

### **EUROPEAN COMMISSION**

DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
VAT and other turnover taxes

**TAXUD/2417/08 – FINAL – EN** 

Brussels, 15 July 2008

# VALUE ADDED TAX COMMITTEE (ARTICLE 398 OF COUNCIL DIRECTIVE 2006/112/EC) WORKING DOCUMENT NO 568

# **MINUTES**

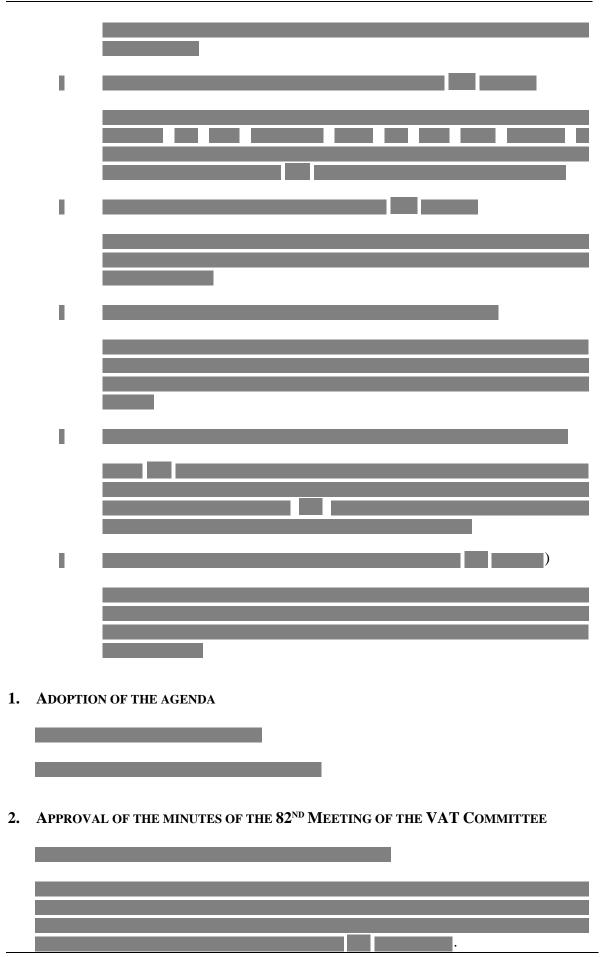
83<sup>RD</sup> MEETING
- 28 AND 29 FEBRUARY 2008 -

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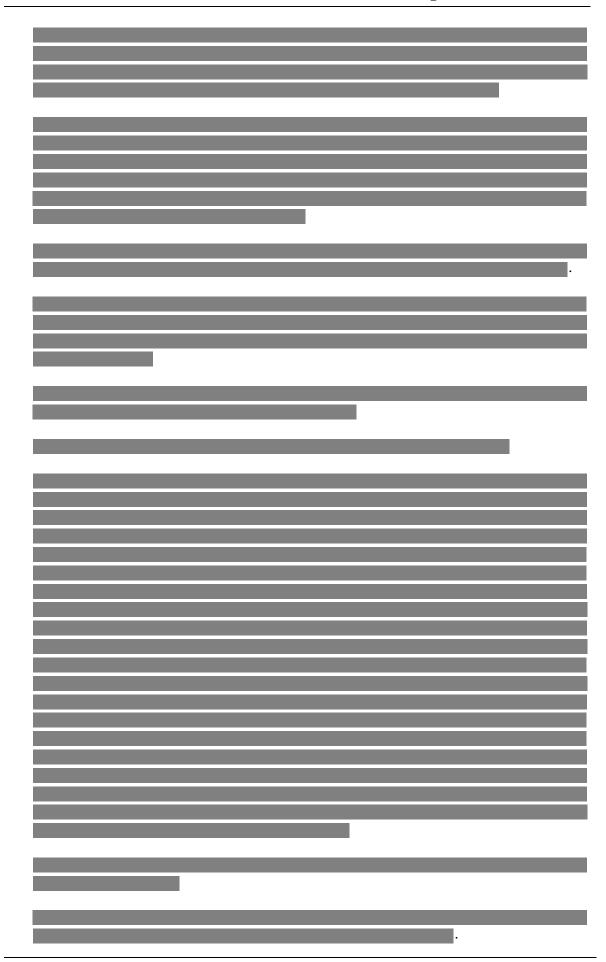
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The Chairman opened the meeting with a number of short points:

