



KÜFFNER MAUNZ LANGER ZUGMAIER

OUR BUSINESS IS
AS GLOBAL AS VAT





KÜFFNER MAUNZ LANGER ZUGMAIER

VAT and the Court of Justice of the European Union (ECJ)

- how it works and how Cyprus courts can benefit -

Dr. Stefan Maunz
KÜFFNER MAUNZ LANGER ZUGMAIER



Limassol VAT Forum 2017

Limassol, 9 June 2017



Agenda

1. Union law

1.1 VAT

1.2 The Court

2. How to get there?

2.1 The Court

2.2 Reference for preliminary ruling



1. Union law

1.1 VAT - Main sources of Union law

- | VAT Directive 2006/112/EC (amended 2016/1045 of 27 June 2016)
- | 13th Directive 86/562/EEC
- | 8th Directive 79/1072/EEC (amended 2006/98/EC of 20 November 2006)

- | VAT Regulation 282/2011 (amended 1042/2013 of 7 October 2013)



1. Union law

1.1 VAT

■ Direct application of VAT Directive?

■ ECLI:EU:2006:374 – Feuerbestattungsverein Halle e.V. – C-430/04

“ 28 Secondly, it is settled case-law that unconditional and sufficiently precise provisions of a directive may, in the absence of implementing measures adopted within the prescribed period, be relied on by private individuals against any national provision which is incompatible with the directive or in so far as they define rights which individuals are able to assert against the State (see, in particular, Case 8/81 Becker [1982] ECR 53, paragraph 25, and Joined Cases C-465/00, C-138/01 and C-139/01 Österreichischer Rundfunk and Others [2003] ECR I-4989, paragraph 98).”



1. Union law

1.1 VAT

- Direct application of VAT Directive?
- ECLI:EU:2006:374 – Feuerbestattungsverein Halle e.V. – C-430/04
“The Court has already held that since the bodies and activities to which the rule of treatment as non-taxable persons applies is clearly defined by Article 4(5) of the Sixth Directive, that provision fulfils the criteria for direct effect.”
- VAT Directive can be generally considered as directly applicable



1. Union law

1.1 VAT

- However...
- More than 200 options in VAT Directive („... Member States may ...“)
- E.g. Article 11

After consulting the advisory committee on value added tax (hereafter, the ‘VAT Committee’), each Member State may regard as a single taxable person any persons established in the territory of that Member State who, while legally independent, are closely bound to one another by financial, economic and organisational links.

A Member State exercising the option provided for in the first paragraph, may adopt any measures needed to prevent tax evasion or avoidance through the use of this provision.



1. Union law

1.1 VAT

I ECLI:EU:2015:496 – Larentia + Minerva – C-108/14

“In that regard, it should be noted that, whenever the provisions of a directive appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise, they may be relied upon before the national courts by individuals against the State where the latter has failed to implement the directive in domestic law by the end of the period prescribed or where it has failed to implement the directive correctly (see, inter alia, judgment in GMAC UK, C-589/12, EU:C:2014:2131, paragraph 29).

[...]

That article is thus conditional inasmuch as it involves the application of national provisions determining the actual scope of such links. As a consequence, Article 4(4) of the Sixth Directive does not satisfy the conditions necessary for it to produce direct effect.”



1. Union law

1.1 VAT

- | Roughly 800 cases on VAT since 1970
- | How one local court can make a difference
 - | 15 cases on VAT referred by *Administrativen sad – Varna* (Bulgaria)
 - | E.g. Asparuhovo Lake Investment Company, Traum, Marinov, Rusedespred, Stroy trans, Bonik, Eon Aset, Balkan and Sea Properties



Agenda

1. Union law

1.1 VAT

1.2 The Court

2. How to get there?

2.1 The Court

2.2 Reference for preliminary ruling



1. Union law

1.2 The Court

- | Article 19 Treaty on the European Union
 - | Court of Justice, General Court, specialised courts
 - | Ensures that interpretation and application of the Treaties the law is observed
 - | Member States ensure effective legal protection in the fields covered by Union law (VAT!)



1. Union law

1.2 The Court

- Article 19 Treaty on the European Union
 - one judge from each Member State (for Cyprus: Constantinos Lycourgos)
 - 11 Advocates-General (six from larger Member States, five from smaller Member States) – six year mandate
 - Advocate General (Rapporteur Public) – part of the Court
 - ECJ to decide which Chamber and whether opinion of Advocate General
- Rules of Procedures of the Court of Justice



1. Union law

- | **1.604** cases brought
- | **1.628** cases completed
- | **142.988** procedural documents entered in the register of the Registries

Average duration of proceedings:



16.7 months

Court of Justice
General Court



14.7



18.7



2.840

judicial notices published in the
Official Journal of the European Union



1.160.000 pages of translation produced



602

hearings and meetings with
simultaneous translation

74

hearings and meetings with
simultaneous translation



The language departments



24

potential languages
of the case

74

interpreters for
hearings and meetings

613

'lawyer-linguists' to translate
written documents



23 language units

522

possible language
combinations

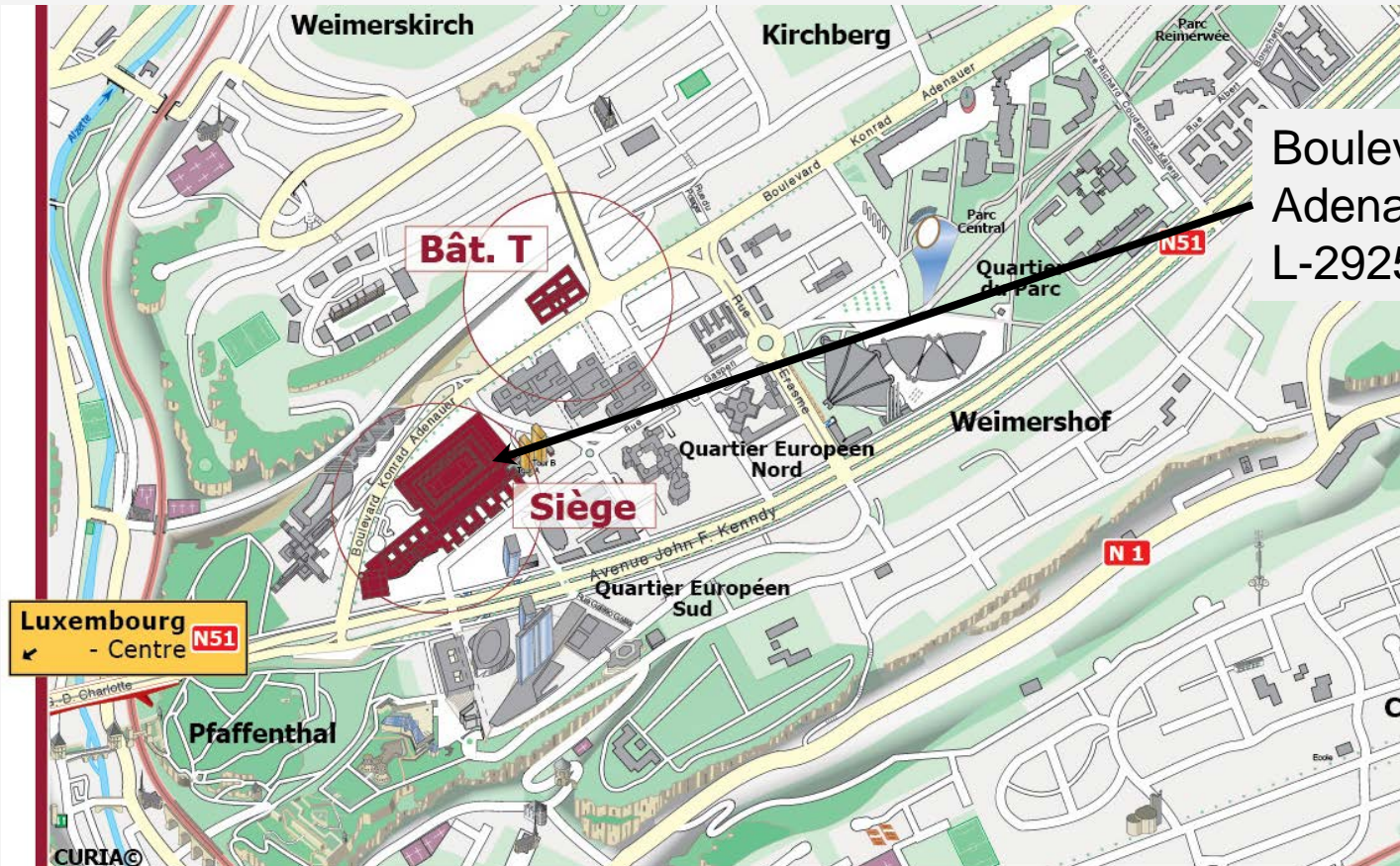


Agenda

1. Union law
 - 1.1 VAT
 - 1.2 The Court
- 2. How to get there?**
 - 2.1 The Court**
 - 2.2 Reference for preliminary ruling



2. How to get there?



Boulevard Konrad
Adenauer Kirchberg,
L-2925 Luxembourg



2. How to get there?

- | Five different procedural routes
- | But only one for local courts: preliminary rulings - Art 267 Treaty on the Functioning of the European Union (TFEU)
 - | National court may ask questions if necessary
 - | Duty to refer to the court, if ...
 - | Court of last instance
 - | Validity of EU law



2. How to get there?

Article 267

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of the Treaties;
- (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.



2. How to get there?

- ECLI:EU:C:1982:335 – C.I.L.F.I.T – C-283/81
- *“Article 177 of the EEC Treaty unreservedly requires national courts or tribunals against whose decisions there is no judicial remedy under national law to refer to the Court every question of interpretation raised before them, the authority of an interpretation already given by the Court may however deprive the obligation of its purpose and thus empty it of its substance. Such is the case especially when the question raised is materially identical with a question which has already been the subject of a preliminary ruling in a similar case or where previous decisions of the Court have already dealt with the point of law in question, irrespective of the nature of the proceedings which led to those decisions, even though the questions at issue are not strictly identical.”*



2. How to get there?

- | Exceptions:
 - | EU law is not decisive for main proceedings
 - | Acte éclairé (similar cases decided)
 - | Acte clair (proper interpretation is obvious)
- | National court submits questions – ECJ gives answers (or not)
- | Lawyers to suggest to the local court to refer questions
- | Case Name
- | No court fees



2. How to get there?

- | Recommendation to national courts and tribunals regarding preliminary rulings (<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2016:439:FULL>)
- | Advice to counsel for hearings
 - | Speak slowly
 - | Submit written text beforehand for interpreters



MANY THANKS

Many thanks for your attention.

Do you have questions? Please do not hesitate to contact us.



KÜFFNER MAUNZ LANGER ZUGMAIER



VAT NEWSLETTER

Would you like to subscribe to our VAT Newsletter?

Please contact us at office@kmlz.de.