Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

24 October 2013 *

(Request for a preliminary ruling — Reorganisation and winding-up of credit institutions — Directive 2001/24/EC — Articles 3, 9 and 32 — National legislative act conferring on reorganisation measures the effects of winding-up proceedings — Legislative measure prohibiting or suspending any legal proceedings against a credit institution after the entry into force of a moratorium)

In Case C-85/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation (France), made by decision of 14 February 2012, received at the Court on 20 February 2012, in the proceedings

LBI hf, formerly Landsbanki Islands hf,

v

Kepler Capital Markets SA,

Frédéric Giraux,

THE COURT (Fifth Chamber),

composed of T. von Danwitz (Rapporteur), President of the Chamber, E. Juhász A. Rosas, D. Šváby and C. Vajda, Judges,

Advocate General: P. Cruz Villalón,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 7 March 2013,

after considering the observations submitted on behalf of:

— LBI hf, by S. Le Damany, T. Brun, J.E. Bunetel and J. Wohl, avocats,

— Mr Giraux, by P. Jupile Boisverd and G. Brasier Porterie, avocats,

— the French Government, by G. de Bergues and F. Fize and by N. Rouam, acting as Agents,

— the Portuguese Government, by L. Inez Fernandes, acting as Agent,

— the Islandic Government, by Þ. Hjatested, V. Benediktsdóttir and J. Bjarnadóttir, acting as Agents,

* Language of the case: French.

— the European Commission, by F. Dintilhac, A. Nijenhuis and E. Traversa, acting as Agents,

— the EFTA Surveillance Authority, by X. Lewis and M. Moustakali, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 May 2013,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (OJ 2001 L 125, p. 15).

2 The request has been made in proceedings between LBI hf, formerly Landsbanki Islands hf ('LBI'), an Icelandic credit institution, and Kepler Capital Markets SA and Mr Giraux concerning two attachment orders instituted in France by Mr Giraux against LBI, at a time when LBI was the subject of a moratorium on payment in Iceland.

Legal context

European Union law

3 Recitals 6, 7, 16, 20 and 30 in the preamble to Directive 2001/24 state:

'(6) The administrative or judicial authorities of the home Member State must have sole power to decide upon and to implement the reorganisation measures provided for in the law and practices in force in that Member State. Owing to the difficulty of harmonising Member States' laws and practices, it is necessary to establish mutual recognition by the Member States of the measures taken by each of them to restore to viability the credit institutions which it has authorised.

(7) It is essential to guarantee that the reorganisation measures adopted by the administrative or judicial authorities of the home Member State and the measures adopted by persons or bodies appointed by those authorities to administer those reorganisation measures, including measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims and any other measure which could affect third parties' existing rights, are effective in all Member States.

…

(16) Equal treatment of creditors requires that the credit institution is wound up according to the principles of unity and universality, which require the administrative or judicial authorities of the home Member State to have sole jurisdiction and their decisions to be recognised and to be capable of producing in all the other Member States, without any formality, the effects ascribed to them by the law of the home Member State, except where this Directive provides otherwise.

…

(20) Provision of information to known creditors on an individual basis is as essential as publication to enable them, where necessary, to lodge their claims or submit observations relating to their claims within the prescribed time limits. This should take place without discrimination against

creditors domiciled in a Member State other than the home Member State, based on their place of residence or the nature of their claims. Creditors must be kept regularly informed in an appropriate manner throughout winding-up proceedings.

…

(30) The effects of reorganisation measures or winding-up proceedings on a lawsuit pending are governed by the law of the Member State in which the lawsuit is pending, by way of exception to the application of the lex concursus. The effects of those measures and proceedings on individual enforcement actions arising from such lawsuits are governed by the legislation of the home Member State, in accordance with the general rule established by this Directive.'

4 Article 2 of Directive 2001/24 is worded as follows:

'For the purposes of this Directive:

…

— "Reorganisation measures" shall mean measures which are intended to preserve or restore the financial situation of a credit institution and which could affect third parties' pre-existing rights, including measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims;

…

— "Winding-up proceedings" shall mean collective proceedings opened and monitored by the administrative or judicial authorities of a Member State with the aim of realising assets under the supervision of those authorities, including where the proceedings are terminated by a composition or other, similar measure;

…'

5 Article 3 of that directive, entitled 'Adoption of reorganisation measures – applicable law', provides:

'1. The administrative or judicial authorities of the home Member State shall alone be empowered to decide on the implementation of one or more reorganisation measures in a credit institution, including branches established in other Member States.