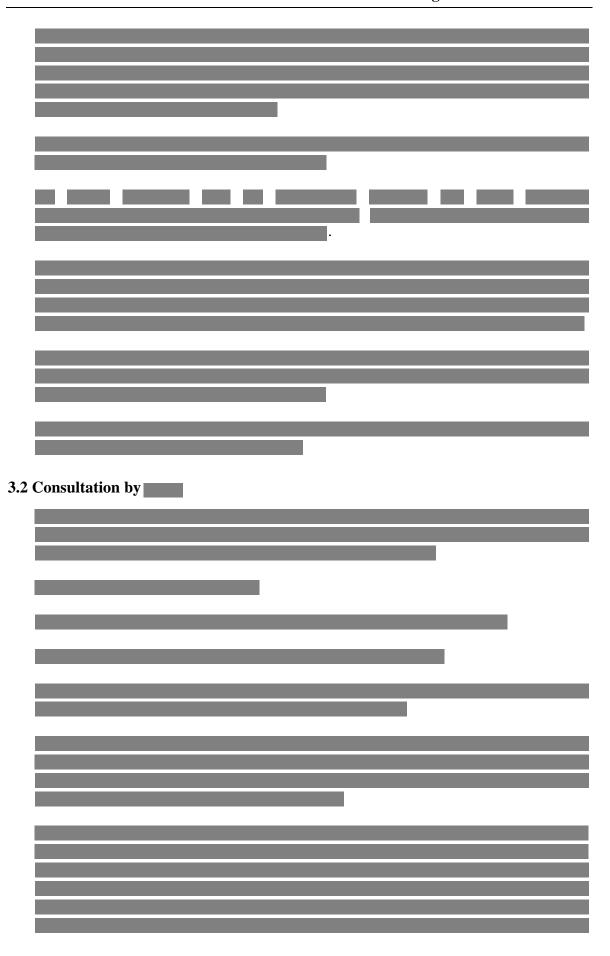


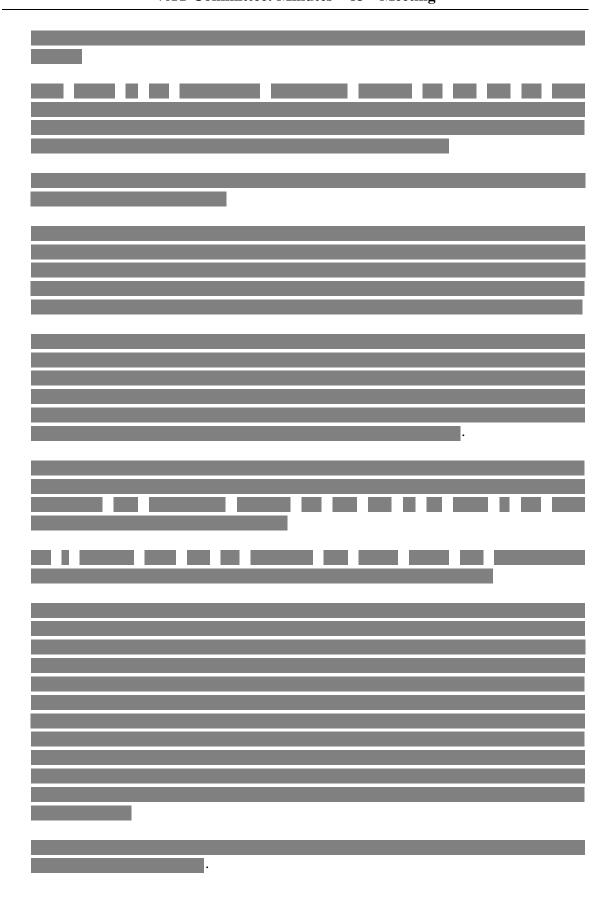


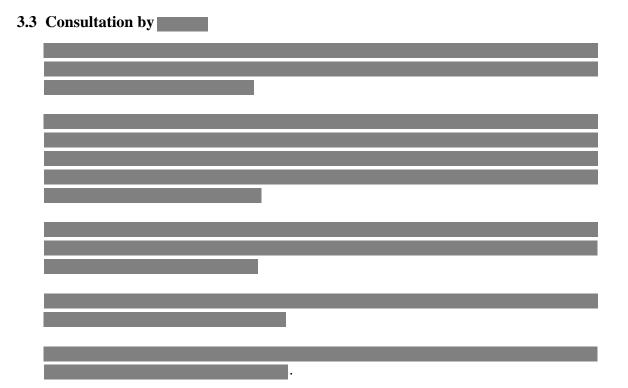
3.	CONSULTATIONS PRO	OVIDED FOR UNDER DIRECTIVE 2006/112/EC			
3.1	Origin:				
3.2	Origin:				
	Origin:				
	Origin: Origin:	United Kingdom			
	Origin:	Czech Republic			
	Reference:	Article 11			
	Subject:	VAT grouping – (points 3.1 and 3.2 were deferred from the 81 <sup>st</sup> and 82 <sup>nd</sup> meetings)			
	(Document TAXUD)	2161/07 – Working paper No 556)			
<b>3.7</b>	Origin:	Hungary			
2.0		(2161/07 ADD1 – Working paper No 556 Addendum 1)			
3.8	Origin: United Kingdom (Document TAXUD/2161/07 ADD2 – Working paper No 556 Addendum 2)				
	The Chairman drew Delegations' attention to the two additional consultations which had been made available and which would be discussed together with the six consultations on VAT grouping which were carried over from the agenda of the last meeting. He thanked the Delegation for the additional information document the had submitted and which had been uploaded on CIRCA.  Recalling the discussions on VAT grouping of the last meeting he conceded that the Commission had perhaps been overly optimistic to hope for the adoption of guidelines.  He further mentioned that stakeholders had informed him that the working paper had been released outside of the VAT Committee. He underlined that the apparent disclosure of the working paper before a conclusive discussion in the committee was to be considered a breach of the transparency rules.  Before commencing on the discussion of the specific consultations, the Commission outlined again the 10 key points as summarised in 2.1 of the working paper.				
3.1	Consultation				











### 3.4 Consultation by the United Kingdom

<u>The Commission</u> pointed out that the UK consultation involved anti-avoidance measures of 1996 and 2004 and asked for explanations how the measures worked with specific reference to the mentioned benefits test. The general impression of the scheme was that on the one hand it was very rigid and on the other hand rather flexible and wide.

The UK explained that according to them, two issues needed to be addressed, namely Article 11 and the FCE ruling. This created a dilemma. They thought that the Commission's approach did not reconcile the two. For the UK, the FCE ruling had to operate in a normal way. The ultimate intention behind VAT grouping was to obtain efficiency.

Following a question from the Commission the UK clarified that the anti-avoidance measures applied to Article 56 services. As to economic, financial and organisational links they had two tests: the control test and the benefits test. Where the two tests were satisfied it was assumed that the links existed.

<u>The Chairman</u> remarked that the answers given were clear and that it appeared to him that the presented anti-avoidance measures seemed to be an application of reverse charge and that the control test was similar to that which had been presented by ES.

