

# COURT OF TRIESTE

## WRIT OF SUMMON

For:

**1) International Provisional Representative of the Free Territory of Trieste – I.P.R. F.T.T.** [*Rappresentanza Internazionale Provvisoria del Territorio Libero di Trieste – Začasno Mednarodno Predstavništvo Svobodnega Tržaškega Ozemlja – Provisorische Internationale Vertretung des Freien Territoriums Triest*] as legal subject delegated to represent and to defend, in all international and diplomatic forums or judicial proceedings the legitimate rights and interests of the citizens *de jure*, residents, enterprises, and organizations of the Free Territory of Trieste and of other States (**document 1**), appearing before Court represented by its General Secretary and legal representative Paolo G. Parovel, born in Trieste on June 19th, 1944, represented pursuant to the mandate at the end of this act by lawyer Walter Zidarich with Italian Fiscal Code (*codice fiscale*) ZDRWTR50P22L424, whose office, chosen as address for service, is in Trieste, via San Francesco 11, where all legal acts and communications regarding this proceeding shall be sent, also via either telefax at n. 040 2410914 or Italian certified email (p.e.c.) at: [walter.zidarich@pectriesteavvocati.it](mailto:walter.zidarich@pectriesteavvocati.it)

**2) Paolo G. Parovel**, born in Trieste on June 19th, 1944, entering an appearance also for himself, for his heirs, and for other persons entitled, bearing a legitimate interest as citizen *de jure* of the present-day Free Territory of Trieste (**document 2, with annexes**) to whom was also assigned Italian citizen and was subject to the tax obligations of the Italian Republic, with Italian Fiscal Code (*codice fiscale*) PRVPLA44H19L424C (**document 3**) also in regard to the business activities registered since 1972 at the Chamber of Commerce, Industry, Craft Trades and Agriculture of Trieste (**document 4**) and for the employment as journalist, with registration at the Italian Association of Journalists since 1979 (**document 5**), represented pursuant to the mandate at the end of this act by lawyer Walter Zidarich with Italian Fiscal Code (*codice fiscale*) ZDRWTR50P22L424, whose office, chosen as address for service, is in Trieste, via San Francesco 11, and where all legal acts and communications regarding this proceeding shall be sent, also via either telefax at n. 040 2410914 or Italian certified email (p.e.c.) at: [walter.zidarich@pectriesteavvocati.it](mailto:walter.zidarich@pectriesteavvocati.it)

**-claimants-**

Versus:

**1) the Italian Government**, represented by the President of the Council of Ministers *pro tempore*, in the role of Government of the Italian Republic and in the role of provisional administering Government of the Free Territory of Trieste, based in Piazza Colonna 370, Palazzo Chigi - 00187 Rome - [presidente@pec.governo.it](mailto:presidente@pec.governo.it) at the *Avvocatura dello Stato* (State legal service).

**2) the Ministry of Economy and Finance**, represented by the Minister *pro tempore*, in the role of Ministry of the Government of the Italian Republic, based in Via XX

Settembre 97 - 00187 Rome - [mef@pec.mef.gov.it](mailto:mef@pec.mef.gov.it), at the *Avvocatura dello Stato* (State legal service).

3) the **Tax Revenue Office**, represented by the Director *pro tempore*, Fiscal Code 06363391001 with siège social in via Cristoforo Colombo n. 426 C/D C/D 00145 Rome - [agenziaentratepec@pce.agenziaentrate.it](mailto:agenziaentratepec@pce.agenziaentrate.it) - at the *Avvocatura dello Stato* (State legal service).

4) the **Customs and Monopolies Agency**, represented by the Director *pro tempore*, Tax Code 97210890584, with registered office in Via Mario Carucci, 71, 00143 Rome - [dogane@pce.agenziadogane.it](mailto:dogane@pce.agenziadogane.it), at the *Avvocatura dello Stato* (State legal service).

**- Summued -**

### **Revolving on:**

the determination of the non-applicability, under both Italian and E.U. legislation in force, of the Value Added Tax of the Italian State to the supply of goods and services, as well as on imports that take in the present-day Free Territory of Trieste and in its international Free Port, the temporary civil administration of which it sub-entrusted to the Italian Government.

**The procedure shall remain open to the free, voluntary intervention**, against the defendants, of the citizens and other legal subjects from the present-day Free Territory of Trieste, or from other State, in order to claim a right pertinent to this legal action, or depending on titles deriving from the same legal action (art. 105, first paragraph, Italian Code of Civil Law), or bearing a personal interest to support the action of the plaintiffs (art. 105, second paragraph, Italian Code of Civil Law).

### **Premise and terminology**

This legal action revolves on the determination of the impossibility, under Italian and E.U. Community legislation in force, to collect the Value-added tax -VAT of the Italian State on the supply of goods and services, as well as on imports that take place in the present-day Free Territory of Trieste - Territorio Libero di Trieste - Svobodno Tržaško Ozemlje, the temporary civil administration of which is sub-entrusted to the responsibility of the Italian Government by the Governments of the United States of America and of the United Kingdom, as primary administering Governments on behalf of the United Nations Security Council, in compliance with the Treaty of Peace with Italy of 10 February 1947, in force, whose Depository is the Government of the French Republic.

The exercise of the aforementioned special trusteeship mandate by the Italian Government is compatible with its current legal framework, which implements and enforces fully the 1947 Italian Peace Treaty, with pre-Constitutional and Constitutional prevalence on other Italian laws in force (Legislative Decree of the Provisional Head of State No.1430 of 28 November 1947, ratified with Italian Law No. 3054 of 1952).

This means the Italian Government is directly responsible of the correct conduction of the special trusteeship mandate entrusted to it before the citizens, enterprises, and authorities of the administered Free Territory of Trieste, but also before the primary administering British and United States Governments, which have sub-entrusted it to the Italian Government behalf of the United Nations Security Council and thus have also the faculty to revoke it, but also before the Italian Republic.

The Italian Government exercises the aforementioned mandate with bodies and officers of the Italian Republic who, therefore act in the Free Territory of Trieste in the same roles as they would in the Italian Republic, but under a different title.

The denomination “*present-day Free Territory of Trieste*” refers to its territorial reassessment that took place in 1992, after which it now consists of the Capital city Trieste-Trst-Triest with its Municipality, the International Free Port and the smaller Municipalities of Muggia-Milje, Dolina (S.Dorligo), Repentabor-Monrupino, Zgonik-Sgonico, Duino Aurisina-Devin Nabrežina, with a total surface of 212 kmq, 236.520 inhabitants (2009 census), and bordering the Italian Republic and the Republic of Slovenia.

Nota: this current extension of the Free Territory of Trieste corresponds to its main Zone (also referred to as zone “A”), entrusted by the United Nations to the Governments of the United States of America and of the United Kingdom of Great Britain and Northern Ireland under a special trusteeship mandate, and sub-entrusted by them to the temporary civil administration of the Italian Government and to the military defense of NATO, both exercise it to the present day (2018).

The territorial re-assessment of the Free Territory of Trieste within its present borders is the result of UN Security Council and UN General Assembly Resolutions S/RES/753 (1992), A/RES/46/238, S/RES/754 (1992), A/RES/46/236, S/RES 777 (1992), A/RES/47/1, which recognized the new independent Republics of Slovenia and of Croatia in their present borders upon self-determination referenda, and also the dissolution of the S.F.R. of Yugoslavia and of its federal Government.

The recognition of this new territorial asset by the U. N. Member States results (art. 30.3 of the Vienna Convention on the Law of Treaties) in the impossibility to apply the provisions of the Treaty of Peace with Italy of February 10th, 1947 and of the Memorandum of Understanding of London of October 5th, 1954 that included in the Free Territory of Trieste also an accessory, secondary costal zone (also referred to as zone “B”) entrusted to the administration of the Yugoslav Federal Government, and sub-entrusted by it to the Federal Republics of Slovenia and of Croatia of that time.

For these reasons, the present-day Free Territory of Trieste maintains its legal status and its border with Italy as established with the Treaty of Peace, however, since 1992, it borders with the Republic of Slovenia along the whole line running from the triborder area north to Medja vas - Medeazza to S. Bartolomeo – Sv. Jernej.

## **FACT**

1. In compliance with the legislation of the European Union, the Italian Government, in its ordinary role of Government of the Italian Republic, collects the Value Added Tax - VAT on the supply of goods and services, as well as on imports that take place within the sovereign territory of the Italian State, only excluding the Municipalities of Livigno, Campione d'Italia and the Italian waters of Lake Lugano.

2. The tax is calculated and collected by the Italian Government through its Ministry of Economy and Finances, the Tax Revenue Office, and the Customs and Monopolies Agency.

- 3.** The ordinary rate of the Italian VAT has increased from the initial 6% (1973) to 15% (1980), 18% (1982), 19% (1988), 20% (1997), and, since 2011, it amounts to 21%. The VAT rate on basic foodstuff and agricultural produce is 4%, on tourists goods and construction works it is 10%, and products considered “luxuries” are subject to a 22% rate. The ordinary rate is expected to increase up to 25%, the average rate up to 12%.
- 4.** The increasing of Italian VAT rates, either automatically or by law, depend on the continuing growth of the public budget deficit of the Italian State, whose public debt had surpassed the 132% of the GDP as early as in the first half of 2018, and now amounts to more than EUR 2,312 billions, increasing of more than EUR 9 billions per month. It is the third largest public debt in the world.
- 5.** The application of the consequent, burdensome rates of the Italian VAT causes serious damages to the citizens, residents, enterprises, professionals, public and private economic enterprises, as well as to the whole economic and social system that are subject to them within the sovereign territory of the Italian State.
- 6.** To date (2018) the Italian Government does also exercise the role of temporary civil administering authority of the present-day Free Territory of Trieste, sub-entrusted to it under a special trusteeship mandate by the Governments of the United States of America and of the United Kingdom of Great Britain Northern Ireland in their role of primary administering Governments on behalf of the United Nations Security Council.
- 7.** The present-day Free Territory of Trieste is indeed an independent State with its own legal order. It is established – in compliance with United Nations Resolution S/RES/16 (1947) – by the 1947 Treaty of Peace with Italy, in force, which places it under the U.N. Security Council’s own, direct protection as well as entrusting its temporary civil administration to the Governments of the United States of America and of the United Kingdom of Great Britain Northern Ireland.
- 8.** The Treaty of Peace that establishes the Free Territory of Trieste does also exempt it from the payment of the Italian public debt does also establish, as a State corporation of the Free Territory of Trieste itself, the only international Free Port in the world, placed at the service of the trades and manufacturing of freight of all States, without discriminations.
- 9.** The Italian Government exercises the legislative, administrative and judicial powers deriving from its sub-mandate of temporary civil administration of the Free Territory of Trieste through bodies and officers of the Italian Republic.
- 10.** The Italian Government and the aforementioned bodies and officers do therefore exercise two roles at once: an ordinary role within the sovereign territory of the Italian Republic, in compliance with its legal order under Italian and under European law, and then the special role of provisional administering authorities of the present-day Free Territory of Trieste, in compliance with its legal order established under domestic and under international law.

**11.** Among the bodies vested with this double role there are also the Italian Ministry of Economy and Finance and its fiscal Agencies in charge of levying and collecting the VAT within Italy's sovereign territory: the Tax Revenue Office and the Customs and Monopolies Agency.

**12.** Through said bodies, the administering Italian Government has forced and is forcing the collection of the Italian VAT due within the Italian State's sovereign territory also on the supply of goods, the supply of services, and on imports that take place within the administered, present-day Free Territory of Trieste, which is not part of the sovereign territory of the Italian State and therefore it cannot be subject to the payment of its public debt or taxes of that State.

**13.** The collection, through the Tax Revenue Office and the Customs and Monopolies Agency, of the Italian VAT within the present-day Free Territory of Trieste does also affect or endanger activities and operations that involve its international Free Port and customs its Port.

**14.** The application of the Italian VAT to the present-day Free Territory of Trieste is illegitimate because it constitutes a simultaneous breach of the Italian legal order and of that of the European Union to which the former is bound, but also the international obligations of the Italian Republic and of the Italian Government respect to the Free Territory of Trieste, and their deriving obligations respect to all other States, and the obligations of the Italian Government to correctly exercise the mandate of temporary civil administration that is sub-entrusted to it by the Governments of the United States of America and of the United Kingdom of Great Britain and Northern Ireland on behalf of the United Nations.

**15.** The application of the Italian VAT to the present-day Free Territory of Trieste, which is illegal for the reasons described above, causes serious, unfair damages or risks for the citizens and residents, the enterprises, professional, private and public economic enterprises, as well as for the whole economic and social system of the Free Territory of Trieste and also for the enterprises of other States, including Italy, that have the right to work in its international Free Port, as well as constituting a serious and unfair damage or risk for their rights and legitimate interests; it is a damage the assessment, ceasing, and compensation of which can be requested before the competent Courts.

**16.** Since this unfair damage is caused by the fact that the administering Italian Government and its bodies are incorrectly enforcing incompatible instruments of Italian and European law within the administered Free Territory of Trieste, the unlawfulness of this behavior can and must be assessed and declared also by Italian judges serving their duties in the administered Free Territory.

**17.** The extent of this unfair damage, its continuance, its impact on the whole economic and social system of the present-day Free Territory of Trieste, as well as the nature of the consequent public responsibilities, including those respect to other States, justify the request to provisionally halt the application and collection of the Italian VAT in the administered Free Territory, unless the administering Italian Government takes care to

suspend it in self-defense with own, prompter measures, including suitable measures for the Accounting of VAT transactions (*partite IVA*).

**18.** The Italian Government and the other defendants cannot object to this request of precautionary suspension of the application and collection of the Italian State's VAT in the present-day Free Territory of Trieste with credible procedural or economic impossibilities.

In facts, the same defendants are already enforcing full VAT exemptions in the Italian fiscal exclaves of Livigno, di Campione d'Italia and the Italian waters of Lake Lugano. Also, VAT revenues from the present-day Free Territory of Trieste, which has about 236.000 inhabitants, are minimal compared to those of the 59 million inhabitants the Italian State, which are 250 times as many.

