

Form of order sought

The Commission claims that the Court should:

- declare that:
 - by failing to adopt the measures necessary to ensure that the safety authority is independent of railway undertakings, rail infrastructure operators, applicants and procurement entities, and
 - by failing to adopt the measures necessary to ensure that the investigating body is independent of railway undertakings and rail infrastructure operators,⁽¹⁾

the Republic of Poland has failed to fulfil its obligations under Articles 16(1) and 21(1) of Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification;

- order the Republic of Poland to pay the costs.

Pleas in law and main arguments

The Commission criticises the Republic of Poland on the ground that it has failed correctly to transpose within the Polish legal system the principle that the investigating body (that is to say, the Państwowa Komisja Badania Wypadków Kolejowych (National Commission for the investigation of railway accidents) (PKBWK)) must be independent in its organisation, legal structure and decision-making, as required by Article 21(1) of Directive 2004/49/EC. The status conferred on the PKBWK does not guarantee its independence. The Commission criticises the fact that the PKBWK is an integral part of the ministry of transport and that there is no safeguard whatsoever to ensure that it is independent of the ministry and the rail infrastructure operator. Furthermore, the PKBWK does not act in its own name: the minister for transport appoints and dismisses the director of the PKBWK and his deputy, as well as the secretary and the permanent and *ad hoc* members of the PKBWK. In addition, the minister for transport has not, by way of an appropriate arrangement, made available to the PKBWK the financial means necessary to enable it to carry out its tasks.

The Commission also criticises the Republic of Poland for failing correctly to implement Article 16(1) of Directive 2004/49/EC on the ground that the safety authority (that is to say, the Prezes Urzędu Transportu Kolejowego (board of the rail authority)) is not independent in its organisation, legal structure and decision-making vis-à-vis railway undertakings, rail infrastructure operators, applicants and procurement entities.

⁽¹⁾ OJ 2004 L 164, p. 44.

**Request for a preliminary ruling from the Högsta domstolen (Sweden) lodged on 26 October 2016 —
Länsförsäkringar Sak Försäkringsaktiebolag and Others v Dödsboet efter Ingvar Mattsson,
Länsförsäkringar Sak Försäkringsaktiebolag**

(Case C-542/16)

(2017/C 014/31)

Language of the case: Swedish

Referring court

Högsta domstolen

Parties to the main proceedings

Applicants: Länsförsäkringar Sak Försäkringsaktiebolag, Jan-Herik Strobel, Mona Strobel, Margareta Nilsson, Per Nilsson, Kent Danås, Dödsboet efter Tommy Jönsson, Stefan Pramryd, Stefan Ingemansson, Lars Persson, Magnus Persson, Anne-Charlotte Wickström, Peter Nilsson, Ingela Landau, Thomas Landau, Britt-Inger Ruth Romare, Gertrud Andersson, Eva Andersson, Rolf Andersson, Lisa Bergström, Bo Sörensson, Christina Sörensson, Kaj Wirenkook, Lena Bergquist Johansson, Agneta Danås, Hans Eriksson, Christina Forsberg, Christina Danielsson, Per-Olof Danielsson, Ann-Christin Jönsson, Åke Jönsson, Stefan Lindgren, Daniel Röme, Ulla Nilsson, Dödsboet efter Leif Göran Erik Nilsson

Defendants: Dödsboet efter Ingvar Mattsson, Länsförsäkringar Sak Försäkringsaktiebolag

Questions referred

- 1 (a) Does Directive 2002/92⁽¹⁾ cover activity where an insurance intermediary had no intention of concluding an actual insurance contract? Is it relevant whether such an intention was absent before the activity was commenced or came into being only subsequently?
- (b) In the situation envisaged in question 1(a), is it relevant if the intermediary has also carried out proper insurance mediation activity alongside the fictive activity?
- (c) Also in the situation envisaged in question 1(a), is it relevant that the activity appeared, *prima facie*, to the client to be work preparatory to the conclusion of an insurance contract? Is the client's understanding, be it well founded or unfounded, of whether insurance mediation was involved of any relevance?
- 2 (a) Does Directive 2002/92 govern advice, economic or other, given in connection with insurance mediation but which as such does not concern the actual signing or continuation of an insurance contract? In that regard, what does apply, in particular, as regards advice concerning the placing of capital in the context of capital assurance?
- (b) Is advice such as that referred to in question 2(a), where, by definition, it constitutes investment advice under Directive 2004/39,⁽²⁾ also or instead covered by the provisions of that directive? If such advice is also covered by Directive 2004/39, does one set of rules take precedence over the other?

⁽¹⁾ Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (OJ 2003 L 9, p. 3).

⁽²⁾ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ 2004 L 145, p. 1).

**Reference for a preliminary ruling from First-tier Tribunal (Tax Chamber) (United Kingdom) made on
28 October 2016 — Marcandi Limited, trading as 'Madbid' v Commissioners for Her Majesty's
Revenue & Customs**

(Case C-544/16)

(2017/C 014/32)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicant: Marcandi Limited, trading as 'Madbid'

Defendant: Commissioners for Her Majesty's Revenue & Customs

Questions referred

1. On the correct interpretation of articles 2(1), 24, 62, 63, 65, and 73 of Council Directive 2006/112/EC⁽¹⁾ of 28 November 2006 on the common system of value added tax, and in circumstances such as those in the main proceedings:
 - a) is the issue of Credits to users, by Madbid, in return for a money payment:
 - i. a 'preliminary transaction' outside the scope of article 2(1), of the sort identified by the Court in *MacDonald Resorts Ltd v Revenue and Customs Commissioners* (C-270/09) [2010] ECR I-13179 ECLI:EU:C:2010:780, at paragraphs 23-42; or