62019CJ0346
JUDGMENT OF THE COURT (Tenth Chamber)

17 December 2020 (*1)

(Reference for a preliminary ruling – Value added tax (VAT) – Refund of VAT – Directive 2008/9/EC – Article 8(2)(d) – Article 15 – Indication of number of the invoice – Refund application)

In Case C?346/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesfinanzhof (Federal Finance Court, Germany), made by decision of 13 February 2019, received at the Court on 2 May 2019, in the proceedings

Bundeszentralamt für Steuern

v

Y-GmbH,

THE COURT (Tenth Chamber),

composed of M. Ileši?, President of the Chamber, E. Juhász (Rapporteur) and I. Jarukaitis, Judges,

Advocate General: E. Tanchev,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

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Y-GmbH, by G. Thurmayr, Steuerberater, and S. Ledermüller, Steuerberaterin,

–

the German Government, by J. Möller and S. Eisenberg, acting as Agents,

–

the European Commission, by J. Jokubauskait? and R. Pethke, 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 Articles 8(2)(d) and 15 of

Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State (OJ 2008 L 44, p. 23), as amended by Council Directive 2010/66/EU of 14 October 2010 (OJ 2010 L 275, p. 1) (‘Directive 2008/9’).

2

The request has been made in proceedings between the Bundeszentralamt für Steuern (Federal Central Tax Office, Germany) and Y-GmbH, concerning the refusal to refund value added tax (VAT) to that company.

Legal context

European Union law

Directive 2006/112

3

Article 170 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 2008/8/EC of 12 February 2008 (OJ 2008 L 44, p. 11) (‘Directive 2006/112’) provides:

‘All taxable persons who … are not established in the Member State in which they purchase goods and services or import goods subject to VAT shall be entitled to obtain a refund of that VAT in so far as the goods and services are used for the purposes of the following:

(a)

transactions referred to in Article 169;

(b)

transactions for which the tax is solely payable by the customer in accordance with Articles 194 to 197 or Article 199.’

4

In accordance with Article 171(1) of that directive:

‘VAT shall be refunded to taxable persons who are not established in the Member State in which they purchase goods and services or import goods subject to VAT but who are established in another Member State, in accordance with the detailed rules laid down in Directive 2008/9/EC.’

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Article 178(a) of that directive provides that, in order to exercise the right to a deduction, in respect of the supply of goods or services, the taxable person must hold an invoice drawn up in accordance with Sections 3 to 6 of Chapter 3 of Title XI of that directive.

6

Article 226 of Directive 2006/112, which is included in Section 4 of Chapter 3 of Title XI of that directive, is worded as follows:

‘Without prejudice to the particular provisions laid down in this Directive, only the following details are required for VAT purposes on invoices issued pursuant to Articles 220 and 221:

…

(2)

a sequential number, based on one or more series, which uniquely identifies the invoice;

…’

Directive 2008/9

7

Article 1 of Directive 2008/9 provides:

‘This Directive lays down the detailed rules for the refund of [VAT], provided for in Article 170 of Directive [2006/112] …’

8

Article 2 of that directive states:

‘For the purposes of this Directive, the following definitions shall apply:

…

5.

“applicant” means the taxable person not established in the Member State of refund making the refund application.’

9

Article 3 of Directive 2008/9 provides:

‘This Directive shall apply to any taxable person not established in the Member State of refund who meets the following conditions:

(a)

during the refund period, he has not had in the Member State of refund, the seat of his economic activity, or a fixed establishment from which business transactions were effected, or, if no such seat or fixed establishment existed, his domicile or normal place of residence;

(b)

during the refund period, he has not supplied any goods or services deemed to have been supplied in the Member State of refund, with the exception of the following transactions:

(i)

the supply of transport services and services ancillary thereto, exempted pursuant to Articles 144, 146, 148, 149, 151, 153, 159 or 160 of Directive [2006/112];

(ii)

the supply of goods and services to a person who is liable for payment of VAT in accordance with Articles 194 to 197 and Article 199 of Directive [2006/112].'

10

In accordance with Article 5 of that directive:

'Each Member State shall refund to any taxable person not established in the Member State of refund any VAT charged in respect of goods or services supplied to him by other taxable persons in that Member State or in respect of the importation of goods into that Member State, in so far as such goods and services are used for the purposes of the following transactions:

(a)

transactions referred to in Article 169(a) and (b) of Directive [2006/112];

(b)

transactions to a person who is liable for payment of VAT in accordance with Articles 194 to 197 and Article 199 of Directive [2006/112] as applied in the Member State of refund.

