

**Questions referred**

1. Is the exemption from tax on dividends granted by the Hungarian legislation to a recipient of dividends resident in Hungary compatible with the provisions of the EU Treaties on the principle of freedom of establishment (Article 49 TFEU), the principle of equal treatment (Article 54 TFEU) and the principle of free movement of capital (Article 56 TFEU (sic)), given that

(a) a non-resident recipient of dividends is exempt from tax on dividends only if it meets certain legal requirements, namely that its holding (in the case of shares, the proportion of its registered shares) in the company capital of the resident company at the time of distribution (allocation) of dividends amounted permanently to at least 20 % for at least two consecutive years, taking account of the fact that, in the event that the permanent holding of 20 % is maintained for less than two consecutive years, the company distributing the dividends is not obliged to withhold the tax on the dividends and the company which receives the dividends or, in the event of non-monetary allocations, the company which distributes them are not obliged to pay that tax on submission of their tax return if another person or the party distributing the dividends has guaranteed the payment of the tax;

(b) further, a non-resident recipient of dividends does not meet the requirements of the national legislation for exemption from tax when its holding (in the case of shares the proportion of its registered shares) in the company capital of a resident company at the time of distribution (allocation) of dividends is below the minimum level of 20 % required by law, or when it has not maintained that percentage permanently for at least two consecutive years, or, in the event that the permanent holding of 20 % has been maintained for less than two consecutive years, if payment of the tax was not guaranteed by any third party or by the party distributing the dividends;

2. Would the answer to question 1(b) be different, that is to say, would there be any effect on the answer, if:

(a) while a resident recipient of dividends is exempt from tax on dividends under the Hungarian legislation, the tax burden of a non-resident recipient of dividends depends on the applicability to it of [Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States] or the [Convention between the Republic of Hungary and the Grand Duchy of Luxembourg for the avoidance of double taxation with respect to taxes on income and on capital, done at Budapest on 15 January 1990],

(b) while a resident recipient of dividends is exempt from tax on dividends under the Hungarian legislation, a non-resident recipient of dividends may either offset such tax against its national tax or bear the final burden, depending on the provisions of its national law.

3. May the national tax authority invoke Article 65(1) TFEU (formerly Article 58(1) EC) and the former Article 220 EC in order to disapply Community law of its own motion?

**Reference for a preliminary ruling from the Rechtbank Middelburg (Netherlands) lodged on 20 March 2012 — Y.S. v Minister voor Immigratie, Integratie en Asiel**

(Case C-141/12)

(2012/C 157/04)

*Language of the case: Dutch*

**Referring court**

Rechtbank Middelburg

**Parties to the main proceedings**

*Applicant:* Y.S.

*Defendant:* Minister voor Immigratie, Integratie en Asiel

**Questions referred**

1. Are the data reproduced in the minute concerning the data subject and which relate to the data subject, personal data within the meaning of Article 2(a) of the Privacy Directive? <sup>(1)</sup>
2. Does the legal analysis included in the minute constitute personal data within the meaning of the aforementioned provision?
3. If the Court of Justice confirms that the data described above are personal data, should the processor/government body grant access to those personal data pursuant to Article 12 of the Privacy Directive and Article 8(2) of the EU Charter? <sup>(2)</sup>
4. In that context, may the data subject rely directly on Article 41(2)(b) of the EU Charter, and if so, must the phrase 'while respecting the legitimate interests of confidentiality [in decision-making]' included therein be interpreted in such a way that the right of access to the minute may be refused on that ground?

5. When the data subject requests access to the minute, should the processor/government body provide a copy of that document in order to do justice to the right of access?

<sup>(1)</sup> 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 L 281, 23.11.1995, p. 31).

<sup>(2)</sup> Charter of fundamental rights of the European Union (OJ 2000 C 364, p. 1).

**Action brought on 26 March 2012 — European Commission v Federal Republic of Germany**

(Case C-146/12)

(2012/C 157/05)

*Language of the case: German*

**Parties**

*Applicant:* European Commission (represented by: P. Hetsch and G. Braun, Agents)

*Defendant:* Federal Republic of Germany

**Form of order sought**

The applicant claims that the Court should:

- declare that the Federal Republic of Germany has failed to bring into force or to communicate to the Commission the laws, regulations and administrative provisions necessary to comply with Article 1, Article 2, Article 4(2), Article 5(2), (5), (6) and (8), Article 6(1), (2), (3), (9) and (10), Articles 7, 8 and 9, Article 11(4) and (5), Article 12, Article 13(5), Articles 15, 16 and 17, Article 18(1), (2), (4) and (5), Article 19(3), Articles 20 to 27, Article 28(4) and (6), Articles 32 to 35 and Annexes I to IX of Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community; <sup>(1)</sup>
- order the Federal Republic of Germany, pursuant to Article 260(3) TFEU, to pay a daily penalty payment in the sum of EUR 215 409,60, payable to the own resources account of the European Union, on account of its failure to fulfil its obligation to notify transposing measures;
- order the Federal Republic of Germany to pay the costs of the proceedings.

**Pleas in law and main arguments**

The period prescribed for transposing the directive expired on 19 July 2010.

<sup>(1)</sup> OJ 2008 L 191, p. 1.

**Reference for a preliminary ruling from the Högsta domstolen (Sweden) lodged on 29 March 2012 — Eva-Marie Brännström and Rune Brännström v Ryanair Holdings plc**

(Case C-150/12)

(2012/C 157/06)

*Language of the case: Swedish*

**Referring court**

Högsta domstolen

**Parties to the main proceedings**

*Applicants:* Eva-Marie Brännström and Rune Brännström

*Defendant:* Ryanair Holdings plc

**Questions referred**

1. Does the carrier's liability for damage caused by delay under Article 19 of the Montreal Convention also include cases where the passengers' arrival at the destination is delayed as a result of non-operation of a flight? Does any importance attach to the stage at which the flight was cancelled, for example, after check-in?
2. Can a technical problem with the airport, which alone or together with weather conditions makes landing impossible, constitute an 'extraordinary circumstance' under Article 5(3) of Regulation (EC) No 261/2004? <sup>(1)</sup> Can the assessment of what constitutes such a circumstance be affected by the fact that the airline was already aware of the technical problem?
3. If the answer to the first question in point 2 is in the affirmative, what measures must the airline take in order to avoid the obligation to pay compensation under Article 5(3) of the regulation?
  - Can the airline be required, and if so on what conditions and to what extent, to have extra resources in the form of, for example, aircraft or crew available to operate a flight which would otherwise have had to be cancelled, or in order to be able to operate a flight in the place of a flight which has been cancelled?
  - Can an airline be required to offer passengers re-routing under Article 8(1)(b) [of the regulation]? In that case what is the obligation as regards carriage, for example, in respect of time of departure and the use of other carriers?