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Parliamentary questions

20 November 2008

E-6246/08

WRITTEN QUESTION by **Karl-Heinz Florenz (PPE-DE)** to the Commission

► Subject: ECJ judgment in Case C-288/07 — BDE complaints at unequal fiscal treatment

Answer(s)

This question derives from the Court judgment of 16 September 2008 in Case C-288/07 concerning a preliminary ruling on the VAT requirement for public-law car-parking facilities. In this case the Court states that two conditions must be satisfied to allow a public-law undertaking to be exempted from tax. First, it must be a body under public law, and second, the activity must be carried on within the framework of the public authority. Even if these conditions are satisfied the public-law undertaking cannot be exempted from tax if this would (or could) lead to significant (potential) distortion of competition.

The Federal Association for the German Waste Disposal Industry (BDE) lodged a complaint with the European Commission on 13 July 2006 concerning unequal fiscal treatment of undertakings organised under public law and private law in the waste water industry, and on 6 June 2007 a comparable complaint on unequal treatment in the field of waste disposal. The above Court judgment is likely to influence the response to these complaints.

In the light of the above, would the Commission state:

- What conclusions does the Commission draw from the judgment with regard to the complaints lodged by the BDE on unequal fiscal treatment? Is the judgment likely to be applied to other cases in which equal fiscal treatment is at issue?
- What does the Commission see as the judgment's implications with regard to the complaints lodged by the BDE?
- How does the Commission assess the Court's ruling that the criterion 'significant distortion of competition' should not be narrowly interpreted?
- What is the current state of progress with processing the complaints lodged by the BDE as much as two years ago? When does the Commission expect to be making progress, when will a decision be taken?

Original language of question: **DE**

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