



## Reports of Cases

### JUDGMENT OF THE COURT (Third Chamber)

9 November 2017\*

(Reference for a preliminary ruling — Enforceable decision of the European Commission ordering the recovery of sums paid — Article 299 TFEU — Enforcement — Implementing measures — Identification of the competent national court to hear disputes regarding enforcement — Identification of the person on whom the pecuniary obligation rests — Conditions for application of the national procedural rules — Procedural autonomy of the Member States — Principles of equivalence and effectiveness)

In Case C-217/16:

REQUEST for a preliminary ruling under Article 267 TFEU from the Efeteio Athinon (Court of Appeal, Athens, Greece), made by decision of 3 March 2016, received at the Court on 18 April 2016, in the proceedings

**European Commission**

v

**Dimos Zagoriou**

THE COURT (Third Chamber),

composed of L. Bay Larsen (Rapporteur), President of the Chamber, J. Malenovský, M. Safjan, D. Šváby and M. Vilaras, Judges,

Advocate General: M. Bobek,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 8 March 2017,

after considering the observations submitted on behalf of:

- the European Commission, by D. Triantafyllou, M. Konstantinidis and A. Katsimerou, acting as Agents,
- Dimos Zagoriou, by G. Papadopoulos, dikigoros,
- the Greek Government, by E. Tsaousi and K. Georgiadis, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 May 2017,

\* Language of the case: Greek.

gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 299 TFEU and Council Regulation (EEC) No 2052/88 of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 185, p. 9), Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1) and Council Regulation (EEC) No 4256/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the European Agricultural Guidance and Guarantee Fund (EAGGF) Guidance Section (OJ 1988 L 374, p. 25).
- 2 The request has been made in proceedings between the European Commission and Dimos Zagoriou (municipality of Zagori, Greece) concerning the recovery, further to a decision of the Commission ordering the recovery of sums previously paid, enforceable in accordance with Article 299 TFEU, of part of the aid granted by the European Agricultural Guidance and Guarantee Fund (EAGGF).

### **Legal context**

- 3 Article 24 of Regulation No 4253/88 provides:

‘1. If an operation or measure appears to justify only part of the assistance allocated, the Commission shall conduct a suitable examination of the case in the framework of the partnership, in particular requesting that the Member State or other authorities designated by it to implement the operation submit their comments within a specified period of time.

2. Following this examination, the Commission may reduce or suspend assistance in respect of the operation or measure concerned if the examination reveals an irregularity and in particular a significant change affecting the nature or conditions of the operation or measure for which the Commission’s approval has not been sought.

3. Any sum received unduly and to be recovered shall be repaid to the Commission. Interest may be levied on sums not reimbursed.’

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

- 4 By Decision C(2006) 4798 of 4 October 2006, enforceable in accordance with Article 299 TFEU, the Commission set at EUR 284 739.20 the sum owed to it by Dimotiki Epicheirisi Touristikis Anaptyxis tou Dimou Aristi Zagoriou Ioanninon (municipal undertaking for the development of tourism of the municipality of Aristi Zagoriou Ioanninon, Greece). That decision sought to recover aid granted to that undertaking in 1993.
- 5 Since that municipal undertaking had gone into liquidation, the Commission served on the municipality of Kentriko Zagori (Greece), which in the meantime had absorbed the municipality of Aristi Zagoriou Ioanninon and, as a result, was subrogated to the rights and obligations thereof, an order for payment dated 31 August 2008 then, by an act dated 7 October 2008, served upon the

municipality of Kentriko Zagori on 15 October 2008, had the accounts of the municipality of Kentriko Zagori's held at a bank attached up to the sum of EUR 322 213.54. That bank, in execution of the attachment order, paid that entire sum to the Commission.

