

Re:

Reference for a preliminary ruling — Supreme Court of the United Kingdom — Interpretation of Articles 49 TFEU and 63 TFEU — National taxes contrary to European Union law — Recovery of sums unduly paid — Coexistence, under national law, of two alternative causes of action open to taxpayers for the purpose of seeking repayment of sums due, one of which provides for a longer period within which an action may be brought than the other — National legislation which reduces, retroactively and without prior notice, the longer of the two limitation periods — Whether compatible with the principles of effectiveness, legal certainty and legitimate expectations.

Operative part of the judgment

1. In a situation in which, under national law, taxpayers have a choice between two possible causes of action as regards the recovery of tax levied in breach of European Union law, one of which benefits from a longer limitation period, the principles of effectiveness, legal certainty and the protection of legitimate expectations preclude national legislation curtailing that limitation period without notice and retroactively;
2. It makes no difference to the answer to the first question that, at the time when the taxpayer issued its claim, the availability of the cause of action affording the longer limitation period had been recognised only recently by a lower court and was not definitively confirmed by the highest judicial authority until later.

⁽¹⁾ OJ C 311, 13.10.2012.

Judgment of the Court (Eighth Chamber) of 12 December 2013 — European Commission v Italian Republic

(Case C-411/12) ⁽¹⁾

(Failure of a Member State to fulfil obligations — State aid — Preferential electricity tariff — Decision 2011/746/EU — Aid incompatible with the internal market — Recovery — Failure to implement within the prescribed period)

(2014/C 52/27)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: B. Stromsky, D. Grespan and S. Thomas, acting as Agents)

Defendant: Italian Republic (represented by: G. Palmieri, assisted by S. Fiorentino, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — State aid — Failure to adopt the measures necessary to comply with Articles 3, 4 and 5 of Commission Decision 2011/746/EU of 23 February 2011 on State aid granted by Italy to Portovesme Srl, ILA SpA, Eurallumina SpA and Syndial SpA (OJ 2011 L 309, p. 1) — Obligation to recover without delay the aid declared unlawful and incompatible with the common market and to notify the Commission of the measures taken.

Operative part of the judgment

The Court:

1. Declares that, by not taking, within the prescribed period, all the measures necessary to recover from Portovesme Srl and Eurallumina SpA the State aid declared unlawful and incompatible with the internal market in Article 2 of Commission Decision 2011/746/EU of 23 February 2011 on State aid measures C 38/B/04 (ex NN 58/04) and C 13/06 (ex N 587/05) granted by Italy to Portovesme Srl, ILA SpA, Eurallumina SpA and Syndial SpA, the Italian Republic failed to fulfil its obligations under Articles 3 and 4 of that decision.
2. Orders the Italian Republic to pay the costs.

⁽¹⁾ OJ C 355, 17.11.2012.

Judgment of the Court (Fifth Chamber) of 12 December 2013 (request for a preliminary ruling from the Tribunal Administrativo e Fiscal do Porto — Portugal) — Portgás — Sociedade de Produção e Distribuição de Gás SA v Ministério da Agricultura, do Mar, do Ambiente e do Ordenamento do Território

(Case C-425/12) ⁽¹⁾

(Procedures for awarding public contracts in the water, energy, transport and telecommunications sectors — Directive 93/38/EEC — Directive not transposed into national law — Whether the State may rely on that directive against a body holding a public service concession in the case where that directive has not been transposed into national law)

(2014/C 52/28)

Language of the case: Portuguese

Referring court

Tribunal Administrativo e Fiscal do Porto

Parties to the main proceedings

Applicant: Portgás — Sociedade de Produção e Distribuição de Gás SA

Defendant: Ministério da Agricultura, do Mar, do Ambiente e do Ordenamento do Território

Re:

Request for a preliminary ruling — Tribunal Administrativo e Fiscal do Porto — Portugal — Interpretation of Articles 2(1)(b), 4(1) and 14(1)(c)(i) of Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1993 L 199, p. 84), as amended by Directive 98/4/EC of the European Parliament and of the Council of 16 February 1998 (OJ 1998 L 101, p. 1) — Direct effect — Whether the State may rely on that directive against a body holding a public service concession in the case where that directive has not been transposed into national law.

