Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

12 July 2012*

(Accession of new Member States — Setting the charge on surplus stocks of agricultural products — Reference, in a provision of national law, to a provision of a European Union regulation not duly published in the Official Journal of the European Union in the language of the Member State in question)

In Case C-146/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Riigikohus (Estonia), made by decision of 17 March 2011, received at the Court on 25 March 2011, in the proceedings

**AS Pimix**, in liquidation,

v

**Maksu- ja Tolliameti Lõuna maksu- ja tollikeskus,**

**Põllumajandusministeerium,**

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, U. Lõhmus, A. Rosas, A. Arabadjiev and C.G. Fernlund (Rapporteur), Judges,

Advocate General: V. Trstenjak,

Registrar: K. Sztranc-Sławiczek, Administrator,

having regard to the written procedure and further to the hearing on 3 May 2012,

after considering the observations submitted on behalf of:

— AS Pimix, in liquidation, by M. Ots, advokaat, and T. Pikamäe, vandeadvokaat,

— the Estonian Government, by M. Linntam, acting as Agent,

— the European Commission, by K. Saaremäel-Stoilov, H. Tserepa-Lacombe and A. Marcoulli, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Estonian.

## Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 288 TFEU, Article 297(1) TFEU and Article 58 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 33; 'the 2003 Act of Accession').

2 The reference has been made in proceedings between, on the one hand, AS Pimix ('Pimix'), in liquidation, and, on the other, the Maksu- ja Tolliameti Lõuna maksu- ja tollikeskus (Southern Tax and Customs Centre of the Tax and Customs Office) and the Põllumajandusministeerium (Ministry of Agriculture), concerning the collection of a charge on surplus stocks.

## Legal context

### *European Union ('EU') law*

#### The 2003 Act of Accession

3 Under Article 2 of the 2003 Act of Accession:

'From the date of accession, the provisions of the original Treaties and the acts adopted by the institutions and the European Central Bank before accession shall be binding on the new Member States and shall apply in those States under the conditions laid down in those Treaties and in this Act.'

4 Under the first paragraph of Article 41 of the 2003 Act of Accession, the European Commission may adopt measures to facilitate the transition from the existing regime in the new Member States to that resulting from the application of the common agricultural policy. Those transitional measures 'may be taken during a period of three years following the date of accession and their application shall be limited to that period'.

5 Article 58 of the 2003 Act of Accession provides:

'The texts of the acts of the institutions, and of the European Central Bank, adopted before accession and drawn up by the Council, the Commission or the European Central Bank in the Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Slovak and Slovenian languages shall, from the date of accession, be authentic under the same conditions as the texts drawn up in the present eleven languages. They shall be published in the *Official Journal of the European Union* if the texts in the present languages were so published.'

#### Regulation No 1/58

6 Under Article 1 of Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ, English Special Edition 1952-1958 (I), p. 59), as amended by the 2003 Act of Accession ('Regulation No 1/58'), the official languages of the European Union are 'Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish'.

7 Article 4 of that regulation provides:

‘Regulations and other documents of general application shall be drafted in the twenty official languages.’

8 Article 5 of Regulation No 1/58 provides:

‘The *Official Journal of the European Union* shall be published in the twenty official languages.’

9 Article 8 of that regulation provides:

‘If a Member State has more than one official language, the language to be used shall, at the request of such State, be governed by the general rules of its law.

…’

Regulation (EC) No 1972/2003

10 One of the legal bases for Commission Regulation (EC) No 1972/2003 of 10 November 2003 on transitional measures to be adopted in respect of trade in agricultural products on account of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ 2003 L 293, p. 3) is Article 41 of the 2003 Act of Accession.

11 Recital 1 in the preamble to Regulation No 1972/2003 states that that regulation seeks ‘to avoid the risk of deflection of trade, affecting the common organisation of agricultural markets due to the accession of 10 new States to the European Union on 1 May 2004’. In view of that risk, recital 3 of that regulation emphasises that provisions should be made for ‘deterrent charges to be levied on surplus stocks in the new Member States’.

12 To that end, Article 4(1) of Regulation No 1972/2003 requires the new Member States to levy charges on holders of surplus stocks at 1 May 2004 of products in free circulation.

13 Article 4(2) of that regulation provides:

‘In order to determine the surplus stock of each holder, the new Member States shall take into account, in particular:

(a) averages of stocks available in the years preceding accession;

(b) the pattern of trade in the years preceding accession;

(c) the circumstances in which stocks were built up.

The notion surplus stocks applies to products imported into the new Member States or originating from the new Member States. The notion surplus stocks applies also to products intended for the market of the new Member States.

…’

14 Article 4(3) of Regulation No 1972/2003 provides that the amount of the charge on surplus stocks is to be determined by the *erga omnes* import duty rate applicable on 1 May 2004. That rate of duty is fixed by Commission Regulation (EC) No 1789/2003 of 11 September 2003 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2003 L 281, p. 1).

15 In order to ensure that the charge on surplus stocks is correctly applied, Article 4(4) of Regulation No 1972/2003 requires the new Member States to carry out without delay an inventory of stocks available as at 1 May 2004 and to notify the Commission of the quantity of products in surplus stocks by 31 October 2004 at the latest.

16 Article 4(5) of that regulation provides that, in the case of Estonia, Article 4 is to apply, inter alia, to products covered by the Combined Nomenclature ('CN') code 0405 10, namely butter.

17 Pursuant to Article 10 of Regulation No 1972/2003, that regulation applied from 1 May 2004 to 30 April 2007.

Regulation No 1789/2003

18 Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1) establishes the CN. The CN is updated once a year by the Commission. Regulation No 1789/2003 entered into force on 1 January 2004.

*Estonian law*

19 On 7 April 2004, the Riigikogu (Estonian Parliament) adopted the Law on the surplus stock charge (Üleliigse laovaru tasu seadus, RT I 2004, 30, 203; 'the ÜLTS'). That Law was published in the *Riigi Teataja* (Official Journal of the Republic of Estonia) on 27 April 2004 and entered into force on 1 May 2004.

20 Under Paragraph 7 of the ÜLTS, the 'surplus stock' is equal to the difference between the stock actually held on 1 May 2004 and the transitional stock.

21 Paragraph 6 of the ÜLTS defines 'the transitional stock' as the annual average stock held during the four years preceding the accession of the Republic of Estonia to the European Union — the years 2000 to 2003 — multiplied by 1.2.

22 Under Paragraph 10 of the ÜLTS, the transitional stock and the surplus stock are to be calculated by the Põllumajandusministeerium on the basis of the operator's declarations. If the operator makes a reasoned application, the Põllumajandusministeerium can take account of certain factors which may explain an increase in stocks not caused by speculation.

**The dispute in the main proceedings and the questions referred for a preliminary ruling**

23 On 29 October 2004, the Põllumajandusministeerium established that Pimix held a surplus stock of 550 tonnes of natural butter covered by CN code 0405 10 19.

24 On 26 November 2004, by means of a tax assessment notice, the Maksu- ja Tolliameti Lõuna maksu- ja tollikeskus fixed the amount of the surplus stock charge payable by Pimix at EEK 16 318 500. In order to comply with a judgment of the Riigikohus (Supreme Court) of 5 October 2006, the Maksu- ja Tolliameti Lõuna maksu- ja tollikeskus withdrew that notice and by means of a

fresh assessment notice of 29 March 2007 fixed the surplus stock charge payable by Pimix at the same amount, pursuant to the rate laid down in Paragraph 14(2) of the ÜLTS and Article 4(3) of Regulation No 1972/2003.

25 Pimix challenged the decision of 29 October 2004 and the tax assessment notice of 29 March 2007. The proceedings brought by Pimix were dismissed at first instance and on appeal. In the context of a further appeal, on a point of law, Pimix takes issue with the fact that the lower courts had applied Regulations Nos 1789/2003 and 1972/2003, even though those regulations had not been duly published in Estonian in the *Official Journal of the European Union* and, what is more, notwithstanding the fact that, as from 1 May 2004, the national regulation transposing the CN ceased to be in force. Relying on Case C-161/06 *Skoma-Lux* [2007] ECR I-10841, Pimix submits that the Estonian authorities could not impose on it obligations derived from rules not taken up in national legislation and not duly published before 5 March 2005.

26 The Riigikohus considers that, in order to resolve the dispute before it, it must be ascertained whether, when determining the Pimix surplus stock, the Estonian authorities acted on the basis only of the provisions of EU legislation which had been implemented by the ÜLTS, or whether they applied that legislation directly before it was duly published in Estonian in the *Official Journal of the European Union*.

27 The Riigikohus takes the view that the elements essential to establishing the surplus stock charge — the taxpayer, the goods covered by the charge and the rate of charge — do not directly and clearly follow from the ÜLTS. A number of provisions of the ÜLTS make a *renvoi* to the EU legislation. Thus, as regards the taxpayer, the concept of 'operator' is defined in Paragraph 5(1) of the ÜLTS by reference to the concept of 'agricultural products', which had in turn been inserted in Paragraph 2 of the ÜLTS in the form of a reference to the provisions of Article 4(5) of Regulation No 1972/2003 applicable to Estonia. The Riigikohus notes that Article 4(5) of Regulation No 1972/2003 is unclear because, in order to understand the content of the CN, it is necessary to refer to Regulation No 1789/2003.

28 The Riigikohus states that, when Pimix was required to submit its declaration, it was impossible for it to understand the need to submit the declaration or to know the agricultural products in respect of which the obligation to make a declaration had arisen. As at 1 May 2004, the date designated for determining the amount of surplus stocks, neither Regulation No 1789/2003 nor Regulation No 1972/2003 had been published in the *Official Journal of the European Union* in Estonian; nor had they been adopted by the time that the decision of 29 October 2004 setting the amount of surplus stocks for Pimix was adopted.

29 As regards, in particular, the CN provided for under Regulation No 1789/2003, the Riigikohus states that, as at 1 May 2004, this was not reproduced in any provision of national law in force at that time.

30 In the light of those factors, the Riigikohus asks whether, in making a reference to an EU regulation not duly published in Estonian in the *Official Journal of the European Union*, Article 2 of the ÜLTS constitutes implementation of that regulation, in the sense contemplated by the Court in Case C-560/07 *Balbiino* [2009] ECR I-4447 and Case C-140/08 *Rakvere Lihakombinaat* [2009] ECR I-10533.

31 In those circumstances, the Riigikohus decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 288 [TFEU], read in conjunction with Article 58 of the [2003] Act of Accession, to be interpreted in the light of the case-law of the Court of Justice [*Skoma-Lux*, *Balbiino* and *Rakvere Lihakombinaat*] as meaning that an individual can be required to fulfil the obligation deriving from … Regulation [No 1972/2003]

(a) even despite the fact that that regulation had not been published in Estonian in the *Official Journal of the European Union* by 1 May 2004,

(b) and the legislature of the Member State concerned had not reproduced in a measure of national law the term "agricultural products" defined in the regulation but had confined itself to referring to Article 4(5) of that regulation, which had not been duly published,

(c) if the individual has nevertheless fulfilled an obligation deriving from [Regulation No 1972/2003] (he has declared the stock in accordance with the correct goods code) and has not challenged such an obligation,

(d) and the charge was levied on him by the competent office of the Member State at a time when Regulation No 1972/2003 had already been published in Estonian in the *Official Journal of the European Union*?

(2) Can it be concluded from Article 58 of the [2003] Act of Accession, read in conjunction with Article 297(1) [TFEU] and … recital [3] in the preamble to and Article 4 of … Regulation [No 1972/2003], that a Member State can demand a charge on surplus stocks from an individual if Regulation No 1972/2003 had not been published in Estonian in the *Official Journal of the European Union* by 1 May 2004 but that regulation had indeed been published in Estonian in the *Official Journal of the European Union* by the time that the competent office of the Member State later levied the charge?'

