the fine imposed to reflect the fact that there had been no actual impact on the market; (ii) the diminishing intensity of the infringement during the period from 1999 to 2002; and (iii) the attenuating factor of 'reasonable doubt', applied instead in the analogous Spanish case — and, in consequence, reduce the fine;

— order the Commission to pay the costs in their entirety.

Pleas in law and main arguments

It is claimed, in the first place, that the judgment under appeal is in breach of Article 296 TFEU, Articles 48 and 49 of the Charter of Fundamental Rights of the European Union and, in any event, of the principles which govern the burden of proof and Transcatab's rights of defence. In the course of the proceedings at first instance, arguments and evidence were put forward to overturn the presumption that SCC had exerted decisive influence over Transcatab's conduct. In so far as those arguments and that evidence were *important* or, at any rate, *not insignificant* in the light of the recent case-law of the Court of Justice, they warranted at least a specific appraisal and, in the event of being rejected, that adequate reasons be stated for that rejection. Transcatab maintains that the General Court neither undertook a specific appraisal nor provided an adequate statement of reasons. In any event, Transcatab claims that, in finding that the use of *new evidence* in the Decision was permissible, the judgment under appeal acted in breach of the principles governing the burden of proof and, in any event, it infringed Transcatab's rights of defence.

In the second place, Transcatab claims that, in not upholding the complaints relating to the fact that the infringement had not had any actual impact on the market and to the diminishing intensity of the infringement during the period from 1999 to 2002, the General Court erred in distorting the facts and, in any event, acted in breach of: the general principles governing the interpretation of administrative acts of the European institutions; its duty to state reasons; the rules governing the burden of proof; Transcatab's rights of defence; and the principle requiring correspondence between the ruling and the application.

In the third place, Transcatab claims that the judgment under appeal is flawed by error of law and by the failure to state reasons, or by reasoning which is illogical, in so far as the General Court rejected Transcatab's complaint alleging breach of the principle of equal treatment, in so far as it failed to take account of the attenuating circumstance consisting in a 'reasonable doubt' whereas, in the analogous Spanish case, this was treated as an attenuating circumstance.

Action brought on 21 December 2011 — United Kingdom of Great Britain and Northern Ireland v Council of the European Union

(Case C-656/11)

(2012/C 49/34)

Language of the case: English

Parties

Applicant: United Kingdom of Great Britain and Northern Ireland (represented by: C. Murrell, Agent and A. Dashwood QC)

Defendant: Council of the European Union

The applicant claims that the Court should:

— annul the Council Decision of 16 December 2011 ([1]) on the position to be taken by the European Union in the Joint Committee established under the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, as regards the replacement of Annex II on the coordination of social security schemes;

— order the Council of the European Union to pay the costs of the proceedings.

Pleas in law and main arguments

1. By an action brought under Article 263 TFEU, the United Kingdom of Great Britain and Northern Ireland is seeking the annulment, pursuant to Article 264 TFEU, of the Council Decision of 16 December 2011 on the position to be taken by the Union in the Joint Committee established under the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, as regards the replacement of Annex II on the coordination of social security schemes.

2. Article 48 TFEU is the sole substantive legal basis specified in the Decision.

3. The Decision relates to the amendment of Annex II to the Agreement of 21 June 1999 between the European Union and its Member States, of the one part, and the Swiss Confederation, of the other part, on the free movement of persons. Annex II to the Agreement is exclusively concerned with the coordination, as between the EU and Switzerland, of social security systems. The purpose of the amendments to Annex II that the disputed Decision would introduce is to reflect changes in the EU machinery of social security coordination. One effect of the contemplated changes to Annex II would be to extend to Swiss nationals who are neither themselves economically active nor members of the family of a person who is so active ('non-actives'), rights that they do not derive from the present Annex II regime.

4. In the contention of the United Kingdom, Article 48 TFEU cannot serve as the sole substantive legal basis of a measure intended to have such consequences. It is a provision designed to facilitate freedom of movement (a) within the Union, not between the Union and third countries; and (b) by persons who are economically active or their families, not by non-actives. The correct legal basis is Article 79 (2) (b) TFEU. This confers competence for the adoption of measures in the area of 'the definition of the rights of third country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States'.

5. Article 79 (2) (b) TFEU is found in Title V of Part Three of the Treaty. Pursuant to Protocol 21 to the Treaties, measures adopted under Title V do not apply to the United Kingdom (or Ireland) unless it signals its willingness to 'opt into' them. By its erroneous choice of Article 48 TFEU, instead of Article 79 (2) (b) TFEU, as the substantive legal basis of the Decision, the Council refused to recognise the right of the United Kingdom to choose not to participate in the Decision and be bound by it.

6. The annulment of the Council Decision of 16 December 2011 is, therefore, sought on the ground that it was adopted on the wrong legal basis, with the consequence that the rights of the United Kingdom under Protocol 21 were not recognised.

([1]) OJ L 341 p. 1

Reference for a preliminary ruling from the Supremo Tribunal Administrativo (Portugal) lodged on 27 December 2011 — TVI Televisão Independente SA v Fazenda Pública

(Case C-659/11)

(2012/C 49/35)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicant: TVI Televisão Independente SA

Defendant: Fazenda Pública

Questions referred

1. Is Article 16(1) of the CIVA [VAT Code], as interpreted in the judgment under appeal (to the effect that the commercial advertising screening tax is inherent in the supply of advertising services, so that it should be included in the taxable amount of the supply of services for the purposes of VAT), compatible with Article 11(A)(1)(a) of Directive 77/388/EC ([1]) (now Article 73 of Council Directive 2006/112/EC ([2]) of 28 November 2006) and, in particular, with the concept of 'consideration which has been or is to be obtained by the supplier … for such supplies'?

2. Is Article 16(6)(c) of the CIVA, as interpreted in the judgment under appeal (to the effect that the commercial advertising screening tax does not constitute an amount paid in the name and on behalf of the customer of the services, even though it is accounted for in third party suspense accounts and is intended to be paid to public bodies, so that it is not excluded from the taxable amount for the purposes of VAT) compatible with Article 11(A)(3)(c) of Directive 77/388/EC (now Article 79(c) of Council Directive 2006/112/EC of 28 November 2006) and, in particular, with the concept of 'amounts received by a taxable person from his purchaser or customer as repayment for expenses paid out in the name and for the account of the latter and which are entered in his books in a suspense account'?

([1]) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment — OJ 1977 L 145, p. 1.

([2]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax OJ 2006 L 347, p. 1.

Order of the President of the Third Chamber of the Court of 22 November 2011 — European Commission v Ireland

(Case C-356/10) ([1])

(2012/C 49/36)

Language of the case: English

The President of the Third Chamber has ordered that the case be removed from the register.

([1]) OJ C 246, 11.9.2010.

Order of the President of the Court of 14 November 2011 — 4care AG v Office For Harmonization in the Internal Market (Trade marks and designs), Laboratorios Diafarm, SA

(Case C-535/10 P) ([1])

(2012/C 49/37)

Language of the case: German

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 30, 29.1.2011.