- 6 As is apparent from the order for reference, on 23 October 2008, the municipality of Kentriko Zagori (Greece), for which the municipality of Zagori pursues the main proceedings as successor to all its rights and liabilities, opposed the order for payment which had been served upon it on the basis of that Commission decision before the Monomeles Protodikeio Athinon (Court of First Instance (single judge), Athens, Greece).
- 7 In the same proceedings, the municipality of Kentriko Zagori also sought the annulment of the attachment order.
- 8 In support of its claims, the defendant pointed to the fact that, on the one hand, it did not have the capacity to be made a defendant in enforcement proceedings and consequently could not be subject to such an enforcement measure and, on the other, the disputed amount related to income which is not attachable.
- 9 By judgment of 14 May 2013, the Monomeles Protodikeio Athinon (Court of First Instance (single judge), Athens), after having declared that it had jurisdiction to hear the dispute due to its private law nature, upheld in part the defendant's claims by annulling the attachment order due to the fact that the municipality of Kentriko Zagori did not have the capacity to be made a defendant in enforcement proceedings.
- 10 The Commission appealed against that judgment before the referring court, taking the view, in particular, that the court of first instance had wrongly interpreted EU law. That institution is of the opinion, in essence, that that court of first instance did not have jurisdiction to hear the dispute in the main proceedings, since that dispute, being administrative in nature, fell to be heard by the administrative courts. The Commission also argued that enforcement must be sought against the municipality of Zagori.
- 11 In those circumstances, the Efeteio Athinon (Court of Appeal, Athens, Greece) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
  - (1) What is the nature of the acts of the [Commission] when it exercises its powers pursuant to Regulations No 2052/88, No 4253/88 and No 4256/88 and, more specifically, are those acts of the Commission acts of public law and do they give rise to administrative disputes as to the substance in any event, in particular where the subject matter of the attachment by the [Commission] of assets held by a third party is a private debt, whereas the initial debt for whose satisfaction enforcement is proceeded with derives from a legal relationship governed by public law which has arisen from the foregoing acts of the [Commission], or are they acts of private law and do they give rise to private disputes?
  - (2) Having regard to the fact that, under Article 299 TFEU, enforcement of acts of the [Commission] which impose a pecuniary obligation on persons other than Member States is to be governed by the rules of civil procedure in force in the State in the territory of which enforcement is proceeded with and that, under that article, the courts of the country concerned are to have jurisdiction over complaints that enforcement is being carried out in an irregular manner, how is the jurisdiction of the national courts over disputes which arise from such enforcement determined, when under national law those disputes are administrative disputes as to the substance, that is to say, when the underlying relationship is one of public law?

- (3) In the case of enforcement of acts of the [Commission] which are adopted pursuant to Regulations No 2052/88, No 4253/88 and No 4256/88 and impose a pecuniary obligation on a person other than Member States, is the capacity to be made a defendant that is possessed by the person liable assessed on the basis of national law or of EU law?
- (4) When the person liable to discharge a pecuniary obligation stemming from an act of the [Commission] adopted pursuant to Regulations No 2052/88, No 4253/88 and No 4256/88 is a community undertaking, which subsequently was wound up, does the community which owns that undertaking owe an obligation to discharge that pecuniary obligation to the [Commission] under the foregoing regulations?

## Consideration of the questions referred

### *The first and second questions*

- 12 By its first and second questions, the referring court asks, in essence, whether Article 299 TFEU must be interpreted as meaning that that article determines the choice of the competent court to hear actions connected with the enforcement of enforceable Commission acts which impose a pecuniary obligation on persons other than States, in accordance with that article.
- 13 In that regard, it is clear from the wording of the first paragraph of Article 299 TFEU that acts, particularly those of the Commission, which impose a pecuniary obligation on persons other than States are enforceable.
- 14 Although it is true that the second paragraph of Article 299 TFEU states that enforcement is to be governed by the rules of civil procedure in force in the State in the territory of which it is carried out, the reference to the rules of civil procedure must be understood as referring to the national rules governing enforcement. The third paragraph of Article 299 TFEU provides that when these formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law and its fourth paragraph stipulates that the courts of the country concerned are to have jurisdiction over complaints that enforcement is being carried out in an irregular manner.
- 15 It follows both from the wording and the structure of Article 299 TFEU that it does not contain an express provision determining, in national law, the courts competent to hear disputes concerning enforcement of enforceable Commission acts imposing a pecuniary obligation on persons other than States.
- 16 Accordingly, it is for the national legal system of each Member State, by virtue of the principle of its procedural autonomy, to make such a determination and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law. Nonetheless, it is clear from the settled case-law of the Court that the application of national law must not undermine the application and effectiveness of EU law and that that would be the case, in particular, if such an application made it impossible in practice to recover the sums improperly granted. National legislation must also be applied in a manner which is not discriminatory as compared to procedures for deciding similar national disputes and the national authorities must act with the same degree of care, and in accordance with rules and procedures which do not make the recovery of the sums in question more difficult, as in comparable cases concerning solely the application of corresponding national legislation (see, to that effect, judgment of 13 March 2008, *Vereniging Nationaal Overlegorgaan Sociale Werkvoorziening and Others*, C-383/06 to C-385/06, EU:C:2008:165, paragraphs 48 and 50 and the case-law cited).

