



Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 25 February 2016¹

Case -559/14

Rudolfs Meroni

(Request for a preliminary ruling from the Augstākās tiesas Senāts (Senate of the Supreme Court)
(Latvia))

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Article 34(1) — Grounds for refusal of the recognition and declaration of enforceability of provisional and protective measures — Public policy)

I – Introduction

1. Following the *West Tankers* case,² which focused on an ‘anti-suit injunction’, in the present case the Court is once again confronted with a specific procedural feature of the Anglo-American legal system.
2. This time a ‘freezing injunction’ is at issue.³ This is a court-ordered provisional prohibition of disposal which seeks to prevent the creditor being deprived of access to the debtor’s assets as a result of a prior disposal of those assets.
3. In this case, however, the freezing of assets is not only directed at the defendant in the main proceedings. The freezing injunction also applies to third persons who have close links with the defendant’s property. The referring court, which is required to decide on the declaration of enforceability of the freezing injunction in the Republic of Latvia, considers that this raises problems from the point of view of public policy.
4. The present case thus offers the Court a further opportunity to clarify the legal concept of public policy in the context of Regulation (EC) No 44/2001.⁴ The central question is whether, and if so to what extent, account must be taken of effects on rights of third persons as a ground for refusal in connection with the declaration of enforceability.

1 — Original language: German.

2 — Judgment in *Allianz* (C-185/07, EU:C:2009:69).

3 — Previously also known as a ‘Mareva injunction’; see, in this regard, the judgment in *Gambazzi* (C-394/07, EU:C:2009:219, paragraph 11).

4 — Council Regulation of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1, in the version applicable here, as last amended by Regulation (EC) No 1103/2008 of the European Parliament and of the Council of 22 October 2008 (OJ 2008 L 304, p. 80)).

II – Legislative framework

A – EU law

5. The framework for this case in EU law is formed by Regulation No 44/2001.

6. Recital 18 of that regulation states:

‘... respect for the rights of the defence means that the defendant should be able to appeal in an adversarial procedure, against the declaration of enforceability [of a judgment], if he considers one of the grounds for non-enforcement to be present. ...’

7. Article 32 of that regulation defines ‘judgment’⁵ as follows:

‘For the purposes of this Regulation, “judgment” means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.’

8. Under Article 34(1) of Regulation No 44/2001, ‘[a] judgment shall not be recognised ... if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought’. The same applies under Article 34(2) of the regulation ‘where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so’.

9. Article 38(1) of Regulation No 44/2001 provides:

‘A judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.’

10. Article 41 of Regulation No 44/2001 states:

‘The judgment shall be declared enforceable immediately on completion of the formalities in Article 53^[6] without any review under Articles 34 and 35. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.’

11. Under Article 42(2) of Regulation No 44/2001, the ‘declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the judgment, if not already served on that party’.

12. Article 43 of Regulation No 44/2001 provides that ‘[t]he decision on the application for a declaration of enforceability may be appealed against by either party’.

13. Under the first sentence of Article 45(1) of Regulation No 44/2001, ‘[t]he court with which an appeal is lodged under Article 43 ... shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Articles 34 and 35.’

5 — This definition is essentially the same as the definition in Article 25 of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1972 L 299, p. 32) (‘the Brussels Convention’).

6 — The items to be produced include a copy of the judgment to be enforced.

B – *Latvian law*

14. Under Article 92 of the Constitution of the Republic of Latvia, everyone is entitled to defend his or her rights and legitimate interests before an impartial court.

15. Article 105 of the Latvian Constitution provides that property rights may be restricted only in accordance with law.

III – **Facts of the main proceedings and questions referred for a preliminary ruling**

16. The request for a preliminary ruling stems from a legal dispute regarding the declaration of enforceability in the Republic of Latvia of a freezing injunction issued in 2013 by the High Court of Justice (England & Wales), Queen’s Bench Division (Commercial Court) (United Kingdom).

17. By that freezing injunction Mr A.L. is prohibited, *inter alia*, from disposing of assets which can be attributed directly or indirectly to his property. The injunction extends to his interests in the Latvian company VB. Mr A.L. has a direct interest in that company with only one share. According to the referring court, however, he is also the ‘beneficial owner’⁷ of shares in at least one other company (‘Y’), which itself has substantial interests in VB.

