

2. Orders the Italian Republic to pay the costs.

(¹) OJ C 256, 24.10.2009.

Judgment of the Court (Third Chamber) of 22 December 2010 (reference for a preliminary ruling from the Unabhängiger Verwaltungssenat Wien — Austria) — Yellow Cab Verkehrsbetriebs GmbH v Landeshauptmann von Wien

(Case C-338/09) (¹)

(Freedom to provide services — Freedom of establishment — Competition rules — Cabotage transport operations — National transportation of persons by bus service — Application to operate a service — Licence — Authorisation — Conditions — Requirement of a seat or permanent establishment in the national territory — Reduction of income compromising the profitability of a service already licensed)

(2011/C 63/12)

Language of the case: German

Referring court

Unabhängiger Verwaltungssenat Wien

Parties to the main proceedings

Applicant: Yellow Cab Verkehrsbetriebs GmbH

Defendant: Landeshauptmann von Wien

Re:

Reference for a preliminary ruling — Unabhängiger Verwaltungssenat Wien — Interpretation of Articles 49 et seq. EC and Article 81 et seq. EC — Legislation of a Member State subjecting the grant of a licence to operate a public transport service to the double condition that the applicant for that licence be established in that Member State and that the new service does not undermine the profitability of a similar existing transport service

Operative part of the judgment

1. Article 49 TFEU must be interpreted as opposing the legislation of a Member State, such as that at issue in the main proceedings, which, for the purposes of the grant of authorisation to operate a public urban bus service, where fixed stopping points are called at regularly in accordance with a timetable, requires applicant economic operators established in another Member State to hold a seat or another establishment in the territory of the host Member State even before being authorised to operate that service. By contrast, Article 49 TFEU must be interpreted as not precluding national legislation which provides for an establishment requirement where such a requirement does not apply until after that authorisation has been granted and before the applicant commences operation of that service.

2. Article 49 TFEU must be interpreted as opposing national legislation which provides for the refusal of the grant of authorisation to operate a tourist bus service as a result of the reduced profitability of a competing undertaking which has been authorised to operate a service which is partially or entirely identical to the one applied for, on the sole basis of the statements of that competing undertaking.

(¹) OJ C 282, 21.11.2009.

Judgment of the Court (First Chamber) of 22 December 2010 — European Commission v Republic of Malta

(Case C-351/09) (¹)

(Failure of a Member State to fulfil obligations — Environment — Directive 2000/60/EC — Articles 8 and 15 — Status of inland surface water — Establishment and making operational of monitoring programmes — Failure — Submission of summary reports on those monitoring programmes — Failure)

(2011/C 63/13)

Language of the case: English

Parties

Applicant: European Commission (represented by: S. Pardo Quintillán and K. Xuereb, acting as Agents)

Defendant: Republic of Malta (represented by: S. Camilleri, D. Mangion, P. Grech and Y. Rizzo, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 8 and 15 of Directive 2000/60/EC of the European Parliament and of the Council of 23 October establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1) — Obligation to establish and make operational programmes for the monitoring of the status of surface waters — Obligation to submit summary reports regarding the programmes for the monitoring of surface waters

Operative part of the judgment

The Court:

1. Declares that, in failing, firstly, to establish monitoring programmes on the status of inland surface water and make them operational in accordance with Article 8(1) and (2) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, and, secondly, to submit summary reports on the monitoring programmes on the status of inland surface water in accordance with Article 15(2) of that directive, the Republic of Malta has failed to fulfil its obligations under Articles 8 and 15 of that directive;

2. Orders the Republic of Malta to pay the costs.

⁽¹⁾ OJ C 267, 07.11.2009.

Judgment of the Court (Third Chamber) of 22 December 2010 (reference for a preliminary ruling from the Nejvyšší správní soud — Czech Republic) — Bezpečnostní softwarová asociace — Svaz softwarové ochrany v Ministerstvo kultury

(Case C-393/09) ⁽¹⁾

(Intellectual property — Directive 91/250/EEC — Legal protection of computer programs — Notion of ‘expression in any form of a computer program’ — Inclusion or non-inclusion of a program’s graphic user interface — Copyright — Directive 2001/29/EC — Copyrights and related rights in the information society — Television broadcasting of a graphic user interface — Communication of a work to the public)

(2011/C 63/14)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: Bezpečnostní softwarová asociace — Svaz softwarové ochrany

Defendant: Ministerstvo kultury

Re:

Reference for a preliminary ruling — Nejvyšší správní soud — Interpretation of Article 1(2) of Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (OJ 1991 L 122, p. 42) and Article 3(1), of European Parliament and Council Directive 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10) — Whether or not the graphic user interface included in the expression ‘the expression in any form of a computer program’ contained in Article 1(2) of Directive 91/250

Operative part of the judgment

1. A graphic user interface is not a form of expression of a computer program within the meaning of Article 1(2) of Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs and cannot be protected by copyright as a computer program under that directive. Nevertheless, such an interface can be protected by copyright as a work by Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society if that interface is its author’s own intellectual creation.

2. Television broadcasting of a graphic user interface does not constitute communication to the public of a work protected by copyright within the meaning of Article 3(1) of Directive 2001/29.

⁽¹⁾ OJ C 11, 16.1.2010.

Judgment of the Court (Third Chamber) of 22 December 2010 (reference for a preliminary ruling from the Naczelny Sąd Administracyjny — Poland) — Bogusław Juliusz Dankowski v Dyrektor Izby Skarbowej w Łodzi

(Case C-438/09) ⁽¹⁾

(Sixth VAT Directive — Right to deduct input VAT — Services provided — Taxable person not registered for VAT — Details required on the VAT invoice — National tax legislation — Exclusion of right to deduct under Article 17(6) of the Sixth VAT Directive)

(2011/C 63/15)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: Bogusław Juliusz Dankowski

Defendant: Dyrektor Izby Skarbowej w Łodzi

Re:

Reference for a preliminary ruling — Naczelny Sąd Administracyjny — Interpretation of Article 17(6) 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) — Compatibility with this provision of national legislation excluding the right to deduct input tax paid for supply of a service on the basis of an invoice issued, in breach of national law, by a person not on the register of taxable persons for the purposes of VAT

Operative part of the judgment

1. Articles 18(1)(a) and 22(3)(b) 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 2006/18/EC of 14 February 2006, must be interpreted as meaning that a taxable person has the right to deduct value added tax paid in respect of