JUDGMENT OF THE COURT (First Chamber)

18 December 2014 (*)

(References for a preliminary ruling — VAT — Sixth Directive — Transitional arrangements for trade between Member States — Goods dispatched or transported within the Community — Tax evasion carried out in the Member State of arrival — Evasion taken into account in the Member State of dispatch — Refusal of the benefit of rights to deduction, exemption or refund — Absence of provisions in national law)

In Joined Cases C?131/13, C?163/13 and C?164/13,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Hoge Raad der Nederlanden (Netherlands), made by decisions of 22 February and 8 March 2013, received at the Court on 18 March and 2 April 2013, in the proceedings

Staatssecretaris van Financiën,

v

Schoenimport ‘Italmoda’ Mariano Previti vof (C?131/13),

and

Turbu.com BV (C?163/13),

Turbu.com Mobile Phone’s BV (C?164/13),

and

Staatssecretaris van Financiën,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, S. Rodin (Rapporteur), A. Borg Barthet, E. Levits and F. Biltgen, Judges,

Advocate General: M. Szpunar,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 5 June 2014,

after considering the observations submitted on behalf of:

– Schoenimport ‘Italmoda’ Mariano Previti vof, by A. de Ruiter,

– Turbu.com BV and Turbu.com Mobile Phone’s BV, by J. Vetter, advocaat,

– the Netherlands Government, by M. Bulterman, C. Schillemans and B. Koopman, acting as Agents,

– the Italian Government, by G. Palmieri, acting as Agent, and by F. Urbani Neri, avvocato dello Stato,

– the United Kingdom Government, by L. Christie and S. Brighouse, acting as Agents, and by P. Moser QC and G. Peretz, Barrister,

– the European Commission, by W. Roels and A. Cordewener, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 September 2014,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 17(2) and (3) and Article 28b(A)(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 95/7/EC of 10 April 1995 (OJ 1995 L 102, p. 18) (the 'Sixth Directive').

2 The requests have been made in proceedings respectively between the Staatssecretaris van Financiën (State Secretary for Finance) (the 'Staatssecretaris') and Schoenimport 'Italmoda' Mariano Previti BV ('Italmoda') and between Turbu.com BV ('Turbu.com') and Turbu.com Mobile Phone's BV ('TMP'), on the one hand, and the Staatssecretaris, on the other, concerning a refusal to grant those companies an exemption from or deduction or refund of value added tax ('VAT') on the ground that they had participated in evasion of VAT.

Legal context

EU law

3 Article 17(2)(a) and (d) and (3)(b) of the Sixth Directive, in the version resulting from Article 28f(1) of that directive, provides:

'2. In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:

(a) [VAT] due or paid within the territory of the country in respect of goods or services supplied or to be supplied to him by another taxable person;

...

(d) [VAT] due pursuant to Article 28a(1)(a).

3. Member States shall also grant to every taxable person the right to the deduction or refund of the [VAT] referred to in paragraph 2 in so far as the goods and services are used for the purposes of:

...

(b) transactions which are exempt pursuant to Article ... 28c(A) ...'

4 Article 28a of the Sixth Directive provides:

‘1. 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).

...

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.

...’

5 Article 28b(A) of that directive, entitled ‘Place of the intra-Community acquisition of goods’, states:

‘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 [VAT] 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 [VAT] identification number under which the person acquiring the goods made the acquisition.

For the purposes of applying the first subparagraph, the intra-Community acquisition of goods shall be deemed to have been subject to tax in accordance with paragraph 1 when the following conditions have been met:

– the acquirer establishes that he has effected this intra-Community acquisition for the needs of a subsequent supply effected in the Member State referred to in paragraph 1 and for which the consignee has been designated as the person liable for the tax due in accordance with Article 28c(E)(3),

– the obligations for declaration set out in the last subparagraph of Article 22(6)(b) have been satisfied by the acquirer.’

