Questions referred

1. How is the option, granted by Article 2(4) of Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the EAGGF, ([1]) to extend the scrutiny period 'for periods … preceding or following the 12-month period' which it defines, to be implemented by a Member State, having regard to, first, the need to protect the Communities' financial interests, and second, the principle of legal certainty and the necessity to not give the scrutiny authorities indefinite power?

2. In particular:

   — Must the period scrutinised, in all instances — if the scrutiny is not to be marred by an irregularity which the person scrutinised may rely on against the decision giving due effect to the results of the scrutiny — end during the twelve month period which precedes the 'scrutiny' period during which the scrutiny operations are carried out?

   — In the event of a positive reply to the preceding question, how must the option, expressly provided for by the regulation, to extend the period of scrutiny for periods 'following the 12-month period' be understood?

   — In the event of a negative reply to the first question, must the scrutiny period nevertheless — if the scrutiny is not to be marred by an irregularity which the scrutinised person may rely on against the decision giving due effect to the results of the scrutiny — include a twelve month period which ends during the scrutiny period preceding that during which the scrutiny was carried out, or, on the contrary, may the scrutiny cover only a period which ends before the beginning of the preceding scrutiny period?

([1]) Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Directive 77/435/EEC (OJ 1989 L 388, p. 18).

Reference for a preliminary ruling from the Conseil d'Etat (France) lodged on 29 December 2011 — SNC Doux Élevage and Société Coopérative Agricole UKL-ARREE v Ministère de l'Agriculture, de l'alimentation, de la pêche, de la ruralité et de l'aménagement du territoire and Comité interprofessionnel de la dinde française (CIDEF)

(Case C-677/11)

(2012/C 89/16)

Language of the case: French

Referring court

Conseil d'Etat, France

Parties to the main proceedings

Applicants: SNC Doux Élevage, Société Coopérative Agricole UKL-ARREE

Defendants: Ministère de l'Agriculture, de l'alimentation, de la pêche, de la ruralité et de l'aménagement du territoire, Comité interprofessionnel de la dinde française (CIDEF)

Question referred

Must Article 107 of the Treaty on the Functioning of the European Union, read in the light of Case C-345/02 *Pearle BV and Others*, be interpreted as meaning that a decision by which a national authority extends to all the traders in a sector an agreement which, like the agreement made within the Comité interprofessionnel de la dinde française (CIDEF), introduces the levying of a contribution in an inter-trade organisation recognised by that national authority, thus rendering that contribution compulsory, in order to make it possible to implement certain activities — publicity activities, promotional activities, external relations activities, quality assurance activities, research activities, activities in defence of the sector's interests, and the use of studies and consumer panels — is, in view of the nature of the activities in question, the methods by which they are financed and the conditions of their implementation, related to State aid?

Reference for a preliminary ruling from the Oberster Gerichtshof (Austria), lodged on 27 December 2011 — Bundeswettbewerbsbehörde v Schenker & Co AG and Others

(Case C-681/11)

(2012/C 89/17)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Appellants: Bundeswettbewerbsbehörde, Bundeskartellanwalt

Respondents: Schenker & Co AG, ABX Logistics (Austria) GmbH, Logwin Invest Austria GmbH, Logwin Road + Rail Austria GmbH, Alpentrans Spedition und Transport GmbH, Kapeller Internationale Spedition GmbH, Johann Strauss GmbH, Wildenhofer Spedition und Transport GmbH, DHL Express (Austria) GmbH, G. Englmayer Spedition GmbH, Internationale Spedition Schneckenreither Gesellschaft mbH, Leopold Schöffl GmbH & Co KG, Express-Interfracht Internationale Spedition GmbH, Rail Cargo, A. Ferstl Speditionsgesellschaft mbH, Spedition, Lagerei und Beförderung von Gütern mit Kraftfahrzeugen Alois Herbst GmbH & Co KG, Johann Huber Spedition und Transportgesellschaft mbH, Keimelmayr Speditions- u. Transport GmbH, 'Spedpack'-Speditions- und Verpackungsgesellschaft mbH, Thomas Spedition GmbH, Koch Spedition

GmbH, Maximilian Schludermann, in his capacity as insolvency administrator for the assets of Kubicargo Spedition GmbH, Kühne + Nagel GmbH, Lagermax Internationale Spedition Gesellschaft mbH, Morawa Transport GmbH, Johann Ogris Internationale Transport- und Speditions GmbH, Traussnig Spedition GmbH, Treu SpeditionsgesmbH, Spedition Anton Wagner GmbH, Gebrüder Weiss GmbH, Marehard u. Wuger Internat. Speditions- u. Logistik GmbH

Questions referred

1. May breaches of Article 101 TFEU committed by an undertaking be penalised by means of a fine in the case where the undertaking erred with regard to the lawfulness of its conduct and that error is unobjectionable?

If Question 1 is answered in the negative:

1a. Is an error with regard to the lawfulness of conduct unobjectionable in the case where the undertaking acts in accordance with advice given by a legal adviser experienced in matters of competition law and the erroneous nature of the advice was neither obvious nor capable of being identified through the scrutiny which the undertaking could be expected to exercise?

1b. Is an error with regard to the lawfulness of conduct unobjectionable in the case where the undertaking has expectations as to the correctness of a decision taken by a national competition authority which examined the conduct under review solely on the basis of national competition law and found it to be permissible?

2. Are the national competition authorities competent to declare that an undertaking participated in a cartel which infringes European Union competition law in a case where no fine is to be imposed on the undertaking on the ground that it has requested to be heard as a cooperative witness?

Reference for a preliminary ruling from the Tribunal da Relação de Lisboa (Portugal) lodged on 3 January 2012 — Ordem dos Técnicos Oficiais de Contas v Autoridade da Concorrência

(Case C-1/12)

(2012/C 89/18)

Language of the case: Portuguese

Referring court

Tribunal da Relação de Lisboa

Parties to the main proceedings

Applicant: Ordem dos Técnicos Oficiais de Contas

Defendant: Autoridade da Concorrência

Questions referred

1. Must an institution such as the Ordem dos Técnicos Oficiais de Contas (OTOC) be regarded in its entirety as an association of undertakings for the purposes of applying the Community competition law rules (training market)? If so, is the present Article 101(2) TFEU to be interpreted as also rendering subject to those rules an entity which, like the OTOC, lays down binding rules of general application and does so in compliance with legal requirements concerning mandatory training of chartered accountants with a view to providing citizens with a quality service that can be relied on?

2. If an entity such as the OTOC is required by law to implement a mandatory training system for its members, may the present Article 101 TFEU be interpreted as allowing the possibility of challenging the setting up of a training system legally imposed by the OTOC and by the Regulation governing that system, in so far as the latter strictly confines itself to giving effect to the legal requirement? Or, on the contrary, does this matter fall outside the scope of Article 101 and must it be examined under the present Article 56 et seq. TFEU?

3. Having regard to the fact that the *Wouters* [1] judgment, and similar judgments, were concerned with rules having an impact on the economic activity of the professional members of the professional association in question, do Articles 101 and 102 TFEU preclude rules on the training of chartered accountants which have no direct influence on their economic activity?

4. In the light of Union competition law (in the training market), may a professional association impose the requirement, for the practice of the profession, of particular training provided only by it?

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[1] Case C-309/99 *Wouters* [2002] ECR I-1577

Reference for a preliminary ruling from the Conseil d'État (France) lodged on 2 January 2012 — Syndicat OP 84 v Office national interprofessionnel des fruits, des légumes, des vins et de l'horticulture (VINIFLHOR) venant aux droits de l'ONIFLHOR

(Case C-3/12)

(2012/C 89/19)

Language of the case: French

Referring court

Conseil d'État