Reports of Cases

OPINION OF ADVOCATE GENERAL
JÄÄSKINEN
delivered on 27 November 2012 [1]

Case C-85/11

European Commission
v

Ireland

(VAT — Articles 9 and 11 of Directive 2006/112/EC — National rules allowing non-taxable persons to be members of VAT groups — Compatibility with European Union VAT law)

I – Introduction

1. In these proceedings, the Commission seeks a declaration that by permitting non-taxable persons to be members of a value added tax (VAT) group (a single taxable person for VAT purposes) Ireland has failed to comply with its obligations under Articles 9 and 11 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ('the VAT Directive'). [2]

2. Concurrently with these proceedings, the Commission instituted an infringement action against the Kingdom of Sweden for breach of Article 11 of the VAT Directive, but for different reasons. I will address this complaint in a separate opinion.

II – Legal framework

A – *European Union law*

3. Article 9(1) of the VAT Directive defines the concept of a taxable person for VAT purposes as follows:

'1. "Taxable person" shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.

Any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, shall be regarded as "economic activity". The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.'

1 — Original language: English.

2 — OJ 2006 L 347, p. 1. Similar infringement actions have been raised by the Commission against the Czech Republic, the Kingdom of Denmark, the Republic of Finland, the Kingdom of the Netherlands, and the United Kingdom of Great Britain and Northern Ireland. See Case C-109/11 *Commission* v *Czech Republic*; Case C-95/11 *Commission* v *Denmark*; Case C-74/11 *Commission* v *Finland*; Case C-65/11 *Commission* v *Netherlands*; Case C-86/11 *Commission* v *United Kingdom*. The Court has limited, however, its request for an Opinion of an Advocate General to this case and Case C-480/10 *Commission* v *Sweden*, where my opinion will be presented at the same time as the present opinion.

4. Article 11 of the VAT Directive lays down rules concerning the treatment of more than one person as a single entity for the purpose of administration of the tax ('VAT grouping') as follows:

'After consulting the advisory committee on value added tax (hereafter, the "VAT Committee"), each Member State may regard as a single taxable person any persons established in the territory of that Member State who, while legally independent, are closely bound to one another by financial, economic and organisational links.

A Member State exercising the option provided for in the first paragraph, may adopt any measures needed to prevent tax evasion or avoidance through the use of this provision.'

B – *National law*

5. Section 15 of the Value Added Tax Consolidation Act 2010, which came into force for taxable periods commencing on or after 1 November 2010, provides that: [3]

'(1) Subject to subsection (2), where the Revenue Commissioners are satisfied that 2 or more persons established in the State, at least one of whom is a taxable person, are closely bound by financial, economic and organisational links and it seems necessary or appropriate to them for the purpose of efficient and effective administration (including collection) of the tax to do so, then, for the purpose of this Act, the said Commissioners may, whether following an application on behalf of those persons or otherwise -

(a) by notice in writing (in this section referred to as a "group notification") to each of those persons deem them to be a single taxable person (in this section referred to as a "group") and the persons so notified shall then be regarded as being in the group for as long as this subsection applies to them, but section 65 shall apply in respect of each of the members of the group, and

(i) one of those persons, who shall be notified accordingly by the Commissioners, shall be responsible for complying with the provisions of this Act in respect of the group, and

(ii) all rights and obligations arising under this Act in respect of the transactions of the group shall be determined accordingly,

and

(b) make each person in the group jointly and severally liable to comply with this Act and regulations (including the provisions requiring the payment of tax) that apply to each of those persons and subject to the penalties under this Act to which they would be subject if each such person was liable to pay to the Commissioners the whole of the tax chargeable, apart from regulations under this section, in respect of each such person:

…'

III – Pre-litigation procedure and proceedings before the Court

6. On 18 September 2008 the Commission sent a letter of formal notice to Ireland, in which it argued that various provisions of Irish law were incompatible with Articles 9 and 11 of the VAT Directive, because they allowed non-taxable persons to join a VAT group.

3 — Substantially identical provisions were previously contained in section 8(8)(a) of the Value Added Tax Act 1972, as amended most recently by the Finance Act 2008.

7. The Irish authorities responded by letter of 27 January 2009 stating that, in their opinion, the Irish legislation was in line with the VAT Directive.

8. On 20 November 2009 the Commission addressed a reasoned opinion to Ireland in which it restated its position. Ireland replied by letter of 19 January 2010 in which it maintained that its interpretation of the VAT Directive was correct.

9. Not being satisfied with Ireland's reply, the Commission instituted the present infringement action which was lodged at the Court on 24 February 2011. The Kingdom of Denmark, the Czech Republic, the Republic of Finland and the United Kingdom have all intervened in support of Ireland. These Member States and the Commission participated in the hearing that was held on 5 September 2012.

10. Ireland asks the Court to dismiss the action as inadmissible because the subject-matter of the application goes beyond the complaint formulated by the Commission in the administrative procedure. In the alternative, Ireland seeks dismissal of the action as unfounded.

IV – Admissibility of the action

11. Ireland argues that the formal declaration sought from the Court by the Commission differs significantly from the original complaint made against Ireland in the letter of formal notice. Ireland alleges that the Commission's original complaint was confined to the argument that, on a proper interpretation of Articles 9 and 11 of the VAT Directive, a non-taxable person cannot 'join' a VAT group. Ireland further alleges that this was the complaint to which it responded in its reply to the letter of formal notice, and that the complaint of the Commission continued to be so limited in its reasoned opinion. Yet, in the proceedings before the Court, the Commission contends that Ireland is breaching Articles 9 and 11 of the VAT Directive 'by permitting non-taxable persons to be members of a VAT group'.

12. Ireland objects that, if the Commission were correct in its assertions, Ireland would be required not only to regulate and police the formation of VAT groups so as to completely exclude non-taxable persons, but also to continue policing existing approved groups. For Ireland, this means that the allegations made by the Commission are broader in scope than those that were put in the administrative phase, and Ireland was given no opportunity during that phase to comment on the implications of the broader complaint which, for Ireland, are not insignificant.

13. According to the established case-law of the Court, an application must be based on the same reasons and grounds as the reasoned opinion.[4] To the extent that a claim has not been mentioned in the reasoned opinion, it cannot be declared admissible in the proceedings before the Court.

14. However, as the Court observed in *Commission* v *Portugal*, that requirement cannot be stretched so far as to mean that in every case the formal statement of objections set out in the reasoned opinion and the form of order sought in the application must be exactly the same, provided that the subject-matter of the proceedings as defined in the reasoned opinion has not been extended or altered.[5]

4 — See Case C-139/00 *Commission* v *Spain* [2002] ECR I-6407 paragraph 18, and case-law cited.

5 — Case C-458/08 [2010] ECR I-11599, paragraph 44 and case-law cited. See also Case C-39/10 *Commission* v *Estonia* [2012] ECR, paragraphs 24 to 26.

15. These infringement proceedings are primarily concerned with the interpretation of Article 11 of the VAT Directive. In the first paragraph of Article 11 Member States are given the option of regarding separate persons as a single taxable person. According to the second paragraph of Article 11, a Member State exercising the discretion provided for in the first paragraph may adopt any measures needed to prevent tax evasion or avoidance.

16. Thus, the applicability of Article 11 of the VAT Directive is not dependent on whether it is a question of joining the group or belonging to it. The second paragraph of Article 11 simply gives Member States the right to adopt any measures needed to prevent tax evasion or avoidance. In other words, Article 11 of the VAT Directive contains exhaustive prerequisites for separate persons to be regarded as a single taxable person, and it is this question that lies at the heart of the infringement action.

17. In the present case, the rewording in the application of the complaint did not extend, alter or even limit the subject-matter of the proceedings as defined in the reasoned opinion. It has had no effect on Ireland's rights of defence because the action brought by the Commission is directed at who may be a member of a VAT group, and not the control of such groups by Member State authorities.

18. Thus, the fact that the Commission's reasoned opinion made no distinction between non-taxable persons joining VAT groups, and non-taxable persons maintaining membership thereof, does not mean that the Commission has introduced a new claim which the Court cannot address.

19. The claim of inadmissibility should therefore be rejected.

V – Arguments of the parties

20. The disagreement between the Commission and Ireland can be summarised as follows.

21. The Commission takes the view that, even though the word 'taxable' does not appear in Article 11 of the VAT Directive in between the words 'any persons', it is implicit in Article 11 of the VAT Directive that this provision encompasses only 'taxable persons' as defined in Article 9 of the VAT Directive. Otherwise, a VAT group could consist solely of non-taxable persons. For the Commission, the concept of 'grouping' implies that all of the persons in the Article 11 group must belong to the same category for VAT purposes. Further, given that Article 11 derogates from the general rule that each taxable person is to be treated as a separate unit, Article 11 is to be interpreted narrowly.

22. The Commission argues that its interpretation of Article 11 of the VAT Directive is consistent with the primary purposes of the VAT grouping provisions, which are to simplify administration and combat abuse. Simplification lies primarily in relief from the administrative and accounting burdens associated with filing individual accounts and VAT returns. Since only taxable persons must file such accounts and returns, the goal of simplification cannot justify the inclusion of non-taxable persons in a VAT group. In relation to abuse, the explanatory memorandum to the proposal for the Sixth VAT Directive mentions only the aim of preventing economic operators from exploiting the taxation thresholds by splitting a single business into several separate persons. The Commission seems to suggest that this excludes any role for non-taxable persons. The Commission further argues, however, that Article 11 cannot be used as an instrument to prevent tax evasion or avoidance [6] by, for example, allowing holding companies which are not taxable persons under Article 9 to be included in a VAT group under Article 11.

6 — The Commission contends that, if a Member State wishes to derogate from the normal provisions of the VAT Directive in pursuit of this objective, it must comply with the procedure laid down in Article 395 of the VAT Directive.

23. Additionally, the Commission argues that its complaint is supported, although indirectly, by case-law of the Court, and mainly by the judgment in *Ampliscientifica*. In that case the Court held that the effect of implementing a VAT group regime was to allow 'persons, in particular companies, which are bound to one another by financial, economic and organisational links no longer to be treated as separate taxable persons for the purposes of VAT but to be treated as a single taxable person'.[7] In the Commission's opinion, this passage, along with the Opinion of Advocate General Van Gerven in *Polysar*,[8] reflects the idea that only taxable persons may be members of a 'single taxable person'.

24. Ireland, on the other hand, takes the position that Article 11 of the VAT Directive must be interpreted literally, and the use of the term 'persons' by the legislator without the attribute 'taxable' was deliberate. If the legislature had intended to refer to taxable persons in Article 11, it would have inserted this word into the recast VAT Directive.

25. Ireland argues that the concept of 'grouping' on which the Commission relies is merely descriptive, and is not used in the VAT Directive itself. It cannot therefore form the basis for the interpretation of Article 11 of the VAT Directive. Further, while it is theoretically possible for a VAT group to consist solely of non-taxable persons, this is both highly improbable and, moreover, expressly precluded by Irish legislation.[9]

26. Ireland claims that the addition of the second paragraph to Article 11 of the VAT Directive has extended the purpose of the provision to enable Member States to adopt measures in relation to VAT groups which are intended to combat abuse, simplify VAT treatment and prevent tax evasion and avoidance.[10] Ireland argues that permitting non-taxable persons, especially holding companies,[11] to be members of a VAT group may promote the prevention of tax avoidance and/or evasion. Such advantages, according to Ireland, include being able to impose joint and several liability on a holding company where trading members of a group run into difficulties in paying VAT that is due.

27. Finally, Ireland contests the relevance of the case-law relied on by the Commission. The question of whether only taxable persons may be members of a VAT group was not before the Court in *Ampliscientifica*. As for Advocate General Van Gerven's opinion in *Polysar*, Ireland notes that the Court decided not to follow the Advocate General's opinion in either that case, or in its later judgments in *Wellcome Trust*[12] or *Harnas and Helm*.[13]

7 — Case C-162/07 [2008] ECR I-4019, paragraph 19.

8 — Case C-60/90 [1991] ECR I-3111. Advocate General Van Gerven concluded at point 9 of his Opinion that: 'The question which arises is whether that option enables a Member State to treat two persons who are closely bound to one another as a single taxable person where it is established that one of those persons does not engage in any "economic activities" within the meaning of Article 4 of the directive. In my view, that question must be answered in the negative.'

9 — Ireland refers to section 15(1) of the Value Added Tax Consolidation Act 2010 that requires at least one the members of a VAT group to be a taxable person for the purposes of Title III of the VAT Directive.

10 — Ireland further refutes the argument that measures based on Article 11 need to be adopted on the basis of Article 395 of the VAT Directive.

11 — As to holding companies from the VAT point of view, see for example *Polysar*, and Case C-29/08 *SKF* [2009] ECR I-10413.

12 — Case C-155/94 [1996] ECR I-3013. In *Wellcome Trust* the issue at stake was whether the concept of economic activities, within the meaning of Article 4(2) of the Sixth Directive, is to be interpreted as including an activity consisting in the purchase and sale of shares and other securities by a trustee in the course of the management of the assets of a charitable trust.

13 — Case C-80/95 [1997] ECR I-745. *Harnas and Helm* concerned the question whether Article 4(2) of the Sixth Directive is to be interpreted as meaning that the mere acquisition of ownership in and the holding of bonds, activities which are not subservient to any business activity, and the receipt of income thereform are not to be regarded as economic activities conferring on the person concerned the status of a taxable person.

VI – Analysis

28. At the outset, it is useful to recall that, according to the settled case-law of the Court, in determining the meaning of a provision of European Union law, its objectives, context and wording must all be taken into account.[14] I will first consider the wording of Article 11 in the light of its legislative history, before examining its context and objectives.

A – *Legislative history and wording*

29. In 1967 VAT grouping was introduced into EU law by the Second VAT Directive. Point 2 of Annex A to the Second VAT Directive[15] allowed the Member States to regard, as a single taxable person, separate independent persons fulfilling the prerequisites set forth therein. Later, the option was regulated by the Sixth VAT Directive,[16] and more recently by the current VAT Directive. However, its form altered in the process of amendment.

30. In the Second VAT Directive, Point 2 of Annex A, the Member States were allowed 'not to consider as separate taxable persons, but as one single taxable person, persons who, although independent from the legal point of view, are, however, organically linked to one another by economic, financial or organisational relationships'. Recourse to the word 'separate' indicated that the Member States had the choice of treating taxable persons separately, or as one taxable person. The same meaning appeared in the French and German versions of the Second VAT Directive.

31. However the Sixth VAT Directive featured a change in the wording of the provision on VAT grouping. The relevant provision of that directive, namely the second subparagraph of Article 4(4), made no reference to members of a VAT group as being 'separate' taxable persons, but merely as 'persons'.[17]

32. The change was more apparent in language versions of the Sixth Directive in which there is a different word for 'taxable person' and 'person'. One example is the French language. The former translates as 'assujetti' while the latter translates as 'personne'.

33. The wording of Article 11 of the recast VAT Directive appears to be the same in most language versions, with the exception of the English version.[18] In the English version the word 'any' has been added before the word 'person', which according to the Irish, Finnish and United Kingdom Governments simply serves to emphasise that the 'person' belonging to a VAT group does not have to be a taxable person.

14 — See Case C-174/08 *NCC Construction Danmark* [2009] ECR I-10567, paragraph 23 and case-law cited; see also Case C-33/11 *A Oy* [2012] ECR, paragraph 27.

15 — Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes – Structure and procedures for application of the common system of value added tax (OJ, English Special Edition 1967(I), p. 16).

16 — Sixth Council Directive 77/388/EEC 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.

17 — The full text of the second subparagraph of Article 4(4) of the Sixth Directive states '… each Member State may treat as a single taxable person persons established in the territory of the country who, while legally independent, are closely bound to one another by financial, economic and organisational links'.

18 — See recital 3 of the VAT Directive: 'To ensure that the provisions are presented in a clear and rational manner, consistent with the principle of better regulation, it is appropriate to recast the structure and the wording of the Directive although this will not, in principle, bring about material changes in the existing legislation. A small number of substantive amendments are however inherent to the recasting exercise and should nevertheless be made. Where such changes are made, these are listed exhaustively in the provisions governing transposition and entry into force.'

34. In the light of this legislative history, I find it difficult to accept the arguments of the Commission. As has been pointed out by Ireland, elsewhere in the VAT Directive, the term 'taxable person' has been used, and not 'person' when an entity is engaged in economic activities for the purposes of the VAT Directive. While the legislative history is not decisive, it may imply that the legislator wanted to broaden the scope of those who may engage in VAT grouping.

35. Further, I note that supplies between non-taxable persons fall outside the scope of the VAT Directive, irrespective of whether they form a VAT group or not. This means that the Commission's hypothetical concern that a VAT group could consist merely of non-taxable persons is not pertinent.

36. Therefore, Article 11 of the VAT Directive allow Member States to regard as 'a single taxable person' any legally independent persons established in the territory of that Member State, provided that they are closely bound to one another by financial, economic and organisational links. This conclusion is in conformity with the principle of legal certainty, which is particularly important in taxation matters, where not only taxable persons and tax authorities but also the Member States need to rely on the clear and precise wording of the relevant European Union law.[19] I therefore propose that the Commission's action should be dismissed.

