

Interveners: Nuova Solmine SpA, American Husky III, Inovyn Produzione Italia SpA, Sasol Italy SpA, Radici Chimica SpA, La Vecchia Soc. cons. arl, Zignago Power Srl, Santa Margherita e Kettmeir e Cantine Torresella SpA, Zignago Vetro SpA, Chemisol Italia Srl, Vinavil SpA, Italgem SpA, Arkema Srl, Yara Italia SpA, Ineos Manufacturing Italia SpA, ENEL Distribuzione SpA, Terna SpA, CSEA — Cassa per i servizi energetici e ambientali, Ministero dello Sviluppo economico (C-262/17), Terna SpA, CSEA — Cassa per i servizi energetici e ambientali, Ministero dello Sviluppo economico, ENEL Distribuzione SpA (C-263/17), Terna SpA, Ministero dello Sviluppo economico (C-273/17)

Operative part of the judgment

1. Article 2(5) and Article 28(1) of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC must be interpreted as meaning that systems, such as those at issue in the main proceedings, put in place for the purposes of self-consumption before the entry into force of that directive and operated by a private person, to which a limited number of generation and consumption units are connected, and which in turn are connected to the public network, constitute distribution systems falling within the scope of that directive.
2. Article 28 of Directive 2009/72 must be interpreted as meaning that systems, such as those at issue in the main proceedings, which have been classified by a Member State as closed distribution systems within the meaning of paragraph 1 of that article, may, in that capacity, only be exempted by that Member State from the requirements laid down in paragraph 2 of that article, without prejudice to the fact that those systems are otherwise eligible for other exemptions provided for in that directive, in particular the exemption set out in Article 26(4) thereof, if they meet the conditions laid down therein, which it is for the referring court to ascertain. In any event, that Member State may not include those systems in a separate category of distribution systems in view of granting them exemptions not provided for in that directive.
3. Article 32(1) of Directive 2009/72 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides that closed distribution systems within the meaning of Article 28(1) of that directive are not subject to the obligation to provide third-party access, but must provide access only to third parties falling within the category of users that may be connected to those systems, those users having a right of access to the public network.
4. Article 15(7) and Article 37(6)(b) of Directive 2009/72 must be interpreted as precluding, in the absence of any objective justification, national legislation such as that at issue in the main proceedings which provides that dispatching charges for the users of a closed distribution system are calculated on the basis of the electricity exchanged with that system by each of its users through their connection point to that system, should the users of a closed distribution system prove not to be in the same situation as the other users of the public network and should the provider of the dispatching service for the public network bear the limited costs with regard to those users of a closed distribution system, which it is for the referring court to ascertain.

⁽¹⁾ OJ C 309, 18.9.2017.

Judgment of the Court (Fourth Chamber) of 29 November 2018 (request for a preliminary ruling from the Finanzgericht Münster — Germany) — Harry Mensing v Finanzamt Hamm

(Case C-264/17) ⁽¹⁾

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Article 314 — Article 316 — Article 322 — Special arrangements for works of art — Margin scheme — Taxable dealers — Supply of works of art by the creator or his successors in title — Intra-Community transactions — National tax authorities' refusal to grant a taxable person the right to opt for application of the margin scheme — Conditions under which applicable — Right to deduct input tax — Works of art, collectors' items and antiques)

(2019/C 35/05)

Language of the case: German

Referring court

Finanzgericht Münster

Parties to the main proceedings

Applicant: Harry Mensing

Defendant: Finanzamt Hamm

Operative part of the judgment

1. Article 316(1)(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that a taxable dealer may opt for the application of the margin scheme to the input supply of works of art which were supplied in the context of an exempt intra-Community supply, by the creator or his successors in title, when those persons do not fall within the categories of persons listed in Article 314 of that directive.
2. A taxable dealer may not opt for the application of the margin scheme laid down in Article 316(1)(b) of the VAT Directive to an input supply of works of art that were supplied to him in the context of an exempt intra-Community supply and, at the same time, claim a right to deduct input VAT in the situations in which such a right is precluded under Article 322(b) of that directive, if that latter provision has not been transposed into national law.

⁽¹⁾ OJ C 283, 28.8.2017.

Judgment of the Court (Third Chamber) of 28 November 2018 (request for a preliminary ruling from the Tribunale Amministrativo Regionale per la Liguria — Italy) — Amt Azienda Trasporti e Mobilità SpA and Others v Atpl Liguria — Agenzia regionale per il trasporto pubblico locale SpA, Regione Liguria

(Case C-328/17) ⁽¹⁾

(Reference for a preliminary ruling — Public procurement — Review procedures — Directive 89/665/EEC — Article 1(3) — Directive 92/13/EEC — Article 1(3) — Right to bring proceedings subject to the condition that a tender was submitted in a procurement procedure)

(2019/C 35/06)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Liguria

Parties to the main proceedings

Applicants: Amt Azienda Trasporti e Mobilità SpA, Atc Esercizio SpA, Atp Esercizio Srl, Riviera Trasporti SpA, Tpl Linea Srl

Defendants: Atpl Liguria — Agenzia regionale per il trasporto pubblico locale SpA, Regione Liguria

Operative part of the judgment

Both Article 1(3) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007, and Article 1(3) of Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, as amended by Directive 2007/66, must be interpreted as meaning that they do not preclude national legislation, such as that at issue in the main proceedings, which does not allow economic operators to bring an action against the decisions of a contracting authority relating to a tendering procedure in which they have decided not to participate on the ground that the legislation applicable to that procedure made the award to them of the contract concerned very unlikely.