

2. By the second ground of appeal, the appellants claim that, in breach of the rights of defence and the duty to state reasons, the General Court rejected their argument that the Commission decision should have been declared void because the proportions of liability in the internal relationship of the joint and several debtors were not determined in conformity with the judgment since delivered by the General Court in Joined Cases T-122/07 to T-124/07 *Siemens Österreich* [2011] ECR II-793. The argument in the action was neither late nor insufficient.
3. With reference to the amount of the fine, the appellants allege by their third ground of appeal that the General Court infringed the principle of equal treatment when it did not — as in the parallel case *Gigaset* — reduce the fines against the appellants in light of the errors in calculating the fine, in particular the failure to take into account an entrance fee and the incorrect taking into account of a leniency reduction in SKW's fine.
4. The appellants welcome the fact that, when setting their new fine, the General Court also reassessed the proportion of the fine '*which will be considered to be paid when SKW makes payments in connection with the fine imposed on them by the contested decisions*' (operative part of the judgment, point 2, first indent). By the fourth alternative ground of appeal, the appellants claim, however, that, in breach of the principle of legal certainty, *nulla poena sine lege certa* and the duty to state reasons in the reassessment, the General Court did not expressly determine the double repayment effect of a payment from SKW for both ARQUES Industries AG ('Arques') (now Gigaset AG ('Gigaset')) and for the appellants.
5. By the fifth alternative ground of appeal, the appellants claim that, in reassessing the fines, the General Court, in breach of the principles for setting joint and several fines (Article 81 EC, Article 23 of Regulation No 1/2003) <sup>(1)</sup> in particular, deducted the leniency reduction in the proportion which is considered to be paid by a performance by SKW. The General Court thereby allowed for a leniency reduction in that proportion at the expense of the appellants although SKW did not cooperate with the Commission in accordance with the Leniency Notice.

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<sup>(1)</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty; OJ 2003 L 1, p. 1.

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**Request for a preliminary ruling from the Conseil d'État (France) lodged on 4 April 2014 — Société Neptune Distribution v Minister for Economic Affairs and Finance**

**(Case C-157/14)**

(2014/C 184/20)

*Language of the case: French*

**Referring court**

Conseil d'État

**Parties to the main proceedings**

*Applicant:* Société Neptune Distribution

*Defendant:* Minister for Economic Affairs and Finance

**Questions referred**

1. Is the basis for calculating the 'equivalent value for salt' of the quantity of sodium present in a foodstuff, for the purposes of the annex to Regulation (EC) No 1924/2006, <sup>(1)</sup> constituted only by the quantity of sodium which, when associated with chloride ions, forms sodium chloride, or table salt, or does it include the total quantity of sodium in all its forms contained in the foodstuff?

2. In the latter case, do Article 2(1) of Directive 2000/13/EC and Article 9(1) and (2) of Directive 2009/54/EC, <sup>(2)</sup> together with Annex III to the latter directive, read in the light of the equivalence established between sodium and salt in the annex to Regulation (EC) No 1924/2006, infringe the first subparagraph of Article 6(1) of the Treaty on the European Union, read with Article 11(1) (freedom of expression and information) and Article 16 (freedom to conduct a business) of the Charter of Fundamental Freedoms of the European Union, and Article 19 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, by prohibiting a distributor of mineral water from placing on his labels and advertising material any indication as to the low salt content or sodium chloride content, which could be that of his product that is high in sodium bicarbonate, inasmuch as that indication would be likely to mislead the purchaser in regard to the total sodium content of the water?

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<sup>(1)</sup> Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ 2006 L 404, p. 9).

<sup>(2)</sup> Directive 2009/54/EC of the European Parliament and of the Council of 18 June 2009 on the exploitation and marketing of natural mineral waters (Recast) (OJ 2009 L 164, p. 45).

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## Action brought on 4 April 2014 — European Commission v Kingdom of Belgium

(Case C-163/14)

(2014/C 184/21)

*Language of the case: French*

### Parties

*Applicant:* European Commission (represented by: F. Clotuche-Duvieusart and I. Martínez del Peral, acting as Agents)

*Defendant:* Kingdom of Belgium

### Form of order sought

- declare that, by failing to grant the institutions and bodies of the European Union the exemption provided for by the second subparagraph of Article 3 of the Protocol on the Privileges and Immunities of the European Union from the contributions established by Article 26 of the Order concerning the organisation of the electricity market in the Brussels-Capital Region, and by Article 20 of the Order concerning the organisation of the gas market in the Brussels-Capital Region, as amended and by precluding the reimbursement of those contributions thereby paid by the Region, the Kingdom of Belgium failed to fulfil its obligations under the second subparagraph of Article 3 of the Protocol on the Privileges and Immunities of the European Union;
- order Kingdom of Belgium to pay the costs.

### Pleas in law and main arguments

The Orders of 19 July 2001 concerning the organisation of the electricity market in the Brussels-Capital Region and of 1 April 2004 concerning the organisation of the gas market in the Brussels-Capital Region, as amended, provide for the payment of duties by the suppliers of electricity and gas in favour of the Brussels-Capital Region. Those regional contributions are then invoiced to the end consumers and therefore to the institutions of the European Union at the time of the supply of electricity or gas in accordance with the wattage made available to the end customers (for electricity) or the meter-readings at the end customers' premises (for gas).

The Commission considers that those regional contributions must be classified as indirectly collected by the Belgian authorities at the time of large purchases made by the institutions for their official use and incorporated in the price of electricity and gas which is invoiced to them. The Commission points out that it is not necessary, for the purpose of identifying an indirect tax, that there be express provision in the legislation for an end customer pass-on requirement and that it is decisive that there is a tax levied at the time of consumption or the incurring of expenditure. As a consequence, it considers that the Belgian State is obliged under the second subparagraph of Article 3 of the Protocol on the Privileges and Immunities of the European Union to reimburse those indirect duties or sales taxes to the institutions of the European Union.