



## Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

7 November 2019\*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 655/2014 — European Account Preservation Order — Article 5(a) — Obtention procedure — Article 4(8) to (10) — Definition of ‘judgment’, ‘court settlement’ and ‘authentic instrument’ — National order for payment against which an objection may be lodged — Article 18(1) — Time limits — Article 45 — Exceptional circumstances — Definition)

In Case C-555/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sofiyski rayonen sad (Sofia District Court, Bulgaria), made by decision of 16 August 2018, received at the Court on 30 August 2018, in the proceedings

**K.H.K.**

v

**B.A.C.,**

**E.E.K.,**

THE COURT (Sixth Chamber),

composed of M. Safjan, President of the Chamber, L. Bay Larsen and C. Toader (Rapporteur), Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the European Commission, by I. Zaloguin, M. Wilderspin, M. Heller and C. Georgieva-Kecsmar, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 29 July 2019,

gives the following

\* Language of the case: Bulgarian.

## Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters (OJ 2014 L 189, p. 59).
- 2 The request has been made in proceedings between, on the one hand, K.H.K. and, on the other, B.A.C. and E.E.K. (together, ‘the debtors’) concerning enforcement action for recovery by K.H.K. of the claim allegedly held against B.A.C. and E.E.K., by means, *inter alia*, of a European Account Preservation Order.

### Legal context

#### *EU law*

- 3 Recitals 5, 13, 14 and 37 of Regulation No 655/2014 state:
  - ‘(5) National procedures for obtaining protective measures such as account preservation orders exist in all Member States, but the conditions for the grant of such measures and the efficiency of their implementation vary considerably. Moreover, recourse to national protective measures may prove cumbersome in cases having cross-border implications, in particular when the creditor seeks to preserve several accounts located in different Member States. It therefore seems necessary and appropriate to adopt a binding and directly applicable legal instrument of the Union which establishes a new Union procedure allowing, in cross-border cases, for the preservation, in an efficient and speedy way, of funds held in bank accounts.

...

  - (13) In order to ensure a close link between the proceedings for the Preservation Order and the proceedings on the substance of the matter, international jurisdiction to issue the Order should lie with the courts of the Member State whose courts have jurisdiction to rule on the substance of the matter. For the purposes of this Regulation, the notion of proceedings on the substance of the matter should cover any proceedings aimed at obtaining an enforceable title on the underlying claim including, for instance, summary proceedings concerning orders to pay and proceedings such as the French “*procédure de référé*”. If the debtor is a consumer domiciled in a Member State, jurisdiction to issue the Order should lie only with the courts of that Member State.
  - (14) The conditions for issuing the Preservation Order should strike an appropriate balance between the interest of the creditor in obtaining an Order and the interest of the debtor in preventing abuse of the Order.

...

...

  - (37) In order to ensure that the Preservation Order is issued and enforced swiftly and without delay, this Regulation should establish time-limits by which the different steps in the procedure must be completed. Courts or authorities involved in the procedure should only be allowed to derogate from those time-limits in exceptional circumstances, for instance in cases which are legally or factually complex.’

4 Article 1 of Regulation No 655/2014 provides:

‘1. This Regulation establishes a Union procedure enabling a creditor to obtain a European Account Preservation Order (“Preservation Order” or “Order”) which prevents the subsequent enforcement of the creditor’s claim from being jeopardised through the transfer or withdrawal of funds up to the amount specified in the Order which are held by the debtor or on his behalf in a bank account maintained in a Member State.

2. The Preservation Order shall be available to the creditor as an alternative to preservation measures under national law.’

5 According to Article 4(8) to (10) of that regulation:

‘(8) “judgment” means any judgment given by a court of a Member State, whatever the judgment may be called, including a decision on the determination of costs or expenses by an officer of the court;

(9) “court settlement” means a settlement which has been approved by a court of a Member State or concluded before a court of a Member State in the course of proceedings;

(10) “authentic instrument” means a document which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which:

(a) relates to the signature and the content of the instrument; and

(b) has been established by a public authority or other authority empowered for that purpose.’

