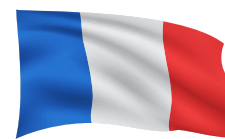


France: National courts should facilitate enforcement of foreign judgements



According to a recent judgement of the French Cour de cassation¹, a foreign judgement setting a financial penalty for mismanagement against a manager should be recognised and enforced in France whatever the judgement looks like.

A German Court had judged a manager to bear personal liability after insolvency proceedings had been opened against his company. He was charged an amount of more than 2 million euros, upon a request filed by the German Insolvenzverwalter (liquidator). In the meantime, this manager had transferred his home in the South of France, maybe in order to avoid lawsuits of German creditors...

The clerk of the French Court issued a certificate giving enforcement to this judgement.

Upon an appeal filed by the manager, the French Court of appeal reversed the decision of the lower-level court, by considering that the judgement did not contain any formal conviction. Such an analysis was then rejected by the Cour de cassation: a domestic court may neither distort nor review foreign judgements, according to the EU law². The certificate delivered by the clerk pursuant to article 54 of Council Regulation (EC) 44/2001 certified the enforceability of this judgement.

This judgement of the Cour de cassation also reminds national courts that recognition and enforcement of judgements in relation with insolvency proceedings opened in other EU Member States are regulated by the Regulation Brussels I, except if public policy is invoked³. It differs from rules applicable to opening judgements, whose recognition and enforcement are granted *ipso jure*. Other

judgements have to be enforced as judgements passed in civil and commercial cases.

The Council Regulation (EC) 44/2001 of 22 December 2000, and the more recent Regulation (EU) n° 1215/2012 provide a vague definition of what such a judgement could be: any judgement, whatever its name⁴, given by a court or tribunal of a Member State. No specific requirements are needed for a foreign judgement to be recognised: therefore, any decision issued by a foreign court must be recognised and enforced. The formal appearance of a judgement is not relevant for its recognition, because domestic rules are not fully harmonised, especially with respect to procedural matters, thus foreign judgements cannot be expected to be similar to domestic ones.

An old judgement of the Cour de cassation can be mentioned in that respect for it had indicated that any decision issued by a foreign court may get *exequatur* if it affects the rights or liabilities of a person⁵.

Moreover, neither the Legislative guide on insolvency law nor the cross-border insolvency model law adopted by UNCITRAL suggest any definition of the formal appearance of the national or foreign judgements: such definitions were deemed unnecessary, because they primarily depend on domestic legislators.

If such aspects of procedural matters in civil and commercial cases are not harmonised, domestic courts only have to check the name of parties, the sum to be paid or the relief to be granted and the right to enforcement. In this case the certificate delivered by the foreign clerk confirmed in a sufficient manner the obligation

of the former manager to pay.

The Cour de cassation therefore focusses on a flexible approach of the notion of enforceable foreign judgements, based on the general principle of mutual trust due to foreign European courts, irrespective of the formal appearance of such judgements.

Obviously, the foreign court should also be a real public body established by the law and acting according to the rules set out by the European Court of Human Rights and in an independent way: the courts of EU Member States are deemed to meet with such principles. This presumption is necessary for a proper functioning of the internal market. Such an approach should apply to all kind of judgements in relation with foreign insolvency proceedings, ordered toward a debtor, a shareholder, a third debtor, a mother company or a manager, or issued in any judicial case on a challenged claim, on a disqualification or on a discharge. ■



JEAN-LUC VALLENS
Honorary judge,
Professor emeritus,
University of Strasbourg

Footnotes:

- 1 Cass First civil chamber 3 March 2021, n° 19-20.393
- 2 In this case, article 32 of Council Regulation (EC) n° 44/2001 of 22 December 2000 on jurisdiction, recognition and enforcement of judgements in civil and commercial matters
- 3 Articles 25 and 26 of Council Regulation (EC) n° 1346/2000 of 29 May 2000 on insolvency proceedings, repealed by articles 32 and 33 of Regulation (UE) n° 2015/848 of 20 May 2015 on insolvency proceedings
- 4 Article 32 of Council Regulation (EC) n° 44/2001 of 22 December 2000; also, article 2 of Regulation (UE) n° 1215/2012 of 12 December 2012 on jurisdiction, recognition and enforcement of judgements in civil and commercial matters
- 5 Cass 1ère civ 17 Oct 2000, n° 98-19.913



The Cour de cassation focusses on a flexible approach of the notion of enforceable foreign judgements