B – *The objectives and context of the VAT grouping provisions*

37. If the Court were to accept the above analysis based on the wording of Article 11, it is not strictly necessary for the Court to go on to consider its context and objectives.[20] However, I will discuss this issue in case the Court does not accept my conclusion with respect to the wording of Article 11.

38. The Explanatory Memorandum to the proposal for the Sixth VAT Directive states that '… in the interests of simplifying administration or of combating abuses (e.g. the splitting up of one economic operator among several taxable persons so that each may benefit from a special scheme) Member States will not be obliged to treat as taxable persons those whose "independence" is purely a legal technicality'.[21] The legislative history of the provisions establishing VAT groups reveals no other aims. For the Commission, these goals preclude the inclusion of non-taxable persons in VAT groups.

39. In order to understand the purpose of VAT grouping within the context of the broader VAT regime, account needs to be taken of the effect VAT groups have on fiscal neutrality. This entails consideration of the practical effects of registering a VAT group. This is significant, because these effects may well provide the motivation for economic operators to be involved in VAT grouping, provided that they have a choice in this respect under the applicable national legislation.[22]

C – *The VAT grouping option in the broader context of the VAT regime*

40. The forming of a VAT group results in the creation of a single taxable person for VAT purposes which is in all aspects comparable to a taxable person consisting of only one entity. Regardless of its nature as a special scheme, VAT grouping neither introduces limitations nor broadens the rights of a taxable person as defined in Article 9 of the VAT Directive.

19 — Case C-582/08 *Commission* v *United Kingdom* [2010] ECR I-7195, paragraphs 49 to 51.

20 — *Commission* v *United Kingdom*, especially at paragraph 51. See also my Opinion in that case at point 52.

21 — See Explanatory Memorandum to the proposal for a Sixth VAT Directive, COM(73) 950, 20 June 1973.

22 — The practical implementation of the VAT group option varies. In some Member States that have introduced VAT grouping, it is obligatory for persons fulfilling the requirements, and in others it is voluntary.

41. The VAT system achieves the highest degree of simplicity and neutrality under two conditions: when the tax is levied in as general a manner as possible and when its scope covers all stages of production, distribution, and the supply of services.[23] The VAT regime should result in neutrality in competition, so that within the territory of a Member State similar goods and services bear the same tax burden, regardless of the length of the production and distribution chains.[24] When functioning optimally, this so-called neutral taxation should not affect either competition or the decisions economic operators make when organising their activities, such as legal form or organisational structure.[25]

42. The establishment of a VAT group initiates the tax liability of the VAT group, and terminates the separate tax liability of those of its members who were taxable persons for VAT purposes before joining the group.[26] The VAT treatment of the group's transactions, both to and from entities outside the group, is comparable to VAT treatment of a single taxable person operating individually. Transactions between the individual members of the group, and which remain therefore within the group, are considered as having been carried out by the group for itself. Consequently, a VAT group's internal transactions do not exist for VAT purposes.

43. When a VAT group acts in accordance with the rules of the VAT regime, the right of the persons belonging to the VAT group to deduct VAT for purchases is not expanded.[27] This right continues to be applicable only to those supplies that are made for the activities subject to VAT by the VAT group. Nor are the members of a VAT group entitled to deduct VAT on supplies made for VAT exempted activities.

D – *The purpose of the VAT grouping provisions*

44. In the light of the purpose and context of VAT grouping, which I have outlined above, I cannot agree with the Commission's argument that non-taxable persons must be precluded from it. I have reached these conclusions for the following reasons.

45. VAT grouping does not create economic benefits when a purchase is made for activities subject to VAT, since the purchaser is entitled to deduct input VAT. In such a situation it is in principle irrelevant whether the purchase is made within the VAT group without input VAT or with input VAT from outside of the VAT group. However, as a VAT group's internal transactions are disregarded for VAT purposes, VAT grouping may entail cash flow advantages for economic operators with respect to activities that are subject to VAT.

46. In certain situations members of a VAT group may gain economic benefits from belonging to the group.[28] This, in my opinion, is simply an inevitable consequence flowing from the basic fiscal policy choice of a Member State to permit VAT grouping.

47. Membership of a VAT group can be beneficial, for example, in a situation in which the member making a purchase subject to VAT had, because of the VAT exempt nature of its activities, no right to deduct VAT at all, or no full VAT deduction right. If such a member purchases from a supplier outside the VAT group, VAT would be incurred. If, however, it makes the purchase from another member of the group, no VAT is incurred.

23 — See recital 5 of the VAT Directive.

24 — See recital 7 of the VAT Directive.

25 — Terra, B., and Kajus, J., *A Guide to the European VAT Directives*, IBFD, 2012, Chapter 7.3.

26 — See *Ampliscientifica*, paragraphs 19 and 20.

27 — For a summary of the deduction system, see Case C-324/11 *Tóth* [2012] ECR, paragraph 25 and case-law cited.

28 — See Communication from the Commission to the Council and the European Parliament on the VAT group option provided for in Article 11 of Council Directive 2006/112/EC on common system of value added tax (COM(2009) 325 final), pages 11 and 12.

48. Where an economic operator is not entitled to deduct input VAT incurred in a purchase, it might be economically advantageous for it to produce the goods or services itself. For example, a bank that is not entitled to deduct VAT might benefit economically if it produces IT services needed for its banking activities internally rather than buying them from a third party. However, if the VAT grouping option is available, it may outsource its IT service provision to a subsidiary belonging to the group and still gain the same advantage.

49. Hence, VAT liability can and does have an impact on the structure and functioning of business activities. But VAT grouping allows the Member States to diminish the influence of VAT on the way economic operators organise themselves. It can do this by reducing the difference in costs between producing a service in-house and buying it from a dependent supplier with separate legal personality. Thus, VAT grouping supports fiscal neutrality by enabling appropriate business structures without negative consequences in terms of VAT liability. Moreover, the possibility of including non-taxable persons as members of a VAT group places corporate structures that include such persons in the same position as other corporate structures. An example is found in such company groups where a holding company possesses majority holdings in all other companies of the group.

50. I recall it is the activity and not the legal form that defines status as a taxable person for VAT purposes. The activities of members of VAT groups need to be examined in order to determine the practical effect of VAT grouping in terms of fiscal neutrality.

51. For example, in principle the nature of the activities of a legally independent holding company as taxable or non taxable does not depend on whether it belongs to a VAT group or not.[29] Nevertheless, a holding company belonging to a VAT group can purchase taxable goods and services without VAT, whereas a holding company not belonging to a VAT group cannot. Through its membership in a VAT group, a non-taxable person becomes an entity regulated by the European Union VAT regime.

52. However, in my opinion it is not an anomaly that non-taxable persons can belong to a VAT group. This is so because any taxable person may be engaged in activities falling within the scope of VAT and activities falling outside of the scope of VAT.[30] In this respect no distinction can be made between an ordinary taxable person and a VAT group.

53. Hence, from the perspective of fiscal neutrality, the inclusion of non-taxable persons in a VAT group makes no difference to the pursuit of the goals of the VAT grouping regime. Moreover, in my opinion, a situation in which a non-taxable person benefits economically by making VAT free purchases within a VAT group is not different from the situation in which a taxable person engaged in VAT exempt activities may, by belonging to a VAT group, purchase taxable supplies VAT free from within the VAT group.

54. In conclusion, I consider that the purpose of VAT grouping within the VAT regime does not support the position according to which non-taxable persons cannot be included in VAT groups under Article 11 of the VAT Directive.

29 — See the judgment in *Polysar*, paragraphs 15 to 17.

30 — See Case C-77/01 *EDM* [2004] ECR I-4295, paragraph 49, and Case C-437/06 *Securenta* [2008] ECR I-1597, paragraph 26. 'It is apparent from the information supplied by the national court that Securenta carries out three types of activity: (i) non-economic activities, which do not fall within the scope of the Sixth Directive; (ii) economic activities, which as such fall within the scope of that directive but are exempt from VAT; and (iii) taxed economic activities. The question therefore arises, in that context, whether – and, if so, to what extent – such a taxable person has the right to deduct input VAT relating to expenditure which is not attributable to specific output transactions.'

VII – Conclusion

55. For these reasons I propose that the Court should declare that Ireland, by permitting non-taxable persons to be members in a value added tax group, has not infringed its obligations under Articles 9 and 11 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. In consequence the Commission's action should be dismissed and the Commission be ordered to pay costs and the intervening Member States to support their own costs.