

Reference for a preliminary ruling by the Hoge Raad der Nederlanden by order of that Court of 30 January 2004 in the case of Levob Verzekeringen B.V., OB Bank N.V., c.s, against Staatssecretaris van Financiën

(Case C-41/04)

(2004/C 94/38)

Reference has been made to the Court of Justice of the European Communities by order of the Hoge Raad der Nederlanden of 30 January 2004, received at the Court Registry on 2 February 2004, for a preliminary ruling in the case of Levob Verzekeringen B.V., OB Bank N.V., c.s, against Staatssecretaris van Financiën on the following questions:

- 1 (a) Are Article 2(1) and Article 5(1) of the Sixth Directive, in conjunction with Article 6(1) thereof, to be interpreted as meaning that the acquisition of software, such as that in the present case and on terms such as those at issue in this dispute – whereby separate payment is stipulated in respect of the standard software, recorded on a carrier, developed and put on the market by the supplier, on the one hand, and the subsequent customisation thereof to meet the purchaser's requirements, on the other – must be regarded as a single supply?
- (b) If the answer to the above question is in the affirmative, are these provisions to be interpreted as meaning that this supply must be regarded as a service (of which the supply of the goods, namely the carriers, forms part)?
- (c) If the answer to that question is in the affirmative, is Article 9 of the Sixth Directive (in the version in force until 6 May 2002) to be interpreted as meaning that this service is supplied at the place referred to in Article 9(1)?
- (d) If the answer to the previous question is in the negative, which part of Article 9(2) of the Sixth Directive is applicable?
- 2 (a) If the answer to Question 1a is in the negative, are the provisions referred to therein to be interpreted as meaning that the provision of non-customised software on the carriers must be regarded as a supply of tangible property for which the agreed separate price constitutes the consideration for the purposes of Article 11A(1)(a) of the Sixth Directive?
- (b) If the answer to this question is in the negative, is Article 9 of the Sixth Directive to be interpreted as meaning that the service is supplied at the place referred to in Article 9(1) or at one of the places referred to in Article 9(2)?
- (c) Does the same apply to the service consisting of the customisation of software as applies to the provision of the standard software?

Reference for a preliminary ruling by the Corte Suprema di Cassazione by order of that court of 6 November 2003 in the case of Aro Tubi Trafilerie S.p.A. against Ministero dell'Economia e delle Finanze

(Case C-46/04)

(2004/C 94/39)

Reference has been made to the Court of Justice of the European Communities by order of the Corte Suprema di Cassazione (Supreme Court of Cassation) of 6 November 2003, received at the Court Registry on 6 February 2004, for a preliminary ruling in the case of Aro Tubi Trafilerie S.p.A. against Ministero dell'Economia e delle Finanze on the following question:

Must Directive 69/335/EEC ⁽¹⁾ concerning indirect taxes on the raising of capital, as amended by Directives 73/80/EEC ⁽²⁾ and 85/303/EEC ⁽³⁾, be interpreted as meaning that it precludes the levying of proportional registration duty on a merger through acquisition where all the share capital is owned not by the acquiring company but by the company acquired, in particular with regard to the possible existence of a restriction on the free movement of capital in this special case?

⁽¹⁾ OJ, English Special Edition 1969(II), p. 412

⁽²⁾ OJ L 103 of 18.4.1973, p. 15

⁽³⁾ OJ L 156 of 15.6.1985, p. 23

Action brought on 9 February 2004 by the Commission of the European Communities against the Kingdom of the Netherlands

(Case C-49/04)

(2004/C 94/40)

An action against the Kingdom of the Netherlands was brought before the Court of Justice of the European Communities on 9 February 2004 by the Commission of the European Communities, represented by Karen Banks and Wouter Wils, acting as Agents.

The applicant claims that the Court should:

1. declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2001/29/EC ⁽¹⁾ 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, or, in any event, by failing to forward those provisions to the Commission, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive;
2. order the Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments:

The period within which the directive had to be transposed expired on 22 December 2002.

⁽¹⁾ OJ 2001 L 167 of 22.6.2001, p. 10.