2. If it is presumed that the Danish tax rules do not contain a difference of treatment as dealt with in the *Philips* case, does a prohibition of setting off similar to that described — in a case in which the loss in the non-resident company's permanent establishment is also subject to the host country's power of taxation — in itself constitute a restriction of the right of freedom of establishment under Article 49 TFEU, which has to be justified by reference to overriding reasons of the public interest?

3. If so, can such a restriction then be justified by the interest in preventing the double use of losses, the objective of ensuring a balanced distribution of powers of taxation between the Member States, or a combination of both?

4. If so, is such a restriction proportionate?

([1]) Judgment of the Court of 6 September 2012, C-18/11 (EU:C:2012:532).

Request for a preliminary ruling from the Tribunal Superior de Justicia de Galicia (Spain) lodged on 25 January 2017 — Isabel González Castro v Mutua Umivale, Prosegur España, S.L.

(Case C-41/17)

(2017/C 121/19)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Galicia

Parties to the main proceedings

Appellant: Isabel González Castro

Respondents: Mutua Umivale, Prosegur España, S.L.

Questions referred

1. Has Article 7 of Directive 92/85/EEC ([1]) to be interpreted as meaning that the night work, which those workers referred to in Article 2, including workers who are breastfeeding, must not be obliged to perform, includes not only work performed entirely during the night, but also shift work when, as in this case, some of those shifts are worked at night?

2. In proceedings in which the existence of a situation of risk for a worker who is breastfeeding is at issue, do the special rules on burden of proof in Article 19(1) of Directive 2006/54/EC, ([2]) transposed into Spanish law by, inter alia, Article 96(1) of Ley 36/2011 (Law 36/2011), apply in conjunction with the requirements set out in Article 5 of Directive 92/85/EEC, transposed into Spanish law by Article 26 of the Ley de Prevención de Riesgos Laborales (Law on the Prevention of Occupational Risks), relating to the granting of leave to a breastfeeding worker and, as the case may be, payment of the relevant allowance under national legislation by virtue of Article 11(1) of Directive 92/85/EEC?

3. In proceedings in which the existence of a risk during breastfeeding giving entitlement to leave, as provided for in Article 5 of Directive 92/85/EEC and transposed into Spanish law by Article 26 of the Law on the Prevention of Occupational Risks, is at issue, can Article 19(1) of Directive 2006/54/EC be interpreted as meaning that the following are 'facts from which it may be presumed that there has been direct or indirect discrimination' in relation to a breastfeeding worker: (1) the fact that the worker does shift work as a security guard with some shifts being worked at night and alone; (2) in addition, that the work entails doing rounds and, where necessary, dealing with emergencies (criminal behaviour, fire and other incidents); and (3) furthermore that there is no evidence that the workplace has anywhere suitable for breastfeeding or, as the case may be, for expressing breast milk?

4. In proceedings in which the existence of a risk during breastfeeding giving entitlement to leave is at issue, when 'facts from which it may be presumed that there has been direct or indirect discrimination' have been established in accordance with Article 19(1) of Directive 2006/54/EC in conjunction with Article 5 of Directive 92/85/EEC, transposed into Spanish law by Article 26 of the Law on the Prevention of Occupational Risks, can a breastfeeding worker be required to demonstrate, in order to be granted leave in accordance with the domestic legislation transposing Article 5(2) and (3)of Directive 92/85/EEC, that the adjustment of her working conditions and/or working hours is not technically and/or objectively feasible, or cannot reasonably be required and that moving her to another job is not technically and/or objectively feasible or cannot reasonably be required or are these matters for the respondents (the employer and the mutual insurance company providing the social security benefit associated with the suspension of the contract of employment) to prove?

([1]) Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) . OJ 1992 L 348, p. 1

([2]) Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast). OJ 2006 L 204, p. 23

Request for a preliminary ruling from the Landgericht Hamburg (Germany) lodged on 27 January 2017 — The Scotch Whisky Association v Michael Klotz

(Case C-44/17)

(2017/C 121/20)

Language of the case: German

Referring court

Landgericht Hamburg

Parties to the main proceedings

Applicant: The Scotch Whisky Association

Defendant: Michael Klotz

Questions referred

1. Does 'indirect commercial use' of a registered geographical indication of a spirit drink in accordance with Article 16(a) of Regulation (EC) No 110/2008 ([1]) require that the registered geographical indication be used in identical or phonetically and/or visually similar form, or is it sufficient that the disputed element evokes in the relevant public some kind of association with the registered geographical indication or the geographical area?

   If the latter is sufficient: When determining whether there is any 'indirect commercial use', does the context in which the disputed element is embedded then also play a role, or can that context not counteract indirect commercial use of the registered geographical indication, even if the disputed element is accompanied by an indication of the true origin of the product?

2. Does an 'evocation' of a registered geographical indication in accordance with Article 16(b) of Regulation (EC) No 110/2008 require that there be a phonetic and/or visual similarity between the registered geographical indication and the disputed element, or is it sufficient that the disputed element evokes in the relevant public some kind of association with the registered geographical indication or the geographical area?

   If the latter is sufficient: When determining whether there is any 'evocation', does the context in which the disputed element is embedded also play a role, or can that context not counteract any unlawful evocation of the registered geographical indication, even if the disputed element is accompanied by an indication of the true origin of the product?