OPINION OF ADVOCATE GENERAL FENNELLY
delivered on 28 November 1996 *

1. The Court is asked in this preliminary reference to interpret the scope of certain provisions of Article 9 of the Sixth VAT Directive. [1] The question referred essentially requires the Court to decide where the provision of veterinary services to cattle-farming undertakings in one Member State (Belgium) by a veterinary partnership, which is established in business and has its fixed establishment in another Member State (the Netherlands), should be regarded as having been supplied for VAT purposes.

I — Legal and factual context

2. The relevant provisions of Article 9 of the Sixth Directive are as follows:

'1. The place where a service is supplied shall be deemed to be 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.

2. However:

...;

(c) the place of the supply of services relating to:

...

— valuations of movable tangible property,

* Original language: English.

1 — 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 (hereinafter 'the Sixth Directive'); OJ 1977 L 145, p. 1.

— work on movable tangible property,

shall be the place where those activities are physically carried out;

...;

(e) the place where the following services are supplied when performed for customers established outside the Community or for taxable persons established in the Community but not in the same country as the supplier, shall be 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:

...

— services of consultants, engineers, consultancy bureaux, lawyers, accountants and other similar services, as well as data processing and the supplying of information,

...'.

Article 9(3) is also of relevance. It provides that:

'In order to avoid double taxation, non-taxation or the distortion of competition the Member States may, with regard to the supply of services referred to in [Article 9] 2(e) ... consider:

(a) the place of supply of services, which under this Article would be situated within the territory of the country, as being situated outside the Community where the effective use and enjoyment of the services take place outside the Community;

(b) the place of supply of services, which under this Article would be situated outside the Community, as being within the territory of the country where the effective use and enjoyment of the services take place within the territory of the country.'

3. According to the Gerechtshof, 's-Hertogenbosch (Regional Court of Appeal, 's-Hertogenbosch, hereinafter 'the national court'), the Wet op de Omzetbelasting 1968 (Law on Turnover Tax 1968, hereinafter

'the Law') was subsequently adjusted to take account of the Sixth Directive. [2] The national court states that the Court can assume that the legislature of the Netherlands intended to enact the same rules in Article 6 of the Law with regard to the place at which services are to be deemed to be supplied as are contained in Article 9 of the Sixth Directive.

4. The partnership, Linthorst, Pouwels and Scheres, the appellant in the main proceedings, is established at Ell in the Netherlands. [3] It operates a general veterinary practice through its partners, all of whom are veterinary surgeons. For VAT purposes, it is considered an undertaking (*ondernemer*) within the meaning of Article 7 of the Law. During February 1994 (hereinafter 'the relevant tax period'), it charged cattle farmers, established in Belgium and with no fixed establishment outside Belgium, a total of HFL 5 110 for veterinary services. The services (hereinafter 'the Belgian services'), which did not include the supply of medicaments, related to animals located in Belgium and were performed by the partnership in Belgium. For the relevant tax period, the partnership included, in its overall declaration of liability to VAT of HFL 32 037, a sum of HFL 894, which represented VAT at 17.5% on the amount of HFL 5 110 invoiced for the Belgian services. The partnership, having made an unsuccessful administrative claim for reimbursement of the sum of HFL 894, appealed to the national court.

5. Linthorst claimed before the national court that the place where the Belgian services were supplied should, pursuant to the third and fourth indents of Article 9(2)(c) of the Sixth Directive, be regarded as the place where they were physically carried out, which was in Belgium. In the alternative, it submitted that under Article 9(2)(e), the place of supply should be deemed to be the place where the customers had established their places of business, which, equally, was in Belgium. The tax authorities submitted that the main rule in Article 9(1) was applicable and that the partnership was correctly subjected to VAT on the Belgian services at its place of establishment in the Netherlands.

6. The national court points out that, since the place where a service is deemed to be supplied under Article 9 of the Sixth Directive circumscribes the power of a Member State to tax that service, a Community-law interpretation of that provision is necessary so as to obviate situations of either double taxation or non-taxation to which divergent national interpretations might give rise. Whilst unconvinced that any of the provisions of Article 9(2) invoked by the partnership in the present case was applicable, the national court, noting that the Belgian authorities are of the view that the fourth

2 — Reference is made to a law of 28 December 1978, *Staatsblad* 677.

3 — I shall refer to it either as 'Linthorst' or 'the partnership'.

indent of Article 9(2)(c) applies to the provision of veterinary services, decided to refer the following question to the Court for a preliminary ruling:

'Should Article 9 of the Sixth Directive be interpreted as meaning that the place where a veterinary surgeon supplies his services as such should be deemed to be the place where he has established his business or has a fixed establishment from which the services are 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, or should that article be interpreted as meaning that the place where a veterinary surgeon supplies his services as such is located elsewhere, namely at the place where those services are physically carried out or 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?'

II — Observations

7. Written observations were submitted by Linthorst, the Kingdom of the Netherlands, the Federal Republic of Germany, the Italian Republic and the Commission, who, with the exception of Linthorst and Germany, also submitted oral observations.

III — Analysis

8. Article 9(1) of the Sixth Directive enunciates a rule that VAT on the supply of services is normally to be levied at the place of establishment of the service provider. Article 9(2), however, subjects to alternative rules a wide and heterogenous range of service-supply transactions. The interpretation of this article, particularly the relationship between Article 9(1) and (2), has been explained by the Court.

9. Whilst Article 9(1) 'lays down the general rule on the matter', [4] it does not follow that the scope of Article 9(2) should be interpreted narrowly as an exception to a general rule. [5] Instead, the Court held in *Dudda* that 'the object of those provisions is to avoid, first, conflicts of jurisdiction, which may result in double taxation and, secondly, non-taxation, as Article 9(3) indicates, albeit only as regards specific situations'. [6] The Court continued: [7]

'It follows that, when Article 9 is interpreted, Article 9(1) in no way takes precedence over

4 — Case C-327/94 *Jürgen Dudda* v *Finanzamt Bergisch Gladbach* [1996] ECR I-4595, paragraph 20 of the judgment (hereinafter '*Dudda*').

5 — In this respect, therefore, the emphasis placed on behalf of Italy and the Netherlands on this interpretative approach is mistaken.

6 — *Dudda*, paragraph 20 of the judgment.

7 — Ibid., paragraph 21 of the judgment.

Article 9(2). In every situation, the question which arises is whether [a transaction] is covered by one of the instances mentioned in Article 9(2); if not, it falls within the scope of Article 9(1).'

Accordingly, the Court stated that the scope of Article 9(2) had to be interpreted in the light of its purpose as set out in the seventh recital in the preamble to the Sixth Directive, [8] which indicates that its overall objective is 'to establish a special system for services provided between taxable persons where the cost of the services is included in the price of the goods'. [9]

10. In the present case, the services provided by the partnership were probably included directly in the price of the products supplied by the farmers (namely, in the resale value of the cattle or their carcasses, if slaughtered prior to sale, or in the price of the milk products produced from their animals in the case of dairy farming). More generally, however, as noted by the national court, a not insignificant proportion of the services of veterinary surgeons are supplied to individuals so that there is no supply between taxable persons, even if, as I shall discuss later, veterinary services are to be included in Article 9(2)(e), third indent. However, this does not appear to arise on the facts of the present case, where the supplies are to cattle farmers.

(i) — *Article 9(2)(c), third indent — valuations of movable tangible property*

11. The first submission advanced by the interested party is that the Belgian services may be classified as 'valuations of movable tangible property'. This argument is based, in the first instance, on the Dutch text of the third indent of Article 9(2)(c) of the Sixth Directive, and in particular the words '*in verband met*', which may be rendered in English as 'in connection with' or in French as '*en rapport avec*'. In fact, the English employs the words 'relating to' and the French text reads '*ayant pour objet*'. Both of

8 — The seventh recital 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 supplies of goods for assembly and the supply of services; ... although the place where a supply of services is effected should in principle be defined as the place where the person supplying the services has his principal place of business, that place should be defined as being in the country of the person to whom the services are supplied, in particular in the case of certain services supplied between taxable persons where the cost of the services is included in the price of the goods ...'.

9 — *Dudda*, paragraph 23 of the judgment. It is clear from paragraph 24 of the judgment that the same rationale applies to the supply of services whose cost is included by the recipient 'in the price of the complete service paid for by the final consumer ...'.

these imply a purposive link between the services provided and the valuation of the property. I accept the classification of animals as 'movable tangible property', since the civil law of most legal systems regards the ownership of animals as similar to the ownership of inanimate chattels. However, I agree with the national court that the services envisaged by the draftsman were those of experts in valuation work, such as insurance claims assessors, and not those of experts in animal health care.

12. It may occur occasionally that a veterinary surgeon provides a farmer with a valuation of damage suffered, for example, as a result of an outbreak of some bovine disease, or, as pointed out at the hearing by counsel for the Netherlands, that he provides the owner of a horse with an assessment of the animal's value. However, in my opinion, such instances are incidental or occasional. The principal function of a veterinary surgeon is to provide veterinary therapeutic or preventative care to animals. In its essence, both as to the essential objective of such care and the means and medicaments used, it is often — subject to some obvious exceptions — similar to that of general medical practitioner. I do not think that the services customarily provided by veterinary surgeons can be equated with those 'relating to ... valuations of movable tangible property'.

(ii) — *Article 9(2)(c), fourth indent — work on movable tangible property*

13. Linthorst also submits that the services provided by veterinary surgeons may be classified as work on movable tangible property under the fourth indent of Article 9(2)(c) of the Sixth Directive. In this respect, in addition to the fact that the Dutch text of the governing words of the indent employs the words '*in verband met*', where the English text uses 'relating to', the national court points out that neither the wording of the English nor the German texts (namely 'work on movable tangible property' or '*Arbeiten an beweglichen körperlichen Gegenständen*') is potentially as broad as the Dutch expression '*werkzaamheden die betrekking hebben op roerende lichamelijke zaken*', which apparently, on a more literal translation into English, could be rendered as '*activities* which relate to movable corporeal things'. In Dutch the word '*werkzaamheden*' apparently has a wider connotation than that of 'work' in English. The Commission, however, contends that the word '*travaux*' used in the French text calls to mind the idea of repair or maintenance work rather than the combined function of providing advice and veterinary care, which it contrasts with what it accepts as being the more neutral Dutch word '*werkzaamheden*'.[10] The

10 — The 1993 edition of the *Le Nouveau Petit Robert* defines the words '*un travail*' or '*le travail de quelqu'un*' as '*[l']ensemble des activités exercées pour parvenir à un résultat (oeuvre, production)*', which seems to evoke the idea of physical work leading to material and ascertainable results.

national court would confine the fourth indent to work on movable tangible property itself and, supported by Germany, takes the view that the provision should not be interpreted too broadly, since such an interpretation would have the effect of rendering the third indent redundant.

14. When interpreting a provision of Community legislation the Court seeks to develop a uniform interpretation of the text which accords with the real intention of the Community legislature and which is not necessarily influenced by the peculiarities of any one linguistic version of the various equally authentic texts. [11] The national court has referred to the German and English texts as not supporting a wide construction of the Dutch text, while the Commission contends that the French text tends towards a narrower and more specific construction. To this I would add that none of the other texts of Article 9(2)(c) of the Sixth Directive that were authentic during the relevant tax period appears to support the expansive interpretation of that provision for which the partnership contends. [12] It is true that the Court has occasionally interpreted a provision of the Sixth Directive by emphasizing in particular one of its authentic texts, where that is not in conflict with the others, [13] but always in pursuit, none the less, of the objective of a uniform Community interpretation.

15. In the view of the national court, the services of veterinary surgeons, both in common parlance and because of the preventative and advisory services usually provided, encompass more than merely work on animals and could more appropriately be regarded as concerned with the treatment of animals. [14] It states that this view is also supported by the other legislative provisions. [15] It has the support of the Commission for the contention that society's views as articulated in common parlance are more important

11 — See, for example, Case 29/69 *Stauder v Ulm* [1969] ECR 419, paragraph 3 of the judgment.

12 — The wording used is as follows: in Danish '*arbejde*'; in Greek '*εργασίες*'; in Italian '*lavori*'; in Portuguese '*trabalhos*'; in Spanish '*trabajos*'. All these retain a strong link with the idea of work.

13 — See, for example, Case C-468/93 *Gemeente Emmen* v *Belastingdienst Grote Ondernemingen* [1996] ECR I-1721, paragraph 24 of the judgment, where the Dutch text, supported by the punctuation in three other texts, was relied upon.

14 — In this respect it refers to point 9 of Annex F to the Sixth Directive which refers to 'treatment of animals by veterinary surgeons'. Member States were permitted by Article 28(3)(b) to maintain, for a period, any existing national exemptions of such services from VAT. This authorization was, however, repealed by Article 1 of the Eighteenth Council Directive 89/465/EEC of 18 July 1989 on the harmonization 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 266, p. 21.

15 — Reference is made, *inter alia*, to the provisions of VAT exemptions on the temporary importation of goods into the Community. It notes that the scope of the exemption in this respect, provided for in Article 14(1)(c) of the Sixth Directive, has been defined in the Seventeenth Council Directive 85/362/EEC of 16 July 1985 on the harmonization of the laws of the Member States relating to turnover taxes — Exemption from value added tax on the temporary importation of goods other than means of transport; OJ 1985 L 192, p. 20. Title III, Chapter 11, comprising Article 23, deals with animals. It provides that the exemption shall be granted for: '(a) live animals of any species imported ... in order to be given veterinary treatment'. Such specific references to veterinary services indicate, in its view, that, had the legislator wished to include such services within the scope of the fourth indent, it would expressly have done so.

than the precise wording used. [16] The services provided by veterinary surgeons are not in ordinary language referred to as work on animals.

16. I agree that the reference to 'work on movable tangible property' should not be interpreted broadly. The draftsman intended, in my view, to include within that indent only services requiring some physical working of chattels, or which at least relate closely to such works, rather than work of a predominantly intellectual nature.

17. The work of veterinary surgeons in its common social understanding comprises much more than merely the physical treatment of animals. As noted in footnote 14 above, the Community legislature initially granted Member States the possibility of exempting '*the treatment* of animals by veterinary surgeons' (emphasis added). Moreover, under Article 13(A)(1)(c), Member States are, without any limitation as to time, required to exempt 'the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member States concerned'. In my opinion, these specific references to 'treatment' and 'care' illustrate that those who drafted the Sixth Directive did not intend to alter, for VAT purposes, the common conception of what constitutes the work of veterinary surgeons. The Court, in determining that Italy, in exempting veterinary services from VAT, had failed in its obligations under the Sixth Directive, appeared to accept that the work of veterinary surgeons should be described in terms of 'care administered to animals'. [17]

18. I am satisfied that the work of veterinary surgeons should be viewed globally and by reference to the common understanding of the nature and purpose of that work, and not by reference to the incidental fact that actually it involves work on animals. The mere fact that some of the work effected by the partnership may involve, in a purely literal sense, work on movable tangible property cannot, in my opinion, affect this approach. The physical aspects of the examinations and operations carried out on animals by veterinary surgeons, as part of the service provided to their clients, do not exhaustively define the nature of that service, since they presuppose the intellectual qualification, experience and judgement of the relevant practitioner. I am therefore convinced that it cannot be classified as coming within the fourth indent of Article 9(2)(c).

16 — The Commission cites paragraphs 19 and 20 of the judgment in Case 139/84 *Van Dijk's Boekhuis* v *Staatssecretaris van Financiën* [1985] ECR 1405 in support of this approach.

17 — Case 122/87 *Commission* v *Italy* [1988] ECR 2685, paragraph 9 of the judgment.

