REPORT FOR THE HEARING
delivered in Joined Cases 123 and 330/87 *

I — Facts and written procedure

1. *The applicable Community legislation*

Article 17 (2) (a) of Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment (Official Journal 1977, L 145, p. 1), hereinafter referred to as 'the Sixth Directive', provides that in so far as the goods and services are used for the purposes of his taxable transactions, a taxable person is entitled to deduct from the tax which he is liable to pay:

'value-added tax due or paid in respect of goods or services supplied or to be supplied to him by another taxable person'.

Article 18 (1) (a) provides that to exercise his right to deduct, the taxable person must 'hold an invoice, drawn up in accordance with Article 22 (3)'.

Article 22 (3) imposes an obligation on the taxable person to issue an invoice or other document serving as invoice in respect of all goods and services supplied by him to another taxable person and to keep a copy thereof (subparagraph (a)). Every taxable person must likewise issue an invoice in respect of payments on account made to him by another taxable person before the supply of goods or services is effected or completed. The invoice must state clearly the price exclusive of tax and the corresponding tax at each rate as well as any exemptions (subparagraph (b)). Member States are to determine the criteria for considering whether a document serves as an invoice (subparagraph (c)).

Article 22 (2) provides that 'every taxable person shall keep accounts in sufficient detail to permit application of the value-added tax and inspection by the tax authority.'

2. *The Belgian legislation*

Article 45 of the Belgian Value-added Tax Code provides for the right to deduct the tax as laid down in the Community rules.

In order to exercise his right to deduct tax on goods and services supplied to him a taxable person must, pursuant to the first subparagraph of Article 3 (1) of Royal Decree No 3 of 10 December 1969 on value-added tax deductions (*Moniteur belge* of 12 February 1969), hold an invoice drawn up in accordance with Article 2 of Royal Decree No 1 of 23 July 1969 on

* Language of the Case: French.

measures to ensure payment of value-added tax (*Moniteur belge* of 30 July 1969). Article 2 provides that invoices must contain the following particulars:

'(1) The date on which it is issued and the serial number under which it is entered in the sales ledger;

(2) The names and addresses of the taxable person and the other party to the transaction;

(3) The date of delivery of the article or completion of the service and, in cases referred to in Article 1, the date on which the tax is due, or if that cannot be precisely determined, the period over which the transaction is completed;

(4) The customary denomination and quantity of goods delivered or the nature of the service and specification of the information needed to determine the applicable rate;

(5) The price and other components of the taxable amount; where invoiced transactions are subject to different rates, the price and other components of the taxable amount in relation to each rate;

(6) The rate and amount of the tax due; where invoiced transactions are subject to different rates, the amount of the tax due in respect of each rate;

(7) The reason for exemption where the invoiced transaction is not liable to tax.

Where payment is in cash the receipt may take the place of an invoice, provided it contains the information required by the present article.'

That article is the subject of the two actions before the national court.

With regard to Case 123/87 mention must also be made of Royal Decree No 17 of 20 July 1970 on the establishment of a minimum taxable amount for value-added tax on motor vehicles (*Moniteur belge* of 31 July 1970), Article 4 (2) of which provides that invoices and all other documents relating to the delivery within the country or import of a motor vehicle must contain the information needed to determine the catalogue prices and the type of vehicle, its fittings and accessories, in particular its make, model, year of manufacture, cylinder capacity, engine power, bodywork model, chassis number and the year of registration when the vehicle was first delivered within the country or imported.

3. *The main actions*

Case 123/87

Mrs Jorion, née Jeunehomme, the plaintiff in the main proceedings, carries on a business as car dealer in Brussels under the name 'Le Palais de la Voiture d'Occasion'. Following investigations by officers of the VAT administration several findings of irregularities were made. The plaintiff admits some of the irregularities with which she is charged but denies wrongly deducting

the amounts mentioned as value-added tax on documents evidencing the acquisition of second-hand motor vehicles.

The VAT administration claims the tax deducted from the taxpayer on the ground that the invoices on which the plaintiff's suppliers charged the contested taxes do not contain the number of the sales ledger entry, fictitious addresses and cancelled VAT registration numbers were given, different signatures have been appended to the same names and there is inadequate identification of the vehicles sold.

Mrs Jorion is contesting four demands for payment issued by the VAT administration and claims that they should be annulled on the ground that she does not owe the amounts unduly claimed from her; she also claims the return of the property seized in execution of those demands.

Case 330/87

The Société anonyme d'étude et de gestion immobilière 'EGI' (hereinafter referred to as 'EGI'), the plaintiff in the main proceedings, is a construction and civil engineering undertaking which engages in all kinds of property transactions. Prior to be being put into liquidation in 1982 it was subject to value-added tax in 1977 and 1978 and was therefore entitled to deduct from the amounts which it was liable to pay in respect of goods and services supplied by it the tax paid on the goods and services supplied to it.

Following investigations by officers of the VAT administration several findings of irregularities were made. Because of irregularities with regard to the Belgian legislation on the content of invoices the VAT administration refused deduction of taxes on goods and services supplied to EGI by Cotradec and Mr Salegno. It points out that the invoices delivered by Cotradec do not contain the number of the sales ledger entry or the supplier's VAT registration number and in any event do not state the date of delivery of the article and or the completion of the service and do not satisfactorily state the name or company name of the taxable person. Moreover, the description of the goods and services is completely inadequate in the invoices prepared by Cotradec and Mr Salegno.

After correction of the taxable amount the Belgian tax administration claimed by a demand for payment dated 30 June 1980 the amount of the deduction of taxes brought into account by Cotradec and Salegno and correction of the taxable amount of two invoices issued by Cotradec. By bringing into account a tax credit in favour of EGI the authorities allowed a set-off, the effect of which was to reduce the total amount claimed.

EGI brought two actions in the national court, one for the annulment of the abovementioned demand for payment and the other to obtain the actual repayment of the tax credit together with compensation for vexatious and frivolous litigation.

4. *Procedure before the court*

The tribunal de première instance, Brussels, before which the actions were brought, considers that its judgment depends on the interpretation of provisions of the Sixth Directive.

By judgments of 6 April and 16 October 1987 it stayed the proceedings and requested the Court of Justice of the European Communities to give a preliminary ruling under Article 177 of the EEC Treaty on the following question:

'Articles 18 (1) (a) and 22 (3) (a) and (b) of the Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes provide that in order to exercise his right to deduct, the taxable person must hold an invoice stating clearly the price exclusive of value-added tax and the corresponding tax at each rate as well as any exemptions.

The preparatory documents concerning Article 22 (3) also state that the method of invoicing is not only part of tax law but also, and principally, of commercial law (commentary accompanying the proposal for a Sixth Directive submitted to the Council by the Commission on 20 June 1973, Article 23 (3)).

In those circumstances, do Articles 18 (1) and 22 (3) (a) and (b) of the Sixth Directive permit the Belgian State to make the exercise of the right to deduction subject to the holding of a document which must contain not only the information normally contained in an invoice as traditionally defined in commercial law but also other information unconnected with the nature, essence and purpose of a commercial invoice, namely that specified in Article 2 of Royal Decree No 1 of 23 July 1969 adopted in implementation of the Belgian Value-added Tax Code, where such additional information is purely technical in nature and is designed to facilitate supervision of the collection of the tax on the basis of the accounts of another taxable person with whom the person in question has concluded a contract?'

The requests for a preliminary ruling were received at the Court Registry on 9 April and 20 October 1987.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged in Case 123/87 by the Government of the Kingdom of Belgium, represented by H. De Belder, Director for European Affairs in the Ministry of Foreign Affairs, Foreign Trade and Cooperation with Developing Countries, Mrs Jorion, represented by J. P. Davreux and G. Van Fraeyenhoven, of the Brussels Bar, the Commission of the European Communities, represented by its Legal Adviser J. F. Buhl and by D. Calleja, a member of its Legal Department, the Government of the Federal Republic of Germany, represented by M. Seidel and D. Knopp, of the Federal Ministry for Economic Affairs, and the Government of the Kingdom of Spain, represented by F. J. Conde de Saro and R. Garcia-Valdecasas Fernández, of the Ministry of Foreign Affairs; and in Case 330/87, by the Government of the Kingdom of Belgium, represented by J. Dussar, Inspector-General in the Ministry of Finance, acting as Agent, assisted by K. Lenaerts, of the Brussels Bar, EGI, represented by G. Van Fraeyenhoven, of the Brussels Bar, the Commission of the

European Communities, represented by its Legal Adviser J. F. Buhl and by D. Calleja, a member of its Legal Department, the Government of the Portuguese Republic, represented by M. L. I. Fernandes and A. Correia, of the Ministry of Foreign Affairs, and the Government of the Kingdom of Spain, represented by M. F. J. Conde de Saro and R. Garcia-Valdecasas Fernández, of the Ministry of Foreign Affairs.

