JUDGMENT OF THE COURT (Third Chamber)

12 January 2006 *

In Joined Cases C-354/03, C-355/03 and C-484/03,

REFERENCES for a preliminary ruling under Article 234 EC from the High Court of Justice of England and Wales, Chancery Division (United Kingdom), made by decisions of 28 July 2003 (C-354/03 and C-355/03) and 27 October 2003 (C-484/03), received at the Court on 18 August and 19 November 2003 respectively, in the proceedings

Optigen Ltd (C-354/03),

Fulcrum Electronics Ltd (C-355/03),

Bond House Systems Ltd (C-484/03)

v

Commissioners of Customs & Excise,

* Language of the case: English.

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, J. Malenovský, J.-P. Puissochet, S. von Bahr (Rapporteur) and U. Lõhmus, Judges,

Advocate General: M. Poiares Maduro,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 8 December 2004,

after considering the observations submitted on behalf of:

— Optigen Ltd, by T. Beazley QC and J. Herberg, Barrister,

— Fulcrum Electronics Ltd, by R. Englehart QC and A. Lewis, Barrister,

— Bond House Systems Ltd, by K.P.E. Lasok QC and M. Patchett-Joyce, Barrister,

— the United Kingdom Government, by C. Jackson (C-354/03, C-355/03 and C-484/03) and K. Manji (C-484/03), acting as Agents, and by R. Anderson QC and I. Hutton, Barrister,

— the Czech Government, by T. Boček, acting as Agent (C-354/03, C-355/03 and C-484/03),

— the Danish Government, by J. Molde and A. Rahbøl Jacobsen, acting as Agents, and by P. Biering, advokat (C-484/03),

— the Council of the European Union, by A.-M. Colaert and J. Monteiro, acting as Agents (C-354/03 and C-355/03),

— the Commission of the European Communities, by R. Lyal, acting as Agent (C-354/03, C-355/03 and C-484/03),

after hearing the Opinion of the Advocate General at the sitting on 16 February 2005,

gives the following

Judgment

1 The references for a preliminary ruling concern the interpretation of First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes (OJ, English Special Edition 1967, p. 14), as amended by Sixth Council Directive 77/388/EEC of 17 May 1977 on the

harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1, 'the First Directive'), and the interpretation of Sixth Directive 77/388, as amended by Council Directive 95/7/EC of 10 April 1995 (OJ 1995 L 102, p. 18, 'the Sixth Directive').

2 The references were made in the course of three sets of proceedings brought by Optigen Ltd ('Optigen'), Fulcrum Electronics Ltd, in liquidation, ('Fulcrum') and Bond House Systems Ltd ('Bond House') against the Commissioners of Customs & Excise ('the Commissioners') concerning the rejection by the Commissioners of the claims for reimbursement of value added tax ('VAT') paid on the purchase in the United Kingdom of CPUs which were subsequently exported to another Member State.

Legal context

3 Article 2 of the First Directive is worded as follows:

'The principle of the common system of value added tax involves the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, whatever the number of transactions which take place in the production and distribution process before the stage at which tax is charged.

On each transaction, value added tax, 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 value added tax borne directly by the various cost components.

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

4 Under Article 2(1) of the Sixth Directive, a supply of goods or services effected for consideration by a taxable person acting as such is subject to VAT.

5 Under Article 4(1) of the Sixth Directive, 'taxable person' means any person who independently carries out any economic activity specified in Article 4(2). The term 'economic activities' is defined in Article 4(2) as comprising all activities of producers, traders and persons supplying services, including the exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis.

6 Under Article 5(1) of that directive, '"[s]upply of goods" shall mean the transfer of the right to dispose of tangible property as owner'.

7 Article 17(1) to (3) of the Sixth Directive provides:

'1. The right to deduct shall arise at the time when the deductible tax becomes chargeable.

2. In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:

(a) value added tax due or paid in respect of goods or services supplied or to be supplied to him by another taxable person;

(b) value added tax due or paid in respect of imported goods;

...

