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Judgment of the Court in Case C-695/20 | Fenix International

Online platforms and VAT collection: the Council did not exceed the limits of its implementing power in specifying that the operator of a platform, such as Only Fans, is presumed to be the supplier of the services provided

Fenix International ('Fenix'), a company registered in the United Kingdom for VAT purposes, operates on the internet a social media platform known as Only Fans ('the Only Fans platform'). That platform is offered to 'users' throughout the world, who are divided into 'creators' and 'fans'. Fenix provides not only the Only Fans platform but also the device enabling the collection and distribution of the payments made by fans. Fenix levies 20% on any sum paid to a creator to whom it charges the corresponding amount. On the sum which it levies in this way, Fenix applies VAT at a rate of 20%, which appears on the invoices which it issues.

The UK tax and customs authority (HMRC) sent Fenix VAT assessments for the VAT due for a period between 2017 and 2020, taking the view that Fenix had to be deemed to be acting in its own name and consequently had to pay VAT on all of the sum received from a fan and not only on the 20% of that sum which it levied by way of remuneration.

Fenix filed an appeal before a UK court. By that appeal, Fenix essentially challenges the validity of the legal basis for the tax assessments, namely a provision of an implementing regulation of the Council of the European Union seeking to clarify the VAT directive. The court hearing the case brought by Fenix referred a question for a preliminary ruling to the Court of Justice before the end of the transition period following Brexit, so that the Court remains competent to respond to that question. The referring court seeks to ascertain whether the contested provision is invalid in so far as the Council may have supplemented or amended the VAT Directive, thus exceeding the implementing powers conferred on it.

The VAT Directive establishes that a taxable person who, in the context of a supply of services, acts as an intermediary in his or her own name but on behalf of another person, is presumed to be the supplier of those services.

Account being taken of the development of the VAT system and in order to ensure a uniform application in the European Union thereof, the Council indicated, in the implementing regulation, that a taxable person taking part in the supply of electronically supplied services through a telecommunications network, an interface or a portal such as a marketplace for applications, is to be 'presumed to be acting in his own name but on behalf of the provider of those services'.

That presumption can be rebutted where that provider is explicitly indicated as being the supplier by the taxable person and where that is apparent from the contractual agreements between the parties.

In contrast, a taxable person taking part in that supply is always presumed to be acting in his or her own name but on behalf of the provider of those services and, therefore, is deemed himself or herself to be the supplier of those services, when he or she authorises the charge to the customer or the delivery of those services or sets the general terms and conditions of that supply.

In that regard, the Court states that, where a taxable person, who takes part in the supply of a service by electronic

means, by operating, for example, an online social network platform, has the power to authorise the supply of that service, or to charge for it, or to lay down the general terms and conditions of such a supply, that taxable person may unilaterally define essential elements relating to the supply, namely the provision of that service and the time at which it will take place, or the conditions under which the consideration will be payable, or the rules forming the general framework of that service. In such circumstances, and having regard to the economic and commercial reality reflected by them, it is correct that the taxable person must be regarded as being the supplier of services, pursuant to the VAT Directive.

After its examination, the Court holds that, by adopting the contested provision of the implementing regulation, the Council merely clarified the VAT Directive, without supplementing or amending it. **Examination of the question referred has therefore disclosed no factor of such a kind as to affect the validity of the contested provision of the implementing regulation.**

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and the abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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