OPINION OF ADVOCATE GENERAL LA PERGOLA

delivered on 28 May 1998 *

Facts of the case and legal background

1. The question submitted to the Court for a preliminary ruling in these proceedings relates to the concept of 'enforceable judgment' for the purposes of the first paragraph of Article 31 of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, signed at Brussels on 27th September 1968 (hereinafter 'the Convention'). [1] The first paragraph of Article 31 of the Convention states that '[a] judgment given in a Contracting State and enforceable in that State shall be enforced in another Contracting State when, on the application of any interested party, it has been declared enforceable there'.

In accordance with Articles 1 and 2(2) of the Protocol on the interpretation of the Convention, [2] the Cour Supérieure de Justice (High Court of Justice) of the Grand Duchy of Luxembourg has referred the following question to the Court of Justice:

'Does a judgment delivered in the State of origin in the context of a court-supervised liquidation — a matter which is excluded from the scope of the [Convention] — and which is not open to recognition under the national law of the State in which enforcement is sought, but which, in the State in which it was given, confers on one of the parties immunity from execution of the judgment whose enforcement is sought, affect the quality of enforceability which, according to the first paragraph of Article 31 of the Convention, a judgment must possess in order to be recognised and enforced?'

2. The facts at the origin of the dispute in the main proceedings can be summarised as follows. By judgment of 6 January 1993 of the Cour d'Appel (Court of Appeal), Nancy, the spouses Eric Coursier and Martine Bellami, both of French nationality and resident in France, were ordered to pay to the Luxem-

* Original language: Italian.

1 — *Journal Officiel* 1972 L 299, p. 32. The consolidated version of the Brussels Convention, as amended by subsequent Accession Conventions (the most recent of which was the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the Brussels Convention), was published in OJ 1998 C 27, p. 1.

2 — See the Protocol concerning the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, signed in Luxembourg on 3 June 1971 (OJ 1975 L 204, p. 28). The consolidated version of the Protocol, as amended by the Accession Conventions, was published in OJ 1998 C 27, p. 28.

bourg company Fortis Bank (hereinafter 'Fortis') the equivalent in French Francs of LUF 563 282 together with statutory interest and the costs of the proceedings. The claim of Fortis recognised by the French court stemmed from the failure of the Coursier-Bellami couple to meet their obligation to repay the sum of LUF 480 000, which they had been lent in August 1990. It does not appear from the case-file that the debtors appealed against the judgment, which was served on them on 24 February 1993.

By judgment of 1 July 1993, the Tribunal de Commerce (Commercial Court), Briey, brought simplified proceedings for court-supervised receivership (*redressement judiciaire*) against Mr Coursier, who ran a bar in Rehon (France). On the same date the receivership was converted into a court-supervised liquidation (*liquidation judiciaire*), in view of the cessation of business activities by the debtor, his inability to offer creditors a serious recovery plan and the impossibility of other recovery options. [3] Under this procedure, Fortis registered its claim as an unsecured creditor.

3. The court-supervised liquidation was finally terminated for lack of sufficient assets by judgment of the Tribunal de Commerce of 16 June 1994. The judgment stated 'that the right of creditors to bring individual proceedings shall be reinstated only under the conditions specified in Article 169 of the Law of 25 January 1985'. [4] Under the first paragraph of Article 169: [5]

'a judgment terminating, for lack of sufficient assets, a liquidation under supervision of the court shall not reinstate the right of creditors to bring individual actions against the debtor, except in so far as the debt arises:

1. from a criminal conviction in respect of facts unrelated to the occupational activity of the debtor or in respect of tax fraud, in which case only the public treasury may benefit;

2. from rights attaching to the person of the debtor. [6]

3 — The court-supervised receivership procedure introduced by Law No 85-98 of 25 January 1985 on the court-supervised receivership and liquidation of undertakings (hereinafter 'Law No 85-98') is designed to safeguard an undertaking in difficulties, preserve its assets and employment and discharge its liabilities. The procedure may lead to continuation of the undertaking's activities, total or partial cessation of business or the court-supervised liquidation of its assets (see Article 1).

4 — See footnote 3 above.

5 — As amended with effect from 1 October 1994 by Article 75 of Law No 94-475 of 10 June 1994 on the prevention of and remedies against the difficulties of undertakings.

6 — The concept of 'rights attaching to the person of the debtor' covers claims relating to maintenance payments or a benefit as compensation for material or non-material damage (see F. Derrida, P. Godé and J.-P. Sortais in *Redressement et liquidation judiciaires des entreprises, cinq années d'application*, Paris, 1991, 3rd edition, pp. 430 and 431).

The debtor may, however, be sued by a surety or joint debtor who has paid in his stead.'

4. Subsequently, as Mr Coursier had found paid employment in Luxembourg while continuing to reside in France, Fortis applied to the Tribunal de Paix (Magistrate's Court) in Luxembourg for a writ attaching the wages which its debtor earned there. In order to obtain an enforceable instrument for the purposes of securing the attachment, Fortis requested and obtained an order for the enforcement of the judgment, which order was made in accordance with Articles 31 and 32 of the Convention [7] by the presiding judge of the Tribunal d'arrondissement (District Court) Luxembourg on 2 July 1996 (hereinafter 'the enforcement order').

5. *Mr Coursier* appealed to the national court in accordance with Articles 36 to 39 of the Convention (see point 14 below), claiming that the order enforcing the judgment was void. In his opinion, the judgment is not enforceable as Fortis' claim does not come within the exceptions specifically laid down in Article 169 of Law No 85-98 and the bank's right to bring individual proceedings for enforcement had therefore not been reinstated either in France or in another Contracting State. Article 31 of the Convention makes enforcement (hereinafter referred to by that term in order to distinguish it from compulsory execution in the proper sense of the word) [8] subject to the condition that the decision to be enforced is of an enforceable nature. The appellant maintains that that requirement is not satisfied in the present case because the court-supervised liquidation procedure under French law grants the insolvent debtor 'immunity from enforcement', which in his view makes the judgment delivered by the court in that country unenforceable in Luxembourg. [9] Under the procedure in question, no international validity can be conferred on a decision which under the internal law of the State of origin has ceased to be valid *vis-à-vis* the debtor on account of the immunity from enforcement which the law grants to the latter. Those arguments are endorsed by the *Commission*, as is clear from the observations it has submitted to the Court of Justice.

6. By contrast, *Fortis* maintains that the immunity from enforcement deriving from

7 — Article 32 of the Convention states, in as far as concerns these proceedings, that 'the application [provided for in the first paragraph of Article 31 (see point 1 above)] shall be submitted: ... in Luxembourg, to the presiding judge of the tribunal d'arrondissement'.

8 — As the Court of Justice pointed out some time ago, 'the Convention merely regulates the procedure for obtaining an order for the enforcement of foreign enforceable instruments and does not deal with execution itself, which continues to be governed by the domestic law of the court in which execution is sought', but the application of the domestic procedural rules may not impair the effectiveness of the Convention (see Case 148/84 *Deutsche Genossenschaftsbank* v *Brasserie du Pêcheur* [1985] ECR 1981, paragraph 18, and Case 145/86 *Hoffmann* v *Krieg* [1988] ECR 645, paragraphs 27 to 29).

9 — '*Immunité d'exécution*', meaning the preferential treatment which in exceptional cases the law accords to the debtor and which relates to the person of the debtor and is designed to protect him from compulsory enforcement in particular circumstances, is described in Donnier, *Voies d'exécution et procédures de distribution*, Paris, 1993, 3rd edition, pp. 49-51.

Article 169 of Law No 85-98 applies only to the person of Mr Coursier (and therefore does not extend to Mrs Bellami) and has territorial effects which are confined to France. The fact that the right to bring individual enforcement proceedings against a debtor previously subject to court-supervised liquidation is not reinstated does not, however, detract in any way from the enforceable nature of judgments *predating* the opening of the bankruptcy proceedings. The applicant in the main proceedings is therefore wrong to rely on Article 31 of the Convention. In the view of Fortis, the article in question does not permit enforcement to be refused in the light of the effects of other decisions that may have been adopted against the respondent in the State of origin if they relate to issues falling outside the scope of the Convention. This, the bank maintains, is precisely the case of the French order terminating the court-supervised liquidation for lack of sufficient assets. [10] Furthermore, Article 34 of the Convention provides that the application for enforcement may be refused 'only for one of the reasons specified in Articles 27 and 28', [11] none of which applies in the present case, even according to Mr Coursier. If the Court were to hold that the alleged defence of unenforceability of the judgment in France were well founded and if the enforcement order were quashed, Fortis would have no possibility of taking action for the compulsory execution of its rights as creditor, either in Luxembourg, the State in which Mr Coursier earns income from employment that is (at least partly) attachable, or in France, where Fortis had duly obtained judgment against the debtor as required by the provisions of the Convention regarding territorial jurisdiction. [12] Fortis adds that in France bankruptcy proceedings are governed by the principle of territoriality; hence, even if the liquidation were to be reopened — which is theoretically possible — it could not lead to assets or income held by the debtor in other Contracting States being added to the assets in bankruptcy.

Legal analysis

7. In my view, the question submitted by the national court calls for a preliminary inquiry. Above all, it is necessary to examine the procedure for reviewing the enforcement in one Contracting State of enforceable judgments delivered in another Contracting State. It is also necessary to ascertain what effects can be accorded in the legal system of one Con-

10 — See point 19 below.

11 — See point 16 below.

12 — Under the first paragraph of Article 2 of the Convention, 'subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State'. It should be noted that, if the conditions for application of the Convention regarding scope, jurisdiction and time are met, the courts of the Contracting States are required to apply it [see the Report by Prof. Dr. P. Schlosser on the Convention of 9 October 1978 on the Association of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Convention, (hereinafter referred to as 'the Schlosser Report'), in OJ 1979 C 59, p. 71, and especially p. 97]. Not without reason, the Court has stated that questions relating to the scope of the provisions of the Convention, which determine jurisdiction within the international legal order, must be regarded as being matters of public policy (see Case C-89/91 *Shearson Lehmann Hutton* [1993] ECR I-139, paragraph 10).

tracting State to foreign decisions of the same type as the judgment delivered on 16 June 1994 by the Tribunal de Commerce, Briey. That judgment in turn refers to Article 169 of Law No 85-98 (see point 3 above); the *rationale* and scope of that provision therefore also warrant a brief analysis for the purposes of these proceedings.

The extinction of individual actions for enforcement by creditors, provided for by Article 169 of Law No 85-98

8. I shall commence with the latter point. Article 169 — which lays down that the termination of court-supervised liquidation for lack of sufficient assets does not reinstate the right of either unsecured or preferential creditors to bring individual actions against the debtor in respect of claims predating the commencement of the recovery procedure except in the cases specifically laid down by law — is understood in academic writing as providing for the definitive *extinction* of the creditors' rights, and not simply for their suspension. However, such extinction applies not to creditors' substantive rights but to their ability to take legal action against the debtor to obtain satisfaction of those rights. This distinction is important, because the counterpart to the extinction of the action is that it creates a natural obligation on the part of the debtor: consequently, spontaneous repayment to a creditor cannot be regarded as an undue payment liable to recovery. [13] The provision in question does not appear to have an equivalent in any other Member State; particular relevance for the purposes of this Opinion attaches to the fact that Luxembourg bankruptcy law (see Article 536 of the Commercial Code) applies the opposite principle, which permits creditors to resume individual actions for enforcement if the proceedings are terminated, and on which the French system was based before the adoption of Law No 85-98. By distinguishing between the debtor and the undertaking, the *rationale* behind Article 169 appears to be to bring the treatment of sole traders, who otherwise would be liable up to the value of their entire assets for debts contracted in the conduct of business, into line with that of shareholders in joint stock companies, who are not personally liable for the company's debts, which are extinguished when the company is dissolved. [14] However, legal writers have raised the question whether or not the provision at issue serves its intended purpose: it is one thing to rehabilitate the undertaking of a debtor in difficulties and another to allow him to free himself immediately of all his residual debts and to start again from scratch, resulting in a kind of 'advance rehabilitation' of his future enterprise which excludes the risk of another insolvency. [15] It has been observed,

13 — See Y. Guyon, *Droit des affaires et des entreprises*, Paris, 1997, 6th edition, Vol. 2, p. 375, Y. Chaput, *Droit du redressement et de la liquidation judiciaires des entreprises*, Paris, 1987, pp. 254-255, and Derrida, Godé and Sortais (op. cit. in footnote 6 above), p. 431.

