Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

6 March 2025 *

(Reference for a preliminary ruling – Approximation of laws – Intellectual property – Copyright and related rights – Performers engaged under an administrative law statute – Assignment of related rights by means of a regulatory act – Directive 2001/29/EC – Article 2(b) and Article 3(2) – Rights of reproduction and of making available to the public – Directive 2006/115/EC – Articles 7 to 9 – Rights of fixation, broadcasting, communication to the public and distribution – Directive (EU) 2019/790 – Articles 18 to 23 – Fair remuneration in exploitation contracts – Article 26 – Application in time – Concepts of 'acts concluded' and 'rights acquired')

In Case C-575/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (Council of State, Belgium), made by decision of 31 August 2023, received at the Court on 15 September 2023, in the proceedings

FT,

AL,

ON

v

Belgian State,

intervener:

Orchestre national de Belgique (ONB),

THE COURT (First Chamber),

composed of K. Lenaerts, President of the Chamber, acting as President of the First Chamber, T. von Danwitz, Vice-President of the Court, acting as Judge of the First Chamber, A. Kumin, I. Ziemele (Rapporteur) and O. Spineanu-Matei, Judges,

Advocate General: M. Szpunar,

Registrar: M. Siekierzyńska, Administrator,

* Language of the case: French.

having regard to the written procedure and further to the hearing on 20 June 2024,

after considering the observations submitted on behalf of:

– FT, AL and ON, by S. Capiau, avocate,

– Orchestre national de Belgique (ONB), by C. Bernard, M. Buydens and D. Lagasse, avocats,

– the Belgian Government, by S. Baeyens, P. Cottin and C. Pochet, acting as Agents, and by R. Fonteyn and A. Joachimowicz, avocats,

– the European Commission, by C. Auvret and J. Samnadda, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 24 October 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 18 to 23 and Article 26(2) of Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (OJ 2019 L 130, p. 92).

2 The request has been made in proceedings between FT, AL and ON, musicians engaged under an administrative law statute by the Orchestre national de Belgique (Belgian National Orchestra; ONB), and the Belgian State concerning the lawfulness of the Royal Decree of 1 June 2021 concerning the related rights of artistic personnel of the Belgian National Orchestra (*Moniteur belge* of 4 June 2021, p. 56936; 'the Royal Decree of 1 June 2021').

Legal context

International law

The Rome Convention

3 The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations was concluded in Rome on 26 October 1961 ('the Rome Convention').

4 The European Union is not a party to that convention. However, all of its Member States except for the Republic of Malta are.

5 Article 7 of that convention, which concerns minimum protection for performers, provides, in paragraph 1 thereof:

‘The protection provided for performers by this Convention shall include the possibility of preventing:

(a) the broadcasting and the communication to the public, without their consent, of their performance, except where the performance used in the broadcasting or the public communication is itself already a broadcast performance or is made from a fixation;

(b) the fixation, without their consent, of their unfixed performance;

(c) the reproduction, without their consent, of their unfixed performance:
(i) if the original fixation itself was made without their consent;
(ii) if the reproduction is made for purposes different from those for which the performers gave their consent;
(iii) if the original fixation was made in accordance with the provisions of Article 15, and the reproduction is made for purposes different from those referred to in those provisions.’

6 Article 8 of the Rome Convention, concerning performers acting jointly, is worded as follows:

‘Any Contracting State may, by its domestic laws and regulations, specify the manner in which performers will be represented in connection with the exercise of their rights if several of them participate in the same performance.’

7 Article 12 of that convention, which concerns secondary uses of phonograms, reads as follows:

‘If a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or for any communication to the public, a single equitable remuneration shall be paid by the user to the performers, or to the producers of the phonograms, or to both. Domestic law may, in the absence of agreement between these parties, lay down the conditions as to the sharing of this remuneration.’

8 Article 15 of that convention sets out the exceptions to the protection guaranteed by that convention.

9 Article 19 of that convention, which concerns performers’ rights in films, reads as follows:

‘Notwithstanding anything in this Convention, once a performer has consented to the incorporation of his performance in a visual or audio–visual fixation, Article 7 shall have no further application.’

The WPPT

10 The World Intellectual Property Organisation (WIPO) adopted, on 20 December 1996, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (‘the WPPT’). Those treaties were approved on behalf of the European Community by Council Decision 2000/278/EC of 16 March 2000 on the approval, on behalf of the European Community, of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (OJ 2000 L 89, p. 6) and entered into force, in so far as concerns the European Union, on 14 March 2010.

11 Article 2 of the WPPT, entitled 'Definitions', provides:

'For the purposes of this Treaty:

(a) "performers" are actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;

…'

12 Articles 6 to 10 of that Treaty concern, respectively, the economic rights of performers in respect of their unfixed performances, the right of reproduction, the right of distribution, the right of rental and the right of making available of fixed performances.

European Union law

Directive 2001/29/EC

13 Recitals 9, 10, 15 and 30 of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10), state:

'(9) Any harmonisation of copyright and related rights must take as a basis a high level of protection, since such rights are crucial to intellectual creation. Their protection helps to ensure the maintenance and development of creativity in the interests of authors, performers, producers, consumers, culture, industry and the public at large. Intellectual property has therefore been recognised as an integral part of property.

(10) If authors or performers are to continue their creative and artistic work, they have to receive an appropriate reward for the use of their work, as must producers in order to be able to finance this work. …

…

(15) The Diplomatic Conference held under the auspices of the [WIPO] in December 1996 led to the adoption of two new Treaties, the "WIPO Copyright Treaty" and the "[WPPT]", dealing respectively with the protection of authors and the protection of performers and phonogram producers. … This Directive also serves to implement a number of the new international obligations.

…

(30) The rights referred to in this Directive may be transferred, assigned or subject to the granting of contractual licences, without prejudice to the relevant national legislation on copyright and related rights.'