6 Article 5 of Regulation No 655/2014, entitled ‘Availability’, to be found in Chapter 2 of that regulation, entitled ‘Procedure for obtaining a preservation order’, states as follows:

‘The Preservation Order shall be available to the creditor in the following situations:

(a) before the creditor initiates proceedings in a Member State against the debtor on the substance of the matter, or at any stage during such proceedings up until the issuing of the judgment or the approval or conclusion of a court settlement;

(b) after the creditor has obtained in a Member State a judgment, court settlement or authentic instrument which requires the debtor to pay the creditor’s claim.’

7 Article 6 of Regulation No 655/2014, entitled ‘Jurisdiction’, provides in paragraphs 1 and 4:

‘1. Where the creditor has not yet obtained a judgment, court settlement or authentic instrument, jurisdiction to issue a Preservation Order shall lie with the courts of the Member State which have jurisdiction to rule on the substance of the matter in accordance with the relevant rules of jurisdiction applicable.

...

4. Where the creditor has obtained an authentic instrument, jurisdiction to issue a Preservation Order for the claim specified in that instrument shall lie with the courts designated for that purpose in the Member State in which that instrument was drawn up.’

8 Article 7 of that regulation is worded as follows:

‘1. The court shall issue the Preservation Order when the creditor has submitted sufficient evidence to satisfy the court that there is an urgent need for a protective measure in the form of a Preservation Order because there is a real risk that, without such a measure, the subsequent enforcement of the creditor’s claim against the debtor will be impeded or made substantially more difficult.

2. Where the creditor has not yet obtained in a Member State a judgment, court settlement or authentic instrument requiring the debtor to pay the creditor’s claim, the creditor shall also submit sufficient evidence to satisfy the court that he is likely to succeed on the substance of his claim against the debtor.’

9 Under Article 8(1) of that regulation:

‘Applications for a Preservation Order shall be lodged using the form established in accordance with the advisory procedure referred to in Article 52(2).’

10 Article 14(1) of that regulation provides:

‘Where the creditor has obtained in a Member State an enforceable judgment, court settlement or authentic instrument which requires the debtor to pay the creditor’s claim and the creditor has reasons to believe that the debtor holds one or more accounts with a bank in a specific Member State, but knows neither the name and/or address of the bank nor the IBAN, BIC or another bank number allowing the bank to be identified, he may request the court with which the application for the Preservation Order is lodged to request that the information authority of the Member State of enforcement obtain the information necessary to allow the bank or banks and the debtor’s account or accounts to be identified.

Notwithstanding the first subparagraph, the creditor may make the request referred to in that subparagraph where the judgment, court settlement or authentic instrument obtained by the creditor is not yet enforceable and the amount to be preserved is substantial taking into account the relevant circumstances, and the creditor has submitted sufficient evidence to satisfy the court that there is an urgent need for account information because there is a risk that, without such information, the subsequent enforcement of the creditor’s claim against the debtor is likely to be jeopardised and that this could consequently lead to a substantial deterioration of the creditor’s financial situation.’

11 Article 18 of Regulation No 655/2014 concerns the time limits for the decision on the application for a preservation order. In paragraphs 1 and 2 it states:

‘1. Where the creditor has not yet obtained a judgment, court settlement or authentic instrument, the court shall issue its decision by the end of the tenth working day after the creditor lodged or, where applicable, completed his application.

2. Where the creditor has already obtained a judgment, court settlement or authentic instrument, the court shall issue its decision by the end of the fifth working day after the creditor lodged or, where applicable, completed his application.’

12 Article 45 of that regulation provides that ‘where, in exceptional circumstances, it is not possible for the court or the authority involved to respect the time frames provided for in ... Article 18 ... the court or authority shall take the steps required by those provisions as soon as possible’.

***Bulgarian law***

- 13 Article 47 of the *Grazhdanski protsesualen kodeks* (Bulgarian Code of Civil Procedure), in the version applicable in the main proceedings ('the GPK'), entitled 'Service by affixing notice', provides, in paragraph 1 thereof, that 'where within 1 month the defendant cannot be found at the address stated in the documents, and no person can be found who agrees to accept service, the server shall affix a notice to the door or letter box of the person concerned; if there is no access to these, the notice is to be posted on the entrance door of the building or in a visible place nearby. If he has access to the letter box, the server shall also place a notice in the letter box. The fact that the defendant could not be found at the address stated in the documents is established following at least three unsuccessful visits to that address at least 1 week apart, one of which must be on a non-working day. This rule does not apply if the server has been advised by the managing agent of the apartment block or by the local mayor or has otherwise obtained information that the defendant does not reside at that address and certifies that fact by stating the information source in the notice'.
- 14 Article 410 of the GPK, entitled 'Application for an order for payment', to be found in Chapter 37 of the GPK, relating to the order for payment procedure, provides:
- '1. An applicant may apply for an order for payment:
- (1) on the grounds of monetary claims or claims to fungible goods, provided the district court has jurisdiction to hear the application;
- (2) on the grounds of the delivery of movable property received by the debtor subject to return or encumbered with a lien or delivered to the debtor subject to transfer of ownership, provided the district court has jurisdiction to hear the application.
2. The application must request an enforcement order and must fulfil the requirements of Article 127(1) and (3) and Article 128, Sections 1 and 2. The application must give details of an account or some other payment method.'
- 15 Article 414 of the GPK is worded as follows:
- '1. The debtor may lodge a written objection against the order for payment or parts of the order. Grounds for objection need not be stated other than in the cases referred to in Article 414a.
2. Objections must be lodged within 2 weeks of service of the order. That period may not be extended.'
- 16 Paragraphs 1 and 5 of Article 415 of the GPK state:
- '1. The court shall notify the applicant that he may initiate proceedings to pursue his claim in the following cases:
- (1) the objection was lodged in time;
- (2) the order for payment was served on the debtor in accordance with Article 47(5);
- (3) the court dismissed the application for an order for payment.
- ...

5. If the applicant fails to adduce proof that he initiated proceedings within the period prescribed, the court shall set aside the order for payment in part or in full, together with the enforcement order issued in accordance with Article 418.'

17 Article 416 of the GPK concerns the enforceability of the order for payment and provides that 'if the objection is not lodged in time or is withdrawn, or if the judgment by which the claim was acknowledged acquires the force of *res judicata*, the order for payment shall become enforceable. The court shall grant an enforcement order on the basis of the order for payment and make note of it on the order for payment'.

18 Pursuant to Article 618a of the GPK, relating to the European Account Preservation Order under Regulation No 655/2014:

'1. An application for a European Account Preservation Order may be lodged before proceedings are initiated before the court of first instance with jurisdiction to rule on the substance of the matter.

2. An application for a European Account Preservation Order may be lodged after an authentic instrument within the meaning of Article 4(10) of [Regulation No 655/2014] has been obtained from the court of first instance with jurisdiction.

3. In any event, the applicant may request, at any point during and up to the point at which the proceedings are concluded, the court before which the proceedings are pending to grant a European Account Preservation Order. If the application for a European Account Preservation Order is lodged in connection with proceedings to have a judgment set aside, the order shall be granted by the appellate court.

4. An application for a European Account Preservation Order may be lodged after pronouncement of the judgment by the court seised on the substance of the matter at first instance or after approval of a court settlement.'

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

19 The applicant in the main proceedings brought an application before the referring court, the 155<sup>th</sup> Chamber of the Third Division of the Sofiyski rayonen sad (Sofia District Court, Bulgaria), for an order for payment, under Article 410 of the GPK, holding the debtors jointly and severally liable for payment to him of the sum corresponding to a payment on account owed under a preliminary purchase agreement dated 20 October 2017 and a rider to that contract, plus statutory interest from 2 March 2018 pending full and final payment of the amount claimed.

