Reports of Cases

OPINION OF ADVOCATE GENERAL
CAMPOS SÁNCHEZ-BORDONA
delivered on 12 January 2016[1]

Joined Cases C-226/14 and C-228/14

Eurogate Distribution GmbH
v
Hauptzollamt Hamburg-Stadt (C-226/14)
and
DHL Hub Leipzig GmbH
v
Hauptzollamt Braunschweig (C-228/14)

(Requests for a preliminary ruling from the Finanzgericht Hamburg (Germany))

(Community Customs Code — Customs warehousing — External transit procedure — Incurrence of customs debt as a result of non-fulfilment of an obligation — Delayed entry in stock records — Delayed presentation of goods to the competent customs authority — Sixth Directive — VAT Directive — Chargeability of VAT — Link between the customs debt and the VAT debt)

1. In the context of an infringement of the formal obligations to which goods under import duty suspension arrangements are subject, a German court asks the Court of Justice whether, in addition to the customs debt provided for on that ground in Article 204 of the Community Customs Code,[2] a value added tax (VAT) assessment should also be made. If that is the case, the issue is whether the same person who failed to comply with the customs formalities is liable for payment of the VAT, even though that person is a warehouse keeper with no right of disposal over the goods in question.

2. The present cases provide the Court with the opportunity to refine the case-law laid down in its judgment in *X*,[3] in which it interpreted Article 7 of the Sixth Directive[4] declaring that VAT is due where the goods are not covered by the arrangements provided for in that article, even where a customs debt is incurred exclusively on the basis of Article 204 CCC.

3. There are two possible approaches to answering the questions referred for a preliminary ruling in the two disputes. The first would be merely to repeat verbatim the Court's findings in the judgment in *X*,[5] without any qualifications. The second, however, would qualify from a non-formalist perspective the analysis of the problems raised, while bearing in the mind the function and nature of VAT as a tax with unitary features which is levied on the added value created at each stage of the production or distribution process for goods and services.

1 — Original language: Spanish.

2 — Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ('CCC') (OJ 1992 L 302, p. 1), as amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005 (OJ 2005 L 117, p. 13).

3 — Case C-480/12, EU:C:2014:329.

4 — Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), as amended by Council Directive 2004/66/EC of 26 April 2004 (OJ 2004 L 168, p. 35).

5 — Case C-480/12, EU:C:2014:329.

4. A careful reading of the judgment in *X* leads me to conclude that, in fact, the simultaneity of the VAT and the customs debt arising as a result of failure to comply with certain conditions is not as automatic as the wording of the operative part of the judgment in *X* might suggest;[6] on the contrary, it may be inferred from the rationale for and, in particular, from the very nature of VAT that there is no reason why the incurrence of a customs debt should inevitably lead to import VAT being payable.

I – **Legislative framework**

A – *EU law*

1. Community Customs Code

5. Article 1 of the CCC provides:

‘For the purposes of this Code, the following definitions shall apply:

…

(7) “Community goods”: goods:

— wholly obtained in the customs territory of the Community under the conditions referred to in Article 23 and not incorporating goods imported from countries or territories not forming part of the customs territory of the Community. Goods obtained from goods placed under a suspensive arrangement shall not be deemed to have Community status in cases of special economic importance determined in accordance with the committee procedure,

— imported from countries or territories not forming part of the customs territory of the Community which have been released for free circulation,

— obtained or produced in the customs territory of the Community, either from goods referred to in the second indent alone or from goods referred to in first and second indents.

…’

6. Under Article 37 of the CCC:

‘1. Goods brought into the customs territory of the Community shall, from the time of their entry, be subject to customs supervision. They may be subject to customs controls in accordance with the provisions in force.

2. They shall remain under such supervision for as long as necessary to determine their customs status, if appropriate, and in the case of non-Community goods and without prejudice to Article 82(1), until their customs status is changed, they enter a free zone or free warehouse or they are re-exported or destroyed in accordance with Article 182.’

7. Under Article 50 of the CCC, ‘until such time as they are assigned a customs-approved treatment or use, goods presented to customs are to have, following such presentation, the status of goods in temporary storage. Such goods shall hereinafter be described as “goods in temporary storage”.’

6 — Case C-480/12, EU:C:2014:329.

8. In accordance with Article 79 of the CCC:

'Release for free circulation shall confer on non-Community goods the customs status of Community goods.

…'

9. Under 89(1) of the CCC, 'a suspensive arrangement with economic impact shall be discharged when a new customs-approved treatment or use is assigned either to the goods placed under that arrangement or to compensating or processed products placed under it.'

10. Article 91 of the CCC provides:

'1. The external transit procedure shall allow the movement from one point to another within the customs territory of the Community of:

(a) non-Community goods, without such goods being subject to import duties and other charges or to commercial policy measures;

…

2. Movement as referred to in paragraph 1 shall take place:

(a) under the external Community transit procedure; or

…'

11. Article 92 of the CCC provides:

'1. The external transit procedure shall end and the obligations of the holder shall be met when the goods placed under the procedure and the required documents are produced at the customs office of destination in accordance with the provisions of the procedure in question.

2. The customs authorities shall discharge the procedure when they are in a position to establish, on the basis of a comparison of the data available to the office of departure and those available to the customs office of destination, that the procedure has ended correctly.'

12. Under Article 96 of the CCC:

'1. The principal shall be the [holder of the procedure] under the external Community transit procedure. He shall be responsible for:

(a) production of the goods intact at the customs office of destination by the prescribed time limit and with due observance of the measures adopted by the customs authorities to ensure identification;

(b) observance of the provisions relating to the Community transit procedure.

2. Notwithstanding the principal's obligations under paragraph 1, a carrier or recipient of goods who accepts goods knowing that they are moving under Community transit shall also be responsible for production of the goods intact at the customs office of destination by the prescribed time limit and with due observance of the measures adopted by the customs authorities to ensure identification.'

13. Pursuant to Article 98(1) of the CCC, 'the customs warehousing procedure shall allow the storage in a customs warehouse of: (a) non-Community goods, without such goods being subject to import duties or commercial policy measures …'

14. Under Article 105 of the CCC, 'the person designated by the customs authorities shall keep stock records of all the goods placed under the customs warehousing procedure in a form approved by those authorities. Stock records are not necessary where a public warehouse is operated by the customs authorities …'

15. Article 204 of the CCC provides:

'1. A customs debt on importation shall be incurred through:

(a) non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they are placed, or

(b) non-compliance with a condition governing the placing of the goods under that procedure or the granting of a reduced or zero rate of import duty by virtue of the end-use of the goods,

in cases other than those referred to in Article 203 unless it is established that those failures have no significant effect on the correct operation of the temporary storage or customs procedure in question.

2. The customs debt shall be incurred either at the moment when the obligation whose non-fulfilment gives rise to the customs debt ceases to be met or at the moment when the goods are placed under the customs procedure concerned where it is established subsequently that a condition governing the placing of the goods under the said procedure or the granting of a reduced or zero rate of import duty by virtue of the end-use of the goods was not in fact fulfilled.

3. The debtor shall be the person who is required, according to the circumstances, either to fulfil the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they have been placed, or to comply with the conditions governing the placing of the goods under that procedure.'

2. Regulation (EEC) No 2454/93[7]

16. Article 356 of the Implementing Regulation provides:

'1. The office of departure shall set the time limit within which the goods must be presented at the office of destination, taking into account the itinerary, any current transport or other legislation, and, where appropriate, the details communicated by the principal.

…'

17. Article 512(3) of the Implementing Regulation provides that 'transfer to the office of exit with a view to re-exportation may take place under cover of the arrangements. In this case, the arrangements shall not be discharged until the goods or products declared for re-exportation have actually left the customs territory of the Community.'

7 — Commission Regulation of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ('the Implementing Regulation') (OJ 1993 L 253, p. 1), amended by Commission Regulation (EEC) No 402/2006 of 8 March 2006 (OJ 2006 L 70, p. 35).

18. Article 529(1) of the Implementing Regulation states that 'the stock records shall at all times show the current stock of goods which are still under the customs warehousing arrangements. At the times laid down by the customs authorities, the warehousekeeper shall lodge a list of the said stock at the supervising office.'

19. According to Article 530(3) of the Implementing Regulation, 'entry in the stock records relating to discharge of the arrangements shall take place at the latest when the goods leave the customs warehouse or the holder's storage facilities'.

20. Under Article 860 of the Implementing Regulation, 'the customs authorities shall consider a customs debt to have been incurred under Article 204(1) of the [CCC] unless the person who would be the debtor establishes that the conditions set out in Article 859 are fulfilled'.

21. Article 866 of the Implementing Regulation states that, 'without prejudice to the provisions laid down concerning prohibitions or restrictions which may be applicable to the goods in question, where a customs debt on importation is incurred pursuant to Articles 202, 203, 204 or 205 of the [Customs] Code and the import duties have been paid, those goods shall be deemed to be Community goods without the need for a declaration for entry into free circulation'.

3. The Sixth Directive

22. Article 2 of the Sixth Directive provided that 'the following shall be subject to value added tax: … 2. the importation of goods'.

23. Pursuant to Article 7 of the Sixth Directive:

'1. "Importation of goods" shall mean:

(a) the entry into the Community of goods which do not fulfil the conditions laid down in Articles [23 EC and 24 EC] or, where the goods are covered by the Treaty establishing the [ECSC Treaty], are not in free circulation;

(b) the entry into the Community of goods from a third territory, other than the goods covered by (a).

2. The place of import of goods shall be the Member State within the territory of which the goods are when they enter the Community.

3. Notwithstanding paragraph 2, where goods referred to in paragraph 1(a) are, on entry into the Community, placed under one of the arrangements referred to in Article 16(1)(B)(a), (b), (c) and (d), under arrangements for temporary importation with total exemption from import duty or under external transit arrangements, the place of import of such goods shall be the Member State within the territory of which they cease to be covered by those arrangements.

Similarly, when goods referred to in paragraph 1(b) are placed, on entry into the Community, under one of the procedures referred to in Article 33a(1)(b) or (c), the place of import shall be the Member State within whose territory this procedure ceases to apply.'

24. In accordance with Article 10(3) of the Sixth Directive, 'the chargeable event shall occur and the tax shall become chargeable when the goods are imported. Where goods are placed under one of the arrangements referred to in Article 7(3) on entry into the Community, the chargeable event shall occur and the tax shall become chargeable only when the goods cease to be covered by those arrangements …'

25. Article 17 of the Sixth Directive provided:

‘1. The right to deduct shall arise at the time when the deductible tax becomes chargeable.

2. In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:

(a) [VAT] due or paid within the territory of the country in respect of goods or services supplied or to be supplied to him by another taxable person;

(b) [VAT] due or paid in respect of imported goods within the territory of the country;

…’

26. In accordance with Article 21(4) of the Sixth Directive, ‘on importation, [VAT] shall be payable by the person or persons designated or accepted as being liable by the Member State into which the goods are imported’.

4. The VAT Directive [8]

27. Article 2(1) of the VAT Directive provides that: ‘the following transactions shall be subject to VAT: … (d) the importation of goods’.

28. Under Article 9(1) of the VAT Directive, ‘“taxable person” shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity …’

29. Article 30 of the VAT Directive is worded as follows:

‘“Importation of goods” shall mean the entry into the Community of goods which are not in free circulation within the meaning of Article 24 of the Treaty.

In addition to the transaction referred to in the first paragraph, the entry into the Community of goods which are in free circulation, coming from a third territory forming part of the customs territory of the Community, shall be regarded as importation of goods.’

30. Under Article 60 of the VAT Directive, ‘the place of importation of goods shall be the Member State within whose territory the goods are located when they enter the Community’.

31. Article 61 of the VAT Directive provides:

‘By way of derogation from Article 60, where, on entry into the Community, goods which are not in free circulation are placed under one of the arrangements or situations referred to in Article 156, or under temporary importation arrangements with total exemption from import duty, or under external transit arrangements, the place of importation of such goods shall be the Member State within whose territory the goods cease to be covered by those arrangements or situations.

Similarly, where, on entry into the Community, goods which are in free circulation are placed under one of the arrangements or situations referred to in Articles 276 and 277, the place of importation shall be the Member State within whose territory the goods cease to be covered by those arrangements or situations.’

8 — Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

32. In accordance with Article 70 of the VAT Directive, 'the chargeable event shall occur and VAT shall become chargeable when the goods are imported'.

