Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

21 June 2012*

(Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation (EC) No 44/2001 — Temporal scope — Enforcement of a judgment delivered before the accession of the State of enforcement to the European Union)

In Case C-514/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Nejvyšší soud (Czech Republic), made by decision of 13 October 2010, received at the Court on 2 November 2010, in the proceedings

Wolf Naturprodukte GmbH

v

SEWAR spol. s r. o.,

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, J. Malenovský, R. Silva de Lapuerta, G. Arestis and D. Šváby (Rapporteur), Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Calot Escobar,

after considering the observations submitted on behalf of:

— the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,

— the German Government, by T. Henze, acting as Agent,

— the Latvian Government, by M. Borkoveca and A. Nikolajeva, acting as Agents,

— the European Commission, by A.-M. Rouchaud-Joët and M. Šimerdová, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 February 2012,

gives the following

* Language of the case: Czech.

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 66(2) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

2 The reference has been made in proceedings between Wolf Naturprodukte GmbH ('Wolf Naturprodukte'), a company established in Graz (Austria), and SEWAR spol. s r. o. ('SEWAR'), a company established in Šanov (Czech Republic), concerning the recognition and enforcement in the Czech Republic of a judgment delivered in Austria.

Legal context

European Union law

3 Recital 5 in the preamble to Regulation No 44/2001 states:

'On 27 September 1968 the Member States, acting under Article 293, fourth indent, of the Treaty, concluded the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters [OJ 1978 L 304, p. 36], as amended by Conventions on the Accession of the New Member States to that Convention (hereinafter referred to as the "Brussels Convention") … On 16 September 1988 Member States and EFTA States concluded the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters [OJ 1988 L 319, p. 9], which is a parallel Convention to the 1968 Brussels Convention. Work has been undertaken for the revision of those Conventions, and the Council has approved the content of the revised texts. Continuity in the results achieved in that revision should be ensured.'

4 Recital 19 in the preamble to that regulation reads as follows:

'Continuity between the Brussels Convention and this Regulation should be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation of the Brussels Convention by the Court of Justice of the European Communities and the 1971 Protocol … should remain applicable also to cases already pending when this Regulation enters into force.'

5 Article 4(1) of that regulation provides:

'If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Articles 22 and 23, be determined by the law of that Member State.'

6 Under Article 26 of the regulation:

'1. Where a defendant domiciled in one Member State is sued in a court of another Member State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Regulation.

2. The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

…'

7 In accordance with Article 66 of the regulation:

‘1. This Regulation shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after the entry into force thereof.

2. However, if the proceedings in the Member State of origin were instituted before the entry into force of this Regulation, judgments given after that date shall be recognised and enforced in accordance with Chapter III,

(a) if the proceedings in the Member State of origin were instituted after the entry into force of the Brussels or the Lugano Convention both in the Member State of origin and in the Member State addressed;

(b) in all other cases, if jurisdiction was founded upon rules which accorded with those provided for either in Chapter II or in a convention concluded between the Member State of origin and the Member State addressed which was in force when the proceedings were instituted.’

8 Article 76 of the regulation provides:

‘This Regulation shall enter into force on l March 2002.

This Regulation is binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.’

Czech law

9 In accordance with Paragraph 37(1) of Law No 97/1963 on private international law and international procedural law (‘the ZMPS’), ‘jurisdiction of the Czech courts in property disputes exists if they have jurisdiction under Czech legislation’.

10 Under Paragraph 63 of the ZMPS:

‘Decisions of judicial institutions of a foreign State in the matters listed in Paragraph 1 ... take effect in the [Czech] Republic in so far as they have acquired binding legal effect as certified by the competent foreign institution and have been recognised by the [Czech] institutions’.

11 Paragraph 64 of that law provides:

‘A foreign judgment may not be recognised or enforced where:

…

(c) the party to the proceedings against whom the judgment is to be recognised was by the procedure of the foreign institution denied an opportunity to participate properly in the proceedings, in particular if he was not served personally with the summons or application instituting proceedings, or if the defendant was not served personally with the application instituting proceedings;

…

(e) reciprocity is not guaranteed; reciprocity is not required if the foreign judgment is not directed against a [Czech] citizen or legal person.’

The dispute in the main proceedings and the question referred for a preliminary ruling

12 By judgment of 15 April 2003, the Landesgericht für Zivilrechtssachen Graz (Regional Civil Court, Graz) (Austria) ordered SEWAR to pay a claim brought against by it by Wolf Naturprodukte.

