ECLI:EU:C:2016:605

JUDGMENT OF THE COURT (Fourth Chamber)

28 July 2016 (*)

(VAT — Directive 2006/112/EC — Validity and interpretation of the directive — Services provided by lawyers — Liability to VAT — Right to an effective remedy — Equality of arms — Legal aid)

In Case C-543/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour constitutionnelle (Belgium), made by decision of 13 November 2014, received at the Court on 27 November 2014, in the proceedings

Ordre des barreaux francophones et germanophone and Others,

Jimmy Tessens and Others,

Orde van Vlaamse Balies,

Ordre des avocats du barreau d'Arlon and Others

v

Conseil des ministres,

intervening parties:

Association Syndicale des Magistrats ASBL,

Council of Bars and Law Societies of Europe,

THE COURT (Fourth Chamber),

composed of T. von Danwitz (Rapporteur), President of the Chamber, C. Lycourgos, E. Juhász, C. Vajda and K. Jürimäe, Judges,

Advocate General: E. Sharpston,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 16 December 2015,

after considering the observations submitted on behalf of:

– the Ordre des barreaux francophones et germanophone and Others, by V. Letellier, R. Leloup, E. Huisman, J. Buelens and C. T'Sjoen, avocats,

– Mr Tessens and Others, by J. Toury and M. Denys, avocats,

– the Orde van Vlaamse Balies, by D. Lindemans and E. Traversa, avocats,

– the Ordre des avocats du barreau d'Arlon and Others, by D. Lagasse, avocat,

– the Association Syndicale des Magistrats ASBL, by V. Letellier, avocat,

– the Council of Bars and Law Societies of Europe, by M. Maus and M. Delanote, avocats,

– the Belgian Government, by M. Jacobs and J.-C. Halleux, acting as Agents,

– the Greek Government, by K. Georgiadis and A. Dimitrakopoulou, acting as Agents,

– the French Government, by D. Colas and J.-S. Pilczer, acting as Agents,

– the Council of the European Union, by E. Chatziioakeimidou, E. Moro and M. Moore, acting as Agents,

– the European Commission, by H. Krämer, J.-F. Brakeland and M. Owsiany-Hornung, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 March 2016

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation and the validity of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

2 The request has been made in proceedings between the Ordre des barreaux francophones et germanophone (Council of French- and German-language Bars), Mr Jimmy Tessens, Orde van Vlaamse Balies (Council of Flemish Bars), Ordre des avocats du barreau d'Arlon (the Arlon Bar) and natural or legal persons, on the one hand, and the Conseil des ministres (the Belgian Council of Ministers), on the other hand, concerning an application for annulment of Article 60 of the loi du 30 juillet 2013 portant des dispositions diverses (Law of 30 July 2013 enacting various provisions) (*Moniteur belge* of 1 August 2013, p. 48270, 'Law of 30 July 2013'), by which the value added tax (VAT) exemption for the supply of services by lawyers in the exercise of their regular activity was ended.

Legal context

International law

ECHR

3 Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (the 'ECHR') provides:

'1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. …

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

...'

4 Article 14 of the ECHR provides:

'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'

International Covenant on Civil and Political Rights

5 Article 14(1) and (3) of the International Covenant on Civil and Political Rights, adopted by the UN General Assembly on 16 December 1966, which entered into force on 23 March 1976 (the 'ICCPR'), is worded as follows:

'1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. ...

...

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

...

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

...

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

...'

6 Under Article 26 of the ICCPR:

'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

The Aarhus Convention

7 Article 9 of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed at Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1; the 'Aarhus Convention'), provides:

‘1. Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under Article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law.

...

2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned

(a) having a sufficient interest or, alternatively,

(b) alleging the impairment of a right, where administrative procedural law of a Party requires this as a precondition,

have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of Article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organisation meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.

...

3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.

4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.

5. In order to further the effectiveness of the provisions of this article, each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.'

EU law

8 Article 1(2) of Directive 2006/112 reads as follows:

'The principle of the common system of VAT entails the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, however many transactions take place in the production and distribution process before the stage at which the tax is charged.

On each transaction, VAT, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of VAT borne directly by the various cost components.

The common system of VAT shall be applied up to and including the retail trade stage.'

9 Under Article 2(1) of the directive:

'The following transactions shall be subject to VAT:

...

