Downloaded via the EU tax law app / web

JUDGMENT OF THE COURT (Third Chamber)

12 October 2016 (*)

(Reference for a preliminary ruling — Taxation — Value added tax — Sixth Directive 77/388/EEC — Article 4(1) and (4) — Directive 2006/112/EC — Articles 9 and 11 — Concept of ‘taxable person’ — Civil-law partnerships selling their products under a common trade mark and through a limited company — Concept of ‘independent undertaking’ — Refusal of the status of taxable person — Retroactivity — Sixth Directive 77/388 — Article 25 — Directive 2006/112 — Articles 272 and 296 — Flat-rate scheme for farmers — Exclusion from the flat-rate scheme — Retroactivity)

In Case C?340/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesfinanzgericht (Federal Finance Court, Austria), made by decision of 29 June 2015, received at the Court on 7 July 2015, in the proceedings

Christine Nigl and Others

v

Finanzamt Waldviertel,

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, M. Vilaras (Rapporteur), J. Malenovský, M. Safjan and D. Šváby, Judges,

Advocate General: M. Szpunar,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 13 April 2016,

after considering the observations submitted on behalf of:

– Ms Nigl and Others, by H. Nigl, Rechtsanwalt, and J. Auer,

– the Austrian Government, by C. Pesendorfer, S. Pfeiffer and F. Koppensteiner, acting as Agents,

– the European Commission, by R. Lyal and M. Wasmeier, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 June 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to

turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), as amended by Council Directive 2004/66/EC of 26 April 2004 (OJ 2004 L 168, p. 35) ('the Sixth Directive'), and 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 members of the Nigl family, who are members of three civil-law partnerships each engaged in wine production, and the Finanzamt Waldviertel (Tax Office, Waldviertel, Austria; 'the Tax Office') concerning, first, the determination of the status of taxable person for the purposes of value added tax (VAT) and, second, the refusal to apply the common flat-rate scheme for farmers to those civil-law partnerships.

Legal context

EU law

The Sixth Directive

3 Article 4 of the Sixth Directive, entitled 'Taxable persons', provides:

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

2. The economic activities referred to in paragraph 1 shall comprise all activities of producers, traders and persons supplying services including mining and agricultural activities and activities of the professions. The exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis shall also be considered an economic activity.

...

4. The use of the word "independently" in paragraph 1 shall exclude 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.

Subject to the consultations provided for in Article 29, each Member State may treat as a single taxable person persons established in the territory of the country who, while legally independent, are closely bound to one another by financial, economic and organisational links.

...'

4 Article 25 of the Sixth Directive, entitled 'Common flat-rate scheme for farmers', provides:

'1. Where the application to farmers of the normal [VAT] scheme, or the simplified scheme provided for in Article 24, would give rise to difficulties, Member States may apply to farmers a flat-rate scheme tending to offset the [VAT] charged on purchases of goods and services made by the flat-rate farmers pursuant to this Article.

...

9. Each Member State may exclude from the flat-rate scheme certain categories of farmers and farmers for whom the application of the normal [VAT] scheme, or the simplified scheme provided for in Article 24(1), would not give rise to administrative difficulties.

...’

The VAT Directive

5 Article 9(1) of the VAT Directive, set out in Title III thereof, entitled ‘Taxable persons’, provides as follows:

‘“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 there from on a continuing basis shall in particular be regarded as an economic activity.’

6 Article 10 of that directive states:

‘The condition in Article 9(1) that the economic activity be conducted “independently” shall exclude employed and other persons from VAT 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.’

7 The first paragraph of Article 11 of that directive provides:

‘After consulting the advisory committee on [VAT], each Member State may regard as a single taxable person any persons established in the territory of that Member State who, while legally independent, are closely bound to one another by financial, economic and organisational links.’

8 Pursuant to Article 296(1) and (2) of the VAT Directive:

‘1. Where the application to farmers of the normal VAT arrangements, or the special scheme provided for in Chapter 1, is likely to give rise to difficulties, Member States may apply to farmers, in accordance with this Chapter, a flat-rate scheme designed to offset the VAT charged on purchases of goods and services made by the flat-rate farmers.

2. Each Member State may exclude from the flat-rate scheme certain categories of farmers, as well as farmers for whom application of the normal VAT arrangements, or of the simplified procedures provided for in Article 281, is not likely to give rise to administrative difficulties.’

Austrian law

9 Paragraph 2 of the Umsatzsteuergesetz 1994 (1994 Law on turnover tax; ‘the UStG’), entitled ‘Trader, undertaking’, provides:

‘1. A trader is any person who independently carries out a commercial or professional activity. An undertaking comprises the whole of a trader’s commercial or professional activity. A commercial or professional activity shall mean any permanent activity carried out for the purpose of obtaining income, even where there is no intention to make a profit or a group of persons carries out its activities only in relation to its members.

2. A commercial or professional activity is not exercised independently:

(1) if natural persons are, individually or as a group, integrated in an undertaking in such a way that they are required to follow the instructions of the trader:

(2) if a legal person is dependent on the will of a trader in such a way that it does not exercise its own will. A legal person is dependent on the will of a trader in such a way that it does not exercise its own will (affiliated entity) if, having regard to all the factual circumstances, it is integrated financially, economically and organisationally into the undertaking.

...'

10 Paragraph 22 of the UStG provides that, for traders not under the obligation to keep accounts, who carry out operations on an agricultural and forestry holding, the tax payable in respect of those operations is fixed at 10% of the taxable basis, with such an obligation depending, according to Paragraphs 124 and 125 of the Bundesabgabenordnung (Federal Tax Code), on the level of turnover and on the value of the agricultural holding.

11 Moreover, Paragraph 1175 of the Allgemeines Bürgerliches Gesetzbuch (General Civil Code) provides that a civil-law partnership is formed by two or more persons who, by agreement, have decided jointly to carry out an activity aimed at attaining a common objective. Such an agreement is not subject to any requirements with regard to form.

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

12 Since 1998, the appellants in the main proceedings have been engaged in wine production through three civil-law partnerships, each of them operating vineyards on different sites and each being subject to VAT. The first of those civil-law partnerships was formed by Mr Martin Nigl and Ms Christine Nigl, the second by Ms Gisela Nigl (senior) and Mr Josef Nigl, and the third by Mr Martin Nigl and Ms Gisela Nigl (junior). No written contract was drawn up during the creation of the three civil-law partnerships.

13 In order to meet increased demand for high-quality wines, a market sector developed by Mr Martin Nigl, the appellants in the main proceedings created, in 2001, Wein-Gut Nigl GmbH ('the trading company'). In the main, that company either purchases wines from the holdings of the civil-law partnerships in order to sell them to retailers or markets those wines to end consumers, in the name and on behalf of each civil-law partnership concerned. In addition, it produces wine from purchases made from contractually-linked vineyards and operates a hotel and restaurant.

14 The civil-law partnerships were the subject of declarations made to the public authorities, including the Tax Office, which classified those partnerships of independent taxable persons as undertakings, for turnover-tax purposes, and as joint ventures, for income-tax purposes.

15 The income and expenditure of the three civil-law partnerships is accounted for separately, via bank accounts owned by each of them separately, the profits are distributed within each civil-law partnership between its members and there are no assets or bank account shared by those partnerships. Each civil-law partnership separately operates vineyards belonging to it or leased by it, employs workers and owns its own equipment, such as tractors or machines. The equipment used for carrying out the work — in the amount of 15% to 20% — is purchased centrally by the trading company and then distributed among the civil-law partnerships, according to the quantities of wine produced. The operating costs relating to the buildings and gas and electricity costs are invoiced at the end of the year by the trading company.

16 Wine-making takes place separately at each holding, whereas bottling is carried out at a

shared facility. The wines produced by the civil-law partnerships are marketed under a common trade mark, ‘Weingut Nigl’, by the trading company, and are sold at jointly-fixed prices, the prices for purchase by that company being determined by applying an allowance to its own sale prices. Neither the advertisements, the website nor the price-lists make reference to the different holdings or producing civil-law partnerships. Finally, the trading company performs all administrative tasks on behalf of the three civil-law partnerships.

17 Until 2012, the Tax Office took the view that the holding was being operated by four taxable persons, namely the three civil-law partnerships and the trading company.

18 Following a tax inspection in 2012, the Tax Office found that, in view of the closely interconnected economic and organisational nature of the civil-law partnerships, their members had formed, since 2005, a single association of persons. In its view, there was only one source of income, the proceeds of which had to be assigned to the various members of the three civil-law partnerships.

19 With regard to VAT, the Tax Office took the view that there existed, with retroactive effect from 2005, two taxable undertakings, namely the single association of persons, made up of the members of the three civil-law partnerships, and the trading company. VAT assessments were issued to all the members of the three civil-law partnerships and to the trading company, and, by a decision of 18 July 2012, the VAT identification number of each of the civil-law partnerships was restricted.

20 As a result, the Tax Office called into question the common flat-rate scheme for farmers enjoyed by the civil-law partnerships.

21 Dealing with proceedings to determine whether the appellants in the main proceedings were operating, as independent undertakings, four or only two wine-producing holdings, the Bundesfinanzgericht (Federal Finance Court, Austria) notes that, under Austrian law, every structure which conducts itself outwardly as such in relation to third parties and which provides services independently, within the meaning of the Law on turnover tax, has the capacity to be an undertaking, even if it consists of an association of persons lacking legal capacity.

22 In addition, that court notes that it has previously held that, as the Republic of Austria had failed to seek consultation from the Advisory Committee on VAT mentioned in Article 29 of the Sixth Directive, joint enterprises independent of each other for income tax purposes do not constitute a single undertaking for turnover tax purposes, whatever the relationships between them.

23 It is in that context that the Bundesfinanzgericht (Federal Finance Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Do three associations of persons constitute three independent traders (taxable persons) where those associations consist of different members of one family, conduct themselves outwardly as such independently in relation to their suppliers and to public authorities, possess their own production facilities, with the exception of two business assets, but market under a common trade mark the greater part of their products through a limited company whose shares are held by the members of the associations of persons and other members of the family?

(2) If the three associations of persons are not to be regarded as three independent traders (taxable persons), is any of the following to be regarded as an independent trader (taxable person):

(a) the marketing company, or

(b) an association of persons consisting of the members of the three associations of persons, which does not conduct itself as such on the market in relation either to suppliers or to customers, or

(c) an association of persons consisting of the three associations of persons and the limited company, which does not conduct itself as such on the market in relation either to suppliers or to customers?

(3) If the three associations of persons are not to be regarded as three independent traders (taxable persons), is the refusal of the status of a trader (taxable person)

(a) retrospective,

(b) only for the future, or

(c) not permissible at all

if the associations of persons were at first, after investigations by the tax authorities, recognised by the Tax Office as independent traders (taxable persons)?

(4) If the three associations of persons are to be regarded as three independent traders (taxable persons), are they, as wine producers and therefore farmers, flat-rate farmers if each of those associations of persons which cooperate in practice is in itself covered by the flat-rate scheme for farmers, but the limited company, an association of persons formed of the members of the three associations of persons or an association of persons formed of the limited company and the members of the three associations of persons is, under national law, not covered by the flat-rate scheme on account of the size of the business or its legal form?

(5) If the flat-rate scheme for farmers is in principle excluded for the three associations of persons, is that exclusion

(a) retrospective,

(b) only for the future, or

(c) not effective at all?’

Consideration of the questions referred

24 As a preliminary point, it is appropriate to note that, in view of the period for which the Tax Office found that the members of the three civil-law partnerships had created a single association of persons, namely from 2005 to 2012, the respective relevant provisions of the Sixth Directive and the VAT Directive are applicable.

The first question

25 By its first question, the referring court essentially asks whether Article 4(1) and the first subparagraph of Article 4(4) of the Sixth Directive, on the one hand, and the first subparagraph of Article 9(1) and Article 10 of the VAT Directive, on the other, must be interpreted as meaning that multiple civil-law partnerships, such as those at issue in the main proceedings, which conduct themselves outwardly independently as such in relation to their suppliers, public authorities and, to a certain extent, their customers, and each of which carries out its own production by using for the

most part its means of production, but which market a large proportion of their products under a common trade mark through a limited company the shares in which are held by members of those civil-law partnerships and by other members of the family in question, must be regarded as independent undertakings which are taxable persons for VAT purposes.