## LAW

### **I. In the merit**

**19.** In the Italian legal order, Legislative Decree of the Provisional Head of State 1430/1947, ratified with Italian Law 3054/1952, ranks higher than national Italian laws in the hierarchy of sources of Italian law under both pre-Constitutional and Constitutional law; it fully and completely implements, since 16 September 1947, the Treaty of Peace between the Allied and Associated Power and Italy signed at Paris on 10 February 1947, which is in force since 15 September 1947 and has established the Free Territory of Trieste as well as the consequent obligations of the Italian Republic and of the Italian Government respect to it and to all other States.

In addition, the Italian legal order is bound to E.U. Community Law, which establishes that international obligations contracted by E.U. Member States respect to third States before 1 January 1958 rank higher than European laws.

The Treaty of Peace with Italy is therefore a multilateral instrument of international law and also a law, in force, of the Italian State that, in the hierarchy of sources of Italian law, prevails on both domestic and on Community law.

The same Treaty of Peace, which is also a binding Italian law, subtracts to the competences of domestic Courts all controversies regarding the interpretation and enforcement of that Treaty, and reserves the settlement of such disputes to specific procedures established under international law (Treaty of Peace with Italy, arts. 86 and 87; Annex VI, art. 36; Annex VIII, art. 24; Annex IX, art. 7; Annex X art. 19).

The subject of this legal action, initiated before an Italian judge serving in the Court of Trieste, does therefore revolve exclusively on the direct legal verification of the enforceability, by the summoned Italian Government, Tax Revenue Office, and Customs and Monopolies Agency, of norms, in force, of the Italian and of the E.U. legal order.

**20.** The international relations and legal obligations of the Italian Republic, of the Italian Government, and of their bodies respect to the present-day Free Territory of Trieste, as well as their consequent obligations respect to all other States and respect to

the United Nations are ratified and enforced within the Italian legal order in force by a coherent and univocal *corpus juris* which does also include the pertinent provisions of E.U. legislation.

To identify and review this *corpus juris* in this legal action for determination we recall in full, as an integral part of this writ of summon, expertise SG/2017/LC/M-V-it of the I.P.R. F.T.T. Law Commission, a copy of which is therefore lodged in this proceeding (**document 6**), reserving the right to lodge other further, pertinent acts and documents.

Note: the Italian *corpus juris* in force reviewed in expertise SG/2017/LC/M-V refutes to the ground the well-known and widespread political doctrinal elaborations (A.E. Cammarata, M. Udina, and others, in opposition to Capotorti, D. De Castro, and others) that, since 1947-48, attempt to demonstrate the lack of legal existence of the Free Territory of Trieste. The lodged expertise proves that, instead, Italian lawmakers recognize and enforce, since 1947, all constituent and governmental legal instruments of the Free Territory of Trieste.

**21.** It is henceforth essential pointing out that neither the Italian legal order or that of the European Union includes instruments that can legitimate the application of the VAT of the Italian State to the present-day Free Territory of Trieste, the temporary civil administration of which is sub-entrusted to the Italian Government by the Governments of the United States of America and of the United Kingdom of Great Britain and Northern Ireland as primary administering Governments on behalf of the United Nations Security Council.

**22.** Said legal evidences, by their own nature, cannot be unknown to the public officers who are bound to comply with them, have since long been made evident, for all legal effects, to the parties summoned with this act, in particular, through the aforementioned legal action for determination on general fiscal matters No. 1757/2017, brought before this same Court (**document 7**: writ of summon), now at the stage of appeal, and by notifying expertise SG/2017/LC/M-V to the authorities concerned (**document 8**).

**23.** The Value Added Tax was introduced as a Community obligation for all E.U. Member States with the First Council Directive 67/227/EEC of 11 April 1967, on the harmonisation of legislation of Member States concerning turnover taxes, and with the 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.

At art. 2, Directive 67/228/EEC establishes that Member States shall apply the value added tax the supply of goods and the provision of services «*within the territory of the country*» and also to importations; at art. 3 it explains that «*'Territory of the country' means the territory in which the State concerned applies the value added tax; this territory shall, as a general rule, include the whole of the national territory, including territorial waters.*». The reserve «as a general rule» regards possible free zones of each Member State.

**24.** Within the Italian legal order, the Value Added Tax - VAT (*Imposta sul Valore Aggiunto - IVA*) is therefore applied by virtue of Decreto del Presidente della Repubblica del 26 ottobre 1972 n. 633 - Istituzione e disciplina dell'imposta sul valore aggiunto, e sue successive modificazioni // Decree of the President of the Italian

Republic No. 633 of 26 October 1972 n. 633 - Establishment and regulation of the Value Added Tax, and its amendments, which does also provide a definition of the territory in which that tax is applied:

a) at art. 1 – Taxable transactions: *«L'imposta sul valore aggiunto si applica sulle cessioni di beni e le prestazioni di servizi effettuate nel territorio dello Stato nell'esercizio di imprese o nell'esercizio di arti e professioni e sulle importazioni da chiunque effettuate.»* // «The Value Added Tax applies to the supply of goods and services that take place **within the territory of the Country** supplied in the carrying-out of arts, professions or business, as well as on all imports.»

b) at art. 7 – Territorial application of the tax – Definitions, punto 1a) it is explained that *«per "Stato" o "territorio dello Stato" si intende il territorio della Repubblica italiana, con esclusione dei comuni di Livigno e Campione d'Italia e delle acque italiane del Lago di Lugano»* // «the words "Country" and "territory of the Country" identify the **sovereign territory of the Italian Republic, but exclude the municipalities of Livigno and of Campione d'Italia as well as the Italian waters of Lake Lugano**», which are the only free zones within the sovereign territory of the Italian State.

25. The sovereign territory of the Italian Republic is the one declared *«one and indivisible»* at art. 5 of the Country's own Constitution in force which, at art. 10, conforms the Italian legal order to the generally recognized principles of international law; the Italian Constitution was approved by the Constituent Assembly on 27 December 1947 and came into force on 1 January 1948.

For this reason, the Constitution establishes that the borders of the Italian Republic are those that, on those dated, had already been consolidated with the ratifications, coming into force, and implementation of the Treaty of Peace of 10 February 1947, in force, under which Italy accepted and recognized the loss of the territories ceded to France, Yugoslavia, Albania, Greece, China, as well as of Albania, Libya, Eritrea, Somaliland, and of the Free Territory of Trieste.

Indeed, the Italian Constituent Assembly had authorized the ratification of the Treaty of Peace with its Law No. 811 of 2 August 1947, and the Treaty is in force since the deposit of ratifications, on 15 September 1947, as well as being implemented, fully and completely, in the Italian legal order since 16 September 1947 under Legislative Decree of the Provisional Head of State No. 1420 of 28 November 1947, which assigns it pre-constitutional primacy on Italian legislation in force and is itself ratified with Italian Law 3054/1952.

By virtue of its art. 10, which conforms the Italian legal order to the generally recognized principles of international law, the Constitution of the Italian Republic, in force since 1 January 1948, assigned a Constitutional rank also the pre-Constitutional obligation, established under Legislative Decree of the Provisional Head of State No. 1420/1947, to enforce the Treaty of Peace fully and completely, recognizing its primacy within the hierarchy of Italian sources of law, and this extends also to the consequent territorial changes.



The generally recognized principles of international law do indeed include the fundamental principles of compliance with the Treaties (*pacta sunt servanda*) as well as obligations established on this matter under the Charter of the United Nations and other international Conventions ratified and enforced in the Italian legal order since 1957, including the Vienna Convention on the Law of Treaties.

The meaning and legal effects of art. 10, first paragraph of the Italian Constitution were later extended to compliance with the European Union's own legal order, and were explained and detailed by the amendment, under Italian Constitutional Law No. 3/2001, of art. 117, first paragraph of the Italian Constitution, which bounds the exercise of legislative powers vested in the State and in the Regions to comply «with the Constitution and with the constraints deriving from EU legislation and international obligations», and its art. 120, second paragraph, which allows the Italian Government to substitute the bodies of the regions, metropolitan cities, provinces, or municipalities «if the latter fail to comply with international rules and treaties or EU legislation [...] regardless of the geographic borders of local authorities.»

26. Follows that, since 1948, a change in the Constitutional sovereign territory of the Italian Republic to include the present-day Free Territory of Trieste and its international Free Port in it would have required the President of the Italian Republic to ratify (art. 87 of the Italian Constitution), upon a law of authorization issued by the Italian Parliament (art. 80 of the Italian Constitution), a new multilateral agreement with all signatory States of the Treaty of Peace with Italy in order to either amend or make unenforceable its provisions on the matter (see. Vienna Convention on the Law of Treaties), and also a Constitution amendment (art. 138 of the Italian Constitution) to declare Trieste's annexation, also, since 1957, the procedure requires also a preliminary act of self-determination through a plebiscite, to take place under scrutiny of the United Nations.

To date (2018) none of those conditions occurred. Consequently, normative, administrative and judicial acts of Italian Authorities that claim or imply the persistence or re-establishment of Italian sovereignty over the Free Territory of Trieste after 15 September 1947 are unenforceable, being issued in breach of Constitutional, upper-ranking provisions that are also protected within the Italian legal order. This leads to an unresolvable logical and legal contradiction: it is impossible enforcing a legal system by the mean of its violation.

Note: Among the aforementioned political doctrinal claims mentioned (page 6) there are also attempts to interpret as laws annexing the Free Territory of Trieste to Italy either Italian Constitutional Law No.1 of 1963 - Special Statute of Region Friuli-Venezia Giulia, or Italian Law No. 73/1977 - ratification of the Italian-Yugoslav 1975 Treaty of Osimo. None of said interpretations have legal ground within the Italian legal order itself, since:

a) Italian Constitutional Law No. 1/1963 is not a revision or amendment of the Italian Constitution, rather, it is a law enforcing an original reservation of that Constitution (art. 116, first paragraph of the Italian Constitution), regarding only the adoption of the Special Statutes of the Autonomous Regions that were already established under art. 131 of the Italian Constitution.

Given this Constitutional framework, Region Friuli Venezia Giulia exists since 1 January 1948, and it includes the Italian provinces of Gorizia and of Udine (Pordenone was not separated from Udine until much later) and it must act «in accordance with the principles laid down in the Constitution» (former art. 115 of the Italian Constitution: «Legislative powers shall be vested in the State and the Regions in compliance with the Constitution and with the constraints deriving from EU legislation and international obligations.»), which do also define the territory of the State in compliance with international law.

Former art. 115 is reprised in the current arts. 114, second paragraph: «Municipalities, provinces, metropolitan cities and regions are autonomous entities having their own statutes, powers and functions in accordance with the principles laid down in the Constitution.» and art. 117 first paragraph: «Legislative powers shall be vested in the State and the Regions in compliance with the Constitution and with the constraints deriving from EU legislation and international obligations.»).

This means Italian Constitutional Law 1/1963 refers to those principles and Constitutional territory when recalling the previous establishment of that Autonomous Region «*within the unity of the Italian Republic, one and indivisible, on the bases of the principles of the Italian Constitution*».

On the other side, the Municipalities of the present-day Free Territory of Trieste were aggregated to the Region (which in the Italian legal order is an entity without its own sovereignty) only for the exercise «*In harmony with the Constitution, with the general principles of the State's legal order (...) and with the international obligations of the State*» (art. 4) of that part of the normative and administrative powers deriving from the special trusteeship mandate and vested in the Commissioner General for the Territory of Trieste (Decree of the President of the Italian Republic of 27 October 1954, without number), which corresponds with the ordinary power of the Region. This is why this special authority was transferred to a Commissioner in the Region under art. 70 of Italian Constitutional Law 1/1963, which is therefore included at its Title VIII, about “*Transitional and final provisions*”.

Under logics and law, it remains evident that this different administrative status and inclusion, in force, would not have been necessary or possible if Italian Constitutional Law 1/1963 could have annexed the present-day Free Territory of Trieste sub-entrusted to the temporary civil administration of the Italian Government.

Furthermore, Italian Constitutional Law 1/1963 itself, which in the Italian Republic had come into force upon its publication on Italian Official Gazette No. 29 of 1 February 1963, could only come into force in the present-day Free Territory of Trieste after being published on the Official Bulletin of the Commissioner General of the Italian Government for the Territory of Trieste No.7 of 11 March 1963, in the category of the regulatory measures enforced directly, without needing further adjustments or amendments, in the “parallel” legal order of the Free Territory (see expertise [document 6](#), point M, pages 48-50).

b) Italian Law No. 73/1977, instead, is an ordinary law that ratified and enforced an abnormal political agreement undersigned by Italy and Yugoslavia in 1975, with which the two Signatories committed to mutually recognize (arts. 1 and 2) a terrestrial and maritime frontier «*pour la partie non indiquée comme telle dans le Traité de paix du 10 février 1947.*» and provide a topographic description of it at Annexes I to IV of the same Convention without mentioning the Free Territory of Trieste, however, at art. 7 they specify that the 1954 Memorandum of Understanding (which entrusted the Governments of Italy and of Yugoslavia with the temporary civil administration of the then two zones of the Free Territory) shall cease to have effect only in the mutual, bilateral relations of those two States («*cesserent d'avoir effet dans les relations entre la République Italienne et la République Socialiste Fédérative de Yougoslavie*», (see expertise [document 6](#), point M, pages 56-59).

This is why the often misunderstood legal efficacy of that political agreement is limited to Italy and Yugoslavia's mutual, bilateral relations, and cannot affect international or domestic laws regarding the obligations already undertaken by the two States and by their Governments respect to the Free Territory of Trieste and respect to third States under the 1947 Treaty of Peace and under the quadrilateral 1954 Memorandum of Understanding, both in force (see: U.S. Department of State – Treaties in force on 1<sup>st</sup> January 2018).

**27. The legal system of the European Union** is in force since 1 January 1958, save previous agreements of its Member States which, therefore, rank higher than European laws, limits its Member State's legislative sovereignty (art. 249 TEC, now art. 288 TFEU) and bounds their domestic legislative system to apply Community Rules directly, as well as to enforce, with domestic measures, Community Directives.

