Reports of Cases

OPINION OF ADVOCATE GENERAL
CRUZ VILLALÓN
delivered on 2 February 2012 [1]

Case C-514/10

Wolf Naturprodukte GmbH
v
SEWAR spol. s r. o.

(Reference for a preliminary ruling from the Nejvyšší soud České republiky (Czech Republic))

((Enforcement of judgments in civil and commercial matters — Temporal scope of Regulation (EC) No 44/2001 — Article 66 — Obligation to enforce a judgment given in another Member State before the accession to the European Union of the State in which enforcement is sought))

I – Introduction

1. Article 66 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 [2] governs the determination *ratione temporis* of the proceedings and, as the case may be, the judgments to which the provisions of the Regulation must be applied, irrespective of the fact that the Regulation entered into force on 1 March 2002; [3] those provisions, as the title of the Regulation indicates, relate specifically to the determination of jurisdiction and the recognition and enforcement of the relevant judgments.

2. In connection with an application for enforcement in the Czech Republic of a judgment given in Austria, the referring court asks, essentially, whether that article must be interpreted as meaning that, for the purposes of its application, it is (or is not) sufficient that, at the time of delivery of the judgment concerned, the Regulation had entered into force only in the State of origin of the judgment, regardless, therefore, of the status of the Regulation in the State of enforcement.

3. In those terms, as I shall attempt to argue, the question submitted, which is also the main focus of interest in the present case, concerns for practical purposes the manner in which the provisions of Article 66 may be applied in the territory of Member States which joined the European Union after the entry into force of the Regulation, in so far as that is a matter which is not expressly dealt with in the Regulation itself.

1 — Original language: Spanish.

2 — OJ 2001 L 12, p. 1; 'Regulation No 44/2001' or 'the Regulation'.

3 — Article 76 of the Regulation.

II – Legal framework

A – *European Union law: Regulation No 44/2001*

4. Recital 5 in the preamble to Regulation No 44/2001 states:

'On 27 September 1968 the Member States, acting under Article 293, fourth indent, of the Treaty, concluded the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by Conventions on the Accession of the New Member States to that Convention (hereinafter referred to as the "Brussels Convention"). On 16 September 1988 Member States and EFTA States concluded the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, which is a parallel Convention to the 1968 Brussels Convention. Work has been undertaken for the revision of those Conventions, and the Council has approved the content of the revised texts. Continuity in the results achieved in that revision should be ensured.'

5. Recital 19 in the preamble to the Regulation states as follows:

'Continuity between the Brussels Convention and this Regulation should be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation of the Brussels Convention by the Court of Justice of the European Communities and the 1971 Protocol should remain applicable also to cases already pending when this Regulation enters into force.'

6. The transitional provisions to which Recital 19 refers are set out in Article 66 of Regulation No 44/2001, pursuant to which:

'1. This Regulation shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after the entry into force thereof.

2. However, if the proceedings in the Member State of origin were instituted before the entry into force of this Regulation, judgments given after that date shall be recognised and enforced in accordance with Chapter III:

(a) if the proceedings in the Member State of origin were instituted after the entry into force of the Brussels or the Lugano Convention both in the Member State o[f] origin and in the Member State addressed;

(b) in all other cases, if jurisdiction was founded upon rules which accorded with those provided for either in Chapter II or in a convention concluded between the Member State of origin and the Member State addressed which was in force when the proceedings were instituted'.

7. Article 76 of Regulation No 44/2001 provides: 'This Regulation shall enter into force on l March 2002'.

B – *National legislation*

8. Pursuant to Paragraph 37(1) of the Zákon č. 97/1963 Sb., o mezinárodním právu soukromém a procesním (Law on private international law and international procedural law; 'ZMPS'), 'jurisdiction of the Czech courts in property disputes exists if they have jurisdiction under Czech legislation'.

9. Paragraph 63 of the ZMPS provides that 'decisions of judicial institutions of a foreign State in the matters listed in Paragraph 1 ... take effect in the Czech Republic in so far as they have acquired binding legal effect as certified by the competent foreign institution and have been recognised by the Czechoslovak institutions'.

