European Court of Justice, 18 July 2006, Meca-Medina and Majcen v Commission

FREE MOVEMENT

Purely sporting rules

- **In holding that rules could thus be excluded straightaway from the scope of those articles solely on the ground that they were regarded as purely sporting with regard to the application of Articles 39 EC and 49 EC, without any need to determine first whether the rules fulfilled the specific requirements of Articles 81 EC and 82 EC, as set out in paragraph 30 of the present judgment, the Court of First Instance made an error of law.**

Therefore, even if those rules do not constitute restrictions on freedom of movement because they con-cern questions of purely sporting interest and, as such, have nothing to do with economic activity (Walrave and Koch and Donà), that fact means neither that the sporting activity in question necessarily falls outside the scope of Articles 81 EC and 82 EC nor that the rules do not satisfy the specific requirements of those articles. However, in paragraph 42 of the contested judg-ment, the Court of First Instance held that the fact that purely sporting rules may have nothing to do with eco-nomic activity, with the result that they do not fall within the scope of Articles 39 EC and 49 EC, means, also, that they have nothing to do with the economic relationships of competition, with the result that they also do not fall within the scope of Articles 81 EC and 82 EC. Accordingly, the appellants are justified in as-serting that, in paragraph 68 of the contested judgment, the Court of First Instance erred in dismissing their application on the ground that the anti-doping rules at issue were subject to neither Article 49 EC nor competition law. The contested judgment must therefore be set aside, and there is no need to examine either the remaining parts of the first plea or the other pleas put forward by the appellants.

Excessive rules covered by the prohibition

- **Rules of that kind could indeed prove excessive by virtue of, first, the conditions laid down for establishing the dividing line between circumstances which amount to doping in respect of which penalties may be imposed and those which do not, and second, the sever-ity of those penalties.**

Therefore, even if the anti-doping rules at issue are to be regarded as a decision of an association of undertakings limiting the appellants' freedom of action, they do not, for all that, necessarily constitute a restriction of competition incompatible with the common market, within the meaning of Article 81 EC, since they are justified by a legitimate objective. Such a limitation is inherent in the organisation and proper conduct of competitive sport and its very purpose is to ensure healthy rivalry between athletes. While the appellants do not dispute the truth of this objective, they nevertheless contend that the anti-doping rules at issue are also intended to protect the IOC's own economic interests and that it is in order to safeguard this objective that excessive rules, such as those contested in the present case, are adopted. The latter cannot therefore, in their submission, be regarded as inherent in the proper conduct of competitive sport and fall outside the prohibitions in Article 81 EC. It must be acknowledged that the penal nature of the anti-doping rules at issue and the magnitude of the penalties applicable if they are breached are capable of producing adverse effects on competition because they could, if penalties were ultimately to prove unjustified, result in an athlete's unwarranted exclusion from sport-ing events, and thus in impairment of the conditions under which the activity at issue is engaged in. It follows that, in order not to be covered by the prohibition laid down in Article 81(1) EC, the restrictions thus im-posed by those rules must be limited to what is necessary to ensure the proper conduct of competitive sport (see, to this effect, DLG, paragraph 35).

Anti-doping rules at issue are not disproportionate

- **In those circumstances, and as the appellants do not specify at what level the threshold in question should have been set at the material time, it does not appear that the restrictions which that threshold imposes on professional sportsmen go beyond what is necessary in order to ensure that sporting events take place and function properly.**

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European Court of Justice, 18 July 2006
(A. Rosas, J. Malenovský, J.□P. Puissochet, A. Borg Barthet and A. Ó Caoimh)
JUDGMENT OF THE COURT (Third Chamber)
18 July 2006 (*)
(Appeal – Rules adopted by the International Olympic Committee concerning doping control – Incompatibility with the Community rules on competition and freedom to provide services – Complaint – Rejection)
In Case C-519/04 P,
APPEAL under Article 56 of the Statute of the Court of Justice lodged on 22 December 2004,
David Meca-Medina, residing in Barcelona (Spain),
Igor Majcen, residing in Ljubljana (Slovenia),
represented by J.-L. Dupont and M.-A. Lucas, avocats, appellants,
the other parties to the proceedings being:
Commission of the European Communities, represented by O. Beynet and A. Bouquet, acting as Agents, with an address for service in Luxembourg,
defendant at first instance,

Republic of Finland, represented by T. Pynnä, acting as Agent,
intervener at first instance,
THE COURT (Third Chamber),
composed of A. Rosas, President of the Chamber, J. Malenovský (Rapporteur), J.□P. Puissochet, A. Borg Barthet and A. Ó Caoimh, Judges,
Advocate General: P. Léger,
Registrar: B. Fülöp, Administrator,
having regard to the written procedure and further to the hearing on 23 March 2006,
after hearing the **Opinion of the Advocate General at the sitting on 23 March 2006**,
gives the following

Judgment

1 By their appeal, Mr Meca-Medina and Mr Majcen ('the appellants') ask the Court to set aside the judgment of the Court of First Instance of the European Communities of 30 September 2004 in Case T-313/02 Meca-Medina and Majcen v Commission [2004] ECR II-3291 ('the contested judgment') by which the latter dismissed their action for annulment of the decision of the Commission of the European Communities of 1 August 2002 rejecting the complaint – lodged by them against the International Olympic Committee ('the IOC') – seeking a declaration that certain rules adopted by the IOC and implemented by the Fédération internationale de natation (International Swimming Federation; 'FINA') and certain practices relating to doping control were incompatible with the Community rules on competition and freedom to provide services (Case COMP/38158 –- Meca-Medina and Majcen/IOC) ('the decision at issue').

Background to the dispute

2 The Court of First Instance summarised the relevant anti-doping rules ('the anti-doping rules at issue') in paragraphs 1 to 6 of the contested judgment:

'1 The [IOC] is the supreme authority of the Olympic Movement, which brings together the various international sporting federations, among which is [FINA]).

2 FINA implements for swimming, by its Doping Control Rules ("the DCR", cited here in the version in force at the material time), the Olympic Movement's Anti-Doping Code. DCR 1.2(a) states that the offence of doping "occurs when a banned substance is found to be present within a competitor's body tissue or fluids". That definition corresponds to that in Article 2(2) of the abovementioned Anti-Doping Code, where doping is defined as the presence in an athlete's body of a prohibited substance or the finding that such a substance or a prohibited technique has been used.

