Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

12 May 2022*

(Reference for a preliminary ruling – Customs union – Value added tax (VAT) – Directive 2006/112/EC – Article 201 – Persons liable to pay VAT – Import VAT – Union Customs Code – Regulation (EU) No 952/2013 – Article 77(3) – Joint and several liability of the indirect customs representative and the importing company – Customs duties)

In Case C-714/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Commissione tributaria provinciale di Venezia (Provincial Tax Court, Venice, Italy), made by decision of 17 November 2020, received at the Court on 24 December 2020, in the proceedings

U.I. Srl

v

Agenzia delle dogane e dei monopoli – Ufficio delle dogane di Venezia,

THE COURT (Sixth Chamber),

composed of I. Ziemele, President of the Chamber, T. von Danwitz (Rapporteur) and P.G. Xuereb, Judges,

Advocate General: T. Ćapeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– U.I. Srl, by M.C. Santacroce and A. Dal Ferro, avvocati,

– the Italian Government, by G. Palmieri, acting as Agent, and by G. Albenzio, avvocato dello Stato,

– the Greek Government, by M. Tassopoulou and by K. Georgiadis and G. Avdikos, acting as Agents,

* Language of the case: Italian.

– the European Commission, by L. Lozano Palacios, F. Clotuche-Duvieusart and F. Moro, acting as Agents,

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 201 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') and Article 77(3) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1) ('the Customs Code').

2 The request has been made in proceedings between U.I. Srl and the Agenzia delle dogane e dei monopoli – Ufficio delle dogane di Venezia (Customs and Monopolies Agency – Venice Customs Office) ('the Customs Agency') concerning the payment by U.I., as indirect customs representative, of import value added tax (VAT) in addition to customs duties on imports.

Legal context

European Union law

The VAT Directive

3 Recitals 43 and 44 of the VAT Directive state:

'(43) Member States should be entirely free to designate the person liable for payment of the VAT on importation.

(44) Member States should be able to provide that someone other than the person liable for payment of VAT is to be held jointly and severally liable for its payment.'

4 Article 2(1)(d) of the VAT Directive states that the importation of goods is subject to VAT.

5 Under the first paragraph of Article 30 of that directive, 'importation of goods' means the entry into the European Union of goods which are not in free circulation within the meaning of Article 29 TFEU.

6 Article 70 of that directive provides that the chargeable event is to occur and VAT is to become chargeable when the goods are imported.

7 Article 71 of the VAT Directive provides:

'(1) Where, on entry into the [European Union], goods are placed under one of the arrangements or situations referred to in Articles 156, 276 and 277, or under temporary importation

arrangements with total exemption from import duty, or under external transit arrangements, the chargeable event shall occur and VAT shall become chargeable only when the goods cease to be covered by those arrangements or situations.

However, where imported goods are subject to customs duties, to agricultural levies or to charges having equivalent effect established under a common policy, the chargeable event shall occur and VAT shall become chargeable when the chargeable event in respect of those duties occurs and those duties become chargeable.

(2) Where imported goods are not subject to any of the duties referred to in the second subparagraph of paragraph 1, Member States shall, as regards the chargeable event and the moment when VAT becomes chargeable, apply the provisions in force governing customs duties.'

8 Article 201 of that directive is worded as follows:

'On importation, VAT shall be payable by any person or persons designated or recognised as liable by the Member State of importation.'

The Customs Code

9 Article 5 of the Customs Code states that:

'For the purposes of the [Customs] Code, the following definitions shall apply:

…

(6) "customs representative" means any person appointed by another person to carry out the acts and formalities required under the customs legislation in his or her dealings with customs authorities;

…

(12) "customs declaration" means the act whereby a person indicates, in the prescribed form and manner, a wish to place goods under a given customs procedure, with an indication, where appropriate, of any specific arrangements to be applied;

…

(15) "declarant" means the person lodging a customs declaration, a temporary storage declaration, an entry summary declaration, an exit summary declaration, a re-export declaration or a re-export notification in his or her own name or the person in whose name such a declaration or notification is lodged;

…

(18) "customs debt" means the obligation on a person to pay the amount of import or export duty which applies to specific goods under the customs legislation in force;

(19) "debtor" means any person liable for a customs debt;

(20) "import duty" means customs duty payable on the import of goods;

…'

10 Under Article 18(1) of that code:

'Any person may appoint a customs representative.

Such representation may be either direct, in which case the customs representative shall act in the name of and on behalf of another person, or indirect, in which case the customs representative shall act in his or her own name but on behalf of another person.'

11 Article 77, which is part of Section 1, entitled 'Customs debt on import', of Chapter 1, entitled 'Incurrence of a customs debt', of Title III of that code, entitled 'Customs debt and guarantees', states as follows:

'(1) A customs debt on import shall be incurred through the placing of non-Union goods liable to import duty under either of the following customs procedures:

(a) release for free circulation, including under the end-use provisions;

(b) temporary admission with partial relief from import duty.

(2) A customs debt shall be incurred at the time of acceptance of the customs declaration.

(3) The declarant shall be the debtor. In the event of indirect representation, the person on whose behalf the customs declaration is made shall also be a debtor.

Where a customs declaration in respect of one of the procedures referred to in paragraph 1 is drawn up on the basis of information which leads to all or part of the import duty not being collected, the person who provided the information required to draw up the declaration and who knew, or who ought reasonably to have known, that such information was false shall also be a debtor.'

12 Under Article 84 of the Customs Code:

'Where several persons are liable for payment of the amount of import or export duty corresponding to one customs debt, they shall be jointly and severally liable for payment of that amount.'

Italian law

13 Article 1 of Decreto del Presidente della Repubblica n. 633 – Istituzione e disciplina dell'imposta sul valore aggiunto (Decree No 633 of the President of the Republic establishing and regulating value added tax) of 26 October 1972 (ordinary supplement to the GURI No 292, 11 November 1972) ('Decree No 633/1972') states that:

'Value added tax shall be imposed on supplies of goods and services carried out on the territory of Italy in the exercise of a business, trade or profession and on imports effected by any person.'

14 According to Article 8 of that decree:

‘The following shall be considered as non-taxable export supplies:

…

(c) supplies, including through agents, of goods other than buildings and building land and the supply of services provided to persons who, having made export supplies or intra-Community transactions, exercise the option to acquire, including through agents, or import goods or services without paying VAT.

…’

15 The first paragraph of Article 17 of that decree provides:

‘The tax is payable by persons supplying taxable goods or providing taxable services, who must pay that tax to the Treasury, cumulatively for all transactions carried out and net of the deduction provided for in Article 19, in accordance with the detailed rules and the terms laid down in Title II.’

16 According to the first paragraph of Article 70 of that decree:

‘The tax on imports shall be established, assessed and levied for each transaction. With respect to disputes and penalties, the provisions of the customs legislation on border duties shall apply.’

17 Article 34 of Decreto del Presidente della Repubblica n. 43 – Approvazione del testo unico delle disposizioni legislative in materia doganale (Decree No 43 of the President of the Republic approving the Consolidated Laws on Customs) of 23 January 1973 (ordinary supplement to the GURI No 80, 28 March 1973) (‘Decree No 43/1973’) states that:

‘“Customs duties” means all duties which customs are required to levy pursuant to a law in connection with customs transactions.

Customs duties include “border duties”, which are duties on imports and exports, charges and other taxes on imports and exports provided for by Community regulations and related rules of application, as well as, in the case of imported goods, monopoly dues, border surcharges and any other consumer tax or surcharge payable to the State.’

18 According to Article 38 of that decree:

‘Liability to pay customs duties shall fall on the owner of the goods, in accordance with Article 56, and, jointly and severally, on any persons on whose behalf the goods are imported or exported.

In order to ensure satisfaction of the debt represented by those duties, the State has, in addition to the privileges established by law, a right of retention over the goods which are subject to those duties.

The right of retention may also be exercised in order to satisfy any other claim by the State relating to goods which are the subject of a customs transaction.’

19 Article 1 of Decreto-Legge n. 746 – Disposizioni urgenti in materia di imposta su valore aggiunto (Decree-Law No 746 on urgent provisions on value added tax) of 29 December 1983 (GURI No 358, 31 December 1983), converted into law and amended by Law No 17 of 27 February 1984 (GURI No 59, 29 February 1984), in the version applicable on the date of the facts in the main proceedings ('Decree-Law No 746/1983'), states:

'The provisions of point (c) in the first paragraph and of the second paragraph of Article 8 of [Decree No 633/1972], as amended, shall apply, provided that:

(a) the amount of the consideration for the export supplies carried out [and] referred to in points (a) and (b) of the same article, recorded in the previous year, is greater than [10] per cent of the turnover determined in accordance with Article 20 of that decree …

