

2. Must Article 67(2) TFEU and Articles 20 and 21 of Regulation No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), or any other rules of EU law, be interpreted as precluding a rule of national law which grants the police authorities of the Member State in question the power briefly to stop and question any person on a train or on the premises of the railways of that Member State, with a view to impeding or stopping unlawful entry into the territory of that Member State, and to request that person to produce for purposes of checking the identity documents or border crossing papers he is carrying and visually inspect the articles he is carrying, if, on the basis of known facts or border police experience, it may be presumed that such trains or railway premises are used for unlawful entry and that entry is effected from a State party to the Convention implementing the Schengen Agreement of 14 June 1985 (Convention implementing the Schengen Agreement), in the absence of any temporary reintroduction of border controls at the relevant internal border pursuant to Article 23 et seq. of the Schengen Borders Code?

- (<sup>1</sup>) Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2006 L 105, p. 1).
- (<sup>2</sup>) Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239, p. 19).

**Request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Portugal) lodged on 18 January 2016 — Santogal M-Comércio e Reparação de Automóveis Lda v Autoridade Tributária e Aduaneira**

(Case C-26/16)

(2016/C 136/14)

*Language of the case: Portuguese*

**Referring court**

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

**Parties to the main proceedings**

*Applicant:* Santogal M-Comércio e Reparação de Automóveis Lda

*Defendant:* Autoridade Tributária e Aduaneira

**Questions referred**

- (1) Is it contrary to Article 138[2](a) of Council Directive 2006/112/EC (<sup>1</sup>) of 28 November 2006 [on the common system of value added tax] for provisions of national law [Articles 1(e) and 14(b) of the VAT Rules on Intra-Community Transactions — RITI] to require, for the grant of exemption from VAT on the supply for consideration of new means of transport, transported by the purchaser from national territory to another Member State, the purchaser to be established or domiciled in that Member State?
- (2) Is it contrary to Article 138[2](a) of Council Directive 2006/112/EC for exemption from the tax in the Member State of commencement of the transport operation to be refused in circumstances in which the means of transport purchased has been transported to Spain, where it has been granted tourist registration, provisionally and subject to the fiscal rules laid down in Articles 8 to 11, 13 and 15 of Spanish Royal Decree 1571/1993 of 10 September 1993?

- (3) Is it contrary to Article 138(2)(a) of Council Directive 2006/112/EC to require the payment of VAT by the supplier of a new means of transport in circumstances in which it has not been demonstrated whether or not the tourist registration rules have ceased to apply because of one of the situations provided for in Articles 11 and 15 of Spanish Royal Decree 1571/1993 of 10 September 1993, or whether VAT has been or will be paid by reason of the disapplication of those rules?
- (4) Is it contrary to Article 138 [2](a) of Council Directive 2006/112/EC and the principles of legal certainty, proportionality and protection of legitimate expectations to require VAT to be paid by the supplier of a new means of transport dispatched to another Member State, in circumstances in which:
- the purchaser, before dispatch, informs the supplier that he resides in the Member State of destination and produces to him a document proving that he has been assigned a foreign national's identity number in that Member State, indicating a residence in that State different from the residence stated by the purchaser himself;
  - the purchaser subsequently gives to the supplier documents proving that the means of transport purchased has undergone a technical inspection in the Member State of destination and that he has been granted a tourist registration in that State;
  - it has not been demonstrated that the supplier collaborated with the purchaser to avoid paying VAT;
  - the customs authorities have not raised any objection to the cancellation of the customs declaration for the vehicle on the basis of the documents in the possession of the supplier?

<sup>(1)</sup> OJ 2006 L 347, p. 1.

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**Request for a preliminary ruling from the Landgericht Stralsund (Germany) lodged on 18 January 2016 — HanseYachts AG v Port D'Hiver Yachting SARL, Société Maritime Côte D'Azur, Companie Generali IARD SA**

**(Case C-29/16)**

(2016/C 136/15)

*Language of the case: German*

**Referring court**

Landgericht Stralsund

**Parties to the main proceedings**

*Applicant:* HanseYachts AG

*Defendants:* Port D'Hiver Yachting SARL, Société Maritime Côte D'Azur, Companie Generali IARD SA

**Question referred**

Where the procedural law of a Member State provides for independent proceedings for the taking of evidence in which, by order of the court, an expert report is obtained (in this case the '*expertise judiciaire*' in French law), and where such independent proceedings for the taking of evidence are conducted in that Member State and an action based on the findings of those independent proceedings is subsequently brought in the same Member State between the same parties: