

had refrained from passing the tax on to persons following him in the chain of supply. Directive 78/583 of 26 June 1978, extending the period for implementing Directive 77/388, does

not have retroactive effect in relation to transactions carried out by economic operators prior to its entry into force.

In Case 70/83

REFERENCE to the Court under Article 177 of the EEC Treaty by the Niedersächsisches Finanzgericht [Finance Court, Lower Saxony], for a preliminary ruling in the proceedings pending before that court between

GERDA KLOPPENBURG

and

FINANZAMT [Tax Officel] LEER,

on the interpretation of 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 (Official Journal 1977, L 145, p. 1) and of Article 1 of the Ninth Council 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),

THE COURT

composed of: J. Mertens de Wilmars, President, T. Koopmans, K. Bahlmann and Y. Galmot (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, A. O'Keefe, G. Bosco, O. Due, U. Everling and C. Kakouris, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

1. In the Federal Republic of Germany turnover tax is charged on any supplies or other services effected for consideration within the territory of the country by a person acting in the course of his business.

Paragraph 4 (8) of the Law on turnover tax [Umsatzsteuergesetz] of 16 November 1973 (Bundesgesetzblatt 1973, I, p. 1682) exempted from turnover tax *inter alia* the granting of credit, the negotiation of transactions involving securities and legal tender, and the management of credit; it did not grant exemption in respect of credit negotiation. The latter transaction was exempted from the charge to turnover tax from 1 January 1980 by the insertion of a new Paragraph 4 (8) (a) by the Law on the new version of the Law on turnover tax and on the amendment of other laws (Gesetz zur Neufassung des Umsatzsteuergesetzes und zur Änderung anderer Gesetze) (Bundesgesetzblatt 1979, I, p. 1953).

2. The plaintiff in the main action, Gerda Kloppenburg, who resides in Uplengen, carries on a credit and

mortgage business. Her turnover from credit negotiation transactions for the first six months of 1978 amounted to DM 48 897. She did not charge her clients separately for turnover tax. In her tax return she claimed exemption from turnover tax for turnover from credit negotiations transactions in accordance with Paragraph 4 (8) of the Law on turnover tax, 1980, in conjunction with Articles 1 and 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 (Official Journal 1977, L 145, p. 1).

3. Article 1 of that directive (hereinafter referred to as "the Sixth Directive") provides as follows:

"Member States shall modify their present value-added tax systems in accordance with the following Articles.

They shall adopt the necessary laws, regulations and administrative provisions so that the systems as modified enter into force at the earliest opportunity and by 1 January 1978 at the latest."

Furthermore Articles 13 B (d) 1, which falls under Title X of the directive, dealing with exemptions, provides as follows:

"Without prejudice to other Community provisions, 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) ...

1. the granting and the negotiation of credit and the management of credit by the person granting it ...”

4. The plaintiff lodged a claim for exemption from tax with the Finanzamt [Tax Office] Leer, which was, however, rejected. Consequently, by notice of assessment to turnover tax of 3 July 1980, the Finanzamt assessed the plaintiff's transactions at the normal rate, in accordance with the provisions of the Law on turnover tax of 1973.

5. The plaintiff then lodged an appeal against that decision before the Niedersächsisches Finanzgericht [Finance Court, Lower Saxony], relying essentially upon the judgments of the Court of Justice of 19 January 1982 in Case 8/81, *Becker v Finanzamt Münster-Innenstadt*, [1982] ECR 53, and of 10 June 1982 in Case 255/81, *Grendel v Finanzamt für Körperschaften*, [1982] ECR 2301. In those two references for a preliminary ruling, the Court gave the following ruling:

“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.”

The plaintiff takes the view that a credit negotiator in the Federal Republic of Germany who has not passed on turnover tax to his clients is entitled to claim the exemption from turnover tax provided for in the Sixth Directive even for the first six months of 1978, because the postponement of the date for the implementation of the provisions of that directive, provided for in Article 1 of the Ninth Council 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, hereinafter referred to as “the Ninth Directive”) cannot have retroactive effect, since otherwise there would be a breach of fundamental principles of law (laws may not have retroactive effect if individuals are adversely affected thereby).

6. Article 1 of the Ninth Directive provides that:

“By way of derogation from Article 1 of Directive 77/388/EEC, Denmark, Germany, France, Ireland, Italy, Luxembourg and the Netherlands are hereby authorized to implement the said Directive by 1 January 1979 at the latest.”

The Ninth Directive was notified to the States to which it was addressed on 30 June 1978.

7. The Finanzamt claimed that the action should be dismissed.

8. The Finanzgericht stayed the proceedings and referred to the Court for a preliminary ruling the following question:

“In the period from 1 January 1978 to 30 June 1978, was it 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, even though under Article 1 of the Ninth Council Directive, 78/583/EEC, of 26 June 1978 on the harmonization of the laws of the Member States relating to turnover taxes, the Member States referred to in that article were authorized to implement Directive 77/388/EEC by 1 January 1979 at the latest?"

9. In the grounds of its order for reference, the Finanzgericht observes that in its opinion a credit negotiator could rely, as from 1 January 1979, on the exemption from turnover taxes provided for in the Sixth Directive, if, like the plaintiff, he had not shown the turnover tax separately in his invoices and therefore had not passed it on to his clients. On the other hand, it seems to the Finanzgericht to be questionable whether a credit negotiator could rely on the exemption under the Sixth Directive in the first six months of 1978, in view of the fact that Article 1 of the Ninth Directive authorized the seven Member States cited therein to implement the Sixth Directive by 1 January 1979 at the latest. The Finanzgericht draws attention to the fact that the Commission of the European Communities, apparently taking into consideration the prohibition of laws having retroactive effect, agreed to the postponement of the date for the incorporation of the Sixth Directive into national law only on the express condition that the effects of the provisions of the Sixth Directive which did not require national implementing measures and which had been produced before the date of notification of the Ninth Directive, should remain fully

effective. That reservation concerning rights acquired since 1 January 1978 was, however, not adopted by the Council of the European Communities. From that it might be concluded that the Council wished to allow the Member States to incorporate the Sixth Directive into national law by 1 January 1979 at the latest, without conferring upon private individuals in the Member States a right, enforceable before the national courts, to rely upon the effects of the provisions of the Sixth Directive which had already been produced. It should be borne in mind that according to the case-law of the Court of Justice the Sixth Directive does not constitute national law, with the result that the prohibition of the adoption of laws imposing charges with retroactive effect is in any case not directly relevant. The direct effect of the Sixth Directive lies rather in the fact that the Member States may not plead, as against private individuals who rely upon the directly applicable provisions of the Sixth Directive that, in breach of their obligations under the EEC Treaty, they have not incorporated the Sixth Directive into national law within the prescribed period, thus showing bad faith towards the contracting States. However, it might be that there was no infringement of the Treaty in relation to the year at issue, 1978, because under Article 1 of the Ninth Directive the date for the incorporation of the Sixth Directive into national law was postponed until 1 January 1979.

10. Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the European Economic Community, written observations were submitted by the plaintiff in the main action, represented by Joachim Huppenkothen, tax adviser, by the Italian Government, represented by its Agent,

Marcello Conti, *Avvocato dello Stato*, and by the Commission, represented by Erich Zimmermann, its Legal Adviser, assisted by Wolf-Dietrich Krause-Ablass, *Rechtsanwalt* of Düsseldorf.

2. The *Government of the Italian Republic* takes the view that the question submitted to the Court by the *Finanzgericht* must be answered in the negative.

11. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Written observations submitted to the Court

1. *Mrs Kloppenburg*, the plaintiff in the main action, maintains that there can be no doubt that the Ninth Directive cannot deprive the individual taxpayer in the Community of the subjective rights which were acquired during the first six months of 1978 by virtue of the original Sixth Directive. She stresses that when the Commission decided to propose that the period for implementation should be extended by one year for the benefit of the Member States which had not incorporated the Sixth Directive into national law within the period initially prescribed, it did so only on the express condition that that derogation should not prejudice the effects of the provisions of the Sixth Directive which did not require the adoption of national implementing measures, if those effects had been produced before the date of notification of the Ninth Directive. Moreover, the Council expressly recognized in a "declaration" annexed to the Protocol of 26 June 1978 (on the Ninth Directive) that persons liable to the tax had acquired rights between 1 January and 26 June 1978.

The plaintiff concludes that the question submitted by the *Finanzgericht* should be answered in the affirmative.

