Reference for a preliminary ruling from the Juzgado de lo Mercantil de A Coruña (Spain) lodged on 28 June 2011 — Germán Rodríguez Cachafeiro and Maria Reyes Martínez-Reboredo Varela-Villamayor v Iberia Líneas Aéreas de España S.A.

(Case C-321/11)

(2011/C 282/04)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil de A Coruña

Parties to the main proceedings

Applicants: Germán Rodríguez Cachafeiro and Maria Reyes Martínez-Reboredo Varela-Villamayor

Defendant: Iberia Líneas Aéreas de España S.A.

Question referred

May the definition of 'denied boarding' contained in Article 2(j), in conjunction with Article 3(2) and 4(3), of Regulation (EC) No 261/2004, ([1]) be regarded as including a situation in which an airline refuses to allow boarding because the first flight included in the ticket is subject to a delay ascribable to the airline and the latter erroneously expects the passengers not to arrive in time to catch the second flight, and so allows their seats to be taken by other passengers?

([1]) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (Text with EEA relevance) — Commission Statement; OJ 2004 L 46, p. 1.

Action brought on 22 June 2011 — European Commission v Kingdom of Denmark

(Case C-323/11)

(2011/C 282/05)

Language of the case: Danish

Parties

Applicant: European Commission (represented by: I. Hadjiyiannis and U. Nielsen, acting as Agents)

Defendant: Kingdom of Denmark

Form of order sought

— declare that, by failing to publish the final river basin management plans by 22 December 2009 and by failing to send the Commission copies thereof by 22 March 2010 and, in any event, by failing to inform the Commission thereof, the Kingdom of Denmark has failed to fulfil its obligations under Directive 2000/60/EC ([1]) of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy;

— order the Kingdom of Denmark to pay the costs.

Pleas in law and main arguments

Article 13(1), (2) and (6) of the Directive provides that the Member States were to adopt the laws and administrative provisions necessary to comply with the Directive by 22 December 2009 and to send the Commission copies thereof by 22 March 2010.

Since the Commission is not in possession of any information which enables it to establish that the necessary provisions have been adopted, the Commission must proceed on the assumption that Denmark has not yet adopted those provisions and has therefore failed to fulfil its obligations under the Directive.

([1]) OJ 2000 L 327, p. 1, 22.12.2000.

Reference for a preliminary ruling from the A Magyar Köztársaság Legfelsőbb Bírósága (Hungary) lodged on 29 June 2011 — Gábor Tóth v Nemzeti Adó- és Vámhivatal Észak-magyarországi Regionális Adó Főigazgatósága, as successor to Adó- és Pénzügyi Ellenőrzési Hivatal Hatósági Főosztály Észak-magyarországi Kihelyezett Hatósági Osztály

(Case C-324/11)

(2011/C 282/06)

Language of the case: Hungarian

Referring court

A Magyar Köztársaság Legfelsőbb Bírósága (Supreme Court of the Republic of Hungary)

Parties to the main proceedings

Appellant: Gábor Tóth

Respondent: Nemzeti Adó- és Vámhivatal Észak-magyarországi Regionális Adó Főigazgatósága, as successor to Adó- és Pénzügyi Ellenőrzési Hivatal Hatósági Főosztály Észak-magyarországi Kihelyezett Hatósági Osztály

Questions referred

1. Is the principle of tax neutrality (Article 9 of Council Directive 2006/112/EC ([1]) of 28 November 2006 on the common system of value added tax) infringed by a legal interpretation which prevents the addressee of an invoice from exercising his right to deduct where the operator who issued it has, prior to full performance of the contract or issue of the invoice, had his business operator's licence withdrawn by the municipal authority?

2. Can the fact that the individual operator who issued the invoice has not declared the workers whom he employs (who, as a result, work 'in the black economy'), and the fact that, for that reason, the tax authority has found that the said operator 'has no declared workers', prevent the addressee of that invoice from exercising the right to deduct, having regard to the principle of tax neutrality?

3. Can it be held that the addressee of the invoice is guilty of a lack of care when he does not verify either whether a legal relationship exists between the workers employed on a work site and the issuer of the invoice or whether the latter has fulfilled his tax-return obligations or any other obligations relating to those workers? Can it be held that such conduct constitutes an objective factor which demonstrates that the addressee of the invoice knew or ought to have known that he was participating in a transaction involving fraudulent evasion of VAT?

4. Having regard to the principle of tax neutrality, can the national court take the above circumstances into consideration when its overall assessment leads it to the conclusion that the economic transaction did not take place between the persons specified on the invoice?

([1]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

Action brought on 30 June 2011 — European Commission v Slovak Republic

(Case C-331/11)

(2011/C 282/07)

Language of the case: Slovak

Parties

Applicant: European Commission (represented by: A. Marghelis and A. Tokár, acting as Agents)

Defendant: Slovak Republic

Forms of order sought

— declare that, by authorising the operation of the Žilina — Považský Chlmec waste site without a conditioning plan for the waste site and without adopting a definite decision on whether operations might continue on the basis of the said conditioning plan, the Slovak Republic has failed to fulfil its obligations under Article 14(a), (b) and (c) of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste ([1])

— order the Slovak Republic to pay the costs.

Pleas in law and main arguments

The Žilina — Považský Chlmec waste site is operated without any conditioning plan having been submitted and without the approval of any measures which might be needed on the basis of such a plan. The Commission therefore submits that the Court should declare that, by authorising the operation of the Žilina — Považský Chlmec waste site without a conditioning plan for the waste site and without adopting a definite decision on whether operations might continue on the basis of the said conditioning plan, the Slovak Republic has failed to fulfil its obligations under Article 14(a), (b) and (c) of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste.

([1]) OJ 1999 L 182, p. 1.

Appeal brought on 29 June 2011 by Lancôme parfums et beauté & Cie against the judgment of the General Court (Eighth Chamber) delivered on 14 April 2011 in Case T-466/08: Lancôme parfums et beauté & Cie v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Focus Magazin Verlag GmbH

(Case C-334/11 P)

(2011/C 282/08)

Language of the case: English

Parties

Appellant: Lancôme parfums et beauté & Cie (represented by: A. von Mühlendahl, J. Pagenberg, Rechtsanwälte)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Focus Magazin Verlag GmbH

Form of order sought

The appellant requests the Court of Justice to decide as follows:

— The judgment of the General Court of 14 April 2011 in Case T-466/08 an the decision of the First Board of Appeal of the Office of 29 July 2008 in Case R 1796/2007-1 are annulled.

— The costs of the proceedings before the Board of Appeal of the Office, before the General Court and before this court shall be borne by the Office and by the Intervener.

Pleas in law and main arguments

The Appellant claims that the contested judgment must be annulled because the General Court violated Article 43 (2) and (3) CTMR and committed legal error in deciding that in the contested case the five-year period following registration within which the earlier German mark FOCUS on which the opposition against the CTM application for ACNO FOCUS was based must be put to genuine use did not begin to run until 13 January 2004.