Case C-84/09

X

v

Skatteverket

(Reference for a preliminary ruling from the Regeringsrätten)

(VAT – Directive 2006/112/EC – Article 2, first paragraph of Article 20 and Article 138(1) – Intra-Community acquisition of a new sailing boat – Immediate use of the goods purchased in the Member State of acquisition or in another Member State before transporting it to its final destination – Time-limit within which transport of goods to place of destination commences – Maximum duration of transport – Relevant point in time for determining whether a means of transport is new for the purposes of taxation thereof)

Summary of the Judgment

1. *Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Transitional arrangements for the taxation of trade between Member States*

(Council Directive 2006/112, Arts 2(1)(b)(ii), 20, first para., and 138(1))

2. *Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Transitional arrangements for the taxation of trade between Member States*

(Council Directive 2006/112, Art. 2(2)(b))

1. The first paragraph of Article 20 and Article 138(1) of Council Directive 2006/112 on the common system of value added tax are to be interpreted as meaning that the classification of a transaction as an intra-Community supply or acquisition cannot be made contingent on the observance of any time period whatsoever during which the transport of the goods from the Member State of supply to the Member State of destination must be begun or completed. However, in order that such a classification may be made and the place of acquisition determined, a temporal and material link must be established between the supply of the goods in question and the transport of those goods, and also continuity in the course of the transaction.

In the specific case of the acquisition of a new means of transport within the meaning of Article 2(1)(b)(ii) of that directive, the determination of the intra-Community nature of the transaction must be made through an overall assessment of all the objective circumstances and the purchaser’s intentions, provided that it is supported by objective evidence making it possible to identify the Member State in which final use of the goods concerned is envisaged. In that regard, the factors that may possibly be of some importance include, besides the length of time spent on transporting the goods, in particular, the place of registration and usual use of the goods, the place of residence of the purchaser and the presence or absence of links between the purchaser and the Member State of supply or another Member State. In the specific case of the acquisition of a sailing boat, relevance may also be attached to the flag Member State and the place where the sailing boat will usually be moored or anchored and the place where it will be stored in the winter.

However, it cannot be required, in the context of an intra-Community acquisition, that the transport

of a means of transport be carried out immediately after its supply, that it be uninterrupted and that the goods in question not be used in any manner whatsoever before or during that transport. The essential issue is, in fact, to determine the Member State in which the final, permanent use of the means of transport will take place. In that regard, the use of the means of transport, even for leisure purposes, represents only a negligible period of time in relation to the usual lifespan of a means of transport.

(see paras 33, 45-46, 48, 50-51, operative part 1)

2. In order to determine whether a means of transport that is the subject-matter of an intra-Community acquisition is new within the meaning of Article 2(2)(b) of Directive 2006/112 on the common system of value added tax, it is necessary to take into consideration the moment when the goods in question are supplied by the vendor to the purchaser, that is to say, the moment when the right to dispose of those goods as owner is transferred from the vendor to the purchaser.

(see paras 55, 57, operative part 2)

JUDGMENT OF THE COURT (Second Chamber)

18 November 2010 (*)

(VAT – Directive 2006/112/EC – Article 2, first paragraph of Article 20 and Article 138(1) – Intra-Community acquisition of a new sailing boat – Immediate use of the goods purchased in the Member State of acquisition or in another Member State before transporting it to its final destination – Time-limit within which transport of goods to place of destination commences – Maximum duration of transport – Relevant point in time for determining whether a means of transport is new for the purposes of taxation thereof)

In Case C?84/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Regeringsrätten (Sweden), made by decision of 16 February 2009, received at the Court on 26 February 2009, in the proceedings

X

v

Skatteverket,

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, A. Arabadjiev, U. Lõhmus (Rapporteur), A. Ó Caoimh and P. Lindh, Judges,

Advocate General: J. Kokott,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 15 April 2010,

after considering the observations submitted on behalf of:

– X, by U. Käll, D. Kleist and M. Johansson, advokater,

– the Skatteverket, by C. Olsson, advokat,

– the Swedish Government, by A. Falk and S. Johannesson, acting as Agents,

– the German Government, by M. Lumma and B. Klein, acting as Agents,

– the European Commission, by D. Triantafyllou and P. Dejmek, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 May 2010,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 2, the first paragraph of Article 20 and Article 138(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

2 The reference was made in the context of proceedings between X and the Skatteverket (Swedish tax administration) concerning a preliminary tax decision of the Skatterättsnämnden (Swedish Revenue Law Commission) relating to the application of value added tax ('VAT') in Sweden to the acquisition of a new sailing boat in another Member State.

Legal context

Directive 2006/112

3 Directive 2006/112 repealed and replaced, with effect from 1 January 2007, the existing Community VAT legislation, including Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

4 Recital 11 in the preamble to Directive 2006/112 states:

'It is also appropriate that, during that transitional period, … certain intra-Community … suppl[ies] of new means of transport to individuals or to exempt or non-taxable bodies should also be taxed in the Member State of destination, in accordance with the rates and conditions set by that Member State, in so far as such transactions would, in the absence of special provisions, be likely to cause significant distortion of competition between Member States.'

5 Article 2 of that directive provides:

'1. The following transactions shall be subject to VAT:

(a) the supply of goods for consideration within the territory of a Member State by a taxable person acting as such;

(b) the intra-Community acquisition of goods for consideration within the territory of a Member State by:

…

(ii) in the case of new means of transport, a taxable person, or a non-taxable legal person, whose other acquisitions are not subject to VAT pursuant to Article 3(1), or any other non-taxable person;

…

2. (a) For the purposes of point (ii) of paragraph 1(b), the following shall be regarded as “means of transport”, where they are intended for the transport of persons or goods:

…

(ii) vessels exceeding 7.5 metres in length, with the exception of vessels used for navigation on the high seas and carrying passengers for reward, and of vessels used for the purposes of commercial, industrial or fishing activities, or for rescue or assistance at sea, or for inshore fishing;

…

(b) These means of transport shall be regarded as “new” in the cases:

…

(ii) of vessels, where the supply takes place within three months of the date of first entry into service or where the vessel has sailed for no more than 100 hours;

…

(c) Member States shall lay down the conditions under which the facts referred to in point (b) may be regarded as established.’

6 Under Article 14(1) of that directive, ‘supply of goods’ is to be understood as meaning the transfer of the right to dispose of tangible property as owner.

7 According to the first paragraph of Article 20 of that same directive:

‘“Intra-Community acquisition of goods” shall mean the acquisition of the right to dispose as owner of movable tangible property dispatched or transported to the person acquiring the goods, by or on behalf of the vendor or the person acquiring the goods, in a Member State other than that in which dispatch or transport of the goods began.’

8 Under Article 40 of Directive 2006/112, the place of an intra-Community acquisition of goods is deemed to be the place where dispatch or transport of the goods to the person acquiring them ends.

9 Article 68 of that directive provides:

‘The chargeable event shall occur when the intra-Community acquisition of goods is made.

The intra-Community acquisition of goods shall be regarded as being made when the supply of similar goods is regarded as being effected within the territory of the relevant Member State.’

10 Article 138 of that directive reads as follows:

‘1. Member States shall exempt the supply of goods dispatched or transported to a destination outside their respective territory but within the Community, by or on behalf of the vendor or the person acquiring the goods, for another taxable person, or for a non-taxable legal person acting as such in a Member State other than that in which dispatch or transport of the goods began.

2. In addition to the supply of goods referred to in paragraph 1, Member States shall exempt the following transactions:

(a) the supply of new means of transport, dispatched or transported to the customer at a destination outside their respective territory but within the Community, by or on behalf of the vendor or the customer, for taxable persons, or non-taxable legal persons, whose intra-Community acquisitions of goods are not subject to VAT pursuant to Article 3(1), or for any other non-taxable person;

…’

National legislation

11 Under Chapter 1, Paragraph 1, of the Law on value added tax (Mervärdesskattelagen, SFS 1994:200) (‘the ML’), VAT is to be paid on, inter alia, sales within Swedish territory of goods or services as part of a business activity and for intra-Community acquisitions of movable goods.

