



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

4 September 2014*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 1896/2006 — European order for payment procedure — Invalid service — Effects — European order for payment declared enforceable — Opposition — Review in exceptional cases — Time-limits)

In Joined Cases C-119/13 and C-120/13,

REQUESTS for a preliminary ruling under Article 267 TFEU from Amtsgericht Wedding (Germany), made by decisions of 7 January and 5 February 2013 respectively, received at the Court on 14 March 2013, in the proceedings

eco cosmetics GmbH & Co. KG

v

Virginie Laetitia Barbara Dupuy (C-119/13),

and

Raiffeisenbank St. Georgen reg. Gen. mbH

v

Tetyana Bonchyk (C-120/13),

THE COURT (Third Chamber),

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

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Ms Dupuy, by M. Stawska-Höbel, Rechtsanwältin,

— the German Government, by T. Henze and J. Kemper, acting as Agents,

* Language of the case: German.

— the Greek Government, by F. Dedousi and M. Skorila, acting as Agents,
— the Italian Government, by G. Palmieri, acting as Agent and L. D’Ascia, avvocato dello Stato,
— the European Commission, by A.-M. Rouchaud-Joët and B. Eggers, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 9 April 2014,
gives the following

Judgment

- 1 These requests for a preliminary ruling concern the interpretation of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (OJ 2006 L 399, p. 1).
- 2 The requests have been made in two sets of proceedings, first, between eco cosmetics GmbH & Co. KG (‘eco cosmetics’), which has its registered office in Germany, and Ms Dupuy, who is domiciled in France, and, second, Raiffeisenbank St. Georgen reg. Gen. mbH, which has its registered office in Austria, and Ms Bonchyk, who is domiciled in Germany, concerning the European order for payment procedure.

Legal context

EU law

- 3 Recitals 13, 19 and 23 to 25 in the preamble to Regulation No 1896/2006 read as follows:
(13) In the application for a European order for payment, the claimant should be obliged to provide information that is sufficient to clearly identify and support the claim in order to place the defendant in a position to make a well-informed choice either to oppose the claim or to leave it uncontested.
...
(19) Due to differences between Member States’ rules of civil procedure and especially those governing the service of documents, it is necessary to lay down a specific and detailed definition of minimum standards that should apply in the context of the European order for payment procedure. In particular, as regards the fulfilment of those standards, any method based on legal fiction should not be considered sufficient for the service of the European order for payment.
...
(23) The 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.
(24) 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. For the purposes of this Regulation the concept of ordinary civil proceedings should not necessarily be interpreted within the meaning of national law.

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

4 According to recital 27 in the preamble to that regulation, '... the procedures for the enforcement of the European order for payment should continue to be governed by national law'.

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

'The purpose of this Regulation is:

(a) to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims by creating a European order for payment procedure'.

6 Article 6(1) of that regulation, entitled 'Jurisdiction', provides

'For the purposes of applying this Regulation, jurisdiction shall be determined in accordance with the relevant rules of Community law, in particular [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)].'

7 Article 12(3) and (5) of Regulation No 1896/2006 is worded as follows:

'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.

...

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.'

8 Article 13 of Regulation No 1896/2006, entitled 'Service with proof of receipt by the defendant', provides:

'The European order for payment may be served on the defendant in accordance with the national law of the State in which the service is to be effected, by one of the following methods:

(a) personal service attested by an acknowledgement of receipt, including the date of receipt, which is signed by the defendant;

(b) personal service attested by a document signed by the competent person who effected the service stating that the defendant has received the document or refused to receive it without any legal justification, and the date of service;

- (c) postal service attested by an acknowledgement of receipt, including the date of receipt, which is signed and returned by the defendant;
 - (d) service by electronic means such as fax or e-mail, attested by an acknowledgement of receipt, including the date of receipt, which is signed and returned by the defendant.’
- 9 Article 14(1) and (2) of that regulation, entitled ‘Service without proof of receipt by the defendant’, provides:
- ‘1. The European order for payment may also be served on the defendant in accordance with the national law of the State in which service is to be effected, by one of the following methods:
- (a) personal service at the defendant’s personal address on persons who are living in the same household as the defendant or are employed there;
 - (b) in the case of a self-employed defendant or a legal person, personal service at the defendant’s business premises on persons who are employed by the defendant;
 - (c) deposit of the order in the defendant’s mailbox;
 - (d) deposit of the order at a post office or with competent public authorities and the placing in the defendant’s mailbox of written notification of that deposit, provided that the written notification clearly states the character of the document as a court document or the legal effect of the notification as effecting service and setting in motion the running of time for the purposes of time-limits;
 - (e) postal service without proof pursuant to paragraph 3 where the defendant has his address in the Member State of origin;
 - (f) electronic means attested by an automatic confirmation of delivery, provided that the defendant has expressly accepted this method of service in advance.
2. For the purposes of this Regulation, service under paragraph 1 is not admissible if the defendant’s address is not known with certainty.’
- 10 Article 15 of that regulation, entitled ‘Service on a representative’, is worded as follows:
- ‘Service pursuant to Articles 13 or 14 may also be effected on a defendant’s representative.’
- 11 Under Article 16 of Regulation No 1896/2006:
- ‘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.
- ...’

12 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.

...’

13 Article 18 of the Regulation, entitled ‘Enforcement procedure’, 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.

2. Without prejudice to paragraph 1, the formal requirements for enforceability shall be governed by the law of the Member State of origin.

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

14 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.’

15 Article 21(1) of Regulation No 1896/2006 states:

‘Without prejudice to the provisions of this Regulation, enforcement procedures shall be governed by the law of the Member State of enforcement.

A European order for payment which has become enforceable shall be enforced under the same conditions as an enforceable decision issued in the Member State of enforcement.’

16 Article 26 of that regulation, entitled ‘Relationship with national procedural law’, is worded as follows:

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

German law

17 Under German law, the Civil Procedure Code (Zivilprozessordnung) sets out the procedure to be followed in respect of payment orders.

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

Case C-119/13

18 eco cosmetics, a company incorporated under German law, requested the referring court to issue a European order for payment against Ms Dupuy, who is domiciled in France.

19 On 22 March 2010, the Amtsgericht Wedding (Local Court, Wedding) upheld the application and issued the European order for payment applied for, in accordance with Article 12 of Regulation No 1896/2006. The order in question was subsequently served by registered letter with advice of receipt. The advice of receipt shows that that order was served on 31 March 2010 at the address provided by eco cosmetics. The advice of receipt does not contain any other information about service of the order.

20 On 20 May 2010, the referring court declared that order to be enforceable.

21 By lawyer’s letter of 28 July 2010, Ms Dupuy challenged the order for payment concerned. By letter of 5 August 2010, the referring court indicated that the opposition was out of time and that, at that stage, it was possible only to apply for a review in accordance with Article 20 of Regulation No 1896/2006.

22 Two months later, by letter of 7 October 2010, Ms Dupuy lodged an application for a review, without giving any further information as to the grounds. Six months later, by lawyer’s letter of 13 April 2011, she gave reasons for her application for review.

23 Ms Dupuy claimed that she had not been served with the European order for payment issued against her. She states that she moved out of the premises at the address given by eco cosmetics in October 2009 and that she learned of the order for payment only through her bank on 23 July 2010.

Case C-120/13

24 Raffeisenbank St. Georgen reg. Gen mbH, a bank incorporated under Austrian law, requested the referring court to issue a European payment order against Ms Bonchyk, who is domiciled in Germany.

