



EU law precludes a Member State from excluding performers who are nationals of States outside the EEA from the right to a single equitable remuneration for the playing of recorded music

Recorded Artists Actors Performers Ltd (RAAP) is a collective management organisation for performers, whereas Phonographic Performance (Ireland) Ltd (PPI) is a collective management organisation for phonogram producers. Those undertakings entered into an agreement which stipulates how fees payable in Ireland for the playing in public – in bars and other publicly accessible places – or the broadcasting of recorded music must, after being paid by the users to PPI, be shared with the performers and, for that purpose, be paid on in part by PPI to RAAP. They are in disagreement in relation to the operation of that agreement as regards fees paid to PPI where the music was performed by a person who is neither a national nor a resident of a Member State of the European Economic Area (EEA).

RAAP takes the view that all the fees payable must be shared, without having regard to the performer's nationality and residence. If RAAP's position were followed, performers from third States would be paid in Ireland in any event although, according to PPI, which relies in this regard on Irish law, that cannot be the case where Irish performers do not receive equitable remuneration in third States.

In its judgment of the 8 September 2020, the Court finds that **where phonograms are used in the European Union, Directive 2006/115¹ precludes a Member State from excluding from the performers entitled to a single equitable remuneration performers who are nationals of States outside the EEA.** In addition, the Court explains that reservations notified by third States pursuant to the World Intellectual Property Organisation (WIPO) Performances and Phonograms Treaty (WPPT) do not in themselves limit the right of those performers from third States to a single equitable remuneration in the European Union.

Although such limitations may be introduced by the EU legislature, provided that they are consistent with the right to intellectual property, which is protected by the Charter of Fundamental Rights of the European Union ('the Charter'), Directive 2006/115 does not contain such a limitation and therefore precludes a Member State from limiting the right to a single equitable remuneration in respect of performers and producers who are nationals of third States.

Furthermore, the Court states that Directive 2006/115 also precludes only the producer of the phonogram concerned receiving remuneration, without sharing it with the performer who has contributed to that phonogram.

The Court states, first, that the right to a single equitable remuneration ensures the application of the WPPT in EU law and cannot be limited by the national legislature solely to nationals of the EEA Member States.

¹ Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ 2006 L 376, p. 28).

In that regard, the Court finds that Directive 2006/115, confers within the framework of rights related to copyright a right that is compensatory in nature and lays down an obligation to ensure remuneration that is equitable and shared between the phonogram producer and the performer. That obligation applies where the use of the phonogram or of a reproduction thereof takes place in the European Union. **The directive lays down no condition under which the performer or phonogram producer should be a national of an EEA Member State or any other condition requiring a connection to EEA territory, such as domicile, residence or the place where the creative or artistic work is carried out.**

On the contrary, according to the Court, it follows from the context and objectives of Directive 2006/115 and the primacy of international agreements concluded by the European Union that the Directive 2006/115 must be interpreted, as far as possible, in a manner consistent with the WPPT. The Court points out in that regard that that international agreement, which forms an integral part of the EU legal order, in principle obliges the European Union and its Member States to grant the right to a single equitable remuneration also to nationals of other contracting parties to the WPPT. [OMISSIS]

Second, the Court explains that reservations notified by third States under the WPPT do not in themselves lead in the European Union to limitations of the right to a single equitable remuneration in respect of nationals of those third States. It is true that the Court stated that, in the light of the principle of reciprocity enshrined in the Vienna Convention², the European Union and its Member States are not required to grant the right to a single equitable remuneration without limitation. According to the Court, the need to safeguard fair conditions of involvement in recorded music is capable of justifying a limitation of the right to a single equitable remuneration.

However, that right related to copyright constitutes an intellectual property right protected by the Charter. Consequently, any limitation on the exercise of that right must be provided for by law clearly and precisely, in accordance with the provisions of the said Charter. According to the Court, the mere existence of a reservation under the WPPT does not fulfil that requirement. Therefore, it is for the EU legislature alone, which has exclusive external competence in the matter, to decide on such a limitation.

Third, the Court holds that it follows from the very wording of Directive 2006/115 that both performers and phonogram producers are entitled to a single equitable remuneration, as that remuneration is 'shared' between them. Therefore, that provision precludes the law of a Member State from excluding the performer from a single equitable remuneration.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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² Vienna Convention on the Law of Treaties of 23 May 1969 (*United Nations Treaty Series*, vol. 1155, p. 331).