



## Reports of Cases

### JUDGMENT OF THE COURT (Second Chamber)

10 March 2016\*

(Reference for a preliminary ruling — Area of freedom, security and justice — Judicial cooperation in civil matters — European order for payment procedure — Regulation (EC) No 1896/2006 — Articles 17 and 20 — Obligations of a court seised in order to designate the court with territorial jurisdiction to hear contentious proceedings following the defendant's opposition to the European order for payment — Competence of the courts of the Member State of origin of the European order for payment — Regulation (EC) No 44/2001 — Debt arising from the right to compensation under Regulation (EC) No 261/2004 on account of a flight delay)

In Case C-94/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Kúria (Supreme Court, Hungary), made by decision of 27 February 2014, received at the Court on the same day, in the proceedings

**Flight Refund Ltd**

v

**Deutsche Lufthansa AG,**

THE COURT (Second Chamber),

composed of M. Ilešič (Rapporteur), President of the Chamber, C. Toader, A. Rosas, A. Prechal and E. Jarašiūnas, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Hungarian Government, by M.Z. Fehér and G. Szima, acting as Agents,
- the German Government, by T. Henze and J. Kemper, acting as Agents,
- the European Commission, by A.-M. Rouchaud-Joët, A. Sipos and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 October 2015,

gives the following

\* Language of the case: Hungarian.

## Judgment

- 1 This request for a preliminary ruling concerns 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 request has been made in proceedings between Flight Refund Ltd ('Flight Refund'), a company established in the United Kingdom, and Deutsche Lufthansa AG ('Lufthansa'), a company established in Germany, concerning a debt in respect of compensation claimed on account of a flight delay.

## Legal Framework

### *International law*

- 3 The Convention for the Unification of Certain Rules for International Carriage by Air ('the Montreal Convention'), concluded in Montreal on 28 May 1999, was signed by the European Community on 9 December 1999 and approved on its behalf by Council Decision 2001/539/EC of 5 April 2001 (OJ 1999 L 194, p. 38).
- 4 Article 19 of the Montreal Convention, entitled 'Delay', provides:

'The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.'
- 5 Article 33(1) of the Convention states:

'An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination.'

### *EU law*

#### Regulation No 261/2004

- 6 Article 5 of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1), entitled 'Cancellation', provides, in paragraph (1)(c), that passengers concerned have, in principle, in the event of cancellation of a flight, the right to compensation by the operating air carrier in accordance with Article 7 of that regulation.
- 7 Article 6 of that regulation, entitled 'Delay', places certain obligations on the operating air carrier as regards assistance to the passengers concerned in the event of a flight delay.
- 8 Article 7 of that regulation, entitled 'Right to compensation', provides, in paragraph (1)(c), that, where reference is made to that article, passengers are to receive compensation amounting to EUR 600 for all flights of more than 3500 km.

Regulation No 1896/2006

- 9 Recital 8 in the preamble to Regulation No 1896/2006 states:

‘The ... impediments to access to efficient justice in cross-border cases ... necessitate Community legislation guaranteeing a level playing field for creditors and debtors throughout the European Union.’

- 10 Recital 10 in the preamble to that regulation states as follows:

‘The procedure established by this Regulation should serve as an additional and optional means for the claimant, who remains free to resort to a procedure provided for by national law. Accordingly, this regulation neither replaces nor harmonises the existing mechanisms for the recovery of uncontested claims under national law.’

- 11 Recital 24 in the preamble to Regulation No 2201/2003 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. For the purposes of this Regulation the concept of ordinary civil proceedings should not necessarily be interpreted within the meaning of national law.’

- 12 Article 1 of Regulation No 1896/2006 provides:

‘1. ‘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;

...

2. This regulation shall not prevent a claimant from pursuing a claim within the meaning of Article 4 by making use of another procedure available under the law of a Member State or under [EU] law.’

- 13 Article 2(1) of that regulation defines its scope as follows:

‘This Regulation shall apply to civil and commercial matters in cross-border cases, whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority (*“acta iure imperii”*).’

- 14 Under Article 5(1) of that regulation, the ‘Member State of origin’ is defined as ‘the Member State in which a European order for payment is issued’.

