

The appellant complains in particular that the General Court did not take into account that its application was directed against a decision of the Commission provided for in the two-stage procedure under Regulation No 1049/2001. It would not have been able, in terms of procedural law, to bring an action before the answer the Commission said it would give to the appellant's confirmatory request of 15 October 2009 asking for review of the answer of 9 October 2009 to its initial request. The appellant acted in this respect in accordance with the case-law of the European Union judiciary. The period for bringing proceedings started to run from the receipt of the answer to its confirmatory request, deemed to be negative in accordance with Article 8(3) of Regulation No 1049/2001, on 2 December 2009. It ended on 2 February 2010. The application was therefore made in good time, in the opinion of the appellant. The appellant cannot understand how the General Court could, erring in law, set the start of the period for bringing proceedings at 16 October 2009 (the date of making the confirmatory request) and the end at 29 December 2009, without taking into account that it was not until the negative answer to its confirmatory request that the decision of 9 October 2009 (provisional answer to its initial request) became a legal act amenable to challenge.

Reference for a preliminary ruling from the Cour de cassation (Belgium) lodged on 9 May 2011 — État belge v Medicom sprl

(Case C-210/11)

(2011/C 211/28)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: État belge

Defendant: Medicom sprl

Questions referred

1. Are Articles 6(2)(a) and 13B(b) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment ⁽¹⁾ to be interpreted as precluding the private use by the managers, administrators or members and their families of a company with legal personality that is liable to tax of all or part of a property forming part of the assets of the company and thus treated as forming, in its entirety, part of the assets of the business, from being treated as an exempt supply of services, on the basis that it constitutes a leasing or letting of immovable property within the meaning of Article 13B(b), where there is no provision for

payment of rent in money as consideration for that use, which amounts to a benefit in kind that is taxed as such for the purpose of the managers' income tax and such use is therefore regarded for tax purposes as the consideration for a proportion of the work performed by the managers, administrators or members?

2. Are those provisions to be interpreted as meaning that that exemption applies in such circumstances where the company fails to prove that there is an essential link between the operation of the business and the making available of all or part of the property to the managers, administrators or members and, if so, is an indirect link sufficient?

⁽¹⁾ OJ 1977 L 145, P. 1.

Reference for a preliminary ruling from the Cour de cassation (Belgium) lodged on 9 May 2011 — État belge v Maison Patrice Alard sprl

(Case C-211/11)

(2011/C 211/29)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: État belge

Defendant: Maison Patrice Alard sprl

Questions referred

1. Are Articles 6(2)(a) and 13B(b) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment ⁽¹⁾ to be interpreted as precluding the private use by the managers, administrators or members and their families of a company with legal personality that is liable to tax of all or part of a property forming part of the assets of the company and thus treated as forming, in its entirety, part of the assets of the business, from being treated as an exempt supply of services, on the basis that it constitutes a leasing or letting of immovable property within the meaning of Article 13B(b), where there is no provision for payment of rent in money as consideration for that use, which amounts to a benefit in kind that is taxed as such for the purpose of the managers' income tax and such use is therefore regarded for tax purposes as the consideration for a proportion of the work performed by the managers, administrators or members?

2. Are those provisions to be interpreted as meaning that that exemption applies in such circumstances where the company fails to prove that there is an essential link between the operation of the business and the making available of all or part of the property to the managers, administrators or members and, if so, is an indirect link sufficient?

(¹) OJ 1977 L 145, p. 1.

Action brought on 13 May 2011 — European Commission v Portuguese Republic

(Case C-223/11)

(2011/C 211/30)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by P. Guerra e Andrade and I. Hadjiyannis, Agents)

Defendant: Portuguese Republic

Form of order sought

The Commission claims that the Court should:

1. Declare that:

- by failing to publish national and international plans for the management of river basins, the Portuguese State has failed to fulfil its obligations under Article 13(6), in conjunction with Article 13(1) and (2), of Directive 2000/60/EC; (¹)
- by failing to publish and make available for comments to the public, including users, draft copies of the river basin management plans, the Portuguese State has failed to fulfil its obligations under Article 14(1)(c) of Directive 2000/60/EC;
- by failing to send to the Commission copies of the plans for river basin management, the Portuguese State has failed to fulfil its obligations under Article 15(1) of Directive 2000/60/EC;

2. Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

Article 13 of Directive 2000/60/EC

Article 13(6), in conjunction with Article 13(1) and (2), of Directive 2000/60/EC, provides that the river basin management plans of every river basin district, whether national or international, falling entirely within the European Union must be published by 22 December 2009 at the latest.

The Commission has not been notified, nor is it aware, that any such plans have been published, so far as Portugal is concerned.

Article 14 of Directive 2000/60/EC

As the Directive makes clear, public participation is considered essential to the pursuit of the Directive's objectives.

The Commission has not been notified, nor is it aware, that any draft river basin management plans whatsoever have been published or made available for comments to the public, including users.

Article 15 of Directive 2000/60/EC

The Commission has received from the Portuguese State no copies of plans for river basin management or of those for national or international river basin districts.

(¹) Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1).

Reference for a preliminary ruling from Upper Tribunal (Tax and Chancery Chamber) (Royaume-Uni) (United Kingdom) made on 13 May 2011 — Her Majesty's Commissioners of Revenue and Customs v Able UK Ltd

(Case C-225/11)

(2011/C 211/31)

Language of the case: English

Referring court

Upper Tribunal (Tax and Chancery Chamber) (Royaume-Uni)

Parties to the main proceedings

Applicant: Her Majesty's Commissioners of Revenue and Customs

Defendant: Able UK Ltd

Question referred

1. Is Article 151(1)(c) of the Principal VAT Directive (¹) to be interpreted as exempting a supply in the UK of services of dismantling obsolete US Navy ships for the US Department of Transportation Maritime Administration in either or both of the following circumstances:

- (a) where that supply was not made to a part of the armed forces of a NATO member taking part in the common defence effort or to civilian staff accompanying them;