…

(c) the intention to make use of the option to make purchases or imports without applying the tax is evident from a declaration drawn up in accordance with the model approved by decree of the Ministry of Finance, indicating the declarant's VAT number and the relevant office, sent electronically to the Agenzia delle Entrate ([the Italian] Revenue Agency), which shall issue an electronic receipt. …'

20 Article 2(1) of that decree-law provides:

'Persons who carry out transactions without payment of the tax in the absence of the declaration referred to in Article 1(1)(c) shall be subject to the payment of a fine two to six times higher than the tax not collected, in addition to the tax itself. If the declaration has been issued, only the suppliers, principals and importers that have drawn up the declaration shall be liable for non-payment of the tax.'

21 Article 3 of Decreto legislativo n. 374 – Riordinamento degli istituti doganali e revisione delle procedure di accertamento e controllo in attuazione delle direttive n. 79/695/CEE del 24 luglio 1979 e n. 82/57/CEE del 17 dicembre 1981, in tema di procedure di immissione in libera pratica delle merci, e delle direttive n. 81/177/CEE del 24 febbraio 1981 e n. 82/347/CEE del 23 aprile 1982, in tema di procedure di esportazione delle merci comunitarie (Legislative Decree No 374 reorganising the customs institutions and revising the procedures for assessment and review in the context of the implementation of [Council] Directive 79/695/EEC of 24 July 1979 and [Commission] Directive 82/57/EEC of 17 December 1981 on the harmonisation of procedures for the release of goods for free circulation, and [Council] Directive 81/177/EEC of 24 February 1981 and [Commission] Directive 82/347/EEC of 23 April 1982 on the harmonisation of procedures for the export of Community goods) of 8 November 1990 (ordinary supplement to the GURI No 291, 14 December 1990) provides:

'(1) Customs duties shall be established, assessed and levied in accordance with the provisions of [Decree No 43/1973] and other customs laws, unless otherwise provided for by the specific laws relating to customs duties.

(2) The duties, charges and other taxes on imports and exports provided for by Community regulations shall be established, assessed and levied in accordance with the provisions of those regulations and, where those regulations refer to the rules of the individual Member States, or make no relevant provision, in accordance with the provisions of [Decree No 43/1973] and other customs laws.'

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

22 By two tax notices served on 15 May 2017 and 6 February 2018 to U.I., a company established in Milan (Italy), the Customs Agency reassessed 45 and 115 import declarations, respectively, and determined the corresponding import VAT amounts payable, namely EUR 173 561.22 and EUR 786 046.24, plus interest. It also determined that U.I., in its capacity as indirect customs representative of the importing companies A. SpA and U.C. Srl, established in Rome (Italy) – the former being the subject of bankruptcy proceedings – was jointly and severally liable for payment of that tax with those companies, specifically under Articles 77 and 84 of the Customs Code.

23 In the course of its verification operations, the Customs Agency found that the declarations of intent attached to those import declarations were not reliable, in so far as they were based on the erroneous claim that those importing companies were established exporters. However, since those companies had not carried out transactions which could be included in the VAT-free purchase quota, the import transactions verified were not exempt from VAT under Article 1(a) of Decree-Law No 746/1983.

24 U.I. brought an appeal against those two tax notices before the referring court, the Commissione tributaria provinciale di Venezia (Provincial Tax Court, Venice, Italy), requesting that they be declared unlawful.

25 U.I. acknowledged having effected the customs operations in question as an indirect customs representative in its name on behalf of those importing companies, on the basis of powers of attorney, and submitted the corresponding customs declarations. It argued, however, that the rules serving as the basis for the tax notices, in particular Articles 77 and 84 of the Customs Code, were not applicable to VAT. It added that there was no provision in the Italian legal framework making the indirect customs representative jointly and severally liable with the importing company for the payment of import VAT and that recognition of such joint and several liability would infringe Article 201 of the VAT Directive.

26 The Customs Agency requested that the appeal be dismissed. It stated that, like the customs debt, the chargeable event for the VAT debt in question was importation and that that chargeable event was identified in the customs regulations. Those regulations should also be used to determine the origin of the import VAT debt and, therefore, to establish that the debtors of that debt are the persons presenting the goods to customs, namely, in line with the case-law of the Corte suprema di cassazione (Supreme Court of Cassation, Italy), the importer and its indirect customs representative, jointly and severally.

27 The referring court asserts that, according to that case-law, the obligation to pay import VAT arises at the time when the goods are presented to customs for entry into the territory of the European Union, in the same way as customs duties. That is the same tax as intra-Community VAT, as can be seen from the judgment of 17 July 2014, *Equoland* (C-272/13, EU:C:2014:2091). Although import VAT is not one of those duties or charges levied at the border in the strict sense, but rather one of the taxes levied under national law, it shares a tax point with customs duties, as stated in Article 34 of Decree No 43/1973. That means that, in so far as the indirect customs representative submits the declaration of intent to the customs authority and assumes responsibility for it, that representative is jointly and severally liable for payment of the VAT.

28 That court notes another strand of national case-law whereby, if there is no express provision in national law determining the persons 'designated' as liable for payment of import VAT in accordance with Article 201 of the VAT Directive, the rules of EU law on customs debts governing the joint and several liability of the importer and its indirect customs representative cannot be interpreted broadly.

29 That court further notes that, if the terms 'designated' or 'recognised' used in that article are to be interpreted strictly, to the effect that the national legislature should expressly identify the persons liable for payment of VAT, it should find, in the present case, that the national provisions designate only the importer as the person liable for payment of that tax. On the other hand, if those terms are to be interpreted broadly, that court could allow the extensive application of national rules laid down for taxes other than import VAT, such as customs duties.

30 Similarly, the interpretation of Article 77(3) of the Customs Code, and in particular the question as to whether its application should be limited to customs duties, is decisive in resolving the dispute in the main proceedings.

31 In those circumstances, the Commissione tributaria provinciale di Venezia (Provincial Tax Court, Venice) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) In providing that, "on importation, VAT shall be payable by any person or persons designated or recognised as liable by the Member State of importation", is Article 201 of [the VAT Directive] to be interpreted as meaning that the Member State of importation is required to issue a State provision relating to import VAT (domestic-law tax: [case giving rise to the judgment of 17 July 2014, *Equoland*, C-272/13, EU:C:2014:2091]) that expressly identifies the persons liable to pay import VAT?

(2) Is Article 77(3) of [the Union Customs Code]), which concerns customs debts on import and which provides that, "in the event of indirect representation, the person on whose behalf the customs declaration is made shall also be a debtor", to be interpreted as meaning that the indirect representative is liable not only for customs duties, but also for import VAT merely as a result of being a "declarant" for customs purposes in its own name?'

Consideration of the questions referred

Admissibility

32 The Italian Government contends that the questions referred for a preliminary ruling are inadmissible on the ground that they are not only ambiguous but also irrelevant for the purpose of resolving the dispute in the main proceedings, inasmuch as the referring court has not applied the case-law of the Corte suprema di cassazione (Supreme Court of Cassation), which had already ruled on the question of the persons liable for import VAT. Furthermore, with regard to the first question, the national and EU provisions unequivocally identifying the chargeable event for import VAT and the debtors of that VAT have not been clarified.

33 In that regard, it must be borne in mind that, in the context of the cooperation between the Court and the national courts established in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent

judicial decision, to determine, in the light of the particular circumstances of the case, both the need of a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is, in principle, bound to give a ruling (judgment of 19 December 2019, *Darie*, C-592/18, EU:C:2019:1140, paragraph 24 and the case-law cited).

34 It follows that questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a request for a preliminary ruling referred by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 19 December 2019, *Darie*, C-592/18, EU:C:2019:1140, paragraph 25 and the case-law cited).

35 In the present case, the national court, while clearly stating the reasons for its concern about the interpretation of the provisions of EU law referred to in its questions for a preliminary ruling, made clear that the answers to those questions were decisive for the outcome of the dispute in the main proceedings, in so far as the possibility of holding U.I. jointly and severally liable as an indirect customs representative depended on those answers. The fact that that court has not applied the case-law of the Corte suprema di cassazione (Supreme Court of Cassation) cannot negate the relevance of questions concerning the interpretation of EU law.

36 In addition, the reference for a preliminary ruling contains a description of the factual and legal background to the dispute in the main proceedings, in particular the national provisions likely to be applicable and the relevant national case-law, which is sufficient to enable the Court to give a useful answer to the two questions referred.

37 Accordingly, the questions referred for a preliminary ruling are admissible.

The second question

38 By its second question, which should be examined first, the national court is asking, in essence, whether Article 77(3) of the Customs Code must be interpreted as meaning that, under that provision alone, the indirect customs representative is liable for the customs duties payable on the goods which it has declared to customs and for the import VAT on those goods.

39 In accordance with settled case-law, 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 (judgment of 18 November 2020, *Kaplan International colleges UK*, C-77/19, EU:C:2020:934, paragraph 39 and the case-law cited).

40 It should be noted that, under Article 18(1) of the Customs Code, an indirect customs representative acts in his or her own name but on behalf of another person. Thus, where that representative lodges a ‘customs declaration’, as defined in Article 5(12) of that code, he or she does so in his or her own name but on behalf of the person who has given him or her a power of representation and who he or she represents, such that, as rightly noted by the referring court, that person is acting as the ‘declarant’ under Article 5(15) of that code.

41 First, according to Article 77(3) of the Customs Code, the declarant is the debtor and, in the event of indirect representation, the person on whose behalf the customs declaration is made is also a debtor.

42 It follows from the wording of that provision that both the indirect customs representative, as declarant, and the importer on whose behalf that representative lodges the declaration are debtors.

43 Second, the context and objectives of the regulation in which that provision is included show that it is aimed exclusively at customs debt and not also at import VAT.

44 Indeed, on the one hand, Article 77 of the Customs Code appears in Section 1 of Chapter 1 of Title III of that code, entitled, 'Customs debt on import', 'Incurrence of a customs debt' and 'Customs debt and guarantees', respectively. In that regard, paragraphs 1 and 2 of that article refer to customs debt.

45 On the other hand, according to Article 5(19) of that code, the 'debtor' is 'any person liable for a customs debt'.

46 Furthermore, Article 84 of that code explicitly covers customs debt, providing that, where several persons are liable for payment of the amount of import or export duty corresponding to one customs debt, they are to be jointly and severally liable for payment of that amount.

47 As for the notion of 'customs debt', it is defined in Article 5(18) of the Customs Code as the obligation on a person to pay the amount of 'import or export duty which applies to specific goods under the customs legislation in force'.

48 However, import VAT is not included as an 'import duty', under Article 5(20) of that code, which covers customs duty payable on the import of goods.

49 As both the European Commission and U.I. stated in their written observations, it is clear from the Court's case-law that import duties do not include the VAT to be levied on the importation of goods (see, to that effect, in relation to Article 4(10) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), corresponding to Article 5(20) of the Customs Code, judgments of 29 July 2010, *Pakora Pluss*, C-248/09, EU:C:2010:457, paragraph 47, and of 2 June 2016, *Eurogate Distribution* and *DHL Hub Leipzig*, C-226/14 and C-228/14, EU:C:2016:405, paragraph 81).

50 Lastly, the EU legislation on VAT, specifically Article 201 of the VAT Directive, makes no reference to the provisions of the Customs Code in relation to the obligation to pay that tax, but provides that that obligation is imposed on the person or persons designated or recognised as being liable by the Member State into which the goods are imported, as has already been held by the Court (see, to that effect, in relation to Article 21(2) of the 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), corresponding to Article 201 of the VAT Directive, judgment of 29 July 2010, *Pakora Pluss*, C-248/09, EU:C:2010:457, paragraph 52).

51 It follows that, under Article 77(3) of that code alone, regarding the payment of import VAT, the indirect customs representative cannot be held liable with the importer that has given him or her a power of representation and that he or she represents.

52 In the light of the foregoing considerations, the answer to the second question is that Article 77(3) of the Customs Code must be interpreted as meaning that, under that provision alone, the indirect customs representative is liable only for the customs duties payable on the goods which he or she has declared to customs and not also for the import VAT on those goods.

The first question

53 By its first question, the referring court is seeking, in essence, to determine whether Article 201 of the VAT Directive must be interpreted as meaning that an indirect customs representative can be held jointly and severally liable with the importer for the payment of import VAT where there are no national provisions expressly designating or recognising that representative as being liable for that tax.

54 As a preliminary point, it should be noted that, according to settled case-law, import VAT and customs duties display comparable essential features since they arise from the fact of importation of goods into the European Union and the subsequent distribution of those goods through the economic channels of the Member States. This parallel nature is confirmed by the fact that the second subparagraph of Article 71(1) of the VAT Directive authorises Member States to link the chargeable event and the date on which the VAT on importation becomes chargeable with those laid down for customs duties (judgments of 10 July 2019, *Federal Express Corporation Deutsche Niederlassung*, C-26/18, EU:C:2019:579, paragraph 41, and of 3 March 2021, *Hauptzollamt Münster (Place where the VAT is incurred)*, C-7/20, EU:C:2021:161, paragraph 29 and the case-law cited).

55 According to the wording of Article 201 of the VAT Directive, whereby import VAT 'shall be payable by any person or persons designated or recognised as liable by the Member State of importation', that article leaves discretion to the Member States to designate the persons liable for payment of that tax. That is confirmed by recital 43 of that directive, which states that the Member States should be entirely free to designate the person liable for payment of VAT on importation.

56 Thus, while it follows from that article that Member States must designate at least one person as the person liable for payment of that tax, they are free to designate more than one. That is also apparent from recital 44 of that directive, whereby Member States should be able to provide that someone other than the person liable for payment of VAT is to be held jointly and severally liable for its payment.

57 Consequently, in view of the discretion granted to Member States by Article 201 of the VAT Directive, it is indeed open to them to provide, for the purpose of implementing that article, that the persons liable for customs duties will also be liable for import VAT and, in particular, that the indirect customs representative will be jointly and severally liable for the payment of that tax with the person who has issued him or her with a power of representation and whom he or she represents.

58 In that regard, it should be noted that the third paragraph of Article 288 TFEU provides that a directive is to be binding, as to the result to be achieved, upon each Member State to which it is addressed, but is to leave to the national authorities the choice of form and methods.

59 According to settled case-law, the provisions of directives must, however, be implemented with unquestionable binding force and with the specificity, precision and clarity necessary to satisfy the requirements of legal certainty (judgment of 24 October 2013, *Commission* v *Spain*, C-151/12, EU:C:2013:690, paragraph 26 and the case-law cited).

60 It is essential that the legal situation resulting from national implementing measures is sufficiently precise and clear to enable the individuals concerned to know the extent of their rights and obligations (see, to that effect, judgment of 14 February 2012, *Flachglas Torgau*, C-204/09, EU:C:2012:71, paragraph 60).

61 Furthermore, the principle of legal certainty requires, in particular, that rules of law be clear, precise and predictable in their effect, especially where they may have negative consequences for individuals and undertakings (judgments of 30 April 2019, *Italy* v *Council (Fishing quota for Mediterranean swordfish)*, C-611/17, EU:C:2019:332, paragraph 111, and of 26 March 2020, *Hungeod and Others*, C-496/18 and C-497/18, EU:C:2020:240, paragraph 93 and the case-law cited).

62 In those circumstances it is for Member States, for the purpose of implementing Article 201 of the VAT Directive, to designate or recognise the person or persons liable for payment of import VAT using national provisions that are sufficiently clear and precise, in accordance with the principle of legal certainty.

63 It follows that any liability of the indirect customs representative for the payment of import VAT imposed by a Member State, jointly and severally with the person who has given him or her a power of representation and whom he or she represents, must be established, explicitly and unequivocally, by such national provisions.

64 In the present case, it is for the referring court, which alone has jurisdiction to interpret national law, to assess, in the light of all the provisions of Italian law, whether those provisions and, in particular, Articles 34 and 38 of Decree No 43/1973, Article 3(2) of Legislative Decree No 374 of 8 November 1990 indicated in paragraph 21 of this judgment, and Article 1 and Article 70(1) of Decree No 633/1972 to which the Italian Government refers, or Article 2(1) of Decree-Law No 746/1983 cited by the Commission, explicitly and unequivocally designate or recognise the indirect customs representative as being liable for import VAT, in addition to being the debtor, as is apparent from paragraphs 42, 46 and 52 of this judgment, for the customs duties jointly and severally with the importer that has given him or her a power of representation and that he or she represents, in accordance with Article 77(3) and Article 84 of the Customs Code.

65 In the light of all of the above, the answer to the first question is that Article 201 of the VAT Directive must be interpreted as meaning that the liability of the indirect customs representative for the payment of import VAT, jointly and severally with the importer, cannot be accepted where there are no national provisions explicitly and unequivocally designating or recognising that representative as being liable for that tax.

Costs

66 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Sixth Chamber) hereby rules:

1. **Article 77(3) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code must be interpreted as meaning that, under that provision alone, the indirect customs representative is liable only for the customs duties payable on the goods which he or she has declared to customs, and not also for the import value added tax on those goods.**

2. **Article 201 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 liability of the indirect customs representative for the payment of the import value added tax, jointly and severally with the importer, cannot be accepted where there are no national provisions explicitly and unequivocally designating or recognising that representative as being liable for that tax.**

[Signatures]