Provisional text

JUDGMENT OF THE COURT (Third Chamber)

29 April 2021 (*)

(Reference for a preliminary ruling – Banking supervision – Reorganisation and winding up of credit institutions – Directive 2001/24/EC – Reorganisation measure adopted by an administrative authority in the home Member State of a credit institution – Transfer of rights, assets or liabilities to a 'bridge institution' – Transfer back to the credit institution subject to the reorganisation measure – Article 3(2) – Lex concursus – Effect of a reorganisation measure in other Member States – Mutual recognition – Article 32 – Effects of a reorganisation measure on a pending lawsuit – Exception to the application of the lex concursus – Article 47, first paragraph, of the Charter of Fundamental Rights of the European Union – Effective judicial protection – Principle of legal certainty)

In Case C-504/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Supremo (Supreme Court, Spain), made by decision of 25 June 2019, received at the Court on 2 July 2019, in the proceedings

Banco de Portugal,

Fundo de Resolução,

Novo Banco SA, Sucursal en España

v

VR,

THE COURT (Third Chamber),

composed of A. Prechal, President of the Chamber, K. Lenaerts, President of the Court, acting as Judge of the Third Chamber, N. Wahl, F. Biltgen and L.S. Rossi (Rapporteur), Judges,

Advocate General, J. Kokott,

Registrar: L. Carrasco Marco, administrator,

having regard to the written procedure and further to the hearing on 30 September 2020,

after considering the observations submitted on behalf of:

– Banco de Portugal and the Fundo de Resolução, by J.M. Rodríguez Cárcamo, abogado, and A.M. Rodríguez Conde, abogada,

– Novo Banco SA, Sucursal en España, by A. Fernández de Hoyos and J.I. Fernández Aguado, abogados,

– the Spanish Government, by S. Centeno Huerta, acting as Agent,

– the Italian Government, by G. Palmieri, acting as Agent, and by G.M. De Socio, avvocato dello Stato,

– the Portuguese Government, by L. Inez Fernandes and by S. Jaulino, A. Homem, A. Pimenta, C. Raimundo and P. Barros da Costa, acting as Agents, and by T. Tönnies, advogada,

– the European Parliament, by L. Visaggio and M. Sammut and by P. López-Carceller and R. Ignătescu, acting as Agents,

– the Council of the European Union, by A. de Gregorio Merino and I. Gurov and by E. d'Ursel, acting as Agents,

– the European Commission, by D. Triantafyllou, A. Nijenhuis, J. Rius Riu and K.-Ph. Wojcik, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 19 November 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3(2) 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), Article 2 TEU, Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') and the general principle of legal certainty.

2 The request has been made in proceedings between Banco de Portugal, the Fundo de Resolução ('the Resolution Fund'), Novo Banco SA, Sucursal en España ('Novo Banco Spain'), and VR concerning an application for the nullity of an agreement for the sale of preference shares purchased by the latter.

Legal context

EU law

3 Recitals 3, 4, 6, 7, 11, 16, 23 and 30 to Directive 2001/24 are worded as follows:

'(3) This Directive forms part of the Community legislative framework set up by Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions [(OJ 2000 L 126, p. 1)]. It follows therefrom that, while they are in operation, a credit institution and its branches form a single entity subject to the supervision of the competent authorities of the State where authorisation valid throughout the Community was granted.

(4) It would be particularly undesirable to relinquish such unity between an institution and its branches where it is necessary to adopt reorganisation measures or open winding-up proceedings.

…

(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.

…

(11) It is necessary to notify third parties of the implementation of reorganisation measures in Member States where branches are situated when such measures could hinder the exercise of some of their rights.

…

(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.

…

(23) Although it is important to follow the principle that the law of the home Member State determines all the effects of reorganisation measures or winding-up proceedings, both procedural and substantive, it is also necessary to bear in mind that those effects may conflict with the rules normally applicable in the context of the economic and financial activity of the credit institution in question and its branches in other Member States. In some cases reference to the law of another Member State represents an unavoidable qualification of the principle that the law of the home Member State is to apply.

…

(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 procedures 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 1(1) of Directive 2001/24 states:

'This Directive shall apply to credit institutions and their branches set up in Member States other than those in which they have their head offices, as defined in points (1) and (3) of Article 1 of Directive 2000/12/EC, subject to the conditions and exemptions laid down in Article 2(3) of that Directive.'

5 Under the seventh indent of Article 2 of Directive 2001/24, 'reorganisation measures' means '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'.

6 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 procedures 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 Community 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 Community once they become effective in the Member State where they have been taken.'

7 According to Article 32 thereof, entitled 'Lawsuits pending':

'The 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.'

Spanish law

8 Ley 6/2005 sobre saneamiento y liquidación de las entidades de crédito (Law 6/2005 on the reorganisation and liquidation of credit institutions) of 22 April 2005 (BOE No 97 of 23 April 2005, p. 13912) transposed Directive 2001/24 into Spanish law.

9 Article 19(1) of that law provides as follows:

'In the case of a credit institution authorised in a Member State of the European Union. which has at least one branch or provides services in Spain, that [reorganisation] measure or [winding-up] proceedings [adopted or opened against it,] has full effect in Spain without any further formality, as soon as it has effect in the Member State in which the measure was adopted or proceedings were opened.'

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

10 On 10 January 2008, VR entered into a contract with Banco Espírito Santo, Sucursal en España ('BES Spain') by which she purchased preference shares in the Icelandic credit institution Kaupthing Bank for an amount of approximately EUR 166,000 ('the Share Sale Agreement'). At that time, BES Spain was the Spanish branch of the Portuguese bank Banco Espírito Santo ('BES').

11 In view of the serious financial difficulties suffered by BES, the Board of Directors of Banco de Portugal adopted, by decision of 3 August 2014, as amended by decision of 11 August 2014 ('the August 2014 decision'), so-called 'resolution' measures with respect to that credit institution.

12 By that decision, Banco de Portugal decided to set up a 'bridge bank' or 'bridge institution', called Novo Banco SA, to which were transferred the assets, liabilities and other off-balance sheet items of BES, set out in Annex 2 to that decision.

13 Annex 2 listed certain liabilities which were excluded from the transfer to Novo Banco and which therefore remained part of the assets of BES. Those liabilities included those listed in the first subparagraph under (b)(v) thereof, namely 'any liability or contingency, in particular those arising from fraud or infringement of regulatory, penal or administrative provisions or decisions'.

14 Following the transfer referred to in paragraph 12 of the present judgment, Novo Banco Spain maintained the commercial relationship that VR had established with BES Spain, relating to the deposit and management of the securities that were the subject of the Share Sale Agreement, and continued to receive the commission related to those services.

15 On 4 February 2015, VR brought an action before the Juzgado de Primera Instancia de Vitoria (Court of First Instance, Vitoria, Spain) against Novo Banco Spain, seeking, primarily, a declaration that the Share Sale Agreement was null and void, due to a lack of consent, and the repayment of the amount invested, or,

in the alternative, the termination of that agreement for breach of the obligations of diligence, loyalty and information, as well as the award of damages against that banking establishment.

16 Before that court, Novo Banco Spain objected that it lacked capacity to be sued because, under Annex 2 to the August 2014 decision, the alleged liability was not one that had been transferred to it.

17 By judgment of 15 October 2015, the Juzgado de Primera Instancia de Vitoria (Court of First Instance, Vitoria) upheld VR's claim, finding that that liability had indeed been transferred to Novo Banco by virtue of the decision of August 2014. According to that court, VR's consent had been vitiated at the time of the Share Sale Agreement, as she was then 68 years old, had no financial knowledge and had not been adequately informed by BES Spain of the nature and risks of the preference shares she had purchased. Therefore, that court declared the contract null and void and ordered Novo Banco Spain to reimburse the full purchase price to VR.

18 Novo Banco Spain appealed against that judgment to the Audiencia Provincial de Álava (Provincial Court, Álava, Spain). In the course of the proceedings, it filed two decisions adopted by Banco de Portugal on 29 December 2015 ('the decisions of 29 December 2015').

19 It follows from those decisions, as presented by the referring court, that Annex 2, first paragraph, subparagraph (b)(vii) to the August 2014 decision was now to read as follows: 'Any obligations, warranties, liabilities or contingencies assumed in the marketing, brokerage, contracting and distribution of financial instruments issued by any institutions'. It was also clarified on that occasion that 'in particular, as of today, the following liabilities of BES have not been transferred to Novo Banco:… (iii) all indemnities related to contractual breaches (real estate and other asset purchases) signed and concluded before 20:00 on 3 August 2014; … (vi) all indemnities and claims resulting from the cancellation of operations carried out by BES as a financial and investment services provider; and (vii) any liability subject to one of the procedures described in Annex I'. The proceedings referred to in Annex I include the action brought by VR.

20 Furthermore, the decisions of 29 December 2015 provide that, 'in so far as any asset, liability or other off-balance sheet item … should have remained part of BES's assets and liabilities but was in fact transferred to Novo Banco, those assets, liabilities or other off-balance sheet items shall be transferred back from Novo Banco to BES with effect from 3 August 2014 (20.00)'.

21 The Audiencia Provincial de Álava (Provincial Court of Álava) dismissed Novo Banco Spain's appeal and Novo Banco Spain lodged an extraordinary appeal for procedural irregularities before the referring court, the Tribunal Supremo (Supreme Court, Spain). Banco de Portugal and the Resolution Fund were granted leave to intervene in support of the forms of order sought by Novo Banco Spain. Those parties take the view that the latter should not have been recognised as a defendant in the main proceedings, since the liabilities at issue were not transferred to Novo Banco and, even if they had been transferred, they would subsequently have been retransferred to BES by virtue of the decisions of 29 December 2015. Those parties also claim that, pursuant to Article 3(2) of Directive 2001/24, those decisions have effect in all Member States without any further formality.

22 The referring court considers that the decisions of 29 December 2015 are not intended merely to clarify the decision of August 2014, but amend it with retroactive effect. Thus, by virtue of the decisions of 29 December 2015, the liability vis-à-vis VR arising from the Share Sale Agreement, which the decision of August 2014 had transferred to Novo Banco, was retransferred to BES with retroactive effect on 3 August 2014.

23 The referring court does not entertain any doubts as to the possibility that a reorganisation measure adopted by the competent public authority of the home Member State may produce retroactive effects, which the Court has already acknowledged in the judgment of 24 October 2013, *LBI* (C-85/12, EU:C:2013:697), nor does it call into question the possibility that liabilities transferred to Novo Banco may subsequently be transferred back to BES. However, it wishes to know whether the substantive

changes made by the adoption of the decisions of 29 December 2015 should be recognised in the pending lawsuit initiated before their adoption.

24 In that connection, the referring court questions, in the light of the requirement of effectiveness of the judicial protection of VR's rights deriving from the first paragraph of Article 47 of the Charter and the principle of legal certainty inherent in the rule of law, whether the argument of Novo Banco Spain, Banco de Portugal and the Resolution Fund is well founded, that even if the referring court were to uphold the judgment of the Audiencia Provincial de Álava (Provincial Court, Álava) that confirmatory judgment would be ineffective or inoperative, since, by the decisions of 29 December 2015, the liabilities in question were, in any event, transferred back to the assets of BES with effect from 3 August 2014.

25 In those circumstances, the Tribunal Supremo (Supreme Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is an interpretation of Article 3(2) of Directive [2001/24] under which, in legal proceedings pending in other Member States, the courts must, without any further formalities, recognise the effects of a decision by the competent administrative authority of the home Member State that is intended retrospectively to change the legal framework that existed at the time the proceedings were commenced and that renders ineffective any judgments that do not accord with the provisions of the new decision, compatible with the fundamental right to an effective remedy in Article 47 of the [Charter], the principle of the rule of law in Article 2 [TEU] and the general principle of legal certainty?'

Consideration of the question referred

Preliminary observations

26 As a preliminary point, it must be observed, in the first place that, as stated in paragraph 22 of the present judgment, it is apparent from the order for reference that the referring court assumes that the decisions of 29 December 2015 modified the decision of August 2014, in particular by retransferring to BES, with retroactive effect, the potential liability of Novo Banco on which VR's action is based.

27 The correctness of that assumption has been challenged by Novo Banco, Banco de Portugal and the Resolution Fund as well as by the Portuguese Government. In that connection, they argue that the decisions of 29 December 2015 do not modify the decision of August 2014, but merely clarify the latter and, therefore, that the exclusion from the scope of the assets and liabilities transferred to Novo Banco of the potential liability on which VR's action is based is the result of reorganisation measures adopted, not in the context of a pending lawsuit, but before VR's action was brought on 4 February 2015.

28 However, it is not for the Court to assess the scope of the decisions of 29 December 2015, since questions relating to the interpretation of Union law raised by the national court within the regulatory and factual framework which it defines under its responsibility, and whose accuracy it is not for the Court to verify, enjoy a presumption of relevance (judgment of 30 April 2020, *Blue Air -Airline Management Solutions*, C-584/18, EU:C:2020:324, paragraph 46 and the case-law cited).

29 Thus, in order to answer the question posed, it must be assumed that the decisions of 29 December 2015 did indeed modify, with retroactive effect, the decision of August 2014 and that they were adopted in the context of ongoing legal proceedings, as VR commenced proceedings before the Juzgado de Primera Instancia de Vitoria (Court of First Instance, Vitoria) on 4 February 2015.

30 In the second place, according to settled case-law, in the procedure laid down by Article 267 TFEU, providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the referring court with an answer which will be of use to it and enable it to determine the case before it. Furthermore, the Court may also find it necessary to consider provisions of EU law to which the national court has not referred in its question. Having that in mind, the Court may have to reformulate the questions

referred to it (judgments of 13 September 2016, *Rendón Marín*, C-165/14, EU:C:2016:675, paragraph 33; and of 8 June 2017, *Freitag,* C-541/15, EU:C:2017:432, paragraph 29; and of 17 December 2020, *Generalstaatsanwaltschaft Berlin (Extradition to the Ukraine)*, C-398/10, EU;C:2020:1032, paragraph 35).

31 In the present case, although the questions raised by the national court relate to Article 3(2) of Directive 2001/24, it should be noted, in the light of the findings set out in paragraph 26 of the present judgment and repeated in paragraph 29, that Article 32 of that directive, in so far as it introduces an exception to Article 3(2) thereof in respect of the law applicable to the effects of reorganisation measures on pending proceedings, is relevant for the purposes of the reply to be given to the national court.

Substance

32 In the light of those preliminary considerations, the question referred by the national court concerns, in substance, whether Article 3(2) and Article 32 of Directive 2001/24, read in the light of the principle of legal certainty and the first paragraph of Article 47 of the Charter, must be interpreted as precluding recognition, without further conditions, in judicial proceedings on the merits pending in a Member State other than the home Member State, of a liability of which a credit institution had been divested by a first reorganisation measure taken in the latter State, of the effects of a second reorganisation measure designed to transfer back, with retroactive effect, at a date prior to the opening of such proceedings, that liability to that credit institution, where such recognition has the result that the credit institution to which the liability had been transferred by the first measure can no longer be sued, with retroactive effect, for the purposes of those proceedings, thereby calling into question judicial decisions already given in favour of the applicant who is the subject of those proceedings.

33 In that connection, it must be observed, as is apparent inter alia from recitals 4 and 16 thereof, that 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.

34 Under Article 3(2) of that directive, reorganisation measures are, in principle, applied in accordance with the law of the home Member State. Furthermore, it follows, first, from the second subparagraph of that provision, that such measures produce their effects 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. Second, in accordance with the third subparagraph of that provision, reorganisation measures produce their effects throughout the Union as soon as those measures produce their effects in the home Member State. Those provisions thus provide that, in principle, the *lex concursus* governs the reorganisation measures of credit institutions and their effects (judgment of 24 October 2013, *LBI*, C-85/12, EU:C:2013:697, paragraph 49).

35 However, as is expressly stated in recital 23 of Directive 2001/24, those effects may conflict with the rules normally applicable in the context of the economic and financial activity of the credit institution and its branches in other Member States. Therefore, the reference to the law of another Member State is, in certain cases, an unavoidable qualification of the principle that the law of the home Member State applies.

36 Thus, by way of exception to the application of the *lex concursus*, Article 32 of Directive 2001/24 provides that the effects of reorganisation measures on pending lawsuits concerning an asset or a right of which the credit institution has been divested are governed exclusively by the law of the Member State in which those proceedings are pending (see, to that effect, judgment of 24 October 2013, *LBI*, C-85/12, EU:C:2013:697, paragraphs 51 and 52).

37 In the first place, it is apparent from the wording of Article 32 that the application of the exception provided for therein requires three cumulative conditions to be met.

