

DO YOU SPEAK MAREVA? HOW WORLDWIDE FREEZING ORDERS ARE ENFORCED IN SWITZERLAND

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I. Introduction

Worldwide Freezing Orders (WFOs), also known as Mareva injunctions, have been described as “nuclear weapons” of the law.¹ Often granted at the pre-trial stage in *ex parte* hearings, a WFO is a protective measure preventing a defendant, by way of an interim injunction, from disposing of their assets pending the resolution of the underlying substantive proceedings.² While granted only in certain common law jurisdictions, such orders can take effect worldwide. However, their

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¹ *Bank Mellat v. Nipkour* [1985] F.S.R. 87.

² *Mareva Compania Naviera S.A. v. International Bulkcarriers S.A.* [1975] 2 Lloyd’s Rep 509 (CA), although the first recorded instance of such an order in English jurisprudence was *Nippon Yusen Kaisha v. Karageorgis* [1975] 1 WLR 1093. See generally T. WEIBEL, *Enforcement of English Freezing Orders (“Mareva Injunctions”) in Switzerland*, Basel 2005, p. 3. See also M. BERNET, Die Vollstreckbarerklärung englischer Freezing Orders in der Schweiz, *Jusletter* 19 January 2004, para. 2, available at <http://jusletter.weblaw.ch/article/de/_2904>; P. PEYER, Vollstreckung unvertretbarer Handlungen und Unterlassungen, *Zürcher Studien zum Verfahrensrecht* No. 145, p. 61 *et seq.*; A. BUCHER, *CR-LDIP/CL*, *ad art.* 31, para. 17.

enforcement can prove problematic in other jurisdictions that may not provide for corresponding measures.

A 2010 decision of the Zurich Court of First Instance, appealed to the Zurich Court of Appeal and then to the Swiss Federal Supreme Court, illustrates the difficulties raised by the enforcement of English WFOs in Switzerland.³ The applicants had obtained a WFO from the London High Court of Justice against the defendant who held assets in Switzerland. They later requested the Zurich Court of First Instance to declare the WFO enforceable in Switzerland and to issue protective measures against the defendant and the Swiss bank with which the defendant held an account.

As will be seen, WFOs remain a language difficult to speak by Swiss courts and some appear more fluent than others. After a brief description of the legal framework applicable to the enforcement of WFOs in Switzerland (*cf. infra* II), this contribution will review the several decisions rendered by the cantonal courts and the Swiss Federal Supreme Court in relation to the enforcement of the WFO at stake (*cf. infra* III), and will critically comment upon the issues arising in relation to protective measures requested in support thereof, to conclude that the objections commonly raised may be overcome (*cf. infra* IV).

II. Enforcement in Switzerland

The enforcement of a WFO in Switzerland is subject to different legal regimes depending on whether the WFO has been issued by an EU Member State court or by a non-EU court.

The enforcement of an EU WFO is governed by the 2007 Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (LC 2007) which is the successor of the 1988 Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (LC 1988).⁴ As to non-EU WFOs, their enforcement is regulated by the 1987 Swiss Private International Law Act (PILA).

EU WFOs are generally enforced in Switzerland pursuant to Articles 31-49 LC 1988, and Articles 38-56 LC 2007 respectively, both of which apply to interim decisions.⁵ In contrast, Swiss courts generally refuse the enforcement of non-EU

³ Decision of the Swiss Federal Supreme Court 4A_366/2011 31 October 2011.

⁴ The LC 1988 and LC 2007 are parallel agreements to the 1968 Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (Brussels Convention), respectively the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation). While the LC 2007 entered into force on 1st January 2010 for the EU, Denmark and Norway, it has only applied to Switzerland since 1st January 2011 and to Iceland since 1st May 2011.

⁵ Decision of the Swiss Federal Supreme Court ATF 129 III 626 (*Uzan v. Motorola Credit Corporation*); ECJ, C-125/79, *Bernard Denilauler v. SNC Couchet Frères*, [1980]

WFOs, because under the PILA a foreign decision must be final in order to be enforceable in Switzerland.⁶ This condition is usually not met by WFOs because of their interim nature.

In addition, the enforcement of *ex parte* WFOs issued by EU courts requires that the defendant was granted the right to be heard in the underlying proceedings within a reasonable time and prior to the application for recognition and enforcement in Switzerland.⁷ In a decision of 2003, the Swiss Federal Supreme Court considered that a five business day period for the defendant to apply for variation or discharge of the *ex parte* WFO was too short.⁸ One might conclude that the WFO could have been recognised in Switzerland if the time for varying or discharging the order had been longer, e.g., one month. One might also assume that an *ex parte* WFO which has been confirmed after an *inter partes* hearing should, in principle, be enforceable in Switzerland. The implementation of the defendant's right to be heard is, however, subject to subtle differentiations by the Swiss Federal Supreme Court, which have given rise to various academic interpretations.⁹ Clearer guidance on this issue would be welcome.

While WFOs are in principle subject to recognition and enforcement under the relevant provisions of the LC 1988 and LC 2007, their actual "translation" in a foreign jurisdiction is often difficult – if not impossible – due to the absence of equivalents in domestic law. This concerns in particular protective measures to be ordered in their support. One important issue relates to the nature of a WFO which is a measure *ad personam*, i.e., a measure aimed at a person. In contrast, an attachment, one of the Swiss closest equivalents to a WFO, is a measure *in rem*, i.e., a measure targeting a person's assets.¹⁰ Under Swiss domestic law, it is, therefore, not possible to attach "all the defendant's assets located in Switzerland" as is often provided in WFOs.¹¹

ECR 1553. S. KOFMEL EHRENZELLER, in *Lugano-Übereinkommen, Handkommentar*, 2nd ed., Bern 2011, *ad art.* 31, p. 639.

⁶ Article 25 PILA.

⁷ ECJ, C-125/79, *Bernard Denilauler v. SNC Couchet Frères*, [1980] ECR 1553, with effect also in Switzerland pursuant to Protocol 2 of the LC 1988 and LC 2007; Decision of the Swiss Federal Supreme Court ATF 129 III 626 (*Uzan v. Motorola Credit Corporation*), para. 5.2.1.

⁸ Decision of the Swiss Federal Supreme Court 4P.331/2005 of 1 March 2006.

⁹ See A. BUCHER (note 2), *ad art.* 31, paras 12 *et seq.* See also M. BERNET (note 2), paras 9 *et seq.*; S. KOFMEL EHRENZELLER (note 5), *ad art.* 31, p. 639.

¹⁰ An attachment is only possible against specific assets to be detailed by the applicant, or generic assets to be described as precisely as possible with at least an indication of their type and location, failing which the attachment request is considered a fishing expedition (in French: "séquestre exploratoire" and in German: "Sucharrest") and is rejected. Attachment of generic assets generally applies to assets held with banks as third party custodian.

¹¹ T. WEIBEL (note 2), at 32.

III. The Case

In the case considered, the applicants obtained a WFO from the London High Court of Justice against the defendant and sought enforcement of the WFO in Switzerland, where the defendant held assets.

They requested the Zurich Court of First Instance to (i) declare the WFO enforceable and (ii) order protective measures against the defendant, including measures to be enforced by a Swiss bank with which the defendant held an account. The applicants requested in particular that the defendant be prohibited from disposing of his assets located in Switzerland up to a specific amount and that the Swiss bank with which the defendant held assets be prohibited, under the threat of criminal sanction pursuant to Article 292 Swiss Criminal Code (SCrC), to dispose of the defendant's assets or make outgoing payments in favour of the defendant. These prohibitions were subject to an *Angel Bell* order, which authorised the disbursement of the defendant's expenses for living costs, legal advice and continuation of business up to a specific amount.

The two requests were subsequently subdivided into separate proceedings.¹² Although the case was decided under the LC 1988 – the WFO having been issued by the English court before the entry into force of LC 2007 –, its reasoning holds true under the LC 2007 as the provisions regarding recognition and enforcement of WFOs, as well as protective measures are substantively identical under the LC 1988 and the LC 2007.

The following discusses the several decisions rendered by the cantonal courts and the Swiss Federal Supreme Court concerning the applicants' request to obtain a declaration of enforceability and request for protective measures.

