

**Case C-385/09**

**Nidera Handelscompagnie BV**

**v**

**Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos**

(Reference for a preliminary ruling from the

Mokestinė ginčų komisija prie Lietuvos Respublikos vyriausybės)

(Directive 2006/112/EC – Right of deduction of input VAT – National legislation excluding the right of deduction in respect of goods sold on before identification of the taxable person for VAT purposes)

**Summary of the Judgment**

1. *Preliminary rulings – Reference to the Court – Court or tribunal of a Member State within the meaning of Article 234 EC – Definition*

(Art. 234 EC)

2. *Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Deduction of input tax – Obligations of the taxable person*

(Council Directive 2006/112)

1. In order to determine whether a body making a reference is a court or tribunal for the purposes of Article 234 EC, the Court takes account of a number of factors, such as whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is *inter partes*, whether it applies rules of law and whether it is independent.

The Mokestinė ginčų komisija prie Lietuvos Respublikos vyriausybės (Lithuanian Tax Disputes Commission), which has the task of carrying out an objective examination of a complaint filed by a taxpayer and making a lawful and substantiated decision, meets those criteria.

(see paras 35-36, 40)

2. Council Directive 2006/112 on the common system of value added tax must be interpreted as precluding a taxable person for VAT purposes who meets the substantive conditions for the right of deduction, in accordance with the provisions of that directive, and who identifies himself as a taxable person for VAT purposes within a reasonable period following the completion of transactions giving rise to that right of deduction, from being denied the opportunity of exercising that right by national legislation which prohibits the deduction of VAT paid on the purchase of goods if the taxpayer was not identified as a taxable person for VAT purposes before using those goods in his taxable activity.

By virtue of Article 178(a) of Directive 2006/112, exercise of the right of deduction pursuant to Article 168(a) thereof is subject to the single formal requirement that, in respect of the supply of goods or services, the taxable person must hold an invoice drawn up in accordance with Articles

220 to 236 and Articles 238 to 240 of the Directive. Indeed, there is also an obligation for taxable persons to state when their activity commences, changes or ceases, in accordance with the measures adopted to that end by the Member States, pursuant to Article 213 of Directive 2006/112. However, that provision in no way authorises Member States, in the event of such a declaration's not being submitted, to defer the exercise of the right to deduct until the time at which taxable transactions actually begin to be carried out on a regular basis, or to deprive the taxable person of that right. In addition, the measures which the Member States may adopt under Article 273 of Directive 2006/112 in order to ensure the correct levying and collection of the tax and for the prevention of fraud must not go further than is necessary to attain such objectives and must not undermine the neutrality of VAT. In consequence, the identification provided for in Article 214 of Directive 2006/112, in the same way as the obligations laid down in Article 213 of that directive, is not a measure giving rise to the right of deduction – a right which arises at the time when the deductible tax becomes payable – but constitutes a formal requirement for the purposes of verification. It follows from the foregoing that a taxable person for VAT purposes cannot be prevented from exercising his right of deduction on the ground that he had not been identified as a taxable person for those purposes before using the goods purchased in the context of his taxed activity.

(see paras 47-51, 54, operative part)

## JUDGMENT OF THE COURT (Third Chamber)

21 October 2010 (\*)

(Directive 2006/112/EC – Right of deduction of input VAT – National legislation excluding the right of deduction in respect of goods sold on before identification of the taxable person for VAT purposes)

In Case C-385/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Mokestinių ginimų komisija prie Lietuvos Respublikos vyriausybės (Lithuania), made by decision of 21 September 2009, received at the Court on 29 September 2009, in the proceedings

**Nidera Handelscompagnie BV**

v

**Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos,**

THE COURT (Third Chamber),

composed of K. Lenaerts (Rapporteur), President of the Chamber, D. Šváby, R. Silva de Lapuerta, E. Juhász and J. Malenovský, Judges,

Advocate General: E. Sharpston,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 1 July 2010,

after considering the observations submitted on behalf of:

- Nidera Handelscompagnie BV, by I. Misiūnas,
- the Lithuanian Government, by R. Mackevičienė, S. Daiva and A. Materlytė, acting as Agents,
- the European Commission, by A. Steiblytė and M. Afonso, acting as Agents,

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

gives the following

## **Judgment**

1 This reference for a preliminary ruling concerns the interpretation of the provisions of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

2 The reference has been made in proceedings between Nidera Handelscompagnie BV ('Nidera') and Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos (State Tax Inspectorate under the Finance Ministry of the Republic of Lithuania; 'the State Tax Inspectorate') concerning the right of deduction of value added tax ('VAT') paid at the time of purchase in Lithuania of goods exported to non-Member States.

## **Legal context**

### *European Union law*

3 Under Article 9(1) of Directive 2006/112:

"Taxable person" shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.

Any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, shall be regarded as "economic activity". The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.'

4 Article 167 of that directive states:

'A right of deduction shall arise at the time the deductible tax becomes chargeable.'

5 In accordance with Article 168 of that directive:

'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;

...'

6 Article 178 of that directive provides:

'In order to exercise the right of deduction, a taxable person must meet the following conditions:

(a) for the purposes of deductions pursuant to Article 168(a), in respect of the supply of goods or services, he must hold an invoice drawn up in accordance with Articles 220 to 236 and Articles 238, 239 and 240;

...'

7 In accordance with Article 213 of that directive:

'1. Every taxable person shall state when his activity as a taxable person commences, changes or ceases.

...'

8 Article 214(1) of Directive 2006/112 provides:

'1. Member States shall take the measures necessary to ensure that the following persons are identified by means of an individual number:

...

(c) every taxable person who, within their respective territory, makes intra-Community acquisitions of goods for the purposes of transactions which relate to the activities referred to in the second subparagraph of Article 9(1) and which are carried out outside that territory.

...'

9 Article 273 of Directive 2006/112 is worded as follows:

'Member States may impose other obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion, subject to the requirement of equal treatment as between domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

The option under the first paragraph may not be relied upon in order to impose additional invoicing obligations over and above those laid down in Chapter 3.'

#### *National law*

10 Article 2(28) of Lithuanian Law No IX-751 on value added tax (Lietuvos Respublikos pridėtinės vertės mokesčio įstatymas No IX-751, Žin., 2002, No 35-1271, 2002, No 40, 2002, No 46, 2002, No 48), as amended (Žin., 2004, No 17-505, 2005, No 81-2944; 'the PVM?'), defines 'taxable person identified for VAT purposes' as:

‘... a person registered as a VAT payer by the tax administrator, including any other identification for VAT purposes if he has an appropriate identification number, but excluding the identification of persons for the purposes of the VAT rate compensation scheme.’

11 In accordance with Article 41 of the PVM?:

‘1. Unless otherwise specified in the present Chapter, deliveries of goods are taxed at a zero rate where the goods are transported from the territory of the European Communities by their supplier or by a third party on his behalf.

...’

12 Article 57 of the PVM? is worded as follows:

‘1. Only VAT payers other than those who are subject to the provisions of Section Five, Chapter XII, of this Law shall have the right to deduct VAT. ...

3. Persons who have the right to deduct VAT may opt not to exercise that right.’

13 In accordance with Article 58 of the PVM?:

‘1. A VAT payer shall have the right to deduct input and/or import VAT in respect of goods and/or services acquired and/or imported, if those goods and/or services are intended for use in the following activities of that VAT payer:

1. the supply of goods and/or services on which VAT is chargeable;

2. the supply of goods and/or services outside the territory of the country where, under the provisions of this Law, such supply of goods and/or services would not be exempt from VAT if it were effected within the territory of the country. This condition shall not apply with regard to the supply, outside the territory of the European Communities, of insurance and/or financial services specified in Article 28 of this Law.

...’

14 Under Article 63 of the PVM?:

‘1. A VAT payer shall have the right, in accordance with the provisions of this Chapter and the limitations laid down in this article, to deduct input and/or import VAT on goods and/or services acquired and/or imported prior to the date of his registration as a VAT payer, provided that they will be used by that VAT payer for an activity specified in Article 58(1) of this Law.

...’

15 By virtue of Article 71 of the PVM?:

‘ ...

3. A foreign taxable person shall register as a VAT payer through an establishment in the territory of the country and, if there is no such establishment, through an appointed fiscal agent in the Republic of Lithuania. The requirement to appoint a fiscal agent does not apply to taxable persons established in other Member States who may be registered directly as VAT payers. A foreign taxable person is not obliged to register as a VAT payer if he carries out only the following activity in the territory of the country:

...

3. supply of goods and/or services in respect of which, under this Law, a zero rate of VAT is charged, ...'.

16 Article 117 of the PVM? reads as follows:

'1. A foreign taxable person shall have the right to submit an application for a refund of VAT paid in the Republic of Lithuania only if during the period in which the refund of that VAT is requested he satisfies the following criteria:

1. he had no establishment in the Republic of Lithuania, and, if he is a natural person, his normal place of residence was not in the Republic of Lithuania either; and

2. he did not carry out any activity in the territory of the country which, according to this Law, is subject to VAT, unless otherwise provided in this article.

...'

17 Article 147 of Lithuanian Law No IX-2112 on tax administration (Lietuvos Respublikos mokesčių administravimo įstatymas No IX-2112, Žin., 2004, No 63-2243), as amended (Žin., 2007, No 80-3220, 2008, No 131-5036; hereinafter 'the MA?') provides:

'Tax disputes shall be examined by the central tax administrator, the Mokestininių ginčų komisija prie Lietuvos Respublikos vyriausybės (Tax Disputes Commission under the Government of the Republic of Lithuania; 'Tax Disputes Commission') and a court.'

18 In accordance with Article 148 of the MA?:

'1. The Tax Disputes Commission ('the Commission') shall be a public legal person funded from the State budget.

2. The purpose of the Commission shall be to carry out an objective examination of a complaint filed by a taxpayer and to make a lawful and substantiated decision.

3. The Commission shall comprise the President of the Commission and other members of the Commission. The total number of Commission members and its regulations shall be approved by the Government of the Republic of Lithuania.

4. Members of the Commission shall be appointed for a term of six years. They shall be appointed by the Government of the Republic of Lithuania, acting on a joint recommendation from the Minister of Finance and the Minister of Justice. Only a person of irreproachable reputation, holding a master's degree in finance, law or economics or having equivalent qualifications of higher education and a work record of not less than three years in the field of taxes, customs or company law may be appointed as a member of the Commission. Members of the Commission must be citizens of the Republic of Lithuania.

5. A member of the Commission may be dismissed before his term of office expires in the event that:

- (1) he resigns;
- (2) he ceases to be a citizen of the Republic of Lithuania;
- (3) he is absent from work due to temporary incapacity for more than 120 calendar days in succession or more than 140 days during the last twelve months or a medical or disability commission concludes that he is unable to perform his duties;
- (4) upon the entry into force of a court judgment whereby a punishment is imposed for a serious or very serious crime or a crime against property, property rights and property interests, the economy and business practice or the financial system;
- (5) seriously violates his work duties.

6. The work of Commission members shall be considered as their principal employment and they shall be remunerated in accordance with the procedure laid down in the Law on employment pay for State politicians and State officials. A Commission member may hold office only in the Commission; he may also engage in research or teaching activities.

7. On expiry of the term of his powers, a member of the Commission shall continue his duties until a new member is appointed.

...'

