

Parties to the main proceedings

Applicant: X

Other parties: College van burgemeester en wethouders van de gemeente Purmerend, Tamoil Nederland B.V.

Questions referred

1. a. Must Article 5(1) of Directive 2008/68/EC ⁽¹⁾ be interpreted as precluding a licensing condition, included in the licence for the LPG service station, which stipulates that the individual LPG service station concerned may exclusively be supplied by LPG road tankers that are fitted with a heat-resistant lining whereas that obligation is not directly imposed on one or more operators of LPG road tankers?
- b. In answering the first question, does it matter that the Member State has concluded an agreement in the form of the 'Safety Deal hittewerende bekleding op LPG-autogastankwagens' ('Safety Deal on heat-resistant lining on LPG automotive-fuel road tankers') with organisations of market participants in the LPG industry (including operators of LPG service stations, producers, sellers and carriers of LPG), in which the parties have committed themselves to implementing the heat-resistant lining and that, subsequently, that Member State issued a circular such as the 'Circulaire effectafstanden externe veiligheid LPG-tankstations voor besluiten met gevolgen voor de effecten van een ongeval' ('Circular on safety distances external safety LPG service stations for decisions with consequences for the effects of an accident'), in which an additional risk policy is laid down that is based on the assumption that LPG service stations are supplied by means of road tankers fitted with a heat-resistant lining?
2. a. If a national court is assessing the lawfulness of an enforcement decision aimed at enforcing compliance with a licensing condition that has become legally unchallengeable and is contrary to EU law:
 - does EU law, in particular the case-law of the Court of Justice on national procedural autonomy, allow the national court in principle to proceed on the assumption of the legality of such a licensing condition, unless it is clearly contrary to higher law, including EU law? And if so, does EU law impose (additional) conditions on that exception?
 - or does EU law entail, having regard to the judgments of the Court of Justice in *Giola* (Case C-224/97, EU:C:1999:212) and *Man Sugar* (Case C-274/04, EU:C:2006:233), that the national court should disregard such a licensing condition because it is contrary to EU law?
- b. In answering question 2 a., is it relevant whether the enforcement decision is a remedy or a criminal charge?

⁽¹⁾ Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods (OJ 2008 L 260, p. 13).

Appeal brought on 22 January 2019 by the Federal Republic of Germany against the judgment of the General Court (Ninth Chamber, Extended Composition) delivered on 13 December 2018 in Joined Cases T-339/16, T-352/16 and T-391/16, Ville de Paris, Ville de Bruxelles and Ayuntamiento de Madrid v European Commission

(Case C-177/19 P)

(2019/C 155/36)

Languages of the case: Spanish and French

Parties

Appellant: Federal Republic of Germany (represented by: J. Möller, S. Eisenberg and D. Klebs, acting as Agents)

Other parties to the proceedings: European Commission, Ville de Paris, Ville de Bruxelles and Ayuntamiento de Madrid

Form of order sought

The appellant claims that the Court should:

1. set aside the judgment of the General Court of the European Union of 13 December 2018, *Ville de Paris, Ville de Bruxelles and Ayuntamiento de Madrid v Commission* (T-339/16, T-352/16 and T-391/16, EU:T:2018:927);
2. dismiss the actions;
3. order the applicants at first instance to pay the costs incurred before the General Court and the Court of Justice; and
4. in the alternative, vary point 3 of the operative part of the judgment referred to above so that the effectiveness of the annulled provision is maintained for a maximum period that is significantly longer than 12 months from the date on which that judgment takes effect.

Grounds of appeal and main arguments

In support of its appeal, the appellant relies on four grounds of appeal:

First, the General Court wrongly found that the action was admissible. The General Court erred in law when it accepted that the applicant municipalities were directly concerned by Regulation (EU) 2016/646 ⁽¹⁾ when exercising their powers to enact measures to prevent air pollution.

Second, the judgment under appeal contains insufficient reasoning, in so far as it contains no reasons explaining how that regulation directly concerns the applicants. Rather, the General Court concludes that the applicants at first instance are directly concerned solely on the basis that Directive 2007/46/EC ⁽²⁾ precludes them from imposing bans on vehicles compliant with the Euro 6 standard. This interpretation of Directive 2007/46 is also incorrect.

Third, the General Court also erred in law when, contrary to Article 5(3) of Regulation (EC) No 715/2007, ⁽³⁾ it accepted that the Commission did not have the power to enact Regulation 2016/646 in that particular form. The General Court overlooked the fact that the Commission had greater discretion when it set the conformity factors for exhaust gas measurements in RDE test procedures in Regulation 2016/646. The Commission was not amending the limits in Regulation No 715/2007 — although the General Court accepted that it was — but rather was setting those limits, which was necessary on account of the novelty and particular nature of the measurement procedure (measurement tolerances).

Fourth, the General Court also erred in law when it accepted that an annulment in part of Regulation 2016/646 is legally possible. When it did so, it failed to take into account that the measurement procedure could not practically be carried out without conformity factors and that the Commission expressly made the binding nature of the RDE procedure for approval purposes contingent on the introduction of correction factors.

In its alternative form of order, the German Government claims that the General Court failed sufficiently to take into account the fact that it is impossible for the EU legislature to enact a new provision in the period set out in the judgment under appeal. Consequently, the effectiveness of the provision annulled by the judgment under appeal should be maintained for a maximum period that is significantly longer than 12 months from the date on which that judgment takes effect.

⁽¹⁾ Commission Regulation (EU) 2016/646 of 20 April 2016 amending Regulation (EC) No 692/2008 as regards emissions from light passenger and commercial vehicles (Euro 6); OJ 2016 L 109, p. 1.

⁽²⁾ Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles; OJ 2007 L 263, p. 1.

⁽³⁾ Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information; OJ 2007 L 171, p. 1.
