Provisional text

JUDGMENT OF THE COURT (Eighth Chamber)

2 May 2019 (*)

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Deduction of input tax — Sixth Directive 77/388/EEC — Article 17(2) and (6) — Directive 2006/112/EC — Articles 168 and 176 — Exclusion from the right to deduct — Purchase of overnight accommodation and catering services — Standstill clause — Accession to the European Union)

In Case C?225/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Naczelny S?d Administracyjny (Supreme Administrative Court, Poland), made by decision of 23 October 2017, received at the Court on 28 March 2018, in the proceedings

Grupa Lotos S.A.

v

Minister Finansów,

THE COURT (Eighth Chamber),

composed of F. Biltgen, President of the Chamber, J. Malenovský and L.S. Rossi (Rapporteur), Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Grupa Lotos S.A., by B. Wolniewicz, radca prawny,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by J. Jokubauskait? and M. Owsiany-Hornung, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 168(a) and Article 176 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 Grupa Lotos S.A., established in Poland, parent company of a group of companies active, inter alia, in the fuel and lubricants sector, and Minister Finansów (Minister for Finance, Poland), concerning a tax ruling by which the Minister for Finance refused Grupa Lotos the right to deduct value added tax (VAT) paid by it on the purchase of overnight accommodation and catering services which that company resells and, therefore, re-invoices to other VAT taxable persons.

Legal context

EU law

3 Article 17(2) and (6) 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') provided:

'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;

...

6. Before a period of four years at the latest has elapsed from the date of entry into force of this Directive, the Council, acting unanimously on a proposal from the Commission, shall decide what expenditure shall not be eligible for a deduction of [VAT]. [VAT] shall in no circumstances be deductible on expenditure which is not strictly business expenditure, such as that on luxuries, amusements or entertainment.

Until the above rules come into force, Member States may retain all the exclusions provided for under their national laws when this Directive comes into force.'

4 The Sixth Directive was repealed and replaced by the VAT Directive, which entered into force on 1 January 2007.

5 Article 168 of the VAT Directive provides:

'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;

...'

6 Article 176 of the VAT Directive states:

‘The Council, acting unanimously on a proposal from the Commission, shall determine the expenditure in respect of which VAT shall not be deductible. VAT shall in no circumstances be deductible in respect of expenditure which is not strictly business expenditure, such as that on luxuries, amusements or entertainment.

Pending the entry into force of the provisions referred to in the first paragraph, Member States may retain all the exclusions provided for under their national laws at 1 January 1979 or, in the case of the Member States which acceded to the Community after that date, on the date of their accession.’

Polish law

7 Article 25(1)(3b) of the ustawa o podatku od towarów i us?ug oraz o podatku akcyzowym (Law on VAT and on excise duty), of 8 January 1993 (Dz. U. of 1993, No 11, item 50), in the version in force until it was repealed on 1 May 2004, provided:

‘A reduction in the amount of VAT or refunds of VAT paid shall not apply to:

(3b) overnight accommodation and catering services, with the exception of:

(a) cases where those services were acquired by taxable persons supplying tourism services, provided that the tourism services include overnight accommodation or catering services or both,

(b) the purchase of ready meals prepared for passengers by taxable persons providing passenger transport services.’

8 Article 8(2a) of the ustawa o podatku od towarów i us?ug (Law on VAT) of 11 March 2004 (Dz. U. of 2011, No 177, item 1054) in the version in force as at the date of the dispute in the main proceedings (‘the Law on VAT’), provides:

‘If a taxable person, acting in his own name but for the benefit of a third party, participates in the provision of services, it shall be assumed that the taxable person himself received and provided the services in question.’

9 Article 86(1) of the Law on VAT states:

‘To the extent that goods and services are used to perform taxable transactions, the taxable person … shall have the right to deduct the amount of tax paid from the amount of tax due, without prejudice to Article 114, Article 119(4), Article 120(17) and (19) and Article 124.’

10 Article 88(1) of the Law on VAT, in the version in force until 1 December 2008, provided:

‘A reduction in the VAT rate or a refund of the difference of tax due shall not apply to: …

(4) overnight accommodation and catering services, with the exception of:

(a) cases where the services were acquired by taxable persons supplying tourism services, provided that the tourism services, which are taxed under rules other than those specified in Article 119, include overnight accommodation or catering services or both,

(b) the purchase of ready meals prepared for passengers by taxable persons providing passenger transport services.’

