

2. For the answer to the first question, is it relevant whether operators of hackney cabs and taxis and operators of minicabs perform journeys on the basis of special agreements with major customers under almost identical conditions?

⁽¹⁾ Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment; OJ 1977 L 145, p. 1.

⁽²⁾ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax; OJ L 347, p. 1.

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 10 October 2012 — Karin Oertel v Finanzamt Würzburg mit Außenstelle Ochsenfurt

(Case C-455/12)

(2012/C 399/22)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Karin Oertel

Defendant: Finanzamt Würzburg mit Außenstelle Ochsenfurt

Question referred

Having regard to the principle of neutrality, does the third subparagraph of Article 12(3)(a) in conjunction with Annex H, Category 5, of Sixth Council Directive 77/388/EEC of 17 May 1977 ⁽¹⁾ on the harmonisation of the laws of the Member States relating to turnover taxes preclude national rules which provide for a reduced rate of turnover tax for local passenger transport by taxi, whereas local passenger transport by minicab is subject to the standard rate of tax?

⁽¹⁾ Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment; OJ 1977 L 145, p. 1.

Reference for a preliminary ruling from the Østre Landsret (Denmark) lodged on 16 October 2012 — Copydan Båndkopi v Nokia Danmark A/S

(Case C-463/12)

(2012/C 399/23)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: Copydan Båndkopi

Defendant: Nokia Danmark A/S

Questions referred

1. Is it compatible with Directive 2001/29/EC ⁽¹⁾ for Member States to have legislation which guarantees compensation for the rightholders for reproductions made using the following sources:
 1. files where the use in question is approved by the right-holders and paid for by the customer (licensed content from online shops, for example);
 2. files where the use in question is approved by the right-holders and not paid for by the customer (licensed content, for example, in connection with a marketing action);
 3. the user's own DVD, CD, MP3 player, computer, etc., where effective technological measures are not applied;
 4. the user's own DVD, CD, MP3 player, computer, etc., where effective technological measures are applied;
 5. a third party's DVD, CD, MP3 player, computer, etc.;
 6. unlawfully copied works from the Internet or other sources;
 7. files copied lawfully in some other way from, for example, the Internet (from lawful sources where no licence has been granted)?
2. How must effective technological measures be taken into account, (ref. Article 6 of the Directive) in the Member States' legislation on compensation for rightholders (ref. Article 5(2)(b) of the Directive)?
3. In the calculation of compensation for private copying (ref. Article 5(2)(b) of the Directive), what constitutes 'situations where the prejudice to the rightholder would be minimal', as referred to in recital 35 in the preamble to the Directive, with the result that it will not be compatible with the Directive for the Member States to have legislation which provides for compensation for rightholders for such copying for private use (ref. in this connection the survey referred to in part 2 above)?

4. (a) If it is assumed that the primary or most important function of memory cards in mobile phones is not private copying, is it compatible with the Directive for the Member States to have legislation which guarantees compensation for rightholders for copying on mobile phone memory cards?
- (b) If it is assumed that private copying is one of the several primary or essential functions of memory cards in mobile phones, is it compatible with the Directive for the Member States to have legislation which guarantees compensation for rightholders for copying on mobile phone memory cards?
5. Is it compatible with the concept of 'fair balance' in recital 31 in the preamble to the Directive and with the uniform interpretation of the concept of 'fair compensation' (ref. Article 5(2)(b) of the Directive), which must be based on 'prejudice', for the Member States to have legislation under which remuneration is collected for memory cards, whereas no remuneration is collected for internal memory such as MP3 players or iPods, which are designed and primarily used for private copying?
6. (a) Does the Directive preclude the Member States from having legislation which provides for the collection of remuneration for private copying from a producer and/or importer who sells memory cards to business concerns which sell the memory cards on to both private and business customers, without the producer's and/or importer's having knowledge of whether the memory cards have been sold to private or business customers?
- (b) Is the answer to question 6(a) affected if provisions are laid down in a Member State's legislation which ensure that producers, importers and/or distributors do not have to pay remuneration for memory cards used for professional purposes, that producers, importers and/or distributors, where the remuneration has nevertheless been paid, can have the remuneration for memory cards refunded in so far as they are used for professional purposes, and that producers, importers and/or distributors can sell memory cards to other undertakings registered with the organisation which administers the remuneration scheme, without payment of remuneration?
- (c) Is the answer to questions 6(a) and 6(b) affected
1. if provisions are laid down in a Member State's legislation ensuring that producers, importers and/or distributors do not have to pay remuneration for memory cards used for professional purposes, but the concept of 'professional purposes' is interpreted as conferring a right of deduction applying only to undertakings approved by Copydan, whereas remuneration must be paid for memory cards used professionally by other business customers which are not approved by Copydan;
2. if provisions are laid down in a Member State's legislation ensuring that producers, importers and/or distributors, where the remuneration has in fact been paid (theoretically), can have remuneration for memory cards refunded where they are used for professional purposes, but (a) it is in practice only the purchaser of the memory card who can have the remuneration refunded, and (b) the purchaser of memory cards must submit an application for refund of remuneration to Copydan;
3. if provisions are laid down in a Member State's legislation ensuring that producers, importers and/or distributors may sell memory cards to other undertakings registered with the organisation which administers the remuneration scheme, without payment of remuneration, but (a) Copydan is the organisation which administers the remuneration scheme and (b) the registered undertakings have no knowledge of whether the memory cards have been sold to private or business customers?

(¹) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

Reference for a preliminary ruling from the Tribunale di Cosenza (Italy) lodged on 19 October 2012 — CCIAA di Cosenza v CIESSE SRL in liquidation

(Case C-468/12)

(2012/C 399/24)

Language of the case: Italian

Referring court

Tribunale di Cosenza

Parties to the main proceedings

Applicant: Camera di Commercio, Industria, Artigianato e Agricoltura (CCIAA) di Cosenza

Defendant: CIESSE SRL in liquidation