JUDGMENT OF THE COURT (Fourth Chamber)

20 June 2018 (*)

(Reference for a preliminary ruling — Value added tax (VAT) — Directive 2006/112/EC — Article 143(1)(d) and Article 143(2) — Exemptions from VAT on importation — Importation followed by an intra-Community supply — Conditions — Evidence of dispatch or transport of the goods to another Member State — Transport under an excise duty suspension arrangement — Transfer to the purchaser of the right to dispose of goods as owner — Tax evasion — No obligation of the competent authority to help the taxable person collect the necessary information to show that the conditions for exemption are satisfied)

In Case C?108/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius, Lithuania), made by decision of 15 February 2017, received at the Court on 3 March 2017, in the proceedings

UAB ‘Enteco Baltic’

v

Muitin?s departamentas prie Lietuvos Respublikos finans? ministerijos,

intervener:

Vilniaus teritorin? muitin?,

THE COURT (Fourth Chamber),

composed of T. von Danwitz, President of the Chamber, C. Vajda, E. Juhász, K. Jürimäe (Rapporteur) and C. Lycourgos, Judges,

Advocate General: P. Mengozzi,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 25 January 2018,

after considering the observations submitted on behalf of:

– UAB ‘Enteco Baltic’, by A. Medelien?, advokat?, and M. Bielskien?, advokato pad?j?ja,

– the Lithuanian Government, by R. Krasuckait?, D. Stepanien?, K. Dieninis and D. Kriau?i?nas, acting as Agents,

– the European Commission, by L. Lozano Palacios and J. Jokubauskait?, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 March 2018,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 138, Article 143(1)(d) and Article 143(2) 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 2009/69/EC of 25 June 2009 (OJ 2009 L 175, p. 12), ('the VAT Directive'), and of the principles of tax neutrality and the protection of legitimate expectations.

2 The request has been made in proceedings between UAB 'Enteco Baltic' and the Muitin?s departamentas prie Lietuvos Respublikos finans? ministerijos (Customs Department at the Ministry of Finance, Lithuania) ('the Customs Department') concerning the exemption from value added tax (VAT) of imports of fuel from Belarus into Lithuania followed by dispatch or transport of the fuel to other Member States.

Legal context

EU law

The VAT Directive

3 In accordance with Article 14(1) of the VAT Directive, '"supply of goods" shall mean the transfer of the right to dispose of tangible property as owner'.

4 Under Article 131 of the VAT Directive:

'The exemptions provided for in Chapters 2 to 9 shall apply without prejudice to other [provisions of EU law] 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.'

5 Article 138(1) of the VAT Directive provides:

'Member States shall exempt the supply of goods dispatched or transported to a destination outside their respective territory 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.'

6 Directive 2009/69, the period for the transposition of which expired on 1 January 2011, added paragraph 2 to the original version of Article 143 of the VAT Directive. Since the transactions at issue in the main proceedings took place from 2010 to 2012, the two successive versions of Article 143 apply to the main proceedings.

7 Recitals 3 to 5 of Directive 2009/69 state:

'(3) The importation of goods is exempt from [VAT] if followed by a supply or transfer of those goods to a taxable person in another Member State. The conditions under which that exemption is granted are laid down by Member States. Experience, however, shows that divergences in application are exploited by traders to avoid payment of VAT on goods imported under those circumstances.

(4) In order to prevent that exploitation it is necessary to specify, for particular transactions, at Community level, a set of minimum conditions under which this exemption applies.

(5) Since, for those reasons, the objective of this Directive, namely to address the problem of VAT evasion, cannot be sufficiently achieved by the Member States themselves and can therefore be better achieved at Community level, the Community may adopt measures …'

8 Article 143 of the VAT Directive provides:

'1. Member States shall exempt the following transactions:

…

(d) the importation of goods dispatched or transported from a third territory or a third country into a Member State other than that in which the dispatch or transport of the goods ends, where the supply of such goods by the importer designated or recognised under Article 201 as liable for payment of VAT is exempt under Article 138;

…

2. The exemption provided for in paragraph 1(d) shall apply in cases when the importation of goods is followed by the supply of goods exempted under Article 138(1) and (2)(c) only if at the time of importation the importer has provided to the competent authorities of the Member State of importation at least the following information:

(a) his VAT identification number issued in the Member State of importation or the VAT identification number of his tax representative, liable for payment of the VAT, issued in the Member State of importation;

(b) the VAT identification number of the customer, to whom the goods are supplied in accordance with Article 138(1), issued in another Member State, …

(c) the evidence that the imported goods are intended to be transported or dispatched from the Member State of importation to another Member State.

However, Member States may provide that the evidence referred to in point (c) be indicated to the competent authorities only upon request.'

9 Article 167 of the VAT Directive provides:

'A right of deduction shall arise at the time the deductible tax becomes chargeable.'

Legislation on administrative cooperation and combating fraud in the field of VAT

10 Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ 2010 L 268, p. 1) is a recasting of Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of [VAT] and repealing Regulation (EEC) No 218/92 (OJ 2003 L 264, p. 1).

11 Regulation No 904/2010, as provided for in the first paragraph of Article 61, repealed Regulation No 1798/2003 with effect from 1 January 2012, and applies, in accordance with the second paragraph of Article 62, from that date. Having regard to the date of the exchange of information requested in the dispute in the main proceedings, Regulation No 904/2010 is relevant for the purposes of the present case.

12 Recitals 3, 4 and 7 of Regulation No 904/2010 read as follows:

‘(3) Tax evasion and tax avoidance extending across the frontiers of Member States lead to budget losses and violations of the principle of fair taxation. They are also liable to bring about distortions of capital movements and of the conditions of competition. They thus affect the operation of the internal market.

(4) Combating VAT evasion calls for close cooperation between the competent authorities in each Member State responsible for the application of the provisions in that field.

…

(7) For the purposes of collecting the tax owed, Member States should cooperate to help ensure that VAT is correctly assessed. They must therefore not only monitor the correct application of tax owed in their own territory, but should also provide assistance to other Member States for ensuring the correct application of tax relating to activity carried out on their own territory but owed in another Member State.’

13 Article 1(1) and (2) of Regulation No 904/2010 provides:

‘1. This Regulation lays down the conditions under which the competent authorities in the Member States responsible for the application of the laws on VAT are to cooperate with each other and with the Commission to ensure compliance with those laws.

To that end, it lays down rules and procedures to enable the competent authorities of the Member States to cooperate and to exchange with each other any information that may help to effect a correct assessment of VAT, monitor the correct application of VAT, particularly on intra-Community transactions, and combat VAT fraud. In particular, it lays down rules and procedures for Member States to collect and exchange such information by electronic means.

