C/2025/5939

17.11.2025

Request for a preliminary ruling from the Bundesverwaltungsgericht (Austria) lodged on 7 August 2025 – Flugzeugherstellerin

(Case C-538/25, Flugzeugherstellerin [1])

(C/2025/5939)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Appellant: Flugzeugherstellerin

Respondent authority: Bundesminister für Wirtschaft, Energie und Tourismus

Questions referred

1. What circumstances are to be taken into account when assessing whether an item can be used also *'for … military purposes'* in accordance with point 1 of Article 2 of Regulation (EU) 2021/821 [2] of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (OJ 2021 L 206, p. 1)?

   a. Must an item be able to make a substantial contribution to the capabilities of the armed forces in order for there to be use also *'for … military purposes'* in accordance with point 1 of Article 2 of Regulation (EU) 2021/821? Alternatively, can such use already exist in the event that the item is used for the training of military personnel, without the basic training that can be undertaken using the item being distinguishable from that given to comparable civilian personnel, and the specific military training of military personnel takes place, or has to take place, at a later time using a different item?

   b. In assessing whether an item can be used also *'for … military purposes'* in accordance with point 1 of Article 2 of Regulation (EU) 2021/821, must account be taken of the military capabilities of the end user or recipient in the third country to which the item is to be exported, of the situation in the third country, of the possibility of the item being repurposed or of the risk of the item being diverted, or is the assessment based solely on the condition of the item when it is to be exported?

2. Does Article 207 TFEU, read in conjunction with Article 10 of Regulation (EU) 2015/479 [3] of the European Parliament and of the Council of 11 March 2015 on common rules for exports (OJ 2015 L 83, p. 34), or any other provision of EU law permit the application of a national legal provision for the purpose of examining and, as the case may be, prohibiting the export of an item to a third country on the ground of human rights considerations, regardless of whether the item concerned is a dual-use item in accordance with point 1 of Article 2 of Regulation (EU) 2021/821?

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[1] The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.
[2] OJ 2021 L 206, p. 1.
[3] OJ 2015 L 83, p. 34.