

Provisional text

JUDGMENT OF THE COURT (Fifth Chamber)

5 September 2019 (*)

(Reference for a preliminary ruling — Technical and business requirements for credit transfers and direct debits in euro — Regulation (EU) No 260/2012 — Single euro payments area (SEPA) — Payment by direct debit — Article 9(2) — Accessibility of payments — Residence condition)

In Case C-28/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Supreme Court, Austria), made by decision of 20 December 2017, received at the Court on 17 January 2018, in the proceedings

Verein für Konsumenteninformation

v

Deutsche Bahn AG,

THE COURT (Fifth Chamber),

composed of E. Regan (Rapporteur), President of the Chamber, C. Lycourgos, E. Juhász, M. Ilešič and I. Jarukaitis, Judges,

Advocate General: M. Szpunar,

Registrar: D. Dittert, Head of Unit,

having regard to the written procedure and further to the hearing on 30 January 2019,

after considering the observations submitted on behalf of:

- the Verein für Konsumenteninformation, by S. Langer, Rechtsanwalt,
- Deutsche Bahn AG, by C. Pöchlhammer and L. Riede, Rechtsanwälte,
- the European Commission, by H. Tserepa-Lacombe and T. Scharf, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 May 2019,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 9(2) of Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ 2012 L 94, p. 22).

- 2 The request has been made in proceedings between the Verein für Konsumenteninformation (Consumer Information Association; ‘the VKI’) and Deutsche Bahn AG concerning the fact that it is not possible for passengers who are not resident in Germany to pay for tickets booked on the company’s website by means of direct debit in euros under the EU-wide direct debit scheme (‘SEPA direct debit’).

Legal context

- 3 Recitals 1, 6, 9, 10 and 32 of Regulation No 260/2012 are worded as follows:

‘(1) The creation of an integrated market for electronic payments in euro, with no distinction between national and cross-border payments is necessary for the proper functioning of the internal market. To that end, the single euro payments area (SEPA) project aims to develop common Union-wide payment services to replace current national payment services. As a result of the introduction of open, common payment standards, rules and practices, and through integrated payment processing, SEPA should provide Union citizens and businesses with secure, competitively priced, user-friendly, and reliable payment services in euro. This should apply to SEPA payments within and across national boundaries under the same basic conditions and in accordance with the same rights and obligations, regardless of location within the Union. ...

...

(6) Only rapid and comprehensive migration to Union-wide credit transfers and direct debits will generate the full benefits of an integrated payments market, so that the high costs of running both “legacy” and SEPA products in parallel can be eliminated. Rules should therefore be laid down to cover the execution of all credit transfer and direct debit transactions denominated in euro within the Union. ...

...

(9) For a credit transfer to be executed, the payee’s payment account must be reachable. Therefore, in order to encourage the successful take-up of Union-wide credit transfer and direct debit services, a reachability obligation should be established across the Union. To improve transparency, it is furthermore appropriate to consolidate that obligation and the reachability obligation for direct debits already established under Regulation (EC) No 924/2009 [of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001 (OJ 2009 L 266, p. 11)] in a single act. All payee payment accounts reachable for a national credit transfer should also be reachable via a Union-wide credit transfer scheme. All payers’ payment accounts reachable for a national direct debit should also be reachable via a Union-wide direct debit scheme. This should apply whether or not a [payment service provider (PSP)] decides to participate in a particular credit transfer or direct debit scheme.

(10) Technical interoperability is a prerequisite for competition. In order to create an integrated market for electronic payments systems in euro, it is essential that the processing of credit transfers and direct debits is not hindered by business rules or technical obstacles such as compulsory adherence to more than one system for settling cross-border payments. Credit transfers and direct debits should be carried out under a scheme, the basic rules of which are adhered to by PSPs representing a majority of PSPs within a majority of the Member States and constituting a majority of PSPs within the Union, and which are the same both for cross-border and for purely national credit transfer and direct debit transactions. ...

...

(32) In order to ensure broad public support for SEPA, a high level of protection for payers is essential, particularly for direct debit transactions. The current and only pan-European direct debit scheme for

consumers developed by the [European Payments Council (EPC)] provides for a “no-questions-asked”, unconditional refund right for authorised payments during a period of 8 weeks from the date on which the funds were debited, while that refund right is subject to several conditions under Articles 62 and 63 of Directive 2007/64/EC [of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ 2007 L 319, p. 1)]. In the light of the prevailing market situation and of the necessity to ensure a high level of consumer protection, the impact of those provisions should be assessed in the report that, in accordance with Article 87 of Directive 2007/64/EC, the Commission shall, no later than 1 November 2012, present to the European Parliament, the Council, the European Economic and Social Committee and the [European Central Bank] accompanied, where appropriate, by a proposal for its revision.’

4 Article 1 of Regulation No 260/2012, entitled ‘Subject matter and scope’, provides in paragraph 1:

‘This Regulation lays down rules for credit transfer and direct debit transactions denominated in euro within the Union where both the payer’s payment service provider and the payee’s payment service provider are located in the Union, or where the sole payment service provider (PSP) involved in the payment transaction is located in the Union.’

5 Article 2 of that regulation, entitled ‘Definitions’, provides:

‘For the purposes of this Regulation, the following definitions shall apply:

...

(2) “direct debit” means a national or cross-border payment service for debiting a payer’s payment account, where a payment transaction is initiated by the payee on the basis of the payer’s consent;

(3) “payer” means a natural or legal person who holds a payment account and allows a payment order from that payment account or, where there is no payer’s payment account, a natural or legal person who makes a payment order to a payee’s payment account;

(4) “payee” means a natural or legal person who holds a payment account and who is the intended recipient of funds which have been the subject of a payment transaction;

(5) “payment account” means an account held in the name of one or more payment service users which is used for the execution of payment transactions;

...

(21) “mandate” means the expression of consent and authorisation given by the payer to the payee and (directly or indirectly via the payee) to the payer’s PSP to allow the payee to initiate a collection for debiting the payer’s specified payment account and to allow the payer’s PSP to comply with such instructions;

...

(26) “cross-border payment transaction” means a payment transaction initiated by a payer or by a payee where the payer’s PSP and the payee’s PSP are located in different Member States;

(27) “national payment transaction” means a payment transaction initiated by a payer or by a payee, where the payer’s PSP and the payee’s PSP are located in the same Member State;

...’

6 Article 3 of that regulation, entitled ‘Reachability’, provides in paragraph 2:

‘A payer’s PSP which is reachable for a national direct debit under a payment scheme shall be reachable, in accordance with the rules of a Union-wide payment scheme, for direct debits initiated by a payee through a PSP located in any Member State.’

7 Article 9 of the regulation, entitled ‘Payment accessibility’, states in paragraph 2:

‘A payee accepting a credit transfer or using a direct debit to collect funds from a payer holding a payment account located within the Union shall not specify the Member State in which that payment account is to be located, provided that the payment account is reachable in accordance with Article 3.’

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

8 In accordance with Austrian legislation, the VKI has standing to bring an action for the protection of consumers.

9 Deutsche Bahn is a rail transport company with its registered office in Berlin (Germany). It offers consumers the possibility to book international train journeys on its website. For that purpose it concludes contracts with consumers on the basis of its general conditions of carriage.

10 According to one of the clauses in those general conditions of carriage, bookings made on Deutsche Bahn’s website may be paid for by credit card, via PayPal, by credit transfer or under the SEPA direct debit scheme. However, according to that clause, payment by SEPA direct debit is only accepted subject to the observance of several conditions, namely that the payer have a place of residence in Germany, that he consent to the direct debit being taken from an account held with a bank or savings bank that has its registered office in a SEPA-participating State, that he instruct the bank or savings bank to honour the SEPA direct debit and that he register on the Deutsche Bahn website. In addition, in order to activate the SEPA direct debit scheme, the payer must give his consent to undergo a credit check.

11 The VKI brought an action for a prohibitory order before the Handelsgericht Wien (Commercial Court, Vienna, Austria) by which it sought to have Deutsche Bahn ordered to cease using that clause in consumer contracts. In support of that action, the VKI claimed that the clause at issue in the main proceedings, according to which the payer must inter alia have a place of residence in Germany in order to make a payment by SEPA direct debit, is contrary to Article 9(2) of Regulation No 260/2012 since, first, a consumer’s payment account is generally located in the Member State of his residence and, secondly, that clause imposes an even weightier obligation than a condition requiring the payer to open a payment account in Germany.

12 Deutsche Bahn contends that since Regulation No 260/2012 is addressed to payment service providers, it aims to protect payments rather than payers. That regulation does not require payees to offer payment by SEPA direct debit to all consumers throughout the European Union. Moreover, other methods of payment are available to consumers for the purpose of purchasing tickets on its website. In any event, the condition regarding the consumer’s place of residence is justified. Indeed, in contrast to the situation in relation to other payment procedures, under the direct debit scheme the payee receives no payment guarantee from the payment service provider.

13 By judgment of 13 July 2016, the Handelsgericht Wien (Commercial Court, Vienna), allowed the VKI’s claim with regard to consumers residing in Austria, having held that the clause was contrary to Article 9(2) of Regulation No 260/2012.

