

4. Are a legal interpretation and a practice developed in a Member State, whereby a taxable person who has an invoice in conformity with the VAT Directive is refused the benefit of the right to deduct VAT on the ground that he has not acted with due diligence in the course of trade because he has failed to demonstrate conduct such as to support the determination that his activity was not simply confined to the mere receipt of invoices meeting the formal requirements laid down, consistent with the aforementioned articles of the VAT Directive, with the principle of fiscal neutrality and, above all, with the case-law of the Court of Justice — which, when interpreting those provisions, places the burden of proof on the tax authority —, even in the case where the taxable person has enclosed all documentation relating to the transactions at issue and the tax authority has rejected other offers to furnish evidence made by the taxable person during the tax proceedings?
5. In the light of the aforementioned articles of the VAT Directive and the fundamental principle of legal certainty, may the finding, reached in connection with due diligence, that the issuer of the invoice was not engaged in any economic activity at all, constitute an objective fact, in the case where the tax authority takes the view that there has been a failure to demonstrate the actual performance (and, therefore, the genuine existence) of an economic transaction — as documented by means of invoices, contracts and other supporting accounting documentation, and by correspondence, and as confirmed by the statements of the warehousing undertaking and the taxable person's director and employee —, and bases that view exclusively on the statement of the supplier undertaking's director denying the existence of that transaction, without taking into account the circumstances in which that statement was made, the interests of the person making the statement or the fact that, according to the documents in the case file, that undertaking had been founded by the very person making the statement and, according to the information available, an agent was acting on its behalf?
6. Must the provisions of the VAT Directive relating to the deduction of VAT be interpreted as meaning that, in the case where the tax authority discovers during the tax proceedings that the goods mentioned on the invoices concerned are of Community origin and that the taxable person is the second member of a chain [of supplies], the configuration of that scenario — given that goods of Community origin are exempt from VAT and the first Hungarian purchaser is not therefore entitled to deduct VAT, only the second member of that chain being so entitled — is an objective fact sufficient in itself to demonstrate tax evasion, or must the tax authority, in that case, also show, on the basis of objective facts, which member or members of that chain committed tax evasion, by what *modus operandi* it or they did so, and whether the taxable person was or could have been aware of this through the exercise of due diligence?

(¹) OJ 2006 L 347, p. 1.

Request for a preliminary ruling from the Fővárosi Törvényszék (Hungary) lodged on 11 August 2022 — SB v Agrárminiszter

(Case C-538/22)

(2022/C 432/12)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: SB

Defendant: Agrárminiszter

Questions referred

1. Is the practice of a Member State compliant with Article 30(3) of Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance,⁽¹⁾ having regard to recitals 28 and 31, points 16 and 18 of Article 2(1) and Article 31(1) to (3) thereof, if that practice establishes that where, under the aid eligibility criterion introduced by the Member State, the calving rate achieved for the number of declared animals is less than the rate required and stipulated for declared animals, the application for payment of coupled support for suckler cows must be refused in its entirety, even where the required calving rate is met by a smaller number of declared animals, because where the calving percentage is less than that required by the national legislation, the result is that none of the declared animals is eligible?

2. If the response to the previous question is in the negative, in the present case, where the calving percentage achieved is less than that required by the national legislation, having regard to the requirements for a graded and proportionate approach established in recitals 28 and 31 of the aforesaid regulation and the articles of EU law cited in the first question referred for a preliminary ruling, must the number of eligible animals within the meaning of point 18 of Article 2(1) and Article 30(3) of the regulation be determined:
 - (a) by classing as eligible animals only those which have calved; or

 - (b) by classing as eligible animals those animals from among the declared animals which comprise the group in which the calving rate stipulated in the national legislation is reached?

3. Having regard to Article 30(3) and Article 31(1) and (2) of Delegated Regulation No 640/2014 and the requirement for proportionality established in recital 31 thereof, must Article 31(3) of that regulation be interpreted as meaning that the penalty is to be determined on the basis of the ratio of the non-compliant to compliant animals, or on the basis of the ratio of the declared animals to the compliant animals, and also that the quotient thus obtained must still be multiplied by 100, in a percentage calculation?

⁽¹⁾ OJ 2014 L 181, p. 48.

Request for a preliminary ruling from the Okresný súd Bratislava II (Slovakia) lodged on 17 August 2022 — INGSTEEL spol. s. r. o. v Úrad pre verejné obstarávanie

(Case C-547/22)

(2022/C 432/13)

Language of the case: Slovak

Referring court

Okresný súd Bratislava II

Parties to the main proceedings

Applicant: INGSTEEL spol. s. r. o.

Defendant: Úrad pre verejné obstarávanie