14 Article 2 of that directive provides:

‘Member States shall provide for the exclusive right to authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part:

…

(b) for performers, of fixations of their performances;

…’

15 Article 3(2) of that directive provides:

‘Member States shall provide for the exclusive right to authorise or prohibit the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them:

(a) for performers, of fixations of their performances;

…’

16 Article 5 of that directive lists the cases in which Member States may provide for exceptions and limitations to the exclusive rights provided for in Articles 2 to 4 of that directive.

17 Article 10(2) of Directive 2001/29 provides:

‘This Directive shall apply without prejudice to any acts concluded and rights acquired before 22 December 2002.’

Directive 2006/115/EC

18 Recitals 4, 5 and 7 of 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), state:

‘(4) Copyright and related rights protection must adapt to new economic developments such as new forms of exploitation.

(5) The creative and artistic work of authors and performers necessitates an adequate income as a basis for further creative and artistic work …

…

(7) The legislation of the Member States should be approximated in such a way as not to conflict with the international conventions on which the copyright and related rights laws of many Member States are based.’

19 Article 3(1) of that directive provides:

‘The exclusive right to authorise or prohibit rental and lending shall belong to the following:

…

(b) the performer in respect of fixations of his performance;

…’

20 Article 7(1) of that directive provides:

‘Member States shall provide for performers the exclusive right to authorise or prohibit the fixation of their performances.’

21 Article 8(1) and (2) of Directive 2006/115 reads as follows:

‘1. Member States shall provide for performers the exclusive right to authorise or prohibit the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.

2. Member States shall provide a right in order to ensure that a single equitable remuneration is paid by the user, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public, and to ensure that this remuneration is shared between the relevant performers and phonogram producers. Member States may, in the absence of agreement between the performers and phonogram producers, lay down the conditions as to the sharing of this remuneration between them.’

22 Article 9(1) of that directive provides:

‘Member States shall provide the exclusive right to make available to the public, by sale or otherwise, the objects indicated in points (a) to (d), including copies thereof, hereinafter “the distribution right”:

(a) for performers, in respect of fixations of their performances;

…’

23 Article 10 of that directive, which sets out the limitations to related rights that Member States may provide for, states, in paragraph 2 thereof:

‘Irrespective of paragraph 1, any Member State may provide for the same kinds of limitations with regard to the protection of performers, producers of phonograms, broadcasting organisations and of producers of the first fixations of films, as it provides for in connection with the protection of copyright in literary and artistic works.

However, compulsory licences may be provided for only to the extent to which they are compatible with the Rome Convention.’

Directive 2019/790

24 Recitals 4 and 72 of Directive 2019/790 state:

‘(4) This Directive is based upon, and complements, the rules laid down in the directives currently in force in this area, in particular [Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ 1996 L 77, p. 20), and Directives 2001/29 and 2006/115].

…

(72) Authors and performers tend to be in the weaker contractual position when they grant a licence or transfer their rights, including through their own companies, for the purposes of exploitation in return for remuneration, and those natural persons need the protection provided for by this Directive to be able to fully benefit from the rights harmonised under Union law. That need for protection does not arise where the contractual counterpart acts as an end user and does not exploit the work or performance itself, which could, for instance, be the case in some employment contracts.’

25 Article 1 of Directive 2019/790, entitled ‘Subject matter and scope’, provides:

‘1. This Directive lays down rules which aim to harmonise further Union law applicable to copyright and related rights in the framework of the internal market …

2. Except in the cases referred to in Article 24, this Directive shall leave intact and shall in no way affect existing rules laid down in the directives currently in force in this area, in particular [Directives 96/9, 2001/29 and 2006/115].’

26 Title IV of Directive 2019/790, relating to measures to achieve a well-functioning marketplace for copyright, includes Chapter 3, entitled ‘Fair remuneration in exploitation contracts of authors and performers’, which contains Articles 18 to 23 of that directive.

27 Article 18 of Directive 2019/790, entitled ‘Principle of appropriate and proportionate remuneration’, provides:

‘1. Member States shall ensure that where authors and performers license or transfer their exclusive rights for the exploitation of their works or other subject matter, they are entitled to receive appropriate and proportionate remuneration.

2. In the implementation in national law of the principle set out in paragraph 1, Member States shall be free to use different mechanisms and take into account the principle of contractual freedom and a fair balance of rights and interests.’

28 Article 19 of that directive, entitled ‘Transparency obligation’, provides, in paragraph 1 thereof:

‘Member States shall ensure that authors and performers receive on a regular basis, at least once a year, and taking into account the specificities of each sector, up to date, relevant and comprehensive information on the exploitation of their works and performances from the parties to whom they have licensed or transferred their rights, or their successors in title, in particular as regards modes of exploitation, all revenues generated and remuneration due.’

29 Article 20 of that directive, entitled 'Contract adjustment mechanism', states, in paragraph 1 thereof:

'Member States shall ensure that, in the absence of an applicable collective bargaining agreement providing for a mechanism comparable to that set out in this Article, authors and performers or their representatives are entitled to claim additional, appropriate and fair remuneration from the party with whom they entered into a contract for the exploitation of their rights, or from the successors in title of such party, when the remuneration originally agreed turns out to be disproportionately low compared to all the subsequent relevant revenues derived from the exploitation of the works or performances.'

30 Article 21 of that directive, entitled 'Alternative dispute resolution procedure', provides:

'Member States shall provide that disputes concerning the transparency obligation under Article 19 and the contract adjustment mechanism under Article 20 may be submitted to a voluntary, alternative dispute resolution procedure. Member States shall ensure that representative organisations of authors and performers may initiate such procedures at the specific request of one or more authors or performers.'

31 Article 22 of Directive 2019/790, entitled 'Right of revocation', provides:

'1. Member States shall ensure that where an author or a performer has licensed or transferred his or her rights in a work or other protected subject matter on an exclusive basis, the author or performer may revoke in whole or in part the licence or the transfer of rights where there is a lack of exploitation of that work or other protected subject matter.

