

**Judgment of the Court (Grand Chamber) of 29 November 2011 (reference for a preliminary ruling from the *Gerechtshof te Amsterdam* — Netherlands) — *National Grid Indus BV v Inspecteur van de Belastingdienst Rijnmond/kantoor Rotterdam***

(Case C-371/10) <sup>(1)</sup>

*(Transfer of a company's place of effective management to a Member State other than that in which it is incorporated — Freedom of establishment — Article 49 TFEU — Taxation of unrealised capital gains relating to the assets of a company transferring its place of management between Member States — Determination of the amount of tax at the time of the transfer of the place of management — Immediate recovery of the tax — Proportionality)*

(2012/C 32/14)

Language of the case: Dutch

**Referring court**

Gerechtshof te Amsterdam

**Parties to the main proceedings**

Applicant: National Grid Indus BV

Defendant: Inspecteur van de Belastingdienst Rijnmond/kantoor Rotterdam

**Re:**

Reference for a preliminary ruling — Gerechtshof te Amsterdam — Interpretation of Article 43 EC (now Article 49 TFEU) — National tax legislation providing for immediate taxation on exit for companies transferring their place of management or assets to another Member State

**Operative part of the judgment**

1. A company incorporated under the law of a Member State which transfers its place of effective management to another Member State, without that transfer affecting its status of a company of the former Member State, may rely on Article 49 TFEU for the purpose of challenging the lawfulness of a tax imposed on it by the former Member State on the occasion of the transfer of the place of effective management.

2. Article 49 TFEU must be interpreted as:

- not precluding legislation of a Member State under which the amount of tax on unrealised capital gains relating to a company's assets is fixed definitively, without taking account of decreases or increases in value which may occur subsequently, at the time when the company, because of the transfer of its place of effective management to another Member State, ceases to obtain profits taxable in the former Member State; it makes no difference that the unrealised capital gains that are taxed relate to exchange rate gains which cannot be reflected in the host Member State under the tax system in force there;

- precluding legislation of a Member State which prescribes the immediate recovery of tax on unrealised capital gains relating to assets of a company transferring its place of effective management to another Member State at the very time of that transfer.

<sup>(1)</sup> OJ C 328, 4.12.2010.

**Judgment of the Court (Second Chamber) of 8 December 2011 — *Chalkor AE Epexergasias Metallon v European Commission***

(Case C-386/10 P) <sup>(1)</sup>

*(Appeal — Competition — Agreements, decisions and concerted practices — Market for copper plumbing tubes — Fines — Size of the market, duration of the infringement and cooperation capable of being taken into consideration — Effective judicial remedy)*

(2012/C 32/15)

Language of the case: English

**Parties**

Appellant: Chalkor AE Epexergasias Metallon (represented by: I. Forrester QC)

Other party to the proceedings: European Commission (represented by: E. Grippini Fournier and S. Noë, Agents, B. Doherty, Barrister)

**Re:**

Appeal against the judgment of the General Court (Eighth Chamber) of 19 May 2010 in Case T-21/05 *Chalkor v Commission* by which the Court reduced the fine imposed on the appellant by Commission Decision 2006/485/EC of 3 September 2004 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-1/38.069 — Copper Plumbing Tubes) (notified under document number C(2004) 2826), concerning a system for the allocation of production volume and market shares and the establishment of objectives and price increases in the European market for copper plumbing tubes

**Operative part of the judgment**

The Court:

1. Dismisses the appeal;
2. Orders Chalkor AE Epexergasias Metallon to pay the costs.

<sup>(1)</sup> OJ C 288, 23.10.2010.