3 Nandrolone and its metabolites, Norandrosterone (NA) and Norethiocholanolone (NE) (hereinafter together called "Nandrolone"), are prohibited anabolic substances. However, according to the practice of the 27 laboratories accredited by the IOC and FINA, and to take account of the possibility of endogenous, therefore innocent, production of Nandrolone, the presence of that substance in a male athlete's body is defined as doping only if it exceeds a limit of 2 nanogrammes (ng) per millilitre (ml) of urine.

4 For a first offence of doping with an anabolic substance, DCR 9.2(a) requires the suspension of the athlete for a minimum of four years, which may however be reduced, under the final sentence of DCR 9.2, DCR 9.3 and DCR 9.10, if the athlete proves that he did not knowingly take the prohibited substance or establishes how that substance could be present in his body without negligence on his part.

5 The penalties are imposed by FINA's Doping Panel, whose decisions are subject to appeal to the Court of Arbitration for Sport ("the CAS") under DCR 8.9. The CAS, which is based in Lausanne, is financed and administered by an organisation independent of the IOC, the International Council of Arbitration for Sport ("the ICAS").

6 The CAS's rulings are subject to appeal to the Swiss Federal Court, which has jurisdiction to review international arbitration awards made in Switzerland.'

3 The factual background to the dispute was summarised by the Court of First Instance in paragraphs 7 to 20 of the contested judgment:

'7 The applicants are two professional athletes who compete in long-distance swimming, the aquatic equivalent of the marathon.

8 In an anti-doping test carried out on 31 January 1999 during the World Cup in that discipline at Salvador de Bahia (Brazil), where they had finished first and second respectively, the applicants tested positive for Nandrolone. The level found for Mr D. Meca-Medina was 9.7 ng/ml and that for Mr I. Majcen 3.9 ng/ml.

9 On 8 August 1999, FINA's Doping Panel suspended the applicants for a period of four years.

10 On the applicants' appeal, the CAS, by arbitration award of 29 February 2000, confirmed the suspension.

11 In January 2000, certain scientific experiments showed that Nandrolone's metabolites can be produced endogenously by the human body at a level which may exceed the accepted limit when certain foods, such as boar meat, have been consumed.

12 In view of that development, FINA and the applicants consented, by an arbitration agreement of 20 April 2000, to refer the case anew to the CAS for reconsideration.

13 By arbitration award of 23 May 2001, the CAS reduced the penalty to two years' suspension.

14 The applicants did not appeal against that award to the Swiss Federal Court.

15 By letter of 30 May 2001, the applicants filed a complaint with the Commission, under Article 3 of Council Regulation No 17 of 6 February 1962: First Regulation implementing Articles [81] and [82] of the Treaty (OJ, English Special Edition 1959-1962, p. 87), alleging a breach of Article 81 EC and/or Article 82 EC.

16 In their complaint, the applicants challenged the compatibility of certain regulations adopted by the IOC and implemented by FINA and certain practices relating to doping control with the Community rules on

competition and freedom to provide services. First of all, the fixing of the limit at 2 ng/ml is a concerted practice between the IOC and the 27 laboratories accredited by it. That limit is scientifically unfounded and can lead to the exclusion of innocent or merely negligent athletes. In the applicants' case, the excesses could have been the result of the consumption of a dish containing boar meat. Also, the IOC's adoption of a mechanism of strict liability and the establishment of tribunals responsible for the settlement of sports disputes by arbitration (the CAS and the ICAS) which are insufficiently independent of the IOC strengthens the anti-competitive nature of that limit.

17 According to that complaint, the application of those rules (hereinafter "the anti-doping rules at issue") leads to the infringement of the athletes' economic freedoms, guaranteed inter alia by Article 49 EC and, from the point of view of competition law, to the infringement of the rights which the athletes can assert under Articles 81 EC and 82 EC.

18 By letter of 8 March 2002, the Commission informed the applicants, in accordance with Article 6 of Commission Regulation (EC) No 2842/98 of 22 December 1998 on the hearing of parties in certain proceedings under Articles [81] and [82] of the EC Treaty (OJ 1998 L 354, p. 18), of the reasons for which it considered that the complaint should not be upheld.

19 By letter of 11 April 2002, the applicants sent the Commission their observations on the letter of 8 March 2002.

20 By decision of 1 August 2002 …, the Commission, after analysing the anti-doping rules at issue according to the assessment criteria of competition law and concluding that those rules did not fall foul of the prohibition under Articles 81 EC and 82 EC, rejected the applicants' complaint …'.

Procedure before the Court of First Instance and the contested judgment

4 On 11 October 2002, the present appellants brought an action before the Court of First Instance to have the decision at issue set aside. They raised three pleas in law in support of their action. First, the Commission made a manifest error of assessment in fact and in law, by deciding that the IOC is not an undertaking within the meaning of the Community case-law. Second, it misapplied the criteria established by the Court of Justice in Case C-309/99 Wouters and Others [2002] ECR I-1577, in deciding that the anti-doping rules at issue are not a restriction of competition within the meaning of Article 81 EC. Finally, the Commission made a manifest error of assessment in fact and in law at point 71 of the decision at issue, in rejecting the grounds under Article 49 EC relied upon by the appellants to challenge the anti-doping rules.

5 On 24 January 2003, the Republic of Finland sought leave to intervene in support of the Commission. By order of 25 February 2003, the President of the Fourth Chamber of the Court of First Instance granted leave.

6 By the contested judgment, the Court of First Instance dismissed the action brought by the present appellants.

7 In paragraphs 40 and 41 of the contested judgment, the Court of First Instance held, on the basis of case-law of the Court of Justice, that while the prohibitions laid down by Articles 39 EC and 49 EC apply to the rules adopted in the field of sport that concern the economic aspect which sporting activity can present, on the other hand those prohibitions do not affect purely sporting rules, that is to say rules relating to questions of purely sporting interest and, as such, having nothing to do with economic activity.

8 The Court of First Instance observed, in paragraph 42 of the contested judgment, that the fact that purely sporting rules may have nothing to do with economic activity, with the result that they do not fall within the scope of Articles 39 EC and 49 EC, means, also, that they have nothing to do with the economic relationships of competition, with the result that they also do not fall within the scope of Articles 81 EC and 82 EC.

9 In paragraphs 44 and 47 of the contested judgment, the Court of First Instance held that the prohibition of doping is based on purely sporting considerations and therefore has nothing to do with any economic consideration. It concluded that the rules to combat doping consequently cannot come within the scope of the Treaty provisions on the economic freedoms and, in particular, of Articles 49 EC, 81 EC and 82 EC.

