

Operative part of the judgment

Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Council Directive 92/50/EEC of 18 June 1992, must be interpreted as precluding national legislation which makes the right to damages for an infringement of public procurement law by a contracting authority conditional on that infringement being culpable, including where the application of that legislation rests on a presumption that the contracting authority is at fault and on the fact that the latter cannot rely on a lack of individual abilities, hence on the defence that it cannot be held accountable for the alleged infringement.

(¹) OJ C 267, 07.11.2009.

Judgment of the Court (Third Chamber) of 30 September 2010 (reference for a preliminary ruling from the Baranya Megyei Bíróság — Republic of Hungary) — *Uszodaépítő kft v APEH Központi Hivatal Hatósági Főosztály*

(Case C-392/09) (¹)

(Sixth VAT Directive — Directive 2006/112/EC — Right to deduct input tax — New national legislation — Requirements as to the content of an invoice — Retroactive application — Loss of the right to deduct)

(2010/C 317/18)

Language of the case: Hungarian

Referring court

Baranya Megyei Bíróság

Parties to the main proceedings

Applicant: *Uszodaépítő kft*

Defendant: *APEH Központi Hivatal Hatósági Főosztály*

Re:

Interpretation of Articles 17 and 20 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), and the general principles of Community law — New national legislation on VAT giving taxable persons the right to opt for its application, even retro-

actively, to cases in progress on the date of its entry into force — Application with retroactive effect, failing which the right to deduct is lost, of the new provisions regarding the requirements as to the contents of the invoice

Operative part of the judgment

Articles 167, 168 and 178 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding the retroactive application of national legislation which, in the context of a reverse charge regime, makes the deduction of value added tax relating to construction works conditional upon the amendment of invoices for those services and the submission of a supplementary, amending tax declaration, while the tax authority concerned has all the information necessary to establish that the taxable person is, as the recipient of the supply of services at issue, liable to value added tax, and to ascertain the amount of tax deductible.

(¹) OJ C 11, 16.1.2010.

Judgment of the Court (Seventh Chamber) of 30 September 2010 (reference for a preliminary ruling from the Naczelny Sąd Administracyjny — Poland) — *Oasis East sp. z o.o. v Minister Finansów*

(Case C-395/09) (¹)

(Sixth VAT Directive — Directive 2006/112/EC — Accession of a new Member State — Right to deduct input tax — National legislation excluding the right to deduct tax on the provision of certain services — Commercial partners established in a territory classified as a ‘tax haven’ — Option for Member States to retain rules excluding the right to deduct at the time when the Sixth VAT Directive entered into force)

(2010/C 317/19)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: *Oasis East sp. z o.o.*

Defendant: *Minister Finansów*