Reports of Cases

OPINION OF ADVOCATE GENERAL
CRUZ VILLALÓN
delivered on 8 September 2015 [1]

**Case C-300/14**

**Imtech Marine Belgium NV**
**v**
**Radio Hellenic SA**

(Request for a preliminary ruling from the hof van beroep te Antwerpen (Belgium))

(Judicial cooperation in civil matters — Regulation (EC) No 805/2004 — European Enforcement Order for uncontested claims — Conditions for certification — Minimum standards applicable to national procedures — Debtor's right of defence — Article 19 — Review in exceptional cases — Duties of the registrar)

1. The present case offers the Court of Justice the opportunity for the first time to interpret Article 19(1) of Regulation (EC) No 805/2004 [2] ('the EEO Regulation'). That provision establishes, in the context of the creation of a European Enforcement Order for uncontested claims, a series of minimum standards with which the procedural law of each Member State must comply in order for a review to be sought of a judgment on an uncontested claim in those exceptional cases in which the debtor, with no fault on his part, has been unable to contest the claim or to defend himself. The ultimate objective of those minimum standards is to ensure that in any event the right of defence of the debtor against whom a judgment certified as a European Enforcement Order may be enforced has been respected; in that regard, it must be borne in mind that, as exequatur is abolished, the courts of the Member State of enforcement will not be able to submit the judgment thus certified to any kind of check.

2. In the circumstances of the case, more specifically, the referring court, which must decide on appeal whether it is possible to certify a judgment delivered by a first-instance court as a European Enforcement Order, has doubts concerning the extent to which the Belgian legal order actually complies with the minimum procedural standards contained in the EEO Regulation, in particular in Article 19 thereof. Against that background it has referred five questions to the Court for a preliminary ruling, the reply to which should enable it to determine whether or not Belgian law satisfies the requirements in the aforementioned Article 19 and whether, therefore, judgments on uncontested claims delivered by Belgian courts may, in principle, be certified as European Enforcement Orders.

1 — Original language: Spanish.

2 — Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (OJ 2004 L 143, p. 15).

## I – **The legal framework**

### A – *EU law*

3. Article 1 of the EEO Regulation states that the purpose of that regulation is to 'create a European Enforcement Order for uncontested claims to permit, by laying down minimum standards, the free circulation of judgments, court settlements and authentic instruments throughout all Member States without any intermediate proceedings needing to be brought in the Member State of enforcement prior to recognition and enforcement'.

4. Of the 26 recitals in the preamble to the EEO Regulation, the following should be emphasised for the purposes of the present case:

'…

(10) Where a court in a Member State has given judgment on an uncontested claim in the absence of participation of the debtor in the proceedings, the abolition of any checks in the Member State of enforcement is inextricably linked to and dependent upon the existence of a sufficient guarantee of observance of the rights of the defence.

(11) This Regulation seeks to promote the fundamental rights and takes into account the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure full respect for the right to a fair trial as recognised in Article 47 of the Charter.

(12) Minimum standards should be established for the proceedings leading to the judgment in order to ensure that the debtor is informed about the court action against him, the requirements for his active participation in the proceedings to contest the claim and the consequences of his non-participation in sufficient time and in such a way as to enable him to arrange for his defence.

…

(17) The courts competent for scrutinising full compliance with the minimum procedural standards should, if satisfied, issue a standardised European Enforcement Order certificate that makes that scrutiny and its result transparent.

(18) Mutual trust in the administration of justice in the Member States justifies the assessment by the court of one Member State that all conditions for certification as a European Enforcement Order are fulfilled to enable a judgment to be enforced in all other Member States without judicial review of the proper application of the minimum procedural standards in the Member State where the judgment is to be enforced.

(19) This Regulation does not imply an obligation for the Member States to adapt their national legislation to the minimum procedural standards set out herein. It provides an incentive to that end by making available a more efficient and rapid enforceability of judgments in other Member States only if those minimum standards are met.'

5. Under Article 6(1) of the EEO Regulation:

‘1. A judgment on an uncontested claim delivered in a Member State shall, upon application at any time to the court of origin, be certified as a European Enforcement Order if:

(a) the judgment is enforceable in the Member State of origin; and

(b) the judgment does not conflict with the rules on jurisdiction as laid down in sections 3 and 6 of Chapter II of Regulation (EC) No 44/2001; and

(c) the court proceedings in the Member State of origin met the requirements as set out in Chapter III where a claim is uncontested within the meaning of Article 3(1)(b) or (c); and

(d) the judgment was given in the Member State of the debtor’s domicile within the meaning of Article 59 of Regulation (EC) No 44/2001, in cases where

— a claim is uncontested within the meaning of Article 3(1)(b) or (c); and

— it relates to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession; and

— the debtor is the consumer.’

6. Under Article 12(1) of the EEO Regulation, which opens Chapter III, entitled ‘Minimum standards for uncontested claims procedures’, ‘[a] judgment on a claim that is uncontested within the meaning of Article 3(1)(b) or (c) can be certified as a European Enforcement Order only if the court proceedings in the Member State of origin met the procedural requirements as set out in this Chapter’.

7. Also in Chapter III, Article 19 of the EEO Regulation, entitled ‘Minimum standards for review in exceptional cases’, provides as follows:

‘1. Further to Articles 13 to 18, a judgment can only be certified as a European Enforcement Order if the debtor is entitled, under the law of the Member State of origin, to apply for a review of the judgment where:

(a) (i) the document instituting the proceedings or an equivalent document or, where applicable, the summons to a court hearing, was served by one of the methods provided for in Article 14; and

(ii) service was not effected in sufficient time to enable him to arrange for his defence, without any fault on his part;

or

(b) the debtor was prevented from objecting to the claim by reason of *force majeure*, or due to extraordinary circumstances without any fault on his part,

provided in either case that he acts promptly.

2. This Article is without prejudice to the possibility for Member States to grant access to a review of the judgment under more generous conditions than those mentioned in paragraph 1.’