10 The Court of First Instance held, in paragraph 49 of the contested judgment, that the anti-doping rules at issue, which have no discriminatory aim, are intimately linked to sport as such. It found furthermore, in paragraph 57 of the contested judgment, that the fact that the IOC might possibly, when adopting the anti-doping rules at issue, have had in mind the concern, legitimate according to the present appellants themselves, of safeguarding the economic potential of the Olympic Games is not sufficient to alter the purely sporting nature of those rules.

11 The Court of First Instance further stated, in paragraph 66 of the contested judgment, that since the Commission concluded in the decision at issue that the anti-doping rules at issue fell outside the scope of Articles 81 EC and 82 EC because of their purely sporting nature, the reference in that decision to the method of analysis in Wouters and Others cannot, in any event, bring into question that conclusion. The Court held in addition, in paragraph 67 of the contested judgment, that the challenging of those rules fell within the jurisdiction of the sporting dispute settlement bodies.

12 The Court of First Instance also dismissed the third plea put forward by the present appellants, holding, in paragraph 68 of the contested judgment, that since the anti-doping rules at issue were purely sporting, they did not fall within the scope of Article 49 EC.

Forms of order sought on appeal

13 In their appeal, the appellants claim that the Court should:

– set aside the contested judgment;
– grant the form of order sought before the Court of First Instance;
– order the Commission to pay the costs of both sets of proceedings.

14 The Commission contends that the Court should:
– dismiss the appeal in its entirety;
– in the alternative, grant the form of order sought at first instance and dismiss the action for annulment of the decision at issue;
– order the appellants to pay the costs including those of the proceedings at first instance.

15 The Republic of Finland contends that the Court should:
– dismiss the appeal in its entirety.

The appeal

16 By their arguments, the appellants put forward four pleas in law in support of their appeal. By the first plea, which is in several parts, they submit that the contested judgment is vitiated by an error of law in that the Court of First Instance held that the anti-doping rules at issue did not fall within the scope of Articles 49 EC, 81 EC and 82 EC. By the second plea, they contend that the contested judgment should be annulled because it distorts the clear sense of the decision at issue. By the third plea, they argue that the contested judgment fails to comply with formal requirements because certain of its grounds are contradictory and the reasoning is inadequate. By the fourth plea, they submit that the contested judgment was delivered following flawed proceedings, since the Court of First Instance infringed the rights of the defence.

The first plea

17 The first plea, alleging an error of law, is in three parts. The appellants submit, first, that the Court of First Instance was mistaken as to the interpretation of the Court of Justice's case-law relating to the relationship between sporting rules and the scope of the Treaty provisions. They submit, second, that the Court of First Instance misconstrued the effect, in the light of that case-law, of rules prohibiting doping, generally, and the anti-doping rules at issue, in particular. They contend, third, that the Court of First Instance was wrong in holding that the anti-doping rules at issue could not be likened to market conduct falling within the scope of Articles 81 EC and 82 EC and therefore could not be subject to the method of analysis established by the Court of Justice in Wouters and Others.

The first part of the plea

– Arguments of the parties

18 In the appellants' submission, the Court of First Instance misinterpreted the case-law of the Court of Justice according to which sport is subject to Community law only in so far as it constitutes an economic activity. In particular, contrary to what was held by the Court of First Instance, purely sporting rules have never been excluded generally by the Court of Justice from the scope of the provisions of the Treaty. While the Court of Justice has held the formation of national teams to be a question of purely sporting interest and, as such, having nothing to do with economic activity, the Court of First Instance could not infer therefrom that any rule relating to a question of purely sporting interest has, as such, nothing to do with economic activity and thus is not covered by the prohibitions laid down in Articles 39 EC, 49 EC, 81 EC and 82 EC. The concept of a purely sporting rule must therefore be confined solely to rules relating to the composition and formation of national teams.

19 The appellants further contend that the Court of First Instance was wrong in finding that rules of purely sporting interest are necessarily inherent in the organisation and proper conduct of competitive sport, when, according to the case-law of the Court of Justice, they must also relate to the particular nature and context of sporting events. The appellants also submit that, because professional sporting activity is, in practical terms, indivisible in nature, the distinction drawn by the Court of First Instance between the economic and the non-economic aspect of the same sporting activity is entirely artificial.

20 In the Commission's submission, the Court of First Instance applied correctly the case-law of the Court of Justice according to which purely sporting rules are, as such, not covered by the rules on freedom of movement. This does therefore involve an exception of general application for purely sporting rules, which is thus not limited to the composition and formation of national teams. Nor does the Commission see how a rule of purely sporting interest and relating to the specific nature of sporting events could fail to be inherent in the proper conduct of the events.

21 In the Finnish Government's submission, the Court of First Instance's approach is consistent with Community law.

– Findings of the Court

22 It is to be remembered that, having regard to the objectives of the Community, sport is subject to Community law in so far as it constitutes an economic activity within the meaning of Article 2 EC (see Case 36/74 Walrave and Koch [1974] ECR 1405, paragraph 4; Case 13/76 Donà [1976] ECR 1333, paragraph 12; **Case C-415/93 Bosman [1995] ECR I□4921**, paragraph 73; Joined Cases C-51/96 and C-191/97 Deliège [2000] ECR I□2549, paragraph 41; and Case C-176/96 Lehtonen and Castors Braine [2000] ECR I□2681, paragraph 32).

23 Thus, where a sporting activity takes the form of gainful employment or the provision of services for remuneration, which is true of the activities of semi-professional or professional sportsmen (see, to this effect, Walrave and Koch, paragraph 5, Donà, paragraph 12, and Bosman, paragraph 73), it falls, more specifically, within the scope of Article 39 EC et seq. or Article 49 EC et seq.

24 These Community provisions on freedom of movement for persons and freedom to provide services not only apply to the action of public authorities but extend also to rules of any other nature aimed at regulating gainful employment and the provision of services in a collective manner (Deliège, paragraph 47, and Lehtonen and Castors Braine, paragraph 35).

25 The Court has, however, held that the prohibitions enacted by those provisions of the Treaty do not affect rules concerning questions which are of purely sporting interest and, as such, have nothing to do with economic activity (see, to this effect, Walrave and Koch, paragraph 8).

26 With regard to the difficulty of severing the economic aspects from the sporting aspects of a sport, the Court has held (in Donà, paragraphs 14 and 15) that the provisions of Community law concerning freedom of movement for persons and freedom to provide services do not preclude rules or practices justified on non-economic grounds which relate to the particular nature and context of certain sporting events. It has stressed, however, that such a restriction on the scope of the provisions in question must remain limited to its proper objective. It cannot, therefore, be relied upon to exclude the whole of a sporting activity from the scope of the Treaty (Bosman, paragraph 76, and Deliège, paragraph 43).

27 In light of all of these considerations, it is apparent that the mere fact that a rule is purely sporting in nature does not have the effect of removing from the scope of the Treaty the person engaging in the activity governed by that rule or the body which has laid it down.

28 If the sporting activity in question falls within the scope of the Treaty, the conditions for engaging in it are then subject to all the obligations which result from the various provisions of the Treaty. It follows that the rules which govern that activity must satisfy the requirements of those provisions, which, in particular, seek to ensure freedom of movement for workers, freedom of establishment, freedom to provide services, or competition.

29 Thus, where engagement in the sporting activity must be assessed in the light of the Treaty provisions relating to freedom of movement for workers or freedom to provide services, it will be necessary to determine whether the rules which govern that activity satisfy the requirements of Articles 39 EC and 49 EC, that is to say do not constitute restrictions prohibited by those articles (Deliège, paragraph 60).

30 Likewise, where engagement in the activity must be assessed in the light of the Treaty provisions relating to competition, it will be necessary to determine, given the specific requirements of Articles 81 EC and 82 EC, whether the rules which govern that activity emanate from an undertaking, whether the latter restricts competition or abuses its dominant position, and whether that restriction or that abuse affects trade between Member States.

31 Therefore, even if those rules do not constitute restrictions on freedom of movement because they concern questions of purely sporting interest and, as such, have nothing to do with economic activity (Walrave and Koch and Donà), that fact means neither that the sporting activity in question necessarily falls outside the scope of Articles 81 EC and 82 EC nor that the rules do not satisfy the specific requirements of those articles.

32 However, in paragraph 42 of the contested judgment, the Court of First Instance held that the fact that purely sporting rules may have nothing to do with economic activity, with the result that they do not fall within the scope of Articles 39 EC and 49 EC, means, also, that they have nothing to do with the economic relationships of competition, with the result that they also do not fall within the scope of Articles 81 EC and 82 EC.

33 In holding that rules could thus be excluded straightaway from the scope of those articles solely on the ground that they were regarded as purely sporting with regard to the application of Articles 39 EC and 49 EC, without any need to determine first whether the rules fulfilled the specific requirements of Articles 81 EC and 82 EC, as set out in paragraph 30 of the present judgment, the Court of First Instance made an error of law.

34 Accordingly, the appellants are justified in asserting that, in paragraph 68 of the contested judgment, the Court of First Instance erred in dismissing their application on the ground that the anti-doping rules at issue were subject to neither Article 49 EC nor competition law. The contested judgment must therefore be set aside, and there is no need to examine either the remaining parts of the first plea or the other pleas put forward by the appellants.

Substance

35 In accordance with Article 61 of the Statute of the Court of Justice, since the state of the proceedings so permits it is appropriate to give judgment on the substance of the appellants' claims for annulment of the decision at issue.

36 The appellants advanced three pleas in support of their action. They criticised the Commission for having found, first, that the IOC was not an undertaking within the meaning of the Community case-law, second, that the anti-doping rules at issue were not a restriction of competition within the meaning of Article 81 EC and, finally, that their complaint did not contain facts capable of leading to the conclusion that there could have been an infringement of Article 49 EC.

The first plea

37 The appellants contend that the Commission was wrong not to treat the IOC as an undertaking for the purposes of application of Article 81 EC.

38 It is, however, common ground that, in order to rule on the complaint submitted to it by the appellants in the light of Articles 81 EC and 82 EC, the Commission sought, as is explicitly made clear in point 37 of the decision at issue, to proceed on the basis that the IOC was to be treated as an undertaking and, within the Olympic Movement, as an association of international and national associations of undertakings.

39 Since this plea is founded on an incorrect reading of the decision at issue, it is of no consequence and must, for that reason, be dismissed.

The second plea

40 The appellants contend that in rejecting their complaint the Commission wrongly decided that the anti-doping rules at issue were not a restriction of com-

petition within the meaning of Article 81 EC. They submit that the Commission misapplied the criteria established by the Court of Justice in Woutersand Others in justifying the restrictive effects of the anti-doping rules on their freedom of action. According to the appellants, first, those rules are, contrary to the Commission's findings, in no way solely inherent in the objectives of safeguarding the integrity of competitive sport and athletes' health, but seek to protect the IOC's own economic interests. Second, in laying down a maximum level of 2 ng/ml of urine which does not correspond to any scientifically safe criterion, those rules are excessive in nature and thus go beyond what is necessary in order to combat doping effectively.

41 It should be stated first of all that, while the appellants contend that the Commission made a manifest error of assessment in treating the overall context in which the IOC adopted the rules at issue like that in which the Netherlands Bar had adopted the regulation upon which the Court was called to rule in Wouters and Others, they do not provide any accompanying detail to enable the merits of this submission to be assessed.

42 Next, the compatibility of rules with the Community rules on competition cannot be assessed in the abstract (see, to this effect, Case C-250/92 DLG [1994] ECR I□5641, paragraph 31). Not every agreement between undertakings or every decision of an association of undertakings which restricts the freedom of action of the parties or of one of them necessarily falls within the prohibition laid down in Article 81(1) EC. For the purposes of application of that provision to a particular case, account must first of all be taken of the overall context in which the decision of the association of undertakings was taken or produces its effects and, more specifically, of its objectives. It has then to be considered whether the consequential effects restrictive of competition are inherent in the pursuit of those objectives (Wouters and Others, paragraph 97) and are proportionate to them.

43 As regards the overall context in which the rules at issue were adopted, the Commission could rightly take the view that the general objective of the rules was, as none of the parties disputes, to combat doping in order for competitive sport to be conducted fairly and that it included the need to safeguard equal chances for athletes, athletes' health, the integrity and objectivity of competitive sport and ethical values in sport.

44 In addition, given that penalties are necessary to ensure enforcement of the doping ban, their effect on athletes' freedom of action must be considered to be, in principle, inherent itself in the anti-doping rules.

45 Therefore, even if the anti-doping rules at issue are to be regarded as a decision of an association of undertakings limiting the appellants' freedom of action, they do not, for all that, necessarily constitute a restriction of competition incompatible with the common market, within the meaning of Article 81 EC, since they are justified by a legitimate objective. Such a limitation is inherent in the organisation and proper conduct of competitive sport and its very purpose is to ensure healthy rivalry between athletes.

46 While the appellants do not dispute the truth of this objective, they nevertheless contend that the anti-doping rules at issue are also intended to protect the IOC's own economic interests and that it is in order to safeguard this objective that excessive rules, such as those contested in the present case, are adopted. The latter cannot therefore, in their submission, be regarded as inherent in the proper conduct of competitive sport and fall outside the prohibitions in Article 81 EC.

47 It must be acknowledged that the penal nature of the anti-doping rules at issue and the magnitude of the penalties applicable if they are breached are capable of producing adverse effects on competition because they could, if penalties were ultimately to prove unjustified, result in an athlete's unwarranted exclusion from sporting events, and thus in impairment of the conditions under which the activity at issue is engaged in. It follows that, in order not to be covered by the prohibition laid down in Article 81(1) EC, the restrictions thus imposed by those rules must be limited to what is necessary to ensure the proper conduct of competitive sport (see, to this effect, DLG, paragraph 35).

48 Rules of that kind could indeed prove excessive by virtue of, first, the conditions laid down for establishing the dividing line between circumstances which amount to doping in respect of which penalties may be imposed and those which do not, and second, the severity of those penalties.

49 Here, that dividing line is determined in the anti-doping rules at issue by the threshold of 2 ng/ml of urine above which the presence of Nandrolone in an athlete's body constitutes doping. The appellants contest that rule, asserting that the threshold adopted is set at an excessively low level which is not founded on any scientifically safe criterion.

50 However, the appellants fail to establish that the Commission made a manifest error of assessment in finding that rule to be justified.

51 It is common ground that Nandrolone is an anabolic substance the presence of which in athletes' bodies is liable to improve their performance and compromise the fairness of the sporting events in which they participate. The ban on that substance is accordingly in principle justified in light of the objective of anti-doping rules.

52 It is also common ground that that substance may be produced endogenously and that, in order to take account of this phenomenon, sporting bodies, including the IOC by means of the anti-doping rules at issue, have accepted that doping is considered to have occurred only where the substance is present in an amount exceeding a certain threshold. It is therefore only if, having regard to scientific knowledge as it stood when the anti-doping rules at issue were adopted or even when they were applied to punish the appellants, in 1999, the threshold is set at such a low level that it should be regarded as not taking sufficient account of this phenomenon that those rules should be regarded as not justified in light of the objective which they were intended to achieve.

53 It is apparent from the documents before the Court that at the material time the average endogenous production observed in all studies then published was 20 times lower than 2ng/ml of urine and that the maximum endogenous production value observed was nearly a third lower. While the appellants contend that, from 1993, the IOC could not have been unaware of the risk reported by an expert that merely consuming a limited quantity of boar meat could cause entirely innocent athletes to exceed the threshold in question, it is not in any event established that at the material time this risk had been confirmed by the majority of the scientific community. Moreover, the results of the studies and the experiments carried out on this point subsequent to the decision at issue have no bearing in any event on the legality of that decision.

54 In those circumstances, and as the appellants do not specify at what level the threshold in question should have been set at the material time, it does not appear that the restrictions which that threshold imposes on professional sportsmen go beyond what is necessary in order to ensure that sporting events take place and function properly.

55 Since the appellants have, moreover, not pleaded that the penalties which were applicable and were imposed in the present case are excessive, it has not been established that the anti-doping rules at issue are disproportionate.

56 Accordingly, the second plea must be dismissed.

The third plea

57 The appellants contend that the decision at issue is vitiated by an error of law in that it rejects, at point 71, their argument that the IOC rules infringe Article 49 EC.

58 However, the application made by the appellants to the Court of First Instance relates to the legality of a decision adopted by the Commission following a procedure which was conducted on the basis of a complaint lodged pursuant to Council Regulation No 17 of 6 February 1962: First Regulation implementing Articles [81] and [82] of the Treaty (OJ, English Special Edition 1959-1962, p. 87). It follows that judicial review of that decision must necessarily be limited to the competition rules as resulting from Articles 81 EC and 82 EC, and consequently cannot extend to compliance with other provisions of the Treaty (see, to this effect, the order of 23 February 2006 in Case C-171/05 P Piau, not published in the ECR, paragraph 58).

59 Accordingly, whatever the ground on which the Commission rejected the argument relied upon by the appellants with regard to Article 49 EC, the plea which they now put forward is misplaced and must accordingly also be rejected.

60 In light of all the foregoing considerations, the action brought by the appellants challenging the decision at issue must therefore be dismissed.

Costs

61 The first paragraph of Article 122 of the Rules of Procedure provides that, where the appeal is unfounded or where the appeal is well founded and the Court of Justice itself gives final judgment in the case, it is to make a decision as to costs. Under Article 69(2) of the Rules of Procedure, which applies to appeal proceedings by virtue of Article 118 of those rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. The first subparagraph of Article 69(3) of the rules provides, however, that the Court may order that the costs be shared or that the parties bear their own costs where each party succeeds on some and fails on other heads, or where the circumstances are exceptional. The first subparagraph of Article 69(4) lays down that Member States which intervene in the proceedings are to bear their own costs.

62 Since the Commission has applied for costs to be awarded against the appellants and the latter have in essence been unsuccessful, they must be ordered to pay the costs relating both to the present proceedings and to the proceedings brought before the Court of First Instance. The Republic of Finland is to be ordered to bear its own costs.

On those grounds, the Court (Third Chamber) hereby:

1. Sets aside the judgment of the Court of First Instance of the European Communities of 30 September 2004 in Case T-313/02 Meca-Medina and Majcen v Commission;

2. Dismisses the action under No T-313/02 brought before the Court of First Instance for annulment of the Commission's decision of 1 August 2002 rejecting the complaint lodged by Mr Meca-Medina and Mr Majcen;

3. Orders Mr Meca-Medina and Mr Majcen to pay the costs relating both to the present proceedings and to the proceedings brought before the Court of First Instance;

4. Orders the Republic of Finland to bear its own costs.

OPINION OF ADVOCATE GENERAL LÉGER

delivered on 23 March 2006 1(1)
Case C□519/04 P
David Meca-Medina,
Igor Majcen
v
Commission of the European Communities
(Appeal – Rules adopted by the International Olympic Committee (IOC) concerning doping control – Incompatibility with Articles 49 EC, 81 EC and 82 EC – Complaint – Rejection)

1. This case concerns the appeal brought by Mr Meca-Medina and Mr Majcen (2) against the judgment of the Court of First Instance of the European Communities of 30 September 2004 in Case T□313/02 Meca-Medina and Majcen v Commission, (3) by which that Court dismissed their action for annulment of the decision of the Commission of the European Communities of 1 August 2002, (4) rejecting the complaint lodged by them under Article 3 of Regulation No 17 (5) against the International Olympic Committee. (6)

2. In their complaint, the appellants challenged the compatibility of certain regulations adopted by the IOC and implemented by the Fédération internationale de natation amateur, (7) and certain practices relating to doping control, with the Community rules on competition (Articles 81 EC and 82 EC) and freedom to provide services (Article 49 EC).

I – Background to the dispute (8)

3. Following a positive anti-doping test for Nandrolone, (9) the appellants were suspended for a period of four years by a decision of FINA's Doping Panel of 8 August 1999. The appellants appealed against that decision before the Court of Arbitration for Sport, which confirmed the suspension on 29 February 2000 before reconsidering it and subsequently reducing it to a period of two years by an arbitration award of 23 May 2001.

4. By letter of 30 May 2001, the appellants filed a complaint with the Commission, under Article 3 of Regulation No 17, alleging a breach of Article 81 EC and/or Article 82 EC. They argued, inter alia, that the fixing of the limit for Nandrolone at two nanogrammes per millilitre of urine (the 'rules in dispute') was a concerted practice between the IOC and the 27 laboratories accredited by it. They submitted that the anti-competitive nature of that practice was moreover reinforced by the fact that the tribunals responsible for the settlement of sports disputes by arbitration were not independent of the IOC.

5. By the contested decision, the Commission rejected the appellants' complaint, holding that the rules in dispute did not fall foul of the prohibition under Articles 81 EC and 82 EC. (10)

II – Action before the Court of First Instance and the judgment under appeal

6. By an application lodged at the Registry of the Court of First Instance on 11 October 2002, the appellants brought an action for annulment of the contested decision on the basis of the fourth paragraph of Article 230 EC.

7. In support of their action, the appellants advanced three pleas, alleging that the Commission had committed manifest errors of assessment, firstly, in the characterisation of the IOC, secondly, when examining the rules in dispute in the light of the criteria established by the Court in Wouters and Others(11) and, thirdly, in the application of Article 49 EC.

8. The Court of First Instance dismissed that action, holding that those three pleas were wholly unfounded, and ordered the appellants to bear their own costs and to pay those incurred by the Commission.

III – Procedure before the Court and the forms of order sought on appeal

9. The appellants brought this appeal by an application lodged at the Registry of the Court of Justice on 22 December 2004.

10. They claim that the Court should set aside the judgment under appeal and order the Commission to pay the costs of both sets of proceedings. In addition, they request the Court to grant the claims they submitted before the Court of First Instance.

11. The Commission, the defendant, contends that the Court should dismiss the appeal and, in the alternative, that it should dismiss the action for annulment of the contested decision. In addition, the Commission seeks an order that the appellants pay the costs of both sets of proceedings.

12. The Republic of Finland, the intervener at first instance, claims that the Court should dismiss the appeal.

IV – The appeal

13. Despite referring to specific paragraphs in the judgment under appeal, the notice of appeal is particularly muddled. From my reading of it, I understand that the appellants are raising four pleas.

14. Firstly, they complain that the Court of First Instance misinterpreted the case□law of the Court of Justice stemming from Walrave and Koch, (12)Bosman (13) and Deliège (14) on the application of Articles 39 EC and 49 EC to sporting rules. Secondly, they dispute the assessment made by the Court of First Instance according to which anti-doping rules are purely sporting rules and therefore fall outside the scope of the EC Treaty. Thirdly, the appellants submit that the Court of First Instance erred in holding that the rules in dispute had nothing to do with any economic consideration and did not come within the scope of Articles 49 EC, 81 EC or 82 EC. Fourthly, they criticise the Court of First Instance for having held that the examination of the rules in dispute carried out by the Commission following the method of analysis established in Wouters and Others was not necessary.

A – The first plea

15. In the first plea, (15) the appellants criticise the interpretation given by the Court of First Instance, in paragraphs 40 and 41 of the judgment under appeal, to the case-law of the Court of Justice stemming from Walrave and Koch, Bosman and Deliège on the application of Articles 39 EC and 49 EC to sporting rules.

16. First of all, the appellants dispute the Court of First Instance's assessment that the prohibitions enacted by Articles 39 EC and 49 EC do not affect purely sporting rules, which by their nature have nothing to do with any economic consideration. They submit that the Court of Justice did not lay down any such general exclusion in Walrave and Koch. On the contrary, it limited that exception to the composition and formation of sports teams. The appellants subsequently contend that only rules relating to the particular nature and context of sporting events, and which are thus inherent in the organisation and proper conduct of competitive sport, can be regarded as purely sporting rules.

17. Like the Commission and the Republic of Finland, I think the Court of First Instance correctly applied the case-law of the Court of Justice. (16)

18. The Court has consistently held that, having regard to the objectives of the European Community, sport is subject to Community law only in so far as it constitutes an economic activity within the meaning of Article 2 EC. Thus, where such an activity takes the form of paid employment or the provision of services for remuneration (that applies to, for example, the ac-

tivity of professional or semi-professional football players) it falls, more specifically, within the scope of Articles 39 EC to 42 EC or 49 EC to 55 EC. (17)

19. On the other hand, the Court has accepted, on numerous occasions, a restriction on the scope of those provisions where the sporting rules in question were warranted by 'reasons which [were] not of an economic nature, which [related] to the particular nature and context of [the sports] matches and [were] … of sporting interest only'. (18) In those cases, I think the Court identified an exception of general application which cannot be restricted, as the appellants contend, to the composition and formation of sports teams.

20. In those circumstances, I think the Court of First Instance could properly hold, in paragraphs 40 and 41 of the judgment under appeal, that the prohibitions enacted by Articles 39 EC and 49 EC apply to the rules which concern the economic aspect which a sporting activity can present, but 'do not affect purely sporting rules, that is to say rules concerning questions of purely sporting interest and, as such, having nothing to do with economic activity'. (19)

21. Consequently, I take the view that the first plea is unfounded and must therefore be rejected.

B – The second plea

22. By their second plea, the appellants dispute the Court of First Instance's line of reasoning according to which anti-doping rules by their nature have nothing to do with economic activity and consequently fall outside the scope of the Treaty. They put forward two arguments in support of this plea.

