

## V

(Announcements)

## COURT PROCEEDINGS

## COURT OF JUSTICE

**Judgment of the Court (Third Chamber) of 7 March 2013  
— Swiss Confederation v European Commission, Federal  
Republic of Germany, Landkreis Waldshut**(Case C-547/10 P) <sup>(1)</sup>

*(Appeal — External relations — Agreement between the European Community and the Swiss Confederation on air transport — Regulation (EEC) No 2408/92 — Access of Community air carriers to intra-Community air routes — Articles 8 and 9 — Scope — Exercise of traffic rights — Decision 2004/12/EC — German measures relating to the approaches to Zurich Airport — Duty to state reasons — Non-discrimination — Proportionality — Burden of proof)*

(2013/C 123/02)

Language of the case: German

**Parties**

Appellant: Swiss Confederation (represented by: S. Hirsbrunner, Rechtsanwalt)

Other parties to the proceedings: European Commission (represented by: T. van Rijn, K. Simonsson and K. P. Wojcik, Agents); Federal Republic of Germany (represented by T. Henze, Agent, assisted by T. Masing, Rechtsanwalt); Landkreis Waldshut, (represented by M. Núñez Müller, Rechtsanwalt)

**Re:**

Appeal against the judgment delivered by the General Court (Fifth Chamber) on 9 September 2010 in Case T-319/05 *Switzerland v Commission* by which that court dismissed the action brought by the Swiss Confederation for the annulment of Commission Decision 2004/12/EC of 5 December 2003 on a procedure relating to the application of Article 18(2), first sentence, of the Agreement between the European Community and the Swiss Confederation on air transport and Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes (OJ 1993 L 15, p. 33) — Measures adopted by Germany relating to the approaches to Zurich airport — Wrongful assessment of the applicability of Article 9(1) of Regulation (EEC) No 2408/92 to the contested measures — Misinterpretation of the scope of the Commission's obligation to state reasons — Failure to take account of the rights of the

airport operator and the people living around the airport — Infringement of the principles of non-discrimination and proportionality

**Operative part of the judgment**

The Court:

1. Dismisses the appeal.
2. Orders the Swiss Confederation to bear, in addition to its own costs, all of the costs incurred by the European Commission both at first instance and on appeal.
3. Orders the Federal Republic of Germany and Landkreis Waldshut to bear their own costs.

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<sup>(1)</sup> OJ C 30, 29.1.2011.**Judgment of the Court (Fifth Chamber) of 7 March 2013  
(request for a preliminary ruling from the arbeidshof te  
Antwerpen — Belgium) — Aldegonda van den Booren v  
Rijksdienst voor Pensioenen**(Case C-127/11) <sup>(1)</sup>

*(Social security for migrant workers — Article 46a of Regulation (EEC) No 1408/71 — National rules against overlapping — Old-age pension — Increase in the amount paid by a Member State — Survivor's pension — Reduction in the amount paid by another Member State)*

(2013/C 123/03)

Language of the case: Dutch

**Referring court**

Arbeidshof te Antwerpen

**Parties to the main proceedings**

*Applicant:* Aldegonda van den Booren

*Defendant:* Rijksdienst voor Pensioenen

**Re:**

Request for a preliminary ruling — Arbeidshof te Antwerpen — Interpretation of Articles 10 EC, 39 EC and 42 EC (now Articles 4(3) TUE, 45 TFEU and 48 TFEU respectively) and Article 46a(3)(a) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ, English special edition, 1971 (II), p. 416) — Benefits — National anti-overlapping rules — Reduction of the survivor's pension paid by the first Member State because of an increase in the old-age pension paid by another Member State

**Operative part of the judgment**

Article 46a of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 1386/2001 of the European Parliament and of the Council of 5 June 2001, must be interpreted as meaning that it does not preclude the application of legislative rules of a Member State containing a provision under which a survivor's pension received in that Member State is reduced as a result of the increase in an old-age pension received under the legislation of another Member State, provided, in particular, that the conditions set out in Article 46a(3)(d) are observed.

Article 45 TFEU must be interpreted as meaning that it likewise does not preclude the application of such national legislative rules in so far as they do not lead, in respect of the person concerned, to an unfavourable situation in comparison with that of a person whose situation has no cross-border element, and, if such a disadvantage is established, in so far as it is justified by objective considerations and is proportionate in relation to the objective legitimately pursued by national law, this being a matter for the referring court to ascertain.

<sup>(1)</sup> OJ C 152, 21.5.2011.

**Judgment of the Court (First Chamber) of 7 March 2013 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — GfBk Gesellschaft für Börsenkommunikation mbH v Finanzamt Bayreuth**

(Case C-275/11) <sup>(1)</sup>

*(Taxation — Value added tax — Directive 77/388/EEC — Exemption of the management of special investment funds — Scope)*

(2013/C 123/04)

*Language of the case:* German

**Referring court**

Bundesfinanzhof

**Parties to the main proceedings**

*Applicant:* GfBk Gesellschaft für Börsenkommunikation mbH

*Defendant:* Finanzamt Bayreuth

**Re:**

Request for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 13B(d)(6) 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) — Exemption of the management of special investment funds — Scope

**Operative part of the judgment**

Article 13B(d)(6) 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 meaning that advisory services concerning investment in transferable securities, provided by a third party to an investment management company which is the manager of a special investment fund, fall within the concept of 'management of special investment funds' for the purposes of the exemption laid down in that provision, even if the third party has not acted on the basis of a mandate within the meaning of Article 5g of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as amended by Directive 2001/107/EC of the European Parliament and of the Council of 21 January 2002.

<sup>(1)</sup> OJ C 269, 10.9.2011.