



## Reports of Cases

OPINION OF ADVOCATE GENERAL  
WATHELET  
delivered on 29 May 2018<sup>1</sup>

**Case C-21/17**

**Catlin Europe SE**

**v**

**O.K. Trans Praha spol. s r. o.**

(Request for a preliminary ruling  
brought by the Nejvyšší soud České republiky (Supreme Court, Czech Republic))

(Reference for a preliminary ruling — Judicial cooperation in civil and commercial matters — Regulation (EC) No 1896/2006 — European order for payment procedure — Service of an order for payment with the application for the order — No translation of the application for the order — European order for payment declared enforceable — Application for review after expiry of the period for opposition to the order)

1. By this reference for a preliminary ruling, the Nejvyšší soud (Supreme Court, Czech Republic) asks us to interpret Regulation (EC) No 1896/2006<sup>2</sup> in the context of a dispute between two companies (Catlin Europe SE and O.K. Trans Praha spol. s r. o.) concerning a European order for payment procedure.

### **I. Legal context**

#### ***A. Regulation No 1896/2006***

2. According to recitals 1 and 2 of Regulation No 1896/2006, in order to develop an area of freedom, security and justice in which the free movement of persons is ensured, the European Union is to adopt measures in the field of judicial cooperation in civil matters having cross-border implications and needed for the proper functioning of the internal market, with a view to eliminating obstacles to the good functioning of civil proceedings.

3. The purpose of the regulation, therefore, according to recitals 9 and 29, is to establish a uniform, rapid mechanism for the recovery of uncontested pecuniary claims throughout the European Union.

<sup>1</sup> Original language: French.

<sup>2</sup> Regulation 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).

4. 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;
- 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.’

5. Article 2(1) of the regulation provides:

‘This Regulation shall apply to civil and commercial matters in cross-border cases, whatever the nature of the court or tribunal. ...’

6. Article 7 of the regulation 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:

- (a) the names and addresses of the parties, and, where applicable, their representatives, and of the court to which the application is made;
- (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;
- (f) the grounds for jurisdiction;

and

(g) the cross-border nature of the case within the meaning of Article 3.

...’

7. Under Article 8 of the regulation:

‘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. ...’

8. Article 12 of the regulation provides as follows:

‘1. If the requirements referred to in Article 8 are met, the court shall issue, as soon as possible and normally within 30 days of the lodging of the application, a European order for payment using standard form E as set out in Annex V.

...

2. The European order for payment shall be issued together with a copy of the application form. ...

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, to be sent within 30 days of service of the order on him.

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.

5. The court shall ensure that the order is served on the defendant in accordance with national law by a method that shall meet the minimum standards laid down in Articles 13, 14 and 15.’

9. Article 16(1) to (3) of the regulation provides:

‘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.’

10. Article 18 of the regulation provides:

‘1. If within the time limit laid down in Article 16(2), taking into account an appropriate period of time to allow a statement to arrive, no statement of opposition has been lodged with the court of origin, the court of origin shall without delay declare the European order for payment enforceable using standard form G as set out in Annex VII. The court shall verify the date of service.

...

3. The court shall send the enforceable European order for payment to the claimant.’

11. Article 19 of the regulation is worded as follows:

‘A European order for payment which has become enforceable in the Member State of origin shall be recognised and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition.’

12. Article 20 of the regulation, entitled ‘Review in exceptional cases’, provides:

‘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:

- (a) (i) the order for payment was served by one of the methods provided for in Article 14,  
and
- (ii) service was not effected in sufficient time to enable him to arrange for his defence, without any fault on his part,  
or
- (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.

3. If the court rejects the defendant’s application on the basis that none of the grounds for review referred to in paragraphs 1 and 2 apply, the European order for payment shall remain in force.

If the court decides that the review is justified for one of the reasons laid down in paragraphs 1 and 2, the European order for payment shall be null and void.’

13. Under the heading ‘Relationship with Regulation (EC) No 1348/2000’, Article 27 of the regulation provides:

‘This Regulation shall not affect the application of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters [(OJ 2000 L 160, p. 37)].’

