Reports of Cases

OPINION OF ADVOCATE GENERAL
COLLINS
delivered on 31 March 2022[1]

Case C‑18/21

Uniqa Versicherungen AG
v
VU

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

(Reference for a preliminary ruling – Judicial cooperation in civil matters – European order for payment procedure – Regulation (EC) No 1896/2006 – Opposition – Article 16(2) – 30-day time limit to send a statement of opposition to the European order for payment – Article 20 – Review in exceptional cases after the expiry of the time limit in Article 16(2) – Article 26 – Relationship with national procedural law – National legislation on measures related to COVID-19 interrupting all procedural periods in civil cases from 21 March 2020 to 30 April 2020)

I. Introduction

1. The present request for a preliminary ruling concerns a European payment order issued at the request of Uniqa Versicherungen AG against VU in accordance with Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.[2] It seeks the interpretation of Articles 16(2), 20 and 26 of that regulation.

2. Article 16(2) of Regulation No 1896/2006 provides that a statement of opposition to a European order for payment shall be sent within 30 days of service of the order, in the absence of which that order becomes enforceable against the defendant.[3] A defendant who does not lodge a statement of opposition within that 30-day time limit may, in a number of exceptional cases, apply for a review of the order pursuant to Article 20 of Regulation No 1896/2006. According to Article 26 of Regulation No 1896/2006, procedural issues not specifically dealt with in that regulation are governed by national law.

3. At the height of the COVID-19 pandemic in the first trimester of 2020, the Republic of Austria adopted legislation which interrupted all procedural periods in proceedings in civil cases from 21 March 2020 to 30 April 2020. By its request for a preliminary ruling of 27 November 2020,

[1] Original language: English.

[2] OJ 2006 L 399, p. 1.

[3] See Article 18(1) of Regulation No 1896/2006.

lodged at the Registry of the Court of Justice on 12 January 2021, the Oberster Gerichtshof (Supreme Court, Austria) seeks to ascertain whether Articles 20 and 26 of Regulation No 1896/2006 preclude such national legislation.

II. Legal framework

A. European Union law – Regulation No 1896/2006

4. Recital 9 of Regulation No 1896/2006 describes its purpose as:

'… 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 … 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. Recital 24 of the regulation states:

'A statement of opposition filed within the time limit should terminate the European order for payment procedure and should lead to an automatic transfer of the case to ordinary civil proceedings unless the claimant has explicitly requested that the proceedings be terminated in that event. …'

6. Recital 25 of the regulation provides that:

'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.'

7. Recital 29 of the regulation declares that that regulation has as its objective 'to establish a uniform rapid and efficient mechanism for the recovery of uncontested pecuniary claims throughout the European Union'.

8. 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;

…'

9. Article 16, entitled 'Opposition to the European order for payment', provides in its paragraphs 1 and 2:

'1. The defendant may lodge a statement of opposition to the European order for payment with the court of origin using standard form F as set out in Annex VI, which shall be supplied to him together with the European order for payment.

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

10. Article 17(1) of that regulation states:

'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.

…'

11. Article 18(1) of that regulation provides:

'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.'

12. Article 20 of Regulation No 1896/2006, 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. Article 26 of Regulation No 1896/2006, entitled 'Relationship with national procedural law', provides:

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

B. Austrian law

14. The first and second sentences of Paragraph 1(1) of the Bundesgesetz betreffend Begleitmaßnahmen zu COVID-19 in der Justiz
(1. COVID-19-Justiz-Begleitgesetz – 1. COVID-19-JuBG) (Federal Law on accompanying measures for COVID-19 in the administration of justice; 'the national COVID-19 law') [4], provide:

'Proceedings in civil cases

Interruption of periods

… In judicial proceedings, all procedural periods for which the event triggering the period falls in the period after the entry into force of this Federal Law and all procedural periods that have not yet expired before the entry into force of this Federal Law shall be interrupted until the end of 30 April 2020. They shall begin to run anew on 1 May 2020. …'

III. The facts of the main proceedings and the question referred for a preliminary ruling

15. On 6 March 2020, the Bezirksgericht für Handelssachen Wien (District Court for Commercial Matters, Vienna, Austria), acting as the court of first instance, issued a European order for payment at the behest of Uniqa Versicherungen. The order was served on VU, who is a resident of Germany, on 4 April 2020. A statement of opposition to the order was lodged on 18 May 2020. The Bezirksgericht für Handelssachen Wien (District Court for Commercial Matters, Vienna) rejected that opposition on the ground that it had not been lodged within the 30-day time limit provided by Article 16(2) of Regulation No 1896/2006.

16. On appeal, the Handelsgericht Wien (Commercial Court, Vienna, Austria) set aside the order of the court of first instance. It held that the time limit for lodging a statement of opposition under Article 16(2) of Regulation No 1896/2006 had been interrupted pursuant to Paragraph 1(1) of the national COVID-19 law. According to that law, all procedural periods in proceedings in civil cases that had started to run on 22 March 2020 or thereafter, up until the end of 30 April 2020, are interrupted and begin to run anew on 1 May 2020.

[4] Published on 21 March 2020, in the version of the 4. COVID-19-Gesetz (BGBl. I, 24/2020) in force at the time when the European order for payment was served on VU on 4 April 2020.

17. Uniqa Versicherungen appealed the decision of the Handelsgericht Wien (Commercial Court, Vienna) on a point of law. It seeks to have the order of the court of first instance restored.

18. The Oberster Gerichtshof (Supreme Court) notes that there are diverging views in Austrian legal literature as to whether Paragraph 1(1) of the national COVID-19 law applies to the 30-day time limit for lodging a statement of opposition laid down in Article 16(2) of Regulation No 1896/2006 or whether Article 20 of that regulation excludes the application of the national COVID-19 law. Some commentators take the view that Article 20 of Regulation No 1896/2006 governs *force majeure* or extraordinary circumstances such as the COVID-19 crisis. Recourse to national law is therefore impermissible. Other commentators consider that Paragraph 1(1) of the national COVID-19 law is not 'superseded' by the review procedure under Article 20 of Regulation No 1896/2006. They maintain that the terms of Article 16(2) of Regulation No 1896/2006 are limited to the duration of the time limit within which a statement of opposition may be lodged. Any possible interruption of that time limit is unregulated, with the result that – pursuant to Article 26 of Regulation No 1896/2006 – national procedural law applies. Article 20(1)(b) of Regulation No 1896/2006 is limited to achieving fairness in individual cases. It does not contain a general rule adopted in the context of exceptional situations, such as the COVID-19 crisis.

19. The Oberster Gerichtshof (Supreme Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Are Articles 20 and 26 of [Regulation No 1896/2006] to be interpreted as meaning that those provisions preclude an interruption of the 30-day time limit for lodging a statement of opposition to a European order for payment, as provided for in Article 16(2) of that regulation, by Paragraph 1(1) of the [national COVID-19 law], pursuant to which all procedural periods in proceedings in civil cases for which the event triggering the period occurs after 21 March 2020 or which have not yet expired by that date are to be interrupted until the end of 30 April 2020 and are to begin to run anew from 1 May 2020?'

IV. The procedure before the Court

20. Uniqa Versicherungen, VU, the Hellenic and Austrian Governments and the European Commission submitted written observations.

21. Uniqa Versicherungen, the French and Austrian Governments and the Commission participated at the hearing on 19 January 2022.

V. Consideration of the question referred

22. By its question, the Oberster Gerichtshof (Supreme Court) asks whether Articles 20 and 26 of Regulation No 1896/2006 preclude the adoption, in the circumstances of the COVID-19 pandemic, of a national measure that purported to interrupt the 30-day time limit for lodging a statement of opposition to a European order for payment contained in Article 16(2) thereof.

23. Prior to analysing the question referred, it is necessary to examine the existing case-law of the Court on Regulation No 1896/2006, in particular, on its Articles 16, 20 and 26.

