Request for a preliminary ruling from the Tribunal de grande instance de Perpignan (France) lodged on 14 December 2015 — Procureur de la République v Noria Distribution SARL

(Case C-672/15)

(2016/C 090/11)

Language of the case: French

Referring court

Tribunal de grande instance de Perpignan

Parties to the main proceedings

Prosecutor: Procureur de la République

Defendant: Noria Distribution SARL

Questions referred

1. Do Directive 2002/46/EC ([1]) and Community principles of free movement of goods and of mutual recognition preclude the laying down of national legislation such as the order of 9 May 2006 which refuses any mutual recognition procedure so far as concerns food supplements based on vitamins and minerals from another Member State by excluding the application of a streamlined procedure in respect of products lawfully marketed in another Member State that are based on nutrients [whose values exceed the limits set] by the order of 9 May 2006?

2. Does Directive 2002/46, in particular in Article 5, as well as the principles resulting from Community case-law on the provisions relating to the free movement of goods, permit the maximum daily doses of vitamins and minerals to be set in proportion to the recommended daily allowances by adopting a value equal to three times the recommended daily allowances for nutrients presenting the least risk, a value equal to the recommended daily allowances for nutrients presenting a risk of the upper safe level being exceeded and a value below the recommended daily allowances or even zero for nutrients involving the most risk?

3. Does Directive 2002/46, as well as the principles resulting from Community case-law on the provisions relating to the free movement of goods, permit the doses to be set [in the light of] solely national scientific opinions even though recent international scientific opinions [conclude in favour of] higher doses in identical conditions of use?

([1]) Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements (OJ 2002 L 183, p. 51).

Appeal brought on 16 December 2015 by Office for Harmonisation in the Internal Market (Trade Marks and Designs) against the judgment of the General Court (Fourth Chamber) delivered on 7 October 2015 in Case T-299/11: European Dynamics Luxembourg SA, Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE, European Dynamics Belgium SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-677/15 P)

(2016/C 090/12)

Language of the case: English

Parties

Appellant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: N. Bambara, agent, P. Wytinck, B. Hoorelbeke, lawyers)

Other parties to the proceedings: European Dynamics Luxembourg SA, Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE, European Dynamics Belgium SA

Form of order sought

The appellant claims that the Court should:

— In principal

— Annul the Contested Judgment of the General Court in so far as it holds that the award decision is vitiated by various instances of substantive unlawful conduct, including a breach of the principles of equal opportunities and transparency, manifest errors of assessment and several failures to state reasons (point 1 of the operative part of the Contested Judgment), and in so far as it orders the European Union to pay damages to European Dynamics Luxembourg for loss of opportunity to be awarded the framework contract (point 2 of the operative part of the Contested Judgment),

— reject the Application for annulment of the contested award decision and the request for damages as brought forward by the Applicant in first instance;

— Subsidiary order, annul the Contested Judgment of the General Court in so far as it holds that the award decision is vitiated by various instances of substantive unlawful conduct, including a breach of the principles of equal opportunities and transparency, manifest errors of assessment and several failures to state reasons, and in so far as it orders the European Union to pay damages to European Dynamics Luxembourg for loss of opportunity to be awarded the framework contract, and refer the case back to the General Court;

— Secondary subsidiary order, annul the Contested Judgment of the General Court in so far as it orders the European Union to pay damages to European Dynamics Luxembourg for loss of opportunity to be awarded the framework contract, and refer the case back to the General Court;

— Order the Applicants in first instance to pay the entire costs of the procedure.

Pleas in law and main arguments

1. The Appeal is based on four main grounds of appeal, notably that: 1) the General Court erred in law in the interpretation and application of the principles of equal opportunities and transparency and has violated its duty to state reasons as laid down in Article 36 of the Statute of the Court, 2) the General Court erred in law in the interpretation and application of the test regarding manifest errors of assessment, 3) the General Court erred in law in the application of Article 100 (2) of the General Financial Regulation ([1]) read in conjunction with the second paragraph of Article 296 TFEU, and 4) the General Court erred in law by the award for damages on the basis of the loss of opportunity.

2. In the First Ground of Appeal, the Appellant alleges that the General Court erred in law by not assessing and establishing whether the introduction of weighting criteria for the sub-criteria of the first technical award criteria which were not communicated to the tenderers before the submission of their tenders 1) altered the criteria for the award of the contract set out in the contract documents or the contract notice, 2) contained elements which, if they had been known at the time the tenders were prepared, could have affected that preparation, or 3) were adopted on the basis of matters likely to give rise to discrimination against one of the tenderers. In the second part of the first ground of appeal, the Appellant also demonstrates that the General Court has violated its duty to state reasons as imposed by Article 36 of the Statute of the Court of Justice as it does not provide any reason why it considers that the introduction of unannounced weighting factors for the sub-criteria used in the first award criterion had a detrimental effect on the chances of the applicants in first instance to be ranked in first or second place in the cascade for the disputed Call for Tenders.

3. In the Second Ground of Appeal, the Appellant submits that the General Court erred in law by not examining whether the established manifest errors of assessment made by the evaluation committee in the evaluation of European Dynamics' tender for the first and second award criterion could have had an impact on the final outcome of the contested award decision. The Appellant points out the General Court is required to examine whether the established manifest errors of assessment would lead to a different outcome for the award procedure on two accounts. First, the General Court has to examine whether, if those manifest errors of assessment had not been committed, the rejected tenderer would have obtained sufficient points to be ranked higher in the cascade. Second, the General Court needs to examine whether the established manifest errors have an effect on the score awarded for a given (sub-)criterion in case there are several other reasons (which are not vitiated by a manifest error of assessment) which equally support the scores awarded.

4. In the Third Ground of Appeal, the Appellant puts forward that the General Court erred in law by examining each and every comment made by the evaluation committee in isolation and not in there broader context, and as such applied a stricter test regarding the duty to state reasons as the one that follows from the settled case-law of the Court of Justice. In addition, the General Court erred in law by not examining whether the other reasons (which are not vitiated by a failure to state reasons) put forward by OHIM to justify the scores awarded for the first award criterion, could not still be sufficient to confirm the validity of the score awarded. For that reason the General Court erred in law in annulling the contested decision on the grounds of a violation of Article 100 (2) General Financial Regulation read in conjunction with Article 296 TFEU.

5. In the Fourth Ground of Appeal, the Appellant alleges that the General Court erred in law in awarding damages to the first applicant in first instance as one of the cumulative conditions for incurring non-contractual liability of EU institutions (i.e. the presence of unlawful conduct) has not been demonstrated. In subsidiary order, the Appellant submits that, even if the Application for annulment of OHIM would only succeed on its first ground of appeal, the contested judgment should still be annulled insofar as it imposes the obligation to pay damages as in that case the existence of a causal link between the remaining unlawful conduct (manifest error of assessment and failure to state reasons) and the alleged harm is not demonstrated. In more subsidiary order, the Appellant asks that the judgment should be annulled on the ground of a contradiction between the considerations of the contested judgment and the second indent of the operative part of the contested judgment. In most subsidiary order, the Appellant points out that, in any event, the operative part of the contested judgment contains a material error as it orders the European Union instead of OHIM to compensate European Dynamics Luxembourg for the loss of opportunity.

([1]) Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 OJ L 298, p. 1

Request for a preliminary ruling from the Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 23 December 2015 — Shiraz Baig Mirza v Bevándorlási és Állampolgársági Hivatal

(Case C-695/15)

(2016/C 090/13)

Language of the case: Hungarian

Referring court

Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Shiraz Baig Mirza

Defendant: Bevándorlási és Állampolgársági Hivatal

Questions referred

1. Should Article 3(3) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ([1]) ('the Dublin III Regulation') be interpreted as meaning that

   (a) Member States may exercise the right to send an applicant to a safe third country only before determining the Member State responsible or that they may also exercise that right after making that determination?

   (b) Is the answer to the preceding question different if the Member State establishes that it is the State responsible not at the time when the application is first lodged with its authorities in accordance with Article 7(2) of the Dublin III Regulation and Chapter III of that regulation but when it receives the applicant from another Member State following a transfer or take back request pursuant to Chapters V and VI of the Dublin III Regulation?