Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

13 December 2012*

(Regulation (EC) No 1896/2006 — European order for payment procedure — Application for an order which does not comply with the formal requirements laid down by national law — Exhaustive nature of the requirements to be met by the application — Whether it is possible to claim the interest accrued up to the date of payment of the principal)

In Case C-215/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Sąd Okręgowy we Wrocławiu (Poland), made by decision of 11 April 2011, received at the Court on 9 May 2011, in the proceedings

Iwona Szyrocka

v

SiGer Technologie GmbH,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, M. Ilešič (Rapporteur), E. Levits, J.-J. Kasel and M. Safjan, Judges,

Advocate General: P. Mengozzi,

Registrar: K. Sztranc-Sławiczek, Administrator,

having regard to the written procedure and further to the hearing on 18 April 2012,

after considering the observations submitted on behalf of:

— the Polish Government, by M. Szpunar, M. Arciszewski, and B. Czech, acting as Agents,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the Portuguese Government, by L. Fernandes, acting as Agent,

— the Finnish Government, by M. Pere, acting as Agent,

— the United Kingdom Government, by S. Ossowski, acting as Agent,

— the European Commission, by A.-M. Rouchaud-Joët and K. Herrmann, acting as Agents,

* Language of the case: Polish.

after hearing the Opinion of the Advocate General at the sitting on 28 June 2012,

gives the following

Judgment

1 This reference 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).

2 The reference was made in proceedings for a European order for payment instigated by Mrs Szyrocka, who is resident in Poland, against SiGer Technologie GmbH, established in Germany.

Legal context

Regulation No 1896/2006

3 Recitals 8, 9, 10 and 11 in the preamble to Regulation No 1896/2006 are worded as follows:

‘(8) The resulting impediments to access to efficient justice in cross-border cases and the distortion of competition within the internal market due to imbalances in the functioning of the procedural means afforded to creditors in different Member States necessitate Community legislation guaranteeing a level playing field for creditors and debtors throughout the European Union.

(9) The purpose of this Regulation is to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims by creating a European order for payment procedure …

(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.

(11) The procedure should be based, to the largest extent possible, on the use of standard forms in any communication between the court and the parties in order to facilitate its administration and enable the use of automatic data processing.’

4 Recital 16 in the preamble to Regulation No 1896/2006 states that ‘[t]he court should examine the application, including the issue of jurisdiction and the description of evidence, on the basis of the information provided in the application form. This would allow the court to examine prima facie the merits of the claim and inter alia to exclude clearly unfounded claims or inadmissible applications.’

5 Recital 29 in the preamble to Regulation No 1896/2006 states that the objective of the regulation is ‘to establish a uniform rapid and efficient mechanism for the recovery of uncontested pecuniary claims throughout the European Union’.

6 Article 1(1) of Regulation No 1896/2006 is worded as follows;

‘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;

…’

7 Article 2(1) of that regulation provides as follows:

‘This Regulation shall apply to civil and commercial matters in cross-border cases, whatever the nature of the court or tribunal. …’

8 Article 3(1) of Regulation No 1896/2006 is worded as follows:

‘For the purposes of this Regulation, a cross-border case is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seised.’

9 Article 4 of the regulation provides as follows:

‘The European order for payment procedure shall be established for the collection of pecuniary claims for a specific amount that have fallen due at the time when the application for a European order for payment is submitted.’

10 Article 6(1) of Regulation No 1896/2006 reads as follows:

‘For the purposes of applying this Regulation, jurisdiction shall be determined in accordance with the relevant rules of Community law …’

11 Article 7 of Regulation No 1896/2006 provides as follows:

‘1. An application for a European order for payment shall be made using the standard form as set out in Annex 1.

