

**Reference for a preliminary ruling from the Hof van Beroep te Gent (Belgium) lodged on 30 November 2009 — Vandoorne NV v Belgische Staat**

(Case C-489/09)

(2010/C 37/23)

*Language of the case: Dutch*

**Referring court**

Hof van Beroep te Gent

**Parties to the main proceedings**

*Appellant:* Vandoorne NV

*Respondent:* Belgische Staat

**Question referred**

Is Belgian law, in particular Article 58(1), in conjunction with Article 77(1)(7), of the Value Added Tax Code (Wetboek van de belasting over de toegevoegde waarde), compatible or incompatible with Article 27 of Sixth Council Directive 77/388/EEC, <sup>(1)</sup> which allows the Member States to adopt simplification measures, and/or with Article 11.C(1) of that directive, which grants a right to a refund of value added tax (VAT) in the case of total or partial non-payment, by reason of the fact that such national law (1) lays down a simplified procedure for charging VAT on supplies of manufactured tobacco products by imposing a single charge at source; and (2) does not give persons liable to tax at the various intermediary stages of the chain of supply who have borne VAT on those products a right to a refund of VAT on account of the total or partial loss of the purchase price?

<sup>(1)</sup> 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)

**Action brought on 30 November 2009 — Commission of the European Communities v Grand-Duchy of Luxembourg**

(Case C-490/09)

(2010/C 37/24)

*Language of the case: French*

**Parties**

*Applicant:* Commission of the European Communities (represented by: G. Rozet and E. Traversa, acting as Agents)

*Defendant:* Grand-Duchy of Luxembourg

**Form of order sought**

— Declare that, by maintaining in force, in their current wording, Paragraph 24 of the Social Security Code which precludes the reimbursement of the costs of medical analyses carried out in another Member State by providing for those analyses to be reimbursed only by a paying third party, and Article 12 of the statutes of the Union des Caisses de Maladie (Union of Sickness funds) which subjects the reimbursement of medical analyses carried out in another Member State to full compliance with the dispensing conditions provided for by Luxembourg national conventions, the Grand-Duchy of Luxembourg has to fulfil its obligations under Article [49] EC Treaty;

— order the Grand-Duchy of Luxembourg to pay the costs.

**Pleas in law and main arguments**

By its action, the European Commission claims that by maintaining in force the laws which preclude the reimbursement of medical analyses and medical laboratory tests carried out in other Member States, or which subject such reimbursement to full compliance with the dispensing conditions provided for by Luxembourg legislation, the defendant infringed the principle of the freedom to provide services set out in Article 49 EC.

The applicant observes, by way of example, that the national authorities reimburse the costs of analysis and testing only where they are carried out within a separate laboratory which fully complies with the provisions of Luxembourg law. However, in certain Member States, such analyses are not carried out in a laboratory, but by the doctors themselves.

According to the Commission, the restrictions at issue cannot be justified by an overriding requirement in the general interest and neither do they represent an essential and proportionate measure to achieve the aim of the protection of public health.

**Action brought on 1 December 2009 — European Commission v Portuguese Republic**

(Case C-493/09)

(2010/C 37/25)

*Language of the case: Portuguese*

**Parties**

*Applicant:* European Commission (represented by: R. Lyal and M. Afonso, Agents)