INTRODUCTORY NOTE TO SKATTEVERKET V. HEDQVIST (C.J.E.U.)

BY REDMAR WOLF*

[October 22, 2015]
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Introduction

On October 22, 2015, the Court of Justice of the European Union (CJEU) rendered its judgment in the case of *Skatteverket v. Hedqvist*.[1] In this important decision the CJEU sheds light on the value added tax (VAT) aspects of the use of bitcoins. Supplying bitcoins (or better, paying with bitcoins) does not constitute a VAT taxable service, so paying with bitcoins is not a barter transaction. The mere exchange of bitcoins into traditional currency (or vice versa) also remains outside the scope of VAT. The exchange service is VAT exempt.

Background

David Hedqvist is a Swedish citizen who was planning to offer bitcoin exchange services. Hedqvist had received a ruling from the Swedish Revenue Law Commission (Skatterättsnämnden) stating that these activities would be VAT exempt.[2] According to the Skatterättsnämnden, bitcoins should be considered currency for purposes of VAT. Reference was also made to the CJEU decision in the case *First National Bank of Chicago*, using the opinion to determine that "Hedqvist would be supplying an exchange service effected for consideration" but that the exchange fell under an exception to the Law on VAT.[3] The Swedish tax authority (Skatteverket), however, appealed against the decision of the Skatterättsnämnden. Legal proceedings followed in which the Swedish Supreme Court found that the decision of the CJEU in the case *First National Bank of Chicago* did not necessarily relate to virtual currencies like bitcoin. The Court decided to stay the proceeding and referred the following questions to the CJEU:

> Is Article 2(1) of the VAT Directive to be interpreted as meaning that transactions in the form of what has been designated as the exchange of virtual currency for traditional currency and vice versa, which is effected for consideration added by the supplier when the exchange rates are determined, constitute the supply of a service effected for consideration? If the answer to the first question is in the affirmative, is Article 135(1) to be interpreted as meaning that the abovementioned exchange transactions are tax exempt?[4]

The Decision

In answering these questions, the CJEU's Advocate General Kokott and the CJEU addressed some fundamental VAT issues of Bitcoin.

First they addressed the question of whether paying with bitcoins constitutes a VAT taxable event. In her opinion, Kokott refers to the judgment in *First National Bank of Chicago*, where the CJEU held that the exchange of currencies in relation to which a bank sets different rates for the sale and purchase of the currencies involved constitutes the supply of a service effected for consideration.[5]

First National Bank of Chicago addressed the VAT aspects of the bank's currency transactions. National currency was exchanged for foreign currency and vice versa using different exchange rates; an offer and a bid price.[6] The offer rate was used when selling foreign currency, the bid rate was used when purchasing foreign currency (and, from a VAT point of view supplying national currency while receiving foreign currency as payment). The difference between the offer and the bid prices was known as the spread. In its decision the CJEU held that this spread was in fact the remuneration the bank received for the exchange of currency. The exchange of the currencies itself was disregarded.

The CJEU's Advocate General concludes that this approach should also be applied to bitcoins. Their exchange as such does not constitute a VAT taxable event. However, as Hedqvist planned to buy and sell bitcoins for Swedish crowns at a price that included a markup on the exchange rate on a particular exchange site, his activity includes VAT relevant services in the form of the exchange service.

In its decision the CJEU characterizes bitcoins as virtual currency with bidirectional flow. This virtual currency has no purpose other than to be a means of payment. Like means of payment officially recognized as legal

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tender (the CJEU refers to "traditional currencies"), bitcoin cannot be considered tangible property. According to the CJEU, the exchange of different means of payment does not qualify as a VAT relevant "supply of goods." However, the exchange at hand constitutes a VAT relevant service. The remuneration for this service is the margin that Hedqvist includes in the calculation of the exchange rate at which he is willing to sell and purchase the currencies concerned. The CJEU thus follows the same reasoning as applied in *First National Bank of Chicago*. The respective supplies of the means of payment (whether or not qualifying as legal tender) are disregarded. What is relevant is only the exchange of means of payment in as far as a spread is realized on this exchange. Apparently, paying with bitcoin is put on the same footing as paying with legal tender; this supply falls outside the scope of VAT.

The Exchange Service; Exempt?

Once it is established that the exchange of bitcoin against a regular currency constitutes a VAT relevant service, the question arises whether this service is taxed or exempt.

