

Question referred

Does Council Directive 2004/114/EC ⁽¹⁾ of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service establish a non-discretionary right to a visa for the purposes of studies and the subsequent residence permit under Article 12 of the so called 'Student Directive', if the 'conditions of admission', namely those listed in Articles 6 and 7 of the directive, are met and there are no grounds for refusing the visa under Article 6(1)(d) of the directive?

⁽¹⁾ OJ 2004 L 375, p. 12.

Request for a preliminary ruling from the Administrativen sad — Varna (Bulgaria) lodged on 13 September 2013 — 'Traum' EOOD v Direktor na Direktsia 'Obzhalvane i danachno osiguritelna praktika' — grad Varna pri Tsentralno Upravlenie na Natsionalnata Agentsia za Prihodite

(Case C-492/13)

(2013/C 344/83)

Language of the case: Bulgarian

Referring court

Administrativen sad — Varna

Parties to the main proceedings

Applicant: 'Traum' EOOD

Defendant: Direktor na Direktsia 'Obzhalvane i danachno osiguritelna praktika' — grad Varna pri Tsentralno Upravlenie na Natsionalnata Agentsia za Prihodite

Questions referred

1. Is the requirement giving entitlement to tax exemption under Article 138(1) of Directive 2006/112/EC ⁽¹⁾ fulfilled and is there no exception under the second paragraph of Article 139(1) of the Directive in circumstances such as those in the main proceedings in which it was established that the absence of the characteristic of a 'person registered under the ZDDS' in respect of the acquirer of the goods was indicated in the Union database after the actual supply, but the applicant claims that it acted with due diligence by obtaining information in this system which is not documented? The late recording of the characteristic of a 'person registered under the ZDDS' emerges from hard copies/information of the tax authorities.
2. Are the principles of fiscal neutrality, proportionality and protection of legitimate expectations violated by adminis-

trative practice and case-law according to which it is for the vendor — the consignor under the transport contract — to determine the authenticity of the acquirer's signature and to establish whether it comes from a person representing the company (the acquirer), one of its employees in a corresponding position or an authorised person?

3. In a case such as the present does Article 138(1) of Directive 2006/112/EC have direct effect, and can the national court directly apply the provision?

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

Action brought on 12 September 2013 — European Commission v Republic of Estonia

(Case C-493/13)

(2013/C 344/84)

Language of the case: Estonian

Parties

Applicant: European Commission (represented by: G. Braun, L. Nicolae and L. Naaber-Kivisoo, acting as Agents)

Defendant: Republic of Estonia

Form of order sought

— declare that, by failing to ensure, in the case of the Majandus- ja Kommunikatsiooniministeerium, effective structural separation of the regulatory function from activities associated with ownership or control of undertakings providing electronic communications networks and/or services, the Republic of Estonia has failed to fulfil its obligations under Article 3(2) of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services; ⁽¹⁾

— order the Republic of Estonia to pay the costs.

Pleas in law and main arguments

The Commission considers that the Majandus- ja Kommunikatsiooniministeerium (Ministry of the Economy and Communications) is included in the scope of the concept of 'national regulatory authority' defined in Article 2(g) of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) and the provisions of Article 3 of the Framework Directive apply to it, especially in connection with the structural separation referred to in Article 3(2).

The Commission submits that in addition to regulatory tasks the Majandus- ja Kommunikatsiooniministeerium of the Republic of Estonia also carries out activity associated with the ownership or control of undertakings providing electronic communications networks and/or services. Effective structural separation of the two functions is not ensured, which is contrary to the requirements of Article 3(2) of the Framework Directive.

(¹) OJ 2002 L 108, p. 33.

Request for a preliminary ruling from the Simboulio tis Epikratias lodged on 16 September 2013 — Agrooikosystemata EPE v Ipourgos Ikonomias kai Ikonomikon, Ipourgos Agrotikis Anaptixis kai Trofimon, Region of Thessaly

(Case C-498/13)

(2013/C 344/85)

Language of the case: Greek

Referring court

Simboulio tis Epikratias

Parties to the main proceedings

Applicant: Agrooikosystemata EPE

Defendants: Ipourgos Ikonomias kai Ikonomikon, Ipourgos Agrotikis Anaptixis kai Trofimon, Region of Thessaly

Question referred

Must those who are to qualify as beneficiaries of the long-term agricultural land set-aside scheme under Regulation (EEC) No 2078/92 (¹) and Regulation (EC) No 746/96 (²) be farmers or is it sufficient if they assume the financial risk of the land entered in the scheme and are responsible for its management?

(¹) Council Regulation (EEC) No 2078/92 of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside (OJ 1992 L 215, p. 85).

(²) Commission Regulation (EC) No 746/96 of 24 April 1996 laying down detailed rules for the application of Council Regulation (EEC) No 2078/92 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside (OJ 1996 L 102, p. 19).

Action brought on 18 September 2013 — European Commission v Grand-Duchy of Luxembourg

(Case C-502/13)

(2013/C 344/86)

Language of the case: French

Parties

Applicant: European Commission (represented by: F. Dintilhac, C. Soulay, acting as Agents)

Defendant: Grand-Duchy of Luxembourg

Form of order sought

— declare that, by applying a VAT rate of 3 % to digital books (or electronic books), the Grand-Duchy of Luxembourg failed to fulfil its obligations under Articles 96 to 99, 110 and 114 of the VAT directive, (¹) read in conjunction with Annexes II and III to that directive and its implementing regulation, (²)

— order Grand-Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The Commission raises a single plea in law in support of its action, alleging that, by subjecting the supply of electronic books to a super-reduced rate of 3 % from 1 January 2012, the national legislation is not compatible with the VAT directive.

According to the Commission, the application of a reduced rate of VAT is incompatible with the wording of Articles 96 and 98 of the VAT directive, in so far as such a rate may be applied only to the supplies of goods and services referred to in Annex III to that directive. In the absence of express mention of the supply of digital books in that annex, the latter may not enjoy a reduced rate of VAT. That is moreover confirmed by the wording of the second subparagraph of Article 98(2), which explicitly excludes electronically supplied services from the benefit of reduced rates of VAT, and by the adoption by the VAT Committee of guidelines according to which reduced rates of VAT do not apply to the supply of digital books.

The Commission considers also that the reduced rate of 3 %, that is to say a rate which is below the minimum rate of 5 % fixed by Article 99 of the VAT directive, to the supply of digital books, may not be covered by the exception provided for by Article 110 of the VAT directive, or in accordance with Article 114 of that directive.

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

(²) Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for the VAT directive (OJ 2011 L 77, p. 1).