

**Reference for a preliminary ruling from the Cour de cassation (France) lodged on 20 February 2012 — Landsbanki Islands HF v Kepler Capital Markets SA, Frédéric Giraux**

(Case C-85/12)

(2012/C 118/30)

*Language of the case: French*

#### Referring court

Cour de cassation

#### Parties to the main proceedings

*Applicant:* Landsbanki Islands HF

*Defendants:* Kepler Capital Markets SA, Frédéric Giraux

#### Questions referred

1. Must Articles 3 and 9 of Directive 2001/24/EC on the reorganisation and winding up of credit institutions<sup>(1)</sup> be interpreted as meaning that reorganisation or winding-up measures in regard to a financial establishment, such as those under Icelandic Law No 44/2009 of 15 April 2009, are to be regarded as measures adopted by a administrative or judicial authority for the purposes of those articles?
2. Must Article 32 of Directive 2001/24/EC be interpreted as precluding a national provision, such as Article 98 of the Icelandic law of 20 December 2002, which prohibited or suspended any legal action against a financial establishment as from the entry into force of a moratorium, from having effect in regard to interim protective measures adopted in another Member State prior to the declaration of the moratorium?

<sup>(1)</sup> Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (OJ 2001 L 125, p. 15).

**Reference for a preliminary ruling from the Högsta förvaltningsdomstolen (Sweden) lodged on 17 February 2012 — Skatteverket v PFC Clinic AB**

(Case C-91/12)

(2012/C 118/31)

*Language of the case: Swedish*

#### Referring court

Högsta förvaltningsdomstolen

#### Parties to the main proceedings

*Appellant:* Skatteverket

*Respondent:* PFC Clinic AB

#### Questions referred

1. Is Article 132(1)(b) and (c) of the VAT Directive<sup>(1)</sup> to be interpreted as meaning that the stated exemption from taxation covers services such as those at issue in the present case and which consist of:
  - (a) cosmetic surgery,
  - (b) cosmetic treatments?
2. Does it affect that assessment if the surgery or treatments are carried out with the purpose of preventing or treating sicknesses, physical impairments or injuries?
3. If due account is to be taken of the purpose, can the patient's understanding of the purpose of the intervention be taken into consideration?
4. Is it of any importance to the assessment whether the intervention is carried out by licensed medical professionals, or that such professionals decide on its purpose?

<sup>(1)</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, p. 1).

**Action brought on 21 February 2012 — European Commission v Federal Republic of Germany**

(Case C-95/12)

(2012/C 118/32)

*Language of the case: German*

#### Parties

*Applicant:* European Commission (represented by: E. Montaguti and G. Braun, acting as Agents)

*Defendant:* Federal Republic of Germany

### Form of order sought

The applicant claims that the Court should:

- declare that, by failing to adopt all the measures necessary to comply with the judgment of the Court of Justice of the European Union in Case C-112/05 *Commission v Germany* [2007] ECR I-8995 regarding the incompatibility with European Union law of provisions of the VW-Gesetz, the Federal Republic of Germany has failed to meet its obligations under Article 260(2) TFEU;
- order the Federal Republic of Germany to make a daily penalty payment in the amount of EUR 282 725,10 and a lump sum daily payment of EUR 31 114,72, payable to the own resources account of the European Union;
- order the Federal Republic of Germany to pay the costs.

### Pleas in law and main arguments

The judgment of the Court of Justice in Case C-112/05 *Commission v Germany* was delivered on 23 October 2007. In that case, the Commission essentially submitted that three provisions of the VW-Gesetz could deter direct investment and thus restricted the free movement of capital within the meaning of Article 56 EC in that they (i), in derogation from the general law, capped the voting rights of every shareholder at 20 % of Volkswagen's share capital, (ii) required a majority of over 80 % of the shares represented for resolutions of the general assembly, which, according to the general law, require only a majority of 75 % and (iii) allowed, in derogation from the general law, the Federal State and the Land of Lower Saxony each to appoint two representatives to Volkswagen's supervisory board.

It transpires from the judgment of the Court of Justice referred to above that each of the three of the provisions of the VW-Gesetz complained of, taken individually, was found to infringe the free movement of capital.

The law adopted by the Federal Republic of Germany, which, in the latter's opinion, has transposed the judgment of the Court of Justice, still requires, however, a majority of over 80 % of the shares represented for resolutions of the general assembly of the Volkswagen AG, which, according to the Aktiengesetz (German company law), require only a majority of 75 %. The Federal Republic of Germany justifies this with reference to the operative part of the judgment in Case C-112/05, pursuant to which that provision only constitutes a legal infringement when taken in conjunction with the other two provisions. Taken individually, however, that provision does not constitute an infringement of the free movement of capital.

In the Commission's view, the wording of the operative part of the judgment does not rule out the unlawfulness of the three contested provisions, taken individually. When implementing a judgment, it is not just the operative part thereof which needs to be taken into account, but also the grounds for the decision. In the context of the present case, it appears particularly far-fetched on the part of the Federal Republic of Germany to try to justify its failure to fully implement the judgment of the Court of Justice exclusively on the basis of the three words 'in conjunction with' in the operative part of the judgment. Such an interpretation does not only ignore the overall grounds for the judgment, but also the case-law of the Court of Justice on so-called 'Golden Shares'.

Accordingly, the Commission regards itself once again as required to bring the case before the Court of Justice in accordance with Article 260(2) TFEU. The amount of the financial sanctions was determined on the basis of the Commission's communication of 1 September 2011 on the updating of data for the calculation of lump sum and penalty payments. <sup>(1)</sup>

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<sup>(1)</sup> OJ 2011 C 12, p. 1