

Case C-156/24**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

28 February 2024

Referring court:

Corte suprema di cassazione (Italy)

Date of the decision to refer:

2 February 2024

Appellant in cassation:

STM srl

Respondent in cassation:

Ministero della Giustizia

Subject matter of the main proceedings

Appeal in cassation against a judgment in which it was ruled that, despite a delay in the payment of sums due for the rental of wiretapping instruments to a public prosecutor's office, default interest cannot be applied under decreto legislativo n. 231/2002 (Legislative Decree No 231/2002) because the legal relationship between the parties (the rental company and the Ministero della Giustizia (Ministry of Justice)) cannot be classified as a commercial transaction.

Subject matter and legal basis of the request

Interpretation of EU law under Article 267 TFEU, in particular Article 4(3) TEU, Article 47 of the Charter, and Article 2(1) and (2) of Directive 2011/7, as well as Article 10(1) thereof.

Questions referred for a preliminary ruling

(1) Should the principle of sincere cooperation referred to in Article 4(3) TEU, the fundamental right to an effective remedy before a tribunal enshrined in Article 47 of the Charter of Fundamental Rights of the European Union, and Directive 2011/7/EU [of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions] – in particular, Article 2(1) and (2) thereof – be interpreted as precluding a piece of national legislation or a national practice that (i) excludes the classification of services performed for remuneration by charterers at the request of public prosecutors' offices as 'commercial transactions' within the meaning of Directive 2011/7, and (ii) consequently excludes claims made by charterers for services performed for public prosecutors' offices from the rules governing interest which are laid down by that directive?

(2) Should the principle of sincere cooperation referred to in Article 4(3) TEU, the fundamental right to an effective remedy before a tribunal enshrined in Article 47 of the Charter of Fundamental Rights of the European Union, and Directive 2011/7 – in particular, Article 10(1) thereof – be interpreted as precluding a piece of national legislation or a national practice that does not lay down a fixed time limit for the settlement of fees due to a service provider and/or that also provides that such rights may be enforced only by means of the remedies provided for in decreto del Presidente della Repubblica n. 115/2002 – Testo Unico in materia di spese di giustizia (Presidential Decree No 115/2002 – Consolidated text regarding legal costs) and in particular only by means of the remedy of objecting to the order for taxation of costs?

Main provisions of European Union law relied on

Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions: recitals 5, 7 and 9

Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions: Article 2(1) and (2), Article 10(1), and recitals 3 and 4

Charter of Fundamental Rights of the European Union: Article 47

Main provisions of national law relied on

Decreto legislativo del 9 ottobre 2002, n. 231 – Attuazione della direttiva 2000/35/CE relativa alla lotta contro i ritardi di pagamento nelle transazioni commerciali (Legislative Decree No 231 of 9 October 2002 – Implementation of Directive 2000/35/EC on combating late payment in commercial transactions; 'Legislative Decree No 231/2002') (GURI No 249 of 23 October 2002), as amended by decreto legislativo del 9 novembre 2012, n. 192 – Modifiche al

decreto legislativo 9 ottobre 2002, n. 231, per l'integrale recepimento della direttiva 2011/7/UE relativa alla lotta contro i ritardi di pagamento nelle transazioni commerciali (Legislative Decree No 192 of 9 November 2012 – Amendments to Legislative Decree No 231 of 9 October 2002, for the full transposition of Directive 2011/7/EU on combating late payment in commercial transactions), in accordance with Article 10(1) of legge 11 novembre 2011, n. 180 (Law No 180 of 11 November 2011) (GURI No 267 of 15 November 2012): Articles 1 to 5

Decreto del Presidente della Repubblica del 30 maggio 2002, n. 115 – Testo unico delle disposizioni legislative e regolamentari in materia di spese di giustizia (Presidential Decree No 115 of 30 May 2002 – Consolidated text of legislative and regulatory provisions regarding legal costs) (Ordinary Supplement to GURI No 139 of 15 June 2002) ('the Consolidated text regarding legal costs'):

Article 168: '1. The determination of amounts due to court officers ... shall be on the basis of reasoned payment orders issued by the prosecuting magistrate. 2. Such orders shall be notified to the beneficiary and the parties, including the public prosecutor, and shall be provisionally enforceable ...'

Article 168-bis: '1. The determination of the costs relating to the services referred to in Article 96 of decreto legislativo 1° agosto 2003, n. 259 (Legislative Decree No 259 of 1 August 2003), and of the costs instrumental to the use of such services, shall be made without delay by means of a payment order from the public prosecutor who requested or executed the authorisation to order wiretapping operations. ... 3. Objections to payment orders shall be admissible under Article 170' and

Article 170: '1. The beneficiary and the parties to the proceedings, including the public prosecutor, may lodge an objection to the payment order issued in favour of the court officer, ... Objections shall be governed by Article 15 of decreto legislativo 1° settembre 2011, n. 150 (Legislative Decree No 150 of 1 September 2011)'.

Succinct presentation of the facts and procedure in the main proceedings

- 1 By means of a payment order, the Tribunale di Catanzaro (District Court, Catanzaro, Italy), the court of first instance, ordered the Ministry of Justice to pay STM srl sums including default interest, under Articles 4 and 5 of Legislative Decree No 231/2002, as remuneration for the rental of electronic equipment for telephone and environmental wiretapping provided by that company to numerous public prosecutors' offices.
- 2 The Ministry of Justice lodged an objection with that court, which issued a judgment revoking the payment order and recognised STM as having a claim not including default interest. It held, in fact, that the services involved in the wiretapping and environmental monitoring were not commercial transactions

(remunerated using the criteria laid down in Legislative Decree No 231/2002), but rather were among the activities of court officers (remunerated using the criteria laid down in Article 168 et seq. of the Consolidated text regarding legal costs).

- 3 The judgment at first instance was appealed and was upheld on appeal. STM has brought an appeal in cassation against the appeal judgment before the referring court.

The essential arguments of the parties in the main proceedings

- 4 **According to the appellant in cassation**, its provision of equipment rental services constitutes a commercial transaction within the meaning of Directive 2011/7, as the provision of services against payment of a price, and must therefore be capable of generating default interest in the event of late payment.
- 5 The fact that the person requesting the service was a public prosecutor does not preclude such a classification. Indeed, in authorising the use of the wiretapping equipment, the public prosecutor formulated a genuine acceptance of the proposal made by the supplying company and, thus, entered into a contractual relationship with that company, subject to the ordinary rules governing obligations and contracts.
- 6 Even if the relationship in question were, conversely, to be classified as a relationship governed by public law and the payment were therefore to be justified by a legal obligation as a legal cost, the charterer should in any event be awarded default interest and should also be able to assert its claim by means other than the avenue specifically laid down in the Consolidated text regarding legal costs, namely an order for taxation of costs. In fact, such an order, once issued, (a) is only notified to the parties, and not served by means of a certified copy, which means that the creditor, if it wishes to enforce the order, must first obtain an enforceable copy, paying the necessary costs in advance; (b) does not cover interest (legal or default interest), and (c) can only be objected to under Article 170 of the Consolidated text regarding legal costs. Moreover, (d) no time limits are prescribed for the issuance of the order for taxation of costs.
- 7 **According to the Ministry of Justice**, however, first, the act of authorising the use of private equipment is an exercise of the public powers of the public administration and, second, the public prosecutor does not have the power contractually to bind the public administration.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 8 Until 2004, there were no explicit provisions for the payment of wiretapping expenses. Article 5(1)(i-bis) of the Consolidated text regarding legal costs, introduced by Legge n. 311/2004 (Law No 311/2004), included among the expenses recoverable by the Treasury, which had paid for them in advance, both

those for tracing activities, which telephone operators are bound by law to undertake, and those that are instrumental in such activities. For both of these types of expenses, Article 168-bis of the Consolidated text regarding legal costs, introduced by decreto legislativo n. 120/2018 (Legislative Decree No 120/2018), provides that they are to be settled by court order in accordance with Article 168 of the Consolidated text regarding legal costs.

- 9 According to the settled case-law of the Corte [suprema] di cassazione (Supreme Court of Cassation, Italy), this choice of legal approach demonstrates the legislature's intention (a) to consider the rental of machinery from private parties, as well as possible services by personnel, as strictly inherent in criminal proceedings, and (b) to include the relevant expenses, as extraordinary expenses, among those relating to justice, and therefore not freely negotiated, both with reference to the determination phase and in relation to the objection phase. According to this approach, those costs can therefore be paid only by the public prosecutor in the proceedings, 'without delay' (Article 168-bis), by means of a reasoned order that becomes definitively enforceable in the absence of an objection under Article 170 of the Consolidated text regarding legal costs and constitutes an order for payment of the costs, in accordance with Article 171 of the Consolidated text regarding legal costs.
- 10 However, the referring court believes that such an approach could limit the charterer's effective judicial protection, since the reference solely to the Consolidated text regarding legal costs eliminates the possibility for the charterer to assert its claims as a creditor by way of an action to obtain an order for payment, if necessary. Thus, not only would a company such as the present appellant in cassation not be entitled to default interest, but that company would also (i) be obliged to suffer – often considerable – delays in seeing its claims recognised (the Consolidated text regarding legal costs does not lay down any time limit for the issuance of the order for taxation of costs by the competent court), (ii) not have a title to initiate actions to protect its claim even if that claim has been recognised (the order for taxation of costs is not served in full), and (iii) be able to challenge the amount of the determination only in the manner expressly laid down in Article 170 of the Consolidated text regarding legal costs.
- 11 These consequences, which result from the hitherto established case-law of the Corte [suprema] di cassazione, raise doubts for the division of that court hearing the dispute as to the compatibility of that case-law with EU law. It is in fact possible to identify (a) a possible conflict with the EU legislation, as transposed by national legislation, on combating late payment in commercial transactions, (b) a specific infringement of Article 10(1) of Directive 2011/7, pursuant to which the creditor should be able to have an enforceable title within ninety days of the order for taxation of costs, and lastly (c) a conflict with the fundamental right to an effective remedy and to a fair trial (Article 47 of the Charter).

A preliminary interpretation of the relevant legislation is therefore requested.

- 12 The referring court points out that, following a complaint by the appellant in cassation, infringement proceedings under Article 258 TFEU are currently pending against Italy (INFR (2021) 4037). The European Commission takes the view that, by not including the rental of the equipment in question among commercial transactions, the Italian legislation would deprive service provider companies of the protection afforded by the Late Payment Directive.

In view of those proceedings and the scale of the dispute between chartering companies and public prosecutors' offices, the expedited preliminary ruling procedure is requested.

WORKING DOCUMENT