

3. The General Court misinterpreted Article 10(3) and the third sentence of Article 13(1) of Regulation No 659/1999 in that it failed to recognise that the information decision has direct legal consequences for the legal position of the Member State and the undertaking concerned not least because the third sentence of Article 13(1) of Regulation No 659/1999 enables the Commission to take a decision concerning possible State aid on the basis of the information available if a Member State fails to comply with an information injunction. The consequent relaxation of the Commission's burden of proof has the effect of considerably worsening the procedural position of the undertaking concerned, which is effectively forced to supply the information sought in order to protect its rights.
4. The General Court also erred in law in so far as it denied that the information decision had any legal consequences, maintaining that it is merely an interim measure preparatory to the final decision. The General Court thereby failed to recognise that that does not preclude the liability of the measure to be set aside if the purported interim measure — such as the decision under Article 10(3) of Regulation No 659/1999 — itself has damaging legal consequences.
5. Finally, the General Court failed to recognise that Commission infringements with respect to the adoption of the information decision cannot be adequately considered in the context of an action against the final decision, particularly as it is not possible at that stage to appeal the incompleteness of the factual basis of the case. At the same time, provisional compliance with an unlawful information injunction could, however, as in the present case, entail considerable time and expenditure for the undertaking concerned.

**Reference for a preliminary ruling from the Landgericht Gießen (Germany) lodged on 28 September 2010 — Criminal proceedings against Baris Akyüz**

(Case C-467/10)

(2010/C 328/33)

*Language of the case: German*

**Referring court**

Landgericht Gießen

**Party to the main proceedings**

Baris Akyüz

**Questions referred**

Are

- (a) Article 1(2), in conjunction with the second subparagraph of Article 8(4), of Council Directive 91/439/EEC <sup>(1)</sup> of 19 July 1991 on driving licences, and
- (b) Article 2(1), in conjunction with Article 11(4), of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (recast) <sup>(2)</sup>

to be interpreted as meaning:

1. that they preclude a Member State ('the host State') from refusing to recognise, within its territory, a driving licence issued by another Member State ('the issuing State') in the case where the acquisition of the driving licence in the issuing State was preceded by a refusal to grant a driving licence in the host State on the ground that the physical and mental requirements for the safe driving of a motor vehicle had not been met;
2. if Question 1 is answered in the affirmative: that they preclude a Member State ('the host State') from refusing to recognise, within its territory, a driving licence issued by another Member State ('the issuing State') in the case where the acquisition of the driving licence in the issuing State was preceded by a refusal to grant a driving licence in the host State on the ground that the physical and mental requirements for the safe driving of a motor vehicle had not been met and, on the basis of information given on the driving licence, other indisputable information from the host State, or on the basis of other indisputable facts, in particular any information provided by the holder of the driver licence himself or other indisputable facts known to the host State, it is established that there has been a breach of the rule on residence under Article 7(1)(b) of Directive 91/439/EEC and Article 7(1)(e) of Directive 2006/126/EC — inasmuch as other indisputable facts, in particular any information provided by the holder of the driving licence himself or other indisputable facts known to the host State are not sufficient: that information, within the meaning of the case-law of the Court of Justice, is provided by the issuing State even in the case where that information has not been directly conveyed, but rather has been conveyed only indirectly in the form of a notification based on such information from a third party, in particular the host State's embassy in the issuing State —;
3. that they preclude a Member State ('the host State') from refusing to recognise, within its territory, a driving licence issued by another Member State ('the issuing State') in the case where, although the formal requirements for the issuing of a driving licence in the issuing State were fulfilled, it is nonetheless clear that the residence was solely for the purpose of acquiring a driving licence and was not for any other purposes protected by European

Union law, in particular the fundamental freedoms under the TFEU, the Charter of Fundamental Rights of the European Union and the European Convention for the protection of human rights and fundamental freedoms ('Driving licence tourism')?

<sup>(1)</sup> OJ 1991 L 237, p. 1.

<sup>(2)</sup> OJ 2006 L 403, p. 18.

**Action brought on 28 September 2010 — European Commission v Portuguese Republic**

(Case C-470/10)

(2010/C 328/34)

*Language of the case: Portuguese*

**Parties**

*Applicant:* European Commission (represented by: M. França and I.V. Rogalski, acting as Agents)

*Defendant:* Portuguese Republic.

**Form of order sought**

— Declare that, by maintaining a requirement of registration and accreditation by the Portuguese authorities for any temporary provision of services by Community patent agents who are already established in another Member State and by checking the professional qualifications of Community patent agents who travel to Portugal, even in relation to a temporary service, the Portuguese Republic has failed to fulfil its obligations under Article 56 TFEU and Articles 5 to 7 of Directive 2005/36/EC <sup>(1)</sup> on the recognition of professional qualifications.

— order the Portuguese Republic to pay the costs.

**Pleas in law and main arguments**

The Portuguese legislation at issue prevents a patent and trade mark agent, legally established in another Member State, from exercising his activities of representation before the National Institute of Industrial Property (INPI — Instituto Nacional da Propriedade Industrial) in Portugal, when he travels there to provide services to clients located in another Member State, if he has not previously undergone a test examination to be accredited or recognised by that institute.

<sup>(1)</sup> OJ 2005 L 255, p. 22

**Reference for a preliminary ruling from the Unabhängiger Verwaltungssenat Salzburg lodged on 28 September 2010 — Martin Wohl and Ildiko Veres v Magistrat der Stadt Salzburg, Other party: Finanzamt Salzburg-Stadt**

(Case C-471/10)

(2010/C 328/35)

*Language of the case: German*

**Referring court**

Unabhängiger Verwaltungssenat Salzburg

**Parties to the main proceedings**

*Applicants:* Martin Wohl and Ildiko Veres

*Defendant:* Magistrat der Stadt Salzburg

*Other party:* Finanzamt Salzburg-Stadt

**Question referred**

Is Annex X of the list referred to in Article 24 of the Act of Accession of the Republic of Hungary to the European Union (1. Freedom of movement for persons) <sup>(1)</sup> to be interpreted as meaning that the leasing of workers from Hungary to Austria cannot be regarded as a posting of those workers and that national restrictions concerning the employment of Hungarian/Slovakian workers in Austria apply equally, in Austria, in respect of Hungarian/Slovak workers (regularly employed in Hungary) leased by Hungarian undertakings?

<sup>(1)</sup> OJ 2003 L 236, p. 846.

**Action brought on 29 September 2010 — European Commission v Republic of Hungary**

(Case C-473/10)

(2010/C 328/36)

*Language of the case: Hungarian*

**Parties**

*Applicant(s):* European Commission (represented by: H. Støvlbæk and B.D. Simon, agents)

*Defendant(s):* Republic of Hungary