Case C-203/10

Direktsia ‘Obzhalvane i upravlenie na izpalnenieto’ – Varna

v

Auto Nikolovi OOD

(Reference for a preliminary ruling from the Varhoven administrativen sad)

(Directive 2006/112/EC – Value added tax – Second-hand parts for motor vehicles – Importation into the European Union by a taxable dealer – Margin scheme or normal VAT scheme – Origin of the right of deduction – Direct effect)

Summary of the Judgment

1. *Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Special arrangements for taxable dealers – Margin scheme – Scope*

(Council Directive 2006/112, Art. 314)

2. *Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Special arrangements for taxable dealers – Goods imported into the European Union by the taxable dealer – Inapplicability of the margin scheme – Deferral of the right to deduct tax paid on importation – Not permissible*

(Council Directive 2006/112, Art. 320(1), first para., and (2))

3. *Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Special arrangements for taxable dealers – Margin scheme – Provisions defining the scope of the scheme – Rule defining the conditions for deferral of the right to deduct the tax paid when the normal scheme is opted for – Direct effect*

(Council Directive 2006/112, Arts 314 and 320(1), first para., and (2))

1. Article 314 of Directive 2006/112 on the common system of value added tax must be interpreted as meaning that the margin scheme is not applicable to supplies of goods such as spare parts for motor vehicles, which the taxable dealer himself imported into the European Union under the normal value added tax scheme.

It is apparent from the structure and general scheme of Directive 2006/112, in particular from the classification of taxable transactions in Title IV thereof, that the concept of ‘supply of goods’ in Article 314 of that Directive must be distinguished, in particular, from that of ‘importation of goods’ into the European Union from a third country.

(see paras 43, 53, operative part 1)

2. The first subparagraph of Article 320(1) and Article 320(2) of Directive 2006/112 on the common system of value added tax must be interpreted as meaning that they preclude a national provision which provides for the deferral, until the subsequent supply subject to the normal value added tax scheme, of the right of the taxable dealer to deduct value added tax paid at the time of

the importation of goods other than works of art, collectors' items or antiques.

Where the applicability of the margin scheme is excluded, as, consequently, is the choice between the application of that scheme and the normal value added tax scheme, there is no risk of fraud which could justify ruling out the application of the normal deduction scheme.

(see paras 58-59, operative part 2)

3. Article 314, the first subparagraph of Article 320(1) and Article 320(2) of Directive 2006/112 on the common system of value added tax have direct effect which authorises an individual to rely on them before a national court for the purposes of having national legislation which is incompatible with those provisions disapplied.

In Article 314, the definition of the cases covered by the application of the margin scheme is in unequivocal terms and does not require the intervention of any other measures, either of the Union institutions or of the Member States. As regards the first subparagraph of Article 320(1), it sets out, clearly and unconditionally, the imported goods the subsequent supply of which, under the normal value added tax scheme, grants the taxable dealer a right to deduct value added tax payable or paid on importation. Article 320(2), for its part, defines in the same way the scope of application of the rule of deferral of the right to deduct.

(see paras 62-63, 65, operative part 3)

JUDGMENT OF THE COURT (Third Chamber)

3 March 2011 (*)

(Directive 2006/112/EC – Value-added tax – Second-hand parts for motor vehicles – Importation into the European Union by a taxable dealer – Margin scheme or normal VAT scheme – Origin of the right of deduction – Direct effect)

In Case C?203/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Varhoven administrativen sad (Bulgaria), made by decision of 20 April 2010, received at the Court on 26 April 2010, in the proceedings

Direktsia 'Obzhalvane i upravlenie na izpalnenieto' – Varna

v

Auto Nikolovi OOD,

THE COURT (Third Chamber),

composed of K. Lenaerts (Rapporteur), Presidents of Chamber, D. Šváby, R. Silva de Lapuerta, G. Arestis and J. Malenovský, Judges,

Advocate General: J. Mazák,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the direktsia ‘Obzhalvane i upravlenie na izpalnenieto’ – Varna, by Sv. Avramov,

– Auto Nikolovi OOD, by M. Nikolov,

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

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 311(1)(1), 314 and 320 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 has been made in proceedings between Auto Nikolovi OOD (‘Auto Nikolovi’) and the direktsia ‘Obzhalvane i upravlenie na izpalnenieto’ – Varna (Appeals and Enforcement Management Directorate, Varna) at the Tsentralno upravlenie na Natsionalna agentsia za prihodite (Central Administration of the National Revenue Agency), following that authority’s refusal to grant Auto Nikolovi the right to immediately deduct the value added tax (‘VAT’) paid on the importation into the European Union of second-hand parts for motor vehicles from Switzerland.

Legal context

European Union law

3 Recital 51 in the preamble to Directive 2006/112 states:

‘It is appropriate to adopt a Community taxation system to be applied to second-hand goods, works of art, antiques and collectors’ items, with a view to preventing double taxation and the distortion of competition as between taxable persons.’

4 According to the first paragraph of Article 30 of that directive:

‘“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 With regard to that type of transaction, Article 70 of that directive provides that ‘the chargeable event shall occur and VAT shall become chargeable when the goods are imported.’

6 Article 167 of that directive provides that ‘a right of deduction shall arise at the time the deductible tax becomes chargeable.’

7 Article 168 of Directive 2006/112 provides:

‘In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

…

(e) the VAT due or paid in respect of the importation of goods into that Member State.’

8 Title XII of Directive 2006/112, entitled ‘Special arrangements’, includes a Chapter 4, entitled ‘Special arrangements for second-hand goods, works of art, collectors’ items and antiques’, consisting of Articles 311 to 343.

9 Under Article 311(1)(1) and (5) of that directive:

‘For the purposes of this Chapter, and without prejudice to other Community provisions, the following definitions shall apply:

(1) “second-hand goods” shall mean tangible movable property that is suitable for further use as it is or after repair, other than works of art, collectors’ items or antiques and other than precious metals or precious stones as defined by the Member States;

…

(5) “taxable dealer” shall mean a taxable person who, in the course of his economic activity, purchases or acquires for the purposes of his undertaking, or imports with a view to resale, second-hand goods and/or works of art, collectors’ items or antiques, whether that taxable person is acting for himself or on behalf of another person pursuant to a contract under which commission is payable on purchase or sale.’

10 Article 313(1) of that directive provides:

‘In respect of the supply of second-hand goods, works of art, collectors’ items or antiques carried out by taxable dealers, Member States shall apply a special scheme for taxing the profit margin made by the taxable dealer, in accordance with the provisions of this Subsection.’

11 Article 314 of Directive 2006/112 provides:

‘The margin scheme shall apply to the supply by a taxable dealer of second-hand goods, works of art, collectors’ items or antiques where those goods have been supplied to him within the Community by one of the following persons:

(a) a non-taxable person;

(b) another taxable person, in so far as the supply of goods by that other taxable person is exempt pursuant to Article 136;

(c) another taxable person, in so far as the supply of goods by that other taxable person is covered by the exemption for small enterprises provided for in Articles 282 to 292 and involves capital goods;

(d) another taxable dealer, in so far as VAT has been applied to the supply of goods by that other taxable dealer in accordance with this margin scheme.'

12 Pursuant to Article 316(1) of that Directive:

'(1) Member States shall grant taxable dealers the right to opt for application of the margin scheme to the following transactions:

(a) the supply of works of art, collectors' items or antiques, which the taxable dealer has imported himself;

… .'

13 Article 319 of that directive provides that 'the taxable dealer may apply the normal VAT arrangements to any supply covered by the margin scheme.'

14 Under Article 320 of Directive 2006/112:

'(1) Where the taxable dealer applies the normal VAT arrangements to the supply of a work of art, a collectors' item or an antique which he has imported himself, he shall be entitled to deduct from the VAT for which he is liable the VAT due or paid on the import.

…

(2) A right of deduction shall arise at the time when the VAT due on the supply in respect of which the taxable dealer opts for application of the normal VAT arrangements becomes chargeable.'

National law

15 The Law on value-added tax (Zakon za danak varhu dobavenata stoynost, DV No 63 of 4 August 2006) ('the VAT Law'), in the version applicable to the facts of the main proceedings, states in Article 16(1):

'"Importation of goods" within the meaning of this law shall mean the entry of non-Community goods into the national territory.'

16 Under Article 54(1) of the VAT Law:

'On the importation of goods, the chargeable event occurs and the tax becomes chargeable at the time at which the obligation to pay import duties in the national territory arises or at the time at which that obligation should arise if the debt did not exist or it amounts to zero.'

17 Article 68 of the VAT Law provides that:

'(1) Input tax is the amount of tax which a registered person may deduct from his tax debts under this law in respect of:

…

3. imports effected by it;

…

(2) The right to deduct input tax shall arise at the time when the deductible tax becomes chargeable.’

18 Under Article 69(1)(2) of the VAT Law, where the goods and services are used for the purposes of the taxable supplies effected by the registered person, that person may deduct the tax charged on the importation of goods pursuant to Article 56 of that law.

19 The conditions for the exercise of the right to deduct input tax are set out in Article 71 of the VAT Law, which provides, in particular:

‘The person shall exercise his right to deduct input tax where he fulfils at least one of the following conditions:

…

3. where he holds a customs declaration in which he is indicated as importer and the tax was paid in accordance with the conditions set out in Article 90(1) (in cases of importation within the meaning of Article 16);’

20 Article 90(1) of the VAT Law states:

‘In cases such as those referred to in Article 16, the importer of the goods shall pay the tax charged by the customs authorities to the budget of the Republic … .’

21 Under Chapter 17 of the VAT Law headed ‘Special arrangements under the margin scheme’, Article 143 is worded as follows:

‘(1) The provisions of this chapter shall apply to supplies, effected by a dealer of second-hand goods, of works of art, collectors’ items or antiques which were supplied to him in the territory of the State (including imported goods) or from the territory of another Member State by:

1. a non-taxable person;

2. another taxable person where the supply is tax-exempt under Article 50;

3. another taxable person who is not registered under this law;

4. another dealer applying the special arrangements under the margin scheme.

(3) The dealers shall also have the right to apply the provisions of this chapter to the supply of:

1. works of art, collectors’ items or antiques which they have imported;’

22 Article 151 of the VAT Law, headed ‘Option’, provides:

‘(1) The dealer may apply the normal tax arrangements provided by law to the supply of second-hand goods, works of art, collectors’ items or antiques.

(2) The person shall exercise the right provided for under paragraph 1 by not indicating in the invoice that the special arrangements are applicable.

…

(4) In cases such as those referred to in paragraph 2, the right to deduct input tax in respect of goods acquired or imported by the person concerned to which the special arrangements under the margin scheme are not applied shall arise and be exercised in the period during which the tax on a subsequent supply became chargeable.'

23 Paragraph 1(19) of the Supplementary Provisions to the VAT Law provides:

'"Second-hand goods" shall mean second-hand and individually identified movable property that is suitable for further use as it is or after repair and can be used for the purpose for which it was made. The following shall not constitute second-hand goods:

(a) works of art;

(b) collectors' items;

(c) antiques;

(d) precious metals and precious stones, regardless of their respective form.'

24 Under paragraph 1(23) of those supplementary provisions, 'a "dealer in second-hand goods, works of art, collectors' items or antiques" shall mean a taxable person who, in the course of his economic activity, purchases, acquires or imports with a view to resale, second-hand goods, works of art, collectors' items or antiques, even if he is acting as a commission agent within the meaning of the law on trade.'

The facts which gave rise to the dispute in the main proceedings and the questions referred for a preliminary ruling

25 Auto Nikolovi is a company established in Silistra (Bulgaria). It deals principally in second-hand motor vehicles.

26 In July 2008, it was subject to a tax inspection covering, in particular, the period from 17 January 2003 and 31 May 2008 in respect of the VAT debt.

27 That inspection was concluded by the issue of a tax assessment, dated 16 January 2009. As grounds for that assessment, the competent tax authority referred to the finding that, during that inspection, some of the second-hand parts that Auto Nikolovi had imported from Switzerland were still on its premises and had, consequently, not been used in subsequent taxable supplies. Assuming that Auto Nikolovi had opted for the normal VAT arrangements to be applied, it refused, on the basis of Article 151(1) and (4) of the VAT Law, to recognise the right to deduct input tax amounting to BGN 405.55 for the tax month of April 2007 in connection with the VAT paid on the importation of second-hand tyres, and BGN 375.31 for the tax month of July 2007 in connection with the VAT paid on the importation of second-hand tyres, wheel rims, a second-hand car lifter and bumpers.

28 Auto Nikolovi brought an objection against that tax assessment before the Director of the direktsia 'Obzhalvane i upravlenie na izpalnenieto' – Varna claiming, in essence, that the goods at issue are not covered by the definition of 'second-hand goods' in paragraph 1(19) of the

Supplementary Provisions to the VAT Law, although the provisions of that law relating to second-hand goods are not applicable in the present case.

29 That objection was dismissed by a decision of 11 March 2009, the director concluding that Auto Nikolovi was a dealer in second-hand goods and that it had opted to apply the normal VAT arrangements to the supplies of the goods at issue.

30 Auto Nikolovi contested that decision before the Administrativen sad Varna (Administrative court, Varna). It claimed, in essence, that its situation was not covered by the arrangements of the margin scheme in light of the fact that, under Article 314 of Directive 2006/112, and contrary to what is provided for in Article 143(1) of the VAT Law, that scheme does not cover supplies of goods imported by the taxable dealer himself. It is therefore entitled to exercise the right to deduct input tax under the conditions set out in Article 71(1) of that law.

31 By judgment of 11 June 2009, the Administrativen sad Varna annulled the assessment of 11 March 2009 to the extent that, by that assessment, Auto Nikolovi had been refused the right to deduct input tax in respect of the second-hand tyres, wheel rims and car lifters imported by it.

32 The Administrativen sad Varna held that those goods were not second-hand goods within the meaning of the VAT Law, in light of the fact that they constituted generic goods, and not goods individually identified by features which enable them to be distinguished from other goods of the same kind. Therefore, in application of the combined provisions of Articles 54 and 68(1) and (2) of that law, it held that Auto Nikolovi had lawfully exercised its right to deduct input tax in respect of the imports referred to with regard to the last month of the import procedure.

33 The Director of the direktsia ‘Obzhalvane i upravlenie na izpalnenieto’ – Varna lodged an appeal on a point of law against that judgment before the Varhoven administrativen sad (Supreme Administrative Court).

34 The referring court, which starts from the assumption that Auto Nikolovi is a taxable dealer, is faced with various questions in the resolution of the dispute in the main proceedings.

35 It has doubts with respect to the classification of the goods at issue as ‘second-hand goods’, in light of the fact that, in contrast to the definition of those goods in Article 311(1)(1) of Directive 2006/112, Paragraph 1(19) of the Supplementary Provisions to the VAT Law refers to goods which are ‘individually identified’. In that regard, it is uncertain whether the Member States themselves are free to define the concept of ‘second-hand goods’.

36 Assuming that the goods at issue are second-hand goods, it raises the question whether the arrangements under the margin scheme are applicable to the present case, in which the person concerned does not incur the risk of double taxation since it is entitled under the VAT Law to deduct the VAT paid on importation.

37 Assuming that the arrangements under the margin scheme are applicable to the main proceedings, it wonders whether a legislative provision which defers the right of the person concerned to deduct input tax in respect of the VAT paid on importation to the period during which the imported second-hand goods are used in subsequent taxable supplies, is compatible with the strict conditions of application of such a deferral arising from Article 319, the first subparagraph of Article 320(1) and Article 320(2) of Directive 2006/112.

38 Assuming that such deferral does not affect the importation of second-hand goods by the trader itself, it questions whether Article 314(a) to (d), the first subparagraph of Article 320(1) and Article 320(2) of Directive 2006/112 have direct effect allowing them to be relied upon and

incompatible national provisions disapplied.

39 In those circumstances the Varhoven administrativen sad decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘1. Does the term “second-hand goods” set out in Article 311(1)(1) of … Directive 2006/112 … also cover second-hand movable property which is not individualised (by mark, model, serial number, year of manufacture etc.) in such a way that it can be distinguished from goods of the same variety but is instead identified by generic features?

2. Does the phrase “as defined by the Member States” contained in Article 311(1)(1) of … Regulation 2006/112 … grant Member States the possibility of defining the term ‘second-hand goods’ themselves, or must the definition of this term in the directive be reproduced strictly in national law?

3. Is the requirement, incorporated into national law, that second-goods be individually identified, consistent with the spirit and purpose of the definition of “second-hand goods” in Community law?

4. Having regard to the aims set out in recital (51) of the preamble to … Directive 2006/112 … , can it be concluded that the phrase “where those goods have been supplied to him within the Community” contained in Article 314 … thereof also covers the importation of second-hand goods which the taxable dealer has imported himself?

5. If the arrangements under the margin scheme are also applicable to the supply of second-hand goods by a taxable dealer who has imported those goods himself, must the person from whom the taxable dealer has acquired those goods belong to one of the categories of person referred to in Article 314(a) to (d)?

6. Is the list of goods contained in Article 320(1) of … Directive 2006/112 … exhaustive?

7. Are the first subparagraph of Article 320(1) and Article 320(2) of … Directive 2006/112 … to be interpreted as meaning that they preclude a national provision under which the taxable dealer’s right to deduct as input tax the VAT paid by him on the importation of second-hand goods arises and is exercised in the period during which those goods were supplied in connection with a subsequent taxable supply to which the taxable dealer applies the normal tax arrangements?

8. Do Articles 314(a) to (d), the first subparagraph of Article 320(1), and Article 320(2) of Directive 2006/112 … have direct effect and can the national court rely on them directly in a case such as the present?’

Consideration of the questions referred for a preliminary ruling

The fourth question

40 By its fourth question, which should be considered first, the referring court asks, in essence, whether Article 314 of Directive 2006/112 must be interpreted as meaning that the arrangements under the margin scheme are applicable to supplies of second-hand goods which the taxable dealer itself imported into the European Union.

41 In that regard, it should be borne in mind that, in determining the scope of a provision of European Union law, its wording, objective and context must all be taken into account (see, to that effect, Case C?280/04 *Jyske Finans* [2005] ECR I?10683, paragraph 34, and Case C?116/10 *Feltgen and Bacino Charter Company* [2010] ECR I?0000, paragraph 12).

42 In the present case, it should, first, be noted that, as the European Commission observed, the part of the sentence 'where those goods have been supplied to him within the Community', in Article 314 of Directive 2006/112, clearly refers to the situation where, prior to their resale by the taxable dealer, the goods concerned were the object of a national or intra-Community supply to the person concerned, within the meaning of that directive.

43 However, it is apparent from the structure and general scheme of Directive 2006/112, in particular from the classification of taxable transactions in Title IV thereof, that the concept of 'supply of goods' must be distinguished, in particular, from that of 'importation of goods' into the European Union from a third country. It follows that the part of the sentence referred to in the paragraph above cannot cover goods which the taxable dealer himself imported into the European Union from a third country.

44 It is true that, as stated by the direktsia 'Obzhalvane i upravlenie na izpalnenieto' – Varna, the initial definition of 'taxable dealer' in Article 311(1)(5) covers, in general, any taxable person who, in the course of his economic activity and 'with a view to resale, purchases, or applies for the purposes of his business, or imports, second-hand goods, works of art, collectors' items or antiques'.

45 However, that definition, which covers the numerous situations governed by the provisions of the chapter of Directive 2006/112 dealing with special arrangements applicable to those goods, cannot disguise the fact that the scope of application Article 314 of that directive itself is limited to the resale of second-hand goods, works of art, collectors' items or antiques previously 'supplied' to the taxable dealer in the European Union.

46 Next, it should be noted that the arrangements for the taxation of the profit margin made by the taxable dealer on the supply of second-hand goods, works of art, collectors' items and antiques constitute a special arrangement for VAT – derogating from the general scheme of Directive 2006/112 – which, like the other special arrangements provided for in that directive, must be applied only to the extent necessary to achieve their objective (see *Jyske Finans*, paragraph 35).

47 As is apparent from recital 51 in the preamble to Directive 2006/112, the objective of the margin scheme is to avoid double taxation and distortions of competition between taxable persons in the area of second-hand goods (see, to that effect, Case C?320/02 *Stenholmen* [2004] ECR I?3509, paragraph 25; and *Jyske Finans*, paragraphs 37 and 41).

48 To tax, on its overall price, the supply by a taxable dealer of second-hand goods, where the price at which that dealer purchased those goods includes a sum of input VAT which was paid by a person falling within one of the categories identified in Article 314(a) to (d) of that directive and which neither that person nor the taxable dealer was able to deduct, would lead to such double taxation (see, to that effect, *Stenholmen*, paragraph 25 and *Jyske Finans*, paragraph 38).

49 However, where a taxable person resells, for the purposes of his taxed transactions, goods, such as those at issue in the main proceedings, which he imported himself, subject to the normal VAT scheme, into the Member State in which he carries out those transactions, and where he is therefore entitled, under Article 168(d) of Directive 2006/112, to deduct the VAT payable or paid

for those imported goods, there is, as the Commission points out, no likelihood of double taxation which could justify the application of the derogating margin scheme.

50 In that regard, it should be noted that the Explanatory Memorandum to the Proposal, presented by the Commission to the Council of the European Union on 11 January 1989, for a Directive supplementing the common system of value added tax and amending Articles 32 and 28 of Directive 77/388/EEC – special arrangements for second-hand goods, works of art, antiques and collector's items (OJ 1989 C 76, p. 10), expressly states that, where goods have been imported by the taxable dealer subject to the normal VAT scheme at the time of their importation, the existence of the right to deduct precludes the likelihood of double taxation, so that there is no justification for excluding the application of that normal scheme in favour of the special margin scheme.

51 Finally, the fact that the latter scheme is not applicable in circumstances such as those in the main proceedings is borne out by Article 316(1)(a) of Directive 2006/112. That provision, which specifies the supplies of imported goods by the taxable dealer himself with respect to which a right to opt for the application of that scheme must be granted to him by the Member States, covers supplies of 'works of art, collectors' items or antiques', and not those of goods such as those imported by Auto Nikolovi.

52 It follows that, irrespective of whether the goods at issue in the main proceedings are covered, or not, by the definition of 'second-hand goods', in Article 311(1)(1) of Directive 2006/112, the margin scheme is, in any event, not applicable to supplies of goods such as those concerned by the present case, which the taxable dealer himself imported into the European Union under the normal VAT scheme.

53 Consequently, the answer to the fourth question is that Article 314 of Directive 2006/112 must be interpreted as meaning that the margin scheme is not applicable to supplies of goods such as spare parts for motor vehicles, which the taxable dealer himself imported into the European Union under the normal VAT scheme.

54 In those circumstances, there is no need to answer the first three questions or the fifth question referred.

The sixth and seventh questions

55 By its sixth and seventh questions, which should be considered together, the referring court asks, in essence, whether the first subparagraph of Article 320(1) and Article 320(2) of Directive 2006/112 must be interpreted as meaning that they preclude a national provision which provides for the deferral, until the subsequent supply subject to the normal VAT scheme, of the right of the taxable dealer to deduct VAT paid on the importation of goods other than works of art, collectors' items or antiques.

56 In that regard, it is clearly apparent from the wording of those two provisions that, except in the situation, which is not relevant in the present case, referred to in the second subparagraph of Article 320(1) of Directive 2006/112, the rule that, as a derogation from the normal scheme of immediate deduction contained in Article 167 et seq. of that directive, the right to deduct arises at the time of the subsequent taxable supply, is applicable only where the taxable dealer 'opts' for the application of the normal VAT scheme to the 'the supply of works of art, collectors' items or antiques, which he has imported himself', rather than taking advantage of the right granted by national law, in accordance with Article 316 of that directive, to apply the margin scheme to such supplies.

57 As pointed out by the Commission, that literal interpretation is supported by the objective pursued by that derogating rule. That objective is to avoid the risk of fraud in situations where, having the choice between the application of the normal VAT scheme and the margin scheme, the taxable dealer opts, on importation, for that normal scheme in order to benefit from an immediate right to deduct in full the VAT payable or paid on importation, then contrives to bring the subsequent resale of imported goods within the margin scheme.

58 On the other hand, where, as in the main proceedings, the applicability of the margin scheme is, as indicated by the answer to the fourth question, excluded, as, consequently, is the choice between the application of that scheme and the normal VAT scheme, there is no risk of fraud which could justify ruling out the application of the normal deduction scheme.

59 Consequently, the answer to the sixth and seventh questions is that the first subparagraph of Article 320(1) and Article 320(2) of Directive 2006/112 must be interpreted as meaning that they preclude a national provision which provides for the deferral, until the subsequent supply subject to the normal VAT scheme, of the right of the taxable dealer to deduct VAT paid at the time of the importation of goods other than works of art, collectors' items or antiques.

The eighth question

60 By its eighth question, the referring court asks, in essence, whether Article 314, the first subparagraph of Article 320(1) and Article 320(2) of Directive 2006/112 have direct effect, so that they can be relied upon in a dispute such as that in the main proceedings.

61 In that regard, according to the settled case-law of the Court, whenever the provisions of a directive appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise, they may be relied on before the national courts by individuals against the State where the latter has failed to implement the directive in domestic law by the end of the period prescribed or where it has failed to implement the directive correctly (see Case C?266/07 *Flughafen Köln/Bonn* [2008] ECR I?5999, paragraph 23; Case C?138/07 *Cobelfret* [2009] ECR I?731, paragraph 58; and Case C?243/09 *Fuß* [2010] ECR I?0000, paragraph 56).

62 In Article 314 of Directive 2006/112, the definition of the cases covered by the application of the margin scheme is in unequivocal terms and does not require the intervention of any other measures, either of the European Union institutions or of the Member States.

63 As regards the first subparagraph of Article 320(1) of that directive, it sets out, clearly and unconditionally, the imported goods the subsequent supply of which, under the normal VAT scheme, grants the taxable dealer a right to deduct VAT payable or paid on importation. Article 320(2) of that directive, for its part, defines in the same way the scope of application of the rule of deferral of the right to deduct.

64 Since therefore Article 314, the first subparagraph of Article 320(1) and Article 320(2) of Directive 2006/112 appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise, their direct effect, which is dependent on that finding, authorises an individual to rely on them before national courts in a dispute with national tax authorities, such as that in the main proceedings, for the purposes of having national legislation which is incompatible with those provisions disapplied (see, to that effect, *Flughafen Köln/Bonn*, paragraph 39).

65 The answer to the eighth question is therefore that Article 314, the first subparagraph of Article 320(1) and Article 320(2) of Directive 2006/112 have direct effect which authorises an individual to rely on them before a national court for the purposes of having national legislation

which is incompatible with those provisions disapplied.

Costs

66 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 (Third Chamber) hereby rules:

1. **Article 314 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the margin scheme is not applicable to supplies of goods such as spare parts for motor vehicles, which the taxable dealer himself imported into the European Union under the normal value-added tax scheme.**

2. **The first subparagraph of Article 320(1) and Article 320(2) of Directive 2006/112 must be interpreted as meaning that they preclude a national provision which provides for the deferral, until the subsequent supply under the normal value added tax scheme, of the right of the taxable dealer to deduct value added tax paid on importation of goods other than works of art, collectors' items or antiques.**

3. **Article 314, the first subparagraph of Article 320(1) and Article 320(2) of Directive 2006/112 have direct effect which authorises an individual to rely on them before a national court for the purposes of having national legislation which is incompatible with those provisions disapplied.**

[Signatures]

* Language of the case: Bulgarian.