

**Operative part of the judgment**

1. European Union law does not preclude a legislative provision of a Member State which permits an administrative authority to prohibit a national of that State from leaving it on the ground that a tax liability of a company of which he is one of the managers has not been settled, subject, however, to the twofold condition that the measure at issue is intended to respond, in certain exceptional circumstances which might arise from, *inter alia*, the nature or amount of the debt, to a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society and that the objective thus pursued does not solely serve economic ends. It is for the national court to determine whether that twofold condition is satisfied.

2. Even if a measure imposing a prohibition on leaving the territory such as that applying to Mr Aladzhov in the main proceedings has been adopted under the conditions laid down in Article 27(1) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, the conditions laid down in Article 27(2) thereof preclude such a measure,

— if it is founded solely on the existence of the tax liability of the company of which he is one of the joint managers, and on the basis of that status alone, without any specific assessment of the personal conduct of the person concerned and with no reference to any threat of any kind which he represents to public policy, and

— if the prohibition on leaving the territory is not appropriate to ensure the achievement of the objective it pursues and goes beyond what is necessary to attain it.

It is for the referring court to determine whether that is the position in the case before it.

<sup>(1)</sup> OJ C 317, 20.11.2010.

**Judgment of the Court (Fourth Chamber) of 17 November 2011 (reference for a preliminary ruling from the Centrale Raad van Beroep (Netherlands)) — J. C. van Ardennen v Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen**

(Case C-435/10) <sup>(1)</sup>

(Directive 80/987/EEC — Protection of employees in the event of the insolvency of their employer — Insolvency benefit — Payment subject to registration as a job-seeker)

(2012/C 25/27)

Language of the case: Dutch

**Referring court**

Centrale Raad van Beroep

**Parties to the main proceedings**

Applicant: J. C. van Ardennen

Defendant: Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen

**Re:**

Reference for a preliminary ruling — Centrale Raad van Beroep — Interpretation of Articles 4, 5 and 10 of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer (OJ 1980 L 283, p. 23), as amended by Directive 2002/74/EC (OJ 2002 L 270, p. 10) — Extent of the guarantee offered by the guarantee institution — National legislation obliging employees to register immediately as job-seekers before they apply for payment of outstanding pay claims.

**Operative part of the judgment**

Articles 3 and 4 of Council Directive 80/987/EEC of 20 October 1980 relating to the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 must be interpreted as precluding a national rule which obliges employees to register as job-seekers in the event of the insolvency of their employer, in order to fully assert their right to payment of outstanding wage claims, such as those in issue in the main proceedings.

<sup>(1)</sup> OJ C 317, 20.11.2010.

**Judgment of the Court (Second Chamber) of 10 November 2011 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — Finanzamt Lüdenscheld v Christel Schriever**

(Case C-444/10) <sup>(1)</sup>

(VAT — Sixth Directive — Article 5(8) — Concept of a ‘transfer of a totality of assets or part thereof’ — Transfer of the stock and fittings concomitant with the conclusion of a contract of lease of the business premises)

(2012/C 25/28)

Language of the case: German

**Referring court**

Bundesfinanzhof

**Parties to the main proceedings**

Applicant: Finanzamt Lüdenscheld

Defendant: Christel Schriever

**Re:**

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 5(8) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Possibility for the Member States to exempt from VAT the transfer of a totality of assets — Lease for an indefinite period of the shop premises of a retail outlet together with the transfer to the lessee of ownership of the stock and shop fittings of the retail outlet — Possibility of categorising such a transaction as a ‘transfer of a totality of assets’ for the purposes of Article 5(8) of Directive 77/388/EEC.

**Operative part of the judgment**

Article 5(8) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be interpreted as meaning that there is a transfer of a totality of assets, or a part thereof, for the purposes of that provision, where the stock and fittings of a retail outlet are transferred concomitantly with the conclusion of a contract of lease, to the transferee, of the premises of that outlet for an indefinite period but terminable at short notice by either party, provided that the assets transferred are sufficient for the transferee to be able to carry on an independent economic activity on a lasting basis.

(<sup>1</sup>) OJ C 317, 20.11.2010.

**Judgment of the Court (Second Chamber) of 17 November 2011 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — Oliver Jestel v Hauptzollamt Aachen**

(Case C-454/10) (<sup>1</sup>)

*(Community Customs Code — Second indent of Article 202(3) — Customs debt incurred through unlawful introduction of goods — Meaning of ‘debtor’ — Participation in unlawful introduction — Person acting as intermediary in conclusion of contracts of sale relating to goods introduced unlawfully)*

(2012/C 25/29)

Language of the case: German

**Referring court**

Bundesfinanzhof

**Parties to the main proceedings**

Applicant: Oliver Jestel

Defendant: Hauptzollamt Aachen

**Re:**

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of the second indent of Article 202(3) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) —

Customs debt incurred through the unlawful introduction of goods into the customs territory of the European Union — Person acting as intermediary in conclusion of contracts of sale relating to goods introduced unlawfully without directly taking part in that introduction — Conditions under which such a person can be considered to be a debtor of a customs debt.

**Operative part of the judgment**

The second indent of Article 202(3) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted as meaning that a person who, without being directly involved in the introduction of goods, participated in the introduction as intermediary in the conclusion of contracts of sale relating to those goods must be considered to be a debtor of a customs debt incurred through the unlawful introduction of goods into the customs territory of the European Union where that person was aware, or should reasonably have been aware, that that introduction was unlawful, which is a matter for the national court to determine.

(<sup>1</sup>) OJ C 317, 20.11.2010.

**Judgment of the Court (Third Chamber) of 24 November 2011 (references for a preliminary ruling from the Tribunal Supremo — Spain) — Asociación Nacional de Establecimientos Financieros de Crédito (ASNEF) (C-468/10), Federación de Comercio Electrónico y Marketing Directo (FECEDM) (C-469/10) v Administración del Estado**

(Joined Cases C-468/10 and C-469/10) (<sup>1</sup>)

*(Processing of personal data — Directive 95/46/EC — Article 7(f) — Direct effect)*

(2012/C 25/30)

Language of the cases: Spanish

**Referring court**

Tribunal Supremo

**Parties to the main proceedings**

Applicants: Asociación Nacional de Establecimientos Financieros de Crédito (ASNEF) (C-468/10), Federación de Comercio Electrónico y Marketing Directo (FECEDM) (C-469/10)

Defendant: Administración del Estado

**Re:**

Reference for a preliminary ruling — Tribunal Supremo — Interpretation of Article 7(f) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31) — Processing of data by controllers and communication to the addressees to satisfy their respective legitimate interests — Additional requirements — Direct effect of the provisions of a directive