

2. EU law precludes a national court that is confronted with a provision of national tax law, which has transposed a provision of Directive 2006/112 and is open to several interpretations, from adopting the interpretation that is most favourable to the taxable person by relying on the constitutional principle of *in dubio mitius* under national law, even after the Court has held that such an interpretation is incompatible with EU law.

(¹) OJ C 294, 20.8.2018.

Judgment of the Court (Ninth Chamber) of 2 April 2020 (request for a preliminary ruling from the Augstākās tiesa — Latvia) — ‘PrivatBank’ AS

(Case C-480/18) (¹)

(Reference for a preliminary ruling — Payment services in the internal market — Directive 2007/64/EC — Material and personal scope — Payment services provided in a currency other than the euro or the currency of a Member State outside the euro area — Payment services provided by a credit institution — Non-execution or defective execution of a payment order — Person liable — Prudential supervision procedure — Complaint procedures — Out-of-court-redress — Competent authorities)

(2020/C 230/04)

Language of the case: Latvian

Referring court

Augstākās tiesa

Parties to the main proceedings

Applicant: ‘PrivatBank’ AS

Intervener: Finanšu un kapitāla tirgus komisija

Operative part of the judgment

1. Article 2(2) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market, amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC, as amended by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009, must be interpreted as not precluding national legislation under which the authority referred to in Article 82 of that directive has the power to examine complaints and impose penalties in the case of payment services provided in the currency of a third State;
2. Articles 20 and 21 of Directive 2007/64, as amended by Directive 2009/111, are not applicable *ratione personae* to credit institutions;
3. Articles 80 to 82 of Directive 2007/64, as amended by Directive 2009/111, must be interpreted as not conferring power on the competent authority, for the purposes of those provisions, to resolve, by applying the criteria established in Article 75 of that directive, disputes between users and providers of payment services arising from non-execution or defective execution of a payment transaction, where that authority exercises its powers to assess complaints lodged by payment services users and to impose penalties on payment service providers in the event of infringement of the applicable provisions. Such disputes must be resolved through the out-of-court redress procedures referred to in Article 83 of Directive 2007/64, as amended by Directive 2009/111, without prejudice to the right to bring proceedings before a court in accordance with national procedural law. If the national legislature opted to concentrate the powers conferred in Articles 80 to 82 and those conferred in Article 83 of the directive in the hands of the same authority, that authority must exercise each of those powers independently, applying only the relevant respective procedures;

4. In accordance with the principle of the procedural autonomy of the Member States, the national legislature may give the competent authority, in the complaints and penalty procedures referred to in Articles 80 to 82 of Directive 2007/64, as amended by Directive 2009/111, the power to take into account the existence and contents of an arbitration ruling settling a dispute between a user and provider of payment services concerned by those procedures, provided that the probative value given to that ruling in those procedures is not liable to undermine the purpose or specific objectives of the procedures, the rights of defence of the persons concerned or the independent exercise of the powers and competencies conferred on that authority, which is a matter for the referring court to ascertain.

(¹) OJ C 381, 22.10.2018.

Judgment of the Court (Grand Chamber) of 23 April 2020 (request for a preliminary ruling from the Corte suprema di cassazione — Italy) — NH v Associazione Avvocatura per i diritti LGBTI — Rete Lenford

(Case C-507/18) (¹)

(Reference for a preliminary ruling — Equal treatment in employment and occupation — Directive 2000/78/EC — Article 3(1)(a), Article 8(1) and Article 9(2) — Prohibition of discrimination based on sexual orientation — Conditions for access to employment or to occupation — Concept — Public statements ruling out recruitment of homosexual persons — Article 11(1), Article 15(1) and Article 21(1) of the Charter of Fundamental Rights of the European Union — Defence of rights — Sanctions — Legal entity representing a collective interest — Standing to bring proceedings without acting in the name of a specific complainant or in the absence of an injured party — Right to damages)

(2020/C 230/05)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellant: NH

Respondent: Associazione Avvocatura per i diritti LGBTI — Rete Lenford

Operative part of the judgment

1. The concept of 'conditions for access to employment ... or to occupation' in Article 3(1)(a) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as covering statements made by a person during an audiovisual programme according to which that person would never recruit persons of a certain sexual orientation to his or her undertaking or wish to use the services of such persons, even though no recruitment procedure had been opened, nor was planned, provided that the link between those statements and the conditions for access to employment or occupation within that undertaking is not hypothetical.
2. Directive 2000/78 must be interpreted as not precluding national legislation under which an association of lawyers whose objective, according to its statutes, is the judicial protection of persons having in particular a certain sexual orientation and the promotion of the culture and respect for the rights of that category of persons, automatically, on account of that objective and irrespective of whether it is a for-profit association, has standing to bring legal proceedings for the enforcement of obligations under that directive and, where appropriate, to obtain damages, in circumstances that are capable of constituting discrimination, within the meaning of that directive, against that category of persons and it is not possible to identify an injured party.

(¹) OJ C 436, 3.12.2018.