4. The Commission maintains in addition that Article 4(1) of Directive 79/409/EEC has not been transposed correctly because no formal procedure for designating areas as SPAs has been provided for, there is no express reference and link between the species in Annex I and the requirement to designate SPAs and there is no reference to the requirement to take into account trends and variations in population levels of protected species.

5. The Commission then finds that Article 5 of Directive 79/409/EEC has not been transposed fully and correctly because the Greek legislation contains no general requirement of species protection as laid down by the directive but is oriented towards hunting. Furthermore, the prohibition of deliberate killing of protected species and deliberate taking of their eggs has not been transposed.

6. Lastly, the Commission considers that Article 8(1) of Directive 79/4409/EEC has not been transposed correctly, because in the Greek legislation there is no general prohibition of the use of all means, arrangements or methods used for the large-scale or non-selective capture or killing of birds or capable of causing the local disappearance of a species.

7. The Commission accordingly considers that the Hellenic Republic has not transposed fully and/or correctly the requirements resulting from Articles 3(1) and (2), 4(1), 5 and 8(1) of Directive 79/409/EEC on the conservation of wild birds.

([1]) OJ L 103 of 25.4.1979, p. 1.

Reference for a preliminary ruling from the Tribunal Superior de Justicia de Murcia (Spain) lodged on 19 June 2008 — María Julia Zurita García v Delegado del Gobierno en la Región de Murcia

(Case C-261/08)

(2008/C 209/49)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Murcia

Parties to the main proceedings

Applicant: María Julia Zurita García

Defendant: Delegado del Gobierno en la Región de Murcia

Question referred

Should Article 62(1) and (2)(a) of the Treaty Establishing the European Community and Articles 5, 11 and 13 of Regulation (EC) No 562/2006 ([1]) of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) be interpreted as precluding national legislation, and the case-law which interprets it, which permits the substitution of the expulsion of any 'third country national' who does not have documentation authorising him to enter and remain in the territory of the European Union by the imposition of a fine?

([1]) OJ L 105, p. 1.

Reference for a preliminary ruling from the Østre Landsret (Eastern Regional Court) (Denmark) lodged on 19 June 2008 — CopyGene A/S v Skatteministeriet

(Case C-262/08)

(2008/C 209/50)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: CopyGene A/S

Defendant: Skatteministeriet

Questions referred

1. Is the term activity 'closely related' to hospital care in Article 13A(1)(b) of the Sixth Directive ([1]) to be interpreted as implying a temporal requirement so that the hospital care to which the service is closely related must exist or be specifically performed, commenced or envisaged, or is it sufficient that the service will potentially be closely related to possible, but as yet non-existent or undetermined future hospital care, so that the services supplied by a stem cell bank, consisting in the collection, transportation, analysis and storage of umbilical cord blood from newborns for autologous use, are covered by it?

   In that connection, is it relevant that the services described cannot be performed at a later time than the time of delivery?

2. Is Article 13A(1)(b) of the Sixth Directive to be interpreted as covering general preventative services where the services are supplied before the hospital or medical care takes place and before the hospital or medical care is required in both temporal and health terms?

3. Is the term 'other duly recognised establishments of a similar nature' in Article 13A(1)(b) of the Sixth Directive to be interpreted as covering private stem cell banks where the services — which are performed and supplied by professional health personnel in the form of nurses, midwives and bioanalysts — consists in the collection, transportation, analysis and storage of umbilical cord blood from newborns with a view to autologous use in connection with possible future hospital care where the stem cell banks concerned do not receive support from the public heath insurance scheme and where the expenditure on the services provided by these stem cell banks is not covered by the public health insurance scheme?

   In that connection, is it relevant whether or not a private stem cell bank has obtained authorisation from a Member State's competent health authorities to handle tissue and cells — in the form of processing, preserving and storing stem cells from umbilical cord blood for autologous use — pursuant to national legislation which implements Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells ([2])?

4. Is the answer to Questions 1 to 3 affected by whether the above services are supplied with a view to possible allogeneic use or provided by a private stem cell bank which has obtained authorisation from a Member State's competent health authorities to handle tissue and cells — in the form of processing, preserving and storing stem cells from umbilical cord blood for autologous use — pursuant to national legislation which implements Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells?

([1]) 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).
([2]) OJ 2004 L 102, p. 48.

Reference for a preliminary ruling from the Högsta domstolen (Sweden) lodged on 19 June 2008 — Djurgården-Lilla Värtans Miljöskyddsförening v Stockholms kommun genom dess marknämnd

(Case C-263/08)

(2008/C 209/51)

Language of the case: Swedish

Referring court

Högsta domstolen

Parties to the main proceedings

Applicant: Djurgården-Lilla Värtans Miljöskyddsförening

Defendant: Stockholms kommun genom dess marknämnd

Questions referred

1. Is point 10 of Annex II to Directive 85/337 ([1]) to be interpreted as meaning that it encompasses water-related works which involve the drawing off from a tunnel for power cables of groundwater leaking into it and infiltration (supply) of water into the ground or hill to compensate for any reduction in the groundwater, and the construction and maintenance of installations for the drawing off and infiltration?

2. If the answer to Question 1 is affirmative: Does the provision in Article 10a of Directive 85/337 — that under certain circumstances the public concerned is to have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of a decision — imply that there is also a requirement that the public concerned is to be entitled to challenge a decision of a court in planning consent proceedings in a case where the public concerned has had the opportunity of participating in the court's examination of the question of planning consent and of submitting its views to that court?

3. If the answers to Questions 1 and 2 are affirmative: Are Articles 1(2), 6(4) and 10a of Directive 85/337 to be interpreted as meaning that different national requirements can be laid down with regard to the public concerned referred to in Articles 6(4) and 10a, with the result that small, locally established environmental protection associations have a right to