- 15 Article 6(1) of Regulation No 1896/2006 states that, for the purposes of applying that regulation, jurisdiction is to be determined in accordance with the relevant rules of EU 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).

- 16 Article 7(2)(f) of Regulation No 1896/2006 provides that a request for a European order for payment is to include the grounds for jurisdiction.

17 Article 16(1) to (3) of that regulation provides 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.’

18 Article 17 of that regulation, entitled ‘Effects of the lodging of a statement of opposition’, states, in paragraphs (1) and (2):

‘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.

...

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.’

19 Article 18(1) of Regulation No 3665/87 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.’

20 Article 20 of Regulation No 1896/2006 provides for a ‘review in exceptional cases’. In particular, paragraph (2) thereof provides: ‘After 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 the order for payment was clearly wrongly issued, having regard to the requirements laid down in this Regulation, or due to other exceptional circumstances.’ Under Article 20(3) of that regulation, if the court decides that review is justified, the European order for payment is null and void. If it decides to the contrary, under the same provision, that order remains in force.

21 Under Article 26 of that regulation, entitled ‘Relationship with national procedural law’:

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

Regulation No 44/2001

- 22 The rules on jurisdiction laid down by Regulation No 44/2001 are set out in Chapter II thereof, in its Articles 2 to 31. Under Section 7 of Chapter II, headed ‘Prorogation of jurisdiction’, Article 24 of that regulation provides:

‘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.’

*Hungarian law*

Code of Civil Procedure

- 23 Law No III of 1952 on the Code of civil procedure (a polgári perrendtartásról szóló 1952. évi III. törvény; ‘the Code of civil procedure’) sets out the rules on jurisdiction.

- 24 Article 45 of the Code of Civil Procedure states:

‘1. In the event of conflict of substantive or territorial jurisdiction arising from definitive decisions and in cases where it is impossible to establish which is the court having territorial jurisdiction or where that court, following an opposition, cannot handle the case, it is necessary to designate, as a priority, the court having jurisdiction.

2. The court having jurisdiction to make that designation shall be:

...

(c) in cases other than those referred to in paragraphs (a) and (b) above, the Kúria [(Supreme Court)].’

Law No L of 2009 concerning the order for payment

- 25 Article 59(1) of the Law No L of 2009 concerning the order for payment (a fizetési meghagyásos eljárásról szóló 2009. évi L. törvény) gives jurisdiction to notaries to issue the European order for payment provided for in Regulation No 1896/2006.
- 26 Under Article 38(1) of that law, in the event of opposition, the notary is to forward the case file to the court designated by the claimant in the application for the order for payment.
- 27 Under Article 38(3) of that law, if the applicant has not designated such a court, the notary is to transfer the file to the court which is substantively and territorially competent under Articles 29, 30 and 40 of the Code of civil procedure.

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

- 28 It is clear from the order for reference that, by a contract, an airline passenger assigned her rights to compensation for a delayed flight to Flight Refund, a company specialised in the recovery of such claims. Flight Refund then applied to a Hungarian notary for a European order for payment against Lufthansa. It based its claim, in the principal amount of EUR 600, on the ground that, following the

assignment of the claim, it had a right to damages from Lufthansa owing to a delay of more than three hours on flight LH 7626 between, according to the information supplied to the notary, the airports of Newark (United States) and London Heathrow (United Kingdom).

