



Reports of Cases

Case C-34/17

Eamonn Donnellan
v
The Revenue Commissioners

(Request for a preliminary ruling from the High Court (Ireland))

(Reference for a preliminary ruling — Mutual assistance for the recovery of claims — Directive 2010/24/EU — Article 14 — Right to an effective remedy — Charter of Fundamental Rights of the European Union — Article 47 — Possibility for the requested authority to refuse recovery assistance on the basis that the claim was not duly notified)

Summary — Judgment of the Court (Second Chamber), 26 April 2018

1. *Approximation of laws — Mutual assistance for the recovery of claims — Principle of mutual trust — Scope — Limitations — Restrictive interpretation*

(Council Directive 2010/24)

2. *Approximation of laws — Mutual assistance for the recovery of claims — Recovery measures or precautionary measures — Disputes — Competence of the requested authority — Competence to refuse recovery assistance — Conditions*

(Council Directive 2010/24, Art. 14(2); Rules of Procedure of the Court of Justice, Art. 47)

3. *Approximation of laws — Mutual assistance for the recovery of claims — Recovery measures or precautionary measures — Disputes — Request for recovery of a claim relating to a pecuniary sanction imposed in another Member State — Refusal by the requested authority to execute that request on the basis that the claim was not duly notified — Lawfulness*

(Council Directive 2010/24, Art. 14(1) and (2); Rules of Procedure of the Court of Justice, Art. 47)

1. It should be noted at the outset that the principle of mutual trust between the Member States is of fundamental importance in EU law, given that it allows an area without internal borders to be created and maintained. That principle requires, particularly with regard to the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law (Opinion 2/13 (Accession of the European Union to the ECHR) of 18 December 2014, EU:C:2014:2454, paragraph 191 and the case-law cited).

While coming within the area of the internal market, and not that of freedom, security and justice, Directive 2010/24 is also based on the principle of mutual trust referred to above. The implementation of the system of mutual assistance established by that directive depends on the existence of such trust between the national authorities concerned.

It has also consistently been held that limitations on the principle of mutual trust must be interpreted strictly (see, inter alia, judgments of 14 November 2013, *Baláž*, C-60/12, EU:C:2013:733, paragraph 29; of 16 July 2015, *Diageo Brands*, C-681/13, EU:C:2015:471, paragraph 41; of 25 May 2016, *Meroni*, C-559/14, EU:C:2016:349, paragraph 38; and of 23 January 2018, *Piotrowski*, C-367/16, EU:C:2018:27, paragraph 48).

(see paras 40, 41, 50)

2. Far from giving the bodies of the requested Member State the power to review the acts of the applicant Member State, Article 14(2) of Directive 2010/24 explicitly limits the power of review of those bodies to acts of the requested Member State.

Even though the acts taken by Member States pursuant to the system of mutual assistance established by Directive 2010/24 must be in accordance with the fundamental rights of the European Union, which include the right to an effective remedy enshrined in Article 47 of the Charter, it does not in any way follow that the acts of the applicant Member State must be capable of being challenged both before the courts of that Member State and before those of the requested Member State. On the contrary, that system of mutual assistance, as it is based, in particular, on the principle of mutual trust, increases legal certainty with regard to the determination of the Member State in which disputes are settled and thus makes it possible to avoid forum shopping (see, by analogy, judgment of 21 November 2011, *N.S. and Others*, C-411/10 and C-493/10, EU:C:2011:865, paragraph 79).

It follows that the action which the person concerned brings in the requested Member State, seeking rejection of the demand for payment addressed to him by the authority of that Member State which is competent for the recovery of the claim made in the applicant Member State, cannot lead to an assessment of the legality of that claim.

By contrast, as the Court has previously held, it cannot be ruled out that the requested authority may, exceptionally, decide not to grant its assistance to the applicant authority. Enforcement of the request for recovery of the claim may thus, inter alia, be refused if it is shown that such enforcement is liable to be contrary to the public policy of the Member State of the requested authority (see, with regard to Article 12 of Directive 76/308, to which, in essence, Article 14 of Directive 2010/24 corresponds, judgment of 14 January 2010, *Kyrian*, C-233/08, EU:C:2010:11, paragraph 42).

That being said, it is for the Court to review the limits within which the authorities of a Member State may refuse, by reference to national views such as those relating to the public policy of that State, to grant their assistance to another Member State within the context of a system of cooperation established by the EU legislature (see, to that effect, judgments of 28 April 2009, *Apostolides*, C-420/07, EU:C:2009:271, paragraphs 56 and 57, and of 25 May 2016, *Meroni*, C-559/14, EU:C:2016:349, paragraphs 39 and 40).

(see paras 44-47, 49)

3. Article 14(1) and (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, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding an authority of a Member State from refusing to enforce a request for recovery concerning a claim relating to a fine imposed in another Member State, such as that at issue in the main proceedings, on the ground that the decision imposing that fine was not properly notified to the person concerned before the request for recovery was made to that authority pursuant to that directive.

As the Advocate General noted, in essence, in point 70 of his Opinion, a situation in which the applicant authority seeks recovery of a claim based on a decision which was not notified to the person concerned does not satisfy the condition governing requests for recovery, laid down in Article 11(1) of Directive 2010/24. Since, according to that provision, a request for recovery within the meaning of that directive cannot be made as long as the claim and/or the instrument permitting enforcement of its recovery in the Member State of transmission is contested in that Member State, it follows that such a request also cannot be made when the person concerned has not been informed of the very existence of that claim, that information being a necessary prerequisite for the ability to contest that claim.

Moreover, this interpretation is supported by Article 47 of the Charter and by the case-law of the Court concerning the service and notification of judicial documents. It follows in particular from that case-law that, in order to ensure respect for the rights laid down in Article 47 of the Charter, it is important not only to ensure that the addressee of a document actually receives the document in question but also that he is able to know and understand effectively and completely the meaning and scope of the action brought against him abroad, so as to be able effectively to assert his rights in the Member State of transmission (see, to that effect, judgment of 16 September 2015, *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraphs 31 and 32 and the case-law cited). Such considerations are also relevant in the context of Directive 2010/24. It follows from the foregoing that an exceptional situation such as that at issue in the main proceedings in the present case, in which an authority of a Member State requests an authority of another Member State to recover a claim relating to a fine of which the person concerned was unaware, may legitimately lead to a refusal of assistance with the recovery by that latter authority. The assistance provided for in Directive 2010/24 is, as is indicated by the title and various recitals of that directive, described as ‘mutual’, which implies, in particular, that it is for the applicant authority to create, before it makes a request for recovery, the conditions under which the requested authority will be able to grant its assistance in a meaningful manner and in conformity with the fundamental principles of EU law.

(see paras 57, 58, 61, 62, operative part)