In the Italian legal order, this limitation of sovereignty is allowed under art. 11 of the Constitution: «*Italy [...] agrees, on conditions of equality with other States, to the limitations of sovereignty that may be necessary to a world order ensuring peace and justice among the Nations. Italy promotes and encourages international organisations furthering such ends.*»

This means Community laws have been implemented in the Italian legal order with a rank second only to that of international obligations pursuant to art. 10 of the Italian Constitution, as is the 1947 Italian Peace Treaty.

**28.** Community laws regarding international obligations, but also tax and customs matters, make it impossible considering the Free Territory of Trieste and its international Free Port as part of the political and fiscal territory of both the European Union and Italy, because:

**a)** art. 234 of the Treaty establishing the European Economic Community (TEEC) of 25 March 1957, ratified and enforced in the Italian legal order with L. 1203/1957, rules that *«The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Treaty.»* This provision is repeated in the successive European Treaties, which are all enforced and implemented in the Italian legal order ratified and implemented in the Italian legal order.

Therefore, the E.U. and its Member States, including Italy, are bound to recognize and act accordingly to the prevalence of the rights and obligations deriving from the Treaty of Peace between the Allied and Associated Powers and Italy signed at Paris on 10 February 1947 on Community Law also in relations with third States, including the Free Territory of Trieste and also respect to rights on its international Free Port prevail.

Said rights and obligations include compliance with the international instruments that enforce the Treaty of Peace with Italy, including agreements of State between the Italian Government and the first provisional Government of the present-day Free Territory of Trieste (see the agreement on the supply of currency approved by Italy with Decree of the President of the Italian Republic 1630/1948) and the quadrilateral 1954 Memorandum of Understanding under which the temporary civil administration of the present-day Free Territory is sub-entrusted to the Italian Government.

This means the multilateral 1947 Treaty of Peace with Italy does directly bound fifteen current E.U. Member States as either signatories of that Treaty (Italy, France, the United Kingdom, Belgium, Greece, Poland), their successors (Czechia, Slovakia, Slovenia, Croatia), or as signatories of Treaties that bound them to respect it (Hungary, Romania, Bulgaria, and Finland in 1947, Austria in 1955). Also, France is the Depositary of that Treaty with the powers set forth at art. 77 of the Vienna Convention on the Law of Treaties.

Fifteen current E.U. Member States (Austria, Belgium, Denmark, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, the United Kingdom, the German Federal Republic, Spain, Sweden) are also signatories, together with the present-day Free Territory of Trieste, Switzerland, Iceland, Norway, Turkey and the United States of America, of the international agreements that, from 1948 to 1953, established the first European organizations (ERP, OEEC, EPU, ECMT, ICEM, etc.) recognizing the present-day Free Territory of Trieste as a Member State.

**b)** the present-day Free Territory of Trieste sub-entrusted to the temporary civil administration of the Italian Government is not a Member State of the European Union, and does not have *Stabilisation and Association Agreements* or other legal agreements and obligations with it, also, its international Free Port is not a port of the European Union.

This is due to the administering Italian Government not taking care to conclude specific agreements between the administered Free Territory of Trieste and the authorities of the European Community.

**c)** this is why Regulations EEC No. 1496/68, EC No. 2151/84, EU No. 450/2008, EU 952/2013 and the Special report No. 2/93 of the European Court of Auditors define the fiscal territory of the Community and its custom territory with own lists of national territories of E.U. Member States and of their free zones do not include the Free Territory of Trieste and its international Free Port as either independent entities or as parts of the Italian and European customary or duty-free territory.

Indeed, those lists identify Italy's customs and fiscal territory, as well as its free zones, as *«the territory of the Italian Republic, except the municipalities of Livigno and Campione d'Italia and the national waters of Lake Lugano which are between the bank and the political frontier of the area between Ponte Tresa and Porto Ceresio»*, as the only free zones in the territory of the Italian State.

**d)** For this reason, during the approval of Council Directive 69/75/EEC of 4 March 1969, on the harmonisation of provisions laid down by law, regulation or administrative action relating to free zones the European Council, the European Commission and the Italian delegations recognized, with a Statement for minutes, the different, pre- and extra-E.U. legal *status* of the international Free Port of the present-day Free Territory of Trieste, sub-entrusted to the Italian Government's temporary civil administration.

In facts, with this Statement for minutes, the European Council and the European Commission recognize that *«Following communication from the Italian delegation and in regard to Art. 234»* TEEC [see above, point a)] *«1. the Free Port of Trieste has been established under Annex VIII of the Treaty of Peace between Italy and the Allied and Associated Powers signed in Paris on 10 February 1947, and has been the subject of the Memorandum of Understanding of London of 5 October, 1954»*.

In the Italian legal order, Council Directive 69/75/EEC is implemented under DPR 1133/69, and the European Council and of the European Commission Statement is recalled in the Note No. 3722/3522 issued by the Italian Ministry of Finances on 11 January 1991 to confirm, once again, that Italy's international obligations on this matter are fully in force.

**e)** therefore, the definition of the national and fiscal territory of the Italian State and of its Free Zones provided by Community law on the matter is also implemented in the European Directives regarding the improvement of the VAT system applied in the Italian legal system under the Decree of the President of the Italian Republic No. 633/1972, which establishes the tax, and in particular:

– of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, Title III – Territorial application, art. 3: «*1. For the purposes of this Directive, the 'territory of the country' shall be the area of application of the Treaty establishing the European Economic Community as stipulated in respect of each Member State in Article 227. - 2. The following territories of individual Member States shall be excluded from the 'territory of the country': [...]* Livigno, Campione d'Italia, the Italian waters of Lake Lugano»;

– of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, Title II – Territorial scope, art. 6 point 2: «*This Directive shall not apply to the following territories not forming part of the customs territory of the Community: [...]* e) Livigno; f) Campione d'Italia; g) the Italian waters of Lake Lugano».

**29.** The exclusion of the present-day Free Territory of Trieste and of its international Free Port from the fiscal territory and free zones of the Italian State and of the E.U. is confirmed once again in the legal system of the Italian Republic with the laws that implement European legal instruments regarding custom franchises and facilitations.

In facts, the implementation of those legal instruments in the Italian legal order requires to clarify that the legal *status* of the international Free Port of the present-day Free Territory of Trieste, established under the 1947 Treaty of Peace with Italy and entrusted (1954) to the temporary civil administration of the Italian Government, is outside the jurisdiction of the European Union.

