



Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

30 April 2020 *

(Reference for a preliminary ruling – Common system of value added tax – Directive 77/388/EEC – First and third subparagraphs of Article 10(2), Article 17(1) and first subparagraph of Article 18(2) – Directive 2006/112/EC – Article 63, Article 64(1), subparagraphs (a) to (c) of the first paragraph of Article 66, Article 167 and the first paragraph of Article 179 – Services supplied before Hungary acceded to the European Union – Exact remuneration for that supply determined after accession – Invoice relating to that supply issued and paid after accession – Refusal on the grounds of limitation of the right to deduct based on that invoice – Jurisdiction of the Court)

In Case C-258/19,

concerning a request for a preliminary ruling under Article 267 TFEU from the Kúria (Supreme Court, Hungary), by a decision of 7 March 2019, received at the Court on 27 March 2019, in the proceedings

EUROVIA Ipari, Kereskedelmi, Szállítványozási és Idegenforgalmi Kft.

v

Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága,

THE COURT (Tenth Chamber)

composed of I. Jarukaitis (Rapporteur), President, M. Ilešič and C. Lycourgos, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Hungarian Government, by M.Z. Fehér and G. Koós, acting as Agents,
- the European Commission, by L. Havas and J. Jokubauskaitė, acting as Agents,

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

gives the following

* Language of the case: Hungarian.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation 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'), and of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).
- 2 The request has been made in proceedings between EUROVIA Ipari, Kereskedelmi, Szállítmányozási és Idegenforgalmi Kft. ('Eurovia') and the Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága (Appeals Directorate of the National Tax and Customs Administration, Hungary) ('the tax authority') concerning the lawfulness of a decision by the tax authority refusing Eurovia the right to deduct input value added tax (VAT), on the grounds that it was time-barred.

Legal context

EU law

Sixth Directive

- 3 Article 10 of the Sixth Directive provided:

'1. (a) "Chargeable event" shall mean the occurrence by virtue of which the legal conditions necessary for tax to become chargeable are fulfilled.

(b) The tax becomes "chargeable" when the tax authority becomes entitled under the law at a given moment to claim the tax from the person liable to pay, notwithstanding that the time of payment may be deferred.

2. The chargeable event shall occur and the tax shall become chargeable when the goods are delivered or the services are performed. ... Supplies of services which give rise to successive statements of account or payments shall be regarded as being completed at the time when the periods to which such statements of account or payments pertain expire.

...

By way of derogation from the above provisions, Member States may provide that the tax shall become chargeable, for certain transactions or for certain categories of taxable person, either:

- no later than the issue of the invoice or of the document serving as invoice, or
- no later than receipt of the price, or
- where an invoice or document serving as invoice is not issued, or is issued late, within a specified period from the date of the chargeable event.

...'

- 4 Under Article 17 of that directive:

'1. The right to deduct shall arise at the time when the deductible tax becomes chargeable.

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) [VAT] due or paid in respect of goods or services supplied or to be supplied to him by another taxable person;

...'

5 Article 18 of that directive stated:

'1. To exercise his right to deduct, the taxable person must:

(a) in respect of deductions under Article 17(2)(a), hold an invoice ...;

...

2. The taxable person shall effect the deduction by subtracting from the total amount of value added tax due for a given tax period the total amount of the tax in respect of which, during the same period, the right to deduct has arisen and can be exercised under the provisions of paragraph 1.

...'

Directive 2006/112

6 Article 411(1) of Directive 2006/112 provides, inter alia, that the Sixth Directive is repealed. Under Article 411(2), references to the Sixth Directive are to be construed as references to the corresponding provisions of Directive 2006/112.

7 Article 62(1) and (2) of Directive 2006/112 reproduces Article 10(1) (a) and (b) of the Sixth Directive respectively. Article 63 of Directive 2006/112 exactly reproduces the wording of the first sentence of the first subparagraph of Article 10(2) of the Sixth Directive, whilst Article 64(1) of Directive 2006/112 reiterates without substantial changes that of the second sentence of that first subparagraph, and subparagraphs (a) to (c) of the first paragraph of Article 66 of Directive 2006/112 contain, in essence, the same nuances as the first to third indents of the third subparagraph of Article 10(2) of the Sixth Directive.