A. The Decisions of the Zurich Court of First Instance and Court of Appeal

1. Declaration of Enforceability

The Zurich Court of First Instance held that a declaration of enforceability of a WFO could only be granted if the protective measures requested on this basis were admissible in Switzerland. However, given the WFO's *ad personam* effect, the Court considered that the protective measures that could be ordered in Switzerland might go beyond the measures ordered in the State of origin. It found that translating the WFO into an attachment would give an *in rem* effect to the *ad personam* measures ordered in the WFO, thus exceeding what the court in the State of origin had envisaged. The Court of First Instance, therefore, deemed the requested protective measures inadmissible. As a result, the Court found that, because protective measures could not be granted, the applicants lacked a "legitimate interest" for obtaining a declaration of enforceability of the WFO – as opposed to the actual

¹² Decisions of the Zurich Court of First Instance (*Bezirksgericht Zürich*) of 22 December 2010 (EU100827) regarding the request to obtain a declaration of enforceability and (EU102419) regarding the request for protective measures.

enforcement – and rejected the request. The Court of First Instance also acknowledged that although the WFO was not legally binding on third parties on the Swiss territory, banks in Switzerland usually comply voluntarily with a foreign WFO upon its informal notification. The Court of First Instance thus concluded that a declaration of enforceability would *de facto* be of no use to the applicants.

The Zurich Court of Appeal rejected the applicants' appeal for the same reasons and confirmed the decision of the Court of First Instance.¹³ In particular, the Court of Appeal held that the court seized with the enforcement request had some leeway to interpret and adapt the foreign decision so as to render it fit for enforcement. However, where the implementation of the foreign decision is impossible because it is not sufficiently determinate (“Bestimmtheit”), the request for enforcement shall be rejected on grounds of public policy. The Court of Appeal further considered that a decision which could substantively not be enforced resulted in a declaration of enforceability deprived of any concrete effect which the Court qualified as a “naked declaration of enforceability” (“nackte Vollstreckbarerklärung”). The Court of Appeal then recalled an earlier decision of the Swiss Federal Supreme Court,¹⁴ whereby a similar WFO was declared enforceable, and held this case law applicable to the case at hand, thus in a last minute twist apparently admitting the enforceable nature of the WFO.

However, referring to domestic civil procedural rules, the Court of Appeal made the declaration of enforceability of the WFO in Switzerland conditional to the existence of “a legitimate interest”. Indeed, under Swiss procedural law, a party seeking declaratory relief must in principle demonstrate that it has a “legitimate interest” in obtaining such relief. Against this background, the Court of Appeal went on to examine whether the protective measures requested in support of the enforcement of the WFO could be granted and concluded that they were inadmissible as the order was not sufficiently determinate. As a result, the Court of Appeal considered that the applicants had no legitimate interest in obtaining a declaratory order since protective measures could not be ordered.

2. Request for Protective Measures

Using the same arguments as stated above, the Court of First Instance considered that the protective measures requested on the basis of the WFO could not be granted as it was not possible to translate their *ad personam* effect into Swiss law without going beyond the scope of the measure initially ordered in the State of origin.

Reviewing the decision of the Court of First Instance, the Court of Appeal recalled that such measures are to be issued in accordance with the law of the jurisdiction requested. It then referred to the relevant provisions of Zurich civil

¹³ Decision of the Zurich Court of Appeal (*Obergericht des Kantons Zurich*) of 9 May 2011 (NL 110002-O/U, joined under NL 110006).

¹⁴ Decision of the Swiss Federal Supreme Court ATF 129 III 626 (*Uzan v. Motorola Credit Corporation*), para. 5.4.

procedure law,¹⁵ which did not exclude measures aimed at third parties, but stated that such measures could only be applicable if the order was sufficiently determinate. Referring to earlier case law, the Court of First Instance considered that a WFO providing for an *Angel Bell* order did not pass the required threshold of determinateness and should thus be rejected.

B. The Decision of the Swiss Federal Supreme Court

The applicants successfully appealed to the Swiss Federal Supreme Court which found that the LC 1988 did not require a party seeking a declaration of enforceability to simultaneously request the enforcement of the WFO. Indeed, while Article 39(2) LC 1988 provides for the possibility to request protective measures, there is no obligation to do so. A request to obtain a declaration of enforceability without enforcement measures (“nackte Vollstreckbarerklärung”) is, therefore, admissible.

The Swiss Federal Supreme Court further held that the voluntary compliance of Swiss banks with a WFO is irrelevant to the applicants’ right to have the order declared enforceable. It therefore considered that a party benefitting from an English WFO had a legitimate interest in obtaining a declaration of enforceability from a Swiss court.

The matter was remanded to the Zurich Court of Appeal which was asked to re-examine the requested declaration of enforceability and protective measures.

C. The Revised Decision of the Zurich Court of First Instance

To guarantee that the applicants were granted two levels of judicial review, the Zurich Court of Appeal sent the matter back to the Court of First Instance which issued two separate decisions, one addressing the requested declaration of enforceability and the other addressing the request for protective measures.¹⁶

1. Declaration of Enforceability

Although bound by the Swiss Federal Supreme Court’s ruling to grant the applicants a declaration of enforceability, the Court of First Instance criticised the Swiss Federal Supreme Court’s case law.¹⁷ In particular, it noted that the reasoning of the Swiss Federal Supreme Court led to the creation of a new category of “hybrid” cases considered sufficiently clear to be declared enforceable in Switzerland, but

¹⁵ The WFO was issued before the entry into force of the Swiss Civil Procedure Code (CPC) on 1 January 2011 which unified and replaced cantonal provisions on civil procedure.

¹⁶ Decision of the Zurich Court of Appeal (*Obergericht des Kantons Zürich*) of 23 December 2011 (RU110060-O/U).

¹⁷ Decision of the Zurich Court of First Instance (*Bezirksgericht Zürich*) of 27 February 2012 (EZ110064-L/U).

insufficiently determinate to allow protective measures to be granted. In its conclusion, it took the liberty to express regrets as regards the Swiss Federal Supreme Court's stubbornness in maintaining a reasoning considered by the Court of First Instance dogmatically difficult to follow.

2. Request for Protective Measures

Examining each of the applicants' requests for protective measures separately, the Court of First Instance dismissed them all.¹⁸ First, it held that the prohibition to the defendant to dispose of his assets could not be granted because of his location abroad. Second, restating its earlier position, the Court of Appeal held that the prohibition imposed on the bank to dispose of the defendant's assets could not be enforced because translating the *ad personam* WFO into a Swiss *in rem* measure would go beyond the framework of the WFO and, therefore, would exceed the effects foreseen by the initial order. It also considered that, in practice, such a measure could not be enforced by the bank for it could not oversee the defendant's financial situation worldwide and thus monitor whether the prohibition to dispose in the amount set by the WFO was complied with or not.

In this context, the Court of First Instance finally concluded that the applicants may be better advised to request the English courts to issue a decision which would be internationally enforceable rather than petitioning the Swiss courts to enforce a decision which could not be translated into Swiss law in practice.

IV. Commentary

These decisions illustrate the difficulty that applicants face when seeking the enforcement of WFOs in Switzerland and the divergent positions that Swiss courts adopt on this issue. In this context, the Swiss Federal Supreme Court's decision provides a welcome clarification on the conditions related to the declaration of enforceability of a WFO. However, it leaves the question of whether and, if so, what type of protective measures can be ordered in support of a WFO, unresolved. The position of the Zurich courts in that respect may however not be as convincing as it appears.

Protective measures available in support of an EU WFO are regulated by Article 39 LC 1988¹⁹ and Article 47 LC 2007, respectively.²⁰ Accordingly,

¹⁸ Decision of the Zurich Court of First Instance (*Bezirksgericht Zürich*) of 27 February 2012 (EZ110065-L/U).

¹⁹ Article 39 of the LC 1988 provides that:

“During the time specified for an appeal pursuant to Article 36 and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures taken against the property of the party against whom enforcement is sought.

The decision authorising enforcement shall carry with it the power to proceed to any such protective measures.”

protective measures must be accorded pursuant to the law of the requested State.²¹ Under Swiss law, a distinction is made between non-monetary claims and monetary claims. While the enforcement of the former, including protective measures, is regulated by the Swiss Code of Civil Procedure (SCCP) (Articles 262 *et seq.* SCCP), the enforcement of the latter is regulated by the Debt Collection and Bankruptcy Act (DEBA) (Articles 271 *et seq.* DEBA).

In spite of this, it would appear impossible – at least for the Zurich courts – to translate a WFO into the corresponding Swiss protective measures. The reasons invoked are, in particular, (i) the *ad personam* effect of WFOs²² and (ii) the fact that they are allegedly not sufficiently determinate, among others, as regards the implementation of an *Angel Bell* order. These objections, while not entirely unfounded, may ultimately be overcome.

