

What is a Judgment (in the context of Reg 655/2014)? - CJEU Case C-291/21 Starkinvest

Less than half a year after the CJEU's decision in Case C-646/20 *Senatsverwaltung für Inneres* (discussed here by Krzysztof Pacula), the Court had to engage again with the question of what constitutes a "judgment" in the sense of an EU instrument in Case C-291/21 *Starkinvest*.

This time, the question arose in the context of Regulation 655/2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters. The regulation envisages two kinds of situation:

1. The creditor has already obtained a "judgment" (Art. 7(1)): In this case, the creditor only needs to show that there is an urgent need for a protective measure to ensure that the judgment can be effectively enforced against the debtor.
2. The creditor has not yet obtained a "judgment" (Art. 7(2)): In this case, the creditor *also* needs to show "that he is likely to succeed on the substance of his claim against the debtor".

In *Starkinvest*, the claimant had obtained a decision from the Tribunal de commerce de Liège, Belgium, that ordered the debtor to cease seeling certain goods, subject to a penalty payment of EUR 2 500 per breach. On the basis of that decision, they later sought payment of EUR 85 000 in penalties, which they requested the referring court to secure through a European Account Preservation Order. Confronted with the question of how to characterise the initial decision in the context of the above dichotomie, the court referred the case to the CJEU.

The CJEU followed the advice of Advocate General Szpunar, holding that

Article 7(2) of [the Regulation] must be interpreted as meaning that a judgment that orders a debtor to make a penalty payment in the event of a future breach of a prohibitory order and that therefore does not definitively set the amount of

that penalty payment does not constitute a judgment requiring the debtor to pay the creditor's claim, within the meaning of that provision, such that the creditor who requests a European Account Preservation Order is not exempt from the obligation to provide sufficient evidence to satisfy the court before which an application for that order is brought that he or she is likely to succeed on the substance of his or her claim against the debtor.

In reaching that decision, the court emphasised the fact that in a case like this, the precise amount of the debt had not yet been established by a court (see paras. 51-52, 55); accordingly, there was no sufficient justification for exempting the claimant from the requirement to satisfy the court that they are likely to succeed on the merits.