Enforcement in Netherlands of German ex parte decision under Brussels Regulation

In a case between Realchemie Nederland BV (The Netherlands) and Fa. Feinchemie Schwebda GmbH (Germany) the Dutch Supreme Court ruled that a German "Kostenfestsetzungsbeschluss" (decision on the costs of the procedure), based on an "einstweilige Verfügung" (provisional measure) was to be recognized and enforced pursuant to the Brussels Regulation (Hoge Raad, 7 November 2008, No. 07/12641; LJN: BD7568), even though both were granted *ex parte*.

Referring to the ECJ cases Denilauler v. Couchet (ECJ, 21 May 1980, case 125/9) and Maersk v. De Haan (ECJ, 14 October 2004, case C-39/02) the Supreme Court argued that measures that (a) concern the granting of provisional and protective measures, (b) ordered without the party against whom they are directed having been summoned, and (c) which are intended to be enforced without prior service, are not covered by Chapter III of the Brussels Regulation, dealing with recognition and enforcement . However, since both the "einstweilige Verfügung" and the "Kostenfestsetzungsbeschluss" were served on the defendant, and were, according to German law, subject to challenge after service, these decisions – although granted *ex parte* – are to be regarded as decisions within the meaning of Chapter III of the Brussels Regulation.

Further, the ground of refusal laid down in Article 34(2) Brussels Regulation is, according to the Supreme Court, applicable in a situation where the decision was rendered in default, and does not apply where the defendant was not summoned and did not have to be summoned (see also Hoge Raad, 20 June 2008, No. R07/124HR; LJN: BD0138, German Graphics Graphische Maschinen GmbH v. Van der Schee).