Questions referred

1. For the purposes of constituting the chargeable event giving rise to the tax, does the fact that bingo players pay the portion of the card price corresponding to the winnings amount to genuine consumption of goods and services?

2. For the purposes of the rules governing the denominator used in the calculation of the percentage of the deductible proportion, is Article 11A(1)(a), in conjunction with Articles 17(5) and 19(1), of the Sixth Directive [1] to be interpreted as requiring such a degree of harmonisation that it precludes the adoption in the Member States of different solutions in legislation or case-law with regard to the inclusion in the taxable amount for VAT of the portion of the card price allocated to the payment of winnings?

3. For the purposes of constituting the denominator used in the calculation of the percentage of the deductible proportion, is Article 11A(1)(a), in conjunction with Articles 17(5) and 19(1), of the Sixth Directive to be interpreted as precluding national case-law which, in the case of the game of bingo, includes in the taxable amount for VAT the amount corresponding to winnings that is paid by players through the purchase of cards?

[1] Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization 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)

Reference for a preliminary ruling from the Juzgado Mercantil de Barcelona (Spain) lodged on 18 July 2011 — Manuel Mesa Bertrán and Cristina Farrán Morenilla v Novacaixagalicia

(Case C-381/11)

(2011/C 290/04)

Language of the case: Spanish

Referring court

Juzgado Mercantil de Barcelona

Parties to the main proceedings

Applicants: Manuel Mesa Bertrán and Cristina Farrán Morenilla

Defendant: Novacaixagalicia

Questions referred

1. If a credit institution offers a client with whom it has previously signed a mortgage loan contract an interest rate swap arrangement to cover the risk of variations of interest rates on that loan, must this be regarded as investment advice within the meaning of point [(4)] of Article 4(1) of the MiFID Directive [Directive 2004/39/EC] [1]?

2. Must omission of the suitability test provided for in Article 19(4) of the MiFID Directive with regard to a retail investor give rise to fundamental nullity of the interest rate swap arrangement entered into between the investor and the advising credit institution?

3. In the event that the service provided in the terms described is not regarded as investment advice, does the mere fact of purchasing a complex financial instrument, into which category falls an interest rate swap arrangement, without the appropriateness test provided for in Article 19(5) of the MiFID Directive being carried out, for reasons imputable to the investment institution, give rise to fundamental nullity of the purchase contract concluded with the same credit institution?

4. Under Article 19(9) of the MiFID Directive, does the mere fact that a credit institution offers a complex financial instrument linked to a mortgage loan constitute sufficient cause to exclude application of the obligation to carry out the suitability and appropriateness tests provided for by the said Article 19 which the investment institution must undertake in the case of a retail investor?

5. In order to enable the obligations laid down in Article 19 of the MiFID Directive to be excluded, is it necessary for the financial product to which the financial instrument offered is linked to be subject to statutory investor-protection standards similar to those laid down in that directive?

[1] Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.

Reference for a preliminary ruling from the Juzgado de lo Social de Barcelona (Spain) lodged on 19 July 2011 — Isabel Elbal Moreno v Instituto Nacional de la Seguridad Social (INSS) and Tesorería General de la Seguridad Social (TGSS)

(Case C-385/11)

(2011/C 290/05)

Language of the case: Spanish

Referring court

Juzgado de lo Social de Barcelona

Parties to the main proceedings

Applicant: Isabel Elbal Moreno

Defendants: Instituto Nacional de la Seguridad Social (INSS) and Tesorería General de la Seguridad Social (TGSS)

Questions referred

1. Does a contributory retirement pension such as the one provided for under the Spanish Social Security system on the basis of the contributions made by and on behalf of the worker during his working life fall within the concept of 'employment conditions' to which the prohibition of discrimination in Clause 4 of [the Framework Agreement annexed to] Directive 97/81 ([1]) refers?

2. If the first question were to be answered in the affirmative and a contributory retirement pension such as that governed by the Spanish Social Security system were to be regarded as falling within the concept of 'employment conditions' referred to in Clause 4 of [the Framework Agreement annexed to] Directive 97/81, is the prohibition of discrimination laid down in that clause to be interpreted as preventing or precluding national legislation which — as a consequence of the double application of the '*pro rata temporis* principle' — requires a proportionally greater contribution period from a part-time worker than from a full-time worker for the former to qualify, if appropriate, for a contributory retirement pension in an amount reduced in proportion to the part-time nature of his work?

3. As a supplementary question to the previous ones, may rules such as the Spanish rules (contained in the 7th Additional Provision of the General Law on Social Security) governing the method of contribution, access and quantification with regard to the contributory retirement pension for part-time workers be considered to be among the 'aspects and conditions of remuneration' to which the prohibition of discrimination in Article 4 of Directive 2006/54 ([2]), and Article 157 TFEU (formerly Article 141 EC), refer?

4. As an alternative question to the previous ones, in the event that the Spanish contributory retirement pension were not regarded either as a 'condition of employment' or as 'pay': Is the prohibition of discrimination on ground of sex, either directly or indirectly, laid down in Article 4 of Directive 79/7 ([3]) to be interpreted as preventing or precluding national legislation which — as a consequence of the double application of the '*pro rata temporis* principle' — requires a proportionally greater contribution period from part-time workers (the vast majority of whom are women) than from full-time workers for the former to qualify, if appropriate, for a contributory retirement pension in an amount reduced in proportion to the part-time nature of their work?

([1]) Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC — Annex: Framework agreement on part-time work (OJ 1998 L 14, p. 9).
([2]) Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ 2006 L 204, p. 23).
([3]) Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ 1979 L 6, p. 24).

Appeal brought on 22 July 2011 by Région Nord-Pas-de-Calais against the judgment of the General Court (Eighth Chamber) delivered on 12 May 2011 in Joined Cases T-267/08 and T-279/08 Région Nord-Pas-de-Calais and Communauté d'Agglomération du Douaisis v Commission.

(Case C-389/11 P)

(2011/C 290/06)

Language of the case: French

Parties

Appellant: Région Nord-Pas-de-Calais (represented by: M. Cliquennois and F. Cavedon, avocats)

Other parties to the proceedings: Communauté d'Agglomération du Douaisis, European Commission

Form of order sought

— Set aside the judgment of the General Court of the European Union of 12 May 2011 in Joined Cases T-267/08 and T-279/08;

— grant the forms of order sought at first instance by the Région Nord-Pas-de-Calais;

— order the European Commission to pay the costs.

Pleas in law and main arguments

The appellant relies on two grounds in support of its appeal.

First, the Région Nord-Pas-de-Calais claims that the General Court erred in refusing to examine the grounds of complaint against Commission Decision C(2008) 1089 final of 2 April 2008, withdrawn and replaced by Commission Decision C(2010) 4112 final of 23 June 2010, both decisions relating to the same State aid, C 38/2007 (ex NN 45/2007). According to the appellant, the further decision was in fact a response to the written pleadings which the appellant had submitted in its initial action before the General Court, and the appellant was given no opportunity to be heard within a further prior administrative procedure.

Second, the appellant claims an infringement of the rights of the defence and the principle of the right to be heard within the administrative procedure in that the Commission adopted a further decision while absolving itself of the obligation to comply with the essential procedural requirements of that adoption. The Commission altered its analysis on the nature of the State measure at issue and revised the method for the calculation of the reference rates applicable when the State aid in favour of Arbel Fauvet Rail SA was granted.