isoglucose and inulin syrup that has been allocated to an undertaking and assigned by it to one or more of its factories, referred to in Article 3(1)(b) of Regulation No 320/2006, may give rise to recovery of the aid, the imposition of a penalty and the collection of the levy on surpluses, as respectively set out in those provisions. With regard to the penalty under Article 27(3) of Regulation No 968/2006, it is for the referring court to assess whether, having regard to all the circumstances of the case, the non-compliance can be regarded as having been committed intentionally or as a result of grave negligence. The principles of ne bis in idem, proportionality and non-discrimination must be interpreted as not precluding the cumulative application of those measures.

4. *Article 26(1) of Regulation No 968/2006 must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, if an undertaking has complied with its commitment partially to dismantle the production facilities of the factories concerned but not its commitment to renounce the quota for the production of sugar, isoglucose and inulin syrup that has been allocated to it and assigned by it to one or more of its factories, referred to in Article 3(1)(b) of Regulation No 320/2006, the amount of the aid to be recovered is equal to the part of the aid corresponding to the commitment that has not been complied with. That part of the aid must be determined on the basis of the amounts laid down in Article 3(5) of Regulation No 320/2006.*

[1] OJ C 161, 19.6.2010.

Judgment of the Court (Second Chamber) of 21 July 2011 (references for a preliminary ruling from the Verwaltungsgericht Frankfurt am Main (Germany)) — Gerhard Fuchs (C-159/10), Peter Köhler (C-160/10) v Land Hessen

(Joined Cases C-159/10 and C-160/10) [1]

(Directive 2000/78/EC — Article 6(1) — Prohibition of discrimination on grounds of age — Compulsory retirement of prosecutors on reaching the age of 65 — Legitimate aims justifying a difference of treatment on grounds of age — Coherence of the legislation)

(2011/C 269/21)

Language of the cases: German

Referring court

Verwaltungsgericht Frankfurt am Main

Parties to the main proceedings

Applicants: Gerhard Fuchs (C-159/10), Peter Köhler (C-160/10)

Defendant: Land Hessen

Re:

Reference for a preliminary ruling — Verwaltungsgericht Frankfurt am Main — Interpretation of Article 6 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — Prohibition of discrimination on grounds of age — National rules providing for automatic retirement of civil servants at 65 — Legitimate objectives justifying differences of treatment on grounds of age

Operative part of the judgment

1. *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation does not preclude a law, such as the Law on the civil service of the Land Hessen (Hessisches Beamtengesetz), as amended by the Law of 14 December 2009, which provides for the compulsory retirement of permanent civil servants — in this instance prosecutors — at the age of 65, while allowing them to continue to work, if it is in the interests of the service that they should do so, until the maximum age of 68, provided that that law has the aim of establishing a balanced age structure in order to encourage the recruitment and promotion of young people, to improve personnel management and thereby to prevent possible disputes concerning employees' fitness to work beyond a certain age, and that it allows that aim to be achieved by appropriate and necessary means.*

2. *In order for it to be demonstrated that the measure concerned is appropriate and necessary, the measure must not appear unreasonable in the light of the aim pursued and must be supported by evidence the probative value of which it is for the national court to assess.*

3. *A law such as the Law on the civil service of the Land Hessen, as amended by the Law of 14 December 2009, which provides for the compulsory retirement of prosecutors when they reach the age of 65, does not lack coherence merely because it allows them to work until the age of 68 in certain cases or also contains provisions intended to restrict retirement before the age of 65, and other legislation of the Member State concerned provides for certain — particularly elected — civil servants to remain in post beyond that age and also the gradual raising of the retirement age from 65 to 67 years.*

[1] OJ C 161, 19.6.2010.

