

The main argument

In the absence of any provision of EU law on the matter, it is for the national law of each Member State to determine the procedural conditions governing actions to vindicate the rights enjoyed by citizens under EU law. However, that procedural autonomy is subject to observance of the principles of effectiveness and equivalence and to other generally applicable principles of law, such as legal certainty and the protection of legitimate expectations. Section 107 of the Finance Act 2007 fails to observe those principles and is thus incompatible with Article 4(3) TEU.

Request for a preliminary ruling from the Centrale Raad van Beroep (Nederland) lodged on 12 December 2013 — H.J. Mertens v Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen

(Case C-655/13)

(2014/C 78/05)

Language of the case: Dutch

Referring court

Centrale Raad van Beroep

Parties to the main proceedings

Applicant: H.J. Mertens

Defendant: Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen

Question referred

Should Article 71(1)(a)(i) of Regulation No 1408/71 ⁽¹⁾ be interpreted as precluding a frontier worker who, immediately after a full-time employment relationship with an employer in a Member State, is employed for fewer hours by another employer in the same Member State, from being classified as a partially unemployed frontier worker?

⁽¹⁾ Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ 1971 L 149, p. 2 [DE, FR, IT, NL]; English special edition: Series I Volume 1971(II) P. 416-463).

Request for a preliminary ruling from the Supremo Tribunal Administrativo (Portugal) lodged on 13 December 2013 — Surgicare — Unidades de Saúde SA v Fazenda Pública

(Case C-662/13)

(2014/C 78/06)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicant: Surgicare — Unidades de Saúde SA

Defendant: Fazenda Pública

Question referred

When the tax authorities suspect the existence of an abusive practice designed to obtain a VAT refund and Portuguese law provides for a mandatory preliminary procedure applicable to abusive practices in taxation matters, is that procedure to be regarded as inapplicable to VAT, given the Community origin of that tax?

Request for a preliminary ruling from the Finanzgericht München (Germany) lodged on 30 December 2013 — Fliesen-Zentrum Deutschland GmbH v Hauptzollamt Regensburg

(Case C-687/13)

(2014/C 78/07)

Language of the case: German

Referring court

Finanzgericht München

Parties to the main proceedings

Applicant: Fliesen-Zentrum Deutschland GmbH

Defendant: Hauptzollamt Regensburg

Question referred

Is Council Implementing Regulation (EU) No 917/2011 of 12 September 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tiles originating in the People's Republic of China ⁽¹⁾ valid?

⁽¹⁾ OJ 2011 L 238, p. 1.

Request for a preliminary ruling from the Juzgado Mercantil nº 3 de Barcelona (España) lodged on 27 December 2013 — Gimnasio Deportivo San Andrés, S.L., other parties: Gemma Atarés París and Agencia Estatal de la Administración Tributaria

(Case C-688/13)

(2014/C 78/08)

Language of the case: Spanish

Referring court

Juzgado Mercantil de Barcelona

Parties to the main proceedings

Applicant: Gimnasio Deportivo San Andrés, S.L.

Other parties: Gemma Atarés París and Agencia Estatal de la Administración Tributaria

Questions referred

1. Must the guarantee, that the transferee acquiring an undertaking in insolvency or a production unit of that undertaking will not take on liability for debts arising out of social security debts incurred before the award of the production unit or out of previous employment-related debts when the insolvency proceedings give rise to protection at least equivalent to that provided for in the Community directives, be considered to relate uniquely and exclusively to debts directly linked to employment contracts or employment relationships or, in the framework of overall protection of the rights of employees and the safeguarding of employment, must that guarantee be extended to employment-related or social security debts incurred before the award to a third party?
2. In the same context of guaranteeing the rights of employees, can the purchaser of the production unit obtain from the court dealing with the insolvency and authorising the award a guarantee, not only in relation to rights arising from the

employment contracts but also in relation to debts incurred before the award that the insolvent company may owe to employees whose employment relationship has already been terminated or in relation to earlier social security debts?

3. Does the person who acquires an insolvent undertaking or a production unit and undertakes to safeguard all or some of the contracts of employment, and accepts liability for them by subrogation, obtain the guarantee that there will not be claimed from him or transferred to him other obligations of the transferor connected to the contracts or [Or. 11] relationships where he accepts liability by subrogation, particularly earlier employment risks or social security debts?
4. In brief, as regards the transfer of production units or undertakings that have been judicially or administratively declared insolvent and in liquidation, can Directive 2001/23 ⁽¹⁾ be interpreted not only as permitting the safeguarding of contracts of employment but also as making it certain that the purchaser will not have to be liable for debts incurred before the award of that production unit[?]
5. Does the wording of Article 149(2) of the Ley Concursal Española (Spanish Law on Insolvency), in referring to the transfer of an undertaking, constitute the provision of national law required by Article 5(2)(a) of Directive 2001/23 for the exception to operate?
6. And, if this is so, must the award order issued by the court conducting the insolvency proceedings and which contains these guarantees and safeguards at all events be binding on all other courts or in administrative proceedings that may be brought against the new purchaser in respect of debts incurred before the date of purchase, with the result, therefore, that Article 44 of the Workers' Statute cannot render ineffective Article 149(2) and (3) of the Ley Concursal?
7. If, on the other hand, it were to be considered that Articles 149(2) and (3) of the Ley Concursal do not operate as the exception provided for in Article 5 of the Directive, the Court of Justice is asked to make it clear whether the rules laid down in Article 3(1) of the Directive will affect only the employment-related rights and obligations, strictly speaking, laid down in the contracts in force, so that rights or obligations such as those arising from social security contributions or other obligations in respect of employment contracts already terminated before the insolvency proceedings were initiated are not, in any circumstances, to be regarded as being transferred to the purchaser.

⁽¹⁾ Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ 2001 L 82, p. 16).