

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 5 June 2012 — European Commission v *Électricité de France* (EDF), French Republic, Iberdrola SA

(Case C-124/10 P) ⁽¹⁾

(Appeal — State aid — Waiver of a tax claim — Exemption from corporation tax — Increase in share capital — Conduct of a State acting as a prudent private investor in a market economy — Criteria to distinguish between the State as shareholder and the State exercising public power — Definition of ‘reference private investor’ — Principle of equal treatment — Burden of proof)

(2012/C 217/02)

Language of the case: French

Parties

Appellant: European Commission (represented by: E. Gippini Fournier, B. Stromsky and D. Grespan, acting as Agents)

Other parties to the proceedings: *Électricité de France* (EDF) (represented by: M. Debroux, avocat), French Republic (represented by: G. de Bergues and J. Gstalter, acting as Agents), Iberdrola SA (represented by: J. Ruiz Calzado and É. Barbier de La Serre, avocats)

Supported by: EFTA Surveillance Authority (represented by: X. Lewis and B. Alterskjær, acting as Agents)

Re:

Appeal against the judgment of 15 December 2009, by which the General Court (Third Chamber) annulled Articles 3 and 4 of the decision of the Commission of 16 December 2003 on the State aid granted to EDF and the electricity and gas industries (C 68/2002, N 504/2003 and C 25/2003) — Aid granted in the form of a selective tax exemption linked to an increase in share capital during a recapitalisation of the undertaking — Conduct of a State acting as a prudent private investor in a

market economy — Criteria to distinguish between the State as shareholder and the State exercising public power — Principle of equal tax treatment

Operative part of the judgment*The Court:*

1. Dismisses the appeal;
2. Orders the European Commission to pay the costs;
3. Orders the EFTA Surveillance Authority, the French Republic and Iberdrola SA to bear their own costs.

⁽¹⁾ OJ C 161, 19.6.2010.

Judgment of the Court (Grand Chamber) of 5 June 2012 (reference for a preliminary ruling from the Sąd Najwyższy — Poland) — Criminal proceedings against Łukasz Marcin Bonda

(Case C-489/10) ⁽¹⁾

(Common agricultural policy — Single area payment scheme — Regulation (EC) No 1973/2004 — Article 138(1) — Exclusion from receiving aid if the area declared is not correct — Administrative or criminal nature of that penalty — Rule against the overlapping of criminal penalties — Ne bis in idem principle)

(2012/C 217/03)

Language of the case: Polish

Referring court

Sąd Najwyższy

Party to the main criminal proceedings

Łukasz Marcin Bonda

Re:

Reference for a preliminary ruling — Sąd Najwyższy — Interpretation of Article 138 of Commission Regulation (EC) No 1973/2004 of 29 October 2004 laying down detailed rules for the application of Council Regulation (EC) No 1782/2003 as regards the support schemes provided for in Titles IV and IVa of that Regulation and the use of land set aside for the production of raw materials (OJ 2004 L 345, p. 1) — Single area payment — Grant of aid excluded if the area declared is incorrect — Administrative or criminal nature of that penalty

Operative part of the judgment

Article 138(1) of Commission Regulation (EC) No 1973/2004 of 29 October 2004 laying down detailed rules for the application of Council Regulation (EC) No 1782/2003 as regards the support schemes provided for in Titles IV and IVa of that regulation and the use of land set aside for the production of raw materials must be interpreted as meaning that the measures provided for in the second and third subparagraphs of that provision, consisting in excluding a farmer from receiving aid for the year in which he made a false declaration of the eligible area and reducing the aid he can claim within the following three calendar years by an amount corresponding to the difference between the area declared and the area determined, do not constitute criminal penalties.

⁽¹⁾ OJ C 13, 15.1.2011.

**Judgment of the Court (Fourth Chamber) of 7 June 2012
(reference for a preliminary ruling from the Korkein hallinto-oikeus — Finland) — Proceedings brought by
Insinööritoimisto InsTiimi Oy**

(Case C-615/10) ⁽¹⁾

(Directive 2004/18/EC — Public contracts in the field of defence — Article 10 — Article 296(1)(b) EC — Protection of a Member State's essential security interests — Trade in arms, munitions and war material — Product procured by a contracting authority specifically for military purposes — Existence, as regards that product, of a potential and largely identical civilian application — Tilttable turntable for carrying out electromagnetic measurements — Contract not put out to tender in accordance with the procedures provided for by Directive 2004/18)

(2012/C 217/04)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Insinööritoimisto InsTiimi Oy,

party heard in the matter: Puolustusvoimat

Re:

Reference for a preliminary ruling — Korkein hallinto-oikeus — Interpretation of Article 10 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114) and Article 346 TFEU — List of arms, munitions and war material adopted by Decision No 255/58 of the Council of 15 April 1958 — Scope of the directive — Material intended primarily for military use — Turntable equipment for electromagnetic measurements

Operative part of the judgment

Article 10 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, read in conjunction with Article 296(1)(b) EC, must be interpreted as authorising a Member State to set aside the procedures laid down by that directive in the case of a public contract awarded by a contracting authority in the field of defence for the acquisition of material which, although intended for specifically military purposes, also presents possibilities for essentially identical civilian applications only if that material, by virtue of its intrinsic characteristics, may be regarded as having been specially designed and developed, also as a result of substantial modifications, for such purposes, this being a matter for the referring court to determine.

⁽¹⁾ OJ C 72, 5.3.2011.

**Judgment of the Court (Eighth Chamber) of 7 June 2012
(reference for a preliminary ruling from the Administrativen sad Sofia-grad — Bulgaria) — Anton
Vinkov v Nachalnik Administrativno-nakazatelna deynost**

(Case C-27/11) ⁽¹⁾

(Reference for a preliminary ruling — Non-recognition in national law of the right to a judicial remedy in respect of decisions imposing a financial penalty and the deduction of points for certain breaches of road traffic regulations — Purely internal situation — Inadmissibility of the reference)

(2012/C 217/05)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad