Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

5 December 2024*

(Reference for a preliminary ruling – Judicial cooperation in civil matters – European order for payment procedure – Regulation (EC) No 1896/2006 – European order for payment declared enforceable – Service of judicial and extrajudicial documents in civil or commercial matters – Regulation (EC) No 1393/2007 – Invalid service ascertained during enforcement – National legislation providing for a legal remedy enabling the defendant to apply for the annulment of a European order for payment – Legal consequences – Obligation of the court seised to annul the European order for payment)

In Case C-389/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Amtsgericht Wedding (Local Court, Berlin-Wedding, Germany), made by decision of 19 May 2023, received at the Court on 27 June 2023, in the proceedings

Bulgarfrukt – Fruchthandels GmbH

v

Oranzherii Gimel II EOOD,

THE COURT (Second Chamber),

composed of F. Biltgen (Rapporteur), President of the First Chamber, acting as President of the Second Chamber, M.L. Arastey Sahún, President of the Fifth Chamber, and J. Passer, Judge,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Bulgarfrukt – Fruchthandels GmbH, by W. Kreuzer and F. Sturm, Rechtsanwälte,

– Oranzherii Gimel II EOOD, by W. Hoffmann, Rechtsanwalt,

– the European Commission, by S. Noë and J. Vondung, acting as Agents,

* Language of the case: German.

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (OJ 2006 L 399, p. 1) and Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ 2007 L 324, p. 79).

2 The request has been made in proceedings between Bulgarfrukt – Fruchthandels GmbH, a limited liability company established in Germany, and Oranzherii Gimel II EOOD ('Oranzherii'), a one-person limited liability company established in Bulgaria, concerning the enforcement of a European order for payment.

Legal context

European Union law

Regulation No 1896/2006

3 Recitals 9, 10, 24 and 26 of Regulation No 1896/2006 state:

'(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.

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

…

(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.

…

(26) Court fees covered by Article 25 should not include for example lawyers' fees or costs of service of documents by an entity other than a court.'

4 Article 1 of that regulation provides:

'1. The purpose of this Regulation is:

(a) to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims by creating a European order for payment procedure;

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 of Regulation No 1896/2006, entitled 'Issue of a European order for payment', provides, in paragraphs 3 and 5:

'3. 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.

…

5. The court shall ensure that the order is served on the defendant in accordance with national law by a method that shall meet the minimum standards laid down in Articles 13, 14 and 15.'

6 Under Article 13 of that regulation, entitled 'Service with proof of receipt by the defendant':

'The European order for payment may be served on the defendant in accordance with the national law of the State in which the service is to be effected, by one of the following methods:

(a) personal service attested by an acknowledgement of receipt, including the date of receipt, which is signed by the defendant;

(b) personal service attested by a document signed by the competent person who effected the service stating that the defendant has received the document or refused to receive it without any legal justification, and the date of service;

(c) postal service attested by an acknowledgement of receipt, including the date of receipt, which is signed and returned by the defendant;

(d) service by electronic means such as fax or e-mail, attested by an acknowledgement of receipt, including the date of receipt, which is signed and returned by the defendant.'

7 Article 14 of Regulation No 1896/2006, entitled 'Service without proof of receipt by the defendant', provides:

'1. The European order for payment may also be served on the defendant in accordance with the national law of the State in which service is to be effected, by one of the following methods:

(a) personal service at the defendant's personal address on persons who are living in the same household as the defendant or are employed there;

(b) in the case of a self-employed defendant or a legal person, personal service at the defendant's business premises on persons who are employed by the defendant;

(c) deposit of the order in the defendant's mailbox;

(d) deposit of the order at a post office or with competent public authorities and the placing in the defendant's mailbox of written notification of that deposit, provided that the written notification clearly states the character of the document as a court document or the legal effect of the notification as effecting service and setting in motion the running of time for the purposes of time limits;

(e) postal service without proof pursuant to paragraph 3 where the defendant has his address in the Member State of origin;

(f) electronic means attested by an automatic confirmation of delivery, provided that the defendant has expressly accepted this method of service in advance.

2. For the purposes of this Regulation, service under paragraph 1 is not admissible if the defendant's address is not known with certainty.

3. Service pursuant to paragraph 1(a), (b), (c) and (d) shall be attested by:

(a) a document signed by the competent person who effected the service, indicating:
(i) the method of service used;

and
(ii) the date of service;

and
(iii) where the order has been served on a person other than the defendant, the name of that person and his relation to the defendant;

or

(b) an acknowledgement of receipt by the person served, for the purposes of [paragraph] (1)(a) and (b).'

8 Article 15 of that regulation, entitled ‘Service on a representative’, provides:

‘Service pursuant to Articles 13 or 14 may also be effected on a defendant’s representative.’

9 Article 16 of Regulation No 1896/2006, entitled ‘Opposition to the European order for payment’, provides:

‘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.

…’

10 Under Article 18 of that regulation, entitled ‘Enforceability’:

‘1. If within the time limit laid down in Article 16(2), taking into account an appropriate period of time to allow a statement to arrive, no statement of opposition has been lodged with the court of origin, the court of origin shall without delay declare the European order for payment enforceable using standard form G as set out in Annex VII. The court shall verify the date of service.

2. Without prejudice to paragraph 1, the formal requirements for enforceability shall be governed by the law of the Member State of origin.

3. The court shall send the enforceable European order for payment to the claimant.’

11 Article 26 of Regulation No 1896/2006, entitled ‘Relationship with national procedural law’, provides:

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

12 Article 27 of that regulation provides:

‘This Regulation shall not affect the application of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters [(OJ 2000 L 160, p. 37)].’

Regulation No 1393/2007

13 Article 1(1) of Regulation No 1393/2007 provides:

‘This Regulation shall apply in civil and commercial matters where a judicial or extrajudicial document has to be transmitted from one Member State to another for service there. It shall not extend in particular to revenue, customs or administrative matters or to liability of the State for actions or omissions in the exercise of state authority (*acta iure imperii*).’

14 Article 7 of that regulation, entitled 'Service of documents', provides, in paragraph 1:

'The receiving agency shall itself serve the document or have it served, either in accordance with the law of the Member State addressed or by a particular method requested by the transmitting agency, unless that method is incompatible with the law of that Member State.'

15 Under Article 8 of Regulation No 1393/2007, entitled 'Refusal to accept a document':

'1. The receiving agency shall inform the addressee, using the standard form set out in Annex II, that he may refuse to accept the document to be served at the time of service or by returning the document to the receiving agency within one week if it is not written in, or accompanied by a translation into, either of the following languages:

(a) a language which the addressee understands; or

(b) the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected.

2. Where the receiving agency is informed that the addressee refuses to accept the document in accordance with paragraph 1, it shall immediately inform the transmitting agency by means of the certificate provided for in Article 10 and return the request and the documents of which a translation is requested.

3. If the addressee has refused to accept the document pursuant to paragraph 1, the service of the document can be remedied through the service on the addressee in accordance with the provisions of this Regulation of the document accompanied by a translation into a language provided for in paragraph 1. In that case, the date of service of the document shall be the date on which the document accompanied by the translation is served in accordance with the law of the Member State addressed. However, where according to the law of a Member State, a document has to be served within a particular period, the date to be taken into account with respect to the applicant shall be the date of the service of the initial document determined pursuant to Article 9(2).

…'

German law

16 Paragraph 1092a of the Zivilprozessordnung (Code of Civil Procedure; 'the ZPO'), entitled 'Remedy in the event of failure to serve or to effect proper service of the European order for payment', is worded as follows:

'(1) The defendant may apply for the annulment of the European order for payment, if the European order for payment

1. was not served on him or her, or

2. was served on him or her in a manner that does not meet the requirements of Articles 13 to 15 of Regulation [No 1896/2006].

The application must be filed within one month from the time at which the defendant had or could have had knowledge of the issuance of the European order for payment or the lack of service. Should the court allow the application for one of the reasons set out in the first sentence, the European order for payment shall be annulled.

(2) Should the court already have declared the European order for payment enforceable pursuant to Article 18 of Regulation [No 1896/2006] at the time of the application under the first sentence of subparagraph 1, and should it now allow the application, it shall declare the compulsory enforcement under the order for payment to be inadmissible. The third sentence of subparagraph 1 shall apply accordingly.

(3) The decision shall be delivered by court order. The court order shall not be open to appeal. Paragraph 1092(2) to (4) shall apply *mutatis mutandis*.'

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

17 Upon application of Bulgarfrukt, the Amtsgericht Wedding (Local Court, Berlin-Wedding, Germany), which is the referring court, issued a European order for payment against Oranzherii on 4 January 2019.

18 The Bulgarian receiving agency certified that service of that order had been effected on 26 July 2019, in accordance with Regulation No 1393/2007. However, that certificate does not specify the method of service used; it is merely stated in that certificate, in Bulgarian, that 'the person has left the address and its [current] address is not entered in the register. The notifications … are deemed to have been lawfully served'.

19 On 24 April 2020, taking the view that proper service had been effected, the referring court declared the European order for payment referred to above enforceable in accordance with Article 18(1) of Regulation No 1896/2006.

20 By fax of 1 March 2021, Oranzherii filed a statement of opposition to that European order for payment, claiming that it had become aware of that order for the first time on 24 February 2021, in the context of enforcement measures.

21 After the referring court had informed that company of the legal remedies available, that company sought, by document of 25 March 2021, a remedy under Paragraph 1092a of the ZPO.

22 As regards that legal remedy, provided for in Paragraph 1092a of the ZPO, against a European order for payment, the referring court, first of all, has doubts as to the compatibility of that Paragraph 1092a with EU law.

23 By requiring the court seised to annul a European order for payment that has not been served or has not been effectively served, the German legislation is more demanding than the principles stemming from the judgment of 4 September 2014, *eco cosmetics and Raiffeisenbank St Georgen* (C-119/13 and C-120/13, EU:C:2014:2144), according to which such a situation must have the result of invalidating the declaration of enforceability of such a European order for payment.

24 In that regard, the referring court takes the view, in the first place, that Paragraph 1092a(1) of the ZPO infringes the provisions of Articles 16 and 17 of Regulation No 1896/2006, in that it enables a legal remedy to be sought in advance, even though the time limit for lodging a statement of opposition to such a European order for payment has not yet started to run.

25 In the second place, if the defendant were to become aware by chance of the existence of a European order for payment against him or her and were to have recourse to a remedy provided for in Paragraph 1092a of the ZPO, the court seised would have to terminate the European order for payment procedure concerned, instead of ordering a new service triggering the legal consequences referred to in Articles 16 and 17 of Regulation No 1896/2006.

26 In the third place, the legal remedy provided for in Paragraph 1092a of the ZPO could preclude the practical effectiveness of that regulation, which seeks to ensure the proper functioning of the internal market by eliminating obstacles to the proper functioning of civil proceedings, inasmuch as the applicant would prefer not to use the European order for payment procedure in view of the risk that a remedy based on Paragraph 1092a of the ZPO might preclude the European order for payment that he or she will have obtained.

27 In the fourth place, the principle which follows from the judgment of 2 March 2017, *Henderson* (C-354/15, EU:C:2017:157), according to which the failure to send a form provided for in Regulation No 1393/2007 does not render the service concerned invalid in its entirety, but requires that the court seised subsequently correct such an omission, is also to apply in the context of the European order for payment procedure established by Regulation No 1896/2006 (judgment of 6 September 2018, *Catlin Europe*, C-21/17, EU:C:2018:675).

28 In the fifth and last place, this view is also supported by the fact that Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (OJ 2020 L 405, p. 40) now provides, in Article 12(5) and (6), for the possibility of remedying the service of a document on account of irregularities vitiating that service, without those irregularities leading to the invalidity of that service as a whole.

29 The referring court asks, next, whether, where the court seised grants a remedy under Paragraph 1092a of the ZPO even though it has already declared a European order for payment enforceable, it is also required, under that Paragraph 1092a, to declare the compulsory enforcement under that order for payment inadmissible, which would have the effect of permanently precluding that enforcement, although, in the case of the mere invalidity of a declaration of enforceability of a European order for payment, it is conceivable that, following new, effective service, that European order for payment then becomes enforceable.

30 Lastly, that court asks whether a defendant may validly lodge a statement of opposition to an existing order for payment before that order has been effectively served on him or her, given that the Court held, in paragraph 49 of the judgment of 4 September 2014, *eco cosmetics and Raiffeisenbank St Georgen* (C-119/13 and C-120/13, EU:C:2014:2144), that an application of the opposition procedure laid down by Articles 16 and 17 of Regulation No 1896/2006 cannot be appropriate in such circumstances.

31 In addition, that court states that, if it were required to effect new service in accordance with the minimum standards laid down by that regulation, it would notify the defendant of the need to lodge, by way of precaution, a new statement of opposition. However, the question whether a

defendant is in a position to defend himself or herself effectively against a European order for payment cannot, in the view of the referring court, depend on an uncertain factor relating to the goodwill of the court seised.

32 In those circumstances, the Amtsgericht Wedding (Local Court, Berlin-Wedding) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Are Regulation [No 1393/2007] and Regulation [No 1896/2006] to be interpreted as precluding a provision of national law which provides that a European order for payment must be annulled by the court in the context of proceedings in the event of failure to serve or to effect proper service on the defendant?

(2) If Question 1 is answered in the affirmative: must the aforementioned regulations be interpreted as precluding a provision of national law which provides that enforcement of a European order for payment must be declared inadmissible in the event of failure to serve the order for payment or to effect proper service on the defendant?

(3) If Question 1 is answered in the affirmative: must Regulation No 1896/2006 be interpreted as meaning that a defendant who is aware that a European order for payment has been issued, but on whom that order has not yet been served or on whom service has not yet been properly effected, cannot yet effectively object to it?'

Consideration of the questions referred

The first question

33 By its first question, the referring court asks, in essence, whether the provisions of Regulation No 1896/2006, read in conjunction with those of Regulation No 1393/2007, must be interpreted as precluding national legislation under which, where a European order for payment has not been served on the defendant or has not been served on him or her in a manner which complies with the minimum standards laid down in Articles 13 to 15 of Regulation No 1896/2006, the court before which a remedy against that order is sought is obliged to annul that order.

34 It should be noted, in the first place, that, as recital 9 and Article 1(1)(a) of Regulation No 1896/2006 make clear, that 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 (judgment of 15 September 2022, *Uniqa Versicherungen*, C-18/21, EU:C:2022:682, paragraph 20).

35 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 or her and it is only then that he or she is advised, as is apparent from Article 12(3) of Regulation No 1896/2006, of his or her options either to pay the amount indicated in that order to the claimant or to oppose the order in the court of origin (see, to that effect, judgment of 15 September 2022, *Uniqa Versicherungen*, C-18/21, EU:C:2022:682, paragraph 21 and the case-law cited).

36 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 or her to contest the claim after the European order for payment has been issued (judgments of 22 October 2015, *Thomas Cook Belgium*, C-245/14, EU:C:2015:715, paragraph 28, and of 15 September 2022, *Uniqa Versicherungen*, C-18/21, EU:C:2022:682, paragraph 24 and the case-law cited).

37 That statement of opposition has the effect of terminating the European order for payment procedure and of leading to an automatic transfer of the case to ordinary proceedings, be it 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) or any other appropriate national civil procedure, unless the claimant has expressly requested that the proceedings be terminated in the event of a statement of opposition (see, to that effect, judgments of 13 June 2013, *Goldbet Sportwetten*, C-144/12, EU:C:2013:393, paragraph 31, and of 15 September 2022, *Uniqa Versicherungen*, C-18/21, EU:C:2022:682, paragraph 23).

38 In the second place, it should be recalled that any European order for payment referred to by Regulation No 1896/2006 must be served in a manner which complies with the minimum standards laid down in Articles 13 to 15 of that regulation. Where these minimum rules are not complied with, the balance between the objectives pursued by that regulation of speed and efficiency, on the one hand, and respect of the rights of defence, on the other hand, would be undermined (see, to that effect, judgment of 4 September 2014, *eco cosmetics and Raiffeisenbank St Georgen*, C-119/13 and C-120/13, EU:C:2014:2144, paragraph 37).

39 In that regard, the Court has held that, if there is no service in accordance with those minimum standards, the period within which to send a statement of opposition does not start to run, so that the validity of the procedures which depend on the expiry of that period, including that of the declaration of enforceability referred to in Article 18 of Regulation No 1896/2006, even if they have already been initiated, is affected (see, to that effect, judgment of 4 September 2014, *eco cosmetics and Raiffeisenbank St Georgen*, C-119/13 and C-120/13, EU:C:2014:2144, paragraph 43).

40 In the third place, Article 1(1)(b) of Regulation No 1896/2006, read in the light of recital 9 thereof, makes clear that that regulation corresponds to 'minimum standards' laid down to permit the free circulation of European orders for payment. That regulation 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, judgments of 13 June 2013, *Goldbet Sportwetten*, C-144/12, EU:C:2013:393, paragraph 28, and of 15 September 2022, *Uniqa Versicherungen*, C-18/21, EU:C:2022:682, paragraph 28 and the case-law cited).

