

The General Court failed when arguing that food business operators, such as the Appellant, are protected by transitional measures. Art. 28 Sec. 5 of the Regulation refers directly to Art. 13 Sec. 3 of the Regulation which means that the transitional measures ended on 31 January 2010 the latest. It may be acceptable that this time limit may not be met and that the transitional measures shall apply after 31 January 2010 for a couple of months, but missing the time limits set by law by six years is not fulfilling the goals of the health claim regulation itself.

Since the Appellant brought Claims which are now under observation by EFSA the Appellant is directly affected and, therefore, in a position to bring an action against the Commission. The arguments of the General Court in the case T-296/12 apply to this case.

The Appellant has met all time limits provided in Art. 265 and 263 TFEU. The General Court violated the Appellant's rights of effective protection by a tribunal in accordance with the Charter of the Fundamental Rights of the European Union.

---

**Reference for a preliminary ruling from First-tier Tribunal (Tax Chamber) (United Kingdom) made on  
3 December 2015 — Trustees of the P Panayi Accumulation & Maintenance Settlements v  
Commissioners for Her Majesty's Revenue and Customs**

(Case C-646/15)

(2016/C 048/28)

*Language of the case: English*

**Referring court**

First-tier Tribunal (Tax Chamber)

**Parties to the main proceedings**

*Applicant:* Trustees of the P Panayi Accumulation & Maintenance Settlements

*Defendant:* Commissioners for Her Majesty's Revenue and Customs

**Questions referred**

1. Is it compatible with the freedom of establishment, the free movement of capital, or the freedom to provide services for a Member State to enact and maintain legislation such as section 80 of the Taxation of Chargeable Gains Act 1997 under which a charge to tax arises on the unrealised gains in value of the assets comprised in a trust fund if the trustees of a trust become at any time neither resident nor ordinarily resident in the Member State.
2. On the assumption that such a charge to tax restricts the exercise of the relevant freedom, is such a charge justifiable in accordance with the balanced allocation of powers of taxation, and is such a charge proportionate where the legislation neither grants the trustees the option to defer the charge to tax or to pay in instalments, nor does it take into account any subsequent fall in the value of the trust assets.
3. Are any of the fundamental freedoms engaged where a Member State imposes a charge to tax on unrealised capital gains on the increase in value of assets held by trusts at the time when the majority of the trustees cease to be resident or ordinarily resident in that Member State?

4. Is a restriction on the freedom created by that exit charge justified in order to ensure balanced allocation of powers of taxation, in circumstances where it was possible that capital gains tax might still be imposed on the realised gains, but only if specific circumstances arose in the future?
5. Is proportionality to be determined on the facts of the individual case? In particular, is the restriction created by such a charge to tax proportionate in circumstances where:
  - (a) the legislation makes no provision for an option to defer the payment of tax or for payment in instalments, or for account to be taken of any subsequent fall in the value of the trust assets after the exit,
  - (b) but in the particular circumstances of the assessment to tax under appeal, the assets were sold before the tax was payable and the relevant assets did not decrease in value between the relocation of the trust and the date of sale.

---

**Appeal brought on 3 December 2015 by TV2/Danmark A/S against the judgment of the General Court (Eighth Chamber) delivered on 24 September 2015 in Case T-674/11 TV2/Danmark A/S v European Commission**

**(Case C-649/15 P)**

(2016/C 048/29)

*Language of the case: Danish*

#### **Parties**

*Appellant:* TV2/Danmark A/S (represented by: O. Koktvedgaard, advokat)

*Other parties to the proceedings:* European Commission, Kingdom of Denmark, Viasat Broadcasting UK Ltd

#### **Forms of order sought**

1. Set aside the judgment under appeal in so far as it finds in favour of the Commission in respect of TV2's principal claim, rule on the case and annul the contested decision in so far as it finds that the measures investigated constituted State aid covered by Article 107(1) TFEU. In the alternative, refer the case back to the General Court for reconsideration.
2. Set aside the judgment under appeal in so far as it finds in favour of the Commission in respect of the second part of TV2's alternative claim, rule on the case and annul the contested decision in so far as it finds that the licence fee revenue which, in the years 1997-2002, was transferred to TV2 and then on to the regions, constituted State aid in favour of TV2. In the alternative, refer this part of the case back to the General Court for reconsideration.
3. Set aside the judgment under appeal in so far as it orders TV2 to bear its own costs and to pay three-quarters of the Commission's costs; order the Commission to pay TV2's costs associated with the proceedings before both the General Court and the Court of Justice. Should the case be referred back to the General Court, a corresponding decision on costs should be made on the referred portion of the case referred back to the General Court.