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 ('Normverbrauschasbgage')

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.*

2. *A length-of-service increment such as that at issue in the main proceedings is, as an employment condition, covered by clause 4(1) of the framework agreement on fixed-term work annexed to Directive 1999/70. Consequently, fixed-term workers may contest treatment which, with regard to payment of that increment, is less favourable than that which is given to permanent workers in a comparable situation and for which there is no objective justification. The temporary nature of the employment relationship of certain public servants is not, in itself, capable of constituting an objective ground within the meaning of that clause of the framework agreement.*

3. *The mere fact that a national provision such as Article 25(2) of Law 7/2007 on the basic regulations relating to public servants (Ley 7/2007 del Estatuto Básico del empleado público) of 12 April 2007 contains no reference to Directive 1999/70 does not preclude that provision from being regarded as a national measure transposing the directive.*

4. *Clause 4(1) of the framework agreement on fixed-term work, annexed to Directive 1999/70, is unconditional and sufficiently precise for interim civil servants to be able to rely on it as against the State before a national court in order to obtain recognition of their entitlement to length-of-service increments, such as the three-yearly increments at issue in the main proceedings, in respect of the period starting with the date by which Member States should have transposed Directive 1999/70 and ending with the date of entry into force of the national law transposing that directive into the domestic law of the Member State concerned, subject to compliance with the relevant provisions of national law concerning limitation.*

5. *Even though the national legislation transposing Directive 1999/70 contains a provision which, whilst recognising the right of interim civil servants to be paid the three-yearly length-of-service increments, excludes the retrospective application of that right, the competent authorities of the Member State concerned are obliged, under European Union law and in relation to a provision of the framework agreement on fixed-term work, annexed to Directive 1999/70, having direct effect, to give that right to payment of the increments retrospective effect to the date by which the Member States should have transposed Directive 1999/70.*

([1]) OJ C 24, 30.1.2010.

Judgment of the Court (Second Chamber) of 16 December 2010 — AceaElectrabel Produzione SpA v European Commission, Electrabel SA

(Case C-480/09 P) ([1])

(Appeal — State aid — Aid declared compatible with the common market — Condition requiring prior repayment by the beneficiary of earlier aid declared unlawful — Concept of 'economic unit' — Joint control by two separate parent companies — Distortion of the pleas in law relied on in the application — Errors and defective reasoning)

(2011/C 55/26)

Language of the case: Italian

Parties

Appellant: AceaElectrabel Produzione SpA (represented by: L. Radicati di Brozolo and M. Merola, avvocati)

Other parties to the proceedings: European Commission (represented by: V. Di Bucci, Agent), Electrabel SA (represented by: L. Radicati di Brozolo and M. Merola, avvocati)

Re:

Appeal against the judgment of the Court of First Instance (First Chamber) of 8 September 2009 in Case T 303/05 *ACEAElectrabel Produzione SpA* v *Commission* by which the Court of First Instance dismissed the application for annulment of Commission Decision 2006/598/EC of 16 March 2005 concerning State aid that Italy (Regione Lazio) intends to grant for the reduction of greenhouse gas emissions (OJ 2006 L 244).

Operative part of the judgment

The Court:

1. *dismisses the appeal;*

2. *orders AceaElectrabel Produzione SpA, in addition to bearing its own costs, to pay those incurred by the European Commission;*

3. *orders Electrabel SA to bear its own costs.*

([1]) OJ C 24, 30.1.2010.

Judgment of the Court (First Chamber) of 9 December 2010 (reference for a preliminary ruling from the Bundesfinanzhof, Germany) — Minerva Kulturreisen GmbH v Finanzamt Freital

(Case C-31/10) ([1])

(Sixth VAT Directive — Article 26 — Special scheme for travel agents and tour operators — Scope — Sale of opera tickets without the provision of supplementary services)

(2011/C 55/27)

Language of the case: German

Referring court

Bundesfinanzhof (Germany)