Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

1 August 2025 *

(Reference for a preliminary ruling – Taxation – Common system of value added tax (VAT) – Directive 2006/112/EC – Special arrangements for second-hand goods, works of art, collectors' items and antiques – Taxable dealers – Margin scheme – Article 316(1)(b) – Option to apply the margin scheme – Concept of 'supply of a work of art by the creator' – Supply by the creator through a legal person)

In Case C-433/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (Council of State, France), made by decision of 18 June 2024, received at the Court on 18 June 2024, in the proceedings

Galerie Karsten Greve

v

Ministère de l'Économie, des Finances et de la Souveraineté industrielle et numérique,

THE COURT (Fourth Chamber),

composed of I. Jarukaitis, President of the Chamber, N. Jääskinen, A. Arabadjiev (Rapporteur), M. Condinanzi and R. Frendo, Judges,

Advocate General: M. Szpunar,

Registrar: R. Șereș, Administrator,

having regard to the written procedure and further to the hearing on 20 March 2025,

after considering the observations submitted on behalf of:

– Galerie Karsten Greve, by L. Poulet-Odent, avocat,

– the French Government, by B. Dourthe, O. Duprat-Mazaré and B. Fodda, acting as Agents,

– the Spanish Government, by A. Torró Molés, acting as Agent,

– the European Commission, by M. Herold, W. Roels and J. Samnadda, acting as Agents,

* Language of the case: French.

after hearing the Opinion of the Advocate General at the sitting on 12 June 2025,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 316(1)(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1; 'the VAT Directive'), in the version applicable to the dispute in the main proceedings.

2 The request has been made in proceedings between the company Galerie Karsten Greve ('GKG') and the Ministère de l'Économie, des Finances et de la Souveraineté industrielle et numérique (Ministry of Economic Affairs, Finance and Industrial and Digital Sovereignty, France), concerning additional value added tax (VAT) assessments.

Legal context

European Union law

3 Recitals 4, 7 and 51 of the VAT Directive state:

'(4) The attainment of the objective of establishing an internal market presupposes the application in Member States of legislation on turnover taxes that does not distort conditions of competition or hinder the free movement of goods and services. It is therefore necessary to achieve such harmonisation of legislation on turnover taxes by means of a system of [VAT], such as will eliminate, as far as possible, factors which may distort conditions of competition, whether at national or Community level.

…

(7) The common system of VAT should, even if rates and exemptions are not fully harmonised, result in neutrality in competition, such that within the territory of each Member State similar goods and services bear the same tax burden, whatever the length of the production and distribution chain.

…

(51) It is appropriate to adopt a Community taxation system to be applied to second-hand goods, works of art, antiques and collectors' items, with a view to preventing double taxation and the distortion of competition as between taxable persons.'

4 Article 14(1) of that directive provides:

'"Supply of goods" shall mean the transfer of the right to dispose of tangible property as owner.'

5 Under Article 103 of that directive:

‘1. Member States may provide that the reduced rate, or one of the reduced rates, which they apply in accordance with Articles 98 and 99 is also to apply to the importation of works of art, collectors’ items and antiques, as defined in points (2), (3) and (4) of Article 311(1).

2. If Member States avail themselves of the option under paragraph 1, they may also apply the reduced rate to the following transactions:

(a) the supply of works of art, by their creator or his successors in title;

(b) the supply of works of art, on an occasional basis, by a taxable person other than a taxable dealer, where the works of art have been imported by the taxable person himself, or where they have been supplied to him by their creator or his successors in title, or where they have entitled him to full deduction of VAT.’

6 Article 311(1) of that directive provides:

‘For the purposes of this Chapter, and without prejudice to other Community provisions, the following definitions shall apply:

…

(2) “works of art” means the objects listed in Annex IX, Part A;

…

(5) “taxable dealer” means any taxable person who, in the course of his economic activity and with a view to resale, purchases, or applies for the purposes of his business, or imports, second-hand goods, works of art, collectors’ items or antiques, whether that taxable person is acting for himself or on behalf of another person pursuant to a contract under which commission is payable on purchase or sale.’

