Questions referred

1. Is the requirement that the minimum capacity levels stipulated in Article 44(2) of Directive 2004/18/EC (Council Directive) of the Council of the European Union (Council) be in accordance with Article 47(1)(b) of that Directive to be interpreted in such a way that the contracting authority is entitled to link the minimum capacity levels to a single indicator in an accounting document (balance sheet) that it selects to monitor economic and financial standing?

2. If the answer to the first question is yes, Budapest Court of Appeal further asks whether the consistency requirement laid down by Article 44(2) of the Directive is fulfilled by data selected for assessment of the minimum capacity levels (profit/loss according to the balance sheet), where such data has different content pursuant to the accounting legislation of individual Member States?

3. Is it sufficient, for the purposes of correcting any discrepancies which doubtless exist between Member States, if the contracting authority ensures that there is an opportunity to employ external resources (Article 47(3)), in addition to the documents selected as proof of economic and financial standing, or must the contracting authority, in order to meet the requirement of consistency as regards all the documents selected by it, ensure that that capacity can be demonstrated in another manner (Article 47(5))? 

Reference for a preliminary ruling from the Bundesgerichtshof (Germany), lodged on 11 May 2011 — BrainProducts GmbH v Bio Semi V.O.F. and Others (Case C-219/11) (2011/C 232/24)

Language of the case: German

Referring court
Bundesgerichtshof

Parties to the main proceedings
Claimant and appellant: BrainProducts GmbH
Defendants and respondents: Bio Semi V.O.F., Antonius Pieter Kuiper, Robert Jan Gerard Honsbeek, Alexander Coenraad Metting van Rijn

Question referred
Does a product which is intended by the manufacturer to be applied for human beings for the purpose of investigation of a physiological process constitute a medical device, within the terms of the third indent of Article 1(2)(a) of Directive 93/42/EEC, (1) only in the case where it is intended for a medical purpose?


Reference for a preliminary ruling from the Oberverwaltungsgericht Berlin-Brandenburg (Germany) lodged on 11 May 2011 — Leyla Ecem Demirkan v Federal Republic of Germany (Case C-221/11) (2011/C 232/25)

Language of the case: German

Referring court
Oberverwaltungsgericht Berlin-Brandenburg

Parties to the main proceedings
Applicant: Leyla Ecem Demirkan
Defendant: Federal Republic of Germany

Questions referred
1. Does the passive freedom to provide services also fall within the scope of the concept of freedom to provide services within the meaning of Article 41(1) of the Additional Protocol to the Agreement establishing an Association between the European Economic Community and Turkey of 23 November 1970 (1) (Additional Protocol)?

2. In the event that the first question is answered in the affirmative: does the protection of the passive freedom to provide services under the law on the Association Agreement, specifically pursuant to Article 41(1) of the Additional Protocol, also extend to Turkish nationals, who — like the claimant — do not wish to enter the Federal Republic of Germany in order to receive a specific service, but for the purposes of visiting relatives for a stay of up to three months and rely on the mere possibility of receiving services in the Federal territory?


Reference for a preliminary ruling from the Administrativen Sad Varna (Bulgaria) lodged on 16 May 2011 — TETS Haskovo AD v Direktor na Direktsia ‘Obzhalvane i upravlenie na izpalnenieto’, gr. Varna, pri Sentralno Upravlenie na Natsionalna Agentsia po Prihodite (Case C-234/11) (2011/C 232/26)

Language of the case: Bulgarian

Referring court
Administrativen Sad Varna
Parties to the main proceedings

Applicant: TETS Haskovo AD

Defendant: Direktor na Direktsia ‘Obzhalvane i upravlenie na izpalnenieto’, gr. Varna, pri Sentralno Upravlenie na Natsionalna Agensia po Prihodite

Questions referred

1. How is the expression ‘destruction of property’ for the purposes of Article 185(2) of Directive 2006/112 (1) to be interpreted, and are the motives for the destruction and/or the conditions under which it takes place relevant for the purposes of the adjustment to the deduction made upon acquisition of the property?

2. Is the demolition of capital assets, duly proved, with the sole aim of creating new, more modern capital assets with the same purpose to be regarded as a modification of the factors used to determine the amount to be deducted within the meaning of Article 185(1) of Directive 2006/112?

3. Is Article 185(2) of Directive 2006/112 to be interpreted as permitting the Member States to make adjustments in the case of the destruction of property where its acquisition remained totally or partially unpaid?

4. Is Article 185(1) and (2) of Directive 2006/112 to be interpreted as precluding a national provision like Article 79(3) of the Law on VAT and Article 80(2)(1) of the Law on VAT, which provides for an adjustment of the deduction made in cases of destruction of property upon the acquisition of which a total payment of the basic amount and the tax calculated was made, and which makes the non-adjustment of a deduction dependent on a condition other than payment?

5. Is Article 185(2) of Directive 2006/112 to be interpreted as ruling out the possibility of an adjustment to the deduction in the case of the demolition of existing buildings with the sole aim of creating new, more modern buildings in their place which fulfil the same purpose as the demolished buildings and [are used for transactions] which [give] entitlement to [deduction of input] VAT?


Action brought on 19 May 2011 — European Commission v Czech Republic

(Case C-241/11)

(2011/C 232/27)

Language of the case: Czech

Parties

Applicants: European Commission (represented by: Z. Malášková, N.Yerrell and K.Ph. Wojcik, acting as Agents)

Defendant: Czech Republic

Form of order sought

— declare that, by failing to adopt the laws and administrative provisions necessary to comply with Articles 8, 9, 13, 15 to 18 and 20(2) to (4) of Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (1), and by thereby failing to fulfil its obligations under Article 22(1) of that directive, the Czech Republic has failed to fulfil its obligations arising under the judgment in Case C-343/08 Commission v Czech Republic and thereby failed to fulfil its obligations under Article 260 of the Treaty on the Functioning of the European Union;

— order the Czech Republic to pay to the Commission account ‘own resources of the European Union’

lump sum payments of EUR 5 644.80 for each day of delay in adopting the measures required by the judgment in Case C-343/08 Commission v Czech Republic, from the day of the delivery of that judgment on 14 January 2010

until the date of delivery of judgment in this case, or

until the date upon which the Czech Republic adopts the measures required by the judgment in Case C-343/08 Commission v Czech Republic, should that date be sooner than the delivery of judgment in this case, and

penalty payments of EUR 22 364.16 for each day of delay in adopting the measures required by the judgment in Case C-343/08 Commission v Czech Republic, from the date of delivery of judgment in this case until the date upon which the Czech Republic adopts the measures required by the judgment in Case C-343/08 Commission v Czech Republic; and

— order the Czech Republic to pay the costs.

Pleas in law and main arguments

On 14 January 2010, the Court of Justice gave judgment in Case C-343/08 Commission v Czech Republic (1), in which it held that by failing to adopt, within the period prescribed, the laws, regulations and administrative provisions necessary to comply with Articles 8, 9, 13, 15 to 18 and 20(2) to (4) of Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision, the Czech Republic has failed to fulfil its obligations under Article 22(1) of that directive.