Reference for a preliminary ruling from the Oberster Gerichtshof (Austria), lodged on 21 March 2011 — Compass-Datenbank GmbH v Republik Österreich

(Case C-138/11)

(2011/C 186/20)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Appellant: Compass-Datenbank GmbH

Respondent: Republik Österreich

Interested parties: Bundeskartellanwalt, Bundeswettbewerbsbehörde

Questions referred

1. Is Article 102 TFEU to be interpreted as meaning that a public authority acts as an undertaking if it stores in a database (business undertakings register) the information reported by undertakings on the basis of statutory reporting obligations and allows inspection and/or printouts to be made in return for payment, but prohibits any more extensive use?

   If the reply to Question 1 is in the negative:

2. Does a public authority act as an undertaking in the case where, in reliance on its *sui generis* right to protection as the producer of a database, it prohibits uses which go beyond that of allowing inspection and the creation of printouts?

   If the reply to Questions 1 or 2 is in the affirmative:

3. Is Article 102 TFEU to be interpreted as meaning that the principles laid down in the judgments in Joined Cases C-241/91 P and C-242/91 P *RTE and ITP* [1995] ECR I-743 and in Case C-418/01 *IMS Health* [2004] ECR I-5039 ('essential facilities doctrine') are also to be applied if there is no 'upstream market' because the protected data are collected and stored in a database (business undertakings register) in the course of a public-authority activity?

Reference for a preliminary ruling from the Administrativen sad Varna (Bulgaria) lodged on 28 March 2011 — OOD Klub v Director of the Varna Office 'Appeals and the Administration of Enforcement' — Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite)

(Case C-153/11)

(2011/C 186/21)

Language of the case: Bulgarian

Referring court

Administrativen sad Varna

Parties to the main proceedings

Applicant: OOD Klub

Defendant: Director of the Varna Office 'Appeals and the Administration of Enforcement' at the Central Office of the National Revenue Agency (Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite)

Questions referred

1. Is Article 168(1)(a) of Council Directive 2006/112/EC of 28 November 2006 [1] on the common system of value added tax to be interpreted as meaning that — once a taxable person has exercised his option and allocated property constituting capital goods to his business assets — it must be presumed (that is to say assumed in the absence of evidence to the contrary), that these goods are used for the purposes of taxable transactions effected by the taxable person?

2. Is Article 168(1)(a) of Council Directive 2006/112/EC to be interpreted as meaning that the right of deduction on the purchase of an immovable property which is allocated to the business assets of a taxable person arises immediately in the tax period in which the tax became due, regardless of the fact that the property cannot be used in view of the absence of approval for its commissioning as required by law?

3. Is an administrative practice such as that of the Natsionalna Agentsia po Prihodite, according to which the right of deduction claimed by persons liable for value added tax on capital goods purchased by them is refused on the grounds that those goods are used for the private purposes of the owners of the companies, without value added tax being imposed on this use, consistent with the directive?

4. In circumstances such as those of the main proceedings does the company, namely the applicant, have a right of deduction on the purchase of an immovable property, namely a maisonette in Sofia?

(1) OJ 2006 L 347, p. 1

Action brought on 5 April 2011 — European Commission v French Republic

(Case C-164/11)

(2011/C 186/22)

Language of the case: French

Parties

Applicant: European Commission (represented by: W. Mölls, acting as Agent)

Defendant: French Republic

Form of order sought

— declare that, by failing to take the necessary measures to adapt its electricity taxation system to the provisions provided for by Directive 2003/96/EC (1), despite the expiry of the transitional period provided for in the second subparagraph of Article 18(10) of that directive, the French Republic has failed to fulfil its obligations under that directive;

— order the French Republic to pay the costs.

Pleas in law and main arguments

By its application, the Commission submits that, despite the expiry of the transitional period granted to the defendant, namely on 1 January 2009, it has still not adapted all the elements of its electricity taxation system to the provisions of the directive. According to the French authorities, Law No 2010-1488 of 7 December 2010, which was adopted and entered into force after the expiry of the period laid down in the reasoned opinion, transposes the provisions of that directive into domestic law. According to the Commission, the present action must be upheld by reference to the situation under national law which was applicable at the time when the period laid down in the reasoned opinion expired.

The Commission submits that, in any event, France has still not adapted all the elements of its electricity taxation system to comply with the provisions of the directive. The applicant therefore rejects the argument of the national authorities that the directive does not prohibit adjustments to the increase in excise duties according to the geographical areas concerned. On the contrary, the directive sets out the principle of a single tax for all electricity consumption which takes place in the same Member State and exhaustively lists the derogations to that principle in Articles 5, 14, 15 and 17.

Furthermore, the Commission rejects the argument defended by the French authorities that the 'differentiation in tariffs applied' does not lead to any risk of evasion, does not imply any additional burden for operators and does not constitute a barrier to the entry on the market of foreign providers.

(1) Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ 2003 L 283, p. 51).

Reference for a preliminary ruling from the Conseil d'État (France) lodged on 18 April 2011 — CIMADE, Groupe d'information et de soutien des immigrés (GISTI) v Ministre de l'Intérieur, de l'Outre-Mer, des Collectivités Territoriales et de l'Immigration

(Case C-179/11)

(2011/C 186/23)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: CIMADE, Groupe d'information et de soutien des immigrés (GISTI)

Defendant: Ministre de l'Intérieur, de l'Outre-Mer, des Collectivités Territoriales et de l'Immigration

Questions referred

1. Does Council Directive 2003/9/EC of 27 January 2003 (1) guarantee the minimum reception conditions to which it refers to applicants in respect of whom a Member State in receipt of an application for asylum decides, under Council Regulation (EC) No 343/2003 of 18 February 2003, (2) to refer a request to another Member State which it deems to have jurisdiction to examine that asylum application, throughout the duration of the procedure for taking charge of them or for taking them back by that other Member State?

2. If the answer to that question is in the affirmative:

   (a) Does the obligation, incumbent on the first Member State, to guarantee the minimum reception conditions cease at the moment of the acceptance decision by the State to which the referral was made, upon the actual taking charge or taking back of the asylum seeker, or at some other date?