Respondents: QBE Insurance (Europe) Limited Magyarországi Fióktelepe, Magyar Állam

Questions referred

1. Has the national legislature properly complied with Articles 7 and 9 of Directive 90/314/EEC, [1] that is to say, has it ensured effective protection for individuals in the event of insolvency on the part of travel organisers or retailers, in so far as it has made provision that the value of the financial security provided by the travel organiser or retailer is to be adjusted to a set percentage of anticipated net revenues from the sale of the tourist package or to a minimum amount?

2. In so far as it may be found that there is an infringement on the part of the State, is that infringement sufficiently serious as to entail liability for damage?

[1] Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ 1990 L 158, p. 59).

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per la Lombardia (Italy) lodged on 2 August 2013 — Croce Amica One Italia Srl v Azienda Regionale Emergenza Urgenza (AREU)

(Case C-440/13)

(2013/C 344/68)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Lombardia

Parties to the main proceedings

Applicant: Croce Amica One Italia Srl

Defendant: Azienda Regionale Emergenza Urgenza (AREU)

Questions referred

1. Is it consistent with Community law for it to be permissible for a contracting authority, in the exercise of its power to withdraw a decision in relation to a public procurement procedure pursuant to Article 21d of Law No 241/1990, to decide not to proceed with the final award of the contract merely because criminal investigations are pending vis-à-vis the legal representative of the company to which the provisional award was made?

2. Is it consistent with Community law for there to be a derogation from the principle of the finality of findings of criminal liability, as expressed in Article 45 of Directive 2004/18/EC, [1] on grounds of administrative expediency, relating to an area of administrative autonomy?

3. Is it consistent with Community law for there to be a derogation from the principle of the finality of findings of criminal liability, as expressed in Article 45 of Directive 2004/18/EC, where pending criminal investigations concern offences relating to the tendering procedure covered by the administrative decision adopted by way of self-protection?

4. Is it consistent with Community law for the decisions adopted by a contracting authority in matters of public procurement to be open to unlimited review by a national administrative court, in exercise of the jurisdiction conferred in matters relating to public procurement, covering the reliability and the suitability of the tender, and thus going above and beyond the limited cases of clear absurdity, irrationality, failure to state adequate reasons or error as to the facts?'

[1] Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114).

Request for a preliminary ruling from the Unabhängiger Verwaltungssenat in Tirol (Austria) lodged on 7 August 2013 — Ute Reindl, MPREIS Warenvertriebs GmbH v Bezirkshauptmannschaft Innsbruck

(Case C-443/13)

(2013/C 344/69)

Language of the case: German

Referring court

Unabhängiger Verwaltungssenat in Tirol

Parties to the main proceedings

Defendants and appellants: Ute Reindl, MPREIS Warenvertriebs GmbH

Applicant and respondent: Bezirkshauptmannschaft Innsbruck

Questions referred

1. Is Article 1 of Regulation (EC) No 1086/2011 [1] amending Regulation (EC) No 2073/2005 to be understood as meaning that fresh poultry meat must satisfy the microbiological criterion set out in Annex I, Chapter 1, Row 1.28, to Regulation (EC) No 2073/2005 [2] at all stages of distribution?

2. Are food business operators which are active at the food distribution stage also subject in full to the regime under Regulation (EC) No 2073/2005?

3. Must the microbiological criterion set out in Annex I, Chapter 1, Row 1.28, to Regulation (EC) No 2073/2005 also be observed at all stages of distribution by food business operators which are not involved in production (being involved exclusively at the distribution stage)?

(1) Commission Regulation (EU) No 1086/2011 of 27 October 2011 amending Annex II to Regulation (EC) No 2160/2003 of the European Parliament and of the Council and Annex I to Commission Regulation (EC) No 2073/2005 as regards salmonella in fresh poultry meat (OJ 2011 L 281, p. 7).

(2) Commission Regulation (EC) No 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs (OJ 2005 L 338, p. 1).

Appeal brought on 6 August 2013 by Voss of Norway ASA against the judgment of the General Court (First Chamber) delivered on 28 May 2013 in Case T-178/11: Voss of Norway ASA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-445/13 P)

(2013/C 344/70)

Language of the case: English

Parties

Appellant: Voss of Norway ASA (represented by: F. Jacobacci, B La Tella, avvocati)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

Form of order sought

The appellant claims that the Court should:

— annul the judgment of the General Court of 28 May 2013 (T-178/11);

— order OHIM to pay the costs.

Pleas in law and main arguments

By its appeal, Voss of Norway ASA ('Voss') seeks annulment of the judgment of the General Court of the European Union ('GC') of 28 May 2013 in Case T-178/11 (' judgment under appeal'), by which the GC dismissed Voss' application seeking the annulment of the decision of the First board of Appeal ('BOA') of the Office for Harmonisation in the Internal market (Trade Marks and Designs) (OHIM) of 12 January 2011 in Case R 785/2010-1 ('the contested decision') upholding the request for a declaration of invalidity lodged by Nordic Spirit in respect of the Community trade mark ('CTM shape mark'), registered by Voss on 3 December 2004.

The appeal is based on the following grounds:

First Plea: the judgment under appeal failed to take into account Voss's second plea to the GC, namely that the burden of proof was reversed before the Board of Appeal

The GC failed to consider whether the BOA had made an error of law regarding the procedural question of the burden of proof. This plea in law has an independent significance overall for CTM law. This reversed Burden of Proof standard — which contravenes general principles of law — could become part of the body of relevant case-law. For that reason only, the BOA decision should have been annulled and the judgment under appeal set aside.

Second Plea: the GC also erroneously shifted the burden of proof

The GC also shifted the burden of proof, which rested exclusively on Nordic Spirit AB as the cancellation party contesting the validity of a registered CTM, on to Voss to submit concrete evidence that the Voss shape mark is distinctive. To that effect, the GC quoted case-law regarding trademark applications — and non-registered trademarks — that did not enjoy a presumption of validity, as Voss's CTM shape mark does. This constitutes a clear violation of the rules ensuring a fair trial, Article 99 CTMR (1) and Rule 37 (b) (iv) CTMIR (2) which, by itself, is sufficient to annul the contested decision.

Third Plea: the erroneous definition of the norms and customs of the sector which constitutes an infringement of Article 7(1) (b) CTMR

The GC correctly stated, at para. 45, that it is necessary to ascertain whether the contested CTM departs significantly from the norms and customs of the relevant sector. Thus the analysis of whether a 3D shape mark is distinctive requires first and foremost an examination of the 'norms of the sector' in order to then determine whether a particular 3D mark can be distinguished by the consumer from other undertakings.

However, the identification by the GC of the latter falls far short of a well-grounded definition of the 'norms' of the sector for beverages. The indications identified by the GC relating to the norms of the sector are first factually wrong (the reference to an inexistent 'cylindrical section') and so vague and general that — if applied — no beverage bottle would ever pass the test for distinctiveness (not even the famous Coca-Cola bottle, if it were the object of a cancellation action). By contrast, the Cancellation Division properly defined the norms of the sector.

Further, the Board of Appeal in decision R 2465/2011-2 dated 1 February 2012 (Freixenet v. OHIM), held at para. 36 that 'previously, nor the examiner, nor the Board, presented documents which contained references to the reality of the