38 First, the measures must be reorganisation measures within the meaning of Article 2 of Directive 2001/24, which is the position in the present case since, as noted in paragraph 26 of the present judgment, the decisions of 29 December 2015 are intended to preserve or restore the financial situation of a credit institution.

39 Second, there must be a pending lawsuit. In that regard, the Court has already held, relying on recital 30 of Directive 2001/24, that a distinction must be drawn between pending lawsuits and individual enforcement actions arising from those proceedings, and that the term ‘pending lawsuit’, within the meaning of Article 32 thereof, covers only proceedings on the merits (judgment of 24 October 2013, *LBI*, C-85/12, EU:C:2013:697, paragraphs 53 and 54).

40 In the present case, first, as is apparent from the order for reference, the lawsuit in the main proceedings, brought by VR against Novo Banco Spain, in so far as it concerns an action seeking a declaration that the agreement is null and void or, in the alternative, the termination of the Share Sale Agreement, must be regarded as proceedings on the merits. Second, the decisions of 29 December 2015 were adopted after the lawsuit brought by VR on 4 February 2015 before the Juzgado de Primera Instancia de Vitoria (Court of First Instance, Vitoria) had been brought and, therefore, at a time when it was already ongoing.

41 Third, the pending lawsuit must relate to ‘an asset or right of which the credit institution is divested’. In that regard, while some language versions of Article 32 of Directive 2001/24 are worded in such a way as to suggest that only assets are covered by that condition, in other versions the condition is worded more broadly, as the Advocate General noted, in substance, in point 38 of her Opinion. Thus, in the event of such a disparity, the provision in question must be interpreted by reference to the general scheme and the purpose of the rules of which it forms part (see, to that effect, judgment of 26 January 2021, *Hessicher Rundfunk*, C-422/19 and C-423/19, EU:C:2021:63, paragraph 65).

42 As regards the purpose of Article 32 of Directive 2001/24, it is clear from recitals 23 and 30 thereof, that that provision is intended, as an essential qualification to the application of the *lex concursus* to which it is an exception, to make the effects of reorganisation measures or winding-up proceedings on pending lawsuits subject to the law of the Member State in which those lawsuits are pending, in view of the fact that those effects may conflict with the rules normally applicable in the context of the economic and financial activity of the credit institution and its branches in other Member States. It would be incompatible with such a purpose to exclude from the application of the latter law the effects produced by reorganisation measures on a pending lawsuit where it relates to potential liabilities which, as a result of such reorganisation measures, have been transferred to another entity.

43 Thus, it must be held that Article 32 of Directive 2001/24 must apply to pending lawsuits concerning one or more of the assets and liabilities of the credit institution which are the subject of the reorganisation measures adopted (see, by analogy, judgment of 6 June 2018, *Tarragó da Silveira*, C-250/17, EU:C:2018:398, paragraph 25).

44 In the present case, however, the pending lawsuit concerns the potential liability arising from the conclusion of the Share Sale Agreement, which is a liability of BES Spain which was the subject of the reorganisation measure adopted by Banco de Portugal in August 2014 and of which BES Spain was divested, within the meaning of Article 32 of Directive 2001/24, that measure having been amended with retroactive effect by the decisions of 29 December 2015.

45 In the light of those factors, it appears that the three cumulative conditions laid down by Article 32 have been fulfilled in the main proceedings.

46 In the second place, as regards the extent of the effects of reorganisation measures governed by the law of the Member State in which the lawsuit is pending, it must be held that the law of that Member State governs all the effects that such measures may have on pending lawsuits, whether those effects are procedural or substantive.

47 First, it is not clear from Article 32 of Directive 2001/24, nor from recital 30 thereof, that the Union legislature intended to limit the application of that exception to the procedural effects of a reorganisation measure. Second, recital 23 of that directive, which, as is clear from paragraph 35 of the present judgment, justifies reference to the law of a Member State other than the home Member State as an essential qualification of the principle of the applicability of the law of the home Member State, does not merely mention the procedural effects, but indicates that both the procedural effects and the substantive effects of reorganisation measures may conflict with the rules normally applicable in the context of the economic and financial activity of the credit institution and its branches in other Member States

48 In any event, it should be made clear that, since, as follows from the wording of Article 32 of Directive 2001/24 and recital 30 thereof, the law of the Member State in which the lawsuit is pending governs only the effects of the measures for the purposes of those proceedings, the application of that article in a situation such as that in the main proceedings cannot call into question the validity of the decisions of 29 December 2015 themselves.

