



## Reports of Cases

OPINION OF ADVOCATE GENERAL

BOT

Delivered on 6 March 2013<sup>1</sup>

**Case C-144/12**

**Goldbet Sportwetten GmbH**

**v**

**Massimo Sperindeo**

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

(Jurisdiction and enforcement of judgments in civil and commercial matters — Jurisdiction of the court seised owing to the fact that the defendant entered an appearance — Application for a European order for payment)

1. This case concerns the interpretation of Article 6(1) of Regulation (EC) No 1896/2006,<sup>2</sup> which provides that, for the purposes of the application thereof, jurisdiction is to be determined in accordance with the relevant rules of Community law, in particular Regulation (EC) No 44/2001.<sup>3</sup>

2. More particularly, the question in this case is whether a statement of opposition entered against a European order for payment constitutes the entering of an appearance within the meaning of Article 24 of Regulation No 44/2001, and thus acceptance of the jurisdiction of the court responsible for the ordinary civil proceedings which follow the procedure provided for in Regulation No 1896/2006.

3. In this opinion I shall explain why I believe that Article 6(1) of Regulation No 1896/2006 must be interpreted as meaning that the lodging of a statement of opposition to an application for a European order for payment does not constitute the entering of an appearance within the meaning of Article 24 of Regulation No 44/2001 in the ordinary civil proceedings that follow the European order for payment procedure.

4. I shall also explain why in my view the fact that the person opposing that application for a European order for payment put forward substantive arguments when lodging the statement of opposition has no effect in that regard.

1 — Original language: French.

2 — 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), as amended by Commission Regulation (EU) No 936/2012 of 4 October 2012 (OJ 2012 L 283, p. 1) ('Regulation No 1896/2006').

3 — Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) together with corrigendum (OJ 2001 L 307, p. 28).

## I – Legal context

### A – *European Union law*

#### 1. Regulation No 1896/2006

5. Regulation No 1896/2006 creates a European order for payment procedure. Article 1(1)(a) of the regulation provides that '[t]he purpose of this Regulation is ... 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. According to Article 6(1) of that regulation:

'For the purposes of applying this Regulation, jurisdiction shall be determined in accordance with the relevant rules of Community law, in particular Regulation (EC) No 44/2001.'

#### 7. Article 16 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 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.
3. The defendant shall indicate in the statement of opposition that he contests the claim, without having to specify the reasons for this.

...'

#### 8. Article 17 of that regulation provides:

'1. 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.

Where the claimant has pursued his claim through the European order for payment procedure, nothing under national law shall prejudice his position in subsequent ordinary civil proceedings.

2. The transfer to ordinary civil proceedings within the meaning of paragraph 1 shall be governed by the law of the Member State of origin.
3. The claimant shall be informed whether the defendant has lodged a statement of opposition and of any transfer to ordinary civil proceedings.'

## 2. Regulation No 44/2001

9. Regulation No 44/2001 relates to jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Article 5(1) of that regulation states as follows:

‘A person domiciled in a Member State may, in another Member State, be sued:

- (1) (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;
- (b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:
  - ...
  - in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;

...’

10. Article 24 of that regulation provides as follows:

‘Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 22.’

## B – *Austrian law*

11. Paragraph 252 of the Code of Civil Procedure (Zivilprozessordnung), concerning the European order for payment procedure, states that, in so far as Regulation No 1896/2006 does not stipulate otherwise, the procedural provisions applicable to the subject-matter of the case in question are to be applied. Under that article, implementation of the European order for payment procedure falls within the exclusive jurisdiction of the Bezirksgericht für Handelssachen Wien (Vienna District Court for Commercial Matters) (Austria). In addition, still under that provision, if a statement of opposition is received within the time-limits, the court is to serve it on the claimant and to request him to identify within 30 days the court competent to deal with the ordinary proceedings. A lack of jurisdiction of the court seised is to be pleaded by the defendant before he enters an appearance in relation to the substance of the case.

## II – The facts of the dispute in the main proceedings and the questions referred for a preliminary ruling

12. Goldbet Sportwetten GmbH (‘the applicant’) is a company established in Austria which organises betting on sports events. Mr Sperindeo (‘the defendant’) is resident in Italy. Under a contract for the provision of services he undertook to set up and run the applicant’s activities in Italy. In particular he was to collect bets from local betting offices and forward the money, after deduction of winnings, to the applicant.

13. The applicant, taking the view that the defendant had not fulfilled his contractual obligations, applied on 29 December 2009 to the Bezirksgericht für Handelssachen Wien, the competent court with regard to the European order for payment procedure, for a European order for payment of the sum of EUR 16 406, plus interest and costs, by way of damages; the order for payment was obtained on 17 February 2010.

14. On 19 April 2010, the defendant, represented by his lawyer, lodged a statement of opposition to the European order for payment within the prescribed time-limit. By way of grounds for his opposition, he submitted that the applicant's claim was unfounded and not payable.

15. By order of 2 July 2010, the Bezirksgericht für Handelssachen Wien referred the case to the Landesgericht Innsbruck (Innsbruck Regional Court) (Austria), taking the view that that court was the competent court under Article 17(1) of Regulation No 1896/2006.

16. Before the Landesgericht Innsbruck, the defendant for the first time contested the jurisdiction of that court on the ground that he was domiciled in Italy. He therefore requested it to decline jurisdiction and dismiss the action. The applicant, on the other hand, took the view that the Landesgericht Innsbruck had jurisdiction as the court for the place of performance of the obligation to pay a sum of money, in accordance with Article 5(1)(a) of Regulation No 44/2001. In any event, according to the applicant that court had jurisdiction under Article 24 of that regulation given that the defendant had entered an appearance, since he had already submitted substantive arguments in his statement of opposition to the European order for payment and had raised no plea of lack of jurisdiction at that time.

17. By order, the Landesgericht Innsbruck granted the defendant's application, declined jurisdiction and dismissed the action. The applicant brought an appeal against that order before the Oberlandesgericht Innsbruck (Innsbruck Higher Regional Court) (Austria). The appeal was dismissed on the ground that the Austrian courts did not as a matter of principle have jurisdiction, owing to the fact that the applicant's claims were based on a contract for the provision of services and the place of performance agreed for the purposes of Article 5(1)(a) of Regulation No 44/2001 was in Italy. The appeal court added that the lack of jurisdiction of the court seised of the dispute was not remedied by the entering of an appearance under Article 24 of Regulation No 1896/2006.

18. The applicant brought an appeal on a point of law (*Revision*) before the Oberster Gerichtshof (Supreme Court) (Austria) against the decision of the Oberlandesgericht Innsbruck, by which it sought to have the earlier decisions set aside and the resumption of proceedings before the Landesgericht Innsbruck.

19. Since it had doubts on the interpretation of European Union law, the Oberster Gerichtshof decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- '(1) Is Article 6 of Regulation [No 1896/2006] to be interpreted as meaning that Article 24 of [Regulation No 44/2001], which confers jurisdiction on a court before which a defendant enters an appearance, must also be applied in the European order for payment procedure?
- (2) If question 1 is answered in the affirmative:

Is Article 17 of Regulation No 1896/2006 in conjunction with Article 24 of Regulation No 44/2001 to be interpreted as meaning that the lodging of a statement of opposition to a European order for payment itself constitutes the entering of an appearance, provided that that statement does not contest the jurisdiction of the court of origin?

(3) If question 2 is answered in the negative:

Is Article 17 of Regulation No 1896/2006 in conjunction with Article 24 of Regulation No 44/2001 to be interpreted as meaning that the lodging of a statement of opposition confers jurisdiction by virtue of the entering of an appearance at most where that statement itself presents arguments on the substance of the case but does not contest the jurisdiction?’

