

**Parties to the main proceedings**

*Applicant:* PARAT Automotive Cabrio Textiltetőket Gyártó Kft.

*Defendant:* Adó- és Pénzügyi Ellenőrzési Hivatal Hatósági Főosztály Észak-magyarországi Kihelyezett Hatósági Osztály

**Re:**

Reference for a preliminary ruling — Nógrád Megyei Bíróság — Interpretation of Article 17 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) — National legislation restricting the deductibility of the tax relating to the subsidised acquisition of equipment to the non-subsidised portion

**Operative part of the judgment**

1. Article 17(2) and (6) of the 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, must be interpreted to the effect that it precludes national legislation which in the case of acquisition of goods subsidised by public funds, allow the deduction of related VAT only up to the limit of the part of the costs of that acquisition that is not subsidised.
2. Article 17(2) of the Sixth Directive confers on taxable persons rights on which they may rely before a national court to contest national rules that are incompatible with that Article.

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<sup>(1)</sup> OJ C 116, 9.5.2008.

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**Judgment of the Court (Fourth Chamber) of 2 April 2009**  
(reference for a preliminary ruling from the Thüringer Finanzgericht, Gotha (Germany)) — Glückauf Brauerei GmbH v Hauptzollamt Erfurt

(Case C-83/08) <sup>(1)</sup>

*(Harmonisation of the structures of excise duties — Directive 92/83/EEC — Article 4(2) — Small independent brewery which is legally and economically independent of any other brewery — Criteria of legal and economic independence — Possibility of being subject to indirect influence)*

(2009/C 141/27)

Language of the case: German

**Referring court**

Thüringer Finanzgericht, Gotha

**Parties to the main proceedings**

*Applicant:* Glückauf Brauerei GmbH

*Defendant:* Hauptzollamt Erfurt

**Re:**

Reference for a preliminary ruling — Thüringer Finanzgericht, Gotha (Germany) — Interpretation of Article 4(2) of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages (OJ 1992 L 316, p. 21) — Classification as 'independent small brewery' for the purposes of application of reduced rates of duty — Criterion of 'economic independence' — Brewery liable, because of shareholdings and the allocation of voting rights, to be indirectly influenced by two other breweries

**Operative part of the judgment**

Article 4(2) of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages must be interpreted as meaning that a situation characterised by the existence of structural links in terms of shareholdings and voting rights, and which results in a situation in which one individual, performing his duties as manager of a number of the breweries concerned, is able, independently of his actual conduct, to exercise influence over the taking of business decisions by those breweries, prevents them from being considered economically independent of each other.

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<sup>(1)</sup> OJ C 128, 24.5.2008.

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**Judgment of the Court (Fifth Chamber) of 2 April 2009**  
(Reference for a preliminary ruling from the Bundesfinanzhof, Germany) — Hauptzollamt Bremen v J.E. Tyson Parketthandel GmbH hanse j.

(Case C-134/08) <sup>(1)</sup>

*(Regulation (EC) No 2193/2003 — Additional customs duties on imports of certain products originating in the United States of America — Temporal scope — Article 4(2) — Products exported after the entry into force of that regulation for which it can be demonstrated that they were already on their way to the Community when those duties were first applied — Whether subject to duty)*

(2009/C 141/28)

Language of the case: German

**Referring court**

Bundesfinanzhof

**Parties to the main proceedings**

*Applicant:* Hauptzollamt Bremen

*Defendant:* J.E. Tyson Parketthandel GmbH hanse j.

**Re:**

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 4(2) of Council Regulation (EC) No 2193/2003 of 8 December 2003 establishing additional customs duties on imports of certain products originating in the United States of America (OJ 2003 L 328, p. 3) — Application of additional customs duties to products exported from the United States of America to the Community after the entry into force of that regulation for which it can be demonstrated that they were already on their way to the Community, with no possibility of changing their destination, when those duties were first applied

**Operative part of the judgment**

Article 4(2) of Council Regulation (EC) No 2193/2003 of 8 December 2003 establishing additional customs duties on imports of certain products originating in the United States of America must be interpreted in a manner consistent with its wording, namely that products for which it can be demonstrated that they are already on their way to the European Community on the date of entry into force of that regulation, and whose destination cannot be changed, are not to be subject to the additional duty.

<sup>(1)</sup> OJ C 171, 5.7.2008.

**Judgment of the Court (Third Chamber) of 2 April 2009  
(reference for a preliminary ruling from the  
Oberlandesgericht Karlsruhe — Germany) — Criminal  
proceedings against Rafet Kqiku**

(Case C-139/08) <sup>(1)</sup>

*(Visas, asylum, immigration — Third-country national holding a Swiss residence permit — Entry of and stay in the territory of a Member State for purposes other than transit — Lack of a visa)*

(2009/C 141/29)

Language of the case: Germany

**Referring court**

Oberlandesgericht Karlsruhe

**Party/parties in the main proceedings**

Rafet Kqiku

**Re:**

Reference for a preliminary ruling — Oberlandesgericht Karlsruhe (Germany) — Interpretation of Articles 1 and 2 of Decision No 896/2006/EC of the European Parliament and of the Council of 14 June 2006 establishing a simplified regime for the control of persons at the external borders based on the unilateral recognition by the Member States of certain residence

permits issued by Switzerland and Liechtenstein for the purpose of transit through their territory (OJ 2006 L 167, p. 8) — Possibility for a national of the former State Union of Serbia and Montenegro residing in Switzerland and holding a Swiss type C permanent resident permit to enter the territory of the Federal Republic of Germany for purposes other than transit and to remain there for two days without a visa

**Operative part of the judgment**

The Court:

Decision No 896/2006/EC of the European Parliament and of the Council of 14 June 2006 establishing a simplified regime for the control of persons at the external borders based on the unilateral recognition by the Member States of certain residence permits issued by Switzerland and Liechtenstein for the purpose of transit through their territory must be interpreted as meaning that the residence permits listed in the annex to that decision, issued by the Swiss Confederation or the Principality of Liechtenstein to third-country nationals subject to a visa requirement, are considered to be equivalent to a transit visa only. As regards entering the territory of the Member States for the purpose of transit, the requirements laid down in Articles 1(1) and 2 of Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement are fulfilled if the person covered by that decision is in possession of a residence permit issued by the Swiss Confederation or the Principality of Liechtenstein which is listed in the annex to that decision.

<sup>(1)</sup> OJ C 183, 19.07.2008.

**Judgment of the Court (First Chamber) of 23 April 2009  
(reference for a preliminary ruling from the Hof van  
Cassatie van België (Belgium)) — Draka NK Cables Ltd,  
AB Sandvik International, VO Sembodja BV, Parc  
Healthcare International Ltd v Omnipol Ltd**

(Case C-167/08) <sup>(1)</sup>

*(Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Article 43(1) — Jurisdiction and enforcement of judgments — Notion of ‘party’)*

(2009/C 141/30)

Language of the case: Dutch

**Referring court**

Hof van Cassatie van België

**Parties to the main proceedings**

Applicants: Draka NK Cables Ltd, AB Sandvik International, VO Sembodja BV, Parc Healthcare International Ltd

Defendant: Omnipol Ltd