Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

29 July 2024*

(Reference for a preliminary ruling – Companies – Divisions of public limited liability companies – Sixth Directive 82/891/EEC – Article 3(3)(b) – Division by the formation of new companies – Concept of 'liability … not allocated by the draft terms of division' – Joint and several liability of those new companies for liabilities resulting from the conduct of the company being divided prior to that division)

In Case C-713/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte suprema di cassazione (Supreme Court of Cassation, Italy), made by decision of 3 November 2022, received at the Court on 21 November 2022, in the proceedings

LivaNova plc

v

Ministero dell'Economia e delle Finanze,

Ministero dell'Ambiente e della Tutela del Territorio e del Mare,

Presidenza dei Consiglio dei Ministri,

intervening party:

SNIA SpA, under special administration,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, A. Prechal, E. Regan, T. von Danwitz, Z. Csehi and O. Spineanu-Matei, Presidents of Chambers, M. Ilešič, J.-C. Bonichot, P.G. Xuereb (Rapporteur), I. Jarukaitis, A. Kumin, M.L. Arastey Sahún and M. Gavalec, Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: Italian.

after considering the observations submitted on behalf of:

– LivaNova plc, by A. Auricchio, B. Nascimbene, G.C. Rizza, R. Sacchi, C. Santoro, M. Siragusa, D. Vecchi and R. Zaccà, avvocati,

– the Italian Government, by G. Palmieri, acting as Agent, and by G. Di Leo, P. Gentili and F. Vignoli, avvocati dello Stato,

– the Greek Government, by V. Baroutas and K. Boskovits, acting as Agents,

– the Austrian Government, by A. Posch, J. Schmoll and E. Samoilova, acting as Agents,

– the European Commission, by G. Braun, L. Malferrari and P.A. Messina, 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 3(3)(b) of Sixth Council Directive 82/891/EEC of 17 December 1982 based on Article 54(3)(g) of the [EEC] Treaty, concerning the division of public limited liability companies (OJ 1982 L 378, p. 47).

2 The request has been made in proceedings between LivaNova plc and the Ministero dell'Economia e delle Finanze (Ministry of Economy and Finance, Italy), the Ministero dell'Ambiente e della Tutela del Territorio e del Mare (Ministry of Environment, Land and Sea, Italy) ('the Ministry of Environment') and the Presidenza del Consiglio dei Ministri (Presidency of the Council of Ministers, Italy) concerning the finding that LivaNova is jointly and severally liable for the debts arising from the costs of clean-up and environmental damage caused by SNIA SpA as a result of conduct prior to and subsequent to the division of the latter company, from which Sorin SpA, now LivaNova, emerged.

Legal context

European Union law

Third Directive 78/855/EEC

3 Third Council Directive 78/855/EEC of 9 October 1978 based on Article 54(3)(g) of the [EEC] Treaty concerning mergers of public limited liability companies (OJ 1978 L 295, p. 36) was repealed by Directive 2011/35/EU of the European Parliament and of the Council of 5 April 2011 concerning mergers of public limited liability companies (OJ 2011 L 110, p. 1), with effect from 1 July 2011.

4 Article 1 of Third Directive 78/855, entitled ‘Scope’, provided in paragraph 1:

‘The coordination measures laid down by this Directive shall apply to the laws, regulations and administrative provisions of the Member States relating to the following types of company:

…

– Italy: la società per azioni,

…’

Sixth Directive 82/891/EEC

5 Sixth Directive 82/891 was repealed by Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ 2017 L 169, p. 46) as from 20 July 2017. The facts in the dispute in the main proceedings predate that latter date.

6 The fifth recital of Sixth Directive 82/891 stated:

‘… the protection of the interests of members and third parties requires that the laws of the Member States relating to divisions of public limited liability companies be coordinated where the Member States permit such operations’.

7 The eighth to eleventh recitals of that Sixth Directive were worded as follows:

‘… creditors, including debenture holders, and persons having other claims on the companies involved in a division, must be protected so that the division does not adversely affect their interests;

… the disclosure requirements of [First Council Directive 68/151/EEC of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (OJ 1968 L 65, p. 8)] must be extended to include divisions so that third parties are kept adequately informed;

… the safeguards afforded to members and third parties in connection with divisions must be extended to cover certain legal practices which in important respects are similar to division, so that the obligation to provide such protection cannot be evaded;

… to ensure certainty in the law as regards relations between the companies involved in the division, between them and third parties, and between the members, the cases in which nullity can arise must be limited by providing that defects be remedied wherever that is possible and by restricting the period within which nullification proceedings may be commenced’.

