

**Reference for a preliminary ruling from the Naczelny Sąd Administracyjny (Republic of Poland) lodged on 7 October 2008 — Elektrownia Pątnów II sp. z o.o. v Dyrektor Izby Skarbowej w Poznaniu**

(Case C-441/08)

(2008/C 327/25)

*Language of the case: Polish*

**Appeal brought on 8 October 2008 by Região autónoma dos Açores against the judgment of the Court of First Instance (Third Chamber) delivered on 1 July 2008 in Case T-37/04 Região Autónoma dos Açores v Council of the European Union**

(Case C-444/08 P)

(2008/C 327/26)

*Language of the case: English*

### Referring court

Naczelny Sąd Administracyjny

### Parties to the main proceedings

*Appellant:* Elektrownia Pątnów II sp. z o.o.

*Respondent:* Dyrektor Izby Skarbowej w Poznaniu

### Questions referred

In the light of Community law (in particular the provisions of Directive 69/335/EEC<sup>(1)</sup>), are tax authorities obliged when charging capital duty on an increase in capital to take into account transactions relating to the same component of capital which were liable to a capital duty before the date of Poland's accession to the European Union?

In particular, does the mechanism provided for in the second indent of Article 5(3) of Directive 69/335/EEC apply to situations in which the conversion of loans granted to a capital company that are referred to in Article 4(2)(c) of the directive takes place after accession, but those loans have, on the basis of the national legislation in force until the date of accession, previously been taxed in accordance with the principles set out in the Polish Law on civil law transactions tax?

<sup>(1)</sup> Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ English Special Edition 1969 (II), p. 412).

### Parties

*Appellant:* Região autónoma dos Açores (represented by: M. Renouf, Solicitor, C. Bryant, Solicitor, H. Mercer QC)

*Other parties to the proceedings:* Council of the European Union, Commission of the European Communities, Kingdom of Spain, Seas at Risk VZW, WWF — World Wide Fund for Nature, Stichting Greenpeace Council

### Form of order sought

The appellant claims that the Court should:

- Set aside the judgment of the Court of First Instance of 1 July 2008 in Case T-37/04;
- Declare the application in Case T-37/04 admissible;
- Annul Articles 3 and 11 and the Annex of Council Regulation 1954/2003<sup>(1)</sup> in so far as they: a) provide for the fishing effort under the Regulation to be determined by reference only to the target species and the ICES/CECAF area but not also by reference to the type of fishing gear used, whether fixed or towed; and b) exclude deep-sea species (i.e. those demersal species covered by Regulation No 2347/2002<sup>(2)</sup>) from the scope of Articles 3 and 11 of the Council Regulation 1954/2003.
- Annul Article 15 of Council Regulation 1954/2003 in so far as the repeal of Regulations 685/95<sup>(3)</sup> and 2027/95<sup>(4)</sup>: a) Removes (i) the power of the Community to determine fishing effort by reference not only to target species and ICES/CECAF area but also by reference to the type of fishing gear used, and (ii) the determination of the fishing effort, as effected by Regulation 2027/95; b) Removes (i) the power to determine a maximum annual fishing effort by area in respect of deep-sea species (i.e. those demersal species covered by Regulation No 2347/2002) and (ii) the determination of the maximum annual fishing effort, as effected by Regulation 2027/95; c) Removes the exclusion of access of Spanish vessels to the waters of the Azores for fishing of tuna or tuna-like species;