



## Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

9 September 2021 \*

(Reference for a preliminary ruling – Article 20(2)(a) TFEU – Second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union – Regulation (EC) No 1206/2001 – Cooperation between the courts of the Member States in the taking of evidence in civil and commercial matters – Article 1(1)(a) – Regulation (EU) No 1215/2012 – Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters – Article 5(1) – Outstanding debts – Legal decisions – Orders for payment – Service – Debtor residing at an unknown address in a Member State other than that of the court seised)

In Joined Cases C-208/20 and C-256/20,

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the Sofiyski Rayonen sad (Sofia District Court, Bulgaria), made by decisions of 14 May 2020 (C-208/20) and 10 June 2020 (C-256/20), received at the Court on 14 May 2020 and 10 June 2020 respectively, in the proceedings

**‘Toplofikatsia Sofia’ EAD,**

**‘CHEZ Elektro Bulgaria’ AD,**

**‘Agentsia za control na prosrocheni zadalzhenia’ EOOD (C-208/20),**

and

**‘Toplofikatsia Sofia’ EAD (C-256/20),**

THE COURT (Sixth Chamber),

composed of L. Bay Larsen, President of the Chamber, R. Silva de Lapuerta (Rapporteur), Vice-President of the Court, and M. Safjan, Judge,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

\* Language of the case: Bulgarian.

after considering the observations submitted on behalf of:

- ‘Agentsia za control na prosrocheni zadalzhenia’ EOOD, by Y.B. Yanakiev,
- the European Commission, by M. Heller and I. Zaloguín, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

### **Judgment**

- 1 These requests for a preliminary ruling concern the interpretation of Article 20(2)(a) TFEU, in conjunction with the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union (‘the Charter’), Article 1(1)(a) of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ 2001 L 174, p. 1), and Article 5(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1).
- 2 The requests have been made in proceedings between, on the one hand, in Case C-208/20, ‘Toplofikatsia Sofia’ EAD, ‘CHEZ Elektro Bulgaria’ AD and ‘Agentsia za control na prosrocheni zadalzhenia’ EOOD and, in Case C-256/20, Toplofikatsia Sofia and, on the other hand, natural persons who were not parties to the proceedings, concerning the recovery of outstanding debts.

### **Legal context**

#### ***Regulation No 1206/2001***

- 3 According to Article 1 of Regulation No 1206/2001:

‘1. This Regulation shall apply in civil or commercial matters where the court of a Member State, in accordance with the provisions of the law of that State, requests:

- (a) the competent court of another Member State to take evidence; or
- (b) to take evidence directly in another Member State.

2. A request shall not be made to obtain evidence which is not intended for use in judicial proceedings, commenced or contemplated.

...’

4 Article 4(1)(b) of that regulation sets out as follows:

‘The request shall be made using form A or, where appropriate, form I in the Annex. It shall contain the following details:

...

(b) the names and addresses of the parties to the proceedings and their representatives, if any’.

### ***Regulation No 1215/2012***

5 Article 1(1) of Regulation No 1215/2012 states:

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

6 Article 4(1) of that regulation provides:

‘Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.’

7 Article 5(1) of that regulation is worded as follows:

‘Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.’

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

#### ***Case C-208/20***

8 The referring court, the Sofiyski Rayonen sad (Sofia District Court, Bulgaria), is hearing three disputes.

9 The first dispute concerns an action brought by Toplofikatsiya Sofia in order to establish the existence of a claim in respect of the supply of thermal energy to a property in Sofia (Bulgaria) against a natural person after, in the context of the procedure for issuing an order for payment against her, she was not found at the address indicated in the application. The investigations carried out by that court confirmed that that address was her permanent and current address, as registered in the national population register. However, according to a neighbour, she had been living in France for seven years.

10 In the second dispute, that court, at the request of CHEZ Elektro Bulgaria, an electricity supplier, issued an order for payment of unpaid invoices against a natural person in respect of the supply of electricity to a property in Sofia, and ordered that it be served on him at the address indicated by CHEZ Elektro Bulgaria, which corresponds to his permanent and current address, as recorded in the national population register. It was, however, impossible to locate that person there. According to the information provided by a neighbour, he had been living in Germany for a year.