B – *National law*

8. The Belgisch Gerechtelijk Wetboek (Belgian Judicial Code; 'the BGW') contains the following provisions, relevant for the purposes of this case:

— Article 50 of the BGW: 'Time-limits, non-compliance with which results in an opposition's being time-barred, may not be shortened or extended, even with the agreement of the parties, unless that non-compliance is covered by the conditions laid down by law. Nevertheless, if the time-limit for an appeal or opposition provided for in Articles 1048 and 1051 and 1253c(c) and (d) starts to run and expires during the judicial vacation, it shall be extended until the fifteenth day of the new judicial year.'

— Article 55 of the BGW: 'When the law provides that, with regard to the party which has no domicile, place of residence or address for service in Belgium, the time-limits prescribed should be extended, that extension shall be: (1) fifteen days, when the party resides in a country bordering Belgium or in the United Kingdom of Great Britain [and Northern Ireland]; (2) thirty days, when the party resides in another European country; (3) eighty days, when the party resides in another part of the world.'

— Article 860 of the BGW: 'Irrespective of the formality omitted or improperly effected, no procedural act may be declared invalid if the invalidity thereof is not expressly prescribed by law. Failure to comply with the time-limits for exercising a remedy shall, however, result in that remedy's being time-barred. Failure to comply with other time-limits shall only result in a right's being time-barred if the law so provides.'

— Article 1048 of the BGW: 'Subject to time-limits laid down in provisions of supranational and international law, the time-limit for opposition shall be one month, calculated from service or notification of the judgment in accordance with the second and third paragraphs of Article 792. If the defaulting party has no domicile, place of residence or address for service in Belgium, the time-limit for opposition shall be extended in accordance with Article 55.'

— Article 1051 of the BGW: 'Subject to time-limits laid down in provisions of supranational and international law, the time-limit for appeal shall be one month, calculated from service or notification of the judgment in accordance with the second and third paragraphs of Article 792. That time-limit shall start to run from the day of service of the judgment also for the party which effected service thereof. If one of the parties on whom or at the request of whom the judgment has been served has no domicile, place of residence or address for service in Belgium, the time-limit for appeal shall be extended in accordance with Article 55. The same shall apply where one of the parties who is notified of the judgment in accordance with the second and third paragraphs of Article 792 has no domicile, place of residence or address for service in Belgium.'

## II – **The main proceedings and the questions referred for a preliminary ruling**

9. Imtech Marine Belgium NV ('Imtech'), which has its registered office in Belgium, performed various services for Radio Hellenic, which has its registered office in Greece. In the absence of payment by Radio Hellenic of the amount of EUR 23506.99 claimed by Imtech, the latter served a writ on Radio Hellenic in Belgium and requested that, pursuant to the EEO Regulation, it should be ordered to pay by a court decision and that this should be certified as a European Enforcement Order. The first-instance court, namely the rechtbank van koophandel te Antwerpen (Commercial Court, Antwerp (Belgium)), declared Imtech's application to be admissible and well founded in part. Radio Hellenic was ordered *in absentia* to pay the amount owed (plus a penalty stipulated in the contract which bound the two parties, late payment interest and the costs of the proceedings). However, the rechtbank took the view that it could not certify the judgment as a European Enforcement Order, as Imtech had

requested, on the ground that the Belgian legislation did not comply with the minimum procedural standards established by the EEO Regulation. Imtech appealed to the hof van beroep te Antwerpen (Court of Appeal, Antwerp) against the decision not to certify the first-instance judgment as a European Enforcement Order.

10. In view of the dispute in Belgian case-law and legal writing as to whether or not Belgian law complies with the minimum standards for review in exceptional cases in accordance with Article 19 of the EEO Regulation — in particular where, as in the present case, judgment has been given against the debtor *in absentia* and the period for bringing the appeals provided for in Belgian legislation against judgments delivered *in absentia* has expired —, the hof van beroep te Antwerpen decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Does the non-application directly of [the EEO Regulation] constitute a breach of Article 288 [TFEU], because

— the Belgian legislature has not transposed that regulation into Belgian legislation, and

— although an opposition and an appeal are provided for in Belgian legislation, the Belgian legislature has not introduced a review procedure?

(2) If that is not the case, given that [an EU] regulation has direct effect, what should be understood by "review of [a] judgment" in Article 19(1) of [the EEO Regulation]? Must a review procedure be provided for only if a summons/document instituting proceedings has been served by a method provided for in Article 14 of [the EEO Regulation], in other words without proof of receipt? Does Belgian legislation not offer satisfactory guarantees to satisfy the criteria of the "review" procedure provided for in Article 19(1) of [the EEO Regulation] by providing for opposition in accordance with Article 1047 et seq. of the [BGW] and an appeal in accordance with Article 1050 et seq. of the [BGW]?

(3) Does Article 50 of the [BGW], which allows the limitation periods referred to in the second paragraph of Article 860, Article 55 and Article 1048 of that code to be extended in the event of *force majeure* or due to extraordinary circumstances without any fault on the part of the person concerned offer sufficient protection for the purposes of Article 19(1)(b) of [the EEO Regulation]?

(4) Is certification as a European Enforcement Order for uncontested claims a judicial measure which must be applied for in the document instituting the proceedings? If so, must the judge certify the judgment as a European Enforcement Order and must the registrar of the court issue the certificate? If that is not the case: can the task of certifying the judgment as a European Enforcement Order fall to a registrar?

(5) In the event that certification as a European Enforcement Order is not a judicial measure, may the applicant — who has not used the document instituting proceedings to apply for a European Enforcement Order — subsequently, after the judgment has become final, request the registrar to certify the judgment as a European Enforcement Order?'

11. The Court, taking the view that the grounds provided by the referring court were insufficient, requested that it provide the text of the national provisions to which it referred in the order for reference and the relevant national case-law, and also further details concerning the second part of the second question and the fifth question referred. The hof van beroep te Antwerpen supplied the information and explanations requested.