- 29 That notary accepted the application and issued the order for payment against Lufthansa without ascertaining the place where the contract was made, the place for its performance, the place where the damage arose, the place of business of the carrier through which the contract was made, or the flight destination. The notary declared herself competent to issue that order for payment on the basis of Article 33 of the Montreal Convention, on the ground that Hungary is a State party to that convention.
- 30 Lufthansa exercised its right to oppose that order and argued that it did not operate the flight to which Flight Refund referred in its application for the order, the operating carrier for that flight being, according to Lufthansa, the airline United Airlines, Inc.
- 31 Since Flight Refund's representative had, at the request of the notary concerned, declared that he was unable to designate the competent national court once the European order for payment procedure had become ordinary civil proceedings, that notary applied to the Kúria (Supreme Court) to designate the competent court, since, on the basis of the relevant provisions of the Code of civil procedure and in the light of the information available to her, she could not identify that court.
- 32 The referring court decided to stay the proceedings and to refer five questions to the Court concerning the interpretation of a number of provisions of the Montreal Convention, Regulation No 44/2001 and Regulation No 1896/2006. The request for a preliminary ruling was received by the Court on 27 February 2014.
- 33 On 26 September 2014, Flight Refund informed the Court that it had informed the referring court, in a letter of 5 March 2014, that its claim was based on Regulation No 261/2004 and not on the provisions of the Montreal Convention. In order to obtain additional details from the referring court, on 21 October 2014 the Court decided, in accordance with Article 101(1) of its Rules of Procedure, to send a request for clarification to the referring court.
- 34 In its reply, received by the Court on 26 November 2014, the referring court firstly confirmed that Articles 6 and 7 of Regulation No 261/2004 and not the provisions of the Montreal Convention had been relied on by Flight Refund as the legal basis of its claim. In consequence, the referring court has withdrawn three of the five questions referred and has reformulated one of the two remaining questions.
- 35 Secondly, that court pointed out that it had no information concerning the flight at issue, other than that already set out in its request for a preliminary ruling. It stressed that, in a procedure concerning the designation of the court having territorial jurisdiction, pursuant to national law it was not able to not seek further information on the substance of the case.
- 36 In addition, the referring court was doubtful as to the international rules of jurisdiction applicable to a European order for payment procedure brought in order to secure a claim based on Regulation No 261/2004. That court is of the view that the notary who issued the European order for payment did so without having regard to Article 6 of Regulation No 1896/2006, in accordance with which she ought to have examined the question of the jurisdiction of the Hungarian courts on the basis of Regulation No 44/2001.
- 37 That court thus seeks clarification as regards whether, in the present case, the rules applicable are those set out in the Montreal Convention, those laid down in Regulation No 44/2001, or other rules on jurisdiction, such as those in Article 17(1) of Regulation No 1896/2006, providing that the procedure which follows the defendant's opposition to the European order for payment is to be pursued before



the competent courts of the Member State of origin of that order. It is also doubtful as to the consequences which must be drawn from its finding that the Hungarian courts do or do not have international jurisdiction.

38 In those circumstances, the Kúria (Supreme Court) decided to refer the following questions to the Court for a preliminary ruling:

- '(1) Can a European payment order which has been issued in breach of the purpose of [Regulation No 1896/2006] or by an authority which does not have international jurisdiction be the subject of an ex officio review? Or must the contentious proceedings following the lodging of a statement of opposition, where there is a lack of jurisdiction, be discontinued ex officio or on request?
- (2) If any Hungarian court has jurisdiction to consider the case, should the relevant rule governing jurisdiction be interpreted as meaning that the Kúria (Supreme Court), in assigning jurisdiction to a court, should designate at least one court which, in the absence of a jurisdiction and competence determined by the Member State's procedural law, is required to conduct the proceedings on the substance of a case which has arisen as a result of a statement of opposition?'

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

#### *Admissibility*

- 39 The German Government takes the view that the reference for a preliminary ruling is inadmissible. In that regard, that Government argues that it is apparent from Flight Refund's Internet site, which it viewed on 9 June 2014, that that company ceased operation of its site for an indeterminate period and that, during the same period, suspended its pursuit of the debt recovery actions in progress. For that reason, that Government suggests that the Court should ask the referring court for information regarding the state of the proceedings before it.
- 40 In that regard, it should be noted that, according to settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance (judgments in *Fish Legal and Shirley*, C-279/12, EU:C:2013:853, paragraph 30, and *Verder LabTec*, C-657/13, EU:C:2015:331, paragraph 29).
- 41 With regard to the plea of inadmissibility thus raised by the German Government, it is sufficient to note that, in its reply to the request for clarification sent to it by the Court, the referring court confirmed that it was still hearing the application for designation of the court having territorial jurisdiction to hear the contentious proceedings following the defendant's opposition to the European order for payment. Accordingly, there is nothing in the file to permit the conclusion that the presumption of relevance enjoyed by questions referred for a preliminary ruling could be challenged in the present case.
- 42 The request for a preliminary ruling is therefore admissible.

