Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

3 July 2019*

(Reference for a preliminary ruling — Article 267 TFEU — Right to an effective remedy — Extent of review by national courts of an act of the European Union — Regulation (EC) No 1225/2009 — Article 15(2) — Communication to the Member States, no later than 10 working days before the meeting of the Advisory Committee, of all relevant information — Concept of 'relevant information' — Essential procedural requirement — Implementing Regulation (EU) No 723/2011 — Extension of the anti-dumping duty imposed on imports of certain iron or steel fasteners originating in China to imports consigned from Malaysia — Validity)

In Case C‑644/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), made by decision of 10 November 2017, received at the Court on 17 November 2017, in the proceedings brought by

Eurobolt BV

intervener:

Staatssecretaris van Financiën,

THE COURT (Fourth Chamber),

composed of M. Vilaras, President of the Chamber, K. Jürimäe, D. Šváby, S. Rodin (Rapporteur) and N. Piçarra, Judges,

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Eurobolt BV, by C. van Oosten,

– the Netherlands Government, by M.K. Bulterman and M.A.M. de Ree, acting as Agents,

– the Italian Government, by G. Palmieri, acting as Agent, and by F. De Luca and P. Gentili, avvocati dello Stato,

* Language of the case: Dutch.

– the Council of the European Union, by H. Marcos Fraile and B. Driessen, acting as Agents, and by N. Tuominen, avocat,

– the European Commission, by F. Ronkes Agerbeek, H. Krämer, N. Kuplewatzky and T. Maxian Rusche, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 February 2019,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 15(2) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51; corrigendum OJ 2010 L 7, p. 22) ('the Basic Regulation') and Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') and the validity of Council Implementing Regulation (EU) No 723/2011 of 18 July 2011 extending the definitive anti-dumping duty imposed by Regulation (EC) No 91/2009 on imports of certain iron or steel fasteners originating in the People's Republic of China to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not (OJ 2011 L 194, p. 6).

2 The request has been made in proceedings brought by Eurobolt BV concerning the levying of anti-dumping duties in connection with the import of iron or steel fasteners into the European Union.

Legal context

3 At the material time, the adoption of anti-dumping measures by the European Union was governed by the Basic Regulation.

4 Recitals 12, 24 and 25 of that regulation stated:

'(12) It is necessary to lay down the manner in which interested parties should be given notice of the information which the authorities require, and should have ample opportunity to present all relevant evidence and to defend their interests. It is also desirable to set out clearly the rules and procedures to be followed during the investigation, in particular the rules whereby interested parties are to make themselves known, present their views and submit information within specified time-limits, if such views and information are to be taken into account. It is also appropriate to set out the conditions under which an interested party may have access to, and comment on, information presented by other interested parties. ….

…

(24) It is necessary to provide for consultation of an Advisory Committee at regular and specified stages of the investigation. The Committee should consist of representatives of Member States with a representative of the Commission as chairman.

(25) Information provided to Member States in the Advisory Committee is often of a highly technical nature and involves an elaborate economic and legal analysis. In order to provide Member States with sufficient time to consider this information, it should be sent at an appropriate time before the date of a meeting set by the Chairman of the Advisory Committee.'

5 Under Article 6(7) of the Basic Regulation:

'The complainants, importers and exporters and their representative associations, users and consumer organisations, which have made themselves known in accordance with Article 5(10), as well as the representatives of the exporting country may, upon written request, inspect all information made available by any party to an investigation, as distinct from internal documents prepared by the authorities of the Community or its Member States, which is relevant to the presentation of their cases and not confidential within the meaning of Article 19, and … is used in the investigation. Such parties may respond to such information and their comments shall be taken into consideration, wherever they are sufficiently substantiated in the response.'

6 Article 13 of that regulation, entitled 'Circumvention', provided:

'1. Anti-dumping duties imposed pursuant to this Regulation may be extended to imports from third countries, of the like product, whether slightly modified or not, or to imports of the slightly modified like product from the country subject to measures, or parts thereof, when circumvention of the measures in force is taking place. Anti-dumping duties not exceeding the residual anti-dumping duty imposed in accordance with Article 9(5) may be extended to imports from companies benefiting from individual duties in the countries subject to measures when circumvention of the measures in force is taking place. Circumvention shall be defined as a change in the pattern of trade between third countries and the Community or between individual companies in the country subject to measures and the Community, which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like product, and where there is evidence of dumping in relation to the normal values previously established for the like product, if necessary in accordance with the provisions of Article 2.

…

3. Investigations shall be initiated pursuant to this Article on the initiative of the Commission or at the request of a Member State or any interested party on the basis of sufficient evidence regarding the factors set out in paragraph 1. Initiations shall be made, after consultation of the Advisory Committee, by Commission Regulation which may also instruct the customs authorities to make imports subject to registration in accordance with Article 14(5) or to request guarantees. Investigations shall be carried out by the Commission, which may be assisted by customs authorities, and shall be concluded within nine months. When the facts as finally ascertained justify the extension of measures, this shall be done by the Council, acting on a proposal submitted by the Commission, after consultation of the Advisory Committee. The proposal shall be adopted by the Council unless it decides by a simple majority to reject the proposal, within a period of one month after its submission by the Commission. The extension shall take effect from the date on which registration was imposed pursuant to Article 14(5) or on which guarantees were requested. The relevant procedural provisions of this Regulation with regard to initiations and the conduct of investigations shall apply pursuant to this Article.

…'

7 Article 15 of that regulation, entitled 'Consultations', provided:

'1. Any consultations provided for in this Regulation shall take place within an Advisory Committee, which shall consist of representatives of each Member State, with a representative of the Commission as chairman. Consultations shall be held immediately at the request of a Member State or on the initiative of the Commission and in any event within a period which allows the time-limits set by this Regulation to be adhered to.

2. The Committee shall meet when convened by its chairman. He shall provide the Member States, as promptly as possible, but no later than 10 working days before the meeting, with all relevant information.

3. Where necessary, consultation may be in writing only; in that event, the Commission shall notify the Member States and shall specify a period within which they shall be entitled to express their opinions or to request an oral consultation which the chairman shall arrange, provided that such oral consultation can be held within a period which allows the time-limits set by this Regulation to be adhered to.

4. Consultation shall cover, in particular:

(a) the existence of dumping and the methods of establishing the dumping margin;

(b) the existence and extent of injury;

(c) the causal link between the dumped imports and injury;

(d) the measures which, in the circumstances, are appropriate to prevent or remedy the injury caused by dumping and the ways and means of putting such measures into effect.'

8 On 26 January 2009 the Council adopted Regulation (EC) No 91/2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China (OJ 2009 L 29, p. 1).

9 By Regulation (EU) No 966/2010 of 27 October 2010 initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Regulation (EC) No 91/2009 on imports of certain iron or steel fasteners originating in the People's Republic of China by imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not, and making such imports subject to registration (OJ 2010 L 282, p. 29), the Commission initiated an investigation on its own initiative, pursuant to Article 13(3) of the Basic Regulation, concerning the possible circumvention of anti-dumping measures imposed on imports of certain iron or steel fasteners originating in China.

10 In addition, in Article 2 of Regulation No 966/2010, the Commission instructed the customs authorities to make it compulsory to register the imports concerned by that regulation.

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

11 Eurobolt is a company with its registered office in 's-Heerenberg (Netherlands) that markets iron and steel fasteners, which it purchases from manufacturers and suppliers established in Asia with a view to selling them within the European Union.

12 After anti-dumping duties were imposed on certain iron or steel fasteners originating in China by Regulation No 91/2009, Eurobolt decided to purchase such fasteners from two manufacturers established in Malaysia, namely TZ Fasteners ('TZ') and HBS Fasteners Manufacturing ('HBS').

13 During the period from 29 October 2010 to 4 August 2011, Eurobolt made 32 declarations in the Netherlands for the release of steel fasteners, purchased from HBS and TZ, for free circulation. Malaysia was cited in those declarations as the country of origin. In accordance with Regulation No 966/2010, the customs authorities registered those fasteners and released them for free circulation without charging anti-dumping duties.

