Judgment of the Court (Second Chamber) of 7 September 2006 (reference for a preliminary ruling from the Cour de cassation — France) — Laboratoires Boiron SA v Union de recouvrement des cotisations de sécurité sociale et d'allocations familiales (Urssaf) de Lyon, assuming the rights and obligations of the Agence centrale des organismes de sécurité sociale (ACOSS),

(Case C-526/04) [1]

(State aid — Articles 87 and 88(3) CE — Tax on direct sales of medicines — Applicable to pharmaceutical laboratories rather than wholesale distributors — Prohibition on implementing a non-notified aid measure — Possibility of pleading that an aid measure is unlawful in order to obtain reimbursement of a charge — Compensation for discharging public service obligations imposed on wholesale distributors — Burden of proof in relation to overcompensation — Detailed rules laid down by national law — Prohibition on making reimbursement of a charge practically impossible or excessively difficult)

(2006/C 281/18)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Laboratoires Boiron SA

Defendant: Union de recouvrement des cotisations de sécurité sociale et d'allocations familiales (Urssaf) de Lyon, assuming the rights and obligations of the Agence centrale des organismes de sécurité sociale (ACOSS)

Re:

Reference for a preliminary ruling — Cour de Cassation — Interpretation of Articles 86 and 87 — Classification as State aid of the absence of liability to a tax on wholesale sales of proprietary medicinal products by wholesalers subject to certain public service obligations in relation to their range, stocks and delivery times of products (wholesale distributors)

Operative part of the judgment

1. *Community law must be interpreted as meaning that a pharmaceutical laboratory liable to pay a contribution such as that provided for by Article 12 of Law No 97-1164 of 19 December 1997 on social security funding for 1998 is entitled to plead that the fact that wholesale distributors are not liable for that contribution constitutes State aid in order to obtain reimbursement of the part of the sums paid which corresponds to the economic advantage unfairly obtained by wholesale distributors.*

2. *Community law does not preclude the application of rules of national law which make reimbursement of a mandatory contribution such as that provided for in Article 12 of Law No 97-1164 subject to proof by the claimant seeking reimbursement that the advantage derived by wholesale distributors from their not being liable to pay that contribution exceeds the costs which they bear in discharging the public service obligations imposed on them by the national rules and, in particular, that at least one of the conditions laid down in the judgment in Case C-280/00 Altmark Trans and Regierungspräsidium Magdeburg [2003] ECR I-7747 is not satisfied.*

   However, in order to ensure compliance with the principle of effectiveness, if the national court finds that the fact of requiring a pharmaceutical laboratory such as Boiron to prove that wholesale distributors are overcompensated, and thus that the tax on direct sales amounts to State aid, is likely to make it impossible or excessively difficult for such evidence to be produced, since inter alia that evidence relates to data which such a laboratory will not have, the national court is required to use all procedures available to it under national law, including that of ordering the necessary measures of inquiry, in particular the production by one of the parties or a third party of a particular document.

[1] OJ C 69, 19.03.2005.

Judgment of the Court (First Chamber) of 14 September 2006 (reference for a preliminary ruling from the Finanzgericht München, Germany) — Hausgemeinschaft Jörg und Stefanie Wollny v Finanzamt Landshut

(Case C-72/05) [1]

(Sixth VAT Directive — Article 11A(1)(c) — Use of property forming part of the assets of a business for private purposes by a taxable person — Treatment of that use as a supply of services for consideration — Determination of the taxable amount — Definition of full cost to the taxable person of providing those services)

(2006/C 281/19)

Language of the case: German

Referring court

Finanzgericht München, Germany

Parties to the main proceedings

Applicant: Hausgemeinschaft Jörg und Stefanie Wollny

Defendant: Finanzamt Landshut

Re:

Reference for a preliminary ruling — Finanzgericht München — Interpretation of Article 11(A)(1)(c) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Taxable amount of supply of service consisting of use of part of a building forming, in its entirety, part of the assets of a business for the private use of the taxable person — Definition of 'full cost' to the taxable person

Operative part of the judgment

Article 11(A)(1)(c) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 95/7/EC of 10 April 1995, is to be interpreted as meaning that it does not preclude the taxable amount for VAT in respect of the private use of part of a building treated by a taxable person as forming, in its entirety, part of the assets of his business from being fixed at a portion of the acquisition or construction costs of the building, established in accordance with the length of the period for adjustment of deductions concerning VAT provided for in Article 20 of that directive.

That taxable amount must include the costs of acquiring the land on which the building is constructed when that acquisition has been subject to VAT and the taxable person has deducted that tax.

([1]) OJ C 93, 16.4.2005.

Judgment of the Court (First Chamber) of 14 September 2006 — Commission of the European Communities v Hellenic Republic

(Case C-82/05) ([1])

(Failure of a Member State to fulfil obligations — Free movement of goods — Article 28 EC — Quantitative restrictions — Measures having equivalent effect — Marketing of frozen bakery products)

(2006/C 281/20)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Patakia, Agent)

Defendant: Hellenic Republic (represented by: N. Dafniou and M. Apessos, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 28 EC — National legislation considering the 'bake-off' process (thawing and reheating of pre-baked and frozen bread) to be a process of manufacturing bread and allowing only bakeries to sell bread manufactured in that way.

Operative part of the judgment

The Court:

1. *Declares that, by treating the process of final baking or reheating of 'bake-off' products in the same way as the full process of manufacturing bread and by making it subject to the conditions prescribed by the national legislation with regard to bakeries, the Hellenic Republic has failed to fulfil its obligations under Article 28 EC.*

2. *Orders the Hellenic Republic to pay the costs.*

([1]) OJ C 93, 16.04.2005

Judgment of the Court (Second Chamber) of 14 September 2006 (reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven — Netherlands) — Stichting Zuid-Hollandse Milieufederatie v Minister van Landbouw, Natuur en Voedselkwaliteit

(Case C-138/05) ([1])

(Authorisation for the placing of plant protection and biocidal products on the market — Directive 91/414/EEC — Article 8 — Directive 98/8/EC — Article 16 — Power of Member States during the transitional period)

(2006/C 281/21)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven