Reference for a preliminary ruling from the Corte Suprema di Cassazione by order of that court of 23 June 2004 and 10 November 2004, received at the Court Registry on 31 January 2005, in the case of Reemtsma Cigarettenfabriken Gmbh against Ministero delle Finanze

(Case C-35/05)

(2005/C 93/14)

(Language of the case: Italian)

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, Italy) by order of 23 June 2004 and 10 November 2004, received at the Court Registry on 31 January 2005, for a preliminary ruling in the case of Reemtsma Cigarettenfabriken Gmbh against Ministero delle Finanze, on the following questions:

1) Must Articles 2 and 5 of the Eighth Council Directive 79/1072/EEC [1] of 6 December 1979, in so far as they make reimbursement to a non-resident recipient of goods or services conditional on use of the goods and services for the purposes of taxable transactions, be interpreted as meaning that even VAT that is not due, has been charged incorrectly as output tax and paid to the revenue authorities is refundable? If the answer is in the affirmative, is a national provision which precludes reimbursement to a non-resident recipient of goods or services on the ground that the tax charged and paid although not due is not deductible contrary to the abovementioned provisions?

2) In general, is it possible to infer from the uniform Community rules that the recipient of goods or services is the person liable for payment of tax to the revenue authorities? Is it compatible with those rules and in particular with the principles of neutrality of VAT, effectiveness and non-discrimination, not to grant under domestic law to a recipient of goods or services who is subject to VAT and who is treated under national law as being subject to the obligations of invoicing and payment of the tax, a right against the revenue authorities to claim reimbursement in cases where tax that is not due is charged and paid? Are national rules – as interpreted by the national courts – under which a recipient of goods or services may bring an action only against the transferor or provider of the service and not against the revenue authorities, despite the existence of a case of substitution of that kind under domestic law in relation to direct taxes where both parties (the withholding agent and the taxpayer) are entitled to apply to the revenue authorities for reimbursement, contrary to the principles of effectiveness and non-discrimination in the matter of reimbursement of VAT collected in breach of Community law?

[1] OJ L 331 of 27 December 1979, p. 11.

Reference for a preliminary ruling from the Överklagandenämnden för högskolan by decision of that court of 1 February 2005 in Kaj Lyyski v Umeå universitet

(Case C-40/05)

(2005/C 93/15)

(Language of the case: Swedish)

Reference has been made to the Court of Justice of the European Communities by decision of the Överklagandenämnden för högskolan (Sweden) of 1 February 2005, received at the Court Registry on 3 February 2005, for a preliminary ruling in the proceedings between Kaj Lyyski and Umeå universitet on the following question:

1. Does Community law, in particular Article 12 EC, prevent the imposition, on assessment of an applicant's eligibility for admission to teacher training intended in the short term to meet the need for qualified teachers in Sweden, of a requirement of employment in a Swedish school? Can such a requirement be considered justified and proportional?

2. Does it make a difference to the answer to the first question if an applicant for the training course who is employed in a school in a Member State other than Sweden is a Swedish national or a national of another Member State?

3. Does it make a difference to the answer to the first question if the teacher training is intended to be of limited duration or if the teacher involved is of a longer duration?