Operative part of the judgment

Articles 4(1), 14(1)(c)(i) and 15 of Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, as amended by Directive 98/4/EC of the European Parliament and of the Council of 16 February 1998, must be interpreted as meaning that they cannot be relied on against a private undertaking solely on the ground that, in its capacity as the exclusive holder of a public-interest service concession, that undertaking comes within the group of persons covered by Directive 93/38, in circumstances where that directive has not yet been transposed into the domestic system of the Member State concerned.

Such an undertaking, which has been given responsibility, pursuant to a measure adopted by the State, for providing, under the control of the State, a public-interest service and which has, for that purpose, special powers going beyond those which result from the normal rules applicable in relations between individuals, is obliged to comply with the provisions of Directive 93/38, as amended by Directive 98/4, and the authorities of a Member State may therefore rely on those provisions against it.

⁽¹⁾ OJ C 389, 15.12.2012.

Judgment of the Court (Eighth Chamber) of 19 December 2013 (reference for a preliminary ruling from the Gerechtshof 's Hertogenbosch (Netherlands)) — X

(Case C-437/12) ⁽¹⁾

(Internal taxation — Article 110 TFEU — Registration duty — Similar domestic products — Neutrality of the tax between imported used automobile vehicles and similar vehicles already present on the national market)

(2014/C 52/29)

Language of the case: Dutch

Referring court

Gerechtshof 's Hertogenbosch

Parties to the main proceedings

X

Re:

Reference for a preliminary ruling — Gerechtshof te's Hertogenbosch (Netherlands) — Interpretation of Article 110 TFEU — Domestic taxation — National legislation imposing a registration levy at the time of the first use of a vehicle on the national road network — Amount of the levy based, as from 2010, on CO₂ emissions — Vehicle first used on the roads outside the Netherlands in 2006 and registered in 2010 for use within national territory.

Operative part of the judgment

1. For the purpose of applying Article 110 TFEU, the similar domestic products which are comparable to a used vehicle such as the one at issue in the main proceedings, which was first put into service before 1 February 2008 and was imported and

registered in the Netherlands in 2010, are the vehicles already present on the Netherlands market whose characteristics are closest to those of the vehicle in question.

- Article 110 TFEU must be interpreted as precluding a tax, such as the passenger-car and motorcycle tax (*belasting personenauto's en motorrijwielen*) as in force in 2010, if and in so far as the amount of that tax levied on used imported vehicles upon their registration in the Netherlands exceeds the lowest residual amount of BPM incorporated into the value of similar used vehicles already registered in that same Member State.

⁽¹⁾ OJ C 399, 22.12.2012.

Judgment of the Court (Third Chamber) of 12 December 2013 (request for a preliminary ruling from the High Court of Justice (Chancery Division) — United Kingdom) — Actavis Group PTC EHF, Actavis UK Ltd v Sanofi

(Case C-443/12) ⁽¹⁾

(Medicinal products for human use — Supplementary protection certificate — Regulation (EC) No 469/2009 — Article 3 — Conditions for obtaining such a certificate — Successive marketing of two medicinal products containing, wholly or partially, the same active ingredient — Combination of active ingredients, one of which has already been marketed in the form of a medicinal product with a single active ingredient — Whether it is possible to obtain a number of certificates on the basis of the same patent and two marketing authorisations)

(2014/C 52/30)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Applicants: Actavis Group PTC EHF, Actavis UK Ltd

Defendant: Sanofi

Intervening party: Sanofi Pharma Bristol-Myers Squibb SNC

Re:

Request for a preliminary ruling — High Court of Justice (Chancery Division) — Interpretation of Article 3(a) and (c) of Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products (OJ 2009 L 152, p. 1) — Conditions for obtaining a supplementary protection certificate — Concept of 'product protected by a basic patent in force' — Criteria — Possibility of granting the certificate for each medicinal product where there is a patent covering a number of medicinal products.