JUDGMENT OF THE COURT (Fourth Chamber)

22 December 2008 *

In Case C-414/07,

REFERENCE for a preliminary ruling under Article 234 EC, from the Wojewódzki Sąd Administracyjny w Krakowie (Poland), made by decision of 17 May 2007, received at the Court on 10 September 2007, in the proceedings

Magoora sp. z o.o.

v

Dyrektor Izby Skarbowej w Krakowie,

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Chamber, R. Silva de Lapuerta, E. Juhász, G. Arestis (Rapporteur) and J. Malenovský, Judges,

* Language of the case: Polish.

Advocate General: M. Poiares Maduro,
Registrar: M.-A. Gaudissart, Head of Unit,

having regard to the written procedure and further to the hearing on 25 September 2008,

after considering the observations submitted on behalf of:

— Magoora sp. z o.o., by Z. Liptak and J. Martini, pełnomocnicy,

— the Polish Government, by M. Dowgielewicz and H. Majszczyk, acting as Agents,

— the Commission of the European Communities, by D. Triantafyllou and K. Herrmann, acting as Agents,

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

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 17(2) and (6) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) ('the Sixth Directive').

2 The reference was made in the course of proceedings between Magoora sp. z o.o. (spółka z organiczoną odpowiedzialnością — limited liability company) ('Magoora') and the Dyrektor Izby Skarbowej w Krakowie (Director of the Tax Chamber in Cracow) concerning the interpretation of the scope and application of national tax law on the right to deduct value added tax ('VAT') on the purchase of fuel for a vehicle used by Magoora under a leasing contract.

Legal background

Community law

3 Article 17(2)(a) and (6) of the Sixth Directive, as amended by Council Directive 95/7/EC of 10 April 1995 (OJ 1995 L 102, p. 18), provided at the time of the facts in the main proceedings:

'2. In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:

(a) value added tax due or paid within the territory of the country in respect of goods or services supplied or to be supplied to him by another taxable person;

…

6. Before a period of four years at the latest has elapsed from the date of entry into force of this Directive, the Council, acting unanimously on a proposal from the Commission, shall decide what expenditure shall not be eligible for a deduction of VAT. VAT shall in

no circumstances be deductible on expenditure which is not strictly business expenditure, such as that on luxuries, amusements or entertainment.

Until the above rules come into force, Member States may retain all the exclusions provided for under their national laws when this Directive comes into force.'

National legislation

4 Article 25(1)(3a) of the Law of 8 January 1993 on tax on goods and services and on excise duty (Dz. U. No 11, heading 50), in the version in force on 30 April 2004 ('the Law of 8 January 1993'), provided:

'The reduction of the amount or the refund of the difference of the tax due shall not apply to items purchased by the taxable person such as petrol engine fuels, diesel fuels and gas used to power passenger vehicles and other motor vehicles with an authorised carrying capacity of up to 500 kg.'

5 In Poland, the provisions of the Sixth Directive were transposed by the Law of 11 March 2004 on the tax on goods and services (Dz. U. No 54, heading 535) ('the Law on VAT').

6 In accordance with Article 175 of the Law on VAT, the Law of 8 January 1993 was repealed as from 1 May 2004.

7 Article 86(3) and (5) of the Law on VAT provided in its original version:

‘3. In the case of the purchase of passenger vehicles and other motor vehicles with an authorised carrying capacity less than that determined in accordance with the formula:

ACC = 357 kg + n x 68 kg

where:

ACC denotes the authorised carrying capacity,

n denotes the number of seats, including the driver’s seat,

the amount of input tax shall correspond to 50% of the amount of tax set out in the invoice or of the amount of tax due on the intra-Community acquisition of goods or of the amount of tax due on the supply of goods purchased by the taxable person, but not more than PLN 5 000.

…

5. The authorised carrying capacity of vehicles and the number of seats referred to in paragraph 3 shall be determined on the basis of an extract from the type-approval certificate or copy of a decision granting an exemption from the obligation to obtain a type-approval certificate, issued pursuant to the provisions of the road traffic law. Vehicles whose authorised carrying capacity … or number of seats [is] not defined in the extract from the type-approval certificate or copy of the decision referred to in the first sentence shall also be regarded as passenger vehicles within the terms of paragraph 3.'

8 Article 88(1)(3) of the Law on VAT stated in its original version:

'The reduction of the amount or the refund of the difference of the tax due shall not apply to items purchased by the taxable person such as … engine fuels, diesel fuels and gas used to power passenger vehicles and other motor vehicles referred to in Article 86(3) and (5).'

9 In accordance with Article 176(3) of the Law on VAT, Articles 86 and 88 thereof were to apply from 1 May 2004 because that former provision stated that:

'The Law shall enter into force on the expiry of 14 days from the day of its publication [namely 20 April 2004], except:

(3) Articles 1 [to] 14, Article 15(1) [to] (6), Articles 16 [to] 22 …, Articles 42 [to] 95 which shall apply from 1 May 2004.'

10 The Law of 21 April 2005 (Dz. U. No 90, heading 756), which entered into force on 22 August 2005, amended the Law on VAT and, in particular, Articles 86 and 88 thereof.

11 Article 86(3) and (4) of the Law on VAT, in the version in force since 22 August 2005, provides:

'3. In the case of the purchase of passenger vehicles and other motor vehicles with a total authorised weight not exceeding 3.5 tonnes, the amount of input tax shall correspond to 60% of the amount of tax set out in the invoice or of the amount of tax due on the intra-Community acquisition of goods or of the amount of tax due on the supply of goods purchased by the taxable person, but not more than PLN 6 000.

4. Paragraph 3 shall not relate to:

(1) motor vehicles having one row of seats separated from the part intended for the carriage of goods by a wall or a fixed partition which are classified under the provisions of the road traffic law as the subtype: multipurpose vehicle, van;

(2) motor vehicles having more than one row of seats separated from the part intended for the carriage of goods by a wall or a fixed partition, in which the length of the part intended for the carriage of goods, measured on the floor from the furthest forward projecting point of the floor allowing a vertical wall or a fixed partition to be placed between the floor and the ceiling, to the rear edge of the floor, exceeds 50% of the length of the vehicle; for the purpose of calculating the percentage referred to in the previous sentence, the length of the vehicle shall be the distance between the lower edge of the windscreen and the rear edge of the floor of the part of vehicle intended for the carriage of goods, measured horizontally along the vehicle between the lower edge of the windscreen and a point derived vertically from the rear edge of the floor of the part of the vehicle intended for the carriage of goods;

(3) motor vehicles which have an open part intended for the carriage of goods;

(4) motor vehicles which have a driving cab and a body intended for the carriage of goods which are structurally separate elements of the vehicle;

(5) motor vehicles being special vehicles within the meaning of the provisions of the road traffic law with intended purposes referred to in Annex 9 to this Law;

(6) motor vehicles structurally designed for the carriage of at least 10 persons including the driver — where such intended purpose is evident from documents issued under the provisions of the road traffic law;

(7) cases in which the object of the taxable person's activity is:

(a) to resell such cars (vehicles); or

(b) to make available such cars (vehicles) for use for consideration under a hire, rental or leasing contract or other contracts of a similar nature, those cars (vehicles) being intended by the taxable person exclusively for use for those purposes for a period of not less than six months.'

12 Article 88(1)(3) of the Law on VAT, in the version in force since 22 August 2005, provides:

'The reduction of the amount or the refund of the difference of the tax due shall not apply to items purchased by the taxable person such as … engine fuels, diesel fuels and gas used to power passenger vehicles and other motor vehicles referred to in Article 86(3).'

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

13 The dispute pending before the Wojewódzki Sąd Administracyjny w Krakowie (Regional Administrative Court, Cracow) concerns the possibility for Magoora to deduct the input tax on the purchase of fuel for a vehicle used for the activities of that company under a leasing contract.