14 — See Chaput (op. cit. in footnote 13 above), p. 253. By the same token, the exemptions provided for in the second paragraph of Article 169 for situations in which the debtor, by reason of his own negligence, has forfeited preferential legal treatment mirror the treatment prescribed for the managers of legal entities, who are liable to actions to make good deficiencies in the company's assets (and, in the event of aggravated abuse, to personal court-supervised receivership; see Article 178 et seq. of Law No 85-98).

15 — See Guyon (op. cit. in footnote 13 above), p. 13. See also B. Dureuil and J. Mestre, *La 'purge' des dettes par l'article 169 de la loi du 25 janvier 1985*, *Rev. proc. coll.*, 1989, p. 389.

more specifically, that the major sacrifice in terms of creditor rights and the serious harm to freedom of contract caused by Article 169 cannot be justified on grounds of the survival of the undertaking, which by definition has ceased to exist at the liquidation stage. Conversely, if the debtor submits a plan for the continued operation of the undertaking, he is actually prevented from relying upon Article 169. [16] This leads some authors to argue that the article in question which, 'in disregard of a judgment that has acquired the force of *res judicata*, divests of his rights a creditor who had fulfilled all the obligations imposed upon him', is unconstitutional. [17]

The procedures laid down by the Convention for the recognition and enforcement of enforceable foreign judgments

9. Article 169 of Law No 85-98 is relied upon by Mr Coursier in the main proceedings to block the attempt by the creditor bank to obtain the compulsory execution (in Luxembourg) of its claim which is legally recognised (in France), after having obtained recognition of the foreign judgment as equivalent to the domestic enforcement instrument, in accordance with the domestic rules for compliance with the Convention (see point 5 above).

10. As we know, the object of facilitating the recognition and enforcement of judgments between Member States (endorsed by Article 220 of the EC Treaty) is of such importance that it prompted this Court to affirm that the Convention should be interpreted in the spirit of promoting the free movement of judgments within the single market. [18] It was precisely in order to pursue that objective more effectively that the authors of the Convention did not confine themselves to establishing simplified procedures for the recognition and enforcement of foreign judgments but also laid down rules of *direct* jurisdiction (see Articles 2 to 24), that is to say rules that are also applicable in the State of origin (and not only by the court of the State in which recognition or enforcement is sought when the jurisdiction of the foreign court is reviewed for those purposes). [19]

11. The recognition and enforcement procedures are purely declaratory and rest on the fundamental principle of reciprocal confidence among the Contracting States. The powers of the court of the State in which recognition is sought are confined to a much

16 — See Dureuil and Mestre (op. cit. in footnote 15 above), p. 398.

17 — See Derrida, Godé and Sortais (op. cit. in footnote 6 above), p. 426.

18 — See Case 145/86 (cited in footnote 8 above), paragraph 10. As Advocate General Tesauro pointed out, the fact that Article 220 'entrusts to the Member States, and not to the Community institutions, the task of attaining the objectives which it sets is due to the fact that jurisdiction in civil and commercial matters remains, in any event, a matter within the sovereignty of the Member States; however, that does not preclude the conclusion that the rules with which it is concerned fall within the scope of application of the Treaty, for the purposes of Article 2. The free movement of judgments is of fundamental importance to the avoidance of the difficulties which can arise for the functioning of the common market when it proves impossible to secure the acceptance of, and easily enforce, even by judicial means, the individual rights that derive from the multiplicity of legal relationships which come into being in that market' (see the Opinion delivered on 16 December 1993 in Case C-398/92 *Mund & Fester v Hatrex Internationaal Transport* [1994] ECR I-467, paragraph 8; footnote omitted).

19 — See H. Gaudemet-Tallon, *Les Conventions de Bruxelles et de Lugano*, Paris, 1993, p. 211.

simpler and speedier review of the 'international legality' of the foreign judgment than that laid down by the rules of ordinary law. In the light of the guarantees accorded to the respondent in the original proceedings by the uniform rules on direct jurisdiction referred to above [20] and the safeguards provided for the rights of the defence, again within the framework of the objectives pursued by the Convention, [21] the foreign judgment is presumed to be in order, *even if it has not acquired the force of res judicata* in the State of origin. Judgments enforceable by law against which there is a right of appeal or which the court has declared to be provisionally enforceable may be treated in this way; [22] so too may provisional and protective measures, as Article 24 of the Convention shows. [23] As has been observed, this system 'leads to a considerable simplification for the creditor, enabling him to avoid those delaying tactics that often lie at the root of appeals [made in the State of origin] in purely financial disputes and which are lodged for the sole purpose of delaying enforcement of the claim. The Convention has, as a rule, given priority to the position of the creditor over that of the debtor', although naturally without denying protection to the latter (see points 14 and 17 below). [24]

12. The concepts of 'recognition' (see Articles 26 to 30) and 'enforcement' (see Articles 31 to 45) are not expressly defined in the Convention. In this regard, I would point out that the former automatically confers substantive validity on the foreign judgment in the State in which recognition is sought as well. This State therefore agrees to incorporate automatically the legal situation enshrined in the measure in question [25] (a declaratory judgment, for example) into its own legal system without the need for judicial review. The intervention of the court is prescribed only if recognition is sought: (i) as the principal issue, where there is dispute between the parties as to the legality of the decision in question (in which case the party applying for recognition may request application of the enforcement

20 — It will be recalled, for example, that the court of the State of origin must declare of its own motion that it has no jurisdiction if the claim turns on a matter over which the courts of another Contracting State have exclusive jurisdiction (see Article 19 of the Convention) and, in cases where the foreign defendant does not enter an appearance, if its jurisdiction is not derived from the provisions of the Convention (see the first paragraph of Article 20). Moreover, the court must stay the proceedings in the absence of proof that the defendant who fails to appear has been able to arrange for his defence (second paragraph of Article 20).

21 — See Case 125/79 *Denilauler* v *Couchet Frères* [1980] ECR 1553, paragraph 13. According to K. D. Kerameus, 'By having almost all jurisdictional issues determined in the court of origin, the Convention has been able to relieve the recognition and enforcement proceedings from that most serious obstacle confronting all other bilateral or multilateral treaties. Thus upgrading the relevance of rules on jurisdiction ends up in significantly improving recognition and enforcement itself' (see *Basic rules relating to recognition and enforcement of foreign judgments under the Brussels Convention*, in *Studia Juridica*, 1995, Vol. III, p. 495, especially p. 505).

