

### Operative part of the judgment

The second indent of Article 5(1)(b) 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 case of air transport of passengers from one Member State to another Member State, carried out on the basis of a contract with only one airline, which is the operating carrier, the court having jurisdiction to deal with a claim for compensation founded on that transport contract and on Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, is that, at the applicant's choice, which has territorial jurisdiction over the place of departure or place of arrival of the aircraft, as those places are agreed in that contract.

(<sup>1</sup>) OJ C 197, 2.8.2008.

### Judgment of the Court (Fifth Chamber) of 9 July 2009 — Commission of the European Communities v Kingdom of Spain

(Case C-272/08) (<sup>1</sup>)

*(Failure of a Member State to fulfil obligations — Directive 2004/83/EC — Right of asylum — Failure to transpose within the prescribed period)*

(2009/C 205/14)

Language of the case: Spanish

#### Parties

*Applicant:* Commission of the European Communities (represented by: M. Condou-Durande and E. Adsera Ribera, Agent)

*Defendant:* Kingdom of Spain (represented by: B. Plaza Cruz, Agent)

#### Re:

Failure of a Member State to fulfil obligations — Failure to have adopted, within the prescribed period, the measures necessary to comply with Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12)

### Operative part of the judgment

*The Court:*

1. Declares that, by not adopting, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons

who otherwise need international protection and the content of the protection granted, the Kingdom of Spain has failed to fulfil its obligations under that directive.

2. Orders the Kingdom of Spain to pay the costs.

(<sup>1</sup>) OJ C 209, 15.08.2008.

### Judgment of the Court (Sixth Chamber) of 2 July 2009 (Reference for a preliminary ruling from the Finanzgericht München — Germany) — Zino Davidoff SA v Bundesfinanzdirektion Südost

(Case C-302/08) (<sup>1</sup>)

*(Trade marks — International registration — Protocol Relating to the Madrid Agreement — Regulation (EC) No 40/94 — Article 146 — International registration and a Community trade mark having the same effects in the Community — Regulation (EC) No 1383/2003 — Article 5(4) — Goods suspected of infringing a trade mark — Customs action — Proprietor of a Community trade mark — Right to secure action also in Member States other than the Member State in which the application is lodged — Extension to the holder of an international registration)*

(2009/C 205/15)

Language of the case: German

#### Referring court

Finanzgericht München

#### Parties to the main proceedings

*Applicant:* Zino Davidoff SA

*Defendant:* Bundesfinanzdirektion Südost

#### Re:

Reference for a preliminary ruling — Finanzgericht München — Interpretation of Article 5(4) of Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights (OJ 2003 L 196, p. 7) — The right to make an application to the customs authorities to take action which, apart from seeking action to be taken by the customs authorities in the Member State in which the application is made, seeks action from customs authorities of one or more other Member States, exists only for the proprietors of Community trade marks — Extension of that right to proprietors of internationally registered trade marks within the meaning of Article 146 of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark — Legal effects of the accession of the European Community to the Protocol relating to the Madrid Agreement concerning the international registration of marks.

### Operative part of the judgment

Article 5(4) of Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights, read in the light of Article 146 of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, as amended by Council Regulation (EC) No 1992/2003 of 27 October 2003, is to be interpreted as allowing the holder of an internationally registered trade mark to secure action by the customs authorities of one or more other Member States, besides that of the Member State in which it is lodged, just like the proprietor of a Community trade mark.

(<sup>1</sup>) OJ C 247, 27.9.2008.

### Judgment of the Court (First Chamber) of 25 June 2009 — Commission of the European Communities v Republic of Austria

(Case C-356/08) (<sup>1</sup>)

*(Failure of a Member State to fulfil obligations — Freedom to provide services — Freedom of establishment — Free movement of capital — National legislation imposing an obligation on medical doctors established in the territory of the Land of Upper Austria to open a bank account with a particular bank)*

(2009/C 205/16)

Language of the case: German

#### Parties

*Applicant:* Commission of the European Communities (represented by: E. Traversa, acting as Agent and A. Böhlke, Rechtsanwalt)

*Defendant:* Republic of Austria (represented by: C. Pesendorfer, acting as Agent)

#### Re:

Failure of a Member State to fulfil obligations — Breach of Articles 43 EC, 49 EC and 56 EC — National legislation imposing an obligation on medical doctors established in the territory of the Land of Upper Austria to open a bank account with the Oberösterreichische Landesbank

### Operative part of the judgment

The Court:

1. Declares that, by imposing an obligation on every medical doctor becoming established in Oberösterreich (Land of Upper Austria) to open a bank account with the Oberösterreichische Landesbank in Linz to which fees for benefits in kind in the context of the exercise of his professional activity are to be transferred by the health insurance funds, the Republic of Austria has failed to comply with its obligations under Article 49 EC;

2. Orders the Republic of Austria to pay the costs.

(<sup>1</sup>) OJ C 247, 27.09.2008.

### Judgment of the Court (Seventh Chamber) of 2 July 2009 (reference for a preliminary ruling from the Corte suprema di cassazione (Italy)) — EGN BV — Filiale Italiana v Agenzia delle Entrate — Ufficio di Roma 2

(Case C-377/08) (<sup>1</sup>)

*(Sixth VAT Directive — Article 17(3)(a) — Deductibility and refunding of input VAT — Provision of telecommunications services — Supply of services for a customer established in another Member State — Article 9(2)(e) — Determination of the place where the service is provided)*

(2009/C 205/17)

Language of the case: Italian

#### Referring court

Corte suprema di cassazione

#### Parties to the main proceedings

*Applicant:* EGN BV — Filiale Italiana

*Defendant:* Agenzia delle Entrate — Ufficio di Roma 2

#### Re:

Reference for a preliminary ruling — Corte suprema di cassazione — Interpretation of Article 9(2)(e) and Article 17(3)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Supply of cross-border telecommunications services — Right of the supplier of such services to deduct input tax, as permitted under the domestic regime

### Operative part of the judgment

Article 17(3)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 95/7/EC of 10 April 1995, must be interpreted as meaning that a supplier of telecommunications services such as the one at issue in the main proceedings, which is established in the territory of a Member State,