

61981J0008

Judgment of the Court of 19 January 1982. - Ursula Becker v Finanzamt Münster-Innenstadt. - Reference for a preliminary ruling: Finanzgericht Münster - Germany. - Direct effect of directives. - Case 8/81.

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Summary

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Decision on costs

Operative part

Keywords

1 . MEASURES ADOPTED BY INSTITUTIONS - DIRECTIVES - EFFECT - NON-IMPLEMENTATION BY A MEMBER STATE - RIGHT OF INDIVIDUALS TO RELY UPON THE DIRECTIVE - CONDITIONS

(EEC TREATY , ART . 189)

2 . MEASURES ADOPTED BY INSTITUTIONS - DIRECTIVES - DIRECTIVE CONFERRING A MARGIN OF DISCRETION ON THE MEMBER STATES - PROVISIONS WHICH ARE SEVERABLE AND MAY BE RELIED UPON BY INDIVIDUALS

(EEC TREATY , ART . 189 ; COUNCIL DIRECTIVE 77/388)

3 . TAX PROVISIONS - HARMONIZATION OF LAWS - TURNOVER TAX - COMMON SYSTEM OF VALUE-ADDED TAX - EXEMPTIONS CONFERRED BY THE SIXTH DIRECTIVE - TAXABLE PERSONS ' RIGHT OF OPTION - IMPLEMENTATION - POWERS OF THE MEMBER STATES - LIMITS

(COUNCIL DIRECTIVE 77/388 , ART . 13 B AND C)

4 . TAX PROVISIONS - HARMONIZATION OF LAWS - TURNOVER TAX - COMMON SYSTEM OF VALUE-ADDED TAX - EXEMPTIONS CONFERRED BY THE SIXTH DIRECTIVE - EFFECTS WITHIN THE SYSTEM OF VALUE-ADDED TAX

(COUNCIL DIRECTIVE 77/388)

5 . TAX PROVISIONS - HARMONIZATION OF LAWS - TURNOVER TAX - COMMON SYSTEM OF VALUE-ADDED TAX - EXEMPTIONS CONFERRED BY THE SIXTH DIRECTIVE - EXEMPTION OF TRANSACTIONS CONSISTING OF THE NEGOTIATION OF CREDIT - POSSIBILITY OF INDIVIDUALS ' RELYING UPON THE RELEVANT PROVISION WHERE THE DIRECTIVE HAS NOT BEEN IMPLEMENTED - CONDITIONS

(COUNCIL DIRECTIVE 77/388 , ART . 13 B (D) 1)

Summary

1 . IT WOULD BE INCOMPATIBLE WITH THE BINDING EFFECT WHICH ARTICLE 189 OF THE EEC TREATY ASCRIBES TO DIRECTIVES TO EXCLUDE IN PRINCIPLE THE POSSIBILITY OF THE OBLIGATION IMPOSED BY IT BEING RELIED UPON BY PERSONS CONCERNED . PARTICULARLY IN CASES IN WHICH THE COMMUNITY AUTHORITIES HAVE , BY MEANS OF A DIRECTIVE , PLACED MEMBER STATES UNDER A DUTY TO ADOPT A CERTAIN COURSE OF ACTION , THE EFFECTIVENESS OF SUCH A MEASURE WOULD BE DIMINISHED IF PERSONS WERE PREVENTED FROM RELYING UPON IT IN PROCEEDINGS BEFORE A COURT AND NATIONAL COURTS WERE PREVENTED FROM TAKING IT INTO CONSIDERATION AS AN ELEMENT OF COMMUNITY LAW . CONSEQUENTLY , A MEMBER STATE WHICH HAS NOT ADOPTED THE IMPLEMENTING MEASURES REQUIRED BY THE DIRECTIVE WITHIN THE PRESCRIBED PERIOD MAY NOT PLEAD , AS AGAINST INDIVIDUALS , ITS OWN FAILURE TO PERFORM THE OBLIGATIONS WHICH THE DIRECTIVE ENTAILS . THUS , WHEREVER THE PROVISIONS OF A DIRECTIVE APPEAR , AS FAR AS THEIR SUBJECT-MATTER IS CONCERNED , TO BE UNCONDITIONAL AND SUFFICIENTLY PRECISE , THOSE PROVISIONS MAY , IN THE ABSENCE OF IMPLEMENTING MEASURES ADOPTED WITHIN THE PRESCRIBED PERIOD , BE RELIED UPON AS AGAINST ANY NATIONAL PROVISION WHICH IS INCOMPATIBLE WITH THE DIRECTIVE OR IN SO FAR AS THE PROVISIONS DEFINE RIGHTS WHICH INDIVIDUALS ARE ABLE TO ASSERT AGAINST THE STATE .

2 . WHILST THE SIXTH COUNCIL DIRECTIVE 77/388 ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES UNDOUBTEDLY CONFERS UPON THE MEMBER STATES VARYING DEGREES OF DISCRETION AS REGARDS IMPLEMENTING CERTAIN OF ITS PROVISIONS , INDIVIDUALS MAY NOT FOR THAT REASON BE DENIED THE RIGHT TO RELY ON ANY PROVISIONS WHICH OWING TO THEIR PARTICULAR SUBJECT-MATTER ARE CAPABLE OF BEING SEVERED FROM THE GENERAL BODY OF PROVISIONS AND APPLIED SEPARATELY . THIS MINIMUM GUARANTEE FOR PERSONS ADVERSELY AFFECTED BY THE FAILURE TO IMPLEMENT THE DIRECTIVE IS A CONSEQUENCE OF THE BINDING NATURE OF THE OBLIGATION IMPOSED ON THE MEMBER STATES BY THE THIRD PARAGRAPH OF ARTICLE 189 OF THE EEC TREATY . THAT OBLIGATION WOULD BE RENDERED TOTALLY INEFFECTUAL IF THE MEMBER STATES WERE PERMITTED TO ANNUL , AS THE RESULT OF THEIR INACTIVITY , EVEN THOSE EFFECTS WHICH CERTAIN PROVISIONS OF A DIRECTIVE ARE CAPABLE OF PRODUCING BY VIRTUE OF THEIR SUBJECT-MATTER .

3 . ARTICLE 13 C OF DIRECTIVE 77/388 DOES NOT IN ANY WAY CONFER UPON THE MEMBER STATES THE RIGHT TO PLACE CONDITIONS ON OR TO RESTRICT IN ANY MANNER WHATSOEVER THE EXEMPTIONS PROVIDED FOR BY PART B . IT MERELY RESERVES THE RIGHT TO THE MEMBER STATES TO ALLOW , TO A GREATER OR LESSER DEGREE , PERSONS ENTITLED TO THOSE EXEMPTIONS TO OPT FOR TAXATION THEMSELVES , IF THEY CONSIDER THAT IT IS IN THEIR INTEREST TO DO SO .

4 . THE SCHEME OF DIRECTIVE 77/388 IS SUCH THAT ON THE ONE HAND , BY AVAILING THEMSELVES OF AN EXEMPTION , PERSONS ENTITLED THERETO NECESSARILY WAIVE THE RIGHT TO CLAIM A DEDUCTION IN RESPECT OF INPUT TAX AND ON THE OTHER HAND , HAVING BEEN EXEMPTED FROM THE TAX , THEY ARE UNABLE TO PASS ON ANY CHARGE WHATSOEVER TO THE PERSON FOLLOWING THEM IN THE CHAIN OF SUPPLY , WITH THE RESULT THAT THE RIGHTS OF THIRD PARTIES IN PRINCIPLE CANNOT BE AFFECTED .

5 . AS FROM 1 JANUARY 1979 IT WAS POSSIBLE FOR THE PROVISION CONCERNING THE EXEMPTION FROM TURNOVER TAX OF TRANSACTIONS CONSISTING OF THE NEGOTIATION OF CREDIT CONTAINED IN ARTICLE 13 B (D) 1 OF DIRECTIVE 77/388 TO BE RELIED UPON , IN THE ABSENCE OF THE IMPLEMENTATION OF THAT DIRECTIVE , BY A CREDIT NEGOTIATOR WHERE HE HAD REFRAINED FROM PASSING THAT TAX ON TO PERSONS FOLLOWING HIM IN THE CHAIN OF SUPPLY , AND THE STATE COULD NOT CLAIM , AS AGAINST HIM , THAT IT HAD FAILED TO IMPLEMENT THE DIRECTIVE .

Parties

IN CASE 8/81

REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE FINANZGERICHT (FINANCE COURT) MUNSTER FOR A PRELIMINARY RULING IN THE CASE PENDING BEFORE THAT COURT BETWEEN

URSULA BECKER , A SELF-EMPLOYED CREDIT NEGOTIATOR , RESIDING IN MUNSTER ,
AND

FINANZAMT MUNSTER-INNENSTADT (TAX OFFICE , MUNSTER CENTRAL) ,

Subject of the case

ON THE INTERPRETATION OF ARTICLE 13 B (D) 1 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 (OFFICIAL JOURNAL 1977 , L 145 , P . 1) ,

Grounds

1 BY ORDER OF 27 NOVEMBER 1980 , WHICH WAS RECEIVED AT THE COURT ON 14 JANUARY 1981 , THE FINANZGERICHT (FINANCE COURT) MUNSTER REFERRED TO THE COURT FOR A PRELIMINARY RULING UNDER ARTICLE 177 OF THE EEC TREATY A QUESTION ON THE INTERPRETATION OF ARTICLE 13 B (D) 1 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 (OFFICIAL JOURNAL 1977 , L 145 , P . 1) IN ORDER TO DETERMINE WHETHER THAT PROVISION MAY BE REGARDED AS HAVING BEEN DIRECTLY APPLICABLE IN THE FEDERAL REPUBLIC OF GERMANY SINCE 1 JANUARY 1979 IN VIEW OF THE FAILURE BY THAT MEMBER STATE TO ADOPT WITHIN THE PRESCRIBED PERIOD THE MEASURES NECESSARY IN ORDER TO ENSURE ITS IMPLEMENTATION .

THE BACKGROUND TO THE DISPUTE

2 IT SHOULD BE RECALLED THAT THE SIXTH DIRECTIVE , WHICH WAS ADOPTED ON 17 MAY 1977 , PROVIDED IN ARTICLE 1 THAT THE MEMBER STATES WERE TO ADOPT BY 1 JANUARY 1978 AT THE LATEST THE NECESSARY LAWS , REGULATIONS AND ADMINISTRATIVE PROVISIONS IN ORDER TO MODIFY THEIR VALUE-ADDED TAX SYSTEMS IN ACCORDANCE WITH THE REQUIREMENTS OF THE DIRECTIVE . A NUMBER OF MEMBER STATES , INCLUDING THE FEDERAL REPUBLIC OF GERMANY , WERE UNABLE TO MAKE THE NECESSARY MODIFICATIONS WITHIN THE PRESCRIBED PERIOD AND THEREFORE THE COUNCIL , BY THE NINTH DIRECTIVE , 78/583/EEC OF 26 JUNE 1978 ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES (OFFICIAL JOURNAL 1978 , L 194 , P . 16), EXTENDED , IN THE CASE OF THOSE MEMBER STATES , TO 1 JANUARY 1979 THE PERIOD LAID DOWN IN ARTICLE 1 OF THE SIXTH DIRECTIVE .

3 IT WAS NOT UNTIL THE ADOPTION OF THE LAW OF 26 NOVEMBER 1979 (BUNDESGESETZBLATT I , P . 1953), WHICH TOOK EFFECT ON 1 JANUARY 1980 , THAT THE FEDERAL REPUBLIC OF GERMANY IMPLEMENTED THE SIXTH DIRECTIVE .

4 IT IS APPARENT FROM THE ORDER MAKING THE REFERENCE TO THE COURT THAT IN HER MONTHLY RETURNS IN RESPECT OF TURNOVER TAX FOR THE PERIOD FROM MARCH TO JUNE 1979 THE PLAINTIFF IN THE MAIN ACTION , WHO CARRIES ON THE BUSINESS OF A SELF-EMPLOYED CREDIT NEGOTIATOR , APPLIED FOR EXEMPTION FROM TAX IN RESPECT OF HER TRANSACTIONS , CLAIMING THAT ARTICLE 13 B (D) 1 COMPELLED THE MEMBER STATES TO EXEMPT FROM VALUE-ADDED TAX INTER ALIA ' ' THE GRANTING AND THE NEGOTIATION OF CREDIT ' ' AND THAT THAT DIRECTIVE HAD BEEN PART OF NATIONAL LAW SINCE 1 JANUARY 1979 .

5 IT APPEARS FROM THE FILE ON THE CASE THAT THE PLAINTIFF IN THE MAIN ACTION INFORMED THE FINANZAMT (TAX OFFICE) OF THE AMOUNT OF HER TURNOVER AND OF THE INPUT TAX WHICH SHE HAD PAID AND AT THE SAME TIME CLAIMED THAT SHE WAS ENTITLED TO THE EXEMPTION PROVIDED FOR BY ARTICLE 13 B (D) 1 OF THE DIRECTIVE . CONSEQUENTLY , IN EACH CASE SHE DECLARED THE AMOUNT OF TAX PAYABLE AND THE DEDUCTION IN RESPECT OF INPUT TAX TO BE ' ' NIL ' ' .

6 THE FINANZAMT DID NOT ACCEPT THOSE RETURNS AND , IN ITS PROVISIONAL NOTICES OF ASSESSMENT FOR THE MONTHS IN QUESTION , CHARGED TURNOVER TAX ON THE TRANSACTIONS OF THE PLAINTIFF IN THE MAIN ACTION , IN ACCORDANCE WITH THE NATIONAL LEGISLATION WHICH HAD NOT YET BEEN AMENDED , SUBJECT TO A DEDUCTION IN RESPECT OF INPUT TAX .

7 FOLLOWING THE DISMISSAL OF HER OBJECTION , THE PLAINTIFF IN THE MAIN ACTION APPEALED AGAINST THOSE ASSESSMENTS TO THE FINANZGERICHT , RELYING UPON THE ABOVE-MENTIONED PROVISION OF THE DIRECTIVE .

8 IN ITS DEFENCE BEFORE THE FINANZGERICHT , THE FINANZAMT CONTENDED THAT DURING THE PERIOD IN QUESTION THE SIXTH DIRECTIVE HAD NOT YET BEEN

IMPLEMENTED IN THE FEDERAL REPUBLIC OF GERMANY . IT MAINTAINED , MOREOVER , THAT THE VIEW SHARED BY ALL THE MEMBER STATES WAS THAT ARTICLE 13 B COULD NOT BE CONSIDERED TO BE A PROVISION CREATING DIRECTLY APPLICABLE LAW , IN VIEW OF THE FACT THAT THAT PROVISION RESERVED A MARGIN OF DISCRETION TO THE MEMBER STATES .

9 IN ORDER TO RESOLVE THAT ISSUE THE FINANZGERICHT REFERRED TO THE COURT THE FOLLOWING QUESTION :

'' HAS THE PROVISION CONTAINED IN TITLE X , ARTICLE 13 B (D) 1 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 , CONCERNING THE EXEMPTION FROM TURNOVER TAX OF TRANSACTIONS CONSISTING OF THE NEGOTIATION OF CREDIT , BEEN DIRECTLY APPLICABLE IN THE FEDERAL REPUBLIC OF GERMANY AS FROM 1 JANUARY 1979?

''

10 THE PLAINTIFF IN THE MAIN ACTION WAS NOT REPRESENTED IN THE PROCEEDINGS BEFORE THE COURT . HER VIEW WAS SUPPORTED BY THE COMMISSION , WHICH SUBMITTED ARGUMENTS TO THE COURT DESIGNED TO SHOW THAT IT WAS POSSIBLE FOR INDIVIDUALS TO CLAIM THE BENEFIT OF ARTICLE 31 B (D) 1 OF THE SIXTH DIRECTIVE .

11 THE FINANZAMT AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY , ON THE OTHER HAND , PUT FORWARD A NUMBER OF ARGUMENTS DESIGNED TO DEMONSTRATE THAT THE PROVISION IN QUESTION COULD NOT BE RELIED UPON DURING THE PERIOD BEFORE THE RELEVANT IMPLEMENTING PROVISIONS HAD BEEN PUT INTO FORCE IN THE FEDERAL REPUBLIC OF GERMANY , THAT IS TO SAY , DURING THE TAX YEAR 1979 . THE GOVERNMENT OF THE FRENCH REPUBLIC EXPRESSED THE SAME VIEW .

SUBSTANCE OF THE CASE

12 THE FINANZAMT , THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY AND THE GOVERNMENT OF THE FRENCH REPUBLIC DO NOT DISPUTE THE FACT THAT THE PROVISIONS OF DIRECTIVES MAY IN CERTAIN CIRCUMSTANCES BE RELIED UPON BY INDIVIDUALS , AS IS CLEAR FROM THE CASE-LAW OF THE COURT , BUT MAINTAIN THAT SUCH AN EFFECT IS NOT TO BE ATTRIBUTED TO THE PROVISION IN QUESTION IN THE MAIN ACTION .

