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Preliminary references from the new Member States – an attempt to identify problems of common interest and regional specificities

One of the legal effects of accession to the European Union was that it opened the way for the national judiciary of the new Member States to have access to the preliminary ruling procedure under Article 267 TFEU (ex Article 234 EC) to consult the Court of Justice of the European Union (hereinafter referred to as ECJ or Court) and seek the interpretation of EU law or inquire about its validity if national judges consider that a decision on these questions is necessary to enable them to give a judgment.

The use of the preliminary ruling procedure implies, on the one hand, the necessity to apply provisions of EU law, directly or indirectly, and, on the other hand, the national judge's doubt about the meaning or validity of these provisions. Some cases are concerned with the *prima facie* application of EU norms if it is about the enforcement of directly applicable regulations. In other cases, however, EU law comes only indirectly into the picture, if its interpretation is needed in order to establish whether the national provisions to be applied are in conformity with the EU law requirements.

Of course, national courts of the new Member States have availed of the possibility to make use of this instrument, some of them immediately after accession[1], while others at a later stage, only one or two years after accession. This study does not aim to analyse the judicial activity in the new Member States in initiating preliminary ruling procedures, nor does it try to identify why certain Member States' courts have been more active than others in consulting the ECJ. Its objective is to make an attempt to demonstrate that, although the preliminary references coming from the new Member States concern different areas and different legal problems, some of these questions touch upon similar, in some cases identical, issues. The question arises whether these similarities refer to specificities that can be characterised as regional ones due to similar legal traditions, to the difficulty of applying or implementing certain type of EU rules, to specific economic constraints or to the fact of accession and the legal effects it entailed.

The scope of this article will not make it possible to analyse all the 116 references that have been referred by the national courts of the new Member States to the Court by November 2010. Therefore, only those cases which reflect common points and concerns will be examined in detail. Some of these categories might seem artificial. It might also be questioned whether it makes sense to establish such artificial groups of cases. The author of this article believes that, despite the obviously different nature of preliminary references from the Central European region, there can be well identifiable groups of cases reflecting common concerns.

For the purpose of this study, the following categories of cases could be identified and will be further analysed below.

[1] See on this point the Hungarian and Romanian courts.

- The first category of cases embraces references that have been rejected by the Court for lack of jurisdiction, although for different reasons. One group of reasons for rejection is concerned with the misunderstanding of the role the ECJ plays in protecting fundamental rights, while the other identifiable group is more complex, integrating different categories of pre-accession cases.
- Another group of references concerns different aspects – mainly transitional periods or derogating measures - linked to the effects of accession.
- Although closely linked to the legal effects of the accession, problems of applicability of EU legislation because of non-publication in the new languages are dealt with under a distinct title. Even if there was only one reference revealing these problems, the question of the applicability of EU legislation not published in the new languages has been beyond doubt the most specific common concern for all new Member States.
- Under the fourth category of references, we made an attempt to demonstrate that, from among the references seeking the interpretation of different tax law provisions, we can identify two distinct groups of cases touching upon similar problems. The first group is concerned with national registration taxes on second-hand cars, while the second one integrates all those references that were seeking the interpretation of the Sixth VAT Directive in order to be able to rule on the conformity of national legislation with the provisions of the Directive. The majority of these tax cases concerns different kind of limitations of the national legislation to deduct VAT.
- Just like tax cases which aimed at demonstrating shortcomings in the national legislation, references in the field of agricultural law wanted to ascertain whether national measures adopted in order to enforce agricultural subsidy rules had been in conformity with the relevant legislation.
- The remuneration of on-call duties has been revealed in only one early reference. However, the questions and problems raised by the reference might be considered as typical and crucial in at least some of the countries of the region.
- Finally, the study gives a short overview of urgent preliminary references from the new Member States which, although they cannot be considered as representing typical regional specificities, are worth being analysed for the relative high number of these kinds of references emanating from the Central European region.

1. Preliminary references rejected for lack of competence

The first two preliminary references, both referred to by Hungarian courts, had not been decided by the ECJ as to the substance of the case, the Court lacking jurisdiction. However, the reasons behind the refusal were completely different in each case, one fitting completely into the line of a well-established jurisprudence of the Court, the other becoming a reference case, settling an open question of the application of EU law in a definitive manner. This difference is also demonstrated by the ECJ's attitude towards the two cases. Case C-328/04, *Vajnai,* had been decided by a judicial chamber of three judges in the form of an order, without the AG presenting his opinion on the case, while

Case C-302/04, *Ynos,* had been referred to the Grand Chamber and had been closed by a judgment after Advocate General Tizzano delivered his detailed legal argumentation.

1.1. Finding the right court – the ECJ's competences in the field of fundamental rights

The accession of the EU 10 opened the way for national courts to submit preliminary references to the ECJ. At the same time, lawyers appearing before national courts could start to use arguments based on EU law and try to convince national judges to initiate preliminary ruling procedures. However, the very first experiences showed that there had been some confusion on the role and competences of the ECJ in protecting fundamental rights. It seems that the ECJ had been seen by many as an additional forum to guarantee the enforcement of fundamental rights in the Member States. This uncertainty about the ECJ's real function in relation to fundamental fights is clearly reflected by the second Hungarian referral of 2004 (C-328/04, *Vajnai*) and the first referral from Slovakia in 2006 (C-302/06, *Koval'sky*).

In the *Vajnai* case, the main legal question concerned the compatibility with the Charter of Fundamental rights and in particular with its provisions on the freedom of expression of Article 269/B of the Hungarian Criminal Code which prohibits the public use of 'totalitarian symbols'. These questions were raised in criminal proceedings brought against Mr Vajnai, Vice-President of the Hungarian Workers' Party, because of displaying on his clothing in public a five-point red star and violating thereby the relevant provisions of the Hungarian Criminal Code. The Metropolitan Court, Budapest asked the ECJ on the compatibility of the relevant provisions with Article 6 TEU and Articles 10, 11, 12 of the Charter. As the ECJ could easily deduce its ruling from its case-law, it decided the case by an order. It confirmed its established case-law[2], according to which the ECJ must give the national court all the guidance as to interpretation necessary to enable it to assess the compatibility of national provisions with the fundamental rights if these provisions fall within the field of application of EU law. However, the ECJ has no such jurisdiction with regard to national provisions outside the scope of Community law and when the subject-matter of the dispute is not connected in any way with any of the situations contemplated by the treaties.[3]

As to the afterlife of the case, it must be noted that the defendant in the main proceedings, after having exhausted all the internal ways of appeal finally found the right forum to turn to, the European Court of Human Rights[4], which delivered its judgment on the substance of the case in 2008, finding the relevant provisions of the Hungarian Criminal Code incompatible with Article 10 of the European Convention of Human Rights.

In the *Koval'sky* case referred to the ECJ in 2006, the lack of jurisdiction of the ECJ was immediately stated by an order of the Court, without offering the possibility to those entitled under the Statute of the Court to submit written observations, as it was not even

[2] C-299/95 *Kremzow* [1997] ECR I-2629.
[3] Paragraphs 11-12 of the judgment.
[4] Case of *Vajnai v. Hungary* (application no. 33629/06).

an instrument of EU law but certain provisions of the Convention of Human Rights whose interpretation was sought and where the Court's lack of jurisdiction is beyond any doubt.

The fact that national jurisdictions of new Member States in the after-accession period still do not always see clearly the role the ECJ plays in the European judicial system is further supported by the fact that one of the first preliminary references from Austria after its accession in 1995, Case C-299/95, *Kremzow,* was also concerned with the interpretation of fundamental rights in an area which fell outside the scope of EU law.

The practice of invoking the violation of fundamental rights and requesting the national judge to submit a preliminary question to the ECJ in cases unrelated with EU law is still often followed by lawyers acting before national courts. Such requests are however mostly refused by the national judges in the light of the case-law of the ECJ. [5] In this respect the first erroneous reference from the new Member States could have some positive impact, at least by drawing the attention of the new European judges to the limits of invoking fundamental rights before the ECJ.

1.2. Pre-accession cases

The ever first preliminary reference, Case C-302/04, *Ynos* from the EU 10 (referral from the City Court of Szombathely from Hungary) had touched upon a sensitive legal aspect of accession, namely the possibility to interpret pre-accession national legislation implementing a directive in the light of the latter in a case the facts of which arose before accession but which had to be decided by the national judge after accession. The implementing measures of Directive 93/13/EEC on unfair contract terms had been adopted at the end of the 90's by the amendment of the Hungarian Civil Code and by the adoption of a Government decree, and they remained unchanged after accession. The City Court of Szombathely asked three questions from the ECJ, two of which related to the substance of the main action seeking the interpretation of the Directive, while the third one – as a preliminary issue – raised some doubts as to the jurisdiction of the ECJ in relation to pre-accession cases to be decided after accession.[6] Interestingly, the decisive factor referred to by the national judge in his third question was not that the facts of the case occurred before accession but the date when the legal dispute arose. That aspect was, however, not analysed either by the Member States submitting written observations in the case or by the Advocate General and the Court, all of them having examined the applicable law in relation to the date of the facts, this being the relevant factor that normally defines the legal rules to be applied.

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[5] The Czech Supreme Court has, for instance, systematically refused requests for preliminary rulings in restitution cases where the claimants were invoking the violation of Article 6 TEU in respect to the breach of impartiality of judges (Bobek: A new legal order or a non-exsistent one? Some (early) experiences in the application of EU law in Central Europe, *Croatian Yearbook of European Law and Policy,* Vol. 2., 2006, p. 268.)

[6] The third question of the City Court of Szombathely was formulated the following way: „From the point of view of the application of Community law, is it relevant that the main dispute arose before the accession of the Republic of Hungary to the European Union, but after the adaptation of its domestic law to the Directive?"

In his opinion, Advocate General Tizzano argued that the Directive is incapable of applying, or of being relied upon by individuals, in so far as the facts at issue occurred at a time when Hungary had not yet acceded to the Union and was therefore not yet bound by the Directive.[7] He considered therefore the substantial issues raised by the national court as being hypothetical in which case the ECJ cannot give a preliminary ruling.

However, the Advocate General went on to examine whether there could be ways to extend the ECJ's jurisdiction in order to ensure a uniform interpretation of EU law also in a case where individuals are covered only by national legislation but where this legislation aims to implement an EU instrument. According to the Advocate General, such an approach could be accepted "in order to forestall future differences of interpretation"[8]. However, he immediately rejected the eventual extension of the ECJ's jurisdiction by arguing that it would stretch "the scope of the Court's jurisdiction to its limit (or even beyond), allowing the Court to give a ruling in cases where Community law clearly does not apply to the main action and there is only a *future*, and therefore purely hypothetical, interest in its uniform application"[9]. He was of the view that, as a general rule, the reference should not be admissible, but should the Court decide otherwise, it could only be an exception.

The Court, in its judgment, remained silent as to the grounds for the denial of its jurisdiction. It made only reference to another pre-accession case[10] – a preliminary reference from Sweden - where similar, but not identical problems were raised. In its rather laconic reasoning, the Court simply states that, as the facts of the dispute in the main proceedings occurred prior to the accession of Hungary to the European Union, the Court does not have jurisdiction to interpret the Directive, as it has jurisdiction to interpret the Directive only as regards its application in a new Member State with effect from the date of that State's accession to the European Union.[11]

Bobek has qualified the first two preliminary references as "dubious preliminary references"[12]. His view was supported by some other commentators. This opinion is however not shared by the author of this article, who is of the view that the *Ynos* case must clearly be distinguished from the *Vajnai* case. That latter is a clear example of misunderstanding the role of the ECJ, which is giving useful answers to national courts on the interpretation of EU law. The lesson was learnt: the Court of Luxembourg is not a

[7] Paragraph 41 of the opinion of the Advocate General.
[8] Paragraph 47 of the opinion of the Advocate General.
[9] Paragraph 50 of the opinion of the Advocate General.
[10] Case C-321/97, *Andersson and Wåkeräs-Andersson*, [1999] ECR I-3551. This case was however different from the *Ynos* case in two respects. First, it was the EEA agreement whose interpretation had been sought by a new Member State, Sweden, in order to decide a pre-accession case in which this agreement still had to be applied. Second, the main question that arose was not a pure question of interpreting certain provisions of EU law but it inquired whether the State could be held liable for acts predating accession and resulting from an incorrect transposition of a Directive. In this case the Court ruled that it had no jurisdiction for interpretation of the EEA Agreement in the area of its application in the pre-accession period.
[11] Paragraphs 35-37 of the judgment.
[12] Bobek, p. 267.

court of general jurisdiction to ensure the safeguard of fundamental rights in the Member States. On the contrary, the *Ynos* case offered an opportunity to the ECJ to set the limits of its jurisdiction in relation to pre-accession cases, an important aspect that Court could avoid to settle in a definitive manner in its earlier case-law.

