In the context of the first plea, the appellant submits that the General Court held to be admissible the claim that the Commission had exceeded its powers, which claim was raised by the applicant only at the stage of the reply, contrary to Article 48(2) of the Rules of Procedure. Furthermore, in itself determining to which provisions of Community law the second head of claim related, the General Court exceeded the limits of its judicial review.

In the context of the second plea, the appellant submits that the General Court erred in law in its interpretation of the scope and manner of exercise of the rights conferred on the Commission by Article 9(3) of Directive 2003/87/EC. That plea is divided into two parts.

In the first part of this plea, the appellant argues that, by finding that the Commission was not entitled, in its examination of the notified National Allocation Plans II (NAP II) pursuant to the criteria set out in Annex III to Directive 2003/87/EC, to base itself on verified data on CO_2 resulting from one single source (Community Independent Transaction Log) (CITL) for all Member States for the same period (2005), and by finding that the Commission was not entitled to base its decision on GDP forecasts for the period 2005-2010 published in that same period for all Member States, the General Court misinterpreted Article 9(3) of Directive 2003/87/EC and infringed the principle of equal treatment.

In the context of the second part of that plea in law, the appellant submits that, by denying to the Commission the right to disregard data used by certain Member States when carrying out its appraisal of a NAP II, and by denying the Commission the right to refer, in its decision rejecting a NAP II adopted on the basis of Article 9(3) of Directive 2003/87/EC, to the upper limit of the total quantity of allowances which a Member State may allocate, the General Court misinterpreted Article 9(3) of Directive 2003/87/EC by reason of its failure to have regard for its objective and subject-matter.

In the view of the appellant, the prior NAP II appraisal on the basis of Article 9(3) of Directive 2003/87/EC is intended to make possible the achievement of its objective, that is to say, promoting a reduction in greenhouse gases in a manner which is cost-effective and economically viable and ensuring the correct functioning of the Community system of allowance trading. Inasmuch as the right to issue a decision rejecting a NAP II is limited in time, the manner in which the Commission exercises its monitoring rights on the basis of the first sentence of Article 9(3) of Directive 2003/87/EC has to be construed having regard for the purpose of the appraisal procedure in its entirety, that is to say, the assurance that only a NAP II which complies with the criteria in Annex III, in particular with those laid down in points 1 to 3 thereof, may become definitive and constitute the basis on which Member States may adopt their decisions on the total amounts of allowances for distribution.

In the context of the third plea, the appellant argues that, by holding that the Commission ought to have clarified, in the contested decision, why the data used in the Republic of Poland's NAP II were 'less reliable', the General Court failed to have regard for the entire reasoning contained in recital 5 in the preamble to the contested decision and, in any event, construed too widely the scope of the obligation to provide reasons laid down in Article 296 TFEU.

In the context of the fourth plea, the appellant submits that the General Court incorrectly applied the condition governing severability of the provisions of the contested decision when it stated that paragraphs 2 to 5 of Articles 1 and 2 thereof, referring to the incompatibility of the NAP II with criteria of Annex III to the Directive other than the criteria in paragraph 1 of each of those articles, were not severable from those articles. The General Court's erroneous analysis, it is submitted, led to the finding that the contested decision was invalid in its entirety.

([1]) OJ 2003 L 275, p. 32.

Reference for a preliminary ruling from the Collège d'autorisation et de contrôle du Conseil supérieur de l'audiovisuel (Belgium) lodged on 11 December 2009 — RTL Belgium SA (formerly TVI SA) v Conseil supérieur de l'audiovisuel

(Case C-517/09)

(2010/C 51/30)

Language of the case: French

Referring court

Collège d'autorisation et de contrôle du Conseil supérieur de l'audiovisuel

Parties to the main proceedings

Applicant: RTL Belgium SA (formerly TVI SA)

Defendant: Conseil supérieur de l'audiovisuel

Question referred

Can the notion of 'effective control both over the selection of the programmes and over their organisation' in Article 1(c) of the Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities ([1]) [as amended by Directive 2007/65/EC] (the Audiovisual Media Services Directive) be interpreted as meaning that a company established in a Member State and licensed by

the government of that Member State to provide an audiovisual media service does in fact exercise such control, even though it delegates, with an option to further delegate, to a third company established in another Member State, against payment of an indeterminate sum equal to the total advertising revenue generated by the broadcasting of that service, the actual production of all the programmes specific to that service, the communication to the public of programme scheduling information and the provision of financial and legal services, human resources, the management of infrastructure and other personnel-related services, and even though it is apparent that it is at the head offices of that third company that decisions are taken and implemented concerning the putting together of programmes and any deletions from or changes to the programming schedule in response to current events?

(1) Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities (OJ 1989 L 298 p. 23)

Action brought on 15 December 2009 — European Commission v Romania

(Case C-522/09)

(2010/C 51/31)

Language of the case: Romanian

Parties

Applicant: European Commission (represented by: D. Recchia and L. Bouyon, Agents)

Defendant: Romania

Form of order sought

— Declare that, by failing to designate to a sufficient degree, either in number or in size, as special protection areas the most suitable territories for the protection of the bird species listed in Annex I to Directive 79/409/EEC (1) and migratory species returning to its territory, Romania has failed to fulfil its obligations under Article 4(1) and (2) of the directive.

— order Romania to pay the costs.

Pleas in law and main arguments

Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, as amended, regulates the conservation of all species of wild birds occurring naturally occurring in the European territory of the Member States. The obligations under the directive have been applicable in Romania since the date of its accession (1 January 2007). Romania is therefore required, pursuant to Article 4(1) and (2) of the directive, to complete the designation of special protection areas within its territory.

Following its examination of the special protection areas designated by the Romanian authorities, the Commission reached the conclusion that Romania's designation of the most suitable territories as special protection areas was insufficient in both number and size.

In the present case, the areas designated by Romania as special protection areas were examined by reference to the Inventory of Important Bird Areas drawn up by BirdLife International and a similar survey carried out by the Societatea Ornitologică Română. The procedure for designating important bird areas in Romania ended in 2007 and concluded with the designation of 130 such areas.

Out of a total of 130 important bird areas, covering an area of 4 157 500 hectares, the Romanian authorities designated only 108 areas as special protection areas, covering an area of 2 998 700 hectares, only 38 of which were designated in their entirety as special protection areas.

Moreover, 21 important bird areas, covering an area of 341 013 hectares, have yet to be designated as special protection areas in Romania and the area covered by 71 designated special protection areas differs significantly from the area covered by bird protection areas.

In addition to the matters set out above, even though 71 important bird areas have not been registered in their entirety as special protection areas and 21 important bird areas were not included in the designation procedure, the Romanian authorities have failed to provide any inventory or any indication of the scientific methodology used which might justify such discrepancies between important bird areas and designated special protection areas.

As a result of that failure properly to designate and the partial designation of the relevant important bird areas, there are no measures for the protection of the species referred to in Annex I to Directive 79/409/EEC or migratory species and, accordingly, there is infringement of Article 4(1) and (2) of the directive.