

Joint and Several Liability Rules in EU VAT Law

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1. The hot topic of joint and several liability (JSL) rules

Based on the optional rule in Art. 205 of the VAT Directive, Member States have, already for many years, implemented joint and several liability rules – often also labelled as “third-party liability”¹ – for diverse scenarios in their national VAT law. About twenty Member States have made use of the option (in particular for cross-border supplies).² These rules – although being practically challenging – have not led to many infringement proceedings or preliminary rulings before the CJEU (see, on the CJEU judgments, section 3.).

Recently, in the light of the digital revolution and the emergence of the “platform economy”, the relevance of JSL rules has gained momentum; how to apply VAT to the platform economy and the role of platforms in the VAT compliance and collection process are currently on the agenda of the OECD, the EU, and individual jurisdictions worldwide. In 2019, the OECD published a report (hereinafter “the OECD Report”) on the role of digital platforms in the collection of VAT/GST on online sales.³ This Report discusses different levels of integration of online platforms in the compliance and collection process in VAT/GST: a full VAT/GST liability regime, JSL regimes, information sharing obligations, and the education of suppliers selling on the platform. Furthermore, as a follow-up, in 2020 the OECD published Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy.⁴

On the EU level, these different integration levels of online platforms in the VAT compliance and collection process have been implemented in parallel (each for different supplies). A deemed reseller rule (full liability regime) has been effective for certain supplies of goods facilitated by an online platform as of 1 July 2021 (new Art. 14a of the VAT Directive). Similarly, as of 1 July 2021, online platforms will have to record certain data on all facilitated supplies of goods and services not falling within the deemed reseller rule (new Art. 242(a) of the VAT Directive). Moreover, DAC 7 – adopted by the Council in March 2021 – will lead to addi-

- 1 See, inter alia, S. Pfeiffer, *Austria – Value Added Tax – Country Tax Guide*, IBFD online, last reviewed: 23 February 2021, heading of section 10.4. (similar in other Country Tax Guides on VAT); and F. Annacondia, *VAT Options Exercised by the Member States – Global Topics* (last reviewed: 1 January 2020), IBFD online, section 10.4.
- 2 A comprehensive overview can be found in F. Annacondia, *VAT Options Exercised by the Member States – Global Topics* (last reviewed: 1 January 2020), IBFD online, section 10.4. A key area where many Member States have implemented JSL are intra-Community supplies and missing trader fraud scenarios (see also I. Lejeune, S. Kotanidis & E. Cortvriend, *European Union – Joint and several liability relating to intra-Community acquisitions*, IVM 2009, p. 365).
- 3 OECD, *The Role of Digital Platforms in the Collection of VAT/GST on Online Sales*, 20 June 2019, <https://www.oecd.org/tax/the-role-of-digital-platforms-in-the-collection-of-vat-gst-on-online-sales-e0e2dd2d-en.htm> (accessed on 27 April 2021).
- 4 OECD, *Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy*, 3 July 2020, available at <https://www.oecd.org/tax/exchange-of-tax-information/model-rules-for-reporting-by-platform-operators-with-respect-to-sellers-in-the-sharing-and-gig-economy.htm> (accessed on 27 April 2021).

tional data reporting obligations for all facilitated supplies combined with an automatic exchange of this information between Member States as of 2023.⁵ Finally, some Member States, including Austria and Germany, have unilaterally implemented JSL rules based on the option in Art. 205 of the VAT Directive, according to which economic operators of online platforms (also labelled as “electronic interfaces”) become liable for VAT on the supplies they facilitate if they do not carry out certain due diligence obligations regarding the VAT compliance of the underlying suppliers selling goods or services via their platform. The scope and effect of the JSL rules in the Member States differ to a rather great extent. Stakeholders criticize aspects of these JSL rules for online platforms as being burdensome and disproportionate.⁶ In 2019, the European Commission initiated an infringement proceeding against Germany arguing that the German JSL rules for online platforms hinder the free access of EU businesses to the German market and thus violate EU law.⁷

In the light of these developments, it is the right time to take a closer, critical look at the legal basis for these JSL rules and their potential interaction with the higher-ranking general principles of EU law and the internal market.