14 Following the publication of that regulation, the respective authorities of the People's Republic of China and Malaysia, known importers from those countries, including Eurobolt, and the Union industry concerned were informed by the Commission of the initiation of the investigation provided for by that regulation.

15 HBS and TZ made themselves known to the Commission for the purposes of that investigation and responded to the anti-dumping questionnaire. Eurobolt also made itself known as an interested party.

16 By letter of 26 May 2011, the Commission sent Eurobolt its provisional findings from the investigation. On 13 June 2011 Eurobolt replied to that letter in writing within the time limit it had been set. The Advisory Committee met on 15 June 2011.

17 By Implementing Regulation No 723/2011, the definitive anti-dumping duty imposed on imports of certain iron or steel fasteners originating in China was extended to certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not.

18 Following the entry into force of that implementing regulation, the competent Netherlands authorities carried out a post-import check at Eurobolt's premises, as a result of which that company was requested to pay anti-dumping duties amounting to EUR 587 802.20.

19 Having unsuccessfully lodged a complaint against the levying of those anti-dumping duties with the Customs Office in Nijmegen (Netherlands), Eurobolt brought an action before the Rechtbank Noord-Holland (District Court, North Holland Province, Netherlands) alleging, in particular, that the extension by Implementing Regulation No 723/2011 of the anti-dumping duty imposed by Regulation No 91/2009 to imports of the goods consigned from Malaysia in question is invalid.

20 That court having dismissed that action by a judgment of 1 August 2013, Eurobolt brought an appeal before the Gerechtshof Amsterdam (Court of Appeal, Amsterdam, Netherlands), which, by a judgment of 8 September 2015, also dismissed Eurobolt's claim, considering, in particular, that there was no need to refer a question to the Court of Justice for a preliminary ruling concerning the validity of Implementing Regulation No 723/2011.

21 On 12 October 2015 Eurobolt brought an appeal before the referring court. It claims that that implementing regulation is invalid in the light of the criteria set out in Article 13 of the Basic Regulation, inasmuch as its rights of defence were infringed by the Commission during the investigation. It argues that the Commission failed, in breach of Article 15(2) of the Basic Regulation, to provide the members of the Advisory Committee, no later than 10 working days before the meeting of that committee, with the relevant information that had been sent to it by Eurobolt.

22 In that context, first, the referring court has doubts as to the scope of the task of the national courts when assessing the validity of acts of the EU institutions, in particular in the light of Article 47 of the Charter. Second, that court has questions as to the interpretation to be given to Article 15(2) of the Basic Regulation. It is apparent from the case-law of the Court of Justice that a failure to comply with the Rules of Procedure may entail the annulment of an act on the basis of infringement of essential procedural requirements. The question therefore arises as to whether, in the present case, the non-fulfilment by the Commission of the obligation laid down in that provision is liable to entail the invalidity of Implementing Regulation No 723/2011.

23 In those circumstances the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) (a) Must Article 47 of the Charter ..., read in conjunction with Article 4(3) TEU, be interpreted as meaning that an interested party may challenge the legality of a decision of an institution of the Union which must be implemented by national authorities, by pleading infringement of essential procedural requirements, infringement of the Treaties or misuse of powers?

(b) Must Article 47 of the Charter ..., read in conjunction with Article 4(3) TEU, be interpreted as meaning that the institutions of the Union which are involved in the adoption of a decision whose validity is challenged in proceedings before a national court are bound to provide that court, if requested to do so, with all the information at their disposal and which was taken into account, or should have been taken into account, by them in the adoption of that decision?

(c) Must Article 47 of the Charter ... be interpreted as meaning that the right to an effective remedy requires the court to conduct a robust review of whether the conditions for the application of Article 13 of [the Basic Regulation] have been satisfied? In particular, does Article 47 mean that that court is competent to fully assess whether the facts have been fully and adequately established so as to justify the legal effect relied upon? In particular, does Article 47 also mean that that court is competent to fully assess whether facts which were allegedly not taken into account in the adoption of the decision, but which could be detrimental to the legal effect associated with the facts which were established, should have been taken into account?

