

Request for a preliminary ruling from the Oberlandesgericht Wien (Austria) lodged on 26 January 2018 — Skarb Państwa Rzeczypospolitej Polskiej — Generalny Dyrektor Dróg Krajowych i Autostrad v Stephan Riel, acting as administrator in the insolvency proceedings concerning the assets of Alpine Bau GmbH

(Case C-47/18)

(2018/C 142/39)

Language of the case: German

Referring court

Oberlandesgericht Wien

Parties to the main proceedings

Applicant: Skarb Państwa Rzeczypospolitej Polskiej — Generalny Dyrektor Dróg Krajowych i Autostrad

Defendant: Stephan Riel, acting as administrator in the insolvency proceedings concerning the assets of Alpine Bau GmbH

Questions referred

Question 1

Is Article 1(2)(b) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the Jurisdiction Regulation 2012) ⁽¹⁾ to be interpreted as meaning that an action for a specific declaration in insolvency proceedings (Prüfungsklage) under Austrian law concerns insolvency for the purposes of Article 1(2)(b) of the Jurisdiction Regulation 2012 and is, therefore, excluded from the material scope of that regulation?

Question 2a (only in the event that Question 1 is answered in the affirmative):

Is Article 29(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the Jurisdiction Regulation 2012) to be applied analogously to related actions falling within the scope of the Insolvency Regulation?

Question 2b (only in the event that Question 1 is answered in the negative or Question 2a is answered in the affirmative):

Is Article 29(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the Jurisdiction Regulation 2012) to be interpreted as meaning that proceedings involving the same cause of action and between the same parties exist when a creditor (the applicant) who has lodged a (largely) identical claim in the main proceedings in Austria and in the secondary proceedings in Poland, which (in the main) was contested by the respective administrator, brings actions for a declaration of the existence of insolvency claims of a certain amount first in Poland against the administrator acting in the secondary proceedings in that country and then in Austria against the administrator acting in the main proceedings (the defendant)?

Question 3a:

Is Article 41 of Council Regulation (EU) No 1346/2000 of 29 May 2000 on insolvency proceedings (the Insolvency Regulation) ⁽²⁾ to be interpreted as meaning that the requirement to indicate the 'nature of the claim, the date on which it arose and its amount' is satisfied where, in the lodgement of his claim in the main insolvency, as is the case here, the creditor established in a Member State other than the State of the opening of proceedings (the applicant):

- a) describes the claim simply by assigning a specific amount to it without stating the date on which that claim arose (for example, as a 'claim by the subcontractor JSV Slawomir Kubica in respect of the carrying out of roadworks');
- b) does not state the date on which the claim arose in the claims form itself, but such a date may be inferred from the annexes submitted with that form (for example, on the basis of the date stated on the invoice submitted)?

Question 3b:

Is Article 41 of Council Regulation (EU) No 1346/2000 of 29 May 2000 on insolvency proceedings (the Insolvency Regulation) to be interpreted as not precluding the application of national provisions — for example those relating to the requirement to state the day on which a claim arose — which are more favourable in the particular case to the creditor lodging the claim, who is established in a Member State other than the State of the opening of proceedings?

⁽¹⁾ OJ 2012 L 351, p. 1.

⁽²⁾ OJ 2000 L 160, p. 1.

**Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy)
lodged on 29 January 2018 — Antonio Pasquale Mastromartino v Commissione Nazionale per le
Società e la Borsa (Consob)**

(Case C-53/18)

(2018/C 142/40)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio (Italy)

Parties to the main proceedings

Applicant: Antonio Pasquale Mastromartino

Defendant: Commissione Nazionale per le Società e la Borsa (Consob)

Questions referred

1. Is a 'tied agent' covered by the harmonisation provided for in Directive No 2004/39/EC of the European Parliament and of the Council, of 21 April 2004, ⁽¹⁾ and from what aspects;
2. Is the correct application of Directive No 2004/39/EC of the European Parliament and the Council of 21 April 2004, in particular Articles 8, 23 and 51 of that directive, and of the principles and rules of the Treaties with regard to non-discrimination, proportionality, freedom to provide services and the right of establishment precluded by provisions of national law, such as those in Article 55(2) of Legislative Decree No 58 of 24 February 1998 (Consolidated Law on provisions on financial intermediation pursuant to Articles 8 and 21 of Law No 52 of 6 February 1996), as amended, and also Article 111, paragraph 2 of the Resolution No 16190 of the Commissione Nazionale per le Società e la Borsa — Consob of 29 October 2007 (Regulation laying down the rules implementing Legislative Decree No 58 of 24 February 1998 on intermediaries), that:
 - a) allows the 'discretionary' prohibition of the exercise of the activity of a 'tied agent' (adviser authorised to offer offsite services — formerly financial planner) in relation to actions not entailing the loss of good repute, as defined by national law, and at the same time do not concern compliance with the provisions implementing the Directive;