- 25 On 2 September 2010, the Amtsgericht Wedding issued the European order for payment requested and unsuccessfully attempted on two occasions to serve the order by post at the addresses provided by the bank.
- 26 Subsequently, the bank provided another address to which the European order for payment concerned was served by depositing it in the letter box on 1 February 2011.
- 27 On 10 March 2011, the Amtsgericht Wedding declared that order to be enforceable.
- 28 By fax of 1 June 2011, Ms Bonchyk opposed the European order for payment issued against her. She argued that she had learned of the existence of that order only by chance, and that since 2009 she had no longer lived at the address where it had been served.
- 29 By letter of 17 June 2011, the Amtsgericht Wedding informed Ms Bonchyk that her opposition was out of time and that, at that stage, it was possible only to apply for a review in accordance with Article 20 of Regulation No 1896/2006. By lawyer's letter of 24 June 2011, Ms Bonchyk lodged an application for a review.
- 30 In those circumstances, the Amtsgericht Wedding decided to stay the proceedings and to refer the following questions, which are worded in identical terms in Cases C-119/13 and C-120/13, except for the second question which arises in Case C-119/13 alone, to the Court for a preliminary ruling:
1. Must [Regulation No 1896/2006] be interpreted as meaning that a defendant may also apply for a review by the court of the European order for payment where the order for payment was not served on him or not effectively served on him? In those circumstances, may recourse be had, by analogy, in particular to Article 20(1) or Article 20(2) of Regulation No 1896/2006?
 2. If Question 1 is answered in the affirmative:

If the order for payment was not served on him or not effectively served on him, must the defendant respect the time-limits in bringing his application for review? In that connection, must recourse be had in particular to the scheme established in Article 20(3) of Regulation No 1896/2006?
 3. Also if Question 1 is answered in the affirmative:

What are the legal consequences for the procedure if the application for review is successful? May recourse be had in that connection, by analogy, in particular to Article 20(3) or Article 17(1) of Regulation No 1896/2006?
- 31 By order of the President of the Court of 8 April 2013, Cases C-119/13 and C-120/13 were joined for the purposes of the written and oral procedure and the judgment.

The questions referred for a preliminary ruling

The first question

- 32 As a preliminary point, it must be observed that, under the procedure laid down by Article 267 TFEU, providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the questions referred to it. The Court has a duty to interpret all provisions of EU law which national courts require in order to decide the

actions pending before them, even if those provisions are not expressly indicated in the questions referred to the Court of Justice by those courts (judgment in *Worten*, C-342/12, EU:C:2013:355, paragraph 30 and the case-law cited).

- 33 Consequently, even if, formally, the questions referred concern principally the interpretation of Article 20 of Regulation No 1896/2006, that does not prevent this Court from providing the referring court with all the elements of interpretation of EU law that may be of assistance in adjudicating in the cases in the main proceedings. It is, in this regard, for the Court to extract from all the information provided by the national court, in particular from the grounds of the decisions to make the reference, the points of EU law which require interpretation in view of the subject-matter of the disputes (*Worten*, EU:2013:355, paragraph 31 and the case-law cited).
- 34 In the present case, it is apparent from the documents before the Court that the referring court does not exclude the application, in the circumstances of the main proceedings, of the opposition procedure laid down in Articles 16 and 17 of Regulation No 1896/2006. Furthermore, the Greek and Italian Governments take the view that those provisions are the only provisions applicable in the circumstances of the cases in the main proceedings.
- 35 The interpretation of Articles 18 and 19 is also relevant in the cases in the main proceedings, given that the orders for payment were declared enforceable by the referring court.
- 36 In those circumstances, in order to give a useful answer to the referring court, the first question should be reformulated so that it asks essentially whether Regulation No 1896/2006 must be interpreted as meaning that the procedures referred to in Articles 16 to 20 thereof are applicable where an order for payment has not been served in accordance with the minimum standards laid down in Articles 13 to 15 of that regulation.
- 37 In that connection, it must be observed at the outset, as is clear from Articles 12(5) and 13 to 15 of Regulation No 1896/2006, any order referred to by that regulation must be served in a manner which, following one of the methods described in Articles 13 to 15, complies with the minimum standards imposed by that regulation. As the Advocate General noted, in points 36 to 41 of his Opinion, where these minimum rules are not complied with, the balance between the objectives pursued by Regulation No 1896/2006 of speed and efficiency, on one hand, and respect of the rights of defence, on the other hand, would be undermined.
- 38 In the first place, as regards the possible application of the opposition procedure provided for in Articles 16 and 17 of Regulation No 1896/2006, it should be pointed out that, as is apparent from recital 24 in the preamble thereto, opposition is the normal means of terminating the European order for payment procedure, leading to an automatic transfer of the case to ordinary civil proceedings.
- 39 Since the method of challenging in respect of claims which underly 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’.
- 40 In that connection, it must be recalled that, under Article 16 of Regulation No 1896/2006, the defendant may lodge a statement of opposition to the European order for payment with the court of origin using standard form F which is sent to him at the same time as form E which contains the order. The statement of opposition must be sent within 30 days of service of the order on the defendant.
- 41 If the European order for payment is not served in a manner consistent with the minimum standards laid down in Articles 13 to 15 of Regulation No 1896/2006, the defendant does not receive the forms mentioned in paragraph 40 of this judgment and, as a result, is not properly informed of the existence

