Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

13 October 2022*

(References for a preliminary ruling – Regulation (EU) No 651/2014 – Article 2(83) – Direct and unconditional reference to EU law – Admissibility of the questions – Research and development and innovation aid – Concept of 'research and knowledge-dissemination organisation' – Higher education establishment carrying on economic and non-economic activities – Determination of the primary goal)

In Joined Cases C-164/21 and C-318/21,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Administratīvā rajona tiesa (District Administrative Court, Latvia) (C-164/21) and the Administratīvā apgabaltiesa (Regional Administrative Court, Latvia) (C-318/21), made by decisions of 12 March 2021 and 11 May 2021, received at the Court on 12 March 2021 and 21 May 2021 respectively, in the proceedings

'Baltijas Starptautiskā Akadēmija' SIA (C-164/21),

'Stockholm School of Economics in Riga' SIA (C-318/21)

v

Latvijas Zinātnes padome,

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Chamber, L.S. Rossi, J.-C. Bonichot, S. Rodin and O. Spineanu-Matei (Rapporteur), Judges,

Advocate General: T. Ćapeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– 'Baltijas Starptautiskā Akadēmija' SIA, by I. Cvetkova,

– 'Stockholm School of Economics in Riga' SIA, by E. Balode-Buraka, D. Driče and L. Rasnačs, advokāti,

* Language of the case: Latvian.

– the Latvian Government, by J. Davidoviča, I. Hūna and K. Pommere, acting as Agents,

– the Netherlands Government, by M. Bulterman, M. Gijzen, J. Hoogveld and J. Langer, acting as Agents,

– the European Commission, by P. Arenas, C. Kovács and A. Sauka, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 April 2022,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 2(83) of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 [TFEU] (OJ 2014 L 187, p. 1).

2 The requests have been made in proceedings between 'Baltijas Starptautiskā Akadēmija' SIA ('BSA') and 'Stockholm School of Economics in Riga' SIA ('SSE'), higher education establishments, organised under private law, and Latvijas Zinātnes padome (Latvian Science Council, Latvia) concerning the rejection of requests for project funding submitted by those establishments in the context of calls for fundamental and applied projects launched by the Latvian Science Council.

Legal context

European Union law

Regulation No 651/2014

3 Recitals 45, 47, 48 and 49 of Regulation No 651/2014 are worded as follows:

'(45) Aid for research and development and innovation aid can contribute to sustainable economic growth, strengthen competitiveness and boost employment. Experience with the application of [Commission] Regulation (EC) No 800/2008 [of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles [107 and 108 TFEU] (General block exemption Regulation) (OJ 2008 L 214, p. 3) and the Community framework for State aid for research and development and innovation … shows that market failures may prevent the market from reaching optimal output and lead to inefficiencies related to externalities, public goods/knowledge spill-overs, imperfect and asymmetric information, and coordination and network failures.

…

(47) As regards project aid for research and development, the aided part of the research project should completely fall within the categories of fundamental research, industrial research or experimental development. …

(48) High-quality research infrastructures are increasingly necessary for ground-breaking research and innovation because they attract global talent and are essential in supporting new information and communication technologies and key enabling technologies. …

(49) Research infrastructures may perform both economic and non-economic activities. In order to avoid granting State aid to economic activities through public funding of non-economic activities, the costs and financing of economic and non-economic activities should be clearly separated. Where an infrastructure is used for both economic and non-economic activities, the funding through State resources of the costs linked to the non-economic activities of the infrastructure does not constitute State aid. …'

4 Article 1(1) of that regulation, entitled 'Scope', states:

'This Regulation shall apply to the following categories of aid:

…

(d) aid for research and development and innovation;

…'

5 Article 2 of that regulation, entitled 'Definitions', provides:

'For the purposes of this Regulation the following definitions shall apply:

…

Definitions for Aid for research and development and innovation

(83) "research and knowledge-dissemination organisation" means an entity (such as universities or research institutes, technology transfer agencies, innovation intermediaries, research-oriented physical or virtual collaborative entities), irrespective of its legal status (organised under public or private law) or way of financing, whose primary goal is to independently conduct fundamental research, industrial research or experimental development or to widely disseminate the results of such activities by way of teaching, publication or knowledge transfer. Where such entity also pursues economic activities the financing, the costs and the revenues of those economic activities must be accounted for separately. Undertakings that can exert a decisive influence upon such an entity, in the quality of, for example, shareholders or members, may not enjoy preferential access to the results generated by it'.

The 2014 Commission Communication

6 The Communication from the European Commission entitled 'Framework for State aid for research and development and innovation' (OJ 2014 C 198, p. 1) ('the 2014 Commission Communication') states, in points 17, 19 and 20:

'17. Research and knowledge dissemination organisations ("research organisations") and research infrastructures are recipients of State aid if their public funding fulfils all conditions of Article 107(1) [TFEU]. As explained in the Notice on the notion of State aid, and in accordance with the case-law of the Court of Justice, the beneficiary must qualify as an undertaking, but that qualification does not depend upon its legal status, that is to say whether it is organised under public or private law, or its economic nature, that is to say whether it seeks to make profits or not. Rather, what is decisive for that qualification as an undertaking is whether it carries out an economic activity consisting of offering products or services on a given market …

…

19. The Commission considers that the following activities are generally of a non-economic character:
(a) primary activities of research organisations and research infrastructures, in particular:

– education for more and better skilled human resources. In line with case-law … and decisional practice of the Commission …, and as explained in the Notice on the notion of State aid and the SGEI Communication …, public education organised within the national educational system, predominantly or entirely funded by the State and supervised by the State is considered as a non-economic activity …;

– independent R&D for more knowledge and better understanding, including collaborative R&D where the research organisation or research infrastructure engages in effective collaboration …;

– wide dissemination of research results on a non-exclusive and non-discriminatory basis, for example through teaching, open-access databases, open publications or open software.

(b) knowledge transfer activities, where they are conducted either by the research organisation or research infrastructure (including their departments or subsidiaries) or jointly with, or on behalf of other such entities, and where all profits from those activities are reinvested in the primary activities of the research organisation or research infrastructure. The non-economic nature of those activities is not prejudiced by contracting the provision of corresponding services to third parties by way of open tenders.

20. Where a research organisation or research infrastructure is used for both economic and non-economic activities, public funding falls under State aid rules only in so far as it covers costs linked to the economic activities …'

Latvian law

7 Decree No 725 of the Council of Ministers of 12 December 2017 (*Latvijas Vēstnesis*, 2017, No 248), entitled 'Fundamentālo un lietišķo pētījumu projektu izvērtēšanas un finansējuma administrēšanas kārtība' (procedures for evaluating fundamental and applied research projects and administering their funding), states, in Paragraph 2.7:

'The tenderer shall be a scientific institution listed in the register of scientific institutions which, irrespective of its legal status (organised under public or private law) or its way of financing, under the regulatory provisions governing its activities (statutes, internal regulations, instrument of incorporation), pursues primarily non-economic activities which meet the definition of a research organisation set out in Article 2(83) of [Regulation No 651/2014].'

8 Under Paragraph 6 of Decree No 725:

'The tenderer shall implement a project which has no connection with its economic activity. It shall clearly separate the primary activities which are not of an economic nature (and the associated cash flows) from activities which are deemed to be economic activities. Activities carried out on behalf of a business, the leasing of research infrastructure and consultancy services shall be regarded as economic activities. Where the scientific institution also undertakes other economic activities that are not the same as its primary non-economic activities, it shall separate its primary activities and the associated cash flows from its other activities and their associated cash flows.'

9 Paragraph 12.5 of Decree No 725 provides:

'The [Latvian Science Council] shall assess the compliance of the project proposal with the following administrative eligibility criteria: the project shall be implemented in a scientific establishment which meets the requirements of this decree.'

The disputes in the main proceedings and the questions referred for a preliminary ruling

10 In the two cases brought before the referring courts, the applicants in the main proceedings are higher education establishments organised under private law which responded to two separate calls for projects launched in 2019 and 2020 by the Latvian Science Council for the financing of research projects.

11 The Latvian Science Council is an administrative authority under the supervision of the Minister for Education and Science, whose objective is to implement national scientific and technological development policy by ensuring the expertise, implementation and supervision of scientific research programmes and projects financed by the State budget, the Structural Funds of the European Union and other foreign financial instruments.

Case C-164/21

12 BSA is a commercial limited liability company established in Latvia, whose activity consists of providing higher education services that are both academic and non-academic. It is an establishment of higher education recognised by the State, which, moreover, is listed in the register of scientific institutions.

13 By decision of 23 January 2020, the Latvian Science Council approved the rules on the general call for fundamental and applied projects for 2020, in which BSA submitted a project proposal.

14 By decision of 14 April 2020, the Latvian Science Council rejected BSA's project proposal as ineligible for funding, on the ground that it could not be regarded as a scientific institution within the meaning of Decree No 725, since it did not satisfy the definition of 'research and knowledge-dissemination organisation' in Article 2(83) of Regulation No 651/2014.

15 More specifically, the Latvian Science Council stated that the documents submitted by BSA did not contain any information on whether conducting independent research constituted its primary activity. In that regard, it stated that, for 2019, 84% of its turnover consisted of fees for academic activities which, in view of the type of BSA's activity (a limited liability company whose primary purpose is to make profits), corresponded to an economic activity. Consequently, the Latvian Science Council concluded that BSA's primary activity had to be regarded as being of a commercial nature.

16 The Latvian Science Council also took the view that the documents submitted by BSA did not contain sufficient information concerning the fact that undertakings capable of exerting influence over it, for example in their capacity as shareholders or members, could not enjoy privileged access to its research capacity or to the search results which it produces. Consequently, the Latvian Science Council took the view that BSA could not guarantee that the implementation of the project and the use of its share of the financing would comply with Paragraph 6 of Decree No 725, which requires the tenderer to implement a project that has no connection with its economic activity and clearly separates the primary activities which are not economic in nature (and the corresponding cash flows) from activities which are regarded as being economic activities.

17 BSA challenged the Latvian Science Council's refusal before the Administratīvā rajona tiesa (District Administrative Court, Latvia), claiming that independent research is its primary activity. According to BSA, neither Regulation No 651/2014 nor the rules of the call for projects indicate that the tenderer may not pursue an economic activity or derive a benefit from it, nor do they determine what proportion of activities must be economic and what proportion must be non-economic. BSA also maintains that it clearly dissociates the primary non-economic activities from those which are economic, as well as the corresponding financial flows.

18 The referring court is thus uncertain as to the interpretation to be given to the concept of 'research and knowledge-dissemination organisation', within the meaning of Article 2(83) of Regulation No 651/2014, to which Latvian legislation refers, and the criteria for classifying such an organisation.

19 In those circumstances, the Administratīvā rajona tiesa (District Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Can a (private law) organisation which has various principal activities, including research, but most of whose revenue comes from providing educational services for consideration, be classed as an entity within the meaning of Article 2(83) of Regulation No 651/2014?

(2) Is it justified to apply a requirement regarding the proportion of financing (revenues and costs) obtained from economic and non-economic activities in order to determine whether the entity satisfies the requirement in Article 2(83) of Regulation No 651/2014 that the primary goal of the entity's activities must be to independently conduct fundamental research, industrial research or experimental development or to widely disseminate the results of such activities by way of teaching, publication or knowledge transfer? If the answer is that it is justified, what would be an appropriate proportion of financing from economic and non-economic activities to use in determining the primary goal of the entity's activities?

(3) Is it justified, pursuant to Article 2(83) of Regulation No 651/2014, to apply a requirement that the revenues obtained from the principal activity should be re-invested in the principal activities of the entity in question, and must other aspects be assessed in order to determine properly the primary goal of the activities of the institution submitting the project proposal? Would the use made of the revenues obtained (whether they are reinvested in the principal activities or, for example, in the case of a private founder, paid out as dividends to the shareholders) alter that assessment, even in a situation in which most of the revenues come from fees for educational services?

(4) Is the legal status of the members of the institution submitting the project proposal – that is to say, whether it is a company formed under commercial law in order to carry on an economic activity (an activity for consideration) with the objective of making a profit (Article 1 of the [Commercial Code]) or whether its members or shareholders are natural or legal persons whose objective is to make a profit (including through the provision of educational services for consideration) or were founded for non-profit purposes (in the case of an association or foundation, for example) – decisive in determining whether the institution satisfies the definition in Article 2(83) of Regulation No 651/2014?

(5) Are the proportion of domestic students and students from EU Member States as compared with the proportion of foreign students (from third States) and the fact that the goal of the principal activity pursued by the institution submitting the project proposal is to provide students with higher education and qualifications that are competitive in the international labour market in accordance with current international requirements (paragraph 5 of the applicant's statutes) decisive in assessing whether the activities of the institution submitting the project proposal are economic in nature?'

Case C-318/21

20 SSE is a limited liability company established in Latvia, whose object is, inter alia, scientific development, and one of its missions is to carry out fundamental and applied research in economic sciences. It also provides higher university and vocational education. Its sole member is the foundation Rīgas Ekonomikas augstskola – Stockholm School of Economics in Riga, which is listed in the Register of Associations and Foundations.

21 By decision of 22 May 2019, the Latvian Science Council approved the rules on the general call for fundamental and applied research projects for 2019, in which SSE submitted a project proposal.

22 By decision of 19 September 2019, the Latvian Science Council rejected SSE's project proposal as ineligible for funding, on the ground that it could not be regarded as a scientific institution within the meaning of Decree No 725, since it did not satisfy the definition of 'research and knowledge-dissemination organisation' in Article 2(83) of Regulation No 651/2014.

23 That decision was based primarily on the fact that it was apparent from SSE's project proposal that, in 2018, the proportion of the turnover of SSE's non-economic activities compared with its economic activities was 34% against 66%.

24 The Latvian Science Council concluded that SSE's primary activity was commercial in nature and that the view could not be taken that its primary goal was to carry out, in complete independence, fundamental research, industrial research or experimental development, or to disseminate widely the results of those activities by way of teaching, publications or knowledge transfer. It also considered that the documents submitted by SSE similarly did not contain any information indicating that all SSE's revenue from its primary activity would be reinvested in that activity.

25 SSE challenged the decision of the Latvian Science Council before the Administratīvā rajona tiesa (District Administrative Court), arguing, inter alia, that it satisfied the requirements imposed by Decree No 725 since it was listed in the register of scientific institutions and its primary activity was non-economic in nature. In that regard, SSE produced documents showing that the cash flows generated by its primary activity were separated from economic activities and that the profits from its economic activities were reinvested in the institution's primary activity of research.

26 By judgment of 8 June 2020, the Administratīvā rajona tiesa (District Administrative Court) dismissed the action brought by SSE. While acknowledging that scientific activity was one of SSE's fields of activity, that court noted that the report on turnover for 2018 showed that SSE's economic activities accounted for a greater proportion of revenue and costs than those from its non-economic activities. It concluded that SSE was not a scientific institution capable of benefiting from State funding for fundamental and applied research.

27 SSE brought an appeal against that judgment before the Administratīvā apgabaltiesa (Regional Administrative Court, Latvia).

28 That court has doubts as to the assessments made by the Latvian Science Council and the Administratīvā rajona tiesa (District Administrative Court). It considers that, if the criteria laid down by the latter for granting aid to a scientific institution according to which the revenue and costs linked to its economic activities must be lower than those coming from non-economic activities, private higher education establishments would not be able to receive public aid for research, which would create a difference in treatment to their detriment.

29 The Administratīvā apgabaltiesa (Regional Administrative Court) is of the opinion that Regulation No 651/2014 does not clearly establish whether it is justified, for the purposes of classifying an entity as a 'research and knowledge-dissemination organisation', to take account of the respective proportion of that entity's revenue and costs coming from its economic and its non-economic activities.

30 It considers that the outcome of the case before it depends on the Court's interpretation of Article 2(83) of Regulation No 651/2014.

31 In those circumstances, the Administratīvā apgabaltiesa (Regional Administrative Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Must Article 2(83) of [Regulation No 651/2014] be interpreted as meaning that an entity (such as universities or research institutes, technology transfer agencies, innovation intermediaries, research-oriented physical or virtual collaborative entities) whose operating objectives include independently conducting fundamental research, industrial research or experimental development or widely disseminating the results of such activities by way of teaching, publication or knowledge transfer, but whose own funding consists mainly of revenue from economic activities, can be considered a research and knowledge-dissemination organisation?

(2) Is it justified to apply a requirement regarding the proportion of financing (revenues and costs) obtained from economic and non-economic activities in order to determine whether the entity satisfies the requirement in Article 2(83) of [Regulation No 651/2014] that the primary goal of the entity’s activities must be to independently conduct fundamental research, industrial research or experimental development or to widely disseminate the results of such activities by way of teaching, publication or knowledge transfer?

(3) If the answer to the second question referred is in the affirmative, in determining whether the entity’s primary goal is to independently conduct fundamental research, industrial research or experimental development or to widely disseminate the results of such activities by way of teaching, publication or knowledge transfer, what percentages of funding must be obtained from economic and from non-economic activities?

(4) Must the rule in Article 2(83) of [Regulation No 651/2014], which establishes that undertakings that can exert a decisive influence upon the entity submitting the project proposal, in the quality of, for example, shareholders or members, may not enjoy preferential access to the results generated by that entity, be interpreted as meaning that the members or shareholders of the said entity may be either natural or legal persons with a profit motive (including through the provision of educational services in return for payment) or not-for-profit entities (such as an association or foundation)?’

Consideration of the questions referred

Preliminary observations

32 In accordance with settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted by the national court concern the interpretation of EU law, the Court is, in principle, bound to give a ruling (judgment of 10 December 2020, *J & S Service*, C-620/19, EU:C:2020:1011, paragraph 31 and the case-law cited).

33 Questions concerning EU law thus enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the Court does not have before it the legal or factual material necessary to give a useful answer to the questions submitted to it or where the problem is hypothetical (judgment of 24 February 2022, *Tiketa*, C-536/20, EU:C:2022:112, paragraph 39 and the case-law cited).

34 In the present cases, the Court is asked about the interpretation to be given to Article 2(83) of Regulation No 651/2014, which defines the concept of 'research and knowledge-dissemination organisation'. However, it was in the context of disputes relating to the application of Decree No 725 concerning the grant of public funding for fundamental and applied research by the Latvian Science Council that the referring courts made their requests for a preliminary ruling. As those courts state, Paragraph 2.7 of Decree No 725 refers, clearly and unconditionally, to Article 2(83) of Regulation No 651/2014 and states that, in order to be eligible for public financing of fundamental research by the Latvian Science Council, project tenderers must satisfy the definition of a research organisation laid down in Article 2(83) of Regulation No 651/2014. Since, as those courts have adequately explained, the outcome of the disputes in the main proceedings depends on the interpretation of that provision of Regulation No 651/2014, the Court's answers to the questions referred for a preliminary ruling appear necessary for the referring courts to be able to give their judgment.

35 In that regard, it should also be borne in mind that the Court has recognised as admissible requests for a preliminary ruling concerning provisions of EU law in situations where the facts of the case in the main proceedings fell outside the scope of EU law but where those provisions, without amending their purpose or scope, had been rendered applicable by national law due to a direct and unconditional reference made by that law to the content of those provisions. The Court, moreover, has consistently held that, in these types of situations, it is manifestly in the interest of the EU legal order that, in order to forestall future differences of interpretation, the provisions taken from EU law should be interpreted uniformly (see, to that effect, judgments of 18 October 1990, *Dzodzi*, C-297/88 and C-197/89, EU:C:1990:360, paragraphs 36 and 37; of 24 October 2019, *Belgische Staat*, C-469/18 and C-470/18, EU:C:2019:895, paragraphs 21 to 23 and the case-law cited; and of 10 December 2020, *J & S Service*, C-620/19, EU:C:2020:1011, paragraphs 34, 44 and 45).

36 It is apparent from the requests for a preliminary ruling that, by referring, in Paragraph 2.7 of Decree No 725, directly and unconditionally to Article 2(83) of Regulation No 651/2014 in the context of the definition of the criteria for eligibility for public funding for fundamental research, the Latvian authorities wished to ensure consistency between national law and the relevant EU law and to ensure the compatibility of their system for the public financing of fundamental public research with the rules of EU law on State aid, with the result that that reference alters neither the purpose nor the scope of that provision.

37 In those circumstances, the Court must answer the first to fourth questions referred in each of the present cases, in so far as they concern the interpretation to be given to Article 2(83) of Regulation No 651/2014.

38 However, as regards the fifth question in Case C-164/21, concerning the relevance of the origin of the students which an entity hosts and the type of education which it provides as criteria for the purposes of its classification as a research and knowledge-dissemination organisation, it must be

held that that is hypothetical, since the referring court does not set out with sufficient clarity and precision the reasons which led it to refer that question and the extent to which an answer to that question is necessary in order to dispose of the case before it.

39 The request for a preliminary ruling in Case C-164/21 does not indicate how the criteria to which that question relates are relevant to the main proceedings, for example in so far as they formed the basis of the decision of the Latvian Science Council, or in so far as they were relied on by BSA in its action before the referring court. Accordingly, the fifth question in Case C-164/21 must be declared to be inadmissible.

The first and second questions in Case C-164/21 and the first to third questions in Case C-318/21

40 By the first and second questions in Case C-164/21 and the first to third questions in Case C-318/21, which it is appropriate to examine together, the referring courts ask, in essence, whether Article 2(83) of Regulation No 651/2014 must be interpreted as meaning that an entity organised under private law which carries out several activities, including research, but the majority of whose revenue comes from economic activities, such as the provision of teaching services for consideration, may be regarded as being a 'research and knowledge-dissemination organisation', within the meaning of that provision.

41 In so doing, the referring courts ask the Court about the interpretation to be given to the concept of 'research and knowledge-dissemination organisation', as defined in Article 2(83) of Regulation No 651/2014, and on the criteria for identifying such a body.

42 According to settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 26 February 2019, *Rimšēvičs and ECB* v *Latvia*, C-202/18 and C-238/18, EU:C:2019:139, paragraph 45 and the case-law cited).

43 Article 2(83) of Regulation No 651/2014 defines a research and knowledge-dissemination organisation as 'an entity (such as universities or research institutes, technology transfer agencies, innovation intermediaries, research-oriented physical or virtual collaborative entities), irrespective of its legal status (organised under public or private law) or way of financing, whose primary goal is to independently conduct fundamental research, industrial research or experimental development or to widely disseminate the results of such activities by way of teaching, publication or knowledge transfer'.

44 That provision states, moreover, that where such entity also pursues economic activities the financing, the costs and the revenues of those economic activities must be accounted for separately. It also provides that undertakings that can exert a decisive influence upon such an entity, in the quality of, for example, shareholders or members, may not enjoy preferential access to the results generated by it.

45 It is clear from a literal interpretation of Article 2(83) of Regulation No 651/2014 that the key criterion for the classification of an entity as a research and knowledge-dissemination organisation is the primary goal it pursues, which must consist of either conducting, in complete independence, activities of fundamental research, industrial research or experimental development, or widely disseminating the results of such activities by way of teaching, publication or knowledge transfer.

46 First, as regards the concept of 'primary goal', it should be noted that that is not defined by Regulation No 651/2014. It is therefore for the Court to determine its meaning and scope in accordance with its usual meaning in everyday language (see, to that effect, judgment of 5 February 2020, *Staatssecretaris van Justitie en Veiligheid (Signing-on of seamen in the port of Rotterdam)*, C-341/18, EU:C:2020:76, paragraph 42 and the case-law cited). In everyday language, the goal of an entity refers to the objective which it intends to achieve, and the adjective 'primary' underlines the greater importance of the goal in question and therefore its precedence over any other goals pursued by the entity.

47 From that point of view, the use of the concept of 'primary goal' in Article 2(83) of Regulation No 651/2014 suggests that a research and knowledge-dissemination organisation, within the meaning of that provision, may pursue a number of goals and pursue different types of activity, provided that, among those different goals, the pursuit of independent research activities or the wide dissemination of the results of those activities is the primary objective which prevails over any other objectives pursued by that organisation.

48 That interpretation, according to which Article 2(83) of Regulation No 651/2014 and the concept of 'primary goal' on which that provision is based do not preclude a research and knowledge-dissemination organisation from also carrying out other activities, which may be of an economic nature, such as educational activities for consideration, provided that those activities retain a secondary, non-preponderant nature in relation to the primary activities, generally non-economic, of independent research or of dissemination of the results of that research, is borne out by recital 49 of that regulation and point 20 of the 2014 Commission Communication from which it follows that a research organisation or research infrastructure may carry out both economic activities and non-economic activities.

49 Secondly, as regards the activities carried out in pursuit of the primary goal of the entity, while the wording of Article 2(83) of Regulation No 651/2014 and the use of the coordinating conjunction 'or' suggest that research and knowledge-dissemination organisations do not necessarily have to carry out cumulatively research activities and activities of dissemination of results, on the other hand, the expression 'the results of such activities' necessarily presupposes that the activities of knowledge dissemination of the organisation may not relate without distinction to the results of any type of research, even without any link to the entity in question, but must concern, at least in part, the results of the research activities carried out by the entity itself.

50 It follows from those factors that, in order to be classified as a 'research and knowledge-dissemination organisation' within the meaning of Article 2(83) of Regulation No 651/2014, an entity must conduct independent research activities, possibly supplemented by activities for the dissemination of the results of those research activities.

51 Consequently, establishments devoted exclusively to teaching and training activities which disseminate generally the current state of science cannot be classified as research and knowledge-dissemination organisations. That interpretation is supported by the purpose and general structure of Regulation No 651/2014, and of the system which it establishes for aid for research development and innovation, which, as is apparent in particular from recitals 45, 47 and 48 of that regulation, cannot be intended to exempt aid granted to entities dedicated exclusively to teaching and dissemination of generalist knowledge, in no way linked to research activities in which, moreover, they are not engaged.

52 Thirdly, as regards the criteria in the light of which the essential condition of the primary goal of an entity must be assessed for the purposes of its classification as a 'research and knowledge-dissemination organisation', within the meaning of Article 2(83) of Regulation No 651/2014, it should, first of all, be noted that they are not specified in that provision. It must therefore be concluded that, in order to assess an entity's primary goal, that provision allows for all relevant criteria to be taken into account, such as the applicable regulatory framework or the statutes of the entity in question.