13 THE FRENCH GOVERNMENT CONSIDERS THAT THE TAX DIRECTIVES SEEK TO ACHIEVE THE PROGRESSIVE HARMONIZATION OF THE VARIOUS NATIONAL SYSTEMS OF TAXATION BUT NOT THE REPLACEMENT OF THOSE SYSTEMS BY A COMMUNITY SYSTEM OF TAXATION . THAT IS ALSO TRUE OF THE SIXTH DIRECTIVE WHICH CONTAINS A SET OF PROVISIONS THE CONDITIONS FOR THE IMPLEMENTATION OF WHICH ARE LEFT TO A LARGE EXTENT TO THE DISCRETION OF THE MEMBER STATES . IN VIEW OF THE PARTICULARLY LARGE NUMBER OF OPTIONS OPEN TO THE MEMBER STATES UNDER THE DIRECTIVE , THE FRENCH GOVERNMENT IS OF THE OPINION THAT THE DIRECTIVE AS A WHOLE IS INCAPABLE OF PRODUCING ANY EFFECTS WHATEVER IN THE MEMBER STATES BEFORE THE ADOPTION OF THE RELEVANT NATIONAL LEGISLATIVE MEASURES .

14 IN ANY EVENT , AND THIS OPINION IS SHARED BY THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY , IT IS IMPOSSIBLE , BY REASON OF THE MARGIN OF DISCRETION , THE POWERS AND THE OPTIONS WHICH ARTICLE 13 CONFERS UPON THE MEMBER STATES , TO ATTRIBUTE ANY DIRECT EFFECT TO THE PROVISIONS OF THAT ARTICLE .

15 THE FINANZAMT , SUPPORTED BY THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY , ALSO DRAWS ATTENTION TO THE COHERENCE OF THE SYSTEM OF TAXATION ESTABLISHED BY THE DIRECTIVE AND , MORE PARTICULARLY TO THE PROBLEMS RESULTING FROM THE CHAIN OF TAXATION , WHICH IS A CHARACTERISTIC OF VALUE-ADDED TAX . IT CONSIDERS THAT IT IS NOT POSSIBLE FOR AN EXEMPTION , SUCH AS THAT PROVIDED FOR BY ARTICLE 13 B (D) 1 , TO BE DIVORCED FROM ITS CONTEXT WITHOUT DISRUPTING THE ENTIRE MECHANISM OF THE TAX SYSTEM IN QUESTION .

16 IN RESPONSE TO THOSE ARGUMENTS THE PROBLEM RAISED SHOULD BE CONSIDERED , IN THE LIGHT OF THE CASE-LAW OF THE COURT ON THE EFFECT OF DIRECTIVES , IN RELATION TO THE DIRECTIVE ITSELF AND TO THE SYSTEM OF TAXATION CONCERNED .

THE EFFECT OF DIRECTIVES IN GENERAL

17 ACCORDING TO THE THIRD PARAGRAPH OF ARTICLE 189 OF THE TREATY , ' ' A DIRECTIVE SHALL BE BINDING , AS TO THE RESULT TO BE ACHIEVED , UPON EACH MEMBER STATE TO WHICH IT IS ADDRESSED , BUT SHALL LEAVE TO THE NATIONAL AUTHORITIES THE CHOICE OF FORM AND METHODS . ' '

18 IT IS CLEAR FROM THAT PROVISION THAT STATES TO WHICH A DIRECTIVE IS ADDRESSED ARE UNDER AN OBLIGATION TO ACHIEVE A RESULT , WHICH MUST BE FULFILLED BEFORE THE EXPIRY OF THE PERIOD LAID DOWN BY THE DIRECTIVE ITSELF .

19 IT FOLLOWS THAT WHEREVER A DIRECTIVE IS CORRECTLY IMPLEMENTED , ITS EFFECTS EXTEND TO INDIVIDUALS THROUGH THE MEDIUM OF THE IMPLEMENTING MEASURES ADOPTED BY THE MEMBER STATE CONCERNED (JUDGMENT OF 6 MAY 1980 IN CASE 102/79 COMMISSION V BELGIUM (1980) ECR 1473) .

20 HOWEVER , SPECIAL PROBLEMS ARISE WHERE A MEMBER STATE HAS FAILED TO IMPLEMENT A DIRECTIVE CORRECTLY AND , MORE PARTICULARLY , WHERE THE PROVISIONS OF THE DIRECTIVE HAVE NOT BEEN IMPLEMENTED BY THE END OF THE PERIOD PRESCRIBED FOR THAT PURPOSE .

21 IT FOLLOWS FROM WELL-ESTABLISHED CASE-LAW OF THE COURT AND , MOST RECENTLY , FROM THE JUDGMENT OF 5 APRIL 1979 IN CASE 148/78 PUBBLICO MINISTERO V RATTI (1979) ECR 1629 , THAT WHILST UNDER ARTICLE 189 REGULATIONS ARE DIRECTLY APPLICABLE AND , CONSEQUENTLY , BY THEIR NATURE CAPABLE OF PRODUCING DIRECT EFFECTS , THAT DOES NOT MEAN THAT OTHER CATEGORIES OF MEASURES COVERED BY THAT ARTICLE CAN NEVER PRODUCE SIMILAR EFFECTS .

22 IT WOULD BE INCOMPATIBLE WITH THE BINDING EFFECT WHICH ARTICLE 189 ASCRIBES TO DIRECTIVES TO EXCLUDE IN PRINCIPLE THE POSSIBILITY OF THE OBLIGATIONS IMPOSED BY THEM BEING RELIED ON BY PERSONS CONCERNED .

23 PARTICULARLY IN CASES IN WHICH THE COMMUNITY AUTHORITIES HAVE , BY MEANS OF A DIRECTIVE , PLACED MEMBER STATES UNDER A DUTY TO ADOPT A CERTAIN COURSE OF ACTION , THE EFFECTIVENESS OF SUCH A MEASURE WOULD BE

DIMINISHED IF PERSONS WERE PREVENTED FROM RELYING UPON IT IN PROCEEDINGS BEFORE A COURT AND NATIONAL COURTS WERE PREVENTED FROM TAKING IT INTO CONSIDERATION AS AN ELEMENT OF COMMUNITY LAW .

