OPINION OF ADVOCATE GENERAL

KOKOTT

delivered on 14 June 2012 (1)

Case C-234/11

TETS Haskovo AD

v

Direktor na Direktsia ‘Obzhalvane i upravlenie na izpalnenieto’ — Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

(Reference for a preliminary ruling from the Administrativen Sad Varna (Bulgaria))

(Tax legislation — Value added tax — Articles 185 and 187 of Directive 2006/112/EC — Adjustment of deductions in connection with the demolition of buildings)

I – **Introduction**

1. The European Union’s common system of value added tax (‘VAT’) is characterised by the deduction of input tax. The deduction relieves each undertaking’s input of the tax burden, but normally only where VAT is charged also on its output. The Court describes it thus: The deduction of input taxes is linked to the collection of output taxes. (2)

2. But what happens where this link between input and output is broken: For example, where an undertaking cannot sell goods which have been bought because the warehouse has burnt down or all the goods have been stolen?

3. These matters are governed by the provisions of EU law on the adjustment of deductions which form the subject-matter of the present request for a preliminary ruling. Fortunately, it does not concern unpleasant events such as fire or theft. Rather, the undertaking itself took the initiative and demolished several of its buildings to make way for new buildings. The Court must now rule whether adjustment of the original deduction is necessary in such a case.

II – **Legal context**

A – *EU law*

4. In EU law VAT in respect of the period at issue in the main proceedings is governed by Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (3) (‘the VAT Directive’).

5. The provisions of Chapter 1 of Title X of that directive govern the ‘Origin and scope of right

of deduction'. In that respect, Article 168 of the VAT Directive lays down the following requirements in extract:

'In so far as the goods … are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

(a) the VAT due or paid in that Member State in respect of supplies to him of goods …, carried out or to be carried out by another taxable person.'

6. Articles 184 to 192 of Chapter 5 of Title X of the VAT Directive contain the provisions on the 'Adjustment of deductions'. Article 184 lays down the following general rule in that respect:

'The initial deduction shall be adjusted where it is higher or lower than that to which the taxable person was entitled.'

7. Article 185 contains the following special requirement on adjustment:

'(1) Adjustment shall, in particular, be made where, after the VAT return is made, some change occurs in the factors used to determine the amount to be deducted, for example where purchases are cancelled or price reductions are obtained.

(2) By way of derogation from paragraph 1, no adjustment shall be made in the case of transactions remaining totally or partially unpaid or in the case of destruction, loss or theft of property duly proved or confirmed, or in the case of goods reserved for the purpose of making gifts of small value or of giving samples, as referred to in Article 16.

However, in the case of transactions remaining totally or partially unpaid or in the case of theft, Member States may require adjustment to be made.'

8. Articles 187 to 191 lay down a special system for the adjustment of deductions in the case of capital goods. Article 187 provides as follows in extract:

'(1) In the case of capital goods, adjustment shall be spread over five years including that in which the goods were acquired or manufactured.

…

In the case of immovable property acquired as capital goods, the adjustment period may be extended up to 20 years.

(2) The annual adjustment shall be made only in respect of one-fifth of the VAT charged on the capital goods, or, if the adjustment period has been extended, in respect of the corresponding fraction thereof.

The adjustment referred to in the first subparagraph shall be made on the basis of the variations in the deduction entitlement in subsequent years in relation to that for the year in which the goods were acquired ...'

9. Furthermore, Article 19 of the VAT Directive contains the following special system relating to the consequences for tax purposes of a non-cash contribution:

'In the event of a transfer, … as a contribution to a company, of a totality of assets or part thereof, Member States may consider that no supply of goods has taken place and that the person to

whom the goods are transferred is to be treated as the successor to the transferor.'

B – *Bulgarian law*

10. The Republic of Bulgaria implemented the VAT Directive by means of the Zakon za danak varhu dobavenata stoynost (Law on value added tax; 'the Bulgarian Law on VAT').

11. Article 79 of the Bulgarian Law on VAT lays down the following provisions on a deduction which has been made:

'…

(3) Any registered person who has wholly or partly deducted input tax in respect of any goods produced, purchased, acquired or imported by him shall calculate and be liable for tax in the amount of the deduction made, where the goods were destroyed, shrinkages were established or the goods were classified as wastage, or their intended use was modified and the new intended use no longer gives entitlement to deduction.

(4) The adjustment under Paragraphs 1 and 3 shall be made in the tax period during which the relevant circumstances have occurred …

…

(6) Notwithstanding Paragraphs 1 and 3, the taxable person shall be liable, in respect of goods and services which are capital goods … for tax in an amount calculated according to the following formula: …'

12. As regards exceptions from the adjustment of deductions, Article 80 of the Bulgarian Law on VAT provides inter alia as follows:

'…

(2) The adjustments referred to in Article 79(3) shall not be made in cases of:

1. destruction, shrinkage or wastage caused by *force majeure*, ...;

2. destruction, shrinkage or wastage caused by mishaps or accidents which the person can prove were not caused through his fault.'

13. In addition, Article 10 of the Bulgarian Law on VAT provides for the following consequences for VAT purposes of a non-cash contribution:

'(1) No supply of goods or provision of services shall be deemed to have taken place where the supply or the service to the transferee by the person being transformed, making the transfer or making the contribution results from

…

3. a non-cash contribution to a commercial company.

(2) In the cases covered by Paragraph 1, the person receiving the goods or services shall enter into legal succession in respect of all related rights and obligations under this Law, including the right to deduct VAT and the obligation to adjust the deduction made.'

III – **Facts and the questions referred for a preliminary ruling**

14. At issue in the main proceedings is the amount of the VAT liability of TETS Haskovo AD, a company incorporated under Bulgarian law ('the taxable person'), in respect of the period January and February 2010.

15. In August 2008 it was decided to effect a capital increase for the taxable person in the form of a non-cash contribution. That contribution included three buildings for energy production, namely a cooling tower, a chimney and another building, which the taxable person demolished in January and February 2010. The demolition was part of a plan to reconstruct and modernise a thermal power station on the land. The scrap metal salvaged from the demolition was sold subject to VAT.

16. Before the non-cash contribution was made those buildings were owned by Finans inzhenering AD ('Finans inzhenering'). It had acquired the buildings from the Municipality of Haskovo in April 2008 and made a deduction of income tax in that regard. A deduction of around 1.5 million lev ('BGN'), which is the equivalent of around EUR 767,000, was attributable to the buildings which were subsequently demolished.

17. The Bulgarian tax administration considers that this deduction in connection with the demolition of the buildings must be partially adjusted, pursuant to Article 79(3) and (6) of the Bulgarian Law on VAT. It issued a tax assessment notice according to which the taxable person, as the legal successor of Finans inzhenering, is liable to pay an amount of around BGN 1.3 million in VAT for the months of January and February 2010.

18. The referring court has to rule on the action which the taxable person brought against that notice. It considers that the Court must answer the following questions in order for it to do so:

'(1) How is the expression "destruction of property" for the purposes of Article 185(2) of Directive 2006/112 to be interpreted, and are the motives for the destruction and/or the conditions under which it takes place relevant for the purposes of the adjustment to the deduction made upon acquisition of the property?

(2) Is the demolition of capital assets, duly proved, with the sole aim of creating new, more modern capital assets with the same purpose to be regarded as a modification of the factors used to determine the amount to be deducted within the meaning of Article 185(1) of Directive 2006/112?

(3) Is Article 185(2) of Directive 2006/112 to be interpreted as permitting the Member States to make adjustments in the case of the destruction of property where its acquisition remained totally or partially unpaid?

(4) Is Article 185(1) and (2) of Directive 2006/112 to be interpreted as precluding a national provision like Article 79(3) of the Law on VAT and Article 80(2)(1) of the Law on VAT, which provides for an adjustment of the deduction made in cases of destruction of property upon the acquisition of which a total payment of the basic amount and the tax calculated was made, and which makes the non-adjustment of a deduction dependent on a condition other than payment?

(5) Is Article 185(2) of Directive 2006/112 to be interpreted as ruling out the possibility of an adjustment to the deduction in the case of the demolition of existing buildings with the sole aim of creating new, more modern buildings in their place which fulfil the same purpose as the demolished buildings and are used for transactions which give entitlement to deduction of input

VAT?’

IV – **Legal assessment**

19. The questions are referred against the background of a situation where, pursuant to Article 10(1)(3) and (2) of the Bulgarian Law on VAT, the taxable person whose deduction was adjusted is the legal successor of Finans inzhenering, which made the original deduction. I will use this legal situation as a basis for examining the questions referred.

20. However, in my view it should be made clear that Article 19 of the VAT Directive permits the Member States to lay down such rules on legal succession only where a totality of assets or part thereof is transferred. With regard to the predecessor provision, Article 5(8) of the Sixth Directive, (4) the Court ruled that that concept is to be understood as meaning the transfer of a business or of an independent part of an undertaking, which constitute an undertaking or a part of an undertaking which is capable of carrying on an independent economic activity, but *not* as meaning the simple transfer of assets. (5) Whether or not these requirements are satisfied in the main proceedings cannot be deduced from the information provided in the order for reference. Therefore, the referring court will have to assess, if necessary, whether in the main proceedings Article 10(1)(3) and (2) of the Bulgarian Law on VAT can be applied in compliance with Article 19 of the VAT Directive.

21. The national court has referred five questions on the interpretation of Article 185 of the VAT Directive. I think it would be helpful to examine these questions below in a different order which is consistent with the scheme of this provision. In interpreting the VAT Directive I will also cite the case-law of the Court on the Sixth Directive which was essentially only intended to be recast by the VAT Directive currently in force.

A – *Question 2: application of the adjustment mechanism*

22. As is consistent with the structure of Article 185 of the VAT Directive, it is necessary first to answer Question 2 which concerns the first paragraph of that provision and therefore the application in principle of the adjustment mechanism. By this question the national court wishes to know whether the demolition of capital assets, duly proved, which has the sole aim of creating new, more modern capital assets with the same purpose, in principle constitutes a case of adjustment of deductions.

1. Special system for capital goods

23. In answering this question, it must first be borne in mind that a special system of adjustment of deductions relating to capital goods exists (6) and is to be found in Articles 187 to 191 of the VAT Directive. Goods which are used durably and whose acquisition costs are written down are to be understood as capital goods within the meaning of these provisions. (7) Buildings are the classical example of such capital goods and therefore the abovementioned special scheme applies in the present case.

24. The first paragraph of Article 187(2) of the VAT Directive provides for an annual adjustment in respect of capital goods. The second paragraph of that provision makes that adjustment dependant on the ‘variations in the deduction entitlement in subsequent years in relation to that for the year in which the goods were acquired’. Consequently, the right to deduct must be determined afresh in respect of each current year of the adjustment period. Where this right does not exist in a particular year, one-fifth of the deduction made in the year of acquisition must be adjusted and thus paid back, pursuant to the first paragraph of Article 187(2) of the VAT Directive. This review is repeated annually until the end of the adjustment period.

25. This on-going determination of the right to deduct, for which Article 187(2) of the VAT Directive makes provision in respect of capital goods during the adjustment period, is in line with the requirements laid down in the provisions governing adjustment contained in Articles 185(1) and 184 of the directive. In both cases a subsequent variation in the deduction originally granted or in the factors relevant to determination of the deduction are also necessary for application of the adjustment mechanism. For this, a subsequent right to deduct must be determined in each case. Therefore, it may be left open whether Article 187 independently provides for application of the adjustment mechanism in respect of capital goods or for its part requires application of the provisions governing adjustment contained in Articles 185(1) or 184 of the VAT directive. In any event, a subsequent variation in the deduction must have occurred so that the adjustment mechanism can apply in principle in the case of capital goods.

26. It is true that the second paragraph of Article 187(2) of the VAT Directive — like Article 185(1) or Article 184 thereof — does not explicitly lay down how the subsequent right to deduct in each current year of the adjustment period is to be determined. Article 167 et seq. in Chapter 1 of Title X of the VAT Directive govern only the origin of the right to deduct, that is to say the right in the year in which investment goods were acquired. However, in my view these provisions must be applied *mutatis mutandis* to determine the right to deduct in each current year.

27. This application *mutatis mutandis* gives rise to a certain modification in the examination of the right to deduct. For example, Article 168 of the VAT Directive lays down the requirement, as regards the origin of the right to deduct, that the goods concerned must be used for the purposes of the taxed transactions. However, it is not normally possible to establish whether capital goods are *actually* used for such purposes at the time the right arises. In accordance with Articles 63 and 167 of the VAT Directive, the right to deduct arises in principle when the goods are supplied to the taxable person. (8) Of necessity, the actual use for the purposes of the taxed transactions follows only afterwards. Therefore, in principle only the *intended use*, confirmed by objective evidence, is decisive as regards the origin of the right to deduct. (9)

28. On the other hand, the *actual* use of goods can be taken into consideration retrospectively for the purpose of adjusting deductions. The right to deduct for each current year of the adjustment period must then be determined on the basis of that retrospective consideration. This approach is consistent with the purpose of adjusting deductions. In particular in the case of capital goods acquired by the taxable person, the objective is to ensure that deductions of input VAT reflect the use of the capital goods for the purposes of taxable transactions. (10)

2. Variation in the right to deduct in January and February 2010

29. Therefore, in the present case an adjustment can be made pursuant to the second paragraph of Article 187(2) of the VAT Directive only if the demolition of the buildings varied the right to deduct in January and February 2010. That would be the case under Article 168(a) of the VAT Directive if the buildings were as a result no longer used for the purposes of the taxed transactions in January and February 2010.

a) Criterion relating to direct and immediate link

30. This is not the first time that the Court has considered when use for the purposes of the taxed transactions within the meaning of the above provision is to be assumed. According to settled case-law, the existence of a direct and immediate link between a particular input transaction and a particular output transaction or transactions giving rise to entitlement to deduct is, in principle, necessary before the taxable person is entitled to deduct. (11)

31. According to settled case-law so far, this requirement applies to both goods and services which the taxable person has acquired as input transactions. (12) It is true that recently the Court ruled in its judgment in *Eon Aset Menidjmunt* that the criterion relating to input transaction varies according to whether a service or capital goods are being acquired and requires a direct and immediate link with output transactions only where services are acquired. (13) However, in my view that does not mark a departure from previous case-law in relation to the acquisition of goods. In that case the Court clearly differentiated in terms of supplies which are used from the beginning in part for private use and in part for business use. On the basis of the Court's case-law there are in this area particular features which could provide grounds for such differentiation, (14) but which are irrelevant in the present case.

32. Moreover, the Court has consistently held that for there to be the direct and immediate link required by the Court, the costs incurred in acquiring the input transactions must be part of the cost components of the taxable output transactions, that is to say they must be incorporated into their price. (15) The Court has also made it clear that this also covers the input transactions attributable to the taxable person's general overheads. In the case of such input transactions the required link exists not with certain output transactions but rather with the taxable person's economic activity as a whole, that is to say all of his output transactions. (16)

33. These requirements which the Court lays down on the origin of the right to deduct also require a certain degree of adaptation in connection with the adjustment of deductions. As has been explained, (17) under the second paragraph of Article 187(2) the right to deduct in respect of the current years of the adjustment period is normally to be determined on the basis of the *actual* use of capital goods. In that case the link required by the Court must be between the actual use of the capital goods and the taxed output transactions. A link with the input transaction, that is to say the acquisition of the capital goods, is relevant only to the origin of the right to deduct since no actual use yet exists at that time.

34. Clearly, these abstract requirements of the Court are not straightforward to implement in a specific case. It itself pointed out early on that the link between input and output transactions necessary for deduction cannot be described more accurately in abstract terms on account of the large variety of economic activities. Therefore, in principle it is for the national court to apply the 'direct and immediate link' test specifically to the facts of each case before it. (18)

b) Application in the present case

35. However, I believe that in a case such as the present there is a direct and immediate link between the use of the buildings in January and February 2010 and the taxed output transactions.

36. Firstly, this follows from the fact that the scrap metal salvaged from the demolition of the buildings was sold subject to VAT. In that respect it would appear easy to establish a direct and immediate link. Secondly, the expenditure in acquiring the buildings which contained the metal was certainly a cost component in their sale. In that regard it is irrelevant that the purchase price of the demolished buildings, or the value attributed to them in connection with the non-cash contribution, clearly significantly exceeds the proceeds from the scrap. The right to deduct is not dependent on the economic success of the taxable person.

37. Nor is this analysis contradicted by the fact that the buildings were ‘destroyed’ by the demolition, as the national court puts it. The demolition of a building and the economic exploitation of the parts salvaged from it constitutes to a certain extent consumption of goods in the taxable person’s production process. As the Commission has also stressed, such consumption of goods is an entirely normal form of use for the purposes of Article 168(a) of the VAT Directive. Accordingly, the Court ruled in connection with the adjustment of deductions that there is no change in the factors within the meaning of what is now Article 185(1) of the VAT Directive where goods or services were entirely consumed in the course of the business activity. (19)

38. Furthermore, a direct and immediate link can exist between the demolition of the buildings in January and February 2010 and energy services which are taxed later. This is particularly so in view of the fact that the demolished buildings were clearly acquired with land and other buildings. The associated acquisition of this immovable property in turn undoubtedly constitutes a cost element of the subsequent energy services produced on this land. I concur with the Commission’s view that in any event the demolition of some of the buildings does not alter this finding in any way where — as in the present case — it forms part of the facility’s modernisation. Therefore, the acquisition and demolition of the buildings ultimately serve the purpose of providing energy services which are the taxed output transactions.

39. Furthermore, whether or not the reconstruction of the thermal power station is successful and energy services are actually supplied is irrelevant. According to the case-law, in principle a right to deduct also exists in the start-up phase of an economic activity which never reaches the transaction stage. Entitlement to deduct in respect of preparatory acts is retained, even if the economic activity envisaged did not give rise to taxed transactions. (20)

40. Consequently, in the present case there appears to be a right to deduct in respect of the demolished buildings also in January and February 2010 and therefore the adjustment mechanism does not apply from the outset. I should point out that in this case — applying Article 188(1) of the VAT Directive *mutatis mutandis* — adjustment of the deduction would appear to be ruled out also in respect of the rest of the adjustment period.

3. Destruction for the purposes of the first paragraph of Article 185(2) of the VAT Directive

41. No doubt is cast on this finding by the fact that the first subparagraph of 185(2) of the VAT Directive provides that no adjustment of the deduction under paragraph 1 is to be made ‘in the case of destruction … of property duly proved or confirmed’. It could be concluded from this provision that in principle an adjustment of the deduction under Article 185(1) of the VAT Directive must be made in the case of destruction of property because otherwise the first subparagraph of paragraph 2 thereof would not have had to lay down an exception for that case.

42. For the time being, it can be left open whether Article 185 of the VAT Directive is applicable

at all in the case of property which constitutes capital goods. This could be doubtful, as a special scheme for capital goods exists in Articles 187 to 191 of the VAT Directive which lay down their own requirements on adjustment and Articles 186 and 189 contain separate and substantively different powers to flesh out Articles 184 and 185 and Articles 187 and 188 of the VAT Directive respectively.

43. In any event, the term ‘destruction’ in the first subparagraph of Article 185(2) of the VAT Directive can be interpreted as covering only the destruction of property which is not carried out for the purposes of the taxed transactions of a taxable person. For example, where property is destroyed accidentally or for the private purposes of a taxable person, the adjustment mechanism contained in Article 185 of the VAT Directive is, in my view, also applicable in principle.

4. Abuse

44. Finally, I would like to consider the allegation of abuse which the Bulgarian Government and the Bulgarian tax administration have made at least implicitly in the present case. It is true that preventing possible tax evasion, avoidance and abuse is an objective recognised and encouraged by the Union’s VAT Directive. (21) According to the Court’s case-law, where a taxable person has pretended that he wished to pursue a particular economic activity, the tax authorities may claim, with retroactive effect, repayment of the sums deducted. (22) A taxable person can also be denied the right to deduct where the transactions from which that right derives constitute an abusive practice. This presupposes inter alia that application of the VAT legislation results in the accrual of a tax advantage, the grant of which would be contrary to the provisions applied. (23)

45. However, in the circumstances at issue, there is nothing to suggest to the Court that such an allegation of abuse is justified in relation to VAT. In the course of its business activity the taxable person took investment decisions, the sense of which VAT legislation cannot in principle call into question. Consequently, the retention of the right to deduct in respect of the acquisition of subsequently demolished buildings is consistent with settled case-law, according to which the deduction system is meant to relieve the taxable person entirely of the burden of the VAT paid or payable in the course of all his economic activities. (24)

46. Retention of the deduction in the present case is also consistent with the aims of the adjustment mechanism. It is intended, firstly, to avoid giving an unjustified economic advantage to a taxable person by comparison with a final consumer. (25) No such advantage can be discerned in the present case since the taxable person cannot use the buildings for private purposes following demolition. The adjustment mechanism is intended, secondly, to ensure a correspondence between deduction of input tax and charging of output tax. (26) I have demonstrated this correspondence above. (27)

47. Whether or not the valuation of the buildings connected with the non-cash contribution is correct is another question. It might be wondered whether buildings, which are demolished shortly afterwards, thus necessitating a write-down, should be shown in the balance sheet as having a value of BGN 8.9 million. However, the issue here is at most one of taxation of gains.

48. With regard to VAT, by contrast, this question is irrelevant. The Court has consistently held that it is the consideration actually received and not a value assessed according to objective criteria that is decisive in determining the basis of assessment. (28) Therefore, even if a taxable person objectively paid an excessively high price to acquire a property, the amount of the deduction remains unaffected.

5. Interim conclusion

49. The answer to Question 2 must therefore be that under Article 187(2) of the VAT Directive destruction of capital goods with the aim of creating new, more modern goods with the same purpose does not lead to adjustment of the deduction where the destruction constitutes use for the purposes of taxed transactions within the meaning of Article 168 of the directive.

B – *Question 4: Compatibility of the national provision*

50. By its fourth question the national court wishes to know whether Article 185 of the VAT Directive precludes a national provision which provides for an adjustment of the deduction made in cases of destruction of property, upon the acquisition of which a total payment of the basic amount and the tax calculated was made, and which makes the non-adjustment of a deduction dependent on a condition other than payment.

51. It follows from my answer to Question 2 that the destruction of capital goods does not trigger application of the adjustment mechanism under Article 187(2) of the VAT Directive where the destruction constitutes use for the purposes of taxed transactions within the meaning of Article 168 of the directive. The answer to the fourth question referred by the national court must therefore be that a national provision which provides for adjustment of deductions in the case of the destruction of capital goods, irrespective of whether it is made for the purposes of taxed transactions, is incompatible with Articles 187(2) and 168 of the VAT Directive.

C – *The other questions*

52. Following the answers I have proposed to Questions 2 and 4 there is no need to answer the other questions referred. Questions 1, 3 and 5 concern the interpretation of Article 185(2) of the VAT Directive which set out the exceptions to the obligation to adjust. Giving answers to these questions in the main proceedings is clearly relevant only if the adjustment mechanism applies in principle. However, as I stated above, (29) I do not consider that to be the case.

V – **Conclusion**

53. In the light of the foregoing, I propose that the Court should reply as follows to the questions referred by the Administrativen Sad Varna:

(1) Article 187(2) of the VAT Directive must be interpreted as meaning that destruction of capital goods with the aim of creating new, more modern goods with the same purpose does not lead to adjustment of the deduction of input tax where destruction constitutes use for the purposes of taxed transactions within the meaning of Article 168 of the directive.

(2) A national provision which provides for adjustment of deductions in the case of the destruction of capital goods, irrespective of whether it is made for the purposes of taxed transactions, is incompatible with Articles 187(2) and 168 of the VAT Directive.

1 – Original language: German.

2 – Case C-184/04 *Uudenkaupungin kaupunki* [2006] ECR I-3039, paragraph 24.

3 – OJ 2006 L 347, p. 1.

4 – 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 (OJ 1977 L 145, p. 1).