12 Under Chapter 2a, Paragraph 2, of the ML, ‘intra-Community acquisition’ means the acquisition for consideration in a case where the goods are transported to the person acquiring the goods in Sweden from another Member State by or on behalf of the person acquiring the goods, the vendor or a third party on their behalf.

13 Under Chapter 2a, Paragraph 3, of the ML, goods are to be regarded as acquired by means of an intra-Community acquisition if the acquisition concerns a new means of transport as referred to in Chapter 1, Paragraph 13a of that law.

14 Under Chapter 1, Paragraph 13a, of the ML, new means of transport is to be understood as including vessels – with certain exceptions which are not relevant in the present case – exceeding 7.5 metres in length, provided that they are sold within three months of the date on which they first entered into service or have sailed for no more than 100 hours before the sale.

15 Chapter 3, Paragraph 30a, of the ML provides that sales of new means of transport which are transported by or on behalf of the vendor or the purchaser from Sweden to another Member State are to be exempt from VAT, even if the purchaser is not registered for VAT purposes.

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

16 X, a private individual who is resident in Sweden, intends to acquire in the United Kingdom a newly manufactured sailing boat exceeding 7.5 metres in length for private use. After delivery of the sailing boat, X intends to use it for recreational purposes in the Member State of supply for three to five months and thus to sail the boat for more than 100 hours. Alternatively, the boat is to

be transported out of the United Kingdom immediately after delivery for similar use in Member States other than Sweden. In both cases, after the planned use, the boat is to be sailed to Sweden, which is the final destination.

17 In order to clarify the tax consequences of the acquisition, X applied to the Skatterättsnämnden for a preliminary decision as to whether the acquisition would be taxed in Sweden in either of the two cases.

18 The Skatterättsnämnden found that in both cases X must be regarded as making an intra-Community acquisition of a new means of transport for which he must pay VAT in Sweden. The Skatterättsnämnden's reasoning was that the boat, on delivery from the shipyard, must be considered to be a new means of transport because, at the point in time when X acquires the right to dispose of the boat as owner, it will not have been used for more than three months since it first entered into service or have been sailed for more than 100 hours. The fact that those conditions will no longer be satisfied when the vessel does in fact reach Sweden has no bearing on that assessment. The Skatterättsnämnden further took the view that the transport begins at the time of the acquisition or the vendor's delivery of the boat in question and that the place of the intra-Community acquisition is the place where the boat is at the time when transport of it ends, in this case Sweden.

19 Taking the view that the envisaged acquisition should be taxed as a supply effected in the United Kingdom, X appealed against that preliminary decision to the Regeringsrätten. The Skatteverket, for its part, asked the referring court to uphold the preliminary tax decision.

20 In those circumstances, the Regeringsrätten decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Are Articles 138 and 20 of [Directive 2006/112] to be interpreted as meaning that the transport out of the territory of the State of origin must begin within a certain period of time for the sale to be exempt from tax and for there to be an intra-Community acquisition?

(2) Similarly, are those articles to be interpreted as meaning that the transport must end in the country of destination within a certain period of time for the sale to be exempt from tax and for there to be an intra-Community acquisition?

(3) Would the answers to Questions 1 and 2 be affected if that which is acquired is a new means of transport and the person acquiring the goods is an individual who intends ultimately to use the means of transport in a particular Member State?

(4) In connection with an intra-Community acquisition, at which time must the assessment be made as to whether a means of transport is new in accordance with Article 2(2)(b) of Council Directive 2006/112/EC on the common system of value added tax?'

Consideration of the questions referred for a preliminary ruling

The first and third questions

21 By its first and third questions, which it is appropriate to examine together, the referring court asks, essentially, whether the first paragraph of Article 20 and Article 138(1) of Directive 2006/112 are to be interpreted as meaning that the classification of a transaction as an intra-Community supply or acquisition is contingent on compliance with a requirement that the transport of the goods in question from the Member State of supply to the Member State of destination must be commenced or completed within a certain period of time. That court wishes to know, in particular,

whether the fact that the matter involves a new means of transport which the purchaser, a private individual, intends to use in a certain Member State is of any significance in that regard.

22 It should be borne in mind, as a preliminary point, that the transitional arrangements for VAT applicable to intra-Community trade established by Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers (OJ 1991 L 376, p. 1) are based on a new chargeable event, namely the intra-Community acquisition of goods, enabling the transfer of the tax revenue to the Member State in which final consumption of the goods supplied takes place (see, to that effect, Case C?409/04 *Teleos and Others* [2007] ECR I?7797, paragraphs 21, 22 and 36).

23 Thus, the mechanism consisting, on the one hand, in an exemption granted by the Member State of departure, of the supply giving rise to the intra-Community dispatch or transport, together with a right to deduct or reimbursement of the input VAT paid in that Member State and, on the other hand, in taxation, by the Member State of arrival, of the intra-Community acquisition, was intended to ensure a clear demarcation of the sovereignty of the Member States in matters of taxation (see, to that effect, Case C?245/04 *EMAG Handel Eder* [2006] ECR I?3227, paragraph 40).

24 As regards, in particular, the rules pertaining to the taxation of acquisitions of new means of transport, it can be seen from recital 11 in the preamble to Directive 2006/112, which reiterates the content of the 11th recital in the preamble to Directive 91/680, that those rules, in addition to covering the allocation of authority to tax, aim to prevent distortions of competition between the Member States liable to result from the application of differing rates of tax. If there were no transitional arrangements, the marketing of new means of transport would tend to be confined to Member States having a low VAT rate, to the detriment of the other Member States and their taxation revenue. As the Advocate General pointed out at point 34 of her Opinion, the European Union legislature has, by Article 2(1)(b)(ii) of Directive 2006/112, made the acquisition of new means of transport not only by taxable persons and non-taxable legal persons, but also by private persons, subject to tax, inter alia because of the high value and easy transportability of those goods.

25 It is against that background and those objectives that the provisions alluded to in the questions referred to the Court must be interpreted.

26 Regarding, in the first place, the question whether the transport of the goods in question to the purchaser, for the purposes of the first paragraph of Article 20 and Article 138(1) of Directive 2006/112, must take place within a certain period of time, it should be observed, at the outset, that those provisions lay down conditions which must be satisfied in order for a transaction to be classified as an intra-Community supply or acquisition.

27 Thus, the intra-Community acquisition of goods takes place and the exemption of the intra-Community supply of goods becomes applicable only when the right to dispose of the goods as owner has been transferred to the purchaser and the supplier establishes that those goods have been dispatched or transported to another Member State and when, as a result of that dispatch or that transport, they have physically left the territory of the Member State of supply (see *Teleos and Others*, paragraph 42, and Case C?184/05 *Twoh International* [2007] ECR I?7897, paragraph 23).

28 Moreover, the intra-Community supply of goods and their intra-Community acquisition are, in fact, one and the same financial transaction, such that the two provisions referred to in paragraph 26 of this judgment must be interpreted in such a way as to confer on them identical meaning and scope (see, regarding the first subparagraph of Article 28a(3) and the first subparagraph of Article 28c(A)(a) of the Sixth Directive, the contents of which correspond to the

first paragraph of Article 20 and to Article 138(1) of Directive 2006/112 respectively, *Teleos and Others*, paragraphs 23 and 34).

29 Next, it should be noted that the wording of neither the first paragraph of Article 20 nor Article 138(1) of Directive 2006/112 requires that the transport of the goods in question to the purchaser must be commenced or completed within any specific period of time in order for those provisions to be applicable.

30 To impose a specific time period for that transport would, moreover, be contrary to the general scheme of those provisions as well as to the background and objectives of the transitional VAT arrangements applicable to intra-Community trade, as discussed in paragraphs 22 to 24 of this judgment.

