

preclude a national rule which, in the case where the statutory nine-month period for compiling and disclosing annual accounts to the relevant court maintaining the commercial register is exceeded,

- without a prior opportunity to state views on the existence of an obligation to disclose and on any potential obstacles to doing so, in particular without prior examination as to whether those annual accounts have in fact already been submitted to the court which maintains the register in the judicial district of which the principal place of business is situated; and
- without a prior individual request to the company or the bodies authorised to represent it to comply with the disclosure obligation,

requires that the court maintaining the commercial register impose immediately a minimum fine of EUR 700 on the company and on each of the bodies authorised to represent it, in the absence of the provision of proof to the contrary and pursuant to the fiction that the company and its bodies were culpable in failing to effect disclosure; and which requires, in the event of further failure for periods of two months, the further and immediate imposition in each case of further minimum fines of EUR 700 on the company and on each of the bodies authorised to represent it, again in the absence of the provision of proof to the contrary and pursuant to the fiction that the company and its bodies were culpable in failing to effect disclosure?

⁽¹⁾ First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (OJ, English special edition 1968(I), p. 41).

⁽²⁾ Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (OJ 1978 L 222, p. 11; amended version at OJ 2006 L 224, p. 1).

⁽³⁾ Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts (OJ 1983 L 193, p. 1).

Reference for a preliminary ruling from the Finanzgericht Baden-Württemberg (Germany) lodged on 16 August 2011 — Katja Ettwein v Finanzamt Konstanz

(Case C-425/11)

(2011/C 331/12)

Language of the case: German

Referring court

Finanzgericht Baden-Württemberg

Parties to the main proceedings

Applicant: Katja Ettwein

Defendant: Finanzamt Konstanz

Question referred

Are the provisions of the Agreement of 21 June 1999 ⁽¹⁾ between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons (BGBl. II 2001, 810 et seq.), which was passed as a Law by the Bundestag on 2 September (BGBl. II 2001, 810) and entered into force on 1 June (‘the Agreement on free movement’), in particular Articles 1, 2, 11, 16 and 21 thereof and Articles 9, 13 and 15 of Annex I thereto, to be interpreted as precluding a rule under which spouses who live in Switzerland and are subject to taxation in the Federal Republic of Germany on their entire taxable income cannot be granted joint assessment, regard being had to the ‘splitting’ regime?

⁽¹⁾ Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons — Final Act — Joint Declarations — Information relating to the entry into force of the seven Agreements with the Swiss Confederation in the sectors free movement of persons, air and land transport, public procurement, scientific and technological cooperation, mutual recognition in relation to conformity assessment, and trade in agricultural products, OJ 2002 L 114, p. 6.

Appeal brought on 18 August 2011 by Gosselin Group NV, formerly Gosselin World Wide Moving NV, against the judgment delivered by the General Court (Eighth Chamber) on 16 June 2011 in Joined Cases T-208/08 and T-209/08 Gosselin Group NV and Stichting Administratiekantoor Portielje v European Commission

(Case C-429/11 P)

(2011/C 331/13)

Language of the case: Dutch

Parties

Appellant: Gosselin Group NV, formerly Gosselin World Wide Moving NV, (represented by: F. Wijckmans and H. Burez, advocaten)

Other parties to the proceedings: European Commission and Stichting Administratiekantoor Portielje

Form of order sought

- Principally, (i) set aside the judgment under appeal ⁽¹⁾ in so far as the General Court finds that the unlawful practices by their nature restrict competition and that there is no need to prove anti-competitive effects; and (ii) annul the Decision ⁽²⁾ (as amended and in so far as it relates to the appellant) since it contains no proof of the consequences in terms of competition law of the practices for which the appellant is held liable;

