Provisional text

JUDGMENT OF THE COURT (Ninth Chamber)

4 May 2023 (*)

(Reference for a preliminary ruling – Common system of value added tax (VAT) – Directive 2006/112/EC – Article 185 – Adjustment of deductions of input VAT – Goods written off – Subsequent sale as waste – Destruction or disposal duly proved or confirmed)

In Case C?127/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria), made by decision of 16 February 2022, received at the Court on 22 February 2022, in the proceedings

‘**Balgarska telekomunikatsionna kompania’ EAD**

v

Direktor na Direktsia ‘Obzhalvane i danachno-osiguritelna praktika’ – Sofia

THE COURT (Ninth Chamber),

composed of L.S. Rossi, President of the Chamber, J.-C. Bonichot and O. Spineanu-Matei (Rapporteur), Judges,

Advocate General: T. ?apeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– ‘Balgarska telekomunikatsionna kompania’ EAD, by O.P. Hadzhiyski and T.M. Mollahasan, advokati,

– Direktor na Direktsia ‘Obzhalvane i danachno-osiguritelna praktika’ – Sofia, by T. Todorov, advokat,

– the European Commission, by D. Drambozova, J. Jokubauskait? and V. Uher, 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 185 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 ‘Balgarska telekomunikatsionna kompania’ EAD (‘BTK’) and the Direktor na Direktsia ‘Obzhalvane i danatchno-osiguritelna praktika’ – Sofia (Director of the ‘Tax and Social Security Appeals and Practice’ Directorate of Sofia, Bulgaria) concerning the decision of the Inspector General of Taxes of the Teritorialna Direktsia na Natsionalna Agentsia za prihodite (District Office of the National Revenue Agency, ‘Major Taxpayers and Insurers Division’, Bulgaria) rejecting BTK’s request for reimbursement of sums paid in respect of adjustments of initial value added tax (VAT) deductions, which had been made because various capital goods and stock items were written off between the years 2014 and 2017.

Legal context

European Union law

3 Article 168(a) 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’.

4 Article 184 of that directive provides:

‘The initial deduction shall be adjusted where it is higher or lower than that to which the taxable person was entitled.’

5 Under Article 185 of that Directive:

‘1. Adjustment shall, in particular, be made where, after the VAT return is made, some change occurs in the factors used to determine the amount to be deducted, for example where purchases are cancelled or price reductions are obtained.

2. By way of derogation from paragraph 1, no adjustment shall be made in the case of transactions remaining totally or partially unpaid or in the case of destruction, loss or theft of property duly proved or confirmed, or in the case of goods reserved for the purpose of making gifts of small value or of giving samples, as referred to in Article 16.

However, in the case of transactions remaining totally or partially unpaid or in the case of theft, Member States may require adjustment to be made.’

6 Article 186 of that VAT Directive provides that Member States are to lay down the detailed rules for applying Articles 184 and 185 thereof.

Bulgarian Law

7 The zakon za danak varhu dobavenata stoynost (Law on value added tax) of 21 July 2006 (DV No 63 of 4 August 2006, p. 8), in the version applicable from 1 January 2017 (‘the ZDDS’), provides in Article 78:

‘1. Input VAT deducted is the amount of tax which a taxable person has deducted under this

law in the year in which the right to deduct is exercised.

2. In the event of a change in the taxable amount, the cancellation of a supply or a change in the nature of a supply, the taxable person is required to adjust the amount of VAT deducted.

…’

8 Article 79(1) of the ZDDS provides:

‘Any taxable person who has deducted, in full, in part or in proportion to the level of use for the purposes of the independent exercise of his or her business, a tax credit on goods which he has produced, acquired or imported, shall, where those goods are destroyed, shrinkages are established or the goods are classified as wastage, pay tax in an amount equivalent to that of the input VAT deducted.’

9 Exceptions or limitations to the adjustment of input VAT are provided for in Article 80 of that law, paragraph 2 of which provides:

‘Adjustments under Article 79 shall not be made in the following cases:

1. destruction, shrinkage or wastage caused by *force majeure*, as well as in the case of the destruction of excisable goods under administrative control in accordance with the Law on excise duties and tax warehouses;

2. destruction, shrinkage or wastage caused by accidents or disasters which the person concerned is able to prove were not caused by him or her or by the person using the goods;

3. shrinkage resulting from a change in the physical and chemical properties in normal proportions corresponding to the standards established for the limit values for natural loss of substances and shrinkage of goods during storage and transport in accordance with a regulatory act or with business standards and norms;

4. technological wastage within permissible limits established by the technological documentation for the production or activity concerned;

5. wastage due to expiry of the service life, determined in accordance with legal requirements;

6. writing-off of capital goods, where their net book value is less than 10% of their original value.’

10 Article 79(3) and Article 80(2) of the ZDDS in the version applicable before 1 January 2017 (‘the previous version of the ZDDS’) contained provisions similar to those set out, respectively, in paragraphs 8 and 9 of the present judgment.

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

11 BTK is a company incorporated under Bulgarian law operating in the telecommunications sector. It is subject to VAT on its activities, which include, inter alia, the provision of telecommunication services. For the purposes of its activities, it acquires various capital goods and, with a view to their resale, mobile communication devices and various items of equipment necessary or ancillary to the use of the services it provides. Deductions are made in respect of the VAT paid on those acquisitions.

12 During the period between October 2014 and December 2017, BTK wrote off various goods,

such as installations, equipment or appliances considered unsuitable for use or sale for various reasons, including wear and tear, defects or their obsolete or unsuitable nature. The writing-off was carried out in compliance with the applicable national legislation. This consisted, specifically, in the removal of the assets concerned from the company's balance sheet. Next, some of those goods were sold as waste to taxable third-party undertakings and others were destroyed or disposed of.

13 Those write-off transactions led to adjustments involving the repayment of the input VAT deducted in respect of the goods concerned. Those adjustments were made pursuant to Article 79(3) of the previous version of the ZDDS, between the years 2014 and 2016, and pursuant to Article 79(1) of the ZDDS, as of 1 January 2017.

14 On 18 January 2019, BTK submitted a request for reimbursement of the sums paid in connection with those adjustments. That request related to a total amount of 1 304 090.54 leva (BGN) (approximately EUR 666 770). It submitted on that occasion that Article 79(1) of the ZDDS and Article 79(3) of the previous version of the ZDDS were incompatible with Article 185(2) of the VAT Directive.

15 That request for reimbursement was refused by a decision of the Inspector General of Taxes of the Regional Directorate of the National Revenue Agency (Major Taxpayers and Insurers Division), adopted on 5 December 2019. That decision was confirmed by a decision of 18 February 2020 of the Director of the Tax and Social Security Appeals and Practices Directorate in Sofia.

16 Likewise, the legal action brought by BTK against that decision before the Administrativen sad Sofia grad (Administrative Court, Sofia, Bulgaria) was dismissed by judgment of 18 May 2021. That court observed that the writing off of goods might not give rise to adjustment, in accordance with Article 80(2) of the ZDDS, where one of the conditions laid down in that provision is met, which was not the case.

17 An appeal was brought against that judgment before the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria), which is the referring court.

18 The referring court states that writing off assets consists of their removal from the balance sheet and that that concept is interpreted in Bulgarian law as referring to assets or stock items that have become unusable or unfit for their intended purpose due to physical wear and tear or damage, or when they are obsolete and can no longer be used or sold. It notes, in essence, that this interpretation means the exhaustion of the economic potential of the goods concerned in the course of their use in the economic activity of the undertaking. It makes a comparison in that regard with the situation in which goods or services have been fully consumed in the course of a taxable person's business activity, a situation in which it considers that, in accordance with the case-law of the Court, removing those goods or services from the taxable person's assets does not entail any change in the factors taken into account to determine the amount of the deduction, within the meaning of Article 185(1) of the VAT Directive.

19 Next, the referring court notes that the first subparagraph of Article 185(2) of the VAT Directive contains an exhaustive list of the cases which, subject to the second subparagraph of that paragraph, should not give rise to adjustment of the input VAT deducted and takes the view that those cases correspond to situations in which goods may no longer be used by the taxable person for subsequent supplies due to events beyond his or her control. That court points out that the exemption from adjustment provided for in such cases is intended to prevent the taxable person from suffering a tax loss in addition to the economic loss.

20 In that context, the referring court considers that the lawfulness of the decision contested before it, and therefore the resolution of the dispute before it, requires clarification of certain concepts referred to in Article 185 of the VAT Directive.

21 It is uncertain, first of all, as to the possible effect of the fact that, in the present case, goods written off were subsequently sold as waste by way of taxable transactions carried out as a taxable person, but which did not form part of BTK's usual economic activity. It then asks whether writing off constitutes a change in the factors taken into account to determine the amount to be deducted, within the meaning of Article 185(1) of the VAT Directive, where the goods concerned have subsequently been destroyed or disposed of, excluding any use in transactions which are exempt from or fall outside the scope of VAT. Finally, assuming that writing off may constitute a 'loss' within the meaning of the first subparagraph of Article 185(2) of that directive, it asks whether the essential element is, in such an event, that the goods have, objectively, been destroyed or whether it is also necessary that it was the result of events beyond the taxable person's control, which he or she could neither have foreseen nor avoided.

22 In those circumstances, the Varhoven administrativen sad (Supreme Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 185(1) of [the VAT Directive] to be interpreted as meaning that, where goods are written off, in the sense that assets or inventories are derecognised on the taxable person's statement of financial position because they are not expected to be of any further economic benefit, for example because they are worn, faulty or unsuitable or cannot be used for their intended purpose, that is a change in the factors used to determine the amount to be deducted in relation to the VAT already paid when the goods were purchased, which occurred after the [VAT] return was made … and which therefore gives rise to the obligation to adjust the deduction if the goods written off were subsequently sold [in the context of] a taxable supply?

(2) Is Article 185(1) of [the VAT Directive] to be interpreted as meaning that, where goods are written off, in the sense [referred to in Question 1], that is a change in the factors used to determine the amount to be deducted in relation to the VAT already paid when the goods were purchased, which occurred after the [VAT] return was made … and which therefore gives rise to the obligation to adjust the deduction if the goods written off were subsequently destroyed or disposed of and that fact can be duly proved or confirmed?

(3) If the answer to Question 1 or Question 2 or both is in the affirmative, is Article 185(2) of [the VAT Directive] to be interpreted as meaning that, where goods are written off under the circumstances described above, that is a duly proved or confirmed case of the destruction or loss of goods, for which [no] obligation arises to adjust the deduction in relation to the VAT paid when the goods were [purchased]?

(4) Is Article 185(2) of [the VAT Directive] to be interpreted as meaning that, in duly proved or confirmed cases of the destruction or loss of goods, there is no need to adjust the deduction only where the destruction or loss was caused by events beyond the control of [the taxable person and which could not be foreseen or avoided by him or her]?

(5) If the answer to Question 1 or Question 2 or both is in the negative, does Article 185(1) of [the VAT Directive] preclude national legislation, such as Article 79(3) of the [previous version of the] ZDDS, or Article 79(1) of the ZDDS …, which requires the deduction to be adjusted where goods are written off, even where the goods are subsequently sold as a taxable supply of goods … or where they are destroyed or disposed of and that fact is duly proved or confirmed?'

Consideration of the questions referred

23 As a preliminary point, it should be noted that the rules for adjusting the initial deduction of VAT, provided for in Articles 187 to 191 of the VAT Directive as regards capital goods, such as some of the goods allegedly written off by BTK, have no bearing on the answer to those questions. Those rules concern the coming into existence of an obligation to make an adjustment, and not the detailed rules for any adjustment. Rather, it is Articles 184 to 186 of the VAT Directive which constitute the scheme applicable to any entitlement of the tax authority to require a taxable person to make a VAT adjustment, including adjustment of deductions made in respect of capital goods (see, to that effect, judgment of 17 September 2020, *Stichting Schoonzicht*, C?791/18, EU:C:2020:731, paragraph 33 and the case-law cited).

The first question

24 By its first question, the referring court asks, in essence, whether Article 185(1) of the VAT Directive must be interpreted as meaning that writing off goods which the taxable person considered to have become unusable in the course of his or her usual economic activities, followed by the sale of those goods as waste, which was subject to VAT, constitutes a 'change … in the factors used to determine the amount to be deducted', within the meaning of that provision.

25 In order to answer that question, it must first of all be recalled that the adjustment mechanism provided for in Articles 184 to 186 of the VAT Directive is an integral part of the VAT deduction scheme established by that directive (judgment of 17 July 2014, *BCR Leasing IFN*, C?438/13, EU:C:2014:2093, paragraph 32 and the case-law cited).

26 As regards that deduction scheme, it follows from Article 168 of the VAT Directive that, in so far as the taxable person, acting as such at the time when he or she acquires goods, uses those goods for the purposes of his or her taxable transactions, he or she is entitled to deduct the VAT due or paid in respect of those goods (judgment of 22 March 2012, *Klub*, C?153/11, EU:C:2012:163, paragraph 36 and the case-law cited).

27 The purpose of the rules governing deduction is to relieve the trader entirely of the burden of the VAT payable or paid in the course of all of his or her economic activities. Thus, the common system of VAT seeks to ensure complete neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves subject, in principle, to VAT (judgment of 17 October 2018, *Ryanair*, C?249/17, EU:C:2018:834, paragraph 23 and the case-law cited).

28 Next, as regards the possible impact on the deduction of events occurring after those activities, it must be recalled that the use to which the goods or services are put, or are intended to be put, determines the extent of the initial deduction to which the taxable person is entitled and the extent of any adjustments in the course of the following periods (judgment of 17 September 2020, *Stichting Schoonzicht*, C?791/18, EU:C:2020:731, paragraph 25 and the case-law cited).

29 Accordingly, the rules laid down by the VAT Directive in respect of adjustment are intended to enhance the precision of deductions so as to ensure the neutrality of VAT, with the result that transactions carried out at an earlier stage continue to give rise to the right to deduct only to the

extent that they are used to make supplies themselves subject to VAT. By those rules, that directive thus aims to maintain a close and direct relationship between the right to deduct input VAT and the use of the goods and services concerned for taxable output transactions (judgment of 10 October 2013, *Pactor Vastgoed*, C?622/11, EU:C:2013:649, paragraph 34 and the case-law cited).

30 Finally, as regards the coming into existence of any obligation to make an adjustment of an input VAT deduction, Article 185(1) of the VAT Directive establishes the rule that such an adjustment must be made inter alia when changes to factors which were taken into consideration for the determination of the amount of that deduction occurred after the VAT return.

31 In the present case, it is apparent from the order for reference that the goods concerned were ultimately sold by the taxable person in the context of taxable transactions. It must therefore be held that the condition for the application and maintenance of the right to deduct is fulfilled, in accordance with the case-law referred to in paragraph 27 of the present judgment, namely that those goods were used in the course of economic activities subject to VAT. That application and that maintenance are, moreover, necessary in order to ensure fiscal neutrality, which is the objective pursued by the common system of VAT by means of the deduction system.

32 In that regard, it is irrelevant that the sale of waste is not one of the usual economic activities of the taxable person making such a sale or that the value of the goods concerned is reduced in relation to their initial value, by reason of the fact that they are sold as waste or that, for the same reason, their original nature has been changed.

33 In accordance with the case-law referred to in paragraph 27 of the present judgment, in so far as the goods are used in the course of economic activities subject to VAT, the deduction system concerns all of the economic activities of a taxable person, whatever their purpose or results. It should also be noted that the Court has already taken into account, in order to hold that no adjustment of the deductions is to be made, the fact that waste from buildings acquired under the VAT deduction system and subsequently partially demolished had been resold in the context of taxable output transactions (see, to that effect, judgment of 18 October 2012, *TETS Haskovo*, C?234/11, EU:C:2012:644, paragraph 35).

34 Accordingly, such circumstances are not such as to bring about a break in the close and direct relationship between the right to deduct input VAT paid on the purchase of the goods concerned and their use for taxable output transactions, within the meaning of the case-law cited in paragraph 29 of the present judgment.

35 It follows from all of those considerations that Article 185(1) of the VAT Directive must be interpreted as meaning that writing off goods which the taxable person considered to have become unusable in the course of his or her usual economic activities, followed by the sale of those goods as waste, which was subject to VAT, does not constitute a ‘change … in the factors used to determine the amount to be deducted’ within the meaning of that provision.

The second, third and fourth questions

36 By the second question, and by the third and fourth questions in so far as they relate to destroyed goods, which it is appropriate to examine together, the referring court asks, in essence, whether Article 185 of the VAT Directive must be interpreted as meaning that writing off goods, which the taxable person considered to have become unusable in the course of his or her usual economic activities, followed by the voluntary destruction of those goods, constitutes a ‘change … in the factors used to determine the amount to be deducted’, within the meaning of paragraph 1 of that article, and, if so, whether writing off the goods in such circumstances constitutes ‘destruction

… duly proved or confirmed' or a 'loss … duly proved or confirmed' within the meaning of paragraph 2 of that article, even though this is not an event beyond the control of that taxable person and which that person could neither have foreseen nor avoided.

37 In the first place, it should be noted that the destruction of goods necessarily entails the disappearance of any possibility of using them in the context of taxable transactions (see, by analogy, judgment of 4 October 2012, *PIGI*, C?550/11, EU:C:2012:614, paragraph 35).

38 Accordingly, that fact leads to a break in the close and direct relationship between the right to deduct input VAT and the use of the goods concerned for taxable output transactions, as stated in the case-law referred to in paragraph 29 of the present judgment, and therefore constitutes a 'change … in the factors used to determine the amount to be deducted', within the meaning of Article 185(1) of the VAT Directive. That is confirmed, moreover, by the reference, in paragraph 2 of that article, to destruction among the possible exceptions to the adjustment obligation.

39 In the second place, as regards the meaning and scope of the terms 'destruction' and 'loss' within the meaning of Article 185(2) of the VAT Directive, in the absence of a definition, these must be determined by considering the usual meaning of those terms in everyday language, while also taking into account the context in which they occur (see, to that effect, judgment of 22 April 2021, *Austrian Airlines*, C?826/19, EU:C:2021:318, paragraph 22 and the case-law cited).

40 In everyday language, the term 'destruction' refers to the action of profoundly altering an object, making it disappear by demolishing it and eliminating it. The term 'loss', when it relates to goods, refers to the fact of being deprived of something owned or enjoyed. It follows that the loss of goods cannot be the result of a deliberate action on the part of its owner or possessor, whereas that cannot be ruled out in the case of destruction.

41 As regards the context of the exceptions provided for in the first subparagraph of Article 185(2) of the VAT Directive and their purpose, it should be noted that a provision providing for similar exceptions was previously included in Article 20(1)(b) 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). The preparatory works relating to the latter provision indicate that, by those exceptions, the Community legislature considered it necessary, in the event of a shrinkage of goods giving rise to deduction of input VAT, to limit the adjustment obligation to cases of unconfirmed shrinkage, so as to prevent a loss of a fiscal nature in addition to economic loss when proof of destruction, loss or theft was adduced.

42 It follows from that information that the cases of destruction, loss or theft referred to in Article 185(2) of the VAT Directive correspond to cases of economic loss suffered, but also that the occurrence of those cases must be duly proved or confirmed, in accordance with the first subparagraph of that provision.

43 In the present case, since the destruction of the goods concerned resulted from an action by the taxable person, it must be held that it constitutes 'destruction' and not a 'loss' within the meaning of Article 185(2) of the VAT Directive.

44 Furthermore, it does not follow either from the wording of that provision or from the preparatory work which may be regarded as relevant that the destruction of goods must be totally beyond the control of the taxable person. As stated in paragraph 40 of the present judgment, it cannot be ruled out that, in certain cases, such destruction may involve deliberate action by the taxable person.

45 That is the case, in particular, where goods have been destroyed following a finding that they have become unsuitable for use in the taxable person's usual economic activities. In that regard, it should be recalled that consideration of the economic and commercial realities forms a fundamental criterion for the application of the common system of VAT (judgment of 22 November 2018, *MEO – Serviços de Comunicações e Multimédia*, C?295/17, EU:C:2018:942, paragraph 43 and the case-law cited).

46 However, in order to fall within the scope of Article 185(2) of the VAT Directive, the destruction of goods forming part of the taxable person's assets must be duly proved or confirmed and only the destruction of goods decided upon because of the objective loss of use of those goods in the context of the taxable person's usual economic activities, which it is for the referring court to ascertain, may be taken into consideration.

47 As to the remainder, in so far as the referring court also mentions the fact that certain goods which gave rise to the adjustments at issue in the main proceedings have been 'disposed of', it is also for that court to ascertain whether the circumstances specifically referred to by that term correspond to the irreversible disappearance of those goods. Thus, methods of disposal of goods such as their landfilling must be regarded as leading to their 'destruction', within the meaning of the first subparagraph of Article 185(2) of the VAT Directive, since they actually entail the irreversible disappearance of those goods.

48 It follows from all of the foregoing considerations that Article 185 of the VAT Directive must be interpreted as meaning that writing off goods, which the taxable person considered to have become unusable in the course of his or her usual economic activities, followed by the voluntary destruction of those goods, constitutes a 'change … in the factors used to determine the amount to be deducted', within the meaning of paragraph 1 of that article. However, such a situation constitutes 'destruction', within the meaning of the first subparagraph of paragraph 2 of that article, irrespective of its voluntary nature, with the result that that change does not give rise to an adjustment obligation provided that that destruction is duly proved or confirmed and that the goods had objectively lost all usefulness in the taxable person's economic activities. The duly proven disposal of goods must be treated in the same way as their destruction in so far as it actually entails the irreversible disappearance of those goods.

The fifth question

49 By its fifth question, referred in the event that the first and/or second questions are answered in the negative, the referring court asks, in essence, whether Article 185(1) of the VAT Directive must be interpreted as precluding provisions of national law which provide for the adjustment of input VAT deducted upon acquisition of goods where they have been written off, the taxable person having considered that they had become unusable in the course of his or her usual economic activities, irrespective of whether, subsequently, the goods were sold subject to VAT or were destroyed or disposed of in a duly proven or confirmed manner.

50 However, it follows from the last part of that question, read in the light of the order for reference, in particular the third and fourth questions and the circumstances of the dispute in the main proceedings, that the referring court is specifically addressing, by the present question, the requirement to adjust the input VAT deducted in such circumstances, in the light not only of the adjustment obligation laid down in Article 185(1) of the VAT Directive, but also of certain exceptions to that obligation referred to in paragraph 2 of that article, and therefore in the light of all of the provisions of Article 185.

51 Moreover, for the same reasons, this question does not have to be answered only if the

answer to the first question, relating to the sale of written-off goods as waste, or the second question, relating to the destruction of written-off goods, is negative. Indeed, an answer to the fifth question may also be relevant if one of those two questions is answered in the affirmative.

52 In those circumstances, it is for the Court to reformulate the question referred to it, in order to provide the referring court with an answer which will be of use to it and enable it to determine the dispute before it (see, to that effect, judgment of 15 July 2021, *The Department for Communities in Northern Ireland*, C?709/20, EU:C:2021:602, paragraph 61 and the case-law cited).

53 Accordingly, it must be held that, by its fifth question, the referring court asks whether Article 185 of the VAT Directive must be interpreted as precluding provisions of national law which provide for the adjustment of input VAT deducted upon acquisition of goods where they have been written off, the taxable person having considered that they had become unusable in the course of his or her usual economic activities, irrespective of whether, subsequently, the goods were sold subject to VAT or were destroyed or disposed of in a duly proved or confirmed manner.

54 In the light of all of the considerations which gave rise to the answers to the first, second, third and fourth questions, set out in paragraphs 35 and 48 of the present judgment, such national provisions are incompatible with Article 185(1) and the first subparagraph of Article 185(2) of the VAT Directive.

55 Furthermore, the destruction of goods is not one of the cases in which the second subparagraph of Article 185(2) of that directive authorises the Member States nevertheless to require the adjustment of deductions.

56 Consequently, the answer to the fifth question is that Article 185 of the VAT Directive must be interpreted as precluding provisions of national law which provide for the adjustment of input VAT deducted upon acquisition of goods where they have been written off, the taxable person having considered that they had become unusable in the course of his or her usual economic activities and where, subsequently, those goods were either sold subject to VAT or destroyed or disposed of in a way which effectively means that they have disappeared irreversibly, provided that such destruction is duly proved or confirmed and that the goods had objectively lost all usefulness in the taxable person’s economic activities.

Costs

57 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Ninth Chamber) hereby rules:

1. **Article 185(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax**

must be interpreted as meaning that writing off goods which the taxable person considered to have become unusable in the course of his or her usual economic activities, followed by the sale of those goods as waste, which was subject to value added tax (VAT), does not constitute a ‘change … in the factors used to determine the amount to be deducted’, within the meaning of that provision.

2. **Article 185 of Directive 2006/112**

must be interpreted as meaning that writing off goods, which the taxable person considered to have become unusable in the course of his or her usual economic activities, followed by the voluntary destruction of those goods, constitutes a 'change … in the factors used to determine the amount to be deducted', within the meaning of paragraph 1 of that article. However, such a situation constitutes 'destruction', within the meaning of the first subparagraph of paragraph 2 of that article, irrespective of its voluntary nature, with the result that that change does not give rise to an adjustment obligation provided that that destruction is duly proved or confirmed and that the goods had objectively lost all usefulness in the taxable person's economic activities. The duly proven disposal of goods must be treated in the same way as their destruction in so far as it actually entails the irreversible disappearance of those goods.

3. **Article 185 of Directive 2006/112**

must be interpreted as meaning that it precludes provisions of national law which provide for the adjustment of input VAT deducted upon acquisition of goods where they have been written off, the taxable person having considered that they had become unusable in the course of his or her usual economic activities and where, subsequently, those goods were either sold subject to VAT or destroyed or disposed of in a way which effectively means that they have disappeared irreversibly, provided that such destruction is duly proved or confirmed and that the goods had objectively lost all usefulness in the taxable person's economic activities.

[Signatures]

* Language of the case: Bulgarian.