. Info believes that the specifications given by Auditur were unclear and led to unnecessary delays. Auditur is dissatisfied with the result of the contract, refuses to pay the price and wants to terminate the contract. Auditur starts proceedings before the courts in Hamburg. The first instance court in Hamburg issues a document to initiate the proceedings but the address is wrong and Info never receives the document. Info does not appear in court and the German judgment is given in default of appearance in January 2018.
The notification of the judgment, however, is sent to the right address. The judgment declares the termination of the contract and orders Info to pay damages to Auditur.
Info contests the enforcement and argues that (i) it did not know about the proceedings; (ii) the judgment is biased in favour of the claimant; and (iii) the judgment has violated Info's intellectual property rights on its software, including a violation of Directive 2009/24/EC of 23 April 2009 on the legal protection of computer programs.
Auditur seeks enforcement of the judgment in Poland.

Questions

1. Would the enforcement of the German judgment be based on the Brussels I Regulation (recast) or on the European Enforcement Order?

2. What kind of procedure should be used to
   a. enforce the judgment in Poland?
   b. resist the enforcement of the judgment in Poland?

Exercises

a. Find, using the e-justice portal, the proper form to be obtained in the country of origin.
b. Find, using the e-justice portal, the competent court to resist enforcement in your own Member State.

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3. If Info wants to block enforcement in Poland, discuss the arguments raised.
   a. Does the absence of notification of the document initiating the proceedings have an impact on enforcement?
   b. Does the argument that the judgment was biased in favour of the claimant have an impact on enforcement?
   c. Does the alleged violation of EU law have an impact on enforcement?

4. Assume that while the proceedings in Germany were on-going, Auditur raised a claim in Warsaw in order to get a temporary seizure of the assets of Info in Poland.
   a. Do the Polish courts have jurisdiction to order the seizure of the assets?
   b. Do the Polish courts have jurisdiction on the merits?

5. Assume that, after long proceedings, Info and Auditur decide to settle. They enter into a settlement agreement, which takes the form of an enforceable authentic act drawn up before a notary in Germany. In the settlement, Info agrees to pay 10 000 Euros to Auditur. However, Info subsequently refuses to pay.
   a. Can this settlement be enforced in Poland within the framework of the Brussels I Regulation (recast)? Describe the procedure that must be followed by Auditur.
   b. Can this settlement be enforced within the framework of the European Enforcement Regulation? Describe the procedure that must be followed by Auditur.

Exercise

Find the relevant forms for the enforcement of an authentic act, a court settlement or a judgment through the Brussels I (recast) procedure or through the European Enforcement Order procedure in the e-justice portal.

Methological advice

Training Aims:

- Familiarise the participants with scope of application of the regulations.
- Explain the objectives underlying the main rules in the regulations.
- Clarify the functioning of the various jurisdiction rules.
- Explain the potential difficulties of multiple actions.
- Explain the various possibilities of decision circulations.
- Make the participants feel at ease with the application of the European instruments.
- Familiarise the participants with some key decisions of relevant EU case law.

For the national training seminar, it would be helpful to provide participants with references to relevant publications available in the participant's mother tongue, as well as relevant case law.

Methodology

In any case with a cross-border component, the following steps can assist in finding the right provisions to be applied:

Step 1. Identify the area of law concerned.

Step 2. Consider which aspect of private international law is at issue.

Step 3. Find the relevant EU and international legal sources.

Step 4. Check the substantive, geographical and temporal scope of the respective EU and international instruments; where more than one instrument is relevant, check their relation to each other.

Step 5. Find the correct provisions.

Please note, where no EU instrument, international multilateral or bilateral instrument is applicable in a cross-border case, the autonomous private international law rules of the State concerned will have to be considered.

Suggested solution

1. Would the enforcement of the German judgment be based on the Brussels I Regulation (recast) or on the European Enforcement Order?

Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims has set up a new transnational enforcement procedure.
The purpose of this Regulation is to promote the free circulation of judgments by laying down certain minimum standards (Article 1). The European Enforcement Order is a simple procedure that can be used for uncontested cross-border claims. It is important that enforcement of the judgment can take place without any intermediate proceedings needing to be brought in the Member State of enforcement prior to recognition and enforcement.

The European Enforcement Order does not suppress 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 (the "Brussels I Regulation (recast)"). As a result, the two instruments now co-exist. The principle of the European Enforcement Order is the mutual recognition of judgments (and authentic instruments) between Member States. The judge who has given a judgment in a country certifies it as a European Enforcement Order and so makes it enforceable in EU territory.

The following requirements have to be fulfilled:
This Regulation applies – like the Brussels I Regulation (recast) – in civil and commercial matters (Article 2), a term which has to be interpreted autonomously. The Regulation on the European Enforcement Order does not apply to revenue, customs or administrative matters, or the liability of the State for acts and omissions in the exercise of State authority.
The Regulation only applies to "uncontested claims" (see below for a more detailed explanation).
Finally, to fulfil the requirements for certification as a European Enforcement Order, the decision must fulfil the cumulative conditions according to Article 6:

- the decision (judgment, court settlement and authentic instrument) must be enforceable in the Member State of origin
- the decision must not be incompatible with the jurisdiction rules in Brussels I Regulation (recast)
- the procedure must comply with minimum standards set out in Chapter III

The very notion of "uncontested claim" is difficult to grasp. A definition is given in Article 3 Section 1 of the Regulation. For instance, a claim shall be regarded as uncontested if the debtor has expressly agreed to it or has never objected to it.

A claim is regarded as uncontested if:

- 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
- the debtor has never objected to it in the course of the court proceedings; or
- the debtor has not appeared at or been represented at a court hearing regarding that claim after having initially objected to the claim in the course of the court proceedings; or
- the debtor has expressly agreed to it in an authentic instrument.

In the present situation, a default judgment was given, i.e. the claim was uncontested. The fact that Info contested the claim before the proceedings started is irrelevant.
However, the minimum standards for uncontested claims procedures were not fulfilled: According to Articles 13 and 14, certain minimum standards have to be fulfilled when serving the document instituting the court proceedings.
According to Recital 12 "[m]inimum standards should be established for the proceedings leading to the judgment in order to ensure that the debtor is informed about the court action against him, the requirements for his active participation in the proceedings to contest the claim and the consequences of his non-participation in sufficient time and in such a way as to enable him to arrange for his defence."
In our case, the address mentioned in this document was wrong so Info never received this document. Therefore, the default judgment cannot be certified as a European Enforcement Order.

Note: Even if the creditor was looking for enforcement of the costs of the German judgment, the European Enforcement Order Regulation could not be used.
The CJEU stated that Article 4(1) and Article 7 of the Regulation must be interpreted as meaning that "an enforceable decision on the amount of costs related to court proceedings, contained in a judgment which does not relate to an uncontested claim, cannot be certified as a European Enforcement Order" (CJEU, 14 December 2017, C-66/17, Chudas).
Therefore, the route of the Enforcement Order does not work for Info.

Brussels I Regulation (recast) allows for recognition and enforcement of any judgment given by a court in a Member State in another Member State. The scope of application requires that the judgment was rendered in civil and commercial matters (Article 1) and the proceedings were initiated after 10 January 2015 (Article 66). The domicile or the nationality of the parties is not relevant.
Article 2a as well as Article 32 Brussels I Regulation (recast) give a broad definition to the notion of "judgment" encompassing "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."
Therefore, the enforcement of the German judgment should be sought for through the Brussels I Regulation (recast) provisions.

Note: The importance of the distinction between the procedure in the European Enforcement Order Regulation and the Brussels I Regulation (recast) was very important when the exequatur procedure still existed, *i.e.* when Regulation 44/2001 (Brussels I) was still in place.
Now that the exequatur procedure has been abolished, the importance is less striking. One remaining difference, however, is that there are more grounds to resist enforcement in the addressed country under the Brussels I (recast) regime (see *infra*, Q2).

2. What kind of procedure should be used to
a) enforce the judgment in Poland?

Article 36 Brussels I Regulation (recast) provides that judgments issued in one Member State are automatically recognised in other Member States without any prior proceedings or formal steps. The principle of automatic recognition (*ipso iure*) is one of the cornerstones of European civil procedure.
A judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member State without any declaration of enforceability being required (Article 39). This is to say that the Brussels I Regulation (recast) eliminated the "exequatur" procedure which was maintained under the previous version of the text.
Therefore, no particular procedure should be used by Auditur in Poland. The German company can go to the local enforcement authorities and follow the Polish enforcement procedures.
However, Auditur must prove the very existence and the enforceable nature of the judgment obtained in Germany (Article 42).
In order to ease enforcement, a model form has been elaborated. According to Article 42 and 53, the enforcement seeker should provide a certificate obtained before the court of origin certifying that the judgment is enforceable and containing an extract of the judgment as well as, where appropriate, relevant information on the recoverable costs of the proceedings and the calculation of interest.
The certificate, which is very precise, is laid down in Annex 1 of the Regulation.
Therefore, in order to obtain enforcement in Poland, Auditur should ask for this certificate in Germany.

b) resist the enforcement of the judgment in Poland?

The party against whom enforcement is sought can initiate proceedings in the state addressed (Article 46). Therefore, in that situation, Info can apply before Polish courts that the enforcement of the German judgment shall be refused.
The application for refusal of enforcement shall be submitted to the court which the Member State concerned has communicated to the Commission pursuant to point (a) of Article 75 as the court to which the application is to be submitted (see exercises, *infra*).

Exercises:
a. *Find, using the e-justice portal, the proper form to be obtained in the country of origin.*

Regulation (EU) No 1215/2012 provides for two forms: a certificate concerning a judgment and a certificate concerning an authentic instrument/court settlement.

The forms can be found here :
https://e-justice.europa.eu/content_judgments_in_civil_and_commercial_matters_forms-273-en.do

In the present situation, the certificate which needs to be obtained concerns a judgment. The specific form can be found here:

https://e-justice.europa.eu/dynForms.do?1557141740784&introMemberState=1&introTaxonomy=273&form4BC=jccm&subform4BC=dynform_br_a&currentPage=dynform_br_a_1&selectedFormPage=dynform_br_a_1_action&redirectPath=/jsp/dynforms/br/dynform_br_a_1_tile.jsp

b. *Find, using the e-justice portal, the competent court to resist enforcement in your own Member State*

Information about the available courts in Europe can be found on the e-justice website of the EU : https://e-justice.europa.eu/content_brussels_i_regulation_recast-350-en.do.

Click on the national flag to get the complete references of the available courts.

For example, in Warsaw the competent court would be the "Sąd Okręgowy w Warszawie".

3. If Info wants to block enforcement in Poland, discuss the arguments raised.

The reasons for refusal of recognition and enforcement are very strictly defined in Articles 45 and 46. As stated in Article 45:

"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;

(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."

Therefore, the grounds for non-recognition can be classified in three main categories:

- Public policy (a and b)
- Irreconcilability of judgements (c and d)
- Control of the jurisdiction of the court of origin (e).

Public policy is a traditional exception of private international law, by which a court will not enforce norms or acts if the performance contravened fundamental moral principles or offended some other overriding public interest. In the context of recognition and enforcement of judgments, it allows the Court of the State addressed to refuse recognition and enforcement of a judgement from another Member State.

It is important to understand that the public policy concept it is based upon is extremely narrow. This narrow concept does not cover all internal rules of public policy, rather only the core principles and values that cannot be derogated from. Denying recognition or enforcement can only be based on the identification of a fundamental principle which would be violated in the State of enforcement (effet atténué).

Irreconcilability of judgments refers to the situation where more than one judgment has been rendered in different States. In this situation, both judgments cannot be simultaneously enforced, one must choose. The Brussels regime favours the judgment of the forum or, in the situation in which conflicting judgments were issued in two foreign States, the first judgment rendered. The other judgment, therefore, cannot be recognised or enforced.

Finally, the jurisdiction of the court of origin can be controlled in certain exceptional situations (mainly: weaker party protection and exclusive jurisdiction) by the court of the State addressed to refuse recognition and enforcement if the jurisdiction rules mentioned have not been applied.

In the present situation, there is no irreconcilable judgment, and the dispute is not one of the rare cases where the judge addressed should control the jurisdiction of the judge of origin.

The only reason for resisting enforcement could be the public policy exception.

The very notion is to be defined according to national law, since Article 45-Ia refers to "the public policy (ordre public) in the Member State addressed". However, it is clear from case law that the concept is to be understood strictly. According to the Court of Justice, the public policy exception *"ought to operate only in exceptional cases"* (CJEU, 4 February 1988, Hoffmann, 145/86). Therefore, there is a strict control of the exercise of the public policy exception by the Court of Justice, and the threshold is very high.

This is the reason why the arguments raised by Info have very little chance of success.

The arguments raised by Info concern both the substantive and the procedural aspects of the public policy exception and should be analysed separately.

a) Does the absence of notification of the document initiating the proceedings have an impact on enforcement?

Article 45 Section 1 b provides that recognition and enforcement can be refused: "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."
Info could therefore argue that their rights have been violated because they had not been served properly with the document initiating the proceedings and, therefore, could not arrange for theirs. However, the conditions set forth in Article 45 Section 1 b are strict, and particularly, the last part of the sentence is to be interpreted in the sense that if the defendant had the possibility to appeal the judgment in the country of origin and failed to do so, enforcement should be granted (CJEU, 16 July 2015, Diageo Brands, C-681/13), even if the judgment was not properly served (CJEU, 14 December 2006, C-283/05, ASML).
The defendant who did not challenge the decision in its State of origin loses the possibility of later raising the argument opposing its recognition. In the present situation, the judgment was properly served and Info failed to lodge any appeal against it. Accordingly, Info cannot argue that it did not know about the judgment.
Therefore, the Polish courts should dismiss the action for refusal of enforcement against the German judgment on that grounds.

b) Does the argument that the judgment was biased in favour of the claimant have an impact on enforcement?

Despite the rather narrow wording of Article 45 Section 1 b, the CJEU found that any violation of the parties' fundamental procedural rights could lead to a refusal of recognition and enforcement (CJEU, 28 March 2000, Krombach, C-7/98).
The Court held that "recourse to the public-policy clause in Article 27, point 1, of the Convention [as it then was] can be envisaged only where recognition or enforcement of the judgment delivered in another Contracting State would be at variance to an unacceptable degree with the legal order of the State in which enforcement is sought inasmuch as it infringes a fundamental principle" (n° 37) and the right to a fair trial is undoubtedly one of these fundamental rights. The claimant must prove that there is "a manifest breach of a rule of law, regarded as essential in the legal order of the State in which enforcement is sought or of a right recognised as being fundamental within that legal order" (CJEU, Krombach, *ibid*).
Basically, in *Krombach* and in the following cases, the CJEU imported the case law under Article 6 ECHR, and now Article 47 of the European Charter (CJEU, 25 May 2016, C-559/14, Meroni) and applied it to the public policy exception. In essence therefore, under the public policy exception, Info must prove that its right to a fair trial in the sense of Article 6 ECHR has been violated.

In the present situation, this argument has very little chances of success, since arguing that the judge was biased is in itself insufficient, without more specific proof of the violation of the right to a fair trial.
Therefore, the Polish courts should dismiss the action for refusal of enforcement against the German judgment on that grounds.

c) Does the alleged violation of EU law have an impact on enforcement?

A possible (even gross) violation of national or EU law is not sufficient in itself under the public policy exception. This solution was clearly stated by the CJEU in the Renault case (CJEU, 11 May 2000, Renault, C-38/98), which held that:

> "Recourse to the clause on public policy (…) can be envisaged only where recognition or enforcement of the judgment delivered in another Contracting State would be at variance to an unacceptable degree with the legal order of the State in which enforcement is sought inasmuch as it infringes a fundamental principle. In order for the prohibition of any review of the foreign judgment as to its substance to be observed, the infringement would have to constitute a manifest breach of a rule of law regarded as essential in the legal order of the State in which enforcement is sought or of a right recognised as being fundamental within that legal order" (n°30) and therefore "The court of the State in which enforcement is sought cannot, without undermining the aim of the Convention, refuse recognition of a decision emanating from another Contracting State solely on the grounds that it considers that national or Community law was misapplied in that decision" (n° 33).

In the present situation, therefore, the fact that EU law arguably could have been violated is irrelevant under the public policy exception. This solution has been recently reaffirmed by the CJEU (CJEU, 16 July 2015, Diageo Brands, C-681/13).
Thus it is unlikely that Info could invoke the substantive aspect of the public policy exception and hence the Polish courts should dismiss the action for refusal of enforcement against the German judgment on that grounds. As a whole, it does not seem that Info can invoke convincing arguments in order to object the enforcement. Its action should be dismissed, and the German judgment enforced.

4. Assume that while the proceedings in Germany were on-going, Auditur raised a claim in Warsaw in order to get a temporary seizure of the assets of Info in Poland.

a) Do the Polish courts have jurisdiction to order the seizure of the assets?

In addition to the jurisdictions rules in Articles 4-26, the Brussels I Regulation (recast) provides a further jurisdiction ground for provisional including protective measures. It enables the applicant to seek such measures from a court even if another court has jurisdiction as to the substance of the matter.
Provisional and protective measures are measures normally sought for in order to ensure that certain rights are safeguarded and to maintain the status quo, so that the parties can have a chance to argue their claims on the merits. In essence, they are only meant to be temporary.

They are of utmost importance in the international litigation arena, are dealt with in Article 35 of the Regulation and led to several important cases from the CJEU.
As stated in Article 35:
"Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that Member State, even if the courts of another Member State have jurisdiction as to the substance of the matter".
In other words, Article 35 provides for a specific grounds of jurisdiction based on the necessity to obtain provisional and protective measures and the measures will be those available under national law. Accordingly, the standard of proof and the procedural requirements will be determined by national law.
However, the measures sought for have to fit the European definition given by the CJEU in the Reichert case, that is "measures which, in matters within the scope of the Convention, are intended to preserve a factual or legal situation so as to safeguard rights the recognition of which is sought elsewhere from the court having jurisdiction as to the substance of the matter" (CJEU, 26 March 1992, C-261/90, Reichert, n° 34).
Moreover, there must be a link between the measure sought and the court seised. As the Court of Justice put it in the famous Van Uden case:

> "the granting of provisional or protective measures (…) is conditional on, *inter alia*, the existence of a real connecting link between the subject-matter of the measures sought and the territorial jurisdiction of the Contracting State of the court before which those measures are sought" (CJEU, 17 November 1988, C-391/95, Van Uden, n°48).

In the present situation, Info wants the freezing of the assets of Auditur in Poland. Therefore, the two conditions set up by the CJEU seem to be met. The freezing of assets complies with the requirement of the Reichert definition, and if the assets frozen are in Poland, the real link connection of the Van Uden case is also respected. Therefore, if Info respects the requirements of Polish law, it could obtain provisional and protective measures from a Polish court.

Note: It is generally accepted that the effect of provisional and protective measures is limited to the country where they have been granted. As the Court said in the *Denilauler* case:
"the conditions imposed by Title III of the Convention on the recognition and the enforcement of judicial decisions are not fulfilled in the case of provisional or protective measures which are ordered or authorized by a court without the party against whom they are directed having been summoned to appear and which are intended to be enforced without prior service on that party. It follows that this type of judicial decision is not covered by the simplified enforcement procedure provided for by Title III of the Convention" (CJEU, 21 May 1980, 125/79, n°17, *Denilauler*).
Moreover, it is generally understood that the "real connecting link" referred to in the *Van Uden* case implies that the court only has jurisdiction if enforcement in the same Member State is possible. This is the reason why decisions on provisional and protective measures do not fall under the regime of free movement of decisions; they do not circulate. Hence, a court cannot deliver a certificate of enforceability if its jurisdiction is solely for granting provisional and protective measures.

b) Do the Polish courts have jurisdiction on the merits?

The specific grounds of jurisdiction given in Article 35 does *not* allow the court seised to hear the merits of the case. In order to hear the substance, Polish courts should find grounds for jurisdiction in the Regulation. In the present situation, Polish courts do not have jurisdiction on the merits. Not only is the Polish court seised second (and therefore subject to a stay of proceedings based on *lis pendens*) but there is a choice of court agreement to the courts of Hamburg, depriving any possible jurisdiction of the courts of every other tribunal in a Member State.
Therefore, in that situation the Polish court can order a provisional measure, but cannot hear the substance of the case.

