OPINION OF ADVOCATE GENERAL

BOBEK

delivered on 10 November 2016 (1)

Case C?564/15

Tibor Farkas

v

Nemzeti Adó- és Vámhivatal Dél-alföldi Regionális Adó F?igazgatósága

(Request for a preliminary ruling from the Kecskeméti Közigazgatási és Munkaügyi Bíróság (Kecskemét Administrative and Labour Court, Hungary))

(Common system of value added tax — Directive 2006/112/EC — Reverse charge mechanism — Article 199(1)(g) — Decision of tax authorities establishing a ‘tax difference’ owed by the receiver of goods — Impossibility to deduct the input VAT — Imposition of a fine — Proportionality of the fine)

I – **Introduction**

1. Mr Farkas (the ‘Applicant’) bought a mobile hangar from an insolvent company (the ‘Seller’) at an auction. The Applicant paid the sale price as well as the amount of VAT charged by the Seller on that supply. Subsequently, he sought to have this amount deducted in his VAT returns. However, the tax authorities indicated that the transaction should have been subjected to the reverse charge mechanism. Under that mechanism the Applicant was obliged to pay that VAT to the authorities. The tax authorities therefore requested that payment and, in addition, fined the Applicant in the amount of 50% of the VAT due.

2. The referring court asks the Court of Justice whether such decisions of the tax authorities comply with Directive 2006/112/EC (the ‘VAT Directive’). (2)

3. However, before any such assessment can be made, a preliminary issue needs to be addressed first. That preliminary issue, incidentally opened by the questions posed by the referring court, relates to the proper implementation of Article 199(1)(g) of the VAT Directive and the classification of the supply in this case as movable or immovable property.

II – **Applicable law**

A – *EU law*

4. Article 193 of the VAT Directive provided, at the time relevant for the present case, that ‘the VAT shall be payable by any taxable person carrying out a taxable supply of goods or services,

except where it is payable by another person in the cases referred to in Articles 194 to 199 and Article 202'.

5. Article 199(1)(g) of the VAT Directive enables Member States to provide that the person liable for the payment of VAT is the taxable person who receives 'the supply of immovable property sold by a judgment debtor in a compulsory sale procedure'.

6. Article 226(11) of the VAT Directive states that where the customer is liable for payment of VAT, only the following details are, in principle, required for VAT purposes on invoices: 'reference to the applicable provision of this Directive, or to the corresponding national provision, or any other reference indicating that the supply of goods or services is exempt or subject to the reverse charge procedure'.

B – *National law*

7. Paragraph 142(1) of the az általános forgalmi adóról szóló 2007. évi CXXVII. Törvény (Law CXXVII of 2007 on value added tax, 'Law on VAT') provides that the 'tax shall be paid by the taxable person receiving the goods or services … (g) in the case of the supply of capital goods of the business, and the supply of other goods or services with an open market value of HUF 100 000 at the time of supply, if the taxable person supplying the goods or services is the subject of liquidation proceedings or any similar insolvency proceedings in which it has been definitively established that he is unable to pay his debts'.

8. If Paragraph 142(1)(g) is applicable to a transaction, then, pursuant to Paragraph 142(7) of the Law on VAT, 'the supplier of the goods or services shall issue an invoice which does not indicate … the amount of the output VAT …'.

9. According to Article 169(n) of the Law on VAT where the VAT is payable by the customer, invoices shall contain 'the words "fordított adózás" ("reverse charge procedure")'.

III – **Facts, national procedure and the questions referred**

10. The Applicant bought a mobile hangar at an electronic auction, in a compulsory sale of the Seller's assets organised by the tax authorities.

11. The Seller issued an invoice in accordance with the rules of the ordinary VAT system, showing 26 November 2012 as the date of supply. The order for reference states that the Applicant paid the sale price inclusive of VAT ('first amount of VAT'). He subsequently applied for a corresponding VAT deduction in his VAT returns.

12. However, when the Nemzeti Adó- és Vámhivatal Bács-Kiskun Megyei Adóigazgatósága (Bács-Kiskun Provincial Tax Directorate) ('first-instance tax authority') inspected the Applicant's accounts, it stated that the reverse charge mechanism provided for in Paragraph 142(1)(g) of the Law on VAT should have been applied. As a result, the Applicant should have paid VAT on the transaction, as he was the purchaser of the hangar. The first-instance tax authority declared that the Applicant was liable for a 'tax difference' in the sum of HUF 744 000. According to the first-instance tax authority that sum corresponded to the VAT owed on the transaction under the reverse charge mechanism ('second amount of VAT'). The first-instance tax authority dismissed the Applicant's request to have that sum refunded and imposed a fine of HUF 372 000.