23. Firstly, the Court of First Instance's line of reasoning is based on cdontradictory grounds or gives insufficient reasons. That Court asserts, in paragraphs 44 and 47 of the judgment under appeal, that anti-doping rules do not pursue any economic objective. By contrast, it admits in paragraph 57 of that judgment that, when adopting such rules, the IOC might have been concerned to safeguard the economic potential of the Olympic Games. In addition, the Court of First Instance, in paragraph 45 of that judgment, made an artificial distinction between the economic and non-economic aspects of engaging in sport.

24. Secondly, the Court of First Instance erred in relying on Walrave and Koch, Donà and Deliège in order to hold that anti-doping rules fall outside the scope of Articles 49 EC, 81 EC and 82 EC. The appellants submit that, in fact, anti-doping rules may be distinguished from rules relating to the composition of national football teams (Walraveand Koch, and Donà) and to the selection of athletes for high-level events (Deliège).

25. My view, in agreement with the Commission and the Republic of Finland, is that this plea must likewise be dismissed. (20)

26. The appellants' argument that there is a contradiction between, firstly, paragraphs 44 and 47 of the judgment under appeal and, secondly, paragraph 57 of that judgment is in my view unfounded.

27. The Court of First Instance, after having observed, in paragraph 44 of the judgment under appeal, that 'high-level sport has become, to a great extent, an economic activity', stated that the primary aim of the campaign against doping is to safeguard the ethical values of sport and the health of sportsmen and women. The reference, in paragraph 57 of the judgment under appeal, to the economic objectives that the IOC might possibly have been pursuing is not enough, in my opinion, to prove a contradiction in the Court of First Instance's reasoning.

28. Given the commercial and financial stakes which surround high-level sport, I think it may be impossible for purely sporting rules, such as anti-doping rules, to possess no economic interest. However, that interest is purely secondary, in my opinion, and cannot prevent anti-doping rules from being purely sporting in character. As the Commission rightly observed, the appellants' proposition effectively favours, under the cover of the argument that sporting activity is indivisible, a secondary aspect – the economic dimension – in order to ensure that the rules of the Treaty are wholly applicable to the professional or semi-professional practice of sport. (21)

29. I consider that the appellants' argument that the Court of First Instance could not profitably refer to Walrave and Koch, Donà or Deliège is likewise unfounded. The appellants seem to be adopting an especially restrictive reading of those judgments in so far as in those cases the Court has, in my view, excluded in general terms purely sporting rules from the scope of Articles 39 EC and 49 EC. The appellants are thus trying to set out an artificial distinction between the rules considered in those cases and the rules in dispute here.

30. I therefore suggest that the Court should dismiss the second plea as unfounded.

C – The third plea

31. In the third plea, (22) the appellants claim, in substance, that the Court of First Instance erred in finding, in paragraph 48 of the judgment under appeal, that the rules in dispute had nothing to do with any economic consideration and consequently did not come within the scope of Articles 49 EC, 81 EC or 82 EC.

32. My understanding is that the appellants put forward two arguments in support of this plea.

33. In the first place, they call into question the Court of First Instance's analysis, set out in paragraphs 49 and 55 of the judgment under appeal, that the excessive nature of the rules in dispute, were it to be proved, would not result in them ceasing to be purely sporting rules. According to the appellants, that analysis is not only based on contradictory and inadequate reasoning, but is also contrary to the case-law of the Court established in Deliège and Wouters and Others. (23)

34. Next, the appellants claim that the Court of First Instance made a materially incorrect finding of fact by holding, in the second sentence of paragraph 55 of the judgment under appeal, that the rules in dispute are anti-doping rules whereas, in their opinion, the level set by those rules can also be reached following physical effort and/or the consumption of products other than drugs, such as boar meat.

35. Like the Commission, I am of the opinion that this plea must be dismissed. (24)

36. It need only be stated that the appellants in actual fact dispute the limit of two nanogrammes per millilitre of urine set by the rules in dispute and are attempting to have the assessment of the facts carried out by the Court of First Instance re-examined by the Court of Justice.

37. It follows from Article 225(1) EC and Article 58 of the Statute of the Court of Justice that an appeal may be based only on grounds relating to breaches of rules of law, to the exclusion of any appraisal of the facts. It is thus settled case□law that it is not for the Court, in an appeal, to give judgment on the appraisal of the facts and evidence carried out by the Court of First Instance, unless their clear sense has been distorted by it. (25)

38. Furthermore, in my view it is not for the Court, when ruling on an appeal against a Court of First Instance judgment, to decide whether or not a rule adopted by the IOC in the campaign against doping is scientifically justified.

39. In those circumstances, and given that the appellants have not proved, nor even in truth argued, that the clear sense of the facts was distorted, I suggest that the Court should declare the third plea manifestly inadmissible and dismiss it.

D – The fourth plea

40. In the fourth plea, (26) the appellants dispute paragraphs 61, 62 and 64 of the judgment under appeal, in which the Court of First Instance held that the examination of the rules in dispute carried out by the Commission following the method of analysis established in Wouters and Others was not necessary.

41. In support of this plea, the appellants submit three complaints alleging, firstly, an incorrect assessment as regards the relevance of applying the method of analysis established in Wouters and Others, secondly, distortion of the sense of the contested decision and, thirdly, infringement of the right to a fair hearing.

1. Incorrect assessment by the Court of First Instance as regards the relevance of applying the method of analysis established by the Court of Justice in Wouters and Others

42. The appellants complain, in substance, that the Court of First Instance, in paragraphs 65 and 66 of the judgment under appeal, held that this case can be distinguished from Wouters and Others in so far as the rules in dispute concern conduct – doping – which cannot be likened to market conduct, and apply to an activity, sport, which, in essence, has nothing to do with any economic consideration. According to the appellants, the criteria established by the Court in that case were perfectly applicable to the present instance.

43. I am of the view that this complaint is not well founded.

44. It is enough to note that the rules at issue in Wouters and Others concerned market conduct – namely, the establishment of networks between lawyers and accountants – and applied to an essentially economic activity, that of lawyers. However, because the rules in dispute are purely sporting rules, which have nothing to do with any economic consideration, the Court of First Instance could rightly, in my view, hold that examination of the rules on the basis of criteria established in that judgment was not necessary.

