

JUDGMENT OF THE COURT (Fifth Chamber)

9 October 2014 (*)

(Reference for a preliminary ruling — Taxation — VAT — Directive 2006/112/EC — Article 138(1) — Exemptions for intra-Community transactions — Purchaser not registered for VAT purposes — Whether the vendor is required to establish the authenticity of the signature of the purchaser or his representative — Principles of proportionality, legal certainty and protection of legitimate expectations — Direct effect)

In Case C-492/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Administrativen sad Varna (Bulgaria), made by decision of 2 September 2013, received at the Court on 13 September 2013, in the proceedings

Traum EOOD

v

Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite,

THE COURT (Fifth Chamber),

composed of T. von Danwitz (Rapporteur), President of the Chamber, C. Vajda, A. Rosas, E. Juhász and D. Šváby, Judges,

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite, by D. Zhelyazkov, acting as Agent,
- the European Commission, by S. Petrova and L. Lozano Palacios, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 138(1) and 139(1), second subparagraph, of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), as amended by Council Directive 2010/88/EU of 7 December 2010 (OJ 2010 L 326, p. 1) ('the VAT Directive').

2 The request has been made in proceedings between Traum EOOD ('Traum') and the Direktor na Direktsia 'Obzhlvane i danachno-osiguritelna praktika' Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite (Director of the Varna 'Appeals and practice in the field of tax and social security' directorate at the central office of the public revenue agency) ('the Direktor') regarding a tax adjustment notice refusing to grant Traum an exemption from value added tax ('VAT') in respect of a transaction which it had categorised as an 'intra-Community supply of goods'.

Legal context

EU legislation

3 Article 131 of the VAT Directive provides as follows:

'The exemptions provided for in Chapters 2 to 9 [of Title IX of the VAT Directive] shall apply without prejudice to other Community provisions and in accordance with conditions which the Member States shall lay down for the purposes of ensuring the correct and straightforward application of those exemptions and of preventing any possible evasion, avoidance or abuse.'

4 Article 138(1) of that directive, included in Chapter 4, entitled 'Exemptions for intra-community transactions' of Title IX thereof, provides as follows:

'Member States shall exempt the supply of goods dispatched or transported to a destination outside their respective territory but within the Community, by or on behalf of the vendor or the person acquiring the goods, for another taxable person, or for a non-taxable legal person acting as such in a Member State other than that in which dispatch or transport of the goods began.'

5 Under Article 139(1) of that directive:

'The exemption provided for in Article 138(1) shall not apply to the supply of goods carried out by taxable persons who are covered by the exemption for small enterprises provided for in Articles 282 to 292.

Nor shall that exemption apply to the supply of goods to taxable persons, or non-taxable legal persons, whose intra-Community acquisitions of goods are not subject to VAT pursuant to Article 3(1).'

Bulgarian legislation

6 Article 7(1) of the Law on value added tax (Zakon za danak varhu dobavenata stoynost, DV No 63 of 4 August 2006), in the version applicable to the dispute in the main proceedings ('the ZDDS'), states as follows:

'An intra-Community supply of goods is a supply of goods which are transported by the vendor — a person registered for VAT in accordance with the present law — or on his behalf or on behalf of the purchaser from the national territory to another Member State, where the purchaser is a taxable person or a non-taxable legal person who is registered for VAT purposes in another Member State.'

7 Article 45 of the regulation implementing the ZDDS provides as follows:

'To prove an intra-Community supply of goods, the supplier must have at his disposal the following documents:

1. Document covering the supply:

(a) Invoice covering the supply stating, where the purchaser is registered for VAT purposes in another Member State, the purchaser's VAT identification number allocated by the Member State and under which the goods were delivered to him;

(b) The report identified in Article 117(2) [of the ZDDS] — in cases of an intra-Community supply under Article 7(4) [of the ZDDS];

...

2. Documents which prove that the goods have been dispatched or transported from the national territory to another Member State:

(a) The transport document or written confirmation by the purchaser or a person acting under his authority which certifies that the goods were received in the territory of another Member State, where the goods are transported on behalf of the supplier or the purchaser by a third party ...

...'

The dispute in the main proceedings and the questions referred for a preliminary ruling

8 In September and October 2009, Traum was engaged in the general construction of buildings and works of art. In its VAT return in respect of the period from 1 September to 31 October 2009, Traum declared that it had made intra-Community supplies of knife blocks and blanks, exempt from VAT, to the company Evangelos gaitadzis, established in Greece, producing documents referred to in Article 45 of the regulation implementing the ZDDS, namely two invoices containing the Greek VAT identification number of Evangelos gaitadzis, acceptance and handover reports, international consignment notes and a signed certificate attesting receipt of the goods.

