Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

19 June 2025 *

(Reference for a preliminary ruling – Taxation – Common system of value added tax – Directive 2006/112/EC – Exemptions for certain activities in the public interest – Article 132 – Public postal services – Directive 97/67/EC – Article 12 – Universal postal service provider – Concepts of 'public postal service' and 'public interest service')

In Case C-785/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria), made by decision of 18 December 2023, received at the Court on 19 December 2023, in the proceedings

Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Sofia pri Tsentralno upravlenie na Natsionalna agentsia za prihodite

v

'Bulgarian posts' EAD,

interested party:

Varhovna administrativna prokuratura,

THE COURT (Tenth Chamber),

composed of D. Gratsias, President of the Chamber, E. Regan (Rapporteur) and B. Smulders, Judges,

Advocate General: M. Szpunar,

Registrar: R. Stefanova-Kamisheva, Administrator,

having regard to the written procedure and further to the hearing on 24 January 2025,

after considering the observations submitted on behalf of:

– the Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Sofia pri Tsentralno upravlenie na Natsionalna agentsia za prihodite, by M. Bakalova and E. Pavlova,

* Language of the case: Bulgarian.

– ‘Bulgarian posts’ EAD, by V.D. Gerdzhikov and M. Peneva, advokati,

– the European Commission, by M. Herold, M. Ilkova and J. Szczodrowski, acting as Agents,

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 132 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) and Article 12 of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ 1998 L 15, p. 14), as amended by Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 (OJ 2008 L 52, p. 3) (‘Directive 97/67’).

2 The request has been made in proceedings between the Direktor na Direktsia ‘Obzhalvane i danachno-osiguritelna praktika’ Sofia pri Tsentralno upravlenie na Natsionalna agentsia za prihodite (Director of the Sofia ‘Appeals and Tax and Social Insurance Practice’ Directorate within the Central Administration of the National Revenue Agency, Bulgaria) (‘the tax administration’) and ‘Bulgarian posts’ EAD concerning a tax assessment notice relating to an additional charge to value added tax (VAT) that was demanded from that company for the tax period from 1 January to 31 December 2015.

Legal context

European Union law

Directive 2006/112

3 Title IX of Directive 2006/112, entitled ‘Exemptions’, includes inter alia Chapter 2, entitled ‘Exemptions for certain activities in the public interest’, containing Article 132 of that directive which provides:

‘1. Member States shall exempt the following transactions:

(a) the supply by the public postal services of services other than passenger transport and telecommunications services, and the supply of goods incidental thereto;

…’

Directive 97/67

4 Recital 15 of Directive 97/67 states:

'Whereas the provisions of this Directive relating to universal service provision are without prejudice to the right of universal service operators to negotiate contracts with customers individually'.

5 Article 2 of that directive provides:

'For the purposes of this Directive, the following definitions shall apply:

1. *postal services*: services involving the clearance, sorting, transport and delivery of postal items;

1a. *postal service provider*: undertaking that provides one or more postal services;

…

13. *universal service provider*: the public or private postal service provider providing a universal postal service or parts thereof within a Member State, the identity of which has been notified to the [European] Commission in accordance with Article 4;

…

17. *user*: any natural or legal person benefiting from postal service provision as a sender or an addressee;

…

19. *essential requirements*: general non-economic reasons which can induce a Member State to impose conditions on the supply of postal services. These reasons are the confidentiality of correspondence, security of the network as regards the transport of dangerous goods, respect for the terms and conditions of employment, social security schemes, laid down by law, regulation or administrative provision and/or by collective agreement negotiated between national social partners, in accordance with Community and national law and, where justified, data protection, environmental protection and regional planning. Data protection may include personal data protection, the confidentiality of information transmitted or stored and protection of privacy;

20. *services provided at single piece tariff*: postal services for which the tariff is set in the general terms and conditions of universal service provider(s) for individual postal items.'

6 Article 3 of that directive states:

'1. Member States shall ensure that users enjoy the right to a universal service involving the permanent provision of a postal service of specified quality at all points in their territory at affordable prices for all users.

…

3. Member States shall take steps to ensure that the universal service is guaranteed not less than five working days a week, save in circumstances or geographical conditions deemed exceptional, and that it includes as a minimum:

– one clearance,

– one delivery to the home or premises of every natural or legal person or, by way of derogation, under conditions at the discretion of the national regulatory authority, one delivery to appropriate installations.

Any exception or derogation granted by a national regulatory authority in accordance with this paragraph must be communicated to the Commission and to all national regulatory authorities.

4. Each Member State shall adopt the measures necessary to ensure that the universal service includes the following minimum facilities:

– the clearance, sorting, transport and distribution of postal items up to two kilograms,

– the clearance, sorting, transport and distribution of postal packages up to 10 kilograms,

– services for registered items and insured items.

5. The national regulatory authorities may increase the weight limit of universal service coverage for postal parcels to any weight not exceeding 20 kilograms and may lay down special arrangements for the door-to-door delivery of such parcels.

Notwithstanding the weight limit of universal service coverage for postal parcels established by a given Member State, Member States shall ensure that postal parcels received from other Member States and weighing up to 20 kilograms are delivered within their territory.

6. The minimum and maximum dimensions for the postal items in question shall be those as laid down in the relevant provisions adopted by the Universal Postal Union.

7. The universal service as defined in this Article shall cover both national and cross-border services.’

7 The second indent of Article 5(1) of the directive is worded as follows:

‘Each Member State shall take steps to ensure that universal service provision meets the following requirements:

…

– it shall offer an identical service to users under comparable conditions’.

8 Article 12 of Directive 97/67 provides:

‘Member States shall take steps to ensure that the tariffs for each of the services forming part of the universal service comply with the following principles:

– prices shall be affordable and must be such that all users, independent of geographical location, and, in the light of specific national conditions, have access to the services provided. Member States may maintain or introduce the provision of a free postal service for the use of blind and partially-sighted persons,

– prices shall be cost-oriented and give incentives for an efficient universal service provision. Whenever necessary for reasons relating to the public interest, Member States may decide that a uniform tariff shall be applied, throughout their national territory and/or cross-border, to services provided at single piece tariff and to other postal items,

– the application of a uniform tariff shall not exclude the right of the universal service provider(s) to conclude individual agreements on prices with users,

– tariffs shall be transparent and non-discriminatory,

– whenever universal service providers apply special tariffs, for example for services for businesses, bulk mailers or consolidators of mail from different users, they shall apply the principles of transparency and non-discrimination with regard both to the tariffs and to the associated conditions. The tariffs, together with the associated conditions, shall apply equally both as between different third parties and as between third parties and universal service providers supplying equivalent services. Any such tariffs shall also be available to users, in particular individual users and small and medium-sized enterprises, who post under similar conditions.’

Bulgarian law

The ZDDS

9 Article 49(2) of the Zakon za danak varhu dobavenata stoynost (Law on value added tax), in the version applicable to the case in the main proceedings (‘the ZDDS’), provides that the provision of universal postal services is an exempt supply in accordance with the conditions and the procedure set out in the Zakon za poshtenskite uslugi (Law on Postal Services) (‘the ZPU’).

Regulation implementing the Law on value added tax

10 Article 43(2) of the Pravilnik za prilagane na Zakona za danak varhu dobavenata stoynost (Regulation implementing the Law on value added tax), in the version applicable to the case in the main proceedings, provides:

‘The universal postal service within the meaning of Article 49(2) of the [ZDDS] is the universal postal service within the meaning of Chapter 4, Section I, of the [ZPU].’

The ZPU

11 Article 15 of the ZPU, in the version applicable to the case in the main proceedings, is worded as follows:

‘(1) The [Komisia za regulirane na saobshteniata (Communications Regulation Commission; ‘the Regulation Commission’)] shall regulate the provision of postal services in accordance with this law, and shall:

…

7. define the standards, in accordance with the Bulgarian and European standards in force, as to the quality and efficiency of the universal postal service and shall ensure, at its expense, that the implementation of those standards is monitored on a yearly basis by an independent body;

…

20. authorise the prices for providing access to the network of the postal operator subject to the universal postal service obligations;

21. provide, further to a reasoned written request on the part of the ministry of transport, information technology and communications, the necessary information relating to the conduct of State policy in the field of postal services.

…’

12 Under Article 21(1) of the ZPU, in the version applicable to the case in the main proceedings:

‘Postal operators shall ensure that users have equal access to access points for the purpose of using the postal services and shall set the general terms and conditions of the contract with the consumers. The signing of individual contracts with consumers is not necessary.’

13 Article 24 of that law, in the version applicable to the case in the main proceedings, states:

‘The universal postal service shall be provided by a postal operator which is required by law to provide this service throughout the country using a postal network organised and managed by it.’

14 Article 32 of that law, in the version applicable to the case in the main proceedings, provides:

‘A universal postal service shall be a continuous service which is provided during set opening hours and the quality of which meets the standards referred to in Article 15(1)(7), at prices which shall be affordable, with the possibility for all users in the territory of the country to use that service irrespective of their geographical location.’

15 Under Article 33(1) of the ZPU, in the version applicable to the case in the main proceedings:

‘The universal postal service shall be provided each working day, a minimum of five days a week …’

16 Article 34(1) of that law, in the version applicable to the case in the main proceedings, provides:

‘The universal postal service shall include the following types of postal services:

1. the reception, transport and delivery of national and international postal items as follows:
   (a) items of correspondence, up to [two] kilograms;
   (b) small packages, up to [two] kilograms;

…
   (d) printed matter, up to [five] kilograms;
   (e) postal packages for blind and partially-sighted persons, up to [seven] kilograms;

2. the reception, transport and delivery of national and international postal packages, up to 20 kilograms;

…

4. additional “registered” and “insured” services.’

17 Article 36(1) and (2) of that law, in the version applicable to the case in the main proceedings, is worded as follows:

‘(1) Postal items and postal packages referred to in Article 34 shall be delivered: in the letter-boxes of the addressees located at the destination address; in post offices; in other branches of the postal network; in places or facilities agreed upon between the postal operators and the users.