3. Member States shall also grant to every taxable person the right to a deduction or refund of the value added tax referred to in paragraph 2 in so far as the goods and services are used for the purposes of:

(a) transactions relating to the economic activities as referred to in Article 4(2) carried out in another country, which would be eligible for deduction of tax if they had occurred in the territory of the country;

...'.

The main proceedings

8 According to the orders for reference, at the material time Optigen, Fulcrum and Bond House essentially carried on the business of buying CPUs from companies established in the United Kingdom and selling them to purchasers established in another Member State.

9 Optigen claimed a net balance of refundable VAT in excess of GBP 7 million in its VAT return in respect of June 2002. By decisions of 16 and 31 October 2002, the Commissioners declined to allow an amount of just over GBP 7 million of that claim. Similarly, by a decision of 30 October 2002, the Commissioners disallowed the refund of just over GBP 13 million in respect of July of that year.

10 Fulcrum claimed a net balance of input VAT of nearly GBP 7.2 million in its VAT return in respect of June 2002. By a decision of 11 November 2002, the Commissioners disallowed nearly GBP 2 million of the sum claimed. Similarly, in respect of July 2002 they disallowed about GBP 1.1 million out of a total claim of nearly GBP 4 million. In addition, in February 2003 the Commissioners issued an assessment against Fulcrum for nearly GBP 160 000 for input VAT which they claimed to have wrongly refunded to them in respect of May 2002.

11 Bond House claimed a refund of approximately GBP 16.3 million for input VAT paid in its VAT return in respect of May 2002. That claim was refused by the Commissioners. In September 2002, the Commissioners informed the company that they accepted that, of the total sum claimed, just over GBP 2.7 million was allowable.

12 According to the orders for reference, the transactions in question formed part of a chain of supply which, without the applicants in the main proceedings being aware of it, involved a defaulting trader, that is to say, a trader who incurs liability to VAT but goes missing without discharging that liability with the tax authorities, or a trader using a 'hijacked' VAT number, that is to say, a trader using a VAT number belonging to someone else, and thus, according to the Commissioners, constituted a carousel fraud.

13 According to the orders for reference in Cases C-354/03 and C-355/03, and, according to the Commissioners in Case C-484/03, a carousel fraud generally operates as follows:

— A company (A) in one European Union Member State sells taxable goods to a company (B) in another Member State.

— Company B, which is the defaulting trader or the trader using the hijacked VAT number, sells the goods at a discount to another company (C), a buffer company, in the other Member State. Further sales can thereby be made at a profit. Company B incurs liability to VAT on the purchase of the goods, but, having used the goods for taxable transactions, it is also entitled to deduct that VAT as input VAT. On the other hand, it incurs liability for the output VAT it has charged to company C, but goes missing before discharging that liability to the tax authorities.

— In turn, company C sells the goods to another buffer company (D) in the other Member State, paying the tax authorities the output VAT charged after having deducted the input VAT paid, and so on until a company in the other Member State exports the goods to another Member State. Exports are exempt from

VAT, but the exporting company is entitled to claim a refund of the input VAT paid on the purchase of the goods. When the purchaser in the last Member State is company A, there is a true carousel fraud.

— The process can be repeated.

14 In Cases C-354/03 and C-355/03, the referring court states that the Commissioners based their decisions on the contention that, first, as regards the purchases in question in the main proceedings, Optigen and Fulcrum received no supplies used or to be used for VAT purposes, so that the amounts of VAT purportedly paid in respect of those purchases were not input tax within the meaning of the Value Added Tax Act 1994. Further, for the purposes of VAT, the relevant sales were not supplies made in the course of a business and do not therefore give any entitlement to a refund. Finally, the purchases and the sales, judged objectively, were devoid of economic substance and were not part of any economic activity. Accordingly, the purchases were not supplies used or to be used for the purposes of any economic activity and the sales were not supplies made in the course of an economic activity for the purposes of VAT.

15 Optigen and Fulcrum appealed against the decisions of the Commissioners to the VAT and Duties Tribunal, London, which joined the two cases.

