

**Questions referred**

- (1) Is the interpretation of national law that excludes review of prices in contracts relating to 'special sectors', particularly as regards those with a different object from those to which the Directive 2004/17<sup>(1)</sup> refers, but that are connected with those sectors by an instrumental link, compatible with EU law (in particular, Article 3(3) TEU, Articles 26, 56 to 58 and 101 TFEU, and Article 16 of the Charter of Fundamental Rights of the European Union) and Directive 2004/17?
- (2) Is Directive 2004/17 (if it should be considered that exclusion of revision of prices in all contracts concluded and applied within 'special sectors' arises directly therefrom) compatible with the principles of the European Union (in particular Articles 3(1) TEU, 26, 56 to 58 and 101 TFEU, and Article 16 of the Charter of Fundamental Rights of the European Union), 'in the light of the unfairness, disproportionality, and distortion of contractual balance and, therefore, of the rules governing an efficient market'?

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<sup>(1)</sup> Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2004 L 134, p. 1).

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**Request for a preliminary ruling from the Conseil d'État (France) lodged on 3 April 2017 — Morgan Stanley & Co International plc v Ministre de l'Économie et des Finances**

(Case C-165/17)

(2017/C 213/26)

*Language of the case: French*

**Referring court**

Conseil d'État

**Parties to the main proceedings**

*Appellant:* Morgan Stanley & Co International plc

*Respondent:* Ministre de l'Économie et des Finances

**Questions referred**

1. In circumstances where expenditure of a branch established in one Member State is exclusively used for the transactions of its principal establishment established in another Member State, must the provisions of Article 17(2), (3) and (5) and Article 19(1) of the Sixth Directive 77/388/EEC,<sup>(1)</sup> incorporated in Articles 168, 169 and 173 to 175 of Directive 2006/112/EC,<sup>(2)</sup> be interpreted to the effect that the Member State in which the branch is registered is to apply to that expenditure the branch's deductible proportion, determined according to the transactions carried out in the Member State in which it is registered and according to the rules applicable in that State, or to apply the proportion applicable to the principal establishment, or to deduct a specific proportion combining the rules applicable in the Member States in which the branch and the principal establishment are registered, with regard in particular to a possible option mechanism for imposing value added tax on transactions?
2. What rules should be applied in the specific case where expenditure borne by the branch is used both for transactions in the Member State where it is registered and for transactions of the principal establishment, particularly as regards the concept of general costs and the proportion of tax deductible?

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<sup>(1)</sup> Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

<sup>(2)</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

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