Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

4 October 2018 *

(Reference for a preliminary ruling — Judicial co-operation in civil matters — Regulation (EC) No 44/2001 — Recognition and enforcement of decisions in civil and commercial matters — Time limit laid down in the law of the Member State addressed for enforcing a preventive attachment order — Applicability of that time limit to a preventive attachment instrument obtained in another Member State and declared enforceable in the Member State in which enforcement is sought)

In Case C-379/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Federal Court of Justice, Germany), made by decision of 11 May 2017, received at the Court on 26 June 2017, in the proceedings brought by

Società Immobiliare Al Bosco Srl

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, A. Rosas, C. Toader (Rapporteur), A. Prechal and E. Jarašiūnas, Judges,

Advocate General: M. Szpunar,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 11 April 2018,

after considering the observations submitted on behalf of:

– the German Government, by T. Henze, J. Techert and M. Hellmann, acting as Agents,

– the European Commission, by M. Heller and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 20 June 2018,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 38(1) 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).

* Language of the case: German.

2 The request has been made in proceedings brought by Società Immobiliare Al Bosco Srl ('Al Bosco') seeking the enforcement in Germany, by registration of a debt-securing mortgage against real property, of a preventive attachment order issued by the Tribunale di Gorizia (District Court, Gorizia, Italy) against Mr Gunter Hober and declared enforceable in Germany by the Landgericht München (Regional Court, Munich, Germany).

Legal context

European Union law

3 Recitals 2, 6, 10, 16 and 17 of Regulation No 44/2001 are worded as follows:

'(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.

…

(6) In order to attain the objective of free movement of judgments in civil and commercial matters, it is necessary and appropriate that the rules governing jurisdiction and the recognition and enforcement of judgments be governed by a Community legal instrument which is binding and directly applicable.

…

(10) For the purposes of the free movement of judgments, judgments given in a Member State bound by this Regulation should be recognised and enforced in another Member State bound by this Regulation …

…

(16) Mutual trust in the administration of justice in the Community 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 38(1) of Regulation No 44/2001 provides:

'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.'

5 Article 41 of that regulation provides:

'The judgment shall be declared enforceable immediately on completion of the formalities in Article 53 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.'

6 Under Article 66(2) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1), which repealed Regulation No 44/2001:

'... Regulation (EC) No 44/2001 shall continue to apply to judgments given in legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded before 10 January 2015 which fall within the scope of that Regulation.'

German law

7 Paragraph 929 of the Zivilprozessordnung (Civil Procedure Code; 'the ZPO'), headed 'Order for enforcement; time limit for enforcement', is part of Section 5, on preventive attachments and precautionary measures, of Book 8 of the ZPO, on enforcement measures. Subparagraphs 2 and 3 of that provision state the following:

'(2) Enforcement of the attachment order shall not be permitted if one month has elapsed since the date on which the order was issued or on which it was served on the requesting party.

(3) Enforcement before the order has been served on the debtor shall be permitted. However, it shall be ineffective if service is not effected within one week of the enforcement and prior to the expiry of the period specified for this purpose in the preceding subparagraph.'

8 Under Paragraph 932 of the ZPO, headed 'Attachment by registration of a mortgage':

'(1) Enforcement of an attachment order against real property … shall be effected by registering a debt-securing mortgage in respect of the debt …

…

(3) For the purposes of Paragraph 929(2) and (3), the application to register the mortgage shall be regarded as the enforcement of the attachment order.'

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

9 On 19 November 2013, Al Bosco, a property company established under Italian law, obtained from the Tribunale di Gorizia (District Court, Gorizia, Italy) a preventive attachment order authorising it to obtain preventive attachment in a maximum amount of EUR 1 million against the debtor's movable and immovable, tangible and intangible assets.

10 On 22 August 2014, that preventive attachment order was declared enforceable in Germany by the Landgericht München (Regional Court, Munich) pursuant to Regulation No 44/2001.

11 On 23 April 2015, Al Bosco applied for the registration of a mortgage against the debtor's real property located in Germany, namely a residential apartment and two underground parking spaces. Its application was rejected by the Amtsgericht München — Grundbuchamt (Land Registry attached to the Local Court, Munich, Germany).

12 Al Bosco challenged the decision of that court before the Oberlandesgericht München (Higher Regional Court, Munich, Germany). The latter court dismissed the action on the ground that the time limit of one month, laid down in Paragraph 929(2) of the ZPO, had expired. It considered that that time limit applies to the enforcement of the preventive attachment instrument issued by an Italian court which, having been recognised in Germany, is comparable to a seizure instrument issued by a German court. Moreover, it found that that provision concerned the enforcement of such an instrument obtained in another Member State, which is a matter for the *lex fori*, rather than the validity of a preventive attachment instrument.

13 On 15 June 2016, Al Bosco brought an appeal against the decision of the Oberlandesgericht München (Higher Regional Court, Munich). In its appeal, it submitted that the time limit for enforcement of the attachment laid down in Article 675 of the Italian Civil Procedure Code — whereby the order authorising the attachment loses its effects if it is not enforced within the period of 30 days from the date on which the order was made — had been observed, as preventive attachments had been effected within the period of 30 days from the date of the order of 19 November 2013. It maintains that there can be no requirement to observe the time limit laid down in German law in addition to that laid down in Italian law.

14 The referring court is unclear as to whether a national provision, such as Paragraph 929(2) of the ZPO, relates to the enforceability of the order authorising a preventive attachment which, in accordance with Article 38 of Regulation No 44/2001, comes within the remit of the law of the Member State in which that instrument was issued, or whether that provision refers to the enforcement, in the strict sense, of an enforceable instrument issued in another Member State, since such rules come, in principle, within the scope of the law of the Member State addressed.

15 The referring court notes that the basis of the enforcement in Germany of a foreign preventive attachment instrument adopted in another Member State is the national decision relating to the declaration of enforceability. Where the registration of a debt-securing mortgage is sought, the enforcement conditions laid down by German law are examined independently by the Land Registry. According to the referring court, the appeal court correctly classed, without it being disputed in the appeal, the preventive attachment delivered in Italy, in the light of its function, as a seizure instrument as provided for in German law which is enforced, in accordance with Paragraph 932 of the ZPO, by means of an application for the registration of a debt-securing mortgage. The enforcement conditions applicable in the present case would therefore be those laid down in the German provisions on the enforcement of seizure orders, in particular Paragraph 929(2) of the ZPO.

16 The referring court states that, where the time limit laid down in Paragraph 929(2) of the ZPO has expired, the preventive attachment order can no longer be enforced. In that connection, the referring court specifies that, where it applies to decisions given in other Member States, that time limit is calculated from the date on which the declaration of enforceability is notified to the creditor. The purpose of that provision is to protect debtors so as to prevent decisions adopted further to summary proceedings for interim relief remaining enforceable for a relatively long period of time, despite any changes in the situation at hand.

17 The referring court considers that, first and from a technical perspective, the time limit for enforcement is likely to come within the remit of the national law of the court seised and is not governed by Regulation No 44/2001, as is apparent from the case-law of the Court (judgments of 3 October 1985, *Capelloni and Aquilini*, 119/84, EU:C:1985:388, paragraph 16; of 29 April 1999, *Coursier*, C-267/97, EU:C:1999:213, paragraph 28; and of 28 April 2009, *Apostolides*, C-420/07, EU:C:2009:271, paragraph 69). Secondly, that time limit leads to the instrument ceasing to be enforceable as a result of the passage of time. The effect of that time limit would ultimately be no different to the instrument being set aside in the appeal proceedings. Accordingly, the application of that time limit with respect to a preventive attachment order issued in another Member State could be incompatible with the case-law of the Court of Justice, according to which the application of the

procedural rules of the Member State in which enforcement is sought must not undermine the effectiveness of Regulation No 44/2001 by frustrating the principles laid down by the regulation itself (judgments of 3 October 1985, *Capelloni and Aquilini*, 119/84, EU:C:1985:388, paragraph 21, and of 28 April 2009, *Apostolides*, C-420/07, EU:C:2009:271, paragraph 69).

18 Lastly, the referring court states that national case-law and jurisprudence are divided so far as concerns the scope of Paragraph 929(2) of the ZPO. In that connection, some German courts have declared that that provision concerns the enforceability of orders authorising preventive attachments and can apply only to German attachment instruments, while other courts have held that that provision also applies to attachment instruments issued in other Member States and which have been declared enforceable in Germany. The appeal court considered that it is appropriate to examine the observance of the time limit for enforcement laid down by the law of the Member State of origin in the enforceability procedure together with that laid down by the law of the Member State addressed during enforcement in the strict sense.