24 CONSEQUENTLY , A MEMBER STATE WHICH HAS NOT ADOPTED THE IMPLEMENTING MEASURES REQUIRED BY THE DIRECTIVE WITHIN THE PRESCRIBED PERIOD MAY NOT PLEAD , AS AGAINST INDIVIDUALS , ITS OWN FAILURE TO PERFORM THE OBLIGATIONS WHICH THE DIRECTIVE ENTAILS .

25 THUS , WHEREVER THE PROVISIONS OF A DIRECTIVE APPEAR , AS FAR AS THEIR SUBJECT-MATTER IS CONCERNED , TO BE UNCONDITIONAL AND SUFFICIENTLY PRECISE , THOSE PROVISIONS MAY , IN THE ABSENCE OF IMPLEMENTING MEASURES ADOPTED WITHIN THE PRESCRIBED PERIOD , BE RELIED UPON AS AGAINST ANY NATIONAL PROVISION WHICH IS INCOMPATIBLE WITH THE DIRECTIVE OR IN SO FAR AS THE PROVISIONS DEFINE RIGHTS WHICH INDIVIDUALS ARE ABLE TO ASSERT AGAINST THE STATE .

26 THE QUESTION PUT TO THE COURT BY THE FINANZGERICHT SEEKS TO DETERMINE WHETHER ARTICLE 13 B (D) 1 OF THE DIRECTIVE MAY BE CONSIDERED TO BE OF SUCH A NATURE . UNDER THE TERMS OF THAT PROVISION ' ' MEMBER STATES SHALL EXEMPT THE FOLLOWING UNDER CONDITIONS WHICH THEY SHALL LAY DOWN FOR THE PURPOSE OF ENSURING THE CORRECT AND STRAIGHTFORWARD APPLICATION OF THE EXEMPTIONS AND OF PREVENTING ANY POSSIBLE EVASION , AVOIDANCE OR ABUSE : . . . (D) THE FOLLOWING TRANSACTIONS : 1 . THE GRANTING AND THE NEGOTIATION OF CREDIT . . . ' ' .

THE SCHEME OF THE DIRECTIVE AND THE CONTEXT OF ARTICLE 13

27 INASMUCH AS IT SPECIFIES THE EXEMPT SERVICE AND THE PERSON ENTITLED TO THE EXEMPTION , THE PROVISION , TAKEN BY ITSELF , IS SUFFICIENTLY PRECISE TO BE RELIED UPON BY AN INDIVIDUAL AND APPLIED BY A COURT . HOWEVER , IT REMAINS TO BE CONSIDERED WHETHER THE RIGHT TO EXEMPTION WHICH IT CONFERS MAY BE CONSIDERED TO BE UNCONDITIONAL , HAVING REGARD TO THE GENERAL SCHEME OF THE DIRECTIVE , TO THE CONTEXT IN WHICH ARTICLE 13 IS PLACED AND ALSO TO THE PARTICULAR CHARACTERISTICS OF THE SYSTEM OF TAXATION WITHIN WHICH THE EXEMPTION IS TO APPLY .

28 WITH REGARD TO THE GENERAL SCHEME OF THE DIRECTIVE , THE FIRST ARGUMENT TO BE CONSIDERED IS THAT BASED ON THE FACT THAT THE PROVISION REFERRED TO BY THE NATIONAL COURT IS AN INTEGRAL PART OF A HARMONIZING DIRECTIVE WHICH IN VARIOUS RESPECTS RESERVES TO THE MEMBER STATES A MARGIN OF DISCRETION ENTAILING POWERS AND OPTIONS .

29 WHILST THE SIXTH DIRECTIVE UNDOUBTEDLY CONFERS UPON THE MEMBER STATES VARYING DEGREE OF DISCRETION AS REGARDS IMPLEMENTING CERTAIN OF ITS PROVISIONS , INDIVIDUALS MAY NOT FOR THAT REASON BE DENIED THE RIGHT TO RELY ON ANY PROVISIONS WHICH OWING TO THEIR PARTICULAR SUBJECT-MATTER ARE CAPABLE OF BEING SEVERED FROM THE GENERAL BODY OF PROVISIONS AND APPLIED SEPARATELY . THIS MINIMUM GUARANTEE FOR PERSONS ADVERSELY AFFECTED BY THE FAILURE TO IMPLEMENT THE DIRECTIVE IS A CONSEQUENCE OF THE BINDING NATURE OF THE OBLIGATION IMPOSED ON THE MEMBER STATES BY THE THIRD PARAGRAPH OF ARTICLE 189 OF THE TREATY . THAT OBLIGATION WOULD BE RENDERED TOTALLY INEFFECTUAL IF THE MEMBER STATES WERE PERMITTED TO ANNUL , AS THE RESULT OF THEIR INACTIVITY , EVEN THOSE EFFECTS WHICH CERTAIN PROVISIONS OF A DIRECTIVE ARE CAPABLE OF PRODUCING BY VIRTUE OF THEIR

SUBJECT-MATTER .

30 CONSEQUENTLY , THE GENERAL NATURE OF THE DIRECTIVE IN QUESTION OR THE DISCRETION WHICH , IN OTHER AREAS , IT LEAVES TO THE MEMBER STATES MAY NOT BE RELIED UPON IN ORDER TO DENY ANY EFFECT TO THOSE PROVISIONS WHICH IN VIEW OF THEIR SUBJECT-MATTER MAY BE RELIED UPON TO GOOD PURPOSE BEFORE A COURT EVEN THOUGH THE DIRECTIVE AS A WHOLE HAS NOT BEEN IMPLEMENTED .

