

Judgment of the Court (Grand Chamber) of 2 December 2009 — European Commission v Ireland, French Republic, Italian Republic, Eurallumina SpA, Aughinish Alumina Ltd

(Case C-89/08 P) ⁽¹⁾

(Appeal — State aid — Exemption from excise duty on mineral oils — Regulation (EC) No 659/1999 — Article 1(b)(v) — Failure to state reasons — Court acting of its own motion — Plea involving a matter of public policy raised by the Community judicature — Infringement of the rule that the parties should be heard — Scope of the obligation to state reasons)

(2010/C 24/08)

Language of the case: French, English and Italian

Parties

Appellant: European Commission (represented by: V. Di Bucci and N. Khan, Agents)

Other parties to the proceedings: Ireland (represented by: D. O'Hagan, Agent and by P. McGarry BL), French Republic (represented by: G. de Bergues and A.-L. Vendrolini, Agents), Italian Republic (represented by R. Adam, Agent and by G. Aiello, avvocato dello Stato), Eurallum SpA (represented by R. Denton, Solicitor), Aughinish Alumina Ltd (represented by: J. Handoll and C. Waterson, Solicitors)

Re:

Appeal against the judgment of the Court of First Instance (Second Chamber, Extended Composition) of 12 December 2007 in Joined Cases T-50/06, T-56/06, T-60/06, T-62/06 and T-69/06 *Ireland and Others v Commission*, by which the Court of First Instance annulled Commission Decision 2006/323/EC of 7 December 2005 concerning the exemption from excise duty on mineral oils used as fuel for alumina production in Gardanne, in the Shannon region and in Sardinia respectively implemented by France, Ireland and Italy (OJ 2006 L 119, p. 12) — Concepts of existing aid and new aid — Objective concepts — Lack of reasoning — Plea of public policy to be raised automatically by the Community Court — Breach of the principle that the action is confined to the subject-matter as delimited in the application and general principles of the adversarial system and respect of the rights of the defence.

Operative part of the judgment

The Court:

1. Sets aside the judgment of the Court of First Instance of the European Communities of 12 December 2007 in Joined Cases T-50/06, T-56/06, T-60/06, T-62/06 and T-69/06 *Ireland and Others v Commission* in so far as it:

— annulled Commission Decision 2006/323/EC of 7 December 2005 concerning the exemption from excise duty on mineral

oils used as fuel for alumina production in Gardanne, in the Shannon region and in Sardinia respectively implemented by France, Ireland and Italy, on the ground that, in that decision, the Commission of the European Communities failed to fulfil its obligation to state reasons with regard to the non-application in the present case of Article 1(b)(v) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88 EC]; and

— ordered the Commission of the European Communities to bear its own costs and to pay those of the applicants, including the costs relating to the interim proceedings in Case T-69/06 R;

2. Refers Joined Cases T-50/06, T-56/06, T-60/06, T-62/06 and T-69/06 back to the General Court of the European Union;

3. Orders that costs are reserved.

⁽¹⁾ OJ C 116, 9.5.2008.

Judgment of the Court (Grand Chamber) of 17 November 2009 (reference for a preliminary ruling from the Corte costituzionale (Italy)) — Presidente del Consiglio dei Ministri v Regione autonoma della Sardegna

(Case C-169/08) ⁽¹⁾

(Freedom to provide services — Article 49 EC — State aid — Article 87 EC — Regional legislation establishing a tax on stopovers for tourist purposes by aircraft used for the private transport of persons, or by recreational craft, to be imposed only on operators whose tax domicile is outside the territory of that region)

(2010/C 24/09)

Language of the case: Italian

Referring court

Corte costituzionale (Italy)

Parties to the main proceedings

Applicant: Presidente del Consiglio dei Ministri

Defendant: Regione autonoma della Sardegna

Re:

Reference for a preliminary ruling — Corte Costituzionale (Italy) — Interpretation of Articles 49 and 87 EC — Regional legislation under which a tax is imposed in respect of stopovers for tourist purposes by aircraft only on undertakings, operating

aircraft for the transport of persons or goods by way of an activity ancillary to their main business, whose tax domicile is outside Sardinia — State aid, in the form of an exclusion from the obligation to pay the tax, to undertakings carrying on the same activities whose tax domicile is in Sardinia

Operative part of the judgment

1. Article 49 EC must be interpreted as precluding tax legislation, adopted by a regional authority, such as that provided for under Article 4 of Law No 4 of the Region of Sardinia of 11 May 2006 (Miscellaneous provisions on revenue, reclassification of costs, social policy and development) as amended by Article 3(3) of Law No 2 of the Region of Sardinia of 29 May 2007 (Provisions for the preparation of the annual and long-term budget of the Region — 2007 Finance Law), which establishes a regional tax on stopovers for tourist purposes by aircraft used for the private transport of persons, or by recreational craft, to be imposed only on natural and legal persons whose tax domicile is outside the territory of the region.
2. Article 87(1) EC must be interpreted as meaning that tax legislation, adopted by a regional authority, which establishes a tax on stopovers, such as that at issue in the main proceedings, to be imposed only on natural and legal persons whose tax domicile is outside the territory of the region, constitutes a State aid measure in favour of undertakings established in that territory.

⁽¹⁾ OJ C 171, 05.07.2008.

Judgment of the Court (Second Chamber) of 10 December 2009 (Reference for a preliminary ruling from the Umweltsenat — Austria) — Umweltanwalt von Kärnten v Kärntner Landesregierung

(Case C-205/08) ⁽¹⁾

(Reference for a preliminary hearing — Article 234 EC — Concept of ‘national court or tribunal’ — Admissibility — Directive 85/337/EEC — Environmental impact assessment — Construction of overhead electrical power lines — Length of more than 15 km — Transboundary constructions — Transboundary power line — Total length exceeding the threshold — Line mainly situated in the territory of a neighbouring Member State — Length of national section below the threshold)

(2010/C 24/10)

Language of the case: German

Referring court

Umweltanwalt von Kärnten

Parties to the main proceedings

Applicant: Umweltanwalt von Kärnten

Defendant: Kärntner Landesregierung

Re:

Reference for a preliminary ruling — Umweltsenat (Austria) — Interpretation of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ 1997 L 73, p. 5) and by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ 2003 L 156, p. 17) — Requirement for an environment impact assessment for constructions of overhead electrical power lines of a length of more than 15 km — Length to be taken into account in the case of trans-frontier constructions — Scheme for an electrical power line with a total length exceeding the threshold but with only a section of 7.4 km on national territory, the remainder being situated on the territory of the neighbouring Member State.

Operative part of the judgment

Articles 2(1) and 4(1) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, are to be interpreted as meaning that the competent authorities of a Member State must make a project referred to in point 20 of Annex I to the Directive, such as the construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km, subject to the environmental impact assessment procedure even where the project is transboundary in nature and less than 15 km of it is situated on the territory of that Member State.

⁽¹⁾ OJ C 209, 15.8.2008.