



## Reports of Cases

### ORDER OF THE COURT (Third Chamber)

21 March 2013\*

(Article 99 of the Rules of Procedure — Judicial cooperation in civil matters — Regulation (EC) No 1896/2006 — European order for payment procedure — Opposition lodged out of time — Article 20 — Review in exceptional cases — No ‘extraordinary’ or ‘exceptional’ circumstances)

In Case C-324/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Handelsgericht Wien (Austria), made by decision of 11 June 2012, received at the Court on 9 July 2012, in the proceedings

**Novontech-Zala kft.**

v

**Logicdata Electronic & Software Entwicklungs GmbH,**

THE COURT (Third Chamber),

composed of M. Ilešič (Rapporteur), President of the Chamber, E. Jarašiūnas, A. Ó Caoimh, C. Toader and C.G. Fernlund, Judges,

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to give a decision by reasoned order, pursuant to Article 99 of the Rules of Procedure of the Court of Justice,

makes the following

### Order

- 1 This reference for a preliminary ruling concerns the interpretation of Article 20 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 (OJ 2006 L 399, p. 1).
- 2 The reference has been made in proceedings between Novontech-Zala kft. (‘Novontech Zala’), whose registered office is in Hungary, and Logicdata Electronic & Software Entwicklungs GmbH (‘Logicdata’), whose registered office is in Austria.

\* Language of the case: German.

## Legal context

### *Regulation No 1896/2006*

- 3 According to recital 25 in the preamble to Regulation No 1896/2006:

‘After the expiry of the time-limit for submitting the statement of opposition, in certain exceptional cases the defendant should be entitled to apply for a review of the European order for payment. Review in exceptional cases should not mean that the defendant is given a second opportunity to oppose the claim. During the review procedure the merits of the claim should not be evaluated beyond the grounds resulting from the exceptional circumstances invoked by the defendant. The other exceptional circumstances could include a situation where the European order for payment was based on false information provided in the application form.’

- 4 Recital 28 in the preamble to that regulation states:

‘For the purposes of calculating time-limits, Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time-limits [OJ, English Special Edition 1952-1972(V), p. 88] should apply. The defendant should be advised of this and should be informed that account will be taken of the public holidays of the Member State in which the court issuing the European order for payment is situated.’

- 5 Article 1(1) of Regulation No 1896/2006 provides:

‘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;

...’

- 6 Article 16(1) to (3) of Regulation No 1896/2006 is worded as follows:

‘1. The defendant may lodge a statement of opposition to the European order for payment with the court of origin ...

2. The statement of opposition shall be sent within 30 days of service of the order on the defendant.

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

- 7 Article 20(1) and (2) of that regulation provide:

‘1. After the expiry of the time-limit laid down in Article 16(2) the defendant shall be entitled to apply for a review of the European order for payment before the competent court in the Member State of origin where:

...

- (b) the defendant was prevented from objecting to the claim by reason of force majeure or due to extraordinary circumstances without any fault on his part,

provided in either case that he acts promptly.

2. After expiry of the time-limit laid down in Article 16(2) the defendant shall also be entitled to apply for a review of the European order for payment before the competent court in the Member State of origin where the order for payment was clearly wrongly issued, having regard to the requirements laid down in this Regulation, or due to other exceptional circumstances.'

*Regulation No 1182/71*

8 Article 3 of Regulation No 1182/71 provides:

'1. ...

Where a period expressed in hours is to be calculated from the moment at which an event occurs or an action takes place, the hour during which that event occurs or that action takes place shall not be considered as falling within the period in question.

2. Subject to the provisions of paragraphs 1 and 4:

...

(b) a period expressed in days shall start at the beginning of the first hour of the first day and shall end with the expiry of the last hour of the last day of the period;

...

3. The periods concerned shall include public holidays, Sundays and Saturdays, save where these are expressly excepted or where the periods are expressed in working days.

4. Where the last day of a period expressed otherwise than in hours is a public holiday, Sunday or Saturday, the period shall end with the expiry of the last hour of the following working day.

...'

**The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 9 On 14 October 2011, Logicdata brought an application before the Bezirksgericht für Handelssachen Wien (District Commercial Court, Vienna) for a European order for payment against Novontech-Zala, for the payment of EUR 30 586 in respect of a sale which had not been paid for by that company. On 25 October 2011, that court issued a European order for payment. The order was served on Novontech-Zala on 13 December 2011 in Zalaegerszeg (Hungary).
- 10 Novontech-Zala sent that order to its lawyer in Hungary, who lodged a statement of opposition on 13 January 2012, that is, after the expiry of the time-limit of 30 days laid down in Article 16(2) of Regulation No 1896/2006. It is clear from the documents before the Court that the lawyer had based his calculation of the period in question on the incorrect assumption that the European order for payment had been notified to Novontech-Zala on 14 December 2011 and not 13 December, as was in fact the case. He calculated that period on the assumption that it would expire on 13 January 2012, whereas, in reality, it expired on 12 January 2012. Without asking the court which had issued the European order for payment the date from which the time-limit had started to run, the lawyer entered the date on which the time-limit was to expire (which had been incorrectly calculated) in the diary and, therefore, lodged the statement of opposition out of time.