31 WITH REGARD TO THE CONTEXT IN WHICH ARTICLE 13 IS PLACED , THE FINANZAMT , SUPPORTED BY THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY AND THE FRENCH REPUBLIC , DRAWS PARTICULAR ATTENTION TO THE MARGIN OF DISCRETION RESERVED TO THE MEMBER STATES BY THE INTRODUCTORY SENTENCE OF PART B OF THAT ARTICLE , WHERE IT IS STATED THAT THE EXEMPTION IS TO BE GRANTED BY THE MEMBER STATES ' ' UNDER CONDITIONS WHICH THEY SHALL LAY DOWN FOR THE PURPOSE OF ENSURING THE CORRECT AND STRAIGHTFORWARD APPLICATION OF THE EXEMPTIONS AND OF PREVENTING ANY POSSIBLE EVASION , AVOIDANCE OR ABUSE ' ' . IT IS SUBMITTED THAT IN VIEW OF THAT RIDER THE EXEMPTION PROVISIONS CONTAINED IN ARTICLE 13 ARE NOT UNCONDITIONAL ; CONSEQUENTLY , THEY MAY NOT BE RELIED UPON UNTIL THE CONDITIONS REFERRED TO HAVE BEEN LAID DOWN .

32 IT SHOULD FIRST BE OBSERVED IN THAT REGARD THAT THE ' ' CONDITIONS ' ' REFERRED TO DO NOT IN ANY WAY AFFECT THE DEFINITION OF THE SUBJECT-MATTER OR THE EXEMPTION CONFERRED .

33 THE ' ' CONDITIONS ' ' REFERRED TO ARE INTENDED TO ENSURE THE CORRECT AND STRAIGHTFORWARD APPLICATION OF THE EXEMPTIONS . A MEMBER STATE MAY NOT RELY , AS AGAINST A TAXPAYER WHO IS ABLE TO SHOW THAT HIS TAX POSITION ACTUALLY FALLS WITHIN ONE OF THE CATEGORIES OF EXEMPTION LAID DOWN IN THE DIRECTIVE , UPON ITS FAILURE TO ADOPT THE VERY PROVISIONS WHICH ARE INTENDED TO FACILITATE THE APPLICATION OF THAT EXEMPTION .

34 MOREOVER , THE ' ' CONDITIONS ' ' REFER TO MEASURES INTENDED TO PREVENT ANY POSSIBLE EVASION , AVOIDANCE OR ABUSE . A MEMBER STATE WHICH HAS FAILED TO TAKE THE PRECAUTIONS NECESSARY FOR THAT PURPOSE MAY NOT PLEAD ITS OWN OMISSION IN ORDER TO REFUSE TO GRANT TO A TAXPAYER AN EXEMPTION WHICH HE MAY LEGITIMATELY CLAIM UNDER THE DIRECTIVE , PARTICULARLY SINCE IN THE ABSENCE OF SPECIFIC PROVISIONS ON THE MATTER THERE IS NOTHING TO PREVENT THE STATE FROM HAVING RECOURSE TO ANY RELEVANT PROVISIONS OF ITS GENERAL TAX LEGISLATION WHICH ARE DESIGNED TO COMBAT EVASION .

35 THE ARGUMENT BASED ON THE INTRODUCTORY SENTENCE OF ARTICLE 13 B MUST THEREFORE BE REJECTED .

36 IN SUPPORT OF THE VIEW THAT THE PROVISION IN QUESTION MAY NOT BE RELIED UPON , THE FINANZAMT , THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY AND THE FRENCH REPUBLIC ALSO REFER TO PART C OF ARTICLE 13 , WHICH READS AS FOLLOWS : ' ' OPTIONS . MEMBER STATES MAY ALLOW TAXPAYERS A RIGHT OF OPTION FOR TAXATION IN CASES OF : . . . (B) THE TRANSACTIONS COVERED IN B (D) . . . MEMBER STATES MAY RESTRICT THE SCOPE OF THIS RIGHT OF OPTION AND SHALL FIX THE DETAILS OF ITS USE ' ' .

37 THE GERMAN GOVERNMENT EMPHASIZES THAT THE OPTION PROVIDED FOR BY THAT PROVISION IS ' ' RESERVED TO THE MEMBER STATES ' ' AND THAT THE FEDERAL REPUBLIC OF GERMANY EXERCISED THAT POWER ONLY IN ARTICLE 9 OF THE IMPLEMENTING LAW . IT IS NOT PERMISSIBLE TO PRE-EMPT THAT LEGAL OPTION . THE

GERMAN GOVERNMENT CLAIMS THAT IN VIEW OF THAT POWER RESERVED TO THE MEMBER STATES AND OF THE POSSIBILITY WHICH IT ENTAILS OF RESTRICTING THE SCOPE OF THE RIGHT OF OPTION AND OF FIXING THE DETAILS OF ITS USE , THE PROVISION RELIED UPON BY THE PLAINTIFF IN THE MAIN ACTION MAY NOT BE CONSIDERED AS CONSTITUTING AN UNCONDITIONAL RULE .

38 THAT LINE OF ARGUMENT IS BASED ON AN INCORRECT UNDERSTANDING OF THE MEANING OF ARTICLE 13 C . BY VIRTUE OF THE POWER CONFERRED UPON THEM BY THAT PROVISION THE MEMBER STATE MAY ALLOW PERSONS ENTITLED TO EXEMPTIONS PROVIDED FOR BY THE DIRECTIVE TO WAIVE THEIR EXEMPTIONS IN ALL CASES OR WITHIN CERTAIN LIMITS OR SUBJECT TO CERTAIN DETAILED RULES . HOWEVER , IT SHOULD BE EMPHASIZED THAT , UNDER THE ABOVE-MENTIONED PROVISION , WHERE A MEMBER STATE MAKES USE OF THAT POWER , THE EXERCISE OF THE OPTION CONFERRED SUBJECT TO THOSE CONDITIONS IS A MATTER FOR THE TAXPAYER ALONE AND NOT FOR THE STATE .