9 After carrying out, on 7 October 2009, a search in the electronic database of the VAT Information Exchange System (VIES) ('the VIES database'), the Bulgarian tax authorities, on 2 November 2009, issued an offset and refund notice with regard to Traum. In that notice, it stated that a search in the VIES database had shown that Evangelos gaitadzis was registered for VAT purposes and had had a valid VAT identification number since 15 November 2005.

10 However, Evangelos gaitadzis neither declared the intra-Community acquisition nor paid VAT in Greece.

11 In a later VAT inspection, the Bulgarian tax authorities again consulted the VIES database and this time found that Evangelos gaitadzis had been de-registered for VAT purposes since 15 January 2006. Therefore, on 17 May 2011, those authorities issued an adjustment notice with regard to Traum, rendering the sale transactions to Evangelos gaitadzis subject to VAT on that ground that that company was not registered for VAT purposes in another Member State, so that the condition for exemption from VAT that the purchaser must be a taxable person, as provided for in Article 7(1) of the ZDDS, was not satisfied.

12 Having lodged an administrative appeal against that adjustment notice with the Direktor, Traum on that occasion produced the offset and refund notice issued by the Bulgarian tax authorities, which stated that Evangelos gaitadzis had a valid VAT identification number at the time

of the transaction.

13 By decision of 5 August 2011, the Direktor confirmed the adjustment notice on the basis that there was no evidence of the transport of the goods outside Bulgaria and no written confirmation of receipt of the goods by the purchaser. The Direktor maintained that the certificate attesting receipt of the goods in question and the acceptance and handover reports submitted contained no information as to the exact address at which the goods were accepted or the identity, position or power of representation of the person who accepted the goods on behalf of Evangelos gaitadzis, so that those documents had no probative force.

14 In support of its action before the Administrativen sad Varna (Varna Administrative Court) against the Direktor's decision, Traum submits that it provided the Bulgarian tax authorities with all the documents required by both the ZDDS and by the regulation implementing the ZDDS, proving that there had been an intra-Community supply. Furthermore, it argues that it carried out the transactions in question in good faith, having verified the VAT identification number of Evangelos gaitadzis in the VIES Database before concluding the transactions at issue.

15 The referring court observes that, with regard to the application of Article 7(1) of the ZDDS concerning the means of proving that goods had been transported within the Community and accepted in another Member State, Bulgarian case-law contains contradictory decisions as regards the probative force of international consignment notes. In that regard, it raises the issue whether the evidentiary requirements applied under Bulgarian law are in conformity with EU law.

16 In those circumstances, the Administrativen sad Varna decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is the requirement for entitlement to tax exemption under Article 138(1) of [the VAT] Directive ... fulfilled and is the exception under the second paragraph of Article 139(1) of the directive not applicable in circumstances such as those in the main proceedings, in which it was established that the person acquiring the goods was recorded as not having the status of a 'person registered for VAT purposes' in [the VIES database] after the actual supply had taken place, [or it is apparent from the information gathered by the Bulgarian tax authorities that the status of "person no longer registered for VAT purposes" was recorded belatedly] but the applicant claims that it acted with due diligence by carrying out searches for information in that database which are, however, not documented?

(2) Are the principles of fiscal neutrality, proportionality and protection of legitimate expectations infringed by administrative practice and case-law under which it is for the vendor — the consignor under the transport contract — to establish whether the signature of the person acquiring the goods is authentic and whether it is the signature of a person representing the acquiring company, one of its employees in a corresponding position or an authorised person?

(3) In a case such as that which gave rise to the main proceedings, does Article 138(1) of [the VAT] Directive ... have direct effect, and can the national court directly apply the provision?'

Consideration of the questions referred

Admissibility

17 The Direktor casts doubt on the admissibility of the request for a preliminary ruling, claiming that the referring court presented the facts of the main proceedings inaccurately. According to the Direktor, the referring court incorrectly considered it to be proved that the goods were transported to Greece and delivered to Evangelos gaitadzis.

18 In that regard, it must be observed, first, that the referring court merely informed the Court of the documents Traum submitted in order to prove that there had been an intra-Community supply of goods, without itself stating that the goods were actually transported to Greece or delivered to the purchaser and, secondly, that the questions referred to the Court concern, on the contrary, the evidentiary requirements to which the Member States may subject the VAT exemption in respect of an intra-Community supply of goods.

