

Request for a preliminary ruling from the Cour administrative (Luxembourg) lodged on 24 June 2016 — UBS (Luxembourg) SA, Alain Hondequin, Holzem and Others

(Case C-358/16)

(2016/C 335/51)

Language of the case: French

Referring court

Cour administrative

Parties to the main proceedings

Applicants: UBS (Luxembourg) SA, Alain Hondequin, Holzem and Others

Questions referred

1. Against the background in particular of Article 41 of the Charter of Fundamental Rights of the European Union (the Charter) enshrining the principle of good administration, does the exception of “cases covered by criminal law” — found at the end of Article 54(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, ⁽¹⁾ and at the beginning of Article 54(3) — cover a situation concerning, according to national law, an administrative sanction, but considered from the point of view of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) to be part of criminal law, such as the sanction at issue in the main proceedings, imposed by the national regulator, the national supervisory authority, and consisting in ordering a member of the national bar association to cease holding a post as director or any other post subject to accreditation in an entity supervised by that regulator and ordering him to resign from all his posts at the earliest opportunity?
2. Inasmuch as the aforementioned administrative sanction, regarded as such under national law, stems from administrative proceedings, to what extent is the obligation of professional secrecy, which a national supervisory authority may invoke under Article 54 of Directive 2004/39/EC, subject to the requirements for a fair trial including an effective remedy as laid down in Article 47 of the Charter, examined in relation to the parallel requirements of Articles 6 and 13 ECHR relating to a fair trial and an effective remedy, which together constitute the safeguards provided for by Article 48 of the Charter, in particular as regards full access for the person on whom the administrative sanction has been imposed to the administrative file of the author of the sanction, which is also the national supervisory authority, for the purpose of protecting the interests and civil rights of the person on whom the sanction has been imposed?

⁽¹⁾ OJ L 145, p. 1.

Request for a preliminary ruling from the Hof van Cassatie (Belgium) lodged on 24 June 2016 — Ömer Altun and Others, Absa NV and Others v Openbaar Ministerie

(Case C-359/16)

(2016/C 335/52)

Language of the case: Dutch

Referring court

Hof van Cassatie

Parties to the main proceedings

Appellants: Ömer Altun, Abubekir Altun, Sedrettin Maksutogullari, Yunus Altun, Absa NV, M. Sedat BVBA, Alnur BVBA

Respondent: Openbaar Ministerie

Question referred

Can an E101 certificate issued under Article 11(1) of Regulation (EEC) No 574/72⁽¹⁾ of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as applicable before its repeal by Article 96(1) of Regulation (EC) No 987/2009⁽²⁾ laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, be annulled or disregarded by a court other than that of the sending Member State if the facts which are submitted to its scrutiny support the conclusion that the certificate was obtained or invoked fraudulently?

⁽¹⁾ (OJ 1972 L 74, p. 1).

⁽²⁾ Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ 2009 L 284, p. 1).

**Request for a preliminary ruling from the Conseil d'Etat (France) lodged on 4 July 2016 —
Association française des entreprises privées (AFEP) and Others v Ministre des finances et des
comptes publics**

(Case C-365/16)

(2016/C 335/53)

Language of the case: French

Referring court

Conseil d'Etat

Parties to the main proceedings

Applicants: Association française des entreprises privées (AFEP), Axa, Compagnie générale des établissements Michelin, Danone, ENGIE, formerly GDF Suez, Eutelsat Communications, LVMH Moët Hennessy-Louis Vuitton SA, Orange SA, Sanofi SA, Suez Environnement Company, Technip, Total SA, Vivendi, Eurazeo, Safran, Scor SE, Unibail-Rodamco SE, Zodiac Aerospace

Defendant: Ministre des finances et des comptes publics

Questions referred

1. Does Article 4 of Council Directive 2011/96/EU of 30 November 2011,⁽¹⁾ and in particular paragraph 1(a) thereof, preclude a levy such as that provided for in Article 235^{ter} ZCA of the General Tax Code, which is payable on the distribution of profits by parent companies that are liable to corporation tax in France and is assessed on the basis of the sums distributed?
2. In the event that the first question is answered in the negative, is a levy such as that provided for in Article 235^{ter} ZCA of the General Tax Code to be regarded as a 'withholding tax' from which, pursuant to Article 5 of the directive, profits distributed by a subsidiary must be exempt?

⁽¹⁾ Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 2011 L 345, p. 8).