7 Article 314 of the VAT Directive provides:

‘The margin scheme shall apply to the supply by a taxable dealer of second-hand goods, works of art, collectors’ items or antiques where those goods have been supplied to him within the [European] Community by one of the following persons:

(a) a non-taxable person;

(b) another taxable person, in so far as the supply of goods by that other taxable person is exempt pursuant to Article 136;

(c) another taxable person, in so far as the supply of goods by that other taxable person is covered by the exemption for small enterprises provided for in Articles 282 to 292 and involves capital goods;

(d) another taxable dealer, in so far as VAT has been applied to the supply of goods by that other taxable dealer in accordance with this margin scheme.’

8 Article 316(1) of that directive provides:

‘Member States shall grant taxable dealers the right to opt for application of the margin scheme to the following transactions:

(a) the supply of works of art, collectors’ items or antiques, which the taxable dealer has imported himself;

(b) the supply of works of art supplied to the taxable dealer by their creators or their successors in title;

(c) the supply of works of art supplied to the taxable dealer by a taxable person other than a taxable dealer where the reduced rate has been applied to that supply pursuant to Article 103.’

9 Annex IX to that directive includes Part A, entitled ‘Works of art’, which is worded as follows:

‘(1) Pictures, collages and similar decorative plaques, paintings and drawings, executed entirely by hand by the artist, other than plans and drawings for architectural, engineering, industrial, commercial, topographical or similar purposes, hand-decorated manufactured articles, theatrical scenery, studio back cloths or the like of painted canvas (CN code 9701);

(2) original engravings, prints and lithographs, being impressions produced in limited numbers directly in black and white or in colour of one or of several plates executed entirely by hand by the artist, irrespective of the process or of the material employed, but not including any mechanical or photomechanical process (CN code 9702 00 00);

(3) original sculptures and statuary, in any material, provided that they are executed entirely by the artist; sculpture casts the production of which is limited to eight copies and supervised by the artist or his successors in title (CN code 9703 00 00); on an exceptional basis, in cases determined by the Member States, the limit of eight copies may be exceeded for statuary casts produced before 1 January 1989;

(4) tapestries (CN code 5805 00 00) and wall textiles (CN code 6304 00 00) made by hand from original designs provided by artists, provided that there are not more than eight copies of each;

(5) individual pieces of ceramics executed entirely by the artist and signed by him;

(6) enamels on copper, executed entirely by hand, limited to eight numbered copies bearing the signature of the artist or the studio, excluding articles of jewellery and goldsmiths’ and silversmiths’ wares;

(7) photographs taken by the artist, printed by him or under his supervision, signed and numbered and limited to 30 copies, all sizes and mounts included.’

French law

10 Article 278-0*bis* of the code général des impôts (General Tax Code; 'the CGI'), in the version applicable to the dispute in the main proceedings, provides, inter alia:

'[VAT] shall be levied at the reduced rate of 5.5% as regards:

…

I. – (1) Imports of works of art, collectors' items or antiques, as well as intra-Community acquisitions made by a taxable person or a non-taxable legal person of works of art, collectors' items or antiques which they have imported into the territory of another Member State of the European Union;

(2) Intra-Community acquisitions of works of art which have been supplied to another Member State by taxable persons other than taxable dealers.'

11 Under Article 278*septies* of the CGI, in the version applicable to the dispute in the main proceedings:

'[VAT] shall be levied at the rate of 10%:

…

(2) on the supply of works of art, by their creator or his or her successors in title.'

12 Paragraph I of Article 297 A of the CGI is worded as follows:

'(1) The taxable amount of supply by a taxable dealer of second-hand goods, works of art, collectors' items or antiques supplied to him or her by a person not liable for [VAT] or by a person who is not authorised to charge [VAT] in respect of that supply shall be the difference between the selling price and the purchase price.

The definition of second-hand goods, works of art, collectors' items and antiques shall be laid down by decree.'

13 The first paragraph of Article 297 B of the CGI provides:

'Taxable dealers may request to apply the provisions of Article 297 A in respect of supply of works of art, collectors' items or antiques subsequent to importation, intra-Community acquisition or supply subject to the reduced rate of [VAT] pursuant to Article 278*septies* or paragraph I of Article 278-0*bis*.'

14 Paragraph II of Article 98 A of Annex III to the CGI, in the version applicable to the dispute in the main proceedings, provides:

'The following shall be regarded as works of art:

(1) Pictures, collages and similar decorative plaques, paintings and drawings, executed entirely by hand by the artist, other than plans and drawings for architectural, engineering, industrial, commercial, topographical or similar purposes, hand-decorated manufactured articles, theatrical scenery, studio back cloths or the like of painted canvas'.

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

15 GKG operates as an art gallery and supplied works of art that had been supplied to it during 2014 by Studio Rubin Gideon ('SRG'), a company incorporated under United Kingdom law. GKG was the subject of an audit of accounts at the end of which the tax authorities called into question the benefit from the margin scheme applied to that supply carried out by GKG and, consequently, issued GKG with additional assessments for VAT in respect of the period from 1 January to 31 December 2014.

16 By judgment of 25 November 2020, the tribunal administratif de Paris (Administrative Court, Paris, France) dismissed GKG's application seeking cancellation of those additional tax assessments and the corresponding penalties. By judgment of 1 June 2022, the cour administrative d'appel de Paris (Administrative Court of Appeal, Paris, France) dismissed GKG's appeal against that judgment.

17 Hearing an appeal on a point of law lodged by GKG, the Conseil d'État (Council of State, France), which is the referring court, states that it is apparent from the documents in the file that SRG regularly supplied works of art during the tax period in question. Consequently, GKG was not, in any event, entitled to subject to the margin scheme, on the basis of the provisions of Article 297 B and Article 278-0*bis*(I)(2) of the CGI, its own supply following the intra-Community acquisitions made from that company.

18 That said, it follows from the wording of paragraph 2 of Article 278*septies* of the CGI, in the version applicable to the tax period in question, read in conjunction with Article 297 B of that code, that the right to opt for the special margin scheme applies to the supply of works of art resulting from a supply carried out by their creator or his or her successors in title, and to those resulting from an intra-Community acquisition of such works from their creator or his or her successors in title.

19 In the present case, GKG applied the margin scheme to the supply carried out to its customers of paintings by the painter Gideon Rubin, which it had itself obtained as a result of intra-Community acquisitions from SRG, of which Mr Rubin was one of the two partners.

20 In order to find that GKG was not entitled to apply the margin scheme to that supply of paintings, the cour administrative d'appel de Paris (Administrative Court of Appeal, Paris) took the view that the paintings at issue had not been supplied to that company by their creator, in particular on the ground that the creator of a painting could only be the artist who had painted it by hand, with the result that SRG, in its capacity as a legal person, could not be regarded as the creator of those paintings. In support of its appeal, GKG submits that the cour administrative d'appel de Paris (Administrative Court of Appeal, Paris) erred in law on that point.

21 According to the Conseil d'État (Council of State), the answer to the ground of appeal raised by GKG depends on whether Article 316(1)(b) of the VAT Directive, in conjunction with Article 311(1)(2) and Part A of Annex IX thereto, must be interpreted as precluding a legal person, such as a company, from being regarded, within the meaning and for the application of those provisions, as the 'creator' of a painting.

22 If the answer to the first question is in the negative, the answer to that ground of appeal would also depend on which criteria must be taken into account in order to accept that a legal person, such as a company, may be regarded, within the meaning and for the application of those provisions, as

the 'creator' of a painting. Such criteria could be, inter alia, that the company is subject to a special legal regime, that the natural person who painted the picture holds all or part of the share capital of that company, or even that that natural person exercises management functions within that company.

23 In those circumstances, the Conseil d'État (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must the provisions of Article 316(1)(b) of [the VAT Directive], combined with those of Article 311(1)(2) thereof and those of Part A of Annex IX thereto, be interpreted as precluding a legal person such as a company from being regarded, within the meaning and for the purposes of those provisions, as the "creator" of a painting?

(2) If the first question is answered in the negative, which criteria must be taken into account to allow a legal person such as a company to be regarded, within the meaning and for the purposes of those same provisions, as the "creator" of a painting (such as, in the case of a company, the company being subject to a particular legal regime, the fact that the natural person who painted the painting holds some or all of the company's share capital, the exercise by that person of management functions within the company, and so on)?'

Consideration of the questions referred

24 As a preliminary point, it should be borne in mind that, according to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court of Justice should, where necessary, reformulate the questions referred to it (judgment of 30 April 2025, *Inspektorat kam Visshia sadeben savet*, C-313/23, C-316/23 and C-332/23, EU:C:2025:303, paragraph 65 and the case-law cited).

25 Under Article 316(1)(b) of that directive, Member States are to grant taxable dealers the right to opt for application of the margin scheme to the supply of works of art supplied to the tax dealer by their creators or their successors in title.

26 In the present case, it is apparent from the request for a preliminary ruling that the referring court is uncertain, in particular, whether a legal person may be regarded, for the purposes of the application by the taxable dealer of the margin scheme provided for in Article 316(1)(b) of the VAT Directive, as the creator of a work of art and, if so, under what conditions.

27 However, it is common ground that the creator of the paintings at issue in the main proceedings is the painter Gideon Rubin, who marketed them through SRG, of which he is one of the two partners.

28 Furthermore, in accordance with Article 314(a) of the VAT Directive, the margin scheme applies to supply carried out by a taxable dealer of second-hand goods, works of art, collectors' items or antiques where those goods have been supplied to him or her within the European Union by a non-taxable person. Thus, Article 316(1)(b) of that directive covers taxable dealers who supply works of art which have been supplied to the taxable dealer by the creator or his or her successors in title as taxable persons for the purposes of VAT.

29 In those circumstances, in order to provide the national court with a useful answer, it is necessary to analyse not whether a legal person such as SRG may fall within the concept of 'creator' within the meaning of Article 316(1)(b) of the VAT Directive, but whether the supply of works of art by their creator or his or her successors in title acting through a legal person subject to VAT falls within the scope of that provision.

30 Consequently, it must be held that, by its questions referred for a preliminary ruling, which it is appropriate to examine together, the referring court asks, in essence, whether Article 316(1)(b) of the VAT Directive must be interpreted as meaning that the supply by taxable dealers of works of art supplied to the taxable dealer by the creator or his or her successors in title acting through a legal person falls within the scope of that provision and, if so, under what conditions.

31 In that regard, it should be recalled that, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, to that effect, judgment of 1 October 2014, *E.*, C-436/13, EU:C:2014:2246, paragraph 37).

32 In the first place, it should be noted that the wording of Article 316(1)(b) of the VAT Directive does not specify the detailed rules by which a creator or his or her successors in title must supply works of art to taxable dealers. However, as the Advocate General, in essence, observed in point 23 of his Opinion, the supply of works of art is part of the commercial activity of the creator or his or her successors in title, the substance of which consists, in accordance with Article 14(1) of the VAT Directive, in transferring, generally for remuneration, the right to dispose of tangible property as owner.

33 Accordingly, the wording of Article 316(1)(b) of the VAT Directive does not expressly preclude a creator or his or her successors in title from carrying out such a supply through a legal person or such a supply from being carried out by a legal person.

34 In the second place, as regards the context of that provision, it is true that the scheme for the taxation of the profit margin made by the taxable dealer on the supply of works of art constitutes a special arrangement for VAT, derogating from the general scheme of that directive, with the result that Articles 314 and 316 of that directive, which identify the cases in which this arrangement is to be applied, must be construed narrowly. However, that rule of strict interpretation does not mean that the terms used to set out that arrangement should be construed in such a way as to deprive it of its effects. In fact, the interpretation of those terms must conform to the objectives pursued by that arrangement and respect the requirements of tax neutrality (judgment of 29 November 2018, *Mensing*, C-264/17, EU:C:2018:968, paragraphs 22 and 23).