22 — See G. A. L. Droz, *Compétence judiciaire et effets des jugements dans le Marché Commun*, Paris, 1972, p. 353.

23 — The expression 'provisional, including protective, measures' within the meaning of Article 24 must therefore be understood as referring to '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' (see Case C-261/90 *Reichert et al.* v *Dresdner Bank* [1992] ECR I-2149, paragraph 34). However, provisional or protective measures which are ordered or authorised without the party against which they are directed having been summoned to appear and which are intended to be enforced without prior service do not come within the system of recognition and enforcement provided for by Title III of the Convention (see Case 125/79, cited in footnote 21 above).

24 — See F. Pocar, *La convenzione di Bruxelles sulla giurisdizione e l'esecuzione delle sentenze*, Milan 1995, 3rd edition, p. 27.

25 — See Gaudemet-Tallon (op. cit. in footnote 19 above), p. 227.

procedure; see point 16 below); or (ii) as an ancillary matter (for example, to support an objection of *res judicata* or the offsetting of a claim), in which case jurisdiction rests with the court hearing the main application.

13. The enforcement procedure which relates solely to measures requiring material execution — that is to say, typically judgments establishing and documenting a claim as being certain, liquidated and enforceable, [26] including, for example, judgments ordering the unsuccessful party to pay the costs of the proceedings [27] — is designed to render the foreign judgment enforceable by means of a domestic order. [28] In this way, the beneficiary of the judgment is enabled to satisfy in the State addressed — by using legal instruments appropriate to its system, if necessary by having recourse to public authority [29] — the substantive right found to exist and to be compulsorily enforceable in the State of origin.

14. Among the conditions for the legality of the foreign judgment, particular importance attaches here to its enforceability. 'If a judgment from which an appeal still lies or against which an appeal has been lodged in the State in which it was given [see point 11 above] cannot be provisionally enforced in that State, it cannot be enforced in the State in which enforcement is sought. It is *an essential requirement of the instrument whose enforcement is sought* that it should be enforceable in the State in which it originates. ... there is no reason for granting to a foreign judgment rights which it does not have in the country in which it was given'. [30] For the same reason,

26 — See G. Tarzia, *Les titres exécutoires et le recouvrement des créances dans l'Union Européenne*, in *Actualité du droit/ Annales de droit de Liège*, 1995, p. 381, especially p. 383. Enforcement in the State addressed by the enforcement bodies of that State necessarily presupposes that the claim, after taking account of the actual form in which it is formulated, is capable of execution under the powers granted to such bodies. Hence, although it is necessary to verify, from the enforcement phase onwards and in the same way as for a domestic decision of the same kind, whether the claim is of an enforceable nature, the Convention does not lay down that such verification is to be performed by the bodies entrusted with enforcement. In order to ascertain the enforceability of the foreign judgment, the court of the State in which enforcement is sought may interpret the operative part of the judgment in the light of the statement of reasons [see Oberlandesgericht, Saarbrücken, Order of 3 August 1987, No 5 W 102/87 (Digest of case-law relating to the European Communities, D Series, I-31-B 12), which granted enforcement of a French judgment for the repayment of borrowed sums of money, but only with regard to the capital sum and not to the contractual interest, which on the basis of the original judgment were due, after deduction of sums which the debtor had already paid as interest and which had been allocated to a particular period prior to the judgment but not collected].

27 — See Cour de Cassation (France), judgment No 676 90-21.473 of 5 May 1993, *Times Newspapers* v *Pordéa* (Gazette du Palais, 1994, I, p. 383).

28 — Whereas 'in the countries which derive their model for importing judgments from French law — the original signatories to the Convention — the action [open to the interested party] is designed to append the "enforcement formula", whereby the court traditionally ... "mande et ordonne à tous huissiers de justice, sur ce requis, de mettre ledit arrêt (ou ledit jugement) à exécution" ..., in the common law countries, which acceded to the Convention at a later date, enforcement proceeds via "registration" [in one or more of the autonomous jurisdictions of the United Kingdom: England and Wales, Scotland, and Northern Ireland], which consists in inserting the foreign judgment into the records or registers of the court from which recognition is sought, almost as though it had been delivered by that court itself. The effect of this is that the judgment registered in this way ... "shall, for the purposes of execution, be of the same force and effect ... as [if] the judgment had been originally given in the registering court" ...' (see A. Miele, *La cosa giudicata straniera*, Padua, 1989, pp. 20-21; footnote omitted).

29 — See Gaudemet-Tallon (op. cit. in footnote 19 above), p. 228, A. Miele (op. cit. in footnote 28 above) and P. Moreau, *De l'exequatur et des causes de préférence*, in *Actualité du droit/ Annales de droit de Liège*, 1995, p. 395, especially p. 398.

30 — See the Report by P. Jenard on the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (hereinafter referred to as 'the Jenard Report'), OJ 1979, C 59, p. 1, p. 48 (footnote omitted; emphasis added).

if at the time of the application the foreign judgment has *ceased* to be enforceable in the legal system of origin — for example, because it has been quashed or as a result of prescription [31] — the view must be taken that the substantive condition laid down by Article 31 for the granting of enforcement is not fulfilled. [32]

15. The enforcement procedure is a summary one: the competent court (indicated for each Contracting State in Article 32 of the Convention) decides upon application by the interested party, without delay and without hearing the other party. [33] The rights of the defence of the party against whom enforcement is sought are safeguarded, however, as there is provision for a hearing to be held at a later date if the respondent lodges an appeal within one or two months of service of the measure granting enforcement (depending on the addressee's State of domicile). [34] Such an appeal may be based, *inter alia*, on the fact that the decision is not yet enforceable or is the subject of an appeal in the State of origin or does not fall within the scope of the Convention. [35] The debtor can also effectively raise objections on the ground of lack of interest on the part of the creditor in bringing proceedings because of events arising after the judgment was given (for example, evidence that the debt to which the foreign judgment relates has been discharged). [36] However, the *substance* of the judgment to be enforced or the procedure on the basis of which the judgment was reached may be reviewed only to the extent provided for in Articles 27 and 28 (see point 16 below).