14. In accordance with the second paragraph of Article 33 of the regulation, it is applicable from 12 December 2008.

15. Annex I to the regulation contains Form A, entitled ‘Application for a European order for payment’.

16. Form E, for the issue of a European order for payment, is set out in Annex V to the regulation.

## ***B. Regulation No 1393/2007***

17. In order to ensure the proper functioning of the internal market, the purpose of Regulation (EC) No 1393/2007<sup>3</sup> is, according to recital 2, to improve and expedite judicial procedures by establishing the principle of the transmission of judicial and extrajudicial documents in civil or commercial matters for service between the Member States.

18. Recitals 7 and 10 to 12 of the regulation state in particular:

‘(7) Speed in transmission warrants the use of all appropriate means, provided that certain conditions as to the legibility and reliability of the document received are observed. Security in transmission requires that the document to be transmitted be accompanied by a standard form, to be completed in the official language or one of the official languages of the place where service is to be effected, or in another language accepted by the Member State in question.

...

(10) To secure the effectiveness of this Regulation, the possibility of refusing service of documents should be confined to exceptional situations.

(11) In order to facilitate the transmission and service of documents between Member States, the standard forms set out in the Annexes to this Regulation should be used.

(12) The receiving agency should inform the addressee in writing using the standard form that he may refuse to accept the document to be served at the time of service or by returning the document to the receiving agency within one week if it is not either in a language which he understands or in the official language or one of the official languages of the place of service. This rule should also apply to the subsequent service once the addressee has exercised his right of refusal. ... It should be established that the service of the refused document can be remedied through the service on the addressee of a translation of the document.’

19. The regulation applies, according to Article 1(1), in civil and commercial matters where a judicial or extrajudicial document has to be transmitted from one Member State to another for service there.

20. Chapter II of the regulation contains provisions which provide for various means of transmission and service of judicial documents.

21. That chapter includes in particular Article 8 of the regulation, entitled ‘Refusal to accept a document’, which provides:

‘1. The receiving agency shall inform the addressee, using the standard form set out in Annex II, that he may refuse to accept the document to be served at the time of service or by returning the document to the receiving agency within one week if it is not written in, or accompanied by a translation into, either of the following languages:

(a) a language which the addressee understands, or

(b) the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected.

<sup>3</sup> Regulation of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ 2007 L 324, p. 79).

2. Where the receiving agency is informed that the addressee refuses to accept the document in accordance with paragraph 1, it shall immediately inform the transmitting agency by means of the certificate provided for in Article 10 and return the request and the documents of which a translation is requested.

3. If the addressee has refused to accept the document pursuant to paragraph 1, the service of the document can be remedied through the service on the addressee in accordance with the provisions of this Regulation of the document accompanied by a translation into a language provided for in paragraph 1. However, where according to the law of a Member State, a document has to be served within a particular period, the date to be taken into account with respect to the applicant shall be the date of the service of the initial document determined pursuant to Article 9(2).

...'

22. The standard form, entitled 'Information to the addressee about the right to refuse to accept a document', as set out in Annex II to the regulation, contains the following statement for the attention of the addressee of the document:

'You may refuse to accept the document if it is not written in or accompanied by a translation into either a language which you understand or the official language or one of the official languages of the place of service.

If you wish to exercise this right, you must refuse to accept the document at the time of service directly with the person serving the document or send it back to the address indicated below within one week stating that you refuse to accept it.'

23. The standard form also contains a 'declaration of the addressee' which the addressee is asked to sign in the event that he refuses to accept the document concerned, and it is worded as follows:

'I refuse to accept the document attached hereto because it is not written in or accompanied by a translation into either a language which I understand or the official language of the place of service.'

24. Finally, the standard form states that, in that situation, the addressee must indicate the language or languages which he understands from among the official languages of the European Union.

25. Under Article 25 of the regulation:

'1. Regulation (EC) No 1348/2000 shall be repealed as from the date of application of this Regulation.

2. References made to the repealed Regulation shall be construed as being made to this Regulation ...'

26. Pursuant to the second paragraph of Article 26, the regulation is to apply as of 13 November 2008.

## **II. The dispute in the main proceedings and the question referred**

27. According to the order for reference, O.K. Trans Praha, a company incorporated under Czech law, applied to the Okresní soud Praha-západ (District Court, Prague West, Czech Republic) for a European order for payment against Catlin Innsbruck GmbH, established in Austria. In the course of the proceedings, Catlin Innsbruck merged with another company in the Catlin Group, Catlin Europe, which has its seat in Cologne (Germany). Catlin Europe assumed the rights of Catlin Innsbruck in the main proceedings.

28. The Okresní soud Praha-západ (District Court, Prague West) granted the application by issuing, on 1 August 2012, the European order for payment applied for.

29. That order was served on Catlin Europe on 3 August 2012 and became enforceable on 3 September 2012.

30. On 21 December 2012, after the expiry of the period for lodging a statement of opposition provided for in Article 16(2) of Regulation No 1896/2006, Catlin Europe submitted an application for review of the order under Article 20(2) of that regulation.

31. In support of its application, Catlin Europe claimed that, contrary to Article 8(1) of Regulation No 1393/2007, it had not been informed, using the standard form in Annex II to that regulation, of its right to refuse to accept the document to be served since it was not accompanied by a translation.

32. In the present case, a copy of the application form for the order for payment, which was attached to the order for payment of 1 August 2012 in accordance with Article 12(2) of Regulation No 1896/2006, was written only in Czech, without an accompanying translation into German.

33. In that regard, Catlin Europe considers that the absence of a translation of the application form for the order for payment made it impossible for it to understand the document instituting the proceedings, which constituted an exceptional circumstance within the meaning of Article 20(2) of that regulation, such as to warrant review of the order pursuant to that provision.

34. The application for review was, however, rejected by the Okresní soud Praha-západ (District Court, Prague West), by a decision of 8 April 2013, which was confirmed on appeal on 17 June 2013 by the Krajský soud v Praze (Regional Court, Prague, Czech Republic).

35. According to that court, the European order for payment was properly served on Catlin Europe in accordance with the requirements of Article 14 of Regulation No 1896/2006. Moreover, the failure to inform the addressee of the possibility of refusing to accept the document to be served, in accordance with Article 8(1) of Regulation No 1393/2007, cannot render the order invalid or allow its review, since Regulation No 1896/2006 does not provide for such a consequence.

36. Catlin Europe appealed on a point of law to the Nejvyšší soud (Supreme Court).

37. That court is unsure whether the failure to comply, in the case before it, with the requirements of Article 8(1) of Regulation No 1393/2007 is such as to warrant review of the order as provided for in Article 20 of Regulation No 1896/2006.

38. In particular, Regulation No 1896/2006 does not contain any provision governing the language in which the application for an order for payment should be served on the defendant. Furthermore, unlike Regulation No 1393/2007, Regulation No 1896/2006 lays down specific rules based on the use of standard forms set out in its annexes, which essentially have to be completed using predetermined numerical codes. Consequently, the referring court is uncertain whether it may be considered that a purely formal procedural defect such as that relied on by Catlin Europe is capable of infringing its rights of defence.

39. In those circumstances, the Nejvyšší soud (Supreme Court) decided to stay the proceedings and to refer the following question to the Court:

‘Is Article 20(2) of ... Regulation (EC) No 1896/2006 ... to be interpreted to the effect that a failure to notify the addressee of the possibility of refusing to accept the documents to be served, as provided for under Article 8(1) of ... Regulation (EC) No 1393/2007 ..., gives grounds for a right on the part of the defendant (the addressee) to apply for review of the European order for payment under Article 20(2) of ... Regulation (EC) No 1896/2006 ...?’

### III. Analysis

#### A. Summary of the arguments of the parties

40. Written observations have been submitted by O.K. Trans Praha, the Greek, Italian and Austrian Governments and the European Commission. No hearing has been requested and none has been held by the Court.

41. O.K. Trans Praha considers that in this instance there is no exceptional circumstance capable of warranting review of the European order for payment under Article 20(2) of Regulation No 1896/2006.

42. The present European order for payment procedure was preceded by three other procedures of the same type and, in each of those three procedures, Catlin Europe lodged a statement of opposition, proving that it was aware of the possibilities for defending itself. The failure to notify it of the possibility of refusing to accept the present order therefore had no effect on its rights of defence.

43. The fact that no statement of opposition was lodged in the present procedure was due to an error by an employee of Catlin Europe, which was now trying to rectify that error by an attempt to obtain a review.

44. The Greek Government points out that the purpose of Regulations No 1896/2006 and No 1393/2007 is to ensure a fair balance between the applicant’s interests and those of the defendant, by reconciling the aims of efficient and rapid transmission of procedural documents with the need to ensure appropriate protection for the rights of defence of the addressee of those documents.

