

JUDGMENT OF THE COURT (Third Chamber)

28 November 2013 (\*)

(VAT – Directive 2006/112/EC – Articles 132 to 134 and 168 – Exemptions – Educational services provided on a profit-making basis by bodies governed by private law – Right to deduction)

In Case C-319/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Naczelny Sąd Administracyjny (Poland), made by decision of 27 April 2012, received at the Court on 2 July 2012, in the proceedings

**Minister Finansów**

v

**MDDP sp. z o.o. Akademia Biznesu, sp. komandytowa,**

THE COURT (Third Chamber),

composed of M. Ilešić, President of the Chamber, C.G. Fernlund (Rapporteur), A. Ó Caoimh, C. Toader and E. Jarašiūnas, Judges,

Advocate General: J. Kokott,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 15 May 2013,

after considering the observations submitted on behalf of:

- the Minister Finansów, by J. Kaute and T. Tratkiewicz, acting as Agents,
- MDDP sp. z o.o. Akademia Biznesu, sp. komandytowa, by T. Michalik, adviser,
- the Polish Government, by A. Kraińska, A. Kramarczyk, B. Majczyna and M. Szpunar, acting as Agents,
- the Greek Government, by I. Pouli and M. Tassopoulou, acting as Agents,
- the Portuguese Government, by L. Inez Fernandes and R. Laires, acting as Agents,
- the United Kingdom Government, by L. Christie, acting as Agent, and P. Mantle, Barrister,
- the European Commission, by K. Herrmann and L. Lozano Palacios, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 20 June 2013,

gives the following

## Judgment

1 This request for a preliminary ruling concerns the interpretation of point (i) of Article 132(1), points (a) to (d) of Article 133(1), Article 134 and point (a) of Article 168 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) ('the VAT Directive').

2 The request has been made in proceedings between the Minister Finansów (Minister for Finance) ('the Minister') and MDDP sp. z o.o. Akademia Biznesu. sp. Komandytowa ('MDDP') concerning exemption from value added tax ('VAT') for educational services provided for commercial purposes by bodies not governed by public law.

## Legal context

### *European Union law*

3 Points (i), (l), (m) and (q) of Article 132(1) of the VAT Directive provides:

'Member States shall exempt the following transactions:

...

(i) the provision of children's or young people's education, school or university education, vocational training or retraining, including the supply of services and of goods closely related thereto, by bodies governed by public law having such as their aim or by other organisations recognised by the Member State concerned as having similar objects;

...

(l) the supply of services, and the supply of goods closely linked thereto, to their members in their common interest in return for a subscription fixed in accordance with their rules by non-profit-making organisations with aims of a political, trade-union, religious, patriotic, philosophical, philanthropic or civic nature, provided that this exemption is not likely to cause distortion of competition;

(m) the supply of certain services closely linked to sport or physical education by non-profit-making organisations to persons taking part in sport or physical education;

...

(q) the activities, other than those of a commercial nature, carried out by public radio and television bodies.'

4 Points (a) to (d) of the first subparagraph of Article 133 of the VAT Directive states:

'Member States may make the granting to bodies other than those governed by public law of each exemption provided for in points (b), (g), (h), (i), (l), (m) and (n) of Article 132(1) subject in each individual case to one or more of the following conditions:

(a) the bodies in question must not systematically aim to make a profit, and any surpluses nevertheless arising must not be distributed, but must be assigned to the continuance or improvement of the services supplied;

(b) those bodies must be managed and administered on an essentially voluntary basis by

persons who have no direct or indirect interest, either themselves or through intermediaries, in the results of the activities concerned;

(c) those bodies must charge prices which are approved by the public authorities or which do not exceed such approved prices or, in respect of those services not subject to approval, prices lower than those charged for similar services by commercial enterprises subject to VAT;

(d) the exemptions must not be likely to cause distortion of competition to the disadvantage of commercial enterprises subject to VAT.'

5 Article 134 of that directive provides:

'The supply of goods or services shall not be granted exemption, as provided for in points (b), (g), (h), (i), (l), (m) and (n) of Article 132(1), in the following cases:

(a) where the supply is not essential to the transactions exempted;

(b) where the basic purpose of the supply is to obtain additional income for the body in question through transactions which are in direct competition with those of commercial enterprises subject to VAT.'

6 Point (a) of Article 168 of that directive reads as follows:

'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:

(a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person'.

### *Polish legislation*

7 Article 43(1)(1) of the Law on taxation of goods and services (Ustawa o podatku od towarów i usług) of 11 March 2004 (Dz. U. n° 54, position 535), as amended ('the Law on VAT'), provides:

'The following shall be exempt from tax:

(1) the services listed in Annex 4 to the law;

...'

8 Item 7 of Annex 4 to the Law on VAT refers to:

'educational services'.

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

9 MDDP, a company incorporated under Polish law, organises specialised training courses and conferences in various fields of education and training, such as taxation, accountancy, finance, and in areas connected with the organisation and management of undertakings, including professional and personal development.

10 Those activities are organised by MDDP as part of its business, with a view to generating regular profit.

11 MDDP is not entered in the register of schools and non-public institutions in accordance with the Law on the education system of 7 September 1991 (Ustawa o systemie oświaty).

12 MDDP sought a special interpretation from the Minister concerning its right to deduct input VAT levied on goods and services purchased for the purpose of performing its educational services. It claimed that its educational services should not be exempt from VAT, but should be subject to it.

13 In that context, MDDP claimed that Article 43(1)(1) and Item 7 of Annex 4 to the Law on VAT are incompatible with point (i) of Article 132(1), Article 133 and Article 134 of the VAT Directive.

14 By contrast, the Minister considers that the provisions of the VAT Directive had been correctly transposed by Article 43(1)(1), read in conjunction with Item 7 of Annex 4, of the Law on VAT.

15 On 3 January 2011, MDDP then brought an action before the Wojewódzki Sąd Administracyjny w Warszawie (Warsaw Regional Administrative Court) for annulment of the abovementioned special interpretation, invoking an infringement of point (i) of Article 132(1) of the VAT Directive, read in conjunction with Articles 133 and 134 thereof.

16 By judgment of 17 October 2011, the Wojewódzki Sąd Administracyjny w Warszawie annulled the contested special interpretation on the ground that point (i) of Article 132(1) of the VAT Directive precludes organisations which do not provide educational services in the general interest from benefiting from an exemption from VAT.

17 The Wojewódzki Sąd Administracyjny w Warszawie held, relying on the judgment in Case C-150/99 *Stockholm Lindöpark* [2001] ECR I-493, that, in the case of an exemption which does not comply with the VAT Directive, the taxable person has the right to rely directly on Article 168 of that directive and to deduct input VAT levied on the purchase of goods and services used for the purpose of the educational services provided, even if they are exempt from VAT, where that exemption does not comply with the VAT Directive. It, however, noted the paradoxical nature of the situation resulting from the above, in which a taxable person performing operations exempt from VAT would also have a right to deduct under Article 168 of the VAT Directive.

18 The Minister appealed in cassation against the judgment of 17 October 2011 before the Naczelny Sąd Administracyjny (Supreme Administrative Court).

19 Ruling on the action brought by the Minister, the referring court expresses doubts concerning the interpretation of point (i) of Article 132(1) of the VAT Directive. It questions whether MDDP is entitled to apply the exemption to the educational service provided while relying on the right to deduct input VAT.

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

‘1. Must point (i) of Article 132(1), Article 133 and Article 134 of [the VAT] Directive ... be interpreted as precluding exemption from value added tax of educational services provided for commercial purposes by bodies not governed by public law, which follows from Article 43(1)(1) of the [Law on taxation of goods and services] ... in conjunction with Item 7 of Annex 4 to that Law, in the version in force in 2010?

2. If the answer to the first question is in the affirmative, does this mean that due to the

incompatibility of the exemption with the provisions of [the VAT] Directive, Article 168 of the directive grants taxpayers both the right to apply the tax exemption and to deduct input VAT?’

## Consideration of the questions referred

### Question 1

21 By its first question, the referring court asks, in essence, whether point (i) of Article 132(1), read in conjunction with Articles 133 and 134, of the VAT Directive must be interpreted as meaning that educational services provided for commercial purposes by bodies not governed by public law are precluded from exemption from VAT.

22 The Polish, Greek and Portuguese Governments, and the Government of the United Kingdom, claim that those provisions do not preclude such exemption.

23 By contrast, MDDP and the European Commission consider that the VAT Directive does not allow general exemption of all supplies of educational services provided for commercial purposes by private organisations, since such an exemption is capable of being granted only on the basis of the aims pursued by those organisations.

24 As a preliminary point, it should be noted that point (i) of Article 132(1), Article 133 and Article 134 of the VAT Directive correspond to Article 13A(1)(i) and (2)(a) and (b) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization 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).

25 As is clear from settled case-law, the terms used to specify the exemptions in Article 132 of the VAT Directive are to be interpreted strictly. Nevertheless, the interpretation of those terms must be consistent with the objectives underlying the exemptions and must comply with the requirements of the principle of fiscal neutrality inherent in the common system of VAT. Accordingly, the requirement of strict interpretation does not mean that the terms used to specify the exemptions referred to in Article 132 must be construed in such a way as to deprive the exemptions of their intended effects (see, *inter alia*, Case C-174/11 *Zimmermann* [2012] ECR, paragraph 22 and case-law cited).

26 Concerning the purpose of the exemption provided for in point (i) of Article 132(1) of the VAT Directive, it is apparent from that provision that that exemption, by treating the supply of educational services more favourably for the purposes of VAT, is intended to facilitate access to those services by avoiding the increased costs that would result if the services were subject to VAT (see, to that effect, Case C-287/00 *Commission v Germany* [2002] ECR I-5811, paragraph 47).

27 In the light of that purpose, it must be observed that the commercial nature of an activity does not preclude it from being, in the context of point (i) of Article 132(1) of the VAT Directive, an activity in the general interest (see Case C-144/00 *Hoffmann* [2003] ECR I-2921, paragraph 38; and Case C-498/03 *Kingscrest Associates and Montecello* [2005] ECR I-4427, paragraph 31).

28 Likewise, the term ‘organisation’, referred to in point (i) of Article 132(1) of the VAT Directive is, in principle, sufficiently broad to include private profit-making entities (see, *Kingscrest Associates and Montecello*, paragraph 35).

29 In that regard, it should also be noted that when the European Union legislature intended to restrict the grant of the exemptions under point (i) of Article 132(1) of the VAT Directive to certain

non-profit-making or non-commercial entities, it said so expressly, as is clear from subparagraphs (l), (m) and (q) thereof (see, to that effect, *Kingscrest Associates and Montecello*, paragraph 37).

30 Moreover, it is apparent from settled case-law that point (a) of the first subparagraph of Article 133 of the VAT Directive, which is an optional condition which Member States may additionally impose for the grant of certain exemptions mentioned in Article 132(1) of that directive, authorises, but does not oblige, the Member States to restrict entitlement to the exemptions under, inter alia, point (i) of Article 132(1) to organisations other than public-law organisations which do not systematically seek to make profit (see *Hoffmann*, paragraph 38; *Kingscrest Associates and Montecello*, paragraph 38; and Case C-106/05 *L.u.P.* [2006] ECR I-5123, paragraph 43).

31 In those circumstances, in order not to deprive point (a) of the first subparagraph of Article 133 of the VAT Directive of all purpose, it must necessarily be accepted that, where the European Union legislature, as in point (i) of Article 132(1) of that directive, has not expressly made entitlement to the exemptions in question subject to the absence of a profit-making aim, the pursuit of such an aim cannot preclude entitlement to those exemptions (see *Kingscrest Associates and Montecello*, paragraph 40).

32 Furthermore, contrary to what is claimed by the Commission, Article 134 of the VAT Directive in no way excludes the possibility of applying the exemption provided for in point (i) of Article 132(1) of that directive to private organisations that provide educational services for commercial purposes. As the Advocate General pointed out in point 31 of her Opinion, Article 134 of the VAT Directive is applicable only to transactions closely related to the exempted educational services within the meaning of point (i) of Article 132(1) thereof, that is to say, not to transactions in the core area of those services (see, to that effect, Joined Cases C-394/04 and C-395/04 *Ygeia* [2005] ECR I-10373, paragraph 26; and Case C-415/04 *Stichting Kinderopvang Enschede* [2006] ECR I-1385, paragraphs 22 and 25).

33 It follows from the foregoing that point (i) of Article 132(1), Article 133 and Article 134 of the VAT Directive do not preclude educational services provided for commercial purposes by bodies not governed by public law from being exempt from VAT.

34 However, Article 43(1)(1) of the Law on VAT, read in conjunction with Item 7 of Annex 4 thereto, as in force in 2010, provides for general exemption of all educational services, whatever the aims pursued by the organisations providing those services.

35 Under point (i) of Article 132(1) of the VAT Directive, the supply of educational services referred to is, however, exempt only if those services are provided by educational bodies governed by public law or by other organisations recognised by the Member State concerned as having similar objects. It follows that other organisations, namely, private organisations, must fulfil the condition of pursuing objects similar to those of bodies governed by public law. It is thus clearly apparent from the wording of point (i) of Article 132(1) that it does not permit Member States to grant the supply of the educational services exemption to all private organisations providing such services, by including also those whose objects are not similar to those of bodies governed by public law.

36 Therefore, an exemption, such as that at issue in the main proceedings, which applies generally to all supplies of educational services, whatever the aim pursued by the private organisations providing those services, is incompatible with point (i) of Article 132(1), as conceived by the European Union legislature.

37 In so far as point (i) of Article 132(1) of the VAT Directive does not specify the conditions or procedures for defining those similar objects, it is, in principle, for the national law of each Member

State to lay down the rules in accordance with which that definition may be granted to such organisations. The Member States have a discretion in that respect (see, to that effect, *Kingscrest Associates and Montecello*, paragraphs 49 and 51; and *Zimmermann*, paragraph 26).

38 Furthermore, it is for the national courts to examine whether the Member States, in imposing such conditions, have observed the limits of their discretion in applying the principles of European Union law, in particular the principle of equal treatment, which, in the field of VAT, takes the form of the principle of fiscal neutrality (see, to that effect, *Kingscrest Associates and Montecello*, paragraph 52; and *L.u.P.*, paragraph 48).

39 The answer to Question 1 is, therefore, that point (i) of Article 132(1), Article 133 and Article 134, of the VAT Directive must be interpreted as meaning that they do not preclude educational services provided for commercial purposes by bodies not governed by public law from being exempt from VAT. However, point (i) of Article 132(1) of that directive precludes a general exemption of all supplies of educational services, without consideration of the objects pursued by non-public organisations providing those services.

## Question 2

40 In the light of the answer to Question 1, by Question 2, the referring court seeks to ascertain whether a taxable person may rely on the fact that the exemption from VAT provided for by national law is incompatible with point (i) of Article 132(1) of the VAT Directive in order to claim a right to deduct input VAT, provided for by Article 168 of the VAT Directive, and benefit at the same time from that exemption for the supplies of professional educational and training services which it provides.

41 First of all, it should be noted that, as the Polish and Portuguese Governments and the Government of the United Kingdom observed, it is a central principle of the VAT system that the right to deduct VAT levied on the purchase of input goods or services presupposes that the expenditure incurred in acquiring them was a component of the cost of the output transactions that gave rise to the right to deduct.

42 It is apparent from the introductory part of Article 168 of the VAT Directive, which lays down the requirements for the origin and scope of the right to deduct, that only operations subject to output tax may give rise to the right to deduct the VAT levied on the purchase of goods and services used to perform those operations.

43 Consequently, according to the logic of the system established by the VAT Directive, the deduction of input taxes is linked to the collection of output taxes.

44 In that regard, the Court has already held that, except in the cases expressly provided for by the relevant directives, where a taxable person supplies services to another taxable person who uses them for an exempt transaction, the latter person is not entitled to deduct the input VAT paid (see, inter alia, Case C-4/94 *BLP Group* [1995] ECR I-983, paragraph 28; and Case C-302/93 *Debouche* [1996] ECR I-4495, paragraph 16).

45 It follows from the foregoing that, even where an exemption provided for by national law is incompatible with the VAT Directive, Article 168 of that directive does not permit a taxable person both to benefit from that exemption and to exercise the right to deduct tax.

46 It is necessary to examine whether a taxable person such as MDDP may rely on point (i) of Article 132(1) of the VAT Directive in order to have its educational services made liable to VAT and, therefore, to benefit from the right to deduct.

47 In that regard, it should be noted that, according to settled case-law, wherever the provisions of a directive appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise, they may, in the absence of implementing measures adopted within the prescribed period, be relied on against any national provision which is incompatible with the VAT Directive or in so far as they define rights which individuals are able to assert against the State (see, inter alia, Case C-363/05 *JP Morgan Fleming Claverhouse Investment Trust and The Association of Investment Trust Companies* [2007] ECR I-5517, paragraph 58 and case-law cited).

48 The question that arises is, therefore, whether the content of point (i) of Article 132(1) of the VAT Directive is unconditional and sufficiently precise as regards the exemption of the supply of educational services by private organisations.

49 The first of those conditions is satisfied. The content of point (i) of Article 132(1) of the VAT Directive is unconditional, since it does not provide the Member States with an option, but requires each Member State to grant the exemption laid down by that provision.

50 Concerning the second condition, it follows from the Court's answer to Question 1 that point (i) of Article 132(1) of the VAT Directive grants the Member States a certain discretion when defining private organisations which have objects similar to those of bodies governed by public law and which must therefore, in accordance with that article, be exempt from VAT.

51 The Court has, however, already held that the fact that that provision of the VAT Directive laying down an exemption grants the Member States a discretion to establish the beneficiaries thereof does not prevent that provision from being held to be sufficiently precise to be relied upon directly if, according to objective evidence, the supply at issue meets the criteria for that exemption (see, inter alia, *JP Morgan Fleming Claverhouse Investment Trust and The Association of Investment Trust Companies*, paragraphs 60 and 61 and case-law cited).

52 Likewise, where a Member State has exceeded its discretion by exempting supplies or taxable persons with regard to which such an exemption could not objectively be granted under that provision of the VAT Directive, the person concerned may rely directly on that provision so that that exemption is not applied to him.

53 It follows that it is only where the Member State has exceeded its discretion, by defining a taxable person as an organisation with objects similar to those of bodies governed by public law, that that taxable person may then rely on point (i) of Article 132(1) of the VAT Directive in order to contest national legislation and have its services made liable to VAT.



54 As was pointed out by the Advocate General in points 70 and 71 of her Opinion, it is for the national court to determine whether the exemption of services supplied by an organisation such as MDDP, in accordance with point (i) of Article 132(1) of the VAT Directive, exceeds the discretion granted to the Polish legislature. It is for that court to examine the object and conditions of MDDP's activity by comparing them with those of Polish bodies governed by public law providing educational services. It follows from the Court's answer to Question 1 that the mere fact that an organisation such as MDDP pursues commercial objects is not sufficient to preclude its having objects similar to those of bodies governed by public law and that its services may therefore be exempted in accordance with that provision.

55 If the national court were to find that the objects pursued by an organisation such as MDDP cannot be considered to be similar to those pursued by a body governed by public law, MDDP could rely on the fact that national law exempts, in infringement of point (i) of Article 132(1) of the VAT Directive, its professional educational and training services from VAT. In that case, its services would be subject to VAT and MDDP could then claim, to that extent, a right to deduct input VAT in accordance with Polish legislation.

56 The answer to Question 2 is, therefore, that:

- a taxable person may not claim, in accordance with Article 168 of the VAT Directive or the national provision transposing it, a right to deduct input VAT where, as a result of an exemption provided for by national law in infringement of point (i) of Article 132(1) of that directive, the input supply of its educational services is not subject to VAT;
- that taxable person may, however, rely on the incompatibility of that exemption with point (i) of Article 132(1) of the VAT Directive so that that exemption is not applied to it where, even taking account of the discretion granted to Member States, that taxable person could not objectively be regarded as an organisation having objects similar to those of an educational body governed by public law, within the meaning of that provision, which is to be determined by the national court; and
- in the latter case, the educational services supplied by that taxable person will be subject to VAT and that person could then benefit from the right to deduct input VAT.

## **Costs**

57 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. Point (i) of Article 132(1)(i), points (a) to (d) of 133(1) and Article 134 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that they do not preclude educational services provided for commercial purposes by bodies not governed by public law from being exempt from value added tax. However, point (i) of Article 132(1) of that directive precludes a general exemption of all supplies of educational services, without consideration of the objects pursued by non-public organisations providing those services.**

**2. A taxable person may not claim, in accordance with Article 168 of Directive 2006/112 or the national provision transposing it, a right to deduct input value added tax where, as a result of an exemption provided for by national law in infringement of point (i) of Article 132(1) of that directive, the input supply of its educational services are not subject to value**

**added tax.**

**That taxable person may, however, rely on the incompatibility of that exemption with point (i) of Article 132(1) of Directive 2006/112 so that that exemption is not applied to it where, even taking account of the discretion granted to Member States, that taxable person could not objectively be regarded as an organisation having objects similar to those of an educational body governed by public law, within the meaning of that provision, which is to be determined by the national court.**

**In the latter case, the educational services supplied by that taxable person will be subject to value added tax and that person could then benefit from the right to deduct input value added tax.**

[Signatures]

\* Language of the case: Polish.