Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

20 January 2021 *

(Reference for a preliminary ruling – Directive 2010/24/EU – Article 16 – Recovery of claims relating to taxes, duties and other measures – Mutual assistance – Request for precautionary measures – Judicial decision of the applicant Member State for the purpose of implementing precautionary measures – Jurisdiction of the court of the requested Member State to assess and reassess the justification of those measures – Principles of mutual trust and of mutual recognition)

In Case C-420/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Riigikohus (Supreme Court, Estonia), made by decision of 29 May 2019, received at the Court on 29 May 2019, in the proceedings

Maksu- ja Tolliamet

v

Heavyinstall OÜ,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, R. Silva de Lapuerta (Rapporteur), Vice-President of the Court, L. Bay Larsen, C. Toader and N. Jääskinen, Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Heavyinstall OÜ, by S. Koivuaho, acting as representative,

– the Estonian Government, by N. Grünberg, acting as Agent,

– the Hungarian Government, by M.Z. Fehér and R. Kissné Berta, acting as Agents,

* Language of the case: Estonian.

– the Swedish Government, by H. Eklinder, C. Meyer-Seitz, H. Shev, J. Lundberg and A. Falk, acting as Agents,

– the European Commission, by W. Roels and E. Randvere, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 September 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 16 of Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (OJ 2010 L 84, p. 1).

2 The request has been made in proceedings between the Maksu- ja Tolliamet (Tax and Customs Authority, Estonia; 'the MTA') and Heavyinstall OÜ regarding the adoption, in Estonia, of precautionary measures requested by the Finnish tax authority against that company.

Legal context

European Union law

3 Recitals 1, 4 and 6 of Directive 2010/24 state:

'(1) Mutual assistance between the Member States for the recovery of each others' claims and those of the Union with respect to certain taxes and other measures contributes to the proper functioning of the internal market. It ensures fiscal neutrality and has allowed Member States to remove discriminatory protective measures in cross-border transactions designed to prevent fraud and budgetary losses.

…

(4) To better safeguard the financial interests of the Member States and the neutrality of the internal market, it is necessary to extend the scope of mutual assistance for recovery to claims relating to taxes and duties not yet covered by mutual assistance for recovery, whilst in order to cope with the increase in assistance requests and to deliver better results, it is necessary to make assistance more efficient and effective and to facilitate it in practice. …

…

(6) This Directive should not affect the Member States' competence to determine the recovery measures available under their internal legislation. However, it is necessary to ensure that neither disparities between national laws nor lack of coordination between competent authorities jeopardise the seamless operation of the mutual assistance system provided for in this Directive.'

4 Article 14(1) and (2) of that directive provides:

‘1. Disputes concerning the claim, the initial instrument permitting enforcement in the applicant Member State or the uniform instrument permitting enforcement in the requested Member State and disputes concerning the validity of a notification made by a competent authority of the applicant Member State fall within the competence of the competent bodies of the applicant Member State. If, in the course of the recovery procedure, the claim, the initial instrument permitting enforcement in the applicant Member State or the uniform instrument permitting enforcement in the requested Member State is contested by an interested party, the requested authority shall inform that party that such an action must be brought by the latter before the competent body of the applicant Member State in accordance with the laws in force there.

2. Disputes concerning the enforcement measures taken in the requested Member State or concerning the validity of a notification made by a competent authority of the requested Member State shall be brought before the competent body of that Member State in accordance with its laws and regulations.’

5 According to Article 16 of that directive:

‘1. At the request of the applicant authority, the requested authority shall take precautionary measures, if allowed by its national law and in accordance with its administrative practices, to ensure recovery where a claim or the instrument permitting enforcement in the applicant Member State is contested at the time when the request is made, or where the claim is not yet the subject of an instrument permitting enforcement in the applicant Member State, in so far as precautionary measures are also possible, in a similar situation, under the national law and administrative practices of the applicant Member State.

The document drawn up for permitting precautionary measures in the applicant Member State and relating to the claim for which mutual assistance is requested, if any, shall be attached to the request for precautionary measures in the requested Member State. This document shall not be subject to any act of recognition, supplementing or replacement in the requested Member State.

2. The request for precautionary measures may be accompanied by other documents relating to the claim, issued in the applicant Member State.’

