

# 61976J0051

Judgment of the Court of 1 February 1977. - *Verbond van Nederlandse Ondernemingen v Inspecteur der Invoerrechten en Accijnzen*. - Reference for a preliminary ruling: Hoge Raad - Netherlands. - Capital goods. - Case 51-76.

*European Court reports 1977 Page 00113*

*Greek special edition Page 00055*

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## Keywords

1 . *TURNOVER TAX - NATIONAL LEGISLATION - HARMONIZATION - CAPITAL GOODS - CONCEPT - POWERS OF DEFINITION OF THE MEMBER STATES*

( *SECOND COUNCIL DIRECTIVE OF 11 APRIL 1967 ON THE HARMONIZATION OF LEGISLATION OF MEMBER STATES , ARTICLE 17* )

2 . *MEASURES ADOPTED BY AN INSTITUTION - DIRECT EFFECT - DIRECTIVES*

( *EEC TREATY , ARTICLE 189* )

3 . *TURNOVER TAX - LEGISLATION OF THE MEMBER STATES - HARMONIZATION - GOODS USED FOR THE PURPOSES OF AN UNDERTAKING - NOT IN THE NATURE OF CAPITAL GOODS - VALUE-ADDED TAX - IMMEDIATE DEDUCTION - RIGHT - PROTECTION BY THE NATIONAL COURT*

( *SECOND COUNCIL DIRECTIVE OF 11 APRIL 1967 ON THE HARMONIZATION OF LEGISLATION OF MEMBER STATES , ARTICLES 11 AND 17* )

## Summary

1 . *THE WORDS ' CAPITAL GOODS ' APPEARING IN THE THIRD INDENT OF ARTICLE 17 OF THE SECOND COUNCIL DIRECTIVE OF 11 APRIL 1967 , ON THE HARMONIZATION OF LEGIS- LATION OF MEMBER STATES CONCERNING TURNOVER TAXES , MEAN GOODS*

USED FOR THE PURPOSES OF SOME BUSINESS ACTIVITY AND DISTINGUISHABLE BY THEIR DURABLE NATURE AND THEIR VALUE AND SUCH THAT THE ACQUISITION COSTS ARE NOT NORMALLY TREATED AS CURRENT EXPENDITURE , BUT ARE WRITTEN OFF OVER SEVERAL YEARS . THE MEMBER STATES HAVE A CERTAIN MARGIN OF DISCRETION AS REGARDS THE REQUIRE- MENTS WHICH MUST BE SATISFIED CONCERN- ING THE DURABILITY AND VALUE OF THE GOODS , TOGETHER WITH THE RULES APPLICABLE FOR WRITING OFF , PROVIDED THAT THEY PAY DUE REGARD TO THE EXISTENCE OF AN ESSENTIAL DIFFERENCE BETWEEN CAPITAL GOODS AND THE OTHER GOODS USED IN THE MANAGEMENT AND IN THE DAY TO DAY RUNNING OF UNDERTAKINGS . 2 . IT WOULD BE INCOMPATIBLE WITH THE BINDING EFFECT ATTRIBUTED TO A DIRECTIVE BY ARTICLE 189 TO EXCLUDE , IN PRINCIPLE , THE POSSIBILITY THAT THE OBLIGATION WHICH IT IMPOSES MAY BE INVOKED BY THOSE CONCERNED . IN PARTICULAR , WHERE THE COMMUNITY AUTHORITIES HAVE , BY DIRECTIVE , IMPOSED ON MEMBER STATES THE OBLIGATION TO PURSUE A PARTICULAR COURSE OF CONDUCT , THE USEFUL EFFECT OF SUCH AN ACT WOULD BE WEAKENED IF INDIVIDUALS WERE PREVENTED FROM RELYING ON IT BEFORE THEIR NATIONAL COURT AND IF THE LATTER WERE PREVENTED FROM TAKING IT INTO CONSIDERATION AS AN ELEMENT OF COMMUNITY LAW . THIS IS ESPECIALLY SO WHEN THE INDIVIDUAL INVOKES A PROVISION OF A DIRECTIVE BEFORE A NATIONAL COURT IN ORDER THAT THE LATTER SHALL RULE WHETHER THE COMPETENT NATIONAL AUTHORITIES , IN EXERCISING THE CHOICE WHICH IS LEFT TO THEM AS TO THE FORM AND THE METHODS FOR IMPLEMENTING THE DIRECTIVE , HAVE KEPT WITHIN THE LIMITS AS TO THEIR DISCRETION SET OUT IN THE DIRECTIVE .

