

Question referred

Must Article 48 TFEU be interpreted as meaning that it precludes national legislation which requires as a condition for access to an early retirement pension that the amount of the pension to be received must be higher than the minimum pension which would be due to the person concerned under that same national legislation, the term 'pension to be received' being interpreted as the actual pension from the competent Member State (in this case, Spain) alone, without also taking into account the actual pension which that person may receive through another benefit of the same kind from one or more other Member States?

**Request for a preliminary ruling from the College van Beroep voor het Bedrijfsleven (Netherlands)
lodged on 18 June 2018 — Vereniging Gasopslag Nederland, TAQA Onshore BV, TAQA Piek Gas BV
v Autoriteit Consument en Markt**

(Case C-399/18)

(2018/C 294/48)

Language of the case: Dutch

Referring court

College van Beroep voor het Bedrijfsleven

Parties to the main proceedings

Appellants: Vereniging Gasopslag Nederland, TAQA Onshore BV, TAQA Piek Gas BV

Respondent: Autoriteit Consument en Markt

Question referred

Is a uniform capacity tariff which is not differentiated according to the type of network user but is, rather, differentiated according to the contracted capacity, compatible with Article 13(1) of Regulation (EC) No 715/2009⁽¹⁾ of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (the Gas Regulation)?

⁽¹⁾ OJ 2009 L 211, p. 36.

**Request for a preliminary ruling from the Krajský soud v Praze (Czech Republic) lodged on 18 June
2018 — Herst, s.r.o. v Odvolací finanční ředitelství**

(Case C-401/18)

(2018/C 294/49)

Language of the case: Czech

Referring court

Krajský soud v Praze

Parties to the main proceedings

Applicant: Herst, s.r.o.

Defendant: Odvolací finanční ředitelství

Questions referred

1. Must any taxable person be regarded as a taxable person within the meaning of Article 138(2)(b) of Council Directive 2006/112/EC⁽¹⁾ on the common system of value added tax (the VAT Directive)? If not, to which taxable persons does that provision apply?

2. If the Court of Justice's answer is that Article 138(2)(b) of the VAT Directive applies to a situation such as that in the main proceedings (that is, the acquirer of the products is a taxable person registered for tax), must that provision be interpreted as meaning that, where the dispatch or transport of those products takes place in accordance with the relevant provisions of Council Directive 2008/118/EC ⁽²⁾ concerning the general arrangements for excise duty and repealing Directive 92/12/EEC ('the Excise Duty Directive'), a supply connected with a procedure under the Excise Duty Directive must be regarded as a supply entitled to exemption under that provision, even though the conditions for exemption under Article 138(1) of the VAT Directive are not otherwise satisfied, having regard to the assignment of the transport of goods to another transaction?
3. If the Court of Justice's answer is that Article 138(2)(b) of the VAT Directive does not apply to a situation such as that in the main proceedings, is the fact that the goods are transported under an excise duty suspension arrangement decisive for deciding the question of which of several successive supplies a transport is to be ascribed to for the purposes of the right to exemption from VAT under Article 138(1) of the VAT Directive?
4. Is 'the right to dispose of the goods as owner' within the meaning of the VAT Directive acquired by a taxable person who buys goods from another taxable person directly for a specific customer in order to fulfil an already existing order (identifying the type of goods, the quantity, place of origin and time of delivery) where he does not physically handle the goods himself since, in the context of concluding the contract of sale, his buyer agrees to arrange transport of the goods from their point of origin, so that he will only provide access to the requested goods via his suppliers and communicate the information necessary for acceptance of the goods (on his own behalf or on behalf of his sub-suppliers in the chain), and his profit from the transaction is the difference between the buying-in price and the selling price of such goods without the cost of transporting the goods being invoiced in the chain?
5. Does the Excise Duty Directive establish (for example, in Article 4(1), Article 17 or Article 19), either directly or indirectly through a limit on the effective handling of such goods, sufficient conditions for the transfer of the 'right to dispose of the goods (that are subject to excise duty) as the owner' within the meaning of the VAT Directive, with the result that the taking over of the goods under an excise duty suspension arrangement by an authorised warehousekeeper or registered consignee in accordance with the conditions arising from the Excise Duty Directive should be treated as a supply of goods for VAT purposes?
6. In this context, when considering the determination of a supply which is linked to transport within a chain of supply of goods under an excise duty suspension arrangement with a single transport, is it necessary to regard a transport in the sense of the VAT Directive as commencing and closing in accordance with Article 20 of the Excise Duty Directive?
7. Does the principle of VAT neutrality or any other principle of EU law prevent application of the constitutional principle of *in dubio mitius* in national law, which obliges the public authorities, where legal rules are ambiguous and objectively offer a number of possible interpretations, to choose the interpretation that benefits the person subject to the legal rule (here the taxable person for VAT)? Would the application of this principle be compatible with EU law at least if it were limited to situations where the relevant facts of the case preceded a binding interpretation of a disputed legal question by the Court of Justice of the European Union, which has determined that another interpretation less favourable to the taxable entity is correct?

If it is possible to apply the principle of *in dubio mitius*:

8. Was it possible, in terms of the limits set by EU law at the time when the taxable transactions took place in this case (November 2010 to May 2013), to consider the question whether the legal concept of supply of goods or transport of goods has (or does not have) the same content both for the purposes of the VAT Directive and for the purposes of the Excise Duty Directive objectively as legally uncertain and offering two interpretations?

⁽¹⁾ OJ 2006 L 347, p. 1.

⁽²⁾ OJ 2009 L 9, p. 12.