



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

17 December 2015 *

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 805/2004 — European Enforcement Order for uncontested claims — Conditions for certification — Rights of the debtor — Review of the judgment)

In Case C-300/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the hof van beroep te Antwerpen (Court of Appeal, Antwerp, Belgium), made by decision of 16 June 2014, received at the Court on 20 June 2014, in the proceedings

Imtech Marine Belgium NV

v

Radio Hellenic SA,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Third Chamber, acting as President of the Fourth Chamber, J. Malenovský, M. Safjan (Rapporteur), A. Prechal and K. Jürimäe, 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 Belgian Government, by C. Pochet, J.-C. Halleux and L. Van den Broeck, acting as Agents,
- the Polish Government, by B. Majczyna, acting as Agent,
- the Portuguese Government, by L. Inez Fernandes and E. Pedrosa, acting as Agents,
- the European Commission, by G. Wils and A.-M. Rouchaud-Joët, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 September 2015,

gives the following

* Language of the case: Dutch.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 19(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 between Imtech Marine Belgium NV ('Imtech Marine'), established in Belgium, and Radio Hellenic SA ('Radio Hellenic'), established in Greece, concerning the former's application for certification, as a European Enforcement Order within the meaning of Regulation No 805/2004 of a judgment delivered *in absentia* in relation to a claim accompanied by a penalty payment and late payment interest.

The legal framework

EU law

Regulation (EC) No 44/2001

- 3 Article 34.2 of 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) provides that a judgment is not to be recognised 'where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so'.

Regulation No 805/2004

- 4 Recitals 10 to 14, 18 and 19 in the preamble to Regulation No 805/2004 state:
 - '(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 ["the Charter"]. 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.
 - (13) Due to differences between the Member States as regards the rules of civil procedure and especially those governing the service of documents, it is necessary to lay down a specific and detailed definition of those minimum standards. In particular, any method of service that is based on a legal fiction as regards the fulfilment of those minimum standards cannot be considered sufficient for the certification of a judgment as a European Enforcement Order.

(14) All the methods of service listed in Articles 13 and 14 are characterised by either full certainty (Article 13) or a very high degree of likelihood (Article 14) that the document served has reached its addressee. In the second category, a judgment should only be certified as a European Enforcement Order if the Member State of origin has an appropriate mechanism in place enabling the debtor to apply for a full review of the judgment under the conditions set out in Article 19 in those exceptional cases where, in spite of compliance with Article 14, the document has not reached the addressee.

...

(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 Article 6 of that regulation, entitled 'Requirements for certification as a European Enforcement Order', provides, 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); 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 Article 9 of Regulation No 805/2004, headed 'Issue of the European Enforcement Order certificate', is worded as follows:

- '1. The European Enforcement Order certificate shall be issued using the standard form in Annex I.
- 2. The European Enforcement Order certificate shall be issued in the language of the judgment.'

7 Article 10 of Regulation No 805/2004, entitled 'Rectification or withdrawal of the European Enforcement Order certificate', provides:

1. The European Enforcement Order certificate shall, upon application to the court of origin, be
 - (a) rectified where, due to a material error, there is a discrepancy between the judgment and the certificate;
 - (b) withdrawn where it was clearly wrongly granted, having regard to the requirements laid down in this Regulation.
2. The law of the Member State of origin shall apply to the rectification or withdrawal of the European Enforcement Order certificate.
3. An application for the rectification or withdrawal of a European Enforcement Order certificate may be made using the standard form in Annex VI.
4. No appeal shall lie against the issuing of a European Enforcement Order certificate.'