2. The reorganisation measures shall be applied in accordance with the laws, regulations and proceedings applicable in the home Member State, unless otherwise provided in this Directive.

They shall be fully effective in accordance with the legislation of that Member State throughout the [Union] without any further formalities, including as against third parties in other Member States, even where the rules of the host Member State applicable to them do not provide for such measures or make their implementation subject to conditions which are not fulfilled.

The reorganisation measures shall be effective throughout the [Union] once they become effective in the Member State where they have been taken.'

6 Under the title 'Opening of winding-up proceedings – Information to be communicated to other competent authorities', Article 9(1) of that directive states:

'The administrative or judicial authorities of the home Member State which are responsible for winding up shall alone be empowered to decide on the opening of winding-up proceedings concerning a credit institution, including branches established in other Member States.

A decision to open winding-up proceedings taken by the administrative or judicial authority of the home Member State shall be recognised, without further formality, within the territory of all other Member States and shall be effective there when the decision is effective in the Member State in which the proceedings are opened.'

7 Under Article 10 of Directive 2001/24, entitled 'Law applicable':

'1. A credit institution shall be wound up in accordance with the laws, regulations and proceedings applicable in its home Member State insofar as this Directive does not provide otherwise.

2. The law of the home Member State shall determine in particular:

...

(e) the effects of winding-up proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending, as provided for in Article 32;

...

(l) the rules relating to the voidness, nullity, voidability or unenforceability of legal acts detrimental to all the creditors.'

8 According to Article 32 of that directive, '[t]he effects of reorganisation measures or winding-up proceedings on a pending lawsuit concerning an asset or a right of which the credit institution has been divested shall be governed solely by the law of the Member State in which the lawsuit is pending'.

9 Directive 2001/24 was incorporated into the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3) by the Decision of the EEA Joint Committee No 167/2002 of 6 December 2002 amending Annex IX (Financial services) to the EEA Agreement (OJ 2003, L 38, p. 28).

Icelandic law

10 Article 138 of Law No 21/1991 on insolvency of 26 March 1991 ('Law on insolvency'), included in Chapter XX of this law, relating to the annulment of measures taken by the insolvent company, states:

'The attachment order on an insolvent company's assets shall be automatically annulled when a court declares the insolvency, on condition that the asset concerned is added to the insolvency estate. The same rule applies to enforcement measures adopted which create a charge over an asset of the insolvent company during the six months preceding the reference date, on condition that the asset concerned is added to the insolvency estate.

...'

11 Law No 161/2002 on financial institutions of 20 December 2002 ('Law No 161/2002 on financial institutions') provides, in Chapter XII, rules on financial reorganisation, winding up and mergers of financial institutions.

12 In the context of the international banking and financial crisis which affected the Republic of Iceland during 2008, the provisions included in Chapter XII of Law No 161/2002 on financial institutions were amended several times. Accordingly, Article 98 of that law was amended by Law No 129/2008 of 13 November 2008 ('Law No 129/2008') in such a way as to permit financial institutions in difficulty to be granted a moratorium protecting them in particular, from the entry into force of that measure, from any legal proceedings and ordering the suspension of pending legal proceedings throughout the period of the moratorium, unless the law provides otherwise or a criminal offence has been committed.

13 The scheme applicable to financial institutions under a moratorium, provided for by Law No 161/2002 on financial institutions, as amended by Law No 129/2008, was redrafted by Law No 44/2009 of 15 April 2009 ('Law No 44/2009'). First, Law No 44/2009 repealed the provisions of Article 98 of Law No 161/2002 on financial institutions which prohibited proceedings from being brought and suspended proceedings pending against financial institutions under a moratorium. Second, it introduced a series of transitional provisions, including point II, which concerns financial institutions under a moratorium and reads as follows:

'The special rules which follow shall apply to financial institutions benefitting from a debt moratorium at the time of the entry into force of [Law No 44/2009].

1. The authorised moratorium shall continue despite the entry into force of this law and may be extended in accordance with the rules provided for under the second paragraph of Article 10 [of Law No 44/2009].

