

Question referred

Is Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽¹⁾ to be interpreted as meaning that, in the event of an alleged breach of a prohibition on resale outside a selective distribution network and via a marketplace by means of online offers for sale on a number of websites operated in various Member States, an authorised distributor which considers that it has been adversely affected has the right to bring an action seeking an injunction prohibiting the resulting unlawful interference in the courts of the territory in which the online content is or was accessible, or must some other clear connecting factor be present?

⁽¹⁾ OJ 2001 L 12, p. 1.

Reference for a preliminary ruling from Court of Appeal (England & Wales) (Civil Division) (United Kingdom) made on 24 November 2015 — The Trustees of the BT Pension Scheme v Commissioners for Her Majesty's Revenue and Customs

(Case C-628/15)

(2016/C 038/52)

Language of the case: English

Referring court

Court of Appeal (England & Wales) (Civil Division)

Parties to the main proceedings

Applicant: The Trustees of the BT Pension Scheme

Defendant: Commissioners for Her Majesty's Revenue and Customs

Questions referred

1. Given that the Court, in its answer to Question 4 in the judgment of 12 December 2006 in Case C-446/04 Test Claimants in the FII Group Litigation v Commissioners of Inland Revenue [2006] ECR I-11753, determined that Articles 43 and 56 of the EC Treaty — now Articles 49 and 63 of the Treaty on the Functioning of the European Union — precluded legislation of a Member State which allows resident companies distributing dividends to their shareholders which have their origin in foreign-sourced dividends received by them to elect to be taxed under a regime which permits them to recover advance corporation tax paid, but, first, obliges those companies to pay that advance corporation tax and subsequently to claim repayment and, secondly, does not provide a tax credit for their shareholders, whereas those shareholders would have received such a tax credit in the case of a distribution made by a resident company which had its origin in nationally-sourced dividends: are any rights under EU law conferred on those shareholders themselves, whether under Article 63 TFEU or otherwise, in cases where they are the recipients of the dividends elected to be paid under that regime; in particular where a shareholder is resident in the same Member State as the company distributing the dividends?
2. If the shareholder referred to in Question 1 does not itself have rights under Article 63 TFEU, is it entitled to rely on any infringement of rights under Article 49 or Article 63 TFEU of the company distributing the dividend?
3. If the answer to Question 1 or Question 2 is that the shareholder has rights under or can rely on EU law, does EU law impose any requirements as to the remedy to be provided to the shareholder under domestic law?
4. Does it make any difference to the Court's answer to the above questions that:
 - a) the shareholder is not liable to income tax in the Member State on any dividends received, with the consequence that in the case of a distribution made by a resident company outside the above regime the tax credit to which the shareholder is entitled under domestic legislation may result in a payment of the tax credit to the shareholder by the Member State;

- b) the national court has decided that the infringement of EU law by the domestic legislation in question was not sufficiently serious so as to give rise to a liability of the Member State in damages in favour of the company distributing the dividends, under the principles established under Joint Cases C-46/93 and C-48/93 *Brasserie du Pêcheur SA v Federal Republic of Germany* and *The Queen v Secretary of State for Transport, ex parte Factortame Limited and Others* [1996] ECR I-1029; or that
- c) in some cases but not all, the company distributing the dividends under the above regime may have increased the amount of its distributions paid to all shareholders to provide a cash sum equivalent to that which would be achieved by an exempt shareholder from a payment of dividends outside the regime?

Appeal brought on 24 November 2015 by Novartis Europharm Ltd against the judgment of the General Court (Second Chamber) delivered on 15 September 2015 in Case T-472/12: Novartis Europharm Ltd v European Commission

(Case C-629/15 P)

(2016/C 038/53)

Language of the case: English

Parties

Appellant: Novartis Europharm Ltd (represented by: C. Schoonderbeek, avocate)

Other parties to the proceedings: European Commission, Teva Pharma BV

Form of order sought

The appellant claims that the Court should:

- Set aside the Judgment under appeal in that, by that judgment, the General Court dismissed the action of annulment in case T-472/12,
- Remit the case back to the General Court, if necessary, and
- Order the Commission to pay the costs.

Pleas in law and main arguments

By its application for annulment in Case T-472/12 Novartis requested the General Court to annul the Commission Implementing Decision C(2012) 5894 final of 16 August 2012 granting a marketing authorisation in accordance with Regulation (EC) No. 726/2004⁽¹⁾ for the medicinal product for human use 'Zoledronic acid Teva Pharma — zoledronic acid' because this decision constitutes a violation of Novartis' data exclusivity rights for its medicinal product Aclasta pursuant to Article 13(4) of Regulation (EC) No. 2309/93⁽²⁾ read in conjunction with Article 14(11) and 89 of Regulation (EC) No. 726/2004 and Article 6(1) of Directive 2001/83/EC⁽³⁾. By the judgment under appeal the application of annulment was dismissed.

In support of this appeal, the appellant claims that the General Court made an error in law in that it incorrectly interpreted Article 6(1) of Directive 2001/83/EC, which lays down the concept of the global marketing authorisation, and because the General Court failed to provide an adequate statement of reasons in the judgment under appeal.

In this respect the appellant claims first that the judgment under appeal is based on a misunderstanding of the wording and purpose of Article 6(1) of Directive 2001/83/EC and of the legal framework for the authorisation of new therapeutic indications and on the incorrect assumption that the appellant's interpretation of the Article 6(1) of Directive 2001/83/EC would facilitate manipulation and circumvention of data protection and indefinite extension of data protection for reference medicinal products.