Without prejudice to Article 6, for the purposes of this Directive, entitlement to an input tax refund shall be determined pursuant to Directive [2006/112] as applied in the Member State of refund.'

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Article 7 of that directive is worded as follows:

'To obtain a refund of VAT in the Member State of refund, the taxable person not established in the Member State of refund shall address an electronic refund application to that Member State and submit it to the Member State in which he is established via the electronic portal set up by that Member State.'

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Article 8(2) of Directive 2008/9 provides:

'In addition to the information specified in paragraph 1, the refund application shall set out, for each Member State of refund and for each invoice or importation document, the following details:

(a)

name and full address of the supplier;

(b)

except in the case of importation, the VAT identification number or tax reference number of the

supplier, as allocated by the Member State of refund in accordance with the provisions of Articles 239 and 240 of Directive [2006/112];

(c)

except in the case of importation, the prefix of the Member State of refund in accordance with Article 215 of Directive [2006/112];

(d)

date and number of the invoice or importation document;

(e)

taxable amount and amount of VAT expressed in the currency of the Member State of refund;

(f)

the amount of deductible VAT calculated in accordance with Article 5 and the second paragraph of Article 6 expressed in the currency of the Member State of refund;

(g)

where applicable, the deductible proportion calculated in accordance with Article 6, expressed as a percentage;

(h)

nature of the goods and services acquired, described according to the codes in Article 9.’

13

Article 10 of that directive states:

‘Without prejudice to requests for information under Article 20, the Member State of refund may require the applicant to submit by electronic means a copy of the invoice or importation document with the refund application where the taxable amount on an invoice or importation document is EUR 1000 or more or the equivalent in national currency. Where the invoice concerns fuel, the threshold is EUR 250 or the equivalent in national currency.’

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Article 15 of that directive provides:

‘1. The refund application shall be submitted to the Member State of establishment at the latest on 30 September of the calendar year following the refund period. The application shall be considered submitted only if the applicant has filled in all the information required under Articles 8, 9 and 11.

…

2. The Member State of establishment shall send the applicant an electronic confirmation of receipt without delay.’

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According to Article 20 of that directive:

‘1. Where the Member State of refund considers that it does not have all the relevant information on which to make a decision in respect of the whole or part of the refund application, it may request, by electronic means, additional information, in particular from the applicant or from the competent authorities of the Member State of establishment, within the four-month period referred to in Article 19(2). Where the additional information is requested from someone other than the applicant or a competent authority of a Member State, the request shall be made by electronic means only if such means are available to the recipient of the request.

If necessary, the Member State of refund may request further additional information.

The information requested in accordance with this paragraph may include the submission of the original or a copy of the relevant invoice or import document where the Member State of refund has reasonable doubts regarding the validity or accuracy of a particular claim. In that case, the thresholds mentioned in Article 10 shall not apply.

2. The Member State of refund shall be provided with the information requested under paragraph 1 within one month of the date on which the request reaches the person to whom it is addressed.’

German law

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Article 61(1) of the Umsatzsteuer-Durchführungsverordnung (Turnover Tax Implementing Regulation), in the version applicable in the tax year at issue in the main proceedings, that is, the 2012 tax year, is worded as follows:

‘The operator established in the rest of [the EU] shall transmit to the Federal Central Tax Office, by means of the electronic portal established in the Member State in which that operator is based, an electronic application for a refund, in accordance with the regulation on the transfer of tax data, reflecting all the regulatory data.’

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That article provides, in paragraph 2, that ‘the refund application shall be introduced within nine months following the end of the calendar year during which that application arises’.

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

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On 29 October 2012, Y, a company established in Austria, made an application to the Federal Central Tax Office for a refund of the VAT credit at its disposal for the period from July to September 2012, by means of the electronic portal made available to it in its Member State of establishment.

19

In the application form filled in by Y, the numbers referred to as invoice numbers consisted, for each of the goods or services in question, not of a sequential number of the invoice, but of another number, which was in reference to the invoice.

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By a notice of 25 January 2013, the Federal Central Tax Office rejected the refund applications corresponding to the invoices mentioned in the previous paragraph.

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On 8 February 2013, Y challenged that notice.

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That challenge was rejected by the Federal Central Tax Office by decision of 7 January 2014.

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In the reasoning for that rejection, the Federal Central Tax Office stated that Y had not submitted a refund application in compliance with the legal requirements within the set deadline, that is, before 30 September 2013. In that respect, the Federal Central Tax Office stated that, on three occasions and prior to the expiry of that deadline, it had informed Y that the invoice numbers referred to in its application were not compliant with the legal requirements.

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Seised of the action brought against that rejection, the Finanzgericht Köln (Finance Court, Cologne, Germany), by judgment of 14 September 2016, upheld Y's application on the grounds, first, that the indication, in the application, of the reference number appearing on the invoices, alongside their sequential number, satisfied the formal conditions required for a refund application and, secondly, that the absence of an invoice number did not invalidate an application for a refund of VAT, in so far as that application could not be considered 'devoid of content'.

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The Federal Central Tax Office brought proceedings before the Bundesfinanzhof (Federal Finance Court, Germany), claiming that the decision made by the Finanzgericht Köln (Finance Court, Cologne) infringed Article 8(2) of Directive 2008/9.

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The Bundesfinanzhof (Federal Finance Court) asks, first of all, whether the term 'number of the invoice' in Article 8(2)(d) of Directive 2008/9 may be interpreted as meaning that it covers the reference number of an invoice which is indicated as an additional classification criterion, alongside the number of the invoice.

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In that regard, the referring court mentions that the principle of neutrality of VAT requires the term 'number of the invoice' in Article 8(2)(d) of Directive 2008/9 to be interpreted as meaning that, in the context of a refund application, the reference to another clear and broader classification criterion indicated in that application is sufficient.

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The same applies to the principle of proportionality. According to the referring court, ‘Article 8(2)(d) of Directive 2008/9 … is also respected, as in the present case, where the reference number is indicated in the application, since that would allow the [Federal Central Tax Office] to make a clear classification of the invoice in question in the context of its assessment of the application for a refund of VAT’.

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However, the referring court points out that, as the Court has previously ruled, the right to deduct VAT is subject to compliance with both substantive and formal requirements, which implies that, in order to obtain a refund, only the presence of a sequential number, within the meaning of Article 226(2) of Directive 2006/112, should be significant. That court adds that, nevertheless, the indication of such a number, while appropriate in order to attain the objective of a clear classification of the invoice, is not necessary.

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In the event that its first question were to be answered in the negative, the Bundesfinanzhof (Federal Finance Court) asks whether a refund application is considered formally complete and submitted within the deadline where that application refers to invoice numbers used by the applicant for a refund, and not to sequential numbers.

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In that regard, the referring court considers that the validity of an application for a refund of input VAT does not presuppose the accuracy of its contents, but its formal completeness. That would suggest that a refund application which refers to an invoice number used by the applicant would indeed be inaccurate, but not incomplete.

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Lastly, the Bundesfinanzhof (Federal Finance Court) asks whether consideration should be given to the fact that the mistake made was partly due to the Federal Central Tax Office, whose VAT refund application forms refer to the general heading ‘supporting document number’ and not to ‘number of the invoice’.

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In those circumstances, the Bundesfinanzhof (Federal Finance Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1)

Is Article 8(2)(d) of … Directive 2008/9 …, according to which the refund application is to set out, for each Member State of refund and for each invoice, inter alia, the number of the invoice, to be interpreted as meaning that it is also sufficient to state the reference number of an invoice, which is shown on an invoice document as an additional classification criterion alongside the invoice number?

(2)

If the above question is to be answered in the negative: Is a refund application in which the reference number of an invoice has been indicated instead of the invoice number to be considered formally complete and submitted within the deadline for the purpose of the second sentence of Article 15(1) of Directive 2008/9?

(3)

Should consideration be given, when answering Question 2, to the fact that the taxable person not established in the Member State of refund was, from the point of view of a reasonable applicant, and given the design of the electronic portal in the State of establishment and the form provided by the Member State of refund, entitled to assume that, for the application to have been properly made, or in any event to be formally complete, and timely, entering an indicator other than the invoice number is sufficient for the purpose of identifying the invoice to which the refund application relates?'

Consideration of the questions referred

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By its first and second questions, which it is appropriate to consider together, the referring court asks, in essence, whether Article 8(2)(d) and Article 15(1) of Directive 2008/9 must be interpreted as meaning that, where an application for a refund of VAT does not contain a sequential number of the invoice, but contains another number which allows that invoice, and thus, the good or service in question, to be identified, the tax authority of the Member State of refund must consider that application 'submitted' within the meaning of Article 15(1) of Directive 2008/9, and to proceed with its assessment.

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As a preliminary point, it should be borne in mind that Articles 170 and 171 of Directive 2006/112 and Articles 3 and 5 of Directive 2008/9 govern the substantive conditions for the right to a refund of VAT (judgment of 18 November 2020, Commission v Germany (Refund of VAT – Invoices), C?371/19, not published, EU:C:2020:936, paragraph 76).

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In that regard, the Court has already clarified that the right of a taxable person established in a Member State to obtain the refund of VAT paid in another Member State, in the manner governed by Directive 2008/9, is the counterpart of that taxable person's right, established by Directive 2006/112, to deduct input VAT in his or her own Member State (judgment of 18 November 2020, Commission v Germany (Refund of VAT – Invoices), C?371/19, not published, EU:C:2020:936, paragraph 78 and the case-law cited).

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Article 171(1) of Directive 2006/112 provides: 'VAT shall be refunded to taxable persons who are not established in the Member State in which they purchase goods and services or import goods subject to VAT but who are established in another Member State, in accordance with the detailed rules laid down in Directive 2008/9'. For its part, Directive 2008/9 contains several references to Directive 2006/112 in order to define the content of the right to a refund.

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In accordance with the second sentence of the first subparagraph of Article 15(1) of Directive 2008/9, a refund application is considered submitted only if the applicant has filled in all the information required under Articles 8, 9 and 11 of that directive.

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In that regard, it should be noted that a reading of Article 8(2)(d) of Directive 2008/9 shows that, by using the expression ‘the number of the invoice’, the EU legislature is referring to one specific number, to the exclusion of all others.

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In that context, it should be noted that, since there is a direct connection between Directive 2006/112 and Directive 2008/9, a different meaning cannot be given to an important concept of the system of VAT in a situation where that concept appears in one or other of those directives.

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Among the information which, for the purposes of VAT, must necessarily be included on the invoices issued, Article 226(2) of Directive 2006/112 requires ‘a sequential number … which uniquely identifies the invoice’.

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It is thus apparent that the number of the invoice mentioned in Article 8(2)(d) of Directive 2008/9 refers to a sequential number which uniquely identifies the invoice.

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Nevertheless, the absence of a reference to such an invoice number in the refund application cannot lead to the refusal of that application in the event that such a refusal would infringe the principle of fiscal neutrality or the principle of proportionality.

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Despite the importance of the use of a sequential number of the invoice for the functioning of the VAT system, that requirement remains a formal condition which, in certain circumstances, must surrender its priority to the application of the substantive conditions of the right to a refund, in accordance with the principles of neutrality and of proportionality (see, by analogy, judgment of 21 November 2018, V?dan, C?664/16, EU:C:2018:933, paragraphs 41 and 42).

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According to the case-law of the Court, like the right to deduct, the right to a refund is a fundamental principle of the common system of VAT established by EU legislation, which is intended to relieve the operator entirely of the burden of the VAT due or paid in the course of all his or her economic activities. The common system of VAT therefore ensures neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves, in principle, subject to VAT (judgment of 2 May 2019, Sea Chefs Cruise Services, C?133/18, EU:C:2019:354, paragraph 35 and the case-law cited).

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The right to deduct and, accordingly, to a refund is an integral part of the VAT scheme and in

principle may not be limited. That right is exercisable immediately in respect of all taxes charged on input transactions (judgment of 18 November 2020, Commission v Germany (Refund of VAT – Invoices), C?371/19, not published, EU:C:2020:936, paragraph 79 and the case-law cited).

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The fundamental principle of VAT neutrality requires the deduction or refund of input VAT to be allowed if the substantive requirements are satisfied, even if the taxable person has failed to comply with some of the formal requirements (judgment of 18 November 2020, Commission v Germany (Refund of VAT – Invoices), C?371/19, not published, EU:C:2020:936, paragraph 80 and the case-law cited).

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The position may, however, be different if non-compliance with such formal requirements effectively prevents the production of conclusive evidence that the substantive requirements have been satisfied (judgment of 18 November 2020, Commission v Germany (Refund of VAT – Invoices), C?371/19, not published, EU:C:2020:936, paragraph 81 and the case-law cited).