8 Article 13 of Regulation No 805/2004, entitled 'Service with proof of receipt by the debtor', provides:

1. The document instituting the proceedings or an equivalent document may have been served on the debtor by one of the following methods:
 - (a) personal service attested by an acknowledgement of receipt, including the date of receipt, which is signed by the debtor;
 - (b) personal service attested by a document signed by the competent person who effected the service stating that the defendant has received the document or refused to receive it without any legal justification, and the date of service;
 - (c) postal service attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the debtor;
 - (d) service by electronic means such as fax or e-mail, attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the debtor.
2. Any summons to a court hearing may have been served on the debtor in compliance with paragraph 1 or orally in a previous court hearing on the same claim and stated in the minutes of that previous court hearing.'

9 Article 14 of Regulation No 805/2004, entitled 'Service without proof of receipt by the debtor', provides:

1. Service of the document instituting the proceedings or an equivalent document and any summons to a court hearing on the debtor may also have been effected by one of the following methods:
 - (a) personal service at the debtor's personal address on persons who are living in the same household as the debtor or are employed there;
 - (b) in the case of a self-employed debtor or a legal person, personal service at the debtor's business premises on persons who are employed by the debtor;
 - (c) deposit of the document in the debtor's mailbox;

- (d) deposit of the document at a post office or with competent public authorities and the placing in the debtor's mailbox of written notification of that deposit, provided that the written notification clearly states the character of the document as a court document or the legal effect of the notification as effecting service and setting in motion the running of time for the purposes of time-limits;
- (e) postal service without proof pursuant to paragraph 3 where the debtor has his address in the Member State of origin;
- (f) electronic means attested by an automatic confirmation of delivery, provided that the debtor has expressly accepted this method of service in advance.

2. For the purposes of this Regulation, service under paragraph 1 is not admissible if the debtor's address is not known with certainty.

3. Service pursuant to paragraph 1, (a) to (d), shall be attested by:

- (a) a document signed by the competent person who effected the service, indicating:
 - (i) the method of service used; and
 - (ii) the date of service; and
 - (iii) where the document has been served on a person other than the debtor, the name of that person and his relation to the debtor,or
- (b) an acknowledgement of receipt by the person served, for the purposes of paragraphs (1)(a) and (b).'

10 Article 19 of Regulation No 805/2004, entitled 'Minimum standards for review in exceptional cases', is worded 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.'

11 Article 21 of Regulation No 805/2004, entitled ‘Refusal of enforcement’, provides:

‘1. Enforcement shall, upon application by the debtor, be refused by the competent court in the Member State of enforcement if the judgment certified as a European Enforcement Order is irreconcilable with an earlier judgment given in any Member State or in a third country, provided that:

- (a) the earlier judgment involved the same cause of action and was between the same parties; and
- (b) the earlier judgment was given in the Member State of enforcement or fulfils the conditions necessary for its recognition in the Member State of enforcement; and
- (c) the irreconcilability was not and could not have been raised as an objection in the court proceedings in the Member State of origin.

2. Under no circumstances may the judgment or its certification as a European Enforcement Order be reviewed as to their substance in the Member State of enforcement.’

12 Under Article 30 of Regulation No 805/2004, entitled ‘Information relating to redress procedures, languages and authorities’:

‘1. The Member States shall notify the Commission of:

- (a) the procedures for rectification and withdrawal referred to in Article 10(2) and for review referred to in Article 19(1);

...’

Belgian law

13 Under Article 50 of the Judicial Code:

‘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.’

14 Article 55 of that code provides:

‘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.’

15 Article 860 of that code provides:

‘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 result in a right’s being time-barred only if the law so provides.’

16 According to Article 1047 of that code:

‘An opposition may be lodged against any judgment delivered *in absentia*, subject to the exceptions laid down by law.

...’

17 Article 1048 of the Judicial Code provides that:

‘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.’

18 Article 1051 of the Judicial Code provides that:

‘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 dispute in the main proceedings and the questions referred for a preliminary ruling

19 Imtech Marine performed various services for Radio Hellenic, as a result of which the latter owed Imtech Marine EUR 23506.99. Under Imtech Marine’s general terms and conditions, a penalty payment of 10% and late payment interest at an annual rate of 12% are due in the event of non-payment.

20 Despite several letters of formal notice, Radio Hellenic failed to meet its payment obligations.

- 21 By a writ served on 25 March 2013, Imtech Marine applied to the rechtbank van koophandel te Antwerpen (Commercial Court, Antwerp) for an order requiring Radio Hellenic to pay the amounts due and requested that the judgment containing that order be certified as a European Enforcement Order on the basis of Regulation No 805/2004. By judgment of 5 June 2013, that court declared Imtech Marine's application to be admissible and well founded in part. Radio Hellenic was ordered *in absentia* to pay EUR 23506.99, plus the penalty payment of 10% and late payment interest. However, the rechtbank took the view that, in the absence of appropriate national legislation, it could not certify that judgment as a European Enforcement Order.
- 22 On 3 September 2013, Imtech Marine appealed against that judgment to the referring court. In its appeal, it submits that the judgment to be delivered should be certified as a European Enforcement Order within the meaning of Regulation No 805/2004.
- 23 The referring court states that there is some dispute as to whether Belgian law complies with the requirements laid down in Article 19 of Regulation No 805/2004 and as to the respective tasks of the judge and the registrar with regard to the certification of a judgment as a European Enforcement Order. The shortcomings on the part of the national legislature, it finds, creates a situation of legal uncertainty for litigants. Despite the direct effect of Regulation No 805/2004, the Belgian courts have, in the view of the referring court, been rather reluctant to certify judgments as European Enforcement Orders.
- 24 In particular, the referring court points out that, with regard to the review procedure referred to in Article 19(1) of Regulation No 805/2004, the period for challenging a judgment delivered *in absentia* may, in Belgian law, expire before the debtor has been able to do so.
- 25 In those circumstances the hof van beroep te Antwerpen (Court of Appeal, Antwerp) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) Does the non-application directly of Regulation No 805/2004 constitute a breach of Article 288 TFEU, because:
- (a) the Belgian legislature has not transposed that regulation into Belgian legislation, and
 - (b) 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 a regulation has direct effect, what should be understood by 'review of [a] judgment' in Article 19(1) of Regulation No 805/2004? 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 Regulation No 805/2004 ..., 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 Regulation No 805/2004 ... by providing for opposition in accordance with Article 1047 et seq. of the Belgian Judicial Code and an appeal in accordance with Article 1050 et seq. of that code?
- (3) Does Article 50 of the Belgian Judicial Code, 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 Regulation No 805/2004 ...?

- (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?

- 26 A request for information was sent to the referring court on 7 August 2014, and the referring court replied on 16 October 2014.

The questions referred for a preliminary ruling

The first question

- 27 By its first question, the referring court asks, in essence, whether Article 19 of Regulation No 805/2004, read in the light of Article 288 TFEU, must be interpreted as requiring Member States to establish in their national law a review procedure such as that referred to in Article 19 of that regulation.
- 28 Article 19 of Regulation No 805/2004 provides that a judgment can be certified as a European Enforcement Order only if the debtor is entitled, under the law of the Member State of origin, to apply for a review of the judgment in question. However, according to recital 19 in the preamble to Regulation No 805/2004, that regulation does not imply an obligation for the Member States adapt their national legislation to the minimum procedural standards set out therein, or, therefore, to establish a specific review procedure within the meaning of Article 19.
- 29 The only consequence of the lack of a review procedure is, as Article 19 of Regulation No 805/2004 itself provides, that a judgment cannot be certified as a European Enforcement Order under the conditions referred to in that article.
- 30 In those circumstances — and irrespective of the obligation, under Article 30(1)(a) of Regulation No 805/2004, to notify the Commission of the review procedure, if any, under national law — a Member State which, in accordance with the wording of that regulation, chooses not to adapt its legislation cannot be in breach of Article 288 TFEU.
- 31 Consequently, the answer to the first question is that Article 19 of Regulation No 805/2004, read in the light of Article 288 TFEU, must be interpreted as not requiring Member States to establish in their national law a review procedure such as that referred to in Article 19 of that regulation.

The second and third questions

- 32 By its second and third questions, which should be examined together, the referring court asks, in essence, under what conditions Article 19(1) of Regulation No 805/2004 authorises certification, as a European Enforcement Order, of a judgement delivered *in absentia*.

- 33 Article 19(1) of Regulation No 805/2004 provides that, in the situations referred to subparagraphs (a) and (b) of that provision, a judgment can be certified as a European Enforcement Order only if the debtor is entitled, under the law of the Member State of origin, to apply for a review of the judgment in question.
- 34 The situation referred to in Article 19(1)(a) of Regulation No 805/2004 is that in which the document instituting proceedings or an equivalent document was served on, or notified to, the debtor by one of the methods provided for in Article 14 of that regulation, but service was not effected in sufficient time to enable the debtor to arrange for his defence, without any fault on his part.
- 35 The situation referred to in Article 19(1)(b) of Regulation No 805/2004 is that 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. That situation may also cover a case in which the debtor is still unable to object to the claim at the stage in which the period for challenging the judgment in question starts to run.
- 36 Although the Member States may have put in place, in their national law, a procedure for review of judgments which specifically covers the situations referred to in Article 19(1)(a) and (b) of Regulation No 805/2004, it is also possible that the procedures which existed in a Member State before that regulation entered into force may allow a debtor to apply for such a review. Without prejudice to the obligation for the Member States, in accordance with Article 30(1)(a) of that regulation, to notify the Commission of the procedures in question, the binding nature of that regulation in its entirety under Article 288 TFEU entails the obligation for the court hearing an application for certification to examine whether the condition laid down in that regard in Article 19(1) of Regulation No 805/2004 is fulfilled, that is to say, whether national law effectively and without exception allows the debtor to seek a review of the judgment in question in the situations referred to in that provision.
- 37 As the Advocate General noted in point 24 of his Opinion, since the review procedure is not governed by EU law and Regulation No 805/2004 expressly refers to the legislation of the Member State of origin, the Member States may opt for various types of remedies, on condition that they adequately respect the debtor's rights of defence and the right to a fair trial, referred to in recitals 10 and 11 in the preamble to Regulation No 805/2004.
- 38 In order to respect the debtor's rights of defence and the right to a fair trial guaranteed by the second paragraph of Article 47 of the Charter, it must be required that, in order to constitute a review procedure for the purpose of Article 19(1) of Regulation No 805/2004, interpreted in the light of recital 14 in the preamble thereto, the remedies in question must allow, first, a full review of the decision, in fact and in law.
- 39 Secondly, those remedies must allow a debtor who invokes the existence of one of the situations referred to in Article 19(1)(a) and (b) of that regulation to request such a review outside the ordinary periods laid down by national law for bringing an opposition or an appeal against the judgment. That is the case, *inter alia*, where the national law provides the possibility to extend those periods in such a way that they start to run again, at the earliest, as from the day on which the debtor was actually in a position to become aware of the content of the judgment or to challenge it.
- 40 In order to satisfy, specifically, the requirements of Article 19(1)(b) of Regulation No 805/2004, the national law must allow such an extension of the periods for challenging the judgment in question both in the event of *force majeure* and in that of extraordinary circumstances beyond the control of the debtor, without any fault on his part, since that provision draws a distinction between those two concepts.