33. Pursuant to Article 71(1) of the VAT Directive, 'where, on entry into the Community, goods are placed under one of the arrangements or situations referred to in Articles 156, 276 and 277, or under temporary importation arrangements with total exemption from import duty, or under external transit arrangements, the chargeable event shall occur and VAT shall become chargeable only when the goods cease to be covered by those arrangements or situations …'

34. Article 143(1)(d) of the VAT Directive provides that 'Member States shall exempt … the importation of goods dispatched or transported from a third territory or a third country into a Member State other than that in which the dispatch or transport of the goods ends, where the supply of such goods by the importer designated or recognised under Article 201 as liable for payment of VAT is exempt under Article 138'.

35. According to Article 167 of the VAT Directive, 'a right of deduction shall arise at the time the deductible tax becomes chargeable'.

36. Article 168 of the VAT Directive provides:

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

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

…

(e) the VAT due or paid in respect of the importation of goods into that Member State.'

37. In accordance with Article 178 of the VAT Directive, 'in order to exercise the right of deduction, a taxable person must meet the following conditions: … (e) for the purposes of deductions pursuant to Article 168(e), in respect of the importation of goods, he must hold an import document specifying him as consignee or importer, and stating the amount of VAT due or enabling that amount to be calculated …'

38. Pursuant to Article 201 of the VAT Directive, 'on importation, VAT shall be payable by any person or persons designated or recognised as liable by the Member State of importation'.

B – *National law*

39. Paragraph 1 of the Law on turnover tax (Umsatzsteuergesetz; 'UStG'), in the version applicable at the relevant time,[9] provides:

'(1) The following transactions shall be subject to the tax:

1. the supply of goods and other services for consideration within German territory by an undertaking in the context of its activities;

…

9 — *BGBl.* 2005 I, p. 386.

4. the importation of goods into Germany … (import turnover tax);

…’

40. In accordance with Paragraph 15(1) of the UStG:

‘A business may deduct the following amounts of input tax:

1. The tax lawfully due on the goods supplied and other services provided by another operator for his business;

2. Import turnover tax incurred on goods which are imported for his business under Paragraph 1(1)(4);

…’

41. Paragraph 21 of the UStG provides:

‘(1) Import turnover tax is a tax on consumption within the meaning of the General Tax Code (Abgabenordnung).

(2) The customs rules shall apply by analogy to import turnover tax, with the exception of the rules relating to inward processing in the reimbursement system and those relating to outward processing.

…’

II – **Facts and questions referred**

A – *Case C-226/14*

42. As the order from the referring court states, Eurogate Distribution GmbH (‘Eurogate’), the applicant in the main proceedings, took into its customs warehouse customers’ goods in transit and placed them together for deliveries to various eastern European countries. The storage duration was on average more than six weeks. The goods were subsequently collected from Eurogate’s warehouse by transport undertakings established in the destination countries concerned.

43. A customs inspection for the period from 1 July to 31 December 2006 showed that in some cases there had been some delay — up to 126 days after removal — in entering removals from the customs warehouse in the stock records required by customs law.

44. By the import duty assessment notice of 1 July 2008, the Hauptzollamt Hamburg-Stadt fixed the amount of the customs debt and the import VAT. Eurogate lodged an administrative appeal against the assessment notice, which was dismissed. Eurogate brought an action against that decision before the Finanzgericht Hamburg.

45. So far as the customs debt is concerned, the Finanzgericht Hamburg referred a question to the Court for a preliminary ruling which was answered in the judgment in *Eurogate*.[10] At paragraph 35 of that judgment, the Court declared that 'Article 204(l)(a) of the [CCC] must be interpreted as meaning that, in the case of non-Community goods, non-fulfilment of the obligation to enter the removal of the goods from the customs warehouse in the appropriate stock records, at the latest when the goods leave the customs warehouse, gives rise to a customs debt in respect of those goods, even if they have been re-exported'.

46. Eurogate continues to object to the assessment notice and does so in these proceedings to the extent that that notice concerns import VAT, claiming that the import VAT assessment should be cancelled.

47. Against that background, the Finanzgericht Hamburg has referred the following questions to the Court of Justice:

'(1) Is it contrary to the provisions of Directive 77/388/EEC to impose import turnover tax on goods which have been re-exported as non-Community goods but for which a customs debt has been incurred under Article 204 of the [CCC] as a result of non-fulfilment of obligations — in this case, failure to fulfil within the proper time the obligation to enter the removal of the goods from a customs warehouse in the appropriate stock records at the latest at the time of their removal?

(2) If Question 1 is answered in the negative:

Do the provisions of Directive 77/388/EEC require import turnover tax to be imposed on the goods in such cases, or do the Member States have discretion in this respect?

and

(3) Is a customs warehouse keeper who stores goods from a third country in his customs warehouse on the basis of a contract for services, while having no right of disposal over the goods, liable for payment of the import value added tax incurred as a result of his non-fulfilment of obligations under Article 10(3)(2) of Directive 77/388/EEC in conjunction with Article 204(1) of the [CCC], even though the goods are not used for the purposes of his taxable transactions within the meaning of Article 17(2)(a) of Directive 77/388/EEC?'

B – *Case C-228/14*

48. An external Community transit procedure T1 was opened on 5 January 2011 in respect of goods which were to be transported to Macao through the Hanover Airport customs office or the Leipzig Airport customs office within the prescribed period, that is by 12 January 2011. DHL Hub Leipzig GmbH ('DHL') was the carrier of the goods within the meaning of Article 96(2) of the CCC. It failed to present the goods at the Leipzig Airport customs office before they were transported to Macao.

49. The transit procedure could not be completed in accordance with Article 366(2) of the Implementing Regulation because the necessary documents could not be presented.

50. On 8 August 2011, the Hauptzollamt Braunschweig issued DHL with an import VAT assessment notice on the basis of Article 204(1)(a) of the CCC. In particular, the amount of VAT due came to EUR 6002.01. On 29 February 2012, DHL applied for repayment of the import VAT paid on the basis of that notice, in accordance with Article 236 of the CCC.

10 — Case C-28/11, EU:C:2012:533.

51. The Hauptzollamt Braunschweig refused the application for repayment by decision of 28 March 2012. Following an unsuccessful administrative appeal, DHL brought an action before the Finanzgericht Hamburg, claiming that the decision of the Hauptzollamt should be annulled and the import VAT should be repaid.

