

Court of Justice EU, 8 September 2022, Ametic



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Collective management organisations entrusted with exemptions from payment and reimbursements must grant this in accordance with objective criteria which do not allow that legal person to refuse an application on the basis of considerations and the decisions of that legal person refusing such an application may be challenged before an independent body

- National legislation which provides that exemption certificates in respect of compensation for private copying and reimbursements must be granted in good time on the basis of objective criteria which do not entail any discretion on the part of the person competent to examine applications submitted for that purpose is, in principle, capable of complying regards the requirements arising from Article 5(2)(b) of the directive.

In that regard, it should be noted, in the first place, that, as regards the requirements arising from Article 5(2)(b) of that directive, the right to reimbursement of the private copying levy for persons other than natural persons who purchase reproduction equipment for purposes clearly unrelated to the making of copies for private use must be effective and must not make it excessively difficult to refund the levy paid. The scope, the effectiveness, the availability, the public awareness and the simplicity of use of the right to reimbursement must allow for the correction of any imbalances created by the private copying levy system, in order to respond to the practical difficulties observed (see, to that effect, judgment of 22 September 2016, Microsoft Mobile Sales International and Others, C-110/15, EU:C:2016:717, paragraph 37 and the case-law cited).

- In order to avoid any risk of bias on the part of such a legal person in the grant of exemption certificates and reimbursements it must be possible to challenge the decisions of that legal person refusing to grant such a certificate or reimbursement before an independent body, whether judicial or otherwise.

Collective management organisations may request access to the information necessary for the exercise of the powers of review

- In so far as the information in question is confidential, the legal person and the management organisations which become aware of such information in the context of their duties are required to safeguard the confidential nature of that information.

Those checks must relate exclusively to information which makes it possible, first, to verify that the conditions for benefiting from an exemption or a

reimbursement are actually satisfied and, second, to calculate any amounts payable by way of compensation for private copying by persons who are not exempt, such as manufacturers, importers or distributors, or persons who have unduly benefited from an exemption certificate or a reimbursement.

Source: [ECLI:EU:C:2022:644](https://eur-lex.europa.eu/eli/cj/oj/2022/644)

Court of Justice EU, 8 September 2022

(E. Regan, I. Jarukaitis, M. Ilešič, D. Gratsias and Z. Csehi, Judges, Advocate General: A.M. Collins.)
JUDGMENT OF THE COURT (Fifth Chamber)
8 September 2022 (*)

(Reference for a preliminary ruling – Copyright and related rights – Directive 2001/29/EC – Article 5(2)(b) – Exclusive reproduction right – Exception – Copies for private use – Levy – Ex ante exemption – Exemption certificate issued by a private law entity controlled solely by copyright management societies – Powers of review of that entity)

In Case C-263/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Supremo (Supreme Court, Spain), made by decision of 17 March 2021, received at the Court on 23 April 2021, in the proceedings

Asociación Multisectorial de Empresas de la Electrónica, las Tecnologías de la Información y la Comunicación, de las Telecomunicaciones y de los Contenidos Digitales (Ametic),

v

Administración del Estado,

Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA),

Asociación para el Desarrollo de la Propiedad Intelectual (ADEPI),

Artistas Intérpretes o Ejecutantes, Sociedad de Gestión de España (AIE),

Artistas Intérpretes, Entidad de Gestión de Derechos de Propiedad Intelectual (AISGE),

Ventanilla Única Digital,

Derechos de Autor de Medios Audiovisuales (DAMA),

Centro Español de Derechos Reprográficos (CEDRO),

Asociación de Gestión de Derechos Intelectuales (AGEDI),

Sociedad General de Autores y Editores (SGAE),

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, I. Jarukaitis, M. Ilešič, D. Gratsias (Rapporteur) and Z. Csehi, Judges,

Advocate General: A.M. Collins,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Asociación Multisectorial de Empresas de la Electrónica, las Tecnologías de la Información y la Comunicación, de las Telecomunicaciones y de los Contenidos Digitales (Ametic), by A. González García, M. Magide Herrero, R. Sánchez Aristi and D. Sarmiento Ramírez-Escudero, abogados,

– Asociación para el Desarrollo de la Propiedad Intelectual (ADEPI), by J.J. Marín López, abogado,
 – Artistas Intérpretes o Ejecutantes, Sociedad de Gestión de España (AIE), by J.A. Hernández-Pinzón García, abogado,
 – Artistas Intérpretes, Entidad de Gestión de Derechos de Propiedad Intelectual (AISGE), by J.M. Montes Relazón, abogado,
 – Ventanilla Única Digital, by J.J. Marín López, abogado,
 – Derechos de Autor de Medios Audiovisuales (DAMA), by R. Gómez Cabaleiro, abogado,
 – Centro Español de Derechos Reprográficos (CEDRO), by I. Aramburu Muñoz and J. de Fuentes Bardají, abogados,
 – the Spanish Government, by L. Aguilera Ruiz, acting as Agent,
 – the French Government, by A. Daniel and A.-L. Desjonquères, acting as Agents,
 – the European Commission, by É. Gippini Fournier and J. Samnadda, acting as Agents,
 having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation 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) and of general principles of EU law.

2 The request has been made in proceedings between Asociación Multisectorial de Empresas de la Electrónica, las Tecnologías de la Información y la Comunicación, de las Telecomunicaciones y de los Contenidos Digitales (Ametic), on the one hand, and the Administración del Estado (State Administration, Spain), Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA), Asociación para el Desarrollo de la Propiedad Intelectual (ADEPI), Artistas Intérpretes o Ejecutantes, Sociedad de Gestión de España (AIE), Artistas Intérpretes, Entidad de Gestión de Derechos de Propiedad Intelectual (AISGE), Ventanilla Única Digital, Derechos de Autor de Medios Audiovisuales (DAMA), Centro Español de Derechos Reprográficos (CEDRO), Asociación de Gestión de Derechos Intelectuales (AGEDI) and the Sociedad General de Autores y Editores (SGAE), on the other, seeking the annulment of certain provisions of Real Decreto 1398/2018 por el que se desarrolla el artículo 25 del texto refundido de la Ley de Propiedad Intelectual, aprobado por el Real Decreto Legislativo 1/1996, de 12 de abril, en cuanto al sistema de compensación equitativa por copia privada (Royal Decree 1398/2018 implementing Article 25 of the consolidated text of the Law on Intellectual Property, approved by Royal Legislative Decree 1/1996 of 12 April 1996, with respect to the system of fair compensation for private copying) of 23 November 2018 (BOE No 298 of 11 December 2018, p. 121354).

Legal context

European Union law

Directive 2001/29

3 Recitals 31, 35 and 38 of Directive 2001/29 are worded as follows:

'(31) A fair balance of rights and interests between the different categories of rightholders, as well as between the different categories of rightholders and users of protected subject matter must be safeguarded.

...
 ...

(35) In certain cases of exceptions or limitations, rightholders should receive fair compensation to compensate them adequately for the use made of their protected works or other subject matter. When determining the form, detailed arrangements and possible level of such fair compensation, account should be taken of the particular circumstances of each case. When evaluating these circumstances, a valuable criterion would be the possible harm to the rightholders resulting from the act in question. In cases where rightholders have already received payment in some other form, for instance as part of a licence fee, no specific or separate payment may be due. The level of fair compensation should take full account of the degree of use of technological protection measures referred to in this Directive. In certain situations where the prejudice to the rightholder would be minimal, no obligation for payment may arise.

...

(38) Member States should be allowed to provide for an exception or limitation to the reproduction right for certain types of reproduction of audio, visual and audiovisual material for private use, accompanied by fair compensation. This may include the introduction or continuation of remuneration schemes to compensate for the prejudice to rightholders. ...'

4 Article 2 of that directive, entitled 'Reproduction right', 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:

- (a) for authors, of their works;*
- (b) for performers, of fixations of their performances;*
- (c) for phonogram producers, of their phonograms;*
- (d) for the producers of the first fixations of films, in respect of the original and copies of their films;*
- (e) for broadcasting organisations, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite.'*

5 Article 5 of that directive, entitled 'Exceptions and limitations', provides, in paragraphs 2 and 5 thereof:

'2. Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:

...

- (b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which*

takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject matter concerned;

...

5. The exceptions and limitations provided for in paragraphs 1, 2, 3 and 4 shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interests of the rightholder.'

Directive 2014/26/EU

6 Recitals 2, 14 and 26 of Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (OJ 2014 L 84, p. 72) read as follows:

'(2) ... Management of copyright and related rights includes granting of licences to users, auditing of users, monitoring of the use of rights, enforcement of copyright and related rights, collection of rights revenue derived from the exploitation of rights and the distribution of the amounts due to rightholders. Collective management organisations enable rightholders to be remunerated for uses which they would not be in a position to control or enforce themselves, including in non-domestic markets.

...

(14) This Directive does not require collective management organisations to adopt a specific legal form. In practice, those organisations operate in various legal forms such as associations, cooperatives or limited liability companies, which are controlled or owned by holders of copyright and related rights or by entities representing such rightholders. In some exceptional cases, however, due to the legal form of a collective management organisation, the element of ownership or control is not present. This is, for example, the case for foundations, which do not have members. Nonetheless, the provisions of this Directive should also apply to those organisations. ...

...

(26) Collective management organisations collect, manage and distribute revenue from the exploitation of the rights entrusted to them by rightholders. That revenue is ultimately due to rightholders, who may have a direct legal relationship with the organisation, or may be represented via an entity which is a member of the collective management organisation or via a representation agreement. ...'

7 According to Article 1 thereof, that directive lays down requirements necessary to ensure the proper functioning of the management of copyright and related rights by collective management organisations.

8 Article 3 of that directive sets out the following definitions:

'For the purposes of this Directive, the following definitions shall apply:

(a) "collective management organisation" means any organisation which is authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to

copyright on behalf of more than one rightholder, for the collective benefit of those rightholders, as its sole or main purpose, and which fulfils one or both of the following criteria:

- (i) it is owned or controlled by its members;
- (ii) it is organised on a not-for-profit basis;

...

(d) "member" means a rightholder or an entity representing rightholders, including other collective management organisations and associations of rightholders, fulfilling the membership requirements of the collective management organisation and admitted by it;

...

(h) "rights revenue" means income collected by a collective management organisation on behalf of rightholders, whether deriving from an exclusive right, a right to remuneration or a right to compensation;

...'

Spanish law

The Law on Intellectual Property

9 Article 25, entitled 'Fair compensation for private copying', of the Ley de Propiedad Intelectual (Law on Intellectual Property), in the consolidated version approved by Real Decreto Legislativo 1/1996, por el que se aprueba el texto refundido de la Ley de Propiedad Intelectual, regularizando, aclarando y armonizando las disposiciones legales vigentes sobre la materia (Royal Legislative Decree 1/1996 approving the consolidated text of the Law on Intellectual Property standardising, clarifying and harmonising the legal provisions in force in this regard) of 12 April 1996 (BOE No 97 of 22 April 1996, p. 14369), as amended by Real Decreto-ley 12/2017 (Royal Decree-Law 12/2017) of 3 July 2017 (BOE No 158 of 4 July 2017, p. 56444) ('the Law on Intellectual Property'), is worded as follows:

'1. The reproduction of works circulated in the form of books or publications deemed by Royal Decree to be equivalent for this purpose, as well as in the form of phonograms, videograms or other sound, visual or audiovisual media, carried out by means of non-typographic technical devices or instruments, exclusively for private, non-professional or non-business use and for ends that are neither directly nor indirectly commercial, in accordance with Article 31(2) and (3), shall give rise to fair compensation paid at a flat rate for each of the three methods of reproduction mentioned, aimed at appropriately compensating the harm caused to creditors as a result of reproductions made on the basis of the legal limitation on private copying. That compensation shall be determined for each method of reproduction according to the equipment, devices and media appropriate to make that reproduction, which were manufactured on Spanish territory or purchased outside that territory with a view to their commercial distribution or use in that territory.

...

3. Manufacturers established in Spain, where they operate as commercial distributors, and persons who purchase, outside Spanish territory, the equipment, devices and media referred to in paragraph 1 with a

view to their commercial distribution or use in that territory shall be liable for payment of that compensation.