16 By decision of 23 May 2003, the VAT and Duties Tribunal, London, dismissed the appeal brought by those companies, concluding that the Commissioners had legitimately maintained that the transactions in question fall outside the scope of

VAT. It found that a trader does not have a right to a refund of input VAT paid on goods which it then sold to companies outside the United Kingdom, when there is a defaulting trader or a trader using a hijacked VAT number in the chain of supply, even though the trader claiming the refund was in no way involved in or had no knowledge of the failure of the other trader to fulfil its obligations or the hijacking of the VAT number, and the chains of supply which included the purchases and sales of the trader were part of a carousel fraud operated by third parties without its knowledge.

17 Optigen and Fulcrum lodged appeals before the High Court of Justice of England and Wales, Chancery Division, against the decision of the VAT and Duties Tribunal, London.

18 According to the order for reference in Case C-484/03, the Commissioners claim that the fact that the chains of supply at issue in the main proceedings had a fraudulent objective means that all the transactions which make it up, including those of Bond House, were devoid of economic substance. Accordingly, as the illegal transactions did not fall within the scope of VAT, the amounts which Bond House paid as input VAT to its suppliers under the guise of VAT were not VAT, and therefore did not give that company an entitlement to a refund of those amounts.

19 Bond House lodged an appeal before the VAT and Duties Tribunal, Manchester, in August 2002.

20 By judgment of 29 April 2003, amended by addendum of 8 May 2003, the VAT and Duties Tribunal, Manchester, held that 26 of the 27 purchases in question could not be regarded as economic activities within the meaning of the Sixth Directive and were therefore outside the scope of VAT. It found that those purchases formed part

of a series of transactions having a fraudulent objective. Even though Bond House did not know of that objective and was innocent of any wrongdoing, those operations were devoid of economic substance and had to be evaluated according to objective criteria. It was therefore immaterial that the applicant in the main proceedings did not commit a breach. Finally, Bond House could not rely on the principle of the protection of legitimate expectations in support of its claim for a refund of the input VAT it had paid, and the Commissioners, in depriving Bond House of that refund, did not offend against the principles of proportionality or of legal certainty, and did not breach the applicant's human rights.

21 Bond House lodged an appeal against that judgment before the High Court of Justice of England and Wales, Chancery Division.

The questions referred for a preliminary ruling and the procedure before the Court

22 In Cases C-354/03 and C-355/03, the national court points out that the facts are assumed facts. It indicates that the following facts are relevant:

— There was a carousel fraud.

— Optigen and Fulcrum were innocent parties who were not involved in and had no knowledge of or reason to have knowledge of that fraud other than as ordinary buyers from a trader and ordinary sellers to a company in another Member State.

— Optigen and Fulcrum had no dealings with the defaulting trader or the trader using a hijacked VAT number.

— The nine purchases by Fulcrum in respect of which the VAT refund was disallowed would have looked no different to Fulcrum from any other of the 467 purchases it made during the relevant three-month period.

— At the time when Optigen and Fulcrum purchased the goods and paid input VAT, the 'carousel' was incomplete and a defaulting trader had not yet gone 'missing', so that at that time either of those events might not in fact occur.

23 In Case C-484/03, the national court states that Bond House challenges a limited number of facts or conclusions of the VAT and Duties Tribunal, Manchester. The following facts are among those which are unchallenged:

— Bond House was well regarded by the Commissioners and was not suspected of any VAT fraud.

— Bond House did not know of the existence of the fraud alleged by the Commissioners and did not act recklessly.

— Bond House did not deal with any of the traders alleged by the Commissioners to have acted fraudulently.

— All the transactions effected by Bond House and the transactions that took place before and after Bond House had bought and sold the goods were genuine: the goods and the payments for them changed hands on every occasion.

