the OECD, according to which measures which may be general in Gibraltar may be harmful to OECD member countries, which include the United Kingdom. Article 87(1) EC must be interpreted in accordance with OECD principles, so that that comparison is not only possible but necessary.

3. Infringement of the ECB Guideline of 16 July 2004 when applying Article 87(1) EC. The European System of Central Banks regards Gibraltar, together with 37 other territories, as an offshore financial centre distinct from the United Kingdom with regard to balance of payments, international investment position and international reserves. The analysis in the judgment under appeal, which precludes a comparison between business activity in Gibraltar and the United Kingdom, is at odds with that definition, which does consider such a comparison to be possible, and entails a breach of a binding rule of Community law, namely the ECB Guideline of 16 July 2004, in the application of Article 87(1) EC.

4. Infringement of Article 87(1) EC by failing to observe the requirement that aid must be granted 'by a Member State or through State resources'. Given that Gibraltar is a territory which is not part of a Member State, pursuant to Article 299(4) EC, the finding in the judgment that the reference framework for the application of Article 87(1) EC corresponds exclusively to the geographical limits of the territory of Gibraltar is tantamount to treating Gibraltar as a Member State, since otherwise it would never be possible to fulfil the requirement that the aid be granted 'by a Member State or through State resources'.

5. Infringement of the principle of non-discrimination, by applying without good cause the rules in the *Azores* judgment (Case C-88/03) to a situation other than the one envisaged therein. There are two differences between the Azores case and the case considered in the judgment under appeal. First, the Azores is a territory of a Member State, which is not the case of Gibraltar, and, second, in the Azores case the Court of Justice examined a reduction of the corporate tax rate, whilst in the case of Gibraltar what is at issue is a new general corporate tax system.

6. Infringement of Article 87(1) EC, by holding that, from the point of view of regional selectivity, the conditions for State aid have not been satisfied. Specifically, the Kingdom of Spain argues that the judgment erred in law in finding that the three requirements of political autonomy, procedural autonomy and economic autonomy established by the *Azores* judgment were met.

7. Error in law by failing to assess and apply the fourth condition put forward by the Kingdom of Spain in the proceedings at first instance. Even if the three conditions of the *Azores* judgment were held to be satisfied, the Court of First Instance should have set a fourth harmonisation condition in relation to the domestic tax system of the Member State which introduced the measure.

8. Infringement of Article 87(1) EC by holding that, from the point of view of material selectivity, the conditions for State aid have not been satisfied. Even on the assumption that Gibraltar is an autonomous reference framework in which the conditions of the judgment in *Azores* are met, the judgment under appeal infringed Article 87(1) EC in its consideration of material selectivity, given that the Court of First Instance in its analysis did not take into account that the corporation tax reform which Gibraltar is seeking to implement creates a system in which, of the 29 000 companies in existence in Gibraltar, 28 798 undertakings may be subject to a zero rate of taxation. The measure particularly favours those companies and the judgment under appeal, in failing to recognise that, infringed Article 87(1) EC. Furthermore, contrary to what is maintained in the judgment, the Commission did indeed identify the common tax regime.

9. Failure to state reasons in the judgment with regard to the assessment of the 'fourth condition' put forward by the Kingdom of Spain.

10. Infringement of the fundamental right to have the proceedings disposed of within a reasonable period, since the proceedings before the Court of First Instance lasted virtually twice as long as a normal case without any justification being given for that, whilst that situation had a significant impact on the proceedings.

11. Infringement of Article 77(a) and (b) of the Rules of Procedure of the Court of First Instance in that the Court failed to stay the proceedings after hearing the parties.

([1]) OJ 2004 L 85, p. 1.

Reference for a preliminary ruling from the Baranya Megyei Bíróság (Hungary) lodged on 23 March 2009 — Ker-Optika Bt. v ÁNTSZ Dél-dunátúli Regionális Intézete

(Case C-108/09)

(2009/C 141/43)

Language of the case: Hungarian

Referring court

Baranya Megyei Bíróság

Parties to the main proceedings

Applicant: Ker-Optika Bt.

Defendant: ÁNTSZ Dél-dunátúli Regionális Intézete

Questions referred

1. Does the sale of contact lenses constitute medical advice requiring the physical examination of a patient and thus not fall with the scope of Directive 2000/31/EC [1] of the European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market?

2. If the sale of contact lenses does not constitute medical advice requiring the physical examination of a patient, must Article 30 EC be interpreted as precluding legislation of a Member State under which contact lenses may be sold only in specialist medical accessory shops?

3. Does the principle of the freedom of movement of goods laid down in Article 28 EC preclude the provision of Hungarian law which makes it possible to sell contact lenses solely in specialist medical accessory shops?

[1] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'); OJ L 178, 17.7.2000, p. 1-16 (ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV) Hungarian Special Edition, Chapter 13, Volume 25, p. 399-414.

Reference for a preliminary ruling from the Bundesarbeitsgerichts (Germany) lodged on 23 March 2009 — Deutsche Lufthansa AG v Gertraud Kumpan

(Case C-109/09)

(2009/C 141/44)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicant: Deutsche Lufthansa AG

Defendant: Gertraud Kumpan

Questions referred

1. Are Article 1, Article 2(1) and Article 6(1) of Council Directive 2000/78/EC of 27 November 2000 [1] establishing a general framework for equal treatment in employment and occupation and/or the general principles of Community law to be interpreted as precluding a provision of national law, which entered into force on 1 January 2001, under which fixed term employment contracts may be agreed without further conditions with workers simply because the latter have reached the age of 58?

2. Is Clause 5(1) of the ETUC-UNICE-CEEP Framework Agreement, which was implemented by Council Directive 1999/70/EC of 28 June 1999, [2] to be interpreted to the effect that it precludes a provision of national law which, without further conditions, allows the conclusion over an indefinite period of an unlimited number of successive fixed term employment contracts without objective grounds, simply because the worker has reached the age of 58 by the time the fixed term employment relationship begins and there is no close objective connection with a previous employment relationship of indefinite duration with the same employer?

3. If Questions 1 and/or 2 are answered in the affirmative:

   Must the national courts disapply the provision of national law?

[1] OJ 2000 L 303, p. 16.
[2] OJ 1999 L 175, p. 43.

Reference for a preliminary ruling from the Okresní Soud v Cheb (Czech Republic) lodged on 23 March 2009 — Česká podnikatelská pojišťovna, a.s., Vienna Insurance Group v Michal Bílas

(Case C-111/09)

(2009/C 141/45)

Language of the case: Czech

Referring court

Okresní Soud v Cheb

Parties to the main proceedings

Applicants: Česká podnikatelská pojišťovna, a.s., Vienna Insurance Group

Defendant: Michal Bílas

Questions referred

1. Should Article 26 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [1] ('the Regulation') be interpreted as not authorising a court to review its international jurisdiction where the defendant partipates in the proceedings, even when the case is subject to the rules on compulsory jurisdiction under Section 3 of the Regulation and the application is brought contrary to those rules?

2. Can the defendant, by the fact that he partipates in the proceedings, establish the international jurisdiction of the Court within the meaning of Article 24 of the Regulation even where the proceedings are otherwise subject to the rules of compulsory jurisdiction in Section 3 of the Regulation and the application is brought contrary to those rules?