

(Case C-629/10)

Reference for a preliminary ruling — High Court of Justice (England and Wales), Queen's Bench Division (Administrative Court) — Interpretation of Articles 5, 6 and 7 of Regulation (EC) No 261/2004 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 (OJ 2004 L 46, p. 1) — Right to compensation in the event of delay — Effects of the judgment in Joined Cases C-402/07 and C-432/07 *Sturgeon and Others* [2009] ECR I-10923

### Operative part of the judgment

- Articles 5 to 7 of Regulation (EC) No 261/2004 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, must be interpreted as meaning that passengers whose flights are delayed are entitled to compensation under that regulation where they suffer, on account of such flights, a loss of time equal to or in excess of three hours, that is, where they reach their final destination three hours or more after the arrival time originally scheduled by the air carrier. Such a delay does not, however, entitle passengers to compensation if the air carrier can prove that the long delay is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken, namely circumstances beyond the actual control of the air carrier.
- Consideration of the questions referred for a preliminary ruling has disclosed no factor of such a kind as to affect the validity of Articles 5 to 7 of Regulation No 261/2004.

<sup>(1)</sup> OJ C 72, 5.3.2011.  
OJ C 89, 19.3.2011.

**Judgment of the Court (First Chamber) of 25 October 2012 (reference for a preliminary ruling from the Bundesgerichtshof — Germany) — Folien Fischer AG, Fofitec AG v Ritrama SpA**

(Case C-133/11) <sup>(1)</sup>

*(Area of freedom, security and justice — Jurisdiction in civil and commercial matters — Special jurisdiction in tort, delict or quasi-delict — Action for a negative declaration («negative Feststellungsklage») — Whether a person alleged to have committed a harmful act may bring a person who might be adversely affected, before the courts with jurisdiction for the place where the act allegedly occurred or may occur, seeking a declaration that there is no liability in tort or delict)*

(2012/C 399/05)

Language of the case: German

### Referring court

Bundesgerichtshof

### Parties to the main proceedings

Applicants: Folien Fischer AG, Fofitec AG

Defendant: Ritrama SpA

### Re:

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of point (3) of Article 5 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) — Special jurisdiction in tort, delict or quasi-delict — Action for a negative declaration (negative Feststellungsklage) — Whether a person who may have committed a harmful act may bring the person potentially adversely affected before the courts with jurisdiction for the place where the act occurred or may occur, seeking a declaration that there is no liability in tort or delict.

### Operative part of the judgment

Point (3) of Article 5 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action for a negative declaration seeking to establish the absence of liability in tort, delict, or quasi-delict falls within the scope of that provision.

<sup>(1)</sup> OJ C 204, 9.7.2011.

**Judgment of the Court (Eighth Chamber) of 25 October 2012 — European Commission v French Republic**

(Case C-164/11) <sup>(1)</sup>

*(Failure of a Member State to fulfil obligations — Directive 2003/96/EC — Taxation of energy products and electricity — Failure to transpose within the prescribed period)*

(2012/C 399/06)

Language of the case: French

### Parties

Applicant: European Commission (represented by: W. Mölls, acting as Agent)

Defendant: French Republic (represented by: G. de Bergues and N. Rouam, acting as Agents)

Intervener in support of the defendant: Kingdom of Spain (represented by: S. Centeno Huerta, acting as Agent)

**Re:**

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, the provisions necessary to adapt its electricity taxation system to the provisions laid down by Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ 2003 L 283, p. 51) — Application of a single rate on expiry of the transitional period

**Operative part of the judgment**

*The Court:*

1. Declares that by failing to adopt the provisions necessary to adapt its electricity taxation system to the provisions laid down by Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, despite the expiry of the transitional period provided for in the second subparagraph of Article 18(10) of that directive, the French Republic has failed to fulfil its obligations under that directive;
2. Orders the French Republic to pay the costs.

(<sup>1</sup>) OJ C 186, 25.6.2011.

**Judgment of the Court (Eighth Chamber) of 25 October 2012 (reference for a preliminary ruling from the Förvaltningsrätten i Falun — Sweden) — Daimler AG (C-318/11), Widex A/S(C-319/11) v Skatteverket**

(Joined Cases C-318/11 and C-319/11) (<sup>1</sup>)

*(Common system of value added tax — Directive 2006/112/EC — Articles 170 and 171 — Eighth VAT Directive — Article 1 — Directive 2008/9/EC — Article 3(a) — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country — Taxable persons established in one Member State and carrying out in another Member State only technical testing or research activities)*

(2012/C 399/07)

Language of the case: Swedish

**Referring court**

Förvaltningsrätten i Falun

**Parties to the main proceedings**

Applicants: Daimler AG (C-318/11), Widex A/S(C-319/11)

Defendant: Skatteverket

**Re:**

(C-318/11)

Reference for a preliminary ruling — Förvaltningsrätten i Falun — Interpretation of Articles 170 and 171 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) and of Articles 1 and 2 of Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ 1979 L 331, p. 11) and Articles 2, 3 and 5 of Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State (OJ 2008 L 44, p. 23) — Car manufacturer established in Member State A, having made certain acquisitions in Member State B, in order to carry out there, through its subsidiary established in that Member State, endurance tests on its vehicles in winter conditions, with a view to their sale in Member State A — Subsidiary wholly owned by the car manufacturer having the principal objective of providing to the parent company sites, tracks on which to carry out the tests and services connected with the tests inside Member State B, necessary to the commercial activities carried out by the parent company in the Member State where it is established — Whether the car manufacturer has a fixed establishment in Member State B

(C-319/11)

Reference for a preliminary ruling — Förvaltningsrätten i Falun — Interpretation of Articles 170 and 171 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) and Articles 1 and 2 of Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ 1979 L 331, p. 11) — Company manufacturing hearing aids established in Member State A which has acquired goods and services in Member State B for the needs of its audiology research department situated in that Member State and whose staff is employed by that company — Whether or not the hearing aid manufacturer has a fixed establishment in Member State B

**Operative part of the judgment**

1. A taxable person for VAT established in one Member State and carrying out in another Member State only technical testing or research work, not including taxable transactions, cannot be regarded as having in that other Member State a 'fixed establishment from which business transactions are effected' within the meaning of Article 1 of Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country, as amended by Council Directive 2006/98/EC of 20 November 2006, and Article 3(a) of Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State;