Provisional text

JUDGMENT OF THE COURT (Seventh Chamber)

8 February 2024 (*)

(Reference for a preliminary ruling – Common system of value added tax (VAT) – Directive 2006/112/EC – Article 98 – Option for the Member States to apply a reduced rate of VAT to certain supplies of goods and services – Annex III, point 12 – Reduced rate of VAT applicable to accommodation provided in hotels and similar establishments – Application of that rate only to accommodation facilities with a categorisation certificate – Principle of fiscal neutrality)

In Case C?733/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria), made by decision of 18 November 2022, received at the Court on 29 November 2022, in the proceedings

Direktor na Direktsia ‘Obzhalvane i danachno-osiguritelna praktika’ – Sofia pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

v

‘Valentina Heights’ EOOD,

THE COURT (Seventh Chamber),

composed of F. Biltgen, President of the Chamber, N. Wahl and M.L. Arastey Sahún (Rapporteur), Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Direktor na Direktsia ‘Obzhalvane i danachno-osiguritelna praktika’ – Sofia pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite, by E. Pavlova,

– ‘Valentina Heights’ EOOD, by D.D. Dimitrova, advokat,

– the European Commission, by A. Armenia and D. Drambozova, 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 Article 98(2) of, and point

12 of Annex III to, Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) (‘the VAT Directive’).

2 The request has been made in proceedings between the Direktor na Direktsia ‘Obzhalvane i danachno-osiguritelna praktika’ – Sofia pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite (Director of the Sofia ‘Appeals and Tax and Social Insurance Practice Directorate’ at the Central Administration of the National Revenue Agency, Bulgaria) (‘the Direktor’) and ‘Valentina Heights’ EOOD concerning application of the reduced rate of value added tax (VAT) to that company’s activities in a period during which it did not have a categorisation certificate for the accommodation facility that it manages.

Legal context

European Union law

3 Article 96 of the VAT Directive provides:

‘Member States shall apply a standard rate of VAT, which shall be fixed by each Member State as a percentage of the taxable amount and which shall be the same for the supply of goods and for the supply of services.’

4 Article 98(1) and (2) of that Directive provides:

‘1. Member States may apply either one or two reduced rates.

2. The reduced rates shall apply only to supplies of goods or services in the categories set out in Annex III.

…’

5 Article 135 of the directive reads as follows:

‘1. Member States shall exempt the following transactions:

…

(l) the leasing or letting of immovable property.

2. The following shall be excluded from the exemption provided for in point (l) of paragraph 1:

(a) the provision of accommodation, as defined in the laws of the Member States, in the hotel sector or in sectors with a similar function, including the provision of accommodation in holiday camps or on sites developed for use as camping sites;

…’

6 Annex III to the VAT Directive contains the list of supplies of goods and services to which the reduced rates of VAT referred to in Article 98 of that directive may be applied. Point 12 of that annex refers to the following services:

‘accommodation provided in hotels and similar establishments, including the provision of holiday accommodation and the letting of places on camping or caravan sites’.

Bulgarian law

The Law on VAT

7 Under Article 66 of the zakon za danak varhu dobavenata stoynost (Law on Value Added Tax) (DV No 63 of 4 August 2006), in the version applicable to the dispute in the main proceedings ('the Law on VAT'):

'(1) The rate of tax shall be 20% for:

1. taxable supplies, with the exception of those expressly indicated as zero-rated.

…

(2) … The rate of tax for accommodation provided in hotels and similar establishments, including the provision of holiday accommodation and the letting of places on camping or caravan sites, shall be 9%.

…'

8 Paragraph 1, point 45, of the Additional Provisions of the Law on VAT provides that, for the purposes of that law, 'accommodation' means 'basic tourist services within the meaning of point 69 [of Paragraph 1] of the Additional Provisions of the [zakon za turizma (Law on Tourism) (DV No 30 of 26 March 2013)], other than in the case of the provision of a general tourist service'.

Regulation implementing the Law on VAT

9 Article 40 of the pravilnik za prilagane na zakona za danak varhu dobavenata stoynost (Regulation implementing the Law on VAT) (DV No 76 of 15 September 2006), entitled 'Accommodation provided by hotels', provides in paragraph 1:

'In order to prove the supply referred to in Article 66(2) of the [Law on VAT], where the service is provided by a person that provides accommodation in tourist establishments, that person must have:

1. a copy of the register of tourist arrivals;

2. a categorisation certificate for the tourist establishment;

3. an invoice for the supply, unless no such invoice is required to be issued under Article 113(3) of the [Law on VAT].'

The Law on Tourism

10 Article 111 of the Law on Tourism is worded as follows:

'(1) Within the territory of Bulgaria, hotel and catering activities may be carried on only in tourist establishments categorised under this law.

(2) … For the types of establishments and the categories specified in this law, that categorisation shall be carried out by the [ministara na turizma (Minister for Tourism, Bulgaria)] and by the mayors of the municipalities or by officials authorised by them.

…'

11 Under Article 113(1) of that law:

‘A person may carry on hotel or catering activities subject to:

…

3. having staff with the required occupational and linguistic skills and, as regards managerial staff, with the seniority required.’

12 Article 114 of that law provides in points 1 and 2:

‘Persons engaged in hotel and/or catering activities in tourist establishments … shall:

1. provide tourist services in a categorised tourist establishment or in an establishment to which a provisional certificate has been issued pursuant to the commencement of categorisation proceedings;

2. provide tourist services in a tourist establishment meeting the requirements of the category assigned to it …’

13 Article 133(1) of that law provides:

‘The category of accommodation facilities and of the catering and entertainment establishments complementary to them … shall be determined on the basis of compliance with the mandatory minimum requirements relating to construction, layout and outfitting, service, services offered and the occupational and linguistic skills of the staff …’

14 Paragraph 1 of the Additional Provisions of the Law on Tourism provides:

‘For the purposes of this law:

…

69. “Basic tourist services” shall mean: accommodation, meals and transport.

…’

15 Under Paragraph 121 of the Transitional and Final Provisions of the Law amending and supplementing the Law on Tourism:

‘For tourist establishments categorised before 26 March 2013 [the date of entry into force of the Law on Tourism], categorisation documents must be filed in 2019.’

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

16 Valentina Heights is a company incorporated under Bulgarian law the object of which includes tourism, catering, hotel and tour operating activities. It was registered for the purposes of the Law on VAT on 13 December 2016.

17 The company was the subject of a tax audit covering the period from 13 December 2016 to 29 February 2020. In the course of the audit, it was established that, during that period, the company had taken a lease of a holiday apartment complex in the town of Bansko (Bulgaria), likewise known as ‘Valentina Heights’, (‘the holiday complex in question’), belonging to private individuals. According to the management contracts for the privately owned properties comprising

the complex, the owners of those properties agreed that Valentina Heights would manage and maintain the properties and rent them out to third parties on their behalf. That company accordingly carried on an accommodation activity at that complex during the period in question. The income from that activity was recorded by means of electronic cash registers connected to the tax authorities and by bank transfer. The company charged VAT at a rate of 9% on the transactions.

18 Valentina Heights produced a certificate dated 15 February 2013, issued by the mayor of the municipality of Bansko, categorising the holiday complex in question, that is to say, a guest house with a capacity of 9 bedrooms and 19 beds.

19 On 18 November 2016, that company filed an application with the Ministerstvo na turizma (Ministry of Tourism, Bulgaria) for the complex to be included in the ‘three star’ category, with a declared capacity of 23 bedrooms and 46 beds.

20 By order of 7 March 2019, the mayor of the Bansko municipality withdrew the categorisation of the guest house granted by the above certificate.

21 On 27 September 2019, Valentina Heights applied to the Ministry of Tourism for a snack bar belonging to the holiday complex in question to be included in the ‘two star’ category.

22 On 22 July, 1 and 16 October 2019, and 16 and 18 September 2020, that company submitted documents supplementing those filed with the applications for categorisation referred to in paragraphs 19 and 21 of this judgment.

23 By order of 21 September 2020, the zamestnik-ministara na turizma (Deputy Minister for Tourism, Bulgaria) instituted categorisation proceedings for those tourist establishments and issued provisional certificates, valid until 21 January 2021, for the holiday complex in question and for its snack-bar.

24 On 4 December 2020, the revenue department of the Teritorialna direktsia na Natsionalnata agentsia za prihodite (Regional Directorate of the National Revenue Agency, Bulgaria) issued an audit notice adjusting the declared VAT for the taxation periods March 2019 and June 2019 and for the taxation period from August 2019 to February 2020, which was confirmed by a decision of the Direktor of 22 February 2021.

