

**Judgment of the Court (First Chamber) of 7 March 2013  
(request for a preliminary ruling from the First-tier  
Tribunal (Tax Chamber) — United Kingdom) — Wheels  
Common Investment Fund Trustees Ltd and Others v  
Commissioners for Her Majesty's Revenue and Customs**

(Case C-424/11) <sup>(1)</sup>

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

(2013/C 123/06)

Language of the case: English

**Referring court**

First-tier Tribunal (Tax Chamber)

**Parties to the main proceedings**

*Appellants:* Wheels Common Investment Fund Trustees Ltd, National Association of Pension Funds Ltd, Ford Pension Fund Trustees Ltd, Ford Salaried Pension Fund Trustees Ltd, Ford Pension Scheme for Senior Staff Trustee Ltd

*Respondent:* Commissioners for Her Majesty's Revenue and Customs

**Re:**

Request for preliminary ruling — First-tier Tribunal (Tax Chamber) — 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) — Interpretation of Article 135(1)(g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p.1) — Exemptions — Scope of the exemption for the management of special investment funds — Inclusion of occupational retirement pension schemes

**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 and Article 135(1)(g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that an investment fund pooling the assets of a retirement pension scheme is not a 'special investment fund' within the meaning of those provisions, management of which may be exempted from value added tax in the light of the objective of those directives and the principle of fiscal neutrality, where the members of the scheme do not bear the risk

arising from the management of the fund and the contributions which the employer pays into the scheme are a means by which he complies with his legal obligations towards his employees.

<sup>(1)</sup> OJ C 311, 22.10.2011.

**Judgment of the Court (Fourth Chamber) of 7 March 2013  
(request for a preliminary ruling from the Cour d'appel de  
Bruxelles — Belgium) — DKV Belgium v Association belge  
des consommateurs Test-Achats ASBL**

(Case C-577/11) <sup>(1)</sup>

*(Freedom to provide services — Freedom of establishment —  
Directives 73/239/EEC and 92/49/EEC — Direct insurance  
other than life assurance — Freedom to set rates — Health  
insurance contracts not linked to professional activity —  
Restrictions — Overriding reasons in the public interest)*

(2013/C 123/07)

Language of the case: French

**Referring court**

Cour d'appel de Bruxelles

**Parties to the main proceedings**

*Applicant:* DKV Belgium SA

*Défendant:* Association belge des consommateurs Test-Achats ASBL

**Re:**

Request for a preliminary ruling — Cour d'appel de Bruxelles — Interpretation of Article 49 and 56 TFEU, of the second paragraph of Article 29 and Article 39(3) of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (Third Non-life Insurance Directive) (OJ 1992 L 228, p. 1) and of Article 8(3) of Council Directive 73/239/EEC of 24 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 (OJ 1973 L 228, p. 3) — National legislation providing, with regard to health insurance contracts not linked to professional activity, provisions under which the premium, the excess payable and the benefit can be adapted, on the annual date of the premium, only on the basis of specific criteria — System of prior approval of rates — Restriction on the principles of the freedom of establishment and the freedom to provide services — Overriding reasons in the general interest

### Operative part of the judgment

Articles 29 and 39(2) and (3) of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (Third Non-life Insurance Directive) and Article 8(3) of First Council Directive 73/239/EEC of 24 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 amended by Directive 92/49, must be interpreted as not precluding legislation of a Member State which provides, with regard to health insurance contracts not linked to professional activity, provisions under which the premium, the excess payable and the benefit can be adapted annually only:

- on the basis of the consumer price index, or
- on the basis of a so-called ‘medical index’, if and in so far as the changes in that index exceed that in the consumer price index, or
- after obtaining authorisation from an administrative authority responsible for the supervision of insurance undertakings, at the request of the insurance undertaking concerned, where that authority finds that the application of the premium rate of that undertaking, notwithstanding the adaptations calculated on the basis of those two types of indices, gives rise to, or is likely to give rise to losses.

Articles 49 TFEU and 56 TFEU must be interpreted as not precluding such legislation, provided that there are no less restrictive measures which might be used to achieve, under the same conditions, the objective of protecting consumers against sharp, unexpected increases in insurance premium rates, which it is for the national court to ascertain.

<sup>(1)</sup> OJ C 32, 4.2.2012.

### Judgment of the Court (Fourth Chamber) of 7 March 2013 (request for a preliminary ruling from the High Court of Justice (Chancery Division) — United Kingdom) — ITV Broadcasting Limited and Others v TVCatchup Limited

(Case C-607/11) <sup>(1)</sup>

**(Directive 2001/29/EC — Article 3(1) — Broadcasting by a third party over the internet of signals of commercial television broadcasters — ‘Live streaming’ — Communication to the public)**

(2013/C 123/08)

Language of the case: English

### Referring court

High Court of Justice (Chancery Division)

### Parties to the main proceedings

Applicants: ITV Broadcasting Ltd, ITV 2 Ltd, ITV Digital Channels Ltd, Channel 4 Television Corporation, 4 Ventures Ltd, Channel 5 Broadcasting Ltd, ITV Studios Ltd

Defendant: TVCatchup Ltd

### Re:

Request for a preliminary ruling — High Court of Justice (Chancery Division) — Interpretation of Article 3(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10) — Concept of ‘communication to the public’ — Authorisation, by right holders, of the television broadcasting of their works on the free terrestrial network covering either the whole territory of a Member State or a limited geographical area within that Member State — Continuous transmission service, operated by a third party broadcaster, available to individual subscribers who have paid the television licence fee, meaning that those subscribers can receive the programmes live via video streams on the internet

### Operative part of the judgment

1. The concept of ‘communication to the public’, within the meaning of Article 3(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, must be interpreted as meaning that it covers a retransmission of the works included in a terrestrial television broadcast
  - where the retransmission is made by an organisation other than the original broadcaster,
  - by means of an internet stream made available to the subscribers of that other organisation who may receive that retransmission by logging on to its server,
  - even though those subscribers are within the area of reception of that terrestrial television broadcast and may lawfully receive the broadcast on a television receiver.
2. The answer to Question 1 is not influenced by the fact that a retransmission, such as that at issue in the main proceedings, is funded by advertising and is therefore of a profit-making nature.
3. The answer to Question 1 is not influenced by the fact that a retransmission, such as that at issue in the main proceedings, is made by an organisation which is acting in direct competition with the original broadcaster.

<sup>(1)</sup> OJ C 65, 3.3.2012.