Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

9 October 2025*

(Reference for a preliminary ruling – Taxation – Common system of value added tax (VAT) – Directive 2006/112/EC – Article 28 – Taking part in a supply of services – Articles 44 and 45 – Place of supply of services – Article 203 – VAT entered on an invoice – Electronically supplied services – App store – 'In-app' purchases)

In Case C-101/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesfinanzhof (Federal Fiscal Court, Germany), made by decision of 23 August 2023, received at the Court on 7 February 2024, in the proceedings

Finanzamt Hamburg-Altona

v

XYRALITY GmbH,

THE COURT (First Chamber),

composed of F. Biltgen, President of the Chamber, T. von Danwitz, Vice-President of the Court, acting as Judge of the First Chamber, I. Ziemele, A. Kumin (Rapporteur) and S. Gervasoni, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– XYRALITY GmbH, by D. Bell and M. Luther, Rechtsanwälte,

– the German Government, by J. Möller and N. Scheffel, acting as Agents,

– the European Commission, by P. Carlin and B. Eggers, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 April 2025,

* Language of the case: German.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 28, 44, 45 and 203 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 2008/8/EC of 12 February 2008 (OJ 2008 L 44, p. 11) ('the VAT Directive').

2 The request has been made in proceedings between the Finanzamt Hamburg-Altona (Tax Office, Hamburg-Altona, Germany) ('the tax authority') and XYRALITY GmbH ('Xyrality') concerning the imposition of value added tax (VAT) on services supplied by Xyrality electronically during the period from 2012 to 2014.

Legal context

The VAT Directive

3 Under Article 2(1)(c) of the VAT Directive, 'the supply of services for consideration within the territory of a Member State by a taxable person acting as such' shall be subject to VAT.

4 Article 28 of that directive reads as follows:

'Where a taxable person acting in his own name but on behalf of another person takes part in a supply of services, he shall be deemed to have received and supplied those services himself.'

5 Article 44 of that directive provides:

'The place of supply of services to a taxable person acting as such shall be the place where that person has established his business. …'

6 Article 45 of that directive provides:

'The place of supply of services to a non-taxable person shall be the place where the supplier has established his business. …'

7 Article 203 of the VAT Directive states:

'VAT shall be payable by any person who enters the VAT on an invoice.'

Implementing Regulation (EU) No 282/2011

8 Under Article 9a(1) of Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ 2011 L 77, p. 1), as amended by Council Implementing Regulation (EU) No 1042/2013 of 7 October 2013 (OJ 2013 L 284, p. 1) ('Implementing Regulation No 282/2011'):

'For the application of Article 28 of [the VAT Directive], where electronically supplied services are supplied through a telecommunications network, an interface or a portal such as a marketplace for applications, a taxable person taking part in that supply shall be presumed to be acting in his own name but on behalf of the provider of those services unless that provider is explicitly indicated as the supplier by that taxable person and that is reflected in the contractual arrangements between the parties.

In order to regard the provider of electronically supplied services as being explicitly indicated as the supplier of those services by the taxable person, the following conditions shall be met:

(a) the invoice issued or made available by each taxable person taking part in the supply of the electronically supplied services must identify such services and the supplier thereof;

(b) the bill or receipt issued or made available to the customer must identify the electronically supplied services and the supplier thereof.

For the purposes of this paragraph, a taxable person who, with regard to a supply of electronically supplied services, authorises the charge to the customer or the delivery of the services, or sets the general terms and conditions of the supply, shall not be permitted to explicitly indicate another person as the supplier of those services.'

9 Under the second paragraph of Article 3 of Implementing Regulation No 1042/2013, Article 9a of Implementing Regulation No 282/2011 is to apply from 1 January 2015.

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

10 Xyrality, established in Germany, develops game applications for mobile devices. In order to market those applications, it uses, inter alia, an internet-based digital platform for the distribution of software ('app store'), which was, until 31 December 2014, operated by X, an undertaking established in Ireland. End customers using mobile devices with a specific operating system could, during the period at issue in the main proceedings, download those applications free of charge on the app store.

11 The purchase for consideration of improvements or other advantages (in-app purchases) enabled the end customer to advance in the game which he or she had previously downloaded or to obtain other advantages. The end customer could select the desired improvements or advantages in the Xyrality game application and activate them in exchange for payment. The payment in respect of those in-app purchases was made via the app store by means of one of the payment methods registered by the end customer.

