

EUROPEAN UNION / JUDGMENT

WT v MR, YF, EZ

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Provisional text

OPINION OF ADVOCATE GENERAL

CAMPOS SÁNCHEZ-BORDONA

delivered on 1 October 2026 (1)

Case C - 697/25 [Appenzell] (i)

WT

v

MR,

YF,

EZ

(Request for a preliminary ruling from the Oberster Gerichtshof (Supreme Court, Austria))

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters – Lugano II Convention – Enforcement proceedings concerning the recovery of an unpaid debt – Administrative body for debt recovery – Concept of judgment – Concept of court)

1. In Switzerland, responsibility for the enforcement of debts aimed at obtaining the payment of a cash sum is entrusted to an administrative authority, the Betreibungs- und Konkursamt (Debt recovery and insolvency authority). (2)
2. That competence is exercised, at the instance of the creditor, in a procedure culminating in a payment order (Zahlungsbefehl) (3) being made without an examination of the substance of the case. If the debtor does not object within the specified time limit, that payment order will open the way to the enforcement stage proper.
3. A dispute has been brought before the Oberster Gerichtshof (Supreme Court, Austria) concerning an order for payment, issued in Switzerland and produced in Austria for recognition and enforcement. The question it has referred for a preliminary ruling is confined to the possibility of regarding such an order for payment as a ‘judgment given by a court or tribunal’, within the meaning of Article 32 of the Lugano II Convention. (4)

I. Legislative framework

A. Lugano II Convention

4. In accordance with Article 1(1):

‘This Convention shall apply in civil and commercial matters whatever the nature of the court or tribunal. ...’

5. Article 32, which opens Title III, concerning ‘Recognition and enforcement’, reads:

‘For the purposes of this Convention, “judgment” means any judgment given by a court or tribunal of a State bound by this Convention, 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.’

6. Article 62 provides:

‘For the purposes of this Convention, the expression “court” shall include any authorities designated by a State bound by this Convention as having jurisdiction in the matters falling within the scope of this Convention.’

7. The content of the Convention is glossed in the explanatory report drawn up by Professor Fausto Pocar. (5)

B. Swiss law. Federal law on debt recovery and insolvency (6)

8. In accordance with Article 38:

‘1. The debt shall be recovered by way of enforcement aimed at obtaining the payment of a cash sum ...

2. The enforcement procedure begins with an order for payment being served on the debtor. It continues with the seizure of assets, the realisation of pledged property or insolvency. ...’

9. In accordance with Article 67(1):

‘An application for enforcement shall be made to the authority in writing or orally. It shall include:

1. the name and address of the creditor ...;
2. the name and address of the debtor ...;
3. the amount, in Swiss currency, of the claim ...; whether the claim bears interest, the rate and the day from which that interest is to accrue;
4. the title and date; in the absence of title, the cause of the obligation.’

10. Article 69 states:

‘1. Upon receipt of the application for enforcement, the authority shall draw up the order for payment.

2. That document shall contain:

1. the information prescribed for the application for enforcement;
2. the summons to pay, within 20 days, the amount of the claim and the costs ...;
3. notice that the debtor must lodge an objection within 10 days of its service if he or she intends to contest all or part of the claim or the [creditor’s] right to pursue enforcement proceedings;
4. warning that, if the debtor fails to comply with the order for payment or to lodge an objection, enforcement shall follow its course.’

11. Article 71(1) states:

‘An order for payment shall be served on the debtor upon receipt of the application for enforcement.’

12. Article 74(1) reads:

‘A debtor being pursued who seeks to lodge an objection must, orally or in writing, make an immediate declaration to the person issuing the order for payment, or to the authority, within 10 days of service of the order for payment.’

13. Article 78(1) states that ‘the objection shall have the effect of suspending the debt enforcement proceedings’.

14. Article 79 provides:

‘Where an objection has been lodged in a debt enforcement procedure, the creditor shall pursue his or her claim in declaratory civil proceedings or administrative proceedings. The creditor may restart the enforcement proceedings only on the basis of an enforceable decision which expressly dismisses the objection.’

15. Article 88(1) reads:

‘If enforcement proceedings have not been suspended by means of an objection or judicial decision, the creditor may submit a request for the continuation of enforcement no earlier than 20 days after service of the order for payment. ...’

II. Facts, dispute and question referred for a preliminary ruling

16. On 4 September 2024, the Debt Recovery Authority of Appenzell (Switzerland) issued an order for payment, on behalf of the applicant lawyers, requiring the debtor to pay them, within 20 days, certain unpaid fees (plus the costs of enforcement).

17. The debtor did not lodge an objection within the time limit provided for in Article 74 of the LP.
18. The creditors produced the order for payment before the Austrian courts, in order to have it recognised and enforced.
19. The court of first instance granted an order for enforcement and authorised the creditors to enforce claims and rights on the basis of the order for payment.
20. The court of appeal dismissed the appeal brought against the decision at first instance. It held that the order for payment constituted a 'judgment given by a court or tribunal' for the purposes of Article 32 of the Lugano II Convention.
21. The judgment on appeal is the subject of a further appeal before the Oberster Gerichtshof (Supreme Court), which has referred the following question to the Court of Justice for a preliminary ruling:

'Must an order for payment from a Swiss debt enforcement and insolvency [body] pursuant to Article 69 of [the LP] – which was issued not on the basis of an enforceable order previously obtained by the creditor but in the context of "[recovery] without an enforceable instrument" – be regarded as a judgment given by a court or tribunal within the meaning of Article 32 of the Lugano [II] Convention?'

III. Procedure before the Court of Justice

22. The request for a preliminary ruling was received at the Court on 4 November 2025.
23. The creditors, the debtor, the Swiss Government and the European Commission have submitted written observations.
24. The Court did not consider it necessary to hold a hearing.

IV. Assessment

A. Notion of 'court or tribunal' in the Lugano II Convention

25. The referring court wishes to know whether a Swiss order for payment, issued in the course of a procedure for recovery 'without an enforceable instrument' and against which no objection was lodged, may be regarded as a 'judgment', in accordance with Article 32 of the Lugano II Convention. (7)
26. Article 32 of the Lugano II Convention defines what is meant by 'judgment' for the purposes of the application of the rules laid down in Title III of that convention. According to the wording of that article, 'judgment' means 'any judgment given by a court or tribunal of a State bound by this Convention, whatever the judgment may be called ...' (emphasis added).

27. That definition is reproduced in a substantially identical manner in all the instruments of judicial cooperation in civil matters regulating the cross-border recognition and enforcement of judgments. (8) What changes from one instrument to another is the notion of ‘court or tribunal’, which expressly forms part of the definition of ‘judgment’. (9)
28. The two notions (judgment and court or tribunal) are closely interconnected, to the extent that the definition of one has a direct bearing on the other. Therefore, while, in the abstract, it would be possible to carry out an analysis of the decisions in themselves, decoupled from their origin (judicial or otherwise), that is not possible in order to interpret Article 32 of the Lugano II Convention.
29. By defining the notion of ‘court or tribunal’ in the area of judicial cooperation in civil matters (and, derivatively, the notion of a judgment), it is possible to identify three approaches, or legislative techniques, according to the way in which each instrument authorises the use of non-judicial means. (10)
30. The first approach, taken in Regulation (EU) No 1215/2012 (11) and in the Lugano I Convention, is based on an (implicit) institutional conception of ‘court or tribunal’, (12) accompanied by an (explicit) clause allowing that status to be accessed by a limited and predetermined number of authorities other than ‘judges’.
31. In order to interpret provisions reflecting that first approach, the Court of Justice had to determine whether a decision given not by a ‘court or tribunal in an institutional sense’, but rather by non-judicial bodies not mentioned in the access clause of the Brussels I bis Regulation, could be regarded as a ‘judgment’. (13)
32. In that regard, the Court specified that:
- ‘The concept of “court” for the purposes of [the Brussels I bis Regulation] must be interpreted as taking account of the need to enable the national courts of the Member States to identify judgments delivered by other Member States’ courts and to proceed, with the expeditiousness required by that regulation, in enforcing those judgments.’ (14)
 - ‘The decision must emanate from a judicial body ... deciding on its own authority on the issues between the parties.’ (15)
 - ‘Compliance with the principle of mutual trust in the administration of justice in the Member States ... requires, in particular, that judgments the enforcement of which is sought in another Member State have been delivered in court proceedings offering guarantees of independence and impartiality and in compliance with the principle of audi alteram partem .’ (16)
33. The second approach recognises the possibility of an ‘administrative authority’ (17) or a ‘legal professional’ (18) being regarded as a ‘judicial authority’, provided that:
- ‘[they] exercise judicial functions or act pursuant to a delegation of power by a judicial authority or act under the control of a judicial authority’; (19) and

– they meet certain minimum standards in relation both to the authorities themselves (guarantees of impartiality and respect for the right of defence) and to their decisions (which must be able to be reviewed by a judicial authority and have a similar force and effect to a decision of a judicial authority on the same matter).

34. The third approach, taken in Article 62 of the Lugano II Convention, (20) employs an even broader definition of ‘court’, which ‘[includes] any authorities designated by a State [party to the Convention] as having jurisdiction in the matters falling within the scope of this Convention’. Those authorities are not required, at least expressly, to exercise ‘judicial functions’, nor to comply with minimum standards with regard to their decisions.

35. Understood from that perspective, the question referred is seeking to clarify whether, in view of the ‘broad’ and ‘open’ definition of the notion of ‘court’ in the Lugano II Convention, for a ‘judgment given by a court or tribunal’ to exist:

– it is sufficient for the decision to have been given by a body, whatever its nature, on which national law confers jurisdiction in the matters falling within the scope of that convention;

– or, conversely, it is necessary for such a body, in exercising that jurisdiction, to perform a judicial function.

36. I can say at this stage that, in my opinion, the correct interpretation of Article 62 of the Lugano II Convention is the second of the two that I have just set out.

37. Indeed, the exercise of a ‘judicial function’, as well as compliance with minimum requirements relating to independence and respect for the principle of audi alteram partem , are (implicit) requirements for a ‘decision’ to be able to circulate under an instrument regulating the cross-border recognition and enforcement of judgments.

38. There are various arguments in favour of that view. I shall refer, in particular, to the judgment in Schlömp , (21) to the internal logic of the Lugano II Convention and to its systematic interpretation.

B. The judgment in Schlömp

39. Unless I am mistaken, the Court of Justice has ruled only once (the judgment in Schlömp) on the interpretation of the notion of ‘court’ for the purposes of the Lugano II Convention.

40. In the case settled by that judgment, it was a question of determining whether a conciliation authority under Swiss law could be regarded as the ‘court first seised’, for the purposes of the rule relating to lis pendens contained in Article 27 of the Lugano II Convention.

