3. If Question 2 is answered in the affirmative: Must Article 176 of Directive 2006/112 be interpreted as meaning that a Member State which sought to take advantage of the option to exclude certain goods and services from the right of deduction and which defined the category of expenditure as follows: the goods and services intended for gratuitous transactions or for activities other than the economic activity of the taxable person except in the cases mentioned in Article 70(3) of the Law on VAT, satisfied the requirement to adequately define the category of goods and services, that is, to define these by reference to their nature?

4. Depending on the answer given to Question 3: In the light of Articles 168 and 173 of Directive 2006/112, how must the purpose (the use or future use) of the goods or services acquired by the taxable person be assessed: as a prerequisite for the initial establishment of the right of deduction or as grounds for the adjustment of the amount of input tax deducted?

5. If the purpose (use) must be assessed as grounds for an adjustment to the amount of input tax deducted, how must Article 173 of Directive 2006/112 be interpreted: does it provide for adjustments to be made also in cases in which goods and services are used initially for an activity which is not taxed or following their acquisition not used at all but are at the disposal of the undertaking and in a (tax) period following their acquisition are included in the taxable activity of the taxable person?

6. If Article 173 of Directive 2006/112 must be interpreted as meaning that the adjustment envisaged also applies to cases in which, following their acquisition, goods and services are used initially for an activity which is not taxed or not used at all but subsequently are included in the taxable activity of the taxable person, in the light of the restriction established by Article 70(1)(2) of the Law on VAT and the fact that, pursuant to Article 79(1) and (2) of the Law on VAT, adjustments may be made only in cases in which goods whose initial use satisfies the requirement for deduction of input tax are subsequently included in a use which does not satisfy those requirements, must it be presumed that the Member State has satisfied its obligation, in relation to all taxable persons, to structure the right of deduction as soundly and fairly as possible?

7. Depending on the answers given to the previous questions: Must it be presumed, having regard to the rules established in the Bulgarian Law on VAT governing restrictions on the right of deduction and adjustments to the amount of input tax deducted, in circumstances such as those of the main proceedings, and in the light of Article 168 of Directive 2006/112, that, in relation to goods supplied and services carried out by another taxable person, a taxable person registered pursuant to the Bulgarian Law on VAT may deduct the input tax in the (tax) period in which these were supplied to him or carried out on his behalf and in which the VAT became chargeable?

([1]) OJ 2006 L 347, p. 1.

Action brought on 4 March 2011 — European Commission v French Republic

(Case C-119/11)

(2011/C 145/22)

Language of the case: French

Parties

Applicant: European Commission (represented by: F. Dintilhac and C. Soulay, agents)

Defendant: French Republic

Form of order sought

— Declare that, by applying, since 1 January 2007, a VAT rate of 2,10 % to income from charges for admission to the first performances of concerts held in establishments where refreshments may be obtained during the performance, the French Republic has failed to fulfil its obligations under Articles 99 and 110 of the VAT Directive; ([1])

— order French Republic to pay the costs.

Pleas in law and main arguments

By the present action, the Commission complains that, since 1 January 2007, the defendant has applied a VAT rate of 2,10 % to income from charges for admission to the first performances of concerts held in establishments where refreshments may be obtained during the performance, instead of the earlier rate of 5,5 %.

The Commission points out that, under Article 110 of the VAT Directive, Member States which, at 1 January 1991, were applying reduced rates of VAT lower than the minimum rate of 5 % may continue to apply those rates. However, Member States are not permitted under that provision to introduce new derogations or extend the scope of the derogations existing as

at 1 January 1991 where they have restricted the scope of the derogations after that date. However, that is exactly what occurred in this case, since, as from 1 January 1997, the defendant restricted the scope of the derogation existing as at 1 January 1991 in connection with reduced rates of VAT and expressly excluded from this income relating to first performances generated by the sale of tickets 'which give access solely to concerts held in establishments where refreshments may be obtained during the performance'. By extending the scope of a derogation from the Directive, the French Republic has therefore disregarded the purpose of the Directive.

(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 Tribunale di Santa Maria Capua Vetere (Italy) lodged on 7 March 2011 — Criminal proceedings against Yeboah Kwadwo

(Case C-120/11)

(2011/C 145/23)

Language of the case: Italian

Referring court

Tribunale di Santa Maria Capua Vetere

Party to the main proceedings

Yeboah Kwadwo

Question referred

In the light of the principles of sincere cooperation, the effectiveness of directives and the proportionality and effectiveness of coercive measures for the return of illegally staying foreign nationals, do Articles 2, 15 and 16 of Directive 2008/115/EC (1) preclude an illegally staying foreign national who has simply failed to comply with the deportation order and the removal order issued by the administrative authorities from incurring criminal liability and being sentenced to a term of imprisonment of up to four years if he fails to comply with the first removal order and up to five years if he fails to comply with subsequent orders issued by the Questore?

(1) OJ 2008 L 348, p. 98.

Reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 9 March 2011 — A Oy

(Case C-123/11)

(2011/C 145/24)

Language of the case: Finish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: A Oy

Defendant: Veronsaajien oikeudenvalvontayksikkö and Valtiovarainministerio

Questions referred

1. Do Article 49 TFEU and Article 54 TFEU require that the acquiring company is entitled to deduct in its taxation losses incurred in previous years by a company merging with it, which has resided in another Member State where it has incurred the losses in connection with business activities, when the acquiring company will not have a fixed place of business in the resident state of the acquired company and when, under national legislation, the acquiring company is entitled to deduct the losses of an acquired company, if the acquired company was Finnish or if the losses had been incurred in a fixed place of business located in this state?

2. If the answer to the first question is affirmative, do Article 49 TFEU and Article 54 TFEU have a bearing on whether the loss to be deducted is calculated in accordance with the tax legislation of the acquiring company's state of residence, or should the losses consolidated in the acquired company's state of residence be considered as the deductible losses?

Reference for a preliminary ruling from the Administrativen Sad Varna (Bulgaria) lodged on 14 March 2011 — OOD Provadiinvest v Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto'

(Case C-129/11)

(2011/C 145/25)

Language of the case: Bulgarian

Referring court

Administrativen Sad Varna