Provisional text

OPINION OF ADVOCATE GENERAL

BOT

delivered on 30 November 2017 (1)

Case C?580/16

Firma Hans Bühler KG

(Request for a preliminary ruling from the Verwaltungsgerichtshof (Administrative Court, Austria))

(Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Supply of goods dispatched or transported within the European Union — Exemption — Supply by a taxable person from one Member State to an acquirer in another Member State — Situation where the taxable person provides on the invoice the VAT identification number issued to him by a third Member State)

1. This request for a preliminary ruling concerns the interpretation of Article 141(c) and Articles 42 and 265 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, (2) in the version applicable to the dispute in the main proceedings, read in conjunction with the first paragraph of Article 41 and Articles 197 and 263 of that directive.

2. The request was made in the course of a dispute between the company Firma Hans Bühler KG and the Finanzamt Graz-Stadt (City of Graz Tax Office, Austria) concerning the payment of value added tax (VAT) on transactions carried out between October 2012 and March 2013.

3. The purpose of the request is to determine the conditions governing the implementation of a simplification mechanism for charging tax on transactions involving three taxable persons identified for VAT purposes in three different Member States.

4. In this specific case involving intra-Community acquisitions, usually referred to as ‘triangular transactions’ and represented in the form of a diagram, such as the diagram set out below, goods are supplied by taxable person A, who is identified for VAT purposes in Member State 1, to taxable person B, who is identified for VAT purposes in Member State 2, who in turn supplies those goods to taxable person C, who is identified for VAT purposes in Member State 3, the goods being dispatched or transported directly from Member State 1 to Member State 3.

5. The objective pursued is for taxable person B to be exempted from VAT in respect of the intra-Community acquisition made by him in the Member State of the place of arrival of the goods and, thereafter, for him to be released from the obligation to identify himself for VAT purposes (‘identification for VAT purposes’) in that Member State; the tax in respect of the subsequent

supply is to be charged to taxable person C in that Member State.

6. I shall submit that, provided that the substantive criteria governing intra-Community acquisitions are met, the benefit of the simplification measure laid down in Article 141 of the VAT Directive cannot be refused to taxable person B on the grounds that he should not be identified for VAT purposes in the Member State of departure of the goods or that the recapitulative statement concerning the transactions at issue was not submitted or corrected within the period prescribed.

I. Legal context

A. European Union law

7. Article 40 of the VAT Directive provides:

‘The place of an intra-Community acquisition of goods shall be deemed to be the place where dispatch or transport of the goods to the person acquiring them ends.’

8. According to Article 41 of that directive:

‘Without prejudice to Article 40, the place of an intra-Community acquisition of goods as referred to in Article 2(1)(b)(i) shall be deemed to be within the territory of the Member State which issued the VAT identification number under which the person acquiring the goods made the acquisition, unless the person acquiring the goods establishes that VAT has been applied to that acquisition in accordance with Article 40.

If VAT is applied to the acquisition in accordance with the first paragraph and subsequently applied, pursuant to Article 40, to the acquisition in the Member State in which dispatch or transport of the goods ends, the taxable amount shall be reduced accordingly in the Member State which issued the VAT identification number under which the person acquiring the goods made the acquisition.’

9. According to Article 42 of the directive:

‘The first paragraph of Article 41 shall not apply and VAT shall be deemed to have been applied to the intra-Community acquisition of goods in accordance with Article 40 where the following conditions are met:

(a) the person acquiring the goods establishes that he has made the intra-Community acquisition for the purposes of a subsequent supply, within the territory of the Member State identified in accordance with Article 40, for which the person to whom the supply is made has been designated in accordance with Article 197 as liable for payment of VAT;

(b) the person acquiring the goods has satisfied the obligations laid down in Article 265 relating to submission of the recapitulative statement.’

10. Article 141 of the VAT Directive provides:

‘Each Member State shall take specific measures to ensure that VAT is not charged on the intra-Community acquisition of goods within its territory, made in accordance with Article 40, where the following conditions are met:

(a) the acquisition of goods is made by a taxable person who is not established in the Member State concerned but is identified for VAT purposes in another Member State;

(b) the acquisition of goods is made for the purposes of the subsequent supply of those goods, in the Member State concerned, by the taxable person referred to in point (a);

(c) the goods thus acquired by the taxable person referred to in point (a) are directly dispatched or transported, from a Member State other than that in which he is identified for VAT purposes, to the person for whom he is to carry out the subsequent supply;

(d) the person to whom the subsequent supply is to be made is another taxable person, or a non-taxable legal person, who is identified for VAT purposes in the Member State concerned;

(e) the person referred to in point (d) has been designated in accordance with Article 197 as liable for payment of the VAT due on the supply carried out by the taxable person who is not established in the Member State in which the tax is due.'

11. According to Article 197 of the VAT Directive:

'1. VAT shall be payable by the person to whom the goods are supplied when the following conditions are met:

(a) the taxable transaction is a supply of goods carried out in accordance with the conditions laid down in Article 141;

(b) the person to whom the goods are supplied is another taxable person, or a non-taxable legal person, identified for VAT purposes in the Member State in which the supply is carried out;

(c) the invoice issued by the taxable person not established in the Member State of the person to whom the goods are supplied is drawn up in accordance with Sections 3 to 5 of Chapter 3.

2. Where a tax representative is appointed as the person liable for payment of VAT pursuant to Article 204, Member States may provide for a derogation from paragraph 1 of this Article.'

12. Article 262 of that directive provides:

'Every taxable person identified for VAT purposes shall submit a recapitulative statement of the following:

(a) the acquirers identified for VAT purposes to whom he has supplied goods in accordance with the conditions specified in Article 138(1) and (2)(c);

(b) the persons identified for VAT purposes to whom he has supplied goods which were supplied to him by way of intra-Community acquisitions referred to in Article 42;

...'

13. According to Article 263 of the VAT Directive:

'1. The recapitulative statement shall be drawn up for each calendar month within a period not exceeding one month and in accordance with procedures to be determined by the Member States.

1a. However, Member States, in accordance with the conditions and limits which they may lay down, may allow taxable persons to submit the recapitulative statement for each calendar quarter within a time limit not exceeding one month from the end of the quarter, where the total quarterly amount, excluding VAT, of the supplies of goods as referred to in Articles 264(1)(d) and 265(1)(c) does not exceed either in respect of the quarter concerned or in respect of any of the previous four

quarters the sum of EUR 50 000 or its equivalent in national currency.

The option provided for in the first subparagraph shall cease to be applicable after the end of the month during which the total value, excluding VAT, of the supplies of goods as referred to in Article[s] 264(1)(d) and 265(1)(c) exceeds, in respect of the current quarter, the sum of EUR 50 000 or its equivalent in national currency. In this case, a recapitulative statement shall be drawn up for the month(s) which has (have) elapsed since the beginning of the quarter, within a time limit not exceeding one month.

1b. Until 31 December 2011, Member States are allowed to set the sum mentioned in paragraph 1a at EUR 100 000 or its equivalent in national currency.

...

2. Member States shall allow, and may require, the recapitulative statement referred to in paragraph 1 to be submitted by electronic file transfer, in accordance with conditions which they lay down.'

14. Article 265 of the directive provides:

'1. In the case of intra-Community acquisitions of goods, as referred to in Article 42, the taxable person identified for VAT purposes in the Member State which issued him with the VAT identification number under which he made such acquisitions shall set the following information out clearly on the recapitulative statement:

(a) his VAT identification number in that Member State and under which he made the acquisition and subsequent supply of goods;

(b) the VAT identification number, in the Member State in which dispatch or transport of the goods ended, of the person to whom the subsequent supply was made by the taxable person;

(c) for each person to whom the subsequent supply was made, the total value, exclusive of VAT, of the supplies made by the taxable person in the Member State in which dispatch or transport of the goods ended.

2. The value referred to in paragraph 1(c) shall be declared for the period of submission established in accordance with Article 263(1) to (1b) during which VAT became chargeable.'

15. Article 266 of the directive states:

'By way of derogation from Articles 264 and 265, Member States may provide that additional information is to be given in recapitulative statements.'

B. **Austrian law**

16. Article 3(8) of the Umsatzsteuergesetz (Austrian Law on Turnover Tax), of 23 August 1994, (3) provides:

‘The intra-Community acquisition is made in the territory of the Member State in which the goods are located … when their dispatch or transport ends. If the acquirer uses, in its dealings with the supplier, a VAT identification number issued to it by another Member State, the acquisition shall be deemed to have been made in the territory of that Member State, unless and until the acquirer proves that the acquisition has been taxed by the Member State designated in the first sentence. In the event of proof, Paragraph 16 shall apply by analogy.’

17. In the version applicable in respect of 2012, (4) Article 25 of the 1994 UStG, entitled ‘Triangular transactions’, provides:

‘Definition

(1) A triangular transaction occurs where three contractors effect taxable transactions concerning the same goods in three different Member States, those goods are sent directly by the first supplier to the final customer and the conditions set out in paragraph 3 are met. That shall also apply where the final customer is a legal person who is not a contractor or is not acquiring the goods for its business.

Place of the intra-Community acquisition in the case of a triangular transaction

(2) The intra-Community acquisition within the meaning of the second sentence of Article 3(8) shall be deemed to be taxed when the contractor (acquirer) proves that a triangular transaction has occurred and that it has complied with its obligations concerning the duty to declare under paragraph 6. If the contractor does not comply with its duty to declare, the tax exemption shall be forfeited retroactively.

Tax exemption on the intra-Community acquisition of goods

(3) The intra-Community acquisition shall be exempt from VAT where the following conditions are met:

(a) the contractor (acquirer) has no residence or establishment within the national territory but is identified for VAT purposes within the territory of the [European Union];

(b) the acquisition is made with a view to a subsequent supply by the contractor (acquirer) in the national territory to a contractor or a legal person identified for VAT purposes in the national territory;

(c) the goods acquired originate in a Member State other than that in which the contractor (acquirer) is identified for VAT purposes;

(d) the power of disposal over the goods acquired is transferred by the first contractor or first customer directly to the final customer (recipient);

(e) in accordance with paragraph 5, the recipient is liable to pay the tax.

Issuing of invoice by the acquirer

(4) (5) In the event of the exemption under paragraph 3, the invoice must additionally contain the following information:

– an express reference to the existence of an intra-Community triangular transaction and the fact that the final customer is liable for the tax,

– the VAT identification number under which the contractor (acquirer) made the intra-Community acquisition and subsequent supply of the goods, and

– the VAT identification number of the recipient of the supply.

Person liable for payment of the tax

(5) In the case of a triangular transaction, the recipient of the taxable supply shall be liable to pay the tax where the invoice issued by the acquirer corresponds to paragraph 4.

Obligations of the acquirer

(6) In order to comply with the obligations concerning the duty to declare under paragraph 2, the contractor shall be required to provide the following details in the recapitulative statement:

– the VAT identification number in the national territory under which it made the intra-Community acquisition and subsequent supply of goods;

– the VAT identification number of the recipient of the subsequent supply by the contractor, issued to it in the Member State of destination of the goods dispatched or transported;

– for each one of those recipients, the total amount paid in respect of the supplies thus delivered by the contractor in the Member State of destination of the goods dispatched or transported. These amounts are to be indicated in respect of the calendar quarter in which the tax debt arose.

Obligations of the recipient

(7) In calculating the tax under Paragraph 20, the amount payable under paragraph 5 is to be added to the amount ascertained.’

18. Under Article 21(3) of the 1994 UStG, recapitulative statements are to be submitted before the end of the calendar month following the statement period.

II. **Facts of the main proceedings and the questions referred for a preliminary ruling**

19. Firma Hans Bühler, a limited partnership, established and identified for VAT purposes in Germany, operates a production and trading undertaking in that Member State. From October 2012 to April 2013, (6) it was also identified for VAT purposes in Austria on account of its plan to set up a permanent establishment in that other Member State. At the time of the reference for a preliminary ruling, that plan had not yet been realised. (7)

20. During the period from October 2012 to March 2013, that limited partnership purchased goods on several occasions from suppliers established in Germany and sold them to a customer established and identified for VAT purposes in the Czech Republic. The goods were transported by the German suppliers directly to the Czech customer. Firma Hans Bühler used only its Austrian VAT identification number for those transactions, which it regarded as triangular transactions.

21. The German suppliers gave their German VAT identification number and the Austrian VAT identification number of Firma Hans Bühler on their invoices to that undertaking. Firma Hans Bühler in turn drew up invoices for its Czech customer setting out its Austrian VAT identification

number as well as the acquirer's Czech VAT identification number. It was stated on those invoices that the transactions were 'intra-Community triangular transactions' and that the final customer was therefore liable to pay the tax.

22. On 8 February 2013 Firma Hans Bühler submitted to the Austrian tax authorities recapitulative statements for the period from October 2012 to January 2013 in which it had given its Austrian VAT identification number and the Czech VAT identification number of the final customer. No entries were made in the box for 'triangular transactions'.

23. Then, on 10 April 2013, Firma Hans Bühler corrected those recapitulative statements, stating that it had effected triangular transactions, and submitted additional recapitulative statements for February and March 2013.

24. The City of Graz Tax Office concluded that the transactions between the German suppliers and Firma Hans Bühler were chargeable to VAT in Austria as intra-Community acquisitions.

25. It considered those transactions to be 'abortive' triangular transactions because Firma Hans Bühler had not complied with its obligations concerning the duty to declare, nor had it proved that the transaction had been subject to VAT upon final acquisition of the goods in the Czech Republic. The Tax Office also maintained that, even though the intra-Community acquisitions had occurred in the Czech Republic, they were also deemed to have been effected in Austria, since Firma Hans Bühler had used an Austrian VAT identification number.

26. Firma Hans Bühler's action against that decision was rejected by the Bundesfinanzgericht (Federal Finance Court, Austria) on the ground that that acquirer had forfeited the VAT exemption on its intra-Community acquisitions, pursuant to Article 25(2) of the 1994 UStG, for failing to comply with the specific obligations concerning the duty to declare as laid down by that provision. The Bundesfinanzgericht (Federal Finance Court) also held that the Austrian VAT identification number issued to Firma Hans Bühler was no longer valid on 10 April 2013 and that the undertaking therefore had also failed to comply with the obligations concerning the duty to declare under Article 25(6) of the 1994 UStG in respect of the transactions effected in February and March 2013.

27. Firma Hans Bühler brought an appeal on a point of law against that judgment before the Verwaltungsgerichtshof (Administrative Court, Austria).

28. That court expresses doubts about the consensus between the taxable person, the City of Graz Tax Office and the Bundesfinanzgericht (Federal Finance Court) that the rules concerning triangular transactions are applicable.

29. Having pointed out that two 'contractors', within the meaning of Article 25(1) of the 1994 UStG, are established in the same Member State, namely the Federal Republic of Germany, the referring court is unsure of the conclusion to be drawn from the fact that the goods were dispatched or transported from that Member State, in the light of Article 141(c) of the VAT Directive, and, consequently, of the determining factor in defining the transaction. Should the VAT identification number used by the taxable person be the single determining factor, the court refers to the potential impact of that outcome in terms of VAT identification obtained exclusively for participation in triangular transactions.

30. Lastly, the Verwaltungsgerichtshof (Administrative Court) does not share the view adopted by the City of Graz Tax Office and the Bundesfinanzgericht (Federal Finance Court) regarding the legal consequences of the failure to comply with the obligations concerning the duty to declare, in the light of Articles 41 and 42 of the VAT Directive and the case-law of the Court on the correction

of invoices.

31. In those circumstances the Verwaltungsgerichtshof (Administrative Court) decided to stay the proceedings and to refer to the Court the following questions for a preliminary ruling:

‘(1) Is Article 141(c) of [the VAT] Directive, on which the non-application of the first paragraph of Article 41 of [the VAT] Directive depends, in accordance with Article 42 (read in conjunction with Article 197) of [the VAT] Directive, to be interpreted as meaning that the requirement laid down in that provision is not met where the taxable person is established and identified for VAT purposes in the Member State from which the goods are dispatched or transported, even if that taxable person uses the VAT identification number of another Member State for that specific intra-Community acquisition?

(2) Are Articles 42 and 265 of [the VAT] Directive, read in conjunction with Article 263 of [the VAT] Directive, to be interpreted as meaning that only the submission in due time of the recapitulative statement renders the first paragraph of Article 41 of [the VAT] Directive inapplicable?’

III. **My analysis**

A. **Preliminary observations**

32. By its first question, the referring court asks the Court to rule, for the first time, on the criteria governing implementation of the mechanism created in Article 141 of the VAT Directive (8) which must be met to ensure that VAT is not charged in a Member State on the intra-Community acquisition of goods in the territory of that Member State made by a taxable person for the purposes of a subsequent supply.

33. Since the matter involves a simplification measure, it seems appropriate to me to begin by considering it in the more general context of the rules applying to the intra-Community trade in goods (9) of which it is part.

34. Article 141 of the VAT Directive in essence reproduces Article 28c(E)(3), first to fifth indents, of the Sixth Directive.

35. Article 28c(E) of the Sixth Directive was introduced by Article 1(22) of Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388 with a view to the abolition of fiscal frontiers, (10) which had inserted a Title XVIa comprising Articles 28a to 28m, setting out the transitional arrangements for the taxation of trade between Member States (11) and, more specifically, those governing exemptions.

36. The provisions of Article 28c(E) of the Sixth Directive have not been revised, in terms of their substance, since they were amended by Article 1(13) of Council Directive 92/111/EEC of 14 December 1992 amending Directive 77/388 and introducing simplification measures with regard to value added tax. (12)

37. Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112 on the common system of value added tax, (13) the objective of which is, according to recital 4 thereof, ‘to ensure uniform application of the current VAT system by laying down rules implementing [the VAT Directive], in particular in respect of taxable persons, the supply of goods and services, and the place of taxable transactions’, does not contain any specific provisions relating to exemptions for intra-Community transactions referred to in Articles 138 to 142 of the VAT Directive. (14)

38. Accordingly, Article 141 of the directive constitutes one element of the general mechanism for exempting intra-Community acquisitions. To facilitate understanding of the mechanism created by this provision, (15) it also seems necessary to me to bear in mind some fundamental concepts regarding intra-Community trade of goods which stem from the VAT Directive and the case-law of the Court.

39. Primarily, under Article 2(1)(b)(i) of the directive, the intra-Community acquisition of goods for consideration within the territory of a Member State by a taxable person acting as such is to be subject to VAT. (16)

40. In the first paragraph of Article 20 of the directive, ‘intra-Community acquisition of goods’ is defined as ‘the acquisition of the right to dispose as owner of movable tangible property dispatched or transported to the person acquiring the goods, by or on behalf of the vendor or the person acquiring the goods, in a Member State other than that in which dispatch or transport of the goods began’.

41. Article 42 of the VAT Directive deals with the specific case of acquisition for the purposes of a subsequent supply, as does Article 141(b) of that directive.

42. The place of an intra-Community acquisition of goods, that is to say, the place where the transaction is subject to tax, ‘shall be deemed to be’, in accordance with Article 40 of the directive, ‘the place where dispatch or transport of the goods to the person acquiring them ends’.

