Parties to the main proceedings

Applicant: Jednostka Innowacyjno-Wdrożeniowa Petrol S.C. Paczuski Maciej i Puławski Ryszard

Defendant: Minister Finansów

By order of 5 February 2015, the Court held that the second subparagraph of Article 2(3) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity ([1]) must be construed as precluding national provisions, such as those in issue in the main proceedings, which impose excise duty on additives coming under heading 3811 of the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1031/2008 of 19 September 2008, at a rate which differs from that applied to the fuel to which they are added.

The second subparagraph of Article 2(3) of Directive 2003/96 must be interpreted as meaning that it may be relied on by an individual as against the competent national authority in the context of proceedings before a national court which seek to have set aside the application of national legal rules which are at variance with that provision.

([1]) OJ 2003 L 283, p. 51.

Request for a preliminary ruling made by the Sąd Rejonowy w Rzeszowie (Poland), lodged on 10 June 2014 — Przedsiębiorstwo Produkcyjno-Handlowo-Usługowe 'Stylinart' sp. z o.o. v Skarb Państwa — Wojewoda Podkarpacki, Skarb Państwa — Prezydent Miasta Przemyśla

(Case C-282/14)

(2015/C 171/10)

Language of the case: Polish

Referring court

Sąd Rejonowy w Rzeszowie

Parties to the main proceedings

Applicant: Przedsiębiorstwo Produkcyjno-Handlowo-Usługowe 'Stylinart' sp. z o.o.

Defendant: Skarb Państwa — Wojewoda Podkarpacki, Skarb Państwa — Prezydent Miasta Przemyśla

By order of 11 December 2014, the Court of Justice of the EU ruled that it manifestly lacked jurisdiction to reply to the question referred by the Sąd Rejonowy w Rzeszowie.

Appeal brought on 12 January 2015 by Ledra Advertising Ltd against the order of the General Court (First Chamber) delivered on 10 November 2014 in Case T-289/13: Ledra Advertising Ltd v Commission and European Central Bank

(Case C-8/15 P)

(2015/C 171/11)

Language of the case: English

Parties

Appellant: Ledra Advertising Ltd (represented by: C. Paschalides, Solicitor, A. Paschalides, dikigoros and A. Riza QC)

Other parties to the proceedings: European Commission and European Central Bank

Form of order sought

The appellant claims that the Court should:

— allow the appeal and dismiss the applications of the Defendants and order them to bear the costs, both before this Court and before the General Court and for the case to proceed to trial on the substantive issues.

Pleas in law and main arguments

1. The General Court infringed EU law in its appraisal of a number of propositions in its judgment as follows.

a) That the 'duties conferred on the Commission… within the ESM Treaty do not entail any power to make decisions of their own and …that the activities of those two institutions within the ESM Treaty solely commit the ESM ([1]),' was relied on by the General Court without appraising at all the impact of the proposition of law it accepted *arguendo* at paragraph 48, that the Commission 'had not surrendered effective control of its overarching decision making role under Article 136(3) [TFEU] pursuant to its powers under Article 17 [TEU] to act as the EU institution responsible for ensuring that acts concluded under the ESM Treaty were in conformity with EU law.'

b) It is submitted that the case of *Pringle* ([2])upon which the General Court relied ([3]), decides that whereas the Commission and the ECB solely commit the ESM ([4]), nevertheless at *inter alia* ([5]) paragraph 164 of that case the court observed that the 'tasks allocated to the Commission by the ESM Treaty enable it, as provided in 13(3) and 13(4) of that treaty, to ensure that the memoranda of understanding concluded by the ESM are consistent with EU law' and at paragraph 174 that 'under Article 13(3) of the ESM Treaty the MoU which is to be negotiated with the Member State requesting stability support must be fully consistent with EU law.'

c) 'A claim for compensation that is directed against the EU and is based on the mere illegality of an act or course of conduct that has not been adopted by an institution of the EU or by its servants must be rejected as inadmissible ([6]),' was applied without an appraisal of the submission in the Appellant's reply which was that ... the ECB must have been acting as an EU institution since the ESM could not lawfully exercise effective control of the coercive power under EU law to allow and/or make and/or act in furtherance of the unless-demand. The said coercive power is vested exclusively in the ECB '... effective control of which could not be surrendered under EU law.'