41 Since Regulation No 1896/2006 is silent as to the possible remedies available to the defendant if it only becomes apparent after a European order for payment has been declared enforceable that that order has not been served or has not been served in a manner which complies with the minimum standards laid down in Articles 13 to 15 of that regulation, those procedural issues are governed by national law, in accordance with Article 26 of that regulation (see, to that effect, judgment of 4 September 2014, *eco cosmetics and Raiffeisenbank St Georgen*, C-119/13 and C-120/13, EU:C:2014:2144, paragraphs 46 and 47).

42 In the fourth place, as regards questions concerning service of a European order for payment which are not regulated by Regulation No 1896/2006, it follows from the Court's case-law that those questions must be decided, if necessary, in accordance with Regulation No 1393/2007, since Article 27 of Regulation No 1896/2006 states that it is without prejudice to the application of Regulation No 1348/2000, and that latter regulation was repealed and replaced by Regulation No 1393/2007, Article 25(2) of which provides that references made to Regulation No 1348/2000 are to be construed as being made to Regulation No 1393/2007 (see, to that effect, judgment of 6 September 2018, *Catlin Europe*, C-21/17, EU:C:2018:675, paragraphs 39 and 40).

43 In that regard, it must be borne in mind that Article 8(1) of Regulation No 1393/2007 provides that the addressee of the document to be served may refuse to accept it, on the ground that the document in question is not drafted or accompanied by a translation in a language which he or she is deemed to understand (judgment of 2 March 2017, *Henderson*, C-354/15, EU:C:2017:157, paragraph 49).

44 It is important not only to ensure that the addressee of a document actually receives the document in question, but also that he or she is able to know and understand effectively and completely the meaning and scope of the action brought against him or her abroad, so as to be able effectively to prepare his or her defence and assert his or her rights in the Member State of transmission (judgment of 6 September 2018, *Catlin Europe*, C-21/17, EU:C:2018:675, paragraph 34 and the case-law cited).

45 In order for the right of refusal set out in Article 8(1) of Regulation No 1393/2007 usefully to produce its effects, it is necessary that the addressee of the document has been duly informed of the existence of that right using the standard form set out in Annex II to that regulation (see, to that effect, judgment of 2 March 2017, *Henderson*, C-354/15, EU:C:2017:157, paragraphs 53 and 54).

46 The Court deduced from this that the entity responsible for service is required, in all circumstances and without having a margin of discretion, to inform the addressee of a document of his or her right to refuse to accept the document, by using systematically for that purpose that standard form (see, to that effect, judgment of 6 September 2018, *Catlin Europe*, C-21/17, EU:C:2018:675, paragraph 38 and the case-law cited).

47 If a document is served on the addressee without that form being attached to that document, such an omission must be remedied by the receiving agency by immediately informing that addressee of his or her right to refuse to accept that document, by transmitting to him or her the standard form (see, to that effect, judgment of 6 September 2018, *Catlin Europe*, C-21/17, EU:C:2018:675, paragraph 50 and the case-law cited).

48 The Court has held that that failure to attach the standard form in Annex II to Regulation No 1393/2007 cannot render invalid either the document to be served or the procedure for service, as that consequence would be incompatible with the objective pursued by that regulation, which consists in providing a direct, rapid and effective means of transmission between Member States of documents in civil and commercial matters (judgment of 6 September 2018, *Catlin Europe*, C-21/17, EU:C:2018:675, paragraph 49 and the case-law cited).

49 Therefore, national legislation cannot provide, without infringing Regulation No 1393/2007, that the penalty for omission of that standard form is invalidity (see, to that effect, judgment of 2 March 2017, *Henderson*, C-354/15, EU:C:2017:157, paragraph 62).

50 It is in the light of those considerations that an answer is to be given to the referring court.

51 In the present case, it is apparent from the findings made by the referring court that the service effected by the receiving agency clearly does not comply with the minimum standards laid down in Articles 13 to 15 of Regulation No 1896/2006, given that it was only at the time of enforcement of the European order for payment at issue that the defendant in the main proceedings became aware of the existence of that order.

52 In that regard, it is apparent from the case-law cited in paragraphs 39 and 41 above, first, that the declaration of enforceability of such a European order for payment must be regarded as invalid and, secondly, that national law governs the possible legal remedies available to the defendant if it only becomes apparent after that declaration that that order has not been served or has not been served in a manner which complies with the minimum standards laid down in Articles 13 to 15 of Regulation No 1896/2006.

53 In the present case, German law provides, in Paragraph 1092a of the ZPO, for such a legal remedy, in the context of which the court seised is obliged to annul such a European order for payment.