…

5. Member States may provide that any contractual provision derogating from the revocation mechanism provided for in paragraph 1 is enforceable only if it is based on a collective bargaining agreement.'

32 Article 23 of that directive, entitled 'Common provisions', reads as follows:

'1. Member States shall ensure that any contractual provision that prevents compliance with Articles 19, 20 and 21 shall be unenforceable in relation to authors and performers.

2. Members States shall provide that Articles 18 to 22 of this Directive do not apply to authors of a computer program …'.

33 Article 26 of that directive, entitled 'Application in time', states:

'1. This Directive shall apply in respect of all works and other subject matter that are protected by national law in the field of copyright on or after 7 June 2021.

2. This Directive shall apply without prejudice to any acts concluded and rights acquired before 7 June 2021.'

34 Article 29 of that directive, entitled 'Transposition', provides, in paragraph 1 thereof:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 7 June 2021. They shall immediately inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.'

Belgian law

35 The related rights of performers were enshrined by the law of 30 June 1994 on copyright and related rights (*Moniteur belge* of 27 July 1994, p. 19297), the provisions of which have been integrated into the Code of Economic Law by the Law of 19 April 2014 on the insertion of Book XI 'Intellectual Property' into the Code of Economic Law, and the insertion of provisions specific to Book XI into Books I, XV and XVII of that code (*Moniteur belge* of 12 June 2014, p. 44352).

36 Article XI.205(4) of the Code of Economic Law, contained in Book XI of that code, provides that, where performances are carried out by a performer pursuant to an employment contract or statute, the economic rights resulting from the related rights may be assigned to the employer provided that the assignment of rights is expressly provided for and the performance falls within the scope of the contract or statute.

37 The preamble to the Royal Decree of 1 June 2021 contains the following passage:

'Whereas the [ONB] is a category B public interest body;

Whereas Article XI.205(4) of the Code of Economic Law allows, where performances are carried out by a performer pursuant to an employment contract or a statute, the economic rights resulting from the related rights to be assigned to the employer provided that the assignment of rights is expressly provided for and the performance falls within the scope of the contract or statute;

Whereas the proper functioning of the [ONB] requires that all rights relating to carrying out or exploiting the performances of performers of the [ONB] be assigned to it'.

38 Article 1 of that royal decree is drafted as follows:

'For the purposes of this decree:

1. Performer shall mean: a musician of the [ONB] engaged under an administrative law statute or under an employment contract, excluding any musician engaged as a musical director or soloist.

…'

39 Article 2 of that royal decree provides:

'The performer shall assign to the [ONB], in accordance with the provisions of this decree, the related rights which concern any performances carried out in the context of his or her service to the [ONB].'

40 Article 3(1) and (2) of that royal decree provides:

‘1. The following related rights shall be assigned to the [ONB] under Article 2 in return for the allowances set out in Articles 4 and 6:

(a) Right of communication to the public:

– The right to communicate to the public the performances of performers carried out in the context of their service to the [ONB] for the purpose of broadcasting and sound retransmission by radio, by cable, by satellite, via internet platforms, by streaming or by any other known or as yet unknown technique;

– The right to communicate to the public the performances of performers carried out in the context of their service to the [ONB] for the purpose of broadcasting and audio-visual retransmission by radio, by cable, by satellite, via internet platforms, by streaming or by any other known or as yet unknown technique;

(b) Rights of reproduction and distribution:

– The right to reproduce the performances of performers carried out in the context of their service to the [ONB], in full or in part, in an unlimited number of copies, on any phonographic, videographic or multimedia media, including digital media, known or as yet unknown;

– The right to distribute media reproducing performances of performers, and the right to make them available for download for private use on a service accessible via a digital data transmission network, particularly the internet, and in general the right to exploit media or have them exploited, including by sale and rental.

2. The rights assigned in accordance with Article 2 and with the first paragraph of this article shall be assigned for the entire duration of the related rights and worldwide.’

The dispute in the main proceedings and the questions referred for a preliminary ruling

41 Before the Royal Decree of 1 June 2021 was adopted, the exploitation of the related rights of the musicians of the ONB was negotiated on a case-by-case basis within a consultative committee.

42 Between 2016 and 2021, the ONB and the trade union delegations of the musicians of that orchestra held negotiations in order to reach an agreement on fair remuneration by the ONB for the performances of those musicians.

43 Since those negotiations were not successful, and a ‘memorandum of disagreement’ was drawn up and signed in May 2021, the Belgian State adopted the Royal Decree of 1 June 2021.

44 According to the preamble of that royal decree, the proper functioning of the ONB requires that all rights relating to carrying out or exploiting the performances of performers of that orchestra be assigned to it.

45 To that end, Article 2 of that royal decree provides that the performer is to assign to the ONB the related rights which concern any performances carried out in the context of his or her service to that orchestra. Under Article 3 of that royal decree, in return for the compensatory allowances referred to in Articles 4 and 6 thereof, the right of communication to the public and the right of reproduction and distribution are to be assigned for the entire duration of the related rights and worldwide.

46 By an application lodged on 26 July 2021 before the Conseil d'État (Council of State, Belgium), which is the referring court, FT, AL and ON sought the annulment of the Royal Decree of 1 June 2021, claiming, inter alia, that the provisions of that royal decree infringed EU law.

47 In that regard, that court notes, in essence, that the examination of that action raises the questions of whether the assignment of rights stemming from a statutory employment relationship falls within the scope of Directive 2019/790, in particular Articles 18 to 23 thereof, and, if so, whether the Belgian State was required to comply with those provisions when it adopted the Royal Decree of 1 June 2021, a date on which the period for transposing that directive had not yet expired.

48 According to that court, those questions concern the interpretation of EU law and must, accordingly, be submitted to the Court of Justice.

49 In those circumstances, the Conseil d'État (Council of State) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must Articles 18 to 23 of Directive [2019/790] be interpreted as precluding the transfer, by means of a regulatory act, of the related rights of statutory employees in performances carried out in the context of the employment relationship?

