

Question referred

Does the embedding of a work — which is available on a freely accessible website with the consent of the rightholder — in the website of a third party by way of framing constitute communication to the public of that work within the meaning of Article 3(1) of Directive 2001/29/EC⁽¹⁾ where it occurs through circumvention of protection measures against framing taken or instigated by the rightholder?

⁽¹⁾ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

Action brought on 24 May 2019 — Republic of Poland v European Parliament and Council of the European Union

(Case C-401/19)

(2019/C 270/24)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: B. Majczyna, acting as agent, W. Gonatarski, adwokat)

Defendants: European Parliament, Council of the European Union

Form of order sought

The applicant claims that the Court should:

- annul Article 17(4)(b) and Article 17(4)(c), *in fine* (i.e. the part containing the following wording: ‘and made best efforts to prevent their future uploads in accordance with point (b)’) of Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC; ⁽¹⁾
- order European Parliament and Council of the European Union to pay the costs.

Pleas in law and main arguments

The Republic of Poland seeks the annulment of Article 17(4)(b) and Article 17(4)(c), *in fine* (i.e. the part containing the following wording: ‘and made best efforts to prevent their future uploads in accordance with point (b)’) of Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (OJ EU L 130 of 17.5.2019, p. 92) and an order that the European Parliament and the Council of the European Union are to pay the costs.

In the alternative, should the Court find that the contested provisions cannot be deleted from Article 17 of Directive (EU) 2019/790 without substantively changing the rules contained in the remaining provisions of that article, the Republic of Poland claims that the Court should annul Article 17 of Directive (EU) 2019/790 in its entirety.

The Republic of Poland raises against that the contested provisions of Directive 2019/790 a plea alleging infringement of the right to freedom of expression and information guaranteed by Article 11 of the Charter of Fundamental Rights of the European Union.

The Republic of Poland claims specifically that the imposition on online content-sharing service providers of the obligation to make best efforts to ensure the unavailability of specific works and other subject matter for which the rightholders have provided the service providers with the relevant and necessary information (point (b) of Article 17(4) of Directive 2019/790) and the imposition on online content-sharing service providers of the obligation to make best efforts to prevent the future uploads of protected works or other subject-matter for which the rightholders have lodged a sufficiently substantiated notice (point (c), *in fine*, of Article 17(4) of Directive 2019/790) make it necessary for the service providers — in order to avoid liability — to carry out prior automatic verification (filtering) of content uploaded online by users, and therefore make it necessary to introduce preventive control mechanisms. Such mechanisms undermine the essence of the right to freedom of expression and information and do not comply with the requirement that limitations imposed on that right be proportional and necessary.

(¹) OJ 2019 L 130, p. 92.

Request for a preliminary ruling from the Conseil d'État (France) lodged on 24 May 2019 — Société Générale SA v Ministre de l'Action et des Comptes publics

(Case C-403/19)

(2019/C 270/25)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Société Générale SA

Defendant: Ministre de l'Action et des Comptes publics

Question referred

In the light of Article 56 of the Treaty establishing the European Community, now Article 63 of the Treaty on the Functioning of the European Union, does the fact that the application of the rules set out in paragraph 5 of this decision, in order to compensate for the double taxation of dividends paid to a company liable for corporation tax in the Member State of residence by a company resident in another Member State and subject, by virtue of the exercise by that Member States of the power of taxation, to withholding tax, is liable to create a disadvantage to the detriment of transactions involving the securities of foreign companies carried out by companies liable for corporation tax in the first Member State, mean that that State, where it has been decided to grant a concession in response to the double taxation, goes beyond waiving its right to receive the tax revenue that it would derive from the imposition of corporation tax on the dividends in question?