- 11 In the third dispute, the referring court, at the request of a debt collection agency, Agentsia za control na prosrocheni zadalzhenia, issued an order for payment against a natural person who had not repaid a loan to a financial institution based in Sofia, and ordered that it be served on him at the address indicated by that company, which corresponds to his permanent and current address, as recorded in the national population register. It was, however, impossible to locate that person there. According to information provided by his mother, he had been living in Germany for three years.
- 12 The referring court asks whether, in the same way as it is obliged under Bulgarian law to carry out, of its own motion, checks concerning the address in Bulgaria of persons to be served with a judicial document, it is also obliged to carry out such checks with the competent authorities of another Member State where it appears that the addressee of a judicial decision such as those at issue in the main proceedings lives in that Member State.
- 13 In addition, that court is uncertain as to the interpretation of Article 5(1) of Regulation No 1215/2012. In that regard, it asks, in essence, whether that provision must be interpreted as meaning that, where it appears probable or certain that a debtor is not habitually resident within its jurisdiction, it precludes the court from issuing an order for payment against that debtor or the order from becoming enforceable. It also asks whether, in that situation, that provision obliges it to annul, of its own motion, such an order.
- 14 In those circumstances, the Sofiyski Rayonen sad (Sofia District Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
  - ‘(1) Must Article 20(2)(a) [TFEU], in conjunction with the second paragraph of Article 47 of the [Charter], the principles of non-discrimination and of the equivalence of procedural measures in national judicial proceedings and Article 1[(1)](a) of Regulation [No 1206/2001] be interpreted as meaning that, where the national law of the court seised provides that the latter is to obtain, of its own motion, information regarding the defendant’s address in its own State and it is established that the defendant is in another State of the European Union, the national court seised is obliged to obtain information regarding the defendant’s address from the competent authorities of the State in which he or she resides?
  - (2) Must Article 5(1) of Regulation [No 1215/2012], in conjunction with the principle that the national court must guarantee procedural rights for the effective protection of rights arising from EU law, be interpreted as meaning that, when determining the habitual residence of a debtor as a condition required under national law for the conduct of unilateral formal proceedings in which evidence is not taken, such as order for payment procedures, the national court is obliged to interpret any reasonable suspicion that the debtor is habitually resident in another State of the European Union as a lack of a legal basis for issuing an order for payment or as a basis for the order for payment not acquiring the force of *res judicata*?
  - (3) Must Article 5(1) of Regulation [No 1215/2012], in conjunction with the principle that the national court must guarantee procedural rights for the effective protection of rights deriving from EU law, be interpreted as meaning that a national court, which, after having issued an order for payment against a particular debtor, has established that that debtor is unlikely to be habitually resident in the State of the court and, provided that this constitutes an obstacle to the issuing of an order for payment against such a debtor under national law, is obliged to annul, of its own motion, the order for payment issued, despite the absence of an express statutory provision to that effect?

- (4) If the third question is answered in the negative, are the provisions referred to in that question to be interpreted as obliging the national court to annul the order for payment issued where it has carried out a check and established with certainty that the debtor is not habitually resident in the State of the court seised?’

### ***Case C-256/20***

- 15 In that case, the referring court, the Sofiyski Rayonen sad (Sofia District Court), at the request of Toplofikatsia Sofia, issued an order for payment of unpaid invoices against a natural person in respect of the supply of thermal energy to a property in Sofia, and ordered that it be served on her at her permanent and current address. Despite two attempts, it was, however, not possible to locate that person there. According to the information provided by the manager of that property, she lives in Germany and is rarely present at that address.
- 16 In those circumstances, the Sofiyski Rayonen sad (Sofia District Court) decided to stay the proceedings and to refer three questions to the Court of Justice for a preliminary ruling, worded in terms identical to those of the second to fourth questions referred in Case C-208/20.

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

#### ***The first question in Case C-208/20***

- 17 By its first question in Case C-208/20, the court asks, in essence, whether Article 20(2)(a) TFEU, in conjunction with the second paragraph of Article 47 of the Charter, the principles of non-discrimination and of equivalence, and Article 1(1)(a) of Regulation No 1206/2001, must be interpreted as meaning that, where, under the rules of a Member State, its courts are obliged to obtain, of their own motion, information regarding the address of persons on whom a judicial document is to be served in that State, those courts are also obliged, once it appears that a person on whom a legal decision is to be served resides in another Member State, to obtain information regarding that person’s address from the competent authorities of that State.
- 18 As regards, in the first place, the interpretation that is sought of Article 20(2)(a) TFEU, in conjunction with the second paragraph of Article 47 of the Charter, and of the principles of non-discrimination and of equivalence, it should be recalled at the outset that, in the context of the preliminary ruling procedure under Article 267 TFEU, there must be a connecting factor between the dispute before the referring court and the provisions of EU law whose interpretation is sought, by virtue of which that interpretation is objectively required for the decision to be taken by the referring court (order of 20 January 2021, *Bezirkshauptmannschaft Kirchdorf*, C-293/20, not published, EU:C:2021:44, paragraph 23 and the case-law cited).
- 19 In addition, the Court stresses that it is important for the referring court to set out the precise reasons why it was unsure as to the correct interpretation of EU law and why it considered it necessary to refer questions to the Court for a preliminary ruling. In that regard, it is essential that, in the order for reference itself, the national court should give at the very least some explanation of the reasons for the choice of the EU law provisions which it seeks to have interpreted and of the link it establishes between those provisions and the national legislation applicable to the proceedings pending before it (judgment of 16 July 2020, *Adusbef and Others*, C-686/18, EU:C:2020:567, paragraph 37 and the case-law cited).

- 20 Those requirements concerning the content of a request for a preliminary ruling are expressly set out in Article 94 of the Rules of Procedure of the Court, of which the national court is supposed, in the context of the cooperation between the Court and the national courts under Article 267 TFEU, to be aware and which it is bound to observe scrupulously. They are also set out in paragraph 15 of the recommendations of the Court of Justice of the European Union to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (OJ 2019 C 380, p. 1) (judgment of 16 July 2020, *Adusbef and Others*, C-686/18, EU:C:2020:567, paragraph 38 and the case-law cited).
- 21 In the present case, first, it is in no way apparent from the order for reference in Case C-208/20 that the disputes in the main proceedings have any connecting factor with Article 20(2)(a) TFEU, in conjunction with the second paragraph of Article 47 of the Charter, and the principles of non-discrimination and of equivalence.
- 22 Second, the referring court does not state the reasons why, in its view, an interpretation of those provisions and those principles is necessary in order to resolve those disputes, nor does it explain the link that it establishes between them and the national legislation at issue in the main proceedings.
- 23 Consequently, the first question is inadmissible in so far as it concerns the interpretation of those provisions and those principles.
- 24 As regards, in the second place, the interpretation of Article 1(1)(a) of Regulation No 1206/2001, it should be recalled that, according to that provision, that regulation is to apply in civil or commercial matters where the court of a Member State, in accordance with the provisions of the law of that State, requests the competent court of another Member State to take evidence.
- 25 Seeking the address of a person on whom a judicial decision is to be served does not constitute taking evidence, within the meaning of that provision, under the scope of that regulation.
- 26 In that regard, it should be noted that, under Article 4(1)(b) of that regulation, such a request must, *inter alia*, state the names and addresses of the parties to the proceedings.
- 27 It follows that a request from the court of a Member State seeking to obtain, in another Member State, the address of a person on whom a judicial decision is to be served is not governed by Regulation No 1206/2001, with the result that the latter does not apply to a situation such as that at issue in the main proceedings.
- 28 In the light of all the foregoing considerations, the answer to the first question in Case C-208/20 is that Article 1(1)(a) of Regulation No 1206/2001 must be interpreted as meaning that it does not apply to a situation where the court of a Member State seeks the address, in another Member State, of a person on whom a judicial decision is to be served.

