



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

5 September 2019*

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 103(2)(a) — Article 311(1), point 2 — Annex IX, Part A, point 7 — Reduced rate of VAT — Works of art — Concept — Photographs taken by the artist, printed by him or under his supervision, signed and numbered and limited to 30 copies — National legislation restricting the application of the reduced rate of VAT only to photographs that have artistic character)

In Case C-145/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (Council of State, France), made by decision of 20 February 2018, received at the Court on 23 February 2018, in the proceedings

Regards Photographiques SARL

v

Ministre de l'Action et des Comptes publics,

THE COURT (Second Chamber),

composed of A. Arabadjiev, President of the Chamber, T. von Danwitz (Rapporteur) and C. Vajda, Judges,

Advocate General: M. Szpunar,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 21 November 2018,

after considering the observations submitted on behalf of:

- Regards Photographiques SARL, by E. Piwnica, lawyer,
- the French Government, by A. Alidière, E. de Moustier and D. Colas, acting as Agents,
- the European Commission, by N. Gossement and J. Jokubauskaitė, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 March 2019,

gives the following

* Language of the case: French.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 103 and 311 of, and point 7 of Part A of Annex IX to, 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 Regards Photographiques SARL and the ministre de l’Action et des Comptes publics (Minister for the Public Sector and Public Accounts, France; ‘the tax authority’) concerning the latter’s refusal to apply the reduced rate of value added tax (VAT) to the supply of portrait photographs and wedding photographs made during the period from 1 February 2009 to 31 January 2012.

Legal context

European Union law

- 3 Recital 51 of the VAT Directive states:

‘It is appropriate to adopt a Community taxation system to be applied to second-hand goods, works of art, antiques and collectors’ items, with a view to preventing double taxation and the distortion of competition as between taxable persons.’

- 4 Article 96 of that directive provides:

‘Member States shall apply a standard rate of VAT, which shall be fixed by each Member State as a percentage of the taxable amount and which shall be the same for the supply of goods and for the supply of services.’

- 5 Article 98(1) and (2) of the VAT Directive provides:

‘1. Member States may apply either one or two reduced rates.

2. The reduced rates shall apply only to supplies of goods or services in the categories set out in Annex III.

...’

- 6 Under Article 99(1) of that directive:

‘The reduced rates shall be fixed as a percentage of the taxable amount, which may not be less than 5%.’

- 7 Article 103 of the VAT Directive reads as follows:

‘1. Member States may provide that the reduced rate, or one of the reduced rates, which they apply in accordance with Articles 98 and 99 is also to apply to the importation of works of art, collectors’ items and antiques, as defined in points (2), ... of Article 311(1).

2. If Member States avail themselves of the option under paragraph 1, they may also apply the reduced rate to the following transactions:

(a) the supply of works of art, by their creator or his successors in title;

...’

8 Article 311(1) and (2) of that directive provides:

‘1. For the purposes of this Chapter, and without prejudice to other Community provisions, the following definitions shall apply:

...

(2) “works of art” means the objects listed in Annex IX, Part A;

...

2. Member States need not regard as works of art the objects listed in [point 7] of Annex IX, Part A.’

9 Point 7 of Part A of Annex IX to that directive is worded as follows:

‘photographs taken by the artist, printed by him or under his supervision, signed and numbered and limited to 30 copies, all sizes and mounts included.’

French law

10 Article 278(f) of the Code général des impôts (General Tax Code), in the version applicable up to 1 January 2012 (‘the CGI’), provided:

‘[VAT] shall be levied at the rate of 5.5%:

...

(2) on the supply of works of art, by their creator or his successors in title;

...’

11 As from 1 January 2012 the rate laid down in that provision was increased to 7%.

12 Under point 7 of Article 98 A of Annex II to the CGI, the following photographs are to be regarded as works of art:

‘photographs taken by the artist, printed by him or under his supervision, signed and numbered and limited to 30 copies, all sizes and mounts included ...’

13 The Ministerial Directive of the Directorate-General for Taxation of 25 June 2003 entitled ‘VAT. Reduced rate of 5.5% applicable to works of art. Situation of art photographs.’, published in the *Bulletin officiel des impôts* No 115 of 2 July 2003, as applicable at the time of the material facts of the case in the main proceedings (‘the Ministerial Directive of 25 June 2003’), was intended to provide clarification regarding the conditions for applying the reduced rate of VAT laid down in Article 278(f) of the CGI in respect of art photographs. The Ministerial Directive provided:

‘...

I. Criteria for art photographs:

1. Only photographs demonstrating clear creative intent on the part of their creator may be regarded as works of art eligible for the reduced rate of VAT.

That is the case where, through subject choice, setting, features of the shot or any other distinctive characteristic of the photographer's work, such as framing quality, composition, exposure, lighting, contrast, colours and relief, play of light and volume, lens and film selection or the specific conditions in which the negative is processed, he produces a work which goes beyond the simple mechanical fixation of the memory of an event, trip or people and which is thus of interest to any audience.

II. Conditions for application

1. In the light of the above, identity photographs, school photographs and group photographs are not eligible for the reduced rate.

2. Photographs where interest depends primarily on the status of the individual or the nature of the object shown are not, in general, regarded as art photographs. That is the case, for example, with photographs depicting family or religious events (weddings, communions etc.).

3. That being said, for photographs of any kind other than those mentioned in II-1, the creative intent of the creator as evidenced by the criteria already set out and the interest to any audience may be reinforced by the following indicators:

(a) The photographer proves that his works have been exhibited in cultural institutions (regional, national or international), museological institutions (museums, temporary or permanent exhibitions) or commercial institutions (trade fairs, shows, galleries etc.) or that they have been presented in specialist publications.

...

(b) The use of specific equipment for both taking and developing the photograph.

...'

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

- 14 The business activity of Regards Photographiques is the creation and sale of photographs.
- 15 Following an audit of accounts, the tax authority called into question the reduced rate of VAT that the company had applied to the supply of certain photographs, namely portraits and wedding photographs. Because it considered that those photographs should be subject to the standard rate of VAT, the tax authority imposed on Regards Photographiques additional assessments of VAT for the period from 1 February 2009 to 31 January 2012.
- 16 The action brought by Regards Photographiques against those additional assessments of VAT was dismissed both by the tribunal administratif d'Orléans (Administrative Court, Orléans, France) and by the cour administrative d'appel de Nantes (Administrative Court of Appeal, Nantes, France). In its judgment of 21 April 2016, the latter court found that the photographs at issue in the main proceedings could not be eligible for the reduced rate of VAT, since they lacked originality and did not demonstrate creative intent, with the result that they were not to be regarded as photographs taken by an artist.

- 17 Regards Photographiques brought an action before the referring court, the Conseil d'État (Council of State, France) seeking to have that judgment set aside. Regards Photographiques submits that, in order to be eligible for the reduced rate of VAT, it is sufficient that, before the creator of the photographs in question or his successors in title have supplied those photographs, he or his successors in title supervised the printing of them and signed and numbered them, up to a limit of 30 copies.
- 18 In those circumstances, the Conseil d'État (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) Must the provisions of Articles 103 and 311 of [the VAT Directive] and point 7 of Part A in Annex IX thereto, be interpreted as meaning that they require only that the photographs are taken by their photographer, printed by him or under his supervision, signed and numbered up to a maximum of 30 copies, all sizes and mounts included, in order to be able to benefit from the reduced rate of VAT?
 - (2) If the answer to the first question is yes, are Member States nevertheless permitted to exclude from the benefit of the reduced rate of VAT photographs that are not, in addition, artistic in character?
 - (3) If the answer to the first question is no, what other conditions must the photographs satisfy in order to benefit from the reduced rate of VAT? In particular, must they show an artistic character?
 - (4) Must those conditions be interpreted uniformly within the European Union, or do they refer to the law of each Member State, in particular in the field of intellectual property?

Consideration of the questions referred

The first and third questions

- 19 By its first and third questions, which it is appropriate to examine together, the referring court asks the Court, in essence, what conditions must be satisfied by photographs in order for them to be regarded as works of art eligible for the reduced rate of VAT, pursuant to Article 103(1) and (2)(a) of the VAT Directive, read in conjunction with point 2 of Article 311(1) of that directive and point 7 of Part A of Annex IX thereto, and, in particular, whether they must, for that purpose, have artistic character.
- 20 Accordingly, in the context of the present reference for a preliminary ruling, the Court is called upon not to determine the meaning of 'works of art' in general, but to interpret that concept in the context of the VAT Directive and, in particular, the provisions of that directive concerning the application of a reduced rate of VAT.
- 21 It should be noted that Article 96 of that directive provides that the same rate of VAT, that is the standard rate fixed by each Member State, is applicable to supplies of goods and services. As an exception to that principle, Article 103(1) and (2)(a) of the VAT Directive gives the Member States the option of applying the reduced rate of VAT, or one of the reduced rates, which they apply in accordance with Articles 98 and 99 thereof, to the importation of works of art, as defined in point 2 of Article 311(1) of that directive, and, where they make use of that option, also to the supply of works of art, by their creator or his successors in title.

- 22 As regards the definition of ‘works of art’, point 2 of Article 311(1) of the VAT Directive provides that the objects listed in Part A of Annex IX to that directive are to be regarded as works of art. Point 7 of Part A refers to ‘photographs taken by the artist, printed by him or under his supervision, signed and numbered and limited to 30 copies, all sizes and mounts included’.
- 23 The French Government submits that only ‘art photographs’ may be eligible for the reduced rate of VAT, a concept which, in that government’s view, is restricted to photographs demonstrating clear creative intent on the part of their creator and being of interest to any audience. That interpretation stems from the use of the word ‘artist’ in point 7 of Part A of Annex IX to the VAT Directive, the need to interpret the option of applying a reduced rate of VAT strictly, as an exception to the principle of applying the standard rate of VAT, and the objective of promoting artistic production by applying a reduced rate of VAT.
- 24 By contrast, Regards Photographiques and the European Commission submit that Article 103(2)(a) of that directive refers not to the ‘artist’, but to the ‘creator’ of a photograph that is regarded as a work of art under point 2 of Article 311(1) of that directive, read in conjunction with point 7 of Part A of Annex IX thereto. Furthermore, they emphasise the detailed and objective nature of the conditions that photographs must satisfy under that point 7 in order to be regarded as works of art, whereas the artistic merit of a photograph constitutes, in their view, a subjective and indeterminate criterion whose assessment entails a judgement on the merits of a work. They submit that it is in order to avoid such a subjective assessment that the EU legislature laid down, in that point 7, detailed and objective conditions which, accordingly, alone are decisive for the purposes of identifying the photographs eligible for the reduced rate of VAT.
- 25 In determining the scope of the option given to Member States of applying the reduced rate of VAT to the supply of photographs, as laid down in the provisions of EU law whose interpretation is sought, both the wording and context of those provisions and the objective pursued by the legislation in question must be taken into account (see, to that effect, judgments of 18 January 2017, *Sjelle Autogenbrug*, C-471/15, EU:C:2017:20, paragraph 29 and the case-law cited, and of 16 November 2017, *Kozuba Premium Selection*, C-308/16, EU:C:2017:869, paragraph 38).
- 26 As regards, in the first place, the wording of those provisions, while Article 103(1) and (2)(a) of the VAT Directive provides that Member States may also apply the reduced rate of VAT to the supply of works of art by their creator or his successors in title, it refers to ‘works of art’, as defined in point 2 of Article 311(1) of that directive, read in conjunction with Part A of Annex IX thereto.
- 27 As regards that definition, it is clear from the wording used by the EU legislature, first, in point 2 of Article 311(1), according to which the objects listed in Part A of Annex IX to the VAT Directive come under the definition of works of art and, secondly, in point 7 of Part A, which describes in detail the conditions that photographs must satisfy in order to be regarded as ‘works of art’, that any photograph which satisfies those conditions must be treated as a ‘work of art’ for the purposes of applying the reduced rate of VAT. Point 7 refers not to art photographs, but to all ‘photographs taken by the artist, printed by him or under his supervision, signed and numbered and limited to 30 copies, all sizes and mounts included’.
- 28 As regards the French Government’s argument that it must be inferred from the use of the word ‘artist’ in point 7 of Part A of Annex IX to the VAT Directive that a photograph must have artistic character in order to be eligible for the reduced rate of VAT under Article 103(2)(a) of that directive, it must be borne in mind that, according to the latter provision, Member States may apply the reduced rate of VAT to the supply of works of art not by an ‘artist’, but ‘by their creator or his successors in title’.
- 29 In using the words ‘creator’ and ‘artist’, those provisions refer to the same person, namely the person who is the creator of a photograph meeting the conditions expressly laid down in that point 7.

- 30 Indeed, the words ‘creator’ and ‘artist’ used in Article 103(2)(a) of the VAT Directive and in point 7 of Part A of Annex IX thereto are identical in scope, taking into account, inter alia, the particular importance that point 7 gives to the personal involvement of the creator of the photograph in its execution. As the Advocate General observed in point 23 of his Opinion, a photograph is classified as a ‘work of art’ under point 7 only if the two key stages of its execution, namely shooting and printing, have been carried out by the creator of the photograph or, as regards the printing, at the very least under his supervision. Furthermore, in order to be regarded as ‘works of art’, the prints of the photograph must be signed, numbered and limited to 30 copies.
- 31 Therefore, contrary to what the French Government submits, it cannot be inferred from the use of the word ‘artist’ in point 7 of Part A of Annex IX to the VAT Directive that, in addition to the conditions set out in point 7, a photograph should also have artistic character in order to be eligible for the reduced rate of VAT under Article 103(2)(a) of that directive.
- 32 As regards, in the second place, the context of the provisions whose interpretation is sought, it must be recalled that the application of the reduced rate of VAT to the supply of works of art by their creator or his successors in title under Article 103(2)(a) of the VAT Directive constitutes an exception to the application of the standard rate of VAT. Therefore, that provision, as well as point 2 of Article 311(1) of that directive and point 7 of Part A of Annex IX thereto, which identify the photographs to which that reduced rate may be applied, must be interpreted strictly. However, that rule of strict interpretation does not mean that the terms used to set out the cases in which that reduced rate is applied should be construed in such a way as to deprive it of its effects. In fact, the interpretation of those terms must conform to the objectives pursued by that arrangement and respect the requirements of tax neutrality (see, by analogy, judgments of 17 June 2010, *Commission v France*, C-492/08, EU:C:2010:348, paragraph 35, and of 29 November 2018, *Mensing*, C-264/17, EU:C:2018:968, paragraphs 22 and 23 and the case-law cited).
- 33 Furthermore, it is settled case-law that the terms contained in the VAT Directive are objective in nature and apply without regard to the purpose or results of the transactions concerned (judgment of 11 July 2018, *E LATS*, C-154/17, EU:C:2018:560, paragraph 35 and the case-law cited).
- 34 As argued by Regards Photographiques and the Commission in their observations submitted to the Court, point 2 of Article 311(1) of that directive, read in conjunction with point 7 of Part A of Annex IX thereto, determines the photographs that are regarded as works of art by means of objective criteria which, in essence, relate to the identity and status of the creator of the photograph, to the shooting method, to signing, to numbering and to limiting the number of copies. Such criteria are sufficient to ensure that the application of the reduced rate of VAT only to photographs meeting those criteria is the exception to the application of the standard rate to any other photograph. As the Advocate General observed in point 24 of his Opinion, those criteria rule out the possibility that photographs might be classified as ‘works of art’ when they are mass produced, where printing is entrusted to specialist laboratories and the photographer does not have control over the final effect.
- 35 On the other hand, interpreting those provisions as meaning that the application of the reduced rate of VAT is restricted to photographs that, in addition, have artistic character would make the application of that reduced rate dependent on the judgement of the competent national tax authority as to their artistic merit, such merit being a subjective, not objective, characteristic. As the Court has previously pointed out, the artistic merit of an article is defined essentially by reference to subjective and indeterminate criteria (judgments of 27 October 1977, *Westfälischer Kunstverein*, 23/77, EU:C:1977:171, paragraph 3, and of 13 December 1989, *Raab*, C-1/89, EU:C:1989:648, paragraph 25).
- 36 Furthermore, an interpretation whereby eligibility for the reduced rate of VAT would be reserved solely to photographs that have artistic character may result in photographs, such as, for example, photographs depicting family events such as weddings, being treated differently for VAT purposes, depending on whether or not the tax authority considers them to be artistic, even though those

photographs may have similar characteristics and meet the same consumer needs. However, the principle of fiscal neutrality precludes treating goods or supplies of services that are similar from the point of view of the typical consumer, which are thus in competition with each other, differently for VAT purposes (see, to that effect, judgment of 27 February 2014, *Pro Med Logistik and Pongratz*, C-454/12 and C-455/12, EU:C:2014:111, paragraphs 52 and 53).

- 37 Thus, the examination of the context of the provisions whose interpretation has been sought also militates in favour of interpreting them as meaning that any photograph which satisfies the conditions laid down in point 7 of Part A of Annex IX to the VAT Directive must be regarded as a work of art for the purposes of applying the reduced rate of VAT under Article 103(1) and (2)(a) thereof, without that classification being dependent on the assessment by the competent national tax authority of the photograph's artistic character.
- 38 As regards, in the third place, the objectives pursued by the VAT Directive, the option laid down in Article 103(1) and (2)(a) of that directive allows the Member States to grant favourable tax treatment to the supply of works of art by their creator or his successors in title by applying the reduced rate of VAT to them. That being the case, as is clear from recital 51 of that directive, the taxation system established by the directive in respect of works of art, including a uniform definition of 'works of art', seeks to prevent double taxation and the distortion of competition as between taxable persons.
- 39 The interpretation that all photographs satisfying the objective conditions laid down in point 7 of Part A of Annex IX to the VAT Directive are eligible for the reduced rate of VAT is consistent with the objective referred to in recital 51, since it avoids, as noted in paragraphs 35 and 36 of this judgment, the need to assess the artistic merit of a photograph on the basis of subjective and indeterminate criteria, an assessment which bears the risk of distorting competition.
- 40 In the light of all those considerations, the answer to the first and third questions is that in order to be regarded as works of art eligible for the reduced rate of VAT under Article 103(1) and (2)(a) of the VAT Directive, read in conjunction with point 2 of Article 311(1) of that directive and point 7 of Part A of Annex IX thereto, photographs must meet the criteria set out in that point 7, in that they have been taken by their creator, printed by him or under his supervision, signed and numbered and limited to 30 copies, to the exclusion of all other criteria, in particular the assessment by the competent national tax authority of their artistic character.

The second question

- 41 By its second question, the referring court asks, in essence, whether Article 103(1) and (2)(a) of the VAT Directive, read in conjunction with point 2 of Article 311(1) of that directive and point 7 of Part A of Annex IX thereto, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which restricts the application of the reduced rate of VAT only to photographs that have artistic character.
- 42 It must be borne in mind that, as regards the application of the reduced rate of VAT provided for in Article 98(1) and (2) of the VAT Directive, the Court has held that there is nothing in the text of that provision which requires that it be interpreted as meaning that that reduced rate must be applied to all aspects of a category of supply covered by Annex III to that directive. Accordingly, subject to compliance with the principle of fiscal neutrality inherent in the common system of VAT, Member States may apply a reduced rate of VAT to concrete and specific aspects of a category of supplies covered by Annex III to the VAT Directive (see, to that effect, judgments of 6 May 2010, *Commission v France*, C-94/09, EU:C:2010:253, paragraphs 25 to 27; of 27 February 2014, *Pro Med Logistik and Pongratz*, C-454/12 and C-455/12, EU:C:2014:111, paragraphs 43 and 44; and of 11 September 2014, *K*, C-219/13, EU:C:2014:2207, paragraph 23).

- 43 The possibility of applying the reduced rate of VAT is justified, *inter alia*, by the fact that, since that rate is the exception to the application of the standard rate fixed by each Member State, the restriction of its application to concrete and specific aspects of the category of supply in question is consistent with the principle that exemptions or derogations must be interpreted restrictively (see, to that effect, judgment of 9 November 2017, *AZ*, C-499/16, EU:C:2017:846, paragraph 24 and the case-law cited).
- 44 As the Advocate General observed in point 31 of his Opinion, the principles derived from the case-law cited in the preceding two paragraphs also apply *mutatis mutandis* to Article 103(2)(a) of the VAT Directive. That provision extends the possibility of applying the reduced rate of VAT stemming from Article 98(1) and (2) of that directive to the supply of works of art, as defined in point 2 of Article 311(1) of that directive, by their creator or his successors in title.
- 45 Contrary to what *Regards Photographiques* submits in its written observations, Article 311(2) of the VAT Directive does not require a different interpretation of Article 103(1) and (2)(a) of that directive. Article 311(1), point 2, and (2) defines the concept of ‘work of art’ both for the application of the margin scheme and for that of the reduced rate of VAT. Thus, although the latter provision states that Member States need not regard photographs covered by point 7 of Part A of Annex IX to that directive as works of art, it cannot exclude the possibility, stemming from Article 103(2)(a) of that directive, read in conjunction with Article 96 thereof, of restricting the application of the reduced rate of VAT to a limited category of those photographs, provided that such application complies with the requirements set out in paragraph 42 of this judgment.
- 46 It follows that the exercise of the possibility granted to the Member States of restricting the application of the reduced rate of VAT to a limited category of photographs covered by point 7 of Part A of Annex IX to the VAT Directive is subject to the twofold condition, first, that they isolate, for the purposes of the application of the reduced rate, only concrete and specific aspects of those photographs and, secondly, that they comply with the principle of fiscal neutrality. Those conditions seek to ensure that Member States make use of that possibility only under conditions which ensure the correct and straightforward application of the reduced rate chosen and the prevention of any possible evasion, avoidance or abuse (see, by analogy, judgments of 6 May 2010, *Commission v France*, C-94/09, EU:C:2010:253, paragraph 30, and of 27 February 2014, *Pro Med Logistik and Pongratz*, C-454/12 and C-455/12, EU:C:2014:111, paragraph 45).
- 47 According to the Court’s settled case-law, although it is for the national court to determine whether national legislation, such as that at issue in the main proceedings, is compatible with the requirements stemming from EU law, it is for the Court to provide it with any helpful guidance to resolve the dispute before it (see, to that effect, judgment of 12 July 2012, *EMS-Bulgaria Transport*, C-284/11, EU:C:2012:458, paragraph 51 and the case-law cited).
- 48 In the present case, it is apparent from the file submitted to the Court that, according to the provisions of the CGI at issue in the main proceedings, as interpreted by the Ministerial Directive of 25 June 2003, a photograph is regarded as having artistic character only if it demonstrates clear creative intent on the part of its creator and is of interest to any audience, those criteria being clarified by a number of indicators set out in the Ministerial Directive in order to guide the tax authority’s case-by-case assessment. Although that national legislation, as thus interpreted, provides that photographs depicting, *inter alia*, family events such as weddings do not, in principle, have artistic character, it does not exclude the possibility that such photographs might exceptionally have such character. Only identity photographs, school photographs and group photographs are deemed not to have artistic character.
- 49 In accordance with the case-law recalled in paragraph 46 of this judgment, photographs that have artistic character for the purposes of that national legislation must, in the first place, constitute a concrete and specific aspect of the photographs covered by point 7 of Part A of Annex IX to the VAT

Directive, which means that they are, as such, identifiable separately from the other photographs covered by that point. Such identification presupposes the existence of objective, clear and precise criteria in the national legislation, making it possible to determine precisely the photographs to which that legislation reserves the application of the reduced rate of VAT (see, by analogy, judgments of 6 May 2010, *Commission v France*, C-94/09, EU:C:2010:253, paragraphs 33 and 35; of 27 February 2014, *Pro Med Logistik and Pongratz*, C-454/12 and C-455/12, EU:C:2014:111, paragraph 47; and of 9 November 2017, *AZ*, C-499/16, EU:C:2017:846, paragraphs 25 and 28).

- 50 As the Advocate General observed in point 33 of his Opinion, the provisions of the CGI at issue in the main proceedings, as interpreted by the Ministerial Directive of 25 June 2003, do not lay down objective, clear and precise criteria for designating photographs that have artistic character, but merely establish an abstract definition of those photographs, based on vague and subjective criteria relating to the clear creative intent of the creator and the interest to any audience which those photographs must demonstrate.
- 51 Although that national legislation, as thus interpreted, sets out a number of indicators to facilitate the assessment of those criteria, the fact remains that it allows the tax authority, on the basis of vague and subjective criteria, to make an assessment of the artistic quality of the photographs in question, an assessment on the basis of which the tax advantage resulting from the application of the reduced rate of VAT will or will not be granted.
- 52 It is thus apparent that the criteria laid down by the provisions of the CGI at issue in the main proceedings, as interpreted by the Ministerial Directive of 25 June 2003, relating to the clear creative intent of the creator and the interest to any audience, do not make it possible to identify, as such, photographs that have artistic character and to distinguish them from the other photographs covered by point 7 of Part A of Annex IX to the VAT Directive and, therefore, do not meet the requirements set out in paragraph 49 of this judgment.
- 53 In the second place, as follows from the considerations in paragraph 36 of this judgment, national legislation which restricts, on the basis of such criteria, the application of the reduced rate of VAT to photographs that have artistic character might also infringe the principle of fiscal neutrality. Therefore, it must be held that such national legislation does not comply with the requirements set out in paragraph 46 of this judgment.
- 54 As regards identity photographs, school photographs and group photographs which, under the provisions of the CGI at issue in the main proceedings, as interpreted by the Ministerial Directive of 25 June 2003, are irrebuttably deemed not to have artistic character, it is for the referring court to ascertain whether those photographs are, as such, identifiable separately from the other photographs covered by point 7 of Part A of Annex IX to the VAT Directive and, if necessary, whether the exclusion, in any event, of those photographs from eligibility for the reduced rate of VAT is compatible with the principle of fiscal neutrality.
- 55 In the light of the foregoing considerations, the answer to the second question is that Article 103(1) and (2)(a) of the VAT Directive, read in conjunction with point 2 of Article 311(1) of that directive and point 7 of Part A of Annex IX thereto, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which restricts the application of the reduced rate of VAT only to photographs that have artistic character, in so far as the existence of such artistic character is subject to an assessment by the competent national tax authority which is not made within the confines of objective, clear and precise criteria set by that national legislation, making it possible to determine precisely the photographs to which that legislation reserves the application of the reduced rate of VAT, in such a way as to avoid infringing the principle of fiscal neutrality.

The fourth question

- 56 In the light of the answer to the first and third questions, there is no need to reply to the fourth question.

Costs

- 57 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 (Second Chamber) hereby rules:

1. **In order to be regarded as works of art eligible for the reduced rate of value added tax (VAT) under Article 103(1) and (2)(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in conjunction with point 2 of Article 311(1) of that directive and point 7 of Part A of Annex IX thereto, photographs must meet the criteria set out in that point 7, in that they have been taken by their creator, printed by him or under his supervision, signed and numbered and limited to 30 copies, to the exclusion of all other criteria, in particular the assessment by the competent national tax authority of their artistic character.**
2. **Article 103(1) and (2)(a) of Directive 2006/112, read in conjunction with point 2 of Article 311(1) of that directive and point 7 of Part A of Annex IX thereto, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which restricts the application of the reduced rate of VAT only to photographs that have artistic character, in so far as the existence of such artistic character is subject to an assessment by the competent national tax authority which is not made within the confines of objective, clear and precise criteria set by that national legislation, making it possible to determine precisely the photographs to which that legislation reserves the application of the reduced rate of VAT, in such a way as to avoid infringing the principle of fiscal neutrality.**

[Signatures]