

JUDGMENT OF THE COURT (Fourth Chamber)

27 September 2012 (*)

(Taxation – Value-added tax – Supply of goods – Taxation of chain transactions – Refusal to exempt on grounds of failure to produce the VAT identification number of the person acquiring goods)

In Case C-587/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Bundesfinanzhof (Germany), made by decision of 10 November 2010, received at the Court on 15 December 2010, in the proceedings

Vogtländische Straßen-, Tief- und Rohrleitungsbau GmbH Rodewisch (VSTR)

v

Finanzamt Plauen,

intervening parties:

Bundesministerium der Finanzen,

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot (Rapporteur), President of the Chamber, A. Prechal, K. Schiemann, L. Bay Larsen and C. Toader, Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Impellizzeri, administrator,

having regard to the written procedure and further to the hearing on 7 March 2012,

after considering the observations submitted on behalf of:

- Vogtländische Straßen-, Tief- und Rohrleitungsbau GmbH Rodewisch (VSTR), by T. Küffner, S. Maunz and T. Streit, Rechtsanwälte,
- the German Government, by T. Henze and K. Petersen, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, assisted by P. Gentili, avvocato dello Stato,
- the European Commission, by W. Mölls and C. Soulay, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 21 June 2012,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of 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), as amended by Council Directive 98/80/EC of 12 October 1998 (OJ 1998 L 281, p. 31) ('the Sixth Directive').

2 The reference was made in the course of proceedings between Vogtländische Straßen-, Tief- und Rohrleitungsbau GmbH Rodewisch ('VSTR') and the Finanzamt Plauen concerning the latter's refusal to exempt a supply of goods made by a branch of that company from value added tax ('VAT').

Legal context

European Union law

3 Article 4(1) of the Sixth Directive defines a 'taxable person' as follows:

'1. "Taxable person" shall mean any person who independently carries out in any place any economic activity specified in paragraph 2, whatever the purpose or results of that activity.'

4 Article 22 of the Sixth Directive, in the version resulting from Article 28h thereof, imposes several obligations on persons liable to payment under the internal system, concerning, in particular, account keeping, invoicing, VAT returns and recapitulative statements which they are required to lodge with the tax authorities.

5 Article 22(1)(c), first and third indents, of the Sixth Directive, in the version resulting from Article 28h thereof, provides:

'Member States shall take the measures necessary to identify by means of an individual number:

- every taxable person, with the exception of those referred to in Article 28a(4), who within the territory of the country effects supplies of goods or of services giving him the right of deduction ...
- ...
- every taxable person who, within the territory of the country, effects intra-Community acquisitions of goods for the purposes of his operations relating to the economic activities referred to in Article 4(2) carried out abroad'.

6 Article 22(3)(a) of the Sixth Directive, in the version resulting from Article 28h thereof, provides:

'Every taxable person shall issue an invoice, or other document serving as invoice, in respect of goods and services which he has supplied or rendered to another taxable person or to a non-taxable legal person. Every taxable person shall also issue an invoice ... in respect of the supplies of goods referred to in [Article 28c(A)]. ...'

7 The second subparagraph of Article 22(3)(b) of the Sixth Directive, in the version resulting from Article 28h thereof, provides:

'The invoice shall also indicate:

...

— in the case of the transactions referred to in Article 28c(A)(a), the number by which the taxable person is identified in the territory of the country and the number by which the person acquiring the goods is identified in another Member State,

...’.

8 Article 22(8) of the Sixth Directive, in the version resulting from Article 28h thereof, provides:

‘Member States may impose other obligations which they deem necessary for the correct collection of the tax and for the prevention of evasion, subject to the requirement of equal treatment for domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.’

9 The first and second subparagraphs of Article 28a(1)(a) and the first subparagraph of Article 28a(3) of the Sixth Directive provide:

‘The following shall also be subject to [VAT]:

(a) intra-Community acquisitions of goods for consideration within the territory of the country by a taxable person acting as such or by a non-taxable legal person where the vendor is a taxable person acting as such who is not eligible for the tax exemption provided for in Article 24 and who is not covered by the arrangements laid down in the second sentence of Article 8(1)(a) or in Article 28b(B)(1).