8 Article 1 of Sixth Directive 82/891 provided:

‘1. Where Member States permit the companies referred to in Article 1(1) of [Third Directive 78/855] coming under their laws to carry out division operations by acquisition as defined in

Article 2 of this Directive, they shall subject those operations to the provisions of Chapter I of this Directive.

2. Where Member States permit the companies referred to in paragraph 1 to carry out division operations by the formation of new companies as defined in Article 21, they shall subject those operations to the provisions of Chapter II of this Directive.

…'

9 Articles 2 to 20 of Sixth Directive 82/891 are found in Chapter I of that directive, entitled 'Division by acquisition'.

10 Article 2(1) of that Sixth Directive provided:

'For the purposes of this Directive, "division by acquisition" shall mean the operation whereby, after being wound up without going into liquidation, a company transfers to more than one company all its assets and liabilities in exchange for the allocation to the shareholders of the company being divided of shares in the companies receiving contributions as a result of the division (hereinafter referred to as "recipient companies") and possibly a cash payment not exceeding 10% of the nominal value of the shares allocated or, where they have no nominal value, of their accounting par value.'

11 Article 3 of that Sixth Directive stated:

'1. The administrative or management bodies of the companies involved in a division shall draw up draft terms of division in writing.

2. Draft terms of division shall specify at least:

…

(h) the precise description and allocation of the assets and liabilities to be transferred to each of the recipient companies;

(i) the allocation to the shareholders of the company being divided of shares in the recipient companies and the criterion upon which such allocation is based.

3. (a) Where an asset is not allocated by the draft terms of division and where the interpretation of these terms does not make a decision on its allocation possible, the asset or the consideration therefor shall be allocated to all the recipient companies in proportion to the share of the net assets allocated to each of those companies under the draft terms of division.

(b) Where a liability is not allocated by the draft terms of division and where the interpretation of these terms does not make a decision on its allocation possible, each of the recipient companies shall be jointly and severally liable for it. Member States may provide that such joint and several liability be limited to the net assets allocated to each company.'

12 Article 12 of that Sixth Directive was worded as follows:

‘1. The laws of Member States must provide for an adequate system of protection for the interests of the creditors of the companies involved in a division whose claims antedate publication of the draft terms of division and have not yet fallen due at the time of such publication.

2. To that end, the laws of Member States shall at least provide that such creditors shall be entitled to obtain adequate safeguards where the financial situation of the company being divided and that of the company to which the obligation will be transferred in accordance with the draft terms of division make such protection necessary and where those creditors do not already have such safeguards.

3. In so far as a creditor of the company to which the obligation has been transferred in accordance with the draft terms of division has not obtained satisfaction, the recipient companies shall be jointly and severally liable for that obligation. Member States may limit that liability to the net assets allocated to each of those companies other than the one to which the obligation has been transferred. However, they need not apply this paragraph where the division operation is subject to the supervision of a judicial authority in accordance with Article 23 and a majority in number representing three-fourths in value of the creditors or any class of creditors of the company being divided have agreed to forego such joint and several liability at a meeting held pursuant to Article 23(l)(c).

…’

13 In the words of Article 13 of Sixth Directive 82/891:

‘Holders of securities, other than shares, to which special rights are attached, must be given rights in the recipient companies against which such securities may be invoked in accordance with the draft terms of division, at least equivalent to the rights they possessed in the company being divided, unless the alteration of those rights has been approved by a meeting of the holders of such securities, if such a meeting is provided for under national laws, or by the holders of those securities individually, or unless the holders are entitled to have their securities repurchased.’

14 Article 17(1) of that Sixth Directive provided:

‘A division shall have the following consequences *ipso jure* and simultaneously:

(a) the transfer, both as between the company being divided and the recipient companies and as regards third parties, to each of the recipient companies of all the assets and liabilities of the company being divided; such transfer shall take effect with the assets and liabilities being divided in accordance with the allocation laid down in the draft terms of division or in Article 3(3);

(b) the shareholders of the company being divided become shareholders of one or more of the recipient companies in accordance with the allocation laid down in the draft terms of division;

(c) the company being divided ceases to exist.’

