

Questions referred

1. Does the exclusion from the scope of the legislation provided for in Article 1(2)(e) of the Convention on the law applicable to contractual relations of 19 June 1980 ('the Rome Convention') and in Article 1(2)(f) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations ('the Rome I Regulation') ⁽¹⁾ also apply to agreements between a beneficiary and a fiduciary who holds an interest in a limited partnership on behalf of the beneficiary, particularly where the partnership agreements and the fiduciary agreements are interwoven?
2. If Question 1 is answered in the negative:

Is Article 3(1) of Council Directive No 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ('the Unfair Contract Terms Directive') ⁽²⁾ to be interpreted as meaning that a clause in a fiduciary agreement concluded between a professional and a consumer concerning the management of an interest in a limited partnership, which was not individually negotiated and which provides that the law of the State in which the limited partnership has its seat is to apply, is unfair if the sole purpose of the fiduciary agreement is the management of the limited partnership interest and the beneficiary is granted the rights and obligations of a direct partner?

3. If Question 1 or 2 is answered in the affirmative:

Does this answer still hold if, in addition, the consumer's subscription application was signed in his State of residence, the professional also provides information on the internet about the limited partnership interest and a payment agency has been established in the consumer's State, to which the consumer must pay his subscription monies, even though the professional has no right to give directions as to that bank account? Does it make a difference whether the Rome I Regulation or the Rome Convention is applicable?

4. If Question 3 is answered in the affirmative:

Does this answer still hold if, in addition, the consumer's subscription application was signed in his State of residence, the professional also provides information on the internet about the limited partnership interest and a payment agency has been established in the consumer's State, to which the consumer must pay his subscription monies, even though the professional has no right to give directions as to that bank account? Does it make a difference whether the Rome I Regulation or the Rome Convention is applicable?

⁽¹⁾ OJ 2008 L 177, p. 6.

⁽²⁾ OJ 1993 L 95, p. 29.

Request for a preliminary ruling from the Nejvyšší správní soud (Czech Republic) lodged on 23 April 2018 — Milan Vinš v Odvolací finanční ředitelství

(Case C-275/18)

(2018/C 221/14)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: Milan Vinš

Respondent: Odvolací finanční ředitelství

Questions referred

1. Is it permissible to render the right to a tax exemption from value added tax on the exportation of goods (Article 146 of Council Directive 2006/112/EC⁽¹⁾ of 28 November 2006 on the common system of value added tax) ('the Directive') conditional on the fact that the goods must first be placed under a particular customs procedure (§ 66 Zákona č. 235/2004 Sb., o dani z přidané hodnoty) (Paragraph 66 of Law No 235/2004 on Value Added Tax)?
2. Is such national legislation sufficiently justifiable under Article 131 of the Directive as a condition for the purposes of preventing tax evasion, avoidance or abuse?

⁽¹⁾ OJ 2006 L 347, p. 1.

Action brought on 4 May 2018 — European Commission v Italian Republic

(Case C-304/18)

(2018/C 221/15)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: Z. Malůšková, M. Owsiany-Hornung, F. Tomat, acting as Agents)

Defendant: Italian Republic

Form of order sought

The Commission claims that the Court should:

- Declare that, by refusing to make available traditional own resources in the amount of EUR 2 120 309,50 concerning communication on ineligibility IT (07)08-917, the Italian Republic has failed to fulfil its obligations under Article 8 of Council Decision 94/728/EC, Euratom,⁽¹⁾ Article 8 of Council Decision 2000/597/EC, Euratom,⁽²⁾ Article 8 of Council Decision 2007/436/EC, Euratom⁽³⁾ and Article 8 of Council Decision 2014/335/EU,⁽⁴⁾ as well as Articles 6, 10, 11 and 17 of Council Regulation (EEC, Euratom) No 1552/1989,⁽⁵⁾ Articles 6, 10, 11 and 17 of Council Regulation (EC, Euratom) No 1150/2000⁽⁶⁾ and Articles 6, 10, 12 and 13 of Council Regulation (EC, Euratom) No 609/2014;⁽⁷⁾
- Order the Italian Republic to pay the costs of the proceedings.

Pleas in law and main arguments

The information available to the Commission, which are based on communications and information provided by the Italian Republic in the course of the pre-litigation procedure, show that, in an anti-fraud operation aimed at tackling the trafficking in foreign manufactured tobacco, in 1997 the Italian authorities established the customs debt at issue, included it in separate accounts and then notified the debtor of the amount of the duties owed. Since the debt at issue was included in separate accounts (accounts B) and was not contested, the Italian authorities should have proceeded to its immediate recovery, which they have failed to do. The Italian authorities waited for the outcome of the relevant criminal proceedings brought against the debtors before initiating a recovery procedure, which ended approximatively six years after the debt arose and was established.

Customs duties constitute EU own resources, which must be collected by the Member States and made available to the Commission. The obligation on Member States to establish the Union's own resources arises as soon as the conditions provided for by customs legislation are met (establishment of the amount of the duties that stem from the customs debt and identification of the liable person).