



Reports of Cases

OPINION OF ADVOCATE GENERAL
BOT
delivered on 14 January 2016¹

Case C-511/14

Pebros Servizi Srl

v

Aston Martin Lagonda Ltd (Request for a preliminary ruling

from the Tribunale di Bologna (District Court of Bologna, Italy))

(Reference for a preliminary ruling — Judicial cooperation in civil and commercial matters — Regulation (EC) No 805/2004 — European Enforcement Order for uncontested claims — Issue of certificate — Administrative or judicial procedure)

I – Introduction

1. Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims² contributes to the construction of a unified European area of justice in civil and commercial matters. The regulation renders the exequatur process unnecessary in the case of uncontested debts evidenced by a judgment and, with the systematic aim of mutual recognition, replaces it with a mechanism for certification by the court of origin. This allows the judgment thus certified to be regarded as a European Enforcement Order for the purposes of enforcement, as if it had been delivered in the Member State in which enforcement is sought.
2. It is within the context of that new certification procedure that the Tribunale di Bologna (District Court of Bologna) requested a preliminary ruling on the concept of ‘uncontested debt’, wishing to know whether that concept should be read with reference to the law of the Member States or, on the other hand, whether it should receive an autonomous definition under EU law.
3. By a judgment of 22 January 2014, which became final as no appeal was brought against it, the Tribunale di Bologna (District Court of Bologna) ordered Aston Martin Lagonda Ltd, among other companies, to pay to Pebros Servizi Srl a certain figure, together with statutory interest and costs.
4. Although it had been served with notice of the proceedings taken against it and put in a position to take part, Aston Martin Lagonda Ltd failed to appear and proceedings were therefore conducted in its absence.

¹ — Original language: French.

² — OJ 2004 L 143, p. 15.

5. Based on that judgment, on 14 October 2014 Pebros Servizi Srl made an application to the Tribunale di Bologna (District Court of Bologna) seeking a European Enforcement Order under Regulation No 805/2004, so that it could initiate enforcement proceedings to recover the debt. Being unsure of the applicability of the regulation since, under Italian law, judgment in default of appearance ('in contumacia') does not imply any admission, the Tribunale di Bologna (District Court of 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/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 uncontested nature 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?'

6. The Italian Government pleaded the inadmissibility of the question and disputed the status of the Tribunale di Bologna (District Court of Bologna) as a court or tribunal within the meaning of Article 267 TFEU. The Italian Government was of the opinion that the procedure followed by the Tribunale di Bologna (District Court of Bologna) when required to rule on the certification of a judgment as a European Enforcement Order does not satisfy the objective criteria allowing it be categorised as the exercise of a judicial function and is more comparable to a purely administrative procedure or, at most, as non-contentious proceedings.

7. The Court must therefore first answer the question of whether it has jurisdiction to rule on the request for a preliminary ruling. Given that it is undisputed that the Tribunale di Bologna (District Court of Bologna) constitutes a court, organically speaking, the Court's jurisdiction depends on whether the certification procedure must be regarded as a purely administrative procedure or whether, in addition, it has a judicial aspect.

8. In this Opinion, which will focus on that very question, I will contend that, when asked to issue a certificate for a European Enforcement Order, the court of origin must be regarded not only as acting as an administrative authority, not being required to settle any dispute, but as also exercising a judicial function, from which I will deduce that the Court has jurisdiction to rule on the present reference for a preliminary ruling.

II – Analysis

9. The procedure established under Article 267 TFEU is an instrument of cooperation between the Court of Justice and the national courts, under which the Court provides to the national courts the elements of interpretation of EU law necessary for them to resolve the dispute that they have been asked to settle. It is, to use the standard terminology, a dialogue between one court and another, which contributes to the making of a decision for the purposes of ensuring the uniform application of EU law. As indicated by the wording of Article 267 TFEU, only a 'court or tribunal' of a Member State may request the Court to give a ruling.

