Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

8 November 2018 *

(Reference for a preliminary ruling — Value added tax (VAT) — Directive 2006/112/EC — Exemptions — Article 146(1)(e) and Article 153 — Road transport operations directly connected with the exportation of goods — Supply of services by intermediaries taking part in such operations — Rules on proof that the goods were exported — Customs declaration — TIR carnet)

In Case C-495/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunalul Prahova (Regional Court, Prahova, Romania), made by decision of 14 February 2017, received at the Court on 14 August 2017, in the proceedings

**Cartrans Spedition SRL**

v

**Direcția Generală Regională a Finanțelor Publice Ploiești — Administrația Județeană a Finanțelor Publice Prahova,**

**Direcția Regională a Finanțelor Publice București — Administrația Fiscală pentru Contribuabili Mijlocii,**

THE COURT (Seventh Chamber),

composed of A. Prechal (Rapporteur), President of the Third Chamber, acting as President of the Seventh Chamber, C. Toader and A. Rosas, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Cartrans Spedition SRL, by R. Ioniță and R. Popescu, acting as Agents,

– the Romanian Government, initially by R.H. Radu, and subsequently by C.-R. Canțăr, C.-M. Florescu and O.-C. Ichim, acting as Agents,

– the European Commission, by L. Lozano Palacios and L. Radu Bouyon, acting as Agents,

* Language of the case: Romanian.

after hearing the Opinion of the Advocate General at the sitting on 12 July 2018,

gives the following

## Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 146(1)(e) and Article 153 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) ('the VAT Directive').

2 The request has been made in proceedings between, on the one hand, Cartrans Spedition SRL ('Cartrans') and, on the other, the Direcția Generală Regională a Finanțelor Publice Ploiești — Administrația Județeană a Finanțelor Publice Prahova (Regional Directorate-General of Public Finances of Ploiești — Regional Public Finance Administration of Prahova, Romania) and the Direcția Generală Regională a Finanțelor Publice București — Administrația Fiscală pentru Contribuabili Mijlocii (Bucharest Regional Directorate-General of Public Finances — Tax authority for medium-sized taxpayers, Romania) concerning the refusal of the tax authorities to exempt from value added tax (VAT) several transport operations carried out for the exportation of goods to third countries, in which Cartrans had been involved.

### Legal context

#### *EU law*

*The VAT Directive*

3 Article 131 of the VAT Directive, which features in Chapter 1, headed 'General provisions', of Title IX, headed 'Exemptions', states:

'The exemptions provided for in Chapters 2 to 9 shall apply without prejudice to other Community provisions and in accordance with conditions which the Member States shall lay down for the purposes of ensuring the correct and straightforward application of those exemptions and of preventing any possible evasion, avoidance or abuse.'

4 Article 146(1) of the VAT Directive, which features in Chapter 6, headed 'Exemptions on exportation', of Title IX of the VAT Directive, states:

'Member States shall exempt the following transactions:

(a) the supply of goods dispatched or transported to a destination outside the [European Union] by or on behalf of the vendor;

…

(e) the supply of services, including transport and ancillary transactions, but excluding the supply of services exempted in accordance with Articles 132 and 135, where these are directly connected with the exportation or importation of goods …'

5 The first paragraph of Article 153 of the VAT Directive, which is to be found in Chapter 9, headed 'Exemptions for the supply of services by intermediaries', of Title IX, states:

'Member States shall exempt the supply of services by intermediaries, acting in the name and on behalf of another person, where they take part in the transactions referred to in Chapters 6, 7 and 8, or in transactions carried out outside the [European Union].'

*The Customs Code*

6 Under Article 4(16) and (17) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005 (OJ 2005 L 117, p. 13), ('the Customs Code'):

'For the purposes of this Code, the following definitions shall apply:

…

(16) "Customs procedure" means:

…

(b) transit;

…

(h) exportation.

(17) "Customs declaration" means the act whereby a person indicates in the prescribed form and manner a wish to place goods under a given customs procedure'.

7 Article 59 of the Customs Code, which features in Section 1, headed 'Placing of goods under a customs procedure', of Chapter 2, headed 'Customs procedures', of Title IV, headed 'Customs-approved treatment or use', provides:

'1. All goods intended to be placed under a customs procedure shall be covered by a declaration for that customs procedure.

2. Community goods declared for an export, outward processing, transit or customs warehousing procedure shall be subject to customs supervision from the time of acceptance of the customs declaration until such time as they leave the customs territory of the [European Union] or are destroyed or the customs declaration is invalidated.'

8 Article 91 of the Customs Code, which features in point I, headed 'General provisions', of part B, headed 'External transit', of Section 3, headed 'Suspensive arrangements and customs procedures with economic impact', of that Chapter 2, states:

'1. The external transit procedure shall allow the movement from one point to another within the customs territory of the [European Union] of:

…

(b) Community goods, in cases and on conditions determined in accordance with the committee procedure, in order to prevent products covered by or benefiting from export measures from either evading or benefiting unjustifiably from such measures.

2. Movement as referred to in paragraph 1 shall take place:

…

(b) under cover of a TIR carnet (TIR Convention) provided that such movement:
(1) began or is to end outside the [European Union];

…'

9 Article 161(1) and (2) of the Customs Code, which features in Section 4, headed 'Export', of Chapter 2, provides:

'1. The export procedure shall allow Community goods to leave the customs territory of the [European Union].

Exportation shall entail the application of exit formalities including commercial policy measures and, where appropriate, export duties.

2. ... all Community goods intended for export shall be placed under the export procedure.'

10 Article 182a(1) of the Customs Code, to be found in Title V, headed 'Goods leaving the customs territory of the [European Union]', provides:

'Goods leaving the customs territory of the [European Union], with the exception of goods carried on means of transport only passing through the territorial waters or the airspace of the customs territory without a stop within this territory, shall be covered either by a customs declaration or, where a customs declaration is not required, a summary declaration.'

11 Under Article 182b(1) and (2) of the Customs Code:

'1. Where goods leaving the customs territory of the [European Union] are assigned to a customs approved treatment or use for the purpose of which a customs declaration is required under the customs rules, this customs declaration shall be lodged at the customs office of export before the goods are to be brought out of the customs territory of the [European Union].

2. Where the customs office of export is different from the customs office of exit, the customs office of export shall immediately communicate or make available electronically the necessary particulars to the customs office of exit.'

*The TIR Convention*

12 The Customs Convention on the international transport of goods under cover of TIR carnets, signed in Geneva on 14 November 1975 and approved on behalf of the European Economic Community by Council Regulation (EEC) No 2112/78 of 25 July 1978 (OJ 1978 L 252, p. 1), entered into force for the European Economic Community on 20 June 1983 (OJ 1983 L 31, p. 13). All of the Member States are also parties to that convention.

13 In its amended and consolidated version published by Council Decision 2009/477/EC of 28 May 2009 (OJ 2009 L 165, p. 1) ('the TIR Convention'), Article 1 of the TIR Convention states:

'For the purposes of this Convention:

(a) the term "TIR transport" shall mean the transport of goods from a Customs office of departure to a Customs office of destination under the procedure, called the TIR procedure, laid down in this Convention;

(b) the term "TIR operation" shall mean the part of a TIR transport that is carried out in a Contracting Party from a Customs office of departure or entry (*en route*) to a Customs office of destination or exit (*en route*);

…

(e) the term "discharge of a TIR operation" shall mean the recognition by Customs authorities that the TIR operation has been terminated correctly in a Contracting Party. This is established by the Customs authorities on the basis of a comparison of the data or information available at the Customs office of destination or exit (*en route*) and that available at the Customs office of departure or entry (*en route*);

…

(o) the term "holder" of a TIR Carnet shall mean the person to whom a TIR Carnet has been issued in accordance with the relevant provisions of the Convention and on whose behalf a Customs declaration has been made in the form of a TIR Carnet indicating a wish to place goods under the TIR procedure at the Customs office of departure. He shall be responsible for presentation of the road vehicle, the combination of vehicles or the container together with the load and the TIR Carnet relating thereto at the Customs office of departure, the Customs office *en route* and the Customs office of destination and for due observance of the other relevant provisions of the Convention;

…'

14 Article 4 of the TIR Convention provides that goods carried under the TIR procedure are not to be subjected to the payment or deposit of import or export duties and taxes at customs offices *en route*.

15 In order for those facilities to be applied, the TIR Convention requires, in particular, as follows from Article 3(b) thereof, that the goods be accompanied throughout the transport operation by a standard document, namely the TIR carnet, which enables the regularity of the operation to be checked.

16 The TIR carnet consists of a set of sheets each comprising vouchers No 1 and No 2, with the corresponding counterfoils, on which all the necessary information is set out, one pair of vouchers being used for each territory crossed. At the start of the transport operation, voucher No 1 is left with the customs office of departure. Discharge takes place once voucher No 2 has been returned from the customs office of exit in the same customs territory. This procedure is repeated for each territory crossed, each pair of vouchers in the same carnet being used in turn.

*The Transit Manual (for the TIR procedure)*

17 The Transit Manual for the TIR procedure (document TAXUD/1873/2007) was drawn up by the European Commission within the Customs Code Committee (Transit Section — TIR). Article 1(2) in Part IX of that manual provides:

'... the TIR carnet is a customs declaration for transport of goods. It provides proof of the existence of the guarantee. … A TIR carnet … is taken into use in the country of departure and enables the customs control in the Contracting Parties of departure, transit and destination'.

***Romanian Law***

18 Article 143(1)(c) of Legea nr. 571/2003 privind Codul fiscal (Law No 571/2003 establishing the Tax Code) of 22 December 2003 (*Monitorul Oficial al României*, Part I, No 927 of 23 December 2003), in the version in force at the material time ('the Tax Code'), provides:

'The following shall be exempt from tax:

…

(c) supplies of services, including transport and services ancillary to transport, other than those provided for in Article 141, which are directly connected with the export of goods'.

19 In accordance with Article 144a of the Tax Code:

'Services provided by intermediaries acting in the name and on behalf of another person shall be exempt from tax when those services are provided in the context of the exempt transactions referred to in Articles 143 and 144 … '

20 Article 4(2) of Ordinul nr. 2222/2006 al ministrului finanțelor publice privind aprobarea Instrucțiunilor de aplicare a scutirii de taxă pe valoarea adăugată pentru operațiunile prevăzute la articolul 143 alineatul (1) literele a)-i), articolul 143 alineatul (2) și articolul 144 din Legea nr. 571/2003 privind Codul fiscal (Order No 2222/2006 of the Minister for Public Finance concerning the approval of the instructions for the application of the value added tax exemption for the transactions referred to in Articles 143(1)(a) to (i), in Article 143(2) and in Article 144 of Law No 571/2003 establishing the Tax Code; 'Ministerial Order No 2222/2006'), provides:

'The tax exemption laid down in Article 143(1)(c) of the Tax Code, concerning services for the transport of goods directly connected with the export of goods, shall be justified by the service provider … The documents which justify the tax exemption are as follows:

(a) the invoice … or, if necessary, for those persons who have actually carried out the transport service, the specific document of carriage …

(b) the contract drawn up with the service recipient;

(c) the specific documents of carriage referred to in paragraph 4, in accordance with the type of transport, or, if necessary, copies of those documents;

(d) documents showing that the goods transported have been exported.'

21 In their written observations, both the Romanian Government and the Commission indicate that Article 4(4) of Ministerial Order No 2222/2006, referred to in Article 4(2)(c) of that order, refers, in particular, to the 'TIR carnet' as being the specific document of carriage by road.

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

22 Cartrans, a company established in Romania, is an intermediary in road freight transport services. Following a tax inspection, Cartrans received a tax assessment notice, issued on 13 August 2014, imposing additional VAT of RON 16 203 (approximately EUR 3 650) relating to the supply of road transport services on seven occasions in connection with exports of goods, for a total amount of RON 67 512 (approximately EUR 15 160); three of those supplies were made between March and May 2012 to Turkey, two in August 2012 to Georgia, the sixth in February 2013 to Iraq and the last in April 2014 to Ukraine.