14 On 25 March 2005, Magoora entered into a contract for the operational leasing of a car, registered at the Urząd Skarbowy (Tax Office) on 13 June 2005. The referring court does not provide any information about the make and technical characteristics of that car.

15 It is clear from the order for reference that the restrictions on the deduction of input tax on purchases of fuel according to a mathematical formula in the Law on VAT, in the version in force on the day on which the leasing contract was concluded, namely 25 March 2005, were not applied to Magoora. However, following the adoption of the new wording of Article 86(3) of the Law on VAT, in the version in force since 22 August

2005, the restrictions on the deduction of input VAT on those purchases were applied to that company, since the authorised weight of the vehicle at issue in the main proceedings did not exceed 3.5 tonnes.

16 On 30 August 2005, Magoora submitted to the Naczelnik Urzędu Skarbowego Kraków-Prądnik (Head of the Cracow-Prądnik Tax Office) an application for an interpretation of the provisions of the Law on VAT as regards the scope and restrictions on the right to deduct input tax on the purchase of fuel for the vehicle used under a leasing contract. Magoora takes the view, in that regard, that it should retain the right to deduct input tax on purchases of fuel for that vehicle on the basis of Article 17(6) of the Sixth Directive.

17 By decision of 3 November 2005, the Naczelnik Urzędu Skarbowego Kraków-Prądnik declared Magoora's submissions unfounded, taking the view that Article 17(6) of the Sixth Directive could not constitute a source of national law in Poland.

18 On 15 February 2006, the Dyrektor Izby Skarbowej w Krakowie dismissed Magoora's appeal and upheld that decision on the ground that the Republic of Poland was entitled to retain restrictions on the deduction of VAT which existed in that Member State on the date on which the Sixth Directive entered into force. Furthermore, he held that the provisions in force from 22 August 2005 merely redefined the categories of vehicles for which the deduction of VAT on purchases of fuel was not permitted.

19 Magoora brought an action before the Wojewódzki Sąd Administracyjny w Krakowie against the decision of the Dyrektor Izby Skarbowej w Krakowie.

20 Since the Wojewódzki Sąd Administracyjny w Krakowie was uncertain as to the interpretation of Article 17 of the Sixth Directive, it decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Does Article 17(2) and (6) of the Sixth Directive … preclude the Republic of Poland from repealing completely, as of 1 May 2004, national provisions in force up to that date concerning restrictions on the deduction of input tax on purchases of fuel for vehicles used for a taxable activity and also introducing in their place restrictions on the deduction of input tax on purchases of fuel for vehicles used for a taxable activity but which are defined in national law on the basis of different criteria from those used prior to 1 May 2004, and from subsequently amending those criteria again with effect from 22 August 2005?

(2) If the answer to Question 1 is in the affirmative, does Article 17(6) of the Sixth Directive preclude the Republic of Poland from amending the above criteria so as de facto to restrict the scope of deductions of input tax in comparison with the national provisions in force on 30 April 2004 or with the national provisions in force before the amendment made on 22 August 2005? If it should be found that this action by the Republic of Poland constitutes a breach of Article 17(6) of the Sixth Directive, would it be necessary to find that a taxable person would be entitled to make deductions but only in so far as the amendments to the national provisions went beyond the scope of the restrictions on deducting input tax provided for in the national provisions in force on 30 April 2004 and repealed on that same date?

(3) Does Article 17(6) of the Sixth Directive preclude the Republic of Poland, invoking the possibility, provided for in that provision, for Member States to restrict the deduction of input tax attaching to expenditure which is not strictly business expenditure, such as that on luxuries, amusements or entertainment, from restricting the deduction of input tax in comparison with the position in law as it stood on 30 April 2004 so as to exclude the deduction of input tax on the purchase of fuel for passenger cars or other motor vehicles with a maximum authorised mass not exceeding 3.5 tonnes, with the exception of vehicles referred to in Article 86(4) of the [Law on VAT], in the version in force since 22 August 2005?'

The questions referred for a preliminary ruling

Admissibility of the questions referred

21 According to the Polish Government, the reference for a preliminary ruling is inadmissible because the questions referred are unrelated to the actual facts of the dispute in the main proceedings. The facts which gave rise to this reference were not evaluated by the referring court. The consideration of the questions referred therefore relates to hypothetical situations.

22 In that regard, it must be recalled that, in proceedings under Article 234 EC, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of

Community law, the Court is in principle bound to give a ruling (see, inter alia, Case C-119/05 *Lucchini* [2007] ECR I-6199, paragraph 43; Case C-162/06 *International Mail Spain* [2007] ECR I-9911, paragraph 23; and Case C-221/07 *Zablocka-Weyhermüller* [2008] ECR I-9029, paragraph 20).

23 The Court may reject a request for a preliminary ruling submitted by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, inter alia, Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 39; Joined Cases C-94/04 and C-202/94 *Cipolla and Others* [2006] ECR I-11421, paragraph 25; Joined Cases C-222/05 to C-225/05 *van der Weerd and Others* [2007] ECR I-4233, paragraph 22; Case C-379/05 *Amurta* [2007] ECR I-9569, paragraph 64; and *Zablocka-Weyhermüller*, paragraph 21).

24 In this case, it must be stated, as is clear from the order for reference, that the referring court provided the Court with a detailed explanation of the factual and legal background to the dispute in the main proceedings, together with the reasons why it considered that an answer to the questions referred is necessary in order to give its judgment.

25 Accordingly, the reference for a preliminary ruling must be declared admissible.

Substance

26 By its questions, which it is appropriate to examine together, the referring court asks essentially whether Article 17(2) and (6) of the Sixth Directive precludes a Member State from repealing in its entirety, from the date of entry into force of that directive on its territory, national provisions concerning restrictions on the deduction of input tax on purchases of fuel for vehicles used for a taxable activity and replacing them with measures laying down new criteria, and whether it precludes that Member State from subsequently amending those criteria again so as to extend those restrictions. If the answer is affirmative, the referring court asks whether a taxable person is entitled to insist on the application of the national provisions in force before the said date.

27 In this case, the Sixth Directive entered into force in the Republic of Poland on the date of its accession to the European Union; that is 1 May 2004. Therefore, that is the material date for the purposes of the application of the second subparagraph of Article 17(6) of the Sixth Directive as regards that Member State (see, to that effect, Case C-409/99 *Metropol and Stadler* [2002] ECR I-81, paragraph 41).

28 According to the fundamental principle which underlies the common VAT system and which follows from Article 2 of First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes (OJ, English Special Edition, Series I, 1967, p. 14) and the Sixth Directive, VAT applies to each transaction by way of production or distribution after deduction has been made of the VAT which has been levied directly on transactions relating to inputs. It is settled case-law that the right of deduction provided for in Article 17 et seq. of the Sixth Directive is an integral part of the VAT scheme and in principle may not be limited. That right must be exercised immediately in respect of all the taxes charged on input transactions. Any limitation on the right of deduction of VAT affects the level of the tax burden and must be applied in a similar manner in all the Member States.

Consequently, derogations are permitted only in the cases expressly provided for in the Sixth Directive (see Joined Cases C-177/99 and C-181/99 *Ampafrance and Sanofi* [2000] ECR I-7013, paragraph 34; *Metropol and Stadler*, paragraph 42; and Case C-371/07 *Danfoss and AstraZeneca* [2008] ECR I-9549, paragraph 26). Furthermore, provisions laying down derogations from the principle of the right to deduct VAT, which ensures the neutrality of that tax, are to be interpreted strictly (*Metropol and Stadler*, paragraph 59).

29 Article 17(2) of the Sixth Directive clearly sets out the principle of the taxable person's right to deduct the amounts invoiced as VAT for goods supplied or services rendered to him, in so far as such goods or services are used for the purposes of his taxable transactions. The principle of the right to deduct VAT is none the less subject to the derogation in Article 17(6) of the Sixth Directive, and, in particular, the second subparagraph thereof (see *Metropol and Stadler*, paragraphs 43 and 44, and *Danfoss and AstraZeneca*, paragraphs 27 and 28).

30 Under Article 17(6) of the Sixth Directive, the Member States are authorised to retain their existing legislation as at the date of entry into force of that directive in regard to exclusion from the right of deduction until such time as the Council has adopted the provisions envisaged by that article.

31 It is for the Community legislature to establish the Community system of exclusions from the right to deduct VAT and thereby to bring about the progressive harmonisation

of national VAT legislation. Community law does not yet contain any provision listing the expenditure excluded from the right to deduct VAT (see, to that effect, Case C-345/99 *Commission* v *France* [2001] ECR I-4493, paragraph 20; *Metropol and Stadler*, paragraph 44; and Case C-280/04 *Jyske Finans* [2005] ECR I-10683, paragraph 23).

32 The interpretation of the national legislation in order to determine its content at the date of entry into force of the Sixth Directive and to establish whether the effect of that legislation was to extend, after the entry into force of the Sixth Directive, the scope of existing exclusions is in principle within the jurisdiction of the national court (see *Metropol and Stadler*, paragraph 47).

33 Furthermore, it must be observed that, in proceedings under Article 234 EC, which is based on a clear separation of functions between the national courts and the Court of Justice, any assessment of the facts in the case is a matter for the national court (see, in particular, Case C-450/06 *Varec* [2008] ECR I-581, paragraph 23 and case-law cited). However, in order to give the national court a useful answer, the Court may, in a spirit of cooperation with national courts, provide it with all the guidance that it deems necessary (see, in particular, Case C-49/07 *MOTOE* [2008] ECR I-4863, paragraph 30).

34 It is for the Court of Justice to supply the referring court with guidance on interpreting the Community concept of 'national legislation' within the meaning of the second subparagraph of Article 17(6) of the Sixth Directive, in order to enable that court to determine its content at the date of entry into force of that directive (see *Metropol and Stadler*, paragraph 47).

35 The second subparagraph of Article 17(6) of the Sixth Directive contains a 'standstill' clause which provides for the retention of national exclusions from the right to deduct VAT which were applicable before the Sixth Directive entered into force (*Ampafrance and Sanofi*, paragraph 5). The objective of that provision is to allow the Member States, pending the establishment by the Council of the Community system of exclusions from the right to deduct VAT, to maintain any rules of national law excluding the right to deduct which were actually applied by their public authorities at the date of entry into force of the Sixth Directive (*Metropol and Stadler*, paragraph 48, and *Danfoss and AstraZeneca*, paragraphs 30 and 31).

36 Where, after the entry into force of the Sixth Directive, the legislation of a Member State is amended so as to reduce the scope of existing exemptions and thereby brings itself into line with the objective of the Sixth Directive, that legislation must be considered to be covered by the derogation in the second subparagraph of Article 17(6) of the Sixth Directive and is not in breach of Article 17(2) (see Case C-345/99 *Commission* v *France*, paragraph 22; *Metropol and Stadler*, paragraph 45; and *Danfoss and AstraZeneca*, paragraph 32).

37 It must be recalled, according to the settled case-law of the Court, that national legislation does not constitute a derogation permitted by the second subparagraph of Article 17(6) of the Sixth Directive if its effect is to increase, after the entry into force of that directive, the extent of existing exclusions, thus diverging from the objective of that directive (see Case C-40/00 *Commission* v *France* [2001] ECR I-4539, paragraph 17; Case C-155/01 *Cookies World* [2003] ECR I-8785, paragraph 66; and *Danfoss and AstraZeneca*, paragraph 33).

38 It follows that, taking account of the objective of that provision, the concept of 'national legislation' within the meaning of the second subparagraph of Article 17(6) of the Sixth Directive refers to the rules on deducting VAT existing and actually applied when that directive entered into force.

39 Furthermore, it must be recalled, as the Commission has submitted, that the 'standstill' clause, provided for in the second subparagraph of Article 17(6) of the Sixth Directive is not intended to allow a new Member State to amend its domestic legislation on its accession to the European Union in a way which diverts that legislation from the objectives of that directive. An amendment to that effect would be contrary to the very spirit of that clause.

40 In that context, the referring court is unsure whether the fact that the Republic of Poland repealed the Law of 8 January 1993 on the day of its accession to the European Union prevents it from introducing on the same day new provisions providing for restrictions on the right to deduct input VAT on purchases of fuel for vehicles used for a taxable activity.

41 It must be held that the repeal of national provisions, on the date of entry into force of the Sixth Directive in the national legal system concerned, and their replacement on the same date by other national provisions does not in itself give rise to the presumption that the Member State concerned has stopped applying exclusions on the right to deduct input tax. Neither does such a legislative amendment automatically lead to the conclusion that there is an infringement of the second subparagraph of Article 17(6) of that directive, provided, however, that it has not led to an extension, from the said date, of the previous national exclusions.

42 In the case in the main proceedings, it is for the national court, which, as stated in paragraph 32 of this judgment, has sole jurisdiction to interpret its national law, to determine whether the amendments introduced when the Sixth Directive was transposed into Polish law by the Law on VAT had the effect of extending, with respect to the previous national provisions, the scope of the restrictions on the right to deduct input VAT on the purchase of fuel for vehicles intended for taxable activities.

43 However, it should be noted, as set out in the reference for a preliminary ruling, that the amendment of the Law on VAT introduced by the Law of 21 April 2005, which entered into force on 22 August 2005, extends the scope of those restrictions as compared with the situation existing when the Sixth Directive entered into force in the Republic of Poland, which, having regard to the case-law set out in paragraph 36 of this judgment, is contrary to the second subparagraph of Article 17(6) of that directive.

44 It is for the national court to interpret domestic law, so far as possible, in the light of the wording and the purpose of the Sixth Directive with a view to achieving the results sought by the latter, favouring the interpretation of the national rules which is the most consistent with that purpose in order thereby to achieve an outcome compatible with the provisions of the directive (see, to that effect, Case C-212/04 *Adeneler and Others* [2006] ECR I-6057, paragraph 124), setting aside, if necessary, any contrary provision of national law (see, to that effect, Case C-144/04 *Mangold* [2005] ECR I-9981, paragraph 77).

45 In those circumstances, the answer to the questions referred must be that the second subparagraph of Article 17(6) of the Sixth Directive precludes a Member State from repealing in their entirety, when that directive is transposed into national law, national provisions concerning restrictions on the right to deduct input tax on purchases of fuel for vehicles used for a taxable activity, by replacing, on the date on which that directive entered into force on its territory, those provisions by provisions laying down new criteria in that regard, if — which it is for the national court to determine — the latter provisions have the effect of extending the scope of those restrictions. It precludes, in any event, a Member State from subsequently amending its legislation which entered into force on that date, so as to extend the scope of those restrictions as compared with the situation existing prior to that date.

Costs

46 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:

The second subparagraph of Article 17(6) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment precludes a Member State from repealing in their entirety, when that directive is transposed into national law, national provisions concerning restrictions on the right to deduct input tax on purchases of fuel for vehicles used for a taxable activity, by replacing, on the date on which that directive entered into force on its territory, those provisions by provisions laying down new criteria in that regard, if — which it is for the national court to determine — the latter provisions have the effect of extending the scope of those restrictions. It precludes, in any event, a Member State from subsequently amending its legislation which entered into force on that date, so as to extend the scope of those restrictions as compared with the situation existing prior to that date.

[Signatures]