

**Reference for a preliminary ruling from the Curtea de Apel Oradea (Romania) lodged on 18 September 2012 — SC Fatorie SRL v Direcția Generală a Finanțelor Publice Bihor**

(Case C-424/12)

(2012/C 379/25)

*Language of the case: Romanian*

**Referring court**

Curtea de Apel Oradea

**Parties to the main proceedings**

*Applicant:* SC Fatorie SRL

*Defendant:* Direcția Generală a Finanțelor Publice Bihor

**Questions referred**

1. Do the provisions of Directive 2006/112/EC <sup>(1)</sup> allow the penalty of loss of the right to deduct to be applied to a taxable person, when:

(i) the invoice produced by the taxable person for the purpose of exercising his right to deduct was incorrectly drawn up by a third party, failing to apply the simplification measures;

(ii) the taxable person has paid the VAT indicated in the invoice?

2. Does the European law principle of legal certainty militate against the administrative practice of the Romanian tax authorities that have:

(i) first, by irrevocable administrative decision, acknowledged the right to deduct VAT;

(ii) then reversed that decision, and made the taxable person liable to pay into the State budget the VAT for which the right to deduct was originally exercised, and to pay interest and default interest?

3. Does the principle of the fiscal neutrality of VAT permit a taxable person to be deprived of the right to deduct VAT, in circumstances in which:

(i) the taxable person has paid the VAT incorrectly indicated in the invoice by a third party;

(ii) the tax authorities have taken no active steps to request the third party to put right the incorrectly worded invoice;

(iii) at present, as a result of the third party's insolvency, it is impossible for the invoice to be corrected?

<sup>(1)</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

**Action brought on 20 September 2012 — European Commission v Kingdom of Spain**

(Case C-428/12)

(2012/C 379/26)

*Language of the case: Spanish*

**Parties**

*Applicant:* European Commission (represented by: I. Galindo Martin and G. Wilms, Agents)

*Defendant:* Kingdom of Spain

**Form of order sought**

The applicant claims that the Court should:

— declare that the Kingdom of Spain has failed to fulfil its obligations under Articles 34 and 36 of the Treaty on the Functioning of the European Union, by making it compulsory — in Ministerial Decree FOM/734/2007 of 20 March 2007 supplementing the Rules for the implementation of the Law on the Regulation of Inland Transport in respect of authorisations for the transport of goods by road — that, in order to obtain an 'authorisation for the private, own-account transport of goods', no more than five months must have elapsed since the first registration of the first vehicle of an undertaking's fleet, and by failing to justify that requirement;

— order the Kingdom of Spain to pay the costs.

**Pleas in law and main arguments**

The requirement that, in order to obtain an 'authorisation for the private, own-account transport of goods', no more than five months must have elapsed since the first registration of the first vehicle of an undertaking's fleet, constitutes a measure having equivalent effect to a quantitative restriction on imports, in breach of Article 34 of the Treaty on the Functioning of the European Union. That restriction is not justified either by one of the public interest grounds set out in Article 36 TFEU or by an imperative requirement.