JUDGMENT OF THE COURT (Second Chamber)

18 July 2013 (*)

(Directive 2006/112/EC – Common system of value added tax – Supply of goods – Concept – Right to deduct – Refusal – Actual performance of a taxable transaction – Regulation (EC) No 1760/2000 – System for the identification and registration of bovine animals – Ear tags)

In Case C-78/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Administrativen sad Sofia-grad (Bulgaria), made by decision of 6 February 2012, received at the Court on 14 February 2012, in the proceedings

‘Evita-K’ EOOD

v

Direktor na Direktsia ‘Obzhalvane i upravlenie na izpalnenieto’ – Sofia pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta (Rapporteur), President of the Chamber, G. Arestis, J.-C. Bonichot, A. Arabadjiev and J.-L. da Cruz Vilaça, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– ‘Evita-K’ EOOD, by A. Kashkina,

– the Direktor na Direktsia ‘Obzhalvane i upravlenie na izpalnenieto’ – Sofia pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite, by A. Georgiev, acting as Agent,

– the Bulgarian Government, by Y. Atanasov, acting as Agent,

– the European Commission, by L. Lozano Palacios and D. Roussanov, acting as Agents,

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 14(1), 178(a), 185(1), 226(6) and 242 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 request has been made in proceedings between ‘Evita-K’ EOOD (‘Evita-K’) and the Direktor na Direktsia ‘Obzhalvane i upravlenie na izpalnenieto’ – Sofia pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite (Director of the ‘Appeal and Enforcement’ Directorate, for the City of Sofia, of the Central Administration of the National Revenue Agency; ‘the Direktor’) concerning refusal of the right to deduct, in the form of a tax credit, value added tax (‘VAT’) relating to invoices concerning the delivery of calves intended for slaughter.

Legal context

European Union law

Directive 2006/112

3 Article 2(1)(a) and (c) of Directive 2006/112 provides that the supply of goods and the supply of services for consideration within the territory of a Member State by a taxable person acting as such are to be subject to VAT.

4 Under Article 14(1) of that directive:

‘“Supply of goods” shall mean the transfer of the right to dispose of tangible property as owner.’

5 Article 168 of that directive 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;

…’

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 According to Article 184 of Directive 2006/112, the initial deduction is to be adjusted where it is higher or lower than that to which the taxable person was entitled.

8 Article 185 of that directive reads as follows:

‘1. Adjustment shall, in particular, be made where, after the VAT return is made, some change occurs in the factors used to determine the amount to be deducted, for example where purchases are cancelled or price reductions are obtained.

2. By way of derogation from paragraph 1, no adjustment shall be made in the case of transactions remaining totally or partially unpaid or in the case of destruction, loss or theft of property duly proved or confirmed, or in the case of goods reserved for the purpose of making gifts of small value or of giving samples, as referred to in Article 16.

However, in the case of transactions remaining totally or partially unpaid or in the case of theft, Member States may require adjustment to be made.’

9 Under Article 186 of Directive 2006/112, Member States are required to lay down the detailed rules for applying Articles 184 and 185 thereof.

10 Article 220 of that directive provides:

‘Every taxable person shall ensure that, in respect of the following, an invoice is issued, either by himself or by his customer or, in his name and on his behalf, by a third party:

(1) supplies of goods or services which he has made to another taxable person or to a non-taxable legal person;

...’

11 Under Article 226 of Directive 2006/112:

‘Without prejudice to the particular provisions laid down in this Directive, only the following details are required for VAT purposes on invoices issued pursuant to Articles 220 and 221:

...

(6) the quantity and nature of the goods supplied or the extent and nature of the services rendered;

...’

12 Article 242 of that directive provides:

‘Every taxable person shall keep accounts in sufficient detail for VAT to be applied and its application checked by the tax authorities.’

13 Article 273 of Directive 2006/112 states:

‘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.’

Regulation (EC) No 1760/2000

14 Recital 12 in the preamble to Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 (OJ 2000 L 204, p. 1), as amended by Council Regulation (EC) No 1791/2006 of 20 November 2006 (OJ 2006 L 363, p. 1), ('Regulation No 1760/2000') states:

'The current rules concerning the identification and the registration of bovine animals have been laid down in Council Directive 92/102/EEC of 27 November 1992 on the identification and registration of animals [(OJ 1992 L 355, p. 32)] and [Council Regulation (EC) No 820/97 of 21 April 1997 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products (OJ 1997 L 117, p. 1)]. Experience has shown that the implementation of Directive 92/102/EEC for bovine animals has not been entirely satisfactory and needs further improvement. It is therefore necessary to adopt specific rules for bovine animals in order to reinforce the provisions of the said Directive.'

15 Article 1(1) of Regulation No 1760/2000 requires each Member State to establish a system for the identification and registration of bovine animals, in accordance with Title I of that regulation.

16 The first paragraph of Article 3 of that regulation provides as follows:

'The system for the identification and registration of bovine animals shall comprise the following elements:

(a) ear tags to identify animals individually;

(b) computerised databases;

(c) animal passports;

(d) individual registers kept on each holding.'

17 Article 4 of that regulation provides:

'1. All animals on a holding born after 31 December 1997 or intended for intra-Community trade after 1 January 1998 shall be identified by an ear tag approved by the competent authority, applied to each ear. … All animals on a holding in Bulgaria or Romania born by the date of accession or intended for intra-Community trade after that date shall be identified by an ear tag approved by the competent authority, applied to each ear. Both ear tags shall bear the same unique identification code, which makes it possible to identify each animal individually together with the holding on which it was born.

...

2. The ear tag shall be applied within a period to be determined by the Member State as from the birth of the animal and in any case before the animal leaves the holding on which it was born.

...'

Regulation (EC) No 1725/2003

18 Commission Regulation (EC) No 1725/2003 of 29 September 2003 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the

European Parliament and of the Council (OJ 2003 L 261, p. 1) adopted international accounting Standard IAS 41 ‘Agriculture’ (‘Standard IAS 41’), as set out in the annex to that regulation.

19 The objective of that standard is to prescribe the accounting treatment, financial statement presentation, and disclosures related to agricultural activity.

20 Points 10 and 11 of Standard IAS 41 read as follows:

‘10. An enterprise should recognise a biological asset or agricultural produce when, and only when:

(a) the enterprise controls the asset as a result of past events;

(b) it is probable that future economic benefits associated with the asset will flow to the enterprise; and

(c) the fair value or cost of the asset can be measured reliably.

11. In agricultural activity, control may be evidenced by, for example, legal ownership of cattle and the branding or otherwise marking of the cattle on acquisition, birth, or weaning. The future benefits are normally assessed by measuring the significant physical attributes.’

Bulgarian law

21 Article 70(5) of the Law on Value Added Tax (Zakon za danaka varhu dobavenata stoynost), in the version applicable to the dispute in the main proceedings (DV No 63 of 4 August 2006; ‘the ZDDS’), provides that there is no right to deduct input VAT in the case where it has been unlawfully invoiced.

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

22 Evita-K is a company incorporated under Bulgarian law, the main economic activity of which is the trade in animals.

23 That company declared nine invoices concerning the supply of calves for slaughter, issued during the months of September and October 2007 by ‘Ekspertis-7’ EOOD (‘Ekspertis-7’), in order to obtain, in the form of a tax credit, the deduction of the VAT relating to those invoices.

24 In addition, Evita-K declared that it had exported live calves to Albania during those same months and provided proof of their purchase by those invoices and by producing customs declarations, veterinary certificates indicating the animals’ ear tags and veterinary certificates for the transportation of the animals on national territory.

25 In order to provide proof of the acquisition of the animals at issue, in addition to the nine invoices issued by Ekspertis-7, Evita-K produced weight certificates, bank statements relating to payment of those invoices and the contract concluded with Ekspertis-7 for the supply of calves.

26 Evita-K was subject to a tax investigation covering the months of September and October 2007. On that occasion, the Bulgarian tax authorities requested Ekspertis-7 to provide information on the supplies which it had invoiced to Evita-K.

27 As the answers given by Ekspertis-7 had, according to those authorities, revealed certain gaps in its accounting and in its compliance with the veterinary formalities relating, in particular, to titles of ownership of the animals and to their ear tags, those authorities took the view that it had

not been proved that those supplies had in fact been carried out and that, consequently, Evita-K was not entitled to claim a right to deduction of the VAT relating to those supplies.

28 Accordingly, by a tax assessment decision of 26 November 2009, the Bulgarian tax authorities denied Evita-K the right to deduct, in the form of a tax credit, the VAT relating to the invoices issued by Ekspertis-7.

29 Evita-K lodged an administrative appeal against that decision refusing the deduction with the Direktor, who, by a decision of 29 April 2010, confirmed that decision.

30 Evita-K then appealed against the tax assessment decision of 26 November 2009 to the referring court. In particular, it claimed before that court that the information which it had communicated was sufficient to prove that the supplies invoiced by Ekspertis-7 had indeed been carried out, that, irrespective of any irregularities which may have been committed by Ekspertis-7, Evita-K had to be considered to be a *bona fide* purchaser under Bulgarian law, and that the question of the right to deduct VAT was independent of the question as to the ownership of and the origin of the goods acquired.

31 In those circumstances the Administrativen sad – Sofia-grad (Administrative Court for the City of Sofia) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is the concept of “supply of goods” within the meaning of Article 14(1) of Directive [2006/112] in conjunction with Article 345 [TFEU] to be interpreted as meaning that, in the circumstances of the main proceedings, it allows the person to whom a supply is made to acquire the right to dispose of the goods (movable property specified only by type) by acquiring the ownership of those goods from a non-owner through *bona fide* possession acquired for consideration, which is permissible under the national law of the Member State, although it should be borne in mind that, under that law, the right of ownership of such property is transferred by delivery?

(2) Does proof of effecting a “supply of goods” within the meaning of Article 14(1) of Directive 2006/112 with respect to a specific invoice in connection with the exercise of the right under Article 178(a) of [that] Directive to deduct the tax actually paid and shown in that invoice presuppose that the person to whom the supply is made demonstrates the supplier’s rights of ownership where the supply relates to movable property specified according to its type and under the national law of the Member State the right of ownership of such property is transferred by delivery, although under that national law the acquisition of the right of ownership of such property by *bona fide* possession acquired for consideration from a non-owner is also permitted?

Is a “supply of goods” for the purposes of deduction of input tax within the meaning of Directive [2006/112] to be regarded as proved where, in the circumstances of the main proceedings, *the person to whom the supply is made has effected a subsequent supply of the same goods* (animals subject to compulsory identification) by exportation with the submission of a customs declaration and there is no evidence of rights of third parties in those goods?

(3) For the purposes of demonstrating that a “supply of goods” within the meaning of Article 14(1) of Directive 2006/112 has been effected with respect to a specific invoice in connection with the exercise of the right under Article 178(a) of [that] Directive to deduct the tax actually paid and shown in that invoice, *must it be assumed that the supplier and the person to whom the supply is made, who are not agricultural producers, are acting in bad faith* where, on receipt of the goods, no document mentioning the animals’ ear tags in accordance with the requirements of European Union veterinary legislation was provided by the previous owner, and where the animals’ ear tags are not mentioned in the veterinary certificate which was issued by an administrative authority and

which accompanies the animals during transport in order to effect the specific supply?

Where the supplier and the person to whom the supply is made have independently made lists of the ear tags of the animals which were supplied to them, must it then be assumed that they have complied with the requirements of that European Union veterinary legislation if the administrative authority has not shown the animals' ear tags in the veterinary certificate which accompanies the animals during their shipment?

(4) Are the supplier and the person to whom the supply is made in the main proceedings, who are not agricultural producers, required under Article 242 of Directive 2006/112 to show the goods supplied (animals subject to compulsory identification or "biological assets") in their accounts pursuant to [Standard IAS 41], Agriculture, and to prove control of the assets in accordance with that standard?

(5) Does Article 226(6) of Directive 2006/112 require the ear tags of the animals, which are subject to compulsory identification under the European Union veterinary legislation and are the goods supplied, also to be shown in VAT invoices such as those at issue in the main proceedings where the national law of the Member State does not expressly lay down such a requirement and the persons involved in the supply are not agricultural producers?

(6) Is it permissible under Article 185(1) of Directive 2006/112, on the basis of a national provision such as that in the main proceedings, to adjust the deduction of input tax on account of the conclusion that the supplier's right of ownership of the goods which are supplied was not proved, where the supply was not cancelled by any of the persons involved in it, the person to whom the supply was made effected a subsequent supply of the same goods, there is no evidence of rights claimed by third parties in those goods (animals subject to compulsory identification), no bad faith on the part of the person to whom the supply was made is alleged, and under the law of the Member State the right of ownership of such goods specified only according to their type is transferred by delivery?'

Consideration of the questions referred

The first, second and third questions

32 By its first, second and third questions, the referring court asks, in essence, whether the provisions of Directive 2006/112 must be interpreted as meaning that, in the context of the exercise of the right to deduct VAT, the concept of 'supply of goods' and evidence that such a supply was in fact carried out require that a right of ownership of the supplier of the goods concerned over those goods is established formally or whether the acquisition of a right of ownership of those goods by *bona fide* possession is sufficient in that regard.

33 It must be borne in mind that, according to settled case-law of the Court, the concept of 'supply of goods' referred to in Article 14(1) of Directive 2006/112 does not refer to the transfer of ownership in accordance with the procedures prescribed by the applicable national law but covers any transfer of tangible property by one party which empowers the other party actually to dispose of it as if he were its owner (see Case C-320/88 *Shipping and Forwarding Enterprise Safe* [1990] ECR I-285, paragraph 7; Case C-435/03 *British American Tobacco and Newman Shipping* [2005] ECR I-7077, paragraph 35; and Case C-237/09 *De Fruytier* [2010] ECR I-4985, paragraph 24).

34 In that context, it is for the national court to determine in each individual case, on the basis of the facts of the case, whether there is a transfer of the right to dispose of the property as owner (see *Shipping and Forwarding Enterprise Safe*, paragraph 13).

35 It follows that a transaction may be categorised as a ‘supply of goods’ for the purposes of Article 14(1) of Directive 2006/112 if, by that transaction, a taxable person makes a transfer of tangible property authorising the other party to hold that property *de facto* as if it were the owner, without the form by which a right of ownership of that property was acquired having any bearing in that regard.

36 Likewise, the evidence that such a supply of goods has in fact been carried out, to which the existence of a right to deduct is subject, cannot depend on the method by which the right of ownership of the goods concerned was acquired.

37 Moreover, in so far as it is apparent from the order for reference that the Bulgarian tax authorities refused Evita-K the right to deduct VAT relating to the supplies of goods at issue in the main proceedings on the ground that it was not established that those supplies had in fact been carried out, and in so far as the assertion that they were not carried out is disputed by Evita-K, it must be borne in the mind that, first, it is for the person seeking deduction of VAT to establish that he meets the conditions for eligibility (see Case C-230/94 *Enkler* [1996] ECR I-4517, paragraph 24), and, second, it is for the referring court to carry out, in accordance with the national rules relating to evidence, an overall assessment of all the facts and circumstances of the dispute in the main proceedings in order to determine whether Evita-K may exercise a right to deduct on the basis of those supplies of goods (see, to that effect, Case C-273/11 *Mecsek-Gabona* [2012] ECR, paragraph 53; Case C-285/11 *Bonik* [2012] ECR, paragraph 32; and Case C-643/11 *LVK – 56* [2013] ECR, paragraph 57).

38 In the context of that overall assessment, that court may take into consideration information relating to transactions prior or subsequent to those at issue in the main proceedings and documents linked to them, such as certificates or certified statements issued when the animals concerned were transported or exported.

39 In that context it is incumbent upon the national authorities and courts to refuse the right of deduction where it is established, on the basis of objective evidence, that that right is being relied on for fraudulent or abusive ends (see, to that effect, Joined Cases C-439/04 and C-440/04 *Kittel and Recolta Recycling* [2006] ECR I-6161, paragraph 55; Joined Cases C-80/11 and C-142/11 *Mahagében and Dávid* [2012] ECR, paragraph 42; *Bonik*, paragraph 37; and *LVK – 56*, paragraph 59).

40 That is the position where a tax fraud is committed by the taxable person himself or when he knew, or should have known, that, by his purchase, he was taking part in a transaction connected with VAT fraud (see *Bonik*, paragraphs 38 and 39 and the case-law cited).

41 By contrast, it is incompatible with the rules governing the right to deduct under Directive 2006/112 to impose a penalty, in the form of a refusal of that right, on a taxable person who did not know, and could not have known, that the transaction concerned was connected with fraud committed by the supplier, or that another transaction forming part of the chain of supply prior or subsequent to the transaction carried out by the taxable person was vitiated by VAT fraud (see Joined Cases C-354/03, C-355/03 and C-484/03 *Optigen and Others* [2006] ECR I-483, paragraphs 52 and 55; *Kittel and Recolta Recycling*, paragraphs 45, 46 and 60; *Mahagében and Dávid*, paragraph 47; *Bonik*, paragraph 41; and *LVK – 56*, paragraph 60).

42 Furthermore, the Court has already held that the tax authorities cannot, as a general rule, require the taxable person wishing to exercise the right to deduct VAT to ensure that the issuer of the invoice relating to the goods and services in respect of which the exercise of that right is sought has the capacity of a taxable person, that he was in possession of the goods at issue and

was in a position to supply them and that he has satisfied his obligations as regards declaration and payment of VAT, in order to be satisfied that there are no irregularities or fraud at the level of the traders upstream, or, second, to be in possession of documents in that regard (see *Mahagében and Dávid*, paragraph 61, and *LVK – 56*, paragraph 61). Likewise, those authorities cannot require that taxable person to produce documents issued by that issuer and mentioning the ear tags of the animals subject to the identification and registration system established by Regulation No 1760/2000.

43 In those circumstances, the answer to the first, second and third questions is that Directive 2006/112 must be interpreted as meaning that, in the context of the exercise of the right to deduct VAT, the concept of 'supply of goods' for the purposes of that directive and evidence that such a supply has in fact been carried out are not linked to the form of the acquisition of a right of ownership of the goods concerned. It is for the referring court to carry out, in accordance with the national rules relating to evidence, an overall assessment of all the facts and circumstances of the dispute before it in order to determine whether the supplies of goods at issue in the main proceedings were actually carried out and whether, as the case may be, a right to deduct may be exercised on the basis of those supplies.

The fourth question

44 By its fourth question, the referring court asks, in essence, whether Article 242 of Directive 2006/112 must be interpreted as meaning that it requires taxable persons who are not agricultural producers to show in their accounts the subject-matter of the supplies of goods which they make, when they concern animals, and to prove that those animals were subject to control in accordance with Standard IAS 41.

45 In that regard, suffice it to note that Article 242 of Directive 2006/112 does not provide that taxable persons are required to comply with Standard IAS 41 but merely requires them to keep accounts in sufficient detail for VAT to be applied and for those accounts to be checked by the tax authorities.

46 Consequently, the fact that the accounts of Ekspertis-7 and Evita-K contain information which does not comply with that standard is irrelevant for VAT purposes since that information is sufficiently detailed for the purposes of Article 242.

47 In those circumstances, the answer to the fourth question is that Article 242 of Directive 2006/112 must be interpreted as meaning that it does not require taxable persons who are not agricultural producers to show in their accounts the subject-matter of the supplies of goods which they make, when animals are concerned, and to prove that those animals were subject to control in accordance with Standard IAS 41.

The fifth question

48 By its fifth question, the referring court asks, in essence, whether Article 226(6) of Directive 2006/112 must be interpreted as meaning that it requires a taxable person who makes supplies of goods concerning animals which are subject to the identification and registration system established by Regulation No 1760/2000 to mention the ear tags of those animals in invoices relating to those supplies.

49 In this regard, it must be borne in mind that, under Article 178(a) of Directive 2006/112, the exercise of the right of deduction referred to in Article 168(a) of that directive is subject to the possession of an invoice. In accordance with Article 220(1) of Directive 2006/112, an invoice must thus be issued for every supply of goods or services which a taxable person makes on behalf of

another taxable person (see Case C-368/09 *Pannon Gép Centrum* [2010] ECR I-7467, paragraph 39, and Case C-280/10 *Polski Trawertyn* [2012] ECR, paragraph 41).

50 Article 226 of Directive 2006/112 states that, without prejudice to the particular provisions of that directive, only the details listed in that article must mandatorily appear, for VAT purposes, on invoices issued pursuant to Article 220 of that directive (see *Pannon Gép Centrum*, paragraph 40, and *Polski Trawertyn*, paragraph 41).

51 It follows that it is not open to Member States to make the exercise of the right to deduct VAT dependent on compliance with conditions relating to the content of invoices which are not expressly laid down by the provisions of Directive 2006/112. That interpretation is supported by Article 273 thereof, which provides, first, that Member States may impose obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion, but, second, that that option may not be relied upon in order to impose additional invoicing obligations over and above those laid down by, inter alia, Article 226 of that directive (see *Pannon Gép Centrum*, paragraph 41, and *Polski Trawertyn*, paragraph 42).

52 In accordance with Article 226(6) of Directive 2006/112, the quantity and nature of the goods supplied or the extent and nature of the services rendered must mandatorily appear, for VAT purposes, on an invoice.

53 Consequently, it must be held that that provision does not require a taxable person who carries out a supply of animals which are subject to the identification and registration system established by Regulation No 1760/2000 to mention the ear tags of those animals on invoices relating to that supply.

54 In those circumstances, the answer to the fifth question is that Article 226(6) of Directive 2006/112 must be interpreted as meaning that it does not require a taxable person who carries out supplies of goods concerning animals which are subject to the identification and registration system established by Regulation No 1760/2000 to mention the ear tags of those animals on the invoices relating to those supplies.

The sixth question

55 By its sixth question, the referring court asks, in essence, whether Article 185(1) of Directive 2006/112 must be interpreted as allowing, on the basis of a national provision such as Article 70(5) of the ZDDS, an adjustment to a deduction of VAT on the ground that the supplier’s right to ownership of the goods which he supplied has not been proved.

56 It is apparent from the order for reference that that court refers that question by reason of the fact that it takes the view that Article 70(5) of the ZDDS constitutes a detailed rule for applying Articles 184 and 185 of Directive 2006/112 within the terms of Article 186 thereof.

57 In that regard, it must be borne in mind that, in accordance with Article 184, the initial deduction is to be adjusted where it is higher or lower than that to which the taxable person was entitled.

58 So far as concerns the creation of an obligation to adjust an input VAT deduction, Article 185(1) of Directive 2006/112 establishes the principle that such an adjustment is carried out in particular where, after the VAT return has been made, some change occurs in the factors used to determine the amount to be deducted (Case C-257/11 *Gran Via Moine?ti* [2012] ECR, paragraph 40).

59 Consequently, Articles 184 and 185(1) of Directive 2006/112 can be applicable only if a VAT deduction relating to a taxable transaction was initially carried out, that is to say, only if the taxable person concerned previously benefitted from a right to deduct VAT under the conditions laid down in Article 168(a) of that directive.

60 It follows that, in so far as Article 70(5) of the ZDDS covers the case of the absence of a right to deduct VAT where the latter was unlawfully invoiced, that provision cannot serve as a basis for an adjustment for the purposes of Article 185 of Directive 2006/112, since, by definition, it concerns a situation in which a taxable person is not entitled to that right.

61 In those circumstances, the answer to the sixth question is that Article 185(1) of Directive 2006/112 must be interpreted as allowing a deduction of VAT to be adjusted only if the taxable person concerned previously benefitted from a right to deduct that tax under the conditions laid down in Article 168(a) of that directive.

Costs

62 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that, in the context of the exercise of the right to deduct value added tax, the concept of 'supply of goods' for the purposes of that directive and evidence that such a supply has in fact been carried out are not linked to the form of the acquisition of a right of ownership of the goods concerned. It is for the referring court to carry out, in accordance with the national rules relating to evidence, an overall assessment of all the facts and circumstances of the dispute before it in order to determine whether the supplies of goods at issue in the main proceedings were actually carried out and whether, as the case may be, a right to deduct may be exercised on the basis of those supplies.**

2. **Article 242 of Directive 2006/112 must be interpreted as meaning that it does not require taxable persons who are not agricultural producers to show in their accounts the subject-matter of the supplies of goods which they make, when animals are concerned, and to prove that those animals were subject to control in accordance with International Accounting Standard 41 'Agriculture'.**

3. **Article 226(6) of Directive 2006/112 must be interpreted as meaning that it does not require a taxable person who carries out supplies of goods concerning animals, which are subject to the identification and registration system established by Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97, as amended by Council Regulation (EC) No 1791/2006 of 20 November 2006, to mention the ear tags of those animals on the invoices relating to those supplies.**

4. **Article 185(1) of Directive 2006/112 must be interpreted as allowing a deduction of value added tax to be adjusted only if the taxable person concerned previously benefitted from a right to deduct that tax under the conditions laid down in Article 168(a) of that directive.**

[Signatures]

* Language of the case: Bulgarian.