



## Reports of Cases

GOLDBET SPORTWETTEN JUDGMENT OF THE COURT (Third Chamber)

13 June 2013\*

((Regulation (EC) No 1896/2006 — European order for payment procedure — Articles 6 and 17 — Opposition to the European order for payment without any challenge to the jurisdiction of the court of the Member State of origin — Regulation (EC) No 44/2001 — Jurisdiction and recognition and enforcement of judgments in civil and commercial matters — Article 24 — Entering of an appearance of the defendant before the court seised — Applicability in the context of the European order for payment procedure))

In Case C-144/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Austria), made by decision of 28 February 2012, received at the Court on 23 March 2012, in the proceedings

**Goldbet Sportwetten GmbH**

v

**Massimo Sperindeo,**

THE COURT (Third Chamber),

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

Advocate General: Y. Bot,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 20 February 2013,

after considering the observations submitted on behalf of:

- Goldbet Sportwetten GmbH, by D. Czernich, Rechtsanwalt,
- Mr Sperindeo, by L. Lorenz and R. Testor, Rechtsanwälte,
- the Austrian Government, by C. Pesendorfer, acting as Agent,
- the Czech Government, by M. Smolek and J. Vlácil, acting as Agents,
- the German Government, by T. Henze and J. Kemper, acting as Agents,

\* Language of the case: German.

- the Portuguese Government, by L. Inez Fernandes and S. Duarte Afonso, acting as Agents,
- the Swiss Government, by D. Klingele, acting as Agent,
- the European Commission, by W. Bogensberger, A.-M. Rouchaud-Joët and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 March 2013,

gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 6 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), read in conjunction with Article 17 thereof, and of Article 24 of 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).
- 2 The request has been made in a European order for payment procedure initiated by Goldbet Sportwetten GmbH ('Goldbet'), a company established in Austria, against Mr Sperindeo, residing in Italy.

#### **Legal context**

##### *Regulation No 1896/2006*

- 3 Recitals 23 and 24 in the preamble to Regulation No 1896/2006 are worded as follows:
  - '(23) The defendant may submit his statement of opposition using the standard form set out in this Regulation. However, the courts should take into account any other written form of opposition if it is expressed in a clear manner.
  - (24) A statement of opposition filed within the time-limit should terminate the European order for payment procedure and should lead to an automatic transfer of the case to ordinary civil proceedings unless the claimant has explicitly requested that the proceedings be terminated in that event. For the purposes of this Regulation the concept of ordinary civil proceedings should not necessarily be interpreted within the meaning of national law.'
- 4 Article 1(1)(a) of Regulation No 1896/2006 provides:
  - 'The purpose of this Regulation is:
    - (a) to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims by creating a European order for payment procedure'.
- 5 Under Article 5 of that regulation, the 'Member State of origin' is defined as 'the Member State in which a European order for payment is issued'.

6 Article 6(1) of that regulation provides:

‘For the purposes of applying this Regulation, jurisdiction shall be determined in accordance with the relevant rules of Community law, in particular Regulation ... No 44/2001.’

7 Article 12(3) of Regulation No 1896/2006 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.’

8 Under Article 16 of that regulation:

‘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.

...

3. The defendant shall indicate in the statement of opposition that he contests the claim, without having to specify the reasons for this.

4. The statement of opposition shall be submitted in paper form or by any other means of communication, including electronic, accepted by the Member State of origin and available to the court of origin.

...’

9 Article 17(1) of that regulation states:

‘If a statement of opposition is entered within the time-limit ..., 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.

...’

10 Annex VI to Regulation No 1896/2006 contains standard form F which can be used to enter a statement of opposition to the European order for payment.

*Regulation No 44/2001*

11 Article 5(1) of Regulation No 44/2001 states:

‘A person domiciled in a Member State may, in another Member State, be sued:

(1) (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

- (b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:

...

- in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided,

...'

- 12 Article 24 of Regulation No 44/2001 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.'

*Austrian legislation*

- 13 Paragraph 252 of the Code of Civil Procedure (Zivilprozessordnung), which concerns the European order for payment procedure, provides:

'1. In so far as Regulation [No 1896/2006] does not stipulate otherwise, the procedural provisions applicable to the subject-matter of the case in question shall be applied.