Judgment of the Court (Second Chamber) of 21 July 2011 (reference for a preliminary ruling from the Court of Appeal (England and Wales) (Civil Division) (United Kingdom)) — Tural Oguz v Secretary of State for the Home Department

(Case C-186/10) [1]

(EEC-Turkey Association Agreement — Article 41(1) of the Additional Protocol — Standstill clause — Freedom of establishment — Refusal of the application for further leave to remain from a Turkish national who had established a business in breach of the conditions of his leave to remain — Abuse of rights)

(2011/C 269/22)

Language of the case: English

Referring court

Court of Appeal (England and Wales) (Civil Division)

Parties to the main proceedings

Applicant: Tural Oguz

Defendant: Secretary of State for the Home Department

In the presence of: Centre for Advice on Individual Rights in Europe

Re:

Reference for a preliminary ruling — Court of Appeal (England and Wales) (Civil Division) — Interpretation of Article 41(1) of the Additional Protocol and Financial Protocol signed on 23 November 1970, annexed to the Agreement establishing the Association between the European Economic Community and Turkey and on measures to be taken for their entry into force (OJ 1973 C 113, p. 17) — Standstill rule — Scope — Prohibition on Member States from introducing new restrictions on the freedom of establishment and the freedom to provide services — Turkish national who established a business in the United Kingdom after obtaining leave to remain subject to a condition that he should not engage in any business or profession without the consent of the Secretary of State — Refusal to grant further leave to remain on the ground of breach of the conditions of his previous leave to remain

Operative part of the judgment

Article 41(1) of the Additional Protocol, signed on 23 November 1970 at Brussels and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972, must be interpreted as meaning that it may be relied on by a Turkish national who, having leave to remain in a Member State on condition that he does not engage in any business or profession, nevertheless enters into self-employment in breach of that condition and later applies to the national authorities for further leave to remain on the basis of the business which he has meanwhile established.

([1]) OJ C 179, 3.7.2010.

Judgment of the Court (Eighth Chamber) of 14 July 2011 (reference for a preliminary ruling from the Finanzgericht Düsseldorf — Germany) — Paderborner Brauerei Haus Cramer KG v Hauptzollamt Bielefeld

(Case C-196/10) ([1])

(Common Customs Tariff — Combined Nomenclature — Tariff classification — Headings 2203 and 2208 — Malt beer base intended for use in the production of a mixed drink)

(2011/C 269/23)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Paderborner Brauerei Haus Cramer KG

Defendant: Hauptzollamt Bielefeld

Re:

Reference for a preliminary ruling — Finanzgericht Düsseldorf — Interpretation of the Combined Nomenclature, as amended by Commission Regulations (EC) No 2031/2001 of 6 August 2001 (OJ 2001 L 279, p. 1) and (EC) No 1832/2002 of 1 August 2002 (OJ 2002 L 290, p. 1) — Malt beer base with an alcoholic strength by volume of 14 % obtained from brewed beer which has been specially clarified and subjected to ultra-filtration and which is to be used in the making of a mixed beer drink — Classification under heading 2203 or heading 2208 of the Combined Nomenclature?

Operative part of the judgment

Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EEC) No 2587/91 of 26 July 1991, must be interpreted as meaning that a liquid described as a 'malt beer base', such as that in issue in the main proceedings, with an alcoholic strength by volume of 14 % and obtained from brewed beer which has been clarified and then subjected to ultrafiltration, by which the concentration of ingredients such as bitter substances and proteins has been reduced, must be classified under heading 2208 of the Combined Nomenclature set out in Annex I to that regulation, as amended.

([1]) OJ C 161, 19.6.2010.

Judgment of the Court (Seventh Chamber) of 21 July 2011 — Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Maritime Safety Agency (EMSA)

(Case C-252/10 P) ([1])

(Appeal — Public procurement — European Maritime Safety Agency (EMSA) — Call for tenders relating to the 'Safe-SeaNet' application — Decision rejecting a tenderer's bid — Contract award criteria — Sub-criteria — Obligation to state reasons)

(2011/C 269/24)

Language of the case: English

Parties

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

Other party to the proceedings: European Maritime Safety Agency (EMSA) (represented by: J. Menze, acting as Agent, and by J. Stuyck and A.-M. Vandromme, advocaaten)