OPINION OF ADVOCATE GENERAL

POIARES MADURO

delivered on 7 December 2005 (1)

Case C-384/04

Commissioners of Customs & Excise

Attorney General

v

Federation of Technological Industries

(Reference for a preliminary ruling from the Court of Appeal (Civil Division) of England and Wales (United Kingdom))

(Sixth VAT Directive – Articles 21(3) and 22(8) – Joint and several liability for payment of VAT – Principles of proportionality and legal certainty – Missing trader intra-Community fraud – Carousel fraud)

1. This reference for a preliminary ruling from the Court of Appeal (Civil Division) of England and Wales concerns the interpretation of Articles 21(3) and 22(8) of Sixth Council Directive 77/388/EEC. (2) The reference has been made in the course of an application for judicial review in proceedings between 53 traders in mobile telephones and computer processing units and their trade body, the Federation of Technological Industries (hereinafter collectively referred to as 'the Federation') and the Commissioners of Customs and Excise and H.M. Attorney?General (hereinafter 'the Commissioners'). The challenge is to sections 17 and 18 of the Finance Act 2003, which were enacted to deal with practices which exploit the VAT rules on intra-Community sales of goods. The Court of Justice is asked to give a ruling in order to enable the national court to assess the compatibility of sections 17 and 18 with Community law.

I – **Legal framework**

A – *Community legislation*

2. Article 21 of the Sixth Directive provides:

'1. Under the internal system, the following shall be liable to pay value added tax:

(a) the taxable person carrying out the taxable supply of goods or of services, except for the cases referred to in (b) and (c).

Where the taxable supply of goods or of services is effected by a taxable person who is not

established within the territory of the country, Member States may, under conditions determined by them, lay down that the person liable to pay tax is the person for whom the taxable supply of goods or of services is carried out;

(b) taxable persons to whom services covered by Article 9(2)(e) are supplied or persons who are identified for value added tax purposes within the territory of the country to whom services covered by Article 28b(C), (D), (E) and (F) are supplied, if the services are carried out by a taxable person not established within the territory of the country;

(c) the person to whom the supply of goods is made when the following conditions are met:

– the taxable operation is a supply of goods made under the conditions laid down in Article 28c(E)(3),

– the person to whom the supply of goods is made is another taxable person or a non-taxable legal person identified for the purposes of value added tax within the territory of the country,

– the invoice issued by the taxable person not established within the territory of the country conforms to Article 22(3).

However, Member States may provide a derogation from this obligation, where the taxable person who is not established within the territory of the country has appointed a tax representative in that country;

(d) any person who mentions the value added tax on an invoice or other document serving as invoice;

(e) any person effecting a taxable intra-Community acquisition of goods.

2. By way of derogation from the provisions of paragraph 1:

(a) where the person liable to pay tax in accordance with the provisions of paragraph 1 is a taxable person who is not established within the territory of the country, Member States may allow him to appoint a tax representative as the person liable to pay tax. This option shall be subject to conditions and procedures laid down by each Member State;

(b) where the taxable transaction is effected by a taxable person who is not established within the territory of the country and no legal instrument exists, with the country in which that taxable person is established or has his seat, relating to mutual assistance similar in scope to that laid down by Directives 76/308/EEC and 77/799/EEC and by Council Regulation (EEC) No 218/92 of 27 January 1992 on administrative cooperation in the field of indirect taxation (VAT), Member States may take steps to provide that the person liable for payment of the tax shall be a tax representative appointed by the non-established taxable person.

3. In the situations referred to in paragraphs 1 and 2, Member States may provide that someone other than the person liable for payment of the tax shall be held jointly and severally liable for payment of the tax.

4. On importation, value added tax shall be payable by the person or persons designated or accepted as being liable by the Member State into which the goods are imported.’

3. Article 22(7) of the Sixth Directive provides:

‘Member States shall take the measures necessary to ensure that those persons who, in

accordance with Article 21(1) and (2), are considered to be liable to pay the tax instead of a taxable person not established within the territory of the country comply with the obligations relating to declaration and payment set out in this Article; they shall also take the measures necessary to ensure that those persons who, in accordance with Article 21(3), are held to be jointly and severally liable for payment of the tax comply with the obligations relating to payment set out in this Article.'