By way of derogation from the first subparagraph, intra-Community acquisitions of goods made under the conditions set out in paragraph 1a by a taxable person or non-taxable legal person shall not be subject to value added tax.

...

3 “Intra-Community acquisition of goods” shall mean 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 to a Member State other than that from which the goods are dispatched or transported.’

10 Article 28b(A) of that directive provides:

‘1. The place of the intra-Community acquisition of goods shall be deemed to be the place where the goods are at the time when dispatch or transport to the person acquiring them ends.

2. Without prejudice to paragraph 1, the place of the intra-Community acquisition of goods referred to in Article 28a(1)(a) shall, however, be deemed to be within the territory of the Member State which issued the value added tax identification number under which the person acquiring the goods made the acquisition, unless the person acquiring the goods establishes that that acquisition has been subject to tax in accordance with paragraph 1.

If, however, the acquisition is subject to tax in accordance with paragraph 1 in the Member State of arrival of the dispatch or transport of the goods after having been subject to tax in accordance with the first subparagraph, the taxable amount shall be reduced accordingly in the Member State which issued the value added tax identification number under which the person acquiring the

goods made the acquisition.

...'

11 The first subparagraph of Article 28c(A)(a) of the Sixth Directive provides:

'Without prejudice to other Community provisions and subject to conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions provided for below and preventing any evasion, avoidance or abuse, Member States shall exempt:

(a) supplies of goods, as defined in Article 5, dispatched or transported by or on behalf of the vendor or the person acquiring the goods out of the territory referred to in Article 3 but within the Community, effected for another taxable person or a non-taxable legal person acting as such in a Member State other than that of the departure of the dispatch or transport of the goods'.

German law

12 Paragraph 6a of the Umsatzsteuergesetz (Law on turnover tax; 'the UStG') defines intra-Community supply as follows:

'There is an intra-Community supply [Paragraph 4(1)(b)] where a supply fulfils the following conditions:

(1) the trader or the person acquiring the goods transported or dispatched the object of the supply to another part of the Community;

(2) the person acquiring the goods is:

(a) a trader who acquired the object of the supply for his undertaking;

(b) a legal person who is not a trader or who did not acquire the object of the supply for his undertaking; or

(c) any other purchaser in the case of the supply of a new vehicle

and

(3) the acquisition of the object of the supply is subject as regards the person acquiring the goods in another Member State to the provisions relating to the imposition of turnover tax.

...'

13 Paragraph 17c(1) of the Umsatzsteuer-Durchführungsverordnung (Regulation implementing the UStG) imposes the following obligations on the supplier:

'In the case of intra-Community supplies (Paragraph 6a(1) and (2) of the [UStG], the trader to whom this provision applies must provide evidence in the accounts that the requirements for exemption from tax have been complied with, including the VAT identification number of the person acquiring the goods. The accounts must show clearly and in an easily verifiable manner that the requirements have been met.'

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

14 In November 1998 a branch of VSTR established in Germany sold two stone-crushing machines to Atlantic International Trading Co. ('Atlantic'), established in the United States. Atlantic

had a subsidiary in Portugal but was not registered in any Member State of the European Union for VAT purposes.

15 The branch of VSTR requested Atlantic to provide its VAT identification number. Atlantic replied that it had sold the machines on to a company established in Finland and gave the seller the VAT identification number of the Finnish company. The branch verified this information.

16 Those goods were subsequently collected from the premises of the branch of VSTR by a transport company contracted by Atlantic and taken first by land to Lübeck (Germany) and then by sea to Finland.

17 The branch of VSTR issued Atlantic with an invoice without VAT for the supply of the stone-crushers, bearing the VAT identification number of the Finnish undertaking to which those goods were sold.

18 However, the Finanzamt Plauen took the view that the supply between the branch of VSTR and Atlantic could not be exempt from VAT as the former did not provide the VAT identification number of the latter.

19 The Sächsisches Finanzgericht (Finance Court, Saxony) (Germany), which heard the case at first instance, dismissed the action for annulment brought by VSTR against that decision of the Finanzamt Plauen.

20 VSTR then brought an appeal on a point of law before the Bundesfinanzhof (Federal Finance Court) (Germany) ('Revision'), arguing that the grounds on which the Finanzamt Plauen refused the VAT exemption were contrary to the Sixth Directive. The Finanzamt Plauen contends, rather, that Member States may, without contravening European Union law, specify that the exemption of an intra-Community supply is conditional on the person acquiring the goods having a VAT identification number in a Member State.