35 In the third place, as regards the objectives pursued by the VAT Directive, it follows from recitals 4 and 7 of that directive that the directive aims to establish a VAT system that does not distort conditions of competition or hinder the free movement of goods and services. It is apparent from the Court's settled case-law that the principle of tax neutrality is inherent to that system and that that principle precludes, in particular, economic operators carrying out the same transactions from being treated differently in relation to the collection of VAT (judgment of 29 November 2018, *Mensing*, C-264/17, EU:C:2018:968, paragraph 32).

36 As regards, more specifically, the objectives pursued by the margin scheme, as provided for in Articles 314 and 316 of the VAT Directive, it must be observed that, according to recital 51 of that directive, that scheme seeks, in the field of second-hand goods, works of art, antiques and collectors' items, to prevent double taxation and the distortion of competition as between taxable persons (judgment of 29 November 2018, *Mensing*, C-264/17, EU:C:2018:968, paragraph 35).

37 In addition, first, as the Advocate General observed in points 25 and 26 of his Opinion, in adopting Articles 103 and 316 of the VAT Directive, the specific objective of the EU legislature was to promote the introduction onto the EU market of new works of art, whether imported into the European Union or newly created within its territory, by providing for favourable tax treatment for the importation of such works, for their first supply after creation and for the first supply of those works by taxable dealers.

38 Second, as the French Government has correctly submitted, by limiting the right of taxable dealers to opt for the margin scheme solely in relation to works of art supplied to the tax dealer by their creator or his or her successors in title, Article 316(1)(b) of the VAT Directive is also intended to limit, both for taxable dealers and for the tax authorities of the Member States, the administrative burdens of proof and verification, in particular, those linked, for the former, to proving whether or not the purchase price of a work of art includes input VAT and, for the latter, to verifying such a factual situation.

39 In that regard, the Court has already held that it may be difficult to establish whether specific goods were previously subject to VAT, to the extent that, in the light of the very nature of the works of art, collectors' items and antiques, the goods may be old or may have been traded amongst various non-taxable persons. It is precisely in the light of those difficulties in the assessment of the VAT that may have already been charged on such goods that the VAT Directive provides for the right to opt for the application of the margin scheme and to calculate the VAT owed by referring, as an element for calculating such a margin, to the selling price of those goods (see, to that effect, judgment of 29 November 2018, *Mensing*, C-264/17, EU:C:2018:968, paragraph 36).

40 In the light of those considerations, it must be held that an interpretation of Article 316(1)(b) of the VAT Directive which excludes from its scope, in all cases, the supply by taxable dealers of works of art supplied to the tax dealer by creators or the successors in title of the creators acting through legal persons could undermine the objectives of ensuring fiscal neutrality, avoiding distortions of competition and promoting the introduction of new works of art onto the EU market.

41 As noted in paragraph 35 above, the principle of fiscal neutrality precludes, in particular, economic operators carrying out the same transactions from being treated differently in relation to the collection of VAT. As the Advocate General observed in points 27, 29 and 33 of his Opinion, when they supply works of art to taxable dealers, the creators of those works of art or their successors in title carry out identical transactions from the point of view of levying VAT, whether they carry out such supply as natural persons or through legal persons.

42 Furthermore, where Article 103(2)(a) and (b) of the VAT Directive grants the Member States the power to apply a reduced rate of VAT to certain supplies, it uses, in essence, the same terms as Article 316(1)(b) of that directive, with the result that such different treatment depending on the legal form in which the creators or their successors in title act would also be likely to result in the collection of VAT at different rates for identical transactions.