A. An overview of Regulation No 1896/2006 and of the case-law of the Court thereon

24. The purpose of Regulation No 1896/2006 is to simplify, accelerate and reduce costs in cross-border disputes concerning uncontested pecuniary claims by establishing a European order for payment procedure.[5] It introduces a uniform instrument for the recovery of debts under identical conditions for creditors and debtors throughout the European Union, while providing that the procedural law of the Member States applies to all procedural questions not expressly regulated thereunder. Regulation No 1896/2006 thus guarantees a level playing field for creditors and debtors throughout the European Union.[6]

25. Article 2(1) of Regulation No 1896/2006 makes the European order for payment procedure available in cross-border disputes. Under Article 3(1) thereof, a dispute is deemed to be cross-border where at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seised.[7] In the present case, Uniqa Versicherungen seised the Austrian civil courts. VU resides in Germany. There is accordingly a cross-border dispute for the purposes of Regulation No 1896/2006.

26. The European order for payment procedure established by Regulation No 1896/2006 is non-adversarial. The national court seised of an application for such an order determines it exclusively by reference thereto. The defendant is not informed of the existence of the proceedings.[8] It is thus not until service of the order that the defendant may learn of both its existence and the content of the claim against him or her. Given the essentially unilateral nature of the European order for payment procedure, the Court has stated that respect for the rights of the defence is especially important.[9]

[5] See Article 1 of Regulation No 1896/2006, read in conjunction with recitals 9 and 29 thereof. Judgment of 19 December 2019, *Bondora* (C-453/18, EU:C:2019:1118, paragraph 36). The Court stated that it is apparent from a combined reading of recitals 8 and 10 of Regulation No 1896/2006 and Article 26 thereof that it institutes a European order for payment procedure which constitutes an additional and optional means for a claimant, while neither replacing nor harmonising the existing mechanisms for the recovery of uncontested claims under national law. Judgment of 10 March 2016, *Flight Refund* (C-94/14, EU:C:2016:148, paragraph 53).

[6] Judgments of 13 December 2012, *Szyrocka* (C-215/11, EU:C:2012:794, paragraph 30); of 13 June 2013, *Goldbet Sportwetten* (C-144/12, EU:C:2013:393, paragraph 28); and of 10 March 2016, *Flight Refund* (C-94/14, EU:C:2016:148, paragraph 53).

[7] See, to that effect, judgment of 19 December 2019, *Bondora* (C-453/18, EU:C:2019:1118, paragraph 35).

[8] Article 7 of Regulation No 1896/2006 contains exhaustive requirements as to the content and form of an application for a European order for payment. Judgment of 13 December 2012, *Szyrocka* (C-215/11, EU:C:2012:794, paragraphs 25 to 32). A court seised of an application for a European order for payment may however request additional information from the creditor relating to the terms of the agreement relied on in support of the claim at issue in order to carry out an *ex officio* review of the possible unfairness of those terms. Judgment of 19 DecemberACC 2019, *Bondora* (C-453/18, EU:C:2019:1118, paragraph 54). By that means, the exhaustive character of Article 7 of Regulation No 1896/2006 may not allow creditors to circumvent the requirements of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) or Article 38 of the Charter of Fundamental Rights of the European Union ('the Charter') on consumer protection.

[9] Judgment of 6 September 2018, *Catlin Europe* (C-21/17, EU:C:2018:675, paragraphs 44 and 45). Cyril Nourissat has described the procedure as '*impitoyable*', unforgiving. See Nourissat, C., 'Nouveau refus de la Cour de justice de caractériser des circonstances exceptionnelles en matière de réexamen', *Procédures*, 2016, No 1, p. 29.

27. Upon service of the European order for payment, the defendant is advised of his or her options[10] of either paying the claimant the amount indicated in the order or lodging a statement of opposition with the court of origin[11] in accordance with Article 16 of Regulation No 1896/2006 within 30 days of service of the order for payment. A statement of opposition need not contain any reasons,[12] since it does not provide a framework for a defence on the merits but merely enables the defendant to contest the claim.[13] Opposition is the standard mechanism for terminating the European order for payment procedure, since it leads to the automatic transfer of the case to ordinary civil-court proceedings unless the claimant explicitly requests termination of the proceedings.[14] As the Hellenic Government observes in its written observations, the result of lodging a statement of opposition is that there is no longer an uncontested pecuniary claim for the purposes of Regulation No 1896/2006. The option of lodging a statement of opposition is designed to compensate for the fact that the system established by Regulation No 1896/2006 does not provide for the defendant's participation. The exercise of that option by the defendant enables him or her to contest the claim after the European order for payment has been issued.[15]

28. When the 30-day time limit for submitting a statement of opposition has elapsed, the European order for payment can be reviewed exclusively in the 'exceptional cases'[16] exhaustively listed in Article 20 of Regulation No 1896/2006.[17] Moreover, a defendant's application to a court to stay the enforcement of a European payment order under Article 23 of Regulation No 1896/2006 will succeed only in exceptional circumstances. Thus, as the Hellenic Government stated in its written observations, the expiration of the 30-day time limit in Article 16(2) of Regulation No 1896/2006 can have grave and irreversible consequences for defendants.

29. Pursuant to Article 20(1)(b) of Regulation No 1896/2006, a defendant is entitled to apply for a review of the European order for payment before the competent court in the Member State of origin either where he or she was prevented from objecting to the claim by reason of *force majeure*[18] or where three cumulative conditions are met. First, there must be extraordinary circumstances by reason of which the defendant was prevented from challenging the claim within the time limit prescribed for that purpose; second, there should be no fault on the part of the defendant; and, third, the defendant must act promptly.[19] In addition, Article 20(2) of Regulation No 1896/2006

[10] See Article 12(3) of Regulation No 1896/2006. Where the minimum rules on service of the European order for payment in Regulation No 1896/2006 are not complied with, the Court has held that the balance between the objectives pursued by that regulation of speed and efficiency, on the one hand, and respect for the rights of the defence, on the other hand, are undermined. Judgment of 4 September 2014, *eco cosmetics and Raiffeisenbank St Georgen* (C-119/13 and C-120/13, EU:C:2014:2144, paragraph 37). In such circumstances, the order is unenforceable, the opposition procedure laid down in Article 16 of Regulation No 1896/2006 does not apply and the period during which a defendant may lodge a statement of opposition does not start to run. 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 48). See also judgment of 6 September 2018, *Catlin Europe* (C-21/17, EU:C:2018:675, paragraph 53). It follows that the review procedure in Article 20 of Regulation No 1896/2006 is also inapplicable. Judgments of 4 September 2014, *eco cosmetics and Raiffeisenbank St Georgen* (C-119/13 and C-120/13, EU:C:2014:2144, paragraphs 43 and 44), and of 6 September 2018, *Catlin Europe* (C-21/17, EU:C:2018:675, paragraph 54).

[11] Pursuant to Article 5(4) of Regulation No 1896/2006, the 'court of origin' is that which issues the European order for payment.

[12] See Article 16(3) of Regulation No 1896/2006. See also judgment of 22 October 2015, *Thomas Cook Belgium* (C-245/14, EU:C:2015:715, paragraph 40).

[13] Judgment of 13 June 2013, *Goldbet Sportwetten* (C-144/12, EU:C:2013:393, paragraph 40).

[14] Judgment of 4 September 2014, *eco cosmetics and Raiffeisenbank St Georgen* (C-119/13 and C-120/13, EU:C:2014:2144, paragraph 38). See, to that effect, recital 24 of Regulation No 1896/2006. In paragraph 39 of the judgment of 4 September 2014, *eco cosmetics and Raiffeisenbank St Georgen* (C-119/13 and C-120/13, EU:C:2014:2144), the Court stated that, given that 'the method of challenging in respect of claims which [underlie] a European order for payment is that of opposition, the special procedure governed by Regulation No 1896/2006 no longer applies, since, in accordance with Article 1(1)(a) of that regulation, its purpose is "to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims"'.

[15] Judgment of 22 October 2015, *Thomas Cook Belgium* (C-245/14, EU:C:2015:715, paragraph 28 and the case-law cited).