(2) (a) Must the term "relevant information" in Article 15(2) of [the Basic Regulation] be interpreted as including the response of an independent importer of the goods forming the subject of the investigation referred to in that provision, established in the European Union, to the findings of the Commission, if that importer was notified of that investigation by the Commission, provided requested information to the Commission and, having been given the opportunity to do so, responded in a timely fashion to the Commission's findings?

(b) If question 2(a) is answered in the affirmative, can that importer then plead infringement of Article 15(2) of [the Basic Regulation] if the response submitted by him was not made available at least 10 working days prior to the meeting of the Advisory Committee provided for in that provision?

(c) If question 2(b) is answered in the affirmative, does that infringement of Article 15(2) of [the Basic Regulation] mean that that decision is unlawful and that it should not be implemented?'

Consideration of the questions referred

Question 1(a) and (c)

24 By indents (a) and (c) of its first question, the referring court asks, in essence, whether Article 267 TFEU is to be interpreted as meaning that, in order to contest the validity of a piece of secondary EU legislation, an individual may rely before a national court or tribunal on complaints that could be put forward in the context of an action for annulment under Article 263 TFEU, including complaints alleging a failure to satisfy the conditions for adopting that piece of legislation.

25 As is apparent from settled case-law, the jurisdiction of the Court to give preliminary rulings under Article 267 TFEU concerning the validity of acts of the EU institutions cannot be limited by the grounds on which the validity of those measures may be contested (judgments of 12 December 1972, *International Fruit Company and Others*, 21/72 to 24/72, EU:C:1972:115, paragraph 5, and of 16 June 1998, *Racke*, C-162/96, EU:C:1998:293, paragraph 26).

26 Consequently, the answer to indents (a) and (c) of the first question is that Article 267 TFEU must be interpreted as meaning that, in order to contest the validity of a piece of secondary EU legislation, an individual may rely before a national court or tribunal on complaints that could be put forward in the context of an action for annulment under Article 263 TFEU, including complaints alleging a failure to satisfy the conditions for adopting such a piece of legislation.

Question 1(b)

27 By indent (b) of its first question, the referring court asks, in essence, whether Article 267 TFEU, read in conjunction with Article 4(3) TEU, is to be interpreted as meaning that a national court or tribunal is entitled to approach the EU institutions that have taken part in drawing up a piece of secondary EU legislation, the validity of which is being contested before that court or tribunal, in order to obtain information from those institutions regarding the factors which they took or should have taken into consideration when adopting that piece of legislation.

28 It should be borne in mind that national courts may examine the validity of an act of the Union and, if they consider that the grounds which they have raised of their own motion or which have been raised by the parties in support of invalidity are unfounded, they may reject those grounds, concluding that the act is completely valid (see, to that effect, judgments of 16 June 1981, *Salonia*, 126/80, EU:C:1981:136, paragraph 7, and of 22 October 1987, *Foto-Frost*, 314/85, EU:C:1987:452, paragraph 14). By contrast, national courts have no jurisdiction themselves to determine that acts of EU institutions are invalid (judgment of 6 December 2005, *Gaston Schul Douane-expediteur*, C-461/03, EU:C:2005:742, paragraph 17).

29 Accordingly, if the grounds put forward by the parties are sufficient to convince the national court that an act of the Union is invalid, that court should, solely on that basis, question the Court of Justice as to the validity of that act, without investigating further. As can be seen from the judgment of 22 October 1987, *Foto-Frost* (314/85, EU:C:1987:452, paragraph 18), the Court of Justice is in the best position to decide on the validity of pieces of secondary EU legislation, in so far as the EU institutions whose acts are challenged are entitled, under the second paragraph of Article 23 of the Statute of the Court of Justice of the European Union, to submit written observations to the Court in order to defend the validity of the acts in question. In addition, under the second paragraph of Article 24 of that Statute, the Court may require the institutions, bodies, offices and agencies of the Union not being parties to the case to supply all information which it considers necessary for the purposes of the case before it.

30 That being said, a national court or tribunal is entitled to approach an EU institution, prior to the bringing of proceedings before the Court of Justice, in order to obtain specific information and evidence from that institution which that court or tribunal considers essential in order to dispel all doubts which it may have as regards the validity of the EU act concerned and, thus, avoid making a reference to the Court of Justice for a preliminary ruling for the purpose of assessing validity.

