

Parties to the main proceedings

Applicant: Enzo di Maura

Defendant: Agenzia delle Entrate — Direzione Provinciale di Siracusa

Questions referred

1. Having regard to Article 11(C)(1) and the second sentence of Article 20(1)(b) of Directive 77/388/EEC ⁽¹⁾ in relation to the downward adjustment of the taxable amount and the adjustment of the VAT charged on taxable transactions in cases where the consideration agreed by the parties remains totally or partially unpaid, is it compatible with the principles of proportionality and effectiveness guaranteed by the TFEU, and the principle of neutrality that governs the application of VAT, to impose limits that make it impossible or excessively costly — in terms of time too, in connection with the unforeseeable duration of an insolvency procedure — for the taxable person to recover the tax on the consideration which remains totally or partially unpaid?
2. If the answer to the first question is in the affirmative, is it compatible with the principles set out above that a provision — such as Article 26(2) of Presidential Decree No 633/1972, in the version in force before the amendments introduced by Article 1(126) and (127) of Law No 208 of 28 December 2015 — makes the right to recover the tax contingent on proof that insolvency procedures have previously been unsuccessfully conducted, that is to say, in accordance with case-law and the practice of the tax authority of the EU Member State, following definitive failure to distribute the assets, or, failing that, a final decision closing the insolvency procedure, even where such procedures may reasonably be deemed to be uneconomic because of the amount of the claim, the prospects of recovery and the costs of the insolvency procedures and given that, in any event, those conditions could apply years after the date of opening of the insolvency?

⁽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).

**Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 2 May 2016 —
Austria Asphalt GmbH & Co OG v Bundeskartellanwalt**

(Case C-248/16)

(2016/C 260/34)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Austria Asphalt GmbH & Co OG

Defendant: Bundeskartellanwalt

Question referred

Must Article 3(1)(b) and Article 3(4) of Council Regulation (EC) No 139/2004⁽¹⁾ of 20 January 2004 on the control of concentrations between undertakings ('the Merger Regulation') be interpreted to mean that a move from sole control to joint control of an existing undertaking, in circumstances where the undertaking previously having sole control becomes an undertaking exercising joint control, constitutes a concentration only where the controlled undertaking has on a lasting basis all the functions of an autonomous entity?

⁽¹⁾ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ 2004 L 24, p. 1).

Request for a preliminary ruling from the Cour d'appel de Bruxelles (Belgium) lodged on 3 May 2016 — Flibtravel International SA, Léonard Travel International SA v AAL Renting SA, Haroune Tax SPRL, Saratax SCS and Others

(Case C-253/16)

(2016/C 260/35)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Appellants: Flibtravel International SA, Léonard Travel International SA

Respondents: AAL Renting SA, Haroune Tax SPRL, Saratax SCS, Ryad SCRI, Taxis Bachir & Cie SCS, Abdelhamid El Barjaji, Abdelouahab Ben Bachir, Sotax SCRI, Mostapha El Hammouchi, Boughaz SPRL, Sahbaz SPRL, Jamal El Jelali, Mohamed Chakir Ben Kadour, Taxis Chalkis SCRL, Mohammed Gheris, Les délices de Fès SPRL, Abderrahmane Belyazid, E.A.R. SCS, Sotrans SPRL, B.M.A. SCS, Taxis Amri et Cie SCS, Aramak SCS, Rachid El Amrani, Mourad Bakkour, Mohamed Agharbiou, Omar Amri, Jmili Zouhair, Mustapha Ben Abderrahman, Mohamed Zahyani, Miltotax SPRL, Lextra SA, Ismael El Amrani, Farid Benazzouz, Imad Zufri, Abdel-Ilah Bokhamy, Ismail Al Bouhali, Bahri Messaoud & Cie SCS, Mostafa Bouzid, BKN Star SPRL, M.V.S. SPRL, A.B.M.B. SCS, Imatrans SPRL, Reda Bouyaknouden, Ayoub Tahri, Moulay Adil El Khatir, Redouan El Abboudi, Mohamed El Abboudi, Bilal El Abboudi, Sofian El Abboudi, Karim Bensbih, Hadel Bensbih, Mimoun Mallouk, Abdellah El Ghaffouli, Said El Aazzoui

Questions referred

1. Must Article 96(1) TFEU be interpreted as being capable of application to rates and conditions imposed by a Member State on taxi service operators where: (a) the taxi journeys concerned are only exceptionally made across national borders; (b) a significant proportion of the customers of those taxis consists of EU nationals or residents who are not nationals or residents of the Member State in question; and (c) in the specific circumstances of the case, the taxi journeys at issue are, for the passenger, very often no more than one stage in a longer trip the final destination or point of departure of which is in an EU country other than the Member State in question?
2. Must Article 96(1) TFEU be interpreted as being applicable to operating conditions other than fare conditions and the criteria for obtaining authorisation to carry on the transport activity in question, such as, in this case, a prohibition preventing taxi operators from making available individual seats rather than the vehicle in its entirety, and a prohibition on those operators determining themselves the final destination of the journey that they are offering to customers, which has the effect of preventing those operators from grouping together customers who are travelling to the same final destination?