

The Concept of Enforceability

Notionally, what is enforceability? When the forum declares a foreign judgement enforceable, what does it mean? Does it mean that the foreign judgement actually enters in the legal system of the forum as such, and remains a foreign judgement? Or does it mean that a judgement of the forum carrying the substance of the foreign judgement is produced, and will be the only one existing in the legal system of the forum?

The distinction can be important for some of the effects of judgements, which could differ in the foreign legal system and in the forum. For instance, judgements could become time barred more quickly in some legal orders. Also, there could be special rules about the interests of judgement debts. The issue can thus arise of whether the foreign rule or the rule of the forum applies.

One example of such rule is article 1153-1 of the French Civil Code, which provides that judgement debts automatically attract a higher interest rate. Is this provision applicable to foreign judgements? If so, when does the interest start?

On March 6, 2007, the French supreme court for private matters (*Cour de cassation*) held in *Delsey* that the provision applies to foreign judgements declared enforceable in France, and that the interest begins to accrue from the date of the declaration of enforceability (*exequatur*). In an earlier 2004 case on the enforcement of arbitral awards in France, the *Cour de cassation* had already held that the provision applies to the arbitral awards declared enforceable in France “as the law of the enforcement proceedings”.

The *Cour de cassation* did not provide much information on the facts of the *Delsey* case, but it seems that a Saudi agent of the French company *Delsey* had sued its principal in Saudi Arabia and obtained a judgement awarding Euros 807,121 as compensation for the termination of the contract. The agent then sought to enforce the Saudi judgement in France and obtained a declaration of enforceability providing that interests had accrued pursuant to article 1153-1 since when the Saudi judgement was made. *Delsey* appealed before the *Cour de cassation* arguing that the starting point of the interest was the date of the French declaration of enforceability and not the date of the making of the Saudi judgement. The appeal was allowed.

Delsey lays down the above mentioned rules, but does not explain them, in accordance with the French judicial practice. The case could be considered as an indication that the *Cour de cassation* subscribes to the theory that it is the declaration of enforceability of the forum which is enforced locally, and that this is the reason why the rules of the forum govern.