

JUDGMENT OF THE COURT (First Chamber)

22 June 2016 (*)

(Reference for a preliminary ruling — Sixth Directive 77/388/EC — Value added tax — Article 2(1) — Supply of services effected for consideration — Definition — Public broadcasting — Financing from a compulsory statutory fee)

In Case C-11/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic), made by decision of 18 December 2014, received at the Court on 13 January 2015, in the proceedings,

Odvolací finanční úředitelství

v

Český rozhlas,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta (Rapporteur), President of the Chamber, J.-C. Bonichot, C.G. Fernlund, S. Rodin and E. Regan, Judges,

Advocate General: M. Szpunar,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 17 December 2015,

after considering the observations submitted on behalf of:

- Odvolací finanční úředitelství, by E. Nedorostková, acting as Agent,
- Český rozhlas, by P. Orct, advokát,
- the Czech Government, by M. Smolek, J. Vlášil, Z. Petzl and T. Müller, acting as Agents,
- the Greek Government, by G. Konstantinos and A. Dimitrakopoulou, acting as Agents,
- the Polish Government, by B. Majczyna, acting as Agent,
- the United Kingdom Government, by V. Kaye, acting as Agent, and by P. Mantle, Barrister,
- the European Commission, by L. Lozano Palacios and Z. Malášková, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 March 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(1) 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; ‘the Sixth Directive’).

2 The request has been made in proceedings between the Odvolací finanční ředitelství (Appellate Tax Directorate; ‘the Tax Directorate’), formerly the Finanční ředitelství pro hlavní město Prahu (Prague City Tax Directorate, Czech Republic), and Český rozhlas (Czech Radio) concerning value added tax (VAT) for which it was liable in connection with its public broadcasting activity.

Legal context

EU law

3 Article 2(1) of the Sixth Directive provides:

‘The following shall be subject to [VAT]:

1. the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such’.

4 Article 13A(1)(q) of that directive provides:

‘A. *Exemptions for certain activities in the public interest*

1. Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any possible evasion, avoidance or abuse:

...

(q) activities of public radio and television bodies other than those of a commercial nature.’

Czech law

5 Under Article 1 of Law No 484/1991 on Český rozhlas, in the version applicable to the dispute in the main proceedings, Český rozhlas was incorporated as a broadcasting company with its registered office in Prague (Czech Republic). According to that provision, Český rozhlas is a legal person which manages its own assets, acquires rights and on its own initiative enters into binding commitments.

6 Article 10 of that law provides that Český rozhlas’s sources of financing are, inter alia, the radio fees received under specific legislation and income levied from its own economic activities.

7 In accordance with Article 1 of Law No 348/2005 on radio and television fees, in the version applicable to the case in the main proceedings, the radio fee is intended to finance the public service provided by Český rozhlas.

8 Under Article 2 of that law, the radio fee is paid for technical equipment capable of individually reproducing, on demand, radio broadcasting, irrespective of how it is received (‘radio

receiver'), including if that equipment is intended for a different use.

9 According to Article 3 of that law, the person liable for the radio fee is any natural or legal person who owns a radio receiver or who, although not the owner of a radio receiver, possesses or uses a radio receiver on other legal grounds for at least one month.

10 Article 7 of the same law provides that the taxable person is to pay the radio fee or the television fee to the statutory broadcaster, either directly or through an authorised intermediary.

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

11 Český rozhlas is a legal person created by law whose principal activity is the public broadcasting of radio programmes.

12 By supplementary tax returns covering the period from March to December 2006, Český rozhlas applied for a further increase to its right to deduct VAT by excluding from the calculation of the coefficient used for deducting VAT supplies covered by the radio fees paid to it, which it had initially declared as supplies exempt from VAT and not conferring a right to deduction from VAT. In that regard, Český rozhlas argued that those fees did not constitute remuneration for the public broadcasting service provided.

13 By 10 supplementary tax assessments relating to the VAT payable by Český rozhlas for that period, the Finanční úřad pro Prahu 10 (Prague City Tax Office No 10, Czech Republic) refused to exclude those services.

14 Český rozhlas lodged a complaint against those supplementary tax assessments.

15 Following the rejection of that complaint by 10 decisions of the Tax Directorate, Český rozhlas filed an appeal against those decisions with the Městský soud v Praze (Municipal Court, Prague, Czech Republic).

16 By judgment of 6 June 2014, the Městský soud v Praze (Municipal Court, Prague) annulled those decisions and referred the case back to the Tax Directorate.

17 The Tax Directorate lodged an appeal on a point of law against that judgment before the referring court.

18 In those circumstances, the Nejvyšší správní soud (Supreme Administrative Court) decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Can public sector broadcasting, financed by compulsory statutory charges of the amount set by the law, on the basis of ownership of a radio receiver, possession thereof or entitlement to use it on other legal grounds, be regarded as the "provision of a service against payment" within the meaning of Article 2(1) of the Sixth ... Directive ..., which must be exempted from [VAT] in accordance with Article 13A(1)(q) of that directive, or is it a non-economic activity which is not subject to [VAT] at all under Article 2 of the Sixth Directive, and to which exemption from VAT in accordance with Article 13A(1)(q) of that directive does not therefore apply?'

Consideration of the question referred

19 By its question the referring court asks, in essence, whether Article 2(1) of the Sixth Directive must be interpreted as meaning that public broadcasting activities, such as those at issue in the main proceedings, funded by a compulsory statutory fee paid by owners or possessors of a

radio receiver and carried out by a radio broadcasting company created by statute, constitutes a supply of services 'effected for consideration' within the meaning of that provision, but exempted from VAT in accordance with Article 13A(1)(q) of that directive, or as meaning that such activity does not constitute a taxable transaction falling within the scope of that directive.

20 In that regard, it must be recalled that, within the framework of the VAT system, taxable transactions presuppose the existence of a transaction between the parties in which a price or consideration is stipulated. Thus, where a person's activity consists exclusively of providing services for no direct consideration, there is no basis of assessment and the services are therefore not subject to VAT (see judgments of 3 March 1994 in *Tolsma*, C?16/93, EU:C:1994:80, paragraph 12; 29 October 2009 in *Commission v Finland*, C?246/08, EU:C:2009:671, paragraph 43; and 27 October 2011 in *GFKL Financial Services*, C?93/10, EU:C:2011:700, paragraph 17).

21 It follows from this that a supply of services is effected 'for consideration' within the meaning of Article 2(1) of the Sixth VAT Directive, and hence is taxable, only if there is a legal relationship between the provider of the service and the recipient, pursuant to which there is reciprocal performance, the remuneration received by the provider of the service constituting the value actually given in return for the service supplied to the recipient (see judgments of 3 March 1994 in *Tolsma*, C?16/93, EU:C:1994:80, paragraph 14; 29 October 2009 in *Commission v Finland*, C?246/08, EU:C:2009:671, paragraph 44; and 27 October 2011 in *GFKL Financial Services*, C?93/10, EU:C:2011:700, paragraph 18).

22 In that context, the Court has repeatedly held that the notion of the 'supply of services effected for consideration', within the meaning of Article 2(1), requires the existence of a direct link between the service provided and the consideration received (see judgments of 5 February 1981 in *Coöperatieve Aardappelenbewaarplaats*, 154/80, EU:C:1981:38, paragraph 12; 8 March 1988 in *Apple and Pear Development Council*, 102/86, EU:C:1988:120, paragraph 12; 3 March 1994 in *Tolsma*, C?16/93, EU:C:1994:80, paragraph 13; 29 October 2009 in *Commission v Finland*, C?246/08, EU:C:2009:671, paragraph 45; and 27 October 2011 in *GFKL Financial Services*, C?93/10, EU:C:2011:700, paragraph 19).

23 As regards the public broadcasting service at issue in the main proceedings, it is clear that there is no legal relationship between ?eský rozhlas and the persons liable to pay the radio fee, in the course of which there is an exchange of reciprocal performance, or direct link between that public broadcasting service and that fee.

24 In the context of the provision of that service, ?eský rozhlas and those persons are not linked by any contractual relationship or transaction in which a price was stipulated, or even by a voluntary legal commitment made by one party towards the other.

25 Moreover, the obligation to pay the radio fee does not stem from the provision of a service of which it constitutes direct consideration, since that obligation is linked not to the use of the public broadcasting service provided by ?eský rozhlas by the persons subject to that obligation but solely to the possession of a radio receiver, whatever the use that is made of it.

26 Consequently, persons possessing a radio receiver are obliged to pay that fee, even if they use that receiver solely to listen to radio programmes transmitted by broadcasters other than ?eský rozhlas, such as commercial radio programmes financed by sources other than that fee, for listening to CDs or other digital media, or even for other functions generally available on that equipment enabling them to receive and reproduce transmissions.

27 Furthermore, it must be noted that the access to the public broadcasting service provided by Český rozhlas is free and that it is in no way subject to the payment of the radio fee.

28 It follows from this that the provision of a public broadcasting service with similar characteristics to that at issue in the main proceedings does not constitute a supply of services effected 'for consideration' within the meaning of Article 2(1) of the Sixth Directive.

29 The Czech Government's argument that the situation at issue in the main proceedings is distinguished by a triangular legal relationship, within which the Czech State entrusts Český rozhlas with a general-interest mission consisting of providing a public broadcasting service, providing it with remuneration in the form of a compulsory fee imposed by statute on the recipients of that service, cannot call the above interpretation in question.

30 In that regard, it is sufficient to note that, even if there were such a triangular legal relationship, not only is there no direct link between the public broadcasting service provided by Český rozhlas and that fee, as stated at paragraph 23 above, but, as is clear from the characteristics of that fee, as described at paragraph 25 above, it does not constitute the payment of a price for that service.

31 The same is true of the Czech Government's argument that the exemption provided for under Article 13A(1)(q) of the Sixth Directive makes sense only if public broadcasting activities such as those at issue in the main proceedings are considered to fall within the scope of that directive.

32 In that regard, it is sufficient to note, first, that, although that provision provides an exemption for 'activities of public radio and television bodies other than those of a commercial nature', that provision is nevertheless applicable only on the condition that those activities should be 'subject to VAT' within the meaning of Article 2 of the Sixth Directive, and, second, that it is not to be interpreted as extending the scope of application of that directive, as defined in Article 2.

33 Finally, as regards the parallel drawn by the referring court between the situation at issue in the main proceedings and the situation in the case which gave rise to the judgment of 27 March 2014 in *Le Rayon d'Or* (C-151/13, EU:C:2014:185), it must be held that those situations are not comparable.

34 In that regard, it must be noted that, in that judgment, relating to a case on the taxability of a 'lump sum' paid by a national sickness insurance fund to care homes for older people for the provision of care services to their residents, the Court held that a direct link existed between the supply of services provided by those establishments to their residents and the consideration received, namely the 'lump sum', so that such a lump sum payment constituted consideration for the supply of care services effected for consideration by one of those establishments to its residents and, as a result, falls within the scope of VAT.

35 However, in the main proceedings, not only is there no such link between the radio fee and the public broadcasting service provided by Český rozhlas but, as has already been noted, the payment of that fee does not form part of a legal relationship involving a reciprocal exchange of services but rather is the performance of an obligation imposed by law.

36 In those circumstances, the answer to the question referred is that Article 2(1) of the Sixth Directive must be interpreted as meaning that public broadcasting activities, such as those at issue in the main proceedings, funded by a compulsory statutory charge paid by owners or possessors of a radio receiver and carried out by a radio broadcasting company created by law, do not

constitute a supply of services 'effected for consideration' within the meaning of that provision and therefore fall outside the scope of that directive.

Costs

37 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 (First Chamber) hereby rules:

Article 2(1) 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 must be interpreted as meaning that public broadcasting activities, such as those at issue in the main proceedings, funded by a compulsory statutory charge paid by owners or possessors of a radio receiver and carried out by a radio broadcasting company created by law, do not constitute a supply of services 'effected for consideration' within the meaning of that provision and therefore fall outside the scope of that directive.

[Signatures]

* Language of the case: Czech.