2. Is it compatible with EU law, and in particular Article 3(27) of Directive 2007/46/EC to allow — in relation to the supply through public procurement of replacement parts for buses intended for public service — an individual tenderer to describe itself as 'manufacturer' of a specific non-original replacement part intended for a particular vehicle, especially where it falls into one of the categories of components covered by the technical rules listed in Annex IV (List of requirements for the purpose of EC type-approval of vehicles) to Directive 2007/46/EC, or must that tenderer prove — for each of the replacement parts thus subject to tender and in order to certify their equivalence to the technical specifications of the tender — that it is the entity who is responsible to the approval authority for all aspects of the type-approval and for ensuring conformity of production and the related level of quality and is directly involved in at least some of the stages of the construction of the component which is the subject of the approval, and if so, by what means is such proof to be provided?

(1) Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ 2007 L 263, p. 1).

Action brought on 3 February 2021 — European Commission v Hellenic Republic

(Case C-70/21)

(2021/C 128/34)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: M. Konstantinidis and N. Noll-Ehlers, acting as Agents)

Defendant: Hellenic Republic

Form of order sought

The applicant claims that the Court of Justice should

— declare that:

— by systematically and consistently exceeding the limit values for PM_{10} concentrations as regards the daily limit value since 2005 in the EL0004 conurbation of Thessaloniki, the Hellenic Republic has failed to fulfil its obligations under the combined provisions of Article 13 of and Annex XI to Directive 2008/50/EC; (1)

— by failing to adopt, from 11 June 2010, appropriate measures to ensure compliance with the limit values for PM_{10} concentrations in the EL0004 conurbation of Thessaloniki, the Hellenic Republic has failed to fulfil its obligations under Article 23(1) of Directive 2008/50/EC (in conjunction with Section A of Annex XV to that directive), and in particular the obligation, laid down in the second subparagraph of Article 23(1) of that directive, to take the appropriate measures to ensure that the duration of the exceedance of limit values is as short as possible;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

By its first plea in law, the Commission submits that Directive 2008/50/EC on ambient air quality and cleaner air for Europe requires that Member States limit the exposure of citizens to small particles known as particulate matter (PM_{10}). The Commission claims that since 2005, when compliance with daily and annual limit values for PM_{10} became mandatory (pursuant, initially, to Article 5(1) of Directive 1999/30/EC then to Article 13 of Directive 2008/50/EC), the Hellenic Republic, on the basis of its annual air quality reports, has failed consistently to ensure consistent compliance with daily limit values in the EL0004 conurbation of Thessaloniki.

By its second plea in law, the Commission claims that the second subparagraph of Article 23(1) of Directive 2008/50/EC imposes a clear and urgent obligation on Member States in the event that limit values are exceeded to adopt air quality plans setting out appropriate measures to ensure that the duration of any exceedance is as short as possible. The Commission submits that the Hellenic Republic failed to draw up an appropriate air quality plan in respect of the EL0004 conurbation of Thessaloniki, in breach of the obligation laid down in Article 23(1) of Directive 2008/50/EC.

(1) Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ 2008 L 152, p. 1).

Appeal brought on 3 February 2021 by Química del Nalón SA, formerly Industrial Química del Nalón SA against the judgment of the General Court (Eighth Chamber, Extended Composition) delivered on 16 December 2020 in Case T-635/18, Industrial Química del Nalón SA v Commission

(Case C-73/21 P)

(2021/C 128/35)

Language of the case: English

Parties

Appellant: Química del Nalón SA, formerly Industrial Química del Nalón SA (represented by: P. Sellar, advocaat, K. Van Maldegem, avocat, M. Grunchard, avocate)

Other parties to the proceedings: European Commission, Kingdom of Spain and European Chemicals Agency

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal;

— refer the case back to the General Court for consideration; and

— reserve the costs.

Pleas in law and main arguments

First plea in law, alleging that the General Court's finding that the appellant's argument that the Commission committed a manifest error did not necessarily imply also the argument that the Commission had infringed the duty of act diligently, is wrong as a matter of law.

Second plea in law, alleging that the General Court was wrong as a matter of law to use an alleged lack of legal clarity of point 4.1.3.5.5 of Annex I to Regulation No 1272/2008 (1) as a ground for dismissing the legal argument that was actually being made by the appellant.

Third plea in law, alleging that the General Court could not rely on the finding that the legal framework was complex in order to excuse the Commission's failure to take into account the lack of CTPHT's (classified pitch, coal tar, high-temp) solubility. The General Court had actually held the opposite in earlier related proceedings (Case T-689/13 DEP, *Bilbaina de Alquitranes SA and Others v European Commission*). Without any explanation for holding the opposite, the General Court's reasoning is insufficient and contradictory.

Fourth plea in law, alleging that the General Court wrongly applied the ordinary, due diligence test. By finding that the Commission acted as any other ordinary, duly diligent administrative authority would, it used an incorrect and inappropriate point of comparison to assess the due diligence and ordinariness of the Commission.

Fifth plea in law, alleging that the General Court's statement of reasons is insufficient and contradictory insofar as that court found, without indicating any evidence and by only relying on the opinion of the Advocate General, that the Commission may have had difficulties in correcting its manifest error of assessment, thereby suggesting that Commission's approach could be excused.