15 In Chapter II of that Sixth Directive, entitled 'Division by the formation of new companies', Article 21(1) thereof provided:

'For the purposes of this Directive, "division by the formation of new companies" means the operation whereby, after being wound up without going into liquidation, a company transfers to more than one [newly formed] company all its assets and liabilities in exchange for the allocation to the shareholders of the company being divided of shares in the recipient companies, and possibly a cash payment not exceeding 10% of the nominal value of the shares allocated or, where they have no nominal value, of their accounting par value.'

16 Article 22(1) of that Sixth Directive, also in Chapter II thereof, provided:

'Articles 3, 4, 5 and 7, 8(1) and (2) and 9 to 19 of this Directive shall apply, without prejudice to Articles 11 and 12 of [Directive 68/151], to division by the formation of new companies. For this purpose, the expression "companies involved in a division" shall refer to the company being divided and the expression "recipient companies" shall refer to each of the new companies.'

17 Article 25 of Sixth Directive 82/891, contained in Chapter IV of that directive, entitled 'Other operations treated as divisions', provided:

'Where the laws of a Member State permit one of the operations specified in Article 1 without the company being divided ceasing to exist, Chapters I, II and III shall apply, except for Article 17(1)(c).'

Italian law

18 Article 2506 of the Codice Civile (Civil Code), entitled 'Forms of division', provides:

'In a division, a company allocates all of its assets to more than one company, either pre-existing or newly formed, or a part of its assets, in that case possibly to only one company, and the corresponding shares or units to its shareholders.

…

By the division, the company being divided can either be wound up without going into liquidation or can continue its activity.

…'

19 Article 2506-bis of that code, entitled 'Draft division', provides:

'The management board of the companies involved in the division shall draw up draft terms of the division which must include the information referred to in the first paragraph of Article 2501-ter and a precise description of the assets to be divided between each of the recipient companies and of any cash balance.

If the allocation of an asset cannot be inferred from the draft terms, that element, if all the assets of the company being divided are distributed, shall be apportioned between the recipient companies in proportion to the share of net assets allocated to each of them, as assessed for the purposes of determining the exchange ratio; if the distribution of the company's assets is only partial, that element remains within the assets of the company being divided.

For liabilities the allocation of which cannot be inferred from the draft terms, the recipient companies, in the first case, and the company being divided and the recipient companies, in the second case, shall be jointly and severally liable. Joint and several liability is limited to the actual value of the net assets allocated to each recipient company.

The draft terms of division must indicate the criteria for allocating the shares or units of the recipient companies. Where the draft terms of division provide for the allocation of shareholdings to shareholders which is not proportionate to their initial shareholding, it must provide for the right, for shareholders who do not approve the division, to have their shares acquired for a specific consideration, in accordance with the criteria laid down for withdrawal, and must indicate those on whom the acquisition obligation is to be imposed.'

20 Article 2506-quater of that code, entitled 'Effects of the division', provides, in its final subparagraph:

'Each company is jointly and severally liable, within the limits of the net assets transferred to it or remaining with it, for the debts of the company being divided that are not satisfied by the company to which they have been transferred.'

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

21 On 13 May 2003, SNIA was divided, in accordance with Italian law, with effect from 2 January 2004, a division by which it transferred part of its assets, namely all its shareholdings in the biomedical sector, to a newly formed company, Sorin.

22 The Ministry of Environment brought actions for damages against SNIA for the environmental damage which SNIA had allegedly caused, in the context of its activities in the chemical sector, carried out through its subsidiaries, Caffaro and Caffaro Chimica, on three industrial sites in Brescia (Italy), Torviscosa (Italy) and Colleferro (Italy) respectively.

23 SNIA, which was placed under extraordinary administration in 2010, brought proceedings against Sorin, together with the Ministry of Economy and Finance, the Ministry of Environment and the Presidency of the Council of Ministers, before the Tribunale di Milano (District Court, Milan, Italy), seeking a declaration that Sorin was jointly and severally liable, including vis-à-vis those public authorities, for all of the debts arising from the costs of clean-up and environmental damage, liability for which was attributable to SNIA prior to the division.

24 The defendant public administrations, in turn, sought an order that Sorin, jointly and severally with SNIA, be ordered to pay.

25 In 2015 Sorin became LivaNova.

26 On 1 April 2016, the Tribunale di Milano (District Court, Milan) dismissed all the applications brought by the defendant public authorities. Those authorities appealed against the judgment of that court.

