

**Re:**

Request for a preliminary ruling — Commissione tributaria regionale di Milano — Interpretation of Articles 2, 4 and 8(1) and (2) of Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (OJ 1990 L 225, p. 1) — Transfer of assets — National legislation providing for the taxation of the capital gains arising from a transfer of assets and for the capital gain to correspond to the difference between the initial cost of acquiring the assets in exchange for the shares or holdings transferred and their current market value — Exemption where the transferring company carries over in its own balance sheet a special reserve fund equivalent to the capital gains arising upon the transfer

**Operative part of the judgment**

Articles 2, 4 and 9 of Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States must be interpreted as not precluding, in a situation such as the one at issue in the main proceedings, the consequence of a transfer of assets being the taxation of the transferring company on the capital gain arising from that transfer, unless the transferring company carries over in its own balance sheet an appropriate reserve fund equivalent to the capital gain arising upon that transfer.

(<sup>1</sup>) OJ C 211, 16.7.2011.

**Judgment of the Court (Fourth Chamber) of 19 December 2012 — European Commission v Ireland**

(Case C-279/11) (<sup>1</sup>)

*(Failure of a Member State to fulfil obligations — Directive 85/337/EEC — Assessment of the effects of certain public and private projects on the environment — Incorrect transposition — Annexe II — Point 1(a) to (c) — Judgment of the Court of Justice — Finding of infringement — Article 260 TFEU — Pecuniary penalties — Lump sum payment — Member State's ability to pay — Economic crisis — Assessment on the basis of current economic data)*

(2013/C 46/08)

Language of the case: English

**Parties**

*Applicant:* European Commission (represented by: P. Oliver and K. Mifsud-Bonnici, acting as Agents)

*Defendant:* Ireland (represented by: E. Creedon and D. O'Hagan, acting as Agents, and E. Regan, SC, and de C. Toland, BL)

**Re:**

Failure of a Member State to fulfil obligations — Failure to comply with the judgment of the Court of 20 November 2008 in Case C-66/06 *Commission v Ireland* concerning the infringement of Article 2(1) and Article 4(2) to (4) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5) — Application for the imposition of a penalty payment and a lump sum.

**Operative part of the judgment**

*The Court:*

1. Declares that, by failing to take the measures necessary to comply with the judgment of 20 November 2008 in Case C-66/06 *Commission v Ireland*, Ireland has failed to fulfil its obligations under Article 260 TFEU.
2. Orders Ireland to pay to the Commission, into the account 'European Union own resources', a lump sum of EUR 1 500 000.
3. Orders Ireland to pay the costs.

(<sup>1</sup>) OJ C 226, 30.7.2011.

**Judgment of the Court (Eighth Chamber) of 19 December 2012 — Mitteldeutsche Flughafen AG, Flughafen Leipzig-Halle GmbH v European Commission, Federal Republic of Germany, Arbeitsgemeinschaft Deutscher Verkehrsflughäfen eV (ADV)**

(Case C-288/11 P) (<sup>1</sup>)

*(Appeal — State aids — Concept of 'undertaking' — Economic activity — Airport infrastructure construction — Runway)*

(2013/C 46/09)

Language of the case: German

**Parties**

*Appellants:* Mitteldeutsche Flughafen AG, Flughafen Leipzig-Halle GmbH (represented by: M. Núñez Müller and J. Dammann, Rechtsanwälte)

*Other parties to the proceedings:* European Commission (represented by: B. Martenczuk and T. Maxian Rusche, acting as agents), Federal Republic of Germany, Arbeitsgemeinschaft Deutscher Verkehrsflughäfen eV (ADV) (represented by: L. Giesberts and G. Kleve, Rechtsanwälte)