See the Decree of the President of the Italian Republic No. 1133 of 30 December 1969 – Enforcement of Directives 69/73/EEC, 69/74/EEC and 69/75/EEC adopted by the Council of the European Communities, regarding the harmonization of provisions laid down by law, regulation or administrative action relating to inward processing arrangements [suspension of refund of duties or of the VAT on imports - a/n], customs warehousing procedure and free zones:

«*Il Presidente della Repubblica - Visto il Trattato che istituisce la Comunità Economica Europea, ratificato con Legge 14 ottobre 1957, n. 1203; [...]; Visto il Decreto legislativo del Capo Provvisorio dello Stato 28 novembre 1947, n. 1430, che ha reso esecutivo il Trattato di Pace fra l'Italia e le Potenze Alleate e Associate, firmato a Parigi il 10 febbraio 1947 [...]; Vista le necessità di adottare norme per adeguare la legislazione vigente alle citate direttive numeri 69/73/CEE, 69/74/CEE e 69/75/CEE; Decreta: [...] Articolo 32: per i punti franchi compresi nella zona del porto franco di Trieste di cui all'Allegato VIII al Trattato di Pace fra l'Italia e le Potenze Alleate e Associate, firmato a Parigi il 10 febbraio 1947, e reso esecutivo con Decreto legislativo del Capo Provvisorio dello Stato 28 novembre 1947, n. 1430, restano ferme, in deroga a quanto stabilito nei precedenti articoli, le vigenti disposizioni più favorevoli.*»

«*The President of the Italian Republic - In view of the Treaty establishing the European Economic Community, ratified with Law No.1957 of 14 October 1957; [...];*

In view of Legislative Decree of the Provisional Head of State No.1430 of 28 November 1947, which enforced the Treaty of Peace with Italy between Italy and the Allied and Associated Powers, signed in Paris on 10 February 1947 [...]; In view of necessity to adjust legislation in force to European Directives 69/73/EEC, 69/74/EEC, and 69/75/EEC;

Rules: [...] Article 32: as for the free ones included within the Free Port of Trieste referred at Annex VIII of the Treaty of Peace with Italy between Italy and the Allied and Associated Powers, signed in Paris on 10 February 1947 and enforced in the Italian legal order with Legislative Decree of the Provisional Head of State No.1430 of 28 November 1947, the more favorable provisions in force shall remain unchanged by derogation from the preceding clauses».

**30.** Art. 79 of the ECSC Treaty (1951), repeated in all successive European Treaties, which are all implemented in the Italian legal order, makes it possible applying European Treaties also to European territories for whose external relations a signatory State is responsible (see Expertise SG/2017/LC/M-V-en, document 6, point K, pages 41-45).

As recalled above, the Free Territory of Trieste is not a Member State of the European Union, and does not have *Stabilisation and Association Agreements* or other legal agreements and obligations with it. Yet, its provisional administration is sub-entrusted to the Italian Government, which therefore vested with a valid legal title to exercise its representation in foreign relations through the diplomatic bodies of the Italian Republic.

Furthermore, when it comes to the present-day Free Territory of Trieste, the provisional enforcement of European Treaties can take place only if they are compatible with its special legal status, established under the previous and prevalent norms of the 1947 Treaty of Peace with Italy and of the 1954 Memorandum of Understanding, which provide the rules for the exercise of the temporary civil administration sub-entrusted to the Italian Government.

In particular, it is the provisions of the Treaty of Peace regarding the sovereignty and independence of the Free Territory of Trieste (art. 21) and of its general legal order (Annex VI - Permanent Statute and art. 2 fourth paragraph of Annex VII - Provisional Regime) which, contrarily to the Italian Constitution, does not allow to limit sovereignty in favor of international organizations.

Art. 24, point 3 of Annex VI – Permanent statute, establishes exactly that «*The Free Territory may be or become a party to international conventions or become a member of international organizations provided the aim of such conventions or organizations is to settle economic, technical, cultural, social or health questions.*»

Note. The Permanent Statute of the Free Territory of Trieste is in force since 15 September 1947, when it came in force together with the Instrument for the Provisional Regime of the Free Territory of Trieste which, at art.2, paragraph IV, establishes that all compatible norms of the Permanent Statute be enforced during the Provisional Regime as well.

For these reasons, also the application of the Community Laws establishing Value Added Taxes in the administered Free Territory of Trieste would require the administering Italian Government to preliminary assessment its compatibility, and only

a positive outcome would make it possible establishing a separate regulation on VAT, which should be different from that of the Italian State. Indeed, the State where the tax would be levied, the legal title to do so, and the basis for the calculation of the VAT's rates would differ, and could not be established according to the budget deficits of another State, as is the Italian Republic. However, to date (2018) the Italian Government has not taken care of this assessment yet.

**31.** The administering Italian Government and its Ministry of Economy and Finances, both defendants in this proceeding, are absolutely aware that the Italian legal system fully implements the provisions, in force, of the 1947 Treaty of Peace with Italy regarding the present-day Free Territory of Trieste and its provisional regime of Government, as they know to exercise its temporary civil administration since 1954, when the Italian Government was sub-entrusted with that under the Memorandum of Understanding regarding the Free Territory of Trieste.

This awareness is perfectly demonstrated by the Inter-ministerial Decree of 13 July 2017 (without number) regarding the administrative organization for the management of the free zones of the Free Port of Trieste.

Indeed, the decree was issued by the Italian Ministry of Infrastructures and Transport together with The Italian Ministry of Economy and Finance in compliance with of article 6, paragraph 12, of the Italian Law No. 84 of 28 January 1994 and of the «*Memorandum of Understanding of London of 5 October 1954 between the Governments of Italy, of the United Kingdom, of the United States, and of the Socialist Federal Republic of Yugoslavia regarding the regime of temporary administration of the Free Territory of Trieste, envisioned at Annex VII of the Treaty of Peace between Italy and the Allied and Associated Powers, signed in Paris on 10 January 1947*».

At the same time, when it comes to this matter, the Parliament of the Italian Republic confirmed itself that, since 1947, the «*Treaty of Peace between Italy and the Allied and Associated Powers signed at Paris on 10 February 1947, enforced with Legislative Decree of the Provisional Head of State No. 1430 of 28 November 1947, ratified with Italian Law No. 3054 of 25 November 1952*» is in full force within the Italian legal order with article 1, paragraph 66, letter b. of Italian Law No. 205/2017.

**32.** This ultimately confirms also the reasons why the Italian and the European legal systems in force do not allow to apply the VAT of the Italian State on the supply of goods and services, as well as on imports that take place within the present-day Free Territory of Trieste, which is sub-entrusted to the temporary civil administration of the Italian Government under a special trusteeship mandate by the Governments of the United States of America and of the United Kingdom, as primary administering Governments on behalf of the United Nations Security Council.

**33.** The application of the Italian VAT within the administered Free Territory of Trieste constitutes a simultaneous breach of the Free Territory's own legal order, of the legal order of the Italian Republic, and of that of the European Union, all of which the sub-administering Italian Government has the duty to respect and enforce.

**34.** By breaching those three legal systems - of Italy, of the European Union, and of the administered Free Territory - the application of the Italian VAT to the Free Territory of Trieste gives rise, on all three levels, to the aforementioned, unresolvable logical and legal contradiction: it is impossible enforcing a legal system by the mean of its violation.

