

- In the event that the Court of Justice upholds the second plea in law, the appellant requests that the contested decision be set aside and the General Court be instructed to restrict its consideration to the factual and legal questions addressed in the Board of Appeal Decision. If the General Court concludes that it cannot uphold the Board of Appeal Decision when the Website Disclosures are considered in isolation, then the appellant requests that it refer the matter back to the Board of Appeal for further consideration as to whether, in light of the evidence provided, the Fort Lauderdale Disclosures and Sales Disclosures fall within the Article 7⁽¹⁾ exception.
- In the event that the Court of Justice upholds the third plea in law, the appellant requests that the Contested Decision be set aside as regards the application of Article 7 and the General Court be instructed to re-assess the evidence giving proper force to the wording of Article 7 and applying a balance of probabilities test.
- In the event that the Court of Justice upholds the fourth plea in law, the appellant requests that the Contested Decision be annulled and the matter remitted to a different Chamber of the General Court for further consideration.
- The appellant further requests that the Court of Justice makes an award of costs in its favour pursuant to Article 137 and 184 the Rules of Procedure of the Court of Justice.

Pleas in law and main arguments

1) First Plea in Law — Infringement of Article 63 CDR

The General Court erred in its interpretation and application of Article 63 by failing to annul the Board of Appeal Decision as far as it allowed admission of new evidence.

2) Second Plea in Law — Infringement of Article 61 CDR

The General Court infringed Article 61 by in effect determining factual questions which had not been determined by the Board of Appeal in its decision and were not within the scope of the appeal. As such the General Court went outside of its jurisdiction to annul or alter the Board of Appeal Decision.

3) Third Plea in Law — Infringement of Article 7 CDR

The General Court infringed Article 7 by applying the wrong standard of proof. In doing so, the General Court also suggested that the test requires specific items of evidence, rather than applying the legal test to the evidence as filed in the proceedings. Finally, the General Court incorrectly dismissed the appellant's argument that a quantitative factor may be taken into consideration when applying Article 7.

4) Fourth Plea in Law — Irregular Constitution of the General Court (Seventh Chamber)

The Seventh Chamber of the General Court was improperly constituted. Judge Kornezov had been appointed to the General Court from the Civil Service Tribunal in 2016. However, it has since been found that Judge Kornezov's appointment to the Civil Service Tribunal was vitiated by a procedural error. Had Judge Kornezov not been sitting on the Civil Service Tribunal in 2016, his appointment to the General Court would not have been possible before 2019. As such, it appears that his appointment to the General Court is also vitiated by a procedural error. The Contested Decision must therefore be set aside and the matter remitted back to a different Chamber of the General Court.

⁽¹⁾ Article 7 of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ 2002, L 3, p. 1) ('CDR').

Request for a preliminary ruling from the Gerechtshof 's-Hertogenbosch (Netherlands) lodged on 26 June 2018 — IO, other party: Inspecteur van de rijksbelastingdienst

(Case C-420/18)

(2018/C 319/16)

Language of the case: Dutch

Referring court

Gerechtshof 's-Hertogenbosch

Parties to the main proceedings

Appellant: IO

Other party: Inspecteur van de rijksbelastingdienst

Question referred

Does a member of the Supervisory Board of a foundation, who is in a subordinate position in regard to that Board for his employment and remuneration conditions, but who is otherwise not in a subordinate position in regard to the Supervisory Board or the foundation, carry out his economic activities independently within the meaning of Article 9 and Article 10 of Council Directive 2006/112/EC⁽¹⁾ of 26 November 2006 on the common system of value added tax?

⁽¹⁾ OJ 2006 L 347, p. 1.

Request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Portugal) lodged on 4 July 2018 — Galeria Parque Nascente-Exploração de Espaços Comerciais S.A. v Autoridade Tributária e Aduaneira

(Case C-438/18)

(2018/C 319/17)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: Galeria Parque Nascente-Exploração de Espaços Comerciais S.A.

Defendant: Autoridade Tributária e Aduaneira

Questions referred

1. If Article 23(1)(c) of the Corporation Tax Code, in the version in force in 2013, and Article 23(1) and (2)(c) of that code, in the version in force in 2014, are interpreted as meaning that, after the ‘reverse merger’ in question, the interest on the loans taken out with third parties (which but for the merger would be deductible by the company now being acquired), in order to purchase the shares of the subsidiary which is now the acquiring company, and transferred as a result of the merger, ceases to be deductible for tax purposes from the profits of the acquiring company, will those provisions be compatible with Community law, in particular having regard to the fact that that non-deductibility of the interest may constitute an impediment or restriction to the merger operations encompassed by Council Directive 2009/133/EC,⁽¹⁾ infringing the principles and objectives of that directive, as well as Article 4 thereof?
2. If the first question is answered to the effect that that non-deduction of interest for tax purposes is compatible with the directive, will that answer remain unchanged by the fact that such a correction was not made on the basis of the anti-abuse provision of the directive (Article 15) or the national law reproducing it (Article 73(10) of the Corporation Tax Code), but another provision of national law (Article 23 of the Corporation Tax Code)?

⁽¹⁾ Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States (OJ 2009 L 310, p. 34).