16. Although the method of lodging the application for enforcement or recognition (such as the information it must contain or the number of copies to be submitted) is determined by the procedural law of the State addressed, the Convention requires the production of certain documents, in particular an

31 — For example, under English law, authorisation is needed to obtain a writ of execution if six years have elapsed since the delivery of a judgment [see Rules of the Supreme Court (Rev.), Ord. 46, r. 2; see S. O'Malley and A. Layton, *European Civil Practice*, London, 1989, p. 744, footnote 20].

32 — See Droz (op. cit. in footnote 22 above), p. 351. According to O'Malley and Layton (op. cit. in footnote 31 above, at p. 744), the date on which the foreign judgment must be enforceable is that on which the court from which enforcement is sought issues its writ.

33 — Such an arrangement is obviously designed to permit 'the element of surprise which is necessary in an enforcement procedure if the respondent is not to have the opportunity of withdrawing his assets from any measure of enforcement' (see the Jenard Report, cited in footnote 30 above, p. 50). However, a party who has obtained judgment in his favour in a Contracting State, being a judgment for which an order for enforcement under Article 31 of the Convention may be issued in another Contracting State, is prevented from making an application to a court in that other State for a judgment against the other party in the same terms as the judgment delivered in the first State, even if such ordinary proceedings may be simpler and less costly, from the procedural point of view, than the recognition procedure (see Case 42/76 *De Wolf* v *Cox* [1976] ECR 1759).

34 — If an appeal is lodged, or in any case during the time specified for doing so, any decision authorising enforcement does not permit the applicant to commence measures of enforcement against the property of the debtor other than the protective measures for which the legislation of the State in which enforcement is sought provides (see Articles 33 to 39 of the Convention). If the application for enforcement is refused, the applicant may appeal to the court designated in Article 40 of the Convention, before which both parties will be called to state their case.

35 — See the Jenard Report (cited in footnote 30 above), p. 51, and the Schlosser Report (cited in footnote 12 above), p. 134.

36 — See the Jenard Report (cited in footnote 30 above), p. 51, according to which 'such grounds are admissible in enforcement proceedings', and Oberlandesgericht, Munich, Order No 25 W 1937/79 of 30 November 1979 [(Digest of case-law relating to the European Communities, D Series, I-34-B 4), quashing the enforcement order on the grounds of the partial extinction of a pecuniary obligation arising from an Italian judgment].

authenticated copy of the foreign judgment 'which satisfies the conditions necessary to establish its authenticity' and, in the case of a judgment given in default, the document which establishes that the party in default was served with the document instituting the proceedings (see Article 46).

Under Article 47(1) of the Convention, a provision which applies only to applications for enforcement, the applicant must also produce documents which establish that (i) the judgment is enforceable according to the law of the State of origin and (ii) has been served on the other party in order to give him the opportunity to comply voluntarily. [37] It need hardly be pointed out that the provision in question, by requiring proof of the enforceability of the foreign judgment — which may be deduced from the enforcement order or other references in the same measure, [38] or else from separate documents, and in particular from a comparison of the date of the judgment, the date of service and the time allowed for lodging an appeal — is clearly linked to the first paragraph of Article 31 of the Convention (see point 14 above).

17. If the foreign judgment of which the applicant seeks recognition is only provisionally enforceable and an appeal is lodged, the court of the State in which recognition is sought may stay the proceedings (see Article 30 of the Convention), where appropriate after having first ascertained that the grounds for refusal set out in Articles 27 and 28 (see point 16 above) do not apply. Similarly, under Article 38 of the Convention, if the enforceable foreign judgment is the subject of an appeal in the State of origin (or if the time for lodging such an appeal has not yet expired), the court of the State in which an objection has been lodged may (a) stay the proceedings, upon application by the appellant, or (b) confirm the enforcement order, even of its own motion, but make it conditional on the provision of such security as it shall determine.

18. Recognition and enforcement of the foreign judgment may be refused (or, if granted, revoked by the ruling on the appeal) only for

37 — It will be observed that the failure to produce the documents required by Articles 46 and 47 does not necessarily lead to the refusal of recognition or enforcement but makes it necessary to stay the proceedings and allow the applicant time to produce them. Only if the documents presented are insufficient to allow the court to form an opinion can the court declare the application inadmissible (see the Jenard Report, cited in footnote 30 above, p. 50).

38 — See the Jenard Report (cited in footnote 30 above), p. 55. If the enforceability of the judgment is not unambiguously evident from its content, the court in the State addressed may interpret it in the light of its knowledge of the legislation of the State of origin [and possibly refuse to grant enforcement; see Oberlandesgericht, Stuttgart, Order No. 5 W 9/76 of 19 May 1976 (Digest of case-law relating to the European Communities, D Series, I-47-B 1), which rejected the provisional enforceability of a French divorce decree only in so far as it ordered the husband to pay alimony to his former wife].

one of the reasons specified in Articles 27 and 28 of the Convention, [39] that is to say if (i) recognition (or enforcement) is contrary to public policy in the State in which recognition is sought; (ii) the rights of the defence of a respondent who has not entered an appearance are infringed (failure to serve the document which instituted the proceedings in sufficient time); (iii) the judgment is irreconcilable with a ruling given in a dispute between the same parties in the State in which recognition is sought; (iv) the court of the State of origin has decided a preliminary question concerning certain matters lying outside the scope of the Convention in a way that conflicts with a rule of private international law of the State in which recognition is sought; [40] (v) the judgment is irreconcilable with an earlier judgment given in a non-contracting State involving the same cause of action and between the same parties, provided that this latter judgment fulfils the conditions necessary for its recognition in the State addressed (Article 27); (vi) the judgment conflicts with special or binding provisions regarding jurisdiction (for example, in matters relating to insurance and consumer contracts) or rules of exclusive jurisdiction contained in the Convention; and (vii) recognition or enforcement is prohibited under a previous convention concluded by the State addressed with a third State in which the respondent was domiciled or normally resident when the judgment was delivered, if the jurisdiction of the court of the State of origin was based solely on one of the 'anomalous' rules of jurisdiction listed in the second paragraph of Article 3 of the Convention (Article 28).

19. In particular, under no circumstances may a foreign judgment be reviewed as to its substance (see Articles 29 and 34 of the Convention): even if the court of the State addressed considers that a point of fact or of law has been wrongly decided by the court of origin, or if the defendant in the foreign proceedings does not enter an appearance, that court cannot refuse recognition or enforcement, substituting its own discretion for that of the foreign court. [41] This prohibition, which is an expression of the respect and confidence which the legal system of the State addressed vests in the juridical sovereignty of the State of origin [42] and which is accompanied by an almost total prohibition [43] on reviewing the jurisdiction of the original court, constitutes, in my view, the central principle of the entire Convention.

20. Finally, as to the precise scope of the effects of the 'naturalised' [44] foreign judg-

39 — But see point 14 above for the further ground for refusing enforcement — implicitly foreseen in the first paragraph of Article 31 and the first indent of Article 47 of the Convention — consisting in the lack of enforceability of the foreign judgment at the time when application is made.

40 — The status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession. Recognition or enforcement cannot be refused, however, if the application of the rules of private international law of the State addressed would have led to the same result as that reached in the foreign judgment [see indent 4 of Article 27 of the Convention].

41 — See the Jenard Report (cited in footnote 30 above), p. 46.

42 — See J. Beauchard and C. Houssa, *La procédure d'exequatur*, in *Les Conventions de Bruxelles et de la Haye en matière civile et commerciale* (edited by G. de Leval), Brussels, 1994, p. 55, especially p. 57.

43 — Apart from the exceptions laid down in the first paragraph of Article 28 of the Convention (see point 16 above).

44 — This felicitous expression is from P. Bellet, *Reconnaissance et exécution des décisions en vertu de la Convention du 27 septembre 1968*, in *Revue trimestrielle de droit européen*, 1975, p. 32, in particular p. 41.

ment, the Court has stated, on the basis of the Jenard Report, [45] that in principle a foreign judgment should not be accorded greater authority and effectiveness than it would have *in the State of origin* (the so-called extension of effects theory). [46] Some academic writers, however, add a caveat, which received authoritative approval from Advocate General Darmon in the case of *Hoffmann* v *Krieg* to which I have referred: a foreign judgment cannot have greater effects *in the State in which enforcement is sought* than those of similar *national* judgments (the so-called equivalence of effects theory). [47]

45 — Op. cit. in footnote 30 above.

46 — 'A foreign judgment which has been recognised by virtue of Article 26 of the Convention must in principle have the same effects in the State in which enforcement is sought as it does in the State in which the judgment was given' [see Case 145/86 (cited in footnote 8 above), in which the Court ruled that a (German) judgment ordering the husband to make maintenance payments to the wife — which judgment remained enforceable in the State of origin (where a subsequent Netherlands divorce decree had not been recognised) and into which the enforcement formula had been inserted in the State addressed (the Netherlands), under Article 31 of the Convention, upon application by the beneficiary — must not continue to be enforced, despite the granting of an enforcement order, when it ceases to be enforceable for reasons which lie outside the scope of the Convention (i. e. the lapsing of the husband's obligation to make maintenance payments as a result of the dissolution of the marital relationship, decreed in the State addressed; it will be recalled that under indent (1) of the second paragraph of Article 1, the status of natural persons is one of the matters to which the Convention does not apply). The Court also found that the judgment ordering a person to make maintenance payments and the judgment pronouncing the divorce of the spouses were irreconcilable within the meaning of Article 27(3) of the Convention]. See G. de Leval, *Une harmonisation des procédures d'exécution dans l'Union européenne est-elle concevable?*, in *Seizure and Overindebtedness in the European Union* (ed. G. de Leval), The Hague, 1997, p. 595, especially p. 606.

47 — See Droz (op. cit. in footnote 22 above), p. 280, and Gaudemet-Tallon (op. cit. in footnote 19 above), pp. 228-229. According to Advocate General Darmon, the latter 'limitation is founded on the need to harmonise interpretations and the desirability of preventing excessive recourse to the public policy exception' (see the Opinion delivered on 9 July 1987 in Case 145/86, cited in footnote 8 above, [1987] ECR 654, especially p. 657). In more general terms, the Advocate General warned against the risk of a distorted application of the scheme of the Convention, causing the legal system of the State of origin to take precedence over that of the State of execution, and hence to 'subordinate if not negate' the latter (ibid., p. 658).

Judgments in bankruptcy cases are outside the scope of the Convention

21. In the light of the characteristics of the system of reciprocal recognition of judgments established by the Convention, which I have described above (see points 10 to 20), it is easier, in my view, to understand the reasons that led Mr Coursier to adopt the position described earlier (see point 5) in challenging the enforcement order in the main proceedings. As stated in the order for reference, the judgment falls within the scope of the Convention and as such is capable of enforcement-at least in theory, without reference to the solution to be adopted in the individual case. By contrast, the judgment terminating the appellant's court-supervised liquidation for lack of sufficient assets, which was delivered on 16 June 1994 by the Tribunal de Commerce, Briey, cannot enjoy automatic recognition under Luxembourg law by virtue of Article 26, as it turns on a matter that lies outside the scope of the Convention ('bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings': see indent (2) of the second paragraph of Article 1).

As we know, the exclusion of insolvency proceedings from the scope of the Convention was due historically to what at the time appeared to be the insurmountable difficulty of arriving at a solution acceptable to all Member States on a matter as complex as

bankruptcy. In the light of this difficulty, and in order not to delay unduly the conclusion of the Convention, the committee of national experts appointed by the Council considered it advisable to 'excise' the matter in question from the draft convention. Separate negotiations were begun in parallel with a view to concluding a separate convention relating solely to bankruptcy, the scope of which would have had to 'dovetail almost completely' with that of the Convention. [48] Moreover, as the Court of Justice has long since made clear, this exclusion relates to all proceedings based, under the various laws of the Contracting States, on cessation of payments, insolvency or lack of creditworthiness of the debtor, which involve the intervention of the courts culminating in compulsory collective liquidation of assets or simply in judicial supervision. Moreover, 'it is necessary, if decisions relating to bankruptcy and winding-up are to be excluded from the scope of the Convention, that they must derive *directly* from the bankruptcy or winding-up and be closely connected with the proceedings for the liquidation of assets or supervision by the court.' [49]

It therefore seems indisputable to me that the judgment terminating Mr Coursier's court-supervised liquidation — which derives directly from the judgment opening the insolvency proceedings and constitutes the culmination of those proceedings — cannot be relied upon by the debtor to block Fortis' claim for satisfaction of its rights as creditor. In other words, the Convention works solely to the disadvantage of the applicant in these proceedings, exposing him to the risk of attachment of his income despite his immunity from enforcement under the French legal system, in which both of the judgments relevant to the main proceedings originated. As the Jenard Report [50] states, 'pending the conclusion of the separate Convention covering bankruptcy, proceedings arising directly from bankruptcy will be governed by the legal rules currently in force, or by the conventions which already exist between certain Contracting States'.