27 By a non-final judgment of 5 March 2019, the Corte d'appello di Milano (Court of Appeal, Milan, Italy) recognised the existence of a causal link between the activities carried out by SNIA and its subsidiaries, on the one hand, and the pollution of the land concerned, on the other. It then found that, as the owner of that land and the corresponding installations, the direct manager and parent

company of the undertakings which operated on that land, SNIA was responsible for an intensive environmental activity which continued, on the three industrial sites concerned, for almost a century, with extremely serious consequences in terms of pollution. As is apparent from the judgment of that court, SNIA has admitted its liability for those facts.

28 The facts giving rise to SNIA's liability occurred chronologically before 13 May 2003, the date on which the division at issue in the main proceedings was carried out. The Corte d'appello di Milano (Court of Appeal, Milan) therefore held LivaNova jointly and severally liable, limited to the transferred assets, in accordance with the third paragraph of Article 2506-bis of the Civil Code, on the ground that the debts arising from the costs of clean-up and environmental damage constituted part of SNIA's liabilities, which were known but the allocation of which could not be inferred from the draft terms of the division concerned.

29 The Corte d'appello di Milano (Court of Appeal, Milan) also ordered that the proceedings be continued in order to determine, by means of an expert report, the exact extent of the pollution on the three industrial sites concerned, the environmental rehabilitation measures necessary and the exact amount of the costs of clean-up and the corresponding environmental damage.

30 By a final judgment of 12 November 2021, the Corte d'appello di Milano (Court of Appeal, Milan), pursuant to the third paragraph of Article 2506-bis of the Civil Code, ordered LivaNova, within the limits of the assets transferred, to reimburse the costs of clean-up and environmental damage caused by the activities of SNIA's subsidiaries on the three industrial sites concerned, giving a total of EUR 453 587 327.48.

31 LivaNova brought an appeal on a point of law against that final judgment before the Corte suprema di cassazione (Supreme Court of Cassation, Italy), which is the referring court.

32 By its second ground of appeal on a point of law, the examination of which by the referring court has given rise to the question referred, LivaNova complains that the Corte d'appello di Milano (Court of Appeal, Milan) failed to take account of the difference between the concept of 'liabilities' within the meaning of the third paragraph of Article 2506-bis of the Civil Code and that of 'debts' within the meaning of Article 2506-quater of the Civil Code, which is intended to transpose Article 12(3) of Sixth Directive 82/891. According to LivaNova, the distinction between those concepts should have led that court to include within the concept of 'debts' only liabilities of a certain nature and existence, with a fixed maturity and amount, and not 'provisions' for risks and 'commitments', given that the latter, which constitute 'liabilities', were relevant only for the purposes of the application of Article 2506-bis of the Civil Code. LivaNova adds that that court wrongly imputed to it damage caused by conduct, by action or omission, subsequent to the division at issue in the main proceedings, in breach of the time limit laid down by the legislation as regards the 'liabilities' or 'debts' which already existed at the time of the division concerned.

33 In order to rule on that ground, the referring court considers that it is necessary to verify the compatibility, with EU law, of the interpretation of the concept of 'liabilities the allocation of which cannot be inferred from the draft terms [of division]', referred to in the third paragraph of Article 2506-bis of the Civil Code, carried out by the Corte d'appello di Milano (Court of Appeal, Milan).

34 The referring court indicates that that liability relates to the harmful consequences of 'ongoing unlawfulness', which is liable to get worse over time and which, by its very nature, is outside 'the strict demarcation which would follow from the result of a company law transaction'. It specifies that, following the division at issue in the main proceedings, the pollution levels of the Torviscosa and Colleferro industrial sites did not increase, but that those of the Brescia industrial site increased and that that increase was causally linked to SNIA's conduct prior to that division.

35 In the light of national law, the decisive factor in the present case is that the court adjudicating on the substance, the Corte d'appello di Milano (Court of Appeal, Milan), found SNIA liable on account of the fact that the event giving rise to the environmental damage concerned had occurred at an earlier date. According to the referring court, that fact makes it possible to establish the prior existence of a debt for the purposes of incurring joint and several liability for the corresponding 'ongoing unlawfulness'.

36 The referring court adds that, in its view, the expression 'liabilities' in the third paragraph of Article 2506-bis of the Civil Code does not imply any predetermined qualitative characteristic. Those elements could therefore consist of debts and even debts independent of the assets that are divided. That interpretation is supported by the purpose of Sixth Directive 82/891, which is to protect creditors, as follows from the judgment of 30 January 2020, *I.G.I.* (C-394/18, EU:C:2020:56, paragraphs 44 and 51).