10. Paragraph 64 of the ZMPS provides that 'a foreign judgment may not be recognised or enforced where:

...

(c) the party to the proceedings against whom the judgment is to be recognised was by the procedure of the foreign institution denied an opportunity to participate properly in the proceedings, in particular if he was not served personally with the summons or application instituting proceedings, or if the defendant was not served personally with the application instituting proceedings;

(d) recognition would be contrary to Czech public policy;

(e) reciprocity is not guaranteed; reciprocity is not required if the foreign judgment is not directed against a Czech citizen or legal person.'

III – The main proceedings and the question referred for a preliminary ruling

11. By judgment of 15 April 2003, the Landesgericht für Zivilrechtssachen, Graz (Regional Civil Court, Graz, Austria) ordered SEWAR spol. s r. o. to pay certain sums to Wolf Naturprodukte GmbH.

12. On 21 May 2007, Wolf Naturprodukte GmbH lodged an application with the Okresní soud ve Znojmě (District Court, Znojmo, Czech Republic), seeking a declaration of enforceability in the Czech Republic of the judgment of the Austrian Court and, for that purpose, an order for enforcement against the debtor's assets. In support of its application, Wolf Naturprodukte GmbH relied on Regulation No 44/2001.

13. The Okresní soud ve Znojmě dismissed the applicant's application by decision of 25 October 2007, on the grounds that Article 66(1) and (2) of Regulation No 44/2001 was not applicable *ratione temporis* to the case. Relying, therefore, on the ZMPS, the Okresní soud held that the Austrian judgment did not satisfy the conditions necessary for recognition and enforcement in the Czech Republic. First, the Czech court stated, it was a judgment in default and it could be inferred from the facts of the proceedings that the judgment debtor had been denied the opportunity to participate properly in the proceedings (the application instituting proceedings was served on the debtor on 15 April 2003 and the final judgment was delivered on the same date). Second, the judgment did not satisfy the requirement of reciprocity in the recognition and enforcement of judgments between the Czech Republic and the Republic of Austria.

14. Wolf Naturprodukte GmbH appealed against that decision. By decision of 30 June 2008, the Krajský soud v Brně (Regional Court, Brno) dismissed the appeal and upheld the judgment at first instance.

15. The creditor then brought an appeal on a point of law before the Nejvyšší soud České republiky (Supreme Court of the Czech Republic), claiming that Article 66 of Regulation No 44/2001 must be interpreted in such a way that the decisive date for the purposes of application of the Regulation is the date on which it entered into force generally, not the date on which it entered into force in the particular Member State.

16. Taking the view that the wording of Article 66 does not enable a clear determination of the temporal scope of Regulation No 44/2001, the Nejvyšší soud decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 66(2) of Council Regulation (EC) No 44/2001 Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters 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?'

IV – The procedure before the Court of Justice

17. The reference for a preliminary ruling was registered at the Court Registry on 2 November 2010.

18. Written observations were lodged by the Czech Republic, the Republic of Latvia, the Federal Republic of Germany and the Commission.

V – Analysis of the question referred for a preliminary ruling

A – *The meaning and content of Article 66 and the scope of the question referred*

19. In my view, it is important to set out a number of preliminary points relating to the question submitted by the referring court, as set out above.

20. First of all, it is important to point out that, although, formally, the question specifically concerns Article 66(2), in particular the territorial scope of the expression 'entry into force' of the Regulation in that transitional provision, it is quite clear, as will be seen, that that expression cannot have a different scope in each of the two paragraphs of the provision. Therefore, I believe that the question must refer to Article 66 as a whole, without it being possible to draw any distinction between the two paragraphs.

21. Secondly, it is essential to understand the meaning and structure of Article 66; in short, its 'scheme' within Regulation No 44/2001 as a whole.

22. Article 66, as a transitional legal provision, specifically meets an objective of legal certainty. Moreover, in view of the relevant purpose of the Regulation (jurisdiction and the recognition and enforcement of judgments), it was essential to stipulate *ratione temporis* the particular proceedings and judgments to which, as appropriate, the provisions of the Regulation were to apply.

23. With that purpose in mind, the European Union legislature's approach was to lay down a rule in the first paragraph of Article 66 and an exception in the second paragraph. Put very simply, the rule is that the Regulation applies to proceedings instituted after its entry into force. That means — and this is important — that, in that situation, all parts of the Regulation will be applicable; in other words, the part relating to jurisdiction and the part relating to the recognition and enforcement of the relevant judgments.

24. Without prejudice to the considerations which I shall set out below, the exception is that the Regulation applies to proceedings which had already been instituted but were not yet concluded when the Regulation entered into force; in other words, and as specifically provided for in the article, proceedings in which judgment is given after the entry into force of the Regulation. In those cases, only the part of Regulation No 44/2001 relating to the recognition and enforcement of judgments is intended to apply and, logically, the rules pursuant to which jurisdiction to deliver the judgments concerned was determined at the relevant time may not be called into question. That exception is laid down for a number of cases which are clear from the wording of Article 66(2), as reproduced above. While it is not necessary to consider those cases in detail here, and regardless of the point which I will make below, it is clear that, since this is an exception to the rule, those cases must be interpreted strictly, without — it should be observed — any need readily arising for broad interpretations of the kind put forward by the representative of Germany.

25. Finally, against that backdrop, the meaning of 'entry into force' from a territorial perspective, at the specific time when Regulation No 44/2001 entered into force, leaves no room for any doubt: like any European Union legal instrument, in the absence of an express provision to the contrary, the Regulation entered into force in the territory of the Union, without any further explanation being

required. The Regulation entered into force in the territory of States which subsequently acceded to the Union only on the date of their accession. [4]

26. That means that when Regulation No 44/2001 entered into force in 2002, it made little sense to consider whether or not it was sufficient that the Regulation had entered into force only in the State in which judgment was given. That is because all the Member States were on an equal footing with regard to the Regulation. [5]

27. In that connection, it is worth pointing out that, to my mind, any reasoning which seeks to draw conclusions based on the contrast between Article 66 and the corresponding earlier provisions of the Brussels and Lugano conventions is highly questionable. [6]

28. Accordingly, the question whether, in the context of the legal situation created after the first expansion of the European Union two years later, it is possible to draw a distinction between some Member States and others (and the corresponding citizens of the Union) for the purposes of the reference in Article 66 to 'entry into force', is, for practical purposes, tantamount to asking whether the new Member States (and the citizens concerned) should be deprived of a transitional provision — Article 66 — which satisfies aims that are directly related to legal certainty and, therefore, the rule of law.

29. Above all, such a view would entail adopting what might be described as a 'static' interpretation of that transitional provision, which would benefit only States which were already part of the European Union (and the citizens concerned) when the Regulation entered into force. That is a matter which raises difficulties.

30. Acceptance of the view that new Member States must enforce decisions which were not only delivered in proceedings instituted before they joined the Union, which is excluded by the rule in Article 66(1), but which were also delivered before the entry into force of the Regulation, which is likewise excluded by the exception in Article 66(2), amounts to depriving those States (and the citizens of the Union concerned) of the substance of the transitional arrangements.

31. Stated in those terms, and for the reasons which I shall set out below, I believe that the requirements of the principle of legal certainty and the right to a remedy (Article 47 of the Charter), which inform Article 66 as a whole, preclude acceptance of the view put forward as a question by the referring court, to the effect that it is sufficient that the Regulation had entered into force in the Member State [of origin] at the time of delivery of the judgment concerned for there to be an obligation to enforce that judgment in a Member State in which the Regulation was not in force either at the time when proceedings were instituted or at the time when the judgment was delivered. [7]

4 — The Treaty of Accession does not lay down any special rules for the application of Regulation No 44/2001, from which it follows that it must be deemed to have been in force in the Czech Republic since 1 May 2004, in the terms laid down in the Regulation.

