ECJ Rules on Scope of European Enforcement Order

On December 5, 2013, the Court of Justice of the European Union delivered its judgment in Vapenik v. Thurner (Case 508/12).

The case was concerned with a loan contract concluded between two persons not engaged in commercial or professional activities. The issue for the Court was whether a claim based on this contract was eligible to benefit from Regulation 805/2004 on the European Enforcement Order for uncontested claims.

More specifically, the issue was whether such contract fell within the scope of Article 6(1)(d).

> ***Article 6.*** *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*
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> *(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*
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> *(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*
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> *– 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.*

The Court ruled that the Regulation does not apply. It relied on the language of Article 6, but also, and to a much larger extent, on Regulation 44/2001.

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.

(…)

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.

Final ruling:

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.