37 The referring court is of the view, however, that it is necessary to refer a question to the Court for a preliminary ruling, since the interpretation of the concept of 'liabilities the allocation of which cannot be inferred from the draft terms [of division]' in Article 2506-bis of the Civil Code must be compatible with the corresponding concept of a 'liability … not allocated by the draft terms of division' in Article 3(3)(b) of Sixth Directive 82/891.

38 In those circumstances, the Corte suprema di cassazione (Supreme Court of Cassation) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does Article 3[(3)(b)] of [Sixth Directive 82/891], which (under Article 22 thereof) is also applicable to a division by the formation of new companies – in so far as it provides that (a) "where a liability is not allocated by the draft terms of division and where the interpretation of these terms does not make a decision on its allocation possible, each of the recipient companies shall be jointly and severally liable for it", and that (b) "Member States may provide that such joint and several liability be limited to the net assets allocated to each company" – preclude an interpretation of the provision of national law in Article 2506-bis, third paragraph, of the Italian Civil Code according to which the joint and several liability of the recipient refers, in relation to "liabilities" not allocated by the draft terms, not only to liabilities of a nature already determined, but also (i) to those identifiable in the harmful consequences, arising after the division, of conduct (by act or omission) occurring [prior to] the division itself or (ii) of subsequent conduct developing from it, which has an ongoing unlawful nature and causes environmental damage, the effects of which, at the time of the division, cannot yet be fully determined?'

The jurisdiction of the Court

39 Under Article 21 of Sixth Directive 82/891, division by the formation of new companies means the operation whereby, after being wound up without going into liquidation, a company transfers to more than one newly formed company all its assets. However, SNIA transferred not all its assets to several companies, but only part of its assets to a newly formed company, Sorin, now LivaNova.

40 Consequently, the division at issue in the main proceedings does not directly fall within the scope of Sixth Directive 82/891.

41 In accordance with Article 267 TFEU, the Court has jurisdiction to give preliminary rulings concerning the interpretation of the Treaties and acts of the EU institutions. In the context of cooperation between the Court and the national courts, established by Article 267 TFEU, it is for the national courts alone to assess, in view of the special features of each case, both the need for a preliminary ruling in order to enable them to give their judgment and the relevance of the questions which they put to the Court. Consequently, where questions submitted by national courts concern the interpretation of a provision of EU law, the Court is, in principle, obliged to give a ruling (judgment of 30 January 2020, *I.G.I.*, C-394/18, EU:C:2020:56, paragraph 44 and the case-law cited).

42 Applying that case-law, the Court has repeatedly held that it has jurisdiction to give preliminary rulings on questions concerning EU provisions in situations where the facts of the cases being considered by the national courts were outside the direct scope of EU law but where those provisions had been rendered applicable by domestic law due to a reference made by that law to the content of those provisions. In that case, even though the facts of the main proceedings were outside the direct scope of EU law, the provisions of EU law had been made applicable by national legislation, which, in dealing with purely internal situations, follows the same approach as that provided for by EU law (judgment of 30 January 2020, *I.G.I.*, C-394/18, EU:C:2020:56, paragraph 45 and the case-law cited).

43 When, in regulating purely internal situations, domestic legislation seeks to adopt the same solutions as those adopted in EU law in order, for example, to avoid discrimination against foreign nationals or any distortion of competition or to provide for a single procedure in comparable situations, it is clearly in the interest of the Union that, in order to forestall future differences of interpretation, provisions or concepts taken from EU law should be interpreted uniformly, irrespective of the circumstances in which they are to apply. Thus, an interpretation by the Court of provisions of EU law in purely internal situations is warranted on the ground that they have been made applicable by national law directly and unconditionally, in order to ensure that internal situations and situations governed by EU law are treated in the same way (judgment of 30 January 2020, *I.G.I.*, C-394/18, EU:C:2020:56, paragraph 46 and the case-law cited).

44 Where a national court refers a question to the Court in connection with a situation that is outside the direct scope of EU law, the Court cannot, where the referring court does not indicate something other than that the national legislation in question in the main proceedings applies without distinction to situations governed by the provisions of EU law concerned and to purely internal situations, consider that the request for a preliminary ruling on the interpretation of the provisions of that law is necessary to enable that court to give judgment in the case pending before it (judgment of 30 January 2020, *I.G.I.*, C-394/18, EU:C:2020:56, paragraph 47 and the case-law cited).

45 The specific factors that allow it to be established that the provisions of EU law have been made applicable by national law directly and unconditionally, in order to ensure that internal situations and situations governed by EU law are treated in the same way, must be apparent from the order for reference (judgment of 30 January 2020, *I.G.I.*, C-394/18, EU:C:2020:56, paragraph 48 and the case-law cited).

46 To that end, the referring court must indicate, in accordance with Article 94 of the Rules of Procedure of the Court of Justice, in what way the dispute pending before it, despite its purely domestic character, has a connecting factor with the provisions of EU law that makes the preliminary ruling on interpretation necessary for it to give judgment in that dispute. Those requirements also appear in the recommendations of the Court of Justice of the European Union to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (OJ 2019 C 380, p. 1) (judgment of 30 January 2020, *I.G.I.*, C-394/18, EU:C:2020:56, paragraph 49 and the case-law cited).

47 In the present case, the referring court, which alone has jurisdiction to interpret national law in the context of the system of judicial cooperation established in Article 267 TFEU, stated that the third paragraph of Article 2506-bis of the Civil Code, the application of which is the subject matter of the dispute in the main proceedings, transposes Article 3(3)(b) of Sixth Directive 82/891 into national law.

48 In the order for reference, the referring court also highlights the equivalence, in essence, of the wording of those two provisions.

49 In transposing Sixth Directive 82/891 in that way, the Italian legislature therefore decided to apply Article 3(3)(b) of the Sixth Directive directly and unconditionally also to operations whereby a company limited by shares allocated only part of its assets to another company.

50 In the light of those considerations, it must be held that the Court does have jurisdiction to answer the question referred for a preliminary ruling by the referring court.

Admissibility of the request for a preliminary ruling

51 The Austrian Government harbours doubts as to the admissibility of the request for a preliminary ruling on the ground that the factual and legal material necessary for the Court to give a useful answer to the question referred to it does not emerge unambiguously from the order for reference. It states that the referring court has neither clearly set out the facts nor reproduced the relevant national legal framework, in particular Article 2506-bis of the Civil Code. Nor does the referring court specify the reasons why it considers an interpretation of Sixth Directive 82/891 to be necessary.

52 According to settled case-law, the procedure provided for in Article 267 TFEU is an instrument of cooperation between the Court and the national courts by means of which the Court provides the national courts with the points of interpretation of EU law which they need in order to decide the disputes before them (judgment of 27 April 2023, *Castorama Polska and Knor*, C-628/21, EU:C:2023:342, paragraph 25 and the case-law cited).

53 In that regard it should be recalled that, in those proceedings, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of each case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle bound to give a ruling. It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 27 April 2023, *Castorama Polska and Knor*, C-628/21, EU:C:2023:342, paragraph 26 and the case-law cited).

54 It is also apparent from settled case-law, which is now reflected in Article 94 of the Rules of Procedure, that the need to provide an interpretation of EU law which will be of use to the referring court requires that court to define the factual and legislative context of the questions it is asking or, at the very least, to explain the factual circumstances on which those questions are based. The order for reference must also set out the precise reasons why the national court is unsure as to the interpretation of EU law and considers it necessary to refer a question to the Court for a preliminary ruling (see, to that effect, judgment of 27 April 2023, *Castorama Polska and Knor*, C-628/21, EU:C:2023:342, paragraph 27 and the case-law cited).

55 In the present case, contrary to what the Austrian Government maintains, the request for a preliminary ruling contains an account of the subject matter of the dispute in the main proceedings and of the relevant facts, as well as the content of the relevant national provisions, including that of Article 2506-bis of the Civil Code.

56 In addition, the order for reference sets out the precise reasons which prompted the referring court to ask about the interpretation of Article 3(3)(b) of Sixth Directive 82/891 and to consider it necessary to refer a question in that regard to the Court of Justice for a preliminary ruling. It is apparent from that order for reference that the referring court considers it necessary to refer a question to the Court for a preliminary ruling on the ground that the concept of 'liabilities the allocation of which cannot be inferred from the draft terms', which appears in the third paragraph of Article 2506-bis of the Civil Code and which must be interpreted in order to determine whether LivaNova may be regarded as jointly and severally liable for the costs of clean-up and environmental damage caused by SNIA, must be interpreted in the same way as the corresponding concept of a 'liability … not allocated by the draft terms of division', referred to in Article 3(3)(b) of Sixth Directive 82/891, which the third paragraph of Article 2506-bis of the Civil Code transposes.

57 The request for a preliminary ruling is therefore admissible.

Consideration of the question referred

58 By its question, the referring court asks, in essence, whether Article 3(3)(b) of Sixth Directive 82/891 must be interpreted as meaning that the rule on the joint and several liability of recipient companies laid down in that provision applies not only to defined liabilities, not allocated by the draft terms of division, but also to undefined liabilities, such as the costs of clean-up and

environmental damage which were established, evaluated or consolidated subsequent to the division concerned and which result from conduct of the company being divided prior to the division or from conduct subsequent to that division; the latter conduct is itself the development of prior conduct of the company being divided.

59 It is apparent from the first sentence of Article 3(3)(b) of that Sixth Directive, which applies to a division by the formation of new companies by virtue of Article 22(1) of that Sixth Directive, that, where a liability is not allocated by the draft terms of the division concerned and where the interpretation of those draft terms does not make it possible to decide on its allocation, each of the recipient companies is jointly and severally liable for that liability. It is apparent from the second sentence of Article 3(3)(b) of that Sixth Directive that Member States may provide that such joint and several liability is limited to the net assets allocated to each recipient company.

60 The concept of a 'liability' referred to in the first sentence of Article 3(3)(b) of Sixth Directive 82/891 is not defined by that directive. Nor does that article make any reference to the laws of the Member States as regards such a definition.

61 In accordance with settled case-law, the terms of a provision of EU law which does not contain any express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given, throughout the European Union, an autonomous and uniform interpretation which must be determined according to the usual meaning of those terms in everyday language, taking into account the context in which they are used and the objectives pursued by the legislation of which they form part (judgment of 7 September 2023, *KRI*, C-323/22, EU:C:2023:641, paragraph 46 and the case-law cited).

62 In the first place, in its usual meaning, the term 'liability' refers to all debts borne by a legal or natural person. Accordingly, the concept of 'liability' in the first sentence of Article 3(3)(b) of Sixth Directive 82/891 is intended, in a broad sense, to cover any debt of the company being divided, whether certain or uncertain, defined or undefined, irrespective of its origin and nature.

63 In the second place, as regards the context of the first sentence of Article 3(3)(b) of Sixth Directive 82/891, it should be noted that, under Article 3(2)(h) of that Sixth Directive, draft terms of a division must state, inter alia, the precise description and allocation of the assets and liabilities to be transferred to each of the recipient companies.

64 It follows that the concept of 'liability' within the meaning of the first sentence of Article 3(3)(b) of Sixth Directive 82/891 requires the debts concerned, in principle, to be acquired. Since draft terms of division must set out the precise description and allocation of the liabilities to be transferred, those liabilities must have arisen prior to the division concerned. In the case of the costs of clean-up and environmental damage, that requirement therefore implies that the infringement or the event giving rise to that environmental damage occurred prior to the division, but not that, at that date, that damage had been established, evaluated or even consolidated.

65 In the third place, as regards the objectives of Sixth Directive 82/891, it should be noted that the fifth recital of that Sixth Directivereers, among those objectives, to the protection of the interests of members and third parties. It is also apparent from the eighth recital of that Sixth Directive that the directive also seeks to protect creditors and persons having other claims and states that they must be protected so that the division concerned does not adversely affect their interests. Finally,

it follows from the eleventh recital of that Sixth Directive that the directive seeks to ensure certainty in the law as regards relations both between the companies involved in that division and between those companies and third parties, and between the members of those companies.

66 The concept of 'third parties' used in particular in the fifth and eleventh recitals of Sixth Directive 82/891 is broader than that, used in the eighth recital of that Sixth Directive, of 'creditors, debenture holders, and persons having other claims on the companies involved in a division', those creditors and those persons having other claims being subject to certain specific protection measures provided for, inter alia, in Articles 12 and 13 of that Sixth Directive (see, by analogy, judgment of 5 March 2015, *Modelo Continente Hipermercados*, C-343/13, EU:C:2015:146, paragraph 31).

67 It is therefore necessary to consider as third parties, whose interests Sixth Directive 82/891 is intended to protect, those persons which though not yet creditors or persons having other claims at the date of the division concerned may become such after that division as a result of situations antedating the division. This is the case, for instance, for infringements of environmental law provisions which are found to have been committed in a decision adopted after that division (see, by analogy, judgment of 5 March 2015, *Modelo Continente Hipermercados*, C-343/13, EU:C:2015:146, paragraph 32).