2. As regards the moratorium, the provisions of the first paragraph of Article 101, and of Articles 102, 103 and 103a [of Chapter XII of Law No 161/2002 on financial institutions] shall apply as if the institution had been placed in winding-up proceedings by a judicial decision on the date on which [Law No 44/2009] entered into force; the winding-up proceedings shall however be known as "authorised debt moratorium" for as long as that authorisation remains valid [in accordance with what is provided at paragraph 1 above]. On the expiry of that authorisation, the undertaking shall automatically be regarded as being the subject of winding-up proceedings in accordance with general rules, without any specific judicial decision …'

14 Law No 132/2010 of 16 November 2010 ('Law No 132/2010'), in turn, amended the transitional provisions inserted in Law No 161/2002 on financial institutions by Law No 44/2009. According to Article 2 of Law No 132/2010, financial institutions placed under a moratorium are no longer to be automatically wound-up following the expiry of that moratorium, but winding-up must be applied for before a court prior to that date. That article provides, furthermore, that when that court accepts the application for winding-up, the measures taken during the moratorium from which the financial institution benefitted shall remain unchanged following the entry into force of Law No 44/2009.

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

15 On 10 November 2008, Mr Giraux had two attachment orders served on Kepler Capital Markets SA, in order to guarantee payment of his claim against LBI.

16 LBI requested, before the tribunal de grande instance de Paris (Regional Court, Paris) (France), that those attachment orders be lifted. Referring to the reorganisation and winding-up measures taken against it in Iceland, LBI claimed that those measures were enforceable against its French creditor and that, in accordance with Law No 44/2009 and Article 138 of Law No 21/1991 on insolvency, all the enforcement measures taken since 15 May 2008 were null and void.

17 As regards the measures taken in Iceland against LBI, it is apparent from the file submitted to the Court that the Icelandic Financial Supervision Authority was authorised, by an emergency law of 6 October 2008, to intervene in the activities of financial institutions. Subsequently, that authority took control of LBI and appointed a provisional administrative committee which was responsible for supervising management of the bank's assets and directing its operations. On 5 December 2008, the District Court, Reykjavik (Iceland) granted LBI a moratorium, in accordance with Law No 161/2002 on financial institutions. That moratorium, which was extended several times, was the subject of a notice in the *Official Journal of the European Union* on 9 January 2009 (OJ 2009 C 4, p. 3) as a reorganisation measure, pursuant to Article 6 of Directive 2001/24. The notice stated that, during the application of the moratorium, no legal proceedings could be brought against LBI. A moratorium was also granted on the same legal basis by two separate decisions of the District Court, Reykjavik, of 24 November 2008 to two other financial institutions, namely Kaupthing Bank hf and Glitnir Bank hf.

18 On 25 June 2009, the Regional Court, Paris dismissed LBI's application. It found that the transitional provisions of Law No 44/2009 did not refer to Article 138 of Law No 21/1991 on insolvency. Furthermore, the provisions of Law No 44/2009 did not constitute reorganisation and winding-up measures taken by 'the administrative or judicial authorities' within the meaning of Directive 2001/24.

19 That decision was upheld by a judgment of the cour d'appel de Paris (Court of Appeal, Paris) (France) of 4 November 2010. By a measure of 14 February 2012, LBI brought an appeal on a point of law before the Cour de cassation (Court of Cassation) (France) against that judgment.

20 In those circumstances the Cour de cassation decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Must Articles 3 and 9 of [Directive 2001/24] be interpreted as meaning that reorganisation or winding-up measures in regard to a financial institution, such as those under [Law No 44/2009], are to be regarded as measures adopted by an administrative or judicial authority for the purposes of those articles?

2. Must Article 32 of [Directive 2001/24] be interpreted as precluding a national provision, such as Article 98 of [Law No 161/2002 on financial institutions], which prohibited or suspended any legal action against a financial establishment as from the entry into force of a moratorium, from having effect in regard to interim protective measures adopted in another Member State before the declaration of the moratorium?'

Consideration of the questions referred

The first question

21 By its first question the referring court asks, in essence, whether Articles 3 and 9 of Directive 2001/24 must be interpreted as meaning that reorganisation or winding-up measures in regard to a financial institution, such as those based on the transitional provisions included in point II of Law No 44/2009, are to be regarded as measures adopted by an administrative or judicial authority for the purposes of those articles of Directive 2001/24, where those transitional provisions are effective only by means of judicial decisions granting a moratorium to a credit institution.

22 At the outset, it must be borne in mind that, as is apparent from recital 6 in its preamble, Directive 2001/24 seeks to establish mutual recognition by the Member States of the measures taken by each of them to restore to viability the credit institutions which it has authorised. That objective, and that of guaranteeing equal treatment of creditors, laid down in recital 16 to that directive, require that the reorganisation and winding-up measures taken by the authorities of the home Member State have, in all the other Member States, the effects which the law of the home Member State confers on them.

23 As is apparent from the file submitted to the Court, on 5 December 2008, the District Court, Reykjavik granted LBI a moratorium, in accordance with Law No 161/2002 on financial institutions, as amended by Law No 129/2008, in order to enable it to reorganise its financial situation. That moratorium was granted by that court taking into account the financial difficulties of LBI and was extended on several occasions until 5 December 2010. It is not in dispute that that moratorium, in that it was designed to enable LBI to reorganise its financial situation, constituted a reorganisation measure for the purposes of the seventh indent of Article 2 of Directive 2001/24.

24 The transitional provisions included in point II of Law No 44/2009 have amended the legal effects of those moratoria, by making financial institutions under a moratorium subject to a specific winding-up scheme, without those financial institutions being wound-up before the expiry of that moratorium.

25 The first question asked by the referring court must be answered in the light of those circumstances.

26 In that regard, it must be borne in mind, first, that according to Articles 3(1) and 9(1) of Directive 2001/24, the administrative and judicial authorities of the home Member State are alone empowered to decide on the implementation of reorganisation measures for a financial institution and on the opening of winding-up proceedings against such an undertaking.

27 Second, in accordance with the second subparagraph of Article 3(2) and the second subparagraph of Article 9(1) of that directive, reorganisation measures and decisions opening winding-up proceedings taken by the administrative and judicial authorities of the home Member State are to have, in all the other Member States, the effects which the legislation of the home Member State confers on them.

28 It follows from those provisions that it is the reorganisation and winding-up measures decided by the administrative and judicial authorities of the home Member State which are the subject of recognition under Directive 2001/24, with the effects which the law of that Member State confers on them. However, the legislation of the home Member State relating to the reorganisation and winding-up of credit institutions can, in principle, take effect in the other Member States only through measures taken by the administrative and judicial authorities of that Member State against a specific credit institution.

29 As regards the transitional provisions in point II of Law No 44/2009, it must be stated that they amended the effects of the moratoria on payments which were in force at the time when that law entered into force. The preamble to that law refers, in the part relating to the grounds and objectives of that legislative action, specifically to LBI, to Kaupthing Bank hf and to Glitnir Bank hf.

30 Furthermore, by adopting those transitional provisions, the Icelandic legislature did not order the winding-up, as such, of the credit institutions placed under a moratorium, but conferred certain effects linked to winding-up proceedings on the moratoria which were in force on a specific date.

31 According to the sentence introducing the transitional provisions in point II of Law No 44/2009, they apply only to credit institutions befitting from a moratorium at the time of the entry into force of that law, with the result that, unless a judicial decision has granted or extended a moratorium for the benefit of a specific credit institution before that date, those transitional provisions cannot produce any effects.

32 Since the applicability of the transitional provisions was conditional on an individual decision granting or extending a moratorium, those legal provisions take effect, in accordance with the general scheme of Directive 2001/24, not directly, but through a reorganisation measure granted by a judicial authority for a specific credit institution.

33 Finally, it is clear from the file submitted to the Court that on 22 November 2010 the opening of winding-up proceedings against LBI was announced by decision of the District Court, Reykjavik.

34 Accordingly, it must be held that the winding-up of LBI does not follow solely from the application of the transitional provisions in point II of Law No 44/2009.

35 The effects of those transitional provisions are achieved through individual reorganisation and winding-up measures. In the case in the main proceedings, those individual decisions are, first, the decision of the District Court, Reykjavik, of 5 December 2008 granting a moratorium to LBI, as a reorganisation measure and, second, the decision of the same court of 22 November 2010 opening and implementing winding-up proceedings against LBI.

36 It follows that those individual reorganisation and winding-up measures are capable of producing, in accordance with the second subparagraph of Article 3(2) and the second subparagraph of Article 9(1) of Directive 2001/24, the effects which the Icelandic legislation confers on them, in the EU Member States.

37 That conclusion cannot be rebutted by Mr Giraux's argument that, as the transitional provisions of Law No 44/2009, which transformed the moratorium granted to LBI into winding-up proceedings, are not a decision taken by an administrative or judicial authority, but rather legislative provisions, they cannot be the subject of an action and cannot, therefore, be effective in the EU Member States pursuant to Directive 2001/24.

