Reports of Cases

OPINION OF ADVOCATE GENERAL
BOT
delivered on 7 December 2016 [1]

Case C-33/16

A Oy

(Request for a preliminary ruling from the Korkein hallinto-oikeus (Supreme Administrative Court, Finland))

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Article 148(d) — Supply of services — Concept — Exemption — Supply of services to meet the direct needs of vessels used for navigation on the high seas or of their cargoes — Supply of cargo-loading or -unloading services by subcontractors acting on behalf of intermediaries)

1. This request for a preliminary ruling concerns the interpretation of Article 148(d) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. [2]

2. It has been made in the course of a dispute between A Oy [3] and the Keskusverolautakunta (Finnish Central Tax Board) concerning a tax decision in which the latter considered that the services of loading and unloading cargo onto and off a vessel, when supplied by a subcontractor which invoices them to the contracting undertaking rather than to the shipowner directly, do not qualify for the VAT exemption provided for in Article 148(d) of the VAT Directive.

3. In this Opinion, I shall argue that the concept of the supply of services to meet the direct needs of the vessels referred to in Article 148(a) of that directive or of their cargoes includes the services of loading and unloading cargo onto and off a ship.

4. I shall further submit that the exemption provided for in Article 148(d) of that directive includes the services of loading and unloading cargo onto and off a ship, where those services are supplied by a subcontractor acting on behalf of an economic operator which is itself linked not to the shipowner but to a freight forwarder, carrier or forwarding agent, or to the holder of the cargo concerned.

1 — Original language: French.

2 — OJ 2006 L 347, p. 1, ‘the VAT Directive’.

3 — ‘A’.

I – **Legal context**

A – *EU law*

5. Article 148(a), (c) and (d) of the VAT Directive provides:

‘Member States shall exempt the following transactions:

(a) the supply of goods for the fuelling and provisioning of vessels used for navigation on the high seas and carrying passengers for reward or used for the purpose of commercial, industrial or fishing activities, or for rescue or assistance at sea, or for inshore fishing, with the exception, in the case of vessels used for inshore fishing, of ships’ provisions;

…

(c) the supply, modification, repair, maintenance, chartering and hiring of the vessels referred to in point (a), and the supply, hiring, repair and maintenance of equipment, including fishing equipment, incorporated or used therein;

(d) the supply of services other than those referred to in point (c), to meet the direct needs of the vessels referred to in point (a) or of their cargoes’.

6. Article 148(a), (c) and (d) corresponds to Article 15(4)(a) and (b) and (5) and (8) 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,[4] which it replaced.

B – *Finnish law*

7. Paragraph 71(3) of Arvonlisäverolaki 1501/1993 (Law No 1501/1993 on value added tax) of 30 December 1993,[5] in the version applicable at the time of the facts of the main proceedings, provides:

‘Tax is not payable on the following sales:

…

(3) the sale of services on board a ship or an aircraft engaging in international traffic to persons travelling abroad and the sale of services to meet the direct needs of such a ship or its cargo.’

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

8. A, which is a subsidiary of the company B Oy, operates in two ports, where it supplies loading and unloading, warehousing, shipping agency and freight forwarding services.

4 — OJ 1977 L 145, p. 1 (‘the Sixth Directive’).

5 — ‘AVL’.

9. The package of services supplied by A includes the loading and unloading of the cargoes of vessels used for navigation on the high seas and for the purposes of a commercial activity. Those services are performed by a subcontractor which invoices them to A, which invoices them on to its customer, which, depending on the circumstances, may be B Oy, the holder of the goods, the loader, the forwarding company or the shipowner. The details of the vessel and the cargo concerned are sent to the subcontractor and set out both on its invoice and on the invoice issued by A.

