Reports of Cases

OPINION OF ADVOCATE GENERAL
ĆAPETA
delivered on 24 February 2022 [1]

Case C-637/20

Skatteverket
v
DSAB Destination Stockholm AB

(Request for a preliminary ruling from the Högsta förvaltningsdomstolen (Supreme Administrative Court, Sweden))

(Reference for a preliminary ruling – Value added tax (VAT) – Directive 2006/112/EC – Taxable transactions – City card – Directive (EU) 2016/1065 – Concept of 'voucher')

I. Introduction

1. Vouchers of different sorts are nowadays very common on the market (for example, gift certificates and prepaid cards that can be used at different outlets). However, although they are relatively simple for consumers to use, vouchers have proved to be complex instruments when it comes to their VAT treatment. [2] In 2016 the EU legislature therefore adopted amendments [3] to Directive 2006/112/EC ('the VAT Directive') [4] with the aim of clarifying the application of VAT to vouchers. [5] In the present case, the Court is invited to clarify those legislative clarifications.

2. By its preliminary reference, the Högsta förvaltningsdomstolen (Supreme Administrative Court, Sweden) seeks clarification of the meaning of 'voucher' as envisaged in Article 30a of the VAT Directive. This should allow that court to decide on the tax treatment of the city card offered to visitors to the city of Stockholm.

II. Legal framework

3. Sixth Council Directive 77/388/EEC [6] was repealed by the VAT Directive as of 1 January 2007.

1 Original language: English.

2 As demonstrated in my Opinion in *GE Aircraft Engine Services Ltd*, (Case C-607/20, EU:C:2022:63) delivered on 27 January 2022.

3 See Directive 2016/1065 of 27 June 2016 amending Directive 2006/112/EC as regards the treatment of vouchers (OJ 2016 L 177, p. 9) ('the 2016 Directive').

4 Council Directive of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

5 See, to that effect, recitals 1, 3 and 8 of the 2016 Directive.

6 Sixth Council Directive 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 Sixth Directive').

4. The scope of the VAT Directive is set out in Article 2(1) thereof. Subparagraph (c) of that article provides that 'the supply of services for consideration within the territory of a Member State by a taxable person acting as such' is to be subject to VAT.

5. Pursuant to Article 14(1) of the VAT Directive, the 'supply of goods' is defined as 'the transfer of the right to dispose of tangible property as owner', whereas, under Article 24(1) of that directive, the 'supply of services' means 'any transaction which does not constitute a supply of goods'.

6. Article 30a(1) of the VAT Directive defines 'voucher' as an instrument that entails an obligation to accept it as consideration or part consideration for a supply of goods or services and where the goods or services to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such an instrument.

7. Under Article 30a(2) of that directive, 'single-purpose voucher' means a voucher where the place of supply of the goods or services to which the voucher relates, and the VAT due on those goods or services, are known at the time of issue of the voucher. By contrast, Article 30a(3) thereof states that 'multi-purpose voucher' means a voucher, other than a single-purpose voucher.

8. Article 30b(2) of the VAT Directive provides that the actual handing over of the goods or the actual provision of the services in return for a multi-purpose voucher accepted as consideration or part consideration by the supplier is to be subject to VAT pursuant to Article 2, whereas each preceding transfer of that multi-purpose voucher is not to be subject to VAT. The second paragraph of Article 30b(2) stresses that 'where a transfer of a multi-purpose voucher is made by a taxable person other than the taxable person carrying out the transaction subject to VAT pursuant to the first subparagraph, any supply of services that can be identified, such as distribution or promotion services, shall be subject to VAT'.

9. Under Article 73 of the VAT Directive, the taxable amount for supplies of goods and services is to include everything which constitutes consideration obtained or to be obtained by the supplier, in return for the supply, from the customer or a third party, including subsidies directly linked to the price of the supply.

10. Article 73a of that directive provides that, without prejudice to Article 73, the taxable amount of the supply of goods or services provided in respect of a multi-purpose voucher is to be equal to the consideration paid for the voucher or, in the absence of information on that consideration, the monetary value indicated on the multi-purpose voucher itself or in the related documentation, less the amount of VAT relating to the goods or services supplied.

11. Articles 30a, 30b and 73a of the VAT Directive were introduced by the 2016 Directive. The relevant recitals of that directive read as follows:

'(1) [The VAT Directive] sets out rules on the time and place of supply of goods and services, the taxable amount, the chargeability of value added tax (VAT) and the entitlement to deduction. Those rules are, however, not sufficiently clear or comprehensive to ensure consistency in the tax treatment of transactions involving vouchers, to an extent which has undesirable consequences for the proper functioning of the internal market.

(2) To ensure certain and uniform treatment, to be consistent with the principles of a general tax on consumption exactly proportional to the price of goods and services, to avoid inconsistencies, distortion of competition, double or non-taxation and to reduce the risk of tax avoidance, there is a need for specific rules applying to the VAT treatment of vouchers.

(3) In view of the new rules on the place of supply for telecommunications, broadcasting and electronically supplied services which are applicable since 1 January 2015, a common solution for vouchers is necessary in order to ensure that mismatches do not occur in respect of vouchers supplied between Member States. To this end, it is vital to put in place rules to clarify the VAT treatment of vouchers.

(4) Only vouchers which can be used for redemption against goods or services should be targeted by these rules. However, instruments entitling the holder to a discount upon purchase of goods or services but carrying no right to receive such goods or services should not be targeted by these rules.

(5) The provisions regarding vouchers should not trigger any change in the VAT treatment of transport tickets, admission tickets to cinemas and museums, postage stamps or similar.

(6) So as to identify clearly what constitutes a voucher for the purposes of VAT and to distinguish vouchers from payment instruments, it is necessary to define vouchers, which can have physical or electronic forms, recognising their essential attributes, in particular the nature of the entitlement attached to a voucher and the obligation to accept it as consideration for the supply of goods or services.'

III. Facts, main proceedings, the question referred and the procedure before the Court

12. DSAB Destination Stockholm, the applicant in the main proceedings, issues and sells city cards to visitors to Stockholm (Sweden).

13. According to the order for reference, that card gives cardholders the right to be admitted to around 60 attractions, such as sights and museums, for a limited period of time and up to a certain value. Cardholders also have unlimited access to transport services during the validity of the card, as well as the possibility of joining sightseeing tours offered by different Hop-on-Hop-off buses or boats.

14. The services included in the card are either subject to tax, at various rates, or are tax exempt. The cardholder uses the card by merely presenting it to a special card reader, without paying anything further. In accordance with an agreement concluded with the issuer of the card, the supplier receives consideration from the issuer for each admission or use. With the exception of transport services, which are unlimited, for other services the supplier is not obliged to admit the cardholder more than once. The issuer does not guarantee a minimum number of visitors. Once the value limit has been reached, the card is no longer valid.

15. There are various versions of the Stockholm city card with different validity periods and value limits. A card for an adult with a 24-hour validity period costs SEK 669 (approximately EUR 65). During the validity period, the cardholder can use the card to pay for services having a value of up to SEK 1 800 (approximately EUR 175). The validity period starts to run when the card is used for the first time, and the card must be used within one year of purchase.

16. The applicant in the main proceedings requested an advance ruling from the Skatterättsnämnden (Revenue Law Commission, Sweden), in order to obtain confirmation that such a city card constitutes a multi-purpose voucher.

17. The Revenue Law Commission, however, found that it does not. It concluded from the definition of 'voucher', in conjunction with the provisions relating to the calculation of the taxable amount, that a voucher must have a certain nominal value or relate to certain specified supplies of goods or services. According to that commission, it must emerge clearly from a voucher what may be obtained in return for that voucher even though – when dealing with a multi-purpose voucher – there may be uncertainty as to, for example, the tax rate or the country of taxation.

18. The dispute between the Skatteverket (Tax Agency, Sweden) and DSAB Destination Stockholm related to that advance ruling is now pending before the Högsta förvaltningsdomstolen (Supreme Administrative Court).

19. The parties primarily disagree as to whether the city card is to be considered a voucher at all. On the one hand, the Tax Agency is of the opinion that the card at issue is not a voucher, because it has a high value limit and a short validity period, which makes it certain that the average consumer will not make full use of the card.

20. On the other hand, DSAB Destination Stockholm takes the view that the card is a voucher because suppliers are obliged to accept it as consideration.

21. The referring court first points out that the provisions relating to vouchers in the VAT Directive are relatively new and are applicable to vouchers issued after 31 December 2018.[7] Second, it explains that the question of how city cards are to be treated was the topic of discussions within the EU VAT Committee,[8] but that no consensus was reached in that regard.[9] Lastly, the referring court notes that the Court has not yet had the opportunity to take a position on how the terms 'voucher' and 'multi-purpose voucher' are to be interpreted.

22. In those circumstances the Högsta förvaltningsdomstolen (Supreme Administrative Court) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Must Article 30a of the VAT Directive be interpreted as meaning that a card, such as the one at issue in the main proceedings, which gives the cardholder the right to receive various services at a given place for a limited period of time and up to a certain value constitutes a voucher and, in such circumstances, constitutes a multi-purpose voucher?'

23. Written observations were submitted to the Court by DSAB Destination Stockholm, the Tax Agency, the Italian Government and the European Commission.

[7] It is common ground between the parties in the main proceedings, and the reference does not contain any contrary indications, that the question relates to the use of city cards in the period after 1 January 2019.

[8] Article 398(1) of the VAT Directive reads as follow: 'an advisory committee on value added tax, called "the VAT Committee", is set up'.

[9] VAT Committee, 'VAT Treatment of "city cards"', *Information Paper*, 3 April 2019; 'Working Paper No 983, New Legislation', 13 November 2019; 'Working Paper No 987, Minutes', 2 December 2019.

IV. Analysis

24. The referring court seeks guidance, in the first place, as to how the term 'voucher', inserted into the VAT Directive by the 2016 Directive, is to be interpreted. That interpretation is necessary to enable the referring court to decide whether the Stockholm city card falls within the scope of that concept. If the card is indeed a voucher, the referring court seeks clarification, in the second place, of the concept of 'multi-purpose voucher'.

25. In answer to those questions, I will proceed as follows. First, in order to explain why the question arose in the first place, I will look at the historical account of the treatment of city cards for VAT purposes, before the enactment of the 2016 Directive. I will next examine the legislative context and resulting rules which introduced the amendments to the VAT Directive in order to determine what is understood by the term 'voucher'. Finally, I will answer the question of whether city cards qualify as vouchers for the purpose of VAT.

A. The VAT treatment of city cards prior to the 2016 Directive

26. Even though the Court was never asked to rule on the VAT treatment of city cards, this does not mean that EU law has not been applied to the VAT treatment of such cards, by both the tax authorities and the courts of the Member States. Domestic case reports, as described in the literature [10] and the VAT Committee documentation [11] indicate, however, that EU law has been applied in different ways.

27. It follows from the VAT Committee reports, [12] that the city cards were treated for VAT purposes in three principal ways. The first is to exempt city cards from VAT. The transaction between the issuing organisation and the cardholder is exempted on the basis of Article 13(B)(d)(1) of the Sixth Directive (now Article 135(1)(b) of the VAT Directive) categorising it as the granting of credit. The transaction between issuers of cards and suppliers, is also exempted, but by reliance on Article 13(B)(d)(2) of the Sixth Directive (now Article 135(1)(c) of the VAT Directive) which relates to the guarantee of payment. However, even when States understood transactions under city cards as credit and payment guarantees, they still had the possibility, under Article 13(C)(b) of the Sixth Directive (now Article 137(1)(a) of the VAT Directive), of allowing taxable persons to opt to submit those otherwise exempted transactions to VAT. [13]

28. Thus, exemption, with an optional reintegration within the scope of taxable transactions, appears to have been the first way that city cards were classified for VAT purposes. [14] I will call this option the 'exemption' option.

29. Under the second option, which I will call the 'full taxation' option, transactions under a city card are subject to VAT. The issuer of a city card should charge VAT on the sale of the card based on the full nominal amount referred to on that card. [15] Each individual service supplied under the

[10] Amand, C., 'EU Value Added Tax: The Directive on Vouchers in the Light of the General Value Added Tax Rules', *Intertax*, vol. 45(2), 2017, p. 150.

[11] VAT Committee, 'VAT Treatment of "city cards"', *Information Paper*, 3 April 2019.

[12] Ibid.

[13] VAT Committee, *Guidelines resulting from the 10th meeting*, 23-24 October 1980, XV/353/80, 1/2.

[14] VAT Committee, 'VAT Treatment of "city cards"', *Information Paper*, 3 April 2019, p. 4.

[15] Ibid, p. 6.

card is also subject to VAT. There is evidence that the referring court treated city cards in that way in its case-law [16] predating the application of the 2016 Directive'. [17] The VAT Committee reports suggest that such a classification of city cards has taken place in practice in some other Member States. [18]

30. In the third option, which I will call 'the profit margin' option, transactions under a city card are also subject to VAT. As in the second option, VAT is also charged on the supply of the city card by its issuer; however, the taxable basis is not the full nominal value of the card, but only the amount that remains after deduction of the value paid as consideration for the services actually provided, the so-called profit margin. [19] Specifically, once the card has been used, the issuing organisation gathers information from the various suppliers and pays consideration for the services actually provided. VAT is included in that consideration, and it is not deductible. After that, the issuer of the card accounts for the VAT on the difference between the consideration received for the card and the consideration it has paid for the transactions actually carried out.

31. It follows from the above that, for VAT purposes, city cards have been treated in at least three different ways.

32. As will be shown, if city cards are treated as vouchers, only the third 'profit margin' option, is applicable as a proper method of VAT taxation of city cards, at least for those city cards that are designed as multi-purpose vouchers. The first 'exemption' option, which assimilates city cards to payment instruments, would be contrary to the purpose of the 2016 Directive, which, as indicated by recital 6 thereof, aims at better distinguishing vouchers from payment instruments. [20] The second 'full taxation' option would not be consistent with the tax scheme applicable to vouchers, irrespective of whether the single-purpose or multi-purpose voucher is at issue. Although that taxation option is possibly the most efficient in terms of collecting taxes, it creates a risk of double taxation or the taxation of goods or services that are otherwise tax exempt (such as museum entrances, for instance). That taxation option would therefore also be contrary to the aim of the 2016 Directive, which is to avoid double or no taxation by clarifying the VAT treatment of vouchers. The 'profit margin' option successfully avoids double taxation, even if it is slightly more complicated to implement. Nonetheless, overall, for professionals accustomed to such a tax scheme, what sometimes may at first glance appear difficult for an outsider, proves ultimately not to be so complicated to operate. [21]

[16] Högsta förvaltningsdomstolen (Supreme Administrative Court, Sweden), *Strömma Turism & Sjöfart AB*, 18 October 2018, Case number 1980-18, the summary of which is available in English under the title 'Supply of City Card – Entrance to attractions – Supply of a service or not', on the IBFD database.

[17] Article 2 of that directive states that its provisions apply from 1 January 2019.

[18] VAT Committee, 'VAT Treatment of "city cards"', *Information Paper*, 3 April 2019, p. 8.

[19] Ibid, p. 5.

[20] For further discussion on the distinction between vouchers and instruments of payment, see points 45 and 53 of the present Opinion.

[21] For such an account, see Amand, C., 'Vouchers: une directive TVA européenne applicable à partir de 2019', *La semaine fiscale*, No 277, 20-26 March 2017, p. 2.

B. The 2016 Directive

33. When it comes to the methods of statutory interpretation, the intention of the legislature, inasmuch as it can be understood from the text itself or the legislative history and background materials, is a factor to be taken into consideration.[22] It is therefore necessary to look at the rationale and the architecture of the 2016 Directive and examine the wording which defines the content of the concept of a voucher.

1. The rationale and architecture of the 2016 Directive

34. The preamble to legislative acts is often useful in understanding the legislature's reasons for adopting rules contained in the act. Recital 1 of the 2016 Directive explains that the reason why the amendments were proposed was insufficient clarity as to how existing VAT rules should be applied to vouchers. Clarification was, therefore, necessary to ensure consistency in the tax treatment of transactions involving vouchers in different Member States. This is supported by recitals 2 and 3, which indicate that the legislature intended to bring about greater certainty and uniformity in the treatment of vouchers. The opening recitals also express the intention to ensure that the treatment of vouchers is consistent with the principle requiring that a general tax on consumption is exactly proportional to the price of goods and services, and that such clarification should contribute to preventing inconsistencies, the distortion of competition, double or non-taxation and to reducing the risk of tax avoidance.

35. Nothing suggests, therefore, that the legislature intended to introduce a new, special treatment for vouchers that differs from the general VAT treatment of the supply of goods or services.[23] Its aim was simply to clarify what the existing 'ordinary' treatment already demands when applied to vouchers.

36. Given that the new rules on vouchers therefore do not represent an exception to general EU rules on taxation, I disagree with the Tax Agency and the Italian Government that those rules must be construed narrowly.

37. In order to clarify the VAT scheme for vouchers, the 2016 Directive introduced Articles 30a, 30b and 73a into the general VAT Directive. The places at which the new provisions were included in the scheme of the general VAT Directive also speak in favour of viewing these amendments merely as a restatement of the law as it already was when applied to vouchers.

38. Articles 30a and 30b are included in the part of the VAT Directive dealing with 'Taxable Transactions', as a new Chapter 5, entitled 'Provisions common to Chapters 1 and 3'. Article 73a is inserted in the part of that directive dealing with the 'Taxable Amount'. That provision states that it applies 'without prejudice to Article 73'. It thus follows the general scheme, but explains it in greater detail with regard to multi-purpose vouchers.

[22] See, to that effect, the recent judgment of 9 November 2021, *Bundesrepublik Deutschland (Retention of family unity)* (C-91/20, EU:C:2021:898, paragraphs 49 and 52).

[23] Amand, C., 'EU Value Added Tax: The Directive on Vouchers in the Light of the General Value Added Tax Rules', p. 156, see footnote 10 above.

2. The definition of 'voucher' in the VAT Directive

39. Article 30a(1) of the VAT Directive defines a voucher as an instrument that entails an obligation to accept it as consideration or part consideration for a supply of goods or services and which contains information about the goods or services for which the voucher can be used as consideration, or, alternatively information about the potential suppliers.

40. It is worth noting that this definition does not include all instruments that are commonly referred to as vouchers.[24] One such instrument is the 'discount voucher'. It is excluded from the VAT Directive's definition, even if it was envisaged in the original proposal for the 2016 Directive.[25] As stated in recital 4 of the 2016 Directive, the reason for excluding discount vouchers was that such instruments enable the holder only to get a discount on the purchase of the goods or services, but cannot be used in themselves as consideration for the supply of goods or services. In any case, the city card cannot be regarded as a voucher simply because it is commonly referred to as a voucher. In order to be regarded as a voucher, it must satisfy the two conditions required by Article 30a of the VAT Directive.

41. The two conditions provided for in Article 30a(1) of the VAT Directive are cumulative.

42. The first condition is that the instrument must encompass an obligation for the suppliers of goods or services to accept it as consideration or part consideration for a supply of goods or services they provide.

43. In its observations before the Court, DSAB Destination Stockholm insists that the decisive criterion in ascertaining whether an instrument does qualify as a voucher lies precisely in that condition. However, the Italian Government argues that the essential characteristic of a voucher is that it grants the holder the right to obtain goods or services, specified in quantity and quality, from predetermined suppliers.

44. Although the right to obtain goods or services through use of a voucher is usually part of such instruments, that characteristic was not deemed to be decisive for its definition. In the original proposal, Article 30a provided that '"voucher" shall mean an instrument carrying a right to receive a supply of goods or services …'.[26] Nevertheless, the final wording of that provision does not mention the right to receive goods or services as a constitutive element of a voucher, but rather focuses on the obligation for the supplier to accept that instrument as consideration.[27] Therefore, the Italian Government's argument that the right to receive goods or services is an essential feature of a voucher cannot be accepted.

[24] Amand, C., 'EU Value Added Tax: The Directive on Vouchers in the Light of the General Value Added Tax Rules', see footnote 10 above; Bijl, J.B.O, *The EU Vat Treatment of Vouchers in the Context of Promotional Activities,* Deventer, Wolters Kluwer, 2019, p. 276.

[25] The original proposal, however, contained a specific category of 'discount voucher' in addition to 'single-purpose voucher' and 'multi-purpose voucher'. See, recital 5, as well as Article 25(e) and Article 30a(1), of the Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax, as regards the treatment of vouchers (COM(2012) 206 final – 2012/0102 (CNS)).

[26] Ibid.

[27] For a similar reading of the outcome of the legislative procedure, see Terra, B.J.M.; Kajus, J., *Commentary on EU VAT* , 2020, '7.3.1.5.1.1. Definition of a voucher'.

45. The second condition for an instrument to be a voucher is that the goods or services to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation. It is generally acknowledged that such characteristics are what differentiate vouchers from conventional payment instruments. [28]

46. That condition is worded in the alternative so that, in order for an instrument to be a voucher, it suffices that it is clear for which goods or services it can be used as consideration. If goods and services are not specified, it is sufficient that suppliers of goods or services who are required to accept the voucher as consideration are known.

47. The definition of voucher in the VAT Directive, therefore, makes the finding that an instrument constitutes a voucher contingent on it satisfying the two conditions set out above. The text, however, does not answer the question whether every instrument that does satisfy these two conditions is necessarily to be treated as a voucher. I will suggest the answer to that question together with an examination of whether city cards satisfy the two conditions laid down by Article 30a(1) of the VAT Directive.

C. Tax treatment of city cards

48. The variety of city cards [29] available does not mean that all city cards are automatically regarded as vouchers. Rather, this has to be decided on a case-by-case basis. Only those cards that satisfy the cumulative conditions under Article 30a of the VAT Directive are vouchers. [30]

49. On the other hand, given certain arguments put forward in the participants' written observations, it is worth asking whether those city cards that do indeed satisfy the two conditions laid down by the VAT Directive are necessarily vouchers. In other words, are there grounds for excluding an instrument which meets all the criteria for classification as a voucher from the VAT treatment of vouchers and, if so, what are those grounds?

1. City cards as vouchers

50. It can, I believe, safely be concluded that the majority of city cards entail an obligation for suppliers participating in the scheme to accept them as consideration. Therefore, they usually satisfy the first condition. In the case of the Stockholm city card, it is apparent from the order for reference that those operators who run museums or other attractions or transport services and who participate in the card scheme are obliged to accept the card in return for the supply of services. That is, however, true only during the period of validity of the card, and within the maximum value limit of the card (which is much higher than the price of the card).

51. In that respect, it does not seem to me to make any difference whether the supplier has to accept the card as consideration only once, or every time the cardholder wants to use it for the same service. It is important that the city card must be accepted at least once. Therefore, the arrangement under which the supplier may refuse to admit the cardholder more than once (but

[28] Terra, B.J.M., Terra, E.T., 'The value of the voucher directive on the EU VAT treatment of vouchers', *World Journal of VAT/GST Law*, 2017, 27-34, p. 28.

[29] For a non-exhaustive list of European cities offering such cards and of their content, see https://welovecitycards.com/.

[30] The circumstance that the VAT Committee could not reach an umbrella conclusion on the matter of the VAT treatment of city cards supports that point. VAT Committee, *Working Paper No 987, Minutes'*, 2 December 2019, p. 5.

can volunteer to admit the cardholder more than once), as is the case with the Stockholm city card, does not run counter to the first condition, as the supplier remains under the obligation to accept the card at least once.

52. The Tax Agency raises two further reasons why the Stockholm city card should not be regarded as a voucher. First, it claims that the card does not disclose in monetary terms the successive decrease of its value, with the result that the cardholder cannot know the value remaining on the card after each use and, second, that the unlimited use of transport services encompassed by that card is a subscription, not a voucher.

53. A card the value of which diminishes with each use is conceptually similar to a payment instrument. In spite of that, the aim of the 2016 Directive is to make a distinction between vouchers and payment instruments.[31] It is, therefore, not necessary, or indeed even contrary to the aim of that directive, to introduce a condition inspired by features of payment instruments in order to define vouchers. That does not mean that instruments the value of which decreases with each use cannot qualify as vouchers. However, that cannot be regarded as a condition. It is sufficient that, within the upper value limits, the voucher must be accepted as consideration for services included therein. Therefore, the fact that the city card at issue in the main proceedings does not show the cardholder how much credit remains on the card does not preclude it from qualifying as a voucher.

54. The second objection raised by the Tax Agency is that some aspects of the city card are similar to a subscription, which means that the card cannot be treated as a voucher. In the case of subscriptions (for instance, for a gym, or for the use of transport services for a day, a month or similar timeframes), the transaction is already concluded and the taxable operation is already determined at the moment of the transfer of the subscription fees. That is not the case when it comes to city cards used as vouchers. A city card grants to its holder only the possibility of acquiring a subscription for transport services. Therefore, the taxable operation occurs only when (and if) the card is used for public transport. Additionally, in successive contracts for performance, the performance is not a taxable transaction within the meaning of Article 2 of the VAT Directive. A city card does not alter that. If cardholders avail themselves of the possibility afforded by the city card of acquiring a subscription, the supply of that subscription will be taxed, but the subsequent continued supply of services (each bus ride, for instance) will not.

55. The fact that a city card enables the cardholder to use it as consideration for a subscription, being a service with its own VAT rules, therefore neither prevents it from being classified as a voucher, nor does it conflict with the tax scheme applicable to subscriptions.

56. As regards the second condition, set out in Article 30a of the VAT Directive, that the goods or services to be supplied or the identities of their potential suppliers must be known, the order for reference also indicates that the card and related documentation explicitly list participating suppliers as well as the services which can be redeemed.

57. The Tax Agency nevertheless argues that the city card cannot be classified as a voucher because, owing to its limited period of use, it is impossible for the average consumer to use all the services covered by the card. Yet, there is nothing in the definition of 'voucher' that requires that all the relevant services (or goods) have to be redeemed, for an instrument to be considered a voucher. Instruments which allow all listed goods and services to be redeemed (for example,

[31] Recital 6 of the 2016 Directive.

retail outlet vouchers) are indeed vouchers if they are to be accepted as consideration. However, the requirement that all goods and services be redeemed is not a condition which makes an instrument a voucher.[32] Quite the opposite, as explained above:[33] part of the definition of 'voucher', stating that it includes the right to the provision of listed goods and services, was not included in the final version of the 2016 Directive. That is an additional argument in favour of the interpretation that the legislature rejected a condition that all services must be exhausted for the instrument to be treated as a voucher. Therefore, the fact that the short duration of city cards usually does not enable cardholders to use all the services listed does not alter the finding that, for VAT purposes, a city card is a voucher.

58. The difference between the full value of all services included in a card and its nominal value is understandable if the promotional dimension of most vouchers in general,[34] and of city cards in particular, is taken into consideration.[35] The Italian Government expressed concern that the short duration of the validity of the card does not allow the use of all services and might affect its attractiveness for visitors.[36] However, that does not alter the VAT treatment of such cards.

59. I also feel it necessary, since the point has been raised before the referring court and in various observations submitted by the participants before the Court, to assess the influence of recital 5 of the 2016 Directive on the acceptance of city cards as vouchers. That recital states that 'the provisions regarding vouchers should not trigger any change in the VAT treatment of transport tickets, admission tickets to cinemas and museums, postage stamps or similar'.

60. The purpose of that recital is, to my mind, to make it clear that the possibility of acquiring tickets, postage stamps or similar by means of a voucher should not alter the VAT rate applicable to such tickets, some of which are exempted while others benefit from reduced rates.[37] Vouchers only create a possibility to acquire a ticket and create the obligation for the supplier of such a ticket to accept vouchers as consideration. It does not in any way alter the VAT scheme applicable to such tickets. If a ticket is VAT exempt, VAT will not be charged, irrespective of whether the supplier accepted money, other payment instruments or a voucher as consideration.

61. In my opinion, the only reason why an instrument which satisfies both conditions laid down by the VAT Directive should not be treated as a voucher' is if it prevents the application of the special VAT treatment of a service in respect of which it must be accepted as consideration. As I will show in the last part of my Opinion, if a city card, as a multi-purpose voucher, is subject to the 'profit margin' option of taxation, its treatment as a voucher will not alter the specific VAT treatment of services included in such a voucher which benefit from different treatment for VAT purposes.

[32] If the voucher is not redeemed at all, that is if the holder does not start using it at all during the period in which its use can be initiated, then the provisions on vouchers do not apply. That follows from recital 12 of the 2016 Directive, which reads: 'This Directive does not target the situations where a multi-purpose voucher is not redeemed by the final consumer during its validity period, and the consideration received for such voucher is kept by the seller'.

[33] See point 44 of the present Opinion.

[34] Bijl, J.B.O, *The EU Vat Treatment of Vouchers in the Context of Promotional Activities*, see footnote 24 above.

[35] Drozdowska, M. Duda-Seifert, M., and Faron, A., 'Model of a city destination card as a marketing tool of selected European cities', *Management Sciences*, 2018, vol. 23, No 2, pp. 19-28.

[36] Ibid, p. 27.

[37] Tickets themselves could possibly be regarded as vouchers. Some literature acknowledges that it is difficult to distinguish a single-purpose voucher (SPV) from a ticket (Amand, C., 'EU Value Added Tax: The Directive on Vouchers in the Light of the General Value Added Tax Rules', p. 154, see footnote 10 above; and Terra, B.J.M., Terra, E.T., 'The value of the voucher directive on the EU VAT treatment of vouchers', *World Journal of VAT/GST Law*, 2017, p. 30). The same authors suggest, mainly following the Court's judgment of 23 December 2015, *Air France-KLM and Hop!-Brit Air* (C-250/14 and C-289/14, EU:C:2015:841)), and the wording of recital 5 of the 2016 Directive, that tickets are not vouchers. That, however, is not an issue relevant for the present reference.

62. In the light of all the foregoing, I am of the opinion that a city card, such as that at issue in the main proceedings, satisfies both conditions laid down in Article 30a of the VAT Directive and should, consequently, be construed as a voucher for VAT purposes.

2. City cards as 'multi-purpose vouchers'

63. The referring court wishes to know whether, if a city card qualifies as a voucher, it is a single- or multi-purpose voucher.

64. Article 30a of the VAT Directive makes a distinction between two types of voucher: 'single-purpose' and 'multi-purpose'. A 'multi-purpose voucher' is defined negatively as any voucher which does not qualify as a 'single-purpose voucher'.

65. By virtue of Article 30a(2) of the VAT Directive, a 'single-purpose voucher' is a voucher where the place of supply of the goods or services to which the voucher relates *and* the VAT due on those goods or services, are known at the time of issue of the voucher. [38] It follows from those indications that those conditions are cumulative and, most importantly, that they mean that at the time of issue of a single-purpose voucher, its VAT treatment must be certain.

66. In the case of city cards, or at least city cards of the type at issue in the main proceedings, it is clear that, at the time of purchase of the card, the services that will be supplied are unknown. It is, therefore, also unknown at the same moment which VAT rate will apply. Such a city card is, therefore, not a single-purpose voucher. However, as the card is a voucher, it has to be classified as a multi-purpose voucher.

3. Taxation of city cards as multi-purpose vouchers

67. It remains to be explained how transactions operated using the city card are accounted for, and by whom.

68. The manner in which the VAT is to be applied to multi-purpose vouchers such as city cards is governed by Articles 30b and 73a of the VAT Directive.

69. It is particularly helpful to run through the concrete application of the VAT rules on vouchers when it comes to city cards. I will, therefore, assess which transactions included in the scheme are taxable and at what moment, as well as the taxable amount, the latter being one of the elements taken into consideration by the Revenue Law Commission in finding that city cards, such as that at issue in the main proceedings, do not fall within the scope of the concept of 'voucher'.

70. In accordance with Article 30b(2) of the VAT Directive, VAT is applied to multi-purpose vouchers at the time of the actual supply of the goods or service in question, so that the tax is not charged on transfers of the voucher that take place before it is redeemed. That is so because, at the time of purchase of a city card, not all the relevant information for VAT purposes is known. [39] Given that VAT is a tax on the actual supply of goods and services, in the case of multi-purpose vouchers it is impossible to know which of the goods and services which such a voucher encompasses will actually be supplied.

[38] Emphasis added.

[39] van Doesum, A., van Kesteren, H., van Norden, *Fundamentals of EU VAT Law*, Alphen aan den Rijn, Wolters Kluwer, 2016, p. 246.

71. City cards are usually issued by a taxable person other than the supplier of services for which the card is to be accepted for consideration. As the issuer of the card receives consideration from the cardholder in respect of the transfer of a voucher, the question arises as to whether that transaction should be taxed as a separate service. Otherwise, some of the transactions involved in the scheme might remain untaxed. As I will show, the application of the tax option described as the 'profit margin' option in point 32 of the present Opinion allows the taxation of all transactions involved and avoids any double taxation.

72. The need to apply such a scheme follows, to my mind, from the combined reading of Articles 30b(2) and 73a of the VAT Directive. The former provision requires that 'where a transfer of a multi-purpose voucher is made by a taxable person other than the taxable person carrying out the transaction subject to VAT pursuant to the first subparagraph, any supply of services that can be identified, such as distribution or promotion services, shall be subject to VAT'. The latter provision provides that 'the taxable amount of the supply of goods or services provided in respect of a multi-purpose voucher is to be equal to the consideration paid for the voucher'.

73. A scheme under which VAT is accounted for each supply of goods or services would satisfy the requirement that the taxable amount is consideration received for a voucher if the value of goods and services which are in practice redeemed reaches the price paid for the voucher.[40] However, if the value of all services redeemed in practice is lower than the price paid for the voucher, the difference must also be subject to VAT. That amount is recognised as consideration for the distribution or promotion of services, in accordance with Article 30b(2) of the VAT Directive, and VAT on that 'profit margin' must be accounted for by the issuer of the card.

74. That type of scheme is not new under the VAT Directive. It applies, for example, to the taxation of travel agents (under Article 306 et seq. of the VAT Directive),[41] for which the taxable amount is based on the travel agent's profit margin (Article 308 of the VAT Directive).

75. In treating city cards as multi-purpose vouchers, the VAT Directive therefore requires that they be taxed in line with the profit margin option, because that tax scheme satisfies the basic principles of VAT. It avoids both double taxation and no taxation at all. That is one further reason justifying a reading according to which city cards are multi-purpose vouchers. That solution fulfils the aims of the 2016 Directive, as it clarifies the proper way of taxing city cards by eliminating all but one option used in practice. Practitioners in the field of VAT also appear to approve of such a solution.[42]

76. However, upholding the suggestion put forward by the Italian Government – which suggestion was accepted in the case-law of the referring court prior to the adoption of the 2016 Directive,[43] which opted for the parallel taxation of the entire consideration received in return for a city card and of each supply of goods or services actually supplied – could lead to double

[40] The issuer of the card pays for each supply of goods and services actually supplied, and the price of such supplies also includes VAT (unless the service is exempt). The issuer cannot deduct the VAT included in that price as its input tax.

[41] Which, in my opinion, shows many similarities with the facts of the main proceedings. On that point, see judgment of 13 October 2005, *ISt* (C-200/04, EU:C:2005:608).

[42] See, point 32 of the present Opinion and the literature cited.

[43] On that account, see footnote 16 of the present Opinion.

taxation.[44] Adopting that 'full taxation' option[45] could, as contended by the Commission, distort the VAT treatment of transport or admission tickets. That is precisely what the legislature wanted to avoid.[46]

77. To conclude, considering city cards as multi-purpose vouchers and taxing them on the basis of the 'profit margin' tax scheme whenever the issuer is different from the suppliers of goods and services, offers a comprehensive, uniform, transparent and neutral tax scheme. Given that the city card at issue in the main proceedings appears to satisfy both conditions imposed by the VAT Directive for an instrument to be treated as a voucher, it should be treated as a multi-purpose voucher for VAT purposes.

V. Conclusion

78. In conclusion, I propose that the Court answer the question referred by the the Högsta förvaltningsdomstolen (Supreme Administrative Court, Sweden) as follows:

A card that suppliers are obliged to accept as consideration for the supply to cardholders of the goods or services included in that card at a given place for a limited period of time and up to a certain value, falls within the scope of the concept of 'voucher' within the meaning of Article 30a of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. That is so even if all services covered by such a card cannot be used within a given time by an average consumer. Such a card is a 'multi-purpose voucher' within the meaning of the same provision, whenever the tax on the supply of goods and services for which it must be accepted as consideration is not known at the moment of transfer of that card.

44 See my Opinion in *GE Aircraft Engine Services Ltd*, (Case C-607/20, EU:C:2022:63, delivered on 27 January 2022, point 53).

45 See points 29 and 32 of the present Opinion.

46 Recital 5 of the 2016 Directive.