ECJ Rules on Impact of Opposition to European Order for Payment on Jurisdiction

On 13 June 2013, the Court of Justice of the European Union ruled in Goldbet Sportwetten GmbH v. Massimo Sperindeo (Case C 144/12) on the impact of opposition to a European Order of Payment on jurisdiction under the Brussels I Regulation.

European Orders for Payment are issued ex parte. Defendants are entitled to oppose them. If they do, the case is handled under traditional rules of civil procedure. An issue is whether defendants who merely oppose European Orders, but do not challenge jurisdiction at the same time, submit to the jurisdiction of the court which issued the European Order under Article 24 of the Brussels I Regulation.

The Case

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.

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.

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.

The Judgment

The ECJ ruled that the statement of opposition to the European Order can only produce the effects prescribed by Regulation No 1896/2006.

> *29 [Regulation No 1896/2006] 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.*
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> *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.*
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> *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.*
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> *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.*

The ECJ also held the European Order and proceedings following opposition are

separate.

38 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.

Final Ruling:

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.