6 Article 28c(A) of that 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.

...'

Netherlands law

7 The above provisions of the Sixth Directive have been transposed into Netherlands law by the Law on Turnover Tax (Wet op de omzetbelasting) of 28 June 1968 (*Staatsblad* 1968, No 329), in particular by Articles 9, 15, 17b and 30 of that law in the version applicable to the disputes in the main proceedings.

8 According to the referring court, Netherlands legislation does not provide that the deduction of, exemption from or refund of VAT is to be denied in the event that it is established that the taxable person was involved in tax evasion of which that person was, or should have been, aware.

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

Case C?131/13

9 Italmoda, a company governed by Netherlands law, trades in shoes. At the time of the facts underlying the dispute in the main proceedings, that is to say during 1999 and 2000, it also carried out transactions relating to computer hardware. That hardware, which was acquired by Italmoda in the Netherlands and in Germany, was sold and supplied to customers subject to VAT in Italy. The goods originating in Germany were purchased by Italmoda under the Netherlands VAT identification number of that company, these being acquisitions subject to VAT in the Member State which issued the VAT identification number, within the meaning of Article 28b(A)(2) of the Sixth Directive, but those goods were transported directly from Germany to Italy.

10 With regard to the goods acquired in the Netherlands, Italmoda made all the necessary declarations and deducted input tax from its VAT returns. By contrast, for the goods originating in Germany, Italmoda did not declare either their intra-Community supply in that Member State or their intra-Community acquisition in the Netherlands, even though that transaction had been exempted in Germany. In Italy, none of those intra-Community acquisitions was declared by the purchasers concerned and VAT was not paid. The Italian tax authorities refused those purchasers the right to deduct and proceeded with recovery of the tax due.

11 As the Netherlands tax authorities took the view that Italmoda had knowingly participated in fraudulent activity designed to evade VAT in Italy, they refused that company the right to exemption in respect of the intra-Community supplies effected in that Member State, the right to deduct input tax and the right to a refund of the tax paid in respect of the goods originating in Germany, and consequently issued three additional assessments to Italmoda.

12 The action brought by Italmoda against those additional assessments was upheld at first instance by the Rechtbank te Haarlem (District Court, Haarlem), which ordered the tax authorities to take a fresh decision in the dispute.

13 Following an appeal lodged against that ruling before the Gerechtshof te Amsterdam (Regional Court of Appeal, Amsterdam), that court, in a judgment dated 12 May 2011, set aside the ruling of the Rechtbank te Haarlem and the additional tax assessments in dispute, holding that, in that case, there was no justification for departing from the normal system of VAT collection and

for refusing to apply the exemption or the right to deduct VAT. In this regard, the Gerechtshof te Amsterdam took account, in particular, of the fact that the tax evasion had taken place not in the Netherlands, but in Italy, and that Italmoda had, in the Netherlands, satisfied all the formal statutory conditions for the exemption to be applied.

14 The Staatssecretaris van Financiën brought an appeal on a point of law against that judgment before the Hoge Raad der Nederlanden (Supreme Court of the Netherlands). That court notes, in particular, that, during the period relevant in this case, the application of the exemption or the right of deduction was not subject, under Netherlands law, to the condition that the taxable person must not have deliberately participated in VAT evasion or in a tax avoidance arrangement. The question accordingly arises as to whether deliberate participation in such evasion precludes the right to a refund of VAT, notwithstanding the absence of any provision to that effect in national law.

15 In those circumstances, the Hoge Raad der Nederlanden decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Should the national authorities and courts, on the basis of the law of the European Union, refuse to apply the exemption pertaining to an intra-Community supply, the right to the deduction of VAT in respect of the purchase of goods which, after the purchase, were dispatched to another Member State, or the refund of VAT pursuant to the application of the second sentence of Article 28b(A)(2) of the Sixth Directive, when, on the basis of objective data, it has been established that there has been VAT evasion in respect of the goods concerned, and that the taxable person knew, or should have known, that it was participating therein, if national law does not make provision for refusal of the exemption, the deduction or the refund under those circumstances?

(2) If Question 1 is answered in the affirmative, should the aforementioned exemption, deduction or refund also be refused if the VAT evasion occurred in another Member State (other than the Member State from which the goods were dispatched) and the taxable person was, or should have been, aware of the VAT evasion, while the taxable person in the Member State from which the goods were dispatched has met all the (formal) conditions which national statutory provisions impose on the exemption, the deduction or the refund, and it has always provided the tax authorities in that Member State with all the required information in respect of the goods, the dispatch and the persons acquiring the goods in the Member State of arrival of the goods?

(3) If Question 1 is answered in the negative, what should be understood by “subject to” [tax] in (the final part of) the first sentence of Article 28b(A)(2): the declaration in the statutorily prescribed VAT returns of the VAT payable in respect of intra-Community acquisitions in the Member State of arrival, or — in the absence of such a declaration — also the measures adopted by the tax authorities of the Member State of arrival to regularise the absence of that declaration? When answering that question, is it significant whether the transaction concerned forms part of a chain of transactions aimed at VAT evasion in the country of arrival and the taxable person was aware, or should have been aware, of it?’

Case C?163/13

16 Turbu.com, a company governed by Netherlands law, operates a wholesale business dealing in computer hardware, communications equipment and software.

17 During the period between August and December 2001, Turbu.com made a number of intra-Community supplies of mobile phones, applying the exemption envisaged in that respect and deducting input VAT.

18 Following an investigation by the Netherlands Fiscal Information and Investigation Service, the Netherlands tax authorities, having formed the view that Turbu.com had wrongly considered that those supplies benefited from the VAT exemption, sent that company a notice of additional assessment. Furthermore, criminal proceedings were initiated against, among others, the director of Turbu.com for VAT fraud, which resulted in his conviction, in 2005, for forgery and filing of an incomplete and inaccurate tax return.

19 As regards the additional assessment sent to Turbu.com, following proceedings brought by that company, that additional assessment was confirmed at first instance by the Rechtbank te Breda (District Court, Breda) and subsequently on appeal by the Gerechtshof te ’s-Hertogenbosch (Regional Court of Appeal, ’s-Hertogenbosch) in a judgment of 25 February 2011. In that judgment, the Gerechtshof held that it was plausible that the supplies concerned were not, in reality, intra-Community supplies and that Turbu.com had intentionally and knowingly participated in VAT evasion.

20 Turbu.com brought an appeal on a point of law against that judgment before the Hoge Raad der Nederlanden. That court states, inter alia, that if it is determined, after referral to the appellate court, that the supplies concerned formed part of a series of transactions designed to circumvent the VAT rules and that Turbu.com knew, or should have known, that that was the case, questions of interpretation of EU law will then arise. In that regard, the Hoge Raad is unsure, in particular, whether the application of the VAT exemption must be refused in the event of VAT evasion, even though national law does not provide any legal basis for such a refusal.

21 In those circumstances, the Hoge Raad der Nederlanden decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Should the national authorities and courts, on the basis of the law of the European Union, refuse to apply the VAT exemption in respect of an intra-Community supply where it is established, on the basis of objective evidence, that there was evasion of VAT in respect of the goods concerned and that the taxable person knew, or should have known, that it was participating therein, if national law does not make provision under those circumstances for refusing the exemption?’

Case C?164/13

22 TMP, a company governed by Netherlands law, trades in mobile phones.

23 During July 2003, it made intra-Community supplies of mobile phones, applying the exemption provided for in that regard and requesting a refund of the input VAT paid in respect of the acquisition of those phones from undertakings established in the Netherlands.

24 After the Netherlands tax authorities had identified several irregularities in the declarations made by TMP with regard to both the input transactions carried out and those intra-Community supplies, they refused to grant the requested refund. The decision refusing to refund TMP was annulled by the Rechtbank te Breda in a ruling which was itself set aside by the Gerechtshof te ’s-Hertogenbosch by judgment of 25 February 2011. In that judgment, the Gerechtshof held that TMP could not deduct the input VAT, essentially on the ground that that company knew, or should have known, that VAT evasion was being committed.

25 TMP brought an appeal on a point of law against that judgment before the Hoge Raad der Nederlanden. That court states in particular, that if it is determined, after referral to the appellate court, that the supplies concerned formed part of a series of transactions designed to circumvent the VAT rules and that TMP knew, or should have known, that that was the case, questions of

interpretation of EU law will then arise. In that regard, it noted, inter alia, that in the financial year concerned Netherlands law did not make the right to deduct VAT subject to the condition that the taxable person was not knowingly involved in VAT avoidance or evasion.

26 In those circumstances, the Hoge Raad der Nederlanden decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Should the national authorities and courts, on the basis of the law of the European Union, refuse the right to deduct where it is established, on the basis of objective evidence, that there was evasion of VAT in respect of the goods concerned and that the taxable person knew, or should have known, that it was participating therein, if national law does not make provision under those circumstances for refusing the right to deduct?’

Admissibility of the requests for a preliminary ruling

Admissibility of the request for a preliminary ruling in Case C?131/13

27 In the first place, Italmoda contends that the first question submitted in Case C?131/13 is inadmissible in so far as that question concerns the interpretation of national law.

28 In that regard, it must be held that that question clearly does not relate to the interpretation of national law, but to that of EU law, in particular the provisions of the Sixth Directive.

29 It follows that the plea of inadmissibility raised by Italmoda must be rejected as regards that question.

30 In the second place, the Commission calls into question the admissibility of the second question referred in that case. In the Commission’s view, the assumption on which it is based is not at issue here, since, as is clear from the order for reference, Italmoda did not correctly inform the Netherlands tax authorities of the transactions in question.

31 In that regard, it is appropriate to point out that, according to settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, inter alia, judgments in *Bud?jovický Budvar*, C?478/07, EU:C:2009:521, paragraph 63; *Zanotti*, C?56/09, EU:C:2010:288, paragraph 15; and *Melki and Abdeli*, C?188/10 and C?189/10, EU:C:2010:363, paragraph 27).

32 In the present context, although the Commission contends that no reference may in any event be made here to the situation covered by the second question submitted in the present case, on the ground that Italmoda had not properly fulfilled, vis-à-vis the tax authorities of the Member State of dispatch of the supplies concerned, all of its obligations in respect of information, it must be noted, first, that it is not apparent from the order for reference that those obligations to provide information to the tax authorities were not, ultimately, properly fulfilled. Rather, the referring court intends to uphold the ground of appeal opposing, solely on the basis of a failure to provide reasons, the finding of the appellate court that information was properly provided to the tax authorities, by taking the view that that finding could not have been made solely on the ground that Italmoda’s declarations had not been disproven.

33 Second, and in that context, it should be noted that it is the actual relevance of the question whether the obligations in relation to information have been fulfilled, for the purpose of assessing the rights to deduct, to be exempt from or to obtain a refund of VAT, which, among other issues, forms the subject-matter of that question. Consequently, it is not manifestly evident that that question is hypothetical or that it is unrelated to the facts of the dispute in the main proceedings.

34 It follows that the second question submitted in Case C?131/13 must also be considered to be admissible.

Admissibility of the requests for a preliminary ruling in Cases C?163/13 and C?164/13

35 The Commission argues that the questions raised in Cases C?163/13 and C?164/13 are inadmissible in that they must be regarded as being hypothetical. It submits that essential matters of fact and of law have not yet been determined in the main proceedings.

36 As has been pointed out in paragraph 31 of the present judgment, the Court is, according to settled case-law, in principle required to rule on questions of the interpretation of EU law unless it is obvious that the interpretation that is sought bears no relation to the actual facts of the main action or its purpose, that the problem is hypothetical, or that the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it.

37 It must be noted that that is, however, the case with regard to the requests for a preliminary ruling which are the subject of Cases C?163/13 and C?164/13.

38 In those cases, the Court is being asked to clarify whether and, if so, under what conditions the national authorities and courts are required to refuse the rights to exemption from and deduction of VAT in the event of evasion of VAT.

39 It is, however, evident from the orders for reference that the Hoge Raad der Nederlanden has not established that there was evasion of VAT in the transactions at issue in the main proceedings. Accordingly, given that the questions submitted by those orders for reference are premised precisely on the existence of such evasion, those questions must be considered to be hypothetical in the light of the disputes in the main proceedings.

40 The requests for a preliminary ruling in Cases C?163/13 and C?164/13 must therefore be declared inadmissible.

Consideration of the questions referred in Case C?131/13

The first question

41 By its first question, the referring court asks, in essence, whether national authorities and courts must refuse a taxable person which knew, or should have known, that it was participating, in the context of intra-Community supplies, in a transaction involving VAT evasion, the right to deduct input VAT under Article 17(3) of the Sixth Directive, the right to an exemption under Article 28c(A)(a) of that directive, and the right to a refund of VAT under Article 28b(A)(2) of that directive, in the event that national law does not contain provisions providing for such a refusal.

42 In order to answer that question, it must be recalled, at the outset, that preventing possible tax evasion, avoidance and abuse is an objective recognised and encouraged by the Sixth Directive (see, inter alia, judgments in *Halifax and Others*, C?255/02, EU:C:2006:121, paragraph 71; *Kittel and Recolta Recycling*, C?439/04 and C?440/04, EU:C:2006:446, paragraph 54; and *Mahagében and Dávid*, C?80/11 and C?142/11, EU:C:2012:373, paragraph 41).

43 In this connection, the Court has repeatedly held that EU law cannot be relied on by individuals for abusive or fraudulent ends (see, inter alia, judgments in *Kittel and Recolta Recycling* , EU:C:2006:446, paragraph 54; *Fini H*, C?32/03, EU:C:2005:128, paragraph 32; and *Maks Pen*, C?18/13, EU:C:2014:69, paragraph 26).

44 The Court concluded from this, firstly, in the context of settled case-law on the right to deduct VAT laid down by the Sixth Directive, that it is for the national authorities and courts to refuse that right if it is shown, in the light of objective evidence, that that right is being relied on for fraudulent or abusive ends (see, inter alia, judgments in *Kittel and Recolta Recycling*, EU:C:2006:446, paragraph 55; *Bonik*, C?285/11, EU:C:2012:774, paragraph 37; and *Maks Pen*, EU:C:2014:69, paragraph 26).

45 Secondly, it is clear from the case-law of the Court that that consequence of an abuse or fraud also applies, in principle, to the right to an exemption for intra-Community supplies (see, to that effect, judgments in *R.*, C?285/09, EU:C:2010:742, paragraph 55, and *Mecsek-Gabona*, C?273/11, EU:C:2012:547, paragraph 54).

46 Thirdly, as the Advocate General stated in points 50 to 52 of his Opinion, in so far as any refusal of a right under the Sixth Directive reflects the general principle, mentioned in paragraph 43 of the present judgment, that no one may benefit from the rights stemming from the Union’s legal system for abusive or fraudulent ends, such a refusal is the responsibility, in general, of the national authorities and courts, irrespective of the VAT right affected by the fraud, including therefore the right to a VAT refund.

47 Contrary to what the Commission maintains, that conclusion cannot be called into question by the fact that the latter right is of a special nature in that it constitutes a corrective mechanism designed to ensure the neutrality of VAT in certain cases of intra-Community supplies.

48 In this regard, it is appropriate to note that it follows from the case-law cited in paragraph 44 of the present judgment that the central function of the right of deduction provided for in Article 17(3) of the Sixth Directive, in the VAT mechanism designed to ensure complete neutrality of the tax, does not preclude that right from being refused to a taxable person in the event of participation in fraud (see to that effect, inter alia, judgments in *Bonik*, EU:C:2012:774, paragraphs 25 to 27 and 37, and *Maks Pen*, EU:C:2014:69, paragraphs 24 to 26). Similarly, the specific function of the right to a VAT refund, intended to ensure the neutrality of VAT, cannot preclude that right from being refused to a taxable person in such a situation.

49 In the light of the foregoing considerations, it is, in principle, the responsibility of the national authorities and courts to refuse the benefit of the rights laid down by the Sixth Directive when they are claimed fraudulently or abusively, irrespective of whether those rights are rights to a deduction, to an exemption or to a VAT refund in respect of intra-Community supplies, as at issue in the case in the main proceedings.

50 It must further be noted that, according to settled case-law, that is the position not only where tax evasion has been carried out by the taxable person itself but also where a taxable person knew, or should have known, that, by the transaction concerned, it was participating in a

transaction involving evasion of VAT carried out by the supplier or by another trader acting upstream or downstream in the supply chain (see to that effect, inter alia, judgments in *Kittel and Recolta Recycling*, EU:C:2006:446, paragraphs 45, 46, 56 and 60, and *Bonik*, EU:C:2012:774, paragraphs 38 to 40).

51 As regards the question whether the national authorities and courts are also required to issue such a refusal if there are no specific provisions to that effect in the national legal order, it should be noted, in the first place, that the Netherlands Government insisted, at the hearing, that there were no lacunae in Netherlands law with regard to the transposition of the Sixth Directive and that the prevention of fraud applies as a general principle of law in the application of the national provisions transposing that directive.

52 In this respect, it must be recalled that it is for the national court to interpret the national law, so far as possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by the directive, which requires that national court to do whatever lies within its jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by that law (see, to that effect, judgments in *Adeneler and Others*, C?212/04, EU:C:2006:443, paragraph 111; *Kofoed*, C?321/05, EU:C:2007:408, paragraph 45; and *Maks Pen*, EU:C:2014:69, paragraph 36).

53 It is consequently for the referring court to ascertain whether there are, in Netherlands law, as the Netherlands Government submits, rules of law, whether a provision or a general principle prohibiting abuse of rights, or other provisions relating to tax evasion or tax avoidance which might be interpreted in accordance with the requirements of EU law in regard to combatting tax evasion, such as those noted in paragraphs 49 and 50 of the present judgment (see, to that effect, judgments in *Kofoed*, EU:C:2007:408, paragraph 46, and *Maks Pen*, EU:C:2014:69, paragraph 36).

54 However, should it transpire, in the second place, that, in this case, national law contains no such rules which may be interpreted in accordance with the requirements of EU law, it cannot nevertheless be inferred from this that the national authorities and courts would, in circumstances such as those at issue in the main proceedings, be prevented from satisfying those requirements and, accordingly, refusing a benefit derived from a right laid down by the Sixth Directive in the event of fraud.

55 First, even if it is true, as Italmoda has stated, that, according to settled case-law, a directive cannot of itself impose obligations on an individual and cannot therefore be relied on as such, by the Member State, against that individual (see, inter alia, judgments in *Pfeiffer and Others*, C?397/01 to C?403/01, EU:C:2004:584, paragraph 108, and *Kücükdeveci*, C?555/07, EU:C:2010:21, paragraph 46), the refusal of the benefit of a right as a result of fraud, as in this case, is not covered by the situation envisaged by that case-law.

56 On the contrary, as has been pointed out in paragraphs 43 and 46 of the present judgment, that refusal addresses the principle that rules of EU law cannot be relied on for abusive or fraudulent ends as the application of those rules cannot be extended to cover abusive, let alone fraudulent, practices (see, to that effect, judgments in *Halifax and Others*, EU:C:2006:121, paragraphs 68 and 69, and *Collée*, C?146/05, EU:C:2007:549, paragraph 38).

57 Accordingly, in so far as abusive or fraudulent acts cannot form the basis of a right under EU law, the refusal of a benefit under, in this case, the Sixth Directive does not amount to imposing an obligation on the individual concerned under that directive, but is merely the consequence of the finding that the objective conditions required for obtaining the advantage sought, under the directive as regards that right, have, in fact, not been satisfied (see, to that effect, inter alia,

judgments in *Kittel and Recolta Recycling*, EU:C:2006:446, paragraph 53, and *FIRIN*, C?107/13, EU:C:2014:151, paragraph 41).

58 Consequently, the present case concerns rather the impossibility for the taxable person to claim a right under the Sixth Directive, the objective criteria for the granting of which have not been satisfied either because of fraud affecting the transaction carried out by the taxable person itself or because of the fraudulent nature of a chain of transactions as a whole, in which that taxable person participated, as has been stated in paragraph 50 of the present judgment.

59 In such a situation, however, express authorisation cannot be required in order for the national authorities and courts to be able to refuse a benefit under the common system of VAT, as that consequence must be regarded as being inherent in the system.

60 Next, contrary to what Italmoda has claimed, a taxable person who has created the conditions for obtaining a right only by participating in fraudulent transactions is clearly not justified in invoking the principles of protection of legitimate expectations or legal certainty in order to oppose the refusal to grant the right in question (see, to that effect, judgments in *Breitsohl*, C?400/98, EU:C:2000:304, paragraph 38, and *Halifax and Others*, EU:C:2006:121, paragraph 84).

61 Finally, since refusal of the benefit of a right stemming from the common system of VAT in the case where a taxable person is involved in fraud is merely the consequence of a failure to satisfy the conditions required in that respect by the relevant provisions of the Sixth Directive, that refusal is not, as the Advocate General observed in point 60 of his Opinion, in the nature of a penalty or a sanction within the meaning of Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, or Article 49 of the Charter of Fundamental Rights of the European Union (see, to that effect, judgments in *Emsland-Stärke*, C?110/99, EU:C:2000:695, paragraph 56; *Halifax and Others*, EU:C:2006:121, paragraph 93; and *Döhler Neuenkirchen*, C?262/10, EU:C:2012:559, paragraph 43).

62 In the light of all the foregoing considerations, the answer to the first question is that the Sixth Directive must be interpreted as meaning that it is for the national authorities and courts to refuse a taxable person, in the context of an intra-Community supply, the benefit of the rights to deduction of, exemption from or refund of VAT, even in the absence of provisions of national law providing for such refusal, if it is established, in the light of objective factors, that that taxable person knew, or should have known, that, by the transaction relied on as a basis for the right concerned, it was participating in VAT evasion committed in the context of a chain of supplies.

The second question

63 By its second question, the referring court questions the Court, in essence, as to the relevance, with regard to the possible obligation to refuse the rights to deduction of, exemption from or refund of VAT, as was considered in the context of the first question referred, of circumstances in which, first, the VAT evasion was committed in a Member State other than that in which the benefit of those various rights has been sought and, secondly, the taxable person concerned has, in the latter Member State, complied with the formal requirements laid down by national legislation for the purpose of benefiting from those rights.

64 In this regard, as has already been stated in paragraph 50 of the present judgment, according to settled case-law, not only the situation in which tax evasion is directly committed by the taxable person himself but also the situation in which a taxable person knew, or should have known, that, through the transaction concerned, it was participating in a transaction involving evasion of VAT committed by the supplier or by another trader acting upstream or downstream in the supply chain, is considered to constitute fraudulent conduct on the part of a taxable person

which may give rise, in regard to that person, to a refusal of a right laid down by the Sixth Directive (see, inter alia, judgments in *Kittel and Recolta Recycling*, EU:C:2006:446, paragraphs 45, 46 and 56; *Mahagében and Dávid*, EU:C:2012:373, paragraph 46; and *Bonik*, EU:C:2012:774, paragraph 40).

65 There is no objective reason to conclude that the position would be otherwise merely because the chain of supply affected by fraud extends to two or more Member States or that the transaction by which the VAT evasion was committed took place in a Member State other than that in which the taxable person involved in the fraudulent completion of the transactions concerned improperly seeks to benefit from a right under the Sixth Directive.

66 Similarly, no relevance would attach, as such, with regard to refusal of the benefit of a right under the Sixth Directive, to a finding that, in the light solely of the legal order of the Member State responsible for deciding on whether to grant that right, the conditions laid down in this regard appear to be satisfied, given that, as has been noted, involvement in VAT fraud may consist of conscious participation, or participation which must have been conscious, in a chain of transactions in the context of which another trader, by a subsequent transaction which took place in another Member State, actually commits that fraud.

67 Moreover, as the Netherlands Government has rightly pointed out, the VAT fraud at issue in the main proceedings, known as ‘carousel’ fraud, which is implemented within the framework of intra-Community supplies, is frequently characterised by the fact that, from the point of view of a Member State considered in isolation, the conditions required to rely on a right in relation to VAT appear to be satisfied, since the fraudulent nature of those transactions taken together is the consequence of precisely the specific combination of transactions carried out in several Member States.

68 Furthermore, any interpretation other than that adopted above would not comply with the objective of preventing tax evasion, as recognised and encouraged by the Sixth Directive (see, inter alia, judgment in *Tanoarch*, C?504/10, EU:C:2011:707, paragraph 50).

69 In the light of the foregoing considerations, the answer to the second question is that the Sixth Directive must be interpreted as meaning that a taxable person who knew, or should have known, that, by the transaction relied on as a basis for rights to deduction of, exemption from or refund of VAT, that person was participating in evasion of VAT committed in the context of a chain of supplies, may be refused the benefit of those rights, notwithstanding the fact that the evasion was carried out in a Member State other than that in which the benefit of those rights has been sought and that taxable person has, in the latter Member State, complied with the formal requirements laid down by national legislation for the purpose of benefiting from those rights.

The third question

70 In view of the answer to the first question, it is not necessary to answer the third question, which was raised only in the event of a negative answer to that first question.

Costs

71 Since these proceedings are, for the parties to the main proceedings, a step in the actions pending before the national court, the decisions on costs are 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 (First Chamber) hereby rules:

1. **The questions referred for a preliminary ruling by the Hoge Raad der Nederlanden in Cases C?163/13 and C?164/13 are inadmissible.**

2. **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 95/7/EC of 10 April 1995, must be interpreted as meaning that it is for the national authorities and courts to refuse a taxable person, in the context of an intra-Community supply, the benefit of the rights to deduction of, exemption from or refund of value added tax, even in the absence of provisions of national law providing for such refusal, if it is established, in the light of objective factors, that that taxable person knew, or should have known, that, by the transaction relied on as a basis for the right concerned, it was participating in evasion of value added tax committed in the context of a chain of supplies.**

3. **Sixth Directive 77/388, as amended by Directive 95/7, must be interpreted as meaning that a taxable person who knew, or should have known, that, by the transaction relied on as a basis for rights to deduction of, exemption from or refund of value added tax, that person was participating in evasion of value added tax committed in the context of a chain of supplies, may be refused the benefit of those rights, notwithstanding the fact that the evasion was carried out in a Member State other than that in which the benefit of those rights has been sought and that taxable person has, in the latter Member State, complied with the formal requirements laid down by national legislation for the purpose of benefiting from those rights.**

[Signatures]

* Language of the cases: Dutch.