Provisional text

JUDGMENT OF THE COURT (First Chamber)

28 February 2018 (*)

(Reference for a preliminary ruling — State aid — Regulation (EC) No 1998/2006 — Article 35 TFEU — De minimis aid in the form of tax relief — National legislation excluding investments in the production of goods intended for export from the benefit of that tax relief)

In Case C-518/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sofiyski gradski sad (Sofia City Court, Bulgaria) made by decision of 26 September 2016, received at the Court on 4 October 2016, in the proceedings

‘ZPT’ AD

v

Narodno sabranie na Republika Bulgaria,

Varhoven administrativen sad,

Natsionalna agentsia za prihodite,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, C.G. Fernlund, J.?C. Bonichot (Rapporteur), A. Arabadjiev and E. Regan, Judges,

Advocate General: M. Wathelet,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 18 October 2017,

after considering the observations submitted on behalf of

– ‘ZPT’ AD, by M. Ekimdzhiev and K. Boncheva, advokati,

– the Narodno sabranie na Republika Bulgaria, by T. Tsacheva, acting as Agent,

– the Varhoven administrativen sad, by G. Kolev and M. Semov, acting as Agents,

– the Natsionalna agentsia za prihodite, by B. Atanasov and I. Kirova, acting as Agents,

– the Bulgarian Government, by E. Petranova and L. Zaharieva, acting as Agents,

– the Greek Government, by S. Charitaki and S. Papaioannou, acting as Agents,

– the Italian Government, by G. Palmieri, acting as Agent, and by C. Colelli, avvocato dello

Stato,

– the European Commission, by L. Armati, P. Mihaylova and E. Manhaeve, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 29 November 2017,

gives the following

Judgment

1 The present request for a preliminary ruling concerns the validity, in the light of Article 35 TFEU, of Article 1(1)(d) of Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles [107 TFEU and 108 TFEU] to *de minimis* aid (OJ 2006 L 379, p. 5), as well as the interpretation of that provision.

2 The request has been made in proceedings between, on the one hand, ‘ZPT’ AD and, on the other hand, the Narodno sabranie na Republika Bulgaria (National Assembly of the Republic of Bulgaria), the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria) and the Natsionalna agentsia za prihodite (National Revenue Agency, Bulgaria) concerning a claim for compensation based on an infringement of Article 1(1)(d) of Regulation No 1998/2006.

Legal context

EU law

3 Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles [107 TFEU and 108 TFEU] to certain categories of horizontal State aid (OJ 1998 L 142, p. 1) inter alia empowered the European Commission to set, by way of regulation, a ceiling below which certain aid, known as ‘*de minimis*’aid, is deemed not to meet all the criteria of Article 107(1) TFEU and, for that reason, is deemed not to be subject to the procedure for notification to the Commission laid down in Article 108 TFEU.

4 At the date of the facts in the main proceedings, the provisions governing the adoption of *de minimis* aid were set out in Regulation No 1998/2006, Article 1(1) of which was worded as follows:

‘This Regulation applies to aid granted to undertakings in all sectors, with the exception of:

...

(d) aid to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity;

...’

5 Article 2 of that regulation provided:

‘1. Aid measures shall be deemed not to meet all the criteria of Article [107(1) TFEU] and shall therefore be exempt from the notification requirement of Article [108(3) TFEU], if they fulfil the conditions laid down in paragraphs 2 to 5 of this Article.

2. The total *de minimis* aid granted to any one undertaking shall not exceed EUR 200 000 over any period of three fiscal years. ... These ceilings shall apply irrespective of the form of the *de minimis* aid or the objective pursued ...

... ’

Bulgarian law

6 Article 182(2) of the Zakon za korporativnoto podohodno oblagane (Law on corporation tax), in the version applicable to the facts in the main proceedings, provides as follows:

‘Tax relief representing *de minimis* aid shall not apply to:

...

(7) investment in assets used in activities relating to exports to third countries or Member States.

...’

7 Article 184 of the Law on corporation tax states:

‘Taxable persons shall benefit from a tax reduction of up to 100% of the amount of corporation tax payable on their taxable profit from the manufacturing activity carried out, including contract manufacturing, where the following conditions are met:

(1) the taxable person has performed the manufacturing activity solely in municipalities where, in the year preceding the present year, the unemployment rate was at least 35% higher than the national average in respect of that period;

(2) the conditions set out in:

(a) Article 188 [of the Law on corporation tax] are met in cases of *de minimis* aid.

...’

8 Article 188 of the Law on corporation tax provides:

‘1. Tax relief shall constitute *de minimis* aid where the amount of *de minimis* aid received in the previous three years, including the current year, irrespective of the form or source, does not exceed the equivalent in [Bulgarian leva (BGN)] of EUR 200 000 ...

2. The resources corresponding to the tax reduction referred to in Article 184 must be invested in tangible or intangible assets in accordance with the legislation on accounting before the expiry of a four-year period starting from the year in respect of which the tax is deducted.

...’

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

9 ZPT, a company incorporated under Bulgarian law, carries on three technologically independent manufacturing activities in separate facilities, namely (i) the manufacture of pipes, hollow profiles and protective railings for roads, (ii) the hot-dip galvanisation of components, and (iii) the electroplating or cold-galvanisation of components.

10 In its 2008 tax return, ZPT declared that it wished to benefit from the corporation tax reduction provided for in Article 184 of Law on corporation tax in the amount of BGN 140 677.51 (approximately EUR 70 000).

11 By a tax assessment notice dated 5 March 2010, that tax reduction was not allowed on the ground that the investments for which ZPT sought to benefit from that reduction had been made in facilities for the manufacture of products intended for export, such investments being excluded from the benefit of the tax reduction by Article 182(2)(7) of the Law on corporation tax.

12 On 21 May 2010, ZPT brought an action challenging that assessment notice before the Administrativen sad — grad Burgas (Burgas Administrative Court, Bulgaria). By judgment of 12 January 2011, that court annulled that assessment notice, finding that the refusal to grant the tax reduction was not justified as there were no exports associated with the independent electrogalvanisation manufacturing function in which ZPT declared that it wished to invest the required resources and that the four-year period during which the resources corresponding to the corporation tax reduction could be invested by that company had not expired.

13 By judgment of 27 December 2011, which was delivered on appeal and has become final, the Varhoven administrativen sad (Supreme Administrative Court) set aside that judgment and dismissed ZPT's appeal against the assessment notice of 5 March 2010. Finding that investments had been made in the hot-dip galvanising facility and that products were exported from that facility, that court held that the condition laid down in Article 182(2)(7) of the Law on corporation tax concerning investment in assets not relating to exports to third countries or to Member States was not satisfied and that, in those circumstances, the tax reduction had to be regarded as constituting State aid which had the effect of distorting competition in the internal market.

14 ZPT seeks to establish before the Sofiyski gradski sad (Sofia City Court, Bulgaria) the liability of the National Assembly of the Republic of Bulgaria, the Varhoven administrativen sad (Supreme Administrative Court) and the National Revenue Agency on the basis of alleged infringements of EU law by those institutions. It claims that it is entitled to compensation in an amount equal to that of the tax reduction denied it, together with interest.

15 The Sofiyski gradski sad (Sofia City Court) is unsure whether the restriction laid down by the national legislature in Article 182(2)(7) of the Law on corporation tax is compatible with Article 1(1)(d) of Regulation No 1998/2006.

16 In those circumstances, the Sofiyski gradski sad (Sofia City Court) decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) Do implementing provisions of EU law such as Regulation No 1998/2006 have direct effect and apply directly, and, if so, does a provision of national law which narrows or restricts the applicable scope of the EU legal provisions infringe those principles?

(2) Is State aid granted in the form of tax relief compatible with competition in the internal market, where such aid is invested in assets used for the manufacture of products, some of which are exported to third countries or to Member States?

(3) Does the manufacture of products for export through the use of assets obtained by means of State aid come within the scope of activity directly linked to the quantities exported within the meaning of Article 1(1)(d) of Regulation No 1998/2006? If the answer is in the negative, are Member States entitled to provide in national legislation for additional restrictions on exporters of products manufactured using assets that are the result of tax relief investment? If the answer is in the affirmative, how does that rule relate to the provisions of Article 35 TFEU concerning the prohibition of quantitative restrictions on exports between Member States and all measures having equivalent effect and does it constitute discrimination and infringement of the free movement of goods?

(4) Does Article 1 of Regulation No 1998/2006 allow a legal person to be refused recognition of the right to *de minimis* financial aid, arising from EU law, before the expiry of the four-year period laid down in national law, in which the investment should be made, solely on the ground that in that period it also invested resources in, inter alia, independent, separate structures of its business from which exports were made?'

Consideration of the questions referred

Admissibility

17 The Varhoven administrativen sad (Supreme Administrative Court) disputes the admissibility of the request for a preliminary ruling.

18 In the first place, that court does not consider it relevant or necessary, since the referring court must adjudicate solely on the issue of whether there is a manifest infringement of EU law and a causal link between that alleged infringement and the alleged damage.

19 In that regard, it should be noted that, according to settled case-law of the Court, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, inter alia, judgment of 22 September 2016, *Breitsamer und Ulrich*, C?113/15, EU:C:2016:718, paragraph 33).

20 In the present case, it must be held that, in the main proceedings, ZPT seeks to establish the liability of the Bulgarian State by reason of a decision of the Varhoven administrativen sad (Supreme Administrative Court) and of alleged infringements of EU law attributable to the National Assembly of the Republic of Bulgaria and the National Public Revenue Agency. By those questions, the referring court seeks specifically to ascertain whether the provisions of national law at issue in the main proceedings infringed the EU-law rules on State aid or the free movement of goods. In those circumstances, the present request for a preliminary ruling cannot be regarded as being manifestly irrelevant.

21 In the second place, the Varhoven administrativen sad (Supreme Administrative Court) states that, by its request for a preliminary ruling, the referring court seeks to obtain a review of a national decision having the force of *res judicata* which it is not possible to challenge, even with a view to remedying an infringement of EU law. For the same reason, it submits, such a request is not of a preliminary nature.

22 It must be borne in mind, first, that that argument relates to the substance of the request for a preliminary ruling, not to its admissibility. Second, proceedings seeking to render the State liable do not have the same purpose and do not necessarily involve the same parties as the proceedings resulting in the decision which has acquired the status of *res judicata*. It follows that the principle of *res judicata* does not preclude recognition of the principle of State liability by reason of a decision of a court adjudicating at last instance (judgment of 30 September 2003, *Köbler*, C?224/01, EU:C:2003:513, paragraphs 39 and 40).

23 In the third place, it is submitted, the reference for a preliminary ruling infringes the Bulgarian courts' procedural autonomy and the rules for the conferral of jurisdiction laid down by the Bulgarian Constitution, since the civil courts, to which the referring court belongs, do not have jurisdiction to declare unlawful a decision delivered by the administrative courts.

24 However, it follows from the principle of procedural autonomy that, in the absence of EU rules, it is for the legal system of each Member State to designate the court competent to determine disputes relating to the reparation of an infringement of EU law resulting from a decision of the national court of last instance (judgment of 30 September 2003, *Köbler*, C?224/01, EU:C:2003:513, paragraph 59). In that context, it is not for the Court of Justice to rule on which courts have jurisdiction to hear an action seeking to establish liability such as that brought before the referring court (judgment of 23 November 2017, *CHEZ Electro Bulgaria and Frontex International*, C?427/16 and C?428/16, EU:C:2017:890, paragraph 30).

25 In the fourth place, the Varhoven administrativen sad (Supreme Administrative Court) sets out, on the basis of Article 94 of the Rules of Procedure of the Court, several complaints relating to the imprecision, or indeed the inaccuracy, in fact and in law, of the request for a preliminary ruling, its lack of connection with the dispute in the main proceedings and its failure to state reasons.

26 First, it submits, the request for a preliminary ruling does not include a summary of the findings of fact on which it is based, contrary to Article 94 of the Rules of Procedure, and even distorts, in its fourth question, the facts in the main proceedings. It must be noted that the order for reference contains a rather detailed summary of the facts in the main proceedings. As for the alleged distortion of the facts, this in fact covers a discussion on the legal classification of ZPT's places of business, which is a matter in respect of which the national court alone has jurisdiction and which does not affect the answers to be given to the questions addressed to the Court.

27 Second, while the wording of the first question does not replicate precisely the national provisions at issue nor the issue raised by their interaction with Regulation No 1998/2006, the decision to refer does, by contrast, include all necessary explanations in this respect.

28 Third, it is true that the second question, which asks whether State aid in favour of exported goods is compatible with competition in the internal market, is imprecise in its wording. However, in order to provide a useful answer, it is for the Court, if necessary, to reformulate the questions referred to it (see, inter alia, judgment of 17 December 2015, *Szemerey*, C?330/14, EU:C:2015:826, paragraph 30).

29 In that regard, the referring court seeks to ascertain, by the second question, to what extent the principle of the free movement of goods precludes aid, even *de minimis* aid, in favour of exports. As it is settled case-law that secondary law must be interpreted, so far as possible, in a manner which is compatible with the primary law of the European Union, the principle of free movement of goods may have a bearing on the interpretation of Article 1(1)(d) of Regulation No 1998/2006, which is the subject of the other questions.

30 Fourth, the Varhoven administrativen sad (Supreme Administrative Court) rightly points out that the referring court does not expressly set out, in the third part of the third question, the reasons for its uncertainty as to the validity of Article 1(1)(d) of Regulation No 1998/2006 in the light of Article 35 TFEU. However, those reasons can easily be deduced from the other questions submitted for a preliminary ruling. It is clearly useful for the national court to know whether the provision of secondary law which it asks the Court to interpret, in order to assess the lawfulness of the national provisions at issue,is invalid in the light of Article 35 TFEU.

31 In the fifth place, the Varhoven administrativen sad (Supreme Administrative Court) considers that it cannot be a defendant in proceedings seeking reparation for harm arising from its alleged infringement of EU law without disregarding the principle of the separation of powers, the requirement of judicial independence and impartiality and respect for the judicial powers and hierarchy established by the Bulgarian Constitution.

32 It should be recalled that, under the second paragraph of Article 23 of the Statute of the Court of Justice of the European Union and Article 96(1)(a) of the Rules of Procedure, the parties to the main proceedings are in particular authorised to submit observations to the Court in preliminary-ruling proceedings. The status of party in the dispute in the main proceedings, by reason of which the Varhoven administrativen sad (Supreme Administrative Court) was invited to submit its observations in the context of the present proceedings, is a matter for the national court alone in the light of the rules of national law. In any event, there is no requirement for the parties to the dispute in the main proceedings to submit observations to the Court in the context of preliminary-ruling proceedings.

33 In those circumstances, the request for a preliminary ruling is admissible.

Substance

Consideration of the third part of the third question

34 By the third part of the third question, the referring court asks, in essence, whether Article 1(1)(d) of Regulation No 1998/2006 is invalid in the light of Article 35 TFEU.

35 Under Article 107(1) TFEU, ‘any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market’. Article 108(3) TFEU provides that ‘the Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid’.

36 However, in accordance with Article 109 TFEU, the Council of the European Union is authorised to make any appropriate regulations, in particular for determining the conditions in which Article 108(3) TFEU is to apply and the categories of aid exempt from the procedure under that provision (see, to that effect, judgment of 21 July 2016, *Dilly’s Wellnesshotel*, C?493/14, EU:C:2016:577, paragraph 33). Thus, Regulation No 994/98 empowered the Commission to set, by way of regulation, a ceiling below which aid is not subject to the procedure of notification to the Commission laid down in Article 108 TFEU.

37 By Regulation No 1998/2006, the Commission set the ceiling below which aid is deemed not significantly to affect trade between the Member States, and need not, therefore, be notified to it, at EUR 200 000 over a period of three years. That regulation, however, excludes from that regime certain categories of aid, in particular, in accordance with Article 1(1)(d) thereof, ‘aid to export-

related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity'.

38 Article 35 TFEU prohibits quantitative restrictions on exports between Member States, as well as all measures having equivalent effect.

39 Three preliminary comments have to be made on the assessment of whether Article 1(1)(d) of Regulation No 1998/2006 is compatible with those provisions.

40 In the first place, the prohibition of quantitative restrictions on exports and of measures having equivalent effect applies both to the authorities of the European Union and to the Member States, with the result that a provision of secondary law can be challenged on that basis, including by means of a question submitted for a preliminary ruling on the issue of validity (see, to that effect, judgment of 17 May 1984, *DenkavitNetherland*, 15/83, EU:C:1984:183, paragraph 15).

41 In the second place, whereas Article 1(1)(d) of Regulation No 1998/2006 covers exports to third countries or to Member States, Article 35 TFEU applies only to the movement of goods between Member States. Consequently, in so far as it relates to exports to third countries, Article 1(1)(d) of that regulation cannot be contrary to Article 35 TFEU.

42 In the third place, Article 1(1)(d) of Regulation No 1998/2006 does not, in itself, establish quantitative restrictions on exports. It is necessary, by contrast, to determine whether that provision may be classified as a 'measure having equivalent effect to a quantitative restriction on exports'.

43 In that regard, the Court has held that a national measure applicable to all traders active in the national territory which has a greater effect on goods leaving the market of the exporting Member State than on the marketing of goods in the domestic market of that Member State is covered by the prohibition laid down by Article 35 TFEU (see judgment of 21 June 2016, *New Valmar*, C?15/15, EU:C:2016:464, paragraph 36 and the case-law cited).

44 It follows from that definition that classification as a 'measure having equivalent effect to a quantitative restriction on exports' presupposes the existence of restrictive effects on trade (judgment of 21 June 2016, *New Valmar*, C?15/15, EU:C:2016:464, paragraph 42). Those effects may be of merely minor importance (judgment of 1 April 2008, *Government of the French Community and Walloon Government*, C?212/06, EU:C:2008:178, paragraph 52), provided that they are not too uncertain or too indirect (judgment of 21 June 2016, *New Valmar*, C?15/15, EU:C:2016:464, paragraph 45 and the case-law cited).

45 The prohibition of aid linked to exports to Member States laid down in Article 1(1)(d) of Regulation No 1998/2006, even if it does not exceed the *de minimis* threshold, has no effect on trade in itself, since it merely requires the Member States to refrain from granting a certain type of aid. Consequently, that provision cannot amount to a measure having an effect equivalent to a quantitative restriction on exports, prohibited by Article 35 TFEU.

46 However, the main effect of the fundamental rules of the internal market and of the general aid scheme which forms part of it is that the exclusion of export aid from the scope of Regulation No 1998/2006 is justified in the light of the actual purpose of Article 107 TFEU. According to that article, State aid is, indeed, incompatible with the internal market 'in so far as it affects trade between Member States'. Export aid, even of a modest amount, is, by definition, one of the forms of aid which may affect trade between Member States, both directly by conferring a competitive advantage on the products exported and indirectly by inciting the other Member States to take

symmetric countermeasures intended to counterbalance that competitive advantage. As the Commission argued during the hearing, allowing such aid would be particularly detrimental to the functioning of the internal market.

47 It follows that Article 35 TFEU cannot justify a measure contrary to Article 107 TFEU. The reasons for which the Court held that the provisions of the FEU Treaty on State aid cannot be used to frustrate the Treaty rules on the free movement of goods also justify the reciprocal assertion, namely that those provisions and those rules have a common purpose, namely to ensure the free movement of goods between Member States under normal conditions of competition (judgments of 5 June 1986, *Commission* v *Italy*, 103/84, EU:C:1986:229, paragraph 19, and of 20 March 1990, *Du Pont de Nemours Italiana*, C?21/88, EU:C:1990:121, paragraphs 19 to 21).

48 Therefore, the answer to the third part of the third question is that consideration thereof has not disclosed any factor of such a kind as to affect the validity of Article 1(1)(d) of Regulation No 1998/2006.

The first and second questions, the first two parts of the third question and the fourth question

49 By the first and second questions, the first two parts of the third question and the fourth question, the referring court asks, in essence, whether Article 1(1)(d) of Regulation No 1998/2006 must be interpreted as precluding provisions of national law, such as those at issue in the main proceedings, which exclude investments in assets used for export-related activities from the benefit of tax relief constituting *de minimis* aid.

50 It must be noted, in the first place, that Article 1(1)(d) of Regulation No 1998/2006 must be placed back in the overall context of that regulation, the purpose of which is to allow derogations, for State aid of a limited amount, from the rule that all aid must, prior to implementation, be notified to the Commission.

51 The purpose of Article 1(1)(d) of Regulation No 1998/2006 is to limit the possible scope of that derogation by excluding export aid from it. That prohibition thus amounts to a return to the principle of prohibition of State aid laid down by the Treaty. It cannot, therefore, be interpreted strictly.

52 It should be noted, in the second place, that Regulation No 1998/2006 did not in any way have the purpose, and in addition could not lawfully have had the effect, either of obliging the Member States to grant certain aid or of compelling them to use all the possibilities of derogation for which it provides.

53 The questions raised by the national court must be answered in the light of those reservations.

54 Articles 184 and 188 of the Law on corporation tax grant a tax reduction of an amount below the ceiling set by Regulation No 1998/2006 to undertakings engaged in manufacturing activities in a municipality identified as presenting a significantly higher unemployment rate than the national average, on condition that they invest in that municipality the amount of the tax reduction within a period of four years starting from the beginning of the year in respect of which the tax is deducted. Under Article 182(2)(7) of that law, the tax relief does not apply ‘to investment in assets used in activities relating to exports’. The Republic of Bulgaria thus intended to comply with Article 1(1)(d) of Regulation No 1998/2006, which excludes aid benefiting exports from the benefit of the *de minimis* rule.

55 Article 1(1)(d) of Regulation No 1998/2006 does not exclude all aid which may have an impact on exports, but only that which has as its direct purpose, by its very form, the promotion of sales in another State. Aid ‘directly linked to the quantities exported’, aid relating to the establishment and operation of a distribution network or aid relating to other current expenditure linked to the export activity are the only forms of aid that are regarded as such.

56 It follows that investment aid, on condition of it not being, in one form or another, determined, in principle and in its amount, by the quantity of the goods exported, is not included within ‘aid to export-related activities’ within the meaning of Article 1(1)(d) of Regulation No 1998/2006 and does not therefore come within the scope of application of that provision, even if the investments thus supported facilitate the development of goods intended for export.

57 In the opposite case – that is to say, where investment aid is determined by the quantity of goods exported and by whether it subsequently comes within the scope of application of Article 1(1)(d) of Regulation No 1998/2006 – it is excluded from the benefit of the *de minimis* rule.Thus interpreted, Article 1(1)(d) of Regulation No 1998/2006 does not preclude provisions of national law such as those of Article 182(2)(7) of the Law on corporation tax, provided that they are interpreted by the national courts, as their wording allows, as involving the same exclusion.

58 Therefore, the answer to the first and second questions, the first two parts of the third question and the fourth question is that Article 1(1)(d) of Regulation No 1998/2006 must be interpreted as not precluding provisions of national law, such as those at issue in the main proceedings, which exclude investments in assets used for export-related activities from the benefit of tax relief constituting *de minimis* aid.

Costs

59 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 (First Chamber) hereby rules:

1. **Consideration of the third part of the third question has not disclosed any factor of such a kind as to affect the validity of Article 1(1)(d) of Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles [107 TFEU and 108 TFEU] to** *de minimis* **aid.**

2. **Article 1(1)(d) of Regulation No 1998/2006 must be interpreted as not precluding provisions of national law, such as those at issue in the main proceedings, which exclude investments in assets used for export-related activities from the benefit of tax relief constituting** *de minimis* **aid.**

[Signatures]

* Language of the case: Bulgarian.