In addition, the distributors, wholesalers and retailers who subsequently purchase those equipment, devices and media shall be jointly and severally liable for the payment of compensation to the debtors who supplied them with the goods in question, unless they prove that that compensation has in fact been paid to those persons. The distributors, wholesalers and retailers who subsequently purchase those equipment, devices and media may apply to management organisations, in accordance with the procedure for making fair compensation effective, which is provided for by Royal Decree, for that compensation to be refunded, with regard to sales of reproduction equipment, devices and media, to persons benefiting from an exemption in accordance with paragraph 7.

...
7. The following purchases of reproduction equipment, devices and media shall be exempt from the payment of compensation:

...
(b) purchases made by legal or natural persons acting as final consumers who can prove that the equipment, devices or media purchased are used exclusively for professional purposes and provided that these have not been made available, in law or in fact, to private users and are clearly reserved for uses other than the making of private copies, which they must prove to debtors and, where appropriate, to those who are jointly and severally liable by means of a certificate issued by the legal person referred to in paragraph 10;

...
8. Legal or natural persons who are not exempt from the payment of compensation may apply for reimbursement of that compensation where:

(a) they act as final consumers, proving that the reproduction equipment, devices or media purchased are used exclusively for professional purposes, and provided that these have not been made available, in law or in fact, to private users and are clearly reserved for uses other than the making of private copies.

...
10. Intellectual property rights management organisations shall participate in the creation (in accordance with the legislation in force), management and financing of a legal person which, as a representative of all those organisations, shall perform the following functions:

- (a) the management of exemptions from payment and of reimbursements;
- (b) the receipt and subsequent transmission to management organisations of periodical lists of reproduction equipment, devices and media in respect of which there is an obligation to pay compensation, which are drawn up by debtors and, where appropriate, by those who are jointly and severally liable, in the context of the procedure for making compensation effective, which is determined by Royal Decree;
- (c) unified billing communication.

11. Debtors and those who are jointly and severally liable shall authorise the legal person created by management organisations in accordance with the provisions of the preceding paragraph to control purchases and sales subject to the payment of fair compensation and those affected by the exemptions referred to in paragraph 7. Similarly, persons who have obtained an exemption certificate shall provide, at the request of that legal person, the data necessary to verify that they actually still satisfy the conditions for benefiting from the exemption.

12. ...
... The Ministry of Education, Culture and Sport shall resolve the complaints brought before it concerning the refusal by that legal person to grant the exemption certificates provided for in points (b) and (c) of paragraph 7 and the applications for reimbursement of fair compensation for private copying referred to in paragraph 8.'

10 The single additional provision of Royal Decree-Law 12/2017 states:

'1. Intellectual property rights management organisations shall create the legal person provided for in Article 25(10) ... of the Law on Intellectual Property within three months of the entry into force of this Royal Decree-Law.

2. None of the management organisations shall have the capacity to control, by itself, the decisions of that legal person.

...'

Royal Decree 1398/2018

11 Royal Decree 1398/2018 provides, in Article 3 thereof:

'For the purposes of this Royal Decree, the following definitions shall apply:

(a) exemption certificate means any of the certificates referred to in Article 25(7)(a) to (c)... of the Law on Intellectual Property, of which the following persons may be holders:

...

2° legal or natural persons acting as final consumers, who can prove that the equipment, devices or media they purchase are used exclusively for professional purposes and provided that these are not made available, in law or in fact, to private users and are clearly reserved for uses other than the making of private copies;

...'

12 Article 10 of Royal Decree 1398/2018, entitled 'Procedure for obtaining and using the exemption certificate', provides:

'1. In order to obtain the exemption certificate provided for in point 2° of Article 3(a), the person concerned must forward to the legal person [referred to in Article 25(10) of the Law on Intellectual Property] an application which should preferably be signed electronically, and which must contain the following information:

- (a) the tax identification number, as well as the first name and surnames or the company name;
- (b) an indication of the applicant's business purpose or a declaration of professional activity;

(c) a declaration, under the applicant's responsibility, concerning the following aspects:

1° the rules governing the use of the equipment, devices and media to be purchased, which must be intended for uses which are exclusively professional and clearly unrelated to the making of private copies;

2° the fact that the applicant does not make such equipment, devices and media available, in fact or in law, to private users;

3° the fact that the applicant is subject to the powers of review conferred on the legal person by Article 25(11)... of the Law on Intellectual Property.

(d) where the applicant employs salaried workers to whom he, she or it will make available the equipment, devices or media to be purchased, a declaration that, under the applicant's own responsibility, those workers are aware of the following information:

1° the fact that the equipment, devices or media supplied to them by their employer for the performance of their professional duties must be used exclusively for that purpose;

2° the fact that the use of those equipment, devices or media for private purposes is not permitted.

2. The legal person shall provide on its website a standardised model application for an exemption certificate which satisfies the conditions laid down in the preceding paragraph.

...

4. Once the application for an exemption certificate to be issued has been received, the legal person has 15 working days to grant or refuse the certificate and notify the applicant of its decision.

5. The legal person may refuse to grant the certificate only in the following cases:

(a) where the application does not contain all the information required by this Article;

(b) where the declarations of liability do not reflect the requirements of this Article;

(c) where the applicant has previously had his, her or its exemption certificate revoked, unless the reasons for doing so no longer exist.

In the cases referred to in points (a) and (b) above, the legal person shall, in advance, allow the applicant a period of seven working days in which to put his, her or its application in order.

The refusal shall be notified to the applicant with an adequate statement of the reasons for that decision and, in a similar vein, shall inform the applicant of the right to bring, within one month of notification of the refusal, a complaint before the Ministry of Culture and Sport under Article 25(12) ... of the Law on Intellectual Property.

...

10. Where they do not have a certificate, persons eligible for exemption may use the reimbursement procedure.'

13 Article 11 of Royal Decree 1398/2018, entitled 'Procedure for reimbursement of compensation', is worded as follows:

'1. The application for reimbursement of compensation shall be forwarded to the legal person.

