Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

20 December 2017*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Scope — Action for liability in tort against the members of a committee of creditors which rejected a restructuring plan in insolvency proceedings)

In Case C-649/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Supreme Court, Austria), made by decision of 30 November 2016, received at the Court on 19 December 2016, in the proceedings

Peter Valach,

Alena Valachová,

SC Europa ZV II a.s.,

SC Europa LV a.s.,

VAV Parking a.s.,

SC Europa BB a.s.,

Byty A s.r.o.

v

Waldviertler Sparkasse Bank AG,

Československá obchodná banka a.s.,

Mesto Banská Bystrica,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta (Rapporteur), President of the Chamber, J.-C. Bonichot, A. Arabadjiev, S. Rodin and E. Regan, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

* Language of the case: German.

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Mr Valach, Mrs Valachová, SC Europa ZV II a.s., SC Europa LV a.s., VAV Parking a.s., SC Europa BB a.s. and Byty A s.r.o., by Z. Nötstaller, Rechtsanwältin,

– Waldviertler Sparkasse Bank AG, Československá obchodná banka a.s. and Mesto Banská Bystrica, by S. Fruhstorfer, Rechtsanwältin,

– the Spanish Government, by J. García-Valdecasas Dorrego, acting as Agent,

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

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of 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 (OJ 2012 L 351, p. 1).

2 The request has been made in proceedings between Mr Peter Valach, Mrs Alena Valachová, SC Europa ZV II a.s., SC Europa LV a.s., VAV Parking a.s., SC Europa BB a.s. and Byty A s.r.o. and Waldviertler Sparkasse Bank AG, Československá obchodná banka a.s. and Mesto Banská Bystrica (municipality of Banská Bystrica) concerning an action for liability in tort following the rejection of a restructuring plan in insolvency proceedings relating to VAV invest s.r.o.

Legal context

EU law

Regulation No 1215/2012

3 Recitals 10 and 34 of Regulation No 1215/2012 state:

‘(10) The scope of this Regulation should cover all the main civil and commercial matters apart from certain well-defined matters …

…

(34) Continuity between the … Convention [of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36), as amended by the successive conventions on the accession of new Member States to that convention (“the Brussels Convention”)], [Council] Regulation (EC) No 44/2001 [of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1)] and this Regulation should be ensured, and transitional provisions should

be laid down to that end. The same need for continuity applies as regards the interpretation by the Court of Justice of the European Union of the … Brussels Convention and of the Regulations replacing it.'

4 Article 1(2)(b) of Regulation No 1215/2012 reads as follows:

'This Regulation shall not apply to:

…

(b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings'.

Regulation No 1346/2000

5 Recitals 4, 6 and 7 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1) state:

'(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).

…

(6) In accordance with the principle of proportionality this Regulation should be confined to provisions governing jurisdiction for opening insolvency proceedings and judgments which are delivered directly on the basis of the insolvency proceedings and are closely connected with such proceedings. In addition, this Regulation should contain provisions regarding the recognition of those judgments and the applicable law which also satisfy that principle.

(7) Insolvency proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings are excluded from the scope of the … Brussels Convention …'

6 Article 3(1) of that regulation provides:

'The courts of the Member State within the territory of which the centre of a debtor's main interests is situated shall have jurisdiction to open insolvency proceedings. In the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary.'

Slovak law

7 Paragraph 415 of the Občiansky zákonník (Slovak Civil Code) provides:

'Everyone is obliged to act in such a way that damage does not occur to health, property, nature and the environment.'

8 Paragraph 420(1) of the Civil Code reads as follows:

'Everyone shall be liable for the damage he has caused by a breach of a legal obligation.'

9 According to the order for reference, Slovak law distinguishes, in insolvency proceedings, between winding-up proceedings and restructuring proceedings. Restructuring proceedings are governed by Paragraphs 108 to 165 of the Law on insolvency.

10 Under Paragraph 127(1) of the Law on insolvency, the committee of creditors is to be composed of three or five members, appointed by the meeting of creditors in accordance with that law. Under Paragraph 127(4), all members of the committee of creditors are required to act in the joint interest of all the creditors.

11 The task of the committee under Paragraph 133(1) of the Law on insolvency is, together with the meeting of creditors, to approve the restructuring plan which must be drawn up by the insolvent debtor. If the committee of creditors rejects the restructuring plan or does not take a decision within the time limits laid down in Paragraph 144(1) of that law, it is for the administrator to apply without delay, under Paragraph 144(2) of the law, for winding-up proceedings to be opened.

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

12 VAV invest is a company incorporated under Slovak law whose assets are the subject of restructuring proceedings in Slovakia. Waldviertler Sparkasse Bank, Československá obchodná banka and Mesto Banská Bystrica (municipality of Banská Bystrica) have been appointed as members of the committee of creditors.

13 VAV invest submitted a restructuring plan, as provided for by the Law on insolvency. However, at its meeting of 11 December 2015, the committee of creditors rejected the plan without providing any comprehensible reasons, which led to the frustration of the restructuring proceedings and the liquidation of the assets of VAV invest in the ensuing winding-up proceedings.

14 As a result of the rejection of the restructuring plan, Mr Valach and Mrs Valachová claim to have suffered damage because of the significant loss of value of the shares they held in VAV invest and loss of profits. SC Europa ZV II, SC Europa LV, VAV Parking, SC Europa BB and Byty A for their part, as project companies, claim to have suffered damage caused by the threatened failure of construction projects or delay to those projects.

15 The applicants in the main proceedings brought an action for liability in the Landesgericht Krems an der Donau (Regional Court, Krems an der Donau, Austria), submitting that Waldviertler Sparkasse Bank, Československá obchodná banka and Mesto Banská Bystrica (municipality of Banská Bystrica) had infringed the general duty to avoid causing damage under Paragraph 415 of the Slovak Civil Code and their obligations as members of the committee of creditors under the Law on insolvency, in particular the obligation to act in the joint interest of all the creditors, and were consequently liable for the damage incurred, under Paragraph 420 of the Slovak Civil Code.

16 The Landesgericht Krems an der Donau (Regional Court, Krems an der Donau) dismissed the action without examining the merits, on the ground of lack of international jurisdiction. In its view, the action for liability is inextricably linked with the capacity of the defendants in the main proceedings as members of the committee of creditors and their obligations under the Law on insolvency. The action for liability thus derives directly from insolvency law and is closely linked with that law. It is therefore excluded from the scope of Regulation No 1215/2012 in accordance with Article 1(2)(b) of that regulation and, as a consequence, Regulation No 1346/2000 must be applied to it. In that case, the competent court is the one which opened the insolvency proceedings.

17 The applicants in the main proceedings appealed to the Oberlandesgericht Wien (Regional Court of Appeal, Vienna, Austria), which upheld the dismissal of the action on the ground of lack of international jurisdiction, in that the action falls within insolvency proceedings, as it concerns the

failure of a statutory body under insolvency law to comply with its obligations for the benefit of the creditors as a whole. As an action related to insolvency proceedings, it is covered by the exception in Article 1(2)(b) of Regulation No 1215/2012.

18 The applicants in the main proceedings appealed on a point of law to the Oberster Gerichtshof (Supreme Court, Austria).

19 In that context, the referring court raises the question of the delimitation of the scope of Regulation No 1215/2012 and that of Regulation No 1346/2000, with respect in particular to an action for liability brought against the members of a committee of creditors on the basis of their conduct when voting in insolvency proceedings.

20 In those circumstances, the Oberster Gerichtshof (Supreme Court) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is Article 1(2)(b) of Regulation … No 1215/2012 … to be interpreted as meaning that an action based on a claim for damages in tort against members of a committee of creditors because of their unlawful conduct in voting on a restructuring plan in insolvency proceedings, brought by the holders of shares in the insolvent company — as is the case of [Mr Valach and Mrs Valachová] — and by project companies in a business relationship with the insolvent company — as is the case of [SC Europa ZV II, SC Europa LV, VAV Parking, SC Europa BB and Byty A] — concerns insolvency within the meaning of Article 1(2)(b) of Regulation No 1215/2012 and is therefore excluded from the scope *ratione materiae* of that regulation?'

Consideration of the question referred

21 By its question the referring court essentially asks whether Article 1(2)(b) of Regulation No 1215/2012 must be interpreted as meaning that it applies to an action for liability in tort brought against the members of a committee of creditors because of their conduct in voting on a restructuring plan in insolvency proceedings, and that such an action is therefore excluded from the scope *ratione materiae* of that regulation.

22 Answering the question referred for a preliminary ruling requires a determination of the extent of the jurisdiction of the court which opened the insolvency proceedings, in so far as Article 1(2)(b) of Regulation No 1215/2012, which applies in civil and commercial matters, excludes 'bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings' from its scope.

23 It must be recalled here that, as stated in recital 34 of Regulation No 1215/2012, continuity should be ensured between the Brussels Convention, Regulation No 44/2001 and Regulation No 1215/2012, and also as regards the interpretation by the Court of that convention and the regulations replacing it.

24 In addition, the Court has held that Regulations No 1215/2012 and No 1346/2000 must be interpreted in such a way as to avoid any overlap between the rules of law that those instruments lay down and any legal vacuum. Accordingly, actions excluded under Article 1(2)(b) of Regulation No 1215/2012 from the application of that regulation because they come under 'bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings' fall within the scope of Regulation No 1346/2000. Correspondingly, actions which fall outside the scope of Article 3(1) of Regulation No 1346/2000 fall within the scope of Regulation No 1215/2012 (see, to that effect, judgment of 9 November 2017, *Tünkers France and Tünkers Maschinenbau*, C-641/16, EU:C:2017:847, paragraph 17).

25 As follows in particular from recital 10 of Regulation No 1215/2012, the intention of the EU legislature was to adopt a broad definition of the concept of 'civil and commercial matters' in Article 1(1) of that regulation and, consequently, to provide that the article should be broad in its scope. By contrast, the scope of Regulation No 1346/2000, as stated in recital 6 of that regulation, should not be given a broad interpretation (see, to that effect, judgment of 9 November 2017, *Tünkers France and Tünkers Maschinenbau*, C-641/16, EU:C:2017:847, paragraph 18 and the case-law cited).

26 Applying those principles, the Court has held that only actions which derive directly from insolvency proceedings and are closely connected with them are excluded from the scope of Regulation No 1215/2012. Consequently, only those actions fall within the scope of Regulation No 1346/2000 (see, to that effect, judgment of 9 November 2017, *Tünkers France and Tünkers Maschinenbau*, C-641/16, EU:C:2017:847, paragraph 19 and the case-law cited).

27 It is that criterion that is set out in recital 6 of Regulation No 1346/2000 in order to define the subject matter of that regulation. According to that recital, the regulation should be confined to provisions governing jurisdiction for opening insolvency proceedings and judgments which are 'delivered directly on the basis of the insolvency proceedings and are closely connected with such proceedings'.

28 In this context, it must be determined in the light of the above considerations whether an action for liability in tort, such as that in the main proceedings, satisfies that twofold criterion.

29 With regard to the first criterion, in order to determine whether an action derives directly from insolvency proceedings, the decisive factor applied by the Court to identify the area within which an action falls is not the procedural context of the action but its legal basis. According to that approach, it must be determined whether the right or obligation which forms the basis of the action has its source in the ordinary rules of civil and commercial law or in derogating rules specific to insolvency proceedings (judgment of 9 November 2017, *Tünkers France and Tünkers Maschinenbau*, C-641/16, EU:C:2017:847, paragraph 22).

30 In the present case, according to the referring court, the action at issue in the main proceedings seeks to establish the liability of the members of the committee of creditors which, at a vote on 11 December 2015, rejected the restructuring plan proposed by VAV invest. That rejection was the reason why the winding-up proceedings were opened. The applicants in the main proceedings consider that the committee acted unlawfully, the action for liability being brought on that basis.

31 The referring court states that in Slovak law there are two possible ways of resolving insolvency proceedings, namely restructuring proceedings and winding-up proceedings. If, in restructuring proceedings, the committee of creditors rejects the restructuring plan or does not take a decision within the time limits laid down in Paragraph 144(1) of the Law on insolvency, it is for the administrator to apply without delay for winding-up proceedings to be opened, in accordance with Paragraph 144(2) of that law.

32 In the present case, the action for liability was brought by holders of shares in the company which was the subject of the insolvency proceedings, and by companies in business relationships with that company.

33 Moreover, the action aims in particular to determine whether the members of the committee of creditors, when rejecting the restructuring plan, which rejection lead to the opening of the winding-up proceedings, infringed their duty to act in the joint interest of all the creditors.

34 As is apparent from the order for reference, under Paragraph 127(4) of the Law on insolvency, all members of the committee of creditors are required to act in the joint interest of all the creditors, in that the task of that committee, together with the meeting of creditors, is to assess and, if appropriate, to approve, in accordance with Paragraph 133(1) of the law, the restructuring plan which must be drawn up by the insolvent debtor.

35 The action for liability at issue in the main proceedings is thus the direct and inseparable consequence of the performance by the committee of creditors, a statutory body established when insolvency proceedings are opened, of the task specifically assigned to them by the provisions of national law governing such procedures (see, by analogy, judgment of 2 July 2009, *SCT Industri*, C-111/08, EU:C:2009:419, paragraph 28).

36 Consequently, it is clear that the obligations which form the basis of bringing an action for liability in tort against a committee of creditors, such as that at issue in the main proceedings, originate in rules that are specific to insolvency proceedings.

37 With regard to the second criterion mentioned in paragraph 27 above, it is settled case-law that it is the closeness of the link between a court action and the insolvency proceedings that is decisive for the purposes of deciding whether the exclusion in Article 1(2)(b) of Regulation No 1215/2012 is applicable (judgment of 9 November 2017, *Tünkers France and Tünkers Maschinenbau*, C-641/16, EU:C:2017:847, paragraph 28).

38 In order to ascertain whether the liability of the members of the committee of creditors may be engaged because of the rejection of the restructuring plan, it will be necessary to analyse in particular the extent of that committee's obligations in the insolvency proceedings and the compatibility of the rejection with those obligations. Such an analysis clearly presents a direct and close link with the insolvency proceedings, and is therefore closely connected with the course of those proceedings.

39 In those circumstances, it must be considered that an action such as that at issue in the main proceedings derives directly from insolvency proceedings and is closely connected with them, so that it does not fall within the scope of Regulation No 1215/2012.

40 In the light of those considerations, the answer to the question referred is that Article 1(2)(b) of Regulation No 1215/2012 must be interpreted as meaning that it applies to an action for liability in tort brought against the members of a committee of creditors because of their conduct in voting on a restructuring plan in insolvency proceedings, and that such an action is therefore excluded from the scope *ratione materiae* of that regulation.

Costs

41 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 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 must be interpreted as meaning that it applies to an action for liability in tort brought against the members of a committee of creditors because of their conduct in voting on a restructuring plan in insolvency proceedings, and that such an action is therefore excluded from the scope *ratione materiae* of that regulation.

[Signatures]