

Other parties to the proceedings: European Commission, Fertilizers Europe

Form of order sought

The appellants claim that the Court should:

- set aside the judgment under appeal;
- annul Commission Implementing Regulation (EU) 2019/1688 of 8 October 2019 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of mixtures of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America ⁽¹⁾ in part relating to the first, second, third and fourth parts of the first plea as well as to the first and fourth parts of the fourth plea put forward by the appellants in their action before the General Court, given that the state of the proceedings so permits;
- in the alternative, refer the case back to the General Court for reconsideration;
- order the Commission to pay the costs of the appeal and of the proceedings before the General Court.

Pleas in law and main arguments

In support of the action, the appellants rely on five pleas in law.

First, alleging that the General Court erred in its interpretation of Article 2(9) of the Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽²⁾ ('the Basic Regulation').

Second, alleging that the General Court incorrectly declared the alleged infringement of Article 2(3) to (5) of the Basic Regulation by the Commission inadmissible, exceeded power of judicial review, failed to address the appellants' claim and erred in interpretation of Articles 2(10) and/or 2(10)(k) of the Basic Regulation.

Third, alleging that the General Court committed a legal error in interpretation of Articles 5(1), 5(3), 5(6), 5(9) and 7(2)(a) of the Basic Regulation.

Fourth, alleging that the General Court did not address or distorted the evidence by finding that the complaint demonstrated the existence of dual pricing in Russia.

Fifth, alleging that the General Court distorted the clear meaning of the submitted evidence and violated its duty to state reasons by finding that subsidized natural gas purchases in Trinidad and Tobago do not amount to a dual pricing scheme within the meaning of Article 7(2)(a) of the Basic Regulation and erred in its interpretation.

⁽¹⁾ OJ 2019 L 258, p. 21.

⁽²⁾ OJ 2016 L 176, p. 21.

**Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 24 November 2022 —
Associazione Nazionale Italiana Bingo — Anib, Play Game Srl v Ministero dell'Economia e delle
Finanze, Agenzia delle Dogane e dei Monopoli**

(Case C-728/22)

(2023/C 94/16)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: Associazione Nazionale Italiana Bingo — Anib, Play Game Srl

Defendants: Ministero dell'Economia e delle Finanze, Agenzia delle Dogane e dei Monopoli

Questions referred

1. 'Must Directive 2014/23/EU on the award of concession contracts, ⁽¹⁾ as well as the general principles that follow from the Treaty, namely Articles 15, 16, 20 and 21 of the Charter of Fundamental Rights of the European Union, Article 3 of the Treaty on European Union and Articles 8, 49, 56, 12, 145 and 151 of the Treaty on the Functioning of the European Union, be interpreted as applying to concessions for the operation of the bingo game which were awarded under a selective tender procedure in 2000, expired and were subsequently repeatedly extended in their effects by legislative provisions which entered into force after the Directive had entered into force and the period for transposition thereof had expired?'
2. 'If the first question is answered in the affirmative, does Directive 2014/23/EU preclude an interpretation or application of domestic legislative provisions, or implementing practices based on those provisions, that would deprive the administration of the discretion to initiate, at the request of the interested parties, an administrative procedure to amend the conditions for the exercise of the concessions, with or without a new tender procedure, depending on whether or not the renegotiation of the contractual balance qualifies as a substantial change, in cases where unforeseen and unforeseeable events not attributable to the parties occur that have a significant impact on the normal conditions of operating risk, for as long as those conditions persist and for the time required to reinstate, where possible, the concessions' original operating conditions?'
3. 'Does Directive 89/665/EC, ⁽²⁾ as amended by Directive 2014/23/EU, preclude an interpretation or application of domestic national provisions, or implementing practices based on those provisions, under which the legislature or the public administration may make participation in the procedure for the re-award of gaming concessions conditional on the concessionaire's membership of the technical extension scheme, including in cases where it is not possible to renegotiate the operating conditions of the concession in order to bring them back into equilibrium as a result of unforeseen and unforeseeable events not attributable to the parties that have a significant impact on the normal conditions of operating risk, for as long as those conditions persist and for the time required to reinstate, where possible, the concessions' original operating conditions?'
4. 'In any event, do Articles 49 and 56 TFEU and the principles of certainty and effectiveness of legal protection, as well as the principle of the protection of legitimate expectations, preclude an interpretation or application of domestic legislative provisions, or implementing practices based on those provisions, that would deprive the administration of the discretion to initiate, at the request of the interested parties, an administrative procedure to amend the conditions for the exercise of the concessions, with or without a new tender procedure, depending on whether or not the renegotiation of the contractual balance qualifies as a substantial change, in cases where unforeseen and unforeseeable events not attributable to the parties occur that have a significant impact on the normal conditions of operating risk, for as long as those conditions persist and for the time required to reinstate, where possible, the concessions' original operating conditions?'
5. 'Do Articles 49 and 56 TFEU and the principles of certainty and effectiveness of legal protection, as well as the principle of the protection of legitimate expectations, preclude an interpretation or application of domestic national provisions, or implementing practices based on those provisions, under which the legislature or the public administration may make participation in the procedure for the re-award of gaming concessions conditional on the concessionaire's membership of the technical extension scheme, including in cases where it is not possible to renegotiate the operating conditions of the concession in order to bring them back into equilibrium as a result of unforeseen and unforeseeable events not attributable to the parties that have a significant impact on the normal conditions of operating risk, for as long as those conditions persist and for the time required to reinstate, where possible, the concessions' original operating conditions?'
6. 'More generally, do Articles 49 and 56 TFEU and the principles of certainty and effectiveness of legal protection, as well as the principle of the protection of legitimate expectations, preclude national legislation such as that at issue in the main proceedings, which imposes upon bingo hall operators the payment of an onerous technical extension fee on a monthly basis that is not provided for in the original concession documents, the amount of which is identical for all types of operator and is amended from time to time by the legislature without any proven relationship to the characteristics or performance of individual concession relationships?'

⁽¹⁾ OJ 2014 L 94, p. 1.

⁽²⁾ Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33).