Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

26 September 2013*

(Area of freedom, security and justice — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Article 34(3) and (4) — Recognition of a judgment given in another Member State — Situation whereby that judgment is irreconcilable with an earlier judgment given in that Member State involving the same cause of action and between the same parties)

In Case C-157/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Germany), made by decision of 8 March 2012, received at the Court on 30 March 2012, in the proceedings

Salzgitter Mannesmann Handel GmbH

v

SC Laminorul SA,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Chamber, J. Malenovský, U. Lõhmus, M. Safjan (Rapporteur) and A. Prechal, Judges,

Advocate General: N. Wahl,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 14 March 2013,

after considering the observations submitted on behalf of:

— Salzgitter Mannesmann Handel GmbH, by C. von Carlowitz, O. Kranz, C. Müller and T. Rossbach, Rechtsanwälte,

— the German Government, by J. Möller and T. Henze, and by J. Kemper, acting as Agents,

— the Spanish Government, by S. Centeno Huerta, acting as Agent,

— the Italian Government, by G. Palmieri, acting as Agent, and S. Varone, avvocato dello stato,

— the Romanian Government, by R. Giurescu and A. Voicu, acting as Agents,

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

* Language of the case: German.

after hearing the Opinion of the Advocate General at the sitting on 16 May 2013,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 34(4) 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 request has been made in proceedings between Salzgitter Mannesmann Handel GmbH ('Salzgitter') and SC Laminorul SA ('Laminorul') concerning an application for a declaration of enforceability in Germany of a judgment given by a Romanian court by which Salzgitter was ordered to pay EUR 188 330 to Laminorul.

Legal context

Regulation No 44/2001

3 Recitals 2 and 15 to 17 in the preamble to Regulation No 44/2001 state:

'(2) Certain differences between national rules governing jurisdiction and recognition of judgments hamper the sound operation of the internal market. Provisions to unify the rules of conflict of jurisdiction in civil and commercial matters and to simplify the formalities with a view to rapid and simple recognition and enforcement of judgments from Member States bound by this Regulation are essential.

…

(15) In the interests of the harmonious administration of justice it is necessary to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given in two Member States. There must be a clear and effective mechanism for resolving cases of *lis pendens* and related actions …

(16) Mutual trust in the administration of justice in the [European Union] justifies judgments given in a Member State being recognised automatically without the need for any procedure except in cases of dispute.

(17) By virtue of the same principle of mutual trust, the procedure for making enforceable in one Member State a judgment given in another must be efficient and rapid. To that end, the declaration that a judgment is enforceable should be issued virtually automatically after purely formal checks of the documents supplied, without there being any possibility for the court to raise of its own motion any of the grounds for non-enforcement provided for by this Regulation.'

4 Article 32 of Regulation No 44/2001 provides:

'For the purposes of this Regulation, "judgment" means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called …'.

5 Under Article 33(1) of that regulation:

‘A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.’

6 Article 34(3) and (4) of that regulation provides the following:

‘A judgment shall not be recognised:

…

(3) if it is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought;

(4) if it 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.’

7 Under Article 38(1) of Regulation No 44/2001:

‘A judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.’

8 Article 41 of that regulation is worded as follows:

‘The judgment shall be declared enforceable immediately on completion of the formalities ... without any review under Articles 34 and 35. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.’

9 Under Article 43 of that regulation:

‘(1) The decision on the application for a declaration of enforceability may be appealed against by either party.

…

(3) The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.

…’

10 Article 45 of that regulation provides:

‘(1) The court with which an appeal is lodged under Article 43 or Article 44 shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Articles 34 and 35. …

(2) Under no circumstances may the foreign judgment be reviewed as to its substance.’

11 Article 46(1) of that regulation states:

'The court with which an appeal is lodged under Article 43 or Article 44 may, on the application of the party against whom enforcement is sought, stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within which such an appeal is to be lodged.'

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

12 It is apparent from the order for reference that Laminorul, which is established in Romania, brought an action seeking payment for a delivery of steel products against Salzgitter, established in Germany, before the Tribunalul Brăila (Brăila Court of First Instance) (Romania).

13 Salzgitter claimed that that action should have been brought against the actual party to the contract with Laminorul, Salzgitter Mannesmann Stahlhandel GmbH (formerly Salzgitter Stahlhandel GmbH), rather than against Salzgitter. On that ground, the Tribunalul Brăila dismissed the action brought by Laminorul by judgment of 31 January 2008 ('the first judgment'). That judgment became final.

14 Shortly thereafter, Laminorul initiated new proceedings against Salzgitter before the same court for the same cause of action. That application was, however, served on Salzgitter's former legal representative, whose authority to act for the company had been limited, according to Salzgitter, to the first proceedings. No one appeared on Salzgitter's behalf at the hearing on 6 March 2008 before the Tribunalul Brăila which delivered a judgment by default against Salzgitter, requiring Salzgitter to pay EUR 188 330 to Laminorul ('the second judgment').

15 Salzgitter made an application for the second judgment to be set aside on the ground that it had not been summoned to appear at the hearing. That application was rejected by decision of 8 May 2008 because Salzgitter had failed to lodge the necessary fee stamps.

16 The second judgment was declared enforceable in Germany by the Landgericht Düsseldorf (Düsseldorf Regional Court) (Germany) by order of 21 November 2008. Salzgitter brought an appeal against that order before the Oberlandesgericht Düsseldorf (Düsseldorf Higher Regional Court) (Germany).

17 At the same time, Salzgitter also lodged an extraordinary appeal in Romania seeking annulment of the second judgment, arguing again that it had not been summoned to appear at the hearing. That application was rejected as inadmissible by judgment of 19 February 2009.

18 Salzgitter then lodged another appeal to have that judgment set aside on account of the binding authority of the first judgment. The Curtea de Apel Galați (Galatai Court of Appeal) (Romania) rejected that application by judgment of 8 May 2009 on the ground that it was out of time, a decision which was later upheld by the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) (Romania) by judgment of 13 November 2009.

19 As the legal remedies available in Romania had been exhausted, the proceedings initiated in Germany for a declaration of enforceability – which had been stayed – were resumed. The appeal brought by Salzgitter against the order of the Landgericht Düsseldorf was dismissed as unfounded by decision of the Oberlandsgericht Düsseldorf of 28 June 2010. Salzgitter then lodged an appeal against that decision before the Bundesgerichtshof (Federal Court of Justice) (Germany).

20 In those circumstances, the Bundesgerichtshof decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does Article 34(4) of [Regulation No 44/2001] also cover cases of irreconcilable judgments given in the same Member State (State of origin)?'

Consideration of the question referred

21 By its question, the referring court asks whether Article 34(4) of Regulation No 44/2001 must be interpreted as also covering irreconcilable judgments given by the courts of the same Member State.

22 In order to answer that question, it is necessary to interpret Article 34(4) of Regulation No 44/2001 in the light, not only of the wording of that provision, but also of the system established by the regulation and the objectives it pursues (see Case C-619/10 *Trade Agency* [2012] ECR, paragraph 27).

23 As regards the system established by Regulation No 44/2001, it must be noted that the grounds for non-enforcement serve a clear purpose within that system which establish, as the Advocate General has noted in point 35 of his Opinion, a comprehensive system governing international jurisdiction, and the recognition and enforcement of judgments.

24 First, the interpretation of the meaning and content of the grounds for non-enforcement of judgments given in another Member State set out in Regulation No 44/2001 must take account of the link between those grounds, on the one hand, and the rules on connected actions provided for by that regulation, on the other, which seek, in accordance with recital 15 in the preamble to that regulation, to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given in two Member States.

25 Next, it is apparent from recital 17 in the preamble to Regulation No 44/2001 that the procedure for making enforceable in the Member State addressed a judgment given in another may involve only a purely formal check of the documents required for enforceability in the Member State in which enforcement is sought.

26 Following the lodging of the application referred to in Article 38(1) of Regulation No 44/2001, and as is clear from Article 41 thereof, the authorities of the Member State in which enforcement is sought must, at the beginning of the procedure, not do any more than ensure completion of those formalities with a view to issuing a declaration of enforceability for that judgment (see *Trade Agency*, paragraph 29).

27 In accordance with Article 43 of Regulation No 44/2001, the declaration of enforceability of a judgment delivered in a Member State other than the Member State in which enforcement is sought may, in a second stage of the procedure, be the subject of dispute. The grounds for dispute that may be relied upon are expressly set out in Articles 34 and 35 of Regulation No 44/2001, to which Article 45 thereof refers (see, to that effect, *Trade Agency*, paragraph 31).