4. In the words of Article 22(8) of the Sixth Directive:

'Member States may impose other obligations which they deem necessary for the correct collection of the tax and for the prevention of evasion, subject to the requirement of equal treatment for domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

The option provided for in the first subparagraph cannot be used to impose additional obligations over and above those laid down in paragraph 3.'

B – *National legislation*

5. Paragraph 4 of Schedule 11 to the Value Added Tax Act 1994 (hereinafter the 'VAT Act 1994'), as amended by section 17 of the Finance Act 2003, reads as follows:

'(1) The Commissioners may, as a condition of allowing or repaying input tax to any person, require the production of such evidence relating to VAT as they may specify.

(1A) If they think it necessary for the protection of the revenue, the Commissioners may require, as a condition of making any VAT credit, the giving of such security for the amount of the payment as appears to them appropriate.

(2) If they think it necessary for the protection of the revenue, the Commissioners may require a taxable person, as a condition of his supplying or being supplied with goods or services under a taxable supply, to give security, or further security, for the payment of any VAT that is or may become due from –

(a) the taxable person, or

(b) any person by or to whom relevant goods or services are supplied.

(3) In subparagraph (2) above "relevant goods or services" means goods or services supplied by or to the taxable person.

(4) Security under subparagraph (2) above shall be of such amount, and shall be given in such manner, as the Commissioners may determine.

(5) The powers conferred on the Commissioners by subparagraph (2) above are without prejudice to their powers under section 48(7).'

6. Section 77A of the VAT Act 1994, which was inserted by section 18 of the Finance Act 2003, provides as follows:

'Joint and several liability of traders in supply chain where tax unpaid

(1) This section applies to goods of any of the following descriptions –

(a) telephones and any other equipment, including parts and accessories, made or adapted for use in connection with telephones or telecommunication;

(b) computers and any other equipment, including parts, accessories and software, made or adapted for use in connection with computers or computer systems.

(2) Where –

(a) a taxable supply of goods to which this section applies has been made to a taxable person, and

(b) at the time of the supply the person knew or had reasonable grounds to suspect that some or all of the VAT payable in respect of that supply, or on any previous or subsequent supply of those goods, would go unpaid,

the Commissioners may serve on him a notice specifying the amount of the VAT so payable that is unpaid, and stating the effect of the notice.

(3) The effect of a notice under this section is that –

(a) the person served with the notice, and

(b) the person liable, apart from this section, for the amount specified in the notice,

are jointly and severally liable to the Commissioners for that amount.

(4) For the purposes of subsection (2) above the amount of VAT that is payable in respect of a supply is the lesser of –

(a) the amount chargeable on the supply, and

(b) the amount shown as due on the supplier's return for the prescribed accounting period in question (if he has made one) together with any amount assessed as due from him for that period (subject to any appeal by him).

(5) The reference in subsection (4)(b) above to assessing an amount as due from a person includes a reference to the case where, because it is impracticable to do so, the amount is not notified to him.

(6) For the purposes of subsection (2) above, a person shall be presumed to have reasonable grounds for suspecting matters to be as mentioned in paragraph (b) of that subsection if the price payable by him for the goods in question -

(a) was less than the lowest price that might reasonably be expected to be payable for them on the open market, or

(b) was less than the price payable on any previous supply of those goods.

(7) The presumption provided for by subsection (6) above is rebuttable on proof that the low price payable for the goods was due to circumstances unconnected with failure to pay VAT.

(8) Subsection (6) above is without prejudice to any other way of establishing reasonable

grounds for suspicion.

(9) The Treasury may by order amend subsection (1) above; and any such order may make such incidental, supplemental, consequential or transitional provision as the Treasury think fit.

(10) For the purposes of this section –

(a) “goods” includes services;

(b) an amount of VAT counts as unpaid only to the extent that it exceeds the amount of any refund due.’

II – **The main proceedings and the questions referred for a preliminary ruling**

7. At issue in the main proceedings is the compatibility with Community law of the provisions of sections 17 and 18 of the Finance Act 2003. The sections were enacted to deal with what is known as missing trader intra-Community (MTIC) fraud in the United Kingdom. As explained in the order for reference, two categories of MTIC fraud can be distinguished.

8. The first category is what the Commissioners term ‘acquisition fraud’. A VAT-registered trader in the United Kingdom acquires goods from another Member State and sells them in the United Kingdom. The sale is exempt from VAT in the Member State of dispatch under Article 28c(A)(a) of the Sixth Directive and the purchaser is required to account for tax in the United Kingdom pursuant to Article 28a(1)(a) of the Sixth Directive. The trader sells the goods at a price including VAT, but fails to pay over to the Commissioners the VAT received on the onward supply, and disappears.

9. The second category has become known as ‘carousel fraud’. This involves a more complicated scheme, which in essence works as follows. A company (‘B’) established in the United Kingdom, buys goods from a company (‘A’) in another Member State. No VAT is due from A in respect of the acquisition, but B is required to account for VAT in respect of its onward sales in the United Kingdom. B sells the goods, usually at a discount, to a third company (‘C’) also established in the United Kingdom, but fails to account for VAT. C is called a ‘buffer company’. It sells the goods to another company in the United Kingdom at a small profit, accounting for VAT on the sale, but reclaiming input VAT. There may be a series of further sales, but eventually the goods reach a company which sells them to a VAT registered trader in another Member State. This sale is exempt from VAT, but the seller is entitled to recover input tax and accordingly seeks to recover from the Commissioners the VAT which it paid on its purchase of the goods from the last buffer company. If such repayment is made, the Commissioners pay to this company the VAT charged on the sale by the last buffer company and yet do not receive the amount charged as VAT by B. The hallmark of a true carousel fraud is that the goods are ultimately sold back to the original seller, company A. The cycle can then start again. On each circuit of the carousel the amount paid as VAT to B is extracted from the public revenue. The carousel may revolve like this on a daily basis. B may use a ‘hijacked’ VAT number of an unsuspecting third party or it may register itself for VAT and simply disappear before the tax authorities take action. The goods involved are usually of small size and high value. It is stated in the order for reference that this type of fraud costs the United Kingdom public revenue in excess of £1.5 billion per annum.

10. The application for judicial review of sections 17 and 18 of the Finance Act 2003 was heard first by the Administrative Court, Queen’s Bench Division, High Court of Justice of England and Wales and then, on appeal, by the Court of Appeal (Civil Division) of England and Wales. The Federation challenges sections 17 and 18 of the Finance Act 2003 on the ground of lack of vires. It claims that the sections are authorised neither by Article 21(3) nor by Article 22(8) of the Sixth

Directive. The Court of Appeal decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Does Article 21(3) of Council Directive 77/388/EEC, as amended by Council Directive 2000/65/EC, permit Member States to provide that any person may be made jointly and severally liable for payment of tax with any person who is made so liable by Article 21(1) or 21(2), subject only to the general principles of Community law, namely that such a measure must be objectively justifiable, rational, proportionate and legally certain?

(2) Does Article 22(8) of the Directive permit Member States to provide that any person may be made so liable or to provide that one person may be required to provide security for tax due from another subject only to the aforesaid general principles?

(3) If the answer to Question 1 is no, what limits, other than those imposed by the aforesaid general principles, are there on the power conferred by Article 21(3)?

(4) If the answer to Question 2 is no, what limits, other than those imposed by the aforesaid general principles, are there on the power conferred by Article 22(8)?

(5) Are Member States precluded by the Directive, as amended, from providing for joint and several liability of taxpayers or from requiring one taxpayer to provide security for tax due from another in order to prevent abuse of the VAT system and protect revenues properly due under that system, if such measures comply with the aforesaid general principles?’

11. Written observations have been submitted by the Federation, the United Kingdom Government, the German Government, Ireland, the Cypriot Government, the Netherlands Government, the Portuguese Government and the Commission. At the hearing held on 5 October 2005 the Court heard oral argument from the United Kingdom Government, the Federation, Ireland and the Commission.

