

The General Court stated that a medical prescription is evidence of a medicine, which the appellant also did not dispute. The appellant submits that this is untrue. At the hearing, the appellant's representative expressly stated that, due to therapeutic freedom in Germany, doctors are even permitted to prescribe food. The General Court presumed that consumers would perceive the product as a medicinal product on account of its presentation. It did not take into account the knowledge of specialised circles which would very likely be aware that 'Ayurvedic Medicine' products are ineffective and that the product in question was denied authorisation.

(¹) Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (codification) (OJ 2017 L 154, p. 1).

(²) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67).

**Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 10 March 2023 —
Gestore dei Servizi Energetici SpA — GSE v Erg Eolica Ginestra Srl and Others**

(Case C-148/23, Gestore dei Servizi Energetici)

(2023/C 179/27)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Gestore dei Servizi Energetici SpA — GSE

Respondents: Erg Eolica Ginestra Srl, Erg Eolica Ginestra Srl, Erg Eolica Campania SpA, Erg Eolica Fossa del Lupo Srl, Erg Eolica Amaroni Srl, Erg Eolica Adriatica Srl, Erg Eolica San Vincenzo Srl, Erg Eolica San Circeo Srl, Erg Eolica Faeto Srl, Green Vicari Srl, Erg Wind Energy Srl, Erg Wind Sicilia 3 Srl, Erg Wind Sicilia 6 Srl, Erg Wind 4 Srl, Erg Wind 6 Srl, Erg Wind Sicilia 5 Srl, Erg Wind 2000 Srl, Erg Wind Sicilia 2 Srl, Erg Wind Sardegna Srl, Erg Wind Sicilia 4 Srl, Erg Hydro Srl, Erg Power Generation SpA, Ministero dello Sviluppo Economico

Question referred

Must Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources, amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, (¹) in particular recitals 8, 14, 25 and Articles 1 and 3, and Article 16 of the Charter of Fundamental Rights of the European Union, read in the light of the principles of legal certainty and the protection of legitimate expectations, be interpreted as precluding a rule of national law, such as that resulting from the provisions of decreto legislativo 3 marzo 2011, n. 28 (Legislative Decree No 28 of 3 March 2011) and decreto ministeriale 6 luglio 2012 (Ministerial Decree of 6 July 2012) — as interpreted by the settled case-law of the Consiglio di Stato (Council of State) — which makes the granting of incentives subject to the conclusion of private-law contracts between GSE and the entity responsible for the plant, including plants for the production of electricity powered by renewable sources which began operating before 31 December 2012?

(¹) OJ 2009 L 140, p. 16.

**Request for a preliminary ruling from the Upravni sud u Zagrebu (Croatia) lodged on 20 March
2023 — UP CAFFE d.o.o. v Ministarstvo financija Republike Hrvatske**

(Case C-171/23, UP CAFFE)

(2023/C 179/28)

Language of the case: Croatian

Referring court

Upravni sud u Zagrebu