2. Distortion of the clear sense of the contested decision by the Court of First Instance

45. The appellants complain that the Court of First Instance held that the Commission examined the rules in dispute in the light of the rules on competition only 'in the alternative', or 'for the sake of completeness'. By doing so, the Court of First Instance distorted the clear sense of the contested decision.

46. While the Court of First Instance has exclusive jurisdiction to assess the factual evidence produced to it, the question whether there has been distortion of the sense of that evidence or of the measure under appeal is an issue which can be subject to review by the Court of Justice on appeal. (27) A plea alleging distortion of the sense of the measure under appeal seeks a declaration that the Court of First Instance has altered the meaning, content or scope of the measure in dispute. The distortion can thus stem from a modification of the content of the measure, (28) a failure to take account of its essential aspects (29) or a failure to have regard to its context. (30)

47. As the present complaint alleges distortion of the sense of the contested decision, it is thus admissible under the case-law of the Court of Justice.

48. Nevertheless, I think the complaint is not well founded.

49. Such distortion must be obvious from the documents in the case without its being necessary to undertake a fresh assessment of the facts and evidence. (31) However, the assessment which the Court of First Instance made of the contested decision in paragraphs 61, 62 and 64 of the judgment under appeal does not seem to constitute a distortion of its clear sense.

50. It is apparent on simply reading the contested decision that the Commission did indeed hold, primarily, that the adoption of the rules in dispute did not fall within the sphere of the IOC's economic activities. (32) My opinion, in agreement with what is maintained by the Commission, (33) is that it only examined in the alternative whether any restrictions caused by those rules could be justified pursuant to the criteria established in Wouters and Others. (34)

51. Furthermore, I note that the appellants simply dispute the assessment made by the Court of First Instance and do not provide any evidence to show that it made a manifest error.

3. Infringement by the Court of First Instance of the appellants' right to a fair hearing

52. The appellants claim that the Court of First Instance, by holding that examination of the rules in dispute in the light of the rules on competition was not necessary, did not allow them to give their view on whether those rules amounted to purely sporting rules falling outside the scope of Articles 49 EC, 81 EC and 82 EC.

53. In my opinion, this complaint is not founded either and must be rejected. Like the Commission, I take

the view that the appellants were able to submit their arguments not only in the procedure opened before the Commission, but also during the written and oral stages of the proceedings before the Court of First Instance. (35)

54. Having regard to the foregoing, I thus suggest that the Court should dismiss the fourth plea as unfounded.

V – Conclusion

55. In the light of all the foregoing considerations, I suggest that the Court should dismiss the appeal and order David Meca-Medina and Igor Majcen to pay the costs, with the exception of those incurred by the intervener, in accordance with Articles 69 and 118 of the Rules of Procedure of the Court of Justice.

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1 – Original language: French.
2 – 'The appellants'.
3 – [2004] ECR II-3291, 'the judgment under appeal'.
4 – Case COMP/38158 Meca-Medina and Majcen/IOC, 'the contested decision', available on the website: http://europa.eu.int/comm/competition/antitrust/cases/decisions/38158/fr.pdf.
5 – Council Regulation No 17 of 6 February 1962: First Regulation implementing Articles [81] and [82] of the Treaty (OJ, English Special Edition 1959-1962, p. 87).
6 – 'The IOC'.
7 – International Swimming Federation, 'FINA'.
8 – For more details about the background to the dispute, reference should be made to the description given by the Court of First Instance in paragraphs 1 to 34 of the judgment under appeal.
9 – Nandrolone is an anabolic substance prohibited by the Olympic Movement Anti-Doping Code.
10 – Points 72 and 73.
11 – Case C□309/99 [2002] ECR I□1577.
12 – Case 36/74 [1974] ECR 1405.
13 – Case C□415/93 [1995] ECR I□4921.
14 – Joined Cases C□51/96 and C□191/97 [2000] ECR I□2549.
15 – Appeal (paragraphs 21 to 32).
16 – See the Commission's response (paragraphs 16 to 28) and the Republic of Finland's statement in intervention (paragraph 8).
17 – See, inter alia, Walrave and Koch, paragraphs 4 and 5, Bosman, paragraph 73, and Case 13/76 Donà [1976] ECR 1333, paragraphs 12 and 13.
18 – See, inter alia, Donà, paragraphs 14 and 15, Bosman, paragraphs 76 and 127, and Case C□176/96 Lehtonen and Castors Braine [2000] ECR I□2681, paragraph 34.
19 – First sentence of paragraph 41 of the judgment under appeal.
20 – See the Commission's response (paragraphs 29 to 41) and the Republic of Finland's statement in intervention (paragraphs 11 to 13).
21 – Response (paragraph 35).
22 – Appeal (paragraphs 40 to 53).
23 – The appellants refer to, inter alia, Deliège, paragraph 69, and Wouters and Others, paragraphs 97 to 109 and 123.
24 – Response (paragraphs 42 to 56).
25 – See to that effect, inter alia, Case C□470/00 P Parliament v Ripa di Meanaand Others [2004] ECR I□4167, paragraph 40 and the case-law cited.
26 – Appeal (paragraphs 54 to 64).
27 – See, inter alia, Case C□8/95 P New Holland Ford v Commission [1998] ECR I□3175, paragraph 26; Case C□257/98 P Lucaccioni v Commission [1999] ECR I□5251, paragraphs 45 to 47; and the orders of 27 January 2000 in Case C□341/98 P Proderec v Commission, not published in the ECR, paragraph 28, and of 9 July 2004 in Case C□116/03 P Fichtner v Commission, not published in the ECR, paragraph 33.
28 – See, to that effect, inter alia, Case C□197/99 P Belgium v Commission [2003] ECR I□8461, paragraph 67.
29 – See, to that effect, inter alia, the order in Case C□459/00 P(R) Commission v Trenker [2001] ECR I□2823, paragraph 71.
30 – See, to that effect, inter alia, Case C□277/01 P Parliament v Samper [2003] ECR I□3019, paragraph 40.
31 – See, inter alia, New Holland Ford v Commission, paragraphs 72 and 73.
32 – Contested decision (paragraph 38).
33 – Response (paragraph 62).
34 – Contested decision (paragraphs 42 to 55).
35 – Response (paragraphs 65 to 72).