

- 3) Article 41(2)(b) of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that the applicant for a residence permit cannot rely on that provision against the national authorities.

<sup>(1)</sup> OJ C 157, 2.6.2012.  
OJ C 303, 6.10.2012.

**Judgment of the Court (Fifth Chamber) of 10 July 2014 — Telefónica SA Telefónica de España SAU v European Commission, France Telecom España, SA, Asociación de Usuarios de Servicios Bancarios (Ausbanc Consumo), European Competitive Telecommunications Association**

(Case C-295/12 P) <sup>(1)</sup>

**(Article 102 TFEU — Abuse of dominant position — Spanish markets for access to broadband internet — Margin squeeze — Article 263 TFEU — Review of legality — Article 261 TFEU — Unlimited jurisdiction — Article 47 of the Charter — Principle of effective judicial protection — Review exercising powers of unlimited jurisdiction — Amount of the fine — Principle of proportionality — Principle of non-discrimination)**

(2014/C 315/03)

Language of the case: Spanish

**Parties**

Appellants: Telefónica SA, Telefónica de España SAU (represented by: F. González Díaz and B. Holles, abogados)

Other parties to the proceedings: European Commission (represented by: F. Castillo de la Torre, É. Gippini Fournier and C. Urraca Caviedes, Agents), France Telecom España, SA (represented by: H. Brokelmann and M. Ganino, abogados), Asociación de Usuarios de Servicios Bancarios (Ausbanc Consumo), (represented by: L. Pineda Salido and I. Cámara Rubio, abogados), European Competitive Telecommunications Association, (represented by: A. Salerno and B. Cortese, avvocati)

**Operative part of the judgment**

The Court:

1. Dismisses the appeal;
2. Orders Telefónica SA and Telefónica de España SAU to pay the costs;
3. Orders France Telecom España, SA, Asociación de Usuarios de Servicios Bancarios (Ausbanc Consumo) and the European Competitive Telecommunications Association to bear their own costs.

<sup>(1)</sup> OJ C 243, 11.8.2012.

**Judgment of the Court (Fifth Chamber) of 17 July 2014 — European Commission v Portuguese Republic**

(Case C-335/12) <sup>(1)</sup>

**(Failure of a Member State to fulfil obligations — Own resources — Post-clearance recovery of import duties — Financial liability of the Member States — Surplus stocks of non-exported sugar)**

(2014/C 315/04)

Language of the case: Portuguese

**Parties**

Applicant: European Commission (represented by: A. Caeiros, Agent)

Defendant: Portuguese Republic (represented by: L. Inez Fernandes, J. Gomes and P. Rocha, and by A. Cunha, Agents)

**Operative part of the judgment**

The Court rules and declares that:

1. By failing to make available to the European Commission an amount of EUR 785 078,50 corresponding to levies on surplus stocks of non-exported sugar following the accession of Portugal to the European Community, the Portuguese Republic has failed to fulfil its obligations under Article 10 EC, Article 254 of the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties, Article 7 of Council Decision 85/257/EEC, Euratom of 7 May 1985 on the Communities' system of own resources, Articles 4, 7 and 8 of Commission Regulation (EEC) No 579/86 of 28 February 1986 laying down detailed rules relating to stocks of products in the sugar sector in Spain and Portugal on 1 March 1986, as amended by Commission Regulation (EEC) No 3332/86 of 31 October 1986, and Articles 2, 11 and 17 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources
2. The action is dismissed as to the remainder.
3. The Portuguese Republic shall pay the costs.

---

<sup>(1)</sup> OJ C 303, 6.10.2012.

---

**Judgment of the Court (Tenth Chamber) of 10 July 2014 (request for a preliminary ruling from the Tribunale amministrativo regionale per la Lombardia — Italy) — Consorzio Stabile Libor Lavori Pubblici v Comune di Milano**

(Case C-358/12) <sup>(1)</sup>

**(Request for a preliminary ruling — Public procurement — Contracts falling below the threshold provided for in Directive 2004/18/EC — Articles 49 TFEU and 56 TFEU — Principle of proportionality — Conditions for exclusion from a tender procedure — Criteria for qualitative selection relating to the personal situation of the tenderer — Obligations relating to the payment of social security contributions — Definition of serious infringement — Difference between the sums owed and those paid which exceeds EUR 100 and is greater than 5 % of the sums owed)**

(2014/C 315/05)

Language of the case: Italian

**Referring court**

Tribunale amministrativo regionale per la Lombardia

**Parties to the main proceedings**

Applicant: Consorzio Stabile Libor Lavori Pubblici

Defendant: Comune di Milano

Intervener: Pascolo Srl

**Operative part of the judgment**

Articles 49 TFEU and 56 TFEU and the principle of proportionality must be interpreted as not precluding national legislation which, with regard to public works contracts the value of which is below the threshold laid down in Article 7(c) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, as amended by Commission Regulation (EC) No 1177/2009 of 30 November 2009, requires the contracting authorities to exclude from the award procedure for such a contract a tenderer who has committed an infringement relating to social security contributions where the difference between the sums owed and those paid exceeds EUR 100 and is greater than 5 % of the sums owed.

---

<sup>(1)</sup> OJ C 311, 13.10.2012.