Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

21 March 2019*

(Reference for a preliminary ruling — Payment services in the internal market — Directive 2007/64/EC — Article 74(2) — Payment order by credit transfer — Incorrect unique identifier provided by the payer — Execution of the payment transaction on the basis of the unique identifier — Liability of the payee's payment service provider)

In Case C-245/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale Ordinario di Udine (District Court, Udine, Italy), made by decision of 30 March 2018, received at the Court on 9 April 2018, in the proceedings

Tecnoservice Int. Srl, in liquidation,

v

Poste Italiane SpA,

THE COURT (Tenth Chamber),

composed of C. Lycourgos, President of the Chamber, E. Juhász and I. Jarukaitis (Rapporteur), Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Poste Italiane SpA, by A. Fratini, avvocatessa,

– the Italian Government, by G. Palmieri, acting as Agent, and F. Subrani and A. Collabolletta, avvocati dello Stato,

– the Czech Government, by M. Smolek, J. Vláčil and O. Serdula, acting as Agents,

– the European Commission, by H. Tserepa-Lacombe and V. Di Bucci, acting as Agents,

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

gives the following

* Language of the case: Italian.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 74 and 75 of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ 2007 L 319, p. 1).

2 The request has been made in proceedings between Tecnoservice Int. Srl, in liquidation, ('Tecnoservice') and Poste Italiane SpA concerning the payment of a sum of money to the incorrect payee on account of an incorrect unique identifier provided by the payer.

Legal context

EU law

3 Recitals 40, 43 and 48 of Directive 2007/64 state:

'(40) It is essential, for the fully integrated straight-through processing of payments and for legal certainty with respect to the fulfilment of any underlying obligation between payment service users, that the full amount transferred by the payer should be credited to the account of the payee. …

…

(43) In order to improve the efficiency of payments throughout the [European Union], all payment orders initiated by the payer and denominated in euro or the currency of a Member State outside the euro area, including credit transfers and money remittances, should be subject to a maximum one-day execution time. … In view of the fact that national payment infrastructures are often highly efficient and in order to prevent any deterioration in current service levels, Member States should be allowed to maintain or set rules specifying an execution time shorter than one business day, where appropriate.

…

(48) It should be possible for the payment service provider to specify unambiguously the information required to execute a payment order correctly. On the other hand, however, in order to avoid fragmentation and jeopardising the setting-up of integrated payment systems in the [European Union], Member States should not be allowed to require a particular identifier to be used for payment transactions. However, this should not prevent Member States from requiring the payment service provider of the payer to act in due diligence and verify, where technically possible and without requiring manual intervention, the coherence of the unique identifier, and where the unique identifier is found to be incoherent, to refuse the payment order and inform the payer thereof. The liability of the payment service provider should be limited to the correct execution of the payment transaction in accordance with the payment order of the payment service user.'

4 Article 4 of the directive provides:

'For the purposes of this Directive, the following definitions shall apply:

…

(5) “payment transaction” means an act, initiated by the payer or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee;

…

(21) “unique identifier” means a combination of letters, numbers or symbols specified to the payment service user by the payment service provider and to be provided by the payment service user to identify unambiguously the other payment service user and/or his payment account for a payment transaction;

…’

5 Chapter 2, entitled ‘Single payment transactions’, in Title III of the directive, includes Article 37 of the directive, entitled ‘Information and conditions’. Paragraph 1 of that article provides:

‘Member States shall ensure that the following information and conditions are provided or made available to the payment service user:

(a) a specification of the information or unique identifier that has to be provided by the payment service user in order for a payment order to be properly executed;

…’

6 Chapter 3, entitled ‘Framework contracts’, in Title III of the directive, includes Article 42 of the directive, entitled ‘Information and conditions’. That article is worded as follows:

‘Member States shall ensure that the following information and conditions are provided to the payment service user:

…

2. on use of the payment service:

…

(b) a specification of the information or unique identifier that has to be provided by the payment service user in order for a payment order to be properly executed;

…’

7 Article 74 of Directive 2007/64, entitled ‘Incorrect unique identifiers’, provides:

‘1. If a payment order is executed in accordance with the unique identifier, the payment order shall be deemed to have been executed correctly with regard to the payee specified by the unique identifier.

