OPINION OF ADVOCATE GENERAL

Sharpston

delivered on 7 March 2006 (1)

Case C-166/05

Rudi Heger GmbH

v

Finanzamt Graz-Stadt

1. This request for a preliminary ruling under Article 234 EC concerns the determination of the place where taxable transactions are effected for the purposes of VAT imposed and collected under Sixth Council Directive 77/388/EEC ('the Sixth Directive'). (2)

2. The case before the Austrian Verwaltungsgerichtshof (Administrative Court) involves a company established in Germany which bought quantities of fishing permits in Austria, where it makes no supplies and is therefore not registered for VAT purposes, in order to sell those permits, which are for fishing on certain stretches of river in Austria, to customers in other countries.

3. The national court wishes to know whether that onward sale of the permits constitutes a 'supply of services connected with immovable property' within the meaning of Article 9(2)(a) of that directive.

4. If so, it falls to be taxed in Austria, where the immovable property is situated, and the claimant company must therefore register in Austria for VAT purposes, where it will be able to deduct input tax on the price it paid for the permits.

5. If not, and the transaction is to be classified as an ordinary supply of services under Article 9(1), the place of supply will be in Germany, where the company has established its business, and instead of deducting input tax it must seek a refund under the mechanism put in place by Eighth Council Directive 79/1072/EEC ('the Eighth Directive'). (3)

The legal framework

Relevant Community law provisions

6. Pursuant to Article 5(1) of the Sixth Directive, a supply of goods means 'the transfer of the right to dispose of tangible property as owner'. Article 5(3)(a) and Article 5(3)(b) empower Member States to treat as 'tangible property', respectively, 'certain interests in immovable property' and 'rights in rem giving the holder thereof a right of user over immovable property'.

7. Article 6(1) of the Sixth Directive defines a supply of services as 'any transaction which does not constitute a supply of goods within the meaning of Article 5'. Such transactions may include, inter alia, 'assignments of intangible property' and 'obligations to refrain from an act or to tolerate an act or a situation'.

8. The seventh recital in the preamble to the Sixth Directive states that the determination of the place where taxable transactions are effected 'has been the subject of conflicts concerning jurisdiction as between Member States, in particular as regards … the supply of services'. Article 9 of the Sixth Directive therefore lays down rules to determine the place where a service is deemed to be supplied for VAT purposes (and, therefore, where the service supplied is to be taxed).

9. Article 9(1) establishes the general rule that a service is deemed to be supplied at the place where the supplier 'has established his business or has a fixed establishment from which the service is supplied or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides'.

10. Article 9(2) then sets out a number of special rules departing from the general rule under Article 9(1). Pursuant to Article 9(2)(a), 'the place of the supply of services connected with immovable property, including the services of estate agents and experts, and of services for preparing and coordinating construction works, such as the services of architects and of firms providing on-site supervision, shall be the place where the property is situated'.

11. Article 9(2)(e) lists a number of services which, when performed for, inter alia, taxable persons established in the Community but not in the same country as the supplier, are deemed to be supplied at 'the place where the customer has established his business or has a fixed establishment to which the service is supplied or, in the absence of such a place, the place where he has his permanent address or usually resides'. That list includes, amongst others, the 'services of consultants, engineers, consultancy bureaux, lawyers, accountants and other similar services, as well as data processing and the supplying of information' and 'the supply of staff'.

12. Article 13 provides for exemptions from VAT. Article 13(B)(b) exempts, inter alia, the leasing or letting of immovable property.

13. The arrangements for refunds in respect of cross-border supplies find their origin in the Eighth Directive. In essence, a right to refund of input VAT under the Eighth Directive arises when the taxable person is established in another Member State and has not carried out any onward taxable transaction in the territory of the country where the input VAT has been charged. In contrast, whenever that taxable person has effected taxable onward transactions in the territory of the country where the input VAT was paid, he or she no longer enjoys rights under the Eighth Directive to a refund for that VAT but rather a right to apply the general deduction under Article 17 et seq. of the Sixth Directive.

Relevant national legislation

14. Paragraph 3a(6) of the Austrian Umsatzsteuergesetz 1994 (Law on Turnover Tax of 1994) ('UStG') 1994 implements Article 9(2)(a) of the Sixth Directive, using virtually identical wording.

15. A regulation of the Austrian Federal Minister for Finance, (4) adopted on the basis of the UStG 1994, implements the requirements of, inter alia, the Eighth Directive. Under that regulation the right to refund for input VAT paid in Austria arises, inter alia, if the undertaking established outside Austria has carried out a (subsequent) onward transaction for which the place of supply, and hence the place of taxation, is *not* deemed to be Austria. If, however, that onward transaction is deemed to have been a supply that has taken place in Austria, there is no right to a refund of the input VAT under that regulation, but to a deduction under the ordinary rules.

The main proceedings and the question referred

16. Rudi Heger Gmbh ('Heger') is a company established in Germany. It has no business premises in Austria. In 1997 and 1998, Heger bought fishing quotas for the Gmunder Traun river in Upper Austria from a company established in Austria, Flyfishing Adventure GmbH ('Flyfishing'). By purchasing those quotas, Heger acquired fishing permits which gave the right to fish on certain stretches of that river during certain periods. Heger sold on those permits to a large number of customers across the European Union.

17. In addition to the sale price for the fishing permits, Flyfishing invoiced Heger Austrian VAT at 20%, totalling ATS 152 000 (that is, about EUR 11 045).

18. In December 1999, Heger applied to the competent national authority for refund of the VAT paid in relation to the 1997 and 1998 fishing permits, relying on the Eighth Directive as implemented in Austria.

19. It appears from the order for reference that that application was rejected on the grounds that the onward sale of fishing permits by Heger to its customers constituted a supply of services connected with immovable property situated in Austria. Such a supply (notwithstanding the fact that Heger, the supplier, was established in Germany), would therefore be deemed to be a supply taking place, and taxable, in Austria. Therefore, the conditions for eligibility for a refund of the input VAT on the sale of the fishing quotas to Heger by Flyfishing under the Austrian provisions implementing the Eighth Directive were not fulfilled.

20. Heger contested that decision before the national court, which has stayed proceedings and submitted to the Court the following question for a preliminary ruling:

'Does the transmission of the right to fish by means of a transfer of fishing permits for valuable consideration constitute a "supply of services connected with immovable property" within the meaning of Article 9(2)(a) of the [Sixth Council Directive]?'

21. Written observations were lodged by Italy and the Commission. No hearing was requested and none was held.

Assessment

22. For Article 9(2)(a) of the Sixth Directive to apply in the present case, so that the transaction is deemed to be a 'supply of services connected with immovable property', the following

cumulative conditions must be satisfied. First, the transfer of fishing permits must constitute a ‘supply of services’; secondly, the river sections to which the fishing permits refer must qualify as ‘immovable property’; and, finally, there must be a sufficient connection between the two. If that is the case, the place of the taxable transaction is deemed to be Austria, where the river lies.

23. Three preliminary observations are necessary.

24. First, the Court has held that in the absence of any express definition in the Sixth Directive of the concepts contained therein and of any referral to the legal orders of the Member States, those concepts have their own independent meaning in Community law and must therefore be given a Community definition. (5) The Court has thus (for example) given Community definitions to the concepts of ‘immovable property’ and to ‘letting’ when interpreting the exemptions provided for by Article 13 of the Sixth Directive (6) and to the concept of ‘advertising services’ within the meaning of Article 9(2)(e) of the Sixth Directive. (7)

25. The same reasoning must presumably apply to defining the concepts contained in Article 9(2)(a) of the Sixth Directive. Article 9(2)(a) does not expressly define the concepts it mentions, nor does it refer to the national legal orders for their definition. In the absence of any specific indication to the contrary and for the sake of legal certainty, a concept mentioned in different provisions of the same Community measure should obviously be given the same meaning. Furthermore, it follows from the seventh recital in the preamble to the Sixth Directive that the purpose of the rules set out in Article 9(2)(a), as the Court has already held in respect of Article 9(2)(e), (8) is to apply common and uniform criteria so as to avoid conflicts between national jurisdictions and avoid differences in the application of VAT systems between Member States as well as instances of double taxation and non-taxation. That can only be achieved by giving the concepts in Article 9(2)(a) a Community definition. (9)

26. Secondly, in interpreting Article 9 of the Sixth Directive, the place where the supplier has established his place of business is normally ‘the primary point of reference’. (10) The Court has, however, indicated in *Dudda* (11) that ‘Article 9(1) in no way takes precedence over Article 9(2). In every situation the question that arises is whether it [i.e., the transaction] is covered by Article 9(2); if not, it falls within the scope of Article 9(1)’.

27. Thirdly, the basic principle behind VAT, which is a tax on consumption, is indeed that it should be charged at the place of consumption. (12) However, the Sixth Directive put in place the basic rule, in respect of supply of services, as expressed in Article 9(1), that the place of supply of services and *therefore* the place of taxation is where the supplier is located. In so doing, the Community legislature created a degree of internal tension within the Sixth Directive, inasmuch as the place of supply rules for services are based on the origin principle rather than the destination principle.

Supply of services

28. Article 5(3) of the Sixth Directive allows Member States to treat certain interests in immovable property and/or certain rights in rem as ‘tangible property’ and therefore as goods. However, even if fishing permits were in principle capable of being classed as interests in immovable property or rights in rem (which is open to question), the Commission’s observations indicate that Austria has not availed itself of that option.

29. It follows that the commercial transactions regarding the fishing permits cannot qualify as supplies of goods under Article 5(1) of the Sixth Directive. They therefore fall within the residual

notion of ‘supply of services’ under Article 6(1). There is, moreover, nothing particularly strained or artificial in regarding the sale of a fishing permit as either an ‘assignment of intangible property’ or an ‘obligation to refrain from an act or to tolerate an act or a situation’ within the meaning of Article 6.

Immovable property

30. It follows from the Court’s judgment in *Marselisborg* that defined sections of underwater land in a port are capable of constituting immovable property for the purposes of the Sixth Directive. (13) The same principle must apply to delimited sections of a riverbed with which fishing rights are associated. Like the water-based mooring berths at issue in *Marselisborg*, they qualify as immovable property.

Degree of connexity

31. The answer to the question referred by the national court turns on the degree and nature of connexity that is properly to be required between the service supplied and the immovable property. On a simple view – espoused, indeed, by Italy in its observations – the fishing rights here at issue cannot be exercised except in connection with the Gmunder Traun river, and in respect of the sector of river specified in the permit. Heger’s customers may live in Germany, Italy, the Netherlands and Belgium, and be sold the fishing permits by Heger, established in Germany. However, they cannot benefit from the fishing permits they have purchased except by going to the Gmunder Traun and fishing there. The fishing permits are intimately associated with a particular use of the immovable property in question. Supply of a fishing permit is therefore ‘supply of a service connected with immovable property’.

32. Whilst that reasoning is intuitively attractive, it fails to address the crucial issue: why, how, and to what extent must the actual service provided (i.e., the onward sale of the fishing permits by Heger to its customers) be ‘connected with’ the immovable property (the Gmunder Traun river)?

33. Clearly, different services are connected to immovable property to differing degrees and in different ways. As the Commission correctly points out in its observations, too broad an interpretation of ‘connected with’ would be inappropriate. There is, indeed, a *reductio ad absurdum* , since any service can ultimately be ‘connected’ in one way or another with an immovable property, understood as a delimited space. It does not seem to me to be helpful to approach this problem on a case-by-case basis. Rather, one should seek an objective criterion that can be applied to determine whether the service supplied is properly to be considered as ‘connected with’ the immovable property in question.

34. It is important to emphasise that the service provided by Heger to its customers, on the basis of the fishing quotas that it purchased from Flyfishing and on which the input VAT that Heger sought to have refunded was charged, was the onward sale of fishing permits. This implies that the degree of connexity between the immovable property (the delineated sectors of riverbed) and the service supplied (provision of the fishing permit) had already become less immediate; and that part of the ‘service’ provided by Heger consisted in obtaining the permits which it then provided to its customers. One might regard what was provided as, in that sense, a ‘bundled good’, consisting of both the permit itself and the facilitation of the customer’s wish to go fishing. By buying a fishing permit from Heger, the customer both obtains the actual permit entitling him to fish and avoids the trouble and inconvenience of trying to obtain a fishing permit directly for himself. This analysis

reinforces, to my mind, the need for an objective criterion to determine whether there is, or is not, connexity between the service supplied and the immovable property in question.

35. In my view, the meaning of the term ‘connected’ in the first sentence of Article 9(2)(a) of the Sixth Directive can best be interpreted in the light of the examples given in its second sentence. The reference to ‘services of estate agents and experts, services for preparing and coordinating construction works, such as the services of architects and of firms providing on-site supervision’ can be taken as an indication of the type of connexity between the services and the immovable property which the Community legislature had in mind when adopting that provision.

36. The list in the second sentence of Article 9(2)(a) is illustrative rather than exhaustive. Nevertheless, all the services explicitly mentioned in that provision share a common feature as regards the way in which they are ‘connected with’ the immovable property. All are services which are provided to, or directed towards, the property itself. They have as their object the legal or physical alteration of the immovable property. Estate agents and experts value and sell immovable property. Architects design, prepare and, together with firms providing on site supervision, coordinate and manage its creation and alteration.

37. In contrast, the supply of fishing permits is not a service whose object is the legal or physical alteration of the immovable property (the riverbed) to which they are ‘connected’. Rather, it enables individuals to enjoy, on a non-exclusive basis, one of several possible uses of the river. Put another way, it is a service that derives from the immovable property, rather than a service provided towards it.

38. One approach would be to conclude that the phrase ‘connected with immovable property’, as well as encompassing services *provided towards* that property, should also be deemed to include services involving the *use of* that property. The proposed amendment to the Sixth Directive (discussed below) does indeed expressly insert this additional criterion. However, the text as it presently stands does not reflect it; and none of the illustrations in the second sentence of Article 9(2)(a) involve the use of the property concerned. A reading of the present text leads more naturally to the conclusion that the connexity presently required under Article 9(2)(a) is that the service supplied is directed *to* the immovable property, rather than a service derived *from* it. On that basis, the connexity between the sale of fishing permits and the Gmunder Traun river is a type of connexity that falls outside Article 9(2)(a) of the Sixth Directive.

39. I have considered the analogy between fishing permits and hunting rights, which seems to me to be fairly close. Both, after all, confer non-exclusive rights to pursue and seek to take wild creatures whose habitat and territory is located within a ‘specific part of the earth’s surface … over which title and possession can be created’. (14) The Court dealt with hunting rights in *Stadt Sundern*, (15) where it held that the sale of hunting rights is not the supply of an agricultural service within Article 25(2) of the Sixth Directive, but an ordinary supply of services that falls under the general scheme of the directive. (16) However, the issue of whether the sale of hunting rights was a ‘supply of services connected with immovable property’ under Article 9(2)(a) did not arise in that case.

40. Looking at the matter more widely, it seems to me that a broad interpretation of ‘connected with’ in Article 9(2)(a) would lead to impractical results in at least two respects.

41. First, it would entail appreciable burdens for many service providers in the European Union. Take, for example, a company which sells, from its permanent establishment in one Member State, bookings for excursions to leisure parks or golf courses in different Member States. If Article 9(2)(a) of the Sixth Directive were to be interpreted broadly, that company would have to register in each of the destination Member States for VAT purposes if it were not to lose its ability to deduct

input VAT charged to it by the leisure parks and golf courses, since its booking services would be 'connected with' immovable properties.

42. Secondly, it would render certain other provisions of the Sixth Directive superfluous. The Commission illustrates this reasoning by referring to the services mentioned in Article 9(2)(e) such as those provided by consultants, engineers, consultancy bureaux, lawyers, accountants and other similar services, or the supply of staff. A slight connection with an immovable property (which is not difficult to imagine) would bring those services within the scope of Article 9(2)(a). Yet Article 9(2)(e) contains a specific rule to the effect that the place where such services are supplied is the place where the customer has his place of business or usually resides. The same reasoning appears to apply in respect of Article 26 of the Sixth Directive which provides that travel agents' services are, for the purposes of VAT, deemed to be supplied where the travel agent's main establishment is located, rather than where the customers reside.

43. The suggested interpretation has the advantage of avoiding these shortcomings while at the same time it enhances legal certainty in the application of the Sixth Directive by providing a reasonably clear criterion to distinguish the present scope of Article 9(2)(a) from that of the other provisions in the Sixth Directive.

44. I have considered whether one interpretation, rather than the other, is more likely to encourage free movement and the integration of the single market. It might be said that the narrow reading of Article 9(2)(a) has that effect, inasmuch as it means that a trader established in another Member State is neither disadvantaged by being unable to reclaim the input VAT under the Eighth Directive nor forced, if he does not wish that input VAT to be irrecoverable, to register for VAT in one or more Member States in which he purchases services, other than his Member State of establishment and VAT registration, in order to operate a deduction under the Sixth Directive. On the other hand, the refund procedure is itself cumbersome (17) – perhaps more cumbersome in practice (depending on the particular circumstances) than registering for VAT in more than one Member State.

45. It seems to me that, whether the trader based in another Member State tries to deal with the issue of recovering input VAT by also registering for VAT in the Member State in which the services are supplied (the consequence of a broad interpretation of Article 9(2)(a)) or by invoking the refund procedure (the consequence of a narrow interpretation of that provision), he is still at a disadvantage as compared to the locally-based trader, who has merely to deduct the input VAT in the normal way. In either event, he bears an additional administrative burden precisely because he is trading in more than one Member State (a problem inherent in any cross-border supply between taxable persons). He can of course 'deal' with the problem by ignoring it, including the 'lost' input VAT in the price that he charges for his services and then charging VAT in his own Member State on the total price thus generated. If he approaches matters in that way, however, his price for the service supplied is likely to be higher than that of the locally-based trader.

Possible amendment of Article 9(2)(a) of the Sixth Directive

46. I should here draw attention to the recent proposals for amending the Sixth Directive as regards the place of supply of services. (18)

47. Those proposals expressly seek a general move towards taxation of services at their place of consumption, which is generally considered to be desirable. They have their genesis in a consultation process launched in May 2003 by the DG Taxation and Customs Unions Tax Policy of the Commission. (19) In its consultation paper 'VAT – The Place of Supply of Services', the

Commission outlined the proposed ‘modification’ of the VAT rules from taxation at the place where the supplier is located to taxation at the place where the customer is located, noted that an exclusion would still be required in respect of services connected with immovable property, (20) and expressly invited interested parties to submit ‘remarks on the idea of shifting the place of supply rules for taxable persons from the origin principle to the destination principle’. On the basis of the comments received, the Commission drafted its proposals.

48. With respect to the current Article 9(2)(a) the proposal for the new Article 9a reads as follows:

‘Immovable property

The place of supply of services related to immovable property, including the services of estate agents and experts, *the provision of hotel or similar accommodation*, the *granting of rights to use immovable property* and services to prepare and co-ordinate construction work, such as the services of architects and of firms providing on-site supervision, shall be the place where the immovable property is located.’ (21)

49. The new text clearly adds certain services *derived from* the immovable property to the present text which (as indicated above) lists only services that may be described as being *directed to* the property. Most pertinently, it specifically provides that the *granting of rights to use immovable property shall fall within Article 9(2)(a).*

50. The Commission’s explanatory memorandum describes the amendments as implementing the ‘new VAT strategy’, explaining that, ‘consistent with the guidelines for future work identified by the Commission, this review was guided by the principle that VAT should be imposed at the place of consumption’ and that, ‘once implemented, these changes should ensure taxation at the place of consumption’. (22)

51. The Commission suggests that the text of Article 9(2)(a) has remained virtually unchanged and that the amendments I have highlighted are there ‘to give certainty that hotel services and access to toll roads are considered connected to immovable property’. (23)

52. I cannot agree that the amendment involves no change to the current position. It seems to me that the insertion of the express phrase ‘the granting of rights to use immovable property’ (24) materially alters the scope of Article 9(2)(a), by inserting a new criterion by which whether a service is ‘connected with’ immovable property is to be judged. That would indeed be in line with the purpose of altering the VAT system so that in general services are taxable at their place of consumption. Applied to the facts of the present case, it would result in the onward sale being taxed where the fishing permits are indeed ‘consumed’, namely in Austria. The position espoused by the Commission in its observations in this case in support of a narrow interpretation of Article 9(2)(a) is thus diametrically opposed to the position it has adopted in the section of the Explanatory Memorandum dealing with the amendment of Article 9(2)(a) and in the proposed amendment to the text of Article 9(2)(a). (25)

53. I regard the proposed amendments to the Sixth Directive as being intended – as the Commission said in its original consultation paper – to *change* the general position by shifting the place of supply rule from the origin principle to the destination principle. A consequential amendment is that the granting of rights and the onward sale of such rights to *use* immovable property becomes taxable at the place of consumption, i.e., where the immovable property is located. I therefore remain of the view that the *present* text of Article 9(2)(a) should be construed narrowly, as I have indicated.

Conclusion

54. The preliminary question posed by the national court should therefore be answered as follow:

The transmission of the right to fish by means of a transfer of fishing permits for valuable consideration does not constitute a supply of services connected with immovable property for the purposes of Article 9(2)(a) of 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.

1 – Original language: English.

2 – 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). An unofficial consolidated text of the Sixth Directive is to be found at http://europa.eu.int/eur-lex/lex.

3 – Of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes – Arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ 1979 L 331, p. 11).

4 – Verordnung des Bundesministers für Finanzen zur Erstattung der abziehbaren Vorsteuern an ausländische Unternehmen, published in BGBl. No 279/1995.

5 – See, for instance, in respect of Article 13 of the Sixth Directive, Case C-275/01 *Sinclair Collis* [2003] ECR I-5965, at paragraph 22 and the case-law cited therein. See also the Opinion of Advocate General Jacobs in Case C-315/00 *Maierhofer* [2003] ECR I-563, at point 34.

6 – Case C-275/01 *Sinclair Collis*, cited above in footnote 5.

7 – Case C-73/92 *Commission* v *Spain* [1993] ECR I-5997, at paragraph 12.

8 – Ibid.

9 – See Opinion of Advocate General Poiares Maduro in Case C-452/03 *RAL (Channel Islands)* [2005] ECR I-3947, at point 21, and the case-law cited therein.

10 – Case 168/84 *Berkholz* [1985] ECR 2251, at paragraph 17.

11 – Case C-327/94 [1996] ECR 4595, at paragraph 21.

12 – See Article 6(3) of Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of the Member States concerning turnover taxes – Structure and procedures for application of the common system of valued added tax (OJ English Special Edition 1967(I), p. 16), which provided that 'the place of provision of services shall, as a general rule, be regarded as being the place where that service is provided, the right that is transferred or granted, or the object that is hired, is used or enjoyed'. See also the Opinion of Advocate General Mancini in *Berkholz*, cited above in footnote 10, at point 2; the Opinion of Advocate General La Pergola in Case C-260/95 *DFDS A/S* [1997] ECR I-1005, at point 32, and the Opinion of Advocate General Poiares Maduro in *RAL (Channel Islands),* cited above in footnote 9*,* at points 24 and 30.

13 – Case C-428/02 [2005] ECR I-1527, at paragraph 34. See also the Opinion of Advocate General Kokott in the same case at points 30 to 32. Incidentally, that conclusion reflects the approach applicable in several national legal orders such as, for example the Spanish, Italian, French and Belgian legal orders.

14 – See the definition offered by Advocate General Kokott in her Opinion in *Marselisborg*, cited above in footnote 13, at point 30.

15 – Case C-43/04 [2005] ECR I-4491.

16 – See the analysis at paragraphs 22 to 31 of the judgment.

17 – See the Opinion of Advocate General Jacobs in Case C-108/00 *Syndicat des producteurs independents* [2001] ECR I-2361, at point 30, as to the nature and effectiveness of this mechanism. Thus the fact that Heger, registered for VAT in Germany, will be refunded Austrian input VAT but charge onward VAT on the sale of fishing permits at the German rate is (partially) counterbalanced by the length and complexity of the refund procedure. At the end of the day, neither a broad nor a narrow interpretation of Article 9(2)(a) produces a perfect distortion-free system.

18 – Proposal for a Council Directive amending Directive 77/388/EEC as regards the place of supply of services (COM(2003) 822 final), and amended proposal for a Council Directive amending Directive 77/388/EEC as regards the place of supply of services (COM(2005) 334 final).

19 – For an overview of the consultation process, the summary of the conclusions arising therefrom and the legislative procedure, see http://europa.eu.int/comm/taxation_customs.

20 – According to the Commission in the introduction to the consultation paper, 'this would be essentially the same as the existing Article 9(2)(a) of the Sixth Directive. The existing rule is reasonably straightforward to apply and generally results in taxation where the service is consumed', at p. 3. See also the Explanatory Memorandum to the original proposal in COM(2003) 822 final, unchanged in this respect by the subsequent amendment of the proposal, at p. 7.

21 – COM(2003) 822 final, unchanged in this respect by the subsequent amendment of the proposal, at p. 18, emphasis added. In its opinion on the Commission's proposal concerning Article 9(2)(a), the Parliament stated simply that ‘services connected with immovable property would reasonably continue to be taxed where that property is located (Article 9a of the amended directive, *merely transcribing the current rules*)’, and approved the proposal (European Parliament, A5-0233/2004 Final, of 6 April 2004, PE 333.127; emphasis added). The European Economic and Social Committee’s opinion on the proposal states even more simply ‘the place of supply of services relating to an immovable property would continue to be the country in which the property is located’ (OJ 2004 C 117, p. 15, at p. 17).

22 – All three quotations are taken from p. 2 of the Explanatory Memorandum to the amended proposal (COM(2005) 334 final), cited above in footnote 18.

23 – COM(2003) 822 final, unchanged in this respect by the subsequent amendment of the proposal, at p. 11.

24 – Of which, as a matter of logic, ‘the provision of hotel or similar accommodation’ merely forms a subset.

25 – It is entirely a matter for the Community legislature whether or not to adopt those proposals and, in so doing, to opt for accepting the negative consequences of a broader interpretation of Article 9(2)(a) that I have identified above in the broader interests of moving towards taxation at the place of consumption.