5 — In my opinion, that finding is not altered by the specific features of the Danish situation. In that regard, see Peers, S., *Justice and Home Affairs Law*, Oxford EU law library, 3rd edition, No 8.2.5, p. 619.

6 — Article 54 of the Brussels Convention (amended by Article 16 of the Convention on the accession of Spain and Portugal of 26 May 1989 (89/538/EEC); OJ 1989 L 285, p. 1) and Article 54 of the Lugano Convention of 16 September 1988 expressly laid down the requirement of the 'dual entry into force' of the convention in the State of origin and in the State addressed for the purposes of application of the provisions on the recognition and enforcement of judgments. The inclusion of a requirement of that kind is perfectly logical in the context of an international instrument in which reciprocity plays a central role (that is why it is also included in Article 63 of Council Decision 2007/712/EC **of 15 October 2007 on the signing, on behalf of the Community, of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters** (OJ 2007 L 339, p. 1)).

7 — That is, furthermore, the almost unanimous view of academic writers, particularly German writers who have paid particular attention to this matter. In that connection, it is appropriate to cite, inter alia, Kropholler, J. and von Hein, J., *Europäisches Zivilprozeßrecht: Komentar zu EuGVO, Lugano-Übereinkommen 2007, EuVTVO, EuMVVO und EuGFVO*, 2011, pp. 709 to 717; Becker, M., 'Anerkennung deutscher Urteile in der Tschechischen Republik', *Balancing of interests. Liber Amicorum Peter Hay*, Verlag Rect. Und Wirtschaft GmbH, Frankfurt am Main, 2005, p. 26; Hess, B., 'Die intertemporale Anwendung des europäischen Zivilprozessrechts in den EU-Beitrittsstaaten', *IPRax 2004, Heft 4*, p. 375; and Becker, M. and Müller, K., 'Intertemporale Urteilsanerkennung und Art. 66 EuGVO', *IPRax 2006, FET 5*, p. 436.

B – *Since it is a transitional provision and as a result of its subject-matter, Article 66 may only be interpreted 'dynamically'*

32. According to what might be described as a 'static' interpretation (a kind of 'snapshot'), Article 66 of the Regulation is a transitional provision which, because of the nature and content of the Regulation, could not cease to have a functional nature when the transition, so to speak, from the Convention to the Regulation took place in 2002. On the contrary, owing to the characteristics of the field governed by the Regulation, Article 66 is a transitional provision which is intended to operate every time new Member States join the European Union, on the same terms as it operated in relation to the States (and the citizens) which joined the European Union in 2002. I have already attempted to explain how, to my mind, the view put forward as a question in this case is tantamount to a 'de-activation' of Article 66 of Regulation No 44/2001 vis-à-vis States (and citizens) which acceded to the European Union after the Regulation entered into force. In that connection, it may be said that a 'dynamic' interpretation of that transitional provision is required.

33. As must be the case, a systematic and purposive interpretation of Regulation No 44/2001 supports that approach. Regulation No 44/2001, which was conceived as an instrument aimed at the smooth operation of the internal market, seeks to facilitate and simplify the recognition and enforcement of judgments between Member States and, as the German Government suggests, the path towards that objective of 'free movement of judgments' in civil and commercial matters [8] might be made smoother if it were possible to recognise judgments delivered when the Regulation was in force in the Member State of origin even if it was not yet in force in the Member State in which recognition is later sought. However, I do not believe that that solution is possible because the attainment of the objective of free circulation of judgments must not jeopardise the balance between the interests of the applicant and the interests of the defendant in the proceedings.

34. As I have pointed out from the start, Regulation No 44/2001 comprises two large substantive bodies of rules which, nevertheless, form a single unit. The first body of rules is the group of provisions governing the 'allocation' of jurisdiction in civil and commercial matters within the European Union, while the second is the rules on the recognition and enforcement of judgments. There is a close connection between the two substantive bodies of rules: a careful reading of the Regulation reveals that the Community legislature does not intend one to apply without the other and regards them as a whole body of rules.

35. Article 66(1) is a clear illustration of what I have been saying. By setting the date of institution of proceedings as a general reference date for determining whether the Regulation is applicable, Article 66(1) ensures that the judgment to be enforced was given in accordance with the rules on jurisdiction laid down in the Regulation.

36. To a certain extent, that approach is also revealed in Article 66(2). Although, as I have stated, Article 66(2) formally lays down an exception to the general rule in Article 66(1), substantively, and from a substantive point of view, its nature as an exception is considerably reduced. Article 66(2) provides that the provisions on recognition and enforcement in the Regulation may be applied where proceedings were instituted before the entry into force of the Regulation but judgment was given afterwards in a number of cases which, in principle, can be traced back to the requirement that jurisdiction of the courts of the Member State of origin of the judgment was determined in accordance with the rules of the Regulation itself or other identical or similar rules laid down in an international convention which binds the two Member States concerned.

37. That interaction between the two basic fields of Regulation No 44/2001 (jurisdiction and recognition) is derived from the need for the free movement of judgments to take place within a system which balances the interests of the parties. Without risking an excessive simplification, it is possible to assert that the rules on jurisdiction laid down in the Regulation are aimed principally at

8 — Set out in Recital 6 in the preamble to the Regulation.

protecting the interests of the defendant (who is required to participate in legal proceedings in a Member State other than his State of residence only in exceptional circumstances) in so far as the provisions on the recognition and enforcement of judgments give special protection to the applicant (who may secure swift, reliable and effective enforcement of the judgment in another Member State). [9]

38. The Court referred explicitly to that close relationship between the two bodies of rules in Opinion 1/03 of 7 February 2006, [10] paragraph 163 of which states that 'the simplified mechanism of recognition and enforcement set out in Article 33(1) of that regulation, to the effect that a judgment given in a Member State is to be recognised in the other Member States without any special procedure being required and which leads in principle, pursuant to Article 35(3) of that regulation, to the lack of review of the jurisdiction of courts of the Member State of origin, rests on mutual trust between the Member States and, in particular, by that placed in the court of the State of origin by the court of the State in which enforcement is required, taking account in particular of the rules of direct jurisdiction set out in Chapter II of that regulation.'

39. The facts of the present case demonstrate how an interpretation which accepts that the Regulation applies to a case in which proceedings were instituted after the entry into force of the Regulation in the Member State of origin but before its entry into force in the State where enforcement of the judgment concerned is later sought is capable of leading to the breaking of that link between the two fields covered by the Regulation and, consequently, to the upsetting of the balance between the interests of the applicant and those of the defendant, an outcome which, in my view, the European Union legislature sought to avoid.

40. It should be pointed out, first of all, that the proceedings before the Court do not come within any of the cases in Article 66(2). First, the Czech Republic was not a party to the Brussels and Lugano Conventions or to any other convention establishing a relationship between it and Austria in the field concerned; second, the rules applied for the purposes of determining the jurisdiction of the Austrian court were not, strictly speaking, 'those provided for ... in Chapter II' of the Regulation, as required by Article 66(2)(b). Further, the rules applied were not those directly and substantively provided for in Chapter II (more specifically, in sections 2 to 7 thereof) but rather the national provisions referred to in Article 4, which are applicable when the defendant does not reside in a Member State. As I have already indicated, that means that the defendant was unable to rely on the protection mechanisms provided for in the Regulation (for example, the obligation relating to service in sufficient time).

41. That being said and continuing with the same line of argument, the fundamental problem with the approach set out above is that a defendant domiciled in a State which was not yet a member of the European Union on the date of institution of proceedings would at that time, for the purposes of the Regulation, have been deemed to reside in a non-member State. That means that even if the Regulation were applicable, from a procedural point of view the defendant undertaking would be in a weaker legal position, relatively speaking, than the one it would have been in if it had been established in a Member State.

9 — In legal literature, see Kropholler, J., op. cit. See also, in relation to the Brussels Convention, Case 125/79 *Denilauler* [1980] ECR 1553, paragraph 13 ('It is because of the guarantees given to the defendant in the original proceedings that the convention, in Title III, is very liberal in regard to recognition and enforcement.').