2. Different models of JSL rules based on the OECD Report

With respect to the platform economy, the OECD distinguishes between two variations of a JSL rule. A similar systematic distinction could also be made for JSL rules applied to other areas in the traditional economy. For both models, the OECD Report highlights the need for proportionality and legal certainty.⁸ These two variations of a JSL are described as follows:

Model I: Forward looking

The digital platform is held jointly and severally liable for the future undeclared VAT/GST of the underlying suppliers once the tax authority has spotted cases of

5 Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation (known as “DAC 7”).

6 See, inter alia, R. Ismer, *Rechtswissenschaftliches Gutachten – Die geplanten Neuregelungen zu Aufzeichnungspflichten und zur Haftung von Marktplatzbetreibern in § 22f und § 25e UStG-E aus rechtstechnischer und europarechtlicher Sicht*, September 2018, available at <https://www.bitkom.org/sites/default/files/file/import/20180924-Reform-Umsatzsteuer-Ismer-Studie.pdf> (accessed on 19 April 2021); S. Härtwig, *Gesetzliche Neuregelung zur Haftung von Plattformen*, UR 2018, p. 777 (780); O. Zugmaier & M. Oldiges, *Elektronische Marktplätze haften für Umsatzsteuerausfälle*, DStR 2019, p. 15 (pp. 19–20); W. Hidien, *Ist das deutsche Haftungsmodell für Online-Marktplatzbetreiber unionsrechtswidrig?*, DStR 2020, p. 257 (p. 263 et seq.).

7 INFR(2019)4080, 10 October 2019.

8 OECD, *The Role of Digital Platforms in the Collection of VAT/GST on Online Sales*, 20 June 2019, p. 65.

non-compliance, notified the platform of these non-compliant suppliers, and the latter did not take appropriate action within a specified number of days. The result of such a forward-looking JSL rule is securing compliance from the underlying supplier or removing the supplier from the platform. This model typically does not require the digital platform's (presumed) "knowledge" of fraudulent behavior of the underlying supplier, but links to the notification by the tax authority.⁹

From the perspective of the person covered by the JSL rule, this approach seems preferable, as it avoids the uncertainty connected to a good faith/knowledge test. The administrative burden for tax authorities, however, is higher than under the second model.

Model II: Focus on past liability

The platform is held jointly and severally liable for the past undeclared VAT/GST of underlying suppliers when the platform should have had a reasonable expectation that the supplier should be registered for VAT/GST but was not. Under this concept, therefore, platforms are forced to carry out know-your-customer checks, for example by requesting and verifying VAT/GST registration numbers from underlying suppliers.¹⁰

From the tax authorities' perspective, the second model seems preferable, as it shifts more responsibilities to the platform, thereby – presumably – acting more as a deterrent and, therefore, potentially being more effective in ensuring tax collection. On the negative side, this approach will lead to a higher administrative burden for the persons covered by the JSL rule and greater legal uncertainty in practice.

The OECD highlights that both models "*can be designed to work in tandem*".¹¹ This distinction of different types of JSL rules in the OECD Report does not therefore prevent jurisdictions from implementing a variation or combination of both concepts. The Austrian JSL rules for online platforms follow model II with some adaptations (see section 5.2.). The German JSL rules for online marketplaces also seem to be closer to model II, while the UK JSL rules for online marketplaces show features of both models.¹²

9 OECD, *The Role of Digital Platforms in the Collection of VAT/GST on Online Sales*, 20 June 2019, p. 63.

10 OECD, *The Role of Digital Platforms in the Collection of VAT/GST on Online Sales*, 20 June 2019, pp. 63–64.

11 OECD, *The Role of Digital Platforms in the Collection of VAT/GST on Online Sales*, 20 June 2019, p. 63.

12 On the UK and German JSL regime, see, inter alia, M. Lamensch & R. Millar, *The Role of Marketplaces in Taxing B2C Supplies*, in: M. Lang et al. (eds.), *CJEU – Recent Developments in Value Added Tax 2018* (Vienna: Linde 2019), pp. 51 et seq.

3. The legal basis in Art. 205 of the VAT Directive

3.1. Wording and history

The implementation of JSL rules for EU VAT can be based on the option in Art. 205 of the VAT Directive that reads:

In the situations referred to in Articles 193 to 200 and Articles 202, 203 and 204, Member States may provide that a person other than the person liable for payment of VAT is to be held jointly and severally liable for payment of VAT.

A similar optional JSL rule has already been included in the original version of the Sixth VAT Directive.¹³

Interestingly, in contrast to the adopted version of the Sixth VAT Directive, the Commission proposal to the Sixth VAT Directive of 1973¹⁴ did not include an optional rule comparable to Art. 205 of the VAT Directive. Instead, Art. 21(2) of the Commission proposal provided a mandatory JSL rule for import VAT covering the consignee, the declarant, and his agent. This proposed rule did not include any escape clause for good faith/proportionality reasons, but followed a strict liability concept.¹⁵

Since 2004, the introduction of an additional JSL rule to the VAT Directive with the aim of combatting missing trader fraud has been discussed at EU level.¹⁶ These discussions led to a Commission proposal in 2008, according to which a new second paragraph would have been added to Art. 205 of the VAT Directive. According to this new rule, the supplier of an intra-Community supply should have been held jointly and severally liable for the VAT on the intra-Community acquisition in the destination state, if he did not correctly submit a recapitulative statement for the intra-Community supply and was not able to duly justify his

13 Art. 21(1)(a) last sentence in the original version of the Sixth VAT Directive: *“The Member States may also provide that someone other than the taxable person shall be held jointly and severally liable for payment of the tax”*.

14 Proposal for a Sixth Council Directive on the harmonization of legislation of Member States concerning turnover taxes – Common system of value added tax: uniform basis of assessment, OJ C 80, 5 October 1973, pp. 1–34.

15 Art. 21(2) proposal to the Sixth VAT Directive provides that the following person(s) shall be liable to pay import VAT: *“the person specified as consignee in the import documents or, in the absence of such documents or specification, the importer. The consignee, the declarant and his agent shall be jointly liable for tax”*.

16 Report from the Commission to the Council and the European Parliament on the use of administrative cooperation arrangements in the fight against VAT fraud, COM(2004) 260, p. 15; Communication from the Commission to the Council concerning some key elements contributing to the establishment of the VAT anti-fraud strategy within the EU, COM(2007) 758 final, p. 11: *“In the context of missing trader fraud, whereby a number of actors intervene with the sole objective of hiding the fraudulent character of the transaction chain and thereby making the detection more complicated, the Commission sees the benefits of invoking this provision [option for JSL]”*.

shortcoming to the satisfaction of the competent authorities.¹⁷ In contrast to the optional rule in Art. 205(1) of the VAT Directive, this would have been a compulsory provision (obligation to implement by Member States). The Council never reached an agreement on this provision.¹⁸

3.2. Context, objective, and concept

To get a better understanding of the importance and objective of the optional rule in Art. 205 of the VAT Directive, it is worth looking at the context in which this rule is embedded. Art. 205 of the VAT Directive is part of the section “*Persons liable for payment of VAT to the tax authorities*” which – besides Art. 205 of the VAT Directive – includes a number of other optional rules.

The most important rules regulating the person liable to VAT are Arts. 193 and 196 of the VAT Directive (the “basic rule”¹⁹). According to the general rule in Art. 193 of the VAT Directive, VAT shall be payable by the taxable person carrying out the supply of goods or services (i.e. the supplier), except for cases specifically regulated otherwise in the subsequent articles.