53 In that regard, the Court is asked whether the structure of an entity's turnover and the proportion of that turnover represented by the revenue from its economic activities are decisive for the purposes of assessing the primary goal which it pursues. More specifically, the referring courts are uncertain whether the fact that an entity earns more than half its revenue from such economic activities necessarily means that it cannot be classified as a 'research and knowledge-dissemination organisation', within the meaning of Article 2(83) of Regulation No 651/2014.

54 On that point, it must first be noted that Article 2(83) of Regulation No 651/2014 does not lay down any requirement as to the structure and origin of the financing of the activities of the entity for the purposes of assessing its primary goal and its classification as a 'research and knowledge-dissemination organisation'. That provision even states that such a classification must be made without having regard to the way in which the entity is financed or to its legal status under public or private law.

55 Furthermore, the requirement for separate accounting laid down in Article 2(83) of Regulation No 651/2014 confirms that a research and knowledge-dissemination organisation may also pursue activities of an economic nature which generate revenue.

56 Finally, as the Latvian and Netherlands Governments, and the Commission submit, it must be held that the criterion of the structure of an entity's turnover and of the respective proportion of that turnover represented by the revenue from its economic activities and those from the, generally non-economic, activities of research and dissemination of the results of that research may, if taken in isolation, give a distorted picture of an entity's actual activities and of its primary goal, for example by underestimating the real importance of an activity which generates only a small amount of revenue.

57 Accordingly, it must be held that the criterion of the structure of an entity's turnover and of the proportion of that turnover represented by the revenue from its economic activities cannot be used as the sole decisive criterion for assessing the primary goal of that entity for the purposes of the possible classification of that entity as a research and knowledge-dissemination organisation.

58 However, Article 2(83) of Regulation No 651/2014 does not preclude that criterion from being taken into account, in the wider context of an analysis of all the relevant circumstances, as one indication among others of an entity's primary goal.

59 In the light of all the foregoing considerations, the answer to the first and second questions in Case C-164/21 and the first to third questions in Case C-318/21 is that Article 2(83) of Regulation No 651/2014 must be interpreted as meaning that an entity organised under private law which carries out several activities, including research, but the majority of whose revenue comes from economic activities, such as the provision of teaching services for consideration, may be regarded as being a 'research and knowledge-dissemination organisation', within the meaning of that

provision, provided that it can be established, in the light of all the relevant circumstances of the case, that its primary goal is to conduct, in complete independence, activities of fundamental research, industrial research or experimental development, possibly supplemented by activities for the dissemination of the results of those research activities, by means of teaching, publications or transfers of knowledge. In that context, such an entity cannot be required to earn a certain proportion of its revenue from its non-economic activities of research and dissemination of knowledge.

The third question in Case C-164/21

60 By the third question in Case C-164/21, the referring court asks, in essence, whether Article 2(83) of Regulation No 651/2014 must be interpreted as meaning that, in order for an entity to be regarded as a 'research and knowledge-dissemination organisation', within the meaning of that provision, it is necessary that that entity reinvests the revenue generated by its primary activity in that same activity.

61 It should be noted, first of all, that Article 2(83) of Regulation No 651/2014, beyond the obligation to account separately for the financing, costs and revenue of any economic activities conducted by an entity, does not, for the purposes of its classification as a research and knowledge-dissemination organisation, impose any requirement regarding the use, and possible reinvestment, by that entity of its revenue.

62 In that regard, it should be observed, as submitted by the Netherlands Government and the Commission in their observations, that such a requirement to reinvest revenue existed under the previous system of Regulation No 800/2008, of which Article 30(1) provided, inter alia, that 'all profits must be reinvested in these [research] activities, the dissemination of their results or teaching' and that that requirement was not reproduced in Regulation No 651/2014.

63 Finally, contrary to what the Latvian Government maintains, such a requirement to reinvest cannot be inferred from point 19(b) of the 2014 Commission Communication, which, unlike point 19(a) thereof, is not intended to classify the primary activities of research bodies, but relates solely to the classification of knowledge-transfer activities. It is only for the purpose of indicating in what circumstances the latter activities may be classified as 'non-economic' that point 19(b) refers to a requirement to reinvest revenue in the primary activities of the research organisation.