22. France and Luxembourg are not bound by any bilateral or multilateral convention on jurisdiction and the recognition and enforcement of judgments in bankruptcy

48 — See the Schlosser Report (cited in footnote 12 above), p. 90, the Commission Opinion of 10 December 1981 on the draft Convention on bankruptcy, winding-up, arrangements, compositions and similar proceedings (OJ 1981 L 391, p. 23), L. Daniele, *Fallimento e Convenzione di Bruxelles del 1968*, in *La Convenzione giudiziaria di Bruxelles del 1968 e la riforma del processo civile italiano*, Milan 1985, p. 85, and J.-L. Vallens, *Le droit européen de la faillite: la Convention relative aux procédures d'insolvabilité*, in *Actualité législative Dalloz*, 1995, p. 217.

49 — See Case 133/78 *Gourdain* v *Nadler* [1979] ECR 733, paragraph 4; (emphasis added), in which the Court ruled that the judgment of the civil court in France upholding the liquidator's action to make good a deficiency and ordering the de facto managers of a commercial company to pay a given sum into the assets in bankruptcy lay outside the scope of the Convention. I note, incidentally, that judgments on the termination of insolvency proceedings, such as the judgment of 16 June 1994 of the Tribunal de Commerce, Briey, fall within the scope of the Convention on insolvency proceedings signed on 23 November 1995 in Brussels (hereinafter 'the Bankruptcy Convention'; see footnote 51 below).

50 — Cited in footnote 30 above, p. 12.

cases. Moreover, the Bankruptcy Convention [51] has not yet entered into force. Article 25 of that Convention (entitled 'Recognition and enforceability of other judgments') states in the first paragraph of indent 1: 'Judgments handed down by a court whose judgment concerning the opening of proceedings is recognised [in accordance with the Convention's rules on jurisdiction] and which concern the course and *closure* of insolvency proceedings ... shall also be recognised with no further formalities. Such judgments shall be enforced in accordance with Articles 31 to 51 of the Convention ..., with the exception of Article 34(2)' (emphasis added).

23. As to the possibility of the judgment of 16 June 1994 of the Tribunal de Commerce, Briey, being recognised in Luxembourg at least *under the ordinary law*, this is obviously a matter which the Court may analyse purely as an ancillary issue. In order to examine this possibility, it would be necessary to interpret not the rules of the Convention but national law: it therefore falls not only outside the scope of the question referred by the national court but also outside the jurisdiction of the Court of Justice.

I shall therefore confine myself to recalling that, in the order for reference, the Cour Supérieure de Justice observed that in practice — in the light of the 'universalist' approach of Luxembourg private international law regarding bankruptcy proceedings — the possibility cannot be excluded that, under certain conditions, decisions of foreign courts regarding an insolvent debtor's capacity or assets may be recognised as having the same effects in Luxembourg as they produce in the State of origin, irrespective of whether a formal order enforcing the foreign decision has been granted. According to the national court, however, that principle is not applicable to judgments delivered in a country whose legal system is based on the opposite principle of the 'territoriality and multiple nature' of bankruptcy proceedings, as is the case of French law. A French judgment delivered in insolvency proceedings and relied upon in Luxembourg can therefore have only strictly territorial effects; in the case in point, that principle means that the judgment cannot prevent the insolvent person's property situated in the Grand Duchy from being subject to individual enforcement proceedings. [52]

51 — The Bankruptcy Convention (see *Actualité législative Dalloz*, 1995, p. 239, for the text in French, *International Legal Matters*, 1996, p. 1223, for that in English and *Riv. dir. internaz. priv. process.*, 1996, p. 661, for that in Italian), which remained open for signature until 23 May 1996, was signed by all the Member States except the United Kingdom. Under the third paragraph of Article 49, it should have entered into force on the first day of the sixth month following that of the deposit of the instrument of ratification, acceptance or approval by the last State to take that step, provided that it had been ratified, accepted or approved by *all* the Member States of the European Union. Like the various unsuccessful drafts that preceded it, the Bankruptcy Convention is based on the principle of the unity and universality of the bankruptcy proceedings, which are opened in the State in which the 'centre of a debtor's main interests' is situated. This principle is limited, however, by the provision for the opening of secondary liquidation proceedings with territorial effects in other Contracting States in which the main proceedings have been recognised (the principle of so-called *limited* universality).

52 — The order for reference does not, however, address the question whether or not the Luxembourg court can accord the judgment of 16 June 1994 of the Tribunal de Commerce, Briey, at least *de plano* evidential value by treating it as a 'bare fact' in order to give it indirect or secondary substantial effects, to be determined on the basis of domestic legislation, including rules of private international law (see G. Carella, *Sentenza civile straniera*, in *Enciclopedia del diritto*, Vol. XLI, Milan 1989, p. 1272, especially p. 1275, and A. Huet, Nota a Tribunal de première instance de Saint-Pierre et Miquelon, ordinanza 26 ottobre 1990, PEBSA/Marinoil Service, in *Revue de jurisprudence commerciale*, 1991, p. 177, especially p. 179).

Answer to the question referred in the present case

24. I believe I have now brought into focus the precise contours of the problem, for the solution of which the national court has sought a ruling on interpretation. In my view, the question raised by the Cour Supérieure de Justice must be answered in the negative, for the following reasons.

25. The case under review does not exhibit any special feature that distinguishes it substantially from others in which the problem arises of ensuring the cross-border movement of judgments involving property: given the inadequacy of the debtor's property in the State of origin — ascertained by the court in the decision to terminate the court-supervised liquidation *for lack of sufficient assets* — the interested party has evaded the order to meet his obligations issued in that jurisdiction and has therefore been summoned to comply in the territory of the State in which enforcement is sought, where by contrast he has assets that can be seized. This duty to comply exists and, in my opinion, can be relied upon. Indeed, the judicial position (including immunity from enforcement) relating to the subsequent collective enforcement to which the debtor was subject by virtue of his individual undertaking in the legal system of origin, *the effects of which were confined to the national territory*, does not suggest otherwise. On the other hand, by taking up paid employment in another Contracting State, Mr Coursier incurred the objective risk of losing the protection afforded to him in France by the 'shield' of personal immunity. It was doubtful, to say the least, whether his legal immunity from enforcement proceedings, stemming in the jurisdiction of origin from the judgment of the Tribunal de Commerce, Briey, could automatically be extended from France to the host State.

