

**Parties to the main proceedings**

*Applicant:* ENEA S.A. w Poznaniu

*Defendant:* Prezes Urzędu Regulacji Energetyki

**Questions referred**

1. Must Article 107 of the Treaty on the Functioning of the European Union be interpreted as meaning that the obligation to purchase electrical energy produced in combination with the production of heat, as laid down in Article 9a(8) of the Law of 10 April 1997 on energy law, in the version in force in 2006, adopted on the basis of Article 1, point 13, of the Law of 4 March 2005 amending the Law on energy law and the Law on environmental protection law (Dz.U. 2005, No 62, item 552), constitutes State aid?
2. In the event of an affirmative answer to Question 1, must Article 107 of the Treaty on the Functioning of the European Union be interpreted as meaning that an energy undertaking treated as an emanation of a Member State which was obliged to fulfil the obligation classified as State aid may rely on infringement of that provision in proceedings before a national court?
3. In the event of an affirmative answer to Questions 1 and 2, must Article 107 of the Treaty on the Functioning of the European Union in conjunction with Article 4(3) of the Treaty on European Union be interpreted as meaning that the conflict of the obligation arising from national law with Article 107 TFEU rules out the possibility of imposing a financial penalty on an undertaking which has failed to fulfil that obligation?

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**Request for a preliminary ruling from the Tribunale di Treviso (Italy) lodged on 6 July 2015 —  
Criminal proceedings against Giuseppe Astone**

(Case C-332/15)

(2015/C 320/23)

*Language of the case: Italian*

**Referring court**

Tribunale di Treviso

**Defendant**

Giuseppe Astone

**Questions referred**

- (1) Do the provisions of Directive 2006/2012/EC of 28 November 2006 <sup>(1)</sup>, as interpreted by the Community case-law recalled in the grounds of this order, preclude Member State rules — such as those set out above and in force in Italy (Article 19 of Presidential Decree 633/1972) — which exclude the possibility, including for the purposes of criminal law, of exercising the right to deduct where there has been a failure to file VAT returns, in particular, the return for the second year after the year in which the right to deduct arose?

- (2) Do the provisions of Directive 2006/2012/EC of 28 November 2006, as interpreted by the Community case-law recalled in the grounds of this order, preclude Member State rules — such as those set out above in force in Italy (Articles 25 and 39 of Presidential Decree 633/1972) — which exclude the possibility, including for the purposes of criminal law, of taking account, for the purposes of the deduction of VAT, of purchase invoices which the taxable person has completely failed to register?

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<sup>(1)</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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**Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 13 July 2015 — Bietergemeinschaft: Technische Gebäudebetreuung GesmbH and Caverion Österreich GmbH**

(Case C-355/15)

(2015/C 320/24)

*Language of the case: German*

**Referring court**

Verwaltungsgerichtshof

**Parties to the main proceedings**

*Appellants:* Bietergemeinschaft: Technische Gebäudebetreuung GesmbH and Caverion Österreich GmbH

*Other parties:* Universität für Bodenkultur Wien, VAMED Management und Service GmbH & Co KG in Vienna

**Questions referred**

1. In the light of the principles established in the judgment of the Court of Justice of 4 July 2013 in Case C-100/12 <sup>(1)</sup> *Fastweb SpA*, is Article 1(3) of Directive 89/665/EEC 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 <sup>(2)</sup>, in the version amended by Directive 2007/66/EC amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts <sup>(3)</sup> ('Directive 89/665'), to be interpreted as meaning that a tenderer whose bid was definitively excluded by the contracting authority and who is therefore not a tenderer concerned within the meaning of Article 2a of Directive 89/665 may be refused access to a review of the award decision (decision on the conclusion of a framework agreement) and of the conclusion of the contract (including the award of damages required under Article 2(7) of the Directive), even where only two tenderers submitted bids and the bid submitted by the successful tenderer, to whom the contract was awarded, should, in the submission of the tenderer not concerned, also have been excluded?

If the answer to Question 1 is in the negative: