Question referred

May a Thai national, who was married to a Turkish worker duly registered as belonging to the labour force of a Member State and who, after receiving authorisation to join him, lived with him without interruption for more than three years, rely on the rights arising from the first indent of the first paragraph of Article 7 of Decision No 1/80 of the EEC-Turkey Association Council, with the consequence that she has a right of residence because of the direct effect of that provision?

Appeal brought on 2 September 2011 by Solvay SA against the judgment of the General Court (Sixth Chamber, Extended Composition) delivered on 16 June 2011 in Case T-186/06: Solvay SA v European Commission

(Case C-455/11 P)

(2011/C 347/16)

Language of the case: English

Parties

Appellant: Solvay SA (represented by: O. W. Brouwer, advocaat, M. O'Regan, solicitor)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— quash paragraphs 121 to 170 of the judgment,

— quash paragraphs 394,395 and 402 to 427 of the judgment,

— give final judgment and to annul the contested Decision in so far as it found that (a) the Appellant infringed Article 81 (1) EC between May 1995 and August 1997 and (b) the Appellant was the third undertaking to satisfy the requirements of point 21 of the 2002 Leniency Notice, and to reduce accordingly the fine imposed upon the Appellant, or, in the alternative, to refer the case back to the General Court, and

— order the Commission to pay the costs of the proceedings before the General Court and the Court of Justice.

Pleas in law and main arguments

The Appellant relies upon two pleas in law. In the judgment under appeal, the General Court partially dismissed the application brought by the Appellant for the partial annulment of Commission Decision C(2006) 1766 final of 3 May 2006 relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement (Case COMP/F/38.620 — Hydrogen peroxide and perborate).

By its first plea, the Appellant respectfully contests the General Court's conclusion that the Appellant had participated in an infringement of Articles 81(1) EC and 53(1) EEA between May 1995 and August 1997. The General Court exceeded its powers of review and committed an error of law in concluding that the Appellant had discussed and/or exchanged pricing information and its commercial strategy with other undertakings: such findings could not be made on the basis of the text of the contested Decision. The General Court committed errors in law in upholding the finding in the contested Decision that, by having a common intention to restrict competition, the discussions, negotiations and exchanges of information between hydrogen peroxide manufacturers (including the Appellant) in an unsuccessful attempt to establish a market-sharing arrangement (which did not result in the conclusion of an agreement between them) constituted an infringement of Articles 81(1) EC and 53(1) EEA on the basis that they were, alternatively, either preparatory negotiations for and formed part of the same collusive arrangement as an admitted price-fixing cartel entered into in August 1997 or a concerted practice by virtue of 'preparing the ground' for that later cartel and/or constituting a prohibited exchange of information between undertakings. By its second plea, the Appellant respectfully contests the General Court's conclusion that the Commission had not exceeded the margins of its appreciation in finding, in the contested Decision, that another undertaking, Arkema, had met the requirements of point 21 of the Commission's 2002 Leniency Notice on 3 April 2003. The General Court erred in law in defining and applying the concept of 'significant added value' and distorted and committed manifest errors of assessment of the evidence, in finding that documents faxed by Arkema on 3 April 2003 without any accompanying explanations represented significant added value under point 21 of the 2002 Leniency Notice. It also committed manifest errors of law and procedure and distorted the evidence in concluding that the Commission was entitled in the contested Decision to reach a different conclusion from that reached by it in Decision C(2006) 2098 of 31 May 2006 concerning a procedure under Article 81 EC and Article 53 of the EEA Agreement (Case COMPlF.38.645 — Methacrylates), in which it found that the same fax of 3 April 2003 of Arkema (which concerned Commission investigations into several suspected cartels, including HP and methacrylates) did not satisfy the requirements of point 21 of the 2002 Leniency Notice until explanations were subsequently provided by Arkema.