10 — Opinion 1/03 [2006] ECR I-1145. The request for an opinion concerned the exclusive or shared competence of the European Community to conclude the new convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, intended to replace the Lugano Convention.

42. First, the jurisdiction of the Austrian court would not have been determined in accordance with Article 3 of Regulation No 44/2001 [11] or, in short, in accordance with the rules on jurisdiction directly and substantively laid down in the Regulation, in which the general rule is the defendant's domicile. [12] Since the defendant was not domiciled in a Member State at that time, under Article 4 of the Regulation [13] jurisdiction would have been determined under the law of the Member State in which proceedings were brought (the Austrian provisions on jurisdiction).

43. Second, certain rights of the defence, which the defendant would have been entitled to rely on had it been domiciled in a State which was already a member of the European Union at the time when proceedings were instituted, would not have been available to the defendant. The rights concerned are the ones provided for in Article 26 of Regulation No 44/2001, pursuant to which, 'where a defendant domiciled in one Member State is sued in a court of another Member State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Regulation' (paragraph 1); in addition, that court 'shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end' (paragraph 2).

44. In the instant case, the problem would be that the defendant undertaking had presumably not been able to participate in the proceedings due to a failure to notify it of their commencement in sufficient time. [14] In those circumstances it would not be logical if recognition of the judgment could be sought under Regulation No 44/2001 because that would upset the balance between the interests of the parties and the interconnection of the two basic fields covered by the Regulation.

45. In the light of the foregoing, from both a systematic and a purposive point of view, the only appropriate interpretation of the Regulation which is consistent with the principle of legal certainty and the procedural guarantees is one which entails proposing a dynamic extension of the full effects of the transitional provision contained in the two paragraphs of Article 66 of Regulation No 44/2001 to the territory of each of the Member States which joined the European Union after the date of entry into force of the Regulation.

46. The approach which I propose has necessary and immediate consequences vis-à-vis the tenor of the reply to the question submitted by the referring court. Regulation No 44/2001 applies in the Czech Republic only under the conditions laid down in the two paragraphs of Article 66, or, to put it more clearly, with the same effects which that article had at the time when it entered into force. That leads to a finding that, where an application is made for enforcement of a judgment under Regulation No 44/2001, in order for the Regulation to be relied on effectively it must be in force in the Member State of origin of the judgment and in the Member State in which enforcement is sought.

11 — Article 3 provides: '1. Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter 2. In particular the rules of national jurisdiction set out in Annex I shall not be applicable as against them.'

12 — In support of that view, see Case C-168/08 *Hadadi* [2009] ECR I-6871, relating to Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1). It is clear from paragraph 30 of the judgment in that case that, as regards the application of that regulation for the purposes of the recognition of a decree of divorce issued in another Member State, the provisions applied by the court issuing the decree as the basis for its jurisdiction are irrelevant, provided that that court's jurisdiction could have been based on Article 3(1) of Regulation No 2201/2003.

13 — Article 4(1) provides: 'If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Articles 22 and 23, be determined by the law of that Member State.'

14 — On the system of 'double review' of the rights of a defendant in default of appearance in Regulation No 44/2001, see Case C-283/05 *ASML Netherlands* [2006] ECR I-12041, paragraph 29 et seq., and the Opinion of Advocate General Léger in that case, point 112. In addition, it should be observed that, under Article 35(3) of Regulation No 44/2001, the court applied to cannot review the jurisdiction of the court of the Member State of origin. That requirement is also based on the presumption that, if the Regulation is applicable it is because its provisions on jurisdiction have already been applied. In that regard, see Becker, M. and Müller, K., op. cit., p. 432.

VI – Conclusion

47. Accordingly, I propose that the Court reply as follows to the question referred for a preliminary ruling by the Nejvyšší soud České republiky:

Article 66 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 take effect it is necessary that it is 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, either at the time when proceedings are instituted or, failing that, and provided that the conditions in Article 66(2) are satisfied, at the time when the judgment is delivered.