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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2012/C 151/01)

Last publication of the Court of Justice of the European Union in the *Official Journal of the European Union*

OJ C 138, 12.5.2012

Past publications

OJ C 133, 5.5.2012

OJ C 126, 28.4.2012

OJ C 118, 21.4.2012

OJ C 109, 14.4.2012

OJ C 89, 24.3.2012

OJ C 80, 17.3.2012

These texts are available on:

EUR-Lex: http://eur-lex.europa.eu

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Second Chamber) of 29 March 2012 — European Commission v Republic of Poland, Hungary, Republic of Lithuania, Slovak Republic, United Kingdom of Great Britain and Northern Ireland

(Case C-504/09 P) [1]

(Appeal — Environment — Directive 2003/87/EC — Greenhouse gas emission allowance trading scheme — National allocation plan for emission allowances for the Republic of Poland for the period 2008 to 2012 — Article 9(1) and (3) and Article 11(2) of Directive 2003/87 — Respective competences of the Commission and the Member States — Equal treatment)

(2012/C 151/02)

Language of the case: Polish

Parties

Appellant: European Commission (represented by: E. Kružíková and K. Herrmann and by E. White, acting as Agents)

Intervener in support of the Commission: Kingdom of Denmark (represented by: C. Vang, acting as Agent)

Other parties to the proceedings: Republic of Poland (represented by M. Szpunar, M. Nowacki and B. Majczyna, acting as Agents), Hungary, Republic of Lithuania, Slovak Republic, United Kingdom of Great Britain and Northern Ireland (represented by: H. Walker, acting as Agent, assisted by J. Maurici, Barrister)

Interveners in support of the Republic of Poland: Czech Republic (represented by: M. Smolek and D. Hadroušek, acting as Agents), Romania (represented by V. Angelescu and A. Cazacioc, advisers)

Re:

Appeal against the judgment delivered by the General Court (Second Chamber) on 23 September 2009 in Case T-183/07 Poland v Commission, by which that Court annulled Commission Decision C(2007) 1295 final of 26 March 2007 concerning the national allocation plan for the allocation of greenhouse gas emission allowances notified by Poland for the period from 2008 to 2012 in accordance with Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32) — *Ne ultra petita* principle — Limits of judicial review — Infringement of Article 48(2) of the Rules of Procedure of the General Court — Misinterpretation of Article 296 TFEU, of Article 9(3) of Directive 2003/87/EC and of Articles 1(1), 2(1) and 3(1) of Commission Decision C(2007) 1295 final

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the European Commission to pay the costs;*

3. *Orders the Czech Republic, the Kingdom of Denmark, Romania and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.*

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[1] OJ C 51, 27.2.2010.

Judgment of the Court (Second Chamber) of 29 March 2012 — European Commission v Republic of Estonia, Republic of Lithuania, Slovak Republic, United Kingdom of Great Britain and Northern Ireland

(Case C-505/09 P) [1]

(Appeal — Environment — Directive 2003/87/EC — Greenhouse gas emission allowance trading scheme — National allocation plan for emission allowances for the Republic of Estonia for the period 2008 to 2012 — Respective competences of the Commission and the Member States — Article 9(1) and (3) and Article 11(2) of Directive 2003/87 — Equal treatment — Principle of sound administration)

(2012/C 151/03)

Language of the case: Estonian

Parties

Appellant: European Commission (represented by: E. Kružíková and E. Randvere and by E. White, acting as Agents)

Intervener in support of the Commission: Kingdom of Denmark (represented by C. Vang, acting as Agent)

Other parties to the proceedings: Republic of Estonia (represented by: L. Uibo and M. Linntam, acting as Agents), Republic of Lithuania, Slovak Republic, United Kingdom of Great Britain and Northern Ireland

Interveners in support of the Republic of Estonia: Czech Republic (represented by M. Smolek, acting as Agent), Republic of Latvia (represented by K. Drēviņa and I. Kalniņš, acting as Agents)

Re:

Appeal against the judgment of the General Court (Seventh Chamber) of 23 September 2009 in Case T-263/07 Estonia v Commission by which the Court annulled the Commission's decision of 4 May 2007 concerning the national greenhouse gas allocation plan notified by the Republic of Estonia for the period from 2008 to 2012, in accordance with Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32) — Error of law in examining the admissibility of the application for annulment — Misinterpretation of Articles 9(1) and (3) and 11(2) of Directive 2003/87/EC and the general principle of equal treatment — Misinterpretation of the scope and extent of the principle of sound administration — Erroneous classification of the provisions of the contested decision as not separable, leading to the total rather than partial annulment of that decision

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the European Commission to pay the costs;*

3. *Orders the Czech Republic, the Kingdom of Denmark and the Republic of Latvia to bear their own costs.*

([1]) OJ C 63, 13.3.2010.

Judgment of the Court (First Chamber) of 29 March 2012 (reference for a preliminary ruling from the Raad van State — Netherlands) — Staatssecretaris van Justitie v Tayfun Kahveci (C-7/10), Osman Inan (C-9/10)

(Joined Cases C-7/10 and C-9/10) ([1])

(EEC-Turkey Association Agreement — Right of residence — Members of the family of a Turkish worker who has been naturalised — Retention of Turkish nationality — Date of naturalisation)

(2012/C 151/04)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Staatssecretaris van Justitie

Defendants: Tayfun Kahveci (C-7/10), Osman Inan (C-9/10)

Re:

References for a preliminary ruling — Raad van State — Interpretation of Article 7 of Decision No 1/80 on the development of the Association, adopted by the Association Council set up by the Agreement establishing an Association between the European Economic Community and Turkey — Right of residence for members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State — Members of the family of a Turkish worker who has been naturalised but has retained Turkish nationality — Date of naturalisation

Operative part of the judgment

Article 7 of Decision No 1/80 of 19 September 1980 on the development of the Association adopted by the Association Council set up by the Agreement establishing an Association between the European Economic Community and Turkey, must be interpreted as meaning that the members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State can still invoke that provision once that worker has acquired the nationality of the host Member State while retaining his Turkish nationality.

([1]) OJ C 63, 13.3.2010.

Judgment of the Court (Third Chamber) of 29 March 2012 — European Commission v Republic of Poland

(Case C-185/10) ([1])

(Failure of a Member State to fulfil obligations — Directive 2001/83/EC — Articles 5 and 6 — Proprietary medicinal products — Medicinal products for human use — Marketing authorisation — Legislation of a Member State exempting medicinal products similar to but cheaper than authorised products from marketing authorisation)

(2012/C 151/05)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: M. Šimerdová and K. Herrmann, acting as Agents)

Defendant: Republic of Poland (represented by: M. Szpunar, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 6 of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67) — Legislation of a Member State

permitting medicinal products having a lower price and characteristics similar to authorised products to be marketed in that State without prior authorisation

Operative part of the judgment

The Court:

1. *Declares that, by adopting and maintaining in force Article 4 of the Law on Medicinal Products (Prawo farmaceutyczne) of 6 September 2001, as amended by the Law of 30 March 2007, inasmuch as that statutory provision dispenses with the requirement for a marketing authorisation for medicinal products from abroad which have the same active substances, the same dosage and the same form as those having obtained a marketing authorisation in Poland, on condition that, in particular, the price of those imported medicinal products is competitive in relation to the price of products having obtained such authorisation, the Republic of Poland has failed to fulfil its obligations under Article 6 of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, as amended by Regulation (EC) No 1394/2007 of the European Parliament and of the Council of 13 November 2007;*

2. *Orders the Republic of Poland to pay the costs.*

([1]) OJ C 209, 31.7.2010.

Judgment of the Court (Grand Chamber) of 27 March 2012 (reference for a preliminary ruling from the Højesteret — Denmark) — Post Danmark A/S v Konkurrencerådet

(Case C-209/10) ([1])

(Article 82 EC — Postal undertaking with a dominant position subject to a universal service obligation with regard to certain addressed mail — Low prices charged to certain former customers of a competitor — No evidence relating to intention — Price discrimination — Selectively low prices — Actual or likely exclusion of a competitor — Effect on competition and, thereby, on consumers — Objective justification)

(2012/C 151/06)

Language of the case: Danish

Referring court

Højesteret

Parties to the main proceedings

Applicant: Post Danmark A/S

Defendant: Konkurrencerådet

Intervener: Forbruger-Kontakt a-s

Re:

Reference for a preliminary ruling — Højesteret — Interpretation of Article 82 EC (now Article 102 TFEU) — Abuse of a dominant position — Postal undertaking holding a dominant position and subject to the obligation to distribute addressed letters and parcels, applying selective price reductions for distribution of unaddressed mail at levels lower than its overall average costs, but higher than its incremental average costs — Abuse aimed at eliminating a competitor

Operative part of the judgment

Article 82 EC must be interpreted as meaning that a policy by which a dominant undertaking charges low prices to certain major customers of a competitor may not be considered to amount to an exclusionary abuse merely because the price that undertaking charges one of those customers is lower than the average total costs attributed to the activity concerned, but higher than the average incremental costs pertaining to that activity, as estimated in the procedure giving rise to the case in the main proceedings. In order to assess the existence of anti-competitive effects in circumstances such as those of that case, it is necessary to consider whether that pricing policy, without objective justification, produces an actual or likely exclusionary effect, to the detriment of competition and, thereby, of consumers' interests.

([1]) OJ C 179, 3.7.2010.

Judgment of the Court (Fifth Chamber) of 29 March 2012 — European Commission v Italian Republic

(Case C-243/10) ([1])

(Failure of a Member State to fulfil obligations — State aid — Aid in favour of the hotel industry in Sardinia — Recovery)

(2012/C 151/07)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: D. Grespan and B. Stromsky, Agents)

Defendant: Italian Republic (represented by: G. Palmieri, Agent and P. Gentili, avvocato dello Stato)

Re:

Failure of a Member State to fulfil its obligations — Failure to adopt, within the prescribed period, all the measures necessary to comply with Articles 2, 3 and 4 of Commission Decision 2008/854/EC of 2 July 2008 on a State aid scheme (C 1/04 (ex NN 158/03 and CP 15/2003)): Misuse of aid measure N 272/98, Regional Act No 9 of 1998 (notified under document number C(2008) 2997) (OJ 2008 L 302, p. 9)

Operative part of the judgment

The Court:

1. *Declares that, by not adopting within the prescribed period all the measures necessary to recover from the recipients the aid granted under the aid scheme considered unlawful and incompatible with the common market by Commission Decision 2008/854/EC of 2 July 2008 on a State aid scheme (C 1/04 (ex NN 158/03 and CP 15/2003)): Misuse of aid measure N 272/98, Regional Act No 9 of 1998, the Italian Republic has failed to fulfil its obligations under Articles 2 and 3 of that decision;*

2. *Orders the Italian Republic to pay the costs.*

([1]) OJ C 209, 31.07.2010.

Judgment of the Court (First Chamber) of 29 March 2012 (reference for a preliminary ruling from the Conseil d'État — France) — Véleclair SA v Ministre du Budget, des Comptes publics et de la Réforme de l'État

(Case C-414/10) ([1])

(VAT — Sixth Directive — Article 17(2)(b) — Taxation of a product imported from a third country — National legislation — Right to deduct VAT on importation — Condition — Actual payment of VAT by the taxable person)

(2012/C 151/08)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Véleclair SA

Defendant: Ministre du Budget, des Comptes publics et de la Réforme de l'État

Re:

Reference for a preliminary ruling — Conseil d'État — Interpretation of Article 17(2)(b) 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) — National legislation making the right to deduct value added tax on importation conditional on the actual payment of that tax by the taxable person

Operative part of the judgment

Article 17(2)(b) 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 must be interpreted as not allowing a Member State to make the right to deduct value added tax on importation conditional upon the actual prior payment of that tax by the taxable person where that taxable person is also the holder of the right to deduction.

([1]) OJ C 301, 6.11.2010.

Judgment of the Court (Fourth Chamber) of 29 March 2012 (reference for a preliminary ruling from the Corte suprema di cassazione — Italy) — Ministero dell'Economia e delle Finanze, Agenzia delle Entrate v 3M Italia SpA

(Case C-417/10) ([1])

(Direct taxation — Conclusion of proceedings pending before the court giving judgment at final instance in tax matters — Abuse of rights — Article 4(3) TEU — Freedoms guaranteed by the Treaty — Principle of non-discrimination — State aid — Obligation to ensure the effective application of European Union law)

(2012/C 151/09)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Applicants: Ministero dell'Economia e delle Finanze, Agenzia delle Entrate

Defendant: 3M Italia SpA

Re:

Reference for a preliminary ruling — Corte suprema di cassazione — Corporation tax — National legislation providing for different rates of tax on the dividends of a company depending on where it is resident — Commercial transaction involving the participation of companies resident in Italy and companies established abroad — Decision of the authorities considering that the taxes payable were applicable in the case of the companies resident abroad — Concept of the abuse of rights as defined in Case C-255/02 *Halifax and Others* — Whether applicable to non-harmonised domestic taxes such as direct taxes

Operative part of the judgment

European Union law, in particular the principle of the prohibition of abuse of rights, Article 4(3) TEU, the freedoms guaranteed by the FEU Treaty, the principle of non-discrimination, the rules on State aid and the obligation to ensure the effective application of European Union law, must be interpreted as not precluding the application, in a case such as that in the main proceedings relating to direct taxation, of a provision of national law which provides for proceedings pending before the court giving judgment at final instance in tax matters to be

concluded in return for payment of a sum equivalent to 5 % of the value of the claim, where those proceedings originate in an application made at first instance more than 10 years before the date of entry into force of that provision and the tax authorities have been unsuccessful at first and second instance.

([1]) OJ C 288, 23.10.2010.