13. That decision was confirmed by the second-instance tax authority, the Nemzeti Adó- és Vámhivatal Dél-alföldi Regionális Adó F?igazgatósága (Dél-alföld Regional Tax Directorate) (‘the Defendant’).

14. The Applicant challenges that decision before the Kecskeméti Közigazgatási és Munkaügyi Bíróság (Kecskemét Administrative and Labour Court, Hungary). He alleges that such decisions taken by the national tax authorities infringe EU law. He states that the Defendant deprived him of his right to deduct VAT because of a mere error of form, as the invoice in question was issued by the Seller in accordance with the ordinary tax system instead of the reverse charge mechanism. He points out that the Seller paid the first amount of VAT to the Treasury. Therefore, the Treasury has suffered no loss and has had all the information necessary to determine the correct tax amount.

15. The referring court shares some of the doubts advanced by the Applicant. It points out that there is no indication of tax evasion. It concludes that the tax authorities’ interpretative approach does not appear to be proportionate to the aim pursued by the reverse charge mechanism.

16. In those circumstances, the Kecskeméti Közigazgatási és Munkaügyi Bíróság (Kecskemét Administrative and Labour Court) stayed the proceedings and referred the following questions to the Court of Justice:

‘(1) Is a practice of the tax authority, based on the provisions of the Law on VAT, compatible with the provisions of the VAT Directive, in particular the principle of proportionality with the objectives of tax neutrality and the prevention of tax fraud, if, by that practice, that authority declares that a purchaser of an item of property (or recipient of a service) is liable for a tax difference in a situation in which the seller of the property (or supplier of the service) issues an invoice in accordance with the ordinary tax system for a transaction to which the reverse charge procedure applies and declares and pays to the Treasury the tax relating to that invoice, and the purchaser of the item of property (or recipient of the service), for his part, deducts the VAT paid to the issuer of the invoice, even though he may not exercise his right to deduct the VAT declared as a tax difference?

(2) Is the imposition of a penalty for selecting an incorrect method of taxation in the case of a declaration of a tax difference, which also entails the imposition of a tax fine of 50%, proportionate where the Treasury has not incurred any loss of revenue and there is no evidence of abuse?’

17. Written observations were submitted by the Estonian and Hungarian Governments as well as by the Commission. The Hungarian Government and the Commission presented oral argument at a hearing held on 7 September 2016.

IV – **Assessment**

18. Article 199(1)(g) of the VAT Directive states that it applies only to ‘the supply of immovable property sold by a judgment debtor in a compulsory sale procedure’. Thus, that provision clearly limits its applicability to *immovable* property.

19. In its request, the referring court states that the asset acquired by the Applicant is a ‘mobile hangar’. However, that court is silent on whether, on the facts of the case before it, it had qualified that hangar as movable or immovable property.

20. Why that issue was of limited relevance to the referring court might be understandable in view of the wording of applicable national law (reproduced above in point 7 of this Opinion) which

does not distinguish between movable and immovable property. That classification is, however, of crucial importance for the applicability of Article 199(1)(g) of the VAT Directive.

21. Although that determination is ultimately for the referring court to make, I shall assume that a *mobile* hangar is, as its name in fact implies, *movable* property (A). I will then assess the unlikely scenario of a mobile hangar qualifying as immovable property (B).

A – *If the mobile hangar were movable property*

22. There is no doubt that Article 199(1)(g) of the VAT Directive only applies to *immovable* property.

23. The Hungarian Government confirmed at the hearing that Article 142(1)(g) of the Law on VAT is meant to implement Article 199(1)(g) of the VAT Directive. (3) It also confirmed that Article 142(1)(g) of the Law on VAT applies to movable and immovable property alike.

24. It follows that if Article 142(1)(g) of the Law on VAT was applied to movable property, provided that the mobile hangar were to be classified as such, then the application of the reverse charge mechanism was extended beyond the material scope of Article 199(1)(g) of the VAT Directive.

25. The correlating question is whether a Member State is entitled to extend the material scope of application of Article 199(1)(g) in this way. I think that it is not, for the following reasons.

26. First, the basic rule as to who is liable to pay VAT is laid down by Article 193 of the VAT Directive. (4) It states that VAT is payable by the taxable person who carries out the taxable supply of goods or services.

27. At the same time, that provision also stated, at the time relevant for the present case, that the tax may be payable ‘by another person’ under Articles 194 to 199 and 202 of the VAT Directive.

28. It follows that the rule on the reverse charge mechanism anchored in those provisions represents an exception to the main rule laid down in Article 193. As a result, the scope of those provisions must be interpreted strictly. (5) In the present context, that means that derogations from the general rule should only occur when expressly provided for by the VAT Directive.

29. Second, the combined reading of Articles 193 and 199(1)(g) of the VAT Directive shows that the determination of the person liable to pay VAT for a supply of immovable property in a compulsory sale procedure has been fully harmonised. As the Court has previously explained, Article 199(1)(g) was introduced, (6) together with other grounds for the application of the reverse charge mechanism contained in Article 199, to allow all Member States to apply derogating measures; previously these had been granted only to certain Member States to combat tax evasion and avoidance in certain sectors, or in respect of specific transactions. (7)

30. The resulting harmonisation thus does not allow the Member States to extend, of their own volition, the material scope of the exception provided for under Article 199(1)(g) of the VAT Directive.

31. Third, the only possible way for an individual Member State to depart from the common rule contained in Articles 193 and 199(1)(g) is to obtain a derogation based on Article 395 of the VAT Directive. That provision gives the Member States the possibility to request the right to ‘introduce special measures for derogation from the provisions of [the VAT Directive], in order to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance’.

32. Therefore, Hungary could have extended the scope of the exception under Article 199(1)(g) through a derogation granted by a decision of the Council based on Article 395 of the VAT Directive. (8)

33. At the hearing it was confirmed that Hungary has not been granted any such individual derogation.

34. As Hungary has not been granted a derogation based on Article 395 of the VAT Directive, that Member State is prevented from applying the reverse charge mechanism to the supply of a movable hangar, as in the national proceedings.

35. It follows that, in the circumstances of the national proceedings, the VAT Directive should be interpreted in a way that it precludes the extension of the application of the reverse charge mechanism to movable property supplied in a compulsory sale procedure.

36. The facts provided by the referring court would indicate that the Applicant and the Seller acted in compliance with the VAT Directive when they subjected the supply of the movable hangar to the ordinary VAT regime.

37. If the referring court considers, on the facts of the present case, that the mobile hangar is indeed movable property, then that court is obliged to draw the necessary conclusions from that fact in conformity with the established case-law of the Court of Justice.

38. To the greatest extent possible, national legislation ought to be interpreted in conformity with relevant provisions of EU law. (9) However, as the Court has recognised, interpretation in conformity with EU law has its limits. In particular, it cannot serve as the basis for an interpretation of national law *contra legem*. (10) When interpretation in conformity with EU law proves impossible, the national court has the obligation to give EU law its full effect, if need be by setting aside incompatible provisions of national law without prior repeal of those provisions being necessary. (11) Whether or not a national court is entitled to do so of its own motion is conditional upon the observance of the principle of equivalence, namely whether or not a national court would be obliged, in a comparable situation, to raise of its own motion points of national law. (12)

B – *If the mobile hangar were immovable property*

39. For the reasons outlined above, I believe that the assessment of this case can end here.

40. If the referring court were nonetheless to conclude on the facts before it that the mobile hangar is immovable property, which by its very name seems quite unlikely, I offer concise alternative guidance in the following section, in order to fully assist the referring court.

41. First, I will make several preliminary comments on the distinction that should be made between the payments of the first and second amounts of VAT (1). I will then turn to the question as to whether the tax authorities were entitled to request that the Applicant comply with his VAT obligations under the reverse charge mechanism while refusing the Applicant’s request for a deduction of his input VAT (2). Finally, I will assess the proportionality of the fine imposed on the Applicant (3).

1. Distinguishing the first and second amounts of VAT

42. It ought to be clarified that the questions examined in the next subsection primarily concern the tax obligations and rights that arise for the Applicant in his relationship with the tax authorities with regard to the second amount of VAT. Conversely, these questions do not concern the rights

and obligations that arise in the relationship between the Applicant, the Seller and the Treasury concerning the first amount of VAT.

