

By its eighth ground of appeal, the Commission argues, finally, that the judgment under appeal is totally disproportionate since it annuls its decision in its entirety whereas it was possible to distinguish the amount of the principal from the amount of interest payable, just as it was possible to distinguish the use of a simple interest rate from that of a compound interest rate.

(¹) Commission Decision 2002/14/EC of 12 July 2000 on the State aid granted by France to Scott Paper SA/Kimberly-Clark (OJ 2002 L 12, p. 1).

Reference for a preliminary ruling from the Landgericht Regensburg (Germany) lodged on 21 June 2007 — Staatsanwaltschaft Regensburg v Klaus Bourquain

(Case C-297/07)

(2007/C 211/37)

Language of the case: German

Referring court

Landgericht Regensburg

Parties to the main proceedings

Applicant: Staatsanwaltschaft Regensburg

Defendant: Klaus Bourquain

Question referred

With regard to the interpretation of Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (¹), does the rule prohibiting a person whose trial has been finally disposed of in one contracting party from being prosecuted in another contracting party for the same act apply, where the penalty imposed on him could never be enforced under the laws of the sentencing contracting party?

(¹) OJ 2000 L 239, p. 19.

Reference for a preliminary ruling from VAT and Duties Tribunal, London (United Kingdom) made on 29 June 2007 — J D Wetherspoon PLC v The Commissioners of Her Majesty's Revenue and Customs

(Case C-302/07)

(2007/C 211/38)

Language of the case: English

Referring court

VAT and Duties Tribunal, London

Parties to the main proceedings

Applicant: J D Wetherspoon PLC

Defendant: The Commissioners of Her Majesty's Revenue and Customs

Questions referred

1. Is the rounding off of VAT amounts governed solely by national law, or instead governed by Community law? In particular do the first and second paragraphs of Article 2 of the First Directive (¹) and Articles 11A(l)(a) and/or 12(3)(a) and/or Article 22(3)(b), (version as at 1st January 2004) of the Sixth Directive (²) confirm that rounding off is a matter of Community law?
2. In particular:
 - (i) Does Community law prevent the application of a national rule or practice of the national taxing authority which requires rounding up of any given VAT amount whenever the fraction of the smallest unit of currency is concerned is at or above 0.50 (for example, 0.5 pence is required to be rounded up to the nearest whole pence)?
 - (ii) Does Community law require that the taxpayers be allowed to round down any VAT amount which includes a fraction of the smallest unit of currency available?
3. In a VAT inclusive sale at which level does Community law require rounding off to be applied for the purpose of calculating the VAT due: at the level of each individual item, each line of goods, each supply (if more than one supply is included in the same basket), each transaction/basket total, or each VAT accounting period or some other level?

4. Is the answer to any of the questions affected by the Community law principles of equal treatment and fiscal neutrality, particularly by reference to the existence, in the United Kingdom, of a concession by the relevant taxing authorities allowing only certain traders to round down the VAT amounts to be accounted for?

(¹) First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes (OJ 71, p. 1301), English special edition: Series 1, Chapter 1967, p. 14.

(²) 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 L 145, p. 1).

Reference for a preliminary ruling from the Korkein hallinto-oikeus, Finland lodged on 29 June 2007 — Aberdeen Property Fininvest Alpha Oy

(Case C-303/07)

(2007/C 211/39)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus, Finland

Parties to the main proceedings

Applicant: Aberdeen Property Fininvest Alpha Oy

Other parties: Uudenmaan verovirasto and Helsingin kaupunki

Question referred

Are Articles 43 EC and 48 EC and Articles 56 EC and 58 EC to be interpreted as meaning that, in order to safeguard the fundamental freedoms set out therein, an osakeyhtiö (company limited by shares) or sijoitusrahasto (investment fund) constituted under Finnish law and a SICAV constituted under Luxembourg law are to be regarded as comparable despite the fact that a form of company corresponding exactly to a SICAV is not recognised in Finnish legislation, having regard, first, to the fact that a SICAV, which is a company under Luxembourg law, is not mentioned in the list of companies referred to in Article 2(a) of Directive 90/435/EEC (¹), with which the Finnish withholding tax legislation applicable in the present case is consistent, and, second, to the fact that a SICAV is exempt from

income tax under domestic Luxembourg tax legislation? Is it therefore contrary to the above articles of the EC Treaty for a SICAV resident in Luxembourg which is the recipient of a dividend not to be exempt from withholding tax charged in Finland on dividends?

(¹) Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, OJ L 225, 20.8.1990, p. 6.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 2 July 2007 — Directmedia Publishing GmbH v 1. Albert-Ludwigs-Universität Freiburg, 2. Professor Ulrich Knoop

(Case C-304/07)

(2007/C 211/40)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant: Directmedia Publishing GmbH

Respondents: 1. Albert-Ludwigs-Universität Freiburg, 2. Professor Ulrich Knoop

Question referred

Can the adoption of data from a database protected in accordance with Article 7(1) of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (database directive) (¹) and their incorporation in a different database constitute an extraction within the meaning of Article 7(2)(a) of that directive even in the case where that adoption follows individual assessments resulting from consultation of the database, or does extraction within the meaning of that provision presuppose the (physical) copying of data?

(¹) OJ 1996 L 77, p. 20.