The fact that there has already been compliance with the judgment in the Member State of origin is not a grounds for dispute of the declaration of enforceability of a judgmentin accordance with Brussels I Regulation

- News on legislation [1]

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The Court of justice underlines that it must be noted that no provision of Regulation No 44/2001 permits the refusal or revocation of a declaration of enforceability of a judgment that has already been complied with.

The court of justice has received a reference for a preliminary ruling concerning the interpretation of Article 45 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 (Brussels I).
The reference has been made in the context of proceedings between Prism Investments BV, a company governed by Netherlands law, and Mr van der Meer, in his capacity as receiver in the liquidation of Arilco Holland BV, the Netherlands subsidiary of Arilco Opportune NV, a company governed by Belgian law, concerning enforcement in the Netherlands of a judicial decision ordering payment of a sum of money delivered by a Belgian court.
Mr van der Meer applied to the Dutch competent judge, pursuant to Article 38 of Regulation No 44/2001, for the judgment delivered on 5 December 2006 by the Hof van Beroepte Brussels, so far as concerned the order that Prism Investments pay Arilco Holland the sum of EUR 1 048 232.30, to be declared enforceable. That application was granted. Prism Investments then brought, pursuant to Article 43 of Regulation No 44/2001, an action for annulment of that order for enforcement before the Ducthcompetentjurisdiction. It maintained, inter alia, that the judgment of the Belgian court had already been complied with in Belgium by means of a financial settlement. The jurisdiction dismissed the application made by Prism Investments, expressing the view, inter alia, that, under Article 45 of Regulation No 44/2001, a declaration of enforceability can be revoked only on one of the grounds specified in Articles 34 and 35 of that regulation. It noted that compliance with the obligations in question did not come within any of those grounds and could not therefore be taken into account for the purposes of an appeal against the declaration of enforceability, but only at the later stage of actual enforcement. Hearing an appeal in cassation, the Ducth high court is unsure whether Article 45 of Regulation No 44/2001 must be interpreted as meaning that the court dealing with an appeal under Article 43 or Article 44 of that regulation can refuse or revoke a declaration of enforceability on grounds other than those set out in Articles 34 and 35. In particular, it is unsure whether the ground that there has already been compliance with the judgment in the Member State of origin of that judgment can be advanced not only in a dispute relating to enforcement, but also in actual enforcement proceedings.
By judgment of 13 October 2011, the Court of justice observes that the grounds for dispute of the declaration of enforceability of a judgment delivered in a Member State other than the Member State in which enforcement is sought that may be relied upon are expressly set out in the Regulation No 44/2001. That list, the items of which must, in accordance with settled case-law, be interpreted restrictively, is exhaustive in nature. The ground for revocation of the declaration of enforceability relied upon by the appellant and relating to compliance with the judgment in the Member State of origin – that is to say, Belgium – is not one of those grounds which the court or tribunal of the Member State in which enforcement is sought – in the present case, the Kingdom of the Netherlands – has jurisdiction to review.
The Court of justice adds that it must be noted that no provision of Regulation No 44/2001 permits

the refusal or revocation of a declaration of enforceability of a judgment that has already been complied with because such a situation does not deprive that judgment of its enforceable nature, which is a characteristic specific to that judicial act. Compliance with a judicial decision does not in any way deprive that decision of its enforceable nature and also does not lead to it being attributed, at the time of its enforcement in another Member State, with legal effects that it would not have in the Member State of origin. Recognition of the effects of such a judgment in the Member State in which enforcement is sought, which is precisely the subject of the enforcement procedure, concerns the specific characteristics of the judgment in question, without reference to the elements of fact and law in respect of compliance with the obligations arising from it.
Finally, the Court of justice adds that such a ground may, by contrast, be brought before the court or tribunal responsible for enforcement in the Member State in which enforcement is sought. In accordance with settled case-law, 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.

Read the judgment of the Court [2]

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