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EU country court order not executable if in conflict with public policy

The Supreme Tax Court has held that an Italian court order for the payment of customs duty cannot be executed in Germany if the order is insupportable as being in conflict with public policy.

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Generally, court orders for the payment of tax debts issued in one EU member state are enforceable by the courts of another without further judicial review of the substance of the claim. However, the Supreme Tax Court has now made an exception where the order in question is in serious conflict with German public policy (*ordre public*). Formal conflicts are not, in this sense, serious; the conflict must be such as to render execution of the order insupportable by reason of a conflict with fundamental legal principles underlying the German concept of the rule of law. The Supreme Tax Court saw the conflict as potentially serious where a German haulage company received an Italian writ for a disputed customs debt, which it could not appeal because of a missed deadline of only fifteen days. The Supreme Tax Court went on to rule that the writ could not be executed in Germany, if it had been issued without allowing the taxpayer a reasonable opportunity to state his case. An international freight haulage business could be expected to take prompt steps to ascertain the nature and legal basis of the payment demand, and had the taxpayer done this with reasonable despatch, it would be unjust to hold him to a formal deadline without further review of the circumstances. If this further review revealed that the deadline had been missed through the taxpayer's own neglect, the writ could be enforced. If not, it must be set aside.

Supreme Tax Court judgment VII R 21/10 of November 3, 2010 published on February 9, 2011

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