



Council of the  
European Union

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#### INFORMATION NOTE

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From:	Legal Service
To:	Permanent Representatives Committee (Part 1)
Subject:	<b><i>Case brought before the Court of Justice of the European Union</i></b> <ul style="list-style-type: none"><li>• <b><i>Reference for a preliminary ruling in Case C-45/23 (MS Amlin Insurance)</i></b></li><li>• <b><i>Article 17(1) of Directive (EU) 2015/2302 (Package Travel Directive)</i></b></li></ul>

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#### **DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (28.04.2023)**

1. On 3 March 2023, the Council was notified by the Registrar of the Court of a request for a preliminary ruling lodged on 31 January 2023 in the abovementioned case by the *Nederlandstalige Ondernemingsrechtbank Brussel* (Brussels Commercial Court (Dutch-speaking), Belgium). The referring court refers, in particular, a question on the interpretation of Directive 2015/2302 of the European Parliament and the Council of 25 November 2015<sup>1</sup>.
2. The referring court asks the Court whether Art 17(1) of the Directive, which provides for “*security for the refund of all payments made by or on behalf of travellers insofar as the relevant services are not performed as a consequence of the organiser's insolvency*”, covers cases where the traveller had terminated the package travel contract before the declaration of insolvency of the organiser.

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<sup>1</sup> OJ L 326, 11.12.2015, p. 1–33

3. In its reasoning, the referring court raises the question of the compatibility of Art 17(1) of the Directive with the general principle of equal treatment, as, according to the referring court, travellers that had terminated the package travel contract before the declaration of insolvency of the organiser would not qualify for receiving protection under Art 17(1) and would therefore be treated less preferentially compared to travellers that had not terminated the contract before the declaration of insolvency of the organiser, although both groups of travellers bear the same economic risk and should be seen as comparable. Therefore, it cannot be ruled out that the reference for a preliminary ruling may be interpreted as implicitly calling into question the legality of Art 17(1) of Directive 2015/2302.
4. The Council is, according to Article 23 of the Protocol of the Statute of the Court, entitled to submit observations within two months of receipt of the notification, in a case governed by Article 267 of the TFEU, if the act, the validity or interpretation of which is in dispute, originates from the Council. In addition to the two-month deadline, a flat-rate period should be added on account of the distance of 10 days, provided for in Article 51 of the Court's Rules of Procedure.
5. The Director-General of the Council Legal Service has appointed **DELETED** and **DELETED**, Legal Advisers in that Service, to represent the Council of the European Union in this case. The deadline for submitting the Council's observations is 15 May 2023.
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