18. Mr Meroni is part of the management of Y. Following a seizure ordered by the Office of the Latvian Prosecutor General in 2007, he also acts as the bailee⁸ for the interests in Y. for which Mr A.L. is the beneficial owner.

19. The freezing injunction in question applies, according to paragraph 6 thereof, ‘to all the VB interests whether or not they are in [A.L.’s] name’. Appeals may be lodged against the injunction under English law. Persons who were not parties to the English proceedings may, if the freezing injunction has been served on them, also apply for it to be varied or discharged,⁹ but must otherwise comply with the injunction after notification.¹⁰ In respect of assets outside England and Wales, however, there is nothing to prevent such third persons from continuing to comply with obligations, contractual or otherwise, and State orders.¹¹ According to paragraph 22 (‘Parties to be served with this order’), the freezing injunction is to be served, in addition to the respondents, also on the ‘companies listed at paragraph 7’, including VB. However, without prior notice it is possible to ‘enforce overseas’ only ‘to the extent permissible in the relevant jurisdictions’.¹²

20. The companies VB and Y. were not parties to the proceedings before the High Court of Justice in which the freezing injunction against Mr A.L. was issued. The referring court is not aware of the injunction being served on them.¹³ It is also not clear from the order for reference whether Mr A.L. was given the opportunity to be heard prior to the judgment by the English court. Nevertheless, a prior hearing is suggested by the fact that the freezing injunction was ‘made without prejudice to Mr [L.]’s contention that he does not have any interest, direct or indirect, in any of the assets [in question]’.¹⁴

7 — The referring court does not specify further the meaning of the legal status of ‘beneficial owner’ and whether it should be understood as a trustee relationship or merely as the *de facto* possibility of exerting influence in a similar way to ownership.

8 — In paragraph 3 of the order for reference he is described as ‘bailee of the property of [A.L.] which had been frozen in criminal proceedings’ and in paragraph 9 of the United Kingdom’s written observation as ‘bailee of property of [A.L.]’.

9 — See paragraph 13 of the freezing injunction.

10 — See paragraph 15 of the freezing injunction headed ‘Parties other than the Applicants and Respondents’. In the event of infringement, severe penalties may be imposed for ‘contempt of court’.

11 — See paragraph 20 of the freezing injunction.

12 — See paragraph 21 of the freezing injunction.

13 — See paragraph 10.2.5 of the order for reference.

14 — See paragraph 1 of the freezing injunction.

21. At first instance the freezing injunction was declared enforceable against Mr A.L. in the Republic of Latvia in 2013 and that declaration of enforceability was upheld in the cross-appeal proceedings in so far as the injunction prohibits Mr A.L. from disposing of or diminishing the value of any of his shares, whether held directly or indirectly, in VB and from instructing any other person to perform those actions.

22. The further cross-appeal brought by Mr Meroni, which is now being heard by the referring court, is directed against that Latvian declaration of enforceability. He claims that the freezing injunction prevents the shareholder Y. from exercising its voting rights in respect of VB. This affects constitutionally protected property rights, especially since the company was not heard in the English proceedings. This is contrary to the principle of the right to a fair trial.

23. In the light of these considerations, the referring court stayed its proceedings and referred the following questions to the Court for a preliminary ruling:

- (1) Must Article 34(1) of Regulation No 44/2001 be interpreted as meaning that, in the context of proceedings for the recognition of a foreign judgment, infringement of the rights of persons who are not parties to the main proceedings may constitute grounds for applying the public policy clause contained in Article 34(1) of Regulation No 44/2001 and for refusing to recognise the foreign judgment in so far as it affects persons who are not parties to the main proceedings?
- (2) If the first question is answered in the affirmative, must Article 47 of the Charter be interpreted as meaning that the principle of the right to a fair trial set out therein allows proceedings for the adoption of provisional protective measures to limit the economic rights of a person who has not been a party to the proceedings, if provision is made to the effect that any person who is affected by the decision on the provisional protective measures is to have the right at any time to request the court to vary or discharge the judgment, in a situation in which it is left to the applicants to notify the decision to the persons concerned?

IV – Legal assessment

A – Preliminary remark

24. On the basis of the division of tasks between the Court of Justice and the referring court, aspects of national procedure fall outside the jurisdiction of the Court and it is for the national court in principle to assess the relevance of its questions to the decision. Mention should be made of two procedural features, however, in order to gain a better understanding of this case, especially since they may have a bearing on the relevance of the questions referred.

25. First of all, according to the facts of the case as presented by the referring court, Mr Meroni is clearly appearing in the Latvian proceedings in his own name. However, it would seem that Mr Meroni's inherent property rights are not affected by the freezing injunction in question, but primarily those of Mr A.L., whose property he manages. Nevertheless, Mr Meroni seems to be considered to 'hold [A.L.]'s beneficial ownership rights'¹⁵ with the result that it must be assumed that the questions referred are also relevant in respect of him.

26. Second, it is not clear from the order for reference when precisely the freezing injunction in question was served on Mr A.L. or on Mr Meroni. However, the information provided to the Court indicates that such service, on which the effectiveness of the injunction depends, did actually take place. The freezing injunction itself orders service on the respondents in paragraph 22 thereof. In

¹⁵ — See, in this regard, paragraphs 3 and 8 of the order for reference.

addition, a decision has already been taken on the declaration of enforceability of the freezing injunction by the lower court in the Republic of Latvia and service would have had to have been made on Mr A.L., for whose property Mr Meroni acts as trustee, at the latest at that stage of the procedure under Article 42(2) of Regulation No 44/2001. In this respect too, the questions referred are not therefore to be regarded as irrelevant or even as hypothetical in respect of Mr Meroni.

B – *The questions referred*

27. By its first question, the referring court asks about the interpretation of Article 34(1) of Regulation No 44/2001 and, by its second, which it poses in the event that the first question is answered in the affirmative, Article 47 of the Charter of Fundamental Rights.

28. However, the two questions can be examined together, as a breach of a fundamental right for the purposes of the Charter would entail a breach of public policy for the purposes of Article 34(1) of Regulation No 44/2001.¹⁶

29. By its questions the referring court is therefore essentially seeking to ascertain whether a freezing injunction issued by a court of a Member State as a provisional measure without a prior hearing of all persons whose rights may be affected by the freezing injunction may be contrary to public policy in the State in which enforcement is sought or Article 47 of the Charter of Fundamental Rights if any person who is affected by the judgment has the right at any time to request the court of the State of origin to vary or discharge the judgment.

30. However, it must first be examined whether the freezing injunction in question actually constitutes a ‘judgment’ within the meaning of Article 32 of Regulation No 44/2001,¹⁷ as only then is the recognition and enforcement of the freezing injunction, which is a provisional measure, to be assessed on the basis of that regulation.

31. In the judgment in *Denilauler*,¹⁸ which was delivered in the context of the Brussels Convention, the Court gave a strict interpretation to the notion of ‘judgment’ in respect of provisional measures despite the broad definition of that term and rejected the enforceability of a French attachment order in Germany after the French judgment was delivered *both* without the German party against whom enforcement was sought being heard *and* without prior service being made on him.¹⁹ Applying this to the present case, however, no concerns are raised. As was explained above, it must be presumed at least that the freezing injunction was served on Mr A.L. or his trustee and possibly also that there was a prior hearing in the English proceedings. Consequently, the freezing injunction in question constitutes a ‘judgment’ even by the strict standards of the judgment in *Denilauler*. There is thus no need to clarify whether under Regulation No 44/2001 the notion of ‘judgment’ is now subject to less stringent requirements than under the Brussels Convention, which formed the basis for the judgment in *Denilauler*. It should nevertheless be pointed out for the sake of completeness that in the context of Regulation No 44/2001 there would be a case for a more recognition-friendly approach.²⁰ If

16 — See, to that effect, judgments in *Krombach* (C-7/98, EU:C:2000:164, paragraphs 38 and 39) and *Gambazzi* (C-394/07, EU:C:2009:219, paragraph 28), and my Opinion in *flyLAL-Lithuanian Airlines* (C-302/13, EU:C:2014:2046, point 74).

17 — See, with regard to the former legal situation and Article 25 of the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (Brussels Convention), my Opinion in *Gambazzi* (C-394/07, EU:C:2008:748, points 20 to 30).

18 — Judgment in *Denilauler* (125/79, EU:C:1980:130, paragraphs 2, 7, 8, 17 and 18).

19 — Remarkably, paragraphs 17 and 18 of the German version of the judgment (which, as the language of the case, is authoritative) differ from the French text in so far as the French version rejects status as a judgment in the *cumulative* absence of summons to appear and service (as in the situation in the main proceedings), whereas the German version of the judgment suggests the reading that status as a judgment is not satisfied in the absence of either summons to appear *or* service. The case-law of the German Bundesgerichtshof (Federal Court of Justice) (see, for example, the order of 21 December 2006, Az. IX ZB 150/05, published inter alia in RIW 2007, p. 217), according to which there must first be an adversarial procedure in the State of origin for foreign provisional measures to be recognised in Germany, possibly stems partly from this linguistic discrepancy.

20 — See, in this regard, Leible in: Rauscher, *EuZPR/EuIPR*, Brüssel I-VO, 3. Aufl. 2011, Article 32, note 12a.

recognition was generally to be refused under the Brussels Convention if the defendant had not been duly served in sufficient time, with the document which instituted the proceedings, there is no longer a possible ground for refusal under Regulation No 44/2001, notwithstanding defects in service, if the person concerned fails to commence proceedings in the State of origin of the judgment to challenge the judgment when it was possible for him to do so.²¹ Applied to provisional measures, this means that if a right of appeal against the measure to be enforced is available in the State of origin (as in the present case), it would be logical to regard it as capable of recognition under Regulation No 44/2001 if the defendant fails to commence national proceedings even if it was possible for him to do so.

32. Since a freezing injunction such as the one at issue in the main proceedings may therefore, in principle, be declared enforceable under Regulation No 44/2001, it must be then clarified whether that declaration of enforceability is precluded by considerations of public policy in the present case.

1. The public policy clause in the Court's case-law

33. The Court has given a strict interpretation to grounds for non-recognition or non-enforcement based on public policy.²² I have already discussed the relevant case-law elsewhere²³ and, in order to avoid repetition, I will merely summarise the main basic principles below.

a) General principles

34. It is true that the Member States in principle remain free to determine, according to their own conceptions, what public policy requires. However, the Court reviews the limits within which the courts of a Member State may have recourse to that concept.²⁴

35. Recognition of a judgment may not be refused solely on the ground that there is a discrepancy between the legal rule applied by the court of the State of origin and that which would have been applied by the court of the State in which enforcement is sought had it been seised of the dispute.²⁵ Recourse to the public-policy clause in Article 34(1) of Regulation No 44/2001 can be envisaged only where recognition of the judgment delivered in another Member State would be at variance to an unacceptable degree with the legal order of the State in which enforcement is sought inasmuch as it infringes a fundamental principle. In order for the prohibition laid down in Articles 36 and 45(2) of Regulation No 44/2001 on reviewing the judgment delivered in another Member State as to its substance to be observed, the infringement would have to constitute a manifest breach of a rule of law regarded as essential in the legal order concerned or of a right recognised as being fundamental.²⁶

21 — See, in this regard, judgment in *ASML* (C-283/05, EU:C:2006:787, paragraphs 18 to 21).

22 — See, to that effect, judgments in *Hoffmann* (145/86, EU:C:1988:61, paragraph 21); *Hendrikman and Feyen* (C-78/95, EU:C:1996:380, paragraph 23); *Krombach* (C-7/98, EU:C:2000:164, paragraph 21); *Renault* (C-38/98, EU:C:2000:225, paragraph 26); *Apostolides* (C-420/07, EU:C:2009:271, paragraph 55); and *Trade Agency* (C-619/10, EU:C:2012:531, paragraph 49).

23 — Opinion in *flyLAL-Lithuanian Airlines* (C-302/13, EU:C:2014:2046, point 71 et seq.).

24 — See judgments in *Krombach* (C-7/98, EU:C:2000:164, paragraph 23); *Renault* (C-38/98, EU:C:2000:225, paragraph 28); *Apostolides* (C-420/07, EU:C:2009:271, paragraph 57); *Trade Agency* (C-619/10, EU:C:2012:531, paragraph 49); and *flyLAL-Lithuanian Airlines* (C-302/13, EU:C:2014:2319, paragraph 47).

25 — See judgments in *Krombach* (C-7/98, EU:C:2000:164, paragraph 36); *Renault* (C-38/98, EU:C:2000:225, paragraph 29); *Apostolides* (C-420/07, EU:C:2009:271, paragraph 58); *Trade Agency* (C-619/10, EU:C:2012:531, paragraph 50); and *flyLAL-Lithuanian Airlines* (C-302/13, EU:C:2014:2319, paragraph 48).