The hereto unsettled nature of the issue of jurisdiction is further supported by the fact that, in addition to the European Commission, six governments expressed their views on the third question of the national court by submitting written observations in the case and their perception was divergent. Three of the participating governments[13] argued that the ECJ should have jurisdiction for cases such as the *Ynos* case, either because they believed that national courts of new Member States should be under the obligation to interpret national legislation in the light of EU law by the force of the former Association Agreement, or because they thought that, as the national legislation in question was intended to implement a directive, the ECJ should deliver an answer to the questions relating to the substance because of the need for uniform interpretation, even if the directive could not be applied as such in pre-accession cases.[14]

The fact that the case was referred to the Grand Chamber also underlines the crucial nature of the reference and reflects the Court's engagement to handle the question of jurisdiction as an important legal issue.

The *Ynos* case became a reference case in disputes where the question of applicability of EU law in connection with pre-accession aspects had been raised. The lack of detailed legal reasoning in the *Ynos* judgment forced the Court to fine-tune its position to some extent on a case by case basis. In the Czech preliminary reference C-64/06, *Telefónica O2 Czech Republic*, submitted by the Prague 3 District Court, the Czech government argued that questions referred for a preliminary ruling should be immediately dismissed, on the ground that the ECJ has no jurisdiction *rationae temporis*. The objective of the reference in this case was to ascertain whether, after the accession of the Czech Republic to the European Communities and after the conclusion of administrative proceedings commenced before that date, an undertaking, dominant in the telecommunications sector, should be obliged to connect its network with that of another company without the market analysis required by Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services and Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities. In this case the application in question was submitted and decided at first instance at a time when the Czech Republic was not yet a member of the Communities; the decision was revoked later, at a time when the Czech Republic had joined the European Union and a new resolution was adopted. Advocate General Colomer, under paragraph 32 of his opinion, pointed out that the issue in the case at hand did not relate, as in *Ynos*, to events which took place and were completed in a Member State prior to its entry into the Communities (a state of affairs where the Court would have no jurisdiction), but rather to determining the applicability in time of certain directives in

[13] The Austrian, Spanish and Latvian governments, while the Czech, Polish and Hungarian governments were arguing in favour of the lack of jurisdiction.
[14] Argumentation of the Latvian government.

relation to an event which began before and ended after that date of entry, a situation in which the Court is certainly competent as supreme and ultimate interpreter of Community law. The argumentation of the Advocate General was followed by the Court in its judgment, where it stated that there is no need to examine the consequences of annulment of a decision under the Czech law as the contested decision in the main proceedings was adopted after the Czech Republic acceded to the Union, and that it is prospective in its regulatory effect and not retrospective.[15] Thus, it was the regulatory effect of the administrative decision taken after accession that was considered as decisive factor, even if the case and the original administrative procedure dated back to the pre-accession period.

On the other hand, in cases which clearly fell under the *Ynos* case-law, the Court consistently followed its judgment by stating its lack of jurisdiction in an order. In Case C-261/05, *Lakép* – the third Hungarian preliminary reference - the interpretation of Article 33 of the Sixth Council Directive 77/388/EEC was sought in order to enable a Hungarian national court to rule on the compatibility of local tax on economic operations with the relevant provisions of the Directive. However, the financial years in connection with which the legal dispute arose before the County Court Komárom-Esztergom all predated the day of accession of Hungary to the EU.[16] In the Polish preliminary reference C-168/06, *Ceramika Paradyż,* the Regional Administrative Court in Lodz (Poland) sought the interpretation of the first and sixth VAT Directive, in relation with national legislation providing for the imposition of an additional tax in cases where irregularities are found in the return submitted by the taxable person. The primary doubt of the national court concerned whether these additional tax liabilities should be deemed to be a special measure, as defined in Article 27 of the Sixth VAT Directive. Should that have been the case, Poland should have asked for a special authorisation from the Council, which it had never done. On the contrary, if the additional tax liability is not a measure within the meaning of the Sixth VAT Directive, but an administrative penalty, it falls outside the scope of EU law.[17] However, in that particular case the dates played an important role again: the taxable person made the mistake in 2003, prior to accession, while the tax authorities imposed the additional tax liability after accession, in May 2004. In addition, the national legislation, which contained the legal basis of the imposition of the additional tax liability, had been repealed and a new VAT law adopted in 2004, although with identical wording concerning the tax liability.[18] The Court dismissed the case by referring to its previous judgments in the *Ynos* and *Lakép* cases*,* on the grounds that the national legislation in question was applied in connection with a declaration of tax concerning a period which predated accession. The Court's decision in *Ceramika Paradyż* had been sharply criticised by Półtorak, especially in the light of the judgment in *Telefónica O2 Czech Republic* case delivered some two months later. She argues that, even if the facts of the case took place before the accession of Poland, the tax obligation arose on the basis of the constitutive decision issued after accession and therefore the principle of

[15] Paragraph 21 of the judgment.
[16] Years 1999-2002.
[17] Biegalski – Furga – Lasinski-Sulecki – Switala: Additional Tax Liability under Polish Law, *International VAT Monitor,* March-April 2007., 109.
[18] Biegalski – Furga – Lasinski-Sulecki – Switala, 106.

application of EU legislation to future results of situations arising when past rules were in force should have applied.[19] She further adds that the *Ceramika Paradyż* case was not concerned with the compliance of pre-accession provisions of EU law, but it was about compliance with EU law of post-accession provisions of national law applied to an issue of administrative decisions taken already after accession. According to Półtorak, the fact that the decision of the ECJ in *Ceramika Paradyż* was wrong is indicated by the Court's judgment in the *Telefónica O2 Czech Republic* case.[20] In this case, the ECJ established its jurisdiction on the grounds that, even if the facts of the case and administrative proceedings predate accession, the administrative decision adopted after accession regulates a future and not a past situation. Półtorak points out that the facts of the *Ceramika Paradyż* case were not much different: the decision was issued after accession and the obligation to pay additional tax (a future obligation) arose due to this decision and not to past events. One could contest Półtorak's view by admitting that the additional tax liability is a future obligation, but it is clearly based on a pre-accession breach of tax rules, while the administrative decision in *Telefónica O2 Czech Republic* concerned pure future obligations, independent of concrete past events, as the circumstances in question remained unchanged.

The last judgment in this line of pre-accession cases was delivered in case C-193/09, *Pannon,* in a preliminary ruling procedure initiated by the Metropolitan Court, Hungary. The Hungarian court sought the interpretation of Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services in relation to sharing the net cost of the universal service obligation between providers of networks and electronic communications services. The national court had some doubts about the compatibility of the national legislation on the mechanisms for cost sharing with the directive as regards the financing of universal services provided during the year preceding the accession of Hungary to the European Union. The Court pointed out that, even if the administrative decisions in question were adopted after Hungary's accession to the EU, and the administrative proceedings giving rise to the adoption of the decisions in question were also initiated after Hungary had acceded to the EU, the national court in its preliminary reference does not refer to any fact which could ascertain that the decisions in question would regulate any legal situation other than the one at issue prevailing in 2003, thus before accession.[21] The Court ruled again that the provisions of the Directives in question are therefore not applicable in the given case.

It is interesting to note that, of the references dismissed for *rationae temporis*, the questions that have been asked by the national judges in two of these cases – in the *Lakép* case on the compatibility of the Hungarian tax on economic activity and in the *Ceramica paradyz* case on the compatibility of the additional tax liability under Polish law with the relevant provisions of the Sixth VAT Directive - finally found their way to the ECJ. They have been repeated in cases referred to by courts other than the previous ones in legal disputes where the facts of the main proceedings arose in the post-accession period.[22]

[19] Półtorak: Ratione temporis application of the preliminary ruling procedure, *Common Market Law Review,* 2008, 1375.
[20] Półtorak, 1377.
[21] Paragraphs 18-20 of the order.
[22] See Case C-283/06, Kögáz, Case C-502/07, K-1.

This reflects that the problems in question arose in subsequent disputes and there was a general need for the interpretation of the relevant provisions of the Directive in order to be able to assess the compatibility of the national tax legislation with the EU requirements. Interestingly, the Court gave green light to the national tax provisions, in both cases considering that the provisions of the Sixth VAT Directive as such do not preclude the application of the Hungarian and Polish tax rules respectively.

The *Ynos* judgment identified the date when the facts of the case occurred as a decisive factor for the application of EU law in a legal dispute before a national court. Should they occur before accession, EU law does not have to be applied. On the contrary, if they have arisen after accession, EU law must be taken into account. The judgment of the Court has not only been criticised for being too laconic, settling the question in six short paragraphs,[23] but also for being unconditional and categorical, avoiding to offer guidance for cases where the facts of the case arose before accession but the resulting legal effects are lasting even after accession.[24]

Of course the Court's judgment does not hinder the national judge to take EU law into account in a situation where the national legislation at hand is implementing provisions of EU law, if he/she can do so under the national legal system. Indeed, EU law has been seen as a source of inspiration before national courts of several Member States in legal disputes predating accession.[25] What the judgment wanted to make sure is that the national judge is not under such an obligation in pre-accession cases and the Court would not be competent to answer questions that have arisen in pre-accession cases. Nevertheless, those national courts which choose to use EU measures as a tool of interpretation in pre-accession cases are cut from the possibility of consulting the Court and have to interpret the relevant provisions themselves. Kühn and Bobek refer on this point to the jurisprudence of the Czech courts, which often openly regret not being able to use the preliminary ruling procedure in such cases.[26]

On the contrary, Polish courts systematically refused to apply EU law to pre-accession cases even before the *Ynos* judgment, which only further reinforced this strict

[23] Kovács-Nemessányi: A közösségi jog időközi kérdései az új tagállamok alkalmazásában, *Romániai Magyar Jogtudományi Közlöny,* 69.

[24] Bobek, 278. In order to support his argumentation, Bobek refers to a Czech case brought to the Regional Court in Hradec Králové. The case concerned reimbursement of customs duties in relation to cheese imported from Italy within the terms of a contract concluded immediately before accession but rescinded after accession for reasons of the defect of the product. The court was confronted with the dilemma whether or not to apply EU law in connection with reimbursement of customs duties in a case where the facts arose before accession but the legal act which gave rise to potential reimbursement occurred after accession.

[25] See on this point the decision of the Slovak Supreme Court in a dispute relating to the taxation period of 2002 and concerning VAT rules where the Sixth VAT Directive has been invoked by the court (see Kühn-Bobek: Europe yet to come: the Application of EU law in Slovakia. In Lazowski: *The Application of EU law in the new Member States,* T.M.C. Asser Press, 2010., 363.)

[26] Kühn – Bobek: What about that 'Incoming Tide'? The Application of EU law in Czech Republic. In Lazowski: *The Application of EU law in the new Member States,* T.M.C. Asser Press, 2010., 352.

position.[27]The same approach was followed by the Latvian[28] and Hungarian[29] courts, which opted for the straightforward application of the *Ynos* principle.

