

# ECJ Rules on Irreconcilable Judgments Given in the Same State of Origin

On 26 September 2013, the Court of Justice of the European Union ruled in *Salzgitter Mannesmann Handel GmbH v. SC Laminorul SA* (C-157/12) that Article 34(4) of the Brussels I Regulation does not apply to two irreconcilable judgments given by courts of the same of Member state of origin.

Laminorul, which is established in Romania, brought an action seeking payment for a delivery of steel products against Salzgitter, established in Germany, before the Tribunalul Braila (Braila Court of First Instance) (Romania). Salzgitter claimed that that action should have been brought against the actual party to the contract with Laminorul, Salzgitter Mannesmann Stahlhandel GmbH, rather than against Salzgitter. On that ground, the Tribunalul Braila dismissed the action brought by Laminorul by judgment of 31 January 2008 ('the first judgment'). That judgment became final.

Shortly thereafter, Laminorul initiated new proceedings against Salzgitter before the same court for the same cause of action. That application was, however, served on Salzgitter's former legal representative, whose authority to act for the company had been limited, according to Salzgitter, to the first proceedings. No one appeared on Salzgitter's behalf at the hearing on 6 March 2008 before the Tribunalul Braila which delivered a judgment by default against Salzgitter, requiring Salzgitter to pay EUR 188 330 to Laminorul ('the second judgment'). Salzgitter later on made a number of applications in Romania to review or set aside the second judgment. They were all dismissed.

In the mean time, Maminorul was seeking enforcement of the second judgment in Germany.

The ECJ ruled:

*36 The interpretation of Article 34(4) of Regulation No 44/2001 according to which it also covers conflicts between two judgments given in one Member State is inconsistent with the principle of mutual trust referred to in paragraph*

31 above. Such an interpretation would allow the court in the Member State in which recognition is sought to substitute its own assessment of that of the court in the Member State of origin.

37 Once the judgment has become final at the end of the proceedings in the Member State of origin, the non-enforcement of that judgment on the ground that it is irreconcilable with a judgment given in the same Member State amounts to reviewing the judgment sought to be enforced as to its substance which is, however, expressly excluded by Article 45(2) of Regulation No 44/2001.

38 Such a possibility of review as to the substance would *de facto* constitute an additional means of redress against a judgment which has become final in the Member State of origin. In that regard, it is not disputed that, as the Advocate General has noted in point 31 of his Opinion, the grounds for non-enforcement provided for in Regulation No 44/2001 do not create additional remedies against national judgments which have become final.

39 Lastly, since the list of grounds for non-enforcement is exhaustive, as is apparent from the case-law referred to in paragraph 28 above, those grounds must be interpreted strictly and may not therefore be given, contrary to what Salzgitter and the German Government claim, an interpretation by analogy pursuant to which judgments given in the same Member State would also be covered.

#### **Ruling:**

Article 34(4) 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 not covering irreconcilable judgments given by courts of the same Member State.