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OPINION OF ADVOCATE GENERAL

CAMPOS SÁNCHEZ-BORDONA

delivered on 27 February 2019 (1)

Case C?26/18

Federal Express Corporation Deutsche Niederlassung

v

Hauptzollamt Frankfurt am Main

(Request for a preliminary ruling from the Hessisches Finanzgericht (Finance Court, Hesse, Germany))

(Preliminary ruling — Customs debt — Regulation (EEC) No 2913/92 — Common system of value added tax (VAT) — Directive 2006/112/EC — Scope — Definition of importation — Requirement that goods must enter the economic network of the Union — Presumption)

1.

In the judgments in Eurogate Distribution and DHL Hub Leipzig (2) and Wallenborn Transports, (3) the Court answered questions, referred for a preliminary ruling by the Finanzgericht Hamburg (Finance Court, Hamburg, Germany) and the Hessisches Finanzgericht (Finance Court, Hesse, Germany) respectively, concerning whether import VAT and a customs debt should both be calculated where a taxed transaction has failed to fulfil certain conditions laid down by the customs legislation.

2.

In the Opinion in the first of those cases, (4) I pointed out that that possibility is not as automatic as an initial reading of the judgment of the Court of 15 May 2014, X, (5) might suggest. I argued that there is no reason why the incurrence of a customs debt should inevitably lead to import VAT being due. The Court adopted that view in the two judgments cited above.

3.

The Hessisches Finanzgericht (Finance Court, Hesse) has made a fresh reference for a preliminary ruling on such double calculations. In particular, it believes that it has identified a certain contradiction in the latter two judgments with regard to the conditions laid down by the Court for ascertaining whether goods have entered the European Union’s economic network. That was, in short, the key factor which made it possible to determine whether a customs debt and a VAT debt should both be payable.

I. Legislative framework

A. EU law

1. Community Customs Code (6)

4.

In accordance with Article 202:

‘1. A customs debt on importation shall be incurred through:

(a)

the unlawful introduction into the customs territory of the Community of goods liable to import duties, or

(b)

the unlawful introduction into another part of that territory of such goods located in a free zone or free warehouse.

For the purpose of this Article, unlawful introduction means any introduction in violation of the provisions of Articles 38 to 41 and the second indent of Article 177.

2. The customs debt shall be incurred at the moment when the goods are unlawfully introduced.

…’

5.

Article 203 stipulates:

‘1. A customs debt on importation shall be incurred through:

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the unlawful removal from customs supervision of goods liable to import duties.

2. The customs debt shall be incurred at the moment when the goods are removed from customs supervision.

…’

6.

Article 204 provides:

‘1. A customs debt on importation shall be incurred through:

(a)

non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they are placed, or

(b)

non-compliance with a condition governing the placing of the goods under that procedure or the granting of a reduced or zero rate of import duty by virtue of the end-use of the goods,

in cases other than those referred to in Article 203 unless it is established that those failures have no significant effect on the correct operation of the temporary storage or customs procedure in question.

2. The customs debt shall be incurred either at the moment when the obligation whose non-fulfilment gives rise to the customs debt ceases to be met or at the moment when the goods are placed under the customs procedure concerned where it is established subsequently that a condition governing the placing of the goods under the said procedure or the granting of a reduced or zero rate of import duty by virtue of the end-use of the goods was not in fact fulfilled.

…’

2. Directive 2006/112/EC (7)

7.

In accordance with Article 2(1)(d), ‘the importation of goods’ is subject to VAT.

8.

Article 30 states:

‘“Importation of goods” shall mean the entry into the Community of goods which are not in free circulation within the meaning of Article 24 of the Treaty.

In addition to the transaction referred to in the first paragraph, the entry into the Community of goods which are in free circulation, coming from a third territory forming part of the customs territory of the Community, shall be regarded as importation of goods.’

9.

Pursuant to Article 60:

‘The place of importation of goods shall be the Member State within whose territory the goods are located when they enter the Community.’

10.