3 . IN THE CASE OF GOODS PURCHASED IN 1972 AND INTENDED TO BE USED FOR THE PURPOSES OF THE UNDERTAKING WHICH DO NOT BELONG TO THE CATEGORY OF CAPITAL GOODS WITHIN THE MEANING OF ARTICLE 17 OF THE DIRECTIVE , IT IS THE DUTY OF THE NATIONAL COURT BEFORE WHICH THE RULE AS TO IMMEDIATE DEDUCTION SET OUT IN ARTICLE 11 OF THE DIRECTIVE IS INVOKED TO TAKE THOSE FACTS INTO ACCOUNT IN SO FAR AS A NATIONAL IMPLEMENTING MEASURE FALLS OUTSIDE THE LIMITS OF THE MARGIN OF THE DISCRETION LEFT TO THE MEMBER STATES .

## **Parties**

IN CASE 51/76

REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE HOGE RAAD ( SUPREME COURT ) OF THE NETHERLANDS FOR A PRELIMINARY RULING IN THE ACTION PENDING BEFORE THAT COURT BETWEEN

VERBOND VAN NEDERLANDSE ONDERNEMINGEN ( FEDERATION OF UNDERTAKINGS OF THE NETHERLANDS ), THE HAGUE ,

AND

INSPECTEUR DER INVOERRECHTEN EN ACCIJNZEN ( INSPECTOR OF CUSTOMS AND EXCISE , THE HAGUE ,

## **Subject of the case**

ON THE INTERPRETATION OF ARTICLES 11 AND 17 OF THE SECOND COUNCIL DIRECTIVE ( 67/228/EEC ) OF 11 APRIL 1967 ON THE HARMONIZATION OF LEGISLATION OF MEMBER STATES CONCERNING TURNOVER TAXES - STRUCTURE AND PROCEDURES FOR APPLICATION OF THE COMMON SYSTEM OF VALUE-ADDED TAX ( OJ ENGLISH SPECIAL EDITION 1967 , P . 16 ),

## Grounds

1 BY ORDER OF 9 JUNE 1976 , WHICH REACHED THE COURT ON THE 18TH OF THAT MONTH , THE HOGE RAAD ( SUPREME COURT ) OF THE NETHERLANDS HAS REFERRED FOR A PRELIMINARY RULING UNDER ARTICLE 177 OF THE EEC TREATY THREE QUESTIONS ON THE INTERPRETATION OF CERTAIN PROVISIONS OF THE SECOND COUNCIL DIRECTIVE OF 11 APRIL 1967 ON THE HARMONIZATION OF LEGISLATION OF MEMBER STATES CONCERNING TURNOVER TAXES - STRUCTURE AND PROCEDURES FOR APPLICATION OF THE COMMON SYSTEM OF VALUE-ADDED TAX ( OJ ENGLISH SPECIAL EDITION 1967 , P . 16 ).

2 THOSE QUESTIONS HAVE BEEN REFERRED IN RESPECT OF A DISPUTE IN WHICH A FEDERATION OF UNDERTAKINGS , WHICH IS SUBJECT TO NETHERLANDS LEGISLATION ON TURNOVER TAX , IS CONTESTING A DECISION ADOPTED BY THE INSPECTOR OF CUSTOMS AND EXCISE WHICH SEEKS TO LIMIT THE RIGHT TO DEDUCT TURNOVER TAX ON CERTAIN OBJECTS ACQUIRED BY THE FEDERATION AND USED BY IT AS OFFICE SUPPLIES .

3 ARTICLE 11 ( 1 ) OF THE DIRECTIVE PROVIDES THAT WHERE GOODS AND SERVICES ARE USED FOR THE PURPOSES OF HIS UNDERTAKING , THE TAXABLE PERSON SHALL BE AUTHORIZED TO DEDUCT FROM THE TAX FOR WHICH HE IS LIABLE , INTER ALIA , VALUE-ADDED TAX INVOICED TO HIM IN RESPECT OF GOODS SUPPLIED TO HIM OR IN RESPECT OF SERVICES RENDERED TO HIM .

4 THAT DEDUCTION SYSTEM , HOWEVER , IS SUBJECT TO EXCEPTIONS LAID DOWN BY OTHER PROVISIONS OF THE DIRECTIVE WHICH ALLOW THE MEMBER STATES TO MAKE EXCEPTIONS TO IT IN SPECIFICALLY DEFINED CASES AND WITHIN CLEARLY STATED LIMITS .