On a question from , the UK underlined that members of a VAT group had to be established in the UK, but that transactions between two entities (fixed establishment and HQ) in different States, even if one of the entities is established outside the EU, are always disregarded for VAT purposes. Thus a transaction between the HQ established in UK and its fixed establishment established in USA is disregarded for VAT purposes.

<u>The Chairman</u> thanked the UK delegation for the clear explanations and took note of the consultation.

3.5	Consultation by

### 3.6 Consultation by the Czech Republic

<u>The Chairman</u> posed the Commission's questions to the CZ delegation, namely whether the grouping scheme was also open to non-taxable persons and whether there was a single VAT number for the group.

<u>CZ</u> stressed that Article 11 only spoke about "persons" and not "taxable persons" as in other places in the Directive. They further explained that only the VAT group as a whole had a number.

<u>The Chairman</u> recalled the discussions on the concept of "person" in the last meeting. From the Commission's perspective it was clear that only "taxable persons" were referred to, more so since Article 11 was in a Chapter with the heading "taxable persons".

supported the Commission's view and recounted that they had issued a notice that only taxable persons could be members of a group, whereupon they had received a lot of adverse reactions from economic operators. Therefore they insisted on having the same interpretation of the wording of the Article by all Member States.

<u>The Chairman</u> reiterated that a uniform application was very important and suggested to conclude the consultation on the CZ grouping scheme.

# 3.7 Consultation by



### 3.8 Addendum to the Consultation by the United Kingdom

<u>The Chairman</u> introduced the point by remarking that the UK had submitted an additional document some days before the meeting in which it voiced fundamental concerns about the discussions on grouping.

One major concern raised by the UK related to the timing of these discussions. In answer to this it had to be said that the discussions followed on from the various consultations submitted by Member States and thus followed their legislative processes.

Other concerns evoked by the UK related to the adoption of guidelines and to the lack of an impact assessment on EU businesses. The draft guideline was, in the Commission's view, not unusual given that several Member States had consulted the VAT Committee regarding this issue. Moreover, at the 82<sup>nd</sup> VAT Committee meeting the Commission said there would not be a guideline. Regarding an impact assessment, the Commission recalled that impact assessments were normally carried out for legislative proposals. A further concern was voiced about the nature of the exercise. The Commission answered that if this was to insinuate that the Commission Services put forward documents that were not properly elaborated this was to be rejected.

The Chairman also referred to the matter raised at the beginning of the meeting concerning the leaking of the working paper to consultants.

Finally, he invited the UK delegation to explain how VAT groups helped to reduce levels of irrecoverable VAT as stated in their paper.

<u>The UK</u> replied that it had particular concerns about the guidelines and that they were happy that guidelines were not being discussed in the ongoing meeting. Their primary concern was that these would focus on one particular view only and discussions had shown that the issue was not clear. That was the point the UK had wished to make and that which the Commission had interpreted as an insinuation of lack of analysis.

As to the release of the paper they underlined that it was not the UK who had given it to third parties.

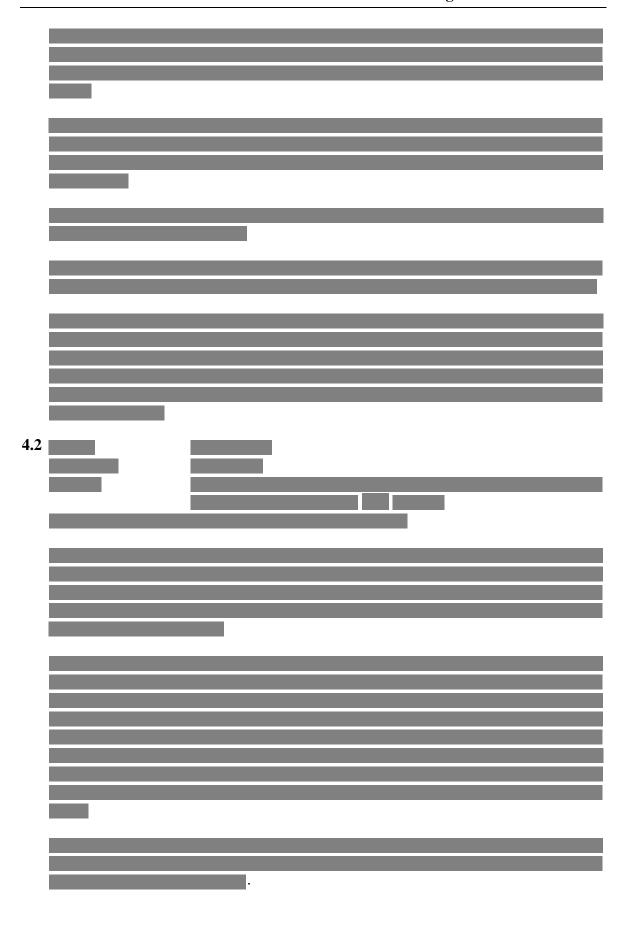
With regard to the quote on reduction of irrecoverable VAT the point to make was that the question should be discussed in the context of the proposal on financial services.

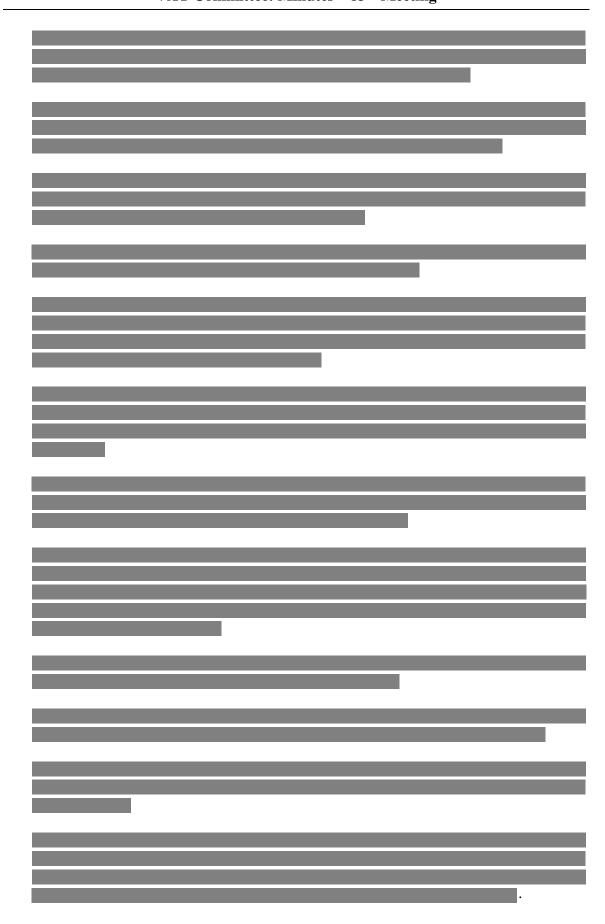
<u>The Chairman</u> found the last reply unconvincing and stressed that the Commission wanted to achieve harmonisation in the financial service sector. The issue of groups had not been included in the Commission's proposal on financial services. On an intervention from , he explained that the question of grouping versus cost sharing arrangements would be taken up in the Council working group.

