



# Reports of Cases

OPINION OF ADVOCATE GENERAL  
MENGOZZI  
delivered on 28 June 2012<sup>1</sup>

**Case C-215/11**

**Iwona Szyrocka**  
v  
**SiGer Technologie GmbH**

(Reference for a preliminary ruling from the Sąd Okręgowy we Wrocławiu (Poland))

(European order for payment procedure — Regulation No 1896/2006 — Formal requirements to be met by the application — Period in respect of which interest may be demanded on the claim — Period up to the date of payment)

## **I – Introduction**

1. In the present proceedings, the Sąd Okręgowy we Wrocławiu (Wrocław Regional Court) is making a reference to the Court for a preliminary ruling on the interpretation of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure ('Regulation No 1896/2006').<sup>2</sup>

## **II – Legal context**

### *A – Community law*

2. Article 1 of Regulation No 1896/2006 provides:

'1. The purpose of this Regulation is:

- (a) to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims by creating a European order for payment procedure; and
- (b) to permit the free circulation of European orders for payment throughout the Member States by laying down minimum standards, compliance with which renders unnecessary any intermediate proceedings in the Member State of enforcement prior to recognition and enforcement.

2. This Regulation shall not prevent a claimant from pursuing a claim within the meaning of Article 4 by making use of another procedure available under the law of a Member State or under Community law.'

<sup>1</sup> — Original language: Italian.

<sup>2</sup> — OJ 2006 L 399, p. 1

3. Article 4 of Regulation No 1896/2006 provides:

‘The European order for payment procedure shall be established for the collection of pecuniary claims for a specific amount that have fallen due at the time when the application for a European order for payment is submitted.’

4. Article 7 of Regulation No 1896/2006 provides:

‘1. An application for a European order for payment shall be made using standard form A as set out in Annex I.

2. The application shall state:

...;

- (b) the amount of the claim, including the principal and, where applicable, interest, contractual penalties and costs;
- (c) if interest on the claim is demanded, the interest rate and the period of time for which that interest is demanded unless statutory interest is automatically added to the principal under the law of the Member State of origin;
- (d) the cause of the action, including a description of the circumstances invoked as the basis of the claim and, where applicable, of the interest demanded;
- (e) a description of evidence supporting the claim;

...

3. In the application, the claimant shall declare that the information provided is true to the best of his knowledge and belief and shall acknowledge that any deliberate false statement could lead to appropriate penalties under the law of the Member State of origin.

...’

5. Under Article 8 of Regulation No 1896/2006:

‘The court seised of an application for a European order for payment shall examine, as soon as possible and on the basis of the application form, whether the requirements set out in Articles 2, 3, 4, 6 and 7 are met and whether the claim appears to be founded. This examination may take the form of an automated procedure.’

6. Under Article 9 of Regulation No 1896/2006:

‘1. If the requirements set out in Article 7 are not met and unless the claim is clearly unfounded or the application is inadmissible, the court shall give the claimant the opportunity to complete or rectify the application. The court shall use standard form B as set out in Annex II.

2. Where the court requests the claimant to complete or rectify the application, it shall specify a time-limit it deems appropriate in the circumstances. The court may at its discretion extend that time-limit.’

7. Article 12 of Regulation No 1896/2006 provides:

‘1. If the requirements referred to in Article 8 are met, the court shall issue, as soon as possible ..., a European order for payment using standard form E as set out in Annex V.

...

3. In the European order for payment, the defendant shall be advised of his options to:

(a) pay the amount indicated in the order to the claimant;

or

(b) oppose the order by lodging with the court of origin a statement of opposition ... .

4. In the European order for payment, the defendant shall be informed that:

(a) the order was issued solely on the basis of the information which was provided by the claimant and was not verified by the court;

(b) the order will become enforceable unless a statement of opposition has been lodged with the court in accordance with Article 16;

(c) where a statement of opposition is lodged, the proceedings shall continue before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event.

...’

8. Under Article 16(3) of Regulation No 1896/2006:

‘The defendant shall indicate in the statement of opposition that he contests the claim, without having to specify the reasons for this.’

9. Under the first subparagraph of Article 17(1) of Regulation No 1896/2006:

‘If a statement of opposition is entered within the time-limit laid down in Article 16(2), the proceedings shall continue before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event.’

10. Article 25 of Regulation No 1896/2006 provides:

‘1. The combined court fees of a European order for payment procedure and of the ordinary civil proceedings that ensue in the event of a statement of opposition to a European order for payment in a Member State shall not exceed the court fees of ordinary civil proceedings without a preceding European order for payment procedure in that Member State.

2. For the purposes of this Regulation, court fees shall comprise fees and charges to be paid to the court, the amount of which is fixed in accordance with national law.’

11. Under Article 26 of Regulation No 1896/2006, which is entitled ‘Relationship with national procedural law’:

‘All procedural issues not specifically dealt with in this Regulation shall be governed by national law.’

### B – *National law*

12. In the order for reference, the Sąd Okręgowy we Wrocławiu has listed a number of provisions of the Polish Code of Civil Procedure which could be material to the case before it, such as Articles 126, 128 and 187(1), which prescribe the basic content of procedural documents and documents instituting proceedings and indicate which documents must be lodged so as to be served on the other party, and Articles 130(1) and 394(1)(1), which govern the procedure to be followed where an application is flawed by formal defects, as well as the procedures for appealing related court decisions.

13. The referring court also mentions Article 481(1) of the Polish Civil Code, which provides that, where the defendant is late in making a payment, the creditor may demand default interest even if he has incurred no loss and even if the default has come about for reasons beyond the defendant’s control,<sup>3</sup> and Article 190 of the Polish Code of Civil Procedure, which permits demands to be made through the courts for future recurring payments, where this is not precluded by the legal relationship between the parties.

### III – Facts and the questions referred

14. Iwona Szyrocka, who is resident in Poland, applied to the Sąd Okręgowy we Wrocławiu on 23 February 2011 for a European order for payment to be issued against SiGer Technologie GmbH, established in Tangermünde (Germany).

15. In the course of those proceedings, the following questions arose:

- does the examination which precedes the issuing of an order for payment under Article 8 of Regulation No 1896/2006 entail an assessment as to whether the formal requirements provided for under the national legislation of the State to which the application is made are met or does it consist solely in an assessment as to whether the requirements set out in the regulation itself are met?<sup>4</sup>
- must the claim for default interest already have fallen due by the date on which the application for a European order for payment is submitted?
- must the party concerned specify the amount of interest in the application on each occasion and may that party demand ‘open interest’, that is to say, interest which accrues up until the time at which the pecuniary claim made in the application is satisfied?

3 — According to the account given by the referring court in paragraph 8 of the order for reference, the Sąd Najwyższy (Polish Supreme Court) construed that provision in its opinion of 5 April 1991 to the effect that the obligation to pay default interest is limited in time because the claim falls due on the first day following expiry of the deadline by which the principal falls to be paid and is gradually increased with each successive day of default. Accordingly, the claim for payment of interest arises on the first day of default and the creditor acquires the right to interest each day throughout the period of default. Interest is treated as an ancillary payment in relation to the principal. Under the Polish legal order, it is permissible to demand interest in respect of the future up to the time of payment, and that demand may be made along with the demand concerning the principal.

4 — That question arose above all because: (i) the claimant had failed to express the amount of the claim in Polish currency (even though this was needed for calculating the application fee); (ii) she had entered the incorrect interest code in point 7 of the application form (Form A) and had not indicated, by means of the appropriate symbol, the timescale for the calculation of interest; and (iii) she had failed to state the amounts on which interest was to be awarded.

— how is the court correctly to formulate the award of that interest, given the format of the official European order for payment form (Form E) (Annex V to Regulation No 1896/2006)?

16. On the view that there is a problem concerning the interpretation of Regulation No 1896/2006, the national court has referred the following eight questions to the Court of Justice for a preliminary ruling:

- (1) Is Article 7 of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure to be interpreted as:
  - (a) governing exhaustively all the requirements which must be met by an application for a European order for payment, or
  - (b) determining only the minimum requirements for such an application and requiring that the provisions of national law be applied to the formal requirements for an application in the case of matters not governed by that provision?
- (2) If Question 1(b) is answered in the affirmative, where the application does not meet the formal requirements laid down in the law of the Member State (for example, the copy of the application intended for the opposing party has not been attached or the value of the subject-matter of the dispute is not specified), must a request for the claimant to complete the application be made pursuant to provisions of national law, in accordance with Article 26 of Regulation No 1896/2006, or pursuant to Article 9 thereof?
- (3) Is Article 4 of Regulation No 1896/2006 to be interpreted as meaning that the features of a pecuniary claim which are referred to in that provision – that is to say, the fact that it is of a specific amount and has fallen due at the time when the application for a European order for payment is submitted – relate only to the principal claim or also to the claim for default interest?
- (4) On a correct interpretation of Article 7(2)(c) of Regulation No 1896/2006, where the law of a Member State does not provide for the automatic addition of interest, is it possible, in a European order for payment procedure, to demand in addition to the principal:
  - (a) all interest, including ‘open interest’ (calculated from the day on which it falls due, expressed as a specific date, to a day of payment not specified by date: for example, ‘from 20 March 2011 to the day of payment’);
  - (b) only interest calculated from the day on which it falls due, expressed as a specific date, to the day on which the application is submitted or the order for payment is issued;
  - (c) only interest calculated from the day on which it falls due, expressed as a specific date, to the day on which the application is submitted?
- (5) If Question 4(a) is answered in the affirmative, how must the court’s decision on interest be formulated in the order for payment form, in accordance with Regulation No 1896/2006?
- (6) If Question 4(b) is answered in the affirmative, who must indicate the amount of interest: the party concerned or the court of its own motion?
- (7) If Question 4(c) is answered in the affirmative, does the party concerned have an obligation to indicate the amount of calculated interest in the application?

- (8) If the claimant does not calculate the interest claimed up until the day on which the application is submitted, must the court calculate that amount of its own motion, or must it then request the party concerned to complete the application pursuant to Article 9 of Regulation No 1896/2006?

#### **IV – Procedure before the Court**

17. Written observations have been submitted by the Commission and by the Austrian, Portuguese, United Kingdom, Finnish and Polish Governments.

18. At the hearing on 18 April 2012, submissions were made by the Commission and by the Finnish and Polish Governments.

#### **V – Question 1**

19. By Question 1, the referring court asks the Court of Justice for clarification as to whether the only formal requirements which must be met by an application for a European order for payment are those laid down in Article 7 of Regulation No 1896/2006 or whether, in fact, it must take account also of other requirements, laid down in the national legislation.

20. It is clear from the text of the regulation that the procedure for obtaining a European order for payment, on the one hand, and similar national procedures, on the other, are mutually independent.

21. That is clear, first and foremost, from the fact that under Article 1 of Regulation No 1896/2006, which reflects recital 10 in the preamble thereto, recourse to the European procedure is available to the claimant as an additional and optional means of proceeding, and that procedure neither replaces nor harmonises the mechanisms available under national law for the recovery of uncontested claims; rather, it operates in parallel with the national legislation as a further means of protecting the claimant's rights.

22. Consequently, the claimant is not precluded from using any other procedure available under the legislation of a Member State, or under Community law, to obtain an order for payment.

23. Secondly, the consideration set out in point 20 is supported by recital 16 to Regulation No 1896/2006, which states that the court should issue the order for payment solely on the basis of the information given in the standard application form, the model for which is annexed to the regulation and in which the information required under Article 7 must be entered; no provision is made under the European legislation for the court to obtain additional information from other sources.

24. The use of standard forms for the various stages of the procedure is contemplated in recital 11 to Regulation No 1896/2006 as a means of facilitating access to the procedure, cutting the costs and time involved and standardising the related administration.

25. This makes it clearer still that the European procedure is separate from the national procedures, since the use of those forms makes it possible to overcome the formalities required under the legislation of the various Member States and the resultant disparities, at the same time providing a procedural instrument which is, in principle, identical throughout the territory of the European Union and, in consequence, distinct from similar instruments in use in the Member States.

26. Lastly, Article 26 of Regulation No 1896/2006 further confirms that the European procedure is distinct from the national procedures, since it provides that national law is to apply only to procedural issues not specifically addressed by that regulation.

27. When, on the other hand, the legislature thought it appropriate, in relation to specific aspects of the procedure, for national legislation to operate *in tandem* with Regulation No 1896/2006, it did so expressly by making a *renvoi* to the national legislation.<sup>5</sup>

28. There would be no reason for the provision made under Article 26 of the regulation or for the *renvois* mentioned in point 27 above and in footnote 5, if it had truly been intended that Regulation No 1896/2006 should be supplemented – even as regards the matters governed by that regulation – by the legislation of the individual Member States, because, if that were so, it would not have been necessary either to specify that the national legislation could govern only procedural issues not dealt with in the regulation or to specify the circumstances in which the law of the Member States would apply.

29. The fact that the Community procedure is separate from the national procedure is also apparent in the light of the purpose for which Regulation No 1896/2006 was adopted, as indicated by the enacting provisions of that regulation and the recitals set out in the preamble.

30. Explicitly setting out the purpose of the regulation, Article 1(1) makes it clear that, by establishing the order for payment procedure in question, Regulation No 1896/2006 is designed<sup>6</sup> to simplify and speed up litigation in cross-border cases concerning uncontested pecuniary claims and reduce the related costs,<sup>7</sup> as well as to ensure the free circulation throughout the Member States of the European order for payment, by laying down minimum standards, compliance with which obviates the need for intermediate proceedings in the Member State of enforcement prior to recognition and enforcement.<sup>8</sup>

31. Moreover, recital 29 to Regulation No 1896/2006 states that the purpose of the regulation is to establish, consistently with the principle of proportionality, a uniform rapid and efficient mechanism for the recovery of uncontested pecuniary claims, given that, as is explained in recitals (6) and (8), the impediments to access to efficient justice in cross-border cases and the distortion of competition within the internal market owing to imbalances in the functioning of the procedural means afforded to creditors in different Member States necessitate Community legislation guaranteeing a level playing field for creditors and defendants throughout the European Union,<sup>9</sup> since late payments constitute one of the principal reasons for insolvency, threatening the survival of businesses – particularly small and medium-sized enterprises – and resulting in numerous job losses.

32. Consequently, a single raft of common minimum procedural standards was introduced as a basis for the European order for payment, but those standards can serve to achieve the purpose described in points 30 and 31 above only if their autonomy in relation to similar standards set by the Member States is assured.

5 — As it did, for example, in the following cases: (i) in Article 7(3), in relation to the penalties to be applied where the application contains false statements; (ii) in Article 10(2), concerning the consequences with respect to the part of the initial claim which, in the view of the referring court, did not satisfy the conditions for the issue of the order for payment; (iii) in Article 11(3), which accords the claimant the right also to use any other procedure available if his claim is rejected; and (iv) in Article 12(5), under which the court is to ensure that the order is served on the defendant in accordance with national law.

6 — The purposes of the regulation are also set out in recital 9.

7 — Also by using standard forms to administer the procedure, in accordance with recitals 11 and 16.

8 — Because of the mutual trust in the administration of justice in the Member States, as explained in recital 27.

9 — According to recital 5 to Regulation No 1896/2006, the introduction of the uniform European order for payment, for the recovery of uncontested claims, is specifically designed to simplify and speed up small claims litigation.