[16] Judgment of 22 October 2015, *Thomas Cook Belgium* (C-245/14, EU:C:2015:715, paragraph 29).

[17] Judgment of 4 September 2014, *eco cosmetics and Raiffeisenbank St Georgen* (C-119/13 and C-120/13, EU:C:2014:2144, paragraph 44).

[18] Provided that the defendant acts promptly.

[19] Order of 21 March 2013, *Novontech-Zala* (C-324/12, EU:C:2013:205, paragraph 24).

provides that where the time limit for submitting a statement of opposition has not been met, there can be a review of the European order for payment where, having regard to the requirements laid down in that regulation or due to other exceptional circumstances, the order for payment was clearly wrongly issued.[20]

30. Given that the review procedure is available in exceptional cases only, the Court has held that Article 20 of Regulation No 1896/2006 must be interpreted strictly.[21] Moreover, as recital 25 of Regulation No 1896/2006 states, the possibility under Article 20 thereof of having the order for payment reviewed does not give the defendant a second opportunity to oppose the claim.[22] If the competent court in the Member State of origin rejects the defendant's application for review under Article 20(1)(b) or Article 20(2) of Regulation No 1896/2006, the European order for payment remains in force. If, however, the competent court in the Member State of origin decides that the review is justified, the European order for payment is null and void.

31. It follows that the review procedure under Article 20 of Regulation No 1896/2006 does not purport to be a substitute for the opposition procedure under Article 16. The two procedures are entirely different in nature. A defendant has an absolute right to oppose a European order for payment within the time limit laid down in Article 16(2) of Regulation No 1896/2006. No reasons are required in the statement of opposition. By contrast, recourse may be had to the review procedure under Article 20 of Regulation No 1896/2006 in very limited 'exceptional cases' and only after the time limit laid down in Article 16(2) has expired.

32. Moreover, a defendant may lodge a statement of opposition to the European order for payment with the court of origin using a standard form supplied to him or her together with the European order for payment. By contrast, a defendant must apply for a review of the European order for payment before the competent court in the Member State of origin and Regulation No 1896/2006 does not provide any standard form for that purpose.

33. Under Article 26 of Regulation No 1896/2006, any procedural issues not specifically dealt with in the regulation 'shall be governed by national law'. In such cases, the application of the regulation by analogy is precluded.[23] In that regard, as stated in its recital 9, Regulation No 1896/2006 lays down minimum standards, compliance with which renders unnecessary any intermediate proceedings in the Member State of enforcement prior to the recognition and the enforcement of a European order for payment. Regulation No 1896/2006 thus does not contain an exhaustive procedure for the recovery of uncontested claims by way of a European order for payment. Moreover, Article 26 of Regulation No 1896/2006 accords with the principles of subsidiarity and proportionality.[24]

[20] Judgment of 22 October 2015, *Thomas Cook Belgium* (C-245/14, EU:C:2015:715, paragraph 30).

[21] See, by analogy, judgment of 22 October 2015, *Thomas Cook Belgium* (C-245/14, EU:C:2015:715, paragraph 31).

[22] See, by analogy, judgment of 22 October 2015, *Thomas Cook Belgium* (C-245/14, EU:C:2015:715, paragraph 48). In that judgment, the Court considered that after the expiration of the 30-day time limit in Article 16(2) of Regulation No 1896/2006, a defendant could not seek a review of an order for payment under Article 20 of that regulation on the basis that the court of origin lacked jurisdiction due to a jurisdictional clause in a contract. Since the defendant must have been aware of that clause, the Court held that it had the opportunity to raise that issue in the opposition procedure. It could not thereafter assert that the payment order had been wrongly issued in exceptional circumstances.

[23] Judgment of 4 September 2014, *eco cosmetics and Raiffeisenbank St Georgen* (C-119/13 and C-120/13, EU:C:2014:2144, paragraph 45).

[24] See also recital 29 of Regulation No 1896/2006.

