Provisional text

JUDGMENT OF THE COURT (Seventh Chamber)

12 September 2024 (*)

(Reference for a preliminary ruling – Common system of value added tax (VAT) – Directive 2006/112/EC – Articles 273 and 395 – Implementing Decision (EU) 2019/310 – Fight against VAT fraud – Split payment mechanism – VAT account of an insolvent taxable person – Transfer at the request of the insolvency administrator of funds deposited on the VAT account)

In Case C?709/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Wojewódzki S?d Administracyjny we Wroc?awiu (Regional Administrative Court, Wroc?aw, Poland), made by decision of 22 September 2022, received at the Court on 17 November 2022, in the proceedings

Syndyk Masy Upad?o?ci A

v

Dyrektor Izby Administracji Skarbowej we Wroc?awiu,

interested party:

Rzecznik Ma?ych i ?rednich Przedsi?biorców,

THE COURT (Seventh Chamber),

composed of N. Wahl, acting as President of the Chamber, J. Passer and M.L. Arastey Sahún (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Dyrektor Izby Administracji Skarbowej we Wroc?awiu, by K. Tudrujek,

– the Rzecznik Ma?ych i ?rednich Przedsi?biorców, by P. Chrupek, radca prawny,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by M. Herold, K. Herrmann and J. Jokubauskait?, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 April 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), Council Implementing Decision (EU) 2019/310 of 18 February 2019 authorising Poland to introduce a special measure derogating from Article 226 of Directive 2006/112 on the common system of value added tax (OJ 2019 L 51, p. 19), Article 17(1), Article 41(1), Article 51(1) and Article 52(1) of the Charter of Fundamental Rights of the European Union ('the Charter'), Article 2 and Article 4(3) TEU, and the principles of proportionality, neutrality of value added tax (VAT) and legal certainty.

2 The request has been made in proceedings between Syndyk Masy Upad?o?ci A (court-appointed administrator in the insolvency of A; 'insolvency administrator A') and the Dyrektor Izby Administracji Skarbowej we Wroc?awiu (Director of the Tax Administration Chamber in Wroc?aw, Poland) ('the Director of the Tax Authority') concerning the latter's decision not to release funds deposited on the VAT account of a taxable person subject to insolvency proceedings.

Legal context

European Union law

Directive 2006/112

3 Article 206 of Directive 2006/112 provides:

'Any taxable person liable for payment of VAT must pay the net amount of the VAT when submitting the VAT return provided for in Article 250. Member States may, however, set a different date for payment of that amount or may require interim payments to be made.'

4 Article 226 of that directive provides:

'Without prejudice to the particular provisions laid down in this Directive, only the following details are required for VAT purposes on invoices issued pursuant to Articles 220 and 221:

…'

5 Article 273 of that directive provides:

'Member States may impose other obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion, subject to the requirement of equal treatment as between domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

The option under the first paragraph may not be relied upon in order to impose additional invoicing obligations over and above those laid down in Chapter 3.'

6 Article 395(1) of that directive is worded as follows:

'The Council [of the European Union], acting unanimously on a proposal from the [European] Commission, may authorise any Member State to introduce special measures for derogation from the provisions of this Directive, in order to simplify the procedure for collecting VAT or to prevent

certain forms of tax evasion or avoidance.

Measures intended to simplify the procedure for collecting VAT may not, except to a negligible extent, affect the overall amount of the tax revenue of the Member State collected at the stage of final consumption.'

Regulation (EU) 2015/848

7 Under the first subparagraph of Article 1(1) of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ 2015 L 141, p. 19):

'This Regulation shall apply to public collective proceedings, including interim proceedings, which are based on laws relating to insolvency and in which, for the purpose of rescue, adjustment of debt, reorganisation or liquidation:

(a) a debtor is totally or partially divested of its assets and an insolvency practitioner is appointed;

(b) the assets and affairs of a debtor are subject to control or supervision by a court; or

(c) a temporary stay of individual enforcement proceedings is granted by a court or by operation of law, in order to allow for negotiations between the debtor and its creditors, provided that the proceedings in which the stay is granted provide for suitable measures to protect the general body of creditors, and, where no agreement is reached, are preliminary to one of the proceedings referred to in point (a) or (b).'

Implementing Decision (EU) 2019/310

8 Implementing Decision 2019/310 was adopted, as is apparent from its cited legal base, on the basis of the FEU Treaty and Directive 2006/112 and, in particular, Article 395(1) thereof.

9 Recitals 1, 3, 4, 7, 9, 11 and 12 of Implementing Decision 2019/310 state:

'(1) By letter registered with the Commission on 15 May 2018 Poland requested an authorisation to introduce a special measure derogating from Article 226 of Directive [2006/112] in order to apply a split payment mechanism ("the special measure"). The special measure should require the inclusion of a special statement that [VAT] has to be paid to the blocked VAT account of the supplier on invoices issued in relation to the supplies of goods and services susceptible to fraud and generally covered by the reverse charge mechanism and by the joint and several liability in Poland. …

…

(3) Poland has already taken numerous measures to fight fraud. It has introduced, the reverse charge mechanism and joint and several liability of the supplier and the customer, the Standard Audit File, tighter rules for the VAT registration and de-registration of taxable persons, increased number of audits among others. However, Poland nonetheless considers that those measures are insufficient to prevent VAT fraud.

(4) Poland is of the view that the application of the special measure will eliminate VAT fraud. Since under the split payment mechanism the amount of VAT deposited on a separate VAT account of a supplier (taxable person) can be used for restricted purposes only, namely for the payment of the VAT liability to the tax authority or for the payment of VAT on invoices received from suppliers, it is better guaranteed that the tax authorities will receive the whole VAT amount

which should be transferred by the taxable person to the Polish State Treasury.

…

(7) Where a surplus of input tax in excess of the output tax that is recognised by the supplier in the VAT return as a refundable amount, the payment of such refund is normally carried out within 60 days to [the] supplier's regular account. However, Poland has informed the Commission that, for the transactions covered by the special measure, at the request of a supplier who holds a blocked VAT account, the refund is to take place within 25 days.

…

(9) The special measure is to apply to all suppliers, including those suppliers who are not established in Poland, as they have to hold a bank account operated pursuant to Polish Banking Law. In this respect, Poland confirmed that the suppliers will not incur any additional costs relating to the obligation of opening a bank account in Poland, since those suppliers will be able to open and hold the bank account for VAT payments in Poland free of charge.

…

(11) The Commission is of the view that the special measure for supplies of goods and services susceptible to fraud is likely to bring effective results in the fight against VAT fraud. …

(12) Given the novelty and the broad scope of the special measure, it is important to ensure necessary follow-up. In particular, such follow-up needs to focus on the impact of the special measure on the level of VAT fraud and on the taxable persons regarding the refunds of VAT, the administrative burden, costs for taxable persons among others. Poland should therefore provide a report on the impact of the special measure 18 months after the entry into force of the special measure in Poland.'

10 Article 1 of that implementing decision provides:

'By way of derogation from Article 226 of [Directive 2006/112], Poland is authorised to introduce a special statement that VAT shall be paid to the separate and blocked VAT bank account of the supplier opened in Poland on invoices issued in relation to supplies between taxable persons of goods and services listed in the Annex to this Decision where payments for supplies are made by electronic bank transfers.'

11 Under the second paragraph of Article 3 thereof, that implementing decision was to apply from 1 March 2019 to 28 February 2022.

12 Council Implementing Decision (EU) 2022/559 of 5 April 2022 amending Implementing Decision (EU) 2019/310 as regards the authorisation granted to Poland to continue to apply the special measure derogating from Article 226 of Directive 2006/112/EC on the common system of value added tax (OJ 2022 L 108, p. 51) extended the authorisation granted by Implementing Decision 2019/310 until 28 February 2025.

Polish law

The Law on VAT

13 Article 106e(1)(18a) of the ustawa o podatku od towarów i us?ug (Law on the tax on goods and services) of 11 March 2004 (Dz. U. of 2021, item 685), as amended ('the Law on VAT'), provides:

'Invoices on which the total amount due exceeds 15 000 [Polish zlotys (PLN)] or the equivalent of that amount in a foreign currency and which cover the supply to a taxable person of goods or services listed in Annex No 15 to that law, shall contain the statement "split payment mechanism" …'

14 Article 108a of that law provides:

'1. Taxable persons who have received an invoice showing the amount of tax may apply the split payment mechanism when paying the amount due arising from that invoice.

