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

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 61(c) and the second indent of Article 67(5) thereof,

Having regard to the proposal from the Commission[(1)],

Having regard to the Opinion of the European Economic and Social Committee[(2)],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(3)],

Whereas:

(1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is ensured. To this end, the Community is to adopt, inter alia, measures in the field of judicial cooperation in civil matters that are necessary for the proper functioning of the internal market.

(2) On 3 December 1998, the Council adopted an Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice[(4)] (the Vienna Action Plan).

(3) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judicial decisions as the cornerstone for the creation of a genuine judicial area.

(4) On 30 November 2000, the Council adopted a programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters[(5)]. This programme includes in its first stage the abolition of exequatur, that is to say, the creation of a European Enforcement Order for uncontested claims.

(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.

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(7) This Regulation should apply to judgments, court settlements and authentic instruments on uncontested claims and to decisions delivered following challenges to judgments, court settlements and authentic instruments certified as European Enforcement Orders.

(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. In the United Kingdom, for example, the registration of a certified foreign judgment will therefore follow the same rules as the registration of a judgment from another part of the United Kingdom and is not to imply a review as to the substance of the foreign judgment. 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[(6)], in that there is no need for approval by the judiciary in a second Member State with the delays and expenses that this entails.

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

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

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

(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

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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.

(15) Personal service on certain persons other than the debtor himself pursuant to Article 14(1)(a) and (b) should be understood to meet the requirements of those provisions only if those persons actually accepted/received the document in question.

(16) Article 15 should apply to situations where the debtor cannot represent himself in court, as in the case of a legal person, and where a person to represent him is determined by law as well as situations where the debtor has authorised another person, in particular a lawyer, to represent him in the specific court proceedings at issue.

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

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

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

(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.

(21) When a document has to be sent from one Member State to another for service there, this Regulation and in particular the rules on service set out herein should apply together with Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters[(7)], and in particular Article 14 thereof in conjunction with Member States declarations made under Article 23 thereof.

(22) Since the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(23) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(8)].

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(24) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Regulation.

(25) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation, and is therefore not bound by it or subject to its application.

(26) Pursuant to the second indent of Article 67(5) of the Treaty, the codecision procedure is applicable from 1 February 2003 for the measures laid down in this Regulation,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

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.

Article 2

Scope

1 This Regulation shall apply in civil and commercial matters, whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority (‘acta iure imperii’).

2 This Regulation shall not apply to:

a the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;

b bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;

c social security;

d arbitration.

3 In this Regulation, the term ‘Member State’ shall mean Member States with the exception of Denmark.

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Article 3

Enforcement titles to be certified as a European Enforcement Order

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.

2 This Regulation shall also apply to decisions delivered following challenges to judgments, court settlements or authentic instruments certified as European Enforcement Orders.

Article 4

Definitions

For the purposes of this Regulation, the following definitions shall apply:

1. ‘judgment’: any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court;

2. ‘claim’: a claim for payment of a specific sum of money that has fallen due or for which the due date is indicated in the judgment, court settlement or authentic instrument;

3. ‘authentic instrument’:

(a) a document which has been formally drawn up or registered as an authentic instrument, and the authenticity of which:

(i) relates to the signature and the content of the instrument; and

(ii) has been established by a public authority or other authority empowered for that purpose by the Member State in which it originates;

or

b) an arrangement relating to maintenance obligations concluded with administrative authorities or authenticated by them;