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Opinion of Mr Advocate General Fennelly delivered on 16 July 1998. - Norbury Developments Ltd v Commissioners of Customs & Excise. - Reference for a preliminary ruling: Value Added Tax Tribunal, Manchester - United Kingdom. - VAT - Sixth directive - Transitional provisions - Maintenance of exemptions - Supply of building land. - Case C-136/97.

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Opinion of the Advocate-General

1 This preliminary reference concerns the scope of the transitional exemptions from liability to VAT that Member States have been permitted to apply in accordance with Article 28(3)(b) of and Annex F to the Sixth VAT Directive. (1) The Court is asked whether a Member State may continue to rely on such exemptions where by later legislative intervention it has narrowed the scope of the relevant pre-existing national rules.

I - Legal and factual background

A - Community law

2 The relevant provisions of the Sixth Directive are those concerned with the supply of `building land'. In the first place, it should be noted that Article 13B(h) provides for a mandatory VAT exemption in respect of `the supply of land which has not been built on other than building land as described in Article 4(3)(b)'. Article 4(3)(b) provides that `"building land" shall mean any unimproved or improved land defined as such by the Member States'. It should also be noted that, under Article 13B(g), read in conjunction with Article 4(3)(a), the supply of buildings and the land on which they stand, other than new buildings, is also mandatorily exempt from VAT.

3 Article 28 of the Sixth Directive is concerned with `[T]ransitional [P]rovisions'. It provides, at Article 28(3)(b), that Member States may transitionally `continue to exempt the activities set out in Annex F under the conditions existing in the Member State concerned'. Point 16 of Annex F refers to `[S]upplies of those buildings and land described in Article 4(3)'. The effect of this transitional exemption is, thus, that Member States may, notwithstanding the exceptions to the VAT exemptions granted by Article 13B(g) and (h), retain national exemptions from VAT; i.e. they may decide not to give effect to the exception whereby `building land' should be taxed.

4 The provisions concerning options for waiving both the abovementioned mandatory and transitional exemptions are also of some relevance in the present case. First, in respect, inter alia, of `the transactions covered' in both Article 13B(g) and (h), Article 13C authorises Member States to `allow taxpayers a right of option for taxation'. Secondly, as regards the transitional exemptions, Article 28(3)(c) permits Member States to `grant to taxable persons the option for taxation ... under the conditions set out in Annex G'. Point I(b) of Annex G states that, `in the case of transactions

specified in Annex F, Member States which provisionally maintain the right to exempt such supplies may grant taxable persons the right to opt for taxation'. Thus, the grant of an option for taxation as regards both the mandatory and the transitional exemptions is expressly permitted.

B - The dispute in the main proceedings

5 The agreed facts, as set out in the order for reference, are relatively straightforward. On 29 April 1994, Norbury Developments Ltd, the appellant in the main proceedings (hereinafter `Norbury'), completed an earlier agreement to purchase certain lands at Chesterton in the United Kingdom from a vendor, Rivermead Homes Ltd, having very shortly before obtained planning permission for the construction thereon of a housing development. On the same day Norbury completed the sale of the land in question to a purchaser, John Kottler Ltd. Rivermead Homes Ltd waived the exemption from VAT applicable in the United Kingdom and charged VAT on the sale to Norbury. However, Norbury omitted to charge any VAT on its onward sale to John Kottler Ltd and subsequently received an assessment to VAT in the sum of UK £12 443, arising from the disallowance by the Commissioners of Customs & Excise, the respondent in the main proceedings (hereinafter `the Commissioners'), of a VAT input claimed by Norbury in respect of the VAT it had paid on the purchase price.

6 In its appeal against that assessment to the VAT and Duties Tribunal, Manchester (hereinafter `the Tribunal'), Norbury contended that the relevant provisions of the United Kingdom VAT legislation were incompatible with the Sixth Directive, and that the sale of the land to John Kottler Ltd should have been treated as taxable. In its view, under Article 28(3)(b) of and point 16 of Annex F to the Sixth Directive, Member States were permitted only to continue to apply precisely the same exemptions as those which were in force at the time of the adoption of the Sixth Directive on 17 May 1977, without any variation. However, since the United Kingdom had changed the relevant national rules, the transitional exemption was no longer applicable.

7 The Commissioners submitted that even if the land at issue was building land, it was exempted by virtue of Article 28(3)(b) of and point 16 of Annex F to the Sixth Directive; the transitional exemption provided for in those provisions had been maintained in force by the Eighteenth Directive. (2) No fundamental change had occurred in the relevant national rules and the Commissioners were entitled to rely on that exemption since they were not seeking to rely on any new VAT exemption against Norbury.

8 The Tribunal took the view that the land at issue, which was `sold specifically with planning permission and formed part of a new development', could not `be regarded as anything other than building land' and, accordingly, that a detailed definition of building land was unnecessary. On comparing the exemption in force at the time of the adoption of the Sixth Directive (i.e. that stated in Schedule 5, Group 1, of the Finance Act 1972) with that in force at the time of the disputed supply (i.e. that contained in Schedule 6, Group 1, of the Value Added Tax Act 1983), the Tribunal stated that `[t]his is not a case of the extension of an exemption but the restriction of an exemption by the introduction of an increasing number of qualifications'. Taking the view that the construction of the wording of Article 28(3)(b) was not `free from doubt' and that it could be construed as allowing Member States to reduce the scope of the exemption but not to extend it, the Tribunal decided to refer the following question to the Court:

`In relation to a supply of land which has not been built on but on which at the time of supply the erection of buildings has been legally authorised by a permission granted in accordance with the law of the Member State and which the Tribunal has held to be building land is the United Kingdom entitled to exempt the supply under Article 28(3)(b) of the Sixth Directive? Notwithstanding that:

(a) the taxation of supplies of land, including supplies of land which is indisputably building land, has altered since the United Kingdom adopted the Sixth Directive on 17 May 1977, in particular

since the enactment of the Finance Act 1989, which introduced the election to waive VAT exemption in respect of certain such supplies; and

(b) the taxation of supplies of land which is indisputably building land has altered since the United Kingdom adopted the Sixth Directive on 17 May 1977, in particular since the enactment of the Finance Act 1989 which required certain such supplies which were previously exempt to be standard-rated as civil engineering works;

and noting that the supply would have been exempt had the supply taken place before 17 May 1977 under item 1 of group 1 of Schedule 5 to the Finance Act 1972.'

II - Observations

9 Written and oral observations were submitted by the Commission and the United Kingdom; Norbury presented oral observations only.

III - Analysis

A - The definition of building land

10 The Tribunal has decided that the land at issue is building land and poses a question which concerns only the entitlement of the United Kingdom to continue to exempt the supply of such land from VAT. In Gemeente Emmen (3) the Court held that `Article 4(3)(b) of the Sixth Directive refers expressly to the Member States' definitions of building land' and, consequently, `that it is for the Member States to define what land is to be regarded as being building land, for the purposes of the application both of that provision and of Article 13B(h) ...'. (4) The Court also observed that Member States should `comply with the objective pursued by Article 13B(h) of the Sixth Directive, which seeks to exempt from tax only supplies of land which has not been built on and is intended to support a building'. (5) However, it concluded merely `that it is for the Member States to define the concept of "building land" within the combined provisions of Article 13B(h) and Article 4(3)(b) of the Sixth Directive', and that it `does not fall to the Court to specify what degree of improvement land which has not been built on must exhibit in order to be categorised as building land ...'. (6)

11 The Commission has drawn attention to the absence of any definition of `building land' in the United Kingdom VAT legislation. It observes that, although Gemeente Emmen left Member States free to define `building land', the failure to provide any definition applicable erga omnes might be contrary to the principle of legal certainty. (7) The Commission nevertheless suggests that this does not arise in the present case, first, because no question regarding the absence of a definition of such land in United Kingdom has been referred and, secondly, because the only consequence of a lack of such a definition would be that all land that might otherwise be caught by it would, subject to the right to opt for taxation, automatically be exempted by virtue of Article 13B(h).

12 It is sufficient, for present purposes, to note that no question has been referred to the Court on this issue. It is common case that the land at issue in the main proceedings is `building land' on any possible definition. To the extent that there are possible unresolved issues arising from the paragraphs of the Court's judgment in Gemeente Emmen which have been cited above, they do not arise in the instant case. In any event, I agree with the view of the United Kingdom that a definition of `building land' where its supply is covered by an exemption which has not materially changed since the beginning of 1973 would be pointless.

B - The application of the transitional exemption

13 I turn then to the issue of the transitional exemption. The question is whether the United Kingdom has forfeited the right to rely on Article 28(3)(b) of the Sixth Directive by so altering the terms of the exemption in respect of `supplies of those buildings and land described in Article 4(3)'

that it has not continued it, as required, `under conditions existing' in 1977.

14 Norbury raised two issues at the oral hearing. The first point concerns the introduction in the United Kingdom, by the Finance Act 1989, of an election to waive the exemption in respect of building land. It is unnecessary to consider whether such a change constitutes, as suggested by Norbury, a change in the conditions under which the exemption is continued. Article 28(3)(c) of the Sixth Directive, as the Commission rightly pointed out at the hearing, permits Member States to `grant to taxable persons the option for taxation of exempt transactions under the conditions set out in Annex G'. According to Annex G, in the case of transactions specified in Annex F, `Member States which provisionally maintain the right to exempt such supplies may grant taxable persons the right to opt for taxation' (emphasis added). The right to `grant' - the verb is used three times in the relevant text - contrasts with the right to `continue' used in Article 28(3)(b). It permitted the introduction of the option granted by the United Kingdom in 1989. It was Norbury's misfortune that it failed to avail of that option.

15 Moreover, that there is nothing untoward in permitting such an option to exist alongside a continuing exemption emerges from a perusal of Article 13 of the Sixth Directive. Thus, although supplies of occupied buildings and land other than building land are in principle exempt from VAT under Article 13B(g) and (h), Article 13C still permits Member States to allow taxpayers a right of option for taxation in respect of transactions involving such supplies. Consequently, I am satisfied that the grant of the right to opt for taxation regarding supply of `building land' which is exempted in a Member State pursuant to a transitional exemption under Article 28(3)(b), read in conjunction with point 16 of Annex F, of the Sixth Directive does not undermine that exemption.

16 The second argument advanced by Norbury is not as simple to dismiss. It is grounded on the undisputed fact, noted in the form of the question from the Tribunal, that `the taxation of supplies of land which is indisputably building land has altered since the United Kingdom adopted the Sixth Directive on 17 May 1977 ...'. Norbury contends that in order to continue to rely upon a transitional exemption, Member States must maintain a legal position identical with that in force on the adoption of the Sixth Directive. It also maintains that any fundamental alteration to the general VAT regime relating to supplies of building land precludes Member States from continuing to rely on the transitional exemption. In its view, the United Kingdom legislation has fundamentally changed the conditions applicable to the exemption in that country. In respect of both of these propositions, it relies on Commission v Germany. (8)

17 Counsel for the United Kingdom contended at the hearing that a distinction should be drawn between `built-on-land' and `building land'. As regards supplies of building land, which he accepted was the type of land at issue in this case, counsel maintained that the current United Kingdom exemption is identical with that applied before the adoption of the Sixth Directive. Consequently, he submitted that the question referred in the present case could be answered to the effect that no material change, for the purposes of the continuity requirement in Article 28(3)(b), had occurred.

18 The United Kingdom, supported by the Commission, also asserts that the changes in the United Kingdom legislation (other than the introduction of the option to waive the exemption which, for the reasons I have given above, does not arise in this connection) are uniquely designed to narrow the scope of the exemption. In their view, as the agent for the Commission stated at the hearing, the exemption of the greater includes the exemption of the lesser. In support of this contention reliance is placed on the Court's judgment in Kerrutt. (9) Furthermore, an interpretation of Article 28(3)(b), read in conjunction with Annex F, which did not permit Member States to reduce the scope of permitted transitional exemptions without forfeiting the right to retain them entirely would be inimical to the objective of the transitional arrangements, whose rationale must be to encourage Member States to remove national exceptions to the common VAT system.

19 Although I remain of the view expressed in my Opinion in Gemeente Emmen to the effect that the scope of the transitional exemptions covered by Article 28(3)(b) `must be construed narrowly,

in the light of the overriding objective of the Sixth Directive to create a uniform basis of assessment for a common integrated system of VAT', I cannot accept Norbury's contention that Member States are obliged to retain the identical legal position to that which they applied on the adoption of the Sixth Directive. (10) Article 28(3)(b) is not a `deep-freezer' provision as counsel for Norbury suggested. The authors of that provision should not, in my view, be regarded as shackling the Member States to the legislation which they applied in 1977. On the contrary, Member States should, at the very least, be free to change the legal provisions governing an exemption covered by that provision once the scope of the relevant exemption remains unaltered. Thus, for example, it must be possible for a Member State to codify or clarify its VAT rules in new legislation. To my mind, there could be no question of a breach of the principle of legal certainty in such cases.

20 In this case, however, the United Kingdom has proposed resolving this reference on the narrow basis that no material change in the national exemption of `building land' has been effected. It is suggested that, since the exemption had only been removed in respect of supplies of what counsel for the United Kingdom described as `built-on-land', the original exemption of `building land' should be regarded as being unaltered. Presumably, the United Kingdom has in mind the fact that point 16 of Annex F to the Sixth Directive not only effectively refers to supplies of `building land' but also to supplies of new or previously unoccupied buildings. However, the pertinence in the present case of the proposed distinction between `built-on-land' and `building land' was disputed by Norbury; it referred to the fact that under the post-1977 national rules civil engineering works, which can include bare land with sewers, are now subject to VAT. Since such land could, in the light of the Court's judgment in Gemeente Emmen, be defined as `building land' by Member States, it would not be appropriate, in my view, to reject Norbury's contention that the United Kingdom may no longer rely on point 16 of Annex F on the basis that no possible curtailment of the pre-1977 exemption in that Member State regarding supplies of building land has befallen.

21 I agree with the United Kingdom and the Commission that the principle enunciated by the Court in Kerrutt is of assistance in the present case. (11) In Kerrutt, the Court was concerned with a co-proprietor's building scheme known as the Bauherrenmodell, under which a series of transactions - essentially the purchase of land and the construction of dwellings - whose result was that the participating `co-proprietors' were each supplied with a new dwelling was effected on their behalf by a single agent. The purpose of the scheme was to reduce costs and provide deductible expenses for income tax purposes. The dispute at issue however concerned VAT. As Advocate General Darmon pointed out, while the supply of building land had always been exempted in Germany, supplies of goods and services used in the construction process of what would later become the supply of a new building had never been exempted. (12) The Court took the view that the supply of such goods and services and the supply of a new building, including the land on which it stood, were legally separate transactions. It is in this light that the Court's statement that the wording `continue to exempt' used in Article 28(3)(b) `precludes the introduction of new exemptions or the extension of the scope of existing exemptions after the date of the entry into force of the directive' should be understood. (13) Thus, even if the land aspect of the transaction might have benefited from the transitional exemption under Article 28(3)(b), read in conjunction with point 16 of Annex F, the subjection to VAT of supplies of the upstream goods and services used in the construction process could not `affect the scope of the exemption from turnover tax'. (14) There is nothing in the case to suggest that, if the scope of the original transitional exemption of building land had been abridged, the benefit of that exemption would have been lost altogether. However, this does not suffice to dispose of Norbury's argument in the instant case that, on the basis in particular of Commission v Germany, the post-1977 reduction in the scope of the exemption of supplies of building land operates to preclude the continuing transitional exemption of such supplies in the United Kingdom. (15)

22 To resolve this issue, I propose to consider the changes in United Kingdom legislation in the light of the decision of the Court in Commission v Germany.

23 The relevant legislation is summarised in the order for reference. It is not unduly complex and the parties do not contest that a comparison is to be made between the lists of exceptions to the exemptions found in schedules respectively to the Finance Act 1972 (`the 1972 Act') and the Value Added Tax Act 1983 (`the 1983 Act'). The 1972 Act exempted a list of acts capable of constituting a supply of land. The exceptions to that list found in Schedule 5 related only to matters concerned broadly with holiday or leisure activity such as the provision of hotel accommodation or gaming or fishing rights. The structure of the comparable provisions in the 1983 Act is identical, though there are changes in content. The existing exceptions are enumerated in more detail but there does not seem to me to be any essential change. It has not been suggested that they involve any extension to the exemption. More materially, the exceptions now include what I would paraphrase as consisting essentially of the `grant of the fee simple' (i.e. full freehold title) in complete and incomplete non-residential buildings and complete and incomplete civil engineering works and supplies made pursuant to a developmental tenancy, lease or licence.