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However, it should be borne in mind that Article 20 of Directive 2008/9 offers the Member State of refund, when it considers that it does not have all the relevant information on which to make a decision in respect of the whole or part of such a refund application, the possibility to request, in particular from the taxable person or from the competent authorities of the Member State of establishment, additional information which must be provided within one month of the date on which the request reaches the person to whom it is addressed.

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That provision would, to a large extent, be deprived of its effectiveness if the Member State could immediately refuse the refund application disregarding the fact that a number which allows the invoice to be identified was included in the application.

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In those circumstances, the principle of neutrality and the principle of proportionality require the tax authority of the Member State of refund to consider the application ‘submitted’ within the meaning of Article 15(1) of Directive 2008/9, and to make use of the discretion conferred by Article 20(1) of that directive to request additional information which may include a request that the applicant produce the sequential number of the invoice (see, to that effect, judgment of 18 November 2020, Commission v Germany (Refund of VAT – Invoices), C?371/19, not published, EU:C:2020:936, paragraph 88).

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By contrast, in the event that a Member State, like the Federal Republic of Germany, as is apparent from the judgment of 18 November 2020, Commission v Germany (Refund of VAT – Invoices) (C?371/19, not published, EU:C:2020:936, paragraph 74), made use of the discretion provided in Article 10 of Directive 2008/9, so that the applicant was required to submit with his or her refund application a copy of the invoice and that the copy of the invoice is available to the tax authority, that authority must make an assessment of that application without requiring additional information regarding the sequential number of that invoice.

53

In that regard, according to the well-established case-law of the Court, where the tax authority has the information necessary to establish that the taxable person is liable for VAT, it cannot impose additional conditions which may have the effect of rendering the right to deduct or to a refund of VAT ineffective (see judgment of 18 November 2020, Commission v Germany (Refund of VAT – Invoices), C?371/19, not published, EU:C:2020:936, paragraph 82 and the case-law cited).

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That would, in particular, be the case if the tax authority already had available to it the original or a copy of the invoice in question, under Directive 2008/9.

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First, pursuant to Article 10 of Directive 2008/9, the Member States have the discretion to require each applicant to submit with his or her refund application a copy of the invoice if the taxable amount on the invoice is EUR 1000 or more or the equivalent in national currency – that threshold being set at EUR 250 or the equivalent in national currency where the invoice concerns fuel.

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Secondly, under the third subparagraph of Article 20(1) of that directive, if the Member State of refund has reasonable doubts regarding the validity or accuracy of a particular claim, it may request the original or a copy of the invoice justifying the claim, without regard for the thresholds set out in Article 10.

57

Save where the original or a copy of the invoice is already available to the tax authority, that authority may request that the applicant produce the sequential number of that invoice and, if that request is not satisfied within the deadline of one month laid down in Article 20(2) of Directive 2008/9, it is entitled to reject the application for a refund of VAT.

58

Having regard for all the foregoing considerations, the answer to the first and second questions referred is that Article 8(2)(d) and Article 15(1) of Directive 2008/9 must be interpreted as meaning that, where an application for a refund of VAT does not contain a sequential number of the invoice, but does contain another number which allows that invoice, and thus the good or service in question, to be identified, the tax authority of the Member State of refund must consider that application ‘submitted’ within the meaning of Article 15(1) of Directive 2008/9, and proceed with its assessment. In making that assessment, and save where that authority already has available to it the original invoice or a copy thereof, it may request that the applicant produce a sequential number which uniquely identifies the invoice and, if that request is not satisfied within the deadline of one month laid down in Article 20(2) of that directive, it is entitled to reject the application for a refund.

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There is no need to examine, in this context, the elements mentioned by the referring court in its third question.

Costs

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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 (Tenth Chamber) hereby rules:

Article 8(2)(d) and Article 15(1) of Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State, as amended by Council Directive 2010/66/EU of 14 October 2010, must be interpreted as meaning that, where an application for a refund of value added tax does not contain a sequential number of the invoice, but does contain another number which allows that invoice, and thus the good or service in question, to be identified, the tax authority of the Member State of refund must consider that application ‘submitted’ within the meaning of Article 15(1) of Directive 2008/9, as amended by Directive 2010/66, and proceed with its assessment. In making that assessment, and save where that authority already has available to it the original invoice or a copy thereof, it may request that the applicant produce a sequential number which uniquely identifies the invoice and, if that request is not satisfied within the deadline of one month laid down in Article 20(2) of that directive, as amended by Directive 2010/66, it is entitled to reject the application for a refund.

[Signatures]

(*1) Language of the case: German.