Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

5 December 2013 *

(Area of freedom, security and justice — Regulation (EC) No 805/2004 — European enforcement order for uncontested claims — Requirements for certification as an enforcement order — Situation in which the judgment was given in the Member State of the creditor in a dispute between two persons not engaged in commercial or professional activities)

In Case C-508/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landesgericht Salzburg (Austria), made by decision of 31 October 2012, received at the Court on 9 November 2012, in the proceedings

Walter Vapenik

v

Josef Thurner,

THE COURT (Ninth Chamber),

composed of M. Safjan (Rapporteur), President of the Chamber, J. Malenovský and A. Prechal, Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Austrian Government, by A. Posch, acting as Agent,

— the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,

— the German Government, by T. Henze acting as Agent,

— the European Commission, by W. Bogensberger and A.-M. Rouchaud-Joët, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: German.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 6(1)(d) 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 That request has been made in proceedings brought by Mr Vapenik, who is domiciled in Salzburg (Austria), appealing against the rejection of his application for a European enforcement order for a judgment in default against Mr Thurner, who is domiciled in Ostend (Belgium), on the ground that the action against the latter, a consumer, was not brought in the Member State in which he was domiciled.

Legal context

Regulation No 805/2004

3 Recitals 8, 9 and 20 in the preamble to Regulation No 805/2004 state:

'(8) In its Tampere conclusions, the European Council considered that access to enforcement in a Member State other than that in which the judgment has been given should be accelerated and simplified by dispensing with any intermediate measures to be taken prior to enforcement in the Member State in which enforcement is sought. A judgment that has been certified as a European Enforcement Order by the court of origin should, for enforcement purposes, be treated as if it had been delivered in the Member State in which enforcement is sought. … Arrangements for the enforcement of judgments should continue to be governed by national law.

(9) Such a procedure should offer significant advantages as compared with the exequatur procedure provided for in 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 amended by Commission Regulation (EC) No 1496/2002 of 21 August 2002 (OJ 2002 L 225, p. 13) ('Regulation No 44/2001')], in that there is no need for approval by the judiciary in a second Member State with the delays and expenses that this entails.

…

(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 Regulation (EC) No 44/2001 or other Community instruments.'

4 Article 1 of Regulation No 805/2004 is worded as follows:

'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(1) of that regulation provides:

'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;

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

6 Article 6(1) of that regulation, entitled 'Requirements for certification as a European Enforcement Order', states:

'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.'

7 Chapter III of Regulation No 805/2004 establishes the minimum standards applicable to procedures relating to uncontested claims.

Regulation No 44/2001

8 Recital 13 in the preamble to Regulation No 44/2001 states:

'In relation to insurance, consumer and employment contracts, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules.'

9 In Section 4 of Chapter II of Regulation No 44/2001, Article 15(1) thereof is worded as follows:

'In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section ..., if:

(a) it is a contract for the sale of goods on instalment credit terms; or

(b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or

(c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.'

10 Article 16(1) and (2) of the regulation provides:

'1. A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or in the courts for the place where the consumer is domiciled.

2. Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled.'

11 In accordance with Article 35(1) of that regulation, 'a judgment shall not be recognised if it conflicts with Sections 3, 4 or 6 of Chapter II'.

12 Sections 3, 4 and 6 of Chapter II of Regulation No 44/2001 lay down the rules of jurisdiction in matters relating to insurance, consumer contracts and exclusive jurisdiction.

13 Article 43(1) of that regulation states:

'The decision on the application for a declaration of enforceability may be appealed against by either party.'

14 Article 45(1) of that regulation provides:

'The court with which an appeal is lodged under Article 43 or Article 44 shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Articles 34 and 35. It shall give its decision without delay.'

Regulation (EC) No 593/2008

15 Recitals 23 and 24 in the preamble to Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6) state:

'(23) As regards contracts concluded with parties regarded as being weaker, those parties should be protected by conflict-of-law rules that are more favourable to their interests than the general rules.

