

Judgment of the Court (Second Chamber) of 3 September 2014 — European Commission v Kingdom of Spain

(Case C-127/12) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Free movement of capital — Articles 21 TFEU and 63 TFEU — EEA Agreement — Articles 28 and 40 — Taxation of inheritances and gifts — Distribution of powers of taxation — Discrimination as between residents and non-residents — Discrimination according to where the immovable property is situated — Burden of proof)

(2014/C 395/03)

Language of the case: Spanish

Parties

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

Defendant: Kingdom of Spain (represented by: A. Rubio González, Agent)

Operative part of the judgment

The Court:

- 1) declares that, by applying different tax treatment to donations and successions between beneficiaries and donees resident in Spain and those not resident in Spain, between bequeathers resident in Spain and those not resident in Spain, and between donations and similar transfers of immovable property situated within and outside of Spain, the Kingdom of Spain has failed to fulfil its obligations under Article 63 TFEU and Article 40 of the Agreement on the European Economic Area of 2 May 1992;
- 2) dismisses the action as to the remainder;
- 3) orders the Kingdom of Spain to pay the costs.

⁽¹⁾ OJ C 126, 28.4.2012.

Judgment of the Court (Second Chamber) of 4 September 2014 — European Commission v French Republic

(Case C-237/12) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Directive 91/676/EEC — Article 5(4) — Annex II.A, points 1 to 3 and 5 — Annex III.1, points 1 to 3, and Annex III.2 — Protection of waters against pollution caused by nitrates from agricultural sources — Periods for land application — Capacity of storage vessels for livestock manure — Limitation of land application — Prohibition on land application on steeply sloping ground or on snow-covered or frozen ground — Non-compliance of national legislation)

(2014/C 395/04)

Language of the case: French

Parties

Applicant: European Commission (represented by: E. Manhaeve, B. Simon and J. Hottiaux, acting as Agents)

Defendant: French Republic (represented by: G. de Bergues, S. Menez and D. Colas, acting as Agents)

Operative part of the judgment

The Court:

- 1) Declares that, by not adopting the measures necessary to ensure the full and correct implementation of all the requirements imposed on it by Article 5(4) of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution by nitrates from agricultural sources, read together with Annex II.A, points 1 to 3 and 5, Annex III.1, points 1 to 3, and Annex III.2, to that directive, the French Republic failed to fulfil its obligations under that directive, in so far as, in the national legislation adopted in order to ensure the implementation of that directive:

- there is no provision for periods of prohibition on land application of type I fertilisers in respect of autumn-planted arable crops and grasslands planted for more than six months;
- the period of prohibition on land application of type I fertilisers in respect of spring-planted arable crops is limited to the months of July and August;
- the prohibition on land application of type II fertilisers in respect of autumn-planted arable crops is restricted to the period from 1 November to 15 January and the prohibition of land application of type III fertilisers for those crops is not extended after 15 January;
- the period of prohibition on land application of type II fertilisers in respect of spring-planted arable crops is not extended after 15 January;
- there is provision for a period of prohibition on land application of type II fertilisers in respect of grasslands planted for more than six months only from 15 November and the prohibition on land application of type III fertilisers in respect of those grasslands and in mountain areas is not extended until the end of February;
- until 1 July 2016 it will still be possible for the calculation of storage capacities to take account of scheduled times for prohibition on land application which are not compatible with the requirements of the directive;
- the field storage of solid straw manure is permitted for a period lasting ten months;
- the national legislation does not ensure that farmers and the monitoring authorities are in a position to calculate correctly the quantity of nitrogen which may be applied to land in order to ensure balanced fertilisation;
- as regards dairy cows, the nitrogen discharge values are established on the basis of a quantity of excreted nitrogen which does not take into account different levels of milk production and on the basis of a volatilisation coefficient of 30 %;
- as regards other cattle, the nitrogen discharge values are established on the basis of a volatilisation coefficient of 30 %;
- as regards pigs, nitrogen discharge values for solid manure are not established;
- as regards poultry, the nitrogen discharge values are established on the basis of an incorrect volatilisation coefficient of 60 %;
- as regards sheep, the nitrogen discharge values are established on the basis of a volatilisation coefficient of 30 %;
- as regards goats, the nitrogen discharge values are established on the basis of a volatilisation coefficient of 30 %;
- as regards horses, the nitrogen discharge values are established on the basis of a volatilisation coefficient of 30 %;
- as regards rabbits, the nitrogen discharge values are established on the basis of a volatilisation coefficient of 60 %;
- the national legislation does not contain clear, precise and objective criteria, in accordance with the requirements of the principle of legal certainty, concerning the conditions for the land application of fertilisers on steeply sloping ground;
- the land application of type I and III fertilisers on frozen ground; the land application of type I fertilisers on snow-covered ground; the land application of fertilisers on ground which is only superficially frozen as a result of a 24-hour cycle of freezing and thaw, and the land application on frozen ground of solid straw manure and composts of livestock manure are permitted.

- 2) Dismisses the action as to the remainder.
- 3) Orders the French Republic to pay the costs.

(¹) OJ C 217, 21. 7. 2012.

Judgment of the Court (Second Chamber) of 4 September 2014 — YKK Corp., YKK Holding Europe BV, YKK Stocko Fasteners GmbH v European Commission

(Case C-408/12 P) (¹)

(Appeal — Agreements, decisions and concerted practices — Markets for zip fasteners and other fasteners and for attaching machines — Successive responsibilities — Legal upper limit of the fine — Article 23(2) of Regulation No 1/2003 — Concept of ‘undertaking’ — Personal responsibility — Principle of proportionality — Deterrence multiplier)

(2014/C 395/05)

Language of the case: English

Parties

Appellants: YKK Cor., YKK Holding Europe BV, YKK Stocko Fasteners GmbH (represented by: D. Arts, W. Devroe, E. Winter and F. Miotto, avocats)

Other party to the proceedings: European Commission (represented by: A. Bouquet and R. Sauer, acting as Agents)

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union in *YKK and Others v Commission* (EU:T:2012:322), as regards the application, for the purposes of determining the maximum amount of the fine, in the context of the cooperation in the Baseler-Wuppertaler and Amsterdamer circles on the market for metal and plastic fasteners and attaching machines, of a 10 % upper limit calculated on the basis of the YKK group turnover in the year preceding the adoption of Commission Decision C(2007) 4257 final of 19 September 2007 relating to a proceeding under Article [81 EC] (Case COMP/39.168 — PO/Hard haberdashery: fasteners), as regards the period of the infringement for which YKK Stocko Fasteners GmbH was held to be solely responsible;
2. Dismisses the appeal for the remainder;
3. Annuls Article 2(2) of Commission Decision C(2007) 4257 final in so far as it concerns the calculation of the fine for which YKK Stocko Fasteners GmbH was held to be solely liable in the framework of the cooperation in the Baseler-Wuppertaler and Amsterdamer circles;
4. Orders the fine imposed on YKK Stocko Fasteners GmbH for the infringement for which it is exclusively liable, in the framework of the cooperation in the Baseler-Wuppertaler and Amsterdamer circles, to be fixed at EUR 2 792 800;
5. Orders YKK Corporation, YKK Holding Europe BV and YKK Stocko Fasteners GmbH to bear their own costs and pay three quarters of the costs of the European Commission relating both to the proceedings at first instance and to the appeal proceedings;
6. Orders the European Commission to bear one quarter of its own costs relating both to the proceedings at first instance and to the appeal.

(¹) OJ C 343, 10.11.2012.