28 That list is exhaustive in nature and its items must be interpreted strictly inasmuch as they constitute an obstacle to the attainment of one of the fundamental objectives of Regulation No 44/2001 intended to facilitate the free movement of judgments by establishing a simple and rapid enforcement procedure (see, to that effect, Cast C-420/07 *Apostolides* [2009] ECR I-3571, paragraph 55 and the case-law cited, and Case C-139/10 *Prism Investments* [2011] ECR I-9511, paragraph 33).

29 More specifically, with regard to the ground for non-enforcement based on the irreconcilability of two judgments, the wording of Article 34(4) of Regulation No 44/2001, read in the light of the notion of 'judgment' within the meaning of Article 32 of that regulation, indicates, as the Advocate General has

noted in point 42 of his Opinion, that Article 34(4) must be understood as meaning that '[a] judgment [given by a court or tribunal of a Member State] shall not be recognised … if it is irreconcilable with an earlier judgment given in another Member State or in a third State'.

30 The situation envisaged by Article 34(4) therefore appears to be that where irreconcilable judgments are given in two different Member States.

31 That interpretation is supported by the principle of mutual trust on which the rules on recognition and enforcement of judgments given in another Member State are based, pursuant to Regulation No 44/2001.

32 As is clear from recitals 16 and 17 in the preamble to that regulation, the rules on recognition and enforcement are based on mutual trust in the administration of justice in the European Union which requires that judicial decisions delivered in one Member State are not only recognised automatically in another Member State, but also that the procedure for making those decisions enforceable in that Member State is efficient and rapid (see *Trade Agency*, paragraph 40).

33 The sound operation of those rules which are based on mutual trust implies that the courts of the Member State of origin retain jurisdiction to assess, in the context of the legal remedies established by the legal system of that Member State, the lawfulness of the judgment to be enforced, to the exclusion, in principle, of the court of the Member State in which enforcement is sought, and that the final outcome of the assessment of the lawfulness of that judgment will not be called into question.

34 It is in that context that Article 46(1) of Regulation No 44/2001 provides for the possibility to stay the proceedings if an ordinary appeal has been or may be lodged against the judgment in the Member State of origin.

35 It is for the party to the proceedings to avail himself of the legal remedies provided for by the legal system in the Member State in which the proceedings take place which, moreover, Salzgitter sought to do in the main proceedings. However, the party to the proceedings cannot rely on the grounds for non-enforcement of judgments given in another Member State to challenge the outcome of those proceedings.

36 The interpretation of Article 34(4) of Regulation No 44/2001 according to which it also covers conflicts between two judgments given in one Member State is inconsistent with the principle of mutual trust referred to in paragraph 31 above. Such an interpretation would allow the court in the Member State in which recognition is sought to substitute its own assessment of that of the court in the Member Sate of origin.

37 Once the judgment has become final at the end of the proceedings in the Member State of origin, the non-enforcement of that judgment on the ground that it is irreconcilable with a judgment given in the same Member State amounts to reviewing the judgment sought to be enforced as to its substance which is, however, expressly excluded by Article 45(2) of Regulation No 44/2001.

38 Such a possibility of review as to the substance would *de facto* constitute an additional means of redress against a judgment which has become final in the Member Sate of origin. In that regard, it is not disputed that, as the Advocate General has noted in point 31 of his Opinion, the grounds for non-enforcement provided for in Regulation No 44/2001 do not create additional remedies against national judgments which have become final.

39 Lastly, since the list of grounds for non-enforcement is exhaustive, as is apparent from the case-law referred to in paragraph 28 above, those grounds must be interpreted strictly and may not therefore be given, contrary to what Salzgitter and the German Government claim, an interpretation by analogy pursuant to which judgments given in the same Member State would also be covered.

40 In the light of all the foregoing considerations, the answer to the question referred is that Article 34(4) of Regulation No 44/2001 must be interpreted as not covering irreconcilable judgments given by courts of the same Member State.

Costs

41 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 (Fourth Chamber) hereby rules:

Article 34(4) 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 not covering irreconcilable judgments given by courts of the same Member State.

[Signatures]