2. The application shall state:

(a) the names and addresses of the parties, and, where applicable, their representatives, and of the court to which the application is made;

(b) the amount of the claim, including the principal and, where applicable, interest, contractual penalties and costs;

(c) if interest on the claim is demanded, the interest rate and the period of time for which that interest is demanded unless statutory interest is automatically added to the principal under the law of the Member State of origin;

(d) the cause of the action, including a description of the circumstances invoked as the basis of the claim and, where applicable, of the interest demanded;

(e) a description of evidence supporting the claim;

(f) the grounds for jurisdiction;

and

(g) the cross-border nature of the case within the meaning of Article 3.

3. In the application, the claimant shall declare that the information provided is true to the best of his knowledge and belief and shall acknowledge that any deliberate false statement could lead to appropriate penalties under the law of the Member State of origin.

4. In an Appendix to the application the claimant may indicate to the court that he opposes a transfer to ordinary civil proceedings … in the event of opposition by the defendant. This does not prevent the claimant from informing the court thereof subsequently, but in any event before the order is issued.

5. The application 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.

6. The application shall be signed by the claimant or, where applicable, by his representative. …'

12 Article 11(1) of Regulation No 1896/2006 states as follows:

'The court shall reject the application if:

(a) the requirements set out in Articles 2, 3, 4, 6 and 7 are not met;

…'

13 Article 12(3) of Regulation No 1896/2006 is worded as follows:

'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;

…'

14 Article 25 of Regulation No 1896/2006 provides as follows:

'1. The combined court fees of a European order for payment procedure and of the ordinary civil proceedings that ensue in the event of a statement of opposition to a European order for payment in a Member State shall not exceed the court fees of ordinary civil proceedings without a preceding European order for payment procedure in that Member State.

2. For the purposes of this Regulation, court fees shall comprise fees and charges to be paid to the court, the amount of which is fixed in accordance with national law.'

15 Article 26 of Regulation No 1896/2006 is worded as follows:

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

16 Annex I to Regulation No 1896/2006 contains Form A, entitled 'Application for a European Order for payment'.

17 Section 7 of the Guidelines for Filling in the Application Form in Annex I to Regulation No 1896/2006 is worded as follows:

'Interest: If interest is demanded, this should be specified for each claim … in accordance with the codes indicated on the form. … If interest is demanded up to the decision by the court, the last box [to] should be left blank. …'

18 Form E, for the issue of a European order for payment, is in Annex V to Regulation No 1896/2006.

Polish law

19 Article 187(1) of the Code of Civil Procedure provides that, in cases relating to property law, the application must state the value of the subject-matter of the dispute, unless that consists of a fixed sum of money.

20 Article 130(1) of the Code of Civil Procedure sets out the consequences of the submission of an application flawed by formal defects. Under that provision, as a general rule, the court is to request the claimant, on pain of having his pleading returned, to rectify it, complete it or pay for it within one week.

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

21 On 23 February 2011, Mrs Szyrocka, who is resident in Poland, applied to the Sąd Okręgowy we Wrocławiu for a European order for payment to be issued against SiGer Technologie GmbH, established in Tangermünde (Germany).

22 When examining the application, the referring court found that it did not comply with certain formal requirements laid down by Polish law and, in particular, that it failed to specify the value of the subject-matter of the dispute, expressed in Polish currency, as required under Polish law to enable the fee for issuing the application to be calculated. It is apparent from the file before the Court that, on the application form for a European order for payment, Mrs Szyrocka stated the principal amount of the claim in euros. The referring court also points out that, on that form, Mrs Szyrocka indicated that she was claiming interest from a specified date until the date of payment of the principal.

23 In those circumstances, the Sąd Okręgowy we Wrocławiu decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Is Article 7 of [Regulation No 1896/2006] to be interpreted as:

(a) governing exhaustively all the requirements which must be met by an application for a European order for payment, or

(b) determining only the minimum requirements for such an application and requiring that the provisions of national law be applied to the formal requirements for an application in the case of matters not governed by that provision?

(2) If Question 1(b) is answered in the affirmative, where the application does not meet the formal requirements laid down in the law of the Member State (for example, the copy of the application intended for the opposing party has not been attached or the value of the subject-matter of the dispute is not specified), must a request for the claimant to complete the application be made pursuant to provisions of national law, in accordance with Article 26 of Regulation No 1896/2006, or pursuant to Article 9 thereof?

(3) Is Article 4 of Regulation No 1896/2006 to be interpreted as meaning that the features of a pecuniary claim which are referred to in that provision – that is to say, the fact that it is of a specific amount and has fallen due at the time when the application for a European order for payment is submitted – relate only to the principal claim or also to the claim for default interest?

(4) On a correct interpretation of Article 7(2)(c) of Regulation No 1896/2006, where the law of a Member State does not provide for the automatic addition of interest, is it possible, in a European order for payment procedure, to demand in addition to the principal:

(a) all interest, including 'open interest' (calculated from the day on which it falls due, expressed as a specific date, to a day of payment not specified by date: for example, 'from 20 March 2011 to the day of payment');

(b) only interest calculated from the day on which it falls due, expressed as a specific date, to the day on which the application is submitted or the order for payment is issued;

(c) only interest calculated from the day on which it falls due, expressed as a specific date, to the day on which the application is submitted?

(5) If Question 4(a) is answered in the affirmative, how must the court's decision on interest be formulated in the order for payment form, in accordance with Regulation No 1896/2006?

(6) If Question 4(b) is answered in the affirmative, who must indicate the amount of interest: the party concerned or the court of its own motion?

(7) If Question 4(c) is answered in the affirmative, does the party concerned have an obligation to indicate the amount of calculated interest in the application?

(8) If the claimant does not calculate the interest claimed up until the day on which the application is submitted, must the court calculate that amount of its own motion, or must it then request the party concerned to complete the application pursuant to Article 9 of Regulation No 1896/2006?'

Consideration of the questions referred

Question 1

24 By its first question, the referring court asks whether Article 7 of Regulation No 1896/2006 must be interpreted as governing exhaustively the requirements to be met by an application for a European order for payment, or whether it sets out only the minimum requirements for such an application, so that the provisions of national law are to be applied to the formal requirements for an application for all matters not governed by that provision.

25 In order to answer that question, it is necessary to refer to the text of Article 7 of Regulation No 1896/2006, as well as to its general scheme and purpose.

26 First, it should be noted that Article 7 of that regulation lays down a series of requirements as to the content and form of an application for a European order for payment. Thus, it deals, inter alia, with the requirement that such an application be made using a standard form, the constituent elements of the form, the claimant's declaration to the effect that the information provided in the form is true, the possibility open to the claimant to oppose a transfer to ordinary civil proceedings and the rules governing the signing of the application.

27 There is nothing in the wording of Article 7 to justify the conclusion that the Member States are free to impose additional requirements, existing under national law, as regards an application for a European order for payment.

28 Indeed, as is clear from Article 7(2)(c), (3), (5) and (6) of Regulation No 1896/2006, where that provision authorises Member States to apply national law to certain specific aspects of the requirements of an application for a European order for payment, it does so expressly. On the other hand, that provision does not contain any other express or implied reference providing general authorisation for the imposition of additional requirements which exist under the Member States' domestic law.

29 Next, that literal interpretation is endorsed by the general scheme of Regulation No 1896/2006. First, as is apparent from recital 16 in the preamble to the regulation, the court seised is required to examine the application for a European order for payment only on the basis of the information provided in the application form. Second, there is no possibility under Articles 2 to 4 and 6 of the regulation – which set out details concerning certain requirements to which the issue of a European order for payment is subject – of imposing additional requirements on the basis of the Member States' domestic law. Furthermore, Article 11(1)(a) of the regulation provides that only failure to meet the requirements set out in Articles 2 to 4, 6 and 7 will lead to the rejection of an application for a European order for payment.

30 Lastly, it should be noted that 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. As observed in recitals 8, 10 and 29, although the 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.

