By the order under appeal, the General Court did not follow the rulings of the judgment delivered by the Court of Justice on 9 June 2011 in 'Comitato Venezia vuole vivere', in so far as that judgment states that the Commission's decision 'must contain in itself all the matters essential for its implementation by the national authorities'. Even though the decision lacked the matters essential for its implementation by the national authorities, the General Court failed to point to any deficiency in the method used by the Commission in the contested decision, and consequently erred in law.

On the basis of the principles outlined by the Court of Justice in the judgment in 'Comitato Venezia vuole vivere', when aid is being recovered, it is the Member State — and not, therefore, the individual beneficiary — which is required to show, in each individual case, that the conditions laid down in Article 107(1) are met. In the present case, however, in the contested decision the Commission failed to specify the 'modalities' for any such verification. Consequently, since it did not have available to it, at the time when the aid was to be recovered, the matters essential for the purpose of showing whether the advantages granted constituted, in the hands of the beneficiaries, State aid, the Italian Republic — by Law No 228 of 24 December 2012 (Article 1, paragraphs 351 et seq.) — decided to reverse the burden of proof, in breach of Community case law. According to the Italian legislature, in particular, it is not for the State but for the individual beneficiaries of aid granted in the form of relief to prove that the advantages in question do not distort competition or affect trade between Member States. In the absence of any such proof, there is a presumption that the advantage granted was likely to distort trade and affect trade between Member States. That is clearly contrary to the principles outlined by the Court in its judgment in 'Comitato Venezia vuole vivere'.

Action brought on 26 February 2013 — European Commission v Hellenic Republic

(Case C-96/13)

(2013/C 129/15)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: M. Patakia and A. Tokár)

Defendant: Hellenic Republic

Form of order sought

— declare that, by inserting terms in the open invitation to tender for the provision of services to support the production operation of OPS-IKA (the integrated information system of the Idrima Kinonikon Asfalision (Social Security Institution; 'the IKA')) and of the IKA's website and to expand the databases, for a period of 30 months (invitation to tender No L30/POY/9/5-6-2009 — published in the *Official Journal of the European Union* under No 2009/S110-159234), under which, first, the tenderers had to have experience in the performance of similar contracts for a Greek insurance body and, second, experience of the subcontractors could not establish experience of the tenderers, the Hellenic Republic has failed to fulfil its obligations under Article 2, and Articles 44(2) and 48 in conjunction with Article 2, of Directive 2004/18/EC; [1]

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

1. The pleaded infringement of Articles 44(2) and 48 of Directive 2004/18, in conjunction with Article 2, concerns the tender procedure of the IKA, as contracting authority, relating to the provision of services to support the production operation of OPS-IKA (the integrated information system of the IKA) and of the IKA's website and to expand the databases.

2. The Commission considers that the term of the invitation to tender requiring experience in achieving an integrated information system for a social security institution in Greece constitutes a geographical condition that infringes the principles of equal treatment and non-discrimination as laid down in Articles 2, 44(2) and 48 of Directive 2004/18.

3. It is noted that, in their responses to the Commission's reasoned opinion, the Greek authorities assumed the obligation to make all the changes in accordance with the Commission's complaint, accepting in essence the alleged infringement.

4. Also, the Commission considers that the term of the invitation to tender which provides that experience of the tenderer's subcontractors does not establish experience of the tenderer infringes Article 48 of Directive 2004/18 since, as a result of that term, tenderers cannot rely on third parties' experience in order to demonstrate that they have the required technical ability to perform the contract concerned.

5. In their response, the Greek authorities gave the commitment that the tender documentation for the new procurement procedure would expressly provide for the possibility for economic operators submitting tenders to rely on the relevant experience of third-party entities such as subcontractors, accepting in essence also the abovementioned second complaint of the Commission.

6. Nevertheless, the Greek authorities failed to set a specific date for a new invitation to tender and instead decided to extend the duration of the previous contract, invoking grounds relating to the internal legal order.

7. The Commission therefore established that the pleaded infringement of the aforesaid provisions of Directive 2004/18 is continuing, without the grounds invoked being capable of justifying the infringement, and brought an action for declaration of that infringement before the Court of Justice.

([1]) OJ L 134, 30.4.2004, p. 114.

Request for a preliminary ruling from the Tribunalul Sibiu (Romania) lodged on 27 February 2013 — Silvia Georgiana Câmpean v Administrația Finanțelor Publice a Municipiului Mediaș, Administrația Fondului pentru Mediu

(Case C-97/13)

(2013/C 129/16)

Language of the case: Romanian

Referring court

Tribunalul Sibiu

Parties to the main proceedings

Applicant: Silvia Georgiana Câmpean

Defendants: Administrația Finanțelor Publice a Municipiului Mediaș, Administrația Fondului pentru Mediu

Questions referred

1. Is the body of rules introduced by Law No 9/2012 in breach of Article 110 TFEU, and does it amount to the introduction of a measure which is manifestly discriminatory?

2. Must Article 110 TFEU be interpreted as precluding the body of rules introduced by Law No 9/2012 (in its original wording) establishing a tax on pollutant emissions from motor vehicles, if that tax is structured in such a way as to discourage the putting into circulation in that Member State of second-hand vehicles purchased in other Member States, but without discouraging the purchase of second-hand vehicles of the same age and condition on the domestic market?

Request for a preliminary ruling from the Højesteret (Denmark) lodged on 27 February 2013 — Martin Blomqvist v Rolex SA, Manufacture des Montres Rolex SA

(Case C-98/13)

(2013/C 129/17)

Language of the case: Danish

Referring court

Højesteret

Parties to the main proceedings

Applicant: Martin Blomqvist

Defendants: Rolex SA, Manufacture des Montres Rolex SA

Questions referred

1. Is Article 4(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society ([1]) to be interpreted in such a way that it must be viewed as constituting 'distribution to the public' in a Member State of copyright-protected goods if an undertaking enters into an agreement via a website in a third country for the sale and dispatch of the goods to a private purchaser with an address known to the vendor in the Member State where the goods are protected by copyright, receives payment for the goods and effects dispatch to the purchaser at the agreed address, *or* is it also a condition in that situation that the goods must have been the subject, prior to the sale, of an offer for sale or an advertisement targeted at, or shown on a website intended for, consumers in the Member State where the goods are delivered?

2. Is Article 5(1) and (3) of Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks ([2]) to be interpreted in such a way that it must be viewed as constituting '[use] in the course of trade' of a trade mark in a Member State if an undertaking enters into an agreement via a website in a third country for the sale and dispatch of goods bearing the trade mark to a private purchaser with an address known to the vendor in the Member State where the trade mark is registered, receives payment for the goods and effects dispatch to the purchaser at the agreed address, *or* is it also a condition in that situation that the goods must have been the subject, prior to the sale, of an offer for sale or an advertisement targeted at, or shown on a website intended for, consumers in the State in question?

3. Is Article 9(1) and (2) of Council Regulation No 207/2009 of 26 February 2009 on the Community trade mark ([3]) to be interpreted in such a way that it must be viewed as constituting '[use] in the course of trade' of a trade mark in a Member State if an undertaking enters into an agreement via a website in a third country for the sale and dispatch of goods bearing the Community trade mark to a private purchaser with an address known to the vendor in a Member State, receives payment for the goods and effects dispatch to the purchaser at the agreed address, *or* is it also a condition in that situation that the goods must have been the subject, prior to the sale, of an offer for sale or an advertisement targeted at, or shown on a website intended for, consumers in the State in question?