According to the CJEU the bitcoin virtual currency is not a current account or a deposit account, a payment or a transfer, but instead a direct means of payment between the operators that accept it. As a result, Article 135(1)(d) of the VAT Directive does not apply to the exchange of bitcoins.

The CJEU subsequently reviews the exemption for transactions involving, inter alia, "currency [and] bank notes and coins used as legal tender" according to Article 135(1)(e) of the VAT Directive. From the language of this provision it is not clear whether this exemption is restricted to transactions involving traditional currencies (legal tender) or whether it also encompasses transactions involving other currencies. Where there are linguistic differences in the various versions of a provision, the context of the provision and the aims and scope of the VAT directive must be taken into account in order to determine the scope of the provision.

The exemption for transactions involving currency is intended to alleviate the difficulties connected with determining the taxable amount and the amount of VAT deductible that arise in the context of financial transactions. Such difficulties not only exist when traditional currencies are exchanged but also when traditional currencies are exchanged for virtual currencies that are accepted as means of payment. Transactions in non-traditional currencies, such as bitcoin, are financial transactions. Limiting the scope of the exemption to transactions involving only traditional currencies would then deprive the exemption of part of its effect. From this the CJEU concludes that the exemption for transactions in currencies should also cover the exchange of bitcoins at hand.

Exchanging bitcoins for legal traditional currencies is thus put on the same footing as the regular exchange of traditional currencies.

Conclusions

Bitcoin offers an alternative means of payment. In its decision in *Hedqvist* the CJEU has confirmed that for purposes of VAT the use of bitcoins is treated as the use of any other means of payment. This implies that paying with bitcoins constitutes a mere payment and is not a relevant transaction for VAT purposes. When receiving bitcoins as payment, VAT will be due on the value using exchange rates that are readily available on the internet. Exchanging bitcoins for regular currencies remains outside the scope of VAT. Any commission received in this respect (or calculated as spread between the sale and purchase) is VAT exempt.

Unfortunately, the CJEU did not address all VAT aspects of bitcoin in its judgment. The activities of bitcoin miners were not covered. In my view, it is likely that these activities will not attract VAT.[7] Another issue is the valuation of bitcoins for purposes of calculating the VAT due as there is no official exchange rate yet. This issue also does not seem insurmountable, provided that official exchange rates (at least for VAT) are set.

All in all, despite its revolutionary nature, bitcoin does not attract too many VAT complications within the EU. This is because the CJEU has put the use of bitcoins on the same footing as the use of regular currencies. As a result, from a VAT perspective, the EU is ready for the future of this new form of payment.

ENDNOTES

1 Case C-264/14, Skatteverket v. Hedqvist (Oct. 22, 2015), http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d2dc30d5b0d800cab3874663a1568162180efc2c.e34KaxiLc3qMb40Rch0SaxyKa3b0?text=&docid=170305&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=423360.

2 Högsta förvaltningsrättens beslut [HFD] [Supreme Administrative Court Decision], 2013 case no. 32-12/I, http://skatterattsnamnden.se/skatterattsnamnden/forhandsbesked/2013/forhandsbesked2013/mervardesskatthandelmedbitcoins.5.46ae6b26141980f1e2d29d9.html (Swed.).

3 Case C-172/96, Commissioners of Customs & Excise v. First National Bank of Chicago, 1998 E.C.R. I-04387.

4 Case C-264/14, Request for a Preliminary Ruling from the Högsta Förvaltningsdomstolen (Swed.)—Skatteverket v. Hedqvist (June 2, 2014), http://curia.europa.eu/juris/document/document.jsf?docid=154888&doclang=EN.

5 Case C-264/14, Skatteverket v. Hedqvist, Opinion of Advocate General Kokott (July 16, 2015), http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d2dc30d5b0d800cab3874663a1568162180efc2c.e34KaxiLc3qMb40Rch0SaxyKa3b0?text=&docid=165919&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=423360.

6 Case C-172/96, Commissioners of Customs & Excise v. First National Bank of Chicago, 1998 E.C.R. I-04387.

7 *See* Redmar Wolf, *Virtual Currencies, M-Payments and VAT: Ready for the Future?*, *in* BITCOIN AND MOBILE PAYMENTS: CONSTRUCTING A EUROPEAN UNION FRAMEWORK 231–49 (Gabriella Gimigliano ed., 2016).

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Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

22 October 2015*

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Articles 2(1)(c) and 135(1)(d) to (f) — Services for consideration — Transactions to exchange the 'bitcoin' virtual currency for traditional currencies — Exemption)

In Case C-264/14,

REQUEST for a preliminary ruling under Article 267 TFEU, from the Högsta förvaltningsdomstolen (Supreme Administrative Court, Sweden), made by decision of 27 May 2014, received at the Court on 2 June 2014, in the proceedings

Skatteverket

v

David Hedqvist,

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Fourth Chamber, acting as President of the Fifth Chamber, D. Šváby, A. Rosas (Rapporteur), E. Juhász and C. Vajda, Judges,

Advocate General: J. Kokott,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 17 June 2015, after considering the observations submitted on behalf of:

— the Skatteverket, by M. Loeb, acting as legal adviser,

— Hedqvist, by A. Erasmie, advokat, and F. Berndt, jur. kand.,

— the Swedish Government, by A. Falk and E. Karlsson, acting as Agents,

— the German Government, by T. Henze and K. Petersen, acting as Agents,

— the Estonian Government, by K. Kraavi-Käerdi, acting as Agent,

— the European Commission, by L. Lozano Palacios, M. Owsiany-Hornung, K. Simonsson and J. Enegren, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 July 2015,

gives the following

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Judgment

1 This request for a preliminary ruling relates to the interpretation of Articles 2(1) and 135(1) 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').

2 The request has been made in proceedings between the Skatteverket (Swedish tax authority) and Mr Hedqvist concerning a preliminary decision given by the Swedish Revenue Law Commission (Skatterättsnämnden) on whether transactions to exchange a traditional currency for the 'Bitcoin' virtual currency or vice versa, which Mr Hedqvist wished to perform through a company, were subject to value added tax ('VAT').

Legal context

EU law

3 Article 2 of the VAT Directive provides:

'1. 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;

. . .

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

. . .'

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 Article 24(1) of that directive is worded as follows:

'"Supply of services" shall mean any transaction which does not constitute a supply of goods.'

6 Article 135 of the VAT Directive provides:

'(1) Member States shall exempt the following transactions:

. . .

(d) transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection;

(e) transactions, including negotiation, concerning currency, bank notes and coins used as legal tender, with the exception of collectors' items, that is to say, gold, silver or other metal coins or bank notes which are not normally used as legal tender or coins of numismatic interest;

(f) transactions, including negotiation but not management or safekeeping, in shares, interests in companies or associations, debentures and other securities, but excluding documents establishing title to goods, and the rights or securities referred to in Article 15(2);

. . .'

Swedish law

7 Under Chapter 1 of the Law (1994:200) on VAT, (mervärdesskattelagen (1994:200), 'the Law on VAT'), Paragraph 1 provides that VAT is to be paid to the State on supplies within national territory of taxable goods or services effected by a taxable person acting as such.

8 Under Chapter 3 of that law, Paragraph 23(1) provides that bank notes and coins used as legal tender, with the exception of collectors' items, that is to say, gold, silver or other metal coins or bank notes which are not normally used as legal tender or which are of numismatic interest, are exempt from VAT.

9 Also under Chapter 3, Paragraph 9 provides that supplies of banking and financial services and transactions involving securities and similar transactions are exempt from tax. Banking and financial services do not include notarial activity, collection of invoices or administrative services relating to factoring or the leasing of storage facilities.

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

10 Mr Hedqvist wishes to provide, through a company, services consisting of the exchange of traditional currency for the 'bitcoin' virtual currency and vice versa.

11 According to the order for reference the 'bitcoin' virtual currency is used, principally, for payments made between private individuals via the internet and in certain online shops that accept the currency. The virtual currency does not have a single issuer and instead is created directly in a network by a special algorithm. The system for the 'bitcoin' virtual currency allows anonymous ownership and the transfer of 'bitcoin' amounts within the network by users who have 'bitcoin' addresses. A 'bitcoin' address may be compared to a bank account number.

12 Referring to a 2012 report by the European Central Bank on virtual currencies, the referring court states that a virtual currency can be defined as a type of unregulated, digital money, which is issued and controlled by its developers and accepted by members of a specific virtual community. The 'bitcoin' virtual currency is one of the virtual currency schemes with 'bidirectional flow', which users can purchase and sell on the basis of an exchange rate. Such virtual currencies are analogous to other convertible currencies as regards their use in the real world. They allow both real and virtual goods and services to be purchased. Virtual currencies differ from electronic money, as defined in Directive 2009/110/EC of the European Parliament and the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ 2009 L 267, p. 7), in so far as, unlike that money, for virtual currencies the funds are not expressed in traditional accounting units, such as in euro, but in virtual accounting units, such as the 'bitcoin'.

13 The referring court states that the transactions envisaged by Mr Hedqvist would be carried out electronically via the company's website. That company would purchase units of the 'bitcoin' virtual currency directly from private individuals and companies, or from an international exchange site. The company would then resell the units on such an exchange site, or store them. Mr Hedqvist's company would also sell such units to private individuals or to companies that place an order on its website. In a situation where the client has accepted the price in Swedish Crowns offered by Mr Hedqvist's company and a payment has been received, the sold units of the 'bitcoin' virtual currency would be sent automatically to the 'bitcoin' address indicated. The 'bitcoin' virtual currency units sold by the company would either be those that it would purchase directly on the exchange site after the client had placed his order, or those that the company already had in stock. The price proposed by the company to clients would be based on the current price on a particular exchange site, to which a certain percentage would be added. The difference between the purchase price and the sale price would constitute Mr Hedqvist's company's earnings. The company would not charge any other fees.

14 The transactions that Mr Hedqvist intends to carry out are thus limited to the purchase and sale of 'bitcoin' virtual currency units in exchange for traditional currencies, such as the Swedish crown, or vice versa. It is not apparent from the order for reference that those transactions would include payments made using 'bitcoin'.

15 Before starting to carry out such transactions, Mr Hedqvist requested a preliminary decision from the Revenue Law Commission in order to establish whether VAT must be paid on the purchase and sale of 'bitcoin' virtual currency units.

16 In a decision of 14 October 2013, the Revenue Law Commission found, on the basis of the judgment in *First National Bank of Chicago* (C-172/96, EU:C:1998:354), that Mr Hedqvist would be supplying an exchange service

effected for consideration. The Revenue Law Commission held, however, that the exchange service was covered by the exemption under Chapter 3, Paragraph 9, of the Law on VAT.

17 According to the Revenue Law Commission, the 'bitcoin' virtual currency is a means of payment used in a similar way to legal means of payment. Furthermore, the term 'legal tender' referred to in Article 135(1)(e) of the VAT Directive is used in order to restrict the scope of the exemption as regards bank notes and coins. It follows, according to the Revenue Law Commission, that that term must be taken to mean that it relates only to bank notes and coins and not to currencies. That interpretation is also consistent with the objective of the exemptions laid down in Article 135(1)(b) to (g) of the VAT Directive, namely to avoid the difficulties involved in making financial services subject to VAT.

18 The Skatteverket appealed against the Revenue Law Commission's decision to the Högsta förvaltningsdomstolen (Supreme Administrative Court) arguing that the service to which Mr Hedqvist's request refers is not covered by the exemption under Chapter 3, Paragraph 9, of the Law on VAT.

19 Mr Hedqvist submits that the appeal by the Skatteverket should be dismissed and the preliminary decision by the Revenue Law Commission should be confirmed.

20 The referring court considers that it can be inferred from the judgment in *First National Bank of Chicago* (C-172/96, EU:C:1998:354) that transactions to exchange a virtual currency for a traditional currency and vice versa, in return for payment of a sum equal to the difference between the purchase price paid by the operator and the sale price obtained by him, constitutes the provision of services for consideration. In such a case, the question arises whether the transactions are covered by one of the exemptions for financial services laid down in Article 135(1) of the VAT Directive, more specifically, those set out in points (d) to (f) of that provision.

21 Having doubts as to whether one of those exemptions applies to such transactions, the Högsta förvaltningsdomstolen (Supreme Administrative Court) decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

> '(1) Is Article 2(1) of the VAT Directive to be interpreted as meaning that transactions in the form of what has been described as the exchange of virtual currency for traditional currency and vice versa, which is effected for consideration added by the supplier when the exchange rates are determined, constitute the supply of a service effected for consideration?
>
> (2) If so, must Article 135(1) [of that directive] be interpreted as meaning that the abovementioned exchange transactions are tax exempt?'

The questions referred

The first question

22 By its first question, the referring court asks, in essence, whether Article 2(1)(c) of the VAT Directive must be interpreted as meaning that transactions such as those at issue in the main proceedings, which consist of the exchange of traditional currency for units of the 'bitcoin' virtual currency and vice versa, in return for payment of a sum equal to the difference between, on the one hand, the price paid by the operator to purchase the currency and, on the other hand, the price at which he sells that currency to his clients, constitutes the supply of services for consideration within the meaning of that article.

23 Article 2(1) of the VAT Directive provides that the supply of goods and services for consideration within the territory of a Member State by a taxable person acting as such is to be subject to VAT.

24 It must be held, first, that the 'bitcoin' virtual currency with bidirectional flow, which will be exchanged for traditional currencies in the context of exchange transactions, cannot be characterised as 'tangible property' within the meaning of Article 14 of the VAT Directive, given that, as the Advocate General has observed in point 17 of her Opinion, that virtual currency has no purpose other than to be a means of payment.

25 The same is true for traditional currencies, since it involves money which is legal tender (see, to that effect, judgment in *First National Bank of Chicago*, C-172/96, EU:C:1998:354, paragraph 25).

26 Consequently, the transactions at issue in the main proceedings, which consist of the exchange of different means of payment, do not fall within the concept of the 'supply of goods', laid down in Article 14 of the directive. In those circumstances, those transactions constitute the supply of services, within the meaning of Article 24 of the VAT Directive.

27 As regards, in the second place, the supply of services for consideration, it must be recalled that a supply of services is effected 'for consideration' within the meaning of Article 2(1)(c) of the VAT Directive, and is therefore subject to VAT, only if there is a direct link between the services supplied and the consideration received by the taxable person (judgments in *Loyalty Management UK and Baxi Group*, C-53/09 and C-55/09, EU:C:2010:590, paragraph 51 and the case-law cited, and *Serebryannay vek*, C-283/12, EU:C:2013:599, paragraph 37). Such a direct link is established if there is a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance, the remuneration received by the provider of the service constituting the actual consideration given in return for the service supplied to the recipient (judgment in *Le Rayon d'Or*, C-151/13, EU:C:2014:185, paragraph 29 and the case-law cited).

28 In the case in the main proceedings, it is clear from the material in the case file submitted to the Court that there would be a synallagmatic legal relationship between Mr Hedqvist's company and the other party to the contract in which the parties to the transaction would agree, reciprocally, to transfer amounts of a certain currency and receive the corresponding value in a virtual currency with bidirectional flow, or vice versa. It is also clear that Mr Hedqvist's company would be remunerated for supplying the service by a consideration equal to the margin that it would include in the calculation of the exchange rate at which it would be willing to sell and purchase the currencies concerned.

29 The Court has already held that it is irrelevant, for the purposes of determining whether a supply of services is effected for consideration, that the remuneration does not take the form of a payment of a commission or specific fees (judgment in *First National Bank of Chicago*, C-172/96, EU:C:1998:354, paragraph 33).

30 Having regard to the foregoing considerations, it must be held that transactions such as those at issue in the main proceedings, constitute the supply of services for a consideration that has a direct link with the service provided, that is to say, the supply of services for consideration within the meaning of Article 2(1)(c) of the VAT Directive.

31 Consequently, the answer to the first question is that Article 2(1)(c) of the VAT Directive must be interpreted as meaning that transactions such as those at issue in the main proceedings, which consist of the exchange of traditional currency for units of the 'bitcoin' virtual currency and vice versa, in return for payment of a sum equal to the difference between, on the one hand, the price paid by the operator to purchase the currency and, on the other hand, the price at which he sells that currency to his clients, constitute the supply of services for consideration within the meaning of that article.

The second question

32 By its second question, the referring court asks, in essence, whether Article 135(1)(d) to (f) of the VAT Directive must be interpreted as meaning that the supply of services such as those at issue in the main proceedings, which consist of the exchange of traditional currencies for units of the 'bitcoin' virtual currency and vice versa, performed in return for payment of a sum equal to the difference between, on the one hand, the price paid by the operator to purchase the currency and, on the other hand, the price at which he sells that currency to his clients, are exempt from VAT.

33 As a preliminary point, it should be borne in mind that, in accordance with the Court's case-law, the exemptions laid down in Article 135(1) of the VAT Directive constitute independent concepts of EU law whose purpose is to avoid divergences in the application of the VAT system as between one Member State and another (see, inter alia, judgments of *Skandinaviska Enskilda Banken*, C-540/09, EU:C:2011:137, paragraph 19 and the case-law cited, and *DTZ Zadelhoff*, C-259/11, EU:C:2012:423, paragraph 19).

34 It is also established case-law that the terms used to specify those exemptions are to be interpreted strictly, since they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person (judgments in *Ludwig*, C-453/05, EU:C:2007:369, paragraph 21, and *DTZ Zadelhoff*, C-259/11, EU:C:2012:423, paragraph 20).

35 Nevertheless, the interpretation of those terms must be consistent with the objectives pursued by the exemptions laid down in Article 135(1) of the VAT Directive and comply with the requirements of the principle of fiscal neutrality inherent in the common system of VAT. Thus, the requirement of strict interpretation does not mean that the terms used to specify the exemptions referred to in Article 135(1) must be construed in such a way as to deprive the exemptions of their effect (see, inter alia, judgments in *Don Bosco Onroerend Goed*, C-461/08, EU:C:2009:722, paragraph 25; *DTZ Zadelhoff*, C-259/11, EU:C:2012:423, paragraph 21; and *J.J. Komen en Zonen Beheer Heerhugowaard*, C-326/11, EU:C:2012:461, paragraph 20).

36 In that regard, it is clear from the Court's case-law that the purpose of the exemptions laid down in Article 135(1)(d) to (f) of the VAT Directive is, inter alia, to alleviate the difficulties connected with determining the taxable amount and the amount of VAT deductible (see, inter alia, judgment in *Velvet & Steel Immobilien*, C-455/05, EU:C:2007:232, paragraph 24, and the Order in *Tiercé Ladbroke*, C-231/07 and C-232/07, EU:C:2008:275, paragraph 24).

37 Moreover, the transactions exempt from VAT under those provisions are, by their nature, financial transactions even though they do not necessarily have to be carried out by banks or financial institutions (see judgments in *Velvet & Steel Immobilien*, C-455/05, EU:C:2007:232, paragraphs 21 and 22 and the case-law cited, and *Granton Advertising*, C-461/12, EU:C:2014:1745, paragraph 29).

38 As regards, in the first place, the exemptions laid down in Article 135(1)(d) of the VAT Directive, it should be recalled that, according to that provision, Member States are to exempt transactions involving, inter alia, 'deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments'.

39 The transactions exempted under that provision are thus defined according to the nature of the services provided. In order to be regarded as exempt transactions the services in question must, viewed broadly, form a distinct whole, fulfilling the specific, essential functions of a service described in that provision (see judgment in *Axa UK*, C-175/09, EU:C:2010:646, paragraphs 26 and 27 and the case-law cited).

40 It is clear from the wording of Article 135(1)(d) of the VAT Directive, read in the light of the judgment in *Granton Advertising* (C-461/12, EU:C:2014:1745, paragraphs 37 and 38), that the transactions referred to in that provision concern services or instruments that operate as a way of transferring money.

41 Furthermore, as the Advocate General observed in points 51 and 52 of her Opinion, that provision does not cover transactions that involve money itself, which are the object of a specific provision, namely Article 135(1)(e) of the VAT Directive.

42 The 'bitcoin' virtual currency, being a contractual means of payment, cannot be regarded as a current account or a deposit account, a payment or a transfer. Moreover, unlike a debt, cheques and other negotiable instruments referred to in Article 135(1)(d) of the VAT Directive, the 'bitcoin' virtual currency is a direct means of payment between the operators that accept it.

43 Therefore, transactions such as those in the main proceedings do not fall within the scope of the exemptions provided for under that provision.

44 As regards, in the second place, the exemptions laid down in Article 135(1)(e) of the VAT Directive, that provision provides that Member States are to exempt transactions involving, inter alia, 'currency [and] bank notes and coins used as legal tender'.

45 In that regard, it must be recalled that the concepts used in that provision must be interpreted and applied uniformly in the light of the versions in all the languages of the European Union (see, to that effect, judgments in *Velvet & Steel Immobilien*, C-455/05, EU:C:2007:232, paragraph 16 and the case-law cited, and *Commission* v *Spain*, C-189/11, EU:C:2013:587, paragraph 56).

46 As the Advocate General observes at points 31 to 34 of her Opinion, the various language versions of Article 135(1)(e) of the VAT Directive do not allow it to be determined without ambiguity whether that provision applies only to transactions involving traditional currencies or whether, on the contrary, it is also intended to cover transactions involving another currency.

47 Where there are linguistic differences, the scope of the expression in question cannot be determined on the basis of an interpretation which is exclusively textual. That expression must therefore be interpreted in the light of the context in which it is used and of the aims and scheme of the VAT Directive (see judgments in *Velvet & Steel Immobilien*, C-455/05, EU:C:2007:232, paragraph 20 and the case-law cited, and *Commission* v *Spain*, C-189/11, EU:C:2013:587, paragraph 56).

48 As is recalled in paragraphs 36 and 37 of this judgment, the exemptions laid down by Article 135(1)(e) of the VAT Directive are intended to alleviate the difficulties connected with determining the taxable amount and the amount of VAT deductible which arise in the context of the taxation of financial transactions.

49 Transactions involving non-traditional currencies, that is to say, currencies other than those that are legal tender in one or more countries, in so far as those currencies have been accepted by the parties to a transaction as an alternative to legal tender and have no purpose other than to be a means of payment, are financial transactions.

50 Furthermore, as Mr Hedqvist submitted, in essence, at the hearing, in the case of exchange transactions in particular, the difficulties connected with determining the taxable amount and the amount of VAT deductible may be the same, whether it is a case of the exchange of traditional currencies, normally entirely exempt under Article 135(1)(e) of the VAT Directive, or the exchange of such currencies for virtual currencies with bi-directional flow, which — without being legal tender — are a means of payment accepted by the parties to a transaction, and vice versa.

51 It therefore follows from the context and the aims of Article 135(1)(e) that to interpret that provision as including only transactions involving traditional currencies would deprive it of part of its effect.

52 In the case in the main proceedings, it is common ground that the 'bitcoin' virtual currency has no other purpose than to be a means of payment and that it is accepted for that purpose by certain operators.

53 Consequently, it must be held that Article 135(1)(e) of the VAT Directive also covers the supply of services such as those at issue in the main proceedings, which consist of the exchange of traditional currencies for units of the 'bitcoin' virtual currency and vice versa, performed in return for payment of a sum equal to the difference between, on the one hand, the price paid by the operator to purchase the currency and, on the other hand, the price at which he sells that currency to his clients.

54 As regards, finally, the exemptions laid down in Article 135(1)(f) of the VAT Directive, it suffices to recall that that provision covers, inter alia, transactions in 'shares, interests in companies or associations, debentures and other securities', namely securities conferring a property right over legal persons and 'other securities' that have to be regarded as being comparable in nature to the other securities specifically mentioned in that provision (judgment in *Granton Advertising*, C-461/12, EU:C:2014:1745, paragraph 27).

55 It is common ground that the 'bitcoin' virtual currency is neither a security conferring a property right nor a security of a comparable nature.

56 Therefore the transactions at issue in the main proceedings do not fall within the scope of the exemptions laid down in Article 135(1)(f) of the VAT Directive.

57 Having regard to the foregoing considerations, the answer to the second question is that:

— Article 135(1)(e) of the VAT Directive must be interpreted as meaning that the supply of services such as those at issue in the main proceedings, which consist of the exchange of traditional currencies for units of the 'bitcoin' virtual currency and vice versa, performed in return for payment of a sum equal to the difference between, on the one hand, the price paid by the operator to purchase the currency and, on the other hand, the price at which he sells that currency to his clients, are transactions exempt from VAT, within the meaning of that provision;

— Article 135(1)(d) and (f) of the VAT Directive must be interpreted as meaning that such a supply of services does not fall within the scope of application of those provisions.

Costs

58 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 (Fifth Chamber) hereby rules:

1. **Article 2(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that transactions such as those at issue in the main proceedings, which consist of the exchange of traditional currency for units of the 'bitcoin' virtual currency and vice versa, in return for payment of a sum equal to the difference between, on the one hand, the price paid by the operator to purchase the currency and, on the other hand, the price at which he sells that currency to his clients, constitute the supply of services for consideration within the meaning of that article.**

2. **Article 135(1)(e) of Directive 2006/112 must be interpreted as meaning that the supply of services such as those at issue in the main proceedings, which consist of the exchange of traditional currencies for units of the 'bitcoin' virtual currency and vice versa, performed in return for payment of a sum equal to the difference between, on the one hand, the price paid by the operator to purchase the currency and, on the other hand, the price at which he sells that currency to his clients, are transactions exempt from VAT, within the meaning of that provision.**

Article 135(1)(d) and (f) of Directive 2006/112 must be interpreted as meaning that such a supply of services does not fall within the scope of application of those provisions.

[Signatures]

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