



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

14 March 2019*

(Reference for a preliminary ruling — Directive 2010/24/EU — Mutual assistance for the recovery of claims relating to taxes, duties and other measures — Article 13(1) — Article 14(2) — Enforced recovery, by the authorities of the requested Member State, of claims of the applicant Member State — Procedure relating to an application seeking the restitution of those claims to the insolvency estate of a company established in the requested Member State — Defendant in those proceedings — Determination)

In Case C-695/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Helsingin käräjäoikeus (Helsinki District Court, Finland), made by decision of 5 December 2017, received at the Court on 12 December 2017, in the proceedings

Metirato Oy, in liquidation

v

Suomen valtio/Verohallinto,

Eesti Vabariik/Maksu- ja Tolliamet,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, R. Silva de Lapuerta (Rapporteur), Vice-President of the Court, C. Toader, A. Rosas and L. Bay Larsen, Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Finnish Government, by H. Leppo, acting as Agent,
- the Estonian Government, by N. Grünberg, acting as Agent,
- the European Commission, by W. Roels and I. Koskinen, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 November 2018,

* Language of the case: Finnish.

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 13(1) and Article 14(2) of Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (OJ 2010 L 84, p. 1).
- 2 The request has been made in proceedings between Metirato Oy and Suomen valtio/Verohallinto (Finnish State — Tax Authority) and Eesti Vabariik/Maksu- ja Tolliamet (Estonian State — Tax Authority) concerning an application from the administrator of that company's insolvency estate seeking the restitution to the insolvency estate of claims recovered by the Finnish authorities at the request of the Estonian authorities.

Legal context

European Union law

- 3 Recitals 1 to 4 of Directive 2010/24 state:
 - ‘(1) Mutual assistance between the Member States for the recovery of each others’ claims and those of the Union with respect to certain taxes and other measures contributes to the proper functioning of the internal market. It ensures fiscal neutrality and has allowed Member States to remove discriminatory protective measures in cross-border transactions designed to prevent fraud and budgetary losses.
 - (2) Arrangements for mutual assistance for recovery were first set out in Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of the agricultural levies and customs duties [(OJ 1976 L 73, p. 18)]. That Directive and the acts amending it were codified by Council Directive 2008/55/EC of 26 May 2008 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures [(OJ 2008 L 150, p. 28)].
 - (3) Those arrangements, however, while providing a first step towards improved recovery procedures within the Union by approximating applicable national rules, have proved insufficient to meet the requirements of the internal market as it has evolved over the last 30 years.
 - (4) To better safeguard the financial interests of the Member States and the neutrality of the internal market, it is necessary to extend the scope of mutual assistance for recovery to claims relating to taxes and duties not yet covered by mutual assistance for recovery, whilst in order to cope with the increase in assistance requests and to deliver better results, it is necessary to make assistance more efficient and effective and to facilitate it in practice. In order to fulfil these objectives, important adaptations are necessary, whereby a mere modification of the existing Directive 2008/55/EC would not be sufficient. The latter should therefore be repealed and replaced by a new legal instrument which builds on the achievements of Directive 2008/55/EC but provides for clearer and more precise rules where necessary.’

4 Article 1 of the directive provides:

‘This Directive lays down the rules under which the Member States are to provide assistance for the recovery in a Member State of any claims referred to in Article 2 which arise in another Member State.’

5 Article 10 of the directive is worded as follows:

‘1. At the request of the applicant authority, the requested authority shall recover claims which are the subject of an instrument permitting enforcement in the applicant Member State.

2. As soon as any relevant information relating to the matter which gave rise to the request for recovery comes to the knowledge of the applicant authority, it shall forward it to the requested authority.’

6 Article 13 of Directive 2010/24 provides:

‘1. For the purpose of the recovery in the requested Member State, any claim in respect of which a request for recovery has been made shall be treated as if it was a claim of the requested Member State, except where otherwise provided for in this Directive. The requested authority shall make use of the powers and procedures provided under the laws, regulations or administrative provisions of the requested Member State applying to claims concerning the same or, in the absence of the same, a similar tax or duty, except where otherwise provided for in this Directive.

...

The requested Member State shall not be obliged to grant other Member States’ claims preferences accorded to similar claims arising in that Member State, except where otherwise agreed between the Member States concerned or provided in the law of the requested Member State. A Member State which grants preferences to another Member State’s claims may not refuse to grant the same preferences to the same or similar claims of other Member States on the same conditions.

...

5. Without prejudice to Article 20(1), the requested authority shall remit to the applicant authority the amounts recovered with respect to the claim and the interest referred to in paragraphs 3 and 4 of this Article.’

7 According to Article 14 of that directive:

‘1. Disputes concerning the claim, the initial instrument permitting enforcement in the applicant Member State or the uniform instrument permitting enforcement in the requested Member State and disputes concerning the validity of a notification made by a competent authority of the applicant Member State shall fall within the competence of the competent bodies of the applicant Member State. If, in the course of the recovery procedure, the claim, the initial instrument permitting enforcement in the applicant Member State or the uniform instrument permitting enforcement in the requested Member State is contested by an interested party, the requested authority shall inform that party that such an action must be brought by the latter before the competent body of the applicant Member State in accordance with the laws in force there.

2. Disputes concerning the enforcement measures taken in the requested Member State or concerning the validity of a notification made by a competent authority of the requested Member State shall be brought before the competent body of that Member State in accordance with its laws and regulations.

3. Where an action as referred to in paragraph 1 has been brought before the competent body of the applicant Member State, the applicant authority shall inform the requested authority thereof and shall indicate the extent to which the claim is not contested.

4. As soon as the requested authority has received the information referred to in paragraph 3, either from the applicant authority or from the interested party, it shall suspend the enforcement procedure, as far as the contested part of the claim is concerned, pending the decision of the body competent in the matter, unless the applicant authority requests otherwise in accordance with the third subparagraph of this paragraph.

At the request of the applicant authority, or where otherwise deemed to be necessary by the requested authority, and without prejudice to Article 16, the requested authority may take precautionary measures to guarantee recovery in so far as the laws or regulations in force in the requested Member State allow such action.

The applicant authority may, in accordance with the laws, regulations and administrative practices in force in the applicant Member State, ask the requested authority to recover a contested claim or the contested part of a claim, in so far as the relevant laws, regulations and administrative practices in force in the requested Member State allow such action. ...

...'

- 8 The first subparagraph of Article 16(1) of that directive provides:

'At the request of the applicant authority, the requested authority shall take precautionary measures, if allowed by its national law and in accordance with its administrative practices, to ensure recovery where a claim or the instrument permitting enforcement in the applicant Member State is contested at the time when the request is made, or where the claim is not yet the subject of an instrument permitting enforcement in the applicant Member State, in so far as precautionary measures are also possible, in a similar situation, under the national law and administrative practices of the applicant Member State.'

Finnish law

- 9 According to Paragraph 5(1) of the Laki takaisinsaannista konkurssipesään (Law on the restitution of assets to the insolvency estate), in the version applicable to the dispute in the main proceedings, a legal transaction must be set aside, inter alia, if alone or in combination with other measures it unfairly benefits one creditor to the detriment of the other creditors. The requirements for setting aside a transaction are that the debtor was insolvent when the legal transaction was concluded or that that legal transaction contributed to the debtor's insolvency.
- 10 Paragraph 10 of that law provides, inter alia, that the payment of a debt made less than three months prior to the reference date is to be set aside if the amount of the debt paid appears to be substantial in relation to the amount of the insolvency estate. However, in that situation the payment is not to be set aside if, taking account of the circumstances, it may be considered to be customary practice.
- 11 Under Paragraph 23 of that law, the administrator of the insolvency estate or a creditor who has entered its claim or whose claim is otherwise taken into account in the schedule of claims may request restitution by bringing legal proceedings or by challenging the filing of a claim. The action may be brought before the district court which opened insolvency proceedings.

