Provisional text

JUDGMENT OF THE COURT (Third Chamber)

3 October 2019 (*)

(Reference for a preliminary ruling — Value added tax (VAT) — Directive 2006/112/EC — Procurement of food products — Deduction of input tax — Refusal of deduction — Possibly fictitious supplier — VAT fraud — Requirements relating to knowledge on the part of the purchaser — Regulation (EC) No 178/2002 — Obligations of traceability of foodstuffs and identification of the supplier — Regulations (CE) No 852/2004 and (EC) No 882/2004 — Registration obligations of operators in the food sector — Effect on the right to deduct VAT)

In Case C?329/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Augst?k? tiesa (Supreme Court, Latvia), made by decision of 10 May 2018, received at the Court on 17 May 2018, in the proceedings

Valsts ie??mumu dienests

v

‘Altic’ SIA,

THE COURT (Third Chamber),

composed of A. Prechal, President of the Chamber, F. Biltgen (Rapporteur), J. Malenovský, C.G. Fernlund and L.S. Rossi, Judges,

Advocate General: M. Bobek,

Registrar: M. Aleksejev, Head of Unit,

having regard to the written procedure and further to the hearing on 6 March 2019,

after considering the observations submitted on behalf of

– ‘Altic’ SIA, by A. Purmalis, advok?ts,

– the Latvian Government, by I. Kucina and V. So?eca, acting as Agents,

– the Spanish Government, by L. Aguilera Ruiz, acting as Agent,

– the European Commission, by L. Lozano Palacios, J. Jokubauskait? and A. Sauka, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 May 2019,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 168(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), as amended by Council Directive 2010/45/EU of 13 July 2010 (OJ 2010 L 189, p. 1) ('Directive 2006/112').

2 This request was made in the context of a dispute between the Valsts ie??mumu dienests (Latvian tax administration; 'the tax administration') and 'Altic' SIA concerning a payment demand made to Altic for the amount of value added tax (VAT) on the purchase of rapeseed paid upstream and deducted by Altic, together with a fine and default interest.

Legal context

EU law

3 Under Article 168(a) of Directive 2006/112:

'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 and services, carried out or to be carried out by another taxable person.'

4 Article 178(a) of that directive provides:

'In order to exercise the right of deduction, a taxable person must meet the following conditions:

(a) for the purposes of deductions pursuant to Article 168(a), in respect of the supply of goods or services, he must hold an invoice drawn up in accordance with Sections 3 to 6 of Chapter 3 of Title XI.'

5 The first paragraph of Article 273 of that directive states:

'Member States may impose other obligations which they deem necessary to ensure the correct collection of VAT and to prevent fraud, subject to the requirement of equal treatment as between domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.'

6 Recitals 28 and 29 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1), state:

'(28) Experience has shown that the functioning of the internal market in food or feed can be jeopardised where it is impossible to trace food and feed. It is therefore necessary to establish a comprehensive system of traceability within food and feed businesses so that targeted and accurate withdrawals can be undertaken or information given to consumers or control officials, thereby avoiding the potential for unnecessary wider disruption in the event of food safety problems.

(29) It is necessary to ensure that a food or feed business including an importer can identify at least the business from which the food, feed, animal or substance that may be incorporated into a food or feed has been supplied, to ensure that on investigation, traceability can be assured at all stages.'

7 For the purposes of that regulation, Article 3, point 15, thereof defines the term 'traceability' as 'the ability to trace and follow a food, feed, food-producing animal or substance intended to be, or expected to be incorporated into a food or feed, through all stages of production, processing and distribution'.

8 Under the third paragraph of Article 17(2) of the regulation:

'Member States shall also lay down the rules on measures and penalties applicable to infringements of food and feed law. The measures and penalties provided for shall be effective, proportionate and dissuasive.'

9 Article 18 of the same regulation, entitled 'Traceability', reads as follows:

'1. The traceability of food, feed, food-producing animals, and any other substance intended to be, or expected to be, incorporated into a food or feed shall be established at all stages of production, processing and distribution.

2. Food and feed business operators shall be able to identify any person from whom they have been supplied with a food, a feed, a food-producing animal, or any substance intended to be, or expected to be, incorporated into a food or feed.

To this end, such operators shall have in place systems and procedures which allow for this information to be made available to the competent authorities on demand.

…'

10 Article 6(2) of Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs (OJ 2004 L 139, p. 1), provides:

'In particular, every food business operator shall notify the appropriate competent authority, in the manner that the latter requires, of each establishment under its control that carries out any of the stages of production, processing and distribution of food, with a view to the registration of each such establishment.

Food business operators shall also ensure that the competent authority always has up-to-date information on establishments, including by notifying any significant change in activities and any closure of an existing establishment.'

11 Article 31(1) of Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ 2004 L 165, p. 1, and corrigendum OJ 2004 L 191, p. 1), provides:

'(a) Competent authorities shall establish procedures for feed and food business operators to follow when applying for the registration of their establishments in accordance with Regulation (EC) No 852/2004, [Council] Directive 95/69/EC [of 22 December 1995 laying down the conditions and arrangements for approving and registering certain establishments and intermediaries operating in the animal feed sector and amending Directives 70/524/EEC, 74/63/EEC, 79/373/EEC

and 82/471/EEC (OJ 1995 L 332, p. 15)] or with the future regulation on feed hygiene;

(b) They shall draw up and keep up to date a list of feed and food business operators which have been registered. Where such a list already exists for other purposes, it may also be used for the purposes of this regulation.'

Latvian law

12 Article 10(1)(1) of the likums par pievienot?s v?rt?bas nodokli (Law on VAT), in its version in force on the date of the facts in the main proceedings, is worded as follows:

'Only a taxable person registered with the [tax administration] shall be entitled, in his VAT return, to deduct from the amount of tax to be paid to the Treasury, as input tax, the amount of tax shown on invoices received from other taxable persons for goods acquired or services received in order to carry out his own taxable transactions, including transactions carried out abroad which would have been taxable if they had been carried out in the national territory.'

13 Article 10(12) of that law provides:

'The amount of tax indicated on invoices relating to goods and services received shall be deductible after receipt of the invoice relating to the said goods and services received, or after payment of the amount of tax indicated on the invoice as an advance.'

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

14 Altic purchased rapeseed from 'Sakorex' SIA during the months of July and August 2011 and from 'Ulmar' SIA in October 2011. It is apparent from the order for reference that those companies contacted Altic, referring to Altic's media and internet advertisements. That rapeseed was received and stored in a warehouse owned by 'Vendo' SIA. Altic deducted the VAT paid on those purchases.

15 Following an audit carried out at Altic, the tax administration took the view that the purchase transactions had not actually taken place. It ordered Altic to pay to it the VAT deducted, together with a fine and default interest.

16 The Administrat?v? rajona tiesa (District Administrative Court, Latvia) upheld the action brought by Altic for annulment of the tax administration's decision. The decision of that court was confirmed by the Administrat?v? apgabaltiesa (Regional Administrative Court, Latvia).

17 The latter court noted that it was not in dispute that the rapeseed had been received in the warehouse on the dates and in the quantity indicated in Vendo's accompanying documents. It held that, in the circumstances, Altic acted in good faith and relied fully on the ability of Sakorex and Ulmar to deliver the contracted goods, an ability which Altic was not responsible for verifying. In that regard, the tax authorities did not state which specific actions arising from the relevant rules Altic had failed to take to carry out such verification.

18 The tax administration appealed in cassation to the referring court, namely the Augst?k? tiesa (Supreme Court, Latvia). It argues that, in accordance with Regulation No 178/2002, food business operators must be able to identify any substance intended or likely to be incorporated into food or feed and must, to that end, have systems and procedures in place to make the information available to the competent authorities. However, Altic did not carry out any minimum checks on its contracting partners or ascertain that they were registered with the Latvian Food and Veterinary Agency. That means that Altic knew or should have known that it was involved in a misuse of the common system of VAT.

19 According to the referring court, it is not in dispute that there are indications that Sakorex and Ulmar are fictitious undertakings and that the origin of the goods in question cannot be established. Consequently, the question arises as to whether Altic knew or should have known that the transactions in question in the main proceedings amounted to VAT fraud.

20 In that regard, the referring court notes that there is no evidence to confirm that the rapeseed purchased was exclusively intended for use in the production of fuel, as alleged by Altic, or at least that it was in no way linked to the food chain. Consequently, there is support for the view that, as regards those operations, Altic was required to comply with the provisions of Regulation No 178/2002.

21 That court states that Article 18 of that regulation lays down the general principles for the traceability of foodstuffs and the identification of their suppliers. With regard to that identification, it notes that, although that regulation does not specify to what extent an undertaking must identify its supplier, it follows from the Guidelines for the implementation of Articles 11, 12, 14, 17, 18, 19 and 20 of Regulation No 178/2002 of 26 January 2010, in the Conclusions of the European Commission’s Standing Committee on the Food Chain and Animal Health, that undertakings are required to keep information on the name and address of the supplier of the product and on the product identification.

