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Request for a preliminary ruling from the Finanzgericht Köln (Germany) lodged on 28 August 2020
— Phantasialand v Finanzamt Brühl

(Case C-406/20)

(2020/C 423/37)

Language of the case: German

Referring court

Finanzgericht Köln

Parties to the main proceedings

Applicant: Phantasialand

Defendant: Finanzamt Brühl

Questions referred

1.

Can the listing of fairs and amusement parks in Annex III(7) to Directive 2006/112, (1) in conjunction with Article 98(2) thereof, be relied on as the basis for drawing a distinction in the form of the taxation of a theme park at the standard rate, even though the term ‘amusement park’ covers both static and mobile fairground undertakings?

2.

Is the case-law of the Court of Justice of the European Union, to the effect that different services may be dissimilar on account of their context, applicable to the provision of services by mobile fairground entertainers and by static fairground undertakings in the form of theme parks?

3.

In the event that the second question is answered in the negative:

Does the ‘point of view of the average consumer’, which, in accordance with the case-law of the Court of Justice of the European Union, is an essential element of the principle of fiscal neutrality, constitute a ‘conceptual perspective’ not amenable to the gathering of evidence based on expert opinion?

(1) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).