**35.** To adhere to the current legal systems in force of the Italian Republic, of the European Union, and of the administered Free Territory of Trieste, the supply of goods and services, as well as on imports that take place within the present-day Free Territory of Trieste sub-entrusted to the temporary civil administration of the Italian Government should therefore be clearly marked as follows:

*“Non imponibile IVA ex artt. 1 e 7.1a) DPR 633/1972; DlgsCPS 1430/1947 e L. 3054/1952 (in esecuzione del Trattato di Pace con l'Italia del 10 febbraio 1947, art. 21 ed Allegato X, art. 1); L. 1203/1957 (b, art. 234); L. 57/2005 (Articolo III-435).”*

*“Not subject to VAT under arts. 1 and 7.1a) of the Decree of the President of the Italian Republic 633/1972, Legislative Decree of the Provisional Head of State 1430/1947, and Italian Law 3054/1952 (in compliance with art. 21 and Annex X, art. 1 of the Treaty of Peace with Italy of 10 February 1947); under Italian Law 1203/1957 (b, art. 234), and under Italian Law 57/2005 (Article III-435)”.*

**36.** Consequently, the direct and indirect damages caused by the illegitimate application of the Italian VAT in the present-day Free Territory of Trieste, the temporary civil administration of which is sub-entrusted to the Italian Government, are extremely relevant, are evident *in re ipsa*, and their impact on the whole economic and social system of the administered Free Territory and for the enterprises of others States is virtually incalculable.

Indeed, said damages consist in the unfair direct and indirect increasing of the price of goods, services, and duties on imports that take place within the Free Territory of Trieste, and this affects all public and private subjects who purchase, sell, or import goods and services, and this results in the breach of their rights revolving on the enjoyment to be exempted from it, and to enjoy the levels of employment and welfare offered by the legal status of the Free Territory of Trieste and of its international Free Port.

And all of this results in an unfair limitation or prevention of the right of those people or enterprises from enjoying the general and special economic freedoms and social conditions that are granted and established by said legal *status*.

The extent of the economic damages caused from the breach of those rights is also increasing as worsening the particular and economic crisis conditions that the same breach is causing and extending within the Free Territory itself, resulting in a vicious and ruinous circle that can only be stopped and reverted into a virtuous circle by re-establishing the rule of law on this matter.



**37.** The resulting damages would also affect public administration under different respects, since:

a) save for good faith exemptions, they invest Italian public officers in charge of the fiscal administration as well as serving in tax, administrative, and ordinary Courts with the liabilities established at article 28 of the Italian Constitution: «*Officials of the State or public agencies shall be directly responsible under criminal, civil, and administrative law for acts committed in violation of rights. In such cases, civil liability shall extend to the State and to such public agency.*», as well as at art. 40, second paragraph, Italian Criminal Code, establishing that «*Where there is a legal obligation to prevent an event, failure to prevent it shall be equivalent to causing it*»;

b) pending this legal action for determination, any action of the summoned parties to sanction or to force the collection or to enforce the recovery of the Value Added Tax would give rise to that liability, due to that tax being inapplicable in the territory in question under upper-ranking laws in force;

c) this situation, in case it proves impossible to settle by the parties involved with a proper negotiation or legal decision, would make it very hard for the Italian Government to reconcile with the special trusteeship mandate sub-entrusted to it, and not yet questioned before the competent international authorities.

**38.** Finally, it is our duty making it plain that the illegitimate application of the Italian VAT in the present-day Free Territory of Trieste fuels a complex entanglement of impositions, collections and offsets, which covers all from the assignment of the VAT identification numbers, the Accounting of VAT transactions, all up to the final user and payer.

The reasonable and efficient solution to the dispute, therefore, requires more than just the suspension of the collection of the Italian VAT, but also the prompt adoption of an effective practice of reductions and refunds for the pending VAT transactions. Both measures can and must be implemented by the tax authorities concerned, also as means of self-defense.

## **II. Jurisdictional competence**

**39.** The subject of this lawsuit is clearly outside the nature and legal competences of Tax Courts, proving incompatible with it because, in the Italian legal order:

a) contrarily to ordinary Courts and other honorary magistrates, the Judges serving in Tax Courts are honorary magistrates directly appointed by the Ministry of Economy and Finances, and the Minister in Office receives an annual report about the implementation of Tax Justice. The Italian Ministry of Economy and Finances is one of the parties summoned before Court in this proceeding, represent by the Minister in Office himself;

b) the question brought before Court with this legal action is to assess, with a judicial review, that under both European and Italian laws in force the *IVA - Imposta sul Valore Aggiunto* (VAT - Value Added Tax) of the Italian State cannot be levied on the supply of

goods and services, as well as on imports that take place in the present-day Free Territory of Trieste, the temporary civil administration of which is sub-entrusted to the responsibility of the Italian Government.

This matter is not subject to the provisions of Italian Legislative Decree No. 546 of 31 December 1992 because they limit, under penalty of exclusion, the jurisdiction of Tax Courts to appeals against single, impugnable acts (art. 4), and the possible parties to a list of subjects (art. 10) which do not include the Italian Government and its Ministries.

This means it is Italian Legislative Decree No. 546/1992 itself to confirm once again that Tax Courts lack jurisdiction on this matter, and therefore confirms the full and perfect jurisdiction of the Ordinary Court correctly addressed by the complainants. Otherwise, there would be no competent Court to decide on this matter.

Furthermore, it is confirmed by the general principle about the competences and jurisdiction of Ordinary Courts that, as established at art. 2 of Italian Law No. 2218/1865 «all questions revolving on a civil or political right, regardless to how it concerns public administration, and whenever the executive or administrative authorities issue measures about it», which is confirmed to be in full force at art. 1, paragraph 1 of Italian Legislative Decree No. 179 of 1 December 2009 and is furthermore confirmed in the dedicated art. 6 of the same law.

In addition, there is no doubt that this case falls under the conditions of interest to bring proceedings described by the Italian Court of Cassation, I Civil Section, in its recent judgment No. 16162/2015: «the one acting in an action for determination, including the demonstration of a non-infringement, must have a factual and actual, legally relevant legitimate interest that can only be achieved by an intervention of the Court, by removing a state of objective legal uncertainty regarding the existence of the legal relation put forward with the legal action».

**40.** This legal action in front of an Italian magistrate serving their duties in the present-day Free Territory of Trieste, the temporary civil administration of which is sub-entrusted to the Italian Government by the Governments of the United States of America and of Great Britain and Northern Ireland in their role of primary administering Governments on behalf of the United Nations Security Council, is a legitimate action because, by requesting the verification of domestic law, it reasonably avoids, although does not prevent, the activation of the safeguards established for the Free Territory of Trieste under international law.

### **III. Rights and legitimate interests represented and brought before Court**

**41.** This legal action for determination is based on the right and legitimate interest of the claimants to obtain, by an intervention of the Court, the end of an effective state of legal uncertainty regarding the existence of the legal relation brought in the proceeding, because the defendants, by illegitimately collecting the Italian VAT within the present-day Free Territory of Trieste, are disregarding that, and this causes severe and unfair damages to all citizens and residents, to companies, to professionals, to investors, but

also to public and private bodies, and consequently, to the whole economic and social system of the Free Territory itself.

42. As for the current complainants, the International Provisional Representative of the Free Territory of Trieste - I.P.R. F.T.T. is an agency that acts to represent and defend before all authorities, including diplomatic and judicial bodies, the rights and the legitimate interests of the citizens *de jure*, residents, enterprises and corporations of the Free Territory and of other States; Paolo G. Parovel himself is a citizen of the present-day Free Territory of Trieste entitled to act before Court and damaged by the state of things described above.

