ORDER OF THE COURT (Second Chamber)

1 December 2005 *

In Case C-447/04,

REFERENCE for a preliminary ruling under Article 234 EC from the Landesgericht Innsbruck (Austria), made by decision of 30 September 2004, received at the Court on 27 October 2004, in the proceedings

Autohaus Ostermann GmbH

v

VAV Versicherungs AG,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans (Rapporteur), President of the Chamber, R. Schintgen, R. Silva de Lapuerta, G. Arestis and J. Klučka, Judges,

* Language of the case: German.

Advocate General: P. Léger,
Registrar: R. Grass,

after informing the national court that the Court proposes to give its decision by reasoned order pursuant to the second paragraph of Article 104(3) of its Rules of Procedure,

after inviting the interested parties referred to in Article 23 of the Statute of the Court of Justice to submit any observations they might have in that regard,

after hearing the Advocate General,

makes the following

Order

1 This request for a preliminary ruling concerns the interpretation of Article 4(6) of Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (fourth motor insurance directive) (OJ 2000 L 181, p. 65).

2 The request was made in the context of proceedings between Autohaus Ostermann GmbH, the claimant in the main proceedings (the 'claimant'), and VAV Versicherungs AG, the defendant in the main proceedings (the 'defendant'), concerning the costs of proceedings in settling a traffic accident claim.

Legal context

Community law

3 Recital 18 of Directive 2000/26 provides:

'In addition to ensuring that the insurance undertaking has a representative in the State where the injured party resides, it is appropriate to guarantee the specific right of the injured party to have the claim settled promptly; it is therefore necessary to include in national law appropriate effective and systematic financial or equivalent administrative penalties — such as injunctions combined with administrative fines, reporting to supervisory authorities on a regular basis, on-the-spot checks, publications in the national official journal and in the press, suspension of the activities of the company (prohibition on the conclusion of new contracts for a certain period), designation of a special representative of the supervisory authorities responsible for monitoring that the business is run in line with insurance laws, withdrawal of the authorisation for this business line, sanctions to be imposed on directors and management staff — in the event that the insurance undertaking or its representative fails to fulfil its obligation to make an offer of compensation within a

reasonable time-limit; this should not prejudice the application of any other measure — especially under supervisory law — which may be considered appropriate; however, it is a condition that liability and the damage and injury sustained should not be in dispute, so that the insurance undertaking is able to make a reasoned offer within the prescribed time-limit; the reasoned offer of compensation should be in writing and contain the grounds on the basis of which liability and damages have been assessed.'

4 Article 1 of Directive 2000/26 entitled 'Scope' provides:

'1. The objective of this Directive is to lay down special provisions applicable to injured parties entitled to compensation in respect of any loss or injury resulting from accidents occurring in a Member State other than the Member State of residence of the injured party which are caused by the use of vehicles insured and normally based in a Member State.

...

2. Articles 4 and 6 shall apply only in the case of accidents caused by the use of a vehicle

(a) insured through an establishment in a Member State other than the State of residence of the injured party, and

(b) normally based in a Member State other than the State of residence of the injured party.

...'

5 It is provided in Article 4 of Directive 2000/26 entitled 'Claims representatives':

'...

6. The Member States shall create a duty, backed by appropriate, effective and systematic financial or equivalent administrative penalties, to the effect that, within three months of the date when the injured party presented his claim for compensation either directly to the insurance undertaking of the person who caused the accident or to its claims representative,

(a) the insurance undertaking of the person who caused the accident or his claims representative is required to make a reasoned offer of compensation in cases where liability is not contested and the damages have been quantified, or

(b) the insurance undertaking to whom the claim for compensation has been addressed or his claims representative is required to provide a reasoned reply to the points made in the claim in cases where liability is denied or has not been clearly determined or the damages have not been fully quantified.

Member States shall adopt provisions to ensure that where the offer is not made within the three-month time-limit, interest shall be payable on the amount of compensation offered by the insurance undertaking or awarded by the court to the injured party.

...'

6 Article 10(4) of Directive 2000/26 entitled 'Implementation' states:

'Member States may, in accordance with the Treaty, maintain or bring into force provisions which are more favourable to the injured party than the provisions necessary to comply with this Directive.'

National law

7 Paragraph 29a of the Law on motor vehicle liability insurance of 19 August 1994 (Kraftfahrzeug-Haftpflichtversicherungsgesetz, BGBl. 651/1994, in the amended version published in BGB1. I, 11/2002) (the 'KHVG') provides:

'(1) The insurer or its claims representative appointed under Paragraph 12a of the Versicherungsaufsichtsgesetz (Law on the supervision of insurance) is under a duty to offer the injured party compensation within three months of notification of the claim, provided the injured party has not disputed the grounds or the amount of the claim.

(2) Should the insurer or its claims representative dispute their duty to pay compensation or should the investigations to establish liability not be completed within the period set down in Paragraph 29a(1), they must inform the injured party of this in writing, giving reasons, within the period set down in Paragraph 29a(1).

...

(4) If the insurer or its claims representative do not fulfil their obligations under Paragraph 29a(1) and (2), interest is payable to the injured party at the latest from expiry of the period set down in Paragraph 29a(1).'

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

8 On 3 February 2004 a traffic accident occurred in Innsbruck involving two motor vehicles registered in Austria. The owner of one of the vehicles had her vehicle repaired by the claimant, to whom she assigned her claims against the defendant. The latter is an insurance undertaking established in Vienna.

9 By letter of 19 February 2004 from the claimant's agent, the defendant was requested to pay, by 2 March 2004, various amounts, comprising EUR 2 206.39 in respect of repair costs, EUR 156 for expert's costs, EUR 36 for ancillary costs incurred as a result of the accident, together with the costs of the claimant's agent.

10 The defendant having failed to react within the time-limit, the Bezirksgericht Innsbruck (District Court, Innsbruck) issued an order on 19 March 2004, on the claimant's application, ordering the defendant to pay EUR 2 407.39 and interest at the rate of 5.5% from 2 March 2004. The order to pay was served on the defendant on 23 March 2004. A few days earlier, however, the defendant had arranged for the principal amount to be transferred in full to the account of the claimant's agent. The latter was credited with this amount on 24 March 2004.

11 As the defendant had paid the principal amount, the application before the Bezirksgericht Innsbruck was limited to the issue of costs. In its decision of 18 June 2004, the court ordered the defendant to pay costs of EUR 531.01, on the ground

that liability insurance companies are given a reasonable period, according to established case-law, of around 10 to 14 days for the settlement of claims. The claimant is entitled to expect settlement of its claim by the insurer, with normal case-handling, within that period. The court dismissed the defence raised by the defendant that, under Paragraph 29a(1) of the KHVG, it has a period of three months for settling the claim.

12 The defendant brought an appeal before the Landesgericht Innsbruck (Regional Court, Innsbruck) seeking a modification of the decision of the Bezirksgericht Innsbruck such that the claimant be ordered to pay costs in the amount of EUR 404.02, and in the alternative, annulment of that decision.

13 The national court states that Paragraph 41 et seq. of the Code on Civil Procedure (Zivilprozessordnung, the 'ZPO') lay down as a general rule the principle of award of costs to the successful party, namely that the party losing a case must pay the costs of the successful party. However, under Paragraph 45 of the ZPO, it is for the claimant to pay the defendant's costs, even where its claim is justified, if the defendant's conduct has not caused the case to be brought and has accepted forthwith the claim advanced in the case.

14 According to the national court, if the defendant's argument, that under Article 4(6) of Directive 2000/26 the insurer in any event has a three-month period within which to deal with a matter, were correct, according to Paragraph 45 of the ZPO the claimant would have to pay costs. Conversely, if the claimant's submission — that

the correct interpretation of the above provision of the directive is that the victim can require its claim to be settled earlier and impose on the insurance undertaking a reasonable payment period, within the three-month period — were to prevail, then the defendant should be considered to have caused the proceedings to be brought and therefore pay the costs.

15 In those circumstances, the Landesgericht Innsbruck decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'Is Article 4(6) of Directive 2000/26 ... to be interpreted as meaning that the insurance undertaking against which a claim has been made always has a three-month period within which to deal with the matter, even in the case of a simple factual and legal situation, or that this is merely a due date rule which does not exclude an earlier legal action against the insurance undertaking, even within the three-month period, after the setting of a "reasonable" period for payment?'

Concerning the question referred

16 Since the answer to the question referred admits of no reasonable doubt, the Court has informed the national court that it proposes to give its decision by reasoned order pursuant to Article 104(3) second paragraph of its Rules of Procedure and has invited the interested parties referred to in Article 23 of the Statute of the Court of Justice to submit any observations they might have in that regard.

17 No observation has been made by the interested parties.

18 As a preliminary point, the Austrian Government has questioned the Court's jurisdiction to reply to the question referred. Directive 2000/26 applies, pursuant to Article 1(1) thereof, to any loss arising from accidents occurring in a Member State other than the Member State of residence of the injured party. The facts in the main proceedings, however, would appear only to concern Austria.

19 It should be noted in that regard that, as is apparent from the referring decision, when implementing Directive 2000/06, the Austrian legislature decided to draw no distinction between purely national situations and those falling within the directive.

20 The Court has repeatedly held that it has jurisdiction to give preliminary rulings on questions concerning Community provisions in situations where the facts of the cases being considered by the national courts were outside the scope of Community law but where those provisions had been rendered applicable by domestic law (see, in particular, Case C-170/03 *Feron* [2005] ECR I-2299, paragraph 11 and the case-law cited therein).

21 Thus, the Court must reply to the question referred.

22 The question of the national court is essentially whether Article 4(6) of Directive 2000/26 is to be interpreted as precluding a national rule from allowing an injured party to bring a legal action against the insurance undertaking within the three-month period set down by that provision, after the setting of a reasonable period for payment.

23 The defendant considers that the question referred should be answered in the affirmative, whereas the claimant, the German and Austrian Governments and the Commission of the European Communities hold the opposite view.

24 It should be noted in this respect that the objective of Article 4(6) of Directive 2000/26 is not, as the defendant maintains, to ensure that the insurer benefits from a reasonable period in which to settle the claim, but rather, as is apparent from recital 18 of that directive, to guarantee the specific right of the injured party to have the claim settled promptly.

25 As is evident from recital 8 of Directive 2000/26, that objective coincides with that of the protection of victims underlying those earlier directives which Directive 2000/26 seeks to supplement, namely Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability (OJ, English Special Edition 1972(II), p. 360), Second Council Directive 84/5/EEC of 30 December 1983 (OJ 1984 L 8, p. 17) and Third Council Directive 90/232/EEC of 14 May 1990 (OJ 1990 L 129, p. 33), both on the approximation of the laws of the Member States relating to insurance

against civil liability in respect of the use of motor vehicles (see, to that effect, Case C-129/94 *Ruiz Bernáldez* [1996] ECR I-1829, paragraph 18, and Case C-537/03 *Candolin and Others* [2005] ECR I-5753, paragraph 18).

26 It would, however, run counter to such an objective of protecting the injured party to interpret the three-month period, laid down in Article 4(6) of Directive 2000/26, as meaning that there can be no possibility for the injured party, even in a simple legal or factual situation, to have the claim settled by the insurer before that period expires.

27 Moreover, to interpret Article 4(6) of Directive 2000/26 as precluding a national rule from allowing the injured party to seek payment within a reasonable period, shorter than the three-month period, would be contrary to Article 10(4) of that directive, which provides that Member States may, in accordance with the EC Treaty, maintain or bring into effect provisions that are more favourable to the injured party than the provisions necessary to comply with Directive 2000/26.

28 In those circumstances, the answer to the question must be that Article 4(6) of Directive 2000/26 is to be interpreted as not precluding a national rule from allowing an injured party to bring a legal action against the insurance undertaking within the three-month period set down by that provision, after the setting of a reasonable period for payment.

Costs

29 Since these proceedings are, for the parties to the main proceedings, a step in the proceedings 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 (Second Chamber) hereby rules:

Article 4(6) of Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (fourth motor insurance directive) is to be interpreted as not precluding a national rule from allowing an injured party to bring a legal action against the insurance undertaking within the three-month period set down by that provision, after the setting of a reasonable period for payment.

[Signatures]