

Request for a preliminary ruling from the Högsta förvaltningsdomstolen (Sweden) lodged on 26 January 2023 — Keva, Landskapet Ålands pensionsfond and Kyrkans Centralfond v Skatteverket

(Case C-39/23, Keva and Others)

(2023/C 121/10)

Language of the case: Swedish

Referring court

Högsta förvaltningsdomstolen

Parties to the main proceedings

Applicants: Keva, Landskapet Ålands pensionsfond and Kyrkans Centralfond

Respondent: Skatteverket

Questions referred

1. Does the fact that dividends paid by domestic companies to foreign public pension institutions are subject to withholding tax, whereas the corresponding dividends are not taxed if they accrue to the own State through its general pension funds, constitute such negative differential treatment that it entails a restriction of the free movement of capital prohibited, in principle, by Article 63 TFEU?
2. If Question 1 is answered in the affirmative, what are the criteria that should be taken into account when assessing whether a foreign public pension institution is in a situation which is objectively comparable to that of the own State and its general pension funds?
3. Can a possible restriction be regarded as being justified by overriding reasons of public interest?

Appeal brought on 8 February 2023 by Westfälische Drahtindustrie GmbH and Others against the judgment of the General Court (Seventh Chamber, Extended Composition) delivered on 23 November 2022 in Case T-275/20, Westfälische Drahtindustrie GmbH and Others v European Commission

(Case C-70/23 P)

(2023/C 121/11)

Language of the case: German

Parties

Appellants: Westfälische Drahtindustrie GmbH, Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. KG, Pampus Industriebeteiligungen GmbH & Co. KG (represented by: O. Duys and N. Tkatchenko, Rechtsanwälte)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

- set aside the judgment under appeal;
- declare invalid the Commission's letter of 2 March 2020, in which the deputy Commission Director-General for Budget required Westfälische Drahtindustrie GmbH to pay an amount of EUR 12 236 931,69 to the Commission;

- consequently, hold that the payments made by Westfälische Drahtindustrie GmbH to the Commission between 29 June 2011 and 16 June 2015 in the amount of EUR 16 400 000 plus compensatory interest which has become due in the amount of EUR 1 420 610, making a combined total of EUR 17 820 610, are to be taken into account in respect of the standalone fine imposed by the General Court in the judgment of 15 July 2015, *Westfälische Drahtindustrie and Others v Commission* (T-393/10, EU:T:2015:515), as from 15 July 2015 and that as a result of the payment of 17 October 2019 of EUR 18 149 636,24 that fine has already been paid in full;
- order the Commission to pay to Westfälische Drahtindustrie GmbH an amount of EUR 1 633 085,17 together with compensatory interest with effect from 17 October 2019 until reimbursement in full of the corresponding amount owed;
- in the alternative, set aside the judgment under appeal and order the Commission to pay compensation to all three appellants in the amount of EUR 12 236 931,69 in settlement of the amount claimed from Westfälische Drahtindustrie GmbH by the Commission letter of 2 March 2020 in the amount of EUR 12 236 931,36 and to pay to Westfälische Drahtindustrie GmbH the amount of the overpayment being EUR 1 633 085,17 together with compensatory interest since 17 October 2019 until reimbursement in full of the amount owed;
- in the alternative to the heads of claim appearing in the three indents above, refer the case back to the General Court for a ruling;

and in any event
- order the Commission to pay the costs incurred in the proceedings at first instance and on appeal.

Grounds of appeal and main arguments

The appellants put forward three grounds of appeal:

1. The judgment under appeal infringes EU law and is vitiated by contradictory reasoning. It is true that the General Court also recognises the substantive amendment and substitution of the fine imposed on the appellants by the Commission in 2010/2011. Notwithstanding the clear nature of the terms of the operative part to the contrary and the General Court's findings in the judgment of 15 July 2015, it is argued in the judgment under appeal, however, that the unlawful Commission decision issued in 2010/2011 and the unreasonable fine imposed by that decision remained unchanged and identical.
2. In the judgment under appeal, the General Court failed to have regard for the legal consequences of the judgment of 15 July 2015. The General Court infringed the principle under which the EU institutions were obliged to remove the specified consequences following the delivery of the judgment of 15 July 2015.
3. In the judgment under appeal, the General Court infringed the fundamental procedural right of the appellants to effective judicial protection in the form of their claim to a fair hearing. The General Court rejected all the pleas with the same reasoning that the fine revised in the judgment of 15 July 2015 was not a new fine. The decision taken in the judgment under appeal as to the legal nature of the fines is questionable. Furthermore, there is no close connection between the various pleas such as to justify their rejection by means of a single legal argument. Rather, the General Court should have undertaken an independent and careful examination of all the pleas. It is not apparent that the General Court provided sufficient reasons for the rejection of all the pleas in the judgment under appeal.

Appeal brought on 17 February 2023 by WhatsApp Ireland Ltd against the order of the General Court (Fourth Chamber, Extended Composition) delivered on 7 December 2022 in Case T-709/21, WhatsApp Ireland v European Data Protection Board

(Case C-97/23 P)

(2023/C 121/12)

Language of the case: English

Parties

Appellant: WhatsApp Ireland Ltd (represented by: H.-G. Kamann, Rechtsanwalt, F. Louis and A. Vallery, avocats, P. Nolan, B. Johnston and C. Monaghan, Solicitors, P. Sreenan and D. McGrath, Senior Counsel, C. Geoghegan and E. Egan McGrath, Barrister-at-Law)