26. More precisely, the claim adduced by the debtor in the main proceedings does not appear to me to derive support from either the text or the spirit of the Convention. Under the simplified system of enforcement established by the Convention, the requirement that the judgment must be enforceable according to the law of the State of origin — as provided for in the first paragraph of Article 31 and the first indent of Article 47, upon which Mr Coursier relies in today's proceedings — is justified exclusively by the fact that the Convention does not make enforcement dependent on the foreign judgment having acquired the force of *res judicata*. [53] I have already explained how the system established by the Convention operates (see point 11 above). It is true that even a judgment that is fully enforceable (whether automatically or by virtue of a clause affixed by the court), which has been equated to a national judgment for the purposes of compulsory execution in another Contracting State, may cease to be valid in the jurisdiction of origin as a result of a subsequent judgment partially reversing or quashing it.

53 — As I observed earlier (see point 15), this provision is linked to the power of the court of the State addressed to stay any appeal procedure or to make enforcement subject to the lodging of a guarantee if in the jurisdiction of origin an appeal has been made against the 'naturalised' judgment or if the time-limit for lodging an appeal has not expired.

Under the system established by the Convention, a case of this kind is catered for by stipulating that the host State must automatically recognise the new foreign judgment, which can then produce its extinctive effects there. [54] However, if the new foreign decision with extinctive effects cannot be recognised (for example, because the application initiating the proceedings was not properly and promptly served on the respondent who failed to enter an appearance), Article 31 of the Convention will again come into play, in the sense that it will invalidate the enforcement order or the registration of the judgment subsequently quashed or amended. [55]

27. That said, it must be pointed out at once that this case undoubtedly differs from the one I have just described, and from more than one angle: the judgment, which established that Fortis had a liquidated claim that had fallen due (in that it was not subject to time-limits or conditions), became final well before the action and order for enforcement; nor does the obligation arising out of the legally recognised debt appear to have been extinguished as a result of payment or any another reason. The bank's interest in bringing an action must therefore be assumed to be unchanged (see point 15 above). The Luxembourg court hearing the application for enforcement was accordingly justified, when examining the legality of the judgment, in holding that it exhibited the same 'quality as the instrument' for the purposes of enforcement that French law prescribes for all judgments of that type. Therefore, under the legal system of the Grand Duchy, the judgment was not accorded any 'rights' (for my part, I would prefer to speak of 'effects') 'which it does not have in the State of origin'.

Although it is true that in France Fortis would be prevented from obtaining compulsory execution of the claim in question, this stems from a distinct measure (the judgment of the Tribunal de Commerce, Briey) which relates (like the substantive provision on which it rests) to a matter outside the scope of the Convention — to be precise, bankruptcy and similar proceedings — and cannot therefore benefit from freedom of movement for the purposes of recognition, in this case in Luxembourg (see points 21 and 22 above). This exclusion stems from the clear and unambiguous decision of the Contracting States, and in my view there is no doubt that the rules defining the substantive scope of the Convention take precedence over those which, *equally within the scope so defined*, concern the enforceable nature of foreign judgments, the execution of which has been sought. Furthermore, Luxembourg legislation does not grant extraterritorial validity to the aforementioned judgment of the French court (see point 23 above). That ruling is therefore of no relevance to the national court. If it were otherwise, and if the arguments of the applicant in the present case were accepted, the result would be illogical, as Fortis has correctly pointed out: the French judgment terminating the court-supervised liquidation, while falling outside the substantive scope of the Convention, would automatically be accorded recognition under Luxembourg law, while at the same time enforcement of the judgment to which, by contrast, the Convention is clearly applicable, would be prevented.

54 — See V. Starace, *Sull'estinzione di efficacia, nell'ordinamento di origine, della sentenza straniera riconosciuta o resa esecutiva*, in *Riv. dir. intern. priv. proc.*, 1969, p. 152, especially p. 153.

55 — Ibid., pp. 154 and 155. According to O'Malley and Layton (op. cit. in footnote 31 above, pp. 744-745), the same result is achieved — once again through the application of the first paragraph of Article 31 of the Convention — if the foreign judgment has ceased to be enforceable as a result of prescription (see footnote 31 above).

28. Permit me to clarify one further point. In contrast to the fear expressed by the Commission, the solution proposed in this Opinion, which permits the creditor's claim to be enforced in the State addressed, does not impair the right to equal treatment of creditors who have previously participated in bankruptcy proceedings that have run their course in the State of origin. Other creditors who have obtained an enforcement instrument from a court (including a court settlement) or an authentic instrument (see Articles 50 and 51 of the Convention) — even if they have been divested of the right to bring individual actions for enforcement in the State of origin as a result of a decision of the type reached by the Tribunal de Commerce, Briey — will be able, subject to their instrument being declared enforceable, to intervene in the enforcement proceedings initiated by the speediest creditor in the State in which enforcement is sought, and thus to participate collectively and on an equal footing in the subsequent distribution of the assets (without prejudice to the effects of substantive rules regarding preferential claims or granting preferential treatment to the first creditor to seek attachment). [56]

Conclusions

For the reasons set out above, I propose that the Court reply as follows to the question submitted for a preliminary ruling by the Cour Supérieure de Justice:

A judgment ordering the payment of a sum of money does not lose the quality of enforceability, which Article 31 of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters requires a judgment to possess in order to be enforced in another Contracting State, if the party against whom enforcement is sought is permanently protected in the State of origin from individual proceedings for enforcement as a result of another judgment delivered in that State in the context of insolvency proceedings which is not open to recognition in the State in which enforcement is sought either under the Convention or under that State's national law.

56 — See E. Krings, *Synthèse. Le droit des saisies dans les États membres de l'union européenne*, in *Seizure and Overindebtedness in the European Union* (cited in footnote 46 above), p. 3, especially pp. 41-44. The author notes that in the legal systems of some Contracting States (such as Italy, Greece and Belgium) creditors *without* an enforcement instrument are also permitted to intervene in the enforcement proceedings, subject to certain conditions, as a means of safeguarding the equality of claims.