64 In the light of all the foregoing considerations, the answer to the third question in Case C-164/21 is that Article 2(83) of Regulation No 651/2014 must be interpreted as meaning that, in order for an entity to be regarded as a 'research and knowledge-dissemination organisation', within the meaning of that provision, it is not necessary that that entity reinvests the revenue generated by its primary activity in that same primary activity.

The fourth questions in Case C-164/21 and Case C-318/21

65 By their fourth questions in Cases C-164/21 and C-318/21, the referring courts ask, in essence, whether Article 2(83) of Regulation No 651/2014 must be interpreted as meaning that the legal status of the shareholders and members of an entity, and the possible profit-making nature of the

activities carried out by them and of the objectives which they pursue, constitute decisive criteria for the purposes of classifying that entity as a 'research and knowledge-dissemination organisation', within the meaning of that provision.

66 First, Article 2(83) of Regulation No 651/2014 expressly provides that the legal status of the entity (organised under public or private law) or its way of financing are irrelevant for the purpose of determining whether it may be classified as a research and knowledge-dissemination organisation. That attests to the intention of the Commission, the author of Regulation No 651/2014, not to have regard, for the purposes of classifying an entity as a research and knowledge-dissemination organisation, to formal criteria linked to the legal status and internal organisation of the entity.

67 Secondly, the rule in Article 2(83) of Regulation No 651/2014, according to which undertakings which may exercise decisive influence over a research and knowledge-dissemination organisation, for example in their capacity as a shareholder or member, cannot enjoy privileged access to the results which that body produces, suggests that the legal status of the shareholders or members of an entity, and the profit-making nature of their activities or their objectives, cannot be decisive for the purposes of classifying that entity as a 'research and knowledge-dissemination organisation', within the meaning of that provision.

68 In addition, it should be noted that that rule concerns only those entities which may be regarded as undertakings. As the Court has repeatedly held (see, to that effect, judgments of 19 February 2002, *Wouters and Others*, C-309/99, EU:C:2002:98, paragraphs 46 and 47, and of 11 June 2020, *Commission and Slovak Republic* v *Dôvera zdravotná poist'ovňa*, C-262/18 P and C-271/18 P, EU:C:2020:450, paragraphs 28 and 29), and as Article 1 of Annex I to Regulation No 651/2014 and point 17 of the 2014 Commission Communication confirm, an 'undertaking', for the purposes of EU law, is any entity which carries out an economic activity consisting of offering products or services on a given market, regardless of its legal status or the profit-making nature of the goal it pursues. Consequently, and as the Latvian and Netherlands Governments, and the Commission submit, the rule in Article 2(83) of Regulation No 651/2014 does not entail any restriction as to the legal status of any shareholders or members of a research and knowledge-dissemination organisation or the profit-making nature, or otherwise, of the activities carried out by those shareholders or members and the objectives which they pursue.

69 In the light of all the foregoing considerations, the answer to the fourth questions in Cases C-164/21 and C-318/21 is that Article 2(83) of Regulation No 651/2014 must be interpreted as meaning that the legal status of the shareholders and members of an entity and the possible profit-making nature of the activities carried out by them and of the objectives which they pursue do not constitute decisive criteria for the purposes of classifying that entity as a 'research and knowledge-dissemination organisation', within the meaning of that provision.

Costs

70 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

1. **Article 2(83) of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 [TFEU]**

   must be interpreted as meaning that an entity organised under private law which carries out several activities, including research, but the majority of whose revenue comes from economic activities, such as the provision of teaching services for consideration, may be regarded as being a 'research and knowledge-dissemination organisation', within the meaning of that provision, provided that it can be established, in the light of all the relevant circumstances of the case, that its primary goal is to conduct, in complete independence, activities of fundamental research, industrial research or experimental development, possibly supplemented by activities for the dissemination of the results of those research activities, by means of teaching, publications or transfers of knowledge. In that context, such an entity cannot be required to earn a certain proportion of its revenue from its non-economic activities of research and dissemination of knowledge.

2. **Article 2(83) of Regulation No 651/2014**

   must be interpreted as meaning that, in order for an entity to be regarded as a 'research and knowledge-dissemination organisation', within the meaning of that provision, it is not necessary that that entity reinvests the revenue generated by its primary activity in that same primary activity.

3. **Article 2(83) of Regulation No 651/2014**

   must be interpreted as meaning that the legal status of the shareholders and members of an entity and the possible profit-making nature of the activities carried out by them and of the objectives which they pursue do not constitute decisive criteria for the purposes of classifying that entity as a 'research and knowledge-dissemination organisation', within the meaning of that provision.

[Signatures]