Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

16 June 2016*

(Reference for a preliminary ruling — Area of freedom, security and justice — Judicial cooperation in civil matters — Regulation (EC) No 805/2004 — European Enforcement Order for uncontested claims — Article 3(1)(b) — Conditions for certification — Judgment in default — Concept of 'uncontested claim' — Procedural conduct of a party capable of constituting an 'absence of contestation of the claim')

In Case C-511/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale di Bologna (District Court, Bologna, Italy), made by decision of 6 November 2014, received at the Court on 14 November 2014, in the proceedings

Pebros Servizi Srl

v

Aston Martin Lagonda Ltd,

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, D. Šváby, J. Malenovský, M. Safjan (Rapporteur) and M. Vilaras, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Pebros Servizi Srl, by N. Maione, avvocato,

— the Italian Government, by G. Palmieri, acting as Agent, and by M. Salvatorelli, avvocato dello Stato,

— the German Government, by T. Henze and J. Kemper, acting as Agents,

— the European Commission, by F. Moro and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 January 2016,

* Language of the case: Italian.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3(1) 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 (OJ 2004 L 143, p. 15).

2 The request has been made in proceedings brought by Pebros Servizi Srl, a company established in Italy, seeking certification as a European Enforcement Order, within the meaning of Regulation No 805/2004, of a judgment which has become final, delivered in default against Aston Martin Lagonda Ltd ('Aston Martin'), a company established in the United Kingdom.

Legal context

EU Law

3 According to recitals 5, 6, 10, 12, 17 and 20 of Regulation No 805/2004:

'(5) The concept of "uncontested claims" should cover all situations in which a creditor, given the verified absence of any dispute by the debtor as to the nature or extent of a pecuniary claim, has obtained either a court decision against that debtor or an enforceable document that requires the debtor's express consent, be it a court settlement or an authentic instrument.

(6) The absence of objections from the debtor as stipulated in Article 3(1)(b) can take the shape of default of appearance at a court hearing or of failure to comply with an invitation by the court to give written notice of an intention to defend the 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.

…

(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.

…

(20) Application for certification as a European Enforcement Order for uncontested claims should be optional for the creditor, who may instead choose the system of recognition and enforcement under [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)] or other Community instruments.'

4 Article 1 of Regulation No 805/2004, entitled 'Subject matter', provides:

'The purpose of this 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.'

5 Article 3 of that regulation, entitled 'Enforcement titles to be certified as a European Enforcement Order', provides in paragraph (1):

'This Regulation shall apply to judgments, court settlements and authentic instruments on uncontested claims.

A claim shall be regarded as uncontested if:

(a) the debtor has expressly agreed to it by admission or by means of a settlement which has been approved by a court or concluded before a court in the course of proceedings; or

(b) the debtor has never objected to it, in compliance with the relevant procedural requirements under the law of the Member State of origin, in the course of the court proceedings; or

(c) the debtor has not appeared or been represented at a court hearing regarding that claim after having initially objected to the claim in the course of the court proceedings, provided that such conduct amounts to a tacit admission of the claim or of the facts alleged by the creditor under the law of the Member State of origin; or

(d) the debtor has expressly agreed to it in an authentic instrument.'

6 Article 6 of that regulation, entitled 'Requirements for certification as a European Enforcement Order', sets out in paragraph (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) …'

7 Article 9 of Regulation No 805/2004, entitled 'Issue of the European Enforcement Order certificate', provides in paragraph (1):

'The European Enforcement Order certificate shall be issued using the standard form in Annex I.'

8 Chapter III of Regulation No 805/2004, which includes Articles 12 to 19 of the latter, establishes minimum standards for uncontested claims procedures. Those standards, which serve to safeguard the debtor's rights of defence, concern not only the methods of service or notification of a document instituting the proceedings and other documents, but also the information contained in that document, since the debtor must be informed of the debt and of the procedure to follow in order to contest that debt. Article 12 of that regulation, entitled 'Scope of application of minimum standards', states in paragraph (1):

'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.'

9 Under Article 27 of Regulation No 805/2004, entitled 'Relationship with Regulation (EC) No 44/2001':

'This Regulation shall not affect the possibility of seeking recognition and enforcement, in accordance with Regulation (EC) No 44/2001, of a judgment, a court settlement or an authentic instrument on an uncontested claim.'

Italian law

10 Under Italian law, the default procedure is governed by Chapter VI, Title I, Book II of the Codice di procedura civile (Code of Civil Procedure). Chapter VI includes Articles 290 to 294 of that code.

11 Article 291 of the Code of Civil Procedure, entitled 'Default of the defendant', provides in the first paragraph thereof:

'Where the defendant does not enter an appearance and the examining judge discovers a defect resulting in the nullity of service of the summons, that judge shall set a mandatory time-limit by which the applicant is to renew the summons. The renewal shall prevent any lapse.'

12 Article 293 of that code, entitled 'Appearance of the defaulting party', provides:

'The party which has been declared to be in default may appear at any time during the proceedings, until the hearing specifying the nature of the forms of order sought.

The appearance may take place by means of the filing of written pleadings, the power of attorney and documents with the registry, or by attendance at the hearing.

The party in default who appears may, in all cases, at the first hearing or within the deadline set by the investigating judge, contest the written evidence submitted against it.'

13 Article 294 of that code, entitled 'Restoration', provides in the first paragraph thereof:

'The party in default who appears may request the investigating judge to be authorised to take action which would otherwise be time-barred where it shows that, as a result of the nullity or service of the summons, it was unable to be aware of the action or that it was prevented from appearing due to reasons beyond its control.'

The dispute in the main proceedings and the question referred for a preliminary ruling

14 It is apparent from the order for reference that Pebros Servizi sued before the Tribunale di Bologna (District Court, Bologna, Italy) several companies, including Aston Martin.

15 The proceedings between Pebros Servizi and Aston Martin before that court took place in the absence of the latter, although, according to the order for reference, the summons was duly notified to it and it was put in a position to participate in those proceedings.

16 By judgment of 24 January 2014 concluding that procedure, the Tribunale di Bologna (District Court, Bologna) ordered Aston Martin to pay to Pebros Servizi the sum of EUR 18 000, together with interest at the statutory rate running from the publication of the judgment until payment in full and the legal costs, comprising EUR 835 for sundry expenses and EUR 9 500 for professional fees, plus VAT and other incidental social security expenses under national law.

17 Since no appeal was brought against that judgment, it became final.

18 On 14 October 2014, Pebros Servizi made an application to the Tribunale di Bologna (District Court, Bologna) for certification of that judgment as a European Enforcement Order, within the meaning of Regulation No 805/2004, so as to be able to initiate the enforcement procedure allowing the recovery of its debts.

19 The referring court expresses doubts regarding the applicability of Regulation No 805/2004 in the case in the main proceedings, in so far as, in the Italian legal system, a failure to attend proceedings does not amount to acquiescence by the defendant to the action brought against him. The question, therefore, arises as to whether a judgment in default may be regarded as a judgment for an uncontested claim.

20 In that regard, that court points out that two interpretations of the concept of 'absence of contestation' are possible. The first interpretation, suggested by that court and based on national law, excludes the application of Regulation No 805/2004, given that the default procedure provided for in the Italian legal order does not amount to an uncontested claim. By contrast, according to the second interpretation, that concept of 'absence of contestation' is defined autonomously by EU law and covers also a failure to appear during proceedings.

21 In those circumstances, the Tribunale di Bologna (District Court, Bologna) decided to stay proceedings and refer the following question to the Court for a preliminary ruling:

'In the case of a judgment in default (of appearance), given against the defendant in default of appearance/failing to appear without, moreover, there being any express acknowledgement of the law by the defendant in default of appearance/failing to appear;

Is it for national law to decide whether such procedural conduct amounts to non-contestation, for the purposes of Regulation No 805/2004, which could possibly, under national law, negate the uncontestedness of the claim,

or,

Does a judgment in default of appearance constitute, by reason of its very nature alone, on the basis of EU law, non-contestation, with the result that Regulation No 805/2004 applies, irrespective of the assessment of the national court?'

The admissibility of the request for a preliminary ruling and of the question referred

22 The Italian Government contests both the admissibility of the request for a preliminary ruling and of the question referred.

The admissibility of the request for a preliminary ruling

23 According to the Italian Government, in the main proceedings, the Tribunale di Bologna (District Court, Bologna) does not act as a 'court or tribunal' within the meaning of Article 267 TFEU, in so far as the procedure it follows, when it is called upon to give a decision on an application for certification of a court decision as a European Enforcement Order, does not fulfil the criteria allowing that procedure to be classified as the exercise of judicial activity, since that procedure should be treated like a purely administrative procedure or non-contentious proceedings.

24 It should be noted, in that regard, that, according to the Court's settled case-law, although Article 267 TFEU does not make the reference to the Court subject to there having been an *inter partes* hearing in the proceedings in the course of which the national court refers the questions for a preliminary ruling, a national court may refer a question to the Court only if there is a case pending before it and if it is called upon to give judgment in proceedings intended to lead to a decision of a judicial nature (judgment of 25 June 2009 in *Roda Golf & Beach Resort*, C-14/08, EU:C:2009:395, paragraphs 33 and 34 and the case-law cited).

25 Such is the case for a procedure leading to the certification of a court decision as a European Enforcement Order. In that regard, the Court has already had occasion to state that that procedure requires a judicial examination of the conditions laid down by Regulation No 805/2004 in order to assess whether the minimum standards intended to safeguard the debtor's rights of defence have been respected (judgment of 17 December 2014 in *Imtech Marine Belgium*, C-300/14, EU:C:2015:825, paragraph 46 and 47).

26 Therefore, that regulation requires the body making the certification as a European Enforcement Order to carry out a series of checks with respect to the elements listed in the form set out in Annex I to Regulation No 805/2004. As regards the review of the lawfulness of the judicial procedure which led to the adoption of a decision covered by certification, which that court carries out at the stage of that certification, that review is not, as was pointed out by the Advocate General in point 29 of his Opinion, different in nature from judicial reviews it is required to carry out before making court decisions in other proceedings. Moreover, Article 6 of that regulation requires that court, in addition to reviewing the lawfulness of that earlier judicial procedure and compliance with the rules on jurisdiction, in particular to ensure the enforceability of the decision taken and to assess the nature of the claim.

27 Moreover, although the certification procedure takes place after the dispute has been settled by the court decision which closes the proceedings, the fact remains that, in the absence of certification, that decision is not yet capable of circulating freely within the European judicial area, as was stated by the Advocate General in point 32 of his Opinion.

28 In that regard, it should be noted that although the terms 'give judgment', within the meaning of the second paragraph of Article 267 TFEU, encompass the whole procedure leading to the referring court's judgment, they must be interpreted broadly in order to prevent many procedural questions from being regarded as inadmissible and from being unable to be the subject of interpretation by the Court and the latter from being unable to interpret all procedural provisions of EU law that the referring court is required to apply (see, to that effect, judgments of 17 February 2011 in *Weryński*, C-283/09, EU:C:2011:85, paragraphs 41 and 42, and of 11 June 2015 in *Fahnenbrock and Others*, C-226/13, C-245/13, C-247/13 and C-578/13, EU:C:2015:383, paragraph 30).

29 Therefore, the procedure for the certification of a court decision as a European Enforcement Order appears, functionally, not as a procedure which is distinct from the earlier judicial procedure, but as the final phase of that procedure, necessary in order to ensure that it is fully effective, by allowing the creditor to proceed with the recovery of his debt.

30 In the light of the above, it must be noted that the certification of a court decision as a European Enforcement Order is a judicial act during the adoption of which the national court is entitled to refer questions to the Court for a preliminary ruling. Consequently, the request for a preliminary ruling is admissible.

Admissibility of the question for a preliminary ruling

31 The Italian Government contends that the question referred for a preliminary ruling is inadmissible by maintaining that, in the absence of mandatory application, in the dispute in the main proceedings, of Regulation No 805/2004, that question is irrelevant. According to that government, the application to that dispute of Regulation (EU) 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 (OJ 2012 L 351, p. 1) allows the problem concerning the definition of an uncontested claim as it arises in that dispute to be avoided, in so far as that regulation does not contain any references to national rules of procedure.

32 In that regard, it suffices to note that, according to the Court's settled case-law, since questions on the interpretation of EU law enjoy a presumption of relevance, the Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, inter alia, judgment of 11 June 2015 in *Fahnenbrock and Others*, C-226/13, C-245/13, C-247/13 and C-578/13, EU:C:2015:383, paragraph 25 and the case-law cited).

33 In this case, Pebros Servizi requested, in application of Regulation No 805/2004, the certification of a judgment as a European Enforcement Order. Therefore, the court ruling on that request must check whether the conditions laid down in that regulation are satisfied. Regardless of the fact that Regulation No 1215/2012 is not applicable *ratione temporis* to the main proceedings, the facts of which predate the date on which that regulation became applicable, the fact that, in the event that such a request is rejected, Pebros Servizi may, according to the Italian Government, initiate the enforcement procedure provided for by that regulation or opt directly for that procedure has no effect on the relevance of the question referred.

34 It follows that the reference for a preliminary ruling is admissible.

Substance

35 By its question, the referring court asks, in essence, whether the conditions according to which, in the case of a judgment by default, a claim is to be regarded as 'uncontested', within the meaning of the second subparagraph of Article 3(1) of Regulation No 805/2004, must be assessed according to its own law or autonomously, solely in accordance with that regulation.

36 The Court has consistently held that it follows from the need for uniform application of EU law and from the principle of equality that the terms of a provision of that law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union, having regard to the context of the provision and the objective pursued by the legislation in question (judgment of 5 December 2013 in *Vapenik*, C-508/12, EU:C:2013:790, paragraph 23 and the case-law cited).

37 In that regard, it must be stated that Regulation No 805/2004 does not define the concept of 'uncontested claim' by means of a reference to the laws of the Member States. On the contrary, it is apparent from a reading of Article 3 of that regulation in the light of recital 5 of the latter, that that concept is an autonomous concept of EU law. The reference to the laws of the Member States in Article 3(1)(b) and (c) of that regulation does not relate to the constituent elements of that concept, but concern the specific elements of its application.

38 Recital 5 of that regulation states that the concept of 'uncontested claims' should cover all situations in which a creditor, given the verified absence of any dispute by the debtor as to the nature or extent of a pecuniary claim, has obtained, inter alia, a court decision against that debtor.

39 As is apparent from the order for reference, Aston Martin, in its capacity as duly informed debtor who is given an opportunity to participate in the court proceedings, failed to take action throughout those proceedings by not participating in them at any moment. For that reason, a judgment was delivered in default with respect to it. It follows that that company's situation is covered by Article 3(1)(b) of Regulation No 805/2004, in accordance with which a claim is to be regarded as uncontested if 'the debtor has never objected to it, in compliance with the relevant procedural requirements under the law of the Member State of origin, in the course of the court proceedings'.

40 Recital 6 of that regulation states, in that regard, that the absence of objections from the debtor, as stipulated in Article 3(1)(b) of that regulation, can take the shape of default of appearance at a court hearing or of failure to comply with an invitation by the court to give written notice of an intention to defend the case.

41 Consequently, a claim may be regarded as 'uncontested', within the meaning of the second subparagraph of Article 3(1)(b) of Regulation No 805/2004, if the debtor does nothing to object to it by failing to comply with an invitation by the court to give written notice of an intention to defend the case or by failing to appear at the hearing.

42 Therefore, it should be noted that the fact that, under Italian law, a judgment in default does not amount to an uncontested claim is irrelevant for the purposes of the answer to be given to the question referred by the referring court. The express reference to the procedural rules of the Member State in Article 3(1)(b) of Regulation No 805/2004 does not relate to the legal consequences of a failure by the debtor to attend the proceedings, those consequences being the subject of an autonomous classification under that regulation, but concerns exclusively the detailed procedural rules in accordance with which the debtor may effectively contest the claim.

43 It must be noted that Regulation No 805/2004 establishes solely minimum procedural standards, necessary in order to respect the defaulting debtor's rights of defence, without however governing all the aspects of the contestation of the claim, such as, in particular, the form of a contestation, the bodies involved in the contestation procedure or the applicable deadlines. Consequently, in each Member State, the debtor must make such a contestation in accordance with the rules of civil procedure in force.

44 Furthermore, as regards the minimum procedural standards set out in Chapter III of that regulation and referred to in the previous paragraph of the present judgment, those standards, compliance with which is necessary, under Article 6(1)(c) of that regulation, so that a judgment on an uncontested claim delivered in a Member State may be certified as a European Enforcement Order, seek to ensure, in accordance with recital 12 of that regulation, that the debtor is informed, first, about the court action against him, the requirements for his active participation in the proceedings to contest the claim and, secondly, the consequences of his non-participation in sufficient time and in such a way as to enable him to arrange for his defence. In the specific case of a decision delivered in default, for the purposes of Article 3(1)(b) of Regulation No 805/2004, those minimum procedural standards seek to ensure the existence of adequate guarantees of respect for the rights of the defence.

45 In the light of all the above considerations, the answer to the question referred is that the conditions according to which, in the case of a judgment by default, a claim is to be regarded as 'uncontested', within the meaning of the second subparagraph of Article 3(1)(b) of Regulation No 805/2004, must be assessed autonomously, solely in accordance with that regulation.

Costs

46 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

The conditions according to which, in the case of a judgment by default, a claim is to be regarded as 'uncontested', within the meaning of the second subparagraph of Article 3(1)(b) 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, must be assessed autonomously, solely in accordance with that regulation.

[Signatures]