

**Parties to the main proceedings**

*Appellant:* Staat der Nederlanden

*Respondents:* Essent NV

Essent Nederland BV

**Questions referred**

1. Must Article 345 TFEU be interpreted as meaning that the 'rules in Member States governing the system of property ownership' also include the rule in respect of the absolute ban on privatisation which is at issue in the present case, as set out in the Besluit aandelen netbeheerders (Decree on shares in system operators), in conjunction with Article 93 of the Elektriciteitswet 1998 (1998 Law on electricity) and Article 85 of the Gaswet (Law on gas), under which shares in a system operator can be transferred only within the circle of public authorities?
2. If Question 1 is answered in the affirmative, does this then have the effect that the rules relating to the free movement of capital are not applicable to the group ban and to the ban on secondary activities, or at least that a review of the group ban and of the ban on secondary activities in the light of the rules relating to the free movement of capital is not required?
3. Are the objectives which also form the basis of the Wou (Wet onafhankelijk netbeheer) (Law on independent network operation), that is to say, to achieve transparency in the energy market and to prevent distortions of competition by opposing cross-subsidisation in the broad sense (including strategic information exchange), purely economic interests, or can they also be regarded as interests of a non-economic nature, in the sense that in certain circumstances, as compelling reasons in the general interest, they may constitute a justification for a restriction of the free movement of capital?

**Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands), lodged on 29 February 2012 — Staat der Nederlanden v Eneco Holding NV**

(Case C-106/12)

(2012/C 151/27)

*Language of the case: Dutch*

**Referring court**

Hoge Raad der Nederlanden

**Parties to the main proceedings**

*Appellant:* Staat der Nederlanden

*Respondent:* Eneco Holding NV

**Questions referred**

1. Must Article 345 TFEU be interpreted as meaning that the 'rules in Member States governing the system of property ownership' also include the rule in respect of the absolute ban on privatisation which is at issue in the present case, as set out in the Besluit aandelen netbeheerders (Decree on shares in system operators), in conjunction with Article 93 of the Elektriciteitswet 1998 (1998 Law on electricity) and Article 85 of the Gaswet (Law on gas), under which shares in a system operator can be transferred only within the circle of public authorities?
2. If Question 1 is answered in the affirmative, does this then have the effect that the rules relating to the free movement of capital are not applicable to the group ban, or at least that a review of the group ban in the light of the rules relating to the free movement of capital is not required?
3. Are the objectives which also form the basis of the Wou (Wet onafhankelijk netbeheer) (Law on independent network operation), that is to say, to achieve transparency in the energy market and to prevent distortions of competition by opposing cross-subsidisation in the broad sense (including strategic information exchange), purely economic interests, or can they also be regarded as interests of a non-economic nature, in the sense that in certain circumstances, as compelling reasons in the general interest, they may constitute a justification for a restriction of the free movement of capital?

**Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands), lodged on 29 February 2012 — Staat der Nederlanden v Delta NV**

(Case C-107/12)

(2012/C 151/28)

*Language of the case: Dutch*

**Referring court**

Hoge Raad der Nederlanden

**Parties to the main proceedings**

*Appellant:* Staat der Nederlanden

*Respondent:* Delta NV

**Questions referred**

1. Must Article 345 TFEU be interpreted as meaning that the 'rules in Member States governing the system of property ownership' also include the rule in respect of the absolute ban on privatisation which is at issue in the present case, as set out in the Besluit aandelen netbeheerders (Decree on shares in system operators), in conjunction with Article 93 of the Elektriciteitswet 1998 (1998 Law on electricity) and Article 85 of the Gaswet (Law on gas), under which shares in a system operator can be transferred only within the circle of public authorities?