good time, i.e. within three years, that the levy was thus not possible, and that, consequently, the own resources could not be made available to the Commission.

(1) Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties (OJ 1985 L 302, p. 23).
(2) Council Decision 85/257/EEC of 7 May 1985 on the Communities' system of own resources (OJ 1985 L 128, p. 15).
(3) Commission Regulation (EEC) No 579/86 of 28 February 1986 laying down detailed rules relating to stocks of products in the sugar sector in Spain and Portugal on 1 March 1986 (OJ 1986 L 57, p. 21).
(4) Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties (OJ 1979 L 197, p. 1).
(5) Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources (OJ 1989 L 155, p. 1).
(6) Case C-30/00 *William Hinton & Sons* (2001) ECR I-7511.
(7) Commission Regulation (EEC) No 2670/81 of 14 September 1981 laying down detailed implementing rules in respect of sugar production in excess of the quota (OJ 1981 L 262, p. 14).
(8) Council Regulation (EEC) No 3771/85 of 20 December 1985 on stocks of agricultural products in Portugal (OJ 1985 L 362, p. 21).

Reference for a preliminary ruling from the Rechtbank van Koophandel te Gent (Belgium) lodged on 19 July 2012 — Euronics Belgium CVBA v Kamera Express BV & Kamera Express Belgium BVBA

(Case C-343/12)

(2012/C 303/28)

Language of the case: Dutch

Referring court

Rechtbank van Koophandel te Gent

Parties to the main proceedings

Applicant: Euronics Belgium CVBA

Defendants: Kamera Express BV

Kamera Express Belgium BVBA

Question referred

Is Article 101 of the (Belgian) Law on market practices and consumer protection (Wet betreffende marktpraktijken en consumentenbescherming), which, inter alia, is intended to protect the interests of consumers and is worded as follows:

'Article 101(1)All undertakings shall be prohibited from offering for sale or selling goods at a loss.

A sale at a loss shall mean any sale at a price which is not at least equal to the price at which the undertaking purchased the item or which the undertaking would have to pay to replenish its stock, after any discounts granted and definitively obtained. In order to determine whether a sale is a sale at a loss, no account shall be taken of discounts which, whether exclusive or non-exclusive, are granted in exchange for commitments entered into by the undertaking other than for the purchase of goods',

contrary to Directive 2005/29/EC (1) in so far as it prohibits sales at a loss, whereas Directive 2005/29/EC appears not to prohibit such sales practices and the Belgian Law may be stricter than the provisions of Directive 2005/29/EC and the prohibition under Article 4 of that directive?

(1) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (OJ 2005 L 149, p. 22).

Appeal brought on 24 July 2012 by Council of the European Union against the judgment of the General Court (Fifth Chamber) delivered on 4 May 2012 in Case T-529/09: Sophie in 't Veld v Council of the European Union

(Case C-350/12 P)

(2012/C 303/29)

Language of the case: English

Parties

Appellant: Council of the European Union (represented by: P. Berman, B. Driessen, Cs. Fekete, Agents)

Other parties to the proceedings: Sophie in 't Veld, European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the contested judgment of the General Court;

— give final judgment in the matters that are the subject of this appeal;

and

— order the Applicant in Case T-529/09 to pay the costs of the Council arising from that case and from the present appeal.

Pleas in law and main arguments

The present appeal concerns the interpretation of the exceptions relating to the protection of the public interest as regards international relations and to the protection of legal advice. These exceptions are set out respectively in an absolute exception to the right of public access in the third indent of Article 4(1)(a) and in a qualified exception to the right of public access in the second indent of Article 4(2) of the Regulation (1).

The Council submits that the General Court, in its interpretation of the said exceptions, made four mistakes.

First, the General Court errs in holding that a disagreement on the choice of a legal basis cannot undermine the EU's interests in international relations (**first limb of the first plea**). Disputes on Union competence and on the choice of the legal basis between the institutions are closely intertwined with conflicts on the substance of international agreements. Disputes on competence between the institutions may moreover impact on the negotiating position of the EU, adversely affect its credibility as a negotiating partner and jeopardise the outcome of the negotiations.

Secondly, the General Court applied the wrong standard of review and replaced the Council's assessment of the significance for international relations of the document concerned with its own (**second limb of the first plea**). In relation to the protection of the public interest in international relations, the standard of review if one that accords 'wide discretion' to the institution concerned rather than requiring the demonstration of 'actual and specific' harm. The General Court erred in law in carrying out a full review of the Council's reasons by applying the 'actual and specific' harm requirement, thereby replacing the Council's assessment of the foreign policy consequences of the public release of the document with its own assessment.

Thirdly, the General Court erred in law by failing to consider both the sensitive content of the requested legal opinion and the specific circumstances prevailing at the time that access was sought (**first limb of the second plea**). The matter dealt with in the legal opinion relates to sensitive international negotiations which were still on-going at the time of the access request, where essential and vital interests in the area of transatlantic cooperation on the prevention and combating of terrorism and terrorist financing were at stake and where the issue of the choice of the legal basis addressed in the legal opinion was the subject of disagreement between the institutions. The General Court overlooked these specific characteristics of the legal advice.

Last, the General Court erroneously assimilated the negotiation and conclusion of an international agreement with the institutions' legislative activities for the purposes of applying the overriding public interest test (**second limb of the second plea**). By doing so, the General Court overlooked important differences between the negotiation of international agreements, where public participation is necessarily restricted in view of the strategic and tactical interests at stake, and the conclusion and transposition of such agreements.

(1) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents OJ L 145, p. 43

Reference for a preliminary ruling from the Audiencia Provincial de Barcelona (Spain), lodged on 1 August 2012 — Miguel Fradera Torredemer and Others v Corporación Uniland, S.A.

(Case C-364/12)

(2012/C 303/30)

Language of the case: Spanish

Referring court

Audiencia Provincial de Barcelona

Parties to the main proceedings

Appellants: Miguel Fradera Torredemer, Maria Teresa Torredemer Marcet, Enrique Fradera Ohlsen and Alicia Fradera Torredemer

Respondent: Corporación Uniland, S.A.

Questions referred

1. Are Article 101 TFEU (formerly Article 81 of the EC Treaty, read in conjunction with Article 10) and Article 4(3) TEU compatible with rules such as those laid down in the regulation on the tariff applying to *procuradores*, namely: Royal Decree 1373/2003 of 7 November 2003, which provides that their remuneration is subject to a minimum tariff or scale, which can be varied, upwards or downwards, only by 12 % and when it is not really possible for the authorities of the Member State, including the courts, to depart from the minimum levels laid down in the statutory scale if exceptional circumstances arise?

2. For the purpose of applying the tariff without applying the minimum levels laid down therein: may the fact that the amount of fees payable under the scale or tariff is disproportionate to the work actually done be regarded as exceptional circumstances?

3. Is Article 56 TFEU (formerly Article 49) compatible with the regulation on the tariff applying to *procuradores*, namely: Royal Decree 1373/2003 of 7 November 2003?

4. Do these rules meet the requirements of necessity and proportionality referred to in Article 15(3) of Directive 2006/123/EC? (1)

5. Does Article 6 of the European Convention on Human Rights, enshrining the right to a fair trial, include the right to defend oneself properly in a situation in which the figure at which the fees of a *procurador* are set is disproportionately high and does not correspond to the work actually carried out?