45. Furthermore, according to established case-law, under Regulation No 1393/2007, when the receiving agency serves a judicial or extrajudicial document on its addressee, it is required in every case to attach to that document the standard form set out in Annex II to that regulation, in order to inform the addressee of his right to refuse to accept the document if it is not written in or translated into a language which he knows or is deemed to understand.<sup>4</sup>

46. It follows that the interpretation given to the possibility of a review of a European order for payment in exceptional cases, as provided for in Article 20(2) of Regulation No 1896/2006, must not have the effect of undermining the rights of defence of the addressee of the order.

47. It is evident that a defendant’s rights of defence are infringed where he is not able to understand, in the absence of an appropriate translation, the content of the application for an order for payment, and therefore the claim against him, since in those circumstances he is not able to make a well-informed decision whether to oppose the application or to leave it uncontested.

<sup>4</sup> See judgment of 2 March 2017, *Henderson* (C-354/15, EU:C:2017:157).



48. Consequently, the failure to inform the addressee of a European order for payment of the option open to him to refuse to accept the document to be served on the ground that it is not written in or translated into one of the languages referred to in Article 8 of Regulation No 1393/2007 should be regarded as constituting an exceptional circumstance within the meaning of Article 20(2) of Regulation No 1896/2006 and, therefore, as warranting review under that provision.

49. According to the Italian Government, on the other hand, the failure to inform the addressee of the option of refusing to accept the document to be served if it is not drawn up in his own language or in a language he knows does not entitle him to apply for review of a European order for payment on the basis of Article 20(2) of Regulation No 1896/2006.

50. Consequently, such a formal defect does not render either the document to be served or the procedure for service invalid. The procedure for service must simply be rectified by providing the party concerned with the standard form set out in Annex II to Regulation No 1393/2007, so that the time limit for lodging a statement of opposition under Article 16(2) of Regulation No 1896/2006 does not start to run until that rectification has been made. That being so, the requirement laid down for the application of Article 20 of Regulation No 1896/2006, that the defendant must provide evidence that the circumstance relied on prevented him from lodging a statement of opposition in good time, is not met in the present case.

51. Moreover, none of the circumstances warranting review referred to in Article 20 corresponds to service that is improper because of failure to inform the addressee of the possibility of refusing to accept the document.

52. The Austrian Government reaches the same conclusion as the Italian Government, but on the basis of a slightly different argument: although Regulation No 1896/2006 contains certain provisions on the service of a European order for payment on the defendant, it does not, however, contain any rule about the language in which service must be effected.

53. However, any questions relating to service not governed by that regulation must be decided in accordance with Regulation No 1393/2007.

54. It follows that, under Article 8 of the latter regulation, a European order for payment must be served with a translation or, where no translation is provided, the defendant must be informed of his right to refuse to accept the document.

55. It is not clear, however, whether a translation of the copy of the application form seeking the order is also required or may be demanded in certain cases.

56. Under Article 12(2) of Regulation No 1896/2006, a European order for payment must be issued together with a copy of the application form.

57. The application form is one in which the claimant only has to tick various boxes, so that the defendant could easily understand the content by reading it alongside the version of the form drawn up and published in his own language.

58. However, it is possible that the application may also contain important explanations in the form of free text.

59. In that situation, where the addressee was not informed of his right to refuse to accept the document even though it was not drawn up in a language which he understood, it must be determined whether service was properly effected.

60. In that regard, it might be argued either that that was not the case, so that the time limit for lodging a statement of opposition had not started to run, or that Article 20(1) of Regulation No 1896/2006 must be applied by analogy.

61. By contrast, Article 20(2) cannot be applied for such a formal defect. That provision only relates to cases where a European order for payment was wrongly issued because of a clerical error. In the case in the main proceedings, the order was correctly issued, and any error — a purely formal matter — occurred only later in the procedure, when the order was served on the defendant.

62. In the Commission's opinion, the two procedural defects which, according to Catlin Europe, invalidate the service of the European order for payment in the present case — the fact that, first, the copy of the application for the order, which must accompany it, was not drawn up in a language understood by the addressee or in the official language or one of the official languages of the Member State addressed, and that, secondly, the defendant was not informed of his right to refuse to accept the order in question, under Article 8 of Regulation No 1393/2007 — do not constitute exceptional circumstances warranting a review of the order under Article 20 of Regulation No 1896/2006.

63. Any other interpretation would not be consistent with the purpose of the European order for payment procedure.

64. In that regard, the aim of Regulation No 1896/2006 is to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims.

65. The main feature of the procedure is that there is an application form which is attached to the regulation and published in all the official EU languages. The standard form is to be completed using numerical codes which are the same in all the language versions, so that the defendant is able to understand that proceedings have been initiated against him, as well as the specific subject matter of the application and the reasons why a pecuniary claim has been brought.

66. The defendant is also informed of the possibility of lodging a statement of opposition to the order.

67. In addition, the right to seek a review of the order is confined to cases where there are exceptional circumstances, which means that the defendant does not have a second opportunity to oppose the order.

68. In any event, a simple remedy is to send the defendant a translation of the application for the order.

## ***B. Assessment***

69. The referring court asks, first, whether Regulations No 1896/2006 and No 1393/2007 are to be interpreted as meaning that, when a European order for payment is served on a defendant residing in the territory of another Member State, and the application for the order has not been drawn up in or is not accompanied by a translation into either a language which he understands, or the official language of the Member State of enforcement or, where there is more than one official language in that Member State, the official language or one of the official languages of the place where the order is to be served, the addressee must be properly informed, using the standard form set out in Annex II to Regulation No 1393/2007, of his right to refuse to accept the order.

70. Secondly, the referring court asks what the consequences are of failing to inform the addressee of his right to refuse to accept the document to be served, contrary to Article 8(1) of Regulation No 1393/2007, and, more particularly, whether that circumstance is capable of giving grounds for an application for review of the European order for payment under Article 20(2) of Regulation No 1896/2006.

*1. Part 1 — applicability of the requirements of Article 8(1) of Regulation No 1393/2007 in accordance with the requirements of Regulation No 1896/2006*

*(a) The case-law of the Court*

71. I refer mainly to the judgment of 2 March 2017, *Henderson* (C-354/15, EU:C:2017:157, in particular paragraphs 50 to 56 and the case-law cited), which has already examined this issue at length in the light of Regulation No 1393/2007.

72. Confirming its earlier case-law,<sup>5</sup> the Court reiterates in paragraph 50 of that judgment that the possibility provided for in Article 8(1) of Regulation No 1393/2007 of refusing to accept the document at issue constitutes a right of the addressee of that document.

73. It also confirms that the right to refuse to accept service of a document stems from the need to protect the rights of the defence of the addressee of that document, in accordance with the requirements of a fair hearing, enshrined in the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union and Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.<sup>6</sup> While the main aim of Regulation No 1393/2007 is to improve the efficiency and speed of judicial procedures and to ensure the proper administration of justice, the Court has held that those objectives cannot be attained by undermining in any way the rights of the defence of the addressees of the documents in question.<sup>7</sup>

74. It is important, therefore, not only to ensure that the addressee of a document actually receives the document in question, but also that he is able to know and understand effectively and completely the meaning and scope of the action brought against him abroad, so as to be able to prepare his defence effectively and to assert his rights in the Member State of transmission.<sup>8</sup>

75. In order for the right of refusal set out in Article 8(1) of Regulation No 1393/2007 to usefully produce its effects, it is necessary that the addressee of the document has been duly informed, in advance and in writing, of the existence of that right.<sup>9</sup>

76. In the system established by Regulation No 1393/2007, that information must be provided to him using the standard form set out in Annex II to that regulation.<sup>10</sup>

<sup>5</sup> Judgment of 16 September 2015, *Alpha Bank Cyprus* (C-519/13, EU:C:2015:603, paragraph 49; see also my Opinion in that case, EU:C:2015:33, where I specifically dealt with this subject), and order of 28 April 2016, *Alta Realitat* (C-384/14, EU:C:2016:316, paragraph 61).

<sup>6</sup> See judgment of 2 March 2017, *Henderson* (C-354/15, EU:C:2017:157, paragraph 51). See also, to that effect, order of 28 April 2016, *Alta Realitat* (C-384/14, EU:C:2016:316, paragraph 73).

<sup>7</sup> See judgment of 2 March 2017, *Henderson* (C-354/15, EU:C:2017:157, paragraph 51). See also, to that effect, judgment of 16 September 2015, *Alpha Bank Cyprus* (C-519/13, EU:C:2015:603, paragraphs 30 and 31), and order of 28 April 2016, *Alta Realitat* (C-384/14, EU:C:2016:316, paragraphs 48 and 49).

