Reports of Cases

JUDGMENT OF THE GENERAL COURT (Chamber giving preliminary rulings)

3 December 2025*

(Reference for a preliminary ruling – Harmonisation of fiscal legislation – Common system of VAT – Articles 41 and 42 of Directive 2006/112/EC – Place of an intra-Community acquisition of goods – Article 141(c) of Directive 2006/112 – Triangular transaction – Simplification measure – Chain of supplies comprising four operators identified in three different Member States – Taxable person who is or should have been aware of transactions constituting an abuse of the VAT system)

In Case T-646/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Upravno sodišče (Administrative Court, Slovenia), made by decision of 21 November 2024, received at the Court on 28 November 2024, in the proceedings

MS KLJUČAROVCI, d.o.o., in liquidation,

v

Republika Slovenija,

THE GENERAL COURT (Chamber giving preliminary rulings),

composed, at the time of the deliberations, of S. Papasavvas, President, J. Laitenberger, G. Hesse, M. Stancu et I. Dimitrakopoulos (Rapporteur), Judges,

Advocate General: I. Gâlea,

Registrar: V. Di Bucci,

having regard to the transmission of the request for a preliminary ruling to the General Court by the Court of Justice on 13 December 2024, pursuant to the third paragraph of Article 50b of the Statute of the Court of Justice of the European Union,

having regard to the fact that the case concerns the area referred to in point (a) of the first paragraph of Article 50b of the Statute of the Court of Justice of the European Union and the fact that there is no independent question relating to interpretation within the meaning of the second paragraph of Article 50b of that statute,

having regard to the written part of the procedure,

* Language of the case: Slovenian.

after considering the observations submitted on behalf of:

– MS KLJUČAROVCI, in liquidation, by J. Ahlin, odvetnik,

– the Slovenian Government, by V. Klemenc, acting as Agent,

– the European Commission, by M. Herold and B. Rous Demiri, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the first paragraph of Article 41 and of Article 141(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), as amended by Council Directive 2010/45/EU of 13 July 2010 (OJ 2010 L 189, p. 1) ('the VAT Directive').

2 The request has been made in proceedings between MS KLJUČAROVCI, d.o.o. ('MS'), a commercial company in liquidation identified for value added tax (VAT) purposes in Slovenia, and the Republika Slovenija (Republic of Slovenia), represented by the Ministrstvo za finance (Ministry of Finance, Slovenia), concerning the lawfulness of a tax decision as regards the calculation of the VAT adopted by the Finančna uprava Republike Slovenije (Tax Authority of the Republic of Slovenia) ('the Slovenian tax authority').

Legal framework

European Union law

3 Under Article 14(1) of the VAT Directive, '"Supply of goods" shall mean the transfer of the right to dispose of tangible property as owner'.

4 In addition, in accordance with the first paragraph of Article 20 of the VAT Directive, '"intra-Community acquisition of goods" shall mean the acquisition of the right to dispose as owner of movable tangible property dispatched or transported to the person acquiring the goods, by or on behalf of the vendor or the person acquiring the goods, in a Member State other than that in which dispatch or transport of the goods began'.

5 Title V of the VAT Directive is entitled 'Place of taxable transactions'. In Chapter 2 of that title, Articles 40 to 42 define the place of an intra-Community acquisition of goods.

6 Under Article 40 of the VAT Directive, 'the place of an intra-Community acquisition of goods shall be deemed to be the place where dispatch or transport of the goods to the person acquiring them ends'.

7 Article 41 of the VAT Directive states:

‘Without prejudice to Article 40, the place of an intra-Community acquisition of goods as referred to in Article 2(1)(b)(i) shall be deemed to be within the territory of the Member State which issued the VAT identification number under which the person acquiring the goods made the acquisition, unless the person acquiring the goods establishes that VAT has been applied to that acquisition in accordance with Article 40.

If VAT is applied to the acquisition in accordance with the first paragraph and subsequently applied, pursuant to Article 40, to the acquisition in the Member State in which dispatch or transport of the goods ends, the taxable amount shall be reduced accordingly in the Member State which issued the VAT identification number under which the person acquiring the goods made the acquisition.’

8 Under Article 42 of the VAT directive:

‘The first paragraph of Article 41 shall not apply and VAT shall be deemed to have been applied to the intra-Community acquisition of goods in accordance with Article 40 where the following conditions are met:

(a) the person acquiring the goods establishes that he has made the intra-Community acquisition for the purposes of a subsequent supply, within the territory of the Member State identified in accordance with Article 40, for which the person to whom the supply is made has been designated in accordance with Article 197 as liable for payment of VAT;

(b) the person acquiring the goods has satisfied the obligations laid down in Article 265 relating to submission of the recapitulative statement.’

9 Title IX of the VAT Directive is entitled ‘Exemptions’. Chapter 4 of that title deals with exemptions for intra-Community transactions. Section 2 of that chapter concerns exemptions for intra-Community acquisitions of goods. In that section, Article 141 of the VAT Directive provides:

‘Each Member State shall take specific measures to ensure that VAT is not charged on the intra-Community acquisition of goods within its territory, made in accordance with Article 40, where the following conditions are met:

(a) the acquisition of goods is made by a taxable person who is not established in the Member State concerned but is identified for VAT purposes in another Member State;

(b) the acquisition of goods is made for the purposes of the subsequent supply of those goods, in the Member State concerned, by the taxable person referred to in point (a);

(c) the goods thus acquired by the taxable person referred to in point (a) are directly dispatched or transported, from a Member State other than that in which he is identified for VAT purposes, to the person for whom he is to carry out the subsequent supply;

(d) the person to whom the subsequent supply is to be made is another taxable person, or a non-taxable legal person, who is identified for VAT purposes in the Member State concerned;

(e) the person referred to in point (d) has been designated in accordance with Article 197 as liable for payment of the VAT due on the supply carried out by the taxable person who is not established in the Member State in which the tax is due.'

10 In Title XI of the VAT Directive, entitled 'Obligations of taxable persons and certain non-taxable persons', Article 197(1) of that directive provides:

'VAT shall be payable by the person to whom the goods are supplied when the following conditions are met:

(a) the taxable transaction is a supply of goods carried out in accordance with the conditions laid down in Article 141;

(b) the person to whom the goods are supplied is another taxable person, or a non-taxable legal person, identified for VAT purposes in the Member State in which the supply is carried out;

(c) the invoice issued by the taxable person not established in the Member State of the person to whom the goods are supplied is drawn up in accordance with Sections 3 to 5 of Chapter 3.'

11 Lastly, Article 226 of the VAT Directive provides:

'Without prejudice to the particular provisions laid down in this Directive, only the following details are required for VAT purposes on invoices issued pursuant to Articles 220 and 221:

…

(11) in the case of an exemption, reference to the applicable provision of this Directive, or to the corresponding national provision, or any other reference indicating that the supply of goods or services is exempt;

…'

Slovenian law

12 The VAT Directive was transposed into Slovenian law by the Zakon o davku na dodano vrednost (Law on value added tax) of 16 November 2006 (Uradni list RS, No 13/11; 'the ZDDV-1'), and by the Pravilnik o izvajanju Zakona o davku na dodano vrednost (Regulation implementing the law on value added tax) of 30 December 2006 (Uradni list RS, No 141/06; 'Regulation implementing the ZDDV-1').

13 Article 23 of the ZDDV-1 provides:

'(1) The place of an intra-Community acquisition of goods shall be deemed to be the place where dispatch or transport to the person acquiring them ends.

(2) Without prejudice to the provisions of paragraph 1 of this article, the place of an intra-Community acquisition of goods shall be deemed to be within the territory of the Member State which issued the VAT identification number under which the person acquiring the goods

made the acquisition, unless the person acquiring the goods establishes that VAT has been applied to that acquisition in another Member State in accordance with paragraph 1 of this article.

(3) If VAT was applied to the acquisition of goods in accordance with paragraph 2 of this article and subsequently applied in the Member State in which dispatch or transport of the goods ends, the taxable amount shall be reduced accordingly in the Member State which issued the VAT identification number under which the person acquiring the goods made the acquisition.

(4) Without prejudice to the provisions of paragraph 2 of this article, VAT shall be deemed to have been applied to the acquisition of goods in accordance with paragraph 1 of this article if the person acquiring the goods:

(a) establishes that he or she has made the intra-Community acquisition for the purposes of a subsequent supply, within the territory of another Member State identified in accordance with paragraph 1 of this article, for which the person to whom the supply is made has been designated as liable for payment of VAT, …

(b) has satisfied the obligations relating to submission of the recapitulative statement.'

14 Article 48(2) of the ZDDV-1 provides:

'VAT shall not be applied to the intra-Community acquisition of goods made in the territory of Slovenia, in accordance with Article 23(1) of this law, where the following conditions are satisfied:

(a) the acquisition of goods is made by a taxable person who is not established in Slovenia, but is identified for VAT purposes in another Member State;

(b) the acquisition of goods is made for the purposes of the subsequent supply of those goods, in the territory of Slovenia by the taxable person referred to in point (a) of this paragraph;

(c) the goods thus acquired by the taxable person referred to in point (a) are directly dispatched or transported, from a Member State other than that in which the taxable person is identified for VAT purposes, to the person for whom he or she is to carry out the subsequent supply;

(d) the person to whom the subsequent supply is to be made is a taxable person, or a non-taxable legal person, who is identified for VAT purposes in Slovenia; …

(e) the VAT due on the subsequent supply of the goods made in the territory of Slovenia by the taxable person referred to in point (a) of this paragraph must be paid, in accordance with Article 76(1)(4) of this law, by the person to whom the supply is made.'

15 Article 76(1)(4) of the ZDDV-1 provides:

'VAT shall be payable by the person to whom the goods are supplied when the following conditions are met:

– the taxable transaction is a supply of goods carried out in accordance with the conditions laid down in Article 48(2) of this law;

– the person to whom the goods are supplied is another taxable person, or a non-taxable legal person, identified for VAT purposes in Slovenia, …

– the invoice issued by the taxable person not established in Slovenia is drawn up in accordance with this law …'

16 Lastly, under Article 27 of the Regulation implementing the ZDDV-1:

'Triangular transactions are chain transactions involving three taxable persons identified for VAT purposes, each in his or her own Member State. The taxable person supplying the goods, established in a Member State, issues an invoice in respect of the intra-Community supply of goods to a taxable person acquiring the goods and established in another Member State, in respect of the goods that are dispatched or transported directly to the taxable person to whom the goods are supplied who is established in a third Member State.'

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

17 The applicant in the main proceedings, MS, is a commercial company identified for VAT purposes in Slovenia. In 2015 and in 2016, it acquired from suppliers registered in Germany soya seed and rapeseed presscakes as well as rapeseed oil which it resold to three companies identified for VAT purposes in Denmark. MS provided a VAT identification number to the German suppliers. The transport of the goods acquired by MS was carried out directly from Germany to Denmark and was organised and paid for by MS. Those purchases of goods and the subsequent supplies to the three Danish companies, clients of MS, were referred to in a VAT return and in a recapitulative statement in Slovenia. The invoices which the applicant in the main proceedings issued to its customers bore the reference 'Reverse charge'.

18 MS applied the simplification measure provided for in respect of so-called triangular transactions in Articles 23 and 48 of the ZDDV-1, read in conjunction with Article 27 of the Regulation implementing the ZDDV-1, by transferring the tax obligation to account for VAT on the intra-Community acquisitions of goods to the three Danish companies, without registering for VAT purposes in Denmark.

19 The Slovenian tax authority, on the basis of Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ 2010 L 268, p. 1), requested information from the Danish tax administration in order to ascertain whether the three Danish companies, customers of MS, had declared the acquisitions made from MS, whether they had declared and paid the appropriate VAT and whether they had actually taken delivery of the goods. In response to that request, the Danish tax administration stated that those three companies had not acquired the goods in question or paid the appropriate VAT, that they had no warehouses or offices in Denmark and that they were therefore missing traders.

20 The VAT on the intra-Community acquisitions was therefore neither paid in Denmark nor in Slovenia.

21 In practice, the goods acquired by MS were handed over by MS, as the organiser of the transport, at storage or mixing facilities in Denmark, where they were collected by various companies on behalf of ANC Group, a company governed by Danish law, a customer of the three Danish companies referred to in paragraph 17 above. The chain of supplies thus included four operators

registered in three different Member States, namely, in turn, a German supplier, MS, a Danish company which was a customer of MS and ANC Group. The goods in question were the subject of a single transport operation from the German supplier, the first operator in the chain of supplies, to ANC Group, the fourth operator in that chain, which was able to dispose of those goods as their owner.

22 The Slovenian tax authority carried out a tax inspection of MS concerning the declaration and payment of VAT for 2015 and 2016. In the course of that inspection, it set the total amount of VAT payable by MS in respect of those two years at EUR 1 802 408.04.

23 The Slovenian tax authority took the view that MS was not authorised to benefit from the simplification measure provided for in respect of triangular transactions in Articles 23 and 48 of the ZDDV-1, read in conjunction with Article 27 of the Regulation implementing the ZDDV-1, because more than two supplies of goods had been made in the course of a single transport operation. In that regard, the Slovenian tax authority relied on the fact that the goods in question had not been made available to the third operator in the chain of supplies, but had been handed over to ANC Group, the fourth operator in that chain. The place of taxation of the acquisitions made by MS is therefore, under Article 23(2) of the ZDDV-1, in the Member State in which MS is identified for VAT purposes, namely Slovenia. In addition, the Slovenian tax authority took the view that MS could not reduce its taxable amount by the corresponding amount of VAT paid in Denmark, pursuant to Article 23(3) of the ZDDV-1, since it was aware that it was participating in transactions aimed at the commission of VAT fraud.

24 The Ministry of Finance rejected the complaint submitted by MS as unfounded and confirmed the grounds relied on by the Slovenian tax authority for the purpose of calculating the VAT.

25 MS brought an action for annulment of the decision of the Slovenian tax authority before the Upravno sodišče (Administrative Court, Slovenia), which is the referring court.

26 MS submits that the conditions laid down in Article 141 of the VAT Directive are satisfied in the present case, even though the transaction in question comprises three successive supplies. According to MS, the fact that, in the Member State of identification for VAT purposes of the subsequent person acquiring the goods (the third operator in the chain of supplies), the goods are supplied to another operator (the fourth operator in that chain) has no bearing on the fact that the transaction in question may be classified as a triangular transaction.

27 The Republic of Slovenia disputes the position of MS submitted in paragraph 26 above and contends that the transaction in question in the main proceedings is not in the nature of a triangular transaction, in particular on the ground that more than two supplies of goods took place in the context of a single transport transaction between Germany and Denmark. In its view, although the application of the simplification measure provided for in respect of triangular transactions is not subject to the supply of the goods at the premises of the third operator in the chain of supplies, the goods must, at the end of the transport, be made available to that operator, who is required to comply with the obligation to pay VAT on the intra-Community acquisitions of goods. MS does not satisfy, in the present case, that condition in so far as the storage or mixing facilities did not take delivery of the goods in question in the name and on behalf of the Danish customer companies of MS, which, taken together, constitute the third operator in the chain of supplies, but on behalf of ANC Group, the fourth operator in that chain.

28 In that context, the referring court suggests, first of all, that the transactions between the first three operators in a chain of supplies involving four operators may give rise to the simplification measure provided for in respect of triangular transactions within the meaning of the provisions of the VAT Directive, provided that the conditions laid down by that directive are satisfied. According to the interpretation of the referring court, a subsequent supply of goods following a triangular transaction in accordance with Article 141 of the VAT Directive does not form part of that triangular transaction and has, in principle, no bearing on the compliance with the conditions for the application of the simplification measure by the second operator in the chain of supplies.

29 As regards the interpretation of Article 141(c) of the VAT Directive, the referring court points out, next, that it is not apparent from that directive that the fact that the third operator in a chain of supplies intends to resell the goods which it has acquired is of importance for the second operator in that chain. In that regard, the referring court notes that the wording of Article 141(c) of the VAT Directive, in particular the words 'to the person for whom he is to carry out the subsequent supply', does not make clear whether the third operator in the chain of supplies must actually take delivery of the goods concerned, which are thus made available to it, or whether the condition laid down in that provision is also satisfied in the case of a direct supply to the customer of that operator. The referring court notes, in that regard, that there is no case-law of the Court of Justice on that issue, since the existing case-law relates to the formal conditions for the application of the simplification measure provided for in respect of triangular transactions.

30 The referring court observes, lastly, a difficulty concerning the correct taxation of the transaction in the main proceedings if, since the conditions for the application of the simplification measure provided for in respect of triangular transactions are satisfied, it appears that the applicant in the main proceedings knowingly participated in fraudulent transactions. The referring court questions whether the Slovenian tax authority has jurisdiction to determine the tax due by the applicant in the main proceedings, on the basis of the first paragraph of Article 41 of the VAT Directive, in such a situation.

31 In those circumstances, the Upravno sodišče (Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 141(c) of the VAT Directive, on which, in accordance with Articles 42 and 197 thereof, the non-application of the first paragraph of Article 41 depends, be interpreted as meaning that the condition laid down in that provision is satisfied when the goods in question are supplied (that is, made available in terms of possession or ownership) under a single transport operation to the customer of the person acquiring the goods (and not to the third person in the transaction chain), which is registered for VAT purposes in the same Member State as the third person in the transaction chain?

(2) In order to satisfy the condition laid down in Article 141(c) of the VAT Directive, is the fact that the person claiming simplification for triangular transactions is aware of the subsequent supply relevant?

Depending on the answer given to the two aforementioned questions, the Upravno sodišče [(Administrative Court)] refers the third question, namely:

(3) In the circumstances arising in the present case, must the first paragraph of Article 41 of the VAT Directive be interpreted as meaning that VAT may be paid in the State of identification of the taxable person who is second in the transaction chain (in Slovenia), bearing in mind that, in that context, that taxable amount is not reduced in accordance with the second paragraph of Article 41 of that Directive when it is established that the taxable person knew or should have known that he was participating in transactions amounting to an abuse of the VAT system?'

Consideration of the questions referred

The first question

32 By its first question, the referring court questions the application to the second operator in a chain of supplies of the simplification measure provided for triangular transactions in Articles 42, 141 and 197 of the VAT Directive in the particular case where that chain of supplies comprises not three but four operators identified for VAT purposes in three different Member States.

33 In accordance with the case-law, a triangular transaction is a transaction by which goods are supplied by a supplier, identified for VAT purposes in one Member State, to an intermediary acquiring the goods, identified for VAT purposes in a second Member State, who, in turn, supplies those goods to a final customer, identified for VAT purposes in a third Member State, those goods being transported directly from the first Member State to the third Member State (judgment of 8 December 2022, *Luxury Trust Automobil*, C-247/21, EU:C:2022:966, paragraph 41).

34 That triangular transaction is eligible for a derogation from the rule laid down in Article 2(1)(b) of the VAT Directive, according to which the intra-Community acquisition of goods for consideration within the territory of a Member State is subject to VAT (see judgment of 8 December 2022, *Luxury Trust Automobil*, C-247/21, EU:C:2022:966, paragraph 42 and the case-law cited).

35 That derogation consists, first, in exempting the intra-Community acquisition carried out by the intermediary acquiring the goods, who is identified for VAT purposes in the second Member State and, second, in transferring liability for the taxation of that acquisition to the final customer, established and identified for VAT purposes in the third Member State, the intermediary acquiring the goods being exempt from the requirement to identify itself for VAT purposes in that latter Member State. That derogation results from the relationship between the rule laid down in Article 40 of the VAT Directive and the derogation flowing from Article 42 of that directive (judgment of 8 December 2022, *Luxury Trust Automobil*, C-247/21, EU:C:2022:966, paragraph 43).

36 Article 40 of the VAT Directive lays down the rule that the place of taxation of an intra-Community acquisition is the place where dispatch or transport of the goods to the person acquiring them ends. In order to ensure the correct application of that rule, Article 41 of that directive provides that, where the person acquiring the goods does not establish that VAT has been applied to that acquisition in accordance with Article 40 of that directive, the place of the intra-Community acquisition is to be deemed to be within the territory of the Member State

which issued the VAT identification number under which the person acquiring the goods made the acquisition (judgment of 8 December 2022, *Luxury Trust Automobil*, C-247/21, EU:C:2022:966, paragraph 44).

37 Article 42 of the VAT Directive derogates from the application of the rule referred to in paragraph 36 above in the context of triangular transactions as defined in Article 141 of that same directive where, first, the person acquiring the goods establishes that he or she has made the intra-Community acquisition in question for the purposes of a subsequent supply, within the territory of the Member State identified in accordance with Article 40 of that directive and for which the person to whom the supply is made has been designated in accordance with Article 197 of the same directive as liable for payment of VAT, and, secondly, the person acquiring the goods has satisfied the obligations laid down in Article 265 of that directive relating to submission of the recapitulative statement (judgment of 8 December 2022, *Luxury Trust Automobil*, C-247/21, EU:C:2022:966, paragraph 45).

38 In the case in the main proceedings, unlike a 'classic' triangular transaction (involving three operators), the chain of supplies involves four taxable persons identified for VAT purposes in three different Member States. It concerns the situation where A, a taxable person identified for VAT purposes in Germany, sells goods to B, a taxable person identified for VAT purposes in Slovenia, who sells the same goods to C, a taxable person identified for VAT purposes in Denmark, who sells those goods itself to D, a taxable person also identified for VAT purposes in Denmark.

39 The referring court considers that, in the circumstances of the case in the main proceedings, the third and final transaction, between the operators C and D, which takes place in the same Member State as the preceding transaction, must be regarded, at least in principle, as an additional supply with no effect on the previous transactions, which could be classified, as a whole, as a preliminary triangular transaction and benefit from the administrative simplification measure provided for in Articles 42, 141 and 197 of the VAT Directive, provided that the conditions laid down by that directive are satisfied.

40 According to the referring court, the difficulty lies in the fact that it is not clear from the words 'to the person for whom he is to carry out the subsequent supply' in Article 141(c) of the VAT Directive whether the third operator in the chain of supplies must actually take delivery of the goods concerned, which are thus made available to him or her, or whether the condition laid down in that provision is also satisfied in the case of a direct supply to the customer of that operator.

41 Consequently, the case in the main proceedings essentially concerns the fact that the 'subsequent supply', within the meaning of Article 141(c) of the VAT Directive, was not made to the third operator (operator C), but directly to the third operator's customer (operator D).

42 Thus, by its first question, the referring court asks, in essence, whether Article 141(c) of the VAT Directive must be interpreted as meaning that the fact that the goods are not physically transported to the person for whom the subsequent supply is carried out in the context of a triangular transaction, but that they are transported to his or her customer, to whom that person resells the goods and who is identified for VAT purposes in the same Member State as the reseller, does not preclude the condition laid down in that provision from being regarded as satisfied.

43 In those circumstances, the first question referred for a preliminary ruling essentially concerns the interpretation of the concept of 'the person to whom the subsequent supply is to be made' within the meaning of Article 141(c) and (d) of the VAT Directive.

44 In that regard, it should be stated that Article 14(1) of the VAT Directive defines the supply of goods as the 'transfer of the right to dispose of tangible property as owner'.

45 According to settled case-law of the Court of Justice, the concept of 'supply of goods' does not refer to the transfer of ownership in accordance with the procedures prescribed by the applicable national law but covers any transfer of tangible property by one party which empowers the other party actually to dispose of it as if the recipient were the owner of the property (see judgment of 2 July 2015, *NLB Leasing*, C-209/14, EU:C:2015:440, paragraph 29 and the case-law cited).

46 A transfer of the right to dispose of tangible property as owner, within the meaning of Article 14(1) of the VAT Directive, does not require that the party to whom the property is transferred must physically possess it or that it must be physically transported to and/or received by that party (order of 15 July 2015, *Itales*, C-123/14, not published, EU:C:2015:511, paragraph 36; see also, by analogy, judgment of 16 December 2010, *Euro Tyre Holding*, C-430/09, EU:C:2010:786, paragraph 42).

47 The Court of Justice has already had occasion to state, in that regard, that the fact that goods had not been received directly from the issuer of the purchase invoice was not necessarily the result of fraudulent concealment committed by the true supplier, but that there may have been other reasons for it, such as, inter alia, the existence of two successive sales of the same goods which, on instructions, were transported directly from the first vendor to the second person acquiring the goods, with the result that there were two successive supplies within the meaning of Article 14(1) of the VAT Directive, but a single actual transport. In addition, it is not necessary for the first person acquiring the goods in question to have become the owner of those goods at the time of that transport, given that the existence of a supply within the meaning of that provision does not presuppose the transfer of the legal ownership of the goods (see order of 15 July 2015, *Itales*, C-123/14, not published, EU:C:2015:511, paragraph 37 and the case-law cited).

48 Thus, it must be concluded that Article 141(c) and (d) of the VAT Directive does not require that the person to whom a 'subsequent supply' is to be made, within the meaning of those provisions, must physically possess the tangible property supplied or that it must be physically transported to and/or received by that person. Thus, such a supply may be made in the context of a single transport to the person to whom that person to whom a subsequent supply is to be made resells the tangible property.

49 In addition, the objectives pursued by the derogation provided for in Articles 42 and 141 of the VAT Directive support that interpretation. In that regard, it should be stated that, according to the case-law, although the purpose of Article 141 of that directive is to avoid a situation whereby the intermediary acquiring the goods (operator B) has to satisfy identification and declaration obligations in the Member State of destination of the goods, Articles 41 and 42 of that directive are intended to ensure that the intra-Community acquisition in question is subject to VAT payable by the final customer (operator C), the person to whom the subsequent supply is to be made, while avoiding double taxation of that transaction (see, to that effect, judgments of 19 April 2018, *Firma Hans Bühler*, C-580/16, EU:C:2018:261, paragraphs 41 and 50, and of

8 December 2022, *Luxury Trust Automobil*, C-247/21, EU:C:2022:966, paragraph 53). The attainment of those objectives does not depend on the fact that the goods are physically transported to the person for whom the subsequent supply is carried out.

50 In the light of all the foregoing considerations, the answer to the first question is that Article 141(c) of the VAT Directive must be interpreted as meaning that the fact that the goods supplied in the context of a triangular transaction are not physically transported to the person for whom the subsequent supply is carried out, but to his or her customer, to whom that person resells them and who is identified for VAT purposes in the same Member State as the reseller, does not preclude the condition laid down in that provision from being regarded as satisfied.

The second question

51 By its second question, the referring court asks, in essence, whether the fact that an operator benefiting from the simplification measure provided for in respect of triangular transactions is aware that the subsequent supply was not made to the person for whom that supply was carried out, but to the customer of that person, has a bearing on the compliance with the condition laid down in Article 141(c) of the VAT Directive.

52 In the light of the considerations set out in paragraphs 46 to 50 above, the second question must be answered in the negative. A contrary approach would, moreover, run counter to the case-law according to which transactions must be taxed by taking into account their objective characteristics (see judgment of 27 September 2007, *Collée*, C-146/05, EU:C:2007:549, paragraph 30 and the case-law cited; see also, to that effect, judgment of 11 July 2018, *E LATS*, C-154/17, EU:C:2018:560, paragraph 36 and the case-law cited).

53 Therefore, the answer to the second question is that Article 141(c) of the VAT Directive must be interpreted as meaning that the fact that the operator benefiting from the simplification measure provided for in respect of triangular transactions is aware that the goods concerned are not physically transported to the person for whom the subsequent supply is carried out, but to the customer of that person, to whom that person resells the goods and who is identified for VAT purposes in the same Member State as the reseller, has no bearing on the compliance with the condition laid down in that provision.

The third question

54 By its third question, the referring court asks, in essence, whether Articles 41 and 42 of the VAT Directive must be interpreted as meaning that, in circumstances such as those in question in the main proceedings, the place of the intra-Community acquisition of goods is deemed to be within the territory of the Member State which issued the VAT identification number under which the person acquiring the goods made that acquisition and that person acquiring the goods cannot benefit from the reduction in the taxable amount provided for in the second paragraph of Article 41 of that directive, where it is found that the person acquiring the goods knew or should have known that he or she was participating in transactions constituting an abuse of the VAT system.

55 In that regard, it should be stated, first of all, that the Court of Justice has repeatedly held that EU law cannot be relied on by individuals for abusive or fraudulent ends (see judgment of 18 December 2014, *Schoenimport 'Italmoda' Mariano Previti and Others*, C-131/13, C-163/13 and C-164/13, EU:C:2014:2455, paragraph 43 and the case-law cited).

56 Moreover, according to settled case-law, the prevention of tax evasion, avoidance and abuse are objectives recognised and encouraged by the VAT Directive (see judgment of 6 September 2012, *Mecsek-Gabona*, C-273/11, EU:C:2012:547, paragraph 47 and the case-law cited).

57 The Court has held in that regard that it is, in principle, the responsibility of the national authorities and courts to refuse the benefit of the rights laid down by the VAT Directive when they are claimed fraudulently or abusively, irrespective of whether those rights are rights to a deduction, to an exemption or to a VAT refund in respect of intra-Community supplies (judgment of 18 December 2014, *Schoenimport 'Italmoda' Mariano Previti and Others*, C-131/13, C-163/13 and C-164/13, EU:C:2014:2455, paragraph 49).

58 That is the position not only where tax evasion has been carried out by the taxable person itself but also where a taxable person knew, or should have known, that, by the transaction concerned, it was participating in a transaction involving evasion of VAT carried out by the supplier or by another trader acting upstream or downstream in the supply chain (see judgment of 18 December 2014, *Schoenimport 'Italmoda' Mariano Previti and Others*, C-131/13, C-163/13 and C-164/13, EU:C:2014:2455, paragraph 50 and the case-law cited).

59 In so far as abusive or fraudulent acts cannot form the basis of a right under EU law, the refusal of a benefit under the VAT Directive does not amount to imposing an obligation on the individual concerned under that directive, but is merely the consequence of the finding that the objective conditions required for obtaining the advantage sought, under the directive as regards that right, have, in fact, not been satisfied (see judgment of 18 December 2014, *Schoenimport 'Italmoda' Mariano Previti and Others*, C-131/13, C-163/13 and C-164/13, EU:C:2014:2455, paragraph 57 and the case-law cited).

60 It should be noted in that regard, as the Republic of Slovenia has done, that, according to the case-law, the refusal to apply a benefit under the VAT Directive is not contrary to the principle of proportionality, the principle of neutrality, the principle of legal certainty or the principle of the protection of legitimate expectations. Those principles cannot legitimately be invoked by a taxable person who has intentionally participated in tax evasion and who has jeopardised the operation of the common system of VAT (see, to that effect, judgment of 7 December 2010, *R.*, C-285/09, EU:C:2010:742, paragraphs 53 and 54).

61 In the light of the foregoing considerations, and of the objectives pursued by the derogation provided for in Articles 42 and 141 of the VAT Directive, referred to in paragraph 49 above, the answer to the third question is that Articles 41 and 42 of the VAT Directive must be interpreted as meaning that it is for the authorities and the courts of the Member State which issued the VAT identification number under which a person acquiring the goods who is a taxable person for VAT purposes made an intra-Community acquisition of goods to refuse that person acquiring the goods the benefit of the scheme provided for in Articles 42 and 141 of that directive and the reduction of the taxable amount provided for in the second paragraph of Article 41 of that directive, if it is established that that person acquiring the goods knew or should have known that, by the transaction relied on to justify the application of that scheme, he or she was participating in VAT fraud committed in the context of a chain of supplies.

Costs

62 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds,

THE GENERAL COURT (Chamber giving preliminary rulings)

hereby rules:

1. **Article 141(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/45/EU of 13 July 2010,**

   must be interpreted as meaning that the fact that the goods supplied in the context of a triangular transaction are not physically transported to the person for whom the subsequent supply is carried out, but to his or her customer, to whom that person resells them and who is identified for value added tax (VAT) purposes in the same Member State as the reseller, does not preclude the condition laid down in that provision from being regarded as satisfied.

2. **Article 141(c) of Directive 2006/112, as amended by Directive 2010/45,**

   must be interpreted as meaning that the fact that the operator benefiting from the simplification measure provided for in respect of triangular transactions is aware that the goods concerned are not physically transported to the person for whom the subsequent supply is carried out, but to the customer of that person, to whom that person resells the goods and who is identified for VAT purposes in the same Member State as the reseller, has no bearing on the compliance with the condition laid down in that provision.

3. **Articles 41 and 42 of Directive 2006/112, as amended by Directive 2010/45,**

   must be interpreted as meaning that it is for the authorities and the courts of the Member State which issued the VAT identification number under which a person acquiring the goods who is a taxable person for VAT purposes made an intra-Community acquisition of goods to refuse that person acquiring the goods the benefit of the scheme provided for in Articles 42 and 141 of that directive and the reduction of the taxable amount provided for in the second paragraph of Article 41 of that directive, if it is established that that person acquiring the goods knew or should have known that, by the transaction relied on to justify the application of that scheme, he or she was participating in VAT fraud committed in the context of a chain of supplies.

Papasavvas Laitenberger Hesse

Stancu Dimitrakopoulos

Delivered in open court in Luxembourg on 3 December 2025.

[Signatures]