20 On 5 April 2018, the referring court issued an order for payment, pursuant to Article 410 of the GPK. On 18 April 2018, copies of that order were served on the debtors at their respective addresses in Sofia (Bulgaria), as given by the applicant in the main proceedings and as officially recorded in the national population register.

21 Those notifications were returned to the sender since the debtors were not found at the addresses given. Furthermore, the debtors failed to respond, within the relevant time limit, to the notifications that were served in accordance with Article 47(1) of the GPK by being affixed to the door or letter box. It is apparent from the request for a preliminary ruling that the referring court was unable to find any other addresses for the debtors.

22 By order of 2 August 2018, served on 3 August 2018, that court informed the applicant in the main proceedings that he could lodge an application for a declaratory judgment acknowledging his claim against the debtors under Article 415(1)(2) of the GPK.

- 23 On the same day that the order was issued, the applicant in the main proceedings lodged before the referring court an application for a European Account Preservation Order, on the basis of Article 618a of the GPK and Article 8 of Regulation No 655/2014, in respect of the debtors' bank accounts in Sweden, on the ground that the debtors had left Bulgaria and were, at that time, staying in Sweden.
- 24 By order of 2 August 2018, the referring court ordered that that new application and the annexes thereto be sent to the President of the Second Civil Division of the Sofiyski rayonen sad (Sofia District Court) with a view to the commencement of separate proceedings and the appointment of a judge-rapporteur. However, the President of the Second Civil Division remitted the matter back to the referring court and directed it to give a ruling, on the ground that the order for payment of 5 April 2018, issued on the basis of Article 410 of the GPK, constituted an 'authentic instrument' within the meaning of Article 4(10) of Regulation No 655/2014 and that there was no need to initiate separate proceedings.
- 25 The referring court does not share that view. It considers that an order under Article 410 of the GPK is not immediately enforceable since an objection may be lodged against it under Article 414 of the GPK. Accordingly, such an order does not constitute an 'authentic instrument' within the meaning of Article 4(10) of Regulation No 655/2014. The fact that the order is not immediately enforceable also follows from Article 415(5) of the GPK, which provides that the creditor must prove that he lodged his application within the prescribed time limit, otherwise the order will be set aside. Therefore, in this instance, there is presently no order that is enforceable and constitutes an authentic instrument on the basis of which the referring court, in proceedings for an order for payment, could issue a European Account Preservation Order on the basis of Article 618a(2) of the GPK. Such an order could be issued only in separate proceedings on the substance of the matter, pursuant to Article 618a(3) of the GPK.
- 26 Moreover, the referring court states that, in proceedings for an order for payment under Article 410 of the GPK, the court hearing the application is bound, in issuing the order for payment, only by the time limit laid down by national law, and time ceases to run in that regard during judicial vacations. Nevertheless, Article 18(1) of Regulation No 655/2014 lays down a time limit for the court to issue a decision on the application for a European Account Preservation Order. The referring court raises the question as to whether that time limit prevails over the provisions of national law, with the effect that the court is required to issue a decision within the time limit laid down in Article 18(1) of that regulation, even if the time limit expires during the judicial vacations.
- 27 In those circumstances, the Sofiyski rayonen sad (Sofia District Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- '1. Is an order for payment of a monetary claim under Article 410 of the [GPK], which has not yet become enforceable, an authentic instrument within the meaning of Article 4(10) of Regulation [No 655/2014]?
  2. If an order for payment under Article 410 of the [GPK] is not an authentic instrument, must separate proceedings be commenced, on application by the creditor, outside the proceedings under Article 410 of the [GPK], in accordance with Article 5(a) of [Regulation No 655/2014]?
  3. If an order for payment under Article 410 of the [GPK] is an authentic instrument, must the court issue its decision within the time limit laid down in Article 18(1) of Regulation [No 655/2014] if a provision of national law provides that time ceases to run during judicial vacations?'

