JUDGMENT OF THE COURT (First Chamber)

14 January 2010 *

In Case C-233/08,

REFERENCE for a preliminary ruling under Article 234 EC, from the Nejvyšší správní soud (Czech Republic), made by decision of 5 May 2008, received at the Court on 30 May 2008, in the proceedings

Milan Kyrian

v

Celní úřad Tábor,

THE COURT (First Chamber),

composed of A. Tizzano, President of Chamber, acting for the President of the First Chamber, E. Levits, A. Borg Barthet, M. Ilešič (Rapporteur) and J.-J. Kasel, Judges,

* Language of the case: Czech.

Advocate General: J. Mazák,
Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 13 May 2009,

after considering the observations submitted on behalf of:

— the Czech Government, by M. Smolek, acting as Agent,

— the German Government, by M. Lumma and C. Blaschke, acting as Agents,

— the Greek Government, by I. Chalkias, E. Leftheriotou and V. Karra, acting as Agents,

— the Polish Government, by M. Dowgielewicz, acting as Agent,

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

— the Commission of the European Communities, by M. Afonso and L. Jelínek, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 September 2009,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 12(3) of Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures (OJ 1976 L 73, p. 18), as amended by Council Directive 2001/44/EC of 15 June 2001 (OJ 2001 L 175, p. 17, 'Directive 76/308').

2 The reference was brought in the context of proceedings between Mr Kyrian and Celní úřad Tábor (Customs Office, Tábor) concerning the review of the enforceability of an instrument permitting enforcement issued by the Hauptzollamt Regensburg (Principal Customs Office, Regensburg) (Germany).

Legal context

Community legislation

3 The purpose of Directive 76/308 is to eliminate obstacles to the establishment and functioning of the common market resulting from the territorial limitation of the scope of application of national provisions relating to recovery, inter alia of customs duties.

4 According to the sixth recital in the preamble to Directive 76/308, different forms of assistance must be afforded by the requested authority in compliance with the laws, regulations and administrative provisions governing the matters concerned in the Member State in which it is situated, whilst the seventh recital thereof states that it is necessary to lay down the conditions in accordance with which requests for assistance are to be drawn up by the applicant authority and to give a limitative definition of the particular circumstances in which the requested authority may refuse assistance in any given case.

5 The 10th recital of Directive 76/308 states that it is possible that, during the recovery procedure in the Member State in which the requested authority is situated, the claim or the instrument authorising its enforcement issued in the Member State in which the applicant authority is situated may be contested by the person concerned and that it should be laid down in such cases that the person concerned must bring the action contesting the claim before the competent body of the Member State in which the applicant authority is situated and that the requested authority must suspend any enforcement proceedings which it has begun until a decision is taken by the aforementioned body.

6 Article 4(3) of Directive 76/308 provides:

‘The requested authority shall not be obliged to supply information:

(a) which it would not be able to obtain for the purpose of recovering similar claims arising in the Member State in which it is situated;

(b) which would disclose any commercial, industrial or professional secrets; or

(c) the disclosure of which would be liable to prejudice the security of or be contrary to the public policy of the State.'

7 According to Article 5(1) of that directive, the requested authority, at the request of the applicant authority, and in accordance with the rules of law in force for the notification of similar instruments or decisions in the Member State in which the requested authority is situated, is to notify to the addressee all instruments and decisions, including those of a judicial nature, which emanate from the Member State in which the applicant authority is situated and which relate to a claim and/or to its recovery.

8 Article 5(2) of the Directive states that the request for notification is to indicate the name, address and any other relevant information relating to the identification to which the applicant authority normally has access of the addressee concerned, the nature and the subject of the instrument or decision to be notified, if necessary the name, address and any other relevant information relating to the identification to which the applicant authority normally has access of the debtor and the claim to which the instrument or decision relates, and any other useful information.

9 Article 6 of Directive 76/308 provides:

'1. At the request of the applicant authority, the requested authority shall, in accordance with the laws, regulations or administrative provisions applying to the recovery of similar claims arising in the Member State in which the requested authority is situated, recover claims which are the subject of an instrument permitting their enforcement.

2. For this purpose any claim in respect of which a request for recovery has been made shall be treated as a claim of the Member State in which the requested authority is situated, except where Article 12 applies.'

