

By its fifth ground, the appellant contends that the Court of First Instance committed a number of errors of law and infringed its duty to state adequate grounds, in so far as it held that the Commission was justified in increasing the fine imposed on the appellant on the ground of repeated infringement, whereas there was no legal basis or any definitive finding in that regard capable of justifying such an increase. In so doing, the Court of First Instance also infringed the general principle that penalties must have a proper legal basis as well as the principles of legal certainty and the sound administration of justice.

Lastly, by its sixth and final ground, the appellant submits that the Court of First Instance erred in law by finding that the Commission was justified in increasing the starting amount of the fine by way of a deterrent, whereas it should have taken account of the final amount of that fine in order to determine whether it was appropriate to increase the fine on such a basis.

(¹) Council Regulation No 17 of 7 February 1962: First Regulation implementing Articles 85 and 86 of the Treaty (OJ English Special Edition 1959-1962, p. 87).

(²) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

(³) Commission Decision of 27 November 2002 in Case COMP/E-1/37.152 — Plasterboard (OJ 2005 L 166, p. 8).

Reference for a preliminary ruling from the Verwaltungsgericht Berlin (Germany) lodged on 23 September 2008 — Yasar Erdil v Land Berlin

(Case C-420/08)

(2008/C 327/20)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicant: Yasar Erdil

Defendant: Land Berlin

Question referred

Can a Turkish national whose legal status is derived from the second indent of the first paragraph of Article 7 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association between the European Economic Community and Turkey and who has lived in Germany since his birth in 1989 rely on the special protection

against expulsion under Article 28(3)(a) of Directive 2004/38/EC (¹) of 29 April 2004?

(¹) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77). (Corrigendum to Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 229, p. 35)).

Reference for a preliminary ruling from the Conseil d'Etat (Belgium) lodged on 26 September 2008 — Enviro Tech (Europe) LTD v Belgian State

(Case C-425/08)

(2008/C 327/21)

Language of the case: French

Referring court

Conseil d'Etat

Parties to the main proceedings

Applicant: Enviro Tech (Europe) Ltd

Defendant: Belgian State

Questions referred

Question 1:

— In so far as it classifies nPB as a highly flammable substance (R11) on the basis of a single test carried out at a temperature of – 10 °C, does Directive 2004/73/EC (¹) comply with Framework Directive 67/548/EEC (²), in particular with point A.9 of Annex V to that directive which lays down the methods for determining flash points?

— Does Directive 2004/73/EC comply with Framework Directive 67/548/EEC, in particular with point 4.2.3 of Annex VI to that directive, in so far as it classifies nPB as a category 2 substance which is toxic for reproduction (R60), first, without clear results in appropriate animal studies where toxic effects have been observed to provide a strong presumption that human exposure to the substance may result in developmental toxicity and, secondly, on the basis of tests in which toxicity was detected only in animals subjected to a concentration of 250 ppm, that is to say 11 times the maximum and 40 times the average of the concentration of nPB to which a person is exposed when handling the product?

- Does Directive 2004/73/EC comply with Framework Directive 67/548/EEC, in particular with Annexes V and VI thereto, in so far as it classifies nPB as highly flammable (R11) and as a category 2 substance which is toxic for reproduction (R60) on the basis of the precautionary principle without complying with the methods and criteria set out in Annexes V and VI to Directive 67/548/EEC?
- Does Directive 2004/73/EC comply with Framework Directive 67/548/EEC in so far as it classifies nPB as highly flammable (R11) and as a category 2 substance which is toxic for reproduction (R60) on the basis of tests which are different from those carried out on competing products, inter alia chlorinated halogens, and without regard to the principle of proportionality?

Question 2:

- If Directive 2004/73/EC does not comply with Directive 67/548/EEC, should the Kingdom of Belgium have refrained from transposing into national law the classification of nPB which stems from Directive 2004/73/EC or even rejected that classification, even though under Article 2 of Directive 2004/73/EC 'Members States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 October 2005 at the latest'?

(¹) Commission Directive 2004/73/EC of 29 April 2004 adapting to technical progress for the twenty-ninth time Council Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ 2004 L 152, p. 1).

(²) Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ, English Special Edition 1967, p. 234).

Reference for a preliminary ruling from VAT and Duties Tribunals, London (United Kingdom) made on 29 September 2008 — Terex Equipment Ltd v The Commissioners for Her Majesty's Revenue & Customs

(Case C-430/08)

(2008/C 327/22)

Language of the case: English

Referring court

VAT and Duties Tribunals, London (pursuant to a request from the Edinburgh Tribunal Centre)

Parties to the main proceedings

Applicant: Terex Equipment Ltd

Defendant: The Commissioners for Her Majesty's Revenue & Customs

Questions referred

1. Does the Code (¹), and in particular Article 78, permit revision of the declaration to correct the CPC and if so, are HMRC required to amend the declaration and to regularise the situation?
2. Were the goods in this case unlawfully removed from customs supervision within the meaning of Article 203(1) of the Code by reason of the operation of Article 865 IR (²)?
3. If so, was a customs debt on importation thereby incurred under Article 203 of the Code?
4. Even if there was no customs debt under Article 203 of the Code, has a customs debt arisen by virtue of Article 204 having regard to
 - (i) the findings on 'obvious negligence' and
 - (ii) the question whether HMRC failed to comply with Article 221(3) 45 of the Code by failing to communicate the Article 204 customs debt within the time limit
5. Given that:
 - (i) there can be no regularisation under Article 78 of the Code and
 - (ii) there was a customs debt and
 - (iii) there was a special situation as contemplated by Article 899 IR,
 was it open to the Tribunal to conclude that there was no obvious negligence present, so that the customs debt should be remitted under Article 239 of the Code?

(¹) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, p. 1).

(²) ² Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, p. 1).