Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

19 September 2013*

(Judicial cooperation in civil matters — Regulation (EC) No 1346/2000 — Insolvency proceedings — Article 24(1) — Honouring an obligation 'for the benefit of a debtor that is subject to insolvency proceedings' — Payment made to a creditor of that debtor)

In Case C-251/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal de commerce, Brussels (Belgium), made by decision of 14 May 2012, received at the Court on 22 May 2012, in the proceedings

Christian Van Buggenhout and Ilse Van de Mierop, acting as liquidators in the insolvency of Grontimmo SA,

v

Banque Internationale à Luxembourg SA,

THE COURT (Third Chamber),

composed of M. Ilešič (Rapporteur), President of the Chamber, E. Jarašiūnas, A. Ó Caoimh, C. Toader and C.G. Fernlund, Judges,

Advocate General: J. Kokott,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 14 March 2013,

after considering the observations submitted on behalf of:

— Messrs Van Buggenhout and Van de Mierop, acting as liquidators in the insolvency of Grontimmo SA, by themselves and by C. Dumont de Chassart, avocat,

— Banque Internationale à Luxembourg SA, by V. Horsmans, avocat,

— the Belgian Government, by M. Grégoire, M. Jacobs, L. Van den Broeck, and J.-C. Halleux, acting as Agents,

— the German Government, by J. Kemper and T. Henze, acting as Agents,

— the French Government, by G. de Bergues and B. Beaupère-Manokha, acting as Agents,

* Language of the case: French.

— the Portuguese Government, by L. Inez Fernandes and S. Duarte Afonso, acting as Agents,

— the European Commission, by M. Wilderspin, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 8 May 2013,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 24(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1).

2 The request has been made in proceedings between Messrs Van Buggenhout and Van de Mierop, acting as liquidators in the insolvency of Grontimmo SA ('Grontimmo'), and Banque International à Luxembourg SA ('BIL'), concerning an action brought against the latter seeking an order that BIL transfer back the payment it made to one of Grontimmo's creditors to the assets administered by the liquidators.

Legal context

EU law

3 Recitals 4, 23 and 30 in the preamble to Regulation 1346/2000 state as follows:

'(4) It is necessary for the proper functioning of the internal market to avoid incentives for the parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position (forum shopping).

…

(23) This Regulation should set out, for the matters covered by it, uniform rules on conflict of laws which replace, within their scope of application, national rules of private international law. Unless otherwise stated, the law of the Member State of the opening of the proceedings should be applicable (*lex concursus*) …

…

(30) It may be the case that some of the persons concerned are not in fact aware that proceedings have been opened and act in good faith in a way that conflicts with the new situation. In order to protect such persons who make a payment to the debtor because they are unaware that foreign proceedings have been opened when they should in fact have made the payment to the foreign liquidator, it should be provided that such a payment is to have a debt-discharging effect.'

4 Article 1(1) of Regulation No 1346/2000 provides:

'This Regulation shall apply to collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator.'

5 Under Article 4(1) of that regulation:

‘Save as otherwise provided in this Regulation, the law applicable to insolvency proceedings and their effects shall be that of the Member State within the territory of which such proceedings are opened …’

6 Article 21(1) of the same regulation provides:

‘The liquidator may request that notice of the judgment opening insolvency proceedings and, where appropriate, the decision appointing him, be published in any other Member State …’

7 Article 24 of Regulation No 1346/2000 provides:

‘1. Where an obligation has been honoured in a Member State for the benefit of a debtor who is subject to insolvency proceedings opened in another Member State, when it should have been honoured for the benefit of the liquidator in those proceedings, the person honouring the obligation shall be deemed to have discharged it if he was unaware of the opening of proceedings.

2. Where such an obligation is honoured before the publication provided for in Article 21 has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been unaware of the opening of insolvency proceedings; where the obligation is honoured after such publication has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been aware of the opening of proceedings.’

Belgian law

8 Under Belgian law, insolvency is governed by the Law on insolvency of 8 August 1997.

9 Article 14 of that law provides that any judgment declaring insolvency is immediately provisionally enforceable from the moment of its delivery, such a judgment taking effect at 24.00 on the day of its delivery and producing all of its effects from that time.

10 Article 16 of the Law on insolvency states that ‘the insolvent party, from the day of the judgment declaring insolvency, shall be automatically divested of the administration of all its assets, including those which it may acquire while in a state of insolvency’.

Dispute in the main proceedings and the question referred for a preliminary ruling

11 Grontimmo is a property development company with its registered office in Antwerp (Belgium). On 11 May 2006, an application to open insolvency proceedings was made in respect of that company before the Tribunal de commerce, Brussels.

