



Press and Information

Court of Justice of the European Union

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Judgment in Case C-444/07
MG Probud Gdynia sp. z o.o.

The Court explains the effect of the rules governing recognition by the Member States of judgments relating to insolvency proceedings

After the main insolvency proceedings have been opened in a Member State, the competent authorities of another Member State are, in principle, required to recognise and enforce all the judgments concerning those proceedings

MG Probud, an undertaking in the building sector whose registered office is in Poland, engaged in construction work in Germany through the activities of a branch. In 2005 MG Probud was declared insolvent by a Polish court.

Following procedures initiated by the Hauptzollamt Saarbrücken (Principal Customs Office, Saarbrücken) against the manager of MG Probud's German branch, who was suspected of having infringed the legislation on the posting of workers by reason of failure to pay a number of Polish workers and to make social security contributions in their regard, the Amtsgericht Saarbrücken (Local Court, Saarbrücken) ordered attachment of MG Probud's assets held by banks in the amount of €50 683.08 and of various claims of the undertaking against German parties with whom it had entered into contracts.

In the insolvency proceedings, the Sąd Rejonowy Gdańsk-Północ w Gdańsku (North Gdansk District Court, Gdansk) (Poland) questioned whether the attachment effected by the German authorities was lawful since Polish law, which is the law applicable to the insolvency proceedings because Poland is the State of the opening of those proceedings, would not allow such attachment after the undertaking has been declared insolvent. In this context, that court asked the Court of Justice whether, after main insolvency proceedings have been opened in a Member State the competent authorities of another Member State are permitted, in accordance with their legislation, first, to order the attachment of assets of the debtor who has been declared insolvent that are situated in the territory of the latter Member State and, second, to refuse to recognise and, as the case may be, to enforce judgments concerning the course and closure of insolvency proceedings opened in the first Member State.

In its judgment, the Court of Justice notes first of all that the Community regulation¹ makes provision for two types of insolvency proceedings. Insolvency proceedings opened by the competent court of the Member State within the territory of which the centre of a debtor's main interests is situated, described as the 'main proceedings', produce universal effects in that the proceedings apply to the debtor's assets situated in all the Member States. Although, subsequently, proceedings may be opened by the competent court of the Member State where the debtor has an establishment, those proceedings, described as 'secondary proceedings', produce effects which are restricted to the assets of the debtor situated in the territory of the latter State. It follows that only the opening of secondary insolvency proceedings is capable of restricting the universal effect of the main insolvency proceedings.

The Court then observes that the judgment opening insolvency proceedings in a Member State is to be recognised in all the other Member States from the time that it becomes effective in the State

¹ Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1), as amended by Council Regulation (EC) No 603/2005 of 12 April 2005 (OJ 2005 L 100, p. 1).

of the opening of proceedings and that it is, with no further formalities, to produce the same effects in any other Member State as under the law of the State of the opening of proceedings. Recognition of all judgments other than that relating to the opening of the insolvency proceedings likewise occurs automatically.

As regards the enforcement of judgments relating to insolvency proceedings, the Court points out that under the Community regulation there are only two grounds for refusal. First, the Member States are not obliged to recognise or enforce a judgment concerning the course and closure of insolvency proceedings which might result in a limitation of personal freedom or postal secrecy. Second, any Member State may refuse to recognise insolvency proceedings opened in another Member State or to enforce a judgment handed down in the context of such proceedings where the effects of such recognition or enforcement would be manifestly contrary to that State's public policy, in particular its fundamental principles or the constitutional rights and liberties of the individual.

The Court finds that, because of the universal effect which all main insolvency proceedings must be accorded, the insolvency proceedings opened in Poland encompass all of MG Probud's assets, including those situated in Germany, and Polish law determines not only the opening of insolvency proceedings but also their course and closure. On that basis, Polish law is required to govern the treatment of assets situated in other Member States and the effects of the insolvency proceedings on the measures to which those assets are liable to be subject. Given that the Polish Law on insolvency and restructuring does not permit enforcement proceedings relating to the pool of assets in the insolvency to be brought against the debtor after insolvency proceedings have been opened, the competent German authorities could not validly order, pursuant to German legislation, enforcement measures relating to MG Probud's assets situated in Germany.

The Court thus concludes that, **after the main insolvency proceedings have been opened in a Member State the competent authorities of another Member State, in which no secondary insolvency proceedings have been opened, are in principle required to recognise and enforce all judgments relating to the main insolvency proceedings and, therefore, are not entitled to order, pursuant to the legislation of that other Member State, enforcement measures relating to the assets of the debtor declared insolvent that are situated in its territory when the legislation of the State of the opening of proceedings does not so permit.**

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of an act of the European Union. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which the same issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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