d) 'The conduct allegedly giving rise to the damage pleaded is a failure by the Commission to act when signing the MoU. However, the MoU was signed after the reduction in the value of the applicant's deposit... That reduction actually occurred on the entry into force of the measures of 29 March 2013. Therefore the applicant cannot be regarded as having established with necessary certainty that the damage it claims to have suffered was actually caused by the inaction alleged against the Commission' ([7]). This proposition ignores the way the applicant put his case referred to at paragraph 41 of the judgment viz. 'that it is in respect of the conditions attached to FAF provided to [the Republic of Cyprus] on 26 April 2013 and the process by which they were required by the Commission and the ECB that caused the applicant damage for which it seeks compensation pursuant to Articles 268 and 340 TFEU.' The process by which they were required included the failure by the Commission to ensure that the conditionality was in conformity with EU law and the unless-demand made by the ECB to cut the supply of euro to Cyprus off which were continuing acts/failures to act beginning on 15 March 2013 and ending with compliance with the conditionality on 29 March 2013.

e) The contents of the MoU were challenged on the basis that they referred back to prior compliance with a conditionality that *ex hypothesi* arose prior to the diminution in the value of the applicant's deposit, which the General Court failed to appraise as an integral part of a course of conduct.

f) 'In cases where the conduct allegedly giving rise to the damage pleaded consists in refraining from taking action, it is particularly necessary to be certain that the damage was actually caused by the inaction complained of and could not have been caused by conduct separate from that alleged against the defendant institution': *Portela v Commission* ([8]). In other words 'even if' ([9]) the Commission acted in accordance with its duty to ensure the conditions were consistent with EU law it would have made no difference 'as the MoU was signed after the reduction in value of the applicant's deposit at BoC ([10]).' Again the General Court failed to appraise the arguments relied on by the Appellant: see *inter alia* (d) and (e) above.

g) Further and alternatively the General Court was wrong in point of fact to hold that the MoU was signed after the diminution deposits in all cases. In the case of BoC the final diminution in value did not occur until after the MoU was signed on 26 April 2013 viz. at the end of June 2013.

2. If the ECJ accepts that the defendants were in law capable of acting as institutions of the EU it follows that the General Court's decision in respect of the second head of claim [for annulment] referred to at paragraphs 55 to 60 of the judgment would fall away *afortiori*.

([1]) At paragraph 45 of its judgment.
([2]) Case C-370/12 [2012].
([3]) Paragraph 45 of judgment.
([4]) Paragraph 45 of judgment dated 10 November 2014.
([5]) See also 112 and 163.
([6]) Paragraph 43 of the judgment and case C-520/12 P.
([7]) Paragraph 54 of judgment.
([8]) Case T-137/07 at paragraph 80.
([9]) Case T-7/96 Perillo v Commission.
([10]) Paragraph 54 of judgment.

Appeal brought on 12 January 2015 by Andreas Eleftheriou, Eleni Eleftheriou and Lilia Papachristofi against the order of the General Court (First Chamber) delivered on 10 November 2014 in Case T-291/13: Andreas Eleftheriou, Eleni Eleftheriou and Lilia Papachristofi v European Commission and European Central Bank

(Case C-9/15 P)

(2015/C 171/12)

Language of the case: English

Parties

Appellants: Andreas Eleftheriou, Eleni Eleftheriou and Lilia Papachristofi (represented by: C. Paschalides, Solicitor, A. Paschalides, dikigoros and A. Riza QC)

Other parties to the proceedings: European Commission and European Central Bank

Form of order sought

The appellant claims that the Court should:

— allow the appeal and dismiss the applications of the Defendants and order them to bear the costs, both before this Court and before the General Court and for the case to proceed to trial on the substantive issues.

Pleas in law and main arguments

1. The General Court infringed EU law in its appraisal of a number of propositions in its judgment as follows.