12 More specifically, first of all, after the end customer had selected a paid item, a 'pop-up' window opened up in the game application, showing the chosen product, its gross price and the method of payment. Next, that customer clicked on the 'Pay' button and a second window opened up, in which the subject of the purchase, the price and the method of payment were reiterated. Lastly, after he or she had clicked on the 'Confirm' button, that customer saw a third window open up, in which it was stated that the payment had been successfully carried out. The end customer could then immediately continue the game in the application. The logo of X appeared on the three windows. Xyrality was not referred to as the supplier.

13 Following the purchase, the end customer received from X an order confirmation by electronic mail, containing the logo of the app store and stating that a purchase had been made from Xyrality. That electronic mail also stated the gross price and the amount of the (German) VAT included in that price. X indicated to Xyrality each month the in-app purchases carried out by the end customers and drew up a commission invoice, equal to 30% of each purchase.

14 Xyrality considered, first of all, that it was the supplier of the services provided to the end customers, with the result that it declared the German VAT in respect of the end customers established in the European Union. On 29 January 2016, however, that company submitted amended VAT returns in respect of the period at issue in the main proceedings. Xyrality stated that it had concluded with X a commission contract for the provision of services, within the meaning of Article 28 of the VAT Directive. Accordingly, Xyrality itself provided services to X and X acted as the supplier of services to the end customers.

15 Taking the view, therefore, that the place of supply of the services which it had supplied to X was in Ireland, in accordance with Article 44 of the VAT Directive, Xyrality reduced the VAT base of its output transactions subject to VAT in Germany by the amount of the in-app purchases made by end customers established in the European Union.

16 Following a tax inspection, the tax authority considered that X was merely an intermediary. According to that tax authority, whereas, in each case, the purchase process was carried out through the app store, the end customer was nonetheless reminded of the terms of use of the service at each stage of the in-app purchase. X thus clearly informed the end customer, at the time of each purchase, that the transactions were carried out in the name of a third party and that X merely collected the price. Consequently, the tax authority issued VAT assessments relating to the 2012 to 2014 tax periods, in which the amendments carried out by Xyrality were not taken into account. In addition, the complaints lodged by that company were rejected by that tax authority.

17 Xyrality brought an action before the Finanzgericht Hamburg (Finance Court, Hamburg, Germany) which upheld that action by judgment of 23 February 2020. According to that court, the services provided by Xyrality were not taxable in Germany as the recipient of those services was X.

18 According to the Finanzgericht Hamburg (Finance Court, Hamburg), X acted in its own name in the context of the in-app purchases. The integration of the products offered by Xyrality into the interface of the app store meant that the average end customer expected X to be the other party to the contract and the seller of those products, particularly since that customer first of all had to register on the app store and accept its terms of use. The fact that X acted in the name of another service provider was not sufficiently clear. Although the purchases were carried out from the game application developed by Xyrality and the interface of the game was displayed in the background

during the purchase process, the end customer was, however, virtually redirected to the app store by the information appearing in the pop-up windows. Specifically, the purchase process took place under the logo of the app store, represented in a dominant manner.

19 The tax authority brought an appeal on a point of law against the judgment of the Finanzgericht Hamburg (Finance Court, Hamburg) before the Bundesfinanzhof (Federal Fiscal Court, Germany), which is the referring court.

20 The Bundesfinanzhof (Federal Fiscal Court) questions, in the first place, whether the assumption that X, and not Xyrality, provided the services to the end customers who made the in-app purchases at issue, is compatible with EU law.

21 That court states that, in accordance with its case-law on 'in-store purchases', it must be held that an end customer who purchases everyday consumer goods or is the recipient of other services in a store wishes, in principle, to establish a commercial relationship with the owner of that store. That approach, which corresponds to the economic and commercial reality, is also applicable to services supplied electronically or as telecommunication services.

22 However, the referring court considers that, if it were to uphold the judgment of the Finanzgericht Hamburg (Finance Court, Hamburg), it would be in conflict with the legal classification of the transactions at issue in the main proceedings as adopted by X and the Irish tax authorities, which would lead to potentially definitive non-taxation. Thus, it asks the Court to clarify whether Article 28 of the VAT Directive applies in a situation such as that before it.