That application, which must be signed, preferably electronically, shall be accompanied by the following information:

(a) the tax identification number, as well as the first name and surnames or the company name;

(b) an indication of the applicant's business purpose or a declaration of professional activity;

(c) a copy of the purchase invoice for the equipment, devices or media;

(d) a declaration, under the applicant's responsibility, concerning the following aspects:

1° the fact that the use made of the equipment, devices or media purchased is exclusively professional and clearly unrelated to the making of private copies;

2° the fact that the applicant has not made such equipment, devices and media available, in fact or in law, to private users;

3° the fact that the applicant is subject to the powers of review conferred on the legal person by Article 25(11)... of the Law on Intellectual Property.

(e) where the applicant employs salaried workers to whom he, she or it has made available the equipment, devices or media purchased, a declaration that, under the applicant's own responsibility, those workers are aware of the following aspects:

1° the fact that the equipment, devices or media supplied to them by their employer for the performance of their professional duties must be used exclusively for that purpose;

2° the fact that the use of those equipment, devices or media for private purposes is not permitted.

2. The legal person shall provide on its website a standardised model application for reimbursement which satisfies the conditions laid down in the preceding paragraph.

3. The legal person shall have a period of one month from receipt of the application to carry out the necessary checks in order to establish whether or not a right to reimbursement exists and to notify the applicant of its decision.

...

5. The legal person may refuse reimbursement of compensation only in the following cases:

(a) where the application for reimbursement does not contain all the information required by this Article;

(b) where the declarations of liability do not reflect the requirements of this Article;

(c) where the amount sought in the application for reimbursement is less than that provided for in the penultimate subparagraph of Article 25(8)... of the Law on Intellectual Property, subject to the exception provided for in that article;

(d) where, after examination of the application, the existence of a right to reimbursement is not established. In the cases referred to in points (a) and (b) above, the applicant shall be allowed a period of seven working days to put his, her or its application in order.

The refusal shall be notified to the applicant with an adequate statement of the reasons for that refusal and, in the same vein, shall inform the applicant of the right to bring, within one month of notification of the refusal,

a complaint before the Ministry of Culture and Sport under Article 25(12) ... of the Law on Intellectual Property.'

14 Article 12 of Royal Decree 1398/2018 provides:

'1. Management organisations and the legal person shall respect the confidential nature of any information of which they become aware in the performance of their duties and, in any event, the processing of such information shall be subject to compliance with the rules on the protection of competition and the protection of data.

2. Debtors, distributors and holders of exemption certificates may not rely on the confidentiality of business accounts referred to in Article 32(1) of the Código de Comercio (Commercial Code) when the legal person exercises the powers of review conferred on it by Article 25(11)... of the Law on Intellectual Property.'

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

15 Ametic, the applicant in the main proceedings, is an association of manufacturers, traders and distributors in the information technology and communications technology sector, the activity of which includes trade in reproduction equipment, devices and media subject to compensation for private copying. By its action brought before the referring court, the Tribunal Supremo (Supreme Court, Spain), Ametic seeks, inter alia, the annulment of certain provisions of Royal Decree 1398/2018, including Articles 3 and 10 thereof. That royal decree lays down the rules for implementing Article 25 of the Law on Intellectual Property, the latter having been adopted following [the judgment of 9 June 2016, EGEDA and Others \(C-470/14, EU:C:2016:418\)](#), by which Article 5(2)(b) of Directive 2001/29 had been interpreted as precluding the old system of fair compensation for private copying, which was to be charged to the general State budget.

16 As is apparent from the order for reference, the Spanish legislature, in Article 25 of that law, introduced a system of compensation for private copying, payable to copyright holders, for the reproduction of protected works, exclusively for private use, by means of non-typographical technical devices or instruments.

17 The referring court explains, in essence, that Article 25(3) of the Law on Intellectual Property provides that persons who manufacture or distribute, on Spanish territory, equipment capable of being used for the purpose of reproducing protected works are required to pay compensation for private copying. Those manufacturers and distributors may pass on the amount of that compensation to their customers, wholesalers or retailers, who may, where appropriate, pass them on to the final consumers.

18 That court also specifies that, under Article 25(7)(b) of that law, purchases of reproduction equipment, devices and media by legal or natural persons acting as final consumers who provide evidence of the exclusively professional use of the equipment, devices or media purchased are automatically exempt from the payment of compensation for private copying, provided that such equipment, devices or media have not

been made available, in law or in fact, to private users and that they are clearly reserved for uses other than the making of private copies. That evidence must be furnished by means of a certificate issued by a legal person which, in accordance with Article 25(10) of that law, is to be set up by intellectual property management organisations and, as their representative, is to be engaged in the management of (i) exemptions from payment in respect of compensation for private copying and (ii) reimbursements in respect of such compensation.

19 The persons concerned who are not holders of such a certificate must bear the burden of compensation for private copying at the time of purchase. However, if they can prove the exclusively professional use of the reproduction equipment, devices or media purchased, and provided that these (i) have not been made available to private users and (ii) are clearly reserved for uses other than private copying, they may apply to that legal person for reimbursement of the compensation which they have previously paid.

20 The referring court adds that the distributors, wholesalers and retailers who subsequently purchase the goods in question may apply to management organisations for reimbursement of the compensation for private copying which they have previously paid on the sales which they have made to holders of an exemption certificate.

21 Article 3(a) of Royal Decree 1398/2018 describes an 'exemption certificate' as a certificate that may be held by, inter alia, the persons referred to in Article 25(7)(b) of the Law on Intellectual Property. Article 10 of that royal decree governs the procedure for obtaining and using that exemption certificate.

22 Furthermore, the referring court specifies that, in accordance with Article 25(11) of the Law on Intellectual Property and Article 12 of the royal decree which implements it, the legal person is entitled to require the communication of information necessary for the exercise of the powers of review conferred on it in the context of its duties relating to the management of (i) exemptions from payment in respect of compensation for private copying and (ii) reimbursements in respect of such compensation, and that, in the course of such checks, economic operators may not rely on the confidentiality of business accounts provided for by national law.