Art. 196 in conjunction with Art. 192a of the VAT Directive provides the most prominent exception to the general rule in Art. 193 of the VAT Directive, known as the mandatory “reverse charge”. According to this article, VAT shall be payable by any taxable person, or non-taxable legal person identified for VAT purposes, to whom the services referred to in Art. 44 of the VAT Directive are supplied, if the services are supplied by a taxable person not established within the territory of the Member State in which the VAT is due. This rule leads to the result that the customer (rather than the supplier) is liable to pay VAT for most cross-border B2B supplies of services.²⁰

Next to the mandatory reverse charge in Art. 196, the VAT Directive also permits (but does not obligate) Member States to apply the reverse charge mechanism to other supplies, in particular to all other *cross-border* supplies of services or goods where the supplier is not established in the Member State in which the VAT is due

17 Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards tax evasion linked to import and other cross-border transactions, COM (2008) 805; critical on this proposal I. Lejeune, S. Kotanidis & E. Cortvriend, *European Union – Joint and several liability relating to intra-Community acquisitions*, IVM 2009, pp. 362 et seq.

18 Interestingly, this proposed rule showed some similarities to the quick fix added to Art. 138 of the VAT Directive, according to which the receipt of the customer’s VAT ID and the correct submission of the recapitulative statement are material conditions for the exemption of the intra-Community supply (as of 1 January 2020). Even though this quick fix is not designed as a JSL rule, it implements similar strict (formal) requirements for the supplier and follows a similar objective (prevention of fraud in cross-border trade).

19 CJEU, 20 May 2021, C-4/20, *ALTI*, EU:C:2021:397, para. 27.

20 Mandatory reverse charge also exists for a couple of other special transactions: e.g. in triangulation cases (Art. 197 of the VAT Directive), specific transactions relating to investment gold (Art. 198 of the VAT Directive).

(Art. 194 of the VAT Directive). This includes, for example, services linked to immovable property, supplies with installation, or supplies of goods without transportation in a chain transaction. The Directive also permits Member States, subject to certain conditions, to apply the reverse charge mechanism to certain *domestic* supplies that are presumed to be more vulnerable to fraud (Arts. 199, 199a to 199c of the VAT Directive).

Arts. 200–203 of the VAT Directive include special rules for the person liable for VAT with respect to specific transactions (for example, intra-Community acquisitions, importation). Finally, Art. 204 of the VAT Directive (another optional rule) permits Member States, under certain conditions, to allow the taxable person to appoint a tax representative as the person liable for the payment of the VAT, if he/she is not established in the Member State in which the VAT is due.

Art. 205 of the VAT Directive does not alter all these liability rules (in particular Art. 193 and Art. 196) and their implementation in domestic law. It provides the Member States with the possibility to assign a “second” person who is responsible for the correct collection of VAT on a certain supply and could be held liable, if the primary tax debtor (supplier or customer) does not remit the VAT. AG Kokott also refers to this concept as “secondary liability”.²¹ Sometimes, the term “third-party liability” is also used.²² Art. 205 of the VAT Directive, thus, strengthens the enforcement possibilities of tax authorities.²³ In the light of this context, Member States might particularly make use of the option in Art. 205 of the VAT Directive for areas in which they fear and presume an increased risk of non-collection and/or tax evasion and avoidance.

The concept of the JSL rule is not further defined in the VAT Directive. Therefore, it is unclear, and has also not been addressed by the CJEU so far, whether this concept is to be understood as a default liability, i.e. whether the tax authorities need to endeavour to collect VAT from the primary person liable to pay VAT first, or whether they could directly approach the person subject to the JSL rule (for example, the online marketplace), if the conditions for JSL are met.²⁴

21 Opinion of AG Kokott, 14 January 2021, C-4/20, *ALTI*, EU:C:2021:12, para. 28.

22 See, inter alia, S. Pfeiffer, *Austria – Value Added Tax – Country Tax Guide*, IBFD online, last reviewed: 23 February 2021, heading of section 10.4. (similar in other Country Tax Guides on VAT); F. Annacondia, *VAT Options Exercised by the Member States – Global Topics* (last reviewed: 1 January 2020), IBFD online, section 10.4.

23 See also CJEU, 20 May 2021, C-4/20, *ALTI*, EU:C:2021:397, para. 29: “for the efficient collection of VAT”.

24 See on this aspect, inter alia, the discussions in Austrian literature, by C. Kindl, *Gesamtschuld und Haftung im nationalen und europäischen Umsatzsteuerrecht* (Vienna: LexisNexis-Verl. ARD Orac, 2010) p. 79; and D. Auer, *Mehrwertsteuerbetrugsbekämpfung in der EU* (Vienna: Linde 2020) p. 137. The first reading would limit the effectiveness of the JSL rule. The German language version (“Haftung”) could speak in favour of the first reading, whereas the English language version (“jointly and severally liable”) could also support a broader understanding (see C. Kindl, *Gesamtschuld und Haftung im nationalen und europäischen Umsatzsteuerrecht* (Vienna: LexisNexis-Verl. ARD Orac, 2010) p. 79).

According to AG Kokott, it “*follows from the very nature of joint and several liability that each debtor is liable for the full amount of the debt and the creditor is, in principle, free to claim payment of that debt from one or more of the debtors as he chooses*”.²⁵ The AG derives this conclusion from CJEU judgments in the field of customs law, where a similar term (“jointly and severally liable”) is used within EU legislation.²⁶

3.3. Scope

The substantive scope of Art. 205 of the VAT Directive is very broad. Art. 205 of the VAT Directive specifies neither the persons that Member States may designate as joint and several debtors nor the situations in which such designation may be made. Thus, according to the CJEU, it is for the Member States to determine the conditions and arrangements under which the JSL provided for in that article will be incurred.²⁷ As Art. 205 of the VAT Directive refers to “persons”, it could potentially also be applied to non-taxable persons.²⁸ Moreover, the scope is not restricted to cross-border cases; hence, the option may also be used for purely domestic scenarios.²⁹

Art. 205 of the VAT Directive refers to almost all articles in the section “Persons liable for payment of VAT to the tax authorities”. Remarkably, only one article is explicitly excluded: Art. 201 of the VAT Directive on import VAT. According to Art. 201 of the VAT Directive, import VAT shall be payable “*by any person or persons designated or recognised as liable by the Member State of importation*”. Art. 201 of the VAT Directive itself hence grants broad discretion to Member States when defining the person liable for import VAT, which should also include the right for Member States to implement JSL rules for import VAT.³⁰ Therefore, the exclusion of Art. 201 from the scope of Art. 205 of the VAT Directive should not have any material consequence.

Art. 205 of the VAT Directive, as it stands nowadays, does not set any substantive conditions under which circumstances (for example, a violation of due diligence

25 Cf Opinion of AG Kokott, 14 January 2021, C-4/20, *ALTI*, EU:C:2021:12, para. 32.

26 CJEU, 18 May 2017, C-154/16, *Latvijas Dzelzceļš*, EU:C:2017:392, para. 85; CJEU, 22 November 2017, C-224/16, *Aebtri*, EU:C:2017:880, paras. 19–80.

27 CJEU, 20 May 2021, C-4/20, *ALTI*, EU:C:2021:397, para. 31.

28 F. Annacondia, *VAT Options Exercised by the Member States – Global Topics* (last reviewed: 1 January 2020), IBFD online, section 10.4.

29 F. Annacondia, *VAT Options Exercised by the Member States – Global Topics* (last reviewed: 1 January 2020), IBFD online, section 10.4.2.; Opinion of AG Kokott, 14 January 2021, C-4/20, *ALTI*, EU:C:2021:12, para. 29.

30 Compare also European Commission, Explanatory Notes on the VAT e-commerce rules, December 2020, p. 53 (available at https://ec.europa.eu/taxation_customs/commission-guidelines_en, accessed on 19 January 2022): “*If the VAT is not collected by the IOSS registered supplier or electronic interface and VAT becomes due upon importation into the EU in the Member State of final destination, that Member State can decide freely on the person liable to pay the import VAT (either the customer or the supplier or the electronic interface – Article 201 of the VAT Directive)*”.

obligations, “bad” faith, etc.) a person can be made subject to JSL. However, this does not mean that there are no legal limits (see, on the legal limits, section 4.).

4. CJEU case law on JSL rules

4.1. Overview

The CJEU has had to address questions related to Art. 205 of the VAT Directive (or its predecessor in Art. 21 of the Sixth VAT Directive) in four cases.³¹ The *Federation of Technological Industries* case of 2006 concerned UK JSL rules applicable to suppliers of goods who were made jointly liable for VAT on any previous or subsequent supply, in case they knew or should have known that the supply was involved in a fraudulent transaction.³² The *Vlaamse Oliemaatschappij NV* case of 2011 involved a Belgian JSL rule applicable to warehouse keepers who were jointly liable for the VAT owing on a supply of goods, released from the warehouse, by the owner of the goods.³³ Finally, in the *Macikowski* case of 2015, the CJEU had to address special Polish rules for court enforcement officers who were made subject to obligations to calculate, collect, and pay the VAT on the sale of immovable property effected through enforcement.³⁴

Finally, in May 2021, the CJEU issued another ruling to Art. 205 of the VAT Directive in the *ALTI* case. A Bulgarian court asked the CJEU whether Art. 205 of the VAT Directive permits Member States to provide that, in addition to the supplier, the recipient of a purely domestic supply is a further “*person liable for payment of VAT*” and to hold him liable not only for a third-party VAT liability but also for third-party default interest. Contrary to AG Kokott,³⁵ the CJEU concluded that Art. 205 of the VAT Directive does not preclude legislation pursuant to which the person held jointly and several liable must pay, in addition to the VAT, the default interest on that amount.³⁶ Due to its specific background, this case will not be addressed in detail in the following sections.

The CJEU has developed the following general rules in its judgments on Art. 205 of the VAT Directive (and its predecessor in Art. 21 of the Sixth VAT Directive): as a starting point, the Court emphasized that this option “*permits, as a rule, Member States to enact measures under which a person is to be jointly and severally liable to pay a sum in respect of VAT payable by another person*”.³⁷ However, the

31 See also Opinion of AG Kokott, 14 January 2021, C-4/20, *ALTI*, EU:C:2021:12, para. 27. In the *FIRIN* case, the referring Bulgarian court also addressed Art. 205 in its preliminary questions. However, the CJEU declared the preliminary question relating to Art. 205 as inadmissible (CJEU, 13 March 2014, C-107/13, *FIRIN*, EU:C:2014:151, paras. 28–32).

32 CJEU, 11 May 2006, C-384/04, *Federation of Technological Industries*, EU:C:2006:309.

33 CJEU, 21 December 2011, C-499/10, *Vlaamse Oliemaatschappij NV*, EU:C:2011:871.

34 CJEU, 26 March 2015, C-499/13, *Macikowski*, EU:C:2015:201.

35 Opinion of AG Kokott, 14 January 2021, C-4/20, *ALTI*, EU:C:2021:12.

36 CJEU, 20 May 2021, C-4/20, *ALTI*, EU:C:2021:397, para. 45.

37 CJEU, 11 May 2006, C-384/04, *Federation of Technological Industries*, EU:C:2006:309, para. 28; CJEU, 21 December 2011, C-499/10, *Vlaamse Oliemaatschappij NV*, EU:C:2011:871, para. 19.