Although the first Romanian preliminary ruling case, case C-33/07, *Jipa,* is not directly concerned with the issue of accession, and the Court's judgment does not even make reference to it, the case itself is closely connected to the legal effects of accession. In fact it was Romania's joining the EU and thus the applicability of EU law in the light of which the national judge thought it could be doubtful to apply restrictions on the free movement of an EU citizen on the basis of a decree implementing an international agreement concluded before accession, in relation to an act committed before accession but sanctioned by limitations on the freedom to leave a Member State after accession. In that particular case Jipa, a Romanian national, was repatriated in 2006 (i.e. before Romania entered the EU), to Romania from Belgium, on account of his illegal residence there. The legal basis of the repatriation was a readmission agreement concluded in 1995 by the two countries. A Romanian decree implementing the readmission agreement foresaw the possibility for Romanian courts, at the request of the competent minister, to restrict the exercise of the right of Romanian citizens to free movement abroad for a period not exceeding three years if the person concerned was repatriated under the terms of the agreement. In the case of Mr. Jipa, the Minister applied to the Tribunalul Dâmbovița in January 2007 (thus after Romania's accession), for a measure prohibiting Mr Jipa from travelling to Belgium for a period of up to three years. The national court, which had doubts about the compatibility of the Romanian legislation with EU law, and in particular the right conferred by Article 18 EC to move and reside freely within the territory of the Member States, referred questions to the ECJ. The Court, in its judgment, referred to its previous case-law and confirmed that the right of freedom of movement includes both the right for citizens of the European Union to enter a Member State other than the one of origin and the right to leave the State of origin. It further stated that the fundamental freedoms guaranteed by the EC Treaty would be rendered meaningless if the Member State of origin could, without valid justification, prohibit its own nationals from leaving its territory in order to enter the territory of another Member State.[30]With regard to possible limitations of this freedom, the Court pointed out that the limitations on the grounds of public policy or public order can only be justified if the personal conduct of the person constitutes a genuine, present and sufficiently serious threat to one of the fundamental interests of society. It left it to the national court to ascertain whether these

[27] Lazowski - Wentkowska: Poland: Constitutional Drama and Business as Usual. In Lazowski: *The Application of EU law in the new Member States,* T.M.C. Asser Press, 2010, 293.
[28] Zukova: The Application of EU law in Latvia. In Lazowski: *The Application of EU law in the new Member States,* T.M.C. Asser Press, 2010, 254.
[29] The lack of precise guidance given by the ECJ resulted in some cases in the mechanical application of the *Ynos* doctrine excluding the possibility (or even the obligation) to refer a question to the ECJ in cases where the facts giving rise to the legal dispute arose before accession but still continued to exist after it and the national court's decision had to embrace the entire period of time (see on this point decision Pfv. IV. 20. 936/2008/4 of the Hungarian Supreme Court in which it refused to refer a preliminary reference to the ECJ on the interpretation of Directive 2000/43 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, in a case concerning the segregation of Roma children in educational institutions where the eventual segregation started before accession and even attempts have been made to solve this problem before that date, however the situation continued to exist after accession).
[30] Paragraph 18 of the judgment.

conditions are met, although the Court found that it did not seem in the given case that a limitation could be justified. However, the national rule itself was not judged to be contrary to the principle of free movement of persons if applied on a case by case basis according to the criteria set by the ECJ.

The main difference of the *Jipa* case in comparison to the *Ynos* judgment lies in the fact that the actual limitation of Mr. Jipa's freedom of movement took place after accession, even if the facts giving rise to these restrictions predated accession. In this connection the date of the repatriation does not have legal significance in respect of the application of EU law. The fact that Mr Jipa had been repatriated must rather be seen as one element contributing to enabling the national judge to decide whether Mr. Jipa's personal conduct constitutes a genuine, present and sufficiently serious threat to one of the fundamental interests of society.

2. Other cases linked to accession

Legal effects of accession on the application of EU law were not only revealed in cases where the facts pre-dated accession but also in other cases where the European instruments provided for certain transitory measures or for maintainability of certain national measures in connection with their entry into force which, in the case of new Member States, is their date of accession. We will see below in section 4 that Article 17(6) of the Sixth VAT Directive on the maintainability of certain limitations to deduct tax has been raised in several cases, either by the national judge or by the governments submitting observations to the case.

Legal effects of the accession with regard to transitional measures had been examined in the Lithuanian preliminary ruling case C-66/09, *Kirin Amgen*, where the interpretation of Council Regulation No 1768/92 concerning the creation of a supplementary protection certificate (SPC) for medicinal products was sought by the national court. The Lithuanian court wanted to establish whether the relevant articles of the Regulation must be interpreted as allowing the holder of a valid basic patent to apply to the competent Lithuanian authorities, within six months of the date upon which Lithuania acceded to the European Union, for the grant of an SPC where a Community (but not a Lithuanian) authorisation to place that product on the market as a medicinal product had been obtained more than six months before that date. The Regulation as amended laid down general rules for the application of a SPC, according to which such an application shall be lodged within six months of the date on which the authorisation to place the product on the market as a medicinal product was granted. However, the Regulation stipulated special rules in relation to acceding countries. According to these latter provisions in respect of Lithuania, the Regulation should apply to any medicinal product protected by a valid basic patent applied for after 1 February 1994 and for which the first authorisation to place it on the market as a medicinal product was obtained in Lithuania prior to the date of accession, provided that the application for the SPC was lodged within six months of the date of accession.[31]

[31] Article 19a (f) of the Regulation.

In the main proceedings, the applicant, Kirin Amgen, was granted a Community marketing authorisation in 2001, but not a national marketing authorisation obtained in Lithuania. The Court made it clear that the provision of the Regulation foreseeing derogations for new Member States are couched in clear and unambiguous terms and they only allow a SPC to be granted in respect of a product for which a first authorisation to place it on the market as a medicinal product had been obtained in Lithuania. According to the Court's reasoning, the applicant could not prevail from the provisions of the general rule either. It argued that if the entry into force of a Community marketing authorisation in a new Member State could be equated to its grant there, every Community marketing authorisation would confer entitlement to the grant of an SPC if it were applied for within six months of the accession of such a Member State to the European Union, even if the date of grant of that marketing authorisation were prior to the dates for the obtaining of an authorisation that are referred to in the transitional provisions of the Regulation and this would also run counter to the outcome of the accession negotiations.[32] Thus, Kirin Amgen could not be granted a SPC on the basis of either of the provisions.

The case raised the interest of the governments of several other new Member States: Latvia, the Czech Republic and Hungary submitted written observations in the procedure. The outcome of the case and the interpretation of the Court were relevant for these Member States, as their national patent offices and national courts had to decide cases similar to that in the main proceedings. The jurisprudence of the Hungarian Patent Office and national courts, for instance, has followed the same argumentation as the Lithuanian courts with the difference resulting from the different wording of the Regulation in respect of Hungary. According to Article 19a (f), an SPC could be granted for any medicinal product protected by a valid basic patent and for which the first authorisation to place it on the market as a medicinal product was obtained after 1 January 2000. However, contrary to Article 19a (f) relating to Lithuania, the authorisation to place the product on the market did not have to be obtained necessarily in Hungary; consequently it could be any other Member State of the EEA. [33] The Hungarian courts refrained from initiating preliminary ruling procedure in their respective cases. The Supreme Court of Hungary, being normally under the obligation to refer questions to the ECJ if the interpretation of EU law is necessary, invoked the criteria of the *Cilfit* judgment[34] in order to decide the case, arguing that the wording of the Regulation was unambiguous and did not reveal any problems of interpretation.[35]

3. The non-publication of the Official Journal in the official languages of the new Member States

[32] Paragraph 50 of the judgment.

[33] See decision 8.Pkf.25.009/2009/10 of the Metropolitan Court as confirmed by decision Pfv.IV.20.457/2010/3 of the Hungarian Supreme Court, decision 8.Pkf.26.972/2008/5 of the Metropolitan Appeal Court, decision 8.Pkf.25.143/2007/10 of the Metropolitan Appeal Court.

[34] Case 283/81, Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health [1982] ECR 03415.

[35] See decision Pfv.IV.20.457/2010/3 of the Hungarian Supreme Court.

If we are to identify specificities of the Central European region reflected by preliminary references referred to by the national courts of the new Member States, case C-161/06, *Skoma Lux,* is beyond doubt the most illustrative example of legal problems common to the new Member States, linked to the precondition of applicability of EU law in these countries. One of the major legal consequences of the accession is that the provisions of the founding Treaties and the acts adopted by the European institutions shall be binding on the new Member States and shall be applied in them. For reasons of legal certainty and because the official languages of the new Member States became at the same time official languages of the EU, Article 58 of the Act of Accession foresees that the texts of the acts of the institutions adopted before accession shall be published in the new languages. This meant in practice translation of the acquis in force by the governments of the candidate countries, authentication (approval) of the texts of the acts by the European institutions and publication in a Special Edition of the Official Journal of the European Union. However, the 219 volumes of the Special Edition could not be published in the new languages by the date of accession. In the first regular Official Journal published after accession, the 1st of May 2004,[36] the European Commission issued a notice reflecting its own interpretation of Article 58 of the Act of Accession, according to which the volumes of the Special Edition would be issued gradually between 1 May and the end of 2004 and, pending publication, the electronic version of the texts was available on EUR-Lex and would in the meantime constitute publication in the *Official Journal of the European Union* for the purposes of Article 58 of the Act of Accession. The legal value and significance of this declaration being doubtful, national authorities and jurisdictions were left without any authentic guidance as to the application of acts that had not been published in the language of the new Member State concerned.

In the main proceedings in case C-161/06, *Skoma-Lux*, the Regional Court of Ostrava was uncertain whether it would be possible to impose fines on an individual for breaching the provisions of the Common Customs Code which had not been published in the Czech version of the Special Edition when the custom offence in question was committed. The question asked by the Czech court was not unique. National authorities and courts of new Member States have been faced with similar problems. National administration and national authorities of the new Member States found themselves in a difficult situation as they were under the obligation to apply and enforce EU legislation after accession, although they knew that the preconditions of Article 58 of the Act of Accession had not been fulfilled, and individuals against whom they intended to enforce the measures could only be acquainted with the relevant rules from non-official sources (mainly websites of the relevant ministries or of the EU). The practices of the national courts before the *Skoma-Lux* judgment diverged on the applicability of non-published EU measures. In Poland, for instance, the Regional Administrative Court in Bydgoszcz and the Regional Administrative Court in Gdansk both ruled that customs authorities had breached the principle of legal certainty by applying EU regulations before their official publication in Polish.[37] Interestingly, neither of the two Polish courts thought to ask the ECJ questions

[36] OJ L 169 01.05.2004.

[37] Lasinski-Sulecki – Morawski: Late publication of EC law in the languages of new Member States and its effects: obligations on individuals following the Court's judgment in Skoma-Lux, *Common Market Law Review,* 45, 2008, pp. 708-709.

on this issue but decided the case on their own. On the contrary, the Estonian Supreme Court considered the non-publication of EU law in the Estonian language as irrelevant as regards the application of customs legislation.[38]Given the fact that the late publication of the pre-accession acquis did not only embrace a short period of time but ended one and half years after accession, many cases pending before national courts had been concerned with the dilemma of the applicability of non-published EU provisions. It was thus only a matter of time before the Court was required to rule on the issue.

However, the problem of non-publication put Member States in a difficult situation. Even if they agreed theoretically with the non-applicability of non-published EU legislation, under the provisions of the Act of Accession they were bound by them, and under the principle of loyal cooperation they were under the obligation to enforce them. Therefore, Member States submitting written observations in the *Skoma-Lux* case followed different lines of argumentation, most of them trying to strike a fine balance between ensuring respect for the principle of legal certainty and moderating financial consequences that might arise from the loyal behaviour of the states' authorities. The Czech, Latvian and Swedish governments claimed that, according to Article 58 of the Act of Accession, any measure can only be enforced against individuals if properly published in the Special Edition.[39] The Estonian and the Polish government presented similar views, raising however the need to take into account the possibility of finding out about legal measures by means of the internet. In that respect the Polish government put forward that an individual in a Member State may avoid the adverse consequences of the application of the provisions of a legal measure which has not been officially published in the national language only if it is established that he/she did not learn of the content of that measure by a different means.[40]

In its judgment the Court delivered a categorical answer to the question, considering it the only interpretation that can be consistent with the principle of legal certainty and non-discrimination.[41] It confirmed that a regulation cannot take effect unless it is published in the Official Journal and that, in conjunction with Article 58 of the Act of Accession, this must be read as meaning that a regulation cannot be enforced against an individual in a new Member State without being properly published in the Official Journal in the language of this Member State. The Court explicitly refused to take into account the availability of electronic versions on the internet, by arguing that making the legislation available by such means does not equate to a valid publication.[42] The categorical interpretation of the Court could however have led to serious financial and legal consequences in the new Member States which had made all efforts to enforce EU legislation after accession under the principle of cooperation in good faith, regardless of whether the acts concerned had already been published in their languages or not. This is why the Czech and Latvian governments applied for the temporal limitation of the effects of the judgment. According to the Court's view however, the present case did not reveal

[38] Lasinski-Sulecki – Morawski, p. 709.
[39] Paragraph 24 of the judgment.
[40] Paragraph 29 of the judgment.
[41] Paragraph 36 of the judgment.
[42] Paragraph 48 of the judgment.

the question of limiting the temporal effects of a judgment of the Court in the traditional meaning of the term, but rather limiting the temporal effects of a judgment which concerns the actual enforceability, in a Member State, of a Community act.[43] It considered the situation similar to the annulment of an unlawful legal act, where the Court might decide that some of the legal consequences of the act shall nevertheless lawfully take effect. Taking advantage of this possibility, it ruled that Member States concerned are not, under Community law, obliged to call into question the administrative or judicial decisions taken on the basis of such rules where those decisions have become definitive under the applicable national rules, except in exceptional circumstances where there have been administrative measures or judicial decisions, in particular of a coercive nature, which would compromise fundamental rights.[44] Although, according to the Court's interpretation, legal relations, which became definitive following judicial decisions where European legal acts not yet published in the Special Edition were applied, can as a general rule remain unchanged, the exception provided by the judgment referring to the breach of fundamental rights seems to be too vague. Moreover, Lasinski-Sulecki and Morawski are of the view that the exception provided by the judgment might generate problems for national authorities in assessing the consequences of administrative penalties not necessarily of a financial nature.[45] They further refer to another potential problem linked to the Court's interpretation, namely the significant discrepancies that exist between Member States' legal systems considering when judicial decisions become definitive.[46]

