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Judgment of the Court in Case C-393/21 | Lufthansa Technik AERO Alzey

The Court clarifies the concept of ‘exceptional circumstances’ permitting the competent judicial authority to stay the enforcement of a judgment certified as a European Enforcement Order

The national court of the Member State of enforcement must ensure that the proceedings are stayed when the enforceability of a judgment certified as a European Enforcement Order has been suspended in the Member State of origin

On 14 June 2019, the Amtsgericht Hünfeld (Local Court, Hünfeld, Germany) served on Arik Air Limited an order for payment with a view to recovering a debt of € 2 292 993.32 owed to Lufthansa Technik AERO Alzey GmbH (‘Lufthansa’). Then, on 24 October 2019, it issued a European Enforcement Order and, on 2 December 2019, a European Enforcement Order certificate.

A bailiff operating in Lithuania was instructed by Lufthansa to carry out the European Enforcement Order in respect of Arik Air.

The latter company made an application before the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main, Germany) ¹ for the withdrawal of the European Enforcement Order and the termination of the compulsory recovery of the debt. In its view, the procedural documents had been served improperly by the Local Court, Hünfeld, which had led to a failure to comply with the time limit available to it for objecting to the order for payment at issue.

In Lithuania, Arik Air also requested the bailiff to have the enforcement proceedings stayed until the Regional Court, Frankfurt am Main, has given a final ruling, which the bailiff refused to do, taking the view that the national legislation did not allow for such a stay in those circumstances.

By order of April 2020, the Regional Court, Frankfurt am Main, considering, inter alia, that Arik Air had failed to demonstrate that the European Enforcement Order had been issued improperly, made the suspension of the compulsory execution of the order concerned conditional on the provision of a security of € 2 000 000.

By order adopted in June 2020, the Kauno apylinkės teismas (District Court, Kaunas, Lithuania) dismissed the action brought by Arik Air against the bailiff’s decision refusing to stay those enforcement proceedings.

On appeal, the Kauno apygardos teismas (Regional Court, Kaunas, Lithuania) set aside that order, staying the enforcement proceedings at issue pending the final ruling of the German court on Arik Air’s claims. That court took the view that, given the risk of disproportionate harm liable to arise from the enforcement proceedings against Arik Air, the bringing of an action against the European Enforcement Order certificate before the court of the Member State of origin was a sufficient basis for staying those proceedings. It also found that there was no reason to

¹ That application was made on the basis of Article 10 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).

consider that it was for Regional Court, Frankfurt am Main to decide on the merits of the request for the enforcement measures to be stayed.

Lufthansa then brought an appeal on a point of law before the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania) against that decision.

Seised by that court, the Court of Justice clarifies the meaning and scope of the concept of 'exceptional circumstances' permitting the competent court or authority in the Member State of enforcement, within the meaning of Article 23 of Regulation No 805/2004,² to stay the enforcement of a judgment certified as a European Enforcement Order in the Member State of origin.

Findings of the Court

In the first place, the Court states that the concept of 'exceptional circumstances' contained in Article 23(c) of Regulation No 805/2004 covers a situation in which continued enforcement proceedings in respect of a judgment certified as a European Enforcement Order, where the debtor has challenged that judgment or has brought an application for the rectification or withdrawal of the European Enforcement Order certificate in the Member State of origin, would expose the debtor to a real risk of particularly serious harm. The reparation of such harm would prove impossible or extremely difficult if that judgment were to be annulled or the European Enforcement Order certificate were to be rectified or withdrawn. That concept does not refer to circumstances connected with the judicial proceedings brought in the Member State of origin against the judgment certified as a European Enforcement Order or against the European Enforcement Order certificate.

In order to reach that conclusion, the Court observes, first, that the concept of 'exceptional circumstances' is an autonomous concept of EU law. In that regard, it must be inferred from the reference by the EU legislature to that concept that it did not intend to limit the scope of that provision solely to situations of *force majeure*, which, as a general rule, follow from unforeseeable and unavoidable events arising from a cause external to the debtor. Consequently, the power to stay the enforcement proceedings in respect of a judgment certified as a European Enforcement Order must be considered to be reserved for cases in which continued enforcement would expose the debtor to a real risk of particularly serious harm, the reparation of which would prove to be impossible or extremely difficult if the challenge or the application brought by the debtor in the Member State of origin were to be successful. The initiation of such court proceedings by the debtor is, moreover, a prerequisite for the competent court or authority of the Member State of enforcement to examine whether there are exceptional circumstances.

In addition, the division of jurisdiction between the courts and authorities of the Member State of origin and those of the Member State of enforcement under Regulation No 805/2004 means that the latter have no jurisdiction to examine, in the context of a request to have the enforcement proceedings stayed, a judgment on an uncontested claim given in the Member State of origin or the certification thereof as a European Enforcement Order. Thus, the courts or authorities of the Member State of enforcement have limited discretion as regards the assessment of the circumstances in the light of which a request for a stay of enforcement may be granted. When examining such a request, those courts or authorities must limit themselves, in order to establish whether there are exceptional circumstances within the meaning of that provision, to weighing up the creditor's interest in ensuring the immediate enforcement of the judgment on his or her claim and the debtor's interest in avoiding harm that is particularly

² Under that provision, entitled 'Stay or limitation of enforcement':

Where the debtor has

- challenged a judgment certified as a European Enforcement Order, including an application for review within the meaning of Article 19, or
- applied for the rectification or withdrawal of a European Enforcement Order certificate in accordance with Article 10,

the competent court or authority in the Member State of enforcement may, upon application by the debtor:

- (a) limit the enforcement proceedings to protective measures; or
- (b) make enforcement conditional on the provision of such security as it shall determine; or
- (c) under exceptional circumstances, stay the enforcement proceedings.'

serious and impossible to remedy or difficult to remedy.

In the second place, the Court specifies that Article 23 of Regulation No 805/2004 permits the simultaneous application of the measures limiting the enforcement proceedings and requiring the provision of security laid down in subparagraphs (a) and (b),³ but that it does not permit the simultaneous application of either one of those two measures and that staying the enforcement proceedings under subparagraph (c).

In the third and last place, the Court rules that, where the enforceability of a judgment certified as a European Enforcement Order has been suspended in the Member State of origin and the certificate referred to in Article 6(2) of Regulation No 805/2004 has been produced before the court of the Member State of enforcement, that court is required to stay, on the basis of that judgment, the enforcement proceedings initiated in the latter State.⁴

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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³ Those measures seek to limit the enforcement proceedings to protective measures (a) and to make enforcement conditional on the provision of such security as determined by the competent court or authority in the Member State of enforcement (b) respectively.

⁴ On that issue, the Court rules on the basis of Article 6(2) of Regulation No 805/2004, read in conjunction with Article 11.

Article 6 of Regulation No 805/2004, entitled 'Requirements for certification as a European Enforcement Order', provides, in paragraph 2 :

'Where a judgment certified as a European Enforcement Order has ceased to be enforceable or its enforceability has been suspended or limited, a certificate indicating the lack or limitation of enforceability shall, upon application at any time to the court of origin, be issued, using the standard form in Annex IV.'

Article 11 of that regulation, entitled 'Effects of the European Enforcement Order certificate', states, for its part: 'The European Enforcement Order certificate shall take effect only within the limits of the enforceability of the judgment.'