OPINION OF ADVOCATE GENERAL MAZÁK

delivered on 15 September 2009 [1]

I — Introduction

1. The present reference was made by the Nejvyšší správní soud (Supreme Administrative Court) (Czech Republic) in the context of proceedings between Milan Kyrian ('the applicant') and Celní úřad Tábor (the customs office of Tábor, Czech Republic) ('the defendant') concerning the recovery by the defendant of arrears of excise duty pursuant to a tax assessment notice issued by the Hauptzollamt Weiden (Principal Customs Office Weiden) (Germany) against the applicant and which was served by the Ministerstvo financí — Generální ředitelství cel (Czech Ministry of Finance — Directorate General of Customs).

2. The referring court seeks clarification on whether, pursuant to Article 12(3) of Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures (as amended), [2] that court has competence to review the enforceability of the tax assessment notice in question and whether it has been properly served on the applicant. The referring court also seeks clarification as to whether, in the light of the general legal principles of Community law, in particular the principles of a right to a fair trial, sound administration and the rule of law, service of the tax assessment notice on the applicant in a language other than one he understands, which, moreover, is not an official language of the Czech Republic, constitutes a defect permitting refusal to recover the claim in question.

II — Community legislation

3. Article 6 of Directive 76/308 provides:

'1. At the request of the applicant authority, the requested authority shall, in accordance with the laws, regulations or administrative

1 — Original language: English.
2 — OJ 1976 L 73, p. 18.

provisions applying to the recovery of similar claims arising in the Member State in which the requested authority is situated, recover claims which are the subject of an instrument permitting their enforcement.

2. For this purpose any claim in respect of which a request for recovery has been made shall be treated as a claim of the Member State in which the requested authority is situated, except where Article 12 applies.'

4. Article 12 of Directive 76/308 provides:

'1. If, in the course of the recovery procedure, the claim and/or the instrument permitting its enforcement issued in the Member State in which the applicant authority is situated are contested by an interested party, the action shall be brought by the latter before the competent body of the Member State in which the applicant authority is situated, in accordance with the laws in force there. This action must be notified by the applicant authority to the requested authority. …

2. As soon as the requested authority has received the notification referred to in paragraph 1 either from the applicant authority or from the interested party, it shall suspend the enforcement procedure pending the decision of the body competent in the matter, unless the applicant authority requests otherwise in accordance with the second subparagraph....

Notwithstanding the first subparagraph of paragraph 2, the applicant authority may in accordance with the law, regulations and administrative practices in force in the Member State in which it is situated, request the requested authority to recover a contested claim, in so far as the relevant laws, regulations and administrative practices in force in the Member State in which the requested authority is situated allow such action. If the result of contestation is subsequently favourable to the debtor, the applicant authority shall be liable for the reimbursement of any sums recovered, together with any compensation due, in accordance with the laws in force in the Member State in which the requested authority is situated.

3. Where it is the enforcement measures taken in the Member State in which the requested authority is situated that are being contested the action shall be brought before the competent body of that Member State in accordance with its laws and regulations.

…'

III — The main proceedings and the question referred for a preliminary ruling

5. On 2 July 1999, the Hauptzollamt Weiden (Principal Customs Office, Weiden) (Germany) issued a 'Steuerbescheid' decision ('the tax assessment notice') addressed to the recipient 'Milan Kyrian, Studnicni 836, 39811 Protivin/Tschechien', by which it imposed payment of excise duty on alcohol on the person named in the amount of DEM 218 520. The tax assessment notice was served through the Czech Ministry of Finance — Directorate General of Customs on 6 August 1999.

6. On 28 September 2004, the Hauptzollamt Regensburg (Principal Customs Office, Regensburg) (Germany), pursuant to Article 6 of Directive 76/308, requested the Czech Ministry of Finance — Directorate General of Customs ('the requested authority') to recover the arrears of excise duty pursuant to the tax assessment notice. In the request for recovery the applicant was identified as the debtor by his forename, surname, address and date of birth, and the arrears of excise duty are stated numerically, together with the penalty, as CZK 3 258 625.30.

7. By notice of 6 December 2004, the requested authority delegated the recovery of the arrears to the defendant. On 10 December 2004 (in connection with excise duty) and on 30 December 2004 (in connection with the penalty), the defendant issued a request for payment of the arrears of tax within an additional time-limit. The applicant lodged appeals against those requests which the Celní ředitelství České Budějovice (Customs Directorate, České Budějovice) (Czech Republic) dismissed by decisions of 4 March and 6 April 2005.

8. On 6 March 2006, the defendant issued a warrant of execution, by which it ordered enforcement of the arrears of excise duty by deductions from the applicant's salary. The applicant lodged complaints against the warrant of execution, which were dismissed by decision of 31 October 2006 ('the contested decision').

9. The applicant lodged an administrative action against the contested decision in which he complained, in particular, that the identification of the recipient in the tax assessment notice (by forename, surname and address) is insufficient, since those data were the same for three persons, the applicant, the applicant's father and the applicant's son. For that reason, the tax assessment notice is unenforceable and the defendant is not entitled, from the number of persons who correspond to the description stated in the tax assessment notice, to select specifically the applicant and to levy execution specifically against him. For corresponding reasons, neither can the tax assessment notice be considered to have been properly served on the applicant

where, from the document of service submitted to the requested authority, it is clear only that the tax assessment notice was delivered to the recipient 'Milan Kyrian, Studniční 836, 39811 Protivín', something which, according to the applicant, cannot constitute proof of proper service of the tax assessment notice into the hands of the applicant in particular. The applicant further complained that he did not understand the instruments which were sent to him by the German customs authorities in German and he was unable to take the appropriate legal steps to defend his rights. The applicant considers that he is under no obligation to procure, at his own expense, a translation of the written instruments of the German customs authorities.

10. The Regional Court, České Budějovice dismissed the action by decision of 14 March 2007 č.j. 10 Ca 239/2006 — 40 ('the contested judgment'). The applicant appealed against the contested judgment to the referring court. In that appeal, the applicant claimed that the tax assessment notice is not enforceable because it does not contain a sufficiently definite identification of the debtor which would prevent him from being confused with other persons. It is not within the defendant's competence to remedy that defect of the tax assessment notice by exercising its own judgment as to the person upon whom the tax assessment notice imposes the obligation. According to the applicant, it is not even possible for that defect to be remedied by the fact that the applicant is identified as the recipient of the tax assessment notice in the request for recovery (where the applicant's date of birth appears for the first time). The applicant also claims that the tax assessment notice was not served on him in a proper manner which would have enabled him to undertake steps to defend his rights, since in the acknowledgement of receipt placed in the court file he is identified by forename, surname and address as the addressee, which is not sufficient to prove that the tax assessment notice was served on the applicant himself rather than on any other person corresponding to that identification. The applicant denies that the signature on the acknowledgment of receipt is his signature. In addition, to date he has not had the opportunity of acquainting himself with the tax assessment notice in Czech. The defendant considers that neither it nor the Czech administrative courts have jurisdiction to review the tax assessment notice in the light of the conditions for its issue and content. The precise identification of the applicant as the debtor results clearly from the request for recovery issued by the applicant authority. If the date of birth in the request for recovery had been missing, the defendant would have requested the applicant authority to supply that additional data. The defendant is of the view that the tax assessment notice was served on the applicant, something which follows from the applicant's own assertion that he obtained instruments of the German customs authorities which failed, however, to identify sufficiently the addressee, were issued only in German without a Czech translation and were not understandable to him.

11. The referring court notes that according to the settled case-law of the Czech higher courts, it is necessary to interpret Article 261a (1) of the Czech Civil Procedure Code as meaning that, with respect to the identification of the debtor, there must be 'exact

individualisation' of the person who is the debtor. The identification of the debtor must be exact and non-interchangeable or at least it must be possible, without any doubt, to deduce from the instrument permitting enforcement on whom the obligation was imposed. The referring court considers that it may be inferred from the right to a fair trial and the rights of the defence included therein that the Czech courts, in the case at issue, should take into account the applicant's complaint concerning the insufficiently identified recipient (the debtor) in the tax assessment notice itself. If the defendant's view were accepted — that the Czech authorities were totally bound by the identification of the debtor in the request for recovery — the applicant would be completely denied the opportunity to defend his rights. If the Czech administrative courts were not authorised to assess the question of the enforceability of the tax assessment notice, this would result in a denial of justice. As regards the service of the tax assessment notice in German, the referring court considers that in order to protect the interests of the recipients of instruments served, there may be a general principle resulting from the right to a fair trial and the right of a defence that service must be performed in the official language of the State of service, or in another language which the recipient understands.