As a consequence of this milestone judgment the national courts, including the already established practice of supreme courts, had to alter their attitude. Following the judgment the Supreme Court of Estonia, for instance, reversed its previous position that professionals in the corresponding field needed to abide by the EU rules irrespective of the official publication of these norms.[47]

Later in its judgment case C-560/07, *Balbiino,* the Court had the occasion to further fine-tune its *Skoma-Lux* decision in relation to the applicability of national implementing measures, which aimed to enforce provisions of Commission regulations which had not been published in the *Official Journal of the European Union* at the date of accession in the language of a new Member State. In this particular case, the applicant in the main proceedings, Balbiino, argued that the fact that the two Commission regulations in question had not been published at the date of accession also precluded the application of the national law implementing these regulations. However, the Court was of a different view. It held that, by implementing the obligations under the relevant regulations, the Estonian national law creates obligations for individuals in Estonia notwithstanding the fact that the EU regulations in question cannot be enforced against them before they have had the opportunity to learn of them by proper publication in the *Official Journal of the*

[43] Paragraph 68 of the judgment.
[44] Paragraphs 72-73 of the judgment.
[45] Lasinski-Sulecki – Morwaski, p. 719.
[46] Lasinski-Sulecki – Morwaski, p. 718.
[47] Susi: The Estonian judicial system in search of an effective remedy against unreasonable length of proceedings, *Juridica International,* XVI/2009., p. 195.

European Union in the language of that Member State. It further held that, due to the existence of these implementing measures, the *Skoma-Lux* doctrine does not preclude the enforcement against individuals of those provisions of the regulations which had been taken over by the implementing legislations. This principle remains of residual application with regard to provisions of the regulations which were not implemented by Estonian law but are relied upon by national authorities against individuals before their official publication in Estonian.[48]This argumentation had been confirmed by the Court in another Estonian case, case C-140/08, *Rakvere Lihakombinaat,* which concerned the interpretation of the Combined Nomenclature (CN) and the classification of certain products under a particular heading of the CN, although in connection with national implementing measures concerning surplus stocks. Again, it was the applicant to the main proceedings that invoked the non publication of the relevant regulation amending the CN. The Court repeated its Balbiino decision and stated that it is in each case for the national court to ascertain whether there are reasons for the residual application of the *Skoma-Lux* doctrine in cases where certain provisions of the non-published regulation which were not implemented by the national implementing measures were relied on by the Estonian authorities against individuals before the official publication of the regulation in Estonian.[49]

4. Tax cases

It is not a regional specificity that taxation is one of the areas mostly concerned by preliminary references. According to the statistical data of the ECJ, in 2009 the highest proportion of the 298 preliminary references received at the Court concerned taxation (44), followed by environment and consumers (33).[50] As to the Member States of Central and Eastern Europe, the Polish and the Hungarian courts have been the most active in referring references on the interpretation of European taxation rules. Seventeen of the 26 Polish preliminary references concerned taxation and 9 of the 29 Hungarian references sought the interpretation of EU tax rules. In addition, one reference had been referred to by a Slovakian court, one reference by a Lithuanian court, 6 references (5 of them asking the same question) by Romanian courts and 2 references by Bulgarian courts.

The large number of tax cases is mainly due to the fact that any tax or duty levied in breach of EU law must be reimbursed by the State and therefore individuals have a clear interest in contesting national tax provisions invoking their incompatibility with EU legislation. On the other hand, decisions of tax authorities are often contested for reasons of non-conformity with the VAT Directive, especially in cases where the possibility to deduct VAT is limited either by national tax law provisions or by individual tax decisions. According to Lazowski, the high number of disputes between companies and tax authorities in Poland and the significant number of Polish preliminary references in this field is due to the fact that the Polish VAT Act of 2004, adopted hastily immediately before accession, has been criticised since the very beginning for non compliance with

[48] Paragraphs 27-32 of the judgment.
[49] Paragraph 34 of the judgment.
[50] Annual Report of the European Court of Justice, 2009, p. 83.

the Sixth VAT Directive and it was only a matter of time until administrative courts would be faced with cases challenging the legality of tax decisions.[51]

If we want to class these cases into artificial categories, focusing on their similarities or common points, the following two categories can be identified:

- cases concerning taxes levied on motor vehicles in connection with their registration and
- cases seeking the interpretation of the Sixth VAT Directive (or its successor, Directive 2006/112/EC)

4.1. Registration taxes on vehicles

The second realm of preliminary references in 2005 from new Member States concerned taxation and in particular taxes on second hand vehicles imported from other Member States. In the Hungarian cases C-290/05, *Nádasdi* and C-333/5, *Németh,* the national courts were eager to know whether the first paragraph of Article 90 EC (current Article 110 TFEU) should be interpreted as precluding the maintenance in force of a duty on used motor vehicles from other Member States, such as the Hungarian registration tax applicable at that time, when that duty is wholly independent of the value of the vehicle and the amount is determined solely on the basis of the technical characteristics of the vehicle (engine type, engine capacity) and its environmental classification. The amount of the registration tax levied in Hungary until 31 December 2005 did not in any way reflect the depreciation in value of used vehicles and was wholly independent of how long a vehicle had been in circulation. The Court, after having joined the two cases, referred in its judgment to its well-established case-law[52] according to which the first paragraph of Article 90 EC is infringed where the tax charged on the imported product and that charged on the similar domestic product are calculated in a different manner on the basis of different criteria which lead, even if only in certain cases, to higher taxation being imposed on the imported product.[53] The Court went on to say that, in the context of a system of registration duty, criteria such as engine type, engine capacity and a classification based on environmental considerations constitute objective criteria, which can be in line with Article 90 and they may thus be used in such a system. On the other hand, the Court found that there is no requirement that the amount of the duty be linked to the price of the vehicle. Thus, according to the applicable national rules, a vehicle of the same model, age, mileage and other characteristics, bought second-hand in another Member State and registered in Hungary, attracted the full rate of registration duty for that category of vehicle, the same as that applied to new vehicles. A new vehicle in respect of which registration duty has been paid in Hungary loses, over time, part of its market value. With the depreciation in value, the amount of registration duty included in the residual value of the vehicle also diminishes. Since it is a used vehicle, it can be sold only for a percentage of its initial value, which contains the residual amount of the

[51] Lazowski - Wentkowska: Poland: Constitutional Drama and Business as Usual. In Lazowski: *The Application of EU law in the new Member States,* T.M.C. Asser Press, 2010., p. 300.
[52] Case C-387/01 *Weigel* [2004] ECR I-4981.
[53] Paragraph 47 of the judgment.

registration duty. The duty therefore put a heavier burden on imported used vehicles than on similar used vehicles already registered in Hungary, which had already borne that duty at an earlier stage.[54] As such, the Court decided that the first paragraph of Article 90 EC has to be interpreted as precluding a tax such as that imposed by the Law on registration duty insofar as it is charged on used vehicles when they are first placed in circulation in the territory of a Member State, and its amount, which is determined exclusively by the vehicles' technical characteristics (engine type, engine capacity) and their environmental classification, is calculated without taking the depreciation of the vehicles into account, in such a way that, when applied to used vehicles imported from other Member States, it exceeds the amount of that duty included in the residual value of similar used vehicles which have already been registered in the Member State of importation.

The Polish preliminary reference C-313/05, *Brzeziński,* concerned excise duties charged in connection with the purchase of a second-hand motor vehicle in Germany for the purposes of importing the vehicle into Poland. The excise duty in question was similar to the Hungarian registration tax, as it was levied on all passenger vehicles before their initial registration in Poland and therefore the tax was examined in the light of Article 90 EC. When examining the conformity with the provisions of Article 90 EC the Court repeated its statement given in previous judgments on similar taxes, according to which in order to ensure the neutrality of internal taxation in respect of competition between second-hand motor vehicles already on the national market and similar vehicles imported from a Member State other than the Republic of Poland, it is necessary to compare the effects of the excise duty imposed on the latter vehicles with the effects of the residual excise duty imposed on the former vehicles, which have already been subject to that same duty at the time of their initial registration.[55] The Polish system of excise duties was more differentiated than the Hungarian registration tax. The excise duty had to be calculated according to different methods depending on whether the car was new or less than two years old or, alternatively, whether it was sold more than two years after its date of manufacture. For cars belonging to the first category, the percentage of excise duty was 3.1% or 13.6% of the sale price, depending on engine capacity. However, for vehicles over two years old, that percentage was fixed using a calculation formula varying according to the age of the vehicle, attaining a maximum of 65% of the tax base. In addition, the application of that formula resulted in a situation where the percentage increased – instead of decreasing - with the age of the vehicle. It could be deduced from that – as Advocate General Sharpston pointed out in her opinion – that tax rules on the first category of cars were less problematic, as the rate of duty (3.1% or 13.6% of the sale price) on a second-hand car imported into Poland during the year of manufacture or the following year was the same as the proportion of residual duty (3.1% or 13.6% of the vendor's remuneration) in the value of a comparable car on which excise duty was charged in Poland when new and which was subsequently sold second-hand in Poland.[56]More problematic seemed to be the rules applied on cars more than two years old. For cars sold second-hand after the end of the year following their manufacture, the proportion of residual duty in the value of a car on which duty was charged in Poland

[54] Paragraphs 54-55 of the judgment.
[55] Paragraph 32 of the judgment.
[56] Paragraph 47 of the opinon.

when new remains constant at 3.1% or 13.6% (depending on engine capacity) of the depreciated value of the vendor's remuneration. In contrast, the rate charged on second-hand cars from other Member States increased year by year up to 65%.[57] The Court - for which some crucial points of the Polish legislation remained unclear - was less categorical than its Advocate General and put the responsibility on the national court to ascertain these problematic points and to decide upon the compatibility of the excise duty which should be precluded by Article 90 EC insofar as the amount of the duty imposed on second-hand vehicles over two years old acquired in a Member State other than that which introduced such a duty exceeds the residual amount of the same duty incorporated into the market value of similar vehicles already registered in the Member State which introduced that duty.[58] The same questions had been raised in case C-426/07, *Krawczyńsk,* two years later. That case had been decided by the Court on the basis of the judgment given in case C-313/05, *Brzeziński,* interestingly not by an order but a judgment.

As a direct consequence of the judgments both countries modified the relevant legal provisions of their national legislation and did provide for special legal provisions on the reimbursement of the taxes levied in violation of EU law. That latter obligation flows from the case-law of the ECJ, according to which taxes levied in breach of EU law must be reimbursed and it is for the Member State to establish the methods of reimbursement by respecting the principles of equivalence and effectiveness.[59] In Hungary, lacking equivalent provisions of the national law, the Parliament adopted immediately after the delivery of the judgment an Act specifically designed for the reimbursement of registration tax.[60] The Act specified the method of calculation of the amount to be returned, reflecting the depreciation in value of the imported car. In order to be reimbursed, an application had to be lodged at the tax authority within 180 days after the entry into force of the Act. It is interesting to note that not only taxpayers but also those who did not import the second hand car themselves but bought them from an importer who passed the charge of the registration tax on them were entitled by the Act to apply for reimbursement if it could be presumed, on the basis of the documents relating to the purchase of the car, that the burden of the tax was really borne by that person. According to the data available, by the expiry of the period open for lodging the application, some 5 billion Forint plus interest had been repaid by the State.

In Poland, the Act on the return of overpaid excise duties on intra-Community acquisitions or imports of passenger cars was adopted in July 2008, some 18 months after the delivery of the judgment in case C-313/05. In the meantime, until the adoption of the Act, individuals have initiated their claims based on existing provisions of the Fiscal Code.[61] The lack of special provisions, especially on the calculation methods of the

[57] Paragraph 49 of the opinion.
[58] Paragraph 41 of the judgment.
[59] Joined cases C-397/98, Metallgesellschaft Ltd and Others and C-410/98, Hoechst AG and Hoechst (UK) Ltd v. Commissioners of Inland Revenue and HM Attorney General [2001] ECR I-01727.
[60] Act No CXXX of 2006.
[61] According to Lazowski and Wentkowska the Brezinski-like judgments can be counted in the dozen and have become an important test for the effectiveness of EU law in Poland. They further point out that this does not mean that reimbursements are proceeding smoothly (Lazowski - Wentkowska, 315).

amount to be reimbursed, led to diverging jurisprudence. The Act which applies to excise duty charged on vehicles older than two years and imported to Poland from another Member State between 1 of May 2004 and 30 of November 2006 aimed to set uniform rules on the reimbursement. The provisions of the Act also had to be applied in proceedings that had been initiated before the entry into force of the Act. In addition, the Act provided for the possibility to reopen already closed procedures initiated on the basis of other provisions of national law, in order to apply within one month after the entry into force of the Act for additional partial reimbursement if the new provisions would be more favourable than the decisions adopted in previous proceedings. This aspect of applying the provisions in pending procedures before courts has not been dealt with by the Hungarian reimbursement Act. National courts before which cases were pending concerning the compatibility of the Hungarian registration tax with EU law faced serious difficulties to apply the Court's judgment in their particular case, which gave rise to a decision of the Supreme Court referring the case back to the tax authority and obliging it to apply the Reimbursement Act *per analogiam* in order to ensure that the principles of equivalence and effectiveness were applied.[62]

The Polish Act determined the rules on the reimbursement of overpayments and the method of calculating the amount to be returned.[63] In order to be reimbursed, an application had to be lodged by the taxpayer within 5 years from the date of purchase of the car. By the end of 2008, the amount of excise duties returned under this Law totalled about 104 million PLN.[64]

There is still an interesting aspect of interrelation between the two cases. In order to avoid or to minimise the financial consequences of the judgment, the Polish government in its written observations submitted in the Hungarian *Nádasdi* case, asked for the limitation of the temporal effects of the judgment, presumably because it believed that if the Court proceeded to such a limitation it would have an effect on the pending Polish case. The Hungarian Government did not ask in its written observations for such a limitation but presented such a request at the hearing. Regardless of whether the necessary pre-conditions of the temporal limitation of the judgment – existence of good faith and risk of serious difficulties – could have been established in the given case or not, it is interesting to note that it was not the Member State concerned which applied for the limitation, but another Member State. In her opinion, Advocate General Sharpston found it surprising that that it was the Polish, rather than the Hungarian, government which first raised the issue of temporal limitation, since any temporal limitation must be based on an assessment of the situation in the particular Member State concerned and she thought it would be undesirable in principle if such a limitation were to be granted at the sole request of a different Member State.[65] Moreover, there are serious doubts about whether

[62] Legf. Bír. Kfv.I.35.055/2007.

[63] The returnable-amount of the tax is the difference between the sum of excise duty calculated according to provisions before 1 December 2006 (the rate is fixed depending on the car's age) and the sum calculated according to these rates: 13.6 % for cars with engine's capacity over 2000 cc and 3.1 % for all other cars.

[64] *5 Years of Poland in the European Union*, Office of the Committee for European Integration, Warsaw, 2009, p. 64.

[65] Paragraph 81 of the opinion.

a temporal limitation granted in a judgment could have effects on a Member State other than the one concerned by the judgment.[66] In its judgment the Court established the lack of serious economic difficulties for Hungary and therefore it was no longer necessary to examine whether the criteria of good faith could be fulfilled,[67] although, given the rich case-law on this issue, it is easily predictable that it could not have been established either.

It must be added further that, although no preliminary reference had been referred to the ECJ from Romania on the interpretation of the former Article 90 EC in order to assess the compatibility with EU law of the Romanian registration tax, the Romanian registration tax would have been also precluded by the Treaty, as it did not take into account the value of the vehicle either. On the contrary, the tax amount increased on the basis of the age of the cars and depended on technical characteristics.[68] In 2007 the European Commission initiated proceedings against Romania for infringing Article 90 EC. In 2008 the tax was renamed as a special pollution tax depending on CO2 emissions, cylinder capacity and compliance with Euro emission standards.[69] However, according to the new provisions that entered into force in February 2009, cars pertaining to the EURO 4 category and with a cylinder capacity of less or equal to 2.000 cc were exempted from pollution tax in Romania if registered for the first time anywhere within the EU during the period from 15 December 2008 to 31 December 2009. According to the same legislation, the tax rates applicable to other cars subject to the tax have been doubled. The Commission considered the new rules as contrary to the new Article 110 TFEU because all new cars registered during the period fixed by the Romanian legislation and which instantly join the Romanian used car market circulate tax free. On the contrary, cars with an equivalent specifications, which are going to be registered in Romania during the same period (although not for the first time) and which are in direct competition with domestic goods, will be subject to a substantial tax burden. Consequently, the Commission launched another infringement procedure against Romania, this time in relation to the pollution tax.[70] While the interpretation of Article 110 TFEU was not sought in relation to the former registration tax, the compatibility of the pollution tax has been challenged before national courts, which referred questions to the ECJ in order to be able to establish whether legislation such as the Romanian pollution tax should be precluded under Article 110 TFEU. The cases are still pending before the ECJ.[71]

One can see, on the basis of what was said above, that problems linked to registration taxes favouring environmental criteria as a basis for calculation of the tax instead of the real value of the car can indeed be classified under regional specificities. That is mainly due to the fact that Central European countries, in order to protect the environment, tried to use all legislative and administrative means of tax policy in order to avoid the flow of

[66] On this point see paragraph 183 of the opinion of Advocate General Stix-Hackl in case C-475/03, *Banca Popolare di Cremona.*

[68] Ungur: Taxa speciala platita la prima inmatriculare a autoturismelor in Romania si incompatibilitatea acesteia cu dreptul comunitar. *Revista Romana de Drept Comunitar*, March-April 2007, p. 51.
[69] Ordinance No. 50/2008
[70] http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1012&format=HTML
[71] C-335/10, C-336/10, C-377/10 and C-263/10.

old used cars from Western Europe into their respective countries. The case-law of the Court however shows that the enforcement of environmental considerations cannot disregard prohibitions on discriminative taxation.

4.2. Cases on the interpretation of the Sixth VAT Directive (and its successor, Directive 2006/112/EC)

From among the tax cases before the ECJ, most references concerned the interpretation of the Sixth VAT Directive[72] (and its successor, Directive 2006/112/EC). Three major categories can be established in relation to these cases. The first category comprises cases on the interpretation of the essential characteristics of turnover taxes in order to establish whether a national tax is caught by the prohibition of Article 33 of the Sixth VAT Directive, according to which a Member State can maintain only one turnover tax in its legislation and any other tax having the characteristics of turnover taxes should be forbidden. The second category of cases covers limitations on the deduction of VAT foreseen by the national legislation and often the maintainability of limitations that existed before accession, i.e. the interpretation of Article 17(6) of the Sixth VAT Directive. The third group of references concerns the interpretation of the scope of the Directive and especially whether certain type of services or professions can be covered by it. As we will see, most of the references coming from the new Member States – and in particular those touching upon the limitations of VAT deduction - could be easily decided on the basis of previous case-law after only hearing the Advocate General but without seeking his/her opinion on the case.

4.2.1. Compatibility of national legislation with Article 33 of the Sixth VAT Directive

One of the most exiting judgments concerning the interpretation of the Sixth VAT Directive of the last years had been an Italian preliminary reference (Case C-475/03, *Banca popolare di Cremona),* in which the interpretation of Article 33 of the Directive had been sought in order to establish whether the Italian tax on economic activities (IRAP) could be a turnover tax and thus fall under the prohibition of that Article. The case was followed with great interest, especially after Advocate General Jacobs in his conclusions found that the tax contravenes the prohibition of Article 33 and could therefore not be upheld. In Hungary tax experts and lawyers had quickly discovered the similarities between the Hungarian local tax on economic activities and the Italian tax at hand and, until the Court finally gave its judgment in 2006 with regard to IRAP, several hundred actions claiming the incompatibility of the Hungarian tax with the Sixth VAT Directive were introduced before Hungarian courts. Three Hungarian references were referred to the Court; the first of them was rejected for lack of jurisdiction while the two others were joined[73] and decided following the same argumentation line as in its judgment in the IRAP case, where the Court found the Italian tax compatible with Article 33 of the Sixth VAT Directive.

[72] Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes.
[73] Joined cases C-283/06, *Kögáz* and C-312/06, *OTP* [2007] ECR I-08463.

Some other taxes in new Member States had been challenged before national courts for having essential characteristics of turnover taxes and therefore for being forbidden under the Sixth VAT Directive. However none of them had been found by the Court as being caught by the prohibition. In case C-119/08, *Nemunas,* the Court ruled that the Lithuanian road tax calculated on the basis of an undertaking's turnover to finance the maintenance and development programme for national roads does not have the essential characteristics of turnover taxes as it is not of general application, it is not proportionate to the price charged by the taxable person in return for the goods and services which he has supplied and there is no mechanism for the deduction of the tax foreseen.

In case C-502/07, *K1,* it was the compatibility of the Polish additional tax duty with the same article of the Sixth VAT Directive that had been sought again after the same questions had been rejected in Case C-168/06, *Ceramica paradyz,* for lack of competence *ratione temporis*. According to the Polish rules, additional tax liability occurred in the event that it could be established that the taxable person had indicated in the tax declaration submitted an amount of tax difference to be repaid or an amount of input tax to be repaid which was greater than the amount due. The additional tax liability was equivalent to 30% of the amount of the overstatement. The Court stated that an additional tax, such as that provided for in the national legislation at issue in the case in the main proceedings, does not have the essential characteristics of VAT as it arises not from any transaction but from a declaration error and, in addition, the amount thereof is not proportional to the price charged by the taxable person. Thus, the additional tax liability is an administrative penalty, not forbidden under the Sixth VAT Directive. It further added that the principle of a common system of VAT does not preclude the introduction by the Member States of measures penalising irregularities committed when declarations are made as to the amount of VAT due.[74] It is interesting to note that, although the additional tax liability could have been upheld, it had been abolished in Poland since 1 January 2008.[75]

In case C-188/09, *Profaktor,* another 30% financial sanction rule of Polish law had been measured against the First and the Sixth Directive. In that case the main question referred to the Court was whether the First and the Sixth VAT Directives preclude a Member State from imposing a temporary restriction on the extent of the right of taxable persons who have not complied with a formal requirement to retain accounting records of their sales to deduct input VAT. In that particular case, the tax authority decided to reduce by 30% the input tax paid on the acquisition of goods and services which had been set against the amount of tax due, on the grounds that the company in question, Profaktor, had not complied with the obligation to record its turnover and the amount of tax due by means of cash registers. Similarly to the additional tax liability, the Court considered the 30% reduction rule as an administrative sanction, the deterrent effect of which is intended to ensure compliance with the accounting obligations of tax payers. The Court further pointed out that, in the absence of harmonisation of European Union legislation in the

[74] Paragraphs 18-20 of the judgment.

[75] Tax developments in Poland, Wardynski & Partners Tax Practice, 2009. http://meetings.abanet.org/webupload/commupload/TX716500/sitesofinterest_files/FLF_Poland.pdf

field of sanctions applicable where conditions laid down by arrangements under the legislation implementing the VAT Directives are not complied with, Member States are empowered to choose the sanctions which seem to them to be appropriate. They must, however, exercise that power in accordance with European Union law and its general principles, and consequently in accordance with the principle of proportionality.[76] As to the provisions of the Polish Law, the Court put the duty on the national court to assess the compatibility of the rules with EU law; it did however provide the national court with all the relevant criteria to determine the compatibility. When examining the provisions of the VAT Law, the Court held that they do not bring into question the actual principle of the right to deduct, and that the administrative sanction does not appear to be manifestly inappropriate in relation to the objective which it seeks to attain. Moreover, the choice made to apply that financial burden by withholding a portion of the tax which may be deducted from the VAT payable, comes within the competence of the Member State and the rate of the amount withheld in the main proceedings, which is limited to 30% and thus preserves the greater part of the input tax paid, appears neither excessive nor inadequate for the purpose of ensuring that the sanction in question is deterrent and, therefore, effective.[77] As such, the Polish administrative sanction could be upheld.

The decision of the Court can have important implications for national legislation of other Member States of the region, which foresee similar financial sanctions for any breach of VAT rules so that they can be measured against the criteria set by the Court. Such are sanctions for not meeting the registration character pursuant to the Czech VAT Act, or the decrease in an excessive deduction of 10% pursuant to the Czech Act on the Administration of Taxes and Fees in the event of a late submission of an ordinary tax return.[78]

4.2.2. Limitations on the right to deduct VAT

Another set of cases concerned different limitations of national law on tax deductions and their compatibility with the Sixth VAT Directive. In its decisions, the Court has consequently held that the right to deduct is an integral part of the VAT scheme and may therefore as a general rule not be limited. In that regard the Court had been asked on several occasions to interpret Article 17(6), according to which new Member States could retain exclusions under the national legislation, in relation to certain expenditure in respect of which VAT shall not be deductible, that were in force at the date of their accession.

