

JUDGMENT OF THE COURT (Fifth Chamber)  
14 July 1988 \*

In Joined Cases 123 and 330/87

REFERENCES to the Court under Article 177 of the EEC Treaty by the tribunal de première instance (Court of First Instance), Brussels, for a preliminary ruling in proceedings pending before that court between

**Léa Jorion, née Jeunehomme,**

and

**Société anonyme d'étude et de gestion immobilière (EGI)**

and

**Belgian State**

on the interpretation of Articles 18 (1) (a) and 22 (3) (a) and (b) of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment,

THE COURT (Fifth Chamber)

composed of: G. Bosco, President of the Fifth Chamber, J. C. Moitinho de Almeida (President of a Chamber), U. Everling, Y. Galmot and R. Joliet, Judges,

Advocate General: Sir Gordon Slynn  
Registrar: B. Pastor, Administrator

\* Language of the Case: French.

after considering the observations submitted in Case 123/87 on behalf of:

Mrs Jorion, the plaintiff in the main proceedings, by J. P. Davreux and G. Van Fraeyenhoven of the Brussels Bar,

the Government of the Kingdom of Belgium, by H. De Belder, Director of European Affairs at the Ministry of Foreign Affairs, Foreign Trade and Cooperation with Developing Countries,

the Government of the Federal Republic of Germany, by M. Seidel and D. Knopp, of the Federal Ministry of Economic Affairs,

the Government of the Kingdom of Spain, by M. F. J. Conde de Saro and R. Garcia-Valdecasas Fernández, of the Ministry of Foreign Affairs,

the Commission of the European Communities, by its Legal Adviser J. F. Buhl and by D. Calleja, a member of its Legal Department, acting as Agent,

in Case 330/87, on behalf of:

EGI, the plaintiff in the main proceedings, by G. Van Fraeyenhoven, of the Brussels Bar,

the Government of the Kingdom of Belgium, by J. Dussart, Inspector-General at the Ministry of Finance, acting as Agent, assisted by K. Lenaerts, of the Brussels Bar,

the Government of Portugal, by M. L. I. Fernandes and A. Correia, of the Ministry of Foreign Affairs,

the Government of the Kingdom of Spain, by M. F. J. Conde de Saro and R. Garcia-Valdecasas Fernández, of the Ministry of Foreign Affairs,

the Commission of the European Communities, by its Legal Adviser J. F. Buhl and by D. Calleja, a member of its Legal Department, acting as Agent,

having regard to the Report for the Hearing and further to the hearing on 8 March 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on 31 May 1988,

gives the following

### Judgment

- 1 By judgments of 6 April and 16 October 1987, which were received at the Court on 9 April and 20 October 1987 respectively, the tribunal de première instance, Brussels, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Articles 18 (1) (a) and 22 (3) (a) and (b) of the Sixth Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment (Official Journal 1977, L 145, p. 1) (hereinafter referred to as 'the Sixth Directive').
- 2 These questions were raised in the course of two actions against the Belgian State, by Léa Jorion, née Jeunehomme, a dealer in second-hand cars (Case 123/87), and by EGI (Case 330/87).
- 3 In the first case, Mrs Jorion seeks the annulment of four demands for payment issued to her by the Belgian State claiming reimbursement of certain amounts of value-added tax which it alleges she wrongfully deducted, contrary to the legal provisions in force and in particular those relating to the information which must be contained in invoices; she also seeks the return of property seized in execution of those demands.

- 4 The deductions in question related to the acquisition of second-hand cars in respect of which the invoices issued by the supplier contained, according to the Belgian tax authorities, certain irregularities. The serial number in the sales ledger was omitted, fictitious addresses and deleted VAT registration numbers were indicated, different signatures appeared in respect of the same name and the vehicles sold were inadequately identified.
- 5 In the second case, EGI essentially seeks the annulment of a demand for reimbursement of certain amounts of value-added tax allegedly deducted in breach of the legal provisions in force relating to the information which must be contained in invoices and reimbursement of the tax credit to which it is entitled; it also seeks interest on the outstanding amounts and damages of BFR 25 000 for vexatious and frivolous litigation.
- 6 The deductions in question relate to goods and services supplied to EGI by two undertakings, Cotradec and Salegno. According to the Belgian tax authorities, the invoices issued by Cotradec do not contain the VAT registration number of the supplier, do not mention the date on which the goods were supplied or the services completed and do not give sufficient details of the business or corporate name of the taxable person. The description of the goods and services is totally inadequate in all the invoices in question.
- 7 By virtue of Article 2 of Royal Decree No 1 of 23 July 1969 on measures to ensure payment of VAT, the specific items which must appear on invoices are as follows:

the date on which the invoice is issued;

its serial number in the trader's sales ledger (which must appear not only on the duplicate of the invoice but above all on the original issued to the customer);

the identity of the supplier of the goods or services and of the customer (name and address of the persons concerned);

the date of delivery of the goods or completion of the services;

the usual designation and quantity of goods supplied or the nature of the services, specifying the details required to establish the applicable rate of VAT;

the price of the goods or services and the other components of the taxable amount;

the VAT rate applicable;

the total amount of VAT charged;

a statement of the grounds for exemption, where the transaction invoiced is not subject to VAT.

- 8 As regards motor cars, Article 4 of Royal Decree No 17 of 20 July 1970 on the establishment of a minimum taxable amount for VAT on motor vehicles provides that invoices and all other documents relating to the delivery within the country or the importation of a motor car must contain the information needed in order to establish catalogue prices, the identification of the type of vehicle and its fittings and accessories. These details include in particular the make, model, year, cylinder capacity and horse-power of the engine, bodywork model, chassis number and the year of the registration of the car delivered within the country or imported.
- 9 The tribunal de première instance, Brussels, points to the practice of the Belgian tax authorities whereby, in case of doubt, the invoice does not exempt the taxable person from proving that the conditions conferring the right to deduct are satisfied. As regards invoices which are irregular as to form, the deduction is allowed when the genuine nature of the transaction is not open to doubt.

- 10 The tribunal considered that the requirement laid down by Belgian law of including certain details on invoices in addition to those provided for in Article 22 (3) (b) of the Sixth Directive raised a question as to the compatibility of that law with the Sixth Directive; it therefore referred to the Court two preliminary questions worded as follows:

Case 123/87:

‘Do Articles 18 (1) (a) and 22 (3) (a) and (b) of the Sixth Directive permit the Belgian State to make the exercise of the right to deduction subject to the holding of a document which must contain not only the information normally contained in an invoice as traditionally defined in commercial law but also other information unconnected with the nature, essence and purpose of a commercial invoice, namely that specified in Article 2 of Royal Decree No 1 of 23 July 1969 adopted in implementation of the Belgian VAT code?’

Case 330/87:

‘Do Articles 18 (1) (a) and 22 (3) (a) and (b) of the Sixth Directive permit the Belgian State to make the exercise of the right to deduction subject to the holding of a document which must contain not only the information normally included in an invoice as traditionally defined in commercial law but also other information unconnected with the nature, essence and purpose of a commercial invoice, namely that specified in Article 2 of Royal Decree No 1 of 23 July 1969 adopted in implementation of the Belgian VAT code, where such additional information is purely technical in nature and is designed to facilitate supervision of the collection of the tax on the basis of the accounts of another taxable person with whom the person in question has concluded a contract.’

- 11 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

- 12 By its questions the national court essentially seeks to determine whether Articles 18 (1) (a) and 22 (3) (a) and (b) of the Sixth Directive allow Member States to make the exercise of the right to deduction subject to possession of an invoice which must contain certain particulars intended to ensure the application of value-added tax and permit supervision by the tax authorities.
- 13 First of all, as the Court underlined in particular in its judgment of 5 May 1982 in Case 15/81 (*Schul v Inspecteur der Invoerrechten en Accijnzen* [1982] ECR 1409), one of the basic features of the VAT system is that VAT is chargeable on each transaction only after deduction of the amount of VAT borne directly by the cost of the various components of the price of goods and services and that the deduction procedure is arranged in such a way that only taxable persons are authorized to deduct from the VAT for which they are liable the VAT which the goods and services have already borne.
- 14 In order to be entitled to deduct the value-added tax payable or paid in respect of goods delivered or to be delivered or services supplied or to be supplied by another taxable person, a taxable person must hold an invoice drawn up in accordance with Article 22 (3) of the Sixth Directive (Article 18 (1) (a)). Under that provision, the invoice must state clearly the price exclusive of tax and the corresponding tax at each rate as well as any exemptions (subparagraph (b)) and the Member States are to determine the criteria for considering whether a document serves as an invoice (subparagraph (c)).
- 15 Furthermore, Article 22 (8) of the Sixth Directive provides that '... Member States may impose other obligations which they deem necessary for the correct levying and collection of the tax and for the prevention of fraud'. In doing so, Member States are not required to use the procedure laid down in Article 27 of the Directive. Article 22 (8) is a special provision limited to the specific area of taxpayers' obligations and only relates to the right of Member States to lay down obligations other than those provided for in the Directive.

- 16 It follows from the foregoing that as regards the exercise of the right to deduction in the circumstances set out above, which are those of this case, the Sixth Directive does no more than require an invoice containing certain information. Member States may provide for the inclusion of additional information to ensure the correct levying of value-added tax and permit supervision by the tax authorities.
- 17 However, the requirement on the invoice of particulars other than those set out in Article 22 (3) (b) of the Sixth Directive, as a condition for the exercise of the right to deduction, must be limited to what is necessary to ensure the correct levying of value-added tax and permit supervision by the tax authorities. Moreover, such particulars must not, by reason of their number or technical nature, render the exercise of the right to deduction practically impossible or excessively difficult.
- 18 The reply to the questions of the national court should therefore be that Articles 18 (1) (a) and 22 (3) (a) and (b) of the Sixth Council Directive (77/388/EEC) of 17 May 1977 allow Member States to make the exercise of the right to deduction subject to the holding of an invoice which must contain certain particulars which are necessary in order to ensure the levying of value-added tax and permit supervision by the tax authorities. Such particulars must not, by reason of their number or technical nature, render the exercise of the right of deduction practically impossible or excessively difficult.
- 19 It is for the national court to determine whether or not the particulars required by the Belgian legislation are in compliance with the criteria set out above.

### Costs

- 20 The costs incurred by the German, Belgian, Spanish and Portuguese Governments and by the Commission of the European Communities, which submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the actions pending before the national court, the decision on costs is a matter for that court.



On those grounds,

THE COURT (Fifth Chamber)

in answer to the questions referred to it by the tribunal de première instance, Brussels, by judgments of 6 April and 16 October 1987, hereby rules:

Articles 18 (1) (a) and 22 (3) (a) and (b) of the Sixth Council Directive (77/388/EEC) of 17 May 1977 allow Member States to make the exercise of the right to deduction subject to the holding of an invoice which must contain certain particulars which are necessary in order to ensure the levying of value-added tax and permit supervision by the tax authorities. Such particulars must not, by reason of their number or technical nature, render the exercise of the right to deduction practically impossible or excessively difficult.

Bosco

Moitinho de Almeida

Everling

Galmot

Joliet

Delivered in open court in Luxembourg on 14 July 1988.

J.-G. Giraud

Registrar

G. Bosco

President of the Fifth Chamber