

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 27 July 2017 in Case R 2089/2016-4

Form of order sought

The applicant claims that the Court should:

- Set aside the contested decision of the Fourth Board of Appeal of EUIPO of 27 July 2017, No R 2089/2016-4 *Eico v Maico*, and the opposition decision of 26 October 2016, No B 002528654, and amend them in such a way that the appeal and the opposition are upheld in their entirety;
- order EUIPO to pay the costs of the proceedings, including the costs incurred in the appeal proceedings.

Plea in law

- Infringement of Article 42 of Regulation No 207/2009, in conjunction with Article 8(1)(b) thereof.

Action brought on 26 September 2017 — Port autonome du Centre et de l'Ouest and Others v Commission

(Case T-673/17)

(2017/C 382/73)

Language of the case: French

Parties

Applicants: Port autonome du Centre et de l'Ouest SCRL (La Louvière, Belgium), Port autonome de Namur (Namur, Belgium), Port autonome de Charleroi (Charleroi, Belgium), Port autonome de Liège (Liège, Belgium) and Région wallonne (Jambes, Belgium) (represented by: J. Vanden Eynde, lawyer)

Defendant: European Commission

Form of order sought

- Declare this application admissible as regards each of the applicants and, in consequence, annul Commission Decision SA.38393 (2016CP, ex 2015/E) — Taxation of ports in Belgium (C(2017) 5174 final);
- Declare this action admissible and well-founded;
- Consequently, annul the decision of the European Commission to regard the fact that the economic activities of the Belgian ports, and in particular the Walloon ports, are not subject to corporate tax as State aid incompatible with the internal market;
- Order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely, in essence, on a single plea in law. In their opinion, from the outset the Commission disregarded Article 93 TFEU, which institutes specific rules for the transport sector and, accordingly, for ports, thus failing to take account of the intention of the European legislature.

The Commission's assessment is not justified either in fact or in law and runs counter to the text of Article 1 of the Belgian Income Code (CIR) and the prerogatives of the public authorities to define non-economic activities of general interest.

Nor is the Commission's position consistent with the Proposal for a Directive of 16 March 2011 (COM/2011/0121 final) on a Common Consolidated Corporate Tax Base (CCCTB) which provides, even for commercial companies, for an exemption from tax in respect of subsidies directly linked to the acquisition, construction or improvement of fixed assets.

Furthermore, by giving Belgium formal notice to amend its tax legislation, the Commission is seeking to bypass the taxation competence of the Member States, by imposing a tax harmonisation which is without its competence under Article 113 TFEU. It thus omits to take account of the Member States' prerogatives to define public service activities and the scope of direct taxation, the obligation to ensure the proper functioning of services of general interest ('SGIs') necessary to social and economic cohesion and the discretionary organisation of the organisation of SGIs. The European legislature devolved to the Member States the competence to exempt from taxation activities which they define at their absolute discretion to be public service activities.

The applicants are of the opinion that the essential activities of the internal Walloon ports are SGIs, which are not governed, in accordance with EU law, by the competition rules.

Finally, the European criteria for the definition of State aid are not satisfied in the present case, in particular as regards the criterion of selectiveness.

Action brought on 26 September 2017 — Le Port de Bruxelles et Région Bruxelles-Capitale v Commission

(Case T-674/17)

(2017/C 382/74)

Language of the case: French

Parties

Applicants: Le Port de Bruxelles (Brussels, Belgium), Région Bruxelles-Capitale (Brussels) (represented by: J. Vanden Eynde, lawyer)

Defendant: European Commission

Form of order sought

- Declare this application admissible as regards each of the applicants and, in consequence, annul Commission Decision SA.38393 (2016CP, ex 2015/E) — Taxation of ports in Belgium (C(2017) 5174 final);
- Declare this action admissible and well-founded;
- Consequently, annul the decision of the European Commission to regard the fact that the economic activities of the Belgian ports, and in particular the Walloon ports, are not subject to corporate tax as State aid incompatible with the internal market;
- Order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely, in essence, on a single plea in law which is substantially identical or similar to that raised in Case T-673/17, *Port autonome du Centre et de l'Ouest and Others v Commission*.