1a. When making payments for purchased goods or services listed in Annex No 15 to that law and evidenced by an invoice whose total amount due exceeds PLN 15 000 or the equivalent of that amount in a foreign currency, taxable persons shall be required to apply the split payment mechanism. …

…

2. The split payment mechanism consists of:

(1) paying the amount corresponding to all or part of the amount of the tax arising from the invoice received into the VAT account;

(2) paying all or part of the amount corresponding to the net sales value arising from the invoice received into a bank account or a credit union account for which a VAT account is maintained, or by otherwise settling that invoice.'

15 Article 108b of that law provides:

'1. At the request of the taxable person, the Director of the Tax Office shall authorise, by decision, the transfer of the funds held in the VAT account indicated by the taxable person to the bank account or credit union account, indicated by the taxable person, for which account that VAT account is maintained.

…

3. The Director of the Tax Office shall issue a decision within 60 days of receipt of the request.
…

…

5. The Director of the Tax Office shall refuse, by decision, the transfer of the funds held in the VAT account:

(1) in the event of tax arrears on the part of the taxable person and payment arrears referred to in Article 62b(2)(2)(a) of the [ustawa – Prawo bankowe (Law on Banking), of 29 August 1997 [(Dz. U. of 1997, No 140, item 939), as amended; ('the Law on Banking')], where the amount of those funds corresponds to those arrears with late payment interest at the date of the decision;

(2) when there are reasonable grounds for concern that

(a) the tax liability relating to the taxes and liabilities referred to in Article 62b(2)(2)(a) of [the Law on Banking] will not be enforced, in particular where the taxpayer persistently refrains from paying the taxes due or takes measures consisting of the disposal of assets which may hinder or frustrate the fulfilment of tax obligations, or

(b) arrears of taxes and liabilities referred to in Article 62b(2)(2)(a) of [the Law on Banking] arises, or an additional tax debt, is established.

…'

The Law on Banking

16 Article 62b(2) of the Law on Banking, provides:

'The VAT account may be debited only:

…

(2) for the purposes of payment:

(a) into the account of the Tax Office of:

– [VAT], including [VAT] on imported goods, additional tax and late payment interest on [VAT] or on the additional tax,

– corporation tax and the payment on account for that purpose, together with late payment interest on corporation tax or on the payment on account for that purpose,

– personal income tax and advance payment for that purpose, together with late payment interest on personal income tax and on payment on account for that purpose,

– excise duty, advance payment of excise duty, daily payments and late payment interest on excise duty and advance payment of excise duty,

– customs duties and late payment interest thereon,

…'

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

17 On 28 June 2021, the insolvency administrator A applied to the Naczelnik Urz?du Skarbowego w O. (Director of the Tax Office, O., Poland) to transfer the funds held in the VAT account of an insolvent taxable person to the account of the insolvency estate. As grounds for the insolvency administrator A's application, the insolvency administrator A stated that the sum of 104 915 PLN (approximately EUR 23 600) was to be transferred to the account of the municipality of O. (Poland) in order to pay the property tax, payable by that taxable person in respect of July 2021.

18 By decision of 26 August 2021, the Director of the Tax Office in O. rejected that application.

19 The Director of the Tax Authority, hearing an appeal brought by the insolvency administrator A against that decision, confirmed that decision by decision of 30 November 2021.

20 The insolvency administrator A brought an action against the latter decision before the Wojewódzki S?d Administracyjny we Wroc?awiu (Regional Administrative Court, Wroc?aw,

Poland), which is the referring court.

21 The referring court notes that the Polish legislation and, more specifically, Article 106e(1) and Articles 108a to 108f of the Law on VAT, and Articles 62a to 62e of the Law on Banking, provide for the split payment mechanism. That mechanism consists in separating the payment of VAT due from the taxable amount due. When a supplier of goods or services falls within the split payment provisions, that supplier is obliged to have, in addition to his or her regular bank account, a separate and blocked bank account for VAT purposes. That account is reserved for the collection of the VAT paid by its customers and the payment of VAT to its own suppliers as well as the payment of other public debts, but only those of the State Treasury. In that case, the customer pays the taxable amount to the supplier into an ordinary bank account, while the VAT due on the supply of goods or services is paid into the blocked bank account for the purposes of the VAT held by that supplier. That method of payment is merely the result of the payer's willingness and is not automatic. The release of funds held in the VAT account of a taxable person requires the consent of the tax authority.

22 The split payment mechanism was introduced by the Polish legislature in accordance with Implementing Decision 2019/310, by which the Council authorised the Republic of Poland to introduce, for the period from 1 March 2019 to 28 February 2022, a special measure derogating from Article 226 of Directive 2006/112.

23 In that regard, the referring court observes that Implementing Decision 2019/310 contains rules different from those set out in Council Implementing Decision (EU) 2017/784 of 25 April 2017 authorising the Italian Republic to apply a special measure derogating from Articles 206 and 226 of Directive 2006/112 on the common system of value added tax and repealing Implementing Decision (EU) 2015/1401 (OJ 2017 L 118, p. 17).

24 Unlike Implementing Decision 2019/310, Implementing Decision 2017/784 provides, by way of derogation from Article 206 of Directive 2006/112, the possibility of establishing a national system under which the payment of the VAT due on supplies of goods and services is made by the recipient to a separate and blocked bank account held by the Italian tax authority.

25 The referring court asks whether a national measure laying down an obligation for the purchaser of goods or services to transfer the VAT due to the supplier of those goods or services to a separate and blocked bank account, held by that supplier, constitutes a derogation from Article 206 of Directive 2006/112 and, therefore, whether that measure needs to be notified, pursuant to Article 395 of that directive. A breach of the notification obligation constitutes a procedural defect and renders those regulations inapplicable and therefore unenforceable against individuals (see, to that effect, judgment of 4 February 2016, *Ince*, C?336/14, EU:C:2016:72, paragraph 67).

26 In the opinion of that court, in accordance with Article 206 of Directive 2006/112, the taxable person is liable to pay VAT not after each taxable transaction carried out by him, but at the end of each tax period. Accordingly, the net amount of VAT, referred to in the first sentence of that article, corresponds to the amount of VAT relating to all the taxable transactions carried out by the taxable person during the tax period, from which the VAT paid in respect of all the transactions carried out during that period is deducted, including those carried out before the transactions carried out by that taxable person. In those circumstances, that taxable person should be able to dispose freely of the earlier payments which he or she has received from his or her customers. In the case, however, of a VAT account such as that at issue in the case before that court, the funds are blocked before the VAT liability to the public authorities arises.

27 It is true that Article 206 of Directive 2006/112 allows Member States to collect an interim

payment of VAT. The term ‘interim payment’ means the partial payment of an amount that is payable later, namely the net amount of VAT calculated for a whole tax period. However, it would be difficult to regard the amount of VAT paid by the purchaser of goods or services to its supplier in respect of a specific transaction, as laid down by the Polish legislation providing for the split payment mechanism, as constituting an interim payment within the meaning of Article 206 of Directive 2006/112, in accordance with the case-law resulting from the judgment of 9 September 2021, *Dyrektor Izby Administracji Skarbowej w Bydgoszczy (Intra-Community acquisitions of diesel)* (C?855/19, EU:C:2021:714, paragraph 33). Furthermore, the situation in the case before the referring court is different to that in the case which gave rise to the judgment of 26 March 2015, *Macikowski* (C?499/13, EU:C:2015:201), in which a court enforcement officer was regarded as a third party who had paid output tax, and not as a supplier.

28 The referring court has doubts as to whether the national measure at issue goes beyond the objective of fighting VAT fraud, which follows from Articles 273 and 395 of Directive 2006/112 and Implementing Decision 2019/310.

29 In particular, it asks whether the obligation, for a taxable person, to obtain authorisation from the tax authority as regards the allocation of funds in that taxable person’s VAT account for purposes other than the payment of debts owed to the State Treasury, in particular to another public creditor such as a municipality, falls within the limits of the fight against VAT fraud.

30 With regard to the situation of insolvent taxable persons, such as that in the case before the referring court, it would be all the more difficult to concede that the obligation laid down by the measure at issue is intended to combat VAT fraud given that the authorisation for the transfer of funds held in the VAT account was requested by an insolvency administrator subject to review by an insolvency court.

31 In addition, the referring court asks whether, in the light of the fact that, in the present case, the insolvent taxable person does not carry out any economic activity, thus is not performing any transactions giving rise to VAT, and that insolvency administrator A stated that that taxable person had not, since the declaration of insolvency, had any outstanding VAT arrears, the blocking of funds in the VAT account infringes the principle of VAT neutrality.