In the Polish case C-25/07, *Sosnowska,* the main question to be decided was whether Article 18(4) of the Sixth VAT directive must be interpreted as precluding Polish legislation, which, in order to allow inquiries necessary to prevent tax evasion and avoidance, extends from 60 to 180 days, starting from the date of submission of the taxable person's VAT return, the period available to the national tax office for repayment of excess VAT to a category of taxable persons, unless those persons lodge a security

[76] Paragraph 29 of the judgment.
[77] Paragraphs 33-35 of the judgment.
[78] Tax and Legal News, October 2010, Deloitte, http://www.deloitte.com

deposit. The provisions in question concerned newly registered taxpayers who have run their business for less than one year. In its judgment the Court recalled its case-law[79] according to which the right to deduct is an integral part of the VAT scheme and as a general rule may not be limited. It further pointed out that this right is exercisable immediately in respect of all the taxes charged on transactions relating to inputs.[80] Prevention of tax evasion, as grounds for justification raised by the Polish government, was refused by the Court on the basis that the conditions for repayment of excess VAT were more onerous for new tax payers because of a presumed risk of evasion, without however making any provision for the taxable person to demonstrate the absence of tax evasion or avoidance in order to take advantage of less restrictive conditions. The Polish VAT rules in question had been considered as disproportionate to the objectives and principles of the Sixth VAT Directive.[81] After the delivery of the judgment, the Polish government decided to amend its VAT Act and presented a draft amendment with a view to replace the security deposit with a property guarantee of another kind. According to the amendment, instead of one flat deposit amount, the amount of guarantee should reflect the declared amount of excess VAT. It made it possible to lodge the guarantee as a bank or insurance guarantee, a bill of exchange, certified cheque, bearer securities, or in the form of a cash deposit.[82]

A more problematic aspect of VAT rules had been raised in another Polish case, case C-414/07, *Magora*. The Regional Administrative Court in Krakow referred a question to the Court on the interpretation of article 17(6) of the sixth EC directive, which allows to retain only those restrictions on the right to deduct input VAT which existed and were actually applied when the directive entered into force, which in the case of new Member States should be the date of accession. In that particular case, Polish VAT provisions placing restrictions on the deduction of VAT on the purchase of fuel for vehicles had been at stake. Poland introduced two amendments to its VAT regulation after its accession to the EU, changing the criteria (weight of the vehicle in the case at hand) for vehicles entitled to input VAT deduction and extending the scope of restrictions. The Court treated the case as a simple one and decided, after having heard the Advocate General but without seeking her opinion. It recalled that the 'standstill' clause of the Sixth VAT Directive is not intended to allow a new Member State to amend its domestic legislation on its accession to the European Union in a way which diverts that legislation from the objectives of that Directive. If the amendment of the VAT Law extends the scope of those restrictions, as compared with the situation existing when the Sixth Directive entered into force in the Republic of Poland (which is for the national court to ascertain), that is contrary to the second subparagraph of Article 17(6) of that directive.

The judgment of the Court had severe financial consequences in Poland. A large number of claims for VAT refunds that could not be deducted under the amendments of the VAT Act breaching EU law had been introduced before the national courts. In practice, two

[79] Case C-62/93 *BP Supergas* [1995] ECR I-1883; Joined Cases C-110/98 to C-147/98 *Gabalfrisa and Others* [2000] ECR I-1577; and Case C-368/06 *Cedilac* [2007] ECR I-000.
[80] Paragraph 15 of the judgment.
[81] Paragraph 24 of the judgment.
[82] Tax Alert, KPMG, July 2008.

groups of cars could qualify for VAT deduction under Polish tax rules before accession: vehicles certified as non-passenger cars with a loading capacity higher than 500 kg and cars with a loading capacity higher than the threshold calculated according to special formula. However, national courts had contradictory practice as to the interpretation on limitations of deductibility. The Kraków Court ruled that, in the light of the ECJ's judgment in the *Magora* case and in the light of the rules and principles enshrined in the Constitution of the Republic of Poland, there should be no limitations whatsoever on the right to deduct input VAT charged on the purchase of fuel for motor vehicles. However, the interpretation by the majority of other administrative courts has been that the limitations on the deductibility of VAT which had been in force before Poland's accession to the EU are legal with regard to motor vehicles with a loading capacity higher than the threshold calculated according to special formula.[83] In July 2010 a question was referred to a panel of seven judges of the Supreme Administrative Court in order to ensure uniform interpretation of the legal consequences of the judgment of the ECJ.[84]

Prohibitions in the Polish legislation (which exclude in general the right to deduct input VAT paid at the time of the acquisition of imported services, the price of which has been paid, either directly or indirectly, to a person established in a State or territory classified by that legislation as a 'tax haven') had been examined in the light of Directive 2006/112/EC in case C-395/09, *Oasis East sp*. The Court ruled that Member States are not empowered to maintain exclusions from the right to deduct VAT which apply in a general manner to any expenditure related to the acquisition of goods or services.[85] It furthermore pointed out that, if a Member State wishes to apply restrictions in order to prevent certain types of tax evasion and avoidance, Article 27 of the Sixth Directive provides, to that end, for a special procedure allowing the Council to authorise any Member State to introduce special derogating measures which had definitely not been the case with respect to the exclusions examined.

The first Hungarian reference on the limitation of the right to deduct VAT and on the compatibility of these limitations with the Sixth VAT Directive had been case C-74/08, *Parat,* which was followed by some other references arisen in legal disputes concerned with different limitations. The main legal question in the *Parat* case had been whether it is contrary to the provisions of the Sixth Directive for a Member State to exclude the right to deduct VAT for the part of the purchase price of goods which comes from a subsidy financed by public funds. The limitation of the Hungarian legislation was seen by the Court as a general exclusion from the VAT system, which is not tolerated under EU law as it only allows certain goods or services to be excluded from the deduction.[86]The judgment entailed the amendment of Hungarian Fiscal Code in order to provide for the

[83] http://www.bakermckenzie.com/news/PolandSCRulesMagoora

[84] The question put to the panel of the Supreme Court aims to ascertain whether, in the light of the *Magoora* judgement (C-414/07), an administrative court, when assessing breach of 'stand still' rule of the Sixth Directive, shall consider norms that limit the right to deduct input tax on expenditures related to the operation of vehicles resulting from the provisions of the VAT Act being in force until 30 April 2004, or shall recognise that any violation of this rule results in the lack of restrictions on the applicability of the right to deduct for expenses associated with the operation of any car? *Accreo Taxand Flash*, July 2010.

[85] Paragraph 30 of the judgment.

[86] Paragraphs 28-29 of the judgment.

possibility to deduct retroactively VAT originally excluded from deduction.[87] This special form of reimbursement needed special rules as it concerned the revision of formerly submitted tax declarations.

The Hungarian case C-368/09, *Pannon Gépcentrum,* concerned the deduction of VAT on the basis of invoices which were found to be incorrect by the tax authority on the grounds that that they did not reflect the actual completion date indicated in the certificate of completion of the work. In the particular case the incorrect invoices were cancelled and replaced by new invoices. The first level tax authority ordered the applicant to pay, first, the VAT relating to the services supplied by the sub-contractor, which the applicant had deducted from the tax which it was liable to pay and, secondly, both a fine and a penalty for late payment. According to that tax authority, the applicant could not use the invoices initially issued by the sub-contractor for the purposes of deduction of VAT, since those invoices did not contain the correct date of completion of the work by the sub-contractor. Nor could the new, corrected, invoices be used as the basis for deduction of VAT, because the numbering had not been sequential. The National Tax Authority upheld the decision of the first level tax authority upon appeal. The decisions of the tax authorities were based upon the national legislation at issue, as interpreted by the Hungarian Supreme Court, according to which the taxable person can maintain their right to deduct only on the basis of an invoice which is both formally and substantively authentic. Accordingly, the exercise of the right to deduct is to be challenged if the invoice contains a formal defect of any kind and errors the errors in the work completion dates could be considered as such. The applicant then requested the Baranya County Court to review the decision; the court stayed the proceedings and referred three questions to the Court, inquiring essentially about the compatibility of national legislation with the relevant provisions of the Sixth VAT Directive. In its judgment – which was delivered without seeking the opinion of the Advocate General – the Court emphasised that the right to deduct is an integral part of the VAT scheme and in principle may not be limited. The right to deduct is exercisable immediately in respect of all taxes charged on transactions relating to inputs.[88] As to the case at hand, the Court stated that the material conditions laid down in Directive 2006/112 (the successor of the Sixth VAT Directive and, because the deadline for transposition had elapsed, applicable in this case) governing whether the applicant is entitled to exercise the right to deduct the VAT relating to the services supplied to him by the sub-contractor were satisfied, as the services were in fact used for the purposes of taxed transactions, carried out by the taxable person in the Member State concerned.[89] It further added that only the details listed in Article 226 of the Directive must obligatorily appear, for VAT purposes, on invoices and that Member States are not allowed to make the exercise of the right to deduct VAT dependent on compliance with conditions relating to the content of invoices which are not expressly laid down by the provisions of the Directive.[90] Given the fact that Directive 2006/112 does not prohibit the correction of incorrect invoices, if the national court finds that the corrected invoices contained all the details required by Directive 2006/112, all the material and formal

[8787] See new Article 124/D.§ of the Hungarian Fiscal Code (Act XCII of 2003).
[88] Paragraph 37 of the judgment.
[89] Paragraph 38 of the judgment.
[90] Paragraphs 40-41 of the judgment.

conditions governing whether the applicant is entitled to deduct the VAT relating to the supply of services by the sub-contractor have been satisfied and, as such, the national legislation or practice such as the one at hand should be precluded by the Directive. The decision also makes it clear that continuity in invoice numbering is not relevant regarding the correction of invoices.

Other limitations of the Hungarian law on the right to deduct VAT had been considered as being precluded by Directive 2006/112/EC in the judgment in case C-392/09, *Uszodaépítő*. In this particular case it was the adoption of the new VAT Act and the retroactive application of its provisions which gave rise to the dispute in the main proceedings. The applicant of the main proceedings opted to apply the provisions of the new VAT Act instead of the previous one but this had been denied by the tax authority on the grounds that the applicant did not hold invoices for the services amended in accordance with the provisions of the new VAT Law, which were applicable retroactively, and that it had failed to amend its tax declaration for 2007 on the basis of the invoices thus amended. The Court held that in cases where the substantive conditions for benefiting from the right to deduct VAT, laid down in Directive 2006/112, are fulfilled, the imposition of formal requirements such as the amendment of invoices and tax declarations on the basis of new provision applied retroactively would render the applicant's right to deduct ineffective.[91]

In two of these cases – *Oasis East* and *Parat* – the possibility had been raised of invoking Article 17(6) of the Sixth VAT Directive (Article 176 of the recast Directive 2006/112/EC) in order to justify the existing limitations. In both cases the Court opted to stick to the strict interpretation of the derogation provided by this provision. It made clear that the power granted under this Article does not apply to general exclusions and does not release Member States from the obligation to define the goods and services in relation to which the right to deduct is excluded in sufficient detail.

There are references concerning certain limitations of national law on VAT deduction which are pending before the Court. In the Polish case C-438/09, *Dankowski,* a Polish individual, registered for VAT for business purposes, deducted input VAT from a VAT invoice which complied with all formal VAT regulation invoicing requirements. This invoice documented a VAT-able supply. A local tax office questioned the input VAT deduction after discovering the supplier was not properly registered for VAT when the invoice was issued.[92] The Supreme Administrative Court of Poland asked for the interpretation of Article 17(6) of the Sixth VAT Directive in order to ascertain whether it precludes legislation of a Member State under which a taxable person does not acquire the right to deduct input tax arising from a VAT invoice issued by a person who is not entered on the register of taxable persons for the purpose of tax on goods and services. Again, the question reveals the interpretation of the possibility to uphold limitations that had existed before Poland's accession as the one in question existed before Poland's accession.

[91] Paragraphs 44-45 of the judgment.
[92] *Brussels Briefing*, March 2010, KPMG, www.kpmg.com

4.2.3. Cases seeking the interpretation of the scope of the Sixth VAT Directive

In another set of references, it was the scope of the Sixth VAT Directive that had to be interpreted in order to establish whether certain professions or services are covered by it.

The second Slovak preliminary reference C-456/07, *Mikal,* concerned the interpretation of the first subparagraph of Article 4(5) of the Directive in order to ascertain whether private individuals, such as bailiffs, could be treated as a body governed by public law and thus exempted from value added tax merely because their activity consists in engaging in acts falling within the rights and powers of a public authority. The Court decided the case by an order as it could be clearly deduced from previous case-law.[93] It stated that even on the assumption that, in the exercise of his duties, a bailiff does carry out acts falling within the rights and powers of a public authority, he does not, under legislation such as that at issue in the main proceedings, exercise his activity in the form of a body governed by public law, not being integrated into the organisation of the public administration, but in the form of an independent economic activity carried out in a self-employed capacity, and, consequently, he is not covered by the exemption provided for in the first subparagraph of Article 4(5) of the Sixth Council Directive.

The Polish preliminary reference C-222/09, *Kronospan Mielec sp,* concerned the determination of the place where services were supplied. Kronospan, which has its registered office in Poland, provided, for a customer established in Cyprus, services in the field of technical investigations and analyses and carried out research and development work in the fields of natural sciences and technology. Kronospan took the view that those services had, in their entirety, to be classified as engineering work, with the result that the place of the supply of the services, as provided by Article 9(2) (e) of the Sixth Directive, had to be the place where the recipient of those services was established, namely Cyprus. However, the tax authorities expressed the view that some of the transactions at issue in the main proceedings were scientific activities and that, consequently, the place of the supply of services was, pursuant to Article 9(2) (c) of the Sixth Directive, situated in Poland. Kronospan appealed against the decision of the tax authority and, as the appeal was dismissed, it brought an action against the decision before the Provincial Administrative Court, of Rzeszow, which dismissed the action on the grounds that the services at issue were scientific activities and were not engineering services. The case had been brought before the Polish Supreme Administrative Court, which stayed proceedings and asked the ECJ for the interpretation of Article 9(2)(e) of the Sixth Directive on whether services of engineers referred to in that provision include research and development work carried out by those engineers or not. The ECJ noted that the exercise of the profession of an engineer covers services which are characterised by the fact that they involve not only the application of existing knowledge and procedures to specific problems, but also the acquisition of new knowledge and the development of new procedures designed to resolve those problems or new problems, and thus research and development activities constitute services which may principally and habitually be carried out by engineers.[94]

[93] Case 235/85, Commission v. Netherlands [1984] ECR 01471
[94] Paragraphs 21-22 of the judgment.

The interpretation of the meaning of services under the Sixth Directive was also sought by new references from Poland. In case C-530/09, *Inter-Mark Group Sp,* the Administrative Court of Poznan asked the ECJ whether services consisting of the temporary provision of exhibition and fair stands to clients presenting their goods and services at fairs and exhibitions must be classified as services ancillary to fair and exhibition services, as referred to in Article 52(a) of Directive 2006/112/EC and taxed at the place where they are physically carried out, or as advertising services, taxed at the place where the customer has established his business on a permanent basis.

In joined cases C-180/10 and C-181/10, the referring Polish courts asked for the interpretation of taxable person for VAT within the meaning of Article 9(1) of Directive 2006/112/EC in order to establish whether a natural person who carried out an agricultural activity on land and subsequently, on account of a change to urban management plans which occurred for reasons beyond his control, ceased that activity and reclassified his property as private property, divided it into smaller parts (land designated for a holiday home development) and began to dispose of it, is to be classified as a taxable person for VAT.

5. Agricultural cases

Another category of preliminary references from the Central and Eastern European countries implies cases in which different aspects of the agricultural legislation and especially those linked to subsidies have been concerned. In the cases belonging to this category it was the compatibility of the national legislation aiming to supplement and execute certain provisions of EU Regulations that had been contested.

In the Estonian reference C-241/07, *JK Otsa Talu OÜ,* the ECJ was required to interpret Council Regulation No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund. In this particular case a national regulation changed the conditions for granting agri-environmental support during the support period in order to restrict the category of eligible applicants. According to the new provisions, continued support could only be granted to applicants for whom, within the framework of that programme, a decision awarding agri-environmental support has already been made in the previous budgetary year, and who have entered into an environmental commitment and, in the case of new applicants, new support could only be granted to those who are prepared to enter into a commitment in respect of environmentally-friendly production and accordingly organise their production to comply with the statutory requirements. The grounds for changing legislation has been insufficient budgetary resources. After having analysed the aim and the spirit of the Regulation, the Court ruled that the choice made by the national legislature in order to limit the class of farmers who were able to benefit from rural development support to farmers having already given agri-environmental commitments in the previous budgetary year is within the discretion available to the Member States under Regulation No 1257/1999.[95]

[95] Paragraph 48 of the judgment.

The Hungarian case C-133/09, *Uzonyi,* concerned the interpretation of Council Regulation No 1782/2003, which established common rules for direct support schemes under the Common Agricultural Policy and established certain support schemes for farmers. With regard to the main proceedings, Uzonyi submitted an application to the Hungarian Office of Agriculture and Rural Development for a separate sugar payment, for the year 2006, in respect of his sugar beet production delivered through a body called an *integrátor,* which acts as an intermediary and coordinator and assists farmers belonging to it with their production activity. His application was refused on the grounds that only farmers who have sugar beet delivery rights and who have complied with the obligations attached thereto are eligible for the payment. As such, insofar as the documents annexed to the application did not relate to the delivery rights (and compliance with the obligations attaching thereto), of the applicant himself but to those of the *integrátor,* the requirements were not met. The Budapest Municipal Court reviewing the decision of the Office asked the Court whether the provisions of the Regulation preclude national rules which exclude from entitlement to a separate sugar payment a farmer not having delivery rights who delivers sugar beet to a sugar manufacturer through an *integrátor* who does have such rights, while those provisions grant a separate payment to a farmer having delivery rights who delivers sugar beet directly to a sugar manufacturer, and to a farmer not having delivery rights who is a member of a producer group which does have delivery rights and who delivers sugar beet to a sugar manufacturer through that group. The Court pointed out that Regulation No 1782/2003 requires the new Member States to apply objective and non-discriminatory criteria when granting a separate sugar payment. It further stated that farmers producing sugar beet are in comparable situations whether they deliver that product to a sugar manufacturer directly or indirectly and whether or not they themselves have delivery rights under national provisions. As such, national provisions such as those at issue in the main proceedings treat comparable situations differently and that difference in treatment cannot be objectively justified.

There is a series of pending cases inquiring about the compatibility of national legislation with EU agricultural aid schemes. In case C-115/10, *Bábolna,* the Municipal Court of Budapest would like to decide upon the compatibility of national rules implementing the common agricultural policy by ascertaining whether conditions for Community aid under the Common Agricultural Policy (EAGGF) might differ from the conditions for national supplementary aid, that is to say, whether other, stricter rules than are applied to aid financed by the EAGGF might apply to the conditions for national supplementary aid. Both cases, the Hungarian case C-21/10, *Nagy Károly,* and the Slovenian case C-536/09, *Maria Omejc,* pending before the Court concern the compatibility of different forms of checks and controls carried out by the competent authority with the relevant Regulations on support for rural development.

Under agricultural cases the Estonian reference C-560/07, *Balbiino*, is still worthy of mention as it touched upon an issue of common concern, that of charges levied on surplus stocks in the new Member States. Article 41 of the Act of Accession allows the Commission to adopt measures to facilitate the transition of new Member States to the regime of the Common Agricultural Policy. In view of this aim, the Commission foresaw deterrent charges to be levied on surplus stocks in the new Member States in order to

avoid the risk of deflection of trade affecting the common organisation of agricultural markets due to the accession of 10 new States. In 2005 the Commission determined the amounts of agricultural products in free circulation within the territory of the Member States on the date of accession which, in the view of the Commission, exceeded the level of normal stocks of those products and for that reason imposed on the Member States concerned the amounts to be charged in consequence of the expense of elimination of those quantities of surplus stocks. Several new Member States (Poland, Slovakia the Czech Republic, and Lithuania)[96] had brought actions in order to contest the validity of the Commission decisions on the determination of surplus stocks of certain agricultural products and the financial consequences of their elimination. The applicant Member States, contesting the Commission's figures, claimed above all that the Commission, by calculating the amount of surplus stocks, had infringed the principle of proportionality and legal certainty.

The Estonian case, *Balbiino*, did not concern the validity of the Commission's Regulation on the determination of surplus stocks but the conformity of the Estonian implementing measures with the relevant EU Regulation fixing the surplus quantities of sugar to be eliminated by each Member State.[97]In this particular case, Balbiino, an Estonian undertaking selling frozen foods and producing ice-cream, contested the decision of the Minister of Agriculture determining the surplus stocks it was in possession of and brought proceedings before the Tallinn Court. The six questions referred to the ECJ by the national court concerned the compatibility of the national law on the ascertainment of the amount of an operator's surplus stock with the relevant requirements of the EU Regulations. Balbiino claimed in the main proceedings that the method used by the Estonian legislation for calculating the surplus stocks by deducting from the stock actually held on 1 May 2004 the transitional stock, defined as the average stock on 1 May of the previous four years of activity multiplied by a coefficient of 1.2, was arbitrary, disproportionate and contrary to the principle of equal treatment. The Court pointed out in its judgment that in the absence of precise rules of the Commission Regulation on the relevant period or the method of calculating the averages of the stocks available, Member States enjoy a wide discretion in defining these criteria which must however be in compliance with the objectives pursued by the Regulation and the general principles of EU law.[98] The Court found that the Estonian implementing measures do not infringe the relevant EU Regulations and the above principles.

It must still be added that the first Estonian Act on calculating surplus stocks – the one in force before the Act that had been concerned by the *Balbiino* case – had been declared by the Estonian Supreme Court as non-applicable because the calculation method laid down by it was not precise enough. Similarly, the Hungarian Constitutional Court declared the Hungarian Parliamentary Act on surplus stocks aiming to implement the relevant Commission Regulation as breaching the Constitution mainly for reasons of retroactivity

[96] See pending cases T-243/07, Poland v. Commission, T-247/07, Slovakia v. Commission, T-248/07, Czech Republic v. Commission and T-262/07, Lithuania v. Commission.
[97] Commission Regulation No 832/2005.
[98] Paragraph 37 of the judgment.

and violation of the principle of legal certainty.[99] In neither of the cases has the validity of the EU regulations been called into question; in both cases the high courts analysed national provisions adopted within the discretion of the Member States.

6. Remuneration of workers for on-call duties performed by them

Although case C-437/05, *Vorel,* had been decided by a reasoned order by the Court referring to the existing case-law from which the answers to the questions of the District Court of Český Krumlov could be clearly deduced, the questions raised by this reference touched upon issues that have been revealed at national courts of other Members States of the region as well and which led in some of them to mass actions introduced by workers claiming compensation for on-call duties performed over the tolerated working time. In that particular case the applicant sought compensation from his employer, basing his argument on the judgment delivered in case C-151/02, *Jaeger* in which the Court ruled that on-call duty performed by a doctor where he is physically present in the hospital constitutes working time within the meaning of Directive 93/104/EEC. According to the applicant, in the light the *Jaeger* judgment, the period of on-call duties should be remunerated in the same way as actual work. The Czech law in fact applied different remuneration schemes for actual work and for on-call duties, for which the rates depended on whether work has been performed or not. As such, the applicant in the given case raised an aspect of on-call duties other than that elaborated by the case-law of the Court in the spirit of the Directive, namely the protection of the safety and health of workers by offering them minimum requirements concerning the length of work and rest periods. He claimed that if on-call duty performed by a worker must be regarded in its entirety as working time, it should be remunerated the same manner as actual work. Applicants before Hungarian courts relying on the same provisions of the Directive have raised the same concerns about remuneration that they thought to deduce from the case law. In the *Vorel* judgment, the ECJ first repeated its previous case-law, according to which on-call duty must be treated as wholly constituting working time; it however made it clear by referring to its judgment in case C-14/04, *Dellas*, delivered after the reference in *Vorel* case had been made, that the Directive is limited to regulating certain aspects of the organisation of working time and it does not apply to the remuneration of workers.[100] Applying these premises in the case at hand the Court further specified its *Dellas* ruling that as the provisions of the Directive do not apply to the remuneration of workers, they do not prevent a Member State from applying legislation on the remuneration of workers and concerning on-call duties performed by them at the workplace which makes a distinction between the treatment of periods in the course of which work is actually done and those during which no actual work is done.

