V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Action brought on 28 February 2012 — European Parliament v Council of the European Union

(Case C-103/12)

(2012/C 157/02)

Language of the case: French

Parties

Applicant: European Parliament (represented by: L.G. Knudsen, I. Díez Parra and I. Liukkonen, acting as Agents)

Defendant: Council of the European Union

Form of order sought

— Annul Council Decision 2012/19/EU [1] of 16 December 2011 on the approval, on behalf of the European Union, of the Declaration on the granting of fishing opportunities in EU waters to fishing vessels flying the flag of the Bolivarian Republic of Venezuela in the exclusive economic zone off the coast of French Guiana;

— Order the Council of the European Union to pay the costs.

Pleas in law and main arguments

By its action, the European Parliament seeks annulment of Council Decision 2012/19/EU of 16 December 2011 on the approval, on behalf of the European Union, of the Declaration on the granting of fishing opportunities in EU waters to fishing vessels flying the flag of the Bolivarian Republic of Venezuela in the exclusive economic zone off the coast of French Guiana. The Parliament challenges the legal basis chosen. It submits, principally, that Article 43(3) TFEU, together with Article 218(6)(b) TFEU, cannot be the correct legal basis, since the measure in question equates to an international agreement concerning access to European Union waters for the purposes of fishing activities by a non-member country. Accordingly, the measure ought to have been adopted on the basis of Articles 43(2) and 218(6)(a) TFEU and thus after approval by the Parliament.

In the alternative, the Parliament takes the view that the Council, having used the procedure laid down in Article 218(6)(b) TFEU, has given an incorrect interpretation to Article 218(6)(a) TFEU. Even if Article 43(3) TFEU could constitute the appropriate legal basis for an internal measure of the European Union with the same content as the measure challenged, which the Parliament disputes, the fact remains that the Common Fisheries Policy forms, for the purposes of the EU entering into international commitments, an indissociable whole from a procedural point of view. Accordingly, any agreement in that field is an 'agreement covering fields to which either the ordinary legislative procedure applies' within the meaning of Article 218(6)(a) TFEU. Thus, in any event the measure ought to have been adopted in observance of the consent procedure laid down in Article 218(6)(a) TFEU.

[1] OJ 2012 L 6, p. 8.

Reference for a preliminary ruling from the Kúria (Hungary) lodged on 1 March 2012 — Franklin Templeton Investment Funds Sociéte d'Investissement à Capital Variable v Nemzeti Adó- és Vámhivatal Kiemelt Ügyek és Adózók Adó Főigazgatósága

(Case C-112/12)

(2012/C 157/03)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Applicant: Franklin Templeton Investment Funds Sociéte d'Investissement à Capital Variable

Defendant: Nemzeti Adó- és Vámhivatal Kiemelt Ügyek és Adózók Adó Főigazgatósága (Hungary)

Questions referred

1. Is the exemption from tax on dividends granted by the Hungarian legislation to a recipient of dividends resident in Hungary compatible with the provisions of the EU Treaties on the principle of freedom of establishment (Article 49 TFEU), the principle of equal treatment (Article 54 TFEU) and the principle of free movement of capital (Article 56 TFEU (sic)), given that

   (a) a non-resident recipient of dividends is exempt from tax on dividends only if it meets certain legal requirements, namely that its holding (in the case of shares, the proportion of its registered shares) in the company capital of the resident company at the time of distribution (allocation) of dividends amounted permanently to at least 20 % for at least two consecutive years, taking account of the fact that, in the event that the permanent holding of 20 % is maintained for less than two consecutive years, the company distributing the dividends is not obliged to withhold the tax on the dividends and the company which receives the dividends or, in the event of non-monetary allocations, the company which distributes them are not obliged to pay that tax on submission of their tax return if another person or the party distributing the dividends has guaranteed the payment of the tax;

   (b) further, a non-resident recipient of dividends does not meet the requirements of the national legislation for exemption from tax when its holding (in the case of shares the proportion of its registered shares) in the company capital of a resident company at the time of distribution (allocation) of dividends is below the minimum level of 20 % required by law, or when it has not maintained that percentage permanently for at least two consecutive years, or, in the event that the permanent holding of 20 % has been maintained for less than two consecutive years, if payment of the tax was not guaranteed by any third party or by the party distributing the dividends;

2. Would the answer to question 1(b) be different, that is to say, would there be any effect on the answer, if:

   (a) while a resident recipient of dividends is exempt from tax on dividends under the Hungarian legislation, the tax burden of a non-resident recipient of dividends depends on the applicability to it of [Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States] or the [Convention between the Republic of Hungary and the Grand Duchy of Luxembourg for the avoidance of double taxation with respect to taxes on income and on capital, done at Budapest on 15 January 1990],

   (b) while a resident recipient of dividends is exempt from tax on dividends under the Hungarian legislation, a non-resident recipient of dividends may either offset such tax against its national tax or bear the final burden, depending on the provisions of its national law.

3. May the national tax authority invoke Article 65(1) TFEU (formerly Article 58(1) EC) and the former Article 220 EC in order to disapply Community law of its own motion?

Reference for a preliminary ruling from the Rechtbank Middelburg (Netherlands) lodged on 20 March 2012 — Y.S. v Minister voor Immmmigratie, Integratie en Asiel

(Case C-141/12)

(2012/C 157/04)

Language of the case: Dutch

Referring court

Rechtbank Middelburg

Parties to the main proceedings

Applicant: Y.S.

Defendant: Minister voor Immmmigratie, Integratie en Asiel

Questions referred

1. Are the data reproduced in the minute concerning the data subject and which relate to the data subject, personal data within the meaning of Article 2(a) of the Privacy Directive? ([1])

2. Does the legal analysis included in the minute constitute personal data within the meaning of the aforementioned provision?

3. If the Court of Justice confirms that the data described above are personal data, should the processor/government body grant access to those personal data pursuant to Article 12 of the Privacy Directive and Article 8(2) of the EU Charter? ([2])

4. In that context, may the data subject rely directly on Article 41(2)(b) of the EU Charter, and if so, must the phrase 'while respecting the legitimate interests of confidentiality [in decision-making]' included therein be interpreted in such a way that the right of access to the minute may be refused on that ground?