

Questions referred

1. Is a provision of a law of a Member State, which entered into force on 1 January 2008, after the right to deduct had arisen, and which, for the purposes of the deduction of VAT paid and declared in relation to supplies of goods or services made in the 2007 financial year, requires the amendment of the content of invoices and the submission of a supplementary declaration, compatible with Articles 17 and 20 of the Sixth Directive? ⁽¹⁾
2. Is the measure laid down by Paragraph 269(1) of the new VAT Law, according to which, if the requirements set out in the previous question are complied with, rights and obligations must be determined and applied in accordance with the provisions of that Law, even where they arose before the entry into force thereof, within the limitation period, compatible with the general principles of Community law, and, in particular, is it objectively justifiable, reasonable, proportionate and consistent with the principle of legal certainty?

⁽¹⁾ Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment OJ 1997 L 145, p. 1.

Reference for a preliminary ruling from the Nejvyšší správní soud (Supreme Administrative Court) (Czech Republic) lodged on 5 October 2009 — Bezpečnostní softwarová asociace (Security software association) v Ministerstvo kultury ČR (Ministry of Culture of the Czech Republic)

(Case C-393/09)

(2010/C 11/24)

Language of the case: Czech

Referring court

Nejvyšší správní soud (Supreme Administrative Court) (Czech Republic)

Parties to the main proceedings

Applicant: Bezpečnostní softwarová asociace (Security software association)

Defendant: Ministerstvo kultury ČR (Ministry of Culture of the Czech Republic)

Questions referred

1. Should Article 1(2) of Council Directive 91/250/EEC ⁽¹⁾ of 14 May 1991 on the legal protection of computer programs

be interpreted as meaning that, for the purposes of the copyright protection of a computer program as a work under that directive, the phrase 'the expression in any form of a computer program' also includes the graphic user interface of the computer program or part thereof?

2. If the answer to the first question is in the affirmative, does television broadcasting, whereby the public is enabled to have sensory perception of the graphic user interface of a computer program or part thereof, albeit without the possibility of actively exercising control over that program, constitute making a work or part thereof available to the public within the meaning of Article 3(1) of European Parliament and Council Directive 2001/29/EC ⁽²⁾ of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society?

⁽¹⁾ Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (OJ 1991 L 122, p. 42).

⁽²⁾ Corrigendum to 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 (OJ 2001 L 167, p. 10).

Appeal brought on 3 October 2009 by Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE against the order of the Court of First Instance (Fourth Chamber) delivered on 2 July 2009 in Case T-279/06: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v Banque centrale européenne BCE

(Case C-401/09 P)

(2010/C 11/25)

Language of the case: English

Parties

Appellant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (represented by: N. Korogiannakis and M. Dermitzakis, Δικηγόροι)

Other party to the proceedings: European Central Bank

Form of order sought

The applicant claims that the Court should:

— Set aside the decision of the Court of First Instance;

— Annul the decision of the European Central Bank to evaluate the applicant's bid as not successful and award the contract to the successful contractor;

— Order ECB to pay the applicant's legal and other costs and expenses incurred in connection with the initial procedure, even if the current Appeal is rejected as well as those of the current Appeal, in case it is accepted.

Pleas in law and main arguments

The appellant submits that the defendant's objection of inadmissibility, submitted together with the defence, should have been declared inadmissible due to the fact that it does not comply with article 114 of the rules of procedure of the CFI which expressly provides that such an objection must be submitted 'by a separate document'. The appellant also submits that, by accepting the objection of inadmissibility and failing to comment on the appellant's arguments with respect to the objection, the CFI infringed article 36 of the Statute of the Court of Justice.

In the appellant's view the CFI was wrong when it held that European Dynamics, because its bid was unacceptable, had no legal interest in seeking review of the decision of the contracting authority. The appellant also argues that the CFI erred by considering that it was necessary for the appellant to obtain an Arbeitnehmerüberlassungsgenehmigung (AÜG) in order to offer its services lawfully.

Finally the appellant submits that the CFI failed to apply the relevant legal provisions concerning the duty of the contracting authority to provide reasons for its decision.

Action brought on 20 October 2009 — Commission of the European Communities v Kingdom of Spain

(Case C-404/09)

(2010/C 11/26)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: F. Castillo de la Torre, D. Recchia and J.-B. Laignelot, acting as Agents)

Defendant: Kingdom of Spain

Form of order sought

— Declare that,

(a) that, by giving consent to the opencast mines 'Fonfría', 'Nueva Julia' and 'Los Ladrones' but failing to subject that consent to an assessment in order to identify,

describe and assess in an appropriate manner the direct, indirect and cumulative effects of the existing opencast mining projects, the Kingdom of Spain has failed to fulfil its obligations under Articles 2, 3 and 5(1) and (3) of Council Directive 85/337/EEC⁽¹⁾ of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11/EEC.

(b) that, from 2000, the date of classification of the 'Alto Sil' as a bird protection area:

— by having given consent to the opencast mines 'Nueva Julia' and 'Los Ladrones' but failing to subject that consent to an appropriate assessment of the possible effects of those projects; and in any event failing to comply with the conditions under which the execution of a project is permitted, in spite of the risk which those projects represented for the capercaillie species which is one of the natural assets which justified the classification of the 'Alto Sil' bird protection area and in the absence of alternative solutions, namely for imperative reasons of overriding public interest and only after having notified the Commission of the necessary compensatory measures to ensure that the coherence of the Natura 2000 network is protected.

— and by having failed to adopt the necessary measures to prevent the deterioration of the habitats of that species, and to prevent the disturbance of that species, which was the reason for the designation of that area as a bird protection area, caused by the 'Feixolín', 'Salguero-Prégame-Valdesegadas' 'Fonfría' 'Ampliación de Feixolín' and 'Nueva Julia' mines;

the Kingdom of Spain has failed to fulfil its obligations in relation to the 'Alto Sil' bird protection area under Article 6(2) (3) and (4) in conjunction with Article 7 of Directive 92/43/EEC⁽²⁾

(c) that, from January 1998,

— by failing in relation to the mining operations at the 'Feixolín', 'Salguero-Prégame-Valdesegadas', 'Fonfría' and 'Nueva Julia' mines to adopt the necessary measures to safeguard the ecological interest which the proposed 'Alto Sil' site had at national level,

— the Kingdom of Spain has failed to fulfil its obligations in relation to the proposed 'Alto Sil' site, pursuant to the interpretation of the Court of Justice in Case C 117/03 Dragaggi [2005] ECR I 167 and Case C 244/05 Bund Naturschutz in Bayern [2006] ECR I 8445, and