

**Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 23 March 2020 —  
Finanzamt Kiel v Norddeutsche Gesellschaft für Diakonie mbH**

(Case C-141/20)

(2020/C 222/19)

*Language of the case: German*

**Referring court**

Bundesfinanzhof

**Parties to the main proceedings**

*Applicant:* Finanzamt Kiel

*Defendant:* Norddeutsche Gesellschaft für Diakonie mbH

**Questions referred**

1. Is the second subparagraph of Article 4(4) in conjunction with Article 21(1)(a) and Article 21(3) of Sixth Council Directive 77/388/EEC <sup>(1)</sup> of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes (Directive 77/388/EEC) to be interpreted as permitting a Member State to designate, instead of the VAT group ('Organkreis', group treated as a single entity for tax purposes), a member of the VAT group ('Organträger', controlling company) as the taxable person?
2. If question 1 is answered in the negative: Can the second subparagraph of Article 4(4) in conjunction with Article 21(1)(a) and Article 21(3) of Directive 77/388/EEC be invoked in this regard?
3. Must a strict or lenient standard be applied in the assessment to be carried out in accordance with paragraph 46 of the *Larentia + Minerva* judgment <sup>(2)</sup> of the Court of Justice of 16 July 2015, C-108/14 and C-109/14 (EU:C:2015:496, paragraph 44 and 45), as to whether the requirement of financial integration contained in the first sentence of point 2 of Paragraph 2(2) of the Umsatzsteuergesetz (Law on turnover tax) constitutes a permissible measure which is necessary and appropriate for attaining the objectives seeking to prevent abusive practices or behaviour or to combat tax evasion or tax avoidance?
4. Are Article 4(1) and the first subparagraph of Article 4(4) of Directive 77/388/EEC to be interpreted as permitting a Member State to regard a person as not being independent within the meaning of Article 4(1) of Directive 77/388/EEC if that person is integrated into the undertaking of another undertaking ('Organträger', controlling company) in financial, economic and organisational terms in such a way that the controlling company is able to impose its will on the person and thus prevent the person from forming his own will, which diverges from that of the controlling company?

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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> Judgment of the Court of Justice of 16 July 2015 (C-108/14 and C-109/14, EU:C:2015:496).

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**Request for a preliminary ruling from the Rechtbank Rotterdam (Netherlands) lodged on 24 March  
2020 — Stichting Rookpreventie Jeugd and Others v Staatssecretaris van Volksgezondheid, Welzijn  
en Sport**

(Case C-160/20)

(2020/C 222/20)

*Language of the case: Dutch*

**Referring court**

Rechtbank Rotterdam

**Parties to the main proceedings**

*Applicants:* Stichting Rookpreventie Jeugd and Others

*Defendant:* Staatssecretaris van Volksgezondheid, Welzijn en Sport

*Other party to the proceedings:* Vereniging Nederlandse Sigaretten- en Kerftakfabrikanten (VSK)

**Questions referred**

1. Is the form of the measurement method provided for in Article 4(1) of Directive 2014/14/EU, <sup>(1)</sup> based on ISO standards which are not freely accessible, in accordance with Article 297(1) TFEU (and Regulation (EU) No 216/2013 <sup>(2)</sup>) and with the underlying principle of transparency?
2. Must the ISO standards 4387, 10315, 8454 and 8243 referred to by Article 4(1) of Directive 2014/14/EU be interpreted and applied in such a way that, in the interpretation and application of Article 4(1) of that directive, emissions of tar, nicotine and carbon monoxide should not be measured (and verified) only by the prescribed method, but that those emissions may or must also be measured (and verified) in a different manner and with a different intensity?
3. (a) Is Article 4(1) of Directive 2014/14/EU contrary to the underlying principles of that directive and to Article 4(2) thereof as well as to Article 5(3) of the WHO Framework Convention on Tobacco Control, given that the tobacco industry played a role in determining the ISO standards referred to in Article 4(1) of that directive?  
  
(b) Is Article 4(1) of Directive 2014/14/EU contrary to the underlying principles of that directive, to Article 114(3) TFEU, to the spirit of the WHO Framework Convention on Tobacco Control and to Articles 24 and 35 of the Charter, in so far as the measurement method prescribed therein does not measure the emissions from filter cigarettes during their intended use since, with that method, no account is taken of the effect of the ventilation holes in the filter which are largely closed off during their intended use by the smoker's lips and fingers?
4. (a) Which alternative measurement method (and verification method) may or must be used should the Court of Justice:  
  
— answer question 1 in the negative?  
  
— answer question 2 in the affirmative?  
  
— answer question 3(a) and/or question 3(b) in the affirmative?  
  
(b) *[If the Court is unable to give an answer to question 4(a)]:* Does the temporary unavailability of a measurement method give rise to a situation such as that referred to in Article 24(3) of Directive 2014/14/EU?

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<sup>(1)</sup> Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ 2014 L 127, p. 1).

<sup>(2)</sup> Council Regulation of 7 March 2013 on the electronic publication of the *Official Journal of the European Union* (OJ 2013 L 69, p. 1).