— The transactions that the VAT and Duties Tribunal, Manchester, found to be devoid of economic substance were no different from other transactions in which Bond House engaged whose economic substance was not disputed, as there was no evidence that they formed part of a carousel fraud

24 Bond House essentially submits that, as the purchases and supplies in question actually took place, it cannot be asserted that they did not amount to 'supplies' or 'economic activities' for the purposes of VAT merely because, elsewhere in the chain of supply and without the knowledge of Bond House, a fraudster had charged VAT to a customer and not accounted for that VAT to the Commissioners. Further, there is no reason to believe that transactions taking place before or after the fraudster had carried out the fraud and involving persons who had no knowledge of the fraud or the fraudster formed a part of the fraud or of the fraudster's plan. The decision of the VAT and Duties Tribunal, Manchester, is inconsistent with the common system of VAT. As a means of combating fraud, it is disproportionate and capable of having a deterrent effect on legitimate trade, contrary to Article 28 EC. It is also inconsistent with the principle of legal certainty because taxable persons can no longer even issue invoices bearing VAT or complete their VAT returns with any degree of certainty.

25 The Commissioners essentially contend that transactions which form part of a carousel fraud are not economic activities within the meaning of the Sixth Directive. The 26 transactions at issue were therefore devoid of economic substance and were outside the scope of that directive. Those transactions were not part of any

'economic activity', nor were they 'supplies' to or by Bond House. The decision not to reimburse Bond House the VAT in question involves no breach of the principles of proportionality, legal certainty or respect for human rights.

26 It is in those circumstances that the High Court of Justice of England and Wales, Chancery Division, decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

In Cases C-354/03 and C-355/03:

'1. Under the common system of VAT, and in the light of [the First Directive] and [the Sixth Directive], is the entitlement of a trader to credit for a payment in respect of VAT under a transaction to be judged by reference to:

(a) only the particular transaction to which the trader was a party including the trader's purposes in entering into it, or

(b) the totality of transactions, including subsequent transactions, making up a circular chain of supply of which the particular transaction forms part including the purposes of other participants in the chain of which the trader has no knowledge and/or means of knowledge, and/or

(c) the fraudulent acts and intention, whether arising prior or subsequent to the particular transaction, of other participants in the circular chain of whose involvement the trader is unaware and of whose acts and intentions the trader has no knowledge and/or means of knowledge, or

(d) some other, and if so what, criteria?

2. Does the exclusion from the VAT regime of transactions entered into by an innocent party, but which form links in a carousel fraud by others, infringe the general principles of proportionality, equal treatment or legal certainty?'

In Case C-484/03:

'1. Having regard to the general principles of EC law (in particular, the principles of proportionality and legal certainty) and to Article 28 [EC]:

(a) in the relevant circumstances, was the appellant a "taxable person acting as such" within Article 2(1) of the Sixth Directive when, in the 26 transactions, it acquired the CPUs from the UK vendors and sold them to the non-UK purchasers?

(b) in the relevant circumstances, was the appellant carrying on an "economic activity" within Article 4 of the Sixth Directive when, in the 26 transactions, it acquired the CPUs from the UK vendors and sold them to the non-UK purchasers?

(c) in the relevant circumstances, was the acquisition by the appellant, in the 26 transactions, of the CPUs from the UK vendors a "supply of goods" to the appellant within Article 5(1) of the Sixth Directive?

(d) in the relevant circumstances, was the sale by the appellant, in the 26 transactions, of the CPUs to the non-UK purchasers a "supply of goods" by the appellant within Article 5(1) of the Sixth Directive?

2. Do the answers to Question 1(a) to (d) above give rise to any breach of the general principles of Community law (in particular, the principles of proportionality and legal certainty)?'

27 By order of the President of the Court of 19 September 2003, Cases C-354/03 and C-355/03 were joined for the purposes of the written procedure, the oral procedure and the judgment.

28 Subsequently, by order of the President of the Court of 15 June 2004, those cases were joined with Case C-484/03 for the purposes of the oral procedure and the judgment.