38 As noted at paragraph 27 of this judgment, the effects which reorganisation and winding-up measures taken by the administrative or judicial authorities of the home Member State may have in the other EU Member States are determined, in accordance with the second subparagraph of Article 3(2) and the second subparagraph of Article 9(1) of Directive 2001/24, by the law of the home Member State. Therefore, that directive does not prevent that Member State from amending, even with retroactive effect, the legal scheme applicable to such measures.

39 As regards the question whether the transitional provisions of Law No 44/2009 must be able to form the subject of an action in order to constitute measures taken by an administrative or judicial authority for the purposes of Articles 3 and 9 of Directive 2001/24, it must be borne in mind that that directive, as is apparent from recital 6 thereto, establishes a system of mutual recognition of national reorganisation and winding-up measures, without seeking to harmonise national legislation on that subject.

40 In the context of the system established by Directive 2001/24, the reorganisation and winding-up measures of the home Member State are, as is apparent from the second subparagraph of Article 3(2) and the second subparagraph of Article 9(1) of that directive, recognised 'without any further formalities'. In particular, that directive does not make the recognition of reorganisation and winding-up measures subject to a condition that it be possible to bring an action against them. Similarly, according to the second subparagraph of Article 3(2), the host Member State may likewise not make that recognition subject to a condition of that type for which its national rules may provide.

41 Finally, although the principle of equal treatment between creditors as regards the opportunities open to them to take action – as is stated in recital 12 in the preamble to Directive 2001/24 – requires the authorities of the home Member State to guarantee creditors from other Member States equal treatment in relation to creditors of that home Member State, it cannot be inferred that only

reorganisation and winding-up measures capable of an action under domestic law may form the subject-matter of recognition under the second subparagraph of Article 3(2) and the second subparagraph of Article 9(1) of Directive 2001/24.

42 In the light of the foregoing, the answer to the first question is that Articles 3 and 9 of Directive 2001/24 must be interpreted as meaning that reorganisation or winding-up measures in regard to a financial institution, such as those based on the transitional provisions in point II of Law No 44/2009, are to be regarded as measures adopted by an administrative or judicial authority for the purposes of those articles, where those transitional provisions take effect only by means of judicial decisions granting a moratorium to a credit institution.

The second question

43 By its second question, the referring court asks, in essence, whether Article 32 of Directive 2001/24 must be interpreted as precluding a national provision, such as Article 98 of Law No 161/2002 on financial institutions, as amended by Law No 129/2008, which prohibited or suspended any legal action against a financial institution once it benefitted from a moratorium, from being effective against interim protective measures, such as those at issue in the main proceedings, adopted in another Member State before the declaration of the moratorium.

Admissibility

44 Mr Giraux claims that the second question is inadmissible on the ground that it is not relevant to resolve the dispute in the main proceedings and that it is hypothetical. He claims that the prohibition on bringing legal actions against a financial institution under moratorium, according to Article 98 of Law No 161/2002 relating to financial institutions, does not apply to actions which were introduced, as were those at issue in the main proceedings, prior to the judicial decision granting such a moratorium. Furthermore, Mr Giraux notes that the provisions of that article relied on by LBI were repealed by Law No 44/2009.

45 According to the Court's settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, 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 (see Case C-152/11 *Odar* [2012] ECR, paragraph 24).

46 That presumption of relevance cannot be rebutted by the simple fact that one of the parties to the main proceedings contests certain facts, the accuracy of which is not a matter for the Court to determine and on which the delimitation of the subject-matter of those proceedings depends (see Case C-379/05 *Amurta* [2007] ECR I-9569, paragraph 65 and case-law cited).

47 The question whether Article 98 of Law No 161/2002 on financial institutions may take effect in regard to interim protective measures adopted before the judicial decision granting a moratorium, and what effect in that regard the repeal of the relevant provisions of that article may have, constitutes precisely a question within the legislative and factual context which is not for the Court to determine.

48 The second question referred must therefore be considered to be admissible.

Substance

49 In order to answer the second question referred for a preliminary ruling, it must be noted that, as is apparent inter alia from recital 16, Directive 2001/24 is based on the principles of unity and universality, and establishes as a principle the mutual recognition of reorganisation measures and winding-up proceedings, and of their effects. For that purpose, the second and third subparagraphs of Article 3(2) and the second subparagraph of Article 9(1) of that directive make the reorganisation measures and the winding-up proceedings subject to the law of the home Member State and provide that the effects of such measures and proceedings are established according to the legislation of that State and that they are to be effective when they are effective in the home Member State. Those provisions also provide that, in principle, the lex concursus governs the reorganisation measures and the winding-up proceedings.