43. Then, as the Court has held:

– ‘the intra-Community supply of goods and their intra-Community acquisition are, in fact, one and the same financial transaction, even though the latter creates different rights and obligations both for the parties to the transaction and for the tax authorities of the Member States concerned’; (17)

– ‘thus, any intra-Community acquisition that is taxed in the Member State where the dispatch or intra-Community transport of goods ends under the first subparagraph of Article 28a(1)(a) of the Sixth Directive [(18)] has, as a corollary, an exempted supply in the Member State in which that dispatch or transport began under the first subparagraph of Article 28c(A)(a) of that directive [(19)] [(judgment of 6 April 2006, *EMAG Handel Eder*, C?245/04, EU:C:2006:232)]’; (20)

– ‘it follows that the exemption of an intra-Community supply corresponding to an intra-Community acquisition enables double taxation and, therefore, infringement of the principle of fiscal neutrality inherent in the common system of VAT ... to be avoided’, (21) and

– ‘the intra-Community acquisition of goods is made and the exemption of the intra-Community supply of goods becomes applicable only when the right to dispose of the goods as owner has been transferred to the acquirer and the supplier establishes that those goods have been dispatched or transported to another Member State and that, as a result of that dispatch or

that transport, they have physically left the territory of the Member State of supply'. (22)

44. Lastly, only triangular transactions come under a special provision in the VAT Directive, namely Article 141, in which they are defined. Accordingly, they must be carried out by three taxable persons, identified for VAT purposes in three different Member States, the special feature of the transactions being that the goods concerned are dispatched or transported by the first taxable person to the third taxable person.

45. They must, therefore, be distinguished from successive or 'chain' transactions concerning the same goods, which result in there being only a single intra-Community transport, (23) as previously examined by the Court, even if the outcomes of those transactions are comparable. (24)

46. In such circumstances, in the absence of any special provision, it was a matter of establishing the conditions governing implementation of the principle of exemption of intra-Community supply in order easily to attain the purpose, 'namely to transfer the tax revenue to the Member State in which final consumption of the goods supplied takes place' and to make it possible 'to delimit clearly the authority to tax of the Member States concerned'. (25)

47. In those circumstances the Court ruled, first, that 'that dispatch or transport can be ascribed to only one of the two supplies, which alone will be exempted from tax under the first subparagraph of Article 28c(A)(a) of the Sixth Council Directive' (26) and that 'that interpretation holds good regardless of which taxable person — the first vendor, the intermediary acquiring the goods or the second person acquiring the goods — has the right to dispose of the goods during that dispatch or transport'. (27)

48. The Court subsequently found (28) that 'the determination of the transaction to which that transport should be ascribed, namely the first or second supply ... must be conducted in the light of an overall assessment of all the circumstances of the case in order to establish which of those two supplies fulfils all the conditions relating to an intra-Community supply'. (29)

49. However, in applying Article 141 of the VAT Directive, the issue of determining the supply to which the intra-Community transport is to be ascribed does not arise on account of the conditions laid down in subparagraphs (b) and (c) of that provision, namely, on the one hand, that the acquisition of goods is made '*for the purposes of the subsequent supply of those goods*' (30) by a taxable person in the Member State where the dispatch or transport of those goods ends, and, on the other hand, that the goods thus acquired are dispatched or transported directly to the person for whom the subsequent supply is made.

50. Therefore, although the referring court's questions concern the identification for VAT purposes of the taxable persons concerned in three different Member States, I feel that it is necessary to point out (31) that such identification does not on its own define the triangular transaction. The conditions under which the economic transaction at issue is made are determinant. Accordingly, the transaction must be carried out by an intermediary acquiring the goods, or, in other words, a buyer-reseller, who decides concurrently to acquire the goods in order to resell them and have them transported directly by his supplier to his customer. In those circumstances, the right to dispose of the goods as owner will necessarily have been transferred to the first person acquiring the goods since the 'intra-Community acquisition is ... effected by [his arranging] for the carriage of the goods'. (32)

51. Consequently, it appears crucial to me that these specific circumstances, which allow a distinction to be made between triangular transactions and successive or 'chain' transactions, should be established first (33) before contemplating any simplification.

52. The same is true of the more general conditions concerning intra-Community transactions, for instance, the actual dispatch or transport of the goods (34) and the designation of the final recipient of the subsequent supply as the person liable for payment of VAT in the Member State concerned. (35)

53. It follows that, since the intra-Community acquisition at issue in the main proceedings would be followed by an internal supply, a helpful answer could be given to the two questions raised by the referring court regarding the implementation of the simplification measure established for the benefit of the taxable intermediary by Article 141 of the VAT Directive.

B. **The first question referred**

54. The first question referred relates to examination of the condition, laid down by Article 141 of the VAT Directive, that each of the three taxable persons must be identified for VAT purposes in a different Member State. That question seeks clarification as to whether it is essential to adhere to the straightforward finding that three different identification numbers were used or, on the contrary, to verify the existence of multiple VAT identification numbers belonging to the taxable intermediary.

55. It must be noted that the only restriction expressly referred to in Article 141(a) and (e) is that the taxable person carrying out the subsequent supply in the Member State of the place of the intra-Community acquisition of the goods, namely the place of their arrival, must not be ‘established’ there.

56. The various language versions, in particular the Spanish, German, English, Italian and Polish versions, (36) are drawn up with this single reservation.

57. This is substantiated by the objective pursued by the provision in question. As is stated in paragraph 248 of the 1994 report, ‘the object of the simplification measures is to avoid the [intermediary] trader having to satisfy identification and declaration obligations [(37)] in the Member State [of the place of arrival of the goods]’, while he makes in that Member State an intra-Community acquisition of goods followed by a supply within that Member State, attracting VAT in accordance with the rules applicable in that Member State. (38)

58. This mechanism therefore involves ‘nullifying taxation of the intra-Community acquisition, which is in principle taxable in [the] Member State [of the place of arrival of the transport of goods] and shifting to [the final] subpurchaser ... taxation of the sale made to him by [the intermediary trader]’. (39)

59. Consequently, if all the other conditions laid down in Article 141 of the VAT Directive are met, in particular the condition relating to the designation of the taxable person as liable for payment of the tax, the effect of using for the intra-Community acquisition a VAT identification number issued by a Member State other than the Member State of arrival of the goods cannot be that the acquisition is subject to taxation in the Member State which issued an identification number to the taxable intermediary.

60. However, the referring court is unsure whether Article 141 of the VAT Directive applies where the taxable person is established in the Member State of departure of the goods and is specifically uncertain of the interpretation to be given to Article 141(c). It is therefore essential to specify all the points that require discussion.

61. First, as the referring court has explained, the wording used in Article 141(c) of the VAT

Directive, relating to the dispatch or transport of goods ‘from a Member State other than that in which [the intermediary trader] is identified for VAT purposes’, could be interpreted literally as excluding situations where the taxable person is established, and indeed identified for tax purposes, in the Member State of departure of the goods, regardless of the choice of identification available to him when carrying out the transaction.

62. Secondly, such an interpretation would not be isolated. As commentators B. Terra and J. Kajus note, various Member States make provision for excluding situations where identification for tax purposes is issued in the Member State of departure of the goods. (40)

63. Thirdly, there would be practical justification for such a measure: given that establishment in a Member State creates rights (41) and obligations in terms of taxation and submitting returns, the simplification measure would be of no benefit to the taxable person.

64. Fourthly, excluding situations in which the taxable person is identified for tax purposes in the Member State of departure of the goods would be advantageous in that it would restrict the use of identification numbers issued for ‘one-off’ transactions for the sole purpose of establishing participation in triangular transactions. In this regard, in its 1994 report the Commission had highlighted the benefit of exercising a degree of vigilance, (42) as noted by the referring court.

65. In my view, the various arguments set out above must be rejected for the following reasons.

66. From the outset, it may be argued that a literal interpretation of Article 141(c) of the VAT Directive (43) effectively excludes from its scope situations — not exclusively relating to the establishment of the taxable person — in which the VAT identification number is issued in the Member State of departure of the goods. Such exclusion could not be justified by obligations concerning the duty to declare. (44)

67. Then, more fundamentally, on the basis of the finding that there are no specific provisions relating to cases of multiple identification numbers, I submit that Article 141 of the directive must be given a strict and teleological interpretation.

68. On the one hand, a strict interpretation of Article 141 of the VAT Directive is necessary because of its purpose, namely the setting up of a simplification measure the corollary of which is exclusion in relation to situations where the taxable person is identified for VAT purposes in the Member State of arrival of the goods. In other words, exclusion of situations where the taxable person is identified in the Member State of departure of the goods cannot be inferred from general terms.

69. This line of reasoning cannot be challenged, in terms of Article 141(a) of the directive, by the finding that exclusion must apply not only where the taxable person is established in the Member State of arrival of the goods but also where he is merely identified for VAT purposes in that Member State. That condition can be inferred inherently from the objective pursued by that provision, which is to avoid the taxable intermediary being identified there. The 1994 report, in which reference is made to the taxable intermediary’s use of the ‘identification number issued ... by a Member State other than the Member State of arrival of the transport’, confirms that analysis. (45)

70. On the other hand, I concur with the Commission that the provisions of Article 141 of the VAT Directive must be read in their entirety and in conjunction with those of Article 265 (46) of the directive, mentioned in Article 42 of the directive, which concerns the content of the recapitulative statement that must be drawn up in the case of intra-Community acquisition for the purpose of a subsequent supply. The expression ‘VAT identification number ... under which [the person

acquiring the goods] made [that] acquisition' suggests freedom to choose as between different numbers. This wording is also used in Article 41 of the directive with regard to determining the place of intra-Community acquisition of goods.

71. That interpretation is supported by the purpose of the mechanism at issue. To my mind, verification that tax has been charged at the final place of consumption of the goods is sufficient to justify the EU legislature's choice not to exclude, in Article 141 of the VAT Directive, simplification where the intermediary acquiring the goods has another identification number corresponding to the place of establishment of that taxable person in the Member State of the place of departure of the goods. (47)

72. The opposite approach, preventing a taxable person from choosing his VAT identification number, would give rise to a significant difference in the manner in which taxable persons are treated and might restrict the pursuit of economic activities, although the individual VAT identification number is only one form of proof. (48)

73. Moreover, as the Austrian Government has pointed out, (49) economic realities demonstrate the benefit of reducing administrative burden (50) by maintaining a taxable person's freedom to choose his VAT identification number for intra-Community transactions and by providing legal certainty with regard to the transactions carried out for the final customer. (51) Similarly, at the hearing, reference was made to the advantage gained from simplification for the cash management of the undertaking exempted from the charging of tax.

74. Finally, the interest to the Member State in which the taxable intermediary is identified for tax purposes of opposing another identification number issued by the Member State of departure of the goods remains to be established. Indeed, in such circumstances, only the latter Member State may charge tax on the supply.

75. All of those factors lead me to the view that, for the purpose of adhering to what 'is necessary to ensure the correct collection of the tax' (52) in the Member State of arrival of the goods, it need only be established that three different VAT identification numbers have been used in order to implement the simplification mechanism provided for in Article 141 of the VAT Directive, provided that, in accordance with the Court's settled case-law, (53) the use of multiple VAT identification numbers is not fraudulent.

76. As the referring court has pointed out, circumstances, such as those described by the Commission in its 1994 report, (54) may lead to questions concerning VAT identification numbers chosen with a view to conducting triangular transactions. (55)

77. Furthermore, generally speaking, it is clear from the Commission's Action Plan on VAT (56) that special vigilance is required as the law currently stands.

78. In the light of all those considerations, I propose that the answer to the first question referred should be that Article 141(c) of the VAT Directive must be interpreted as meaning that the taxable person, who meets the conditions governing identification referred to in subparagraph (a) of that article, must have made the acquisition of goods referred to in subparagraph (b) of that article under a VAT identification number issued by a Member State other than that from which the goods are dispatched or transported for the intra-Community acquisition at issue, regardless of whether he is established or identified for tax purposes in that Member State.

C. **The second question referred**

79. This question must be considered only if triangular transactions are found to exist.

80. By the second question referred, the referring court is seeking to establish, in essence, whether compliance with the requirements concerning the drawing up of a recapitulative statement, as laid down by Articles 263 (57)and 265 (58) of the VAT Directive, constitutes a substantive condition governing the application of Article 42 of that directive and, consequently, the VAT exemption in respect of the taxable intermediary, under the mechanism laid down in Article 141 of the directive. (59)

81. More specifically, the referring court is uncertain of the inferences to be drawn from the late submission of the recapitulative statements concerning the transactions carried out between October and December 2012 (60) and from the subsequent corrections to those statements clarifying that there were triangular transactions. (61)

82. It should be noted that Article 265 of the VAT Directive lists the information which the taxable person must set out in the recapitulative statement to be drawn up by him in accordance with Article 262 of the directive. The consequences of that requirement on establishing the place where the VAT is to be charged are set out in Article 42 of the directive.

83. Thus, Article 42(a) of the VAT Directive defines the substantive conditions which have to be met, in conjunction with Article 197 of that directive, and specifically with paragraph 1(a) of that article. Accordingly, the conditions laid down in Article 141 of the directive must first be met in order for the intra-Community acquisition, made ‘for the purposes of a subsequent supply’, (62) to be deemed to be subject to VAT in the Member State of arrival of the goods.

84. The requirement to satisfy ‘the obligations laid down in Article 265 relating to submission of the recapitulative statement’, which is contained in Article 42(b) of the VAT Directive, must be assessed in a different way, in line with the Court’s case-law, as a formal condition under which VAT may be charged exclusively in the Member State of the place of final consumption of the goods.

85. It should be noted, first of all, on the basis of the wording of the first paragraph of Article 42 of the VAT Directive, that Article 42(b) must be construed in the light of Article 41 of the directive. (63) Article 41 is applicable ‘unless the person acquiring the goods establishes that VAT has been applied to [the] acquisition in accordance with Article 40’. These provisions lay down more stringent requirements of broader scope than those under Article 42 of the directive relating to the straightforward submission of a recapitulative statement. It is also essential to bear in mind the purpose of those provisions, which the Court recalled in the judgment of 22 April 2010, *X and fiscale eenheid Facet-Facet Trading*, (64) namely, ‘to ensure that the acquisition in question is subject to VAT’. (65)

86. Unlike the Austrian Government, I am not convinced of any need to draw on the difference in wording between Article 42 of the VAT Directive and Article 138 of the directive, which is silent on that point. To my mind, as EU law currently stands, (66) there is no obstacle to comparison with the settled case-law of the Court, which can be applied to the circumstances of this case, under which, where the substantive conditions for an intra-Community supply are met, the right to exempt that supply from VAT cannot be subject to other administrative requirements.

87. Thus, the Court gave a ruling precluding the refusal to allow an intra-Community supply — which actually took place — to be exempt from VAT solely on the ground that the evidence of a supply had not been produced in good time. (67) In fact, the Court cited ‘the submission of recapitulative statements to the tax authority’ as an example of the formal obligations contained in

Article 22 of the Sixth Directive, in the version resulting from Article 28h of that directive, which is now, in this regard, Article 263 of the VAT Directive. (68)

88. The same is true, in terms of the inferences that can be applied to the case in the main proceedings, of the requirements additional to that of valid identification, such as registration in the VAT Information Exchange System (VIES), or the requirement that intra-Community acquisitions must be subject to taxation arrangements, (69) or even the provision of the VAT identification number of the person acquiring the goods. (70)

89. Following the same reasoning, the correction of an invoice in relation to a detail which must be mentioned, namely the VAT identification number, may have retroactive effect. (71) Furthermore, the VAT exemption for an intra-Community supply may not be refused solely on the ground that the tax authority of another Member State has removed the purchaser's VAT identification number from the register with retroactive effect from a date prior to that supply. (72)

90. Lastly, consideration must be given, first, to the obligation incumbent on every taxable person identified for VAT purposes to draw up recapitulative statements, (73) thus allowing the information supplied to be cross-checked. Secondly, from a broader perspective, changes in the Union's legislation on administrative cooperation in the field of VAT (74) must be borne in mind. After all, Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax, (75) which entered into force on 1 January 2012, lays down common rules and procedures, in particular for the purpose of exchanging information between the competent national authorities with a view to ensuring the correct application of VAT. (76) This arrangement will inevitably mitigate the consequences of submitting an incomplete or late return.

91. However, there are two exceptions to that 'principle of the rejection of formalism', (77) traditionally based on the objective nature of the terms defined by the VAT Directive and the principle of fiscal neutrality, which apply irrespective of the benefit stemming from an instrument of Union law. (78) These are, on the one hand, intentional participation in tax evasion (79) and, on the other hand, failure to furnish evidence that the substantive requirements are satisfied. (80)

92. To my mind, and contrary to the Austria Government's claim, (81) the latter exception explains the outcome of the judgment of 22 April 2010, *X and fiscale eenheid Facet-Facet Trading*, (82) given that the Court established that the goods at issue had not actually entered the Member State which issued the identification number. (83)

93. Therefore, I consider that the right to exemption from VAT may ensue only from fulfilment of the conditions laid down in Article 141 and Article 42(a) of the VAT Directive, bearing in mind that the condition laid down in Article 42(b) of that directive merely sets out a practical implementing procedure.

94. However, should the Court disagree with this analysis, it ought to be borne in mind, as the Commission has noted, that the absence of a recapitulative statement or any other form of return was not at issue in the main proceedings.

95. I therefore propose that the answer to the second question referred should be that Article 42(b) of the VAT Directive must be interpreted as precluding a tax authority of the Member State which issued the VAT identification number under which the taxable person made an intra-Community acquisition, for the purposes of a subsequent supply, from refusing to exempt that acquisition from VAT on the sole ground that the recapitulative statement, referred to in Article 265 of that directive, was submitted late or subsequently corrected by the taxable person, even though there is no specific evidence of fraud and it is established that the substantive conditions for

exemption are satisfied.

IV. **Conclusion**

96. In the light of the foregoing considerations, I propose that the Court's answers to the questions referred by the Verwaltungsgerichtshof (Administrative Court, Austria) for a preliminary ruling should be as follows:

(1) Article 141(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the taxable person, who meets the conditions governing identification referred to in subparagraph (a) of that article, must have made the acquisition of goods referred to in subparagraph (b) of that article under a VAT identification number issued by a Member State other than that from which the goods are dispatched or transported for the intra-Community acquisition at issue, regardless of whether he is established or identified for VAT purposes in that Member State.

(2) Article 42(b) of Directive 2006/112 must be interpreted as precluding a tax authority of the Member State which issued the VAT identification number under which the taxable person made an intra-Community acquisition, for the purposes of a subsequent supply, from refusing to exempt that acquisition from VAT on the sole ground that the recapitulative statement, referred to in Article 265 of that directive, was submitted late or subsequently corrected by the taxable person, even though there is no specific evidence of tax fraud and it is established that the substantive conditions for exemption are satisfied.

1 Original language: French.

2 OJ 2006 L 347, p. 1, 'the VAT Directive'.

3 BGBl. No 663/1994, 'the 1994 UStG'.

4 BGBl. I, No 34/2010.

5 This paragraph was amended by the Abgabenänderungsgesetz 2012 (Tax Amendment Law) of 14 December 2012 (BGBl. I, No 112/2012), with effect from 1 January 2013. It states:

'(4) The issuance of the invoice shall be governed by the provisions of the Member State in which the acquirer operates its undertaking. If the supply is carried out from the acquirer's permanent establishment, the law of the Member State in which the establishment is situated shall be applicable. ...

Where the provisions of this Federal law are applicable to the issuance of the invoice, the invoice must additionally contain the following details:

– an express reference to the existence of an intra-Community triangular transaction and the fact that the final customer is liable for the tax;

– the VAT identification number under which the contractor (acquirer) made the intra-Community acquisition and subsequent supply of the goods; and

– the VAT identification number of the recipient of the supply.'

6 It is clear from paragraph 7 of the order for reference that, on 10 April 2013, the VAT identification number was no longer valid.

7 At the hearing, that company’s representative stated that it had abandoned its plan.

8 The same applies to the equivalent provisions of 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, ‘the Sixth Directive’). See point 34 et seq. of the present Opinion.

9 For a historical perspective, see the Opinion of Advocate General Kokott in *Teleos and Others* (C?409/04, EU:C:2007:7, points 24 to 29).

10 OJ 1991 L 376, p. 1.

11 At paragraph 22 of the judgment of 27 September 2007, *Teleos and Others* (C?409/04, EU:C:2007:548), the Court held that ‘the Community legislature, after stating that conditions could not yet be brought about that would permit the principle of the taxation in the Member State of origin of goods supplied to be implemented without prejudicing the principle that tax revenue from the imposition of tax at the final consumption stage should accrue to the benefit of the Member State in which the final consumption takes place, introduced, under Title XVIa of the Sixth Directive, transitional arrangements for the taxation of trade between Member States, based on a new chargeable event, namely the intra-Community acquisition of goods (7th to 10th recitals in the preamble to Directive 91/680)’.

12 OJ 1992 L 384, p. 47, the date of entry into force being fixed, under Article 4 of the directive, at 1 January 1993.

13 OJ 2011 L 77, p. 1. With the exception of some provisions laid down in Articles 3, 11, 23 and 24, that regulation entered into force on the 20th day following its publication in the *Official Journal of the European Union* and was to apply from 1 July 2011 (see Article 65 of that regulation). Council Regulation (EC) No 1777/2005 of 17 October 2005 laying down implementing measures for Directive 77/388 on the common system of value added tax was thereby repealed ((OJ 2005 L 288, p. 1); see Article 64 of Regulation No 282/2011).

14 See, for future reference, the Proposal for a Council Implementing Regulation of 4 October 2017 amending Implementing Regulation No 282/2011 as regards certain exemptions for intra-Community transactions (COM(2017) 568 final), concerning only Article 138 of the VAT Directive.

15 It must be noted that this mechanism is not mandatory. Acquirers may opt to be subject to the general arrangements under which the taxable intermediary must comply with his tax duties either in the Member State in which dispatch of the goods begins, where he carries out an intra-Community supply, or in the Member State in which dispatch of the goods ends, where he carries out an intra-Community acquisition, followed by an internal supply for which the tax is charged to the final customer.

16 Subparagraph (a) of that article provides that ‘the supply of goods for consideration within the territory of a Member State by a taxable person acting as such’ is to be subject to VAT.

17 See judgment of 27 September 2007, *Teleos and Others* (C?409/04, EU:C:2007:548, paragraph 23).

18 Now Article 2(1)(b)(i) of the VAT Directive.

19 Now Article 138(1) of the VAT Directive.

20 See judgment of 27 September 2007, *Teleos and Others* (C?409/04, EU:C:2007:548, paragraph 24).

21 See judgment of 27 September 2007, *Teleos and Others* (C?409/04, EU:C:2007:548, paragraph 25).

22 See judgment of 27 September 2007, *Teleos and Others* (C?409/04, EU:C:2007:548, paragraph 42). See, by way of illustration of the consequences of failure to meet that requirement, judgment of 22 April 2010, *X and fiscale eenheid Facet-Facet Trading* (C?536/08 and C?539/08, EU:C:2010:217, paragraphs 41 and 42).

23 See, for illustrative purposes, with regard to transactions involving more than two taxable persons, judgments of 22 April 2010, *X and fiscale eenheid Facet-Facet Trading* (C?536/08 and C?539/08, EU:C:2010:217); of 27 September 2012, *VSTR*, (C?587/10, EU:C:2012:592); of 18 December 2014, *Schoenimport 'Italmoda' Mariano Previti and Others* (C?131/13, C?163/13 and C?164/13, EU:C:2014:2455); and of 26 July 2017, *Toridas* (C?386/16, EU:C:2017:599).

24 For a comparison with the arrangements applying to triangular transactions, see Opinion of Advocate General Kokott in *EMAG Handel Eder* (C?245/04, EU:C:2005:675, point 65).

25 See judgment of 6 April 2006, *EMAG Handel Eder* (C?245/04, EU:C:2006:232, paragraph 40).

26 Now Article 138(1) of the VAT Directive.

27 See judgment of 6 April 2006, *EMAG Handel Eder* (C?245/04, EU:C:2006:232, operative part, paragraph 1).

28 See judgment of 16 December 2010, *Euro Tyre Holding* (C?430/09, EU:C:2010:786, paragraph 27 et seq.).

29 See paragraph 44 of that judgment.

30 Emphasis added.

31 Which the Court did, for the attention of the parties, when it raised a question for oral answer at the hearing.

32 According to the terms used in the Opinion of Advocate General Kokott in *EMAG Handel Eder* (C?245/04, EU:C:2005:675, point 66).

33 See, by way of comparison, the situations envisaged in the report from the Commission to the Council and the European Parliament of 23 November 1994 on the operation of the transitional arrangements for charging VAT in intra-Community trade (COM(94) 515 final, '1994 report'), which states, at paragraph 247, that 'conversely, where B takes delivery of the goods in Member State 1, or if his purchaser C undertakes, on his own behalf and for his own account, to transport the goods to a place of destination in Member State of arrival 2 [to be read as "Member State 3" for the sake of consistency with point 4 of this Opinion], B makes a purchase within Member State 1 followed by an intra-Community supply from that Member State'. See, by way of illustration of the first situation, judgment of 26 July 2017, *Toridas* (C?386/16, EU:C:2017:599, paragraphs 12, 13 and 40).

34 See point 43, fourth indent, of this Opinion.

35 This requirement is set out in Article 42 and Article 141(e) of the VAT Directive. In the alternative, Article 41 of the directive must apply. The condition is worded as follows: ‘unless the person acquiring the goods establishes that VAT has been applied to [the] acquisition in accordance with Article 40’. See point 85 of this Opinion and paragraphs 6 and 17 of the order for reference.

36 See the written observations of the Austrian Government (paragraph 7). Independent verification of the consistency of the various translations.

37 See Article 214 of the VAT Directive in relation to the obligations to provide identification for any transaction. See also, in particular, as a reminder of the intended purpose, which is to ensure that the VAT system operates properly, judgment of 14 March 2013, *Ablessio* (C?527/11, EU:C:2013:168, paragraphs 18 and 19).

38 See 1994 report, paragraph 246 on the principles of taxation.

39 See 1994 report, paragraph 249.

40 Terra, B., and Kajus, J., *A guide to the European VAT Directives, Introduction to European VAT*, Volume 1, International Bureau of Fiscal Documentation, Amsterdam, 2017, p. 619, in particular footnote 601. See also, for example, French circular BOI-TVA-CHAMP-20-40-20120912, available on the following website: http://bofip.impots.gouv.fr/bofip/1342-PGP.html, point 240, and the commentary on Belgian legislation in Baltus, F., *La TVA: fondements et mécanismes*, 2nded., Larcier, Brussels, 2016, p. 163.