10 Article 7(1), (2) and (3) of that directive provide:

'1. The request for recovery of a claim which the applicant authority addresses to the requested authority must be accompanied by an official or certified copy of the instrument permitting its enforcement, issued in the Member State in which the applicant authority is situated and, if appropriate, by the original or a certified copy of other documents necessary for recovery.

2. The applicant authority may not make a request for recovery unless:

(a) the claim and/or the instrument permitting its enforcement are not contested in the Member State in which it is situated, except in cases where the second subparagraph of Article 12(2) is applied;

(b) it has, in the Member State in which it is situated, applied appropriate recovery procedures available to it on the basis of the instrument referred to in paragraph 1, and the measures taken will not result in the payment in full of the claim.

3. The request for recovery shall indicate:

(a) the name, address and any other relevant information relating to the identification of the person concerned and/or to the third party holding his or her assets;

…'

11 Article 8 of that directive provides:

'1. The instrument permitting enforcement of the claim shall be directly recognised and automatically treated as an instrument permitting enforcement of a claim of the Member State in which the requested authority is situated.

2. Notwithstanding the first paragraph, the instrument permitting enforcement of the claim may, where appropriate and in accordance with the provisions in force in the Member State in which the requested authority is situated, be accepted as, recognised as, supplemented with, or replaced by an instrument authorising enforcement in the territory of that Member State.

Within three months of the date of receipt of the request for recovery, Member States shall endeavour to complete such acceptance, recognition, supplementing or replacement, except in cases where the third subparagraph is applied. They may not be refused if the instrument permitting enforcement is properly drawn up. The requested authority shall inform the applicant authority of the grounds for exceeding the period of three months.

If any of these formalities should give rise to contestation in connection with the claim and/or the instrument permitting enforcement issued by the applicant authority, Article 12 shall apply.'

12 Article 12(1) to (3) of Directive 76/308 states:

'1. If, in the course of the recovery procedure, the claim and/or the instrument permitting its enforcement issued in the Member State in which the applicant authority is situated are contested by an interested party, the action shall be brought by the latter before the competent body of the Member State in which the applicant authority is situated, in accordance with the laws in force there. This action must be notified by the applicant authority to the requested authority. The party concerned may also notify the requested authority of the action.

2. As soon as the requested authority has received the notification referred to in paragraph 1 either from the applicant authority or from the interested party, it shall suspend the enforcement procedure pending the decision of the body competent in the matter, unless the applicant authority requests otherwise in accordance with the second subparagraph …

Notwithstanding the first subparagraph of paragraph 2, the applicant authority may in accordance with the law, regulations and administrative practices in force in the Member State in which it is situated, request the requested authority to recover a contested claim, in so far as the relevant laws, regulations and administrative practices in force in the Member State in which the requested authority is situated allow such action. If the result of contestation is subsequently favourable to the debtor, the applicant authority shall be liable for the reimbursement of any sums recovered, together with any compensation due, in accordance with the laws in force in the Member State in which the requested authority is situated.

3. Where it is the enforcement measures taken in the Member State in which the requested authority is situated that are being contested the action shall be brought before the competent body of that Member State in accordance with its laws and regulations.'

13 Article 17 of that directive provides:

'Requests for assistance, the instrument permitting the enforcement and other relevant documents shall be accompanied by a translation in the official language, or one of the official languages of the Member State in which the requested authority is situated, without prejudice to the latter authority's right to waive the translation.'

14 Under Article 23 thereof, the Directive is not to prevent 'a greater measure of mutual assistance being afforded either now or in the future by particular Member States under any agreements or arrangements, including those for the notification of legal or extra-legal acts'.

National legislation

15 According to Paragraph 2(7) of Law No 191/2004, on international assistance for the recovery of certain financial claims (Zákon č. 191/2004 Sb., o mezinárodní pomoci při vymáhání některých finančních pohledávek), when acting in pursuance of international assistance, Law No 337/1992 on the administration of taxes and fees (Zákon č. 337/1992 Sb., o správě daní a poplatků) is to apply, save where Law No 191/2004 provides otherwise.

16 Paragraph 5 of Law No 191/2004, headed 'Enforcement of Claims', provides:

'1. … At the request of the competent body of another State, the Ministry shall ensure the enforcement of claims; … The request for recovery must be justified by means of the original or a certified copy of the instrument authorising enforcement capable of being enforced in the State of the competent body.

2. The Ministry shall proceed to the enforcement provided that the request for recovery contains:

(a) the forename, surname and place of residence of the natural person or the seat of the legal person who is the debtor or, where necessary, the person required to pay the claim under the law of the State of the competent body... and any other necessary information to identify the debtor or another person in possession of his assets,

(b) the nature and amount of the claim and the amount of the interest, penalties, fines and costs relating thereto which are due and indicated in the currencies of the two States, specifying the instrument authorising enforcement,

(c) information on the legal force of the instrument authorising enforcement and on the prescription or limitation period of the right to recover the claim,

…

(f) a declaration by the competent body of the other State under Paragraph 6(2), …

3. … If the request does not contain the information referred to in paragraph 2, the Ministry shall proceed to the recovery only to the extent that, at its request, that information is completed.'

17 Under Paragraph 6(1) of Law No 191/2004, the document constituting the instrument permitting the enforcement of the claim in the State of the competent authority is, from the date of receipt of the complete request for recovery, to be recognised directly as an instrument permitting the enforcement of the claim in the Czech Republic. According to Paragraph 6(2) thereof, on the basis of the request for recovery, the Ministry can initiate the recovery of the claim only if the competent body of the other State declares that the instrument permitting the enforcement of the claim is not contested in the State of the competent body, except in the cases referred to in Paragraph 7(1) thereof, and that the recovery procedure has already been instituted in the State of the competent body without leading to the payment of the claim in full.

18 Paragraph 13(1) of Law No 191/2004 states:

'Exchanges of information between the Ministry and the competent body of the other State shall be in the official language of the State whose competent body was requested to help in the recovery. … The official language of the State which was requested to help in the recovery shall not be used where the Ministry and the competent body of the other State agree otherwise.'

19 Paragraph 32(1) of Law No 337/1992 provides:

'In tax proceedings, liability may only be imposed and rights acknowledged only by decision. Such decisions are legally effective in respect of the recipient only where they are properly served on or communicated to him, save where this Law or a special law provides otherwise.'

20 Paragraph 73 of Law No 337/1992 describes the procedure for recovering arrears of tax. Under Paragraph 73(7) thereof, concerning tax enforcement, the Civil Procedure Code is to apply *mutatis mutandis*.

21 Under Paragraph 261a(1) of Law No 99/1963 on the Civil Procedure Code (Zákon č. 99/1963 Sb., občanský soudní řád), as amended, the enforcement of a decision may be ordered only where the decision contains the identification of the person who is entitled and the debtor, the determination of the scope and content of the obligations for the fulfilment of which application for the enforcement of the decision has been made and the time-limits fixed for the fulfilment of the obligation.

22 As the national court has stated, according to the settled case-law of the Czech higher courts, the identification of the debtor must be exact and non-interchangeable or at least it must be possible, without any doubt, to deduce from the instrument permitting enforcement of the claim concerned on whom the obligation was imposed (decision of the Nejvyšší soud of the Czech Republic of 25 February 1999, č.j. 21 Cdo 2101/98, published in *Soudní judikatura* 6/1999, p. 233). In the declaratory judgment of the Nejvyšší soud (Supreme Court) of the Czech Socialist Republic of 18 February 1981 Cpj 159/79 (*Sbírka soudních rozhodnutí a stanovisek*, 1981, p. 499), it was also established that a decision which does not contain an exact identification of the debtor is not an enforceable decision nor may it form the basis for enforcement of the decision. By the same token, it follows from the order of the extended composition of the national court of 26 October 2005, č.j. 2 Afs 81/2004-54, that enforcement measures carried out on the basis of an instrument insufficiently designating the addressee must be annulled.

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

23 On 2 July 1999, Hauptzollamt Weiden (Principal Customs Office, Weiden) (Germany) sent an assessment notice to 'Milan Kyrian, Studnicni 836, 39811 Protivin, Czech Republic', requiring him to pay excise duty in the amount of DEM 218 520. The instrument permitting enforcement subsequently sent by the Hauptzollamt Weiden was served on 6 August 1999 through the Ministerstvo financí — Generální ředitelství cel (Czech Ministry of Finance — Directorate General of Customs, 'the requested authority in the main proceedings').

