

JUDGMENT OF THE COURT (First Chamber)

4 May 2017 (\*)

(Reference for a preliminary ruling — Regulation (EC) No 1889/2005 — Controls of cash entering or leaving the European Union — Article 3(1) — Natural person entering or leaving the European Union — Obligation to declare — International transit area of a Member State's airport).

In Case C-17/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation (France), made by decision of 5 January 2016, received at the Court on 12 January 2016, in the proceedings

**Oussama El Dakkak,**

v

**Administration des douanes et des droits indirects**

THE COURT (First Chamber),

composed of R. Silva de Lapuerta (Rapporteur), President of the Chamber, E. Regan, J.-C. Bonichot, A. Arabadjiev and C.G. Fernlund, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the French Government, by A. Daly and D. Colas, acting as Agents,
- the Greek Government, by E. Tsaousi and K. Georgiadis, acting as Agents,
- the European Commission, by L. Grønfeldt and F. Dintilhac, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 21 December 2016,

gives the following

**Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 3(1) of Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community (OJ 2005 L 309, p. 9) and of Article 4(1) of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2006 L 105, p. 1).
- 2 The request has been made in proceedings between Mr Oussama El Dakkak and Intercontinental SARL, and the Administration des douanes et droits indirects (Customs and Excise Authority, France) concerning their claims for compensation for the loss suffered as a result of the latter's seizure of cash sums transported by Mr El Dakkak while passing through Roissy-Charles-de-Gaulle airport (France) on the ground that he failed to declare those sums.

**Legal context**

*Regulation No 1889/2005*

- 3 Recitals 2 and 4 to 6 of Regulation No 1889/2005 are worded as follows:

'(2) The introduction of the proceeds of illegal activities into the financial system and their investment after laundering are detrimental to sound and sustainable economic development. Accordingly, Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering [OJ 1991 L 166, p. 77] introduced a Community mechanism to prevent money laundering by monitoring transactions through credit and financial institutions and certain types of professions. As there is a risk that the application of that mechanism will lead to an increase in cash movements for illicit purposes, Directive 91/308 ... should be supplemented by a control system on cash entering or leaving the Community.

...

- (4) Account should also be taken of complementary activities carried out in other international fora, in particular those of the Financial Action Task Force on Money Laundering (FATF), which was established by the G7 Summit held in Paris in 1989. Special Recommendation IX of 22 October 2004 of the FATF calls on governments to take measures to detect physical cash movements, including a declaration system or other disclosure obligation.
- (5) Accordingly, cash carried by any natural person entering or leaving the Community should be subject to the principle of obligatory declaration. This principle would enable the customs authorities to gather information on such cash movements and, where appropriate, transmit that information to other authorities. ...
- (6) In view of its preventive purpose and deterrent character, the obligation to declare should be fulfilled upon entering or leaving the Community. However, in order to focus the authorities' action on significant movements of cash, only those movements of EUR 10 000 or more should be subject to such an obligation. Also, it should be specified that the obligation to declare applies to the natural person carrying the cash, regardless of whether that person is the owner.'

4 Article 1(1) of that regulation provides:

'This Regulation complements the provisions of Directive 91/308 ... concerning transactions through financial and credit institutions and certain professions by laying down harmonised rules for the control, by the competent authorities, of cash entering or leaving the Community.'

5 Article 3(1) of that regulation provides:

'Any natural person entering or leaving the Community and carrying cash of a value of EUR 10 000 or more shall declare that sum to the competent authorities of the Member State through which he is entering or leaving the Community in accordance with this Regulation. The obligation to declare shall not have been fulfilled if the information provided is incorrect or incomplete.'

6 Article 4(2) of Regulation No 1049/2001 provides:

'In the event of failure to comply with the obligation to declare laid down in Article 3, cash may be detained by administrative decision in accordance with the conditions laid down under national legislation.'

*Regulation No 562/2006*

7 Under Article 1 of Regulation No 562/2006:

'This Regulation provides for the absence of border control of persons crossing the internal borders between the Member States of the European Union.

It establishes rules governing border control of persons crossing the external borders of the Member States of the European Union.'

8 Article 4(1) of that regulation provides as follows:

'External borders may be crossed only at border crossing points and during the fixed opening hours. The opening hours shall be clearly indicated at border crossing points which are not open 24 hours a day.

Member States shall notify the list of their border crossing points to the Commission in accordance with Article 34.'

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

9 Intercontinental instructed Mr El Dakkak to transport American dollars (USD) from Cotonou (Benin) to Beirut (Lebanon) by aeroplane, with a transit stop at Roissy-Charles de Gaulle airport.

10 On 9 December 2010, whilst in transit at that airport, Mr El Dakkak was checked by the customs officials at the boarding gate for Beirut. When those officials found that he was in possession of EUR 3 900 and USD 1 607 650 (approximately EUR 1 511 545) in cash, Mr El Dakkak presented them with a declaration made to the customs authorities of the Republic of Benin.

11 Following that check, Mr El Dakkak was detained by the customs authority and was subsequently formally charged by an examining magistrate with failing to declare capital, money laundering and fraud.

12 The cash transported by Mr El Dakkak was seized, then officially sealed by the Customs and Excise Authority.

13 By judgment of 11 May 2011, the examining chamber of the cour d'appel de Paris (Paris Court of Appeal, France) annulled the entire proceedings due to an irregularity relating to Mr El Dakkak's detention and ordered the sealed items to be returned.

14 By letter of 2 April 2012, the competent authority consequently informed Mr El Dakkak that it was going to transfer the euros, the consideration in euros for the US dollars seized and a pro rata proportion of the handling charges.

15 Next, Mr El Dakkak and Intercontinental brought an action before the Tribunal d'instance d'Aulnay-sous-Bois (District Court, Aulnay-sous-Bois, France) and the Paris Court of Appeal, seeking compensation for their losses, claiming that the Customs and Excise Authority was not entitled to rely on an infringement of an obligation to declare, on the part of Mr El Dakkak, because he was not bound by any such obligation.

16 After the Paris Court of Appeal dismissed his claim by judgment of 25 March 2014, Mr El Dakkak brought an appeal on a point of law before the referring court.

17 It was in those circumstances that the Cour de cassation (Court of Cassation, France) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Must Article 3(1) of Regulation ... No 1889/2005 ... and [Article] 4(1) of Regulation ... No 562/2006 ... be interpreted as meaning that a national of a third State who is in the international transit area of an airport is not subject to the obligation to make a declaration under Article 3(1) of Regulation ... No 1889/2005 ..., or, on the contrary, must those provisions be interpreted as meaning that that national is subject to that obligation by virtue of having crossed an external border of the [EU] at one of the border crossing points referred to in Article 4(1) of Regulation ... No 562/2006 ...?'

### Consideration of the question referred

18 By its question, the referring court seeks to determine, in essence, whether Article 3(1) of Regulation No 1889/2005 must be interpreted to the effect that the obligation to declare under that provision is applicable in the international transit area of an airport of a Member State in circumstances such as those in the main proceedings in which a natural person entered that area by disembarking from an aircraft coming from a third State, and waits there before boarding another aircraft heading to another third State.

19 The scope of that obligation to declare is determined on the basis of the interpretation to be given to the notion of a 'natural person entering or leaving' the European Union, referred to in Article 3(1).

20 In that regard, it should be pointed out at the outset that Regulation No 1889/2005 does not define that notion.

21 However, that notion is not ambiguous and must be understood as having its normal meaning, that is to say, as referring to the movement of a natural person from a place which is not part of EU territory to a place which is part of that territory, or from a place which is part of EU territory to one which is not.

22 EU territory corresponds to the geographical space referred to in Article 52 TEU and Article 355 TFEU which define the territorial scope of the Treaties.

23 In the absence of detail as to the territorial scope of an act of secondary legislation, that scope must be determined on the basis of those provisions, since the secondary legislation applies in principle to the same area as the Treaties themselves and applies automatically in that area (see, to that effect, judgment of 15 December 2015, *Parliament and Commission v Council*, C-132/14 to C-136/14, EU:C:2015:813, paragraphs 76 and 77).

24 First of all, the airports of Member States are part of that geographical area, and therefore part of EU territory.

25 Next, the inevitable conclusion is that the provisions of Regulation No 1889/2005 do not exclude the applicability of the obligation to declare, laid down in Article 3(1) of that regulation, in the international transit areas of those airports, any more than Article 52 TEU and Article 355 TFEU exclude those areas from the territorial scope of the treaties, or lay down any exceptions in relation to those areas.

26 This implies that, where a natural person moves from a place which is not part of the geographical area covered by Article 52 TEU and Article 355 TFEU to a place which is part of that area, that person enters the European Union for the purposes of Article 3(1) of Regulation No 1889/2005.

27 That is the case with a person who, like Mr El Dakkak, disembarks from an aircraft coming from a third State in an airport in the territory of a Member State and waits in the international transit area of that airport before boarding another aircraft heading to another third State.

28 The interpretation that that obligation to declare applies in the international transit areas of airports located within the territory of the European Union is also consistent with the objective pursued by that regulation.

29 In that regard, it should be recalled that, in accordance with recitals 2, 5 and 6 of Regulation No 1889/2005, the regulation seeks to prevent, discourage and avoid the introduction of the proceeds of illegal activities into the financial system and their investment after laundering by the establishment, inter alia, of a principle of obligatory declaration of the movements of cash entering or leaving the EU, allowing information to be gathered concerning them (see judgment of 16 July 2015, *Chmielewski*, C-255/14, EU:C:2015:475, paragraph 18).

30 To that end, Article 3(1) of that regulation lays down an obligation, for any natural person entering or leaving the European Union and carrying an amount of cash equal to or more than EUR 10 000, to declare that amount (see judgment of 16 July 2015, *Chmielewski*, C-255/14, EU:C:2015:475, paragraph 19).

31 Moreover, as is apparent from Article 1(1) of Regulation No 1889/2005, read in conjunction with recitals 1 to 3 of that regulation, in the context of promoting harmonious, balanced and sustainable economic development throughout the European Union, that regulation seeks to supplement the provisions of Directive 91/308 by laying down harmonised rules for the control of cash entering or leaving the European Union (see judgment of 16 July 2015, *Chmielewski*, C-255/14, EU:C:2015:475, paragraph 17).

32 In that context, it should also be recalled that the Court has held that Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ 2005 L 309, p. 15), which replaced Directive 91/308, has as its main aim the prevention of the use of the financial system for the purposes of money laundering and terrorist financing, as is apparent both from its title and the preamble, and from the fact that it was adopted, like its predecessor, Directive 91/308, in an international context, in order to apply and make binding in the European Union the recommendations of the 'Financial Action Task Force' (FATF), which is the main international body combating money laundering (see, judgment of 25 April 2013, *Jyske Bank Gibraltar*, C-212/11, EU:C:2013:270, point 46).

- 33 Like Directives 91/308 and 2005/60, Regulation 1889/2005, as is apparent from its fourth recital, was adopted in order to take account of complementary activities carried out in other international fora, in particular those of FATF, whose Special Recommendation IX of 22 October 2004 calls on governments to take measures to detect physical cash movements, including a declaration system or other disclosure obligation.
- 34 Consequently, as the Advocate General stated in points 44 and 45 of his Opinion, it is clear from the objective pursued by Regulation No 1889/2005, from its international context and from the need to pursue the preventive and deterrent aim of the obligation to declare laid down in Article 3(1) of that regulation, that the notion of a 'natural person entering or leaving' the European Union, referred to in that provision, must be given a broad interpretation.
- 35 If that provision were to be interpreted to the effect that people in an international transit area of a European Union airport are not subject to that obligation, the effectiveness of the control system for cash entering or leaving the European Union, provided for by Regulation No 1889/2005, and consequently the attainment of its objective would, at least in part, be jeopardised.
- 36 The issue whether or not a national from a third State in the international transit area of an airport of a Member State has crossed the external border of the European Union, for the purposes of Article 4(1) of Regulation No 562/2006, is irrelevant to the previous considerations.
- 37 In that regard, it should be pointed out that, as is attested in particular by the different legal bases on which those regulations were adopted, they have different aims and objectives.
- 38 As has already been stated in paragraph 38 above, Regulation No 1889/2005 aims to supplement the provisions of Directive 91/308 by laying down harmonised rules for the control of cash entering or leaving the European Union, whilst Regulation No 562/2006, according to Article 1, provides for the absence of border control of persons crossing the internal borders between the Member States and establishes rules governing border control of persons crossing the external borders of those States.
- 39 Moreover, Regulation No 1889/2005 contains no indication that its provisions should be interpreted in the light of the provisions of Regulation No 562/2006.
- 40 Thus, in the absence of any express provision to that effect in either of those enactments, the interpretation of Article 3(1) of Regulation No 1889/2005 cannot depend on the interpretation of the notion of crossing an external border of the European Union for the purposes of Article 4(1) of Regulation No 562/2006.
- 41 Having regard to all the foregoing considerations, the international transit areas of the airports of Member States must not be excluded from the scope of Article 3(1) of Regulation No 1889/2005, so that, if a natural person disembarking from an aircraft coming from a third State in an airport in the territory of a Member State and waiting in the international transit area of that airport before boarding another aircraft heading to another third State is in possession of a sum equal to or greater than EUR 10 000 in cash when he enters the European Union, he is subject to the obligation to declare laid down in Article 3(1) of Regulation No 1889/2005.
- 42 In that regard, it falls to the Member States to take the appropriate measures to enable the interested parties to comply with that obligation in such a way as to ensure full legal certainty.
- 43 In those circumstances, the answer to the question referred is that Article 3(1) of Regulation No 1889/2005 must be interpreted to the effect that the obligation to declare laid down in that provision is applicable in the international transit area of an airport of a Member State.

### **Costs**

- 44 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 (First Chamber) hereby rules:

**Article 3(1) of Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community must be interpreted to the effect that the obligation to declare laid down in that provision is applicable in the international transit area of an airport of a Member State.**

[Signatures]