11 In the version in force from 1 December 2008, Article 88(1) of the Law on VAT provides:

‘A reduction in the VAT rate or a refund of the difference of tax due shall not apply to: ...

(4) overnight accommodation and catering services, with the exception of:

(a) [repealed]

(b) the purchase of ready meals prepared for passengers by taxable persons providing passenger transport services.’

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

12 In the course of 2014, Grupa Lotos, subject to VAT in Poland, acquired overnight accommodation and catering services purchased in part for its own use and, in part, for resale to its subsidiaries, themselves taxable persons in that Member State.

13 Grupa Lotos applied for a tax ruling from the Polish tax authorities, asking, in particular, whether, on the assumption that it purchased overnight accommodation and catering services which it then re-invoiced to other VAT taxable persons, it had the right to deduct input VAT under the general rules provided for in Article 86(1) of the Law on VAT.

14 In the view of Grupa Lotos, since, first, it is apparent from Article 8(2a) of the Law on VAT that an operator who acquires in his own name services in order to resell them must be considered a service provider and, secondly, the overnight accommodation and catering services are subject to VAT when resold by Grupa Lotos, it ought to be possible to deduct the input VAT paid on their purchase, in accordance with Article 86(1) of the Law on VAT. The restriction provided for in Article 88(1)(4) of that law, concerning the exclusion from the right to deduct in relation to overnight accommodation and catering services, is not applicable in the present case, since Grupa Lotos is considered not the final consumer of those services, but a service provider like VAT taxable persons who provide those types of service.

15 In their tax ruling of January 2015, the tax authorities rejected Grupa Lotos’ view, on the ground that the exclusion from the right to deduct, unambiguously laid down in Article 88(1)(4) of the Law on VAT, made no distinction according to whether the taxable person, who initially purchases overnight accommodation and catering services, then acts as a final consumer or as a service provider.

16 The action for annulment of the tax ruling, brought by Grupa Lotos before the Wojewódzki S?d Administracyjny w Gda?sku (Gda?sk Regional Administrative Court, Poland), was dismissed on grounds similar to those put forward by the tax authorities.

17 Grupa Lotos then brought an appeal in cassation before the Naczelny S?d Administracyjny (Supreme Administrative Court, Poland), essentially reiterating its position summarised in paragraph 14 above.

18 The referring court notes that Article 86(1) of the Law on VAT reflects the principle of the right to deduct input VAT, provided for in Article 168(a) of the VAT Directive. It also points out that the prohibition of the right to deduct in the case of overnight accommodation and catering services, laid down in Article 88(1)(4) of the Law on VAT was, prior to the Republic of Poland’s accession to the European Union on 1 May 2004 until 1 December 2008, a straightforward repetition of the wording of Article 25(1)(3b) of the Law of 8 January 1993 on VAT and on excise duty and was based on the standstill clause in the second subparagraph of Article 17(6) of the Sixth Directive

(reproduced in the second paragraph of Article 176 of the VAT Directive).

19 The referring court also notes that, until 1 December 2008, Article 88(1)(4) of the Law on VAT contained a subparagraph (a) pursuant to which the exclusion from deduction did not encompass those cases in which overnight accommodation and catering services had been purchased by taxable persons providing tourism services. However, on 1 December 2008, the Polish legislature repealed the provisions of Article 88(1)(4)(a), thereby entailing a broader application of the exclusion from the right to deduct VAT where overnight accommodation and catering services are purchased, compared with the situation that existed prior to the Republic of Poland's accession to the European Union.

20 The referring court explains that the exclusion from the deduction of VAT, which stems from Article 88(1)(4) of the Law on VAT, is justified by the fact that the VAT included in purchases relating to expenditure on overnight accommodation and catering services can often be consumer-oriented in nature and not strictly connected to business activity. Thus the purpose of that provision is to disallow VAT deductions on expenditure on these types of service, which only appear to be used in the taxable person's business activity, and may be, or are in fact, used for private consumption.