CJEU also highlighted that Member States are not fully free in their discretion: when Member States make use of the option in Art. 205 of the VAT Directive, they “*must comply with the general principles of law which form part of the Community legal order, which include, in particular, the **principles of legal certainty and proportionality***” [emphasis added].³⁸ In a similar vein, the OECD highlights in its Report on the platform economy that it is “*important for a tax authority when applying JSL to avoid disproportionate requirements on platforms and include clear criteria to ensure legal certainty*”.³⁹

When carrying out this proportionality test, the CJEU strikes a balance of interests: the interest of Member States (the need to preserve tax revenues) has to be balanced against the interest of the natural or legal persons acting on the market and covered by the JSL rules (fundamental rights of the persons affected⁴⁰).⁴¹ In particular, the Court emphasized that Member States are free “*to preserve the rights of the public exchequer as effectively as possible*”. However, “*such measures must not go further than is necessary for that purpose*”.⁴² Hence, it also needs to be tested whether there are other “*appropriate means less detrimental*” available for Member States in order to combat tax evasion and avoidance.⁴³ More recently in the *ALTI* case, the CJEU specified that the application of a JSL rule to a person other than the person liable for payment of VAT “*must be justified by the factual and/or legal relationship between the two persons concerned*”.⁴⁴

When applying these general principles to the specific domestic JSL rules at hand, the Court concluded that it is for the referring court to make the final decision on whether the specific rules are in violation of EU law.⁴⁵ The CJEU, however, gave the national courts some more detailed criteria on the way to determine this (see, in more detail, section 4.2.).

38 CJEU, 11 May 2006, C-384/04, *Federation of Technological Industries*, EU:C:2006:309, para. 29; similar CJEU, 21 December 2011, C-499/10, *Vlaamse Oliemaatschappij NV*, EU:C:2011:871, para. 20; CJEU, 26 March 2015, C-499/13, *Macikowski*, EU:C:2015:201, para. 47; CJEU, 20 May 2021, C-4/20, *ALTI*, EU:C:2021:397, para. 32.

39 OECD, *The Role of Digital Platforms in the Collection of VAT/GST on Online Sales*, 20 June 2019, p. 65.

40 In its judgments, the CJEU did not explicitly rely on the fundamental rights, but uses the vague concept of proportionality as a separate general principle and legal basis. In the author’s opinion, the Court would be better off in relying on the fundamental rights (e.g. right to conduct a business).

41 See Opinion of AG Poiares Maduro, 7 December 2005, C-384/04, *Federation of Technological Industries*, EU:C:2005:745, para. 25: “*the national court will have to strike a balance between the need to ensure the collection of VAT and the interest in ensuring that regular trade is not rendered unreasonably difficult by the threat of liability for the non-payment of VAT owed by another.*” Opinion of AG Kokott, 14 January 2021, C-4/20, *ALTI*, EU:C:2021:12, para. 1.

42 CJEU, 11 May 2006, C-384/04, *Federation of Technological Industries*, EU:C:2006:309, para. 30; CJEU, 20 May 2021, C-4/20, *ALTI*, EU:C:2021:397, para. 33.

43 CJEU, 19 Sept 2000, C-177/99, *Ampafrance SA*, EU:C:2000:470, para. 61; similar CJEU, 20 May 2021, C-4/20, *ALTI*, EU:C:2021:397, para. 33.

44 CJEU, 20 May 2021, C-4/20, *ALTI*, EU:C:2021:397, para. 34.

45 CJEU, 11 May 2006, C-384/04, *Federation of Technological Industries*, EU:C:2006:309, para. 34; CJEU, 21 December 2011, C-499/10, *Vlaamse Oliemaatschappij NV*, EU:C:2011:871, para. 27; CJEU, 26 March 2015, C-499/13, *Macikowski*, EU:C:2015:201, para. 52.