21 The Bundesfinanzhof found that the transaction at issue in the main proceedings gave rise to two successive supplies, the first from the branch of VSTR to Atlantic, and the second from Atlantic to the Finnish company.

22 It took the view that the first supply could be exempted from VAT as an intra-Community supply, provided that, inter alia, in accordance with Paragraph 6a(1), first sentence, point 3 of the UStG, the acquisition of the goods by the person acquiring the goods is actually subject to tax in Finland. It considered that such a condition might require that the person acquiring the goods actually have a VAT identification number in the Member State of destination so that the authority in that Member State could impose VAT on the transaction.

23 The Bundesfinanzhof took the view that exemption from VAT could be refused pursuant to the first sentence of Paragraph 17c(1) of the Regulation implementing the UStG, which requires the supplier to provide evidence in the accounts of the VAT identification number of the person acquiring the goods.

24 It pointed out that, although the first subparagraph of Article 28c(A)(a) of the Sixth Directive does not expressly require that, for an intra-Community supply to be exempt from VAT, the person acquiring the goods must trade under an individual VAT identification number, such a requirement is implied by the condition set out in that provision that the person acquiring the goods must be a 'taxable person ... acting as such in [another] Member State'. Moreover it raised the question whether, having regard to Article 22(8) of the Sixth Directive, in the version resulting from Article 28h thereof, and the first subparagraph of Article 28c(A)(a) of that directive, that condition might

authorise Member States to impose such a rule of evidence on the supplier, particularly where, as in the case in the main proceedings, the person acquiring the goods, who is established in a third State, is not registered in any Member State and, moreover, the supplier has not proved that the person acquiring the goods has declared the intra-Community acquisition to the tax authority.

25 The referring court also raises the question whether the obligation to provide a VAT identification number might be justified by reason of the correlation, established by the Sixth Directive and upheld by the case-law of the Court of Justice, between exemption for intra-Community supplies and taxation of intra-Community acquisitions.

26 The Bundesfinanzhof therefore decided to stay the proceedings and to refer these questions to the Court:

‘(1) Does [the Sixth Directive] allow the Member States to accept an intra-Community supply as tax-exempt only where the taxable person provides evidence in the accounts of the VAT identification number of the person acquiring the goods?

(2) Is it relevant to the answer to that question:

- that the person acquiring the goods was a trader with its seat in a third State, which, although it dispatched the object of the supply in the course of a chain transaction from one Member State to another Member State, is not registered for VAT purposes in any Member State, and
- whether the taxable person has proved that the person acquiring the goods submitted a tax return concerning the intra-Community acquisition?’

The questions referred for a preliminary ruling

Preliminary observations

27 The first subparagraph of Article 28c(A)(a) of the Sixth Directive, which exempts intra-Community supplies from VAT, forms part of the transitional arrangements for the taxation of trade between Member States laid down in Title XVIa of that directive, the purpose of which is to transfer the tax revenue to the Member State in which final consumption of the goods supplied takes place (see, *inter alia*, Case C-285/09 *R* [2010] ECR I-12605, paragraph 37).

28 The mechanism established under those transitional arrangements consists of (i) exemption by the Member State of departure of the supply giving rise to the intra-Community dispatch or transport, in conjunction with the right to deduction or reimbursement of the VAT paid as input tax in that Member State, and (ii) taxation, by the Member State of destination, of the intra-Community acquisition. That mechanism thus makes it possible to delimit clearly the authority to tax of the Member States concerned (see, to that effect, *R*, paragraph 38) and enables double taxation and, therefore, infringement of the principle of fiscal neutrality inherent in the common system of VAT to be avoided (see, *inter alia*, Case C-409/04 *Teleos and Others* [2007] ECR I-7797, paragraph 25, and Case C-146/05 *Collée* [2007] ECR I-7861, paragraph 23).