26 — See judgments in *Krombach* (C-7/98, EU:C:2000:164, paragraph 36); *Renault* (C-38/98, EU:C:2000:225, paragraph 29); *Gambazzi* (C-394/07, EU:C:2009:219, paragraph 27); *Apostolides* (C-420/07, EU:C:2009:271, paragraph 59); *Trade Agency* (C-619/10, EU:C:2012:531, paragraph 51); and *flyLAL-Lithuanian Airlines* (C-302/13, EU:C:2014:2319, paragraph 49).

b) Public policy and procedural safeguards

36. On 16 July 2015 the Court reaffirmed this approach in the judgment in *Diageo Brands*²⁷ and also took a view on the extent to which the fact that a judgment of a court of a Member State is manifestly contrary to EU law and was delivered in breach of procedural safeguards constitutes a ground for refusal of recognition under Article 34(1) of Regulation No 44/2001.

37. The Court ruled in that regard that in the case of infringements of EU law the public policy clause can apply only where that error of law means that the recognition of the judgment concerned in the State in which recognition is sought would result in the manifest breach of an essential rule of law in the EU legal order and therefore in the legal order of that Member State.²⁸ With regard to the breach of procedural safeguards, the Court further stated that, prior to a declaration of enforceability, 'save where specific circumstances make it too difficult or impossible to make use of the legal remedies in the Member State of origin, the individuals concerned must avail themselves of all the legal remedies available [... in the Member State of origin of the judgment to be enforced] with a view to preventing a breach of public policy before it occurs [in the State in which enforcement is sought]'.²⁹ The Court has thus imposed a heavy burden on the person threatened with enforcement in accordance with Article 34(2) of Regulation No 44/2001. The party against whom enforcement is sought may not wait impassively and count on being able to rely on procedural defects in the State of origin, possibly only in the context of his legal remedies in validation proceedings. Instead he must take action himself when he becomes aware of the judgment in question and challenge it using the legal remedies available to him in the Member State of origin.³⁰

38. The judgment in *Diageo Brands* is thus along similar lines to the judgment of the European Court of Human Rights of 25 February 2014,³¹ which interestingly, like the present case, has a link with Latvia.

39. In that case the European Court of Human Rights was required to assess, in the light of Article 6 ECHR³² and the right to a fair hearing, whether defects in the manner in which proceedings were initiated in Cyprus after a judgment was given in default could preclude it being declared enforceable in Latvia. Article 34(2) of Regulation No 44/2001 rejects such a ground for non-enforcement where the defendant — as in the case to be decided by the European Court of Human Rights — 'failed to commence proceedings' to challenge the judgment in question 'when it was possible for him to do so'. The European Court of Human Rights considers that this does not raise any objections from the point of view of the ECHR, but states that the defendant who lodged an application with it was an investment consultant, and thus not inexperienced in commercial matters. Even though the judgment to be enforced did not contain any reference to the available remedies, he could therefore have been expected to familiarise himself with the remedies available in Cyprus and to take legal action there after he had become aware of the judgment to be enforced. He did not produce evidence of the inexistence or ineffectiveness of any possible remedy.

27 — Judgment in *Diageo Brands* (C-681/13, EU:C:2015:471).

28 — Judgment in *Diageo Brands* (C-681/13, EU:C:2015:471, paragraph 50).

29 — Judgment in *Diageo Brands* (C-681/13, EU:C:2015:471, paragraph 64).

30 — See, in this regard, the judgment in *Apostolides* (C-420/07, EU:C:2009:271, paragraph 80).

31 — European Court of Human Rights, judgment in *Avotiņš v. Latvia* (ECLI:CE:ECHR:2014:0225JUD001750207, in particular paragraph 51 et seq.).

32 — This provision corresponds to Article 47 of the Charter of Fundamental Rights. In the light of Article 52(3) thereof, the interpretation of Article 6 ECHR is of relevance to the interpretation of Article 47; see, in this regard, my Opinion in *Schindler Holding and Others v Commission* (C-501/11 P, EU:C:2013:248, points 21 to 24).

40. The final word has not yet been given in this case, however, as, following the judgment of 25 February 2014, the case was referred to the Grand Chamber of the European Court of Human Rights, which is still to give judgment. Nevertheless, it must be assumed, for the time being and on the basis of the judgment delivered, that a party against whom enforcement is sought who is not inexperienced in commercial matters has significant duties of cooperation in relation to safeguarding his substantive and procedural rights; if he fails to fulfil those duties, his reliance on Article 6 ECHR will be ineffective.