B. Analysis of the question referred

34. The referring court, as well as the Austrian Government in its written observations, state that the purpose of the general interruption of time limits introduced by Paragraph 1(1) of the national COVID-19 law was swiftly to guarantee clarity and legal certainty to all parties to court proceedings and to their representatives, in the exceptional situation of the COVID-19 pandemic during which public life and activity were limited to a minimum. Due to the impact of the virus and the quarantine measures taken to contain its spread, including the avoidance of personal contact as far as possible, it was foreseen that court staff, legal advisers and parties would be unable to go about their business in the usual manner. Accordingly, the Austrian legislator interrupted time limits generally and without reference to individual cases.

35. By purporting to interrupt all procedural periods in civil cases, including those set by EU legal instruments, Paragraph 1(1) of the national COVID-19 law had a very broad scope. Nonetheless, it appears from the file before the Court that the measure in question applied to procedural periods that had not yet expired prior to its entry into force and interrupted those time limits for a period of approximately five weeks. As the Commission indicated in its written observations, the measure in question did not resuscitate time limits that had expired or have any other retroactive effect. Moreover, the Austrian Government confirmed at the hearing that it adopted no other measures to interrupt time limits as a consequence of the COVID-19 pandemic.

36. Article 16 of Regulation No 1896/2006 does not provide for the interruption or the extension of the time limit specified therein. It simply establishes the 30-day time limit that begins to run from the date of service of the order on the defendant.[25] In filing a statement of opposition, VU did not comply with the 30-day time limit laid down in Article 16(2) of Regulation No 1896/2006. The European order for payment obtained by Uniqa Versicherungen is thus, in principle, enforceable pursuant to Article 18 of that regulation.

37. On the face of it, Article 16 of Regulation No 1896/2006 does not seem to contemplate a measure such as Paragraph 1(1) of the national COVID-19 law that interrupts or suspends time limits generally. Indeed, as the Austrian Government and VU stated in their written observations, Regulation No 1896/2006 does not provide for any interruption or suspension of time limits, general or otherwise, due, for example, to the death of a party, the loss of a party's capacity to sue, or the opening of bankruptcy/insolvency proceedings. That government and VU thus contend that the interruption or suspension of time limits in such matters fall to be regulated by national law.

38. In that regard, it may be observed that the time limit for lodging a statement of opposition laid down in Article 16(2) of Regulation No 1896/2006 may not, in fact, be identical in all Member States. According to recital 28 of that regulation, Regulation (EEC, Euratom) No 1182/71 of the

[25] See, by contrast, Article 14(2) of Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (OJ 2007 L 199, p. 1), which provides that a court or tribunal may, in exceptional circumstances, extend certain time limits provided for therein, if necessary to safeguard the rights of the parties. See also Article 45 of Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters (OJ 2014 L 189, p. 59) and recital 37 of that regulation. Those facilitate the possibility of derogating from the time limits contained therein where it is not possible for the court or the authority involved to respect them and where that derogation is justified by exceptional circumstances. In its judgment of 7 November 2019, *K.H.K. (Account preservation)* (C-555/18, EU:C:2019:937, paragraph 55), the Court held that judicial vacations are not 'exceptional circumstances' for the purposes of Article 45 of Regulation No 655/2014. See also Article 14(3) of Regulation No 861/2007, which provides that if, in exceptional circumstances, it is not possible for a court to respect certain time limits provided therein, it shall take the steps required by those provisions as soon as possible. Those provisions, which give express powers to courts to extend time limits on an ad hoc basis in exceptional circumstances, are absent from Regulation No 1896/2006.

Council of 3 June 1971 determining the rules applicable to periods, dates and time limits [26] applies to the calculation of time limits under Regulation No 1896/2006. Consequently, the public holidays of the Member State in which the court issuing the European order for payment is situated are taken into account. Given that public holidays in the Member States are not uniform, there will be divergences when determining the exact date by which a statement of opposition must be lodged.

39. Article 20(2) of Regulation No 1896/2006, which provides for the review of a European order for payment where the order for payment was clearly wrongly issued, does not apply in the context of the main proceedings. First, there is no suggestion in the file before the Court that the European order for payment obtained by Uniqa Versicherungen was wrongly issued. Second, and more importantly, Article 20(2) of Regulation No 1896/2006 establishes criteria that apply to specific situations whereas Paragraph 1(1) of the national COVID-19 law established a general rule that applied to all procedural periods in civil cases.

40. In my view, the general nature of Paragraph 1(1) of the national COVID-19 law brings it outside of the ambit of Article 20(1)(b) of Regulation No 1896/2006. Moreover, the latter provision is interpreted strictly. [27] A person can rely on Paragraph 1(1) of the national COVID-19 law without having to prove that he or she was prevented from opposing a European order for payment by reason of *force majeure* or due to extraordinary circumstances. [28] That conclusion is not altered by the existence of individual cases where, as a result of the COVID-19 pandemic, a defendant could in fact rely on *force majeure* or extraordinary circumstances by reference to Article 20(1)(b) of Regulation No 1896/2006 where he or she had failed to lodge a statement of opposition in a timely manner.

41. Given that Article 16(2), Article 20(1)(b) and Article 20(2) of Regulation No 1896/2006 do not envisage a general interruption of the time limit laid down in Article 16(2) thereof, the question arises whether they, or any other provision of Regulation No 1896/2006, preclude the adoption of a general measure such as Paragraph 1(1) of the national COVID-19 law.

42. I think not. As is evident from its recital 9 and Article 26, Regulation No 1896/2006 does not purport to harmonise the procedural rules governing a European order for payment exhaustively. [29] Rather, Regulation No 1896/2006 lays down minimum standards to ensure the recognition and enforcement of an order adopted in another Member State without the necessity to bring any prior intermediate proceedings in the Member State of enforcement. I therefore consider that a general interruption of time limits due to the COVID-19 pandemic is a procedural issue not dealt with in Regulation No 1896/2006. It thus falls to be governed by national law in accordance with Article 26 thereof. [30]

[26] OJ, English Special Edition 1971 (II), p. 354.

[27] See point 30 of the present Opinion. In the light of the judgment of 4 September 2014, *eco cosmetics and Raiffeisenbank St Georgen* (C-119/13 and C-120/13, EU:C:2014:2144, paragraph 45), it is not possible to apply by analogy Article 20(1)(b) and Article 20(2) of Regulation No 1896/2006 to situations arising due to the COVID-19 pandemic in an abstract and general manner.

[28] Such as illness or quarantine measures.

[29] See, by analogy, Articles 19 and 21(1) of Regulation No 861/2007 and Article 46(1) of Regulation No 655/2014.

[30] Uniqa Versicherungen stated in its written observations that if the EU legislator had wanted the 30-day time limit to be interrupted by reason of *force majeure* or due to exceptional circumstances, it would have provided for that eventuality. That argument overlooks Article 26, which expressly provides that all procedural issues not addressed by Regulation No 1896/2006 are governed by the laws of the Member States.

43. National procedural measures adopted in accordance with Article 26 of Regulation No 1896/2006 may not be discriminatory and thus less favourable than those governing similar domestic situations or undermine the objectives pursued by that regulation.[31]

44. It would appear, subject to verification by the referring court, that Paragraph 1(1) of the national COVID-19 law was neither directly nor indirectly discriminatory as it applied to all procedural periods in civil cases regardless of the legal basis on which they were commenced. Indeed, as the Austrian Government observed at the hearing, given the existence of parallel national procedures for the same purpose as the European order for payment, a prohibited difference in treatment might have arisen had Austrian law interrupted time limits in respect of national procedures whilst not applying identical rules to time limits under Regulation No 1896/2006.

45. Nor, in my view, does a measure such as Paragraph 1(1) of the national COVID-19 law undermine the objectives of Regulation No 1896/2006 since a general interruption of time limits does not add another procedural step to the recognition and enforcement of a European order for payment. The uniform mechanism established by Regulation No 1896/2006 is unaltered. The national measure in question did not impose an additional procedural burden on claimants. It merely ensured that the time limit within which to lodge a statement of opposition to a European order for payment was interrupted at the height of the COVID-19 pandemic for a limited period. In so doing, the national legislator ensured that Regulation No 1896/2006 operated in an effective manner by preserving the appropriate balance between the procedural interests of claimants and defendants established thereby, thus safeguarding the rights of both.