8 Article 167 of Directive 2006/112 exactly reproduces the wording of Article 17(1) of the Sixth Directive, and Article 168 of Directive 2006/112 corresponds, in essence, to Article 17(2)(a) of the Sixth Directive.

9 Article 178 and the first paragraph of Article 179 of Directive 2006/112 restate, in essence, the provisions of Article 18(1)(a) and of the first subparagraph of Article 18(2) of the Sixth Directive respectively.

Hungarian law

10 Paragraph 16 of the az általános forgalmi adóról szóló 1992. évi LXXIV. törvény (Law LXXIV of 1992 on value added tax) (*Magyar Közlöny* 1992/128 (XII. 19.)), in the version applicable at the time the services at issue in the main proceedings were supplied ('the former Law on VAT') read as follows:

'(1) The tax becomes chargeable, on supplies of goods or services – without prejudice to Paragraphs 17 and 18 – at the time of performance or, if applicable, partial performance (... "performance").

(2) Unless otherwise provided in this Law, the time of performance will be determined in accordance with the Civil Code.'

11 Paragraph 32 of the former Law on VAT provided:

'(1) A taxable person under Paragraph 34 shall have the right to deduct from the tax which he is required to pay:

(a) the amount of tax which another taxable person – including, in the case of a corporate restructuring, the legal predecessor of that taxable person – or a taxable person by virtue of the Simplified Corporation Tax Law has passed on to him in connection with the supply of goods or services; ...'

12 Under Paragraph 35 of the former Law on VAT:

'(1) Unless otherwise provided by the Tax Code, the right to deduct may, as a rule, only be exercised by persons who hold documentation reliably attesting to the amount of the input tax. The following documents shall be considered to be such documentation:

(a) invoices and simplified invoices [in the case of Paragraph 32(1)(a) and (g)]; ...'

13 Paragraph 55(1) of the az általános forgalmi adóról szóló 2007. évi CXXVII. törvény (Law CXXVII of 2007 on value added tax) (*Magyar Közlöny* 2007/155 (XI. 16.)), in the version applicable on the date on which the invoice at issue in the main proceedings was issued ('the Law on VAT'), provided that 'the tax shall become chargeable on the occurrence of the event by which the taxable transaction is actually effected ("performance")'.

14 Paragraph 119(1) of the Law on VAT stated that 'unless otherwise provided in this Law, a right to deduct shall arise at the time the amount due in respect of input VAT is determined (Paragraph 120)'.

15 Under Paragraph 120 of the Law on VAT:

'In so far as the taxable person, acting as such, uses or otherwise exploits goods or services in order to carry out a taxable supply of goods or services, he shall be entitled to deduct from the tax that he is liable to pay:

(a) the amount of tax passed on to him, in connection with the purchase of goods or the use of services, by another taxable person – including any person or entity subject to simplified corporation tax; ...'

16 Paragraph 127 of the Law on VAT provided:

‘1. Exercise of the right to deduct shall be subject to the substantive condition that the taxable person is himself in possession:

(a) in the situation referred to in Paragraph 120(a), of an invoice issued in his name which attests to the performance of the transaction; ...’

17 Paragraph 164 of the az adózás rendjéről szóló 2003. évi XCII. törvény (Law XCII of 2003 on General Taxation Procedure) (*Magyar Közlöny* 2003/131 (XI. 14.)) provides:

‘(1) The right to charge the tax will become time-barred on expiry of five years from the last day of the calendar year in which the declaration or notification of the tax should have been submitted or, where there is no declaration or notification, in which the tax should have been paid. The right to apply for public grants and the right to apply for a refund of amounts paid in excess will become time-barred – unless otherwise provided by this Law – on expiry of five years from the last day of the calendar year in which those rights arose.’

The main proceedings and the questions referred for a preliminary ruling

18 On 12 November 1996 and 17 September 1997, Eurovia concluded a number of works contracts with a commercial company (‘the contractor’) for work relating to an overhead telecommunications network. On account of a dispute that arose between Eurovia and the contractor as to the remuneration payable, Eurovia paid the contractor only part of that remuneration.

19 The contractor then brought judicial proceedings, which gave rise to a decision of 17 September 2004 of the Fővárosi Ítéltábla (Budapest Regional Court of Appeal, Hungary) ordering Eurovia to pay 19 703 394 forint (HUF) (approximately EUR 59 000), plus interest, which was confirmed by a judgment of 5 October 2010 of the Legfelsőbb Bíróság (Supreme Court, Hungary). Following enforcement proceedings, Eurovia paid that amount.

20 On 15 June 2011, at Eurovia’s request, the contractor issued an invoice, indicating 6 June 2011 as the date of performance of the transaction at issue in the main proceedings. In its declaration for the second quarter of 2011, Eurovia deducted VAT of HUF 3 940 679 (approximately EUR 11 800), on the basis of that invoice.

21 After carrying out a pre-payment check, the tax authority found that Eurovia had deducted that amount unduly and issued a tax penalty of HUF 394 000 (approximately EUR 1 200). According to the tax authority, under Paragraph 36(1)(a) and Paragraph 16(15) of the former Law on VAT, the limitation period began to run on 31 December 2004, with the result that the right to claim a refund of the input VAT paid had become time-barred on 31 December 2009.

22 On conclusion of the legal proceedings brought by Eurovia against that decision, the latter was annulled by the Kúria (formerly the Legfelsőbb Bíróság) (Supreme Court, Hungary), by a decision delivered in 2014, on the grounds that Paragraph 16(15) of the former Law on VAT did not apply and that the date of performance of the transaction at issue in the main proceedings had to be determined in accordance with the general provisions of the law.

23 In a new procedure, the tax authority, relying on the decision of 17 September 2004 of the Fővárosi Ítéltábla (Budapest Regional Court of Appeal), set the date of performance of the transaction at issue in the main proceedings as 16 November 1998 and disputed the right to deduct VAT, arguing that it was time-barred since under the former Law on VAT the date on which the right to deduct the tax arose was the date the tax became payable by the supplier. According to those authorities, given that

performance of the transaction at issue in the main proceedings effectively occurred on 16 November 1998, the invoice issued by the contractor gives an incorrect date, since the concept of ‘performance’ of a transaction refers not to the date on which the transaction is paid for, but that on which it actually takes place.

- 24 Eurovia brought an appeal against that new decision, claiming inter alia that the right to deduct VAT only arises once an invoice has been issued. That action was dismissed at first instance on the ground, in particular, that it was common ground that in 1998 the contractor had already discharged its obligations under the contracts entered into with Eurovia and that the tax authority had, therefore, correctly found that the right to deduct VAT was time-barred.
- 25 Eurovia brought an appeal on a point of law to the Kúria (Supreme Court), the referring court, asserting inter alia that, in the absence of an invoice, it had not been in a position to exercise its right to deduct VAT; that the limitation period did not in fact run so long as the requirements for exercising the right to deduct were not satisfied; and that it was the uncertainty as to the amount of the sum owed that had prevented it from complying with its invoicing obligation. The tax authority sought a form of order dismissing the appeal.
- 26 The referring court asks whether, in the event of a dispute between the parties as to the amount of the remuneration for a supply of services, where that amount was determined by a court decision and the invoice was not issued until after the amount had actually been paid, it is permissible to disregard the provisions of the Sixth Directive and of the VAT Directive on performance of the transaction at issue and taxation thereof, and whether it is permissible to disapply the national legislation on the limitation period of the right to deduct VAT.
- 27 In the present case, owing to the dispute between the parties, the invoice was issued only in 2011. The referring court is therefore of the view that, for Eurovia, the right to deduct VAT could only have arisen at that time, and that the time limit for exercising the right to deduct should run from the time when the amount of VAT at issue in the main proceedings was paid to the Treasury and the invoice was issued. According to the referring court, the position taken by the tax authority contravenes the principle of VAT neutrality since it is denying the exercise of the right to deduct VAT as a result of a restrictive interpretation of the time of performance of a transaction, without taking into account the specific features of the present case.
- 28 The referring court also asks whether the fact that Eurovia did not voluntarily comply with its payment obligation, thereby delaying the issuing of the invoice, might affect the exercise of its right to deduct VAT.
- 29 In those circumstances, the Kúria (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Does the practice of a Member State infringe the principle of fiscal neutrality and the formal requirements of the right to deduct VAT where, for the purposes of exercising the right to deduct the tax, it has regard solely to the time the chargeable event occurred, and does not take into account the fact that there was a civil dispute between the parties concerning performance of the contract, which was determined in judicial proceedings, and that the invoice was only issued once a final judgment was delivered?
- (2) If the answer to that question is in the affirmative, is it possible to exceed the limitation period for exercising the right to deduct VAT, set by the legislation of the Member State at five years from the time when the services were supplied?

- (3) If the answer to that question is in the affirmative, is the exercise of the right to deduct VAT affected by the conduct of the recipient of the invoice in the present case, which did not pay the contractor's remuneration determined by a final judgment until the contractor had brought enforcement proceedings, for which reason the invoice was not issued until after the limitation period had expired?

Jurisdiction of the Court of Justice

- 30 According to settled case-law, the Court has jurisdiction to interpret EU law only as regards its application in a Member State with effect from the date of that State's accession to the European Union (judgments of 10 January 2006, *Ynos*, C-302/04, EU:C:2006:9, paragraph 36, and of 27 June 2018, *Varna Holideis*, C-364/17, EU:C:2018:500, paragraph 17 and the case-law cited).
- 31 This means, in particular, that the Court is not competent to interpret EU Directives relating to VAT where the recovery of taxes at issue in the main proceedings pre-dates the accession of the Member State concerned to the Union (judgment of 27 June 2018, *Varna Holideis*, C-364/17, EU:C:2018:500, paragraph 18 and the case-law cited).
- 32 According to the referring court, the supply of services in relation to which the right to deduct VAT at issue in the main proceedings was exercised took place on 16 November 1998, that is to say, before Hungary acceded to the European Union on 1 May 2004.
- 33 It is worth recalling here that under the first sentence of the first subparagraph of Article 10(2) of the Sixth Directive, and Article 63 of Directive 2006/112, the chargeable event occurs and the tax becomes chargeable when the goods or the services are supplied.
- 34 Accordingly, assuming that the supply of services at issue in the main proceedings was governed by rules such as those provided for by the Sixth Directive, that supply took place and the VAT became chargeable before the accession of Hungary to the European Union (see, by analogy, judgment of 27 June 2018, *Varna Holideis*, C-364/17, EU:C:2018:500, paragraph 21).
- 35 It needs to be added in that respect that, first, it is not apparent that the supply in question gave rise to successive statements of account or payments within the meaning of the second sentence of the first subparagraph of Article 10(2) of the Sixth Directive or that of Article 64(1) of Directive 2006/112, which would warrant regarding that supply as being performed on expiry of the period to which each statement of account or payment pertains.
- 36 Admittedly, it emerges from the decision to refer that Eurovia initially paid only part of the remuneration owed for the supply at issue in the main proceedings and that it only paid that remuneration in full in 2010, once the total amount owed for that supply had been determined in a final judgment. Nevertheless, it is clear from the decision to refer that it is not necessary for the purposes of the dispute in the main proceedings to rule on whether such circumstances can fall within the scope of those provisions, but that instead it concerns the issue of whether the tax authority correctly found that the limitation period of Eurovia's right to deduct the VAT paid on that supply could begin to run before the invoice for the supply had been issued.
- 37 The fact that Eurovia did not pay the full amount of the remuneration owed for the supply of services at issue in the main proceedings until 2011 is therefore irrelevant to the finding made in paragraph 34 above.
- 38 Secondly, it is not apparent from the decision to refer that the main proceedings concern a situation, such as that envisaged in the first to third indents of the third subparagraph of Article 10(2) of the Sixth Directive and subparagraphs (a) to (c) of the first paragraph of Article 66 of Directive 2006/112,

in which the tax becomes chargeable on the basis of the issue of an invoice, receipt of the price or expiry of a period calculated from the date of the chargeable event in accordance with a provision of national law adopted under one of those provisions.

- 39 The right to deduct VAT as established both by the Sixth Directive and by Directive 2006/112 has a direct substantive and temporal link with the chargeability of the input VAT due or paid in respect of goods and services (see, to that effect, judgment of 27 June 2018, *Varna Holideis*, C-364/17, EU:C:2018:500, paragraph 22).
- 40 The right of taxable persons to deduct VAT due or paid on goods purchased and services received as inputs from the VAT which they are liable to pay is a fundamental principle of the common system of VAT established by EU law. As the Court has repeatedly held, the right to deduct that was provided for by Articles 17 to 20 of the Sixth Directive and is now laid down in Articles 167 et seq. of the Directive 2006/112 is an integral part of the VAT scheme and may not, in principle, be limited. In particular, the right to deduct is exercisable immediately in respect of all taxes charged on input transactions (see judgments of 29 July 2010, *Profaktor Kulesza, Frankowski, Józwiak, Orłowski*, C-188/09, EU:C:2010:454, paragraph 19 and the case-law cited, and of 27 June 2018, *Varna Holideis*, C-364/17, EU:C:2018:500, paragraph 23 and the case-law cited).
- 41 As established by Article 17(1) and the first subparagraph of Article 18(2) of the Sixth Directive, which were substantially reproduced in Article 167 and in the first paragraph of Article 179 of Directive 2006/112, the right to deduct VAT must, in principle, be exercised during the same period as that during which it has arisen, namely once the tax becomes due (see, to that effect, judgments of 8 May 2008, *Ecotrade*, C-95/07 and C-96/07, EU:C:2008:267, paragraph 41, and of 27 June 2018, *Varna Holideis*, C-364/17, EU:C:2018:500, paragraph 24 and the case-law cited).
- 42 It follows that, in accordance with the case-law mentioned in paragraphs 30 and 31 above, the Court has no jurisdiction to answer the questions referred, since they concern the exercise of the right to deduct in relation to a supply of services which took place before the accession of Hungary to the European Union (see, by analogy, judgment of 27 June 2018, *Varna Holideis*, C-364/17, EU:C:2018:500, paragraph 25).
- 43 Furthermore, the Court has held that the mere existence of an element after the date of accession of the Member State in question to the European Union, which relates to circumstances preceding that date and which stems from those circumstances, is not sufficient to confer jurisdiction on the Court to answer the questions referred on the interpretation of a directive (judgment of 27 June 2018, *Varna Holideis*, C-364/17, EU:C:2018:500, paragraph 30 and the case-law cited).
- 44 Accordingly, the fact that the exact remuneration owed for the supply of services at issue in the main proceedings was determined only after the date on which Hungary acceded to the European Union and that, as a result, it was only after that date that that amount was paid in full and an invoice for that supply was issued, on the basis of which the right to deduct at issue in the main proceedings was exercised, cannot therefore, in the circumstances of the present case, confer jurisdiction on the Court to interpret the Sixth Directive or Directive 2006/112, since those facts taken as a whole are inextricably linked to a supply of services which, it is common ground, was made before that accession (see, by analogy, judgment of 27 June 2018, *Varna Holideis*, C-364/17, EU:C:2018:500, paragraph 31).
- 45 It follows from the foregoing that the Court has no jurisdiction to answer the questions referred by the Kúria (Supreme Court).

Costs

- ⁴⁶ Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Tenth Chamber) hereby rules:

The Court of Justice of the European Union has no jurisdiction to answer the questions referred by the Kúria (Supreme Court, Hungary).

[Signatures]