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Judgment of the Court (Fifth Chamber) of 14 May 1985. - Van Dijk's Boekhuis BV v
Staatssecretaris van Financiën. - Reference for a preliminary ruling: Hoge Raad - Netherlands. -
VAT - Work on customers' materials - Book repairs. - Case 139/84.

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Summary

Parties

Subject of the case

Grounds

Decision on costs

Operative part

Keywords

*TAX PROVISIONS - HARMONIZATION OF LEGISLATION - TURNOVER TAXES - COMMON
SYSTEM OF VALUE-ADDED TAX - SUPPLY OF GOODS - PRODUCTION OF GOODS FROM
CUSTOMERS ' MATERIALS - CONCEPT - REPAIRS - EXCLUDED*

(COUNCIL DIRECTIVES 67/228 , ART . 5 (2) (D) , AND 77/338 , ART . 5 (5) (A))

Summary

*THE PRODUCTION OF GOODS FROM CUSTOMERS ' MATERIALS AS REFERRED TO IN
ARTICLE 5 (2) (D) OF THE SECOND DIRECTIVE AND ARTICLE 5 (5) (A) OF THE SIXTH
DIRECTIVE ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING
TO TURNOVER TAXES ONLY TAKES PLACE WHERE A CONTRACTOR PRODUCES A NEW
ARTICLE FROM THE MATERIALS ENTRUSTED TO HIM BY HIS CUSTOMER . A NEW
ARTICLE IS PRODUCED WHEN THE WORK OF THE CONTRACTOR RESULTS IN AN
ARTICLE WHOSE FUNCTION , ACCORDING TO GENERALLY ACCEPTED VIEWS , IS
DIFFERENT FROM THAT OF THE MATERIALS PROVIDED .*

*IT FOLLOWS THAT REPAIRS , HOWEVER RADICAL THEY MAY BE , WHICH SIMPLY
RESTORE TO THE ARTICLE ENTRUSTED TO THE CONTRACTOR THE FUNCTION WHICH IT
PREVIOUSLY HAD WITHOUT RESULTING IN THE CREATION OF A NEW ARTICLE DO NOT
AMOUNT TO THE PRODUCTION OF GOODS FROM CUSTOMERS ' MATERIALS .*

Parties

IN CASE 139/84

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

VAN DIJK ' S BOEKHUIS BV , KAMPEN ,

AND

STAATSSECRETARIS VAN FINANCIEN

Subject of the case

ON THE INTERPRETATION OF ARTICLE 5 (2) OF 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 ' (OFFICIAL JOURNAL , ENGLISH SPECIAL EDITION 1967 , P . 16), AND OF ARTICLE 5 (5) (A) OF 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 A JUDGMENT OF 16 MAY 1984 , WHICH WAS RECEIVED AT THE COURT ON 24 MAY 1984 , THE HOGE RAAD DER NEDERLANDEN (SUPREME COURT OF THE NETHERLANDS) REFERRED TO THE COURT FOR A PRELIMINARY RULING UNDER ARTICLE 177 OF THE EEC TREATY TWO QUESTIONS ON THE INTERPRETATION OF COUNCIL DIRECTIVE 67/228 OF 11 APRIL 1967 (OFFICIAL JOURNAL , ENGLISH SPECIAL EDITION 1967 , P . 16) AND COUNCIL DIRECTIVE 77/388 OF 17 MAY 1977 (OFFICIAL JOURNAL 1977 , L 145 , P . 1) ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES .

2 THOSE QUESTIONS WERE RAISED IN PROCEEDINGS BETWEEN VAN DIJK ' S BOEKHUIS BV , KAMPEN , AND THE INSPECTOR OF CUSTOMS AND EXCISE , ZWOLLE , REGARDING THE AMOUNT OF TAX PAYABLE BY VAN DIJK ' S BOEKHUIS FOLLOWING A REASSESSMENT .

3 AMONG OTHER THINGS VAN DIJK ' S BOEKHUIS CARRIES OUT REPAIRS , SOMETIMES RADICAL , ON SCHOOL BOOKS , AT THE REQUEST OF THE OWNERS OF THOSE BOOKS . DURING THE PERIOD FROM 1976 TO 1979 VAN DIJK ' S BOEKHUIS PAID VALUE-ADDED TAX IN RESPECT OF SUCH REPAIRS AT THE REDUCED RATE OF 4% CHARGED UNDER NETHERLANDS LAW ON SUPPLIES OF BOOKS .

4 AFTER AN INVESTIGATION IN 1981 THE INSPECTOR OF CUSTOMS AND EXCISE AT ZWOLLE DECIDED THAT THOSE REPAIRS DID NOT CONSTITUTE A SUPPLY OF GOODS UNDER THE RELEVANT NETHERLANDS LEGISLATION BUT RATHER THE PROVISION OF

SERVICES , TO WHICH A RATE OF 18% APPLIED . THE INSPECTOR THEREFORE ISSUED A REASSESSMENT NOTICE FOR THE YEARS 1976 TO 1979 . THAT NOTICE WAS UPHOLD NOTWITHSTANDING AN OBJECTION LODGED BY VAN DIJK ' S BOEKHUIS .

5 VAN DIJK ' S BOEKHUIS THEN BROUGHT AN ACTION AGAINST THE DECISION OF THE INSPECTOR OF CUSTOMS AND EXCISE BEFORE THE GERECHTSHOF (REGIONAL COURT OF APPEAL), ARNHEM . THAT COURT HELD THAT DESPITE THE RADICAL REPAIRS CARRIED OUT THE OLD BOOK CONTINUED TO EXIST , THAT THERE WAS NO MANUFACTURE OF A NEW ARTICLE AND THAT THERE WAS NO SUPPLY OF GOODS WITHIN THE MEANING OF THE NETHERLANDS LEGISLATION ON VALUE-ADDED TAX . BY JUDGMENT OF 14 APRIL 1983 IT THEREFORE HELD THAT THE ACTION WAS UNFOUNDED .

6 VAN DIJK ' S BOEKHUIS APPEALED AGAINST THAT JUDGMENT TO THE HOGE RAAD . IT ARGUED THAT THE VARIOUS OPERATIONS CARRIED OUT BY IT ON BOOKS IN TATTERS RESULTED IN THE MANUFACTURE OF A NEW BOOK ; IN DECIDING THAT THERE WAS NO SUPPLY OF GOODS THE GERECHTSHOF , ARNHEM , THEREFORE MISAPPLIED THE NETHERLANDS LAW OF 1968 ON VALUE-ADDED TAX .

7 FOR THE HOGE RAAD THAT ARGUMENT RAISES THE QUESTION OF THE MEANING OF THE TERM ' MAKE ' IN THE LAW ON VALUE-ADDED TAX . THE HOGE RAAD CONSIDERS THAT THE NETHERLANDS LEGISLATURE DID NOT INTEND THAT TERM TO HAVE ANY MEANING OTHER THAN THAT OF THE TERM ' MADE ' AS USED IN ARTICLE 5 (2) (D) OF COUNCIL DIRECTIVE 67/228 OF 11 APRIL 1967 ON THE HARMONIZATION OF LEGISLATION OF MEMBER STATES CONCERNING TURNOVER TAXES (OFFICIAL JOURNAL , ENGLISH SPECIAL EDITION 1967 , P . 16) (HEREINAFTER REFERRED TO AS ' THE SECOND DIRECTIVE '). THE HOGE RAAD IS ALSO OF THE VIEW THAT SINCE 1 JANUARY 1979 THE TERM ' MAKE ' IN THE NETHERLANDS LAW HAS HAD THE SAME MEANING AS THE PHRASE ' MADE OR ASSEMBLED ' WHICH APPEARS IN ARTICLE 5 (5) (A) OF COUNCIL DIRECTIVE 77/388 OF 17 MAY 1977 ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES (OFFICIAL JOURNAL 1977 , L 145 , P . 1) (HEREINAFTER REFERRED TO AS ' THE SIXTH DIRECTIVE ').

8 IN THOSE CIRCUMSTANCES THE HOGE RAAD CONSIDERED THAT IT COULD NOT RULE ON THE ARGUMENT PUT FORWARD BY VAN DIJK ' S BOEKHUIS WITHOUT OBTAINING AN INTERPRETATION OF ARTICLE 5 OF BOTH THE SECOND AND SIXTH DIRECTIVES . IT THEREFORE DECIDED TO REFER THE FOLLOWING QUESTIONS TO THE COURT OF JUSTICE :

' (1) MUST THE WORK PERFORMED BY A TAXABLE PERSON WHO RADICALLY REPAIRS OR RENOVATES FOR A CUSTOMER MOVABLE PROPERTY MADE AVAILABLE TO HIM BY THAT CUSTOMER AND THEN SUPPLIES THE PROPERTY TO THE CUSTOMER BE REGARDED AS THE MAKING OF MOVEABLE PROPERTY WITHIN THE MEANING OF ARTICLE 5 (2) (D) OF THE SECOND DIRECTIVE OR THE MAKING OR ASSEMBLY OF MOVEABLE PROPERTY WITHIN THE MEANING OF ARTICLE 5 (5) (A) OF THE SIXTH DIRECTIVE ONLY IF , ACCORDING TO ORDINARY LANGUAGE USAGE OR COMMONLY ACCEPTED VIEWS , THE RESULT OF THAT WORK CONSTITUTES NEW PROPERTY?

(2) IF THE CRITERION SET OUT IN THE FIRST QUESTION IS NOT DECISIVE ,

(A) WHAT ARE THE MINIMUM REQUIREMENTS WHICH MUST BE FULFILLED IN ORDER FOR SUCH WORK TO BE CONSIDERED TO INVOLVE THE MAKING OF MOVABLE PROPERTY OR THE MAKING OR ASSEMBLY OF MOVABLE PROPERTY?

(B) MUST A DISTINCTION BE DRAWN IN THIS REGARD BETWEEN GOODS CHARACTERIZED MAINLY BY PHYSICAL QUALITIES AND GOODS CHARACTERIZED

MAINLY BY NON-PHYSICAL QUALITIES , SUCH AS BOOKS?

(C) MUST A DISTINCTION BE DRAWN IN THIS REGARD BETWEEN THE REPAIR OR RENOVATION OF GOODS WHICH HAVE FALLEN TO PIECES OR WHICH ARE FIRST TAKEN APART BY THE CONTRACTOR AND THE REPAIR OR RENOVATION OF GOODS WHICH ARE STILL INTACT AND REMAIN SO?

(D) MUST A DISTINCTION BE DRAWN IN THIS REGARD DEPENDING ON THE EXTENT TO WHICH THE CONTRACTOR ADDS NEW MATERIALS?

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9 ARTICLE 5 (2) (D) OF THE SECOND DIRECTIVE READS AS FOLLOWS :

' THE FOLLOWING SHALL ALSO BE CONSIDERED AS SUPPLY WITHIN THE MEANING OF PARA- GRAPH 1 :

...

(D) THE DELIVERY OF MOVABLE PROPERTY PRODUCED UNDER A CONTRACT FOR WORK , THAT IS TO SAY THE HANDING OVER BY A CONTRACTOR TO HIS CUSTOMER OF MOVABLE PROPERTY WHICH HE HAS MADE FROM MATERIALS AND OBJECTS ENTRUSTED TO HIM BY THE CUSTOMER FOR THIS PURPOSE , WHETHER OR NOT THE CONTRACTOR HAS PROVIDED A PART OF THE PRODUCTS USED ' .

10 ARTICLE 5 (5) (A) OF THE SIXTH DIRECTIVE PROVIDES THAT :

' MEMBER STATES MAY CONSIDER THE FOLLOWING TO BE SUPPLIES WITHIN THE MEANING OF PARAGRAPH 1 :

(A) SUPPLIES UNDER A CONTRACT TO MAKE UP WORK FROM CUSTOMERS ' MATERIALS , THAT IS TO SAY DELIVERY BY A CONTRACTOR TO HIS CUSTOMER OF MOVABLE PROPERTY MADE OR ASSEMBLED BY THE CONTRACTOR FROM MATERIALS OR OBJECTS ENTRUSTED TO HIM BY THE CUSTOMER FOR THIS PURPOSE , WHETHER OR NOT THE CONTRACTOR HAS PROVIDED ANY PART OF THE MATERIALS USED ' .

THE FIRST QUESTION

11 IN ITS FIRST QUESTION THE HOGE RAAD ASKS , ON THE ONE HAND , WHETHER RADICAL REPAIRS OR RENOVATIONS OF MOVABLE PROPERTY BELONGING TO ANOTHER PERSON MUST RESULT IN THE CREATION OF A NEW ARTICLE IN ORDER TO AMOUNT TO THE PRODUCTION OF GOODS FROM MATERIALS FURNISHED BY THE CUSTOMER , AS REFERRED TO IN ARTICLE 5 (2) (D) OF THE SECOND DIRECTIVE AND ARTICLE 5 (5) (A) OF THE SIXTH DIRECTIVE , AND , ON THE OTHER HAND , HOW IT IS TO BE DECIDED WHETHER OR NOT A NEW ARTICLE HAS BEEN PRODUCED .

12 IN ITS OBSERVATIONS BEFORE THIS COURT VAN DIJK ' S BOEKHUIS ARGUES THAT THE CRITERION USED IN THE SECOND AND SIXTH DIRECTIVES IS NOT WHETHER OR NOT THE ARTICLE PRODUCED IS NEW , SINCE THE DIRECTIVES PLACE MORE EMPHASIS ON THE NATURE OF THE WORK CARRIED OUT TO PRODUCE THE GOODS . ACCORDING TO VAN DIJK ' S BOEKHUIS , THE PRODUCTION OF GOODS FROM CUSTOMERS ' MATERIALS AS REFERRED TO IN THOSE DIRECTIVES TAKES PLACE WHENEVER A CUSTOMER ENTRUSTS MATERIALS OR OBJECTS TO A CONTRACTOR FOR THE PURPOSE OF MAKING AN ARTICLE . THAT INTERPRETATION IS EQUALLY APPLICABLE WHERE THE MATERIALS HANDED OVER COME FROM AN ARTICLE WHICH HAS FALLEN TO PIECES .

13 THE NETHERLANDS GOVERNMENT BASES ITS REASONING ON THE DUTCH VERSION OF ARTICLE 5 OF THE SECOND DIRECTIVE . IN THAT VERSION IT IS STATED THAT WORK CONSTITUTES THE PRODUCTION OF AN ARTICLE FROM CUSTOMERS ' MATERIALS ONLY IF IT IS CARRIED OUT BY THE ' MAKER OF THE ARTICLE ' . IN COMMON USAGE THAT PHRASE CAN ONLY REFER TO A PERSON WHO MAKES NEW ARTICLES . THE NETHERLANDS GOVERNMENT INFERS FROM THAT THAT RADICAL REPAIRS OR RENOVATIONS OF MOVABLE PROPERTY BELONGING TO ANOTHER PERSON CONSTITUTE THE PRODUCTION OF ARTICLES FROM CUSTOMERS ' MATERIALS ONLY WHEN THEY RESULT IN THE CREATION OF A NEW ARTICLE .

14 IN INTERPRETING THE WORDING OF THE SECOND AND SIXTH DIRECTIVES THE COMMISSION BASES ITS VIEW ON THE MEANING OF THE WORD ' MADE ' IN COMMON USAGE . IN NORMAL USAGE THE WORD ' MAKE ' REFERS TO OPERATIONS WHICH RESULT IN THE CREATION OF A NEW ARTICLE , THAT IS TO SAY , AN ARTICLE WHOSE ESSENTIAL CHARACTERISTICS HAVE BEEN ALTERED . IT IS ONLY IN SUCH A CASE THAT IT IS POSSIBLE TO SPEAK OF THE PRODUCTION OF GOODS FROM CUSTOMERS ' MATERIALS .

15 FINALLY , THE FRENCH GOVERNMENT CONSIDERS THAT IN ADOPTING THE DIRECTIVES REFERRED TO THE COUNCIL INTENDED TO LEAVE IT TO THE MEMBER STATES TO DETERMINE ACCORDING TO NATIONAL LAW WHETHER THE PRODUCTION OF GOODS FROM CUSTOMERS ' MATERIALS , AS REFERRED TO IN THE SECOND AND SIXTH DIRECTIVES , SHOULD BE CLASSED AS THE SUPPLY OF GOODS OR OF SERVICES .

16 IT MUST FIRST BE POINTED OUT THAT THE FRENCH GOVERNMENT ' S REMARKS RAISE THE PRELIMINARY QUESTION WHETHER THE CONCEPT OF PRODUCTION OF GOODS FROM CUSTOMERS ' MATERIALS , AS USED IN THE SECOND AND SIXTH DIRECTIVES , IS A CONCEPT OF COMMUNITY LAW OR WHETHER IT IS TO BE DEFINED BY THE NATIONAL LAW OF THE MEMBER STATES . THE FACT THAT IN ARTICLE 5 OF THE SECOND AND SIXTH DIRECTIVES THE REFERENCE TO THE TYPE OF CONTRACT CONCERNED IS FOLLOWED BY THE WORDS ' THAT IS TO SAY ' AND A DEFINITION SHOWS CLEARLY THAT THE COUNCIL INTENDED THAT THE CONCEPT OF PRODUCTION OF GOODS FROM CUSTOMERS ' MATERIALS SHOULD HAVE AN INDEPENDENT MEANING IN COMMUNITY LAW .

17 UNDER ARTICLE 5 (2) (D) OF THE SECOND DIRECTIVE AND ARTICLE 5 (5) (A) OF THE SIXTH DIRECTIVE THE PRODUCTION OF GOODS FROM CUSTOMERS ' MATERIALS MEANS THE MANUFACTURE OR ASSEMBLY OF MOVABLE PROPERTY FROM MATERIALS FURNISHED BY THE CUSTOMER FOR THAT PURPOSE .

18 IN ITS OBSERVATIONS THE COMMISSION CORRECTLY POINTED OUT THAT THE PROBLEM RAISED BY THE HOGE RAAD WAS THE DETERMINATION OF THE MEANING OF THE WORD ' MADE ' IN THE SECOND DIRECTIVE ; THE MEANING OF THAT WORD WAS

NOT ALTERED BY THE ADDITION OF THE WORD ' ASSEMBLED ' IN THE SIXTH DIRECTIVE .

19 ONCE THE QUESTION HAS BEEN NARROWED DOWN IN THIS WAY , IT MUST BE STATED THAT THE OTHER PROVISIONS OF THE SECOND AND SIXTH DIRECTIVES GIVE NO INDICATION OF THE MEANING TO BE ATTRIBUTED TO THE WORD ' MADE ' . NOR IS ANY ENLIGHTENMENT TO BE GATHERED BY LOOKING AT THE PURPOSE PURSUED BY THE COUNCIL IN ADOPTING THE TWO DIRECTIVES . THEIR MAIN OBJECTIVE IS TO DETERMINE THE BASIS OF ASSESSMENT OF VALUE-ADDED TAX IN A UNIFORM MANNER ACCORDING TO COMMUNITY RULES . THAT OBJECTIVE WILL BE ATTAINED WHATEVER MEANING IS GIVEN TO THE WORD ' MADE ' , PROVIDED THAT THAT MEANING IS IDENTICAL IN ALL THE MEMBER STATES .

20 IN THOSE CIRCUMSTANCES THE WORD ' MADE ' CAN ONLY BE INTERPRETED BY REFERENCE TO COMMON USAGE . IN COMMON USAGE THE CONCEPT OF MAKING AN ARTICLE IMPLIES THE CREATION OF AN ARTICLE THAT DID NOT PREVIOUSLY EXIST .

21 THE CONCLUSION MAY THEREFORE BE DRAWN THAT THE PRODUCTION OF GOODS FROM CUSTOMERS ' MATERIALS ONLY TAKES PLACE WHERE A CONTRACTOR PRODUCES A NEW ARTICLE FROM THE MATERIALS ENTRUSTED TO HIM BY HIS CUSTOMER .

22 A NEW ARTICLE IS PRODUCED WHEN THE WORK OF THE CONTRACTOR RESULTS IN AN ARTICLE WHOSE FUNCTION , ACCORDING TO GENERALLY ACCEPTED VIEWS , IS DIFFERENT FROM THAT OF THE MATERIALS PROVIDED . IT IS FOR THE NATIONAL COURT , HAVING REGARD TO THE USE WHICH MAY BE MADE OF THE ARTICLE , TO DECIDE WHETHER OR NOT A NEW ARTICLE HAS BEEN PRODUCED .

23 IT FOLLOWS THAT REPAIRS , HOWEVER RADICAL THEY MAY BE , WHICH SIMPLY RESTORE TO THE ARTICLE HANDED OVER THE FUNCTION WHICH IT PREVIOUSLY HAD WITHOUT RESULTING IN THE CREATION OF A NEW ARTICLE DO NOT AMOUNT TO THE PRODUCTION OF GOODS FROM CUSTOMERS ' MATERIALS .

24 THE ANSWER TO THE FIRST QUESTION REFERRED BY THE HOGE RAAD DER NEDERLANDEN MUST THEREFORE BE THAT THE PRODUCTION OF GOODS FROM CUSTOMERS ' MATERIALS AS REFERRED TO IN ARTICLE 5 (2) (D) OF THE SECOND DIRECTIVE AND ARTICLE 5 (5) (A) OF THE SIXTH DIRECTIVE ONLY TAKES PLACE WHERE A CONTRACTOR PRODUCES A NEW ARTICLE FROM THE MATERIALS ENTRUSTED TO HIM BY HIS CUSTOMER AND THAT A NEW ARTICLE IS PRODUCED WHEN THE WORK OF THE CONTRACTOR RESULTS IN AN ARTICLE WHOSE FUNCTION , ACCORDING TO GENERALLY ACCEPTED VIEWS , IS DIFFERENT FROM THAT OF THE MATERIALS PROVIDED .

THE SECOND QUESTION

25 IN VIEW OF THE REPLY TO THE FIRST QUESTION SUBMITTED BY THE HOGE RAAD , THE SECOND QUESTION HAS BECOME OTIOSE .

Decision on costs

COSTS

26 THE COSTS INCURRED BY THE NETHERLANDS GOVERNMENT , THE FRENCH GOVERNMENT AND THE COMMISSION OF THE EUROPEAN COMMUNITIES , WHICH SUBMITTED OBSERVATIONS TO THE COURT , ARE NOT RECOVERABLE . SINCE THESE

PROCEEDINGS ARE , IN SO FAR AS THE PARTIES TO THE MAIN PROCEEDINGS 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 (FIFTH CHAMBER),

IN REPLY TO THE QUESTIONS SUBMITTED TO IT BY THE HOGE RAAD DER NEDERLANDEN , BY JUDGMENT OF 16 MAY 1984 , HEREBY RULES :

THE PRODUCTION OF GOODS FROM CUSTOMERS ' MATERIALS , AS REFERRED TO IN ARTICLE 5 (2) (D) OF COUNCIL DIRECTIVE 67/228 OF 11 APRIL 1967 (OFFICIAL JOURNAL , ENGLISH SPECIAL EDITION 1967 , P . 16) AND ARTICLE 5 (5) (A) OF COUNCIL DIRECTIVE 77/388 OF 17 MAY 1977 (OFFICIAL JOURNAL 1977 , L 145 , P . 1) ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES , ONLY TAKES PLACE WHERE A CONTRACTOR PRODUCES A NEW ARTICLE FROM THE MATERIALS ENTRUSTED TO HIM BY HIS CUSTOMER . A NEW ARTICLE IS PRODUCED WHEN THE WORK OF THE CONTRACTOR RESULTS IN AN ARTICLE WHOSE FUNCTION , ACCORDING TO GENERALLY ACCEPTED VIEWS , IS DIFFERENT FROM THAT OF THE MATERIALS PROVIDED .