

4. **Fourth plea-in-law.** The Court failed to exercise a full review of the rejection of the applicability of Article 101(3) TFEU by the Commission.
5. **Fifth plea-in-law.** The Court erred in law by applying its powers of judicial review *ultra vires* in establishing a new infringement of Article 101(1) TFEU that was not formulated in the Decision and substituting its own findings for those of the Commission.
6. **Sixth plea-in-law.** The Court failed to identify clear, precise and consistent evidence to support a finding that Generics (UK) committed the alleged infringement intentionally or negligently as required pursuant to Article 23(2) of Council Regulation (EC) No 1/2003 <sup>(1)</sup> of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

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<sup>(1)</sup> OJ 2003, L 1, p. 1.

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**Action brought on 21 November 2016 — European Commission v Hellenic Republic**

**(Case C-590/16)**

(2017/C 030/29)

*Language of the case: Greek*

**Parties**

*Applicant:* European Commission (represented by: Flavia Tomat and Aikaterini Kyratsou, acting as Agents)

*Defendant:* Hellenic Republic

**Form of order sought**

- declare that, as provided for in Article 258 of the Treaty on the Functioning of the European Union, by enacting and retaining in force legislation which permits petroleum products to be made available without excise duty being charged by the filling stations of the company Katastimata Aforologiton Eidon A.E. at the border posts located at Kipoi in Evros, at Kakavia and at Evzonoi, all of which are in areas bordering on third countries, specifically Turkey, Albania and the Former Yugoslav Republic of Macedonia respectively, the Hellenic Republic has failed to fulfil its obligations under Article 7(1) of Directive 2008/118/EC; <sup>(1)</sup>
- order the Hellenic Republic to pay the costs.

**Pleas in law and main arguments**

1. According to the reasoned opinion of 1 September 2014 which the Commission sent to the Greek authorities, by its approval of the fact that the filling stations held by the company Katastimata Aforologiton Eidon A.E. at the border posts located at Kipoi in Evros, at Kakavia and at Evzonoi make petroleum products available on which excise duty is not charged, Greece has failed to fulfil its obligations under Directive 2008/118 concerning the general arrangements for excise duty, as Greece does not consider that making those products available constitutes actual release for consumption. The direct supply of vehicles with fuel at those filling stations constitutes release for consumption and is subject to excise duty.
2. The deviations from the basic rule that duty is due in the Member State where consumption occurs are expressly laid down by the EU legislature. The application, when petroleum products subject to excise duty are made available, of simplified procedures for export to a third country is contrary to Directive 2008/118, since it does not fall within the scope of any of the relevant provisions of the directive.

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<sup>(1)</sup> OJ 2009 L 9, p. 12.