2. This Regulation lays down the conditions under which the authorities referred to in paragraph 1 are to assist in the protection of VAT revenue in all the Member States.’

14 In accordance with Article 7(1) of that regulation:

‘At the request of the requesting authority, the requested authority shall communicate the information referred to in Article 1, including any information relating to a specific case or cases.’

15 Article 54(1) of that regulation provides:

‘The requested authority in one Member State shall provide a requesting authority in another Member State with the information referred to in Article 1 provided that:

(a) the number and the nature of the requests for information made by the requesting authority within a specific period do not impose a disproportionate administrative burden on that requested authority;

(b) that requesting authority has exhausted the usual sources of information which it could have used in the circumstances to obtain the information requested, without running the risk of jeopardising the achievement of the desired end.’

Legislation on excise duty

16 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) lays down in Chapter IV

the rules governing the movement of excise goods under suspension of excise duty. That chapter comprises Articles 17 to 31 of the directive.

17 In accordance with Article 21(1) to (3) of Directive 2008/118:

‘1. A movement of excise goods shall be considered to take place under a duty suspension arrangement only if it takes place under cover of an electronic administrative document processed in accordance with paragraphs 2 and 3.

2. For the purposes of paragraph 1 of this Article, the consignor shall submit a draft electronic administrative document to the competent authorities of the Member State of dispatch using the computerised system referred to in Article 1 of Decision No 1152/2003/EC (hereinafter “the computerised system”).

3. The competent authorities of the Member State of dispatch shall carry out an electronic verification of the data in the draft electronic administrative document.

Where these data are not valid, the consignor shall be informed thereof without delay.

Where these data are valid, the competent authorities of the Member State of dispatch shall assign to the document a unique administrative reference code and shall communicate it to the consignor.’

18 Article 24 of that directive provides:

‘1. On receipt of excise goods at any of the destinations referred to in Article 17(1)(a)(i), (ii) or (iv) or in Article 17(2), the consignee shall, without delay and no later than five working days after the end of the movement, except in cases duly justified to the satisfaction of the competent authorities, submit a report of their receipt (hereinafter the “report of receipt”), using the computerised system.

…

3. The competent authorities of the Member State of destination shall carry out an electronic verification of the data in the report of receipt.

Where these data are not valid, the consignee shall be informed thereof without delay.

Where these data are valid, the competent authorities of the Member State of destination shall confirm to the consignee the registration of the report of receipt and send it to the competent authorities of the Member State of dispatch.

4. The competent authorities of the Member State of dispatch shall forward the report of receipt to the consignor. Where the places of dispatch and of destination are situated in the same Member State, the competent authorities of that Member State shall forward the report of receipt directly to the consignor.’

19 Commission Regulation (EC) No 684/2009 of 24 July 2009 implementing Council Directive 2008/118 as regards the computerised procedures for the movement of excise goods under suspension of excise duty (OJ 2009 L 197, p. 24) lays down inter alia, in accordance with Article 1(a), rules on the structure and content of the electronic messages exchanged through the computerised system referred to in Article 21(2) of Directive 2008/118 for the purposes of Articles 21 to 25 of that directive.

20 Under Article 3 of Regulation No 684/2009:

‘1. The draft electronic administrative document submitted in accordance with Article 21(2) of Directive [2008/118] and the electronic administrative document to which an administrative reference code has been assigned in accordance with the third subparagraph of Article 21(3) of that Directive shall comply with the requirements set out in Table 1 of Annex I to this Regulation.

2. The draft electronic administrative document shall be submitted no earlier than 7 days before the date indicated on that document as date of dispatch of the excise goods concerned.’

21 Article 7 of that regulation provides:

‘The report of receipt submitted in accordance with Article 24 of Directive [2008/118] and the report of export submitted in accordance with Article 25 of that Directive, shall comply with the requirements set out in Table 6 of Annex I to this Regulation.’

Lithuanian law

22 Article 143(1) and (2) of the VAT Directive was transposed in Lithuania by Article 35 of the Lietuvos Respublikos prid?tin?s vert?s mokes?io ?statymas (Law of the Republic of Lithuania on VAT, ‘the Law on VAT’). Article 35 appears in Title V of the Law on VAT, headed ‘Cases in which imported goods are not subject to VAT on importation’. That article provides:

‘1. Imported goods shall be exempt from import VAT if it is known at the time of importation that those goods are intended for export and will be transported to another Member State, and the supply of goods by the importer from the Republic of Lithuania to another Member State shall, by virtue of Chapter VI of this law, be subject to a zero rate of VAT.

2. The provisions of this article shall be applicable if the importer is registered as a VAT payer in the Republic of Lithuania and the goods are transported to another Member State within a period not exceeding one month from the day of the chargeable event referred to in Article 14(12) or (13) of this law. A longer time limit for transport of the goods may be set on objective grounds.

3. Detailed rules for the application of this article shall be laid down by the national customs department together with the central tax authority.’

23 In accordance with Article 49(1) of the Law on VAT:

‘The zero rate of VAT shall apply to goods supplied to a person registered for the purposes of VAT in another Member State which are exported from the national territory to another Member State …’

24 Article 56 of the Law on VAT, concerning ‘Evidence of applicability of a zero rate of VAT’, provides:

‘1. … A taxable person for the purposes of VAT who has applied the zero rate of VAT under Article 49 of this law must have evidence of exportation of the goods from the national territory and, where the zero rate of VAT is applied at the time of the supply of the goods to a person registered for the purposes of VAT in another Member State, evidence that the person to whom the goods were exported is subject to VAT in another Member State.

…

4. Notwithstanding the other provisions of this article, the tax authority shall have the right, in accordance with the detailed rules laid down by the Mokes?i? administravimo ?statymas (Law on tax administration), to require the submission of additional evidence to allow an assessment of the basis for application of the zero rate of VAT. …

5. Notwithstanding the other provisions of this article, the tax authority has the right to collect, on its own initiative or through the competent law enforcement services, additional evidence to allow an assessment of the basis for application of the zero rate of VAT. …'

25 The Rules on the exemption from import VAT of imported goods supplied to another Member State of the European Union ('the Rules') were approved by Order No 1B-439/VA-71 of the Customs Department and the head of the Valstybin? mokes?i? inspekcija prie Lietuvos Respublikos finans? ministerijos (National Tax Inspectorate at the Ministry of Finance of the Republic of Lithuania, Lithuania, 'the Tax Inspectorate') of 29 April 2004. Paragraph 4 of the Rules reads as follows:

'Goods imported into the national territory shall be exempt from VAT if all the following conditions are met:

4.1. it is known at the time of importation that the goods are intended for export and will be transported to another Member State;

…'

26 Under paragraph 7 of the Rules:

'For customs inspection purposes, in addition to the other documents the following shall be provided with the customs import declaration:

…

7.2. documents establishing that the goods imported into the territory of the country are intended to be transported and will be transported to another Member State (transport documents or contract, in particular).'

27 The Rules were amended by Order No 1B-773/VA-119 of 28 December 2010 of the director of the Customs Department and the head of the Tax Inspectorate, which entered into force on 1 January 2011. That order inserted paragraph 71 in the Rules, under which:

'The importer must without delay inform in writing the regional customs service if the place of storage of the goods or their purchaser changes (the taxable person of the other Member State and/or the Member State to which the goods are supplied as specified in the documents provided for customs inspection purposes), by presenting new evidence explaining the reasons for the changes and enclosing copies of the supporting documents.'

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

28 Enteco Baltic is a company established in Lithuania. It operates in the wholesale fuel trade.

29 In the period at issue in the main proceedings, from 2010 to 2012, Enteco Baltic imported into Lithuania fuel from Belarus. That fuel was placed under the arrangement known as 'customs procedure 42', which allows goods to be released for free circulation without being subject to VAT on importation. In the import declarations, Enteco Baltic specified the VAT identification numbers

of purchasers in another Member State to whom it intended to supply the goods. It stored the goods in warehouses for goods subject to excise duty owned by other Lithuanian undertakings.

30 Enteco Baltic sold the fuel to companies established in Poland, Slovakia and Hungary on the basis of written contracts and individual orders. The contracts provided for ‘ex-works’ supply. Under those contracts, Enteco Baltic was thus obliged only to hand over the fuel to the purchasers in Lithuania, and they were responsible for the continuation of its transport to the Member State of destination. Both the individual orders of the purchasers and the invoices issued by Enteco Baltic were usually sent by electronic mail.

31 For transport purposes, the goods were the subject of electronic transport documents for goods subject to excise duties and CMR consignment notes (consignment notes on the basis of the Convention on the Contract for the International Carriage of Goods by Road, signed at Geneva on 19 May 1956, as amended by the Protocol of 5 July 1978). The notes were completed by the responsible employees of the dispatching tax warehouse and specified inter alia the place of dispatch of the goods (that is, the dispatching tax warehouse), the purchaser and the place of receipt of the goods (that is, the receiving tax warehouse).

32 After delivery of the goods to the receiving tax warehouses in Poland, Enteco Baltic received an electronic confirmation of the supply of the goods (‘e-ROR confirmation’). It also received the CMR consignment notes confirming the receipt of the goods by the receiving tax warehouses.

33 Enteco Baltic sometimes sold goods to taxable persons in other Member States, different from those whose identification numbers were shown on the import declarations. Information on those taxable persons, including their VAT identification numbers, was always provided to the Tax Inspectorate in the monthly reports on the supply of goods to other Member States.

34 In 2012 the Vilniaus teritorin? muitin? (Regional Customs Service, Vilnius, Lithuania) (‘the VTM’) carried out a partial analysis of the import declarations for the period from 1 April 2010 to 31 May 2012 and found irregularities in the VAT identification numbers. It corrected them.

35 In 2013 the Tax Inspectorate received information from the Hungarian, Polish and Slovak tax authorities concerning possible fraud in the application of ‘customs procedure 42’. In particular, those authorities stated that they could not certify that the fuel had been received by the purchasers and observed that those purchasers had not declared VAT for the period concerned.

36 In the light of that information, the Tax Inspectorate carried out a further tax check in 2013 relating to Enteco Baltic’s compliance with VAT obligations for the period from 1 January 2012 to 30 June 2013. It found that Enteco Baltic had provided sufficient evidence to show that the goods had left Lithuanian territory and that the right to dispose of the goods as owner had actually been transferred to the purchasers. According to the Tax Inspectorate, it has not been shown that Enteco Baltic acted negligently or imprudently in connection with the transactions at issue.

37 The VTM also carried out, in 2014 and 2015, a further check relating to the period from 1 April 2010 to 31 May 2012 and an initial check relating to the period from 1 June 2012 to 31 December 2013. Following those checks, the VTM found that Enteco Baltic had not supplied the fuel to the taxable persons shown on the import declarations, or had not shown that the fuel had been transported and that the right to dispose of it as owner had been transferred to the persons whose names were stated on the invoices mentioning the VAT due.

38 Enteco Baltic turned to a Polish economic information company in order to obtain additional information on the transports in question. It also requested the VTM to approach the Polish tax warehouses for the information which the Polish information company was unable to obtain. The

request was not granted.

39 On 25 November 2015 the VTM adopted an inspection report, in which it found that Enteco Baltic had wrongly taken the view that the imports of fuel from Belarus were exempt from VAT. Consequently, it ordered it to pay the sum of EUR 3 220 822 in VAT, plus penalties and default interest.

40 The Customs Department confirmed those orders by decision of 16 March 2016.

41 Enteco Baltic appealed against that decision of the Customs Department to the Mokestini? gin?? komisija prie Lietuvos Respublikos Vyriausyb?s (Tax Disputes Commission of the Government of the Republic of Lithuania). By decision of 1 June 2016, the Commission referred the case back to the Customs Department.

42 Both Enteco Baltic and the Customs Department brought proceedings before the referring court seeking inter alia the annulment of the decision of the Tax Disputes Commission of the Government of the Republic of Lithuania.

43 In those circumstances, the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius, Lithuania) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Is Article 143(2) of the VAT Directive to be interpreted as prohibiting a tax authority of a Member State from refusing to apply the exemption provided for in Article 143(1)(d) of that directive solely because at the time of importation the goods were planned to be supplied to one VAT payer and therefore its VAT identification number was specified in the import declaration, but later, after a change in circumstances, the goods were transported to another taxable person (VAT payer) and the public authority was provided with full information about the identity of the actual purchaser?

(2) In circumstances such as those of the present case, can Article 143(1)(d) of the VAT Directive be interpreted as meaning that documents that have not been disproved (e-AD [electronic administrative document] consignment notes and e-ROR confirmations) confirming transport of the goods from a tax warehouse in the territory of one Member State to a tax warehouse in another Member State may be regarded as sufficient proof of transportation of the goods to another Member State?

(3) Is Article 143(1)(d) of the VAT Directive to be interpreted as prohibiting a tax authority of a Member State from refusing to apply the exemption provided for in that provision if the right of disposal was transferred to the purchaser of the goods not directly, but via the persons specified by it (transport undertakings/tax warehouses)?

(4) Does an administrative practice conflict with the principle of neutrality of VAT and of the protection of legitimate expectations where under that practice the interpretation differs as to what is to be regarded as a transfer of the right of disposal, and as to what evidence must be submitted to substantiate such a transfer, according to whether Article 167 or Article 143(1)(d) of the VAT Directive is applicable?

(5) Does the scope of the principle of good faith in relation to the levying of VAT also encompass the right of persons to exemption from import VAT (under Article 143(1)(d) of the VAT Directive) in cases such as that in the main proceedings, that is to say, where the customs office denies the right of a taxable person to exemption from import VAT on the basis that the conditions for further supply of goods within the European Union (Article 138 of the VAT Directive) were not

complied with?

(6) Is Article 143(1)(d) of the VAT Directive to be interpreted as prohibiting an administrative practice of Member States under which the assumption that (i) the right of disposal was not transferred to a specific contractual partner and (ii) that the taxpayer knew or could have known about possible VAT fraud committed by the contractual partner is based on the fact that the undertaking communicated with the contractual partners by electronic means of communication and that it was established when the investigation was carried out by a tax authority that the contractual partners did not operate at the addresses specified and did not declare the VAT on the transactions with the taxable person?

(7) Is Article 143(1)(d) of the VAT Directive to be interpreted as meaning that, although the duty to substantiate the right to a tax exemption falls on the taxpayer, this does not, however, mean that the competent public authority deciding the issue of transfer of the right of disposal has no obligation to collect information accessible only to public authorities?'

Consideration of the questions referred

Question 1

44 By its first question, the referring court seeks essentially to know whether Article 143(1)(d) and Article 143(2)(b) of the VAT Directive must be interpreted as precluding the competent authorities of a Member State from refusing exemption from VAT on importation on the sole ground that, following a change of circumstances after the importation, the goods in question have been supplied to a taxable person other than the person whose VAT identification number was stated in the import declaration, where the importer has communicated all the information on the identity of the new purchaser to the competent authorities of the Member State of import.

45 As a preliminary point, it must be noted that, as pointed out in paragraph 6 above, the period for transposing Directive 2009/69, which inserted paragraph 2 in Article 143 of the original version of the VAT Directive, expired on 1 January 2011. Consequently, Article 143(2) applies only from that date.

46 First, it follows from Article 143(1)(d) of the VAT Directive that the Member States are to exempt the importation of goods dispatched or transported from a third territory or a third country into a Member State other than that in which the dispatch or transport of the goods ends, where the supply of such goods by the importer designated or recognised under Article 201 of the directive as liable for payment of VAT is exempt under Article 138.

47 Exemption from VAT on importation is thus subject to the importer subsequently making an intra-Community supply which is itself exempt under Article 138 of the VAT Directive, and it therefore depends on compliance with the substantive conditions laid down in that article, as the Advocate General observes in points 42, 50 and 68 of his Opinion.

48 Neither Article 138 nor Article 143(1)(d) of the VAT Directive lays down, on the other hand, an obligation for the importer to indicate the VAT identification number of the purchaser who takes part in the subsequent intra-Community transaction.

49 Before the amendment of the original version of the VAT Directive by Directive 2009/69, such an obligation could be laid down by national law, as by the Lithuanian law at issue in the main proceedings.

50 In the absence of any provision on the point in the VAT Directive, it is for the Member States

to lay down, in accordance with Article 131 of that directive, the conditions under which imports followed by intra-Community supplies will be exempt, with a view to ensuring the correct and straightforward application of the exemption on importation provided for by the directive 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 EU legal order (see, to that effect, judgments of 6 September 2012, *Mecsek-Gabona*, C?273/11, EU:C:2012:547, paragraph 36 and the case-law cited; of 9 October 2014, *Traum*, C?492/13, EU:C:2014:2267, paragraph 27; and of 9 February 2017, *Euro Tyre*, C?21/16, EU:C:2017:106, paragraph 33).

51 The Court has previously held in this respect, in the context of the exemption of intra-Community supplies laid down by Article 138(1) of the VAT Directive, that, since that exemption depends on compliance with the substantive conditions set out exhaustively in that provision, which do not include an obligation for the purchaser to have a VAT identification number, Member States cannot in principle refuse to grant that exemption on the ground of failure to comply with a formal requirement, such as the purchaser's VAT identification number, that may be laid down by the national law of a Member State (see, to that effect, judgment of 9 February 2017, *Euro Tyre*, C?21/16, EU:C:2017:106, paragraphs 29 and 32).

52 The same considerations apply where, pursuant to Article 131 of the VAT Directive, a Member State provides that the exemption on importation laid down in Article 143(1)(d) of the VAT Directive is subject to communication by the importer of the purchaser's VAT identification number.

53 Second, Article 143(2)(b) of the VAT Directive, which derives from the amendments made by Directive 2009/69, now provides that, in order to benefit from the exemption on importation laid down in Article 143(1)(d) of the directive, the importer must provide the purchaser's VAT identification number at the time of importation.

54 While that provision could, having regard to its wording, be interpreted as meaning that the exemption on importation must be refused where the importer, after indicating a VAT identification number of a purchaser, supplies the goods in question to a different purchaser, that interpretation would, however, be contrary to the general scheme and context of Article 143(2) of the VAT Directive.

55 In the first place, it is apparent from recitals 3 to 5 of Directive 2009/69 that Article 143(2) of the VAT Directive lists the minimum conditions for the application of the VAT exemption on importation for which it provides. The addition of those conditions to the VAT Directive was justified by the need to prevent the system of VAT exemption being fraudulently exploited by traders taking advantage of divergences between the conditions governing the grant of the exemption on importation previously laid down by the Member States. It follows that the obligation in Article 143(2)(b) of the VAT Directive, following the amendment made by Directive 2009/69, for the importer to provide the VAT identification number of the purchaser cannot be regarded as a substantive condition of exemption, and is merely intended to remedy divergences between the Member States in the application of the exemption.

56 That is all the more so as Directive 2009/69 did not amend Article 143(1)(d) of the VAT Directive, which refers to the substantive conditions for the exemption of the ensuing intra-Community supply, laid down in Article 138 of that directive.

57 In the second place, having regard to the considerations set out by the Advocate General in points 67 to 71 of his Opinion, it should be added that to adopt a contrary interpretation of that provision would be incompatible with the fact that the exemption on importation is subject to compliance with the conditions for the exemption of the subsequent intra-Community supply and, in the absence of amendment to the latter conditions — in particular Article 138 of the VAT

Directive — by Directive 2009/69, would produce inconsistencies in the system of those exemptions.

58 Consequently, whether during the currency of the original version of the VAT Directive or that of the VAT Directive, the exemption on importation cannot in principle be refused on the sole ground that the goods were supplied to a different purchaser from the one whose number was indicated at the time of importation, provided that it is shown that the import was actually followed by an intra-Community supply satisfying the substantive conditions of exemption laid down in Article 138(1) of that directive and that the importer always informed the competent authority of the changes in the identity of the purchasers.

59 It would be otherwise only if the importer intentionally participated in tax evasion which has jeopardised the operation of the common system of VAT, or if the breach of a formal requirement has the effect of preventing the production of conclusive evidence that the substantive requirements have been satisfied (see, by analogy, judgments of 20 October 2016, *Plöckl*, C?24/15, EU:C:2016:791, paragraphs 39, 43, 44 and 46, and of 9 February 2017, *Euro Tyre*, C?21/16, EU:C:2017:106, paragraphs 36 to 39 and 42).

60 Moreover, it should be recalled that, in order to penalise non-compliance with formal requirements, the Member States may consider penalties other than the refusal of an exemption from VAT, such as the imposition of a fine or financial penalty proportionate to the seriousness of the infringement (see, to that effect, judgment of 19 April 2018, *Firma Hans Bühler*, C?580/16, EU:C:2018:261, paragraph 52).

61 In the light of the above considerations, the answer to Question 1 is that Article 143(1)(d) and Article 143(2)(b) of the VAT Directive must be interpreted as precluding the competent authorities of a Member State from refusing exemption from VAT on importation on the sole ground that, following a change of circumstances after the importation, the goods in question have been supplied to a taxable person other than the person whose VAT identification number was stated in the import declaration, where the importer has communicated all the information on the identity of the new purchaser to the competent authorities of the Member State of import, provided that it is shown that the substantive conditions for the exemption of the subsequent intra-Community supply are actually satisfied.

Question 2

62 By its second question, the referring court seeks essentially to know whether Article 143(1)(d) in conjunction with Article 138 and Article 143(2)(c) of the VAT Directive must be interpreted as meaning that documents such as CMR and e-AD consignment notes and e-ROR confirmations which confirm the transport of the goods from a tax warehouse in the Member State of import, not to the purchaser but to a tax warehouse in another Member State, may be regarded as sufficient evidence of dispatch or transport of the goods within the meaning of those provisions.

63 It must be recalled that Article 143(1)(d) of the VAT Directive provides for the exemption of imports of goods followed by intra-Community supplies which are themselves exempt under Article 138(1) of the directive.

64 First, it follows from Article 143(2)(c) of the VAT Directive, the provisions of which derive from the amendments made by Directive 2009/69, that the exemption on importation applies only if, at the time of importation, the importer provides evidence that the imported goods are intended to be transported or dispatched from the Member State of importation to another Member State.

65 Before those amendments, it was for the Member States alone to lay down the conditions

governing the VAT exemption for imports of goods provided for in Article 143(1) of the VAT Directive.

66 Second, it must be recalled that the exemption of an intra-Community supply of goods in accordance with Article 138(1) of the VAT Directive applies only where the right to dispose of the goods as owner has been transferred to the purchaser, the vendor shows that the goods have been dispatched or transported to another Member State and, as a result of the dispatch or transport, the goods have physically left the territory of the Member State from which they were dispatched or transported (judgments of 6 September 2012, *Mecsek-Gabona*, C?273/11, EU:C:2012:547, paragraph 31 and the case-law cited, and of 9 February 2017, *Euro Tyre*, C?21/16, EU:C:2017:106, paragraph 25).

67 It is for the person seeking to benefit from the VAT exemption, in other words the supplier of the goods, to prove that the conditions set out in Article 138(1) of the VAT Directive are satisfied (judgment of 27 September 2007, *Twoh International*, C?184/05, EU:C:2007:550, paragraph 26). However, in circumstances in which the right to dispose of the goods as owner is transferred to the purchaser in the territory of the Member State from which they are dispatched or transported and the purchaser dispatches or transports the goods out of the territory of that Member State, the evidence that the supplier might submit to the tax authorities depends essentially on the information that he receives for that purpose from the purchaser (judgments of 16 December 2010, *Euro Tyre Holding*, C?430/09, EU:C:2010:786, paragraph 37, and of 14 June 2017, *Santogal M-Comércio e Reparação de Automóveis*, C?26/16, EU:C:2017:453, paragraph 66).

68 Furthermore, it follows from Article 138(1) of the VAT Directive and the case-law of the Court that the condition concerning the dispatch or transport of the goods is satisfied where the goods have actually left the territory of the Member State from which they are dispatched or transported in order to be transferred to the territory of the Member State of destination (see, to that effect, judgment of 27 September 2007, *Teleos and Others*, C?409/04, EU:C:2007:548, paragraphs 27 and 33).

69 It follows that, to benefit from the exemption on importation in Article 143(1)(d) of the VAT Directive, the importer must in particular provide the authorities of the Member State of import with evidence that, at the time of importation, the goods in question are intended for dispatch or transport to another Member State and that, in the context of the subsequent intra-Community supply, they have been the subject of such a dispatch or transport.

70 In this respect, it suffices that the importer shows that the goods in question are intended to be dispatched or transported and subsequently are actually dispatched or transported to another Member State, without it being necessary to show that they are dispatched or transported specifically to the address of the purchaser of the goods.

71 In the present case, the referring court is uncertain in particular as to the probative value of the CMR and e-AD consignment notes and e-ROR confirmations. While it is for the referring court to assess the probative value of the evidence submitted in the main proceedings, the Court may nonetheless provide it with all the elements of interpretation of EU law that may be of use to it.

72 As regards the e-AD consignment notes, reference must be made to the provisions of EU law on the electronic administrative document accompanying movements under suspension of excise duty (‘e-AD document’) of goods, such as those at issue in the main proceedings, which are subject to excise duty.

73 First, it follows from the provisions of Article 21(2) of Directive 2008/118 and Article 3 of Regulation No 684/2009, read together with Table 1 of Annex I to that regulation, that, no earlier

than seven days before the date of dispatch of the excise goods concerned, the consignor is to submit to the competent authorities of the Member State of dispatch a draft e-AD document containing inter alia information on the economic operators concerned, namely the consignor and the consignee, the places of dispatch and destination, the goods dispatched, the invoice relating to the goods, and the transport of the goods. The information in the draft is verified by those authorities, pursuant to Article 21(3) of that directive.

