

Other party to the proceedings: European Commission (represented by: C. Giolito, agent)

Re:

Appeal lodged against the judgment of the General Court (Eighth Chamber) of 24 March 2011 in Case T-377/06 *Comap v Commission*, by which the General Court dismissed the action for annulment in part of Commission Decision C(2006) 4180 final of 20 September 2006 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/F 1/38.121 — FITTINGS) — Copper and copper alloy fittings sector — Infringement of the right to an independent and impartial tribunal — Infringement of the principle of strict interpretation of criminal law — Notion of ‘public distancing’ — Distortion of evidence — Failure to state reasons

Operative part of the judgment

The Court:

1. Dismisses the appeal;
2. Orders *Comap SA* to pay the costs.

(¹) OJ C 252, 27.8.2011.

Judgment of the Court (Second Chamber) of 10 April 2012 (Reference for a preliminary ruling from the Bundesgerichtshof — Germany) — Criminal proceedings against Minh Khoa Vo

(Case C-83/12 PPU) (¹)

(Area of freedom, security and justice — Regulation (EC) No 810/2009 — Community Code on Visas — Articles 21 and 34 — National legislation — Third country nationals brought illegally into the territory of a Member State — Visas obtained by fraud — Criminal penalties imposed on the human smuggler)

(2012/C 174/20)

Language of the case: German

Referring court

Bundesgerichtshof

Party in the main proceedings

Minh Khoa Vo

Re:

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of Articles 21 and 34 of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (OJ 2009 L 243, p. 1) — National legislation imposing criminal penalties on persons who smuggle foreign nationals into national territory — Applicability of penalties when the foreign nationals concerned are in possession of a visa obtained by false pretences from a competent authority of another Member State but which has not yet been annulled pursuant to that regulation

Operative part of the judgment

Articles 21 and 34 of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) are to be interpreted as meaning that they do not preclude national provisions under which assisting illegal immigration constitutes an offence subject to criminal penalties in cases where the persons smuggled, third country nationals, hold visas which they obtained fraudulently by deceiving the competent authorities of the Member State of issue as to the true purpose of their journey, without prior annulment of those visas.

(¹) OJ C 126, 28.4.2012.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany), lodged on 6 March 2012 — Josef Probst v mr.nexnet GmbH

(Case C-119/12)

(2012/C 174/21)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant on a point of law: Josef Probst

Respondent in the appeal on a point of law: mr.nexnet GmbH

Question referred

Does Article 6(2) and (5) of Directive 2002/58/EC (¹) permit the passing of traffic data from the service provider to the assignee of a claim for payment in respect of telecommunications services in the case where the assignment effected with a view to the collection of transferred debts includes, in addition to the general obligation to respect the privacy of telecommunications and to ensure data protection as provided for under the applicable legislation, the following contractual stipulations:

the service provider and the assignee undertake to process and use the protected data only within the framework of their cooperation and exclusively for the purpose of the contract and in the manner prescribed therein;

as soon as the information in the protected data is no longer required for such purpose, all protected data held in that connection are to be irreversibly erased or returned;

each contracting party is entitled to check that the other party has ensured data protection and data security in accordance with this agreement;

confidential documents and information transferred may be made accessible only to such employees as require these for the purposes of performing the contract;

the contracting parties are to require those employees to maintain confidentiality in accordance with this agreement;

on request, or at the latest on termination of the cooperation between the contracting parties, all confidential data held in that connection are to be irreversibly erased or returned to the other party?

(¹) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ 2002 L 201, p. 37).

Reference for a preliminary ruling from the Juzgado de lo Mercantil No 1 de Granada (Spain) lodged on 8 March 2012 — Promociones y Construcciones BJ 200, S.L. and Others

(Case C-125/12)

(2012/C 174/22)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil No 1 de Granada

Parties to the main proceedings

Promociones y Construcciones BJ 200, S.L., Ignacio Alba Muñoz, administrator of the insolvency of Promociones y Construcciones BJ 200 S.L., and Agencia Estatal de Administración Tributaria (State tax administration)

Questions referred

1. Must Article 199(1)(g) of Council Directive 2006/112/EC (¹) of 28 November 2006 on the common system of value added tax, providing as it does that ‘1. Member States may provide that the person liable for payment of VAT is the taxable person to whom any of the following supplies are made: ... (g) the supply of immovable property sold by a judgment debtor in a compulsory sale procedure’, be interpreted, in court proceedings that are creditor proceedings initiated by a declaration as to the insolvency of that debtor, to the effect that it refers only to transfers which strictly reflect the fact that the proceedings are liquidation proceedings or that they have reached the phase of liquidation, with the result that the disposal of such immovable property must take place as a consequence of the liquidation of all the debtor’s assets, or, given that insolvency proceedings may end, among other possibilities, with the liquidation of the insolvent undertaking, does it also cover any transfers of immovable property carried out in the course of insolvency proceedings by a debtor declared insolvent?

2. Must Article 199(1)(g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax be interpreted to the effect that the ‘compulsory sale procedure’ to which it refers includes a collective judicial insolvency procedure in which there has been a voluntary sale, unconnected with any phase of compulsory liquidation of the debtor’s assets and for reasons merely of timeliness, of any one or more of its assets; or, on the contrary, does it refer only to sales ordered in enforcement proceedings intended to liquidate the assets of the judgment debtor?

3. In the latter case, if Article 199(1)(g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax refers strictly to sales in enforcement proceedings intended to liquidate the assets of a judgment debtor, may that provision be interpreted as excluding reversal of the position regarding the taxable person for VAT purposes in any case where immovable property is transferred by a debtor declared insolvent because such transfer is timely and conducive to the interests of the insolvency and the transfer is unconnected with any procedure for liquidation of all the debtor’s assets, with the result that it is necessary to disapply a national law which has extended the material scope of Article 199(1)(g) of Directive 2006/112 to cases which that provision does not contemplate?

(¹) OJ L 347, p. 1.

Reference for a preliminary ruling from the Finanzgericht des Landes Sachsen-Anhalt (Germany) lodged on 8 March 2012 — Magdeburger Mühlenwerke GmbH v Finanzamt Magdeburg

(Case C-129/12)

(2012/C 174/23)

Language of the case: German

Referring court

Finanzgericht des Landes Sachsen-Anhalt

Parties to the main proceedings

Applicant: Magdeburger Mühlenwerke GmbH

Defendant: Finanzamt Magdeburg

Question referred

Did Commission Decision C(1998) 1712 of 20 May 1998 (¹) grant the German legislature discretion in relation to the formulation of point 4 of the second sentence of Paragraph 2 of the Investitionszulagengesetz (InvZulG 1996) (Law on investment