(2) If Question 1 is answered in the affirmative, must the concepts of "acts concluded" and "rights acquired" within the meaning of Article 26(2) of Directive [2019/790] be interpreted as covering, in particular, the transfer of related rights by means of a regulatory act adopted before 7 June 2021?'

Consideration of the questions referred

Admissibility

50 The Belgian Government, without explicitly pleading that the first question is inadmissible, claims, first, that that question is designed to obtain from the Court of Justice an advisory opinion on a general question and, secondly, that the referring court does not state, in its request for a preliminary ruling, the reasons which prompted it to inquire about the interpretation of Articles 18 to 23 of Directive 2019/790, or the relationship between those provisions and the Royal Decree of 1 June 2021.

51 In that regard, it should be borne in mind, first, that, according to settled case-law, questions on the interpretation of EU law enjoy a presumption of relevance. The Court may refuse to give a ruling on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have

before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 15 June 2021, *Facebook Ireland and Others*, C-645/19, EU:C:2021:483, paragraph 115 and the case-law cited).

52 Moreover, according to equally settled case-law, the justification for a reference for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered but rather that it is necessary for the effective resolution of a dispute (judgment of 15 June 2021, *Facebook Ireland and Others*, C-645/19, EU:C:2021:483, paragraph 116 and the case-law cited).

53 Secondly, as is apparent from Article 94(c) of the Rules of Procedure of the Court of Justice, a request for a preliminary ruling must contain a statement of the reasons which prompted the referring court or tribunal to inquire about the interpretation or validity of certain provisions of EU law, and the relationship between those provisions and the national legislation applicable to the main proceedings, failing which it will be inadmissible.

54 In the present case, as has been observed in paragraph 47 above, it is unequivocally clear from the order for reference that, in the action for annulment of the Royal Decree of 1 June 2021 before it, the referring court must ascertain whether the applicants in the main proceedings are right to claim that Articles 18 to 23 of Directive 2019/790 preclude the assignment, by means of a regulatory act, of the related rights of the musicians of the ONB engaged under an administrative law statute in respect of performances carried out in the context of their service to that orchestra, without their prior consent.

55 It follows that that court has stated the relationship between those provisions and the Royal Decree of 1 June 2021 and that an answer to the first question is necessary in order to enable it to rule on the dispute in the main proceedings.

56 The first question is accordingly admissible.

Substance

Preliminary observations

57 According to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it. The Court may also find it necessary to consider provisions of EU law which the national court has not referred to in its questions (judgment of 22 June 2023, *K.B. and F.S. (Raising ex officio of an infringement in criminal proceedings)*, C-660/21, EU:C:2023:498, paragraph 26 and the case-law cited).

58 The fact that a national court has, formally speaking, worded a question referred for a preliminary ruling with reference to certain provisions of EU law does not prevent the Court from providing the national court with all the points of interpretation which may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to them in its questions. In that regard, it is for the Court to extract from all the information provided by the national court, in particular from the grounds of the decision referring the questions, the points of EU law which

require interpretation, having regard to the subject matter of the dispute (judgment of 22 June 2023, *K.B. and F.S. (Raising ex officio of an infringement in criminal proceedings)*, C-660/21, EU:C:2023:498, paragraph 27 and the case-law cited).

59 In the present case, the questions referred for a preliminary ruling concern only the interpretation of Articles 18 to 23 and Article 26(2) of Directive 2019/790, and are intended, in particular, to ascertain, in essence, whether Articles 18 to 23 preclude the assignment, by means of a regulatory act, to the employer, of the related rights of musicians of an orchestra who are engaged under an administrative law statute, in respect of the performances carried out in the context of their service to that employer, without their prior consent.

60 It is clear, however, that the provisions referred to by the referring court in its questions relate, respectively, to the fair remuneration in exploitation contracts of authors and performers and to the temporal application of Directive 2019/790.

61 The fact remains, as stated in recital 4 of Directive 2019/790, that that directive is based upon, and complements, the rules laid down, inter alia, in Directives 2001/29 and 2006/115, which govern such an assignment. In that regard, Article 1(2) of Directive 2019/790 provides that, except in the cases referred to in Article 24 thereof, that directive is not to affect in any way the existing rules laid down, inter alia, in Directives 2001/29 and 2006/115.

62 Those rules include, as regards the rights of performers, those set out in Article 2(b) and Article 3(2)(a) of Directive 2001/29, which provide, for the benefit of those rightholders, and subject to the exceptions and limitations provided for by that directive, for the exclusive right to authorise or prohibit the reproduction and the making available to the public of fixations of their performances.

63 Also included are the rules referred to in Article 3(1)(b), Article 7(1), Article 8(1) and Article 9(1)(a) of Directive 2006/115, which confer on performers, also subject to the limitations provided for by that directive, the exclusive right to authorise or prohibit rental and lending of fixations of their performances, the exclusive right to authorise or prohibit the fixation of their performances, the exclusive right to authorise or prohibit the broadcasting and the communication to the public of their performances and the exclusive right to distribute fixations of those performances.

64 Such rules are, accordingly, relevant for ascertaining whether EU law precludes the assignment, by means of a regulatory act, to the employer, of the related rights of performers engaged under an administrative law statute, in respect of the performances carried out in the context of their service to that employer, without their prior consent.

65 Moreover, it seems apparent from the order for reference that the performances of performers, the rights of which are assigned to the ONB by the Royal Decree of 1 June 2021, are intended to be exploited by that orchestra, with the result that the ONB does not act as the end user of such performances, within the meaning of recital 72 of Directive 2019/790. That assignment concerns both the rights of communication to the public of the performances of performers for the purpose of broadcasting and sound or audio-visual retransmission, by any technique, and the rights of reproduction of those performances, in full or in part, in an unlimited number of copies, on any media and the rights of distribution of any performances thus fixed. It is for the referring court to determine whether that is actually the case.