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

- 12 On 18 April 2012, the Tax and Customs Administration of the Republic of Estonia sent a request for recovery to the Finnish Tax Authority, pursuant to Article 10 of Directive 2010/24, concerning taxes and interest due on that tax, in the amount of EUR 28 754.50, to be recovered from Metirato.
- 13 Pursuant to that request, the Finnish Tax Authority sent both its own claims and those of the Estonian State to the Finnish enforcement authorities responsible for the implementation of the procedures for the forced recovery of the claims.
- 14 On 12 February 2013, Metirato voluntarily paid EUR 17 500 to that authority, EUR 15 837.67 of which was sent to the Finnish Tax Authority, which paid EUR 15 541.67 to the Estonian State, pursuant to that request for recovery.
- 15 On 23 April 2013, Metirato voluntarily paid a further EUR 17 803 to the Finnish Tax Authority.
- 16 On 8 May 2013, the Helsingin käräjäoikeus (District Court, Helsinki, Finland) ordered the liquidation of Metirato further to an application made by the company itself.
- 17 On 10 September 2013, the Estonian Tax Authority sent the Finnish Tax Authority a second request for recovery which included, inter alia, the outstanding balance from the first request for recovery of EUR 8 840.17. On 17 September 2013, the Finnish Tax Authority relied on that second claim to file, in addition to its own claims, the claims of the Estonian State against Metirato.
- 18 On 8 May 2014, the administrator of Metirato's insolvency estate brought an action against the Finnish State and its tax authority before the Helsingin käräjäoikeus (District Court, Helsinki) seeking the restitution to the insolvency estate of all the sums paid in accordance with Paragraphs 5 and 10 of the Law on the restitution of assets to the insolvency estate.
- 19 That action is based on the arguments, first, that the Finnish Tax Authority was unduly favoured to the detriment of other creditors by the payments of long overdue taxes at a time when Metirato was already insolvent and that authority should have known of the insolvency and, second, during the critical period, between 25 January and 8 May 2013, Metirato had repaid a large proportion of the tax debt as compared with the amount of the insolvency estate.
- 20 That action is directed against the Finnish State and its tax authority and, if they are not regarded as the proper defendants with respect to the sum of EUR 15 541.67, against the Estonian State.
- 21 The Finnish State challenged the proceedings brought by the administrator of Metirato's insolvency estate, arguing, inter alia, that since the disputed sum was received by the Estonian State, that action should be brought against the latter. The Finnish State submits that, by providing administrative assistance to the Estonian authorities, in accordance with Article 10 of Directive 2010/24, it acted simply as an agent of the Estonian authorities, at no time did it take possession of that amount, and that its task was completed when the restitution was made, so that the request from the administrator of Metirato's insolvency estate regarding that amount must be addressed to the Estonian Tax Authority.
- 22 For its part, the Estonian State has challenged that action on the ground that, in its view, it is clear from the provisions of Article 13(1) and Article 14(2) of Directive 2010/24 that, as the request of the administrator of Metirato's insolvency estate concerns an amount recovered by the Finnish authority, only the latter can be regarded as the defendant in the proceedings for restitution at issue.

- 23 In those circumstances, the Helsingin käräjäoikeus (District Court, Helsinki) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘(1) Must the provisions of Article 13(1) of Directive [2010/24], according to which claims to be recovered pursuant to a request for recovery are to be treated by the requested State as being the claims of that State, be interpreted as meaning that:
 - (a) the requested Member State is also a party to the legal proceedings concerning the restitution to the insolvency estate of sums paid following a recovery, or
 - (b) that the involvement of the requested State is limited to the recovery of the debt by enforcement and the lodgement of the claim in the insolvency proceedings, and that it is the applicant State which is the defendant in a request for recovery concerning the extent of the assets covered by the liquidation?
 - (2) Must Directive [2010/24] be interpreted as meaning that the debts of another Member State are to be recovered using the same means, while remaining separate and distinct from the assets of the requested State, or must the directive be interpreted as meaning that those debts are to be recovered together with the debts of the requested State, in which case they are merged with the debts of the requested State. In other words: does the directive aim exclusively to prohibit the discrimination of debts of another Member State?
 - (3) Is it possible for a dispute concerning restitution of assets to the insolvency estate to be treated as a dispute concerning enforcement measures within the meaning of Article 14(2), and can it be inferred that, according to the directive, that the requested State is also a defendant in such a dispute?’

Consideration of the questions referred

- 24 By its questions, which it is appropriate to examine together, the referring court asks essentially whether Article 13(1) and Article 14(2) of Directive 2010/24 must be interpreted as meaning that they apply to proceedings seeking the restitution, into the insolvency estate of a company established in the requested Member State, of claims which were recovered at the request of the applicant Member State, where those proceedings are based on a dispute concerning the enforcement measure, within the meaning of Article 14(2) and that the requested Member State, within the meaning of those provisions, must be regarded as the defendant in those proceedings and whether the fact that the amount represented by those claims has been separated from the assets of that Member State or merged with them is relevant in that regard.
- 25 In the present case, it must be recalled that, by his action, the administrator of Metirato’s insolvency estate challenges the validity, under Finnish law, of the recovery of claims by the Finnish authority responsible for the enforcement of State claims for the purpose of recovering claims owed by that company to the Finnish State and the Estonian State.
- 26 In so far as that forced recovery procedure was brought in order to enforce a request for recovery addressed to the Finnish authorities by the Estonian authorities, pursuant to Directive 2010/24, it constitutes an enforcement measure taken in the requested Member State, within the meaning of Article 14(2) thereof.
- 27 Therefore, according to that provision, a dispute seeking to challenge the conduct and outcome of those proceedings, such as that at issue in the main proceedings, is a dispute concerning an enforcement measure taken in the requested Member State and must be brought before the competent court of that Member State, in the present case, the Republic of Finland, in accordance with the applicable laws and regulations.

- 28 However, since the wording of that provision does not indicate whether the applicant Member State or the requested Member State is the defendant in such a dispute, it must be determined whether the defendant may be identified having regard to the general scheme and purpose of Directive 2010/24.
- 29 As is clear from recitals 1 to 4 of that directive, it seeks to extend the scope of Directive 76/308, codified by Directive 2008/55, to claims which are not covered in order to better safeguard the financial interests of the Member States and the neutrality of the internal market and to make mutual assistance more efficient and effective and to facilitate it in practice, in order to cope with growing number of assistance requests.
- 30 In accordance with Article 1 of Directive 2010/24, the directive lays down the rules under which the Member States are to provide assistance for the recovery in a Member State of any claims which arise in another Member State.
- 31 As regards the measures taken by the requested Member State for the purposes of recovery, in that Member State, of a claim which is the subject of a recovery request, the requested authority must, in accordance with Article 13(1) of Directive 2010/24, make use of the competences and procedures provided under the laws, regulations or administrative provisions of that Member State since any claims which are the subject of such a request is, except where otherwise provided for in that directive, to be treated as a claim of the requested Member State.
- 32 Likewise, Article 14(4), second subparagraph, and Article 16(1) of Directive 2010/24 provide for the possibility for the requested authority, at the request of the applicant authority, to take precautionary measures in order to ensure recovery of a claim that is disputed, provided that the national law of the requested Member State so permits.
- 33 Furthermore, Article 14 of Directive 2010/24 provides for a division of powers between the courts of the applicant Member State and the requested Member State to hear disputes concerning, on one hand, the claim, the initial instrument permitting enforcement in the applicant Member State, the uniform instrument permitting enforcement in the requested Member State or disputes concerning the validity of a notification given by a competent authority of the applicant Member State, and on the other hand, the enforcement measures taken in the requested Member State or the validity of the notification given by a competent authority of the latter.
- 34 That division of powers results from the fact that the claim and the instrument permitting enforcement are established on the basis of the law in force in the Member State in which the applicant authority is situated, whilst, for enforcement measures in the Member State in which the requested authority is situated, the latter applies according to its national law (see, as regards Directive 76/308, judgment of 14 January 2010, *Kyrian*, C-233/08, EU:C:2010:11, paragraph 40).
- 35 Thus, pursuant to Article 14(1) of Directive 2010/24, any dispute of that claim, initial instrument permitting enforcement in the applicant Member State, uniform instrument permitting enforcement in the requested Member State or notification made by a competent authority of the applicant Member State must be brought before the competent bodies of that Member State and not before those of the requested Member State, whose power of review is expressly limited by Article 14(2) to acts of the requested Member State (judgment of 26 April 2018, *Donnellan*, C-34/17, EU:C:2018:282, paragraphs 43 and 44).
- 36 On the other hand, where it is the enforcement measures taken in the Member State in which the requested authority is situated or the validity of a notification given by the requesting authority that is being contested, the action is to be brought before the competent body of that Member State in accordance with its laws and regulations, that body being the best placed to interpret its national law and to determine whether an act is lawful on the basis of that law (see, as regards Directive 76/308, judgment of 14 January 2010, *Kyrian*, C-233/08, EU:C:2010:11, paragraphs 39, 40 and 49).

