

### Questions referred

1. Is the importer (declarant), who at the time of the import requests exemption from payment of VAT (import in accordance with procedure 42), inasmuch as the goods are intended to be supplied in another Member State, liable for payment of the VAT (when it is subsequently found that the conditions necessary for exemption have not been satisfied) in the same way that he is liable for payment of the customs debt?
2. If the answer is in the negative, is the liability of the importer (declarant) equal to that of the taxable person who makes the intra-Community supply of exempt goods, for the purposes of Article 138(1) of the VAT Directive?
3. In the latter case, must the subjective element showing that the importer (declarant) intended to abuse the VAT scheme be assessed differently from the case of the intra-Community supply of goods referred to in Article 138(1) of the VAT Directive? Must that assessment be more concessive, in the light of the fact that in procedure 42 exemption from payment of VAT must be authorised in advance by the customs authority? Or must it be more restrictive, inasmuch as the transactions concerned are connected with the first entry into the European Union internal market of goods originating from third countries?

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**Appeal brought on 7 September 2017 by Mykola Yanovych Azarov against the judgment of the General Court (Sixth Chamber) of 7 July 2017 in Case T-215/15, M.Y. Azarov v Council of the European Union**

**(Case C-530/17 P)**

(2017/C 374/30)

*Language of the case: German*

### Parties

*Appellant:* Mykola Yanovych Azarov (represented by: A. Egger and G. Lansky, Rechtsanwälte)

*Other party to the proceedings:* Council of the European Union

### Form of order sought

The appellant claims that the Court should:

1. set aside the judgment of the General Court of 7 July 2017 in Case T-215/15;
2. give final judgment itself in the case and annul Council Decision (CFSP) 2015/364<sup>(1)</sup> of 5 March 2015 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine and Council Implementing Regulation (EU) 2015/357<sup>(2)</sup> of 5 March 2015 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, in so far as they concern the appellant, and order the Council to pay the costs of the proceedings before the General Court and the Court of Justice;
3. in the alternative to the second head of claim above, refer the case back to the General Court for determination in line with the legal assessment contained in the judgment of the Court of Justice, and reserve the decision on costs.

### Grounds of appeal and main arguments

The appellant raises the following grounds of appeal:

- (1) The General Court infringed Article 296 TFEU and Article 41 of the Charter of Fundamental Rights in finding that the Council had not erred in law in its reasons for the restrictive measures. The Council did not set out the reasons in a sufficiently specific and concrete manner.
- (2) The General Court erred in finding that the Council had not infringed fundamental rights. The General Court erred in law in its assessment of the interference with property rights and the freedom to run a business. In particular, it erred in law in finding that the measures were appropriate and proportionate. Moreover, the General Court committed procedural errors and infringed procedural rights.

- (3) The General Court erred in finding that the Council had not misused its powers. First, the General Court failed to carry out a specific check on the appellant. Second, the General Court erred in law in taking the view that the lack of specific evidence was irrelevant.
- (4) The General Court erred in finding that the Council had not infringed the right to good administration. First, the findings of the General Court on the Council's obligation to maintain impartiality are vitiated by errors of law. Second, the General Court failed to have regard for the scope of the obligation to make a careful determination of the facts. In this context, an infringement of the appellant's procedural rights is also evident.

The General Court erred in finding that the Council had not committed a 'manifest error of assessment'. First, the General Court failed to meet its obligation to carry out a review in relation to the contested legal acts in that it did not review the procedure which had led to the adoption of the contested legal acts. The General Court erred in law in finding that the Council could rely solely on a letter from the Ukraine. The General Court thereby disregarded the obligation to make additional enquiries. Furthermore, the General Court failed to have regard for the scope of the most recent case-law of the Court of Justice on restrictive measures. In addition, the General Court reasoned to a large extent in a purely political manner and demonstrates a failure to appreciate the importance of fundamental rights in a third country.

<sup>(1)</sup> OJ 2015 L 62, p. 25.

<sup>(2)</sup> OJ 2015 L 62, p. 1.

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**Appeal brought on 13 September 2017 by Talanton AE — Symvouleftiki-Ekpaideftiki Etaireia Dianomon, Parochis Ypiresion Marketing kai Dioikisis Epicheiriseon against the judgment delivered by the General Court (Seventh Chamber) on 13 July 2017 in Case T-65/15 Talanton AE v European Commission**

**(Case C-539/17 P)**

(2017/C 374/31)

*Language of the case: Greek*

### **Parties**

*Appellant:* Talanton AE — Symvouleftiki-Ekpaideftiki Etaireia Dianomon, Parochis Ypiresion Marketing kai Dioikisis Epicheiriseon (represented by: K. Damis, dikigoros)

*Other party to the proceedings:* European Commission

### **Form of order sought**

- set aside in its entirety the judgment of the General Court of the European Union of 13 July 2017 in Case T-65/15 *Talanton AE — Symvouleftiki-Ekpaideftiki Etaireia Dianomon, Parochis Ypiresion Marketing kai Dioikisis Epicheiriseon v European Commission*;
- uphold the company's action of 6 February 2015;
- dismiss the Commission's counterclaim;
- order the Commission to pay all the appellant's costs.

### **Pleas in law and main arguments**

- (1) Incorrect application of the principle of good faith in the performing of the agreement at issue — Infringement of the provisions concerning subcontracting under the financial regulation in force.
- The General Court assessed Article 1134 of the Belgian Civil Code incorrectly, as regards application of the principle of good faith in the performing of the agreement.
  - The General Court erred as to the interpretation of the provisions concerning subcontracting, as laid down in Article 130 et seq. of Regulation (EU) No 2342/2002 and in contractual clauses I.II.2.4 and II.13.1 of the Framework Contract signed under number FP7/2009/1.