5 – See Case C-497/01 *Zita Modes* [2003] ECR I-14393, paragraph 40; Case C-29/08 *SKF* [2009] ECR I-10413, paragraph 37; and Case C-444/10 *Schriever* [2011] ECR I-11071, paragraph 24.

6 – See Case C-63/04 *Centralan Property* [2005] ECR I-11087, paragraph 55.

7 – See *Centralan Property*, cited in footnote 6, paragraph 55.

8 – See Case C-153/11 *Klub* [2012] ECR, paragraph 36.

9 – See my Opinion of 1 March 2012 in Case C-334/10 *X*, pending, point 81.

10 – See *Centralan Property*, cited in footnote in 6, paragraph 77.

11 – See Case C-4/94 *BLP Group* [1995] ECR I-983, paragraph 19; Case C-98/98 *Midland Bank* [2000] ECR I-4177, paragraph 24; Case C-408/98 *Abbey National* [2001] ECR I-1361, paragraph 26; Case C-16/00 *Cibo Participations* [2001] ECR I-6663, paragraph 29; Case C-32/03 *Fini H* [2005] ECR I-1599, paragraph 26; Case C-255/02 *Halifax and Others* [2006] ECR I-1609, paragraph 79; Case C-435/05 *Investrand* [2007] ECR I-1315, paragraph 23; and *SKF*, cited in footnote 5, paragraph 57.

12 – See, inter alia, *Midland Bank*, cited in footnote 11, paragraph 20, and *SKF*, cited in footnote 5, paragraph 57.

13 – See Case C-118/11 *Eon Aset Menidjmunt* [2012] ECR, paragraphs 45 and 46.

14 – See *Eon Aset Menidjmunt*, cited in footnote 13, paragraph 53 et seq., and my Opinion in *X*, cited in footnote 9, point 23 et seq.

15 – See *Midland Bank*, cited in footnote 11, paragraph 30; *Abbey National*, cited in footnote 11, paragraph 28; *Cibo Participations*, cited in footnote 11, paragraph 31; *Investrand*, cited in footnote 11, paragraph 23; *SKF*, cited in footnote 5, paragraphs 57 and 60; and *Eon Aset Menidjmunt*, cited in footnote 13, paragraph 48.

16 – See *Midland Bank*, cited in footnote 11, paragraph 31; *Abbey National*, cited in footnote 11, paragraph 35; *Cibo Participations*, cited in footnote 11, paragraph 33; *Investrand*, cited in footnote 11, paragraph 24; *SKF*, cited in footnote 5, paragraph 58; and *Eon Aset Menidjmunt*, cited in footnote 13, paragraph 47.

17 – See point 27 et seq. above.

18 – See *Midland Bank*, cited in footnote 11, paragraph 25, and *SKF*, cited in footnote 5, paragraph 63.

19 – See Joined Cases C-322/99 and C-323/99 *Fischer and Brandenstein* [2001] ECR I-4049, paragraph 91.

20 – See Case C-110/94 *INZO* [1996] ECR I-857, paragraph 20, and *Fini H*, cited in footnote 11, paragraph 22.

21 – See Case C-504/10 *Tanoarch* [2011] ECR I-10853, paragraph 50 and the case-law cited therein.

22 – See *Klub*, cited in footnote 8, paragraph 48 and the case-law cited therein.

23 – See, inter alia, *Halifax and Others*, cited in footnote 11, paragraph 74, and *Tanoarch*, cited in footnote 21, paragraph 52.

24 – See, inter alia, Case 268/83 *Rompelman* [1985] ECR 655, paragraph 19, and *Klub*, cited in footnote 8, paragraph 35.

25 – Case C-72/05 *Wollny* [2006] ECR I-8297, paragraph 35.

26 – *Wollny*, cited in footnote 25, paragraph 36.

27 – See point 35 et seq. above.

28 – See, inter alia, Case 154/80 *Coöperatieve Aardappelenbewaarplaats* [1981] ECR 445, paragraph 13, and Case C-588/10 *Kraft Foods Polska* [2012] ECR, paragraph 27.

29 – See paragraph 22 et seq. above.