



## Reports of Cases

### JUDGMENT OF THE COURT (Third Chamber)

15 September 2022\*

(Reference for a preliminary ruling – Judicial cooperation in civil matters – European order for payment procedure – Regulation No 1896/2006 – Article 16(2) – 30-day time limit for lodging a statement of opposition to the European order for payment – Article 20 – Review procedure – Article 26 – Application of national law for procedural issues not specifically dealt with in that regulation – COVID-19 pandemic – National legislation which interrupted the procedural periods in civil matters for several weeks)

In Case C-18/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Supreme Court, Austria), made by decision of 27 November 2020, received at the Court on 12 January 2021, in the proceedings

**Uniqa Versicherungen AG**

v

**VU,**

THE COURT (Third Chamber),

composed of K. Jürimäe (Rapporteur), President of the Chamber, K. Lenaerts, President of the Court, acting as Judge of the Third Chamber, N. Jääskinen, M. Safjan and N. Piçarra, Judges,

Advocate General: A.M. Collins,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure and further to the hearing on 19 January 2022,

after considering the observations submitted on behalf of:

- Uniqa Versicherungen AG, by S. Holter, Rechtsanwalt, and S. Pechlof, Prozessbevollmächtigter,
- VU, by M. Brandt, Rechtsanwalt,

\* Language of the case: German.

- the Austrian Government, by A. Posch, E. Samoilova, U. Scheuer and J. Schmoll, acting as Agents,
- the Greek Government, by S. Charitaki, V. Karra and A. Magrippi, acting as Agents,
- the European Commission, by M. Heller and I. Zaloguin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 31 March 2022,

gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Articles 20 and 26, read in conjunction with Article 16(2), 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), as amended by Regulation (EU) 2015/2421 of the European Parliament and of the Council of 16 December 2015 (OJ 2015 L 341, p. 1) ('Regulation No 1896/2006').
- 2 The request has been made in proceedings between Uniqqa Versicherungen AG, an Austrian insurance company, and VU, a German national, concerning the enforcement of a European order for payment served on VU.

### **Legal context**

#### ***European Union law***

- 3 Recitals 8, 9, 18 and 24 of Regulation No 1896/2006 are worded as follows:
  - '(8) The resulting impediments to access to efficient justice in cross-border cases and the distortion of competition within the internal market due to imbalances in the functioning of procedural means afforded to creditors in different Member States necessitate Community legislation guaranteeing a level playing field for creditors and debtors throughout the European Union.
  - (9) The 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, and to permit the free circulation of European orders for payment throughout the Member States by laying down minimum standards, compliance with which renders unnecessary any intermediate proceedings in the Member State of enforcement prior to recognition and enforcement.

...

(18) The European order for payment should apprise the defendant of his options to pay the amount awarded to the claimant or to send a statement of opposition within a time limit of 30 days if he wishes to contest the claim. In addition to being provided with full information concerning the claim as supplied by the claimant, the defendant should be advised of the legal significance of the European order for payment and in particular of the consequences of leaving the claim uncontested.

...

(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.'

4 As set out in Article 1 of that regulation:

'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;

and

(b) to permit the free circulation of European orders for payment throughout the Member States by laying down minimum standards, compliance with which renders unnecessary any intermediate proceedings in the Member State of enforcement prior to recognition and enforcement.

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 Community law.'

5 Article 12(3) of that regulation provides:

'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.'

6 Article 16 of that regulation, headed 'Opposition to the European order for payment', provides in paragraphs 1 to 3:

'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.'
- 7 Article 17 of Regulation No 1896/2006, headed 'Effects of the lodging of a statement of opposition', provides:
- '1. If a statement of opposition is lodged within the time limit laid down in Article 16(2), the proceedings shall continue before the competent courts of the Member State of origin unless the claimant has explicitly requested that the proceedings be terminated in that event. The proceedings shall continue in accordance with the rules of:
    - (a) the European Small Claims Procedure laid down in Regulation (EC) No 861/2007 [of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (OJ 2007 L 199, p. 1)], if applicable; or
    - (b) any appropriate national civil procedure.
  2. Where the claimant has not indicated which of the procedures listed in points (a) and (b) of paragraph 1 he requests to be applied to his claim in the proceedings that ensue in the event of a statement of opposition or where the claimant has requested that the European Small Claims Procedure as laid down in Regulation (EC) No 861/2007 be applied to a claim that does not fall within the scope of that Regulation, the proceedings shall be transferred to the appropriate national civil procedure, unless the claimant has explicitly requested that such transfer not be made.
  3. Where the claimant has pursued his claim through the European order for payment procedure, nothing under national law shall prejudice his position in subsequent civil proceedings.
  4. The transfer to civil proceedings within the meaning of points (a) and (b) of paragraph 1 shall be governed by the law of the Member State of origin.
  5. The claimant shall be informed of whether the defendant has lodged a statement of opposition and of any transfer to civil proceedings within the meaning of paragraph 1.'
- 8 Article 20 of Regulation No 1896/2006, headed 'Review in exceptional cases', states:
- '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.'