52. Against that background, the Finanzgericht Hamburg has referred the following question to the Court of Justice:

'Is import VAT for goods which have been re-exported under customs supervision as non-Community goods but for which a customs debt has been incurred under Article 204 of the [CCC] as a result of non-fulfilment of obligations — in this case, failure to complete the external Community transit procedure within the proper time by presenting them to the competent customs office prior to shipment to the third country — to be considered as not legally owed within the meaning of Article 236(1) of the [CCC] in conjunction with the provisions of Directive 2006/112/EC in any case where the person held liable for the tax debt is the person who should have fulfilled that obligation even though he had no right of disposal over the goods?'

III – **The procedure before the Court of Justice**

53. The request for a preliminary ruling in Case C-226/14 was received at the Court Registry on 8 May 2014. The request for a preliminary ruling in Case C-228/14 was received on 12 May 2014.

54. By order of the President of the Court of Justice of 14 October 2014, the two cases were joined for the purposes of the written and oral procedures and so that they could be decided by a single judgment.

55. Written observations were lodged by the Hauptzollamt Hamburg-Stadt, the Hauptzollamt Braunschweig, Eurogate, the Greek Government and the Commission.

56. On 5 June 2014, the Finanzgericht Hamburg was asked to confirm whether, in the light of the judgment of the Court in *X*,[11] it maintained its requests for a preliminary ruling. By letter received at the Court Registry on 3 October 2014, the referring court stated its intention to maintain those requests for a preliminary ruling. Specifically, it asked the Court, in responding to the first request, 'to clarify whether, in every situation where a customs debt has arisen under Article 204 of the [CCC], [VAT] is also due automatically in accordance with the provisions of Directive 77/388/EEC, regardless of whether the goods remain under the suspensive arrangement referred to in Article 16(1)(B)(b) of the Sixth Directive or the external transit procedure, or whether [VAT] should not be levied on the importation of goods which, as non-Community goods, were under customs warehousing arrangements and were subsequently re-exported using the appropriate customs declaration but for which a customs debt was incurred in the meantime under Article 204(1) of the [CCC] (which was, however, determined only after the goods were re-exported) because the customs warehouse keeper was several days late in fulfilling his obligation to enter the removal of the goods from the customs warehouse in the stock record at the latest at the time of their removal'.

57. By order of 1 October 2015, the Court invited the parties to focus in their submissions at the hearing on the second and third questions referred in Case C-226/14 and on the question referred in Case C-228/14. The parties were also invited to adopt a position on whether import VAT may be deemed to have been paid when goods are re-exported.

58. At the hearing, held on 11 November 2015, oral argument was presented by the Hauptzollamt Hamburg-Stadt, the Hauptzollamt Braunschweig, Eurogate and the Commission.

11 — Case C-480/12, EU:C:2014:329.

IV – **Submissions**

59. As regards the first question referred to in Case C-226/14, Eurogate submits that an import VAT assessment is contrary to the Sixth Directive where the customs debt was incurred under Article 204(1)(a) of the CCC, since in that case there is no importation within the meaning of the Sixth Directive.

60. In relation to the second and third questions in Case C-226/14, Eurogate claims that the Member States have no discretion regarding the definition of the term 'importation' for the purposes of the Sixth Directive. Eurogate submits that Member States have some latitude to define who is liable to pay VAT under Article 21 of the Sixth Directive, since two alternative interpretations are possible in that connection: a) the person who brings in the non-Community goods, that is, the person who declares the goods at customs or commits a customs irregularity, is to be treated as the 'importer'; or b) only the person who, as the owner, is entitled to dispose of the goods at the time of importation is to be treated as the 'importer'. In the first situation, the importer must have the right to deduct the VAT due, which did not occur in the case of Eurogate. That, in Eurogate's submission, clearly shows that the national law applied is incompatible with EU law.

61. In relation to the question in Case C-228/14, Eurogate argues that there is no obligation to pay VAT if, as in the present case, the non-Community goods were re-exported under customs supervision in accordance with a transit procedure. Eurogate submits that its arguments concerning the concept of 'importer' for the purposes of the Sixth Directive are equally applicable to the VAT Directive.

62. The Hauptzollamt Hamburg-Stadt and the Hauptzollamt Braunschweig maintain that, in addition to a customs debt, failure to fulfil customs obligations gives rise to a VAT liability. They submit that failure to comply with the obligation to enter in the stock records goods which are under customs warehousing arrangements should be likened to a withdrawal from customs control. In both cases, the customs authorities are deprived of the opportunity to check the movement of the goods and, therefore, to ensure that there has been compliance with the conditions governing the system of advance payment of export refunds.

63. The Hauptzollamt Hamburg-Stadt contends that, just as the obligation to pay customs duties is derived from non-compliance with the conditions required in order to benefit from the advantage of application of the customs warehousing procedure (which, therefore, justifies the imposition of customs duties), that advantage cannot be claimed either in relation to VAT were there has been a failure to fulfil an obligation imposed under the customs warehousing procedure which jeopardises the checks carried out by the customs authorities.

64. The Greek Government argues, in relation to the first question in Case C-226/14, that, based on a combined interpretation of the EU legislation on VAT and customs procedure, the requirement to pay VAT in a situation like that at issue in the present case is governed by the Sixth Directive.

65. As regards the second question, the Greek Government submits that application of the provisions of the VAT Directive relating to the importation of goods and the chargeability of import tax is mandatory. The irregularity in the stock records leads to the incurrence of a customs debt without the need for any assessment by the authorities based on the particular circumstances of the case. Accordingly, where a customs debt is incurred under the conditions present in the main proceedings, there is also a tax liability and VAT is payable by the person liable for the tax and liable for payment of the debt (the depositor).

66. As far as the third question is concerned, the Greek Government asserts that it is for the Member States to identify the person liable for payment of import tax but, it submits, it is not only the person who imports the goods who may be treated as liable to pay the tax but also the person liable for the customs debt incurred under the CCC.

67. As regards the question in Case C-228/14, the Greek Government maintains that it is necessary to determine, first of all, whether or not the infringements constitute removal of the goods from customs supervision as a result of deception or negligence on the part of the person liable to fulfil the obligation and whether the relevant formalities were regularised *ex post facto*. Since it follows from the facts of the case that there was a failure to comply with Article 859(2)(a) and (c) of the Implementing Regulation, the Greek Government submits that it is necessary to examine whether the office of destination is in a position to ensure that those same goods received a customs-approved treatment or use after exhaustion of the transit procedure. Accordingly, taking account, on the one hand, of the provisions of the VAT Directive relating to the chargeable event giving rise to the tax and, on the other, of the judgment of the Court in *X*,[12] where the customs debt has arisen under Article 204 of the CCC, the event giving rise to VAT also occurs and VAT becomes payable immediately. The persons liable for payment of VAT are those who were responsible for fulfilling the obligations under the customs transit procedure, that is, the principal liable under the customs transit procedure (Article 96(1) of the CCC) and the transport company (Article 96(2) of the CCC), although it may not deduct the VAT.

