

Question referred

Is the operation of a network-connected photovoltaic installation with no independent power storage capability on or adjacent to a privately owned house used for private residential purposes, which is technically designed such that the power generated by the installation is, on a continuing basis, below the total quantity of power privately consumed by the installation operator in the privately owned house, an 'economic activity' of the installation operator within the meaning of Article 4 of the Sixth Directive 77/388/EEC? ⁽¹⁾

⁽¹⁾ Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation 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 Raad van State (Belgium) lodged on 11 May 2012 — Belgacom NV v Interkommunale voor Teledistributie van het Gewest Antwerpen (INTEGAN) and Others

(Case C-221/12)

(2012/C 243/06)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Belgacom NV

Defendants: Interkommunale voor Teledistributie van het Gewest Antwerpen (INTEGAN), Inter-Media, West-Vlaamse Energie- en Teledistributiemaatschappij (WVEM), Provinciale Brabantse Energiemaatschappij CVBA (PBE)

Interveners: Telenet NV, Telenet Vlaanderen NV, Telenet Group Holding NV

Questions referred

- Should Articles 49 or 56 TFEU be interpreted in such a way that an undertaking established in Belgium may rely on the fundamental rules of European Union law before the Belgian courts, in particular, on the obligation of transparency which is derived from the aforementioned Articles, in respect of an agreement which does not fall within the scope of any of the directives concerning public tenders, under which a Belgian authority transfers rights to another Belgian undertaking without having organised an invitation to tender?
- Can the efforts to prevent the infringement of an existing, in itself undisputed and very specific contractual framework between a legal person governed by public law and a private law undertaking, not controlled by itself, or the conclusion of a transaction or a settlement aimed at the resolution of an existing interpretation dispute regarding

the aforementioned contractual framework, where that settlement is based on the rights of the parties in accordance with a provisional decision of a judge hearing an application for interim relief and where, without such a settlement, the relevant activity of the authority can incur serious damage and depreciation, with the consumers, in the meanwhile, remaining deprived of services, be regarded as an overriding reason in the public interest, or at least an objective ground of justification, justifying the fact that legal persons governed by public law, by way of exception and contrary to the principle of equal treatment and the prohibition of discrimination on the grounds of nationality, which are laid down in Articles 49 and 56 TFEU and the obligation of transparency to which it gives rise, do not organise an invitation to bid and award the tender directly?

- If the second question can be answered in the affirmative, should the aforementioned transaction or settlement, so as not to limit the aforementioned fundamental freedoms guaranteed by European Union law more than is necessary in order to achieve the aim pursued, then be limited to what is strictly required to put an end to the dispute which has arisen, or may the parties devise a more far-reaching settlement with a view to future challenges which have a reasonable and logical connection with the dispute and which at the same time safeguards the interests of the consumers and also entails maximising the value of the transferred activity concerned?

Reference for a preliminary ruling from the Raad van State (Netherlands), lodged on 14 May 2012 — C. Demir; other party: Staatssecretaris van Justitie

(Case C-225/12)

(2012/C 243/07)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellant: C. Demir

Other party: Staatssecretaris van Justitie

Questions referred

- Is Article 13 of Decision No 1/80 ⁽¹⁾ to be interpreted as meaning that it is applicable to a substantive and/or formal condition governing first admission, even if such a condition — in the present case, the possession of a temporary residence permit — has as one of its objectives the prevention of illegal entry and illegal residence prior to the submission of an application for a residence permit and, to that extent, can be regarded as a measure, within the terms of paragraph 85 of the judgment in Joined Cases C-317/01 and C-369/01 *Abatay and Others*, ⁽²⁾ which may be made more stringent?