

Provisional text

JUDGMENT OF THE COURT (Ninth Chamber)

8 September 2022 (*)

(Reference for a preliminary ruling – Customs union – Union Customs Code – Regulation (EU) No 952/2013 – Place where the customs debt is incurred – Value added tax (VAT) – Directive 2006/112/EC – Article 30 – Article 60 – Article 71(1) – Chargeable event and place where the import VAT becomes chargeable – Place where the tax liability is incurred – Finding of a failure to comply with an obligation imposed by EU customs legislation – Determination of the place of importation of goods – Means of transport registered in a third country and imported into the European Union in infringement of customs legislation)

In Case C-368/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Finanzgericht Hamburg (Finance Court, Hamburg, Germany), made by decision of 2 June 2021, received at the Court on 14 June 2021, in the proceedings

R.T.

v

Hauptzollamt Hamburg,

THE COURT (Ninth Chamber),

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

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- R.T., by Y. Özkan and U. Schrömbges, Rechtsanwälte,
- the European Commission, by F. Clotuche-Duvieusart, J. Jokubauskaitė and R. Pethke, 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 30 and 60 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

(OJ 2006 L 347, p. 1), as amended by Council Directive (EU) 2018/2057 of 20 December 2018 (OJ 2018 L 329, p. 3) ('Directive 2006/112').

2 The request has been made in proceedings between R.T. and the Hauptzollamt Hamburg (Principal Customs Office, Hamburg, Germany; 'the customs office') concerning the levying of import value added tax (VAT) on a vehicle imported into the territory of the European Union in breach of customs legislation.

Legal context

European Union law

Directive 2006/112

3 Article 2(1)(d) of Directive 2006/112 provides that the importation of, inter alia, the following goods is subject to VAT:

'...

(d) the importation of goods.'

4 Article 30(1) of that directive provides:

"Importation of goods" shall mean the entry into the Community of goods which are not in free circulation within the meaning of Article 24 of the Treaty.'

5 Article 60 of that directive, in Chapter 4 thereof, entitled 'Place of importation of goods', of Title V, entitled 'Place of taxable transactions', provides:

'The place of importation of goods shall be the Member State within whose territory the goods are located when they enter the Community.'

6 In Chapter 4, entitled 'Importation of goods', of Title VI, entitled 'Chargeable event and chargeability of VAT', Article 71 of Directive 2006/112 is worded as follows:

'1. Where, on entry into the Community, goods are placed under one of the arrangements or situations referred to in Articles 156, 276 and 277, or under temporary importation arrangements with total exemption from import duty, or under external transit arrangements, the chargeable event shall occur and VAT shall become chargeable only when the goods cease to be covered by those arrangements or situations.

However, where imported goods are subject to customs duties, ... the chargeable event shall occur and VAT shall become chargeable when the chargeable event in respect of those duties occurs and those duties become chargeable.

2. Where imported goods are not subject to any of the duties referred to in the second subparagraph of paragraph 1, Member States shall, as regards the chargeable event and the moment when VAT becomes chargeable, apply the provisions in force governing customs duties.'

The Customs Code

7 Under Article 79(1)(a) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1; 'the Customs Code'):

‘For goods liable to import duty, a customs debt on import shall be incurred through non-compliance with any of the following:

(a) one of the obligations laid down in the customs legislation concerning the introduction of non-Union goods into the customs territory of the Union, their removal from customs supervision, or the movement, processing, storage, temporary storage, temporary admission or disposal of such goods within that territory;

...’

8 Article 87 of that regulation, entitled ‘Place where the customs debt is incurred’, provides:

‘1. A customs debt shall be incurred at the place where the customs declaration or the re-export declaration referred to in Articles 77, 78 and 81 is lodged.

In all other cases, the place where a customs debt is incurred shall be the place where the events from which it arises occur.

If it is not possible to determine that place, the customs debt shall be incurred at the place where the customs authorities conclude that the goods are in a situation in which a customs debt is incurred.

...

4. If a customs authority establishes that a customs debt has been incurred under Article 79 or Article 82 in another Member State and the amount of import or export duty corresponding to that debt is lower than EUR 10 000, the customs debt shall be deemed to have been incurred in the Member State where the finding was made.’

German law

9 Paragraph 21(2) of the Umsatzsteuergesetz (Law on Turnover Tax) of 21 February 2005 (BGBl. 2005 I, p. 386) provides:

‘The rules applicable to customs duties shall apply by analogy to import turnover tax; ...’

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

10 In January 2019, R.T., residing in Germany, purchased and registered a vehicle in Georgia. In March 2019, R.T. drove the vehicle from Georgia to Germany via Turkey, Bulgaria, Serbia, Hungary and Austria without presenting that vehicle to an import customs office.

11 In Germany, R.T. used the vehicle, which came to the attention of a control team of the customs office on 28 March 2019 during an inspection. It was also noticed in October 2020 due to the commission of a road traffic offence.

12 On 13 May 2019, the customs office claimed from R.T., by notice of customs duty assessment, the amounts of EUR 4 048.13 in customs duties and EUR 8 460.59 in import VAT.

13 As his appeal to the customs office was dismissed, R.T. brought an action for annulment of that notice on 9 February 2020 before the Finanzgericht Hamburg (Finance Court, Hamburg, Germany). During the course of the proceedings, he decided to challenge only the decision setting the amount of import VAT.

14 As the referring court has no doubts as to the German authorities' powers to recover the customs debt, that court seeks to ascertain whether the customs office is also empowered to set the amount of import VAT. According to that court, this is the case if it follows from the interpretation of Articles 30 and 60 of Directive 2006/112 that the place of importation is Germany, despite the fact that the applicant in the main proceedings entered the European Union territory in Bulgaria.

15 Regarding the interpretation of Articles 30 and 60 of Directive 2006/112 concerning the concept and place of 'importation', the referring court takes the view that the failure to comply with obligations imposed by customs legislation committed in a Member State causes import VAT to become chargeable in that Member State only where the goods concerned were also imported into that Member State, within the meaning of VAT law.

16 That court considers that, according to the Court's case-law as applied by the German finance courts, the place of importation as defined in Article 60 of Directive 2006/112 must, in the present case, be Bulgaria, since that was where the vehicle was used for the first time. Import VAT therefore became, in principle, chargeable in that Member State, save if that vehicle were 'intended for consumption' in Germany, in the light of the judgments of 2 June 2016, *Eurogate Distribution and DHL Hub Leipzig*, C-226/14 and C-228/14, EU:C:2016:405, paragraph 65; of 1 June 2017, *Wallenborn Transports*, C-571/15, EU:C:2017:417, paragraph 54; and of 10 July 2019, *Federal Express Corporation Deutsche Niederlassung*, C-26/18, EU:C:2019:579, paragraph 44.

17 However, according to the referring court, the judgments referred to in the previous paragraph – which establishes the idea of intended consumption – were delivered on the subject of goods which had been transported, whereas the case in the main proceedings concerns a vehicle used as a means of transport. In that regard, several special German courts have understood the case-law referred to above as meaning that means of transport enter the economic network of the European Union in the Member State in the territory of which they are actually used for the first time.

18 According to that approach, the vehicle of the applicant in the main proceedings should, according to the referring court, be regarded as having entered the economic network of the European Union in Bulgaria, given that it is in that Member State that that vehicle was used for the first time. Consequently, the place of importation of that vehicle is Bulgaria for the purposes of Article 60 of Directive 2006/112.

19 However, that conclusion appears to run counter to that flowing from the judgment of 3 March 2021, *Hauptzollamt Münster (Place where VAT is incurred)* (C-7/20, EU:C:2021:161), in which the Court decided that, despite the fact that the vehicle physically entered the customs territory of the European Union through Bulgaria, it had actually been used in Germany, the Member State in which the applicant in the main proceedings resides.

20 Should the place of importation of the vehicle in question be in another Member State than the Federal Republic of Germany, the referring court refers a second question in order to ascertain whether Article 87(4) of the Customs Code empowers the German customs authorities to set the amount of import VAT.

21 In that connection, that court is uncertain whether the application of that provision *mutatis mutandis*, imposed in Paragraph 21(2) of the Law on Turnover Tax, is contrary to Directive 2006/112.

22 In those circumstances, the Finanzgericht Hamburg (Finance Court, Hamburg) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Are Articles 30 and 60 of Directive [2006/112] to be interpreted as meaning that the place of importation under [VAT] legislation of a means of transport registered in a third country and imported into the [European Union] in breach of customs legislation is located in the Member State in which the customs legislation was infringed and the means of transport was first used as such in the [European Union], or is it located in the Member State in which the person who failed to comply with customs obligations resides and uses the vehicle?

(2) If the place of importation is located in a Member State other than Germany, is Directive 2006/112 and, in particular, Articles 30 and 60 thereof, infringed where Article 87(4) of [the Customs Code] is declared under a national provision to be applicable *mutatis mutandis* to import [VAT]?’

Consideration of the questions referred

The first question

23 By its first question, the referring court asks, in essence, whether Articles 30 and 60 of Directive 2006/112 must be interpreted as meaning that, for VAT purposes, the place of importation of a vehicle registered in a third country and imported into the European Union in breach of customs legislation is situated in the Member State in which the customs legislation was infringed and the vehicle was first used in the European Union, or is situated in the Member State in which the person who failed to comply with customs obligations resides and actually uses the vehicle.

24 Article 2(1)(d) of Directive 2006/112 provides that the importation of goods is subject to VAT. Under the first paragraph of Article 30 of that directive, ‘importation of goods’ means the entry into the European Union of goods which are not in free circulation. Under Article 60 of that directive, the place of importation is the Member State within whose territory the goods are situated when they enter the European Union.

25 Where the imported goods are subject to customs duties, the second paragraph of Article 71(1) of Directive 2006/112 authorises Member States to link the chargeable event and the date on which the VAT on importation becomes chargeable with those laid down for customs duties. Import VAT and customs duties display comparable essential features since they arise from the fact of importation of goods into the European Union and the subsequent distribution of those goods through the economic channels of the Member States (see, to that effect, judgment of 7 April 2022, *Kauno teritorin? muitin?*, C-489/20, EU:C:2022:277, paragraph 47 and the case-law cited).

26 Thus, in addition to the customs debt, there may also be a requirement to pay VAT where, on the basis of the particular unlawful conduct which gave rise to the customs debt, it can be presumed that the goods entered the economic network of the European Union and, consequently, that they may have undergone consumption, that is, the act on which VAT is levied (judgment of 7 April 2022, *Kauno teritorin? muitin?*, C-489/20, EU:C:2022:277, paragraph 48 and the case-law cited).

27 However, such a presumption may be rebutted if it is established that, despite failures to comply with customs legislation which result in the incurrance of a customs debt on importation in

the Member State where those failures occurred, goods have been introduced into the economic network of the European Union via the territory of another Member State, where they were intended for consumption. In that case, the chargeable event for VAT on importation occurs in that other Member State (judgment of 3 March 2021, *Hauptzollamt Münster (Place where VAT is incurred)*, C-7/20, EU:C:2021:161, paragraph 31 and the case-law cited).

28 Accordingly, in a case concerning goods in respect of which customs legislation was not complied with in Germany, where they had only been transferred from one aeroplane to another before being routed to Greece, the Court held that the goods in question had entered the economic network of the European Union in that Member State and that the related import VAT had become chargeable there, since that Member State was their final destination and the place in which they had been consumed (see, to that effect, judgment of 10 July 2019, *Federal Express Corporation Deutsche Niederlassung*, C-26/18, EU:C:2019:579, paragraph 53).

29 The Court has also held that a specific vehicle, imported in breach of customs legislation, must be regarded as having entered the economic network of the Member State in which the taxable person resides, where that vehicle had actually been used in that Member State, even if, when travelling from a third country to that Member State, that vehicle had physically entered the customs territory of the European Union via another Member State. As a result, import VAT had become chargeable in that first Member State (see, to that effect, judgment of 3 March 2021, *Hauptzollamt Münster (Place where VAT is incurred)*, C-7/20, EU:C:2021:161, paragraphs 34 and 35).

30 In the present case, it is apparent from the request for a preliminary ruling, subject to verification by the referring court, that R.T., when travelling from Georgia to Germany in March 2019, drove his car via Bulgaria, then through Serbia, Hungary and Austria. R.T. resides in Germany, where he used that vehicle from March 2019 and, at the very least, until October 2020.

31 Having regard to the findings made in the judgment of 3 March 2021, *Hauptzollamt Münster (Place where VAT is incurred)*, (C-7/20, EU:C:2021:161), set out in paragraph 28 of the present judgment, it must be held that even though the first use of the vehicle and its physical entry into the European Union were in Bulgaria for transit purposes, it was actually used in the Member State of its destination, in this case Germany. Consequently, in so far as the vehicle entered into the economic network of the European Union in that Member State, it was imported for the purposes of Articles 30 and 60 of Directive 2006/112 into the same Member State.

32 That finding is not called into question by the hypothesis set out by the referring court that the first use of the vehicle within the European Union as a means of transport would amount to its 'consumption', the act on which VAT is levied, within the meaning of the judgment of 10 July 2019, *Federal Express Corporation Deutsche Niederlassung* (C-26/18, EU:C:2019:579, paragraph 44), or would constitute at least a step in that consumption, which would mean that, in the present case, the vehicle entered the economic network of the European Union in Bulgaria.

33 It follows from the judgment of 10 July 2019, *Federal Express Corporation Deutsche Niederlassung* (C-26/18, EU:C:2019:579, paragraph 48), the physical entry of a product into a Member State notwithstanding, that product can be regarded as having been imported into the economic network of the European Union in another Member State when it is in that Member State that that product was 'intended for consumption'. In those circumstances, the Court found that the goods in question had entered the economic network of the European Union in the Member State of their final destination and that, consequently, the import VAT relating to those goods had arisen in that Member State (see, to that effect, judgment of 10 July 2019, *Federal Express Corporation Deutsche Niederlassung*, C-26/18, EU:C:2019:579, paragraph 53).

34 Accordingly, a vehicle registered in a third country which, as the referring court also observes, cannot be ‘consumed’, but which has been used by the taxable person to travel from that country to the Member State in which he or she resides, where the vehicle was actually and permanently used, can be regarded as having entered the economic network of the European Union in that Member State. Even though the product was not itself transported into that Member State and was used as a means of transport in the Member State where it physically entered the European Union, that product was used in that Member State merely to move it to the Member State of its final destination for the purpose of its actual and permanent use there. In that connection, it must be observed that the residence of the user can provide information as to that use.

35 Having regard to all the foregoing considerations, the answer to the first question is that Articles 30 and 60 of Directive 2006/112 must be interpreted as meaning that, for VAT purposes, the place of importation of a vehicle registered in a third country and imported into the European Union in infringement of customs legislation is situated in the Member State in which the person who failed to comply with customs obligations resides and actually uses the vehicle.

The second question

36 Having regard to the answer to the first question, there is no need to answer the second question.

Costs

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

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

Articles 30 and 60 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive (EU) 2018/2057 of 20 December 2018

must be interpreted as meaning that:

for value added tax purposes, the place of importation of a vehicle registered in a third country and imported into the European Union in breach of customs legislation is situated in the Member State in which the person who failed to comply with customs obligations resides and actually uses the vehicle.

[Signatures]

* Language of the case: German.