2. Application of the principles identified in case-law to the present case

41. In addition to the first question to be considered of whether, in the light of case-law, a breach of public policy can be taken to exist in the present case, it is also necessary to examine, in order to give a useful answer to the referring court, who is able to raise a complaint of an alleged breach of public policy in the dispute concerning the declaration of enforceability and whether alleged rights of third persons may also be asserted with such complaints.

a) Existence of a breach of public policy in the main proceedings

42. In the main proceedings the applicant alleges that by the declaration of enforceability ‘property rights of third persons’³³ are affected. By ‘third person’ he means, first and foremost, the company Y., as Mr A.L. had ‘only an economic interest’³⁴ in the company whose rights are affected by the freezing injunction and is not the actual shareholder.

43. However, the freezing injunction is addressed *ad personam* to Mr A.L. and covers the companies and assets economically controlled by him only indirectly. Ultimately, it orders Mr A.L. to refrain from any action which could result in an indirect or direct reduction in the assets of VB and to instruct the management of the companies controlled by him accordingly.³⁵

44. It is not immediately clear to what extent that injunction might be contrary to basic principles of Latvian substantive law or procedural law, especially since, as the referring court acknowledges, the Latvian legal order does permit judgments as provisional measures without a prior hearing of the party against whom enforcement is sought.³⁶

45. Aside from this, the English freezing injunction at issue does not provide for any irreversibly drastic measures for its enforcement overseas, in particular in so far as third persons who were not parties to the proceedings in England are concerned. Rather, the freezing injunction claims legal effects on third persons resident in other countries — and thus the companies controlled by Mr A.L. — only subject to strict requirements: first, it is to have legal effects on a without notice basis only where this is permitted by the foreign law;³⁷ second, anyone served with the freezing injunction may apply to the court to vary or discharge it³⁸ and, third, compliance with contractual obligations in other countries³⁹ is still to be possible notwithstanding the freezing injunction.

33 — See paragraph 8 of the order for reference.

34 — See paragraph 8 of the order for reference.

35 — See paragraph 9 of the freezing injunction.

36 — See paragraph 10.2.4 of the order for reference

37 — See paragraph 21 of the freezing injunction.

38 — See paragraph 13 of the freezing injunction.

39 — See paragraph 20 of the freezing injunction.

46. The freezing injunction in question is therefore characterised by the fact that it has regard to the specific procedural features of the State in which enforcement is sought (such as requirements for service) and leaves the person concerned considerable substantive latitude even after service. If, for example, the company Y. were required under voting agreements to exercise its voting rights in a pre-determined way at the shareholder meeting for VB, this would not appear to be precluded by the freezing injunction, which is without prejudice to contractual obligations entered into.

47. Bearing this in mind, it does not appear that third persons who were not parties to the proceedings are materially oppressed *by the freezing injunction*, which could be relevant from the perspective of public policy. On the contrary, in so far as a third person who was not a party to the proceedings, such as the company Y., may be covered by the freezing injunction, this essentially results from the fact that, first, Mr A.L. is its 'beneficial owner', second, the national law of the State in which enforcement is sought seems to acknowledge that legal status⁴⁰ and, third, the national law of the State of origin permits a freezing injunction to that effect. Any interference by such an injunction with constitutionally protected legal positions of undertakings which were not parties to the proceedings is therefore never non-arbitrary, but has a legal basis.

48. Furthermore, in so far as the third persons referred to in the freezing injunction are able to commence proceedings to challenge the freezing injunction and, in addition, the third persons are capital companies, and not therefore commercially entirely inexperienced, there are also no evident indications of a breach of public policy from a procedural point of view. This holds at least in so far as there are no insurmountable obstacles to bringing proceedings in England, which must be presumed, in the absence of specific evidence to the contrary⁴¹ in a spirit of mutual trust in the administration of justice by the Member States.

49. In fact, it can be inferred from the abovementioned judgment in *Diageo Brand* that national remedies must be exhausted in the State of origin before the public policy objection can actually be raised in the State in which enforcement is sought. This premiss is also consistent with the recent case-law of the European Court of Human Rights on Article 6 ECHR, which has the same substance as Article 47 of the Charter. If those judgments are applied to the present case, a breach of public policy cannot be taken to exist because remedies are not yet exhausted in the Member State of origin.