66 In those circumstances, it must be considered that, by its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 2(b) and Article 3(2)(a) of Directive 2001/29, and Article 3(1)(b), Article 7(1), Article 8(1) and Article 9(1)(a) of Directive 2006/115, on the one hand, and Articles 18 to 23 of Directive 2019/790, on the other, must be interpreted as precluding national legislation which provides for the assignment, by means of a regulatory act, for the purpose of exploitation by the employer, of the related rights of performers engaged under an administrative law statute, in respect of the performances carried out in the context of their service to that employer, without their prior consent.

The applicability of Directives 2001/29, 2006/115 and 2019/790

– *The applicability* ratione temporis *of Directive 2019/790*

67 In its written observations, the Belgian Government submits that the Royal Decree of 1 June 2021 is excluded from the scope *ratione temporis* of Directive 2019/790 because that decree is an 'act concluded' prior to the date of expiry of the period for transposing that directive, 7 June 2021, and that it generated, before that date, 'rights acquired' by the ONB, within the meaning of Article 26(2) of that directive.

68 It should be noted that, in accordance with Article 29(1) of Directive 2019/790, the period for transposing that directive expired on 7 June 2021. Article 26 of that directive provides, in paragraph 1 thereof, that the directive is to apply in respect of all works and other subject matter that are protected by national law in the field of copyright on or after 7 June 2021 and, in paragraph 2 thereof, that it is to apply 'without prejudice to acts concluded and rights acquired before 7 June 2021'.

69 It follows from a combined reading of those provisions, first, that Directive 2019/790 applies to all works and other subject matter protected by national copyright law from 7 June 2021.

70 Secondly, the application of that directive is, according to the wording of Article 26(2) thereof, 'without prejudice to acts concluded and rights acquired before 7 June 2021'. As the Court has held in respect of Article 10(2) of Directive 2001/29, which is drafted in terms substantially identical to those of Article 26(2) of Directive 2019/790, the protection of the acts described reflects a general principle ensuring that a directive has no retroactive effect and does not apply to acts of exploitation of protected works and other subject matter which occurred before the date on which that directive has to be implemented by Member States (see, to that effect, judgment of 27 June 2013, *VG Wort and Others*, C-457/11 to C-460/11, EU:C:2013:426, paragraph 28). It follows that Directive 2019/790 is not intended to apply to acts of exploitation occurring before 7 June 2021 and in respect of which rights were validly acquired before that date.

71 It is in the light of those provisions that it must be ascertained whether, as the Belgian Government maintains, the Royal Decree of 1 June 2021 constitutes an 'act concluded' prior to 7 June 2021, within the meaning of Article 26(2) of Directive 2019/790, which generated, before that date, 'rights acquired' by the ONB in respect of the related rights of the musicians of that orchestra, and whether those rights concern performances carried out before the entry into force of that directive or after it.

72 In that regard, it is apparent from settled case-law that, in principle, a new rule of law applies from the entry into force of the act introducing it. While it does not apply to legal situations that have arisen and become definitive under the old law, it does apply to the future effects of a situation which arose under the old rule and to new legal situations also. The position will be otherwise – subject to the principle of the non-retroactivity of legal acts – only if the new rule is accompanied by special provisions which specifically lay down its conditions of temporal application (judgment of 21 December 2021, *Skarb Państwa (Motor insurance cover)*, C-428/20, EU:C:2021:1043, paragraph 31 and the case-law cited).

73 Accordingly, the measures taken to transpose a directive must apply to the future effects of situations which arose under the old rule, as from the date on which the period for transposing that directive expired, unless that directive provides otherwise (judgment of 21 December 2021, *Skarb Państwa (Motor insurance cover)*, C-428/20, EU:C:2021:1043, paragraph 32 and the case-law cited).

74 In order to ascertain the temporal applicability of a new EU rule to a situation which arose under the old rule that the new rule replaces, it is necessary to determine whether the effects of that situation had been exhausted before the entry into force of the new rule, in which case that situation should be regarded as a situation arising prior to the entry into force of that new rule, or whether that situation continues to produce its effects after the entry into force of that rule (judgment of 21 December 2021, *Skarb Państwa (Motor insurance cover)*, C-428/20, EU:C:2021:1043, paragraph 34).

75 In the present case, it is apparent from the order for reference, first, that the Royal Decree of 1 June 2021 entered into force on 4 June 2021, with the result that it must be regarded as having been 'concluded' before the expiry, on 7 June 2021, of the period for transposing that directive.

76 It follows that that decree, in so far as it was validly adopted, is capable of having generated, between 4 June and 7 June 2021, for the ONB, rights which do not fall within the scope *ratione temporis* of Directive 2019/790.

77 The fact remains, secondly, as is also apparent from the order for reference, that the Royal Decree of 1 June 2021 did not exhaust its legal effects on the date of its entry into force, 4 June 2021, and cannot, therefore, be regarded as relating exclusively to situations arising prior to that entry into force, within the meaning of the case-law cited in paragraph 74 above, but that it is intended regularly to produce its effects on the performances of the performers concerned throughout the duration of its application, including after the expiry, on 7 June 2021, of the period for transposing that directive.

78 As the Advocate General observed, in essence, in point 57 of his Opinion, the valid acquisition, by the ONB, of rights in respect of the performances of the musicians of that orchestra can, for the purposes of applying Article 26(2) of Directive 2019/790, concern only rights relating to those performances which were carried out, and could have generated such rights, before the date of expiry of the period for transposing that directive.

79 Furthermore, an interpretation according to which all performances by performers covered by the Royal Decree of 1 June 2021 and subsequent to the date of expiry of the period for transposing Directive 2019/790 are excluded from the scope of that directive under Article 26(2) thereof

would be liable to undermine the effectiveness of the provisions of that directive, which are intended, as is apparent in particular from recital 72 of that directive, to protect performers in the event of a transfer of their rights.

80 It follows from the foregoing considerations that Directive 2019/790 is applicable *ratione temporis* to the assignment, effected by the Royal Decree of 1 June 2021, of the related rights of the musicians of the ONB concerning performances carried out after 7 June 2021.

