

**Case C-318/21****Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

21 May 2021

**Referring court:**

Administratīvā apgabaltiesa (Regional Administrative Court, Latvia)

**Date of the decision to refer:**

11 May 2021

**Applicant:**

SIA STOCKHOLM SCHOOL OF ECONOMICS IN RIGA

**Defendant:**

Latvijas Zinātnes padome (Latvian Council of Science)

**Subject matter of the main proceedings**

Appeal lodged by SIA STOCKHOLM SCHOOL OF ECONOMICS IN RIGA against the judgment of the Administratīvā rajona tiesa (District Administrative Court) of 8 June 2020 dismissing the action by the aforesaid company seeking to have the decision of the Latvijas Zinātnes padome (Latvian Council of Science) of 19 September 2019 declared illegal and to be awarded compensation of EUR 300 000.

**Subject matter and legal basis of the request for a preliminary ruling**

Pursuant to Article 267 TFEU, during the written stage of the present proceedings, the referring court requests an 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 of the Treaty on the Functioning of the European Union, in order to determine whether an entity 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. The referring court also seeks clarification of whether, for the purposes of this classification, there is justification for applying the requirement regarding the proportion of funding (revenue and costs) derived from economic and non-economic activities and, if so, what the percentages of funding from economic and non-economic activities should be for these purposes.

### Questions referred

- 1) Must 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 of the Treaty on the Functioning of the European Union 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) In determining whether the entity complies with the requirement in 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 of the Treaty on the Functioning of the European Union 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, is it justified to apply the requirement concerning the proportion of funding (revenue and costs) derived from economic and non-economic activities?
- 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 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 of the Treaty on the Functioning of the European Union, 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)?

### **Provisions of EU law relied upon**

Article 107(1), Article 107(3)(c) and Article 179(1) and (2) of the Treaty on the Functioning of the European Union.

Recital 49 and 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 of the Treaty.

Point 2(1) of the Communication from the European Commission of 27 June 2014 entitled 'Framework for State aid for research and development and innovation' No 2014/C 198/01.

### **Provisions of national law relied upon**

Article 2(2) and Article 7 of the **Biedrību un nodibinājumu likums (Law on Associations and Foundations)**.

Article 2(2): A foundation ... is a set of assets designated for the purposes of achieving the objective specified by the founder, which must not have a profit motive.

Article 7(1): ... the foundation shall be entitled, as an ancillary function, to carry on an economic activity in connection with maintaining or exploiting its assets and to carry on any other economic activity for the purposes of achieving the foundation's objectives.

Article 7(2): The ... foundation's revenues may be used only for the purposes of achieving the objective specified in its statute. Any profits obtained from the foundation's economic activities may not be distributed among the founders.

Articles 1, 2, 4, 7 and 8 of the **Likums 'Par Rīgas Ekonomikas augstskolu' (Law on the Stockholm School of Economics in Riga)**, which establish that the applicant is a higher education institution providing academic teaching, operating in the field of economic sciences and serving the interests of the people of Latvia, that its objectives include the development of science, and that one of its missions is to conduct fundamental and applied research in economic sciences.

Paragraphs 2(7), 2(9) and 12(5) of **Ministru kabineta 2017. gada 12. decembra noteikumi Nr. 725 'Fundamentālo un lietišķo pētījumu projektu izvērtēšanas**

**un finansējuma administrēšanas kārtība’ (Decree No 725 of the Council of Ministers of 12 December 2017 on procedures for evaluating fundamental and applied research proposals and administering their funding).**

Paragraph 2(7): Entity submitting the project proposal: a scientific institution registered in the Register of Scientific Institutions which, irrespective of its legal status (whether organised under public or private law) or way of funding under the legal provisions governing its activities (statute, internal regulations or instrument of incorporation), pursues principal activities that are non-economic in nature and satisfies the definition of research organisation in Article 2(83) of Commission Regulation (EU) No 651/2014.

Paragraph 2(9): Principal non-economic activity: an activity of a research organisation that does not fall within the activities laid down in Article 107(1) of the Treaty on the Functioning of the European Union, including:

2(9)(1) teaching activities intended to increase employment and employees’ qualifications;

2(9)(2) independent research and development intended to increase knowledge and improve understanding, including joint research and development under which the research organisation is part of an effective collaboration;

2(9)(3) dissemination of the results of research on a non-exclusive and non-discriminatory basis, including by means of teaching, open-source databases, freely available publications or open-source software;

2(9)(4) knowledge and technology transfer, provided that:

2(9)(4)(1) the knowledge and technology transfer activities are carried out by a department of the research organisation or a subsidiary of the research organisation (a commercial company in which the parent company holds a stake of more than 50% or the majority of the voting rights and which satisfies the definition of a research organisation), the research organisation together with other research organisations, or the research organisation together with third parties under contracts for certain services concluded under an open tender;

2(9)(4)(2) all profits from the said activity are to be reinvested in the research organisation’s principal activity.

Paragraph 12(5): The Council shall assess whether the project proposal complies with the following administrative requirements: The project is to be carried out in a scientific institution that satisfies the requirements of this regulation.

**Brief description of the facts and the main proceedings**

- 1 On 22 May 2019 the Latvian Council of Science ('the Council') approved the rules governing a call for fundamental and applied research projects for 2019 and announced a call for projects ('the call').
- 2 The applicant, SIA STOCKHOLM SCHOOL OF ECONOMICS IN RIGA, submitted a project to the call entitled 'Analysis of an untapped resource: older female entrepreneurs in the Baltic countries' ('the project proposal').
- 3 By decision of the Council of 19 September 2019 ('the decision'), the project proposal submitted by the applicant was rejected on the grounds that it did not satisfy the eligibility criteria in paragraph 12(5) of Decree No 725 of the Council of Ministers of 12 December 2017 on procedures for evaluating fundamental and applied research proposals and administering their funding ('Decree No 725'), which stipulated that the project must be undertaken 'in a scientific institution that satisfies the requirements of this decree'.
- 4 In its decision, the Council stated that the applicant could not be considered a scientific institution that was eligible to apply for State funding, because it was not possible to show that it satisfied the provisions in paragraph 2(7) of Decree No 725 and Article 2(83) of European Commission Regulation No 651/2014 of 17 June 2014 ('Regulation No 651/2014').
- 5 This conclusion is based on the fact that, according to the project proposal, in 2018 the proportion of the applicant's activities that were non-economic in nature was 34%, as compared with 66% that were economic. The Council therefore concluded that the applicant's principal activity was commercial in nature and that it could not be held that its primary goal was 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. Moreover, in the view of the Council, the documents submitted by the applicant did not contain any information to show that all the revenue obtained by the applicant from its principal activity was reinvested in that activity.
- 6 The applicant lodged an action against the Council's decision that the applicant could not be considered a scientific institution within the meaning of Decree No 725, relying on the arguments set out below.
- 7 The applicant considered that it satisfied the criterion in paragraph 12(5) of Decree No 725 because it was registered in the Register of Scientific Institutions and its principal activity was non-economic in nature within the meaning of paragraph 2(9) of the decree.
- 8 In this regard, the applicant submitted documents intended to show that the financial contributions provided by the principal activity were separate from the

economic activities and that the profits from the applicant's economic activities were reinvested in the research institution's principal activity.

- 9 The applicant also argued that the Council had failed to take into account the applicant's corporate structure. The applicant stated that its only member was the foundation known as the 'Rīgas Ekonomikas augstskola – Stockholm School of Economics in Riga' which, under Article 2(2) of the Law on Associations and Foundations, is a not-for-profit organisation. The applicant also argued that it differed from other entities organised under private law in that, in principle, it was impossible for its profits not to be reinvested in its principal activity.
- 10 According to the applicant, the documents it had provided demonstrated that the funds it invested in its research activity exceeded the revenues it obtained from that activity. It also stated that it carried on its research activity either through its own funds or by obtaining research grants.
- 11 In the applicant's view, it was clear from the Special Law on the Stockholm School of Economics in Riga, which governed its activities, and from its statute and internal regulations, that one aspect of its principal activity was to conduct research and scientific work.
- 12 By judgment of 8 June 2020 the District Administrative Court dismissed the action.
- 13 In the opinion of that court, one of the applicant's defined areas of activity is scientific activity, as part of which it undertakes fundamental and applied economic research and disseminates the results. In its view, the applicant may also carry on economic activities that are not prohibited by the Law on Associations and Foundations.
- 14 According to the District Administrative Court, the report on turnover for 2018, which was attached to the applicant's project proposal, shows that the applicant's economic activities account for a greater proportion of revenue and costs (that is, they are higher) than those from its non-economic activities. The court therefore considers that the applicant is not a scientific institution which is eligible to receive State funding for fundamental and applied research.
- 15 According to the court, under Decree No 725 and Regulation No 651/2014, in order to be eligible for funding for fundamental and applied research, the non-economic activities carried out by the entity submitting the project proposal must be its primary activities or represent a majority percentage.
- 16 With regard to the direct application of Regulation No 651/2014, the court noted that the regulation establishes the categories of State aid that are compatible with the internal market and the common provisions for granting State aid, but does not establish specific selection criteria for entities submitting project proposals. It states that, in order to reduce uncertainty over the use of State aid in economic activities, the Latvian legislature therefore established that State aid for

fundamental and applied research should be granted to scientific institutions whose principal activity (primary goal) was not connected with an economic activity.

- 17 The applicant lodged an appeal against the judgment of the District Administrative Court, on the grounds set out below.
- 18 In support of its appeal, the applicant argues that the District Administrative Court has not taken into account the fact that fundamental and applied research can be undertaken in the context of both an economic and a non-economic activity, and that the court's conclusion regarding the direct applicability of Regulation No 651/2014 should be considered unfounded.
- 19 First, the applicant argues that the Latvian legislature has not stipulated that the non-economic activities of the entity submitting the project proposal must be its primary activities, nor that the revenue from those activities must exceed that from its economic activity.
- 20 Secondly, the applicant argues that in paragraph 2(7) of Decree No 725 the legislature has introduced a reference to the need for the entity submitting the project proposal to comply with the requirements of Regulation No 651/2014. Therefore, in terms of the application of that provision too, it is necessary to examine whether it complies with the spirit and purpose of Article 2(83) of Regulation No 651/2014.
- 21 According to the applicant, Decree No 725 cannot be interpreted in isolation from the provisions in Regulation No 651/2014. In its opinion, Regulation No 651/2014 cannot be interpreted in a way that is contrary to the interpretation of the legal rules that is set out in the Communication from the European Commission.

### **Main arguments of the parties to the main proceedings**

The main arguments of the parties to the main proceedings are included in the description of the facts and the main proceedings.

### **Brief statement of the reasons for the request for a preliminary ruling**

- 22 The Apgabaltiesa (Regional Administrative Court) must rule on the question of whether the applicant can be considered to be a scientific institution which satisfies the requirements in Decree No 725 (and in Article 2(83) of Regulation No 651/2014) and is entitled to receive State funding for research. Both the Council and the District Administrative Court considered that the applicant does not come within the category of scientific institutions that are eligible to receive State aid for conducting fundamental and applied research, because the applicant's economic activities account for a greater proportion of revenue and costs (that is, they are higher) than the revenue from its non-economic activities. At the same

time, in the proceedings it is essential to determine what is meant by the status of member of a research organisation, in other words, whether it is a for-profit or a not-for-profit entity, and whether it is precluded from obtaining any advantage from exploiting the results of the research.

- 23 It can be seen from the Law on the Stockholm School of Economics in Riga and the applicant's instruments of incorporation that the applicant's main activities involve running educational programmes and undertaking scientific research.
- 24 According to the applicant, its economic activities have no commercial objective, and its structure is configured in such a way that the applicant's member (a foundation) cannot obtain any advantage from exploiting the results of the research.
- 25 The applicant's only member, namely the foundation known as the 'Rīgas Ekonomikas augstskolas Stockholm School of Economics in Riga', is registered in the register of associations and foundations, and the primary goal of its activities is in the public interest, since it seeks to foster high-quality teaching of business studies and the development of science, and to make these accessible, thereby promoting the economic development of the Baltic region and Latvia. The objective of the aforesaid foundation is also to safeguard and develop the applicant's activities in the Republic of Latvia by ensuring that the school is properly managed and that it obtains donations, which are needed for the school's activities and in order to provide support to students in the form of grants to subsidise course fees to enable talented students from Baltic countries to benefit from a competitive business studies education close to home; this will benefit the economy of the Baltic countries by ensuring and encouraging the entry of highly qualified personnel and young entrepreneurs into the economic structure of Latvia, Lithuania and Estonia.
- 26 We can therefore agree with the applicant that the benefits the foundation gains from its economic activities can be used only to achieve the objective established in the statute.
- 27 According to the national legislation, to be eligible for State funding an applicant must satisfy three cumulative requirements established by paragraph 2(7) of Decree No 725. Specifically: 1) the entity submitting the project proposal must be registered in the Register of Scientific Institutions; 2) the entity's principal activities under the legal rules governing its activities (statute, internal regulations or instrument of incorporation) must be non-economic, as defined in paragraph 2(9) of the decree; and 3) the entity submitting the project proposal must satisfy the definition of research organisation in Article 2(83) of Regulation No 651/2014.
- 28 Point 2(1) of the Communication from the European Commission of 27 June 2014 entitled 'Framework for State aid for research and development and innovation' No 2014/C 198/01 ('the Commission Communication') establishes that research

and knowledge-dissemination organisations and research infrastructures will be beneficiaries of State aid if their public funding fulfils all the conditions of Article 107(1) of the Treaty on the Functioning of the European Union. As explained in the Notice on the notion of State aid, 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 is whether the beneficiary carries out an economic activity consisting of offering products or services on a given market.

- 29 In turn, point 2(1)(1) of the Commission Communication establishes that where the same entity carries out activities of both an economic and a non-economic nature, the public funding of the non-economic activities will not fall under Article 107(1) of the Treaty on the Functioning of the European Union if the two kinds of activities and their costs, funding and revenues can be clearly separated so that cross-subsidisation of the economic activity is effectively avoided. Evidence of due allocation of costs, funding and revenues can consist of annual financial statements of the relevant entity.
- 30 The definition of research organisation in Article 2(83) of Regulation No 651/2014 does not stipulate that the research organisation must achieve a specific proportion of its revenue from its principal non-economic activity. Under EU law there is a requirement to separate funding and revenues, in order to avoid cross-subsidies, and also a requirement to verify whether or not the undertaking's shareholders and other members have access to the results produced by the entity.
- 31 If the criteria proposed by the District Administrative Court and the Council for granting aid to a scientific institution, whose revenue and costs in respect of its economic activities must be proportionally less than those relating to its non-economic activities, are considered to be correct, this will restrict the ability of private higher education institutions to receive State aid for research and will permit unequal treatment, because the revenue and costs generated by these institutions' economic activities will always be higher than in the case of public higher education institutions. Specifically, in the case of the latter, revenue from course fees is allocated to their non-economic activities, whereas, in the case of private higher education institutions, revenue from course fees is allocated to their economic activities. The same type of revenue earned by public and private higher education institutions is allocated to two different budget items, giving rise to unequal treatment between applicants.
- 32 If one has regard solely and exclusively to the mathematical distribution of percentages proposed by the District Administrative Court and the Council, in essence this will deny private higher education institutions the right to obtain State funding to conduct scientific research. Paragraph 3 of the introduction to the Commission Communication notes that the 'Europe 2020' strategy put forward the 'Innovation Union' initiative, which aims to improve framework conditions and access to finance for research and innovation in order to ensure that

innovative ideas can be turned into products and services that create growth and jobs. In the present case, the interpretation of the definition in Article 2(83) of Regulation No 651/2014 adopted by the District Administrative Court and the Council could be considered contrary to the objectives established by the European Union and the stance adopted in the Commission Communication regarding the procedure for granting State aid. Moreover, applying the rules in this way results in unequal treatment between public and private higher education institutions.

Recital 49 of Regulation No 651/2014 describes, in general terms, a percentage relationship where the organisation's infrastructure is used primarily for a non-economic activity. However, it cannot be inferred from this percentage distribution of the organisation's infrastructure that Regulation No 651/2014 determines whether, for the purpose of defining research and knowledge-dissemination organisations, one may justifiably have regard to the proportional distribution of the organisation's financial contributions generated by the revenue and financing costs associated with its economic activities and its non-economic activities, in order to determine whether the organisation can be classed as a research and knowledge-dissemination organisation within the meaning of Regulation No 651/2014.