



EUROPEAN PARLIAMENT



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Parliamentary questions

8 January 2009

E-6246/2008

Answer given by Mr Kovács on behalf of the Commission

Regarding the available information of the legal position in Germany, the Commission considers that the conclusions made by the European Court of Justice in Case C-288/07 are not applicable to the issue raised by the BDE in its complaints.

It is true that the questions in the reference for a preliminary ruling in Case C-288/07 pertain to the interpretation of the second subparagraph of Article 4(5) of the Sixth VAT Directive⁽¹⁾. This case concerns the operation of off-street car parking facilities by local authorities. The private sector provides similar services in each of those areas. The Court concluded that it is the nature of the activity, and not the local conditions of competition, that has to be taken into account to assess the risk of distortions of competition.

The VAT treatment of bodies governed by public law has been source of litigation which has to be taken in consideration. Within this context, the judgment given by the Court on 13 December 2007 in Case C-408/06 Götz should be mentioned.

As to the question of whether the treatment of a public body as a non-taxable person for VAT purposes leads to significant distortions of competition, it is to be observed that in cases where it is for the public body alone to fulfil the activity concerned in a country, there is no question of there being any competition between identical services supplied by the public bodies and those provided by other private operators. This appears to be the situation in Germany as regards services in the area of sewerage disposal.

The complainant will be informed of the analysis of its complaint concerning the services in the area of sewerage disposal in the near future. Presently, the complex issue in the sector of waste disposal is still under examination. In the light of the assessment, the Commission will determine the way forward for this case.

⁽¹⁾ In the new VAT Directive (Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJ L 347, 11.12.2006,) Article 4 of the Sixth VAT Directive (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, OJ L 145, 13.6.1977) was included in one Title which was then split into several Articles, one of which is Article 13, which includes the essence of paragraph 5.

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