

**Request for a preliminary ruling from the Audiencia provincial de Tarragona, Sección cuarta (Spain)  
lodged on 14 April 2016 — Ministerio Fiscal**

**(Case C-207/16)**

(2016/C 251/09)

*Language of the case: Spanish*

**Referring court**

Audiencia provincial de Tarragona, Sección cuarta

**Party to the main proceedings**

Ministerio Fiscal

**Questions referred**

1. Can the sufficient seriousness of offences, as a criterion which justifies interference with the fundamental rights recognised by Articles 7 and 8 of the Charter, <sup>(1)</sup> be determined taking into account only the sentence which may be imposed in respect of the offence investigated, or is it also necessary to identify in the criminal conduct particular levels of harm to individual and/or collective legally-protected interests?
2. If it were in accordance with the constitutional principles of the European Union, used by the Court of Justice in its judgment of 8 April 2014 [Joined Cases C-293/12 (*Digital Rights Ireland*) and C-594/12 (*Seitlinger and Others*)] as standards for the strict review of the Directive, <sup>(2)</sup> to determine the seriousness of the offence solely on the basis of the sentence which may be imposed, what should the minimum threshold be? Would it be compatible with a general provision setting a minimum of three years' imprisonment?

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<sup>(1)</sup> Charter of Fundamental Rights of the European Union (OJ C 326, p. 391).

<sup>(2)</sup> Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ 2006 L 105, p. 54).

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**Request for a preliminary ruling from the Commissione Tributaria Provinciale di Torino (Italy)  
lodged on 15 April 2016 — Bimotor SpA v Agenzia delle Entrate — Direzione Provinciale II di Torino**

**(Case C-211/16)**

(2016/C 251/10)

*Language of the case: Italian*

**Referring court**

Commissione Tributaria Provinciale di Torino

**Parties to the main proceedings**

*Appellant:* Bimotor SpA

*Respondent:* Agenzia delle Entrate — Direzione Provinciale II di Torino

**Question referred**

Does the Community legislation on VAT (Sixth Council Directive 77/388/EEC <sup>(1)</sup> of 17 May 1977, as amended by Directive 2002/38/EC <sup>(2)</sup> and Directive 2006/112/EC <sup>(3)</sup>) preclude legislation of a Member State — such as Article 34(1) of Law No 388 of 23 December 2000 — under which VAT claims may be repaid or used to offset tax owed, for a given tax year, not in their entirety but only up to a predetermined maximum limit?

- <sup>(1)</sup> Sixth 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 1977 L 145, p. 1).
- <sup>(2)</sup> Council Directive 2002/38/EC of 7 May 2002 amending and amending temporarily Directive 77/388/EEC as regards the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services (OJ 2002 L 128, p. 41).
- <sup>(3)</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

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**Request for a preliminary ruling from the Vergabekammer Südbayern (Germany) lodged on 15 April 2016 — DUK Versorgungswerk eV, Gothaer Pensionskasse AG v BG Klinik für Berufskrankheiten Bad Reichenhall gGmbH**

**(Case C-212/16)**

(2016/C 251/11)

*Language of the case: German*

**Referring court**

Vergabekammer Südbayern

**Parties to the main proceedings**

*Applicants:* DUK Versorgungswerk eV, Gothaer Pensionskasse AG

*Defendant:* BG Klinik für Berufskrankheiten Bad Reichenhall gGmbH

*Joined parties:* Versorgungsanstalt des Bundes und der Länder, VBG Verwaltungs-Berufsgenossenschaft

**Questions referred**

1. Is it compatible with ensuring effective judicial protection in accordance with Article 1(3) and Article 2d(1)(a) of Directive 89/665/EEC, <sup>(1)</sup> as amended by Directive 2007/66/EC, <sup>(2)</sup> for a person who asserts the ineffectiveness of a contract concluded without prior publication of a contract notice in the *Official Journal of the European Union* not to be eligible to use the review procedure, despite risk of harm, on the ground that the contracting authority, which, prior to awarding the contract, did not publish a notice in the *Official Journal of the European Union* and did not follow a proper award procedure, conclusively specifies, by a statement during the review procedure, the service to be provided in such a way that the economic operator bringing proceedings could not provide it?
2. (a) Does it constitute a material contractual amendment within the meaning of the case-law of the Court of Justice (judgment of 19 June 2008 in Case C-454/06 *Pressetext*) if a public undertaking hived off from another public undertaking concludes, in the context of transfer of part of a business within the meaning of Directive 2001/23/EC, <sup>(3)</sup> with the previous provider of occupational pension services to the hiving-off public undertaking, a new contract for the provision of occupational pensions which, for the purpose of safeguarding the rights of the transferred employees to old-age and invalidity benefits under an occupational pension scheme, is in that respect identical with the original contract and the hived-off public undertaking is controlled by the hiving-off public undertaking as sole proprietor?