

LEGISLATIVE ACT

Regulation (EU) 2022/2560 of 14 December 2022



Analysis:

It is difficult to say how effective this instrument will be in terms of business competitiveness and the preservation of the internal market, as it will depend on how it is implemented by the European Commission. What is clear is that the Regulation will increase the administrative burden on businesses, and that, in the first months of implementation, it may slow down public procurement procedures and transactions. While the purpose of the Regulation is a good one, there is a risk that it will become just another bureaucratic obligation with no benefit for the internal market, to the detriment of EU companies.

The foreign subsidies Regulation

Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market is a novel instrument that will affect companies from 12 July 2023, especially insofar as they are involved in concentrations and public procurement procedures.

Aim: To complement the state aid regime set out in Articles 107 and 108 of the TFEU by providing the European Commission with a legal basis to prevent subsidies from non-EU states from distorting the internal market and altering the conditions of competition, thus ensuring a level playing field for all companies.

Scope: Applies to all foreign subsidies - any financial contribution from a third state - that distort or are likely to distort the conditions of competition in the internal market and affects all sectors and all undertakings operating in the EU, whether EU or foreign.

Obligations for companies: (i) notify to the European Commission concentrations and public procurement procedures where certain thresholds are met from 12 October 2023 and (ii) analyse whether the company has received financial contributions in case the European Commission initiates an *ex-officio* investigation.

Additionally: (i) the Regulation empowers companies to report competitors to the European Commission for obtaining funding from third states; and (ii) it opens a new avenue of discussion with the European Commission, a new procedure. The European Commission's decisions could be challenged before the CJEU.

MORE INFORMATION

- [European Commission press release](#)
- [Regulation \(EU\) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market](#)
- [Pérez-Llorca Legal Briefing](#)

LEGISLATIVE PROPOSAL

Request submitted by the Court of Justice with a view to amending the Statute of the Court of Justice of the European Union



Analysis

This is a very novel proposal, because the Court of Justice has always held a monopoly on preliminary rulings and has always been reluctant to share jurisdiction with the General Court, as it affects the uniformity of interpretation of Union law. The increasing burden on the Court of Justice and the need to maintain the quality and consistency of its case law have led it to take this step, the final outcome of which will depend not only on whether this amendment is adopted, but also on the way in which this transfer will be carried out in practice, through possible amendments to the Rules of Procedure.

Questions referred to the General Court for a preliminary ruling?


The CJEU has submitted a proposal to amend the Statute of the Court of Justice of the European Union which would transfer jurisdiction to the General Court to decide on questions referred for a preliminary ruling in the following areas: (i) common system of value added tax; (ii) excise duties; (iii) the customs code and the tariff classification of goods under the Combined Nomenclature; (iv) compensation and assistance to passengers; and (v) the scheme for greenhouse gas emission allowance trading.

This change **would not, in principle, affect the way in which national judges submit questions for preliminary rulings, nor would it affect the interpretation to be given**, as only questions on which there is settled case law will be referred to the General Court. However, every good lawyer knows how difficult it is for one case to be the same as another, and that the technique of a preliminary ruling is very different from that of an action for annulment.

For these reasons, **many questions arise**: What will happen when the national judge submits another related question for a preliminary ruling? What is meant by “formation of an intermediate size”? How will it be ensured that questions are allocated properly and uniformly? How will it be ensured that preliminary rulings are not perceived differently depending on whether they are from the General Court or the Court of Justice? What will the role of the Advocate General be in the General Court?

The request must now be dealt with by the Legislature and await adoption, but ultimately, in order to understand its true scope, it would be necessary to know how it will be incorporated in the procedural regulations.

MORE INFORMATION

 https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-12/demande_transfert_ddp_tribunal_es.pdf

CJEU JUDGMENT

**Judgment of 22
December 2022,
C-61/21**



Analysis

This is a very formal approach, which closes for the time being claims against Member States for non-compliance with their air quality obligations. Some criticise the ruling for not taking into account the Charter of Fundamental Rights, and consider that, unlike in other cases, they have taken a very restrictive approach despite the need for urgent action to combat climate change. It should not be forgotten, however, that the Court itself makes explicit the possibility of States being more “generous”, which is certainly unlikely, given that it is a matter of compensating for the breach of their own obligations, unless it is the national courts, on the basis of their national law.

Judgment on the liability of states for pollution

In a Grand Chamber Judgment, the Court of Justice closes the door on the possibility that the Air Quality Directives can serve as a basis for individuals to be compensated by a Member State. In particular, it points out that those Directives do not lay down clear and precise obligations as to the result to be achieved by Member States, and therefore do not allow it to be considered that there is a “subjective right” on the part of the claimants.

It points out that these are obligations that pursue a general objective of protecting human health and the environment as a whole, and do not contain any explicit granting of rights to individuals. The fact that a Directive gives individuals the right to bring administrative or judicial proceedings to defend their rights does not mean that the first condition for obtaining a remedy for non-contractual liability under settled case law is met.

However, the Court of Justice makes two clarifications: (i) national law may provide for a less restrictive system than that contained in the Directive and (ii) national courts may be called upon to enforce compliance by the public authorities, including by means of periodic penalties.



MORE INFORMATION

 Judgment of the Court of Justice of the European Union (Grand Chamber), of 22 December 2022, Case C-61/21



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CASE TO FOLLOW

Case C-675/22, Republic of Poland v. The Council



Analysis

This action is relevant in that the limits of Article 122 of the TFEU in the field of energy will be discussed, particularly with the establishment of a figure that affects the taxing power of Member States. As it is an anti-crisis measure, the Court of Justice will be very cautious in any decision it makes, but it is a good opportunity to clarify the scope of the article.

Action for annulment of the emergency Regulation to reduce the demand for gas in the EU



The Republic of Poland has brought an action for annulment against Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas.

Article 122 of the TFEU was used as the legal basis to adopt this Regulation, which allowed it to be adopted without the involvement of the European Parliament and with the vote of a qualified majority. The Regulation, among other measures, includes a “solidarity contribution”, which has the features of a tax.

The grounds for annulment submitted by Poland are mainly the following: (i) error in the legal basis chosen, considering that another legal basis should have been used, which has implications in terms of the majority rule and the involvement of the European Parliament and (ii) breach of the principle of legal certainty and energy solidarity.



MORE INFORMATION

-  Publication in the OJEU of 9 January 2023
-  Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas