(j) If the aforementioned provision M.B.902(b)(4) in Subpart I of Section B of Annex I to the Regulation has the second meaning set out above, can the requirement of the Regulation be construed, in light of that meaning, as being satisfied by a national regulation that makes provision for inspectors to be accredited following theoretical and practical training, at which point they can carry out aircraft airworthiness reviews and engage the liability of the competent authority by alone signing the review documents?

(k) Furthermore, if the aforementioned provision M.B.902(b)(4) in Subpart I of Section B of Annex I to Regulation (EC) No 2042/2003 has the second meaning set out above, is a national provision, such as the critical regulation at issue, which provides that it is desirable for persons initially selected as Airworthiness and Avionics Inspectors to have previously been promoted to 'senior positions of responsibility in an aircraft maintenance organisation', compatible with it?

(l) Within the meaning of Regulation (EC) No 2042/2003, which does not regulate the question of whether and under what conditions persons performing airworthiness review duties before it entered into force are entitled to continue to perform such duties following the entry into force of the said regulation, was the national legislature obliged to provide that persons who were performing the duties of inspector when the above regulation entered into force (or possibly before then) should automatically be reaccredited as inspectors, without first undergoing a selection and evaluation procedure? Or does the above Regulation (EC) No 2042/2003, the aim of which is to improve the safety of air transport, not to safeguard the professional rights of employees of the Member State's authority responsible for airworthiness reviews, mean that the Member States are simply granted the discretion, in light also of the relevant requirements of provision AMC M.B.902(b)(4) in Subpart A of Section B of Annex I to EASA Decision No 2003/19/RM dated 28 November 2003, to continue, if they deem appropriate, to employ as airworthiness inspectors persons who were carrying out airworthiness reviews before the aforementioned regulation entered into force, even if those persons do not have the qualifications required under the said regulation?

(m) If it is found that, within the meaning of Regulation (EC) No 2042/2003, the Member States are obliged automatically to reaccredit persons who were performing the duties of inspector before the said regulation entered into force, without applying a selection procedure, is a national provision, such as the critical provision at issue, which provides that, in order to be reaccredited as inspectors, those persons must have actually been performing the duties of inspector not on the date on which the above regulation entered into force, but on the later date, when the said provision of national law entered into force, compatible with that regulation?

Action brought on 9 June 2011 — European Commission v Hellenic Republic

(Case C-293/11)

(2011/C 232/33)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: D. Triantafillou and C. Soulay)

Defendant: Hellenic Republic

Form of order sought

— declare that, by applying the special VAT scheme for travel agents in cases where the travel services have been sold to a person other than the traveller, the Hellenic Republic has failed to fulfil its obligations under Articles 306 to 310 of Directive 2006/112/EC; ([1])

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The scheme for travel agents applies only to services which are supplied directly to travellers, in accordance with the directive's wording in most languages. Even the English version, which uses, at one point only, the term 'customer', would not make sense unless it related solely to travellers. The same conclusion results from a combined reading of all the relevant provisions (systemic argument). A historic interpretation also supports the same conclusion, since the VAT directive merely codified the Sixth Directive, without altering its content. So far as concerns a teleological interpretation, what is important is that double taxation of agents in certain Member States not be allowed (by the exclusion of deductions in the event of extended application of the scheme for travel agents). Any shortcoming of the directive cannot be corrected by individual States without its text being officially amended.

([1]) OJ L 347, 11.12.2006.

Action brought on 10 June 2011 — Italian Republic v Council of the European Union

(Case C-295/11)

(2011/C 232/34)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: G. Palmieri, Agent, and S. Fiorentino, Avvocato dello Stato)

Defendant: Council of the European Union

Form of order sought

— Annul Council Decision of 10 March 2011 authorising enhanced cooperation in the area of the creation of unitary patent protection (2011/167/EU) [1];

— order the Council of the European Union to pay the costs.

Pleas in law and main arguments

In support of its action, the Italian Republic raises four pleas in law.

First, it submits that the enhanced cooperation procedure was authorised by the Council outside the limits provided for in the first subparagraph of Article 20(1) TEU, according to which such a procedure is to be allowed only within the framework of the European Union's non-exclusive competences. The European Union has an exclusive competence to create 'European rules' which have Article 118 TFEU as their legal basis.

Second, it submits that the authorisation of enhanced cooperation in the present case is contrary to — or, in any event, not compatible with — the objectives in view of which such cooperation is provided for by the Treaties. In so far as that authorisation is contrary to, if not the letter, at least the spirit of Article 118 TFEU, it infringes Article 326(1) TFEU, in that the latter requires enhanced cooperation to comply with the Treaties and with EU law.

Third, the Italian Republic submits that the authorisation decision was adopted without an appropriate inquiry with regard to the *last resort* requirement and without an adequate statement of reasons on that point.

Lastly, according to the Italian Republic, the authorisation decision infringes Article 326 TFEU in that it adversely affects the internal market, introducing a barrier to trade between Member States and discrimination between undertakings, causing distortion of competition. Furthermore, it does not help to reinforce the EU's integration process, and is thus contrary to the second subparagraph of Article 20(1) TEU.

[1] OJ 2011 L 76, p. 53.

Reference for a preliminary ruling from the Administrativen sad Varna (Bulgaria) lodged on 14 June 2011 — Dobrudzhanska petrolna kompania AD v Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — gr. Varna, pri Tsentralno upravlenie na Natsionalnata Agentsia po Prihodite

(Case C-298/11)

(2011/C 232/35)

Language of the case: Bulgarian

Referring court

Administrativen sad Varna

Parties to the main proceedings

Applicant: Dobrudzhanska petrolna kompania AD

Defendant: Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto'– gr. Varna, pri Tsentralno upravlenie na Natsionalnata Agentsia po Prihodite

Questions referred

1. Is Article 80(1)(a) and (b) of Council Directive 2006/112/EC [1] of 28 November 2006 on the common system of value added tax to be interpreted as meaning that, where there are supplies between connected persons, in so far as the consideration is lower than the open market value, the taxable amount is the open market value of the transaction only if the supplier or the recipient does not qualify for the right to deduct in full the input tax chargeable on the purchase or production of the goods supplied?

2. Is Article 80(1)(a) and (b) of Directive 2006/112 to be interpreted as meaning that, if the supplier has exercised the right to deduct in full the input tax on goods and services which are the subject of subsequent supplies between connected persons at a value lower than the open market value, and that right to deduct input tax has not been corrected under Articles 173 to 177 of the Directive and the supply is not subject to a tax exemption within the meaning of Articles 132, 135, 136, 371, 375, 376, 377, 378(2) or 380 to 390 of the Directive, a Member State is not permitted to adopt measures whereby the taxable amount is exclusively the open market value?

3. Is Article 80(1)(a) and (b) of Council Directive 2006/112 to be interpreted as meaning that, if the recipient has exercised the right to deduct in full the input tax on goods and services which are the subject of subsequent supplies between connected persons with a lower value than the open market value, and that right to deduct input tax has not been corrected under Articles 173 to 177 of the Directive, a Member State is not permitted to adopt measures whereby the taxable amount is exclusively the open market value?

4. Does Article 80(1)(a) and (b) of Directive 2006/112 constitute an exhaustive list of cases representing the circumstances in which a Member State is permitted to take measures whereby the taxable amount in respect of supplies is to be the open market value of the transaction?

5. Is a provision of national law such as Article 27(3)(1) of the Zakon za danak varhu dobavenata stoynost (Law on VAT) permissible in cases other than those listed in Article 80(1)(a), (b) and (c) of Directive 2006/112?