19 Moreover, it is settled case-law that, in connection with the procedure provided for in Article 267 TFEU, which is based on a clear separation of functions between the national courts and the Court of Justice, the latter is empowered only to give rulings on the interpretation or the validity of a EU law provision on the basis of the facts which the national court puts before it (see judgments in *WWF and Others*, C-435/97, EU:C:1999:418, paragraph 31, and *Endress*, C-209/12, EU:C:2013:864, paragraph 19 and the case-law cited). As regards, specifically, the alleged omissions and factual errors in the order for reference, it is sufficient to note that it is not for the Court of Justice but for the national court to ascertain the facts which have given rise to the dispute and to establish the consequences which they have for the judgment which it is required to deliver (judgment in *PreussenElektra*, C-379/98, EU:C:2001:160, paragraph 40).

20 The request for a preliminary ruling is therefore admissible.

The first and second questions

21 By its first and second questions, which may be examined together, the referring court asks, in essence, whether Articles 138(1) and 139(1), second subparagraph, of the VAT Directive must be interpreted as precluding, in circumstances such as those in the main proceedings, the tax authorities of a Member State from refusing to grant a VAT exemption in respect of an intra-Community supply of goods on the ground that the purchaser was not registered for VAT purposes in another Member State and that the supplier has proven neither the authenticity of the signature on the documents submitted in support of its declaration in respect of a supply it claims to be VAT exempt nor that the person who signed those documents on behalf of the purchaser had the authority to represent the purchaser.

22 In order to answer those questions, it should be recalled that an intra-Community supply, which is the corollary of the intra-Community acquisition, is exempt from VAT if the conditions laid down in Article 138(1) of the VAT Directive are satisfied (judgment in *Mecsek-Gabona*, C-273/11, EU:C:2012:547, paragraph 29 and the case-law cited).

23 Under Article 138(1) of the VAT Directive, Member States are to exempt supplies of goods dispatched or transported to a destination outside their respective territories but within the European Union, by or on behalf of the vendor or the person acquiring the goods, for another taxable person, or for a non-taxable legal person acting as such in a Member State other than that in which dispatch or transport of the goods began.

24 It is settled case-law that the exemption of VAT in respect of the intra-Community supply of goods becomes applicable only when the right to dispose of the goods as owner has been transferred to the purchaser, the supplier establishes that those goods have been dispatched or transported to another Member State and that, as a result of that dispatch or that transport, they

have physically left the territory of the Member State of supply (see, inter alia, judgment in *Teleos and Others*, C-409/04, EU:C:2007:548, paragraph 42).

25 In addition, as is apparent from Article 139(1), second subparagraph, of the VAT Directive, exemption from that tax is subject to the condition that the supply cannot be made to a taxable person, or a non-taxable legal person, whose intra-Community acquisitions of goods are not subject to VAT pursuant to Article 3(1) of that directive.

26 The questions asked by the referring court concern the types of evidence which may be required of the supplier to show that the conditions for exemption from VAT when carrying out an intra-Community supply of goods have been satisfied.

27 In this connection, it is apparent from the Court's case-law that, in the absence of any specific provision in the VAT Directive as to the evidence that taxable persons are required to provide in order to be granted the exemption from VAT, it is for the Member States to lay down, in accordance with Article 131 of that directive, the conditions in which intra-Community supplies of goods will be exempt, with a view to ensuring the correct and straightforward application of those exemptions and of preventing any possible evasion, avoidance or abuse. However, when they exercise their powers, Member States must observe the general principles of law which form part of the European Union legal order, which include, in particular, the principles of legal certainty and proportionality (judgment in *Mecsek-Gabona*, EU:C:2012:547, paragraph 36 and the case-law cited).

28 The principle of legal certainty, the corollary of which is the principle of the protection of legitimate expectations, requires, on the one hand, that rules of law must be clear and precise and, on the other, that their application must be foreseeable by those subject to them (judgment in *Plantanol*, C-201/08, EU:C:2009:539, paragraph 46 and the case-law cited).

29 It must be pointed out that that principle is to be observed all the more strictly in the case of rules liable to entail financial consequences, in order that those concerned may know precisely the obligations which such rules impose on them. It follows that it is necessary that taxable persons be aware, before concluding a transaction, of their tax obligations (see judgment in *Teleos and Others*, EU:C:2007:548, paragraph 48 and the case-law cited).

30 In that context, the Court has stated that the obligations imposed upon taxable persons with regard to evidence must be determined in the light of the conditions laid down in that regard by national law and in accordance with the general practice established in respect of similar transactions (see judgment in *Mecsek-Gabona*, EU:C:2012:547, paragraph 38).

31 Accordingly, it would be contrary to the principle of legal certainty if a Member State which has laid down the conditions for the application of the VAT exemption in respect of intra-Community supplies by prescribing, among other things, a list of the documents to be presented to the competent authorities, and which has accepted, initially, the documents presented by the supplier as evidence establishing entitlement to the exemption, could subsequently require that supplier to account for the VAT on that supply, where it transpires that, because of the purchaser's fraud, of which the supplier had and could have had no knowledge, the goods concerned did not actually leave the territory of the Member State of supply (see judgment in *Teleos and Others*, EU:C:2007:548, paragraph 50).

32 The Court's case-law states that, in such a situation, although there appears to be no tangible evidence to substantiate the conclusion that the goods concerned have been transferred out of the territory of the Member State of supply, to oblige taxable persons to provide conclusive proof of this does not ensure the correct and straightforward application of the VAT exemptions.

On the contrary, that obligation places taxable persons in an uncertain situation as regards the possibility of applying the exemption to their intra-Community supplies or as regards the need to include VAT in the sale price (see judgments in *Teleos and Others*, EU:C:2007:548, paragraphs 49 and 51, and *Mecsek-Gabona*, EU:C:2012:547, paragraph 41).

33 In the present case, it is apparent from the order for reference that the Bulgarian tax authorities issued an offset and refund notice on the basis of the documents submitted by Traum in accordance with Article 45 of the regulation implementing the ZDDS, but without requiring evidence of the authenticity of the purchaser's signature on those documents or presentation of the power of representation of the signatory. It was only in a later tax inspection that those requirements, which according to the referring court constitute 'additional requirements', were imposed by those authorities.

34 It would be contrary to the principle of legal certainty to refuse to grant a VAT exemption in respect of the transactions at issue in the main proceedings on the ground that the supplier did not produce such additional evidence when those transactions were subsequently scrutinised, where the documents presented by Traum in support of its declaration were consistent with the list of documents to be presented to the Bulgarian tax authorities under Article 45 of the regulation implementing the ZDDS and were accepted by those authorities, initially, as evidence establishing entitlement to the exemption. This is a matter for the referring court to ascertain.

35 So far as concerns the refusal to grant a VAT exemption in respect of the supply of goods at issue in the main proceedings on the ground that the purchaser was not registered for VAT purposes in another Member State at the time of the supply, it is true that a VAT identification number provides proof of the tax status of the taxable person for the purposes of the application of that tax and facilitates the tax audit of intra-Community transactions (see, to that effect, judgment in *Mecsek-Gabona*, EU:C:2012:547, paragraph 60).

36 However, given that the obligation to check the status of the taxable person must be discharged by the competent national authority before it assigns that person a VAT identification number, possible irregularities affecting the register cannot deprive a trader who has relied on the information entered in that register of the right of exemption from VAT to which it is entitled. Thus, the Court has held that it is contrary to the principle of proportionality that the supplier be held liable for the VAT solely on the ground that the purchaser's VAT identification number was removed from the register with retroactive effect (see, to that effect, judgment in *Mecsek-Gabona*, EU:C:2012:547, paragraphs 63 and 64).

37 In the dispute in the main proceedings, Traum sent the Bulgarian tax authorities two invoices showing the Greek VAT identification number of Evangelos gaitadzis in order to prove its entitlement to an exemption from VAT, in accordance with Article 45(1)(a) of the regulation implementing the ZDDS. That information was confirmed, after being verified by those authorities in the VIES database, in the offset and refund notice of 2 November 2009. Those authorities therefore agreed and accepted, initially, that in accordance with the requirement in Article 7(1) of the ZDDS, the purchaser was subject to VAT in another Member State. It was only in the course of a subsequent inspection that those authorities found that that requirement was not satisfied. In those circumstances, to refuse the VAT exemption in respect of an intra-Community supply of goods would be contrary to the principles of legal certainty and proportionality.

38 So far as concerns the claim made by the Direktor in his written observations that Traum should have proved by other means that Evangelos gaitadzis was a taxable person acting as such in another Member State whose intra-Community acquisitions were subject to VAT, it is apparent from the order for reference that there is no such requirement under the national rules at issue in the main proceedings and, moreover, no such requirement had been established by the Bulgarian

tax authorities before they issued the offset and refund notice. That is a matter for the referring court to verify.

39 In his written observations, the Direktor also argues that Traum did not act in good faith and did not show due diligence in order to satisfy itself of the authenticity of the documents submitted in support of its application for exemption from VAT. He also refers to possible tax fraud by Evangelos gaitadzis with regard to the Greek tax authorities. In that connection, the Direktor claims in particular that, in the light of the answers given by the carriers in the course of the tax inspection carried out in respect of the supply at issue in the main proceedings, it is doubtful whether the transport documents produced reflected the actual situation.