74 As the Advocate General observes in points 122 and 124 of his Opinion, it should be considered that such a draft e-AD document, duly completed and presented at the time of importation, is capable of constituting evidence showing that, at the time of importation, the goods in question were intended to be dispatched or transported to another Member State within the meaning of Article 143(2)(c) of the VAT Directive.

75 Second, it must be pointed out that, in accordance with Article 24 of Directive 2008/118, on receipt of the excise goods, the consignee is to submit a report of their receipt to the competent authorities of the Member State of destination, and those authorities are to forward it to the consignor. It follows from Article 7 of Regulation No 684/2009, read together with Table 6 of Annex I to that regulation, that the report of receipt includes in particular a reference to the relevant e-AD document.

76 It must be considered, as the Advocate General does in point 126 of his Opinion, that such a report of receipt is capable of showing that the goods in question actually left the territory of the Member State of dispatch and were dispatched or transported to another Member State within the meaning of Article 138(1) of the VAT Directive.

77 Next, as regards the e-ROR confirmations, it appears from the documents in the case file that they are drawn up after the goods have been dispatched or transported. In so far as they do not yet exist at the time of importation, those confirmations cannot show that, at that time, the goods in question are intended to be dispatched or transported to another Member State within the meaning of Article 143(2)(b) of the VAT Directive. On the other hand, they are capable of being taken into account for the purpose of showing that the goods have actually been dispatched or transported in accordance with Article 138(1) of that directive.

78 Finally, as regards the CMR consignment notes, it must be observed that they are drawn up before the dispatch or transport to the Member State of destination and indicate inter alia the place of dispatch, the purchaser, the place of receipt and the transporting vehicles. They are therefore capable of showing that the goods in question are intended to be dispatched or transported to that State, and of being taken into account for the purposes of Article 143(2)(c) of the VAT Directive, in so far as they have been submitted at the time of importation. They can also be taken into account for the purposes of Article 138(1) of the directive, especially where, following the dispatch or transport, they bear a record of receipt.

79 According to the order for reference, before the referring court, the parties to the main proceedings disagree on whether the exemption on importation could be refused on the sole ground that the CMR notes produced by Enteco Baltic had no mark confirming receipt or bore the registration mark of the Polish tax warehouses. It should be noted, however, that that ground cannot in itself lead to a refusal of exemption where the other evidence produced by that company is capable of showing that, at the time of importation, the goods in question were intended to be dispatched or transported to a Member State other than the Member State of import and that, during the subsequent transaction, the goods were actually dispatched or transported to that other Member State.

80 It is consequently for the referring court to ascertain, in the light of all the evidence produced

by Enteco Baltic, whether those conditions are satisfied.

81 In the light of the above considerations, the answer to Question 2 is that Article 143(1)(d) in conjunction with Article 138 and Article 143(2)(c) of the VAT Directive must be interpreted as meaning that:

– documents which confirm the transport of goods from a tax warehouse in the Member State of import, not to the purchaser but to a tax warehouse in another Member State, may be regarded as sufficient evidence of dispatch or transport of the goods to another Member State;

– documents such as CMR consignment notes and e-AD documents may be taken into account to show that, at the time of importation into a Member State, the goods concerned are intended to be dispatched or transported to another Member State within the meaning of Article 143(2)(c) of the VAT Directive, provided that the documents are submitted at that time and include all the necessary information. Those documents, as also the e-ROR confirmations and the report of receipt issued following a movement under suspension of excise duty, are capable of showing that the goods have actually been dispatched or transported to another Member State in accordance with Article 138(1) of that directive.

Questions 3 and 4

82 By its third and fourth questions, which should be considered together, the referring court essentially asks whether Article 143(1)(d) of the VAT Directive must be interpreted as precluding the authorities of a Member State from refusing an importer the right to the exemption from VAT laid down in that provision for imports of goods into that Member State carried out by him and followed by intra-Community supplies, where the goods were not transferred directly to the purchaser but were handled by transport undertakings and tax warehouses designated by the purchaser, and whether the concept of ‘supply of goods’ within the meaning of Article 14(1) of the VAT Directive is to be understood in this context in the same way as in the context of Article 167 of the directive.

83 It should be recalled, as a preliminary point, that the exemption on importation provided for in Article 143(1)(d) of the VAT Directive is subject to the subsequent performance of an intra-Community supply that is itself exempt by virtue of Article 138(1) of the directive.

84 Like any supply of goods as defined in Article 14(1) of the VAT Directive, an intra-Community supply requires the transfer to the purchaser of the right to dispose of tangible property as owner (see, to that effect, judgment of 6 September 2012, *Mecsek-Gabona*, C?273/11, EU:C:2012:547, paragraph 32).

85 According to settled case-law, ‘supply of goods’ within the meaning of the VAT Directive must be given an autonomous and uniform interpretation specific to EU law (see, to that effect, judgment of 3 June 2010, *De Fruytier*, C?237/09, EU:C:2010:316, paragraph 22). In accordance with the purpose of the VAT Directive, which is designed inter alia to base the system of VAT on a uniform definition of taxable transactions (see, to that effect, judgments of 8 February 1990, *Shipping and Forwarding Enterprise Safe*, C?320/88, EU:C:1990:61, paragraph 8, and of 11 May 2017, *Posnania Investment*, C?36/16, EU:C:2017:361, paragraph 25), that concept must have a uniform meaning in the context of that directive. Consequently, it cannot be interpreted differently in connection with the exemption on importation and in connection with the right to deduct input VAT referred to in Article 167 of the directive.

86 It is also apparent from the Court’s case-law that the concept of ‘supply of goods’ does not refer to the transfer of ownership in accordance with the procedures prescribed by the applicable

national law but covers any transfer of tangible property by one party which empowers the other party actually to dispose of it as if he were its owner (judgment of 3 June 2010, *De Fruytier*, C?237/09, EU:C:2010:316, paragraph 24 and the case-law cited).

87 A transfer of the power to dispose of tangible property as owner does not require that the party to whom the property is transferred must physically possess or that it must be physically transported to and/or received by that party (order of 15 July 2015, *Itales*, C?123/14, not published, EU:C:2015:511, paragraph 36).

88 On the other hand, where there is no transfer of the power to dispose of goods as owner, neither the transfer of goods merely for possession (see, to that effect, judgment of 14 July 2005, *British American Tobacco and Newman Shipping*, C?435/03, EU:C:2005:464, paragraph 36) nor the physical movement of the goods concerned by a transporter from one place to another on behalf of other operators (see, to that effect, judgment of 3 June 2010, *De Fruytier*, C?237/09, EU:C:2010:316, paragraph 25) can fall within the concept of ‘supply of goods’.