- 9 As set out in Article 26 of that regulation, headed 'Relationship with national procedural law':  
'All procedural issues not specifically dealt with in this Regulation shall be governed by national law.'

### *Austrian law*

- 10 Paragraph 1(1) of the COVID-19-Justiz-Begleitgesetz (Federal law on accompanying measures for COVID-19 in the administration of justice) of 21 March 2020 (BGBl. I Nr 16/2020), in the version applicable to the dispute in the main proceedings ('the Austrian Law on COVID-19'), provided that, in civil proceedings, all procedural periods that started to run after 21 March 2020 or which had not yet expired by that date were to be interrupted until 30 April 2020 and were to run anew from 1 May 2020.

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

- 11 On 6 March 2020, the Bezirksgericht für Handelssachen Wien (District Court for Commercial Matters, Vienna, Austria) issued, at the behest of Uniqa Versicherungen, a European order for payment, which was served on VU, a natural person resident in Germany, on 4 April 2020. VU lodged a statement of opposition to that order for payment by letter posted on 18 May 2020. That court rejected VU's statement of opposition on the ground that it had not been lodged within the 30-day time limit laid down in Article 16(2) of Regulation No 1896/2006.
- 12 The Handelsgericht Wien (Commercial Court, Vienna, Austria), the appeal court, set aside that order on the basis of Paragraph 1(1) of the Austrian Law on COVID-19.
- 13 Uniqa Versicherungen brought an appeal on a point of law (*Revision*) against the decision of the Handelsgericht Wien (Commercial Court, Vienna) before the Oberster Gerichtshof (Supreme Court, Austria), the referring court in the present case.

- 14 The referring court states that Paragraph 1(1) of the Austrian Law on COVID-19 is a response to a situation in which, due to the illness of court staff, legal advisers or the parties, or on account of the measures adopted, it was not always possible to comply with procedural time limits.
- 15 According to the referring court, there are diverging views in Austrian legal literature as to whether that national legislation is applicable to the time limit for lodging a statement of opposition to a European order for payment, which is set at 30 days by Article 16(2) of Regulation No 1896/2006, or whether Article 20 of that regulation precludes the application of that national legislation to the time limit for lodging a statement of opposition.
- 16 Some Austrian academic writers maintain that Article 20 of that regulation provides for the possibility of a review of the European order for payment, which may lead to that order being set aside, inter alia in cases of *force majeure* or extraordinary circumstances, such as the COVID-19 crisis. According to that view, recourse to national law to take account of such a situation is impermissible, since it is exhaustively governed by that regulation.
- 17 According to another opinion defended in legal literature, Article 20 of Regulation No 1896/2006 does not preclude the application of national legislation such as Paragraph 1(1) of the Austrian Law on COVID-19. Article 16(2) of that regulation, it is argued, governs only the duration of the period for lodging a statement of opposition, whereas the issue of any interruption of that period has not been regulated by EU law. Article 26 of that regulation, which refers to national law for all procedural issues not specifically dealt with in that regulation, should therefore apply. From that perspective, Article 20 of Regulation No 1896/2006 is intended solely to ensure fairness in individual cases and does not contain general provisions governing an exceptional situation such as the COVID-19 crisis.
- 18 In those circumstances, the Oberster Gerichtshof (Supreme Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:
- ‘Are Articles 20 and 26 of [Regulation No 1896/2006] to be interpreted as meaning that those provisions preclude an interruption of the 30-day time limit for lodging a statement of opposition to a European order for payment, as provided for in Article 16(2) of that regulation, by Paragraph 1(1) of the [Austrian Law on COVID-19], pursuant to which all procedural periods in proceedings in civil cases for which the event triggering the period occurs after 21 March 2020 or which have not yet expired by that date are to be interrupted until the end of 30 April 2020 and are to begin to run anew from 1 May 2020?’

### **Consideration of the question referred**

- 19 By its question, the referring court asks, in essence, whether Articles 16, 20 and 26 of Regulation No 1896/2006 must be interpreted as precluding the application of national legislation, which was adopted when the COVID-19 pandemic arose and which interrupted the procedural periods in civil matters for approximately five weeks, to the 30-day time limit laid down by Article 16(2) of that regulation for the defendant to lodge a statement of opposition to a European order for payment.

