

Parties to the main proceedings

Applicant: Federación de Servicios Públicos de la UGT (UGT-FSP)

Defendants: Ayuntamiento de La Línea de la Concepción, María del Rosario Vecino Uribe, Ministerio Fiscal

Re:

Reference for a preliminary ruling — Juzgado de lo Social Único de Algeciras — Interpretation of Article 6(1) of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses — Obligation to preserve the status and the function of the employee representatives in an undertaking or business, where the undertaking or business preserves its autonomy following the transfer — Concept of autonomy

Operative part of the judgment

A transferred economic entity preserves its autonomy, within the meaning of Article 6(1) of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, provided that the powers granted to those in charge of that entity, within the organisational structures of the transferor, namely the power to organise, relatively freely and independently, the work within that entity in the pursuit of its specific economic activity and, more particularly, the powers to give orders and instructions, to allocate tasks to employees of the entity concerned and to determine the use of assets available to the entity, all without direct intervention from other organisational structures of the employer, remain, within the organisational structures of the transferee, essentially unchanged. The mere change of those ultimately in charge cannot in itself be detrimental to the autonomy of the entity transferred, except where those who have become ultimately in charge have available to them powers which enable them to organise directly the activities of the employees of that entity and therefore to substitute their decision making within that entity for that of those immediately in charge of the employees.

(¹) OJ C 167, 18.7.2009.

Judgment of the Court (Fourth Chamber) of 29 July 2010 (reference for a preliminary ruling from the Naczelny Sąd Administracyjny, Republic of Poland) — Dyrektor Izby Skarbowej w Białymstoku v Profaktor Kulesza, Frankowski, Józwiak, Orłowski spółka jawna w Białymstoku, formerly Profaktor Kulesza, Frankowski, Trzaska spółka jawna w Białymstoku

(Case C-188/09) (¹)

(Reference for a preliminary ruling — VAT — Right to deduct — Reduction of the extent of the right to deduct in the event of breach of the obligation to use a cash register)

(2010/C 246/11)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: Dyrektor Izby Skarbowej w Białymstoku

Defendants: Profaktor Kulesza, Frankowski, Józwiak, Orłowski spółka jawna w Białymstoku, formerly Profaktor Kulesza, Frankowski, Trzaska spółka jawna w Białymstoku

Re:

Reference for a preliminary ruling — Naczelny Sąd Administracyjny — Interpretation of the first and second paragraphs of Article 2 of First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes (OJ, English Special Edition 1967, p. 14), in conjunction with Articles 2, 10(1) and (2), 17(1) and (2), 27(1) and 33(1) 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 (OJ 1977 L 145, p. 1) — Compatibility with those provisions of national legislation providing for the mandatory use of a cash register for sales to non-taxable persons effected by taxable persons for VAT purposes and under which breach of that obligation is penalised by forfeiture of the right to deduct input tax in the amount of 30 %

Operative part of the judgment

1. *The common system of value added tax, as defined in Article 2(1) and (2) of First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning*

turnover taxes and in Articles 2, 10(1) and (2) and 17(1) and (2) 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 2004/7/EC of 20 January 2004, does not preclude a Member State from imposing a temporary restriction on the extent of the right of taxable persons who have not complied with a formal requirement to keep accounting records of their sales to deduct input tax paid, on condition that the sanction thus provided for complies with the principle of proportionality.

2. Provisions such as those of Article 111(1) and (2) of the Law on the Tax on Goods and Services (*ustawa o podatku od towarów i usług*) of 11 March 2004 are not 'special measures for derogation' intended to prevent certain types of tax evasion or avoidance within the meaning of Article 27(1) of Sixth Directive 77/388, as amended by Directive 2004/7.
3. Article 33 of Sixth Directive 77/388, as amended by Directive 2004/7, does not preclude the maintenance of provisions such as those of Article 111(1) and (2) of the Law on the Tax on Goods and Services of 11 March 2004.

⁽¹⁾ OJ C 193, 15.8.2009.

Judgment of the Court (Seventh Chamber) of 29 July 2010 — European Commission v Republic of Austria

(Case C-189/09) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Directive 2006/24/EC — Respect for private life — Retention of data generated or processed in connection with the provision of electronic communications services — Failure to transpose within the prescribed period)

(2010/C 246/12)

Language of the case: German

Parties

Applicant: European Commission (represented by: L. Balta and B. Schöfer, Agents)

Defendant: Republic of Austria (represented by: E. Riedl, Agent)

Intervener in support of the applicant: Council of the European Union

Re:

Failure of a Member State to fulfil obligations – Failure to adopt or communicate, within the prescribed period, the provisions necessary to comply with Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ 2006 L 105, p. 54)

Operative part of the judgment

The Court:

1. Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC, the Republic of Austria has failed to fulfil its obligations under that directive;
2. Orders the Republic of Austria to pay the costs.

⁽¹⁾ OJ C 180, 01.08.2009.

Judgment of the Court (Fourth Chamber) of 29 July 2010 — Anheuser-Busch Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Budějovický Budvar, národní podnik

(Case C-214/09 P) ⁽¹⁾

(Appeals — Community trade mark — Regulation (EC) No 40/94 — Application for registration of the word mark BUDWEISER — Opposition — Article 8(1)(a) and (b) of Regulation No 40/94 — Earlier international word and figurative marks BUDWEISER and Budweiser Budvar — Genuine use of the earlier trade mark — Article 43(2) and (3) of Regulation No 40/94 — Submission of evidence 'in due time' — Certificate of renewal for the earlier mark — Article 74(2) of Regulation No 40/94)

(2010/C 246/13)

Language of the case: English

Parties

Appellant: Anheuser-Busch Inc. (represented by: V. von Bomhard and B. Goebel, Rechtsanwälte)