- 11 By order of 21 January 2012, the Bezirksgericht für Handelssachen Wien dismissed the opposition because it was out of time.
- 12 On 8 February 2012, Novontech-Zala, henceforth represented by a firm of lawyers in Austria, challenged the order rejecting the opposition, asking the Bezirksgericht für Handelssachen Wien, in particular, to review the order for payment in accordance with Article 20 of Regulation No 1896/2006. By order of 5 March 2012, that court dismissed the application for review.
- 13 Novontech-Zala appealed against that order before the referring court, arguing that the court of first instance had not applied the correct legal rules in reaching its assessment and that that court was required to carry out a review of the European order for payment pursuant to Article 20 of Regulation No 1896/2006.
- 14 It is in those circumstances that the Handelsgericht Wien decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘1. Does the failure on the part of a party’s lawyer to comply with the time-limit for lodging opposition to a European order for payment constitute fault on the part of the defendant for the purposes of Article 20(1)(b) of [Regulation No 1896/2006]?
  2. If wrongful conduct on the part of the lawyer representing the defendant is not to be regarded as fault on the part of the defendant itself, is the failure of the former to take note of the correct date of expiry of the time-limit for opposing a European order for payment to be regarded as an extraordinary circumstance within the meaning of Article 20(2) of Regulation No 1896/2006?’

### **Consideration of the questions referred**

- 15 Pursuant to Article 99 of its Rules of Procedure, where the answer to the question referred for a preliminary ruling admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.
- 16 By its two questions, which it is appropriate to examine together, the referring court asks essentially whether the failure to comply with the time-limit for lodging a statement of opposition to a European order for payment, as a result of the wrongful conduct of the defendant’s representative, may justify the review of that order for payment, either by reason of ‘extraordinary circumstances without any fault on the [defendant’s part]’, within the meaning of Article 20(1)(b) of Regulation No 1896/2006, or due to ‘exceptional circumstances’ within the meaning of Article 20(2) thereof.
- 17 Novontech-Zala submits in that regard that, where the defendant’s representative does not observe the time-limit for lodging a statement of opposition to a European order for payment on account of his own wrongful conduct, the conditions required for the review of the European order for payment are satisfied, both under Article 20(1)(b) and (2) of Regulation No 1896/2006.
- 18 Conversely, Logicdata, the Austrian, Greek and Portuguese Governments and the European Commission take the view that, in circumstances such as those in the main proceedings, the conditions for a review of a European order for payment are not satisfied.
- 19 The interpretation set out in the preceding paragraph must be accepted.
- 20 It is clear that circumstances such as those in the main proceedings, involving the incorrect calculation and transcription of the time-limit for lodging the statement in opposition by the defendant’s representative, are neither ‘extraordinary’, within the meaning of Article 20(1)(b), nor ‘exceptional’, within the meaning of Article 20(2) of Regulation No 1896/2006.

- 21 It is true that Article 20(1)(b) and (2) of Regulation No 1896/2006 makes it clear that a review of a European order for payment may be carried out where the failure to comply with the 30-day time-limit for lodging a statement of opposition results from extraordinary or exceptional circumstances which prevented that statement of opposition from being lodged within the period prescribed and the other conditions laid down by those provisions are fulfilled. However, where, as in the case in the main proceedings, the failure to comply with the time-limit is due to a lack of diligence by the defendant's representative, such a situation, since it could easily have been avoided, does not constitute extraordinary or exceptional circumstances within the meaning of those provisions.
- 22 The possibility of a review of a European order for payment in circumstances such as those at issue in the main proceedings would give the defendant a second opportunity to oppose the claim within the meaning of recital 25 in the preamble to Regulation No 1896/2006.
- 23 Since the condition relating to extraordinary circumstances is absent, it is unnecessary to examine whether the other conditions laid down in Article 20(1)(b) of Regulation No 1896/2006, in particular that relating to the absence of fault on the part of the defendant are fulfilled.
- 24 As is apparent from the wording of Article 20(1)(b) of Regulation No 1896/2006, in order for the defendant to have grounds to apply for the review of a European order for payment pursuant to that provision, it is necessary, in the absence of force majeure, that three cumulative conditions be satisfied, namely, first, there must be extraordinary circumstances by reason of which the defendant was prevented from challenging the claim within the period prescribed for that purpose, second, there should be no fault on the part of the defendant and, third, the defendant must act promptly. The fact that one of those conditions is not fulfilled means that the defendant cannot argue that it satisfies the conditions laid down in that provision.
- 25 Having regard to the foregoing, the answer to the questions referred is that the failure to observe the time-limit within which to lodge a statement of opposition to a European order for payment, by reason of the wrongful conduct of the defendant's representative, does not justify a review of that order for payment, since such failure to observe the time-limit does not constitute extraordinary circumstances, within the meaning of Article 20(1)(b), or exceptional circumstances, within the meaning of Article 20(2) of Regulation No 1896/2006.

### **Costs**

- 26 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

**The failure to observe the time-limit for lodging a statement of opposition to a European order for payment, by reason of the negligence of the defendant's representative, does not justify a review of that order for payment, since such a failure to observe the time-limit does not constitute extraordinary circumstances within the meaning of Article 20(1)(b) or exceptional circumstances within the meaning of Article 20(2) 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.**

[Signatures]