31 In that regard, it is apparent from the case-law of the Court of Justice that the EU institutions are under a duty of sincere cooperation with the judicial authorities of the Member States, which are responsible for ensuring that EU law is applied and respected in the national legal system. On that basis, those institutions must, pursuant to Article 4(3) TEU, provide those authorities with the evidence and documents which have been asked of them in the exercise of their powers, unless the refusal to provide these is justified by legitimate reasons based, inter alia, on protecting the rights of third parties or the risk of an impediment to the functioning or the independence of the Union (see, to that effect, order of 6 December 1990, *Zwartveld and Others*, C-2/88-IMM, EU:C:1990:440, paragraphs 10 and 11).

32 Consequently, the answer to indent (b) of the first question is that Article 267 TFEU, read in conjunction with Article 4(3) TEU, must be interpreted as meaning that a national court or tribunal is entitled, prior to bringing proceedings before the Court of Justice, to approach the EU institutions that have taken part in drawing up a piece of secondary EU legislation, the validity of which is being contested before that court or tribunal, in order to obtain specific information and evidence from those institutions which it considers essential in order to dispel all doubts which it may have as regards the validity of the EU act concerned and so that it may avoid referring a question to the Court of Justice for a preliminary ruling for the purpose of assessing the validity of that act.

Question 2

33 By indents (a), (b) and (c) of its second question, which must be examined together, the referring court asks, in essence, whether Implementing Regulation No 723/2011 is invalid in the light of Article 15(2) of the Basic Regulation, inasmuch as the observations submitted by Eurobolt in response to the Commission's findings were not, as relevant information for the purposes of that provision, made available to the Advisory Committee referred to therein at least 10 working days prior to the meeting of that committee.

34 As a preliminary point, it should be noted that, as is apparent from Article 15(1) of the Basic Regulation, any consultations provided for in that regulation are to take place within an Advisory Committee, which is to consist of representatives of each Member State, with a representative of the Commission as chairman.

35 Article 15(2) of that regulation provides that that Advisory Committee is to meet when convened by its chairman, who is to provide the Member States, 'as promptly as possible, but no later than 10 working days before the meeting, with all relevant information'.

36 In the present case, it is common ground that the meeting of the Advisory Committee took place on 15 June 2011, that is, 2 days after Eurobolt submitted, within the time limit it had been set in that regard, its observations in response to the Commission's findings.

37 In order to answer the question whether, as a result, Article 15(2) of the Basic Regulation has been infringed in such a way as to render Implementing Regulation No 723/2011 invalid, it is necessary to examine, first of all, whether those observations were covered by the concept of 'relevant information' for the purposes of that provision.

38 In that regard, it should be pointed out that, in view of the general nature of the terms used in Article 15(2) of the Basic Regulation, the concept of 'relevant information' must be understood in a very broad sense. In the same vein, given that, according to those same terms, the Member States must be provided with 'all' relevant information, it is clear from that provision that it is intended to ensure that the Advisory Committee is as well informed as possible.

39 In addition, the importance of the possibility which interested parties have to make their views known and defend their interests during the investigation is highlighted by recital 12 of that regulation.

40 In the present case, the observations at issue in the main proceedings were submitted by Eurobolt in its capacity as an interested party in connection with an investigation initiated by the Commission under Article 13(3) of the Basic Regulation. Those observations were intended to respond to the provisional findings that had been made by the Commission.

41 Eurobolt thus made its views known and provided information in accordance with Article 6(7) of that regulation.

42 Accordingly, as the Advocate General noted in points 47 to 50 of his Opinion, the observations submitted by Eurobolt constituted relevant information for the purposes of Article 15(2) of the Basic Regulation.

43 It follows that that provision has been infringed inasmuch as those observations were not communicated to the Member States no later than 10 working days before the meeting of the Advisory Committee, as has been noted in paragraph 36 above.

44 It is therefore necessary to examine, next, whether that infringement of Article 15(2) of the Basic Regulation is capable of rendering Implementing Regulation No 723/2011 invalid.