41. While the case did not concern the interpretation of the notion of ‘court’ for the purposes of identifying a judgment (in accordance with Article 32 of the Lugano II Convention), there is a parallelism between the rules relating to *lis pendens* and the existence of a ‘judgment’ capable of recognition and enforcement in accordance with Title III of the Lugano II Convention.
42. The Lugano II Convention is a dual convention, which aims to bring about the recognition and enforcement of judgments. (22) The rules relating to the exercise of jurisdiction or to its coordination (such as the provisions on *lis pendens*) are conceived to ensure that that objective is achieved. It would not be reasonable to require the court of the State in which recognition is sought to decline jurisdiction in favour of the court first seized, if the latter did not have the authority to give a ‘judgment’; that is to say, a judicial decision capable of recognition and enforcement in the second State. (23)
43. The definition of ‘court’ implied by the judgment in *Schlömp* is, then, relevant in order to assess the scope of that same concept in the context of Article 32 of the Lugano II Convention.
44. By referring to Article 62 of the Lugano II Convention, (24) the judgment in *Schlömp* naturally took account of the access clause it contained (in accordance with which, Swiss conciliation authorities, under national law, had ‘jurisdiction in the matters falling within the scope of [the Lugano II Convention]’).
45. However, if that were the only factor necessary, or if it were sufficient, for an authority to be treated as a ‘court’, the judgment in *Schlömp* would have been able to limit itself to that finding. It did not do so, but rather, going beyond mere formal considerations, examined the functions of the Swiss authorities and the guarantees surrounding their actions.
46. In particular, the Court attributed importance to the fact that those authorities:
 - Acted in the context of a ‘conciliation procedure [that was] laid down by law, [was] subject to the principle of *audi alteram partem* and [was], in principle, obligatory ... That procedure [could have given] rise either to a binding judgment ... a draft judgment which may become final in the absence of challenge ... the signing of a conciliation agreement, or the issue of an authorisation to institute proceedings.’ (25)
 - Were ‘subject to the guarantees ... relating to the disqualification of magistrates and ... [performed] their duties with complete independence.’ (26)
47. From those observations, the Court deduced that ‘in the performance of the duties conferred on them ... the [Swiss] arbitration authorities may be treated as “courts” within the meaning of Article 62 of the Lugano II Convention.’
48. Several of the factors focused on by the Court in the judgment in *Schlömp* are those which other instruments (in particular, Regulation No 4/2009) (27) consider essential for the purposes of identifying a judgment.

49. That is the case as regards the impartiality of the authority, both internally and externally; the inter partes nature of the proceedings; the authority to give decisions having effects equivalent to those of a judgment; and the existence of an inherent legal authority allowing it give binding decisions.
50. In short, if my reading of the judgment in Schlömp is correct, in that judgment the notion of a court is linked to the exercise of ‘judicial functions’ and a minimum standard of procedural guarantees.

C. Internal logic of the Lugano II Convention and systematic interpretation

51. The Pocar Report confirms the interpretation of Article 32 of the Lugano II Convention that I have proposed. It notes that: ‘... the definition covers decisions taken by a court or tribunal, or a body or person acting in a judicial role , irrespective of whether the person taking the decision is formally described as a “judge” ...’ (28)
52. The advisability of interpreting the Lugano II Convention uniformly and in a manner consistent with the equivalent rules of the Brussels Regulations – a principle applied by the Court of Justice (29) – leads to the same result.
53. As I have already noted, the definition of ‘judgment’ has identical wording in the Brussels (I and I bis) Regulations and in the Lugano Conventions. What changes is the notion of ‘court or tribunal’, since the Brussels Regulations are based on a less open approach to the use of non-judicial means in civil matters (30) than that of the Lugano II Convention.
54. I am not attempting to minimise those differences. Nevertheless, I believe the requirement that a ‘court or tribunal’ should exercise a ‘judicial function’ and meet minimum standards of independence and respect for the principle of audi alteram partem remains unaltered in both regimes.
55. That may be inferred, in my opinion, from the comparison between the constituent elements of a ‘court’ for the purposes of the Lugano II Convention, as identified in the judgment in Schlömp , the (implicit) elements implied by the case-law relating to the concept of ‘court’ under the Brussels regime and the (explicit) elements set out in Article 2(2) of Regulation No 4/2009.
56. That way, a harmonised interpretation of the three instruments regulating judicial cooperation in civil and commercial matters (including maintenance obligations) in relations between the European Union and the States that are members of the European Free Trade Association (EFTA) is ensured.
57. If, as I have said, the solution that I am proposing ensures the consistent interpretation of the different instruments, the need for that is not, however, quite so pressing in the case of others that regulate matters falling outside the scope of the Lugano II Convention. I am referring, in particular to the regulations concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility,

(31) which contain a definition of ‘court’ that is substantially identical to that contained in Article 62 of the Lugano II Convention.

