

Operative part of the judgment

The Court:

1. Dismisses the appeal;
2. Orders *Evropaiki Dynamiki — Proigmena Systemata Tilepikoinonion Pliroforikis kai Tilematikis AE* to pay the costs.

(¹) OJ C 49, 18.2.2012.

Judgment of the Court (Fourth Chamber) of 4 October 2012 (reference for a preliminary ruling from the Conseil d'État — France) — ED & F Man Alcohols v Office national interprofessionnel des fruits, des légumes, des vins et de l'horticulture (Viniflor)

(Case C-669/11) (¹)

(Protection of the financial interests of the European Union — Regulation (EC, Euratom) No 2988/95 — Scope *ratione materiae* — Meaning of 'detriment to the financial interests of the European Union' — Individual invitation to tender for the export of vinous alcohol held by intervention agencies — Export of quantities of alcohol outside the European Union after the expiry of the prescribed time-limit — Retention of the performance guarantee — Administrative measures — Administrative penalties — Regulation (EC) No 360/95 — Regulation (EC) No 1623/2000 — Retroactive application of less severe penalty)

(2012/C 366/28)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: ED & F Man Alcohols Ltd

Defendant: Office national interprofessionnel des fruits, des légumes, des vins et de l'horticulture (Viniflor).

Re:

Reference for a preliminary ruling — Conseil d'État — Interpretation of Article 5(5) of Commission Regulation (EC) No 360/95 of 22 February 1995 opening individual sales by invitation to tender for the export of vinous alcohol held by intervention agencies (OJ 1995 L 41, p. 14), of Article 91(12) of Commission Regulation (EC) No 1623/2000 of 25 July 2000 laying down detailed rules for implementing Regulation (EC) No 1493/1999 on the common organisation of the market in

wine, with regard to market mechanisms (OJ 2000 L 194, p. 45), of Article 1 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1), and of the provisions of Commission Regulation (EEC) No 377/93 of 12 February 1993 laying down detailed rules for the disposal of alcohol obtained from the distillation operations referred to in Articles 35, 36 and 39 of Council Regulation (EEC) No 822/87 and held by intervention agencies (OJ 1993 L 43, p. 6) and of Commission Regulation (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the application of the system of securities for agricultural products (OJ 1985 L 205, p. 5) — Individual sales by invitation to tender for the export of vinous alcohol held by intervention agencies for the purpose of an end use as motor fuel — Time-limit for export exceeded by the successful tenderer — Administrative penalties or other measures — Failure likely to prejudice the budget of the European Union

Operative part of the judgment

1. The failure of an operator to comply with the time-limit for export imposed in respect of quantities of alcohol obtained in an invitation to tender procedure organised by the European Commission, as governed by Commission Regulation (EC) No 360/95 of 22 February 1995 opening individual sales by invitation to tender for the export of vinous alcohol held by intervention agencies, constitutes an 'irregularity' within the meaning of Article 1 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests.
2. The loss in whole or in part of a performance guarantee, such as that provided for in Article 5(5) of Regulation No 360/95, or of a security to ensure export within the time allowed, such as that provided for in Article 91(12) of Commission Regulation (EC) No 1623/2000 of 25 July 2000 laying down detailed rules for implementing Regulation (EC) No 1493/1999 on the common organisation of the market in wine, with regard to market mechanisms, is covered by the concept of 'administrative penalty' within the meaning of Article 5 of Regulation No 2988/95.
3. In circumstances such as those of the main proceedings, Article 5(5) of Regulation No 360/95 constitutes the necessary legal basis for the imposition of a penalty consisting of the loss in whole or in part of a performance guarantee.
4. In circumstances such as those of the main proceedings, Article 2(2) of Regulation No 2988/95 must be interpreted as meaning that, in order to penalise a failure to comply with the time-limit allowed for the export to Brazil of quantities of alcohol obtained by invitation to tender under the provisions of Regulation No 360/95, the national authorities must apply the penalty laid down in Article 5(5) of the latter regulation, and not that laid down in Article 91(12) of Regulation No 1623/2000.

(¹) OJ C 89, 24.3.2012.