

Questions referred

1. Is a natural person who is a member of the board of directors of a public limited company incorporated under Luxembourg law carrying out an 'economic' activity within the meaning of Article 9 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, ⁽¹⁾ and more specifically, are percentage fees received by that person to be regarded as remuneration paid in return for services provided to that company?
2. Is a natural person who is a member of the board of directors of a public limited company incorporated under Luxembourg law carrying out his or her activity 'independently', within the meaning of Articles 9 and 10 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax?

⁽¹⁾ OJ 2006 L 347, p. 1.

Request for a preliminary ruling from the Tribunal da Concorrência, Regulação e Supervisão (Portugal) lodged on 4 May 2022 — Banco BPN/BIC Português, SA, Banco Bilbao Vizcaya Argentaria SA, Portuguese branch, Banco Português de Investimento SA (BPI), Banco Espírito Santo SA (in liquidation), Banco Santander Totta SA, Barclays Bank Plc, Caixa Económica Montepio Geral — Caixa Económica Bancária, SA, Caixa Geral de Depósitos, SA, Unión de Creditos Inmobiliarios, SA — Estabelecimento Financeiro de Crédito SOC, Caixa Central de Crédito Agrícola Mútuo CRL, Banco Comercial Português, SA v Autoridade da Concorrência

(Case C-298/22)

(2022/C 326/09)

Language of the case: Portuguese

Referring court

Tribunal da Concorrência, Regulação e Supervisão

Parties to the main proceedings

Applicants: Banco BPN/BIC Português, SA, Banco Bilbao Vizcaya Argentaria SA, Portuguese branch, Banco Português de Investimento SA (BPI), Banco Espírito Santo SA (in liquidation), Banco Santander Totta SA, Barclays Bank Plc, Caixa Económica Montepio Geral — Caixa Económica Bancária, SA, Caixa Geral de Depósitos, SA, Unión de Creditos Inmobiliarios, SA — Estabelecimento Financeiro de Crédito SOC, Caixa Central de Crédito Agrícola Mútuo CRL, Banco Comercial Português, SA

Defendant: Autoridade da Concorrência

Other party: Ministério Público

Questions referred

- I. Does Article 101 TFEU (formerly Article 81 TEC) preclude the classification as a restriction of competition by object of a comprehensive, monthly exchange between competitors of information concerning commercial conditions (in particular, current and future credit spreads and risk variables) along with (monthly, individualised and disaggregated) production figures on home loan offers, corporate lending offers and consumer credit offers, exchanged regularly and in reciprocal fashion, in the retail banking sector, in the context of a concentrated market with barriers to entry, which has artificially increased transparency and reduced uncertainty with regard to the strategic conduct of competitors?
- II. If the answer is in the affirmative, does Article 101 TFEU preclude such classification where it has been impossible to identify or establish any gain in efficiency or any uncertain or positive effect on competition resulting from that exchange of information?