

Other parties to the proceedings: Kingdom of the Netherlands (represented by: C.M. Wissels and D.J.M. de Grave, Agents), Federal Republic of Germany (represented by: M. Lumma, B. Klein and T. Henze, Agents)

Interveners in support of the Kingdom of the Netherlands: French Republic (represented by: G. de Bergues, A.-L. Vendrolini, J. Gstalter and B. Cabouat, Agents), Republic of Slovenia (represented by: V. Klemenc, Agent), United Kingdom of Great Britain and Northern Ireland (represented by: E. Jenkinson, S. Behzadi-Spencer, S. Ossowski and H. Walker, Agents, and by K. Bacon, Barrister)

Re:

Appeal brought against the judgment of the Court of First Instance (Fifth Chamber, Extended Composition) of 10 April 2008 in Case T-233/04 *Kingdom of the Netherlands v Commission*, by which the Court of First Instance annulled Commission Decision C(2003) 1761 final of 24 June 2003 relating to State aid N 35/2003 concerning the emission trading scheme for nitrogen oxides notified by the Kingdom of the Netherlands

Operative part of the judgment

The Court:

1. Sets aside the judgment of the Court of First Instance of the European Communities of 10 April 2008 in Case T-233/04 *Netherlands v Commission*;
2. Dismisses the cross-appeals;
3. Dismisses the action at first instance;
4. Orders the Kingdom of the Netherlands to pay the costs incurred by the European Commission relating to the proceedings at first instance and to bear its own costs in those proceedings.
5. Orders the European Commission and the Kingdom of the Netherlands to bear their own costs relating to the appeal.
6. Orders the Federal Republic of Germany, the French Republic, the Republic of Slovenia and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.

⁽¹⁾ OJ C 223, 30.8.2008.

Judgment of the Court (Grand Chamber) of 6 September 2011 (reference for a preliminary ruling from the Østre Landsret (Denmark)) — Lady & Kid A/S, Direct Nyt ApS, A/S Harald Nyborg Isenkram- og Sportsforretning, KID-Holding A/S v Skatteministeriet

(Case C-398/09) ⁽¹⁾

(Refusal to reimburse a tax paid in error — Unjust enrichment arising from the link between the introduction of that tax and the abolition of other taxes)

(2011/C 311/08)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicants: Lady & Kid A/S, Direct Nyt ApS, A/S Harald Nyborg Isenkram- og Sportsforretning, KID-Holding A/S

Defendant: Skatteministeriet

Re:

Reference for preliminary ruling — Østre Landsret — Interpretation of the judgment of the Court in Joined Cases C-192/95 to C-218/95 *Comateb and Others* and of the principles of Community law governing unjust enrichment — Refusal to reimburse a national tax held to be incompatible with Community law, on grounds of unjust enrichment arising from the direct link between the introduction of the unlawful tax and the abolishment of other taxes charged on another basis — Non-reimbursement having the effect of placing product importers at a disadvantage in relation to purchasers of similar domestic products due to the proportionally greater payment of the unlawful tax by the former as compared to the latter.

Operative part of the judgment

The rules of European Union law on recovery of sums wrongly paid must be interpreted to the effect that recovery of sums wrongly paid can give rise to unjust enrichment only when the amounts wrongly paid by a taxpayer under a tax levied in a Member State in breach of European Union law have been passed on direct to the purchaser. Consequently, European Union law precludes a Member State from refusing reimbursement of a tax wrongfully levied on the ground that the amounts wrongly paid by the taxpayer have been set off by a saving made as a result of the concomitant abolition of other levies, since such a set-off cannot be regarded, from the point of view of European Union law, as an unjust enrichment as regards that tax.

⁽¹⁾ OJ C 312, 19.12.2009.

Judgment of the Court (Grand Chamber) of 6 September 2011 (reference for a preliminary ruling from the Bayerischer Verwaltungsgerichtshof (Germany)) — Karl Heinz Bablok and Others v Freistaat Bayern

(Case C-442/09) ⁽¹⁾

(Genetically modified food for human consumption — Regulation (EC) No 1829/2003 — Articles 2 to 4 and 12 — Directive 2001/18/EC — Article 2 — Directive 2000/13/EC — Article 6 — Regulation (EC) No 178/2002 — Article 2 — Apicultural products — Presence of pollen from genetically modified plants — Consequences — Placing on the market — Definition of ‘organism’ and ‘food for human consumption containing ingredients produced from genetically modified organisms’)

(2011/C 311/09)

Language of the case: German

Referring court

Bayerischer Verwaltungsgerichtshof