22 The referring court entertains doubts, however, as to whether the objective of Regulation No 178/2002, namely to guarantee the safety of food, does not require proof of greater diligence on the part of the food business operator as regards the choice of its contracting partner, which would require it to carry out checks on that partner, in particular on its registration with the competent authorities, and whether, in the absence of such diligence, that operator may be refused the right to deduct VAT. In that regard, the referring court also queries whether, in the light of that same objective, Altic’s verification of the quality of the goods delivered could be such as to reduce that obligation to carry out a more detailed investigation into the contracting partner.

23 The referring court further notes that, according to the tax administration, Altic’s failure to ascertain whether the contracting parties were registered with the Food and Veterinary Agency shows that that company knew or should have known that the transactions at issue in the main proceedings amounted to VAT fraud. However, that court is of the view that, although the verification of registration of a food business provided for in Regulations No 852/2004 and No 882/2004 ensures that it participates legally in the food chain, the registration of a business does not rule out its economic activity being fictitious and, conversely, the absence of registration does not automatically establish that it is fictitious, so that the lack of verification cannot decisively support the tax administration’s finding.

24 In those circumstances, the Augst?k? tiesa (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Having regard to the aim of ensuring food safety established in [Regulation No 178/2002]

(which is achieved, amongst other means, by ensuring food traceability), should Article 168(a) of [Directive 2006/112] be interpreted as not precluding a refusal to allow deduction of input tax where the taxable person involved in the food chain, in choosing his co-contractor, has failed to demonstrate greater diligence (beyond normal commercial practice) entailing, in essence, a requirement to carry out checks on his co-contractor, but where he has at the same time verified the quality of the foodstuffs, thus meeting the aim of [Regulation No 178/2002]?

(2) Does the requirement in Article 6 of Regulation No 852/2004 and in Article 31 of Regulation No 882/2004 concerning regulation of a food business, as interpreted in the light of Article 168(a) of [Directive 2006/112], require a party that contracts with that business to check that the business is registered, and is that check relevant for the purposes of determining whether that party knew or should have known that it was taking part in a transaction with a fictitious undertaking, having regard to the particular characteristics of the transaction in question?'

Consideration of the questions referred

The first question

25 By its first question, the referring court asks, in essence, whether Article 168(a) of Directive 2006/112 must be interpreted as precluding a taxable person who participates in the food chain from being denied the right to deduct input VAT on the ground that he has failed to comply with his obligations under Article 18(2) of Regulation No 178/2002 to identify his suppliers for the purposes of the traceability of foodstuffs.

26 First, it must be borne in mind that, in accordance with the settled case-law of the Court, the right of taxable persons to deduct from the VAT that they are liable to pay the VAT due or paid on goods purchased and services received by them as inputs is a fundamental principle of the common system of VAT. 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, provided that his activities are themselves subject, in principle, to VAT (see, to that effect, judgment of 19 October 2017, *Paper Consult*, C?101/16, EU:C:2017:775, paragraphs 35 and 37 and the case-law cited).

27 The right of deduction is an integral part of the VAT mechanism and cannot, in principle, be limited if the material and formal requirements or conditions to which this right is subject are respected by taxable persons wishing to exercise it (see, to that effect, judgment of 19 October 2017, *Paper Consult*, C?101/16, EU:C:2017:775, paragraphs 36 and 38 and the case-law cited).

28 In addition to those requirements or material and formal conditions, which derive from Article 168(a) and Article 178(a) of Directive 2006/112 (see, to that effect, judgment of 19 October 2017, *Paper Consult*, C?101/16, EU:C:2017:775, paragraphs 39 and 40), Article 273 of that directive allows the Member States, subject to certain conditions, to impose other obligations which they deem necessary to ensure the correct collection of VAT and to prevent fraud.

29 Second, it must also be borne in mind that the prevention of tax evasion, tax avoidance and potential abuse is an objective recognised and promoted by Directive 2006/112. The Court has held that EU law cannot be relied on by individuals for abusive or fraudulent ends. Accordingly, it is for the national courts and authorities to refuse the right of deduction, if it is shown, in the light of objective evidence, that that right is being relied on for fraudulent or abusive ends (judgment of 13 March 2014, *FIRIN*, C?107/13, EU:C:2014:151, paragraph 40 and the case-law cited).

30 If that is the case where tax evasion is committed by the taxable person himself, it is also the case where a taxable person knew or should have known that, by his acquisition, he was involved in a transaction involving VAT fraud (judgment of 22 October 2015, *PPUH Stehcemp*,

C?277/14, EU:C:2015:719, paragraph 48 and the case-law cited).

31 It is for the tax authorities, having found fraud or irregularities committed by the issuer of the invoice in question, to establish, in the light of objective factors and without requiring the addressee of that invoice to carry out checks which are not his responsibility, that the addressee knew or should have known that the transaction relied on to establish the right of deduction was involved in VAT fraud (judgment of 22 October 2015, *PPUH Stehcemp*, C?277/14, EU:C:2015:719, paragraph 50 and the case-law cited).

32 As regards the level of diligence required of a taxable person wishing to exercise his right to deduct VAT, the Court has held that traders who take every precaution which could reasonably be required of them to ensure that their transactions are not connected with fraud, be it the fraudulent evasion of VAT or other fraud, must be able to rely on the legality of those transactions without the risk of losing their right to deduct the input VAT, the determination of the measures which may, in a particular case, reasonably be required of a taxable person to that end depending essentially on the circumstances of that particular case (see, to that effect, judgments of 21 June 2012, *Mahagében and Dávid*, C?80/11 and C?142/11, EU:C:2012:373, paragraphs 53 and 59, and of 22 October 2015, *PPUH Stehcemp*, C?277/14, EU:C:2015:719, paragraph 51).

33 In the main proceedings, the tax administration, taking the view that Altic’s suppliers were fictitious companies and that there was therefore a question of fraud of the common VAT system, refused Altic the right to deduct VAT. In particular, it was of the opinion that Altic, as a food business operator, was required to carry out a thorough verification of its contracting parties in accordance with Article 18(2) of Regulation No 178/2002. Failure to comply with such an obligation shows that Altic knew or ought to have known that it was a party to transactions involved in that fraud.

34 However, on the one hand, as the Advocate General noted point 46 of his Opinion, the refusal of the right to deduct VAT as a consequence of the failure to comply with the obligations arising from that provision of Regulation No 178/2002 has no legal basis in Directive 2006/112. The obligations laid down in Regulation No 178/2002 are not related to the requirements or the material and formal conditions attaching to the right of deduction laid down in that directive. Nor it is apparent from the evidence before the Court that that ground for refusal is based on the relevant national VAT legislation.

35 On the other hand, and with regard to the fact that, according to the findings of the referring court, Altic was involved in the food chain and therefore had to comply with the provisions of Regulation No 178/2002, it should be noted that the obligation relating to the traceability of foodstuffs laid down in Article 18(2) of that regulation pursues a purpose different from that of detecting VAT fraud. Indeed, it follows from recitals 28 and 29 of that regulation that the obligation to identify food suppliers is intended to allow targeted and precise withdrawals of foodstuffs and to inform consumers or official inspectors, in order to avoid the possibility of more significant and unnecessary disruption to the internal market. Failure to comply with that obligation may result in penalties under national law, in accordance with the third subparagraph of Article 17(2) of that regulation.

36 It follows that such an obligation cannot, as such, be regarded as a measure which the taxable person may reasonably be required to adopt in order to ensure that his transactions are not involved in fraud against the common VAT system. Accordingly, as the Advocate General pointed out in point 56 of his Opinion, any breach of that obligation cannot in itself and automatically justify the refusal to allow that taxable person to deduct VAT.

37 In that context, it is also necessary to recall that the obligation referred to in Article 18(2) of

Regulation No 178/2002 consists, in the very terms of that provision, in the identification of any supplier of a foodstuff and in the establishment of systems and procedures to ensure that such information is made available to the competent authorities at their request.

38 As regards the data required for that identification, the view must be taken that those data must make it possible to achieve the objective of traceability, as described in paragraph 35 of this judgment, so that, in principle, it is sufficient to identify suppliers by their name and address. It follows that the argument put forward by the tax administration before the referring court and by the Latvian Government in its written observations that the regulation generally requires a thorough check of the contracting partner cannot be accepted.

39 It would be otherwise only if it were duly established that, because of particular circumstances, the purchaser of the foodstuffs concerned should have had serious doubts as to the true existence or identity of the supplier of the foodstuffs whom Regulation No 178/2002 requires him to identify, in such a way that he is careful to be certain of that identity, which it will be for the referring court to ascertain, if necessary.

40 Assuming that to be the case, that fact could constitute one of a number of indications which, taken together and in a consistent manner, tend to show that that taxable person knew or should have known that he was involved in a transaction involving VAT fraud.

41 In the light of the foregoing considerations, the answer to the first question is that Article 168(a) of Directive 2006/112 must be interpreted as precluding a taxable person who participates in the food chain from being refused the right to deduct input VAT on the sole ground, assuming that it has been duly established, that that taxable person has not complied with his obligations under Article 18(2) of Regulation No 178/2002 to identify his suppliers for the purposes of traceability of foodstuffs, which it is for the referring court to ascertain. Non-compliance with those obligations may, however, constitute one element among others which, taken together and in a consistent manner, tends to show that the taxable person knew or should have known that he was involved in a transaction involving VAT fraud, which it is for the referring court to assess.

The second question

42 By its second question, the referring court asks, in essence, whether Article 168(a) of Directive 2006/112 must be interpreted as meaning that the failure by a taxable person who participates in the food chain to ascertain that his suppliers are registered with the competent authorities, in accordance with Article 6(2) of Regulation No 852/2004 and Article 31(1) of Regulation No 882/2004, is relevant for the purpose of determining whether the taxable person knew or should have known that he was involved in a transaction involving VAT fraud.

43 In that regard, Article 6(2) of Regulation No 852/2004 provides that a food business operator is to inform the appropriate competent authority of each of its establishments involved in the production, processing and distribution of foodstuffs with a view to their registration. In accordance with Article 31(1)(a) and (b) of Regulation No 882/2004, the competent authorities are required to define the procedures to be followed by those operators when applying for the registration of their establishments and to maintain an up-to-date list of registered operators.

44 It must be noted that Regulations No 852/2004 and No 882/2004 do not contain any obligation for a food business operator to check whether its suppliers are registered in accordance with the requirements of those regulations. Nor does such an obligation to make checks, for the purposes of VAT deduction, arise from Directive 2006/112.

45 However, as pointed out in paragraph 31 of this judgment, where tax authorities, having

found fraud or irregularities committed by the issuer of the invoice in question, seek to establish that the addressee of that invoice knew or should have known that the transaction relied on to establish the right of deduction was involved in VAT fraud, they may not require that addressee to carry out checks which are not his responsibility (see, to that effect, judgment of 22 October 2015, *PPUH Stehcemp*, C?277/14, EU:C:2015:719, paragraph 50).

46 In that context, the Court has previously held that tax authorities cannot require the taxable person wishing to exercise the right to deduct VAT to produce documents issued by his supplier of bovine animals mentioning the eartags of the animals subject to the identification and registration system established by Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 (OJ 2000 L 204, p. 1) (see, to that effect, judgment of 18 July 2013, *Evita-K*, C?78/12, EU:C:2013:486, paragraph 42).

47 Similarly, for the purposes of establishing that a taxable person who participates in the food chain knew or should have known that his suppliers were involved in VAT fraud, tax authorities cannot require that taxable person to verify that those suppliers have complied with their registration obligations as required by EU law on the regulation of foodstuffs.

48 Consequently, the answer to the second question is that Article 168(a) of Directive 2006/112 must be interpreted as meaning that the failure, by a taxable person who participates in the food chain, to ascertain that his suppliers are registered with the competent authorities, in accordance with Article 6(2) of Regulation No 852/2004 and Article 31(1) of Regulation No 882/2004, is not relevant for the purpose of determining whether the taxable person knew or should have known that he was involved in a transaction involving VAT fraud.

Costs

49 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 168(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/45/EU of 13 July 2010, must be interpreted as precluding a taxable person who participates in the food chain from being refused the right to deduct input value added tax (VAT) on the sole ground, assuming that it has been duly established, that that taxable person has not complied with his obligations under Article 18(2) of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, to identify his suppliers for the purposes of traceability of foodstuffs, which it is for the referring court to ascertain. Non-compliance with those obligations may, however, constitute one element among others which, taken together and in a consistent manner, tend to show that the taxable person knew or should have known that he was involved in a transaction involving VAT fraud, which it is for the referring court to assess.**

2. **Article 168(a) of Directive 2006/112, as amended by Directive 2010/45, must be interpreted as meaning that the failure, by a taxable person who participates in the food chain, to ascertain that his suppliers are registered with the competent authorities, in accordance with Article 6(2) of Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs and Article 31(1) of**

Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules, is not relevant for the purpose of determining whether the taxable person knew or should have known that he was involved in a transaction involving VAT fraud.

[Signatures]

* Language of the case: Latvian.