#### *Substance*

- 43 Before examining the questions referred by the referring court, it is appropriate to note that, in its reply to the request for clarification sent to it by the Court, that court expressed doubts as to the relevant rules to be applied in order to examine the question of the international jurisdiction of the courts of a Member State to hear the contentious proceedings concerning the debt which is the origin of the order for payment, against which the defendant has entered a statement of opposition, in

circumstances such as those at issue in the main proceedings, where the claimant has relied on Articles 6 and 7 of Regulation No 261/2004 as the legal basis for its claim. More precisely, that court asks whether the rules applicable in that situation are those on international jurisdiction laid down in Article 33 of the Montreal Convention or those laid down in Regulation No 44/2001.

- 44 Furthermore, that court seeks clarification as to the scope of Article 17(1) of Regulation No 1896/2006, in particular as to whether that provision could be interpreted as containing a rule on jurisdiction in favour of the courts of the Member State of origin within the meaning of Article 5(1) of that regulation, independently of the rules laid down in Regulation No 44/2001.
- 45 In that regard, firstly, it is appropriate to have regard to the settled case-law of the Court, in accordance with which a passenger's right to a standardised and lump-sum payment following a flight delay, drawn from Articles 5 to 7 of Regulation No 261/2004, on which Flight Refund relies in the present case, is independent of compensation for damage in the context of Article 19 of the Montreal Convention (see, to that effect, judgments in *Rehder*, C-204/08, EU:C:2009:439, paragraph 27, and *Nelson and Others*, C-581/10 and C-629/10, EU:C:2012:657, paragraphs 46, 49 and 55).
- 46 Thus, since the rights based respectively on the provisions of Regulation No 261/2004 and of the Montreal Convention fall within different regulatory frameworks, the rules on international jurisdiction provided for in that Convention do not apply to applications made on the basis of Regulation No 261/2004 alone, which must be examined in the light of Regulation No 44/2001 (see, to that effect, judgment in *Rehder*, C-204/08, EU:C:2009:439, paragraphs 27 and 28).
- 47 Secondly, with regard to the situation referred to by the referring court, set out in paragraph 44 of the present judgment, the Court has already held that a statement of opposition by the defendant to the European order for payment, the effects of which are governed by Article 17(1) of Regulation No 1896/2006, cannot extend the jurisdiction of the courts of the Member State of origin of the order for payment, within in the meaning of Article 24 of Regulation No 44/2001, and thus mean that the defendant has accepted, by entering such a statement of opposition, even if it includes statements on the substance of the case, the jurisdiction of the courts of that Member State to hear the contentious proceedings concerning the disputed claim (see, to that effect, judgment in *Goldbet Sportwetten*, C-144/12, EU:C:2013:393, paragraphs 38, 41 and 43).
- 48 In the light of the foregoing, the view must be taken that, by its questions, which it is appropriate to examine together, the referring court enquires, in essence, as to the powers and obligations of a court such as the referring court under EU law and, in particular, Regulation No 1896/2006, in circumstances in which that court is seised of proceedings concerning the designation of a court having territorial jurisdiction of the Member State of origin of a European order for payment and is considering the question of the international jurisdiction of the courts of that Member State to hear the contentious proceedings relating to the debt giving rise to that order for payment, against which the defendant has entered a statement of opposition with the time-limit set for that purpose.
- 49 In that regard, it must be borne in mind that, by virtue of Article 1(1)(a) of Regulation No 1896/2006, the purpose of the 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. Under Article 2(1) thereof, that regulation is to apply to civil and commercial matters in cross-border cases, whatever the nature of the court or tribunal.
- 50 The special procedure governed by Regulation No 1896/2006 and the objectives which it pursues do not, however, apply where the debts giving rise to an order for payment are contested by way of a statement of opposition provided for in Article 16 of that regulation (see, to that effect, judgments in *eco cosmetics and Raiffeisenbank St. Georgen*, C-119/13 and C-120/13, EU:C:2014:2144, paragraph 39, and *Goldbet Sportwetten*, C-144/12, EU:C:2013:393, paragraphs 31 and 42).



