

4. (a) If it is assumed that the primary or most important function of memory cards in mobile phones is not private copying, is it compatible with the Directive for the Member States to have legislation which guarantees compensation for rightholders for copying on mobile phone memory cards?
- (b) If it is assumed that private copying is one of the several primary or essential functions of memory cards in mobile phones, is it compatible with the Directive for the Member States to have legislation which guarantees compensation for rightholders for copying on mobile phone memory cards?
5. Is it compatible with the concept of 'fair balance' in recital 31 in the preamble to the Directive and with the uniform interpretation of the concept of 'fair compensation' (ref. Article 5(2)(b) of the Directive), which must be based on 'prejudice', for the Member States to have legislation under which remuneration is collected for memory cards, whereas no remuneration is collected for internal memory such as MP3 players or iPods, which are designed and primarily used for private copying?
6. (a) Does the Directive preclude the Member States from having legislation which provides for the collection of remuneration for private copying from a producer and/or importer who sells memory cards to business concerns which sell the memory cards on to both private and business customers, without the producer's and/or importer's having knowledge of whether the memory cards have been sold to private or business customers?
- (b) Is the answer to question 6(a) affected if provisions are laid down in a Member State's legislation which ensure that producers, importers and/or distributors do not have to pay remuneration for memory cards used for professional purposes, that producers, importers and/or distributors, where the remuneration has nevertheless been paid, can have the remuneration for memory cards refunded in so far as they are used for professional purposes, and that producers, importers and/or distributors can sell memory cards to other undertakings registered with the organisation which administers the remuneration scheme, without payment of remuneration?
- (c) Is the answer to questions 6(a) and 6(b) affected
1. if provisions are laid down in a Member State's legislation ensuring that producers, importers and/or distributors do not have to pay remuneration for memory cards used for professional purposes, but the concept of 'professional purposes' is interpreted as conferring a right of deduction applying only to undertakings approved by Copydan, whereas remuneration must be paid for memory cards used professionally by other business customers which are not approved by Copydan;
 2. if provisions are laid down in a Member State's legislation ensuring that producers, importers and/or distributors, where the remuneration has in fact been paid (theoretically), can have remuneration for memory cards refunded where they are used for professional purposes, but (a) it is in practice only the purchaser of the memory card who can have the remuneration refunded, and (b) the purchaser of memory cards must submit an application for refund of remuneration to Copydan;
 3. if provisions are laid down in a Member State's legislation ensuring that producers, importers and/or distributors may sell memory cards to other undertakings registered with the organisation which administers the remuneration scheme, without payment of remuneration, but (a) Copydan is the organisation which administers the remuneration scheme and (b) the registered undertakings have no knowledge of whether the memory cards have been sold to private or business customers?

⁽¹⁾ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

Reference for a preliminary ruling from the Tribunale di Cosenza (Italy) lodged on 19 October 2012 — CCIAA di Cosenza v CIESSE SRL in liquidation

(Case C-468/12)

(2012/C 399/24)

Language of the case: Italian

Referring court

Tribunale di Cosenza

Parties to the main proceedings

Applicant: Camera di Commercio, Industria, Artigianato e Agricoltura (CCIAA) di Cosenza

Defendant: CIESSE SRL in liquidation

Question referred

Do the Italian rules governing the methods for calculating the annual duty to be paid by all persons engaged in economic activity conflict with Article 5 of Directive 2008/7/EC⁽¹⁾ of 12 February 2008 in so far as they place a significantly greater burden on the operation of a business activity by a capital company ('capital company' being understood in the exhaustive sense provided for in [Directive 2008/7/EC]) than by a sole trader, inasmuch as under those rules (i) sole traders pay fixed annual duty of EUR 200 if registered in the ordinary section or EUR 88 if noted in the special section, (ii) *società semplici agricole* (agricultural partnerships) pay fixed annual duty of EUR 100 (in addition to EUR 20 for each local unit), (iii) local units and/or branches of undertakings having their seat abroad pay fixed duty of EUR 110, (iv) non-agricultural partnerships pay fixed duty of EUR 200, and (v) law firms pay fixed duty of EUR 200, whereas all other collective economic undertakings (companies, consortia, and so on) are required to pay 'duty as a proportion of the preceding year's turnover' (thereby paying as much as EUR 40 000)?

⁽¹⁾ Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital (OJ 2008 L 46, p. 11).

Reference for a preliminary ruling from the Corte Suprema di Cassazione (Italy) lodged on 22 October 2012 — Panasonic Italia SpA v Agenzia delle Dogane

(Case C-472/12)

(2012/C 399/25)

Language of the case: Italian

Referring court

Corte Suprema di Cassazione

Parties to the main proceedings

Applicant: Panasonic Italia SpA

Defendant: Agenzia delle Dogane

Questions referred

1. Primarily — was it necessary, before the entry into force of Regulation (EC) No 754/2004,⁽¹⁾ to classify under heading 8471, or under heading 8528, a plasma colour monitor with a diagonal measurement of the screen of 106,6 centimetres, equipped with two loudspeakers and a remote control, and with an input device designed for the insertion of a video card (very inexpensive and easy to find and insert) which was not imported with the screen, but which, once inserted, meant that the monitor was capable of receiving composite AV video signals and could be connected, not only to automatic data-processing machines, but also to recording and reproducing apparatus, DVD players, video cameras and satellite receivers?
2. If the answer to Question 1 is in the negative, the Court of Justice is asked to assess and determine whether Regulation No 754/2004 actually requires a monitor of that type to be classified under heading 8528;
3. If the answer to Question 2 is affirmative, the Court is asked whether or not the provisions laid down in that regard by Regulation No 754/2004 have to be regarded as interpretative and, as such, as having retroactive effect save where earlier specific provisions to the contrary apply.

⁽¹⁾ Commission Regulation (EC) No 754/2004 of 21 April 2004 concerning the classification of certain goods in the Combined Nomenclature (OJ 2004 L 118, p. 32).