24 Next I must consider whether Norbury's reliance on Commission v Germany, which is a case of rather greater complexity than the present, is justified. Not only did that case revolve around two different points in Annex F (points 17 and 27) but they had to be examined in the context of the implementation by Germany of the special derogating scheme for VAT on travel agents' services that is laid down by Article 26 of the Sixth Directive.

25 The essence of the special scheme is that travel agents are taxed not on the gross price of their services but only on their `margin', which is defined as `the difference between the total amount paid by the traveller', exclusive of VAT, and `the actual cost to the travel agent of supplies and services provided by other taxable persons where these transactions are for the direct benefit of the traveller' (Article 26(2)). These services (which I will call `input services') will typically consist of hotel and transport provision. The travel agent may not deduct any VAT that he has to pay to the providers of these input services (Article 26(4)).

26 The nub of the case, however, concerned what was held to be Germany's incorrect implementation of Article 26(3). That provision first ordains the exemption from VAT of the travel agent's service where input services are performed by taxable persons outside the Community and secondly that, `where these transactions are performed both inside and outside the Community, only that part of the travel agent's service relating to transactions outside the Community may be exempted'. The German rules contained in a 1980 Law implementing this provision went further and applied this exemption in so far as travel agents' services were provided outside the Federal Republic of Germany. Thus the exemption, the Commission claimed, could apply even in respect of transport services provided inside the Community.

27 In response, Germany relied on its existing exemption under point 17 of Annex F of air and sea transport services. In effect, sea transport had never been subject to the German VAT system, whereas air transport had benefited from a ministerial exempting order. It seems to have been accepted, at least by the Advocate General, that the legal changes made by Germany in its 1980 Law did not effect any substantive change in the tax treatment of these transport services. On the other hand, at the time of the adoption of the Sixth Directive Germany had no existing exemption of travel agents' services: they were taxed in the normal way.

28 The decision of the Court turned on the provision of Article 26(2) that `all transactions performed by the travel agent in respect of a journey shall be treated as a single service supplied by the travel agent to the traveller'. At paragraph 16 of the judgment, the Court, having drawn attention to this provision, referred to the `only exception expressly provided for concerning transactions performed outside the Community for which the supply of services or part of the

supply of services by the agent is exempt from tax'. It then pointed to the exemption permitted by point 27 of Annex F regarding `the services of travel agents referred to in Article 26' and held that this exemption can refer only `to the single service supplied by the travel agent which is normally subject to tax and not to one or other of the transactions making up that single service which were previously subject to another tax scheme'. The last phrase presumably recalls the pre-existing German regime exempting transport services but, significantly, not those of travel agents. (16) However, it is clear that the single-service treatment applied to the travel agency and transport services found in point 17 of Annex F is not reproduced in respect of the supplies covered by point 16. Accordingly, the central point in the reasoning of the Court can have no bearing on the present case.

29 However, Norbury relies on Commission v Germany to establish a principle that any fundamental change in the conditions of a transitional VAT exemption deprives it of effect. It points, in particular, to paragraphs 18 to 22 of the Opinion of Advocate General Gulmann in that case, which it seeks to link with paragraphs 16 and 17 of the judgment. The Advocate General concluded that, even if, in substance, the German rules exempting transport services were not altered by the 1980 Law, the need to ensure that a transitional provision was not being used to create fresh exemptions implied that `it must be possible to determine [this] without difficulty'. In view of the changes in the legal basis of the exemption, the pre- and post-1980 provisions were not legally identical. Their legal basis and structure had been changed. Although this reasoning was not reproduced in the judgment, it was not rejected. The last phrase in paragraph 16 of the judgment, which I have noted in the preceding paragraph, refers to transactions `which were previously subject to another tax scheme'.

30 None the less, I do not think the changes in the national legal provisions at issue in the present case are analogous to those considered by the Court in that case. As I have already pointed out (see paragraph 23 above), the legal structure of the exemption as found in the 1972 and 1983 Acts is identical. In so far as a change is made by the 1983 Act, it consists in the introduction of a number of significant additions to the list of exceptions so as to limit the scope of the exemption of the supply of land. There does not appear to me to be any difficulty in identifying the changes being made. Furthermore, it is not suggested that they involve, contrary to the Kerrutt principle, any disguised extension of the exemption.