31 That objective would be undermined if the Member States were able generally to impose in their national legislation additional requirements to be met by an application for a European order for payment. Such requirements would lead not only to the imposition of different conditions in the various Member States for such an application but also to an increase in the complexity, duration and costs of the European order for payment procedure.

32 Accordingly, only an interpretation to the effect that Article 7 of Regulation No 1896/2006 governs exhaustively the requirements to be met by an application for a European order for payment can ensure that the objective of the regulation is attained.

33 With regard, in particular, to the question whether the national court may, in circumstances such as those in the main proceedings, request the claimant to complete the application for a European payment order by indicating the value of the subject-matter of the dispute expressed in Polish currency, in order to enable the fee for issuing the application to be calculated, it is permissible for that court to rely, for that purpose, on Article 25(2) of Regulation No 1896/2006, which provides that the amount of the court fees is to be fixed in accordance with national law.

34 In the absence of harmonistion of domestic mechanisms for the recovery of uncontested claims, and subject to the conditions laid down in Article 25 of Regulation No 1896/2006, the procedural rules for determining the amount of the court fees is a matter for the domestic legal order of each Member State, in accordance with the principle of the procedural autonomy of the Member States. However, those rules must not be less favourable than those governing similar domestic actions (principle of equivalence) or such as to make it in practice impossible or excessively difficult to exercise the rights conferred by European Union law (see, to that effect, Case C-618/10 *Banco Español de Crédit*o [2012] ECR, paragraph 46 and the case-law cited).

35 It follows that the national court remains free, in principle, to obtain information on the value of the subject-matter of the dispute in accordance with the rules laid down by its national law, provided that the procedural requirements connected with the determination of the court fees lead neither to excessive prolongation of the European order for payment procedure nor to the rejection of the application for such an order.

36 Accordingly, the answer to question 1 is that Article 7 of Regulation No 1896/2006 must be interpreted as governing exhaustively the requirements to be met by an application for a European order for payment. Pursuant to Article 25 of that regulation and subject to the conditions laid down therein, the national court remains free to determine the amount of the court fees in accordance with rules laid down by domestic law, provided that those rules are no less favourable than those governing similar domestic actions and do not make it in practice impossible or excessively difficult to exercise the rights conferred by European Union law.

Question 2

37 In view of the answer given to the first question, it is unnecessary to reply to the second question.

Questions 3 and 4

38 By its third and fourth questions, the Sąd Okręgowy we Wrocławiu asks, in essence, whether Articles 4 and 7(2)(c) of Regulation No 1896/2006 are to be interpreted as precluding a claimant from demanding, in an application for a European order for payment, interest for the period from the date on which interest falls due until the date of payment of the principal.

39 First, it should be noted that Article 4 of Regulation No 1896/2006 provides that pecuniary claims the collection of which is sought under the European order for payment procedure must be for a specific amount and have fallen, whereas Article 7(2)(c) of the regulation provides that if interest on the claim is demanded, the application for a payment order must state the interest rate and the period of time for which that interest is demanded.

40 With regard, first, to the question whether the interest demanded under the European order for payment procedure must be for a specific amount and have fallen due within the meaning of Article 4 of Regulation No 1896/2006, it should be noted that a literal reading of that provision does not provide any clear guidance in that regard, given, in particular, that that provision refers, in a general manner, to 'pecuniary claims' which may be collected under the European order for payment procedure.

41 However, it follows from the context of that provision, in particular from a combined reading of Article 4 and Article 7(2)(c) of Regulation No 1896/2006, that the requirements that the claim must be for a specific amount and have fallen due do not apply to interest.

42 Indeed, as the European Commission correctly observed, no provision in Regulation No 1896/2006 requires the claimant to indicate in the application for a European order for payment the exact amount of interest demanded. In particular, Article 7(2)(c) of the regulation simply provides that where interest on the claim is demanded, it is necessary to indicate the interest rate and the period of time for which that interest is demanded, which is also reflected by the application form for a European order for payment set out in Annex I to the regulation.