– *The applicability* ratione personae *of Directives 2001/29, 2006/115 and 2019/790*

81 It is apparent from the wording of the first question referred by the referring court that that court harbours doubts as to the applicability of Articles 18 to 23 of Directive 2019/790 to the transfer, by means of a regulatory act, for the purpose of exploitation by the employer, of the related rights of musicians of an orchestra who are engaged under an administrative law statute, in respect of the performances carried out in the context of their service to that employer.

82 However, as has been noted in paragraph 64 above, Article 2(b) and Article 3(2)(a) of Directive 2001/29 and Article 3(1)(b), Article 7(1), Article 8(1) and Article 9(1)(a) of Directive 2006/115 are also relevant for answering the questions raised in that regard by the referring court, with the result that it should be ascertained, as a preliminary point, whether the concept of 'performer', referred to in those provisions and in Articles 18 to 23 of Directive 2019/790, covers musicians of an orchestra engaged under an administrative law statute.

83 It must be noted at the outset that, as is apparent from settled case-law, given the requirements of unity and coherence of the EU legal order, the concepts used by directives in force in the field of intellectual property must have the same meaning, unless the EU legislature has, in a specific legislative context, expressed a different intention (see, by analogy, judgments of 4 October 2011, *Football Association Premier League and Others*, C-403/08 and C-429/08, EU:C:2011:631, paragraph 188, and of 20 April 2023, *Blue Air Aviation*, C-775/21 and C-826/21, EU:C:2023:307, paragraph 65 and the case-law cited).

84 However, in the present case, there is no evidence that the EU legislature wished to confer on the concept of 'performer' a different meaning in the respective contexts of Directives 2001/29, 2006/115 and 2019/790 (see, by analogy, judgment of 31 May 2016, *Reha Training*, C-117/15, EU:C:2016:379, paragraph 31).

85 As regards, in particular, the concepts contained in Directive 2019/790, it should be noted that, according to Article 1(1) thereof, that directive lays down rules 'which aim to harmonise further' EU law applicable to copyright and related rights in the framework of the internal market. Furthermore, as has been recalled in paragraph 61 above, it is apparent specifically from Article 1(2) and recital 4 of that directive that that directive is based upon, and complements, the rules laid down, inter alia, in Directives 2001/29 and 2006/115.

86 It follows that the concept of 'performer' must be given the same meaning in the respective contexts of Directives 2001/29, 2006/115 and 2019/790.

87 In that regard, according to settled case-law, the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union; that interpretation must take into account the wording of that provision and its

context, and in particular its origins and international law, as well as the objectives pursued by the rules of which it forms part (judgment of 18 November 2020, *Atresmedia Corporación de Medios de Comunicación*, C-147/19, EU:C:2020:935, paragraph 33 and the case-law cited).

88 In the first place, as regards the wording of the provisions of Directives 2001/29, 2006/115 and 2019/790, cited in paragraph 82 above, it should be observed that none of them formally excludes from its scope performers engaged under an administrative law statute.

89 It is true that Articles 18 to 23 of Directive 2019/790, which appear in Chapter 3 of Title IV of that directive, entitled 'Fair remuneration in exploitation contracts of authors and performers', refer, in various respects, to an assignment of rights by means of a contract. Accordingly, in those articles, the EU legislature uses expressions such as the 'principle of contractual freedom', the 'contractual counterpart', the 'contract adjustment', the 'exclusivity of the contract' and 'contractual provisions'.

90 It cannot, however, be inferred from the use of those expressions that those articles exclude from their scope performers engaged under an administrative law statute.

91 As the Advocate General observed in point 62 of his Opinion, the concept of 'contract' used in those articles must be understood in a broad sense, as referring to any licensing of exploitation or transfer of exclusive rights, Articles 18, 19 and 22 of Directive 2019/790 expressly referring, moreover, to the licensing or transfer of rights.

92 Similarly, the fact, highlighted by the ONB and the Belgian Government, that, as regards performers engaged under an administrative law statute, it follows from the principles of conferral of powers and subsidiarity, referred to in Articles 4 and 5 TEU, that the European Union has no power to determine the remuneration of civil servants of the Member States is irrelevant in that regard. Member States must exercise their competence consistently with EU law in the areas in which the European Union does not have competence, such as that of determining the various constituent elements of a worker's remuneration (see, to that effect, judgments of 10 June 2010, *Bruno and Others*, C-395/08 and C-396/08, EU:C:2010:329, paragraph 39, and of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)*, C-204/21, EU:C:2023:442, paragraph 125 and the case-law cited).

93 In the second place, as regards the context of the provisions of Directives 2001/29, 2006/115 and 2019/790, cited in paragraph 82 above, it is apparent from settled case-law of the Court that the provisions of the directives in force in the field of intellectual property must be interpreted in the light of international law, and in particular of the treaty law which those instruments are specifically intended to implement, as is expressly noted in recital 15 of Directive 2001/29 and in recital 7 of Directive 2006/115 (see, to that effect, judgments of 19 December 2019, *Nederlands Uitgeversverbond and Groep Algemene Uitgevers*, C-263/18, EU:C:2019:1111, paragraphs 38 and 39, and of 18 November 2020, *Atresmedia Corporación de Medios de Comunicación*, C-147/19, EU:C:2020:935, paragraph 34 and the case-law cited).

94 In particular, the Court has already had occasion to hold that the concepts used in Directives 2001/29 and 2006/115 must be interpreted in a manner consistent with the equivalent concepts contained in the WPPT, since the provisions of that treaty form an integral part of the EU legal order and are therefore applicable in the European Union (see, to that effect, judgments of

19 December 2019, *Nederlands Uitgeversverbond and Groep Algemene Uitgevers*, C-263/18, EU:C:2019:1111, paragraph 39, and of 18 November 2020, *Atresmedia Corporación de Medios de Comunicación*, C-147/19, EU:C:2020:935, paragraph 38 and the case-law cited).

