Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

9 October 2019*

(Reference for a preliminary ruling — Area of freedom, security and justice — Judicial cooperation in civil matters — Regulation (EC) No 593/2008 — Law applicable to contractual obligations — Article 14 — Assignment of claims — Third-party effects)

In Case C-548/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Saarländisches Oberlandesgericht (Higher Regional Court of Saarland, Germany), made by decision of 8 August 2018, received at the Court on 23 August 2018, in the proceedings

BGL BNP Paribas SA

v

TeamBank AG Nürnberg,

THE COURT (First Chamber),

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

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– TeamBank AG Nürnberg, by C. Hecken, Rechtsanwältin,

– the German Government, by M. Hellmann, U. Bartl and T. Henze, acting as Agents,

– the Czech Government, by M. Smolek, J. Vláčil and A. Kasalická, acting as Agents,

– the Netherlands Government, by M.K. Bulterman and J.M. Hoogveld, acting as Agents,

– the European Commission, by M. Heller and M. Wilderspin, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

* Language of the case: German.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 14 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations ('Rome I') (OJ 2008 L 177, p. 6, 'the Rome I Regulation').

2 The request has been made in the context of a dispute between BGL BNP Paribas SA ('BNP'), a banking institution based in Luxembourg, and TeamBank AG Nürnberg ('TeamBank'), a banking institution based in Germany, concerning the release of the lodgement, in a German court, of a sum of money deposited by the trustee in insolvency of a debtor of those two institutions.

Legal context

European Union law

The Rome Convention

3 Under the heading 'Voluntary assignment', Article 12 of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980 (OJ 1980 L 266, p. 1; 'the Rome Convention'), provided:

'1. The mutual obligations of assignor and assignee under a voluntary assignment of a right against another person ("the debtor") shall be governed by the law which under this Convention applies to the contract between the assignor and assignee.

2. The law governing the right to which the assignment relates shall determine its assignability, the relationship between the assignee and the debtor, the conditions under which the assignment can be invoked against the debtor and any question whether the debtor's obligations have been discharged.'

The Rome I Regulation

4 The Rome I Regulation replaced the Rome Convention. Recital 38 of that regulation states:

'In the context of voluntary assignment, the term "relationship" should make it clear that Article 14(1) also applies to the property aspects of an assignment, as between assignor and assignee, in legal orders where such aspects are treated separately from the aspects under the law of obligations. However, the term "relationship" should not be understood as relating to any relationship that may exist between assignor and assignee. In particular, it should not cover preliminary questions as regards a voluntary assignment or a contractual subrogation. The term should be strictly limited to the aspects which are directly relevant to the voluntary assignment or contractual subrogation in question.'

5 Under the terms of Article 14 of that regulation, entitled 'Voluntary assignment and contractual subrogation':

'1. The relationship between assignor and assignee under a voluntary assignment or contractual subrogation of a claim against another person (the debtor) shall be governed by the law that applies to the contract between the assignor and assignee under this regulation.

2. The law governing the assigned or subrogated claim shall determine its assignability, the relationship between the assignee and the debtor, the conditions under which the assignment or subrogation can be invoked against the debtor and whether the debtor's obligations have been discharged.

3. The concept of assignment in this article includes outright transfers of claims, transfers of claims by way of security and pledges or other security rights over claims.'

6 Article 27(2) of that regulation provides:

'By 17 June 2010, the [European] Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the question of the effectiveness of an assignment or subrogation of a claim against third parties and the priority of the assigned or subrogated claim over a right of another person. The report shall be accompanied, if appropriate, by a proposal to amend this regulation and an assessment of the impact of the provisions to be introduced.'

Regulation (EU) No 1215/2012

7 Article 26(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 (OJ 2012 L 351, p. 1) provides that 'apart from jurisdiction derived from other provisions of this regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction'.

German law

The BGB

8 Under Paragraph 398 of the Bürgerliches Gesetzbuch (Civil Code; 'the BGB'):

'A claim may be transferred by the creditor by contract with another (assignment). By concluding the contract, the new creditor shall replace the former creditor.'

9 Paragraph 812 of the BGB provides in subparagraph 1 that 'any person who obtains something to the detriment of a third party without legal basis by means of a service provided by that third party, or in any other way, shall be obliged to return it'.

The EGBGB

10 Paragraph 33 of the Einführungsgesetz zum Bürgerlichen Gesetzbuch (Law introductory to the Civil Code; the 'EGBGB'), in the version applicable until the entry into force, on 17 December 2009, of Paragraph 1 of the Gesetz zur Anpassung der Vorschriften des Internationalen Privatrechts an die Verordnung (EG) Nr. 593/2008 (Law adapting private international law to [the Rome I Regulation]), of 25 June 2009 (BGBl. 2009 I, p. 1574) provided:

'1. In the event of an assignment of a claim, the obligations between the former and the new creditors shall be governed by the law governing the contract between them.

2. The law governing the transferred claim shall determine its transferability, the relationship between the new creditor and the debtor, the conditions under which the transfer may be enforced against the debtor and the discharging effect of its performance.'

11 Paragraph 33 of the EGBGB has been deleted by the Law adapting private international law to the Rome I Regulation.

Luxembourg law

12 In accordance with Article 1690(1) of the Civil Code, in the version applicable to the main proceedings, 'an assignment of claim not notified to the debtor shall be ineffective against third parties'.

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

13 TeamBank and a Luxembourg national, domiciled in Germany and a civil servant in Luxembourg ('the debtor'), concluded, on 29 March 2011, a loan agreement, governed by German law and secured by the assignment of the attachable share of her current and future claims to wages and salary, including in particular claims to pension benefits, against her employer in Luxembourg. Her employer was not informed of that assignment.

14 On 15 June 2011, the debtor concluded another loan agreement with BNP. That second contract provided for the assignment of the same claims which the debtor had against her employer in Luxembourg. By registered letter dated 20 September 2012, BNP informed the debtor's employer of that assignment, in accordance with the Luxembourg law applicable to loan agreements.

15 By decision of the Amtsgericht Saarbrücken (District Court, Saarbrücken, Germany) of 5 February 2014, insolvency proceedings were opened against the debtor. In that context, the appointed trustee in insolvency received, from the debtor's employer in Luxembourg, a share of her salary, in the amount of EUR 13 901.64, and deposited that amount with the Amtsgericht Merzig (District Court, Merzig, Germany). The trustee in insolvency justified that lodgement on the basis of the uncertainty as to the identity of the creditor of the said amount, each of the two parties to the main proceedings asserting preferential rights relating, in the case of TeamBank, to a claim in the amount of EUR 71 091.54 and, in the case of BNP, to a claim in the amount of EUR 31 942.95.

16 TeamBank and BNP brought, respectively, an action and a counterclaim before the Landgericht Saarbrücken (Regional Court, Saarbrücken, Germany), requesting the lifting of the lodgement in respect of the entire amount of EUR 13 901.64. That court upheld TeamBank's action and dismissed BNP's counterclaim.

17 BNP appealed against the decision of the Landgericht Saarbrücken (Regional Court, Saarbrücken) to the referring court, arguing that, although the assignment to TeamBank took place before the assignment in its favour, that first assignment had not been notified to the employer in Luxembourg. It stated that, under the Luxembourg law applicable to that assignment, that notification is a requirement for the assignment of claims to be valid, such that the first assignment is without legal effect. Only the second assignment, made in favour of BNP, was properly notified, so that only BNP could request the lifting of the lodgement for the entire amount of EUR 13 901.64.

18 After having established its international jurisdiction on the basis of Article 26 of Regulation No 1215/2012, the referring court notes that the parties to the main proceedings base their claims on the provisions of Article 812(1) of the BGB which concern unjust enrichment.

19 In particular, that court has doubts as to whether the Rome I Regulation can be interpreted as determining the applicable law with regard to the third-party effects of an assignment of a claim in the case of multiple assignments, for the purpose of determining the holder of that claim.

20 In that regard, the national court states that, on that question, German doctrine is divided. According to some authors, the rule arising from Article 14(1) and (2) of that regulation is exhaustive and also covers the third-party effects of the assignment of a claim. To others, the legislative lacuna is intentional.

21 Moreover, that court notes that the application of the German rules on conflict of laws is made difficult by the repeal of Article 33 of the EGBGB by the law adapting private international law to Rome I Regulation.

22 In those circumstances, the Saarländisches Oberlandesgericht (Saarland Higher Regional Court, Germany) has decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Does Article 14 of the [Rome I] Regulation apply to third-party effects in the event of multiple assignments?

(2) If the first question is to be answered in the affirmative, to which law are the third-party effects subject in this case?

(3) If the first question is to be answered in the negative, is that provision applicable *mutatis mutandis*?

(4) If the third question is to be answered in the affirmative, to which law are the third-party effects subject in this case?'

Consideration of the questions referred

23 By its four questions, which it is appropriate to examine together, the referring court asks, in substance, whether Article 14 of the Rome I Regulation must be interpreted as designating, directly or by analogy, the applicable law concerning the third-party effects of the assignment of a claim in the event of multiple assignments of the claim by the same creditor to successive assignees.

24 It should be noted, first of all, that Article 14 of the Rome I Regulation replaced Article 12 of the Rome Convention, which did not concern the third-party effects of the assignment of a claim (see, to that effect, Report on the Convention on the law applicable to contractual obligations, by Mario Giuliano, professor at the University of Milan, and Paul Lagarde, professor at the University of Paris I, OJ 1980 C 282, p. 1).

25 It is appropriate to bear in mind, next, that, with regard to the interpretation of a provision of EU law, it is necessary, in accordance with settled case-law, to take into account not only its terms, but also the context in which it is set and the objectives pursued by the act of which it forms part. The legislative history of a provision of EU law may also reveal elements relevant to its interpretation (judgment of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 47 and the case-law cited).

26 It is necessary to consider, first, whether, according to the wording of Article 14 of the Rome I Regulation, that article expressly designates the applicable law concerning the third-party effects of an assignment of a claim in the case of multiple assignments.

27 As can be seen from its very title ('Voluntary assignment'), Article 14 of that regulation establishes rules on conflict governing various aspects of the assignment of cross-border claims.

28 On the one hand, in accordance with Article 14(1) of the regulation, the relationship between the assignor and the assignee in respect of a claim against the debtor is governed by the law which, under that regulation, applies to the contract between them.

29 On the other, Article 14(2) of the Rome I Regulation provides that the law governing the claim that is the subject of the assignment is to determine the assignable nature of the claim, the relationship between the assignee and the debtor, the conditions on which the assignment is to be effective against the debtor and whether the debtor's obligations have been discharged.

30 Finally, in accordance with Article 14(3) of the Rome I Regulation, the notion of assignment within the meaning of that article includes transfers of claims, whether outright or by way of security, as well as pledges or other security rights over claims.

31 It follows, therefore, that the wording of Article 14 of the Rome I Regulation does not refer to the third-party effects of an assignment of a claim.

32 As regards the context in which Article 14 of the Rome I Regulation is set, it is clear from recital 38 of that regulation that 'matters prior to' an assignment of a claim, such as a prior assignment of the same claim in the context of multiple assignments, despite the fact that they may represent a 'property aspect' of the assignment of the claim, do not fall within the concept of a 'relationship' between the assignor and the assignee within the meaning of Article 14(1) of that regulation. That recital specifies that the term 'relationship' should be strictly limited to those aspects which are directly relevant to the assignment in question.

33 As regards the legislative history of Article 14 of the Rome I Regulation, it should be noted that, while Article 13(3) of the Commission Proposal for a regulation of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I) (COM(2005) 650 final) provided that the third-party effects of an assignment of a claim were to be governed by the law of the country in which the assignor has his habitual residence at the time of the assignment or transfer, that proposal was not accepted during the negotiations within the Council.

34 In addition, Article 27(2) of that regulation requires the Commission to submit 'a report on the question of the effectiveness of an assignment or subrogation of a claim against third parties' and, if appropriate, 'a proposal to amend the [Rome I Regulation] and an assessment of the impact of the provisions to be introduced'.

35 On 29 September 2016, that report, COM(2005) 650 final, was submitted by the Commission to the European Parliament, the Council and the European Economic and Social Committee, from which it emerges that there are no rules of conflict governing the third-party effects of assignments of claims and that it is necessary for the EU legislature to establish such rules.

36 On 12 March 2018, the Commission presented a Proposal for a regulation of the European Parliament and of the Council on the law applicable to the third-party effects of assignments of claims (COM(2018) 96 final), from which it is apparent that the third-party effects of the assignment of claims could, in principle, be governed by the law of the country in which the assignor has his habitual residence.

37 It follows, therefore, that under EU law as it currently stands, the absence of rules of conflict expressly governing the third-party effects of assignments of claims is a choice of the EU legislature.

38 In the light of all the foregoing considerations, the answer to the questions referred is that Article 14 of the Rome I Regulation must be interpreted as not designating, directly or by analogy, the applicable law concerning the third-party effects of the assignment of a claim in the event of multiple assignments of the claim by the same creditor to successive assignees.

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 (First Chamber) hereby rules:

Article 14 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations ('Rome I') must be interpreted as not designating, directly or by analogy, the applicable law concerning the third-party effects of the assignment of a claim in the event of multiple assignments of the claim by the same creditor to successive assignees.

[Signatures]