41 In certain national legislation, there are links between the social insurance or tax identification numbers of an undertaking established in the state concerned. Thus, that identification number is taken as the basis for automatically issuing the intra-Community VAT identification number.

42 See paragraphs 252, 254 and 255 of the report.

43 See point 61 of this Opinion.

44 See point 63 of this Opinion.

45 See paragraph 251 of the report.

46 More specifically, paragraph 1(a) of Article 265 of that directive.

47 That approach may be compared with the Court’s case-law according to which the exemption of an intra-Community supply does not have to depend on the issuing or submitting of a VAT identification number or even on its removal from the register. See point 87 et seq. of this Opinion.

48 See judgment of 14 March 2013, *Ablessio* (C?527/11, EU:C:2013:168, paragraphs 20 and 32).

49 See paragraphs 9 to 11 of the Austrian Government’s written observations.

50 For more general considerations on that objective’s connection with the European Union’s growth strategy, particularly for SMEs, see the Explanatory Memorandum to the Proposal for a

Council Implementing Regulation of 4 October 2017 amending Implementing Regulation No 282/2011 as regards certain exemptions for intra-Community transactions (COM(2017) 568 final, p. 3, fourth paragraph).

51 See judgment of 27 September 2007, *Teleos and Others* (C?409/04, EU:C:2007:548, paragraphs 48 to 50).

52 See judgments of 27 September 2007, *Collée*(C?146/05, EU:C:2007:549, paragraph 29), and of 6 September 2012, *Mecsek-Gabona* (C?273/11, EU:C:2012:547, paragraph 61).

53 Cf. judgment of 27 September 2012, *VSTR*, (C?587/10, EU:C:2012:592, paragraph 43 and the case-law cited).

54 See paragraphs 254 and 255 of the report.

55 It should be noted in this regard that no special measures were adopted, in the light of that report, when the VAT Directive was amended and the regulations were drafted.

56 See Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee of 4 October 2017 on the follow-up to the Action Plan on VAT, Towards a single EU VAT area — Time to act (COM(2017) 566 final, point 3.1.2, p. 10).

57 More specifically, the first subparagraph of Article 263(1), which corresponds to Article 28h of the Sixth Directive, inserted by Directive 91/680, replacing Article 22(6)(b), second subparagraph, first sentence, of the Sixth Directive.

58 More specifically, Article 265(1)(a) and (b), which corresponds to Article 28h of the Sixth Directive, inserted by Directive 91/680, replacing Article 22(6)(b), fifth subparagraph, first and second indents, of the Sixth Directive.

59 See paragraph 16 of the Austrian Government’s written observations.

60 See paragraph 28 of the order for reference, which states that those recapitulative statements were submitted on 8 February 2013, whereas the deadline for submission expired on 31 January 2013.

61 See paragraphs 5 and 31 of the order for reference. Those corrections were submitted on 10 April 2013.

62 Article 42(a) of the directive.

63 Which corresponds to Article 28b(A)(2), first and second subparagraphs, of the Sixth Directive. It may also be noted, in view of the points of analysis set forth by the referring court as well as by the Austrian Government in its written observations, that there may be cases where the final destination of the goods is unknown or, more generally, one of the substantive conditions of Article 42 of the VAT Directive is not met.

64 C?536/08 and C?539/08, EU:C:2010:217, paragraphs 32 to 36.

65 See paragraph 33 of the judgment.

66 See, as regards ongoing projects, Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee of 4 October 2017, on the follow-up to the Action Plan on VAT, Towards a single EU VAT area — Time to act

(COM(2017) 566 final, point 3.1.1.1, under (b), p. 8).

67 See judgment of 27 September 2007, *Collée* (C?146/05, EU:C:2007:549, operative part, first paragraph).

68 See judgment of 27 September 2007, *Collée* (C?146/05, EU:C:2007:549, paragraph 25).

69 See judgment of 9 February 2017, *Euro Tyre* (C?21/16, EU:C:2017:106, paragraph 37).

70 See judgments of 27 September 2012, *VSTR* (C?587/10, EU:C:2012:592, paragraphs 51 and operative part), and of 20 October 2016, *Plöckl* (C?24/15, EU:C:2016:791, paragraph 52 et seq.).

71 See judgment of 15 September 2016, *Senatex* (C?518/14, EU:C:2016:691, operative part).

72 See judgment of 6 September 2012, *Mecsek-Gabona* (C?273/11, EU:C:2012:547, paragraphs 60 and 61 (regarding the formal requirement) and operative part, paragraph 2).

73 See Articles 262 and 263 of the VAT Directive.

74 Cf. judgment of 22 April 2010, *X and fiscale eenheid Facet-Facet Trading* (C?536/08 and C?539/08, EU:C:2010:217, paragraph 37).

75 OJ 2010 L 268, p. 1.

76 See the following recitals of Regulation No 904/2010:

‘(7) For the purposes of collecting the tax owed, Member States should cooperate to help ensure that VAT is correctly assessed. They must therefore not only monitor the correct application of tax owed in their own territory, but should also provide assistance to other Member States for ensuring the correct application of tax relating to activity carried out on their own territory but owed in another Member State.

(8) Monitoring the correct application of VAT on cross-border transactions taxable in a Member State other than that where the supplier is established depends in many cases on information which is held by the Member State of establishment or which can be much more easily obtained by that Member State. Effective supervision of such transactions is therefore dependent on the Member State of establishment collecting, or being in a position to collect, that information.

…

(19) The Member State of consumption has primary responsibility for assuring that non-established suppliers comply with their obligations. ...’

77 Terms used by Advocate General Saugmandsgaard Øe in his Opinion in *Plöckl*, (C?24/15, EU:C:2016:204, point 82 et seq.). His reasoning is based on the principles established in the judgment of 27 September 2007, *Collée* (C?146/05, EU:C:2007:549, paragraph 31), referred to recently in the judgment of 9 February 2017, *Euro Tyre* (C?21/16, EU:C:2017:106, paragraphs 36 to 38).

78 See 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, paragraphs 42 to 49).

79 See judgment of 20 October 2016, *Plöckl* (C?24/15, EU:C:2016:791, paragraphs 44 and 45). See also, as an example of failure to submit returns, constituting VAT evasion, in the Member

State of arrival of the goods, in the context of a triangular relationship, but without recourse to the simplification measure, 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).

80 See judgment of 9 February 2017, *Euro Tyre* (C?21/16, EU:C:2017:106, paragraphs 42 and 43).

81 See paragraphs 23, 27 and 39 of the Austrian Government’s written observations.

82 C-536/08 and C-539/08, EU:C:2010:217.

83 See paragraphs 41 and 42 of that judgment.