- 51 In the present case, it is not in dispute that the defendant entered a statement of opposition, within the time-limit laid down for that purpose in Article 16(2) of Regulation No 1896/2006, against the European order for payment issued against it. Accordingly, since Article 17(1) of that regulation constitutes the sole provision of that regulation governing the effects of such opposition, it is appropriate to examine whether that provision enables the powers and obligations of a court such as the referring court to be determined, in circumstances such as those at issue in the main proceedings, by referring to both the letter of that provision and the scheme of the regulation.
- 52 According to its wording, Article 17(1) of Regulation No 1896/2006 merely requires, if a statement of opposition is entered within the time-limit laid down, that the proceedings automatically continue before the competent courts of the Member State of origin of the order for payment in accordance with the rules of ordinary civil procedure, unless the claimant has explicitly requested that the proceedings be terminated in that event.
- 53 With regard to the scheme of Regulation No 1896/2006, it is apparent from a combined reading of recitals 8 and 10 to that regulation and Article 26 thereof that it institutes a European order for payment procedure which constitutes an additional and optional means for the claimant, while neither replacing nor harmonising the existing mechanisms for the recovery of uncontested claims under national law. Regulation No 1896/2006 puts in place a uniform instrument for recovery, ensuring identical conditions for creditors and debtors throughout the European Union, while providing for the application of the procedural law of the Member States to any procedural question not expressly governed by that regulation.
- 54 Since it is clear from the scheme of Regulation No 1896/2006 that that regulation does not seek to harmonise the procedural law of the Member States and, having regard to the restricted scope of Article 17(1) of that regulation, as stated in paragraph 52 of the present judgment, that provision must be interpreted, in so far as it provides for the automatic continuation of the proceedings, if a statement of opposition is entered by the defendant, in accordance with the rules of ordinary civil procedure, in that it does not lay down any particular requirement as regards the nature of the courts before which the procedure must be continued or the rules which such a court must apply.
- 55 It follows that, in principle, the requirements laid down in Article 17(1) of Regulation No 1896/2006 are met when the proceedings continue, following the entry of a statement of opposition by the defendant, before a court such as the referring court, which examines, in circumstances such as those at issue in the main proceedings, the international jurisdiction of the courts of the Member State of origin of the European order for payment to hear the ordinary civil proceedings relating to the contested claim, by application of the rules laid down in Regulation No 44/2001.
- 56 As the Advocate General noted in point 72 of her Opinion, neither Article 17(1) of Regulation No 1896/2006 nor any other provision of that regulation enables identification of the powers and obligations of a court such as the referring court in circumstances such as those at issue in the main proceedings. In the absence, in Regulation No 1896/2006, of any express rule relating to that procedural question, in accordance with Article 26 of that regulation the question continues to be governed by national law.
- 57 Furthermore, in so far as it is apparent from the request for a preliminary ruling that the referring court is called upon to rule on the question of the international jurisdiction of the courts of the Member State of origin of the European order for payment to hear the contentious proceedings concerning the contested claim, by applying, to that end, as noted in paragraph 46 of the present judgment, the rules laid down in Regulation No 44/2001, it is necessary to verify any obligations on that court which follow from that regulation.

- 58 In that regard, it is common ground that Regulation No 44/2001 does not seek to unify the extent of the verification obligations to which national courts are subject in the course of determining their international jurisdiction. The application of the relevant national laws must not, nevertheless, impair the effectiveness of Regulation No 44/2001 (see judgment in *Kolassa*, C-375/13, EU:C:2015:37, paragraphs 59 and 60 and the case-law cited).
- 59 As regards the requirements to be met during the proceedings, it must be borne in mind that all the provisions of Regulation No 44/2001 express the intention to ensure that, within the scope of the objectives of that regulation, proceedings leading to the delivery of judicial decisions take place in such a way that the rights of the defence are observed (see, to that effect, *G*, C-292/10, EU:C:2012:142, paragraph 47, and *A*, C-112/13, EU:C:2014:2195, paragraph 51 and the case-law cited).
- 60 In that context, it must be pointed out that both the objective of the sound administration of justice, which underlies Regulation No 44/2001, and respect for the independence of the national court in the exercise of its functions require the national court called upon to rule on the question of international jurisdiction may examine that question in the light of all the information available to it, including, where appropriate, the defendant's allegations (see, to that effect, judgment in *Kolassa*, C-375/13, EU:C:2015:37, paragraph 64).
- 61 In the present case, it is apparent from the request for a preliminary ruling that the only information held by the referring court relating to the question of the international jurisdiction of the courts of the Member State of origin is that supplied by the applicant in its application for a European order for payment, which information can, according to Article 7(2)(f) of Regulation No 1896/2006, be reduced to a mere statement of the grounds for international jurisdiction, without the applicant being required to set out the connecting factors of the debt claimed in the context of the European order for payment procedure to the Member State in which it made that application.
- 62 It is appropriate to note in that context that the file before the Court does not enable the national rules applicable to the procedure before the referring court to be identified. That being the case, if, under the national procedural law, that court were required to assess the international jurisdiction of the courts of the Member State of origin of the order for payment exclusively in the light of the evidence provided by the applicant in its application for the European order for payment, such a procedure could guarantee neither the effectiveness of the rules of jurisdiction laid down in Regulation No 44/2001 nor the rights of the defence to which the defendant is entitled.
- 63 The national rules applicable to the procedure before the referring court in the present case must permit that court to examine the question of international jurisdiction, applying the rules laid down in Regulation No 44/2001, in the light of all the information which it needs for that purpose, as the Advocate General noted in point 63 of her Opinion, if necessary hearing the parties' submissions in that regard.
- 64 If that were not the case, that court would be free either to interpret its rules of procedure as permitting it to meet those requirements or to designate, as the referring court has itself suggested, a court having substantive jurisdiction to hear the substance of a claim such as that at issue in the main proceedings under the ordinary civil procedure, as the court having territorial jurisdiction, and required, in this case, to rule, if necessary, on its own international jurisdiction in the light of the criteria set out in Regulation No 44/2001.
- 65 Finally, it is appropriate to answer the referring court's questions concerning the obligations on it following examination of the jurisdiction of the courts of the Member State of origin of the European order for payment, which it carried out under the conditions set out in paragraphs 62 and 63 of the present judgment.

- 66 In that regard, if, after those verifications, it proved to be the case that the jurisdiction of the courts of the Member State of origin of the European order for payment can be established on the basis of the provisions of Regulation No 44/2001, a court such as the referring court could not, without undermining the effectiveness of the rule laid down in that regulation by virtue of which jurisdiction is established, close the procedure on the sole ground that, by applying national law, it cannot identify a court having territorial jurisdiction to rule on the substance of the contested claim.
- 67 That court is required, as the Hungarian Government stated in its written observations, to interpret national law as permitting it to identify or designate the court which has territorial and substantive jurisdiction to rule on the substances of the debt which gave rise to the order for payment against which the defendant has entered a statement of opposition within the time-limit prescribed for that purpose.
- 68 Moreover, to close the contentious proceedings concerning the substance of the contested claim when the jurisdiction of the courts of the Member State of origin of the order for payment has been established on the basis of Regulation No 44/2001 would also undermine the effectiveness of Article 17(1) of Regulation No 1896/2006, in so far as that provision requires the proceedings automatically to be continued, in the event that the defendant has entered a statement of opposition, before the competent courts of the Member State of origin of the order for payment.
- 69 However, if the courts of the Member State of origin do not have jurisdiction under Regulation No 44/2001, it is not necessary, contrary to the apparent views of the referring court, automatically, by analogy with Article 20 of Regulation No 1896/2006, to review the order for payment against which the defendant has validly entered a statement of opposition.
- 70 In that regard, it is clear from the case-law of the Court that the possibility, provided for in Article 20 of Regulation 1896/2006, of having the order for payment reviewed applies only if the defendant has failed to enter a statement of opposition within the time-limit laid down in Article 16(2) of that regulation (see, to that effect, judgment in *Thomas Cook Belgium*, C-245/14, EU:C:2015:715, paragraphs 47 and 48).
- 71 Furthermore, in so far as a procedural situation such as that at issue in the main proceedings is, as is apparent from paragraphs 55 and 56 of the present judgment, governed not by the provisions of Regulation No 1896/2006 but by national law, the provisions of that regulation, including Article 20 thereof, cannot apply, even by analogy, to that situation (see, to that effect, judgment in *eco cosmetics and Raiffeisenbank St. Georgen*, C-119/13 and C-120/13, EU:C:2014:2144, paragraph 45).
- 72 In addition, in accordance with Article 18(1) of Regulation No 1896/2006, an order for payment against which the defendant has entered a statement of opposition within the time-limit prescribed for that purpose cannot become enforceable. Consequently, a court such as the referring court is entitled to draw the consequences provided for, in that situation, under national procedural law of its finding that the courts of the Member State of origin of the European order for payment do not have jurisdiction under Regulation No 44/2001.
- 73 It follows from all the foregoing considerations that the answer to the questions referred is that EU law must be interpreted as meaning that, in circumstances where a court is seised of a procedure, such as that in the main proceedings, concerning the designation of the court of the Member State of origin of a European order for payment having territorial jurisdiction and examines, in those circumstances, the