19 Moreover, as an aspect of comparative law, the referring court notes that the Tribunal Supremo (Supreme Court, Spain) takes the view that it is appropriate to apply the enforcement period of five years, laid down in Article 518 of the Ley de Enjuiciamiento Civil (Civil Procedure Code), also to judicial decisions given in the other Member States and which are meant to be declared enforceable in Spain, in accordance with Article 38 et seq of Regulation No 44/2001.

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

'Is it compatible with Article 38(1) of Regulation No 44/2001 to apply a time limit which is laid down in the law of the State in which enforcement is sought, and on the basis of which an instrument may no longer be enforced after the expiry of a particular period, also to a functionally comparable instrument issued in another Member State and recognised and declared enforceable in the State in which enforcement is sought?'

Consideration of the question referred

21 By its question, the referring court is asking, in essence, whether Article 38 of Regulation No 44/2001 must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which provides for the application of a time limit for the enforcement of a preventive attachment order, from being applied in the case of such an order which has been adopted in another Member State and is enforceable in the Member State in which enforcement is sought.

22 As a preliminary point, it should be recalled that, pursuant to Article 66(2) of Regulation No 1215/2012, Regulation No 44/2001 continues to apply to decisions given in legal actions brought before 10 January 2015 which come within the scope of the latter regulation. This is the situation, in the present case, regarding the order of 22 August 2014 by which the preventive attachment instrument was declared enforceable in Germany.

23 It is clear from the wording of Article 38(1) of Regulation No 44/2001 that a judgment given in a Member State and enforceable in that State is to be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.

24 As is clear from Article 41 of Regulation No 44/2001, for the purposes of issuing the declaration as to the enforceability of a decision given in a Member State other than the Member State in which enforcement is sought, the authorities of the Member State in which enforcement is sought must

confine themselves to a purely formal check of the documents required in accordance with Article 53 of that regulation (see, to that effect, judgment of 13 October 2011, *Prism Investments*, C-139/10, EU:C:2011:653, paragraphs 28 to 30).

25 The limited nature of that review is justified by the purpose of that procedure, which is not to initiate new proceedings, but rather to agree, on the basis of mutual trust in the administration of justice in the Member States, to the judgment delivered by a court or tribunal of a Member State other than the Member State in which enforcement is sought being enforced by means of incorporation into the latter Member State's legal order. That procedure thereby enables a judgment delivered in a Member State other than the Member State in which enforcement is sought to have the effect in the latter Member State of a national enforceable judicial decision (judgment of 13 October 2011, *Prism Investments*, C-139/10, EU:C:2011:653, paragraph 31).

26 It must also be recalled that Regulation No 44/2001 merely regulates the procedure for obtaining an order for the enforcement of enforceable instruments issued by a court of a Member State other than the Member State in which enforcement is sought, and does not deal with enforcement in the strict sense, which continues to be governed by the domestic law of the court in which enforcement is sought, unless, for the purposes of the enforcement of a judgment, the application of the procedural rules of the Member State in which enforcement is sought may impair the effectiveness of the scheme laid down by the regulation as regards enforcement orders, by frustrating the principles laid down in that regard, whether expressly or by implication, by the regulation itself (judgment of 28 April 2009, *Apostolides*, C-420/07, EU:C:2009:271, paragraph 69).

27 Accordingly, it is necessary to determine, in the first place, whether the time limit laid down in Paragraph 929(2) of the ZPO relates to the enforceability of the order authorising a preventive attachment issued by a court of a Member State other than the Member State in which enforcement is sought, or whether that provision comes within the scope of enforcement in the strict sense.

28 In that connection, it should be recalled that the purpose of the enforceability procedure is to recognise the effects of a decision from another Member State in the Member State in which enforcement is sought. That recognition concerns the specific characteristics of that decision, without reference to the matters of fact and law relating to enforcement of the obligations arising from it (judgment of 13 October 2011, *Prism Investments*, C-139/10, EU:C:2011:653, paragraph 39).

