

Operative part of the judgment

Articles 5, 13 and 14 of Directive 2008/115 of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, read in the light of Article 7, Article 19(2) and Articles 21 and 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding national legislation which does not provide, as far as possible, for the basic needs of a third-country national to be met where:

- that national has appealed against a return decision made in respect of him or her;
- the adult child of that third-country national is suffering from a serious illness;
- the presence of that third-country national with that adult child is essential;
- an appeal was brought on behalf of that adult child against a return decision taken against him or her, the enforcement of which may expose that adult child to a serious risk of grave and irreversible deterioration in his or her state of health, and
- that third-country national does not have the means to meet his or her needs himself or herself.

⁽¹⁾ OJ C 255, 29.7.2019

Judgment of the Court (Eighth Chamber) of 1 October 2020 (request for a preliminary ruling from the Hof van Cassatie — Belgium) — Vos Aannemingen BVBA v Belgische Staat

(Case C-405/19) ⁽¹⁾

(Reference for a preliminary ruling — Taxation — Common system of value added tax (VAT) — Sixth Directive 77/388/EEC — Article 17(2)(a) — Right to deduct input tax — Services also having benefited third parties — Existence of a direct and immediate link with the taxable person's economic activity — Existence of a direct and immediate link with one or more output transactions)

(2020/C 399/25)

Language of the case: Dutch

Referring court

Hof van Cassatie

Parties to the main proceedings

Applicant: Vos Aannemingen BVBA

Defendant: Belgische Staat

Operative part of the judgment

1. Article 17(2)(a) of the Sixth Council Directive 77/388/EEC of 17 May 1977, on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 95/7/EC of 10 April 1995, must be interpreted as meaning that the fact that expenditure incurred by a taxable person, a property developer, in respect of advertising costs, administrative costs and estate agents' commission, in connection with the sale of apartments, also benefits a third party, does not preclude that taxable person deducting in full the input value added tax paid on that expenditure where, firstly, there is a direct and immediate link between that expenditure and the taxable person's economic activity and, secondly, the benefit to the third party is ancillary to the taxable person's business purposes.

2. Article 17(2)(a) of the Sixth Directive 77/388, as amended by Directive 95/7, must be interpreted as meaning that the fact that the expenditure incurred by the taxable person also benefits a third party does not preclude that taxable person deducting in full the input value added tax paid in relation to that expenditure, in the case where that expenditure does not relate to the taxable person's general overheads but constitutes costs attributable to particular output transactions, in so far as those costs maintain a direct and immediate link with the taxable person's taxable transactions, which is for the referring court to assess with regard to all of the circumstances in which those transactions occurred.
3. Article 17(2)(a) of the Sixth Directive 77/388, as amended by Directive 95/7, must be interpreted as meaning that, in the case where a third party benefits from expenditure incurred by the taxable person, the fact that it is possible for the taxable person to pass on to the third party a part of the expenditure so incurred constitutes one of the elements, along with all of the other circumstances in which the transactions concerned occurred, which the referring court must consider for the purposes of determining the scope of the taxable person's right to deduct value added tax.

(¹) OJ C 288, 26.8.2019.

Judgment of the Court (Tenth Chamber) of 24 September 2020 (request for a preliminary ruling from the Verwaltungsgericht Berlin — Germany) — NMI Technologietransfer GmbH v EuroNorm GmbH

(Case C-516/19) (¹)

(Reference for a preliminary ruling — State aid — Articles 107 and 108 TFEU — Regulation (EU) No 651/2014 — Exemption of certain categories of aid compatible with the internal market — Annex I — Small and medium-sized enterprises (SMEs) — Definition — Independence test — Article 3(1) — Autonomous enterprise — Article 3(4) — Not included — Indirect control of 25 % of the capital or voting rights by public bodies — Concepts of ‘control’ and ‘public bodies’)

(2020/C 399/26)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicant: NMI Technologietransfer GmbH

Defendant: EuroNorm GmbH

Operative part of the judgment

Article 3(4) of Annex I to Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 [TFEU] must be interpreted as meaning that it does not preclude national legislation which excludes an enterprise from being regarded as a small or medium-sized enterprise (SME), where the body of the enterprise which holds the main part of its capital, although it is not authorised to ensure its day-to-day management, is composed for the most part of members representing public bodies, within the meaning of that article, so that the latter jointly exercise, by that sole fact, indirect control, within the meaning of that article, over the former enterprise, it being understood that:

- first, the concept of ‘public body’ in that article is intended to include entities such as universities and higher education establishments as well as a chamber of commerce and industry, provided that those entities are created to specifically meet needs in the general interest, have legal personality and are either financed for the most part or controlled directly or indirectly by the State, by regional or local authorities or by other public bodies, it being irrelevant in that respect that the persons appointed on the proposal of those entities serve on a voluntary basis within the enterprise concerned, since it is in their capacity as members of the latter that they have been proposed and appointed, and