

Parties to the main proceedings

Applicant: WP

Defendants: Istituto nazionale della previdenza sociale, Repubblica italiana

Operative part of the judgment

1. Articles 45 and 48 TFEU, Article 11(2) of Annex VIII to the Staff Regulations and Article 8(a) of Annex IIIa to the Decision of the European Central Bank of 9 June 1998 on the adoption of the Conditions of Employment for Staff of the European Central Bank as amended on 31 March 1999,

must be interpreted as not precluding, in the absence of an agreement between the European Central Bank (ECB) and the Member State concerned, legislation or an administrative practice of that Member State which does not allow an ECB staff member to transfer, to the ECB pension scheme, an amount corresponding to the pension rights he or she has acquired under the pension scheme of that Member State. However, Article 4(3) TEU requires, in accordance with the principle of sincere cooperation enshrined in that provision, that a Member State to which the conclusion of an agreement is proposed by the ECB, pursuant to Article 8(a) of Annex IIIa, on the transfer, to the ECB pension scheme, of pension rights acquired by its staff members under the pension scheme of that Member State, must participate actively and in good faith in negotiations with the ECB with a view to entering into an agreement with the latter following the opening of negotiations.

2. EU law must be interpreted as not authorising a court of a Member State seized by a European Central Bank (ECB) staff member to order the transfer to the ECB pension scheme of pension rights acquired by the person concerned under the pension scheme of that Member State, in the absence of a provision of national law or an agreement between the Member State concerned and the ECB providing for such a transfer. However, where, owing to the breach, by that Member State, of its obligation, arising from the principle of sincere cooperation enshrined in Article 4(3) TEU, to participate actively and in good faith in negotiations with the ECB with a view to concluding an agreement on the transfer of pension rights, that ECB staff member is unable to have the pension rights which he or she has acquired under the pension scheme of that Member State transferred to the ECB pension scheme, that provision requires that such a national court take all the measures provided by national procedural rules so as to ensure that that obligation is fulfilled by the competent national authority.

⁽¹⁾ OJ C 357, 6.9.2021.

Judgment of the Court (Eighth Chamber) of 22 December 2022 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — Hauptzollamt Hamburg v Shell Deutschland Oil GmbH

(Case C-553/21) ⁽¹⁾

(Reference for a preliminary ruling — Directive 2003/96/EC — Taxation of energy products and electricity — Fourth indent of Article 5 — Differentiated rates of excise duty according to whether those products are for business or non-business use — Optional tax exemptions and reductions — Submission of an application for an optional tax reduction after the expiry of the period prescribed for that purpose but before the expiry of the period for assessment of the tax concerned — Principle of legal certainty — Principle of effectiveness — Principle of proportionality)

(2023/C 63/09)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Appellant in the appeal on a point of law: Hauptzollamt Hamburg

Respondent in the appeal on a point of law: Shell Deutschland Oil GmbH

Operative part of the judgment

The principle of effectiveness and the principle of proportionality, as a general principle of EU law, must be interpreted, in the context of implementing a provision such as that in the fourth indent of Article 5 of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity — which allows Member States to apply, under certain conditions, differentiated rates of taxation between business and non-business use, for energy products and electricity referred to in that directive — as precluding national legislation under which the competent authorities of a Member State are required to reject, automatically and without exception, an application for tax relief lodged within the period for assessment of the tax at issue as laid down in national law, on the sole ground that the applicant failed to comply with the period prescribed by that law for the submission of such an application.

⁽¹⁾ OJ C 490, 6.12.2021.

Judgment of the Court (Fifth Chamber) of 22 December 2022 (request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) — Portugal) — IM Gestão de Ativos (IMGA) — Sociedade Gestora de Organismos de Investimento Coletivo SA and Others v Autoridade Tributária e Aduaneira

(Case C-656/21) ⁽¹⁾

(Reference for a preliminary ruling — Directive 2008/7/EC — Article 5(2)(a) — Indirect taxes on the raising of capital — Stamp duty on services relating to the marketing of shares in undertakings for collective investment in transferable securities)

(2023/C 63/10)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicants: IM Gestão de Ativos (IMGA) — Sociedade Gestora de Organismos de Investimento Coletivo SA, IMGA Rendimento Semestral, IMGA Ações Portugal Cat A, IMGA Ações América Cat A, IMGA Mercados Emergentes, IMGA Eurofinanceiras, IMGA Eurocarteira, IMGA Rendimento Mais, IMGA Investimento PPR, IMGA Alocação Moderada Cat A, IMGA Alocação Dinâmica Cat A, IMGA Global Equities Selection Cat A, IMGA Liquidez Cat A, IMGA Money Market Cat A, IMGA Euro Taxa Variável Cat A, IMGA Dívida Pública Europeia, IMGA Retorno Global Cat A, IMGA Poupança PPR, IMGA Alocação Conservadora Cat A, IMGA Iberia Equities ESG Cat A, IMGA Iberia Fixed Income ESG Cat A, IMGA Alternativo, CA Curto Prazo, IMGA Ações Europa, IMGA Flexível Cat A, CA Monetário, CA Rendimento, Eurobic PPR/OICVM Ciclo Vida 35-44, Eurobic PPR/OICVM Ciclo Vida 45-54, Eurobic PPR/OICVM Ciclo Vida + 55, Eurobic Seleção Top, IMGA European Equities Cat A

Defendant: Autoridade Tributária e Aduaneira

Operative part of the judgment

Article 5(2)(a) of Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital