Questions referred

1. Are Articles 138 and 20 of Council Directive [2006/112/EC] on the common system of value added tax ([1]) to be interpreted as meaning that the transport out of the territory of the State of origin must begin within a certain period of time for the sale to be exempt from tax and for there to be an intra-Community acquisition?

2. Similarly, are those Articles to be interpreted as meaning that the transport must end in the country of destination within a certain period of time for the sale to be exempt from tax and for there to be an intra-Community acquisition?

3. Would the answers to questions 1 and 2 be affected if that which is acquired is a new means of transport and the person acquiring the goods is an individual who intends ultimately to use the means of transport in a particular Member State?

4. In connection with an intra-Community acquisition, at which time must the assessment be made as to whether a means of transport is new in accordance with Article 2(2)(b) of Council Directive [2006/112/EC] on the common system of value added tax?

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

Reference for a preliminary ruling from the Amtsgericht Schorndorf (Germany) lodged on 2 March 2009 — Ingrid Putz v Medianess Electronics GmbH

(Case C-87/09)

(2009/C 90/31)

Language of the case: German

Referring court

Amtsgericht Schorndorf

Parties to the main proceedings

Applicant: Ingrid Putz

Defendant: Medianess Electronics GmbH

Questions referred

1. Are the provisions of Article 3(2), and the third subparagraph of Article 3(3), of Directive 1999/44/EC ([1]) of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees to be interpreted as precluding a national statutory provision under which a seller, in the event that it has restored a consumer product to conformity with a contract of sale by way of replacement, does not have to pay the costs of the installation, in a particular unit, of the subsequently delivered product, in the case where the consumer has properly installed the contractually defective consumer product, if installation was not originally a contractual requirement?

2. Are the provisions of Article 3(2), and the third subparagraph of Article 3(3), of Directive 1999/44/EC to be interpreted as meaning that a seller, in the event that it has restored a consumer product to conformity with a contract of sale by way of replacement, has to pay the costs of disconnection, from a particular unit, of the contractually defective consumer product, in the case where the consumer has properly installed the consumer product?

([1]) Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ 1999 L 171, p. 12).

Appeal brought on 3 March 2009 by General Química, SA, Repsol Química, SA and Repsol YPF, SA against the judgment delivered on 18 December 2008 in Case T-85/06 General Química and Others v Commission of the European Communities

(Case C-90/09 P)

(2009/C 90/32)

Language of the case: Spanish

Parties

Appellants: General Química SA, Repsol Química SA and Repsol YPF, SA (represented by: J.M. Jiménez-Laiglesia Oñate and J. Jiménez-Laiglesia Oñate, abogados)

Other party to the proceedings: Commission of the European Communities

Forms of order sought

The appellants claim that the Court should:

— set aside the judgment of 18 December 2008 in Case T-85/06 in so far as it rejects the plea in law alleging manifest error of assessment and failure to state sufficient reasons for the finding that the applicants are jointly and severally liable;

— annul Article 1(g) and (h) and Article 2(d) of the Decision in so far as they declare that Repsol YPF and Repsol Química, together with General Chímica, are jointly and severally liable for an infringement of Article 81(1) of the EC Treaty and, in the lesser alternative, in so far as the Decision finds against Repsol YPF, in both cases ordering an appropriate reduction of the penalty.

Pleas in law and main arguments

The appeal criticises the rejection, in the judgment under appeal, of the plea in law whereby annulment of the Decision was sought on grounds relating to the attribution of liability to Repsol Química and Repsol YPF in respect of conduct on the part of General Química, SA. In the judgment under appeal, the Court of First Instance errs in using a criterion for the attribution of liability which is unrelated to the facts and circumstances of the case or to the infringement committed by General Química. The Court of First Instance wrongly attributes to the parent company liability which lies with a subsidiary, by concluding that only one economic entity exists, merely because the parent company may, or is able to, wield a decisive influence over the subsidiary. Nor does the Court of First Instance make it clear how the evidence which it selects reveals the existence of decisive influence; at the same time, evidence in the case-file is either ignored or distorted. Moreover, the Court of First Instance misapplies the presumption established by case-law in respect of cases where the parent company holds all of the share capital, and reverses the burden of proof without explaining, moreover, the kind of evidence that must be produced in order to rebut the presumption. The judgment places no limits on the discretion enjoyed by the Commission in relation to the assessment and appraisal of the evidence produced in an attempt to rebut the presumption. This means that, in reality, the presumption is not open to rebuttal. Similarly, and apart from the fact that the liability of Repsol YPF is neither precisely identified nor free of ambiguity, the Court of First Instance wrongly extends automatically to the parent company at the head of the group the presumption based on the mere capacity to exercise a decisive influence. Liability is attributed to the *group of companies* and not to the *undertaking* as an economic unit, such liability being moreover irrefutable.