OPINION OF ADVOCATE GENERAL

KOKOTT

delivered on 22 April 2015 (1)

Case C?126/14

UAB ‘Sveda’

v

Valstybin? mokes?i? inspekcija prie Lietuvos Respublikos finans? ministerijos

(Request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas (Lithuania))

(Tax legislation — Value added tax — Article 168 of Council Directive 2006/112/EC — Deduction of input tax on the acquisition and manufacture of capital goods — Primary use for untaxed transactions — Secondary use for taxed transactions)

I – Introduction

1. This request for a preliminary ruling concerns the charging of value added tax (VAT) in relation to a Baltic mythology recreational path. A Lithuanian company provides this path to visitors free of charge. The tax authorities have therefore refused the company’s application to deduct the input VAT paid on the costs of creating the path. The company regards this decision as mistaken because ultimately the visitors are indeed meant to make some sort of payment, if not for using the path itself then at least for food and drink, souvenirs and other services provided by the company.

2. Determining who is right in the case in the main proceedings thus depends on how a direct and immediate link is to be established between input and output transactions, which in case-law is decisive for the question of VAT deduction. Although the abstract requirements for this link have been set out previously, their specific application may sometimes require further clarification, as in this case.

II – Legal framework

3. During the period to which the case in the main proceedings relates, VAT is governed in the European Union by Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (‘the VAT Directive’). (2)

4. The first subparagraph of Article 9(1) of the VAT Directive defines the term ‘taxable person’ as any person who, ‘independently, carries out in any place any economic activity, whatever the purpose or results of that activity’. The second subparagraph of the provision adds:

‘Any activity of producers, traders or persons supplying services, including mining and agricultural

activities and activities of the professions, shall be regarded as “economic activity”. The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.’

5. Under Article 2(1)(a) and (c) of the VAT Directive the ‘supply of goods’ and ‘services’ ‘for consideration within the territory of a Member State by a taxable person acting as such’ is taxable.

6. Article 26(1) of the VAT Directive adds:

‘Each of the following transactions shall be treated as a supply of services for consideration:

(a) the use of goods forming part of the assets of a business for the private use of a taxable person or of his staff or, more generally, for purposes other than those of his business, where the VAT on such goods was wholly or partly deductible;

…’

7. Article 168 of the VAT Directive provides for the following right of deduction of a taxable person:

‘In so far as the goods and services 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 or services, carried out or to be carried out by another taxable person;

…’

8. This provision corresponds to Article 17(2) 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, (3) which was in force until 31 December 2006. The case-law adopted by the Court in respect of this legislation will also be taken into consideration in this case.

9. Finally, Article 187 of the VAT Directive provides the following regarding the adjustment of the VAT deduction:

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

…

2. The annual adjustment shall be made only in respect of one fifth of the VAT charged on the capital goods …

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, manufactured or, where applicable, used for the first time.’

10. Lithuanian law contains provisions equivalent to those provisions of the VAT Directive.

III – **Main proceedings**

11. The company Sveda UAB (‘Sveda’) is the applicant in the main proceedings. The question

at issue in this dispute is its right of deduction.

12. In 2012 Sveda was working on the creation of a ‘Baltic mythology recreational/discovery path’ (‘the recreational path’). It created paths, steps, observation decks, campfire sites, an information stand and car parks.

13. The work on creating this recreational path was performed on the basis of the obligations under an agreement that Sveda had entered into with the National Paying Agency under the Ministry of Agriculture (‘the Agency’). Under this agreement Sveda is required to provide the public with access to the recreational path free of charge. The agreement also establishes that Sveda is to be reimbursed up to 90% of the costs of setting up the path in the form of a ‘grant’.

14. According to the findings of the national court, Sveda intends to carry out an independent economic activity within the meaning of Article 9(1) of the VAT Directive in the tourism sector. Visitors to the recreational path would thus be offered services, such as the sale of food or souvenirs, for consideration.

15. In its VAT declaration Sveda claimed the input VAT that it had paid on goods and services purchased during the work of creating the recreational path. However, the Lithuanian tax authorities refused to reimburse those input VAT amounts because it had not, in their view, been shown that the goods and services purchased by Sveda were used for an activity subject to VAT.

IV – **Procedure before the Court**

16. The Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), seised of the case, referred the following question to the Court on 17 March 2014 under Article 267(3) TFEU:

‘Can Article 168 of the VAT Directive be interpreted as granting a taxable person the right to deduct the input VAT paid in producing or acquiring capital goods intended for business purposes, such as those in the present case, which (i) are directly intended for use by members of the public free of charge, but (ii) may be recognised as a means of attracting visitors to a location where the taxable person, in carrying out his economic activities, plans to supply goods and/or services?’

17. In the proceedings before the Court, the Republic of Lithuania, the United Kingdom of Great Britain and Northern Ireland, and the European Commission all submitted written observations in July 2014 and attended the hearing held on 4 February 2015.

V – **Legal assessment**

18. By referring this question for a preliminary ruling the national court seeks to ascertain whether a taxable person in a situation like that in the main proceedings enjoys a right of deduction under Article 168 of the VAT Directive.

19. This provision states that a ‘taxable person’ is entitled to deduct the tax on his input transactions in so far as [the goods and services] ‘are used for the purposes of the taxed transactions’.

A – *Allocation of the capital goods to the assets of the business*

20. In the case at hand, the Republic of Lithuania regards any right of deduction as excluded precisely because Sveda, although in principle a taxable person, did not act as such when creating the recreational path.

21. According to settled case-law, the deduction of input VAT paid on purchased goods does indeed require that the taxable person should act as such when purchasing the goods, i.e. at least also for the purposes of his economic activity within the meaning of the second subparagraph of Article 9(1) of the VAT Directive. (4) The same applies to goods produced by the taxable person. (5)

22. In the final analysis, the purpose of this requirement is that goods should be allocated to the taxable person's business assets in whole or in part so that any deduction of input VAT in respect of the purchase or manufacture of the goods is not excluded at the outset. (6) According to the case-law, whether this is the case must be determined in the light of all the circumstances of the case, including the nature of the goods concerned and the period between the acquisition of the goods and their use for the purposes of the taxable person's economic activity. (7)

23. It is on this basis that the Republic of Lithuania questions the finding already made by the national court, whereby the capital goods at issue would belong to Sveda's business assets. It argues that, under the agreement entered into with the Agency, Sveda is required to make the recreational path available to the public free of charge and may not use it for an economic activity until a later date. It follows from this that Sveda did not initially act as a taxable person.

24. However, the Court has several times ruled that a person who acquires goods for the purposes of an economic activity within the meaning of the second subparagraph of Article 9(1) of the VAT Directive does so as a taxable person, even if the goods were not immediately used for such economic activities. (8)

25. Consequently, the national court correctly found that Sveda did act as a taxable person when acquiring or manufacturing the capital goods and that those capital goods must therefore be allocated to its business assets.

B – *Use for the purposes of taxed transactions*

26. In order for Sveda to have a right of deduction, however, the capital goods would have not only to be allocated to its business assets, in other words, serve its economic activity generally, but also be used for the purposes of its *taxed* transactions in accordance with Article 168 of the VAT Directive.

27. The use to which the goods are put, or intended to be put, determines the extent of the deduction of input tax. (9) The *intended* use is often decisive in this respect, for, in accordance with Articles 63 and 167 of the VAT Directive, the right to deduct arises in principle as soon as the taxable person receives goods or services, in other words often before he himself has provided his output transactions. (10)

28. The intended use of the capital goods acquired or manufactured by Sveda has already been established in the main proceedings.

29. On the one hand, the recreational path is to be made available to the public free of charge. This operation is not taxed. There is no tax obligation deriving either from Article 2(1)(c) of the VAT Directive, because Sveda does not make visitors pay, or from its Article 26(1)(a), because the capital goods are not used for purposes other than those of its business within the meaning of this provision. Use for purposes other than those of his business is certainly excluded when the use of capital goods must be allocated to the taxable person's economic activity. (11) None the less, the national court has previously found that Sveda did act for the purposes of its economic activity when creating the path. (12)

30. On the other hand, the recreational path is also meant to attract visitors so that Sveda can offer them goods and services. These processes would be taxed under Article 2(1)(a) and (c) of the VAT Directive.

31. The acquisition or manufacture of the capital goods thus serves two different aims. First and foremost of these is the provision of the recreational path to the public free of charge (primary use), which confers no right of deduction under Article 168 of the VAT Directive. However, besides that there is the use of the recreational path as a means of providing visitors with taxable services (secondary use), which gave rise to a right of deduction. Hence the question is: which of these two aims is decisive under Article 168 of the VAT Directive?