39 IT FOLLOWS THAT ARTICLE 13 C DOES NOT IN ANY WAY CONFER UPON THE MEMBER STATES THE RIGHT TO PLACE CONDITIONS ON OR TO RESTRICT IN ANY MANNER WHATSOEVER THE EXEMPTIONS PROVIDED FOR BY PART B . IT MERELY RESERVES THE RIGHT TO THE MEMBER STATES TO ALLOW , TO A GREATER OR LESSER DEGREE , PERSONS ENTITLED TO THOSE EXEMPTIONS TO OPT FOR TAXATION THEMSELVES , IF THEY CONSIDER THAT IT IS IN THEIR INTEREST TO DO SO .

40 CONSEQUENTLY , THE PROVISION RELIED UPON BY THE FINANZAMT AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY IN ORDER TO SHOW THAT THE EXEMPTION IS CONDITIONAL IS NOT RELEVANT TO THE POSITION OF A TAXPAYER WHO HAS CLEARLY DEMONSTRATED HIS INTENTION TO TAKE ADVANTAGE OF THE EXEMPTION CONFERRED BY THE DIRECTIVE , SINCE THE EXPRESSION OF THAT INTENTION NECESSARILY EXCLUDES THE EXERCISE OF THE RIGHT OF OPTION ENVISAGED BY ARTICLE 13 C .

THE SYSTEM OF VALUE-ADDED TAX

41 IN SUPPORT OF THE VIEW THAT ARTICLE 13 B (D) 1 MAY NOT BE RELIED UPON BY INDIVIDUALS THE FINANZAMT , SUPPORTED BY THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY , PUTS FORWARD VARIOUS DETAILED ARGUMENTS BASED ON THE PARTICULAR FEATURES OF THE TAX SYSTEM CONCERNED , NAMELY THE CHAIN OF TAXATION WHICH IS TYPICAL OF VALUE-ADDED TAX AND WHICH DERIVES FROM THE MECHANISM OF THE RIGHT OF DEDUCTION . THE FINANZAMT CONSIDERS THAT THE SEVERING OF THAT CHAIN BY THE EFFECT OF EXEMPTION MIGHT HAVE ADVERSE CONSEQUENCES UPON THE INTERESTS BOTH OF THE VERY PERSON WHO IS EXEMPTED FROM TAX AND OF THE TAXPAYERS WHO FOLLOW OR EVEN PRECEDE HIM IN THE CHAIN OF SUPPLY . THE FINANZAMT ALSO DRAWS ATTENTION TO THE COMPLICATIONS WHICH MIGHT ARISE FOR THE TAX AUTHORITIES AS A RESULT OF THE APPLICATION OF THE PROVISIONS OF A DIRECTIVE BEFORE ANY ADAPTATION OF THE RELEVANT NATIONAL LAW .

42 IN THIS CONNECTION THE FINANZAMT CLAIMS FIRST THAT ACCORDING TO THE CIRCUMSTANCES AN EXEMPTION PROVIDED FOR BY THE DIRECTIVE MIGHT BE DISADVANTAGEOUS FOR THE VERY PERSON WHO IS ENTITLED TO IT , WHERE HE SUPPLIES SERVICES TO TAXABLE PERSONS WHO FULFIL THE CONDITIONS FOR DEDUCTION . DISADVANTAGES MIGHT ALSO ARISE FOR THE PERSON WHO TAKES ADVANTAGE OF THE EXEMPTION , WHERE DEDUCTIONS IN RESPECT OF CAPITAL GOODS , WHICH UNDER ARTICLE 20 OF THE DIRECTIVE MAY BE MADE OVER A PERIOD OF FIVE YEARS , ARE CORRECTED . THE FINANZAMT ALSO REFERS TO THE

DIFFICULTIES WHICH MAY ARISE FROM THE APPLICATION OF THE PROVISIONS RELATING TO THE ISSUE OF INVOICES CONTAINED IN ARTICLE 22 (3) (B) OF THE DIRECTIVE , UNDER WHICH INVOICES RELATING TO THE TAXABLE SUPPLY OF SERVICES MUST STATE CLEARLY THE AMOUNT OF VALUE-ADDED TAX . UNDER ARTICLE 21 (1) (C) SUCH A STATEMENT GIVES RISE IN THE CASE OF EXEMPT SUPPLIES OF SERVICES TO AN INDEPENDENT LIABILITY TO TAX . TAX DUE UNDER THAT PROVISION MAY , ACCORDING TO ARTICLE 17 (2) , UNDER NO CIRCUMSTANCES BE DEDUCTED AS INPUT TAX BY THE RECIPIENT OF THE SERVICES SUPPLIED . CONSEQUENTLY , THE GRANT OF AN EXEMPTION CONSTITUTES A CONSIDERABLE DISADVANTAGE FOR CREDIT NEGOTIATORS WHO HAVE ISSUED INVOICES STATING THE AMOUNT OF THE TAX .

43 THE FINANZAMT PLACES PARTICULAR EMPHASIS ON THE DISRUPTION CAUSED BY THE FACT THAT AN EXEMPTION MIGHT BE CLAIMED A POSTERIORI , TO THE DETRIMENT OF TAXPAYERS WHO , IN A BUSINESS RELATIONSHIP WITH THE PERSON EXEMPTED FROM THE TAX , EITHER FOLLOW OR PRECEDE HIM IN THE CHAIN OF TRANSACTIONS .

44 IN THAT REGARD IT SHOULD BE POINTED OUT THAT THE SCHEME OF THE DIRECTIVE IS SUCH THAT ON THE ONE HAND BY AVAILING THEMSELVES OF AN EXEMPTION PERSONS ENTITLED THERETO NECESSARILY WAIVE THE RIGHT TO CLAIM A DEDUCTION IN RESPECT OF INPUT AND ON THE OTHER HAND , HAVING BEEN EXEMPTED FROM THE TAX , THEY ARE UNABLE TO PASS ON ANY CHARGE WHATSOEVER TO THE PERSON FOLLOWING THEM IN THE CHAIN OF SUPPLY , WITH THE RESULT THAT THE RIGHTS OF THIRD PARTIES IN PRINCIPLE CANNOT BE AFFECTED .

45 THE ARGUMENTS PUT FORWARD BY THE FINANZAMT AND THE FEDERAL GOVERNMENT AS TO A DISRUPTION OF THE NORMAL PATTERN OF CARRYING FORWARD THE CHARGE TO VALUE-ADDED TAX ARE THEREFORE UNFOUNDED WHERE A TAXPAYER HAS EXPRESSED HIS INTENTION TO AVAIL HIMSELF OF THE EXEMPTION CONFERRED BY THE DIRECTIVE AND MOREOVER BEARS THE CONSEQUENCES OF HIS CHOICE .

46 FINALLY , WITH REGARD TO THE ARGUMENT PUT FORWARD BY THE FINANZAMT AS TO THE DISRUPTION CAUSED BY EXEMPTIONS CLAIMED , A POSTERIORI , UNDER THE DIRECTIVE BY TAXPAYERS , IT SHOULD BE OBSERVED THAT THAT OBJECTION IS NOT RELEVANT TO THE CASE OF A TAXPAYER WHO HAS CLAIMED THE BENEFIT OF THE EXEMPTION WHEN HE SUBMITTED HIS TAX RETURN AND WHO HAS CONSEQUENTLY REFRAINED FROM INVOICING THE TAX TO THE RECIPIENTS OF HIS SERVICES , WITH THE RESULT THAT THIRD PARTIES ARE NOT AFFECTED .

47 AS REGARDS THE ADMINISTRATIVE DIFFICULTIES OF A MORE GENERAL NATURE WHICH ARE ALLEGED TO RESULT FROM THE APPLICATION OF THE EXEMPTION PROVIDED FOR BY THE DIRECTIVE , IN A SITUATION IN WHICH THE TAX LEGISLATION AND ADMINISTRATIVE PRACTICE HAVE NOT YET BEEN ADAPTED SO AS TO TAKE ACCOUNT OF THE NEW FACTORS INTRODUCED BY COMMUNITY LAW , IT IS SUFFICIENT TO POINT OUT THAT IF SUCH DIFFICULTIES WERE TO ARISE , THEY WOULD BE THE CONSEQUENCE OF THE MEMBER STATE ' S FAILURE TO IMPLEMENT THE DIRECTIVE IN QUESTION WITHIN THE PERIOD PRESCRIBED FOR THAT PURPOSE . THE CONSEQUENCES OF THAT SITUATION MUST BE BORNE BY THE ADMINISTRATIVE AUTHORITIES AND MAY NOT BE PASSED ON TO TAXPAYERS WHO RELY ON THE FULFILMENT OF A PRECISE OBLIGATION WHICH HAS BEEN INCUMBENT ON THE STATE UNDER COMMUNITY LAW SINCE 1 JANUARY 1979 .

48 IT FOLLOWS FROM THE FOREGOING THAT THE ARGUMENTS PUT FORWARD AS TO THE SYSTEM OF TAXATION WHICH IS THE SUBJECT OF THE DIRECTIVE MUST ALSO BE

REJECTED .

49 CONSEQUENTLY , THE REPLY TO BE GIVEN TO THE QUESTION PUT TO THE COURT IS THAT AS FROM 1 JANUARY 1979 IT WAS POSSIBLE FOR THE PROVISION CONCERNING THE EXEMPTION FROM TURNOVER TAX OF TRANSACTIONS CONSISTING OF THE NEGOTIATION OF CREDIT CONTAINED IN ARTICLE 13 B (D) 1 OF THE SIXTH COUNCIL DIRECTIVE 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 TO BE RELIED UPON , IN THE ABSENCE OF THE IMPLEMENTATION OF THAT DIRECTIVE , BY A CREDIT NEGOTIATOR WHERE HE HAD REFRAINED FROM PASSING THAT TAX ON TO PERSONS FOLLOWING HIM IN THE CHAIN OF SUPPLY , AND THE STATE COULD NOT CLAIM , AS AGAINST HIM , THAT IT HAD FAILED TO IMPLEMENT THE DIRECTIVE .

Decision on costs

50 THE COSTS INCURRED BY THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY , THE GOVERNMENT OF THE FRENCH REPUBLIC , THE COUNCIL AND THE COMMISSION OF THE EUROPEAN COMMUNITIES , WHICH HAVE SUBMITTED OBSERVATIONS TO THE COURT , ARE NOT RECOVERABLE . AS THESE PROCEEDINGS ARE , IN SO FAR AS THE PARTIES TO THE MAIN ACTION ARE CONCERNED , IN THE NATURE OF 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 SUBMITTED TO IT BY THE FINANZGERICHT MUNSTER BY ORDER OF 27 NOVEMBER 1980 , HEREBY RULES :

AS FROM 1 JANUARY 1979 IT WAS POSSIBLE FOR THE PROVISION CONCERNING THE EXEMPTION FROM TURNOVER TAX OF TRANSACTIONS CONSISTING OF THE NEGOTIATION OF CREDIT CONTAINED IN ARTICLE 13 B (D) 1 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 TO BE RELIED UPON , IN THE ABSENCE OF THE IMPLEMENTATION OF THAT DIRECTIVE , BY A CREDIT NEGOTIATOR WHERE HE HAD REFRAINED FROM PASSING THAT TAX ON TO PERSONS FOLLOWING HIM IN THE CHAIN OF SUPPLY , AND THE STATE COULD NOT CLAIM , AS AGAINST HIM , THAT IT HAD FAILED TO IMPLEMENT THE DIRECTIVE .

MERTENS DE WILMARS BOSCO TOUFFAIT DUE PESCATORE MACKENZIE STUART O ' KEEFFE KOOPMANS EVERLING CHLOROS GREVISSE DELIVERED IN OPEN COURT IN LUXEMBOURG ON 19 JANUARY 1982 .