

2. Must Article 15 of the Headquarters Agreement in conjunction with Article 36 of the Statute of the European System of Central Banks (ESCB) and the ECB be interpreted restrictively with the result that the applicability of German social security law conferring the benefit in question is excluded only where pursuant to the 'Conditions of Employment' the ECB confers a comparable social benefit on its staff?

If Question 2 is answered in the negative:

- (a) Must the abovementioned provisions be interpreted as meaning that they preclude the application of a national provision which grants family benefits only on the basis of the territorial principle?
- (b) Is the reasoning of the Court of Justice in Case C-352/06 *Bosmann* [2008] ECR I-3827, paragraphs 31 to 33, relevant to the application of the abovementioned provisions? Does Article 15 of the Headquarters Agreement in conjunction with Article 36 of the Statute of the ESCB and ECB not deprive the Federal Republic of Germany of the power to grant family benefits to employees of the ECB resident in Germany?

**Action brought on 16 February 2011 — European Commission v Italian Republic**

(Case C-68/11)

(2011/C 145/10)

*Language of the case: Italian*

**Parties**

*Applicant:* European Commission (represented by: A. Alcover San Pedro and S. Mortoni, acting as Agents)

*Defendant:* Italian Republic

**Form of order sought**

The applicant claims that the Court should:

— declare that, by exceeding for a number of consecutive years the limit values for PM<sub>10</sub> particles in ambient air throughout Italian territory, the Italian Republic has failed to fulfil its obligations under Article 5(1) of Council Directive 1999/30/EC<sup>(1)</sup> of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air (now

Article 13(1) of Directive 2008/50/EC<sup>(2)</sup> of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe;

— order the Italian Republic to pay the costs.

**Pleas in law and main arguments**

Under Article 5(1) of Directive 1999/30, Member States are to take the measures necessary to ensure that concentrations of PM<sub>10</sub> in ambient air do not exceed the limit values laid down in Section I of Annex III to that directive as from the dates specified therein. The relevant date in the present context is 1 January 2005.

The assessment made by the Commission in the annual reports for the years 2005 to 2007 revealed that the limit values for PM<sub>10</sub> particles had been exceeded in a great number of urban zones and agglomerations. Moreover, the most recent data forwarded by Italy, which relate to the year 2009, indicate that the exceeding of daily and/or annual limit values has continued in 70 zones at least.

It follows that Italy has failed to fulfil its obligations under Article 5(1) of Directive 1999/30 in terms both of zones and of years.

<sup>(1)</sup> OJ 1999 L 163, p. 41.

<sup>(2)</sup> OJ 2008 L 152, p. 1.

**Reference for a preliminary ruling from the Rechtbank van eerste aanleg te Brugge (Belgium), lodged on 16 February 2011 — Connoisseur Belgium BVBA v Belgische Staat**

(Case C-69/11)

(2011/C 145/11)

*Language of the case: Dutch*

**Referring court**

Rechtbank van eerste aanleg te Brugge

**Parties to the main proceedings**

*Applicant:* Connoisseur Belgium BVBA

*Defendant:* Belgische Staat

**Question referred**

Does Article 26 of the Wetboek van de BTW (the Belgian VAT Code) infringe Article 11.A(1)(a) of the Sixth VAT Directive, <sup>(1)</sup> now incorporated in Article 73 of Council Directive 2006/112/EC <sup>(2)</sup> of 28 November 2006 on the common system of value added tax, and the principle of the neutrality of VAT, if that provision is interpreted as meaning that VAT is due on costs or amounts which could contractually be charged to the other contracting party but which are not so charged?

<sup>(1)</sup> 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).

<sup>(2)</sup> OJ 2006 L 347, p. 1.

**Reference for a preliminary ruling from Upper Tribunal (Immigration and Asylum Chamber) London (United Kingdom) made on 22 February 2011 — Secretary of State for the Home Department v Muhammad Sazzadur Rahman, Fazly Rabby Islam, Mohibullah Rahman**

(Case C-83/11)

(2011/C 145/12)

*Language of the case: English*

**Referring court**

Upper Tribunal (Immigration and Asylum Chamber) London

**Parties to the main proceedings**

*Applicant:* Secretary of State for the Home Department

*Defendants:* Muhammad Sazzadur Rahman, Fazly Rabby Islam, Mohibullah Rahman

**Questions referred**

- Does Article 3(2) of Directive 2004/38/EC <sup>(1)</sup> require a Member State to make legislative provision to facilitate entry to and or residence in a Member state to the class of other family members who are not nationals of the European Union who can meet the requirements of Article 10(2)?
- Can such other family member referred to in Question 1 rely on the direct applicability of Article 3(2) of Directive 2004/38/EC in the event that he cannot comply with any requirements imposed by national legislative provisions?

- Is the class of other family members referred to in Article 3(2) and Article 10(2) of Directive 2004/38/EC limited to those who have resided in the same country as the Union national and his or her spouse, before the Union national came to the host state?
- Must any dependency referred to in Article 3(2) of Directive 2004/38/EC on which the other family member relies to secure entry to the host state be dependency that existed shortly before the Union citizen moved to the host state?
- Can a Member State impose particular requirements as to the nature or duration of dependency referred to in Article 3(2) of Directive 2004/38/EC by such other family member so as to prevent such dependency being contrived or unnecessary to enable a non national to be admitted to or continue to reside in its territory?
- Must the dependency on which the other family member relies in order to be admitted to the Member state continue for a period or indefinitely in the host state for a residence card to be issued or renewed pursuant to Article 10 of Directive 2004/38/EC and if so how should such dependency be demonstrated?

<sup>(1)</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, p. 77)

**Reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 24 February 2011 — Marja-Liisa Susisalo, Olli Tuomaala, Merja Ritala**

(Case C-84/11)

(2011/C 145/13)

*Language of the case: Finnish*

**Referring court**

Korkein hallinto-oikeus

**Parties to the main proceedings**

*Applicants:* Marja-Liisa Susisalo, Olli Tuomaala, Merja Ritala