



Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

13 June 2024*

(Reference for a preliminary ruling – Common system of value added tax (VAT) – Directive 2006/112/EC – Article 64(1) and (2) – Applicability – Services of court-appointed administrators and liquidators – Continuous supply of services – Article 168(a) – Deduction of input VAT – Expenditure relating to the right to use a trade name – Rights of the defence – Right to be heard)

In Case C-696/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania), made by decision of 15 July 2021, received at the Court on 8 November 2022, in the proceedings

C SPRL

v

Administrația Județeană a Finanțelor Publice (AJFP) Cluj,

Direcția Generală Regională a Finanțelor Publice (DGRFP) Cluj-Napoca,

THE COURT (Ninth Chamber),

composed of O. Spineanu-Matei, President of the Chamber, J.-C. Bonichot (Rapporteur) and S. Rodin, Judges,

Advocate General: N. Emiliou,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- C SPRL, by A. Coroian, A. Madar-Petran and C.A. Păun, avocati,
- the Romanian Government, by R. Antonie, E. Gane and A. Rotăreanu, acting as Agents,
- the European Commission, by A. Armenia and J. Jokubauskaitė, acting as Agents,

* Language of the case: Romanian.

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

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 63, 64, 66 and 168 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), as amended by Council Directive 2008/117/EC of 16 December 2008 (OJ 2009 L 14, p. 7) ('Directive 2006/112'), and of the principle of respect for the rights of the defence.
- 2 The request has been made in proceedings between (i) C SPRL and (ii) the Administrația Județeană a Finanțelor Publice (AJFP) Cluj (Provincial Administration of Public Finances, Cluj, Romania) and the Direcția Generală Regională a Finanțelor Publice (DGRFP) Cluj-Napoca (Regional Directorate-General for Public Finances, Cluj-Napoca, Romania) (together, 'the Romanian tax authorities'), in relation to the lawfulness of a tax assessment notice imposing on C additional value added tax (VAT) due for the services provided to undertakings which are the subject of insolvency proceedings.

Legal context

European Union law

- 3 Recital 24 of Directive 2006/112 states:

‘The concepts of chargeable event and of the chargeability of VAT should be harmonised if the introduction of the common system of VAT and of any subsequent amendments thereto are to take effect at the same time in all Member States.’
- 4 Within Title VI of that directive, concerning the chargeable event and chargeability of VAT, Chapter 2, entitled ‘Supply of goods or services’, comprises Articles 63 to 67 of the directive.
- 5 Article 63 of that directive provides:

‘The chargeable event shall occur and VAT shall become chargeable when the goods or the services are supplied.’
- 6 Article 64(2) of Directive 2006/112, in its original version, was amended by Directive 2008/117, for which the transposition period, in accordance with Article 3(1) of Directive 2008/117, expired on 1 January 2010. Accordingly, a first subparagraph was inserted into Article 64(2) of Directive 2006/112, without amending Article 64(1) thereof.
- 7 Article 64 of Directive 2006/112 provides:

‘(1) Where it gives rise to successive statements of account or successive payments, the supply of goods, other than that consisting in the hire of goods for a certain period or the sale of goods on deferred terms, as referred to in point (b) of Article 14(2), or the supply of services shall be

regarded as being completed on expiry of the periods to which such statements of account or payments relate.

(2) ...

Member States may provide that, in certain cases other than those referred to in the previous paragraph, the continuous supply of goods or services over a period of time is to be regarded as being completed at least at intervals of one year.'

8 Article 66 of Directive 2006/112, in its original version, was amended by Directive 2008/117. Accordingly, a second subparagraph was inserted into Article 66 of Directive 2006/112, without the first subparagraph of that article being amended.

9 Under Article 66 of that directive:

'By way of derogation from Articles 63, 64 and 65, Member States may provide that VAT is to become chargeable, in respect of certain transactions or certain categories of taxable person at one of the following times:

(a) no later than the time the invoice is issued;

(b) no later than the time the payment is received;

(c) where an invoice is not issued, or is issued late, within a specified period from the date of the chargeable event.

...'

10 Title VII of that directive, entitled 'Taxable amount', includes Article 90 thereof, which is worded as follows:

'(1) In the case of cancellation, refusal or total or partial non-payment, or where the price is reduced after the supply takes place, the taxable amount shall be reduced accordingly under conditions which shall be determined by the Member States.

2. In the case of total or partial non-payment, Member States may derogate from paragraph 1.'

11 Title X of that directive, relating to deductions, includes Chapter 1, entitled 'Origin and scope of right of deduction', which contains Article 168, which provides:

'In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

(a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person;

...'

Romanian law

- 12 The 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 applicable to the facts in the main proceedings ('the Tax Code'), includes Article 134¹, entitled 'Chargeable event for the supply of goods or services', which provides:

'(1) The chargeable event shall occur on the date of supply of the goods or on the date of supply of the services, subject to the exceptions provided for in this Chapter.

...

(7) Supplies of services which give rise to successive statements of account or successive payments, such as construction and assembly services, consultancy services, research, services of experts and other similar services, shall be deemed to have been performed on the date of issue of progress reports, works reports or other similar documents enabling the services provided to be determined or, as the case may be, on the basis of the contractual provisions, on the date of their acceptance by the recipients.

(8) In respect of the continuous supply of goods and services, other than those referred to in paragraph 7, such as the supply of natural gas, water, telephony services, electricity and other similar supplies, the supply shall be deemed to have been made on the dates specified in the contract for payment for goods or services supplied or on the date of issue of an invoice, provided that the accounting period does not exceed one year.

...'

- 13 Under Article 145 of that code, entitled 'Scope of the right to deduct':

'...

(2) All taxable persons have the right to deduct tax relating to purchases if they are used for the purposes of the following transactions:

(a) taxable transactions ...'

- 14 Article 4 of Legea nr. 85/2006 privind procedura insolvenței (Law No 85/2006 on the insolvency procedure) of 5 April 2006 (*Monitorul Oficial al României*, Part I, No 359 of 21 April 2006) is worded as follows:

'(1) All costs relating to the proceedings instituted by this Law, including those relating to the service, summoning and sending of procedural documents by the court-appointed administrator and/or liquidator, shall be paid from the debtor's assets.

...

(4) Where there are no funds available in the debtor's account, the liquidation fund shall be used ...'