## Consideration of the questions referred

### *Preliminary observations*

- 28 It should be noted 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 (judgment of 26 September 2019, *UTEF 2006.*, C-600/18, EU:C:2019:784, paragraph 17 and the case-law cited). 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.
- 29 Consequently, even if, formally, the questions referred concern principally the interpretation of Article 4(10), Article 5(a) and Article 18(1) of Regulation No 655/2014, 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. In that regard, it is for the Court to extract from all of the information provided by the national court, in particular from the grounds of the order for reference, the points of EU law which require interpretation, having regard to the subject matter of the main dispute (see, by analogy, judgments of 4 September 2014, *eco cosmetics and Raiffeisenbank St Georgen*, C-119/13 and C-120/13, EU:C:2014:2144, paragraph 33, and of 26 September 2019, *UTEF 2006.*, C-600/18, EU:C:2019:784, paragraph 18 and the case-law cited).

### *The first question*

- 30 By its first question, the referring court asks, in essence, whether Article 4(10) of Regulation No 655/2014 must be interpreted as meaning that an order for payment, such as that at issue in the main proceedings, which is not enforceable, constitutes an 'authentic instrument' within the meaning of that provision.
- 31 It should be noted at the outset that it is clear from Article 1 of Regulation No 655/2014 that the regulation establishes an EU-level procedure enabling a creditor to obtain a European Account Preservation Order, as an alternative to preservation measures under national law, which prevents the subsequent enforcement of the creditor's claim from being jeopardised through the transfer or withdrawal of funds up to the amount specified in the order which are held by the debtor or on his behalf in a bank account maintained in a Member State.
- 32 As is apparent from recital 5 of Regulation No 655/2014, that regulation is intended to lay down binding and directly applicable provisions establishing a uniform EU procedure for the preservation of bank accounts, allowing, in cross-border cases, for the efficient and speedy preservation of funds held in bank accounts.
- 33 In order to facilitate the application of that regulation in practice, the regulation provides a standard form for the application for an order, as set out in Annex I to Commission Implementing Regulation (EU) 2016/1823 of 10 October 2016 establishing the forms referred to in Regulation No 655/2014 (OJ 2016 L 283, p. 1), which the creditor must use, in accordance with Article 8 of Regulation No 655/2014.
- 34 Pursuant to Article 5 of Regulation No 655/2014, first, the creditor may lodge an application for such a preservation order before initiating proceedings in a Member State against the debtor on the substance of the matter, or at any stage during such proceedings up until the issuing of the judgment or the

approval or conclusion of a court settlement. Secondly, the creditor may lodge such an application after obtaining, in a Member State, a judgment, court settlement or authentic instrument which requires the debtor to pay the creditor's claim.