54 If a European order for payment has not been served on the defendant or has not been served on him or her in a manner consistent with the minimum standards laid down in Articles 13 to 15 of Regulation No 1896/2006, the defendant does not receive the necessary forms, including the form containing the European order for payment concerned and the form informing him or her of his or her right to lodge a statement of opposition to that order, with the result that he or she is not properly informed of the existence or basis of the European order for payment issued against him or her (see, to that effect, judgment of 4 September 2014, *eco cosmetics and Raiffeisenbank St Georgen*, C-119/13 and C-120/13, EU:C:2014:2144, paragraph 41).

55 It follows that failure to serve a European order for payment or non-compliance with the minimum standards laid down in Articles 13 to 15 of Regulation No 1896/2006 must be distinguished from the failure to communicate, to the addressee of a document to be served, the standard form set out in Annex II to Regulation No 1393/2007 informing that addressee of his or her right to refuse to accept that document where it is not written in or accompanied by a translation into a language which he or she is deemed to understand.

56 Although, in accordance with the case-law cited in paragraphs 47 and 48 above, the omission of that standard form must be remedied immediately by the receiving agency and the penalty for omission cannot be invalidity, in order not to undermine the objective pursued by Regulation No 1393/2007, it must be held that that case-law is not applicable where the national court annuls a European order for payment which has not been served or has not been served in a manner which complies with the minimum standards laid down in Articles 13 to 15 of Regulation No 1896/2006, such annulment being consistent with the objectives of that latter regulation.

57 As soon as the claim that underlies a European order for payment is contested, which is clearly the case where the defendant seeks a remedy against the enforcement of a European order for payment the service of which is vitiated by irregularities, the special procedure governed by Regulation No 1896/2006 no longer applies, since, as is apparent from Article 1(1)(a) of that regulation, the objectives of simplification, speed and reduction of costs pursued by that regulation are relevant only as regards uncontested claims (see, to that effect, judgments of

4 September 2014, *eco cosmetics and Raiffeisenbank St Georgen*, C-119/13 and C-120/13, EU:C:2014:2144, paragraph 39, and of 13 June 2013, *Goldbet Sportwetten*, C-144/12, EU:C:2013:393, paragraph 42).

58 In that context, the fact that the defendant becomes aware of the existence of a European order for payment procedure where service is vitiated by irregularities by chance or when the order for payment concerned is being executed, as well as the time at which the defendant contests the claim that is the subject of that order, are irrelevant, since that remedy is necessarily sought, as is apparent from the case-law cited in paragraph 39 above, even before the time limit for lodging the statement of opposition referred to in Article 16(2) of Regulation No 1896/2006 starts to run.

59 Furthermore, a reconciliation of the objectives pursued by Regulation No 1896/2006, namely speed and efficiency, on the one hand, and respect for the rights of the defence, on the other, supports the finding that it is for the claimant to bear any risks associated with a failure to effect service or with a failure to effect service in a manner which complies with the minimum standards laid down in Articles 13 to 15 of that regulation.

60 As is apparent from Article 1(2) of Regulation No 1896/2006, under which the European order for payment procedure 'shall not prevent a claimant from pursuing a claim … by making use of another procedure available under the law of a Member State or under Community law', the European order for payment procedure is an optional procedure which does not replace other existing procedures.

61 In addition, no provision of Regulation No 1896/2006 precludes, in principle, in the event of rejection of an application for a European order for payment, the creditor concerned from pursuing, if necessary, his or her claim in the context of a new European order for payment procedure.

62 In the light of the foregoing considerations, the answer to the first question is that the provisions of Regulation No 1896/2006, read in conjunction with those of Regulation No 1393/2007, must be interpreted as not precluding national legislation under which, where a European order for payment has not been served on the defendant or has not been served on him or her in a manner which complies with the minimum standards laid down in Articles 13 to 15 of Regulation No 1896/2006, the court before which a remedy against that order is sought is obliged to annul that order.

The second and third questions

63 In view of the answer given to the first question, there is no need to answer the second and third questions.

Costs

64 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 (Second Chamber) hereby rules:

The provisions 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 those of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters,

must be interpreted as not precluding national legislation under which, where a European order for payment has not been served on the defendant or has not been served on him or her in a manner which complies with the minimum standards laid down in Articles 13 to 15 of Regulation No 1896/2006, the court before which a remedy against that order is sought is obliged to annul that order.

[Signatures]