

**Reference for a preliminary ruling by the Consiglio di Stato in sede giurisdizionale, Sezione Quinta, by order of that court of 27 January 2004 in the case of SABA Italia SpA against the Comune di Bolzano and SEAB SpA**

(Case C-216/04)

(2004/C 190/13)

Reference has been made to the Court of Justice of the European Communities by order of the Consiglio di Stato in sede giurisdizionale (Council of State sitting as a court) of 27 January 2004, received at the Court Registry on 24 May 2004, for a preliminary ruling in the case of SABA Italia SpA against the Comune di Bolzano and SEAB SpA on the following question:

'Is the direct award, that is to say, in derogation from the procedures for the selection of contractors laid down in Directive 92/50/EEC<sup>(1)</sup>, of the management of public pay car parks to a public limited company the entire capital of which is publicly owned within the meaning of paragraph 6(b) of Article 44 of Law No 1 of the Region of Trentino-Alto Adige of 4 January 1993, as amended by Article 10 of Regional Law No 10 of 23 January 1998, compatible with Community law, in particular with the freedom to provide services, the prohibition of discrimination and the obligation to guarantee equal treatment, transparency and free competition referred to in Articles 12, 45, 46, 49 and 86 of the EC Treaty?'

<sup>(1)</sup> OJ L 209 of 24.07.1992, p. 1.

**Reference for a preliminary ruling by the Corte Suprema di Cassazione – Sezione Quinta Civile – by order of that court of 23 March 2004 in the case of Ministero dell'Economia e delle Finanze against Cassa di Risparmio di Firenze S.p.A., Fondazione Cassa di Risparmio di San Miniato e Cassa di Risparmio di San Miniato S.p.A.**

(Case C-222/04)

(2004/C 190/14)

Reference has been made to the Court of Justice of the European Communities by order of the Corte Suprema di Cassazione – Sezione Quinta Civile – (Supreme Court of Cassation – Fifth Civil Chamber), Italy, of 23 March 2004, received at the Court Registry on 28 May 2004.

For a preliminary ruling in the case of Ministero dell'Economia e delle Finanze against Cassa di Risparmio di Firenze S.p.A., Fondazione Cassa di Risparmio di San Miniato e Cassa di Risparmio di San Miniato S.p.A. on the following questions:

- (a) Must a group of bodies (namely banking foundations), created on the basis of Law No 218/90 and Legislative Decree No 356/90, as subsequently amended, be considered to be subject to the Community rules on competition – even where they are assigned objects of social benefit – as a result of owning controlling holdings in companies engaged in banking activity and as a result of administering those holdings, in relation to a very large number of bodies operating on the market, with the proceeds of the controlled undertakings devolving to the latter? With regard to the rules introduced by Legislative Decree No 153/99, does the possibility afforded those entities of using the proceeds of the disposal of such holdings to acquire and manage substantial shareholdings in other undertakings – including banking undertakings – for different purposes, including the economic development of the system, similarly constitute a commercial activity for the purposes of the application of Community law on competition?
- (b) Consequently, are those entities, under the rules contained in Law No 218/90 and Legislative Decree No 356/90, as subsequently amended, as well as the reform contained in Law No 461/98 and Legislative Decree No 153/99, subject to the Community rules on State aid (Articles 87 to 88 of the EC Treaty), in relation to a preferential tax regime which applies to them?
- (c) If question (b) above is answered in the affirmative, does or does not the system of direct tax relief on dividends received, which is at issue in this case, constitute State aid, within the meaning of Article 87 of the EC Treaty?
- (d) Again, if question (b) above is answered in the affirmative, is the Decision of the European Commission of 22 August 2002<sup>(1)</sup>, in which the rules on State aid were held to be inapplicable to the foundations of banking origin, valid, having regard to the issues of lawfulness and the lack and/or inadequacy of reasoning set out in this order for reference?
- (e) Leaving out of consideration the question whether the rules on State aids are applicable, does according more favourable tax treatment to the distribution of the profits of the – exclusively national – conferred banking undertakings, controlled by the foundations, and received by the latter, or of those undertakings in which holdings were acquired using the proceeds from the disposal of holdings in conferred banking companies, constitute discrimination against the undertakings invested in as compared with the other undertakings operating on the market and, at the same time, infringe the principles of freedom of establishment and the free movement of capital, in relation to Articles 12, 43 et seq and Article 56 et seq of the EC Treaty?

<sup>(1)</sup> OJ L 55, 1.3.2003, p. 56.