

5. Are member states precluded by the Directive as amended from providing for joint and several liability of taxpayers or from requiring one taxpayer to provide security for tax due from another in order to prevent abuse of the VAT system and the protection of revenues properly due under that system, if such measures comply with the aforesaid general principles?

(¹) 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 L 145, 13.6.1977, p. 1).

Action brought on 10 September 2004 by the Commission of the European Communities against the French Republic

(Case C-389/04)

(2004/C 273/32)

An action against the French Republic was brought before the Court of Justice of the European Communities on 10 September 2004 by the Commission of the European Communities, represented by A. Bordes and K. Simonssen, acting as Agents, with an address for service in Luxembourg.

The Commission of the European Communities claims that the Court should declare:

— that firstly, by failing to transpose correctly the first paragraph of Article 22 of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (¹), concerning the requirement of operational independence as between the national regulatory authority and postal operators, and by maintaining in force legislation which does not guarantee the regulatory body of the postal sector sufficient operational independence vis-à-vis the public postal operator, La Poste,

— and that secondly, by failing to transpose within the period prescribed Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services (²),

— the French Republic has failed to fulfil its obligations under the first paragraph of Article 22 and Article 24 of Directive 97/67/EC, and Article 2 of Directive 2002/39/EC.

order the French Republic to pay the costs.

Pleas in law and main arguments:

Pursuant to Article 22 of Directive 97/67/EC, the French Republic has designated the Minister for Economic Affairs, Finance and Industry, who is the minister responsible for postal services, as the national regulatory authority for the postal sector. At the same time, this minister is head of the directorates-general for industry, information technology and postal services (DIGITIP) set up within the Ministry of Economic Affairs, Finance and Industry, which performs the duties of supervising La Poste through its subdirectorates for postal services. In the context of a public undertaking, the concept of supervision encompasses certain tasks and responsibilities, connected with the exercise of the right to property and with the economic and financial performance of La Poste, such as the establishment of strategic guidelines, the services to be offered in addition to the universal service and pricing policy in relation to such services, involvement in the selection of board members of the undertaking, acquisition of an interest in other undertakings etc., whose performance should be kept separate from regulatory tasks in order to comply with the requirement of operational independence as laid down by the Postal Directive. This requirement aims to preclude any risk of a conflict of interests arising between the national regulatory authority responsible for adopting legislation applicable to the postal sector and for verifying its implementation, and undertakings offering goods and services in this sector. In the case in question such a conflict of interests exists, since the two tasks are carried out within the same ministry. Consequently, the effectiveness of Article 22, first paragraph, of Directive 97/67/EC is not guaranteed.

Furthermore, the time-limit for transposition of Directive 2002/39/EC expired on 31 December 2002.

(¹) OJ L 15, 21.1.1998, p. 14.

(²) OJ L 176, 5.7.2002, p. 21.

Reference for a preliminary ruling by the Regeringsrätten (Supreme Administrative Court) by decision of that court of 7 September 2004 in the case of GöteborgsOperan AB v Skatteverket

(Case C-390/04)

(2004/C 273/33)

Reference has been made to the Court of Justice of the European Communities by order of the Regeringsrätten (Supreme Administrative Court) (Sweden) of 7 September 2004, received at the Court Registry on 13 September 2004, for a preliminary ruling in the case of GöteborgsOperan AB against Skatteverket on the following questions:

1. Is it compatible with the provisions of Article 17 and the second indent of the first subparagraph of Article 19(1) of the Sixth Directive ⁽¹⁾ for subsidies such as those mentioned in the latter provision to be taken into account when determining the right to deduct input tax also in cases where the input tax relates to goods or services that are solely to be used for transactions in respect of which value added tax is otherwise deductible?

If the answer to the first question is yes, an answer to the following questions is also requested.

2. Is it compatible with the provision on subsidies in the second indent of the first subparagraph of Article 19(1) of the Sixth Directive, for reasons of equal competition or for other reasons, to apply the provision only within certain sectors specially designated by the Member State?
3. Is the provision on subsidies in the second indent of the first subparagraph of Article 19(1) of the Sixth Directive to be regarded as including also such economic support as is given on a continuous basis by a regional authority to a company wholly owned by it so that the company may carry out such cultural activity as might be carried out directly by the regional authority? Is it of any significance if the support is paid by another company owned by the regional authority and which is a parent company of the first company?

⁽¹⁾ 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).

Reference for a preliminary ruling by the Simvoulio tis Epikratias by order of that court of 6 July 2004 in the case of Ipourgios Ikonomikon and Proistamenos D.O.I. Amfissas against Charilaos Georgakis

(Case C-391/04)

(2004/C 273/34)

Reference has been made to the Court of Justice of the European Communities by order of the Simvoulio tis Epikratias (Council of State, Greece) of 6 July 2004 received at the Court Registry on 14 September 2004, for a preliminary ruling in the case of Ipourgios Ikonomikon and Proistamenos D.O.I. Amfissas against Charilaos Georgakis on the following question:

Where stock-market transactions agreed on in advance which result in the increase or artificial inflation of the price of the securities transferred are carried out between persons or groups of persons having one of the characteristics set out in Article 2(1) of Council Directive 89/592/EEC, ⁽¹⁾ are the persons carrying out those transactions to be regarded as persons possessing inside information within the meaning of Articles 1 and 2 of that directive, so that their actions fall within the prohibition, laid down by Articles 2, 3 and 4 of the directive, on taking advantage of inside information?

⁽¹⁾ OJ L 334, 18.11.1989, p. 30.

Reference for a preliminary ruling by the Bundesverwaltungsgericht by order of that court of 7 July 2004 in the case i-21-germany GmbH against the Federal Republic of Germany

(Case C-392/04)

(2004/C 273/35)

Reference has been made to the Court of Justice of the European Communities by order of the Bundesverwaltungsgericht of 7 July 2004, which was received at the Court Registry on 16 September 2004, for a preliminary ruling in the case of i-21-germany GmbH against the Federal Republic of Germany on the following questions:

1. Is Article 11(1) of Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services (the licensing directive) to be interpreted as precluding the imposition of a licence fee calculated to anticipate the amount of a national regulatory authority's general administrative costs over a period of 30 years, to be charged in advance?

If the answer to Question 1 is in the affirmative:

2. Are Article 10 EC and Article 11 of the licensing directive to be interpreted as meaning that a fee assessment that determines fees within the meaning of Question 1 and which has not been contested although such a possibility is afforded under national law must be set aside where that is permissible under national law but not mandatory?