Although the Court's decision in *Vorel* case was entirely based on previous case law, it became a reference case in a series of court decisions delivered by Hungarian jurisdictions dismissing claims for reimbursement of on-call duties at the same rate as the

[99] Decision 17/2004. (V. 25.) AB of the Hungarian Constitutional Court.
[100] Paragraph 32 of the order.

remuneration for actual work or alternatively as overtime work.[101] Similarly to the *Vorel* case, Hungarian applicants based their arguments on the *Jaeger* judgment.

7. PPU cases

The Statute of the Court of Justice and its Rules of Procedure had been amended in 2008 in order to introduce a fast-track procedure (urgent preliminary ruling procedure, known according to the French acronym as PPU) in cases relating to the area of freedom, security and justice. The urgent preliminary ruling can only be requested by the national judge if it is absolutely necessary for the Court to give its ruling on the reference as quickly as possible. Such a situation might embrace cases where there is a person in custody or deprived of his liberty, where the answer to the question raised is decisive as to the assessment of that person's legal situation or in proceedings concerning parental authority or custody of children.[102] According to the Rules of Procedure of the Court of Justice, in order to decide the case in a very short period of time (2-4 months instead of 17-21 months), the procedure limits and simplifies the different stages of the procedure.[103] According to the 2009 Annual Report of the Court, in 2008 the Court received six requests for urgent preliminary ruling procedure, of which the urgent procedure was granted in three cases, while in 2009 three requests were introduced and urgency was granted in two cases. Of the five cases decided by the Court, three emanated from national courts from the new Member States (Lithuania, Slovenia and Bulgaria). Two of them concerned the interpretation of Regulation 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and issues of parental responsibility, and the urgency procedure was granted in order to safeguard the interest of the child, while in the third case the need for an urgency procedure was justified by the fact that the detained person of the main proceedings had been kept in detention for longer than the maximum period allowed by the relevant Directive, the calculation of the period depending on the interpretation of the Court.

The Lithuanian case C-195/08 PPU *Rinau,* concerned the custody of a child whose mother who was a Lithuanian citizen who left the territory of Germany with her daughter with the consent of her husband but remained there without informing him. First a

[101] In Hungary, as a consequence of mass actions introduced by employees in the health sector, a number of county courts (County Court of Zala Megye, County Court of Jász-Nagykun-Szolnok) and district courts (District Court of Eger, District Court of Veszprém) had followed the Court's by ruling that on-call duty performed by an employee of a hospital where he/she is physically present must be considered as working time within the meaning of Directive 93/104/EEC. However the question of remuneration had to be decided by the Hungarian Supreme Court in an interim decision in 2006 (Mfv. II. 10.921/2005/3). In this case the Supreme Court ruled that as the Directive is only applicable to the organization of working time it cannot be applied to remuneration. In its later decisions, delivered in review procedures after the ECJ's decision in the Vorel case, the Supreme Court made subsequent reference to the Vorel order (See for instance Pfv. VIII.21.226/2007/3.) as did all other courts of lower instance deciding upon claims of reimbursement of on-call duties.

[102] Paragraph 35 of the Instructions

[103] The number of those entitled to submit written observations in the case is limited. Only parties to the main proceedings, the Member State whose national court initiated the procedure and the Commission can take part in the written procedure. The other Member States can present their views in the oral procedure.

German court awarded Mr. Rinau custody of the child, which decision was not recognised by the Lithuanian Regional Court, then a year later a German court granted divorce to the couple and awarded permanent custody of the child to Mr. Rinau. The urgent preliminary ruling procedure was requested by the Lithuanian Supreme Court which dealt with an appeal of Mrs. Rinau introduced against a decision of the Lithuanian Court of Appeal which refused Mrs. Rinau's application for not recognising the judgment of the German court. The case had been followed in Lithuania with great attention due to the effective use of media by Mrs. Rinau and the intervention of political institutions.[104] The national court applied for an urgent procedure in order to protect the interests of the child and the Court decided for the first time to deal with a case in urgent procedure. The case was decided by the Court in less than two months, the Court finding no doubt in the light of Regulation 2201/2003 about the enforceability of the certified decision of the German court.

The first Slovenian case ever referred to the Court of Justice, Case C-403/09, *Deticek*, concerned the possibility of a Member State's court to adopt provisional measures in matters of parental responsibility by granting custody of a child who is in the territory of that Member State to one parent, where a court of another Member State, which has jurisdiction under that Regulation as to the substance of the dispute relating to custody of the child, has already delivered a judgment provisionally giving custody of the child to the other parent, and that judgment has been declared enforceable in the territory of the former Member State. In this particular case, an Italian court, before which divorce proceedings were pending between a husband of Italian nationality and a wife of Slovenian nationality, provisionally granted sole custody of the spouses' daughter to the father of the child and ordered at the same time her to be placed temporarily in a children's home in Rome. The mother however left Italy for Slovenia with the daughter. As the order of the Italian court had been declared enforceable by Slovene courts, enforcement proceedings were brought for the child to be returned to Italy and placed in the children's home. The mother of the child, Ms. Deticek, applied for a provisional and protective measure giving her custody of the child. Her application was allowed by the Regional Court of Maribor on the grounds of change of circumstances and the interests of the child. The father of the child challenged that order before the same court, which dismissed his action and he therefore appealed against the decision before the Court of Appeal of Maribor. It was under these circumstances that the Court of Appeal of Maribor stayed the proceedings and referred two questions to the Court, asking essentially about the possibility of adopting protective measures. The ECJ, in its judgment delivered two months after the receipt of the reference, recognised that Regulation No 2201/2003 provides that the courts of a Member State in which the child is present are entitled, under certain conditions, to take such provisional, including protective, measures as may be available under the law of that State, even if that regulation confers jurisdiction as to the substance of the matter on a court of another Member State.[105] However, in order to do it, three cumulative conditions must be met: the measures concerned must be urgent, must be taken in respect of persons or assets in the Member State where those courts are

[104] Barnard: The PPU: is it worth the candle? An early assessment. *European Law Review*, 2009, 34(2), 283.
[105] Paragraph 38 of the judgment.

situated, and must be provisional. The Court went on to examine whether these three conditions were satisfied in the present case. It found that if a delay in the enforcement procedure in the requested Member State which is due to changed circumstances resulting from the wrongful removal of the child by the mother would contribute to creating the conditions that would allow the former court to block the enforcement of the judgment that had been declared enforceable, the principle of mutual trust on which the Regulation is based would be undermined.[106] Hence, a court of a Member State is not allowed to take a provisional measure in matters of parental responsibility granting custody of a child who is in the territory of that Member State to one parent, where a court of another Member State, which has jurisdiction under that regulation as to the substance of the dispute relating to custody of the child, has already delivered a judgment provisionally giving custody of the child to the other parent, and that judgment has been declared enforceable in the territory of the former Member State.

The case raised the interest of five Member States presenting their views, in addition to the two countries – Italy and Slovenia – being directly concerned by the interpretation of the Court. This should be considered against the fact that participation of Member States other than the one whose court referred questions to the Court is restricted to oral procedure, allowing only limited time for preparation.

The Bulgarian case C-357/09 PPU, *Kadzoev*, concerned another field of the area of freedom, security and justice, detention and returning illegally staying third country nationals and thus the interpretation of Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals (Return Directive). Actually, this was the first referral on the interpretation of the Return Directive. The case before the Administrative Court of Sofia concerned the detention of a third country national arrested by Bulgarian law enforcement officials near the border with Turkey and whose identity could not be stated with sufficient certainty and was therefore considered as stateless. He had been in detention since he was arrested. Given the fact that the detention started before the implementing national provisions of Directive 2008/115/EC entered into force, the national court wanted to ascertain whether the maximum duration of detention laid down in the Directive must also include the period of detention completed before the rules in the Directive become applicable. The interpretation of the Court could be crucial as, prior to the entry into force of the implementing measures, Bulgarian legislation would have allowed for indefinite detention for the purpose of return. The Bulgarian court furthermore had additional questions on the calculation of the detention period and whether to include the period during which the execution of the decree of deportation was suspended because of a judicial review procedure where the person concerned continued to be held in a detention facility during that procedure, and on the obligation of immediate release after the maximum period laid down in the Directive has expired. By answering the questions of the national Court, the ECJ ruled in favour of the strict interpretation of the Directive which aims to guarantee in any event that detention for the purpose of removal does not exceed the 18 months foreseen by the Directive.

[106] Paragraphs 45-51 of the judgment.

8. Conclusions

Almost seven years have elapsed since the accession of the first Eastern and Central European Countries to the European Union. The last enlargement had taken place four years ago and the next country to accede is just at the front door of the Union. The functioning of the European Union is based on the application of a huge bulk of legislation amounting already to some 90 000 pages of the *Official Journal of the European Union.* The European legal system puts a heavy burden on national judges who are the key actors in enforcing EU legislation. This task demands great efforts and a new attitude from the national judges, which can result in questioning the compatibility of their national legislation with EU law and in disregarding it. For that they must assign proper sense to the provisions of EU law. The aim of the preliminary ruling procedure is to assist national judges in fulfilling this difficult task. The national jurisdictions of the new Member States have used the opportunity to consult the ECJ, although with different frequency. Preliminary references from new Member States concerned different areas of law as needs arose. Of the 70 cases decided so far 59 have been closed by a judgment while 11 references have been decided by the Court by an order, either for lack of jurisdiction or because the case could be deduced from the current case-law.

Despite the differences in the subject-matters concerned, depending on the nature of the legal dispute in which interpretation of certain EU provisions is needed, some cases or groups of cases do show similarities or reveal problems of common concern. This study tried to identify well definable categories of such cases and classified them accordingly in order to underline that it is indeed possible to find or demonstrate certain regional specificities reflected by the preliminary references from Eastern and Central Europe.

Bibliography

Articles:

Barnard, Catherine: The PPU: is it worth the candle? An early assessment. *European Law Review*, 2009, 34(2), 281-297.

Bobek, Michal: A new legal order or a non-existent one? Some (early) experiences in the application of EU law in Central Europe, *Croatian Yearbook of European Law and Policy,* Vol. 2., 2006, 265-298.

Biegalski, Adam – **Furga**, Karina – **Lasinski-Sulecki**, Krzysztof – **Switala**, Filip: Additional Tax Liability under Polish Law, *International VAT Monitor,* March-April 2007, 106-112.

Kovács, Bálint – **Nemessányi**, Zoltán: A közösségi jog időközi kérdései az új tagállamok alkalmazásában, *Romániai Magyar Jogtudományi Közlöny,* 2007, 4. szám. 67-77.

Kühn, Zdenek – **Bobek**, Michal: What about that 'Incoming Tide'? The Application of EU law in Czech Republic. In Lazowski: *The Application of EU law in the new Member States,* T.M.C. Asser Press, 2010, 325-356.

Kühn, Zdenek – **Bobek**, Michal: Europe yet to come: the Application of EU law in Slovakia. In Lazowski: *The Application of EU law in the new Member States,* T.M.C. Asser Press, 2010, 357-378.

Lasinski-Sulecki, Krzysztof – **Morawski**, Wojciech: Late publication of EC law in the languages of new Member States and its effects: obligations on individuals following the Court's judgment in Skoma-Lux, *Common Market Law Review,* 2008, volume 45, issue 3, 705-725.

Lazowski, Adam – **Wentkowska**, Aleksandra: Poland: Constitutional Drama and Business as Usual. In Lazowski: *The Application of EU law in the new Member States,* T.M.C. Asser Press, 2010, 277-324.

Półtorak, Nina: *Ratione temporis* application of the preliminary ruling procedure, *Common Market Law Review,* 2008, volume 45, issue 5, 1357-1382.

Susi, Mart: The Estonian judicial system in search of an effective remedy against unreasonable length of proceedings, *Juridica International,* XVI/2009, 193-202.

Zukova, Galina: The Application of EU law in Latvia. In Lazowski: *The Application of EU law in the new Member States,* T.M.C. Asser Press, 2010, 243-276.

Ungur, Danut Cornel: Taxa speciala platita la prima inmatriculare a autoturismelor in Romania si incompatibilitatea acesteia cu dreptul comunitar. *Revista Romana de Drept Comunitar*, March-April 2007, 51-56.

Other documents:

5 Years of Poland in the European Union, Office of the Committee for European Integration, Warsaw, 2009

Tax developments in Poland, Wardynski & Partners Tax Practice, 2009. http://meetings.abanet.org/webupload/commupload/TX716500/sitesofinterest_files/FLF_Poland.pdf

Tax and Legal News, October 2010, Deloitte, http://www.deloitte.com

Tax Alert, KPMG, July 2008, www.kpmg.com

Brussels Briefing, March 2010, KPMG, www.kpmg.com

http://www.bakermckenzie.com/news/PolandSCRulesMagoora

Accreo Taxand Flash, July 2010, www.taxand.pl