25 That tax audit notice stated that Valentina Heights held the certificate referred to in paragraph 18 of this judgment from 15 February 2013 to 7 March 2019. It was accordingly found that, after 7 March 2019, that company did not have a categorisation certificate for the holiday complex in question and that it had therefore wrongly referred to VAT of 9% on the invoices that it had drawn up after that date. As a result, that company was not compliant with Article 40(1)(2) of the Regulation implementing the Law on VAT, under which, in order to prove the existence of a supply qualifying for the reduced VAT rate of 9%, the person providing the services in question must have, inter alia, a categorisation certificate. Consequently, in accordance with Article 66(1) of the Law on VAT, additional VAT was calculated in order to levy VAT at the standard rate of 20% on the services provided by Valentina Heights when it had no categorisation certificate.

26 By judgment of 6 December 2021, the Administrativen sad Blagoevgrad (Administrative Court, Blagoevgrad, Bulgaria) upheld the action brought by Valentina Heights against that audit notice. That court found that the company had taken all the measures necessary to obtain a categorisation certificate, in so far as it had submitted the applications referred to in paragraphs 19 and 21 of this judgment in 2016 and in 2019, respectively, but the Ministry of Tourism had not issued the categorisation certificates applied for in good time, since it did not issue provisional

certificates until 23 September 2020. That court thus held, in accordance with the case-law of the Court of Justice arising in particular from the judgment of 22 October 1998, *Madgett and Baldwin* (C?308/96 and C?94/97, EU:C:1998:496), that the special scheme for the taxation of tourist services should apply on the basis of the nature of the activity carried on rather than on the basis of registration under a special law, in the present case, the Law on Tourism.

27 The Direktor brought an appeal on a point of law against that judgment before the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria), the referring court, arguing that the provision of services in tourist establishments that do not have a categorisation certificate or a provisional certificate should not be treated as accommodation within the meaning of Article 66(2) of the Law on VAT and should not benefit from a reduced rate of tax.

28 In that regard, the referring court recalls that it is clear from the case-law of the Court of Justice, in particular from the judgment of 6 May 2010, *Commission* v *France* (C?94/09, EU:C:2010:253, paragraph 28), that, where a Member State decides to make use of the possibility given by Article 98(1) and (2) of the VAT Directive to apply a reduced rate of VAT to a category of supply in Annex III to that directive, it has, subject to the requirement to observe the principle of fiscal neutrality, the possibility of limiting the application of that reduced rate of VAT to concrete and specific aspects of that category.

29 That court also states that the VAT Directive does not define the concept of ‘accommodation provided in hotels and similar establishments’ within the meaning of point 12 of Annex III to that directive.

30 The referring court observes that, by contrast, under Article 135(2), point (a), of the VAT Directive the exemption for the leasing or letting of immovable property excludes ‘the provision of accommodation, as defined in the laws of the Member States, in the hotel sector or in sectors with a similar function’. According to that court, it follows that accommodation must be provided in accordance with the definitions set out in the legislation of the Member States. Paragraph 1, point 45, of the Additional Provisions of the Law on VAT defines the concept of ‘accommodation’ by reference to the Law on Tourism.

31 The referring court is therefore uncertain whether the fact that Bulgarian law imposes categorisation requirements on accommodation provided in hotels and similar establishments can be regarded as limiting application of the reduced rate to concrete and specific aspects, within the meaning of the case-law of the Court of Justice, or whether the reduced rate of VAT for such accommodation should be applied on the basis of the nature of the activity carried on rather than on the basis of the categorisation required under the Law on Tourism.

32 In those circumstances, the Varhoven administrativen sad (Supreme Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Article 98(2) of, in conjunction with point 12 of Annex III to, [the VAT Directive] be interpreted as meaning that the reduced rate made available in that provision for accommodation provided in hotels and similar establishments may be applied where those establishments have not been categorised in accordance with the national legal provisions of the Member State requesting the preliminary ruling[?]

(2) If that question is answered in the negative, must Article 98(2) of, in conjunction with point 12 of Annex III to, [the VAT Directive] be interpreted as meaning that it allows the reduced rate to be applied selectively to concrete and specific aspects of a given category of supply, in the case where the application of the reduced rate is subject to the condition that “accommodation provided

in hotels and similar establishments” may take place only in accommodation facilities which have been categorised in accordance with the national legal provisions of the Member State requesting the preliminary ruling, or in respect of which a provisional certificate attesting to the commencement of categorisation proceedings has been issued[?]’

Consideration of the questions referred

33 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 98(2) of the VAT Directive, read in conjunction with point 12 of Annex III thereto, must be interpreted as precluding national legislation under which the reduced rate of VAT for accommodation provided in hotels and similar establishments is subject to a requirement that such an establishment hold a categorisation certificate or a provisional categorisation certificate.

34 Under Article 96 of the VAT Directive, each Member State is to apply the same standard rate of VAT for the supply of goods and for the supply of services.

35 By way of derogation from that principle, reduced rates of VAT may be applied under Article 98 of that directive. To that end, Annex III to that directive exhaustively lists the categories of supplies of goods and services to which reduced rates may be applied.

36 In particular, under point 12 of Annex III to the VAT Directive, Member States may apply a reduced rate of VAT to ‘accommodation provided in hotels and similar establishments, including the provision of holiday accommodation and the letting of places on camping or caravan sites’.

37 The VAT Directive contains no definition of the concept of ‘accommodation provided in hotels and similar establishments’ referred to in point 12 of Annex III.

38 Nevertheless, under Article 135(2), point (a), of the VAT Directive, the VAT exemption for the leasing or letting of immovable property, established in Article 135(1)(l) of that directive, excludes ‘the provision of accommodation, as defined in the laws of the Member States, in the hotel sector or in sectors with a similar function, including the provision of accommodation in holiday camps or on sites developed for use as camping sites’.

39 In that context, it is clear that point 12 of Annex III to the VAT Directive is worded in essentially equivalent terms to Article 135(2), point (a), of that directive.

40 As the latter provision specifies, the provision of accommodation in, among others, the hotel sector is to be understood ‘as defined in the laws of the Member States’. The referring court points out that Bulgarian law defines the concept of ‘accommodation’ by reference to the Law on Tourism, under which accommodation facilities must have a categorisation certificate or a provisional categorisation certificate.

41 The Court has already held that, in defining the classes of provision of accommodation that are to be taxed by derogation from the exemption for the leasing or letting of immovable property, in accordance with Article 135(2), point (a), the Member States enjoy a margin of discretion. It is consequently a matter for the Member States, when transposing that provision, to introduce those criteria which seem to them appropriate in order to draw the distinction between taxable transactions and those which are not (see, to that effect, judgment of 16 December 2010, *Macdonald Resorts*, C?270/09, EU:C:2010:780, paragraph 50 and the case-law cited).

42 In that respect, in the present case it is apparent from the order for reference that the tax authorities took the view, in the tax audit notice referred to in paragraph 25 of this judgment, that, for the period during which Valentina Heights had no categorisation certificate, the services

provided by that company should have been invoiced at the standard rate of VAT, that is to say, 20%, instead of at the reduced rate of 9%. Thus, it is clear that, even though those services were provided in an establishment not categorised under the Law on Tourism, they were considered by those tax authorities as constituting accommodation operations carried out in the hotel sector. Indeed, those services would otherwise have been exempt from VAT under Article 135(1)(l) of the VAT Directive.

43 As regards, next, whether Member States are entitled to make the possibility of applying a reduced rate of VAT subject to the condition that the establishments concerned hold a categorisation certificate or a provisional categorisation certificate, it must be borne in mind that, as apparent from the wording of Article 98 of the VAT Directive, the application of either one or two reduced rates is not obligatory. It is an option accorded to the Member States as an exception to the principle that the standard rate applies (judgment of 9 March 2017, *Oxycure Belgium*, C?573/15, EU:C:2017:189, paragraph 25). Therefore, Member States may, as a rule, choose to apply a reduced rate of VAT to specific accommodation services referred to in point 12 of Annex III to the VAT Directive, while applying the standard rate to other such services (see, to that effect, judgment of 27 June 2019, *Belgisch Syndicaat van Chiropraxie and Others*, C?597/17, EU:C:2019:544, paragraph 45 and the case-law cited).

44 The exercise of the possibility granted to the Member States to apply selectively the reduced rate of VAT is subject to the twofold condition, first, that they isolate, for the purposes of the application of the reduced rate, only concrete and specific aspects of the category of supply at issue and, secondly, that they comply with the principle of fiscal neutrality (judgment of 27 February 2014*, Pro Med Logistik and Pongratz*, C?454/12 and C?455/12, EU:C:2014:111, paragraph 45 and the case-law cited).

45 In order to determine, initially, whether accommodation in categorised establishments constitutes a concrete and specific aspect of the category of accommodation provided in hotels and similar establishments, it is necessary to consider whether this involves a service which is, as such, identifiable separately from the other services in that category (see, to that effect, judgment of 27 February 2014*, Pro Med Logistik and Pongratz*, C?454/12 and C?455/12, EU:C:2014:111, paragraph 47 and the case-law cited).

46 The European Commission submits in its written observations that that is the situation in the present case, in view of the specific legal framework laid down in Bulgaria for categorising tourist establishments, which imposes an entire series of obligations on those establishments. The Commission refers in particular to Article 113(1)(3) of the Law on Tourism, which provides that establishments must have staff with the required occupational and linguistic skills and that managerial staff have the required seniority; and to Article 133(1) of that law, which provides that the category of accommodation facilities is to be determined on the basis of compliance with mandatory minimum requirements relating, inter alia, to construction, layout and outfitting, and services offered.

47 In the light of those obligations, the Commission cites the judgment of 27 February 2014 *, Pro Med Logistik and Pongratz* (C?454/12 and C?455/12, EU:C:2014:111), which concerned the question whether the local transport of passengers by taxi constituted a concrete and specific aspect of the supply of services by undertakings for the transport of passengers and their accompanying luggage, in which the Court pointed out that the legal framework applicable to taxi undertakings was much more restrictive than that applicable to minicab undertakings.

48 In the present case, in contrast to the circumstances of the case that gave rise to the judgment referred to in the preceding paragraph, it seems to follow from the national legal framework, as is apparent not only from the information provided in the order for reference but also

from the wording itself of the second question referred, that, in Bulgaria, all accommodation facilities must be categorised under the Law on Tourism, otherwise they cannot lawfully carry on their activity. If that is indeed so, which it is for the referring court to ascertain, accommodation in non-categorised establishments would not be another type of supply within the category referred to in point 12 of Annex III to the VAT Directive, but would be accommodation that does not comply with the national legislation.

49 Under the national legislation, such an infringement of the national legal framework could give rise to penalties, in particular administrative penalties.

50 On the other hand, there would be no grounds for applying the standard rate of VAT to accommodation in non-categorised establishments in those circumstances since, in Bulgaria, all ‘accommodation provided in hotels and similar establishments’ within the meaning of point 12 of Annex III to the VAT Directive must, by definition and subject to the checks to be carried out by the referring court, be accommodation in categorised establishments. In consequence, accommodation provided in categorised hotels and similar establishments could not constitute a concrete and specific aspect of the category referred to in point 12 of Annex III, identifiable separately from other services in that category, which consist of providing accommodation in non-categorised establishments, because those supplies would not be authorised under the national legislation.

51 In other words, to the extent that the categorisation requirement under the Bulgarian legislation concerns all supplies of ‘accommodation provided in hotels and similar establishments’ within the meaning of point 12 of Annex III to that directive, that legislation cannot be regarded as limiting the application of the reduced rate of VAT to concrete and specific aspects of that category of supply (see, to that effect, judgment of 22 September 2022, *The Escape Center*, C?330/21, EU:C:2022:719, paragraph 38), since it covers all the services in that category.

52 It will be for the referring court to determine, in the light of the national legislation and the factual circumstances before it, whether accommodation in a categorised establishment can constitute a concrete and specific aspect of the same category (see, to that effect, judgment of 27 February 2014*, Pro Med Logistik and Pongratz*, C?454/12 and C?455/12, EU:C:2014:111, paragraph 51).

53 Should the referring court conclude that it can, it would have to ascertain, secondly, whether the selective application of the reduced rate of VAT only to accommodation facilities categorised under the Law on Tourism infringes the principle of fiscal neutrality.

54 That principle precludes treating similar supplies of services, which are thus in competition with each other, differently for VAT purposes. To determine whether goods or services are similar, account must be taken primarily of the point of view of a typical consumer. Goods or services are similar where they have similar characteristics and meet the same needs from the point of view of consumers, the test being whether their use is comparable, and where the differences between them do not have a significant influence on the decision of the average consumer to use one or the other of those goods or services (judgment of 27 June 2019, *Belgisch Syndicaat van Chiropraxie and Others*, C?597/17, EU:C:2019:544, paragraphs 47 and 48 and the case-law cited).

