Form of order sought

The Commission claims that the Court should:

— declare that:

— by failing to take, within the prescribed period, all the measures necessary to recover the State aid declared unlawful and incompatible with the internal market by Commission Decision 2006/323/EC of 7 December 2005 concerning the exemption from excise duty on mineral oils used as fuel for alumina production in Gardanne, in the Shannon region and in Sardinia, respectively implemented by France, Ireland and Italy ('Decision 2006/323'), the Italian Republic has failed to fulfil its obligations under Articles 5 and 6 of that decision and under the Treaty on the Functioning of the European Union; and

— by failing to take, within the prescribed period, all the measures necessary to recover the State aid declared unlawful and incompatible with the internal market by Commission Decision 2007/375/EC of 7 February 2007 concerning the exemption from excise duty on mineral oils used as fuel for alumina production in Gardanne, in the Shannon region and in Sardinia, implemented by France, Ireland and Italy respectively ('Decision 2007/375'), the Italian Republic has failed to fulfil its obligations under Articles 4 and 6 of that decision and under the Treaty on the Functioning of the European Union;

— order Italy to pay the costs.

Pleas in law and main arguments

The period for implementing Decision 2006/323 expired on 8 February 2006. The period for implementing Decision 2007/375 expired on 8 June 2007.

To date, the Italian Republic has not yet undertaken the full recovery of the aid declared unlawful by the decisions in question or informed the Commission that recovery has taken place. Moreover, the legal difficulties relied on by Italy as justification for the delay in implementing those decisions are not such as to make recovery absolutely impossible in accordance with the case-law of the Court.

The Commission complains next that, in breach of the obligation under the decisions in question to communicate information, Italy was late in informing it of the progress of the national procedures for implementing the decisions.

Reference for a preliminary ruling from the Varhoven Administrativen Sad (Bulgaria) lodged on 2 November 2011 — Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — grad Burgas pri Tsentralno Upravlenie na Natsionalnata Agentsia za Prihodite v Orfey Balgaria EOOD

(Case C-549/11)

(2012/C 13/14)

Language of the case: Bulgarian

Referring court

Varhoven Administrativen Sad

Parties to the main proceedings

Applicant: Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — grad Burgas pri Tsentralno Upravlenie na Natsionalnata Agentsia za Prihodite

Defendant: Orfey Balgaria EOOD

Questions referred

1. Is Article 63 of Council Directive 2006/112/EC [1] of 28 November 2006 on the common system of value added tax to be interpreted as meaning that it does not permit a derogation where the chargeable event relating to the performance of work for the construction of certain individual properties in a building occurs before the actual performance of the construction work and that that (chargeable event) is linked to the time of the occurrence of the chargeable event relating to the transaction to be performed in return, which consists in the establishment of a building right relating to other properties in that building, which also forms the consideration for the construction work?

2. Is national legislation which provides that, whenever the consideration is fully or partly expressed as goods and services, the taxable amount for the transaction is the open market value of the goods or services supplied, compatible with Articles 73 and 80 of Directive 2006/112?

3. Is Article 65 of Directive 2006/112 to be interpreted as meaning that it does not permit VAT to be charged on the value of a payment on account in cases where the payment is not made in the form of money, or is that provision to be interpreted broadly, the assumption being that VAT is also chargeable in such cases and that it is to be charged at the level of the financial equivalent of the transaction performed in return?

4. If, in the third question, the second variant given is correct, can the building right established in the present case be regarded, in view of the specific circumstances, as a payment on account within the meaning of Article 65 of Directive 2006/112?

5. Do Articles 63, 65 and 73 of Directive 2006/112 have direct effect?

(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 Administrativen sad — Varna (Bulgaria) lodged on 2 November 2011 — ET 'PIGI — P. Dimova' — P. Dimova v Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

(Case C-550/11)

(2012/C 13/15)

Language of the case: Bulgarian

Referring court

Administrativen sad — Varna

Parties to the main proceedings

Applicant: ET 'PIGI — P. Dimova'

Defendant: Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

Questions referred

1. In which cases is it to be assumed that there is a theft of property duly proved or confirmed within the meaning of Article 185(2) of Directive 2006/112 (1), and is it necessary in that regard that the identity of the perpetrator has been established and that that person has already been finally convicted?

2. Depending on the answer to the first question: does the expression 'theft of property duly proved or confirmed' within the meaning of Article 185(2) of Directive 2006/112 cover a situation such as that in the main proceedings, in which a pre-litigation procedure for theft was initiated against person or persons unknown, a fact that is not disputed by the revenue collection department and on the basis of which it has been assumed that there is a shortfall?

3. In the light of Article 185(2) of Directive 2006/112, are national legal provisions such as those laid down in Articles 79(3) and 80(2) of the Law on VAT and a tax practice such as that adopted in the main proceedings permissible, under which the input tax deduction made on the acquisition of goods which are subsequently stolen must be adjusted, if it is assumed that the State has not made use of the power afforded to it to provide expressly for adjustments to the input tax deducted in the case of theft?

(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 Augstākās tiesas Senāts (Republic of Latvia) lodged on 7 November 2011 — SIA 'Kurcums metal' v Valsts ieņēmumu dienests

(Case C-558/11)

(2012/C 13/16)

Language of the case: Latvian

Referring court

Augstākās tiesas Senāts

Parties to the main proceedings

Appellant: SIA 'Kurcums metal'

Respondent: Valsts ieņēmumu dienests

Questions referred

1. Are cables made of polypropylene and steel thread such as those at issue in the present case included under subheading 5607 49 11 of the Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 (1) of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff?

2. Is it necessary, in order to classify cables such as those at issue in the present case, to apply Rule 3(b) of the General Rules for the interpretation of the Combined Nomenclature in Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff?

3. If the composite cables, made of polypropylene and steel thread, whose maximum transversal section exceeds 3 mm, like those at issue in this case, are nevertheless included under subheading 7312 90 98 of the Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, are such cables also covered by Article 1 of Council Regulation (EC) No 1601/2001 (2) of 2 August 2001 imposing a definitive anti-dumping duty and definitively collecting the provisional anti-dumping duty imposed on imports of certain iron or steel ropes and cables originating in the Czech Republic, Russia, Thailand and Turkey?