12 On 22 and 24 May 2006 respectively two cheques were issued for the benefit of Grontimmo by two of its debtor companies of a total value of EUR 1 400 000.

13 On 29 May 2006, the annual general meeting of Grontimmo accepted the resignation of the directors and appointed new directors, all domiciled in South Africa, with effect from that date. On the same day, Grontimmo acquired a purchase option for EUR 1 400 000 issued by Kostner Development Inc. (‘Kostner’), a company incorporated on 29 March 2006, with its registered office in Panama.

14 On 31 May and 22 June 2006, Grontimmo opened two accounts with Dexia Banque Internationale à Luxembourg, now BIL. The two cheques of a total of EUR 1 400 000 were paid into the first account and that sum was then transferred to the second account.

15 On 2 June 2006, Grontimmos's new directors gave Dexia Banque International à Luxembourg a written order to issue a cheque for EUR 1 400 000 for the benefit of Kostner.

16 Grontimmo was declared insolvent on 4 July 2006 by a judgment of the Tribunal de commerce, Brussels, by which that company was divested automatically and with effect from the first hour of that day of all its assets. That judgment was published in the *Moniteur belge* on 14 July 2006, but was not published in the *Journal officiel du Grand-Duché de Luxembourg*.

17 On 5 July 2006, in compliance with the order of 2 June 2006, Dexia Banque Internationale à Luxembourg, in payment for the purchase option granted by Kostner, issued and encashed a cheque for EUR 1 400 000 for the benefit of that company.

18 On 21 September 2006, Grontimmo's liquidators demanded that Dexia Banque Internationale à Luxembourg repay that amount forthwith, claiming that that payment had been made in contravention of the divestment of the insolvent company's assets and that it was accordingly enforceable against the general body of creditors, the payment in question having been made after the opening of insolvency proceedings. Dexia Banque Internationale à Luxembourg refused to repay that amount on the ground that it had been unaware of the insolvency proceedings and that it could rely on Article 24 of Regulation No 1346/2000.

19 Since all attempts to recover that sum by negotiation proved fruitless, Grontimmo's liquidators commenced the proceedings before the referring court by an action brought on 2 August 2010.

20 The referring court is uncertain whether BIL is able to rely on Article 24 of Regulation No 1346/2000, given, in particular, that, in the present case, Grontimmo's liquidators did not publish the substance of the decision to open insolvency proceedings against that company in Luxembourg, and it cannot be reasonably required of a bank in one Member State to check each day whether its clients in other Member States have been the subject of insolvency proceedings.

21 In those circumstances, the Tribunal de commerce, Brussels, decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'How should the words "obligation for the benefit of a debtor" in Article 24 of Regulation (EC) No 1346/2000 of 29 May 2000 be interpreted? Must those words be interpreted as including a payment made to a creditor of the insolvent debtor at the latter's request, in the case where the party which honoured that payment obligation on behalf and for the benefit of the insolvent debtor did so while unaware of the existence of insolvency proceedings which had been opened against the debtor in another Member State?'

The question referred

22 By its question, the referring court asks essentially whether Article 24(1) of Regulation No 1346/2000 must be interpreted as meaning that a payment made on the order of a debtor subject to insolvency proceedings to one of its creditors falls within the scope of that provision.

23 As a preliminary point, it must be observed that, even if Regulation No 1346/2000 contains, among others, conflict of laws rules aiming to determine international jurisdiction and the applicable law (see, to that effect Case C-527/10 *ERSTE Bank Hungary* [2012] ECR, paragraph 38 and the case-law cited), Article 24 thereof does not count among such rules, but is a provision of substantive law which

applies in each Member State independently of the *lex concursus*. The question referred asks only whether a payment such as that made by Dexia Banque Internationale à Luxembourg to Kostner on the order of Grontimmo falls within paragraph 1 of that provision, according to which, where an obligation has been honoured in a Member State for the benefit of a debtor who is subject to insolvency proceedings opened in another Member State when it should have been honoured for the benefit of the liquidator in those proceedings, the person honouring the obligation must be deemed to have discharged that obligation if he was unaware of the opening of proceedings.

24 To answer that question, as all the parties who have submitted observations have remarked, it is necessary to examine whether the concept of honouring an obligation 'for the benefit of' the debtor who is subject to insolvency proceedings includes only payments or other services to the insolvent debtor or also payments or other services to a creditor of the insolvent debtor.

25 Messrs Van Buggenhout and Van de Mierop, the French Government and the European Commission take the view that that concept does not include a payment to the creditor of an insolvent debtor. However BIL and the Belgian, German and Portuguese Governments submit that such a situation is covered by that concept.

26 According to settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see Case C-533/08 *TNT Express Nederland* [2010] ECR I-4107, paragraph 44 and the case-law cited).

27 Furthermore, the need for a uniform interpretation of European Union regulations makes it impossible for the text of a provision to be considered, in case of doubt, in isolation but requires, on the contrary, that it should be interpreted and applied in the light of the versions existing in the other official languages (see, to that effect Case C-199/08 *Eschig* [2009] ECR I-8295, paragraph 54 and the case-law cited).

28 First, as regards the wording of Article 24(1) of Regulation No 1346/2000, it must be observed that, according to the ordinary meaning of the expression 'for the benefit of', honouring an obligation for the benefit of a person subject to insolvency proceedings does not, prima facie, cover the situation in which an obligation is honoured on the order of that person for the benefit of one of its creditors. In its current usage, that expression means only that an obligation is honoured in favour of that person, as confirmed, in particular, by the Spanish ('a favor de'), French ('au profit du'), Italian ('a favore del'), Dutch ('ten voordelen van') and Portuguese ('a favor de') language versions.

29 Moreover, recital 30 in the preamble to Regulation No 1346/2000 states, in particular, in the German ('Zum Schutz solcher Personen, die … eine Zahlung an den Schuldner leisten'), English ('in order to protect such persons who make a payment to the debtor') and Swedish ('För att skydda sådana personer som infriar en skuld hos gäldenären') language versions, that the situation specifically referred to by Article 24(1) thereof is that of a 'payment' to the insolvent debtor.

30 Furthermore, Article 24(1) provides that the obligation honoured for the benefit of the insolvent debtor should have been for the benefit of the liquidator. That statement makes it unequivocally clear that that article concerns the debts of the insolvent debtor which have become debts of the general body of creditors after the opening of insolvency proceedings.

31 That leads to the conclusion that, according to the wording of the provision whose interpretation is sought, the persons protected by that provision are the debtors of the insolvent debtor who, whether it be directly or indirectly, honour an obligation for the benefit of the latter in good faith.

32 The fact that, in the case in the main proceedings, it is a bank which made the payment concerned, at the behest and on behalf of the insolvent debtor, is irrelevant in that respect. The bank, even if it fulfilled an obligation contracted with regard to the insolvent debtor, has not honoured that obligation 'for the benefit of' the latter within the meaning of Article 24 of Regulation No 1346/2000, since the debtor was not the recipient of the payment.

33 Second, as regards the aim of Article 24(1) of Regulation No 1346/2000 and the legislation of which it is part, it is clear from recital 30 in the preamble thereto that that article enables certain situations which conflict with the new situation created by the opening of the insolvency proceedings to fall outside the liquidator's control.

34 In particular, Article 24(1) allows the deferred recognition of the decision to open insolvency proceedings, in that it permits the assets belonging to the general body of creditors to be reduced by debts of the insolvent debtor paid to the latter by its debtors in good faith.

35 That provision must not be interpreted in a sense which also enables those assets to be reduced by the debts that the insolvent debtor owes to its creditors. If such an interpretation were to be adopted, the insolvent debtor could, via third parties who are unaware of the opening of insolvency proceedings, transfer the assets to that creditor and thereby undermine one of the principal objectives of Regulation No 1346/2000, set out in recital 4 in the preamble thereto, which consists in avoiding incentives for the parties to transfer assets from one Member State to another, seeking to obtain a more favourable legal position.

36 It is clear from all of the foregoing considerations relating to the wording and purpose of Article 24(1) of Regulation No 1346/2000, the context of that provision and the objectives pursued by the legislation of which it is part that a situation such as that at issue in the main proceedings, in which the insolvent debtor has, indirectly, honoured an obligation to one of its creditors, does not fall within the scope of that provision.

37 However, the fact that Article 24(1) of Regulation No 1346/2000 is not applicable to a situation such as that at issue in the main proceedings does not, in itself, give rise to the obligation for the bank concerned to reimburse the disputed sum to the general body of creditors. The issue regarding any liability of that bank is governed by the applicable national law.

38 Having regard to the foregoing, the answer to the question referred is that Article 24(1) of Regulation No 1346/2000 must be interpreted as meaning that a payment made at the behest of a debtor subject to insolvency proceedings to one of the latter's creditors does not fall within the scope of that provision.

Costs

39 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:

Article 24(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as meaning that a payment made at the behest of a debtor subject to insolvency proceedings to one of the latter's creditors does not fall within the scope of that provision.

[Signatures]