(2) The conditions for delivering the postal items and postal packages referred to in paragraph 1 are set out under the general rules laid down by the [Regulation Commission]’.

18 Under Article 38 of the ZPU, in the version applicable to the case in the main proceedings:

‘The non-universal postal services shall include:

1. the reception, transport and delivery of direct marketing material;

2. hybrid postal services;

3. express courier services;

4. money orders’.

19 Article 66 of the ZPU, in the version applicable to the case in the main proceedings, provides:

‘(1) The prices by type of service covered by the universal postal service shall be constituted and applied in accordance with the rules set out in a regulation of the Council of Ministers. The draft regulation shall be drawn up by the [Regulation Commission].

(2) The measures referred to in paragraph 1 shall be subject to compliance with the following principles:

1. identical prices in respect of identical services throughout the national territory;

2. equality of treatment of users;

3. affordable prices;

4. recognition of the costs of supplying the services;

5. a link to the quality of the service;

6. a guarantee of an economically justified profit in accordance with the adopted investment policy;

7. the creation of conditions stimulating consumption;

8. recognition of the level of prices on international markets, to the extent permitted by national circumstances;

9. the publicising of prices.

(3) The legislation referred to in paragraph 1 defines the conditions and the procedure according to which the postal operator obliged to provide the universal postal service may negotiate the prices by types of service covered by the universal postal service other than the prices determined under the rules, while observing the principles of publicity and equality of treatment.'

Additional provisions of the ZPU

20 The Dopalnitelni razporedbi kam ZPU (Additional provisions of the ZPU), in the version applicable to the case in the main proceedings, provides:

'§ 1 For the purposes of this Law:

1. "Reception of postal items" means the activity of postal operators consisting in receiving postal items deposited by senders at access points.

…

4. "Access point" means a fixed or mobile post office, postal agency or external postal counter where senders deposit and where the operator receives postal items and money orders, as well as letter boxes and other devices for public use placed in places accessible to senders.

…

18. "Express courier services" means a postal service with added value in comparison with the universal postal service. The express courier services shall ensure, in addition to greater speed and reliability of the reception, transport and delivery of items by hand to the addressee, the provision of all or part of the following additional services:
    (a) collection at the sender's address;
    (b) delivery by a specified date;
    (c) possibility of a change of address and addressee during transport;
    (d) confirmation to the sender of the delivery of the item;
    (e) tracking and tracing of items;
    (f) personalised services to users and provision of (optional) "bespoke" services in the manner and at the time required ("upon request" and "contractually").

…

28. "Fixed post office" is an essential component of the postal networks, organised in separate premises, where all services falling within the scope of the universal postal service, non-universal postal services and other commercial activities are performed by the agents of the postal operator by means of workstations that are connected using technology.

29. "Mobile post office" means a component of the postal networks, organised inside specialised vehicles, where agents provide all postal services falling within the scope of the universal postal service in several locations in accordance with a fixed route and timetable.

30. "Postal agency" means a place of work in a locality without a fixed post office, organised in separate premises, where an agent of a particular postal operator provides certain postal services.

31. "External postal counter" means a workplace organised to provide postal services in premises where other types of public services are also offered. The right to provide postal services is granted on the basis of an agreement with a particular postal operator.

…'

Regulation laying down the rules for determining and applying the price of the universal postal service

21 Article 4(1) of Section II of the Naredba za opredelyane na pravila za obrazuvane i prilagane na tsentata na universalnata poshtenska usluga (Regulation laying down rules for determining and applying the price of the universal postal service), in the version applicable to the case in the main proceedings, entitled 'Rules for determining prices by types of universal postal service', provides:

'The prices by type of universal postal service shall be established on the basis of the costs of providing the services resulting from the application of the cost sharing system that complies with the acts of the Universal Postal Union.'

22 Article 14 of that regulation, in the version applicable to the case in the main proceedings, is worded as follows:

'(1) The operator subject to a universal postal service obligation may negotiate with users prices which are different from those established under Section II.

(2) The prices referred to in paragraph 1 shall be public, shall not be lower than the costs of providing each type of service and shall be established by applying price discounts by type of universal postal service on the basis of the conditions satisfied by the users and predetermined by the operator subject to a universal postal service obligation.

(3) The operator subject to a universal service obligation shall publish the prices referred to in paragraph 1 and the conditions for their application pursuant to paragraph 2, while observing the principle of equality of treatment of users when concluding contracts for their application.

(4) The operator subject to a universal postal service obligation shall provide the [Regulation Commission] with accounting data relating to revenue, expenditure and the number of items resulting from the performance of the contracts referred to in paragraph 3. The data shall be provided by type of universal postal service at the same time as the request for compensation of the unfair financial burden resulting from the performance of the universal postal service referred to in Article 29a(1) of the [ZPU].

(5) The operator subject to a universal postal service obligation shall submit to the [Regulation Commission], for information purposes, certified copies of the contracts referred to in paragraph 3, and amendments and additions thereto, within 14 days of the date of their conclusion.'

The Standards relating to the quality of the universal postal service and the efficiency of the service

23 The Normativi za kachestvo na universalnata poshtenska usluga i efikasnostta na obsluzhvane (Standards relating to the quality of the universal postal service and the efficiency of the service), in the version applicable to the case in the main proceedings, were adopted by Decision No 655 of 14 July 2011 of the Regulation Commission, published in DV No 64 of 19 August 2011.

24 Article 8 of those standards, in the version applicable to the case in the main proceedings, entitled 'Quality standards for the regular collection of postal items and postal packages', states:

'Area	Days of the week	Number of collections per day
Sofia	Monday to Friday	2
Sofia	Saturday and Sunday	1
with RSTS	Monday to Saturday	1
without RSTS	Monday to Friday	1

(Note: RSTS – exchange and sorting centre.)'

25 Article 9 of those standards, in the version applicable to the case in the main proceedings, entitled ‘Quality standards for the regular delivery of postal items and postal packages’, states:

‘Area	Days of the week	Number of deliveries per day
Sofia	Monday to Saturday	2
with RSTS	Monday to Saturday	1
without RSTS	Monday to Friday	1’

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

26 Bulgarian posts is a company governed by Bulgarian law which holds an individual licence for the provision of the universal postal service in the entire Bulgarian territory.

27 As a universal postal service provider, that company is subject to VAT and, in the exercise of its economic activity, it conducts transactions which give rise to the right to deduct VAT.

28 During a tax inspection, it was found that Bulgarian posts had declared, during a period not specified by the referring court, the supply of certain services as forming part of the universal postal service, which is exempt from VAT within the meaning of the ZDDS.

29 However, according to the authority that carried out the tax inspection, the services concerned could not be regarded as forming part of the universal postal service. Indeed, some of those services did not meet the definition of that universal postal service, set out in the ZPU, in the version applicable to the case in the main proceedings. Other services are provided for in contracts which contain clauses aimed at, first, taking account of the special needs of the customers concerned, such as the place of collection of postal items, the place of delivery, the frequency of collections and opening hours and, secondly, applying prices to those customers that are lower than those approved by the Regulation Commission.

30 Consequently, on 3 August 2021, the authority that carried out the tax inspection issued a tax adjustment notice making Bulgarian posts subject to an additional amount of VAT, plus interest.

31 Bulgarian posts brought an action against that notice before the Administrativen sad Sofia-grad (Administrative Court, Sofia City, Bulgaria), which upheld the action and annulled the notice.

32 According to that court, the fact that the postal items are collected outside the access points, in accordance with specific rules and in particular at a price that is lower than the price approved by the Regulation Commission, is not a factor which makes it possible to determine the nature of the supplies of postal services at issue. By contrast, it may be inferred from the fact that a large part of those services was supplied to bodies governed by public law in order to enable them to fulfil their public service mission that those services were not intended to meet the specific needs of those bodies and that, therefore, they could benefit from the exemption scheme under Article 49(2) of the ZDDS.

33 The tax administration brought an appeal on a point of law against the judgment at first instance before the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria), which is the referring court. That court considers that, although certain judgments of the Court of Justice relating to the provision of the universal postal service contain elements relevant to the

resolution of the dispute before it, the fact remains that the circumstances at issue in those judgments are different to those which prevail in the dispute before the referring court, with the result that they do not make it possible to address all the questions it is faced with.

34 In particular, the referring court observes that the service provided by Bulgarian posts is not identical to the service at issue in the judgment of 16 October 2019, *Winterhoff and Eisenbeis* (C-4/18 and C-5/18, EU:C:2019:860), which concerns the formal service of documents from courts and administrative authorities under specific provisions of German law. Consequently, that court questions the extent to which the solution reached in that judgment is relevant to the resolution of the dispute before it, given that the individual contracts concluded by Bulgarian posts are not concluded exclusively with bodies governed by public law and do not concern the service of judicial and administrative documents.

35 That said, the referring court observes that it is apparent from the judgment of 23 April 2009, *TNT Post UK* (C-357/07, EU:C:2009:248), that the VAT exemption provided for in Article 13A(1)(a) 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 (OJ 1977 L 145, p. 1), the wording of which is repeated in Article 132 of Directive 2006/112, is not applicable to all the supplies of services provided by universal postal service providers which are not expressly excluded from the scope of that provision, regardless of their intrinsic nature. That judgment stipulates that the services performed by such a provider, the conditions of which have been individually negotiated, cannot be exempted since, by their very nature, those services meet the special needs of the users concerned.

36 In that context, the referring court asks whether the view might be taken that the supplies of postal services at issue in the case before it meet the special needs of the users concerned and whether it follows that they can be exempted on the ground that the contracts individually concluded to obtain those services make provision for one or more of the following conditions:

– the prices of the services are lower than those approved by the Regulation Commission for the provision of the universal postal service and it has not been established that they cover the costs of providing the universal postal service;

– the prices of the services are determined by applying a discount which is not determined in accordance with the conditions available to the public for obtaining such discounts;

– the collection and the delivery of postal items take place at the customer's address;

– the frequency of collections of postal items is higher than the lower limit provided for, below which the frequency of collection and delivery must not fall, in accordance with Article 33(2) of the ZPU, in the version applicable to the case in the main proceedings, and is higher than what is provided for by the standards laid down in respect of the quality and efficiency of the universal postal service;

– an additional collection is also provided for, where requested by the customer, outside of the previously agreed time;

– in some of the individually concluded contracts, it was agreed that postal items would also be accepted after the opening hours of post offices for the towns and cities concerned.

37 In those circumstances the Varhoven administrativen sad (Supreme Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Are services provided by the licensee for the provision of the universal postal service in the territory of the Republic of Bulgaria on the basis of individual contracts with users of postal services to be regarded as services which are provided by a “public postal service” within the meaning of Article 132 [contained in] Chapter 2 of Title IX of [Directive 2006/112] and are “in the public interest”, where those individual contracts provide that the service must fulfil one or all of the following conditions, namely … collection of items is effected outside the access points (collection and delivery are effected at the customer’s address)[,] the collection and delivery are effected at a time agreed in advance with the customers[,] the frequency of collection and delivery exceeds the frequency in the standards for the quality of the universal postal service and efficiency of service laid down by law, with provision made for additional collections at the request of the customer beyond the frequency expressly agreed for in the contract outside the opening hours of the post office branches[,] the service is provided at a lower price than that authorised by the [Regulation Commission] or with higher discounts than those authorised by the [Regulation Commission]?

(2) Does it follow from the second indent of Article 12 of [Directive 97/67] that the services provided by a person who is a licensee of the universal postal service do not have the status of a universal postal service within the meaning of [that] directive if they are provided in accordance with an individual contract at a lower price than that authorised for the corresponding type of universal postal service and it has not been demonstrated that the price thus agreed covers the costs of provision?

(3) [Are the principles] of transparency and non-discrimination enshrined in the fourth indent of Article 12 of [Directive 97/67] infringed if a person who is a licensee for the provision of the universal postal service concludes individual contracts for the provision of the universal postal service in which it lays down other conditions for the provision of the service which are more favourable than those which are published and publicly available?

(4) If the answer to [the third] question is in the affirmative, does that constitute a ground for not treating the transactions as exempt within the meaning of Article 132 of [Directive 2006/112]?’

Consideration of the questions referred

Admissibility

38 Bulgarian posts submits, in essence, that the questions referred for a preliminary ruling are inadmissible because, first, they are based on an incorrect premiss, namely that the content of the contracts providing for the supplies of postal services at issue in the main proceedings and the general terms and conditions of sale were examined by the tax administration and during the judicial proceedings. Secondly, since, as in the case which gave rise to the judgment of 16 October 2019, *Winterhoff and Eisenbeis* (C-4/18 and C-5/18, EU:C:2019:860), a significant number of those contracts were concluded with judicial and administrative authorities, the interpretation given by the Court in that judgment can be applied, with the result that a new interpretation of Article 132(1)(a) of Directive 2006/112 is not necessary.

39 In that regard, it is necessary to state that it follows from the settled case-law of the Court that, in proceedings under Article 267 TFEU, which are based on a clear separation of the functions between the national courts and the Court of Justice, the national court alone has jurisdiction to find and assess the facts in the case before it and to interpret and apply national law. Similarly, it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the judicial decision to be made, to determine, in the light of the particular circumstances of the case, both the need for and the relevance of the questions that it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle bound to give a ruling (judgment of 24 November 2022, *Varhoven administrativen sad (Repeal of the disputed provision)*, C-289/21, EU:C:2022:920, paragraph 24 and the case-law cited).

40 Accordingly, in the first place, since it is empowered solely to rule on the interpretation or validity of a provision of EU law, the Court cannot therefore verify the accuracy of the facts set out by the national court or rule on the substance of the allegations of certain parties seeking to contest the relevance of the factual circumstances described by the referring court in its request for a preliminary ruling (judgment of 29 July 2024, *Banco BPN/BIC Português and Others*, C-298/22, EU:C:2024:638, paragraph 31).

41 Therefore, it is not necessary to rule on the observations of Bulgarian posts in respect of the premiss on which the questions referred to the Court for a preliminary ruling are based.

42 In the second place, according to settled case-law, Article 267 TFEU gives national courts the widest discretion in referring matters to the Court of Justice if they consider that a case pending before them raises questions involving the interpretation of provisions of EU law. It follows that, whilst the existence of settled case-law on a point of EU law may prompt the Court of Justice to make an order under Article 99 of its Rules of Procedure, it cannot in any way affect the admissibility of a reference for a preliminary ruling if a national court decides, in the exercise of its discretion, to bring a matter before the Court of Justice under that Article 267 (see, to that effect, judgments of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraphs 48 and 49 and the case-law cited, and of 1 February 2017, *Tolley*, C-430/15, EU:C:2017:74, paragraph 34 and the case-law cited).

43 In the present case, it is apparent from the file before the Court that, contrary to the circumstance highlighted in paragraph 59 of the judgment of 16 October 2019, *Winterhoff and Eisenbeis* (C-4/18 and C-5/18, EU:C:2019:860), mentioned by the referring court, the supplies of postal services at issue in the main proceedings do not consist exclusively of the formal service of documents effected on behalf of courts and administrative authorities.

44 Accordingly, the questions referred in the present case are admissible.

Substance

45 As a preliminary point, it should be stated that although, in the wording of the first question, the referring court refers to contracts which have been ‘individually concluded’, it is apparent from the material in the file before the Court that, by those words, it refers to the actual existence of separate contracts concluded between Bulgarian posts and each of the customers concerned, although it cannot be ruled out that such contracts may relate to the services covered by a special legal regime, nor does it follow that those contracts are the result of individual negotiation or lay down obligations that are specific to the contractual relationship that they establish.

46 Consequently, it should be understood that, by its four questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 132(1)(a) of Directive 2006/112, read in the light of the second and fourth indents of Article 12 of Directive 97/67, must be interpreted as precluding supplies of postal services provided, in accordance with separate contracts, by a holder of an individual licence to provide the universal postal service from benefiting from the VAT exemption provided for in that article, where any or all of the following conditions are satisfied:

– the collection and delivery of postal items take place at the address of the customer or at times agreed in advance with the customer;

– the services are provided without establishing that the price agreed covers the cost of the service;

– the services are provided under conditions different to those approved by the national authority designated in the Member State concerned to regulate the universal postal service or those provided for in the standards relating to that service.

47 In that regard, it should be recalled that, under Article 132(1)(a) of Directive 2006/112, the Member States are to exempt from VAT 'the supply by the public postal services of services … and the supply of goods incidental thereto'.

48 According to settled case-law, the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining the meaning and the scope of that provision must normally be given an autonomous and uniform interpretation throughout the European Union; that interpretation must take into account the wording of that provision, the context in which it fits and the objectives pursued by the rules of which it forms part (see, to that effect, judgments of 13 October 2022, *M2Beauté Cosmetics*, C-616/20, EU:C:2022:781, paragraph 40, and of 24 October 2024, *Kwantum Nederland and Kwantum België*, C-227/23, EU:C:2024:914, paragraph 56).

49 As regards the wording of Article 132(1)(a) of Directive 2006/112, first, the syntax of the phrase forming that provision clearly shows that the words 'public postal services' refer to the organisations which engage in the supply of the services to be exempted. In order to be covered by the wording of that provision, the services must therefore be performed by a body which may be described as 'the public postal service' in the organic sense of that expression (see, by analogy, judgment of 23 April 2009, *TNT Post UK*, C-357/07, EU:C:2009:248, paragraph 27).

50 Secondly, the use of those words implies that, unlike other economic operators, those organisations are subject to a special legal regime with specific obligations. The difference between 'public postal services' and other operators depends not on the nature of the services provided but on the fact that the operators who provide part or all of the universal postal service are subject to a special legal regime with specific obligations (see, to that effect, judgments of 21 April 2015, *Commission* v *Sweden*, C-114/14, EU:C:2015:249, paragraph 33, and of 16 October 2019, *Winterhoff and Eisenbeis*, C-4/18 and C-5/18, EU:C:2019:860, paragraph 55).

51 As regards the context in which Article 132(1)(a) of Directive 2006/112 fits and the objectives pursued by that provision, it may be inferred from the fact that that provision is contained in Chapter 2, entitled 'Exemptions for certain activities in the public interest', of Title IX of that directive, that the objective of the exemptions laid down in Article 132 is to encourage activities

which are in the public interest, such as the supply of services by the public postal services referred to in that provision (see, to that effect, judgment of 16 October 2019, *Winterhoff and Eisenbeis*, C-4/18 and C-5/18, EU:C:2019:860, paragraph 46).

52 That general objective takes the form, in the postal sector, of the more specific objective of offering postal services which meet the essential needs of the population at a reduced cost. As EU law now stands, such an objective is the same, in essence, as that of Directive 97/67, which lays down the common rules for the development of the internal market of EU postal services, namely to offer a universal postal service (see, to that effect, judgment of 16 October 2019, *Winterhoff and Eisenbeis*, C-4/18 and C-5/18, EU:C:2019:860, paragraph 49).

53 Therefore, in practice, only operators, whether public or private, who have undertaken to provide all or part of the universal postal service in a Member State, as defined in Article 3 of Directive 97/67, are entitled to benefit from the exemption provided for in Article 132(1)(a) of Directive 2006/112 (see, to that effect, judgment of 16 October 2019, *Winterhoff and Eisenbeis*, C-4/18 and C-5/18, EU:C:2019:860, paragraph 50).

54 However, it may not be inferred from Article 132(1)(a) of Directive 2006/112 that all the supplies of services by the public postal services which are not expressly excluded from the scope of that provision are exempted, regardless of their intrinsic nature (see, by analogy, judgment of 23 April 2009, *TNT Post UK*, C-357/07, EU:C:2009:248, paragraph 43).

55 Since the terms of that exemption must be both strictly interpreted and interpreted consistently with the objectives of that provision, only the supplies of services intended to meet the basic needs of the population are capable of benefiting from the exemption provided for in Article 132(1)(a) of Directive 2006/112 (see, to that effect, judgment of 23 April 2009, *TNT Post UK*, C-357/07, EU:C:2009:248, paragraph 44).

56 In particular, it is apparent from the nature of that objective that that exemption is not to apply to specific services dissociable from the service of public interest, including services which meet the special needs of the users concerned (judgment of 16 October 2019, *Winterhoff and Eisenbeis*, C-4/18 and C-5/18, EU:C:2019:860, paragraph 47). Accordingly, in order to be covered by the wording of that provision, it is also necessary for the supplies of postal services at issue to fall within the concept of 'public postal services' within the substantive meaning which Article 132(1)(a) of Directive 2006/112 gives to those terms.

57 Accordingly, the supply of services provided by public postal services, the terms and conditions of which have been individually negotiated, cannot be regarded as exempt from VAT under Article 132(1)(a) of Directive 2006/112. By their very nature, such services meet the special needs of the users concerned, which runs counter to the objective pursued by the universal postal service (see, to that effect, judgment of 16 October 2019, *Winterhoff and Eisenbeis*, C-4/18 and C-5/18, EU:C:2019:860, paragraph 48).

58 That said, in order to benefit from the exemption provided for in Article 132(1)(a) of Directive 2006/112, it is not necessary that the services at issue have been formally designated by the national legislation as forming part of the universal postal service, provided that they are capable of being so designated. Indeed, the classification under national law of a specific transaction cannot have the effect of making that transaction subject to VAT, when a VAT exemption applies to that transaction under EU law (see, to that effect, judgment of 16 October 2019, *Winterhoff and Eisenbeis*, C-4/18 and C-5/18, EU:C:2019:860, paragraph 66).

59 Consequently, a supply of postal services by an operator who has undertaken to provide all or part of the universal postal service in a Member State may be exempt from VAT under Article 132(1)(a) of Directive 2006/112, provided that, by reason of its particular features, it is, in any event, capable of forming part of that universal postal service.

60 Article 3(1) of Directive 97/67 defines the universal postal service as involving the permanent provision of a postal service of specified quality at all points in the territory at affordable prices for all users.

61 That said, in so far as Article 3(3) and (4) of Directive 97/67 merely sets out a list of services which must be included as a minimum in the universal postal service and since, consequently, the Member States may extend the scope of that service to include other services, with the exception, however, in accordance with Article 3(5) of that directive, of those relating to postal packages weighing more than 20 kilograms, only the definition of the concept of 'universal postal service' given in Article 3(1) of that directive is to be regarded as relevant for the purpose of determining whether a service may benefit from the exemption provided for in Article 132(1)(a) of Directive 2006/112.

62 In particular, since the second and fourth indents of Article 12 of Directive 97/67, referred to by the referring court in its second and third questions, do not determine the constituent elements of the concept of a 'universal postal service', but lay down the tariff principles which the Member States must require to be observed by operators which have undertaken to provide all or part of that service, the fact that an operator does not comply with those principles cannot deprive the supplies concerned of the benefit of the exemption provided for in Article 132(1)(a) of Directive 2006/112.

63 As regards the situations envisaged by the referring court in its questions, first of all, it may be observed that that court starts from the premiss that the supplies of postal services at issue in the main proceedings are provided by a holder of an individual licence as a universal postal service provider.

64 Next, it must be stated that the fact that the supplies of postal services at issue in the main proceedings are provided in accordance with separate contracts is not, in itself, such as to preclude such services from falling within the concept of a 'universal postal service', as defined in Article 3(1) of Directive 97/67. As has already been pointed out in paragraph 45 above, the existence of separate contracts concluded by the operator with each of its customers neither permits the inference that those services cannot be subject to a special legal regime, nor implies that the reciprocal commitments agreed in those contracts are the result of individual negotiation, since the purpose of formalising such contracts may be to establish proof that the customer concerned has accepted the offer of the supplies of postal services at issue and to remind that customer of the important aspects of that special legal regime.

65 Given that, as has been stated in paragraph 61 above, the Member States may include in the universal postal service services other than those referred to in Article 3(3) and (4) of Directive 97/67 as being the minimum provided for, those Member States may thus make provision for the collection and delivery of postal items to take place at the address of the customer or at times agreed in advance with the customer, provided that such conditions of performance for the supplies of postal services are those laid down in respect of the universal postal service, which it is, in the case at issue in the main proceedings, for the referring court to ascertain.

66 As regards the circumstance, highlighted by the referring court, that the supplies of postal services at issue in the main proceedings are provided without establishing that the price agreed between the parties covers their cost, it is true that Article 3(1) of Directive 97/67 stipulates, as a condition for the inclusion of the supplies of postal services in the universal postal service, that the offer relating to those services is to be affordable. However, the affordability of such an offer depends not on whether the price charged for such a service covers the cost of that service, but on whether natural or legal persons with limited resources are able to pay it, having regard to the standard of living prevailing in the Member State concerned. Consequently, that fact cannot, in itself, justify that a supply of postal services which, by reason of its particular features, should be regarded as forming part of the universal postal service is to be excluded from that universal postal service.

67 By contrast, where a supply of postal services does not fall under the implementation of a special legal regime to which operators who provide all or part of the universal postal service are subject when providing such a service, but is provided under different, more favourable conditions than those approved by the national authority designated in the Member State concerned to regulate services of that kind or than those provided for in standards relating to those services, such as, for example, the possibility of collecting postal items in places, at times, at a frequency or for a price other than those approved by that authority or provided for by those standards, that supply must be regarded as being excluded from the benefit of the VAT exemption provided for in Article 132(1)(a) of Directive 2006/112.

68 It may be inferred from each of those circumstances that, contrary to the requirements of Article 3(1) of Directive 97/67, such a service is not provided 'for all users', but is intended to meet the special needs of the users concerned.

69 Even though, first of all, recital 15 of Directive 97/67 allows universal postal service providers to negotiate contracts with customers individually, it should be observed that the second indent of Article 5(1) of that directive expressly provides that the Member States must ensure that an identical universal postal service is offered to users under comparable conditions, with the result that recital 15 must be understood as referring to the right of providers of that universal postal service to negotiate individual contracts with their customers which fall outside the scope of that service and which therefore concern the supply of services not covered by it.

70 Next, the right of the universal postal service provider(s) to conclude individual agreements on prices with users, set out in the third indent of Article 12 of Directive 97/67, does not mean that the services in respect of which the conditions for performance, including tariff conditions, have been negotiated and which, consequently, are not identical to those offered to any user in a comparable situation must be regarded as falling within the scope of that service. The conclusion of individual agreements on prices may be necessary where, inter alia, quantity rebates are offered in the general terms and conditions of sale as approved by the national authority designated in the Member State concerned to regulate the postal service or provided for in the standards relating to that service, and therefore offered to all, so that the recipients of the service undertake to entrust a certain volume of mail in exchange for a preferential tariff, without necessarily implying that that volume and/or rebate was negotiated for the benefit only of certain users.

71 Lastly, contrary to what Bulgarian posts submits, it should be stated that the interpretation set out in paragraph 70 above also applies where some of the supplies of postal services are provided at the request of public bodies.

72 It is true that the Court held, in the judgment of 16 October 2019, *Winterhoff and Eisenbeis* (C-4/18 and C-5/18, EU:C:2019:860, paragraphs 59 to 61), that the provision of a postal service consisting in the service of judicial and administrative documents, effected pursuant to commissions issued by public bodies in the course of the activities of those public bodies, and which are not intended to satisfy their own needs, but to ensure the proper administration of justice, must be regarded as being provided on behalf of all those who may wish to serve such documents, including the recipients of those documents, and therefore as being provided to all the users of such a service, within the meaning of Article 2(17) of Directive 97/67. It was on the basis of those considerations that the Court concluded that the service of judicial and administrative documents could be regarded as being provided 'for all users', within the meaning of Article 3(1) of that directive and, therefore, as being exempt from VAT as supplies of services provided by the 'public postal services' under Article 132(1)(a) of Directive 2006/112.

73 However, it may not be inferred from that case-law that a supply of postal services which is provided under different, more favourable conditions than those offered in the general terms and conditions of sale, as approved by the national authority designated in the Member State concerned to regulate the postal service or provided for in the standards relating to that service, may benefit from such an exemption solely because it is provided at the request of a public body. It will be for the national court, if necessary, to ascertain whether such a service may be regarded as satisfying the condition laid down in Article 3(1) of Directive 97/67, according to which the universal postal service is to be provided 'for all users'.

74 In the light of all the foregoing considerations, the answer to the questions raised is that Article 132(1)(a) of Directive 2006/112, read in the light of the second and fourth indents of Article 12 of Directive 97/67, must be interpreted as precluding supplies of postal services provided, in accordance with separate contracts, by a holder of an individual licence to provide the universal postal service from benefiting from the VAT exemption provided for in Article 132, when such supplies, which are intended to meet the special needs of the persons concerned without being offered to all users, are provided under different, more favourable conditions than those approved by the national authority designated in the Member State concerned to regulate the universal postal service or those provided for in the standards relating to that service.

Costs

75 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 (Tenth Chamber) hereby rules:

Article 132(1)(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in the light of the second and fourth indents of Article 12 of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, as amended by Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008,

must be interpreted as precluding supplies of postal services provided, in accordance with separate contracts, by a holder of an individual licence to provide the universal postal

service from benefiting from the value added tax exemption provided for in Article 132, when such supplies, which are intended to meet the special needs of the persons concerned without being offered to all users, are provided under different, more favourable conditions than those approved by the national authority designated in the Member State concerned to regulate the universal postal service or those provided for in the standards relating to that service.

[Signatures]