

enforcement has no power to review the jurisdiction of the court issuing a foreign judgment, with the consequence that the *odre public*, as a ground to exclude recognition and enforcement of judgment, may not be relied upon to challenge the jurisdiction of the court of the Member State of origin.⁷⁷²

E. Concluding remarks

The discussion in this chapter reveals that the establishment of the European Community trade mark system required a somewhat complicated legal formula in order to achieve a viable interplay between this newly established unitary right and the different national trade mark rights created and protected in the Member States. While the devised formula enables trade mark proprietors in the EU to own both national and CTM registrations in respect of one and same sign, it also gives them a liberty to switch from the national-based protection regime to the CTM regime and vice versa if they wish to have national registration being integrated in CTM registration or vice versa, provided both national and CTM registrations concern the same mark owned by the same person and registered for identical or similar goods. In view of this aspect of the formula, it is certain that seniority right and the right of a trade mark conversion will continue to be of paramount importance as long as the national trade marks and CTMs still co-exist.

While the devised formula deserves compliments for its tactical approach to the complicated question of enforcement of CTM rights, the formula renders the enforcement mechanism less predictable since various national laws must be interpreted by national authorities, each in its own jurisdiction, in relation to CTM infringement. Thanks to the Rome II Regulation which, to a certain extent, clears the ambiguity by pointing directly to the law of the country where respective rights are protected and where infringement takes place as the law applicable to enforcement of industrial property. The CTM enforcement mechanism may be even better if the EU could introduce a regulation on intellectual property enforcement in addition to the EU's enforcement directive which is already at work to harmonise national measures regarding enforcement of industrial property rights.

772 Article 35(3) of the Brussels Regulation.