- 17 The Commission submits, in its written observations, that EU law requires courts of the same legal system to have jurisdiction to hear both actions concerning the recovery of aid improperly paid from national resources and those concerning the recovery of aid improperly paid from EU resources.
- 18 In that regard, it follows from the considerations set out in paragraph 16 of this judgment that actions involving enforcement of acts of a national public authority and those involving enforcement of an act of an EU institution, referred to in Article 299 TFEU, must be treated equally.
- 19 To that end, it is appropriate, on the one hand, to identify the comparable procedures or action and, on the other, to determine whether the actions concerning enforcement of an act covered by Article 299 TFEU are handled in a less favourable manner than comparable actions concerning the enforcement of an act of a national public authority.
- 20 With regard, firstly, to the comparability of actions, it is solely for the national court, which has direct knowledge of the detailed procedural rules applicable, to ascertain whether the actions concerned are similar as regards their purpose, cause of action and essential characteristics (judgment of 27 June 2013, *Agrokonsulting-04*, C-93/12, EU:C:2013:432, paragraph 39 and the case-law cited).
- 21 Secondly, with regard to the similar handling of the actions, it must be borne in mind that every case in which the question arises as to whether a procedural rule of national law based on EU law is less favourable than those governing similar domestic actions, the national court must take into account the role played by that provision in the procedure as a whole, as well as the operation and any special features of that procedure before the different national courts (judgment of 1 December 1998, *Levez*, C-326/96, EU:C:1998:577, paragraph 44 and the case-law cited).
- 22 The national court must, accordingly, consider whether the procedural rules applicable to actions concerning enforcement of an act covered by Article 299 TFEU are less favourable than those applicable to actions concerning the enforcement of an act of a national public authority. Thus, EU law would be infringed if the application of different rules to similar disputes were to lead to less favourable treatment of actions concerning the enforcement of acts covered by Article 299 TFEU.
- 23 In that regard, it must be borne in mind that a procedural rule under which similar disputes are heard in different national courts, depending on whether those disputes involve EU law or national law, does not necessarily constitute a procedural rule which may be classified as unfavourable (see, by analogy, judgment of 12 February 2015, *Baczó and Vizsnyiczai*, C-567/13, EU:C:2015:88, paragraph 46).
- 24 In that regard, it is clear in the present case that, on the one hand, no complaint has been made that actions brought, in particular, before the civil courts are less favourable to the Commission than those brought before the administrative courts and, on the other, the file before the Court does not contain any indication to that effect. Accordingly, it is for the national court to examine any disregard which there may be, in the present case, of the principle of equivalence.
- 25 In the light of all the foregoing considerations, the answer to the first and second questions is that Article 299 TFEU must be interpreted as not determining the choice of the national competent court to hear actions connected with the enforcement of enforceable Commission acts which impose a pecuniary obligation on persons other than States, in accordance with that article, that determination being a matter for national law by virtue of the principle of procedural autonomy, provided that that determination does not undermine the application and effectiveness of EU law.
- 26 It is for the national court to determine whether the application of the national procedural rules to actions concerning the enforcement of acts covered by Article 299 TFEU is made in a non-discriminatory manner compared to the procedures for deciding national disputes of the same

type and in accordance with procedural rules which do not make the recovery of the sums referred to in those acts more difficult than in comparable cases involving the application of the corresponding national provisions.

### *The third and fourth questions*

- 27 By its third and fourth questions, the referring court asks, in essence, whether Article 299 TFEU and Regulations Nos 2052/88, 4253/88 and 4256/88 must be interpreted as meaning that they define, in circumstances such as those at issue in the main proceedings, the persons against whom enforcement may be pursued by virtue of an enforceable decision of the Commission ordering the recovery of sums paid.
- 28 In that regard, it must be recalled that, under the first subparagraph of Article 299 TFEU, acts of the Council of the European Union, the Commission or the European Central Bank which impose a pecuniary obligation on persons other than States, are to be enforceable.
- 29 It follows from that provision that those acts may be enforced against persons to whom they relate, other than States.
- 30 With regard to the national rules on enforcement, it is clear from the second and third subparagraphs of Article 299 TFEU that those rules govern the means of enforcement and not the identity of persons capable of being the object of such enforcement.
- 31 Accordingly, in the absence of EU law rules specifying those persons and enabling the determination in particular of whether enforcement may be pursued against a person other than the addressee of the Commission decision, it is for the internal legal order of each Member State to establish the persons against whom enforcement may be pursued, on condition, however, that the national rules are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not make it excessively difficult or impossible in practice to exercise the rights conferred by EU law (principle of effectiveness) (see, to that effect, judgment of 12 February 2015, *Baczó and Vizsnyiczai*, C-567/13, EU:C:2015:88, paragraphs 41 and 42 and the case-law cited).
- 32 It is on that basis that it is for the referring court, in the event of the disappearance of the person who is the object of a decision imposing a pecuniary obligation on that person, to specify those persons.
- 33 In that regard, the Commission argues that the relevant national rules of succession totally exclude or make excessively difficult the enforcement of decisions adopted by virtue of Article 299 TFEU as regards a particular category of EU debtors and, in any event, make the reimbursement of EU debts more difficult than that of analogous debts of the Greek State. According to the Commission, those rules allow a public authority which controls a company which has wrongly received EU aid to liquidate that company and, in essence, transfer all its assets, including that aid, to itself, while having the discretion to renounce its liabilities. Thus, in the case at issue in the main proceedings, the municipality of Zagori inherited the debts that the municipality of Kentriko Zagori owed to the Greek State and the social security bodies, but not those owed to the EU.
- 34 However, the third and fourth questions referred by the referring court do not concern the conformity with EU law of the rules of national law concerning the succession of a liquidated municipal undertaking. Moreover, the order for reference does not contain any relevant legal framework as regards the rules of succession in national law and so does not enable the Court to assist the referring court to resolve the specific dispute pending before that court.

35 In the light of all the foregoing considerations, the answer to the third and fourth questions is that Article 299 TFEU and Regulations Nos 2052/88, 4253/88 and 4256/88 must be interpreted as meaning that they do not define, in circumstances such as those at issue in the main proceedings, the persons against whom enforcement may be pursued by virtue of an enforceable decision of the Commission ordering the recovery of sums paid. It is for the national court to define those persons, in compliance with the principles of equivalence and effectiveness.

### **Costs**

36 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 (Third Chamber) hereby rules:

**1. Article 299 TFEU must be interpreted as not determining the choice of the national competent court to hear actions connected with the enforcement of enforceable European Commission acts which impose a pecuniary obligation on persons other than States, in accordance with that article, that determination being a matter for national law by virtue of the principle of procedural autonomy, provided that that determination does not undermine the application and effectiveness of European Union law.**

**It is for the national court to determine whether the application of the national procedural rules to actions concerning the enforcement of acts covered by Article 299 TFEU is made in a non-discriminatory manner compared to the procedures for deciding national disputes of the same type and in accordance with procedural rules which do not make the recovery of the sums referred to in those acts more difficult than in comparable cases involving the application of the corresponding national provisions.**

**2. Article 299 TFEU and Council Regulation (EEC) No 2052/88 of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments, Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments and Council Regulation (EEC) No 4256/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the European Agricultural Guidance and Guarantee Fund (EAGGF) Guidance Section must be interpreted as meaning that they do not define, in circumstances such as those at issue in the main proceedings, the persons against whom enforcement may be pursued by virtue of an enforceable decision of the Commission ordering the recovery of sums paid.**

**It is for the national court to define those persons, in compliance with the principles of equivalence and effectiveness.**

[Signatures]