40 The order for reference does not contain any information suggesting that the supply at issue in the main proceedings was part of a tax fraud or that Traum did not act in good faith in connection with a possible fraud by the purchaser.

41 In that regard, it should be borne in mind that, in proceedings brought under Article 267 TFEU, the Court has no jurisdiction to check or to assess the factual circumstances of the case before the referring court. It is therefore for the national court to carry out an overall assessment of all the facts and circumstances of the case in order to establish whether Traum had acted in good faith and taken every step which could reasonably be asked of it to satisfy itself that the transaction which it had carried out had not resulted in its participation in tax fraud (see, by analogy, judgment in *Mecsek-Gabona*, EU:C:2012:547, paragraph 53).

42 If that court were to reach the conclusion that it is established, in the light of objective evidence, that Traum knew or should have known that the transaction which it had carried out was part of a tax fraud committed by the purchaser and that it had not taken every step which could reasonably be asked of it to prevent that fraud from being committed, there would be no entitlement to the VAT exemption (see, to that effect, judgment in *Mecsek-Gabona*, EU:C:2012:547, point 54).

43 Having regard to the foregoing considerations, the answer to the first and second questions is that Articles 138(1) and 139(1), second subparagraph, of the VAT Directive must be interpreted as precluding, in circumstances such as those in the main proceedings, the tax authorities of a Member State from refusing to grant a VAT exemption in respect of an intra-Community supply of goods on the ground that the purchaser was not registered for VAT purposes in another Member State and the supplier has proven neither the authenticity of the signature on the documents submitted in support of its declaration in respect of a supply it claims to be VAT exempt nor that the person who signed those documents on behalf of the purchaser had the authority to represent the purchaser, where the evidence establishing entitlement to the exemption submitted by the supplier in support of its declaration is consistent with the list of documents to be submitted to those authorities under national law and has been accepted by them, initially, as supporting evidence, which is a matter for the referring court to verify.

The third question

44 By its third question, the referring court asks, in essence, whether Article 138(1) of the VAT Directive must be interpreted as having direct effect, so that it may be relied upon by taxable persons before national courts against the State in order to obtain a VAT exemption in respect of an intra-Community supply of goods.

45 According to settled case-law of the Court, whenever the provisions of a directive appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise, they may be relied upon before the national courts by individuals against the State, regardless of the capacity in

which the latter is acting (see, to that effect, judgments in *Portgás*, C?425/12, EU:C:2013:829, paragraphs 18 and 23, and *Association de médiation sociale*, C?176/12, EU:C:2014:2, paragraph 31 and the case-law cited).

46 In the present case, Article 138(1) of the VAT Directive requires Member States to exempt from VAT supplies of goods which satisfy the conditions listed in that article.

47 Although Article 131 of that directive grants the Member States a certain degree of discretion when adopting the conditions for the VAT exemption provided for in Article 138 of the directive, in order to ensure the correct and straightforward application of those exemptions, that does not alter the precise and unconditional nature of the exemption obligation laid down in that article (see, by analogy, judgment in *Association de médiation sociale*, EU:C:2014:2, paragraph 33).

48 It follows that Article 138(1) of the VAT Directive must be interpreted as having direct effect, so that it may be relied upon by taxable persons before national courts against the State in order to obtain a VAT exemption in respect of an intra-Community supply of goods.

Costs

49 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

1. Articles 138(1) and 139(1), second subparagraph, of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/88/EU of 7 December 2010, must be interpreted as precluding, in circumstances such as those in the main proceedings, the tax authorities of a Member State from refusing to grant an exemption from value added tax in respect of an intra-Community supply of goods on the ground that the purchaser was not registered for value added tax purposes in another Member State and the supplier has proven neither the authenticity of the signature on the documents submitted in support of its declaration in respect of a supply it claims to be exempt from value added tax nor that the person who signed those documents on behalf of the purchaser had the authority to represent the purchaser, where the evidence establishing entitlement to the exemption submitted by the supplier in support of its declaration is consistent with the list of documents to be submitted to those authorities under national law and has been accepted by them, initially, as supporting evidence, which is a matter for the referring court to verify.

2. Article 138(1) of Directive 2006/112, as amended by Directive 2010/88, must be interpreted as having direct effect, so that it may be relied upon by taxable persons before national courts against the State in order to obtain an exemption from value added tax in respect of an intra-Community supply of goods.

[Signatures]

* Language of the case: Bulgarian.