Pleas in law and main arguments

1. It is submitted that the General Court erred in law in finding that the Commission had acted in breach of ENI's rights of defence, applying an increase for repeated infringement to the fine imposed jointly and severally on ENI and Versalis for two past infringements committed by companies wholly owned — or almost wholly owned — by ENI, even though the two decisions establishing those infringements had not been addressed to ENI (which therefore had not received a statement of objections in relation to those infringements). Specifically, it is submitted that the General Court disregarded the fact that, with reference to the imputation of repeated infringement, the rights of the defence are guaranteed if, at the time when the Commission declares its intention of imputing repeated infringement, it gives the parties an opportunity to demonstrate that the relevant conditions have not been satisfied. It is also argued that the General Court failed to consider that, by imputing repeated infringement in the case of a subsequent infringement of the competition rules, the Commission is not retroactively penalising the first infringement, but simply drawing the proper inferences from the fact that the same undertaking (economic entity) has committed a new infringement.

2. It is submitted that the General Court exceeded its jurisdiction and acted inconsistently with the principle that the action is confined to the subject-matter as delimited in the application, as reflected in Article 21 of the Statute of the Court and Articles 44(1) and 48(2) of the Rules of Procedure of the General Court, by examining a question of law (relating to the alleged breach of the principle of equal treatment in the calculation of the fine) which had not been raised in the application initiating proceedings.

3. It is submitted that the General Court erred in law in the interpretation and application of the principle of equal treatment with regard to the 'multiplier' for deterrence purposes and proceeded on the basis of false reasoning. Specifically, it is argued that the General Court disregarded the discretion enjoyed by the Commission in the determination of fines in the light of the relevant circumstances, forcing it to carry out a purely mathematical calculation in order to establish the multiplier to be applied to ENI and Versalis. In addition, it is argued that the General Court wrongly requested the Commission to ensure that the percentage increase in the fine for deterrence purposes was in direct proportion to the respective turnovers of the undertakings, rather than that the multipliers, or the fines resulting from application of the multipliers (the multiplied fines), was in direct proportion to the undertakings' worldwide turnover.

Action brought on 27 February 2013 — European Commission v Federal Republic of Germany

(Case C-100/13)

(2013/C 114/45)

Language of the case: German

Parties

Applicant: European Commission (represented by: G. Wilms and G. Zavvos, acting as Agents)

Defendant: Federal Republic of Germany

Form of order sought

The European Commission claims that the Court should:

— declare that, in so far as the German authorities use the construction products lists to demand additional approvals for effective market access and the use of construction products, instead of incorporating the required assessment methods and criteria within the framework of the harmonised European standards, the defendant has failed to fulfil its obligations under Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products, [1] and, in particular, under Article 4(2) and Article 6(1) thereof;

— order the defendant to pay the costs.

Pleas in law and main arguments

The defendant has failed to fulfil its obligations under Articles 4 and 6 of Directive 89/106/EEC. The use of construction products lists has the result that additional, prior approvals are demanded for effective market access and the use of construction products. Many cases do not concern possible requirements with regard to new characteristics. Rather, requirements which were already established before harmonisation, and which could have and should have been covered by incorporation of the required assessment methods and criteria within the harmonised framework, are adhered to.

[1] OJ 1989 L 40, p. 12.