Parties to the main proceedings

Applicant: PORR Építési Kft.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Questions referred

(1) Must the provisions of Directive 2006/112/EC, ([1]) in particular the principles of proportionality, fiscal neutrality and effectiveness, be interpreted as precluding a practice whereby, in circumstances not involving tax fraud, the national tax authorities, when calculating the tax, refuse the right to deduct that may be exercised on the basis of a VAT invoice issued in accordance with the ordinary taxation regime, because they consider that the invoice for the transaction ought to have been issued in accordance with the reverse charge procedure, and fail, before refusing the right to deduct, to examine

— whether the issuer of the invoice can reimburse the recipient of the invoice the amount of VAT paid in error, or

— whether the issuer of the invoice may lawfully (within the national legal framework) correct and regularise that invoice, and in this way obtain from the tax authorities reimbursement of the tax paid by him in error?

(2) Must the provisions of Directive 2006/112/EC, in particular the provisions of proportionality, fiscal neutrality and effectiveness, be interpreted as precluding a practice whereby the national tax authorities, when calculating the tax, refuses the right to deduct that may be exercised on the basis of a VAT invoice issued in accordance with the ordinary taxation regime, because they consider that the invoice for the transaction ought to have been issued in accordance with the reverse charge procedure, and whereby those authorities, when charging the tax, do not order the recipient of the invoice to be reimbursed the tax paid in error, even though the issuer of the invoice has paid the amount of the VAT in those invoices to the revenue authorities?

([1]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax; (OJ 2006 L 347, p 1).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 11 December 2017 — Telecom Italia SpA v Ministero dello Sviluppo Economico and Infrastrutture e telecomunicazioni per l'Italia SpA (Infratel Italia SpA)

(Case C-697/17)

(2018/C 112/19)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Telecom Italia SpA

Respondents: Ministero dello Sviluppo Economico and Infrastrutture e telecomunicazioni per l'Italia SpA (Infratel Italia SpA)

Question referred

Must the first sentence of Article 28(2) of Directive 2014/24/EU ([1]) be interpreted as requiring pre-qualified operators and those who submit tenders in the context of a restricted procedure to be completely legally and economically identical and, in particular, must that provision be interpreted as precluding the conclusion of an agreement between the holding companies which control two pre-qualified operators at some point between pre-qualification and the submission of tenders, where: (a) that agreement has as its purpose and effect (inter alia) the completion of a merger by the absorption of one of those pre-qualified undertakings into the other (a transaction which, however, is authorised by the European Commission); (b) the effects of that merger were fully realised after the submission of a tender by the absorbing undertaking (for which reason, at the time the tender was submitted, its composition had not changed from that which existed at the time of pre-qualification); (c) the undertaking then absorbed (whose composition had not changed at the time of the deadline for submitting tenders) has however stated that it is not taking part in the restricted procedure, probably in implementation of the contractual schedule established by the agreement drawn up between the holding companies?

([1]) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 14 December 2017 — Unareti SpA v Ministero dello Sviluppo Economico and Others

(Case C-702/17)

(2018/C 112/20)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellants: Unareti SpA

Respondents: Ministero dello Sviluppo Economico, Presidenza del Consiglio dei Ministri — Dipartimento per gli Affari Regionali, Autorità Garante per l'Energia Elettrica il Gas e il Sistema Idrico — Sede di Milano, Presidenza del Consiglio dei Ministri — Conferenza Stato Regioni ed Unificata, Ministero per gli affari regionali, Dipartimento per gli affari regionali e le autonomie, Conferenza Unificata Stato Regioni e Enti Locali

Questions referred

In particular, the Court is asked to establish whether those principles and laws preclude national legislation, as described above, that provides for retrospective application of criteria for determining the amount of the reimbursements payable to former concession holders, thus affecting previous contractual relationships, or whether the application of those criteria can be justified, including in view of the proportionality principle, by the requirement of protecting other public interests of European importance, relating to the necessity of improving protection for competition within the market in question and of giving greater protection to service users, who could indirectly bear the cost of an increase in the sums payable to former concession holders.