

Operative part of the judgment

The Court:

1. Sets aside the order of the Court of First Instance of the European Communities of 29 June 2009 in Case T-94/05 *Athinaiki Techniki v Commission*;
2. Refers the case back to the General Court of the European Union;
3. Orders that the costs be reserved.

(¹) OJ C 312, 19.12.2009.

Judgment of the Court (First Chamber) of 9 December 2010 (reference for a preliminary ruling from the Landesgericht für Zivilrechtssachen Wien — Austria) — Humanplasma GmbH v Republik Österreich

(Case C-421/09) (¹)

(Articles 28 EC and 30 EC — National rules prohibiting the importation of blood products provided from donations which were not entirely unpaid)

(2011/C 55/22)

Language of the case: German

Referring court

Landesgericht für Zivilrechtssachen Wien

Parties to the main proceedings

Applicant: Humanplasma GmbH

Defendant: Republik Österreich

Re:

Reference for a preliminary ruling — Landesgericht für Zivilrechtssachen Wien — Interpretation of Articles 28 EC and 30 EC — Compatibility with those provisions of national legislation prohibiting the importation of human blood where payment was made for the blood donation

Operative part of the judgment

Article 28 EC, read in conjunction with Article 30 EC, must be interpreted as precluding national legislation which provides that the importation of blood or blood components from another Member State is permitted only on the condition, which is also applicable to national products, that the donations of blood on which those products are based were made not only without any payment being made to the donors but also without any reimbursement of the costs incurred by them in connection with those donations.

(¹) OJ C 24, 30.1.2010.

Judgment of the Court (Second Chamber) of 16 December 2010 (reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands)) — Euro Tyre Holding BV v Staatssecretaris van Financiën

(Case C-430/09) (¹)

(Sixth VAT Directive — Article 8(1)(a) and (b), Article 28a(1)(a), Article 28b(A)(1) and the first subparagraph of Article 28c(A)(a) — Exemption of supplies of goods dispatched or transported within the European Union — Successive supplies of the same goods giving rise to a single intra-Community dispatch or transport)

(2011/C 55/23)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Euro Tyre Holding BV

Defendant: Staatssecretaris van Financiën

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Articles 8(1)(a) and (b), Article 28a(1)(a), Article 28b(A)(1) and Article 28c(A)(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 (OJ 1977 L 145, p. 1) — Exemption of supplies of goods dispatched or transported within the Community — Successive supplies of the same goods giving rise to a single intra-Community dispatch or transport of goods

Operative part of the judgment

When goods are the subject of two successive supplies between different taxable persons acting as such, but of a single intra-Community transport, the determination of the transaction to which that transport should be ascribed, namely the first or second supply — given that that transaction therefore falls within the concept of an intra-Community supply for the purposes of the first subparagraph of Article 28c(A)(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 96/95/EC of 20 December 1996, read in conjunction with Article 8(1)(a) and (b), the first subparagraph of Article 28a(1)(a), and Article 28b(A)(1) of that directive — must be conducted in the light of an overall assessment of all the circumstances of the case in order to establish which of those two supplies fulfils all the conditions relating to an intra-Community supply.

In circumstances such as those at issue in the main proceedings, in which the first person acquiring the goods, having obtained the right to dispose of the goods as owner in the Member State of the first supply, expresses his intention to transport those goods to another Member State and presents his value added tax identification number attributed by that other State, the intra-Community transport should be ascribed to the first supply, on condition that the right to dispose of the goods as owner has been transferred to the second person acquiring the goods in the Member State of destination of the intra-Community transport. It is for the referring court to establish whether that condition has been fulfilled in the case pending before it.

⁽¹⁾ OJ C 24, 30.1.2010.

Judgment of the Court (Third Chamber) of 22 December 2010 — European Commission v Republic of Austria

(Case C-433/09) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Taxation — Directive 2006/112/EC — VAT — Taxable amount — Tax on the delivery of vehicles not yet registered in the Member State based on their value and their average consumption — ‘Normverbrauchsabgabe’)

(2011/C 55/24)

Language of the case: German

Parties

Applicant: European Commission (represented by: D. Triantafyllou, Agent)

Defendant: Republic of Austria (represented by: E. Riedl and C. Pesendorfer, Agents)

Re:

Failure of Member State to fulfil obligations — Infringement of Articles 78 and 79 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Sale of a motor vehicle — Inclusion in the taxable amount of a tax on the delivery of vehicles not yet registered in the Member State concerned on the basis of their value and their average consumption (‘Normverbrauchsabgabe’)

Operative part of the judgment

The Court:

1. Declares that, by including the standard consumption tax (‘Normverbrauchsabgabe’) in the taxable amount of value added tax levied in Austria on the delivery of a motor vehicle, the Republic of Austria has failed to fulfil its obligations under Article 78 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.
2. Dismisses the action for the remainder.
3. Orders the Commission and the Republic of Austria to bear their own costs.

⁽¹⁾ OJ C 24 of 30.1.2010.

Judgment of the Court (Second Chamber) of 22 December 2010 (reference for a preliminary ruling from the Juzgado de lo Contencioso-Administrativo No 3 de A Coruña (Spain) and the Juzgado de lo Contencioso-Administrativo No 3 de Pontevedra (Spain)) — Rosa María Gavieiro Gavieiro (C-444/09), Ana María Iglesias Torres (C-456/09) v Consellería de Educación e Ordenación Universitaria de la Xunta de Galicia

(Joined Cases C-444/09 and C-456/09) ⁽¹⁾

(Social Policy — Directive 1999/70/EC — Clause 4 of the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Principle of non-discrimination — Application of the framework agreement to the interim staff of an Autonomous Community — National rules establishing different treatment in respect of the award of a length-of-service increment on the basis of the temporary nature of the employment relationship — Obligation to recognise, with retrospective effect, the right to the length-of-service increment)

(2011/C 55/25)

Language of the case: Spanish

Referring courts

Juzgado de lo Contencioso-Administrativo No 3 de A Coruña and Juzgado de lo Contencioso-Administrativo No 3 de Pontevedra

Parties to the main proceedings

Applicants: Rosa María Gavieiro Gavieiro (C-444/09), Ana María Iglesias Torres (C-456/09)

Defendant: Consellería de Educación e Ordenación Universitaria de la Xunta de Galicia

Re:

Reference for a preliminary ruling — Juzgado Contencioso Administrativo de A Coruña — Interpretation of Clause 4(4) of the Annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43) — Principle of non-discrimination — Meaning of ‘different length-of-service qualifications’ — National legislation establishing different treatment in relation to the award of a length-of-service increment purely on the basis of the temporary nature of the contract

Operative part of the judgment

1. A member of the interim staff of the Autonomous Community of Galicia, such as the applicant in the main proceedings, falls within the scope *ratione personae* of Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, and that of the framework agreement on fixed term work, concluded on 18 March 1999, which is in the Annex to that directive.