

AG Collins on interruption of a time limit set in the EOP Regulation by a national measure related to COVID-19, in the case Uniqa Versicherungen, C-18/21

May the 30-day time limit within which the defendant has to send a statement of opposition against a European order for payment, set in Article 16(2) of the Regulation No 1896/2006 (the EOP Regulation), be interrupted through application of the national provision that, for a specified timeframe related to the COVID-19 pandemic, provides for such effect ?

This is, in essence, the question that Advocate General Collins addresses in his Opinion in the case Uniqa Versicherungen, C-18/21.

Legal context of the preliminary question

As summarized at point 2 of the Opinion, Article 16(2) of the EOP Regulation provides that a statement of opposition to a European order for payment shall be sent within 30 days of service of the order, in the absence of which that order becomes enforceable against the defendant.

A defendant who does not lodge a statement of opposition within that 30-day time limit may, in a number of exceptional cases, apply for a review of the order pursuant to Article 20 of the Regulation.

According to its Article 26, procedural issues not specifically dealt with in that Regulation are governed by national law.

Against this background, as the referring court in the present case, the Austrian Supreme Court (Oberster Gerichtshof), puts it in its request for a preliminary ruling, some authors take the view that Article 20 of Regulation takes account (in

the abstract) of situations such as the COVID-19 crisis and, for such situations, has provided for the possibility to have European orders for payment reviewed and, if necessary, declared null and void. According to that view, recourse to national law is therefore not permissible in view of Article 20, which was created precisely to address cases of force majeure.

The opposing view, also reported by the referring court, is based on the interpretation according to which the interruption of the time limit set in Article 16(2) of the EOP Regulation has remained unregulated by EU law, with the result that - pursuant to Article 26 of the Regulation - recourse is to be done to national law.

Preliminary question

All this prompted the Austrian court to refer a following preliminary question to the Court:

Are Articles 20 and 26 of the EOP Regulation to be interpreted as meaning that those provisions preclude an interruption of the 30-day period for lodging a statement of opposition to a European order for payment, as provided for in Article 16(2) of that Regulation, by Paragraph 1(1) of the Austrian Law on accompanying measures for COVID-19 in the administration of justice, pursuant to which all procedural periods in proceedings in civil cases for which the event triggering the period occurs after 21 March 2020 or which have not yet expired by that date are to be interrupted until the end of 30 April 2020 and are to begin to run anew from 1 May 2020?

Assessment of the preliminary question provided for in the Opinion

In the first place, in his overview of the EOP Regulation, AG Collins convincingly demonstrates that the review procedure under Article 20 of the Regulation does not purport to be a substitute for the opposition procedure under Article 16 (see, for detailed argumentation, points 31 et seq.).

Building upon that demonstration, in the second place, he addresses the legal

issue at hand and presents a series of arguments that lead him to the conclusion according to which the EOP Regulation “[does] not preclude the adoption, in the circumstances of the COVID-19 pandemic, of a national measure that interrupted the 30-day time limit for lodging a statement of opposition to a European order for payment contained in Article 16(2) thereof” (point 49).

In particular, AG Collins contends, firstly, that the EOP Regulation “lays down minimum standards to ensure the recognition and enforcement of an order adopted in another Member State without the necessity to bring any prior intermediate proceedings in the Member State of enforcement” and, as a consequence, “a general interruption of time limits due to the COVID-19 pandemic is a procedural issue not dealt with in [the] Regulation” (point 42).

He indicates, secondly, that “national procedural measures adopted in accordance with Article 26 of [the EOP Regulation] may not [...] undermine the objectives pursued by that regulation” (point 43).

Benchmarking the national measure related to COVID-19 against that requirement, he explains that this measure does not undermine the objectives of the Regulation “since a general interruption of time limits does not add another procedural step to the recognition and enforcement of a European order for payment” and, as a consequence, “the uniform mechanism established by [the EOP Regulation] is unaltered” (point 45).

Thirdly, AG Collins backs his findings by the considerations relating to Article 47 of the Charter, with a further reference to the case law of the ECtHR (see footnote 35). In essence, refusing to interrupt the time limit for sending the opposition against a European order for payment and, thus, ignoring the impact of the pandemic on the practical possibility to send that statement could run against the rights of the defendant (points 46 and 47).

The Opinion is available [here](#).