43. From the perspective of the application of the reverse charge mechanism, and assuming that that mechanism were indeed applicable to the transaction in question, the payment of the first amount of VAT was an error. That error should be corrected between the Applicant and the Seller, and between the Seller and the Treasury. (13)

44. The Court has previously held that the refund of incorrectly invoiced VAT is a matter for the Member States to regulate, (14) under conditions that respect the dual requirement of equivalence and effectiveness. (15) Concerning the requirement of effectiveness in particular, I note the rather specific circumstances in which the sale of the mobile hangar occurred, namely that the Seller was insolvent at the time of the sale and that the forced sale was organised by the tax authorities. (16)

45. Whatever the national procedure for the refund of the first amount of VAT, it is important to stress that that amount is, in principle, bound to be remitted by the Treasury back to the Seller and/or to the Applicant.

46. This is why I am of the view that the first amount of VAT which has been paid to the Treasury is not directly relevant for the assessment of the Applicant's obligations under the reverse charge mechanism. Nevertheless, that same fact bears, in my view, some relevance for the assessment of the Applicant's right to deduct and for the evaluation of the proportionality of the fine.

2. The Applicant's VAT liability and the right to deduct

47. In the light of the foregoing observations, I am of the view that the first preliminary question should be interpreted as being aimed at ascertaining whether the principle of neutrality of VAT prevents the tax authorities from requesting a taxable person, who has paid undue VAT to the supplier, to pay the VAT under the reverse charge mechanism, and from denying that taxable person the right to deduct input VAT, where there is an absence of fraud on his or her part.

48. Assuming that the reverse charge mechanism did apply in these circumstances, the Applicant was indeed liable for the VAT due for the supply of the hangar. That means that no VAT should have been charged on that supply and the invoice should have stated that the VAT charge was reversed, as provided for in paragraph 169(n) of the Law on VAT.

49. That also means, as the Commission notes, that the Applicant had the obligation to declare the VAT to the tax authorities. Therefore, under the hypothesis of the hangar constituting an immovable property, these authorities were entitled to request that the Applicant comply with his obligations under the reverse charge mechanism. (17)

50. Whether they were entitled to reject the Applicant's request for deduction of the input VAT is, however, a different matter.

51. The Court held that the right of deduction is an integral part of the VAT scheme and may not be limited — subject to, in principle, cases of fraud or abuse. (18)

52. The referring court explains that there is no indication of any tax fraud committed by the Applicant. Interestingly, the tax authorities in the main proceedings recognised that the Applicant did indeed have the right to deduct the amount of the input VAT in question. The Hungarian Government agreed with this position.

53. Despite the foregoing, the facts of this case show that the Applicant has ultimately been

deprived of that right.

54. How and why that happened remains unclear to me. I understand that when the tax authorities noted the Applicant's failure to comply with the reverse charge mechanism, they declared that the second amount of VAT became a 'tax difference' — presumably a tax debt. Thus, it seems that by operation of law or by the administrative practice of the tax authorities, the second amount of VAT transformed into a tax debt to which the right to deduct no longer applies.

55. That presumably means that the Applicant's costs corresponding to that input VAT can no longer be deducted. In my view such a result is at odds with the principle of VAT neutrality, inherent in the common system of VAT, (19) in the sense that it aims at relieving the taxable person entirely of the burden of the VAT payable or paid in the course of all of his economic activities (20) and ensuring that the end consumer alone bears the VAT burden. (21)

56. My interim conclusion is therefore that the principle of neutrality of VAT does not prevent the tax authorities from requesting a taxable person, who has paid undue VAT to the supplier, to pay the VAT under the reverse charge mechanism. However, the principle of neutrality of VAT prevents the tax authorities from denying that taxable person the right to deduct input VAT which the taxable person failed to declare correctly under the reverse charge mechanism, where there is no evidence of fraud on his or her part.

3. Proportionality of the fine

57. The conclusion that the Applicant was incorrectly prevented from exercising his right to deduct does not mean that the tax authorities were not entitled to fine him for failure to comply with his obligations under the reverse charge mechanism. The right to deduct, and the obligation to pay a fine for failure to comply with the obligations conditioning the exercise of that right, are two separate issues.

58. The Court held that, in the absence of a system of penalties in the VAT Directive sanctioning infringement of the obligations of taxable persons referred to in that directive; it is for the Member States to choose the penalties which they deem to be appropriate. They must, however, exercise that power in accordance with EU law and its general principles. (22)

59. As the Commission noted in its written observations, the principle of proportionality is one of those principles. (23)

60. To verify whether that principle is respected, the national court must make sure that the respective sanction does not go beyond what is necessary to attain the objectives of ensuring the correct collection of tax and preventing evasion. (24) Account must also be taken inter alia of the nature and the degree of the seriousness of the infringement and of the means of establishing the amount of the penalty. (25)

61. The Hungarian Government explained at the hearing that the applicable national rule, namely Article 170 of the adózás rendjér?l szóló 2003. évi XCII. Törvény (Law XCII of 2003, 'Law on Taxation'), provides for the default 50% fine rate. That rate was applied to the Applicant.