It observes that the so-called reservation of the Commission, contained in its proposal to extend by one year the period prescribed for the implementation of the Sixth Directive, was not adopted by the Council. There is no trace of such a reservation either in the provisions or in the statement of reasons of the Ninth Directive, even though a directive can be interpreted and its effects determined only on the basis of the actual text of the directive and not of unpublished declarations which are not taken up in the specific clauses of the measure adopted. According to the Italian Government, that clearly means that the derogation from Article 1 of the Sixth Directive granted to seven Member States must be regarded as covering all the possible legal effects of all the provisions of the Sixth Directive. The Council plainly wished to prevent a hybrid and uncoordinated system from being introduced, albeit temporarily, in the Member States which had not completed the procedures needed to adapt their legislation to the directive within the prescribed period, such a system consisting partly of the old national provisions and partly of the provisions of the Sixth Directive which complied with the conditions as to form and, as regards their content, as to the necessary degree of precision.

Moreover, the effectiveness of the extension granted would obviously have disappeared if before the end of the prescribed period, as extended, the persons concerned had been able to rely wholly or in part before their national courts on

the provisions of the Sixth Directive. It would be wholly contrary to the spirit and wording of the Ninth Directive to assume that it was intended to eliminate the effects already produced by the Sixth Directive only in respect of the six months following its adoption, whilst leaving the same effects intact in respect of the previous six months.

In addition, a reading of the well-established case-law of the Court shows that in its judgments in Cases 8/81 and 255/81, cited above, the Court repeated that the secondary and indirect effects of a directive in relation to individuals arise and end at the same time as the primary and direct effects of that directive in relation to the State to which it is addressed. In so far as those primary effects are not produced before the expiry of the prescribed period, the indirect effects for individuals cannot be produced either. Again, if the primary effects of the directive in relation to the State to which it is addressed are temporarily extinguished as a result of prescribing a new period, even if this happens after the expiry of the period initially prescribed, any indirect effects which might have arisen if a new period had not been fixed could not avoid the same fate either.

The Italian Government does not accept that that interpretation of the Ninth Directive involves a solution which is contrary to the fundamental principle that laws adversely affecting individuals should not have retroactive effect and that according to that interpretation the directive is therefore illegal. First, in order to adjudicate upon the legality of a directive, it is necessary to have regard to its primary direct effects in relation to the States to which it is addressed. Secondly, the fundamental principle of non-retroactivity is generally recognized

only in relation to rules of criminal law and, possibly, some other rules providing for penalties of a similar nature and scope. Finally, it is inaccurate to describe a provision which suspends exemption from value-added tax simply as a rule "adversely affecting individuals", for although the exemption may be advantageous to a particular person, yet for someone else, operating under different conditions, the same rule may prove to entail heavier charges.

On the basis of the considerations set out above, the Italian Government takes the view that the reply to the question put by the Finanzgericht should be that the provision on the exemption from value-added tax for the negotiation of credit contained in Article 13 B (d) 1 of the Sixth Directive may not be relied upon by individuals in relation to periods prior to 1 January 1979.

3. The *Commission* stresses that in this case the tax exemption was provided for in a directive not yet incorporated into national law. Where an individual may, exceptionally, rely upon a provision of a directive before its incorporation into national law, this is only the counterpart of the obligation imposed on the Member State under Community law. That is not sufficient to establish a directly-protected legal position for the benefit of the individual but suffices at most to establish a certain expectation. If the competent Community institution decides to extend without restriction the period initially prescribed for the incorporation of the directive into national law, it is necessary in case of doubt to start from the principle that such a postponement also involves the postponement without restriction — that is to say even in relation to periods which have already elapsed — of the obligation imposed on the Member

States in question and therefore the suspension with retroactive effect of the individual's right to rely upon the directive, a right which is linked to the Member States' obligation. If on the other hand in an individual case the right to rely upon the directive is to be maintained, that should be expressly stated in some way by the competent Community institution. In the Commission's opinion, that is in fact what happened in the case of the Ninth Directive. That directive provided that an individual could rely upon it in relation to the period between 1 January 1978 and the date of its notification to the Member States concerned.

The Commission contends that, for a proper understanding of the Ninth Directive, it is necessary first to examine its origin. On 1 January 1978, the date laid down for the expiry of the period prescribed in Article 1 of the Sixth Directive, only Belgium and the United Kingdom had incorporated the directive into national law. At the beginning of 1978, the other Member States were therefore exposed to a twofold risk: on the one hand, they had to expect the Commission to initiate proceedings for infringement of the Treaty and on the other hand, they ran the risk that certain professions which were exempt from value-added tax under the Sixth Directive would invoke the case-law of the Court in relation to the right of individuals relying on directives in order to refuse payment of value-added tax with effect from 1 January 1978. For that reason as from February 1978 the Commission was subjected to increasing pressure to submit as quickly as possible a proposal that the date for implementation laid down in the Sixth Directive should be postponed. Since, once the period initially prescribed had expired, a postponement of the date for incorporation of the directives into national law would necessarily give rise to a conflict in relation to the rights

which certain professions might have acquired on 1 January 1978, the Commission hesitated for a long time before acceding to the wishes of the Member States. When it finally decided to propose to the Council that the prescribed period should be extended, it did so only on the express condition contained in the second sentence of Article 1 of the proposal for the Ninth Directive submitted by the Commission to the Council on 25 July 1978 (Official Journal 1978, C 141, p. 3):

"This derogation shall not prejudice the effects of the provisions of Directive 77/388/EEC which do not require the adoption of national implementing measures, if those effects have been produced before the date of notification."

Notwithstanding the Commission's proposal, which was also supported by the European Parliament when it was consulted, the Council was not prepared to include in the Ninth Directive a reservation concerning rights already acquired as from 1 January 1978. Thus an annex to the minutes of the meeting of the Council on 26 June 1978 contains the following declaration:

"The Council declares that this directive may not affect rights acquired by taxpayers between 1 January 1978 and the entry into force of this directive."

But the Commission adds that those minutes of the Council meeting also contain a declaration by the Commission in which it deplores the fact that the second sentence of Article 1 of its proposal was omitted and at the same time states that, by adopting the directive accompanied by a declaration on the maintenance of acquired rights, the Council was adopting the Commission's point of view in relation to the inviolability of those rights and interpreting Article 1 in that sense.

The Commission claims that there is no doubt that the Council declaration cited above related to the right to rely on certain provisions of the Sixth Directive, which implies that the extension of the prescribed period by the Ninth Directive did not affect the right to rely on those provisions of the Sixth Directive which was already available in the first six months of 1978. The fact that, contrary to the Commission's proposal, the reservation concerning the maintenance of the right for individuals to rely upon certain provisions was included not in the Ninth Directive itself but in the minutes of the meeting may be explained by the fact that at the time when the Ninth Directive was adopted there had not yet been a decision of the Court of Justice on the question whether any, and if so, which, provisions of the Sixth Directive qualified as provisions which might be relied upon by an individual, so that the Council did not wish to express an opinion on that point. As the Court established in its judgments in Cases 8/81 and 255/81, cited above, that in relation to the exemption from tax of transactions consisting of the negotiation of credit provided for in Article 13 B (d) 1 of the Sixth Directive the conditions enabling private persons to rely upon that provision were fulfilled, the same must also apply, in view of the declaration contained in the minutes of the Council meeting, as regards the first six months of 1978.

Consequently the Commission proposes that the questions submitted to the Court by the Finanzgericht should be answered as follows:

"In the period from 1 January 1978 to 30 June 1978, 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."

III — Oral procedure

At the sitting on 9 November 1983 oral argument was presented by the following: J. Huppenkothen, for the plaintiff in the main action; Mr Eilers, for the Finanzamt Leer; M. Conti, for the Italian Government; and W.-D. Krause-Ablas, for the Commission of the European Communities.

The Advocate General delivered his opinion at the sitting on 13 December 1983.

Decision

- 1 By order of 3 March 1983, which was received at the Court on 28 April 1983, the Niedersächsisches Finanzgericht [Finance Court, Lower Saxony] 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) and of Article 1 of the Ninth Council 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) in order to ascertain whether the above-mentioned provision of the Sixth Directive could be relied upon by a credit negotiator in the first six months of 1978.

- 2 It must be remembered that, under Article 1 of the Sixth Directive of 17 May 1977, the Member States were to adopt by 1 January 1978 at the latest the necessary laws, regulations and administrative provisions in order to bring their value-added tax systems into line with the requirements of the directive. A number of Member States, including the Federal Republic of Germany, were unable to make the necessary adjustments within the prescribed period and therefore on 26 June 1978 the Council adopted the Ninth Directive which was addressed to those Member States and authorized them to implement the Sixth Directive on 1 January 1979 at the latest. The Ninth Directive was notified to its addressees on 30 June 1978.
- 3 It was not until the adoption of the Law of 26 November 1979 (Bundesgesetzblatt I, p. 1953), and with effect from 1 January 1980, that the Federal Republic of Germany implemented the Sixth Directive. In its judgments of 19 January 1982 in Case 8/81 *Becker* [1982] ECR 53 and of 10 June 1982 in Case 255/81 *Grendel* [1982] ECR 2301, the Court ruled 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 Directive 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.
- 4 It is apparent from the documents before the Court that the plaintiff in the main action, Mrs Gerda Kloppenburg, carries on a credit and mortgage business in the Federal Republic of Germany. For the first six months of 1978 she claimed exemption from turnover tax on the basis of Articles 1 and 13 B (d) 1. of the Sixth Directive.
- 5 The Finanzamt Leer rejected that claim and assessed the plaintiff's transactions at the normal rate, in accordance with the national legislation which had not yet been amended at the time.

- 6 Relying upon the above-mentioned judgments, the plaintiff lodged an appeal against that decision with the Finanzgericht which stayed the proceedings and referred to the Court of Justice the following question for a preliminary ruling:

“In the period from 1 January 1978 to 30 June 1978, was it 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, even though under Article 1 of the Ninth Council Directive, 78/583/EEC, of 26 June 1978 on the harmonization of the laws of the Member States relating to turnover taxes, the Member States referred to in that article were authorized to implement Directive 77/388/EEC by 1 January 1979 at the latest?”

- 7 In order to answer that question it is appropriate in the first place to consider the legal position of economic operators in the first six months of 1978, that is to say before the Ninth Directive took effect following its notification to the Member States to which it was addressed.
- 8 During that period, economic operators established in one of the Member States which had failed to comply with the obligation to bring their legislation into line with the provisions of the Sixth Directive before 1 January 1978 were confronted with a failure to implement the directive with the probable result that the tax authorities would not apply the exemptions provided for by the directive for the benefit of certain of those operators. The situation was identical to that which gave rise to the above-mentioned judgments of 19 January 1982 and 10 June 1982.
- 9 It follows that, during the said period, a credit negotiator who had not passed on the tax to persons following him in the chain of supply was justified in relying on the exception provided for by Article 13 B (d) 1 of the Sixth Directive and a Member State which had failed to fulfil its obligations could not claim, as against that person, that it had not implemented the directive.

- 10 Accordingly, the only new problem which arises in the present case is whether the legal position of such an economic operator has been altered, with retroactive effect, by the Ninth Directive. It is therefore appropriate, in the second place, to examine that directive in order to establish whether it is intended to produce such an effect and, if so, whether it was able to do so lawfully.
- 11 In that regard, it is necessary to emphasize, as the Court has already done on several occasions, that Community legislation must be unequivocal and its application must be predictable for those who are subject to it. Postponement of the date of entry into force of a measure of general application, although the date initially specified has already passed, is in itself liable to undermine that principle. If the purpose of an extension is to deprive individuals of the legal remedies which the first measure has already conferred upon them, such an effect in practice raises the question of the validity of the amending measure.
- 12 However, such a question of validity could arise only if the intention to produce the above-mentioned effect were expressly stated in the amending measure. That is not so in the case of the Ninth Directive. The text of that directive merely extends the period for transposing the Sixth Directive into national law in favour of those Member States which were unable to complete, within the period initially prescribed, the legislative procedure required for amending their legislation on value-added tax. It contains nothing to indicate that the extension alters the position of economic operators in relation to transactions carried out by them prior to the entry into force of the measure altering the period allowed for implementation.
- 13 It follows that the Ninth Directive must be interpreted as not having retro-active effect in that regard.
- 14 The answer to the question raised should therefore be that in the absence of the implementation 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, it was possible for the provision concerning the exemption of the negotiation of credit contained in Article 13 B (d) 1 of that directive to be relied upon by a credit negotiator in relation to transactions carried out between 1 January and 30 June 1978 where he had refrained from passing the tax on to persons following him in the chain of supply.

Costs

- ¹⁵ The costs incurred by the Italian Government 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.

On those grounds,

THE COURT

hereby rules:

In the absence of the implementation 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 tax — Common system of value-added tax: uniform basis of assessment, it was possible for the provision concerning the exemption of the negotiation of credit contained in Article 13 B (d) 1 of that directive to be relied upon by a credit negotiator in relation to transactions carried out between 1 January and 30 June 1978 where he had refrained from passing that tax on to persons following him in the chain of supply.

	Mertens de Wilmars	Koopmans	Bahlmann
Galmot	Pescatore	Mackenzie Stuart	O'Keeffe
Bosco	Due	Everling	Kakouris

Delivered in open court in Luxembourg on 22 February 1984.

P. Heim
Registrar

J. Mertens de Wilmars
President