OPINION OF ADVOCATE GENERAL KOKOTT
delivered on 6 May 2010 [1]

I — Introduction

1. By this reference, the Regeringsrätten (Supreme Administrative Court), Sweden, is seeking an interpretation by the Court of Justice of the rules on intra-Community acquisitions in Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (VAT) [2] ('Directive 2006/112').

2. The specific issue concerns the tax treatment of the acquisition of a new sailing boat of which the purchaser X intends to take possession in the United Kingdom, to use there or in another Member State for three to five months and then to transport to his place of residence in Sweden. X takes the view that that constitutes a supply within the territory of a Member State, taxable in the State of origin. The Swedish tax authority, however — supported in the proceedings before the Court of Justice by the German Government and the Commission — considers that (despite the interval in time) it amounts to an intra-Community acquisition in Sweden.

II — Legal framework

A — *European Union law*

3. Recital 11 in the preamble to Directive 2006/112 reads:

'It is also appropriate that, during that transitional period, intra-Community acquisitions of a certain value, made by exempt persons or by non-taxable legal persons, certain intra-Community distance selling and the supply of new means of transport to individuals or to exempt or non-taxable bodies should also be taxed in the Member State of destination, in

1 — Original language: German.
2 — OJ 2006 L 347, p. 1.

accordance with the rates and conditions set by that Member State, in so far as such transactions would, in the absence of special provisions, be likely to cause significant distortion of competition between Member States.'

4. The relevant passages of Article 2(1) of Directive 2006/112 read as follows:

'The following transactions shall be subject to VAT:

(a) the supply of goods for consideration within the territory of a Member State by a taxable person acting as such;

(b) the intra-Community acquisition of goods for consideration within the territory of a Member State by:

…

(ii) in the case of new means of transport, a taxable person, or a non-taxable legal person, whose other acquisitions are not subject to VAT pursuant to Article 3(1), or any other non-taxable person;

…'

5. Article 2(2) of Directive 2006/112 also provides:

'(a) For the purposes of point (ii) of paragraph 1(b), the following shall be regarded as "means of transport", where they are intended for the transport of persons or goods:

…

(ii) vessels exceeding 7.5 metres in length, with the exception of vessels used for navigation on the high seas and carrying passengers for reward, and of vessels used for the purposes of commercial, industrial or fishing activities, or for rescue or assistance at sea, or for inshore fishing;

…

(b) These means of transport shall be regarded as "new" in the cases:

…

(ii) of vessels, where the supply takes place within three months of the date of first entry into service or where the vessel has sailed for no more than 100 hours;

…

(c) Member States shall lay down the conditions under which the facts referred to in point (b) may be regarded as established.'

6. Article 14(1) of Directive 2006/112 defines the term 'supply of goods' as follows:

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

7. Under Article 20(1) of Directive 2006/112, '[i]ntra-Community acquisition of goods shall mean the acquisition of the right to dispose as owner of movable tangible property dispatched or transported to the person acquiring the goods, by or on behalf of the vendor or the person acquiring the goods, in a Member State other than that in which dispatch or transport of the goods began.'

8. Under Article 40 of Directive 2006/112, the place of an intra-Community acquisition of goods is deemed to be the place where dispatch or transport of the goods to the person acquiring them ends.

9. Article 68 of Directive 2006/112 provides that the time of occurrence of the chargeable event in the case of an intra-Community acquisition of goods is when the intra-Community acquisition of goods is made. Under Article 68, the acquisition is regarded as being made when the supply of similar goods is regarded as being effected within the territory of the relevant Member State.

10. Article 138 of Directive 2006/112 provides for exemption of intra-Community supplies as follows:

'1. Member States shall exempt the supply of goods dispatched or transported to a destination outside their respective territory but within the Community, by or on behalf of the vendor or the person acquiring the goods, for another taxable person, or for a non-taxable legal person acting as such in a Member State other than that in which dispatch or transport of the goods began.

2. In addition to the supply of goods referred to in paragraph 1, Member States shall exempt the following transactions:

(a) the supply of new means of transport, dispatched or transported to the customer at a destination outside their respective territory but within the Community, by or on behalf of the vendor or the customer, for taxable persons, or non-taxable legal persons, whose intra-Community acquisitions of goods are not subject to VAT pursuant to Article 3(1), or for any other non-taxable person;

...'

B — *Swedish law*

11. Under Chapter 1, Paragraph 1, of the Mervärdesskattelagen (Law on value added tax) (1994:200) ('the ML'), VAT is to be paid to the State on, inter alia, sales within the State of taxable goods as part of a business activity and for taxable intra-Community acquisitions of goods which are movable property. Under Chapter 2a, Paragraph 3, of the ML, goods are to be regarded as acquired by means of an intra-Community acquisition if the acquisition concerns a new means of transport such as those mentioned in Chapter 1, Paragraph 13a.

12. Chapter 3, Paragraph 30a, of the ML provides that sales of new means of transport which are transported by or on behalf of the vendor or the purchaser from Sweden to another Member State are to be exempt from tax, even if the purchaser is not identified for VAT purposes.

13. Under Chapter 2a, Paragraph 2, of the ML, 'intra-Community acquisition' means that someone acquires goods for consideration in a case where the goods are transported to the person acquiring the goods in Sweden from another Member State by or on behalf of the person acquiring the goods or the vendor.

14. Under Chapter 1, Paragraph 13a, of the ML, new means of transport is to be understood as including vessels — with certain exceptions which are not relevant in the present case — exceeding 7.5 metres in length, provided that they are sold within three months of the date on which they first entered into service or have sailed for no more than 100 hours before the sale.

III — Facts and questions referred for a preliminary ruling

15. The private individual X, who is resident in Sweden, intends to acquire in the United Kingdom a sailing boat exceeding 7.5 metres in length for his private use. After delivery of the sailing boat, X intends to use it for recreational purposes in the State of origin for three to five months and thereby to sail the boat for more than 100 hours or to transport it out of the State of origin immediately after delivery for similar use in a Member State other than Sweden. In both cases, following the planned use, the boat is to be sailed to Sweden, the final destination.

16. In order to clarify the tax consequences of the acquisition, X applied to the Skatterättsnämnd (Revenue Law Commission)

for a preliminary decision and asked whether the acquisition would be taxed in Sweden in either of the two cases.

17. The Skatterättsnämnd found that in both cases there was a taxable intra-Community acquisition of a new means of transport, resulting in X being liable to tax in Sweden. X is now appealing against that preliminary decision to the Regeringsrätten. He takes the view that the supply of the boat should be taxed as a supply within the territory of the United Kingdom. In the light of the foregoing, the Regeringsrätten has submitted the following questions to the Court of Justice for a preliminary ruling, pursuant to its order of 16 February 2009:

'(1) Are Articles 138 and 20 of Council Directive 2006/112/EC on the common system of value added tax to be interpreted as meaning that the transport out of the territory of the State of origin must begin within a certain period of time for the sale to be exempt from tax and for there to be an intra-Community acquisition?

(2) Similarly, are those articles to be interpreted as meaning that the transport must end in the country of destination within a certain period of time for the sale to be exempt from tax and for there to be an intra-Community acquisition?

(3) Would the answers to Questions 1 and 2 be affected if that which is acquired is a new means of transport and the person acquiring the goods is an individual who intends ultimately to use the means of transport in a particular Member State?

(4) In connection with an intra-Community acquisition, at which time must the assessment be made as to whether a means of transport is new in accordance with Article 2(2)(b) of Council Directive 2006/112/EC on the common system of value added tax?'

18. X, the Skatteverket (the local tax board), the German Government and the European Commission submitted written observations to the Court of Justice. X, the Swedish Government and the Commission presented their oral arguments at the hearing.

IV — Legal assessment

A — *The first, second and third questions referred for a preliminary ruling*

19. The first three questions referred for a preliminary ruling, which will be examined jointly, are intended to shed light on the conditions for the existence of an intra-Community acquisition under Article 20 of Directive 2006/112 or a tax-exempt intra-Community supply under Article 138 of the directive, where the goods concerned are not transported immediately from the State of origin to the State of destination. The Regeringsrätten also asks whether it is significant in that context that the goods acquired are a new means of transport and the person acquiring them an individual who intends ultimately to use the means of transport in a particular Member State (third question).

20. Under Article 2(1)(b)(ii) of Directive 2006/112, in conjunction with Article 2(2)(a)(ii) of that directive, the intra-Community acquisition of a new vessel exceeding 7.5 metres in length by a non-taxable person is to be taxed in the territory of the State of intra-Community acquisition.

21. Article 20 of the directive defines the intra-Community acquisition of goods as the acquisition of the right to dispose as owner of movable tangible property dispatched or transported to the person acquiring the goods, by or on behalf of the vendor or the person acquiring the goods, in a Member State other than that in which dispatch or transport of the goods began.

22. Correspondingly, Article 138(1) of Directive 2006/112 attaches to tax exemption of an intra-Community supply the condition that the goods in question be dispatched or transported by or on behalf of the vendor or the person acquiring the goods to a destination outside their respective territory but within the European Union.

23. The intra-Community acquisition as a chargeable event is therefore subject to two conditions: first, the person acquiring the goods must acquire the right to dispose of them as owner; second, the goods must be dispatched or transported from the State of origin to another Member State. In order for the supply to be tax-exempt in the Member State of origin, that second condition must also be fulfilled. According to the case-law of the Court, it is necessary that the classification of intra-Community supplies and acquisitions be made on the basis of objective matters, such as the physical movement of the goods concerned between Member States. [3]

3 — Case C-409/04 *Teleos and Others* [2007] ECR I-7797, paragraph 40.

24. It is not apparent, however, from the wording of those provisions what temporal or substantive correlation there must be between the assumption of ownership rights and the beginning or ending of transport to another Member State.

25. X takes the view that there is no longer an intra-Community acquisition where the sailing boat has been used for longer than three months or 100 hours before transport to the Member State of destination begins. Its entry into service in the Member State of origin should not be regarded as the beginning of its transport unless the journey to the port of destination begins immediately. The period of time in question must be clear, on grounds of legal certainty.

26. The other parties to the proceedings contend, however, that the process should be considered as a whole, with the temporal correlation between handover to the person acquiring the goods and their dispatch or transport being just one of several factors to be taken into account. If it is established from the outset that the goods are finally to be used in a different Member State from the Member State of origin, that is of vital significance for the conclusion that there is an intra-Community acquisition in the State of destination.

27. It is questionable which of the two viewpoints most closely corresponds to the spirit and purpose of the rules on intra-Community acquisitions. It is necessary, first, to recall the background to the introduction of legislation on intra-Community trade. [4]

28. VAT taxes private consumption within the territory of a Member State. Thus, the supply of goods and the provision of services within the territory of a Member State is subject to VAT (Article 2(1)(a) and (c) of Directive 2006/112). Intra-Community acquisitions and the importation of goods are also subject to VAT (Article 2(1)(b) and (d) of Directive 2006/112). The last two chargeable events ensure that goods are subject to VAT in the State of acquisition or importation in which they are intended for private consumption. [5]

29. Intra-Community acquisition as a chargeable event was introduced on 1 January 1993 as a transitional arrangement for the

4 — See points 24 to 29 of my Opinion delivered in Case C-409/04 *Teleos and Others* [2007] ECR I-7797, and points 19 to 25 of my Opinion delivered in Case C-245/04 *EMAG Handel Eder* [2006] ECR I-3227.

5 — See Case C-245/04 *EMAG Handel Eder* [2006] ECR I-3227, paragraphs 31 and 40; *Teleos and Others*, cited in footnote 3, paragraph 36; Case C-146/05 *Collée* [2007] ECR I-7861, paragraph 22; and Case C-184/05 *Twoh International* [2007] ECR I-7897, paragraph 22.

taxation of trade between Member States.[6] Before that, supplies of goods between two Member States were classified in the same way as supplies in other international trade. The crossing of the frontier on import or export was then the decisive chargeable event for taxation purposes. With the realisation of the internal market, controls at internal frontiers were abolished, which required a recasting of the VAT rules for intra-Community trade.

30. The reform did not, however, go so far as to extend the rules on supplies of goods within the territory of a Member State to trade between two Member States. That would have meant that the right to levy VAT would reside not with the State into which the goods were imported and in which they were consumed but with the State from which they were dispatched. It is rather the case that the transitional arrangements leave the pre-existing distribution of tax sovereignty between Member States untouched.[7]

31. In order to ensure that the right to levy VAT continues to belong to the Member State of final consumption, intra-Community acquisition was introduced as a new chargeable event, together with an exemption for internal supply between Member States.

6 — Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers (OJ 1991 L 376, p. 1).

7 — See *EMAG Handel Eder*, cited in footnote 5, paragraph 27, and *Teleos and Others*, cited in footnote 3, paragraph 22, in each case with reference to the 7th to 10th recitals in the preamble to Directive 91/680.

32. Dispatch or transport to another Member State is therefore of crucial importance to the distinction between supply within the territory of a Member State and an intra-Community supply. That criterion serves to allocate authority to tax to the State of supply or the State of destination according to the final consumption of the goods.

33. In addition to the division of authority to tax, as indicated by recital 11 in the preamble to Directive 2006/112, the rules on taxation of the intra-Community acquisition of new means of transport also specifically pursue the aim of preventing distortions of competition due to different rates of tax in the Member States.

34. Whereas, under Article 2(1)(b)(i) of Directive 2006/112, only an intra-Community acquisition by taxable persons and non-taxable legal persons is generally subject to tax, the legislature has also made the acquisition of new means of transport by private

persons subject to tax. Because of the high value [8] and easy transportability of those goods, there would be an incentive for private individuals to acquire means of transport in Member States with a low rate of VAT, if the supply were to be taxed in the Member State of origin. Taxation in the State of intra-Community acquisition ensures that the person acquiring the goods has to pay the same amount of tax irrespective of the State from which he obtains the means of transport. The rules therefore preclude traders in means of transport from obtaining a competitive advantage only because a lower rate of VAT is charged in their State of establishment.

35. The interpretation of the legislation on intra-Community supplies and intra-Community acquisitions must ensure that the division of tax sovereignty and equal conditions of competition cannot be circumvented by targeted tax arrangements.

36. As rightly argued by the Skatteverket, the German Government and the Commission, without the link to the place of consumption taxable persons could decide arbitrarily where the acquisition of a new means of transport was to be taxed if the transfer of power to impose taxes to the State of intra-Community acquisition were to depend solely on that means of transport leaving the State of origin or arriving in the State of destination within a certain period of time after the supply. Even unintended transport delays could trigger a transfer of the power to impose taxes, even though the goods in question were undoubtedly intended for final consumption in a different Member State from the State of supply.

37. Rather than being based on rigid time-limits, which the directive itself also declines to lay down, the Member State in which final consumption is to take place has to be determined in the light of an overall consideration of all material circumstances. In that context, the primary focus should be on objective matters.

38. In the present case, apart from the time at which transport comes to an end, significance can also be attached to where the sailing boat is registered and where the person acquiring it has a permanent mooring facility for the boat. The place of residence of a private individual acquiring goods can also be an indication of where the boat is ultimately to be permanently used. When determining the end of the period of time, the distance between the State of supply and the State of destination and the lifespan of the goods supplied can inter alia also play a role. If conveyance of the means of transport takes only a very insignificant period of time in comparison with its overall lifespan, it is to be expected that consumption of the goods will essentially take place in the State of destination.

8 — Under Article 2(2)(a)(ii) of Directive 2006/112 the taxation of acquisitions by private persons only applies to vessels exceeding 7.5 metres in length.

39. Although the expressions intra-Community supply and intra-Community acquisition are objective in nature and apply without regard to the purpose or results of the transactions concerned, [9] it is nevertheless necessary to have regard to the intentions of the person acquiring the goods in relation to the place of their final use, as evidenced by objective circumstances and expressed by him at the time of supply. [10] The vendor must already know when the invoice is issued whether he has to charge VAT or may refrain from doing so because it is an exempt intra-Community supply.

40. In addition, under Article 68 of Directive 2006/112, the intra-Community acquisition as a chargeable event occurs as soon as a corresponding supply is regarded as being made within the territory of a Member State. Under Article 63 in conjunction with Article 14 of the directive, the decisive time for that purpose is when the person acquiring the goods acquires the right to dispose of tangible property as owner. If the person acquiring the goods receives them in the State of origin itself, the condition for supply within the territory of a Member State is already satisfied. The question whether it is instead actually an intra-Community acquisition in another Member State can be established at that time only on the basis of information provided by the person acquiring the goods regarding their proposed transport to another Member State and their final use there.

41. The intra-Community acquisition of a means of transport by a private individual constitutes a special case in that respect. First, it is unusual to have a person who is not taxable per se who satisfies the conditions of a chargeable event. Second, the present case displays a peculiarity in that the bringing of a means of transport into service by a private person acquiring goods in the Member State of origin is often not clearly distinguishable from the beginning of transport to the State of destination.

42. However, not even those special circumstances lead to the conclusion that, when distinguishing a supply within the territory of a Member State from an intra-Community acquisition, a certain period of time between the handover of the means of transport to the person acquiring it and the beginning of the transport of the means of transport from the territory of the State of origin to the State

9 — *Teleos and Others*, cited in footnote 3, paragraph 38, referring to Joined Cases C-354/03, C-355/03 and C-484/03 *Optigen and Others* [2006] ECR I-483, paragraph 44, and Joined Cases C-439/04 and C-440/04 *Kittel and Recolta Recycling* [2006] ECR I-6161, paragraph 41.

10 — According to case-law, regard is also to be had to the use intended by the person acquiring the goods, as confirmed by objective evidence, when establishing whether the goods are to be used in the course of an economic activity within the meaning of Article 4(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) or Article 9(1) of Directive 2006/112 so that there is an entitlement to deduct input tax (see Case 268/83 *Rompelman* [1985] ECR 655, paragraph 24, and Case C-400/98 *Breitsohl* [2000] ECR I-4321, paragraphs 34 to 39). When determining the scope of the right to deduct input tax, the criterion is also the use to which goods are put, or are intended to be put (see Case C-63/04 *Centralan Property* [2005] ECR I-11087, paragraph 54).

of destination is alone decisive. The aim of preventing distortions of competition pursued by the special provision in Article 2(1)(b)(ii) in conjunction with Article 2(a)(ii) of Directive 2006/112 specifically requires, in that context, not that regard be had merely to the passage of time, but also that there be an overall consideration of all the circumstances, including the intentions of the person acquiring the goods, as confirmed by objective evidence.

43. X is nevertheless of the opinion that the principle of legal certainty requires a certain period of time to be laid down.

44. According to established case-law, the principle of legal certainty must be observed all the more strictly in the case of rules liable to entail financial consequences, in order that those concerned may know precisely the extent of the obligations which they impose on them. [11]

45. The Court has also refused in principle, on grounds of legal certainty, to make classification as an intra-Community transaction contingent solely on the supplier's or purchaser's intention to effect such a transaction. [12] However, that conclusion is based on the consideration that the tax authorities should be spared the duty of carrying out inquiries to determine the intention of the taxable person. The Court has also made an express reservation for exceptional cases.

46. It is therefore not contrary to the principle of legal certainty for classification as an intra-Community acquisition in a case such as the present one to be made contingent on an overall consideration of all the circumstances, including the place where the goods are intended to be used, as expressed by the person acquiring the goods and confirmed by objective evidence. That approach does not, in particular, lead to an obligation on the person acquiring the goods to pay tax on the intra-Community acquisition in a manner that is unforeseeable, since it is based on his own information regarding their final consumption.

47. According to X, exemption for an intra-Community supply in the United Kingdom is contingent, however, on the sailing boat leaving the territory of that Member State within two months. He claims that there would then be a risk of double taxation if the supply were to be liable after that period had expired to tax in the State of origin as supply in the territory of a Member State but were at the same time to constitute a taxable intra-Community acquisition in the State of destination.

11 — See Case 326/85 *Netherlands* v *Commission* [1987] ECR 5091, paragraph 24; Case C-255/02 *Halifax and Others* [2006] ECR I-1609, paragraph 72; and *Teleos and Others*, cited in footnote 3, paragraph 46.

12 — Case C-4/94 *BLP Group* [1995] ECR I-983, paragraph 24; *Optigen and Others*, cited in footnote 9, paragraph 45; *Kittel and Recolta Recycling*, cited in footnote 9, paragraph 42; *Teleos and Others*, cited in footnote 3, paragraph 39; and Case C-29/08 *AB SKF* [2009] ECR I-10413, paragraph 77.

48. In that regard, it should be pointed out that the intra-Community supply of goods and their intra-Community acquisition are, in fact, one and the same financial transaction, even though the latter creates different rights and obligations both for the parties to the transaction and for the tax authorities of the Member States concerned. [13]

49. Admittedly, where an intra-Community acquisition of goods has taken place, the Member State in which the dispatch or transport of those goods ends exercises its power of taxation pursuant to Article 21 of Council Regulation (EC) No 1777/2005 laying down implementing measures for Directive 77/388/EEC on the common system of value added tax, [14] irrespective of the VAT treatment applied to the transaction in the Member State in which the dispatch or transport began. However, the two Member States must then observe a uniform interpretation of the provisions on exemption for intra-Community supplies (Article 138 of Directive 2006/112) and the taxation of intra-Community acquisitions (Article 20 of Directive 2006/112).

50. In view of the temporal and substantive correlation between the supply and dispatch or transport to the State of destination, those provisions must be interpreted in such a way as to confer on them the same meaning and scope. [15] Otherwise, the exemption of an intra-Community supply does not perform its function of avoiding the double taxation of supplies in intra-Community trade and hence guaranteeing fiscal neutrality. [16]

51. It should also be mentioned that the exemption from tax of intra-Community supplies under Article 131 of Directive 2006/112 applies in accordance with conditions which the Member States lay down for the purposes of ensuring the correct and straightforward application of those exemptions and of preventing any possible evasion, avoidance or abuse. That in principle includes the possibility of the Member State of origin laying down certain periods of time within which the goods subject to an intra-Community supply must generally have left the territory of that State.

52. However, when they exercise their powers, Member States must comply with the general principles of law which form part of the legal order of the European Union, which include, in particular, the principles of legal

13 — *Teleos and Others*, cited in footnote 3, paragraph 23.

14 — OJ 2005 L 288, p. 1.

15 — See, in this vein, *Teleos and Others*, cited in footnote 3, paragraph 34.

16 — *Teleos and Others*, cited in footnote 3, paragraph 25, and *Collée*, cited in footnote 5, paragraph 23.

certainty and proportionality. [17] The measures which the Member States may adopt in order to ensure the correct levying and collection of the tax and for the prevention of fraud may not be used in such a way as to undermine the neutrality of VAT. [18]

53. National legislation that links exemption of an intra-Community supply to adherence to certain periods of time for dispatch or transport must therefore display sufficient flexibility for exemption to be granted in particular cases even where the goods have in fact left the territory of the State in question after a somewhat longer period of time and, on an overall consideration of all the circumstances, it is established that their final use is to take place in another Member State. In those circumstances, there must at least be the possibility of a subsequent adjustment of the tax assessment if tax revenue was not jeopardised and the parties concerned acted in good faith. [19]

54. The answer to the first to third questions referred for a preliminary ruling is therefore that the classification of a transaction concerning a new vessel exceeding 7.5 metres in length as an intra-Community supply exempt from tax under Article 138 of Directive 2006/112 and as an intra-Community acquisition taxable in the State of destination under Article 20 of that directive does not depend only on the condition that the vessel leave the Member State of origin or arrive in the Member State of destination within a certain period of time. Such classification should rather be made on the basis of an overall consideration of all the objective circumstances and having regard to the intention of the person acquiring the goods concerning their final consumption, as confirmed by factual evidence.

