Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

28 April 2022*

(Reference for a preliminary ruling – Value added tax (VAT) – Directive 2006/112/EC – Article 132(1)(i) – Exemptions for certain activities in the public interest – Exemptions related to children's or young people's education, school or university education – Supply of educational services supplementing the school curriculum – Private law body providing those services for commercial purposes)

In Case C-612/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunalul Cluj (Regional Court, Cluj, Romania), made by decision of 23 September 2020, received at the Court on 17 November 2020, in the proceedings

Happy Education SRL

v

Direcția Generală Regională a Finanțelor Publice Cluj-Napoca,

Administrația Județeană a Finanțelor Publice Cluj,

THE COURT (Ninth Chamber),

composed of S. Rodin (Rapporteur), President of the Chamber, J.-C. Bonichot and O. Spineanu-Matei, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Happy Education SRL, by A. Manole, avocat,

– the Romanian Government, by E. Gane and L.-E. Bațagoi, acting as Agents,

– the European Commission, by L. Lozano Palacios and A. Armenia, acting as Agents,

* Language of the case: Romanian.

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(1)(i) and Articles 133 and 134 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

2 The request has been made in proceedings between Happy Education SRL and the Direcția Generală Regională a Finanțelor Publice Cluj-Napoca (Regional Directorate-General for Public Finances of Cluj-Napoca, Romania) and the Administrația Județeană a Finanțelor Publice Cluj (District Administration of Public Finances of Cluj, Romania) (together, 'the tax authorities') regarding the refusal of the tax authorities to exempt from value added tax (VAT) the provision by Happy Education of teaching services supplementing the school curriculum.

Legal context

European Union law

3 Title IX of Directive 2006/112, entitled 'Exemptions', includes, inter alia, Chapter 2 thereof, relating to 'Exemptions for certain activities in the public interest', which contains Article 132 of that directive, paragraph 1 of which is worded as follows:

'Member States shall exempt the following transactions:

…

(i) the provision of children's or young people's education, school or university education, vocational training or retraining, including the supply of services and of goods closely related thereto, by bodies governed by public law having such as their aim or by other organisations recognised by the Member State concerned as having similar objects;

…'

4 Article 133 of that directive provides:

'Member States may make the granting to bodies other than those governed by public law of each exemption provided for in points (b), (g), (h), (i), (l), (m) and (n) of Article 132(1) subject in each individual case to one or more of the following conditions:

(a) the bodies in question must not systematically aim to make a profit, and any surpluses nevertheless arising must not be distributed, but must be assigned to the continuance or improvement of the services supplied;

(b) those bodies must be managed and administered on an essentially voluntary basis by persons who have no direct or indirect interest, either themselves or through intermediaries, in the results of the activities concerned;

(c) those bodies must charge prices which are approved by the public authorities or which do not exceed such approved prices or, in respect of those services not subject to approval, prices lower than those charged for similar services by commercial enterprises subject to VAT;

(d) the exemptions must not be likely to cause distortion of competition to the disadvantage of commercial enterprises subject to VAT.

…'

Romanian law

5 Article 292, entitled 'Exemptions for certain activities in the public interest and exemptions for other activities', of Legea nr. 227/2015 privind Codul fiscal (Law No 227/2015 establishing the Tax Code) of 8 September 2015 (*Monitorul Oficial al României*, Part I, No 688 of 10 September 2015) ('the Tax Code'), provides, in paragraph 1:

'The following transactions in the public interest shall be exempt from tax:

…

(f) the teaching activity provided for by the Law on national education No 1/2011, as subsequently amended and supplemented, vocational training for adults and supplies of services and goods closely related to those activities, carried on by public establishments or by other authorised bodies. The exemption is granted under the conditions laid down in the implementing provisions;

…'

6 Hotărârea Guvernului nr. 1/2016 pentru aprobarea normelor metodologice de aplicare a Legii nr. 227/2015 privind Codul fiscal (Government Decree No 1/2016 approving the provisions implementing Law No 227/2015 establishing the Tax Code) of 6 January 2016 (*Monitorul Oficial al României*, Part I, No 22 of 13 January 2016) states, in Chapter IX, entitled 'Transactions exempt from tax', in section 1, paragraph 42 thereof:

'1. The exemption provided for by Article 292(1)(f) of the Tax Code for vocational training for adults shall be applied by the persons authorised for that purpose in accordance with Ordonanța Guvernului nr. 129/2000 privind formarea profesională a adulților (Government Order No 129/2000 on vocational training for adults), as subsequently amended and supplemented, by persons authorised to provide vocational training for active civil aviation personnel provided for in Legea nr. 223/2007 privind Statutul personalului aeronautic civil navigant profesionist din aviația civilă din România (Law No 223/2007 laying down the Statute governing active civil aviation personnel in civil aviation in Romania), as amended and supplemented, and the National Agency for Public Employees for professional development activity. Vocational training services provided by professional educators pursuant to partnership contracts concluded with the National Agency for Public Employees pursuant to Article 23 of Hotărârea Guvernului

nr. 1066/2008 pentru aprobarea normelor privind formarea profesională a funcționarilor publici (Government Decree No 1066/2008 approving the rules on professional training for public employees) shall also be exempt.

…

3. The exemption provided for in Article 292(1)(f) of the Tax Code shall also apply to supplies of goods and services closely related to educational services, such as the sale of school textbooks, the organisation of lectures linked to the activity of teaching, provided by public establishments or other bodies authorised for educational or adult vocational training activities, the supply of examination services for the purpose of obtaining access to educational services or of adult professional training.

…'

7 The Legea eduției naționale nr. 1/2011 (Law No 1/2011 on national education) of 5 January 2011 (*Monitorul Oficial al României*, Part I, No 18 of 10 January 2011; 'the Law on national education') governs, in accordance with Article 1 thereof, the structure, functions, organisation and functioning of the national system of public, private and denominational education.

8 Article 58 of the Law on national education, relating to the 'School after school' programme, is worded as follows:

'1. Educational establishments may, by decision of the administrative board, extend their activities with pupils after teaching hours through the "School after school" programme.

2. In partnership with local public authorities and parents' associations, educational, recreational, leisure, knowledge-consolidation or accelerated learning activities, and remedial educational activities, shall be offered through the "School after school" programme. Where possible, the partnership can be implemented with non-governmental organisations possessing relevant expertise.

3. The "School after school" programmes shall be organised on the basis of a methodology approved by decree of the Minister for Education, Research, Youth and Sport.

4. The State may finance the "School after school" programme for children and pupils belonging to disadvantaged categories in accordance with the law.'

9 The organisation of the 'School after school' programme is governed by the Metodologia de organizare a programului 'Școala după școală', aprobată prin Ordinul ministrului educației, cercetării, tineretului și sportului nr. 5349 (Methodology for organising the 'School after school' programme, approved by order of the Minister for Education, Research, Youth and Sport) of 7 September 2011 (*Monitorul Oficial al României*, Part I, No 738 of 20 October 2011; 'the Methodology for organising the "School after school" programme').

10 The Methodology for organising the 'School after school' programme provides, in Article 2:

'1. The "School after school" programme (the "SaS Programme"), is a programme supplementing the compulsory curriculum which provides possibilities for formal and informal education for

knowledge consolidation, remedial education and accelerated learning through educational, recreational and leisure activities.

2. The SaS Programme is aimed at both primary and secondary school pupils.

…'

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

11 Happy Education is a Romanian commercial company which provides educational services consisting of the organisation of activities supplementing the school curriculum, such as homework support classes, educational programmes, foreign language classes, art classes, sporting activities, picking children up from school and the provision of after-school meals.

12 The aforementioned activities correspond to those forming part of the 'School after school' programme, as established, inter alia, by the Methodology for organising the 'School after school' programme ('the "School after school" programme').

13 The children participating in that programme are enrolled at various educational establishments in Cluj-Napoca (Romania).

14 Under the Classification of National Economic Activities (CAEN), under which every commercial company and natural person authorised in Romania is required to classify its corporate object for statistical and other purposes, the activities of Happy Education come under the CAEN code 8559 – 'Other education n.e.c. [(not elsewhere classified)]'.

15 Following a tax inspection relating to VAT for the period between 1 August 2016 and 31 December 2017, the inspection department of the tax authorities found that, in July 2016, Happy Education's turnover had exceeded the threshold below which small businesses are exempt from VAT under the Tax Code. Consequently, those authorities took the view that Happy Education should have registered for VAT purposes as from August 2016 and required it to pay an amount representing VAT for the period concerned.

16 On 11 June 2018, the company lodged an administrative complaint against that tax decision, claiming, inter alia, that the transactions it carried out constituted the supply of services closely related to school education for the purposes of the Law on national education, and therefore that they were exempt from VAT under Article 292(1)(f) of the Tax Code. The tax authorities observed, in particular, that Happy Education was not authorised to provide services under the 'School after school' programme for pupils.

17 By decision of 10 September 2018, the complaints processing department No 1 of the tax authorities rejected the administrative complaint on the ground that the activities carried out by Happy Education were not part of the national education system and were not authorised under the implementing provisions of Article 292(1)(f) of the Tax Code.

18 Hearing an action brought by Happy Education against that decision, the Tribunalul Cluj (Regional Court, Cluj, Romania) noted that the corporate object of the activities carried out by that company was, upon its establishment, assigned the CAEN code 8559 – 'Other education n.e.c.', and that Happy Education had therefore considered that there was no need to obtain any

additional opinions in order that the services provided in accordance with that corporate object would be classified under the category of activities exempt from VAT pursuant to Article 292(1)(f) of the Tax Code.

19 However, the referring court states that, under national law, in particular that provision, the services offered by Happy Education are not exempt, in so far as that company has failed to demonstrate that it has concluded a partnership with an educational establishment for the purpose of implementing a project under the 'School after school' programme.

20 That court nevertheless considers that Happy Education might be able to rely on Article 132(1)(i) of Directive 2006/112.

21 In that regard, Happy Education submits that the services it provides to pupils include activities involving the transfer of both practical and theoretical knowledge, in accordance with the national school curriculum, which are necessary to consolidate the knowledge acquired by pupils during classes taught in educational establishments. In its view, the purpose of those activities is therefore not purely recreational, but focused primarily on the completion of homework and the consolidation of knowledge acquired during lessons held in educational establishments under the national system.

22 The referring court concludes that Happy Education's activity falls within the concept of 'school or university education' within the meaning of Article 132(1)(i) of Directive 2006/112.

23 However, that court has doubts as to whether Happy Education satisfies the other criteria laid down in that provision, in so far as it is not certain that the company may be regarded as an 'organisation recognised as having similar objects' to bodies governed by public law, for the purposes of that provision, given that, although it holds the authorisation necessary to carry out the educational activities identified by the CAEN code 8559, that authorisation is not, under national law, considered sufficient to render a body eligible for VAT exemption.

24 In those circumstances, the Tribunalul Cluj (Regional Court, Cluj) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 132(1)(i), Article 133 and Article 134 of [Directive 2006/112] be interpreted as meaning that educational services such as those contained in the national "School after school" programme can be brought within the concept of "services closely related to school education", in the case where they are provided, in circumstances such as those obtaining in the main proceedings, by a private body, for commercial purposes and in the absence of a partnership concluded with an educational establishment?

(2) If the answer to the first question is in the affirmative, can the applicant be recognised as being an "organisation having similar objects", for the purposes of Article 132(1)(i) of [Directive 2006/112], on the basis of the provisions of national law on authorisation of the activities identified by the CAEN code 8559 – "Other education n.e.c." by the Oficiul Național al Registrului Comerțului (National Trade Register Office) and with reference to the public interest nature of the educational activities of the "School after school" type, which are aimed at prevention of school leaving and early school leaving, improvement of school results, remedial education, accelerated learning, personal development and social inclusion?'

Consideration of the questions referred

The second question

25 By its second question, which it is appropriate to examine first, the referring court asks, in essence, whether Article 132(1)(i) of Directive 2006/112 must be interpreted as meaning that the concept of an 'organisation recognised as having similar objects' to those of a body governed by public law, for the purposes of that provision, covers a private entity which carries out teaching activities in the public interest consisting of, inter alia, the organisation of activities supplementing the school curriculum, such as homework support classes, educational programmes and foreign language classes, and which has obtained authorisation from the National Trade Register Office in the form of the attribution of the CAEN code 8559 – 'Other education n.e.c.', within the meaning of the Classification of National Economic Activities.

26 As a preliminary point, it should be recalled that Article 132 of Directive 2006/112 provides for exemptions which, as indicated by the title of the chapter in which that provision is contained, are intended to encourage certain activities in the public interest. However, those exemptions do not cover every activity performed in the public interest, but only those listed in that provision and described in great detail (judgments of 4 May 2017, *Brockenhurst College*, C-699/15, EU:C:2017:344, paragraph 22 and the case-law cited, and of 14 March 2019, *A & G Fahrschul-Akademie*, C-449/17, EU:C:2019:202, paragraph 17).

27 According to the case-law of the Court, those exemptions constitute autonomous concepts of EU law which have the purpose of avoiding divergences in the application of the VAT system from one Member State to another (judgments of 26 October 2017, *The English Bridge Union*, C-90/16, EU:C:2017:814, paragraph 17 and the case-law cited, and of 21 October 2021, *Dubrovin & Tröger – Aquatics*, C-373/19, EU:C:2021:873, paragraph 21).

28 The terms used to specify the exemptions referred to in Article 132 of Directive 2006/112 are to be interpreted strictly, since they constitute exceptions to the general principle, arising from Article 2 of that directive, that VAT is to be levied on all services supplied for consideration by a taxable person. However, that requirement of strict interpretation does not mean that the terms used to specify the exemptions referred to in Article 132 should be construed in such a way as to deprive them of their intended effect (judgments of 4 May 2017, *Brockenhurst College*, C-699/15, EU:C:2017:344, paragraph 23 and the case-law cited, and of 21 October 2021, *Dubrovin & Tröger – Aquatics*, C-373/19, EU:C:2021:873, paragraph 22).

29 It should be noted, more specifically, that it is apparent from the wording of Article 132(1)(i) of Directive 2006/112 that the exemption referred to in that provision is subject, in essence, to two cumulative conditions. First, regarding the nature of the service provided, it must concern the provision of children's or young people's education, school or university education, vocational training or retraining, or services 'closely related' to it. Secondly, as regards the supplier of the service provided, those services must be provided 'by bodies governed by public law … or by other organisations recognised by the Member State concerned as having similar objects' (see, to that effect, judgments of 28 November 2013, *MDDP*, C-319/12, EU:C:2013:778, paragraph 35, and of 4 May 2017, *Brockenhurst College*, C-699/15, EU:C:2017:344, paragraph 26).

30 As regards the second of those conditions, where an entity is not a body governed by public law within the meaning of Article 132(1)(i) of Directive 2006/112, as appears to be the case with Happy Education in the case in the main proceedings, its services may be exempted from VAT

under that provision only in so far as it falls within the concept of 'other organisations recognised by the Member State concerned as having similar objects', referred to in the second question for a preliminary ruling.

31 In that regard, it must be pointed out that the Court has already held that, in so far as Article 132(1)(i) of Directive 2006/112 does not specify the conditions or procedures under which those similar objects may be recognised, it is, in principle, for the national law of each Member State to lay down the rules in accordance with which that recognition may be granted to such organisations. The Member States have a discretion in that respect (see, to that effect, judgments of 26 May 2005, *Kingscrest Associates and Montecello*, C-498/03, EU:C:2005:322, paragraphs 49 and 51, and of 28 November 2013, *MDDP*, C-319/12, EU:C:2013:778, paragraph 37).

32 Furthermore, it is for the national courts to examine whether the Member States, in imposing such conditions, have observed the limits of their discretion in applying the principles of European Union law, in particular the principle of equal treatment, which, in the field of VAT, takes the form of the principle of fiscal neutrality (judgment of 28 November 2013, *MDDP*, C-319/12, EU:C:2013:778, paragraph 38 and the case-law cited).

33 In the present case, it is apparent from the information provided by the referring court that, in respect of private entities such as Happy Education which offer educational activities of the kind provided under the 'School after school' programme, recognition as an organisation with similar objects to those of an educational body governed by public law, for the purposes of Article 132(1)(i) of Directive 2006/112, is granted under Romanian law primarily through the conclusion of a partnership with an educational establishment under the 'School after school' programme, in accordance with Article 58 of the Law on national education and the Methodology for organising the 'School after school' programme.

34 It is apparent from the information submitted by the referring court that Happy Education has not concluded such a partnership and, therefore, does not have the recognition or authorisation required for that purpose under Romanian law.

35 Consequently, it must be held that, subject to the examination referred to in paragraph 32 above, such an entity cannot be regarded as an organisation recognised as having similar objects to those of an educational body governed by public law, for the purposes of Article 132(1)(i) of Directive 2006/112, since it does not satisfy the conditions laid down for that purpose by the national authorities. That characterisation is not affected by the fact that the entity in question carries out educational activities in the public interest of the kind provided under the 'School after school' programme, or that that entity has obtained authorisation in the form of the attribution of the CAEN code 8559 – 'Other education n.e.c.', during the process of registering with the National Trade Register Office.

36 As regards, more specifically, that authorisation, it is apparent from the information submitted by the referring court that it is merely intended to serve as recognition, for the purposes of registration in the National Trade Register, that the company's activity falls within the CAEN code 8559 – 'Other education n.e.c.', and thus relates solely to the legitimate commercial purpose of the activities carried out by that company. Therefore, as the Romanian Government and the European Commission have maintained, such an authorisation cannot amount to recognition of a company as an organisation having similar objects to those of an educational body governed by public law.

37 In light of the foregoing, the answer to the second question is that Article 132(1)(i) of Directive 2006/112 must be interpreted as meaning that the concept of an 'organisation recognised as having similar objects' to those of an educational body governed by public law, for the purposes of that provision, does not cover a private entity which carries out teaching activities in the public interest consisting of, inter alia, the organisation of activities supplementing the school curriculum, such as homework support classes, educational programmes and foreign language classes, and which has obtained authorisation from the National Trade Register Office in the form of the attribution of the CAEN code 8559 – 'Other education n.e.c.', within the meaning of the Classification of National Economic Activities, where that entity does not, in any event, satisfy the conditions under national law for obtaining such recognition.

The first question

38 In view of the answer given to the second question and the cumulative conditions for exemption under Article 132(1)(i) of Directive 2006/112, recalled in paragraph 29 above, there is no need to examine the first question (see, by analogy, judgment of 14 March 2019, *A & G Fahrschul-Akademie*, C-449/17, EU:C:2019:202, paragraph 31).

Costs

39 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 (Ninth Chamber) hereby rules:

Article 132(1)(i) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the concept of an 'organisation recognised as having similar objects' to those of an educational body governed by public law, for the purposes of that provision, does not cover a private entity which carries out teaching activities in the public interest consisting of, inter alia, the organisation of activities supplementing the school curriculum, such as homework support classes, educational programmes and foreign language classes, and which has obtained authorisation from the National Trade Register Office in the form of the attribution of the CAEN code 8559 – 'Other education n.e.c.', within the meaning of the Classification of National Economic Activities, where that entity does not, in any event, satisfy the conditions under national law for obtaining such recognition.

[Signatures]