24 On 28 September 2004, the Hauptzollamt Regensburg ('the applicant authority') issued a payment notice and, on 7 October 2004, requested, pursuant to Article 6 of Directive 76/308, the requested authority in the main proceedings to recover the excise duty pursuant to the instrument permitting enforcement issued by the Hauptzollamt Weiden. In the request for recovery, the applicant in the main proceedings was identified as the debtor by his forename, surname, address and date of birth, and the amount of the excise duty together with a penalty, was stated as a total of CZK 3 258 625.30.

25 In December 2004, the requested authority in the main proceedings delegated the recovery of the tax arrears concerned to Celní úřad Tábor. That customs office issued, in December 2004, two requests for payment of arrears of tax concerning the excise duty and the penalty respectively, granting a time-limit for payment pursuant to Paragraph 73(1) of Law No 337/1992. Mr Kyrian lodged an appeal against those requests which the Celní ředitelství České Budějovice (Customs Directorate, České Budějovice) (Czech Republic) dismissed by two decisions of 4 March 2005 and 6 April 2005. That rejection was confirmed by order of the Krajský soud v Českých Budějovicích (Regional Court, České Budějovice) of 5 October 2005 and by judgment of the Nejvyšší správní soud (Supreme Administrative Court) of 28 June 2006.

26 On 6 March 2006, Celní úřad Tábor issued a warrant of execution for the arrears of excise duty concerned by means of deductions from Mr Kyrian's salary. The applicant lodged complaints against that warrant of execution, which Celní úřad Tábor dismissed by decision of 31 October 2006.

27 Mr Kyrian brought an action in the Krajský soud v Českých Budějovicích against the warrant of execution. In particular, he claimed that the identification of the addressee in the instrument permitting enforcement issued by the Hauptzollamt Weiden by forename, surname and address was insufficient, since the instrument might equally well apply to Mr Kyrian's father or son, since they are also called Milan Kyrian and live at the same address. As the notification document does not specify to which of the three persons of the same name the instrument permitting enforcement should have been given, that instrument cannot be enforced, because it was not properly notified.

28 Mr Kyrian also complained that, as he did not understand the documents which were addressed to him by the German customs authorities in German, he was unable to take the appropriate legal steps to defend his rights. He was not obliged to have the documents translated at his own expense.

29 The Krajský soud v Českých Budějovicích, sitting at first instance, dismissed the action by judgment of 14 March 2007. It pointed out that, according to Paragraph 6(1) of Law No 191/2004, which implemented Directive 76/308, the instrument which serves as the instrument permitting the enforcement of the claim in the State where the applicant authority is situated is to be recognised directly as an instrument permitting the enforcement of the claim in the Czech Republic. Accordingly, neither the requested authority in the main proceedings nor the Krajský soud v Českých Budějovicích had jurisdiction to examine the complaints raised by Mr Kyrian against the instrument permitting enforcement issued by the Hauptzollamt Weiden.

30 According to the Krajský soud v Českých Budějovicích, the fact that, in the request for recovery, Mr Kyrian was identified not only by his forename, surname and address, but also by date of birth clearly identified him as the debtor. According to the request for recovery and the document of notification annexed thereto, the instrument permitting the enforcement of the claim concerned was notified to him and is valid. In addition, the fact that the proceedings before the German customs authorities were held in German could not infringe Mr Kyrian's rights. According to the Krajský soud v Českých Budějovicích, nothing prevented Mr Kyrian, in his own interests, from having the

instrument permitting the enforcement of the claim concerned translated, including the instructions set out therein concerning the possibility of bringing an action against that instrument.

31 Mr Kyrian appealed by way of cassation against that judgment of the Krajský soud v Českých Budějovicích to the Nejvyšší správní soud alleging, on the same grounds as those relied on at first instance, that the instrument permitting the enforcement of the claim concerned was not capable of being enforced.

32 In those circumstances, the Nejvyšší správní soud decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

'1. Must Article 12(3) of Council Directive [76/308] be interpreted as meaning that, where measures for enforcement of a claim are contested before the court of a Member State in which the requested authority has its seat, that court is entitled, in accordance with the legislation of that Member State, to review whether the instrument permitting enforcement … is enforceable and has been properly served on the debtor?

2. Does it follow from general legal principles of Community law, in particular from the principles of a right to a fair trial, sound administration and the rule of law, that service of the instrument permitting enforcement … on the debtor in a language other than one he understands, which, moreover, is not an official language of the State in which it is served on the debtor, constitutes a defect which makes it possible to refuse to enforce on the basis of such an instrument permitting enforcement?'

The questions submitted for a preliminary ruling

The first question

33 By its first question, which it is necessary to examine in two parts, the national court asks, essentially, whether Article 12(3) of Directive 76/308 is to be interpreted as meaning that the courts of the Member State where the requested authority is situated have jurisdiction, first, to review the enforceability of an instrument permitting enforcement and, second, to verify whether the instrument was properly notified to the debtor.

The jurisdiction of the courts of the Member State where the requested authority is situated to review the enforceability of the instrument permitting enforcement

34 Directive 76/308 establishes common rules on mutual assistance in order to ensure the recovery of claims relating, inter alia, to certain levies, duties and taxes (see, to that effect, Case C-470/04 *N* [2006] ECR I-7409, paragraph 53).

35 In order to ensure that Directive 76/308 is given full effect and an autonomous interpretation, reference should be made principally to its general scheme and objectives (see, by analogy, Case C-433/01 *Blijdenstein* [2004] ECR I-981, paragraph 24, and Case C-347/08 *Vorarlberger Gebietskrankenkasse* [2009] ECR I-8661, paragraph 35).

36 In accordance with Article 8(1) of Directive 76/308, the instrument permitting enforcement is to be directly recognised and automatically treated as an instrument permitting enforcement of a claim of the Member State in which the requested authority is situated. Although, according to Article 8(2) thereof, the instrument may, where appropriate and in accordance with the provisions in force in the Member State

in which the requested authority is situated, be accepted as, recognised as, supplemented with, or replaced by an instrument authorising enforcement in the territory of that Member State, such formalities may not be refused where the instrument is properly drawn up. It follows from the same provision that, if any of these formalities should give rise to a challenge concerning the claim and/or the instrument permitting enforcement thereof issued by the applicant authority, Article 12 of that directive is to apply.

37 Article 12 of Directive 76/308 provides for a division of powers between the bodies of the Member States where the applicant authority is situated and those of the Member State where the requested authority is situated to hear any disputes concerning the claim, the instrument permitting enforcement or the enforcement measures.

38 According to Article 12(1) of that directive, if the claim and/or the instrument permitting its enforcement issued in the Member State in which the applicant authority is situated are contested by an interested party, the action is to be brought by the latter before the competent body of that Member State, in accordance with the laws in force there. Article 12(2) provides that as soon as the requested authority has received the notification of such action either from the applicant authority or from the interested party, it is to suspend the enforcement procedure pending the decision of the body competent in the matter, unless the applicant authority requests otherwise.

39 On the other hand, under Article 12(3) of Directive 76/308, where it is the enforcement measures taken in the Member State in which the requested authority is situated that are being contested, the action is to be brought before the competent body of that Member State in accordance with its laws and regulations.

40 That division of powers results from the fact that the claim and the instrument permitting enforcement are established on the basis of the law in force in the Member State in which the applicant authority is situated, whilst, for enforcement measures in the Member State in which the requested authority is situated, the latter applies,

pursuant to Articles 5 and 6 of Directive 76/308, the provisions which its national law lays down for corresponding measures, that authority being the best placed to judge the legality of the measure according to its national law (see, by analogy, Case C-184/05 *Twoh International* [2007] ECR I-7897, paragraph 36, and Case C-318/07 *Persche* [2009] ECR I-359, paragraph 63).

41 The division of powers does not, in principle, permit the requested authority to question the validity or enforceability of the measure or the decision of which notification is sought by the applicant authority.

42 Although it thus falls, in principle, within the exclusive jurisdiction of the bodies of the Member State in which the applicant authority is situated to hear any disputes concerning the validity of the claim or the instrument permitting enforcement, it cannot be ruled out that, exceptionally, the bodies of the Member State in which the requested authority is situated will be authorised to review whether the enforcement of the instrument is liable, in particular, to be contrary to the public policy of that last mentioned State and, where appropriate, to refuse to grant assistance in whole or in part or to make it subject to fulfilling certain conditions.