international jurisdiction of the courts of that Member State to hear the contentious proceedings concerning the debt which gave rise to such an order for payment against which the defendant has entered a statement of opposition within the time-limit prescribed for that purpose:

- since Regulation No 1896/2006 does not provide any indications as to the powers and obligations of that court, those procedural questions continue, pursuant to Article 26 of that regulation, to be governed by the national law of that Member State;
- Regulation No 44/2001 requires the question of the international jurisdiction of the courts of the Member State of origin of the European order for payment to be decided by application of procedural rules which enable the effectiveness of the provisions of that regulation and the rights of the defence to be guaranteed, whether it is the referring court or a court which the referring court designates as the court having territorial and substantive jurisdiction to hear a claim such as that at issue in the main proceedings under the ordinary civil procedure which rules on that question;
- if a court such as the referring court rules on the international jurisdiction of the courts of the Member State of origin of the European order for payment and finds that there is such jurisdiction in the light of the criteria set out in Regulation No 44/2001, that regulation and Regulation No 1896/2006 require such a court to interpret national law in such a way that it permits it to identify or designate a court having territorial or substantive jurisdiction to hear that procedure, and,
- if a court such as the referring court finds that there is no such international jurisdiction, that court is not required of its own motion to review that order for payment by analogy with Article 20 of Regulation No 1896/2006.

## Costs

- <sup>74</sup> 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 (Second Chamber) hereby rules:

**EU law must be interpreted as meaning that, in circumstances where a court is seised of a procedure, such as that in the main proceedings, concerning the designation of the court of the Member State of origin of a European order for payment having territorial jurisdiction and examines, in those circumstances, the international jurisdiction of the courts of that Member State to hear the contentious proceedings concerning the debt which gave rise to such an order for payment against which the defendant has entered a statement of opposition within the time-limit prescribed for that purpose:**

- since Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure does not provide any indications as to the powers and obligations of that court, those procedural questions continue, pursuant to Article 26 of that regulation, to be governed by the national law of that Member State;
- Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters requires the question of the international jurisdiction of the courts of the Member State of origin of the European order for payment to be decided by application of procedural rules which enable the effectiveness

**of the provisions of that regulation and the rights of the defence to be guaranteed, whether it is the referring court or a court which the referring court designates as the court having territorial and substantive jurisdiction to hear a claim such as that at issue in the main proceedings under the ordinary civil procedure which rules on that question;**

- **if a court such as the referring court rules on the international jurisdiction of the courts of the Member State of origin of the European order for payment and finds that there is such jurisdiction in the light of the criteria set out in Regulation No 44/2001, that regulation and Regulation No 1896/2006 require such a court to interpret national law in such a way that it permits it to identify or designate a court having territorial or substantive jurisdiction to hear that procedure; and,**
- **if a court such as the referring court finds that there is no such international jurisdiction, that court is not required of its own motion to review that order for payment by analogy with Article 20 of Regulation No 1896/2006.**

[Signatures]