

5. Article 79 (2) (b) TFEU is found in Title V of Part Three of the Treaty. Pursuant to Protocol 21 to the Treaties, measures adopted under Title V do not apply to the United Kingdom (or Ireland) unless it signals its willingness to 'opt into' them. By its erroneous choice of Article 48 TFEU, instead of Article 79 (2) (b) TFEU, as the substantive legal basis of the Decision, the Council refused to recognise the right of the United Kingdom to choose not to participate in the Decision and be bound by it.
6. The annulment of the Council Decision of 16 December 2011 is, therefore, sought on the ground that it was adopted on the wrong legal basis, with the consequence that the rights of the United Kingdom under Protocol 21 were not recognised.

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(<sup>1</sup>) OJ L 341 p. 1

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**Reference for a preliminary ruling from the Supremo Tribunal Administrativo (Portugal) lodged on 27 December 2011 — TVI Televisão Independente SA v Fazenda Pública**

(Case C-659/11)

(2012/C 49/35)

*Language of the case: Portuguese*

**Referring court**

Supremo Tribunal Administrativo

**Parties to the main proceedings**

*Applicant:* TVI Televisão Independente SA

*Defendant:* Fazenda Pública

**Questions referred**

1. Is Article 16(1) of the CIVA [VAT Code], as interpreted in the judgment under appeal (to the effect that the commercial advertising screening tax is inherent in the supply of advertising services, so that it should be included in the taxable amount of the supply of services for the purposes of VAT), compatible with Article 11(A)(1)(a) of Directive 77/388/EC (<sup>1</sup>) (now Article 73 of Council Directive 2006/112/EC (<sup>2</sup>) of 28 November 2006) and, in particular, with the concept of 'consideration which has been or is to be obtained by the supplier ... for such supplies'?

2. Is Article 16(6)(c) of the CIVA, as interpreted in the judgment under appeal (to the effect that the commercial advertising screening tax does not constitute an amount paid in the name and on behalf of the customer of the services, even though it is accounted for in third party suspense accounts and is intended to be paid to public bodies, so that it is not excluded from the taxable amount for the purposes of VAT) compatible with Article 11(A)(3)(c) of Directive 77/388/EC (now Article 79(c) of Council Directive 2006/112/EC of 28 November 2006) and, in particular, with the concept of 'amounts received by a taxable person from his purchaser or customer as repayment for expenses paid out in the name and for the account of the latter and which are entered in his books in a suspense account'?

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(<sup>1</sup>) 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.

(<sup>2</sup>) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax  
OJ 2006 L 347, p. 1.

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**Order of the President of the Third Chamber of the Court of 22 November 2011 — European Commission v Ireland**

(Case C-356/10) (<sup>1</sup>)

(2012/C 49/36)

*Language of the case: English*

The President of the Third Chamber has ordered that the case be removed from the register.

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(<sup>1</sup>) OJ C 246, 11.9.2010.

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**Order of the President of the Court of 14 November 2011 — 4care AG v Office For Harmonization in the Internal Market (Trade marks and designs), Laboratorios Diafarm, SA**

(Case C-535/10 P) (<sup>1</sup>)

(2012/C 49/37)

*Language of the case: German*

The President of the Court has ordered that the case be removed from the register.

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(<sup>1</sup>) OJ C 30, 29.1.2011.