32. In *BLP Group*, the Court came to the general conclusion on this question that a direct and immediate link of the acquired goods or services with the taxable transactions is necessary and that the 'ultimate' aim pursued by the taxable person is irrelevant in this respect. (13) The Court therefore refused the deduction of input VAT in a situation in which services had been provided to the taxable person in relation to the exempt sale of shares, even though this sale was a means of enabling the taxable activity of the taxable person. In other words, the Court made a distinction in this case between the solely decisive primary and the merely secondary use of an input transaction.

33. However, the Court has further developed its case-law since that case. It still remains the case that for Article 168 of the VAT Directive to apply a direct and immediate link must have been found between a given input transaction under examination and a particular output transaction or transactions giving rise to the right of deduction. (14) Such a link may nevertheless also exist with the economic activity of the taxable person as a whole if the costs of the input transactions form part of the general costs of the taxable person and are therefore cost components of all goods or services delivered or provided by him. (15)

34. According to recent case-law, the decisive factor for a direct and immediate link is consistently that the cost of the input transactions be incorporated in the cost of individual output transactions or of all goods and services supplied by the taxable person. (16) This applies irrespective of whether the use of goods or services by the taxable person is at issue. (17)

35. Consequently, there is a right of deduction in the present case if the cost of acquiring or manufacturing the capital goods of the recreational path is incorporated, in accordance with case-law, in the cost of the output transactions, taxed under the VAT Directive.

36. In the situation to which the case in the main proceedings relates there are various output transactions that could meet this requirement. One possibility might be the taxable services that Sveda wishes to provide to visitors of the recreational path and that are the subject of the question referred for a preliminary ruling (see point 2 below). On the other hand, a relevant taxed output transaction could also be the creation of the recreational path itself. This possibility was not considered by the national court in its order for reference. However, it must be the first possibility

to be examined, since the outcome could make the answer to the specific question referred irrelevant for the main proceedings (see point 1 below).

1. The creation of the recreational path as a taxed output transaction

37. It might be possible to assert that there exists a right of deduction in the main proceedings — irrespective of the answer to the specific question referred for a preliminary ruling — if the creation of the recreational path by Sveda itself constituted a taxed output transaction. In other words, the creation of the recreational path could constitute a service for consideration with respect to the Agency, which would be taxable under Article 2(a) or (c) of the VAT Directive.

38. According to settled case-law, a transaction effected for a consideration requires only there to be a direct link between the supply of goods or the provision of services and the consideration actually received by the taxable person. (18) Such a direct link merely requires there to be a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance, (19) as well as the reciprocal condition of service and consideration. (20) Even supplying goods or services at less than the cost price does not mean that there can be no direct link between supply and consideration. (21)

39. According to the information provided by the national court, Sveda undertook to create the recreational path under an agreement with the Agency. In return, Sveda received from the party contracting its services a payment of 90% of the costs incurred, described as a ‘grant’. However, it is not possible to arrive at a definitive assessment of whether there is a direct link as understood in the cited case-law between the creation of the recreational path and the ‘grant’ without knowing the precise content of the agreement.

40. Should the examination of the national court conclude that Sveda has already provided a taxed transaction under Article 2(a) or (c) of the VAT Directive by creating the recreational path, the acquisition or manufacture of the capital goods of the recreational path would be linked directly and immediately with this taxed output transaction. For there is no doubt in that case that the costs of these input transactions would be incorporated into the price, since the amount of the payment by the Agency is calculated precisely on the basis of those costs.

2. Reply to the question referred

41. However, should the national court find that the creation of the recreational path by Sveda does not represent a taxed transaction, the right of deduction would then depend solely on whether the capital goods of the recreational path are used, for the purposes of Article 168 of the VAT Directive, for the provision of chargeable services to visitors in the future. For that to be the case, the costs of the acquisition and manufacture of these capital goods would have to be incorporated into the cost of these services.

a) Objective definition of costs

42. Contrary to the view of the United Kingdom, this question is independent of the taxable person’s intention of incorporating the relevant costs into the pricing of his output transaction.

43. In accordance with the judgment in *Becker*, the finding of a direct and immediate link between the input and output transactions depends on the objective content of the input supplies acquired. (22) In the *BLP Group* judgment the Court had already found to this effect that the link required between input and output transactions may not be determined by the taxable person’s intentions. (23)

44. Furthermore, in the common system of VAT services are also taxed which were provided at less than cost price. (24) Where this occurs, the pricing is set subjectively by the taxable person without including all the costs of providing the output transaction. None the less, where this is the case there is no doubt that all input transactions that objectively belong to the cost components of the output transactions in accordance with the second subparagraph of Article 1(2) of the VAT Directive also confer entitlement to deduct input VAT. According to settled case-law, the right of deduction is meant to relieve the trader *entirely* of the burden of the VAT payable or paid in the course of all his economic activities, (25) because in the common system of VAT it is ultimately not the taxable trader, but the final consumer who is intended to be taxed. (26)

45. The existence of an objective economic link between input and output transactions is therefore crucial to the question whether the costs are incorporated into the price of a service as understood in case-law. (27) A merely causal link is clearly not sufficient. (28) However, if an input transaction objectively serves the purpose of the performance of certain or all output transactions of a taxable person, there is a direct and immediate link between the two as understood in case-law. This is because in such a case the input transaction constitutes, from an economic perspective, a cost component in the provision of the respective output transaction. As the wording of Article 168 of the VAT Directive already indicates, that therefore depends on the objective purpose of the use of an input transaction.

46. In the present case the national court found that the creation of the recreational path serves to attract visitors who may then be supplied with goods and services for consideration. Consequently, the creation of the recreational path belongs, from an economic perspective, to the cost components of these transactions.

47. It follows that there is in principle a direct and immediate link, as understood in case-law, between the acquisition or manufacture of the capital goods of the recreational path and the chargeable services offered to visitors.

b) Primary use for untaxed output transactions

48. The fact that the recreational path is made available to visitors free of charge does not exclude the right of deduction.

49. Although this is the primary use of the capital goods of the recreational path, such use may break the direct and immediate link with secondary use for taxed output transactions in two cases only. (29)

50. The first case is if the primary use is for supplies provided for a consideration but exempt from VAT. Here the input transactions belong to the cost components of exempt output transactions and are thus incorporated into their price. However, Article 168 et seq. of the VAT Directive provides, in principle, no right of deduction for these transactions. According to case-law, it is irrelevant in such a situation that the input transactions serve an additional ‘ultimate’ aim that also entails taxed output transactions. (30)

51. In the case at hand, however, the primary use is not for exempt chargeable transactions, but for use free of charge.

52. The second case in which a direct and immediate link would be broken between the input transactions and the provision of chargeable services to visitors is if the primary use of the recreational path for use by visitors free of charge represented a non-economic activity of Sveda. This is because in the case-law there is no right of deduction for a taxable person’s expenditure in

so far as it is linked to the exercise of non-economic activities. (31)

53. However, this is not the case here, according to the findings of the national court. (32) The mere fact that a service is provided free of charge does not form the basis — contrary to the Commission's view — for a non-economic activity of a taxable person. In this respect the United Kingdom rightly referred at the hearing to the example of a shopping centre that provides customers with free parking.

c) Breach of the agreement with the Agency

54. Moreover, even if including the costs involved in creating the recreational path in the pricing of the chargeable services that it is envisaged will be offered to visitors might be in breach of the agreement with the Agency, this would be irrelevant to the right of deduction. This point has been considered by the national court.

55. However, such a breach cannot impinge on the VAT assessment nor, as indicated, (33) is it relevant for the VAT deduction whether Sveda does in fact incorporate the costs in its pricing.

d) Infringement of Regulation (EC) No 1698/2005

56. Nor, likewise, does Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development, (34) cited by the national court, have any bearing on the assessment of the present case in the light of VAT law.

57. Even if use of the recreational path by Sveda were to be in breach of Article 36(b)(vii) of this Regulation, cited by the national court and on the basis of which support for 'non-productive investments' may be granted, this would not affect the right of deduction. According to well-established case-law, the principle of fiscal neutrality precludes a differentiation between lawful and unlawful transactions. (35)

e) Influence of the adjustment period

58. The objection raised by the Republic of Lithuania relating to the provisions dealing with the adjustment of the input VAT deduction does not prevent the right of deduction in this case, either.

59. Under Article 187 of the VAT Directive, the original deduction of input VAT when acquiring or manufacturing capital goods is adjusted if there are any variations of significance to the deduction entitlement within a period of five years.

60. The Republic of Lithuania concludes from this that capital goods must be used for an economic activity within a period of five years of their acquisition or manufacture. Otherwise there would be no right of deduction.

61. First, according to the case-law the adjustment period has no influence on the determination of whether a taxable person acts for the purposes of his economic activity at the time he acquires or manufactures the goods. (36) Second, nor is it apparent in the present case that the capital goods are used within the adjustment period for purposes that would exclude the deduction of input VAT. Even if visitors to the recreational path are not initially offered any services that must be paid for, this alters nothing in the use of the capital goods for Sveda's economic activity if it can be established, on the basis of objective circumstances, that such offers are still envisaged.

f) Amount of the deduction

62. Finally, it must be examined whether the fact that the Agency has reimbursed Sveda up to 90% of the costs for the acquisition or manufacture of the capital goods at issue has a bearing on the amount of the deduction.

63. The United Kingdom considers this aspect to be crucial in appraising the question of the extent to which the input transactions are incorporated in the price of the output transactions.

64. Together with the Republic of Lithuania and the Commission, however, I take the view that the partial reimbursement of costs by the Agency has no effect on the amount of the deduction. What matters under Article 168 of the VAT Directive is solely whether the input transactions are used for taxed output transactions. How the input transactions are financed, conversely, has no bearing.

65. Accordingly, the Court has previously ruled that legislation by a Member State under which the right to deduct VAT is limited to those cases in which the purchased goods are financed by means of a state subsidy is not compatible with the European Union's VAT legislation. (37)

66. A taxable person in the circumstances of the case in the main proceedings has, therefore, in principle a right to the full deduction of VAT paid on input transactions relating to the acquisition or manufacture of the capital goods at issue.

VI – **Conclusion**

67. In the light of the foregoing I propose that the reply to the question referred should be:

Article 168 of the VAT Directive must be interpreted to the effect that a taxable person has the right to deduct input VAT paid in producing or acquiring capital goods, which (i) are directly intended for use by members of the public free of charge, but which (ii) are used as a means of attracting visitors to a place where the taxable person, in carrying out his economic activities, plans to supply goods and/or services.

1 – Original language: German.

2 – OJ 2006 L 347, p. 1.

3 – OJ 1977 L 145, p. 1.

4 – See judgments in *Lennartz* (C?97/90, EU:C:1991:315, paragraph 15); *Bakcsi* (C?415/98, EU:C:2001:136, paragraph 29); *Eon Aset Menidjmunt* (C?118/11, EU:C:2012:97, paragraphs 57 and 58); and *Klub* (C?153/11, EU:C:2012:163, paragraphs 39 and 40).

5 – See my Opinion in *X* (C?334/10, EU:C:2012:108, point 25 and the case-law cited therein).

6 – See, to this effect, judgments in *Bakcsi* (C?415/98, EU:C:2001:136, paragraphs 28 and 29), and *Eon Aset Menidjmunt* (C?118/11, EU:C:2012:97, paragraphs 56 to 59); see also Article 168a of the VAT Directive.

7 – Judgments in *Lennartz* (C?97/90, EU:C:1991:315, paragraph 21); *Bakcsi* (C?415/98, EU:C:2001:136, paragraph 29); *Eon Aset Menidjmunt* (C?118/11, EU:C:2012:97, paragraph 58); and *Klub* (C?153/11, EU:C:2012:163, paragraphs 39 and 40).

8 – Judgments in *Lennartz* (C?97/90, EU:C:1991:315, paragraph 14); *Klub* (C?153/11,

EU:C:2012:163, paragraph 44); and *Gran Via Moine?ti* (C?257/11, EU:C:2012:759, paragraph 25).

9 – See, inter alia, judgments in *Lennartz* (C?97/90, EU:C:1991:315, paragraph 15); *X* (C?334/10, EU:C:2012:473, paragraph 17); and *FIRIN* (C?107/13, EU:C:2014:151, paragraph 49).

10 – See judgment in *Klub* (C?153/11, EU:C:2012:163, paragraph 36); see also my Opinion in *X* (C?334/10, EU:C:2012:108, No 81 and the case-law cited therein).

11 – See, to this effect, judgment in *BCR Leasing IFN* (C?438/13, EU:C:2014:2093, paragraph 26); see also further judgments in *Vereniging Noordelijke Land- en Tuinbouw Organisatie* (C?515/07, EU:C:2009:88, paragraph 38), and *Gemeente 's-Hertogenbosch* (C?92/13, EU:C:2014:2188, paragraph 25).

12 – See points 23 to 25 above.

13 – Judgment in *BLP Group* (C?4/94, EU:C:1995:107, paragraph 19); similarly the recent judgment in *Portugal Telecom* (C?496/11, EU:C:2012:557, paragraph 38).

14 – See, inter alia, judgments in *Midland Bank* (C?98/98, EU:C:2000:300, paragraph 24); *Halifax and Others* (C?255/02, EU:C:2006:121, paragraph 79); and *Malburg* (C?204/13, EU:C:2014:147, paragraph 34).