(c) the supply of services for consideration within the territory of a Member State by a taxable person acting as such;

...'

10 Under Article 96 of that directive, Member States are to apply a standard rate of VAT, which is to be fixed by each Member State as a percentage of the taxable amount and which is to be the same for the supply of goods and for the supply of services.

11 Article 98(1) to (2) of the same directive provides:

'1. Member States may apply either one or two reduced rates.

2. The reduced rates shall apply only to supplies of goods or services in the categories set out in Annex III.

...'

12 Annex III to Directive 2006/112, headed 'List of supplies of goods and services to which the reduced rates referred to in Article 98 may be applied', refers, at point 15

thereof, to ‘supply of goods and services by organisations recognised as being devoted to social wellbeing by Member States and engaged in welfare or social security work, in so far as those transactions are not exempt pursuant to Articles 132, 135 and 136’.

13 Article 132 of that directive, included in Chapter 2 of Title IX thereof, entitled ‘Exemptions for certain activities in the public interest’, provides, at paragraph 1 thereof:

‘Member States shall exempt the following transactions:

...

(g) the supply of services and of goods closely linked to welfare and social security work, including those supplied by old people's homes, by bodies governed by public law or by other bodies recognised by the Member State concerned as being devoted to social wellbeing;

...’

14 Under Article 168(a) of that directive:

‘In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

(a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person;

...’

15 Under Article 371 of that directive ‘Member States which, at 1 January 1978, exempted the transactions listed in Annex X, Part B, to the directive may continue to exempt those transactions, in accordance with the conditions applying in the Member State concerned on that date’. Among the transactions referred to in this list are, inter alia, services supplied by lawyers.

Belgian law

16 Article 44(1) of the loi du 3 juillet 1969 créant le code de la taxe sur la valeur ajoutée (Law of 3 July 1969 establishing the Value Added Tax Code) (*Moniteur Belge* of 17 July 1969, p. 7046), provided, in the version that existed prior to the entry into force of the Law of 30 July 2013:

‘Services supplied, in the exercise of their regular activity, by the following persons shall be exempted from tax:

1. lawyers

...’

17 Article 60 of the Law of 30 July 2013, which entered into force on 1 January 2014 provides:

‘In Article 44, [paragraph 1] of the Value Added Tax Code, replaced by the Law of 28 December 1992 and amended by the Law of 28 December 2011, subparagraph 1 is repealed.’

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

18 In the main proceedings, a number of actions were brought before the Cour constitutionnelle (Constitutional Court, Belgium) seeking annulment of Article 60 of the Law of 30 July 2013. That provision ended, with effect from 1 January 2014, the VAT exemption on services supplied by lawyers, which Belgium had maintained on the basis of the transitional provision of Article 371 of Directive 2006/112.

19 The statutory rate of VAT on services supplied by lawyers is 21% in Belgium.

20 The referring court asks whether imposing VAT on services supplied by lawyers and the increase in costs for those services which results from the charging of VAT are compatible with the right to an effective remedy and in particular the right to the assistance of a lawyer. In addition, it asks whether the legislation at issue in the main proceedings complies with the principle of equality of arms, since that cost increase impacts only clients who are not taxable persons and who do not qualify for legal aid, while taxable clients have the possibility of deducting input VAT for those services.

21 In those circumstances, the Cour constitutionnelle (Constitutional Court) decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

‘(1) (a) By making services supplied by lawyers subject to VAT without taking account, having regard to the right to the assistance of a lawyer and the principle of equality of arms, of whether or not a client who does not qualify for legal aid is subject to VAT, is Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax compatible with Article 47 of the Charter of Fundamental Rights of the European Union in conjunction with Article 14 of the International Covenant on Civil and Political Rights and with Article 6 of the European Convention on Human Rights, in so far as that article recognises that everyone is entitled to a fair hearing and has the possibility of being advised, defended and represented and that there is a right to legal aid for those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice?

(b) For the same reasons, is Directive 2006/112 compatible with Article 9(4) and (5) of the Aarhus Convention in so far as those provisions establish a right of access to justice without the cost of those procedures being prohibitively expensive through "the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice"?