68. The Commission maintains that the first question in Case C-226/14 should be answered in the affirmative, in view of the differences which exist between customs duty and import VAT. The Commission states that those differences led the Court to declare that the incurrence of VAT and the incurrence of a customs debt must always be examined separately, and it may be that VAT is owed in the absence of any customs debt and vice versa.

69. The Commission points out that the condition laid down in Article 2(2) of the Sixth Directive is the importation of goods. Given that goods under a temporary or suspensive admission procedure are not imported goods, import VAT is due only if the goods are withdrawn from that procedure. In the case at hand, the goods were under a customs warehousing procedure when they actually left the customs territory, and therefore they were at all times under a 'suspensive arrangement'. Accordingly, the Commission submits that there was no importation and, therefore, there was no reason to make an import VAT assessment.

70. Moreover, the Commission continues, the fact that non-compliance on the part of a warehouse keeper gives rise to a customs debt under Article 204(1)(a) of the CCC does not support the conclusion that the goods were imported since, unlike debts under Article 202 and Article 203 of the CCC, the incurrence of a debt under Article 204 of the CCC does not necessarily mean that the goods entered the economic network of the European Union. Nor can a mere reference in national law to the EU customs legislation, as occurs in Paragraph 21 of the UStG, broaden the definition of importation.

71. The Commission submits that, consequently, it is not appropriate to reply to the second and third questions in Case C-226/14. The Commission confines itself to observing that, if the Court does not take that view, the answer to the second question should be that the Member States have an obligation to levy import VAT and do not have any discretion in that regard. The Commission submits that the answer to the third question should be that the Member States are free to identify the person liable for payment of import VAT in accordance with Article 21(4) of the Sixth Directive, provided that they respect the principles of the Community VAT system.

12 — Case C-480/12, EU:C:2014:329.

72. In relation to Case C-228/14, the Commission submits that its considerations regarding the first question in Case C-226/14 can be applied overall to that case.

V – **Assessment**

A – *Case C-226/14*

1. The first question

73. During the national proceedings which gave rise to Case C-226/14, the Finanzgericht Hamburg referred, at the relevant time, a first question for a preliminary ruling,[13] which the Court answered declaring that Article 204(1)(a) of the CCC 'must be interpreted as meaning that, in the case of non-Community goods, non-fulfilment of the obligation to enter the removal of the goods from the customs warehouse in the appropriate stock records, at the latest when the goods leave the customs warehouse, gives rise to a customs debt in respect of those goods, even if they have been re-exported'.[14]

74. The Finanzgericht Hamburg now asks whether, in the light of that statement, 'every incurrence of a customs debt on importation automatically gives rise to a claim for import VAT'.[15]

75. As Advocate General Jääskinen observed in his Opinion in the (first) *Eurogate* case, that request for a preliminary ruling was not concerned with 'the question of the link allegedly made by the German legislation between the levying of customs duties and the imposition of VAT on importation'.[16] That issue thus remained unresolved,[17] but it clearly re-emerged shortly afterwards in *X*,[18] in which the Netherlands referring court asked, inter alia, whether Article 7 of the Sixth Directive should be interpreted 'as meaning that VAT is due when a customs debt is incurred exclusively on the basis of Article 204 of the [CCC]'.

76. In its reply to the question in *X*,[19] the Court held that Article 7 of the Sixth Directive 'must be interpreted as meaning that [VAT] is due where the goods in question are not covered by the arrangements provided for in that article, even where a customs debt is incurred exclusively on the basis of Article 204 of Regulation No 2913/92, as amended by Regulation No 648/2005'.[20]

77. When asked to confirm whether, in the light of that (second) ruling of the Court of Justice, it maintained its request for a preliminary ruling, The Finanzgericht Hamburg replied that it was 'unable to infer clearly from the judgment in Case C-480/12 that goods cease to be covered by the customs arrangements provided for in Article 7(3), first subparagraph, of the Sixth Directive and, therefore, should be considered to have been imported for the purposes of VAT legislation once a customs debt has been incurred under Article 204 of the Community Customs Code and also in that case'.[21]

13 — Proceedings which gave rise to the first judgment in *Eurogate* (C-28/11, EU:C:2012:533).

14 — Judgment in *Eurogate* (C-28/11, EU:C:2012:533, paragraph 35 and the operative part).

15 — Order for reference in the request for a preliminary ruling in Case C-226/14 (II. 3. b) (1) (b)).

16 — Opinion in *Eurogate* (C-28/11, EU:C:2012:131, point 45).

17 — Nevertheless, Advocate General Jääskinen stated that he did not consider 'the questions raised by the Commission regarding the conformity of that link with EU law on value added tax to be irrelevant' (loc. cit.).

18 — Judgment in *X* (C-480/12, EU:C:2014:329).

19 — Judgment in *X* (C-480/12, EU:C:2014:329).

20 — Judgment in *X* (C-480/12, EU:C:2014:329, point 2 of the operative part).

21 — Paragraph 1, second subparagraph, of the letter from the Finanzgericht lodged at the Court of Justice on 3 October 2014.

78. The Finanzgericht Hamburg believes that, in accordance with the Sixth Directive, goods cannot have been imported while they are under a customs procedure involving total exemption from import duties. Further, in its view, 'goods which (as in this case) have not been withdrawn from customs supervision can still be covered by that customs procedure even if a customs debt has been incurred in the meantime under Article 204 of the [CCC] because of non-fulfilment of one of the obligations provided for under the customs procedure'. [22]

79. As the Finanzgericht itself notes, that approach is the same as the one put forward by Advocate General Jääskinen in his Opinion in *X*, [23] and that is how the referring court says it interprets the fact that, at that time, the Court left it to the national court to determine whether, on the date of their re-exportation, the goods at issue had ceased to be covered by the arrangements referred to in Articles 7(3) and 16(1)(B)(a) of the Sixth Directive. [24]

80. Admittedly, in the operative part of the judgment in *X* [25] the Court stated that Article 7 of the Sixth Directive must be interpreted as meaning that VAT is due where the goods are not covered by the customs arrangements provided for in that article, 'even where a customs debt is incurred exclusively on the basis of Article 204 of [the CCC]'.

81. However, as the Finanzgericht observes, that assertion is qualified at paragraph 54 of the judgment which points out that the crucial time for the purposes of determining that goods are no longer covered by those customs arrangements is 'the date of … re-exportation [of the goods]'. [26] I believe that that point is significant because the reason that the Court held at that time that the incurrence of a customs debt under Article 204 of the CCC is equivalent to the goods no longer being covered by a customs procedure — and, therefore, means that VAT becomes due — was, as paragraph 51 of the judgment states, because 'it follows from Article 866 of the Implementing Regulation that, where a customs debt on importation is incurred pursuant to, inter alia, Articles 203 or 204 of the Customs Code and the import duties have been paid, those goods are to be deemed to be Community goods without the need for a declaration for entry into free circulation'.

82. I agree with the Commission [27] that the aim of Article 866 of the Implementing Regulation is to treat as Community goods, within the meaning of Article 4 of the CCC, goods which are on the customs territory of the Union but in respect of which the necessary formalities for their release into free circulation have not been observed. While they are on the customs territory of the Union, there is the possibility that such goods (that is, goods which do not satisfy the conditions in respect of which non-compliance leads to the incurrence of a customs debt) [28] may enter the economic network of the European Union without having obtained 'the customs status of Community goods', to which Article 79 of the CCC refers. According to Article 79, that status is conferred by 'release for free circulation' which 'shall entail application of commercial policy measures, completion of the other formalities laid down in respect of the importation of goods and the charging of any duties legally due'. [29]

22 — Loc. cit.

23 — Opinion in *X* (C-480/12, EU:C:2014:84, point 66).

24 — Judgment in *X* (C-480/12, EU:C:2014:329, paragraph 54).

25 — Judgment in *X* (C-480/12, EU:C:2014:329).

26 — Paragraph 54 of the judgment reads as follows: 'However, those goods have already ceased to be covered by those arrangements on the date of their re-exportation on account of a customs debt being incurred, which it is for the referring court to determine, it must be considered as having been the subject of an "importation" within the meaning of Article 2(2) of the Sixth Directive'.

27 — Paragraph 76 of its written observations.

28 — As a result of the conduct defined in Articles 202 to 205 of the CCC.

29 — Article 79, second paragraph, of the CCC.

83. Release for free circulation is, therefore, the common or ordinary way of obtaining the status of Community goods. However, it is not the only way because under Article 866 of the Implementing Regulation it is also possible to obtain the status of Community goods if the two conditions laid down therein are met: (a) the incurrence of a customs debt on importation in accordance with — in so far as is important for the present purposes — Article 204 of the CCC and (b) payment of the import duties. Compliance with those two conditions equates to 'the application of commercial policy measures, completion of the other formalities laid down in respect of the importation of goods and the charging of any duties legally due', that is, the requirements for release into free circulation laid down in Article 79, second paragraph, of the CCC.

84. Since, as I believe, Article 866 of the Implementing Regulation in fact constitutes a specific instrument granting the status of Community goods equivalent to release for free circulation, its scope is restricted to goods which are on the customs territory of the Union and not goods which have been re-exported. Since the latter have left the customs territory of the Union, they cannot physically be introduced into the economic network of the Union, from which it follows that there is no need for them to obtain the status of Community goods in order to lawfully enter that network.

85. In the present case, according to the information supplied by the referring court, the goods at issue were, until the date of their re-exportation, under a suspensive arrangement (customs warehousing) at all times. The infringement committed in the case — which led to the application of Article 204 of the CCC, in accordance with the Court's ruling in the first *Eurogate* judgment [30] — was procedural in nature: Eurogate failed to enter the removal of the goods from the customs warehouse in the stock records within the time limit. The Finanzgericht states that there was no risk that the goods would be introduced into the economic network of the Union because non-compliance with that obligation was established after the goods had already been re-exported.

86. Accordingly, as the referring court also maintains in its reply to the Court regarding the effect on the case of the judgment in *X*, [31] Article 866 of the Implementing Regulation is irrelevant in these proceedings since the goods at issue, which were continuously subject to a suspensive procedure, gave rise to the incurrence of a customs debt when they had already been re-exported. The payment of the duties arising as a result of that debt could not serve as fulfilment of the conditions required for the release of the goods for free circulation and their resulting classification as Community goods simply because, in view of their re-exportation, it was impossible for the goods to qualify for that status.

87. Accordingly, since the goods at issue had not left the customs warehouse *on the date of their re-exportation*, the condition for finding that there has been an 'importation' for the purposes of Article 2(2) of the Sixth Directive, laid down by the Court in the judgment in *X*, [32] was not satisfied. The goods at issue were withdrawn from the customs warehousing arrangement *on account of their re-exportation* but not *as a result of a customs debt under Article 204 of the CCC*; since the goods concerned were still situated in the customs territory of the Union, payment of that debt could equate to the release of the goods for free circulation and, therefore, to their being considered to be 'Community goods'.

30 — Judgment in *Eurogate* (C-28/11, EU:C:2012:533).

31 — Paragraph 2 of the letter from the Finanzgericht, which was received at the Court on 3 October 2014.

32 — Judgment in *X* (C-480/12, EU:C:2014:329, paragraph 54).

88. In short, it is my opinion that, beyond the actual wording of the operative part of the judgment in *X*,[33] the interpretation of that part must be seen against the background of the particular factor referred to in paragraph 54 of that judgment. Therefore, the operative part of the judgment must be viewed in the context of a situation where the goods ceased to be covered by the customs arrangements before the time of their re-exportation and as a corollary of a customs debt becoming due under the provisions of one of the articles referred to in Article 866 of the Implementing Regulation.

89. That *integrated* interpretation of the judgment in *X*[34] is, to my mind, the one which accords most appropriately and fully with the logic of the relationship between the Sixth Directive and the CCC.

90. It is settled case-law of the Court that 'import VAT and customs duties display comparable essential features since they arise from the fact of importation of goods into the European Union and the subsequent distribution of those goods through the economic channels of the Member States'; that parallel nature is 'confirmed by the fact that the second subparagraph of Article 71(1) of the VAT directive authorises Member States to link the chargeable event and the date on which the VAT on importation becomes chargeable with those laid down for customs duties'.[35]

91. However, comparable does not mean identical, which is why the Court proposed that the incurrence of the customs debt and VAT should be examined separately. It has to be that way because the two are different in nature and that difference is accentuated when the customs debt was not in fact incurred as a result of the entry of goods into the customs territory under a regular arrangement but rather as a result of failure to fulfil certain conditions or obligations.

92. Under Article 2(2) of the Sixth Directive, the importation of goods is subject to VAT. Article 7(1)(a) of the Sixth Directive provides that 'importation of goods' means 'the entry into the Community of goods which do not fulfil the conditions laid down in Articles [23 EC and 24 EC]'.

93. In principle and in accordance with Article 7(2) and (3) of the Sixth Directive, the physical entry of goods into the territory of the Union does not necessarily mean that those goods are imported for the purposes of VAT. If, from time of their physical entry into the European Union, the goods are placed, so far as is relevant in this context, under a customs warehousing arrangement — that is, under the arrangement referred to in Article 16(1)(B)(c) of the Sixth Directive — the importation as far as VAT is concerned will take place only when the goods cease to be covered by that arrangement, which may occur in the territory of a Member State other than that where the goods physically entered the territory of the Union. Therefore, the goods may move through the Union *without having entered its territory* for the purposes of VAT.

94. The inclusion of goods in one of the arrangements referred to in Article 16(1)(B)(a),(b),(c) and (d) of the Sixth Directive puts those goods in a situation which makes their entry into the economic network of the Union impossible. Only Community goods may enter the economic network of the Union; that is, in accordance with Article 4(7) of the CCC, goods obtained in the customs territory of the Union under the conditions laid down in Article 23 of the CCC or goods imported from outside the customs territory and released for free circulation. In other words, in the case of the latter goods, payment must have been made of duties and charges to which goods placed under one of the above arrangements are not subject.

33 — Judgment in *X* (C-480/12, EU:C:2014:329).

34 — Judgment in *X* (C-480/12, EU:C:2014:329).

35 — Judgment in *Harry Winston* (C-273/12, EU:C:2013:466, paragraph 41), citing the judgments in *Witzemann* (C-343/89, EU:C:1999:445, paragraph 18) and *Dansk Transport og Logistik* (C-230/08, EU:C:2010:231, paragraphs 90 and 91).

95. If, as in the instant case, goods under a customs warehousing arrangement were re-exported without having left that arrangement, even though those goods physically remained in the territory of the Union, the goods were not imported within the meaning of the Sixth Directive [36] and it is not necessary to levy VAT.

96. However, if the goods left that arrangement when they were still in the territory of the Union, they should have been deemed for all purposes to be imported goods and, therefore, subject to VAT. It is immaterial, in that respect, whether removal of the goods from the customs procedure was due to the correct discharge of the procedure, involving payment of the applicable duties, or to failure to fulfil the conditions applicable to it (in other words, in accordance with Article 866 of the Implementing Regulation, if one of the situations referred to in Articles 202 to 205 of the CCC is present).

97. Where the debt incurred under Articles 202 to 205 of the CCC relates to goods which have already been re-exported, the fact that those goods have left the territory of the Union has no bearing on the obligation to pay customs duties. In addition to that customs debt, there may also be a requirement to pay VAT where, based on the particular unlawful conduct which gave rise to the customs debt, it can be presumed that the goods entered the economic network of the Union and, consequently, that they may have undergone consumption, that is, the act on which VAT is levied.

98. That is the case provided for in Article 202(1)(a) of the CCC (unlawful introduction into the customs territory of goods liable to import duties) and Article 203(1) of the CCC (unlawful removal from customs supervision of goods liable to import duties).

99. However, that is not necessarily the case in the hypothesis set out in Article 204 of the CCC, which 'covers failure to fulfil obligations and non-compliance with the conditions of the various customs schemes which have no effect on customs supervision'. [37] And of course it is not the case in these proceedings, for, according to the Finanzgericht Hamburg, the goods remained under the customs warehousing arrangement until the time of their re-exportation, without entering the economic channels of the Member States. Therefore, the customs debt incurred as a result of failure to fulfil the obligations laid down in Article 204 of the CCC should be paid but VAT should not be levied since there is no reason to assume that the goods were consumed in the territory of the Union.

100. The Court has repeatedly referred to the risk of entry (or the presumption of entry) into the economic channels of the Member States as a reason for incurring customs debts levied for non-compliance, observing that such debts are a mechanism for protecting those economic channels. [38] Non-fulfilment of the obligations and conditions imposed under the different customs schemes may, of course, entail the risk that goods are ultimately introduced into the internal market and compete unfairly with Community producers, in addition to causing a loss of tax revenue.

101. If, as in the instant case, the referring court rules out the possibility that such a risk existed and that the goods entered the economic channels of the Member States, it is difficult to understand what the economic situation is in respect of which an indirect tax on consumption, such as VAT, could be levied, notwithstanding the fact that a customs debt arose as a result of failure to fulfil the relevant conditions.

36 — In that connection, see the judgment in *Profitube* (C-165/11, EU:C:2012:692, paragraph 46).

37 — Judgment in *X* (C-480/12, EU:C:2014:329, paragraph 31), citing the judgment in *Hamann International* (C-337/01, EU:C:2004:90, paragraph 28).

38 — See, for example, the judgments in *Harry Winston* (C-273/12, EU:C:2013:466, paragraph 31) and *Dansk Transport og Logistik* (C-230/08, EU:C:2010:231, paragraph 52).

102. Accordingly, I propose that the Court reply to the first question declaring that Article 7(3) of the Sixth Directive is to be interpreted as meaning that VAT is due where, at the time of their re-exportation, the goods concerned had, as a result of a customs debt incurred under Article 204 of the CCC, left the customs arrangements provided for in that article in circumstances which support the presumption that the goods have entered the economic network of the Union.

2. The second question

103. The answer would render irrelevant the other two questions referred by the Finanzgericht Hamburg in Case C-226/14. However, in case the Court should not take that view, I shall examine those questions in the alternative.

104. In the event that the first question is answered in the negative, the Finanzgericht asks whether, given the circumstances of the case at issue in the main proceedings, the Sixth Directive requires import VAT to be levied or whether, on the other hand, the Member States have a measure of discretion in that regard.

105. The parties to the main proceedings, the Greek Government and the Commission all take the view that the question should be answered in the negative, since Article 7 of the Sixth Directive lays down a comprehensive and definitive rule.

106. I can only agree with that approach. The 'importation of goods' as a chargeable event giving rise to VAT and the definition of that term laid down in Article 7 of the Sixth Directive are matters which are dealt with definitively and comprehensively in the Sixth Directive and must be the subject of an autonomous definition under EU law. Otherwise, the existence of differences between the Member States regarding the chargeable event giving rise to the tax would jeopardise attainment of the aim of the Sixth Directive. As the Commission observes,[39] that aim is the achievement of a common market resembling a real internal market — according to the fourth recital in the preamble to the Sixth Directive — in which harmonisation of the tax base means that 'the application of the Community rate to taxable transactions leads to comparable results in all the Member States'.[40]

107. Therefore, since, pursuant to Article 7(3) of the Sixth Directive, the incurrence of a customs debt under Article 204 of the CCC means that VAT becomes due, the Member States have no discretion to lay down provisions to the contrary.

108. Accordingly, I propose that, in the alternative, the Court answer the second question to the effect that the Member States do not have any discretion for the purposes of levying VAT due as a result of the importation of goods.

3. The third question

109. I shall also set out, in the alternative, my views on the third question referred by the Finanzgericht Hamburg, which asks whether, in a situation such as that at issue in the main proceedings, where VAT must be charged as a result of a customs debt incurred pursuant to the combined application of Article 10(3), second subparagraph, of the Sixth Directive and Article 204 of the CCC, the person liable for payment of VAT is the warehouse keeper who stores the goods in a customs warehouse, even though he has no right of disposal over the goods and does not use them for the purposes of his taxable transactions within the meaning of Article 17(2)(a) of the Sixth Directive.

39 — Point 72 of its written observations.

40 — Ninth recital of the Sixth Directive.

110. All the parties agree with the proposition that Article 21(4) of the Sixth Directive confers on the Member States the right to determine the person liable for payment of VAT in import operations. That said, the Greek Government submits that there is no requirement that the sole person liable for payment of VAT should be the importer of the goods, meaning that it is possible that the person liable for the customs debt incurred as a result of non-compliance under the CCC becomes liable for payment of VAT.

111. Eurogate rejects the latter possibility, arguing that it is precluded by the fact that, where a warehouse keeper acts solely as a provider of services, he is not entitled to deduct the VAT due, unlike a warehouse keeper who has the right of disposal over the goods, which would lead to an unjustified difference in treatment.

112. The wording of Article 21(4) of the Sixth Directive is unequivocal in providing that 'the person or persons designated or accepted as being liable by the Member States into which the goods are imported' shall be liable to pay VAT on importation. Admittedly, if the person designated or accepted as being the importer under German law is Eurogate — which it is for the national court to determine — that company could not claim the VAT deduction since Article 17(2) of the Sixth Directive provides only for the deduction of the tax due in respect of 'the goods and services … used for the purposes of his taxable transactions'.

113. The Court ruled recently (25 June 2015) on an issue similar to that raised in the present case, declaring that Article 168(e) of the VAT Directive, which is equivalent to Article 17(2) of the Sixth Directive, 'must be interpreted as not precluding national legislation which excludes the deduction of VAT on import which the carrier, who is neither the importer nor the owner of the goods in question and has merely carried out the transport and customs formalities as part of its activity as a transporter of freight subject to VAT, is required to pay'. [41]

114. Two consequences may be established from the judgment in *DSV Road*. The first is that there is nothing to preclude the legislation of a Member State (in this case, Germany) from designating the carrier as the taxable person liable for payment of import VAT. The second is that nor are there any objections in such cases to the carrier of imported goods not being entitled to deduct the VAT due.

115. Therefore, in those circumstances, it must be stated that the freedom of the Member States to designate the warehouse keeper of the goods concerned as the person liable for payment of import VAT is not limited by the fact that the person designated is not entitled to deduct the tax due.

B – *Case C-228/14*

116. The question referred for a preliminary ruling in Case C-228/14 is also concerned with the incurrence of a customs debt on importation under Article 204 of the CCC. However, it does not concern the failure to comply with the obligations relating to the customs warehousing procedure but rather failure to fulfil the obligations relating to the external transit procedure, governed by Articles 91 to 97 of the CCC. Furthermore, the VAT Directive, rather than the Sixth Directive, is applicable *ratione temporis* to the case.

41 — Judgment in *DSV Road* (C-187/14, EU:C:2015:421, paragraph 51). DSV, a transport and logistics company, had initiated two external Community transit procedures at the end of which it was required to pay customs duties (under Article 203 of the CCC and, in the alternative, under Article 304 of the CCC) and import VAT, while it was refused the right to deduct the VAT.

117. The Finanzgericht Hamburg asks, in particular, whether in the case of goods which are re-exported as non-Community goods under customs supervision but which have given rise to the incurrence of a customs debt for failure to fulfil an obligation provided for in Article 204 of the CCC, Article 236(1) of the CCC, in conjunction with the VAT Directive, must be interpreted as meaning that there is no VAT liability where the person held liable for the tax debt had no right of disposal over the goods.

118. I agree with the Commission that this question may be answered by applying the considerations set out in the examination of Case C-226/14. [42]

119. Like that case, Case C-228/14 concerns goods which were re-exported without having been removed from a suspensive arrangement (the external transit procedure). That being so, the reasons set out in points 98 to 115 of this Opinion lead me to conclude that there was, in fact, no importation and, therefore, no import VAT was due.

120. If the Court does not agree with that view, I believe that the considerations set out in relation to the third question in Case C-226/14 [43] would lead to a declaration that a carrier who does not have the right of disposal over the goods may be the person liable for payment of import VAT.

VI – **Conclusion**

121. In the light of the foregoing considerations, I propose that the Court answer the questions referred to it as follows:

As the main answer:

(1) Article 7(3) of the Sixth Directive and Article 61 of the VAT Directive must be interpreted as meaning that VAT is due where, at the time of their re-exportation, the goods concerned had, as a result of a customs debt incurred under Article 204 of the Community Customs Code, left the customs arrangements provided for in these articles in circumstances which support the presumption that the goods have entered the economic network of the Union.

In the alternative:

(2) The Member States do not have any discretion for the purposes of levying VAT where a customs debt has been incurred under Article 204 of the Community Customs Code.

(3) If VAT should be levied in the situations at issue, the warehouse keeper or the carrier may be the persons liable to pay that tax under national legislation, even if they do not have the right of disposal over the goods and are not entitled to deduct the VAT due.

42 — Points 89 to 95 of its written observations.

43 — Points 112 to 114 above.