- 37 Therefore, it is clear from the provisions of Directive 2010/24 that, first, enforcement measures adopted by the requested Member State are governed by the legislation applicable in that Member State and, second, that disputes concerning those measures must be brought before the competent court of the requested Member State which must examine them in the light of the provisions of its national law.
- 38 The fact that such a dispute arises in the context of proceedings seeking the restitution of assets to the insolvency estate of a company established in the requested Member State cannot call into question the rules relating to the resolution of that dispute laid down by the EU legislature, if the latter has not, for the purpose of those rules, made a distinction according to the nature of the proceedings in which that dispute arises.
- 39 Therefore, as the Advocate General observed, in substance, in points 45 to 47 of his Opinion, it is apparent from the general scheme and purpose of Directive 2010/24 that an action, such as that in the main proceedings, contesting, before the competent body of the requested Member State, the validity, in the light of the law of that Member State, of an enforcement procedure for recovery brought, in accordance with that law, by the authorities of that Member State in order to recover, pursuant to that directive, claims of the applicant Member State, must be brought against the requested Member State, even if such a dispute forms part of a procedure for the restitution of assets to the insolvency estate of a company established in that Member State.
- 40 Furthermore, in the absence of any determination, by Directive 2010/24 of the details rules for conserving the amounts recovered by the requested Member State before their transfer to the applicant Member State, that falls within the competence of the Member States, provided that the obligation to transfer the amounts recovered and the applicable interested are observed.
- 41 Therefore, the fact that the amount represented by those claims recovered by the requested Member State, on the basis of a request for recovery pursuant to that directive, has been separated from the assets of that Member State or merged with them has no effect on the interpretation set out in paragraph 38 of the present judgment.
- 42 Furthermore, it must be recalled that Directive 2010/24 is based on the principle of mutual trust (judgment of 26 April 2018, *Donnellan*, C-34/17, EU:C:2018:282, paragraph 41).
- 43 Therefore, as the Advocate General observed in point 54 et seq. of his Opinion, where an enforcement measure, such as that at issue in the main proceedings, taken in the requested Member State in order to recover a claim of the applicant Member State, is successfully challenged before the competent court of the requested Member State, it is, in principle, for the applicant Member State to reimburse all amounts recovered, pursuant to that measure, which were remitted to it by the requested Member State.
- 44 In those circumstances, the answer to the questions referred is that Article 13(1) and Article 14(2) of Directive 2010/24 must be interpreted as meaning that, first, they apply to proceedings seeking restitution, to the insolvency estate of a company established in the requested Member State, of claims which were recovered at the request of the applicant Member State, if those proceedings are based on disputes concerning the enforcement measures, within the meaning of Article 14(2) and, second, the requested Member State, within the meaning of those provisions, must be regarded as the defendant in those proceedings, the fact that the amount represented by those claims has been separated from the assets of that Member State or merged with them being irrelevant in that regard.

Costs

- 45 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:

Article 13(1) and Article 14(2) of Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures must be interpreted as meaning that, first, they apply to proceedings seeking restitution, to the insolvency estate of a company established in the requested Member State, of claims which were recovered at the request of the applicant Member State, if those proceedings are based on disputes concerning the enforcement measures, within the meaning of Article 14(2) and, second, the requested Member State, within the meaning of those provisions, must be regarded as the defendant in those proceedings, the fact that the amount represented by those claims has been separated from the assets of that Member State or merged with them being irrelevant in that regard.

[Signatures]