45 It should be noted, first, that the adoption, under the Basic Regulation, of anti-dumping measures, such as Implementing Regulation No 723/2011, is to be done on the basis of a procedure, specifically, an investigation, at certain stages of which the Member States, represented within the Advisory Committee, must be consulted, as is emphasised by recital 24 of the Basic Regulation.

46 It is for the purposes of such consultation that Article 15(2) of the Basic Regulation provides that all relevant information is to be communicated to the Advisory Committee 'as promptly as possible, but no later than 10 working days before the meeting'.

47 In that regard, it follows from the very wording of that provision, which is couched in unconditional terms, that the 10-day period referred to therein is binding (see, by analogy, judgment of 29 July 2010, *Greece* v *Commission*, C-54/09 P, EU:C:2010:451, paragraph 46).

48 Next, it is apparent from recital 25 of the Basic Regulation that, as the information concerned 'is often of a highly technical nature and involves an elaborate economic and legal analysis', the time limit laid down in Article 15(2) of that regulation is intended to give the Member States represented in the Advisory Committee enough time to examine that information, in an unhurried manner, before the meeting of that committee (see, by analogy, judgment of 20 September 2017, *Tilly-Sabco* v *Commission*, C-183/16 P, EU:C:2017:704, paragraph 102).

49 Furthermore, the purpose of that time limit is also to enable the governments of the Member States to familiarise themselves, through their representatives in the Advisory Committee, with all relevant information relating to an investigation, so that those governments may, by means of internal and external consultations, define a position in order to protect the specific interests of each of them within that committee (see, by analogy, judgment of 20 September 2017, *Tilly-Sabco* v *Commission*, C-183/16 P, EU:C:2017:704, paragraph 103).

50 Lastly, it should be added that that time limit is intended to ensure that due account may be taken, in the context of the consultation procedure within the Advisory Committee, of the information and observations which interested parties are entitled, as has been noted in paragraph 39 above, to submit during an investigation.

51 In those circumstances, as the Advocate General noted in, inter alia, points 61 and 66 of his Opinion, the requirement to provide the Advisory Committee with all relevant information no later than 10 working days before the meeting of that committee laid down in Article 15(2) of the Basic Regulation constitutes an essential procedural requirement governing the proper conduct of proceedings, breach of which renders the act concerned void (see, by analogy, judgments of 10 February 1998, *Germany* v *Commission*, C-263/95, EU:C:1998:47, paragraph 32, and of 20 September 2017, *Tilly-Sabco* v *Commission*, C-183/16 P, EU:C:2017:704, paragraph 114).

52 In the light of the foregoing considerations, the answer to the second question is that Implementing Regulation No 723/2011 is invalid inasmuch as it was adopted in breach of Article 15(2) of the Basic Regulation.

Costs

53 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 (Fourth Chamber) hereby rules:

1. **Article 267 TFEU must be interpreted as meaning that, in order to contest the validity of a piece of secondary EU legislation, an individual may rely before a national court or tribunal on complaints that could be put forward in the context of an action for annulment under Article 263 TFEU, including complaints alleging a failure to satisfy the conditions for adopting such a piece of legislation.**

2. **Article 267 TFEU, read in conjunction with Article 4(3) TEU, must be interpreted as meaning that a national court or tribunal is entitled, prior to bringing proceedings before the Court of Justice, to approach the EU institutions that have taken part in drawing up a piece of secondary EU legislation, the validity of which is being contested before that court or tribunal, in order to obtain specific information and evidence from those institutions which it considers essential in order to dispel all doubts which it may have as regards the validity of the EU act concerned and so that it may avoid referring a question to the Court of Justice for a preliminary ruling for the purpose of assessing the validity of that act.**

3. **Council Implementing Regulation (EU) No 723/2011 of 18 July 2011 extending the definitive anti-dumping duty imposed by Regulation (EC) No 91/2009 on imports of certain iron or steel fasteners originating in the People’s Republic of China to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not, is invalid, inasmuch as it was adopted in breach of Article 15(2) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community.**

[Signatures]