- in the alternative, (i) set aside the judgment under appeal in so far as the General Court finds that the Commission was entitled, exceptionally, to rely on the second alternative condition in paragraph 53 of the Guidelines on the effect on trade between States ⁽³⁾ without specifically determining the market within the meaning of paragraph 55 of those guidelines; and (ii) annul the Decision (as amended and in so far as it relates to the appellant) since the Commission did not demonstrate to the requisite legal standard that the practices appreciably affect trade between States;
 - in the further alternative, (i) set aside the judgment under appeal in so far as the General Court finds that the Commission was not obliged, either in the context of its assessment of the gravity of the infringement or in the context of mitigating circumstances, to take into account the fact that the appellant had not participated in the written price agreements or in the meetings; and (ii) annul the Decision (as amended and in so far as it relates to the appellant) on the same grounds;
 - in the further alternative, (i) set aside the judgment under appeal in so far as it applies a rate of 17 % of relevant sales without taking into account all 30 relevant circumstances, relying inter alia on a minimum threshold of 15 %; and (ii) annul the Decision (as amended and in so far as it relates to the appellant) on the same grounds;
 - in the further alternative, (i) set aside the judgment under appeal in so far as it finds that the appellant's participation between 31 January 1992 and 30 October 1993 is not time-barred; (ii) annul the Decision (as amended and in so far as it relates to the appellant) in so far as the fine imposed the appellant is calculated on the basis of the appellant's participation between 31 January 1992 and 30 October 1993; and (iii) reduce the fine accordingly;
 - order the European Commission to pay the costs in accordance with Article 69(2) of the Rules of Procedure.
- in its assessment of the mitigating circumstances in the context of the calculation of the fine, infringed the principle of the personal nature of liability and also the rule that the Commission must follow its own guidelines;
 - in the calculation of the basic amount of the fine, infringed the obligation to state reasons, the principle of the personal nature of liability and also the rule that the Commission must follow its own guidelines. Under the first limb, it is submitted that the General Court erred in its view that the Commission was entitled to rely on paragraph 23 of the Guidelines on setting fines. ⁽⁴⁾ Under the second limb it is submitted that the General Court erred in law in finding that there is a minimum rate of 15 % of the value of sales that is, by definition, the minimum starting point for a fine for serious restrictions of competition. Under the third limb, it is submitted that the General Court erred in law in finding that 17 % is equal or almost equal to 15 % and in concluding from that that all the relevant circumstances did not have to be taken into account;
 - infringed Article 25 of Regulation No 1/2003 ⁽⁵⁾ by ruling that the participation of Gosselin Group NV in the practices at issue in the period from 31 November 1992 to 30 October 1993 is not time-barred.

⁽¹⁾ Judgment of the General Court (Eighth Chamber) of 16 June 2011 in Joined Cases T-208/08 and T-209/08 *Gosselin Group NV and Stichting Administratiekantoor Portielje v European Commission* (the judgment under appeal).

⁽²⁾ Commission Decision C(2008) 926 final of 11 March 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/38.543 — International Removal Services) (the Decision).

⁽³⁾ Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty (OJ 2004 C 101, p. 81).

⁽⁴⁾ Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2).

⁽⁵⁾ Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

Pleas in law and main arguments

In support of its appeal, Gosselin Group NV submits that the General Court infringed European Union law, erring in law in its characterisation of the facts which it established (cover quotes and commissions) as price agreements and market-sharing practices, and that, at the very least, the judgment under appeal is vitiated by a lack of reasoning in that regard.

In the alternative, Gosselin Group NV submits that the General Court:

- in its assessment of the appreciable effects of the practices at issue on trade between Member States, infringed the rule that the Commission must follow its own guidelines;

Reference for a preliminary ruling from the Tribunalul Alba (Romania) lodged on 22 August 2011 — Corpul Național al Polițiștilor, acting on behalf of its members serving with the Alba Inspectorate of Police v Ministerul Administrației și Internelor (MAI), Inspectoratul General al Poliției Române (IGPR), Inspectoratul de Poliție al Județului Alba (IPJ)

(Case C-434/11)

(2011/C 331/14)

Language of the case: Romanian

Referring court

Tribunalul Alba