

— 2/B., in the alternative, refer both the cases in question back to the Court of First Instance for it to give another ruling on the same.

Pleas in law and main arguments

Distortion and misrepresentation of the facts and statements of the applicant in its pleadings, following also from the material inaccuracy of the findings of the Court of First Instance (in particular, paragraphs 30, 44, 46 and 49 of the judgment under appeal).

Misinterpretation and misapplication of the concept of a challengeable act, also for confusion, unreasonableness and illogicalness, infringement of Article 231 of the EC Treaty and failure to appreciate the case-law concerning the effects of annulment by the Community courts of a decision issued by a Community institution, infringement of the principle of the authority of *res judicata*, infringement of the principle of the separation of powers (in particular, paragraphs 43, 44 and 49 of the judgment under appeal).

Complete absence of preliminary investigations and failure to rule on a fundamental issue of the dispute (in particular, paragraph 12 and paragraphs 43 to 51 inclusive of the judgment under appeal).

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 1 October 2008 — Yaesu Europe BV v Bundeszentralamt für Steuern

(Case C-433/08)

(2008/C 313/26)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Yaesu Europe BV

Defendant: Bundeszentralamt für Steuern

Questions referred

1. Is the term 'Signature' in the specimen in Annex A to the Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons ⁽¹⁾ not established in the territory of the country, which is to be used to submit an application for a refund of turnover tax pursuant to Article 3(a) of the directive, to be to be given a uniform Community law interpretation?

2. If the answer to the first question is in the affirmative:

Is the term 'Signature' to be understood as meaning that the application for a refund must be signed by the taxable person himself or, in regard to a legal person, by its statutory representative, or is the signature of an agent (for example, a representative for tax purposes or an employee of the taxable person) sufficient?

⁽¹⁾ OJ L 331, 1979, p. 11.

Action brought on 3 October 2008 — Commission of the European Communities v Portuguese Republic

(Case C-438/08)

(2008/C 313/27)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: E. Traversa and M. Teles Romão, Agents)

Defendant: Portuguese Republic

Form of order sought

— A declaration that the Portuguese Republic, by imposing under, specifically, Articles 3(2), 6(1) and 7 of Decree-Law No 550/99 of 15 December 1999, and point 1(e) of Decree No 1165/2000 of 9 December 2000, restrictions on the freedom of establishment of entities of other Member States intending to carry on in Portugal the activity of vehicle inspection, including, in particular, making the grant of authorisations subject to the public interest, the requirement of minimum share capital of EUR 100 000, the limiting of the undertakings' company objects and the incompatibility rules with regard to other activities of members, managers and directors, has failed to fulfil its obligations under Article 43 of the EC Treaty;

— an order that the Portuguese Republic should pay the costs.

Pleas in law and main arguments

Subordinating the grant of new authorisations to the public interest constitutes a restriction of freedom of establishment, given that legal persons from other Member States seeking to carry on the activity of vehicle inspection in Portugal are subject to the discretionary power of the competent national authorities, which leads to considerable legal uncertainty as to the extent of their rights.

The requirement of minimum share capital of EUR 100 000 must be regarded as a restriction of freedom of establishment, for it prevents a Community operator having less share capital than the minimum amount demanded by the Portuguese legislation from setting up subsidiaries or branches in Portugal.

Limiting an undertaking's company objects to the carrying on of the activity of vehicle inspection constitutes a restriction of freedom of establishment, for Community operators legally providing other services at the same time (inspecting, repairing and servicing vehicles) in the Member State of establishment would be obliged to alter the undertaking's objects and, perhaps, even its own internal structure in order to be able to extend to Portugal its vehicle-inspecting activity; in addition, this condition cannot be considered necessary in order to guarantee the independence and impartiality of the providers of that service.

The incompatibility rules imposed on the members, managers and directors of the undertaking who deal with the manufacture, repair, rental, import or marketing of vehicles, their parts or accessories or who are involved in transport activity are capable of having restrictive effects comparable to those produced by limiting the company objects and of creating significant restrictions of the freedom of establishment of undertakings from other Member States wishing to carry on the vehicle-inspection activities in Portugal, because the providers of vehicle-inspection services already legally established in another Member State, with members, managers or directors carrying on other activities in the Member State of establishment, would have to alter their internal structure, part company with those members or cause them to give up the incompatible activities.

Reference for a preliminary ruling from the Hof van Beroep te Brussel (Belgium) lodged on 6 October 2008 — VZW Vlaamse Federatie van Verenigingen van Brood- en Banketbakkers, Ijsbereiders en Chocoladebewerkeren 'VEBIC', the other parties being: Raad voor de Mededinging and the Minister van Economie

(Case C-439/08)

(2008/C 313/28)

Language of the case: Dutch

Referring court

Hof van Beroep te Brussel (Belgium)

Parties to the main proceedings

Applicant: VZW Vlaamse Federatie van Verenigingen van Brood- en Banketbakkers, Ijsbereiders en Chocoladebewerkeren 'VEBIC'

Other parties: Raad voor de Mededinging and Minister van Economie

Questions referred

1. Must [Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, in particular Articles 2, 15(3) and 35(1)] ⁽¹⁾ above be interpreted to mean that national competition authorities derive directly from them an entitlement to formulate written observations on arguments raised, in the context of appeal proceedings, against a decision made by them, and that they can themselves present arguments in fact and in law, with the result that this entitlement cannot be excluded by a Member State?
2. Must the same provisions be interpreted to mean that, for the effective application of the competition rules with a view to protecting the public interest, the public enforcement bodies which are designated as the competition authorities are not only entitled but also have a duty to participate in the appeal proceedings against their decisions by stating their position in relation to the arguments raised in fact and in law?
3. If questions (1) and (2) are answered in the affirmative, must these provisions then be interpreted to mean that, in the absence of national provisions concerning the participation by the competition authority in the proceedings before the appeal body, and where various authorities are involved, it is the authority which is competent to take the decisions set out in Article 5 of the Regulation which shall participate in the appeal proceedings against its decision?
4. Are the answers to the above questions different if the competition authority acts, in accordance with national law, as a court of law and/or if the final decision is taken on completion of an investigation by a body belonging to that court and charged with drawing up the objections and a draft decision?

⁽¹⁾ OJ 2003 L 1, p. 1.