

Operative part of the judgment

1. Article 17(2), (3) and (5) and Article 19(1) 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, and Articles 168, 169 and 173 to 175 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that, in relation to the expenditure borne by a branch registered in a Member State, which is used, exclusively, both for transactions subject to value added tax and for transactions exempt from that tax, carried out by the principal establishment of that branch established in another Member State, it is necessary to apply a deductible proportion resulting from a fraction the denominator of which is formed by the turnover, exclusive of value added tax, made up of those transactions alone and the numerator of which is formed by the taxed transactions in respect of which value added tax which would also be deductible if they had been carried out in the Member State in which that branch is registered, including where that right to deduct stems from the exercise of an option, effected by that branch, consisting in making the transactions carried out in that State subject to value added tax.
2. Article 17(2), (3) and (5) and Article 19(1) of Sixth Directive 77/388, and Articles 168, 169 and 173 to 175 of Directive 2006/112 must be interpreted as meaning that, in order to determine the deductible proportion applicable to the general costs of a branch registered in a Member State, which are used for both transactions of that branch in that State and transactions of the principal establishment of that branch established in another Member State, account must be taken, in the denominator of the fraction which makes up that deductible proportion, of the transactions carried out by both that branch and that principal establishment, it being specified that it is necessary that, in the numerator of that fraction, besides the taxed transactions carried out by that branch, solely the taxed transactions carried out by that principal establishment must appear, in respect of which value added tax would also be deductible if they had been carried out in the State in which the branch concerned is registered.

⁽¹⁾ OJ C 213, 3.7.2017.

Judgment of the Court (Third Chamber) of 17 January 2019 (request for a preliminary ruling from the Kúria — Hungary) — SH v TG

(Case C-168/17) ⁽¹⁾

(Reference for a preliminary ruling — Common foreign and security policy — Restrictive measures adopted in view of the situation in Libya — A chain of contracts concluded with the aim of issuing a bank guarantee for the benefit of an entity on a list of entities whose funds are to be frozen — Payment of costs arising under counter guarantee agreements — Regulation (EU) No 204/2011 — Article 5 — Definition of ‘funds made available to an entity referred to in Annex III to Regulation No 204/2011’ — Article 12(1)(c) — Definition of ‘a claim under a guarantee’ — Definition of a ‘person or entity acting on behalf of a person referred to in Article 12(1)(a) or (b)’)

(2019/C 93/05)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Applicant: SH

Defendant: TG

Intervening party: UF

Operative part of the judgment

1. Article 5(2) of Council Regulation (EU) No 204/2011 of 2 March 2011 concerning restrictive measures in view of the situation in Libya is to be interpreted as:

- being applicable in a situation, such as that at issue in the main proceedings, in which the costs payable under a counter guarantee agreement must be paid by an EU bank to a Libyan bank listed in Annex III to that regulation; and
- not being applicable, in principle, in a situation, such as that at issue in the main proceedings, in which the costs payable under a counter guarantee agreement must be paid by an EU bank to a Libyan bank whose name is no longer on the list in Annex III to that regulation or by one EU bank to another EU bank, where the bank guarantee granted by the Libyan bank benefits an entity which is on that list, unless such a payment leads, as a result of the legal or financial links that exist between the bank receiving that payment and the entity on that list, to the costs in question being made available indirectly to that entity.

2. Article 12 of Regulation No 204/2011 is to be interpreted as:

- being applicable, in its original version, where costs payable under counter guarantee agreements must be paid by an EU bank to a Libyan bank listed in Annex III to that regulation and by an EU bank to a Libyan bank which is not on that list if the bank guarantee granted by the Libyan bank benefits an entity that is on that list, provided that the Libyan bank is regarded as an entity acting on behalf of the Libyan Government, which is a matter for the referring court to verify;
- not being applicable, in the version resulting from Council Regulation (EU) No 45/2014 of 20 January 2014, where the costs payable under counter guarantee agreements must be paid by an EU bank to a Libyan bank listed in Annex III to that regulation and by an EU bank to a Libyan bank which is not on that list if the bank guarantee granted by the Libyan bank benefits an entity which is on the list, provided that those costs were paid before the entry into force of that regulation; and
- not being applicable, either in the original version or in the version resulting from Regulation No 45/2014, where the costs payable under counter agreements must be paid by one EU bank to another EU bank.

3. Article 9 of Regulation No 204/2011 is to be interpreted as not being applicable to payments of costs such as those due under the various agreements at issue in the main proceedings.

4. Article 17(1) of Council Regulation (EU) 2016/44 of 18 January 2016 concerning restrictive measures in view of the situation in Libya and repealing Regulation (EU) No 204/2011 must be interpreted as being applicable to the counter guarantee costs payable by one EU bank to another EU bank in a situation, such as that at issue in the main proceedings, in which the final calculation of the costs is made after the entry into force of that regulation.

(¹) OJ C 221, 10.7.2017.