(24) With more specific reference to consumer contracts, the conflict-of-law rule should make it possible to cut the cost of settling disputes concerning what are commonly relatively small claims and to take account of the development of distance-selling techniques. Consistency with Regulation (EC) No 44/2001 requires both that there be a reference to the concept of directed activity as a condition for applying the consumer protection rule and that the concept be interpreted harmoniously in Regulation (EC) No 44/2001 and this Regulation …'

16 Article 6(1) of that regulation is worded as follows:

'… [A] contract concluded by a natural person for a purpose which can be regarded as being outside his trade or profession (the consumer) with another person acting in the exercise of his trade or profession (the professional) shall be governed by the law of the country where the consumer has his habitual residence, provided that the professional:

(a) pursues his commercial or professional activities in the country where the consumer has his habitual residence, or

(b) by any means, directs such activities to that country or to several countries including that country,

and the contract falls within the scope of such activities.'

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

17 The order for reference states that, by an action brought before the Bezirksgericht Salzburg (District Court, Salzburg) (Austria), Mr Vapenik sought an order that Mr Thurner pay EUR 3 158, plus interest and expenses, resulting from a loan agreement they had concluded. Mr Vapenik brought an action before the Austrian court as the court for the place of performance of the contract chosen by the parties. Neither party was engaged in commercial or professional activities at the time the contract was concluded or when the action was brought.

18 Despite the fact that the notice of proceedings and summons to appear were served on Mr Thurner in Belgium by a court enforcement officer, Mr Thurmer did not enter an appearance before the court. The Bezirksgericht Salzburg therefore gave judgment in default. That judgment was served on Mr Thurner by post, who did not appeal against that judgment, which therefore became final and enforceable.

19 Mr Vapenik then lodged an application before the Bezirksgericht Salzburg for a European enforcement order for that judgment in accordance with Regulation No 805/2004. That court dismissed the application, referring to Article 6(1)(d) of that regulation, and held that the action against Mr Thurner, the consumer, had not been brought in the Member State in which he was domiciled.

20 Mr Vapenik appealed against that judgment before the referring court, arguing that the conditions for issue of a European enforcement order under Article 6(1)(a) to (c) of Regulation No 805/2004 were satisfied because the loan agreement had been concluded between two private individuals. Since Article 6(1)(d) of that regulation provides that such an order is to be issued, in particular, where the consumer's contracting party acts in a commercial or professional capacity, it is not applicable to the case in the main proceedings.

21 In those circumstances, the Landesgericht Salzburg (Regional Court, Salzburg) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is Article 6(1)(d) of Regulation … No 805/2004 to be interpreted as applying only to contracts between business persons as creditors and consumers as debtors, or is it sufficient for at least the debtor to be the consumer for the provision also to apply to claims of a consumer against another consumer?'

The question referred for a preliminary ruling

22 By its question, the referring court asks essentially whether Article 6(1)(d) of Regulation No 805/2004 must be interpreted as meaning that it also applies to contracts concluded between two persons not engaged in commercial or professional activities.

23 The Court has consistently held that it follows from the need for uniform application of European Union 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 Union, having regard to the context of the provision and the objective pursued by the legislation in question (see, inter alia, Case C-320/12 *Malaysia Dairy Industries* [2013] ECR, paragraph 25 and the case-law cited).

24 It is clear from the wording of Article 6(1)(d) of Regulation No 805/2004 that a consumer is a person who has concluded a contract for a purpose which can be regarded as being outside his trade or profession. That provision does not state whether or not the status of professional of the consumer's contracting party plays a role in defining the other party as a 'consumer'. Neither does the status of a consumer's contracting party arise from the other provisions of that regulation and, in the absence of a reference in that provision to the law of the Member States, the meaning and scope of the concept of 'consumer' laid down in Article 6(1)(d) must be determined in the light of the context in which it appears and the objective pursued by Regulation No 805/2004.

25 In that connection, and in order to ensure compliance with the objectives pursued by the European legislature in the sphere of consumer contracts, and the consistency of European Union law, account must be taken, in particular, of the definition of 'consumer' in other rules of European Union law. Having regard to the supplementary nature of the rules laid down by Regulation No 805/2004 as compared with those in Regulation No 44/2001, the provisions of the latter are especially relevant.

26 Thus, it must be stated at the outset that the system of protection implemented by Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) is based on the idea that the consumer is in a weak position vis-à-vis the seller or supplier, as regards both his bargaining power and his level of knowledge (see, inter alia, Case C-618/10 *Banco Español de Crédito* [2012] ECR, paragraph 39; Case C-92/11 *RWE Vertrieb* [2013] ECR, paragraph 41; and Case C-488/11 *Asbeek Brusse and Man Garabito* [2011] ECR, paragraph 31).

27 Furthermore, the specific system instituted, in particular, by the provisions of Regulation No 44/2001 relating to jurisdiction over consumer contracts is intended, as is clear from recital 13 in the preamble thereto, to ensure adequate protection for the consumer as the party deemed to be economically weaker and less experienced in legal matters than the other party to the contract.

28 In that context, the Court has repeatedly stated that Article 15(1) of Regulation No 44/2001, which mentions 'consumer[s]', refers only to the private final consumer, not engaged in trade or professional activities (see, to that effect, Case C-419/11 *Česká spořitelna* [2013] ECR, paragraph 32).

29 Finally, as is clear from recitals 23 and 24 in the preamble to Regulation No 593/2008, the requirement of protection of weaker parties, including consumers, in contracts is also recognised for the purpose of determining the law applicable to consumer contracts. Article 6(1) thereof provides to that effect that contracts concluded between a consumer and a professional are to be governed by the law of the country where the consumer has his habitual residence.

30 Those legal instruments thereby recognise the need to protect the weaker party to a contract where it has been concluded between a person not engaged in commercial or professional activities and a person who is engaged in such activities.

31 Taking account of the objective of protecting consumers laid down by the abovementioned provisions of European Union law, which aim to compensate for the imbalance between parties in contracts concluded between a consumer and a professional, their application cannot be extended to persons with respect to whom that protection is not justified.

32 Thus, the Court has already held that the rules of special jurisdiction over consumer contracts cannot be applied to contracts concluded between two persons engaged in commercial or professional activities (see, to that effect, Case C-89/91 *Shearson Lehmann Hutton* [1993] ECR I-139, paragraphs 11 and 24).

33 It must be stated that there is also no imbalance between the parties in a contractual relationship such as that at issue in the main proceedings, namely that between two persons not engaged in commercial or professional activities. Therefore, that relationship cannot be subject to the system of special protection applicable to consumers contracting with persons engaged in commercial or professional activities.

34 That interpretation is supported by the structure and broad logic of the rules of special jurisdiction over consumer contracts laid down in Article 16(1) and (2) of Regulation No 44/2001, which provides that the courts for the place where the consumer is domiciled are to have jurisdiction with respect to actions brought by and against him. It follows that that provision is applicable only to contracts in which there is an imbalance between the contracting parties.

35 Furthermore, account must be taken of the supplementary nature of the rules laid down by Regulation No 805/2004 as compared with those on recognition and enforcement of decisions laid down by Regulation No 44/2001.

36 In that connection, it must be stated that, although certification as a European enforcement order under Regulation No 805/2004 of a judgment with respect to an uncontested claim enables the enforcement procedure laid down by Regulation No 44/2001 to be circumvented, the absence of such certification does not exclude the possibility of enforcing that judgment under the enforcement procedure laid down by the latter regulation.

37 If, in the context of Regulation No 805/2004, a definition were to be adopted, which is wider than that in Regulation No 44/2001, that might lead to inconsistencies in the application of those two regulations. The derogation laid down by Regulation No 805/2004 might lead to refusal of certification as a European enforcement order of a judgment, whereas it could still be enforced under the general scheme laid down by Regulation No 44/2001 since the circumstances in which that scheme allows the defendant to challenge the issue of an enforcement order, on the ground that the jurisdiction of the courts for the State in which the consumer is domiciled has not been respected, would not be satisfied.

38 It follows from all of the foregoing that the definition of ‘consumers’ within the meaning of Article 6(1)(d) of Regulation No 805/2004 refers to a person who concludes a contract for a purpose which can be regarded as being outside his trade or profession with a person who is acting in the exercise of his trade or profession.

39 Therefore, the answer to the question referred is that Article 6(1)(d) of Regulation No 805/2004 must be interpreted as meaning that it does not apply to contracts concluded between two persons who are not engaged in commercial or professional activities.

Costs

40 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 (Ninth Chamber) hereby rules:

Article 6(1)(d) 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 interpreted as meaning that it does not apply to contracts concluded between two persons who are not engaged in commercial or professional activities.

[Signatures]