III – **Assessment**

12. I shall begin my assessment with a consideration of the questions dealing with Article 21(3) of the Sixth Directive. After that, I shall consider the questions relating to Article 22(8).

13. At the outset, it is worth recalling that, in proceedings brought under Article 234 EC, it is not for the Court to determine whether national rules are compatible with Community law. The role of the Court is confined to providing an interpretation of Community law in order to enable the national court to make such a determination. (3)

A – *On the first and third questions*

14. By its first and third questions the referring court essentially asks whether and to what extent Article 21(3) of the Sixth Directive confers a power on the Member States to make a person jointly and severally liable for payment of VAT with another person.

15. The Federation argues that Article 21(3) authorises Member States to provide for joint and several liability, but that this power should be interpreted strictly. According to the Federation Article 21(3) only grants a power to Member States to impose joint and several liability in situations where Article 21(1) and Article 21(2) identify pairs of individuals that might be made jointly liable. In this regard, the Federation refers to the four situations mentioned in Article 21(1)(a), second subparagraph, Article 21(1)(c), Article 21(2)(a) and Article 21(2)(b). The Federation furthermore submits that Member States must respect general principles of Community law when they choose to impose joint liability pursuant to Article 21(3).

16. The United Kingdom Government submits that Article 21(3) allows Member States to provide that any person may be made jointly and severally liable for payment of VAT with any person who is made so liable under Article 21(1) or (2), subject only to the general principles of Community law. According to the United Kingdom Government, the opening words of Article 21(3) refer to all of the situations in Article 21(1) and (2), not just some of them. The Portuguese Government, Ireland, the Cypriot Government, and the Commission are essentially of the same view as the United Kingdom.

17. The Netherlands Government argues that a measure such as section 18 of the Finance Act falls outside the scope of the Sixth Directive, because the measure does not concern the levying of VAT but its collection. In this regard the Netherlands refers, inter alia, to the order of the Court in Case C-395/02 *Transport Service*, where it was held that, as a rule, it is for the Member States to lay down the conditions under which the tax authorities may recover VAT, while remaining within the limits imposed by Community law. (4) Referring, in particular, to the judgment in *Molenheide and Others* (5) the Netherlands Government submits that Member States are authorised, in the matter of the collection of VAT debts, to enact a provision under which a person may be held jointly and severally liable for payment of VAT debt unpaid by another, subject to the limits stemming from Community law, including the principles of proportionality and legal certainty.

18. I shall first consider the argument that a measure such as that in the present case does not require a legal basis in the Sixth Directive.

19. A distinction must be made between the establishment of liability for payment of VAT and measures relating merely to the recovery of VAT. It follows, inter alia, from the judgment in *Molenheide and Others* that Member States are allowed to adopt measures to protect themselves against the risk of making repayments where no genuine VAT credit exists, (6) such as rules governing the proof of the right to deduct VAT (7) or rules specifying the information to be contained in invoices grounding a right to deduct. (8) In *Transport Service*, which concerned a supply which was wrongly, but allegedly in good faith, invoiced as being exempt from VAT, the Court stated that it is for Member States to lay down the conditions under which the tax authorities may recover VAT, since the Sixth Directive contains no provision relating to that question. (9) Yet, this case-law only concerns the recovery and collection of VAT. The establishment of liability for payment of VAT – an issue which logically precedes the question of recovery or collection – is specifically addressed in Article 21 of the Sixth Directive. In respect of the establishment of liability, Member States must therefore strictly comply with the harmonised rules laid down in the directive. I shall therefore turn to the arguments relating to the interpretation of Article 21(3).

20. Article 21(3) provides that '[i]n the situations referred to in paragraphs 1 and 2, Member States may provide that someone other than the person liable for payment of the tax shall be held jointly and severally liable for payment of the tax'.

21. In my view, the Federation's assertion that Article 21(3) only refers to *some* of the situations covered by Article 21(1) and (2) is incorrect. The wording of Article 21(3) suggests nothing to that

effect. Nor does the Federation's reading of Article 21(3) follow from the system of the VAT directive. Certainly, Article 21(3) provides an exception to the general principle that there should be only one person liable for payment per type of transaction, but this exception exists for reasons of ensuring the collection of tax and for the prevention of abuse, purposes which are recognised and positively encouraged by the Sixth Directive. (10)

22. The Federation argues that its restrictive reading of Article 21(3) is supported by the legislative history of Article 21. Indeed, prior to the adoption of Directive 2000/65, which introduced the present Article 21(3), the possibility of holding another person liable for payment of VAT appears to have been more limited. (11) However, in my view, this is not sufficient ground to interpret Article 21(3) contrary to its apparent meaning, namely that the words 'the situations referred to in paragraphs 1 and 2' relate to all situations mentioned in Article 21(1) and 21(2).

23. Naturally, this does not mean that, under Community law, tax authorities have *carte blanche* to impose joint and several liability for payment of VAT. When implementing provisions of the Sixth Directive national authorities are bound to observe the general principles of Community law. (12) Among those are, as the referring court correctly observed, the principles of legal certainty and of proportionality.

24. In this regard, it will be recalled that the principle of legal certainty requires measures adopted under Article 21(3) of the Sixth Directive to be unequivocal and their application to be predictable for those who are subject to it, (13) while the principle of proportionality requires measures to be appropriate in view of the aim which they seek to achieve. (14)

25. In the present context, the national court will have to strike a balance between the need to ensure the collection of VAT and the interest in ensuring that regular trade is not rendered unreasonably difficult by the threat of liability for the non-payment of VAT owed by another.

26. The Federation submits that the presumptions contained in section 77A, subsection 6, of the VAT Act 1994, run counter to the general principles of Community law because it is extremely difficult to identify an open market price in the markets for mobile phones and CPUs and therefore to recognise an offer as being made below that open market price. According to the Federation, joint liability on all undertakings in the same supply chain, particularly when based on presumptions related to the price on previous supplies, introduces financial risks which are unacceptable to investors. In practice, it is impossible for traders to investigate a supply chain beyond their immediate customers and suppliers. As a consequence, traders cannot protect themselves adequately, regardless of how much due diligence they show and despite the fact that they may be innocent of any wrongdoing.

27. In my opinion, Member States may, under the Sixth Directive, hold a person liable for payment of VAT when, at the time he effected the transaction, he knew or reasonably ought to have known that VAT would go unpaid in the supply chain. (15) In this respect, the national tax authorities may rely on presumptions of such knowledge. Nevertheless, those presumptions must not *de facto* bring about a system of strict liability.

28. It follows that presumptions of VAT fraud must arise from circumstances, indicative of VAT fraud, of which traders may reasonably be expected to have acquired knowledge. Member States may impose a duty on traders to be vigilant and to inform themselves as to the background of the goods in which they are trading. However, this duty must not place too heavy a burden on traders who take the necessary precautions to ensure that they are trading in good faith.

29. In addition, the presumptions must be rebuttable, without demanding evidence of facts that are excessively difficult for traders to ascertain. (16)

30. If these requirements are not fulfilled, the application of presumptions would effectively undermine the imperative that a person can only be held liable for payment of VAT when he knew or reasonably ought to have known that VAT would go unpaid. That would be tantamount to introducing strict liability through the backdoor.

31. The appraisal of the system of presumptions contained in section 77A, subsection 6, of the VAT Act 1994 in light of these criteria must be left to the national court, whose task it is to review whether the national rules and practice at issue are compatible with Community law. (17)

B – *On the second and fourth questions*

32. By its second and fourth questions the referring court asks whether and to what extent Article 22(8) of the Sixth Directive authorises Member States to impose joint and several liability and whether Article 22(8) allows Member States to require a person other than the person liable for tax to provide security for the payment of tax.

