

# Anonymised version

Translation

C-351/21 – 1

Case C-351/21

## Request for a preliminary ruling

### Date lodged:

4 June 2021

### Referring court:

Justice de paix du canton de Forest (Belgium)

### Date of the decision to refer:

13 April 2021

### Applicant:

ZG

### Defendant:

Beobank SA

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Justice de paix du canton de Forest (Magistrate of the Canton of Forest)

## JUDGMENT

The Magistrate gives the following judgment in the case of:

– **ZG**, [...]

[...] [Personal details of applicant and his lawyer]

**applicant**

– **Société anonyme BEOBANK**, formerly known as CITIBANK BELGIUM SA [...] [Personal details of defendant and its lawyer]

**defendant**

[...]

[Facts of the dispute]

### Grounds

By his application, ZG claims that BEOBANK should be ordered to pay the sum of EUR 1 984 in respect of two ‘unauthorised’ transactions made on his debit card.

ZG, a Belgian resident, holds a bank account with BEOBANK in Belgium and has a debit card associated with this account.

ZG spent the night of 20 to 21 April 2017 in Valencia, Spain.

Following an initial payment of EUR 100 (at 00:35) made on his debit card via a mobile card terminal in an establishment which he describes as a nightclub and BEOBANK describes as a ‘brothel’, two further payments were made with the same debit card on the same terminal for EUR 991 (at 01:35) and EUR 993 (at 02:06). A third transaction, for EUR 994, was initiated but refused (at 02:35).

ZG states that he cannot remember what happened after he had a couple of drinks at the establishment.

On 23 April 2017, ZG cancelled his card via CARDSTOP.

On 29 April 2017, ZG reported to the police in Brussels that his bank card had been stolen and used fraudulently.

In addition to damages (EUR 500), ZG is claiming reimbursement of the second and third transactions which he regards as ‘unauthorised’ pursuant to Article VII.35 of the Belgian Code of Economic Law, as it applied at the time in question. BEOBANK refuses to reimburse him as it considers that those transactions were authorised or at the very least that ZG was grossly negligent.

The parties are in dispute, in particular, over the type of establishment visited by ZG, whether he was the victim of a drug-facilitated scam or whether he visited a brothel where he obtained sexual services.

An important question of fact is who received the various payments. Typically, a fraud carried out by a third party via the victim’s debit card gives the fraudster the benefit of purchases or cash withdrawals. However, in the present case, the fraud resulted in payment to the third party’s bank account, if ZG’s version of events is to be believed.

BEOBANK, seemingly following a request from counsel for ZG, supplied only the reference number for the card terminal and its geo-location and identified the payee of the transactions only as ‘COM SU VALENCIA ESP’.

Following the oral pleadings, the case was adjourned to allow BEOBANK to supply more details, but to no avail.

BEOBANK explains that it received no further information from ATOS, the company that manages the card terminal, and that the Spanish bank SABADELL refused to disclose the identity of the merchant in question.

Under Article VII.18 of Belgian Code of Economic Law, as it applied in 2017:

‘Once the amount of an individual payment transaction has been debited from the payer’s account ... the payer’s payment service provider shall, without undue delay, provide the payer ..., with the following information:

(1) a reference enabling the payer to identify the payment transaction and, where appropriate, **information relating to the payee;**

...’.

The question arising is the extent of the service provider’s obligation in respect of the information relating to the payee. If BEOBANK failed to meet its obligation, the court may draw the appropriate conclusions as to the requirement to reimburse the disputed transactions and/or the damages claim for the lost opportunity to recoup the funds from the third party.

The parties to the proceedings do not dispute that Article VII.18 of the Belgian Code of Economic Law is applicable to the facts.

That provision transcribes Article 38 of Directive 2007/64/EC into Belgian law.

BEOBANK maintains that the provision places it under a best endeavours obligation only, under which it is required to supply only that information which the other party chooses to provide it with, leaving it to the consumer to approach that party in the event that the information is insufficient. In the present case, BEOBANK suggests that the Magistrate should, where appropriate, ‘issue a judicial invitation’ to the Spanish bank to produce the documents enabling it to identify the payee of the transaction. If no satisfactory response is received, it would even be appropriate, BEOBANK suggests, to order an investigation, under letters rogatory, to hear the relevant bodies of SABADELL (the Spanish bank where the account was opened). In support of its argument, BEOBANK relies on the words ‘where appropriate’ in the text of the directive.

ZG, on the other hand, maintains that BEOBANK is under an obligation of result and that it must bear the consequences of the Spanish bank failing to provide the information.

Neither of the parties invokes any references to legal doctrine or case-law in support of its arguments.

Neither has the Magistrate been able to find any legal writings dealing with this question.

Under the second paragraph of Article 267 of the Treaty on the Functioning of the European Union (TFEU), a court or tribunal in a Member State may refer a question concerning the interpretation of EU law to the Court of Justice of the European Union for a ruling if it considers that a decision on the question is necessary to enable it to give judgment. Such a reference is particularly appropriate when existing case-law does not appear to shed sufficient light on the matter.

In the present case, the question of whether the banking institution is under a best endeavours obligation or an obligation of result regarding the provision of information relating to the payee appears to be crucial. Similarly, the extent of that information is also of importance, in particular, whether the information must at the very least include data from which the legal entity (natural or legal person) that received the payment can be identified. Furthermore, the transaction before the court is a very common one (electronic payment through a debit card) and a uniform application in different EU countries seems essential to ensure the effectiveness of the decision.

The Court of Justice of the European Union should therefore be asked to rule on the following questions: [...]

[...]

[Questions reproduced in the operative part]

### **Decision**

It is hereby ordered that the case file be referred to the Court of Justice of the European Union for a preliminary ruling on the following questions:

- (1) Under Article 38(a) of Directive 2007/64/EC, is the payment service provider under a best endeavours obligation or an obligation of result regarding the provision of ‘information relating to the payee’?
- (2) Does the ‘information relating to the payee’ referred to in that provision include information from which the natural or legal person that received the payment can be identified?

[...] [closing formula and signatures]