62. The Hungarian Government also explained that pursuant to Article 171 of the Law on Taxation, the default 50% rate can be reduced, or that the fine will not be imposed at all - in exceptional situations when the taxable person acted with due diligence.

63. The applicable national rules seem to allow for a sanction to be adapted and moderated according to the specifics of the concrete case. (26) Therefore, assessed at an abstract level, the

national rules appear to comply with the principle of proportionality.

64. Whether or not the same rules were applied in a proportionate way in the individual case of the Applicant is for the referring court to verify. However, several elements are worth highlighting in the context of the present case.

65. First, there appears to be no fraudulent behaviour on the part of the Applicant. Both the first and second amounts of VAT were paid to the tax authorities. Second, the order for reference does not mention any particular delay on the part of the Applicant for the payment of the second amount of VAT beyond the one that occurred because of the Applicant's (mis)understanding of the reverse charge mechanism. Third, paragraph 142(7) of the Law on VAT indicates that the responsibility to issue the invoice in compliance with the reverse charge mechanism lies with the seller. It should be stressed that the Seller issued an invoice that did not comply with the applicable rules of the reverse charge mechanism, and, that this happened in a compulsory sale procedure organised by the tax authorities.

66. When considering these specific elements, it is open to discussion, as suggested by the Commission, whether the application of the default 50% rate was made after a genuine individual assessment of the Applicant's case. As noted above, however, whether the principle of proportionality has been respected in the present case is for the referring court to examine.

V – **Conclusion**

67. In the light of the foregoing considerations, I propose that the Court answer the questions referred by the Kecskeméti Közigazgatási és Munkaügyi Bíróság (Kecskemét Administrative and Labour Court, Hungary) as follows:

In the absence of a specific derogation granted on the basis of Article 395 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, the supply of movable property within a compulsory sale procedure pursuant to Article 199(1)(g) of that directive cannot be made subject to the reverse charge mechanism.

1 – Original language: English.

2 – Council Directive of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

3 – The Hungarian Government suggested that Article 142(1)(g) of the Law on VAT is meant to implement Article 199(1)(f) of the VAT Directive as well. However, it is difficult to see how that provision is relevant in the present case, because Article 199(1)(f) concerns 'the supply of goods following the cession of a reservation of ownership to an assignee and the exercising of this right by the assignee'.

4 – Opinion of Advocate General Kokott in *Macikowski* (C?499/13, EU:C:2014:2351, point 29).

5 – Judgment of 26 May 2016, *Envirotec Denmark* (C?550/14, EU:C:2016:354, paragraph 33 and the case-law cited).

6 – By Council Directive 2006/69/EC of 24 July 2006 amending Directive 77/388/EEC as regards certain measures to simplify the procedure for charging value added tax and to assist in countering tax evasion or avoidance, and repealing certain Decisions granting derogations (OJ 2006 L 221, p. 9). Judgment of 13 June 2013, *Promociones y Construcciones BJ 200* (C?125/12, EU:C:2013:392, paragraph 24).

7 – See recital 1 of Directive 2006/69 and recital 42 of the VAT Directive, which set out the objective pursued by Article 199(1)(g) of the VAT Directive. As the Court noted, that ‘provision thus allows the tax authorities to collect VAT imposed on the transactions at issue in cases where the debtor’s ability to pay that tax is compromised’. Judgment of 13 June 2013, *Promociones y Construcciones BJ 200* (C?125/12, EU:C:2013:392, paragraphs 25 and 28).

8 – Article 395(1) of the VAT Directive provides that: ‘The Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogation from the provisions of this Directive, in order to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance ...’.

9 – Judgments of 19 April 2016, *DI* (C?441/14, EU:C:2016:278, paragraph 42); of 15 January 2014, *Association de médiation sociale* (C?176/12, EU:C:2014:2, paragraph 38); of 19 December 2013, *Koushkaki* (C?84/12, EU:C:2013:862, paragraphs 75 to 76).