43 In accordance with Articles 6 and 8 of Directive 76/308, the claim forming the subject-matter of a request for recovery and the instrument permitting the enforcement of the claim are treated in the same way as similar claims and instruments of the Member State in which the requested authority is situated. However, it is hard to imagine that an instrument permitting the enforcement of the claim would be enforced by that Member State if that enforcement were liable to be contrary to the public policy of that State. In addition, the public policy exception is provided for in Article 4(3) of Directive 76/308, in connection with requests for supply of information submitted by the applicant authority, whereby the requested authority may refuse such supply in particular where it would be liable to be contrary to the public policy of the Member State in which it is situated.

44 It follows from all of the above that the courts of the Member State in which the requested authority is situated do not, in principle, have jurisdiction to review the enforceability of an instrument permitting enforcement.

The jurisdiction of the courts of the Member State where the requested authority is situated to control whether the instrument permitting the enforcement of the claim was properly notified to the debtor

45 In order to reply to the second part of the first question, it is necessary to interpret the expression 'enforcement measures' used in Article 12(3) of Directive 76/308.

46 According to Article 5 of that directive, the first stage of the enforcement in the context of mutual assistance is, precisely, notification to the addressee by the requested authority of all instruments and decisions which emanate from the Member State in which the applicant authority is situated and which relate to a claim and/or to its recovery, the notification having to be carried out on the basis of the information supplied by the applicant authority.

47 It follows that notification constitutes one of the enforcement measures referred to in Article 12(3) of Directive 76/308 and that, therefore, in accordance with that provision, it is before the competent body of the Member State in which the requested authority is situated that any action challenging that notification is to be brought.

48 That interpretation is, moreover, confirmed by the fact that, as follows, essentially, from the sixth recital in the preamble to Directive 76/308 and Article 5(1) thereof, the notification was carried out in accordance with the rules of law in force for the notification of similar instruments or decisions in the Member State in which the requested authority is situated.

49 As was pointed out in paragraph 40 above, the competent body of the Member State in which the requested authority is situated is best placed to interpret the laws and regulations in force in that Member State.

50 Therefore, in reply to the first question, Article 12(3) of Directive 76/308 must be interpreted as meaning that the courts of the Member States where the requested authority is situated do not, in principle, have jurisdiction to review the enforceability of an instrument permitting enforcement. Conversely, where a court of that Member State hears a claim against the validity or correctness of the enforcement measures, such as the notification of the instrument permitting enforcement, that court has the power to review whether those measures were correctly effected in accordance with the laws and regulations of that Member State.

The second question

51 As to the admissibility of the second question, the Czech Government argues that, as the judicial bodies of the Member State in which the requested authority is situated are not entitled to assess whether the general principles of Community law were complied with when the measures were notified to the debtor, the preliminary question has no bearing on the decision of the national court concerned and is thus purely hypothetical.

52 As the national court has jurisdiction to review the correctness of the notification, it is, in any event, also the competent body to find any irregularity in the notification procedure according to the law and regulations in force in the Member State where it is situated. Taking account of the clear explanations of the Nejvyšší správní soud in its order for reference as to the reasons why it considers that the second question referred is relevant and an answer is necessary for the resolution of the case before it, the question is, therefore, contrary to the Czech Government's contentions, admissible.

53 By its second preliminary question, the Nejvyšší správní soud asks, essentially, whether it is possible to consider as correct the notification of an instrument permitting enforcement where that notification was made in the territory of the Member State in which the requested authority is situated in a language which the addressee does not understand and which is not the official language of that Member State.

54 It should be pointed out that Directive 76/308 lays down no rules stating that the notification of an instrument permitting enforcement in a language other than that understood by the addressee or the official language, or one of the official languages of the Member State in which the requested authority is situated is unlawful.

55 Article 17 of Directive 76/308 provides that requests for assistance, the instrument permitting the enforcement and other relevant documents are to be accompanied by a translation in the official language, or one of the official languages, of the Member State in which the requested authority is situated, without prejudice to the latter authority's right to waive the translation without the same power being offered to the addressee of the instrument permitting the enforcement of the claim.

