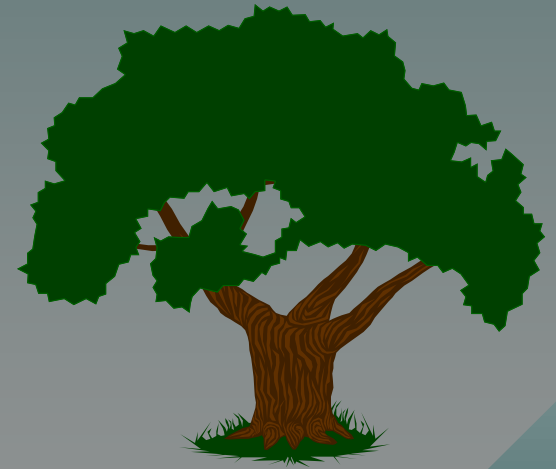


New legal aspects of parallel trade

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Court of Justice of the European Union

Case C-108/13:

Request for a preliminary ruling from the Conseil d'État (France) lodged on 6 March 2013

Société Mac GmbH (Germany)

v

Ministère de l'agriculture, de l'agroalimentaire et de la forêt (France)

Question referred:

Do Articles 34 and 36 of the Treaty on the Functioning of the European Union **preclude national legislation** which makes, inter alia, the grant of a parallel import marketing authorisation for a plant protection product subject to the condition that the product in question have, in the exporting State, a marketing authorisation granted in accordance with Directive 91/414/EEC, and which consequently does not permit the grant of a parallel import marketing authorisation for a product which has, in the exporting State, a parallel import marketing authorisation and which is identical to a product authorised in the importing State?

Case C-108/13:

PPP authorised (after evaluation) in France

Parallel import of this PPP to United Kingdom (UK) approved in UK

Mac GmbH. (Germany) application for parallel import of this PPP from United Kingdom to France not approved - justification of the French Ministry of Agriculture ... - PPP not authorised (after evaluation) in UK

Opinion of **General Advocate** of the Court of Justice of the European Union

Paolo Mengozzi

Case C-108/13:

Société Mac GmbH (Germany)

v

Ministère de l'agriculture, de l'agroalimentaire
et de la forêt (France)

Concluded by Recommendation for the EU Court
of Justice **presented on 22nd May 2014**

Question answered:

Articles 34 TFEU (Treaty on the Functioning of the European Union) and 36 TFEU **preclude the legislation of a Member State** which makes the grant of a parallel import marketing authorisation for a plant protection product which has been re-imported into that Member State after being imported as a parallel import into another Member State subject to the condition that the product should, in the exporting State, a marketing authorisation granted in accordance with Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market.

Judgment of the Court of Justice of the European Union

Case C-108/13:

Société Mac GmbH (Germany)

v

Ministère de l'agriculture, de l'agroalimentaire et de la forêt (France)

EU Court of Justice **ruled** (decided) **on 6th November 2014**

Question answered:

Articles 34 TFEU and 36 TFEU **must be interpreted as precluding national legislation** under which a parallel import authorisation may not be granted for a plant protection product which does not have, in the exporting Member State, a marketing authorisation granted in accordance with Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market, even though that product has a parallel import authorisation and may be regarded as identical to a product covered by a marketing authorisation granted in accordance with that directive in the importing Member State.

What does it mean (under the scope of the Directive 91/414/EEC) in the relation to the PPPs parallel trade ?

The opinion of General Advocate of the Court of Justice of the European Union was confirmed in the form of the Judgment of the Court of Justice of the European Union, thus:

- PPP paralelly imported to United Kingdom (UK) from France can be paralelly (re)-imported to France as it is an identical PPP.
- DG SANCO Guidance on parallel trade to be changed ?

What does it mean from the legal point of view in practice in the relation to the PPPs parallel trade ?

Guidance document concerning the parallel trade of plant protection products, SANCO/10524/2012, vers. 4., dated 31th May 2012, stated in point 3. c) iii):

„Therefore only plant protection products authorised under Article 28 of the Regulation or under national laws transposing Directive 91/414/EEC may be granted a parallel trade permit (see also section 9 of this document). Parallel traded products themselves do not have such an authorisation. Therefore a parallel trade permit cannot be granted on a product which is itself a parallel traded product.“

What does it mean from the legal point of view in the relation to the PPPs parallel trade

Guidance document concerning the parallel trade of plant protection products, SANCO/10524/2012, vers. 5.2, dated 14th July 2015, replaced the previous text by the following one:

- Therefore Article 52.1 concerns plant protection products authorised under Article 28 of the Regulation or under national laws transposing Directive 91/414/EEC.
- For applications for parallel trade permits for products placed on the market under parallel trade permit reference is made to the jurisprudence of the Court in C-108/13.

What does it mean (under the scope of the Regulation (EC) No 1107/2009) in the relation to the PPPs parallel trade ?

The whole title of the Guidance document concerning the parallel trade of plant protection products is:

Guidance document concerning the parallel trade of plant protection products

under Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection product on the market ...

Thus „*per analogiam*„ , e.g.: PPP paralelly imported to United Kingdom from France can be paralelly imported to the Czech Republic as it is find as identical PPP (based on comparison of composition in UK and CZ).

BUT ! What does it mean from the legal point of view as to the PPPs parallel trade ?

There was and also now is stated on the title page of the **Guidance document concerning the parallel trade of plant protection products**:

„COMMISSION GUIDANCE DOCUMENT - DOES NOT NECESSARILY REPRESENT THE VIEWS OF THE COMMISSION

This document has been conceived as a working document of the Commission Services which was elaborated in co-operation with the Member States. **It does not intend to produce legally binding effects** and by its nature does not prejudice any measure taken by a Member State within the implementation prerogatives under Regulation (EC) 1107/2009 nor any case law developed with regard to this provision.“

Thank you for your attention!

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