Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden Den Haag — Interpretation of Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('Brussels I') (OJ 2001 L 12, p. 1) — Interpretation of the concept of 'the place where the harmful event occurred or may occur' — Place where the harmful event occurred — Place where the event which gave rise to the harm occurred ('Handlungsort') and place where the harm arose ('Erfolgsort') — Connecting criteria.

Operative part of the judgment

Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in the context of a dispute such as that in the main proceedings, the words 'place where the harmful event occurred' designate the place where the initial damage occurred as a result of the normal use of the product for the purpose for which it was intended.

([1]) OJ C 183, 19.7.2008.

Judgment of the Court (First Chamber) of 16 July 2009 — American Clothing Associates SA and Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Joined Cases C-202/08 P and C-208/08 P) ([1])

(Appeal — Intellectual property — Regulation (EC) No 40/94 — Community trade mark — Paris Convention for the Protection of Industrial Property — Absolute grounds for refusal to register a trade mark — Trade marks identical with or similar to a State emblem — Representation of a maple leaf — Applicability to service marks)

(2009/C 220/19)

Language of the case: French

Parties

Appellant: American Clothing Associates NV (represented by: P. Maeyaert, advocaat, N. Clarembeaux and C. De Keersmaeker, avocats) (C-202/08 P), Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, Agent) (C-208/08)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, Agent) (202/08), American Clothing Asociates NV (represented by: P. Maeyaert, advocaat, N. Clarembeaux and C. De Keersmaeker, avocats (C-208/08 P)

Re:

Appeal against the judgment of the Court of First Instance (Fifth Chamber) of 28 February 2008 in Case T-215/06 *American Clothing Associates SA* v *OHIM* by which the Court dismissed the action brought by the applicant against the decision of the First Board of Appeal of OHIM of 4 May 2006 refusing registration as a Community trade mark of a sign representing a maple leaf in respect of goods in Classes 18 and 25 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks — Infringement of Articles 7(1)(h) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) and 6*ter*(1)(a) of the Paris Convention for the Protection of Industrial Property of 20 March 1883, as revised and amended — Absolute grounds for refusal of registration — Trademarks identical or similar to a State emblem — Representation of a maple leaf

Operative part of the judgment

The Court:

1. *Dismisses the appeal brought by American Clothing Associates NV in Case C-202/08 P;*

2. *Sets aside the judgment of the Court of First Instance of the European Communities of 28 February 2008 in Case T-215/06 American Clothing Associates v OHIM, in so far as it annulled the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 4 May 2006 (Case R 1463/2005-1) rejecting the application for registration of a sign representing a maple leaf as a Community trade mark;*

3. *Dismisses the action brought by American Clothing Associates NV in Case T-215/06;*

4. *Orders American Clothing Associates NV to pay the costs in Cases C-202/08 P and C-208/08 P.*

([1]) OJ C 209, 15.8.2008.

Judgment of the Court (Eighth Chamber) of 16 July 2009 — Commission of the European Communities v Italian Republic

(Case C-244/08) ([1])

(Failure of Member State to fulfil obligations — Sixth VAT Directive — Article 17 — Eighth Directive 79/1072/EEC — Article 1 — Thirteenth Directive 86/560/EEC — Article 1 — Refund or deduction of VAT — Taxable person established in another Member State or in a non-Member State, but having a fixed establishment in the Member State concerned)

(2009/C 220/20)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: A. Aresu and M. Afonso, acting as Agents)

Defendant: Italian Republic (represented by: I. Bruni, G. De Bellis and G. Palmieri, acting as Agents)

Re:

Failure of Member State to fulfil obligations — Infringement of Article 1 of the Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ 1979 L 331, p. 11) and Article 1 of the Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in Community territory — Refund of VAT to a taxable person established in another Member State or in a non-Member State but having a fixed establishment in Italy

Operative part of the judgment

The Court:

1. *Declares that the Italian Republic has failed, in relation to the refund of value added tax to a taxable person residing in another Member State or in a non-Member State, but having a fixed establishment in the Member State concerned, to fulfil its obligations under Article 1 of the Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country, and Article 1 of the Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in Community territory, by requiring a taxable person established in another Member State or in a non-Member State, but having a fixed establishment in Italy and who, during the period at issue, supplied goods and services in Italy, to apply for a refund of input value added tax according to the mechanism provided by those directives rather than deduct it where the purchase in respect of which repayment of that tax is sought is made not through that fixed establishment, but directly by the principal establishment of that taxable person;*

2. *Orders the Italian Republic to pay the costs.*

(1) OJ C 209, 15.08.2008.

Judgment of the Court (Second Chamber) of 16 July 2009 (reference for a preliminary ruling from the Tribunale Amministrativo Regionale della Campania (Italy)) — Futura Immobiliare srl Hotel Futura, Meeting Hotel, Hotel Blanc, Hotel Clyton, Business srl v Comune di Casoria

(Case C-254/08) (1)

(Reference for a preliminary ruling — Directive 2006/12/EC — Article 15(a) — Waste disposal costs not allocated on the basis of actual production of waste — Compatibility with the 'polluter pays' principle)

(2009/C 220/21)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale della Campania

Parties to the main proceedings

Applicants: Futura Immobiliare srl Hotel Futura, Meeting Hotel, Hotel Blanc, Hotel Clyton, Business srl

Defendant: Comune di Casoria

Intervener: Azienda Speciale Igiene Ambientale (ASIA) SpA

Re:

Reference for a preliminary ruling — Tribunale Amministrativo Regionale della Campania — Interpretation of Article 15 of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39) — National system not allocating the costs of waste disposal on the basis of the production of waste or its possession with a view to handling by a waste collector or an undertaking responsible for its disposal — Compatibility with the 'polluter pays' principle

Operative part of the judgment

Article 15(a) of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste must, as Community law currently stands, be interpreted as not precluding national legislation which, for the purposes of financing an urban waste management and disposal service, provides for a tax or charge calculated on the basis of an estimate of the volume of waste generated by users of that service and not on the basis of the quantity of waste which they have actually produced and presented for collection.

It is, however, incumbent upon the national court to review, on the basis of the matters of fact and law placed before it, whether the tax for the disposal of private solid urban waste at issue in the main