- 35 Under Article 6(1) of Regulation No 655/2014, where the creditor has not yet obtained a decision, court settlement or authentic instrument, jurisdiction to issue a European Account Preservation Order lies with the courts of the Member State which have jurisdiction to rule on the substance of the matter in accordance with the relevant rules of jurisdiction applicable. Paragraphs 3 and 4 of that article cover cases where the creditor has already obtained a judgment, court settlement or authentic instrument. First, it follows from Article 6(3) of that regulation that jurisdiction to issue a European Account Preservation Order for the claim specified in the judgment or court settlement lies with the courts of the Member State in which the judgment was issued or the court settlement was approved or concluded. Secondly, under Article 6(4) of that regulation, where the creditor has obtained an authentic instrument, jurisdiction to issue a European Account Preservation Order for the claim specified in that instrument lies with the courts designated for that purpose in the Member State in which that instrument was drawn up. That distinction is maintained in Section 5, entitled 'Jurisdiction', of the form in Annex I to Implementing Regulation 2016/1823.
- 36 It is apparent from the documents before the Court that the referring court considers, in essence, that the order for payment it issued in the main proceedings, on the basis of Article 410 of the GPK, was not yet enforceable on the date the applicant in the main proceedings lodged his application for a European Account Preservation Order under Article 8 of Regulation No 655/2014. As a result, the referring court does not have jurisdiction to issue such an order.
- 37 In order to determine whether the court that has issued an order for payment on the basis of national law also has jurisdiction to issue a European Account Preservation Order, it is necessary to ascertain whether the 'judgment', 'court settlement' or 'authentic instrument' obtained by the creditor in the Member State of origin is enforceable, within the meaning of Regulation No 655/2014.
- 38 In that regard, it is the Court's established case-law that it follows from the need for uniform application of EU law and from the principle of equality that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union, having regard not only to its wording but also to the context of the provision and the objective pursued by the legislation in question (judgment of 23 May 2019, *WB*, C-658/17, EU:C:2019:444, paragraph 50 and the case-law cited).
- 39 Article 4(8) to (10) of Regulation No 655/2014, which defines the concepts of 'judgment', 'court settlement' and 'authentic instrument' respectively, does not expressly state that the act in question must be enforceable. Thus, it is clear that a literal interpretation of that provision does not, in itself, make it possible to determine whether the term 'authentic instrument', within the meaning of that regulation, presupposes that the act in question is enforceable.
- 40 As regards the analysis of the context of that provision, Article 7 of Regulation No 655/2014, read in conjunction with recital 14 thereof, seeks to strike an appropriate balance between the interests of the creditor and those of the debtor in so far as it lays down different conditions for the issue of a European Account Preservation Order depending on whether the creditor has or has not already obtained an instrument requiring the debtor to pay the claim in the Member State of origin. In particular, in the first situation, the creditor is required to establish only that the measure is needed as a matter of urgency on account of imminent risk, whereas in the second situation, he must also satisfy the court that he is likely to succeed on the substance of his claim.

- 41 As the Advocate General observed in points 68 and 69 of his Opinion, an interpretation of Article 4(8) to (10) of Regulation No 655/2014 to the effect that an instrument obtained by a creditor which is not enforceable in the Member State of origin constitutes a ‘judgment’, ‘court settlement’ or ‘authentic instrument’ within the meaning of that provision would be liable to undermine the balance referred to in the previous paragraph.
- 42 Moreover, that reading is supported by the wording of Article 14(1) of Regulation No 655/2014, read in conjunction with recital 20 thereof, which provides that an application for information on the debtor’s bank accounts may be made where, inter alia, the creditor has obtained an enforceable instrument. Where the creditor has not obtained an enforceable instrument, such an application may be made by way of exception and only where certain stricter conditions are satisfied.
- 43 The *travaux préparatoires* for Regulation No 655/2014 also confirm such a reading. The proposal for a regulation of the European Parliament and of the Council creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters (COM(2011) 445 final) made a distinction between a situation where the creditor has already obtained an enforceable judgment, court settlement or authentic instrument in the Member State of enforcement, and a situation where the creditor has not yet commenced judicial proceedings on the substance of the matter or where he has obtained an instrument which is enforceable against the defendant in the Member State of origin but has not yet been declared enforceable in the Member State of enforcement.
- 44 That distinction between the enforceability of instruments in the Member State of origin and the Member State of enforcement was abandoned by the EU legislature and the conditions for issuing a European Account Preservation Order that had been envisaged for a situation where the creditor has already obtained an enforceable instrument in the Member State of origin were transferred to the situation where the creditor has obtained an instrument requiring the debtor to pay the claim. Thus, it is apparent from the analysis of the *travaux préparatoires* for Regulation No 655/2014 that, in order to be regarded as a ‘judgment’, ‘court settlement’ or ‘authentic instrument’ within the meaning of that regulation, an instrument must be enforceable in the Member State of origin.
- 45 In the light of the foregoing, the answer to the first question is that Article 4(10) of Regulation No 655/2014 must be interpreted as meaning that an order for payment, such as that at issue in the main proceedings, which is not enforceable, does not constitute an ‘authentic instrument’ within the meaning of that provision.