2. The Bezirksgericht für Handelssachen Wien shall have exclusive jurisdiction over the implementation of the order for payment procedure. ...

3. After a statement of opposition has been lodged within the prescribed time-limit, the court shall serve this on the claimant with the request that, within 30 days, the latter identify the court competent to deal with the ordinary proceedings ...

4. ... A lack of jurisdiction of the court seised shall be pleaded by the defendant before he enters an appearance in relation to the substance of the case.'

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

- 14 Mr Sperindeo undertook – under a contract for the provision of services entered into with Goldbet, a company which organises sports betting services – to set up and operate such betting services in Italy. In particular, he was required to collect bets from local betting offices and to send the corresponding sums to Goldbet, after deduction of winnings paid to players.

- 15 Goldbet took the view that Mr Sperindeo had failed to fulfil his contractual obligations, and applied on 29 December 2009 to the Bezirksgericht für Handelssachen Wien (Vienna District Court for Commercial Matters), the competent court in relation to the European order for payment procedure in Austria, for a European order for payment to be issued requiring Mr Sperindeo to pay the sum of EUR 16 406, together with interest and costs, by way of damages; the order for payment was obtained on 17 February 2010.

- 16 On 19 April 2010, Mr Sperindeo, acting through his lawyer, lodged a statement of opposition to the European order for payment within the prescribed time-limit. The grounds for his opposition were that Goldbet's claim was unfounded and that the sum claimed was not payable.

- 17 Prompted by that statement of opposition, the Bezirksgericht für Handelssachen Wien referred the case to the Landesgericht Innsbruck (Innsbruck Regional Court), taking the view that the latter court was the competent court for the ordinary civil procedure within the meaning of Article 17(1) of Regulation No 1896/2006.
- 18 Before the Landesgericht Innsbruck, Mr Sperindeo pleaded, for the first time, a lack of jurisdiction of the Austrian courts, on the ground that he was domiciled in Italy. Goldbet contended that the Landesgericht Innsbruck had jurisdiction as the court for the place of performance of the obligation to pay a sum of money, in accordance with Article 5(1)(a) of Regulation No 44/2001. In any event, according to Goldbet, the Landesgericht Innsbruck had jurisdiction under Article 24 of Regulation No 44/2001, since Mr Sperindeo, having failed to plead lack of jurisdiction when he lodged a statement of opposition to the European order for payment in question, had entered an appearance within the meaning of that article.
- 19 By order, the Landesgericht Innsbruck granted Mr Sperindeo's application, declined jurisdiction and dismissed the action brought before it. Goldbet appealed to the Oberlandesgericht Innsbruck (Innsbruck Higher Regional Court) against that order. The Oberlandesgericht Innsbruck dismissed the appeal on the grounds that the Austrian courts did not have jurisdiction because Goldbet's claims arose from a contract for the provision of services the place of performance of which, within the meaning of Article 5(1)(b) of Regulation No 44/2001, was in Italy, and, moreover, the jurisdiction of the Austrian courts could not be founded on Article 24 of Regulation No 44/2001 since the statement of opposition lodged by Mr Sperindeo could not be regarded as constituting the entering of an appearance within the meaning of that article.
- 20 Goldbet brought an appeal on a point of law against the decision of the Oberlandesgericht Innsbruck before the referring court. It seeks to have the earlier judicial decisions set aside and resumption of the procedure before the Austrian courts.
- 21 The referring court considers that the Austrian courts do not have jurisdiction under Article 5(1)(b) of Regulation No 44/2001, given that the activities with which Mr Sperindeo was tasked by Goldbet were carried out exclusively in Italy. The referring court nevertheless queries whether the opposition to the order for payment, which the defendant lodged without contesting the jurisdiction of the court of origin, might be regarded as constituting the entering of an appearance within the meaning of Article 24 of Regulation No 44/2001, thereby conferring jurisdiction on the Austrian courts.
- 22 In those circumstances, the Oberster Gerichtshof decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) Is Article 6 of Regulation [No 1896/2006] to be interpreted as meaning that Article 24 of [Regulation No 44/2001], which confers jurisdiction on a court before which a defendant enters an appearance, must also be applied in the European order for payment procedure?
- (2) If question 1 is answered in the affirmative:
- Is Article 17 of Regulation No 1896/2006 in conjunction with Article 24 of Regulation No 44/2001 to be interpreted as meaning that the lodging of a statement of opposition to a European order for payment itself constitutes the entering of an appearance, provided that that statement does not contest the jurisdiction of the court of origin?

(3) If question 2 is answered in the negative:

Is Article 17 of Regulation No 1896/2006 in conjunction with Article 24 of Regulation No 44/2001 to be interpreted as meaning that the lodging of a statement of opposition confers jurisdiction by virtue of the entering of an appearance at most where that statement itself presents arguments on the substance of the case but does not contest the jurisdiction?’

### Consideration of the questions referred

- 23 By its questions, which it is appropriate to consider together, the referring court asks, in essence, whether Article 6 of Regulation No 1896/2006, read in conjunction with Article 17 thereof, must be interpreted as meaning that a statement of opposition to a European order for payment that does not contain any challenge to the jurisdiction of the court of the Member State of origin must be regarded as constituting the entering of an appearance within the meaning of Article 24 of Regulation No 44/2001, and whether the fact that the defendant has, in the statement of opposition lodged, put forward arguments relating to the substance of the case is relevant in that regard.
- 24 It is accordingly necessary to ascertain first of all whether a statement of opposition to a European order for payment in which the jurisdiction of the court of the Member State of origin is not contested constitutes the entering of an appearance within the meaning of Article 24 of Regulation No 44/2001 where that statement of opposition is not coupled with arguments on the substance of the case.
- 25 All the interested parties to have submitted observations to the Court are agreed that that question should be answered in the negative.
- 26 It should be borne in mind as a preliminary point that Article 6(1) of Regulation No 1896/2006 provides that, for the purposes of applying that regulation, jurisdiction is to be determined in accordance with the relevant rules of European Union law, in particular those in Regulation No 44/2001. According to Article 17(1) of Regulation No 1896/2006, if a statement of opposition to a European order for payment is entered within the time-limit, the proceedings are to continue before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure.
- 27 Article 24 of Regulation No 44/2001 confers jurisdiction, subject to the exceptions laid down in that provision, on the court of the Member State before which the defendant enters an appearance.
- 28 Furthermore, the objective of Regulation No 1896/2006, as is apparent from Article 1(1)(a) thereof, is, *inter alia*, to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims. Although that regulation neither replaces nor harmonises existing domestic mechanisms for the recovery of uncontested claims, it establishes, for the attainment of that objective, a uniform instrument for the recovery of such claims, guaranteeing a level playing field for creditors and debtors throughout the European Union (Case C-215/11 *Szyrocka* [2012] ECR, paragraph 30).
- 29 As the Advocate General noted at point 30 of his Opinion, 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.

- 30 The defendant's option of lodging a statement of opposition is thus 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.
- 31 However, where a defendant does not contest the jurisdiction of the court of the Member State of origin in his statement of opposition to the European order for payment, that opposition cannot produce, in regard to that defendant, effects other than those that flow from Article 17(1) of Regulation No 1896/2006. Those effects consist in the termination of the European order for payment procedure and in leading – unless the claimant has explicitly requested that the proceedings be terminated in that event – to the automatic transfer of the case to ordinary civil proceedings.
- 32 The alternative – which would have the effect that the statement of opposition constitutes the entering of an appearance within the meaning of Article 24 of Regulation No 44/2001 if it does not contain any challenge to the jurisdiction of the court of the Member State of origin – would extend the effects of the statement of opposition beyond those provided for by Regulation No 1896/2006.
- 33 It will also be recalled, as is evident from Article 16(1) of Regulation No 1896/2006 and from recital 23 in the preamble thereto, that the defendant may use the standard form set out in Annex VI to that regulation in order to enter a statement of opposition to the European order for payment. That form does not provide for the option of contesting the jurisdiction of the courts of the Member State of origin.
- 34 Consequently, a statement of opposition to the European order for payment which does not contain any challenge to the jurisdiction of the courts of the Member State of origin and which is not coupled with arguments on the substance of the case cannot be regarded as constituting the entering of an appearance within the meaning of Article 24 of Regulation No 44/2001.
- 35 Secondly, the Court must consider whether the fact that the defendant put forward arguments on the substance of the case in his statement of opposition to the European order for payment has any effect in that regard.
- 36 Goldbet and the Czech Government submit that where the statement of opposition is coupled with arguments on the substance of the case, jurisdiction may be determined in accordance with Article 24 of Regulation No 44/2001. Mr Sperindeo, the German, Portuguese and Swiss Governments and the European Commission, on the other hand, contend that that fact has no bearing on the determination of jurisdiction.
- 37 It is admittedly apparent from Case 150/80 *Elefanten Schuh* [1981] ECR 1671, paragraph 16, in relation to the interpretation of Article 18 of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36), a provision which in essence is identical to Article 24 of Regulation No 44/2001, that the challenge to jurisdiction may not occur after the making of the submissions which under national procedural law are considered to be the first defence addressed to the court seised.
- 38 However, unlike the circumstances giving rise to that judgment, in which the defendant had put forward arguments on the substance of the case in ordinary civil proceedings, the arguments on the substance of the case were put forward in the main proceedings in this instance in the context of a statement of opposition to a European order for payment. Such a statement of opposition coupled with those arguments cannot be regarded, for the purposes of determining the court having jurisdiction under Article 24 of Regulation No 44/2001, as the first defence put forward in the ordinary civil proceedings that follow the European order for payment procedure.

- 39 To consider such a statement of opposition as being equivalent to the first defence would be tantamount to acknowledging, as the Advocate General noted at point 36 of his Opinion, that the European order for payment procedure and the subsequent ordinary civil proceedings, in principle, constitute the same procedure. However, such an interpretation would be difficult to reconcile with the fact that the first of those procedures follows the rules laid down by Regulation No 1896/2006, whereas the second continues in accordance with the rules of ordinary civil procedure, as is evident from Article 17(1) of that regulation. Such an interpretation would also fail on account of the fact that although – in the absence of any challenge to international jurisdiction by the defendant – those civil proceedings take their course in the Member State of origin, they will not necessarily be conducted in the same court as that in which the European order for payment procedure is pursued.
- 40 An interpretation according to which the statement of opposition coupled with arguments on the substance of the case should be regarded as the first defence would, moreover, run counter to the objective of the statement of opposition to the European order for payment. It is important to note in that regard that there is no provision in Regulation No 1896/2006 – nor, in particular, in Article 16(3) of that regulation – that requires the defendant to specify the reasons for his opposition; therefore that opposition is intended not to serve as a framework for a defence on the merits but, as stated at paragraph 30 of the present judgment, to enable the defendant to contest the claim.
- 41 It follows from this that the fact that the defendant put forward arguments on the substance of the case in his statement of opposition to the European order for payment does not mean that he entered an appearance within the meaning of Article 24 of Regulation No 44/2001.
- 42 Contrary to the submissions of Goldbet and the Czech Government, that interpretation does not disregard the objective of Regulation No 1896/2006 of speeding up litigation. As is apparent from Article 1(1)(a) of the regulation, that objective is relevant only in so far as the claim remains uncontested, which is no longer the case when the defendant lodges a statement of opposition to the European order for payment.
- 43 It follows from all the foregoing considerations that the answer to the questions referred is that Article 6 of Regulation No 1896/2006, read in conjunction with Article 17 thereof, must be interpreted as meaning that a statement of opposition to a European order for payment that does not contain any challenge to the jurisdiction of the court of the Member State of origin cannot be regarded as constituting the entering of an appearance within the meaning of Article 24 of Regulation No 44/2001, and the fact that the defendant has, in the statement of opposition lodged, put forward arguments relating to the substance of the case is irrelevant in that regard.

### Costs

- 44 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:

**Article 6 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, read in conjunction with Article 17 thereof, must be interpreted as meaning that a statement of opposition to a European order for payment that does not contain any challenge to the jurisdiction of the court of the Member State of origin cannot be regarded as constituting the entering of an appearance within the meaning of Article 24 of Council Regulation (EC) No 44/2001 of 22 December 2000 on**



**jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, and the fact that the defendant has, in the statement of opposition lodged, put forward arguments relating to the substance of the case is irrelevant in that regard.**

[Signatures]