B — *The fourth question referred for a preliminary ruling*

55. By its fourth question, the Regeringsrätten wishes to know what the decisive point in time is for the assessment as to whether a means of transport is new within the meaning of Article 2(2)(b) of Directive 2006/112.

56. X takes the view that the relevant point in time is the date on which the vessel reaches the State of destination.

57. The answer to the fourth question is therefore that, in order to determine whether a means of transport that is the subject-matter

17 — See, in this vein, Joined Cases C-286/94, C-340/95, C-401/95 and C-47/96 *Molenheide and Others* [1997] ECR I-7281, paragraph 48; Case C-384/04 *Federation of Technological Industries and Others* [2006] ECR I-4191, paragraphs 29 and 30; and *Teleos and Others*, cited in footnote 3, paragraph 45.

18 — See, in this vein, Joined Cases C-110/98 to C-147/98 *Gabalfrisa and Others* [2000] ECR I-1577, paragraph 52; *Halifax and Others*, cited in footnote 11, paragraph 92; and *Teleos and Others*, cited in footnote 3, paragraph 46.

19 — See, in this vein, *Collée*, cited in footnote 5, paragraphs 31, 35 and 37.

of an intra-Community acquisition is new within the meaning of Article 2(2)(b) of Directive 2006/112, it is necessary to take into considerartion the moment when the goods in question were supplied by the vendor to the purchaser.

58. As the German Government argues, reliance upon the time of arrival in the State of destination could provide the taxable person with an opportunity of influencing the place of taxation by delaying transport, and hence arrival in the State of destination, beyond the three-month period laid down in Article 2(2)(b)(ii) of Directive 2006/112. That would conflict with the allocation of authority to tax according to the place of de facto consumption. [20]

59. There would also be the risk of transactions being entirely tax-exempt. A taxable person in X's situation could therefore export a boat from the State of origin by claiming exemption for intra-Community supplies, spend over 100 hours or three months on the high seas or in a third country and only take the boat to the State of destination thereafter.

20 — See also points 38 and 39 of this Opinion.

If its classification as a new vessel were to depend upon the time of its arrival in the State of destination, it would then no longer be a taxable intra-Community acquisition.

60. The question whether a means of transport is new within the meaning of Article 2(2)(b)(ii) of Directive 2006/112 must therefore be assessed at the time of supply and not at the time of arrival in the State of destination.

61. That conclusion does not moreover conflict with Article 40 of Directive 2006/112. Under that provision, the place of an intra-Community acquisition of goods is deemed to be the place where dispatch or transport of the goods to the person acquiring them ends. The only purpose of that provision is to allocate the right to levy tax on an intra-Community acquisition to the State of destination. It does not say whether the goods in question have to be new on their arrival in that State.

62. The answer to the fourth question referred for a preliminary ruling is therefore that, when assessing in the context of an intra-Community acquisition whether a means of transport is new within the meaning of Article 2(2)(b) of Directive 2006/112, the time of supply is decisive.

V — Conclusion

63. In conclusion, I propose that the questions referred to the Court by the Regeringsrätten be answered as follows:

'(1) The classification of a transaction concerning a new vessel exceeding 7.5 metres in length as an intra-Community supply exempt from tax under Article 138 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and as an intra-Community acquisition taxable in the State of destination under Article 20 of that directive does not depend only on the condition that the vessel leave the Member State of origin or arrive in the Member State of destination within a certain period of time. Such classification should rather be made on the basis of an overall consideration of all the objective circumstances and having regard to the intention of the person acquiring the goods concerning their final consumption, as confirmed by factual evidence.

(2) In order to determine whether a means of transport that is the subject-matter of an intra-Community acquisition is new within the meaning of Article 2(2)(b) of Directive 2006/112, it is necessary to take into consideration the moment when the goods in question were supplied by the vendor to the purchaser.'