

project were sent to the applicant, in breach of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43) — Infringement of the right of access to documents, of the fourth paragraph of Article 263 TFEU and of the Euratom Treaty

### Operative part of the order

1. *The appeal is dismissed.*
2. *Land Wien is ordered to pay the costs.*

(<sup>1</sup>) OJ C 25, 28.1.2012.

### Action brought on 27 June 2012 — European Commission v Hungary

(Case C-310/12)

(2012/C 366/38)

*Language of the case: Hungarian*

#### Parties

*Applicant:* European Commission (represented by: P. Hetsch, D. Düsterhaus and A. Sipos, acting as Agent(s))

*Defendant(s):* Hungary

#### Form of order sought

- Declare that Hungary has failed to fulfil its obligations under Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (<sup>1</sup>) since it has not adopted the laws, regulations and administrative provisions necessary to bring its national law into line with the Directive, or, in any event, has not communicated such provisions to the Commission, pursuant to Article 40 of the Directive.
- Order Hungary to pay a penalty payment pursuant to Article 260(3) TFEU of EUR 27 316,80 per day from the date of judgment, as it has not notified the Commission of the national measures adopted to implement Directive 2008/98/EC.
- Order Hungary to pay the costs.

#### Pleas in law and main arguments

Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives is the principal legal instrument in this sector and establishes, inter alia, the essential concepts of waste management, such as what is to be understood by the terms waste, recycling and recovery.

The period prescribed for the implementation of the Directive expired on 12 December 2010. Hungary informed the Commission that the legislative work on the implementation of the Directive was not finished. As provisions implementing the Directive have not been adopted to date, the Commission takes the view that Hungary has not fulfilled its obligations as regards the full implementation of the Directive.

Pursuant to Article 260(3) TFEU, in actions for failure to fulfil obligations pursuant to Article 258, the Commission may ask the Court of Justice to order, in its judgment declaring that the Member State has failed to fulfil its obligations, the Member State concerned to notify the Commission of the measures transposing a directive adopted under a legislative procedure, or it may specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances. In compliance with the Communication from the Commission on implementation of Article 260(3) of the TFEU, (<sup>2</sup>) the Commission calculated the proposed penalty payment according to the method for the implementation of Article 228 EC provided for in the Communication.

(<sup>1</sup>) OJ 2008 L 312, p. 3.

(<sup>2</sup>) OJ 2011 C 12, p. 1.

### Reference for a preliminary ruling from the Handelsgericht Wien (Austria) lodged on 30 July 2012 — Dr. Michael Timmel v Aviso Zeta AG

(Case C-359/12)

(2012/C 366/39)

*Language of the case: German*

#### Referring court

Handelsgericht Wien

#### Parties to the main proceedings

*Applicant:* Dr. Michael Timmel

*Intervener in support of the applicant:* Lore Tinhofer

*Defendant:* Aviso Zeta AG

#### Questions referred

1. Is Article 22(2) of Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements ('Regulation (EC) No 809/2004') (<sup>1</sup>) to be interpreted as meaning that information that is in principle mandatory which was not yet known at the time of approval of the base prospectus but was already known at the time of publication of a supplement to the prospectus is to be included in the supplement to the prospectus?

2. Is the derogation in Article 22(2) of Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (Regulation (EC) No 809/2004), according to which the inclusion of the information items within the meaning of the third sentence of Article 22(1) may be omitted, applicable even if that (mandatory) information was known before the issue date but after publication of the base prospectus in which that information was not included?

3. Is it possible to speak of lawful publication if only a base prospectus without the mandatory information under the third sentence of Article 22(1) of Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (Regulation (EC) No 809/2004) and in particular under Annex 5 (as regards securities with denomination per unit of less than EUR 50 000) was published and if the final terms were not subsequently published?

4. Is the requirement laid down in Article 29(1)(1) of Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (Regulation (EC) No 809/2004) that the prospectus or the base prospectus must be easily accessible on the web-site, where these are made available, fulfilled:

(a) if accessing, downloading as well as printing, require registration on the website on which access may subsequently take place, whereby registration requires acceptance of a disclaimer and communication of an e-mail address, or

(b) if it is necessary to make a payment for that, or

(c) if free of charge access to parts of a prospectus is restricted to two documents per month, but it is necessary to download at least three documents in order to obtain all the required information within the meaning of the third paragraph of Article 22(1) of Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (Regulation No 809/2004)?

5. Is Article 14(2)(b) of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC ('Directive 2003/71/EC')<sup>(2)</sup> to be interpreted as meaning that the base prospectus must be made available at the registered office of the issuer and at the offices of the financial intermediaries?

<sup>(1)</sup> OJ 2004 L 149, p. 1.

<sup>(2)</sup> OJ 2003 L 345, p. 64.

**Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 1 August 2012 — Finanzamt Dortmund-West v Klinikum Dortmund gGmbH**

(Case C-366/12)

(2012/C 366/40)

*Language of the case: German*

**Referring court**

Bundesfinanzhof

**Parties to the main proceedings**

*Defendant and appellant:* Finanzamt Dortmund-West

*Claimant and respondent:* Klinikum Dortmund gGmbH

**Question referred**

1. Must a closely related activity be a service in accordance with Article 6(1) of 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 Council Directive 77/388/EEC?<sup>(1)</sup>
2. If question 1 is to be answered in the negative, is an activity closely related to hospital or medical care only if it was performed by the same taxable person as also provides the hospital or medical care?
3. If question 2 is to be answered in the negative, is an activity closely related even if the care is exempt from tax not under Article 13A(1)(b) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes but under subparagraph (c) of that provision?

<sup>(1)</sup> OJ L 145, p. 1.