Judgment of the Court (Fifth Chamber) of 29 March 2012 (reference for a preliminary ruling from the Cour d'appel, Mons — Belgium) — Belgian State v BLM SA

(Case C-436/10) ([1])

(Sixth VAT Directive — Article 6(2), first paragraph, point (a), and Article 13(B)(b) — Right of deduction — Business assets which belong to a taxable person which is a legal person and which are placed at the disposal of its staff for their private use)

(2012/C 151/10)

Language of the case: French

Referring court

Cour d'appel, Mons

Parties to the main proceedings

Applicant: Belgian State — SPF Finances

Defendant: BLM SA

Re:

Reference for a preliminary ruling — Cour d'appel de Mons — Interpretation of point (a) of the first paragraph of Articles 6(2) and Article 13B(b) 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 1997 L 145, p. 1) — Capital asset made available and given over in part for private use by the director of a legal person and his family, where the input tax on that asset is deductible — Exclusion of the right to deduct tax

Operative part of the judgment

Point (a) of the first paragraph of Articles 6(2) and Article 13(B)(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 95/7/EC of 10 April 1995, must be interpreted as precluding national legislation which — despite the fact that the characteristics of the leasing or the letting of immovable property for the purposes of Article 13(B)(b) are not present — treats as a supply of services exempt from VAT under that provision the private use, by the staff of a taxable person which is a legal person, of part of a building constructed or owned by virtue of a right in rem in immovable property, held by that taxable person, where the input tax on that business asset is deductible;

It is for the referring court to determine whether, in a situation such as that at issue in the case before it, a finding can be made that there is a letting of immoveable property for the purposes of Article 13(B)(b) of the Sixth Directive.

([1]) OJ C 328, 4.12.2010.

Judgment of the Court (Fourth Chamber) of 29 March 2012 (reference for a preliminary ruling from the Commissione tributaria centrale, sezione di Bologna — Italy) — Ufficio IVA di Piacenza v Belvedere Costruzioni Srl

(Case C-500/10) ([1])

(Taxation — VAT — Article 4(3) TEU — Sixth Directive — Articles 2 and 22 — Automatic conclusion of proceedings pending before the tax court of third instance)

(2012/C 151/11)

Language of the case: Italian

Referring court

Commissione tributaria centrale, sezione di Bologna

Parties to the main proceedings

Applicant: Ufficio IVA di Piacenza

Defendant: Belvedere Costruzioni Srl

Re:

Reference for a preliminary ruling — Commissione tributaria centrale, sezione di Bologna — Value added tax — Articles 2 and 22 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) — Obligation of Member States to ensure the effective recovery of VAT — National legislation providing for the closure, in certain circumstances, of judicial proceedings in tax matters without any ruling on the substance by the court hearing the case at third instance, the decision of the court of second instance thus becoming *res iudicata* — Claim that the effect is the abandonment of the recovery of harmonised taxes

Operative part of the judgment

Article 4(3) TEU and Articles 2 and 22 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 must be interpreted as not precluding the application in value added tax matters of an exceptional provision of national law, such as that at issue in the main proceedings, which provides for the automatic conclusion of proceedings pending before the tax court of third instance where those proceedings originate in an application brought at first instance more than 10 years, and in practice more than 14 years, before the date of the entry into force of that provision and the tax authorities have been unsuccessful at first and second instance, the consequence of that automatic conclusion being that the decision of the court of second instance becomes final and binding and the debt claimed by the tax authorities is extinguished.

([1]) OJ C 346, 18.12.2010.

Judgment of the Court (Fourth Chamber) of 29 March 2012 (reference for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Bundesanstalt für Landwirtschaft und Ernährung v Pfeifer & Langen KG

(Case C-564/10) ([1])

(Regulation (EC, Euratom) No 2988/95 — Protection of the European Union's financial interests — Articles 3 and 4 — Administrative measures — Recovery of wrongly obtained advantages — Default and compensatory interest due under national law — Application of the limitation rules in Regulation No 2988/95 to the recovery of default interest — Start of the limitation period — Concept of suspension — Concept of interruption)

(2012/C 151/12)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Bundesanstalt für Landwirtschaft und Ernährung

Defendant: Pfeifer & Langen KG

Re:

Reference for a preliminary ruling — Bundesverwaltungsgericht — Interpretation of Article 3 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1) — Recovery of aid wrongly paid — Applicability of Article 3 of Regulation (EC, Euratom) No 2988/95 to the limitation period in respect of interest payable under national law in addition to the reimbursement of the sums wrongly paid

Operative part of the judgment

Article 3 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests must be interpreted as meaning that the limitation period that it lays down for the principal claim, relating to the recovery of an advantage wrongly received from the European Union budget, does not apply to the recovery of interest arising from that claim, where that interest is not due under European Union law, but exclusively under an obligation of national law.

([1]) OJ C 72, 5.3.2011.

Judgment of the Court (Fourth Chamber) of 29 March 2012 (reference for a preliminary ruling from the Najvyšší súd Slovenskej republiky — Slovak Republic) — SAG ELV Slovensko a.s., FELA Management AG, ASCOM (Schweiz) AG, Asseco Central Europe a.s., TESLA Stropkov a.s., Autostrade per l'Italia SpA, EFKON AG, Stalexport Autostrady SA v Úrad pre verejné obstarávanie

(Case C-599/10) ([1])

(Public procurement — Directive 2004/18/EC — Contract award procedures — Restricted call for tenders — Assessment of the tender — Requests by the contracting authority for clarification of the tender — Conditions)

(2012/C 151/13)

Language of the case: Slovak

Referring court

Najvyšší súd Slovenskej republiky

Parties to the main proceedings

Applicants: SAG ELV Slovensko a.s., FELA Management AG, ASCOM (Schweiz) AG, Asseco Central Europe a.s., TESLA Stropkov a.s., Autostrade per l'Italia SpA, EFKON AG, Stalexport Autostrady SA

Defendant: Úrad pre verejné obstarávanie

In the presence of: Národná diaľničná spoločnosť a.s.

Re:

Reference for a preliminary ruling — Najvyšší súd Slovenskej republiky — Interpretation of European Parliament and Council Directive 2004/18/EC of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114) and, in particular, of Articles 2, 51 and 55 thereof — Possible obligation on the awarding authority to request clarification of a tender in case of need — Extent of that obligation

Operative part of the judgment

1. *Article 55 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts must be interpreted as requiring the inclusion in national legislation of a provision such as Article 42(3) of Slovak Law No 25/2006 on public procurement, in the version applicable in the main proceedings, which, in essence, provides that if a tenderer offers an abnormally low price, the contracting authority must ask it in writing to clarify its price proposal. It is for the national court to ascertain, having regard to all the documents in the file placed before it, whether the request for clarification enabled the tenderer concerned to provide a sufficient explanation of the composition of its tender;*

2. *Article 55 of Directive 2004/18 precludes a contracting authority from taking the view that it is not required to ask a tenderer to clarify an abnormally low price;*

3. *Article 2 of Directive 2004/18 does not preclude a provision of national law, such as Article 42(2) of the abovementioned Law No 25/2006, according to which, in essence, the contracting authority may ask tenderers in writing to clarify their tenders without, however, requesting or accepting any amendment to the tenders. In the exercise of the discretion thus enjoyed by the contracting authority, that authority must treat the various tenderers equally and fairly, in such a way that a request for clarification cannot appear unduly to have favoured or disadvantaged the tenderer or tenderers to which the request was addressed, once the procedure for selection of tenders has been completed and in the light of its outcome.*

([1]) OJ C 72, 5.3.2011.

Judgment of the Court (Sixth Chamber) of 29 March 2012 — European Commission v Kingdom of Sweden

(Case C-607/10) ([1])

(Failure of a Member State to fulfil its obligations — Environment — Directive 2008/1/EC — Integrated pollution prevention and control — Conditions for the authorisation of existing installations — Obligation to ensure the operation of such installations in accordance with the requirements of the directive)

(2012/C 151/14)

Language of the case: Swedish

Parties

Applicant: European Commission (represented by: A. Alcover San Pedro and K. Simonsson, Agents)

Defendant: Kingdom of Sweden (represented by: A. Falk, Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 5(1) of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (OJ 2008 L 24, p. 8) — Conditions for the authorisation of existing installations — Obligation to ensure that those installations are operated in accordance with the requirements laid down in the directive

Operative part of the judgment

The Court:

1. *Declares that, by failing to take the necessary measures to ensure that the competent national authorities see to it, by means of permits issued in accordance with Articles 6 and 8 of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (Codified version) or, as appropriate, by reconsidering and, where necessary, by updating the conditions, that all existing installations operate in accordance with the requirements of Articles 3, 7, 9, 10 and 13, Article 14(a) and (b) and Article 15(2) of that directive, the Kingdom of Sweden has failed to fulfil its obligations under Article 5(1) of that directive;*

2. *Orders the Kingdom of Sweden to pay the costs.*

([1]) OJ C 89, 19.3.2011.

Judgment of the Court (Fourth Chamber) of 29 March 2012 (reference for a preliminary ruling from the Verwaltungsgericht Mainz — Germany) — Interseroh Scrap and Metals Trading GmbH v Sonderabfall-Management-Gesellschaft Rheinland-Pfalz mbH (SAM)

(Case C-1/11) ([1])

(Environment — Regulation (EC) No 1013/2006 — Article 18(1) and (4) — Shipments of certain waste — Article 3(2) — Mandatory information — Identity of waste producers — Information not provided by the intermediary dealer — Protection of business secrets)

(2012/C 151/15)

Language of the case: German

Referring court

Verwaltungsgericht Mainz

Parties to the main proceedings

Applicant: Interseroh Scrap and Metals Trading GmbH

Defendant: Sonderabfall-Management-Gesellschaft Rheinland-Pfalz mbH (SAM)

Re:

Reference for a preliminary ruling — Verwaltungsgericht Mainz — Interpretation of Article 18(1) and (4) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ 2006 L 190, p. 1) — Document appearing in Annex VII to that regulation and containing details accompanying the transportation of certain waste — Right of an intermediary not to disclose in that document the identity of the waste producer in order to protect its customers with regard to the buyer

Operative part of the judgment

1. *Article 18(4) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, as amended by Commission Regulation (EC) No 308/2009 of 15 April 2009, must be interpreted as not permitting an intermediary dealer arranging a shipment of waste not to disclose the name of the waste producer to the consignee of the shipment, as provided for in Article 18(1) of Regulation No 1013/2006 in conjunction with Annex VII to that regulation, even though such non-disclosure might be necessary in order to protect the business secrets of that intermediary dealer;*

2. *Article 18(1) of Regulation No 1013/2006, as amended by Regulation No 308/2009, must be interpreted as requiring an intermediary dealer, in the context of a shipment of waste covered by that provision, to complete Field 6 of the document contained in Annex VII to Regulation No 1013/2006, as amended by Regulation No 308/2009, and transmit it to the consignee, without any possibility of the scope of that requirement being restricted by a right to protection of business secrets.*

([1]) OJ C 95, 26.3.2011.

Order of the Court (Eighth Chamber) of 16 February 2012 (references for a preliminary ruling from the Tribunale Amministrativo Regionale del Lazio — Italy) — Emanuele Ferazzoli and Others v Ministero dell'Interno

(Joined Cases C-164/10 to C-176/10) ([1])

(Article 104(3), first subparagraph, of the Rules of Procedure — Freedom of establishment — Freedom to provide services — Betting and gaming — Collection of bets on sporting events — Licensing requirement — Consequences of an infringement of European Union law in the awarding of licences — Award of 16 300 additional licences — Principle of equal treatment and the obligation of transparency — Principle of legal certainty — Protection of holders of earlier licences — National legislation — Mandatory minimum distances between betting outlets — Whether permissible — Cross-border activities analogous to those engaged in under the licence — Prohibition under national legislation — Whether permissible)

(2012/C 151/16)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale del Lazio

Parties to the main proceedings

Applicants: Emanuele Ferazzoli (Case C-164/10), Cosima Barberio (Case C-165/10), Patrizia Banchetti (Case C-166/10), Andrea Palomba (Case C-167/10), Michele Fanelli (Case C-168/10), Sandra Castronovo (Case C-169/10), Mirko De Filippo (Case C-170/10), Andrea Sacripanti (Case C-171/10), Emiliano Orru' (Case C-172/10), Fabrizio Cariulo (Case C-173/10), Paola Tonachella (Case C-174/10), Pietro Calogero (Case C-175/10), Danilo Spina (Case C-176/10)

Defendant: Ministero dell'Interno

Re:

Reference for a preliminary ruling — Tribunale Amministrativo Regionale del Lazio — Free movement of persons — Freedom to provide services — Activity of collecting bets — Domestic legislation reserving the right to engage in the activity of collecting bets to national operators who have obtained a licence — Restrictions on opening new betting outlets for the holders of new licences — Licences withdrawn where there is cross-border organisation of games similar to those considered to be 'public'– Whether compatible with Articles 43 EC and 49 EC

Operative part of the order

1. *Articles 43 EC and 49 EC and the principles of equal treatment and effectiveness must be interpreted as precluding a Member State which, in breach of European Union law, has excluded a category of operators from the award of licences to engage in a particular economic activity and which seeks to remedy that breach by putting out to tender a significant number of new licences, from protecting the market positions acquired by the existing operators, by providing inter alia that a minimum distance must be observed between the establishments of new licence holders and those of existing operators.*

2. *Articles 43 EC and 49 EC must be interpreted as precluding the imposition of penalties for engaging in the organised activity of collecting bets without a licence or police authorisation on persons who are linked to an operator which was excluded, in breach of European Union law, from an earlier tendering procedure, even following the new tendering procedure intended to remedy that breach of European Union law, in so far as that tendering procedure and the subsequent award of new licences have not in fact remedied the exclusion of that operator from the earlier tendering procedure.*

3. *It follows from Articles 43 EC and 49 EC, the principle of equal treatment, the obligation of transparency and the principle of legal certainty that the conditions and detailed rules of a tendering procedure such as that at issue in the cases before the referring court and, in particular, the provisions concerning the withdrawal of licences granted under that tendering procedure, such as those laid down in Article 23(2)(a) and (3) of the model contract between the Independent Authority for the Administration of State Monopolies and the successful tenderer for the licence for betting on events other than horse races, must be drawn up in a clear, precise and unequivocal manner, a matter which it is for the referring court to verify.*

([1]) OJ C 161, 19.6.2010.