31 However, Norbury claims that what it calls `piecemeal' changes of this sort are not permissible. In other words, a Member State, though entitled to `continue' in force an existing exemption, may not partially repeal it. I believe that the Opinion of Advocate General Gulmann in Commission v Germany points in the opposite direction. He did not agree with an absolute requirement that exemptions, viewed in their original form, be applied only in full or not at all. Echoing the policy argument of the United Kingdom and the Commission in the present case, he thought that `a narrow interpretation of the transitional provision could have adverse effects for the uniform application of the directive ...'; a Member State might be compelled `to maintain an existing legal position in its entirety, even if it were considered possible, appropriate and desirable otherwise to implement the system laid down in the directive on the subject'. (17) In my opinion, that reasoning applies by analogy to the present case where the exemption has been narrowed over time. The Court's exclusion, in paragraph 17 of its judgment, of `the maintenance of partial exemptions' related to the special terms of Article 26 of and point 27 of Annex F to the Sixth Directive. (18)

32 In summary, I can see nothing either in the combined terms of Article 28 and point 16 of Annex F or in the scheme and purpose of the Sixth Directive to preclude a Member State from making changes to the terms of an existing exemption with the sole effect of reducing its material scope. Member States should not be discouraged from proceeding by stages to the elimination of transitionally authorised VAT exemptions. In any event, any ambiguities arising in national rules adopted after 1977 in respect of the transitional exemptions should, in my opinion, be resolved by national courts in accordance with the principle that any reduction in the scope of a pre-existing

exemption be interpreted broadly; such rules are, after all, akin in effect to an exception from one of the mandatory exemptions provided for in Title X of the Sixth Directive.

IV - Conclusion

33 Accordingly, I recommend that the Court answer the question referred by the VAT and Duties Tribunal, Manchester as follows:

In relation to the supply of land which has been held to be building land, a Member State is entitled to exempt the supply under Article 28(3)(b) of, read in conjunction with point 16 of Annex F to, the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment, notwithstanding that it has, first, since the adoption of the Sixth Directive introduced an election to waive the VAT exemption in respect of such supplies and, secondly, reduced the material scope of the exemption which it applies in respect of such supplies so that some previously exempt supplies are now subject to VAT.

(1) - Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment; OJ 1977 L 145, p. 1 (hereinafter `the Sixth Directive').

(2) - Eighteenth Council Directive 89/465/EEC of 18 July 1989 on the harmonisation of the laws of the Member States relating to turnover taxes - Abolition of certain derogations provided for in Article 28(3) of the Sixth Directive, 77/388/EEC; OJ 1989 L 226, p. 21. Various transitional exemptions originally authorised by Annex F were abolished by Article 1(2) of the Eighteenth Directive.

(3) - Case C-468/93 Gemeente Emmen v Belastingsdienst Grote Ondernemingen [1996] ECR I-1721 (hereinafter `Gemeente Emmen').

(4) - Ibid., paragraph 20.

(5) - Gemeente Emmen, paragraph 25.

(6) - Ibid., paragraph 26 and the dispositive part of the judgment.

(7) - The Commission cites, in this respect, Case 70/83 Kloppenburg v Finanzamt Leer [1984] ECR 1075.

(8) - Case C-74/91 [1992] ECR I-5437.

(9) - Case 73/85 Kerrutt v Finanzamt Mönchengladbach-Mitte [1986] ECR 2219 (hereinafter `Kerrutt').

(10) - Paragraph 27.

(11) - Loc. cit., footnote 9 above.

(12) - Paragraph 4 of his Opinion.

(13) - Paragraph 17.

(14) - Ibid.

(15) - Loc. cit., footnote 8 above.

(16) - The Court then concludes in the first sentence of paragraph 17 that, since Germany had not denied that it had not maintained a general scheme for travel agents, and since it had also actually adopted a special scheme pursuant to Article 26 of the Sixth Directive, it could not `rely on the possibility of continuing to exempt certain activities for which exemption is not envisaged by that article'.

(17) - Commission v Germany, paragraph 21 of the Opinion.

(18) - This is borne out by the second sentence of paragraph 17, where the Court states that `to allow the maintenance of partial exemptions not expressly provided for by the transitional provisions of the Sixth Directive applicable to travel agents would run counter to the principle of legal certainty ...' (emphasis added).