56 However, as the Czech Government together with the German Government and the Commission rightly states, the translations envisaged in that provision are destined for the requested authority for its purposes and not for the debtor. Moreover, as the Commission also correctly states, by way of comparison between the regime under Directive 76/308 and that of judicial cooperation in civil and commercial matters as established in particular by the Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ 2007 L 324, p. 79), that latter being subject to different rules from those which frame judicial cooperation in administrative and fiscal matters, the procedure before the tax authorities or the subsequent notification of decisions are governed by the laws of the Member States.

57 It follows from the purpose of the Directive 76/308 that it is intended to ensure, in particular, the effective notification of all instruments and decisions, including those of a judicial nature, which emanate from the Member State in which the applicant authority is situated and which relate to a claim and/or to its recovery. However, that directive cannot attain that purpose unless it respects the legitimate interests of the addressees of the notifications (see, by analogy, Case C-473/04 *Plumex* [2006] ECR I-1417, paragraph 21).

58 It should be pointed out in that regard that the function of notification, in due time, is to make it possible for the addressee to understand the subject-matter and the cause of the notified measure and to assert his rights (see, to that effect, Case C-14/07 *Weiss und Partner* [2008] ECR I-3367, paragraph 73).

59 Therefore, in the context of mutual assistance pursuant to Directive 76/308, the addressee of the instrument permitting enforcement must be placed in a position to identify with a degree of certainty at the very least the subject-matter of the claim and the cause of action.

60 In a proceeding such as that in the main action, such is the case where the notification is made in an official language of the Member State in which the requested authority is situated. Under Article 5(1) of Directive 76/308, the addressee is notified by the requested authority in accordance with the rules of law in force for the notification of similar instruments or decisions in the Member State in which that authority is situated, which implies, in particular, notification in an official language of that Member State.

61 Given that Directive 76/308 does not set out the consequences where the notification is made in a language other than the official language of the Member State in which the requested authority is situated, it is for the national court to apply national law while taking care to ensure the full effectiveness of Community law, a task which may lead it to interpret a national rule which has been drawn up with only a purely domestic situation in mind in order to apply it to the cross-border situation at issue (see, to that effect, Case C-443/03 *Leffler* [2005] ECR I-9611, paragraph 51).

62 In accordance with the settled case-law of the Court, in the absence of express Community provisions, it is for the domestic legal system of each Member State to determine the procedural conditions governing actions at law intended to ensure the protection of directly effective Community law rights (see, to that effect Case 33/76 *Rewe-Zentralfinanz and Rewe-Zentral* [1976] ECR I-1989, paragraph 5 and *Leffler*, paragraph 49). The Court has also held that those conditions cannot be less favourable than those relating to rights originating in the domestic legal order (principle of equivalence) and cannot make it impossible or excessively difficult in practice to exercise rights conferred by the Community legal order (principle of effectiveness) (see *Rewe-Zentralfinanz and Rewe-Zentral*, paragraph 5; Case C-261/95 *Palmisani* [1997] ECR I-4025, paragraph 27; Case C-231/96 *Edis* [1998] ECR I-4951, paragraph 34; and *Leffler*, paragraph 50).

63 It is therefore necessary to reply to the second question for a preliminary ruling that, in the framework of the mutual assistance introduced pursuant to Directive 76/308, in order for the addressee of an instrument permitting enforcement to be placed in a position to enforce his rights, he must receive the notification of that instrument in an official language of the Member State in which the requested authority is situated. In order to ensure compliance with that right, it is for the national court to apply national law while taking care to ensure the full effectiveness of Community law.

Costs

64 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. **Article 12(3) of Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures, as amended by Council Directive 2001/44/EC of 15 June 2001, must be interpreted as meaning that the courts of the Member States where the requested authority is situated do not, in principle, have jurisdiction to review the enforceability of an instrument permitting enforcement. Conversely, where a court of that Member State hears a claim against the validity or correctness of the enforcement measures, such as the notification of the instrument permitting enforcement, that court has the power to review whether those measures were correctly effected in accordance with the laws and regulations of that Member State;**

2. **In the framework of the mutual assistance introduced pursuant to Directive 76/308, as amended by Directive 2001/44, in order for the addressee of an instrument permitting enforcement to be placed in a position to enforce his rights, he must receive the notification of that instrument in an official language of the Member State in which the requested authority is situated. In order to ensure compliance with that right, it is for the national court to apply national law while taking care to ensure the full effectiveness of Community law.**

[Signatures]