

(2) Community law must be interpreted as precluding a national provision which, whilst pursuing the legitimate objectives of equal treatment of tenderers and of transparency in procedures for the award of public contracts, establishes an irrebuttable presumption that the status of owner, partner, main shareholder or management executive of an undertaking active in the media sector is incompatible with that of owner, partner, main shareholder or management executive of an undertaking which contracts with the State or a legal person in the public sector in the broad sense to perform a works, supply or services contract.

(¹) OJ C 140, 23.6.2007.

Judgment of the Court (Fourth Chamber) of 22 December 2008 (reference for a preliminary ruling from the Cour d'appel de Liège — Belgium) — État belge — SPF Finances v Truck Center SA

(Case C-282/07) (¹)

(Freedom of establishment — Article 52 of the EC Treaty (now, following amendment, Article 43 EC) and Article 58 of the EC Treaty (now Article 48 EC) — Free movement of capital — Articles 73b and 73d of the EC Treaty (now Articles 56 EC and 58 EC respectively) — Taxation of legal persons — Income from capital and movable property — Retention of tax at source — Withholding tax — Charging of withholding tax on interest paid to non-resident companies — No charging of withholding tax on interest paid to resident companies — Double taxation convention — Restriction — None)

(2009/C 44/19)

Language of the case: French

Referring court

Cour d'appel de Liège

Parties to the main proceedings

Appellant: État belge — SPF Finances

Respondent: Truck Center SA

Re:

Reference for a preliminary ruling — Cour d'appel de Liège — Interpretation of Articles 56 EC and 58 EC — Free movement of capital — Taxation of legal persons — Withholding tax deducted by the tax authorities of one Member State on income from capital allocated by a company established in that State to a company established in another Member State — No deduc-

tion of withholding tax where that income is allocated to a company established in the same Member State — Unjustified difference in treatment or difference in situation justifying different treatment? — Effect, in that respect, of a bilateral convention for the avoidance of double taxation

Operative part of the judgment

Articles 52 of the EC Treaty (now, following amendment, Article 43 EC), 58 of the EC Treaty (now Article 48 EC), 73b of the EC Treaty and 73d of the Treaty (now Articles 56 EC and 58 EC respectively) must be interpreted as not precluding tax legislation of a Member State, such as that at issue in the main proceedings, which provides for the retention of tax at source on interest paid by a company resident in that Member State to a recipient company resident in another Member State, while exempting from that retention interest paid to a recipient company resident in the first Member State, the income of which is taxed in that Member State by way of corporation tax.

(¹) OJ C 199 of 25.8.2007.

Judgment of the Court (Eighth Chamber) of 22 December 2008 — Commission of the European Communities v Italian Republic

(Case C-283/07) (¹)

(Failure of a Member State to fulfil obligations — Directive 75/442/EEC — Article 1 — Concept of waste — Scrap intended for use in iron and steel activities — High-quality refuse-derived fuel — Incorrect transposition)

(2009/C 44/20)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by C. Zadra and J.-B. Laiguelot, acting as Agents)

Defendant: Italian Republic (represented by I. Braguglia, acting as Agent, and G. Fiengo, Avvocato dello Stato)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32) — Refuse-derived fuel (RDF) and scrap intended for use in iron and steel and metallurgical activities — Exclusion from the scope of the national transposition law