

court to examine whether the legislation at issue in the main proceedings is limited to what is necessary in order to attain those objectives.

⁽¹⁾ OJ C 197, 2.8.2008.

Judgment of the Court (Second Chamber) of 10 September 2009 (reference for a preliminary ruling from the Oberster Gerichtshof — Austria) — Dr. Erhard Eschig v UNIQA Sachversicherung AG

(Case C-199/08) ⁽¹⁾

(Legal expenses insurance — Directive 87/344/EEC — Article 4(1) — Right of insured persons to choose their own lawyer — Contractual limitation — Multiple insured persons suffering loss as a result of the same event — Selection of the legal representative by the insurer)

(2009/C 267/32)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Dr. Erhard Eschig

Defendant: UNIQA Sachversicherung AG

Re:

Reference for a preliminary ruling — Oberster Gerichtshof (Austria) — Interpretation of Article 4(1), of Council Directive 87/344/EEC on the coordination of the laws, regulations and administrative provisions relating to legal expenses insurance (OJ 1987 L 185, p. 77) — Clause contained in the standard terms and conditions of insurance of a legal expenses insurer enabling it, in the case of an accident in which a large number of insured persons suffer losses as a result of the same event, to choose a legal representative, and thereby limiting the right of the individual insured person to choose his own lawyer ('mass torts clause').

Operative part of the judgment

Article 4(1)(a) of Council Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance must be interpreted as not permitting the legal expenses insurer to reserve the right, where a large number of insured persons suffer loss as a result of the same event, itself to select the legal representative of all the insured persons concerned.

⁽¹⁾ OJ C 197, 02.08.2008.

Judgment of the Court (Third Chamber) of 10 September 2009 (reference for a preliminary ruling from the Hessisches Finanzgericht, Kassel (Germany)) — Plantanol GmbH & Co. KG v Hauptzollamt Darmstadt

(Case C-201/08) ⁽¹⁾

(Directive 2003/30/EC — Promotion of the use of biofuels or other renewable fuels for transport — Directive 2003/96/EC — Community framework for the taxation of energy products and electricity — Blend of vegetable oil, additives and fuel — Biofuels — National rules — Tax exemption — Replacement of the exemption by an obligation to maintain a minimum biofuel content in fuels — Conformity with Directives 2003/30/EC and 2003/96/EC — General principles of legal certainty and the protection of legitimate expectations)

(2009/C 267/33)

Language of the case: German

Referring court

Hessisches Finanzgericht, Kassel

Parties to the main proceedings

Applicant: Plantanol GmbH & Co. KG

Defendant: Hauptzollamt Darmstadt

Re:

Reference for a preliminary ruling — Hessisches Finanzgericht (Germany) — Interpretation of Article 3 of Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport (OJ 2003 L 123, p. 42) and the principles of legal certainty and legitimate expectation — National legislation replacing, before the time-limit laid down by the previous legislation, rules providing for tax exemptions for biofuels forming part of a fuel blend with an obligation to add biofuels to conventional fuels, with the effect of placing producers who had taken advantage of those exemptions at an economic disadvantage.

Operative part of the judgment

- Article 3 of Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport must be interpreted as meaning that it does not preclude national rules such as those at issue in the main proceedings which exclude, from the tax exemption scheme provided for in those rules for biofuels, a product, such as the one at issue in the main proceedings, which is composed of a blend of vegetable oil, fossil gas oil and specific additives.

2. The general principles of legal certainty and the protection of legitimate expectations do not in principle preclude a Member State, with regard to a product such as the one at issue in the main proceedings, from withdrawing, before the expiry date initially laid down in the national rules, a tax exemption scheme which applied to such products. In any event, such a withdrawal does not require the presence of exceptional circumstances. However, it is for the national court to consider, in the context of an overall assessment in the specific case, whether those principles have been respected in the main proceedings by taking account of all relevant circumstances relating to the case.

(¹) OJ C 183, 19.7.2008.

Judgment of the Court (Third Chamber) of 10 September 2009 (Reference for a preliminary ruling from the Thüringer Oberlandesgericht (Germany)) — Wasser- und Abwasserzweckverband Gotha und Landkreismunicipalitäten (WAZV Gotha) v Eurawasser Aufbereitungs- und Entsorgungsgesellschaft mbH

(Case C-206/08) (¹)

(Procurement procedures of entities operating in the water, energy, transport and postal services sectors — Public service for the distribution of drinking water and the treatment of sewage — Service concession — Definition — Transfer to the supplier of the risk connected with operating the service in question)

(2009/C 267/34)

Language of the case: German

Referring court

Thüringer Oberlandesgericht

Parties to the main proceedings

Applicant: Wasser- und Abwasserzweckverband Gotha und Landkreismunicipalitäten (WAZV Gotha)

Defendant: Eurawasser Aufbereitungs- und Entsorgungsgesellschaft mbH

Intervening parties: Stadtwirtschaft Gotha GmbH, Wasserverband Lausitz Betriebsführungs GmbH (WAL)

Re:

Reference for a preliminary ruling — Thüringer Oberlandesgericht — Interpretation of Article 1(2)(a) and (d) and 1(3)(b) of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the

procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2004 L 134, p. 1) — Call for bids for the provision, in the form of a public service concession, of a service to the public in respect of the production, transport and distribution of drinking water and in respect of the disposal and treatment of sewage — Criteria for distinguishing a public service contract from a public service concession

Operative part of the judgment

In relation to a contract for the supply of services, the fact that the supplier does not receive consideration directly from the contracting authority, but is entitled to collect payment under private law from third parties, is sufficient for the contract in question to be categorised as a 'service concession' within the meaning of Article 1(3)(b) of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, where the supplier assumes all, or at least a significant share, of the operating risk faced by the contracting authority, even if that risk is, from the outset, very limited on account of the detailed rules of public law governing that service.

(¹) OJ C 247, 27.9.2008.

Judgment of the Court (First Chamber) of 10 September 2009 (reference for a preliminary ruling from the Juzgado de lo Social de Madrid (Spain)) — Francisco Vicente Pereda v Madrid Movilidad SA

(Case C-277/08) (¹)

(Directive 2003/88/EC — Organisation of working time — Entitlement to paid annual leave — Sick leave — Annual leave coinciding with sick leave — Entitlement to take annual leave at another time)

(2009/C 267/35)

Language of the case: Spanish

Referring court

Juzgado de lo Social de Madrid

Parties to the main proceedings

Applicant: Francisco Vicente Pereda

Defendant: Madrid Movilidad SA