13 On 21 May 2007 Wolf Naturprodukte applied to the Okresní soud ve Znojmě (District Court, Znojmo) (Czech Republic) seeking, on the basis of Regulation No 44/2001, for that judgment to be declared enforceable in the Czech Republic and inter alia for assets of SEWAR to be ordered to be seized for that purpose.

14 The Okresní soud ve Znojmě dismissed the application by decision of 25 October 2007 on the ground that Regulation No 44/2001 was binding on the Czech Republic only from the accession of that State to the European Union, namely 1 May 2004. That court held, referring to the ZMPS, that the conditions for recognition and enforcement of the judgment of the Landesgericht für Zivilrechtssachen Graz were not satisfied. It found, first, that the judgment was a judgment in default, and it could be deduced from the facts of the judicial proceedings that SEWAR had been denied the opportunity of effectively taking part in the proceedings. It considered, secondly, that the condition of reciprocity as regards the recognition and enforcement of judgments between the Czech Republic and the Republic of Austria was not satisfied.

15 Wolf Naturprodukte appealed against that decision to the Krajský soud v Brně (Regional Court, Brno) (Czech Republic), which by decision of 30 June 2008 dismissed the appeal and confirmed the decision at first instance.

16 Wolf Naturprodukte thereupon appealed on a point of law to the Nejvyšší soud (Supreme Court) (Czech Republic), asking it to set aside the judgment given on appeal and to rule that Regulation No 44/2001 was binding on all the Member States as of the date of its entry into force, 1 March 2002.

17 Since it considered that the wording of Article 66 of Regulation No 44/2001 did not allow a clear determination of the temporal scope of that regulation, the Nejvyšší soud decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

‘Must Article 66(2) of [Regulation No 44/2001] be interpreted as meaning that for that regulation to take effect it is necessary that at the time of delivery of a judgment the regulation was in force both in the State whose court delivered the judgment and in the State in which a party seeks to have that judgment recognised and enforced?’

Consideration of the question referred

18 By its question the referring court essentially asks whether Article 66(2) of Regulation No 44/2001 must be interpreted as meaning that, for that regulation to be applicable for the purpose of the recognition and enforcement of a judgment, it is necessary that at the time of delivery of that judgment the regulation was in force both in the Member State of origin and in the Member State addressed.

19 Regulation No 44/2001, which replaced the Brussels Convention between all the Member States except the Kingdom of Denmark, entered into force on 1 March 2002, in accordance with Article 76 of the regulation. However, as the Advocate General observes in point 25 of his Opinion, in the territory of States which, like the Czech Republic, acceded to the European Union on 1 May 2004, it entered into force only on that date.

20 It is apparent in particular from recital 19 in the preamble to Regulation No 44/2001 that continuity between the Brussels Convention and the regulation must be ensured. To that end, the European Union legislature inter alia adopted the transitional provisions in Article 66 of the regulation.

21 Article 66(1) of Regulation No 44/2001 provides that the regulation is to apply only to legal proceedings instituted after the entry into force of the regulation. That principle is intended to govern both the question of jurisdiction and the provisions relating to the recognition and enforcement of judgments.

22 Article 66(2) of Regulation No 44/2001, however, provides that, as an exception to that principle, the provisions of the regulation relating to the recognition and enforcement of judgments are to apply to judgments made after the entry into force of the regulation in consequence of legal proceedings instituted before that date if, in essence, common rules of jurisdiction applied in the two Member States concerned or if the jurisdiction of the court of the Member State of origin was founded on rules similar to those provided for in Chapter II of Regulation No 44/2001.

23 Neither paragraph 1 nor paragraph 2 of Article 66 of Regulation No 44/2001 specifies, however, whether the concept of the 'entry into force' of the regulation, which must be given a uniform interpretation within that article, refers to the entry into force of the regulation in the State in which the judgment has been given, that is to say the State of origin, or in the State in which recognition and enforcement of that judgment is sought, that is to say the State addressed.

24 It must be observed in this respect that the provisions of Regulation No 44/2001 show the close link that exists between the rules relating to jurisdiction which are the subject of Chapter II of the regulation and the rules relating to the recognition and enforcement of judgments which are the subject of Chapter III of the regulation.