29 In the present case, it is apparent from the order for reference that the preventive attachment order given by the Tribunale di Gorizia (District Court, Gorizia) was declared enforceable in Germany, in accordance with the enforcement rules.

30 It is apparent from the provisions of German law, and in particular from Paragraph 932(1) of the ZPO, that a preventive attachment order is enforced through the registration of a debt-securing mortgage in the Land Register. Moreover, the enforcement of a preventive attachment order is not authorised after the expiry of the time limit provided for in Paragraph 929(2) of the ZPO. As is apparent from the order for reference, that time limit for enforcement restricts the enforcement of a preventive attachment order, but not its validity.

31 Both the registration of a debt-securing mortgage with the Land Registry, and the time limit applicable to the completion of that registration, come within the remit of the enforcement of an order authorising a preventive attachment issued by a court of a Member State other than the Member State in which enforcement is sought, such as that at issue in the main proceedings, which becomes enforceable following its recognition in the Member State in which enforcement is sought. They therefore come within the remit of procedural rules laid down in German law for the enforcement of orders authorising preventive attachments.

32 The fact that the application of a time limit for enforcement, such as that laid down in Paragraph 929(2) of the ZPO, entails a temporal limitation on the enforceability of a decision given by a court of a Member State other than the Member State in which enforcement is sought, does not call into question the interpretation whereby that time limit is part of the phase of enforcement in the strict sense.

33 Since the enforcement, in the strict sense, of a decision issued by a court of a Member State other than the Member State in which enforcement is sought, and which is enforceable in the latter Member State, has not been the subject of harmonisation by the EU legislature, the procedural rules of the Member State in which enforcement is sought are to apply to matters relating to enforcement.

34 In particular, it is clear that, in so far as Regulation No 44/2001 has not laid down rules concerning the enforcement of decisions given by a court of a Member State other than the Member State in which enforcement is sought, the latter remains free to make provision, in its own legal order, for the application of a time limit for enforcing such decisions, which have been recognised and declared enforceable in the latter Member State.

35 In that regard, it is settled case-law that, once that judgment is incorporated into the legal order of the Member State in which enforcement is sought, national legislation of that Member State relating to enforcement applies in the same way as to judgments delivered by national courts (judgment of 13 October 2011, *Prism Investments*, C-139/10, EU:C:2011:653, paragraph 40 and the case-law cited).

36 The procedural rules of the Member State in which enforcement is sought alone are applicable. The courts of that Member State are not required to apply any provisions of the national legislation of the Member State of origin which, in respect of the enforcement of decisions given by the courts of the Member State of origin, lay down time limits which differ from those laid down by the law of the Member State in which enforcement is sought.

37 That interpretation is borne out by recital 26 of Regulation No 1215/2012, read in conjunction with Article 39 thereof, which incorporated the case-law cited in paragraph 35 of the present judgment, and whereby any decision given by the courts of a Member State ought to be treated as though it had been given in the Member State in which enforcement is sought.

38 From a broader systematic perspective, it should be noted that that interpretation is also supported by Article 23 of Regulation (EC) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters (OJ 2014 L 189, p. 59), according to which the preservation order is to be enforced in accordance with the procedures applicable to the enforcement of equivalent national orders in the Member State of enforcement.

39 The fact that the failure by the applicant to observe the time limit laid down in Paragraph 929(2) of the ZPO has the effect of rendering impossible the enforcement of an order authorising a preventive attachment, issued by a court of a Member State other than the Member State in which enforcement is sought, by means of the registration of a debt-securing mortgage in the land register, even though that decision remains enforceable in the Member State of origin, is not such as to call that interpretation into question.

40 Although recognition must have the effect, in principle, of conferring on judgments the authority and effectiveness accorded to them in the Member State in which they were delivered, there is, however, no reason for granting to a decision, when it is enforced, effects that a similar decision given directly in the Member State in which enforcement is sought would not have (see, to that effect, judgment of 13 October 2011, *Prism Investments*, C-139/10, EU:C:2011:653, paragraph 38 and the case-law cited).

41 It should be noted that the application of a time limit, such as that laid down in Paragraph 929(2) of the ZPO, meets the requirements arising from the case-law cited in the preceding paragraph.

