Reference for a preliminary ruling from the Administrativen sad — Varna (Bulgaria), lodged on 6 June 2012 — Serebryanniy vek EOOD v Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — grad Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

(Case C-283/12)

(2012/C 243/16)

Language of the case: Bulgarian

Referring court

Administrativen sad — Varna

Parties to the main proceedings

Applicant: Serebryanniy vek EOOD

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

Questions referred

1. Can Article 2(1)(c) of Council Directive 2006/112/EC ([1]) of 28 November 2006 on the common system of value added tax be interpreted as meaning that the acquisition of an intangible asset in exchange for assumption of the costs involved in improving a leased asset item or an asset item the use of which has been assigned in some other way constitutes payment for an improvement service even if the owner of the asset item concerned is not required, under the contract, to pay any valuable consideration?

2. Do Article 2(1)(c) and Article 26 of Directive 2006/112 preclude a national provision under which the supply of a service carried out free of charge and consisting in the improvement of a leased asset item or of an asset item the use of which has been assigned in some other way is in all circumstances to be treated as being taxable? Is it of significance to an answer to this question, in circumstances such as those in the main proceedings, that:

   — the party supplying the service carried out free of charge has exercised the right to deduct value added tax on the goods and services used in making the improvements and that this has not yet been disallowed by a tax assessment instrument that has become final;

   — at the date of the tax assessment, the company had not yet begun to make any taxable turnover from the properties and the period of validity of the contracts had nevertheless not yet expired?

3. Do Articles 62 and 63 of Directive 2006/112 preclude a national provision by which the chargeable event for the purposes of the transaction does not occur at the date on which the service is supplied (in this particular case, when improvements are made) but at the time when the asset item is actually returned in its improved condition on the expiry of the contract or on the termination of its use?

4. If the first and second questions are answered in the negative: under which provision of Title VII of Directive 2006/112 is the taxable amount for purposes of value added tax to be determined in the case where a transaction carried out free of charge does not come within the scope of Article 26 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 Napoli (Italy) lodged on 11 June 2012 — Oreste Della Rocca v Poste Italiane SpA

(Case C-290/12)

(2012/C 243/17)

Language of the case: Italian

Referring court

Tribunale di Napoli

Parties to the main proceedings

Applicant: Oreste Della Rocca

Defendant: Poste Italiane SpA

Questions referred

1. Taking into account the remark interpolated in paragraph 36 of the Order of 15 September 2010 in Case C-386/09 *Briot* [2010] ECR I-8471, does Directive 1999/70/EC ([1]) — and, in particular, Clause 2 [of the framework agreement set out in the Annex thereto] — also refer to the fixed-term employment relationship between worker and temporary employment agency or between worker and user, and does Directive 1999/70/EC accordingly regulate those relationships?

2. In the absence of other prohibitive measures, does a provision which permits the specification, in the employment contract with a temporary employment agency, of a date on which that contract is to end, as well as its successive renewal, not on the basis of technical, organisational or production requirements of the agency in connection with the specific temporary employment relationship, but on the basis of general reasons relating to the worker, unconnected with the specific employment relationship, meet the requirements under Clause 5(1)(a) [of the framework agreement set out in the Annex to] Directive 1999/70/EC, or can it constitute a circumvention of that directive, and must the objective reasons referred to in Clause 5(1)(a) of [the above framework agreement] be set down in a document and must they relate to the specific temporary employment relationship and its successive renewal, rendering the reference to general objective requirements which served as justification for that *somministrazione* contract being drawn up incapable of meeting the condition set out in Clause 5(1)(a), or unsuitable for those purposes?

3. Does Clause 5 of [the framework agreement set out in the Annex to] Directive 1999/70/EC preclude the consequences of abuse from being made the responsibility of a third party, in this case, the user?

(1) OJ 1999 L 175, p. 43.

Reference for a preliminary ruling from the Tartu Ringkonnakohus (Estonia) lodged on 11 June 2012 — Ragn-Sells AS v Sillamäe Linnavalitsus

(Case C-292/12)

(2012/C 243/18)

Language of the case: Estonian

Referring court

Tartu Ringkonnakohus

Parties to the main proceedings

Applicant: Ragn-Sells AS

Defendant: Sillamäe Linnavalitsus

Questions referred

(a) Are Article 106(1) in conjunction with Article 102 of the Treaty on the Functioning of the European Union, the free movement of goods, the freedom of establishment and the freedom to provide services to be interpreted as meaning that it is not contrary to any of them for a Member State to permit an undertaking which operates a specific waste treatment facility to be granted an exclusive right to process municipal waste in a specified area, in return for consideration, where a number of competing undertakings owning a number of different waste treatment facilities which satisfy the environmental requirements and use equivalent technologies are operating within a radius of 260 km?

(b) Is Article 106(2) of the Treaty on the Functioning of the European Union to be interpreted as meaning that it is not contrary thereto for a Member State to regard, first, the collection and transport of waste and, secondly, the processing of waste as services in the general economic interest, but to separate those services from each other, thereby restricting free competition in the waste treatment market?

(c) In a procedure for the award of a concession for the service of collecting and transporting waste, a condition of which is that two undertakings are granted an exclusive right to treat waste in the area designated in the concession agreement, may the applicability of the provisions of competition law in the Treaty on the Functioning of the European Union be excluded?

(d) Is Article 16(3) of Directive 2008/98/EC (1) of the European Parliament and of the Council of 19 November 2008 to be interpreted as meaning that a Member State may, on the basis of the principle of proximity, restrict competition and permit the undertaking operating the waste treatment facility nearest to the area in which the waste occurs to be granted an exclusive right to process the waste, in return for consideration, where a number of competing undertakings owning a number of different waste treatment facilities which satisfy the environmental requirements and use equivalent technologies are operating within a radius of 260 km?

(1) Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ 2008 L 312, p. 3).

Appeal brought on 13 June 2012 by Telefónica S.A. and Telefónica de España, S.A.U. against the judgment of the General Court (Eighth Chamber) delivered on 29 March 2012 in Case T-336/07 Telefónica and Telefónica de España v Commission

(Case C-295/12 P)

(2012/C 243/19)

Language of the case: Spanish

Parties

Appellants: Telefónica S.A. and Telefónica de España, S.A.U. (represented by: F. González Díaz and J. Baño Fos, abogados)

Other parties to the proceedings: European Commission, France Telecom España, S.A., Asociación de Usuarios de Servicios Bancarios (Ausbanc Consumo) and European Competitive Telecommunications Association

Form of order sought

The appellants claim that the Court of Justice should:

— ***Primarily***,

set aside, in its entirety or in part, the judgment of the General Court of 29 March 2012 in Case T-336/07 *Telefónica and Telefónica de España* v *Commission*;

on the basis of the information at its disposal, annul, in its entirety or in part, the decision of the European Commission of 4 July 2007 in Case COMP/38.784 — *Wanadoo España* v *Telefónica*;

revoke or reduce the fine pursuant to Article 261 TFEU;

revoke or reduce the fine as a result of the unjustifiable duration of the proceedings before the General Court; and

order the Commission and the parties intervening in support of the Commission to pay the costs of both these proceedings and those before the General Court.

— ***In the alternative, if the above is not possible at this stage of the proceedings,***

set aside the judgment of the General Court and refer the case back to the General Court for it to be reheard in the light of the issues of law settled by the Court of Justice;