50 As regards the winding-up proceedings, Article 10(2)(e) of Directive 2001/24 states that 'proceedings brought by individual creditors' are subject to the law of the home Member State, with the exception of, effects on 'lawsuits pending'.

51 On this point, Article 32 of Directive 2001/24 provides that effects of reorganisation measures or winding-up proceedings on a pending lawsuit concerning an asset or a right of which the credit institution is divested are to be governed solely by the law of the Member State in which the lawsuit is pending.

52 Accordingly, that provision constitutes an exception to the general rule that the effects of reorganisation and winding-up measures are governed by the law of the home Member State, and it must be interpreted strictly.

53 The scope of Article 32 of Directive 2001/24 is clarified by recital 30 in the preamble to that directive, which makes a distinction between 'lawsuits pending' and 'individual enforcement actions'. According to that recital, first, the effects of reorganisation measures or winding-up proceedings on a 'lawsuit pending' are governed by the law of the Member State in which the lawsuit is pending, by way of exception to the application of the lex concursus. Second, the effects of those measures and of those proceedings on 'individual enforcement actions' arising from such lawsuits are governed by the legislation of the home Member State, in accordance with the general rule established by that directive.

54 Therefore it is necessary to distinguish, as regards determining the law applicable to the effects of reorganisation measures or winding-up proceedings, between lawsuits pending and individual enforcement actions arising from those lawsuits, the latter actions being subject, in accordance with the general rule established by Directive 2001/24, to the legislation of the home Member State. Accordingly, as the European Commission noted in its written observations, the words 'lawsuits pending' cover only proceedings on the substance.

55 A contrary interpretation of Directive 2001/24 would be capable of calling into question the effectiveness of the principle of universality established by it and which seeks to make reorganisation measures and winding-up proceedings subject to proceedings having universal effect. Since the measures and the proceedings laid down in Directive 2001/24 have the very object of suspending individual enforcement actions in order to restore to viability the credit institutions concerned, any enforcement action would reduce the availability of the assets administration and, accordingly, would undermine the principle of universality.

56 As regards the interim protective measures at issue in the main proceedings, it is not in dispute that those measures, which divest a credit institution of the right to dispose freely of part of its assets pending settlement of the substance of a dispute with one of its creditors, constitute individual enforcement actions. It follows that such interim protective measures do not fall within Article 32 of Directive 2001/24 but are governed by Icelandic law as lex concursus.

57 The fact that those measures were adopted before the moratorium at issue in the main proceedings had been granted to LBI cannot invalidate that conclusion. As follows from the very wording of the second and third subparagraphs of Article 3(2) and the second subparagraph of Article 9(1) of Directive 2001/24, the lex concursus also governs the temporal effects of reorganisation measures and of insolvency proceedings. Article 32 of that directive cannot prevent those measures and those proceedings from having retroactive effect.

58 The answer to the second question is therefore that Article 32 of Directive 2001/24 must be interpreted as not precluding a national provision, such as Article 98 of Law No 161/2002 on financial institutions, as amended by Law No 129/2008, which prohibited or suspended any legal action against a financial institution once it benefitted from a moratorium, from being effective in regard to interim protective measures, such as those at issue in the main proceedings, adopted in another Member State before the declaration of the moratorium.

Costs

59 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 (Fifth Chamber) hereby rules:

1. **Articles 3 and 9 of Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions must be interpreted as meaning that reorganisation or winding-up measures in regard to a financial institution, such as those based on the transitional provisions in point II of Law No 44/2009, are to be regarded as measures adopted by an administrative or judicial authority for the purposes of those articles of Directive 2001/24, where those transitional provisions take effect only by means of judicial decisions granting a moratorium to a credit institution.**

2. **Article 32 of Directive 2001/24 must be interpreted as not precluding a national provision, as Article 98 of Law No 161/2002 on financial institutions, as amended by Law No 129/2008 of 13 November 2008, which prohibited or suspended any legal action against a financial institution once it benefitted from a moratorium, from being effective in regard to interim protective measures, such as those at issue in the main proceedings, adopted in another Member State before the declaration of the moratorium.**

[Signatures]