By its first ground of appeal, the appellant submits that the Court failed to have regard to the rules on jurisdiction set out in Article 225 EC, in so far as it delivered a decision on the merits of the appellant's application for annulment of the Commission's letter of 20 July 2007 not confirming entitlement to a waiver of post-clearance recovery of import duties on colour television receivers manufactured in Thailand, even though it had previously held that the aforementioned application was inadmissible on the ground that the letter in question was not capable of producing legal effects.

By its second ground of appeal, the appellant submits that the Court infringed the rights of the defence and made a manifest error in the legal characterisation of the facts inasmuch as it refused the appellant's request to make all the evidence relied on available to the parties and, moreover, held that Thomson had displayed obvious negligence since, as an experienced operator, it should have asked the Commission for specific information about the possibility of continuing to declare colour televisions manufactured in Thailand as being of Thai origin after beginning to be supplied with tubes originating in Korea and Malaysia.

By its third ground of appeal, which is in two parts, Thomson claims that the Court infringed Article 239 of the Customs Code [1] with regard to the possibility of full or part repayment of import or export duties paid, or of remission of a certain amount of customs debt. The appellant submits, first, that the Court erred in law in so far as it dismissed its application after considering only the condition relating to the absence of deception or of negligence, without first investigating the condition relating to the existence of a special situation.

Second, the Court made an error in the legal characterisation of the facts, and thus an error of law, in considering that the conditions for remission under Article 239 of the Customs Code had not been fulfilled. According to the appellant, it does indeed satisfy the requirements of that provision, since the circumstances of the case are such as to amount to a special situation in so far as the Commission changed its practice in respect of the interpretation of the relevant provisions without giving operators sufficient warning.

Thomson submits, moreover, that it had no doubt that its operations were being conducted properly, as it was convinced that a single anti-dumping duty, fixed in practice by agreement with the Commission, applied to the whole of its production. It could not, therefore, be regarded as having been negligent.

[1] Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).

Reference for a preliminary ruling from the Arbeitsgericht Wuppertal (Germany) lodged on 14 December 2009 — Dieter May v AOK Rheinland/Hamburg — Die Gesundheitskasse

(Case C-519/09)

(2010/C 80/14)

Language of the case: German

Referring court

Arbeitsgericht Wuppertal

Parties to the main proceedings

Claimant: Dieter May

Defendant: AOK Rheinland/Hamburg — Die Gesundheitskasse

Question referred

Does the concept of worker within the meaning of Article 7(1) and (2) of Directive 2003/88/EC (corresponding to Article 7 of Directive 93/104/EC) … [1] also cover an employee subject to staff regulations (Dienstordnungsangestellter) in a public-law body whose autonomous regulations issued on the basis of authorisation under federal legislation (Paragraph 351 of the Reichsversicherungsordnung (National Social Insurance Code)) refer, in respect of the holiday entitlement of such an employee, to the provisions applicable to public servants (here Paragraph 101 of the Landesbeamtengesetz NW (Law on public servants of the *Land* North Rhine-Westphalia) in conjunction with the Verordnung über den Erholungsurlaub der Beamtinnen und Beamten und Richterinnen und Richter im Lande Nordrhein-Westfalen (Regulations on the holiday leave of public servants and judges in the *Land* North Rhine-Westphalia))?

[1] Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003, L 299, p. 9).

Reference for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 22 December 2009 — Deutsche Telekom AG v Bundesrepublik Deutschland

(Case C-543/09)

(2010/C 80/15)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Appellant: Deutsche Telekom AG

Respondent: Bundesrepublik Deutschland

Intervening parties: Go Yellow GmbH, Telix AG

Questions referred

1. Must Article 25(2) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) ([1]) be interpreted as meaning that Member States may require undertakings which assign telephone numbers to subscribers to make available data relating to subscribers to whom the undertaking in question has not itself assigned telephone numbers for the purpose of the provision of publicly available directory enquiry services and directories, in so far as that undertaking has such data in its possession?

2. If the answer to the previous question is in the affirmative:

   Must Article 12 of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) ([2]) be interpreted as meaning that the imposition of the abovementioned obligation by the national legislature is conditional upon the consent of, or at least the lack of any objection by, the other telephone service provider or its subscribers to the transmission of the data?

([1]) OJ 2002 L 108, p. 51.
([2]) OJ 2002 L 201, P. 37.

Reference for a preliminary ruling from the Varhoven Administrativen Sad (Bulgaria) lodged on 23 December 2009 — Aurubis Balgaria v Nachalnik na Mitnitsa — Sofia

(Case C-546/09)

(2010/C 80/16)

Language of the case: Bulgarian

Referring court

Varhoven Administrativen Sad

Parties to the main proceedings

Applicant: Aurubis Balgaria

Defendant: Nachalnik na Mitnitsa — Sofia

Questions referred

1. Are national courts to interpret Article 232(1)(b) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ([1]) as meaning that customs authorities may charge interest on arrears in respect of the amount of additional customs debts only in relation to the period following entry in the accounts, communication to the debtor and expiry of the period laid down by the customs authority pursuant to Article 222(1)(a) of the regulation for payment of the additional customs debts?

2. Is Article 214(3) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code to be interpreted, in the absence of corresponding provisions in Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92, ([2]) as meaning that national authorities may not charge compensatory interest in respect of the period between the time of the original customs declaration and the time of the subsequent entry in the accounts?

3. Are the provisions of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code and of Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92 to be interpreted as meaning that, where there are no national legal provisions which provide expressly, in the event of subsequent entry in the accounts, for an increase in the customs duty or another national penalty equal to the amount that would have been charged as interest on arrears in respect of the period between the time at which the customs debt was incurred and the time at which the subsequent entry in the accounts was made, Community law does not permit national courts to effect such an increase or impose such a penalty?

([1]) OJ 1992 L 302, p. 1.
([2]) OJ 1993 L 253, p. 1.