

Re:

Reference for a preliminary ruling — Administrativen sad — Varna — Interpretation of Article 168(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Deduction of the VAT paid by a taxable person in respect of goods supplied to him in so far as they are used for his taxable transactions — Right of a company, whose main activity consists in leasing its own immovable property, to deduct input VAT on the purchase of another property which has yet to be commercially exploited by that company

Operative part of the judgment

Article 168(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that a taxable person who has acquired capital goods while acting as such and has allocated the goods to the assets of the business is entitled to deduct the value added tax on the acquisition of those goods in the tax period in which the tax became due, regardless of the fact that the goods are not immediately used for business purposes. It is for the national court to ascertain whether the taxable person acquired the capital goods for the purposes of his economic activity and to assess, if need be, whether there is a fraudulent practice.

(¹) OJ C 186, 25.6.2011.

Judgment of the Court (Sixth Chamber) of 15 March 2012 (reference for a preliminary ruling from the Tribunale di Napoli — Italy) — Giuseppe Sibilio v Comune di Afragola

(Case C-157/11) (¹)

(Social policy — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Directive 1999/70/EC — Clause 2 — Concept of ‘an employment contract or relationship defined by law, collective agreements or practice in force in each Member State’ — Scope of the framework agreement — Clause 4, point 1 — Principle of non-discrimination — Persons carrying out ‘work of social utility’ with public authorities — National rule excluding the existence of an employment relationship — National rule establishing a difference between the benefit paid to socially useful workers and the remuneration received by workers engaged under a contract of definite and/or indefinite duration by the same public authorities and carrying out the same activities)

(2012/C 133/17)

Language of the case: Italian

Referring court

Tribunale di Napoli

Parties to the main proceedings

Applicant: Giuseppe Sibilio

Defendant: Comune di Afragola

Re:

Reference for a preliminary ruling — Tribunale di Napoli — Interpretation of Clauses 2, 3, 4 and 5 of the Annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43) — Principle of non discrimination — Unemployed persons registered on mobility lists or as job seekers engaged by public authorities for a fixed term carrying out work of social utility/work of public utility (known as socially useful workers/publicly useful workers) — National legislation establishing a difference in treatment in terms of pay between socially useful workers/publicly useful workers and workers engaged under a contract of indefinite duration by the same public authorities performing the same duties.

Operative part of the judgment

Clause 2 of the framework agreement on fixed-term work concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as not precluding national legislation such as that at issue in the main proceedings, which provides that the relationship between socially useful workers and the public authorities for whom they carry out their activities does not fall within the scope of that framework agreement where, and which is for the national court to determine, those workers are not covered by an employment relationship as defined by national law, collective agreements or practice in force, or the Member States and/or social partners have exercised the option granted to them under point 2 of that clause

(¹) OJ C 173, 11.6.2011.

Judgment of the Court (Second Chamber) of 22 March 2012 (reference for a preliminary ruling from the Curtea de Apel Cluj — Romania) — Criminal proceedings against Rareș Doralin Nițaș, Sergiu-Dan Dascăl, Gicu Agenor Gânscă, Ana-Maria Oprean, Ionuț Horea Baboș

(Case C-248/11) (¹)

(Directive 2004/39/EC — Markets in financial instruments — Article 4(1)(14) — Concept of ‘regulated market’ — Authorisation — Functional requirements — Market whose legal nature is not specified, but which is managed, after a merger, by a legal person also managing a regulated market — Article 47 — Not included on the list of regulated markets — Directive 2003/6/EC — Scope — Market manipulation)

(2012/C 133/18)

Language of the case: Romanian

Referring court

Curtea de Apel Cluj

Parties in the main proceedings

Rareş Doralin Nilaş, Sergiu-Dan Dascăl, Gicu Agenor Gânscă, Ana-Maria Oprean, Ionuţ Horea Baboş

Re:

Reference for a preliminary ruling — Curtea de Apel Cluj — Interpretation of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ 2004 L 145, p. 1), in particular Articles 4(1)(19), 9 to 14 and 47 — Definition of the concept of ‘regulated market’ — Inclusion of the Rasdaq Exchange, secondary market in financial instruments, not approved by the competent authorities but administered by the Bucharest Exchange, approved as a regulated market — Applicable legal rules — Offence of market manipulation.

Operative part of the judgment

1. Article 4(1)(14) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, as amended by Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007, must be interpreted as meaning that a market in financial instruments which does not satisfy the requirements in Title III of that directive does not fall within the concept of ‘regulated market’, as defined in that provision, notwithstanding the fact that its operator merged with the operator of such a regulated market.
2. Article 47 of Directive 2004/39, as amended by Directive 2007/44, must be interpreted as meaning that the inclusion of a market on the list of regulated markets referred to in that article is not a precondition for the classification of that market as a regulated market within the meaning of that directive.

⁽¹⁾ OJ C 252, 27.8.2011.

Order of the Court (Eighth Chamber) of 8 February 2012 — Yorma’s AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Norma Lebensmittelfilialbetrieb GmbH & Co. KG

(Case C-191/11 P) ⁽¹⁾

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Opposition proceedings — Application for Community figurative mark with the word element ‘yorma’s’ — Earlier Community word mark NORMA — Relative ground for refusal — Likelihood of confusion)

(2012/C 133/19)

Language of the case: German

Parties

Appellant: Yorma’s AG (represented by: A. Weiß, Rechtsanwältin)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, Agent), Norma Lebensmittelfilialbetrieb GmbH & Co. KG (represented by: A. Parr, Rechtsanwältin)

Re:

Appeal against the judgment of the General Court (First Chamber) of 15 February 2011 in Case T-213/09 *Yorma’s v OHIM — Norma Lebensmittelfilialbetrieb (YORMA’S)* dismissing the application for annulment of the decision of the First Board of Appeal of OHIM of 20 February 2009 refusing registration of the figurative sign with the word element ‘yorma’s’ as a Community trade mark for certain services in Classes 35 and 42 and upholding the opposition brought by the proprietor of the earlier Community word mark ‘NORMA’ — Likelihood of confusion between two marks — Incorrect assessment of the similarity of the marks and services concerned — Infringement of Article 8(1)(b) of Regulation (EC) No 40/94

Operative part of the order

1. The appeal is dismissed.
2. Yorma’s AG shall pay the costs.

⁽¹⁾ OJ C 211, 16.7.2011.

Order of the Court of 2 February 2012 — Elf Aquitaine SA v European Commission

(Case C-404/11 P) ⁽¹⁾

(Appeal — Regulation (EC) No 1/2003 — Competition — Cartel — Sodium chlorate market — Concept of an ‘undertaking’ — Presumption of decisive influence — Scope of that presumption — Factors not capable of rebutting the presumption — Personal fine — Unlimited jurisdiction)

(2012/C 133/20)

Language of the case: French

Parties

Appellant: Elf Aquitaine SA (represented by: E. Morgan de Rivery and E. Lagathu, avocats)

Other party to the proceedings: European Commission (represented by: E. Gippini Fournier and R. Sauer, acting as Agents)

Re:

Appeal brought against the judgment of the General Court (Second Chamber) of 17 May 2011 in Case T-299/08 *Elf Aquitaine v Commission*, by which the General Court dismissed the action brought by the applicant for annulment of Commission Decision C(2008) 2626 final of 11 June 2008 relating to a proceeding under Article 81 of the EC Treaty