2. Differences in time-limits laid down by national legislation with regard to the taxation of imports and taxation of domestic transactions may, in certain circumstances, constitute an infringement of Article 95 of the Treaty. Nevertheless, tax periods which serve as a basis for calculating the net tax position of each taxable person under the internal system need not, as Community legislation stands at present, be taken into consideration in the comparison of the periods for payment. Thus, there is nothing in legislation such as that described by the national court which is capable of constituting discrimination within the meaning of Article 95 of the Treaty.

Mackenzie Stuart Koopmans Bahlmann Galmot

Pescatore O'Keeffe Bosco Due Kakouris

Delivered in open court in Luxembourg on 10 July 1984.

D. Louterman
Administrator

A. J. Mackenzie Stuart
President

OPINION OF MR ADVOCATE GENERAL MANCINI DELIVERED ON 28 FEBRUARY 1984 [1]

Mr President,
Members of the Court,

In these proceedings the Court is requested to determine, by way of preliminary ruling, whether under the EEC Treaty and the secondary law relating to value-added tax (VAT) the Member States may lay down accounting and payment periods for VAT on imports which are different from those prescribed for VAT under the internal system.

1 — Translated from the Italian.

Dansk Denkavit ApS, the plaintiff in the main proceedings, imports animal feeding-stuffs into Denmark from the Netherlands. At its request, it was registered as an importer and therefore is subject to the obligations attaching to persons liable to pay VAT on imports. The Danish rules, like those of certain other States, lay down a time-limit for the payment of VAT on imports which is different from that for internal VAT. On 3 June 1981, Dansk Denkavit, considering that system to be discriminatory, requested the Ministeriet for Skatter og Afgifter [Ministry for Fiscal Affairs, hereinafter referred to as "the Ministry"] to allow it to calculate its VAT liability on the basis laid down for internal VAT; since its request was refused, it brought an action before the Østre Landsret [Danish High Court], claiming that the rules in question were incompatible with Community law. By order of 2 March 1983, the Twelfth Chamber of the Østre Landsret stayed the proceedings and referred to the Court for a preliminary ruling four questions on the interpretation of the Sixth Council Directive of 17 May 1977 (77/388/EEC, Official Journal L 145, p. 1) and of Article 95 of the EEC Treaty.

2. I shall now turn to the Danish rules. Most of them are contained in the Law on VAT, promulgated on 1 July 1982 under No 369, and the Customs Law, promulgated on 15 December 1982 under No 659. Article 20 (1) of the Law on VAT lays down the procedures for payment of the internal tax. The taxable person must, no later than one month and 20 days after the end of each tax period (which is normally one quarter), declare to the revenue authorities the amount of tax which it has charged on its taxable turnover (the so-called "output tax") and the tax invoiced to it by its supplier ("input tax"). The difference between those two amounts constitutes the net tax position; the tax becomes chargeable one month after the end of the tax period and, if there is a net liability, payment must be made within the 20 days following.

In the case of goods imported from another Member State, the calculation and payment procedures are laid down by the Customs Law. Article 85 thereof provides that each return is to cover a period of one month and that the tax on the goods cleared through customs during that period is to be paid by the end of the month following the expiry of that period.

According to the calculations made by the national court, under the internal system undertakings are allowed, for the purpose of discharging the net tax liability, an average credit period of two and a half months as from the date when the goods or services are supplied or invoiced. To this must be added the period of 20 days for payment. In the case of VAT on imports, however, the average credit period is one and a half months as from clearance of the goods through customs.

3. I shall now consider the questions submitted to the Court by the Østre Landsret. The national court asks in the first place whether the Sixth Directive, and in particular Articles 10, 22 and 23 thereof, must "interpreted in such a way that the directive precludes a Member State from laying down accounting periods and periods within which payment must be made in respect of value-added tax chargeable on the importation of goods from another Member State ... which are in conformity with the periods prescribed by Article 22 (4) of the directive but

which mean that registered importers obtain a shorter average period of credit for making payment of that tax to the revenue authorities than the average period of credit which the same Member State generally permits registered undertakings, including importers, in respect of payment to the revenue authorities of the net amount of value-added tax on the general turnover (net tax liability)".

I shall examine the provisions to which the Danish court refers. After defining the terms "chargeable event" and "chargeability of tax", Article 10 distinguishes the times when they occur according to whether the tax is charged on internal transactions or on imports. In the case of imports, the chargeable event occurs and the tax becomes chargeable when the goods are brought into the country. In the case of internal transactions, the chargeable event occurs and the tax becomes chargeable when the goods are delivered or the services are performed. If they involve successive statements of account or payments, the transactions are deemed to have been completed upon the expiry of the periods to which such statements of account or payments pertain.

Articles 22 to 24 relate to the taxable person's obligations and they too make a distinction between internal VAT and VAT on imports. For internal trade, Article 22 (4) provides that every taxable person is to submit a return within a period to be determined by each Member State; however, the period must not end later than two months after the end of each tax period. The tax period may be fixed at one month, two months, a quarter or longer periods not exceeding a year. Paragraph (5) goes on to provide that: "Every taxable person shall pay the net amount of the value-added tax when submitting the return;" Member States may however "fix a different date for the payment of the amount or may demand an interim payment".

As regards VAT on imports, Article 23 provides that "the detailed rules for the making of the declaration and payments" are to be laid down by the Member States; it authorizes the Member States to "provide that the value-added tax payable on importation of goods by taxable persons or persons liable to tax ... need not be paid at the time of importation", provided that the tax "is indicated as such in a return to be submitted under Article 22 (4)".

These rules appear to me to be absolutely clear. In the case of the internal system, the directive identifies three phases for the discharge of the obligations incumbent upon taxable persons. The first is the tax period, and the obligation which is imposed upon the Member States in connection with that period concerns its maximum duration: it may not exceed one year. The second phase is the period within which the return is to be made and here also Member States may not go beyond a certain limit: the return is to be made within the two months following the end of the tax period. The third phase is the period within which the net liability must be discharged or the periodical payments must be made, and as a rule the end of that period must coincide with the

submission of the return. However, Member States retain the power to extend the period and the directive does not even limit the time for which they may allow payment to be deferred in such a case.

With respect to tax on imports, on the other hand, the basic principle is that the VAT is to be paid when the goods are imported. However, if the Member States exercise their right to prescribe a different date for payment, the VAT is to be mentioned "in a return to be submitted under Article 22 (4)", that is to say in accordance with the rules laid down for the internal system.

Thus, the directive leaves the Member States a wide margin of discretion regarding the phasing of the obligations attaching to taxable persons. In particular, none of its provisions requires the time-limits for returns and payments in full or interim payments to be the same for internal tax as for tax on imports. Moreover, the reference in Article 23 to Article 22 (4) does nothing to change that facts. It seems to me to be obvious that that reference relates not to the abovementioned time-limits (which are governed by Article 22 (5) in any case), but only to the *manner* in which the returns *are to be drawn up.* That aspect is in fact dealt with in the second subparagraph of Article 24 (2).

4. The Østre Landsret asks the Court in the second place "what significance must be attached in deciding Question 1 to the fact that the provisions of the Member State in question on the rendering of accounts and payment of value-added tax on imports may be regarded as entailing an average period of credit for importers which constitutes a reasonable counterpart to the average period of credit which purchasers at the same commercial and industrial stage can obtain from suppliers for the payment of the purchase price, inclusive of value-added tax, when they purchase products manufactured in the Member State in question".

As I have just said, as far as time-limits for the payment of VAT and the collection of interim payments in respect of imports are concerned, the Sixth Directive leaves the Member States a considerable degree of discretion. The reasons for which the Member States may consider it necessary to prescribe periods which are longer or shorter than, or even the same as, those applied under the internal system cannot therefore be taken as a criterion for interpretation of the directive.

5. In its third question, the national court asks whether the laying down of different accounting periods and periods within which payment must be made in respect of VAT under the internal system and VAT on imports is contrary to Article 95 of the Treaty. I would point out that, under the first two paragraphs of that article, "no Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products ... [or] any internal taxation of such a nature as to afford indirect protection to other products".