12. On the basis of those considerations, the Nejvyšší správní soud decided, by decision of 5 May 2008, to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'(1) Must Article 12(3) of Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures be interpreted as meaning that, where measures for enforcement of a claim are contested before the court of a Member State in which the requested authority has its seat, that court is entitled, in accordance with the legislation of that Member State, to review whether the instrument permitting enforcement … is enforceable and has been properly served on the debtor?

(2) Does it follow from general legal principles of Community law, in particular from the principles of a right to a fair trial, sound administration and the rule of law, that service of the instrument permitting enforcement … on the debtor in a language other than one he understands, which, moreover, is not an official language of the State in which it is served on the debtor, constitutes a defect which makes it possible to refuse to enforce on the basis of such an instrument permitting enforcement …?'

IV — The proceedings before the Court of Justice

13. Written pleadings were submitted by the Czech Republic, the Federal Republic of Germany, the Portuguese Republic, the Hellenic Republic, the Republic of Poland and the Commission. A hearing was held on 13 May 2009.

V — Question 1

A — *Observations submitted to the Court*

14. The Czech Republic considers that the court of the Member State in which the requested authority has its seat is not entitled to review whether the instrument permitting enforcement is enforceable and has been properly served upon the debtor. Only the competent body in the Member State where the applicant authority has its seat is entitled to examine these circumstances. The Federal Republic of Germany considers that Article 12(3) of Directive 76/308e must be interpreted as meaning that where measures for enforcement of a claim are contested before the court of the Member Stat in which the requested authority has its seat, that court is not entitled in accordance with the legislation of that Member State to review whether the instrument permitting enforcement is enforceable and has been properly notified. The Portuguese Republic considers that Article 12(3) of Directive 76/308 must be interpreted as meaning that the requested authority is not entitled to review the validity of the title established by the applicant authority, which is definitive and executable when the request for recovery is addressed to the requested authority.

15. The Hellenic Republic in response to both questions considers that in light of the principle of effective judicial protection, which, according to settled case-law is a general principle of Community law stemming from common constitutional traditions in the Member States and contained in Articles 6 and 13 of the European Convention on Human Rights ('ECHR'), Article 12(3) of Directive 76/308 must be interpreted as meaning that where measures for enforcement of a claim are contested before the court of a Member State in which the requested authority has its seat, that court is entitled to review, in accordance with the legislation in that Member State, whether the instrument permitting enforcement was properly served, in the official language or an official language of the Member State in which the requested authority has its seat. The Republic of Poland considers that Article 12(3) of Directive 76/308 must be interpreted as meaning that where measures

for recovery of a claim are contested before the courts of a Member State in which the requested authority is situated, those courts are not entitled to review in accordance with the legislation of that Member State whether the foreign instrument permitting enforcement is enforceable and has been properly served on the debtor by the competent body in the applicant Member State.

16. The Commission considers that Article 12(3) of Directive 76/308 must be interpreted as meaning that where measures for enforcement of a claim are contested before the court of a Member State in which the requested authority has its seat, that court is not entitled to review whether the instrument permitting enforcement is enforceable and has been properly served upon the debtor. Nevertheless, where the requested authority has provided assistance in relation to the notification of the instrument permitting enforcement pursuant to Article 5 of Directive 76/308 or pursuant to bilateral or multilateral agreements between the Member States concerned, the court of the Member State where the requested authority has its seat is entitled to examine whether the service was performed in accordance with provisions applicable to the service of corresponding instruments in that Member State. Similarly, in accordance with Article 8(2) of Directive 76/308, where the instrument permitting enforcement has been accepted as, recognised as, supplemented by or replaced by an instrument authorising enforcement in the Member State of the requested authority, such acts or decisions may be subject to judicial control in that Member State.

B — *Assessment*

17. Directive 76/308 establishes common rules on mutual assistance in order to ensure the recovery of claims relating, inter alia, to certain levies, duties and taxes. [3] In that regard, Directive 76/308 provides for three separate and distinct forms of mutual assistance which a requested authority [4] is in principal obliged to perform on behalf of the applicant authority. [5] The requested authority must in accordance with Article 4 of Directive 76/308 supply upon request the applicant authority with the information which the

3 — See Articles 1 and 2 of Directive 76/308. Prior to the adoption of Directive 76/308 it was not possible to enforce in one Member State a claim for recovery substantiated by a document drawn up by the authorities of another Member State. The fact that national provisions relating to recovery were applicable only within national territories created an obstacle to the establishment and functioning of the common market and prevented Community rules from being fully and fairly applied, thereby facilitating fraudulent operations. See recitals 1 to 3 in the preamble to Directive 76/308.

4 — Pursuant to Article 3 of Directive 76/308, 'requested authority' means the competent authority of a Member State to which a request for assistance is made.

5 — Pursuant to Article 3 of Directive 76/308, 'applicant authority' means the competent authority of a Member State which makes a request for assistance concerning a claim.

latter needs in order to recover claims. Pursuant to Article 5 of Directive 76/308 the requested authority must notify the debtor of all instruments relating to claims [6] emanating from the applicant Member State. [7] The notification by the requested authority may thus relate to a claim and/or its recovery. [8] In accordance with Article 6 of Directive 76/308 the requested authority must recover, at the request of the applicant authority, 'claims which are subject to an instrument permitting their enforcement'.

18. Article 7 of Directive 76/308 lays down detailed rules and requirements concerning a request for recovery of a claim which the applicant authority addresses to a requested authority. In addition, Article 8(1) of Directive 76/308 establishes a rule of national treatment by a requested Member State of instruments permitting enforcement of a claim. [9] The instrument permitting enforcement of a claim must thus be directly recognised and automatically treated as such by the requested Member State [10] without any special procedure being required.

19. It is clear therefore, as stated by the Court in *Elliniko Dimosio* v *Nikolaos Tsapalos and Konstantinos Diamantakis*, that Directive 76/308 contains procedural rules which govern the recognition and enforcement of

6 — Which fall within the scope of Directive 76/308.

7 — It would appear that the tax assessment notice was served on the applicant by the Czech Ministry of Finance on 6 August 1999 on foot of the agreement between the Czech Republic and the Federal Republic of Germany concerning mutual assistance between customs administrations of 19 May 1995. Article 7 of the agreement in question provides that 'at the request of the customs administration of one party, the customs administration of the other party shall notify the addressee, in accordance with the applicable legislation, of all decisions and other documents of the requesting customs administration …'.

8 — Article 5 of Directive 76/308 thus envisages, in my view, two different forms of mutual assistance for the service of instruments and decisions: firstly, those related to the claim itself and, secondly, those related to the recovery of the claim.

9 — Which fall within the scope of that directive (see Article 2).

10 — 'In accordance with Article 8 of Directive 76/308, instruments permitting enforcement of the recovery of claims must now [since the entry into force of Council Directive 2001/44/EC of 15 June 2001 amending Directive 76/308/EEC on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of agricultural levies and customs duties and in respect of value added tax and certain excise duties (OJ 2001 L 175, p. 17)], as a general rule, be directly recognised and automatically treated as instruments permitting enforcement of a claim within national territory, whereas previously those instruments had only to be accepted, recognised, supplemented or replaced by an instrument authorising their enforcement within the territory of the Member State in which the requested authority was situated.' See Case C-338/01 *Commission* v *Council* [2004] ECR I-4829, paragraph 71. See also paragraph 75 of that judgment. See, however, Article 8(2) of Directive 76/308 in accordance with which Member States may establish an exception to Article 8(1) of that directive and the principle of national treatment. It would appear however that Article 8(2) of Directive 76/308 is not relevant to the proceedings before the referring court. The possibility of adopting an exception to Article 8(1) of Directive 76/308 was apparently not availed of by the Czech Republic when transposing that directive. See Article 6(1) of Law No 191/2004 Coll. on international assistance for the recovery of certain financial claims which entered into force on 1 May 2004 and transposed Directive 76/308 into Czech law which provides that '[t]he instrument which constitutes the enforcement order for enforcement of the claim in the State of the competent authority is, from the date of receipt of the complete request for recovery, to be directly recognised as an enforcement order for the enforcement of a claim in the Czech Republic'.

certain categories of claims which arise in another Member State, without however setting out rules relating to their accrual or their scope. [11]

20. Aside from rules on mutual assistance, Directive 76/308 also establishes rules concerning the Member State in which an action must be brought where a person concerned contests during the recovery procedure the claim and/or the instrument permitting its enforcement or where the enforcement measures are contested. In accordance with Article 12 of Directive 76/308, the choice of forum depends on whether, on the one hand, it is the claim and/or the instrument permitting its enforcement or, on the other hand, the enforcement measures which are contested. Thus in accordance with Article 12(1) of Directive 76/308, where the claim and/or the instrument permitting its enforcement is contested in the course of the recovery procedure the action must be brought before the competent body of the Member State of the applicant authority. Pursuant to Article 12(3) of Directive 76/308 where enforcement measures taken in the Member State of the requested authority are contested, the action must be brought before the competent body of that Member State. In addition, Article 12(2) of Directive 76/308, in order to fully guarantee a person's right to contest the claim and/or the instrument permitting its enforcement during the recovery procedure, requires the requested authority upon receiving notification of an action contesting the claim and/or the instrument permitting its enforcement to suspend the enforcement procedure pending the decision of the body competent in the matter in the Member State of the applicant authority. Notwithstanding the obligation to suspend the enforcement procedure, the applicant authority may under certain circumstances request the requested authority to recover a contested claim. If the result of contestation is subsequently favourable to the debtor, the applicant authority shall be liable for the reimbursement of any sums recovered, together with any compensation due.

21. By clarifying the jurisdiction in which an action must be brought, and by imposing an obligation to suspend the enforcement procedure in certain circumstances or to repay the sums recovered together with compensation, Article 12 of Directive 76/308 seeks, in effect, to ensure legal certainty and the protection of the rights of defence of the persons concerned. Thus while it may be more convenient for a person concerned to bring an action, for example, in his Member State of residence, the fact that the rules on jurisdiction contained in Article 12 of Directive 76/308 require him to bring an action in another Member State does not eliminate that person's access to justice or unreasonably undermine the rights of defence of that

11 — Joined Cases C-361/02 and C-362/02 [2004] ECR I-6405, paragraph 20.

person. Article 12 of Directive 76/308, by ensuring the predictability of choice of forum in fact, in my view, reinforces the principle of effective judicial protection.

22. I therefore consider that Article 12 of Directive 76/308 embodies a complete harmonisation of the rules on the appropriate forum where an action must be brought concerning claims [12] or enforcement measures within the context of Directive 76/308.

23. In order to provide an answer to the first question of the referring court it is necessary to interpret the terms 'the claim and/or the instrument permitting its enforcement' contained in Article 12(1) of Directive 76/308. I consider that those terms may not be interpreted in the light of rules of national civil procedure but must be given an autonomous interpretation so that Article 12 of Directive 76/308 may be applied in a uniform and predictable manner. To find otherwise would leave such terms open to possible conflicting interpretations thereby undermining the predictability of the choice of forum which is the very objective of Article 12 of Directive 76/308.

24. In my view, it is clear from the wording of Article 12(1) of Directive 76/308 itself that actions concerning 'the claim and/or the instrument permitting its enforcement' encompass actions relating to both the validity and the enforceability of a claim. The term 'instrument permitting enforcement' as contained in Article 12(1) of Directive 76/308 envisages a legal act which may be enforced against the debtor, a situation which, in my view, requires that the claim has already been served on the debtor. Enforcement measures may not be commenced unless the debtor has been duly served with the claim.

25. Moreover, I consider that the objectives of Directive 76/308 would be compromised if it were possible for the validity and enforceability of a claim to be subject to a double control by the competent authorities of the requested Member State as this would require that claim to comply both with the law of the applicant and the requested Member States, a result which Article 8(1) of that directive seeks to avoid. [13]

12 — And/or the instrument permitting their enforcement.

13 — Despite the exception to the rule on national treatment contained in Article 8(2) of Directive 76/308, that provision does not in fact permit the authorities of the requested Member State to question the validity or enforceability of the instrument permitting enforcement of the claim, it merely provides for the instrument's homologation by those authorities and does not alter the rules on jurisdiction contained in Article 12 of that directive. See in that regard Article 8(2), third indent, of Directive 76/308. It should be noted that Article 8(2), third indent, of Directive 76/308 refers to the process of homologation as 'formalities'. See also Article 11(1) of Commission Directive 2002/94/EC of 9 December 2002 laying down detailed rules for implementing certain provisions of Council Directive 76/308/EEC on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures (OJ 2002 L 337, p. 41) which provides that '[t]he requested authority shall in any event not question the validity of the instrument or decision of which notification is requested'.

26. It is thus clear from the rules of jurisdiction laid down by Article 12 of Directive 76/308 that the correct forum for contesting the tax assessment notice in question in the present case and its notification in 1999 is the competent body of the Member State in which the applicant authority is situated, namely the competent body in the Federal Republic of Germany. The applicant, by claiming that he was insufficiently identified as the debtor in the tax assessment notice and that that notice was incorrectly served on him in 1999, is in fact contesting both the validity and the enforceability of the tax assessment notice itself.

27. In accordance with the terms of Article 12(1) of Directive 76/308 the applicant is thus required to bring an action concerning the validity and the enforceability of the tax assessment notice before the competent body in the Federal Republic of Germany. The fact that notification of the tax assessment notice was carried out by the Czech authorities on behalf of the German authorities on foot of a request by the latter authorities does not, in my view, alter the clear rules on jurisdiction laid down in Article 12 of that directive. The mere fact that a Member State provided on request practical assistance to another by, inter alia, providing information or notifying documents does not alter those rules on jurisdiction. [14]

28. I therefore consider that Article 12(3) of Directive 76/308 should be interpreted as meaning that, where enforcement measures are contested before the court of a Member State in which the requested authority has its seat, that court is not entitled to review whether the instrument permitting enforcement is enforceable, including review of the legality of service of that instrument on the debtor.

VI — Question 2

29. By its second question the referring court seeks to ascertain whether the service of the tax assessment notice on the applicant in

14 — In my view, Articles 4 to 6 of Directive 76/308 provide the relevant authorities in a Member State with the possibility of requesting from the relevant authorities in another Member State certain information, the notification of instruments and decisions and the recovery of claims. In my view, Articles 4 to 6 of Directive 76/308 do not impose an obligation to request such assistance. It is for each Member State to assess whether such assistance from another Member States is required. See by analogy Case C-184/05 *Twoh International* [2007] ECR I-7897, paragraph 32, which concerned in particular Article 2(1) of Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation (OJ 1977 L 336, p. 15). I would note once again that the notification of the tax assessment notice was not carried out on foot of Article 5 of Directive 76/308.

German, a language which it appears he does not understand and which, moreover, is not an official language of the Czech Republic, constitutes a defect which makes it possible to refuse to enforce the notice in question.

30. In accordance with settled case-law, in the context of the cooperation between the Court and the national courts provided for by Article 234 EC, it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted for a preliminary ruling concern the interpretation of Community law, the Court is, in principle, bound to give a ruling. [15]

31. However, the Court has also stated that, in exceptional circumstances, it must examine the conditions in which the case was referred to it by the national court, in order to assess whether it has jurisdiction. It is settled case-law that a reference from a national court may be refused only if it is quite obvious that the interpretation of Community law sought bears no relation to the actual facts of the main action or to its purpose, or where the problem is hypothetical or the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it. [16]

32. In my view, the question of whether the applicant must be served with a translation of a tax assessment notice is a question which concerns the enforceability of that notice and which thus must be examined by the competent body of the Member State in which the applicant authority is situated, in this case the competent body in the Federal Republic of Germany. I therefore consider, in accordance with Article 12(1) of Directive 76/308 that the referring court is not the competent body to review the enforceability of the tax assessment notice and that the second question referred by that court is hypothetical in nature and thus manifestly inadmissible.

15 — Case C-145/03 *Keller* [2005] ECR I-2529, paragraph 33, and Case C-119/05 *Lucchini* [2007] ECR I-6199, paragraph 43.

16 — Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 39; Case C-390/99 *Canal Satélite Digital* [2002] ECR I-607, paragraph 19; and Case C-11/07 *Eckelkamp and Others* [2008] ECR I-6845, paragraph 28.

VII — Conclusion

33. For the reasons stated above, I am therefore of the opinion that the first question referred to the Court should be answered as follows:

Article 12(3) of Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures (as amended) should be interpreted as meaning that, where enforcement measures are contested before the court of a Member State in which the requested authority has its seat, that court is not entitled to review whether the instrument permitting enforcement is enforceable, including review of the legality of service of that instrument on the debtor.