33. The United Kingdom Government contends that, even if authority for the provisions imposing joint and several liability cannot be inferred from Article 21, Article 22(8) provides such authority. According to the United Kingdom Government that provision permits Member States to provide that any person may be made jointly and severally liable for payment of VAT with any person who is made so liable under Article 21(1) or (2) of the Sixth Directive, or to provide that one person may be required to provide security for the VAT due from another provided that the provisions in question are deemed necessary for the correct collection of VAT and for the prevention of evasion and are subject to the general principles of Community law.

34. The Federation argues, on the contrary, that Article 22(8) does not permit Member States to introduce measures imposing obligations on any person other than the taxable person as identified under Article 21 of that directive.

35. Ireland argues, in a similar vein, that Article 22(8) cannot itself constitute the basis for joint and several liability. Member States are allowed, subject to the general principles of Community law, to provide that any person made liable for payment of VAT under Article 21(3) may be required under Article 22(8) to provide security for tax due from another person. The Portuguese and the Cypriot Governments essentially support that view.

36. Likewise, the Commission submits that Article 22(8) of the Sixth Directive does not permit Member States to extend liability for payment of VAT to persons who are not so liable under Article 21 of that directive. Nor does Article 22(8) of itself permit Member States to provide that one person may be required to provide security for the VAT due from another. However, once joint and several liability has been established pursuant to a measure adopted on the basis of Article 21(3) of the Sixth Directive, Article 22(8), in conjunction with Article 22(7) thereof, makes it possible to impose on any person made jointly and severally liable for payment the obligation to provide security for the sums due, subject to the general principles of Community law.

37. I concur with that analysis. Article 22(8) permits Member States to ‘impose other obligations which they deem necessary for the correct collection of VAT and for the prevention of evasion’. However, that provision does not create a liability for payment of tax which is not provided for elsewhere in the Sixth Directive. The establishment of liability for payment of VAT is dealt with in Article 21 of the directive. Article 22 of the directive provides for specific administrative obligations

for persons thus liable and Article 22(8) allows Member States to impose on *those persons* obligations other than those expressly laid down in the previous paragraphs of Article 22. (18) Accordingly, the establishment of joint and several liability can only be based on Article 21(3) while the administrative obligations entailed by such liability follow from Article 22. In this regard, the Commission has rightly pointed out that Article 22(7) requires Member States to take the necessary measures to ensure that persons who are jointly and severally liable for the payment of VAT in accordance with Article 21(3) are to comply with the obligations set out in Article 22. Article 22(7) and Article 22(8) thus allow Member States to require any person made liable for payment of VAT under Article 21(3) to provide security for that payment. However, Article 22(8) does not provide a basis for extending liability for payment of VAT, nor does that provision permit Member States to require from a person who is not liable for payment of VAT under Article 21 security for payment of VAT due from another.

C – *On the fifth question*

38. In light of the answer to the previous questions it is not necessary, in my view, separately to address the fifth question referred for a preliminary ruling.

IV – **Conclusion**

39. I therefore propose that the Court should give the following answers to the questions referred to it for a preliminary ruling:

(1) Article 21(3) 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, permits Member States to provide that any person may be made jointly and severally liable for payment of VAT with any person who is made so liable by Article 21(1) or (2) of the same directive, subject to the general principles of Community law, such as the principle of proportionality and the principle of legal certainty.

In light of these principles, a person may be held jointly and severally liable for payment of VAT when, at the time he effected the transaction, he knew or ought to have known that VAT would go unpaid in the supply chain. In this respect, the national tax authorities may rely on presumptions, provided that these presumptions are rebuttable and that they arise from circumstances, indicative of the occurrence of VAT fraud, which traders may be expected to know or reasonably be required to inform themselves of.

(2) Article 22(8) of the same directive does not permit Member States to provide that any person may be made jointly and severally liable for payment of VAT with any person who is made so liable by Article 21(1) or (2) of the directive, nor does Article 22(8) permit Member States to require a person who is not liable for payment of VAT in accordance with Article 21 of the directive to provide security for the payment of VAT due from another.

1 – Original language: Portugese.

2 – 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), as amended by Council Directive 2000/65/EC of 17 October 2000 amending Directive 77/388 as regards the determination of the person liable for payment of value added tax (OJ 2000 L 269, p. 44) (hereinafter the ‘Sixth Directive’).