**Consideration of the questions referred**

32 By its two questions, which should be examined together, the Riigikohus asks, in essence, whether Article 58 of the 2003 Act of Accession must be interpreted as precluding, in Estonia, the application to individuals of provisions of Regulation No 1972/2003 which, as at 1 May 2004, had neither been published in Estonian in the *Official Journal of the European Union* nor reproduced in the national law of that Member State, even though those individuals could have learned of those provisions by other means.

33 In order to answer that question, it is necessary to bear in mind that a fundamental principle in the EU legal order requires that a measure adopted by the public authorities cannot be enforced against individuals before they have the opportunity to make themselves acquainted with it through its proper publication in the *Official Journal of the European Union* (Case C-98/78 *Racke* [1979] ECR 69, paragraph 15, and *Skoma-Lux*, paragraph 37).

34 Furthermore, it follows from Article 2 of the 2003 Act of Accession that the measures taken by the institutions before accession are binding upon the new Member States and are applicable in those States as from accession. However, their enforceability against natural and legal persons in those States is subject to the general conditions for the implementation of EU law in the Member States, as laid down in the original treaties and, in the case of the new Member States, by the 2003 Act of Accession (*Skoma-Lux*, paragraph 32).

35 As regards regulations of the Council or the Commission and directives of those institutions, which are addressed to all the Member States, it follows from Article 297(2) TFEU that those measures cannot produce legal effects unless they have been published in the *Official Journal of the European Union* (see, to that effect, *Skoma-Lux*, paragraph 33).

36 Those principles must also be observed and have the same consequences where, for its implementation, EU legislation obliges Member States to adopt measures imposing obligations on individuals. Such measures must therefore be published so that the latter can become aware of them

(see, to that effect, Case C-313/99 *Mulligan and Others* [2002] ECR I-5719, paragraphs 51 and 52). The individuals concerned must also have the possibility of determining the source of the national measures imposing obligations upon them. Accordingly, not only must the national legislation be published but also the measure of EU law which obliges the Member States to take measures imposing obligations on individuals (see, to that effect, Case C-345/06 *Heinrich* [2009] ECR I-1659, paragraphs 45 to 47).

37 Furthermore, it follows from Article 58 of the 2003 Act of Accession, read in conjunction with Articles 4, 5 and 8 of Regulation No 1, that, in the case of a Member State whose language is an official language of the European Union, the proper publication of a Community regulation must be understood as including the publication of that act, in that language, in the *Official Journal of the European Union* (*Skoma-Lux*, paragraph 34).

38 The Court has accordingly held that Article 58 of the 2003 Act of Accession precludes the obligations laid down in EU legislation which has not been published in the *Official Journal of the European Union* in the language of a new Member State, where that language is an official language of the European Union, from being imposed on individuals in that State, even though those persons could have learned of that legislation by other means (*Skoma-Lux*, paragraph 51, and *Balbiino*, paragraph 30).

39 By adopting the ÜLTS on 7 April 2004, the Republic of Estonia implemented the obligations under Regulation No 1972/2003 by introducing a charge on surplus stocks of agricultural products and defining how that charge was to be calculated. The ÜLTS thus creates obligations for individuals in Estonia, notwithstanding the fact that Regulation No 1972/2003 cannot be enforced against them before they have had an opportunity to learn of it through its proper publication in the *Official Journal of the European Union* in the language of that Member State. Those obligations include that of declaring to the Põllumajandusministeerium, by 15 May 2004 at the latest, the stocks of certain agricultural products in their possession on 1 May 2004. It is not disputed that the obligation to pay the charge on surplus stocks is thus determined in accordance with the stocks of products held at that date. The date on which the assessment notice is issued therefore has no effect on the chargeable event. Consequently, in the case before the referring court, it cannot be concluded from the fact that the assessment notice of 29 March 2007 was issued after Regulations Nos 1789/2003 and 1972/2003 had been duly published in Estonian in the *Official Journal of the European Union* that, at the date on which the ÜLTS entered into force, those regulations could be enforced against Pimix.

