61996C0361

Opinion of Mr Advocate General Cosmas delivered on 12 February 1998. - Société générale des grandes sources d'eaux minérales françaises v Bundesamt für Finanzen. - Reference for a preliminary ruling: Finanzgericht Köln - Germany. - Value added tax - Interpretation of Article 3(a) of the Eighth Council Directive 79/1072/EEC - Obligation of taxpayers not established in the country concerned to annex the original invoices or import documents to applications for a refund of the tax - Possibility of annexing a duplicate where the original has been lost for reasons beyond the control of the taxpayer. - Case C-361/96.

European Court reports 1998 Page I-03495

Opinion of the Advocate-General

I - Introduction

The Court is asked in this case to give a preliminary ruling on two questions referred to it by the Finanzgericht Köln (Finance Court, Cologne) pursuant to Article 177 of the EC Treaty. Those questions concern the interpretation of Article 3(a) of the Eighth Council Directive of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes (`the Eighth Directive'). (1)

II - Legal context

Article 2 of the Eighth Directive provides:

`Each Member State shall refund to any taxable person who is not established in the territory of the country but who is established in another Member State, subject to the conditions laid down below, any value added tax ...'

Article 3(a) provides:

`To qualify for refund, any taxable person as referred to in Article 2 who supplies no goods or services deemed to be supplied in the territory of the country shall:

(a) submit to the competent authority referred to in the first paragraph of Article 9 an application modelled on the specimen contained in Annex A, attaching originals of invoices or import documents ...'.

III - Facts

1 Société Générale des Grandes Sources d'Eaux Minérales Françaises (`SGS'), the plaintiff in the main proceedings, is a French company. In discharging a contractual obligation under a commercial agreement with a German company, SGS paid turnover tax amounting to DM 490

000. According to the undisputed assertion of SGS, the invoice issued for that payment was lost in the post when it was sent to the office of the lawyers instructed by SGS to claim the refund of the turnover tax in question from the competent German authorities. SGS subsequently submitted to the German authorities a duplicate invoice provided by the German company with which it had the agreement. The Bundesamt für Finanzen (Federal Finance Office; `the Bundesamt'), the defendant in the main proceedings, rejected that application.

2 It should be noted that SGS had based its application for the refund of the input tax notwithstanding the loss of the original invoice on the principle of equity in German law, which is laid down in Paragraphs 163 and 155 of the Abgabenordnung (Tax Code). Under that principle, a derogation from particular provisions relating to the assessment of tax or its refund may be granted in specific cases where it appears that their application would be inequitable (2) for the taxable person. However, the competent German authority rejected that application on the ground that such a concession could not be granted unless the strict application of the particular tax provisions led to a result neither foreseen nor desired by the drafter of those provisions, that is to say the legislature. The Bundesamt considered that that condition was not met in this case since the German legislature expressly and clearly requires that only original documentary evidence is to be submitted in the procedure for the refund of turnover tax. More precisely, that requirement is laid down by the fourth sentence of Paragraph 61(1) of the Umsatzsteuer-Durchführungsverordnung (Regulation for the Implementation of Turnover Tax; `the UStDV'). In the view of the Bundesamt, the strict requirement to produce the originals of the documents required for turnover tax to be refunded was enacted by the German legislature in order to comply with the Eighth Directive. It therefore considers that Article 3 of that directive would be infringed by derogating, even for reasons of equity, from the formal conditions laid down by Paragraph 61 of the UStDV.

3 SGS has brought an action challenging that refusal before the Finanzgericht Köln, in which it seeks the refund by concession of the turnover tax which it was charged. That court considered it expedient to stay proceedings and refer to the Court of Justice for a preliminary ruling two questions concerning whether the relevant provisions of the Eighth Directive at issue require without exception that the originals of the requisite documents be produced in order for turnover tax to be refunded or whether, where those originals are lost without fault, they give scope for regard to be had, (3) by way of exception and for reasons of equity, to duplicates of the relevant documents.

4 The referring court observes that, at first sight, the literal and, in part, the teleological interpretation of Article 3(a) of the Eighth Directive lead to the solution which is inflexible for the taxable person. In particular, that provision expressly refers to the attaching of originals of invoices or import documents. In addition, it seeks to prevent turnover tax from being improperly and fraudulently refunded twice and for that reason imposes strict formal requirements. If it were conceded that copy invoices could be produced, the way could be opened for double refunds, in particular in cases such as this one where the company applying for the refund is not based in Germany.

5 However, adhering to the letter of the Eighth Directive and rejecting any derogation from the requirement to submit original documentary evidence may, according to the referring court, place taxable persons who are covered by that directive, that is to say foreign traders, at a disadvantage compared with their domestic competitors. It observes that that possibility is not consistent with the main objective of the author of the Directive, namely to create equal opportunities for competition in every Member State and to guarantee the neutrality of turnover tax by imposing the same conditions for all taxable persons. If foreign traders are deprived of the possibility, even as a concession, of obtaining a tax refund in exceptional circumstances by producing copies of the required documents, they will be in a less favourable position than corresponding domestic traders. If domestic traders, in a commercial transaction, initially receive the original invoice but subsequently lose it, they can deduct the input tax identified on that invoice if they prove that the

original invoice initially came into their possession; for that purpose, all means of proof permitted under procedural law are available to them. If they bring that evidential procedure to a conclusion, they may then submit merely a duplicate or photocopy of the original invoice to the tax authority and the input tax is deducted as a concession on the basis of the duplicate or copy.

6 As the referring court states, the above procedure (using the means of proof under procedural law in order to prove a posteriori that the lost original invoice initially existed and obtaining the refund of input tax as a concession on the basis of a duplicate or photocopy of the original invoice) corresponds to German tax practice and to the concordant settled case-law of the highest German courts. In the light of the above, the referring court expresses the view that the strict interpretation of the relevant provisions of the directive may conflict with its very objective or even offend against a general principle of Community law, namely the prohibition of discrimination laid down by Article 95 of the EC Treaty. (4) It considers that the Court of Justice will have to take account of all the abovementioned matters when answering the two questions referred for a preliminary ruling which I set out immediately below.

IV - Questions submitted for a preliminary ruling

(a) Does Article 3(a) of the Eighth Council Directive of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes preclude the Member States from providing in their national law that a taxable person referred to in Article 2 of the directive may prove his entitlement to a refund by submitting a duplicate invoice or import document where the original has been lost for reasons beyond his control?

(b) Should the first question be answered in the negative, does it follow from the prohibition on discrimination under Community law and from the principle of neutrality of turnover taxes that a taxable person referred to in Article 2 of the directive has the right to prove his entitlement to a refund by submitting a duplicate of the invoice or import document referred to in Article 3(a) where the original has been lost for reasons beyond his control?

V - My answer to the questions submitted

A - Case-law to date

7 Until now, the Court has not dealt with the question of the characteristics which the Eighth Directive requires of supporting documents on whose basis turnover tax is refunded. However, it has examined related questions when called on to interpret Council Directive 77/388/EEC of 17 May 1977 (`the Sixth Directive'). (5) It should be noted that the Sixth Directive is directly linked to the Eighth Directive at issue in this case. The Eighth Directive was adopted after the Sixth Directive had expressly provided that rules relating to the refund of tax to foreign traders should be laid down. (6)

8 As regards the Sixth Directive, the Court has recognised the importance which the invoice has in the Community system of value added tax as a document used both for the payment of VAT and for the deduction of VAT paid at an earlier stage. (7) It should be noted, however, that the Sixth Directive does not contain a definition of the term `invoice', but lays down minimum requirements as to the information which invoices must by definition contain and leaves the Member States a wide discretion to impose further formal requirements for invoices. It is worth referring to three judgments of the Court. In Jeunehomme, (8) the Court accepted that a Member State may require invoices to contain particulars additional to those laid down by the directive. In Reisdorf, (9) which resembles this case more closely, the Court held that the Member States may `regard as an invoice not only the original but also any other document serving as an invoice that fulfils the criteria determined by the Member States themselves, and [are conferred] the power to require production of the original invoice in order to establish the right to deduct input tax, as well as the power, where a taxable person no longer holds the original, to admit other evidence that the

transaction in respect of which the deduction is claimed actually took place'. (10) In the same judgment the Court also held that the Member States have `the power to decide that a document cannot serve as an invoice if an original has been drawn up and is in the possession of the recipient'. (11) In the view of the Advocate General, in any event, possession of the original invoice remains the rule, while recourse to other means of proof is by way of exception and is permitted when consistent with the `overriding objective of the Sixth Directive of ensuring the proper application of the Community VAT scheme'. (12) Finally, the Court held in its recent judgment in Langhorst (13) that the Member States may regard a credit note as a `document serving as an invoice' where it includes the information which the Sixth Directive lays down as minimum requirements for invoices.

9 The above case-law does not answer directly the questions raised in this case. In particular, in the judgment in Reisdorf, (14) where it is accepted that regard may also be had to copy invoices in the tax refund procedure, reference is made to Article 18(1)(a) of the Sixth Directive, according to which the taxable person must hold `an invoice' in order for tax to be deducted. That solution cannot be applied as it stands to this case since Article 3(a) of the Eighth Directive which is at issue here expressly refers to `originals of invoices' and not simply to `invoices'.

10 The case-law cited above nevertheless affects this analysis directly because it sets the framework for the person implementing the Community provisions on the refund of input tax when he lays down the formal requirements for the deduction or refund of tax. In particular, the interpretation and implementation of those rules must be consistent with two principles/objectives of Community tax legislation.

11 First, a fundamental objective of the Sixth Directive must be served, namely ensuring the levying of tax and its supervision by the tax authorities. (15) Moreover, as the Advocate General pointed out in Langhorst, (16) the aim of the Community provisions which require production of the invoice `is to ensure that the tax is correctly levied and to avoid fraud'.

12 That obligation is nevertheless not unlimited. As the Advocate General stated in Jeunehomme, (17) `the requirements laid down must not, however, go beyond what is reasonably necessary for the purposes of verification and fiscal control'. (18) In the same case, the Court held that the particulars to be included on invoices pursuant to national law must not, `by reason of their number or technical nature, render the exercise of the right to deduction practically impossible or excessively difficult'. (19)

13 I consider, therefore, that limits exist both for the adoption of new formal requirements and for the interpretation of the minimum requirements which the Community legislature has enacted. Those limits are intended to prevent the right of taxable persons to deduct input tax from being totally undermined. The Court has repeatedly held that that right, which is laid down in Article 17(2)(a) of the Sixth Directive, constitutes an essential element of the system of VAT. (20)

14 It follows from the above that, in the view of the Community judicature, the Community tax regime in issue is based on two fundamental principles/objectives: first, the levying of tax and the combating of tax evasion and, secondly, safeguarding the right of taxable persons to deduct input tax (the principle of fiscal neutrality). In accordance with the principle of proportionality, the balance must not in any event be tipped excessively in favour of one of the objectives, thereby putting achievement of the other at risk.

B - Consideration of the questions submitted

15 It appears at first sight to follow from certain points arising from the literal and, in part, the teleological approach to the provisions of Community law at issue that the Community legislature makes production of the original invoice an essential requirement which must without exception be complied with in order for input tax to be deducted.

16 The German Government asserts that Article 3(a) of the Eighth Directive, under which taxable persons are to submit to the competent national authority an application modelled on the specimen contained in Annex A to the directive, `attaching originals of invoices or import documents', is expressed in clear and absolute terms and does not leave scope for any exceptions. It fits into an evidential procedure which is characterised by formality and strictness and for that reason cannot be bypassed even if reasons of equity so require. The Community legislature also appears to envisage the use of original invoices only in Article 7(3) of the Eighth Directive, where it provides that `the competent authority ... shall stamp each invoice and/or import document to prevent their use for further application ...'. It follows from Article 3 in conjunction with Article 7 that the Eighth Directive seeks to prevent tax from being refunded twice; that risk is removed completely or, at least, more securely by the requirement to produce the original invoice. The German Government does not neglect to point out the extent of the above risk where the person applying for the refund is not established in Germany, when he also escapes the supervisory powers of the German tax authorities. It refers in particular to a new form of tax fraud, consisting in the creation of bogus companies for the purpose of committing tax offences such as obtaining a double refund of tax. Those companies are established outside the territory of the State in which they commit those infringements and they exploit the fact that that Member State is unable to exercise primary supervision over them and immediately take the appropriate preventive or repressive measures.

17 In view of the foregoing, it will be necessary to take into account that the Community legislature, first, expressly refers to the original invoice and, secondly, seeks to create an effective procedure in order to combat tax evasion. However, are those factors sufficient for it to be concluded that the obligation on taxable persons to hold the original invoice allows absolutely no exception? I do not think so. As the Commission correctly states, the Eighth Directive was adopted pursuant to the Sixth Directive in order to harmonise the procedures for the refund of tax in the special case of an applicant who is not established in the territory of the country in which the refund is made. Even though I do not agree entirely with the Commission's characterisation of the Eighth Directive as an act `dependent' on the Sixth Directive, I nevertheless consider that it forms part of the more general endeavour to create a uniform tax system, whose primary component is equal opportunities for all taxable persons to obtain a refund of input tax. It is therefore wrong, in my view, to seek to present the Eighth Directive as introducing exceptions to the general system of the Sixth Directive, that is to say as a corollary of the desire on the part of the Community legislature to impose, for the purpose of combating tax evasion, a stricter regime on taxable persons established outside the country in which the refund is granted.

18 For an understanding of the position occupied by the Eighth Directive in the Community tax system more generally, it is particularly instructive to read the preamble to that directive. The Community legislature first has regard to the provision in the Sixth Directive relating to the need to lay down Community rules governing the refund of tax to taxable persons not established in the territory of the country, and considers that it is necessary to avoid the imposition of double taxation on those persons. It then states that the Community rules put in place by the Eighth Directive `will mark progress towards the effective liberalisation of the movement of persons, goods and services ...' and that they `must not lead to the treatment of taxable persons differing according to the Member State in the territory of which they are established'. (21) It may accordingly be stated that the Eighth Directive `follows' the general system created by the Sixth Directive and, in accordance with the principle of equal treatment, extends the field of application of that system to a further category of taxable persons, namely those not established in the country in which the input tax was levied.

19 That view was adopted by the Court in Debouche. (22) It found in that case that `it is not the purpose of the Eighth Directive to undermine the scheme introduced by the Sixth Directive. According to the third recital in the preamble, the Eighth Directive is intended rather to eliminate discrepancies between the arrangements then in force in the Member States, which gave rise in some cases to deflection of trade and distortion of competition. In accordance with the fifth recital, the Eighth Directive must not "lead to the treatment of taxable persons differing according to the Member State in the territory of which they are established"'. (23) The Advocate General, for his part, stated: `In view of the objective of the Eighth Directive, therefore, which is to supplement the rules laid down in the Sixth Directive by harmonising also the arrangements governing refunds of VAT to non-resident taxable persons in order to eliminate the problem of double taxation within the Community, its provisions can only be interpreted ... in the light of the principles of the Community system of VAT as laid down in the Sixth Directive.' (24)

20 Following those explanations, I will now reply to the individual issues raised by the questions referred for a preliminary ruling. Those issues may, in my opinion, be dealt with in two ways; however, both lead to the same result.

21 I begin with the more radical solution. As has already been stated, the right of taxable persons to obtain a refund of input tax, so that the neutrality of value added tax in the intra-Community trading of goods and services is in practice guaranteed and the economic integration of the Member States is promoted, constitutes the corner-stone of the Community tax system. That right would be prejudiced, in my view inordinately, if the loss of the original invoice or, in any event, the failure to hold it, because of force majeure or exceptional circumstances for which the person applying for the deduction could not be held responsible, rendered that deduction impossible. From that perspective, I reach the conclusion that, in Community law also, there is a special rule, flowing from the general principles of equity and of proper administration, under which, in exceptional circumstances, the loss, through no fault of the applicant, of the original documents which accompany applications for the refund of input tax may be remedied. I consider, moreover, that that view has been expressed, even if only embryonically, in the judgments in Jeunehomme and Reisdorf and the Opinions of the Advocate Generals in those cases. That rule has until now merely been formulated indirectly, in reliance upon the principle of proportionality, under which the formal conditions for obtaining a tax refund are not to go beyond `what is reasonably necessary for the purposes of verification and fiscal control'. (25)

22 However, I consider that, even if a special Community rule is not formulated, reasons relating to the equal treatment of taxable persons must lead to the same conclusion. As already mentioned, the Eighth Directive is intended to fill out the uniform system for the refund of input tax. From the moment, therefore, when the Court held in Reisdorf, (26) in relation to taxable persons established in the territory of the country in which the tax was paid, that the Member States had the power,

where such persons no longer held the original invoice, to admit other evidence that the application for the deduction of tax was well founded, the same interpretation, in my view, also had to apply when interpreting the Eighth Directive. That is to say, I consider that the differences of wording between the Sixth and Eighth Directives (the Eighth Directive refers to `originals of invoices' while the Sixth Directive simply speaks of the `invoice') do not in fact mean that the Community legislature intended to lay down a different regime for taxable persons depending on the country in which they are established.

23 Moreover, as the referring court and the Commission rightly point out, the opposite approach to interpretation of the Eighth Directive would infringe the general principle of non-discrimination laid down in Article 6 of the EC Treaty, the specific principle concerning the non-discriminatory tax treatment of products enshrined in the first paragraph of Article 95 of the EC Treaty, and the very objectives of the Eighth Directive as set out in its preamble. (27) By contrast, I am unable to agree with the assertions of the German Government that there is no discriminatory treatment falling within the scope of the first paragraph of Article 95 of the EC Treaty or that, while there is discrimination against foreign traders in relation to the general regime laid down by the Sixth Directive, that discrimination is intended by the Community legislature and is justified in that the risk of tax fraud is greater when the refund of input tax is sought by a foreign, and not a domestic, trader. The risk of tax fraud is always present; that, moreover, is the reason why the Eighth Directive allows the Member States to recover amounts wrongly paid or to refuse further refunds to a person who has obtained a tax refund in a fraudulent or other irregular manner. (28) In any event, as already stated, national measures to combat tax fraud are not to go beyond the objective of the Community tax legislation. In my view, therefore, the plaintiff in the main proceedings is correct to assert that an interpretation of the relevant provisions of the Eighth Directive which has the effect of fundamentally denying the right to deduct input tax to a foreign trader who, through no fault of his own, does not hold the original invoice does not accord with the objectives of that directive and does not constitute a reason justifying the unfavourable treatment of foreign traders compared with their domestic competitors. In other words, Germany certainly may not be denied its inalienable right to adopt the necessary measures to prevent the commission of tax offences; however, those measures cannot result in the complete reversal of the principle of neutrality of value added tax in intra-Community trade, to the detriment of taxable persons not established in Germany, especially as the loss of that right additionally amounts to discrimination against that group of taxable persons.

24 It follows from the above that the conclusion reached in Reisdorf must also be applied to the interpretation of the provisions of the Eighth Directive which are at issue. That conclusion may be summarised as follows: on the grounds of the prevention of tax evasion, it is in principle necessary to hold the original invoice in order to obtain a refund of input tax; in special cases, however, where the original cannot be produced, through no fault of the person liable to produce it, the Member States may be satisfied with other evidence proving that the claim for a deduction is well founded.

25 With regard to the instant case in particular, however, since German law allows taxable persons established in Germany to substitute other evidence for an original invoice lost without fault on their part, there is in addition an obligation, which flows from the principle of equal treatment, to grant the same opportunity to taxable persons not established in Germany.

26 As the referring court explains, (29) domestic traders may, first, use all the means of proof available under procedural law in order to prove that they initially held the original invoice and, secondly, may invoke the principle of equity, as enshrined in written and unwritten law, to obtain in the end the refund of input tax by producing merely a copy invoice. Applicants for a refund who are not established in Germany must therefore also be treated in the same way. Those persons are entitled to rely on exactly the same substantive and procedural rules of national law in order to obtain by way of exception a tax refund without presenting the original invoice. That solution is

required by the principle of equal treatment and by the, to my mind better, interpretation of Article 3(a) of the Eighth Directive in conjunction with the approach adopted by the Court in Reisdorf when interpreting the corresponding provisions of the Sixth Directive. On the other hand, the application of a provision of national law, such as Paragraph 61 of the UStDV, in order to prevent foreign traders from invoking the principle of equity, as is currently the case in Germany, is incompatible with Community law.

27 To recapitulate, I summarise the two approaches which, in my view, are open to the Court when it answers the questions referred for a preliminary ruling.

28 First, there may be found to be a special rule of interpretation, resulting both from the teleological approach to the provisions of the Eighth Directive and from the general principles of equity and proper administration, which can be expressed as follows: the requirement laid down by the Eighth Directive to attach the original invoice to the application for the refund of tax ceases to apply when, in exceptional circumstances, the taxable person proves that he lost the original invoice through no fault of his own and submits an accurate copy or duplicate invoice in its place. That solution, which I consider preferable, presents the advantage that it involves Community law only. While it allows the conditions laid down by the Eighth Directive to be applied in a manner favourable to the taxable person, it has a particularly narrow and exceptional field of application and therefore does not compromise the general requirement that the original invoice must be held, nor does it put at risk the efforts of the Community legislature to combat tax evasion and tax fraud; on the other hand, it helps to safeguard the principle of fiscal neutrality, which constitutes the corner-stone of the Community tax system. The formulation of the above rule, which flows from a more general equitable philosophy which must guide those applying Community tax legislation when they are called on to deal with issues similar to those in this case, allows the Court to dispel the various doubts which arise in relation to the legal treatment of cases where the original documentary evidence is lost without fault.

29 There is, of course, also the other interpretation, whose basis is that, for reasons of equal treatment of taxable persons, the decision in Reisdorf is to be applied in the context of the Eighth Directive. Under that solution, a Member States, such as Germany, which has made use of the power conferred on it by the Sixth Directive to accept, in cases where the original invoice is lost without fault, applications for refunds from taxable persons established within its territory which are based on other evidence, must, when it applies the Eighth Directive, also grant exactly the same possibility to taxable persons not established in its territory.

30 In conclusion, it should be noted that those two solutions may be used cumulatively as independent legal bases for the answer to the questions referred for a preliminary ruling.

VI - Conclusion

31 In view of the foregoing, I propose that the Court should answer the questions referred to it for a preliminary ruling as follows:

The requirement laid down by Article 3(a) of the Eighth Council Directive of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes - Arrangements for the refund of value added tax to taxable persons not established in the territory of the country (79/1072/EEC) to attach the original invoice to the application for the refund of tax ceases to apply when, in exceptional circumstances, the taxable person proves that he lost the original invoice through no fault of his own and submits an accurate copy or duplicate invoice in its place. In any event, the prohibition of discrimination under Community law requires applicants for the refund of tax who are not established in Germany and have lost the original invoice to be dealt with in the same way as taxable persons established in that country.

(1) - Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes - Arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ 1979 L 331, p. 11).

(2) - The term used in the German legislation is `unbillig', which could be rendered in French as `inéquitable'.

(3) - The referring court makes the following fine distinctions: if it were to be held that it is not a mandatory requirement under the directive for the original to accompany the application for a refund, it will, in its view, be necessary to consider whether Community law `requires', `permits', `proposes' or even `suffers' the granting of concessions such as that claimed by SGS in its application.

(4) - The national court refers to the case-law of the Court of Justice according to which the prohibition of discrimination may also be infringed by a discriminatory formulation of the detailed technical rules for levying tax (Case 55/79 Commission v Ireland [1980] ECR 481, paragraph 8; Case 42/83 Dansk Denkavit v Ministeriet for Skatter og Afgifter [1984] ECR 2649, paragraph 31; Case C-47/88 Commission v Denmark [1990] ECR I-4509, paragraph 18).

(5) - Sixth Council Directive 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).

(6) - Article 17(4) of the Sixth Directive states that `the Council shall endeavour to adopt before 31 December 1977, on a proposal from the Commission and acting unanimously, Community rules laying down the arrangements under which refunds are to be made in accordance with paragraph 3 to taxable persons not established in the territory of the country'.

(7) - See Case C-342/87 Genius Holding v Staatssecretaris van Financiën [1989] ECR 4227.

(8) - Joined Cases 123/87 and 330/87 Jeunehomme and EGI v Belgian State [1988] ECR 4517.

(9) - Case C-85/95 Reisdorf v Finanzamt Köln-West [1996] ECR I-6257.

(10) - Emphasis added.

(11) - Paragraph 23.

(12) - Opinion of Advocate General Fennelly (paragraph 25).

(13) - Case C-141/96 Finanzamt Osnabrück-Land v Langhorst [1997] ECR I-5073.

(14) - Cited above in footnote 9.

(15) - See, to that effect, Jeunehomme, paragraphs 16 and 17, Reisdorf, paragraph 24, and Langhorst, paragraph 17.

(16) - Opinion of Advocate General Léger of 27 May 1997, point 29 et seq.

(17) - Cited above in footnote 8.

(18) - Opinion of Sir Gordon Slynn of 31 May 1988, at p. 4534 (emphasis added).

(19) - Jeunehomme, paragraph 17. See also the Opinion of Advocate General Fennelly in Reisdorf (paragraph 26): `... Member States are entitled as a general rule to require that taxable persons retain the original invoice for whatever period of time they determine, so long as that period is not

so extended as to infringe the principle of proportionality articulated in that case'.

(20) - See Case 15/81 Gaston Schul Douane v Inspecteur der Invoerrechten en Accijnzen [1982] ECR 1409 and Case 268/83 Rompelman v Minister van Financiën [1985] ECR 655.

(21) - Emphasis added.

(22) - Case C-302/93 Debouche v Inspecteur der Invoerrechten en Accijnzen [1996] ECR I-4495.

(23) - Paragraph 18.

(24) - Opinion of Advocate General Tesauro of 1 February 1996, [1996] ECR I-4497, point 8 (emphasis added).

(25) - Jeunehomme, paragraph 17.

(26) - Cited above in footnote 9.

(27) - See point 18 above.

(28) - Article 7(5) of the Eighth Directive provides as follows: `Where a refund has been obtained in a fraudulent or in any other irregular manner, the competent authority referred to in paragraph 3 shall proceed directly to recover the amounts wrongly paid and any penalties imposed, in accordance with the procedure applicable in the Member State concerned, without prejudice to the provisions relating to mutual assistance in the recovery of value added tax. In the case of fraudulent applications which cannot be made the subject of an administrative penalty, in accordance with national legislation, the Member State concerned may refuse for a maximum period of two years from the date on which the fraudulent application was submitted any further refund to the taxable person concerned. Where an administrative penalty has been imposed but has not been paid, the Member State concerned may suspend any further refund to the taxable person concerned until it has been paid.'

(29) - See above, points 4, 5 and 6.