68 That interpretation of the concept of 'third parties', within the meaning of Sixth Directive 82/891, supports that of the concept of 'liability' referred to in the first sentence of Article 3(3)(b) of that Sixth Directive, in the sense that it also covers undefined liabilities, such as the costs of clean-up and environmental damage which have been established, evaluated or consolidated subsequent to the division concerned, but which result from conduct prior to that division.

69 If such an interpretation of the concept of 'liability', referred to in the first sentence of Article 3(3)(b) of Sixth Directive 82/891, were not accepted, a division could constitute a means, for an undertaking, to escape the legal consequences of offences it has committed to the detriment of the Member State concerned or other potential interested parties (see, by analogy, judgment of 5 March 2015, *Modelo Continente Hipermercados*, C-343/13, EU:C:2015:146, paragraph 33). For that purpose, it would be sufficient for that undertaking to be divided prior to the costs of clean-up and environmental damage resulting from conduct prior to that division having been evaluated. It is also apparent from the recitals referred to in paragraph 65 of the present judgment that Sixth Directive 82/891 seeks specifically to prevent an undertaking from escaping its obligations towards stakeholders, such as its partners, shareholders, creditors or even third parties concerned as a result of the division of a public limited company under its control.

70 It should also be noted that that interpretation does not confer excessive protection on third parties to the detriment of newly formed companies, since the second sentence of Article 3(3)(b) of Sixth Directive 82/891 allows Member States to limit the joint and several liability of those companies to the value of the assets allocated to them in the draft terms of division concerned.

71 Moreover, it should be noted that that interpretation of the concept of 'liability', referred to in the first sentence of Article 3(3)(b) of Sixth Directive 82/891, is consistent with Article 11 TFEU, since it seeks to prevent the undertaking which instigates the polluting activity from escaping its obligations towards its stakeholders as a result of the division of a public limited company under its control.

72 It follows from the foregoing that the concept of 'liability' referred to in the first sentence of Article 3(3)(b) of Sixth Directive 82/891 covers not only defined liabilities, but also undefined liabilities, such as the costs of clean-up and environmental damage having been established, evaluated or consolidated subsequent to the division concerned, which result from conduct prior to that division.

73 In contrast, as regards conduct subsequent to the division which is the development of the conduct of the company being divided prior to that division, it follows from paragraph 64 of the present judgment that the concept of 'liability', within the meaning of Article 3(3)(b) of Sixth Directive 82/891, covers only the costs of clean-up and environmental damage resulting from the conduct of the company being divided which had already been incurred 25frfgon the date of that division.

74 Sixth Directive 82/891 lays down only a minimum system of protection of the interests of third parties, referred to in paragraph 67 of the present judgment, in respect of liability arising from conduct prior to the division concerned (see, by analogy, judgment of 30 January 2020, *I.G.I.*, C-394/18, EU:C:2020:56, paragraphs 67 and 74). The question whether conduct subsequent to that division, but which is the development of prior conduct on the part of the company being divided, may be imputed to that company, with the result that the obligation to make good the damage thus caused, as part of its liability, will be transferred to the recipient companies in accordance with the detailed rules laid down by Sixth Directive 82/891, must therefore be determined on the basis of national law (see, to that effect, judgment of 13 July 2017, *Túrkevei Tejtermelő Kft.*, C-129/16, EU:C:2017:547, paragraph 45 and the case-law cited).

75 It follows from all of the foregoing that the answer to the question referred is that Article 3(3)(b) of Sixth Directive 82/891 must be interpreted as meaning that the rule on the joint and several liability of recipient companies laid down in that provision applies not only to defined liabilities not allocated by the draft terms of division, but also to undefined liabilities, such as the costs of clean-up and environmental damage, which were established, evaluated or consolidated subsequent to the division concerned in so far as they result from conduct of the company being divided prior to the division.

Costs

76 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Grand Chamber) hereby rules:

Article 3(3)(b) of Sixth Council Directive 82/891/EEC of 17 December 1982 based on Article 54(3)(g) of the [EEC] Treaty, concerning the division of public limited liability companies,

must be interpreted as meaning that the rule on the joint and several liability of recipient companies laid down in that provision applies not only to defined liabilities, not allocated by the draft terms of division, but also to undefined liabilities such as the costs of clean-up and environmental damage, which were established, evaluated or consolidated subsequent

to the division concerned in so far as they result from conduct of the company being divided prior to the division.

[Signatures]