

2. If the answer to the first question is in the affirmative: Must Article 67(2) TFEU and Article 20 and Article 21 of Regulation No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), or any other rules of EU law, be interpreted as precluding national legislation or practice which permits a criminal court in that Member State to use evidence to the detriment of the accused, although that evidence was obtained as a result of a State measure that infringes EU law?

⁽¹⁾ OJ L 105, p. 1.

**Request for a preliminary ruling from the Nederlandstalige Rechtbank van eerste aanleg te Brussel
(Belgium) lodged on 24 June 2016 — T.KUP SAS v Belgische Staat**

(Case C-349/16)

(2016/C 335/47)

Language of the case: Dutch

Referring court

Nederlandstalige rechtbank van eerste aanleg te Brussel

Parties to the main proceedings

Applicant: T.KUP SAS

Defendant: Belgische Staat

Questions referred

1. Is Regulation No 1294/2009 ⁽¹⁾ invalid in respect of an importer such as that in the present case, on the ground of infringement of Article 17(1) of the basic regulation, ⁽²⁾ given that the Commission, in its review, used a sample of only eight importers, notwithstanding the fact that a manageable number of 21 importers ought to have been examined?
2. Is Regulation No 1294/2009 invalid in respect of an importer such as that in the present dispute, on the ground of infringement of the third subparagraph of Article 11(2) of the basic regulation, given that the Commission, in its review, did not take sufficient account of the evidence supplied in that it included five large importers in the sample as against only three small importers, and in that it primarily took into account the information provided by the five large importers?
3. Is Regulation No 1294/2009 invalid in respect of an importer such as that in the present dispute, on the ground of infringement of Articles 2 and 3 of the basic regulation and/or of Article 11(2), (5) and (9) of the basic regulation, given that the Commission, in its review, had before it inadequate information to enable it to determine that there were continued imports resulting in dumping and injury?
4. Is Regulation No 1294/2009 invalid in respect of an importer such as that in the present dispute, on the ground of infringement of Article 21 of the basic regulation, given that the Commission, in its review, requires that there be specific indications that an importer is being disproportionately burdened by an extension?

⁽¹⁾ Council Implementing Regulation (EU) No 1294/2009 of 22 December 2009 imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in Vietnam and originating in the People's Republic of China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, whether declared as originating in the Macao SAR or not, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 (OJ 2009 L 352, p. 1).

⁽²⁾ Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1).