***The second to fourth questions in Case C-208/20 and the three questions in Case C-256/20***

- 29 By its second to fourth questions in Case C-208/20 and its three questions in Case C-256/20, the referring court asks, in essence, whether Article 5(1) of Regulation No 1215/2012 must be interpreted as precluding the court of a Member State from issuing an order for payment against

a debtor and, as the case may be, the order from becoming enforceable, or as obliging the court to annul, of its own motion, that order where it appears probable or certain that that debtor is not habitually resident within the jurisdiction of that court.

- 30 Under that provision, persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of Chapter II of that regulation.
- 31 As a preliminary point, it should be noted that, as is apparent from the actual wording of Article 267 TFEU, the question referred for a preliminary ruling must be ‘necessary’ to enable the referring court to ‘give judgment’ in the case before it. Thus, the preliminary ruling procedure is based on the premiss, inter alia, that a case is pending before the national courts, in which they are called upon to give a decision which is capable of taking account of the preliminary ruling (judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C-510/19, EU:C:2020:953, paragraph 27 and the case-law cited).
- 32 In the present case, it is apparent from the requests for a preliminary ruling that the referring court had already issued orders for payment against the defendants in the main proceedings and that it was only when those orders were served on them that the court found that they were no longer resident within its jurisdiction, but probably resided in another Member State, at unknown addresses.
- 33 Consequently, in those circumstances, an interpretation of Article 5(1) of Regulation No 1215/2012 clearly does not appear necessary in order to enable the referring court to determine that it has jurisdiction to issue those orders, since that court has already issued them. It therefore necessarily recognised that it had jurisdiction before issuing them.
- 34 It follows that the second question in Case C-208/20 and the first question in Case C-256/20 are inadmissible in so far as they concern whether that provision precludes, in such circumstances, the court of a Member State from issuing an order for payment against a debtor, where it appears probable or certain that that debtor is not habitually resident within the jurisdiction of that court.
- 35 As regards the questions whether, in circumstances such as those at issue in the main proceedings, Article 5(1) of Regulation No 1215/2012 must be interpreted as precluding the orders for payment issued by the court in question from becoming enforceable, or as obliging that court to annul those orders, it is sufficient to state that that provision has no connection with the procedural rules of the Member States governing, first, the conditions under which judicial decisions become enforceable and, second, the validity of those decisions.
- 36 In that regard, it should be recalled that the purpose of Regulation No 1215/2012 is not to unify the procedural rules of the Member States, but to determine which court has jurisdiction in disputes concerning civil and commercial matters in relations between Member States and to facilitate the enforcement of judgments (judgment of 31 May 2018, *Nothartová*, C-306/17, EU:C:2018:360, paragraph 28 and the case-law cited).
- 37 As that regulation does not determine the conditions in which judicial decisions become enforceable or the conditions governing the validity of those decisions, those conditions, therefore, fall within the procedural autonomy of the Member States (see, to that effect, judgment of 31 May 2018, *Nothartová*, C-306/17, EU:C:2018:360, paragraph 28 and the case-law cited).

- 38 Furthermore, since Article 5(1) of Regulation No 1215/2012 does not apply to a situation such as that at issue in the main proceedings, it cannot be held that the decision which the referring court will be called upon to give as regards the enforceability of the order for payment or as regards the validity of such an order in such a situation is capable of rendering the application of that provision wholly ineffective.
- 39 In those circumstances, the answer to the second to fourth questions in Case C-208/20 and to the three questions in Case C-256/20 is that Article 5(1) of Regulation No 1215/2012 must be interpreted as not precluding an order for payment against a debtor from becoming enforceable, and as not obliging the court to annul such an order.

### Costs

- 40 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 (Sixth Chamber) hereby rules:

- 1. Article 1(1)(a) of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters must be interpreted as meaning that it does not apply to a situation where the court of a Member State seeks the address, in another Member State, of a person on whom a judicial decision is to be served.**
- 2. Article 5(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as not precluding an order for payment against a debtor from becoming enforceable, and as not obliging the court to annul such an order.**

[Signatures]