23 The referring court notes that the legal person which manages the system of exemptions through the grant of certificates, which considerably facilitate the activity of the entity which is the holder of such a certificate, on the one hand, and the system of reimbursements, on the other, is controlled by intellectual property rights management organisations, that is to say, by entities which represent exclusively the interests of creditors of compensation for private copying. That fact could influence the decisions of the legal person in question concerning the grant of exemption certificates or reimbursements in each particular case. Moreover, according to the referring court, that 'imbalance or asymmetry' in the system

might infringe the principle of equality before the law, especially since it is on that legal person that the possibility of simplifying the steps to be taken when purchasing reproduction equipment, devices and media depends. The referring court explains that its doubts are intensified by the extraordinary powers conferred on the legal person in question as regards review, under which it may require information relating to the activities of the persons concerned to be provided to it, since the scope of those powers extends so far as to deprive the economic operator concerned of the possibility of relying on the confidentiality of business accounts. The fact that the decisions of that legal person may be the subject of a complaint brought before the Ministry of Culture and Sport, the decisions of which may themselves be the subject of judicial proceedings, does not appear to the referring court to be sufficient to remove the difficulties which seem, in its view, to result from the form of composition of that legal person.

24 In those circumstances, the Tribunal Supremo (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

(1) *Is the form of composition of the legal person provided for in paragraph 10 of the new Article 25 of the [Law on Intellectual Property] compatible with Directive [2001/29] or, more generally, with the general principles of EU law?*

(2) *Is it compatible with Directive [2001/29] or with the general principles of EU law for national legislation to confer on the aforementioned legal person powers to request information, including accounting information, from those applying for a certificate of exemption from the obligation to pay compensation for private copying?*

Consideration of the questions referred

The first question

Admissibility

25 ADEPI, Ventanilla Única Digital and DAMA dispute the admissibility of the first question on the ground that the referring court does not specify either the provision of Directive 2001/29 or the general principles of EU law in respect of which interpretation is sought.

26 In that regard, it is true that, having regard solely to the wording of its first question, the referring court seeks, by that question, to obtain a ruling from the Court as to the compatibility of a provision of national law with EU law, in this case Directive 2001/29 and the general principles of EU law, without specifying the provisions and principles at issue. The Court has repeatedly held that, in the context of the procedure established by Article 267 TFEU providing for cooperation between the Court of Justice and the national courts, it is not for the Court of Justice to rule on the compatibility of provisions of national law with EU law (see, to that effect, judgment of 6 October 2015, *Consorti Sanitari del Maresme*, C-203/14, EU:C:2015:664, paragraph 43 and the case-law cited).

27 However, it must be borne in mind that, in the context of that cooperation procedure established by Article 267 TFEU, it is for the Court of Justice to provide

the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the questions referred to it. The Court has a duty to interpret all provisions of EU law which national courts require in order to decide on the actions pending before them, even if those provisions are not expressly indicated in the questions referred to the Court by those courts ([judgment of 19 December 2019, *Nederlands Uitgeversverbond and Groep Algemene Uitgevers*, C-263/18, EU:C:2019:1111](#), paragraph 31 and the case-law cited).

28 To that end, the Court can extract from all the information provided by the national court, in particular from the grounds of the order for reference, the points of EU law which require interpretation in view of the subject matter of the dispute in the main proceedings ([judgment of 19 December 2019, *Nederlands Uitgeversverbond and Groep Algemene Uitgevers*, C-263/18, EU:C:2019:1111](#), paragraph 32 and the case-law cited).

29 In the present case, it is clear from the request for a preliminary ruling that the case in the main proceedings concerns the Spanish system for collecting compensation for private copying, the referring court having before it an application for annulment of certain provisions of Royal Decree 1398/2018, which implements Article 25 of the Law on Intellectual Property; an article which provides, inter alia, for the creation of a legal person responsible for managing the system of compensation for private copying. Directive 2001/29 contains only one provision relating to such compensation, namely Article 5(2)(b) thereof.

30 In addition, the referring court expressly refers to the principle of equality between debtors and creditors of the compensation in question, in the light of which it is called upon to examine the legality of the provisions at issue before it, without mentioning any other general principles of EU law whose interpretation it considers to be at stake.

31 In those circumstances, it cannot be held that the first question is vitiated by shortcomings such as to prevent the Court from giving a useful answer to the referring court.

32 That question is therefore admissible.

Substance

33 In the light of the considerations set out in paragraphs 27 to 30 of the present judgment, it must be understood that, by its first question, the referring court asks, in essence, whether Article 5(2)(b) of Directive 2001/29 and the principle of equal treatment are to be interpreted as precluding national legislation under which a legal person established and controlled by intellectual property rights management organisations is entrusted with the management of (i) exemptions from payment in respect of compensation for private copying and (ii) reimbursements in respect of such compensation.

34 In that regard, it must be recalled that, according to Article 5(2)(b) of Directive 2001/29, Member States may provide for exceptions or limitations to the

exclusive reproduction right provided for in Article 2 of that directive in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 of that directive to the work or subject matter concerned.

35 As is apparent from recitals 35 and 38 thereof, Article 5(2)(b) of that directive reflects the EU legislature's intention to establish a specific system of compensation which is triggered by the existence of harm caused to rightholders, which gives rise, in principle, to the obligation to 'compensate' them ([judgments of 9 June 2016, EGEDA and Others, C-470/14, EU:C:2016:418](#), paragraph 19 and the case-law cited, and of [22 September 2016, Microsoft Mobile Sales International and Others, C-110/15, EU:C:2016:717](#), paragraph 26 and the case-law cited).

36 Since Directive 2001/29 does not provide any further details concerning the various elements of the system of fair compensation, the Member States enjoy a broad discretion in that regard. In particular, it falls to the Member States to determine the persons who must pay that compensation and to establish the form, detailed arrangements, and level thereof (see, to that effect, [judgments of 5 March 2015, Copydan Båndkopi, C-463/12, EU:C:2015:144](#), paragraph 20 and the case-law cited, and of [9 June 2016, EGEDA and Others, C-470/14, EU:C:2016:418](#), paragraphs 22 and 23 and the case-law cited).

37 Given the practical difficulties in identifying private users and obliging them to compensate holders of the exclusive right of reproduction for the harm caused to those rightholders by those users, it is open to the Member States to establish a 'private copying levy' for the purpose of financing fair compensation, chargeable not to the private persons concerned but to those who have reproduction equipment, devices and media and who, on that basis, in law or in fact, make these available to private users. Under such a system, it is for the persons having such equipment to pay the private copying levy. Accordingly, the Member States may, under certain conditions, apply the private copying levy indiscriminately with regard to recording media suitable for reproduction, including where the final use of such media does not meet the criteria set out in Article 5(2)(b) of Directive 2001/29 ([judgment of 22 September 2016, Microsoft Mobile Sales International and Others, C-110/15, EU:C:2016:717](#), paragraphs 31 and 32 and the case-law cited).

