Case C-726/23

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

28 November 2023

Referring court:

Curtea de Apel București (Romania)

Date of the decision to refer:

16 September 2021

Applicant and appellant:

SC Arcomet Towercranes SRL

Defendants and respondents:

Direcția Generală Regională a Finanțelor Publice București

Administrația Fiscală pentru Contribuabili Mijlocii București

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Subject matter of the main proceedings

Appeal against the judgment of the Tribunalul București (Regional Court, Bucharest, Romania) dismissing the action brought by SC Arcomet Towercranes SRL ('the appellant') concerning the partial annulment of the decision to dismiss the claim lodged against the tax assessment notice in the amount of 437 705 Romanian lei (RON) by way of additional value added tax ('VAT') owed and the amount of RON 222 917 by way of ancillary charges (late payment interest and penalties), and for the partial annulment of the tax assessment notice of those tax obligations and of the tax inspection report on which the tax assessment notice was based. The appellant also seeks exemption from payment of the two amounts at issue, recognition of the right to reimbursement of the sum of RON 84 973 and actual reimbursement of that amount.

Subject matter and legal basis of the request

Pursuant to Article 267 TFEU, the interpretation is sought of Articles 2(1)(c), 168 and 178 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

Questions referred for a preliminary ruling

(1) Is Article 2(1)(c) of Council Directive 2006/112/EC on the common system of value added tax to be interpreted as meaning that the amount invoiced by a company (the principal company) to an associated company (the operating company), equal to the amount necessary to align the operating company's profit with the activities carried out and the risks assumed in accordance with the margin method of the OECD Transfer Pricing Guidelines, constitutes a payment for a service which therefore falls within the scope of VAT?

(2) If the answer to the first question is in the affirmative, with regard to the interpretation of Articles 168 and 178 of Council Directive 2006/112/EC on the common system of value added tax, are the tax authorities entitled to require, in addition to the invoice, documents (for example, activity reports, [works] progress reports, and so forth) justifying the use of the services purchased for the purposes of the taxable person's taxable transactions, or must that analysis of the right to deduct VAT be based solely on the direct link between purchase and supply or [between purchase and] the taxable person's economic activity as a whole?

Provisions of European Union law relied on

Charter of Fundamental Rights of the European Union ('the Charter'): Article 41(1) and (2)(a)

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ('the VAT Directive'): Articles 2(1)(c), 168 and 178

European Union case-law relied on

Judgment of 14 February 1985, *Rompelman* v *Minister van Financiën*, C-268/83, ECLI:EU:C:1985:74, paragraph 24; judgment of 29 February 1996, *Inzo* v *Belgische Staat*, C-110/94, ECLI:EU:C:1996:67, paragraphs 23 and 24; judgment of 5 December 1996, *Reisdorf* v *Finanzamt Köln-West*, C-85/95, ECLI:EU:C:1996:466, paragraphs 19, 26 and 29; judgment of 18 December 1997, *Garage Molenheide and Others* v *Belgische Staat*, C-286/94, C-340/95, C-401/95 and C-47/96, ECLI:EU:C:1996:623, paragraph 48; judgment of 8 February 2007, *Investrand*, C-435/05, ECLI:EU:C:2007:87, paragraphs 22 to 24; judgment of 6 September 2012, *Portugal Telecom*, C-496/11, ECLI:EU:C:2012:557, paragraphs 33, 34, 48 and 49; judgment of 6 December 2012, *Bonik*,

ECLI:EU:C:2012:774, paragraphs 25–27 and 29; judgment of 21 February 2013, *Becker*, C-104/12, ECLI:EU:C:2013:99, paragraph 19; judgment of 3 September 2014, *GMAC UK*, C-589/12, ECLI:EU:C:2014:2131, paragraph 29; judgment of 9 July 2015, *Salomie and Oltean*, C-183/14, ECLI:EU:C:2015:454, paragraph 59; judgment of 22 October 2015, *PPUH Stehcemp*, C-277/14, ECLI:EU:C:2015:719, paragraphs 26–29.

