Case C-796/23

Request for a preliminary ruling

Date lodged:

21 December 2023

Referring court:

Nejvyšší správní soud (Czech Republic)

Date of decision to refer:

29 November 2023

Applicant:

Česká síť s.r.o.

Defendant:

Odvolací finanční ředitelství

ORDER

The Nejvyšší správní soud […] (The Supreme Administrative Court, Czech Republic) has decided in the case of the applicant: **Česká síť** s.r.o., […] Domažlice, […] v. the defendant: **Odvolací finanční ředitelství**, (Appellate Tax Directorate) […] Brno, with respect to the defendant's decision of 14 December 2021, ref. no. 47225/21/5300-21441-712772, in proceedings concerning the applicant's appeal in cassation challenging the judgment of the Krajský soud v Plzni (Pilsen Regional Court) of 31 January 2023, ref. no. 57 Af 4/2022-62,

as follows:

I. The following question is hereby **submitted** to the Court of Justice of the European Union for a preliminary ruling:

> Is a situation in which, pursuant to special national value added tax arrangements for 'societies' (associations of persons that do not have legal personality), a 'designated partner' is liable for the payment of the VAT for the entire society, despite the fact that another partner had dealt with the end customer in relation to the supply of services, compatible with Council Directive 2006/112/EC of 28 November 2006 on the common system of

value added tax, in particular with Article 9(1) and Article 193 of the Directive?

Does the compatibility of the situation with Directive 2006/112/EC depend on whether the other partner had overstepped the rules of representing the society and dealt in his, her or its own name with the end customer?

II. […] [national proceedings]

Grounds:

I. Subject of the Proceedings

[1] The applicant (in proceedings before the Nejvyšší správní soud (the Supreme Administrative Court) known as the *complainant*) is a limited-liability company with its seat in the Czech Republic. In November 2020, the Finanční úřad pro Plzeňský kraj (Tax Office for the Pilsen Region) (the tax administrator) issued a total of twelve additional payment assessments assessing the complainant for additional value added tax (VAT) in respect of the tax period of January to December 2017. For each tax period (each month of 2017), the tax administrator assessed a tax of CZK 30,713 (a total of CZK 368,556) and ordered it to pay a penalty (a total of CZK 73,704). The complainant appealed without success to the Appellate Tax Directorate (the defendant) and later did not succeed in its action before the Supreme Administrative Court.

[2] The decisions of the tax authorities and the Regional Court are based on the following circumstances. In 2017, the complainant cooperated with several corporations based in the USA that operated in the Czech Republic through their branch offices (the following legal entities were concerned CESKA SIT OPTICS LLC, KDYNSKY INTERNET LLC, and CESKA SIT LLC). All legal entities (the complainant and the three US corporations or, more precisely, their branch offices operating in the Czech Republic) provided services to end customers (in particular, internet connection). Each of the legal entities was in contact with a different group of customers, acting in its own name. Hence, for 2017, each of the legal entities had revenue from the provision of services (for illustration, in the case of the branch offices of the US corporations, the annual revenues were between CZK 645,000 and CZK 748,000).

[3] There were, however, links between the complainant and the US corporations on the basis of which tax authorities as well as the Regional Court concluded that a de facto *society* existed (i.e.., an association of persons that does not have legal personality) pursuant to Paragraph 2716 of zákon č. 89/2012 Sb., občanský zákoník (Law 89/2012, the Civil Code). The executive representative and sole partner of the complainant was, at the same time, the head of the branch offices of all three US legal entities (signing contractual documentation for the branch offices, and in doing so, he also stated some of the complainant's contact information, for example, its website and e-mail address). He was, hence, the only person de facto managing both the complainant and the branch offices of all three

corporations mentioned above. In 2009 and 2010, the complainant transferred to the US corporations' branch offices over 170 of its existing clients, free of charge. The complainant provided the necessary infrastructure to the branch offices and itself purchased connectivity (for example, all customers were connected to the internet via the same access point). On the other hand, the branch offices of the US corporations did not report any tangible or intangible assets and had no wage costs.

[4] The tax authorities concluded that, on the basis of special rules in the Czech VAT Law for societies pursuant to Paragraph 2717 of the Civil Code, the complainant, as the '*designated partner'*, was responsible for paying VAT for the entire society. Consequently, the tax administrator calculated the complainant's VAT by including in the tax base both chargeable transactions made by the complainant in 2017 and the revenue of the branch offices of the corporations – members of the society.

[5] In its appeal in cassation, the complainant is now challenging a number of the partial conclusions that had led to the additional VAT assessment. Among other things, it claimed that the special VAT arrangement for 'societies' and their partners, pursuant to Czech law, was contrary to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1). Ultimately, Czech legislation resulted in the tax administrator assessing the complainant for additional tax on revenue not only of the complainant itself, but on the revenue of the entire 'society', as it was identified by the tax authorities. The complainant is defending itself against the additional tax assessment on the revenues of the branch offices of the US corporations which, according to the tax authorities, fell within the scope of the society.

[6] The defendant, on the other hand, disagrees with that argumentation. It argues that the special regulation for societies was not contrary to EU law. The legislator repealed the previous regulation, not because it was contrary to EU law, but due to problems in its application.

II. Applicable European Union and National legislation

EU law

[7] Pursuant to Article 9(1) of Directive 2006/112/EC, a taxable person is any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity. Pursuant to the same provision, an 'economic activity' is any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, shall be regarded as 'economic activity'. The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.

[8] According to Article 11 of Directive 2006/112/EC, after consulting with the VAT Committee, each Member State may regard as a single taxable person any

persons established in the territory of that Member State who, while legally independent, are closely bound to one another by financial, economic and organisational links. A Member State exercising the option provided for in the first paragraph, may adopt any measures needed to prevent tax evasion or avoidance through the use of this provision.

[9] Pursuant to Article 28 of Directive 2006/112/EC, where a taxable person acting in his own name but on behalf of another person takes part in a supply of services, he shall be deemed to have received and supplied those services himself.

[10] Pursuant to Article 193 of Directive 2006/112/EC, VAT shall be payable by any taxable person carrying out a taxable supply of goods or services, except where it is payable by another person in the cases referred to in Articles 194 to 199 and Article 202. Subsequently, in Articles 282 to 292, Directive 2006/112/EC regulates possibilities for VAT tax exemptions. Pursuant to Article 287 of Directive 2006/112/EC, Member States which acceded after 1 January 1978 may exempt taxable persons whose annual turnover is no higher than the equivalent in national currency of the following amounts at the conversion rate on the day of their accession. Pursuant to Article 287(7) of the Directive, the amount of EUR 35,000 applies as the limit for the Czech Republic.

National law – definition of a 'society'

[11] In Paragraph 2716 et seq., Law 89/2012, the Civil Code, regulates a '*society*', meaning an association of persons that does not have legal personality (a traditional Roman-law concept, *societas* in Latin). Pursuant to Paragraph 2716(1) of the Civil Code, *a society is formed where several persons undertake in a contract to associate as partners to pursue the shared purpose of conducting an activity or engaging in a project.* The contract need not be written, in order for a society to be formed.

[12] Pursuant to Paragraph 2719 (1) of the Civil Code, in a society, money and fungible items, as well as items designated by type that are contributed to the society become the shared property of the partners who made the contributions; other items only become their shared property if they have received a financial valuation. Co-ownership interests of the partners shall be determined by the ratio of the value of the property contributed to the society by each partner.

[13] As concerns decision-making in the society's affairs, pursuant to Paragraph 2729(1) of the Civil Code, *decisions concerning the society's affairs are adopted by a majority of votes; each partner shall have one vote.* In matters concerning the governance of the society, the Civil Code states in Paragraph 2730, inter alia, that, *partners can split responsibility in governing their common affairs in any way they find appropriate. Where they do not do this, each partner shall be, in respect of such matters, the mandatary of the other partners.* Pursuant to Paragraph 2731(1) of the Civil Code, *partners may delegate governance of their common affairs to one of their number or to a third party.*

[14] In terms of the mutual rights of the society's partners, inter alia, pursuant to Paragraph 2727(1) of the Civil Code, a partner shall not, without the consent of the other partners, do anything on his, her or its own or another person's behalf that is of a competitive nature with their shared purpose. Should this occur, the other partners may demand that the partner refrain from such actions. Pursuant to Paragraph 2727(2), where a partner had acted on his, her or its own behalf, the other partners may demand that the actions of the partner be declared made in their common behalf. Where a partner had acted on a third party's behalf, the partners may demand that the right to remuneration be assigned for the benefit of their shared purpose or that any remuneration already paid be relinquished to them. These rights expire if they have not been exercised within three months of the day when an entrepreneur has become aware of them, but no later than within a year of the conduct.

[15] Of greatest importance for the present case are provisions concerning the rights and obligations of the partners in relation to third parties. Pursuant to Paragraph 2736 of the Civil Code, *the partners are jointly and severally liable to third parties for any debts arising from their shared activities.* Pursuant to Paragraph 2737, *where a partner deals with a third party in a shared affair, he, she or it shall be deemed to be a mandatary of all the partners. If the partners agree otherwise, this cannot be held against a third party acting in good faith. Where a partner had acted on his, her or its own behalf in a shared affair with respect to a third party, the other partners may exercise the rights arising therefrom, but the third party shall only be bound vis-à-vis the person who had engaged in legal conduct with respect to him, her or it. This shall not apply if the third party was aware that the partner had been acting on behalf of the society.*

National law – tax regulations

[16] The tax regulation followed on from the private-law regulation of a society. Until 30 June 2017, zákon č. 235/2004 Sb., o dani z přidané hodnoty (Law 235/2004 on Value added Tax; 'the VAT Law'), contained special VAT regulation for taxable persons who were partners in a society under Paragraph 2716 of the Civil Code. Until 30 June 2017, this was the only possible VAT regime for such societies. On 1 July 2017, amendment law 170/2017 amended the VAT Law, bringing to an end the special regime for those societies. Since that amendment, each society partner acts individually in VAT matters, in line with general provisions of the VAT Law. Pursuant to a transitional provision of the amendment, however, the original special VAT regime could be applied to societies until the end of 2018. The explanatory memorandum for the amendment law 170/2017 indicates a potential non-conformity of the existing regulation with Directive 2006/112/EC. According to the explanatory memorandum, the amendment will bring the VAT Law '*in line with the value added tax directive and general value added tax principles'.* However, the explanatory memorandum did not provide a more detailed explanation of this (alleged) inconsistency of the VAT Law with the Directive.

[17] According to Paragraph 5(1) of the VAT Law, a taxable person is a person who independently carries out an economic activity, or a group. A taxable person is also a legal person that has not been founded or established for the purpose of engaging in business, as long as it carries out economic activities. Typically, a taxable person becomes a taxpayer if, pursuant to Paragraph 6(1) of the VAT Law, its turnover for a maximum of the 12 immediately preceding consecutive calendar months exceeds the set amount (at the time of the defendant's decision, it was 1 million Czech koruny). The special regulation for societies, analysed below, however, set other 'ways' to reach the payer status or obligation, which differed from those for regular VAT payers.

[18] The special regulation for societies also differed from VAT rules for a group of persons linked by capital or otherwise (an institute implementing, in Paragraph 5a et seq. of the VAT Law, Article 11 of Directive 2006/112/EU). In Paragraph 5a(1), the VAT Law explicitly stated that *'a member of a group must not at the same time be a partner of the society'* – hence, it was not possible to be at the same time a partner of a 'society' and a member of a group. It may be stressed that **the tax authorities are not claiming that the complainant was a member of a group**.

[19] As for a special separate VAT arrangement for societies, according to the version of the VAT Law applicable to the present case, the following applied (only the most important provisions are set out below).

[20] In terms of the calculation of turnover for VAT purposes, pursuant to Paragraph 4a(3) of the VAT Law, the turnover of a taxable person who is a partner of a society within which supply is being made that is eligible for a tax deduction shall include the turnover achieved (a) by that person independently, outside of the society, and (b) by the entire society.

[21] There was also a special rule for the determination of the payer. Pursuant to Paragraph 6a of the VAT Law, a taxable person who (a) is a partner in a society within which supply is being made that is eligible for a tax deduction, shall be a payer from the day on which any of the other partners has become a payer, unless he, she or it becomes a payer on an earlier occasion pursuant to this law; (b) becomes a partner in a society within which supply is being made that is eligible for a tax deduction together with the payer, shall be a payer from the day on which he, she or it became a partner. Pursuant to Paragraph 94(2) of the VAT Law, a payer had to apply for registration within 15 days of the day on which he, she or it became a payer. Pursuant to Paragraph 95 of the same law, if a taxable person who is a partner in a society becomes a payer, he, she or it shall inform the other partners thereof within 15 days of the day on which he, she or it became a payer.

[22] Pursuant to Paragraph 100(4) of the VAT Law, payers who are partners of the same society are obliged to keep a separate record for value added tax purposes of the activity for which they have associated. That record shall be kept for the society by a designated partner, who shall perform for the society all

obligations and exercise all rights arising from this law for the other partners. Furthermore, Paragraph 101b(2) of the VAT Law stated that a payer who, as a partner designated in this manner, maintains a record for the society, shall include in his, her or its tax return the supply that is eligible for a tax deduction and the tax on his, her or its own activities as well as supply that is eligible for a tax deduction and the tax on the activities of the entire society. The other partners shall include in their tax returns only supplies that are eligible for a tax deduction and the tax on their own activities.

[23] For the sake of completeness, it may be added that the role of the designated partner was also manifested in the issue of the application of a claim to VAT deduction. The basic rule pursuant to Paragraph 74(7) of the VAT Law was that this claim was to be made by the designated partner with respect to taxable supply used for the society's activities.

III. Analysis of the question

[24] Before examining the question itself in greater detail, the Supreme Administrative Court deems it useful to make two observations.

[25] First, logically, the question arises whether the situation of the complainant can be subsumed under the concept of a 'society' under Paragraph 2716 of the Civil Code. In its appeal in cassation, the complainant denied that its cooperation with the US corporations fulfilled the characteristics of a society. Nevertheless, the Supreme Administrative Court reached the preliminary legal conclusion that, in substantive terms, it was a society under Paragraph 2716 of the Civil Code. Incidentally, the Supreme Administrative Court had already assessed the complainant's cooperation and had concluded each time that the structure of its business did qualify as a society under Paragraph 2716 of the Civil Code (this concerned either the complainant's tax obligations in other taxable periods or the obligations of other partners; cf. e.g. judgments of 10 May 2022, ref. no. 10 Afs 137/2020-69, paragraph 16 et seq., of 15 February 2023, ref. no. 6 Afs 331/2021-61, paragraphs 18 to 19).

[26] Second, before the question was referred for a preliminary ruling, the defendant had questioned whether the Supreme Administrative Court was at all able to take into account the complainant's objection concerning the discrepancy between Czech and EU law. The defendant held that the complainant first used this argument only in its appeal in cassation and that such an objection was inadmissible. Nevertheless, the Supreme Administrative Court concluded that it was able to examine the question. Given that the Regional Court has applied the contested provisions of national law to the applicant's arguments, the question essentially stands whether the court has applied the correct legal regulation. The Supreme Administration Court must always examine such a question in proceedings concerning an appeal in cassation, even of its own motion.

[27] In terms of the analysis of the question referred, the court states as follows.

[28] The contested regulation in the VAT Law was manifest in several ways. First, the status of partner of a society, pursuant to Paragraph 2716 of the Civil Code, as a payer did not depend solely on his, her or its individual economic activity or his, her or its own turnover. It also depended on the turnover of the entire society (Paragraph 4a(3) of the VAT Law), or on the status of another partner as a payer. Second, the role of a 'designated partner' was key for the society. His, her or its task was to perform all obligations for the society, including the payment of VAT for the entire society.

[29] The conclusion about the existence of a society in this case was reached by the tax authorities (because no written agreement is required for the society to exist, the tax authorities were able to do so). On the other hand, the complainant has denied the existence of the society since the beginning. It was the tax authorities who determined the 'designated partner' – the complainant in the present case. In doing so, they operated on the basis of its role in the society (cf. paragraph 3 above). And it was the complainant whom they assessed for additional VAT for the entire society.

[30] The complainant sees a contradiction between the special regulation in the Czech VAT Law and Directive 2006/112/EC, in that the person identified by the tax authorities (the designated partner) must pay VAT not only on its own supplies but also on the supplies of other persons which the tax authorities had identified as partners in the society (and it is these supplies that are contested in the present case). Essentially, the complainant objects that, in relation to the transactions of other persons, those persons should be the taxable persons. And it is indeed those persons who are supposed to pay the tax pursuant to Article 193 of the Directive. The complainant claims that it is to be a taxable person pursuant to Article 9(1) of the Directive purely in relation to its own activities and should be liable for the payment of VAT only on those supplies it itself has provided.

[31] The Supreme Administrative Court shares the complainant's reservations. According to the court, the complainant should not be liable for paying VAT on transactions made between other persons and end customers, even though the complainant and those other persons formed a society under Paragraph 2716 of the Civil Code. However, the court deems it necessary to confirm that opinion.

[32] In general, a taxable person pursuant to Article 9(1) of Directive 2006/112/EC is liable for paying VAT on its economic activity pursuant to Article 193 of the Directive. The VAT Law, nevertheless, transferred liability for VAT payment for the entire society to the designated partner (in the present case, the complainant) without exception. If, however, the designated partner is not also the taxable person, pursuant to Article 9(1) of Directive 2006/112/EC, in relation to the transactions on which it is to pay VAT, that partner's liability for paying VAT on those transactions contravenes, in the view of the Supreme Administrative Court, Article 193 of the Directive.

[33] Hence, it is key in the present case to establish who is the taxable person pursuant to Article 9(1) of Directive 2006/112/EC in relation to the contested transactions between the other partners in the society and end customers (i.e., the transactions on which the complainant does not wish to pay VAT). As the case may be, it may also be necessary to consider whether Article 28 of the Directive may apply, given that the present case concerns the provision of services.

[34] The objective of Directive 2006/112/EC is to establish a common system of VAT. The Directive therefore confers on this tax a very wide scope. In order to ensure the uniform application of that directive, it is therefore necessary for the terms that define that scope, such as the terms *taxable transactions, taxable persons, and economic activities,* to be interpreted in an autonomous and uniform manner (judgment of the Grand Chamber of the CJEU of 29 September 2015, *Gmina Wroclaw*, C-276/14, EU:C:2015:635, paragraph 26).

[35] Pursuant to Article 9(1) of Directive 2006/112/EC, a taxable person is any person who meets the conditions stated therein. Article 9(1) of the Directive therefore defines the term *taxable person* broadly. A taxable person may be any individual or legal entity, public or private, as well as an entity without legal personality. The essential aspect is that the person or entity must *independently carry out an economic activity* (CJEU judgment of 16 September 2020, *Valstybinė mokesčių inspekcija*, C-312/19, EU:C:2020:711, paragraphs 39 to 40).

[36] An economic activity is carried out independently if the person concerned carries out an economic activity in his or her own name, on his or her own behalf, and under his or her own responsibility. It is also of the essence whether he or she bears the economic risk associated with the carrying out those activities (cf. the previously cited judgment in *Valstybinė mokesčių inspekcija*, C-312/19, paragraph 41, or CJEU judgment of 12 October 2016, *Nigl*, C-340/15, EU:C:2016:764, paragraph 28).

[37] Those criteria guarantee that the customer can exercise any right of deduction with legal certainty as, according to Article 226, point 5, of Directive 2006/112/EC, the customer requires an invoice with the full name and address of the taxable person in order to do so; however, he can only verify that information on the invoice if he knows who has acted in relation to him (that is, outwardly) (cf. opinion of Advocate General Kokott of 23 April 2020, in *Valstybinė mokesčių inspekcija*, C-312/19, EU:C:2020:310, paragraph [46]).

[38] A conclusion about independence, or independent conduct of an economic activity, to be precise, is not precluded by the fact that some degree of cooperation occurs between the entities that might qualify as taxable persons under Article 9(1) of Directive 2006/112/EC (already cited judgment in *Nigl*, C-340/15, paragraph 31, cf. also opinion of Advocate General Szpunar of 30 June 2016 in the same case, EU:C:2016:505, paragraph 21, where the Advocate General states that *close* cooperation does not necessarily need to indicate that there is subordination to another person).

[39] It also follows from CJEU case-law that, in cases when a member of an partnership deals with customers (enters into contracts) in his or her own name, without referring to the partnership or the other partners, the contents of the partnership agreement recedes to the background (a partnership is an equivalent of a society pursuant to Paragraph 2716 of the Czech Civil Code, both originating from the Roman-law *societas*). The Court of Justice, for example, identified as a taxable person, pursuant to Article 9(1) of the Directive, a partner who entered into real estate purchase agreements in his own name and, in relations with third parties, acted without mentioning the partnership or the identity of the other partner. It was of no consequence in this case that the other partner provided significant finance for the purchase of the property or that important economic decisions were taken together by both partners (cf. *Valstybinė mokesčių inspekcija*, C-312/19, paragraphs 43 to 48). The Court of Justice also identified as a taxable person a member of a partnership who was mentioned in a purchase agreement, regardless of the sale of a property falling within the framework of joint obligations of the partners in the partnership in the case concerned (cf. judgment of 13 February 2023, *DGRFP Cluj*, C-519/21, EU:C:2023:106, paragraphs 74 to 77).

[40] In the case of the provision of a service, the taxable person can also be identified pursuant to Article 28 of Directive 2006/112/EU. Article 28 creates the legal fiction of two identical supplies of services provided consecutively. Under that fiction, the operator, who takes part in the supply of services and who constitutes the commission agent, is considered to have, firstly, received the services in question from the operator on behalf of whom it acts, who constitutes the principal, before providing, secondly, those services to the client him or herself (judgment of 4 May 2017, *Commission v Luxembourg*, C-274/15, EU:C:2017:333, paragraph 86). For Article 28 to apply, there must first be an agency in performance of which the commission agent acts, on behalf of the principal, in the supply of services and, second, the supplies of services acquired, and the supplies of services sold, must be identical (judgment of 12 November 2020, *ITH Comercial Timişoara,* C-734/19, EU:C:2020:919, paragraph 51).

[41] According to the Supreme Administrative Court, however, no agency pursuant to Article 28 of Directive 2006/112/EC can be inferred in the present case. A society under Paragraph 2716 of the Civil Code cannot be simply compared to the relationship of a commission agent and principal.

[42] It was not the complainant, but rather the other partners, who dealt with end customers in the contested transactions. Czech law does not envisage a society under Paragraph 2716 of the Civil Code being a taxable person. Given the conclusion about the existence of the society, provisions concerning a tax group *could not* be applied, and the tax authorities do not even claim that they should have applied (cf. paragraph 18 above).

[43] According to the Supreme Administrative Court, those partners who dealt with customers must be identified as the taxable persons in these transactions, not

the complainant. Nevertheless, the Supreme Administrative Court questions whether that conclusion can be made solely on the basis of which of the partners dealt with customers in the transaction concerned, or whether the circumstances in which that occurred must be examined further (in particular, the fact that the other partners had acted essentially in their own name).

[44] As the Court has stated above, the present case is specific in that the tax authorities inferred the existence of a society only subsequently. That also means that there is no written partnership agreement in the present case from which it would be possible to verify how the partners had set up their rights and obligations inside the society. The Court therefore must assume that the society was intended to operate exactly as stated in the above-quoted provisions of Paragraph 2716 et seq. of the Civil Code.

[45] In the case of the contested transactions, it was always one of the other partners, not the complainant itself, who dealt with the end customer. In such situations, when *one* partner acts externally in a shared affair, the method of representation described in Paragraph 2737(1) of the Civil Code applies as a standard (limited divergence from it is possible, but only in a partnership agreement, which is de facto absent in this case). If a partner follows that standard, he acts in a shared affair as the mandatary of all the partners, and on the basis of a power of attorney from them (which the partners must grant, as the concept of mandate does not include agency). Ultimately, that partner is acting *in the name of and on behalf of all partners* and on the basis of his or her actions, a joint and several obligation of the partners, pursuant to Paragraph 2736 of the Civil Code, is established.

[46] The procedure pursuant to Paragraph 2737(1) of the Civil Code is not the only way in which partners may act in the affairs of a society. If, for example, *all* partners act jointly, their actions lead to the same result – the establishment of a joint and several obligation of all the partners. Cases when the actions of *one of the* partners can *ultimately* bind all of the partners differ. In addition to the standard conduct in line with Paragraph 2737(1), one of the partners can also first act in his, her or its own name and on his, her or its own behalf (independent of the society). Other partners may then subsequently approve and take over his, her or its actions. The difference between acting pursuant to Paragraph 2737(1) and the latter procedure lies in how *independently* a partner acts. In the former case, a partner is in some way linked to the other partners; in the latter he, she or it first acts essentially independently. This may be key also to the determination of the taxable person on the basis of the *independence* criterion in Article 9(1) of the Directive. The procedure under Paragraph 2737(1) of the Civil Code is *the least independent* way in which one of the partners can act in a shared matter.

[47] The Supreme Administrative Court doubts whether it is possible to proceed solely on the basis of the fact that only one of the partners dealt with the end customers in all of the contested transactions. According to that court, it is thus appropriate to assess **the manner in which the legal entities associated in the**

society had dealt with end customers. It is evident from the administrative file that the other partners had dealt with end customers in their own name (through their branch offices). The complainant did not enter into agreements on the provision of services. According to the court, it is irrelevant that some of the complainant's contact details were set out in the contractual documentation (see paragraph 3 above). It is also not evident from the administrative file that the other partners ever referred to the complainant in their agreements with customers or on other occasions in a manner that could identify it as a partner.

[48] The circumstances of the present case also indicate that the complainant, not the other partners, played a key role in providing the necessary infrastructure and connection capacity. Given the personal connections, the actions of the partners were most likely coordinated. In the Court's view, however, these are essentially 'internal' matters of the society that must, in the present case, recede to the background, given the fact that the partners had acted in their own names (see the case-law cited in paragraph 38 above).

[49] The Supreme Administrative Court therefore holds that in the contested transactions in which other partners dealt with customers, the complainant could not be the taxable person pursuant to Article 9(1) of Directive 2006/112/EC. In such a case, however, the application of the special arrangement in Czech laws that results in the complainant being liable for the payment of VAT in all of the contested transactions contravenes Article 193 of the Directive.

IV. Conclusion

[50] Consequently, the Supreme Administrative Court submits the following question to the Court of Justice of the European Union for a preliminary ruling:

> Is the situation in the present case, in which, pursuant to special national value added tax arrangements for 'societies' (associations of persons that do not have legal personality), a 'designated partner' is liable for the payment of the VAT for the entire society, despite the fact that another partner had dealt with the end customer in relation to the supply of services, compatible with Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, in particular with Article 9(1) and Article 193 of the Directive?
>
> Does the compatibility of the situation with Directive 2006/112/EC depend on whether the other partner had overstepped the rules of representing the society and dealt in his, her or its own name with the end customer?

[51] […] [national proceedings]

[…]

[notice, date, signatures]