89 As regards the dispute in the main proceedings, in order to determine whether the transactions carried out between the importer and the purchasers following the import of the goods in question are to be classified as ‘supplies of goods’ within the meaning of the VAT Directive, it must be assessed, as follows from points 95 to 97 of the Advocate General’s Opinion, whether the power to dispose of those goods as owner was transferred by Enteco Baltic to the transporters and tax warehouses, or whether they merely played the part of intermediaries in transport and storage without that power being transferred to them. In the latter case, provided that that power was actually transferred to the purchasers by Enteco Baltic, as the order for reference implies, those transactions must be classified as ‘supplies of goods’.

90 It is for the referring court to ascertain, in the light of all the facts available to it, whether that is so in the case before it (see, to that effect, judgments of 8 February 1990, *Shipping and Forwarding Enterprise Safe*, C?320/88, EU:C:1990:61, paragraph 13, and of 18 July 2013, *Evita-K* , C?78/12, EU:C:2013:486, paragraph 34).

91 If, following that assessment, it is apparent that Enteco Baltic transferred the power to dispose of the goods as owner to the purchasers, provided that the other conditions for exemption on importation are satisfied, Enteco Baltic cannot be refused the exemption on importation.

92 In the light of the above considerations, the answer to Questions 3 and 4 is that Article 143(1)(d) of the VAT Directive must be interpreted as precluding the authorities of a Member State from refusing an importer the right to the exemption from VAT laid down in that provision for imports of goods into that Member State carried out by him and followed by intra-Community supplies on the ground that the goods were not transferred directly to the purchaser but were handled by transport undertakings and tax warehouses designated by the purchaser, where the power to dispose of the goods as owner was transferred to the purchaser by the importer. In this context, the concept of ‘supply of goods’ within the meaning of Article 14(1) of the VAT Directive must be interpreted in the same way as in the context of Article 167 of the directive.

Questions 5 and 6

93 By its fifth and sixth questions, which should be considered together, the referring court essentially asks whether Article 143(1)(d) of the VAT Directive must be interpreted as precluding an administrative practice under which, in circumstances such as those of the dispute in the main proceedings, an importer acting in good faith is refused the right to the VAT exemption on importation where the conditions for the exemption of the subsequent intra-Community supply are not satisfied, because of tax evasion on the part of the purchaser.

94 It should be recalled that, according to the Court's case-law, it is not contrary to EU law to require an operator to act in good faith and to take every step which could reasonably be asked of him to satisfy himself that the transaction which he is carrying out does not result in his participation in tax evasion. If the taxable person concerned knew or ought to have known that the transaction which he carried out was involved in a tax evasion scheme of the purchaser and he did not take all reasonable steps in his power to prevent the evasion, he would have to be refused the exemption (see, to that effect, judgment of 6 September 2012, *Mecsek-Gabona*, C?273/11, EU:C:2012:547, paragraphs 48 and 54 and the case-law cited).

95 It is for the referring court to ascertain, on the basis of an overall assessment of all the facts and circumstances of the dispute in the main proceedings, whether Enteco Baltic acted in good faith and took all the steps which could reasonably be asked of it to satisfy itself that the import and supply transactions which it carried out did not result in its participation in tax evasion (see, to that effect, judgment of 6 September 2012, *Mecsek-Gabona*, C?273/11, EU:C:2012:547, paragraph 53). The Court may nonetheless provide it with all the elements of interpretation of EU law that may be of use to it (judgment of 14 June 2017, *Santogal M-Comércio e Reparação de Automóveis*, C?26/16, EU:C:2017:453, paragraph 72).

96 In the present case, the documents before the Court contain nothing from which it may be concluded whether or not Enteco Baltic acted with the diligence required. It should, however, be stated here that, as the Advocate General observes in points 102 to 104 of his Opinion, the circumstance that the importer communicated with its customers by electronic means does not mean that lack of good faith or negligence on its part may be identified or that it may be presumed that the company knew or ought to have known that it was participating in tax evasion.

97 Should the referring court find that Enteco Baltic acted in good faith and took all the steps which could reasonably be asked of it to satisfy itself that the import and supply transactions which it carried out did not result in its participation in tax evasion, it must be recalled that, in accordance with settled case-law, the principle of legal certainty precludes a Member State which has initially accepted the documents submitted by the vendor as evidence establishing entitlement to an exemption for a supply from subsequently requiring that vendor to account for the VAT on that supply, because of fraud by the purchaser of which the vendor had and could have had no knowledge (see, to that effect, judgments of 27 September 2007, *Teleos and Others*, C?409/04, EU:C:2007:548, paragraph 50, and of 14 June 2017, *Santogal M-Comércio e Reparação de Automóveis*, C?26/16, EU:C:2017:453, paragraph 75).

98 It is not apparent from the documents before the Court that those conditions are satisfied in the situation at issue in the main proceedings. Admittedly, according to those documents, on the basis of the evidence submitted by Enteco Baltic, the Tax Inspectorate concluded that the conditions for exemption of the intra-Community supplies were satisfied and that the company could not be accused of any negligence. However, it must be stressed that the Tax Inspectorate's analysis, which in any event related only to some of the transactions at issue in the main proceedings, did not prevent the VTM from ascertaining, in a further check carried out within the applicable time limits, whether Enteco Baltic had not and could not have been aware of possible tax evasion by the purchaser with respect to all the transactions in question.

99 The interpretation of the principle of legal certainty in the light of the considerations set out in paragraphs 97 and 98 above is not called in question by the argument put forward at the hearing by the Lithuanian Government and the Commission that the checks carried out by the Tax Inspectorate and the VTM had different objects, the former examining compliance with the conditions laid down in Article 138 of the VAT Directive and the latter looking at compliance with the conditions laid down in Article 143(1)(d) of that directive. The exemption on importation under

Article 143(1)(d) of the VAT Directive is subject to the conditions being satisfied for the exemption of the subsequent intra-Community supply under Article 138(1) of the directive. According to the information in the order for reference, the decision of the VTM concerned precisely the conditions of the latter provision.

100 In the light of the above considerations, the answer to Questions 5 and 6 is that Article 143(1)(d) of the VAT Directive must be interpreted as precluding an administrative practice under which, in circumstances such as those of the dispute in the main proceedings, an importer acting in good faith is refused the right to the VAT exemption on importation where the conditions for the exemption of the subsequent intra-Community supply are not satisfied, because of tax evasion on the part of the purchaser, unless it is shown that the importer knew or ought to have known that the transaction was involved in tax evasion committed by the purchaser and did not take all reasonable steps in his power to avoid participation in the evasion. The mere fact that the importer and the purchaser communicated by electronic means of communication cannot allow it to be presumed that the importer knew or could have known that he was participating in tax evasion.

Question 7

101 By its seventh question, the referring court essentially asks whether Article 143(1)(d) of the VAT Directive must be interpreted as meaning that the competent national authorities are obliged, when examining the transfer of the power to dispose of goods as owner, to collect information to which only the public authorities have access.

102 In this respect, it should be recalled that, by analogy with the case-law cited in paragraph 67 above and as the referring court also states, it is for the importer to show that the conditions for the exemption on importation provided for in Article 143(1)(d) of the VAT Directive are satisfied. In particular, it is for him to show that the power to dispose of the goods as owner has been transferred to the purchaser.

103 Moreover, in the context of intra-Community supplies, it follows from the Court's case-law that, where the supplier is unable to produce the necessary evidence to show that the conditions for the exemption of an intra-Community supply are satisfied, the tax authorities of the Member State in which the dispatch or transport of the goods begins are not obliged to request information from the authorities of the Member State of destination on the basis of the provisions of Regulation No 1798/2003 on the system of exchange of information between the tax authorities of the Member States (see, to that effect, judgment of 22 April 2010, *X and fiscale eenheid Facet-Facet Trading*, C?536/08 and C?539/08, EU:C:2010:217, paragraph 37, and, by analogy, judgment of 27 September 2007, *Twoh International*, C?184/05, EU:C:2007:550, paragraphs 28, 34 and 38).

104 That interpretation may be applied to Regulation No 904/2010, which, in accordance with the second paragraph of Article 62, applies from 1 January 2012 and, in accordance with the first paragraph of Article 61, repeals Regulation No 1798/2003 as from that date.

105 As may be seen in particular from recitals 3, 4 and 7 of Regulation No 904/2010, the objective of that regulation is to combat VAT fraud and tax evasion and to contribute to the correct application of VAT. To that end, the regulation, in accordance with the second paragraph of Article 1(1), lays down rules and procedures to enable the competent authorities of the Member States to cooperate and to exchange with each other any information that may help to effect a correct assessment of VAT, monitor the correct application of VAT, particularly on intra-Community transactions, and combat VAT fraud. In particular, Article 7(1) of the regulation provides for that purpose that, at the request of a national authority, the requested authority is to communicate any information that may help to effect a correct assessment of VAT. Article 54(1) of the regulation lays down limits to the exchange of information between the national authorities, who are not required

to produce the information requested in all circumstances. Consequently, and in the absence of any express provision in the regulation to that effect, the regulation does not confer on a taxable person any specific right to request the transmission of information where he is unable himself to produce evidence capable of showing that he is entitled to an exemption from VAT (see, by analogy, judgment of 27 September 2007, *Twoh International*, C?184/05, EU:C:2007:550, paragraphs 30 to 34).

106 In the light of the above considerations, the answer to Question 7 is that Article 143(1)(d) of the VAT Directive must be interpreted as meaning that the competent national authorities are not obliged, when examining the transfer of the power to dispose of goods as owner, to collect information to which only the public authorities have access.

Costs

107 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 (Fourth Chamber) hereby rules:

1. **Article 143(1)(d) and Article 143(2)(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2009/69/EC of 25 June 2009, must be interpreted as precluding the competent authorities of a Member State from refusing exemption from value added tax on importation on the sole ground that, following a change of circumstances after the importation, the goods in question have been supplied to a taxable person other than the person whose value added tax identification number was stated in the import declaration, where the importer has communicated all the information on the identity of the new purchaser to the competent authorities of the Member State of import, provided that it is shown that the substantive conditions for the exemption of the subsequent intra-Community supply are actually satisfied.**

2. **Article 143(1)(d) in conjunction with Article 138 and Article 143(2)(c) of Directive 2006/112, as amended by Directive 2009/69, must be interpreted as meaning that:**

– **documents which confirm the transport of goods from a tax warehouse in the Member State of import, not to the purchaser but to a tax warehouse in another Member State, may be regarded as sufficient evidence of dispatch or transport of the goods to another Member State;**

– **documents such as consignment notes on the basis of the Convention on the Contract for the International Carriage of Goods by Road, signed at Geneva on 19 May 1956, as amended by the Protocol of 5 July 1978, and electronic administrative documents accompanying movements under suspension of excise duty may be taken into account to show that, at the time of importation into a Member State, the goods concerned are intended to be dispatched or transported to another Member State within the meaning of Article 143(2)(c) of Directive 2006/112, as amended, provided that the documents are submitted at that time and include all the necessary information. Those documents, as also the electronic confirmations of the supply of the goods and the report of receipt issued following a movement under suspension of excise duty, are capable of showing that the goods have actually been dispatched or transported to another Member State in accordance with Article 138(1) of Directive 2006/112, as amended.**

3. **Article 143(1)(d) of Directive 2006/112, as amended by Directive 2009/69, must be interpreted as precluding the authorities of a Member State from refusing an importer the right to the exemption from value added tax laid down in that provision for imports of goods into that Member State carried out by him and followed by intra-Community supplies on the ground that the goods were not transferred directly to the purchaser but were handled by transport undertakings and tax warehouses designated by the purchaser, where the power to dispose of the goods as owner was transferred to the purchaser by the importer. In this context, the concept of 'supply of goods' within the meaning of Article 14(1) of that directive, as amended, must be interpreted in the same way as in the context of Article 167 of the directive, as amended.**

4. **Article 143(1)(d) of Directive 2006/112, as amended by Directive 2009/69, must be interpreted as precluding an administrative practice under which, in circumstances such as those of the dispute in the main proceedings, an importer acting in good faith is refused the right to the exemption from value added tax on importation where the conditions for the exemption of the subsequent intra-Community supply are not satisfied, because of tax evasion on the part of the purchaser, unless it is shown that the importer knew or ought to have known that the transaction was involved in tax evasion committed by the purchaser and did not take all reasonable steps in his power to avoid participation in the evasion. The mere fact that the importer and the purchaser communicated by electronic means of communication cannot allow it to be presumed that the importer knew or could have known that he was participating in tax evasion.**

5. **Article 143(1)(d) of Directive 2006/112, as amended by Directive 2009/69, must be interpreted as meaning that the competent national authorities are not obliged, when examining the transfer of the power to dispose of goods as owner, to collect information to which only the public authorities have access.**

[Signatures]

* Language of the case: Lithuanian.