32 The referring court is also uncertain as to whether the split payment mechanism complies with the right to property guaranteed by Article 17 of the Charter.

33 The Polish legislature did not regulate the effects of that mechanism in the context of the Law on Insolvency. In that situation, it is difficult to take the view that there are clear and precise rules enabling an insolvency administrator to conduct the insolvency procedure and foresee the conduct of the tax authorities.

34 In accordance with Article 2 TEU, in a State governed by the rule of law, economic operators should legitimately be able to expect from public authorities that interference with their fundamental rights is subject to reasonable limits and does not take account only of the interests of the State Treasury.

35 In those circumstances, the Wojewódzki S?d Administracyjny we Wroc?awiu (Regional Administrative Court, Wroc?aw) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must the provisions of [Implementing Decision 2019/310] [and] the provisions of [Directive 2006/112], in particular Articles 395 and 273 thereof, as well as the principle of proportionality and the principle of neutrality, be interpreted as precluding national legislation and practice which, in

the circumstances of the case at hand, preclude the grant of consent for the transfer, by an insolvency administrator, of funds held in the VAT account of a taxable person (split payment mechanism) to a bank account which has been designated by [that insolvency administrator]?

(2) Must Article 17(1) of the [Charter] – [concerning the] right to property – in conjunction with Article 51(1) and Article 52(1) thereof, be interpreted as precluding national legislation and practice which, in the circumstances of the case at hand, by precluding the grant of consent for the transfer, by an insolvency administrator, of funds held in the VAT account of a taxable person (split payment mechanism), consequently result in the funds owned by the insolvent taxable person in that VAT account being frozen, and thus make it impossible for [that] insolvency administrator to carry out his or her duties in the course of the insolvency proceedings?

(3) Having regard to the context and objectives of [Implementing] Decision 2019/310, as well as the provisions of [Directive 2006/112], must the principle of the rule of law stemming from Article 2 [TEU] and the principle of legal certainty which implements it, the principle of sincere cooperation stemming from Article 4(3) TEU, and the principle of good administration stemming from Article 41(1) of the Charter, be interpreted as precluding national practice which, by precluding the grant of consent for the transfer, by an insolvency administrator, of funds held in the VAT account of a taxable person (split payment mechanism), seeks to frustrate the objectives of the insolvency proceedings defined by an insolvency court as falling within Polish jurisdiction for the purposes of Article 3(1) of [Regulation 2015/848], and consequently leads to a situation as a result of which, through the application of an inappropriate national measure, the State Treasury is treated preferentially as a creditor at the expense of the general body of creditors?'

Consideration of the questions referred

The first question

36 By its first question, the referring court asks, in essence, whether Articles 273 and 395 of Directive 2006/112, Implementing Decision 2019/310 and the principles of proportionality and neutrality of VAT must be interpreted as precluding national legislation which provides that the amount of VAT deposited on a separate VAT account, which a supplier has with a banking institution, may be used only for limited purposes, namely, in particular, the payment of the VAT due to the tax authority or the payment of the VAT on invoices received from suppliers of goods or services.

37 In that regard, it should be borne in mind that Article 226 of Directive 2006/112 lists the details which are required for VAT purposes on invoices issued pursuant to that directive.

38 Article 395(1) of that directive provides that the Council may authorise any Member State to introduce special measures for derogation from the provisions of that directive, in order to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance.

39 It was pursuant to that latter provision and following a request to that effect by the Republic of Poland to the Commission that the Council adopted Implementing Decision 2019/310.

40 In that regard, it is apparent from recital 1 of that implementing decision that that 'special measure should require the inclusion of a special statement that [VAT] has to be paid to the blocked VAT account of the supplier on invoices issued in relation to the supplies of goods and services susceptible to fraud and [which are] generally covered by the reverse charge mechanism and by the joint and several liability in Poland'.

41 As stated in the grounds of that implementing decision, the Commission was of the view that

the special measure, concerning supplies of goods and services presenting a risk of fraud, is likely to bring effective results in the fight against VAT fraud.