Article 61 provides:

‘By way of derogation from Article 60, where, on entry into the Community, goods which are not in free circulation are placed under one of the arrangements or situations referred to in Article 156, or under temporary importation arrangements with total exemption from import duty, or under external transit arrangements, the place of importation of such goods shall be the Member State within whose territory the goods cease to be covered by those arrangements or situations.

Similarly, where, on entry into the Community, goods which are in free circulation are placed under one of the arrangements or situations referred to in Articles 276 and 277, the place of importation shall be the Member State within whose territory the goods cease to be covered by those arrangements or situations.’

11.

In accordance with Article 71:

‘1. Where, on entry into the Community, goods are placed under one of the arrangements or situations referred to in Articles 156, 276 and 277, or under temporary importation arrangements with total exemption from import duty, or under external transit arrangements, the chargeable event shall occur and VAT shall become chargeable only when the goods cease to be covered by those arrangements or situations.

However, where imported goods are subject to customs duties, to agricultural levies or to charges having equivalent effect established under a common policy, the chargeable event shall occur and VAT shall become chargeable when the chargeable event in respect of those duties occurs and those duties become chargeable.

2. Where imported goods are not subject to any of the duties referred to in the second subparagraph of paragraph 1, Member States shall, as regards the chargeable event and the moment when VAT becomes chargeable, apply the provisions in force governing customs duties.’

12.

Under Article 156(1)(a), Member States may exempt, inter alia other transactions, ‘the supply of goods which are intended to be presented to customs and, where applicable, placed in temporary storage’.

B. National law: Umsatzsteuergesetz (Law on turnover tax) (8)

13.

In accordance with Paragraph 1:

‘(1) The following transactions shall be subject to the tax:

1. the supply of goods and other services for consideration within German territory by an undertaking in the context of its activities.

…

4. the importation of goods into Germany … (import turnover tax);

…’

14.

Pursuant to Paragraph 13, Paragraph 21(2) of the UStG is applicable to import turnover tax.

15.

Paragraph 21(2) provides:

‘The customs rules shall apply by analogy to import turnover tax …’

II. Facts and questions referred for a preliminary ruling

16.

By letter of 23 October 2008, the customs office at Athens airport informed the Hauptzollamt Frankfurt am Main (Principal Customs Office, Frankfurt am Main; ‘the Customs Office’) that, in January 2008, 18 consignments dealt with by Federal Express Corporation Deutsche Niederlassung (‘FedEx’) had been affected by irregularities in connection with the Community transit procedure for air travel. Enquiries revealed that these were goods from Israel, Mexico and the United States, with recipients in Greece.

17.

On 30 November and 1 December 2010, the Customs Office sent FedEx a total of five notices, imposing, in particular, import turnover tax on those consignments.

18.

According to the Customs Office:

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in the case of 14 of those consignments, the goods did not comply with Article 40 of the CCC (presentation to customs) and, therefore, had been introduced into the customs territory of the European Union unlawfully, thereby incurring a customs debt (Article 202 of the CCC). With regard to the import turnover tax, the Customs Office relied on Paragraph 21(2) of the UStG;

–

the remaining 4 consignments had been removed from the place of storage without authorisation and a customs debt as provided for in Article 203 of the CCC had been incurred.

19.

FedEx paid the import turnover tax resulting from the assessment notices received. However, in November 2011, it applied for a refund of that tax, on the ground, inter alia, that the fact that the tax had been collected twice was contrary to EU law.

20.

The Customs Office rejected the application for a refund of the turnover tax. The majority of FedEx’s complaints were also unsuccessful and it brought an action before the Hessisches Finanzgericht (Finance Court, Hesse).

21.

According to that court, the dispute concerns goods which arrived in the EU, initially entering the territory of the Federal Republic of Germany by air and then being transported onwards to Greece from the same airport in another aircraft. It is necessary to determine whether import VAT became chargeable in Germany in circumstances where the introduction of those goods into the European Union infringed provisions of customs law or in circumstances where, although such an infringement was not committed, the goods were later transported onwards to Greece without being placed under the external Community transit procedure.

22.

Against that background, the Hessisches Finanzgericht (Finance Court, Hesse) has referred the following questions for a preliminary ruling:

‘Question 1:

Is importation within the meaning of Articles 2(1)(d) and 30 of Council Directive 2006/112 … subject to the condition that goods which have been introduced into the territory of the European Union must enter the economic network of the European Union, or is the mere risk that the goods introduced may enter the economic network of the European Union sufficient?

If importation is subject to the condition that goods must enter the economic network of the European Union:

Question 2:

Do goods which have been introduced into the territory of the European Union automatically enter the economic network of the European Union in the case where, contrary to customs law, those goods are not placed under an arrangement within the meaning of the first paragraph of Article 61 of the Directive or, although initially placed under such an arrangement, they later cease to be covered by that arrangement on account of conduct contrary to customs law, or is it the case that, in the event of conduct contrary to customs law, entry into the economic network of the European Union is subject to the condition that it may be presumed that, on account of the conduct contrary to customs law, the goods entered the economic network of the European Union in the fiscal territory of the Member State in which the unlawful conduct was committed and may have been consumed or used?’

III. Procedure before the Court of Justice and arguments of the parties

23.

The reference for a preliminary ruling was received at the Registry of the Court of Justice on 16 January 2018.

24.

Written observations were lodged by FedEx, the Greek Government and the Commission. All those parties, together with the representative of the Customs Office, attended the hearing held on 5 December 2018.

25.

FedEx maintains that, following their arrival in Athens, the goods were released for free circulation and consumption after Greek import VAT had been levied on them. In its submission, it can be inferred from the judgment in Wallenborn Transports that, in order to add a VAT debt to a customs debt, it is not sufficient that there is merely a risk that, as a result of the unlawful conduct which gave rise to the customs debt, the goods could have entered the economic network of the Union, since it is for the national court to verify that those goods did not enter that economic network.

26.

FedEx submits that, once a customs debt has been incurred under Article 202(1) or Article 203(1) of the CCC, it is still necessary to examine whether an importation of goods has taken place for the purposes of Article 2(1)(d) of Directive 2006/112. It is not sufficient that the goods have been

introduced into the EU because they must be in free circulation or no longer be covered by one of the arrangements provided for in Article 61 and Article 71(1), first subparagraph, of that directive.

27.

Accordingly, FedEx submits that the answer to the question referred for a preliminary ruling must be that importation is subject to the condition that goods which arrive in the territory of the EU must enter the European Union’s economic network and that, in the event of a breach of the customs legislation, it may be presumed that the goods were introduced into that network via the fiscal territory of the Member State in which the breach was committed.

28.

The Customs Office argues that the goods entered the economic network of the Union in Germany, since that was the Member State in which the breach of customs legislation was committed. Accordingly, VAT is payable in Germany and not in Greece.

29.

The Greek Government proposes that the answer to the first question should be that importation occurs not only with the entry of the goods into the economic network of the Union but also where there is the risk that the goods will enter that network. Therefore, there is no need to answer the second question.

30.

The Commission observes that the goods at issue probably entered the economic network of the Union in Greece, which means that an import VAT debt was incurred. The only uncertainty is where and when that debt was incurred.

31.

The Commission further observes that a customs debt was also incurred in Germany, either because the goods arrived there unlawfully or because they were removed from customs supervision in that Member State. Either of those two situations would give rise to import VAT but only if it is found that the goods entered the economic network of the Union; a mere risk that they might have entered that network is not sufficient for those purposes.

32.

As regards the second question, the Commission states that the referring court must examine whether there is justification for the presumption that the breach of the customs legislation created an import VAT debt in addition to a customs debt, as a result of the entry of the goods into the economic network of the Union.

33.

In the Commission’s submission, if the referring court confirms that the goods left Germany for another Member State, in which they were distributed to their intended recipients, it must be found that they entered the economic network of the Union. If that took place in Germany as a result of infringement of the customs legislation, the import VAT debt will have been incurred in that State. The Commission argues that that circumstance would not alter the fact that VAT must be paid only once and that it is to be borne by the end consumer, which is ensured in the different hypotheses it develops in that regard.

34.

The Commission therefore proposes that the answer to the second question should be that goods may enter the economic network of the Union in the place where and at the time when they are not covered by any customs arrangement or have ceased to be covered by such an arrangement.

IV. Assessment

A. (Partial) admissibility

35.

The referring court relies on an interpretation of Directive 2006/112 pursuant to which an ‘importation of goods’ subject to VAT occurs where goods have been introduced into the territory of the Union without being placed under any of the arrangements or situations referred to in Article 61(1) of that directive or where, although initially placed under such an arrangement or situation, they later ceased to be covered by it.

36.

However, the referring court adds that, in the light of the purpose of VAT and, in particular, certain observations of the Court of Justice in recent judgments, (9) it is open to question whether the mere introduction of goods under those conditions could be construed as ‘importation’. For that purpose, it may be necessary for the goods to have actually entered the European Union’s economic network, without the mere risk that they may have done so being sufficient.

37.

According to the information supplied in the order for reference, the issue in the main proceedings is whether goods which arrived in the European Union, entering the territory of the Federal Republic of Germany by air and then, without leaving Frankfurt am Main airport, being transported onwards, also by air, to Greece, are subject to import VAT in two situations:

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there was a breach of the customs provisions in Germany; or

–

the goods were transported onwards to Greece without being placed under the external Community transit arrangements laid down in the customs legislation. (10)

38.

On that basis, the referring court wishes to know: (a) whether the time when and the place where import VAT becomes chargeable are dependent on the entry of the goods into the European

Union’s economic network and (b) whether a mere risk that the goods may have entered that economic network is sufficient.

39.

However, in its order for reference, the Hessisches Finanzgericht (Finance Court, Hesse) states that the goods did not enter German fiscal territory at any time and were instead transported onwards to Athens, where they were introduced into the economic network of the Union. (11)

40.

If that is how events unfolded, the first question could be regarded as hypothetical and, therefore, inadmissible. (12) Indeed, since it has been established and accepted by the referring court that the goods did not enter the economic network of the Union in Germany but rather in Greece, where they were intended for consumption, it makes no sense to ask whether ‘the mere risk that the goods introduced [into the territory of the European Union] may enter the economic network of the European Union [is] sufficient’.

41.

In the situation described in the order for reference, there was, I repeat, no risk that the goods would enter the economic network of the European Union via Germany. Furthermore, it is categorically stated that it was in Greece where those goods entered that network and were intended for consumption. Since that is the case, I do not think it necessary to rely on a presumption when the fact has already been established, and it is not worth speculating about the risk that it might occur.

42.

Therefore, an abstract question concerning ‘the mere risk that the goods introduced may enter the economic network of the European Union’ should be ruled inadmissible when, in the context of the main proceedings and in the light of the facts which the referring court regards as established, there is, I repeat, no issue of risk but rather a finding that the goods did enter the European Union’s economic network.

43.

The referring court’s first question is, therefore, only of purely hypothetical interest.

44.

In any event, in case the Court of Justice does not share my view, I shall deal with the substance of the first question when, in response to the second question, I analyse the extent to and the conditions under which a simple infringement of the customs legislation can create a presumption that goods have entered the economic network of the Union.

B. The substance

45.

As I stated in the Opinion in Wallenborn Transports, (13)‘the decisive factor as far as the chargeable event for import VAT is concerned is that the goods on which it is charged should be able to form part of the economic network of the European Union and, consequently, be consumed at a later stage’.

46.

I observed on that occasion that the Court confirmed this in the judgment in Eurogate Distribution, in which it held that, in addition to the customs debt incurred as a result of an infringement of the customs legislation, ‘there may also be a requirement to pay VAT where, based on the particular unlawful conduct which gave rise to the customs debt, it can be presumed that the goods entered the economic network of the Union and, consequently, that they may have undergone consumption, that is, the act on which VAT is levied’. (14)

47.

The Court elaborated on that principle in its judgment in Wallenborn Transports. (15)

48.

In both cases, the Court held that, ‘based on the particular unlawful conduct which gave rise to the customs debt’ — that is, based on the specific infringement of the customs legislation at issue in each set of proceedings and its context — the goods at issue could not be found to have entered the economic network of the Union:

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in Eurogate Distribution, that was because, although the obligation to enter the removal of the goods from the customs warehouse in the appropriate stock records had not been fulfilled, it was deemed to have been established that the goods were covered by the customs warehouse procedure until they were re-exported ‘and it is not disputed that there was no risk of them entering the European Union’s economic network;’ (16)

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in Wallenborn Transports, it was because, although the goods had been removed from customs supervision inside a free zone and were no longer in that zone, the referring court considered that it had been established that, before the goods left the free zone with their final destination being a third country, ‘there [was] no distribution through the economic channels of the Member State to whose territory the free zone belongs because, after their removal from customs supervision, the goods initially remained in the free zone and were neither released for consumption nor consumed or used there’. (17)

49.

Admittedly, in Eurogate Distribution, the Court referred to the risk that the goods at issue may have entered the European Union’s economic network. (18)

50.

The referring court appears to interpret that reference as though the decisive factor, for the purposes of establishing whether there was an importation, were to confirm the existence of such a risk. Since it was stated in Wallenborn Transports that the decisive factor was to establish that

the goods had not entered the European Union’s economic network, (19) the referring court identifies a certain contradiction, which leads it to ask whether or not the mere risk of entry into the European Union’s economic network is sufficient for import VAT to be chargeable.

51.

A careful reading of the judgments cited enables even the slightest contradiction between them to be ruled out.

52.

The basic idea has always been that import VAT becomes chargeable when goods enter the economic network of the Union. In that connection, the answer to the first question referred by the national court is not open to doubt: ‘Importation within the meaning of Articles 2(1)(d) and 30 of [the VAT] Directive … [is] subject to the condition that goods which have been introduced into the territory of the European Union must enter the economic network of the European Union’, while ‘the mere risk that the goods introduced may enter the economic network of the European Union [is not] sufficient’.

53.

The entry of goods into the economic network of the European Union may: (a) be established as an event which has actually occurred (physical entry) or (b) merely be presumed. The latter is envisaged by Directive 2006/112 when a number of factors are present (for example, non-compliance with the customs legislation).

54.

In fact, there is a succession of legal presumptions in this area:

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the first is that all goods introduced into the territory of a Member State from a third country are intended for consumption and, therefore, are intended to enter the economic network of the Union. That presumption can be rebutted if the goods are placed under certain arrangements provided for in the customs legislation, such as external transit or customs warehousing;

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the placing of the goods under such arrangements gives rise to a second presumption: in that hypothetical situation, it is assumed (presumed) that, although the goods are physically on the territory of a Member State, they have not entered the European Union and, therefore, cannot be introduced into the European Union’s economic network;

–

the third presumption takes effect when the second no longer applies because the customs legislation which enabled it has been breached. In that situation, the initial presumption could be said to recover its effectiveness (goods which enter the territory of the Union are intended to be introduced into the economic network of the Union) and the circle is closed.

55.

In other words, that is what the judgments in Wallenborn Transports and Eurogate Distribution

state: ‘in addition to the customs debt, there may also be a requirement to pay VAT in the case where, on the basis of the particular unlawful conduct which gave rise to the customs debt, it can be presumed that the goods entered the economic network of the European Union and, consequently, that they may have undergone consumption, that is, the act on which VAT is levied’. (20)

56.

Since the first (goods introduced from a third country enter the European Union’s economic network) and second (goods placed under certain arrangements do not enter that network) presumptions can be rebutted, the third presumption (goods which have infringed the customs legislation enabling the second presumption enter the economic network of the Union) can also be rebutted. None of those three presumptions is irrebuttable (juris et de jure) and instead all can be overturned by evidence to the contrary (juris tantum).

57.

That is precisely what occurred in Wallenborn Transports and Eurogate Distribution: the presumption that goods had entered the economic network of the European Union because the customs legislation had been breached (third presumption) was rebutted because it was established that, despite that breach, the goods had not entered that network:

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in Eurogate Distribution, that was because, despite non-fulfilment of the obligation relating to entry in the stock records, it was possible to establish that the goods were covered by the customs warehousing arrangement until they were re-exported; (21)

–

in Wallenborn Transports, that was because, although the goods were removed from customs supervision, it was established that they remained in the free zone and were not released for free circulation, consumed or used. (22)

58.

