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Press and Information

Advocate General's Opinion in Case C-85/12
Société Landsbanki Islands HF

Advocate General Cruz Villalón considers that the Directive on the reorganisation and winding up of credit institutions does not preclude the adoption by law, as in Iceland, of measures to reorganise financial institutions

For that to be possible, such measures must refer to specific establishments and the persons affected by them must be granted an effective remedy before the courts

The Directive on the reorganisation and winding up of credit institutions[1] provides that, in the event of the bankruptcy of a credit institution which has branches in other Member States, reorganisation measures and the winding up proceedings form part of a single insolvency procedure in the Member State in which the establishment has its registered office (the so-called 'State of origin'). Thus, in principle, such measures are made subject to the bankruptcy laws of a single State and are to be applied in accordance with the law of the State of origin, the effects of which are produced throughout the EU, without any other formalities being required. To that effect, the States which are parties to the Agreement on the European Economic Area, such as Iceland, are treated in the same way as EU Member States.

In the context of the collapse of the financial system experienced in Iceland as part of the international financial crisis that began in 2008, the Icelandic parliament adopted a series of measures to reorganise various financial institutions established in that country. In particular, a law adopted on 13 November 2008[2] barred legal action against credit institutions which have been granted a moratorium on payments. That law also applied retroactively to interim protective measures adopted prior to that law.

Landsbanki Islands HF is an Icelandic credit institution to which a moratorium on payments was granted on 5 December 2008. Shortly before that, on 10 November 2008, two attachment orders were executed in France against Landsbanki on application by a creditor resident in that Member State. Landsbanki challenged those attachment orders before the French courts arguing that, under the Directive, the reorganisation measures adopted in Iceland could be invoked directly against the French creditor.

In that context, the French Cour de Cassation, which is hearing the case at final instance, made a request to the Court of Justice for a preliminary ruling on whether the reorganisation measures laid down in the Icelandic legislation, although adopted by a legislative body, none the less fall within the scope of the Directive, the purpose of which is to ensure the mutual recognition of reorganisation measures and winding up proceedings adopted by administrative and judicial authorities.

In today's Opinion, Advocate General Cruz Villalón proposes that the Court of Justice declare, first of all, that **measures adopted by law, such as those contained in the Icelandic Law in question, must not be excluded from the scope of the Directive on the sole ground that they were adopted directly by the national legislature**. In his Opinion, the reference in the Directive to administrative or judicial authorities is essentially attributable to the fact that these are usually

[1] Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (OJ 2001 L 125, p. 15).
[2] Ley 129/2008.

the authorities which are called upon to adopt the reorganisation measures the recognition of which by the Member States the Directive is intended to secure.

None the less, **such measures must relate specifically to financial institutions individualised by their circumstances and they must not deprive the persons affected by them of an effective remedy before the courts.** It is for the Cour de Cassation to assess whether those conditions are fulfilled by the Icelandic law in question.

On the one hand, Advocate General Cruz Villalón points out, in that respect, that the Icelandic law in question applies to a clearly defined and easily identifiable group of individual addressees: financial institutions which have been granted a moratorium on payments. When the Icelandic law was adopted, that was the situation of Landsbanki and an additional four financial institutions. In the context of the financial crisis which began in Iceland in 2008, the special circumstances affecting Landsbanki could not have been unknown to the Icelandic legislature.

Moreover, he notes that those measures appear to have been adopted to address specific circumstances and on a transitional basis, and were not therefore intended to be generally applicable or permanent. In a situation in which, because of the legislative status of the provisions the application of which is to be affected, the reorganisation measures needed to deal with the situation of a financial institution can only be provisions having the same legislative status, it would make no sense to exclude measures adopted by a parliament from the scope of the Directive on the sole ground that it is not an administrative or judicial authority, in other words that those measures were not adopted by an authority which is not empowered to adopt them. In any event, it is for the Cour de Cassation to determine whether, regardless of its form and its author, functionally, the Icelandic law in question operates as an administrative or judicial decision for the purposes of the Directive, that is to say a provision not intended to be of general or repeated application, but geared towards an individual and specific situation.

On the other hand, the Directive ensures that all creditors are afforded equal treatment as regards the exercise of their right of access to the courts. Therefore, for the measures adopted in the Icelandic law to be considered as reorganisation measures within the meaning of the Directive, their legal form must not deprive the persons affected by them of an effective remedy before the Icelandic courts, which is a matter to be determined by the Cour de Cassation.

Finally, the Advocate General considers that the Directive does not preclude a national provision which prohibits or suspends any legal action against a financial establishment from the entry into force of a moratorium, from having retroactive effect in regard to interim protective measures adopted in another Member State prior to the declaration of the moratorium.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355