

Questions referred

1. (a) Is any person who, because of physical, mental or psychological injuries, cannot or can only to a limited extent carry out his work in a period that satisfies the requirement as to duration specified in paragraph 45 of the judgment of the Court of Justice in Case C-13/05 *Navas* ⁽¹⁾ covered by the concept of disability within the meaning of the directive?
- (b) Can a condition caused by a medically diagnosed incurable illness be covered by the concept of disability within the meaning of the directive?
- (c) Can a condition caused by a medically diagnosed temporary illness be covered by the concept of disability within the meaning of the directive?
2. Should a permanent reduction in functional capacity which does not entail a need for special aids or the like but means only that the person concerned is not capable of working full-time be regarded as a disability in the sense in which that term is used in Council Directive 2000/78/EC ⁽²⁾?
3. Is a reduction in working hours among the measures covered by Article 5 of Directive 2000/78/EC?
4. Does Council Directive 2000/78/EC preclude the application of a provision of national law under which an employer is entitled to dismiss an employee with a shortened notice period where the employee has received his salary during periods of illness for a total of 120 days during a period of 12 consecutive months, in the case of an employee who must be regarded as disabled within the meaning of the directive, where
 - (a) the absence was caused by the disability
 - or
 - (b) the absence was due to the fact that the employer did not implement the measures appropriate in the specific situation to enable a person with a disability to perform his work?

⁽¹⁾ [2006] ECR I-6467.

⁽²⁾ OJ 2000 L 303, p. 16.

Reference for a preliminary ruling from the Cour d'appel de Lyon (France), lodged on 1 July 2011 — Receveur principal des douanes de Roissy Sud, Receveur principal de la recette des douanes de Lyon Aéroport, Direction régionale des douanes et droits indirects de Lyon, Administration des douanes et droits indirects v Société Rohm & Haas Electronic Materials CMP Europe GmbH, Rohm & Haas Europe s. à r.l., Société Rohm & Haas Europe Trading APS-UK Branch

(Case C-336/11)

(2011/C 269/62)

Language of the case: French

Referring court

Cour d'appel de Lyon

Parties to the main proceedings

Appellants: Receveur principal des douanes de Roissy Sud, Receveur principal de la recette des douanes de Lyon Aéroport, Direction régionale des douanes et droits indirects de Lyon, Administration des douanes et droits indirects

Respondents: Société Rohm & Haas Electronic Materials CMP Europe GmbH, Rohm & Haas Europe s. à r.l., Société Rohm & Haas Europe Trading APS-UK Branch

Question referred

Should the combined nomenclature [set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, ⁽¹⁾ as amended by Commission Regulation (EC) No 1549/2006 of 17 October 2006 ⁽²⁾ and Commission Regulation (EC) No 1214/2007 of 20 September 2007 ⁽³⁾] be interpreted as meaning that polishing pads, intended for a polishing machine for working semiconductor materials — as such coming under tariff heading 8460 — imported separately from the machine, in the form of discs perforated in the centre, made up of a hard polyurethane layer, a layer of polyurethane foam, an adhesive layer and a protective plastic film, which do not contain any metal part or any abrasive substance and are used to polish 'wafers', in association with an abrasive liquid, and must be replaced at a frequency determined by their level of wear, come under tariff heading 8466 [...], as parts or accessories suitable for use solely or principally with the machines classified under headings 8456 to 8465, or, on the basis of their constituent material, under tariff heading [3919], as self-adhesive flat shapes made of plastic?

⁽¹⁾ OJ 1987 L 256, p. 1.

⁽²⁾ OJ 2006 L 301, p. 1.

⁽³⁾ OJ 2007 L 286, p. 1.

Reference for a preliminary ruling from the Sø- og Handelsret (Denmark) lodged on 1 July 2011 — HK Danmark, acting on behalf of Lone Skouboe Werge v Pro Display A/S in liquidation

(Case C-337/11)

(2011/C 269/63)

Language of the case: Danish

Referring court

Sø- og Handelsret

Parties to the main proceedings

Applicant: HK Danmark, acting on behalf of Lone Skouboe Werge

Defendant: Pro Display A/S in liquidation

Questions referred

1. (a) Is any person who, because of physical, mental or psychological injuries, cannot or can only to a limited extent carry out his work in a period that satisfies the requirement as to duration specified in paragraph 45 of the judgment of the Court of Justice in Case C-13/05 *Navas* ⁽¹⁾ covered by the concept of disability within the meaning of the directive?
- (b) Can a condition caused by a medically diagnosed incurable illness be covered by the concept of disability within the meaning of the directive?
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4. Does Council Directive 2000/78/EC preclude the application of a provision of national law under which an employer is entitled to dismiss an employee with a shortened notice period where the employee has received his salary during periods of illness for a total of 120 days during a period of 12 consecutive months, in the case of an employee who must be regarded as disabled within the meaning of the directive, where
 - (a) the absence was caused by the disability
 - or
 - (b) the absence was due to the fact that the employer did not implement the measures appropriate in the specific situation to enable a person with a disability to perform his work?

⁽¹⁾ [2006] ECR I-6467.

⁽²⁾ OJ 2000 L 303, p. 16.

Reference for a preliminary ruling from the Tribunal Administratif de Montreuil (France) lodged on 4 July 2011 — Santander Asset Management SGIIC SA, on behalf of FIM Santander Top 25 Euro Fi v Direction des résidents à l'étranger et des services généraux

(Case C-338/11)

(2011/C 269/64)

Language of the case: French

Referring court

Tribunal Administratif de Montreuil

Parties to the main proceedings

Applicant: Société Santander Asset Management SGIIC SA, on behalf of FIM Santander Top 25 Euro Fi

Defendant: Direction des résidents à l'étranger et des services généraux

Questions referred

1. Must the situation of the shareholders be taken into account together with that of undertakings for collective investments in transferable securities (UCITS)?
2. If so, what are the conditions under which the withholding tax at issue may be regarded as consistent with the principle of free movement of capital?

Reference for a preliminary ruling from the Tribunal administratif de Montreuil (France) lodged on 4 July 2011 — Santander Asset Management SGIIC SA, on behalf of Cartera Mobiliaria SA SICAV v Ministre du budget, des comptes publics, de la fonction publique et de la réforme de l'Etat

(Case C-339/11)

(2011/C 269/65)

Language of the case: French

Referring court

Tribunal administratif de Montreuil

Parties to the main proceedings

Applicant: Santander Asset Management SGIIC SA, on behalf of Cartera Mobiliaria SA SICAV

Defendant: Ministre du budget, des comptes publics, de la fonction publique et de la réforme de l'Etat

Questions referred

1. Must the situation of the shareholders be taken into account together with that of undertakings for collective investments in transferable securities (UCITS)?
2. If so, what are the conditions under which the withholding tax at issue may be regarded as consistent with the principle of free movement of capital?