3 – See, for example, Joined Cases 209/84 to 213/84 *Asjes and Others* [1986] ECR 1425, paragraph 12; Case C-292/92 *Hünermund and Others* [1993] ECR I-6787, paragraph 8; Case C-

130/93 *Lamaire* [1994] ECR I-3215, paragraph 10; Joined Cases C-304/94, C-330/94, C-342/94 and C?224/95 *Tombesi and Others* [1997] ECR I-3561, paragraph 36; Case C-410/96 *André Ambry* [1998] ECR I-7875, paragraph 19; Case C-28/99 *Verdonck and Others* [2001] ECR I-3399, paragraph 28; Case C-399/98 *Ordine degli Architetti and Others* [2001] ECR I-5409, paragraph 48; Joined Cases C-285/99 and C-286/99 *Lombardini and Mantovani* [2001] ECR I-9233, paragraph 27; and Case C-151/02 *Jaeger* [2003] ECR I-8389, paragraph 43.

4 – [2004] ECR I-1991, paragraph 29.

5 – Joined Cases C-286/94, C-340/95, C-401/95 and C-47/96 [1997] ECR I-7281, paragraph 43.

6 – *Molenheide and Others*, cited above, paragraph 41, and the Opinion of Advocate General Fennelly in that case, at point 39.

7 – As in *Molenheide.* See also Case C-85/95 *Reisdorf* [1996] ECR I-6257, paragraph 29.

8 – Joined Cases 123/87 and 330/87 *Jeunehomme and Others* [1988] ECR 4517, paragraph 16.

9 – Cited above, paragraph 27. The Court held that the principle of tax neutrality did not preclude Member States from recovering VAT, after the event, from a taxable person who has wrongly invoiced a supply as being exempt from VAT.

10 – See, as regards the purpose of preventing abuse, my opinion in Case C-255/02 *Halifax*, Case C?419/02 *BUPA* and Case C-223/03 *University of Huddersfield*, in particular point 73 and the case-law cited there.

11 – For example, Article 21(1)(b) of the Sixth Directive, before it was last amended, provided that the supplier could be held jointly and severally liable in cases of supplies of intangible services, while Article 21(1)(c) did not mention the possibility of joint and several liability in relation to any person who mentions the value added tax on an invoice. However, the possibility of imposing joint liability expressly existed under Article 21(1)(a) in respect of persons liable for payment where the taxable supply of goods or services is effected by a taxable person established abroad. See also: Terra, B. and Kajus, J., ‘Directive 2000/65/EC on the Determination of the Person Liable for Payment of VAT; Representation Rules Simplified’, *International VAT Monitor*, Vol. 11, No. 6 (2000), p. 272-273. These authors point to recital 9 of the preamble to Directive 2000/65 which says that Member States may *continue* to provide for joint and several liability. From this they conclude that Article 21(3) was not intended to *extend* the possibility of holding another liable. However, in my view, the recital should be read, more generally, as indicating that Article 21 continues to allow for the imposition of joint and several liability, and that, in any event, the amendment was not intended to *restrict* this possibility.

12 – See, inter alia, Case 316/86 *Krücken* [1988] ECR 2213, paragraph 22.

13 – See, by analogy, Case 70/83 *Kloppenburg* [1984] ECR 1075, paragraph 11, and Case C-17/01 *Sudholz* [2004] ECR I-4243.

14 – E.g. *Molenheide and Others*, cited above, paragraph 47.

15 – See, by analogy, my opinion in Joined Cases C-354/03, C-355/03 and C-484/03 *Optigen and Others* [2005] ECR I-0000, point 41.

16 – *Molenheide and Others*, cited above, paragraph 52 and, by analogy, Case C-435/03 *British American Tobacco* [2005] ECR I-0000, paragraph 28, and my opinion in that case at point 17.

17 – See, by analogy, *Molenheide and Others*, paragraph 49 and the case-law cited in footnote 3.

18 – See also *Reisdorf*, cited above, paragraph 27.