

Warsaw, 17 October 2022

Current Report 27/2022

Title: CJEU judgment in a case brought by a subsidiary of the Issuer

With reference to Current Report No. 9/2022 of 13 June 2022 presenting the opinion of the Advocate General of the CJEU regarding the preliminary ruling request of the Supreme Court addressed to the CJEU (Court of Justice of the European Union) in the case “for an order concerning commissions for contracts concluded during the term of the agency contract without the participation of the agent, but with customers acquired by the agent previously for same type of contracts” in relation to the pending proceedings brought by the subsidiary company, Arteria S.A. (hereinafter referred to as the “Issuer”), against Bank Handlowy w Warszawie S.A. with its registered office in Warsaw concerning the exercise of information rights pursuant to Article 7615 of the Civil Code,

the Management Board of the Issuer has been informed through its legal representative

about the CJEU judgment in the case in question, the thesis of which reads as follows:

“Article 7(1)(b) of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents

should be interpreted to mean that:

a derogation may be made, by agreement, from the right conferred by that provision on a commercial agent acting on their own account to charge a commission in respect of a transaction concluded during the term of the agency contract with a third party whom the agent has already acquired as a customer for the same type of a transaction”.

Commentary on the content of the CJEU judgment

The Management Board of the Issuer notes that the content of the judgment is in line with the opinion of the Advocate General of the CJEU, published in Current Report No. 9/2022 of 13 June 2022, assuming that the provision of Article 7(1)(b) of Council Directive 86/653/EEC is dispositive and therefore unfavourable to the Issuer.

Although the position of the CJEU does not oblige the Supreme Court to interpret Polish regulations, in particular Article 761 § 1 of the Civil Code, in the same manner as the Court of Justice of the European Union did, it should be recognised that the above judgment may have a negative impact on the judgment of the Supreme Court in the case brought by Rigall Arteria Management spółka z o.o. sp. k. in Warsaw (a company forming part of the Arteria S.A. Capital Group) against Bank Handlowy w Warszawie S.A. with its registered office in Warsaw. The case in question is that brought by Rigall Arteria Management spółka z o.o. sp. k. in Warsaw (a company forming part of the Arteria S.A. Capital Group) against Bank Handlowy w Warszawie S.A. with its registered office in Warsaw, concerning the exercise of information rights to which Rigall Arteria Management spółka z o.o. sp. k. in Warsaw is entitled pursuant to Article 7615 of the Civil Code.

The interpretation adopted by the CJEU may also affect the dispute in the case brought by a subsidiary of the Issuer against Bank Handlowy w Warszawie S.A. for Bank Handlowy w Warszawie S.A. to be ordered to pay a significant amount on account of commission remuneration on contracts concluded during the term of the agency contract between the parties to the dispute, resulting from the intensive use of the commercial relations with the customers acquired by the claimant, as well as after its termination (indemnity).

The Management Board of the Issuer described the conducted court proceedings in detail in Reports No. 1/2019 of 2 January 2019, No. 5/2019 of 12 March 2019, No. 6/2019 of 1 April 2019, No. 8/2019 of 13 June 2019 and No. 15/2019 of 26 November 2019.

Signatures of persons authorised to represent the Issuer:

Marcin Marzec - President of the Management Board

Sebastian Pielach - Vice-President of the Management Board