Regulation 44/01, Entry into Force and Due Process

A rather non-suprising decision of the ECJ, adopted on June 21, has been published in today's OJ.

The reference for a preliminary ruling concerned the interpretation of Article 66(2) of Council Regulation (EC) No 44/2001, in a dispute on the recognition of an Austrian judgment of April 2003, ordering the defendant to pay a claim brought against it. The claimant, Wolf Naturprodukte, applied to the Okresní soud ve Znojm (District Court, Czech Republic) seeking, on the basis of Regulation No 44/2001, for that judgment to be declared enforceable in the Czech Republic and inter alia for assets of the defendant to be seized for that purpose. The Court dismissed the application on the ground that Regulation No 44/2001 was binding on the Czech Republic only from the accession of that State to the European Union, namely 1 May 2004. Wolf Naturprodukte appealed against that decision to the Krajský soud v Brn (Regional Court, Brno, Czech Republic), which dismissed the appeal and confirmed the decision at first instance. Wolf Naturprodukte thereupon appealed on a point of law to the Nejvyšší soud (Supreme Court, Czech Republic). Since it considered that the wording of Article 66 of Regulation No 44/2001 did not allow a clear determination of the temporal scope of that regulation, the Nejvyšší soud decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

"Must Article 66(2) of [Regulation No 44/2001] be interpreted as meaning that for that regulation to take effect it is necessary that at the time of delivery of a judgment the regulation was in force both in the State whose court delivered the judgment and in the State in which a party seeks to have that judgment recognised and enforced?"

A year and a half later, the ECJ concluded that

Article 66(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 must be interpreted as meaning that, for that regulation to be applicable for the purpose of the recognition and

enforcement of a judgment, it is necessary that at the time of delivery of that judgment the regulation was in force both in the Member State of origin and in the Member State addressed.

The grounds for the ruling are mainly explained in recitals 26

> It follows that the application of the simplified rules of recognition and enforcement laid down by Regulation No 44/2001, which protect the claimant especially by enabling him to obtain the swift, certain and effective enforcement of the judgment delivered in his favour in the Member State of origin, is justified only to the extent that the judgment which is to be recognised or enforced was delivered in accordance with the rules of jurisdiction in that regulation, which protect the interests of the defendant, in particular by providing that in principle he may be sued in the courts of a Member State other than that in which he is domiciled only by virtue of the rules of special jurisdiction in Articles 5 to 7 of the regulation.

and 29

> Furthermore, Regulation No 44/2001 contains certain mechanisms which protect the defendant's rights during the original proceedings in the State of origin, but they apply only if the defendant is domiciled in a Member State of the Union.

As said, the ECJ's ruling does not come as a surprise. The referred question might, though. Or, for that matter, the basis on which the applicant's legal counsel asked for the enforcement of the Austrian decision in the Czech Republic .