50. Lastly, the Court must still assess in the present case whether, as Mr Meroni also complains, the substance of the freezing injunction is too imprecise to be the subject of enforcement measures in Latvia. This is not a matter to be examined in the context of Article 34(1) of Regulation No 44/2001 in the context of the declaration of enforceability.

51. Rather it is a matter of the law on enforcement which is still reserved for the Member States. The present request for a preliminary ruling, on the other hand, concerns only the matter of the declaration of enforceability, which comes before the question of enforcement. In other words, the fact that a judgment is declared enforceable does not necessarily have to mean that it can be executed with the same enforcement instruments which would be available in the State of origin. The question whether a declaration of enforceability is possible depends crucially on whether the judgment is enforceable in the State of origin,⁴² which can be presumed to be the case here. As regards the introduction of enforcement measures, further (national) proceedings can be commenced and objections can be raised — possibly such as those put forward by Mr Meroni — at a stage subsequent to the declaration of enforceability, as the Court recognised *inter alia*. in the judgment in *Prism Investments*.⁴³

40 — Paragraph 8 of the order for reference expressly mentions holding '[A.L.]'s beneficial ownership rights to the Netherlands company [Y.]'.

41 — The unsubstantiated objection raised by Mr Meroni in paragraph 21 *et seq.* of his written observations that the discretion enjoyed by the English courts is too large falls short in this regard.

42 — Judgment in *Coursier* (C-267/97, EU:C:1999:213, paragraph 23).

43 — Judgment in *Prism Investments* (C-139/10, EU:C:2011:653, paragraph 40).

52. In the light of the foregoing considerations, from the perspective of EU law, in a case like the main proceedings there is no evident breach of basic principles of the legal order of the State in which enforcement is sought which could lead to unacceptable results if the freezing injunction were declared enforceable, and a breach of public policy must therefore be rejected.

b) Assertion of rights of third persons in the proceedings on the declaration of enforceability

53. However, even if such a breach of public policy were taken to exist in respect of rights of third persons — in this case the company Y. — Mr Meroni, who, according to the order for reference, is exercising the legal position of Mr A.L. in the Latvian proceedings, would not be able to complain of such a breach by commencing proceedings to challenge the declaration of enforceability of the freezing injunction in respect of Mr A.L.

54. It is clear from the scheme of Regulation No 44/2001 that the court dealing with the application for a declaration of enforceability does not examine whether the judgment in question is consistent with public policy of its own motion, but that it is the potential party against whom enforcement is sought who is able to raise objections against the declaration of enforceability with a view to *respect for the rights of the defence*, according to recital 18 of the regulation. Against that background, it would run counter to that scheme if the party against whom enforcement is sought could also rely, in that connection, on legal positions of third persons, especially where those third persons have not themselves commenced proceedings against the declaration of enforceability or the judgment in question has not yet even been served on them.

55. The same approach was suggested by the Court's judgment in *Draka NK Cables and Others*,⁴⁴ which precluded a creditor, who was not a party to the proceedings, of the party against whom enforcement is sought from taking part in the proceedings on the enforceability of the judgment (for example, with aim of frustrating enforcement by competing creditors). The restriction of the dispute to the parties to the proceedings, as required by the Court, would be circumvented if they were allowed to assert alleged rights of third persons in the proceedings under Article 43 et seq. of Regulation No 44/2001.

56. In so far as Mr Meroni is not bringing his proceedings on behalf of the company Y., of which there is no indication, he is therefore prevented from introducing its interests as 'rights of third persons' in the validation proceedings. Consequently, even if they were well founded, the public policy complaints raised by Mr Meroni would be irrelevant in the main proceedings, as they assert rights of third persons who were not parties to the proceedings.

V – Conclusion

57. In the light of the above considerations, I propose that the Court answer the questions referred as follows:

A freezing injunction issued by a court of a Member State as a provisional measure without a prior hearing of all persons whose rights may be affected by the freezing injunction does not infringe Article 34(1) of Regulation No 44/2001 or Article 47 of the Charter of Fundamental Rights of the European Union at least where any person who is affected by the judgment has the right at any time to request the court of the State of origin to vary or discharge the judgment.

In proceedings to challenge the declaration of enforceability only the appellant's own rights may be asserted and not rights of third persons.

⁴⁴ — Judgment in *Draka NK Cables and Others* (C-167/08, EU:C:2009:263, paragraphs 29 to 31).