38 Since such a system enables the persons liable for payment to pass on the amount of the private copying levy in the price charged for making those reproduction equipment, devices and media available, the burden of the levy will ultimately be borne by the private user who pays that price, in a way consistent with the 'fair balance', referred to in recital 31 of Directive 2001/29, between the interests of holders of the exclusive right of reproduction and those of users of protected subject

matter ([judgment of 22 September 2016, Microsoft Mobile Sales International and Others, C-110/15, EU:C:2016:717](#), paragraph 33 and the case-law cited).

39 However, such a system must not only be justified by practical difficulties, such as the impossibility of identifying the final users, but must also exclude from payment of the levy the supply of reproduction equipment, devices and media to persons other than natural persons for purposes clearly unrelated to the making of copies for private use (see, to that effect, [judgments of 5 March 2015, Copydan Båndkopi, C-463/12, EU:C:2015:144](#), paragraphs 45 to 47, and of [22 September 2016, Microsoft Mobile Sales International and Others, C-110/15, EU:C:2016:717](#), paragraphs 34 to 36).

40 As regards, more specifically, the condition relating to the exemption of the supply of reproduction equipment, devices and media to persons other than natural persons for purposes clearly unrelated to the making of copies for private use, it is, in principle, consistent with the 'fair balance', referred to in recital 31 of Directive 2001/29, between the interests of copyright holders and those of users of protected subject matter that only the final purchaser should be able to obtain reimbursement of the levy and that that reimbursement should be conditional upon the submission of an application to that effect to the organisation responsible for the management of that levy (see, to that effect, [judgment of 5 March 2015, Copydan Båndkopi, C-463/12, EU:C:2015:144](#), paragraph 53).

41 As has been pointed out in paragraph 38 of the present judgment, the possibility afforded to manufacturers, distributors and retailers of passing on to their customers the compensation for private copying which they have paid means that the operators in question do not bear that financial burden. The fact remains that, in order to ensure that the burden of compensation for private copying will ultimately be borne solely by the final users referred to in Article 5(2)(b) of Directive 2001/29, a system imposing such a private copying levy must ensure that final users who purchase reproduction equipment, devices and media for purposes clearly unrelated to the making of copies for private use may still be exempted.

42 Furthermore, where the system for collecting compensation for private copying provides that the final user may be exempted from it, as soon as the reproduction equipment, devices and media are purchased, by means of an exemption certificate showing, in essence, that he, she or it is purchasing them for purposes clearly unrelated to the making of copies for private use, the seller who has paid the levy to his, her or its supplier but is prohibited, because of the presentation of the certificate, from passing on that levy to his, her or its customer should be able to apply to the organisation entrusted with the management of the levy for reimbursement thereof (see, to that effect, [judgment of 5 March 2015, Copydan Båndkopi, C-463/12, EU:C:2015:144](#), paragraph 55).

43 In the present case, as is apparent from the order for reference, the system for collecting compensation for

private copying at issue in the main proceedings has the characteristics of providing that final users are, in principle, liable to pay that compensation, while introducing procedures allowing, under certain conditions, exemption from that compensation – exemption which is subject to the grant of a certificate – or reimbursement thereof.

44 In that context, the referring court asks its first question on the ground that the fact that the legal person which issues exemption certificates in respect of compensation for private copying, on the one hand, and carries out reimbursements in respect of such compensation, on the other, is established and controlled by intellectual property rights management organisations could entail an ‘imbalance’ or ‘asymmetry’ in the interests which it pursues, which could be precluded by Article 5(2)(b) of Directive 2001/29 and the principle of equal treatment.

45 In that regard, it should be noted, in the first place, that, as regards the requirements arising from Article 5(2)(b) of that directive, the right to reimbursement of the private copying levy for persons other than natural persons who purchase reproduction equipment for purposes clearly unrelated to the making of copies for private use must be effective and must not make it excessively difficult to refund the levy paid. The scope, the effectiveness, the availability, the public awareness and the simplicity of use of the right to reimbursement must allow for the correction of any imbalances created by the private copying levy system, in order to respond to the practical difficulties observed (see, to that effect, [judgment of 22 September 2016, Microsoft Mobile Sales International and Others, C-110/15, EU:C:2016:717](#), paragraph 37 and the case-law cited). The same is true of the grant of exemption certificates, where the national legislation also provides for such an instrument in order to ensure that only the persons liable referred to in Article 5(2)(b) of that directive actually bear the burden of compensation for private copying.

46 Furthermore, in accordance with Article 3(h) of Directive 2014/26, income, deriving from a right to compensation, collected by a collective management organisation on behalf of rightholders constitutes copyrights revenue or related rights revenue. Recitals 2 and 26 of that directive state that that revenue is to be collected, managed and distributed to rightholders by collective management organisations.

47 In that regard, it is apparent from Article 3(a) of Directive 2014/26 that a collective management organisation is any organisation which is authorised by law or agreement to manage copyright or rights related to copyright on behalf of more than one rightholder, for the collective benefit of those rightholders, as its sole or main purpose and that that organisation may be owned or controlled by its members. This is, moreover, as a general rule, the case in practice, as is apparent from recital 14 of Directive 2014/26. Lastly, it is stated in Article 3(d) of that directive that a collective management organisation may have as members both holders of copyright or related rights and other collective management organisations.

48 It follows that, as regards the management of compensation for private copying for the purposes of Article 5(2)(b) of Directive 2001/29, unlike the representatives of the debtors of that compensation, such management falls, by definition, within the tasks with which collective copyright management organisations, such as the intellectual property rights management organisations covered by the Law on Intellectual Property, may be entrusted.

49 In that regard, and in the light of the requirements set out in paragraph 45 of the present judgment, it must be held that the establishment of a legal person, such as that provided for by the national legislation at issue in the main proceedings, for the purposes of the management of (i) exemptions from payment in respect of compensation for private copying and (ii) reimbursements in respect of such compensation, may meet an objective of simplicity and effectiveness from which the debtors liable for that compensation also benefit, without those debtors finding themselves, merely because the legal person in question is controlled by collective copyright management organisations, in a less advantageous situation than would have prevailed in the absence of such a legal person.

50 That being so, any national legislation introducing compensation for private copying must provide for procedures which, in the light of the requirements set out in paragraph 45 of the present judgment, ensure that only those liable for payment under Article 5(2)(b) of Directive 2001/29 actually bear the burden of compensation for private copying.

51 In particular, Member States may not lay down detailed fair compensation rules that would discriminate, without any justification, between the different categories of economic operators marketing comparable goods covered by the private copying exception or between the different categories of users of protected subject matter ([judgment of 22 September 2016, Microsoft Mobile Sales International and Others, C-110/15, EU:C:2016:717](#), paragraph 45 and the case-law cited).

52 Those requirements could be jeopardised if the national legislation were to confer on the legal person competent to grant exemption certificates or to reimburse sums unduly paid by way of compensation for private copying a margin of discretion making the treatment of each application submitted for one or other of those purposes dependent on considerations of expediency, so that that legal person could, by exercising that discretion, unduly limit the right to exemption from or reimbursement of that compensation. The existence of such a margin of discretion would be liable to upset the fair balance between rightholders and users of protected subject matter which is sought by recital 31 of Directive 2001/29. The competent legal person could also, as is envisaged by the referring court, treat the different categories of operators or users in similar legal and factual situations in a discriminatory manner.

53 By contrast, national legislation which provides that exemption certificates in respect of compensation for private copying and reimbursements in respect of

such compensation must be granted in good time on the basis of objective criteria which do not entail any discretion on the part of the person competent to examine applications submitted for that purpose is, in principle, capable of complying with the requirements set out in paragraph 45 of the present judgment.

54 In addition, in order to avoid any risk of bias on the part of such a legal person in the grant of (i) exemption certificates and (ii) reimbursements and, consequently, in order to prevent any upsetting of the fair balance between rightholders and users of protected subject matter which is sought by recital 31 of Directive 2001/29, it must be possible to challenge the decisions of that legal person refusing to grant such a certificate or reimbursement before an independent body, whether judicial or otherwise.

55 In the present case, Articles 10 and 11 of Royal Decree 1398/2018 appear to oblige the legal person responsible for examining applications to grant, within a specified period, an exemption certificate or to establish the existence of the right to reimbursement where the applicant provides the requisite identification information and signs the declarations made available to him, her or it. Moreover, they appear to provide for the possibility of challenging before an independent body, namely the Ministry of Culture and Sport, decisions of that legal person refusing an application for an exemption certificate or for reimbursement. In those circumstances, those provisions appear to be capable of complying with the requirements set out in paragraph 45 of the present judgment, which it is nevertheless for the referring court to verify.

56 In the second place, the exceptions provided for in Article 5 of Directive 2001/29 must be applied in a manner consistent with the principle of equal treatment, enshrined in Article 20 of the Charter of Fundamental Rights of the European Union, according to which comparable situations must not be treated differently and different situations must not be treated in the same way unless such treatment is objectively justified ([judgment of 22 September 2016, Microsoft Mobile Sales International and Others, C-110/15, EU:C:2016:717](#), paragraph 44 and the case-law cited).

57 Therefore, that principle cannot be interpreted as precluding the assignment, as such, of the management of (i) exemptions from payment in respect of compensation for private copying and (ii) reimbursements in respect of such compensation, to a person representing the collective interests of the creditors of that compensation. Creditors and debtors of compensation for private copying are, in the light of that burden, in radically different legal situations, so that that principle cannot be infringed on the ground that they are subject to different rights and obligations under the system of compensation for private copying.

58 In the light of all the foregoing considerations, the answer to the first question is that both Article 5(2)(b) of Directive 2001/29 and the principle of equal treatment must be interpreted as not precluding national legislation under which a legal person established and controlled by intellectual property rights management organisations is

entrusted with the management of (i) exemptions from payment in respect of compensation for private copying and (ii) reimbursements in respect of such compensation, where that national legislation provides that exemption certificates and reimbursements must be granted in good time and in accordance with objective criteria which do not allow that legal person to refuse an application for the granting of such a certificate or of reimbursement on the basis of considerations involving the exercise of discretion and that the decisions of that legal person refusing such an application may be challenged before an independent body.

The second question

Admissibility

59 DAMA disputes the admissibility of the second question on the ground that the referring court does not specify either the provision of Directive 2001/29 or the general principles of EU law in respect of which interpretation is sought.

60 However, having regard to the principles recalled in paragraphs 26 to 28 of the present judgment and for the same reasons as those set out in paragraphs 29 and 30 thereof, that argument does not affect the admissibility of the second question.

61 Furthermore, ADEPI and Ventanilla Única Digital argue that it is not apparent from Article 25(7)(b) of the Law on Intellectual Property or from Article 10 of Royal Decree 1398/2018 that the legal person may have access to accounting information. The situation referred to by the referring court is therefore purely hypothetical, with the result that the second question should be declared inadmissible.

62 In that regard, it is sufficient to recall, first, that, in the context of the cooperation between the Court of Justice and the national courts provided for by Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court of Justice is, in principle, bound to give a ruling ([judgment of 12 November 2015, Hewlett-Packard Belgium, C-572/13, EU:C:2015:750](#), paragraph 24 and the case-law cited).

63 Given that questions concerning EU law enjoy a presumption of relevance, the Court may refuse to rule on a question referred 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 12 November 2015, Hewlett-Packard Belgium, C-572/13, EU:C:2015:750](#), paragraph 25 and the case-law cited).

64 Second, in the procedure provided for in Article 267 TFEU, the functions of the Court of Justice and

those of the referring court are clearly distinct and it is for the latter alone to interpret national legislation. Thus, it is not for the Court, in the context of a reference for a preliminary ruling, to rule on the interpretation of provisions of national law. The Court must take account, under the division of jurisdiction between the Courts of the European Union and the national courts, of the factual and legislative context, as described in the order for reference, in which the questions put to it are set (judgment of 14 November 2019, *Spedidam*, C-484/18, EU:C:2019:970, paragraphs 28 and 29).

65 It follows from the foregoing that the interpretation of national law put forward by ADEPI and Ventanilla Única Digital as regards the information which the legal person is entitled to require cannot suffice to overturn the presumption of relevance referred to in paragraph 63 of the present judgment.

66 Since, moreover, the second question does not fall within any of the three situations mentioned in the case-law referred to in paragraph 63 of the present judgment, it must be held that that question is admissible.

Substance

67 By its second question, the referring court asks, in essence, whether Article 5(2)(b) of Directive 2001/29 and the principle of equal treatment are to be interpreted as precluding national legislation which empowers a legal person, which is established and controlled by intellectual property rights management organisations and which is entrusted with the management of (i) exemptions from payment in respect of compensation for private copying and (ii) reimbursements in respect of such compensation, to request access to the information necessary for the exercise of the powers of review conferred on it in that regard, without it being possible, in particular, for the person under review to rely on the confidentiality of business accounts provided for by national law.

68 First, it should be noted that the possibility of requesting information in order to verify the correct application of the national legislation regarding compensation for private copying constitutes an integral part of the exception provided for in Article 5(2)(b) of Directive 2001/29.

69 It is apparent from Article 5(2)(b) of Directive 2001/29, as well as recital 35 thereof, that, in those Member States which have introduced the private copying exception, rightholders must receive fair compensation to compensate them adequately for the use made of their protected works or other subject matter without their permission. Furthermore, in accordance with Article 5(5) of that directive, the introduction of the private copying exception may not unreasonably prejudice the legitimate interests of the copyright holder. It follows that, unless they are to be deprived of all practical effect, those provisions impose on a Member State which has introduced the private copying exception into its national law an obligation to achieve a certain result, meaning that that State must guarantee, within the framework of its competences, the effective collection of that compensation intended to compensate the authors affected for the harm suffered, in particular

if that harm arose on the territory of that Member State ([judgments of 16 June 2011, *Stichting de ThuisKopie*, C-462/09, EU:C:2011:397](#), paragraphs 33 and 34, and of [9 June 2016, *EGEDA and Others*, C-470/14, EU:C:2016:418](#), paragraph 21 and the case-law cited).

70 Thus, in the context of a system based on unilateral declarations by operators in order to establish both the amounts due by way of compensation for private copying and the sales which must be exempt from such compensation, empowering the entity responsible for the management of that compensation to check the veracity of the declarations in question is a necessary condition for ensuring effective collection of the compensation.

71 Consequently, the person entrusted with the management of the system of compensation for private copying must, on the one hand, be able to verify that the conditions for benefiting from an exemption certificate are satisfied. If, at the end of that check, it becomes apparent that those conditions are not satisfied, the obligation to ensure effective collection of the compensation for private copying makes it necessary to ensure that that legal person can, on the other hand, calculate and collect the amounts due by way of that compensation as soon as the conditions for granting an exemption certificate have not been or are no longer satisfied. The performance of those duties by that legal person would be hindered if the person under review could, by invoking the confidentiality of his, her, or its business accounts, refuse access to the accounting information necessary for such performance.

72 It should be added that this is also the case with regard to persons who are not exempt from the payment of compensation for private copying, such as manufacturers, importers or distributors, but who may either pass it on to their customer, where that customer is not a holder of an exemption certificate, or apply to the legal person for reimbursement thereof, where their customer is a holder of such a certificate. The legal person to which the management of the system of compensation for private copying is entrusted must be able to request access to information enabling the purchases and sales subject to the payment of compensation for private copying, as well as the purchases and sales exempt from that compensation, to be verified.

73 That being so, those checks must relate exclusively to information which makes it possible, first, to verify that the conditions for benefiting from an exemption or a reimbursement are actually satisfied and, second, to calculate any amounts payable by way of compensation for private copying by persons who are not exempt, such as manufacturers, importers or distributors, or persons who have unduly benefited from an exemption certificate or a reimbursement. Furthermore, in so far as the information in question is confidential, the legal person and the management organisations which become aware of such information in the context of their duties are required to safeguard the confidential nature of that information. In the present case, it appears that the purpose of Article 12(1) of Royal Decree 1398/2018

is to impose such an obligation, which it is, however, for the referring court to verify.

74 Secondly, for reasons similar to those set out in paragraphs 56 and 57 of the present judgment, the principle of equal treatment is not capable of calling into question provisions such as those of the Law on Intellectual Property and those of Royal Decree 1398/2018 concerning the powers conferred on the legal person in the context of the management of (i) exemptions from payment in respect of compensation for private copying and (ii) reimbursements in respect of such compensation.

75 In the light of all the foregoing considerations, the answer to the second question is that Article 5(2)(b) of Directive 2001/29 and the principle of equal treatment must be interpreted as not precluding national legislation which empowers a legal person, which is established and controlled by intellectual property rights management organisations and which is entrusted with the management of (i) exemptions from payment in respect of compensation for private copying and (ii) reimbursements in respect of such compensation, to request access to the information necessary for the exercise of the powers of review conferred on it in that regard, without it being possible, in particular, for the person under review to rely on the confidentiality of business accounts provided for by national law, that legal person being obliged to safeguard the confidential nature of the information obtained.

Costs

76 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Fifth Chamber) hereby rules:

1. Both Article 5(2)(b) 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 and the principle of equal treatment must be interpreted as not precluding national legislation under which a legal person established and controlled by intellectual property rights management organisations is entrusted with the management of (i) exemptions from payment in respect of compensation for private copying and (ii) reimbursements in respect of such compensation, where that national legislation provides that exemption certificates and reimbursements must be granted in good time and in accordance with objective criteria which do not allow that legal person to refuse an application for the granting of such a certificate or of reimbursement on the basis of considerations involving the exercise of discretion and that the decisions of that legal person refusing such an application may be challenged before an independent body.

2. Article 5(2)(b) of Directive 2001/29 and the principle of equal treatment

must be interpreted as not precluding national legislation which empowers a legal person, which is established and controlled by intellectual property rights management organisations and which is entrusted with the management of (i) exemptions from payment in respect of compensation for private copying and (ii) reimbursements in respect of such compensation, to request access to the information necessary for the exercise of the powers of review conferred on it in that regard, without it being possible, in particular, for the person under review to rely on the confidentiality of business accounts provided for by national law, that legal person being obliged to safeguard the confidential nature of the information obtained.