33. If it were possible for national legislation to supplement Regulation No 1896/2006, the purpose of that regulation would be undermined, since the result would be, not to unify and simplify the procedures, but to create as many different procedures as there are legal orders of Member States – made up, what is more, of rules laid down both by the Member States and by EU law.

34. It is also clear that equal access to the procedure in question for all claimants and defendants in the European Union can be achieved only if it is made certain that the rules to be followed can be known, *ex ante* and in the abstract, without it being necessary always to determine specifically, at the time of deciding to apply for the order for payment, which national legislation the court seised must apply.

35. That situation can come about only if the procedure to be followed – as well as being simplified as far as possible – is standard, from the outset, throughout the territory of the European Union (subject always to the *renvois* which the EU legislation makes to national legislation).

36. It follows that, in the light both of the wording and of the purpose of Regulation No 1896/2006, it is necessary to adopt an interpretation of that regulation which safeguards the independence of the procedure established thereunder in relation to the procedures in force in the individual Member States.

37. It is necessary, in particular, to proceed on the understanding that the procedural requirements for the issue of an order for payment are those laid down in Article 7 of Regulation No 1896/2006 and that, when those requirements are satisfied, the order for payment must be issued without reference to national legislation, the reason for this being that, as a measure generated at European level, not at national level,<sup>10</sup> the European order for payment operates alongside national instruments for the recovery of claims but does not replace them.

38. As regards the case before the referring court, I would point out that, provided that the formal conditions laid down in Article 7 of Regulation No 1896/2006 have been satisfied, it is not possible to refuse to issue a European order for payment simply because additional requirements laid down under national law to regulate similar procedures, such as those mentioned at the hearing – for example, those concerning the number of copies of the application submitted and the statement of the value of the claim in the national currency – have not been met.

39. Above all, I would observe that any questions concerning the costs of the proceedings, referred to by the Polish Government at the hearing and in its observations, cannot stand in the way of the grant of the order sought, always provided that the amount of those costs is determined in accordance with national law pursuant to Article 25 of Regulation No 1896/2006.

40. My conclusion as regards Question 1, therefore, is that the Court should state in reply that, save for those points in respect of which Regulation No 1896/2006 makes a specific *renvoi* to the law of the Member States, Article 7 of that regulation must be interpreted as governing exhaustively the requirements to be met by an application for a European order for payment.

41. The answer given to Question 1 makes it unnecessary to consider Question 2.

<sup>10</sup> — Since it is issued on the basis of procedural rules common to the Member States and introduced by a regulation.



## VI – Questions 3 and 4

42. By Question 3, the Sąd Okręgowy we Wrocławiu asks whether Article 4 of Regulation No 1896/2006 is to be interpreted as meaning that the features of a pecuniary claim which are referred to in that provision – that is to say, the fact that it is of a specific amount and has fallen due at the time when the application for a European order for payment is submitted – relate only to the principal claim or also to the claim for default interest.

43. By Question 4, the Sąd Okręgowy we Wrocławiu raises a series of questions concerning the interest which may be applied for on the basis of the European order for payment procedure.

44. More specifically, the referring court asks whether, under Article 7(2)(c) of Regulation No 1896/2006, it is possible to obtain, in addition to the principal:

- (a) all interest, including ‘open interest’ (calculated from the day on which it falls due, expressed as a specific date, to a day of payment not specified by date; or
- (b) only interest calculated from the day on which it falls due, expressed as a specific date, to the day on which the application is submitted or the order for payment is issued; or
- (c) only interest calculated from the day on which it falls due, expressed as a specific date, to the day on which the application is submitted.

45. I consider it necessary to address both Questions 3 and 4, as it seems to me that the intention of the referring court was, in essence, to ask the Court of Justice whether, in the light of Regulation No 1896/2006 as a whole – and of Articles 4 and 7(2)(c), in particular – it is possible to demand the payment of all types of interest, including ‘open interest’, that is to say, interest calculated from the day on which it falls due to the date of payment (in the present context, default interest).

46. First of all, I would point out that I am unable to agree with the reasoning followed by the referring court in so far as it reaches different conclusions regarding the possibility of demanding ‘open interest’, depending on whether Article 4 of Regulation No 1896/2006 is construed in such a way as to link the features of the pecuniary claim listed in that provision – namely, the ‘specific amount’ and the fact of the claim having fallen due at the time when the application for a European order for payment is submitted – exclusively to the principal claim or also to the claim for default interest.<sup>11</sup>

47. My first objection is that to approach the matter in that way means omitting to interpret Article 4 in the light of the other enacting terms of Regulation No 1896/2006 pertaining to interest.

48. Article 4 of Regulation No 1896/2006 establishes that the procedure for a European order for payment is to be set in place for the recovery of pecuniary claims for a specific amount which have fallen due at the time when the application was submitted and, by referring generally and in particularly broad terms to the concept of ‘claim’, that provision draws no specific distinction between principal and interest.

<sup>11</sup> — I do not therefore agree with the statement made by the referring court, in paragraph 9 of the grounds of the order for reference, that ‘[t]aking the view that the features of a claim set out in Article 4 of the regulation also apply to a claim for payment of interest would mean that the party concerned can demand the award of interest only in respect of the period from the date on which that claim fell due until the date on which the application was submitted at the latest. In that case, the other questions referred by the national court would not have to be answered by the Court of Justice of the European Union.’

49. Alongside Article 4, however, it is also necessary to look at Article 7 of Regulation No 1896/2006, under which the application for a payment order must state ‘the amount of the claim, including the principal and, where applicable, interest, contractual penalties and costs’ (Article 7(2)(b)), and, if interest on the claim is demanded, the interest rate and the period of time for which that interest is demanded (Article 7(2)(c)), as well as ‘the cause of the action, including a description of the circumstances invoked as the basis of the claim and, where applicable, of the interest demanded’ (Article 7(2)(d)).

50. While Article 4 provides general clarification of what may be the content of an application for an order for payment (the recovery of claims and, accordingly, the claim for payment of a sum of money), it is Article 7 which formally lists the elements which go to make up that claim, drawing a distinction between principal, interest, contractual penalties and costs (Article 7(2)(b)).

51. My second objection is that the reasoning followed by the referring court, outlined in point 46 above, fails to take into account the fact that the possibility of demanding interest – and perhaps even ‘open interest’ – devolves from the very nature of claims relating to the principal and of claims relating to interest, as well as from the interrelationship between those two types of claim.

52. The interest reflects a financial obligation which differs from the obligation to pay the principal only in that it is ancillary to the latter, on which it is dependent, and because the amount accounted for by that financial obligation is linked to the passage of time and varies accordingly.

53. There are no other material differences between the two obligations (with the result that, by clarifying in paragraphs 2(c) and (d) that the application for the order for payment is to concern pecuniary claims made up of interest and principal, Article 7 draws a distinction between interest and principal simply because there may or may not be an application for interest) and, in principle, the obligation to pay interest normally follows upon the obligation to pay the principal and the outcome of the related claim, so that it may be said that interest can be claimed only if there is a principal sum in relation to which a claim may be made.

54. Accordingly, the link between the obligation to pay the principal and the obligation to pay interest is structured in such a way that:

- (1) the interest is owed in consequence of the fact that the principal must be paid (that is to say, it has fallen due) and the related payment has not been made (in the case of default interest, by the deadline agreed or laid down by law);
- (2) with the passage of time, the ancillary elements are absorbed into the principal debt, and become a fixed component of the related sum.

55. This means that the answer to the question whether it is possible to demand the payment of interest, including ‘open interest’, by means of the European order for payment cannot depend solely on an interpretation of Article 4 and on such ancillary claims being treated as being of a specific amount and having fallen due in accordance with that provision.

56. This is because claims in respect of which an action for recovery may be brought (whether they relate to the principal, to interest, to contractual penalties or to costs) must be identified on the basis of an assessment made under Articles 4 and 7 read in conjunction and, above all, it is because the possibility of demanding interest depends on the ancillary relationship, mentioned above, linking the interest and the principal.

57. As has been shown above, it is necessary to undertake a substantive analysis of the question submitted by the Sąd Okręgowy we Wrocławiu as to whether it is possible also to demand, by means of the European order for payment procedure, the interest which has accrued up to the time of payment or whether it is possible only to demand the interest owed at the time when the application was made or the order for payment issued.

58. The answer emerges if we analyse the enacting terms and purpose of Regulation No 1896/2006; the matters governed by the relevant legislation as a whole; and the steps to be taken by the authority to which the claim is addressed.

59. First of all, I would point out that Article 7 of Regulation No 1896/2006, which governs in general terms the formal requirements of the application and refers specifically to the possibility of demanding interest, requires the claimant (paragraph 2(c)) to state the interest rate and the period of time for which that interest is demanded, but does not require specification of the precise date up to which the interest is demanded.

60. Article 7 of Regulation No 1896/2006 does not confine its scope solely to the interest which has accrued up to the time when the application was submitted or the European order for payment was issued; nor does it require a statement of the exact amount of interest payable.

61. The same considerations apply with regard to Article 4 of Regulation No 1896/2006, which must be read in conjunction with Article 7 for the purposes of identifying claims which may legitimately be the subject of a European order for payment, as emphasised at points 47 to 50 and point 56 above.

62. It is clear from this that, in prescribing the manner in which the relevant application must be drawn up, the provisions of the regulation which determine the claims in respect of which an action may be brought do not bar the making of demands also for ‘open interest’, in the case of which it is impossible to specify either the date up until which the interest is demanded or the final total amount.

63. The outcome is the same if we consider the purpose of the regulation.

64. As became clear in the process of analysing Question 1,<sup>12</sup> Regulation No 1896/2006 introduces standard procedures for creating, in relation to cross-border small pecuniary claims, judicial instruments which can circulate throughout the Member States, provided that certain minimum standards – compliance with which obviates the need for intermediate proceedings for recognition and enforcement – are respected, thereby achieving also the practical result of simplifying and speeding up small claims litigation (recital 5 to the regulation) and making it possible swiftly and efficiently to recover uncontested claims (recital 6 to the regulation).

65. If Regulation No 1896/2006 were to be interpreted in such a way as to exclude the possibility of demanding ‘open interest’ in addition to the principal, the requirements set out in point 64 above would not be satisfied.

66. If claimants were required to confine their application solely to the principal, with the possible addition of the interest which had actually accrued at the time of making the application or, at most, at the time when the order for payment was issued, they would be compelled to make a series of claims: the first to obtain the capital and the interest due, and the others to obtain the interest relating to the subsequent period.

<sup>12</sup> — See, in particular, points 30 and 31.

67. That would make it more difficult to establish a single judicial instrument which could circulate throughout the Member States, and the overall claim would be split into its various elements, leading to more judicial instruments which would fuel an increase in litigation and in the time and costs involved, thereby making it harder to recover the sums owed, if only because it would result in several actions being brought instead of just one.

68. Moreover, claimants could be led to apply to the courts for an order for payment on the basis of the national legislation of the Member States rather than on the basis of Regulation No 1896/2006, if – and, according to the order for reference, this is the situation in Poland – that meant that they could obtain a decision covering the whole of the claim, including interest up to the date of payment, given that, under the regulation, they could apply to the courts for the principal but for only part of the interest.

69. Lastly, the conclusion set out in point 62 above remains sound if we consider the matters governed by the relevant legislation as a whole and the steps to be taken by the authority to which the claim is addressed.

70. First of all, as is clear from points 20 and 36 above, Regulation No 1896/2006 introduced a procedure which is standard and independent of the national procedures for the issue of orders for payment, governing only the procedural aspects linked to the issue of the European order for payment, as is apparent also from the Green Paper on a European order for payment procedure and on measures to simplify and speed up small claims litigation (cited in recital 5 to Regulation No 1896/2006). The Green Paper states from the outset that its objective is to create a specific speedy and cost-efficient procedure for claims presumed to remain uncontested, which is available throughout all Member States.

71. Secondly, the issue of a European order for payment does not require a substantive examination of the merits of the claim.

72. Under Articles 8 and 12(4) of Regulation No 1896/2006, all that is required is formal verification that the procedural requirements laid down in the regulation are met and that the debt exists, and this verification is to be based on the statements made by the claimant in the form which he submits and does not require any check as to the veracity of the declarations made. Accordingly, when the order for payment is issued, the defendant is informed that it has been obtained solely on the basis of the information provided by the claimant.

73. That is because, in the context of the European procedure, the court seised does not actually undertake an examination of the merits, since an examination of that nature is deferred until any opposition proceedings which may be brought and, as a consequence, the steps taken by the authorities to which a claim is addressed differ according to the point at which they intervene.

74. At the *ex parte* stage, which is governed by the EU legislation, the court checks only, on the basis of the claimant's statement, that the application is formally correct. At the opposition stage, however, which is governed by the law of the Member States and which involves actually verifying the claim, the court undertakes a full assessment of the merits.<sup>13</sup>

13 — I consider that the regulation has introduced what is described as a (potentially at least) no-evidence summary claims system, that is to say, a system under which the court issues the order for payment without undertaking a substantive examination of whether the claim is well founded (in the other systems, described as employing the 'evidence' model, that supervision is, however, present and the claimant must therefore furnish evidence of his claim). In no-evidence systems, what appears to be the lesser degree of protection afforded to the defendant is offset by the fact that it very easy for him to oppose the order for payment (without even having to state the reasons).

75. Any lesser degree of protection for the defendant during the stage which culminates in the issue of a European order for payment is the inevitable consequence of the need to make the procedure as simple and standard as possible. That lesser degree of protection is offset, first of all, by the fact that, under Article 16(3) of Regulation No 1896/2006, the defendant may lodge a statement of opposition without even having to specify the reasons for this and, under Article 17, the proceedings are then to continue in accordance with the rules of ordinary civil procedure; and by the fact that the claimant must declare, under Article 7(3), that the information provided is true and must acknowledge that any false statement could lead to the imposition of penalties.<sup>14</sup>

76. Consequently, as was pointed out by the Commission at the hearing, the competent court will carry out a full substantive examination of the soundness and the amount of the claims for principal and interest, including ‘open interest’, only in response to a statement of opposition, when it will, if necessary, analyse in detail the substantive law (or, possibly, laws) governing the relationship.

77. Thus, Regulation No 1896/2006 relates to procedures and to the means whereby, if a claim exists, it is possible to obtain an order for payment which can circulate throughout the Member States. On the other hand, the regulation does not govern substantive aspects; in particular, so far as is relevant to this case, it does not regulate the types of interest which may be demanded.

78. On the basis of the foregoing considerations, in the light of the wording of Regulation No 1896/2006, the purpose for which it was adopted and the matters governed by the rules at issue, as well as of the steps to be taken by the authority to which the claim is addressed, it must therefore be regarded as established that, while it is necessary to apply Regulation No 1896/2006 in relation to the procedure for establishing the judicial instrument (and national law where *renvois* are made to it or where procedural aspects remain unregulated), when it comes to the type of interest which may be demanded (but the same conclusions must extend to all elements of the claim), the law which logically applies will be the substantive law governing the relationship in place between the parties.

79. If the substantive law accords the claimant the option of demanding ‘open interest’, he will also be able to obtain that interest by means of the procedure laid down in Regulation No 1896/2006.

80. On the other hand, if the relevant legislation recognises only the interest which has accrued by the time the application is submitted or the order for payment is issued by the court, the claimant will have to submit his application in conformity with that legislation.