10 – See judgments of 28 July 2016, *JZ* (C?294/16 PPU, EU:C:2016:610, paragraph 33); of 19 April 2016, *DI* (C?441/14, EU:C:2016:278, paragraph 32 and the case-law cited); of 11 November 2015, *Klausner Holz Niedersachsen* (C?505/14, EU:C:2015:742, paragraphs 31 and 32 and the case-law cited); of 30 April 2014, *Kásler and Káslerné Rábai* (C?26/13, EU:C:2014:282, paragraph 65).

11 – Recently, inter alia, judgment of 8 September 2015, *Taricco and Others* (C?105/14, EU:C:2015:555, paragraph 49 and the case-law cited).

12 – See, in this sense, judgment of 12 February 2008, *Kempter* (C?2/06, ECLI:EU:C:2008:78, paragraphs 45 and 46). Further, see judgments of 14 December 1995, v*an Schijndel and van Veen* (C?430/93 and C?431/93, EU:C:1995:441, paragraphs 13, 14 and 22), and of 24 October 1996, *Kraaijeveld and Others* (C?72/95, EU:C:1996:404, paragraphs 57, 58 and 60).

13 – See, in that sense, judgment of 6 February 2014, *Fatorie* (C?424/12, EU:C:2014:50, paragraphs 40 to 43).

14 – Judgment of 11 April 2013, *Rusedespred* (C?138/12, EU:C:2013:233, paragraphs 25 and 26 and the case-law cited).

15 – Judgment of 15 March 2007, *Reemtsma Cigarettenfabriken* (C?35/05, EU:C:2007:167, paragraphs 37 and 40 and the case-law cited).

16 – See, by analogy, judgment of 15 March 2007, *Reemtsma Cigarettenfabriken* (C?35/05, EU:C:2007:167, paragraph 41).

17 – As the Court noted, under the reverse charge mechanism ‘no VAT payment takes place between the supplier and the recipient of the services, the recipient being liable, in respect of the transactions carried out, for the input VAT, while being able, in principle, to deduct that tax so that no amount is payable to the tax authorities’. Judgment of 6 February 2014, *Fatorie* (C?424/12, EU:C:2014:50, paragraph 29).

18 – See Opinion of Advocate General Szpunar in Joined Cases *Staatssecretaris van Financiën and Others* (C?131/13, C?163/13 and C?164/13, EU:C:2014:2217, point 42). Judgment of 18 December 2014, *Schoenimport ‘Italmoda’ Mariano Previti and Others* (C?131/13, C?163/13 and C?164/13, EU:C:2014:2455, paragraph 48). See also judgment of 21 February 2006, *Halifax and Others* (C?255/02, EU:C:2006:121, paragraph 84 and the case-law cited). See also, in this sense, judgment of 6 July 2006, *Kittel and Recolta Recycling* (C?439/04 and C?440/04, EU:C:2006:446,

paragraphs 45 to 47).

19 – Judgments of 2 July 2015, *NLB Leasing* (C?209/14, EU:C:2015:440, paragraph 40 and the case-law cited), and of 23 April 2015, *GST — Sarviz Germania* (C?111/14, EU:C:2015:267, paragraph 34 and the case-law cited).

20 – Judgment of 6 February 2014, *Fatorie* (C?424/12, EU:C:2014:50, paragraph 31 and the case-law cited).

21 – Judgment of 7 November 2013, *Tulic? and Plavo?in* (C?249/12 and C?250/12, EU:C:2013:722, paragraph 34). See also Opinion of Advocate General Bot in *Sjelle Autogenbrug* (C?471/15, EU:C:2016:724, point 24 in fine).

22 – Judgment of 20 June 2013, *Rodopi-M 91* (C?259/12, EU:C:2013:414, paragraph 31 and the case-law cited).

23 – Judgment of 6 March 2014, *Siragusa* (C?206/13, EU:C:2014:126, paragraph 34 and the case-law cited).

24 – Judgment of 23 April 2015, *GST — Sarviz Germania* (C?111/14, EU:C:2015:267, paragraph 34 and the case-law cited).

25 – Judgment of 20 June 2013, *Rodopi-M 91* (C?259/12, EU:C:2013:414, paragraph 38 and the case-law cited).

26 – Judgment of 20 June 2013, *Rodopi-M 91* (C?259/12, EU:C:2013:414, paragraph 40). Contrast with the judgment of 19 July 2012, *R?dlihs* (C?263/11, EU:C:2012:497, paragraphs 50 to 52).