6 Article 17 of the same directive provides:

‘In order to give effect to Article 16, Articles 10(2), 13(1) and (2), 14, and 15 shall apply *mutatis mutandis*.’

7 Article 18 of Directive 2010/24 provides:

‘1. The requested authority shall not be obliged to grant the assistance provided for in Articles 10 to 16 if recovery of the claim would, because of the situation of the debtor, create serious economic or social difficulties in the requested Member State, in so far as the laws, regulations and administrative practices in force in that Member State allow such exception for national claims.

2. The requested authority shall not be obliged to grant the assistance provided for in Articles 5 and 7 to 16, if the initial request for assistance pursuant to Article 5, 7, 8, 10 or 16 is made in

respect of claims which are more than 5 years old, dating from the due date of the claim in the applicant Member State to the date of the initial request for assistance.

However, in cases where the claim or the initial instrument permitting enforcement in the applicant Member State is contested, the 5-year period shall be deemed to begin from the moment when it is established in the applicant Member State that the claim or the instrument permitting enforcement may no longer be contested.

Moreover, in cases where a postponement of the payment or instalment plan is granted by the competent authorities of the applicant Member State, the 5-year period shall be deemed to begin from the moment when the entire payment period has come to its end.

However, in those cases the requested authority shall not be obliged to grant the assistance in respect of claims which are more than 10 years old, dating from the due date of the claim in the applicant Member State.

3. A Member State shall not be obliged to grant assistance if the total amount of the claims covered by this Directive, for which assistance is requested, is less than EUR 1 500.

4. The requested authority shall inform the applicant authority of the grounds for refusing a request for assistance.'

8 Commission Regulation (EU) No 1189/2011 of 18 November 2011 laying down detailed rules in relation to certain provisions of Directive 2010/24/EU (OJ 2011 L 302, p. 16), as amended by Commission Implementing Regulation (EU) No 2017/1966 of 27 October 2017 (OJ 2017 L 279, p. 38) ('Regulation No 1189/2011'), lays down, as is apparent from Article 1 thereof, detailed rules for the application, inter alia, of Article 16(1) of Directive 2010/24.

9 Under Article 15 of Regulation No 1189/2011:

'1. Requests for recovery or for precautionary measures shall include a declaration that the conditions laid down in Directive 2010/24/EU for initiating the mutual assistance procedure have been fulfilled.

2. In case of a request for precautionary measures, this declaration may be supplemented by a declaration specifying the reasons and circumstances of the request, established in accordance with the model set out in Annex III.'

10 In accordance with points 2.2 and 2.3 of the model set out in Annex III to Regulation 1189/2011, the request for precautionary measures may be accompanied either by an administrative decision permitting precautionary measures or by a judicial confirmation that precautionary measures are justified.

Estonian law

11 Article 130(1) of the Maksukorralduse seadus (Law on the organisation of taxes; 'the MKS') sets out the measures that may be taken by the tax authority in order to enforce recovery of debts, where the debtor fails to fulfil his pecuniary obligation within the period prescribed by that law.

12 Paragraph 136[1] of the MKS, entitled 'Precautionary measures before establishment of monetary claim or liability', provides:

'(1) If, upon inspection of the correct payment of taxes, there is reason to suspect that, following the establishment of the monetary claim or liability arising from tax legislation, the enforceability thereof may prove to be much more difficult or impossible due to the conduct of the taxable person, the head of the tax authority or an officer authorised thereby may ask the Administrative Court to grant approval for an enforcement measure provided for in Paragraph 130(1) of the present law.'

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

13 On 8 February 2018, the Keski-Pohjanmaan käräjäoikeus (District Court, Keski-Pohjanmaa, Finland) adopted an interim decision relating to the seizure of certain assets belonging to Heavyinstall, in order to secure a tax claim of an anticipated amount of EUR 320 022 held by the Finnish tax authority on that company ('the Finnish court's seizure decision').

14 According to that decision, there was a risk that Heavyinstall would conceal, destroy or dispose of its assets or act in a manner liable to frustrate the recovery of the Finnish tax authority's claim. In addition, Heavyinstall's partner had knowingly misled that authority since 2010, in order to relieve that company of its tax obligations in Finland.

15 On 13 March 2018, the Finnish tax authority sent the MTA, on the basis of Article 16 of Directive 2010/24, a request for assistance concerning precautionary measures to be taken against Heavyinstall ('the request for assistance'). It is apparent from the information available to the Court that the Finnish court's seizure decision was attached to that request.

