

Defendant: Republic of Finland (represented by: J. Heliskoski, acting as Agent)

Interveners in support of the defendant: Kingdom of Denmark (represented by: C. Vang, acting as Agent), French Republic (represented by: G. de Bergues and N. Rouam, acting as Agents), Kingdom of the Netherlands (represented by C. Wissels and M. Noort, acting as Agents), Kingdom of Sweden (represented by: A. Falk and S. Johannesson, acting as Agents), United Kingdom of Great Britain and Northern Ireland (represented by H. Walker, acting as Agent, and G. Facenna, Barrister)

Re:

Failure of a Member State to fulfil obligations — Infringement of Art. 63 TFEU and Art. 40 of the EEA Agreement — Tax discrimination — National legislation making dividends paid by resident companies to foreign pension funds subject to a stricter tax regime than that applicable to national pension funds

Operative part of the judgment

The Court:

1. Declares that, by introducing and maintaining in force a scheme under which dividends paid to foreign pension funds are taxed in a discriminatory manner, the Republic of Finland has failed to fulfil its obligations under Article 63 TFEU and Article 40 of the European Economic Area Agreement of 2 May 1992.
2. Orders the Republic of Finland to bear its own costs and to pay those incurred by the European Commission.
3. Orders the Kingdom of Denmark, the French Republic, the Kingdom of the Netherlands, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.

⁽¹⁾ OJ C 234, 28.8.2010.

Judgment of the Court (First Chamber) of 8 November 2012 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — Finanzamt Hildesheim v BLC Baumarkt GmbH & Co. KG

(Case C-511/10) ⁽¹⁾

(Sixth VAT Directive — Article 17(5), third subparagraph — Right to deduct input tax — Goods and services used for both taxable and exempt transactions — Letting of a building for commercial and residential purposes — Criterion for calculating the deductible proportion of VAT)

(2013/C 9/07)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt Hildesheim

Defendant: BLC Baumarkt GmbH & Co. KG

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of the third subparagraph of Article 17(5) of 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) — Right to deduct input tax — Goods and services used for both taxable and exempt transactions — Letting of a building for commercial and residential purposes — Calculation of the deductible proportion on the basis of the turnover attributed to the commercial tenants — National legislation prescribing that the proportion is to be calculated on the basis of the building's floor area attributed to those tenants

Operative part of the judgment

The third subparagraph of Article 17(5) of 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 must be interpreted as allowing Member States, for the purposes of calculating the proportion of input value added tax deductible for a given operation, such as the construction of a mixed-use building, to give precedence, as the key to allocation, to an allocation key other than that based on turnover appearing in Article 19(1) of that directive, on condition that the method used guarantees a more precise determination of the said deductible proportion.

⁽¹⁾ OJ C 30, 29.1.2011.

Judgment of the Court (Fifth Chamber) of 8 November 2012 — European Commission v Hellenic Republic

(Case C-528/10) ⁽¹⁾

(Failure to fulfil obligations — Transport — Development of the Community's railways — Directive 2001/14/EC — Articles 6(2) to (5) and 11 — Railway infrastructure capacity and charges levied for the use of railway infrastructure — Regulatory body — Failure to transpose within the prescribed period)

(2013/C 9/08)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: G. Zavvos and H. Støvlbæk, acting as Agents)

Defendant: Hellenic Republic (represented by: S. Chala)

Interveners in support of the defendant: Czech Republic (represented by: M. Smolek and T. Müller and by J. Očková, acting as Agents)

Italian Republic (represented by: G. Palmieri, acting as Agent, and by S. Fiorentino, avvocato dello Stato)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 6(2) and (5) and 11 of Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ 2001 L 75, p. 29)

Operative part of the judgment

The Court:

1. Declares that, by failing to adopt, within the prescribed period, the necessary measures, *inter alia* so far as concerns the units in which charges are levied for the use of infrastructure in the railways sector, to which Articles 6(2) to (5) and 11 of Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, as amended by Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007, relate, the Hellenic Republic has failed to fulfil its obligations under those articles;
2. Orders the Hellenic Republic to pay the costs;
3. Orders the Czech Republic and the Italian Republic to bear their own costs.

(¹) OJ C 30, 29.1.2011.

Judgment of the Court (Third Chamber) of 15 November 2012 — Stichting Al-Aqsa v Council of the European Union (C-539/10 P), Kingdom of the Netherlands v Stichting Al-Aqsa, Council of the European Union, European Commission (C-550/10 P)

(Joined Cases C-539/10 P and C-550/10 P) (¹)

(Appeals — Common foreign and security policy — Combating terrorism — Restrictive measures against certain persons and entities — Freezing of assets — Common Position 2001/931/CFSP — Article 1(4) and (6) — Regulation (EC) No 2580/2001 — Article 2(3) — Inclusion of an organisation on the list of persons, groups and entities involved in terrorist acts and maintaining it on that list — Conditions — Decision of a competent authority — Repeal of a national measure — Actions for annulment — Admissibility of the appeal — Right to respect for property — Principle of proportionality — Article 253 EC — Obligation to state the reasons on which a decision is based)

(2013/C 9/09)

Language of the case: Dutch

Parties

(C-593/10 P)

Appellant: Stichting Al-Aqsa (represented by: M.J.G. Uiterwaal and A.M. van Eik, advocaten)

Other party to the proceedings: Council of the European Union (represented by: E. Finnegan, B. Driessen and R. Szostak, Agents)

Interveners in support of the Council of the European Union: Kingdom of the Netherlands (represented by: C.M. Wissels and M. Bulterman, Agents), European Commission (represented by: S. Boelaert and M.P. van Nuffel, Agents)

(C-550/10 P)

Appellant: Kingdom of the Netherlands (represented by: C.M. Wissels and M. Noort, Agents)

Other parties to the proceedings: Stichting Al-Aqsa (represented by: A.M. van Eik, advocaat), Council of the European Union (represented by: E. Finnegan, B. Driessen and R. Szostak, Agents), European Commission (represented by: S. Boelaert and P. van Nuffel, Agents)

Re:

Appeal brought against the judgment delivered by the General Court (Seventh Chamber) on 9 September 2010 — *Al-Aqsa v Council* (T-348/07), by which the General Court annulled Council Decision 2007/445/EC of 28 June 2007 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decisions 2006/379/EC and 2006/1008/EC; Council Decision 2007/868/EC of 20 December 2007 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2007/445; Council Decision 2008/583/EC of 15 July 2008 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2007/868; Council Decision 2009/62/EC of 26 January 2009 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2008/583; and Council Regulation (EC) No 501/2009 of 15 June 2009 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2009/62, in so far as those acts concern Stichting Al-Aqsa.

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union of 9 September 2010 in Case T-348/07 *Al Aqsa v Council*;
2. Dismisses the action and the appeal brought by Stichting Al Aqsa;
3. Orders Stichting Al Aqsa to bear, in addition to its own costs, those incurred by the Kingdom of the Netherlands and the Council of the European Union in the context of the present appeals and those incurred by the Council at first instance;