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Request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Portugal) lodged on 24 January 2019 — Vodafone Portugal — Comunicações Pessoais, SA v Autoridade Tributária e Aduaneira

(Case C-43/19)

(2019/C 139/32)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: Vodafone Portugal — Comunicações Pessoais, SA

Defendant: Autoridade Tributária e Aduaneira

Questions referred

1.

Must Articles 2(1)(c), 9, 24, 72 and 73 of Council Directive 2006/112/EC of 28 November 2006 be construed as meaning that the levying by an electronic communications operator on its former customers (to whom it granted promotional benefits in the form of free-of-charge installation, service activation, portability or equipment, or the application of special rates, in exchange for a commitment by customers to observe a tie-in period, which those customers have not fulfilled for reasons attributable to themselves) of an amount which, as required by law, must not exceed the costs incurred by the supplier undertaking for the installation of the service and must be proportionate to the benefit granted to the customer, that benefit being identified and quantified as such in the contract concluded, and therefore may not automatically reflect the total value of the instalments outstanding on the date of termination, constitutes a supply of services liable to VAT?

2.

In the light of the provisions cited above, does the fact that the amounts concerned are payable following termination of the contract, when the operator no longer supplies services to the customer, and the fact that no specific act of consumption has occurred since the contract was terminated, preclude the classification of such amounts as consideration for the supply of services?

3.

In the light of the provisions cited above, is it impossible for the amount concerned to be treated as consideration for the supply of services because the operator and its former customers specified in advance, as required by law, in a standard-form contract, the formula for calculating the amount which former customers must pay if they fail to comply with the tie-in period provided for in the service contract?

4.

In the light of the provisions cited above, is it impossible for the amount concerned to be treated as consideration for the supply of services when the amount at issue does not reflect the amount which the operator would have received during the remainder of the tie-in period if the contract had not been terminated?