

Judgment of the Court (First Chamber) of 16 February 2023 — European Commission v Italian Republic, Kingdom of Spain

(Case C-635/20 P) ⁽¹⁾

(Appeal — Rules on languages — Notice of open competitions for the recruitment of administrators' functions as investigators and team leaders — Knowledge of languages — Restriction of the choice of the second competition language to English, French and German — Language of communication with the European Personnel Selection Office (EPSO) — Regulation No 1 — Staff Regulations — Article 1d(1) — Difference in treatment based on language — Justification — Interests of the service — Requirement to recruit administrators who are 'immediately operational' — Judicial review — Standard of proof required)

(2023/C 127/03)

Languages of the case: Spanish and Italian

Parties

Appellant: European Commission (represented by: G. Gattinara, T. Lilamand, D. Milanowska and N. Ruiz García, acting as Agents)

Other parties to the proceedings: Kingdom of Spain (represented by: L. Aguilera Ruiz and A. Gavela Llopis, acting as Agents), Italian Republic (represented by: G. Palmieri, acting as Agent, and by P. Gentili, avvocato dello Stato)

Operative part of the judgment

The Court:

1. Dismisses the appeal;
2. Orders the European Commission to bear its own costs and to pay those incurred by the Kingdom of Spain and the Italian Republic.

⁽¹⁾ OJ C 28, 25.1.2021.

Judgment of the Court (Third Chamber) of 16 February 2023 (request for a preliminary ruling from the Upper Tribunal (Tax and Chancery Chamber) -United Kingdom) — Gallaher Limited v The Commissioners for Her Majesty's Revenue and Customs

(Case C-707/20, ⁽¹⁾ Gallaher)

(Reference for a preliminary ruling — Direct taxation — Corporate income tax — Articles 49, 63 and 64 TFEU — Freedom of establishment — Free movement of capital — Disposal of assets within a group of companies — Company resident for tax purposes in one Member State having a parent company resident for tax purposes in another Member State and a sister company resident for tax purposes in a third country — Disposal of intellectual property rights of the company resident for tax purposes in a Member State to its sister company resident for tax purposes in a third country — Disposal by the company resident for tax purposes in a Member State of shares in one of its subsidiaries to its parent company resident for tax purposes in another Member State — Consideration equal to the market value of the assets transferred — Exemption from tax or imposition of tax depending on the State in which the beneficiary company has its seat)

(2023/C 127/04)

Language of the case: English

Referring court

Upper Tribunal (Tax and Chancery Chamber)

Parties to the main proceedings

Applicant: Gallaher Limited

Defendant: The Commissioners for Her Majesty's Revenue and Customs

Operative part of the judgment

1. Article 63 TFEU must be interpreted as meaning that national legislation which applies only to groups of companies does not fall within its scope.
2. Article 49 TFEU must be interpreted as meaning that national legislation which imposes an immediate tax charge on a disposal of assets from a company which is resident for tax purposes in a Member State to a sister company which is resident for tax purposes in a third country and which does not carry on a trade in that Member State through a permanent establishment, where both of those companies are subsidiaries wholly owned by a common parent which is resident for tax purposes in another Member State, does not constitute a restriction on the freedom of establishment, within the meaning of Article 49 TFEU, of that parent company, in circumstances where such a disposal would be made on a tax-neutral basis if the sister company were also resident in the first Member State or carried on a trade there through a permanent establishment.
3. Article 49 TFEU must be interpreted as meaning that a restriction of the right to freedom of establishment resulting from the difference in treatment between national and cross-border disposals of assets for consideration within a group of companies under national legislation which imposes an immediate tax charge on a disposal of assets by a company resident for tax purposes in a Member State may, in principle, be justified by the need to maintain a balanced allocation of the power to impose taxes between the Member States, without it being necessary to provide for the possibility of deferring payment of the charge in order to guarantee the proportionality of that restriction, where the taxpayer concerned has obtained, by way of consideration for the disposal of the assets, an amount equal to the full market value of those assets.

⁽¹⁾ OJ C 110, 29.3.2021.

Judgment of the Court (Second Chamber) of 16 February 2023 (request for a preliminary ruling from the Juzgado de lo Mercantil nº 3 de Valencia — Spain) — Tráficos Manuel Ferrer S.L., Ignacio v Daimler AG

(Case C-312/21, ⁽¹⁾ Tráficos Manuel Ferrer)

(Reference for a preliminary ruling — Competition — Compensation for harm caused by a practice prohibited under Article 101(1) TFEU — Decision of the Commission finding the existence of collusive arrangements on pricing and gross price increases for trucks in the European Economic Area (EEA) — National rule of civil procedure under which, in the event that the claim is upheld in part, costs are to be borne by each party, except in cases of wrongful conduct — Procedural autonomy of the Member States — Principles of effectiveness and equivalence — Directive 2014/104/EU — Objectives and overall balance — Article 3 — Right to full compensation for the harm suffered — Article 11(1) — Joint and several liability of the undertakings that infringe competition law — Article 17(1) — Possibility for national courts to estimate the harm — Conditions — Impossibility or unreasonable difficulties in quantifying harm — Article 22 — Temporal application)

(2023/C 127/05)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil nº 3 de Valencia