and basis of the European order for payment issued against him. In such a case, the defendant does not necessarily have all the information necessary to enable him to decide whether or not to oppose that order.

- 42 Such a situation cannot be compatible with the rights of the defence, so that an application of the opposition procedure laid down by Articles 16 and 17 of Regulation No 1896/2006 cannot be appropriate in circumstances such as those at issue in the main proceedings.
- 43 In the second place, it must be stated that, if there is no service in accordance with the minimum standards laid down in Articles 13 to 15 of Regulation No 1896/2006, the period within which to send a statement of opposition in Article 16(2) thereof does not start to run, so that the validity of the procedures which depend on the expiry of that period, such as the declaration of enforceability referred to in Article 18 or the application for review in Article 20, even if they have already been initiated, is affected.
- 44 More specifically, as regards the review procedure, it must be recalled that that procedure is applicable, as the heading of Article 20 of Regulation 1896/2006 states, 'in exceptional cases' which are exhaustively listed in that article, a failure to effect service not being one of them.
- 45 In any event, it must be pointed out that, under Article 26 of Regulation No 1896/2006, any procedural issues not specifically dealt with in the regulation 'shall be governed by national law'. Where that is the case, an application by analogy of the regulation is accordingly precluded.
- 46 In the present case, Regulation No 1896/2006 is silent as to the possible remedies available to the defendant if it only becomes apparent after a European order for payment has been declared enforceable that that order has not been served in a manner which complies with the minimum standards laid down in Articles 13 to 15 of that regulation.
- 47 It follows that, in such a case, those procedural issues are governed by national law in accordance with Article 26 of Regulation No 1896/2006.
- 48 In any event, it should be noted, as is clear from paragraph 43 of this judgment, that where a European order for payment has not been served in a manner consistent with the minimum standards laid down in Articles 13 to 15 of Regulation No 1896/2006, it cannot benefit from the application of the enforcement procedure laid down in Article 18 thereof. It follows that the declaration of enforceability of such an order for payment must be regarded as invalid.
- 49 Having regard to the foregoing considerations, the answer to the first question is that Regulation No 1896/2006 must be interpreted as meaning that the procedures laid down in Articles 16 to 20 thereof are not applicable where it appears that a European order for payment has not been served in a manner consistent with the minimum standards laid down in Articles 13 to 15 of that regulation. Where it is only after a European order for payment has been declared enforceable that such an irregularity is exposed, the defendant must have the opportunity to raise that irregularity, which, if it is duly established, will invalidate the declaration of enforceability.

The second and third questions

- 50 In view of the answer given to the first question, there is no need to answer the second and third questions.

Costs

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

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

Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure must be interpreted as meaning that the procedures laid down in Articles 16 to 20 thereof are not applicable where it appears that a European order for payment has not been served in a manner consistent with the minimum standards laid down in Articles 13 to 15 of that regulation.

Where it is only after a European order for payment has been declared enforceable that such an irregularity is exposed, the defendant must have the opportunity to raise that irregularity, which, if it is duly established, will invalidate the declaration of enforceability.

[Signatures]