

Other parties to the proceedings: Kendrion NV, European Commission

Form of order sought

The appellant submits that the Court of Justice should:

- annul point 1 of the operative part of the judgment under appeal;
- reject Kendrion's claim at first instance for compensation in respect of the material damage allegedly suffered or, in the furthest alternative, reduce that claim for compensation to EUR 175 709,87;
- order Kendrion to pay the costs.

Grounds of appeal and main arguments

In support of its appeal, the appellant puts forward three grounds.

The first ground alleges an error of law in the interpretation of the concept of a causal link, in so far the General Court found that the failure to adjudicate within a reasonable period was the decisive cause of the alleged material damage consisting in the payment of bank guarantee charges, whereas an undertaking's own choice not to pay the fine during the course of the proceedings before the EU Courts is, according to settled case-law, the decisive cause of the payment of such charges.

The second ground alleges an error of law in the interpretation of the concept of damage, in so far as the General Court refused to apply to the alleged material damage — relating to the payment of the charges for bank guarantees — the same condition as that which it had formulated for the alleged damage in relation to the payment of interest on the amount of the fine, namely that the applicant at first instance had to show that the financial burden linked to that latter payment was greater than the benefit which it might have derived from not paying the fine.

The third ground alleges an error in law in the determination of the period in which the alleged damage occurred and an inadequate statement of reasons, in so far as the General Court, without setting out reasons for so finding, found that the period in which the material damage consisting in the payment of bank guarantee charges occurred could have differed from the period in which the General Court had situated the unlawful conduct that had allegedly resulted in that damage.

Reference for a preliminary ruling from the High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court) (United Kingdom) made on 24 March 2017 — Swedish Match AB v Secretary of State for Health

(Case C-151/17)

(2017/C 161/19)

Language of the case: English

Referring court

High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court)

Parties to the main proceedings

Applicant: Swedish Match AB

Defendant: Secretary of State for Health

Questions referred

Are Articles 1(c) and 17 of Directive 2014/40/EU ⁽¹⁾ invalid by reason of:

- i. breach of the EU general principle of non-discrimination;
- ii. breach of the EU general principle of proportionality;
- iii. breach of Article 5(3) TEU and the EU principle of subsidiarity;

- iv. breach of Article 296(2) of the Treaty of the Functioning of the European Union ("TFEU");
- v. breach of Articles 34 and 35 TFEU; and
- vi. breach of Articles 1, 7 and 35 of the EU Charter of Fundamental Rights.

⁽¹⁾ Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ 2014, L 127, p. 1).

Action brought on 4 April 2017 — European Commission v Portuguese Republic

(Case C-170/17)

(2017/C 161/20)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by N. Yerrell and P. Costa de Oliveira, acting as Agents)

Defendant: Portuguese Republic

Form of order sought

1. Declare that, by issuing special national driving licences for driving vehicles of the AM harmonized category, the Portuguese Republic failed to fulfil its obligations under Article 4(1) and (2) and Article 7(2)(a) of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences. ⁽¹⁾
2. Declare that, by failing to ensure that a person holds one driving licence only, the Portuguese Republic failed to fulfil its obligations under Article 7(5)(b) of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences.
3. Order Portuguese Republic to pay the costs.

Pleas in law and main arguments

As regards the obligations of the Portuguese Republic under Article 4(1) and (2) and Article 7(2)(a) and under Article 7(5)(b) of the Directive, the Commission considers that the Portuguese Republic has not taken the necessary measures before expiry of the period laid down in the reasoned opinion. Moreover, the Portuguese administration, by stating in its letter of 15 December 2016 that it will carry out future legislative amendments in this respect, itself acknowledges that it has not taken such measures.

⁽¹⁾ OJ 2006, L 403, p. 18.

Appeal brought on 5 April 2017 by the European Union, represented by the Court of Justice of the European Union, against the judgment of the General Court (Third Chamber, extended composition) delivered on 17 February 2017 in Case T-40/15, ASPLA and Armando Álvarez v European Union

(Case C-174/17 P)

(2017/C 161/21)

Language of the case: Spanish

Parties

Appellant: European Union, represented by the Court of Justice of the European Union (represented by: J. Inghelram, Á. M. Almendros Manzano and P. Giusta, acting as Agents)