**Parties to the main proceedings**

*Applicant:* Alicja Sosnowska

*Defendant:* Dyrektor Izby Skarbowej we Wrocławiu Ośrodek Zamiejscowy w Wałbrzychu

**Re:**

Reference for a preliminary ruling — Wojewódzki Sąd Administracyjny we Wrocławiu — Interpretation of the third paragraph of Article 5 EC, Article 2 of Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes (OJ, English Special Edition, 1967, p. 14), and Articles 18(4) and 27(1) 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 VAT legislation laying down, in relation to the period for refunding overpayments, less favourable rules for taxpayers beginning to carry out taxable operations and registered as taxpayers making intra-Community supplies — Principles of fiscal neutrality and proportionality

**Operative part of the judgment**

1. *Article 18(4) 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, as amended by Council Directive 2005/92/EC of 2 December 2005, and the principle of proportionality preclude national legislation, such as that at issue in the main proceedings, which, in order to allow investigations required to prevent tax evasion and avoidance, extends from 60 to 180 days, as from the date of submission of the taxable person's VAT return, the period available to the national tax office for repayment of excess VAT to a category of taxable persons, unless those persons lodge a security deposit to a value of PLN 250 000;*

2. *Provisions such as those at issue in the main proceedings do not constitute 'special measures for derogation' intended to prevent certain types of tax evasion or avoidance within the meaning of Article 27(1) of the Sixth Directive 77/388, as amended by Directive 2005/92.*

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([1]) OJ C 69, 24.3.2008.

**Judgment of the Court (Third Chamber) of 12 August 2008 (reference for a preliminary ruling from the Cour d'appel de Montpellier — France) — Criminal proceedings of extradition v Ignacio Pedro Santesteban Goicoechea**

**(Case C-296/08 PPU)** ([1])

***(Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — Articles 31 and 32 — European arrest warrant and the surrender procedures between Member States — Possibility for the State executing an extradition request to apply a convention adopted before 1 January 2004 but applicable in that State from a later date)***

(2008/C 260/05)

*Language of the case: French*

**Referring court**

Cour d'appel de Montpellier

**Party in the main proceedings**

Ignacio Pedro Santesteban Goicoechea

**Re:**

Reference for a preliminary ruling — Cour d'appel de Montpellier (France) — Interpretation of Articles 31 and 32 of the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1) — Power of a Member State to use in its relations with another Member State procedures other than those provided for in the Framework Decision, in particular, those provided for by the Dublin Convention of 27 September 1996 relating to extradition between the Member States of the European Union — Effect of the failure of the Member State issuing the arrest warrant to give notification of the agreements and arrangements which it wishes to continue to apply — Possibility, for the Member State executing the arrest warrant, to apply a convention adopted prior to 1 January 2004, but which entered into force in that Member State after that date

**Operative part of the judgment**

1. *Article 31 of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States must be interpreted as referring only to the situation in which the European arrest warrant system is applicable, which is not the case where a request for extradition relates to acts committed before a date specified by a Member State in a statement made pursuant to Article 32 of that Framework Decision;*

2. *Article 32 of Framework Decision 2002/584 must be interpreted as not precluding the application by an executing Member State of the Convention relating to extradition between the Member States of the European Union drawn up by Council Act of 27 September 1996 and signed on that date by all the Member States, even where that convention became applicable in that Member State only after 1 January 2004.*

(1) OJ C 223, 30.8.2008.

**Appeal brought on 27 June 2008 by Landtag Schleswig-Holstein against the order lodged on 3 April 2008 by the Court of First Instance (Second Chamber) in Case T-236/06, Landtag Schleswig-Holstein v Commission of the European Communities**

**(Case C-281/08 P)**

(2008/C 260/06)

*Language of the case: German*

**Parties**

*Appellant:* Landtag Schleswig-Holstein (represented by: S. Laskowski and J. Caspar, acting as Agents)

*Other party to the proceedings:* Commission of the European Communities

**Form of order sought**

— declare the appeal to be admissible and well founded;

— annul the order of the Court of First Instance of 3 April 2008;

— uphold the appellant's application at first instance and declare the application in Case T-236/06 to be admissible and well founded;

— in the alternative, refer the case back to the Court of First Instance, for the latter to admit the original application and the prior proceedings to be continued;

— rule on costs and order the Commission to pay all of the costs of the present proceedings.

**Pleas in law and main arguments**

The Court of First Instance rejected as inadmissible the appellant's application for annulment brought against the Commission of the European Communities on the ground that the appellant is not a legal person within the meaning of the fourth paragraph of Article 230 EC. The application for annulment was brought against the Commission decisions of 10 March 2006 and 23 June 2006, by which the appellant was refused access to document SEK(2005) 420 containing a legal analysis of a draft framework decision, under discussion in the Council, on the retention of data for purposes of the prevention, investigation, detection and prosecution of crime and criminal offences, including terrorism.

The appellant bases its appeal against the contested order of the Court of First Instance on two grounds.

*First, it alleges that the Court of First Instance infringed the audi alteram partem rule in judicial proceedings.* This principle is designed, inter alia, as an expression of the guarantee of a fair hearing and effective legal protection, to prevent judicial decisions from being potentially influenced by arguments which the parties have not been given the opportunity to discuss. As a result, a decision causing surprise to the parties should be avoided. In order to avoid a judgment of such a kind, the Court of First Instance should have given the appellant the opportunity to obtain clarification.

*Secondly, the appellant submits that Court of First Instance infringed Community law* by misinterpreting the constituent element *'legal person'* within the meaning of the fourth paragraph of Article 230 EC, and erred in law by denying the status of legal person, and, in consequence, *locus standi* to the appellant.

The Court of First Instance proceeded on the basis that the President of the Schleswig-Holstein Landtag (*Land* Parliament) represents, in the context of his powers as legal representative, not the appellant, but rather *'the Land directly'*, as a result of which it concluded that the appellant does not have legal capacity and thus also does not have *locus standi* before the Community Courts. It can be deduced from this that the Court of First Instance would have regarded the application as admissible had it been brought by the *'Land* Schleswig-Holstein' rather than by the appellant. This view is not only incorrect in law, inasmuch as it is at odds with the Constitution of the *Land* of Schleswig-Holstein, but also inasmuch as it constitutes, in the appellant's view, a surprising decision which the latter should not have had to expect. The order of the Court of First Instance is wrong in law, *first*, because it failed to recognise that the Landtag is, according to the Constitution of the *Land* of Schleswig-Holstein, the *'highest body of political aspiration elected by the people'*, and, *secondly*, because the Court of First Instance did not realise that the President of the Landtag represents the Landtag in its entirety with regard to constitutional disputes affecting it. The term *'Land'* is used, legally, in an extensive and non-specific way, and may refer, depending on the legal context, to both the *Land* Government and the *Land* Parliament.

**Reference for a preliminary ruling from the Tribunal de Première Instance de Mons (Belgium) lodged on 14 July 2008 — Societe De Gestion Industrielle (SGI) v Belgian State**

**(Case C-311/08)**

(2008/C 260/07)

*Language of the case: French*

**Referring court**

Tribunal de Première Instance de Mons