16 In order to comply with the request for assistance, the MTA made a request, on 29 March 2018, before the Tallinna Halduskohus (Administrative Court, Tallinn, Estonia), with a view to seizure of Heavyinstall's vehicles, namely two trailers with a value of EUR 7 500 and a HGV with a value of EUR 9 500, as well as attachment of that company's bank accounts in all the Estonian credit institutions in the amount of EUR 297 304 ('the request for precautionary measures').

17 By an order of 3 April 2018, the Tallinna Halduskohus (Administrative Court, Tallinn) rejected the request for precautionary measures, on the ground that no proof had been provided that the condition set in Paragraph 136[1](1) of the MKS had been fulfilled. In accordance with that provision, the application of precautionary measures requires there to be reason to suspect that, following the establishment of the claim, the enforceability of the claim may prove to be much more difficult or impossible due to the conduct of the taxable person.

18 The MTA brought an appeal against that order before the Tallinna Ringkonnakohus (Court of Appeal, Tallinn, Estonia), which dismissed that appeal by an order of 8 May 2018.

19 According to that court, it is apparent from Article 16 of Directive 2010/24 that the requested Member State is entitled to assess whether the request for precautionary measures is well founded and proportionate in the light of its own legislation, and to verify whether the adoption of such measures is in conformity with that legislation and with its administrative practices.

20 The Tallinna Ringkonnakohus (Court of Appeal, Tallinn) examined, on the basis of that premiss, whether the conditions of application of Paragraph 136[1] of the MKS were fulfilled and concluded, as the court of first instance had done, that that was not the case. Moreover, according to the Tallinna Ringkonnakohus (Court of Appeal, Tallinn), the application of the precautionary measures the implementation of which is requested against Heavyinstall is disproportionate.

21 In addition, the MTA was informed by the Finnish tax authority that, by a decision of 21 June 2020, the Keski-Pohjanmaan käräjäoikeus (District Court, Keski-Pohjanmaa) had upheld the Finnish court's seizure decision.

22 The MTA brought an appeal before the referring court, the Riigikohus (Supreme Court, Estonia), by which it has requested that court to set aside the order of 8 May 2018 of the Tallinna Ringkonnakohus (Court of Appeal, Tallinn) and to grant its request for implementation of precautionary measures against Heavyinstall.

23 According to the referring court, it is necessary, in the case in the main proceedings, to determine whether the Estonian courts, when ruling on the request for precautionary measures, may themselves assess the evidence adduced and decide, at their own discretion, whether the conditions of application of those measures are fulfilled, or whether, on the contrary, those courts must base their decision on the assessment made in the Finnish court's seizure decision.

24 The Riigikohus (Supreme Court) favours the interpretation of Article 16 of Directive 2010/24 advocated by the courts of first instance and of appeal according to which, in essence, the Finnish court's seizure decision is merely one of the items of evidence that must be examined in the assessment of the conditions set in Paragraph 136[1] of the MKS. However, the referring court also notes that the principles of cooperation, mutual trust and effectiveness of EU law might suggest accepting the interpretation of Article 16 of Directive 2010/24 favoured by the MTA in the main proceedings.

25 It is in those circumstances that the Riigikohus (Supreme Court) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is Article 16 of [Directive 2010/24] to be interpreted as meaning that the court of the Member State which has received the request for precautionary measures, when ruling on that request on the basis of national law (which is possible for the requested court under the first sentence of Article 16), is bound to the view taken by the court of the state of establishment of the applicant in relation to the necessity and possibility of the precautionary measure when a document containing that view has been submitted to the court (last sentence of [the second subparagraph of] Article 16[(1)], according to which this document shall not be subject to any recognition, supplementing or replacement in the requested Member State)?'

Consideration of the question referred

26 By its question, the referring court asks, in essence, whether Article 16 of Directive 2010/24 must be interpreted as meaning that the courts of the requested Member State, ruling on a request for precautionary measures, are bound by the assessment of the factual and legal compliance with the conditions laid down for the application of those measures made by the authorities of the

applicant Member State, where that assessment is contained in the document provided for in the second subparagraph of Article 16(1) of that directive, attached to that request, or, on the contrary, whether they may carry out their own assessment, having regard to their national law.