23 According to the report drawn up following that tax inspection and that tax assessment notice, Cartrans could not benefit from the VAT exemption as regards the transport services concerned because, during that inspection, it had not been able to produce customs export declarations demonstrating that the goods in question had actually been exported.

24 Cartrans brought an action before the Tribunalul Prahova (Regional Court, Prahova, Romania) challenging the tax assessment notice. In support of its action, it submits that the documents which it holds, in this case the TIR carnets and the CMR consignment notes (drawn up on the basis of the Convention on the Contract for the International Carriage of Goods by Road, signed in Geneva on 19 May 1956, as amended by the Protocol signed in Geneva on 5 July 1978) certified by the customs offices of the third countries to which the exports were made, establish that those exports took place and provide proof, pursuant to Ministerial Order No 2222/2006, that they are exempt from VAT. Cartrans states in particular that the TIR carnets include both a reference to the goods concerned and certification of customs transit from a customs office of departure to a customs office of destination.

25 In their defence, the tax authorities maintain that the transport at issue in the main proceedings cannot constitute supplies of services exempt from VAT, in so far as, although the documents produced by Cartrans may establish that the transport services were supplied for a journey abroad to the exporters, they do not prove that the goods were in fact exported. Under the tax legislation in force, such proof requires the production of the customs export declaration.

26 In that regard, the referring court notes, however, in particular, that under national law there is no legal provision which expressly provides what type of document provides proof that the goods transported have been exported.

27 In those circumstances the Tribunalul Prahova (Regional Court, Prahova) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) For the purposes of the VAT exemption for transport operations and services relating to the export of goods, in accordance with [the VAT Directive], does a TIR carnet certified by the customs authorities of the country of destination constitute a document which proves that the goods transported were exported, taking into account the procedure for that document laid down in [the Transit Manual for the TIR procedure] of the European Commission?

(2) Does Article 153 of [the VAT Directive] preclude a tax practice which requires a taxpayer to prove that goods transported were exported exclusively by means of a customs export declaration, with the result that the right to deduct VAT for transport services in respect of goods exported will be refused in the absence of that declaration, even if a TIR carnet certified by the customs authorities of the country of destination exists?'

**Consideration of the questions referred**

28 As a preliminary point, it should be recalled that, under the first paragraph of Article 153 of the VAT Directive, Member States must exempt the supply of services by intermediaries, acting in the name and on behalf of another person, where they take part in the transactions referred to in, inter alia, Chapter 6 of Title IX of that directive.

29 Article 146(1)(e) of the VAT Directive, to be found in Chapter 6 of Title IX thereof, requires Members States to exempt from VAT the supply of services, including transport and ancillary transactions, where these are directly connected with the exportation of goods outside the European Union (see, to that effect, judgment of 29 June 2017, *L.Č.*, C-288/16, EU:C:2017:502, paragraph 20).

30 In the present case, although the questions referred to the Court for a preliminary ruling mention Article 153 of the VAT Directive, the order for reference does not include, apart from the statement that Cartrans is a road haulage intermediary, any other concrete indication making it possible to establish what supplies of services were carried out in the present case by that company acting as such an intermediary in the name and on behalf of another person. Furthermore, it appears from the wording of that order for reference that the tax notice at issue in the main proceedings concerns the VAT due directly on the supply of transport services for the purposes of the exportation of goods.

31 In those circumstances, and in view of the insufficient information available to the Court, it is for the referring court to determine whether, given the facts characterising the situation at issue in the main proceedings, Article 153 of the VAT Directive, read in conjunction with Article 146(1)(e) of that directive, may indeed be applicable to that situation, or whether Article 146(1)(e) alone is applicable to it.

32 Furthermore, although the second question refers to a situation in which the right to deduct VAT is refused, it is apparent from the grounds of the order for reference, as the Advocate General noted in point 20 of her Opinion, that the questions raised by the referring court concern, in essence, the conditions for benefiting from a VAT exemption.

33 In the light of the foregoing, the view must be taken that, by its two questions, which it is appropriate to examine together, the referring court seeks to ascertain, in essence, whether Article 146(1)(e) of the VAT Directive and, if applicable, that provision in conjunction with Article 153 of that directive, preclude a tax practice of a Member State under which the exemption from VAT, for, respectively, the supply of transport services directly connected with the export of goods and for the supply of services by intermediaries taking part in those supplies of transport services is refused in the case where the person liable for the tax is unable to establish that the goods concerned have been exported specifically and exclusively by means of a customs export declaration. If so, that court is unsure whether those same provisions must be interpreted as meaning that a TIR carnet certified by the customs authorities of the third country to which the goods have been transported, produced by the person liable for the tax, is capable, by itself and in all circumstances, of establishing that those goods have in fact been exported.

34 In the first place, as regards the exemption provided for in Article 146(1)(e) of the VAT Directive, it should be recalled at the outset that that exemption supplements the exemption set out in Article 146(1)(a) of that directive, and that it is intended, as is that latter exemption, to ensure that

the supply of services concerned is taxed at the place of destination of those services, that is to say, the place where the exported products are consumed (judgment of 29 June 2017, *L.Č.*, C-288/16, EU:C:2017:502, paragraph 19).

35 Referring, in that regard, to its settled case-law, according to which VAT exemptions must be interpreted strictly since they constitute exceptions to the general principle that that tax is to be levied on each delivery of goods and each service supplied for consideration by a taxable person, the Court has held that it follows from the wording and the objective of Article 146(1)(e) of the VAT Directive, according to which the supply of services, including transport and ancillary transactions, are exempt from VAT when they are directly connected with the exportation of goods, that that provision must be interpreted as meaning that the existence of a direct connection entails not only that, by their subject matter, the supplies of services in question contribute to the actual performance of an exportation transaction, but also that those services are supplied directly to, as the case may be, the exporter or the consignee of the goods referred to in that provision (see, to that effect, judgment of 29 June 2017, *L.Č.*, C-288/16, EU:C:2017:502, paragraphs 22 and 23).

36 In the second place, and in so far as the referring court concludes that the direct connection thus required under the case-law referred to in the previous paragraph of the present judgment has been verified in the context of the main proceedings, the question arises as to whether it is open to the tax authorities to refuse to grant the exemptions concerned on the ground that the transporter or intermediary is unable to establish, specifically and exclusively by way of a customs export declaration, that the goods in question have in fact been exported outside the European Union.

37 In that connection, it must be recalled that, in the absence of any provision in the VAT Directive as to the evidence that taxable persons are required to provide in order to be granted an exemption from VAT, it is for the Member States to lay down, in accordance with Article 131 of that directive, the conditions under which export transactions will be exempt, with a view to ensuring the correct and straightforward application of those exemptions and to preventing any possible evasion, avoidance or abuse. However, when they exercise their powers, Member States must observe the general principles of law which form part of the European Union legal order, which include, in particular, the principles of legal certainty and proportionality (see, to that effect, judgment of 9 October 2014, *Traum*, C-492/13, EU:C:2014:2267, paragraph 27 and the case-law cited).

38 As regards the principle of proportionality, a national measure goes further than is necessary to ensure the correct collection of the tax if, in essence, it makes the right to exemption from VAT subject to compliance with formal obligations, without any account being taken of the substantive requirements and, in particular, without any consideration being given as to whether those requirements have been satisfied. Transactions should be taxed by taking into account their objective characteristics (judgment of 9 February 2017, *Euro Tyre*, C-21/16, EU:C:2017:106, paragraph 34 and the case-law cited).

39 When those substantive requirements have been satisfied, the principle of fiscal neutrality requires the VAT exemption to be granted even if certain formal requirements have been omitted by the taxable persons (see, to that effect, judgment of 9 February 2017, *Euro Tyre*, C-21/16, EU:C:2017:106, paragraph 35 and the case-law cited).

40 According to the Court's case-law, there are only two situations in which the failure to meet a formal requirement may result in the loss of entitlement to an exemption from VAT (judgment of 9 February 2017, *Euro Tyre*, C-21/16, EU:C:2017:106, paragraph 38 and the case-law cited).

41 First, the principle of fiscal neutrality cannot be invoked for the purposes of an exemption from VAT by a taxable person who has intentionally participated in tax evasion jeopardising the operation of the common system of VAT (judgment of 9 February 2017, *Euro Tyre*, C-21/16, EU:C:2017:106, paragraph 39 and the case-law cited). According to the Court's case-law, it is not contrary to EU law to require an operator to act in good faith and to take every step which could reasonably be asked of

it to satisfy itself that the transaction which it is carrying out does not result in its participation in tax evasion. If the taxable person concerned knew or should have known that the transaction which it had carried out was part of a fraud committed by the purchaser and that the taxable person had not taken every step which could reasonably be required of it to prevent that fraud from being committed, that person would have to be refused a VAT exemption (judgment of 9 February 2017, *Euro Tyre*, C-21/16, EU:C:2017:106, paragraph 40 and the case-law cited).

42 Second, non-compliance with a formal requirement may lead to the refusal of an exemption from VAT if that non-compliance would effectively prevent the production of conclusive evidence that the substantive requirements have been satisfied (judgment of 9 February 2017, *Euro Tyre*, C-21/16, EU:C:2017:106, paragraph 42 and the case-law cited).

43 With regard, as in the present case, to the objective characteristics of a supply of transport services such as that referred to in Article 146(1)(e) of the VAT Directive, it follows from that provision that such a supply must be exempt from VAT when it is directly connected with the exportation of goods.

44 Those substantive conditions include, therefore, and as has been noted in paragraph 35 of the present judgment, the existence of a direct connection between the relevant supply of services and exportation of goods, the latter being understood, in particular, as is apparent from Article 146(1) of the VAT Directive, as being a supply of goods dispatched or transported by the vendor, or on its behalf, to a destination outside the European Union.

45 Admittedly, the supply of transport services exempt under Article 146(1)(e) of the VAT Directive must be distinguished from the export transaction itself, which constitutes a separate taxable transaction subject to its own customs and tax procedure and involving, as the case may be, other taxable persons whose exemption, for its part, comes under Article 146(1)(a) of that directive.

46 However, it is common ground, as has been noted in paragraphs 34 and 35 of the present judgment, that a supply of transport services which is thus exempt is exempt only because it is ancillary to the transaction of exporting goods, which it supplements, and to the actual performance of which it contributes, in order to ensure, as with the exemption benefiting the latter transaction, that the supply of goods and services is taxed at the place of their destination, namely the place where the exported goods are consumed.

47 It should also be noted that all of the exemptions set out in Article 146(1) of the VAT Directive constitute, as is clear from the title above that article, ‘exemptions on exportation’.

48 In those circumstances, in order for a supply of transport services to be exempt from VAT on the basis of Article 146(1)(e) of the VAT Directive and, if that supply of services is carried out by an intermediary acting in the name and on behalf of another person, on the basis of Article 153 of that directive, it is in principle necessary that goods in question have in fact been exported, namely that the goods have been delivered outside the European Union, the reality of which must be established to the satisfaction of the competent tax authorities. Such a requirement, which thus relates to the substantive conditions necessary for the granting of an exemption, cannot, therefore, be regarded as a purely formal obligation within the meaning of the case-law cited in paragraph 38 of the present judgment.

49 However, it does not follow that the granting of such an exemption can be subject to the mandatory condition that the relevant transporter or intermediary must produce an export declaration for the purposes of establishing that the exports in fact took place, thereby excluding any other evidence capable of shoring up the conviction thus required by the competent tax authorities to make their conclusion.

50 Imposing such a probative procedure, to the exclusion of any other, would amount to making the right to an exemption subject to compliance with formal obligations, within the meaning of the case-law referred to in paragraphs 38 and 39 of the present judgment, without examining whether the substantive requirements laid down by EU law have in fact been satisfied or not. The mere fact that a transporter or an intermediary taking part in a transport transaction is unable to produce an export declaration does not mean that such exportation has not in fact taken place.

51 In that regard, the obligation to submit such an export declaration, as is apparent in particular from Articles 59, 161 and 182a of the Customs Code, falls under the customs procedure which applies specifically to the export transaction itself, and not to the supply of transport services under cover of a TIR carnet, which, for its part, comes under a transit procedure. Thus, in principle, such an obligation does not devolve upon the transporter or the intermediary referred to in Article 153 of the VAT Directive, which, for their part, are responsible for transporting the goods by crossing the external border of the European Union and for delivering those goods to their destination in the third country and which, consequently, are not necessarily deemed to have that declaration.

52 For the purposes of the checks required of them in order to verify whether there has been compliance with the substantive conditions, to which the exemption established in Article 146(1)(e) of the VAT Directive is subject as regards a transport operation, the competent tax authorities must, as the Advocate General noted in point 39 of her Opinion, examine all of the information available to them in order to determine whether it can be deduced from that information, with a sufficiently high degree of probability, that the goods thus transported to a third country were delivered there. By contrast, those authorities cannot deduce that this was not the case from the mere fact that the transporter or intermediary is unable to produce an export declaration relating to those goods.

53 Furthermore, and as the Advocate General also noted in point 40 of her Opinion, the file available to the Court does not contain any indication that the transporter or intermediary in the present case intentionally participated in tax evasion jeopardising the operation of the common system of VAT, or that, if such a taxable person fails to satisfy that formal requirement, the competent authorities are prevented from establishing whether the substantive conditions governing the exemption have been met.

54 It follows from the foregoing that a tax practice of a Member State refusing to grant the exemption from VAT for the services relating to the transportation of goods directly connected with the export of goods outside the European Union established in Article 146(1)(e) of the VAT Directive, or for the intermediary services relating to such services referred to in Article 153 of that directive, on the sole ground that the transporter or intermediary concerned is unable to produce a customs export declaration for those goods, is at odds with the case-law referred to in paragraph 38 of the present judgment.

55 As regards the principle of legal certainty, it should be recalled that that principle, the corollary of which is the principle of the protection of legitimate expectations and compliance with which, as has been noted in paragraph 37 of the present judgment, obliges Member States to lay down the conditions in regard to exemptions requires, on the one hand, that rules of law must be clear and precise and, on the other, that their application must be foreseeable by those who are subject to them (judgment of 9 October 2014, *Traum*, C-492/13, EU:C:2014:2267, paragraph 28 and the case-law cited).

56 That principle must be observed all the more strictly in the case of rules liable to entail financial consequences, in order that those concerned may know precisely the obligations which such rules impose on them. It follows that it is necessary that taxable persons should be aware, before concluding a transaction, of their tax obligations (judgment of 9 October 2014, *Traum*, C-492/13, EU:C:2014:2267, paragraph 29 and the case-law cited).

57 The Court has also stated that the obligations imposed on taxable persons with regard to evidence must be determined in the light of the conditions expressly laid down in that regard by national law and in accordance with the general practice established in respect of similar transactions (judgment of 9 October 2014, *Traum*, C-492/13, EU:C:2014:2267, paragraph 30 and the case-law cited).

58 In the present case, as the referring court points out, the requirement to produce a customs export declaration does not follow from the wording of the national legislation at issue in the main proceedings, which provides, in that regard, only for the production of otherwise unspecified documents proving that the transported goods have been exported.

59 In those circumstances, the tax practice at issue in the main proceedings does not comply with the requirements arising from the principle of legal certainty referred to in paragraphs 55 to 57 of the present judgment.

60 In the third place, as regards the probative value that may attach to the TIR carnet for the purpose of establishing actual compliance with the condition relating to the export of goods with which a supply of transport services must be connected in order to be able to benefit from the exemption from VAT provided for by Article 146(1)(e) of the VAT Directive, it should be recalled that that document, which is uniform in nature, is issued in accordance with the relevant provisions of the TIR Convention, to which both the European Union and its Member States are parties.

61 Article 91(1)(b) and (2)(b) of the Customs Code states that the movement of goods within the customs territory of the European Union and ending outside the European Union comes, in certain cases determined in accordance with the committee procedure, under the external transit procedure, in particular when that movement is effected under cover of such a TIR carnet.

62 The TIR carnet must, as is apparent from the provisions of the TIR Convention, in particular Article 1(e) and (o) thereof, be presented, together with the vehicle used to transport the goods concerned, to the customs offices of departure, transit and destination, and must be certified by those offices by way of the sheets, vouchers and counterfoils referred to in paragraph 16 of the present judgment, in order to facilitate the discharge of the various TIR transactions concerned once it has been established that those transactions have been completed in accordance with the rules.

63 It follows from the foregoing that a TIR carnet duly certified, in particular by the customs authorities of the third country of destination, constitutes an official document which, in principle, shows that the goods in question, by crossing the European Union's external borders, have physically moved from the European Union to that third country and reached the latter.

64 Such a crossing of borders and arrival of the goods in the third country of destination demonstrated by the TIR carnet constitute one of the elements of an export transaction which distinguishes it from a transaction which occurs within the European Union (see, by analogy, judgment of 27 September 2007, *Teleos and Others*, C-409/04, EU:C:2007:548, paragraph 37).

65 It follows that, when such a supply of transport services is made under cover of a TIR carnet, the latter, in the absence of precise grounds capable of casting doubt on the authenticity or reliability of that carnet and its contents, is particularly relevant in the specific context of the recognition of the right to the exemption in respect of that supply of transport services.

66 The tax authorities must therefore take proper account of such a document, just as, moreover, and has been noted in paragraph 52 of the present judgment, they must take account of all of the information available to them.

67 In that regard, it is thus for those authorities also to take account of the documents issued in the context of the CMR Convention, such as those mentioned by the referring court, for the purposes of examining whether those documents may, where necessary, support the likelihood that the transported goods were in fact exported.

68 In the light of all of the foregoing, the answer to the questions referred for a preliminary ruling is that Article 146(1)(e) of the VAT Directive, on the one hand, and that provision in conjunction with Article 153 of that directive, on the other hand, must be interpreted as precluding a tax practice of a Member State under which the exemption from VAT for, respectively, the supply of transport services directly connected with the exportation of goods and the supply of services by intermediaries taking part in those supplies of transport services is subject to production by the taxable person of a customs export declaration in respect of the goods concerned. In that regard, it is for the competent authorities, for the purposes of granting those exemptions, to examine whether compliance with the condition relating to the exportation of the goods concerned can be inferred, with a sufficiently high degree of probability, from all of the information that may be available to those authorities. In that context, a TIR carnet which is certified by the customs offices of the third country of destination of the goods and which is produced by the taxable person constitutes evidence which, in principle, those authorities must duly take into account, unless they have specific reasons to doubt the authenticity or reliability of that document.

## Costs

69 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 (Seventh Chamber) hereby rules:

**Article 146(1)(e) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, on the one hand, and that provision in conjunction with Article 153 of that directive, on the other hand, must be interpreted as precluding a tax practice of a Member State under which the exemption from value added tax for, respectively, the supply of transport services directly connected with the exportation of goods and the supply of services by intermediaries taking part in those supplies of transport services is subject to production by the taxable person of a customs export declaration in respect of the goods concerned. In that regard, it is for the competent authorities, for the purposes of granting those exemptions, to examine whether compliance with the condition relating to the exportation of the goods concerned can be inferred, with a sufficiently high degree of probability, from all of the information that may be available to those authorities. In that context, a TIR carnet which is certified by the customs offices of the third country of destination of the goods and which is produced by the taxable person constitutes evidence which, in principle, those authorities must duly take into account, unless they have specific reasons to doubt the authenticity or reliability of that document.**

[Signatures]