

CJEU 05-12-1996 Reisdorf C-85/95

By **Editors** - December 5, 1996



CJEU Reisdorf judgment

Member States are allowed to understand by "invoice" not only the original, but also any other document serving as such meeting the criteria laid down by those Member States and grant them the power to require proof of the right to deduct the original of the invoice is presented,

and to permit the taxable person who is no longer in possession of it to prove by other means that the transaction to which the application for deduction relates has actually taken place.

Judgment of the Court (Fifth Chamber)

December 5, 1996

John Reisdorf v Finanzamt Köln-West. - Reference for a preliminary ruling: Bundesfinanzhof - Germany. - Value added tax - Interpretation of Article 18 (1) (a) of Sixth Directive 77/388 / EEC - Deduction of input tax - Obligation of a taxable person - Possession of invoice. - Case C-85/95.

European Court reports 1996 Page I-06257

Summary

Parties

Grounds

Decision on costs

Operative part

Keywords

1 Preliminary rulings - Jurisdiction of the Court - Limits - Dispute in dispute or request for interpretation of provisions of Community law which are clearly not applicable in the main proceedings

(EC Treaty, Art. 177)

2 Tax provisions - Approximation of laws - Turnover taxes - Common system of value added tax - Deduction of input tax - Obligations of the taxable person - Possession of the invoice - Invoice - Concept - Possibility for Member States to accept documents other than the original of the invoice as an invoice

(Council Directive 77/388, Arts 18 (1) (a) and 22 (3))

Resume

3 When the questions referred for a preliminary ruling concern the interpretation of a provision of Community law, the Court gives its ruling on this, without it having to examine in principle what prompted the national court to refer the questions and what application it intends to give to the Community provision which he requests the Court to interpret.

It would only be different if it were found that the procedure under Article 177 of the Treaty is being used improperly and that the actual question is to obtain a ruling from the Court in a hypothetical dispute, or if it is clear that the provision of Community law submitted to the Court for interpretation cannot apply.

4 Articles 18 (1) (a) and 22 (3) of the Sixth Directive (77/388) on the harmonization of the laws of the Member States concerning turnover taxes state the right of a person liable to pay VAT to deduct the amount of input tax from the tax which he owes, the Member States which have the power to lay down rules for controlling the exercise of the right of deduction and, in particular, for the manner in which the taxable person makes that right must provide evidence that the term "invoice" includes not only the original document, but also any other document serving it as such which satisfies the criteria laid down by those Member States and empower them to require that evidence of the right to deduction the original of the invoice is presented, and allow the taxable person who is no longer in possession of it to prove by other means that the transaction to which the application for deduction relates has actually taken place.

Parties

In Case C-85/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Bundesfinanzhof for a preliminary ruling in the proceedings pending before that court between

J. Reisdorf

and

Finanzamt Koeln-West,

for a preliminary ruling on the interpretation of Article 18 (1) (a) of the Sixth Council Directive (77/388 / EEC) of 17 May 1977 on the harmonization of the laws of the Member States

concerning turnover taxes - Community system of value added tax: uniform basis (OJ 1977 L 145, p. 1),

points

THE COURT

(Fifth Chamber),

composed of: JC Moitinho de Almeida (Rapporteur), President of the Chamber, C. Gulmann, DAO Edward, J.-P. Puissochet and P. Jann, judges,

Advocate General: N. Fennelly

Registrar: HA Ruehl, Principal Administrator

having regard to the written observations submitted by:

- J. Reisdorf, represented by H.-P. Taplick, tax adviser,
- the German Government, by E. Roeder, Ministerialrat at the Federal Ministry of the Economy, and B. Kloke, Oberregierungsrat at that Ministry, acting as Agents,
- the Greek Government, by V. Kontolaimos, Deputy Legal Adviser to the State Legal Service, and D. Tsagkarakis, Adviser to the Secretary of State for Foreign Affairs, acting as Agents,
- the French Government, by C. de Salins, Deputy Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and A. de Bourgoing, Chargé de Mission in that Directorate, acting as Agents,
- the United Kingdom Government, by S. Braviner, of the Treasury Solicitor's Department, acting as Agent, assisted by S. Lee, Barrister,
- the Commission of the European Communities, by J. Grunwald, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of J. Reisdorf, represented by R. Olschewski, lawyer in Cologne; the German Government, represented by E. Roeder; the Greek Government, represented by V. Kontolaimos; the French Government, represented by F. Pascal, Attaché d'administration Centrale in the Legal Affairs Directorate of the Ministry of Foreign Affairs, acting as Agent, and the Commission, represented by J. Grunwald, at the hearing on 20 June 1996,

after hearing the Opinion of the Advocate General at the sitting on 11 July 1996,

the following

Judgment

Grounds for the judgment

1 By order of 12 October 1994, received at the Court on 20 March 1995, the Bundesfinanzhof referred three questions, pursuant to Article 177 of the EC Treaty, concerning the interpretation of Article 18 (1) (a) of the Sixth Directive (77 / Council Regulation (EEC) No 388 / EEC of 17 May 1977 on the harmonization of the laws of the Member States concerning turnover taxes - Common system of value added tax: uniform basis (OJ 1977 L 145, p. 1, 'Sixth directive ")).

2 These questions have been raised in proceedings between J. Reisdorf and Finanzamt Koeln-West ('Finanzamt') concerning the possibility of exempting Reisdorf from producing the original invoices relating to the value added tax amounts (hereinafter: "VAT") from which he applies.

3 Article 17 (1) and (2) (a) of the Sixth Directive, concerning the right to deduct, provides:

"1. The right to deduct arises when the deductible tax becomes chargeable.

2. To the extent that the goods and services are used for taxable transactions, the taxable person may deduct from the tax due by him:

(a) value added tax, which is payable or payable for the goods supplied or to be supplied by another taxable person and for the services supplied or to be provided on his behalf by another taxable person. "

4 Article 18 (1) (a) and (3) of the Directive further provides:

"1. In order to exercise his right of deduction, the taxable person must:

(a) for the deduction referred to in Article 17 (2) (a), are in the possession of an invoice drawn up in accordance with Article 22 (3);

(...)

3. Member States shall determine the conditions and rules under which a taxable person may make a deduction if he has not applied it in accordance with the provisions of paragraphs 1 and 2. "

5 Finally, Article 22 (2), (3) and (8) of the Directive provides:

"2. Every taxable person must keep accounts that contain sufficient information to enable the application of the value added tax and its control by the tax administration.

3. (a) Each taxable person shall issue an invoice or any document serving as such for goods supplied to and for services supplied to another taxable person and keep it in duplicate.

Likewise, each taxable person must issue an invoice for the advance payments made to him by another taxable person before the supply or service is made.

b) The invoice must state separately: the price excluding tax, the tax at each individual rate and, where applicable, the exemption.

(c) Member States shall determine the criteria according to which a document can be considered to serve as an invoice.

(...)

8. Without prejudice to the provisions to be adopted under Article 17 (4), Member States may prescribe other obligations which they consider necessary to ensure that the tax is properly levied and to prevent fraud. "

6 It is apparent from the file in the main proceedings that, in 1988, Reisdorf had a retail space converted into a building belonging to him, which he leased to a supermarket operator from November 1988. After having waived the exemption from VAT referred to in Paragraph 4 (12) (a)

of the Umsatzsteuergesetz ('the UStG'), he applied for a deduction of input tax on the furnishing of the said retail space.

7 Following a special VAT check, the Finanzamt Reisdorf requested the production of the original invoices showing the deductions for which it had applied.

8 Under Paragraph 15 (1) (1) of the UStG, the trader may, under further conditions which are not relevant in the present case, be entitled to pay specifically for invoices within the meaning of Paragraph 14 of the UStG on supplies or other services for which other traders are deduct the withholding tax. Under Paragraph 14 (4) of the UStG, an invoice is to be understood as any document with which an entrepreneur or a third party settles with the recipient on his behalf, supplies or other services, regardless of what that document is called in trade.

9 Reisdorf submitted copies of several invoices, including interim invoices from the main contractor, but not originals. Consequently, the Finanzamt reduced the amount of input tax.

10 After unsuccessfully lodging an objection to that reduction, Reisdorf brought an appeal before the Finanzgericht. This action was dismissed because the Finanzgericht considered that although Reisdorf had been invited to do so, Reisdorf had not established that the conditions for deduction of input tax laid down in Paragraph 15 (1) (1) of the UStG were satisfied, since he of the invoices, which existed and which he says he could dispose of.

11 Pursuant to Paragraphs 14 and 15 of the UStG, the Finanzgericht takes the view that only the original of the invoice, which is drawn up and handed over or sent to the purchaser for settlement, can be regarded as the right to deduct to prove. It indicates that the original of the invoice is recognizable as a unique document and cannot be confused with additional copies, duplicates or copies of invoices. According to the Finanzgericht, the original of the invoice must always be presented, except when it is lost or when it is not possible to obtain it within a specified period. In that case, the evidence requested may be provided otherwise, by any means of proof permitted by national law, including a copy of the invoices and equivalent documents.

12 Reisdorf brought an appeal against that judgment before the Bundesfinanzhof, based on infringement of Paragraphs 14 and 15 of the UStG.