58. In relation to those other regulations, the Court of Justice has interpreted the notion of ‘court’ in terms (32) which (at first glance) would seem to decouple it from the exercise of judicial functions. The judgment in *Senatsverwaltung für Inneres und Sport* , in which that interpretation is given, is not, in my opinion, incompatible with what has been set out so far about the notion at issue.
59. In that judgment, it was a question of determining whether the dissolution of a marriage on the basis of an agreement between the spouses and pronounced by a civil registrar of another Member State could be recognised as a ‘divorce’.
60. In that specific context, the Court held that ‘any public authority called upon to pronounce a “judgment”, within the meaning of Article 2(4) of [Regulation 2201/2003], must retain control over the grant of the divorce , which means, in the context of divorces by mutual consent, that it examines the conditions of the divorce in the light of national law and the actual existence and validity of the spouses’ consent to divorce. (33)
61. However, that is only the specific application, in the area of marriage, of the general solution established in civil and commercial matters by the judgment in *Solo Kleinmotoren* . The Court itself recognises that fact. (34)
62. It is true that, in the judgment in *Senatsverwaltung für Inneres und Sport* , the Court employed a very generous interpretation of ‘substantive examination’, as the distinctive feature of a ‘judgment’, which cannot be fully reconciled with the judgment in *WB* . (35) That fact does not, however, alter the fact that the requirement for independent control (that is, for inherent decision-making authority as to the substance of the case) constitutes an essential feature of the judicial function. (36)
63. It is equally true that, in the judgment in *Senatsverwaltung für Inneres und Sport* , the Court did not mention specific requirements relating to independence, nor the need for a procedure of an *inter partes* nature. That absence is explained by the particular context of that case. (37) A unilateral divorce, pronounced without one of the spouses being duly heard and by an authority the independence of which was, at best, questionable, could hardly have been regarded as a ‘judgment’ by the Court. (38)
64. To sum up, a constituent element of the notion of ‘judgment’, common to all of the instruments of EU law regulating the recognition and enforcement of judgments, including the Lugano II Convention, is that the ‘court’ giving it should exercise a ‘judicial function’. That implies that it must be vested with inherent decision-making powers and meet certain minimum standards relating to independence and respect for the principle of *audi alteram partem* .

D. Swiss debt recovery procedure

65. The Oberster Gerichtshof (Supreme Court) starts from the following premises:
- The decisions issued by the (Swiss) Debt Recovery Authority could, in principle, satisfy the requirements of Article 62 of the Lugano II Convention, even if that authority ‘... is not considered to be a court in the traditional sense, but rather a “body” or administrative authority’.
 - That is the case, because Article 62 of the Lugano II Convention ‘... is based on a functional approach whereby an administrative authority may be regarded as a court on the basis of the functions it performs.’ (39)
 - However, an analysis of the type of functions performed by (Swiss) debt recovery authorities ‘undermines the case for [regarding them] as ‘courts’ within the meaning of Article 32 of the Lugano II Convention’, owing to the fact that ‘they lack jurisdiction to examine the substantive basis of the claim and, in the event that the order for payment is challenged by means of the debtor lodging an objection, the creditor has to bring a claim before a court’. (40)
66. Working on those premises and leaving it for the referring court to make the findings that are within its jurisdiction, the Court of Justice is able to provide it with useful guidance in answer to its questions.
67. That guidance will make it possible to clarify whether, by issuing an order for payment such as that at issue here, the Debt Recovery Authority performs a judicial function and satisfies the other requirements set out in the judgment in Schlömp .
68. According to the information appearing in the record of the case, in Switzerland, the debt recovery procedure forms part of the enforcement process and consists of two stages: (41)
- The initiation stage (Article 69 et seq. of the LP), which allows the enforceability of the claim to be clarified; the existence of the claim, from the point of view of substantive law, may not yet be established.
 - The subsequent enforcement proper (Article 89 et seq. of the LP), in which the debtors assets are liquidated in order to satisfy the claims of the creditors.
69. At the first stage, the creditor makes a unilateral application to the Debt Recovery Authority. It is not necessary for the creditor to have an instrument certifying the debt already and the creditor may simply state the ‘cause of the obligation’ in the application. (42) The application does not need to include reasons. (43)
70. Once the application has been received from the creditor, the Debt Recovery Authority issues the order for payment without first hearing the defendant. The Swiss Government (44) clarifies that, at that stage of the procedure, the Debt Recovery Authority essentially confines itself to transcribing, in the order for payment, even by automated means where appropriate, (45) the details provided by the creditor in the application.

71. The Debt Recovery Authority does not carry out any examination of the content of the application, nor does it carry out an examination as to jurisdiction in accordance with the Lugano II Convention. (46)
 72. After issuing the order for payment *inaudita altera parte* , the Debt Recovery Authority serves it on the debtor, informing the debtor that he or she may lodge an objection with 10 days of its service and that, if the debt is not paid and no objection is lodged, ‘enforcement shall follow its course’.
 73. The Swiss Government explains (47) that, if the debtor does not lodge an objection within the time limit stated in the LP, (48) the order for payment does not have the force of *res judicata* as to the merits of the claim. (49) The absence of an objection only allows the procedure to advance to the second stage; that is to say, it opens the way to enforcement proper.
 74. On the basis of that description of the Swiss procedure and the functions performed in it by the Debt Recovery Authority, it is possible to examine whether that authority constitutes a ‘court or tribunal’ and whether, consequently, its decisions may be regarded as ‘judgments’ in accordance with Article 32 of the Lugano II Convention.
1. Independence
75. In the order for reference, the referring court does not raise any doubts regarding the independence of the Debt Recovery Authority.
 76. However, the Commission emphasises (50) that the LP confers on the cantonal supervisory authorities a supervision function in relation to the actions of the Debt Recovery Authority. That function implies ‘... an individual and specific supervision power, that is to say ... direct supervision of [the Debt Recovery Authority] and, therefore ... the power to intervene on a case-by-case basis from the point of view of prudential supervision or to decide for themselves regarding certain procedural matters.’
 77. Everything appears to indicate, then, that the Debt Recovery Authority does not satisfy the requirement for independence that is a characteristic feature of courts. (51) The fact (noted by the Commission) that the cantonal supervisory authorities are able to give instructions to the issuer of the order for payment militates against regarding the issuer as an independent body.
2. Inter partes nature of the proceedings
78. In the judgment in *Pula Parking* , the Court of Justice examined a procedure in which: (a) a writ of execution was based on an ‘authentic document’, issued by a notary and served on the debtor, without the application by which the matter was raised with the notary having been communicated to the debtor beforehand; and (b) after the writ was served on the debtor, if the debtor lodged an ‘admissible, well-founded’ opposition, the notary had to transfer the file to the competent court, for the court to make a decision on the opposition.

79. In that context, the Court held that ‘the examination, by notaries ... of an application for a writ of execution on such a basis is not conducted on an inter partes basis. (52)
80. In the case which now concerns us, the creditors are relying on the case-law in [Denilauler] (53) in order to dismiss the relevance of the solution devised in the judgment in Pula Parking . (54)
81. According to settled case-law of the Court of Justice: (55)
- ‘All the provisions of the [Brussels Convention of 27 September 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters] ... express the intention to ensure that ... proceedings leading to the delivery of judicial decisions take place in such a way that the rights of the defence are observed. ... In the light of these considerations, it is clear that the Convention is fundamentally concerned with judicial decisions which, before the recognition and enforcement of them are sought in a State other than the State of origin, have been, or have been capable of being , the subject in that State of origin and under various procedures , of an inquiry in adversary proceedings. (56)
 - It is necessary that that decision should ‘not have any effect’ prior to being notified to the defendants, who may then assert their rights before the court which has given it by challenging the right of the claimant. (57) In particular, there must be a genuine possibility of a defendant defending himself or herself before a judgment becomes enforceable. (58)
 - The requirement that the rights of the defence should be observed ‘... is particularly crucial where the defendant fails to respond.’ Article 34(2) of the Lugano II Convention, just like the equivalent provision of the Brussels regime, is intended ‘to ensure that a judgment given in default can be recognized or enforced ... only if the defendant had the opportunity to put his defence before the court which gave the judgment’. In particular, the defendant must be duly served with the document which instituted the proceedings or with an equivalent document in sufficient time ‘to enable [him or her] to decide whether to defend the action’. (59)
82. In the opinion of the creditors in this dispute, the existence of a right to object to the order for payment, before it becomes enforceable, is sufficient for the debt recovery procedure to be regarded as inter partes .
83. I shall confine myself to making two observations in that regard.
84. First, the Denilauler case-law was well known to the Court of Justice before the judgment in Pula Parking and yet the latter judgment appears to depart from it. In my opinion, in the judgment in Pula Parking , the principal problem stemmed from the fact that the jurisdiction of the notary was, by its very nature, limited to the ex parte stage of the proceedings, as the debtor’s opposition obliged the notary to send the file to a court, before which the true ‘adversarial debate’ between the parties would take place. That functional separation between the two stages of the proceedings points to the fact that the jurisdiction of the notary did not extend beyond the first stage and was not, therefore, inter partes in nature.

85. From that perspective, it would make more sense to analyse the judgment in Pula Parking not in relation to observance of the rights of the defence, but rather in the light of the criterion relating to the existence of inherent decision-making powers; that is to say, the authority to settle, definitively, the ‘dispute’ arising between the parties as a result of the debtor’s opposition. The absence of such powers is a characteristic which Croatian notaries and the Swiss Debt Recovery Authority have in common.
86. Second, if it is accepted that the Denilauler case-law is relevant to this case, it is doubtful that the right to object to the order for payment issued by the Debt Recovery Authority gives rise, by itself, to true ‘adversarial proceedings’ and constitutes a genuine exercise of the rights of the defence.
87. In the judgment in Hengst Import , given in connection with an Italian decreto ingiuntivo (order for payment), the Court of Justice specified that a ‘decision’ may be regarded as given in inter partes proceedings if, before it becomes enforceable, the defendant is given all of the information necessary to ‘enable him [or her] to assert his [or her] rights’ and ‘enable [him or her] to decide whether to defend the action’. (60)
88. In view of the characteristics of the Swiss debt recovery procedure, the mere service of the order for payment does not appear to allow those objectives to be achieved. For it to be issued, the creditor does not need to justify or prove the existence of the claim, nor give any reasons in support of it; in the absence of title, it is sufficient to state ‘the cause of the obligation’ (Article 67 of the LP). According to the Swiss Government, the Debt Recovery Authority is confined to reproducing in the order to be served on the debtor that (limited) information provided by the creditor.
89. It is also significant that, if the debtor lodges an objection, the subsequent (contentious) proceedings before a court must be initiated by the creditor who applied for the order for payment. It is the creditor who in fact has to bring a claim specifying ‘the cause of the obligation’ and the grounds for the claim. (61)
90. That fact shows that the true adversarial debate can only take place after the service of that claim; that is, the claim which puts the debtor in a position to hear and refute the creditor’s submissions as regards the substance of the matter.
91. The same cannot be said regarding service of the order for payment, since it only allows the debtor to lodge a formal (and unreasoned) objection in order to suspend the enforcement proceedings, which does not constitute a true instrument of defence as to the substance.
92. Accordingly, the possibility of lodging an objection to the order for payment before it becomes enforceable does not prevent a genuinely inter partes nature being absent from the proceedings conducted by the Debt Recovery Authority.
3. Existence of inherent decision-making powers

93. The referring court emphasises that the Debt Recovery Authority lacks jurisdiction to carry out an independent examination of the substantive basis for the claim.
94. The participants in these preliminary ruling proceedings acknowledge that the Debt Recovery Authority does not have jurisdiction to examine, even *prima facie*, the existence and legitimacy of the debt on which the creditor's claim is based, at least in the case of recovery without an enforceable instrument. (62)
95. There is also agreement that the sole effect of the debtor's objection is to make it possible for the proceedings to advance to the stage of enforcement (proper) of the order for payment. That order does not, however, contain any declaration as to the existence of the debt and is not capable of acquiring the force of *res judicata* . (63)
96. Certainly, in order to be enforced in the State in which enforcement is sought, the Lugano II Convention does not require a judgment to have the force of *res judicata* and it is sufficient for it to be enforceable in the State of origin. However, as the Commission emphasises, (64) an instrument which has not yet acquired the force of *res judicata* (as to the merits) is different from an instrument which, *ab initio* , is not capable of acquiring it.
97. The fact that the instrument is incapable of acquiring the force of *res judicata* is a direct consequence of the absence, in the order for payment issued by the Debt Recovery Authority, of any ruling on the substance of the claim to which the application relates.
98. If the force of *res judicata* as to the merits can only be attributed to a decision upholding or rejecting the claim on substantive grounds, that will not occur where the decision does not rule on the substance of the claim.
99. Apart from that, if the debtor lodges an objection, the dispute moves to civil or administrative court proceedings, in accordance with Article 79 of the LP. The Debt Recovery Authority is not even authorised to establish the legitimacy of the enforcement as regards the formal requirements provided for in Articles 80 and 82 of the LP; that is to say, whether an enforceable title or an acknowledgement of debt in due form already exists. (65)
100. That being so, the Debt Recovery Authority does not have inherent decision-making powers. Consequently, the orders for payment issued by it cannot be regarded as 'judgments' for the purposes of Article 32 of the Lugano II Convention.
101. The creditors argue that that interpretation would lead to a 'diplomatically questionable' result, inasmuch as the Court of Justice would be denying a Swiss procedure the ability to produce an enforceable title in the context of a multilateral treaty to which not only the European Union, but also the member States of the EFTA, are parties. If I understand their position correctly, they submit that, in the negotiations for the Lugano II Convention, the Swiss Government would have assumed that its debt recovery authorities would be accorded the status of 'court or tribunal'. (66)

102. In order to reject that objection, it is sufficient to note that, in these preliminary ruling proceedings, the Swiss Government has rejected the notion that its country's debt recovery authorities could be regarded as 'courts' in accordance with Article 62 of the Lugano II Convention.
103. The Swiss Government also emphasises that the payment orders issued by the debt recovery authorities relate to the enforcement stage and are, therefore, acts which are essentially national in scope, intended to produce effects in the Swiss legal system, and not 'judgments' intended to circulate in other States. (67)

V. Conclusion

104. In the light of the foregoing, I suggest that the Court's answer to the Oberster Gerichtshof (Supreme Court, Austria) should be as follows:

'Articles 32 and 62 of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed on 30 October 2007, the conclusion of which was approved on behalf of the Community by Council Decision 2009/430/EC of 27 November 2008,

must be interpreted as meaning that an order for payment issued by a debt recovery authority in a procedure for recovery 'without an enforceable instrument' cannot be regarded as a 'judgment given by a court or tribunal' where that authority lacks judicial functions and guarantees of independence, acts in the context of a procedure that is not inter partes in nature and, in that procedure, does not exercise inherent decision-making powers.'

1 Original language: Spanish.

i The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

2 From here on, 'the Debt Recovery Authority'.

3 In this Opinion, I shall use the expression 'order for payment' in preference to any other expression used in the translations of the order for reference.

4 Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed on 30 October 2007, the conclusion of which was approved on behalf of the Community by Council Decision 2009/430/EC of 27 November 2008 (OJ 2009 L 147, p. 5; 'the Lugano II Convention').

5 OJ 2009 C 319, p. 1; 'the Pocar Report'.

6 Bundesgesetz über Schuldbetreibung und Konkurs (Federal law on debt recovery and insolvency), of 11 April 1889, as worded in the version applicable to the dispute (RS 281.1); 'the LP'.

7 The Court of Justice has already had occasion to examine an order of this kind in its judgment of 30 March 2023, PT (Swiss order for payment) (C-343/22, EU:C:2023:276), however, it did not rule on the question which now concerns us.

8 See Article 32 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; ‘the Brussels I Regulation’); in matrimonial matters, Article 2(1) of Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (OJ 2019 L 178, p. 1; ‘the Brussels II ter Regulation’); in matters of succession, Article 3(1)(g) of Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (OJ 2012 L 201, p. 107); in matters of property regimes, Article 3(1)(d) of Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (OJ 2016 L 183, p. 1).

9 In some language versions, such as the Spanish-language version, the official name of the Lugano II Convention refers to ‘resoluciones judiciales’ (judgments or judicial decisions). Others, such as the German-, Italian- and French-language versions, use only the term ‘decision’ (‘Entscheidungen’; ‘decisioni’; ‘décisions’). In this case, the creditors (paragraph 21 of their written observations) offer as an argument in favour of their position that the German name of the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters – Done at Lugano on 16 September 1988 (OJ 1988 L 319, p. 9; ‘the Lugano I Convention’), contained a reference to ‘gerichtlicher Entscheidungen’ (judicial decisions), while the Lugano II Convention only refers to ‘Entscheidungen’ (decisions). However, that change only affects the German-language version. In the other languages versions that I have been able to consult (English, Italian, French, Portuguese, Dutch and Spanish), the name of both conventions is identical.

10 By ‘the use of non-judicial means’ I mean the establishment of alternatives to court proceedings for the resolution of disputes.

11 Regulation of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1; ‘the Brussels I bis Regulation’), Article 3. Similarly, Article 62 of the Brussels I Regulation.

12 A ‘court or tribunal in an institutional sense’ is an organ of the State integrated into the judicial system and, therefore, provided with a permanent structure and the guarantees relating to independence, impartiality and functioning that are inherent in the exercise of judicial functions.

13 Judgment of 9 March 2017, Pula Parking (C-551/15, ‘the judgment in Pula Parking’, EU:C:2017:193). The Court held that Croatian notaries, acting within the framework of the powers conferred on them by national law in enforcement proceedings based on an ‘authentic document’, do not fall within the concept of ‘court’ within the meaning of the Brussels I bis Regulation.

14 The judgment in Pula Parking, paragraph 54. Emphasis added.

15 Judgment of 2 June 1994, Solo Kleinmotoren (C-414/92, ‘the judgment in Solo Kleinmotoren’, EU:C:1994:221, paragraph 17). As Advocate General Kokott stated in her Opinion in Gambazzi (C-394/07, EU:C:2008:748, paragraph 27), a ‘judgment’ cannot be limited to the ‘mere recording’ of the intention of one or both parties; its content must, to a great extent, depend on the intention of the deciding body.

16 The judgment in Pula Parking, paragraph 54.

17 Article 2(2) of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ 2009 L 7, p. 1).

18 Article 3(2) of Regulation No 650/2012, as well as Article 3(2) of Regulation 2016/1103. Article 3(2) of Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships (OJ 2016 L 183, p. 30), includes an identical definition.

19 In relation to Regulation No 650/2012, ‘the Court has ruled that the exercise of judicial functions means that the person concerned has the power to rule of his own motion on possible points of contention between the parties concerned ... In order for an authority to be regarded, in the light of the specific nature of its activities, as exercising a judicial function, it must be given the power to decide a legal dispute ... This is not the case where the powers of the professional concerned are entirely dependent on the will of the parties (judgment of 23 May 2019, WB, C-658/17, EU:C:2019:444, paragraph 55, citing the judgment in Solo Kleinmotoren).

20 And in other EU instruments: for example, Article 2(1) of Council Regulation No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1); and Article 2(2)(1) of the Brussels II ter Regulation.

21 Judgment of 20 December 2017, Schlömp (C-467/16, ‘the judgment in Schlömp’, EU:C:2017:993).

22 Paragraphs 12 and 128 of the Pocar Report. ‘Dual’ conventions facilitate recognition and enforcement because, by establishing direct rules on jurisdiction that are binding on all States parties, they avoid divergence between the national rules on jurisdiction being grounds for refusal of recognition (which may, on the other hand, occur in the case of ‘simple’ conventions, based on indirect and non-uniform jurisdiction rules).

23 The underlying premiss of the rule on *lis pendens* is that the possible interest of a party in obtaining a ‘judgment’ with legal effect in the State in which recognition is sought (before a court other than the court first seised) does not necessarily require the latter court to exercise its jurisdiction directly. That interest may be satisfied by means of a functionally equivalent mechanism; that is, recognition in the State in which recognition is sought of a judgment given by an equivalent ‘court’ of another State party to the Lugano II Convention.

24 The Court of Justice held that the Swiss authority having jurisdiction in a mandatory prior conciliation procedure constituted a ‘court’ for the purposes of Article 27 of the Lugano II Convention.

25 The judgment in *Schlömp* , paragraph 53.

26 The judgment in *Schlömp* , paragraph 54.

27 The reference to Regulation No 4/2009 is particularly pertinent, as maintenance obligations are also regulated in the Lugano II Convention and that regulation concerns one of the matters that generate the most interest in relation to the transfer of judicial functions to non-judicial bodies.

28 The Pocar Report, paragraph 130 (emphasis added).

29 Judgment in *Schlömp* , paragraphs 47 and 48: ‘the objective of a uniform interpretation of the equivalent provisions of the Lugano II Convention and of [the Brussels I Regulation] and any amendment to it is clear, in particular, from the final recital in Protocol No 2 on the uniform interpretation of the Convention and on the Standing Committee ... and Article 1 thereof, according to which any court applying and interpreting that convention [is] to ensure a converging interpretation of equivalent provisions. The Court also notes that the objectives and wording of [the Brussels I Regulation] and the provisions of the Lugano II Convention are identical guaranteeing the coherence between the two legal regimes’.

30 That restrictive approach was not abandoned when the Brussels I Regulation was recast. The proposal to expand the scope of that definition did not succeed, in the absence of sufficient political consensus: see the judgment in *Pula Parking* , paragraph 55. For a more detailed explanation, Illmer, M., Nuyts, A., and Fitchen, J., ‘Scope and Definitions’, in Dickinson, A., and Lein, E. (eds.), *The Brussels I Regulation Recast* , Oxford University Press, 2015, p. 110.

31 See Article 2(1) of Regulation No 2201/2003 and Article 2(2)(1) of the Brussels II ter Regulation.

32 Judgment of 15 November 2022, *Senatsverwaltung für Inneres und Sport* (C-646/20, ‘the judgment in *Senatsverwaltung für Inneres und Sport*’, EU:C:2022:879).

33 The judgment in *Senatsverwaltung für Inneres und Sport*, paragraph 54 (emphasis added).

34 The judgment in *Senatsverwaltung für Inneres und Sport*, paragraph 55: ‘The requirement for an examination, within the meaning of the preceding paragraph, as a characteristic feature of the concept of “judgment” may also be inferred from the judgment of 2 June 1994, *Solo Kleinmotoren* ...’

35 Judgment of 23 May 2019, *WB* (C-658/17, EU:C:2019:444, paragraph 59): ‘even though notaries have an obligation, under Polish law, to verify that the legal requirements for issuing a deed of certification of succession are complied with ... they have no decision-making powers.’ Nevertheless, that difference of approach may be explained, once again, in light of the particular features of the Italian procedure examined in the judgment in *Senatsverwaltung für Inneres und Sport*: national law expressly equated the judgment given by a judge in a divorce by mutual consent with the document drawn up by a civil registrar.

36 At the time of drafting this Opinion, there is another case (C-799/24, *Babcock Montajes*) pending before the Court of Justice concerning whether an interlocutory decision of a procedural nature, which is confined to declaring jurisdiction and does not rule on the rights and obligations forming the substance of the dispute, may be regarded as a ‘judgment’ for the purposes of the Brussels I bis Regulation.

37 It concerned a divorce by mutual consent formalised before a public authority (the civil registrar), that is, ‘a legally established authority which, under the law of that Member State, has jurisdiction to pronounce the divorce in a legally binding manner’ and which must ‘obtain, personally and on two occasions, within at least 30 days, the declarations made by each spouse, as a result of which he or she is satisfied that their consent to divorce is valid, free and informed’: the judgment in *Senatsverwaltung für Inneres und Sport*, paragraphs 63 and 64 (emphasis added). In other words, neither the independence of the authority, nor the inter partes nature of the procedure was in any doubt.

38 In its judgment of 20 December 2017, *Sahyouni* (C-372/16, EU:C:2017:988, paragraphs 39 to 43, 48 and 49), the Court of Justice examined a divorce resulting from a unilateral declaration by one of the spouses before a religious court. In that context, it was able to confine itself to finding that the divorce ‘decision’ had not been issued ‘by a national court or by, or under the supervision of, a public authority’.

39 Order for reference, paragraph 10 (emphasis added).

40 Order for reference, paragraph 21. The aspects the absence of which is pointed out by the referring court (jurisdiction to carry out an independent assessment of the substance of the case and settle the ‘dispute’ arising between the parties as result of the debtor’s objection) constitute, as I have already noted, essential features of judicial functions.

41 Written observations of the Swiss Government, paragraph 10.

42 In such a case, the procedure is called ‘recovery without an enforceable instrument’ or ‘procedure for the production of an enforceable title’ (titellose Betreuung or Titelproduktionsverfahren).

43 Written observations of the Swiss Government, paragraph 11.

44 Paragraph 11 of the written observations of the Swiss Government.

45 That is the case when the application is made electronically.

46 Jurisdiction is established solely in accordance with national law relating to enforcement.

47 Paragraphs 13 and 16 of the written observations of the Swiss Government.

48 As happened in this case.

49 Even in the absence of an objection, the debtor is able to suspend the enforcement procedure by bringing an action for negative declaratory relief before the competent court (Article 86 of the LP) and thereby obtaining a judgment as to the existence of the debt.

50 Written observations of the Commission, paragraph 47, with reference to Article 15(1) and (3) of the LP.

51 ‘The concept of “independence” has two aspects ... The first aspect, which is external, requires that the body concerned exercise its functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever ... The second aspect ... which is internal, is linked to “impartiality” and seeks to ensure a level playing field for the parties to the proceedings and their respective interests with regard to the subject matter of those proceedings.’ Judgment of 7 May 2024, NADA and Others (C-115/22, EU:C:2024:384, paragraphs 40, 41 and 45).

52 The judgment in Pula Parking , paragraph 58.

53 Judgment of 21 May 1980, Denilauler (C-125/79, EU:C:1980:130).

54 Written observations of the creditors, paragraphs 37 to 39. They also base their case on the different wording of the concepts of ‘court or tribunal’ in the Brussels I bis Regulation and the Lugano II Convention. In that regard, I refer to what I have already set out: as the Commission also notes, in the judgment in Schlömp importance was attached to the principle of audi alteram partem .

55 From here on, I shall refer to this body of case-law as ‘the Denilauler case-law’.

56 Judgment of 21 May 1980, Denilauler (C-125/79, EU:C:1980:130, paragraph 13) (emphasis added).

57 Judgment of 14 October 2004, Mærsk Olie & Gas (C-39/02, EU:C:2004:615, paragraph 51).

58 Judgments of 12 November 1992, Minalmet (C-123/91, EU:C:1992:432, paragraph 20), and of 13 July 1995, Hengst Import (C-474/93, ‘the judgment in Hengst Import’, EU:C:1995:243, paragraph 18).

59 The judgment in Hengst Import, paragraphs 17 and 21.

60 The judgment in Hengst Import, paragraphs 19 and 21.

61 From the judgment of 30 March 2023, PT (Order for payment under Swiss law) (C-343/22, EU:C:2023:276, paragraphs 35 to 38), it is clear that that stage is independent and functionally separate from that dealt with by the Debt Recovery Authority.

62 In any event, as I have just explained, it is doubtful that that body would, on the basis of the application made to it by the creditor, have the information necessary to carry out such an examination.

63 The defendant may, in any event, initiate proceedings to obtain a declaration that the debt claimed does not exist.

64 Paragraph 85 of the Commission’s written observations.

65 The written observations of the Swiss Government, at paragraph 12, clarify that that examination may only be carried out by the ‘competent court’ in judicial proceedings to halt enforcement or in proceedings regarding the substance.

66 Written observations of the creditors, paragraphs 27 to 29. In support of that submission, they cite a document of the Swiss Government (available at <https://www.fedlex.admin.ch/eli/fga/2009/402/fr>), which, however, only suggests in hypothetical and purely speculative terms that those authorities could fall within the new Article 62 of the Lugano II Convention.

67 Paragraph 16 of the written observations of the Swiss Government.

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