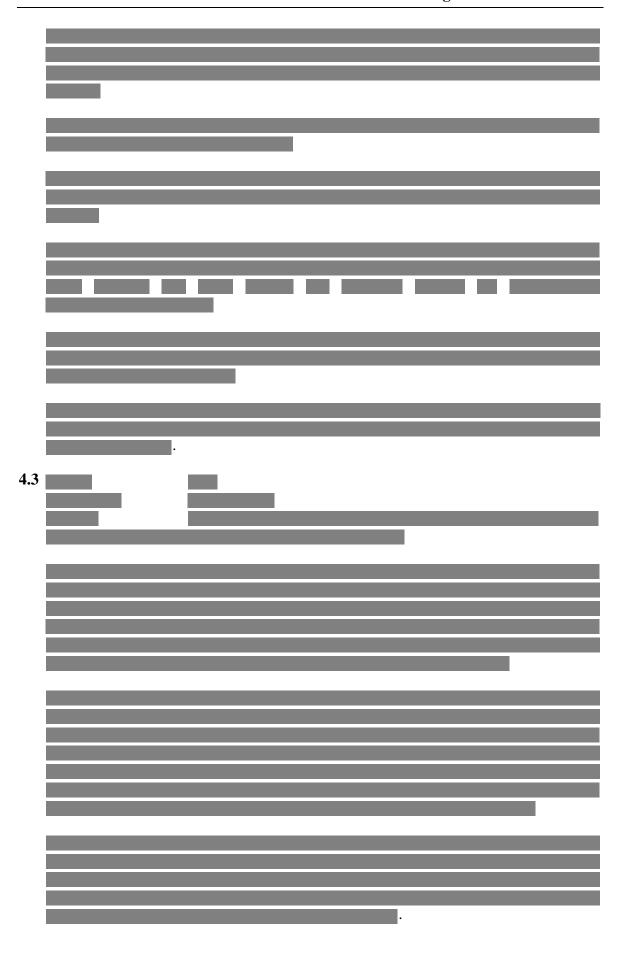
The Chairman concluded the discussions on grouping and suggested to terminate the meeting for the day.

## 4. QUESTIONS CONCERNING THE APPLICATION OF COMMUNITY VAT PROVISIONS

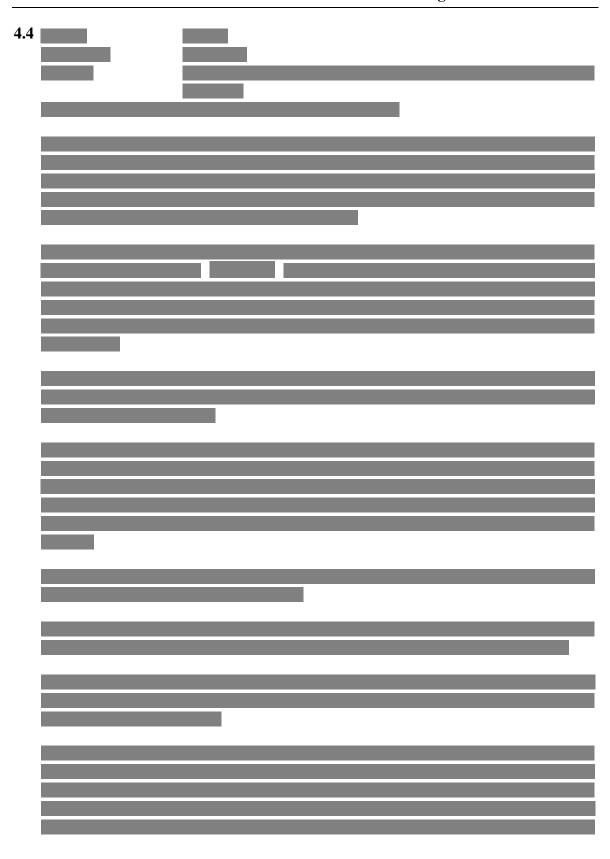










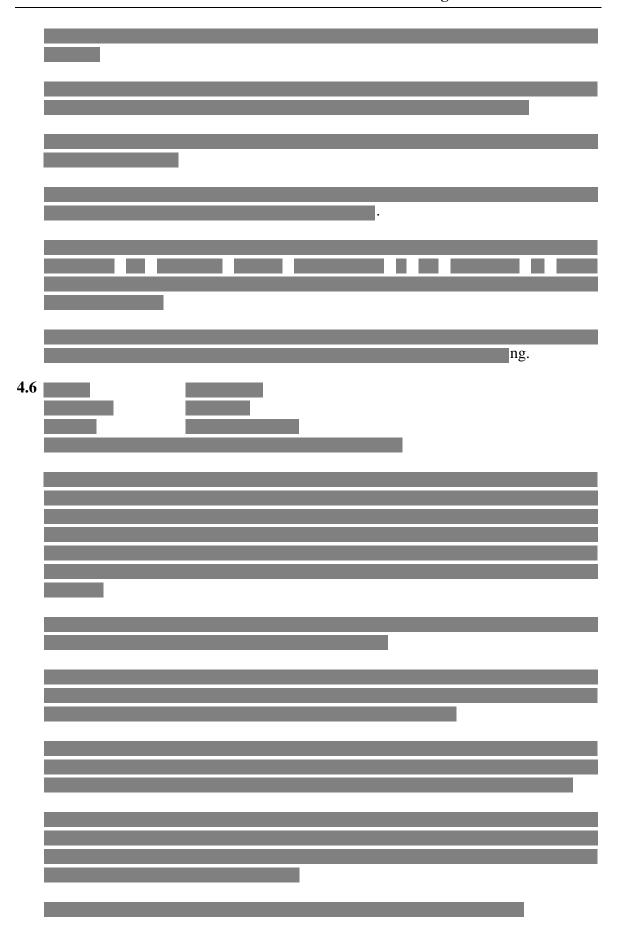


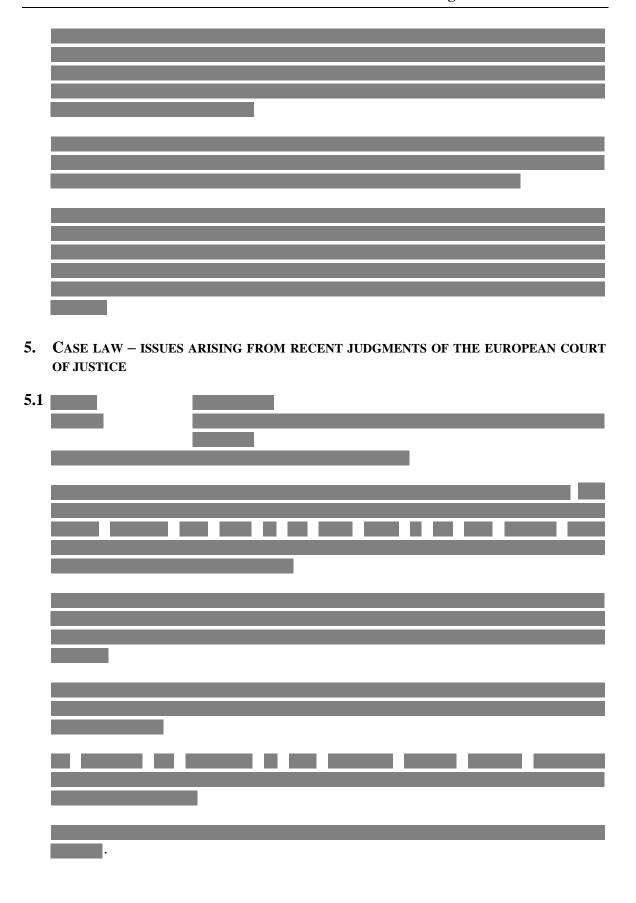
<sup>1)</sup> Legal services relating to the conveyance of or the transfer of a title to land;

<sup>2)</sup> Legal services relating to the drawing up of a contract to sell or acquire land;

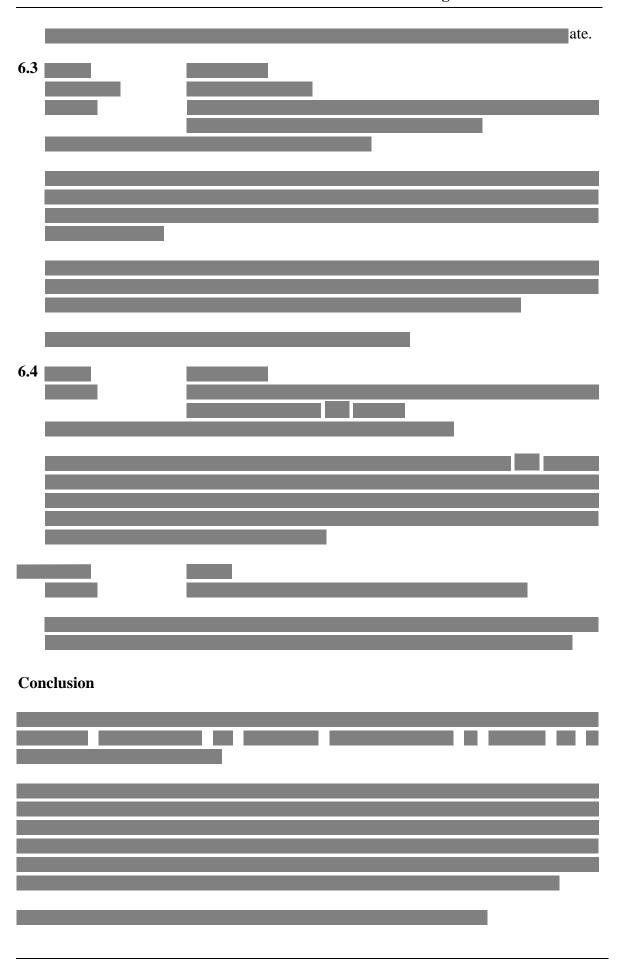
<sup>3)</sup> Legal services relating to advising on the terms of a contract to transfer land, or to enforce such a contract, or to prove the existence of such a contract.













# **ANNEX I**

# LIST OF PARTICIPANTS - LISTE DES PARTICIPANTS - TEILNEHMERLISTE

BELGIQUE/BELGIË .	Ministère des Finances Ministère des Finances Ministère des Finances Ministère des Finances
BULGARIA E.	Ministry of Finance National Revenue Agency
ČESKÁ REPUBLIKA	Ministry of Finance Ministry of Finance Ministry of Finance
DANMARK	Skat Skatteministeriet
DEUTSCHLAND	Bundesministerium der Finanzen Bundesministerium der Finanzen
EESTI/ESTONIA	Ministry of Finance
ELLAS/GREECE .	Ministry of Finance Ministry of Finance
ESPAÑA	Ministry of Finance Ministry of Finance Permanent Representation
FRANCE	Ministère de l'économie et des finances
IRELAND .	Revenue Commissioners Revenue Commissioners
ITALIA	Agenzia delle Entrate Dipartimento Politiche Fiscali

Agenzia delle Entrate KYΠΡΟΣ/CYPRUS Ministry of Finance, VAT Permanent Representation **LATVIJA** Ministry of Finance State Revenue Service LIETUVA/LITHUANIA Ministry of Finance Permanent Representation **LUXEMBOURG** Administration de l'Enregistrement Administration de l'Enregistrement MAGYARORSZÁG/HUNGARY Ministry of Finance Ministry of Finance **MALTA** Ministry of Finance, VAT **NEDERLAND** Ministry of Finance Ministry of Finance ÖSTERREICH Ministry of Finance Ministry of Finance **POLSKA** Ministry of Finance Ministry of Finance **PORTUGAL** Ministry of Finance Permanent Representation **ROMANIA** Ministry of Economy and Finance Ministry of Economy and Finance **SLOVENIJA** Ministry of Finance Ministry of Finance Permanent Representation

# SLOVENSKA REPUBLIKA/SLOVAKIA Ministry of Finance SUOMI/FINLAND Ministry of Finance Permanent Representation **SVERIGE/SWEDEN** Ministry of Finance Permanent Representation **UNITED KINGDOM** HM Revenue & Customs HM Revenue & Customs **COMMISSION** DG TAXUD/D/1 DG TAXUD/D/3

SJ