25 The rules on jurisdiction and the rules on the recognition and enforcement of judgments in Regulation No 44/2001 do not constitute distinct and autonomous systems but are closely linked. The Court has also previously held that the simplified mechanism of recognition and enforcement set out in Article 33(1) of that regulation, to the effect that a judgment given in a Member State is to be recognised in the other Member States without any special procedure being required, which leads in principle, pursuant to Article 35(3) of that regulation, to the lack of review of the jurisdiction of courts of the Member State of origin, rests on mutual trust between the Member States and, in particular, by that placed in the court of the State of origin by the court of the State addressed, taking account in particular of the rules of direct jurisdiction set out in Chapter II of that regulation (Opinion 1/03 [2006] ECR I-1145, paragraph 163).

26 As the Court stressed with reference to the Brussels Convention, whose interpretation by the Court also holds good in principle for Regulation No 44/2001 (see, to that effect, Case C-406/09 *Realchemie Nederland* [2011] ECR I-9773, paragraph 38), it is because of the guarantees given to the defendant in the original proceedings that that Convention, in Title III, is very liberal with regard to recognition (Case 125/79 *Denilauler* [1980] ECR 1553, paragraph 3). The report on that Convention submitted by Mr Jenard (OJ 1979 C 59, p. 1, at p. 46) stated that '[t]he very strict rules of jurisdiction laid down in Title II, and the safeguards granted in Article 20 to defendants who do not enter an appearance make it possible to dispense with any review, by the court in which recognition or enforcement is sought, of the jurisdiction of the court in which the original judgment was given' (Opinion 1/03, paragraph 163).

27 It follows that the application of the simplified rules of recognition and enforcement laid down by Regulation No 44/2001, which protect the claimant especially by enabling him to obtain the swift, certain and effective enforcement of the judgment delivered in his favour in the Member State of origin, is justified only to the extent that the judgment which is to be recognised or enforced was delivered in accordance with the rules of jurisdiction in that regulation, which protect the interests of the defendant, in particular by providing that in principle he may be sued in the courts of a Member State other than that in which he is domiciled only by virtue of the rules of special jurisdiction in Articles 5 to 7 of the regulation.

28 By contrast, in a situation such as that at issue in the main proceedings, in which the defendant is domiciled in a State which was not yet a Member of the Union either at the date of bringing the action or at the date of delivery of the judgment, and is therefore regarded as domiciled in a third

State for the purposes of the applicability of Regulation No 44/2001, the balance of interests between the parties laid down by that regulation, described in paragraph 27 above, is no longer ensured. Where the defendant is not domiciled in a Member State, jurisdiction is determined, in accordance with Article 4(1) of Regulation No 44/2001, by the law of the State of origin.

29 Furthermore, Regulation No 44/2001 contains certain mechanisms which protect the defendant's rights during the original proceedings in the State of origin, but they apply only if the defendant is domiciled in a Member State of the Union.

30 Thus Article 26(1) of Regulation No 44/2001 provides that '[w]here a defendant domiciled in one Member State is sued in a court of another Member State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Regulation'.

31 Similarly, under Article 26(2) of Regulation No 44/2001, the court hearing the case must stay the proceedings so long as it is not shown that the defendant who fails to appear has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end (see Case C-283/05 *ASML* [2006] ECR I-2041, paragraph 30).

32 It should be noted in this respect that, in the main proceedings, it is apparent from the order for reference that the judgment sought to be recognised and enforced was a judgment in default and that it may be supposed that the defendant in the main proceedings, who was unable to benefit from the protection mechanisms provided for in Article 26 of Regulation No 44/2001 in that the Czech Republic had not yet acceded to the European Union at the time of delivery of the judgment in the Member State of origin, was denied the opportunity of taking part effectively in the legal proceedings, since the judgment was given on the very date on which the document instituting the proceedings was served.

33 It thus follows both from the history and from the scheme and purpose of Article 66 of Regulation No 44/2001 that the concept of 'entry into force' in that provision must be understood as the date from which that regulation applies in both the Member States concerned.

34 The answer to the question referred is therefore that Article 66(2) of Regulation No 44/2001 must be interpreted as meaning that, for that regulation to be applicable for the purpose of the recognition and enforcement of a judgment, it is necessary that at the time of delivery of that judgment the regulation was in force both in the Member State of origin and in the Member State addressed.

Costs

35 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

Article 66(2) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, for that regulation to be applicable for the purpose of the recognition and enforcement of a judgment, it is necessary that at the time of delivery of that judgment the regulation was in force both in the Member State of origin and in the Member State addressed.

[Signatures]