Civil judicial cooperation: European enforcement order for uncontested claims

2002/0090(COD) - 21/04/2004 - Final act

PURPOSE : to create a European Enforcement Order for uncontested claims. LEGISLATIVE ACT : Regulation 805/2004/EC of the European Parliament and of the Council creating a European Enforcement Order for uncontested claims. CONTENT : This Regulation creates 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. The Regulation applies in civil and commercial matters, whatever the nature of the court or tribunal, with certain exceptions. These exceptions include rights in property arising out of a matrimonial relationship, wills and succession. The main points are as follows: - the concept of "uncontested claims" will 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; - the absence of objections from the debtor 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; - a judgement which has been certified as a European Enforcement Order in the Member State of origin will be recognised and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition. A judgment that has been certified as a European Enforcement Order by the court of origin will, 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 will continue to be governed by national law. This has advantages over the exequatur procedure in that there is no need for approval by the judiciary in a second Member State with the delays and expenses that this entails; - minimum standards are 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; - due to differences between the Member States as regards the rules of civil procedure and especially those governing the service of documents, this Regulation lays 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 will be considered sufficient for the certification of a judgment as a European Enforcement Order; - all the methods of service listed in the Regulation 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 will 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 the Regulation in those exceptional cases where, in spite of compliance with Article 14, the document has not reached the addressee; - the courts competent for scrutinising full compliance with the minimum procedural standards will, if satisfied, issue a standardised European Enforcement Order certificate that makes that scrutiny and its result transparent; - 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; - 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; - application for certification as a European Enforcement Order for uncontested claims will be optional for the creditor, who may instead choose the system of recognition and enforcement under Regulation 44/2001/EC or other Community instruments; - 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 will apply together with Council Regulation 1348/2000/EC; - the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Regulation; - Denmark does not take part in the adoption of this Regulation, and is therefore not bound by it or subject to its application. ENTRY INTO FORCE : This Regulation shall enter into force on 21 January 2004. It shall apply from 21 October 2005, with the exception of Articles 30, 31 and 32, which shall apply from 21 January 2005.