42 In those circumstances, in accordance with Article 1 of that implementing decision, by way of derogation from Article 226 of Directive 2006/112, the Republic of Poland was authorised to introduce a special statement that the VAT, in relation to the invoices issued for supplies between taxable persons of goods and services listed in the annex to that implementing decision, was to be paid into the separate and blocked VAT bank account of the supplier opened in Poland, where payments for those supplies are made by electronic bank transfers.

43 Consequently, for the purpose of applying the split payment mechanism, the Polish legislature provided, in its national legislation, that invoices for the supply of goods or services covered by that legislation to the taxable person, the total amount due of which exceeds 15 000 PLN (approximately EUR 3 370) or its equivalent in another currency, must contain the statement ‘split payment mechanism’.

44 In so far as that mechanism not only provides for the statement which must be included on the invoices but also establishes the scheme for the separate and blocked VAT account, under which an authorisation from the tax authority is required for the transfer of funds from that account, that authorisation being subject to conditions laid down by Polish legislation, the referring court asks whether the legislation providing for that mechanism goes beyond the authorisation granted to the Republic of Poland by Implementing Decision 2019/310. In particular, that court seeks to ascertain whether that legislation constitutes an unauthorised derogation from Article 206 of Directive 2006/112.

45 In order to answer that question, it must be stated that no provision of that directive imposes specific obligations on Member States with regard to a split payment mechanism such as that at issue in the main proceedings.

46 With regard to Article 206 of that directive, it must be borne in mind that it provides that any taxable person who is liable for the payment of VAT must pay the net amount of VAT when submitting the VAT return provided for in Article 250 of that directive, although Member States may set a different date for payment of that amount or may require interim payments to be made.

47 In that regard, it is apparent from the documents before the Court that, where the funds corresponding to the amount of VAT are paid into the taxable person’s separate VAT account, no payment of a VAT debt to the State budget takes place, the VAT being payable only on specified dates after the end of the tax period.

48 As the Advocate General noted in point 34 of her Opinion, although the taxable person cannot freely dispose of the funds held in a separate VAT account, the Polish legislation nevertheless provides for the possibility for that taxable person to use those funds in order to pay VAT to his or her suppliers of goods or services and to discharge his or her liabilities to the State.

49 Consequently, as the Advocate General observed in point 35 of her Opinion, in so far as the taxable person may use the funds in the separate VAT account to pay VAT to his or her suppliers of goods or services, he or she is not required to pre-finance VAT to an extent greater than that provided for by the normal system of Directive 2006/112.

50 In that regard, it should be added that, while, formally, Implementing Decision 2019/310 constitutes a derogation from Article 226 of Directive 2006/112, which concerns the statements which must be included, for VAT purposes, on invoices issued in accordance with that directive, the fact remains that, as stated in recitals 1, 4 and 7 of that implementing decision and Article 1

thereof, that derogation was provided for in order to allow the Polish legislature to establish a scheme to block funds in a separate bank account for VAT purposes. It follows that, in granting the derogation at issue, the EU legislature was informed that its introduction into Polish legislation entailed establishing that scheme of a separate account for VAT purposes.

51 In those circumstances, the split payment mechanism cannot be regarded, as such, as being contrary to Article 206 of Directive 2006/112 and does not constitute a derogation from that article.

52 As regards the principle of fiscal neutrality, relied on by the referring court in the first question, it must be borne in mind that, in accordance with settled case-law of the Court, that principle of fiscal neutrality was intended by the EU legislature to reflect, in matters relating to VAT, the general principle of equal treatment and precludes in particular treating economic operators carrying out the same transactions differently for VAT purposes (see, inter alia, judgments of 17 December 2020, *WEG Tevesstraße*, C?449/19, EU:C:2020:1038, paragraph 48, and of 16 February 2023, *DGRFP Cluj*, C?519/21, EU:C:2023:106, paragraph 88).

53 The scheme laid down by Directive 2006/112 and the right of VAT deduction which is part of it are designed to relieve the trader entirely of the burden of the VAT due or paid in the course of all his or her economic activities. The common system of VAT consequently ensures that all economic activities, whatever their purpose or results, provided that they are themselves subject to VAT, are taxed in a wholly neutral way (see, to that effect, judgment of 16 February 2023, *DGRFP Cluj*, C?519/21, EU:C:2023:106, paragraph 94 and the case-law cited).

54 In the present case, the order for reference does not make it possible to identify any link between, on the one hand, the principle of fiscal neutrality and, on the other, the conditions, laid down by Polish legislation, to which the refusal to release funds from the VAT account of the insolvent taxable person is subject in the context of insolvency proceedings.

55 As regards the principle of proportionality, also relied on by the referring court in the first question, suffice it to bear in mind that, in the first place, as is apparent from recital 3 of Implementing Decision 2019/310, although the Republic of Poland has already taken numerous measures to fight against VAT fraud, that Member State was of the view, however, that those measures were insufficient to prevent that fraud. As stated in recital 11 of that implementing decision, the Commission approved that analysis, taking the view that the special measure at issue for supplies of goods and services susceptible to fraud was likely to bring effective results in the fight against VAT fraud.

56 In the second place, in so far as, in accordance with Article 1 of Implementing Decision 2019/310, the authorisation provided for by that decision applies only to payments made by means of electronic bank transfers, the obligation to include on the VAT invoice a statement that that tax is paid into a separate and blocked VAT account of the supplier and, therefore, to ensure that the corresponding sums are transferred to that account, must not be regarded as a binding requirement. Therefore, it is not disproportionate.

57 In the third place, that obligation does not apply to all transactions giving rise to payment by electronic transfer, since, in accordance with Article 106e and Article 108a of the Law on VAT, it concerns only invoices for the supply of goods or services the total amount due of which exceeds 15 000 PLN (approximately EUR 3 370) or its equivalent expressed in foreign currency, which does not appear disproportionate either.

58 In the fourth place, as has been stated in paragraph 48 above, the Polish legislation provides for the possibility for the taxable person to use the funds held in that separate VAT

account in order to pay VAT to his or her suppliers of goods or services and to discharge his or her liabilities to the State. Therefore, that legislation does not provide for an absolute blocking of the funds at issue, but merely limits their use, which is also proportionate to the objective of fighting VAT fraud.

59 In the light of all the foregoing considerations, the answer to the first question is that Articles 273 and 395 of Directive 2006/112 and Implementing Decision 2019/310 must be interpreted as not precluding national legislation which provides that the amount of VAT deposited on a separate VAT account, which a supplier has with a banking institution, may be used only for limited purposes, namely, in particular, the payment of the VAT due to the tax authority or the payment of VAT on invoices received from suppliers of goods or services.

The second question

60 By its second question, the referring court asks, in essence, whether Article 17(1) of the Charter, read in conjunction with Article 51(1) and Article 52(1) thereof, must be interpreted as precluding national legislation which provides that the amount of VAT deposited on a separate VAT account, which a supplier has with a banking institution, may be used only for limited purposes, namely, in particular, the payment of the VAT due to the tax authority or the payment of the VAT on invoices received from suppliers of goods or services.

61 In that regard, it should be recalled that, under Article 51(1) of the Charter, its provisions are addressed to the Member States only when they are implementing EU law.

62 In accordance with settled case-law, the concept of ‘implementing Union law’, as referred to in Article 51 of the Charter, assumes a degree of connection between an EU legal measure and the national measure in question, above and beyond the matters covered being closely related or one of those matters having an indirect impact on the other (judgment of 16 July 2020, *Adusbef and Others*, C?686/18, EU:C:2020:567, paragraph 52 and the case-law cited).

63 In that respect, the Court has found that fundamental EU rights could not be applied in relation to national legislation because the provisions of EU law in the subject area concerned did not impose any specific obligation on Member States with regard to the situation at issue in the main proceedings (judgment of 16 July 2020, *Adusbef and Others*, C?686/18, EU:C:2020:567, paragraph 53 and the case-law cited).

64 In the present case, as is apparent from the answer given to the first question, none of the provisions of EU law referred to by the referring court imposes on Member States specific obligations with regard to a split payment mechanism such as that at issue in the main proceedings.

65 In addition, it must be borne in mind that the dispute in the main proceedings concerns the refusal, by the tax authority, to authorise a transfer of funds held in the separate VAT account of an insolvent taxable person to the account of the insolvency estate for the purpose of paying municipal property tax. Before the referring court, the insolvency administrator A challenges the rule, imposed under the Polish legislation applicable in the present case, that it is not possible to transfer the funds held in the separate and blocked VAT account for the purpose of paying that property tax.

66 In that regard, it must be held that, although the split payment mechanism for VAT, provided for by the Polish legislation at issue, has, as such, a certain link with the VAT system provided for by Directive 2006/112, the fact remains that the detailed rules for the payment of a municipal property tax by means of the funds held in a separate VAT account of the taxable person are not

determined by the provisions of Directive 2006/112, with the result that that mechanism does not constitute an ‘implementation of Union law’ within the meaning of the case-law cited in paragraph 62 above.

67 In those circumstances, the second question is inadmissible.

The third question

68 By its third question, the referring court asks whether the principle of the rule of law stemming from Article 2 TEU, the principle of legal certainty, the principle of sincere cooperation stemming from Article 4(3) TEU and the principle of good administration stemming from Article 41(1) of the Charter must be interpreted as precluding national legislation which provides that the amount of VAT deposited on a separate VAT account, which a supplier has with a banking institution, may be used only for purposes limited to, namely, in particular, the payment of the VAT due to the tax authority or the payment of the VAT on invoices received from suppliers of goods or services.

69 In accordance with settled case-law, the procedure provided for in Article 267 TFEU is an instrument of cooperation between the Court of Justice and the national courts, by means of which the Court provides the national courts with the points of interpretation of EU law which they need in order to decide the disputes before them (judgment of 1 August 2022, *Vyriausioji tarnybin?s etikos komisija*, C?184/20, EU:C:2022:601, paragraph 47).

70 Since the order for reference serves as the basis for that procedure, it is essential that the national court should, in that decision, expand on its definition of the factual and legislative context of the dispute in the main proceedings and give the necessary explanation of the reasons for the choice of the provisions of EU law which it seeks to have interpreted and of the link it establishes between those provisions and the national law applicable to the proceedings pending before it (judgment of 8 June 2023, *Lyoness Europe*, C?455/21, EU:C:2023:455, paragraph 26).

71 In that regard, it should also be noted that the information provided in orders for reference must enable, first, the Court to provide useful answers to the questions referred by the national court and, secondly, the governments of the Member States and other interested parties to exercise the right conferred on them by Article 23 of the Statute of the Court of Justice of the European Union to submit observations. It is the Court’s duty to ensure that that right is safeguarded, given that, under that provision, only the orders for reference are notified to the interested parties (see, to that effect, judgment of 4 May 2023, *MV – 98*, C?97/21, EU:C:2023:371, paragraph 30).

72 Those cumulative requirements concerning the content of a request for a preliminary ruling are expressly set out in Article 94 of the Rules of Procedure of the Court of Justice, which the referring court is bound to observe scrupulously (judgment of 8 June 2023, *Lyoness Europe*, C?455/21, EU:C:2023:455, paragraph 27). They are also recalled in paragraphs 13, 15 and 16 of the Recommendations of the Court of Justice of the European Union to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (OJ 2019 C 380, p. 1).

73 In the present case, as regards the third question, the order for reference does not meet the requirement laid down in Article 94(c) of the Rules of Procedure.

74 It is clear that the order for reference does not set out sufficiently the reasons why the interpretation of the principle of the rule of law stemming from Article 2 TEU, the principle of legal certainty, the principle of sincere cooperation stemming from Article 4(3) TEU and the principle of good administration stemming from Article 41(1) of the Charter is necessary in the present case.

75 The fact that the referring court relies on an alleged inconsistency between, on the one hand, the national provisions providing for the split payment mechanism and, on the other hand, the national provisions relating to insolvency is manifestly not sufficient to establish a link between the provisions and principles of EU law referred to in the preceding paragraph and that mechanism, which is at issue in the main proceedings.

76 In those circumstances, the third question is inadmissible.

Costs

77 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 (Seventh Chamber) hereby rules:

Articles 273 and 395 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, and Council Implementing Decision (EU) 2019/310 of 18 February 2019 authorising Poland to introduce a special measure derogating from Article 226 of Directive 2006/112/EC on the common system of value added tax,

must be interpreted as not precluding national legislation which provides that the amount of value added tax (VAT) deposited on a separate VAT account, which a supplier has with a banking institution, may be used only for limited purposes, namely, in particular, the payment of the VAT due to the tax authority or the payment of VAT on invoices received from suppliers of goods or services.

[Signatures]

* Language of the case: Polish.