

### Pleas in law and main arguments

In support of the action, the Applicant considers that all conditions of the failure to act pursuant to article 265 TFUE are fulfilled in this case and that this failure entails several breaches of EU Treaties, principles and secondary law. In this respect it puts forward four pleas in law:

1. First plea in law, alleging that by not opening the formal procedure against Greece the Commission failed to comply with its conclusions on Case SA.33828 — Greek tonnage tax scheme and with its 2003 guidelines on State aid to maritime transport (Maritime Guidelines).
2. Second plea in law, alleging that the Commission failed to comply with the Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (Procedural Regulation, article 23) and Article 108 TFEU by not opening the formal investigation procedure seven years after the Article 23 decision, and that by refusing to take a clear position in this regard the Commission harmed the rights of interested parties in breach of Procedural Regulation (article 24), Charter of Fundamental rights (article 41 and 47) and EU principles (such as legitimate expectations).
3. Third plea in law, alleging that the Commission failed to comply with equal treatment principle as protected by EU Charter (Article 20 and 21) and its duty of sincere cooperation (Article 4(3) TUE, by refusing *ad vitam eternam* to act based on article 107 TFEU against the Greek tonnage tax scheme, while dismantling equivalent State aid schemes to port in other Member States in a limited time frame.
4. Fourth plea in law alleging that the Commission failed to comply with international tax standards and EU tax law and commitments, regarding minimum taxation rules which will have to be implemented by all Member States as from 1st January 2024 on the basis of the OECD Pillar Two Agreement (December 2021) and of Commission Proposal for a Council Directive on ensuring a global minimum taxation for multinational groups in the Union (December 2021) as agreed by the Ecofin Council in December 2022.

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(<sup>1</sup>) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9).

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### Action brought on 20 January 2023 — Greece v Commission

(Case T-18/23)

(2023/C 179/78)

*Language of the case: Greek*

### Parties

*Applicant:* Hellenic Republic (represented by: E. Leftheriotou, A.-E. Vasilopoulou and O. Pastellas, acting as Agents)

*Defendant:* European Commission

### Form of order sought

The applicant claims that the General Court should:

- annul, in its entirety, Commission Implementing Decision C(2002)8047 final of 15 November 2022 on the financial treatment to be applied to expenditure financed by the European Agricultural Guidance and Guarantee Fund, Guidance Section ('EAGGF-G'), in certain cases of irregularity in Greece;
- in the alternative, annul the contested decision in so far as concerns the amount corresponding to the part of the recovery that was annulled by the national court in Case 2014/10019, that is to say, limit the amount to be recovered in that case to EUR 48 619,63 rather than EUR 145 854,46; and
- order the defendant to pay the costs incurred by the Hellenic Republic.

### Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law.

1. First plea in law, alleging that there is no legal basis for the adoption of the contested Commission decision in so far as concerns charging the amount at issue to the Hellenic Republic, since Regulation (EC) No 1681/94 <sup>(1)</sup> has been repealed and no longer applies to cases which fall under the 1994-1999 programme period, and Regulation (EU) No 1306/2013 <sup>(2)</sup> applies only to cases of irregularity in the context of the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD).
2. Second plea in law, alleging error of fact, in that the Commission found that the Greek authorities had failed to show diligence in the management of Case 2014/10019. It is also claimed that charging the amount of EUR 145 854,46 to the Hellenic Republic is disproportionate.

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<sup>(1)</sup> Commission Regulation (EC) No 1681/94 of 11 July 1994 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the structural policies and the organization of an information system in this field (OJ 1994 L 178, p. 43).

<sup>(2)</sup> Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ 2013 L 34, p. 549).

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### Action brought on 23 January 2023 — Mead Johnson Nutrition (Asia Pacific) and Others v Commission

(Case T-37/23)

(2023/C 179/79)

*Language of the case: English*

### Parties

*Applicants:* Mead Johnson Nutrition (Asia Pacific) Pte Ltd (Singapore, Singapore), MJN Global Holdings BV (Amsterdam, Netherlands), Mead Johnson Nutrition Co. (Chicago, Illinois, United States) (represented by: C. Quigley, KC, M. Whitehouse and P. Halford, Solicitors)

*Defendant:* European Commission

### Form of order sought

The applicants claim that the Court should:

- annul the Commission's Decision C(2022) 7665 final of 31 October 2022 in Case SA.34914 (2013/C) — Gibraltar Corporate Income Tax Regime (the 'Contested Decision'); <sup>(1)</sup> and
- order the Commission to pay the applicants' costs

### Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging lack of competence, in that the Commission has no competence pursuant to Article 92(3)(a) of the Agreement on the Withdrawal of the UK from the EU, as the case file SA.34914 and all associated procedures were closed and terminated by the adoption of the final decision (EU) 2019/700 of 19 December 2018; <sup>(2)</sup> and no new case number was allocated to the Commission's investigation concerning MJN Holdings (Gibraltar) Limited prior to the end of the transition period on 31 December 2020, or at all.
2. Second plea in law, alleging infringement of an essential procedural requirement, in that the Commission has infringed Article 6(1) of the Procedural Regulation (EU) 2015/1589, <sup>(3)</sup> which requires the Commission in a decision to open a formal investigation to summarise all the relevant issues of fact and law in its possession, by failing to include relevant information that the applicants had previously submitted, and which the Commission had in its possession, as regards the non-continuation of the 2012 MJN GibCo tax ruling beyond 1 January 2014 and as regards the non-taxability of the royalty income on the proper application of Gibraltar law. Moreover, prior to taking the Article 6(1) decision (the Contested Decision), the Commission, in the course of its preliminary assessment and in accordance with the principle of sound administration, should have, in any event, discussed with the United Kingdom the information previously submitted by the applicants.