49 Therefore, it follows from Article 3(2) and Article 32 of Directive 2001/24 that the effects, both procedural and substantive, of a reorganisation measure on ongoing judicial proceedings on the merits are exclusively those determined by the law of the Member State in which those proceedings are pending.

50 That interpretation is also required in the light of the general principle of legal certainty and the right to effective judicial protection guaranteed by the first paragraph of Article 47 of the Charter.

51 In that connection, with regard, first, to the principle of legal certainty, it must be recalled that, according to the Court's settled case-law, that principle requires, on the one hand, that the rules of law be clear and precise and, on the other, that their application be foreseeable for those subject to the law, in particular, where they may have adverse consequences for individuals and undertakings. Specifically, in order to meet the requirements of that principle, legislation must enable those concerned to know precisely the extent of the obligations imposed on them, and those persons must be able to ascertain unequivocally their rights and obligations and take steps accordingly (see judgment of 11 July 2019, *Agrenergy and Fusignano Due*, C-180/18, C-286/18 and C-287/18, EU:C:2019:605, paragraphs 29 and 30 and the case-law cited).

52 Furthermore, the Court has already recalled that the imperative of legal certainty must be observed all the more strictly in the case of rules liable to have financial consequences (judgment of 21 June 2007, *ROM-projecten*, C-158/06, EU:C:2007:370, paragraph 26 and the case-law cited).

53 In the present case, although VR had, at the time she brought her action before the Juzgado de Primera Instancia de Vitoria (Court of First Instance, Vitoria) against Novo Banco Spain on 4 February 2015, all the information necessary to make a fully informed decision as to whether to bring such an action, as well as to identify with certainty the person against whom the action was to be directed and, in particular, the fact that a retransfer of liability from Novo Banco to BES under the Share Sale Agreement could still be made and have retroactive effect, the fact remains that, VR was not in a position, once her action had been brought but before a final decision had been adopted, to anticipate the implementation of the latter option and to make arrangements accordingly.

54 Thus, the recognition, in the main proceedings, of the effects of the decisions of 29 December 2015 in so far as it is capable of calling into question the judicial decisions already taken in favour of VR, which are still the subject of a pending lawsuit, and which has the result, with retroactive effect, that the defendant can no longer be sued for the purposes of the action brought by the applicant, is incompatible with the principle of legal certainty.

55 Secondly, as regards the assessment of such recognition, in the light of the right to effective judicial protection guaranteed by Article 47 of the Charter, the first paragraph of that article states that everyone whose rights and freedoms guaranteed by Union law have been infringed has the right to an effective remedy before a court, subject to the conditions laid down therein.

56 Furthermore, pursuant to Article 52(1) of the Charter, limitations may be placed on the exercise of rights and freedoms guaranteed by the Charter on condition that (i) those limitations are provided for by law, (ii) they respect the essence of the rights and freedoms at issue, and (iii) in compliance with the principle of proportionality, they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others (see, to that effect, judgment of 6 October 2020, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*, C-245/19 and C-246/19, EU:C:2020:795, paragraph 51).

57 It follows from the case-law of the Court that the effectiveness of the judicial review guaranteed by the first paragraph of Article 47 of the Charter requires, inter alia, that the person concerned is able to defend his or her rights in the best possible conditions and to decide, in full knowledge of the facts, whether it would be useful to bring an action against a given entity before the competent court (see, to that effect, judgment of 8 May 2019, *PI*, C-230/18, EU:C:2019:383, paragraph 78 and the case-law cited).

58 In the present case, the action brought by VR before the Spanish courts is based, inter alia, on a right guaranteed by Union law, in accordance with the first paragraph of Article 47 of the Charter, in so far as, for the purposes of that action, she relies on the right not to be deprived of recognition of the effects of reorganisation measures, where such recognition would infringe the relevant provisions laid down by Directive 2001/24.

59 It appears from the file before the Court that both when VR's action against Novo Banco Spain was brought on 4 February 2015 and when the judgment of 15 October 2015 was delivered by the Juzgado de Primera Instancia de Vitoria (Court of First Instance, Vitoria), which upheld that action, the decisions of 29 December 2015 had not yet been adopted.

60 Therefore, it appears that VR was right to bring her action against Novo Banco Spain, which was at that time the party that could be sued for the liability arising from the conclusion of the Share Sale Agreement with VR. Indeed, VR could not have brought an action against BES Spain at that time, since, as the referring court found, the August 2014 decision had transferred that responsibility from BES to Novo Banco.

61 It is true that Directive 2001/24 does not prevent the home Member State from amending, even with retroactive effect, the legal rules applicable to such reorganisation measures (see, to that effect, judgment of 24 October 2013, *LBI*, C-85/12, EU:C:2013:697, paragraph 38).

62 However, in the present case, it must be made clear that, as can be seen from paragraphs 26 and 29 of the present judgment, the decisions of 29 December 2015, which modified, with retroactive effect, the decision of August 2014, and in particular the imputation of liability arising from the conclusion with VR of the Share Sale Agreement, took place in the context of a pending lawsuit, which was brought with a view to having such liability established. In fact, those decisions aim precisely to render inoperative the judgment of the Juzgado de Primera Instancia de Vitoria (Court of First Instance, Vitoria) of 15 October 2015, by calling into question the interpretation that that court had made of the decision of August 2014. As is clear from paragraph 19 of the present judgment, they refer expressly to the action brought by VR in order to establish, counter to that judgment, that the liability that might arise from that action had not been transferred from BES to Novo Banco.

63 To accept that reorganisation measures taken by the competent authority of the home Member State subsequent to the bringing of such an action and such a judgment, which have the effect of modifying, with retroactive effect, the legal framework relevant to the resolution of the dispute which gave rise to that action, or even directly to the legal situation which is the subject matter of that dispute, might lead the court seised to reject that action, would constitute a restriction on the right to an effective remedy within the meaning of the first paragraph of Article 47 of the Charter, even if such measures are not in themselves contrary to Directive 2001/24, as set out in paragraph 61 of the present judgment.

64 Furthermore, that conclusion cannot be invalidated by the fact that the dispute in the main proceedings had not yet been concluded with a final judgment at the time the decisions of 29 December 2015 were taken, nor by the fact, pointed out by the Portuguese Government in its response to the Court's written questions and at the hearing, that VR had the right to challenge those decisions before the Portuguese courts within a period of three months from their publication on the Banco de Portugal website.

65 In the latter respect, it must be observed that the possibility of bringing an action for annulment of the decisions of 29 December 2015 before the Portuguese courts is not relevant in that context, since the issue in the present case concerns the effectiveness of the action already brought by VR against Novo Banco Spain before the competent Spanish courts.

66 In the light of the foregoing considerations, the answer to the question referred must be that Article 3(2) and Article 32 of Directive 2001/24, read in the light of the principle of legal certainty and the first paragraph of Article 47 of the Charter, must be interpreted as precluding recognition, without further conditions, in legal proceedings on the merits pending in a Member State other than the home State, relating to a liability which a credit institution had been relieved of by a first reorganisation measure taken in the latter Member State, the effects of a second reorganisation measure seeking to transfer back, with retroactive effect, at a date prior to the opening of such proceedings, that liability to that credit institution where such recognition has the result that the credit institution to which the liabilities had been transferred by the first measure can no longer be sued, with retroactive effect, for the purposes of those proceedings, thereby calling into question judicial decisions already taken in favour of the applicant who is the subject of those same proceedings.

Costs

67 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 (Third Chamber) hereby rules:

Article 3(2) and Article 32 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, read in the light of the principle of legal certainty and of the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding recognition, without further conditions, in legal proceedings on the merits pending in a Member State other than the home Member State relating to a liability which a credit institution had been relieved of by a first reorganisation measure taken in the latter Member State, the effects of a second reorganisation measure seeking to transfer back, with retroactive effect at a date prior to the opening of such proceedings, that liability to that credit institution, where such recognition has the result that the credit institution to which the liabilities had been transferred by the first measure can no longer be sued, with retroactive effect, the purposes of those proceedings, thereby calling into question judicial decisions already adopted in favour of the applicant who is the subject of those same proceedings.

[Signatures]

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* Language of the case: Spanish.