Pleas in law and main arguments

The action for annulment brought by the Commission concerns a Council decision, contained in the act of Coreper of 5 February 2020, endorsing the submission to the International Maritime Organization (IMO) concerning the introduction of life cycle guidelines to estimate well-to-tank greenhouse gas emissions of sustainable alternative fuels (the GHG submission), with a view to its transmission by the Presidency of the Council to the IMO on behalf of the Member States and the Commission.

The Commission relies, in support of its action, on two grounds.

The Commission considers first that the decision of the Council breaches the exclusive competence of the Union under Article 3(2) TFEU. Indeed, the Union has exclusive competence in the area addressed by the GHG submission within the meaning of Article 3(2) TFEU, because that area is covered to a large extent by the common rules applicable to intra-EU situations within the meaning of the consistent case-law of the Court of Justice.

The Commission considers secondly that the decision of the Council breaches the institutional prerogatives of the Commission under Article 17(1) TEU, because only the Commission is entitled to act on behalf of the Union and to ensure the Union's external representation.

(1) Council document ST 6287/20 of 24 February 2020.

Action brought on 23 April 2020 — European Commission v Portuguese Republic

(Case C-169/20)

(2020/C 209/26)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: M. França and C. Perrin, Agents)

Defendant: Portuguese Republic

Form of order sought

The applicant claims that the Court should:

— declare that, in not applying depreciation to the environmental component when calculating the value applicable to used vehicles imported into Portuguese territory, purchased in other Member States, in the calculation of registration tax, the Portuguese Republic has failed to fulfil its obligations under Article 110 of the Treaty on the Functioning of the European Union;

— order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The Portuguese legislation at issue provides for discrimination between the taxation of imported vehicles and the taxation imposed on similar national vehicles. The detailed rules and method of calculation in force almost always result in imported vehicles being taxed more heavily.

That situation is all the more worrying, since it is contrary to the settled case-law of the Court of Justice: the Portuguese legislation on the calculation of the tax applicable to used vehicles purchased in other Member States has already been the subject of previous infringement proceedings and various judgments of the Court of Justice.

The Portuguese legislation does not ensure that the used vehicles imported from other Member States are taxed in an amount not exceeding the tax reflected in similar used national vehicles. This may be explained by the fact that, as a result of the amendment of the legislation in 2016, depreciation is not applied to the environmental component used to calculate the value of a used vehicle.

Accordingly, the depreciation table enacted by the national legislation does not result in a reasonable approximation of the actual value of the used imported vehicle. Consequently, the amount paid to register a used imported vehicle exceeds the amount for a similar used vehicle already registered in Portugal, which constitutes an infringement of Article 110 TFEU and the case-law of the Court of Justice.

Action brought on 24 April 2020 — European Commission v Council of the European Union

(Case C-180/20)

(2020/C 209/27)

Language of the case: English

Parties

Applicant: European Commission (represented by: M. Kellerbauer, T. Ramopoulos, Agents)

Defendant: Council of the European Union

The applicant claims that the Court should:

— annul Council Decision (EU) 2020/245 ([1]) of 17 February 2020 on the position to be taken on behalf of the European Union within the Partnership Council established by the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part ('CEPA'), as regards the adoption of the Rules of Procedure of the Partnership Council and those of the Partnership Committee, subcommittees and other bodies set up by the Partnership Council, and the establishment of the list of Sub-Committees, for the application of that Agreement with the exception of Title II thereof ('Council Decision 2020/245') and Council Decision (EU) 2020/246 ([2]) of 17 February 2020 on the position to be taken on behalf of the European Union within the Partnership Council established by the CEPA, as regards the adoption of the Rules of Procedure of the Partnership Council and those of the Partnership Committee, subcommittees and other bodies set up by the Partnership Council, and the establishment of the list of Sub-Committees, for the application of Title II of that Agreement ('Council Decision 2020/246');

— order the Council of the European Union to pay the costs.

Pleas in law and main arguments

The Commission argues that i) excluding Title II CEPA from the scope of Council Decision 2020/245; (ii) adopting a separate Council Decision 2020/246 concerning solely Title II CEPA, which is based on the substantive legal basis of Article 37 TEU; and (iii) adding the second subparagraph of Article 218(8) TFEU, which provides that the Council shall act unanimously when the agreement covers a field for which unanimity is required, violates the Treaty as interpreted in the case law of the Court.

This plea is substantiated by the following arguments:

First, according to established case-law of the Court, the substantive legal basis for the Council Decision based on Article 218(9) TFEU on the position to be taken on behalf of the Union within the bodies established by an agreement needs to be determined in accordance with the centre of gravity of the agreement as a whole. CEPA is predominantly concerned with trade and development cooperation as well as trade in transport services whilst the links between the CEPA and the CFSP are not sufficiently significant to warrant a substantive CFSP legal basis regarding the Agreement as a whole. Accordingly, the Council was wrong to include Article 37 TEU in the legal basis of Decision 2020/246 and that Decision was incorrectly adopted under the voting rule requiring unanimity.