95 In that regard, under Article 2(a) of the WPPT, the concept of 'performers' refers to all persons 'who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore'.

96 Accordingly, that provision, which refers without further specification to 'performers', lays down no condition which would have the effect of excluding from its scope performers engaged under an administrative law statute (see, by analogy, judgment of 8 September 2020, *Recorded Artists Actors Performers*, C-265/19, EU:C:2020:677, paragraph 61).

97 In the third place, such an interpretation is supported by the objectives pursued by Directives 2001/29, 2006/115 and 2019/790, as set out in the preambles to those instruments.

98 Therefore, first, as stated, in essence, in recitals 9 and 10 of Directive 2001/29, any harmonisation of related rights must take as a basis a high level of protection, since those rights are essential for intellectual creation and since performers, in order to continue their creative and artistic work, have to receive an appropriate reward for the use of their protected subject matter.

99 Secondly, recitals 4 and 5 of Directive 2006/115 reiterate the need not only to adapt related rights protection to new economic realities, such as new forms of exploitation, but also to guarantee an adequate income for performers, in order to ensure the continuation of their creative and artistic work.

100 Thirdly, it is expressly stated in recital 72 of Directive 2019/790 that performers tend to be in the weaker contractual position when they grant a licence or transfer their rights, for the purposes of exploitation in return for remuneration, and that those natural persons need the protection provided for by that directive to be able to fully benefit from the rights harmonised under EU law. In that regard, the reference in that recital to the concept of 'contractual position' cannot be interpreted as excluding a position resulting from an employment contract concluded under an administrative law statute.

101 Admittedly, that recital adds that that need for protection does not arise where the contractual counterpart acts as an end user and does not exploit the performance itself. However, that is not the case here, as has been observed in paragraph 65 above.

102 It follows from the foregoing considerations that performers engaged under an administrative law statute are covered by the concept of 'performer' referred to in Article 2(b) and Article 3(2)(a) of Directive 2001/29, Article 3(1)(b), Article 7(1), Article 8(1) and Article 9(1)(a) of Directive 2006/115 and Articles 18 to 23 of Directive 2019/790.

The assignment, by means of a regulatory act, of the related rights of performers without their prior consent

103 As has been noted in paragraphs 60 to 64 above, the assignment of the related rights of performers is governed specifically by the provisions of Directives 2001/29 and 2006/115, which it is therefore appropriate to examine at the outset.

104 In the first place, as regards the wording of those provisions, first, Article 2(b) and Article 3(2)(a) of Directive 2001/29 provide that performers have the exclusive right to authorise or prohibit the reproduction and the making available to the public of fixations of their performances. Secondly, Article 3(1)(b), Article 7(1), Article 8(1) and Article 9(1)(a) of Directive 2006/115 confer on performers the exclusive right to authorise or prohibit rental and lending of fixations of their performances, the exclusive right to authorise or prohibit the fixation of their performances, the exclusive right to authorise or prohibit the broadcasting and the communication to the public of their performances and the exclusive right to distribute fixations of their performances.

105 The protection which those provisions confer on performers must be given a broad scope. Consequently, that protection must be understood as not being limited to the enjoyment of the rights guaranteed by those provisions, but also extends to the exercise of those rights (see, as regards Article 2(b) and Article 3(2)(a) of Directive 2001/29, judgment of 14 November 2019, *Spedidam*, C-484/18, EU:C:2019:970, paragraphs 36 and 37 and the case-law cited).

106 Furthermore, the rights guaranteed to performers are of a preventive nature, in the sense that any use of their performances requires their prior consent. It follows that, subject to the exceptions and limitations laid down in Article 5 of Directive 2001/29 and, in particular, in Article 10 of Directive 2006/115, any use of such protected subject matter by a third party without such prior consent must be regarded as infringing the holder's rights (see, as regards Article 2(b) and Article 3(2)(a) of Directive 2001/29, judgment of 14 November 2019, *Spedidam*, C-484/18, EU:C:2019:970, paragraph 38 and the case-law cited).

107 It must therefore be held, in the light of the wording of the provisions of Directives 2001/29 and 2006/115, referred to in paragraph 104 above, that those provisions preclude, in the absence of prior consent from the rightholders, the assignment, by means of a regulatory act, of the exclusive rights referred to in those directives, unless such an assignment is covered by one of the exceptions or limitations provided for by those directives, which are exhaustive in nature (see, as regards Article 5 of Directive 2001/29, judgment of 24 October 2024, *Kwantum Nederland and Kwantum België*, C-227/23, EU:C:2024:914, paragraph 76 and the case-law cited).

108 Neither Directive 2001/29 nor Directive 2006/115 contains any exception permitting the assignment, without the prior consent of the rightholders, of all rights relating to the performance and exploitation of the performances of performers of an orchestra, such as that effected by the Royal Decree of 1 June 2021 and referred to in paragraphs 44 and 45 above.

109 It is true that Article 8 of Directive 2006/115 provides, in paragraph 1 thereof, for an exception to the exclusive right of performers to authorise or prohibit the broadcasting by wireless means and the communication to the public of their performances, where the performance is itself already a broadcast performance or is made from a fixation. In addition, that Article 8 establishes, in paragraph 2 thereof, a right, for the benefit of performers, to the payment of a single equitable remuneration by the user, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public.

110 However, as the Advocate General observed in point 37 of his Opinion, the circumscribed exceptions to and limitations on the rights of performers, as provided for by Directives 2001/29 and 2006/115, do not permit the general compulsory assignment of all the related rights of a category of performers.

111 That interpretation is supported, in the second place, by the context, in particular the international context, of which the protection of the related rights of performers forms part, and which must be taken into account, in accordance with the case-law referred to in paragraph 93 above.

112 First, as is also apparent from Article 10(2) of Directive 2006/115, as regards the protection of performers, compulsory licences may be provided for only to the extent to which they are compatible with the Rome Convention.

