

2. In the event that the first question must be answered in the negative: is the national provision compatible with Article 43 EC (or Article 49 TFEU) if the transferor is entitled to apply for the deferment, on an interest-free basis, of the tax arising as a consequence of revealing the undisclosed reserves, with the effect that the tax due on the gain may be paid in annual instalments, each of at least a fifth of the tax due, provided that the payment of the instalments is secured?

Reference for a preliminary ruling from the Székesfehérvári Törvényszék (Hungary) lodged on 19 April 2012 — Gábor Fekete v Nemzeti Adó- és Vámhivatal Középdunántúli Regionális Vám- és Pénzügyőri Főigazgatósága

(Case C-182/12)

(2012/C 217/10)

Language of the case: Hungarian

Referring court

Székesfehérvári Törvényszék

Parties to the main proceedings

Applicant: Gábor Fekete

Defendant: Nemzeti Adó- és Vámhivatal Középdunántúli Regionális Vám- és Pénzügyőri Főigazgatósága

Question referred

Under Article 561(2) of Commission Regulation (EEC) No 2454/93⁽¹⁾ of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ('the implementing Regulation') is authorisation granted by the owner of the means of transport established outside the (customs) territory sufficient to establish private use of the means of transport or is private use of the means of transport only possible in the framework of an employment relationship, and thus where provided for (by the owner) in the contract of employment?

⁽¹⁾ Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code; OJ L 253, 11.10.1993, p. 1.

Reference for a preliminary ruling from the Tribunal Judicial de Braga (Portugal) lodged on 23 April 2012 — Impacto Azul, Lda v BPSA 9 — Promoção e Desenvolvimento de Investimentos Imobiliários, SA and Others

(Case C-186/12)

(2012/C 217/11)

Language of the case: Portuguese

Referring court

Tribunal Judicial de Braga

Parties to the main proceedings

Applicant: Impacto Azul, Lda

Defendants: BPSA 9 — Promoção e Desenvolvimento de Investimentos Imobiliários, SA, Bouygues Imobiliária, SGPS, Lda, Bouygues Immobilier S.A., Aniceto Fernandes Viegas, Óscar Cabanez Rodriguez

Question referred

Is it contrary to Community law, in particular Article 49 TFEU, as interpreted by the Court of Justice of the European [Union], for the application of the rules in Article 501 of the [Portuguese Code of Commercial Companies] to undertakings having their seat in another Member State to be excluded pursuant to the rules contained in Article 481(2) of [that code]?

Action brought on 25 April 2012 — European Commission v French Republic

(Case C-193/12)

(2012/C 217/12)

Language of the case: French

Parties

Applicant: European Commission (represented by: B. Simon and J. Hottiaux, acting as Agents)

Defendant: French Republic

Form of order sought

— Declare that, by failing to designate as vulnerable zones a number of zones characterised by the presence of surface and groundwater bodies which are, or may be, affected by excessive nitrate content and/or eutrophication, the French Republic has failed to fulfil its obligations under Article 3(1) and (4) of and Annex I to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources,⁽¹⁾

— order the French Republic to pay the costs.

Pleas in law and main arguments

The Commission complains that when the defendant carried out a revision of the vulnerable zones in 2007, its designation of those zones was not comprehensive, as it ought to have been under Article 3(1) and (4) of and Annex I to Directive 91/676/EEC.

The Commission complains in particular that the French authorities failed to designate 10 additional vulnerable zones and did not provide any specific information that might justify that omission.

⁽¹⁾ OJ 1991 L 375, p. 1.

Action brought on 26 April 2012 — European Commission v French Republic

(Case C-197/12)

(2012/C 217/13)

Language of the case: French

Parties

Applicant: European Commission (represented by: F. Dintilhac and C. Soulay, Agents)

Defendant: French Republic

Form of order sought

— declare that, by not making the exemption from VAT of transactions referred to in Article 262, Part II(2), (3), (6) and (7), of the Code général des impôts conditional on the requirement of use for navigation on the high seas, in respect of vessels carrying passengers for reward and those used for the purpose of commercial activities, the French Republic has failed to fulfil its obligations under the VAT Directive, ⁽¹⁾ in particular Article 148(a), (c) and (d) thereof;

— order the French Republic to pay the costs.

Pleas in law and main arguments

By the present action, the Commission claims that the exemption from VAT of the transactions referred to in Article 262, Part II(2), (3), (6) and (7), of the Code général des impôts (French General Tax Code) (CGI) was not made conditional on the requirement of use for navigation on the high seas, in respect of vessels carrying passengers for reward and those used for the purpose of commercial activities. That condition that vessels must be used on the high seas was added to the

legislative provisions regulating VAT in France in response to the Commission's reasoned opinion addressed to the national authorities. However, the bringing of Article 262, Part II(2), of the CGI into line with the VAT directive was rendered ineffective by an explanatory ministerial ruling binding on the administrative authorities, published subsequent to the legislative amendment, which does not mention the condition that vessels must be used for navigation on the high seas, although this was provided for by the legislation.

In the Commission's view, none of the arguments put forward by the defendant in the course of the pre-litigation procedure, concerning, inter alia, the strict interpretation of Article 148(a) of the VAT Directive and the overly restrictive interpretation of the condition that vessels must be used for navigation on the high seas, can justify the failure to comply with the provisions of the aforementioned directive. Furthermore, as regards Article 131 of Directive 2006/112/EC, relied on by the French authorities, this cannot justify a derogation from the principle that exemptions must be subject to strict interpretation.

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

Reference for a preliminary ruling from the Raad van State (Netherlands) lodged on 27 April 2012 — Minister voor Immigratie en Asiel v X

(Case C-199/12)

(2012/C 217/14)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Minister voor Immigratie en Asiel

Other party: X

Questions referred

1. Do foreign nationals with a homosexual orientation form a particular social group as referred to in Article 10(1)(d) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304; 'the Directive')?