

5. Does the asylum seeker have a right, enforceable by him in the courts, to require a Member State to examine the assumption of responsibility under the first sentence of Article 3(2) of Council Regulation (EC) No 43/2003 and to inform him about the grounds for its decision?

(¹) Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 50, p. 1).

(²) Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 222, p. 3).

Action brought on 22 December 2011 — European Commission v Kingdom of Spain

(Case C-678/11)

(2012/C 73/35)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: W. Roels and F. Jimeno Fernández, Agents)

Defendant: Kingdom of Spain

Form of order sought

The applicant claims that the Court should:

— declare that the Kingdom of Spain has failed to meet its obligations under Article 56 TFEU (formerly Article 49 TEC) and Article 36 of the EEA Agreement by adopting and maintaining in force Article 46(c) of the consolidated version of the Ley de Regulación de los Planes y Fondos de Pensiones, Article 86 of Real Decreto Legislativo 6/2004 of 29 October 2004 approving the consolidated version of the Ley de ordenación y supervisión de los seguros privados, Article 10 of Real Decreto Legislativo 5/2004 approving the consolidated version of the Ley del Impuesto sobre la renta de los no residentes, and Article 47 of Ley 58/2003 (General Tributaria) of 17 December 2003, pursuant to which foreign pension funds based in other Member States and which offer occupational pension schemes in Spain, and insurance companies which operate in Spain under the freedom to provide services, inter alia, are required to designate a tax representative who is resident in Spain.

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

1. The Spanish tax law provisions referred to above require tax payers who are not resident in Spain to designate a tax

representative who is resident in Spain. In particular, that requirement is imposed on foreign pension funds based in other Member States and which offer occupational pension schemes in Spain, and insurance bodies which operate in Spain under the freedom to provide services.

2. The Commission considers that the requirement to designate a tax representative resident in Spain in the cases referred to constitutes an obstacle to the free movement of services in so far as it imposes an additional burden on the entities and physical persons mentioned, who are required to solicit the services of a representative. In addition, that requirement constitutes an obstacle to the free movement of services for persons resident, and undertakings established, in a Member State other than Spain wishing to provide tax representation services to entities or physical persons operating in Spain.

3. The provisions in question infringe Article 56 TFEU (formerly Article 49 TEC) and Article 36 of the EEA Agreement.

Appeal brought on 27 December 2011 by Alliance One International, Inc., formerly Dimon, Inc., against the judgment of the General Court (Fourth Chamber) delivered on 12 October 2011 in Case T-41/05: Alliance One International, Inc., formerly Dimon Inc., v European Commission

(Case C-679/11 P)

(2012/C 73/36)

Language of the case: English

Parties

Appellant: Alliance One International, Inc (formerly Dimon, Inc.) (represented by: M Odriozola, A Vide, Lawyers)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 12 October 2011 in Case T-41/05 insofar as it rejects the pleas in law alleging manifest error of assessment in the application of Article 101(1) TFEU and Article 23(2) Regulation 1/2003 (¹), failure to state sufficient reasons and breach of the principle of equal treatment for the finding that Alliance One International, Inc., formerly Dimon, Inc. was jointly and severally liable;

— annul the decision of the Commission of 20 October 2004 in Case COMP/C.38.238/B.2 — Raw Tobacco Spain insofar as it relates to the Appellant and reduce the fine imposed on the appellants accordingly; and

— order the Commission to pay the costs.