12. The Portuguese, Belgian and Polish Governments and the European Commission have submitted written observations in this case.

## III – **Analysis**

13. It is necessary to make the general point that, according to Articles 6(1)(c) and 12 of the EEO Regulation, a judgment delivered *in absentia*, such as that in this case, may be certified as a European Enforcement Order only if the minimum standards laid down in Article 13 et seq. of that regulation, the objective of which is to ensure that the debtor has received the necessary information about the proceedings and has in any event had the opportunity to be heard and to defend himself, are met.[3] It is against this background that it is necessary also to construe Article 19 of the aforementioned regulation, the interpretation of which is the subject-matter of the questions referred for a preliminary ruling by the hof van beroep te Antwerpen.

### A – *First question*

14. By its first question, the referring court wishes to know whether Article 288 TFEU is infringed, in so far as it provides that regulations are binding in all aspects, by the fact that the Belgian legislation might not comply with the provisions of the EEO Regulation, in particular as regards the provision of a review procedure in exceptional cases.

#### 1. Main arguments of the parties

15. The parties which have intervened by way of submission of observations in relation to this first question all agree that the EEO Regulation does not require Member States to provide for a specific review procedure in their legal systems. However, if no such provision is made in a Member State, the courts of that State will not be able to certify a judgment as a European Enforcement Order.

#### 2. Assessment

16. It is stated in recital 19 in the preamble to the EEO Regulation that '[t]his Regulation does not imply an obligation for the Member States to adapt their national legislation to the minimum procedural standards set out herein'. Moreover, Article 19 of the regulation itself provides that 'a judgment can only be certified as a European Enforcement Order if the debtor is entitled, *under the law of the Member State of origin*, to apply for a review of the judgment'.[4] I consider, therefore, that the EEO Regulation does not require the Belgian legislation to adapt to the minimum procedural standards established in the regulation. As recital 19 also points out, the EEO Regulation does indeed offer an 'incentive' for making that adaptation of the national legislation to the minimum procedural standards which it contains, by making available a more efficient and rapid enforceability of judgments on uncontested claims delivered in other Member States, but only if those minimum standards are met, with the result that there is no failure to fulfil an obligation within the meaning of Article 258 TFEU if that adaptation is not made.[5]

3 — See, by analogy, the judgment in *Krombach*, C-7/98, EU:C:2000:164, in which the Court stated, with reference to the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36; consolidated text in OJ 1998 C 27, p. 1), that, '*even though the Convention is intended to secure the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals, it is not permissible to achieve that aim by undermining the right to a fair hearing*' (paragraph 43). See also the judgment in *Debaecker* v *Bouwman*, 49/84, EU:C:1985:252, paragraph 10.

4 — Emphasis added. The 'Member State of origin' is defined in Article 4(4) of the EEO Regulation as 'the Member State in which the judgment has been given … and is to be certified as a European Enforcement Order'.

5 — It is stated in the case-file that infringement proceedings are pending against Belgium but, as is clear from the Commission's observations (paragraph 27), the infringement does not refer to the failure to adapt Belgian law to the minimum procedural standards in Article 12 et seq. of the EEO Regulation (including Article 19), but to the fact, inter alia, that Belgium is certifying legal decisions as European Enforcement Orders in spite of not having notified the Commission, in accordance with Article 30(1) of the regulation, of the existence in Belgian law of a procedure which meets the requirements of Article 19. The infringement proceedings are at present suspended, pending a ruling from the Court in the present case.

17. I therefore suggest that the Court reply to the first question that Article 288 TFEU is not infringed merely because the national law may not provide for a specific review procedure in accordance with the provisions of Article 19 of the EEO Regulation.

B – *The first and second parts of the second question*

18. The referring court poses the second question, which consists of three parts, formally in case the first question is to be answered in the negative. Given, however, that the third part of this second question relates to the same issues as the third question, I shall deal with them together. Therefore, I shall examine, first, the first two parts of the second question. The referring court wishes to know, first of all, what should be understood by 'review of a judgment' within the meaning of Article 19(1) of the EEO Regulation; secondly, it asks whether the national legal system must provide for a review procedure only if service of a summons or of the document instituting the proceedings has been effected without proof of receipt (Article 14 of the EEO Regulation).

1. Main arguments of the parties

19. The Portuguese Government points out that, under Article 19(1) of the EEO Regulation, the debtor's right to seek a review of the judgment depends on his being unable to contest the claim, without fault on his part, in two situations: first, where the document instituting the proceedings or the summons to a court hearing was not served on him in sufficient time to enable him to arrange his defence, without any fault on his part; and, second, where the debtor was prevented from objecting to the claim by reason of *force majeure*, or due to extraordinary circumstances without any fault on his part. The Portuguese Government notes that the Member States are not required specifically to provide in their legal systems for a review of that nature although, if they do not do so, the judgments of their courts will not be capable of being certified as European Enforcement Orders.

20. According to the Commission, in order for a legal judgment to be certified as a European Enforcement Order, the national law must provide for a review procedure in the two situations envisaged in Article 19(1) of the EEO Regulation. Accordingly, the review must be provided for, first, in those situations in which the document instituting the proceedings or the summons to a court hearing was served on the debtor by one of the methods set out in Article 14 of the EEO Regulation (in short, as the title of that article states, 'without proof of receipt'), but not in sufficient time to enable him to arrange for his defence, without any fault on his part (Article 19(1)(a)); second, the review must also cover any other situation in which the debtor was prevented from objecting to the claim by reason of *force majeure*, or due to extraordinary circumstances without any fault on his part (Article 19(1)(b)), these situations to include service with proof of receipt (Article 13) but with some defect.

21. The Commission maintains that both the two actions provided for in Belgian law which the referring court mentions in its question ('opposition' and 'appeal') and the 'extraordinary civil review' in Article 1132 of the BGW (which the referring court does not mention in its questions) are incapable of satisfying the minimum requirements laid down in Article 19 of the EEO Regulation.

2. Assessment

a) First part of the second question

22. By the first part of the second question, the referring court wishes to know what should be understood by 'review of a judgment' within the meaning of Article 19(1) of the EEO Regulation.

23. In that regard it should be pointed out that the regulation does not define what constitutes a review in exceptional cases, merely stating that in national law there must be some procedure which enables the debtor to contest the judgment in the situations provided for in Article 19(1) of the EEO Regulation (even under more generous conditions than those mentioned in that paragraph, as it provides in paragraph 2).

24. Accordingly, since that procedure is not regulated in EU law and the EEO Regulation expressly refers to the legislation of the Member State of origin, the Member States may opt for one kind of action or the other, provided that the procedure selected adequately respects the debtor's right of defence and right to a fair trial (recitals 10 and 11 in the preamble to the EEO Regulation). I consider that, by analogy with Article 18 of the aforementioned regulation and as recital 14 in the preamble to the EEO Regulation also appears to confirm, respect for the debtor's right of defence requires that he should be offered a remedy permitting a full review of the judgment, not limited merely to matters of law.[6]

b) Second part of the second question

25. As regards the second part of the second question, relating to the applicability of the review procedure in Article 19(1) of the EEO Regulation to situations other than those in which the document instituting the proceedings or the summons to a court hearing was served by one of the methods laid down in Article 14 of that regulation, I should make the preliminary point that the Court requested the referring court to explain to what extent the main proceedings were actually included (or not) in that situation. The referring court replied that '[t]he dispute in the main proceedings concerns solely the hypothetical situation in which the debtor — irrespective of the manner of service — is not able to have the initial judgment "reviewed" as to the substance in all cases of *force majeure* or extraordinary circumstances without any fault on his part'. That is to say, the referring court confirmed that the facts in the present case correspond in principle to those envisaged in Article 19(1)(b) of the EEO Regulation.

26. Nevertheless, I consider that the second part of the second question, as it is worded, merits a reply irrespective of which of the two specific hypotheses contemplated in Article 19(1) of the EEO Regulation match the facts which have given rise to the proceedings *a quo*. That is so because the aforementioned provision does not make certification of the judgment as a European Enforcement Order on the debtor affected by one of the exceptional situations described in Article 19(1) of the EEO Regulation having or having had a *specific* opportunity to seek a review of the judgment, but on the *theoretical* existence, in the legal system of the State of origin, of an 'appropriate mechanism' (recital 14) for seeking, in both hypotheses, a full review of the judgment.[7] Furthermore, the Commission must be informed of that mechanism pursuant to Article 30(1)(a) of that regulation.

27. This assessment is confirmed by the fact that, in situations such as that in the present proceedings, the court dealing with the case will not always be in a position to know which of the two situations in Article 19(1) of the EEO Regulation applies to the debtor who has failed to appear, with the result that, when it decides whether or not the judgment delivered should be certified as a European Enforcement Order, that court must evaluate the existence of those remedies in theoretical, not specific, terms.

6 — See also, to that effect, S. Pabst, 'Art. 19 EG-VollstrTitel VO', in T. Rauscher (ed.): *Europäisches Zivilprozess- und Kollisionsrecht — Kommentar*. Sellier, 2010, paragraph 13.

7 — See, inter alia, S. Arnold, 'VO (EG) 805/2004 — Art. 19', in Geimer/Schütze, *Internationaler Rechtsverkehr in Zivil- und Handelssachen*, 2014, paragraph 1; S. Pabst, *op. cit.* (footnote 6), paragraph 4, and Kropholler/von Hein, 'Art. 19 EuVTVO', in *Europäisches Zivilprozessrecht*, 9ª ed. Frankfurt am Main: Verlag Recht und Wirtschaft GmbH, 2011, paragraph 5, and the authors cited.

28. Therefore, for the reasons set out, in order to be able to certify judgments of the courts of a Member State as European Enforcement Orders, it is not enough for the legal system of that Member State to provide for a review procedure if service on the debtor of a summons or of the document instigating proceedings has been effected in the manner mentioned in Article 14 of the EEO Regulation, that is to say, without proof of receipt (provided, obviously, that service has not been effected in sufficient time for him to be able to arrange his defence, with no fault on his part, these being the cumulative requirements laid down by Article 19(1)(a)(ii) of the regulation).[8] It is also necessary for the legal order of that Member State to provide for a review procedure in a situation established in Article 19(1)(b) of that regulation, that is, that the debtor (also in the case of service effected by the methods in Article 13 of the EEO Regulation, that is to say, with proof of receipt) has been unable to contest the claim for reasons of *force majeure* or owing to extraordinary circumstances without any fault on his part.

## C – *Third part of the second question and the third question*

29. By the third part of the second question and by the third question, the referring court asks whether the regulation of the opposition and the appeal in national law, including the possibility of extending the time limit for bringing those two actions in the event of *force majeure*, meets the requirements for review in exceptional cases referred to in Article 19(1) of the EEO Regulation.

### 1. Main arguments of the parties

30. The Polish Government, after examining the differences between '*force majeure*' and 'extraordinary circumstances without any fault on his part', states that the possibility of extending the time limits which the debtor has been unable to observe owing to *force majeure* or extraordinary circumstances which are not his fault provides adequate protection for the purposes of the aforementioned Article 19.

31. The Commission takes the view that Article 50 of the BGW, as interpreted by Belgian case-law, does not appear to authorise the extension of the time limits indicated (for appeal and opposition) in a way which meets the requirements of Article 19 of the EEO Regulation, in particular because the concept of '*force majeure*' in Belgian law is interpreted in a very restrictive manner which does not leave room for situations which would be 'extraordinary circumstances' within the meaning of the aforementioned Article 19.

32. The Belgian Government proposes that the Court give a joint answer to the first three questions, to the effect that the debtor has in any event in Belgium, also in the case of *force majeure* or extraordinary circumstances, a suitable and adequate remedy as required by the EEO Regulation. In relation to the concepts of '*force majeure*' and 'extraordinary circumstances without any fault on his part', it points out that '*force majeure*', as defined by the Belgian hof van cassatie (Court of Cassation), also covers 'extraordinary circumstances without any fault on his part', on condition that it was impossible for the debtor to act and that those circumstances were unforeseeable and unavoidable. Moreover, according to the Belgian Government, a defendant who was unaware of the proceedings and who had not been served with the judgment could file an opposition or appeal against that judgment from the moment at which he became aware of it, even if the usual period for bringing such actions had already expired, provided that he acted promptly.

8 — The wording of the provision is confused because the fault refers literally to service, whereas service in fact, if it is effected without proof of receipt, certainly does not depend on the debtor. It is reasonable, therefore, to understand that the fault of the debtor refers to the *circumstances in which he acquaints himself with its content*, with the result that he will be at fault if, for example, he is negligent in that he does not check his post regularly (see, to that effect, S. Pabst, *op. cit.* (footnote 6), paragraph 9, and S. Arnold, *op. cit.* (footnote 7), paragraph 11; see also J.F. van Drooghenbroeck and S. Brijs: 'La pratique judiciaire au défi du titre exécutoire européen', in G. de Leval and M. Candela Soriano (coords.), *Espace judiciaire européen. Acquis et enjeux futurs en matière civile*. Brussels: Larcier, 2007, p. 249).

## 2. Assessment

33. According to the information provided by the referring court, the Belgian legal system provides basically two remedies for appealing against a judgment in cases such as the present one: opposition, specifically designed for the purpose of appealing against judgments delivered *in absentia* (Article 1047 et seq. of the BGW) and appeal (Article 1050 et seq. of the BGW). As laid down in Articles 1048 and 1051 of the BGW for the respective actions, the period within which these must be brought is one month from service of the judgment, a period which is extended in accordance with Article 55 of the BGW if the defendant is not domiciled in Belgium. The referring court states that the Belgian hof van cassatie interprets Article 50 of the BGW as meaning that, in cases of *force majeure*, it is permitted to extend the time-limit for bringing the actions.

34. First of all, it is necessary to start from the premise that it is for the referring court to interpret the national law. According to established case-law, 'it is not for the Court, in the context of a reference for a preliminary ruling, to rule on the interpretation of national provisions or to decide whether the referring court's interpretation thereof is correct'.[9] The Court has no jurisdiction to 'apply' rules of EU law to a particular case.[10]

35. In that regard, in the present case it is for the Court to provide the national court with all the necessary guidance concerning the content of Article 19 of the EEO Regulation and the requirements laid down therein, whereas it is for the national court to draw the conclusions from the interpretation which it has requested and to determine whether or not the national legislation complies with the minimum procedural standards established in the aforementioned Article 19.

36. As I have already pointed out, Article 19 of the EEO Regulation establishes, as do the other provisions in Chapter III of that regulation, a series of minimum procedural standards with which the legal proceedings of the Member State of origin must comply in order for judgments on uncontested claims delivered by its courts to be certified in that Member State as European Enforcement Orders. Specifically, the aforementioned Article 19 provides for the two situations described in point 28 of this Opinion. As I have stated, in order for the legal system of the Member State to be regarded as being compliant with the minimum standards for review in exceptional cases, it must make it possible for the debtor to be able to seek review of the judgment on an uncontested claim in either of those two situations.

37. The situation referred to in Article 19(1)(a) of the EEO Regulation is expressly designed for the case in which the document to which the debtor ought to have responded has been served on him in one of the ways provided for in Article 14 of that regulation, all of which have in common the fact that there are no guarantees, but only a high degree of likelihood, that the debtor, the addressee, has received it, as pointed out in recital 14 in the preamble to the EEO Regulation. It may happen, however, and this would fall within the situation of Article 19(1)(b) of the aforementioned regulation, that service has been effected, including in accordance with Article 13 (that is to say, with proof of receipt by the debtor), but that the debtor has been unable, for reasons of *force majeure* or owing to extraordinary circumstances without any fault on his part, to contest the claim. It may also happen that service has been effected, but incorrectly, without compliance with the minimum standards laid down in the EEO Regulation.

9 — Among many others, judgment in *Padawan*, C-467/08, EU:C:2010:620, paragraph 22 and the case-law cited.

10 — Inter alia, judgments in *Patriciello*, C-163/10, EU:C:2011:543, paragraph 21, and in *NLB Leasing*, C-209/14, EU:C:2015:440, paragraph 25.

38. It was specifically the situation of service not effected properly, or even not effected at all, which gave rise to the judgment in *eco cosmetics and Raiffeisenbank St. Georgen*,[11] in which the Court interpreted a provision apparently analogous to Article 19 of the EEO Regulation, namely Article 20 of Regulation No 1896/2006.[12] Article 20 of that regulation provides, in exceptional cases, for review of a European order for payment issued during a European order for payment procedure. In that judgment, the Court declared that, if a European order for payment has not been served in a manner consistent with the minimum standards laid down in Regulation No 1896/2006, the procedures provided for therein — inter alia in Article 20 thereof — will not apply. In such cases, the defendant will not have had a real and well-founded opportunity to oppose that order in the terms established in Article 16 of that regulation.[13] If the irregularity affecting service is revealed only after the European order for payment has been declared enforceable, the defendant must have the opportunity to denounce it in accordance with the remedies available under national law,[14] with the result that, if he manages to prove that irregularity, the declaration of enforceability will be invalidated.

39. However, the Court's statement of reasons in the judgment in *eco cosmetics and Raiffeisenbank St. Georgen*[15] in relation to Article 20 of Regulation No 1896/2006 is not, in my view, transferable to a provision which is only apparently analogous, such as Article 19 of the EEO Regulation. According to the aforementioned judgment, service which does not comply with the minimum standards laid down in Regulation No 1896/2006 does not enable the debtor to contest the European order for payment by the means specifically provided for that purpose in the regulation itself, namely that of opposition. In such cases, the remedy of review in Article 20 of that regulation is not even initiated. If the European order for payment has become enforceable as a consequence of the defendant being unable to oppose it, that enforceability may be challenged by the methods provided for in national law, to which Article 26 of Regulation No 1896/2006 refers for any procedural matter not provided for in the regulation, but not by the method in Article 20.

40. Unlike Article 20 of Regulation No 1896/2006, Article 19 of the EEO Regulation does not create and regulate a review procedure peculiar to EU law,[16] but establishes a series of minimum requirements with which the procedural law of the Member States must comply (in theory) so that the judgments delivered by their courts may be certified as European Enforcement Orders.[17] If, within the framework of the EEO Regulation, service of the document to which the debtor should have responded has been effected improperly — even in the situation, to which the Commission refers, in which one of the methods of service with proof of receipt by the debtor provided for in Article 13 of the EEO Regulation has been used —, Article 19 of the EEO Regulation will still be applicable.

41. In order to satisfy the minimum procedural requirements laid down in Article 19 of the EEO Regulation, the remedies provided for in national law may not — most particularly in situations in which service has been carried out improperly, although not only in such cases — impose a time limit which commences at the time at which the document to which the debtor must respond is served. Indeed, it may happen that, for various reasons, service has been effected but that, in spite of everything, the debtor does not become aware, within the period laid down in national law, of the

11 — C-119/13 and C-120/13, EU:C:2014:2144.

12 — Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (OJ 2006 L 399, p. 1).

13 — As the Court declared in paragraph 41 of the judgment in *eco cosmetics* and *Raiffeisenbank St. Georgen* (C-119/13 and C-120/13, EU:C:2014:2144), '[i] f the European order for payment is not served in a manner consistent with the minimum standards laid down in [Regulation No 1896/2006], the defendant … does not necessarily have all the information necessary to enable him to decide whether or not to oppose that order'. That in turn affects the validity of the procedures which depend on the expiry of the opposition period, such as the review procedure in Article 20 of the EEO Regulation.

14 — Judgment in *eco cosmetics* and *Raiffeisenbank St. Georgen*, C-119/13 and C-120/13, EU:C:2014:2144, paragraphs 46 and 47.

15 — C-119/13 and C-120/13, EU:C:2014:2144.

16 — See also, to that effect, S. Pabst, *op. cit.* (footnote 6), paragraph 3.

17 — To that effect see also S. Arnold, *op. cit.* (footnote 7), paragraph 4, who points out that, unlike Article 20 of Regulation No 1896/2006, Article 19 of the EEO Regulation establishes no specific consequence in the event that the application for review submitted by the debtor is upheld (*ibid*., paragraph 8).

content of what has been served, or that, without any fault on his part, he does not become aware of it in sufficient time for him to arrange his defence. As the referring court itself acknowledges in the additional information provided at the request of the Court of Justice, 'the time limit for exercising the remedy may indeed expire before the debtor has been able to exercise it'.

42. This assessment is supported by the statement made by the Court in the judgment in *ASML*,[18] (in relation to Article 34(2) of Regulation No 44/2001)[19] in which it found that, 'in order to justify the conclusion that "it was possible", within the meaning of Article 34(3) of Regulation No 44/2001, for the defendant to bring proceedings to challenge a default judgment against him, he must have been aware of its contents so that he could, in sufficient time, have exercised his rights effectively before the courts of the State in which the judgment was given',[20] and by the judgment of the European Court of Human Rights in *Miragall Escolano and Others*,[21] according to which '[t]he parties must be able to avail themselves of the right to bring an action or to lodge an appeal from the moment they can effectively apprise themselves of court decisions imposing a burden on them or which may infringe their legitimate rights or interests'.

43. Therefore, I consider that the minimum standards for review in exceptional circumstances are not satisfied by the legislation of a Member State which precludes the defendant from applying for review of the judgment once the one-month period, which begins to run from the moment of service and not from the moment at which the defendant has become aware of its content, has expired. Whether this actually occurs in national law is a matter for the national court to assess.

44. As regards whether the possibility of extending, in the event of *force majeure* or extraordinary circumstances without fault on the part of the debtor, the periods for bringing actions indicated, as provided for in the BWG, is sufficient to satisfy the requirements of Article 19(1)(b) of the EEO Regulation, I stress that it is for the referring court to interpret national law. However, from the parallel use of the categories '*force majeure*' and other 'extraordinary circumstances' without any fault on the part of the debtor in Article 19(1)(b) of the EEO Regulation, it is clear that that provision distinguishes between those two concepts.[22] I therefore consider that it may be inferred that the EEO Regulation precludes national legislation which allows an extension of the time limits for appealing against a judgment on an uncontested claim only in the case of '*force majeure*', without taking account of other extraordinary circumstances without fault on the part of the debtor which may have prevented him from contesting the claim. This is wholly consistent with the objective of allowing certification of a judgment as a European Enforcement Order only if the debtor's rights of defence and right to a fair trial (see recitals 10 and 11 in the preamble to the EEO Regulation) have been adequately respected. Whether that is so in the national legislation at issue is a matter for the referring court to determine.

45. In conclusion, I propose that the Court's reply to the third part of the second question and to the third question should be that the minimum standards for review in exceptional circumstances are not satisfied by the legislation of a Member State which precludes the defendant from applying for review of the judgment once the one-month period, which begins to run from the moment of service and not from the moment at which the defendant has become aware of its content, has expired. It is for the

18 — C-283/05, EU:C:2006:787, paragraph 48.

19 — Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1). As the Commission emphasises, Article 19 of the EEO Regulation fulfils a similar role to that of Article 34(2) of Regulation No 44/2001, with the result that the interpretation of the latter is relevant to that of the former.

20 — See also the judgment in *Debaecker* v *Bouwman*, 49/84, EU:C:1985:252: 'the question whether service was effected in sufficient time is a question of fact and therefore cannot be determined on the basis of the domestic law of the adjudicating court or on the basis of the domestic law of the court in which enforcement is sought' (paragraph 27).

