

- 2) Does Paragraph 5/A of the national implementing law not infringe, as a result of the amount of the fines it provides for, the prohibition on disguised restrictions on the free movement of capital in the Treaty on European Union and in Article 65(3) of the Treaty on the Functioning of the European Union?

(¹) OJ 2005 L 309, p. 9.

Request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Portugal) lodged on 28 May 2014 — Lisboagás GDL, Sociedade Distribuidora de Gás Natural de Lisboa SA v Autoridade Tributária e Aduaneira

(Case C-256/14)

(2014/C 303/16)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicants: Lisboagás GDL, Sociedade Distribuidora de Gás Natural de Lisboa SA

Defendant: Autoridade Tributária e Aduaneira

Questions referred

1. Does EU law preclude the assessment of VAT, when a private undertaking providing infrastructures for the distribution of natural gas passes on to an undertaking acquiring its services, without including any additional amount, the amounts relating to land use taxes paid to the municipalities in which the pipes comprising those infrastructures are located?
2. Given that local authorities assess land use taxes in the exercise of their public powers, without including VAT, does EU law preclude the assessment of VAT when the amounts relating to those taxes paid by a private undertaking providing infrastructures for the distribution of natural gas are passed on to an undertaking acquiring its services?

Request for a preliminary ruling from the Rechtbank Amsterdam (Netherlands) lodged on 28 May 2014 — C. van der Lans v Koninklijke Luchtvaart Maatschappij NV

(Case C-257/14)

(2014/C 303/17)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

Applicant: C. van der Lans

Defendant: Koninklijke Luchtvaart Maatschappij NV

Questions referred

- 1) How must the concept of 'event' in recital 14 of the preamble [to Regulation (EC) No 261/2004 ⁽¹⁾ of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91] be interpreted?
- 2) Having regard to paragraph 22 of the *Wallentin* judgment, ⁽²⁾ extraordinary circumstances as referred to in the aforementioned recital 14 do not coincide with the occurrences listed as examples in the second sentence of recital 14, occurrences cited as events by the Court of Justice in paragraph 22. Is it correct that the events as referred to in the aforementioned paragraph 22 are not the same as the event in recital 14 of the preamble?
- 3) What should be understood by the concept of extraordinary circumstances which, according to paragraph 23 of the *Wallentin* judgment, surround the event 'unexpected flight safety shortcomings' as referred to in the aforesaid recital 14 if, in the light of paragraph 22, unexpected flight safety shortcomings cannot themselves constitute extraordinary circumstances but may only produce such circumstances?
- 4) It is apparent from paragraph 23 of the *Wallentin* judgment that a technical problem can be considered to be covered by 'unexpected flight safety shortcomings' and is therefore an 'event' within the meaning of paragraph 22 of the *Wallentin* judgment; the circumstances surrounding that event may nevertheless be regarded as extraordinary if they relate to an event which is not inherent in the normal exercise of the activities of the air carrier and beyond the actual control of that carrier on account of its nature or origin, as provided in paragraph 23 of the *Wallentin* judgment; according to paragraph 24 thereof, the resolution of a technical problem which can be traced back to poor maintenance of an aircraft is inherent in the normal exercise of an air carrier's activity; therefore, according to paragraph 25 of the *Wallentin* judgment, such technical problems cannot constitute extraordinary circumstances. It appears to follow from those paragraphs that a technical problem which is covered by 'unexpected flight safety shortcomings' is simultaneously an event which may be surrounded by extraordinary circumstances and may itself constitute an extraordinary circumstance. How should paragraphs 22 to 25 of the *Wallentin* judgment be interpreted in order to resolve that apparent contradiction?
- 5) The words: 'inherent in the normal exercise of an air carrier's activity' are consistently interpreted in the case-law of the lower courts as: 'associated with the normal activities of the airline' — which is moreover an interpretation which is compatible with the Netherlands word 'inherent' (not the authentic text of the judgment) — so that, for example, collisions with birds or ash clouds are also not regarded as events within the meaning of paragraph 23 of the *Wallentin* judgment. Other case-law emphasises the words: 'and is beyond the actual control of that carrier on account of its nature or origin', likewise in paragraph 23 of the *Wallentin* judgment. Must 'inherent in' be interpreted as meaning that only events which are within the actual control of the air carrier are covered by that concept?
- 6) How should paragraph 26 of the *Wallentin* judgment be read, or rather, how should that paragraph be interpreted, in the light of the answer of the Court of Justice to questions 4 and 5?
- 7) (a) If question 6 is answered to the effect that technical problems which are considered to be unexpected flight safety shortcomings constitute extraordinary circumstances which may justify invoking Article 5(3) of the Regulation if they arise from an event which is not inherent in the exercise of the activities of the airline and is beyond the actual control of the latter, does that then mean that a technical problem which arose spontaneously and is not attributable to poor maintenance and was moreover not detected during routine maintenance checks (the said A-D Checks and the Daily Control ...) can or cannot constitute an extraordinary circumstance — on the assumption that it could not be detected during the regular maintenance operations — because then no event as referred to in paragraph 26 can be identified and it is therefore also not possible to determine whether such an event is inherent in the exercise of the activities of the airline and is thus beyond the control of the air carrier?

- (b) If question 6 is answered to the effect that technical problems which are considered to be unexpected flight safety shortcomings are events as referred to in paragraph 22 and the technical problem arose spontaneously and is not attributable to poor maintenance and was moreover not detected during routine maintenance checks (the said A-D Checks and the Daily Control), is that technical problem inherent or not inherent in the exercise of the activities of the airline and is it or is it not thus beyond the actual control of the airline within the meaning of the aforementioned paragraph 26?
- (c) If question 6 is answered to the effect that technical problems which are considered to be unexpected flight safety shortcomings are events as referred to in paragraph 22 and the technical problem arose spontaneously and is not attributable to poor maintenance and was moreover not detected during routine maintenance checks (the said A-D Checks and the Daily Control), what circumstances should then surround that technical problem and when should those circumstances be regarded as extraordinary so that they may be relied upon for the purposes of Article 5(3) of the Regulation?
- 8) An air carrier can only rely on extraordinary circumstances if it can prove that the cancellation/delay is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. Is it correct to conclude that the taking of all reasonable measures refers to the avoidance of the occurrence of extraordinary circumstances and not to the taking of measures to keep the delay within the 3-hour limit referred to in Article 5(1)(c)(iii) of Regulation No 261/2004 in conjunction with paragraphs 57-61 of the *Sturgeon* judgment (Case C-402/07)? ⁽³⁾
- 9) In principle, there are two types of measures to limit delays caused by technical problems to a maximum of 3 hours, namely, on the one hand, holding stocks of spare components in various parts of the world, thus not only at the home base of the air carrier, and, on the other hand, the rebooking of the passengers of the delayed flight. In determining the stock levels which they hold and the places in the world where they do so, may the air carriers have regard to what is customary in the aviation world, including for carriers which are only partially covered by the operation of the Regulation?
- 10) In answering the question of whether all reasonable measures were taken to limit the delay which occurred as a result of technical problems which have an effect on the flight safety shortcomings, must the court take account of circumstances which aggravate the consequences of a delay, such as the circumstance that the aircraft affected by the technical problems, before returning to its home base, must, as in the present case, call at a number of airports, which may result in an accumulation of time lost?

⁽¹⁾ OJ 2004 L 46, p. 1.

⁽²⁾ Judgment in *Wallentin-Hermann*, C-549/07, EU:C:2008:771.

⁽³⁾ Judgment in *Sturgeon and Others*, C-402/07 and C-432/07, EU:C:2009:716.

Appeal brought on 3 June 2014 by Debonair Trading Internacional Ld^a against the judgment of the General Court (Ninth Chamber) delivered on 3 April 2014 in Case T-356/12: Debonair Trading Internacional Ld^a v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-270/14 P)

(2014/C 303/18)

Language of the case: English

Parties

Appellant: Debonair Trading Internacional Ld^a (represented by: T. Alkin, Barrister)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs)