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JUDGMENT OF THE COURT (Second Chamber)

19 July 2012 (*)

(Sixth VAT Directive – Directive 2006/112/EC — Concept of ‘economic activity’ — Supplies of timber in order to alleviate the damage caused by a storm — Reverse charge procedure — Failure to register in the register of taxable persons — Fine — Principle of proportionality)

In Case C-263/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Augst?k?s tiesas Sen?ts (Latvia), made by decision of 13 May 2011, received at the Court on 26 May 2012, in the proceedings

Ain?rs R?dlihs

v

Valsts ie??mumu dienests,

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues (President of the Chamber), A. Rosas, A. Ó Caoimh, A. Arabadjiev (Rapporteur) and C.G. Fernlund, Judges,

Advocate General: E. Sharpston,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 28 March 2012,

after considering the observations submitted on behalf of:

– Valsts ie??mumu dienests, by N. Jezdakova, ?ener?ldirektore,

– the Latvian Government, by I. Kalni?š and A. Nikolajeva, acting as Agents,

– the European Commission, by A. Sauka and C. Soulay, 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 Article 4(1) and (2) 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 2006/98/EC of 20 November 2006 (OJ 2006 L 363, p. 129) (‘the Sixth Directive’), of Article 9(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), as amended by Council Directive 2006/138/EC of 19 December 2006 (OJ 2006 L 384, p. 92)

(‘the VAT Directive’), and of the principle of proportionality.

2 The reference has been submitted in the course of proceedings between Mr R?dlihs and the Valsts ie??mumu dienests (Latvian tax authority; ‘the VID’) concerning the former’s failure to register in the register of taxable persons for purposes of value added tax (‘VAT’).

Legal context

European Union law

3 The VAT Directive, pursuant to Articles 411 and 413 thereof, repealed and replaced, as from 1 January 2007, the European Union legislation on VAT, including the Sixth Directive. According to recitals 1 and 3 in the preamble to the VAT Directive, the recasting of the Sixth Directive was necessary to ensure that the provisions on the harmonisation of the laws of the Member States relating to VAT would be presented in a clear and rational manner in a revised structure and wording while, in principle, not making material changes.

4 According to Article 2(1)(a) of the VAT Directive, which essentially reproduces the wording of Article 2(1) of the Sixth Directive, ‘the supply of goods for consideration within the territory of a Member State by a taxable person acting as such … shall be subject to VAT’.

5 Article 9(1) of the VAT Directive, which is worded in terms which are essentially similar to those of Article 4(1) and (2) of the Sixth Directive, provides:

‘“Taxable person” shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.

Any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, shall be regarded as “economic activity”. The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.’

6 Article 213(1) of the VAT Directive, which essentially reproduces the wording of Article 22(1) of the Sixth Directive, in the version resulting from Article 28h(1) of that directive, provides, in particular, that ‘[e]very taxable person shall state when his activity as a taxable person commences, changes or ceases’.

7 Pursuant to the single article of Council Decision 2006/42/EC of 24 January 2006 authorising Latvia to extend the application of a measure derogating from Article 21 of Sixth Directive 77/388 (OJ 2006 L 25, p. 31), that Member State was authorised to continue to designate the recipient of goods or services as being the person liable to pay VAT in the case of timber transactions from 1 May 2005 to 31 December 2009. The Council Implementing Decision of 7 December 2009 (OJ 2009 L 347, p. 30) authorised Latvia, by way of derogation from Article 193 of the VAT Directive, to continue to designate the recipient of goods and services as being the person liable to pay VAT in the case of timber transactions up to 31 December 2012.

Latvian law

8 The relevant provisions of national law, in the version applicable to the dispute in the main proceedings, are contained in the Law on VAT (*Latvijas V?stnesis* No 49 of 30 March 1995).

9 Article 1(6) of that Law provides:

‘[T]he term “economic activity” shall mean any systematic activity for which remuneration is paid

that does not consist of the payment, by the employer to the worker, of a salary or any other remuneration on the basis of which compulsory social security contributions and residents' income tax have to be calculated'.

10 Article 3(3) and (5) of that Law states:

'3. Natural persons or legal entities and the groups of such persons linked by a contract or an agreement, or their representatives, shall be registered in the register of taxable persons for [VAT] purposes maintained by the [VID].

…

5. [I]f the total value of the sales of goods and services subject to VAT effected by a natural person or legal entity during the previous 12 months has not reached or exceeded LVL 10 000, that person, that group or its members shall be entitled not to be included in the register of taxable persons for VAT purposes maintained by the VID. This rule shall also apply to institutions financed by the State budget. Persons who make use of that right must, within thirty days from the date on which that amount is reached or exceeded, have themselves entered in that register.'

11 Article 13.2 of that Law provides:

'1. In respect of the supplies of timber referred to in paragraph 2, if the supplier and purchaser are registered with the VID as taxable persons for [VAT] purposes, the purchaser shall pay the supplier in accordance with the procedure set out by the Chamber of Ministers and in compliance with the following conditions:

(1) the commercial relationship between the supplier and the purchaser of timber shall be documented by an accounting document drawn up in a standard form — the invoice for transport of the timber — the detailed procedure for the use, submission and payment of which shall be set out by the Chamber of Ministers;

(2) the taxable person shall deduct from the tax to be paid, in respect of the input VAT on the timber purchased, only the amount indicated on the transport invoice, if all of the timber bought during the tax year in question was intended for the performance of that person's taxable activities. In that case, [VAT] shall not be payable on the timber bought …'

12 Article 35(3) of that Law provides:

'[W]here a person has not registered, under the provisions of Article 3 of this Law, as a taxable person with the VID but carries out taxable transactions, that person shall be subject to payment of the tax from the date on which he ought to have registered, without having the right to deduct input VAT. If that person carries out supplies of timber that are subject to the tax, a fine shall be imposed on him in the amount of 18% of the value of the timber supplied, from the date on which he ought to have registered.'

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

13 During an inspection carried out by the VID, it was found that the applicant in the main proceedings had carried out 12 supplies of timber in April 2005 and 25 transactions of the same type over a period from May 2005 to December 2006. It was also found that the applicant in the main proceedings had not registered in the register of taxable persons for VAT purposes and had not declared any economic activity to the VID.

14 By a decision of 21 June 2007, the VID, inter alia, penalised that failure to register by

imposing on Mr R?dlihs, pursuant to Article 35(3) of the Law on VAT, a fine of LVL 11 363.20, that is to say, 18% of the value of the supplies at issue, which corresponded to the VAT rate applicable at the time.

15 Mr R?dlihs brought proceedings seeking the annulment of that decision. He submitted that the supplies of timber which he had carried out could not be considered to be an economic activity as they were neither systematic nor carried out independently. Those supplies were, he argued, of an exceptional nature inasmuch as they were effected, not for profit, but to alleviate the damage caused by a storm, which constituted a case of *force majeure*. He also drew attention to the fact that a report of the forestry department showed that the forest concerned was young and that its trees should therefore not be cut down. Moreover, it would not have been possible to sell in one lot all of the trees felled following that storm.

16 In the alternative, he submitted that he had acquired the forest at issue in order to meet his own personal needs and that the transfer of timber from that forest was for that reason not subject to VAT.

17 The applicant in the main proceedings claimed, in addition, that the amount of the fine imposed on him was disproportionate in so far as, even if the supplies at issue did constitute an economic activity, it was the purchaser, and not the supplier, who was liable for the VAT pursuant to Article 13.2 of the Law on VAT.

18 That action was dismissed by the Administrat?v? rajona tiesa (District Administrative Court) and by the Administrat?v? apgabaltiesa (Regional Administrative Court) successively. The courts before which that action had been brought observed that, under Article 1(6) of the Law on VAT, any systematic activity carried out independently for which remuneration was paid was considered to be an 'economic activity'. They concluded that the supplies at issue had to be regarded as having been carried out in the course of an economic activity, in that they were carried out for profit in the name and on behalf of the applicant in the main proceedings, were repeated during the period from April 2005 to December 2006 and were not exceptional in nature. It was also held that the fact that the timber was sold to alleviate damage caused by a storm was irrelevant. In respect of the fine, those courts took the view that there was no statutory basis for reducing it.

19 The applicant in the main proceedings brought an appeal in cassation against the judgment delivered by the Administrat?v? apgabaltiesa.

20 It is in those circumstances that the Augst?k?s tiesas Sen?ts decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Is a natural person who has acquired goods (a forest) for his own needs and who makes a supply of goods to alleviate the consequences generated by *force majeure* (for example, a storm) a taxable person for the purposes of VAT, within the meaning of Article 9(1) of Directive [2006/112] and Article 4(1) and (2) of the [Sixth Directive], who is required to pay VAT? In other words, does such a supply of goods constitute an economic activity within the meaning of those rules of European Union law?

2. Does a rule under which a fine can be imposed on a person who has not registered in the register of taxable persons for the purposes of [VAT], in an amount equivalent to the tax that would normally be due for the value of the goods supplied, even though that person would not have to pay the tax if he had registered in the register, comply with the principle of proportionality?'

The questions referred for a preliminary ruling

The first question

21 By its first question, the referring court asks, essentially, whether Article 9(1) of the VAT Directive and Article 4(1) and (2) of the Sixth Directive must be interpreted as meaning that supplies of timber made by a natural person for the purpose of alleviating the consequences of a case of *force majeure* come within the scope of an 'economic activity' within the meaning of those provisions.

22 As is apparent from the wording of the first question referred, it concerns the interpretation of the relevant provisions both of the Sixth Directive and of the VAT Directive. It is, however, not appropriate, for the purpose of the answers to the questions asked, to draw a distinction between the provisions resulting from each of those directives, as their scope is to be regarded as identical in substance for the purpose of the interpretation which the Court will be required to give in the present case.

23 As mentioned in paragraphs 3 and 5 above, the wording of Article 4(1) and (2) of the Sixth Directive is essentially identical to that of Article 9(1) of the VAT Directive. In addition, it follows from recitals 1 and 3 in its preamble that the VAT Directive is not, in principle, intended to bring about material changes in relation to the provisions of the Sixth Directive.

24 As regards the substance, it must first of all be pointed out that, under the VAT Directive, as under the Sixth Directive, the scope of VAT is very wide in that Article 2 of the former, which concerns taxable transactions, refers not only to the importation of goods but also to the supply of goods or services for consideration within the territory of the country by a taxable person acting as such (see Case C-86/09 *Future Health Technologies* [2010] ECR I-5215, paragraph 25 and the case-law cited).

25 The first subparagraph of Article 9(1) of the VAT Directive provides that the term 'taxable person' is to mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.

26 It must first be observed that, in accordance with Article 10 of the VAT Directive, the condition in Article 9(1) of that directive that the economic activity must be carried out independently excludes employed and other persons from the tax in so far as they are bound to an employer by a contract of employment or by any other legal ties creating the relationship of employer and employee as regards working conditions, remuneration and the employer's liability.

27 That, however, is not the position in the case in the main proceedings, the supplies at issue having been carried out in the name and on behalf of the applicant in the main proceedings. It must also be stated that, in contrast to what the applicant has argued before the national courts dealing with the dispute, the fact that the supplies at issue were carried out to alleviate the consequences of an alleged case of *force majeure* does not in any way mean that those supplies were not carried out independently.

28 As regards, secondly, the concept of 'economic activity' within the meaning of Article 9(1) of the VAT Directive, it is settled case-law that that term is objective in character, in the sense that the activity is considered *per se* and without regard to its purpose or results (see, to that effect, Case C-223/03 *University of Huddersfield* [2006] ECR I-1751, paragraphs 47 and 48 and the case-law cited).

29 Consequently, the fact that supplies such as those at issue in the main proceedings were made in order to alleviate the consequences of a case of *force majeure*, that fact thus being

related to the objective of the transactions carried out, has no effect on the question whether those supplies must be regarded as an ‘economic activity’ within the meaning of Article 9(1) of the VAT Directive.

30 The concept of ‘economic activity’ is defined in the second subparagraph of Article 9(1) of the VAT Directive as comprising any activities of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions. Among other things, the exploitation of tangible property for the purposes of obtaining income therefrom on a continuing basis is to be regarded as an economic activity.

31 It is necessary to specify, in this connection, that the sale of the fruits of tangible property, such as the sale of timber from a private forest, must be regarded as ‘exploitation’ of that property within the meaning of the second subparagraph of Article 9(1) of the VAT Directive.

32 It follows that transactions such as those at issue in the main proceedings must be regarded as ‘economic activity’ within the meaning of Article 9(1) of the VAT Directive if they are effected for the purpose of obtaining income therefrom on a continuing basis (see, by analogy, Case C-230/94 *Enkler* [1996] ECR I-4517, paragraph 22).

33 The issue of whether the activity at issue, namely the exploitation of a private forest, is designed to obtain income on a continuing basis is an issue of fact which must be assessed having regard to all the circumstances of the case, which include, inter alia, the nature of the property concerned (see, to that effect, *Enkler*, paragraphs 24 and 26).

34 That criterion must make it possible to determine whether an individual has used property in such a way that his activity is to be regarded as ‘economic activity’ within the meaning of the VAT Directive. The fact that property is suitable only for economic exploitation will normally be sufficient for a finding that its owner is exploiting it for the purposes of economic activities and, consequently, for the purpose of obtaining income on a continuing basis. On the other hand, if, by reason of its nature, property is capable of being used for both economic and private purposes, all the circumstances in which it is used will have to be examined in order to determine whether it is actually being used for the purpose of obtaining income on a continuing basis (*Enkler*, paragraph 27).

35 In the latter case, comparing the circumstances in which the person concerned actually uses the property with the circumstances in which the corresponding economic activity is usually carried out may be one way of ascertaining whether the activity concerned is carried on for the purpose of obtaining income on a continuing basis (*Enkler*, paragraph 28).

36 Thus, where the person concerned takes active steps in forestry management by mobilising resources similar to those deployed by a producer, a trader or a person supplying services within the meaning of the second subparagraph of Article 9(1) of the VAT Directive, the activity at issue in the main proceedings must be regarded as an ‘economic activity’ within the meaning of that provision (see, to that effect, Joined Cases C-180/10 and C-181/10 *S?aby and Others* [2011] ECR I-8461, paragraph 39).

37 Furthermore, the fact that the supplies of timber at issue were effected with a view to alleviating the consequences of a case of *force majeure* cannot, in itself, lead to the conclusion that those supplies were made on an occasional basis and not ‘for the purposes of obtaining income therefrom on a continuing basis’ within the terms of Article 9(1) of the VAT Directive. It must be observed in this respect that such supplies may fall within the scope of continuous exploitation of tangible property. The fruits of tangible property, such as timber from a forest, may, by their very nature and depending on their characteristics and, in particular, their age, not be

suitable for immediate economic exploitation, as a certain period of time may be objectively necessary before those fruits can become amenable to economic exploitation. Nevertheless, that does not mean that the supplies of timber which have taken place in the meantime, as a result of alleged *force majeure*, do not come within the scope of exploitation of tangible property for the purposes of obtaining income therefrom on a continuing basis within the meaning of the second subparagraph of Article 9(1) of the VAT Directive.

38 Although criteria based on the results of the activity in question cannot in themselves make it possible to determine whether the activity is carried on for the purpose of obtaining income on a continuing basis, the actual length of the period over which the supplies at issue in the main proceedings took place, the number of customers and the amount of earnings are also factors which, forming part of the circumstances of the case as a whole, may be taken into account, with others, when that question is under consideration (see *Enkler*, paragraph 29).

39 It is, furthermore, necessary to state that the fact that the applicant in the main proceedings acquired the tangible property in issue to meet his own personal needs, as is suggested by the wording of the first question in the reference, does not preclude that property from being subsequently used for the purposes of the exercise of an ‘economic activity’ within the meaning of Article 9(1) of the VAT Directive. The question as to whether an individual, in a given case, has acquired property for the needs of his economic activities or for his own needs arises when that individual requests the right to deduct the input VAT paid in respect of the acquisition of that property (see, by analogy, Case C-415/98 *Bakcsi* [2001] ECR I-1831, paragraph 29). Such an issue does not, however, arise in the case in the main proceedings.

40 Having regard to the foregoing, the answer to the first question is that Article 9(1) of the VAT Directive must be interpreted as meaning that supplies of timber made by a natural person for the purpose of alleviating the consequences of a case of *force majeure* come within the scope of the exploitation of tangible property, which must be regarded as an ‘economic activity’, within the meaning of that provision, where those supplies are carried out for the purposes of obtaining income therefrom on a continuing basis. It is for the national court to carry out an assessment of all the circumstances of the case in order to determine whether the exploitation of tangible property, such as a forest, is carried out for the purposes of obtaining income therefrom on a continuing basis.

The second question

41 By its second question, the referring court asks, essentially, whether European Union law must be interpreted as meaning that a rule of national law allowing a fine to be imposed, fixed at the level of the VAT which would normally be applicable for the value of the goods supplied, on an individual who has failed to fulfil his obligation to register in the register of taxable persons for VAT purposes, although that individual was not liable for that tax, is compatible with the principle of proportionality.

42 Article 213(1) of the VAT Directive provides that every taxable person is required to state when his activity as a taxable person commences, changes or ceases.

43 A national measure such as that provided for in Article 3(3) and (5) of the Law on VAT, according to which taxable persons who have carried out transactions in respect of which the total value of the supplies of goods and services subject to VAT has exceeded LVL 10 000 during the previous 12 months are required to register in the register of taxable persons for VAT purposes, gives specific effect to the obligations on taxable persons under Article 213(1) of the VAT Directive.

44 That directive does not expressly provide for a system of penalties in the event of infringement of the obligations in Article 213(1) thereof. It is settled case-law that, in the absence of harmonisation of European Union legislation in the field of penalties applicable in cases where conditions laid down by arrangements under that legislation are not complied with, Member States are empowered to choose the penalties which seem to them to be appropriate. They must, however, exercise that power in accordance with European Union law and its general principles, and consequently with the principle of proportionality (see Case 68/88 *Commission* v *Greece* [1989] ECR 2965, paragraph 23; Case C-210/91 *Commission* v *Greece* [1992] ECR I-6735, paragraph 19; and Case C-36/94 *Siesse* [1995] ECR I-3573, paragraph 21).

45 It is therefore legitimate for the Member States, in order to ensure the correct levying and collection of the tax and to prevent fraud, to provide in their respective provisions of national law for appropriate penalties to sanction the failure to observe the obligation to register in the register of taxable persons for VAT purposes.

46 Such penalties must not, however, go further than is necessary to attain those objectives (see, to that effect, Joined Cases C-95/07 and C-96/07 *Ecotrade* [2008] ECR I-3457, paragraphs 65 to 67, and Case C-284/11 *EMS-Bulgaria Transport* [2012] ECR, paragraph 67).

47 In order to assess whether the penalty here at issue is consistent with the principle of proportionality, the nature and the degree of seriousness of the infringement which that penalty seeks to sanction must, inter alia, be taken into account, as must also the means of establishing the amount of that penalty.

48 As regards, first, the nature and seriousness of the infringement which the penalty at issue seeks to sanction, it is important to point out that that penalty is intended to sanction solely the failure to comply with the obligation to register in the register of taxable persons for VAT purposes. The Court has had the opportunity to state, in this regard, that the obligations set out in Article 213 of the VAT Directive, of which the obligation for the taxable person to declare the commencement of his activity as a taxable person is one, constitute only a formal requirement for the purposes of verification (see, to that effect, Case C-385/09 *Nidera Handelscompagnie* [2010] ECR I-10385, paragraph 50).

49 The penalty at issue is thus not designed to ensure recovery of the tax from the party liable for it. The competent authorities may proceed with such recovery, regardless of whether a penalty is imposed for failure to register.

50 With regard, secondly, to the means of establishing the amount of the penalty at issue, it is important to note that this constitutes a fixed percentage, set at a level equal to that of the tax payable on the supplies effected, even if the object of that penalty is not the recovery of the tax, as stated in the previous paragraph.

51 Moreover, it must be observed that, as is apparent from the written observations of the Latvian Government, the Latvian legislature has adopted new provisions which provide for a graduated scale of penalties for failure to register.

52 In the present case, it is possible that the procedure for establishing the amount of the penalty may go further than is necessary to attain the objectives set out in paragraph 45 of this judgment.

53 Such a penalty may therefore prove to be disproportionate.

54 It is for the national court to determine whether the amount of the penalty does not go further than is necessary to attain the objectives of ensuring the correct levying and collection of the tax and the prevention of fraud, having regard to the facts of the case and, inter alia, the sum actually imposed and the possible existence of fraud or circumvention of the applicable legislation attributable to the taxable person whose failure to register is being penalised.

55 The answer to the second question is therefore that European Union law must be interpreted as meaning that it is possible that a rule of national law allowing a fine to be imposed, fixed at the level of the rate of VAT normally applicable for the value of the goods transferred in the supplies made, on an individual who has failed to fulfil his obligation to register in the register of taxable persons for VAT purposes and who was not liable for that tax, may be contrary to the principle of proportionality. It is for the national court to determine whether the amount of the penalty does not go further than is necessary to attain the objectives of ensuring the correct levying and collection of the tax and preventing fraud, having regard to the facts of the case and, inter alia, the sum actually imposed and the possible existence of fraud or circumvention of the applicable legislation attributable to the taxable person whose failure to register is being penalised.

The limitation of the temporal effects of the Court's reply

56 In its written observations, the Latvian Government requested the Court to limit in time the effects of the judgment to be delivered, should the Court find that supplies of timber such as those which were the subject of the first question referred do not constitute an 'economic activity' for the purposes of Article 4(2) of the Sixth Directive, or that a rule of national law such as that which is the subject of the second question referred does not comply with the principle of proportionality.

57 In the light of the answer to the first question, there is no need to rule on the request of the Latvian Government that the temporal effects of the Court's reply to that question be limited.

58 As regards the limitation of the temporal effects of the Court's response to the second question, the Latvian Government submitted, in support of its request, that it had acted in good faith and that such a judgment of the Court would have negative financial consequences for the public purse, as the fines imposed by the competent authorities during the period from 2004 to 2008 amounted to LVL 900 000.

59 It must be pointed out, in this regard, that it is only quite exceptionally that the Court may, in application of the general principle of legal certainty inherent in the European Union legal order, be moved to restrict for any person concerned the opportunity of relying on a provision or a principle which it has interpreted with a view to calling into question legal relationships established in good faith. Two essential criteria must be fulfilled before such a limitation can be imposed, namely that those concerned should have acted in good faith and that there should be a risk of serious difficulties (see, inter alia, Case C-402/03 *Skov and Bilka* [2006] ECR I-199, paragraph 51; Case C-313/05 *Brzezi?ski* [2007] ECR I-513, paragraph 56 and the case-law cited; and Case C-2/09 *Kalinchev* [2010] ECR I-4939, paragraph 50).

60 More specifically, the Court has taken that step only in quite specific circumstances, where there was a risk of serious economic repercussions owing in particular to the large number of legal relationships entered into in good faith on the basis of rules considered to be validly in force and where it appeared that individuals and national authorities had been led to adopt practices which did not comply with European Union legislation by reason of objective, significant uncertainty regarding the implications of European Union provisions or principles, to which the conduct of other Member States or the European Commission may even have contributed (see, inter alia, Case C-423/04 *Richards* [2006] ECR I-3585, paragraph 42; *Brzezi?ski*, paragraph 57; and *Kalinchev*

, paragraph 51).

61 It is also settled case-law that the financial consequences which might ensue for a Member State from a preliminary ruling do not in themselves justify limiting the temporal effects of the ruling (Case C-184/99 *Grzelczyk* [2001] ECR I-6193, paragraph 52; Case C-209/03 *Bidar* [2005] ECR I-2119, paragraph 68; *Brzezi?ski*, paragraph 58; and *Kalinchev*, paragraph 52).

62 It must be stated in this regard that the total amount of fines imposed by the competent national authorities during the period from 2004 to 2008, submitted by the Latvian Government, does not enable a determination to be made as to whether that amount relates to the fines which are the subject of the second question. In addition, the proportion of this amount which is liable to give rise to reimbursement has also not been notified to the Court. It is important to state in this regard that, as is apparent from the conclusion reached by the Court in the examination of the second question referred, only the amounts exceeding that which is necessary to ensure the correct levying and collection of the tax and the prevention of fraud must be reimbursed.

63 Consequently, the Court finds that the risk of serious economic repercussions, as contemplated in the case-law cited in paragraph 60 of this judgment, such as to justify placing a temporal limitation on the effects of this judgment, has not been established.

64 In those circumstances, it is not necessary to determine whether the criterion relating to the good faith of those concerned is satisfied.

65 Accordingly, there is no need to limit the temporal effects of the present judgment.

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 (Second Chamber) hereby rules:

1. **Article 9(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2006/138/EC of 19 December 2006, must be interpreted as meaning that supplies of timber made by a natural person for the purpose of alleviating the consequences of a case of *force majeure* come within the scope of the exploitation of tangible property, which must be regarded as an 'economic activity' within the meaning of that provision, where those supplies are carried out for the purposes of obtaining income therefrom on a continuing basis. It is for the national court to carry out an assessment of all the circumstances of the case in order to determine whether the exploitation of tangible property, such as a forest, is carried out for the purposes of obtaining income therefrom on a continuing basis.**

2. **European Union law must be interpreted as meaning that it is possible that a rule of national law allowing a fine to be imposed, fixed at the level of the rate of VAT normally applicable for the value of the goods transferred in the supplies made, on an individual who has failed to fulfil his obligation to register in the register of taxable persons for VAT purposes and who was not liable for that tax, may be contrary to the principle of proportionality. It is for the national court to determine whether the amount of the penalty does not go further than is necessary to attain the objectives of ensuring the correct levying and collection of the tax and preventing fraud, having regard to the facts of the case and, inter alia, the sum actually imposed and the possible existence of fraud or circumvention of the applicable legislation attributable to the taxable person whose failure to register is being penalised.**

[Signatures]

* Language of the case: Latvian.