2. If the unique identifier provided by the payment service user is incorrect, the payment service provider shall not be liable under Article 75 for non-execution or defective execution of the payment transaction.

However, the payer’s payment service provider shall make reasonable efforts to recover the funds involved in the payment transaction.

…

3. If the payment service user provides information additional to that specified in Articles 37(1)(a) or 42(2)(b), the payment service provider shall be liable only for the execution of payment transactions in accordance with the unique identifier provided by the payment service user.'

8 Article 75 of the directive, entitled 'Non-execution or defective execution', provides, in essence, in paragraphs 1 and 2, that the liability established by those paragraphs is 'without prejudice to … Article 74(2) and (3)' of the directive.

Italian law

9 Directive 2007/64 was transposed into Italian law by decreto legislativo n. 11, recante attuazione della direttiva 2007/64/CE (Legislative Decree No 11 transposing Directive 2007/64/EC) of 27 January 2010 (Ordinary Supplement to the GURI No 36 of 13 February 2010, 'Legislative Decree No 11/2010').

10 Articles 74 and 75 of Directive 2007/64 were transposed by Articles 24 and 25 of Legislative Decree No 11/2010, the wording of which is almost identical to that of the former provisions.

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

11 On 3 August 2015, a debtor of Tecnoservice made an order for payment by means of a bank transfer to that company of a sum to be credited to a current account with Poste Italiane, identified by means of a unique identifier within the meaning of Article 4(21) of Directive 2007/64, that is, by an international bank account number ('IBAN'). The name of the intended recipient of the transfer, that is, Tecnoservice, was also stated in the transfer order.

12 The transfer was made to the account corresponding to that IBAN. However, the holder of that account was an entity other than Tecnoservice, which therefore never received the sum due to it.

13 Tecnoservice brought an action against Poste Italiane before the Tribunale ordinario di Udine (District Court, Udine, Italy), the referring court, claiming that Poste Italiane was liable on account of its failure to check whether the IBAN indicated by the payer corresponded to the name of the payee. Thus, it was alleged, Poste Italiane allowed the sum in question to be transferred to the wrong recipient, despite there being sufficient information to establish that the unique identifier was incorrect.

14 According to Poste Italiane, it is in no way liable as it credited the account corresponding to the IBAN indicated on the order and is not required to carry out any additional checks whatsoever.

15 The referring court observes in that respect that Directive 2007/64 provides, in essence, that a payment order executed in accordance with a unique identifier is deemed to have been executed correctly.

16 However, according to that court, Articles 74 and 75 of Directive 2007/64 and, therefore, the relevant provisions of the national legislation, can be interpreted in two ways.

17 According to the first interpretation, those articles apply only to the relationship between the payer and his bank, and not to the relationship between the payee's bank and other interested parties, such as the payer, the actual payee or the incorrect payee. In such a case, the second relationship should be subject only to national provisions, which are often based on liability rules that are different and wider in scope than those introduced by the directive.

18 According to the second interpretation, the articles apply to the payment transaction viewed as a whole, including, therefore, the conduct of the payee's bank. In such a case, the liability of the payee's payment service provider would also be strictly linked to simple observance of the IBAN indicated by the payer.

19 In that regard, the referring court observes that the bodies responsible for resolving disputes out of court as part of the Arbitro Bancario e Finanziario (mediation service for banking and finance disputes, Italy) have adopted differing decisions on this subject, but the authority responsible for coordinating these bodies has indicated that it advocates the second interpretation.

20 In those circumstances, the Tribunale ordinario di Udine (District Court, Udine) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Articles 74 and 75 of Directive [2007/64], in the version applicable on 3 August 2015, concerning a payment service provider's obligations and the limitations of such a provider's liability, as transposed into Italian law by Articles 24 and 25 of [Legislative Decree No 11/2010], be interpreted as being applicable only to the payment service provider of the person who ordered the payment, or as being applicable also to the payee's payment service provider?'