15 Article 11(1) of that law provides:

‘The main powers of the insolvency court under this Law are:

...

- (c) the reasoned appointment, by means of the judgment opening the proceedings, from among the eligible administrators of insolvency proceedings who have submitted an offer of services for this purpose in the case file, of the provisional court-appointed administrator ..., determining his or her remuneration in accordance with the criteria established by the law on the organisation of the activities of insolvency practitioners, and his or her duties for that period. The insolvency court shall appoint the provisional court-appointed administrator or provisional liquidator requested by the creditor who has requested the opening of proceedings or by the debtor, if the debtor is making the application. ...
- (d) the confirmation, by order, of the court-appointed administrator or liquidator appointed by the assembly of creditors or by the creditor holding more than 50% of the value of the claims, and the agreed fee. ...’

16 Article 21(1) and (1¹) of that law provides:

‘(1) The court-appointed administrator shall submit a report each month setting out the manner in which he has performed his duties, together with proof of the costs incurred for the management of the proceedings or of other expenses incurred from the liquidity of the debtor’s assets. The report shall be added to the case file and an extract shall be published in the [Buletinul Procedurilor de Insolvență (BPI) (Insolvency Proceedings Bulletin)]. Every 120 days, the insolvency court shall set a time limit for continuing the proceedings, at the end of which the court-appointed administrator shall summarise the measures taken in the meantime, as set out in the activity reports.

(1a) The report referred to in paragraph 1 shall also include the remuneration of the court-appointed administrator or liquidator, indicating the method of calculation of that remuneration.’

17 Article 24 of that law provides:

‘(1) When making a declaration of insolvency, the insolvency court shall appoint a liquidator, and the provisions of Articles 19, 21, 22 and 23 and Article 102(5) shall apply accordingly.

(2) The functions of the court-appointed administrator shall cease when the functions of the liquidator are established by the insolvency court.

(3) The court-appointed administrator previously appointed may also be appointed liquidator.’

- 18 The Ordonanța Guvernului nr.º92/2003 privind Codul de procedură fiscală (Government Order No 92/2003 establishing the Romanian Code of Fiscal Procedure) of 24 December 2003 (*Monitorul Oficial al României*, Part I, No 941 of 29 December 2003), in the version in force at the material time in the main proceedings ('the Code of Fiscal Procedure'), provides in Article 213 thereof, entitled 'Ruling on a complaint':

'(1) The competent authority, ruling on the complaint, shall review the factual and legal grounds on which the administrative act relating to taxation is based. The analysis of the complaint shall take into account the arguments of the parties, the legal provisions relied on by them and the documents in the case file. The complaint shall be dealt with as provided for in the referral.

(2) The authority responsible for dealing with the complaint may seek the opinion of the specialised directorates of the Ministry or other institutions and authorities.

(3) The ruling on the complaint may not lead to the complainant's position being worsened as a result of its action.

(4) The complainant, the intervening parties or their agents may adduce new evidence in support of their action. In that case, the tax authority which issued the contested administrative act relating to taxation or the body which carried out the inspection, as the case may be, shall have the possibility of taking a decision on that new evidence.

(5) The authority responsible for dealing with the complaint shall first decide on the procedural and substantive pleas and, if they are observed to be well founded, the substance of the case shall not be examined.'

- 19 Article 38 of the Ordonanța de urgență nr. 86/2006 privind organizarea activității practicienilor în insolvență (Government Emergency Order No 86/2006 on the organisation of the activities of insolvency practitioners) of 8 November 2006 (*Monitorul Oficial al României*, Part I, No 944 of 22 November 2006), provides:

'(1) Insolvency practitioners are entitled to a fee for their work in the form of fixed fees, success fees or a combination thereof.

...

(4) The insolvency judge determines the provisional fee for the observation period at the opening of the insolvency proceedings, based on the criteria set out in paragraph 2. It may be amended by the assembly of creditors, which must take into account the provisions of paragraph 2.

(5) The fees of insolvency practitioners, court-appointed administrators or liquidators, or the costs of the proceedings, shall be paid from the fund established pursuant to Article 4 of Law No 85/2006 ...'

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

- 20 C, a company incorporated under Romanian law, brings together court-appointed administrators and liquidators, known as ‘insolvency practitioners’ under Romanian law. It provides services to companies which are subject to insolvency proceedings. It is common ground that those services are subject to VAT.
- 21 By a tax notice of 13 August 2015, confirmed in part by a decision of 10 May 2016, adopted in response to a complaint lodged by C, the Romanian tax authorities found irregularities, in particular as regards the chargeability of the tax. C brought an action before the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania), which is the referring court, seeking a stay of enforcement of the decision of 10 May 2016.
- 22 The referring court considers that that action raises three questions concerning the interpretation of Directive 2006/112.
- 23 As regards, in the first place, the services provided by C to SM SRL during the period from 17 March 2011 to 31 August 2011, that court states that C issued an invoice on that date.
- 24 In order to assess the lawfulness of that approach, it is necessary to determine whether the services in question fall within the scope of Article 64(2) of Directive 2006/112, which was transposed into Romanian law by Article 134¹(8) of the Tax Code.
- 25 Under Article 134¹(8) of the Tax Code, taxable persons may provide that the statement of account in relation to their services covers a maximum period of one year in the case of ‘the continuous supply of services’. The scope of that provision is defined by a non-exhaustive list of services.
- 26 If it were established that the services provided to SM fell within Article 134¹(8) of the Tax Code, the Romanian tax authorities would have erred in concluding that the chargeable event and the chargeability of the tax had occurred at the time when C supplied those services and that, consequently, C was required to issue invoices no later than the fifteenth day of the month following that supply.
- 27 The referring court states that it is apparent from the expert’s report drawn up in the context of the proceedings before it that the services in question were actually provided on a continuous basis. That said, it is possible that those services gave rise to successive statements of account or successive payments.
- 28 In the second place, the referring court states that, for the services provided during the period from November 2010 to October 2011, C issued an invoice on 3 October 2011 and received the VAT on 1 November 2011 when it received the payment. That approach was justified by the fact that the payment had been made subject to a condition relating to the provision of liquidity by the recipient of those services.
- 29 The Romanian tax authorities took the view that such a condition did not make it possible to separate the chargeable event and the chargeability of VAT, since it had been specified that C had provided services from the date of its appointment as court-appointed administrator or liquidator.

- 30 C, by contrast, relies on the judgment of 3 September 2015, *Asparuhovo Lake Investment Company* (C-463/14, EU:C:2015:542, paragraph 35), in order to argue that the ‘payment’ is established by a direct link between the transaction and the consideration for it. Accordingly, before the payment in question, there was no reciprocal performance or taxable transaction.
- 31 The referring court queries whether the position taken by the Romanian tax authorities is compatible with Articles 63, 64 and 66 of Directive 2006/112.
- 32 In the third and last place, pursuant to a cooperation agreement concluded on 8 December 2009, DDKK, a law firm, granted financial assistance to C and granted C the right to use its name and logo.
- 33 According to the Romanian tax authorities, that agreement formed part of a marketing strategy seeking to attract clients at the outset of C’s activity as an administrator or liquidator of insolvent businesses. However, those authorities refused to allow deduction of the VAT appearing on the invoices drawn up by DDKK pursuant to that agreement, on the ground that C had not demonstrated that the services provided by DDKK were used for the purposes of its taxable transactions.
- 34 The referring court concludes that, in order to assert its right to a deduction under Article 145(2)(a) of the Tax Code, C had to demonstrate that there was a ‘direct and immediate link’ between the purchases it made as inputs and the transactions it implemented as outputs. The judgment of 25 November 2021, *Amper Metal* (C-334/20, EU:C:2021:961), provides guidance in that regard, but does not make it possible to determine the standard of proof required. In the present case, C submitted the cooperation agreement concluded by DDKK and the invoices drawn up by DDKK to the Romanian tax authorities. In addition, C made reference to an increase in its turnover and in the amount of its taxable transactions.
- 35 Furthermore, the referring court states that, in addition to the three questions relating to the interpretation of Directive 2006/112, the dispute before it raises a question relating to the rights of the defence.
- 36 In the context of the procedure for raising a complaint against the tax assessment of 13 August 2015, the Romanian tax authorities admitted new arguments of fact and of law. C maintains that it did not have the opportunity to state its position on those arguments, in breach of the rights of the defence and contrary to Article 213 of the Code of Fiscal Procedure, which limits the review carried out of a complaint to the factual and legal grounds which were taken into consideration when the contested measure was issued.
- 37 The referring court notes that, in paragraph 79 of the judgment of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics* (C-129/13 and C-130/13, EU:C:2014:2041), the Court held that an infringement of the rights of the defence, in particular the right to be heard, results in the annulment of the decision taken at the end of the administrative procedure at issue only if, had it not been for such an irregularity, the outcome of the procedure might have been different. It follows from paragraph 73 of that judgment that there is also no infringement of the rights of the defence if the implementation of a tax assessment notice is suspended until its possible amendment.

- 38 In the present case, C benefited from interim measures, namely the suspension of the tax assessment notice of 13 August 2015 until the adoption of a substantive decision by the referring court. In addition, in the context of the dispute before the referring court, C challenged the new arguments put forward by the Romanian tax authorities during the complaint procedure.
- 39 In those circumstances, the Curtea de Apel Cluj (Court of Appeal, Cluj) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- (1) Do Articles 63, 64 and 66 of Directive [2006/112] preclude an administrative practice of a tax authority – such as the one in the present case, which imposed additional payment obligations on the taxable person, a professional limited liability company (SPRL) through which administrators of insolvency proceedings may exercise their profession – consisting in defining the chargeable event and the chargeability as being at the time at which the services were provided in the context of insolvency proceedings, where the insolvency administrator's fee was determined by the insolvency court or the assembly of creditors, with the result that the taxable person is obliged to issue invoices no later than the fifteenth day of the month following the month in which the chargeable event occurred?
 - (2) Do Articles 63, 64 and 66 of Directive [2006/112] preclude an administrative practice of a tax authority, such as the one in the present case, consisting in imposing additional payment obligations on the taxable person – a professional limited liability company (SPRL) through which administrators of insolvency proceedings may exercise their profession – in so far as that taxable person issued invoices and collected VAT only on the date on which payments were received for services provided in the context of insolvency proceedings, even though the general assembly of creditors established that the payment of the insolvency administrator's fee is subject to the availability of liquid assets in the debtors' accounts?
 - (3) In the case of a co-branding agreement between a law firm and the taxable person, is it sufficient, for the purpose of granting the right to deduct, that the taxable person, when proving the existence of a direct and immediate link between the purchases made by the upstream taxable person and the downstream transactions, demonstrate, after the agreement, an increase in the turnover/value of the taxable transactions, without further supporting documentation? If so, what are the criteria to be taken into account in order to determine the actual scope of the right to deduct?
 - (4) Is the general EU-law principle of respect for the rights of the defence to be interpreted as meaning that, where, in the course of a national administrative procedure for ruling on a complaint against a notice of assessment that has established the payment of additional VAT, new factual and legal arguments are accepted as compared with those contained in the tax audit report on the basis of which the notice of assessment was issued, and the taxable person has been granted interim judicial protection measures, pending the decision of the court dealing with the substance of the case, by suspending the debt, the court hearing the action may take the view that there has been no breach of that principle without examining whether the outcome of that procedure might have been different, had it not been for such an irregularity?

The request for an expedited procedure

- 40 The referring court asked the Court to apply an expedited procedure to the present case pursuant to Article 105(1) of the Rules of Procedure of the Court of Justice, arguing that the dispute in the main proceedings had been pending before it since 2016.
- 41 Article 105(1) of the Rules of Procedure provides that, at the request of the referring court or tribunal or, exceptionally, of his own motion, the President of the Court may, where the nature of the case requires that it be dealt with within a short time, after hearing the Judge-Rapporteur and the Advocate General, decide that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure derogating from the provisions of those rules.
- 42 In the present case, it does not appear that the referring court is required to give a ruling within a prescribed period or that the action brought before it by C in 2016 has been dealt with as a matter of urgency (see, to that effect, order of the President of the Court of 1 October 2010, *N.S.*, C-411/10, EU:C:2010:575, paragraph 8).
- 43 In that latter regard, it is sufficient to note that that court decided to transmit its request for a preliminary ruling to the Court on 15 July 2021. However, that court did not lodge that application until 8 November 2022.
- 44 Moreover, it must be observed that the requirement for a dispute pending before the Court to be dealt with within a short time cannot derive solely from the fact that the referring court is required to ensure the dispute be settled rapidly (judgment of 13 October 2022, *Gmina Wieliszew*, C-698/20, EU:C:2022:787, paragraph 50).
- 45 Lastly, the Court has already held that the sole interest of individuals, whilst admittedly legitimate, in determining as rapidly as possible the scope of their rights under EU law does not constitute an exceptional circumstance that would justify the use of the expedited procedure (order of the President of the Court of 10 January 2012, *Arslan*, C-534/11, EU:C:2012:4, paragraph 13 and the case-law cited).
- 46 In those circumstances, the President of the Court, by decision of 21 December 2022, after hearing the Judge-Rapporteur and the Advocate General, refused the request for application of the expedited procedure provided for in Article 105 of the Rules of Procedure.

Consideration of the questions referred

Admissibility of the questions

- 47 In the first place, it should be noted that, by its first and second questions, the referring court is asking the Court to interpret Articles 63, 64 and 66 of Directive 2006/112.
- 48 However, it is apparent from the request for a preliminary ruling that, in reality, the referring court is not asking about the interpretation of Article 63 of Directive 2006/112 as such, but about the scope, respectively, of Article 64(1) and (2) of that directive, read in conjunction with Article 63 thereof.

- 49 In that regard, it is also apparent from the request for a preliminary ruling that Article 64(1) and (2) of Directive 2006/112, in its original version, was transposed into Romanian law by Article 134¹(7) and (8) of the Tax Code.
- 50 By contrast, the Court is not in a position to determine whether the first paragraph of Article 66 of that directive, which is a provision which applies on an optional basis, had been transposed into Romanian law at the time of the facts at issue in the main proceedings. In its written observations, the Romanian Government submits that that was not the case. Moreover, the information available to the Court does not enable it to assess whether that provision is relevant for the resolution of the dispute in the main proceedings.
- 51 Since the request for a preliminary ruling serves as the basis for the procedure provided for in Article 267 TFEU, it is essential that the national court should, in that decision, expand on its definition of the factual and legislative context of the dispute in the main proceedings and give the necessary explanation of the reasons for the choice of the provisions of EU law which it seeks to have interpreted and of the link it establishes between those provisions and the national law applicable to the proceedings pending before it (judgment of 8 June 2023, *Lyonesse Europe*, C-455/21, EU:C:2023:455, paragraph 26 and the case-law cited).
- 52 Those cumulative requirements concerning the content of a request for a preliminary ruling are expressly set out in Article 94 of the Rules of Procedure, which the referring court is bound to observe scrupulously. They are also recalled in paragraphs 13, 15 and 16 of the Recommendations of the Court of Justice of the European Union to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (OJ 2019 C 380, p. 1) (judgment of 8 June 2023, *Lyonesse Europe*, C-455/21, EU:C:2023:455, paragraph 27 and the case-law cited).
- 53 In the light of those considerations, it must be held that the first and second questions are inadmissible in so far as they concern the interpretation of Article 66 of Directive 2006/112.
- 54 In the second place, the third question concerns the exercise of the right of deduction provided for in Article 168(a) of Directive 2006/112. The referring court is uncertain, first, as to the evidence which the taxable person must provide to the tax authorities in order to be able to benefit from that right and, second, as to the extent of that right.
- 55 However, the information available to the Court concerns only the first part of the third question, with the result that the Court is not in a position to determine either the grounds giving rise to the referring court's questions relating to the extent of the right of deduction or the usefulness of an answer in that regard. In those circumstances, the second part of the third question is inadmissible.

The first question

- 56 As a preliminary point, it should be noted that, as regards the supplies of services at issue in the main proceedings, the referring court states, in essence, that the court-appointed administrators and liquidators brought together within C provide services to undertakings which are the subject of insolvency proceedings not on a single occasion, but continuously over a certain period.

- 57 Consequently, it must be held that, by its first question, the referring court is asking the Court whether Article 64 of Directive 2006/112 must be interpreted as meaning that the continuous supply of services over a certain period, such as those carried out under Romanian law by court-appointed administrators and liquidators for the benefit of undertakings which are the subject of insolvency proceedings, falls within the scope of Article 64(1) and (2) of that directive.
- 58 In that regard, it should, first, be recalled that Article 64(1) of Directive 2006/112 must be read in the light of Article 63 thereof, since the former is intrinsically linked to the latter (judgment of 28 October 2021, *X-Beteiligungsgesellschaft (VAT – Successive payments)*, C-324/20, EU:C:2021:880, paragraph 34).
- 59 Article 63 of Directive 2006/112 provides that the chargeable event for VAT occurs and VAT becomes chargeable when the goods or services are supplied. Under Article 64(1) of that directive, where the supply of services gives rise to successive statements of account or successive payments, it is to be regarded as being completed, for the purposes of Article 63, on expiry of the periods to which such statements of account or payments relate (see, to that effect, judgment of 28 October 2021, *X-Beteiligungsgesellschaft (VAT – Successive payments)*, C-324/20, EU:C:2021:880, paragraph 35).
- 60 It follows from the combined application of those two provisions that, in respect of the supply of services giving rise to successive statements of account or successive payments, the chargeable event for VAT occurs and VAT becomes chargeable on expiry of the periods to which those statements of account or payments relate (see, to that effect, judgment of 28 October 2021, *X-Beteiligungsgesellschaft (VAT – Successive payments)*, C-324/20, EU:C:2021:880, paragraph 36 and the case-law cited).
- 61 As regards the words ‘supplies which give rise to successive payments’, the Court has confirmed that they concern only supplies the nature of which justify payment in instalments, namely those which are not performed on a single occasion, but repeatedly or continuously over a certain period (see, to that effect, judgment of 28 October 2021, *X-Beteiligungsgesellschaft (VAT – Successive payments)*, C-324/20, EU:C:2021:880, paragraphs 37 to 39).
- 62 That finding applies *mutatis mutandis* to the second situation referred to in Article 64(1) of Directive 2006/112, namely where the ‘supply of services gives rise to successive statements of account’.
- 63 In addition, as a legal rule for determining the time from which a liability to tax arises, Article 64(1) of the directive applies only to the extent that the date or dates of the actual completion of services are unambiguous and potentially give rise to different interpretations, which is the case where they are, on account of their continuous or recurrent nature, supplied during one or several specific periods (judgment of 28 October 2021, *X-Beteiligungsgesellschaft (VAT – Successive payments)*, C-324/20, EU:C:2021:880, paragraph 45).
- 64 By contrast, where the time at which the supply of services is completed is unambiguous, in particular, in the event of a one-time supply and of a precise point in time from which its completion can be ascertained on the basis of the contractual relationship between the parties to the transaction, Article 64(1) of that directive cannot apply without disregarding the clear wording of Article 63 of that directive (judgment of 28 October 2021, *X-Beteiligungsgesellschaft (VAT – Successive payments)*, C-324/20, EU:C:2021:880, paragraph 46).

- 65 Second, it is abundantly clear from the wording of the second subparagraph of Article 64(2) of Directive 2006/112 that that provision, like Article 64(1), relates to continuous supplies of goods and services which take place over a certain period.
- 66 It also follows that the second subparagraph of Article 64(2) of that directive provides for a scheme in respect of which the implementation is optional, so that it is for the Member States to decide whether they wish to use that scheme. The national legislature has, in that regard, some leeway in so far as that provision does no more than state that it may be laid down that it applies ‘in certain cases’ without further clarification otherwise than that relating to the continuous nature of the services, referred to in the preceding paragraph of the present judgment.
- 67 As has been noted in paragraph 49 of the present judgment, the Romanian legislature did in fact decide to implement that provision by adopting Article 134¹(8) of the Tax Code, the scope of which includes the continuous supplies of goods and services, ‘other than those referred to in paragraph 7’ of that Article 134¹. Consequently, the application of Article 134¹(8) of the Tax Code is precluded where supplies of services which are provided on a continuous basis and ‘which give rise to successive statements of account or payments’ are at issue, with the result that they fall within the scope of Article 134¹(7), which is, however, a matter for the referring court to ascertain.
- 68 Therefore, in order to determine whether the services at issue in the main proceedings fall within the scope of Article 64(1) or Article 64(2) of Directive 2006/112, as implemented in Romanian law, it is for the referring court to assess the nature of those services, that is to say, whether they actually take place continuously over a certain period and, in particular, whether they give rise to successive statements of account or successive payments.
- 69 For the sake of completeness, it should be noted that it is apparent from the request for a preliminary ruling that, as regards, in particular, the services provided to SM, C was the court-appointed liquidator of that company and that a monthly fee of 1 000 Romanian lei (RON) (approximately EUR 240) and a success fee of 10% were determined. In addition, in their written observations, the Romanian Government and the European Commission stated that, under Romanian law, namely Article 21(1) and (1¹) and Article 24 of Law No 85/2006 on insolvency procedure, in the version applicable to the facts in the main proceedings, court-appointed administrators and liquidators submit monthly reports on the services provided and on the remuneration due to them.
- 70 In the light of the foregoing, it appears, subject to the investigations to be carried out by the referring court, that the supplies of services at issue in the main proceedings gave rise to successive statements of account or successive payments and that they therefore do not fall within the scope of Article 64(2) of Directive 2006/112, as implemented in Romanian law by Article 134¹(8) of the Tax Code, but rather fall within the scope of Article 64(1) of that directive, transposed into Romanian law by Article 134¹(7) of that code.
- 71 In the light of all the foregoing considerations, the answer to the first question is that Article 64 of Directive 2006/112 must be interpreted as meaning that the continuous supply of services over a certain period, such as those carried out, under Romanian law, by the court-appointed administrators and liquidators for the benefit of undertakings which are the subject of insolvency proceedings, falls within the scope of Article 64(1) of that directive, in so far as, subject to investigations to be carried out by the referring court, those services give rise to successive statements of account or successive payments.

The second question

- 72 As a preliminary point, it should be recalled that it is apparent from the answer to the first question that supplies of services such as those at issue in the main proceedings fall, in principle, within the scope of Article 64(1) of Directive 2006/112.
- 73 In addition, in the light of its wording, the second question could be understood as seeking to determine the time at which invoices must be issued and the VAT collected. However, it is apparent from the information contained in the request for a preliminary ruling that that question concerns, like the first, the determination of the time at which the chargeable event for VAT occurs and the time at which that tax becomes chargeable.
- 74 Consequently, it must be held that, by its second question, the referring court is asking, in essence, whether Article 64(1) of Directive 2006/112 must be interpreted as meaning that, in a situation where payment of remuneration for services falling within the scope of that provision cannot take place because there are insufficient funds in the debtor's accounts, that provision permits the inference that VAT becomes chargeable only at the time when the remuneration is actually received.
- 75 As was observed in paragraph 60 of the present judgment, it follows from the combined application of Article 63 and Article 64(1) of Directive 2006/112 that, in respect of supplies of services giving rise to successive statements of account or successive payments, the chargeable event for VAT occurs and VAT becomes chargeable at the time when the periods to which those statements of account or payments relate expire.
- 76 The time thus determined under Article 64(1) of Directive 2006/112 is binding on taxable persons.
- 77 In accordance with Article 63 of Directive 2006/112, read in the light of recital 24 thereof, the chargeable event and chargeability of VAT are not governed freely by the parties to the contract. On the contrary, the EU legislature thereby intended maximum harmonisation of the date on which liability to pay VAT arises in all the Member States in order to ensure the uniform collection of that tax (judgment of 28 October 2021, *X-Beteiligungsgesellschaft (VAT – Successive payments)*, C-324/20, EU:C:2021:880, paragraph 47).
- 78 Consequently, Article 64(1) of Directive 2006/112 does not allow the chargeable event and the chargeability of VAT to be conditional on the actual receipt of the remuneration due for services supplied during a given period. On the contrary, upon expiry of that period, that is to say, the date on which payment of that remuneration is normally due, the tax invariably becomes chargeable, even though that payment has not been received for any reason whatsoever, including because there is no liquidity in the debtor's account.
- 79 That interpretation of Article 64(1) of Directive 2006/112 is borne out by the scheme of that directive.
- 80 Directive 2006/112 does not preclude VAT from becoming chargeable no later than the time the invoice is issued or than the time the payment is received. However, that is merely an option which, under subparagraphs (a) and (b) of the first paragraph of Article 66 of that directive, may be implemented by the Member States only in respect of certain transactions or certain

categories of taxable person, by way of derogation from Articles 63 to 65 of that directive (see, to that effect, judgment of 28 October 2021, *X-Beteiligungsgesellschaft (VAT – Successive payments)*, C-324/20, EU:C:2021:880, paragraph 49).

