

**Ground of appeal in the alternative: EU law does not, even indirectly, provide for any discretion for the Commission to grant an exemption from the obligation of the Member States to apply secondary legislation and the Regulation.**

The view of the General Court on the Commission's discretion, set out in the grounds of the judgment — paragraph 6 — breaches, from various points of view, binding and unequivocal provisions of the Treaties, which are not, therefore, subject to assessment by the Commission. In the view of the appellant, the Commission is not, moreover able to assess the obligation to ensure the effectiveness of the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union.

In its application, the appellant did not at any point contest the Commission's discretion, but, rather, in the actual substance of the application, complained that it was not possible for the Commission to exercise its discretion within the meaning of the settled case-law relied on by the General Court, given that it is only appropriate to speak of *the exercise of discretion* if the assessment itself is fair and if there is something which can reasonably be assessed.

The Treaty, which is a higher-ranking norm than the case-law, provides that the Commission is to guarantee the effectiveness of EU law.

*In the present case, the agent of the European Union (European Union body) which made the assessment has deprived the appellant of its fundamental right to assess and itself to decide on questions which cannot in themselves be the subject of assessment, instead of the Commission's doing so, in advance and in an unfair manner; that is to say, rather than exercising its discretion, the agent itself decided on the appellant's case on the basis of false findings of fact.*

The appellant considers that neither the national court nor the European Commission can assess whether or not, where Article 101 TFEU is applicable, Council Regulation (EC) No 1/2003 on the application of that article must be applied, and nor can the Commission decide that the refusal to apply a regulation of the European Union (unequivocal case of failure to apply) is equivalent to the *concept of 'application in another way'*. In itself, that finding alone demonstrates the breach of the right of the appellant to fair administration and, consequently, the failure to provide an effective judicial procedure and a lawful judge.

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**Action brought on 19 December 2014 — European Commission v Kingdom of Belgium**

(Case C-589/14)

(2015/C 073/21)

Language of the case: French

**Parties**

*Applicant:* European Commission (represented by: J.-F. Brakeland and W. Roels, acting as Agents)

*Defendant:* Kingdom of Belgium

**Form of order sought**

The applicant claims that the Court should:

— Declare that in maintaining provisions under which:

— as regards interest payable on unsecured debts, an investment company established in another Member State of the European Union or a State belonging to the European Economic Area (EEA) is subject to the payment of withholding tax on that interest, whereas an investment company established in Belgium benefits from an exemption from that tax, and

— as regards interest payable on debts backed by Belgian securities, the interest is subject to the payment of withholding tax when the securities are deposited or registered in an account in a financial institution established in another Member State of the European Union or a State belonging to the EEA, whereas that interest is exempt from withholding tax when the securities are deposited or registered in an account in a financial institution in Belgium,

the Kingdom of Belgium has failed to comply with its obligations under Articles 56 and 63 of the Treaty on the Functioning of the European Union and with Articles 36 and 40 of the Agreement on the EEA.

— order the Kingdom of Belgium to pay the costs.

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

The Commission considers that various provisions of the Royal Decree implementing the Belgian Income Tax Code 1992 make possible exemptions from withholding tax payable on interest subject to conditions that are not compatible with the fundamental freedoms guaranteed by the Treaties, namely Articles 56 and 63 TFEU.

First, as regards the interest payable on unsecured debts, an investment company established in another Member State of the European Union or a State belonging to the EEA would be subject the payment of withholding tax on that interest, whereas an investment company established in Belgium would benefit from an exemption from that tax.

Second, as regards the interest payable on debts backed by Belgian securities, that interest would be subject to the payment of withholding tax when the securities are deposited or registered in an account in a financial institution established in another Member State of the Union or a State belonging to the EEA, whereas such interest would be exempt from withholding tax when the securities are deposited or registered in an investment company in Belgium.

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## **Action brought on 19 December 2014 — European Commission v Kingdom of Belgium**

**(Case C-591/14)**

(2015/C 073/22)

*Language of the case: French*

### **Parties**

*Applicant:* European Commission (represented by: J.-F. Brakeland and B. Stromsky, Acting as agents, acting as Agents)

*Defendant:* Kingdom of Belgium

### **Form of order sought**

The applicant claims that the Court should:

— declare that by failing, within the period prescribed, to take all the necessary measures to recover from the beneficiaries the aid declared to be illegal and incompatible with the internal market by Article 1(3) and (4) of Commission Decision 2011/678/EU of 27 July 2011, concerning the State aid for financing screening of transmissible spongiform encephalopathies (TSE) in bovine animals implemented by Belgium<sup>(1)</sup>, and by failing to inform the Commission, within the prescribed period, of the measures taken to comply with that decision, the Kingdom of Belgium has failed to comply with its obligations under the fourth paragraph of Article 288 TFEU and Articles 2, 3 and 4 of Commission Decision 2011/678/EU.

— order the Kingdom of Belgium to pay the costs.

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

By Commission Decision 2011/678/EU concerning the State aid for financing screening of transmissible spongiform encephalopathies (TSE) in bovine animals implemented by the Kingdom of Belgium, the Commission declared aid granted by Belgium to be illegal and incompatible with the internal market.

The period prescribed by the decision for the recovery of the aid declared to be illegal expired on 28 November 2011, without the complete recovery of those aids having taken place.

At the date on which the present action was lodged, the defendant had still not adopted the necessary measures to recover the aid granted to the beneficiary companies, nor communicated to the Commission all the information requested.

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<sup>(1)</sup> OJ L 2011 274, p. 36.