43. This means the present legal action for the determination of the non-applicability, under both Italian and E.U. legislation in force, of the Value Added Tax of the Italian State to the supply of goods and services, as well as on imports that take in the present-day Free Territory of Trieste and in its international Free Port, the temporary civil administration of which is sub-entrusted to the Italian Government by the Governments of the United States of America and of Great Britain and Northern Ireland on behalf of the United Nations Security Council, has both legal and factual ground.

44. It is therefore evident and proved, *in re ipsa*, that the ceasing of the economic, moral, social, and political damages caused by the illegitimate application of the Italian VAT in the present-day the Free Territory of Trieste is an individual and collective right and legitimate interest of the citizens, residents, public and private enterprises, as well as of rights of all other legal subjects of the present-day Free Territory of Trieste and also of the national and international subjects that are working or have the right to work in the International Free Port of the Free Territory of Trieste enjoying its commercial, productive, financial, and fiscal freedoms.

45. Thus, having proved the *fumus boni juris* and the overall relevance of the unfair damages yet to be remediated, the same legal and factual grounds legitimately requesting the Court to suspend, whilst the proceedings are pending and in case it is not the defendants to do so in self-defense, all procedures for charging and collecting the VAT of the Italian State within the present-day Free Territory of Trieste, administered under a special trusteeship mandate sub-entrusted by the Italian Government, in addition, the defendants shall take care to define the treatment of pending VAT transactions.

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In view of this the International Provisional Representative of the Free Territory of Trieste – I.P.R. F.T.T. [*Rappresentanza Internazionale Provvisoria del Territorio Libero di Trieste – Začasno Mednarodno Predstavništvo Svobodnega Tržaškega Ozemlja – Provisorische Internationale Vertretung des Freien Territoriums Triest*], in person of its Secretary General and legal representative Paolo G. Parovel, and Paolo G. Parovel, entitled, represented and defended *ut supra*,

#### SUMMON:

1) the **Italian Government**, represented by the President of the Council of Ministers *pro tempore*;

2) the **Ministry of Economy and Finance**, represented by the Minister *pro tempore*, in the role of Ministry of the Government of the Italian Republic;

3) the **Tax Revenue Office**, represented by the Director *pro tempore*

4) the **Customs and Monopolies Agency**, represented by the Director *pro tempore*;

are invited to appear before the Court of Trieste, at its site in *Palazzo di Giustizia*, Foro Ulpiano 1, at the hearing to be held on **11 March 2018, at 9.00AM**, before the Judge to be nominated, under and in the manners prescribed by article 166 of the Italian Code of Civil Procedure within 20 days before the first hearing set with this act, and reminding them that failure to appear within that term gives raise to the disqualifications at arts. 38 and 167 of the Italian Code of Civil Procedure, as well as warning them that in case of failure to appear the Court is proceed in default of appearance for the Court itself to uphold the following

### **CONCLUSIONS:**

The applicant claims that the Court of Trieste should, *contrariis reiectis*:

#### **1) AS A PRELIMINARY AND PRECAUTIONARY MEASURE**

Whilst the proceedings are pending, and in case the addressed authorities of the Italian Republic have not already taken care of that in self-defense, to order the suspension of the application and collection of the VAT of the Italian State on the supply of goods and services, as well as on imports that take place in the present-day Free Territory of Trieste, the temporary civil administration of which it sub-entrusted to the Italian Government by the Governments of the United States of America and of Great Britain and Northern Ireland, as primary administering Governments on behalf of the United Nations Security Council. The defendants shall have the responsibility to define the treatment of pending VAT transactions, either similarly or differently from the already exiting exemptions that apply to the Italian fiscal exclaves of Livigno, di Campione d'Italia and the Italian waters of Lake Lugano.

#### **2) IN THE MERIT:**

To preliminarily assess:

a) that, to this date as on the date of the judgment, the following legal instruments of the Italian Legal order are in force: Legislative Decree of the Provisional Head of State No. 1430/1947; Law No. 3054/1952; Decree of the President of the Republic October 27th, 1954, Constitutional Law No. 1/1963, arts. 1, 2, 4, 70, Italian Law.1203/1957; Italian Law 57/2005;

b) the fact that in the Italian legal order, those legal instruments in force are also the highest-ranking within the hierarchy of sources of law by virtue of an autonomous, pre-constitutional norm (Legislative Decree of the Provisional Head of State No.

1430/1947, ratified under Law No. 3054/1952) and/or under successive Constitutional principles and norms (Constitution of the Italian Republic, arts. 10 first paragraph, 117 first paragraph, 120, second paragraph; Constitutional Law No. 1/1963, art. 4);

c) the fact that the letter, legal force and rank of those legal instruments does not allow to regard the present-day Free Territory of Trieste as part of the sovereign territory of the Italian Republic, instead, its temporary civil administration is sub-entrusted by the Governments of the United States of America and of the United Kingdom of Great Britain and Northern Ireland, for their role of primary administering Governments on behalf of the United Nations, to the Italian Government that exercises it to date;

d) the fact that this legal situation is confirmed within the European Union's Legal Order, to which the Italian legal order is bound pursuant to laws in force,

to ascertain and declare:

that the Italian legal order in force does not allow to apply the Value Added Tax - VAT of the Italian State on the supply of goods and services, as well as on imports that take place in the present-day Free Territory of Trieste, the temporary civil administration of which it sub-entrusted with a special trusteeship mandate to the Italian Government by the Governments of the United States of America and of Great Britain and Northern Ireland, as primary administering Governments on behalf of the United Nations Security Council.

Attorney and other legal fees to be refund under the law.

The International Provisional Representative of the Free Territory of Trieste – I.P.R. F.T.T. and all other international subjects concerned fully reserve the right to address the authorities and recall the procedures of international law identified and established under the Treaty of Peace with Italy of 10 February 1947 or with other international conventions, to impugn and to dispute the same alleged violations, or other connected, at any moment in case the time, development, or outcomes of the present legal action or of possible negotiations on the matter prove to be inefficacious to protect the legitimate interests represented.

**Giving also notice to the summoned parties that they can reach an agreement with the claimants to settle the crisis; or they can suggest an action plan with the support of a settlement body or of a Court-appointed professional.**

**ANNEXES:**

*(to the original legal document)*

1 – Authentic texts of the Instrument of constitution of the International Provisional Representative of the Free Territory of Trieste dated September 16th, 2015, in Italian and in English.

2 – Self-declaration of Paolo G. Parovel's citizenship, with annexes.

3 – Paolo G. Parovel's Italian Fiscal Code.

4 – Paolo G. Parovel’s Occupational records from the Chamber of Commerce, Industry, Craft Trades and Agriculture of Trieste.

5 – Paolo G. Parovel’s membership card to the Italian Association of Journalists.

6 – Italian version of expertise prot. SG/2017/LC/M-V by the I.P.R. F.T.T. Law Commission, with its own annexes as listed within the same document.

7 – Writ of Summon in legal action for determination No. 1757/2017 regarding taxation.

8 – Direct notification of expertise SG/2017/LC/M-V-it.

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It is noted that the value of this claim cannot be defined; therefore the unique contribution is set in EUR 518,00.

Trieste, 20 November 2018

*[signatures: omissis]*

**MANDATES:**

*[omitted in this English translation]*

**ACKNOWLEDGEMENTS OF RECEIPT:**

*[omitted in this English translation]*