

Parties to the main proceedings

Applicant: A

Defendant: Migrationsverket

Question referred

Is an application in which the applicant's information is deemed to be reliable and so is taken as the basis for the assessment, but insufficient to form the basis of a need for international protection on the ground that the country-of-origin information suggests that there is acceptable protection, to be regarded as clearly unfounded under Article 31(8) of the recast Asylum Procedure Directive? ⁽¹⁾

⁽¹⁾ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60).

Action brought on 10 July 2017 — European Commission v French Republic

(Case C-416/17)

(2017/C 293/27)

Language of the case: French

Parties

Applicant: European Commission (represented by: J.-F. Brakeland and W. Roels, acting as Agents)

Defendant: French Republic

Form of order sought

The applicant claims that the Court should:

- declare that, in maintaining the effects of the provisions aimed at eliminating double economic taxation of the dividends that allow a parent company to set off against the advance payment, for which it is liable when it redistributes to its shareholders dividends paid by its subsidiaries, the tax credit applied to the distribution of those dividends if they come from a subsidiary established in France, but not to offer that option if those dividends originate from a subsidiary established in another Member State, since, in that case, that legislation does not give entitlement to a tax credit applied to the distribution of those dividends by that subsidiary in so far as, according to the case-law of the *Conseil d'État*, applications are granted for reimbursement of advance payments made in breach of EU law within the meaning of the judgment of the Court in Case C-310/09 *Accor* ⁽¹⁾, subject to the following three restrictions:
 - the right to reimbursement of the advance payment illegally made is restricted by the refusal to take into account taxation suffered by sub-subsidiaries established outside France;
 - the right to reimbursement of the advance payment illegally made is restricted by disproportionate evidentiary requirements;
 - the right to reimbursement of the advance payment illegally made is restricted by limiting the tax credit to the amount of the dividend redistributed in France which comes from a subsidiary established outside France, and whereas the *Conseil d'État*, administrative court adjudicating at last instance, established those restrictions without asking the Court of Justice for the purposes of determining the compatibility of those restrictions with EU law,

the French Republic has failed to fulfil its obligations under the principles of equivalence and effectiveness and in accordance with Articles 49, 63 and the third paragraph of Article 267 of the Treaty on the Functioning of the European Union

— order the French Republic to pay the costs.

Pleas in law and main arguments

The European Commission complains that France, through the settled case-law of the *Conseil d'État*, its highest administrative court, refused to give full effect to the judgment of the Court of Justice in Case C-310/09, *Ministre du Budget, des Comptes publics et de la Fonction publique v Accor SA*, in particular in imposing restrictions contrary to EU law for the reimbursement of a tax unduly levied, namely withholding tax.

In its judgment in *Accor*, handed down following a preliminary question, the Court of Justice found that the French tax rules seeking to eliminate economic double taxation of dividends maintained discrimination in respect of taxation of dividends which have their source in other EU Member States. The taxes which the Court has found to be contrary to EU law must thus be reimbursed.

The Commission considers that France is not complying with the judgment of the Court of Justice on three specific points:

- it does not take into account taxes already paid by non-French sub-subsidiaries;
- it maintains, in order to limit the right to reimbursement of the companies concerned, requirements regarding the evidence to be provided, not observing the criteria laid down by the Court of Justice;
- it limits in an absolute manner the tax credit system to a third of the dividend redistributed by a non-French subsidiary.

These violations are moreover due to the fact that the *Conseil d'État* failed to comply with its obligation to refer a question to the Court of Justice pursuant to Article 267 TFEU.

⁽¹⁾ Judgment of the Court (First Chamber) of 15 September 2011 in Case C-310/09, *Ministre du Budget, des Comptes publics et de la Fonction publique v Accor SA*, EU:C:2011:581.

Appeal brought on 11 July 2017 by Deza, a.s. against the judgment of the General Court (Fifth Chamber) delivered on 11 May 2017 in Case T-115/15 Deza, a.s. v ECHA

(Case C-419/17 P)

(2017/C 293/28)

Language of the case: Czech

Parties

Appellant: Deza, a.s. (represented by: P. Dejl, advokát)

Other parties to the proceedings: European Chemicals Agency, Kingdom of Denmark, Kingdom of the Netherlands, Kingdom of Sweden, Kingdom of Norway

Form of order sought

- set aside the judgment of the General Court of 11 May 2017 in Case T-115/15,
- annul the decision of the ECHA of 12 December 2014, No ED/108/2014,
- order the ECHA to pay the costs incurred by the appellant in the appeal proceedings before the Court of Justice and in the previous proceedings before the General Court.

Grounds of appeal and main arguments

1. The General Court interpreted and applied the REACH regulation incorrectly.