40 The Court has held that the rule stated in *Skoma-Lux* does not preclude the enforcement against individuals of any of the provisions of Regulation No 1972/2003 which were taken up in the ÜLTS. The *Skoma-Lux* rule may nevertheless remain of residual application if certain provisions of that regulation which were not implemented by the ÜLTS were relied on by the Estonian authorities against individuals before the official publication of the regulation in Estonian (*Balbiino*, paragraph 32, and *Rakvere Lihakombinaat*, paragraph 34).

41 Regulation No 1972/2003 requires Member States to levy charges on surplus stocks as at 1 May 2004 for certain agricultural products identified by their CN codes. However, on 1 May 2004, that regulation had not yet been published in Estonian in the *Official Journal of the European Union*, as this did not take place until 3 March 2005. As regards Regulation No 1789/2003, which contained the CN then in force, it was not published in Estonian in the *Official Journal of the European Union* until 6 August 2004. When the ÜLTS entered into force on 1 May 2004, individuals were not in a position to acquaint themselves with the products subject to the charge on surplus stocks by consulting EU legislation which had been properly published in Estonian in the *Official Journal of the European Union*. The ÜLTS did not define those products, but simply made a reference to Article 4(5) of Regulation No 1972/2003. Nor were individuals in a position to identify those products by consulting the national legislation, since the Estonian customs nomenclature was repealed with effect from 1 May 2004.

42 In those circumstances, it must be found that the relevant provisions of Regulations Nos 1789/2003 and 1972/2003 could not be enforced against individuals in Estonia with effect from 1 May 2004, since they had not been properly published in Estonian in the *Official Journal of the European Union* or reproduced in Estonian national law.

43 The Estonian Government submits, however, that in the case before the referring court, Pimix was not unaware of the extent of its obligations from 1 May 2004, since the 2003 Act of Accession already envisaged the levying of charges on surplus stocks of agricultural products. The Estonian Government argues that, if Regulation No 1972/2003 were unenforceable against individuals, this would be contrary to the objective pursued by that regulation and by the 2003 Act of Accession of seeking to combat speculation in agricultural products.

44 However, the Court has held that compliance with the case-law referred to in paragraphs 33 to 38 above, which is based on the principles of legal certainty and non-discrimination, is not contrary to the principle of the effectiveness of EU law, since the principle of effectiveness cannot relate to rules which are not yet enforceable against individuals. Allowing an act which has not been properly published to be enforceable in the name of the principle of effectiveness would result in individuals in the Member State concerned bearing the adverse effects of a failure by the EU administration to comply with its obligation to make available to those individuals, on the date of accession, the entire *acquis communautaire* in all the official languages of the Union (*Skoma-Lux*, paragraph 42).

45 The Estonian Government also contends that Pimix discharged without difficulty its obligations to make declarations under the ÜLTS, thereby demonstrating that it was aware of the extent of its obligations even before Regulations Nos 1789/2003 and 1972/2003 had been properly published in Estonian in the *Official Journal of the European Union*.

46 However, the fact that Pimix made an accurate declaration of the quantities of products in its possession on 1 May 2004 on which charges could be levied and was therefore informed of the applicable EU rules is not sufficient to make EU legislation which has not been properly published in the *Official Journal of the European Union* enforceable against it (see, to that effect, *Skoma-Lux*, paragraph 46).

47 In the light of the foregoing, the answer to the questions referred is that Article 58 of the 2003 Act of Accession must be interpreted as precluding, in Estonia, the application to individuals of provisions of Regulation No 1972/2003 which, as at 1 May 2004, had neither been published in Estonian in the *Official Journal of the European Union* nor reproduced in the national law of that Member State, even though those individuals could have learned of those provisions by other means.

## Costs

48 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

**Article 58 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded must be interpreted as precluding, in Estonia, the application to individuals of provisions of Commission Regulation (EC) No 1972/2003 of 10 November 2003 on transitional measures to be adopted in respect of trade in agricultural products on account of the accession**

**of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, which, as at 1 May 2004, had neither been published in Estonian in the *Official Journal of the European Union* nor reproduced in the national law of that Member State, even though those individuals could have learned of those provisions by other means.**

[Signatures]