19 In accordance with Article 151 of the MA?:

'The Tax Disputes Commission shall consider the following disputes:

- (1) tax disputes arising between a taxpayer and the central tax administrator;
- (2) tax disputes between a taxpayer and the central tax administrator over decisions adopted by the central tax administrator after the examination of complaints filed by the taxpayer against decisions of the local tax administrator;
- (3) tax disputes between a taxpayer and the central tax administrator where the central tax administrator has failed to adopt a decision within the time limits laid down in this Law.'

20 Article 158 of the MA? provides:

'After the expiry of the time limits established for filing an appeal, the decision adopted by the central tax administrator or the Tax Disputes Commission shall be binding on the parties to the dispute and third persons connected with the dispute.'

21 Article 159 of the MA? is worded as follows:

‘1. A taxpayer who contests the decision of the central tax administrator or the Tax Disputes Commission regarding a tax dispute shall have the right to appeal to a court against that decision.

2. The central tax administrator also shall have a right of appeal against a decision of the Tax Disputes Commission but only in cases where the central tax administrator and the Tax Disputes Commission, when ruling on the tax dispute (or in the course of the dispute), put forward different interpretations of the provisions of laws or other legal acts.

...

4. Appeals against the decisions of the central tax administrator or the Tax Disputes Commission shall be examined by the Vilniaus apygardos administracinis teismas (Vilnius Regional Administrative Court).

...’

22 Point 4 of the Mokestininių ginklų komisijos nuostatos (Regulations of the Tax Disputes Commission) adopted by Decision No 1119 of 2 September 2004 of the Lithuanian Government, (Žin., 2004 No 136-4947; ‘the Regulations’) provides as follows:

‘In the course of its activities the Commission shall observe the Constitution of the Republic of Lithuania, the Law on tax administration, other laws and legal acts and these Regulations.’

23 Points 26 and 27 of the Regulations provide, inter alia, as follows:

‘26. Disputes shall be examined at sittings of the Commission. [...]

A member of the Commission may not participate in examining a tax dispute, and shall be debarred (or shall abstain) from so doing, if he is directly or indirectly interested in the outcome of the case, if he is connected with a party to the tax dispute by family or close relationship or has been an employee of the undertaking participating in the tax dispute and less than 3 years has elapsed since the end of his employment relationship, or there are other circumstances which may have an impact on the impartiality of the member of the Commission. A Commission member shall inform the Commission about such matters. Participants in the tax dispute may also raise an objection. Reasons shall be stated for an objection and it shall be raised before examination of the complaint at the Commission’s sitting. The Commission shall adopt a separate decision concerning the debarment of its member(s).

27. The tax payer (or his representatives) and representatives of the tax administrator shall be invited to the Commission’s sitting. The registrar shall take part in the sitting; an interpreter, the Commission’s specialists who have prepared the case, and experts shall also have the right to participate. If the parties to the dispute do not attend the sitting, the complaint shall be examined in their absence. Where, before the beginning of the examination of the complaint at the sitting, the Commission receives a request from those persons to adjourn examination of the complaint for reasons which the Commission considers to be important, the Commission shall have the right to adjourn the examination.

...’

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



24 The dispute in the main proceedings concerns, in essence, whether Nidera is entitled to deduct the VAT paid upon the purchase in Lithuania of goods which were exported to non-Member States, having regard to the fact that it was not identified in Lithuania as a taxable person for VAT purposes at the time of those commercial transactions.

25 Between February and May 2008 Nidera purchased wheat in Lithuania from agricultural produce suppliers. Of the price paid, LTL 11 743 259 (namely approximately EUR 3.4 million) represented the VAT invoiced by those suppliers and paid to them. Nidera then exported the entire quantity of that wheat to non-Member States, Algeria and Turkey, applying zero-rate VAT in accordance with Article 49 of the PVM?.

26 On 12 August 2008 Nidera registered as a VAT payer in Lithuania. In its VAT declaration for the period from 12 to 31 August 2008, it declared input VAT of LTL 11 743 259 and requested a refund in the same amount from the public treasury. Thus, it wished to deduct VAT paid on goods purchased in Lithuania and exported to non-Member States before its registration as a taxable person for VAT purposes.

27 By decision of 16 January 2009, confirmed on 19 March 2009, the Tax Inspectorate for the Vilnius district ('Vilnius AVMI') found that Nidera could not deduct that input VAT because the goods in question, which had already been sold, would no longer be used for its activities which were subject to VAT.

28 On 14 April 2009 Nidera, lodged a complaint with the State Tax Inspectorate. By decision of 22 June 2009, the State Tax Inspectorate rejected the complaint and supported the position adopted by Vilnius AVMI. According to that decision, only registered VAT payers have the right to deduct that tax and, although Nidera is not obliged to register as a VAT payer in Lithuania under national legislation, it nevertheless had to do so if it wished to recover input VAT paid.

29 On 29 July 2009 Nidera appealed to the Tax Disputes Commission. By that appeal, it submits that, in accordance with Article 71(3) of the PVM?, as a foreign taxable person in Lithuania, it did not have to register as a VAT payer in Lithuania, because its activity was exclusively the export of goods to non-Member States to which the zero-rate of VAT applies. In Nidera's opinion, the fact that it exercised its right not to be registered as a VAT payer in Lithuania cannot extinguish its right of deduction of VAT.

30 In its decision for reference, the Tax Disputes Commission asks whether the provisions of the PVM?, pursuant to which, in order to have a right of deduction, the person in question must not only exercise a taxable activity and hold the correct documents, but must also have been formally identified as a taxable person for VAT purposes in Lithuania, comply with Directive 2006/112 and are compatible with the general principles of the VAT system, in accordance with which VAT is a tax on consumption of which the right of deduction is a fundamental feature.

31 In those circumstances, the Tax Disputes Commission decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Is legislation under which the right to deduct VAT is given only to VAT payers – that is to say, only to taxable persons registered as VAT payers in a Member State (in this case, in Lithuania) according to the established procedures – in accordance with the provisions of Directive 2006/112 ... governing the right to deduct VAT?

2. If the answer to the first question is in the affirmative, is it in accordance with the general principles of the right to deduct VAT that are laid down in Directive 2006/112 ... if such legislation

provides that a VAT payer has the right to deduct input and/or import VAT in respect of goods and/or services acquired before the date of his registration as a VAT payer only if those goods will be used for an activity of that VAT payer that is subject to VAT, that is to say, input and/or import VAT in respect of goods and services acquired before the date of his registration as a VAT payer may not be deducted if those goods have already been used for that activity?’

### **Consideration of the questions referred**

32 Since the national court asks the Court to rule on the compatibility with the legal rules of the European Union of legislation such as that at issue in the main proceedings, it must be borne in mind that, although it is not the task of the Court, in preliminary ruling proceedings, to rule upon the compatibility of provisions of national law with the legal rules of the European Union, it has repeatedly held that it has jurisdiction to give the national court full guidance on the interpretation of European Union law in order to enable it to determine the issue of compatibility for the purposes of the case before it (Case C-118/08 *Transportes Urbanos y Servicios Generales* [2010] ECR I-0000, paragraph 23 and the case-law cited).

33 Having regard to the factual context of the main proceedings, the questions referred by the national court must be understood as asking, in essence, whether Directive 2006/112 must be interpreted as precluding a taxable person for VAT purposes who meets the substantive conditions for the right of deduction, in accordance with the provisions of that directive, from being denied the possibility of exercising that right of deduction by national legislation which prohibits the deduction of VAT paid on the purchase of goods if that taxpayer was not identified as a taxable person for VAT purposes before using those goods in his taxable activity.

### *Admissibility*

34 The Lithuanian Government questions the classification of the Tax Disputes Commission as a court or tribunal, on the ground that that Commission is not independent. It forms part of the organisational structure of the Ministry of Finance, to which it is required to submit annual reports and with which it is obliged to cooperate.

35 In that regard, it is appropriate to recall that, in accordance with settled case-law, in order to determine whether a body making a reference is a court or tribunal for the purposes of Article 234 EC, the Court takes account of a number of factors, such as whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is *inter partes*, whether it applies rules of law and whether it is independent (Case C-54/96 *Dorsch Consult* [1997] ECR I-4961, paragraph 23 and the case-law cited).

36 In the main proceedings, it is apparent from Article 148(2) of the MA that the Tax Disputes Commission is to carry out an objective examination of a complaint filed by a taxpayer and to make a lawful and substantiated decision. Pursuant to Article 148(4) thereof, the members of that Commission are appointed for a term of six years and must be persons of irreproachable reputation. Under Article 148(6), the members may hold office only in the Commission. Finally, Article 26 of the Regulations provide for a procedure by which objections may be made to members of that Commission in the event of a conflict of interest.

37 It must be found that those provisions confer on the Tax Disputes Commission the necessary independence for it to be regarded as a court or tribunal within the meaning of Article 234 EC. That analysis cannot be called into question by the fact that that Commission forms part of the organisational structure of the Ministry of Finance and is required to submit annual reports to it.

38 With regard to the obligation to cooperate with the Ministry of Finance, the Lithuanian Government, questioned on that subject at the hearing, stated that it knew of no cases in which the Tax Disputes Commission had received, from that Ministry, instructions or guidance as to the solution which would be preferred in a certain case. In those circumstances, the existence of such a general obligation of cooperation is not incompatible with the independence of that Commission from that Ministry.

39 Furthermore, it is apparent from the national legislation set out in paragraphs 17 to 23 of the present judgment that the Tax Disputes Commission meets the other criteria laid down by the Court of Justice cited in paragraph 35 of the present judgment to be classified as a court or tribunal.

40 In the light of the foregoing, it must be concluded that the Tax Disputes Commission is a court or tribunal within the meaning of Article 234 EC and that the present reference for a preliminary ruling is admissible.

### *Substance*

41 It must be noted that the Member States may limit the right of deduction of VAT only in the cases expressly provided for in Directive 2006/112 (see, by analogy, Case 50/87 *Commission v France* [1988] ECR 4797, paragraphs 16 and 17; Case C-97/90 *Lennartz* [1991] ECR I-3795, paragraph 27; and Case C-37/95 *Ghent Coal Terminal* [1998] ECR I-1, paragraph 16).

42 In addition, the Court has held, in the context of the reverse charge procedure, that the principle of VAT neutrality requires deduction of input tax to be allowed if the substantive requirements are satisfied, even if the taxable person has failed to comply with some of the formal requirements (Joined Cases C-95/07 and C-96/07 *Ecotrade* [2008] ECR I-3457, paragraph 63, and Case C-392/09 *Uszodaépítő* [2010] ECR I-0000, paragraph 39). Where the tax authority has the information necessary to establish that the taxable person is, as the recipient of the supplies in question, liable to VAT, it cannot impose, in relation to the right of that taxable person to deduct that tax, additional conditions which may have the effect of rendering that right ineffective (*Ecotrade*, paragraph 64, and *Uszodaépítő*, paragraph 40).

43 The questions referred by the national court must be examined in the light of those principles.

44 In that regard, it follows from Article 168(a) of Directive 2006/112 that the taxable person is entitled to deduct the VAT due or paid in a Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person, that are used for the purposes of his taxed transactions.

45 It is apparent from the decision for reference that Nidera exported all the wheat in question, which it purchased in Lithuania, to non-Member States, applying zero-rate VAT in accordance with the applicable national law.

46 In those circumstances, it is not in dispute that Nidera has the right of deduction referred to in Article 168(a) of Directive 2006/112 with regard to the VAT paid on those goods in Lithuania. In accordance with Article 167 of that directive, that right of deduction arises at the time when the deductible tax becomes payable.

47 By virtue of Article 178(a) of Directive 2006/112, exercise of the right of deduction pursuant to Article 168(a) thereof is subject to the single formal requirement that, in respect of the supply of

goods or services, the taxable person must hold an invoice drawn up in accordance with Articles 220 to 236 and Articles 238, 239 and 240 of the Directive.

48 Indeed, there is also an obligation on taxable persons to state when their activity commences, changes or ceases, in accordance with the measures adopted to that end by the Member States, pursuant to Article 213 of Directive 2006/112. However, the Court has already held that that in no way authorises Member States, in the event of such a declaration not being submitted, to defer the exercise of the right to deduct until the time at which taxable transactions actually begin to be carried out on a regular basis, or to deprive the taxable person of that right (see, by analogy, Joined Cases C-110/98 to C-147/98 *Gabalfriša and Others* [2000] ECR I-1577, paragraph 51).

49 In addition, the Court has previously held that the measures which the Member States may adopt under Article 273 of Directive 2006/112 in order to ensure the correct levying and collection of the tax and for the prevention of fraud must not go further than is necessary to attain such objectives and must not undermine the neutrality of VAT (see, by analogy, Case C-146/05 *Collée* [2007] ECR I-7861, paragraph 26 and case-law cited).

50 In consequence, the identification provided for in Article 214 of Directive 2006/112, in the same way as the obligations laid down in Article 213 of that directive, cited in paragraph 48 of the present judgment, is not a measure giving rise to the right of deduction – a right which arises at the time when the deductible tax becomes payable – but constitutes a formal requirement for the purposes of verification.

51 It follows from the foregoing that a taxable person for VAT purposes cannot be prevented from exercising his right of deduction on the ground that he had not been identified as a taxable person for those purposes before using the goods purchased in the context of his taxed activity.

52 It is, however, true that a taxable person for VAT purposes who does not comply with the formal requirements laid down in Directive 2006/112 may be subject to an administrative penalty, in accordance with the national measures transposing that directive into national law. In addition, as the Commission rightly observed, if exercise of the right of deduction of VAT were not limited as to time, legal certainty would not be fully possible. The obligation on taxable persons to identify themselves for VAT purposes would be rendered meaningless if the Member States were not entitled to impose a reasonable time-limit in that regard.

53 In the main proceedings, nevertheless, it appears that Nidera was not obliged to identify itself as a taxable person for VAT purposes in Lithuania, in accordance with Article 71(3) of the PVM?, even though under Article 63(1) of that Law taxable persons cannot deduct VAT unless they have taken that step. In as much as it was thus necessary for Nidera to identify itself as a taxable person for VAT purposes in order to exercise its right of deduction, it must be held that it did so less than six months after having completed the transactions which gave rise to that right and, accordingly, within a reasonable period of time.

54 Having regard to all the foregoing considerations, the answer to the questions referred is that Directive 2006/112 must be interpreted as precluding a taxable person for VAT purposes who meets the substantive conditions for the right of deduction, in accordance with the provisions of that directive, and who identifies himself as a taxable person for VAT purposes within a reasonable period following the completion of transactions giving rise to that right of deduction, from being denied the possibility of exercising that right by national legislation which prohibits the deduction of VAT paid on the purchase of goods if the taxpayer was not identified as a taxable person for VAT purposes before using those goods in his taxable activity.

## Costs

55 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 (Third Chamber) hereby rules:

**Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding a taxable person for VAT purposes who meets the substantive conditions for the right of deduction, in accordance with the provisions of that directive, and who identifies himself as a taxable person for VAT purposes within a reasonable period following the completion of transactions giving rise to that right of deduction, from being denied the possibility of exercising that right by national legislation which prohibits the deduction of VAT paid on the purchase of goods if the taxpayer was not identified as a taxable person for VAT purposes before using those goods in his taxable activity.**

[Signatures]

\* Language of the case: Lithuanian.