21 — ECtHR, judgment of 25 January 2002 in *Miragall Escolano and Others* v *Spain*, Reports of Judgments and Decisions 2000-I, p. 275, § 37.

22 — The wording used is the same as in Article 20(1)(b) of Regulation No 1896/2006, in relation to which the Court of Justice has already confirmed, in the judgment in *Novontech-Zala kft.*, C-324/12, EU:C:2013:205, paragraph 24, that they are two different categories, stating that 'it is necessary, in the absence of *force majeure*, that … there must be extraordinary circumstances by reason of which the defendant was prevented from challenging the claim within the period prescribed for that purpose'.

national court to assess whether the national procedural law and its interpretation by the courts of the Member State permit an extension of the time limits for appealing against a judgment on an uncontested claim, not only in cases of *force majeure*, but also in the case where there are other extraordinary circumstances, without fault on the part of the debtor, which may have prevented him from contesting the claim, as provided in Article 19 of the EEO Regulation.

D – *Fourth question*

46. By the fourth question which it has submitted, the referring court asks in essence whether certification of the judgment as a European Enforcement Order is a judicial measure, and therefore a task for the judge, which must be applied for in the document instituting proceedings, or whether it may be entrusted to the registrar.

1. Main arguments of the parties

47. The Belgian Government takes the view that certification is not a judicial measure and that it may therefore be carried out by the registrar.

48. The Polish Government points out that, according to the principle of procedural autonomy, it is for national law to determine which authority is responsible for certification. That authority does not necessarily have to be a judge, provided that there is compliance with the principle of effectiveness.

49. The Portuguese Government expresses the view that, while the EEO Regulation does not provide that it must necessarily be a judge who certifies an uncontested claim as a European Enforcement Order,[23] in the case of judgments the decision relating to certification is a judicial measure, that is to say, the judge who delivers a judgment is also competent to check that the requirements imposed by the regulation for certification as a European Enforcement Order have been satisfied: a decision allowing automatic recognition with no other formality of a particular enforcement order must necessarily be taken by a judge.[24]

50. The Commission does not consider that certification has to be entrusted to a judge, with the result that the Member States may entrust that task to an officer of the court or tribunal, provided that the effectiveness of the EEO Regulation is not jeopardised and that additional burdens are not imposed on the parties concerned. According to the Commission,[25] Member States must ensure that the persons entrusted with certification have sufficient legal training to enable them to make the objective assessment required by that regulation.

23 — Paragraph 18 of its observations.

24 — Paragraph 15 of its observations.

25 — Paragraph 13 of its observations.

## 2. Assessment

51. Article 6(1) of the EEO Regulation provides solely that the application for certification of a judgment on an uncontested claim as a European Enforcement Order must be presented 'to the court of origin',[26] but allows 'some flexibility for Member States as regards the attribution of jurisdiction'.[27] Availing itself of that 'flexibility', Belgium has opted to entrust the registrar, instead of the judge, with the task of certification within the framework of the EEO Regulation.[28]

52. I consider that first of all it is necessary to distinguish — as the referring court appears to have done in formulating the question — between 'certification [of a judgment] as a European Enforcement Order' (Article 6 of the EEO Regulation) and 'issue of the certificate' (Article 9 of the EEO Regulation).[29] In my view, the issue of the certificate, once the decision has been taken regarding certification as a European Enforcement Order (which makes it necessary to check compliance with the minimum requirements laid down in the EEO Regulation), is not necessarily an act which has to be carried out by the judge, with the result that it may be entrusted to the registrar.

53. With regard to certification as such, leaving aside the purely grammatical argument that the EEO Regulation refers at all times to a 'court' to designate the authority responsible for certification,[30] I seriously doubt that that examination may be entrusted to the registrar. The examination required by the EEO Regulation is not a pure formality, but requires an examination to be made on the regularity of the judgment delivered by a judge and the procedure followed, and involves checking, among other aspects, whether the law of the State of origin allows for review in the terms stated in Article 19 of that regulation, something which, in the particular case of Belgium, appears to be the subject of intense controversy in case-law and legal writing, as is clear from the information supplied by the referring court.[31]

26 — This is defined in Article 4.6 as 'the court or tribunal seised of the proceedings at the time of fulfilment of the conditions set out in Article 3(1)(a), (b) or (c)'.

27 — COM(2004) 90 final, section 3.3.2., observations relating to what was then Article 5 of the common position of the Council on the adoption of the present regulation.

28 — It did so by ministerial circular of 22 June 2005 (*Belgische Staatsblad* of 28 October 2005, p. 47402). Very critical of this solution are Kropholler and von Hein, 'Art. 6 EuVTVO', in *Europäisches Zivilprozessrecht*, 9th ed.. Frankfurt am Main: Verlag Recht und Wirtschaft GmbH, 2011, paragraph 3, and the authors cited. See also, with reference to, inter alia, the case of Belgium, J.F. van Drooghenbroeck and S. Brijs, *Un titre exécutoire européen*. Brussels: Larcier, 2006, p. 14 et seq.; by the same authors, 'La pratique judiciaire au défi du titre exécutoire européen', in G. de Leval and M. Candela Soriano (coords.), *Espace judiciaire européen. Acquis et enjeux futurs en matière civile*. Brussels: Larcier, 2007, p. 215 et seq., and P. Gielen, 'Le titre exécutoire européen, cinq ans après: rêve ou réalité?'. *Journal des Tribunaux* 2010, p. 571. A full summary of Belgian case-law in this area and of the practice developed in Belgium by the judges and registrars in relation to the certification of judgments as European Enforcement Orders may be found in C. Vanheukelen, 'Le titre exécutoire européen — Approche d'un praticien du droit', in G. de Leval and F. Georges (dirs.): *Le Droit judiciaire en mutation. En hommage à Alphonse Kohl*. Liège: Anthemis, 2007, p. 17 et seq.

29 — 'The EEO [European Enforcement Order] is not a "special kind of judgment", but a "classification" of certain judgments, transactions and documents which, once it has been established that they have been issued in accordance with certain requirements and once compliance with those requirements has been attested in a document (that is to say, the EEO certificate), enables them to have throughout the European Community the same enforceability as they enjoy in the Members State in which they have been issued … The EEO certificate … is a document which proves that the aforementioned conditions have been satisfied and expresses the essential content of the … enforceable judgment … Classification as an EEO is recorded by means of the appropriate "EEO certificate"' (R. Gil Nievas and J. Carrascosa González, 'Consideraciones sobre el Reglamento 805/2004, de 21 de abril de 2004, por el que se establece un título ejecutivo europeo para créditos no impugnados', in A.L. Calvo Caravaca and E. Castellanos Ruiz (dirs.): *La Unión Europea ante el Derecho de la globalización*. Colex, 2008, pp. 380 and 381).

30 — See also recital 17, which refers to '[t]he courts competent for scrutinising full compliance with the minimum procedural standards'.

31 — See also the works of Belgian authors cited in footnote 28.

54. It is precisely when there is such a marked controversy as to whether or not the internal law of a Member State meets the minimum standards laid down in the aforementioned Article 19 that the decision to certify a judgment as a European Enforcement Order ought, in my view, to be left in the hands of the judge alone. It should be borne in mind, moreover, that the decision to certify is not open to any appeal, as is established in Article 10(4) of the EEO Regulation,[32] and that the courts of the Member State of enforcement will be unable to check whether the minimum procedural standards were satisfied in the Member State of origin.[33]

55. In the light of the foregoing considerations, and precisely in order to ensure — especially in circumstances of intense controversy in the case-law as those of the present case — full respect for the debtor's rights of defence and right to a fair trial, both recognised in Article 47 of the Charter, I consider that the decision to certify the judgment as a European Enforcement Order must be left to the judge, without prejudice to the fact that the registrar may be entrusted with the task of issuing the corresponding certificate.

56. Regarding the question as to whether certification of the judgment as a European Enforcement Order must be applied for in the document instituting proceedings (first part of the fourth question referred for a preliminary ruling), Article 6 of the EEO Regulation establishes that a judgment on an uncontested claim delivered in a Member State must, upon application *at any time* to the court of origin, be certified as a European Enforcement Order. As the Commission maintains, it would not make sense to require the application for certification to be submitted with the document instituting proceedings (although, undoubtedly, the application may be made at that stage) because at that moment it is not yet known whether or not the claim will be contested and, accordingly, whether the judgment to be given at the end of those proceedings will satisfy the requirements for certification as a European Enforcement Order.

57. In conclusion, I propose that the Court's reply to the fourth question should be that the decision to certify the judgment as a European Enforcement Order must be left to the judge, without prejudice to the fact that the registrar may be entrusted with issuing the corresponding certificate.

## E – *Fifth question*

58. The fifth question, which is raised in case certification as a European Enforcement Order is not a judicial measure, concerns the time at which that certification must be sought. In particular, the referring court asks whether certification as a European Enforcement Order may be sought after the judgment which the creditor seeks to have certified has become final.

59. In the light of the answer which I propose that the Court should give to the fourth question, there is no need to answer the fifth question.

60. In the event that the Court should not accept my proposal in relation to the fourth question, it must be borne in mind that, in the present case, the referring court was asked to confirm whether in the main proceedings the true position was that the applicant did not apply, in the document instituting the proceedings, for certification of the judgment. Since the referring court confirmed that the applicant did indeed request, in the document instituting proceedings, that the judgment to be delivered should be certified as a European Enforcement Order, I consider that there is in any event no need to reply to the fifth question because it has been raised hypothetically.

32 — A European Enforcement Order certificate may be rectified only in the case where, due to a material error, there is a discrepancy between the judgment and the certificate (Article 10(1)(a) of the EEO Regulation) or withdrawn only in the case where it was clearly wrongly granted, having regard to the requirements laid down in that regulation (Article 10(1)(b) of the EEO Regulation).

33 — Recital 18 in the preamble to the EEO Regulation.

## IV – **Conclusion**

61. In the light of the foregoing considerations, I propose that the Court should reply to the hof van beroep te Antwerpen as follows:

(1) Article 288 TFEU is not infringed merely because national law may not provide for a specific review procedure in accordance with the provisions of Article 19 of Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims.

(2) In order to be able to certify judgments of the courts of a Member State as European Enforcement Orders, it is not sufficient for the legal system of that Member State to provide for a review procedure if service on the debtor of a summons or of the document instigating proceedings was effected in the manner provided for in Article 14 of Regulation No 805/2004 and if the other requirements of Article 19(1)(a) of that regulation are satisfied. It will also be necessary for the legal system of that Member State to permit a review if the debtor (also in the case of service effected by the method provided for in Article 13 of Regulation No 805/2004) has been unable to contest the claim for reasons of *force majeure* or owing to extraordinary circumstances without any fault on his part. The procedure selected by the Member State must adequately respect the debtor's rights of defence and right to a fair trial and permit a full review of the judgment which is not limited merely to questions of law.

(3) The minimum standards for review in exceptional circumstances are not satisfied by the legislation of a Member State which precludes the debtor from applying for review of the judgment once the one-month period, which begins to run from the moment of service and not from the moment at which the defendant has become aware of its content, has expired. It is for the national court to assess whether the national procedural law and its interpretation by the courts of the Member State permit an extension of the period for appealing against a judgment on an uncontested claim, not only in cases of *force majeure* but also when there are other extraordinary circumstances which, without fault on the part of the debtor, may have prevented him from contesting the claim, as provided in Article 19 of Regulation No 805/2004.

(4) The decision to certify the judgment as a European Enforcement Order must be left to the judge, without prejudice to the fact that the registrar may be entrusted with issuing the corresponding certificate.

(5) There is no need to answer the fifth question referred for a preliminary ruling.