

**Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 11 February 2010 — Systeme Helmholtz GmbH v Hauptzollamt Nürnberg**

(Case C-79/10)

(2010/C 113/35)

*Language of the case: German*

**Referring court**

Bundesfinanzhof

**Parties to the main proceedings**

*Applicant:* Systeme Helmholtz GmbH

*Defendant:* Hauptzollamt Nürnberg

**Questions referred**

1. Is the first sentence of Article 14(1)(b) of Council Directive 2003/96/EC <sup>(1)</sup> of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity to be interpreted as meaning that the exclusion of private pleasure-flying from the tax advantage signifies that the exemption for energy products supplied for use as fuel for the purpose of air navigation is to be applied only to airlines, or is the exemption to be applied to all fuel used for air navigation, provided that the aircraft is used for the purpose of earning income?
2. Is Article 15(1)(j) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity to be interpreted as meaning that it also pertains to fuel which an aircraft requires for the purposes of flights to and from an aircraft maintenance facility, or does the possibility of obtaining a tax advantage only apply to companies whose actual business purpose is the manufacture, development, testing and maintenance of aircraft?
3. Is Article 11(3) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity to be interpreted as meaning that, where an aircraft which is used for both private and commercial purposes is used for maintenance or training flights, pursuant to Article 14(1)(b)

of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity an exemption proportionate to the commercial use should be applied in respect of the fuel used for these flights?

4. If the third question is answered in the negative: may it be concluded from the non-applicability of Article 11(3) of Directive 2003/96/EC for the purposes of Article 14(1)(b) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity that where there is mixed use of an aircraft for private and commercial purposes no exemptions are to be applied to maintenance or training flights?
5. If the third question is answered in the affirmative or if an analogous legal consequence arises from another provision of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity: which criteria and which reference period should be taken as a basis for determining the respective proportion of use, within the meaning of Article 11(3) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, for maintenance and training flights?

<sup>(1)</sup> OJ 2003 L 283, p. 51.

**Action brought on 11 February 2010 — European Commission v Ireland**

(Case C-82/10)

(2010/C 113/36)

*Language of the case: English*

**Parties**

*Applicant:* European Commission (represented by: N. Yerrell, Agent)

*Defendant:* Ireland

**The applicant claims that the Court should:**

— Declare that in failing to apply the European Union insurance legislation in its entirety to all insurance undertakings on a non-discriminatory basis, the Republic of Ireland has failed to fulfil its obligations under, in particular, Articles 6, 8, 9, 13, 15, 16 and 17 of Council Directive 73/239/EEC of 24th July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance, as subsequently amended, and Articles 22 and 23 of Council Directive 92/49/EEC on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357; and

— order Ireland to pay the costs.

**Pleas in law and main arguments**

The Commission is of the opinion that i) the Voluntary Health Insurance Board (hereinafter referred to as VHI) could not properly continue to benefit from an exemption under article 4 of directive 73/239/CEE with effect from the first change to its capacity by virtue of the entry into force of the Voluntary Health Insurance (Amendment) Act 1996, and ii) from this date it became fully subject to the requirements of the European Union insurance legislation, including in particular those relating to authorisation, financial supervision, establishment of technical provisions and a solvency margin including the guarantee fund.

VHI currently continues all its operations without having obtained authorisation from the Irish Financial Regulator, nor having complied *inter alia* with the necessary solvency requirements.

**Reference for a preliminary ruling from the Juzgado de lo Mercantil de Pontevedra (Spain) lodged on 11 February 2010 — Aurora Sousa Rodríguez y otros v Air France S.A.**

(Case C-83/10)

(2010/C 113/37)

*Language of the case: Spanish*

**Referring court**

Juzgado de lo Mercantil de Pontevedra

**Parties to the main proceedings**

*Applicants:* Aurora Sousa Rodríguez, Yago López Sousa, Rodrigo Puga Lueiro, Luis Rodríguez González, María del Mar Pato Barreiro, Manuel López Alonso, Yaiza Pato Rodríguez

*Defendant:* Air France S.A.

**Questions referred**

1. Is the term 'cancellation', defined in Article 2(l) of [Regulation EC No 261/2004], <sup>(1)</sup> to be interpreted as meaning only the failure of the flight to depart as planned or is it also to be interpreted as meaning any circumstance as a result of which the flight on which places are reserved takes off but fails to reach its destination, including the case in which the flight is forced to return to the airport of departure for technical reasons?
2. Is the term 'further compensation' used in Article 12 of the regulation to be interpreted as meaning that, in the event of a cancellation, the national court may award compensation for damage, including non-material damage, for breach of a contract of carriage by air in accordance with rules established in national legislation and case-law on breach of contract or, on the contrary, must such compensation relate solely to appropriately substantiated expenses incurred by passengers and not adequately indemnified by the carrier in accordance with the requirements of Articles 8 and 9 of Regulation 261/2004/EC, even if such provisions have not been expressly relied upon or, lastly, are the two aforementioned definitions of the term further compensation compatible one with another?

<sup>(1)</sup> Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (Text with EEA relevance) — Commission Statement (OJ 2004 L 46, p. 1).

**Reference for a preliminary ruling from the Arbeitsgericht Siegburg (Germany) lodged on 12 February 2010 — Hüseyin Balaban v Zelter GmbH**

(Case C-86/10)

(2010/C 113/38)

*Language of the case: German*

**Referring court**

Arbeitsgericht Siegburg