21 However, according to the referring court, as in the case in the main proceedings, such a prohibition should not apply to a taxable person who purchases those services for resale to consumers or to other taxable persons, since in such circumstances the expenditure incurred on purchasing them remains connected to the taxable person's economic activity. In such a situation the ban on deducting VAT, resulting in double taxation of the services in question, would fail to have regard to the principles of neutrality and proportionality, and the objective pursued by the EU legislature in Article 176 of the VAT Directive.

22 The referring court does indeed state that it is familiar, in particular, with the judgment of 19 September 2000, *Ampafrance and Sanofi* (C?177/99 and C?181/99, EU:C:2000:470, paragraphs 56 and 61), from which, in its view, it can be seen that a measure which consists in excluding as a matter of principle all expenditure in respect of accommodation, hospitality and food from the right to deduct VAT does not appear to be necessary in order to combat tax evasion and avoidance, in particular, if there is objective evidence that that expenditure was incurred for strictly business purposes. However, the referring court is uncertain as to whether that judgment, delivered in the context of a decision of the Council, may be applicable to an exclusion provided for by national law pursuant to the standstill clause, laid down in the second paragraph of Article 176 of the VAT Directive, and whether that exclusion must be consistent with the principle of proportionality.

23 In those circumstances the Naczelny S?d Administracyjny (Supreme Administrative Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Are Article 168 of [the VAT] Directive and the principles of neutrality and proportionality contrary to a provision such as that in Article 88(1)(4) of the Law [on VAT], under which a reduction or refund of input VAT does not apply to acquisitions by a taxable person of overnight accommodation and catering services, with the exception of the purchase of ready meals prepared for passengers by taxable persons providing passenger transport services, even where those provisions were introduced into the law on the basis of Article 17(6) of the Sixth [Directive] ...?'

Consideration of the question referred

24 By its question, the referring court asks, in essence, whether Article 168(a) of the VAT Directive must be interpreted as precluding national legislation, such as that at issue in the main

proceedings, which (i) provides for the scope of an exclusion from the right to deduct VAT to be extended, after the accession of the Member State concerned to the European Union, and which means that a taxable person, providing tourism services, is deprived, from the entry into force of that extension, of the right to deduct VAT paid on the purchase of overnight accommodation and catering services which that taxable person re-invoices to other taxable persons in the context of the provision of tourism services, and, (ii) provides for the exclusion from the right to deduct VAT paid on the purchase of the overnight accommodation and catering services, that exclusion having been introduced before that Member State's accession to the European Union and maintained thereafter, in accordance with the second paragraph of Article 176 of the VAT Directive, and which means that a taxable person, who does not provide tourism services, is deprived of the right to deduct VAT paid on such overnight accommodation and catering services which that taxable person re-invoices to other taxable persons.

25 In that regard, it should be recalled, first, that, in accordance with settled case-law, the right of deduction provided for in Article 168(a) of the VAT Directive is an integral part of the VAT scheme and in principle may not be limited. The right to deduct must be exercised immediately in respect of all the VAT charged on transactions relating to inputs (see, in particular, judgments of 18 July 2013, *AES-3C Maritza East 1*, C?124/12, EU:C:2013:488, paragraph 25, and of 14 September 2017, *Iberdrola Inmobiliaria Real Estate Investments*, C?132/16, EU:C:2017:683, paragraph 25).

26 The deduction system is intended to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his economic activities. The common system of VAT consequently ensures neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves subject in principle to VAT (see judgment of 14 September 2017, *Iberdrola Inmobiliaria Real Estate Investments*, C?132/16, EU:C:2017:683, paragraph 26 and the case-law cited).

27 It follows from this that, in so far as the taxable person, acting as such at the time when he acquires goods or receives services, uses those goods or services for the purposes of his taxed transactions, he is entitled to deduct the VAT paid or payable in respect of those goods or services (see, to that effect, judgment of 14 September 2017, *Iberdrola Inmobiliaria Real Estate Investments* , C?132/16, EU:C:2017:683, paragraph 27 and the case-law cited).

28 Secondly, it is also apparent from the case-law that derogations from the right to deduct VAT are permitted only in the cases expressly provided for by the provisions of the directives governing that tax (see, to that effect, judgments of 19 September 2000, *Ampafrance and Sanofi*, C?177/99 and C?181/99, EU:C:2000:470, paragraph 34, and of 8 January 2002, *Metropol and Stadler*, C?409/99, EU:C:2002:2, paragraphs 42, 44 and 58) and are to be interpreted strictly (judgment of 22 December 2008, *Magoora*, C?414/07, EU:C:2008:766, paragraph 28).

29 Those derogations include the second paragraph of Article 176 of the VAT Directive — which is in essence identical to the second subparagraph of Article 17(6) of the Sixth Directive — the adoption of which did not affect the case-law relating to the interpretation of the second subparagraph of Article 17(6) of the Sixth Directive (see, to that effect, judgment of 30 September 2010, *Oasis East*, C?395/09, EU:C:2010:570, paragraphs 17 and 27).

30 Just as the second subparagraph of Article 17(6) of the Sixth Directive which preceded it, the second paragraph of Article 176 of the VAT Directive contains a standstill clause, which provides, in particular, for the retention by States acceding to the European Union, of national exclusions from the right to deduct VAT which were applicable before the date of their accession, until such time as the Council has adopted the provisions envisaged by the first paragraph of Article 176, which it has failed to do (see, to that effect, judgments of 15 April 2010, *X Holding and Oracle Nederland*

, C?538/08 and C?33/09, EU:C:2010:192, paragraph 38 and the case-law cited, and of 18 July 2013, *AES-3C Maritza East 1*, C?124/12, EU:C:2013:488, paragraphs 43 and 44).

31 Thirdly, the Member States' residual power to retain national exclusions from the right to deduct VAT, pursuant to the second paragraph of Article 176 of the VAT Directive, is not, however, absolute. The Court has thus held that the standstill clause is not intended to allow a new Member State to amend its domestic legislation on its accession to the European Union, the effect of which would be to extend the scope of existing exclusions, in a way which diverts that legislation from the objectives of the VAT directive, which would be contrary to the very spirit of that clause (see, to that effect, judgment of 22 December 2008, *Magoora*, C?414/07, EU:C:2008:766, paragraphs 37 and 39).

32 Such an extension of the scope of the existing exclusions would indeed fail to have regard to the Member States' obligation to ensure collection of all the VAT due on their territory, by depriving the European Union of a part of VAT revenue, that is, part of its own resources, in breach, in particular, of Article 4(3) TEU (see, to that effect, judgment of 2 May 2018, *Scialdone*, C?574/15, EU:C:2018:295, paragraphs 26 and 27 and the case-law cited).

33 The Court has also pointed out that it is for the national courts to determine the content of the national legislation at the date of accession of a new Member State to the European Union and to establish whether the effect of that legislation was to extend, after that accession, the scope of existing exclusions (see, to that effect, judgment of 18 July 2013, *AES-3C Maritza East 1*, C?124/12, EU:C:2013:488, paragraph 41 and the case-law cited).

34 In the main proceedings, it is apparent from the request for a preliminary ruling that, as at the date of the Republic of Poland's accession to the European Union, Article 88(1)(4) of the Law on VAT excluded input tax paid on the purchase of overnight accommodation and catering services from the right to deduct VAT, with the exception, in particular, of the purchase of those types of service, referred to in Article 88(1)(4)(a) of the Law on VAT, namely those used by taxable persons who at a further stage provide tourism services.

35 However, as underlined in paragraph 19 above, the referring court appears to consider that, as from 1 December 2008 and thus after the Republic of Poland's accession to the European Union, the national legislature, in repealing the provision in Article 88(1)(4)(a) of the Law on VAT, increased the number of situations in which the right to deduct VAT paid on the purchase of overnight accommodation and catering services is excluded, by extending that exclusion to input VAT paid on the purchase of such services by taxable persons who at a further stage provide tourism services.

36 In the light of the case-law mentioned, in particular in paragraphs 30 to 32 above, such an extension of the scope of the exclusion from the right to deduct VAT, after the Republic of Poland's accession to the European Union, as noted by the referring court, which means that a taxable person, providing tourism services is deprived as from 1 December 2008 of the right to deduct input VAT paid on the purchase of overnight accommodation and catering services, is not covered by the standstill clause provided for in the second paragraph of Article 176 of the VAT Directive. Such an extension of the scope of the exclusion from the right to deduct VAT, after the Republic of Poland's accession to the European Union, is, therefore, contrary to Article 168(a) of the VAT Directive.

37 Nonetheless, as the Court has held, account must be taken of the actual application of the national provisions on exclusions from the right to deduct VAT and the effects which follow for the taxable persons (see, to that effect, judgment of 18 July 2013, *AES-3C Maritza East 1*, C?124/12, EU:C:2013:488, paragraph 51).

38 In that regard, it must be observed that, subject to verification by the referring court, it is uncertain, as the Commission contended in its written observations, whether an extension of the scope of the exclusion from the right to deduct VAT, such as that indicated by the referring court, is relevant and actually applicable to the situation giving rise to the main proceedings. There is nothing in the documents before the Court to suggest that the overnight accommodation and catering services purchased by Grupa Lotos from other taxable persons are used by it subsequently to provide tourism services, including for the benefit of other taxable persons.

39 If the referring court confirmed that the Commission's premiss were correct, the exclusion from the right to deduct VAT, which was paid on the purchase by a taxable person, such as Grupa Lotos, of overnight accommodation and catering services, subsequently resold to other taxable persons without there being any connection with the provision of tourism services, ought, in principle, to fall within the scope of the standstill clause provided for in the second paragraph of Article 176 of the VAT Directive. For the taxable persons concerned, the effects of the exclusion from the right to deduct VAT, provided for in Article 88(1)(4) of the Law on VAT, remain as a rule unchanged, both before and after the Republic of Poland's accession to the European Union.

40 In that case, first of all, it must further be assessed, in accordance with the case-law, whether the exclusion from the right to deduct in question concerns a category of expenditure that has been adequately defined, or, in other words, whether the national legislation at issue adequately defines the nature or the purpose of the goods and services in respect of which the right to deduct VAT is excluded in order to ensure that that option granted to the Member States is not used to authorise general exclusions from that system (see, to that effect, judgment of 15 April 2010, *X Holding and Oracle Nederland*, C?538/08 and C?33/09, EU:C:2010:192, paragraphs 44 and 45 and the case-law cited).

41 In that regard, it must be pointed out that, in the judgment of 15 April 2010, *X Holding and Oracle Nederland* (C?538/08 and C?33/09, EU:C:2010:192, paragraphs 50 and 51), the Court accepted that categories of expenditure relating to the provision of food and drink to the members of a taxable person's staff, as well as to the provision of accommodation, were adequately defined so that the exclusion from the right to deduct, provided for in the national law at issue in that case, fell within the scope of the standstill clause laid down in the second subparagraph of Article 17(6) of the Sixth Directive.

42 In the present case, it must be found that although designated somewhat generically, the category of expenditure relating to 'overnight accommodation and catering services', at issue in the main proceedings, seems adequately defined, inasmuch as it relates to the nature of those services, in the light of the requirements laid down in the case-law.

43 That said, in the second place, it must be ascertained whether, as the Commission suggests, the standstill clause, laid down in the second paragraph of Article 176 of the VAT Directive, covers only exclusions from the right to deduct VAT which could themselves be authorised by a Council decision, adopted pursuant to the first paragraph of Article 176 of that directive.

44 More specifically, the Commission submits that it is apparent from the history of Article 176 of the VAT Directive that it is intended to apply to expenditure in respect of which, even if incurred

in the context of an economic activity, it is difficult to break down that part used for professional purposes and that intended for private purposes. Consequently, the Commission contends that the exclusion from the right to deduct at issue in the main proceedings is excessively broad since it encompasses situations in which the expenditure on which input VAT has been paid is exclusively for business purposes.

45 That argument must be rejected.

46 First, the first paragraph of Article 176 of the VAT Directive simply states that the Council is to determine the expenditure in respect of which VAT must not be deductible and that VAT must in no circumstances be deductible in respect of expenditure which is not strictly business expenditure, such as that on luxuries, amusements or entertainment. That provision would not, therefore, prevent the Council, at the appropriate time, from excluding business expenditure from the right to deduct.

47 Secondly, the second paragraph of Article 176 of the VAT Directive seeks to maintain ‘all the exclusions’ prior to 1 January 1979 or, in the case of the Member States which acceded to the European Union after that date, on the date of their accession. It must be borne in mind that the Court expressly stated in the judgment of 5 October 1999, *Royscot and Others* (C?305/97, EU:C:1999:481, paragraph 20), regarding an exclusion from the right to deduct VAT paid on the purchase of motor cars, that the expression ‘all the exclusions’, set out in the second subparagraph of Article 17(6) of the Sixth Directive, comprises, in the light of the wording and origin of that article, also expenditure which is strictly business expenditure.

48 Consequently, the standstill clause*,* provided for in the second paragraph of Article 176 of the VAT Directive, authorises Member States to exclude from the right to deduct categories of expenditure which are strictly professional, provided that they are adequately defined, within the meaning of the case-law cited in paragraph 40 above.

49 That interpretation of the second paragraph of Article 176 of the VAT Directive is not invalidated by the judgment of 19 September 2000, *Ampafrance and Sanofi* (C?177/99 and C?181/99, EU:C:2000:470), which was mentioned by the referring court.

50 The case giving rise to that judgment concerned an exclusion from the right to deduct VAT on expenditure in respect of accommodation, food, hospitality and entertainment, introduced by a Member State’s legislation after the Sixth Directive entered into force and which had been authorised by a Council decision, in derogation from Article 17(6) of that directive. Although the Court held, in paragraphs 58 and 61 of the judgment of 19 September 2000, *Ampafrance and Sanofi* (C?177/99 and C?181/99, EU:C:2000:470) that the Council’s decision was invalid, in particular on the ground that it was contrary to the principles of neutrality and proportionality, it insisted on clarifying, in paragraph 39 of that judgment, without further examination, that the other exclusions from the right to deduct, in existence prior to the entry into force of the Sixth Directive and which were subsequently maintained unaltered in the national legislation at issue, had to be considered covered by the standstill clause provided for in the second subparagraph of Article 17(6) of the Sixth Directive.

51 As regards the case in the main proceedings, it follows that, were the referring court to find that the repeal of the provision in Article 88(1)(4)(a) of the Law on VAT had no effect on the situation of Grupa Lotos, the exclusion from the right to deduct VAT paid on the purchase of overnight accommodation and catering services, introduced prior to the Republic of Poland's accession to the European Union and maintained after that accession, would fall within the standstill clause provided for in the second paragraph of Article 176 of the VAT Directive and would, not, therefore run counter to the provisions of Article 168(a) of that directive.

52 In the light of the foregoing, the answer to the question raised is that Article 168(a) of the VAT Directive must be interpreted as:

– precluding national legislation, such as that at issue in the main proceedings, which provides for the scope of an exclusion from the right to deduct VAT to be extended, after the accession of the Member State concerned to the European Union, and which means that a taxable person, providing tourism services, is deprived, from the entry into force of that extension, of the right to deduct VAT paid on the purchase of overnight accommodation and catering services which that taxable person re-invoices to other taxable persons in the context of the provision of tourism services and

– not precluding national legislation, such as that at issue in the main proceedings, which provides for the exclusion from the right to deduct VAT paid on the purchase of overnight accommodation and catering services, that exclusion having been introduced before the accession of the Member State concerned to the European Union and maintained thereafter, in accordance with the second paragraph of Article 176 of the VAT Directive, and which means that a taxable person, who does not provide tourism services, is deprived of the right to deduct VAT paid on the purchase of such overnight accommodation and catering services which that taxable person re-invoices to other taxable persons.

Costs

53 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 (Eighth Chamber) hereby rules:

Article 168(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as:

– **precluding national legislation, such as that at issue in the main proceedings, which provides for the scope of an exclusion from the right to deduct value added tax (VAT) to be extended, after the accession of the Member State concerned to the European Union, and which means that a taxable person, providing tourism services, is deprived, from the entry into force of that extension, of the right to deduct VAT paid on the purchase of overnight accommodation and catering services which that taxable person re-invoices to other taxable persons in the context of the provision of tourism services and**

– **not precluding national legislation, such as that at issue in the main proceedings, which provides for the exclusion from the right to deduct VAT paid on the purchase of overnight accommodation and catering services, that exclusion having been introduced before the accession of the Member State concerned to the European Union and maintained thereafter, in accordance with the second paragraph of Article 176 of Directive 2006/112, and which means that a taxable person, who does not provide tourism services, is deprived of the right to deduct VAT paid on the purchase of such overnight**

accommodation and catering services which that taxable person re-invoices to other taxable persons.

[Signatures]

* Language of the case: Polish.