27 In that regard, it should be recalled that, according to the Court's settled case-law, for the purposes of interpreting a provision of EU law, it is necessary to consider not only its wording, but also its context and the objectives of the rules of which it is part (judgment of 11 June 2020, *ratiopharm*, C-786/18, EU:C:2020:459, paragraph 28).

28 As regards the literal interpretation of Article 16 of Directive 2010/24, first, it is apparent from the wording of the first subparagraph of paragraph 1 of that article that the requested authority is to take precautionary measures, in particular, if 'allowed by its national law and in accordance with its administrative practices' and if 'precautionary measures are also possible, in a similar situation, under the national law and administrative practices of the applicant Member State'.

29 Thus, that wording merely mentions the need for those precautionary measures, on the one hand, to be authorised in the requested Member State and, on the other, to be possible in the applicant Member State, without providing further details as to the extent of the powers of the courts of the requested Member State as regards the assessment of the conditions of application of those precautionary measures.

30 Secondly, it should be noted that, according to the wording of the second subparagraph of Article 16(1) of Directive 2010/24, where a document drawn up for permitting precautionary measures in the applicant Member State is attached to the request for assistance, 'this document shall not be subject to any act of recognition, supplementing or replacement in the requested Member State'.

31 Thus, as the Advocate General observed in point 36 of his Opinion, the analysis contained in that accompanying document, which generally covers the existence of the conditions laid down for precautionary measures in the light of the national law of the applicant Member State, must not and may not be supplemented or replaced in the requested Member State, which is consistent with an interpretation according to which that analysis is binding on the courts of the requested Member State.

32 As regards the interpretation of Article 16 of Directive 2010/24 in the light of its context, it should be noted, in the first place, that, under Article 17 of that directive, Article 14 thereof is to apply, *mutatis mutandis*, in order to give effect to that Article 16.

33 Article 14 of Directive 2010/24 provides for a division of powers between the courts of the applicant Member State and the requested Member State to hear disputes concerning, on one hand, the claim, the initial instrument permitting enforcement in the applicant Member State, the uniform instrument permitting enforcement in the requested Member State or disputes concerning the validity of a notification given by a competent authority of the applicant Member State and, on the other hand, the enforcement measures taken in the requested Member State or the validity of the notification given by a competent authority of the latter. 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 according to its national law (see, to that effect, judgment of 14 March 2019, *Metirato*, C-695/17, EU:C:2019:209, paragraphs 33 and 34).

34 Thus, pursuant to Article 14(1) of Directive 2010/24, any dispute of the claim and of the initial instrument permitting enforcement in the applicant Member State must be brought before the competent bodies of that Member State and not before those of the requested Member State, whose power of review is expressly limited by Article 14(2) of that directive to acts of the requested Member State (see, to that effect, judgment of 14 March 2019, *Metirato*, C-695/17, EU:C:2019:209, paragraph 35 and the case-law cited).

35 The transposition of that case-law, concerning Article 14 of that directive, to disputes relating to precautionary measures, referred to in Article 16 of that directive, is likewise consistent with an interpretation according to which the courts of the requested Member State cannot assess those measures in the light of the substantive conditions laid down by their national law for the adoption of such measures, since those precautionary measures have been established on the basis of the legal rules in force in the applicant Member State.

36 Consequently, as the Advocate General observed in point 45 of his Opinion, a concurrent analysis of the provision laid down by Article 16 of Directive 2010/24 indicates that the courts in the requested Member State are competent to rule on whether the procedure for application of precautionary measures complies with the legal provisions and administrative practices of that State, but not on whether the substantive conditions exist for application of those measures.

37 In the second place, it should be recalled that Article 18 of Directive 2010/24 lists specific cases in which the requested Member State may refuse to grant the mutual assistance provided for in that directive. In accordance with the Court's settled case-law, those cases, as exceptions to the principle of mutual trust, must be interpreted strictly (see, by analogy, judgment of 14 November 2013, *Baláž*, C-60/12, EU:C:2013:733, paragraph 29).

38 Similarly, the Court has accepted that the requested authority may, exceptionally, decide not to grant its assistance to the applicant authority if it is shown that such enforcement is liable to be contrary to the public policy of the Member State of the requested authority (see, to that effect, judgment of 26 April 2018, *Donnellan*, C-34/17, EU:C:2018:282, paragraph 47).

39 It is thus apparent from the analysis of the context of Article 16 of Directive 2010/24 that it is only in specific and defined cases, based on a derogation expressly provided for by that directive or on the case-law of the Court, that the courts of the requested Member State may refuse to grant assistance for the adoption of precautionary measures.

40 So far as concerns the teleological interpretation of Directive 2010/24, it should be borne in mind that that directive, while falling within the area of the internal market and not that of the area of freedom, security and justice, is based on the principle of mutual trust. The implementation of the system of mutual assistance established by Directive 2010/24 depends on the existence of such trust between the national authorities concerned (see, to that effect, judgment of 26 April 2018, *Donnellan*, C-34/17, EU:C:2018:282, paragraph 41).

41 In that regard, it should also be recalled that both the principle of mutual trust between the Member States and the principle of mutual recognition, which is based on the first of those principles, are of fundamental importance in EU law, given that they allow an area without internal borders to be created and maintained (see, to that effect, judgment of 26 April 2018, *Donnellan*, C-34/17, EU:C:2018:282, paragraph 40).

42 Moreover, first, it is apparent from recital 4 of Directive 2010/24 that, in order to cope with the increase in assistance requests and to deliver better results, it is necessary to make assistance more efficient and effective and to facilitate it in practice.

43 Secondly, in accordance with recital 6 of that directive, it is necessary to ensure that neither disparities between national laws nor lack of coordination between competent authorities jeopardise the seamless operation of the mutual assistance system provided for in the directive.

44 An interpretation of Article 16 of Directive 2010/24 that would allow the courts of the requested Member State to carry out a fresh examination of the conditions of application of precautionary measures, in the light of their national law, however, in particular where the assessment of those conditions is contained in the document provided for in the second subparagraph of Article 16(1) of that directive, would be contrary to the principle of mutual trust – on which that directive is based – and to the requirements relating to the seamless operation and the effectiveness of the system of mutual assistance established by that directive.

45 Furthermore, as the Advocate General observed in point 55 of his Opinion, that fresh examination would also be contrary to both the specific requirements for expeditious treatment characterising the procedure for application of precautionary measures and the need to avoid contradictory assessments in that assistance procedure by judicial bodies in the two Member States involved with regard to the same factual circumstances.

46 It follows, therefore, from a literal interpretation of Article 16 of Directive 2010/24 as well as from the context of that provision and from the objectives pursued by that directive that the courts of the requested Member State are, in principle, bound by the assessment made by the authorities of the applicant Member State of compliance with the conditions of application of precautionary measures, in particular where that assessment is contained in the document provided for in the second subparagraph of Article 16(1) of Directive 2010/24, attached to the request for assistance.

47 In the case at hand, it is appropriate to note that the Finnish court's seizure decision may be regarded as the document referred to in the second subparagraph of Article 16(1) of Directive 2010/24. Indeed, as is apparent from point 2.3 of Annex III to Regulation No 1189/2011, which contains a model declaration specifying the reasons and circumstances of a request for precautionary measures, such a request, based on Article 16 of Directive 2010/24, may result from a judicial decision confirming that the precautionary measures are justified. The model also provides that that judicial decision is to be attached to that declaration.

48 It is therefore on the basis of the analysis set out in that document and not on the basis of their own assessment of the facts at issue and of the conditions of application, within the meaning of Paragraph 136[1] of the MKS, of the precautionary measures, that the Estonian courts must rule on the request for assistance before them.

49 In the light of all the foregoing considerations, the answer to the question referred is that Article 16 of Directive 2010/24 must be interpreted as meaning that the courts of the requested Member State, ruling on a request for precautionary measures, are bound by the assessment of the factual and legal compliance with the conditions laid down for the application of those measures made by the authorities of the applicant Member State, in particular where that assessment is contained in the document referred to in the second subparagraph of Article 16(1) of that directive, attached to that request.

Costs

50 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:

Article 16 of Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures must be interpreted as meaning that the courts of the requested Member State, ruling on a request for precautionary measures, are bound by the assessment of the factual and legal compliance with the conditions laid down for the application of those measures made by the authorities of the applicant Member State, in particular where that assessment is contained in the document referred to in the second subparagraph of Article 16(1) of that directive, attached to that request.

[Signatures]