55 Accordingly, if accommodation in a categorised establishment were to be regarded as constituting a service provision that is, as such, identifiable separately from accommodation in a non-categorised establishment, it would be appropriate to determine whether, in the eyes of the average consumer, possession of a categorisation certificate is capable of creating a difference between categorised and non-categorised establishments, since each of those classes of establishment are capable of addressing separate needs of that consumer, and, therefore, of

having a decisive influence on the consumer’s decision to opt for one or other of those types of accommodation.

56 It is true that the categorisation of an establishment by the national authorities is in principle likely to afford a guarantee, in the eyes of the average consumer, of the level, scope and quality of the services to be provided to him or her during the stay in a hotel or a similar establishment. However, the possibility remains that other information, which is more accessible and is likely to be updated regularly, such as the ratings, photographs and comments that other customers leave on online booking platforms like those used by Valentina Heights, may also decisively influence the choice made by the average consumer, possibly even more decisively than the categorisation itself. That is nevertheless a matter to be ascertained, if necessary, by the referring court (judgment of 27 February 2014*, Pro Med Logistik and Pongratz*, C?454/12 and C?455/12, EU:C:2014:111, paragraph 59) in the event that it finds, after conducting an analysis in the light of the national legislation and the factual circumstances before it, that accommodation in a categorised establishment can constitute a concrete and specific aspect of ‘accommodation provided in hotels and similar establishments’ within the meaning of point 12 of Annex III to the VAT Directive.

57 In that respect, it should also be noted that both the conditions for applying the reduced rate of VAT selectively, referred to in paragraph 44 of this judgment, seek to ensure that the Member States make use of that possibility only under conditions which ensure, inter alia, the prevention of any possible evasion, avoidance or abuse (see, to that effect, judgment of 27 February 2014 *, Pro Med Logistik and Pongratz*, C?454/12 and C?455/12, EU:C:2014:111, paragraph 45 and the case-law cited).

58 In the context of any checks that it would need to carry out, as appropriate, the referring court could have regard to the fact that Valentina Heights appears to have carried on the same activity on a stable basis, both when it held a categorisation certificate, albeit a provisional one, and when it did not. Furthermore, it can be seen from the order for reference that, during the period audited by the Regional Directorate of the National Revenue Agency, which includes a period of almost a year during which that company had no categorisation certificate, the income from its activities was recorded by means of electronic cash registers connected to the tax authorities. This is therefore not a matter of an establishment that has never met the requirements to be categorised and which operates outside the control of those authorities, but rather an establishment whose categorisation certificate had expired and whose new certificate, applied for on 18 November 2016, that is to say, more than two years before expiry of the previous certificate, had not been issued, irrespective of whether the delay in issuing that new certificate was attributable to a failure to act on the part of the Ministry of Tourism or to the fact that the company concerned submitted incomplete documents.

59 Lastly, as regards the fact that the temporary lack of categorisation may infringe the Law on Tourism, it should be recalled that according to settled case-law, as regards the levying of VAT, the principle of fiscal neutrality precludes any general distinction between lawful and unlawful transactions (judgment of 27 April 2023, *Fluvius Antwerpen*, C?677/21, EU:C:2023:348, paragraph 28 and the case-law cited).

60 In the light of all the foregoing considerations, the answer to the questions raised is that Article 98(2) of the VAT Directive, read in conjunction with point 12 of Annex III thereto, must be interpreted as precluding national legislation under which the reduced rate of VAT for accommodation provided in hotels and similar establishments is subject to a requirement that such an establishment hold a categorisation certificate or a provisional categorisation certificate, in so far as that legislation does not limit the application of the reduced rate of VAT to concrete and

specific aspects of the category of provision of accommodation provided in hotels and similar establishments or, in the event that it limits the application of that rate to those concrete and specific aspects, it does not comply with the principle of fiscal neutrality.

Costs

61 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Seventh Chamber) hereby rules:

Article 98(2) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in conjunction with point 12 of Annex III thereto,

must be interpreted as precluding national legislation under which the reduced rate of value added tax (VAT) for accommodation provided in hotels and similar establishments is subject to a requirement that such an establishment hold a categorisation certificate or a provisional categorisation certificate, in so far as that legislation does not limit the application of the reduced rate of VAT to concrete and specific aspects of the category of provision of accommodation provided in hotels and similar establishments or, in the event that it limits the application of that rate to those concrete and specific aspects, it does not comply with the principle of fiscal neutrality.

[Signatures]

* Language of the case: Bulgarian.