

are used, in disregard of its will, outside the geographical area for which they have been issued), foreign decoding devices procured or enabled by the provision of a false name and address or foreign decoding devices which have been used in breach of a contractual limitation permitting their use only for private purposes.

2. Article 3(2) of Directive 98/84 does not preclude national legislation which prevents the use of foreign decoding devices, including those procured or enabled by the provision of a false name and address or those used in breach of a contractual limitation permitting their use only for private purposes, since such legislation does not fall within the field coordinated by that directive.

3. On a proper construction of Article 56 TFEU:

— that article precludes legislation of a Member State which makes it unlawful to import into and sell and use in that State foreign decoding devices which give access to an encrypted satellite broadcasting service from another Member State that includes subject-matter protected by the legislation of that first State;

— this conclusion is affected neither by the fact that the foreign decoding device has been procured or enabled by the giving of a false identity and a false address, with the intention of circumventing the territorial restriction in question, nor by the fact that it is used for commercial purposes although it was restricted to private use.

4. The clauses of an exclusive licence agreement concluded between a holder of intellectual property rights and a broadcaster constitute a restriction on competition prohibited by Article 101 TFEU where they oblige the broadcaster not to supply decoding devices enabling access to that right holder's protected subject-matter with a view to their use outside the territory covered by that licence agreement.

5. Article 2(a) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society must be interpreted as meaning that the reproduction right extends to transient fragments of the works within the memory of a satellite decoder and on a television screen, provided that those fragments contain elements which are the expression of the authors' own intellectual creation, and the unit composed of the fragments reproduced simultaneously must be examined in order to determine whether it contains such elements.

6. Acts of reproduction such as those at issue in Case C-403/08, which are performed within the memory of a satellite decoder and

on a television screen, fulfil the conditions laid down in Article 5(1) of Directive 2001/29 and may therefore be carried out without the authorisation of the copyright holders concerned.

7. 'Communication to the public' within the meaning of Article 3(1) of Directive 2001/29 must be interpreted as covering transmission of the broadcast works, via a television screen and speakers, to the customers present in a public house.

8. Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission must be interpreted as not having a bearing on the lawfulness of the acts of reproduction performed within the memory of a satellite decoder and on a television screen.

(¹) OJ C 301, 22.11.2008.

Judgment of the Court (Fifth Chamber) of 6 October 2011 — European Commission v Italian Republic

(Case C-302/09) (¹)

(Failure of a Member State to fulfil obligations — State Aid — Aid to firms in Venice and Chioggia — Reductions in social security contributions — Withdrawal)

(2011/C 347/03)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: V. Di Bucci and E. Righini, Agents)

Defendant: Italian Republic (represented by: G. Palmieri, Agent and G. Aiello, lawyer)

Re:

Failure of a Member State to fulfil obligations — Failure to take, within the period prescribed, the measures necessary to comply with Articles 2, 5 and 6 of Commission Decision 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995 (notified under document number C(1999) 4268) (OJ 2000 L 150, p. 50)

Operative part of the judgment

The Court:

1. Orders that by failing to take, within the prescribed time-limits, all the measures necessary to recover from the beneficiaries the aid granted under the aid scheme considered unlawful and incompatible with the common market by Commission Decision 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995 and, the Italian Republic has failed to fulfil its obligations under Articles 2, 5 and 6 of that decision and under the EC Treaty the Italian Republic failed to fulfil its obligations under Article 5 of the decision;
2. Orders the Italian Republic to pay the costs.

(¹) OJ C 256, 24.10.2009.

**Judgment of the Court (First Chamber) of 6 October 2011
— European Commission v Portuguese Republic**

(Case C-493/09) (¹)

(Failure of a Member State to fulfil obligations — Article 63 TFEU and Article 40 of the EEA Agreement — Free movement of capital — Foreign and national pension funds — Corporation tax — Dividends — Exemption — Difference in treatment)

(2011/C 347/04)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: R. Lyal and M. Afonso, acting as Agents)

Defendant: Portuguese Republic (represented by: L. Inez Fernandes and H. Ferreira, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 63 TFEU and of Article 40 EEA — Restrictions on movements of capital — Foreign and national pension funds — Dividends — Taxation — Difference in treatment

Operative part of the judgment

1. By reserving the benefit of the corporation tax exemption to pension funds resident in Portuguese territory alone, the Portuguese Republic has failed to fulfil its obligations under Article 63 TFEU and Article 40 of the Agreement on the European Economic Area of 2 May 1992.

2. The Portuguese Republic is to pay the costs.

(¹) OJ C 37, 13.2.2010.

Judgment of the Court (Eighth Chamber) of 6 October 2011 (reference for a preliminary ruling from the Unabhängiger Verwaltungssenat Wien — Austria) — Astrid Preissl KEG v Landeshauptmann von Wien

(Case C-381/10) (¹)

(Industrial Policy — Food hygiene — Regulation (EC) No 852/2004 — Installation of a washbasin in the toilets of an establishment which sells food)

(2011/C 347/05)

Language of the case: German

Referring court

Unabhängiger Verwaltungssenat Wien

Parties to the main proceedings

Applicant: Astrid Preissl KEG

Defendant: Landeshauptmann von Wien

Re:

Reference for a preliminary ruling — Unabhängiger Verwaltungssenat Wien — Interpretation of paragraph 4 of Chapter I of Annex II to Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs (OJ 2004 L 139, p. 1) and in particular of the word Handwaschbecken (washbasin for cleaning hands) contained in the German language version of that provision — Administrative decision of a Member State ordering the installation in the toilets of a café of a washbasin equipped with materials for hygienic washing and drying of hands

Operative part of the judgment

Paragraph 4 of Chapter I of Annex II to Council Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs must be interpreted as not requiring that a washbasin within the meaning of that provision be used exclusively for washing hands or that it be possible to use the water tap or hand-drying material without touching by hand.

(¹) OJ C 274, 9.10.2010.