- 81 In addition, it should be recalled that situations in which the purchaser of goods or services fails to pay, or only pays in part, a debt which it nonetheless owes under a contract for the supply of goods or services are governed by a specific provision of Directive 2006/112, namely Article 90(1) thereof, which provides for the reduction of the taxable amount in particular in the case of total or partial non-payment after the supply takes place (see, to that effect, judgment of 28 October 2021, *X-Beteiligungsgesellschaft (VAT – Successive payments)*, C-324/20, EU:C:2021:880, paragraphs 57 and 60).
- 82 In the light of all the foregoing considerations, the answer to the second question is that Article 64(1) of Directive 2006/112 must be interpreted as meaning that, in a situation where payment of remuneration for services falling within the scope of that provision cannot take place because there are insufficient funds in the debtor's accounts, that provision does not permit the inference that VAT becomes chargeable only at the time when the remuneration is actually received.

The third question

- 83 By its third question, the referring court is asking, in essence, whether Article 168(a) of Directive 2006/112 must be interpreted as meaning that, in order to establish that there is a direct and immediate link between, on the one hand, a particular input transaction and, on the other hand, the output transactions giving rise to the right of deduction, it is sufficient that, in addition to the contract underlying the input transaction and the related invoices, the taxable person provides supporting documents which demonstrate the increase in turnover or the increase in volume of taxable transactions allegedly due to that input transaction.
- 84 Under Article 168(a) of Directive 2006/112, in so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person is to be entitled, in the Member State in which that taxable person carries out these transactions, to deduct from the VAT which the taxable person is liable to pay the VAT due or paid in that Member State in respect of supplies to that taxable person of goods or services, carried out or to be carried out by another taxable person.
- 85 In that regard, it is apparent from settled case-law that the right of deduction is an integral part of the VAT scheme and in principle may not be limited. That right is exercisable immediately in respect of all the taxes charged on input transactions. The deduction system is intended to relieve the trader entirely of the burden of the VAT payable or paid in the course of all its economic activities. The common system of VAT ensures neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves subject in principle to VAT. In so far as the taxable person, acting as such at the time when it acquires goods or receives services, uses those goods or services for the purposes of its taxed transactions, it is entitled to deduct the VAT due or paid in respect of those goods or services (judgment of 25 November 2021, *Amper Metal*, C-334/20, EU:C:2021:961, paragraph 23 and the case-law cited).

- 86 The Court has held that, before the taxable person is entitled to deduct input VAT, the existence of a direct and immediate link between a particular input transaction and a particular output transaction or transactions giving rise to the right to deduct is, in principle, necessary. The right to deduct VAT charged on the acquisition of input goods or services presupposes that the expenditure incurred in acquiring them is a component of the price of the output transactions giving rise to the right to deduct (judgment of 8 September 2022, *Finanzamt R (Deduction of VAT linked to a shareholder contribution)*, C-98/21, EU:C:2022:645, paragraph 45 and the case-law cited).
- 87 However, a taxable person also has a right to deduct even where there is no direct and immediate link between a particular input transaction and an output transaction or transactions giving rise to the right to deduct where the costs of the services in question are part of his or her general costs and are, as such, components of the price of the goods or services which he or she supplies. Such costs do have a direct and immediate link with the taxable person's economic activity as a whole (judgment of 8 September 2022, *Finanzamt R (Deduction of VAT linked to a shareholder contribution)*, C-98/21, EU:C:2022:645, paragraph 46 and the case-law cited).
- 88 In either case, it is necessary that the cost of the input goods or services be incorporated either in the cost of particular output transactions or in the cost of goods or services supplied by the taxable person as part of his or her economic activities (judgment of 8 September 2022, *Finanzamt R (Deduction of VAT linked to a shareholder contribution)*, C-98/21, EU:C:2022:645, paragraph 47 and the case-law cited).
- 89 The Court has further specified that the existence of such a link between transactions must be assessed in the light of the objective content of those transactions. More specifically, it is for the tax authorities and the national courts to consider all the circumstances surrounding the transactions concerned and to take account only of the transactions that are objectively linked to the taxable person's taxable activity. To that effect, the Court has held that account must be taken of the actual use of the goods and services purchased, as inputs, by the taxable person and of the exclusive reason for that purchase, since that reason must be regarded as a criterion for determining the objective content (see, to that effect, judgments of 17 October 2018, *Ryanair*, C-249/17, EU:C:2018:834, paragraph 28, and of 8 September 2022, *Finanzamt R (Deduction of VAT linked to a shareholder contribution)*, C-98/21, EU:C:2022:645, paragraph 49 and the case-law cited).
- 90 Where it is clear that a transaction has not been performed for the purposes of the taxable activities of a taxable person, that transaction cannot be regarded as having a direct and immediate link with those activities within the meaning of the Court's case-law, even if that transaction would, in the light of its objective content, be subject to VAT (judgment of 8 November 2018, *C&D Foods Acquisition*, C-502/17, EU:C:2018:888, paragraph 37 and the case-law cited).
- 91 In the event that the expenditure incurred is attributed in part to an exempt or non-economic activity of the taxable person, VAT paid on that expenditure may only be deducted in part (see, to that effect, judgment of 17 October 2018, *Ryanair*, C-249/17, EU:C:2018:834, paragraph 30 and the case-law cited).
- 92 In the present case, it is apparent from the request for a preliminary ruling that C provided the Romanian tax authorities with documents demonstrating an increase in its turnover or the volume of its taxable transactions.

- 93 However, in the light of the foregoing considerations, it must be held that such circumstances cannot, in themselves, enable the Romanian tax authorities to establish the existence of a link between the services provided to C under the cooperation agreement concluded with DDKK and the output transactions provided by C, giving rise to the right of deduction.
- 94 That finding is borne out by the case-law of the Court, from which it is apparent that Article 168(a) of Directive 2006/112 does not in any way make the exercise of the right to deduct subject to a criterion relating to the increase in the turnover of the taxable person or, more generally, to a criterion of the economic profitability of the input transaction. In particular, the absence of an increase in the turnover of the taxable person cannot affect the exercise of the right to deduct. As recalled in paragraph 85 above, the common system of VAT ensures neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves subject in principle to VAT. Therefore, the right to deduct, once it has arisen, is retained even if the intended economic activity was not carried out and, therefore, did not give rise to taxed transactions or if the taxable person was unable to use the goods or services which gave rise to a deduction in the context of taxable transactions by reason of circumstances beyond his or her control (see, to that effect, judgment of 25 November 2021, *Amper Metal*, C-334/20, EU:C:2021:961, paragraphs 30 and 35).
- 95 By contrast, it is apparent from the documents before the Court that, in the present case, there are other factors capable of establishing the necessary link between the transactions at issue carried out by C and its taxable activity, within the meaning of the case-law cited in paragraph 89 of the present judgment, relating to the actual use of the goods and services acquired by C under the cooperation agreement concluded with DDKK and relating to the reason for that purchase.
- 96 It is apparent from the request for a preliminary ruling that, under Article 11(1)(c) and (d) of Law No 85/2006 on insolvency procedure, in order to be able to offer their services in a given insolvency procedure, the court-appointed administrators and liquidators concerned submit tenders to that effect and it is, in principle, for the creditors of the undertaking concerned by that procedure to appoint one of them. In the light of that legal context, the Romanian tax authorities have already ruled on the reason for the transaction in question, finding that the cooperation agreement between C and DDKK formed part of a marketing strategy aimed at attracting customers with a view to C commencing its activity as an administrator or liquidator of insolvent businesses.
- 97 In addition, it appears relevant to state, as regards the actual implementation of that cooperation agreement, that C claimed before the referring court that the documents which C submitted to third parties bear the business name of DDKK.
- 98 It is, however, for the referring court to assess the veracity of the abovementioned circumstances and to take them into consideration, together with all the other circumstances in which the output transactions in question undertaken by C took place, in order to assess whether in the present case there is a direct and immediate link between input transactions and output transactions giving rise to the right of deduction.
- 99 In the light of all the foregoing considerations, the answer to the third question is that Article 168(a) of Directive 2006/112 must be interpreted as meaning that, in order to establish that there is a direct and immediate link between a particular input transaction, on the one hand, and the output transactions giving rise to the right of deduction, on the other, it is necessary to determine the objective content of those transactions, which entails considering all the

circumstances surrounding those transactions, that is to say, in particular, the actual use of the goods and services purchased by the taxable person as inputs and the exclusive reason for that purchase, the increase in turnover or the increase in the volume of taxable transactions not being relevant in that regard.

The fourth question

- 100 As a preliminary point, it should be recalled that the action before the referring court is an action against an administrative decision adopted in response to a complaint and that it considers that that decision was adopted in breach of the principle of respect for the rights of the defence.
- 101 It is apparent in that regard from the request for a preliminary ruling that, in the present case, the Romanian tax authorities adopted a tax assessment notice by which they found irregularities, in particular, as regards the time at which the VAT was applied by C. That tax assessment notice was upheld in part at the end of a complaint procedure, but on the basis of new matters of fact and of law, without, however, C having been invited to state its position with regard to that information.
- 102 The referring court is of the view that that infringement of the rights of the defence is not necessarily decisive for the outcome of the action. It would result in the annulment of the decision adopted in response to C's complaint only if it transpired that, had it not been for that infringement, the outcome of the complaint procedure might have been different. The referring court asks, however, at C's request, whether it may dismiss the action before it without carrying out such an analysis, on the ground that the tax assessment notice of 13 August 2015 was suspended.
- 103 Therefore, it must be held that, by its fourth question, the referring court is asking, in essence, whether the general principle of EU law of respect for the rights of the defence must be interpreted as meaning that, in the context of an administrative complaint procedure against a VAT assessment notice, where the competent authority adopts a decision based on new elements of fact and of law, in respect of which the person concerned has been unable to state its position, that decision must be annulled, even though, at the request of the person concerned, the enforcement of that tax assessment notice has been suspended in parallel with the legal proceedings brought against that decision.
- 104 In that regard, it should be recalled that observance of the rights of the defence is a fundamental principle of EU law, in which the right to be heard in all proceedings is inherent (judgment of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 28 and the case-law cited).
- 105 In accordance with that principle, which applies where the authorities are minded to adopt a measure which will adversely affect an individual, the addressees of decisions which significantly affect their interests must be placed in a position in which they can effectively make known their views as regards the information on which the authorities intend to base their decision (judgment of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 30 and the case-law cited).

- 106 The authorities of the Member States are subject to that obligation when they take decisions which come within the scope of EU law, even though the legislation applicable does not expressly provide for such a procedural requirement (judgment of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 31 and the case-law cited).
- 107 That is indeed so in the present case. The principle of respect for the rights of the defence applies in circumstances such as those at issue in the main proceedings, in which a Member State, in order to comply with the obligation arising from the application of EU law to take all legislative and administrative measures appropriate for ensuring collection of all the VAT due on its territory and for preventing fraud, submits a taxpayer to a tax inspection procedure (judgment of 16 October 2019, *Glencore Agriculture Hungary*, C-189/18, EU:C:2019:861, paragraph 40).
- 108 Furthermore, the purpose of the rule that the addressee of an adverse decision must be placed in a position to submit his or her observations before the decision is adopted is to enable the competent authority effectively to take into account all relevant information. In order to ensure that the person or undertaking concerned is in fact protected, the purpose of that rule is, inter alia, to enable them to correct an error or submit such information relating to their personal circumstances as will argue in favour of the adoption or non-adoption of the decision, or in favour of its having a specific content (judgment of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 38 and the case-law cited).
- 109 In the light of the foregoing considerations and the facts summarised in paragraph 101 of the present judgment, it could be considered that, in the present case, C's right to be heard before the adoption of an act adversely affecting it may have been infringed by the Romanian tax authorities, which it is for the referring court to establish.
- 110 That would not, however, be the case if C's inability to put forward its position with regard to new matters of fact and of law admitted in the complaint procedure were the result not of an error on the part of that administration, but of the application of a procedural rule pursuing a recognised objective in the public interest, which it is for the referring court to ascertain.
- 111 According to settled case-law, fundamental rights, such as respect for the rights of the defence, do not appear as unfettered prerogatives, but may be restricted, provided that the restrictions in fact correspond to objectives of public interest pursued by the measure in question and that they do not constitute, in the light of the objectives pursued, a disproportionate and intolerable interference which impairs the very substance of the rights guaranteed (judgment of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 42 and the case-law cited).
- 112 In that regard, it is apparent from the case-law of the Court that, in the context of an appeal lodged against an adverse decision, a subsequent hearing may, under certain conditions, be able to ensure observance of the right to be heard (judgment of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 55 and the case-law cited).
- 113 In particular, having regard to the general interest of the European Union in recovering its own revenue as soon as possible, which means that inspections can be carried out promptly and effectively, a restriction of the right to be heard prior to the adoption of an adverse decision, such

as a demand for payment, may be justified where, first, at the time when an action is brought against that decision, the person concerned is in fact able to request the adoption of interim measures entailing the suspension of the decision at issue and, second, that action enables the person concerned effectively to put forward his or her point of view (see, to that effect, judgment of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraphs 54, 66, 67 and 71).

- 114 The case-law referred to in paragraphs 111 to 113 of the present judgment concerns the possibility of being able to justify a limitation on the right to be heard which is provided for by national law. However, in the light of the matters of law and of fact set out by the referring court, in the present case, there does not appear to be any question of such a limitation, which it is, however, for the referring court to establish.
- 115 There is nothing in the file before the Court to suggest that Article 213 of the Code of Fiscal Procedure – which, according to the information provided by the referring court, governs the complaint procedure – provides for any limitation of the right to be heard, for the person lodging the complaint, where the Romanian tax authorities intend to base their decision on new matters of fact and of law on which the person concerned has been unable to state its position. On the contrary, it is apparent from its fourth question and from the considerations relating thereto that the referring court is of the view that the failure to hear C before the adoption of the decision ruling on its complaint does indeed constitute an ‘irregularity’ such as to infringe the right to be heard.
- 116 That being so, as the referring court correctly pointed out, not every infringement of the rights of the defence during an administrative procedure must necessarily result in the annulment of the decision taken at the end of that procedure.
- 117 In that regard, the Court held that, where neither the conditions under which observance of the rights of the defence is to be ensured nor the consequences of the infringement of those rights are laid down by EU law, those conditions and consequences are governed by national law, provided that the rules adopted to that effect are the same as those to which individuals in comparable situations under national law are subject (principle of equivalence) and that they do not make it impossible in practice or excessively difficult to exercise the rights of defence conferred by the European Union legal order (principle of effectiveness) (judgment of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 75 and the case-law cited).
- 118 That solution is applicable to VAT matters in so far as Directive 2006/112 does not contain any provisions relating to review procedures which should be transposed by the Member States (see, by analogy, judgment of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 76).
- 119 Nonetheless, while the Member States may allow the exercise of the rights of the defence under the same rules as those governing internal situations, those rules must comply with EU law and, in particular, must not undermine the effectiveness of Directive 2006/112 (see, by analogy, judgment of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 77).

- 120 The obligation of the national court to ensure the full effectiveness of EU law does not always result in the annulment of a contested decision, where the latter was adopted in infringement of the rights of the defence. Such an infringement, in particular the right to be heard, results in the annulment of the decision taken at the end of the administrative procedure at issue only if, had it not been for such an irregularity, the outcome of the procedure might have been different (see, to that effect, judgments of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraphs 78 and 79; of 20 December 2017, *Prequ' Italia*, C-276/16, EU:C:2017:1010, paragraph 62; and of 4 June 2020, *C.F. (Tax inspection)*, C-430/19, EU:C:2020:429, paragraph 35). By contrast, it is irrelevant that the act whose annulment is sought was suspended at the same time as the action brought against that act was suspended.
- 121 In those circumstances, it is for the referring court to assess to what extent the outcome of the complaint procedure might have been different if C had been heard during that procedure.
- 122 In the light of all the foregoing considerations, the answer to the fourth question is that the general principle of EU law of respect for the rights of the defence must be interpreted as meaning that, in the context of an administrative complaint procedure against a VAT assessment notice, where the competent authority adopts a decision based on new elements of fact and of law in respect of which the person concerned has been unable to state its position, the decision adopted at the end of that procedure must be annulled if, had it not been for that irregularity, the outcome of that procedure might have been different, even though, at the request of the person concerned, enforcement of that tax assessment notice has been suspended in parallel with the legal proceedings brought against that decision.

Costs

- 123 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 (Ninth Chamber) hereby rules:

1. **Article 64 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2008/117/EC of 16 December 2008,**

must be interpreted as meaning that the continuous supply of services over a certain period, such as those carried out, under Romanian law, by court-appointed administrators and liquidators for the benefit of undertakings which are the subject of insolvency proceedings, falls within the scope of Article 64(1) of that directive, in so far as, subject to investigations to be carried out by the referring court, those services give rise to successive statements of account or successive payments.

2. **Article 64(1) of Directive 2006/112, as amended by Directive 2008/117,**

must be interpreted as meaning that in a situation where payment of remuneration for services falling within the scope of that provision cannot take place because there are insufficient funds in the debtor's accounts, that provision does not permit the inference

that value added tax becomes chargeable only at the time when the remuneration is actually received.

3. Article 168(a) of Directive 2006/112, as amended by Directive 2008/117,

must be interpreted as meaning that in order to establish that there is a direct and immediate link between a particular input transaction, on the one hand, and the output transactions giving rise to the right of deduction, on the other, it is necessary to determine the objective content of those transactions, which entails considering all the circumstances surrounding those transactions, that is to say, in particular, the actual use of the goods and services purchased by the taxable person as inputs and the exclusive reason for that purchase, the increase in turnover or the increase in the volume of taxable transactions not being relevant in that regard.

4. The general EU-law principle of respect for the rights of the defence

must be interpreted as meaning that in the context of an administrative complaint procedure against a value added tax assessment notice, where the competent authority adopts a decision based on new elements of fact and of law in respect of which the person concerned has been unable to state its position, the decision adopted at the end of that procedure must be annulled if, had it not been for that irregularity, the outcome of that procedure might have been different, even though, at the request of the person concerned, enforcement of that tax assessment notice has been suspended in parallel with the legal proceedings brought against that decision.

[Signatures]