The first questions

29 By the first question in both cases, the referring court seeks essentially to know whether, first, transactions such as those at issue in the main proceedings, which are not themselves vitiated by VAT fraud, but which form part of a chain of supply in

which another prior or subsequent transaction is vitiated by such fraud, without the trader engaged in the first transactions knowing or having any means of knowing, constitute supplies of goods or services effected by a taxable person acting as such and an economic activity within the meaning of Articles 2(1), 4 and 5(1) of the Sixth Directive and, second, whether, in such circumstances, the right of that trader to deduct input VAT may be limited.

Observations submitted to the Court

30 Optigen and Fulcrum take the view that under the common system of VAT, and in the light of the First and Sixth Directives, the entitlement of a trader to credit for a payment in respect of VAT under a transaction is to be judged by reference to the particular transaction to which the trader was a party, including the trader's purposes in entering into it, and not by reference to prior or subsequent transactions of which the trader has no knowledge or means of knowledge, nor by reference to the fraudulent acts and intentions of other traders of whose involvement the trader is unaware and of whose acts and intentions the trader has no knowledge or means of knowledge.

31 In the view of Bond House, the answer to the first question referred in Case C-484/03 should be in the affirmative.

32 The United Kingdom Government maintains that under the common system of VAT, and in the light of the First and Sixth Directives, the entitlement of a trader to credit for a payment in respect of VAT under a transaction is to be judged by reference to the totality of transactions, including subsequent transactions, making up a circular chain of supply of which the particular transaction forms part, taking account of the purposes of other participants in the chain of which the trader has no knowledge and/or means of knowledge, and the fraudulent acts and intention,

whether arising before or after the particular transaction, of other participants in the circular chain of whose involvement the trader has no knowledge and/or means of knowledge. All transactions within a circular chain of supply the only purpose of which is to perpetrate a fraud on the VAT system are, therefore, wholly outside the scope of the Sixth Directive, and the fact that some of those transactions involved an innocent trader is incapable of bringing them within the scope of the directive.

33 The Czech Government submits that where the objective pursued by transactions such as those at issue in the main proceedings is unlawful, such transactions cannot be considered to be economic activities within the meaning of the Sixth Directive.

34 The Danish Government is of the opinion, first, that it is for the party wishing to deduct VAT for a transaction involving a 'supply of goods' to prove that the right to dispose of the goods as owner was actually transferred to that party and, second, that transactions carried out in a closed circuit do not come within the scope of application of VAT as the taxable person, in becoming involved in such a circuit, does not act as a taxable person.

35 The Commission of the European Communities contends that under the common system of VAT, and in the light of the First and Sixth Directives, the entitlement of a trader to credit for a payment in respect of VAT under a transaction should be judged by reference to the particular transaction to which the trader was a party. Transactions of which he has no knowledge and the fraudulent acts or intentions of other persons in the chain of supply of whose involvement he is unaware do not affect his entitlement. It follows that the exclusion from the VAT regime of a transaction which is to be regarded as a taxable supply is contrary to the Sixth Directive

Findings of the Court

36 It is to be remembered first of all that the Sixth Directive establishes a common system of VAT based, inter alia, on a uniform definition of taxable transactions (Case C-305/01 *MKG-Kraftfahrzeuge-Factoring* [2003] ECR I-6729, paragraph 38).

37 In that regard, the Sixth Directive assigns a very wide scope to VAT by mentioning, in Article 2, which concerns taxable transactions, in addition to importation of goods, supplies of goods and services effected for consideration within the territory of the country by a taxable person acting as such.

38 As regards, first, the term 'supply of goods', Article 5(1) of the Sixth Directive provides that the transfer of the right to dispose of tangible property as owner is to constitute such a supply.

39 According to the case-law of the Court, the term covers any transfer of tangible property by one party which empowers the other party actually to dispose of it as if he were the owner of the property (see, inter alia, Case C-320/88 *Shipping and Forwarding Enterprise Safe* [1990] ECR I-285, paragraph 7, and Case C-25/03 *HE* [2005] ECR I-3123, paragraph 64).

