

**Parties to the main proceedings**

*Claimant:* Stroy trans EOOD

*Defendant:* Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

**Re:**

Request for a preliminary ruling — Administrativen sad Varna — Interpretation of Article 203 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Right to deduct input VAT — Tax payable owing to its being entered on the invoice despite the absence of supply or payment of the subject-matter of the invoice — Proof of actual supply of goods — No adjustment of the tax in the revised assessment relating to the taxable person's direct supplier

**Operative part of the judgment**

1. Article 203 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 value added tax entered by a person on an invoice is payable by him regardless of whether a taxable transaction actually exists;
- it cannot be inferred from the mere fact that the tax authorities did not correct, in a tax adjustment notice addressed to the issuer of that invoice, the value added tax declared by the latter that those authorities have acknowledged that the invoice corresponded to an actual taxable transaction.

2. The principles of fiscal neutrality, proportionality and the protection of legitimate expectations must be interpreted as not precluding the recipient of an invoice from being refused the right to deduct input value added tax because there is no actual taxable transaction even though, in the tax adjustment notice addressed to the issuer of that invoice, the value added tax declared by the latter was not adjusted. However, if, in the light of fraud or irregularities, committed by the issuer of the invoice or upstream of the transaction relied upon as the basis for the right of deduction, that transaction is considered not to have been actually carried out, it must be established, on the basis of objective factors and without requiring of the recipient of the invoice checks which are not his responsibility, that he knew or should have known that that transaction was connected with value added tax fraud, a matter which it is for the referring court to determine.

**Judgment of the Court (Third Chamber) of 31 January 2013 (Request for a preliminary ruling from the Administrativen sad Varna — Bulgaria) — LVK — 56 EOOD v Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite**

(Case C-643/11) <sup>(1)</sup>

**(Taxation — VAT — Directive 2006/112/EC — Principle of fiscal neutrality — Right of deduction — Refusal — Article 203 — Entering of the VAT on the invoice — Chargeability — Existence of a taxable transaction — Identical determination in respect of the issuer of the invoice and its recipient — Necessity)**

(2013/C 86/09)

*Language of the case:* Bulgarian

**Referring court**

Administrativen sad Varna

**Parties to the main proceedings**

*Applicant:* LVK — 56 EOOD

*Defendant:* Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

**Re:**

Request for a preliminary ruling — Administrativen sad — Varna — Interpretation of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Right to deduct input VAT — Evidence of the existence of the chargeable event — Practice of the tax authorities refusing to grant the right to deduct VAT to the purchaser of taxable goods on the ground that there is no evidence that the supply took place, despite the finding that the tax had become chargeable at the level of the supplier

**Operative part of the judgment**

1. Article 203 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 value added tax entered by a person on an invoice is payable by him regardless of whether a taxable transaction actually exists;
- it cannot be inferred from the mere fact that the tax authorities did not correct, in a tax adjustment notice addressed to the issuer of that invoice, the value added tax declared by the latter that those authorities have acknowledged that the invoice corresponded to an actual taxable transaction.

<sup>(1)</sup> OJ C 80, 17.3.2012.

2. European Union law must be interpreted as meaning that Articles 167 and 168(a) of Directive 2006/112 and the principles of fiscal neutrality, legal certainty and equal treatment do not preclude the recipient of an invoice from being refused the right to deduct input value added tax because there is no actual taxable transaction even though, in the tax adjustment notice addressed to the issuer of that invoice, the value added tax declared by the latter was not adjusted. However, if, in the light of fraud or irregularities, committed by the issuer of the invoice or upstream of the transaction relied upon as the basis for the right of deduction, that transaction is considered not to have been actually carried out, it must be established, on the basis of objective factors and without requiring of the recipient of the invoice checks which are not his responsibility, that he knew or should have known that that transaction was connected with value added tax fraud, a matter which it is for the referring court to determine.

(<sup>1</sup>) OJ C 80, 17.3.2012.

**Request for a preliminary ruling from the Krajský súd v Prešove (Slovakia) lodged on 6 November 2012 — Spoločenstvo vlastníkov bytov MYJAVA v Podtatranská vodárenská prevádzková spoločnosť, a.s.**

(Case C-496/12)

(2013/C 86/10)

*Language of the case: Slovak*

#### Referring court

Krajský súd v Prešove

#### Parties to the main proceedings

*Applicant:* Spoločenstvo vlastníkov bytov MYJAVA

*Defendant:* Podtatranská vodárenská prevádzková spoločnosť, a.s.

#### Questions referred

1. Must the provisions of European Union directives such as Directive 1999/44/EC (<sup>1</sup>) of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, Council Directive 85/374/EEC (<sup>2</sup>) of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, and other directives intended for the protection of consumers, be interpreted as meaning that the same protection as for consumers is also afforded to a legal person, if in contracts covered by those directives it acts for purposes which are not related to a trade or business?
2. Must the provisions of European Union directives such as Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees and

Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products be interpreted as meaning that a provision of national law, such as that at issue in the main proceedings, which when goods supplied are ascertained to be faulty limits a restitutionary claim such as a claim to recovery of the proceeds of unjust enrichment solely to the period from the last reading of the water meter carried out before the submission of the request is incompatible with them?

(<sup>1</sup>) OJ 1999 L 171, p. 12.

(<sup>2</sup>) OJ 1985 L 210, p. 29.

**Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 19 December 2012 — Loredana Napoli v Ministero della Giustizia — Dipartimento Amministrazione Penitenziaria**

(Case C-595/12)

(2013/C 86/11)

*Language of the case: Italian*

#### Referring court

Tribunale Amministrativo Regionale per il Lazio

#### Parties to the main proceedings

*Applicant:* Loredana Napoli

*Defendant:* Ministero della Giustizia — Dipartimento Amministrazione Penitenziaria

#### Questions referred

1. Is Article 15 of Directive 2006/54/EC (<sup>1</sup>) (return from maternity leave) applicable to attendance of a professional training course in the context of an employment relationship and must it be interpreted as meaning that, at the end of the leave period, the female worker concerned has the right to be re-admitted to the same course still under way, or can it be interpreted as meaning that the female worker concerned may be enrolled on a subsequent course, even though the timing, at least, of that subsequent course is uncertain?
2. Must Article 2(2)(c) of Directive 2006/54/EC, which provides that any less favourable treatment related to maternity leave constitutes discrimination, be interpreted as affording female workers protection, which is absolute and cannot be affected by divergent interests, against any substantial inequality (Case C-136/95 *Thibault* [1998] ECR I-2011), so as to preclude national legislation which, by requiring dismissal from a professional training course and