

3. Independently of the preceding questions, is an action of the tax authority of a Member State, which consists in determining a tax difference owed by a taxable person who is a private individual, on the basis of the provisions referred to in the Law on Accounting, solely because the taxable person, for reasons for which he or she is not responsible, has not been able to make available to the tax authority all the accounting documents of several commercial companies which were independent of the taxable person at the time when the tax inspection was conducted or the registration of which on the Register had been cancelled, in order to prove that he or she paid to those companies cash amounts which he or she handled in the course of the functions that he or she performed previously within those companies or by agreement, or which were transferred to his or her private bank account, and, consequently, the tax authority relies on the absence of certain documents which the taxable person was unlikely to have had for objective reasons at the time when the tax inspection was conducted, and which he or she could not have influenced in terms of their creation or form of preparation, in conformity with basic accounting principles and with the objective and function of the publication requirement, as laid down in Articles 2, 31, 47, 48 and 51 of the Fourth Directive, the right to a fair trial enshrined as a general principle in Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') and with the fundamental principles of legal certainty and proportionality?
4. Are the recitals and Articles 2, 31, 47, 48 and 51 of the Fourth Directive to be interpreted as meaning that fulfilment of the obligations laid down therein gives rise to a legal presumption that the information contained in the annual financial statements as published complies with basic accounting principles, in particular the principle of accuracy and the principle of justification, and with the accounting documents based thereon?
5. Is an action whereby the tax authority does not accept that certain accounting documents prepared in accordance with accounting rules constitute reliable evidence in themselves in conformity with Articles 2, 31, 47, 48 and 51 of the Fourth Directive, as well as the right to a fair trial enshrined in Article 47 of the Charter and the principles of legal certainty and of the primacy and effectiveness of European Union law?
6. Is an action whereby the tax authority accepts neither the annual financial statements published by the company as information for the audit of accounting documents (till receipts) adjusted in terms of form and submitted by the taxable person, who is a private individual, nor the statements or declarations corroborating the same, stating that those financial statements are in themselves insufficient since, in order reliably to demonstrate the movements of funds that form the subject matter of the dispute, the entirety of the company's accounting documents for the financial year under examination is required, in conformity with Articles 2, 31, 47, 48 and 51 of the Fourth Directive, as well as the right to a fair trial enshrined in Article 47 of the Charter and the principle of legal certainty? Should it be inferred from the aforementioned articles of the Fourth Directive that the probative value of the entirety of the accounting documents prepared in accordance with those articles, in relation to the evidence of cash payments made from the company's bank account, is greater than that of the annual financial statements published in accordance with Articles 48 and 51 of the Fourth Directive or that of certain till receipts prepared in accordance with the same accounting rules?

⁽¹⁾ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

⁽²⁾ Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (OJ 1978 L 222, p. 11).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 13 April 2023 — Paolo Beltrami S.p.A. v Comune di Milano

(Case C-235/23, Paolo Beltrami)

(2023/C 235/19)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Paolo Beltrami S.p.A.

Respondent: Comune di Milano

Question referred

Do Articles 16, 49, 50 and 52 of the Charter of Fundamental Rights of the European Union, Article 4 of Protocol 7 to the European Convention on Human Rights (ECHR), Article 6 TEU, the principles of proportionality, competition, freedom of establishment and freedom to provide services laid down in Articles 49, 50, 54 and 56 TFEU preclude a national rule (as contained in Article 75 of decreto legislativo n. 163 del 2006 (Legislative Decree No 163 of 2006)) which provides for the application of the penalty of forfeiture of the provisional security, as an automatic consequence of the exclusion of an economic operator from a procedure for the award of a public service contract, irrespective of whether or not that economic operator has been awarded the contract?

Appeal brought on 17 April 2023 by the European Commission against the judgment of the General Court (Eighth Chamber, Extended Composition) delivered on 8 February 2023 in Case T-522/20, Carpatair v Commission

(Case C-244/23 P)

(2023/C 235/20)

Language of the case: English

Parties

Appellant: European Commission (represented by: I. Georgiopoulos, F. Tomat, Agents)

Other parties to the proceedings: Carpatair SA, Wizz Air Hungary Légiközlekedési Zrt. (Wizz Air Hungary Zrt.), Societatea Națională ‘Aeroportul Internațional Timișoara — Traian Vuia’ SA (AITTV)

Form of order sought

The Appellant claims that the Court should:

- set aside the judgment of the General Court (Eighth Chamber, Extended Composition) of 8 February 2023 in case T-522/20, *Carpatair v Commission*, in so far as it upheld the second plea in law in that case and found that the Commission erred in law by concluding that the agreements concluded in 2008 and 2010 between Societatea Națională ‘Aeroportul Internațional Timișoara — Traian Vuia’ SA (AITTV) and Wizz Air Hungary Légiközlekedési Zrt. (Wizz Air Hungary Zrt.) did not confer an advantage on Wizz Air;
- reject the second plea in law in Case T-522/20, and
- order Carpatair SA to pay the costs of both proceedings.

Pleas in law and main arguments

By the judgment under appeal, the General Court annulled Article 2 of Commission Decision (EU) 2021/1428 (1) of 24 February 2020 on the State Aid SA.31662 — C/2011 (ex NN/2011) implemented by Romania for Timișoara International Airport — Wizz Air in so far as it concluded that the airport charges in the Aeronautical Information Publication of 2010 and the agreements concluded between Societatea Națională ‘Aeroportul Internațional Timișoara — Traian Vuia’ SA (AITTV) and Wizz Air Hungary Légiközlekedési Zrt. (Wizz Air Hungary Zrt.) in 2008 (including the 2010 amendment agreements) do not constitute State aid.

The Commission puts forward a single ground in support of its appeal against the judgment.

Ground of appeal: In paragraphs 179 to 201 of the judgment under appeal, the General Court erred in law in the interpretation of Article 107(1) TFEU, failed to state reasons due to an inadequate and contradictory reasoning, misrepresented and misinterpreted the Decision. This ground of appeal is divided into five parts:

- First part: In paragraphs 186 to 192 of the judgment under appeal, the General Court erred in law in the interpretation of Article 107(1) TFEU, in particular regarding the application of the market economy operator principle. The General Court erred in law by considering that the absence of a prior evaluation is per se a decisive element for the application of that principle.