The judgment in Eurogate Distribution observed that the ‘goods were covered by the customs warehouse procedure until they were re-exported and it is not disputed that there was no risk of them entering the European Union’s economic network’. (23) As I have pointed out above, that sentence appears to be at the root of the referring court’s uncertainty, and that court interprets it as meaning that it is sufficient to rely on the existence of such a risk to consider it to be established that the goods entered the European Union’s economic network.

59.

In my view, what was meant by that sentence is that, since the goods in those proceedings were covered by the customs warehouse procedure, it was not possible to conclude, in the circumstances described, that, as a result of non-compliance with the customs legislation, the goods had entered the European Union’s economic network. In other words, it was possible for the infringement of customs legislation to be successfully challenged in that case by the argument that the goods had been re-exported and, therefore, had not entered the European Union’s economic network. (24)

60.

Therefore, it is not the case that the mere risk that goods may enter the European Union’s economic network, together with the infringement of a number of customs rules, inevitably results in import VAT being due.

61.

Applying that reasoning to the present dispute, while bearing in mind the account of the facts set out in the order for reference, the breach of customs provisions at Frankfurt am Main airport, where the goods were simply transferred from one aircraft to another bound for Greece, is irrelevant for the purposes of the levying, in Germany, of import VAT (even though a customs debt was incurred, a matter which is not in dispute).

62.

That same breach of procedural obligations would not have enabled import VAT to be assessed, in accordance with the judgment in Wallenborn Transports, if the goods were intended for re-export after being placed under the customs warehousing procedure in Frankfurt am Main airport because their re-export meant that they did not enter the economic network of the Union. I do not see why the opposite should have to occur when, following transit through Frankfurt am Main airport, the destination of the goods was (25) Greece, the country where their entry for economic purposes took place (in other words, the real point of entry to the European Union’s economic network) and where they were later released for consumption.

63.

To put it another way, since it has been established that the goods genuinely did not enter the European Union’s economic network in Germany but rather in Greece, the procedural irregularity which occurred at Frankfurt am Main airport does not by itself provide a sufficient legal basis for import VAT to be levied in Germany.

64.

I therefore agree with the referring court’s interpretation of the judgment in Eurogate Distribution for the purposes of its application to the dispute on which it is required to adjudicate: ‘On that basis, it would have to be concluded in the case at issue that German import turnover tax [VAT] did not become chargeable because neither the unlawful introduction of the goods in question nor their removal from customs supervision caused those goods to enter the European Union’s economic network in German fiscal territory. It is, after all, established that the goods were transported onwards to Athens and were not consumed until after they had arrived there [Greece].’ (26)

65.

That being so, Article 60 of Directive 2006/112 is applicable, meaning that the place of importation of the goods (and, as a corollary, of the levying of VAT) ‘shall be the Member State within whose territory the goods are located when they enter the Community’.

66.

The fact that the referring court has no record that VAT was actually paid in Greece is, as the Commission pointed out at the hearing, another matter. (27) However, in this case, it is not a

question of determining what really happened but rather what should have happened in the light of the provisions of EU law applicable to the case.

67.

What should have happened, in accordance with EU law, is that, since the referring court established that the goods did not enter the European Union’s economic network via Germany, the authorities of that Member State should not have been able to demand payment of import VAT but rather only payment of the debt incurred as a result of the infringement of the customs legislation.

V. Conclusion

68.

In the light of the foregoing considerations, I propose that the Court of Justice declare that the first question referred for a preliminary ruling by the Hessisches Finanzgericht (Finance Court, Hesse, Germany) is inadmissible and give the following answer to the second question:

Article 2(1)(d) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, in conjunction with Articles 30 and 60 of that directive, must be interpreted as meaning that:

–

the importation of goods means that goods have entered the economic network of the European Union and it must be presumed that the goods entered that network in the Member State in which they ceased to be covered by one of the arrangements referred to in the first paragraph of Article 61 of Directive 2006/112;

–

in circumstances like those at issue in these proceedings, the national court may consider that presumption to be rebutted if it is established that, despite the infringement of the customs legislation governing the arrangements referred to in the first paragraph of Article 61 of Directive 2006/112 — and the incurrence, as a result, of a customs debt in the Member State in which the infringement was committed — the goods were introduced into the European Union’s economic network via the territory of another Member State, where they were intended for consumption, in which case VAT should be payable in the latter Member State.

(1) Original language: Spanish.

(2) Judgment of 2 June 2016, C?226/14 and C?228/14, EU:C:2016:405; ‘judgment in Eurogate Distribution’.

(3) Judgment of 1 June 2017, C?571/15, EU:C:2017:417; ‘judgment in Wallenborn Transports’.

(4) Cases C?226/14 and C?228/14, EU:C:2016:1.

(5) Case C?480/12, EU:C:2014:329.

(6) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1); ‘CCC’.

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

(8) Law of 21 February 2005 (BGBl. 2005 I, p. 386), in the version applicable to the facts; ‘UStG’.

(9) Specifically, the judgments in Eurogate Distribution and Wallenborn Transports; the judgment of 15 May 2014, X, C?480/12 (EU:C:2014:329); and the judgment of 18 May 2017, Latvijas Dzelzce?š (C?154/16, EU:C:2017:392).

(10) Paragraph I, first subparagraph, of the order for reference.

(11) Paragraph II, number 2(b), second subparagraph, of the order for reference.

(12) The hypothetical nature of the question is one of the reasons, in addition to the irrelevance of the reference in relation to the subject matter of the main proceedings and insufficient factual and legal material necessary to give a useful answer, which can overturn the presumption of relevance of questions referred for a preliminary ruling. See judgments of 16 June 2015, Gauweiler and Others, C?62/14, EU:C:2015:400, paragraphs 24 and 25; of 4 May 2016, Pillbox 38, C?477/14, EU:C:2016:324, paragraphs 15 and 16; of 5 July 2016, Ognyanov, C?614/14, EU:C:2016:514, paragraph 19; of 15 November 2016, Ullens de Schooten, C?268/15, EU:C:2016:874, paragraph 54; of 28 March 2017, Rosneft, C?72/15, EU:C:2017:236, paragraphs 50 and 155; and of 10 July 2018, Jehovan todistajat, C?25/17, EU:C:2018:551, paragraph 31.

(13) Case C?571/15, EU:C:2016:944, point 67.

(14) Judgment in Eurogate Distribution, paragraph 65.

(15) Judgment in Wallenborn Transports, paragraph 54.

(16) Judgment in Eurogate Distribution, paragraph 65.

(17) That situation is referred to in the judgment in Wallenborn Transports, paragraph 56.

(18) Judgment in Eurogate Distribution, paragraph 65.

(19) In the words of the Court of Justice, ‘where, in circumstances such as those of the case in the main proceedings, … it transpires that the goods concerned did not enter the economic network of the European Union … no import VAT can be payable’ (judgment in Wallenborn Transports, paragraph 57).

(20) Judgment in Wallenborn Transports, paragraph 56. Italics added.

(21) Judgment in Eurogate Distribution, paragraph 65.

(22) Judgment in Wallenborn Transports, paragraph 56.

(23) Judgment in Eurogate Distribution, paragraph 65. Italics added.

(24) On that occasion, the Court found that the non-fulfilment of a specific customs obligation (entry of goods in the stock records) did not mean, in the circumstances of the case, that the goods had entered the EU’s economic network because it had been established that they were ultimately re-exported.

(25) According to the order for reference, in some cases, before being transported to Athens, the

goods were placed under an external transit procedure at Paris airport, from where they were sent to Frankfurt am Main.

(26) Paragraph II. 3(b)(cc), fourth subparagraph, of the order for reference.

(27) FedEx was unable to furnish the referring court with documentary proof of payment of Greek VAT, which it attributes to the time elapsed since the goods were delivered in Greece (2007 and 2008).