(c) May services provided by lawyers under a national legal aid scheme be included in the services referred to in Article 132(1)(g) of Directive 2006/112 which are closely linked to welfare and social security work, or may they be exempted under another provision of that directive? If that question is answered in the negative, is Directive 2006/112, interpreted as not permitting a VAT exemption for services supplied by lawyers for clients who qualify for legal aid under a national legal aid scheme, compatible with Article 47 of the Charter of Fundamental Rights of the European Union in conjunction with Article 14 of the ICCPR and with Article 6 of the ECHR?

(2) If the questions mentioned in paragraph 1 are answered in the negative, is Article 98 of Directive 2006/112, in so far as it does not provide for the possibility of applying a reduced rate of VAT to services supplied by lawyers, as the case may be depending on whether or not a client who does not qualify for legal aid is subject to VAT, compatible with Article 47 of the Charter of Fundamental Rights of the European Union in conjunction with Article 14 of the ICCPR and with Article 6 of the ECHR, in so far as that article recognises that everyone is entitled to a fair hearing and has the possibility of being advised, defended and represented and that there is a right to legal aid for those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice?

(3) If the questions mentioned in paragraph 1 are answered in the negative, is Article 132 of Directive 2006/112 compatible with the principle of equality and non-discrimination enshrined in Articles 20 and 21 of the Charter of Fundamental Rights of the European Union and Article 9 TEU, in conjunction with Article 47 of that charter, in so far as it does not provide, among activities in the public interest, for VAT exemption for services of lawyers, when other supplies of services are exempted as activities in the public interest, such as the supply of services by the public postal services, various medical services or services connected with education, sport or culture, and when that difference in treatment between services of lawyers and services exempted by Article 132 of that directive raises sufficient doubts because services of lawyers contribute to respect for certain fundamental rights?

(4) (a) If the questions mentioned in paragraphs 1 and 3 are answered in the negative, can Article 371 of Directive 2006/112 be interpreted, in accordance with Article 47 of the Charter of Fundamental Rights of the European Union, as authorising a Member State of the European Union partially to maintain the exemption for services supplied by lawyers where those services are performed for clients who are not subject to VAT?

(b) Can Article 371 of Directive 2006/112 also be interpreted, in accordance with Article 47 of the Charter of Fundamental Rights of the European Union, as authorising a Member State of the European Union partially to maintain the exemption for services supplied by lawyers where those services are performed for clients who qualify for legal aid under a national legal aid scheme?'

Consideration of the questions referred for a preliminary ruling

Part (a) of the first question

22 By part (a) of the first question, the referring court essentially asks the Court to examine the validity of Article 1(2) and Article 2(1)(c) of Directive 2006/112 in the light of the right to an effective remedy and the principle of equality of arms under Article 47 of the Charter of Fundamental Rights of the European Union (the 'Charter'), in so far as those provisions impose VAT on services supplied by lawyers to clients who do not qualify for legal aid under a national legal aid scheme.

23 Since the referring court refers not only to Article 47 of the Charter, but also to Article 14 of the ICCPR and Article 6 of the ECHR, it should be recalled that, whilst, as Article 6(3) TEU confirms, fundamental rights recognised by the ECHR constitute general principles of EU law and whilst Article 52(3) of the Charter provides that the rights contained in the Charter which correspond to rights guaranteed by the ECHR are to have the same meaning and scope as those laid down by the ECHR, the latter does not constitute, as long as the European Union has not acceded to it, a legal instrument which has been formally incorporated into EU law (judgments of 26 February 2013 in *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 44; 3 September 2015 in *Inuit Tapiriit Kanatami and Others* v *Commission*, C-398/13 P, EU:C:2015:535, paragraph 45; and 15 February 2016 in *N.*, C-601/15 PPU, EU:C:2016:84, paragraph 45). This finding also applies to the ICCPR. Accordingly, an examination of the validity of Directive 2006/112 must be undertaken solely in the light of the fundamental rights guaranteed by the Charter (see, to that effect, judgment of 15 February 2016 in *N.*, C-601/15 PPU, EU:C:2016:84, paragraph 46 and the case-law cited).

24 As regards the scope of the examination required by the question, it should be noted that it is limited to the specific costs resulting from the imposition of VAT at the rate of 21% on services supplied by lawyers and does not cover the whole costs connected to legal proceedings.

25 Furthermore, the doubts expressed by the referring court concern only the situation of clients who do not qualify for legal aid under the relevant provisions of national law. According to information provided by that court, clients who qualify for that aid are not affected by any increase in legal costs that may result from the imposition of VAT on the services supplied by lawyers, since the cost of the supply of those services is borne by the Belgian State.

26 In contrast, other individuals must, in principle, bear, under the rules laid down by national law, lawyers' fees including VAT, which, according to the referring court, raises questions concerning the compatibility of such a tax burden with the right to an effective remedy guaranteed by Article 47 of the Charter. That court also harbours doubts about the compatibility of the tax burden with the principle of equality of arms, since only the clients who are taxable persons have the right to deduct input VAT for the supply of services by lawyers, pursuant to Article 168(a) of Directive 2006/112, and the imposition of VAT on the supply of those services thus impacts individuals differently depending on whether or not they are taxable persons.

The right to an effective remedy

27 Article 47 of the Charter enshrines the right to an effective remedy, which includes, in the second paragraph of that article, in particular, the right of everyone to have the possibility of being advised, defended and represented by a lawyer. The third paragraph of that article guarantees the right to an effective remedy through the grant of legal aid to individuals who lack sufficient resources.

28 In that regard, it should be noted that, according to the case file submitted to the Court, individuals who are not entitled to legal aid, who alone are covered by part (a) of the first question, are deemed, according to the relevant provisions of national law, to have sufficient resources to have access to justice by being represented by a lawyer. With regard to those individuals, the right to an effective remedy enshrined in Article 47 of the Charter, does not, in principle, guarantee a right to the exemption from VAT of the supply of services by lawyers.

29 Part (a) of the first question, concerning the validity of Article 1(2) and Article 2(1)(c) of Directive 2006/112 in the light of Article 47 of the Charter, is to be assessed according to the characteristics of those provisions themselves and cannot depend on the particular circumstances of a given case.

30 Furthermore, although access to justice and the effectiveness of legal protection depend on a multitude of all types of factors, the fact remains that the costs arising from legal proceedings, which include the VAT on the services supplied by lawyers, can also affect the decision of an individual to assert his rights in judicial proceedings and be represented by a lawyer.

31 However, according to the case-law of the Court, relating to several areas other than VAT law, the imposition of such costs can be challenged in the light of the right to an effective remedy guaranteed by Article 47 of the Charter only where those costs represent an insurmountable obstacle (see, by analogy, judgment of 22 December 2010 in *DEB*, C-279/09, EU:C:2010:811, paragraph 61, and order of 13 June 2012 in *GREP*, C-156/12, not published, EU:C:2012:342, paragraph 46) or where they make it in practice impossible or excessively difficult to exercise the rights conferred by the EU legal order (see, by analogy, judgment of 6 October 2015 in *Orizzonte Salute*, C-61/14, EU:C:2015:655, paragraphs 48, 49 and 58).

32 It is true that the applicants in the main proceedings claimed that the imposition of VAT at the rate of 21% on the services supplied by lawyers involved, in respect of individuals who do not qualify for legal aid (who are the only ones covered by part (a) of the first question), a significant increase in costs arising from legal proceedings.

33 However, as noted, in particular, by the Belgian Government in its written observations, the imposition of VAT at a rate of 21% on the supply of those services does not entail a commensurate increase in lawyers' fees, since, as taxable persons, lawyers have the right to deduct VAT imposed on purchases of goods or services as part of the services which they supply, pursuant to Article 168(a) of Directive 2006/112. Since the exercise of the right of deduction is likely to reduce their fees, the extent to which lawyers are financially obliged to pass on the cost resulting from the VAT in their fees is uncertain.

34 The level of a possible increase of those fees is more uncertain given that, in Belgium, fees are freely negotiated. In the framework of such a fee scheme, based on competition between lawyers, those lawyers are required to take into account the financial situation of their clients. In addition, as the Advocate General has observed in point 85 of her Opinion, according to the relevant national rules, lawyers' fees are supposed not to exceed the bounds of just moderation.

35 Therefore, no close or mechanical correlation can be established between the charging of VAT on the services supplied by lawyers and an increase in the price of those services.

36 In any event, since the amount of VAT at issue in the main proceedings is far from constituting the largest part of the costs of legal proceedings, the Court cannot hold that the charging of VAT on the services supplied by lawyers creates, by itself, an insurmountable obstacle to access to justice or that it makes it in practice impossible or excessively difficult to exercise the rights conferred by the EU legal order. In those conditions, the fact that such a charge could eventually lead to increased costs cannot call into question, as regards the right to an effective remedy guaranteed by Article 47 of the Charter, that charge to VAT.

37 If, owing the particular circumstances of a given case, the charging of VAT on the services supplied by lawyers were to create, by itself, an insurmountable obstacle to access to justice or make it in practice impossible or excessively difficult to exercise the rights conferred by the EU legal order, account would have to be taken of this by framing the right to legal aid appropriately, in accordance with the third paragraph of Article 47 of the Charter.

38 In view of the foregoing, it must be held that the protection conferred by the right to an effective remedy does not extend to the imposition of VAT on the services supplied by lawyers.

The principle of equality of arms

39 The applicants in the main proceedings contest the validity of Article 1(2) and Article 2(1)(c) of Directive 2006/112 also in the light of the principle of the equality of arms, on the ground that the charging of VAT at the rate of 21% on the services supplied by lawyers puts non-taxable individuals at a disadvantage compared with individuals who have the status of taxable persons. That disadvantage stems from the fact that the latter, unlike the former, enjoy the right to deduct and would not bear the financial burden resulting from that charging of VAT.

40 According to settled case-law, the principle of equality of arms, which is a corollary of the very concept of a fair trial and aims to ensure a balance between the parties to the proceedings, implies that each party must be afforded a reasonable opportunity to present his case, including his evidence, under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent (see, to that effect, judgments of 6 November 2012 in *Otis and Others*, C-199/11, EU:C:2012:684, paragraphs 71 and 72, and 12 November 2014 in *Guardian Industries and Guardian Europe* v *Commission*, C-580/12 P, EU:C:2014:2363, point 31; order of 16 July 2015 in *Sánchez Morcillo and Abril García*, C-539/14, EU:C:2015:508, paragraph 48).

41 The aim of that principle is to ensure a procedural balance between the parties to judicial proceedings, guaranteeing the equality of rights and obligations of those parties as regards, inter alia, the rules that govern the bringing of evidence and the adversarial hearing before the court (see, to that effect, judgment of 6 November 2012 in *Otis and Others*, C-199/11, EU:C:2012:684, paragraphs 71 and 72) and also those parties' rights to bring an action (judgment of 17 July 2014 in *Sánchez Morcillo and Abril García*, C-169/14, EU:C:2014:2099, paragraphs 44, 48 and 49).

42 However, the principle of equality of arms does not entail, as the Council pointed out in its observations to the Court, the obligation to put the parties on an equal footing in terms of the financial costs incurred in connection with legal proceedings.

43 As regards the charging of VAT at the rate of 21% on the services supplied by lawyers, it should be noted that although the imposition of that tax and the exercise of the right of deduction may, it is true, confer, in respect of the same amount of fees, a financial benefit on the individual who has the status of taxable person as compared with a non-taxable individual, this pecuniary advantage is, however, not likely to affect the procedural balance of the parties.

44 It has been held at paragraph 28 above that those individuals are deemed to have sufficient resources to cover the costs arising from legal proceedings, including lawyers' fees. Therefore, notwithstanding the potential financial benefit that one or the other of those individuals may obtain, the charging of VAT on the services supplied by lawyers at issue in the main proceedings is not such as to place non-taxable individuals at a complete disadvantage, with regard to the right to a fair trial, compared with individuals who have the status of taxable person.

45 As the Commission noted in its observations to the Court, the ability of a party to a dispute to pay lawyers' fees which are higher than those paid by his opponent does not necessarily translate into better legal representation. As the Court found in paragraph 35 above, in a regime where legal fees are freely negotiated, such as that in force in Belgium, lawyers may be induced to take into account the financial situation of their clients and ask their non-taxable clients to pay fees, including VAT, which are lower than those asked of their taxable clients.

46 It must therefore be held that the guarantee conferred by the principle of equality of arms does not extend to the charging of VAT at the rate of 21% on services supplied by lawyers.

47 In the light of all the foregoing considerations, the answer to part (a) of the first question is that the examination of Article 1(2) and Article 2(1)(c) of Directive 2006/112 in the light of the right to an effective remedy and the principle of equality of arms under Article 47 of the Charter has not revealed anything which might affect its validity in so far as those provisions impose VAT on services supplied by lawyers to clients who do not qualify for legal aid under a national legal aid scheme.

Part (b) of the first question

48 By part (b) of the first question, the referring court essentially asks the Court to examine the validity of Article 1(2) and Article 2(1)(c) of Directive 2006/112 in the light of Article 9(4) and (5) of the Aarhus Convention, in so far as they impose VAT on services supplied by lawyers.

49 In that regard, it must be recalled that, according to the Court's settled case-law, the provisions of an international agreement to which the European Union is a party can be relied on in support of an action for annulment of an act of secondary EU legislation or an exception based on the illegality of such an act only where, first, the nature and the broad logic of that agreement do not preclude it and, second, those provisions appear, as regards their content, to be unconditional and sufficiently precise (judgment of 13 January 2015 in *Council and Others* v *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht*, C-401/12 P to C-403/12 P, EU:C:2015:4, paragraph 54 and the case-law cited).

50 As regards Article 9(4) of the Aarhus Convention, it is clear from the wording of that provision that it is applicable only to proceedings referred to in Article 9(1), (2) and 3 of that convention. Those provisions do not contain any unconditional and sufficiently precise obligation capable of directly regulating the legal position of individuals.

51 The Court has held, with regard to Article 9(3) of the Aarhus Convention, that, since only 'members of the public who meet the criteria, if any, laid down by [the] national law' are entitled to exercise the rights provided for in this provision, it is subject, in its implementation or effects, to the adoption of a subsequent measure (judgments of 8 March 2011 in *Lesoochranárske zoskupenie*, C-240/09, EU:C:2011:125, paragraph 45,

and 13 Janaury 2015 in *Council and Others* v *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht*, C-401/12 P to C-403/12 P, EU:C:2015:4, paragraph 55).

52 As the Advocate General observed in point 92 of her Opinion, Article 9(1) and (2) of the Aarhus Convention also refers to the criteria laid down by national law. According to the terms of those provisions, the procedures to which they apply must be established 'within the framework of [the] national legislation' of the parties to that convention, with the national legislature, in particular, having to decide whether it intends to provide the possibility of access to a review procedure 'before a court of law and/or another independent and impartial body established by law'. In addition, it follows from the second subparagraph of Article 9(2) of the Aarhus Convention that the determination of 'what constitutes a sufficient interest and impairment of a right' is a matter for national law.

53 It follows that the application of Article 9(4) of the Aarhus Convention refers exclusively to the provisions of that convention, which do not fulfil the conditions, referred to in paragraph 49 above, to be fulfilled to enable them to be relied on in support of an action for annulment of an act of secondary EU legislation.

54 Accordingly, Article 9(4) of the Convention cannot be relied on to challenge the validity of Directive 2006/112.

55 As regards Article 9(5) of the Aarhus Convention, it follows from that provision, under which each party to the Convention is obliged to 'consider' the establishment of 'appropriate assistance mechanisms' to remove or reduce financial and other barriers to access to justice, that it does not include an unconditional and sufficiently precise obligation and that it is subject, in its implementation or effects, to the adoption of a subsequent measure.

56 In those circumstances, Article 9(5) of that convention cannot, by its very nature, be relied on in order to challenge the validity of Directive 2006/112.

57 Having regard to the foregoing considerations, the answer to part (b) of the first question is that Article 9(4) and (5) of the Aarhus Convention cannot be relied on for the purposes of assessing the validity of Article 1(2) and Article 2(1)(c) of Directive 2006/112.

Part (c) of the first question

58 By part (c) of the first question the referring court asks, in essence, whether Article 132(1)(g) of Directive 2006/112 or 'another provision' of that directive must be interpreted as meaning that the services supplied by lawyers for clients who qualify for legal aid under a national legal aid scheme, such as that at issue in the main proceedings, are exempt from VAT. If that question is answered in the negative, that court essentially asks the Court to examine the validity of Article 1(2) and Article 2(1)(c) of the directive

under Article 47 of the Charter, in so far as those provisions make those services subject to VAT.

59 At the outset, it should be noted that although the main question refers to both Article 132(1)(g) of Directive 2006/112 and 'another [possible] provision' of that directive, the request for a preliminary ruling does not make it possible to identify provisions of that directive, other than Article 132(1)(g) thereof, on the basis of which the services provided by lawyers under a national legal aid scheme could be exempted from VAT.

60 As the Advocate General has noted in points 54 and 55 of her Opinion, although the Court has not previously ruled on the application of the exemption under Article 132(1)(g) of Directive 2006/112 on services provided by lawyers under a national legal aid scheme, it has held, however, that those services cannot be subject to a reduced VAT rate pursuant to Article 98(2) of that directive, read in conjunction with point 15 of Annex III thereto (see, to that effect, judgment of 17 June 2010 in *Commission* v *France*, C-492/08, EU:C:2010:348, paragraph 47).

61 In that judgment, the Court held that, since point 15 of Annex III to that directive permits Member States to apply a reduced rate of VAT not to all supplies of services related to social wellbeing, but only to those provided by organisations which meet the dual requirement of being themselves devoted to social wellbeing and being engaged in welfare or social security work, the intention of the European Union legislature to make the option of applying a reduced rate refer only to supplies of services provided by organisations meeting that dual requirement would be frustrated if a Member State were free to classify private profit-making entities as organisations within the meaning of point 15 merely because those entities provide, inter alia, services related to social wellbeing (see, to that effect, judgment of 17 June 2010 in *Commission* v *France*, C-492/08, EU:C:2010:348, paragraphs 43 and 44).

62 Accordingly, the Court has held that a Member State cannot apply a reduced rate of VAT to supplies of services provided by private profit-making entities merely on the basis of an assessment of the nature of those services without taking into account, inter alia, the objectives pursued by those entities viewed as a whole and whether they are engaged in welfare work on a permanent basis. In the light of its overall objectives and the fact that any engagement in welfare work is not permanent, the professional category of lawyers as a whole cannot be regarded as devoted to social wellbeing (see, to that effect, judgment of 17 June 2010 in *Commission* v *France*, C-492/08, EU:C:2010:348, paragraphs 45 and 46).

63 That case-law applies *mutatis mutandis* to the exemption provided for in Article 132(1)(g) of Directive 2006/112, given that its application is not only subject to a condition relating to the social character of the supplies of services concerned, since they must be closely linked to welfare or social security work, but it is, in addition, restricted to supplies of services by organisations recognised as devoted to social wellbeing.

64 In the present case, it appears from the case file submitted to the Court that the supplies of services under the national legal aid scheme are not provided by all lawyers, but only those who volunteer to provide those services as their principal or ancillary activity and are, to that end, placed on a list established annually. It appears that the provision of services under such a scheme is but one objective among many of the legal profession.

65 Consequently, the services rendered by lawyers under the national legal aid scheme at issue are not exempt from VAT under Article 132(1)(g) of Directive 2006/112.

66 Finally, in the event that those services are found not to be exempt from VAT, the referring court questions the validity of Article 1(2) and Article 2(1)(c) of the directive in the light of Article 47 of the Charter, in so far as they subject those supplies of services to VAT at the rate of 21%. In that regard, it seems clear from the information furnished by the referring court that the national legal aid scheme at issue bears the full legal costs of individuals qualifying for that aid, including VAT on the services supplied by lawyers.

67 In the absence of additional information from the referring court relating to its effects, the charging of VAT on services supplied by lawyers under the national legal aid scheme does not appear to undermine the right to an effective remedy of individuals qualifying for such aid.

68 Having regard to the foregoing considerations, the answer to part (c) of the first question is that Article 132(1)(g) of Directive 2006/112 must be interpreted as meaning that the services supplied by lawyers for clients who qualify for legal aid under a national legal aid scheme, such as that at issue in the main proceedings, are not exempt from VAT.

The second to fourth questions

69 In the light of the answers given to the first question, parts (a) to (c), there is no need to examine the second to fourth questions.

Costs

70 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 Court (Fourth Chamber) hereby rules:

1. **The examination of Article 1(2) and Article 2(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, in the light of the right to an effective remedy and the principle of equality of arms under Article 47 of the Charter of Fundamental Rights of the European Union has not revealed anything which might affect their validity in so far as those provisions**

impose VAT on services supplied by lawyers to clients who do not qualify for legal aid under a national legal aid scheme.

2. **Article 9(4) and (5) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed at Aarhus on 25 June 1998, cannot be relied on for the purposes of assessing the validity of Article 1(2) and Article 2(1)(c) of Directive 2006/112.**

3. **Article 132(1)(g) of Directive 2006/112 must be interpreted as meaning that the services supplied by lawyers for clients who qualify for legal aid under a national legal aid scheme, such as that at issue in the main proceedings, are not exempt from VAT.**

[Signatures]

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* Language of the case: French.