### ***The second question***

- 46 By its second question, the referring court asks, in essence, whether Article 5(a) of Regulation No 655/2014 must be interpreted as meaning that ongoing proceedings for an order for payment, such as those at issue in the main proceedings, may be regarded as proceedings ‘on the substance of the matter’ within the meaning of that provision.
- 47 It is apparent from recital 13 of that regulation that the concept of proceedings on the substance of the matter should cover any proceedings aimed at obtaining an enforceable instrument on the underlying claim including, for instance, summary proceedings concerning orders to pay. Accordingly, Regulation No 655/2014 confers a wide scope on that concept.
- 48 In the present case, given that the debtors could not be found at the address given in Bulgaria and that they failed to respond to the affixed notifications within the period of 2 weeks laid down in Article 414 of the GPK, the court informed the applicant in the main proceedings that he could initiate proceedings to pursue his claim on the basis of Article 415(1)(2) of the GPK.

- 49 In addition, under Article 415(5) of the GPK, where the applicant fails to adduce proof that he initiated proceedings within the prescribed time limit, the court is to set aside the order for payment in part or in full. However, subject to verifications to be carried out by the referring court, it is not apparent from the request for a preliminary ruling that the proceedings were stayed or dismissed.
- 50 It follows that, subject to the verifications to be made by the referring court, the proceedings for an order for payment brought before it by the applicant in the main proceedings must be regarded as proceedings on the substance of the matter pending before that court within the meaning of Article 5(a) of Regulation No 655/2014.
- 51 Thus, in the present case, it should not be necessary for the applicant in the main proceedings to initiate separate proceedings under Article 410 of the GPK.
- 52 In the light of the foregoing, the answer to the second question is that Article 5(a) of Regulation No 655/2014 must be interpreted as meaning that ongoing proceedings for an order for payment, such as those in the main proceedings, may be regarded as proceedings ‘on the substance of the matter’ within the meaning of that provision.

### *The third question*

- 53 By its third question, the referring court asks, in essence, whether Article 45 of Regulation No 655/2014 must be interpreted as meaning that judicial vacations are covered by the concept of ‘exceptional circumstances’ within the meaning of that provision.
- 54 As regards the referring court’s questions concerning compliance with the time limit laid down in Article 18(1) of Regulation No 655/2014, that provision states that the court that has jurisdiction is to issue its decision, at the latest, by the end of the 10<sup>th</sup> working day after the creditor lodged or, where applicable, completed his application.
- 55 However, it is apparent from recital 37 of that regulation that those time limits were laid down in order to ensure that European Account Preservation Orders are issued and enforced swiftly. Nevertheless, Article 45 of that regulation provides for the possibility of derogating from those time limits where justified by exceptional circumstances, for instance in cases which are legally or factually complex, as stated in recital 37 of that regulation. In that regard, judicial vacations cannot be regarded as ‘exceptional circumstances’ within the meaning of that provision.
- 56 It follows from the foregoing considerations that Article 45 of Regulation No 655/2014 must be interpreted as meaning that judicial vacations are not covered by the concept of ‘exceptional circumstances’ within the meaning of that provision.

### **Costs**

- 57 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 4(10) of Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters must be interpreted as meaning**

**that an order for payment, such as that at issue in the main proceedings, which is not enforceable, does not constitute an ‘authentic instrument’ within the meaning of that provision.**

- 2. Article 5(a) of Regulation No 655/2014 must be interpreted as meaning that ongoing proceedings for an order for payment, such as those in the main proceedings, may be regarded as proceedings ‘on the substance of the matter’ within the meaning of that provision.**
- 3. Article 45 of Regulation No 655/2014 must be interpreted as meaning that judicial vacations are not covered by the concept of ‘exceptional circumstances’ within the meaning of that provision.**

[Signatures]