

ECJ judgment on Art 34(2) of the Brussels I Regulation

On 14 December 2006, the European Court of Justice handed down a preliminary ruling on the interpretation of Article 34(2) 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.

Art 34(2) of the Brussels I Regulation, it will be remembered, provides that a judgment is not to be recognised ‘where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was **possible** for him to do so’. In **ASML (C-283/05)**, after litigation in the German courts, the reference was made in the course of proceedings between ASML Netherlands BV ('ASML'), a company established in Veldhoven (Netherlands), and Semiconductor Industry Services GmbH ('SEMIS'), a company established in Feistritz-Drau (Austria), concerning the enforcement in Austria of a judgment given in default of appearance by the Rechtbank 's-Hertogenbosch (Netherlands) ordering SEMIS to pay ASML the sum of EUR 219 918.60 together with interest and the costs of the proceedings. The question essentially referred to the ECJ by the Oberster Gerichtshof was (para. 15):

*...whether Article 34(2) of Regulation No 44/2001 must be interpreted as meaning that the condition that it must be '**possible**', within the meaning of that provision, to commence proceedings to challenge the default judgment in respect of which enforcement is sought, **requires that the judgment should have been duly served on the defendant, or whether it is sufficient that the latter should have become aware of its existence at the stage of the enforcement proceedings in the State in which enforcement is sought.***

The ECJ answered the question in favour of the hypothetical defendant (para. 49):

In the light of all the foregoing considerations, the answer to the questions referred must be that Article 34(2) of Regulation No 44/2001 is to be

interpreted as meaning that it is ‘possible’ for a defendant to bring proceedings to challenge a default judgment against him only if he was in fact acquainted with its contents, because it was served on him in sufficient time to enable him to arrange for his defence before the courts of the State in which the judgment was given.

The full judgment can be found **here**. Comments welcome.

Update: There is a short case-note in the forthcoming edition of EU Focus (2007, 201, 8-9) on the decision in ASML.