

- (b) must be interpreted as meaning that there is a purely budgetary purpose when a particular levy has been established simultaneously with the transfer of certain competences to certain Autonomous Communities to which, in turn, are transferred the proceeds of the levy with the aim of covering, in part, the costs associated with the competences transferred, it being permissible to lay down rates of levy that vary as between Autonomous Communities?
- (c) If the previous question is answered in the negative, must the term 'specific purpose' be interpreted as meaning that the purpose must be exclusive or, on the contrary, that it permits the attainment of various differentiated aims, among which is also included the merely budgetary aim of obtaining financing for certain competences?
- (d) If the answer to the previous question is that the attainment of various aims is permitted, what degree of relevance must be displayed by a particular objective, for the purposes of Article 3(2) of Directive 92/12, in order to fulfil the requirement that the levy should meet a 'specific purpose' in the sense accepted by the case-law of the Court of Justice and what would be the criteria for defining the principal purpose as compared with the ancillary purpose?
2. Does Article 3(2) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products and, in particular, the condition of complying with the tax rules applicable to excise duties or VAT for the determination of chargeability,
- (a) preclude an indirect non-harmonised levy, such as the IVMDH, which becomes chargeable at the time of the retail sale of the fuel to the final consumer, in contrast to the harmonised levy (Impuesto sobre Hidrocarburos, which becomes chargeable when the products leave the last tax warehouse), or value added tax which, although also becoming chargeable at the time of the final retail sale, is payable at each stage of the production and distribution process, since it does not — to use the terms of the judgment in *EKW and Wein & Co* ⁽²⁾ (paragraph 47) — accord with the 'general scheme' of one or other of the abovementioned taxation techniques as structured by the Community legislation?
- (b) In the event that the foregoing question is answered in the negative, must the interpretation be that the said compliance condition is fulfilled, without the need for any coinciding of the effects of the chargeability, on account of the mere circumstance that the non-harmonised indirect levy, in this case the IVMDH, does

not disrupt — in the sense that it does not impede or render difficult — the normal functioning of the chargeability of excise duties or VAT?

⁽¹⁾ OJ 1992 L 76, p. 1.

⁽²⁾ Judgment of 9 March 2000 (Case C-437/97, ECR I-1157).

**Request for a preliminary ruling from the
Verfassungsgerichtshof (Austria) lodged on 19 December
2012 — Kärntner Landesregierung and Others**

(Case C-594/12)

(2013/C 79/13)

Language of the case: German

Referring court

Verfassungsgerichtshof

Parties to the main proceedings

Applicants: Kärntner Landesregierung, Michael Seitlinger, Christof Tschohl, Andreas Krisch, Albert Steinhauser, Jana Herwig, Sigrid Maurer, Erich Schweighofer, Hannes Tretter, Scheucher Rechtsanwalt GmbH, Maria Wittmann-Tiwald, Philipp Schmuck, Stefan Prochaska

Other party to the proceedings: The Federal Government

Questions referred

1. Concerning the validity of acts of institutions of the European Union:

Are Articles 3 to 9 of Directive 2006/24/EC ⁽¹⁾ compatible with Articles 7, 8 and 11 of the Charter of Fundamental Rights of the European Union?

2. Concerning the interpretation of the Treaties:

2.1. In the light of the explanations relating to Article 8 of the Charter, which, according to Article 52(7) of the Charter, were drawn up as a way of providing guidance in the interpretation of the Charter and to which due regard must be given by the Verfassungsgerichtshof, must Directive 95/46/EC ⁽²⁾ and Regulation (EC) No 45/2001 ⁽³⁾ be taken into account, for the purposes of assessing the permissibility of interference, as being of equal standing to the conditions under Article 8(2) and Article 52(1) of the Charter?

- 2.2. What is the relationship between 'Union law', as referred to in the final sentence of Article 52(3) of the Charter, and the directives in the field of the law on data protection?
- 2.3. In view of the fact that Directive 95/46/EC and Regulation (EC) No 45/2001 contain conditions and restrictions with a view to safeguarding the fundamental right to data protection under the Charter, must amendments resulting from subsequent secondary law be taken into account for the purpose of interpreting Article 8 of the Charter?
- 2.4. Having regard to Article 52(4) of the Charter, does it follow from the principle of the preservation of higher levels of protection in Article 53 of the Charter that the limits applicable under the Charter in relation to permissible restrictions must be more narrowly circumscribed by secondary law?
- 2.5. Having regard to Article 52(3) of the Charter, the fifth paragraph in the preamble thereto and the explanations in relation to Article 7 of the Charter, according to which the rights guaranteed in that article correspond to those guaranteed by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, can assistance be derived from the case-law of the European Court of Human Rights for the purpose of interpreting Article 8 of the Charter such as to influence the interpretation of that latter article?

(¹) Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ 2006 L 105, p. 54).

(²) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).

(³) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1).

Action brought on 20 December 2012 — European Commission v Republic of Poland

(Case C-598/12)

(2013/C 79/14)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: P. Hetsch, O. Beynet and K. Herrmann, acting as Agents)

Defendant: Republic of Poland

Form of order sought

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Article 2(1), (22), (32) and (33), Article 3(7), (8) and (13), Article 6(1) and (3), Article 9 as well as Articles 13 to 14 and Articles 17 to 23, Articles 10 and 11, Article 16(1) and (2), Article 26(2)(b), (c) and (d), third and fourth sentences, Article 29, Article 38(1) to (4), Article 39(1) to (4) and Article 40(1) to (3) and (5) to (7) of, and points 1 and 2 of Annex I to, Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC,⁽¹⁾ and in any event by not notifying the Commission of such provisions, the Republic of Poland has failed to fulfil its obligations under Article 49(1) of that directive;

— impose upon the Republic of Poland, in accordance with Article 260(3) TFEU, a penalty payment for failure to fulfil its obligation to notify measures transposing Directive 2009/72/EC at the daily rate of EUR 84 378,24 from the day on which judgment is delivered in the present case;

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

The period for transposing Directive 2009/72/EC expired on 3 March 2011.

(¹) OJ 2009 L 211, p. 55.

Request for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland) lodged on 24 December 2012 — Welmory Sp. z o.o. v Dyrektor Izby Skarbowej w Gdańsku

(Case C-605/12)

(2013/C 79/15)

Language of the case: Polish

Requesting court

Naczelny Sąd Administracyjny