

Direct application from 1 January 2015 of
Regulation (EU) No 517/2014 of the European
Parliament and of the Council of 16 April 2014 on
fluorinated greenhouse gases (Ruling n° 483 -
22-13.317)

28/06/2023



Ruling No. 483

Dismissal

ON BEHALF OF THE FRENCH PEOPLE

RULING OF THE COMMERCIAL, FINANCIAL AND ECONOMIC CHAMBER OF THE *COUR DE CASSATION* (COURT OF CASSATION) OF 28 JUNE 2023

Richardson, a simplified joint-stock company, with registered office at [Address 2], lodged appeal No. E 22-13.317 against ruling No. RG 19/03942 delivered on 12 January 2022 by the *Cour d'appel* (Court of Appeal) of Nîmes (4th Commercial Chamber) in the dispute between said company and Ets Bellucci, a simplified joint-stock company, with registered office at [Address 1], respondent in the quashing.

The applicant bases its appeal on one plea for quashing.

The case file has been sent to the prosecutor-general.

On the report of Ms Bellino, judge referee, the observations of SCP Rocheteau, Uzan-Sarano and Goulet, lawyers of Richardson, SCP Boutet and Hourdeaux, lawyers of Ets Bellucci, after debate in the public hearing of 16 May 2023, attended by Mr Vigneau, President, Ms Bellino, reporting judge referee, Ms Darbois, elder judge, and Ms Labat, Chamber Registrar,

the Commercial, Financial and Economic Chamber of the *Cour de cassation* (Court of Cassation), composed of the above-mentioned president and judges, after debate in accordance with law, has delivered this judgment.

Account of the dispute

Facts and procedure

1. According to the ruling under appeal (Nîmes, 12 January 2022), the company Ets Bellucci (the company Bellucci), which operates in the retail, wholesale and semi-wholesale trade of sanitary appliances, plumbing, heating, household electrical appliances and air conditioning, sued the company Richardson, whose object comprises the trading of heating, sanitary and steel products, in order to have it ruled that by failing to comply with the regulations applicable to the sale of "ready-to-lay" air conditioners preloaded with fluorinated gas with a "split" or "bi-block" system, made up of one external and one internal unit, to be connected when they were installed, said company placed itself in an abnormally favourable situation with regard to it, and that these acts constitute a fault characterising those of unfair competition, requesting that it be ordered to pay damages in compensation for the economic damage suffered as a result of these acts.

Reviewing pleas

On the first part of the plea

Statement of plea

3. Richardson objects to the ruling declaring that Regulation (EU) No. 517/2014 was applicable on French territory as of 1 January 2015, stating that, by failing to comply with the regulations applicable to the sale of preloaded split- or bi-block

air conditioners as of 1 January 2015, it placed itself in an abnormally favourable situation compared to Bellucci, that the acts of which the parties are accused constitute a fault characterising acts of unfair competition, that this necessarily gives rise to a commercial dispute, generating damage, and consequently ordering an expert appraisal, whereas "in the absence of a precise and concrete definition of the obligations arising for the seller from the general prohibition laid down in that article, Article 11(5) of Regulation No 517/2014 of the European Parliament and of the Council of 16 April 2014, according to which "Non-hermetically sealed equipment charged with fluorinated greenhouse gases shall only be sold to the end user where evidence is provided that the installation is to be carried out by an undertaking certified in accordance with Article 10", has no direct effect and cannot only be invoked against persons governed by private law as long as the necessary implementing measures have not been adopted by the Member States, by maintaining the contrary and stating that Richardson was obliged to ensure as of 1 January 2015 that the air conditioners sold to private individuals would be installed by a person with the required certification and that by not satisfying this obligation it had placed itself in an abnormally favourable situation compared with Bellucci, in so ruling, the *cour d'appel* (Court of Appeal) violated Article 288 of the Treaty on the Functioning of the European Union, together with Article 11(5) of Regulation No. 517/2014 of the European Parliament and of the Council of 16 April 2014."

Statement of reasons

Court's response

4. According to Article 288(2) of the Treaty on the Functioning of the European Union, a regulation is binding in its entirety and directly applicable in all Member States.

5. It follows from the case-law of the Court of Justice of the European Union that, on the basis of that provision and due to the very nature of regulations and of their function in the system of sources of Community law, the provisions of those regulations generally have immediate effect in the national legal systems without its being necessary for the national authorities to adopt measures of application, some of their provisions may none the less necessitate, for their implementation, the adoption of measures of application by the Member States (in particular the rulings of 11 January 2001, C-403/98, *Monte Arcosu*; of 24 June 2004, C-278/02, *Handlbauer*; of 28 October 2010, C-367/09, *Belgisch Interventie-en-Restitutiebureau and SGS Belgium*; of 14 April 2011, C-42/10, C-45/10 and C-57/10, *Vlaamse Dierenartsenvereniging and Janssens*; of 15 March 2017, *Al Chodor*, C-528/15; and of 15 June 2021, C-645/19, *Facebook*).

6. After stating that Article 11(5) of Regulation (EU) No. 517/2014 of 16 April 2014 on fluorinated greenhouse gases, which amends and supplements Regulation (EC) No. 842/2006 of 17 May 2006 and which it repeals, provides that « non-hermetically sealed equipment charged with fluorinated greenhouse gases shall only be sold to the end user where evidence is provided that the installation is to be carried out by an undertaking certified in accordance with Article 10 », the ruling holds that the applicability of this regulation is not conditional on France establishing or adapting programs involving certification, training and assessment procedures concerning the installation of said equipment, since, on the one hand, Article 10(7) of the regulation provides that « existing certificates and training attestations issued in accordance with Regulation (EC) No 842/2006 shall remain valid, in accordance with the conditions under which they were originally issued » and that, on the other hand, Article 5 of Regulation No. 842/2006 already organised the establishment of training and certification programs for both companies and staff involved in the installation, maintenance or servicing of the equipment in question.

7. It adds that the prohibition, set out in Article 11(5) of the above-mentioned Regulation No. 517/2014, on the sale of non-hermetically sealed equipment loaded with fluorinated greenhouse gases to the end user without it being established that the installation is to be carried out by a certified company is clear and unconditional and that it is not subject to any reservation making its implementation subject to an act of national law.

8. Having then noted that executive order No. 2015-1790 of 28 December 2015 had been limited to adding to Article R. 543-84 of the Environmental Code the clarification according to which in the transfer by distributors of preloaded equipment containing coolants and requiring, for their assembly or commissioning, the use of a certified operator was

only permitted to other distributors, certified operators, and persons who could justify having concluded, for the assembly and commissioning of the equipment, a contract with a certified operator, the ruling infers, on the one hand, that this executive order is not, as Richardson maintains, the national text allowing the application of Regulation No. 517/2014 and requiring, for the sale of the equipment in question, that the installation be carried out by a certified company, but rather that its sole purpose was to precisely define the methods required to prove this fact, and on the other hand, where the requirement for the production of such a contract for the sale of this equipment to private individuals came into effect on 31 December 2015, the obligation not to sell non-hermetically sealed equipment loaded with fluorinated greenhouse gases to an end-user without it being established that the installation was to be carried out by a certified company, as imposed by Regulation No. 517/2014, was already applicable in France, from 1 January 2015, in accordance with Article 27 of that regulation.

9. On the basis of these statements, findings and assessments, from which it follows that the obligation provided for in Article 11(5) of the above-mentioned Regulation No. 517/2014 did not require, for its implementation, the adoption of measures of application, the *cour d'appel* (Court of Appeal) exactly deduced that this provision was directly applicable in France as of 1 January 2015.

10. The plea is, therefore, unfounded.

Operative part of the ruling

ON THESE GROUNDS, the Court:

DISMISSES the appeal,

Orders Richardson to pay the costs; pursuant to Article 700 of the Code of Civil Procedure, dismisses Richardson's claim and orders it to pay Ets Bellucci the sum of EUR 3,000; Thus decided by the *Cour de cassation* (Court of Cassation), Commercial, Financial and Economic Chamber, and pronounced by the President in a public hearing on the twenty-eighth day of the month of June of the year two thousand and twenty-three.

President : Mr Vigneau

Reporting judge referee : Ms Bellino

Lawyer(s) : SCP Rocheteau, Uzan-Sarano and Goulet – SCP Boutet and Hourdeaux

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