40 Then, according to Article 4(1) of the Sixth Directive any person who independently carries out in any place any economic activity is considered to be a taxable person, whatever the purpose or results of that activity.

41 The term 'economic activities' is defined in Article 4(2) of the Sixth Directive as covering 'all' activities of producers, traders and persons supplying services and, according to the case-law, it comprises all stages of production, distribution and the provision of services (see, inter alia, Case C-186/89 *Van Tiem* [1990] ECR I-4363, paragraph 17, and *MKG-Kraftfahrzeuge-Factoring*, cited above, paragraph 42).

42 Finally, as regards the expression 'taxable person acting as such', according to the case-law, a taxable person acts in that capacity where he carries out transactions in the course of his taxable activity (see, to that effect, Case C-291/92 *Armbrecht* [1995] ECR I-2775, paragraph 17, and Case C-77/01 *EDM* [2004] ECR I-4295, paragraph 66).

43 As the Court held in paragraph 26 of its judgment in Case C-260/98 *Commission* v *Greece* [2000] ECR I-6537, an analysis of the definitions of taxable person and economic activities shows that the scope of the term economic activities is very wide, and that the term is objective in character, in the sense that the activity is considered per se and without regard to its purpose or results (see also Case 235/85 *Commission* v *Netherlands* [1987] ECR 1471, paragraph 8, and, to that effect, inter alia Case 268/83 *Rompelman* [1985] ECR 655, paragraph 19, and Case C-497/01 *Zita Modes* [2003] ECR I-14393, paragraph 38).

44 In fact, that analysis and that of the definitions of 'supply of goods' and 'taxable person acting as such' show that those terms, which define taxable transactions under the Sixth Directive, are all objective in nature and apply without regard to the purpose or results of the transactions concerned.

45 As the Court held in paragraph 24 of its judgment in Case C-4/94 *BLP Group* [1995] ECR I-983, an obligation on the tax authorities to carry out inquiries to determine the intention of the taxable person would be contrary to the objectives of the common system of VAT of ensuring legal certainty and facilitating application of VAT by having regard, save in exceptional cases, to the objective character of the transaction in question.

46 An obligation on the tax authorities to take account, in order to determine whether a given transaction constitutes a supply by a taxable person acting as such and an economic activity, of the intention of a trader other than the taxable person concerned involved in the same chain of supply and/or the possible fraudulent nature of another transaction in the chain, prior or subsequent to the transaction carried out by that taxable person, of which that taxable person had no knowledge and no means of knowledge, would a fortiori be contrary to those objectives.

47 As the Advocate General observed in point 27 of his Opinion, each transaction must therefore be regarded on its own merits and the character of a particular transaction in the chain cannot be altered by earlier or subsequent events.

48 As regards the case-law relied on by the United Kingdom Government according to which a taxable person acquires that status definitively only if he made the declaration of intention to begin the envisaged economic activities in good faith (see, inter alia, Case C-400/98 *Breitsohl* [2000] ECR I-4321, paragraph 39, and Joined Cases C-110/98 to C-147/98 *Gabalfrisa and Others* [2000] ECR I-1577, paragraph 46), suffice it to observe that, as the Advocate General pointed out in point 35 of his Opinion, that case-law concerns the intention to commence and thus engage in

economic activities and not the intended purpose of the economic activities themselves.

49 As regards the argument of the United Kingdom Government derived from the case-law of the Court to the effect that unlawful transactions fall outside the scope of VAT, it must be observed, first, that that case-law concerns products which by their very nature and because of their special characteristics may not be marketed or incorporated into economic channels. Second, it is settled case-law that the principle of fiscal neutrality prevents there being any general distinction as between lawful and unlawful transactions. Consequently, the mere fact that conduct amounts to an offence is not sufficient to justify exemption from VAT. That exemption applies only in specific situations where, owing to the special characteristics of certain products or certain services, any competition between a lawful economic sector and an unlawful sector is precluded (see, inter alia, Case C-158/98 *Coffeeshop 'Siberië'* [1999] ECR I-3971, paragraphs 14 and 21, and Case C-455/98 *Salumets and Others* [2000] ECR I-4993, paragraph 19).

50 It is common ground that this is not the case with the CPUs at issue in the main proceedings.

51 It follows that transactions such as those at issue in the main proceedings, which are not themselves vitiated by VAT fraud, constitute supplies of goods or services effected by a taxable person acting as such and an economic activity within the meaning of Articles 2(1), 4 and 5(1) of the Sixth Directive, where they fulfil the objective criteria on which the definitions of those terms are based, regardless of the intention of a trader other than the taxable person concerned involved in the same chain of supply and/or the possible fraudulent nature of another transaction in the chain, prior or subsequent to the transaction carried out by that taxable person, of which that taxable person had no knowledge and no means of knowledge.

52 Nor can the right to deduct input VAT of a taxable person who carries out such transactions be affected by the fact that in the chain of supply of which those transactions form part another prior or subsequent transaction is vitiated by VAT fraud, without that taxable person knowing or having any means of knowing.

53 As the Court has repeatedly held, the right to deduct provided for in Article 17 et seq. of the Sixth Directive is an integral part of the VAT scheme and in principle may not be limited. It must be exercised immediately in respect of all the taxes charged on transactions relating to inputs (see, in particular, Case C-62/93 *BP Supergas* v *Greek State* [1995] ECR I-1883, paragraph 18, and *Gabalfrisa and Others*, cited above, paragraph 43).

54 The question whether the VAT on the earlier or later sale of the goods concerned to the end-user has or has not been paid to the public purse is irrelevant to the right of the taxable person to deduct input VAT (see, to that effect, the order of the Court in Case C-395/02 *Transport Service* [2004] ECR I-1991, paragraph 26). The Court has consistently held that, according to the fundamental principle which underlies the common system of VAT, and which follows from Article 2 of the First and Sixth Directives, VAT applies to each transaction by way of production or distribution after deduction of the VAT directly borne by the various cost components (see, inter alia, Case C-98/98 *Midland Bank* [2000] ECR I-4177, paragraph 29, and *Zita Modes*, cited above, paragraph 37).

55 Therefore, the answer to the first question referred for a preliminary ruling in each case should be that transactions such as those at issue in the main proceedings, which are not themselves vitiated by VAT fraud, constitute supplies of goods or

services effected by a taxable person acting as such and an economic activity within the meaning of Articles 2(1), 4 and 5(1) of the Sixth Directive, where they fulfil the objective criteria on which the definitions of those terms are based, regardless of the intention of a trader other than the taxable person concerned involved in the same chain of supply and/or the possible fraudulent nature of another transaction in the chain, prior or subsequent to the transaction carried out by that taxable person, of which that taxable person had no knowledge and no means of knowledge. The right to deduct input VAT of a taxable person who carries out such transactions cannot be affected by the fact that in the chain of supply of which those transactions form part another prior or subsequent transaction is vitiated by VAT fraud, without that taxable person knowing or having any means of knowing.

The second questions

56 In the light of the answer given to the first question in each case, there is no need to answer the second question in each case.

Costs

57 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 (Third Chamber) hereby rules:

Transactions such as those at issue in the main proceedings, which are not themselves vitiated by value added tax fraud, constitute supplies of goods or services effected by a taxable person acting as such and an economic activity within the meaning of Articles 2(1), 4 and 5(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 95/7/EC of 10 April 1995, where they fulfil the objective criteria on which the definitions of those terms are based, regardless of the intention of a trader other than the taxable person concerned involved in the same chain of supply and/or the possible fraudulent nature of another transaction in the chain, prior or subsequent to the transaction carried out by that taxable person, of which that taxable person had no knowledge and no means of knowledge. The right to deduct input value added tax of a taxable person who carries out such transactions cannot be affected by the fact that in the chain of supply of which those transactions form part another prior or subsequent transaction is vitiated by value added tax fraud, without that taxable person knowing or having any means of knowing.

[Signatures]