Note: As stated in the Van Uden case, the fact that the court which has jurisdiction on the merits has been seised or not is irrelevant.

As the CJEU ruled (Article 24 Brussels Convention, which is now Article 35 Brussels I recast):

> "It must therefore be concluded that where, as in the case in the main proceedings, the subject-matter of an application for provisional measures relates to a question falling within the scope *ratione materiae* of the Convention, the Convention is applicable and Article 24 thereof may confer jurisdiction on the court hearing that application even where proceedings have already been, *or may be*, commenced on the substance of the case and even where those proceedings are to be conducted before arbitrators" (emphasis added).

5. Assume that, after long proceedings, Info and Auditur decide to settle. They enter into a settlement agreement, which takes the form of an enforceable authentic act drawn up before a notary in Germany. In the settlement, Info agrees to pay 10 000 Euros to Auditur. However, Info subsequently refuses to pay.

Brussels I Regulation (recast) and the Regulation on a European Enforcement Order both provide for enforcement of enforceable authentic instruments. The procedures are not identical but very close. In the present situation, both routes seem to be open for an identical result: the enforcement of the authentic act.

a) Can this settlement be enforced in Poland within the framework of the Brussels I Regulation (recast)? Describe the procedure that must be followed by Auditur.

The Regulation allows for enforcement of authentic instruments as well as judgments in Article 58, which states that "An authentic instrument which is enforceable in the Member State of origin shall be enforceable in the other Member States without any declaration of enforceability being required. Enforcement of the authentic instrument may be refused only if such enforcement is manifestly contrary to public policy (ordre public) in the Member State addressed."

The conditions and procedural requirements are the same, and Article 58 provides for the application of the provisions on enforcement of judgments. Therefore, the party seeking enforcement must have a specific form filled in, provided for in Annex III of the Regulation, establishing the authenticity and the enforceability of the act.
This form should be completed in the country of origin. It will then be open to enforceability in the State addressed, following the local procedures and applying the local law.
Therefore, the authentic act can easily be enforced in Poland.

b) Can this settlement be enforced within the framework of the European Enforcement Regulation? Describe the procedure that must be followed by Auditur.

As has been seen, this Order which has been created by Regulation (EC) No 805/2004 of 21 April 2004 provides for a specific procedure in the State of origin, by which a creditor of an uncontested claim against a debtor can ask for a specific decision (*i.e.* the European Enforcement Order) which allows for immediate enforcement in the State of recognition. This order is an efficient route for European enforcement, particularly because contesting the European Enforcement Order is difficult (see *e.g* Article 10 of the Regulation).
The very nature of the Order is limited to *uncontested* claims. In the present situation, the claim falls into this category, since it is a situation where "the debtor has expressly agreed to it in an authentic instrument", as stated in Article 3 Section 1 d.
Therefore, in this situation the German company could prefer to use the route of the European Enforcement Order.
The creditor must ask for a European Enforcement Order certificate, in a form described in Annex III of the Regulation, establishing the authenticity and the enforceability of the act.
This form should be completed in the country of origin. It will then be open to enforceability in the State addressed, following the local procedures and applying the local law. Therefore, the settlement can easily be enforced in Poland through the European Enforcement Order Procedure.

Exercise: *Find the relevant forms for the enforcement of an authentic act, a court settlement or a judgment through the Brussels I (recast) procedure or through the European Enforcement Order procedure in the e-justice portal.*

Although the requirements for European enforcement are very similar, a distinction must be made, depending on the measure to be enforced. Therefore, several forms are accessible to the parties.
The European Enforcement Order Regulation provides for three different forms (judgment, court settlement, authentic instrument), which can be found here:
https://e-justice.europa.eu/content_european_enforcement_order_forms-270-en.do?clang=en.

The Brussels I Regulation (recast), provides only for two different forms (Judgement, authentic instruments and court settlements, which can be found here:

https://e-justice.europa.eu/content_judgments_in_civil_and_commercial_matters_forms-273-en.do?clang=en).