JUDGMENT OF THE COURT (First Chamber)

13 April 2000 *

In Case C-420/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Nederlandse Raad van State, Netherlands, for a preliminary ruling in the proceedings pending before that court between

W. N.

and

Staatssecretaris van Financiën

on the interpretation of Article 4(1) and (3) of Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent

* Language of the case: Dutch.

authorities of the Member States in the field of direct taxation (OJ 1977 L 336, p. 15),

THE COURT (First Chamber),

composed of: L. Sevón, President of the Chamber, P. Jann (Rapporteur) and M. Wathelet, Judges,

Advocate General: S. Alber,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— the Netherlands Government, by M.A. Fierstra, Head of the European Law Service in the Ministry of Foreign Affairs, acting as Agent,

— the French Government, by K. Rispal-Bellanger, Head of Subdirectorate in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and

S. Seam, Secretary for Foreign Affairs in the same directorate, acting as Agents,

— the Commission of the European Communities, by E. Mennens, Principal Legal Adviser, H. Michard and H. Speyart, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the Netherlands Government and the Commission at the hearing on 18 November 1999,

after hearing the Opinion of the Advocate General at the sitting on 13 January 2000,

gives the following

Judgment

1 By judgment of 19 November 1998, received at the Court on 23 November 1998, the Nederlandse Raad van State (Netherlands Council of State) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) three questions on the interpretation of Article 4(1) and (3) of

Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation (OJ 1977 L 336, p. 15; 'the Directive').

2 Those questions were raised in proceedings between W. N. ('the appellant in the main proceedings') and the Staatssecretaris van Financiën (Netherlands State Secretary for Finance) concerning the State Secretary's decision to inform the competent Spanish authorities of the fact that the appellant in the main proceedings had made maintenance payments to his spouse in Spain.

Relevant provisions

Community legislation

3 Article 1(1) of the Directive provides:

'In accordance with the provisions of this Directive the competent authorities of the Member States shall exchange any information that may enable them to effect a correct assessment of taxes on income and on capital'.

4 Article 4 of the Directive, entitled 'Spontaneous exchange of information', states:

'1. The competent authority of a Member State shall without prior request forward the information referred to in Article 1(1), of which it has knowledge, to the competent authority of any other Member State concerned, in the following circumstances:

(a) the competent authority of the one Member State has grounds for supposing that there may be a loss of tax in the other Member State;

(b) a person liable to tax obtains a reduction in or an exemption from tax in the one Member State which would give rise to an increase in tax or to liability to tax in the other Member State;

...

3. The competent authorities of the Member States may forward to each other in any other case, without prior request, the information referred to in Article 1(1) of which they have knowledge.'

National legislation

5 Under Article 7(1) of the Wet op de internationale bijstandsverlening bij de heffing van belastingen (Law on international administrative assistance in the field of taxation, 'the WIB'), in the version in force at the material time, the Minister for Finance may of his own motion forward to a competent authority such information as may be useful to the latter for the purposes of assessing tax liability in cases where:

'(a) it is presumed that, if that information is not forwarded, a tax reduction, remission, refund or exemption will be incorrectly granted in the State where that competent authority is located or there will be a failure to levy tax which should have been paid in that State;

(b) a tax reduction, remission, refund or exemption which may affect the levying of taxes in the State where that competent authority is located has been granted in the Netherlands'.

6 Under Article 13(1) of the WIB, the Minister is not to forward information where:

'(a) the forwarding of the information is not required under any obligation imposed by the Directive... or any other obligation laid down by international or interregional law;

(b) it would be contrary to Netherlands public policy to do so;

(c) the information may not be obtained in the Netherlands pursuant to any legislative provision or in accordance with any administrative practice for the purposes of levying the taxes referred to in Article 4;

(d) the competent authority does not appear to have first explored the usual avenues within its own State with a view to obtaining the information sought by it;

(e) the competent authority for which the information is intended is neither authorised nor in a position to forward such information to [the] Minister [for Finance]'.

The main proceedings and the questions referred

7 By letter of 2 December 1992, the State Secretary for Finance communicated to the appellant in the main proceedings his decision, taken pursuant to the WIB, spontaneously to inform the competent Spanish authorities about the maintenance payments which the appellant had made in Spain to his spouse, from whom he was permanently separated, between 1987 and 1991 through the intermediary of the ABN-Bank, Geneva, Switzerland.

8 The State Secretary for Finance considered that those maintenance payments, which the appellant in the main proceedings was deducting from his taxable income in the Netherlands, might affect the levying of tax in Spain.

9 On 22 December 1992, the appellant in the main proceedings lodged an objection to that decision which was rejected by a decision of the State Secretary for Finance of 25 May 1993.

10 The State Secretary took the view that the case before him was covered by Article 4(1)(a) of the Directive and that the term 'abnormaal' in the Dutch version was to be construed as meaning 'against the rules'. He considered that, for the purposes of applying that provision, it was sufficient that there be a presumption that all or part of the taxes due cannot be levied.

11 On 22 June 1993, the appellant in the main proceedings brought before the national court an action against the abovementioned decision rejecting the objection.

12 Since the Nederlandse Raad van State found that the dispute raised questions as to the interpretation of Community law, it decided to stay proceedings and to refer the following three questions to the Court of Justice for a preliminary ruling:

'1. Must the words "a loss of tax" in Article 4(1)(a) of Directive 77/799/EEC be interpreted as meaning that the loss of tax in question must be covered by an express measure on the part of the competent authority of another Member State?

2. How should the word "abnormaal" in the Dutch version of that provision be interpreted in that connection?

3. If Article 4(1)(a) is not applicable, can Article 4(3) of the Directive give rise to an obligation to exchange information spontaneously?'

The first question

13 Article 4(1)(a) of the Directive obliges the competent authority of a Member State without prior request to forward to the competent authority of any other Member State the information which may enable a correct assessment of taxes on income and on capital to be effected where it has grounds for supposing that there may be a loss of tax in that other Member State.

14 In accordance with the wording of that provision, it is sufficient for the loss of tax in question to be supposed. It is not necessary, on the other hand, for it to have been proven.

15 That literal interpretation of the terms of the provision in question corresponds to the purpose of the Directive. Since, in accordance with the sixth recital in the preamble thereto, the purpose of the Directive is the correct assessment of taxes on income and on capital in the different Member States, it provides for the exchange of any information which appears relevant for that purpose.

16 To the same effect, Article 1(1) of the Directive provides that the competent authorities of the Member States are to exchange any information that may enable a correct assessment of taxes on income and on capital to be effected.

17 In that respect, it must be recognised that it is only if that information reaches the authorities for which it is intended before the assessment to tax has been made that those authorities will be in a position to use it in the way most suited to the purpose of the Directive.

18 Furthermore, if the forwarding of the information to the other Member State were subject to the requirement that that State should have made the assessment to tax beforehand, that would imply that the authorities holding that information needed to have extensive knowledge of the factual and legal framework prevailing in that State. To make the obligation to exchange information spontaneously subject to such a requirement would run counter to the above-mentioned objective of the Directive.

19 Consequently, the answer to the first question must be that Article 4(1)(a) of the Directive must be interpreted as meaning that it is not necessary for the loss of tax referred to therein to be covered by an express measure on the part of the competent authority of another Member State.

The second question

20 In the Danish, Spanish, French, Italian, Dutch, Portuguese and Finnish versions of Article 4(1)(a) of the Directive, it is a question of an abnormal reduction or exemption, while the German, Greek, Swedish and English versions, in using the terms 'Steuerverkürzung', 'διαφυγή φόρων', 'förlust av skatt' and 'loss of tax' respectively, refer to a loss of tax.

21 According to settled case-law, the various language versions of a provision of Community law must be uniformly interpreted, and thus, in the case of divergence between those versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (see Case 30/77 *Bouchereau* [1977] ECR 1999, paragraph 14; Case C-449/93 *Rockfon* [1995] ECR I-4291, paragraph 28; and Case C-236/97 *Skatteministeriet* v *Codan* [1998] ECR I-8679, paragraph 28).

22 In the light of the purpose of the Directive, which is not only to combat tax evasion and avoidance, but also to enable a correct assessment of taxes on income and on capital to be effected in the different Member States, Article 4(1)(a) of the Directive must be interpreted as meaning that a Member State is without prior request to forward information to the tax authorities of another Member State where it has grounds for supposing that, without that information, an unjustified saving in tax might exist or be granted in that other State. In this context, it is not necessary for that saving to amount to a large sum.

23 That interpretation is borne out by the general scheme of the Directive, according to which the obligation to forward information is not connected with the magnitude of the tax evasion and avoidance which might arise if such information were not forwarded.

24 Consequently, the answer to the second question must be that Article 4(1)(a) of the Directive must be interpreted as meaning that the expression 'a loss of tax' refers to an unjustified saving in tax in another Member State.

The third question

25 In the light of the answers given to the first and second questions, it is not necessary to answer the third question.

Costs

26 The costs incurred by the Netherlands and French Governments and by the Commission, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (First Chamber),

in answer to the questions referred to it by the Nederlandse Raad van State by judgment of 19 November 1998, hereby rules:

Article 4(1)(a) of Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the

field of direct taxation must be interpreted as follows:

— it is not necessary for the loss of tax referred to therein to be covered by an express measure on the part of the competent authority of another Member State.

— the expression 'a loss of tax' refers to an unjustified saving in tax in another Member State.

Sevón Jann Wathelet

Delivered in open court in Luxembourg on 13 April 2000.

R. Grass

Registrar

L. Sevón

President of the First Chamber