43 Second, as regards the question whether Article 7(2)(c) of Regulation No 1896/2006 precludes any interest claim for the period from the date on which interest falls due until the date of payment of the principal, while that provision does not require the amount of interest claimed to be included in the application for an order for payment, nor does it specify the date up to which such interest may be demanded.

44 In those circumstances, that provision must be interpreted in the light in particular of the objective of Regulation No 1896/2006, which is, as pointed out at paragraph 30 above, not only to introduce a simple, swift and effective mechanism for the recovery of uncontested pecuniary claims, but also to reduce the costs of such litigation.

45 An interpretation of Article 7(2)(c) of Regulation No 1896/2006 which deprived the claimant of the possibility of demanding the interest which had accrued up to the date of payment of the principal would not meet that objective. As the Advocate General observed at point 66 of his Opinion, if the interest claim were to be confined to the interest which had accrued at the date on which the application for a European order for payment was made or the date when the order for payment was issued, the claimant would be able to obtain all the interest due up to the date of payment of the principal only by making a series of claims, namely an initial claim for the principal and interest accrued, followed by a claim for payment of the remaining interest for the period from the filing of the initial claim or the issue of the order for payment to the payment of the principal.

46 It is therefore clear that an interpretation of Article 7(2)(c) of Regulation No 1896/2006 to the effect that it is not possible to claim interest which has accrued up to the date of payment of the principal may increase the duration and complexity of the European order for payment procedure and add to the costs of such litigation.

47 Furthermore, such an interpretation might deter a claimant from initiating a procedure for a European order for payment and encourage him, instead, to have recourse to national procedures under which it will be possible to obtain all the interest to which he is entitled. While it is undoubtedly true, as stated in recital 10 in the preamble to Regulation No 1896/2006, that the procedure established by the regulation serves simply as an additional and optional means to those provided under national law, the fact nevertheless remains that, if that procedure is to represent a genuine option for creditors, they must be in a position to assert the same rights under that procedure as under national procedures.

48 Articles 4 and 7(2)(c) of Regulation No 1896/2006 do not therefore preclude the claimant from demanding, in the context of a European order for payment, interest which has accrued up to the date of payment of the principal.

49 Moreover, that interpretation is not undermined by the arguments put forward by the Portuguese and United Kingdom Governments advocating an interpretation of those provisions to the effect that interest cannot be claimed for the period following the issue of the order for payment.

50 Contrary to what is submitted by the United Kingdom Government, the fact that section 7 of the Guidelines for filling in the application form for a European order for payment, set out in Annex I to Regulation No 1896/2006, alludes only to the possibility of demanding interest which has accrued up to the date of the decision by the court on the application cannot deprive the claimant of the possibility of also demanding the interest accrued after that date. Indeed, while the Guidelines may undoubtedly serve as an aid to the interpretation of the regulation, they are, as observed by the Advocate General at point 86 of his Opinion, merely illustrative and do not exhaustively cover all the situations which might actually arise.

51 Moreover, as regards the Portuguese Government's argument based on Article 12(3)(a) of Regulation No 1896/2006, that provision states that in the European order for payment, the defendant is to be advised of the amount he must pay to the claimant. The defendant is advised of that amount not only when the final amounts of the principal and interest are indicated in the European order for payment but also when the order states the amount of the principal and the interest rate as well as the period for which interest is claimed. Furthermore, an interpretation of that provision to the effect that the claimant cannot demand the interest accrued up to the date of payment of the principal would be contrary to the objective of the regulation, on the grounds set out at paragraphs 44 to 46 above.

52 It should be added that the provisions of Regulation No 1896/2006 cannot in themselves, unless justification can be found in the law governing the legal relationship between the claimant and the defendant, constitute a legal basis for any demand for the interest accrued up to the date of payment of the claim. Since Regulation No 1896/2006 governs only the procedural aspects of the order for payment mechanism, any question pertaining to substantive law, including the question as to the kind of interest that may be claimed under that procedure, is, in principle, governed by the law applicable to the relationship between the parties giving rise to the claim in question.

53 It follows from all the foregoing considerations that the answer to Questions 3 and 4 is that Articles 4 and 7(2)(c) of Regulation No 1896/2006 must be interpreted as not precluding a claimant from demanding, in an application for a European order for payment, interest for the period from the date on which it falls due until the date of payment of the principal.

Question 5

54 By its fifth question, the Sąd Okręgowy we Wrocławiu asks, in essence, how the European order for payment form, set out in Annex V to Regulation No 1896/2006, is to be completed if the defendant is ordered to pay to the claimant the interest accrued up to the date of payment of the principal.

55 First, it should be noted that on that form there is a horizontal line headed 'Interest (as of)', intersected by three vertical columns headed, respectively, 'Currency', 'Amount' and 'Date (day/month/year).'

56 It is apparent from recital 11 in the preamble to Regulation No 1896/2006 that the European order for payment procedure should be based, to the largest extent possible, on the use of standard forms, in order to facilitate its administration and enable the use of automatic data processing.

57 As the forms are based on the most typical situations which arise in practice, it is clear that, in circumstances such as those in the main proceedings, in which the European order for payment form does not expressly state that it is possible to indicate that the defendant is required to pay to the claimant the interest accrued up to the date of payment of the principal, the content of the form must be adapted to the particular circumstances of the individual case, so as to enable the court to take such a decision.

58 Accordingly, the European order for payment form must be completed in such a way as to enable the defendant, first, to be fully aware of the decision that he is required to pay to the claimant the interest accrued up to the date of payment of the principal and, second, to identify clearly the rate of interest and the date from which that interest is claimed. Provided that those requirements are met, the way in which the form is to be completed in practice is a matter which the national court is free to decide.

59 For example, the national court may indicate, in the European order for payment form, the currency in the relevant column, the rate of interest in the column headed 'Amount' and specify, in the 'Date (day/month/year)' column, that the defendant is required to pay interest from a particular date until the date of payment of the principal.

60 Consequently, the answer to Question 5 is that, where the defendant is ordered to pay to the claimant the interest accrued up to the date of payment of the principal, the national court is free to determine the way in which the European order for payment form, set out in Annex V to Regulation No 1896/2006, is to be completed in practice, provided that the form thus completed enables the defendant, first, to be fully aware of the decision that he is required to pay the interest accrued up to the date of payment of the principal and, second, to identify clearly the rate of interest and the date from which that interest is claimed.

Questions 6, 7 and 8

61 In the light of the reply given to the third and fourth questions, it is unnecessary to answer the other questions referred.

Costs

62 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 (First Chamber) hereby rules:

1. **Article 7 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 must be interpreted as governing exhaustively the requirements to be met by an application for a European order for payment.**

   Pursuant to Article 25 of that regulation and subject to the conditions laid down therein, the national court remains free to determine the amount of the court fees in accordance with rules laid down by domestic law, provided that those rules are no less favourable than those governing similar domestic actions and do not make it in practice impossible or excessively difficult to exercise the rights conferred by European Union law.

2. **Articles 4 and 7(2)(c) of Regulation No 1896/2006 must be interpreted as not precluding a claimant from demanding, in an application for a European order for payment, interest for the period from the date on which it falls due until the date of payment of the principal.**

3. **Where the defendant is ordered to pay to the claimant the interest accrued up to the date of payment of the principal, the national court is free to determine the way in which the European order for payment form, set out in Annex V to Regulation No 1896/2006, is to be completed in practice, provided that the form thus completed enables the defendant, first, to be fully aware of the decision that he is required to pay the interest accrued up to the date of payment of the principal and, second, to identify clearly the rate of interest and the date from which that interest is claimed.**

[Signatures]