Indeed, it lies in the court's power to extend the *ad personam* effect of a WFO to third parties who possess assets belonging to the debtor, thus providing an *in rem* effect to the WFO.²³ Several decisions – although cantonal – support this line of reasoning. For instance, in a decision dated 16 June 1999, the Zurich Court of Appeal considered that Zurich cantonal civil procedure law allowed, in appropriate cases, the granting of injunctions against third parties.²⁴ By contrast, in the

²⁰ Article 47 of the LC 2007 provides that:

“1. When a judgment must be recognised in accordance with this Convention, nothing shall prevent the applicant from availing himself of provisional, including protective, measures in accordance with the law of the Member State requested without a declaration of enforceability under Article 41 being required.

2. The declaration of enforceability shall carry with it the power to proceed to any protective measures.

3. During the time specified for an appeal pursuant to Article 43(5) against the declaration of enforceability and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures against the property of the party against whom enforcement is sought.”

²¹ While paragraphs 2 and 3 of Article 47 are substantially identical to Article 39 LC 1988, paragraph 1 of Article 47 LC 2007 is new. Yet, it does not entail any substantive novelty to the already existing Swiss case law. R. RODRIGUEZ/ S. ROTH, *Table de concordance commentée de la Convention de Lugano révisée du 30 octobre 2007 et de la Convention de Lugano du 16 septembre 1988*, in *Jusletter* 26 November 2007, p. 42-43, available at <www.jusletter.ch>.

²² A. HAUENSTEIN, *Die Vollstreckbarerklärung der englischen Freezing Order unter dem Lugano-Übereinkommen und das rechtliche Gehör*, *Revue suisse de procédure civile* 2007, p.190.

²³ See D. TUNIK, *L'exécution en Suisse de mesures provisionnelles étrangères: un état des lieux de la pratique*, *Semaine judiciaire* (SJ) 2005 II, p. 319.

²⁴ The Court of Appeal granted an order *ex parte* in the following terms: “[Third party] is ordered with immediate effect as of service of this order, and under pain of prosecution under Article 292 of the Swiss Criminal Code in the event of failure to comply, to desist from disposing of any assets of [Respondent], which they hold for him directly or through third parties or of which he is the beneficial owner, namely [but not confined too] all credit balances and claims in Swiss Francs or other currencies, including matured, current and future interest and dividends, in particular current account balances, credit balances on other accounts, time deposits, fiduciary deposits, options, precious metals,

2003 *Motorola* case,²⁵ the Zurich Court of Appeal, rejected an injunction prohibiting a third party – custodian – to dispose of the targeted assets due to an *Angel Bell* order contained in the WFO. In particular, it held that the formulation of the WFO allowing the spending of a “reasonable sum” for legal costs and payments “in the ordinary and proper course of business” was not as specific and straightforward as required for the enforcement of the order under the threat of criminal sanctions as set out in Article 292 SCRc. Yet, on appeal, the Swiss Federal Supreme Court held that an *Angel Bell* order did not render the WFO so indeterminate so as to create an obstacle to declare it enforceable, but left open the question whether an *Angel Bell* order prevented the application of Article 292 SCRc.²⁶ Interestingly, the Geneva Tribunal of First Instance did not entertain the same hesitations or objections cited by the Zurich courts for refusing protective measures in support of a WFO. In a decision of 2009,²⁷ the Tribunal of First Instance declared a WFO enforceable and granted the requested prohibition order against the defendants to dispose of their assets up to a specific amount, in particular the assets held with several Swiss banks designated by the applicant. The Geneva courts have since upheld this position in more recent – yet unpublished – decisions.

As shown, rather than limiting the translation of a WFO to an *in rem* measure such as the attachment, Swiss law provides the possibility to translate it into an equivalent *ad personam* measure. Such a measure could be ordered on the basis of Article 340 et seq. SCCP. Accordingly, the enforcement court may order protective measures which could, among others, be obligations to act, to refrain from acting or to tolerate something. The court might also issue a threat of criminal penalty under Article 292 SCRc.

Ordering an *in personam* measure, even against third parties, allows overcoming the first objection often raised against the translation of WFOs under Swiss law, whilst at the same time it does not create any specific issues regarding the rights of the defendant or the third party concerned. The interim nature of the WFO and the guarantee of the defendant’s due process rights are in any event sufficient safeguards and limitations to the scope of the WFO. The second objection regarding holding the WFO insufficiently determinate, in particular as regards the assets to be frozen, could in practice also be overcome by coordination measures ordered

claims from foreign exchange and commodity transactions as well as amounts deposited as security for such transactions, claims and receipts from bank guarantees, any and all claims (be they sole or joint with others) against Swiss and foreign custodians of securities, securities, precious metals, open and closed deposits and the contents of safe deposit boxes, all in an amount up to CHF [...]” (free translation) U/EU990521, 16 June 1999, mentioned in S. BERTI, Translating the “Mareva” – The Enforcement of an English Freezing Order in Zurich, in “*Nur, aber immerhin*” – *Festgabe für Anton K. Schnyder zum 50. Geburtstag*, Zürich/Basel/Genf 2002, p. 16. See also Decision of the Swiss Federal Supreme Court ATF 125 I 412.

²⁵ Decision of the Swiss Federal Supreme Court ATF 129 III 626 (*Uzan v. Motorola Credit Corporation*).

²⁶ T. WEIBEL (note 2), at 105-106.

²⁷ Decision of the Geneva Tribunal of First Instance (*Tribunal de première instance*) of 19 January 2009 C/566/2009.

by the foreign court following information provided by the debtor.²⁸ As a result, Swiss courts may be able to find a way to “speak” the WFO language.

Other trends support the better translation of WFOs into a Swiss equivalent. One is the Recast of the Brussels I Regulation on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (“Recast of the Brussels I Regulation”). The Recast of the Brussels I Regulation clearly states the duty of the courts to adapt foreign measures or orders, insofar as possible, in their domestic system to a measure or order which has equivalent effects attached to it and pursues similar aims.²⁹ Interestingly, the provisions regarding protective measures remain unchanged but the spirit of their implementation is directly clarified in the recitals of the Preamble. It remains to be seen whether the LC 2007 will be amended accordingly. Notwithstanding this, the Recast of the Brussels I Regulation may find application in Switzerland further to the obligation of uniform interpretation set out in Protocol II of the LC 2007 which requires Swiss courts to take due account of the decisions rendered by courts of other Member States. Since only the recitals and not the provisions related to protective measures were amended, it might be that EU courts’ decisions translating WFOs into their system become binding upon Swiss courts. In any event, this is a clear statement in favour of more flexibility from the courts seized with enforcement requests of protective measures in support of WFOs.

Another interesting trend is the recent tendency of Swiss courts to issue protective measures, including freezing injunctions, with extraterritorial effect.³⁰ Considered by some commentators as a “Copernican revolution”, this development could be compared to the enforcement of WFOs in Switzerland.³¹ As a result, Swiss courts could become more sensitive to the imperatives and practicalities of foreign protective measures, including WFOs.

V. Conclusion

As illustrated by the decisions reviewed, the enforcement of WFOs in Switzerland remains a language which is spoken with difficulty by Swiss courts. Due to the

²⁸ D. TUNIK (note 23), at 320.

²⁹ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast), recital 28:

“Where a judgment contains a measure or order which is not known in the law of the Member State addressed, that measure or order, including any right indicated therein, should, to the extent possible, be adapted to one which, under the law of that Member State, has equivalent effects attached to it and pursues similar aims. How, and by whom, the adaptation is to be carried out should be determined by each Member State.”

³⁰ Decisions of the Swiss Federal Supreme Court 5A_259/2010 of 26 April 2012 and 5A_262/2010 of 31 May 2012.

³¹ V. JEANNERET/ E. BARUH, *Exécution forcée en Suisse de mesures provisionnelles*, *Revue suisse de procédure civile* 2013, p. 95.

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flexibility required, it seems that silence is often the favoured solution. Other courts have, however, shown more adaptability, thus demonstrating the possibility to find practical solutions to the enforcement of WFOs.

In this world of immediate connection and globalised transactions, it is imperative that courts find ways to adapt, without of course sacrificing the principles on which their legal order rests such as in particular due process. The trends set out by the Recast of the Brussels I Regulation and the recent protective orders issued by Swiss courts with extraterritorial effects point in that direction. However, until the Swiss Federal Supreme Court settles the question of whether and, if so, which protective measures could be issued in support of a WFO in Switzerland, WFOs are likely to be “lost in translation”.

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