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Request for a preliminary ruling from the Fővárosi Törvényszék (Hungary) lodged on 5 August 2021 — Euler Hermes SA Magyarországi Fióktelepe v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-482/21)

(2021/C 471/28)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: Euler Hermes SA Magyarországi Fióktelepe

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Question referred

Do the principles of proportionality, fiscal neutrality and effectiveness –having regard, in particular, to the fact that a Member State may not charge an amount of VAT exceeding that actually received by the supplier of goods or services in respect of that supply of goods or services — and the exemption laid down in Article 135(1)(a) of the VAT Directive (1) — particularly as regards the requirement that that activity is to be treated as a single exempt transaction, by reference to the principles laid down in points 35, 37 and 53 of the Advocate General’s Opinion in Case C-242/08, *Swiss Re* — and the obligation to guarantee the free movement of capital and services in the internal market preclude a practice of a Member State pursuant to which the reduction applicable to the taxable amount in the event of definitive non-payment, as provided for in Article 90(1) of the VAT Directive, is not applicable where an insurer, in the course of its commercial credit insurance business, paid an indemnity to the insured person in respect of the taxable amount and also in respect of the VAT due when the risk materialised (non-payment by the insured’s client), meaning that, under the insurance contract, the debt, together with all associated rights of enforcement, was assigned to the insurer, in the following circumstances:

(i)

at the time when the debts in question became irrecoverable, national law did not allow any reduction of the taxable amount in respect of an irrecoverable debt;

(ii)

since the incompatibility of that prohibition with Union law was made clear, national positive law has consistently excluded outright the refund of VAT on an irrecoverable debt to the original supplier of the goods or services (the insured person) on the grounds that the insurer has reimbursed that amount of VAT to the supplier; and

(iii)

the insurer is able to show that its claim against the debtor has become definitively irrecoverable?

(1) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).