Provisions of national law relied on

Legea nr. 571/2003 privind Codul fiscal (Law No 571/2003 establishing the Tax Code) ('the Tax Code'):

– Article 11 provides that, when establishing the amount of a tax, levy or mandatory social security contribution, the tax authorities may disregard a transaction that has no economic purpose and alter the fiscal effects of such a transaction and may reclassify the form of a transaction or activity so as to reflect the economic content of the transaction or activity (principle of prevalence of the economic factor over the legal factor);

– Article 19(5) provides, first, that transactions between related entities are carried out according to the arm's length market price principle and under specified or imposed conditions which must not be different from commercial or financial relationships established between independent enterprises and, second, that transfer pricing principles are taken into account in determining the profits of associated entities;

– Article 126 provides that taxable transactions are those which constitute or are treated as a supply of goods or services, which are subject to tax, effected for consideration, and sets out the cumulative conditions for a transaction to be regarded as taxable;

– pursuant to Article 129, 'supply of services' means any transaction which does not constitute a supply of goods;

– Article 145(2) provides for the right of a taxable person to deduct tax on purchases if they are made for the purposes of certain transactions, including, under point (a), 'taxable transactions';

– Article 146(1) provides, inter alia, that in order to exercise the right to deduct the tax due or paid in respect of goods supplied or to be supplied to it, or in respect of services supplied or to be supplied to it, the taxable person must be in possession of an invoice issued in accordance with Article 155;

– Article 150 essentially provides that the person liable to pay the tax is the person to whom the services are supplied when they are supplied in Romania, including where they are supplied by a taxable person who is not established in Romania;

Normele metodologice de aplicare a Legii nr. 571/2003 privind Codul fiscal, aprobate prin Hotărârea nr. 44/2004 a Guvernului (Implementing rules for Law No 571/2003 establishing the Tax Code, approved by Government Decision No 44/2004) ('the implementing rules'):

– point 2, paragraph (2) in conjunction with Article 126 of the Tax Code:

'Pursuant to Article 126(1)(a) of the Tax Code, a supply of goods and/or services must be made for consideration. The 'consideration' condition implies the existence of a direct link between the transaction and the consideration obtained. A transaction is taxable where it confers a benefit on the customer and the consideration obtained is linked to the benefit received, as follows:

(a) the condition relating to the existence of a benefit for a customer is met where the supplier of goods or services undertakes to provide specific goods and/or services to the person making the payment or, failing payment, where the transaction has been made to enable such an undertaking to be entered into. That condition is consistent with services being collective, not admitting of precise measurement or being attributable to a legal obligation;

(b) the condition relating to the existence of a link between the transaction and the consideration obtained is met even if the price does not reflect the normal value of the transaction, that is, it takes the form of contributions, goods or services, or price discounts, or is not paid directly by the recipient but by a third party'.

– Paragraph 41, in conjunction with Article 11 of the Tax Code, specifies that, for the purposes of applying transfer pricing rules, the Romanian tax authorities must take into account the principles set out in the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations of the Organisation for Economic Co-operation and Development ('the OECD Guidelines'). According to paragraph 4.38 of the OECD Guidelines, 'compensating adjustments' may be made: this refers to an adjustment in the context in which the taxpayer declares for tax purposes a transfer price which, in its view, is in line with the arm's length principle, even if that price is different from the price actually paid between associated enterprises.

Ordonanța Guvernului nr. 92/2003 din 24 decembrie 2003 privind Codul de procedură fiscală (Government Order No 92/2003 of 24 December 2003 establishing the Tax Procedure Code) ('the Tax Procedure Code'):

– Article 6 provides that the tax authority is entitled to assess, within the limits of its powers and competences, the relevance of facts of a fiscal nature and to adopt a solution based on comprehensive findings relating to all the illuminating circumstances of the case;

– Article 64 provides that the taxpayer's supporting documents and accounts are to constitute proof that the taxable amount has been established; other supporting documents, if any, will also be taken into account on that occasion;

– in accordance with Article 65, it is for the taxpayer to prove the acts and facts that were the basis for its returns and any request made to the tax authority [paragraph (1)], and it is for the tax authority to give reasons for the tax assessment with its own evidence or findings [paragraph (2)];

– Article 107 provides for the right of the taxpayer to be informed during the tax inspection and for the opportunity to set out its point of view on the tax authority's findings and their tax consequences;

– Article 109 governs the conditions for drawing up the tax inspection report and the effects of it, on the basis of which the tax assessment notice is issued in respect of deviations from the tax obligations relating to the periods under inspection.

Succinct presentation of the facts and procedure in the main proceedings

1 The appellant is part of the Arcomet group, an independent global group in the crane rental sector. Within the group, the appellant buys or rents cranes which it then sells or rents to customers. The group's parent company, Arcomet Service NV, which is a Belgian company ('Arcomet Belgium'), seeks suppliers for the Romanian company (as well as for the other group companies) and negotiates contractual terms with these suppliers. The contractual relationship with suppliers and end customers is then entered into by the appellant.

2 In December 2010, Deloitte Belastingconsulenten (a Belgian company) carried out a transfer pricing study for Arcomet Belgium concerning its relationship with associated entities, including the appellant. As a result of the comparability analysis detailed in the study, it was assessed that the financial result (operating profit margin) at market level that the associated entities (including the appellant) should record, in accordance with the transfer pricing rules, is between – 0.71% and 2.74%.

3 In Romania, the findings of the study were incorporated into a contract entered into on 24 January 2012 between Arcomet Belgium and the appellant, by which the parties assumed the responsibilities and risks for selling/purchasing and renting cranes. That contract was to apply to commercial relationships entered into from 1 January 2011.

4 Article 3 of the contract at issue establishes the responsibilities of the appellant (referred to as the 'operating company') in order to determine the local strategy for achieving maximum occupancy of the crane fleet and maximising the prices offered to customers, which it will transfer to its parent company Arcomet Belgium (referred to as the 'principal').

5 Article 4 of the contract provides for the responsibilities of the principal:

– the operational fulfilment of the commercial responsibilities, consisting of strategy and planning, negotiating (framework) contracts with third-party suppliers, negotiating the terms and conditions of financing contracts, engineering, finance, [crane] fleet management at central level and quality and safety management;

– the assumption by the latter of the biggest economic risks with regard to the activity of the operating company, provided that it complies with the instructions, procedures and decisions of the principal in that regard.

6 The contract provided, in accordance with the findings of the December 2010 study, that the appellant would be guaranteed an operating profit margin of between – 0.71% and 2.74%. To that end, Article 5 of the contract of 24 January 2012 governed the remuneration of the parties and Annex 3 to the contract laid down the following rules:

– at the end of the year, it would be verified whether the operating company had a profit before tax margin (PBTM) of between – 0.71% and + 2.74%;

– if the operating company's PBTM was less than – 0.71%, the operating company would issue an invoice to the principal for the difference between the net profit before tax (NPBT) and a PBTM of – 0.71%;

– if the operating company's PBTM was more than or equal to – 0.71% but less than + 2.74%, neither party was entitled to remuneration;

– if the operating company's PBTM was over + 2.74%, the principal would issue an invoice to the operating company for the difference between the NPBT obtained and a PBTM of 2.74%.

– The calculation of the PBTM obtained in accordance with the arm's length principle, of – 0.71% and 2.74% for each financial year, was to be discussed and agreed between the parties on the basis of provisional financial statements and, where appropriate, subsequently adjusted on the basis of audited and approved financial statements.

7 The contract provided for an equalisation invoice to be issued each year, in order to release the parties from their reciprocal obligations, as follows:

– the appellant in respect of Arcomet Belgium to cover the surplus of losses below the margin of – 0.71%, or

– Arcomet Belgium in respect of the appellant to recover the surplus profit obtained above the margin of 2.74%.

8 In 2011, 2012 and 2013, the appellant recorded a surplus profit in respect of which it received from Arcomet Belgium three equalisation invoices, without VAT, for the amounts of EUR 250 937.77 (RON 1 081 868) (‘invoice 1’), EUR 162 076.24 (RON 741 905) (‘invoice 2’) and EUR 281 769.66 (RON 1 252 128) (‘invoice 3’).

9 In the return submitted to the Belgian tax authorities, Arcomet Belgium initially indicated those three invoices as relating to intra-Community supplies of goods. Then, in 2015, Arcomet Belgium corrected the information in the initial return, and the Belgian tax authorities considered that the ‘equalisation’ invoices related to supplies of services.

10 In turn, in its own tax return, the appellant indicated invoices 1 and 2 issued in 2012 as relating to intra-Community purchases of services, in respect of which it applied the reverse charge mechanism. The appellant did not mention invoice 3, issued in 2013, since it considered that it related to transactions outside the scope of VAT.

11 Between 28 January 2015 and 7 July 2015, the appellant was the subject of a tax inspection; the period under consideration ran from 1 January 2011 to 31 December 2014. The inspection concerned the settlement of the VAT returns with negative amounts and the reimbursement option, by which the appellant requested a reimbursement of RON 84 973.

12 The tax inspectors concluded in their report that the abovementioned equalisation invoices related to management services acquired by the appellant from Arcomet Belgium and requested, in that regard, the production of supporting documents attesting that the services had actually been provided and that they were necessary for the purposes of the appellant’s taxable transactions.

13 In addition, the tax inspectors exchanged information with the Belgian tax authorities concerning the declaration of the equalisation invoices in the VIES, as a result of which the Belgian tax authorities considered that Arcomet Belgium had declared the equalisation invoices as being issued for a supply of services.

14 As regards invoices 1 and 2, for which the reverse charge procedure was applied, the tax inspectors denied the right to deduct the VAT relating to those invoices, but retained the VAT collected (both [invoices had been] registered under the reverse charge mechanism), on the ground that the supply of services and the need to carry them out for the purposes of taxable transactions had not been justified.

15 As regards invoice 3, the tax inspectors took the view that it also related to a purchase of intra-Community services from Arcomet Belgium and collected additional VAT, without granting the right to deduct the VAT relating to that invoice; they relied on the same ground, namely the failure to produce documents justifying the supply of the services and the need to carry them out for the purposes of taxable transactions.

16 On the basis of the tax inspection report, the tax assessment notice required the appellant to pay a tax debt in respect of additional VAT in the amount of RON 738 216, to which ancillary charges (interest and administrative fines) in the amount of RON 341 708 were added. The additional difference in VAT retained following the tax inspection, amounting to RON 738 216, consists of:

1. RON 437 705 in respect of non-deductible VAT, consisting of:

– RON 259 648 in respect of the VAT relating to invoice 1, for which the tax inspectors denied the right to deduct VAT;

– RON 178 057 in respect of VAT relating to invoice 2, for which the tax inspectors denied the right to deduct VAT.

(ii) RON 300 511 in respect of the additional VAT collected following the issuance of invoice 3, for which the tax inspectors collected the additional VAT.

17 The appellant lodged an administrative appeal against the tax inspection report and the tax assessment notice. That administrative appeal was dismissed as unfounded and unsubstantiated by documents concerning the amount of RON 437 705 in respect of VAT and the amount of RON 222 917 (in respect of late payment interest and penalties).

18 The appellant brought a direct action for the annulment of the tax assessment notice before the Regional Court, Bucharest, relying on the following grounds:

– the tax inspection report did not comply with the formal requirements laid down by law and the appellant's rights of defence were infringed;

– the activities carried out and the risks assumed by Arcomet Belgium in connection with the appellant's activity do not fall within the scope of VAT;

– assuming the existence of a service falling within the scope of VAT, the right to deduct VAT relating to the activities carried out by the appellant was unlawfully denied;

– the tax authorities misinterpreted and misapplied the reverse charge mechanism.

19 As part of its action, the appellant also submitted a request that a preliminary ruling be lodged with the Court of Justice regarding the interpretation of Articles 2(1)(c), 168 and 178 of the VAT Directive in relation to the factual and legal situation of the present proceedings.

20 The Regional Court, Bucharest dismissed the appellant's action as unfounded for the following reasons.

21 As regards the ground based on the failure, in the tax inspection report, to comply with the formal requirements laid down by law and the infringement of the rights

of defence, that court held that the alleged irregularity, consisting of the inadequacy of the reasoning of the tax inspection body as regards the appellant's point of view on the findings of the tax inspection, could lead to the annulment of the tax assessment notice only if the appellant proved that it had suffered damage which could not be remedied in some other way; however, in the present case, the appellant has not proven the existence of such damage.

22 As regards the ground based on the fact that the activities carried out and the risks assumed by Arcomet Belgium in connection with the activity in Romania did not fall within the scope of VAT, that court referred to the provision in point 2, paragraph (2) of the implementing rules and rejected the argument that there was no clearly identifiable service provided by Arcomet Belgium, but only participation by Arcomet Belgium in all the economic transactions carried out by Arcomet in Romania.

23 As regards the ground based on the right to deduct VAT relating to the activities carried out by the appellant, if those activities were to constitute services falling within the scope of VAT, that court held, on the basis of the case-law of the Court of Justice, that the exercise of the right to deduct VAT is subject to the substantive requirement that the goods or services relied on to justify the right at issue must be used by the taxable person for the purposes of its taxable output transactions. As regards the formal requirements, these also include the requirement that the taxable person be in possession of an invoice drawn up in accordance with the legal provisions.

24 Consequently, the taxable person is required not only to be in possession of the invoice showing the allegedly deductible VAT, but also to prove that the invoiced goods/services were actually supplied and for the purposes of its taxable transactions. The use of the expression 'made for the purposes […]' in the wording of Article 145(2)(a) of the Tax Code means that the goods/services for which the tax, in respect of which deduction is sought, was paid must be liable to produce an advantage regarding the transactions which are the subject of the activity of the taxable person claiming the deduction of VAT.

25 Lastly, as regards the ground based on the misinterpretation and misapplication of the reverse charge mechanism, that court held that the appellant had not been able to prove, for the purposes of recognising its right to deduct VAT, the need for the purchases for the purposes of its taxable transactions, with the result that the reverse charge mechanism was not applicable.

26 The appellant brought an appeal against the judgment of the Regional Court, Bucharest before the referring court, the Curtea de Apel București (Court of Appeal, Bucharest).

The essential arguments of the parties in the main proceedings

27 In its appeal, the appellant makes a series of criticisms of the judgment of the Regional Court, Bucharest, which concern the following aspects:

– that court misinterpreted the provisions of Article 126(1) and Article 129(1) of the Tax Code because the activities carried out and the risks assumed by Arcomet Belgium in connection with the activity in Romania do not fall within the scope of VAT;

– if the services were considered to fall within the scope of VAT, that court misinterpreted the provisions of Article 145(2) of the Tax Code with regard to the right to deduct VAT in relation to the activities carried out by the appellant;

– the formal requirement for the deduction of VAT was met because the equalisation invoices issued by Arcomet Belgium contain all the elements provided for by the Tax Code and were therefore validly issued;

– the appellant made available to the tax inspectors sufficient supporting documents to attest to the assumption of risks and the performance of duties by Arcomet Belgium in connection with the activity in Romania, in accordance with the provisions of the contract;

– if it were considered that the [financial] profit and loss adjustments described were related to a supply of services, the treatment of the relevant VAT would assume that the equalisation invoices of the appellant had been registered as relating to intra-Community purchases of services, taxable in Romania, for which the reverse charge mechanism should be applied.

28 In the appeal proceedings, the appellant reiterates its request for a preliminary ruling with a series of questions, only two of which have been upheld by the referring court, which has reformulated them and referred them to the Court of Justice.

29 The tax authorities, as the defendants at first instance in the main proceedings, mainly submit observations on the appellant’s questions.

30 As regards the first question, they submit that the appellant’s reliance on transfer pricing rules cannot be taken into consideration, since the provisions of those rules apply only to the correction of revenue or expenditure. Furthermore, the Code of Conduct on transfer pricing documentation (OJ 2006 C 176, p. 1) provides that it applies only in situations where local law is unclear. However, in Romania, there is special legislation regarding the content of transfer pricing documentation. On the other hand, the transfer pricing documentation was drawn up for Arcomet Belgium, since the Belgian legislation on the basis of which this documentation was drawn up cannot be applied to the appellant.

31 With regard to the second question referred for a preliminary ruling, the tax authorities state, on the basis of the case-law of the Court of Justice (judgment of 21 March 2000, *Gabalfrisa and Others*, C-110/98–C-147/98, ECLI:EU:C:2000:145, paragraph 46, which refers to paragraphs 23 and 24 of the judgment of 29 February 1996, *Inzo* v *Belgische Staat*, C-110/94, ECLI:EU:C:1996:67 and paragraph 24 of the judgment of 14 February 1985, *Rompelman* v *Minister van Financiën*, C-268/83, ECLI:EU:C:1985:74), it is for the person applying to deduct VAT to prove that the conditions for deduction have been met, and the relevant provisions in that regard (Article 4 of the Sixth Council Directive 77/388/EEC of 17 May 1977), which have been incorporated into the VAT Directive, do not preclude the tax authorities from requiring objective evidence in support of the declared intention of the person concerned to commence economic activities which will give rise to taxable transactions.

32 According to the tax authorities, taxable persons are entitled to deduct VAT on purchases of goods and services only if two cumulative conditions are met, namely that the purchases have been made for the purposes of taxable transactions and that they are based on invoices which must contain all the information necessary to establish the right to deduct.

33 The tax authorities assert in that regard that, in order to prove that the services purchased were used for the purposes of the taxable transaction, the taxable person must not only be in possession of the invoice in which the deductible VAT is recorded, but also prove that the services invoiced were actually supplied and were for the purposes of its taxable transactions. However, in the present case, even though it had the burden of proof, the appellant did not submit any supporting documents showing that the services were provided for the purposes of its taxable transactions. The documents submitted by the appellant are not activity reports showing the nature of the services purchased, the number of hours worked per transaction, the human and material resources used or the method of calculating the charges set for the services invoiced.

Succinct presentation of the reasoning in the request for a preliminary ruling

34 As regards the relevance of the questions referred for a preliminary ruling, the referring court considers, first, that they seek the interpretation of provisions of EU law [Article 2(1)(c), 168 and 178 of the VAT Directive] and, second, that those questions satisfy the premiss laid down in the first paragraph of Article 267 TFEU, since the answer to those questions is not already apparent from the case-law of the Court of Justice, either as regards the classification of the transactions as taxable transactions or as regards the exercise of the right to deduct VAT.

35 As regards the need to refer the matter to the Court of Justice, the referring court states, first, that the provision of EU law which is the subject of the first question referred for a preliminary ruling [namely that Article 2(1)(c) of the VAT Directive, which should be interpreted as meaning that the amount invoiced by a

company (the principal company) to an associated company (the operating company), equal to the amount necessary to align the operating company's profit with the activities carried out and the risks assumed in accordance with the margin method laid down in the OECD Guidelines, constitutes a payment for a service which therefore falls within the scope of VAT] has not yet been interpreted, with the result that the referring court is not relieved of the obligation to request a preliminary ruling to that effect (judgment of 27 March 1963, *Da Costa en Schaake NV and Others* v *Administratie der Belastingen*, C-28/62 to C-30/62, ECLI:EU:C:1963:6).

36 Second, the referring court considers that the correct application of EU law, in the present case, is not so obvious as to leave no scope for any reasonable doubt and for deciding, as a result, to refrain from referring to the Court of Justice a question concerning the interpretation of EU law which has been raised before it (judgment of 15 September 2005, *Intermodal Transports*, C-495/03, ECLI:EU:C:2005:552, paragraph 37 and the case-law cited) and to decide on its own responsibility (judgment of 16 October 1982, *CILFIT* v *Ministero della Sanità*, C-283/81, EU:C:1982:335, paragraph 16).

37 Consequently, the specific circumstances of the present case relating to the abovementioned administrative practice lead to an uncertain conclusion as to the application of the case-law of the Court that has been referred to. Several issues arise in the present case, in particular whether the equalisation invoices described constitute a formal method of adjusting the operating profit or whether they are not linked to any supply of services, but represent a profit adjustment, outside the scope of VAT, where there was no clearly identifiable service supplied to the appellant by Arcomet Belgium. Furthermore, in the event that there was a service supplied to the appellant by Arcomet Belgium and that it fell within the scope of VAT, the question arises as to whether the relevant VAT is to be considered deductible on the ground that [that service] was for the purposes of the appellant's taxable transactions.

38 Moreover, in the absence of specific national legislation (the provisions of the Tax Code only require the existence of an invoice in order to exercise the right to deduct VAT), the second question raises the issue of whether the request for additional documents other than invoices is consistent with the principle of proportionality enshrined in the case-law of the Court of Justice on VAT. It is also necessary to determine whether this practice is compatible with the provisions and objectives of the VAT Directive and with the principles established by the Court of Justice in its case-law regarding the link between service and payment, in order to establish the existence of a service within the scope of VAT.

39 Third, the judgment to be given in the main proceedings is final in accordance with the internal appeals system, so that, under the third paragraph of Article 267 TFEU, the referring court is required to make a reference to the Court of Justice for the interpretation of the relevant EU law.