15 – See, to this effect, inter alia, judgments in *Midland Bank* (C?98/98, EU:C:2000:300, paragraphs 30 and 31); *Investrand* (C?435/05, EU:C:2007:87, paragraph 24); *SKF* (C?29/08, EU:C:2009:665, paragraphs 58 and 60); *Becker* (C?104/12, EU:C:2013:99, paragraph 20); and *Malburg* (C?204/13, EU:C:2014:147, paragraph 38).

16 – See, inter alia, judgments in *SKF* (C?29/08, EU:C:2009:665, paragraph 60); *X* (C?651/11, EU:C:2013:346, paragraph 55); and *PPG Holdings* (C?26/12, EU:C:2013:526, paragraph 23); see previously, to this effect, judgment in *Kretztechnik* (C?465/03, EU:C:2005:320, paragraph 36).

17 – See, in this regard, my Opinion in *TETS Haskovo* (C?234/11, EU:C:2012:352, point 31 and the case-law cited therein).

18 – See, in particular, judgment in *Serebryannay vek* (C?283/12, EU:C:2013:599, paragraph 37 and the case-law cited therein).

19 – See, inter alia, judgments in *Tolsma (*C?16/93, EU:C:1994:80, paragraph 14); *MKG-Kraftfahrzeuge-Factoring* (C?305/01, EU:C:2003:377, paragraph 47); and *Le Rayon d'Or* (C?151/13, EU:C:2014:185, paragraph 29).

20 – See, inter alia, judgments in *Tolsma* (C?16/93, EU:C:1994:80, paragraphs 13 to 20); and *Fillibeck* (C?258/95, EU:C:1997:491, paragraphs 12 to 17); see also the Opinion of Advocate General Stix-Hackl in *Bertelsmann* (C?380/99, EU:C:2001:129, point 32).

21 – See, to this effect, judgment in *Hotel Scandic Gåsabäck* (C?412/03, EU:C:2005:47, paragraph 22).

22 – Judgment in Becker (C?104/12, EU:C:2013:99, paragraphs 22, 23 and 33).

23 – See judgment in *BLP Group* (C?4/94, EU:C:1995:107, paragraph 24).

24 – See point 38 above.

25 – See, inter alia, judgments in *Rompelman* (268/83, EU:C:1985:74, paragraph 19); *Ghent Coal Terminal*

(C?37/95, EU:C:1998:1, paragraph 15); *Halifax and Others* (C?255/02, EU:C:2006:121, paragraph 78); *Securenta* (C?437/06, EU:C:2008:166, paragraph 25); and *Idexx Laboratories Italia* (C?590/13, EU:C:2014:2429, paragraph 32).

26 – See, inter alia, judgments in *Elida Gibbs* (C?317/94, EU:C:1996:400, paragraph 19); *Pelzl and Others* (C?338/97, C?344/97 and C?390/97, EU:C:1999:285, paragraph 21); *KÖGÁZ and Others* (C?283/06 and C?312/06, EU:C:2007:598, paragraph 51); and *Lebara* (C?520/10, EU:C:2012:264, paragraph 25).

27 – See judgment in *AES-3C Maritza East 1* (C?124/12, EU:C:2013:488, paragraph 31).

28 – See judgment in *Becker* (C?104/12, EU:C:2013:99, paragraph 31).

29 – On the possibility of breaking this link, see judgment *TETS Haskovo* (C?234/11, EU:C:2012:644, paragraph 34).

30 – See judgments in *BLP Group* (C?4/94, EU:C:1995:107, paragraph 19); *SKF* (C?29/08, EU:C:2009:665, paragraphs 62 and 71); and *X* (C?651/11, EU:C:2013:346, paragraph 56).

31 – Judgments in *Securenta* (C?437/06, EU:C:2008:166, paragraph 30), and *Vereniging Noordelijke Land- en Tuinbouw Organisatie* (C?515/07, EU:C:2009:88, paragraph 37).

32 – See points 23 to 25 above.

33 – See points 42 to 45 above.

34 – OJ 2005 L 277, p. 1.

35 – See, in particular, judgments in *Fischer* (C?283/95, EU:C:1998:276, paragraph 28); *CPP* (C?349/96, EU:C:1999:93, paragraph 33); and *GfBk* (C?275/11, EU:C:2013:141, paragraph 32).

36 – See judgment *Lennartz* (C?97/90, EU:C:1991:315, paragraph 20).

37 – See judgment in *Commission* v *France* (C?243/03, EU:C:2005:589, paragraph 33).