42 First, once the order authorising a preventive attachment given by a court, such as the Italian court at issue in the case in the main proceedings, is declared enforceable in Germany, it can enjoy, in the latter Member State, the same authority and effectiveness which it had in the Member State of origin. Secondly, the non-application of the time limit for enforcement laid down in Paragraph 929(2) of the ZPO for the same type of decision in the Member State in which enforcement is sought would lead to orders authorising a preventive attachment, granted by the courts of a Member State other than the Federal Republic of Germany, after having been recognised as enforceable, having different effects to those granted by national law to orders authorising preventive attachments issued by a national court; in particular, they may be enforced without a time limit or for a disproportionately longer period of time than national decisions.

43 Moreover, an interpretation whereby a time limit, laid down for the enforcement of preventive attachment orders, relates to the enforceability of decisions, which is governed by the procedural law of the Member State of origin, in such a way that the time limit for enforcement which may be laid down by the latter ought to apply to the enforcement of orders authorising preventive attachments delivered by a court of a Member State other than the Member State in which enforcement is sought and which are enforceable in the latter Member State, would entail a disproportionate burden for the competent authorities in enforcing such an order. As the referring court states in its request for a preliminary ruling, in the present case, the German Land Registry cannot determine whether a time limit for enforcement is laid down in the law of the Member State in which the preventive attachment order was delivered, or the arrangements for that enforcement; nor can it be authorised to apply a legal rule from that Member State.

44 In the second place, as is clear from paragraph 26 of the present judgment, it is appropriate to examine whether the application of the procedural rules of the Member State in which enforcement is sought is liable to undermine the effectiveness of the system set out in Regulation No 44/2001.

45 As regards the objectives of Regulation No 44/2001, it is clear from recitals 2, 6, 16 and 17 thereof that it seeks to ensure the free movement of judgments from Member States in civil and commercial matters by simplifying the formalities with a view to their rapid and simple recognition and enforcement (judgment of 7 July 2016, *Lebek*, C-70/15, EU:C:2016:524, paragraph 33).

46 That objective cannot, however, be achieved at the cost of another important principle, namely that of the legal certainty of registrations in land registers, for the protection both of rightsholders registered therein and third parties.

47 Such a temporal limitation for enforcement is also justified in the light of the nature of preventive attachment proceedings, which can be identified by their interim nature, being generally subject to a requirement of urgency in order to guarantee the payment of a debt, the recovery of which appears to be in jeopardy. That conception is shared in the majority of Member States, in order to ensure legal certainty in debt recovery.

48 As the referring court notes, that temporal limitation for enforcement aims to prevent decisions adopted following summary proceedings from remaining enforceable for long periods of time, despite any changes in the situation concerned.

49 Moreover, a time limit for the enforcement of orders authorising preventive attachment, such as that laid down in Paragraph 929(2) of the ZPO, does not undermine the effectiveness of Regulation No 44/2001, given that decisions delivered in a Member State other than the Federal Republic of Germany are, in principle, recognised and declared enforceable automatically in the latter Member State so as to comply with the objective of that regulation, which is to ensure the free movement of

judicial decisions. That time limit, which is applied as a procedural rule for the enforcement of preventive attachment orders in accordance with the law of the Member State in which enforcement is sought, constitutes a condition to which the enforcement of an enforceable instrument is subject.

50 The time limit of one month thus laid down for the enforcement of preventive attachment orders, including in the context of orders delivered by the courts of Member States other than the Member State in which enforcement is sought, and which is calculated from the date on which the declaration of enforceability was notified to the creditor, does not entail any real risk that the latter cannot enforce a preventive attachment order issued in another Member State and which is enforceable.

51 It follows from the foregoing that the answer to the question referred for a preliminary ruling is that Article 38 of Regulation No 44/2001 must be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, which provides for the application of a time limit for the enforcement of a preventive attachment order, from being applied in the case of an order which has been adopted in another Member State and is enforceable in the Member State in which enforcement is sought.

Costs

52 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 (Second Chamber) hereby rules:

Article 38 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction, recognition and enforcement of judgments in civil and commercial matters must be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, which provides for the application of a time limit for the enforcement of a preventive attachment order, from being applied in the case of an order which has been adopted in another Member State and is enforceable in the Member State in which enforcement is sought.

[Signatures]