Order of the Court (Eighth Chamber) of 16 February 2012 (reference for a preliminary ruling from the Tribunale di Roma — Italy) — Criminal proceedings against Alessandro Sacchi

(Case C-255/10) [1]

(Article 104(3), first subparagraph, of the Rules of Procedure — Freedom of establishment — Freedom to provide services — Betting and gaming — Collection of bets on sporting events — Licensing requirement — Consequences of an infringement of European Union law in the awarding of licences — Award of 16 300 additional licences — Principle of equal treatment and the obligation of transparency — Principle of legal certainty — Protection of holders of earlier licences — National legislation — Mandatory minimum distances between betting outlets — Whether permissible — Cross-border activities analogous to those engaged in under the licence — Prohibition under national legislation — Whether permissible)

(2012/C 151/17)

Language of the case: Italian

Referring court

Tribunale di Roma

Criminal proceedings against

Alessandro Sacchi

Re:

Reference for a preliminary ruling — Tribunale ordinario di Roma — Free movement of persons — Freedom to provide services — Activity of collecting bets — Domestic legislation making the exercise of that activity conditional upon the obtaining of a public security authorisation and permit — Protection afforded to persons obtaining authorisations and permits by means of award procedures that unlawfully excluded other operators from the same sector — Whether compatible with Articles 43 EC and 49 EC

Operative part of the order

1. *Articles 43 EC and 49 EC and the principles of equal treatment and effectiveness must be interpreted as precluding a Member State which, in breach of European Union law, has excluded a category of operators from the award of licences to engage in a particular economic activity and which seeks to remedy that breach by putting out to tender a significant number of new licences, from protecting the market positions acquired by the existing operators, by providing inter alia that a minimum distance must be observed between the establishments of new licence holders and those of existing operators.*

2. *Articles 43 EC and 49 EC must be interpreted as precluding the imposition of penalties for engaging in the organised activity of collecting bets without a licence or police authorisation on persons who are linked to an operator which was excluded, in breach of European Union law, from an earlier tendering procedure, even following the new tendering procedure intended to remedy that breach of European Union law, in so far as that tendering procedure and the subsequent award of new licences have not in fact remedied the exclusion of that operator from the earlier tendering procedure.*

3. *It follows from Articles 43 EC and 49 EC, the principle of equal treatment, the obligation of transparency and the principle of legal certainty that the conditions and detailed rules of a tendering procedure such as that at issue in the case before the referring court and, in particular, the provisions concerning the withdrawal of licences granted under that tendering procedure, such as those laid down in Article 23(2)(a) and (3) of the model contract between the Independent Authority for the Administration of State Monopolies and the successful tenderer for the licence for betting on events other than horse races, must be drawn up in a clear, precise and unequivocal manner, a matter which it is for the referring court to verify.*

[1] OJ C 209, 31.7.2010.

Order of the Court (Eighth Chamber) of 16 February 2012 (reference for a preliminary ruling from the Tribunale di Verbania — Italy) — Criminal proceedings against Matteo Minesi

(Case C-279/10) [1]

(Article 104(3), first subparagraph, of the Rules of Procedure — Freedom of establishment — Freedom to provide services — Betting and gaming — Collection of bets on sporting events — Licensing requirement — Consequences of an infringement of European Union law in the awarding of licences — Award of 16 300 additional licences — Principle of equal treatment and the obligation of transparency — Principle of legal certainty — Protection of holders of earlier licences — National legislation — Mandatory minimum distances between betting outlets — Whether permissible — Cross-border activities analogous to those engaged in under the licence — Prohibition under national legislation — Whether permissible)

(2012/C 151/18)

Language of the case: Italian

Referring court

Tribunale di Verbania

Criminal proceedings against

Matteo Minesi

Re:

Reference for a preliminary ruling — Tribunale del Riesame di Verbania — Free movement of persons — Freedom to provide services — Activity of collecting bets — Domestic legislation making the exercise of that activity conditional upon the obtaining of a public security authorisation and permit — Protection afforded to persons obtaining authorisations and permits by means of award procedures that unlawfully excluded other operators from the same sector — Whether compatible with Articles 43 EC and 49 EC

Operative part of the order

1. *Articles 43 EC and 49 EC and the principles of equal treatment and effectiveness must be interpreted as precluding a Member State which, in breach of European Union law, has excluded a category of operators from the award of licences to engage in a particular economic activity and which seeks to remedy that breach by putting out to tender a significant number of new licences, from protecting the market positions acquired by the existing operators, by providing inter alia that a minimum distance must be observed between the establishments of new licence holders and those of existing operators.*

2. *Articles 43 EC and 49 EC must be interpreted as precluding the imposition of penalties for engaging in the organised activity of collecting bets without a licence or police authorisation on persons who are linked to an operator which was excluded, in breach of European Union law, from an earlier tendering procedure, even following the new tendering procedure intended to remedy that breach of European Union law, in so far as that tendering procedure and the subsequent award of new licences have not in fact remedied the exclusion of that operator from the earlier tendering procedure.*

3. *It follows from Articles 43 EC and 49 EC, the principle of equal treatment, the obligation of transparency and the principle of legal certainty that the conditions and detailed rules of a tendering procedure such as that at issue in the case before the referring court and, in particular, the provisions concerning the withdrawal of licences granted under that tendering procedure, such as those laid down in Article 23(2)(a) and (3) of the model contract between the Independent Authority for the Administration of State Monopolies and the successful tenderer for the licence for betting on events other than horse races, must be drawn up in a clear, precise and unequivocal manner, a matter which it is for the referring court to verify.*

([1]) OJ C 209, 31.7.2010.

Order of the Court (Eighth Chamber) of 16 February 2012 (reference for a preliminary ruling from the Tribunale Ordinario di Prato — Italy) — Criminal proceedings against Michela Pulignani, Alfonso Picariello, Bianca Cilla, Andrea Moretti, Mauro Bianconi, Patrizio Gori, Emilio Duranti, Concetta Zungri

(Case C-413/10) ([1])

(Article 104(3), first subparagraph, of the Rules of Procedure — Freedom of establishment — Freedom to provide services — Betting and gaming — Collection of bets on sporting events — Licensing requirement — Consequences of an infringement of European Union law in the awarding of licences — Award of 16 300 additional licences — Principle of equal treatment and the obligation of transparency — Principle of legal certainty — Protection of holders of earlier licences — National legislation — Mandatory minimum distances between betting outlets — Whether permissible — Cross-border activities analogous to those engaged in under the licence — Prohibition under national legislation — Whether permissible)

(2012/C 151/19)

Language of the case: Italian

Referring court

Tribunale Ordinario di Prato

Criminal proceedings against

Michela Pulignani, Alfonso Picariello, Bianca Cilla, Andrea Moretti, Mauro Bianconi, Patrizio Gori, Emilio Duranti, Concetta Zungri

Re:

Reference for a preliminary ruling — Tribunale Ordinario di Prato — Free movement of persons — Freedom to provide services — Activity of collecting bets — Domestic legislation making the exercise of that activity conditional upon the obtaining of a public security authorisation and permit — Protection afforded to persons obtaining authorisations and permits by means of award procedures that unlawfully excluded other operators from the same sector — Whether compatible with Articles 43 EC and 49 EC

Operative part of the order

1. *Articles 43 EC and 49 EC and the principles of equal treatment and effectiveness must be interpreted as precluding a Member State which, in breach of European Union law, has excluded a category of operators from the award of licences to engage in a particular economic activity and which seeks to remedy that breach by putting out to tender a significant number of new licences, from protecting the market positions acquired by the existing operators, by providing inter alia that a minimum distance must be observed between the establishments of new licence holders and those of existing operators.*

2. *Articles 43 EC and 49 EC must be interpreted as precluding the imposition of penalties for engaging in the organised activity of collecting bets without a licence or police authorisation on persons who are linked to an operator which was excluded, in breach of European Union law, from an earlier tendering procedure, even following the new tendering procedure intended to remedy that breach of European Union law, in so far as that tendering procedure and the subsequent award of new licences have not in fact remedied the exclusion of that operator from the earlier tendering procedure.*

3. *It follows from Articles 43 EC and 49 EC, the principle of equal treatment, the obligation of transparency and the principle of legal certainty that the conditions and detailed rules of a tendering procedure such as that at issue in the case before the referring court and, in particular, the provisions concerning the withdrawal of licences granted under that tendering procedure, such as those laid down in Article 23(2)(a) and (3) of the model contract between the Independent Authority for the Administration of State Monopolies and the successful tenderer for the licence for betting on events other than horse races, must be drawn up in a clear, precise and unequivocal manner, a matter which it is for the referring court to verify.*

([1]) OJ C 288, 23.10.2010.

Order of the Court (Eighth Chamber) of 16 February 2012 (reference for a preliminary ruling from the Tribunale di Santa Maria Capua Vetere — Italy) — Criminal proceedings against Raffaele Russo

(Case C-501/10) ([1])

(Article 104(3), first subparagraph, of the Rules of Procedure — Freedom of establishment — Freedom to provide services — Betting and gaming — Collection of bets on sporting events — Licensing requirement — Consequences of an infringement of European Union law in the awarding of licences — Award of 16 300 additional licences — Principle of equal treatment and the obligation of transparency — Principle of legal certainty — Protection of holders of earlier licences — National legislation — Mandatory minimum distances between betting outlets — Whether permissible — Cross-border activities analogous to those engaged in under the licence — Prohibition under national legislation — Whether permissible)

(2012/C 151/20)

Language of the case: Italian

Referring court

Tribunale di Santa Maria Capua Vetere

Criminal proceedings against

Raffaele Russo

Re:

Reference for a preliminary ruling — Tribunale di Santa Maria Capua Vetere — Free movement of persons — Freedom to provide services — Activity of collecting bets — Domestic legislation making the exercise of that activity conditional upon the obtaining of a public security authorisation and permit — Protection afforded to persons obtaining authorisations and permits by means of award procedures that unlawfully excluded other operators from the same sector — Whether compatible with Articles 43 EC and 49 EC

Operative part of the order

1. *Articles 43 EC and 49 EC and the principles of equal treatment and effectiveness must be interpreted as precluding a Member State which, in breach of European Union law, has excluded a category of operators from the award of licences to engage in a particular economic activity and which seeks to remedy that breach by putting out to tender a significant number of new licences, from protecting the market positions acquired by the existing operators, by providing inter alia that a minimum distance must be observed between the establishments of new licence holders and those of existing operators.*

2. *Articles 43 EC and 49 EC must be interpreted as precluding the imposition of penalties for engaging in the organised activity of collecting bets without a licence or police authorisation on persons who are linked to an operator which was excluded, in breach of European Union law, from an earlier tendering procedure, even following the new tendering procedure intended to remedy that breach of European Union law, in so far as that tendering procedure and the subsequent award of new licences have not in fact remedied the exclusion of that operator from the earlier tendering procedure.*

3. *It follows from Articles 43 EC and 49 EC, the principle of equal treatment, the obligation of transparency and the principle of legal certainty that the conditions and detailed rules of a tendering procedure such as that at issue in the case before the referring court and, in particular, the provisions concerning the withdrawal of licences granted under that tendering procedure, such as those laid down in Article 23(2)(a) and (3) of the model contract between the Independent Authority for the Administration of State Monopolies and the successful tenderer for the licence for betting on events other than horse races, must be drawn up in a clear, precise and unequivocal manner, a matter which it is for the referring court to verify.*

([1]) OJ C 346, 18.12.2010.

Order of the Court (Eighth Chamber) of 16 February 2012 (reference for a preliminary ruling from the Consiglio di Giustizia Amministrativa per la Regione siciliana — Italy) — Ministero dell'Interno, Questura di Caltanissetta v Massimiliano Rizzo

(Case C-107/11) [1]

(Article 104(3), first subparagraph, of the Rules of Procedure — Freedom of establishment — Freedom to provide services — Betting and gaming — Collection of bets on sporting events — Licensing requirement — Consequences of an infringement of European Union law in the awarding of licences — Award of 16 300 additional licences — Principle of equal treatment and the obligation of transparency — Principle of legal certainty — Protection of holders of earlier licences — National legislation — Mandatory minimum distances between betting outlets — Whether permissible — Cross-border activities analogous to those engaged in under the licence — Prohibition under national legislation — Whether permissible)

(2012/C 151/21)

Language of the case: Italian

Referring court

Consiglio di Giustizia Amministrativa per la Regione siciliana

Parties to the main proceedings

Applicant: Ministero dell'Interno, Questura di Caltanissetta

Defendant: Massimiliano Rizzo

Re:

Reference for a preliminary ruling — Consiglio di Giustizia Amministrativa per la Regione siciliana — Free movement of persons — Freedom to provide services — Activity of collecting bets — Domestic legislation making the exercise of that activity conditional upon the obtaining of a public security authorisation and permit — Protection afforded to persons obtaining authorisations and permits by means of award procedures that unlawfully excluded other operators from the same sector — Whether compatible with Articles 43 EC and 49 EC

Operative part of the order

1. *Articles 43 EC and 49 EC and the principles of equal treatment and effectiveness must be interpreted as precluding a Member State which, in breach of European Union law, has excluded a category of operators from the award of licences to engage in a particular economic activity and which seeks to remedy that breach by putting out to tender a significant number of new licences, from protecting the market positions acquired by the existing operators, by providing inter alia that a minimum distance must be observed between the establishments of new licence holders and those of existing operators.*

2. *Articles 43 EC and 49 EC must be interpreted as precluding the imposition of penalties for engaging in the organised activity of collecting bets without a licence or police authorisation on persons who are linked to an operator which was excluded, in breach of European Union law, from an earlier tendering procedure, even following the new tendering procedure intended to remedy that breach of European Union law, in so far as that tendering procedure and the subsequent award of new licences have not in fact remedied the exclusion of that operator from the earlier tendering procedure.*

3. *It follows from Articles 43 EC and 49 EC, the principle of equal treatment, the obligation of transparency and the principle of legal certainty that the conditions and detailed rules of a tendering procedure such as that at issue in the case before the referring court and, in particular, the provisions concerning the withdrawal of licences granted under that tendering procedure, such as those laid down in Article 23(2)(a) and (3) of the model contract between the Independent Authority for the Administration of State Monopolies and the successful tenderer for the licence for betting on events other than horse races, must be drawn up in a clear, precise and unequivocal manner, a matter which it is for the referring court to verify.*

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[1] OJ C 139, 7.5.2012.

Order of the Court (Eighth Chamber) of 16 February 2012 (reference for a preliminary ruling from the Tribunale di Santa Maria Capua Vetere — Italy) — Criminal proceedings against Raffaele Arrichiello

(Case C-368/11) [1]

(Article 104(3), first subparagraph, of the Rules of Procedure — Freedom of establishment — Freedom to provide services — Betting and gaming — Collection of bets on sporting events — Licensing requirement — Consequences of an infringement of European Union law in the awarding of licences — Award of 16 300 additional licences — Principle of equal treatment and the obligation of transparency — Principle of legal certainty — Protection of holders of earlier licences — National legislation — Mandatory minimum distances between betting outlets — Whether permissible — Cross-border activities analogous to those engaged in under the licence — Prohibition under national legislation — Whether permissible)

(2012/C 151/22)

Language of the case: Italian

Referring court

Tribunale di Santa Maria Capua Vetere

Criminal proceedings against

Raffaele Arrichiello

Re:

Reference for a preliminary ruling — Tribunale di Santa Maria Capua Vetere — Free movement of persons — Freedom to provide services — Activity of collecting bets — Domestic legislation making the exercise of that activity conditional upon the obtaining of a public security authorisation and permit — Protection afforded to persons obtaining authorisations and permits by means of award procedures that unlawfully excluded other operators from the same sector — Whether compatible with Articles 43 EC and 49 EC

Operative part of the order

1. *Articles 43 EC and 49 EC and the principles of equal treatment and effectiveness must be interpreted as precluding a Member State which, in breach of European Union law, has excluded a category of operators from the award of licences to engage in a particular economic activity and which seeks to remedy that breach by putting out to tender a significant number of new licences, from protecting the market positions acquired by the existing operators, by providing inter alia that a minimum distance must be observed between the establishments of new licence holders and those of existing operators.*

2. *Articles 43 EC and 49 EC must be interpreted as precluding the imposition of penalties for engaging in the organised activity of collecting bets without a licence or police authorisation on persons who are linked to an operator which was excluded, in breach of European Union law, from an earlier tendering procedure, even following the new tendering procedure intended to remedy that breach of European Union law, in so far as that tendering procedure and the subsequent award of new licences have not in fact remedied the exclusion of that operator from the earlier tendering procedure.*

3. *It follows from Articles 43 EC and 49 EC, the principle of equal treatment, the obligation of transparency and the principle of legal certainty that the conditions and detailed rules of a tendering procedure such as that at issue in the case before the referring court and, in particular, the provisions concerning the withdrawal of licences granted under that tendering procedure, such as those laid down in Article 23(2)(a) and (3) of the model contract between the Independent Authority for the Administration of State Monopolies and the successful tenderer for the licence for betting on events other than horse races, must be drawn up in a clear, precise and unequivocal manner, a matter which it is for the referring court to verify.*

(1) OJ C 282, 24.9.2011.

Order of the Court (Eighth Chamber) of 16 February 2012 (reference for a preliminary ruling from the Tribunale di Milano — Italy) — Criminal proceedings against Vincenzo Veneruso

(Case C-612/11) (1)

(Article 104(3), first subparagraph, of the Rules of Procedure — Freedom of establishment — Freedom to provide services — Betting and gaming — Collection of bets on sporting events — Licensing requirement — Consequences of an infringement of European Union law in the awarding of licences — Award of 16 300 additional licences — Principle of equal treatment and the obligation of transparency — Principle of legal certainty — Protection of holders of earlier licences — National legislation — Mandatory minimum distances between betting outlets — Whether permissible — Cross-border activities analogous to those engaged in under the licence — Prohibition under national legislation — Whether permissible)

(2012/C 151/23)

Language of the case: Italian

Referring court

Tribunale di Milano

Criminal proceedings against

Vincenzo Veneruso

Re:

Reference for a preliminary ruling — Tribunale ordinario di Milano — Free movement of persons — Freedom to provide services — Activity of collecting bets — Domestic legislation making the exercise of that activity conditional upon the obtaining of a public security authorisation and permit — Protection afforded to persons obtaining authorisations and permits by means of award procedures that unlawfully excluded other operators from the same sector — Whether compatible with Articles 43 EC and 49 EC (now Articles 49 TFEU and 56 TFEU)

Operative part of the order

1. *Articles 43 EC and 49 EC and the principles of equal treatment and effectiveness must be interpreted as precluding a Member State which, in breach of European Union law, has excluded a category of operators from the award of licences to engage in a particular economic activity and which seeks to remedy that breach by putting out to tender a significant number of new licences, from protecting the market positions acquired by the existing operators, by providing inter alia that a minimum distance must be observed between the establishments of new licence holders and those of existing operators.*

2. *Articles 43 EC and 49 EC must be interpreted as precluding the imposition of penalties for engaging in the organised activity of collecting bets without a licence or police authorisation on persons*

who are linked to an operator which was excluded, in breach of European Union law, from an earlier tendering procedure, even following the new tendering procedure intended to remedy that breach of European Union law, in so far as that tendering procedure and the subsequent award of new licences have not in fact remedied the exclusion of that operator from the earlier tendering procedure.

3. *It follows from Articles 43 EC and 49 EC, the principle of equal treatment, the obligation of transparency and the principle of legal certainty that the conditions and detailed rules of a tendering procedure such as that at issue in the case before the referring court and, in particular, the provisions concerning the withdrawal of licences granted under that tendering procedure, such as those laid down in Article 23(2)(a) and (3) of the model contract between the Independent Authority for the Administration of State Monopolies and the successful tenderer for the licence for betting on events other than horse races, must be drawn up in a clear, precise and unequivocal manner, a matter which it is for the referring court to verify.*

([1]) OJ C 65, 03.03.2012.

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale per le Marche (Italy) lodged on 20 February 2012 — Swm Costruzioni 2 SpA, D. I. Mannocchi Luigino v Provincia di Fermo

(Case C-94/12)

(2012/C 151/24)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per le Marche

Parties to the main proceedings

Applicants: Swm Costruzioni 2 SpA, D. I. Mannocchi Luigino

Defendant: Provincia di Fermo

Question referred

Must Article 47(2) of Directive 18/2004/EC ([1]) be interpreted as precluding, in principle, the legislation of a Member State, such as the Italian legislation set out in Article 49(6) of Legislative Decree No 163/2006, which prohibits, except in special circumstances, reliance on the capacities of more than one auxiliary undertaking, and provides that '[f]or works contracts, the tenderer may rely on the capacities of only one auxiliary undertaking for each qualification category. The invitation to tender may permit reliance on the capacities of more than one auxiliary undertaking on account of the value of the contract or the special nature of the services to be provided …'?

([1]) OJ 2004 L 134, p. 114.

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale per il Piemonte (Italy) lodged on 24 February 2012 — Fastweb SpA v Azienda Sanitaria Locale di Alessandria

(Case C-100/12)

(2012/C 151/25)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Piemonte

Parties to the main proceedings

Applicant: Fastweb SpA

Defendant: Azienda Sanitaria Locale di Alessandria

Other parties: Telecom Italia SpA, Path-net SpA

Question referred

Do the principles of equality of the parties, of non-discrimination and of protection of competition in public tendering procedures referred to in Directive 89/665/EEC, ([1]) as … amended by Directive 2007/66/EC, ([2]) preclude the most recent case-law (the '*diritto vivente*') as laid down in Decision No 4 of [7 April] 2011 of the Plenary Assembly of the Consiglio di Stato, according to which the cross action, which seeks to challenge recognition of the legitimacy of the applicant in the main action by contesting its admission to the tendering procedure, must of necessity be heard before the main action and carry compelling implications for examination of the main action, even in cases where the applicant in the main action has an interest in the recommencement of the entire selection procedure (*interesse strumentale*) and irrespective of the number of competitors which took part in the procedure, with specific reference to cases where only two participants remained in play in that procedure (namely, the applicant in the main action and the applicant in the cross-action, the latter being also the successful tenderer), each seeking to have the other excluded on the grounds that its tender failed to meet the minimum requirements for the tender to be considered suitable?

([1]) OJ 1989 L 395, p. 33.
([2]) OJ 2007 L 335, p. 31.

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands), lodged on 29 February 2012 — Staat der Nederlanden v Essent NV and Essent Nederland BV

(Case C-105/12)

(2012/C 151/26)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Staat der Nederlanden

Respondents: Essent NV

Essent Nederland BV

Questions referred

1. Must Article 345 TFEU be interpreted as meaning that the 'rules in Member States governing the system of property ownership' also include the rule in respect of the absolute ban on privatisation which is at issue in the present case, as set out in the Besluit aandelen netbeheerders (Decree on shares in system operators), in conjunction with Article 93 of the Elektriciteitswet 1998 (1998 Law on electricity) and Article 85 of the Gaswet (Law on gas), under which shares in a system operator can be transferred only within the circle of public authorities?

2. If Question 1 is answered in the affirmative, does this then have the effect that the rules relating to the free movement of capital are not applicable to the group ban and to the ban on secondary activities, or at least that a review of the group ban and of the ban on secondary activities in the light of the rules relating to the free movement of capital is not required?

3. Are the objectives which also form the basis of the Won (Wet onafhankelijk netbeheer) (Law on independent network operation), that is to say, to achieve transparency in the energy market and to prevent distortions of competition by opposing cross-subsidisation in the broad sense (including strategic information exchange), purely economic interests, or can they also be regarded as interests of a non-economic nature, in the sense that in certain circumstances, as compelling reasons in the general interest, they may constitute a justification for a restriction of the free movement of capital?

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands), lodged on 29 February 2012 — Staat der Nederlanden v Eneco Holding NV

(Case C-106/12)

(2012/C 151/27)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Staat der Nederlanden

Respondent: Eneco Holding NV

Questions referred

1. Must Article 345 TFEU be interpreted as meaning that the 'rules in Member States governing the system of property ownership' also include the rule in respect of the absolute ban on privatisation which is at issue in the present case, as set out in the Besluit aandelen netbeheerders (Decree on shares in system operators), in conjunction with Article 93 of the Elektriciteitswet 1998 (1998 Law on electricity) and Article 85 of the Gaswet (Law on gas), under which shares in a system operator can be transferred only within the circle of public authorities?

2. If Question 1 is answered in the affirmative, does this then have the effect that the rules relating to the free movement of capital are not applicable to the group ban, or at least that a review of the group ban in the light of the rules relating to the free movement of capital is not required?

3. Are the objectives which also form the basis of the Won (Wet onafhankelijk netbeheer) (Law on independent network operation), that is to say, to achieve transparency in the energy market and to prevent distortions of competition by opposing cross-subsidisation in the broad sense (including strategic information exchange), purely economic interests, or can they also be regarded as interests of a non-economic nature, in the sense that in certain circumstances, as compelling reasons in the general interest, they may constitute a justification for a restriction of the free movement of capital?

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands), lodged on 29 February 2012 — Staat der Nederlanden v Delta NV

(Case C-107/12)

(2012/C 151/28)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Staat der Nederlanden

Respondent: Delta NV

Questions referred

1. Must Article 345 TFEU be interpreted as meaning that the 'rules in Member States governing the system of property ownership' also include the rule in respect of the absolute ban on privatisation which is at issue in the present case, as set out in the Besluit aandelen netbeheerders (Decree on shares in system operators), in conjunction with Article 93 of the Elektriciteitswet 1998 (1998 Law on electricity) and Article 85 of the Gaswet (Law on gas), under which shares in a system operator can be transferred only within the circle of public authorities?

2. If Question 1 is answered in the affirmative, does this then have the effect that the rules relating to the free movement of capital are not applicable to the group ban, or at least that a review of the group ban in the light of the rules relating to the free movement of capital is not required?

3. Are the objectives which also form the basis of the Won (Wet onafhankelijk netbeheer) (Law on independent network operation), that is to say, to achieve transparency in the energy market and to prevent distortions of competition by opposing cross-subsidisation in the broad sense (including strategic information exchange), purely economic interests, or can they also be regarded as interests of a non-economic nature, in the sense that in certain circumstances, as compelling reasons in the general interest, they may constitute a justification for a restriction of the free movement of capital?

Reference for a preliminary ruling from the Tribunalul Vâlcea (Romania) lodged on 29 February 2012 — SC Volksbank România SA v Ionuț-Florin Zglimbea, Liana-Ramona Zglimbea

(Case C-108/12)

(2012/C 151/29)

Language of the case: Romanian

Referring court

Tribunalul Vâlcea

Parties to the main proceedings

Applicant: SC Volksbank România SA

Defendants: Ionuț-Florin Zglimbea, Liana-Ramona Zglimbea

Question referred

Can Article 4(2) of Directive 93/13 [1] be interpreted as meaning that 'the main subject matter of the contract' and 'price', as referred to in that provision, cover the elements which make up the consideration to which a credit institution is entitled by virtue of a consumer credit agreement, that is to say, the annual percentage rate of charge under a consumer credit agreement (as defined in Directive 2008/48 [2] on credit agreements for consumers), formed in particular by the interest rate, whether fixed or variable, bank commissions, and the other fees included and defined in the agreement?

[1] Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

[2] Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 1987 L 133, p. 66).

Reference for a preliminary ruling from the Consiglio di Stato (Italy), lodged on 29 February 2012 — Ministero per i beni e le attività culturali and Others v Ordine degli Ingegneri di Verona e Provincia and Others

(Case C-111/12)

(2012/C 151/30)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellants: Ministero per i beni e le attività culturali, Ordini degli Ingegneri delle Province di Venezia, di Padova, di Treviso, di Vicenza, di Verona e Provincia, di Rovigo e di Belluno

Respondents: Ordine degli Ingegneri di Verona e Provincia, Consiglio Nazionale degli Ingegneri, Consiglio Nazionale degli Architetti, Pianificatori, Paesaggisti e Conservatori, Alessandro Mosconi, Comune di S. Martino Buon Albergo, Ordine degli Architetti, Pianificatori, Paesaggisti e Conservatori della Provincia di Verona, Istituzione di Ricovero e di Educazione di Venezia (IRE), Ordine degli Architetti di Venezia

Questions referred

1. Do Articles 10 and 11 of Council Directive 85/384/EEC, [1] which for a transitional period allow nationals of other Member States holding qualifications specifically mentioned to practise in the architectural sector, preclude Italy from lawfully operating an administrative practice having as its legal basis Article 52, second indent, first part, of Royal Decree No 2537 of 1925, which specifically reserves certain operations relating to buildings of artistic interest exclusively to persons holding the qualification of 'architect' or to persons who demonstrate that they have completed courses in the heritage sector specific to cultural assets and ancillary assets in addition to the requirements authorising general access to the provision of architectural services within the terms of Directive 85/384/EEC?

2. In particular, may that administrative practice consist in subjecting professionals from Member States other than Italy, even where they possess qualifications which in general make them suitable for practising as architects, to a specific examination of professional suitability, that is to say, to the authorisation to practise as an architect, which applies also to Italian professionals in the examination to establish their suitability to practise as architects, for the sole purposes of obtaining access to the professional activities referred to in Article 52, second indent, first part, of Royal Decree No [2537] of 1925?

[1] OJ 1985 L 223, p. 15.

Reference for a preliminary ruling from Supreme Court (Ireland) made on 1 March 2012 — Donal Brady v Environmental Protection Agency

(Case C-113/12)

(2012/C 151/31)

Language of the case: English

Referring court

Supreme Court, Ireland

Parties to the main proceedings

Applicant: Donal Brady

Defendant: Environmental Protection Agency

Questions referred

In the absence of a definitive interpretation of the meaning of 'waste' for the purposes of Union law, is a Member State permitted by national law to impose upon a producer of pig slurry the obligation to establish that it is not waste, or is waste to be determined by reference to objective criteria of the type referred to in the case law of the Court of Justice of the European Union:

1. If waste is to be determined by reference to objective criteria of the type referred to in the case law of the Court of Justice of the European Union, what level of certainty of re-use of pig slurry is required, which a licensee collects and stores or may store for upwards of 12 months, pending its transfer to users?

2. If pig slurry is waste, or is determined to be waste in accordance with the application of the appropriate criteria, is it lawful for a Member State to impose upon its producer — who does not use it on his own lands, but disposes of it to third party landowners for use as fertilisers on those third parties' lands — personal liability for compliance by those users with Union legislation concerning the control of waste and/or fertilisers, in order to ensure that the third parties' use of that pig slurry by land spreading will not give rise to a risk of significant environmental pollution?

3. Is the aforesaid pig slurry excluded from the scope of the definition of 'waste' by virtue of Article 2(1)(b)(iii) of Directive 75/442/EEC ([1]), as amended by Council Directive 91/156 ([2]), by reason of its being 'already covered by other legislation', and in particular by Council Directive 91/676/EEC ([3]), in circumstances where, at the time the licence was granted, Ireland had not transposed Council Directive 91/676/EEC, no other domestic legislation controlled the application of pig slurry to land as fertiliser, and Council Regulation (EC) No 1774/2002 ([4]) had not then been adopted?

([1]) Council Directive 75/442/EEC of 15 July 1975 on waste OJ L 194, p. 39

([2]) Council Directive 91/156/EEC of 18 March 1991 amending Directive 75/442/EEC on waste OJ L 78, p. 32

([3]) Council Directive 91/676/EEC OF 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources OJ L 375, p. 1

([4]) Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption OJ L 273, p. 1

Reference for a preliminary ruling from the Audiencia Provincial de Burgos (Spain) lodged on 5 March 2012 — La Retoucherie de Manuela, S.L. v La Retoucherie de Burgos, S.C.

(Case C-117/12)

(2012/C 151/32)

Language of the case: Spanish

Referring court

Audiencia Provincial de Burgos

Parties to the main proceedings

Applicant: La Retoucherie de Manuela, S.L.

Defendant: La Retoucherie de Burgos, S.C.

Questions referred

1. Should the words 'premises and land from which the buyer has operated during the contract period' used in Article 5(b) of [Commission] Regulation [(EC) No] 2790/1999 ([1]) be understood as meaning that they are limited to the place or physical space from which goods were sold or services provided while the agreement was in effect or can they apply to the entire territory in which the purchaser operated during the contract period?

2. In the event that the Court rules in favour of the first interpretation, in the case of a franchise agreement which allocates a specific territory to the franchisee, can the words 'premises and land' refer to the territory in which the franchisee has operated during the contract period?

([1]) Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices (OJ 1999 L 336, p. 21).

Reference for a preliminary ruling from the Tribunalul Giurgiu (Romania) lodged on 6 March 2012 — SC Volksbank România S.A. v Comisariatul Județean pentru Protecția Consumatorilor Giurgiu

(Case C-123/12)

(2012/C 151/33)

Language of the case: Romanian

Referring court

Tribunalul Giurgiu

Parties to the main proceedings

Applicant: SC Volksbank România S.A.

Defendant: Comisariatul Județean pentru Protecția Consumatorilor Giurgiu

Questions referred

1. Can Article 4(2) of Council Directive 93/13/EEC ([1]) be interpreted as meaning that 'main subject matter of the contract' and 'price', as referred to in that provision, cover the elements which make up the consideration to which a credit institution is entitled by virtue of a consumer credit agreement, that is to say, the annual percentage rate of charge under a credit agreement, formed in particular by the interest rate, whether fixed or variable, bank commissions, and the other fees included and defined in the agreement?

2. Can Article 4(2) of Council Directive 93/13/EEC be interpreted as permitting a Member State which has transposed that provision into national law to allow steps to be taken, in the exercise of judicial power, to check whether contractual terms relating to the main subject matter of the contract and the adequacy of the price are unfair?

([1]) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Reference for a preliminary ruling from the Administrativen sad Plovdiv (Bulgaria) lodged on 7 March 2012 — AES-3C Maritsa Iztok I EOOD v Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — Plovdiv

(Case C-124/12)

(2012/C 151/34)

Language of the case: Bulgarian

Referring court

Administrativen sad Plovdiv

Parties to the main proceedings

Applicant: AES-3C Maritsa Iztok I EOOD

Defendant: Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — Plovdiv

Questions referred

1. Is a provision such as that in Article 70(1)(2) of the Law on value added tax according to which a taxable person does not have a right to deduct value added tax on transport services, work clothing and protective gear received and on business travel expenses incurred because those goods and services are provided free of charge to natural persons, namely employees working for the taxable person's benefit, compatible with Articles 168(a) and 176 of Council Directive 2006/112/EC ([1]) of 28 November 2006 on the common system of value added tax, if the following circumstances are taken into account:

   — the taxable person has not concluded any contracts of employment with the employees but engages them on the basis of a contractual relationship relating to the 'provision of staff' with another taxable person who is the employer of the personnel;

   — the transport services received are used to transport employees from certain collection points in various places to their place of work and back and there is no organised public transport available for staff to get to and around the place of work;

   — the provision of work clothing and protective gear is required under the Labour Code and the Law on health and safety at work;

   — the deduction of VAT would not be in dispute in relation to the transport services, work clothing, protective gear and business travel expenses if those goods and services had been provided by the employer of the staff; in the present case, however, the respective acquisitions were made by a taxable person who is not the employer but, on the basis of a contract for the provision of staff, draws the benefit of the work and bears the costs associated therewith?

2. Does Article 176 of Directive 2006/112 empower a Member State, on acceding to the European Union, to introduce a limitation on the exercise of the right to deduct input tax such as that under Article 70(1)(2) of the Law on value added tax — namely that 'the goods or services are intended to be supplied free of charge' — if the legislation in force up to the date of accession did not expressly provide for such a limitation?

3. If the previous question should be answered in the affirmative, does it follow that goods and services received are intended to be 'supplied free of charge' if they are purchased for the purposes of economic activity but, because of their nature, in order for them to be used they have to be provided to the staff working in the taxable person's undertaking?

(1) OJ 2006 L 347, p. 1.

Reference for a preliminary ruling from the Tribunal do Trabalho do Porto (Portugal) lodged on 8 March 2012 — Sindicato dos Bancários do Norte and Others v BPN — Banco Português de Negócios, SA

(Case C-128/12)

(2012/C 151/35)

Language of the case: Portuguese

Referring court

Tribunal do Trabalho do Porto

Parties to the main proceedings

Applicants: Sindicato dos Bancários do Norte, Sindicato dos Bancários do Centro, Sindicato dos Bancários do Sul e Ilhas, Luís Miguel Rodrigues Teixeira de Melo

Defendant: BPN — Banco Português de Negócios, SA

Questions referred

1. Must the principle of equal treatment, from which the prohibition of discrimination derives, be interpreted as being applicable to public sector employees?

2. Is the salary cut made by the State, by means of the Lei do Orçamento de Estado para 2011, applicable only to persons employed in the public sector or by a public undertaking, contrary to the principle of prohibition of discrimination in that it discriminates on the basis of the public nature of the employment relationship?

3. Must the right to working conditions that respect dignity, laid down in Article 31(1) of the Charter of Fundamental Rights of the European Union, (1) be interpreted as meaning that it is unlawful to make salary cuts without the employee's consent, if the contract of employment is not first altered to that effect?

4. Must the right to working conditions that respect dignity, laid down in Article 31(1) of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that employees have the right to fair remuneration which ensures that they and their families can enjoy a satisfactory standard of living?

5. As a salary cut is not the only possible measure and is not necessary and fundamental to the efforts to consolidate public finances in a serious economic and financial crisis in the country, is it contrary to the right laid down in Article 31(1) of the Charter of Fundamental Rights of the European Union to put at risk the standard of living and the financial commitments of employees and their families by means of such a reduction?

6. Is such a salary cut by the Portuguese State contrary to the right to working conditions that respect dignity in that it was unforeseeable and unexpected by the employees?

(1) OJ 2000 C 364, p. 1.

Reference for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 13 March 2012 — Consiglio Nazionale dei Geologi v Autorità Garante della Concorrenza e del Mercato

(Case C-136/12)

(2012/C 151/36)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Consiglio Nazionale dei Geologi

Respondent: Autorità Garante della Concorrenza e del Mercato

Questions referred

I. 1. Do national procedural rules which provide for a system of procedural bars, such as time-limits for bringing proceedings, the requirement that the grounds relied on be specific, a bar on amending the claim in the course of the proceedings and a bar on the court amending the claim as formulated by the applicant, preclude the application of Article 267, third paragraph, TFEU with regard to the obligation on the court of final instance to refer to the Court of Justice for a preliminary ruling a question of interpretation of Community law raised by a party to the proceedings?

2. Does the power of the national court to 'filter' as regards the relevance of the question and to assess the degree of clarity of Community law preclude the application of Article 267, third paragraph, TFEU with regard to the obligation on the court of final instance to refer to the Court of Justice for a preliminary ruling a question of interpretation of Community law raised by a party to the proceedings?

3. If it is construed as imposing on the national court of final instance an unconditional obligation to refer to the Court of Justice for a preliminary ruling a question of interpretation of Community law raised by a party to the proceedings, is Article 267, third paragraph, TFEU consistent with the principle that proceedings must be concluded within a reasonable time, which is also enshrined in Community law?

4. In what factual and legal circumstances does a failure on the part of the national court to comply with Article 267, third paragraph, TFEU constitute a 'clear breach of Community law', and can that concept differ in its scope and application with regard to special proceedings against the State, under Law No 117 of 13 April 1988 for 'compensation for damage caused in the exercise of judicial functions and the civil liability of judges', and general proceedings against the State for infringement of Community law?

II. Should the Court of Justice accept the argument of the 'large-mesh filter' … precluding the application of the national procedural rules concerning the specific nature of the grounds relied on in the application, the questions for a preliminary ruling must be submitted to the Court of Justice of the European Union in exactly the same terms in which they were formulated by the appellant [in the main proceedings], as set out [below].

1. '… the European Court of Justice is asked for a preliminary ruling on the interpretation of Article 101 of the Treaty (formerly Article 81) in relation to the statutory provisions and rules of conduct regulating the profession of geologist and the institutional responsibilities and rules of procedure of the National Council of Geologists, applicable to the case, as set out below, in order to establish whether they are compatible with and lawful in the light of European Union law (the above-mentioned Article 101) concerning the rules on competition.

Article 9, with particular reference to Article 9(g), of Law 112/1963, "the National Council of Geologists shall have the following responsibilities, in addition to those conferred on it by other provisions: (a) it shall ensure compliance with the law regulating the profession and all other provisions concerning the profession; (b) it shall ensure that the register and special list are maintained and be responsible for registering members and removing members from the register; (c) it shall ensure that the professional qualification is protected and take measures to prevent the unlawful exercise of the profession; (d) it shall adopt disciplinary measures; (e) it shall, if requested, determine fees; (f) it shall administer the material assets of the National Association and draw up annually the provisional budget and the final balance sheet; (g) it shall establish, within the limits strictly necessary to cover the operating costs of the National Association, by resolution to be approved by the Ministry of Justice, the amount of the annual contribution to be paid by those entered in the register or the special list, as well as the amount of the registration fee for entry in the register or list [and] the charge for issuing certificates and opinions on the determination of fees".

Article 14, first paragraph, of Law 616/1966, which provides that "[a] person entered in the register or special list who fails to act in a manner consistent with the integrity or dignity of the profession may be subject, depending on the seriousness of the offence, to one of the following disciplinary measures: (1) reprimand; (2) suspension from professional activity for a period of not more than one year; (3) removal from the register".

Article 17 of Law 616/1966, which provides that "[t]he scale of professional fees and emoluments and the criteria for the reimbursement of costs shall be established by decree of the Minister of Justice ('Ministro per la Grazia e Giustizia' [now the 'Ministro della Giustizia'], after consultation of the Minister for Industry and Commerce [now the 'Minister for the Production Sector'], acting on a proposal from the National Council of Geologists".

Article 6 of the New Code of Conduct of 19 December 2006 (Resolution No 143/2006), amended by Resolution No 65 of 24 March 2010 on "professional services", according to which, "[t]he efficiency and effectiveness of the service shall, in essence, be determined by: the intrinsic technical difficulty; the extent of the responsibility undertaken; the novelty of the request; whether or not existing technical solutions may be applied to the case; the significance of the technical aspects to be assessed; the scale of the technical aspects requiring coordination; the originality of the solution; the amount of time and the level of commitment demanded; the capacity for interaction with the client and with other persons, including undertakings, involved in providing the service; the value of the work".

Article 7 of the New Code of Conduct of 19 December 2006 (Resolution No 143/2006), amended by Resolution No 65 of 24 March 2010 on "[p]rofessional conduct", according to which "appropriate professional conduct consists, in essence, in the propriety and completeness of the professional service provided; in the capacity to take on responsibility; in having available effective technical and professional equipment; in the ready availability of up-to-date tools; in the organisation of an efficient office and professional team; in the care shown in executing tasks; in having available resources and structures for continuing education and training, including for staff and

employees; in the ability to communicate promptly and effectively with the client, and with private and public institutions and bodies and the wider public".

Article 17 of the New Code of Conduct of 19 December 2006 (Resolution No 143/2006), amended by Resolution No 65 of 24 March 2010 on the "[c]riteria for charging", according to which "[i]n determining professional remuneration, the geologist must comply with the provisions of Decree-law 223/2006 converted into Law 248/2006; the requirement that remuneration must be commensurate laid down in Article 2233, second paragraph, of the Civil Code and, in any event, all the provisions in force governing the subject-matter. The professional scale of fees approved by Ministerial Decree of 18 November 1971, as subsequently amended and supplemented, and the fees in respect of public works, approved by the Ministerial Decree of 4 April 2001 in so far as concerns geologists, constitute a legitimate and objective technical and professional reference criterion for the purpose of the consideration, determination and settlement of questions relating to fees as between the parties". On that point, in particular, the Court of justice is requested to give a ruling on whether it is contrary to Article 101 of the Treaty to designate Decree-Law 223/2006, with the numerical-chronological system, being the only historically-based and lawful system, at both domestic and Community level, as the mandatory statutory provision in force in its entirety, which undoubtedly has no bearing on whether it is possible for those concerned to be aware of the rule of law or its mandatory effect.

Article 18 of the New Code of Conduct of 19 December 2006 (Resolution No 143/2006), amended by resolution No 65 of 24 March 2010 on the "[c]ommensurate nature of the fee", according to which, "[u]nder the legislation in force, in order to ensure the quality of the services provided, a geologist engaging in professional activity in its various forms — as an individual, as a member of a company or a partnership — must always ensure that the fee charged is commensurate with the scale and difficulty of the task, appropriate professional conduct, technical knowledge and the commitment required. Having regard to the principles of competitiveness, the National Association shall monitor compliance with these requirements".

Article 19 of the New Code of Conduct of 19 December 2006 (Resolution No 143/2006), amended by Resolution No 65 of 24 March 2010 on "[p]ublic tendering procedures", according to which, "[i]n public tendering procedures, where the public authority legitimately refrains from applying the professional scale of fees as the criterion for remuneration, the geologist shall, in any event, ensure that his or her bid is commensurate with the scale and difficulty of the task, appropriate professional conduct and the technical knowledge and commitment required".

As regards:

— Council Regulation (EEC) No 2137/85 ([1]) of 25 July 1985 on the "European Economic Interest Grouping (EEIG) [designed] to facilitate or develop the economic activities of its members", states, in the sixth recital in the preamble, that the provisions [contained therein] — are not to prejudice the application at national level of legal rules and/or ethical codes concerning the conditions for the pursuit of business and professional activities;

— Directive 2005/36/EC ([2]) of the [European] Parliament and of the Council on the "recognition of professional qualifications" states, in recital 43 that "[t]o the extent that they are regulated, this Directive includes also liberal professions, which are, according to this Directive, those practised on the basis of relevant professional qualifications in a personal, responsible and professionally independent capacity by those providing intellectual and conceptual services in the interest of the client and the public. The exercise of the profession might be subject in the Member States, in conformity with the Treaty, to specific legal constraints based on national legislation and on the statutory provisions laid down autonomously, within that framework, by the respective professional representative bodies, safeguarding and developing their professionalism and quality of service and the confidentiality of relations with the client".

— Directive 2006/123/EC ([3]) of the European Parliament and of the Council on "services in the internal market", known as the "services directive", provides, in recital 115 that "[c]odes of conduct at Community level are intended to set minimum standards of conduct and are complementary to Member States' legal requirements. They do not preclude Member States, in accordance with Community law, from taking more stringent measures in law or national professional bodies from providing for greater protection in their national codes of conduct".

Finally, the Court of Justice is asked to rule on the compatibility with Article 101 of the Treaty of the distinction made, as a matter of law and in terms of the organisation of professional associations, between a professional undertaking and a commercial undertaking, as well as between professional competition and commercial competition'.

2. '(a) Does Article 101 TFEU or any other provision of European Union law prohibit and/or restrict any reference to professional integrity and dignity — of geologists in this case — as factors to be taken into account for the purpose of professional remuneration?

(b) Under Article 101 TFEU or any other provision of European Union law, does the reference to factors pertaining to professional integrity and dignity give rise to effects which restrict professional competition?

(c) Does Article 101 TFEU or any other provision of European Union law establish that the requirements of integrity and dignity as factors to be taken into account for the purpose of determining professional remuneration in connection with minimum fees, in respect of which derogations are expressly stated to be permitted — given the express and formal reference in Article 17 of the New Code of Conduct for Geologists to the statutory provision which permits that derogation (Decree-Law No 223/2006, converted into Law 248/2006), may be regarded as conducive to conduct that restricts competition?

(d) Does Article 101 TFEU or any other provision of European Union law prohibit the reference to the professional scale of fees — established, in the case of geologists, by a State measure in the form of a Ministerial Decree of the Minister of Justice, after consultation with the Minister for the Production Sector, and which may be derogated from as regards minimum fees, it must be reiterated, as a result of the express and formal reference to Decree-Law No 223/2006 in Article 17 of the New Code of Conduct — as a purely technical and professional reference criterion for determining remuneration?

(e) Does Article 101 TFEU or any other provision of European Union law prohibit the correlation between the scale of the services to be provided and the requirements of integrity and dignity, as also defined in Articles 6 and 7 of the New Code of Conduct for Geologists on the one hand, and professional remuneration on the other, as provided for by Article 2233, second paragraph, of the Civil Code, according to which "in any event, the amount of the [professional] remuneration must be commensurate with the scale of work performed and the dignity of the profession"?

(f) Under Article 101 TFEU, therefore, can the reference to Article 2233, second paragraph, of the Civil Code be regarded as legitimate and not likely to have a restrictive effect on competition?

(g) Does Article 101 TFEU or any other provision of European Union law establish, in the context of the rules on competition, equality in law between a professional association, in this case for geologists, as regulated by specific State rules laid down for the pursuit of their objectives as an institution, and restrictive agreements, decisions or practices and concentrations of commercial undertakings constituting anti-competitive agreements?

(h) Does Article 101 TFEU or any other provision of European Union law make it possible to establish equivalence between a contribution to a professional association that is mandatory under the law — and is made for the pursuit of institutional functions and objectives — and the activity of selling goods or services and the financial profit accrued and obtained as a result of anti-competitive conduct on the part of concentrations of commercial undertakings?

(i) Does Article 101 TFEU or any other provision of European Union law justify the imposition of a penalty in this case?

(j) Does Article 101 TFEU or any other provision of European Union law justify making contributions to a professional association, which are mandatory under the law, subject to a compulsory levy, equating those contributions to profit and revenue deriving from an anti-competitive economic and commercial agreement?

…'.

III. '1. In the alternative, should the Court answer the questions concerning the interpretation of Article 267, third paragraph, TFEU to the effect that the national rules of procedure are of no effect and the national court is under a duty to provide assistance, and the question for a preliminary ruling, as raised by the appellant, to the effect that the party's question is of a general nature, the question for a preliminary ruling is whether Community law on competition and the professions, in particular the Community provisions relied upon by the appellant in its question, preclude the adoption of professional codes of conduct which make remuneration commensurate with professional integrity and dignity and the quality and scale of the work performed, with the result that remuneration which falls below the threshold of minimum fees (and is therefore competitive) may be penalised, at disciplinary level, as being in breach of the rules of professional conduct?

2. In the alternative, should the Court answer the questions concerning the interpretation of Article 267, third paragraph, TFEU to the effect that the national rules of procedure are of no effect and the national court is under a duty to provide assistance, and the question for a preliminary ruling, as raised by the appellant, to the effect that the party's question is of a general nature, the question for a preliminary ruling is whether Community competition law, in particular the rules prohibiting restrictive agreements, may be interpreted as meaning that a restrictive agreement may consist in rules of professional conduct established by professional associations, where, by referring to professional integrity and dignity, as well as the quality and scale of the work performed as criteria for determining professional remuneration, those rules have the effect of prohibiting derogations from minimum fees and, consequently, also of restricting competition because derogation is prohibited?

3. In the alternative, should the Court answer the questions concerning the interpretation of Article 267, third paragraph, TFEU to the effect that the national rules of procedure are of no effect and the national court is under a duty to provide assistance, and the question for a preliminary ruling, as raised by the appellant, to the effect that the party's question is of a general nature, the question for a preliminary ruling is whether, if national law lays down rules to safeguard competition which are more stringent than the Community rules, in particular by establishing the possibility of derogating from the minimum fees set by the scale of professional fees, when, in fact, Community law appears still to permit the prohibition on derogating from minimum fees in certain circumstances, and, consequently, if action taken by a professional association prohibiting derogation from minimum fees constitutes an agreement that is restrictive of competition according to national law, but may not be regarded as such under Community law, Community competition law, in particular the Community rules on agreements which restrict competition, preclude such an outcome whereby a particular form of conduct is regarded as punishable as a restrictive agreement under national law but not under Community law, whenever national rules for safeguarding competition are more stringent than the Community rules?'

(1) OJ 1985 L 199, p. 1.
(2) OJ 2005 L 255, p. 22.
(3) OJ 2006 L 376, p. 36.

Action brought on 14 March 2012 — European Commission v Council of the European Union

(Case C-137/12)

(2012/C 151/37)

Language of the case: French

Parties

Applicant: European Commission (represented by: E. Cujo, I. Rogalski and R. Vidal Puig, agents)

Defendant: Council of the European Union

Form of order sought

— Annul Council decision 2011/853/EU of 29 November 2011 on the signing, on behalf of the Union, of the European Convention on the legal protection of services based on, or consisting of, conditional access (1)

— Order the Council of the European Union to pay the costs.

Pleas in law and main arguments

By its first plea, the Commission claims that Article 114 TFEU is not an appropriate legal basis for the adoption of the contested decision. According to the applicant, the decision should have been based on Article 207(4) TFEU which authorises the Council to conclude international agreements in the field of the common commercial policy, as defined in Article 207(1) TFEU. The present convention does not aim to 'improve the functioning of the internal market', its principal objective being to 'facilitate' or 'promote' the provision of services based on conditional access between the European Union and other European countries. It would have a direct and immediate effect on the provision of services based on conditional access and on the trade in illicit devices and on the services relating to those devices. Consequently, the convention falls within the scope of the common commercial policy.

By its second plea, the applicant claims that the European Union's exclusive external competence (Article 2(1) and 3(1) and (2) TFEU) has been infringed because the Council considered that the conclusion of the convention did not fall within the European Union's exclusive competence whereas the convention falls within the common commercial policy or, in any case, that the conclusion of the convention is capable of affecting common rules or of altering their scope.

(1) OJ 2011 L 336, p. 1.

Reference for a preliminary ruling from the Administrativen Sad Varna (Bulgaria) lodged on 15 March 2012 — Rusedespred OOD v Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — gr. Varna pri Tsentralno Upravlenie na Natsionalnata Agentsia za Prihodite

(Case C-138/12)

(2012/C 151/38)

Language of the case: Bulgarian

Referring court

Administrativen Sad Varna (Bulgaria)

Parties to the main proceedings

Applicant: Rusedespred OOD

Defendant: Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — gr. Varna pri Tsentralno Upravlenie na Natsionalnata Agentsia za Prihodite

Questions referred

1. Is a taxable person entitled, in accordance with the principle of neutrality, to claim a refund of incorrectly invoiced and undue VAT within the limitation period laid down where, under national law, the transaction in respect of which he has charged the tax is exempt from VAT, the risk of any loss of tax revenue has been eliminated and the provision of national law governing the correction of invoices is inapplicable?

2. Do the common system of value added tax and the principles of neutrality, effectiveness and equal treatment preclude the refusal by a revenue authority, on the basis of a national provision transposing Article 203 of Council Directive 2006/112 [1] of 28 November 2006 on the common system of value added tax, to refund to a taxable person the VAT which that person has entered on an invoice where that tax is not owed, because the transaction in question is exempt from VAT, but was invoiced, charged and paid in error, in so far as the purchaser of the goods or recipient of the service has already been refused the right to deduct tax in respect of the same transaction by a final tax assessment notice on the ground that the supplier of goods or services charged the tax unlawfully?

3. Can a taxable person rely directly on the principles governing the common system of value added tax, in particular the principles of tax neutrality and effectiveness, in order to object to a national provision or its application by the tax authorities or the courts in breach of the aforementioned principles or to the failure by a national provision to observe those principles?

[1] OJ 2006 L 347, p. 1.

Reference for a preliminary ruling from the Administrativen sad Varna (Bulgaria) lodged on 21 March 2012 — Hristomir Marinov v Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — gr. Varna pri Tsentralno Upravlenie na Natsionalnata Agentsia za Prihodite

(Case C-142/12)

(2012/C 151/39)

Language of the case: Bulgarian

Referring court

Administrativen sad Varna (Bulgaria)

Parties to the main proceedings

Applicant: Hristomir Marinov

Defendant: Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — gr. Varna pri Tsentralno Upravlenie na Natsionalnata Agentsia za Prihodite

Questions referred

1. Is Article 18(c) of Council Directive 2006/112/EC [1] of 28 November 2006 on the common system of value added tax to be interpreted as meaning that it also covers cases in which the cessation of the taxable economic activity is attributable to the fact that the taxable person is no longer able to charge or deduct VAT because he has been removed from the VAT register?

2. Do Articles 74 and 80 of Directive 2006/112 preclude a national provision which states that, in the event of the cessation of the taxable economic activity, the taxable amount of the transaction is to be the open market value of the assets in existence at the time of removal from the register?

3. Does Article 74 of Directive 2006/112 have direct effect?

4. Are the length of the period from the purchase of the assets to the cessation of the taxable economic activity and the depreciations in value which have occurred since the assets were purchased significant for the purposes of determining the taxable amount in accordance with Article 74 of Directive 2006/112?

[1] OJ 2006 L 347, p. 1.

Reference for a preliminary ruling from the Hovrätten för Nedre Norrland (Court of Appeal for Southern Norrland) (Sweden) lodged on 26 March 2012 — ÖFAB, Östergötlands Fastigheter AB v Frank Koot, Evergreen Investments B.V.

(Case C-147/12)

(2012/C 151/40)

Language of the case: Swedish

Referring court

Hovrätten för Nedre Norrland (Court of Appeal for Southern Norrland)

Parties to the main proceedings

Applicants: ÖFAB, Östergötlands Fastigheter AB

Defendants: 1. Frank Koot

2. Evergreen Investments B.V.

Questions referred

1. Are Articles 5(1) and 5(3) of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [1] to be interpreted in such a way that they constitute a comprehensive derogation from the main rule of Article 2 in compensation disputes?

2. Is the term 'matters relating to tort, delict or quasi-delict' in Article 5(3) of the Regulation to be interpreted in such a way that the provision covers the action of a creditor against a director of a company if the action seeks to hold the director liable for the company's debts where the director has failed to make formal arrangements to monitor the company's financial situation and instead has continued to operate the company and has burdened it with further debts?

3. Is the term 'matters relating to tort, delict or quasi-delict' in Article 5(3) of the Regulation to be interpreted in such a way that the provision covers an action of a creditor against the owner of a company if the action seeks to make the owner liable for the company's debts when the shareholder continues to conduct business despite the fact that the business is undercapitalised and the company is obliged to go into liquidation?
4. Is the term 'matters relating to tort, delict or quasi-delict' in Article 5(3) of the Regulation to be interpreted in such a way that it covers the action of a creditor against the owner of a company who has undertaken to discharge a company's debts?
5. If the answer to question 3 is in the affirmative, is any harm arising deemed to have occurred in the Netherlands or in Sweden, if the director is domiciled in the Netherlands and the breaches of the board's obligations relate to a Swedish company?
6. If the answer to questions 4 or 5 is in the affirmative, is any harm arising deemed to have occurred in the Netherlands or in Sweden if the owner is domiciled in the Netherlands and the company is Swedish?
7. If Articles 5(1) or 5(3) of the Regulation are applicable in any of the situations described, is it of any relevance to the application of those articles if a claim has been transferred from the original creditor to another person?

(1) OJ 2001 L 12, p. 1.

Order of the President of the Court of 2 March 2012 (reference for a preliminary ruling from the Rechtbank van eerste aanleg te Antwerpen — Belgium) — Annex Customs BVBA v Belgische Staat, KBC Bank NV

(Case C-163/11) (1)

(2012/C 151/41)

Language of the case: Dutch

The President of the Court has ordered that the case be removed from the register.

(1) OJ C 179, 18.6.2011.

GENERAL COURT

Order of the General Court of 22 March 2012 — Viasat Broadcasting UK v European Commission

(Case T-114/09) [1]

(State aid — Repayment of the aid — No further interest in bringing proceedings — No need to adjudicate)

(2012/C 151/42)

Language of the case: English

Parties

Applicant: Viasat Broadcasting UK Ltd (West Drayton, Middlesex, United Kingdom) (represented by: S. Kalsmose Hjelmborg and M. Honoré, lawyers)

Defendant: European Commission (represented initially by: N. Khan and B. Martenczuken, and subsequently by B. Stromsky and L. Flynn, agents)

supported by

Kingdom of Denmark, (represented initially by: J. Bering Liisberg, subsequently by C. Vang, acting as Agents, assisted by P. Biering and K. Lundgaard Hansen, lawyers); and by TV2 Danmark A/S, (Odense C, Denmark (represented by O. Koktvedgaard, lawyer)

Re:

APPLICATION for the annulment of Commission Decision C(2008) 4224 final of 4 August 2008 in Case N 287/2008, concerning rescue aid granted to TV2 Danmark A/S

Operative part of the order

1. *There is no need to adjudicate on this action.*

2. *Viasat Broadcasting UK Ltd, the European Commission, the Kingdom of Denmark and TV2 Danmark A/S shall bear their own costs.*

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[1] OJ C 141, 20.6.2009.

Order of the General Court of 19 March 2012 — Associazione 'Giùlemanidallajuve' v European Commission

(Case T-273/09) [1]

(Competition — Restrictive practices — Abuse of dominant position — Rejection of a complaint — Legitimate interest — Community interest — Action in part manifestly inadmissible and in part manifestly lacking any foundation in law)

(2012/C 151/43)

Language of the case: French

Parties

Applicant: Associazione 'Giùlemanidallajuve' (Cerignola, Italy) (represented by: L. Misson, G. Ernes and A. Pel, lawyers)

Defendant: European Commission (represented by: A. Bouquet and V. Di Bucci, acting as Agents, assisted by J. Derenne, lawyer)

supported by

Fédération internationale de football association (FIFA), (Zurich, Switzerland), (represented by: A. Barav and D. Reymond, lawyers)

Re:

Application for annulment of Commission decision C(2009) 3916 of 12 May 2009, taken pursuant to Article 7(2) of Commission Regulation (EC) No 773/2004 and rejecting, for lack of legitimate interest and lack of Community interest, the complaint submitted by the applicant concerning the infringement of Articles 81 EC and 82 EC allegedly committed by the Federazione italiana giuoco calcio, the Comitato olimpico nazionale italiano, the Union of European Football Associations and the Fédération Internationale de football association, in the context of the sanctions imposed on Juventus Football Club SpA de Turin (Italy) (Case COMP/39.464 — *Supporters Juventus Turin* v *FIGC-CONI-UEFA-FIFA*)

Operative part of the order

1. *The action is dismissed.*

2. *The Associazione 'Giùlemanidallajuve' shall pay its own costs and those incurred by the European Commission.*

3. *The Fédération internationale de football association (FIFA) shall pay its own costs.*

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[1] OJ C 244, 10.10.2009.

Order of the General Court of 27 March 2012 — Connefroy and Others v Commission

(Case T-327/09) [1]

(Action for annulment — State aid — Lack of individual concern — Inadmissibility)

(2012/C 151/44)

Language of the case: French

Parties

Applicants: Philippe Connefroy (Le Rozel, France); Jean-Guy Gueguen (Carantac, France); and EARL de Cavagnan (Grézet-Cavagnan, France) (represented by: C. Galvez, lawyer)

Defendant: European Commission (represented by: B. Stromsky, acting as Agent)

Re:

Action for annulment of Commission Decision 2009/402/EC of 28 January 2009 on the 'contingency plans' in the fruit and vegetable sector implemented by France (OJ 2009 L 127, p. 11).

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Philippe Connefroy and Jean-Guy Gueguen and EARL de Cavagnan are ordered to pay, in addition to their own costs, the costs incurred by the European Commission.*

([1]) OJ C 267, 7.11.2009.

Order of the General Court of 26 March 2012 — Cañas v Commission

(Case T-508/09) ([1])

(Competition — Anti-doping rules — Decision rejecting a complaint — Discontinuance of a professional activity — Disappearance of the interest in bringing proceedings — No need to adjudicate)

(2012/C 151/45)

Language of the case: French

Parties

Applicant: Guillermo Cañas (Buenos Aires, Argentina) (represented initially by F. Laboulfie and C. Aguet, then by Y. Bonnard, lawyers)

Defendant: European Commission (represented by: P. Van Nuffel and F. Ronkes Agerbeek, acting as Agents, and J. Derenne, lawyer)

Interveners in support of the defendant: World Anti-Doping Agency (Lausanne, Switzerland) (represented by: G. Berrisch, lawyer, D. Cooper, Soliciitor, and N. Chesaites, Barrister); and ATP Tour, Inc. (Wilmington, Delaware, United States) (represented by: B. van de Walle de Ghelcke and J. Marchandise, lawyers)

Re:

Application for the annulment of Commission Decision C(2009) 7809 of 12 October 2009 in Case COMP/39471 rejecting a complaint, for insufficient Community interest, concerning an infringement of Articles 81 EC and 82 EC allegedly committed by the World Anti-Doping Agency, by ATP Tour, Inc. and by the International Council of Arbitration for Sport (ICAS).

Operative part of the order

1. *There is no longer any need to adjudicate on the action.*

2. *Guillermo Cañas is ordered to pay his own costs and those incurred by the European Commission.*

3. *The World Anti-Doping Agency and ATP Tour, Inc. are ordered to pay their own costs.*

4. *There is no longer any need to adjudicate on the application for leave to intervene made by European Elite Athletes Association.*

([1]) OJ C 80, 27.3.2010.

Order of the General Court of 29 March 2012 — Asociación Española de Banca v European Commission

(Case T-236/10) ([1])

(Actions for annulment — State aid — Aid schemes allowing for the tax amortisation of financial goodwill for foreign shareholding acquisitions — Decision declaring the aid scheme incompatible with the common market and not ordering the recovery of aid — Association — Lack of individual concern — Inadmissibility)

(2012/C 151/46)

Language of the case: Spanish

Parties

Applicant: Asociación Española de Banca (Madrid, Spain) (represented by: J. Buendía Sierra, E. Abad Valdenebro, M. Muñoz de Juan and R. Calvo Salinero, lawyers)

Defendant: European Commission (represented by: R. Lyal and C. Urraca Caviedes, acting as Agents)

Re:

Application for annulment of Article 1(1) and, alternatively, Article 4 of Commission Decision 2011/5/EC of 28 October 2009 on the tax amortisation of financial goodwill for foreign shareholding acquisitions C 45/07 (ex NN 51/07, ex CP 9/07) implemented by Spain (OJ 2011 L 7, p. 48).

Operative part of the order

1. *The action is dismissed.*

2. *Asociación Española de Banca is to pay the costs.*

([1]) OJ C 195, 17.7.2010.

Order of the General Court of 27 March 2012 — European Goldfields v Commission

(Case T-261/11) [1]

(Action for annulment — State aid — Subsidy granted by the Greek authorities in favour of the mining company Ellinikos Xrysos consisting of the transfer of the Cassandra mines at a price lower than the real market value and exemption from taxes on that transaction — Decision declaring the aid unlawful and ordering its recovery, with interest — No legal interest in bringing proceedings — Inadmissibility)

(2012/C 151/47)

Language of the case: English

Parties

Applicant: European Goldfields Ltd (Whitehorse, Yukon (Canada)) (represented by: K. Adamantopoulos, E. Petritsi, E. Trova and P. Skouris, lawyers)

Defendant: European Commission (represented by: É. Gippini Fournier and D. Triantafyllou, acting as Agents)

Re:

APPLICATION for the annulment of Commission Decision 2011/452/EU of 23 February 2011 on the State aid C 48/08 (ex NN 61/08) implemented by Greece in favour of Ellinikos Xrysos SA (OJ 2011 L 193, p. 27).

Operative part of the order

1. *The action is dismissed as being inadmissible.*

2. *European Goldfields Ltd shall pay the costs.*

3. *There is no need to adjudicate on the application for leave to intervene by Ellinikos Xrysos AE Metalleion kai Viomixanias Xrysou.*

[1] OJ C 219, 23.7.2011.

Order of the General Court of 23 March 2012 — Ecologistas en Acción v Commission

(Case T-341/11) [1]

(Access to documents — Regulation (EC) No 1049/2001 — Implied refusal of access — Interest in bringing proceedings — Express decision adopted after the bringing of the action — No need to adjudicate)

(2012/C 151/48)

Language of the case: Spanish

Parties

Applicant: Ecologistas en Acción-CODA (Madrid, Spain) (represented by: J. Doreste Hernández, lawyer)

Defendant: European Commission (represented by: I. Martínez del Peral and P. Costa de Oliveira, Agents)

Intervener in support of the defendant: Kingdom of Spain (represented initially by: M. Muñoz Pérez and J.M. Rodriguez Cârcamo, lawyers, thereafter by S. Centeno Huerta, lawyer)

Re:

Application for annulment of the Commission's implied decision refusing the applicant access to certain documents concerning the approval of the project for the construction of a port in Granadilla (Tenerife, Spain) supplied by the Spanish authorities to the Commission pursuant to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7).

Operative part of the order

1. *There is no longer any need to adjudicate on the action.*

2. *The European Commission is ordered to pay its own costs and those incurred by Ecologistas en Acción-CODA.*

3. *The Kingdom of Spain shall bear its own costs.*

[1] OJ C 252, 27.8.2011.

Action brought on 22 February 2012 — Makhlouf v Council

(Case T-97/12)

(2012/C 151/49)

Language of the case: French

Parties

Applicant: Rami Makhlouf (Damas, Syria) (represented by: E. Ruchat, lawyer)

Defendant: Council of the European Union

Form of order sought

— Declare the applicant's action admissible and well founded;

— In consequence, annul Decision 2011/782/CFSP of 1 December 2011 and Regulation (EU) No 36/2012 of 18 January 2012 and their subsequent implementing acts, insofar as they concern the applicant;

— Order the Council of the European Union to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law which are in essence identical or similar to those relied on in Case T-432/11 *Makhlouf* v *Council*. ([1])

([1]) OJ 2011 C 290, p. 13.

Action brought on 22 February 2012 — Makhlouf v Council

(Case T-98/12)

(2012/C 151/50)

Language of the case: French

Parties

Applicant: Ehab Makhlouf (Damas, Syria) (represented by: E. Ruchat, lawyer)

Defendant: Council of the European Union

Form of order sought

— Declare the applicant's action admissible and well founded;

— In consequence, annul Decision 2011/782/CFSP of 1 December 2011 and Regulation (EU) No 36/2012 of 18 January 2012 and their subsequent implementing acts, insofar as they concern the applicant;

— Order the Council of the European Union to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law which are in essence identical or similar to those relied on in Case T-433/11 *Makhlouf* v *Council*. ([1])

([1]) OJ 2011 C 290, p. 14.

Action brought on 22 February 2012 — Syriatel Mobile Telecom v Council

(Case T-99/12)

(2012/C 151/51)

Language of the case: French

Parties

Applicant: Syriatel Mobile Telecom (Joint Stock Company) (Damas, Syria) (represented by: E. Ruchat, lawyer)

Defendant: Council of the European Union

Form of order sought

— Declare the applicant's action admissible and well founded;

— In consequence, annul Decision 2011/782/CFSP of 1 December 2011 and Regulation (EU) No 36/2012 of 18 January 2012 and their subsequent implementing acts, insofar as they concern the applicant;

— Order the Council of the European Union to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law, the first three of which are in essence identical or similar to those relied on in Cases T-432/11 *Makhlouf* v *Council*, ([1]) and T-433/11 *Makhlouf* v *Council*. ([2])

The fourth plea alleges infringement of the principle of equal treatment, the consequence of which is to distort competition both within the European Union and Syria and as between those two territories.

([1]) OJ 2011 C 290, p. 13.
([2]) OJ 2011 C 290, p. 14

Action brought on 22 February 2012 — Almashreq Investment v Council

(Case T-100/12)

(2012/C 151/52)

Language of the case: French

Parties

Applicant: Almashreq Investment Co. (Joint Stock Holding Company) (Damas, Syria) (represented by: E. Ruchat, lawyer)

Defendant: Council of the European Union

Form of order sought

— Declare the applicant's action admissible and well founded;

— In consequence, annul Decision 2011/782/CFSP of 1 December 2011 and Regulation (EU) No 36/2012 of 18 January 2012 and their subsequent implementing acts, insofar as they concern the applicant;

— Order the Council of the European Union to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law which are in essence identical or similar to those relied on in Cases T-432/11 *Makhlouf* v *Council*, [1] and T-433/11 *Makhlouf* v *Council*. [2]

[1] OJ 2011 C 290, p. 13.
[2] OJ 2011 C 290, p. 14.

Action brought on 22 February 2012 — Cham v Council

(Case T-101/12)

(2012/C 151/53)

Language of the case: French

Parties

Applicant: Cham Holding Co. SA (Damas, Syria) (represented by: E. Ruchat, lawyer)

Defendant: Council of the European Union

Form of order sought

— Declare the applicant's action admissible and well founded;

— In consequence, annul Decision 2011/782/CFSP of 1 December 2011 and Regulation (EU) No 36/2012 of 18 January 2012 and their subsequent implementing acts, insofar as they concern the applicant;

— Order the Council of the European Union to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law which are in essence identical or similar to those relied on in Cases T-432/11 *Makhlouf* v *Council*, [1] and T-433/11 *Makhlouf* v *Council*. [2]

[1] OJ 2011 C 290, p. 13.
[2] OJ 2011 C 290, p. 14.

Action brought on 22 February 2012 — Sorouh v Council

(Case T-102/12)

(2012/C 151/54)

Language of the case: French

Parties

Applicant: Sorouh Joint Stock Company (Damas, Syria) (represented by: E. Ruchat, lawyer)

Defendant: Council of the European Union

Form of order sought

— Declare the applicant's action admissible and well founded;

— In consequence, annul Decision 2011/782/CFSP of 1 December 2011 and Regulation (EU) No 36/2012 of 18 January 2012 and their subsequent implementing acts, insofar as they concern the applicant;

— Order the Council of the European Union to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law which are in essence identical or similar to those relied on in Cases T-432/11 *Makhlouf* v *Council*, [1] and T-433/11 *Makhlouf* v *Council*. [2]

[1] OJ 2011 C 290, p. 13.
[2] OJ 2011 C 290, p. 14.

Action brought on 24 February 2012 — T&L Sugars and Sidul Açúcares v Commission

(Case T-103/12)

(2012/C 151/55)

Language of the case: English

Parties

Applicants: T&L Sugars Ltd (London, United Kingdom) and Sidul Açúcares, Unipessoal L^{da} (Santa Iria de Azóia, Portugal) (represented by: D. Waelbroeck, lawyer, and D. Slater, Solicitor)

Defendants: European Commission and the European Union, represented by the European Commission

Form of order sought

— Declare the present application for annulment under Article 263(4) TFEU and/or plea of illegality under Article 277 TFEU against Regulation 1240/2011, Regulation 1308/2011, Regulation 1239/2011, Regulation 1281/2011, Regulation 1316/2011, Regulation 1384/2011, Regulation 27/2012 and Regulation 57/2012 admissible and well founded;

— Annulment of Commission Implementing Regulation (EU) No 1240/2011 of 30 November 2011 laying down exceptional measures as regards the release of out-of-quota sugar and isoglucose on the Union market at reduced surplus levy during marketing year 2011/2012 (OJ 2011 L 318, p. 9);

— Annulment of Commission Implementing Regulation (EU) No 1308/2011 of 14 December 2011 fixing allocation coefficient, rejecting further applications and closing the period for submitting applications for available quantities of out-of-quota sugar to be sold on the Union market at reduced surplus levy during marketing year 2011/2012 (OJ 2011 L 332, p. 8);

— Annulment of Commission Implementing Regulation (EU) No 1239/2011 of 30 November 2011 opening a standing invitation to tender for the 2011/2012 marketing year for imports of sugar of CN code 1701 at a reduced customs duty (OJ 2011 L 318, p. 4);

— Annulment of Commission Implementing Regulation (EU) No 1281/2011 of 8 December 2011 on the minimum customs duty to be fixed in response to the first partial invitation to tender within the tendering procedure opened by Implementing Regulation (EU) No 1239/2011 (OJ 2011 L 327, p. 60);

— Annulment of Commission Implementing Regulation (EU) No 1316/2011 of 15 December 2011 on the minimum customs duty to be fixed in response to the second partial invitation to tender within the tendering procedure opened by Implementing Regulation (EU) No 1239/2011 (OJ 2011 L 334, p. 16);

— Annulment of Commission Implementing Regulation (EU) No 1384/2011 of 22 December 2011 on the minimum customs duty to be fixed in response to the third partial invitation to tender within the tendering procedure opened by Implementing Regulation (EU) No 1239/2011 (OJ 2011 L 343, p. 33);

— Annulment of Commission Implementing Regulation (EU) No 27/2012 of 12 January 2012 on the minimum customs duty for sugar to be fixed in response to the fourth partial invitation to tender within the tendering procedure opened by Implementing Regulation (EU) No 1239/2011 (OJ 2012 L 9, p. 12); and

— Annulment of Commission Implementing Regulation (EU) No 57/2012 of 23 January 2012 suspending the tendering procedure opened by Implementing Regulation (EU) No 1239/2011 (OJ 2012 L 19, p. 12);

— In the alternative, declare the plea of illegality against Articles 186(a) and 187 of Regulation 1234/2007 [1] admissible and well founded and declare those provisions illegal, as well as annul the contested regulations, which are directly or indirectly based on those provisions;

— Condemn the EU as represented by the Commission to repair any damage suffered by the applicants as a result of the Commission's breach of its legal obligations and to set the amount of this compensation for the damage suffered by the applicants during the period 1 April 2011 to 29 January 2012 at 87 399 257 EUR plus any ongoing losses suffered by the applicants after that date or any other amount reflecting the damage suffered or to be suffered by the applicants as further established by them in the course of this procedure especially to take due account of future damage;

— Order an interest at the rate set at the time by the European Central bank for main refinancing operations, plus two percentage points, or any other appropriate rate to be determined by your Court, be paid on the amount payable as from the date of your Court's judgement until actual payment;

— Order the Commission to pay all costs and expenses in these proceedings.

Pleas in law and main arguments

In support of the action, the applicants rely on six pleas in law.

1. First plea in law, alleging violation of the principle of non-discrimination as the contested measures discriminate against the case cane sugar refiners in favour of beet processors.

2. Second plea in law, alleging violation of Regulation 1234/2007 and absence of an appropriate legal basis as the defendant has no power to increase quotas and is required to impose high, dissuasive levies on the release of out-of-quota sugar, nor does the defendant have mandate or power to adopt this kind of measure, which was never envisaged in the basic legislation.

3. Third plea in law, alleging violation of the principle of legal certainty, as Regulation 1239/2011 and its implementing regulations created a system whereby custom duties are not predictable and fixed through the application of consistent, objective criteria, but are rather determined by subjective willingness to pay with no actual link with the actual products being imported.

4. Fourth plea in law, alleging violation of the principle of proportionality in so far as the defendant could easily have adopted less restrictive measures which would not have been taken exclusively to the detriment of importing refiners.

5. Fifth plea in law, alleging violation of legitimate expectations, as the defendant breached the applicants' legitimate expectations to be treated in a balanced, fair and non-discriminatory manner.

6. Sixth plea in law, alleging violation of the principle of diligence, care and good administration, as the defendant failed in the first instance to act at all, despite repeated warnings of market disturbances, then went on to adopt manifestly inappropriate measures to tackle those disturbances, and in doing so upset the balance established by the Council between domestic producers and importing refiners.

For the annulment of Regulation 57/2012 the applicants invoke only first, fourth and sixth pleas in law.

In the alternative, the applicants invoke the above-mentioned pleas in law against Regulation 1239/2011 and Regulation 1308/2011, as a plea of illegality based on Article 277 TFEU. In the event that the Court rejects these grounds for annulment, the applicants raise a plea of illegality under Article 277 TFEU against Article 186a and 187 of Regulation 1234/2007 on which the contested regulations are based, and request the annulment of those provisions of Regulation 1234/2007 as well as the contested regulations.

(1) Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (OJ 2007 L 299, p. 1).

Order of the General Court (Fifth Chamber) of 30 March 2012 — Atlantean v Commission

(Case T-125/08) (1)

(2012/C 151/56)

Language of the case: English

The President of the Fifth Chamber has ordered that the case be removed from the register.

(1) OJ C 116, 9.5.2008.

Order of the General Court (Fifth Chamber) of 27 March 2012 — Atlantean v Commission

(Case T-368/08) (1)

(2012/C 151/57)

Language of the case: English

The President of the Fifth Chamber has ordered that the case be removed from the register.

(1) OJ C 301, 22.11.2008.

Order of the General Court (Third Chamber) of 26 March 2012 — PhysioNova v OHIM — Flex Equipos de Descanso (FLEX)

(Case T-501/09) (1)

(2012/C 151/58)

Language of the case: German

The President of the Third Chamber has ordered that the case be removed from the register.

(1) OJ C 37, 13.2.2010.

Order of the General Court (Sixth Chamber) of 28 March 2012 — X Technology Swiss v OHIM — Brawn (X-Undergear)

(Case T-581/10) (1)

(2012/C 151/59)

Language of the case: German

The President of the Sixth Chamber has ordered that the case be removed from the register.

(1) OJ C 63, 26.2.2011.

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