13 In the order for reference, the Bundesfinanzhof states, first, that national law does not regulate proof of the right to deduct, and, second, that, under Article 18 (1) (a) of the Sixth Directive, the taxable person is required to deduct tax due to him, "must be in possession of an invoice issued in accordance with Article 22 (3)". Uncertain as to what is meant by "invoice"

within the meaning of Article 18 (1) (a) of the Sixth Directive, the Bundesfinanzhof decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

"1) Is an invoice within the meaning of Article 18 (1) (a) of the Sixth Directive (77/388 / EEC) only the original, ie the first copy of the invoice, or must the invoice included in this Do you also mean copy, duplicate or photocopy?

2) Does the concept of "being in possession" within the meaning of Article 18 (1) (a) of the Sixth Directive (77/388 / EEC) mean that the taxable person must at all times be able to tax office?

(3) Article 18 (1) (a) of the Sixth Directive (77/388 / EEC) excludes the exercise of the right to deduct input tax where the taxable person is no longer in possession of an invoice ? "

Admissibility

14 Reisdorf considers that the present dispute concerns the definition of the term "invoice" which gives entitlement to deduction. He points out that, under Article 22 (3) (c) of the Sixth Directive, Member States are empowered to set the criteria according to which a document can be regarded as serving as an invoice. Therefore, if the Bundesfinanzhof considers that the Federal Republic of Germany has failed to fulfill its obligation to take legal measures pursuant to Article 22 (3) (c) of the Directive, it should fill that gap, but not to appeal to the Court.

15 This objection must be rejected. It is clear from the wording of the order for reference that the national court asks the Court for an interpretation of Article 18 (1) (a) of the Sixth Directive. If the questions referred for a preliminary ruling concern the interpretation of a provision of Community law, the Court shall rule on it, without it having to examine in principle what prompted the national court to refer the questions and what application it intends to give to Community law. provision which he asks the Court to interpret (see, to that effect, Cases C-67/91 Asociación Española de Banca Privada and Others (1992) ECR I-4785, paragraphs 25 and 26 and 6 July 1995, Case C-62/93 BP Soupergaz (1995) ECR I-1883, paragraph 10).

16 It would only be different if it were found that the procedure under Article 177 of the Treaty is being used improperly and that the actual question is to obtain a ruling from the Court in a hypothetical dispute, or when it is clear, The provision of Community law submitted to the Court for an interpretation cannot apply (see, to that effect, judgment in Asociación Española de Banca Privada, paragraph 26, and BP Soupergaz, paragraph 10, both cited above). However, that is not the case here.

17 The questions asked must therefore be answered.

Substance

18 By its three questions, which must be considered together, the referring court essentially asks whether Article 18 (1) (a) of the Sixth Directive permits the Member States, under 'invoice', only the original, that is, the first copy of the invoice, that is to say, or other documents, such as carbon copies, duplicates or photocopies, and whether the taxpayer who is no longer in possession of the original invoice still has the right to deduct can prove other means.

19 In order to answer those questions, it is necessary, when examining the provisions of the Sixth Directive, to distinguish between those concerning the exercise of the right of deduction and those concerning the proof of that right after it has been paid by the taxable person. exerted. Indeed, that distinction between the exercise of the right to deduct and the proof thereof during subsequent checks is inherent in the operation of the VAT system.

20 First, with regard to the exercise of the right to deduct, under Article 18 (1) (a) of the Sixth Directive, the taxable person must be in possession of an invoice drawn up in accordance with Article 22 (3) ". The concept of invoice must therefore be interpreted taking into account both Article 18 (1) (a) and Article 22 (3) of the Sixth Directive.

21 Article 22 (3) of the Sixth Directive, which governs the drawing up of the invoice in imperative terms, provides, in point (a), that every taxable person, for goods supplied to and for services, provides for another taxable person, "an invoice or a must serve as document serving as such ". In addition, Article 22 (3) (c) empowers the Member States to define the criteria according to which a document can be regarded as "serving as an invoice".

22 On reading Article 18 (1) (a), in conjunction with Article 22 (3), it appears that the exercise of the right to deduct normally depends on the possession of the original of the invoice or of the document which, according to the criteria laid down by the Member State concerned may be regarded as serving as such. As noted by the Advocate General in point 17 of his Opinion, that interpretation is confirmed by the various language versions of those provisions authentic when the Sixth Directive was adopted, even though the German version of Article 22 (3) (a) c, the idea that Member States should define the criteria according to which a document can serve as an invoice is less clearly expressed.

23 Where Article 22 (3) (c) of the Sixth Directive empowers Member States to determine the criteria according to which documents other than the original invoice may serve as an invoice, this implies that they to take the view that a document cannot serve as an invoice when an original has been drawn up and is in the possession of the person for whom it was intended.

24 Such competence of the Member States is consistent with one of the objectives of the Sixth Directive, which is to ensure the levying of VAT and the control thereof by the tax administration (see, to that effect, the seventeenth recital in the preamble to and Article 22 (2) and (8) of the Sixth Directive). In that regard, it should be recalled that in its judgment of 14 July 1988 (Joined Cases 123/87 and 330/87 *Jeunehomme*, 1988, p. 4517, paragraphs 16 and 17) has held that Member States may require that invoices contain additional particulars to ensure correct collection of VAT and the control by the administration, where such particulars are not so numerous or technical, that they make the exercise of the right to deduct practically impossible or excessively difficult.

25 It must therefore be concluded that Articles 18 (1) (a) and 22 (3) of the Sixth Directive permit Member States to understand by 'invoice' not only the original, but also any other person as such. acting document meeting the criteria laid down by those Member States themselves.

26 Secondly, as regards the provisions of the Sixth Directive, which relate to proof of the right to deduct after having been exercised by the taxable person, it must be observed that, as the German Government rightly observed, Article 18 of the Sixth Directive, in accordance with its preamble, deals only with the exercise of the right of deduction and not with the proof of that right after it has been exercised by the taxable person.

27 The obligations imposed on the taxable person after having exercised the right to deduct arise from other provisions of the Sixth Directive. For example, Article 22 (2) provides that every taxable person must keep accounts which contain sufficient information to permit the application of VAT and its control by the tax administration. Article 22 (8) of the Sixth Directive adds that Member States may prescribe other obligations which they consider necessary to ensure correct taxation and to prevent fraud.

28 However, Article 22 of the Sixth Directive does not contain any provision specifically concerning the provision of proof by the taxable person of the right to deduct.

29 However, it follows from the abovementioned provisions, under which the Member States are empowered to require additional particulars on the invoice and to impose any other obligation to ensure correct taxation and to prevent fraud: to monitor the exercise of the right to deduct and, in particular, the manner in which the taxable person is required to prove that right. As stressed by the Advocate General in points 26 and 27 of his Opinion, this includes the power to require the original of the invoice to be presented during tax audits, as well as the power to request that the taxable person who is no longer in possession of it, provide proof by other appropriate means that the act to which the application for deduction relates,

30 It must therefore be concluded that, in the absence of specific rules governing the proof of the right to deduct, Member States are empowered to require that the original of the invoice be presented and to prove that right is shown, that the taxable person who is no longer in possession of it proves by other means that the transaction to which the application for deduction relates has actually taken place.

31 Accordingly, the answer to the questions referred for a preliminary ruling must be that Articles 18 (1) (a) and 22 (3) of the Sixth Directive permit Member States to understand by 'invoice' not only the original, but also any other document serving as such meeting the criteria laid down by those Member States and empowering them to require that the original of the invoice be presented as proof of deduction, and to permit the taxable person which is no longer in its possession, proves by other means that the act to which the application for deduction relates has actually taken place.

Decision on costs

Cost

32 The costs incurred by the German, Greek and French Governments, the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. With regard to the parties to the main proceedings, the proceedings can be regarded as an incident raised there, so that the national court has to decide on the costs.

Operative part

THE COURT (Fifth Chamber),

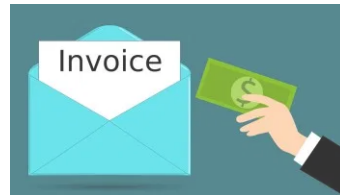
in answer to the questions submitted to it by the Bundesfinanzhof by order of 12 October 1994, hereby rules:

Articles 18 (1) (a) and 22 (3) of the Sixth Council Directive (77/388 / EEC) of 17 May 1977 on the harmonization of the laws of the Member States concerning turnover taxes - Community system of value added tax: uniform basis, Member States authorize 'invoice' to cover not only the original, but also any other document serving it as meeting the criteria laid down by those Member States, and their power to require the proof of the right to deduct to be presented with the original of the invoice and to permit the taxable person who is no longer in possession of it to

prove, by other means, that the transaction covered by the application for deduction has actually taken place.

[ECLI: EU: C: 1996: 466](#)

Related



CJEU 29-04-2004 Terra
Baubedarf-Handel C-152/02
April 29, 2004
In "Court of Justice"



CJEU 11-06-1998 Société
générale des grandes sources
d'eaux minérales C-361/96
June 11, 1998
In "Court of Justice"



CJEU 15-09-2016 Senatex C-
518/14
September 15, 2016
In "Billing"
