

**Judgment of the Court (Third Chamber) of 22 December 2010 (reference for a preliminary ruling from the Court of Appeal (United Kingdom)) — The Commissioners for Her Majesty’s Revenue and Customs v Weald Leasing Limited**

(Case C-103/09) <sup>(1)</sup>

**(Sixth VAT Directive — Concept of ‘abusive practice’ — Leasing transactions effected by a group of undertakings to spread the payment of non-deductible VAT)**

(2011/C 55/08)

Language of the case: English

**Referring court**

Court of Appeal

**Parties to the main proceedings**

Appellants: The Commissioners for Her Majesty’s Revenue and Customs

Respondent: Weald Leasing Limited

**Re:**

Reference for a preliminary ruling — Court of Appeal, London — Interpretation of Directive 77/388/EEC: Sixth Council Directive 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 (OJ 1977 L 145, p. 1) — Concept of transactions constituting an abusive practice — Leases and Sub-leases by a group of undertakings making mostly exempt supplies in order to defer their VAT liability

**Operative part of the judgment**

1. *The tax advantage accruing from an undertaking’s recourse to asset leasing transactions, such as those at issue in the main proceedings, instead of the outright purchase of those assets, does not constitute a tax advantage the grant of which would be contrary to the purpose of the relevant provisions 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, and of the national legislation transposing it, provided that the contractual terms of those transactions, particularly those concerned with setting the level of rentals, correspond to arm’s length terms and that the involvement of an intermediate third party company in those transactions is not such as to preclude the application of those provisions, a matter which it is for the national court to determine. The fact that the undertaking does not engage in leasing transactions in the context of its normal commercial operations is irrelevant in that regard.*
2. *If certain contractual terms of the leasing transactions at issue in the main proceedings, and/or the intervention of an intermediate*

*third party company in those transactions, constituted an abusive practice, those transactions must be redefined so as to re-establish the situation that would have prevailed in the absence of the elements of those contractual terms which were abusive and/or in the absence of the intervention of that company.*

<sup>(1)</sup> OJ C 129, 06.06.2009.

**Judgment of the Court (Second Chamber) of 16 December 2010 (reference for a preliminary ruling from the Raad van State (Netherlands)) — Marc Michel Josemans v Burgemeester van Maastricht**

(Case C-137/09) <sup>(1)</sup>

**(Freedom to provide services — Free movement of goods — Principle of non-discrimination — Measure adopted by a local public authority which restricts access to coffee-shops to Netherlands residents — Marketing of ‘soft’ drugs — Marketing of non-alcoholic beverages and of food — Objective of combating drug tourism and the accompanying public nuisance — Public order — Protection of public health — Coherence — Proportionality)**

(2011/C 55/09)

Language of the case: Dutch

**Referring court**

Raad van State

**Parties to the main proceedings**

Applicant: Marc Michel Josemans

Defendant: Burgemeester van Maastricht

**Re:**

Reference for a preliminary ruling — Raad van State — Interpretation of Articles 12 EC, 18 EC, 29 EC and 49 EC — Drug tourism — General municipal regulation prohibiting the admission of non-residents to coffee-shops selling narcotic drugs — Public order — Different treatment

**Operative part of the judgment**

1. *In the course of marketing narcotic drugs which are not distributed through channels strictly controlled by the competent authorities with a view to use for medical or scientific purposes, a coffee-shop proprietor may not rely on Articles 12 EC, 18 EC, 29 EC or 49 EC to object to municipal rules, such as those at issue in the main proceedings, which prohibit the admission of persons who are non-resident in the Netherlands to such establishments. As regards the activity of marketing non-alcoholic beverages and food in those establishments, Article 49 EC et seq. may be relied on by such a proprietor.*