

By order of 27 February 2019, the Court of Justice (Sixth Chamber) dismissed the appeal and ordered Adis Higiene, S.L. to pay its own costs.

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**Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 9 November 2018 — Ascopiave SpA and Others v Ministero dello Sviluppo Economico and Others**

(Case C-711/18)

(2019/C 131/23)

*Language of the case: Italian*

**Referring court**

Consiglio di Stato

**Parties to the main proceedings**

*Appellants:* Ascopiave SpA, Bim Belluno Infrastrutture SpA, Centria Srl, Retipiù Srl, Pasubio Distribuzione Gas Srl — Unipersonale, Pasubio Group SpA, Unigas Distribuzione Srl

*Respondents:* Ministero dello Sviluppo Economico, Presidenza del Consiglio dei Ministri, Ministero per gli Affari Regionali e le Autonomie

**Questions referred**

Does EU law and, in particular, the common rules governing the internal market in electrical energy and natural gas and the principles of legal certainty and protection of legitimate expectations allow retroactive application of the criteria for determining the amount of the reimbursements payable to former concession holders, thereby affecting previous contractual relationships, or can such application be justified, also in the light of the principle of proportionality, by the need to protect other public interests of European importance, relating to the necessity of improving protection for competition within the market in question and of affording greater protection to service users, who might indirectly bear the burden of an increase in the sums payable to former concession holders?

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**Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkügyi Bíróság (Hungary) lodged on 3 December 2018 — Ryanair Designated Activity Company v Országos Rendőr-főkapitányság**

(Case C-754/18)

(2019/C 131/24)

*Language of the case: Hungarian*

**Referring court**

Fővárosi Közigazgatási és Munkügyi Bíróság

## Parties to the main proceedings

*Applicant:* Ryanair Designated Activity Company

*Defendant:* Országos Rendőr-főkapitányság

## Questions referred

1. Must Article 5(2), on right of entry, of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC<sup>(1)</sup> be interpreted as meaning that, for the purposes of that directive, both the holding of a valid residence card, as referred to in Article 10 thereof, and the holding of a permanent residence card, as referred to in Article 20 thereof, exempt a family member from the requirement to be in possession of a visa at the time of entry to the territory of a Member State?
2. If the answer to question 1 is in the affirmative, must Article 5 of Directive 2004/38, and paragraph 2 thereof, be interpreted in the same way where the person who is a family member of an EU citizen and is not a national of another Member State has acquired the right of permanent residence in the United Kingdom and that is the State which issued the permanent residence card to that person? In other words, does the holding of the permanent residence card provided for in Article 20 of that directive, issued by the United Kingdom, exempt the holder of that card from the requirement to obtain a visa, regardless of the fact that neither Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, to which Article 5(2) of Directive 2004/38 refers, nor Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) is applicable to that Member State?
3. If the answers to questions 1 and 2 are in the affirmative, is the holding of a residence card issued in accordance with Article 20 of Directive 2004/38 to be regarded by itself as sufficient proof that the holder of the card is a family member of an EU citizen and is, without the need for any further checking or certification, permitted — as a family member — to enter the territory of another Member State and is exempt from the requirement to obtain a visa pursuant to Article 5(2) of that directive?
4. If the Court of Justice should answer question 3 in the negative, must Article 26(1)(b) and (2) of the Convention implementing the Schengen Agreement be interpreted as meaning that an air carrier, in addition to checking travel documents, is required to check that a traveller who intends to travel with the permanent residence card referred to in Article 20 of Directive 2004/38 is in fact genuinely a family member of an EU citizen at the time of entry?
5. If the Court of Justice should answer question 4 in the affirmative,
  - (i) where an air carrier is unable to establish that a traveller who intends to travel with the permanent residence card referred to in Article 20 of Directive 2004/38 is actually a family member of an EU citizen at the time of entry, is that carrier required to deny boarding onto the aircraft and to refuse to transport that person to another Member State?
  - (ii) where an air carrier does not check that circumstance or does not refuse to transport a traveller who is unable to provide evidence that he is a family member — and who, moreover, holds a permanent residence card — is it possible to impose a fine on that carrier on that ground pursuant to Article 26(2) of the Convention implementing the Schengen Agreement?

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<sup>(1)</sup> OJ 2004 L 158, p. 77.