

Finally, the Commission maintains that the Council committed a manifest error of assessment insofar it found that exceptional circumstances existed which justify the adoption of the approved measure. The Commission submits that, to the extent that any exceptional circumstances did exist, the contested decision approves aid which either is incapable of addressing those exceptional circumstances or goes beyond what would be needed to resolve them, in violation of the principle of proportionality.

⁽¹⁾ 2009/983/EU, OJ L 338, p. 93

⁽²⁾ OJ 2006 C 319, p. 1

Reference for a preliminary ruling from the Hof van Cassatie van België (Belgium), lodged on 1 March 2010 — Procureur-Generaal bij het Hof van Beroep te Antwerpen v Zaza Retail BV [Philippe and Cécile Noelmans, administrators in the winding-up of Zaza Retail BV (Belgium)]; voluntary intervener: Zaza Retail BV [Manon Cordewener, administrator in the winding-up of Zaza Retail BV (Netherlands)]

(Case C-112/10)

(2010/C 113/51)

Language of the case: Dutch

Referring court

Hof van Cassatie van België

Parties to the main proceedings

Appellant: Procureur-Generaal bij het Hof van Beroep te Antwerpen

Respondent: Zaza Retail BV
[Philippe and Cécile Noelmans, administrators in the winding-up of Zaza Retail BV (Belgium)]

Voluntary intervener: Zaza Retail BV
[Manon Cordewener, administrator in the winding-up of Zaza Retail BV (Netherlands)]

Questions referred

1. Does the term 'the conditions laid down' in Article 3(4)(a) of Council Regulation (EC) No 1346/2000 ⁽¹⁾ also cover

conditions relating to the capacity or the interest of a person — such as the public prosecution service of another Member State — to request the opening of insolvency proceedings, or do those conditions relate only to the substantive conditions for being made subject to such proceedings?

2. Can the term 'creditor' in Article 3(4)(b) of Regulation No 1346/2000 be interpreted broadly to mean that a national authority which, under the law of the Member State to which it belongs, has power to request the opening of insolvency proceedings and acts in the public interest and as the representative of all the creditors, may also, in the present case, validly request the opening of territorial insolvency proceedings pursuant to Article 3(4)(b) of that regulation?

3. If the term 'creditor' can also refer to a national authority with the power to request the opening of insolvency proceedings, does the application of Article 3(4)(b) of Regulation No 1346/2000 require that national authority to demonstrate that it is acting in the interests of creditors who themselves have their domicile, habitual residence or registered office in the country of that national authority?

⁽¹⁾ Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1).

Reference for a preliminary ruling from the Cour de Cassation du Grand-Duché de Luxembourg (Luxembourg) lodged on 3 March 2010 — Etat du Grand-Duché de Luxembourg, Administration de l'Enregistrement et des Domaines v Mr Pierre Feltgen (Administrator in the bankruptcy of the limited liability company BACINO CHARTER COMPANY S.A.), Bacino Charter Company S.A.

(Case C-116/10)

(2010/C 113/52)

Language of the case: French

Referring court

Cour de Cassation du Grand-Duché de Luxembourg

Parties to the main proceedings

Applicants: Etat du Grand-Duché de Luxembourg, Administration de l'Enregistrement et des Domaines

Defendants: Me Pierre Feltgen (Administrator in the bankruptcy of the limited liability company Bacino Charter Company S.A.), Bacino Charter Company S.A.

Question referred

May services provided by the owner of a vessel who, for reward, with a crew, makes it available for natural persons for the purpose of leisure travel on the high seas by those clients, be exempted under Article 15(5) of Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, ⁽¹⁾ where those services are considered to be both vessel hire services and transport services?

⁽¹⁾ OJ 1977, L 145, p. 1.

Action brought on 3 March 2010 — European Commission v Council of the European Union

(Case C-117/10)

(2010/C 113/53)

Language of the case: English

Parties

Applicant: European Commission (represented by: V. Di Bucci, L. Flynn, K. Walkerová, A. Stobiecka-Kuik, Agents)

Defendant: Council of the European Union

The applicant claims that the Court should:

— Annul Council Decision 2010/10/EC ⁽¹⁾ of 20 November 2009 on the granting of State aid by the authorities of the Republic of Poland for the purchase of agricultural land between 1 January 2010 and 31 December 2013.

— order Council of the European Union to pay the costs of the present proceedings.

Pleas in law and main arguments

The Council, by adopting the contested decision, has overturned the Commission's decision resulting from the proposal for appropriate measures in Point 196 of the 2007 Agricultural Guidelines and from its unconditional acceptance by Poland, obliging the latter to bring to an end an existing aid scheme for the purchase of agricultural land by 31 December 2009 at the latest. Under the guise of exceptional circumstances, the Council has in fact allowed Poland to maintain that scheme until the expiry of the 2007 Agricultural Guidelines on 31 December 2013. The circumstances put forward by the Council as the grounds for its decision are self evidently not exceptional circumstances of such a nature as to justify the decision taken and make no allowance for the Commission's decision on that scheme. In support of its action for annulment, the Commission will put forward four pleas in law:

- (a) In the first place, it considers that the Council was not competent to act under the third subparagraph of Article 88(2) EC because it did not decide on the Polish application within the three-month deadline fixed by the fourth subparagraph of that provision and because in any event the aid which it approved was existing aid which Poland had committed to eliminating by the end of 2009 when it accepted the appropriate measures proposed to it by the Commission.
- (b) Secondly, the Council has misused its powers, seeking to neutralise the determination that aid measures which Poland was free to retain until the end of 2009 but not after that date could be kept in place until 2013.
- (c) Next, in its third plea, the contested decision was adopted in breach of the principle of sincere cooperation which applies to Member States and also between institutions. By its decision, the Council has released Poland from its obligation of cooperation with the Commission in relation to the appropriate measures accepted by that Member State regarding existing aid for purchase of agricultural land in the context of the cooperation established by Article 88(1) EC.
- (d) By its final plea, the Commission will argue that the Council committed a manifest error of assessment insofar it found that exceptional circumstances existed which justify the adoption of the approved measure.

⁽¹⁾ OJ L 4, 8.1.2010, p. 89