

That is true, *inter alia*, of all the plans or projects which are not subject to an environmental permit in the Walloon Region.

⁽¹⁾ OJ 1992 L 206, p. 7.

Action brought on 21 December 2009 — European Commission v Federal Republic of Germany

(Case C-539/09)

(2010/C 51/39)

Language of the case: German

Parties

Applicant: European Commission (represented by: A. Caeiros and B. Conte, Agents)

Defendant: Federal Republic of Germany

Form of order sought

— Declare that, by refusing to permit the Court of Auditors to carry out audits in Germany concerning the administrative cooperation in the field of value added tax which is provided for under Regulation No 1798/2003 and the relevant implementing measures, the Federal Republic of Germany has failed to fulfil its obligations under Article 248(1), (2) and (3) EC, Article 140(2) and Article 142(1) of Regulation No 1605/2002, and Article 10 EC;

— Order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

The subject of the present action is the refusal of the German authorities to permit the Court of Auditors of the European Union to carry out audits in Germany concerning the administrative cooperation in the field of value added tax which is provided for under Regulation No 1798/2003 and the relevant implementing measures.

According to the Commission, the Federal Republic of Germany has thereby failed to fulfil its obligations under Article 248 EC and Regulation No 1605/2002, and also infringed its obligation to cooperate in good faith under Article 10 EC.

The Court of Auditors audit powers should be interpreted broadly: the role of the Court of Auditors is to audit EU finances and to propose improvements. In order to do so it must have the right to carry out comprehensive audits and checks relating to all sectors and actors concerned by EU revenue and expenditure. Such audits may also be carried out in the Member States, which must, under Article 248(3) EC,

Article 140(2) and Article 142(1) of Regulation No 1605/2002, and pursuant to the obligation to cooperate in good faith laid down in Article 10 EC, provide full support for the Court of Auditors activities. That also includes the obligation to permit all audits by the Court of Auditors which are designed to assess how EU financial resources were collected and used.

In the present case the German authorities refused to permit the Court of Auditors to do precisely that.

Regulation No 1798/2003 lays down rules and procedures for the lawful and correct assessment of Community revenue. The Regulation forms part of a web of various measures which are designed to ensure that the Member States have at their disposal the correct value added tax yield, and therefore the Community — in optimal circumstances — the own resources to which it is entitled, by means of combating fraudulent practices or preventing their very occurrence. From that perspective, the Commission regards it as necessary that, in order to be able to examine whether value added tax revenue has been lawfully and correctly assessed, the Court of Auditors should be able to check the implementation and application of Regulation No 1798/2003. That means that it should be able to examine whether Member States have established an efficient system of cooperation and assistance and whether they can implement it satisfactorily in practice or whether improvements are required.

The implementation in practice of the administrative cooperation provided for in Regulation No 1798/2003 has an impact on the own resources based on value added tax to be paid by the Member States. Effective cooperation in this sector prevents value added tax evasion and avoidance and therefore leads automatically to increased value added tax revenue and thus also to an increase in Community own resources based on value added tax. If a Member State does not however cooperate properly, it infringes not only its obligations under Regulation No 1798/2003, but also its obligation under the Directive on value added tax to take all legislative and administrative measures appropriate for ensuring collection of all value added tax due on its territory.

Reference for a preliminary ruling from the Regeringsrätten (Sweden) lodged on 21 December 2009 — Skandinaviska Enskilda Banken AB Momsgrupp v Skatteverket

(Case C-540/09)

(2010/C 51/40)

Language of the case: Swedish

Referring court

Regeringsrätten