43 Moreover, the difference in treatment which would result from the interpretation referred to in paragraph 40 above would risk, on the one hand, undermining the objective of promoting the introduction of new works of art onto the EU market and, on the other hand, distorting competition between taxable dealers carrying out the same transactions, that is to say essentially the acquisition and resale of works of art, in that they would be treated differently as regards the possibility of opting for the application of the margin scheme under Article 316(1)(b) of the VAT Directive, depending on whether those works were supplied to the taxable dealer by the creator or his or her successors in title acting through a legal person or not.

44 Consequently, it must be held, in particular, in the light of the objectives pursued by the VAT Directive and Article 316(1)(b) thereof, that that provision also covers the supply by a taxable dealer of works of art supplied to the taxable dealer by a legal person, provided, however, that, in such a case, the supply of those works of art by that legal person to that taxable dealer may be attributed to the creator or his or her successors in title.

45 In that regard, first, where the supply of a work of art to a taxable dealer is carried out, as appears to be the case here, subject to verification by the referring court, by a legal person which the creator or his or her successors in title have established for the purpose of marketing the works of art created by the creator, it may be presumed that the supply is attributable to the creator or his or her successors in title, in so far as, in such a case, that supply takes place within the framework of arrangements which the creator or his or her successors in title have generally put in place for the purposes of that marketing.

46 Second, since the specific objective of Article 316(1)(b) of the VAT Directive is to promote the introduction of new works of art onto the EU market, as noted in paragraph 37 above, the interpretation given in the preceding paragraph of the present judgment must be limited to the supplies referred to in that paragraph which actually constitute the first introduction of a work of art onto the EU market, with the result that there must be no evidence of a previous supply of that work of art, subject to VAT, constituting such a first introduction.

47 Consequently, where a creator or his or her successors in title carry out the supply of such a work of art to a taxable dealer through a legal person, it is necessary, for the purpose of applying that provision during the subsequent supply of that work of art by the taxable dealer, that that legal person have the right to dispose of that work as an owner from its creation or, in the absence of an earlier supply subject to VAT, at the time of that first introduction onto the EU market.

48 It follows that, where the two criteria set out in paragraphs 44 and 46 above are fulfilled, the supply at issue falls within the scope of Article 316(1)(b) of the VAT Directive, which allows a taxable dealer to opt for the margin scheme.

49 Furthermore, it should be noted that the application of criteria such as those envisaged by the referring court, that is to say the legal person being subject to a special legal regime, the natural person who has created a work of art holding all or part of the share capital of that legal person, that natural person exercising management functions within that legal person and/or transferring a substantial part of the proceeds of sale to the natural person who has created that work, could undermine the objective of Article 316(1)(b) of the VAT Directive, which consists in avoiding excessive burdens in terms of proof and verification, in that such an application would entail a verification of arrangements, which may be very complex, relating to property or voting

rights within a legal person and to the distribution of profits between the partners of the legal person, for example in the case where several artists act in the framework of such a legal person to market their works of art and, in particular, where such works of art are created collaboratively.

50 In the light of all the foregoing considerations, the answer to the questions referred is that Article 316(1)(b) of the VAT Directive must be interpreted as meaning that the supply by taxable dealers of works of art supplied to them by the creator or his or her successors in title acting through a legal person falls within the scope of that provision, provided that, first, the supply by the legal person is attributable to the creator or his or her successors in title, which is the case where the creator or successors in title have established that legal person for the purpose of marketing the works of art created by the creator and, second, the supply of those works of art to the taxable dealer constitutes the first introduction of those works of art onto the EU market.

Costs

51 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 (Fourth Chamber) hereby rules:

Article 316(1)(b) 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 supply by taxable dealers of works of art supplied to them by the creator or his or her successors in title acting through a legal person falls within the scope of that provision, provided that, first, the supply by the legal person is attributable to the creator or his or her successors in title, which is the case where the creator or successors in title have established that legal person for the purpose of marketing the works of art created by the creator and, second, the supply of those works of art to the taxable dealer constitutes the first introduction of those works of art onto the EU market.

[Signatures]