Within the scheme of the Treaty, those rules supplement the provisions on the abolition of customs duties and charges having equivalent effect; in other words, they are intended to ensure free movement of goods by removing any protectionist measures resulting from the imposition of internal taxes which discriminate against goods originating in other Member States. Such discrimination will of course be evident from a

comparison between the internal taxes levied on imported goods and those charged on similar domestic goods. As the Court has held, in order to apply Article 95 correctly it is necessary to compare the taxation treatment accorded to the products "taking into account at each production or marketing stage the rate of tax, its basis of assessment and the procedures for levying it" (cf. most recently the judgment of 5. 5. 1982 in Case 15/81, *Schul* v *Inspecteur der Invoerrechten en Accijnzen,* [1982] ECR 1409, paragraph 27 of the decision).

In that statement, it seems to me that particular importance attaches to the phrase "at each production or marketing stage"; in other words, the comparison between the tax burdens must be made with reference to the same marketing stage. However, is it possible to do that in this case? I think not and therefore I do not consider that the problem referred to the Court by the Østre Landsret can be resolved by reliance upon the precedent laid down in the judgment of 27 February 1980 in Case 55/79 *(Commission* v *Ireland* [1980] ECR 481). It is true that in that judgment the Court held that a State discriminates against imported products where, in the case of a tax on consumption, its laws provide for a deferment of payment available only to domestic producers; but in that case the precondition laid down by this Court for the application of Article 95 was satisfied.

Here, as I have said, that is not the case; that is because Community harmonization of the rules on VAT is incomplete or, in other words, the continuity of a tax system which is in itself neutral at domestic and international level is broken by the existence of tax frontiers between the Member States. It is well known that those frontiers are intended to be abolished; however, until they are abolished and whilst "VAT on imports" continues to exist, that tax will necessarily be *sui generis* and will be governed by its own rules. In particular, it will not be possible to ask the Member States to make the time-limits for payment of VAT on imports uniform with those for domestic transactions; it will not be possible to ask them to do so — and this is the important point — because the two different time-limits relate to different marketing stages. Under the internal system the payment of VAT relates to a *sale* and in the case of imports it relates to a *purchase.*

6. That response will be criticized as being formalistic. Dansk Denkavit rejects it and emphasizes the financial benefits accruing to undertakings on the domestic market from the difference between the time-limits for payment of the tax. The latter, it states, retain for a longer period the funds required to discharge their tax liability and thereby derive an advantage in terms of interest which enables them to charge lower prices. How in those circumstances can it be denied that there is discrimination of the kind prohibited by Article 95?

The argument is attractive but is not convincing. Let us accept the premise on which it is based: in other words, let us disregard the various marketing stages to which the time-limits laid down for VAT on imports and internal VAT relate and compare two similar situations, namely that of the importer and that of the *purchaser* on the Danish market. I have already pointed out (in paragraph 2

above) that there are legally prescribed time-limits for the importer to make his return and his payment in respect of VAT which correspond to an average period of credit of one and a half months. As regards the purchaser, however, it is necessary to take account of commercial practice and in particular the periods of credit which, in his capacity as collector of the tax, the supplier grants to the purchaser. The Commission and the defendant government have shown (and the Østre Landsret confirms in the second question) that in Denmark those periods are on average 45 days. The result is that, even if the non-formalistic approach preferred by Denkavit is adopted, there can be no question of any discrimination.

7. The last question submitted by the national court concerns the repercussions for the Sixth Directive in the event of systems such as the Danish system being held to be incompatible with Article 95 of the Treaty. Since I do not believe that such systems are incompatible (cf. paragraphs 5 and 6 above), the question is, as far as I am concerned, devoid of purpose.

8. In view of the foregoing considerations, I suggest that the Court should reply as follows to the questions submitted by the Twelfth Chamber of the Østre Landsret by judgment of 2 March 1983 in the proceedings between Dansk Denkavit ApS and the Ministeriet for Skatter og Afgifter:

1. 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 (in particular Articles 10, 22 and 23) is to be interpreted as not prohibiting Member States from laying down, in respect of VAT on imports, return and payment periods which are different from those applicable to goods under the internal system.

2. Because under the provisions of the Sixth Directive the Member States retain the power to lay down, in respect of VAT on imports, return and payment periods which are different from those applicable to goods under the internal system, the reasons which influence the Member States in deciding upon those time-limits do not affect the interpretation of the directive.

3. Article 95 of the EEC Treaty does not prohibit Member States from laying down return and payment periods which are different for VAT on imports and internal VAT.