Consideration of the question referred

21 By its question, the referring court asks, in essence, whether Articles 74 and 75 of Directive 2007/64 must be interpreted as meaning that, when a payment order is executed in accordance with the unique identifier provided by the payment service user, which does not correspond to the payee name indicated by that user, payment service provider liability is limited to the payer's payment service provider alone or that such liability extends to the payee's payment service provider.

22 It should be borne in mind that Article 74(1) of Directive 2007/64 provides that 'if a payment order is executed in accordance with the unique identifier, the payment order shall be deemed to have been executed correctly with regard to the payee specified by the unique identifier'. The first subparagraph of Article 74(2) states that 'if the unique identifier provided by the payment service user is incorrect, the payment service provider shall not be liable under Article 75 for non-execution or defective execution of the payment transaction'.

23 It should therefore be noted that, as it is apparent from the information in the case file before the Court that the referring court's doubts relate, in essence, to the interpretation of Article 74(2) of Directive 2007/64, concerning specifically the case where the unique identifier provided by the payment service user is incorrect, it is sufficient to interpret that provision in order to provide that court with a useful answer.

24 In accordance with the Court's settled case-law, when interpreting a provision of EU law, it is necessary to consider not only its wording but also its context and the objectives pursued by the rules of which it is part (judgments of 2 September 2015, *Surmačs*, C-127/14, EU:C:2015:522, paragraph 28 and the case-law cited, and of 16 November 2016, *DHL Express (Austria)*, C-2/15, EU:C:2016:880, paragraph 19).

25 In the present case, it is clear that the wording of the first subparagraph of Article 74(2) of Directive 2007/64, which simply uses the expression 'payment service provider', does not distinguish between types of payment service provider. In the light of that wording, the limitation of liability provided for by that article therefore applies to each of the providers involved in the transaction, not to only one of them.

26 That literal interpretation is borne out by the context of that provision. First, a 'payment transaction' is defined, for the purposes of Directive 2007/64, in Article 4(5) of the directive as being an act, 'initiated by the payer or by the payee', of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee. It is thus apparent from that definition that the term 'payment transaction' refers to a single act as a whole between the payer and payee, not only each of the relationships of the payer and the payee with their own respective payment service provider.

27 Secondly, the second subparagraph of Article 74(2) of Directive 2007/64 requires 'the payer's payment service provider' alone to make reasonable efforts to recover the funds involved in the payment transaction. Thus, if the EU legislature had intended to limit the effects of the first subparagraph of Article 74(2) of Directive 2007/64 to the payer's payment service provider as regards payments made in accordance with a unique identifier provided by the user, it would have so specified in that article.

28 In addition, the interpretation of Article 74(2) of Directive 2007/64, as set out in paragraph 25 above, is also borne out by the objectives of the directive. It must be noted that, according to recital 40 of Directive 2007/64, the directive seeks to guarantee the fully integrated straight-through processing of transactions and, according to recital 43 of the directive, it seeks to improve the efficiency and speed of payments. Those objectives of straight-through processing and speed of payments are better served by an interpretation of that provision that limits the liability of both the payer's and the payee's payment service provider, which thus relieves those providers of the obligation to check whether the unique identifier provided by the payment service user does in fact correspond to the person named as the payee.

29 Moreover, it should be noted that recital 48 of Directive 2007/64 does, admittedly, state that Member States are not prevented from requiring, where technically possible and without requiring manual intervention, the payment service provider of 'the payer' to act with due diligence. However, that recital does not distinguish between the two types of provider when it states that the liability of the payment service provider should be limited to the correct execution of the payment transaction in accordance with the payment order of the payment service user.

30 It follows from all the foregoing considerations that the answer to the question referred is that Article 74(2) of Directive 2007/64 must be interpreted as meaning that, when a payment order is executed in accordance with the unique identifier provided by the payment service user, which does not correspond to the payee name indicated by that user, the limitation of payment service provider liability, provided for by that article, applies to both the payer's and the payee's payment service provider.

Costs

31 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 (Tenth Chamber) hereby rules:

Article 74(2) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC must be interpreted as meaning that, when a payment order is executed in accordance with the unique identifier provided by the payment service user, which does not correspond to the payee name indicated by that user, the limitation of payment service provider liability, provided for by that article, applies to both the payer's and the payee's payment service provider.

[Signatures]