First, the three priority action areas, which are the areas where the bulk of efforts to protect the species are concentrated, cover only a very small part of the territory which is the animal's natural habitat since two thirds of the existing burrows are located outside those areas, which themselves represent no more than 2 % of the land which is favourable to the European Hamster. However, if the territory to be covered by the measures for the protection of this species is to be sufficient, it is necessary to take as the minimum point of reference the presence of the European Hamster in 1990, not in 2000.

Secondly, the protection measures are themselves greatly lacking. The Commission is particularly concerned by the lack of clarity in the legislation in relation to areas which can be re-occupied by the hamster. The national authority has much too great a discretion in the granting of derogations for urban development projects in territories which are the habitat of the hamsters and great uncertainty prevails as regards compensatory measures to be taken for the protection of this species.

([1]) OJ 1992 L 206, p. 7

Reference for a preliminary ruling from the Tribunal de grande instance de Paris (France) lodged on 29 September 2009 — PRUNUS SARL v Directeur des Services Fiscaux

(Case C-384/09)

(2009/C 312/27)

Language of the case: French

Referring court

Tribunal de grande instance de Paris

Parties to the main proceedings

Applicant: Prunus SARL

Defendant: Directeur des Services Fiscaux

Questions referred

1. Does Article 56 et seq. of the EC Treaty preclude legislation such as that laid down by Article 990 D et seq. of the Code général des impôts which grants legal persons having their effective centre of management in France or, since 1 January 2008, in a Member State of the European Union, entitlement to exemption from the tax at issue and which, as regards legal persons having their effective centre of management in the territory of a non-Member State, makes that entitlement conditional either on the existence of a convention on administrative assistance to combat tax evasion and avoidance concluded between France and that State or on there being a requirement, under a treaty containing a clause prohibiting discrimination on grounds of nationality, that those legal persons are not to be taxed more heavily than legal persons having their effective centre of management in France?

2. Does Article 56 et seq. of the EC Treaty preclude legislation such as that laid down by Article 990 F of the Code général des impôts which enables tax services to hold jointly and severally liable for payment of the tax provided for in Article 990 D et seq. of the Code général des impôts any legal person interposed between the party or parties liable to the tax and the immovable properties or rights in such properties?

Reference for a preliminary ruling from the Mokestinių ginčų komisija prie Lietuvos Respublikos vyriausybės (Republic of Lithuania) lodged on 29 September 2009 — Nidera Handelscompagnie B.V. v Valstybinės mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

(Case C-385/09)

(2009/C 312/28)

Language of the case: Lithuanian

Referring court

Mokestinių ginčų komisija prie Lietuvos Respublikos vyriausybės

Parties to the main proceedings

Applicant: Nidera Handelscompagnie B.V.

Defendant: Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

Questions referred

1. Is legislation under which the right to deduct VAT is given only to VAT payers — that is to say, only to taxable persons registered as VAT payers in a Member State (in this case, in Lithuania) according to the established procedures — in accordance with the provisions of Directive 2006/112/EC governing the right to deduct VAT?

2. If the answer to the first question is in the affirmative, is it in accordance with the general principles of the right to deduct VAT that are laid down in Directive 2006/112/EC if such legislation provides that a VAT payer has the right to deduct input and/or import VAT in respect of goods and/or services acquired before the date of his registration as a VAT payer only if those goods will be used for an activity of that VAT payer that is subject to VAT, that is to say, input and/or import VAT in respect of goods and services acquired before the date of his registration as a VAT payer may not be deducted if those goods have already been used for that activity?

Reference for a preliminary ruling from the Cour de travail Bruxelles (Belgium) lodged on 30 September 2009 — Jhonny Briot v Randstad Interim, Sodexho SA, Council of the European Union

(Case C-386/09)

(2009/C 312/29)

Language of the case: French

Referring court

Cour du travail de Bruxelles

Parties to the main proceedings

Applicant: Jhonny Briot

Defendants: Randstad Interim, Sodexho SA and Council of the European Union

Questions referred

1. Where, in the framework of a transfer of an undertaking within the meaning of Article 1(1) of Directive 2001/23, [1] it appears that the entity transferred, namely the staff restaurant of a Community institution, used a significant number of temporary agency workers under a framework contract concluded with various temporary employment agencies, must the temporary employment agency, or failing that the institution under whose control and direction the temporary workers worked, be regarded as an employer-transferor within the meaning of Article 2(1)(a) of that directive?

   Where neither the temporary employment agency nor the undertaking using the worker can be recognised as having the status of employer-transferor, must the temporary agency workers be considered not to be entitled to the safeguards offered by Directive 2001/2003?

2. Must Article 4(1) of Directive 2001/23/EC be interpreted as meaning that the non-renewal of the fixed-term contracts of employment of the temporary agency workers attributable to the transfer of the activity to which they were assigned disregards the prohibition laid down in that provision in such a way that those temporary agency workers must be regarded as still being available to the user on the date of the transfer?

3. Must Article 3(1) of Directive 2001/23/EC, read where appropriate in conjunction with Article 2(2)(c), be interpreted as requiring the transferee to maintain an employment relationship with the temporary agency workers who were assigned to the activity that is being transferred or who must be regarded as still being available to the user on the date of the transfer?

   If that question is answered in the affirmative, must Article 3(1) be interpreted as requiring the conclusion of an employment contract of indeterminate duration where the transferee is not a temporary employment agency and cannot conclude a temporary agency contract of employment?

(1) Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ 2001 L 82, p. 16).

Reference for a preliminary ruling from the Juzgado Mercantil (Spain) lodged on 1 October 2009 — Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA) v Magnatrading S.L.

(Case C-387/09)

(2009/C 312/30)

Language of the case: Spanish

Referring court

Juzgado Mercantil No 1 de Santa Cruz de Tenerife

Parties to the main proceedings

Applicant: Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA)

Defendant: Magnatrading S.L.