14 By judgment of 14 March 2017, the Oberlandesgericht Wien (Higher Regional Court, Vienna, Austria), hearing the case on appeal, set aside that judgment and dismissed the VKI’s claim on the ground that, while Article 9(2) of Regulation No 260/2012 ensures that both payers and payees only require a single bank account for both domestic and cross-border payments by direct debit, the regulation does not oblige

payees to accept, in all cases, specific payment instruments for the settlement of commercial transactions with consumers.

- 15 The Oberster Gerichtshof (Supreme Court, Austria), which is hearing the VKI's appeal against that judgment, considers that, by prohibiting payers and payees from specifying in which Member State the other party's account must be held, Article 9(2) of Regulation No 260/2012 does not apply to payment service providers but applies to the relationships between payees and payers and, accordingly, aims to protect payers. Whilst it is true that on a literal interpretation that provision only prohibits making the geographical location of the payment account a criterion, nevertheless, a clause, such as that at issue in the main proceedings, which precludes payment by SEPA direct debit when the payer is not resident in the same Member State as that in which the payee has established his place of business, could be contrary to that provision since a payer's payment account is, as a general rule, located in the Member State in which the payer is resident.
- 16 In those circumstances, the Oberster Gerichtshof (Supreme Court) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Must Article 9(2) of Regulation [No 260/2012] be interpreted as meaning that the payee is prohibited from making payment under the SEPA direct debit scheme dependent on the payer's place of residence being in the Member State in which the payee also has its registered office or residence, if payment in a different way, for example with a credit card, is also allowed?'

Consideration of the question referred

- 17 By its question, the referring court asks, in essence, whether Article 9(2) of Regulation No 260/2012 must be interpreted as precluding a contractual clause, such as that at issue in the main proceedings, which excludes payment by SEPA direct debit where the payer's place of residence is not in the same Member State as that in which the payee has established his place of business.
- 18 As a preliminary point, it must be borne in mind that, as is apparent from recital 1 of Regulation No 260/2012, that regulation was adopted in the context of the project to create SEPA, with the intention of developing, for payments in euros, common Union-wide payment services to replace national payment services.
- 19 According to Article 1, that regulation aims to lay down rules for credit transfer and direct debit transactions denominated in euros within the Union where both the payer's payment service provider and the payee's payment service provider are located in the Union, or where the sole payment service provider involved in the payment transaction is located in the Union.
- 20 As is apparent particularly from recitals 1 and 6 of that regulation, the technical and business requirements provided for by the regulation apply to national and cross-border payments made under SEPA according to the same basic conditions and in accordance with the same rights and obligations, regardless of location within the Union, in order to ensure a complete migration to Union-wide credit transfers and direct debits and thus to introduce an integrated market for electronic payments in euros in which there is no distinction between national and cross-border payments.
- 21 In that respect, Article 9(2) of Regulation No 260/2012 provides that a payee who uses a direct debit to collect funds from a payer holding a payment account located within the Union is not to 'specify' the Member State in which that payment account is to be located, provided that the payment account is reachable in accordance with Article 3 of that regulation, given that the term 'direct debit' is defined in Article 2(2) of that regulation as a national or cross-border payment service for debiting a payer's payment account, where a payment transaction is initiated by the payee on the basis of the payer's consent.

- 22 Pursuant to Article 3(2) of Regulation No 260/2012, a payer's PSP which is reachable for a national direct debit under a payment scheme must be reachable in the same way, as is also apparent from recital 9 of the regulation, for direct debits initiated by a payee in accordance with the rules of a Union-wide payment scheme via a PSP located in another Member State.
- 23 It thus follows from the wording of Article 9(2) of Regulation No 260/2012, read in conjunction with Article 3(2) of that regulation, that a payee receiving a direct debit is prohibited from requiring that the payer's account be located in a particular Member State when that account is reachable for a national direct debit.
- 24 In the present case it is common ground that, although the clause at issue in the main proceedings requires the payer to have his place of residence in the same Member State as that in which the payee has established his place of business, namely Germany, it does not, by contrast, require the payer to have a payment account in a specific Member State. That clause is therefore not explicitly covered by the wording of Article 9(2) of Regulation No 260/2012.
- 25 However, the Court of Justice has consistently held that, in interpreting provisions of EU law, it is necessary to consider not only their wording but also the context in which they occur and the objectives pursued by the rules of which they are part (judgment of 17 October 2018, *Günter Hartmann Tabakvertrieb*, C-425/17, EU:C:2018:830, paragraph 18 and the case-law cited).
- 26 In that regard, the fundamental purpose of Regulation No 260/2012, as was noted in paragraphs 18 to 20 above, is to establish technical and business requirements, as regards direct debits in particular, in order to develop common Union-wide payment services.
- 27 That being said, Article 9(2) of that regulation, in so far as it expressly concerns the specific relationship between the payer and the payee, also contributes to the objective of achieving the high level of consumer protection necessary to ensure broad support for SEPA by those consumers, as is apparent from recital 32 of that regulation.
- 28 That provision allows, as regards payment by direct debit, a single payment account to be used for any transaction within the European Union, thus avoiding costs associated with maintaining several payment accounts, and does so by ensuring, as is apparent from recital 10 of Regulation No 260/2012, that business rules do not have the effect of preventing consumers from making payments, within the context of an integrated market for electronic payments in euros, to accounts held by payees with PSPs located in other Member States.
- 29 However, it must be noted that a clause, such as the one at issue in the main proceedings, under which a distinction is drawn on the basis of the payer's place of residence, is liable to operate mainly to the detriment of consumers who do not have a payment account in the Member State in which the payee has established his place of business. It is common ground that consumers most often have a payment account in the Member State in which they are resident.
- 30 Such a clause therefore indirectly indicates the Member State in which the payment account must be located, thus producing effects comparable to those resulting from such an indication of a specific Member State.
- 31 In most instances, that residence condition restricts the accessibility of payment by SEPA direct debit only to payers with a payment account in the Member State in which the payee has established his place of business and, accordingly, excludes from this method of payment payers with payment accounts in other Member States.
- 32 Accordingly, that clause reserves this method of payment essentially to national payment transactions within the meaning of Article 2(27) of Regulation No 260/2012, namely those made between a payer and a payee each with a payment account with PSPs located in the same Member State, and to the exclusion, as a

result, of most cross-border payment transactions, which involve, in accordance with Article 2(26) of that regulation, PSPs located in different Member States.

33 It follows that a clause such as that at issue in the main proceedings is liable to undermine the practical effect of Article 9(2) of Regulation No 260/2012, since it prevents payers from being able to make a direct debit from an account located in the Member State of their choice. That clause therefore frustrates the objective pursued by that provision, that being, as was stated in paragraph 28 above, to prevent business rules from undermining the development of an integrated market for electronic payments in euros, referred to in recital 1 of that regulation.

34 In this regard it is irrelevant that the consumer may use alternative payment methods. Although payees remain free either to offer payers the possibility of making payments by SEPA direct debit or not, by contrast, contrary to what Deutsche Bahn maintains, when they do offer such a possibility, those payees may not subject the use of that payment method to conditions which undermine the practical effects of Article 9(2) of Regulation No 260/2012.

35 However, according to Deutsche Bahn, it can be inferred from Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ 2018 L 60 I, p. 1) that Article 9(2) of Regulation No 260/2012 does not relate to a residence condition, such as that at issue in the main proceedings.

36 However, aside from the fact that it excludes from its scope transport services, such as those at issue in the main proceedings, and that it only became applicable from 3 December 2018, that is to say after the facts of the main proceedings, it is sufficient to state that Regulation No 2018/302, which specifically concerns geo-blocking, has no effect whatsoever on the interpretation of Article 9(2) of Regulation No 260/2012, as the Advocate General noted in point 39 of his Opinion, in the absence of a cross-reference made by the EU legislature between those two regulations.

37 Deutsche Bahn also maintains that a residence condition such as that at issue in the main proceedings is justified by the need to credit-check payers, since the risk of abuse or default on payment is particularly high when, as in the case in the main proceedings, the direct debit follows on from a mandate delivered directly by the payer to the payee without the involvement of either of their payment service providers. In those circumstances, the payee should himself assess the risk of the client defaulting on his payment.

38 It must be noted, however, as the Advocate General observed in points 46 and 47 of his Opinion, that neither Article 9(2) of Regulation No 260/2012 nor any other provision of that regulation provide for an exception to the obligation set out therein, the EU legislature having sufficiently taken into consideration the various interests at stake between payers and payees when adopting that provision.

39 In any event, as the Commission noted during the hearing, nothing prevents a payee from reducing the risk of abuse or of default on payment by, for example, providing that delivery or printing of tickets will only be possible once the payee has received confirmation that the payment has actually been collected.

40 In the light of the foregoing, the answer to the question referred is that Article 9(2) of Regulation No 260/2012 must be interpreted as precluding a contractual clause, such as that at issue in the main proceedings, which excludes payment by SEPA direct debit where the payer does not have his place of residence in the same Member State as that in which the payee has established his place of business.

Costs

41 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 (Fifth Chamber) hereby rules:

Article 9(2) of Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 must be interpreted as precluding a contractual clause, such as that at issue in the main proceedings, which excludes payment by direct debit in euros under the European Union-wide direct debit scheme (SEPA direct debit) where the payer does not have his place of residence in the same Member State as that in which the payee has established his place of business.

[Signatures]

* Language of the case: German.