

- (b) are the legal consequences of the infringement by the authorities of the European law principle of respect for the rights of the defence governed by national law?
3. If the answer to question 2b is in the negative: what circumstances may the national courts take into account when determining the legal consequences, and in particular may they take into account whether it is likely that, without the infringement by the authorities of the European law principle of respect for the rights of the defence, the proceedings would have had a different outcome?

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 18 March 2013 — Datema Hellman Worldwide Logistics BV, other party: Staatssecretaris van Financiën

(Case C-130/13)

(2013/C 171/23)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Datema Hellman Worldwide Logistics BV

Respondent: Staatssecretaris van Financiën

Questions referred

- Does the European law principle of respect for the rights of the defence by the authorities lend itself to direct application by the national courts?
- If the answer to Question 1 is in the affirmative:
 - must the European law principle of respect for the rights of the defence by the authorities be interpreted to mean that the principle was infringed when the addressee of an intended decision was not given a hearing before the authorities adopted a measure which adversely affected it but was given the opportunity to be heard in a subsequent (objection) phase, which precedes access to the national courts?
 - are the legal consequences of the infringement by the authorities of the European law principle of respect for the rights of the defence governed by national law?

- If the answer to question 2b is in the negative: what circumstances may the national courts take into account when determining the legal consequences, and in particular may they take into account the fact that, without the infringement by the authorities of the European law principle of respect for the rights of the defence, the proceedings would have had a different outcome?

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 18 March 2013 — Staatssecretaris van Financiën, other party: Schoenimport 'Italmoda' Mariano Previti

(Case C-131/13)

(2013/C 171/24)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Staatssecretaris van Financiën

Other party: Schoenimport 'Italmoda' Mariano Previti

Questions referred

- Should the national authorities and courts, on the basis of the law of the European Union, refuse to apply the exemption pertaining to an intra-Community supply, the right to the deduction of VAT in respect of the purchase of goods which, after the purchase, were dispatched to another Member State, or the refund of VAT pursuant to the application of the second sentence of Article 28b(A)(2) of the Sixth Directive, ⁽¹⁾ when, based on objective data, it has been established that there has been VAT evasion in respect of the goods concerned, and that the taxable person knew, or should have known, that it had participated therein, if national law does not make provision for the refusal of the exemption, the deduction or the refund under those circumstances?
- If the previous question is answered in the affirmative, should the aforementioned exemption, deduction or refund also be refused if the VAT evasion occurred in another Member State (other than the Member State from which the goods were dispatched) and the taxable person was or should have been aware of the VAT evasion, while the taxable person in the Member State from which the goods were dispatched has met all the (formal) conditions which national statutory provisions impose on the exemption, the deduction or the refund, and it has always provided the tax authorities in that Member State with all the required information in respect of the goods, the dispatch and the persons acquiring the goods in the Member State of arrival of the goods?

3. If Question 1 is answered in the negative, what should be understood by 'subject to' in (the final part of) the first sentence of Article 28b(A)(2): the declaration in the statutorily prescribed VAT returns of the VAT payable in respect of intra-Community acquisitions in the Member State of arrival, or — in the absence of such a declaration — also the measures adopted by the tax authorities of the Member State of arrival to regularise the absence of that declaration? When answering that question, is it significant whether the transaction concerned forms part of a chain of transactions aimed at VAT evasion in the country of arrival and the taxable person was aware or should have been aware of it?

(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).

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 18 March 2013 — Staatssecretaris van Economische Zaken, Staatssecretaris van Financiën, other party: Q

(Case C-133/13)

(2013/C 171/25)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicants: Staatssecretaris van Economische Zaken,
Staatssecretaris van Financiën

Defendant: Q

Questions referred

- Does the importance of the conservation of national natural heritage and cultural heritage, as addressed in the Natuurschoonwet 1928 (Law on nature protection 1928), constitute an overriding reason in the public interest which justifies a scheme whereby the application of an exemption from gift tax (recovery facility) is limited to estates situated in the Netherlands?
- (a) May the authorities of a Member State, in the context of an investigation into whether an immovable property situated in another Member State may be designated as an estate for the purposes of the Natuurschoonwet 1928, rely on Council Directive 2010/24/EU (¹) of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, for assistance from the authorities of the Member State in which the immovable property is situated, when the designation as an estate pursuant to that law will result in an exemption being granted from the recovery of the

gift tax which will be payable upon donation of that immovable property?

(b) If question 2(a) must be answered in the affirmative, must the concept of 'administrative enquiry' in Article 3(7) of Council Directive 2011/16/EU (²) of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, be interpreted as meaning that it also covers an on-site investigation?

(c) If question 2(b) must be answered in the affirmative, may clarification of the term 'administrative enquiries' in Article 5(1) of Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, be sought in the definition of the term 'administrative enquiry' in Article 3(7) of Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC?

3. If question 2(a), question 2(b) or question 2(c) must be answered in the negative, should the principle of sincere cooperation, as laid down in Article 4(3) of the TEU, considered in conjunction with Article 167(2) of the TFEU, be interpreted as meaning that, when a Member State requests another Member State to provide assistance with the investigation of whether an immovable property situated in that other Member State may be designated as an estate for the purposes of a law which has as its aim the conservation and protection of national natural heritage and cultural heritage, the requested Member State is obliged to provide that assistance?

4. Can a restriction on the free movement of capital be justified by invoking the need to guarantee effective fiscal controls, if it appears that the only risk to effectiveness of those controls is the need for national authorities to travel to another Member State for the period of 25 years referred to in Article 7(1) of the Natuurschoonwet 1928 in order to carry out the necessary controls there?

(¹) OJ 2010 L 84, p. 1.

(²) OJ 2011 L 64, p. 1.

Request for a preliminary ruling from the Kúria (Hungary) lodged on 18 March 2013 — Szatmári Malom Kft. v Mezőgazdasági és Vidékfejlesztési Hivatal Központi Szerve

(Case C-135/13)

(2013/C 171/26)

Language of the case: Hungarian

Referring court

Kúria