10. Following a request by A for a tax decision on whether, under Article 71(3) of the AVL, the loading and unloading operations which it performs as a subcontractor acting on behalf of its customers were eligible for exemption from VAT, the Keskusverolautakunta, by decision of 1 October 2014, held that loading and unloading services are not to be regarded as services exempt from VAT under Paragraph 71(3) of the AVL, which transposes Article 148(a), (c) and (d) of the VAT Directive, because, according to the case-law of the Court of Justice, the supply of services to vessels operating in international traffic or to their cargoes may be exempt from VAT only if those services are provided at the end of the commercial chain, and, in the circumstances contemplated in the request, the loading and unloading services are provided at a stage earlier than the end of the commercial chain.

11. A lodged an appeal against that decision before the Korkein hallinto-oikeus (Supreme Administrative Court, Finland), which decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

‘(1) Is Article 148(d) of [the VAT Directive] to be interpreted as meaning the loading and unloading of cargo onto and off a vessel are supplies of services made to meet the direct needs of the cargo of vessels for the purposes of Article 148(a)?

(2) Given the findings of the Court of Justice [of 14 September 2006, *Elmeka*[6]], according to which the exemption provided for in those rules could not be extended to services supplied at an earlier stage in the commercial chain, is Article 148(d) of [the VAT Directive] to be interpreted as meaning that it applies also to the services at issue in the case in the main proceedings in which the service supplied by A’s subcontractor in the first phase of operations concerns a service which has a direct physical relationship to the cargo, which A invoices to the forwarding or transport company?

(3) In light of the findings of the Court of Justice in paragraph 24 of the judgment [of 14 September 2006, *Elmeka*[7]], according to which the exemption provided for by the rules in question apply only to services which are supplied to the shipowner, is Article 148(d) of [the VAT Directive] to be interpreted as meaning that that exemption cannot apply if the service is supplied to the cargo holder, such as the exporter or importer of the cargo concerned?’

III – **My assessment**

A – *Preliminary observations*

12. As a preliminary point, it should be recalled that the Court applies the following principles to the interpretation of the VAT exemptions provided for in Article 148 of the VAT Directive.

6 — C-181/04 to C-183/04, EU:C:2006:563.

7 — C-181/04 to C-183/04, EU:C:2006:563.

13. First, those exemptions constitute independent concepts of EU law which must, therefore, be interpreted and applied uniformly throughout the European Union. [8]

14. Secondly, those exemptions must be placed in the general context of the common system of VAT introduced by the VAT Directive. [9] That system is based in particular on two principles: on the one hand, the principle that each supply of goods and services effected for consideration by a taxable person is subject to VAT; [10] and, on the other hand, the principle of fiscal neutrality, which precludes economic operators carrying out the same transactions from being treated differently in relation to the levying of VAT. [11]

15. Thirdly, the terms used to define the exemptions envisaged in Article 148 of the VAT Directive are to be interpreted strictly since those exemptions constitute exceptions to the principle that VAT is to be levied on all services supplied for consideration by a taxable person. However, that rule of interpretation does not mean that the terms used to specify those exemptions should be construed in such a way as to deprive them of their effects. [12]

16. The request for a preliminary ruling from the Korkein hallinto-oikeus (Supreme Administrative Court) must be answered in the light of those criteria for interpretation.

B – *The first question referred for a preliminary ruling*

17. By its first question, the referring court asks, in essence, whether Article 148(d) of the VAT Directive must be interpreted as meaning that the concept of the supply of services to meet the direct needs of the cargoes of vessels includes the services of loading or unloading a ship.

18. That question, which all the parties which have submitted observations to the Court are united in answering in the affirmative, does not seem to me to pose any particular difficulty.

19. It is sufficient to note that Article 148(d) of the VAT Directive does not exhaustively list the services which are exempt but defines them generally on the basis of a criterion relating to the objective pursued, which must be to meet the direct needs of vessels and of their cargoes. According to the Court, the supplies exempt are 'those which are directly connected with the needs of sea-going vessels or their cargoes, that is to say services necessary for the operation of such vessels'. [13]

20. Now, just as the activities of piloting, towing or docking a ship are typical of services supplied to meet the direct needs of vessels, the activities of loading or unloading a ship are indisputably in the nature of services supplied to meet the needs of cargoes.

21. In actual fact, the uncertainty engendered by the wording of Article 148(d) of the VAT Directive has less to do with whether the activities of loading or unloading a ship are included in the concept of the supply of services to meet the direct needs of cargoes than with the meaning to be given to the requirement that activities be effected 'to meet the direct needs of the vessels … *or* of their cargoes'. [14]

8 — See, in particular, the judgment of 3 September 2015, *Fast Bunkering Klaipėda* (C-526/13, EU:C:2015:536, paragraph 41 and the case-law cited).

9 — See, in particular, the judgment of 19 July 2012, *A* (C-33/11, EU:C:2012:482, paragraph 31 and the case-law cited).

10 — See, in particular, the judgment of 19 July 2012, *A* (C-33/11, EU:C:2012:482, paragraph 48 and the case-law cited).

11 — See, in particular, the judgment of 19 July 2012, *A* (C-33/11, EU:C:2012:482, paragraphs 32, 33 and 48 and the case-law cited).

12 — See, in particular, the judgment of 19 July 2012, *A* (C-33/11, EU:C:2012:482, paragraph 49 and the case-law cited).

13 — See the judgment of 4 July 1985, *Berkholz* (168/84, EU:C:1985:299, paragraph 21, which excludes from the category of exempt supplies the installation of gaming machines, which 'have no intrinsic connection with navigational requirements').

14 — My italics.

22. In that regard, it should be noted that the language versions of Article 148(d) of the VAT Directive use a different coordinating conjunction to separate the words 'vessels referred to in point (a)' and the words 'of their cargoes'. Thus, while, in the German, Greek, Spanish, French, and Italian language versions in particular, that provision states that 'the supply of services … to meet the direct needs of the vessels referred to in point (a) *and* of their cargoes' is exempt, in the Bulgarian, Romanian, Finnish and English language versions in particular, the same provision provides for the exemption of 'the supply of services … to meet the direct needs of the vessels referred to in point (a) *or* of their cargoes'.[15] That difference in the form of words used creates some uncertainty as to whether the exemption from VAT concerns only supplies of services which are capable of cumulatively satisfying the needs of vessels and their cargoes or applies to all supplies of services which meet the direct needs of vessels and all supplies of services which meet the needs of their cargoes.

23. It is settled case-law that, since provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all EU languages, the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision or be given priority over the other language versions. Where there is divergence between the various language versions of an EU legislative text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part.[16]

24. In the present case, it need hardly be pointed out that an interpretation which confined the exemption provided for in Article 148(d) of the VAT Directive exclusively to services that are common to vessels and to cargoes would considerably reduce the scope of that exemption by excluding the operations that are most typically carried out in port environments for the vessels referred to in point (a) of that article.

25. Thus, the activities of piloting and towing, which could be regarded as supplied exclusively to meet the direct needs of the vessel, inasmuch as they meet the cargo's needs only indirectly, would be excluded from the exemption, while the activity of loading the cargo onto the vessel could also be excluded, on the pretext that that activity is of direct benefit only to the cargo and of only indirect benefit to the ship.

26. Ultimately, this would mean that only activities such as guarding and surveillance services carried out on board the ship could be regarded as meeting the direct needs of the vessel and of its cargo cumulatively and simultaneously.

27. Furthermore, that interpretation is also inconsistent with the objective of Article 148 of the VAT Directive, which seeks to promote the international transport of goods and passengers by air and sea by securing for undertakings active in that sector a cash-flow advantage in the form of a dispensation from VAT prefinancing. In order to achieve that objective, the exemption, which applies to all operations involving the fuelling and provisioning of sea vessels, must likewise apply to all supplies of services to meet the direct needs of those vessels or of their cargoes.

28. It is for those reasons that I propose that the Court's answer to the first question should be that Article 148(d) of the VAT Directive must be interpreted as meaning that the concept of the supply of services to meet the direct needs of the vessels referred to in point (a) of that article or of their cargoes includes the services of loading and unloading cargo onto and off a ship.

15 — My italics.

16 — See to that effect, in particular, the judgment of 28 July 2016, *Edilizia Mastrodonato* (C-147/15, EU:C:2016:606, paragraph 29 and the case-law cited).

C – *The second and third questions referred for a preliminary ruling*

29. By its second and third questions, which must be examined together, the referring court asks, in essence, whether Article 148(d) of the VAT Directive must be interpreted as meaning that the exemption provided for in that provision covers the services of loading and unloading cargo onto and off a ship, where those services are supplied by a subcontractor acting on behalf of an economic operator which is itself linked not to the shipowner but to a freight forwarder, carrier or forwarding agent, or to the holder of the cargo concerned.

30. Since the provision which is the subject of the question referred for a preliminary ruling is worded in the same terms as Article 15(8) of the Sixth Directive, which was repealed and replaced by the VAT Directive, the case-law concerning the interpretation of that article must be considered relevant to the interpretation of Article 148(d) of the VAT Directive.

31. The Court's case-law is determined by the judgments of 26 June 1990, *Velker International Oil Company*,[17] of 14 September 2006, *Elmeka*,[18] and of 3 September 2015, *Fast Bunkering Klaipėda*.[19]

32. The judgment of 26 June 1990, *Velker International Oil Company*,[20] concerns the interpretation of Article 15(4) of the Sixth Directive, relating to operations involving the fuelling and provisioning of vessels. The company Velker International Oil Company Ltd NV, Rotterdam,[21] which had acquired two consignments of bunker oil, had sold them on to the company Forsythe International BV, The Hague,[22] which had had them delivered in tanks rented by it before loading them on to sea-going vessels which it did not operate itself. The question asked by the referring court was whether or not the supplies of bunker oil made by Velker to Forsythe qualified for VAT exemption. More specifically, the issue was whether the concept of the 'supply of goods for the fuelling and provisioning of vessels' was capable of including not only supplies of goods on board that were to be used directly for fuelling and provisioning and followed by exportation but also supplies made at previous commercial stages.

33. The Court's answer, that 'only supplies to a vessel operator of goods to be used by that operator for fuelling and provisioning are to be regarded as supplies of goods for the fuelling and provisioning of vessels', was based on two considerations: that operations involving the fuelling and provisioning of vessels are to be treated as exports, and that extending the exemption to stages prior to the final supply of goods would impose constraints.

34. First, according to the Court, 'just as, in the case of export transactions, the mandatory exemption provided for in Article 15(1) applies exclusively to the final supply of goods exported by the seller or on his behalf, likewise the exemption laid down in Article 15(4) applies only to the supply of goods to a vessel operator who will use those goods for fuelling and provisioning and cannot therefore be extended to the supply of those goods effected at a previous stage in the commercial chain'.[23]

17 — C-185/89, EU:C:1990:262.

18 — C-181/04 to C-183/04, EU:C:2006:563.

19 — C-526/13, EU:C:2015:536.

20 — C-185/89, EU:C:1990:262.

21 — 'Velker'.

22 — 'Forsythe'.

23 — Judgment of 26 June 1990, *Velker International Oil Company* (C-185/89, EU:C:1990:262, paragraph 22).

35. Secondly, the Court noted that 'the extension of the exemption to stages prior to the final supply of the goods to the vessel operator would require Member States to set up systems of supervision and control in order to satisfy themselves as to the ultimate use of the goods supplied free of tax. Far from bringing about administrative simplification, such systems would amount to constraints on the Member States and the traders concerned which it would be impossible to reconcile with the "correct and straightforward application of such exemptions" prescribed in the first paragraph of Article 15 of the Sixth Directive'. [24]

36. The judgment of 14 September 2006, *Elmeka*, [25] applies the solution thus adopted in the case of the exemption of supplies of goods for the fuelling and provisioning of vessels to the exemption provided for in Article 15(8) of the Sixth Directive in respect of the supply of services. The case in the main proceedings concerned fuel transport operations carried out by the undertaking Elmeka NE, which was engaged in the business of operating a tanker on behalf of a company trading in petroleum products, Oceanic International Bunkering SA, which was responsible for supplying goods to the owners of the ships concerned.

37. The Court held that, 'in order to guarantee a coherent application of the Sixth Directive as a whole', the exemption provided for in Article 15(8) of that directive 'applies only to services supplied directly to the shipowner, and cannot therefore be extended to services supplied at an earlier stage in the commercial chain'. [26] It justified its solution by transposing to the exemption applicable to supplies of services under that provision the reasoning set out in paragraphs 22 and 24 of the judgment in *Velker International Oil Company*, [27] concerning the vessel fuelling and provisioning operations referred to in Article 15(4) of the Sixth Directive.

38. The judgment of 3 September 2015, *Fast Bunkering Klaipėda*, [28] does not call into question the principle that the aforementioned exemption cannot be extended to supplies of goods or services at earlier stages in the commercial chain, even though, for reasons relating to the analysis of the concept of the supply of goods to a person under Article 14(1) of the VAT Directive, it accepts that that exemption may be applicable to the particular circumstances of the case in the main proceedings, in which a company supplied fuel to sea-going vessels under a contract not with the operators of those vessels but with intermediaries acting in their own name.

39. Taking into account the fact that the company itself loaded the fuel directly into the fuel tanks of the vessels for which it was intended and that it was only after loading that the exact amount of fuel so supplied could be determined, the Court considered that, even though, according to the procedures prescribed by the applicable national law, ownership of the fuel was transferred to the intermediaries, those intermediaries were at no time in a position to dispose of the quantities supplied, since the power to dispose of the fuel belonged to the operators of the vessels as soon as it had been loaded into the tanks, from which point those operators were usually deemed to be entitled to dispose of it in practice as if they were the owners. [29]

24 — Judgment of 26 June 1990, *Velker International Oil Company* (C-185/89, EU:C:1990:262, paragraph 24).

25 — C-181/04 to C-183/04, EU:C:2006:563.

26 — Judgment of 14 September 2006, *Elmeka* (C-181/04 to C-183/04, EU:C:2006:563, paragraph 24).

27 — C-185/89, EU:C:1990:262.

28 — C-526/13, EU:C:2015:536.

29 — Judgment of 3 September 2015, *Fast Bunkering Klaipėda* (C-526/13, EU:C:2015:536, paragraph 47).

40. The Court inferred from this that the supplies at issue in the main proceedings could not be classified as supplies made to intermediaries acting in their own name, but were to be regarded as supplies made directly to the operators of vessels, which may, on that basis, benefit from the exemption laid down in Article 148(a) of the VAT Directive.[30] The solution thus adopted by the Court therefore amounts to recognition that supplies of fuel are exempt from VAT even where they are invoiced not to the vessel operators themselves but to intermediaries.

41. I share the view expressed by the referring court, which considers that the case-law does not provide a clear answer to the question of whether the aforementioned exemption applies to the services of loading and unloading cargo onto and off a vessel solely by virtue of the fact that those services are by their very nature directly linked to the needs of the cargo, irrespective of the person supplying or receiving them, or whether, on the contrary, those services may be exempt only when invoiced to the operator situated at the final stage of the commercial chain.

42. In order to answer that question, it is necessary to identify the rationale behind the exemption provided for in Article 148(d) of the VAT Directive. There are, after all, two different ways of understanding that provision as interpreted by the Court, which has ruled that that exemption applies only 'to the final supply of the goods to the vessel operator'[31] and to the 'supply of services directly to the shipowner for the direct needs of sea-going vessels'.[32]

43. According to the first interpretation, which is that adopted by A and the Netherlands, Polish and Finnish Governments, the only criterion for exemption under Article 148(d) of the VAT Directive is the nature of the supply of services, it being irrelevant whether that supply is performed by a subcontractor or whether it is invoiced to the holder of the cargo or to a third party, rather than being directly invoiced to the shipowner. According to the Polish Government, that interpretation is perfectly consistent with the Court's case-law, taking into account the differences between the previously settled cases, which concerned supplies of fuel to vessels and the related transport services, and the present case, which concerns the services of loading and unloading cargo onto and off a vessel.

44. According to the second interpretation, supported by the Greek Government and the European Commission, the services of loading and unloading cargo may be exempt from VAT only where they are provided at the end of the commercial chain and are supplied directly to the shipowner. To that effect, the Greek Government argues that those services may be exempt only on condition that the cargo contains goods necessary to the operation and maintenance of the vessel. In its submission, the only services eligible for exemption are therefore those which are linked to the vessel itself and which are supplied to the shipowner itself. In support of its interpretation to the effect that only the final transaction, that is to say only the service supplied to the shipowner, may be exempt under Article 148(d) of the VAT Directive, the Commission states that that interpretation does not penalise any link in the commercial chain since the person who performs the transaction qualifies for the right to deduct. Thus, where subcontractors are used, the services supplied to the shipowner by the principal undertaking may be exempt under Article 148(d) of the VAT Directive, whereas the services supplied to the principal undertaking by the subcontractor cannot be exempt, since they are not provided at the final stage of the commercial chain, although this does not prevent the principal undertaking from subsequently deducting the VAT it paid to its subcontractor or having it refunded. According to the Commission, the interpretation proposed is alone consistent with the Court's case-law and the principle that the exemptions referred to in Article 148 of the VAT Directive are to be treated as exports. It also helps ensure that the application of the exemption is straightforward, whereas extending that exemption to earlier stages of the commercial chain creates practical difficulties.

45. There are sound arguments for both of those interpretations.

30 — Judgment of 3 September 2015, *Fast Bunkering Klaipėda* (C-526/13, EU:C:2015:536, paragraph 52).

31 — Judgment of 26 June 1990, *Velker International Oil Company* (C-185/89, EU:C:1990:262, paragraph 24).

32 — Judgment of 14 September 2006, *Elmeka* (C-181/04 to C-183/04, EU:C:2006:563, paragraph 25).

46. To my mind, there are two main reasons that may be put forward in support of the interpretation to the effect that the exemption is applicable only to services supplied directly to the shipowner.

47. The first reason concerns the treatment of supplies of services within the meaning of Article 148(d) of the VAT Directive as export transactions, for the purposes of which the mandatory exemption applies exclusively to final supplies of goods exported by the seller or on its behalf. Supplies effected by a subcontractor and invoiced to a principal undertaking which invoices them on to a customer other than the shipowner, however, take place at earlier stages in the commercial chain and for that reason cannot be compared with an export transaction.

48. The second concerns the objective pursued by Article 148 of the VAT Directive, which, as I said earlier, is to promote the international transport of goods and passengers by air and sea by securing for undertakings within that sector a cash-flow advantage in the form of a dispensation from VAT prefinancing.[33] From that point of view, it seems logical to limit the exemption exclusively to undertakings which actually engage in the international transport of goods by air and sea, without extending it to economic operators performing different transactions, albeit ones directly linked to transport. The exemption must therefore depend on the status of the person to which the supply of services is invoiced.

49. In my view, however, there are other more conclusive reasons that can be found to support the second interpretation, to the effect that it is important to have regard to the nature of the transaction rather than to make the application of the exemption subject to the condition that the transaction be performed by the supplier itself acting on the direct behalf of the shipowner.

50. The first reason is drawn from the wording of Article 148(d) of the VAT Directive itself, which defines exempt transactions on the basis of the nature of the services supplied rather than on the basis of the supplier or recipient of the service, to neither of which that provision makes any reference. The details of the persons concerned are therefore, in principle, of no relevance for the purposes of determining which transactions are exempt.

51. The second reason is drawn from the principle of fiscal neutrality inherent in the common system of VAT, to the effect that economic operators performing the same transactions must not be treated differently in relation to the levying of VAT. To my mind, that principle precludes an economic operator supplying a service that meets the direct needs of vessels or of their cargoes from being treated differently according to whether it supplies that service directly or indirectly and according to the status of the person to which it supplies that service.

52. The third reason, which to my mind is key, is that the Court's case-law to the effect that, in a commercial chain, the exemption from VAT must be limited to the final link in that chain cannot, in my opinion, be transposed to the specific situation of performance of a single supply of services directly linked to the needs of the vessel or of its cargo. The cases which gave rise to the judgments of 26 June 1990, *Velker International Oil Company*,[34] and of 14 September 2006, *Elmeka*,[35] both concerned situations in which the operation of fuelling and provisioning the vessel was preceded by a separate operation, that is to say the fact, in the first case, that the bunker oil was delivered by tank before being loaded onto the vessels and, in the second case, that the fuel was transported before being delivered to the shipowners.

33 — See point 27 of this Opinion.

34 — C-185/89, EU:C:1990:262.

35 — C-181/04 to C-183/04, EU:C:2006:563.

53. In the case in the main proceedings, on the other hand, as A and the Polish Government rightly argue, a single supply of loading and unloading services directly linked to the needs of the vessel and of its cargo was performed and invoiced by the subcontractor before being invoiced on by A to its customer.

54. The Court justified the refusal to extend the exemption to stages prior to the final supply of goods to the vessel operator by reference to the risk of a change to the ultimate use of the goods or services at issue and the fact that, as a result, Member States would be required to set up systems of supervision and control in order to satisfy themselves as to their ultimate use. Such systems would amount to constraints on the Member States and operators concerned which it would be impossible to reconcile with the correct and straightforward application of the exemptions laid down in Article 131 of the VAT Directive. [36]

55. However, that risk arises from the performance of operations that precede the actual fuelling and provisioning of the vessel and have the effect of introducing into the commercial chain opportunities for changing the ultimate use of the petroleum products. No such risk therefore exists in the case of a cargo-loading and -unloading service supplied directly on board the vessel.

56. It is true that, at the hearing, the Commission contended that there was a further risk that the loading and unloading operation might be performed on a vessel which does not meet the criteria set out in Article 148(a) of the VAT Directive, given that not all Member States have a computerised register for verifying the details of the vessel being loaded or unloaded. While there is no denying the existence of a potential risk that the cargo might be loaded onto or unloaded from a vessel which, among other things, is not used for navigation on the high seas, it should be noted that that risk is not unique to an operation performed by a subcontractor and invoiced on by the principal undertaking to the customer. It is, after all, also conceivable that an operation directly invoiced to the shipowner by the supplier might actually relate to a ship other than those referred to in Article 148(a) of the VAT Directive. Logically, therefore, the general risk alleged by the Commission would necessarily have the effect of calling into question the very principle of an exemption for the operations set out in Article 148 of that directive.

57. In those circumstances, I take the view that the Court's case-law relating to operations prior to the fuelling and provisioning of a vessel cannot be transposed to the supply of services to meet the direct needs of the cargo. In my opinion, the exemption provided for in Article 148(d) of the VAT Directive must be applied by reference to the nature of those services rather than by reference to the person supplying or receiving them.

IV – **Conclusion**

58. Consequently, I propose that the Court's answer to the questions referred for a preliminary ruling by the Korkein hallinto-oikeus (Supreme Administrative Court, Finland) should be as follows:

Article 148(d) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the concept of the supply of services to meet the direct needs of the vessels referred to in Article 148(a) of that directive or of their cargoes includes the services of loading and unloading cargo onto and off a ship.

36 — See, in particular, the judgment of 3 September 2015, *Fast Bunkering Klaipėda* (C-526/13, EU:C:2015:536, paragraph 28).

Article 148(d) of the VAT Directive must be interpreted as meaning that the exemption provided for in that provision includes the services of loading and unloading cargo onto and off a ship, where those services are supplied by a subcontractor acting on behalf of an economic operator which is itself linked not to the shipowner but to a freight forwarder, carrier or forwarding agent, or to the holder of the cargo concerned.