

3. If the supplementary tax on heated tobacco is not another indirect tax on excise goods for specific purposes within the meaning of Article 1(2) of Directive 2008/118: Must point (b) of the first subparagraph of Article 14(1) and point (c) of the first subparagraph of Article 14(2) of Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco (OJ 2011 L 176, p. 24) be interpreted as precluding national legislation of a Member State on the levying of tobacco tax on heated tobacco which provides, with regard to the calculation of the tax, that that tax is to be determined according to an *ad valorem* tax rate and a specific tax rate based on the weight and given number of rolls of tobacco?

<sup>(1)</sup> Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ 2009 L 9, p. 12).

<sup>(2)</sup> Council Directive (EU) 2019/475 of 18 February 2019 amending Directives 2006/112/EC and 2008/118/EC as regards the inclusion of the Italian municipality of Campione d'Italia and the Italian waters of Lake Lugano in the customs territory of the Union and in the territorial application of Directive 2008/118/EC (OJ 2019 L 83, p. 42).

<sup>(3)</sup> Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco (OJ 2011 L 176, p. 24).

**Request for a preliminary ruling from the Tribunale Amministrativo Regionale per la Puglia (Italy)  
lodged on 30 May 2022 — Autorità Garante della Concorrenza e del Mercato v Comune di Ginosa**

(Case C-348/22)

(2022/C 318/41)

*Language of the case: Italian*

**Referring court**

Tribunale Amministrativo Regionale per la Puglia

**Parties to the main proceedings**

*Applicant:* Autorità Garante della Concorrenza e del Mercato

*Defendant:* Comune di Ginosa

**Questions referred**

1. Is Directive 2006/123 <sup>(1)</sup> valid and binding on the Member States, or is it invalid inasmuch as, being a harmonisation directive, it was adopted only by a majority vote, rather than unanimously, in breach of Article 115 [of the Treaty on the Functioning of the European Union]?
2. Does Directive 2006/123, also known as the Bolkestein directive, lay down, objectively and in the abstract, sufficiently detailed rules and consequently preclude the exercise of any discretion by national legislatures, this being the minimum requirement for that directive to be regarded as self-executing and immediately applicable?
3. *In the event that Directive 2006/123 is held to be non-self-executing*, is the effect of mere exclusion or merely preventive disapplication of national law compatible with the principle of legal certainty even where it is impossible for a national court to interpret national law in conformity with EU law or, on the contrary, may or must national law apply in such a situation, without prejudice to the specific penalties provided for under EU law for the failure by a [Member] State to fulfil its obligations under the Treaty of Accession (Article 49 [TFEU]) or for failure to implement a directive (infringement proceedings)?
4. Does the *direct effect* of Article 12(1), (2) and (3) of Directive 2006/123 amount to recognition of the self-executing nature or immediate applicability of that directive or, in the case of a harmonising directive such as Directive 2006/123 ('[it must be considered] that Articles 9 to 13 of Directive 2006/123 provide for exhaustive harmonisation' ([paragraph 61 of] the judgment in *Promoimpresa*)), must it be understood as requiring a [Member] State to adopt harmonisation measures which are not merely general but binding as to their content?

5. May or must the classification of a directive as self-executing or otherwise and, in the case of classification of a directive as self-executing, the merely preventive disapplication of national law, be regarded as falling within the exclusive jurisdiction of the national courts (which have been provided, for that purpose, with specific mechanisms to aid interpretation, such as making a reference to the Court of Justice for a preliminary ruling or seeking a ruling on constitutionality) or as falling also within the remit of the officials or heads of individual municipalities?
6. *In the event that Directive 2006/123 is instead held to be self-executing*, given that Article 49 [TFEU] has been held to preclude the automatic extension of concessions over or authorisations concerning State-owned maritime property for tourism and recreational use only 'in so far as those concessions are of certain cross-border interest', is the fulfilment of that condition a prerequisite also for the application of Article 12(1) and (2) of [that] directive?
7. Is it consistent with the aims pursued by Directive 2006/123 and by Article 49 [TFEU] for a national court to find that, generally and in the abstract, there is a certain cross-border interest with reference to the entire national territory or, on the contrary, given the powers, in Italy, of individual municipalities, must such an assessment be understood as relating to the coastal territory of each individual municipality and, therefore, as falling exclusively within the remit of those municipalities?
8. Is it consistent with the aims pursued by Directive 2006/123 and by Article 49 [TFEU] for a national court to find that, generally and in the abstract, there is a scarcity of resources and available concessions with reference to the entire national territory or, on the contrary, given the powers, in Italy, of individual municipalities, must such an assessment be understood as relating to the coastal territory of each individual municipality and, therefore, as falling exclusively within the remit of those municipalities?
9. *In the event that Directive 2006/123 is held, in the abstract, to be self-executing*, can such immediate applicability be regarded as pertaining even in a legislative context such as that in Italy, in which Article 49 of the Codice della navigazione (Shipping Code) (which provides that, on the expiry of a concession, 'all immovable property shall become the property of the State, without any compensation or reimbursement being due') operates, and is such a consequence of the self-executing nature or immediate applicability of that directive (particularly with reference to duly authorised masonry structures and concessions over State-owned property that are functionally linked to a tourist business such as a hotel or holiday resort) consistent with the protection of fundamental rights, such as the right to property, which are accorded special protection under EU law and in the Charter of Fundamental Rights?

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(<sup>1</sup>) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36).

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## Action brought on 3 June 2022 — European Commission v Kingdom of the Netherlands

(Case C-360/22)

(2022/C 318/42)

Language of the case: Dutch

### Parties

*Applicant*: European Commission (represented by: W. Roels, acting as Agent)

*Defendant*: Kingdom of the Netherlands

### Form of order sought

The Commission claims that the Court should:

- declare that, by approving and maintaining in force Articles 85(1)(b) and 87(2)(f) of the Pensioenwet (Law on Pensions), read in conjunction with Article 19b(2) of the Wet op de loonbelasting (Law on Wages Tax), the Kingdom of the Netherlands has failed to fulfil its obligations under Articles 45, 56 and 63 TFEU and Articles 28, 36 and 40 EEA;