<sup>8</sup> See judgment of 2 March 2017, *Henderson* (C-354/15, EU:C:2017:157, paragraph 52 and the case-law cited).

<sup>9</sup> See judgment of 2 March 2017, *Henderson* (C-354/15, EU:C:2017:157, paragraph 53 and the case-law cited).

<sup>10</sup> See judgment of 2 March 2017, *Henderson* (C-354/15, EU:C:2017:157, paragraph 54 and the case-law cited).

77. As regards the scope which must be given to that standard form, the Court has already held that Regulation No 1393/2007 does not contain any exceptions to its use.<sup>11</sup>

78. From that consideration and the aim pursued by the standard form set out in Annex II to Regulation No 1393/2007, as described in points 75 and 76 of this Opinion, the Court has inferred that the receiving agency is required, in all circumstances and without it having a margin of discretion in that regard, to inform the addressee of a document of his right to refuse to accept that document, by using systematically for that purpose that standard form.<sup>12</sup>

*(b) Application to the present case*

79. In the present case the question is whether the foregoing considerations must also apply in the context of Regulation No 1896/2006.

80. As the Austrian Government has pointed out, questions relating to the service of documents which are not settled by this regulation must be decided in accordance with Regulation No 1393/2007. Article 27 of Regulation No 1896/2006 expressly states that Regulation No 1896/2006 does not affect the application of Regulation No 1348/2000, which was replaced by Regulation No 1393/2007. Furthermore, according to Article 25(2) of this last regulation, references to Regulation No 1348/2000 are to be construed as references to Regulation No 1393/2007.

81. It is clear that, in the present case, the application for the order, which constitutes the document initiating proceedings for the purposes of the issue of the European order for payment, must be classified as a 'document' within the meaning of Article 8(1) of Regulation No 1393/2007.

82. As the Austrian Government notes, Article 12(2) of Regulation No 1896/2006 expressly provides that the European order for payment is to be issued together with a copy of the application form,<sup>13</sup> so that both the order and the application must be served on the defendant at the same time. In the present case, both documents were served.

83. Consequently, the requirements of Article 8(1) of Regulation No 1393/2007 are applicable not just to the service of the order itself, but also to the service of the application for the order. Each of these two documents must therefore be served on its addressee in a language which he is deemed to understand, as provided for by Article 8(1), and, where that is not the case, service must be accompanied by the standard form set out in Annex II to that regulation informing the party concerned of his right to refuse to accept the document in question.

84. The foregoing conclusion is all the more compelling because the European order for payment procedure introduced by Regulation No 1896/2006 is not adversarial, in the sense that the national court decides only on the basis of the application made by the claimant, without the defendant even being informed of the existence of a procedure against him.

85. It is therefore not until the order is served that the defendant has the opportunity to be apprised of the existence and content of the application. Observance of the rights of the defence, which Article 8(1) of Regulation No 1393/2007 seeks to protect, is therefore especially important in this context.

<sup>11</sup> See judgment of 2 March 2017, *Henderson* (C-354/15, EU:C:2017:157, paragraph 55 and the case-law cited).

<sup>12</sup> See judgment of 2 March 2017, *Henderson* (C-354/15, EU:C:2017:157, paragraph 56 and the case-law cited).

<sup>13</sup> This obligation is explained by the fact that the defendant must be able, on that basis, to obtain the information needed to enable him to decide whether or not to oppose the claim (recital 13 of Regulation No 1896/2006).

86. The fact that, under Regulation No 1896/2006, the application for the order is submitted using a standard form, the model for which is set out in Annex I to that regulation, is irrelevant in this respect.

87. Even if many of the boxes in this standard form can be completed using predetermined codes and are therefore easily comprehensible in so far as the explanations of those codes have been published in the *Official Journal of the European Union* in all the official EU languages, the fact remains that the standard form also requires the claimant to supply, as is apparent from Article 7(2)(d) and (e) of that regulation, more detailed information including a description of the specific circumstances invoked as the basis of the claim and evidence supporting the claim. The defendant must be apprised of that information in a language which he is deemed to know, in order to understand effectively and completely the meaning and scope of the action brought against him abroad and, where appropriate, to prepare his defence.

88. It must be concluded that the mandatory and systematic use of the standard form set out in Annex II to Regulation No 1393/2007 applies equally to the service of the European order for payment and to the accompanying service of the application for the order.

## 2. Part 2 — what are the consequences of an infringement of that obligation?

### (a) The case-law of the Court

89. First of all, as the Commission noted, Article 8 of Regulation No 1393/2007 does not say anything about the legal consequences of failure to inform the addressee of a document of his right to refuse to accept it. It is not apparent from any provision of that regulation that that omission renders the procedure for service invalid.

90. In a case where the document was not drawn up in an official language of the Member State addressed or in a language of the Member State of transmission which the addressee understands, the Court has held that it was possible for the sender to remedy that procedural defect by sending the defendant the translation requested.<sup>14</sup>

91. Furthermore, I would again refer to the judgment of 2 March 2017, *Henderson* (C-354/15, EU:C:2017:157, in particular paragraphs 57 and 58).

92. According to paragraph 57 of that judgment, ‘where the receiving agency, which is required to serve the document concerned on its addressee residing in another Member State, has not enclosed the standard form in Annex II of Regulation No 1393/2007, that omission *cannot render invalid either the document to be served or the procedure for service*, as that consequence would be incompatible with the objective pursued by that regulation, which consists in providing a means of direct, rapid and effective transmission between Member States of documents in civil and commercial matters’ (emphasis added).

93. According to paragraph 58, however, ‘as communication of that form constitutes an essential formality, intended to safeguard the rights of defence of the addressee of the act, *its omission must be corrected by the receiving agency in accordance with the provisions laid down by Regulation No 1393/2007*. The receiving agency must therefore immediately inform the addressee of the document of his right to refuse to accept it, by submitting to him, pursuant to Article 8(1) of that regulation, that standard form’ (emphasis added).

<sup>14</sup> See judgment of 8 November 2005, *Leffler* (C-443/03, EU:C:2005:665, paragraphs 38 and 53).

(b) *Application to the present case*

94. In my view, for the same reasons as those set out in points 79 to 88 of this Opinion, the same rules must manifestly apply, by analogy, to the service of documents under Regulation No 1896/2006.

95. As the Court has ruled, it is only after the addressee has been informed of his right to refuse to accept the document and has exercised that right that the court seized may verify whether that refusal was well founded.<sup>15</sup>

96. Therefore, in a case where, as here, the service on the defendant of the application for an order for payment, drawn up in a language other than those referred to in Article 8(1) of Regulation No 1393/2007, was not accompanied by the standard form set out in Annex II to that regulation, that omission must be remedied, as must the resulting failure to inform the addressee of the document of his right to refuse to accept it, by submitting the standard form to the defendant as soon as possible and in accordance with the provisions of that regulation.

97. Furthermore, it is evident from the case-law that, where a European order for payment has not been served properly, as in the present case, it has not legitimately become enforceable and the period within which the defendant may lodge a statement of opposition has not started to run.<sup>16</sup>

98. That being so, the question of reviewing the European order for payment under Article 20 of Regulation No 1896/2006, as raised by the referring court, does not arise.

99. The formal defect invalidating the service of the application for the order for payment has to be regarded as a preliminary issue preceding the review stage: a review presupposes that the period for sending a statement of opposition has expired, whereas, because of the procedural irregularity affecting service of the document, that period has not even started to run.

100. Furthermore, the Court has already held with regard to that provision that: first, since the EU legislature intended to limit use of the review procedure, the article must be interpreted strictly.<sup>17</sup> Secondly, the review procedure presupposed the existence of ‘extraordinary circumstances’ within the meaning of Article 20(1),<sup>18</sup> or ‘exceptional circumstances’ within the meaning of Article 20(2).<sup>19</sup> Thirdly, these cases were exhaustively listed in that article (‘a failure to effect service not being one of them’).<sup>20</sup> Fourthly, the possibility of having the order reviewed after it has become enforceable and the time limit for opposing it has elapsed must not lead to the defendant being given a second opportunity to oppose the claim.<sup>21</sup>

101. On those bases, it seems to me that, contrary to the Greek Government’s claim, the procedural defects mentioned by the defendant cannot warrant review of the European order for payment on the basis of the circumstances referred to in Article 20 of Regulation No 1896/2006.<sup>22</sup>

<sup>15</sup> See order of 28 April 2016, *Alta Realitat* (C-384/14, EU:C:2016:316, paragraphs 62 and 89).

<sup>16</sup> See, by analogy, judgment of 4 September 2014, *eco cosmetics and Raiffeisenbank St. Georgen* (C-119/13 and C-120/13, EU:C:2014:2144, paragraphs 41 to 43 and paragraph 48).