31 The application of a time period within which the transport of the goods to the purchaser must be commenced or completed would give purchasers the option of choosing the Member State where the acquisition of a new means of transport would be taxed according to the most favourable rates and terms. Such an opportunity would jeopardise the achievement of the objective of the transitional VAT arrangements applicable to intra-Community trade in that it would deprive those Member States where the actual final consumption takes place of the tax revenue which is rightfully theirs. Leaving such a choice to purchasers would also run counter to the objective of preventing distortions of competition between Member States in trade involving new means of transport.

32 The case in the main proceedings illustrates how the principle of taxation in the Member State of destination would not be observed if a specific time period were imposed during which the transport of the goods in question to the purchaser must be commenced or completed. If X's interpretation, to the effect that there is a strict time period during which the transport of the goods in question must be commenced, were to be upheld, it would suffice for X to delay the transport of the goods concerned to the Member State of destination in order to mask the intra-Community nature of the transaction or alter the allocation of authority to tax so that a Member State other than the Member State of destination had the authority to tax the transaction. In either case, the Kingdom of Sweden would be deprived of its tax revenue.

33 Consequently, the classification of a transaction as an intra-Community supply or acquisition cannot be made contingent on observance of a specific time period during which the transport of the goods supplied or acquired must be commenced or completed. However, in order for such a classification to be made and the place of acquisition determined, a temporal and material link must be established between the supply of the goods in question and the transport of those goods, as well as continuity in the course of the transaction.

34 Lastly, that interpretation cannot be called into question by X's argument to the effect that the rules in force in the United Kingdom provide for a specific period of time during which the goods concerned must be transported outside the national territory in order for the authorities of that Member State to refrain from charging VAT. X submits that, if the transport of the goods is not carried out within that time period, the VAT is payable to the United Kingdom and that, if the Kingdom of Sweden also charges the tax as being on an intra-Community acquisition, that gives rise to double taxation.

35 As is clear from Article 131 of Directive 2006/112, it is for the Member States to lay down the conditions for the application of the exemption of intra-Community supplies of goods with a view to ensuring the correct and straightforward application of those exemptions and to prevent any possible fraud, evasion and abuse. It is important to note, however, that when they exercise their powers, Member States must comply with the general principles of law which form part of the legal

order of the European Union, which include, in particular, the principles of legal certainty and proportionality (see, to that effect, Case C?384/04 *Federation of Technological Industries and Others* [2006] ECR I?4191, paragraphs 29 and 30, and Case C?271/06 *Netto Supermarkt* [2008] I?771, paragraph 18).

36 In particular, as regards the principle of proportionality, the Court has held that, in accordance with that principle, the Member States must employ means which, whilst enabling them effectively to attain the objectives pursued by their domestic laws, cause the least possible detriment to the objectives and principles laid down by the relevant European Union legislation (see Joined Cases C?286/94, C?340/95, C?401/95 and C?47/96 *Molenheide and Others* [1997] ECR I?7281, paragraph 46; and also *Teleos and Others*, paragraph 52, and *Netto Supermarkt*, paragraph 19).

37 Moreover, the measures which the Member States adopt to that end may not be used in such a way as to undermine the neutrality of VAT (see Case C?454/98 *Schmeink & Cofreth and Strobel* [2000] ECR I?6973, paragraph 59; Case C?255/02 *Halifax and Others* [2006] ECR I?1609, paragraph 92; and also C?146/05 *Collée* [2007] ECR I?7861, paragraph 26).

38 It follows that, where a Member State charges VAT on a transaction which fulfils the objective conditions to qualify as an intra-Community supply on the ground of non-compliance with a transport time period laid down in its domestic legislation, it must grant reimbursement of the tax thus charged in order to avoid double taxation which may arise as a result of the exercise by the Member State of its powers of taxation. Under Article 21 of Council Regulation (EC) No 1777/2005 of 17 October 2005 laying down implementing measures for Directive 77/388/EEC on the common system of value added tax (OJ 2005 L 288, p. 1), the Member State in which the dispatch or transport ends is to exercise its power of taxation irrespective of the VAT treatment applied to the transaction in the Member State in which the dispatch or transport began.

39 As regards, in the second place, intra-Community acquisitions of new means of transport by persons not subject to VAT, the same considerations apply as to the time period during which the transport of the goods to the purchaser must take place. The interpretation to the effect that there is no time period for transport is all the more compelling in the light of the fact that, as observed in paragraphs 31 and 32 of this judgment, the presence of a strict time period would allow purchasers to circumvent not only the objective of conferring authority to tax on the Member State of final consumption of the goods concerned, but also the aim of preventing distortions of competition between Member States, which is a distinct objective pursued by the European Union rules pertaining to taxation of intra-Community acquisitions of new means of transport.

40 Nevertheless, in order to provide the national court with an answer that is helpful to it in deciding the dispute before it, it is appropriate to specify the conditions under which the acquisition of a new means of transport effected by an individual with the intention of using the goods concerned in a certain Member State should be classified as an intra-Community acquisition.

41 In that regard, regard should be had to the settled case-law, according to which the expressions which define taxable transactions for the purposes of the common system of VAT are objective in nature and apply without regard to the purpose or results of the transactions concerned (see, to that effect, Joined Cases C?354/03, C-355/03 and C?484/03 *Optigen and Others* [2006] ECR I?483, paragraph 44, and Joined Cases C?439/04 and C?440/04 *Kittel and Recolta Recycling* [2006] ECR I?6161, paragraph 41). Consequently, it is necessary that the classification of intra-Community supplies and acquisitions be made on the basis of objective matters, such as the physical movement of the goods concerned between Member States (*Teleos and Others*, paragraph 40).

42 As regards new means of transport, however, the application of the rule referred to in the preceding paragraph to intra-Community transactions involving such goods is not a simple matter, given the particular nature of those transactions.

43 In that regard, it is difficult, first of all, to distinguish the transport of means of transport from their use. Secondly, the classification of the transaction is complicated by the fact that the VAT on that transaction must also be paid by a non-taxable individual, who is not subject to the obligations relating to tax returns and accounting, so that a subsequent check of that individual is not possible. Moreover, the individual, as final consumer, cannot claim a VAT deduction, even in the event of resale of a purchased vehicle, and therefore has a greater interest than a trader in avoiding the tax.

44 In those circumstances, in order to classify a transaction as an intra-Community acquisition, it is necessary to conduct an overall assessment of all the relevant objective evidence in order to determine whether the goods purchased have actually left the territory of the Member State of supply and, if so, in which Member State the final consumption will take place.

45 In that regard, as the Advocate General stated at point 38 of her Opinion, significance may be attached to factors such as the amount of time spent on transporting the goods in question, the place of registration and usual use of the goods, the place of residence of the purchaser and the presence or absence of links between the purchaser and the Member State of supply or another Member State.

46 In the specific case of the acquisition of a sailing boat, such as in the main proceedings, relevance may also be attached to the flag Member State and the place where the sailing boat will usually be moored and anchored and where it will be stored in the winter.

47 Moreover, in the specific case of the acquisition of a new means of transport, account must also be taken, as far as possible, of the purchaser’s intentions at the time of the acquisition, provided that they are supported by objective evidence (see, by analogy, regarding entitlement to deduction, Case 268/83 *Rompelman* [1985] ECR 655, paragraph 24; Case C?230/94 *Enkler* [1996] ECR I?4517, paragraph 24; and Joined Cases C?110/98 to C?147/98 *Gabalfrisa and Others* [2000] ECR I?1577, paragraph 47). That is all the more necessary in a situation where the purchaser acquires the right to dispose of goods in question as owner in the Member State of supply and undertakes to transport them to the Member State of destination.

48 However, contrary to X’s submissions, it cannot be required, in the context of an intra-Community acquisition, that the transport of a means of transport be carried out immediately after its supply, that it be uninterrupted and that the goods in question not be used in any manner whatsoever before or during said transport.

49 First, to impose such rigorous conditions would leave it open to the purchaser to choose the Member State in which the means of transport in question are to be taxed, which would run counter to the purpose of Directive 2006/112. Secondly, as rightly observed by the Swedish Government at the hearing, there is no reason to apply differential tax treatment according to whether the boat is transported into Sweden on a trailer or is sailed in.

50 The essential issue is, in fact, to determine the Member State in which the final, permanent use of the means of transport will take place. In that regard, the use of the means of transport, even for leisure purposes, represents only a negligible period of time in relation to the usual lifespan of a means of transport.

51 In view of the foregoing considerations, the answer to the first to third questions is that the first paragraph of Article 20 and Article 138(1) of Directive 2006/112 are to be interpreted as meaning that the classification of a transaction as an intra-Community supply or acquisition cannot be made contingent on the observance of any time period during which the transport of the goods in question from the Member State of supply to the Member State of destination must be commenced or completed. In the specific case of the acquisition of a new means of transport within the meaning of Article 2(1)(b)(ii) of that directive, the determination of the intra-Community nature of the transaction must be made through an overall assessment of all the objective circumstances and the purchaser's intentions, provided that it is supported by objective evidence which make it possible to identify the Member State in which final use of the goods concerned is envisaged.

The fourth question

52 By its fourth question, the referring court asks at which time the assessment must be made, in the case of an intra-Community acquisition, as to whether a means of transport is new in accordance with Article 2(2)(b) of Directive 2006/112.

53 It should be observed, in that regard, that it is clear from the wording of that provision that such an assessment must be made at the time of supply of the goods in question and not at the time of arrival of those goods in the Member State of destination. As regards sailing vessels, Article 2(2)(b)(ii) of Directive 2006/112 provides that such means of transport are regarded as new where the supply takes place within three months of the date of first entry into service or where the vessel has sailed for no more than 100 hours.

54 Moreover, under the second paragraph of Article 68 of that directive, the intra-Community acquisition of goods is made when the supply of similar goods is regarded as being effected within the territory of the relevant Member State. Under Article 14(1) of that directive, 'supply of goods' is to mean the transfer of the right to dispose of tangible property as owner.

55 It follows that whether or not a means of transport which is the subject-matter of an intra-Community acquisition is to be regarded as 'new' is determined at the time when the right to dispose of those goods as owner is transferred from the vendor to the purchaser.

56 That interpretation is not affected by the fact that, under Article 40 of Directive 2006/112, the place of an intra-Community acquisition of goods is to be deemed to be the place where dispatch or transport of the goods to the person acquiring them ends. That provision has no bearing on the determination of whether a means of transport is new, as its purpose relates to the attribution of authority to tax on the intra-Community acquisition to the Member State of destination.

57 The answer to the fourth question is accordingly that the assessment of whether a means of transport which is the subject-matter of an intra-Community acquisition is new within the meaning of Article 2(2)(b) of Directive 2006/112 must be made at the time of the supply of the goods in question by the vendor to the purchaser.

Costs

58 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. **The first paragraph of Article 20 and Article 138(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, are to be interpreted as meaning that the classification of a transaction as an intra-Community supply or acquisition cannot be made contingent on the observance of any time period during which the transport of the goods in question from the Member State of supply to the Member State of destination must be commenced or completed. In the specific case of the acquisition of a new means of transport within the meaning of Article 2(1)(b)(ii) of that directive, the determination of the intra-Community nature of the transaction must be made through an overall assessment of all the objective circumstances and the purchaser's intentions, provided that it is supported by objective evidence which make it possible to identify the Member State in which final use of the goods concerned is envisaged.**

2. **The assessment of whether a means of transport which is the subject-matter of an intra-Community acquisition is new within the meaning of Article 2(2)(b) of Directive 2006/112 must be made at the time of the supply of the goods in question by the vendor to the purchaser.**

[Signatures]

* Language of the case: Swedish.