Request for a preliminary ruling from the Corte d'appello di Milano (Italy) lodged on 18 July 2016 — Acacia Srl v Pneusgarda Srl (in bankruptcy), Audi AG

(Case C-397/16)

(2016/C 371/04)

Language of the case: Italian

Referring court

Corte d'appello di Milano

Parties to the main proceedings

Appellant: Acacia Srl

Respondents: Pneusgarda Srl (in bankruptcy), Audi AG

Questions referred

1. Do (a) the principles of the free movement of goods and of the freedom to provide services within the internal market, (b) the principle of the effectiveness of EU competition law and of the liberalisation of the internal market, (c) the principles of *effet utile* and of the uniform application within the European Union of EU law and (d) the provisions of secondary EU law, such as Directive 98/71, ([1]) and in particular Article 14 thereof, Article 1 of Regulation No 461/2010 ([2]) and UNECE Regulation No. 124, preclude an interpretation of Article 110 of Regulation No 6/2002, ([3]) which contains the repair clause, that excludes replica wheels aesthetically identical to original equipment wheels and approved on the basis of UNECE Regulation No. 124 from the definition of a 'component part of a complex product' (that complex product being a motor vehicle) for the purposes of the repair of that complex product and the restoration of its original appearance?

2. In the event that the first question is answered in the negative, do the rules on exclusive industrial rights in respect of registered designs, regard being had to the balancing of the interests referred to in the first question, preclude the application of the repair clause to replica complementary products that may be selected freely by the customer, on the basis that the repair clause is to be interpreted restrictively and may be relied upon only with respect to spare parts that come in one particular form only, that is to say, component parts the form of which has been determined in practically immutable fashion with respect to the external appearance of the complex product, to the exclusion of component parts that may be regarded as interchangeable and that may be applied freely, in accordance with the customer wishes?

3. In the event that the second question is answered in the negative, what steps must a manufacturer of replica wheels take in order to ensure the free movement of products the intended use of which is the repair of a complex product and the restoration of its original appearance?

([1]) Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs (OJ 1998 L 289, p. 28).

([2]) Commission Regulation (EU) No 461/2010 of 27 May 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector (Text with EEA relevance) (OJ 2010 L 129, p. 52).

([3]) Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ 2002 L 3, p. 1).

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 18 July 2016 — X BV v Staatssecretaris van Financiën

(Case C-398/16)

(2016/C 371/05)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: X BV

Respondent: Staatssecretaris van Financiën

Question referred

Must Articles 43 EC and 48 EC (now Articles 49 TFEU and 54 TFEU) be interpreted as precluding national legislation on the basis of which a parent company established in a Member State is not allowed to deduct interest in respect of a loan associated with a capital contribution made to a subsidiary established in another Member State, whereas that deduction could have been availed of if that subsidiary had been included with that parent company in a single tax entity — with characteristics such as those of a Netherlands single tax entity — in view of the fact that, in that case, by reason of consolidation, there would be no obvious association with such a capital contribution?

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 18 July 2016 — X NV v Staatssecretaris van Financiën

(Case C-399/16)

(2016/C 371/06)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: X NV

Respondent: Staatssecretaris van Financiën

Questions referred

1. Must Articles 43 EC and 48 EC (now Articles 49 TFEU and 54 TFEU) be interpreted as precluding national legislation on the basis of which a parent company established in a Member State cannot take into account a currency loss in connection with the amount which it has invested in a subsidiary established in another Member State, whereas it would be able to do so if that subsidiary were to be included in a single tax entity — with characteristics such as those of the Netherlands single tax entity — with that parent company established in the first-mentioned Member State, as a result of consolidation within the single tax entity?

2. If the answer to Question 1 is in the affirmative: can or must the point of departure for determining the currency loss to be taken into account be that (one or more of) the direct and indirect subsidiaries indirectly held by the parent company concerned, through the subsidiary in question, and established in the European Union, should also be included in the single tax entity?

3. If the answer to Question 1 is in the affirmative: should account be taken only of currency losses that would have been reflected on the parent company's inclusion in the single tax entity in the years to which the dispute relates, or should the currency exchange results that would have been reflected in earlier years also be taken into account?