46. Moreover, the objectives of Regulation No 1896/2006 cannot be achieved by undermining the rights of the defence of addressees of a European payment order as guaranteed by Article 47 of the Charter.[32] As already indicated, given the different nature of the two procedures, the review procedure is no substitute for the opposition procedure.[33] Nor is the outcome of any review proceedings guaranteed. By contrast, the opposition procedure ensures that claims are not deemed to be uncontested and are adjudicated upon by way of an ordinary civil procedure, thereby preserving the defendant’s right to effective access to justice. The unique and unforeseen nature of the COVID-19 pandemic affected everyone to some degree. Obliging defendants to invoke the review procedure in the context of the COVID-19 pandemic would have placed an onerous burden upon them. Finally, as the Austrian Government pointed out by way of justification for adopting Paragraph 1(1) of its national COVID-19 law, frequent reliance by defendants on the review procedure in individual cases could have led to an increase in the number of cases coming before the courts, thereby affecting the proper administration of justice in the wake of the COVID-19 pandemic.[34]

[31] While Article 26 of Regulation No 1896/2006 makes specific provision for the application of national law, it is well established that, in the absence of EU rules on procedural matters, it is for the national legal order of each Member State to establish them in accordance with the principle of procedural autonomy, on condition that those rules are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not make it excessively difficult or impossible in practice to exercise the rights conferred by EU law (principle of effectiveness). See, to that effect, judgment of 17 March 2016, *Bensada Benallal* (C-161/15, EU:C:2016:175, paragraph 24 and the case-law cited).

[32] See, by analogy, judgment of 6 September 2018, *Catlin Europe* (C-21/17, EU:C:2018:675, paragraph 33 and the case-law cited). See also judgment of 22 October 2015, *Thomas Cook Belgium* (C-245/14, EU:C:2015:715, paragraph 41).

[33] See points 26 to 32 of the present Opinion.

[34] Due, for example, to backlogs that accrued as a direct result of measures imposed to tackle the pandemic.

47. The scheme created by Regulation No 1896/2006 envisages that access to the opposition procedure is fundamental to achieving a just and fair balance between the parties and ensuring respect for the rights of the defence of addressees of a European payment order. In my view, a failure to guarantee the addressees of a European payment order an effective opportunity to oppose such an order, and thus to be heard by a court in situations that arose as a consequence of the COVID-19 pandemic, was capable of undermining the delicate balance that Regulation No 1896/2006 has struck between claimants and defendants, thereby amounting to a breach of Article 47 of the Charter.[35]

48. In accordance with the referring court's explanation of the objectives and scope of Paragraph 1(1) of the national COVID-19 law, that measure also appears to have pursued a legitimate objective in the public interest. The period of interruption[36] of approximately five weeks afforded at the height of the COVID-19 pandemic in 2020 was short given the gravity of the public health crisis and general uncertainty that then prevailed. The start and end date of the period of interruption was laid down in a clear and transparent manner. The measure in question thus respected the principle of proportionality and preserved legal certainty, thereby furthering the proper administration of justice.

VI. Conclusion

49. In the light of the above considerations, I propose that the Court answer the question posed by the Oberster Gerichtshof (Supreme Court, Austria) as follows:

Articles 16, 20 and 26 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 do not preclude the adoption, in the circumstances of the COVID-19 pandemic, of a national measure that interrupted the 30-day time limit for lodging a statement of opposition to a European order for payment contained in Article 16(2) thereof.

[35] As a matter of principle, a rigid application of time limits in the light of extraordinary circumstances is capable of constituting a breach of Article 47 of the Charter. See, by analogy, ECtHR, 1 April 2010, *Georgiy Nikolayevich Mikhaylov v. Russia*, CE:ECHR:2010:0401JUD000454304, § 57.

[36] Paragraph 1(1) of the national COVID-19 law did not, in my view, alter the 30-day time limit laid down in Article 16(2) of Regulation No 1896/2006 but merely interrupted it for a fixed period of time.