113 In that regard, although the provisions of that convention do not form part of the EU legal order, since the European Union is not a party to it, the Court has already had occasion to note that that convention has indirect effects within the European Union. In particular, it is apparent from the origins of Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ 1992 L 346, p. 61), that, for the purposes of that directive and, accordingly, of Directive 2006/115, which has in the meantime replaced it, it is necessary to refer to the concepts appearing, inter alia, in that convention (see, to that effect, judgment of 18 November 2020, *Atresmedia Corporación de Medios de Comunicación*, C-147/19, EU:C:2020:935, paragraphs 35 and 36 and the case-law cited).

114 Article 7(1) of the Rome Convention states that the protection which it provides for performers must in principle include, in particular, the possibility of preventing the broadcasting and the communication to the public, without their consent, of their performance; the fixation, without their consent, of their unfixed performance and the reproduction, without their consent, of a fixation of their performance.

115 It is true that that convention includes, in Articles 12, 15 and 19 thereof, limitations on the exclusive rights of holders of related rights, in particular in cases of secondary uses of phonograms, private use, use of short fragments in connection with the reporting of a current event or uses solely for teaching or scientific research, or where the performer has consented to the incorporation of his or her performance in a visual or audio-visual fixation.

116 However, as the Advocate General noted in point 40 of his Opinion, none of those provisions permits a general compulsory assignment of all the related rights of a category of performers.

117 Secondly, as recalled in paragraph 94 above, Directive 2001/29 must also be interpreted in a manner consistent with the provisions of the WPPT.

118 In that regard, it should be observed that, admittedly, Articles 6 to 10 of that treaty enshrine, for the benefit of performers, the exclusive right to authorise, respectively, the broadcasting and the communication to the public of their unfixed performances, except where the performance is already a broadcast performance and also the fixation of their unfixed performances (Article 6), the direct or indirect reproduction of their performances fixed in phonograms (Article 7), the making available to the public of the original and copies of their performances fixed in phonograms by sale or other transfer of ownership (Article 8), the commercial rental to the public of the original and copies of their performances fixed in phonograms (Article 9), and the making available to the public of their performances fixed in phonograms (Article 10). That being the case, neither those provisions nor any other provision of that treaty authorises a general mandatory assignment of all the related rights of a category of performers.

119 Third, under Article 18(2) of Directive 2019/790, Member States are to take into account, for the purposes of implementing the principle of appropriate and proportionate remuneration referred to in paragraph 1 of that article, the principle of contractual freedom and a fair balance of rights and interests. That requirement is not complied with in the case of assignment of the related rights of a category of performers without the prior consent of the rightholders.

120 In the third place, such an interpretation is supported by the objectives pursued by Directive 2001/29 and by Directive 2006/115, which, as noted in paragraphs 98 and 99 above, are intended to ensure a high level of protection of the rights of performers and to guarantee them an adequate income.

121 It follows that the provisions referred to in paragraph 104 above must be interpreted as precluding, in the absence of prior consent from the rightholders, the assignment, by means of regulatory act, of the exclusive rights referred to in those provisions.

122 As regards the form which the prior consent of performers must take, the Court has already observed that Directives 2001/29 and 2006/115 do not specify how that consent is to be given (see, to that effect, judgment of 14 November 2019, *Spedidam*, C-484/18, EU:C:2019:970, paragraph 40).

123 It follows that the Member States are competent, first, as is also apparent from recital 30 of Directive 2001/29, to establish the methods for granting that consent, which, as the Advocate General observed, in essence, in point 48 of his Opinion, must be obtained in the context of individual or collective negotiations or be formalised, in the case of performers engaged under an administrative law statute, in a regulatory act. Secondly, those States are also free to specify the methods of representing performers participating in the same performance for the purposes of the exercise of their rights, in accordance with Article 8 of the Rome Convention.

124 The fact remains that such methods must be strictly defined, in order not to deprive the very principle of prior consent of any effect (see, to that effect, judgment of 14 November 2019, *Spedidam*, C-484/18, EU:C:2019:970, paragraph 40 and the case-law cited).

125 In the present case, it is common ground that the applicants in the main proceedings did not give their prior consent for the exploitation of the exclusive rights they held, which were assigned to the ONB by the Royal Decree of 1 June 2021 after their engagement in service to that orchestra, contrary to the provisions referred to in paragraph 104 above. In particular, as has been noted in paragraph 43 above, the absence of an agreement between the ONB and its musicians was specifically the subject of a ‘memorandum of disagreement’ drawn up and signed before that royal decree was adopted.

126 It follows that Directives 2001/29 and 2006/115, in the absence of the consent of the performers concerned, preclude an assignment of the related rights of those artists, such as that effected by the Royal Decree of 1 June 2021.

127 In those circumstances, there is no longer any need to examine whether Articles 18 to 23 of Directive 2019/790, which concern the fair remuneration which must be paid to performers for the exploitation of performances protected by the related rights which they hold, must be interpreted as also precluding such an assignment.

128 In the light of all the foregoing considerations, the answer to the questions raised is that Article 2(b) and Article 3(2)(a) of Directive 2001/29, and Article 3(1)(b), Article 7(1), Article 8(1) and Article 9(1)(a) of Directive 2006/115 must be interpreted as precluding national legislation which provides for the assignment, by means of a regulatory act, for the purpose of exploitation by the employer, of the related rights of performers engaged under an administrative law statute, in respect of the performances carried out in the context of their service to that employer, without the prior consent of those performers.

Costs

129 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Article 2(b) and Article 3(2)(a) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, as well as Article 3(1)(b), Article 7(1), Article 8(1) and Article 9(1)(a) of 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,

must be interpreted as precluding national legislation which provides for the assignment, by means of a regulatory act, for the purpose of exploitation by the employer, of the related rights of performers engaged under an administrative law statute, in respect of the performances carried out in the context of their service to that employer, without the prior consent of those performers.

[Signatures]