23 According to the referring court, the order confirmations submitted by X, which state that the end customer carried out a purchase from Xyrality on X's app store and which mention German VAT, suggest that Xyrality provided a service to the end customer, with the result that, in the present case, it is not a situation falling within the scope of Article 28 of the VAT Directive.

24 By contrast, even though Article 9a of Implementing Regulation No 282/2011 became applicable only from 1 January 2015, the fact that that provision gives specific expression to the normative content established by Article 28 of the VAT Directive, as the Court held in its judgment of 28 February 2023, *Fenix International* (C-695/20, EU:C:2023:127), could suggest that the principles set out therein apply to transactions carried out by Xyrality before that date. The non-binding guidelines resulting from the 93rd meeting of the VAT Committee of 1 July 2011 (Document C – taxud.c.1(2012)1410604 – 709) could also be indicative in that regard.

25 In the second place, if it were held that Article 28 of the VAT Directive is applicable in the present case, the referring court states that it would result in a legal fiction that two identical supplies of services are supplied consecutively. The scope of that legal fiction is the subject of dispute in Germany.

26 In that regard, the referring court states that, in order to be applicable, Article 28 of the VAT Directive requires the existence of an agency in performance of which the commission agent acts, on behalf of the principal, in the provision of services, which entails the conclusion, between the commission agent and the principal, of an agreement concerning the granting of that agency. According to the referring court, it could be envisaged, with respect to VAT, treating the legal relationship between the commission agent and the principal on whose behalf it acts entirely in the same way as the provision of services in which the commission agent takes part, the fiction provided for in Article 28 of the VAT Directive thus extending to the supply as a whole.

27 In the present case, if it were considered that the service is directly provided by Xyrality, the place of that supply would be Germany. The same is therefore true of the fictitious supply provided by Xyrality to X.

28 It is also possible, however, that at least the place of supply in which the commission agent takes part also determines the place of supply of the service provided by the commission agent to the principal. From that point of view also, the place of supply of the fictitious service provided by Xyrality to X is in Germany.

29 Finally, it is conceivable that the place of the supply in which the commission agent takes part and the place of the supply provided by the commission agent to the principal are determined separately. In the present case, that approach would lead to the place of supply of the fictitious service provided by Xyrality to X being located in Ireland, in accordance with Article 44 of the VAT Directive, given that X is a taxable person who received the fictitious service for the purposes of its business. The place of the supply provided by X to the end customers is also in Ireland, in accordance with Article 45 of the VAT Directive.

30 In the third place, the referring court seeks to determine the consequences of the fact that X, with the agreement of Xyrality, sent by electronic mail order confirmations stating that purchases had been made from Xyrality on the app store and stating the gross price and the German VAT included in that price.

31 In that regard, the referring court is uncertain whether Xyrality is, under Article 203 of the VAT Directive, liable for the VAT stated in its name and with its consent, given that the order confirmations at issue are capable of constituting invoices within the meaning of that provision.

32 In those circumstances the Bundesfinanzhof (Federal Fiscal Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Under circumstances such as those in the main proceedings, in which a German taxable person (developer) supplied, before 1 January 2015, a service by electronic means to non-taxable persons (end customers) established within the territory of the European Union, via a marketplace for applications [“the app store”] operated by an Irish taxable person, is Article 28 of [the VAT Directive] to be applied, with the result that the Irish taxable person is treated as if it had received those services from the developer and supplied them to the end customers, because the [app store] did not name the developer as the supplier of the service and show German VAT until it did so in the order confirmations issued to the end customers?

(2) If the first question referred is answered in the affirmative: is the place of supply of the fictitious service supplied by the developer to the [app store] under Article 28 of [the VAT Directive] in Ireland, by virtue of Article 44 of [the VAT Directive], or in [Germany], by virtue of Article 45 of [the VAT Directive]?

(3) If, by virtue of the answers to the first and second questions referred for a preliminary ruling, the developer has not supplied any services in [Germany]: is the developer subject to a tax liability for German VAT under Article 203 of [the VAT Directive], on the ground that the [app store], acting in accordance with an agreement, named the developer as the supplier of the service and showed German VAT in the order confirmations it sent by email to the end customers, even though the end customers are not entitled to deduct input VAT?’

Consideration of the questions referred

The first question

33 By its first question, the referring court asks, in essence, whether Article 28 of the VAT Directive must be interpreted as meaning that, where a taxable person established in a Member State has, before 1 January 2015, supplied services electronically to non-taxable persons established in the territory of the European Union by means of a marketplace for applications made available by a taxable person established in another Member State, the application of that Article 28 is precluded on the ground that the order confirmations provided, by the latter taxable person, to end customers specify the first taxable person as the supplier and states the rate of VAT applicable in the Member State of establishment of that supplier.

34 Under Article 28 of the VAT Directive, which comes under Title IV of that directive, entitled 'Taxable transactions', where a taxable person acting in his or her own name but on behalf of another person takes part in a supply of services, he or she is to be deemed to have received and supplied those services himself or herself.

35 That Article 28, which is worded in general terms, without containing restrictions as to its application or scope and which thus covers all categories of services, creates the legal fiction of two identical supplies of services provided consecutively under which the operator, who takes part in the supply of services and who constitutes the commission agent, is considered to have, first, received the services in question from the operator on behalf of whom it acts, who constitutes the principal, before providing, second, those services to the client himself or herself (judgment of 28 February 2023, *Fenix International*, C-695/20, EU:C:2023:127, paragraph 54 and the case-law cited).

36 Article 28 of the VAT Directive thus establishes the rule that a taxable person who, in the context of a supply of services, acts as an intermediary in his or her own name but on behalf of another person, is presumed to be the supplier of those services (judgment of 28 February 2023, *Fenix International*, C-695/20, EU:C:2023:127, paragraph 55).

37 It is for the national court hearing a dispute concerning the application of Article 28 of the VAT Directive to inquire, having regard to all the circumstances of the case, and in particular the nature of the contractual obligations of the commission agent towards his or her customers, whether or not the conditions for the application of that provision are satisfied (see, by analogy, judgment of 14 July 2011, *Henfling and Others*, C-464/10, EU:C:2011:489, paragraph 40 and the case-law cited).

38 In the present case, it is apparent from the order for reference that the Finanzgericht Hamburg (Finance Court, Hamburg) found that X had acted in its own name in the context of the in-app purchases at issue in the main proceedings, since, in particular, the integration of the products into the interface of the app store meant that the average end customer expected X to be the other party to the contract and the seller of the products, particularly since that end customer first of all had to register in the app store and accept its terms of use before being able to purchase such products. By contrast, the fact that X was acting in the name of another person was not sufficiently clear during the purchase process on the app store.

39 Although the referring court does not call those findings into question, it questions the relevance, for the purpose of applying Article 28 of the VAT Directive, of the facts that, in the order confirmations provided by X to the end customers, Xyrality was referred to as a supplier and that the amount of German VAT was stated.

40 In that regard, the Court has already held that, in order for Article 28 of the VAT Directive to apply, there must be an agency in performance of which the agent acts, on behalf of the principal, in the provision of services. However, even if, despite the complexity of the chains of transactions which may characterise the supply of electronically supplied services, the end customer is, in certain cases, in a position to know the existence of the agency and the identity of the principal, those circumstances are not sufficient in themselves to exclude that the taxable person, taking part in the supply of services, acts in his or her own name but on behalf of another person, within the meaning of that Article 28. It is above all the powers enjoyed by that taxable person in the context of the supply of services in which he or she takes part which matter (judgment of 28 February 2023, *Fenix International*, C-695/20, EU:C:2023:127, paragraph 88 and the case-law cited).

41 Therefore, the mere fact that the end customer becomes aware of the identity of the principal by means of order confirmations, which that end customer necessarily only receives after the conclusion of the purchase process, does not preclude the applicability of Article 28 of the VAT Directive if it follows from the other relevant factors that the conditions for the application of that provision are satisfied.

42 In so far as the referring court refers, in addition, to Article 9a(1) of Implementing Regulation No 282/2011, it must be stated that that provision seeks to determine the supplier for the purposes of VAT where electronically supplied services are supplied through a telecommunications network, an interface or a portal such as a marketplace for applications. In that regard, it is apparent from the judgment of 28 February 2023, *Fenix International* (C-695/20, EU:C:2023:127, paragraph 89), that Article 9a cannot be regarded as supplementing or amending Article 28 of the VAT Directive.