5 THOSE EXCEPTIONS INCLUDE CERTAIN PROVISIONS CONCERNING CAPITAL GOODS , PARTICULARLY ARTICLE 17 , WHICH IS IN ISSUE IN THIS CASE .

6 THE THIRD INDENT OF THE FIRST PARAGRAPH OF THAT ARTICLE PROVIDES THAT THE MEMBER STATES MAY EXCLUDE IN WHOLE OR IN PART , DURING A CERTAIN TRANSITIONAL PERIOD , CAPITAL GOODS FROM THE DEDUCTION SYSTEM PROVIDED FOR IN ARTICLE 11 .

7 IN APPLICATION OF THAT RELIEVING PROVISION , THE NETHERLANDS LAW ON TURNOVER TAX LAYS DOWN TRANSITIONAL PROVISIONS WHEREBY , FOR THE YEAR 1972 , ONLY 67 % OF THE TAX ON GOODS INTENDED TO BE USED BY THE TRADER AS ' BUSINESS ASSETS ' MAY BE DEDUCTED .

8 THE FEDERATION CLAIMS THAT THE LATTER EXPRESSION , INTERPRETED BY THE NETHERLANDS TAX AUTHORITIES , HAS A WIDER MEANING THAN THE EXPRESSION ' CAPITAL GOODS ' USED BY THE DIRECTIVE , AND THAT THE EXCEPTION TO THE RIGHT TO MAKE DEDUCTION HAS THUS BEEN EXTENDED TOO WIDELY , WITH THE RESULT THAT THE FEDERATION HAS HAD TO BEAR TAX NOT AUTHORIZED BY THE DIRECTIVE .

#### THE FIRST TWO QUESTIONS

9 BY THE FIRST AND SECOND QUESTIONS , THE HOGE RAAD ASKS , IN EFFECT , WHAT IS THE CORRECT INTERPRETATION OF THE EXPRESSION ' CAPITAL GOODS ' APPEARING IN THE THIRD INDENT OF THE FIRST PARAGRAPH OF ARTICLE 17 OF THE DIRECTIVE .

10 IT SHOULD BE NOTED , IN THE FIRST PLACE , THAT THE EXPRESSION AT ISSUE FORMS PART OF A PROVISION OF COMMUNITY LAW WHICH DOES NOT REFER TO THE LAW OF THE MEMBER STATES FOR THE DETERMINING OF ITS MEANING AND ITS SCOPE .

11 IT FOLLOWS THAT THE INTERPRETATION , IN GENERAL TERMS , OF THE EXPRESSION CANNOT BE LEFT TO THE DISCRETION OF EACH MEMBER STATE .

12 THE ORDINARY MEANING OF THE EXPRESSION AND ITS FUNCTION IN THE CONTEXT OF THE PROVISIONS OF THE SECOND DIRECTIVE INDICATE THAT IT COVERS GOODS USED FOR THE PURPOSES OF SOME BUSINESS ACTIVITY AND DISTINGUISHABLE BY THEIR DURABLE NATURE AND THEIR VALUE AND SUCH THAT THE ACQUISITION COSTS NOT NORMALLY TREATED AS CURRENT EXPENDITURE BUT WRITTEN OFF OVER SEVERAL YEARS .

13 IN FACT , THE SPECIAL SYSTEM RESERVED FOR CAPITAL GOODS BY THE DIRECTIVE , WHICH INCLUDES EXCEPTIONS TO THE PRINCIPLE OF IMMEDIATE DEDUCTION , IS EXPLAINED AND JUSTIFIED BY THE DURABLE USE OF THOSE GOODS AND THE ATTENDANT WRITING OFF OF THEIR ACQUISITION COSTS .

14 HOWEVER , THE ACCOUNTING METHODS AND THE PROCEDURES FOR WRITING OFF ADOPTED BY EACH PARTICULAR UNDERTAKING IN RELATION TO ITS OWN FINANCIAL INTERESTS CANNOT PROVIDE THE DECISIVE CRITERION FOR THE DEFINITION OF THE CONCEPT AT ISSUE , GIVEN THAT THE SAID CONCEPT HAS ITS PLACE IN A TAXATION SYSTEM WHICH , IN PRINCIPLE , IS BASED ON THE EQUALITY OF UNDERTAKINGS BEFORE THE REVENUE LAW .

15 CONVERSELY , THE DECISIVE ELEMENTS ARE THE DURABILITY OF USE AND THE PRACTICES FOR WRITING OFF , AS NORMALLY TAKEN INTO CONSIDERATION FOR THE MANAGEMENT OF THE UNDERTAKING IN THE SPHERE CONCERNED .

16 IN THIS RESPECT , THE SECOND DIRECTIVE DOES NOT CONTAIN EXPLICIT GUIDANCE FOR DEFINING UNIFORMLY AND PRECISELY THE REQUIREMENTS WHICH MUST BE SATISFIED CONCERNING DURABILITY AND VALUE , TOGETHER WITH THE RULES APPLICABLE FOR WRITING OFF , IN ORDER THAT AN OBJECT MAY BE CLASSIFIED AS CAPITAL GOODS FOR THE PURPOSES OF THE PROVISIONS AT ISSUE .

17 THE MEMBER STATES THEREFORE HAVE A CERTAIN MARGIN OF DISCRETION AS REGARDS THOSE REQUIREMENTS , PROVIDED THAT THEY PAY DUE REGARD TO THE EXISTENCE OF AN ESSENTIAL DIFFERENCE BETWEEN CAPITAL GOODS AND THE OTHER GOODS USED IN THE MANAGEMENT AND DAY TO DAY RUNNING OF UNDERTAKINGS .

18 THEREFORE THE APPROPRIATE ANSWERS TO THE FIRST TWO QUESTION ARE

( A ) THAT THE WORDS ' CAPITAL GOODS ' , APPEARING IN THE THIRD INDENT OF ARTICLE 17 OF THE SECOND COUNCIL DIRECTIVE OF 11 APRIL 1967 , ON THE HARMONIZATION OF LEGISLATION OF MEMBER STATES CONCERNING TURNOVER TAXES , MEAN GOODS USED FOR THE PURPOSES OF SOME BUSINESS ACTIVITY AND DISTINGUISHABLE BY THEIR DURABLE NATURE AND THEIR VALUE AND SUCH THAT THE ACQUISITION COSTS ARE NOT NORMALLY TREATED AS CURRENT EXPENDITURE BUT WRITTEN OFF OVER SEVERAL YEARS ;

( B ) THAT THE MEMBER STATES HAVE A CERTAIN MARGIN OF DISCRETION AS REGARDS THE REQUIREMENTS WHICH MUST BE SATISFIED CONCERNING THE DURABILITY AND VALUE OF THE GOODS , TOGETHER WITH THE RULES APPLICABLE FOR WRITING OFF , PROVIDED THAT THEY PAY DUE REGARD TO THE EXISTENCE OF AN ESSENTIAL DIFFERENCE BETWEEN CAPITAL GOODS AND THE OTHER GOODS USED IN THE MANAGEMENT AND DAY TO DAY RUNNING OF UNDERTAKINGS .

THE THIRD QUESTION

19 THE THIRD QUESTION REFERRED BY THE HOGE RAAD IS WORDED AS FOLLOWS :

' DOES THE PROVISION CONTAINED IN ARTICLE 11 OF THE SAID DIRECTIVE CONCERNING THE DEDUCTION OF TURNOVER TAX INVOICED TO A TAXABLE PERSON IN RELATION TO GOODS SUPPLIED TO HIM CREATE A RIGHT IN FAVOUR OF AN INDIVIDUAL SUBJECT TO NETHERLANDS TURNOVER TAX , WHICH MAY BE INVOKED BEFORE A NETHERLANDS COURT , TO MAKE AN UNRESTRICTED DEDUCTION IN RESPECT OF GOODS PURCHASED IN 1972 AND INTENDED TO BE USED FOR THE PURPOSES OF THE UNDERTAKING WHICH DO NOT BELONG TO THE CATEGORY OF CAPITAL GOODS WITHIN THE MEANING OF THE SAID ARTICLE 17 , WHATEVER USE THE NETHERLANDS LEGISLATURE MAY HAVE MADE OF THE POWERS MENTIONED IN ARTICLES 11 AND 17 OF THE SAID DIRECTIVE?

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20 THIS QUESTION RAISES THE GENERAL PROBLEM OF THE LEGAL NATURE OF THE PROVISIONS OF A DIRECTIVE ADOPTED UNDER ARTICLE 189 OF THE TREATY .

21 ON THIS , THE COURT HAS ALREADY SAID , MOST RECENTLY IN ITS JUDGMENT OF 4 DECEMBER 1974 IN CASE 41/74 (( 1974 ) ECR 1337 AT P . 1348 ) THAT IF , BY VIRTUE OF THE PROVISIONS OF ARTICLE 189 , REGULATIONS ARE DIRECTLY APPLICABLE AND , CONSEQUENTLY , MAY BY THEIR VERY NATURE HAVE DIRECT EFFECTS , IT DOES NOT FOLLOW FROM THIS THAT OTHER CATEGORIES OF ACTS MENTIONED IN THAT ARTICLE CAN NEVER HAVE SIMILAR EFFECTS .

22 IT WOULD BE INCOMPATIBLE WITH THE BINDING EFFECT ATTRIBUTED TO A DIRECTIVE BY ARTICLE 189 TO EXCLUDE , IN PRINCIPLE , THE POSSIBILITY THAT THE OBLIGATION WHICH IT IMPOSES MAY BE INVOKED BY THOSE CONCERNED .

23 IN PARTICULAR , WHERE THE COMMUNITY AUTHORITIES HAVE , BY DIRECTIVE , IMPOSED ON MEMBER STATES THE OBLIGATION TO PURSUE A PARTICULAR COURSE

OF CONDUCT , THE USEFUL EFFECT OF SUCH AN ACT WOULD BE WEAKENED IF INDIVIDUALS WERE PREVENTED FROM RELYING ON IT BEFORE THEIR NATIONAL COURTS AND IF THE LATTER WERE PREVENTED FROM TAKING IT INTO CONSIDERATION AS AN ELEMENT OF COMMUNITY LAW .

24 THIS IS ESPECIALLY SO WHEN THE INDIVIDUAL INVOKES A PROVISION OF A DIRECTIVE BEFORE A NATIONAL COURT IN ORDER THAT THE LATTER SHALL RULE WHETHER THE COMPETENT NATIONAL AUTHORITIES , IN EXERCISING THE CHOICE WHICH IS LEFT TO THEM AS TO THE FORM AND THE METHODS FOR IMPLEMENTING THE DIRECTIVE , HAVE KEPT WITHIN THE LIMITS AS TO THEIR DISCRETION SET OUT IN THE DIRECTIVE .

25 PARAGRAPH ( 1 ) OF ARTICLE 11 OF THE SECOND DIRECTIVE ON VALUE-ADDED TAX STATES IN EXPLICIT AND PRECISE TERMS THE PRINCIPLE OF THE DEDUCTION OF SUMS INVOICED AS VALUE-ADDED TAX IN RESPECT OF GOODS SUPPLIED TO THE TAXABLE PERSON , IN SO FAR AS THOSE GOODS ARE USED FOR THE PURPOSES OF HIS UNDERTAKING .

26 THAT BASIC PRINCIPLE , HOWEVER , IS SUBJECT TO CERTAIN DEROGATIONS AND EXCEPTIONS WHICH THE MEMBER STATES MAY DETERMINE BY VIRTUE OF OTHER PROVISIONS OF THE DIRECTIVE .

27 WHEN THE NATURE OF THE PROVISIONS CONCERNED IS TAKEN INTO ACCOUNT , THE FACT OF HAVING OR OF NOT HAVING EXERCISED THE POWER TO MAKE A DEROGATION OR AN EXCEPTION IS A MATTER FOR THE DISCRETION OF THE LEGISLATIVE OR ADMINISTRATIVE AUTHORITIES OF THE MEMBER STATE IN QUESTION AND CANNOT , THEREFORE BE SUBJECT TO LEGAL REVIEW ON THE BASIS OF THE PROVISIONS OF THE DIRECTIVE .

28 THE POSITION IS THE SAME IF THE MATTER IN DISPUTE DEPENDS ON ONE OF THE PROVISIONS WHICH , EITHER IN EXPRESS TERMS , OR THROUGH THE INDEFINITE NATURE OF THE CONCEPTS USED , LEAVE THE LEGISLATIVE OR ADMINISTRATIVE AUTHORITIES OF THE MEMBER STATES A MARGIN OF DISCRETION CONCERNING THE MATERIAL CONTENTS OF THE EXCEPTIONS OR DEROGATIONS AUTHORIZED .

29 CONVERSELY , IT IS THE DUTY OF THE NATIONAL COURT BEFORE WHICH THE DIRECTIVE IS INVOKED TO DETERMINE WHETHER THE DISPUTED NATIONAL MEASURE FALLS OUTSIDE THE MARGIN OF THE DISCRETION OF THE MEMBER STATES AND CANNOT THEREFORE BE CONSIDERED AS A LEGITIMATE EXCEPTION TO OR DEROGATION FROM THE PRINCIPLE OF IMMEDIATE DEDUCTION LAID DOWN BY PARAGRAPH ( 1 ) OF ARTICLE 11 , AND TO TAKE THIS INTO ACCOUNT IN GIVING EFFECT TO THE TAXABLE PERSON ' S CLAIM .

30 THEREFORE THE APPROPRIATE ANSWER TO THE THIRD QUESTION IS THAT , IN THE CASE OF GOODS PURCHASED IN 1972 AND INTENDED TO BE USED FOR THE PURPOSES OF THE UNDERTAKING WHICH DO NOT BELONG TO THE CATEGORY OF CAPITAL GOODS WITHIN THE MEANING OF ARTICLE 17 OF THE DIRECTIVE , IT IS THE DUTY OF THE NATIONAL COURT BEFORE WHICH THE RULE AS TO IMMEDIATE DEDUCTION SET OUT IN ARTICLE 11 OF THE DIRECTIVE IS INVOKED TO TAKE THOSE FACTS INTO ACCOUNT IN SO FAR AS A NATIONAL IMPLEMENTING MEASURE FALLS OUTSIDE THE LIMITS OF THE MARGIN OF THE DISCRETION LEFT TO THE MEMBER STATES .

# Decision on costs

## COSTS

31 THE COSTS INCURRED BY THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY , THE GOVERNMENT OF THE KINGDOM OF BELGIUM , THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE COMMISSION OF THE EUROPEAN COMMUNITIES , WHICH HAVE SUBMITTED OBSERVATIONS TO THE COURT , ARE NOT RECOVERABLE .

32 AS THESE PROCEEDINGS ARE , IN SO FAR AS THE PARTIES TO THE MAIN ACTION ARE CONCERNED , A STEP IN THE ACTION PENDING BEFORE THE NATIONAL COURT , THE DECISION ON COSTS IS A MATTER FOR THAT COURT .

## Operative part

ON THOSE GROUNDS ,

THE COURT

IN ANSWER TO THE QUESTIONS REFERRED TO IT BY THE HOGE RAAD OF THE NETHERLANDS BY ORDER OF 9 JUNE 1976 , HEREBY RULES :

1 . THE WORDS ' CAPITAL GOODS ' APPEARING IN THE THIRD INDENT OF ARTICLE 17 OF THE SECOND COUNCIL DIRECTIVE OF 11 APRIL 1967 , ON THE HARMONIZATION OF LEGISLATION OF MEMBER STATES CONCERNING TURNOVER TAXES , MEAN GOODS USED FOR THE PURPOSES OF SOME BUSINESS ACTIVITY AND DISTINGUISHABLE BY THEIR DURABLE NATURE AND THEIR VALUE AND SUCH THAT THE ACQUISITION COSTS ARE NOT NORMALLY TREATED AS CURRENT EXPENDITURE , BUT ARE WRITTEN OFF OVER SEVERAL YEARS .

2 . THE MEMBER STATES HAVE A CERTAIN MARGIN OF DISCRETION AS REGARDS THE REQUIREMENTS WHICH MUST BE SATISFIED CONCERNING THE DURABILITY AND VALUE OF THE GOODS , TOGETHER WITH THE RULES APPLICABLE FOR WRITING OFF , PROVIDED THAT THEY PAY DUE REGARD TO THE EXISTENCE OF AN ESSENTIAL DIFFERENCE BETWEEN CAPITAL GOODS AND THE OTHER GOODS USED IN THE MANAGEMENT AND IN THE DAY TO DAY RUNNING OF UNDERTAKINGS .

3 . IN THE CASE OF GOODS PURCHASED IN 1972 AND INTENDED TO BE USED FOR THE PURPOSES OF THE UNDERTAKING WHICH DO NOT BELONG TO THE CATEGORY OF CAPITAL GOODS WITHIN THE MEANING OF ARTICLE 17 OF THE DIRECTIVE , IT IS THE DUTY OF THE NATIONAL COURT BEFORE WHICH THE RULE AS TO IMMEDIATE DEDUCTION SET OUT IN ARTICLE 11 OF THE DIRECTIVE IS INVOKED TO TAKE THOSE FACTS INTO ACCOUNT IN SO FAR AS A NATIONAL IMPLEMENTING MEASURE FALLS OUTSIDE THE LIMITS OF THE MARGIN OF THE DISCRETION LEFT TO THE MEMBER STATES .