<sup>17</sup> Judgment of 22 October 2015, *Thomas Cook Belgium* (C-245/14, EU:C:2015:715, paragraph 31).

<sup>18</sup> See order of 21 March 2013, *Novontech-Zala* (C-324/12, EU:C:2013:205, paragraphs 20 to 25).

<sup>19</sup> See judgment of 22 October 2015, *Thomas Cook Belgium* (C-245/14, EU:C:2015:715, paragraphs 29 and 30).

<sup>20</sup> Judgment of 4 September 2014, *eco cosmetics and Raiffeisenbank St. Georgen* (C-119/13 and C-120/13, EU:C:2014:2144, paragraph 44).

<sup>21</sup> See judgment of 22 October 2015, *Thomas Cook Belgium* (C-245/14, EU:C:2015:715, paragraph 48).

<sup>22</sup> I note that this view is also supported by O.K. Trans Praha, the Italian and Austrian Governments and the Commission.

102. As regards more specifically Article 20(2) of Regulation No 1896/2006, on which the referring court seeks a ruling from the Court, it mentions two grounds for reviewing an order for payment. First, the order for payment must clearly have been wrongly issued, having regard to the requirements laid down in the regulation. Secondly, other exceptional circumstances may warrant a review.

103. Regarding the first ground, as the Commission noted, it must be stated that the order for reference does not contain any evidence showing that the European order for payment was *clearly wrongly* issued. The European order for payment was issued in accordance with the requirements laid down by the regulation. As for the procedural defect resulting from the failure to serve the order in accordance with Regulation No 1393/2007, it is possible to remedy this by sending the translation requested to the defendant, as stated in points 90 to 93 of this Opinion.

104. Regarding the second ground, it must be assessed whether, in the present case, a review of the European order for payment may be warranted by other exceptional circumstances.

105. I think (as does the Commission) that such exceptional circumstances may be either procedural defects or errors relating to the actual characteristics of the pecuniary claim which is the subject of the order for payment. Since the Court has ruled that Article 20 of Regulation No 1896/2006 must be interpreted strictly, the order for payment cannot be reviewed for just any procedural error. For a procedural error to constitute an exceptional circumstance, it must have a direct effect on the defendant's rights of defence, that is, in the present case, on his right to oppose the order for payment in accordance with Article 16 of that regulation.

106. Furthermore, as the Italian Government noted, it is precisely the absence of any provision providing for a document or its service to be rendered invalid by the failure to inform the addressee that he could refuse the document which supports the argument that the irregularity is rectifiable. As I said, the irregularity of service resulting from the failure to draft the document to be served in a language which the addressee knows or understands may be remedied by the submission of a copy of the translated document to the addressee immediately afterwards, without his right to lodge a statement of opposition being in any way circumscribed.

107. That also means that, pursuant to Article 8(3) of Regulation No 1393/2007,<sup>23</sup> the irregularity of service as a result of the failure to inform the addressee that he can refuse to accept it does not, as such, render the service invalid, but merely postpones the point from which the period for lodging a statement of opposition starts to run, as provided for in Article 16(1) of Regulation No 1896/2006.

#### IV. Conclusion

108. For those reasons, I propose that the Court should answer the question referred by the Nejvyšší soud (Supreme Court, Czech Republic) as follows:

- Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure and Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000, are to be interpreted as meaning that, when a European order for payment is served on a defendant residing in the territory of another Member State, and where the application for the order has not been written in or accompanied by a translation into either a language which he understands or the official language of the Member State of enforcement or, where there is more than one official language

<sup>23</sup> Which provides that 'in that case, the date of service of the document shall be the date on which the document accompanied by the translation is served in accordance with the law of the Member State addressed'.

in that Member State, in the official language or one of the official languages of the place of service, the addressee must be properly informed, using the standard form set out in Annex II to Regulation No 1393/2007, of his right to refuse to accept the document.

- In accordance with the provisions of Regulation No 1393/2007, where that procedural requirement has not been carried out, the procedure may be rectified by transmitting the standard form set out in Annex II to that regulation to the person concerned.
- As long as the procedural defect persists, affecting service of the order for payment together with the application for the order, first, the order does not become in any way enforceable, and, secondly, the period allowed for the defendant to lodge a statement of opposition does not start to run.