10. In order to determine whether a body making a request is a 'court or tribunal', the Court has set up a means of identification which takes account of a number of factors, such as whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is *inter partes*, whether it applies rules of law and whether it is independent.³

3 — See, most recently, judgment in *ConSORCI SANITARI DEL MAREMME* (C-203/14, EU:C:2015:664, paragraph 17 and the case-law cited).

11. Moreover, the request for a preliminary ruling must emanate from a court or tribunal, which, functionally speaking, has a dispute pending before it which it is obliged to resolve. It is settled case-law that a national court may refer a question to the Court of Justice 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.⁴

12. Beginning with the order in *Borker*,⁵ in which the Court held that a request for a preliminary ruling could not be made by a bar council which had before it not a case that it was legally obliged to try but a request for a declaration relating to a dispute between a member of the bar and the courts or tribunals of another Member State, that case-law has been confirmed on numerous occasions.

13. In the order in *Greis Unterweger*,⁶ the Court held that a reference could not be made to it by a consultative commission relating to infringements in monetary matters, which was tasked with submitting opinions within the framework of an administrative procedure and not with resolving disputes.⁷

14. It was then in the judgment in *Job Centre*⁸ that the Court established the two enduring guidelines of its case-law.

15. The first of the guidelines, in accordance with earlier decisions, relates to the introduction into the autonomous definition of a ‘court or tribunal’ under EU law of a functional criterion concerning the ‘nature of the activity carried out by the referring body’. In that judgment, the Court found that it had no jurisdiction to rule on the questions referred for a preliminary ruling by an Italian tribunal hearing an application for confirmation of a company’s articles of association, stating that the referring court, when asked to decide such an application, ‘is performing a non-judicial function which, in other Member States, is entrusted to administrative authorities’⁹ and ‘is exercising administrative authority without being at the same time called upon to settle any dispute’.¹⁰ The concept of a ‘court or tribunal’ is therefore intrinsically linked to the existence of a dispute and the Court of Justice may deal only with a court or tribunal ruling in the exercise of its judicial activity.

16. The second guideline relates to the introduction of an exception when an action has been brought against a decision given by a court in exercise of a non-judicial function. Having declared itself lacking in jurisdiction to reply to the question raised by the court dealing with an application for confirmation, the Court observed that ‘only if the person empowered under national law to apply for such confirmation seeks judicial review of a decision rejecting that application ... may the court seised be regarded as exercising a judicial function ... in respect of an application for the annulment of a measure adversely affecting the petitioner’.¹¹ That exception effectively opens up the possibility of a further collaboration with the Court at the next stage when the national court is confronted with a question of interpretation of EU law.

4 — See orders in *Borker* (138/80, EU:C:1980:162, paragraph 4) and *Greis Unterweger* (318/85, EU:C:1986:106, paragraph 4); judgments in *Job Centre* (C-111/94, EU:C:1995:340, paragraph 9); *Victoria Film* (C-134/97, EU:C:1998:535, paragraph 14); *Salzmann* (C-178/99, EU:C:2001:331, paragraph 14); *Lutz and Others* (C-182/00, EU:C:2002:19, paragraph 13); *Standesamt Stadt Niebüll* (C-96/04, EU:C:2006:254, paragraph 13); and *Roda Golf & Beach Resort* (C-14/08, EU:C:2009:395, paragraph 34), together with orders in *Amiraike Berlin* (C-497/08, EU:C:2010:5, paragraph 17) and *Bengtsson* (C-344/09, EU:C:2011:174, paragraph 18).

5 — 138/80, EU:C:1980:162.

6 — 318/85, EU:C:1986:106.

7 — Paragraph 4.

8 — C-111/94, EU:C:1995:340.

9 — Paragraph 11.

10 — *Ibid.*

11 — *Ibid.*

17. Thus, in its judgment in *Roda Golf & Beach Resort*,¹² the Court held that it had jurisdiction to answer requests for a preliminary ruling connected with the scope of Regulation (EC) No 1348/2000,¹³ based on the fact that, unlike a court clerk dealing with an application for service under that regulation, who may be regarded as acting as an administrative authority which is not at the same time called on to decide a dispute, a court called upon to adjudicate on an appeal against a court clerk's refusal to effect the service requested is dealing with a dispute and is exercising a judicial function.¹⁴

18. To those two guidelines resulting from the judgment in *Job Centre*,¹⁵ recent case-law of the Court relating to the interpretation of instruments of Union law adopted in the context of judicial cooperation in civil matters has added a new guideline, characterised by a broad approach to the concept of the phrase 'to give judgment' for the purposes of the second paragraph of Article 267 TFEU. In its judgment in *Weryński*,¹⁶ relating to the interpretation of Regulation (EC) No 1206/2001,¹⁷ noting that a broad interpretation of that concept 'would make it possible to prevent many procedural questions ... from being unable to be the subject of interpretation by the Court',¹⁸ the Court held that the concept covers 'the entire process of creating the judgment, including all issues relating to the responsibility for the costs of proceedings'.¹⁹

19. Following the logic of that case-law, the Court, in its judgment in *Fahnenbrock and Others*,²⁰ held that it had jurisdiction to reply to requests for a preliminary ruling which were connected with the interpretation of Regulation (EC) No 1393/2007²¹ and which had been made at a particularly early stage of the dispute, prior to service on the other party of the document instituting proceedings.²²

20. Having established that it has jurisdiction in relation to the initial stages of the dispute, the Court is then faced with a question relating to the later stages, once the judgment has been delivered and the procedure for certifying it as a European Enforcement Order must be completed in order that it may be circulated within the European area of justice. Is that procedure an administrative one or a judicial one?

21. Before answering that question, the first point to be noted is that the procedure for certifying a judgment as a European Enforcement Order must, in my opinion, necessarily receive an independent categorisation under EU law, as it is a procedure established by, and particular to, EU law, even though Regulation No 805/2004 retains procedural autonomy for Member States, inter alia, in relation to methods of service of documents.

22. The wording of Article 6(1) of Regulation No 805/2004 does not solve the question, since it provides that the application for certification should be addressed to the court of origin, without specifying which authority within that court is competent to examine the application.

12 — C-14/08, EU:C:2009:395.

13 — Council Regulation of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (OJ 2000 L 160, p. 37).

14 — Paragraph 37 of that judgment.

15 — C-111/94, EU:C:1995:340.

16 — C-283/09, EU:C:2011:85.

17 — Council Regulation of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ 2001 L 174, p. 1).

18 — Paragraph 41 of that judgment.

19 — Paragraph 42 of the same judgment.

20 — C-226/13, C-245/13, C-247/13 and C-578/13, EU:C:2015:383.

21 — Regulation of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ 2007 L 324, p. 79).

22 — Paragraphs 30 and 31 of that judgment.

23. At first sight, the certification procedure appears to be decidedly administrative in nature, since it consists of ticking the boxes on the form that appears in Annex I to Regulation No 805/2004 to indicate, *inter alia*, the Member State, the name of the court or tribunal, the amount of the claim (principal amount and interest), costs etc. However, is there also a judicial aspect to it? Several factors seem to me to suggest that this is the case.

24. The first factor is the importance that the certification procedure under Regulation No 805/2004 places on compliance with the minimum procedural standards that form a fundamental requirement thereof.

25. It is important to point out, in that respect, that the definition given to ‘uncontested claim’ by Article 3(1) of Regulation No 805/2004 covers not only cases where the debtor has ‘expressly’ agreed to it either in an authentic instrument or ‘by admission or by means of a settlement ... before a court’ but also situations where he is deemed to have ‘tacitly’ admitted it, either by having never objected to it in the course of the court proceedings, or by not appearing or being represented at a court hearing regarding the claim after having initially objected to it.

26. Given that this has the drawback of the debtor’s silence potentially being used against him as a form of admission, Regulation No 805/2004 requires compliance with minimum procedural standards in order to preserve the rights of the defence. Those standards relate not only to the methods of service of the document instituting the proceedings, which Regulation No 805/2004 divides into two main categories, according to whether or not they are accompanied by an acknowledgement of receipt by the debtor, but also to the information contained in that document, since the debtor must be informed of the claim and the procedural steps necessary in order to challenge it.

27. Although non-compliance with these minimum standards in theory prevents the judgment from being certified as a European Enforcement Order, Regulation No 805/2004 sets out ways of curing non-compliance where service was carried out in compliance with the requirements and the debtor, although having had the possibility of challenging the judgment by means of a full review and been duly informed of that possibility, failed to do so.²³ Non-compliance with the minimum standards can also be cured if it is proved by the conduct of the debtor in the court proceedings that he personally received the document to be served in sufficient time to arrange for his defence.²⁴

28. Finally, even where the debtor has been informed of the proceedings brought against him by a document instituting proceedings served in accordance with the minimum standards set out in Articles 13 to 17 of Regulation No 805/2004, Article 19(1) of the regulation provides that, in the situations outlined in Article 19(1)(a) and (b), the judgment may 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.

29. Both at the initial stage of reviewing compliance with the minimum standards and the later stage of verifying the conditions required for remedying non-compliance, Regulation No 805/2004 therefore imposes a series of checks relating, *inter alia*, to methods of service of the document initiating the proceedings or the judgment, to the assessment of the debtor’s conduct during the proceedings, and to the level of information that he has received about the possibility of, and terms of, a challenge. The court of origin must ultimately undertake an examination, which is judicial in nature, relating to the correctness of the previous court procedure, since procedural irregularities might impair the

23 — Article 18(1) of that regulation.

24 — Article 18(2) of that regulation.

defendant's rights. The review that the court of origin must undertake at the stage of certification is not, ultimately, different in nature to that which it must undertake prior to delivering its judgment by applying national law, in accordance with the principles of procedural autonomy, to determine, *inter alia*, whether the document initiating proceedings was properly brought to the attention of the debtor.

30. What is more, in addition to this review of the judicial procedure in the Member State of origin, Regulation No 805/2004 also provides for a review relating to the nature of the claim, in order to ensure that it is within the scope of the regulation, to the fact that the claim is uncontested, to the jurisdiction of the court of origin,²⁵ to the enforceable nature of the judgment and, where applicable, to the debtor's domicile.²⁶ In short, certification involves a series of thorough checks which fall within the scope of a genuine judicial examination.

31. The second factor is the impossibility of challenging the issue of a certificate of a European Enforcement Order. Since the usual legal remedies do not permit a matter to be subsequently referred to the Court by a court acting in its judicial role, failure to acknowledge a judicial function will have the effect of preventing the Court from ruling on the interpretation of Regulation No 805/2004 or, at least, of delaying it and making the Court's involvement more complicated.

32. A third factor is the broad interpretation traditionally given by the case-law to the concept of 'proceedings intended to lead to a decision of a judicial nature'. If the certification procedure takes place after the dispute has been decided by a judgment that brings an end to the proceedings before the court of origin, the fact remains that, in the absence of certification, that judgment has not yet reached its full potential as it is not yet able to circulate freely within the European judicial area. Following that logic, the certification procedure seems less like a distinct phase of the earlier judicial procedure and more like the final step in that procedure, which is necessary to perfect the judgment as a European Enforcement Order.

33. I therefore propose that the Court should assume an approach which has indeed recently been adopted in the judgment in *Imtech Marine Belgium*,²⁷ delivered on 17 December 2015. When specifically asked whether Article 6 of Regulation No 805/2004 must be interpreted as meaning that the certification of a judgment as a European Enforcement Order is a judicial act, which can therefore be carried out only by a judge, the Court held that certification 'can only be carried out by a judge',²⁸ to the extent that it 'requires a judicial examination of the conditions laid down by Regulation No 805/2004'.²⁹

III – Conclusion

34. In the light of the foregoing considerations, I propose that the Court should find that it has jurisdiction to rule on the request for a preliminary ruling made by the Tribunale di Bologna (District Court of Bologna).

25 — Article 6(1)(b) of that regulation.

26 — Article 6(1)(d) of Regulation No 805/2004.

27 — C-300/14, EU:C:2015:825.

28 — Paragraph 50.

29 — Paragraph 46.