- 20 It should be borne in mind, first, that, as recital 9 and Article 1(1)(a) of that regulation make clear, the regulation is intended 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.
- 21 That simplified and uniform procedure is not adversarial. The defendant will not be aware that the European order for payment has been issued until it is served on him. As is apparent from Article 12(3) of Regulation No 1896/2006, it is only then that he is advised of his options either to pay the amount indicated in that order to the claimant or to oppose the order in the court of origin (judgment of 13 June 2013, *Goldbet Sportwetten*, C-144/12, EU:C:2013:393, paragraph 29).
- 22 In that regard, Article 16(1) of that regulation states that the defendant may lodge a statement of opposition to the European order for payment with the court of origin. Article 16(2) adds that the statement of opposition is to be sent within 30 days of service of the order on the defendant.
- 23 Thus, as stated in Article 17 of Regulation No 1896/2006, read in the light of recital 24 of that regulation, the defendant may, by lodging a statement of opposition within the prescribed period, terminate the European order for payment procedure and cause the case to be automatically transferred to the European Small Claims Procedure laid down in Regulation No 861/2007 or the appropriate national civil procedure, unless the claimant has explicitly requested that the proceedings be terminated in that event.
- 24 The option of lodging a statement of opposition is designed to compensate for the fact that the system established by Regulation No 1896/2006 does not provide for the defendant's participation in the European order for payment procedure, by enabling him to contest the claim after the European order for payment has been issued (judgment of 13 June 2013, *Goldbet Sportwetten*, C-144/12, EU:C:2013:393, paragraph 30). That stage of the procedure is therefore essential in order to ensure observance of the right to a fair hearing enshrined in the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union.
- 25 The procedure for lodging a statement of opposition is supplemented by the defendant's right to apply for a review of the European order for payment after the time limit for lodging a statement of opposition has expired. However, as is clear from the very heading of Article 20 of that regulation, there can be a review only in 'exceptional cases' (judgment of 22 October 2015, *Thomas Cook Belgium*, C-245/14, EU:C:2015:715, paragraph 29).
- 26 As regards, more specifically, Article 20(1)(b) of Regulation No 1896/2006, that provision stipulates that a European order for payment may be reviewed where the failure to comply with the 30-day time limit for lodging a statement of opposition, laid down in Article 16(2) of that regulation, is the result of *force majeure* or extraordinary circumstances which prevented the defendant from lodging such a statement within that time limit.
- 27 As is apparent from the wording of Article 20(1)(b), in order for the defendant to have grounds to apply for a review of the European order for payment pursuant to that provision, it is necessary that three cumulative conditions be satisfied, namely, first, there must be extraordinary circumstances or *force majeure* by reason of which the defendant was prevented from objecting to the claim within the time limit laid down for that purpose, secondly, there must be no fault on the part of the defendant and, thirdly, the defendant must act promptly (see, to that effect, order of 21 March 2013, *Novontech-Zala*, C-324/12, EU:C:2013:205, paragraph 24).

- 28 Secondly, as regards the scheme of Regulation No 1896/2006, Article 1(1)(b) of that regulation, read in the light of recital 9 thereof, makes clear that the regulation corresponds to ‘minimum standards’ laid down to permit the free circulation of European orders for payment. That regulation thus 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 issue not specifically dealt with in that regulation (see, to that effect, judgment of 10 March 2016, *Flight Refund*, C-94/14, EU:C:2016:148, paragraph 53).
- 29 It is in the light of those considerations that an answer is to be given on the matters raised by the referring court.
- 30 In the present case, the referring court is uncertain whether Article 26 of Regulation No 1896/2006 permits the application, to the 30-day time limit laid down in Article 16(2) of that regulation for lodging a statement of opposition to a European order for payment, of national legislation which, on account of the COVID-19 pandemic, interrupted the procedural periods in civil matters for approximately five weeks, or whether, on the contrary, Article 20(1)(b) of that regulation must be interpreted as exhaustively regulating the defendant’s procedural rights in the event of exceptional circumstances such as the COVID-19 pandemic, with the result that Article 26 of that regulation is not applicable.
- 31 In that regard, it is certainly conceivable that a defendant in a European order for payment procedure may have been prevented from lodging a statement of opposition to that order due to extraordinary circumstances linked to the COVID-19 pandemic. In that situation, he is entitled, in compliance with all of the conditions set out in Article 20(1)(b) of Regulation No 1896/2006 and referred to in paragraph 27 above, to apply for a review of that order before the competent court in the Member State of origin.
- 32 That said, the Court has previously held that, since the EU legislature intended to limit the review procedure to exceptional circumstances, that provision must necessarily be interpreted strictly (see, to that effect, judgment of 22 October 2015, *Thomas Cook Belgium*, C-245/14, EU:C:2015:715, paragraph 31). As is apparent from the very wording of that provision, in particular the condition set out therein relating to the absence of fault on the part of the defendant, the extraordinary circumstances referred to in that provision correspond to circumstances specific to the individual situation of the defendant concerned. In the context of the COVID-19 pandemic, that is the case, for example, if the defendant was ill or hospitalised because of that coronavirus and thereby prevented from exercising his right of opposition within the time limit prescribed for that purpose.
- 33 By contrast, Article 20(1)(b) of Regulation No 1896/2006 is not intended to apply to extraordinary circumstances of a systemic nature, such as those linked to the outbreak of the COVID-19 pandemic, which have affected, generally, the operation and administration of the courts, the collaboration of which is, however, essential pursuant to Article 12(3)(b) and Article 16(1) of that regulation in order to enable the defendant effectively to exercise his right to lodge a statement of opposition, within the period prescribed, to the European order for payment served on him.
- 34 It should be borne in mind, in that regard, that, as stated in paragraph 28 above, Regulation No 1896/2006 does not fully harmonise all aspects of the European order for payment procedure. It provides, pursuant to Article 26 thereof, for the application of the procedural law of the Member States to all procedural issues not specifically dealt with in the regulation.



- 35 While Articles 16 and 20 of that regulation lay down the defendant's right to lodge a statement of opposition to the European order for payment served on him, harmonising a number of aspects of that right, such as the procedural requirements and the period within which it is to be exercised, the starting point of that period and the exceptional cases in which, after the period expires, the defendant may apply for a review of the order, neither those articles nor any other provision of that regulation govern other aspects, such as the basis for interruption or suspension of that period while it is running. Consequently, and in accordance with Article 26 of that regulation, the Member States are entitled to regulate those latter aspects and thus to supplement the procedural aspects which are not dealt with in Articles 16 and 20 of Regulation No 1896/2006.
- 36 That said, in accordance with the Court's settled case-law, it should be made clear that although, in the absence of EU rules on the matter, it is for the national legal order of each Member State to establish them, in accordance with the principle of procedural autonomy, that applies only on condition that those procedural rules are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not make it impossible in practice or excessively difficult to exercise the rights conferred by EU law (principle of effectiveness) (see, to that effect, judgment of 21 December 2021, *Randstad Italia*, C-497/20, EU:C:2021:1037, paragraph 58 and the case-law cited).
- 37 As regards, in the first place, compliance with the principle of equivalence, it is apparent from the request for a preliminary ruling that Paragraph 1(1) of the Austrian Law on COVID-19 applies without distinction to all procedural periods in civil cases, irrespective of the legal basis of the action in question. Accordingly, subject to verification by the referring court, that legislation appears to ensure equal treatment of order for payment procedures under national law and similar procedures under Regulation No 1896/2006.
- 38 As regards, in the second place, the principle of effectiveness, national procedural rules must be regarded as complying with that principle where they do not undermine the balance which Regulation No 1896/2006 has created between the respective rights of the claimant and the defendant in a European order for payment procedure. In particular, national legislation which has the effect of interrupting the period laid down in Article 16(2) of that regulation for opposing such an order complies with that principle where it appears justified by the objective of ensuring observance of the defendant's rights of defence without making it excessively difficult in practice to recover the claims in question speedily and effectively. To that end, the interval of time for which that period is interrupted must be limited to what is strictly necessary.
- 39 In the present case, the national legislation at issue in the main proceedings in no way undermined the aspects harmonised by Regulation No 1896/2006, referred to in paragraph 35 above. It simply provided for an interruption for a period limited to approximately five weeks which, as confirmed at the hearing by the Austrian Government, corresponded to the period during which judicial activities were severely disrupted on account of a strict lockdown imposed in the national territory due to the COVID-19 pandemic. As the Commission stated in its written observations, that legislation did not, moreover, revive periods for lodging a statement of opposition that had expired before the legislation entered into force.
- 40 Subject to verification by the referring court, those national procedural rules therefore appear to have deferred the recovery of claims by only several weeks, while effectively preserving the right to lodge a statement of opposition laid down in Article 16 of Regulation No 1896/2006, a right which is essential to the balance sought by the EU legislature.

- 41 In the light of all the foregoing considerations, the answer to the referring court's question is that Articles 16, 20 and 26 of Regulation No 1896/2006 must be interpreted as not precluding the application of national legislation, which was adopted when the COVID-19 pandemic arose and which interrupted the procedural periods in civil matters for approximately five weeks, to the 30-day time limit laid down by Article 16(2) of that regulation for the defendant to lodge a statement of opposition to a European order for payment.

### **Costs**

- 42 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:

**Articles 16, 20 and 26 of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, as amended by Regulation (EU) 2015/2421 of the European Parliament and of the Council of 16 December 2015,**

**must be interpreted as not precluding the application of national legislation, which was adopted when the COVID-19 pandemic arose and which interrupted the procedural periods in civil matters for approximately five weeks, to the 30-day time limit laid down by Article 16(2) of that regulation for the defendant to lodge a statement of opposition to a European order for payment.**

[Signatures]