

Judgment of the Court (Second Chamber) of 7 October 2010 (reference for a preliminary ruling from the *Rechtbank van eerste aanleg te Antwerpen* (Belgium)) — **Criminal proceedings against Vítor Manuel dos Santos Palhota, Mário de Moura Gonçalves, Fernando Luis das Neves Palhota, Termiso Limitada**

(Case C-515/08) ⁽¹⁾

(Freedom to provide services — Articles 56 TFEU and 57 TFEU — Posting of workers — Restrictions — Employers established in another Member State — Registration of prior declaration of posting — Social or labour documents — Equivalent to those provided for under the law of the host Member State — Copy — Keeping available to the national authorities)

(2010/C 328/05)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Antwerpen

Parties in the main proceedings

Vítor Manuel dos Santos Palhota, Mário de Moura Gonçalves, Fernando Luis das Neves Palhota, Termiso Limitada

Re:

Reference for a preliminary ruling — *Rechtbank van eerste aanleg te Antwerpen* — Interpretation of Articles 49 EC and 50 EC — National legislation requiring construction sector undertakings carrying out works in a Member State on a temporary basis to provide a declaration of posting to the authorities in the host country

Operative part of the judgment

Articles 56 TFEU and 57 TFEU preclude national legislation requiring an employer, established in another Member State and posting workers to the territory of the first Member State, to send a prior declaration of posting, in so far as the employer must be notified of a registration number for the declaration before the planned posting may take place and the national authorities of that first State have a period of five working days from receipt of the declaration to issue that notification.

Articles 56 TFEU and 57 TFEU do not preclude national legislation requiring an employer, established in another Member State and posting workers to the territory of the first Member State, to keep available to the national authorities of the latter, during the posting, copies of documents equivalent to the social or labour documents required under the law of the first Member State and also to send those copies to the authorities at the end of that period.

⁽¹⁾ OJ C 44, 21.2.2009.

Judgment of the Court (Second Chamber) of 7 October 2010 (References for a preliminary ruling from the House of Lords, United Kingdom) — **Commissioners for Her Majesty's Revenue and Customs v Loyalty Management UK Ltd (C-53/09), Baxi Group Ltd (C-55/09)**

(Joined Cases C-53/09 and C-55/09) ⁽¹⁾

(Sixth VAT Directive — Taxable amount — Sales promotion scheme — Loyalty rewards scheme allowing customers to earn points from traders and to redeem them for loyalty rewards — Payments made by the operator of the scheme to redeemers supplying the loyalty rewards — Payments made by the trader to the operator of the scheme supplying the loyalty rewards)

(2010/C 328/06)

Language of the case: English

Referring court

House of Lords

Parties to the main proceedings

Applicant: Commissioners for Her Majesty's Revenue and Customs

Defendants: Loyalty Management UK Ltd (C-53/09), Baxi Group Ltd (C-55/09)

Re:

References for a preliminary ruling — House of Lords — Interpretation of Articles 5, 6, 11A(1)(a) and 17(2) 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 (OJ 1977 L 145, p. 1) — Taxable amount — Loyalty rewards scheme allowing users to earn points from participating traders and to redeem them for rewards or vouchers with approved traders — Redemption of points giving rise to payment by the operator of the scheme to the approved trader concerned — Loyalty rewards scheme enabling customers of a taxable undertaking to collect points when making purchases and to exchange them for rewards offered by a third party advertising and marketing company responsible for operating the scheme — Exchange of points entitling that third party company to payments by the taxable person corresponding to the recommended retail price of the reward goods.

Operative part of the judgment

In relation to a customer loyalty rewards scheme such as those at issue in the cases in the main proceedings, Articles 5, 6, 11A(1)(a) and — in the version resulting from Article 28(1) — 17(2) 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, must be interpreted as meaning that:

- payments made by the operator of the scheme concerned to redeemers who supply loyalty rewards to customers must be regarded, in Case C-53/09, as being the consideration, paid by a third party, for a supply of goods to those customers or, as the case may be, a supply of services to them. It is, however, for the referring court to determine whether those payments also include the consideration for a supply of services corresponding to a separate service; and
- payments made by the sponsor to the operator of the scheme concerned who supplies loyalty rewards to customers must be regarded, in Case C-55/09, as being, in part, the consideration, paid by a third party, for a supply of goods to those customers and, in part, the consideration for a supply of services made by the operator of that scheme for the benefit of that sponsor.

⁽¹⁾ OJ 2009 C 90, 18.4.2009.
OJ 2010 C 148, 5.6.2010.

Judgment of the Court (Third Chamber) of 7 October 2010
— **European Commission v Portuguese Republic**

(Case C-154/09) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Directive 2002/22/EC — Electronic communications — Networks and services — Articles 3(2) and 8(2) — Designation of undertakings responsible for universal service obligations — Incorrect transposition)

(2010/C 328/07)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: P. Guerra e Andrade and A. Nijenhuis, acting as Agents)

Defendant: Portuguese Republic (represented by: L. Inez Fernandes, Agent and L. Morais, lawyer)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 3(2) and 8(2) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108, p. 51) — Designation of undertakings responsible for universal service obligations

Operative part of the judgment

The Court:

1. Declares that, by failing to correctly transpose into national law the provisions of European Union law governing the designation of

universal service provider(s) and, in any event, by failing to ensure in practice that those provisions are applied, the Portuguese Republic has failed to fulfil its obligations under Articles 3(2) and 8(2) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive).

2. Orders the Portuguese Republic to pay the costs.

⁽¹⁾ OJ C 153, 4.7.2009.

Judgment of the Court (Third Chamber) of 7 October 2010
(reference for a preliminary ruling from the Court of Appeal (England and Wales) (Civil Division) (United Kingdom)) — **Secretary of State for Work and Pensions v Taous Lassal**

(Case C-162/09) ⁽¹⁾

(Reference for preliminary ruling — Freedom of movement for persons — Directive 2004/38/EC — Article 16 — Right of permanent residence — Temporal application — Periods completed before the date of transposition)

(2010/C 328/08)

Language of the case: English

Referring court

Court of Appeal (England and Wales) (Civil Division)

Parties to the main proceedings

Applicant: Secretary of State for Work and Pensions

Defendant: Taous Lassal

In the presence of: The Child Poverty Action Group

Re:

Interpretation of Article 16(1) of Directive 2004/58/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ 2004 L 158, p. 77) — Citizen of the Union who resided lawfully in the United Kingdom for five years prior to 30 April 2006, the last date for transposition of the directive, and then left the territory for a period of 10 months — Taking into account of the period ending prior to 30 April 2006 for the purposes of entitlement to the grant of a permanent right of residence