



PRESS RELEASE No 131/24

Luxembourg, 5 September 2024

Judgment of the Court in Joined Cases C-498/22 to C-500/22 | Novo Banco and Others

A failure to publish reorganisation measures in respect of a credit institution does not lead to those measures being invalid or their effects being unenforceable in another Member State

In August 2014, the Bank of Portugal adopted resolution measures in respect of the Portuguese credit institution Banco Espírito Santo SA (BES), which was experiencing serious financial difficulties. In that context, the bridge bank Novo Banco was set up. The assets, liabilities and other off-balance sheet items of BES were transferred to Novo Banco. Certain liabilities were nevertheless excluded from that transfer and remained part of the assets and liabilities of BES.

In October 2014, the Bank of Spain published information about the transfer in part of the business of BES to Novo Banco in so far as concerned Spain. It stated that Novo Banco would continue the ordinary business of BES without interruption and that the measure in question was deemed to be a reorganisation measure within the meaning of the directive on the reorganisation and winding up of credit institutions ¹.

In December 2015, the Bank of Portugal adopted two decisions to amend and clarify its decision of August 2014 in relation to the liabilities of BES that had not been transferred to Novo Banco.

A number of customers of Novo Banco's Spanish branch took the view that Novo Banco had assumed the responsibilities associated with various contracts for financial products and services that they had concluded previously with BES Spain ². In response to Novo Banco's refusal to assume those responsibilities, the customers brought legal proceedings.

In that context, the Spanish Supreme Court is uncertain about the obligation on the Spanish courts to recognise the effects of the reorganisation measures adopted by the Bank of Portugal, because those measures were not published as provided for in the directive. The Supreme Court has referred a number of questions to the Court of Justice for a preliminary ruling in that regard.

In its judgment, the Court answers that **such a failure to publish by the authorities of the home Member State (Portugal) does not lead to the measures being invalid or its effects being unenforceable in the host Member State (Spain).**

Where the measures are not published, the law of the home Member State must enable the persons affected in the host Member State to lodge an appeal against the reorganisation measures within a reasonable period from the time at which they were notified of those measures or at which they became aware of or should reasonably have become aware of them.

Last, the recognition in Spain of the effects of the reorganisation measures adopted in Portugal, which provide that the obligation to pay sums payable as a result of pre-contractual or contractual liability is retained in the liabilities of BES, **does not appear to infringe the principle of legal certainty, the right to property or the principle of**

consumer protection. In that regard, the Court notes in particular **that those measures meet the general interest objective of ensuring the stability of the banking system and preventing a systemic risk, which is also pursued by the European Union.**

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.

Unofficial document for media use, not binding on the Court of Justice.

The [full text and, as the case may be, the abstract](#) of the judgment are published on the CURIA website on the day of delivery.

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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.

² These were: a loan contract secured by way of a mortgage containing a 'floor' clause, specifying a minimum interest rate of 2% (Case C-498/22); an atypical financial contract, which was a high risk, complex financial product with a variable interest rate indexed to the shares of other credit institutions (Case C-499/22); and a €100 000 senior bond, issued by BES. At the time it was acquired by the customer, that bond formed part of the assets and liabilities of Novo Banco, to which the related liability had been transferred pursuant to the August 2014 decision (Case C-500/22).