By a decision of 3 February 1988 adopted under Article 85 (1) and (2) of the Rules of Procedure the Court assigned the case to the Fifth Chamber.

By order of 3 February 1988 the Court joined the two cases for the purposes of the oral procedure and judgment.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry.

II — Written observations submitted to the Court

1. The Belgian Government observes that in Belgian commercial law there is no specific definition of the term 'invoice'. It is defined in case-law and in the specialist literature as a statement in writing by a trader of a debt due from his customer for the sale of goods or supply of services. In its traditional meaning the term 'invoice' implies that for commercial purposes it should include such information as the names of the seller and the buyer, a description of the transaction and the price due from the recipient of the invoice.

It states that the Belgian legislature has intervened only *ad hoc* in order to require specific additional information on the invoice to meet the needs of particular legislation. For instance, the legislation on the commercial register requires all invoices issued by a trader to state its main registered address in the commercial register together with its number. That requirement has never appeared to be contrary to the nature or essence of an invoice.

In the same way the information required by revenue law, especially in the application of value-added tax, cannot be regarded as alien to the definition of invoice in its traditional sense; it specifies and supplements it in order to enable the VAT machinery to function harmoniously, to ensure that the tax is levied accurately and to prevent evasion while observing the normal commercial system. Thus, the serial number in the supplier's sales book, which according to Article 2 of the Royal Decree No 1 of 23 July 1969 must be included not only on the copy of the invoice to be retained by the person who issues it but also on the original which is issued to the recipient, allows the authorities, by means of information obtained from the latter, easily to identify the transaction among the documents kept by the supplier and to check whether the supplier has honoured his obligation to pay the tax which the recipient deducts in the exercise of his right.

If the supplier does not comply with that obligation the rights of the collecting authority are endangered. Where the invoice is irregular, the revenue authorities, in order to ensure that there is a right of deduction, merely require evidence of any lawful kind that the transaction covered by the invoice has in fact taken place and that the recipient who wishes to exercise the right of deduction is entitled, as an average prudent trader, to think that the other party will fulfil his obligation of paying to the collecting authority the value-added tax which the recipient has paid him.

In *Case 123/87* the Belgian Government contends that since there may be many models of the same type of vehicle with very different prices the information required by Article 4 (2) of the Royal Decree No 17 of 20 July 1970 makes possible the identification of the vehicle for the purpose of checking whether the price charged, on which value-added tax is based, corresponds to the model sold.

It points out that in the present case vehicles are not sold and delivered from the vendor's garage but are delivered to the purchaser's garage. The invoice is drawn up there and then at the time of the purchase with the active cooperation of the purchaser, since the vendor is sometimes illiterate, and the purchaser has no way of checking the vendor's correct address or any guarantee that he will pay the value-added tax.

In *Case 330/87*, it states that in the particular circumstances of the issue of the invoice in this case the formal irregularities found from the point of view of Belgian law had all the characteristics of the fraudulent activity of labour contractors. In that respect a report by the Inspector of the Inspection spéciale des impôts (Special Tax Inspectorate) stated that in view of the impossibility of establishing whether the work referred to in the invoices had been done it could not be ruled out that the invoices were fictitious or contrived. The report also referred to the plaintiff's refusal to produce to the tax administration the documents which would have made it possible to verify that the transactions invoiced had in fact been carried out by those who had issued the invoices. Even if it is assumed, in spite of serious misgivings by the tax administration on that issue, that the plaintiff was not using Cotradec and Mr Salegno as 'men of straw', it had shown little prudence in accepting without more careful checking the irregular invoices which had been given to it.

All those circumstances justify the Belgian legislature's attitude in requiring recipients to guard against the risk of irregular invoices not being deductible by exercising caution as regards their wording and reliability.

