

**Request for a preliminary ruling from the Tribunale Amministrativo Regionale per la Lombardia (Italy) lodged on 28 January 2013 — Cartiera dell'Adda SpA and Cartiera di Cologno SpA v CEM Ambiente SpA**

(Case C-42/13)

(2013/C 101/23)

*Language of the case: Italian*

**Referring court**

Tribunale Amministrativo Regionale per la Lombardia

**Parties to the main proceedings**

*Applicant:* Cartiera dell'Adda SpA, Cartiera di Cologno SpA

*Defendant:* CEM Ambiente SpA

**Questions referred**

1. Is it contrary to Community law, when an undertaking participating in a tendering procedure has failed to declare, in its request for participation, that its technical director has not been the object of any of the prosecutions and convictions referred to in Article 38(1)(b) and (c) of Legislative Decree No 163/2006, for an interpretation of that article to be given, in accordance with which the awarding entity must order the exclusion of that undertaking even when that undertaking has suitably proved that the use of the term 'technical director' in its request was due to a mere clerical error?
2. Is it contrary to Community law, when an undertaking participating in a tendering procedure has provided relevant, suitable evidence that the persons required to make the statements referred to in Article 38(1)(b) and (c) have not been the object of any of the prosecutions and convictions referred to therein, for an interpretation of that article to be given, in accordance with which the awarding entity must order the exclusion of that undertaking as a consequence of the failure to comply with the *lex specialis* under which the tendering procedure was launched?

**Request for a preliminary ruling from the Østre Landsret (Denmark) lodged on 28 January 2013 — Nordea Bank Danmark A/S v Skatteministeriet (Ministry of Taxation)**

(Case C-48/13)

(2013/C 101/24)

*Language of the case: Danish*

**Referring court**

Østre Landsret

**Parties to the main proceedings**

*Applicant:* Nordea Bank Danmark A/S

*Defendant:* Skatteministeriet (Ministry of Taxation)

**Question referred**

Are Article 49 TFEU, read together with Article 54 (formerly Article 43 EC, read together with Article 48) and Article 31 of the EEA Agreement, read together with Article 34, to be interpreted as precluding a Member State, which allows a company situated in that State to deduct losses on an ongoing basis from a permanent establishment situated in another Member State, from making full recapture from the company of the losses arising from the permanent establishment (in so far as they are not matched with profits in future years) in the event of the permanent establishment closing down, in connection with which part of the establishment's business is transferred to an affiliated company within the group which is resident in the same State as the permanent establishment, and where it must be assumed that the possibilities for applying the losses in question have been exhausted?

**Action brought on 31 January 2013 — European Commission v Republic of Poland**

(Case C-55/13)

(2013/C 101/25)

*Language of the case: Polish*

**Parties**

*Applicant:* European Commission (represented by: P. Hetsch, O. Beynet and K. Herrmann, acting as Agents)

*Defendant:* Republic of Poland

**Form of order sought**

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Article 2(15), (16), (22), (34) and (35), Article 3(4) and (9), Article 6(1) to (3) and Article 7(1) and (3); Article 9, Article 14 and Articles 17 to 23; Articles 10 and 11; Article 16; Article 26(2)(c), second sentence et seq., and Article 26(2)(d), third and fourth sentences; Article 26(3); Article 27(2); Article 29; Article 31; Article 36; Article 42(1) to (4); Article 43(1), (4) and (8); and Article 44 of, and points 1 and 2 of Annex I to, Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC,<sup>(1)</sup> and in any event by not notifying the Commission of such provisions, the Republic of Poland has failed to fulfil its obligations under Article 54(1) of that directive;

— impose upon the Republic of Poland, in accordance with Article 260(3) TFEU, a penalty payment for failure to fulfil its obligation to notify measures transposing Directive 2009/73/EC at the daily rate of EUR 88 819,20 from the day on which judgment is delivered in the present case;