81. It follows that, in this case, if, under the substantive law governing the relationship (which, according to the order for reference, is Polish law), the claimant is entitled also to the payment of ‘open interest’, the national court will have to recognise a right also to that interest when it issues the order for payment.

82. Moreover, there is no reason why the amount of a claim which, according to the substantive law applicable to the contract – and this is often specifically chosen by the parties or they at least have prior knowledge of it – includes ‘open interest’, should be reduced as a result of applying the procedure laid down in Regulation No 1896/2006, even though it makes no express provision to that effect.

83. The United Kingdom Government takes the view that interest may be demanded only up to the date on which the order for payment is issued.

<sup>14</sup> — A provision which calls to mind the *affidavit*, a procedure typical of the common law systems.

84. That is because the guidelines, set out in Annex I to the regulation, for completing the application for an order for payment set out, as regards Section 7 of the application form, only the procedure to be followed for obtaining the interest which has accrued by the date of the court's decision on the claimant's request (to be specific, it states that, for that purpose, the last box in section 7 should be left blank).

85. According to the United Kingdom Government, a further argument in support of that view derives from the fact that the standard form for the payment order (Form E in Annex V to Regulation No 1896/2006) allows the court seised, if so requested by the claimant, to enter in the 'Interest' box the date on which the order is issued.

86. On that point, I would refer to the considerations already set out above and express the view, in contrast to that of the United Kingdom Government, that the guidelines in question merely illustrate situations which might actually arise.

87. I would emphasise that the standard form for applying for a payment order makes it possible to depart from the instructions for completing that form and tailor the application for interest to the claimant's actual requirements.

88. As regards the code to be entered in Section 7 of the form, in relation to interest, it is possible to form that code using the number 06 and the letter E (which mean 'other'), and then to fill in the space below which reads '[p]lease specify in case of code 6 and/or E' and, if necessary, to complete Section 11 which is entitled 'Additional statements and further information (if necessary)'.

89. In that way, the claimant can safely apply for the interest up until the desired point in time, and possibly also until the time when the payment is made, without having to state an exact amount straightaway.

90. This is also clear from the fact that the final statement in the standard form does not require the specific amount to be specified, but refers only to the payment 'of the above principal' (the principal claim) 'plus interest', and accordingly does not use the word 'above' in relation to the interest.

91. As regards the form for issuing the order for payment (Form E in Annex V to Regulation No 1896/2006), the operative part of which refers to the 'Amount' in relation to interest, I would point out that there is nothing to prevent the court from ordering the defendant to pay 'the sum due at the time of payment', rather than a precise figure calculated with reference to a specified date.

92. The Portuguese Government supports the approach advocated by the United Kingdom Government, in particular because, under Article 12(3)(a) of Regulation No 1896/2006, the defendant is to be advised, in the order for payment, that he has the option to pay the amount indicated in the order to the claimant.

93. In that regard, I would draw attention to the observations that I have already made and emphasise that, at the time when the addressee receives the order for payment served upon him, he will be perfectly capable of calculating, on the basis of a simple mathematical process, the sum owed at the time of payment; and if the defendant does not agree with the figure arrived at by reference to the rate of interest and the date from which the interest is owed as set out in the order for payment, he can lodge opposition.

94. Furthermore, the standardised procedures for completing the forms and the guidelines annexed to Regulation No 1896/2006 cannot deprive the claimant of the right to demand all the interest owed to him at the time of payment, where the substantive law applicable to the contractual relationship allows this, since it is clear from the comprehensive analysis of the text that the regulation does not preclude this.

95. By contrast, the approach advocated by the Portuguese and United Kingdom Governments would clearly undermine the objectives of the regulation – to simplify and speed up the litigation and swiftly and efficiently to recover uncontested claims – and could lead claimants to prefer recourse to national procedures for the issue of an order for payment (which would ensure that their claims were met in full), rather than the procedure under Regulation No 1896/2006.

96. Accordingly, in conclusion, I would propose that the Court answer Questions 3 and 4 by declaring that Article 4 and Article 7(2)(c) of Regulation No 1896/2006 must be interpreted as meaning that, under the European order for payment procedure, it is possible to demand, in addition to the principal, all types of interest which may be demanded on the basis of the substantive law applicable to the contractual relationship and, therefore, depending on the situation, both the interest calculated from the date on which it falls due, for which a precise date is stated, until the unspecified date of payment, and the interest calculated up until the date on which the application is submitted, or until the date on which the order for payment is issued.

## VII – Question 5

97. By Question 5, the referring court asks how, if Question 4(a) is answered in the affirmative, the court's decision on interest must be formulated in the order for payment form, in accordance with Regulation No 1896/2006.

98. In that connection, I would point out that there is an appropriate space at the end of that form in which to enter, after the principal, the interest.

99. If the question of 'open interest' arises and the substantive law governing the contract permits the award of such interest, the court – being unable to determine the amount of that interest – will simply order, in the 'Date' box of the section referred to in point 98 above, that the interest is to be paid up to the time when payment is made, specifying in the 'Interest' box the date from which it is to be paid and in the 'Amount' box the rate of interest applicable.

100. It goes without saying, however, that any other form of fundamentally equivalent statement which clearly sets out the content of the court's decision must be regarded as permissible (I would draw attention here to the approaches proposed, in their written observations, by the Commission and by the Polish and Austrian Governments).

101. On the other hand, in situations (also falling within the scope of Question 4(a) and Question 5, according to the referring court) in which the payment of interest is demanded up to the time when the application is submitted or the order for payment issued, the court will be able to make the necessary calculation, since it will know both the rate and the reference period, and also to enter in the box at the end of the form, referred to in point 98 above, the amount payable by way of interest.

102. Consequently, I propose that the Court state in answer to Question 5 that, under Regulation No 1896/2006, the decision on the inclusion of interest in the order for payment form may be formulated as follows:

- if the question of 'open interest' arises and the substantive law governing the contract permits the award of such interest, the court will enter, in the appropriate space at the end of the order for payment form where the amount to pay is to be entered, under the heading 'Interest', in the 'Date' box, that the interest is to be paid up to the time when payment is made, specifying, in the 'Interest' box, the date from which it is to be paid and, in the 'Amount' box, the rate of interest applicable, but any other form of fundamentally equivalent statement which clearly sets out the content of the court's decision must be regarded as permissible;

— if the payment of interest is demanded up to the time when the application is submitted or the order for payment issued, the court will be able to make the necessary calculation and to enter in the box at the end of the abovementioned form the amount payable by way of interest.

103. The answer given to Questions 4 and 5 makes it unnecessary to address Questions 6 and 7.

### VIII – Question 8

104. By Question 8, the referring court asks whether, if the claimant does not calculate the interest claimed up until the day on which the application is submitted, the court must calculate that amount of its own motion or whether it must request the party concerned to complete the application pursuant to Article 9 of Regulation No 1896/2006.

105. On that point, I would draw attention to the considerations set out above and reiterate that there is no obligation under Article 7 of Regulation No 1896/2006 for the claimant to calculate the amount of the interest, failing which the application will be inadmissible or refused, although he may undertake that calculation.

106. The court will certainly be able to make that calculation, provided that the claimant has provided the necessary information (such as the currency, the rate of interest and the time from which the ancillary elements are to be calculated).

107. If the data required for the calculation have not been provided or are incomplete, then, pursuant to Article 9 of Regulation No 1896/2006, unless the claim is clearly unfounded or the application inadmissible,<sup>15</sup> the court will give the claimant an opportunity to complete or to rectify the application, specifying a time-limit which it deems appropriate.

108. I therefore propose that the Court answer Question 8 as follows:

- if the claimant does not calculate the interest demanded up to the date of submission of the application, that calculation must be made by the court, provided that the claimant has provided the necessary information;
- if the data required for the calculation have not been provided or are incomplete, then, pursuant to Article 9 of Regulation No 1896/2006, unless the claim is clearly unfounded or the application inadmissible, the court will give the claimant an opportunity to complete or to rectify the application, specifying a time-limit which it deems appropriate.

### IX – Conclusions

109. On the basis of the foregoing considerations, I propose that Court should reply as follows to the questions referred by the Sąd Okręgowy we Wrocławiu:

- (1) Save for those points in respect of which it makes a specific *renvoi* to the law of the Member States, Article 7 of Regulation (EC) No 1896/2006 of the European Parliament and of the Council creating a European order for payment procedure must be interpreted as governing exhaustively the requirements which must be met by an application for a European order for payment.

15 — Unless statutory interest is automatically added to the principal under the legislation of the Member State of origin, as provided under Article 7(2)(c).



- (2) Article 4 and Article 7(2)(c) of Regulation No 1896/2006 must be interpreted as meaning that, under the European order for payment procedure, it is possible to demand, in addition to the principal, all types of interest which may be demanded on the basis of the substantive law applicable to the contractual relationship and, therefore, depending on the situation, both the interest calculated from the date on which it falls due, for which a precise date is stated, until the unspecified date of payment, and the interest calculated up until the date on which the application is submitted, or until the date on which the order for payment is issued.
- (3) Under Regulation No 1896/2006, the decision on the inclusion of interest in the order for payment form may be formulated as follows:
  - if the question of ‘open interest’ arises and the substantive law governing the contract permits the award of such interest, the court will enter, in the appropriate space at the end of the order for payment form where the amount to pay is to be entered, under the heading ‘Interest’, in the ‘Date’ box, that the interest is to be paid up to the time when payment is made, specifying, in the ‘Interest’ box, the date from which it is to be paid and, in the ‘Amount’ box, the rate of interest applicable, but any other form of fundamentally equivalent statement which clearly sets out the content of the court’s decision must be regarded as permissible;
  - if the payment of interest is demanded up to the time when the application is submitted or the order for payment issued, the court will be able to make the necessary calculation and to enter in the box at the end of the abovementioned form the amount payable by way of interest.
- (4) If the claimant does not calculate the interest demanded up to the date of submission of the application, that calculation must be made by the court, provided that the claimant has provided the necessary information.
- (5) If the data required for the calculation have not been provided or are incomplete, then, pursuant to Article 9 of Regulation No 1896/2006, unless the claim is clearly unfounded or the application inadmissible, the court will give the claimant an opportunity to complete or to rectify the application, specifying a time-limit which it deems appropriate.