

### Form of order sought

— Annul Council Decision of 10 March 2011 authorising enhanced cooperation in the area of the creation of unitary patent protection (2011/167/EU) <sup>(1)</sup>;

— order the Council of the European Union to pay the costs.

### Pleas in law and main arguments

In support of its action, the Italian Republic raises four pleas in law.

First, it submits that the enhanced cooperation procedure was authorised by the Council outside the limits provided for in the first subparagraph of Article 20(1) TEU, according to which such a procedure is to be allowed only within the framework of the European Union's non-exclusive competences. The European Union has an exclusive competence to create 'European rules' which have Article 118 TFEU as their legal basis.

Second, it submits that the authorisation of enhanced cooperation in the present case is contrary to — or, in any event, not compatible with — the objectives in view of which such cooperation is provided for by the Treaties. In so far as that authorisation is contrary to, if not the letter, at least the spirit of Article 118 TFEU, it infringes Article 326(1) TFEU, in that the latter requires enhanced cooperation to comply with the Treaties and with EU law.

Third, the Italian Republic submits that the authorisation decision was adopted without an appropriate inquiry with regard to the *last resort* requirement and without an adequate statement of reasons on that point.

Lastly, according to the Italian Republic, the authorisation decision infringes Article 326 TFEU in that it adversely affects the internal market, introducing a barrier to trade between Member States and discrimination between undertakings, causing distortion of competition. Furthermore, it does not help to reinforce the EU's integration process, and is thus contrary to the second subparagraph of Article 20(1) TEU.

<sup>(1)</sup> OJ 2011 L 76, p. 53.

**Reference for a preliminary ruling from the Administrativen sad Varna (Bulgaria) lodged on 14 June 2011 — Dobrudzhanska petrolna kompania AD v Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — gr. Varna, pri Tsentralno upravlenie na Natsionalnata Agentsia po Prihodite**

(Case C-298/11)

(2011/C 232/35)

Language of the case: Bulgarian

### Referring court

Administrativen sad Varna

### Parties to the main proceedings

*Applicant:* Dobrudzhanska petrolna kompania AD

*Defendant:* Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto'— gr. Varna, pri Tsentralno upravlenie na Natsionalnata Agentsia po Prihodite

### Questions referred

1. Is Article 80(1)(a) and (b) of Council Directive 2006/112/EC <sup>(1)</sup> of 28 November 2006 on the common system of value added tax to be interpreted as meaning that, where there are supplies between connected persons, in so far as the consideration is lower than the open market value, the taxable amount is the open market value of the transaction only if the supplier or the recipient does not qualify for the right to deduct in full the input tax chargeable on the purchase or production of the goods supplied?
2. Is Article 80(1)(a) and (b) of Directive 2006/112 to be interpreted as meaning that, if the supplier has exercised the right to deduct in full the input tax on goods and services which are the subject of subsequent supplies between connected persons at a value lower than the open market value, and that right to deduct input tax has not been corrected under Articles 173 to 177 of the Directive and the supply is not subject to a tax exemption within the meaning of Articles 132, 135, 136, 371, 375, 376, 377, 378(2) or 380 to 390 of the Directive, a Member State is not permitted to adopt measures whereby the taxable amount is exclusively the open market value?
3. Is Article 80(1)(a) and (b) of Council Directive 2006/112 to be interpreted as meaning that, if the recipient has exercised the right to deduct in full the input tax on goods and services which are the subject of subsequent supplies between connected persons with a lower value than the open market value, and that right to deduct input tax has not been corrected under Articles 173 to 177 of the Directive, a Member State is not permitted to adopt measures whereby the taxable amount is exclusively the open market value?
4. Does Article 80(1)(a) and (b) of Directive 2006/112 constitute an exhaustive list of cases representing the circumstances in which a Member State is permitted to take measures whereby the taxable amount in respect of supplies is to be the open market value of the transaction?
5. Is a provision of national law such as Article 27(3)(1) of the Zakon za danak varhu dobavenata stoynost (Law on VAT) permissible in cases other than those listed in Article 80(1)(a), (b) and (c) of Directive 2006/112?

6. In a case such as the present, does Article 80(1)(a) and (b) of Directive 2006/112 have direct effect, and may the domestic court apply it directly?

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

**Order of the President of the Court of 20 May 2011 (reference for a preliminary ruling from the Oberlandesgericht Innsbruck — Austria) — Pensionsversicherungsanstalt v Andrea Schwab**

(Case C-547/09) (<sup>1</sup>)

(2011/C 232/36)

*Language of the case: German*

The President of the Court has ordered that the case be removed from the register.

(<sup>1</sup>) OJ C 100, 17.4.2010.

**Order of the President of the Court of 17 May 2011 — European Commission v Republic of Poland**

(Case C-341/10) (<sup>1</sup>)

(2011/C 232/37)

*Language of the case: Polish*

The President of the Court has ordered that the case be removed from the register.

(<sup>1</sup>) OJ C 260, 25.9.2010.

**Order of the President of the Court of 20 May 2011 (reference for a preliminary ruling from the Tribunal Judicial de Vieira do Minho — Portugal) — Manuel Afonso Esteves v Axa Seguros Portugal SA**

(Case C-437/10) (<sup>1</sup>)

(2011/C 232/38)

*Language of the case: Portuguese*

The President of the Court has ordered that the case be removed from the register.

(<sup>1</sup>) OJ C 317, 20.11.2010.

**Order of the President of the Court of 7 June 2011 (references for a preliminary ruling from the Tribunal de première instance, Namur — Belgium) — Rémi Paquot (C-622/10), Adrien Daxhelet (Case C-623/10) v État Belge — SPF Finances**

(Joined Cases C-622/10 and 623/10) (<sup>1</sup>)

(2011/C 232/39)

*Language of the case: French*

The President of the Court has ordered that the cases be removed from the register.

(<sup>1</sup>) OJ C 80, 12.3.2011.

**Order of the President of the Court of 17 May 2011 (reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Minister van Financiën v G. in 't Veld**

(Case C-110/11) (<sup>1</sup>)

(2011/C 232/40)

*Language of the case: Dutch*

The President of the Court has ordered that the case be removed from the register.

(<sup>1</sup>) OJ C 160, 28.5.2011.