29 As regards the conditions under which a transaction may be classified as an intra-Community supply within the meaning of the first subparagraph of Article 28c(A)(a) of the Sixth Directive, it is clear from the case-law that supplies of goods dispatched or transported by or on behalf of the vendor or the person acquiring the goods out of the territory of a Member State but within the Community, effected for another taxable person or a non-taxable legal person acting as such in a Member State other than that of the departure of the dispatch or transport of the goods,

are covered by the term ‘intra-Community supply’ and are thus exempt from VAT (see, inter alia, *R*, paragraph 40).

30 Apart from those requirements, relating to the capacity of the taxable person, to the transfer of the right to dispose of goods as owner and to the physical movement of the goods from one Member State to another, no other conditions can be placed on the classification of a transaction as an intra-Community supply or acquisition of goods (see *Teleos and Others*, paragraph 70), bearing in mind that the meanings of ‘intra-Community supply’ and ‘intra-Community acquisition’ are objective in nature and apply without regard to the purpose or results of the transactions concerned (see, inter alia, *Teleos and Others*, paragraph 38).

31 Although the questions asked by the referring court concern the capacity as a taxable person of the person acquiring the goods, the Court none the less considers it necessary to give the referring court some indications regarding the condition concerning transport. Since the dispute in the main proceedings concerns a transaction in which the goods sold were the object of two successive supplies, but only one intra-Community transport, the classification as an intra-Community supply of the first supply, between the branch of VSTR and Atlantic, which can be therefore exempted from VAT pursuant to the first subparagraph of Article 28c(A)(a) of the Sixth Directive, depends on whether, as the order for reference suggests, that transport can actually be ascribed to that first supply (see, to that effect, Case C-245/04 *EMAG Handel Eder* [2006] ECR I-3227, paragraph 45, and Case C-430/09 *Euro Tyre Holding* [2010] ECR I-13335, paragraph 21).

32 The answer to that question depends on an overall assessment of all the specific circumstances of the case (see *Euro Tyre Holding*, paragraph 27), and, in particular, on the determination of the moment at which the right to dispose of the goods as owner was transferred to the final recipient (see *Euro Tyre Holding*, paragraphs 31 to 35). In a situation where the second transfer of the power to dispose of the goods as owner took place before the intra-Community transport had occurred, the intra-Community transport could no longer be ascribed to the first supply to the first person acquiring the goods (see *Euro Tyre Holding*, paragraph 33).

33 Thus, in the case in the main proceedings, the supply by the branch of VSTR to Atlantic would not constitute an intra-Community supply exempt from VAT under the first subparagraph of Article 28c(A)(a) of the Sixth Directive if the second transfer of the ownership of the goods in question from Atlantic to the Finnish company had taken place before the intra-Community transport of those goods to Finland had taken place.

34 As regards the criteria for assessment, the Court has held that, where the first person acquiring the goods has obtained the right to dispose of the goods as owner in the Member State of the first supply, expresses his intention to transport those goods to another Member State and presents his VAT identification number attributed by that other State, the intra-Community transport should be ascribed to the first supply, on condition that the right to dispose of the goods as owner has been transferred to the second person acquiring the goods in the Member State of destination of the intra-Community transport (see *Euro Tyre Holding*, paragraphs 44 and 45).

35 However, the Court has also made clear that such is not the case where, after the transfer to the person acquiring the goods of the right to dispose of the goods as owner, the supplier effecting the first supply had been informed by that person of the fact that the goods would be sold on to another taxable person before they left the Member State of supply (*Euro Tyre Holding*, paragraph 36).

36 According to the order for reference, the facts in the main proceedings are in part the same as those of the latter example as Atlantic made clear to the branch of VSTR, before the goods at issue were transported to Finland, that they had already been sold on to a Finnish firm, and it

informed the branch of that Finnish firm's VAT identification number.

37 However, those circumstances cannot, on their own, be such as to prove that the transfer to the Finnish company of the right to dispose of the goods as owner took place before their transport to Finland and it is for the national court to assess whether or not, having regard to all the circumstances of the case, that was so.

38 It follows that, since the supply at issue in the main proceedings might constitute an intra-Community supply, the two questions referred must be answered.

The two questions referred

39 By its two questions, which should be considered together, the referring court asks, in essence, whether the first subparagraph of Article 28c(A)(a) of the Sixth Directive should be interpreted as not precluding the tax authority of a Member State from making the exemption from VAT of an intra-Community supply subject to the provision by the supplier of the VAT identification number of the person acquiring the goods. The referring court also asks the Court to make clear whether the fact that the person acquiring the goods is established in a third State, without being registered in a Member State, or the fact that the supplier proves that the person acquiring the goods declared the intra-Community acquisition are such as to alter the answer to those questions.

40 The condition set out in the first subparagraph of Article 28c(A)(a) of the Sixth Directive, according to which the person acquiring the goods must be a 'taxable person ... acting as such in [another] Member State' does not, in itself, imply that the person acquiring the goods must trade under a VAT identification number in the course of the acquisition at issue.

41 The questions asked by the referring court must therefore be understood as concerning the rules of evidence liable to be imposed on the supplier to demonstrate that the condition relating to the capacity as a taxable person of the person acquiring the goods in the transaction at issue is respected.

42 In that connection, the Court has held that, in the absence of any provision on that subject in the Sixth Directive, which provides only, in the first sentence of Article 28c(A), that Member States are to lay down the conditions subject to which they may exempt intra-Community supplies of goods, the question of the evidence which may be adduced by taxable persons in order to be exempted from VAT falls within the competence of the Member States (see *Collée*, paragraph 24, and *R*, paragraph 43).

43 The Court has also held that it is for the supplier of the goods to furnish the proof that the conditions laid down for the application of the first subparagraph of Article 28c(A)(a) of the Sixth Directive, including those imposed by the Member States for the purpose of ensuring the correct and straightforward application of the exemptions and for preventing any evasion, avoidance or abuse, are fulfilled (see *R*, paragraph 46).

44 Moreover, Article 22(8) of the Sixth Directive, in the version resulting from Article 28h thereof, gives Member States the option of adopting measures to ensure the correct collection of the tax and the prevention of tax evasion, provided that they do not go further than is necessary to attain those objectives (see, to that effect, *Collée*, paragraph 26, and *R*, paragraph 45). Such measures may not therefore be used in such a way that they would have the effect of undermining the neutrality of VAT, which is a fundamental principle of the common system of VAT (see *Teleos and Others*, paragraph 46, and *Collée*, paragraph 26).

45 Thus, a measure which, in essence, makes the right of exemption from VAT in respect of an intra-Community supply subject to compliance with formal obligations, without any account being taken of the substantive requirements and, in particular, without any consideration being given as to whether those requirements have been satisfied, goes further than is necessary to ensure the correct collection of the tax (see *Collée*, paragraph 29).

46 The principle of fiscal neutrality requires that an exemption from VAT be allowed if the substantive requirements are satisfied, even if the taxable person has failed to comply with some of the formal requirements, and it can only be otherwise if non-compliance with such formal requirements would effectively prevent the production of conclusive evidence that the substantive requirements have been satisfied (see *Collée*, paragraph 31), provided, however, that the supplier of the goods has not intentionally participated in tax evasion which has jeopardised the operation of the common system of VAT. In such a situation, the Court has held that the principle of tax neutrality cannot legitimately be invoked by such a person (see *R*, paragraph 54).

47 It follows from the foregoing that the Member States have the option of requiring the supplier of goods to provide evidence that the person acquiring the goods is a taxable person acting as such in a Member State other than that of the departure of the dispatch or transport of the goods provided that the general principles of law and, in particular, the requirement of proportionality are observed.

48 As to whether those requirements are respected where, as in the case in the main proceedings, a Member State requires a supplier to provide the VAT identification number of the person acquiring the goods, it cannot be disputed that that identification number is closely connected with capacity as a taxable person in the system set up by the Sixth Directive. Thus, the first and third indents of Article 22(1)(c) of the Sixth Directive, in the version resulting from Article 28h thereof, require Member States to take the measures necessary to identify a taxable person by means of an individual number.

49 However, that evidence cannot, in every case, depend exclusively on the provision of that number given that the definition of 'taxable person' set out in Article 4(1) of the Sixth Directive simply covers a person who independently carries out in any place any economic activity specified in paragraph 2 of that article, whatever the purpose or results of that activity, and does not make the capacity of taxable person subject to the possession by that person of a VAT identification number. It follows, moreover, from the case-law that a taxable person acts in that capacity where he carries out transactions in the course of his taxable activity (see, to that effect, Joined Cases C-354/03, C-355/03 and C-484/03 *Optigen and Others* [2006] ECR I-483, paragraph 42).

50 Nor can it be ruled out that a supplier may, for one reason or another, not have that number, particularly as fulfilment of that requirement by the supplier depends on information received from the person acquiring the goods.

51 Thus, although a VAT identification number provides proof of the tax status of the taxable person and facilitates the tax audit of intra-Community transactions, it constitutes only a formal requirement which cannot undermine the right of exemption from VAT where the substantive conditions for an intra-Community supply are satisfied (see Case C-273/11 *Mecsek-Gabona* [2012] ECR, paragraph 60).

52 Consequently, although it is legitimate to require that the supplier act in good faith and take every measure which can reasonably be required of him to ensure that the transaction that he effects does not lead to his participation in tax evasion (see *Euro Tyre Holding*, paragraph 38), the Member States would be going further than the measures strictly necessary for the correct

collection of tax if they refused to grant the VAT exemption for an intra-Community supply on the sole ground that the VAT identification number was not provided by the supplier, where that supplier, acting in good faith and having taken all the measures which can reasonably be required of him, is unable to provide that number but provides other information which is such as to demonstrate sufficiently that the person acquiring the goods is a taxable person acting as such in the transaction at issue.

53 In that connection, it is apparent from the order for reference that, in the case in the main proceedings, the supplier asked Atlantic for its VAT identification number and that Atlantic, which did not have such a number, sent it the identification number of the second person acquiring the goods. Thus neither of the persons involved appears to have acted fraudulently. Moreover, the supply at issue in the main proceedings concerns goods which, by their nature, appear to be intended for use in the course of an economic activity.

54 The fact that the person acquiring the goods is established in a third State, as in the case in the main proceedings, cannot in principle be such as to justify a different answer. Neither the transitional regime of the Sixth Directive relating to intra-Community supplies nor the case-law of the Court of Justice on that subject make a distinction according to the place of establishment of the person acquiring the goods.

55 As for the fact that the supplier presented the tax return of the person acquiring the goods concerning its intra-Community acquisition, it must be borne in mind that, as was held in paragraph 30 of the present judgment, apart from the requirements relating to the capacity of the taxable person, to the transfer of the right to dispose of goods as owner and to the physical movement of the goods from one Member State to another, no other conditions can be placed on the classification of a transaction as an intra-Community supply or acquisition of goods. Thus, in order to be exempt under the first subparagraph of Article 28c(A)(a) of the Sixth Directive, a supplier cannot be required to provide evidence of the taxation of the intra-Community acquisition of the goods in question.

56 Moreover, such a return cannot be considered to constitute, on its own, decisive evidence of the capacity as a taxable person of the person acquiring the goods and at the most can only constitute an indication (see *Teleos and Others*, paragraph 71, and Case C-184/05 *Twoh International* [2007] ECR I-7897, paragraph 37).

57 Consequently, the fact that the supplier did or did not present that return is not such as to alter the reply to the questions asked by the referring court either.

58 In the light of the foregoing considerations, the answer to the two questions is therefore that the first subparagraph of Article 28c(A)(a) of the Sixth Directive should be interpreted as not precluding the tax authority of a Member State from making the exemption from VAT of an intra-Community supply subject to the provision by the supplier of the VAT identification number of the person acquiring the goods, with the proviso that the grant of that exemption should not be refused on the sole ground that that requirement was not fulfilled where the supplier, acting in good faith and having taken all the measures which can reasonably be required of him, is unable to provide that identification number but provides other information which is such as to demonstrate sufficiently that the person acquiring the goods is a taxable person acting as such in the transaction at issue.

Costs

59 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in

submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

The first subparagraph of Article 28c(A)(a) of 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, as amended by Council Directive 98/80/EC of 12 October 1998, should be interpreted as not precluding the tax authority of a Member State from making the exemption from VAT of an intra-Community supply subject to the provision by the supplier of the VAT identification number of the person acquiring the goods, with the proviso that the grant of that exemption should not be refused on the sole ground that that requirement was not fulfilled where the supplier, acting in good faith and having taken all the measures which can reasonably be required of him, is unable to provide that identification number but provides other information which is such as to demonstrate sufficiently that the person acquiring the goods is a taxable person acting as such in the transaction at issue.

[Signatures]

* Language of the case: German.