### III – My analysis

20. By its questions referred for a preliminary ruling, the referring court asks, in essence, whether Article 6(1) of Regulation No 1896/2006 must be interpreted as meaning that the lodging of a statement of opposition to an application for a European order for payment constitutes the entering of an appearance within the meaning of Article 24 of Regulation No 44/2001 in the ordinary civil proceedings that follow the European order for payment procedure, and whether the fact that the person opposing that application for a European order for payment submitted arguments on the substance of the case when lodging the statement of opposition has any effect in that regard.

21. I would point out that, under Article 6(1) of Regulation No 1896/2006, jurisdiction is to be determined, for the purposes of applying that regulation, in accordance with the relevant rules of Community law, in particular Regulation No 44/2001. Yet Article 24 of Regulation No 44/2001 provides for an implied prorogation of jurisdiction in favour of the court seised where the defendant enters an appearance before it without contesting its jurisdiction.

22. Like the Austrian and German Governments and the European Commission, I am of the view that a statement of opposition lodged against a European order for payment does not constitute the entering of an appearance within the meaning of that provision. The fact that the person who lodged the statement of opposition has provided a statement of reasons for it does not in my view have any effect in that regard.

23. Indeed the first part of an answer is provided by the wording of the grounds for Regulation No 1896/2006.

24. These state in a very clear way that the European order for payment procedure created by that regulation is a procedure founded on the establishment of a uniform rapid and efficient mechanism for the recovery of uncontested pecuniary claims throughout the European Union.<sup>4</sup>

25. In this context, Regulation No 1896/2006 forms part of a programme of measures adopted by the Council of the European Union in 2000 which envisages the possibility of laying down within the European Community a ‘*uniform or harmonised procedure ... to obtain a judicial decision*’,<sup>5</sup> which was confirmed in 2004 by the Hague Programme adopted by the European Council on 5 November 2004.<sup>6</sup>

26. That specific factor was mentioned by the Court at paragraph 30 of the judgment in *Szyrocka*,<sup>7</sup> in which it stated: ‘[l]astly, it should be noted that the objective of Regulation No 1896/2006, as is apparent from Article 1(1)(a) thereof, is, inter alia, to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims. As observed in recitals 8, 10

4 — See in particular recitals 4, 9 and 29 in the preamble to that regulation.

5 — Emphasis added.

6 — See recital 4 in the preamble to that regulation.

7 — Case C-215/11 *Szyrocka* [2012] ECR.

and 29, although the regulation neither replaces nor harmonises existing domestic mechanisms for the recovery of uncontested claims, it establishes, for the attainment of that objective, a uniform instrument for the recovery of such claims, guaranteeing a level playing field for creditors and debtors throughout the European Union’.

27. The aim expressed refers without any possible doubt to a legal instrument that is intended to avoid any challenge on the merits and the delays generally caused by traditional legal proceedings, to the point, indeed, where such a procedure could even, at the Member States’ discretion, take place before an administrative body.

28. In fact it appears that, for the purpose of attaining the desired aim, Article 5(3) of Regulation 1896/2006 autonomously defines the term ‘court’ as ‘any authority in a Member State with competence regarding European orders for payment or any other related matters’.<sup>8</sup> That plainly excludes the possibility of the procedure being reserved to courts or tribunals or, for those Member States which have them, administrative bodies.

29. With that in mind, the system created by that regulation has the following features.

30. First of all it is not adversarial. The European order for payment is issued, or the application dismissed, by the competent national authority without any debate,<sup>9</sup> although the authority may seek explanations or reasons from the claimant which can only be construed as a concern to check that the claim in question corresponds at least *prima facie* to an ‘uncontested claim’. At that stage the debtor is not heard, nor can he submit any argument.

31. The debtor appears only at the stage of implementation of the European order for payment, once it has been issued. In fact the debtor only becomes aware of the European order for payment once it is communicated to him, from which time he has 30 days within which to enter a statement of opposition.<sup>10</sup> The statement of opposition is made either on a standard form which must be annexed to the order served or in no particular format.<sup>11</sup> The statement of opposition renders the European order for payment procedure *ipso facto* inoperative.<sup>12</sup> The authority within the meaning of Article 5(3) of Regulation No 1896/2006 takes no further cognisance of it. The case can then only proceed according to the rules of ordinary civil procedure, which are the only rules thenceforth applicable.<sup>13</sup>

32. These operating principles are sufficient in themselves to show that the proceedings before the ordinary civil courts are a completely new procedure in which the entire matter must be taken up again from the beginning, even where the competent authority for the European order for payment is also the court that is competent to determine the merits of the case.

33. I should point out, moreover, that that is not the situation in the main proceedings, since the competent authority under Article 5(3) of Regulation No 1896/2006 is the Bezirksgericht für Handelssachen Wien, and the court designated by it for the purposes of hearing the merits of the case is the Landesgericht Innsbruck.

8 — See also recital 16 in the preamble to Regulation No 1896/2006 which states that examination of the application for a European order for payment should not need to be carried out by a judge.

9 — Under Articles 5(3), 7(3) and 8 to 12 of Regulation No 1896/2006, an application for a European order for payment is in fact initiated by the claimant who lodges the application with the competent national authority. It is on the basis only of the information provided by the claimant that the authority examines the application and either rejects it or issues the order for payment.

10 — See Article 16(2) of Regulation No 1896/2006.

11 — See Article 7 of Regulation No 1896/2006 and recital 23 in the preamble thereto.

12 — Recital 24 in the preamble to Regulation No 1896/2006.

13 — See Article 17(1) and (2) of Regulation No 1896/2006 and recital 24 in the preamble thereto.



34. Irrespective of that, the question remains whether the lodging of a statement of opposition to the European order for payment not by the return of the standard form, but by submission of a detailed document, had the effect of extending the jurisdiction of the court responsible for hearing the merits of the case so that the opposition in those circumstances constituted the entering of an appearance within the meaning of Article 24 of Regulation No 44/2001.

35. There are a number of arguments that can be deployed against an affirmative reply to that question.

36. To reply in the affirmative would be to acknowledge that the European order for payment procedure and the ordinary national civil proceedings in fact constitute the same procedure, and that the single case began before the competent authority for the European order for payment. In fact that can only be the case if the words, ‘the proceedings shall continue before’, in Article 17(1) of Regulation No 1896/2006, are interpreted as meaning that the procedure following opposition to the European order for payment is the same as that begun before the authority initially seised, since procedural events which occurred at that time would subsequently bind the court hearing the case on the merits.

37. It must therefore be noted that the defendant, at this stage the debtor, would have no opportunity to plead lack of jurisdiction of the court since he is entirely absent from the beginning of the proceedings, as I have pointed out at points 30 and 31 of this Opinion.

38. That imbalance might be corrected if the view were taken that, for the debtor, the proceedings commence when the European order for payment is communicated to him. However, in that case we should be faced with a difference in treatment which seems to me entirely to vitiate the latter interpretation.

39. A statement of opposition made using the standard form would leave intact the question of contesting jurisdiction, to be settled only by the court determining the merits of the case. Conversely, a statement of opposition submitted on plain paper, supported by some arguments or by a complete and detailed set of arguments, would constitute the entering of an appearance and thus implied acceptance of jurisdiction, whereas Regulation No 1896/2006, which accepts such a free form of expression, imposes only one condition of validity: the statement of opposition should be expressed in a clear manner.

40. The debtor would otherwise be without a remedy, under a misapprehension as to the jurisdiction of the competent authority for the European order for payment which, according to the referring court, was the case here. In such a scenario the debtor could only, if necessary, rely on the national court declining jurisdiction of its own motion in the ordinary civil proceedings.

41. How can it be justified that such a consequence may be the result of a European order for payment procedure that offers no prospect of appeal? In that regard the applicant submitted at the hearing that, notwithstanding the implied acceptance of jurisdiction on the merits arising solely from the statement of opposition lodged against the application for a European order for payment, it would still be possible to raise the ordinary civil court’s lack of jurisdiction before that court. If that premiss were to be accepted, I do not fully understand why, therefore, the statement of opposition should be regarded as the entering of an appearance with the associated legal consequences.

42. How detailed must the arguments be in order for a statement of opposition in that form to constitute entering an appearance? Would this not lead to imprecision, thus causing legal uncertainty and running counter to the purpose pursued by the European legislature which, I would point out, is precisely to simplify the European order for payment procedure?

43. It is established case-law that the principle of legal certainty requires European Union legislation to be certain and its application foreseeable by those subject to it. That principle thus presupposes that a measure of European Union law – in this case, the relevant provisions of Regulations No 1896/2006 and No 44/2001 – which produces legal effects in relation to those subject to it must be clear and precise so that those persons are able to discern with certainty when that measure begins to have effect.

44. Yet if opposing an application for a European order for payment could constitute the entering of an appearance within the meaning of Article 24 of Regulation No 44/2001, depending on whether or not reasons relating to the substance of the case are given, then that has the effect precisely of creating legal uncertainty, in that it is necessary to assess in each case whether or not the reasons are sufficient and whether their sufficiency can, either expressly or impliedly, be deemed to equate to a view as to the jurisdiction of the court responsible for the ordinary civil proceedings which, I would point out, has not even been seised at that stage.

45. That would have the effect of complicating matters, when Regulation No 1896/2006 specifically aims to simplify the European order for payment procedure.

46. How can it be said that the European order for payment procedure and the ordinary civil proceedings are a single procedure if, for example, the competent authority in relation to the European order for payment is an administrative body and the authority competent to determine the merits is a court, or if that authority is not a court at all? How then can it be justified that an event that occurred before such an authority can have such consequences? I should simply like to point out the importance which the rules on jurisdiction have for the conduct of legal proceedings.

47. Finally, a reading of Article 16 of Regulation No 1896/2006 in conjunction with recital 23 in the preamble thereto provides a sufficient basis for a decision. Article 16(1) of that regulation does not in fact impose any particular form for the opposition. It states: '[t]he defendant may lodge a statement of opposition ... using [the] standard form'. Article 6(3) supplements it by stating that the debtor is not bound to specify the reasons for the opposition.

48. The debtor is not therefore prohibited from setting out the reasons for his opposition, but that cannot in any case trigger specific and unfavourable legal consequences for him that are not expressly provided for by the regulation for the simple reason that, at that stage, it is important to know only whether the claim is contested or not. The reasons are entirely superfluous. Knowing whether or not the claim is contested is all that matters.

49. The wording of recital 23 in the preamble to Regulation No 1896/2006 confirms this, stating: '[t]he defendant may submit his statement of opposition using the standard form set out in this Regulation. However, the courts should take into account any other written form of opposition if it is expressed in a clear manner'. A statement of opposition containing arguments is a written form of opposition that is expressed in a clear manner. It is therefore valid and has no effect other than to trigger the same consequences as that expressed by the standard form, namely to defeat the European order for payment. To add further consequences would be to go not beyond but against the intention of the legislature.

50. For all those reasons I am of the view that Article 6(1) of Regulation No 1896/2006 must be interpreted as meaning that the lodging of a statement of opposition to an application for a European order for payment does not constitute the entering of an appearance within the meaning of Article 24 of Regulation No 44/2001 in the ordinary civil proceedings that follow the European order for payment procedure. The fact that the person opposing that application for a European order for payment submitted arguments on the substance of the case when lodging the statement of opposition has no effect in that regard.



#### **IV – Conclusion**

51. In the light of all the foregoing considerations, I propose that the Court should reply as follows to the questions referred for a preliminary ruling by the Oberster Gerichtshof:

Article 6(1) 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, as amended by Commission Regulation (EU) No 936/2012 of 4 October 2012, must be interpreted as meaning that the lodging of a statement of opposition to an application for a European order for payment does not constitute the entering of an appearance within the meaning of Article 24 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters in the ordinary civil proceedings that follow the European order for payment procedure. The fact that the person opposing that application for a European order for payment submitted arguments on the substance of the case when lodging the statement of opposition has no effect in that regard.