43 Article 9a(1), which entered into force on 1 January 2015, is not applicable *ratione temporis* to the dispute in the main proceedings, which concerns services provided between 2012 and 2014. However, in so far as that provision explains and clarifies a concept appearing in the VAT Directive and applicable since its inception, it should nonetheless be taken into account (see, to that effect, judgments of 15 November 2012, *Leichenich*, C-532/11, EU:C:2012:720, paragraph 32, and of 16 October 2014, *Welmory*, C-605/12, EU:C:2014:2298, paragraphs 44 to 46).

44 In any event, as the Advocate General observed in point 41 of his Opinion, it cannot be inferred from the fact that Article 9a(1) of Implementing Regulation No 282/2011 was not yet applicable during the period at issue in the main proceedings that, in relation to that period, Article 28 of the VAT Directive should be interpreted in a different way from that which is apparent from that Article 9a(1).

45 Having regard to the above considerations, the answer to the first question is that Article 28 of the VAT Directive must be interpreted as meaning that, where a taxable person established in a Member State has, before 1 January 2015, supplied services electronically to non-taxable persons established in the territory of the European Union by means of a marketplace for applications made available by a taxable person established in another Member State, the application of that

Article 28 cannot be precluded solely on the ground that the order confirmations provided, by the latter taxable person, to end customers specify the first taxable person as the supplier and state the rate of VAT applicable in the Member State of establishment of that supplier.

The second question

46 By its second question, the referring court asks, in essence, whether the VAT Directive must be interpreted as meaning that, where a taxable person established in a Member State is deemed to have received and supplied services himself or herself under Article 28 of that directive, the place of supply of services fictitiously provided to that taxable person by a taxable person established in another Member State must be determined in accordance with Article 44 of that directive or in accordance with Article 45 of that directive given that the end customers are non-taxable persons.

47 As stated in paragraph 35 above, Article 28 of the VAT Directive creates the legal fiction of two identical supplies of services provided consecutively under which the operator, who takes part in the supply of services and who constitutes the commission agent, is considered to have, first, received the services in question from the operator on behalf of whom it acts, who constitutes the principal, before providing, second, those services to the client himself or herself.

48 As regards the place of supply of services, that must be determined in accordance with the provisions of Chapter 3 of Title V of the VAT Directive. In that regard, Sections 2 and 3 of that chapter set out, respectively, the general rules for determining the place of taxation of supplies of services and particular rules relating to specific supplies of services (see, to that effect, judgment of 27 October 2022, *Climate Corporation Emissions Trading*, C-641/21, EU:C:2022:842, paragraph 29 and the case-law cited).

49 Accordingly, Article 44 of the VAT Directive provides, in particular, that the place of supply of services to a taxable person acting as such is to be the place where that person has established his or her business. Pursuant to Article 45 of that directive, the place of supply of services to a non-taxable person is, in principle, to be the place where the supplier has established his or her business.

50 As regards the place of supply of services that, pursuant to Article 28 of the VAT Directive, a taxable person is deemed to have received from another taxable person, those taxable persons acting respectively as commission agent and principal, it must be stated, as the Advocate General observed in point 53 of his Opinion, that it does not follow either from Article 28 or from any other provision of the VAT Directive that the place of that supply of services should be determined by way of derogation from the rules laid down in Chapter 3 of Title V of that directive. Accordingly, the place of that supply of services must be determined in accordance with Article 44 of that directive.

51 Therefore, the answer to the second question is that the VAT Directive must be interpreted as meaning that, where a taxable person established in one Member State is deemed to have received and supplied services himself or herself under Article 28 of that directive, the place of supply of services fictitiously provided to that taxable person by a taxable person established in another Member State must be determined in accordance with Article 44 of that directive.

The third question

52 By its third question, the referring court asks, in essence, whether Article 203 of the VAT Directive must be interpreted as meaning that, where a taxable person established in a Member State has provided electronically supplied services to non-taxable persons established in the territory of the European Union by means of a marketplace for applications made available by a taxable person established in another Member State, with the result that the latter taxable person is deemed to have received those services and to have supplied them to the end customers, the first taxable person is liable for VAT in its Member State of establishment under that Article 203 on the ground that, in the order confirmations sent to the end customers, that first taxable person was designated, with his or her consent, as the supplier and that the rate of VAT applicable in his or her Member State of establishment was stated.

53 Article 203 of the VAT Directive provides that VAT is to be payable by any person who enters the VAT on an invoice.

54 As is apparent from the case-law of the Court, that provision seeks to eliminate the risk of loss of tax revenue which the right of deduction provided for in that directive might entail. Article 203 therefore applies where VAT has been invoiced incorrectly and there is a risk of loss of tax revenue on account of the fact that the recipient of the invoice in question has a right to deduct such VAT (judgment of 8 December 2022, *Finanzamt Österreich (VAT invoiced incorrectly to final consumers)*, C-378/21, EU:C:2022:968, paragraphs 20 and 21 and the case-law cited).

55 The referring court states that, in the present case, Xyrality first of all authorised X to designate it as the supplier in the order confirmations and to draw the appropriate conclusions in relation to VAT with regard to the end customer by declaring German VAT as the VAT applicable to the supply of services, only to then take the opposite view against the tax authority. Thus, in the light of the contradictory conduct of Xyrality, it could be legitimately argued that that company remains liable for VAT on the basis of Article 203 of the VAT Directive, in order to avoid a risk of loss of tax revenue caused by a negative conflict of jurisdiction between the German and Irish tax authorities, as a result of which the VAT is not definitively collected in either of those Member States.

56 In that regard, it should however be noted that, as the Advocate General observed in point 67 of his Opinion, Article 203 of the VAT Directive is functionally linked to the right to deduct VAT in that it seeks to avoid the risk of loss of tax revenue resulting from the amount of the deduction being overstated. According to the information in the order for reference, the services at issue in the main proceedings were supplied not to taxable persons for the purposes of their business, but to non-taxable persons. In the absence of a risk of loss of tax revenue associated with the right to deduct VAT incorrectly invoiced, Article 203 therefore does not apply. In those circumstances, the fact that the order confirmations at issue in the main proceedings cannot be regarded as invoices, as Xyrality submits in its written observations, is irrelevant for resolving the dispute in the main proceedings.

57 Having regard to the above considerations, the answer to the third question is that Article 203 of the VAT Directive must be interpreted as meaning that, where a taxable person established in a Member State has provided electronically supplied services to non-taxable persons established in the territory of the European Union by means of a marketplace for applications made available by a taxable person established in another Member State, with the result that the latter taxable person is deemed to have received those services and to have supplied them to the end

customers, the first taxable person cannot be considered liable for the VAT in his or her Member State of establishment under that Article 203 on the ground that, in the order confirmations sent to the end customers, that first taxable person was designated, with his or her consent, as the supplier and that the rate of VAT applicable in his or her Member State of establishment was stated.

Costs

58 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 Court (First Chamber) hereby rules:

1. **Article 28 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2008/8/EC of 12 February 2008,**

   must be interpreted as meaning that where a taxable person established in a Member State has, before 1 January 2015, supplied services electronically to non-taxable persons established in the territory of the European Union by means of a marketplace for applications made available by a taxable person established in another Member State, the application of that Article 28 cannot be precluded solely on the ground that the order confirmations provided, by the latter taxable person, to end customers specify the first taxable person as the supplier and state the rate of value added tax applicable in the Member State of establishment of that supplier.

2. **Directive 2006/112, as amended by Directive 2008/8,**

   must be interpreted as meaning that where a taxable person established in one Member State is deemed to have received and supplied services himself or herself under Article 28 of Directive 2006/112, as amended, the place of supply of services fictitiously provided to that taxable person by a taxable person established in another Member State must be determined in accordance with Article 44 of that directive, as amended.

3. **Article 203 of Directive 2006/112, as amended by Directive 2008/8,**

   must be interpreted as meaning that where a taxable person established in a Member State has provided electronically supplied services to non-taxable persons established in the territory of the European Union by means of a marketplace for applications made available by a taxable person established in another Member State, with the result that the latter taxable person is deemed to have received those services and to have supplied them to the end customers, the first taxable person cannot be considered liable for the value added tax (VAT) in his or her Member State of establishment under that Article 203 on the ground that, in the order confirmations sent to the end customers, that first taxable person was designated, with his or her consent, as the supplier and that the rate of VAT applicable in his or her Member State of establishment was stated.

[Signatures]