With regard to the compatibility of the Belgian legislation with the provisions of the Sixth Directive the Belgian State submits that since those provisions do not define the term 'invoice', it must be understood in each Member State according to the rules in force in that State both in tax and commercial law. In support of that argument it cites the position adopted by the Commission of the European Communities in its account of the reasons for the proposal to the Council of the Sixth Directive on 20 June 1973 (*Bulletin of the European Communities*, Supplement 11/73, p. 22), according to which it was not considered necessary to harmonize the numerous national provisions concerning the delivery of invoices. The Commission

had moreover made it clear in that statement that 'these [provisions concerning the delivery of invoices] are not only part of tax law but also, and principally, of commercial law'. Accordingly it was never the Community legislature's intention to restrict the freedom of Member States to determine the information which they consider necessary before an invoice can be regarded as complying with Article 22 (3) (b) of the Sixth Directive and capable of permitting exercise of the right to deduct under Article 18 (1) (a).

It is inconceivable, moreover, that the information referred to in Article 22 (3) (b), namely the price exclusive of tax and the corresponding tax at each rate as well as any exemptions, should be sufficient. Certain information, such as that set out in Article 2 of Royal Decree No 1 of 23 July 1969, is indispensable for the functioning of value-added tax notwithstanding the fact that it is not required by Article 22 (3) (b) of the Sixth Directive or by commercial law. The requirement of that information cannot in consequence be regarded as contrary to Community law. Article 18 (1) (a) of the Sixth Directive refers to Article 17 (2) (a), which in turn refers to the value-added tax due or paid by the taxable person who claims the right to deduct. In other words, the correct functioning of the basic VAT machinery as conceived by the Sixth Directive requires that the taxable person should have reasonable grounds to believe, in connection with a genuine transaction, that he is paying value-added tax to the other party which will normally be paid to the collecting authority.

If he does not show, or refuses to show, that in spite of the defect in the invoice he is nevertheless covered by Article 17 (2) (a), the tax administration may assume that the defect reflects an attempt to hide the fact that the conditions for deduction under that provision are not met.

The Belgian Government considers that its legislation complies with the judgment of the Court of 2 February 1977 in Case 50/76 (*Amsterdam Bulb BV* v *Produktschap voor Siergewassen* [1977] ECR 137), according to which 'a national provision ... which does not create exemptions from the Community system, does not limit its scope and seeks to achieve the same aim ... cannot be regarded as incompatible with Community law.'

Finally, it points out that Article 22 (8) of the Sixth Directive makes it superfluous to have recourse to the procedure of Article 27 (1) to (4), which must be followed only in order to introduce special measures derogating from the provisions of the directive and intended to prevent tax evasion. Accordingly, the imposition of additional obligations on the taxable person before he may exercise his right to deduct is specifically covered by Article 22 (8) even if its aim is also to prevent tax evasion.

2. The plaintiffs in the main proceedings submit that refusal of the right to deduct because of omission of technical or ancillary information which is alien to the object and nature of an invoice as defined in commercial law is arbitrarily misused by the Belgian value-added tax authority. The VAT administration has refused the

deduction of input taxes solely because the contested invoices do not contain purely technical information which is intended to facilitate checking of the receipt of the tax from the supplier and is thus of no relevance in checking the purchaser.

In Case 123/87 Mrs Jorion considers that the simple fact that most of the invoices do not mention the serial number in the sales ledger and the vendor's registration number in the commercial register cannot justify refusal of the right to deduct.

As regards failure to state the date of delivery of the vehicle she states that since the invoice is drawn up on delivery of the vehicle there is no reason to write the same date twice on the invoice whenever its date is the same date as the delivery.

As regards the absence of the technical information provided for in Article 4 (2) of the Royal Decree No 17 of 20 July 1970 she considers that there is no mention whatsoever of that information in the Belgian rules governing the right to deduct input tax; it is not provided for either in Article 3 of Royal Decree No 3 of 10 December 1969 or Article 2 of Royal Decree No 1 of 23 July 1969.

In Case 330/87 EGI states that as regards the failure to state the dates of delivery and services and the description of the goods and services supplied the invoices expressly refer to the basic contracts and agreements which show the nature and programme of completion of the projects and are accompanied by descriptive surveys showing the state of advancement or completion of the projects. The omission of the registration number of the supplier on five of the eight invoices at issue must be regarded as irrelevant.

The plaintiffs in the main proceedings state that the VAT administration has never denied that they paid the price and tax to their suppliers. Since in cases where the VAT administration has no doubt about the genuineness of invoiced transactions deduction is possible on the basis of invoices which are not in the proper form, and thus in practice a distinction is made between essential and ancillary information, the question arises of the lawfulness of Article 3 of Royal Decree No 3 of 10 December 1969 from the point of view of the Sixth Directive.

They submit further that the VAT administration cannot claim that the other party — the plaintiffs in the present case — is jointly liable where, as in this case, the taxes have not been paid by suppliers who have become insolvent but are perfectly identifiable and known to the Belgian authorities by reason of the fact in particular that they are registered for value-added tax. They state in that respect that since such joint liability is prohibited by the second paragraph of Article 53 (1) of the Belgian VAT Code, which reflects the same philosophy as the Second and Sixth Directives, it is significant that it has never been claimed by the State save to mitigate the insolvency of suppliers, for when they have duly paid the taxes owing the other parties' right to deduct is never refused because of the absence of technical or even essential information on the invoices.

The plaintiffs in the main proceedings challenge the defendant State's argument

based on the Commission's comments in its account of the reasons for the proposal for the Sixth Directive that Member States are free to require that an invoice should contain information not required by commercial law in order to give the right to deduct. Similarly, that argument cannot be founded on Article 22 (8) of the directive, which allows Member States to impose other obligations which they deem necessary for the correct levying and collection of the tax and for the prevention of evasion; it does not allow them to restrict the right to deduct given to taxpayers.

They consider that the Belgian State is wrongly extending the application of Article 22 (3) (c) of the Sixth Directive to the invoices themselves so that it suffices for it to find the least formal defect in the issue of an invoice or to extend the list of necessary ancillary information in order to deprive a party of the right to deduct input taxes. If such an argument were to prevail there would be nothing to prevent the Belgian State in future from applying it even where the supplier had paid the tax to the collecting authority.

3. The Commission of the European Communities states first of all that the Sixth Directive constitutes a further step towards the ultimate objective of fiscal harmonization and that that objective is clearly expressed in the twelfth and fourteenth recitals in its preamble, concerning the system of deductions and obligations of taxpayers respectively. Nevertheless, the Sixth Directive has not specifically harmonized the national provisions on invoicing.

Although it is apparent from the judgments of the Court of 5 May 1982 (Case 15/81 *Schul* v *Inspecteur der Invoerrechten en Accijnzen* [1982] ECR 1409 at p. 1426) and 14 February 1985 (Case 268/83 *Rompelman* v *Minister van Financien* [1985] ECR 655 at p. 663) that the deduction mechanism constitutes a cornerstone of the common system of value-added tax, it is nevertheless clear that the Community legislature did not intend to determine exhaustively the conditions which documents must satisfy to be regarded as invoices.

It cites in that respect the position which it adopted in its account of the reasons for the proposal for the Sixth Directive:

'Although the invoice is the key document which enables the taxable person to exercise his right to deduction (see Article 18), it was not however considered necessary to harmonize the numerous and detailed national provisions concerning the delivery of invoices. These are not only part of tax law but also, and principally, of commercial law . . .'

It considers that since no deduction is justified in the absence of a genuine transaction, the invoice is only corroboration of the right to deduct.

Since the invoice is only an accounting document evidencing a transaction which has taken place and a price which has been paid, it is with that in mind that the Sixth Directive requires only mention of the price exclusive of tax and the corresponding tax or exemption as the case may be. That information, which is absolutely indispensable in the Community system, is nevertheless minimal, and Member States may accordingly provide in their national legislation for additional conditions which they

consider necessary to ensure application of value-added tax and its monitoring by the revenue authorities. Such additional information must not, by reason of its amount or its technical nature, make it more difficult or almost impossible for a taxable person to exercise the right to deduct. If a Member State wishes to go beyond the strict confines of monitoring the application of value-added tax and adopt measures for the prevention of evasion, a right which it has under Article 22 (8) of the Sixth Directive, it must have recourse to the procedure set out in Article 27.

In Case 123/87 the Commission considers that the special information required by the Royal Decree No 17 of 20 July 1970 is so voluminous and technical that it appears to relate to a contract rather than an invoice and that such an amount of information is not justifiable in the trade.

In Case 330/87 the Commission considers that the information required by Article 2 of Royal Decree No 1 of 23 July 1969 is not incompatible with Articles 18 (1) (a) and 22 (3) (a) and (b) of the Sixth Directive.

4. The German Government submits that since Articles 18 and 22 of the Sixth Directive do not contain an exhaustive list of the formal requirements which documents supporting the right to a deduction must satisfy, it is possible to infer from the directive the basic principle that the information and documentary evidence which may be required from the taxable person must be 'necessary' to provide definite proof that the substantive conditions to which deduction is subject are satisfied. It observes that the decisive nature of the criterion of 'necessity' is apparent from Article 22 (8) of the Sixth Directive ('. . . Member States may impose other obligations which they deem necessary for the correct levying and collection of the tax and for the prevention of fraud'), the 14th recital in the preamble ('. . . taxpayers should, in particular, make a periodic aggregate return of their transactions . . . where this appears necessary for establishing and monitoring the basis of assessment of own resources') and Article 22 (2) ('every taxable person shall keep accounts in sufficient detail to permit application of the value-added tax and inspection by the tax authority').

The German Government considers that a clear answer to the question who is to decide on the necessity of certain information as evidence of the substantive conditions for deduction is to be found in Article 22 (8). It is thus the Member States which, in so far as the various national rules have not yet been harmonized, are free to impose other obligations which they 'deem necessary'. That conclusion is confirmed by the German wording of Article 22 (3) of the directive, which clearly gives the Member States the power to determine the requirements to be met by a document serving as an invoice. Although the French and Italian versions speak expressly only of determining the criteria for considering whether a document may serve as an invoice, even if the provision is thus restricted it also confirms the power of the Member States to determine the requirements which may be imposed with regard to evidence of the right to deduct. Those requirements go beyond the normal scope in commercial law of the information

which must be included on a commercial invoice and imply the requirement of any additional information which according to the State concerned is necessary as evidence of the susbtantive right to deduct.

5. The Spanish Government observes that the invoice, as corroboration of the fundamental right to deduct, is intended to make possible the effective exercise of that right. It must in addition contain the minimum information which makes it possible for it to identify the transaction and for the tax authorities to check that the tax is paid.

It argues that the preparatory documents for the Sixth Directive clearly show that the Community legislature did not intend to specify exhaustively the information which invoices must contain and that that argument is confirmed by the 14th recital to the directive. The provisions of Article 18 (1) (a) and (d) and Article 22 (3) (c) and (8) of the Sixth Directive also show that the Directive in no way restricts the power of the Member States to specify the information which invoices must contain.

The Spanish Government goes on to observe that since the Community rule makes no distinction, Member States are not required to define invoices and their requirements by the rules of commercial law. On the contrary, the nature of the subject of the legislation requires that the definition should as a rule come from tax law. The way in which the VAT machinery functions requires that it is through the invoice that the tax should be passed on and only the possession of an invoice which meets all the requirements of tax law will allow a recipient to deduct the tax which he has paid. Those requirements, which are justified by the need to monitor the application of the tax and prevent evasion, must nevertheless be proportionate to the desired objectives and consequently they must not make it difficult or almost impossible for the taxpayer to exercise his right to deduct.

It states that in Spain, as in Belgium, the requirements which invoices have to satisfy are determined by tax law.

It considers that in Case 330/87 the requirements of Belgian legislation do not make it either impossible or difficult to exercise the right to deduct.

The Portuguese Government submits that it is clear from Article 22 (3) (c) of the Sixth Directive that the Community legislature did not intend to specify exhaustively the details which must be included in an invoice and that that has thus been left to the Member States.

In support of that argument it cites the preparatory documents for the directive, which refer to the difficulties inherent in any harmonization of the various provisions of the commercial law of Member States on the terms of invoices.

As regards the question who is to decide on the necessity of particular information as evidence that there is in fact a right to deduct, the Portuguese Government considers that systematic review of the

provisions relating to the right to deduct from the point of view of the objective of ensuring the correct collection of the tax and the prevention of evasion leads to the view that it is for the Member States to determine the terms they consider necessary. That conclusion is confirmed by the wording of Article 22 (3) (c) and (8) of the Sixth Directive.

It observes that from the point of view of the application of value-added tax the supplier who has the original invoice has a credit *vis-à-vis* the State. In those circumstances legal certainty implies that the State may impose certain requirements in relation to a document which makes it a debitor towards the taxpayer.

It states that the requirements which invoices must satisfy under Portuguese commercial law are insufficient for the purposes of applying value-added tax and that the exercise of the right to deduct is governed by the provisions of the VAT Code in relation to the wording of invoices.

J. C. Moitinho de Almeida
Judge-Rapporteur