26 It is important, in this regard, to recall that, under Article 4(1) of the Sixth Directive and Article 9 of the VAT Directive, ‘taxable person’ means any person who independently carries out in any place any economic activity, whatever the purpose or results of that activity (see, inter alia, judgments of 26 March 1987, *Commission* v *Netherlands*, 235/85, EU:C:1987:161, paragraph 6; of 16 September 2008, *Isle of Wight Council and Others*, C?288/07, EU:C:2008:505, paragraph 27; and of 29 October 2009, *Commission* v *Finland*, C?246/08, EU:C:2009:671, paragraph 35).

27 The terms used in Article 4(1) of the Sixth Directive and in Article 9(1) of the VAT Directive, in particular the term ‘any person who’, give to the notion of ‘taxable person’ a broad definition focused on independence in the pursuit of an economic activity to the effect that all persons — natural or legal, both public and private, even entities devoid of legal personality — which, in an objective manner, satisfy the criteria set out in that provision must be regarded as being taxable persons for the purposes of VAT (see, to that effect, judgment of 29 September 2015, *Gmina Wroc?aw*, C?276/14, EU:C:2015:635, paragraph 28).

28 In order to establish that an economic activity is being carried out in an independent manner, it is necessary to examine whether the person concerned performs his activities in his own name, on his own behalf and under his own responsibility, and whether he bears the economic risk associated with the carrying-out of those activities (judgments of 27 January 2000, *Heerma*, C?23/98, EU:C:2000:46, paragraph 18; of 18 October 2007, *van der Steen*, C?355/06, EU:C:2007:615, paragraph 23, and of 29 September 2015, *Gmina Wroc?aw* C?276/14, EU:C:2015:635, paragraph 34).

29 It is in the light of those factors that the first question should be answered.

30 The fact that civil-law partnerships, such as those at issue in the main proceedings, operate separately vineyards that belong to them or are leased by them (also separately), that each of them uses its own means of production almost exclusively and employs its own workers, that they conduct themselves as such outwardly independently in relation to their suppliers, public authorities and, to a certain extent, their customers, reflects the fact that each of those partnerships carries out an activity in its own name, on its own behalf and under its own responsibility.

31 In that context, the fact that some degree of cooperation occurs between such civil-law partnerships and a limited company, particularly in relation to the marketing of their products under a common trade mark, cannot suffice to call into question the independence of those civil-law partnerships vis-à-vis that company.

32 The fact that such civil-law partnerships share a portion of their activities by entrusting that portion to a third company is the result of a choice made in the organisation of those activities and cannot warrant the conclusion that those civil-law partnerships do not carry out their activities independently or that they would not bear the economic risk associated with their economic activity.

33 In addition, the determinative role of one of the members of one of the civil-law partnerships such as those at issue in the main proceedings in producing those partnerships’ wines and in representing them does not appear capable of calling into question the finding that those partnerships carry out their activities independently, in that each of them acts in its own name, on

its own behalf and under its own responsibility.

34 In view of the foregoing considerations, the answer to the first question is that Article 4(1) and the first subparagraph of Article 4(4) of the Sixth Directive, on the one hand, and the first subparagraph of Article 9(1) and Article 10 of the VAT Directive, on the other, must be interpreted as meaning that multiple civil-law partnerships, such as those at issue in the main proceedings, which conduct themselves outwardly as such and independently in relation to their suppliers, public authorities and, to a certain extent, their customers, and each of which carries out its own production by using for the most part its means of production, but which market a large proportion of their products under a common trade mark through a limited company the shares in which are held by members of those civil-law partnerships and by other members of the family in question, must be regarded as independent undertakings which are taxable persons for VAT purposes.

35 In the light of the answer to the first question, there is no need to answer the second and third questions.

The fourth question

36 By its fourth question, the referring court essentially seeks to determine whether Article 25 of the Sixth Directive and Article 296 of the VAT Directive must be interpreted as not excluding the possibility of refusing the application of the common flat-rate scheme for farmers, laid down in those articles, to multiple civil-law partnerships such as those at issue in the main proceedings, regarded as independent undertakings which are taxable persons for VAT purposes and which cooperate with each other, on the ground that a limited company, an association of persons made up of members of those civil-law partnerships or of members of that limited company could not be subject to that scheme, on account of the size of its operation or its legal form.

37 It must be recalled that the common flat-rate scheme for farmers is a scheme which derogates from and is an exception to the general scheme of the Sixth Directive and the VAT Directive and which must therefore be applied only to the extent necessary to achieve its objective (judgments of 15 July 2004, *Harbs*, C?321/02, EU:C:2004:447, paragraph 27; of 26 May 2005, *Stadt Sundern*, C?43/04, EU:C:2005:324, paragraph 27; and of 8 March 2012, *Commission* v *Portugal*, C?524/10, EU:C:2012:129, paragraph 49).

38 Among the two objectives of that scheme is that relating to the need for simplification, which must be reconciled with the objective of offsetting the input VAT borne by farmers (see, to that effect, judgments of 26 May 2005, *Stadt Sundern*, C?43/04, EU:C:2005:324, paragraph 28, and of 8 March 2012, *Commission* v *Portugal*, C?524/10, EU:C:2012:129, paragraph 50).

39 It must also be recalled that, pursuant to Article 25(1) of the Sixth Directive and Article 296(1) of the VAT Directive, Member States ‘may’ apply to farmers a flat-rate scheme if application of the normal VAT arrangements, or of the simplified scheme, is likely to give rise to difficulties, particularly difficulties of an administrative nature.

40 Moreover, it follows from the wording of Article 25(9) of the Sixth Directive and of Article 296(2) of the VAT Directive that, on the one hand, Member States ‘may exclude’ certain categories of farmers from the flat-rate scheme.

41 In the present case, it is apparent from the order for reference that the national legislation does not provide, in general, for exclusion from the flat-rate scheme of a category of farmers on the ground that they are linked by close economic cooperation through a limited company or an association, such as those mentioned in paragraph 36 of the present judgment.

42 On the other hand, those provisions provide that farmers for whom the application of the normal arrangements or of the simplified scheme presents no administrative difficulties are excluded from the flat-rate scheme for farmers.

43 However, the circumstance, put forward by the referring court, that a limited company, an association of persons made up of the members of multiple civil-law partnerships or an association of persons made up of that limited company and of members of those civil-law partnerships could not be subject to the common flat-rate scheme for farmers, on account of its size or its legal form, cannot have a bearing on the eligibility of those civil-law partnerships for that scheme, since such a circumstance does not, by itself, prove that the application of the normal arrangements or the simplified scheme would not present administrative difficulties for those partnerships.

44 It would, however, be otherwise if civil-law partnerships, such as those at issue in the main proceedings, were, owing to their links with a limited company or an association, such as those mentioned in paragraph 36 above, materially capable of assuming the administrative burden of the tasks arising from the application of the normal arrangements or the simplified scheme, this being a matter for the referring court to verify.

45 In that situation, the fact that the application of the flat-rate scheme is nevertheless capable of reducing the administrative costs associated with the application of the VAT scheme cannot, however, be taken into account inasmuch as the EU legislature introduced the flat-rate scheme for the sole benefit of farmers for whom the application of the normal VAT arrangements or simplified scheme is likely to give rise to difficulties, particularly difficulties of an administrative nature.

46 In view of the foregoing considerations, the answer to the fourth question is that Article 25 of the Sixth Directive and Article 296 of the VAT Directive must be interpreted as not excluding the possibility of refusing the application of the common flat-rate scheme for farmers, laid down in those articles, to multiple civil-law partnerships, such as those at issue in the main proceedings, regarded as independent undertakings which are taxable persons for VAT purposes and which cooperate with each other, on the ground that a limited company, an association of persons made up of that limited company and members of the civil-law partnerships in question could not be subject to that scheme, on account of the size of its operation or its legal form, even if those civil-law partnerships do not belong to a category of producers excluded from that flat-rate scheme, in so far as they are, owing to their links with that company or one of those associations, materially capable of assuming the administrative burden of the tasks arising from the application of the normal arrangements or the simplified scheme, this being a matter for the referring court to verify.

The fifth question

47 By its fifth question, the referring court essentially seeks to determine whether, in the event that the common flat-rate regime for farmers has, in principle, to be excluded for civil-law partnerships such as those at issue in the main proceedings, that exclusion would apply retroactively, would apply only for the future or would not apply at all.

48 It is appropriate to recall that the principle of legal certainty does not preclude the tax authorities from carrying out, within the limitation period, an assessment for VAT relating to the deducted tax or to services already provided and which should have been subject to VAT (see, to that effect, judgments of 6 February 2014, *Fatorie*, C?424/12, EU:C:2014:50, paragraphs 47 and 48, and of 9 July 2015, *Cabinet Medical Veterinar Dr. Tomoiag? Andrei*, C?144/14, EU:C:2015:452, paragraph 42).

49 Such a rule must also prevail when a scheme from which a taxable person for VAT

purposes benefits is called into question by the tax authorities, including for a period prior to the date on which such an appraisal is issued, but provided that that appraisal occurs within the limitation period for action on the part of those authorities, and its effects do not apply retroactively to a date earlier than that on which the legal and factual elements on which it is based occurred.

50 In those conditions, the fact that the Tax Office initially granted the benefit of the flat-rate scheme to multiple civil-law partnerships is not capable of affecting the answer to be given to the question posed, since the legal and factual elements on which that office's new appraisal is based arose subsequent to that grant and took place within the limitation period for action on its part.

51 In view of the foregoing considerations, the answer to the fifth question is that, in the event that the common flat-rate regime for farmers has, in principle, to be excluded for civil-law partnerships such as those at issue in the main proceedings, such an exclusion would apply to the period prior to the date on which the appraisal on which it is based took place, provided that that appraisal occurs within the limitation period for action on the part of the tax authority and its effects do not apply retroactively to a date earlier than that on which the legal and factual elements on which it is based occurred.

Costs

52 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. **Article 4(1) and the first subparagraph of Article 4(4) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 2004/66/EC of 26 April 2004, on the one hand, and the first subparagraph of Article 9(1) and Article 10 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, on the other, must be interpreted as meaning that multiple civil-law partnerships, such as those at issue in the main proceedings, which conduct themselves outwardly as such and independently in relation to their suppliers, public authorities and, to a certain extent, their customers, and each of which carries out its own production by using for the most part its means of production, but which market a large proportion of their products under a common trade mark through a limited company the shares in which are held by members of those civil-law partnerships and by other members of the family in question, must be regarded as independent undertakings which are taxable persons for value-added-tax purposes.**

2. **Article 25 of Sixth Directive 77/388, as amended by Directive 2004/66, and Article 296 of Directive 2006/112 must be interpreted as not excluding the possibility of refusing the application of the common flat-rate scheme for farmers, laid down in those articles, to multiple civil-law partnerships, such as those at issue in the main proceedings, regarded as independent undertakings which are taxable persons for value-added-tax purposes and which cooperate with each other, on the ground that a limited company, an association of persons made up of that limited company and members of the civil-law partnerships in question could not be subject to that scheme, on account of the size of its operation or its legal form, even if those civil-law partnerships do not belong to a category of producers excluded from that flat-rate scheme, in so far as they are, owing to their links with that company or one of those associations, materially capable of assuming the administrative burden of the tasks arising from the application of the normal arrangements or the simplified scheme, this being a matter for the referring court to verify.**

3. **In the event that the common flat-rate regime for farmers has, in principle, to be excluded for civil-law partnerships such as those at issue in the main proceedings, such an exclusion would apply to the period prior to the date on which the appraisal on which it is based took place, provided that that appraisal occurs within the limitation period for action on the part of the tax authority and its effects do not apply retroactively to a date earlier than that on which the legal and factual elements on which it is based occurred.**

[Signatures]

* Language of the case: German.