- 41 The information provided by the referring court indicates that the Belgian legal system primarily provides two means of challenging a judgment in a case such as that in the main proceedings, namely, opposition, specifically intended to contest judgments delivered *in absentia* (Article 1047 et seq. of the Judicial Code), and appeal (Article 1050 et seq. of the Judicial Code). It is for the referring court, which is alone competent to interpret those provision of national law, to draw the inferences from the interpretation of Article 19(1) of Regulation No 805/2004 set out in paragraphs 38 to 40 of the present judgment and to determine whether the national legislation meets the minimum procedural requirements laid down in that provision. If so, and in so far as all the other relevant requirements are satisfied, that court should certify the judgment in question.
- 42 In the light of the foregoing, the answer to the second and third questions referred is that Article 19(1) of Regulation No 805/2004 must be interpreted as meaning that, in order to certify a judgment delivered *in absentia* as a European Enforcement Order, the court ruling on such an application must satisfy itself that its national law effectively and without exception allows for a full review, in law and in fact, of such a judgment in the two situations referred to in that provision and that it allows the periods for challenging a judgment on an uncontested claim to be extended, not only in the event of *force majeure*, but also where other extraordinary circumstances beyond the debtor's control prevented him from contesting the claim in question.

Questions 4 and 5

- 43 By its fourth and fifth questions, which should be examined together, the referring court asks, in essence, 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, and must be requested in the document initiating proceedings.
- 44 Article 6(1) of Regulation No 805/2004 provides that the application for certification, as a European Enforcement Order, of a judgment on an uncontested claim must be addressed to the court of origin, but does not specify who, within that court, is competent to carry out that certification.
- 45 That being said, in view of the scheme of Regulation No 805/2004, it is possible to distinguish between the certification, as such, of a judgment as a European Enforcement Order, and the formal act of issuing the certificate, referred to in Article 9 of that regulation. As the Advocate General noted in point 52 of his Opinion, that formal act, after the decision regarding certification as a European Enforcement Order has been taken, is not necessarily an act that has to be carried out by the judge, and may therefore be left to the registrar.
- 46 By contrast, the actual certification itself requires a judicial examination of the conditions laid down by Regulation No 805/2004.
- 47 The legal qualifications of a judge are essential to the correct assessment — in a context of uncertainty as to the observance of the minimum requirements intended to safeguard the debtor's rights of defence and the right to a fair trial — of the remedies under national law in accordance with paragraphs 38 to 40 of the present judgment. Moreover, only a court or tribunal within the meaning of Article 267 TFEU is capable of ensuring, by means of a reference for a preliminary ruling to the Court of Justice, that the minimum requirements laid down by Regulation No 805/2004 are interpreted and applied uniformly throughout the European Union.
- 48 As to whether the certification of a judgment as a European Enforcement Order must be requested in the document initiating proceedings, Article 6 of Regulation No 805/2004 provides that a judgment on an uncontested claim delivered in a Member State is, upon application at any time to the court of origin, to be certified as a European Enforcement Order.

- 49 In addition, as the Advocate General stated in point 56 of his Opinion, it would not make sense to require that the application for certification must be made in all cases in the document initiating proceedings, since it is not yet known at that stage 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.
- 50 In the light of the foregoing, the answer to the fourth and fifth questions referred is that Article 6 of Regulation No 805/2004 must be interpreted as meaning that the certification of a judgment as a European Enforcement Order, which may be applied for at any time, can be carried out only by a judge.

Costs

- 51 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 (Fourth Chamber) hereby rules:

1. **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, read in the light of Article 288 TFEU, must be interpreted as not requiring Member States to establish in their national law a review procedure such as that referred to in Article 19 of that regulation.**
2. **Article 19(1) of Regulation No 805/2004 must be interpreted as meaning that, in order to certify a judgment delivered *in absentia* as a European Enforcement Order, the court ruling on such an application must satisfy itself that its national law effectively and without exception allows for a full review, in law and in fact, of such a judgment in the two situations referred to in that provision and that it allows the periods for challenging a judgment on an uncontested claim to be extended, not only in the event of *force majeure*, but also where other extraordinary circumstances beyond the debtor's control prevented him from contesting the claim in question.**
3. **Article 6 of Regulation No 805/2004 must be interpreted as meaning that the certification of a judgment as a European Enforcement Order, which may be applied for at any time, can be carried out only by a judge.**

[Signatures]