(iii) — *Article 9(2)(e), third indent — similarity with consultancy services*

19. Finally, Linthorst argues that veterinary services should be included as 'similar services' in the expression 'services of consultants, engineers, consultancy bureaux, lawyers, accountants and other similar services' in the third indent of Article 9(2)(e) of the Sixth Directive. The national court is of the view that, in the light of the difference in nature between the whole of the services provided by a veterinary surgeon and the services provided by 'consultants' or 'other similar services', veterinary services cannot fall within that provision. The partnership submits that its services may, by reference both to the extensive meaning of the concept of advice and the partially advisory nature of veterinary services, be regarded as at least similar to those of consultants. Germany contends that, whereas the list of activities enumerated in Article 9(2)(e), third indent, comprises only those which are carried out in an independent manner, it does not follow that all such activities should be regarded as falling within its scope; if the legislator had wished to include the services habitually provided by veterinary surgeons, it would have done so expressly.

20. At first sight, there is no obvious answer to this dilemma. The reason for excluding these services from Article 9(2)(c) is, at least in part, their partly consultative nature. In *Dudda*, the Court interpreted a parallel provision in Article 9(2)(c), first indent, regarding the place of supply of services relating to:

'cultural, artistic, sporting, scientific, educational, entertainment or similar activities, including the activities of the organizers of such activities, and where appropriate, the supply of ancillary services ...'.

It is important to emphasize that the technical acoustic and sound engineering services at issue in that case were held to be 'ancillary' to the artistic or entertainment nature of the principal activities. In its judgment in *Dudda*, the Court thus made brief reference only to the phrase 'similar activities' and stated that 'it is not only services relating *inter alia* to artistic and entertainment activities but also services relating to *merely similar activities* that fall within its scope'. [18]

18 — Paragraph 25 of the judgment (emphasis added).

21. I do not find it easy to interpret the expression 'merely similar activities'. [19] Presumably, the Court is saying that it is enough for activities to be 'similar' to artistic or entertainment activities to bring them within the indent. The Court does not, on the other hand, seek to establish, in the terms of the first indent, any class or genus of activities such as could call for the application of the *ejusdem generis* principle of construction. [20] The application of that principle presupposes that it is possible to identify, from the matters enumerated in the legal text under scrutiny, a *genus* which precedes the general words. [21] The search is essentially for a sufficiently common element to permit the identification of a recognizable class. The activities listed in the third indent of Article 9(2)(e) seem to me to be too heterogeneous and lacking in common elements. It has been suggested that the fact that the activities listed may broadly be regarded as constituting liberal professions provides a *genus*. However, I do not think that the legislator, by that indent, intended to enumerate a catalogue or establish a *genus* or class of activities corresponding to those of the traditional notion of liberal professions. An interpretation which seeks to compare the myriad of possible forms of modern consultancy work with the social and intellectual prestige — based generally on high standards of educational attainment and strict regulation of ethical and professional behaviour — of the traditional liberal professions would strain considerably the language of the indent. The omission of medical services, of course, flows naturally from the exemption of such services pursuant to Article 13(A)(1)(c). They would, if included, undoubtedly have been 'similar' to veterinary services. In the result, there is no class of activity in the catalogue which is 'similar' to the normal activities of a veterinary surgeon, and, in my opinion, no common element other than the unsatisfactory notion of liberal professions can be identified to which those activities could be assimilated.

22. Indeed — as I have already stated in respect of the fourth indent of Article 9(2)(c) [22] — and having regard to the express transitional exemption expressly provided pursuant to Article 28(3)(b) and Annex F to the Sixth Directive for the treatment of animals by veterinary surgeons, if the legislator had wished to include the services of veterinary surgeons in the indent, as it clearly did with the services of lawyers, it would expressly have done so. Veterinary surgeons providing traditional veterinary services are exercising a specific profession whose role is readily understood by society.

19 — For example, the French text of the judgment reads: '*des activités simplement similaires*'.

20 — See, for example, Bennion, *Statutory Interpretation* (Butterworths, 2nd ed. 1992), p. 860 et seq.

21 — See, for example, *NALGO* v *Bolton Corporation* [1943] AC 166, at p. 176. This principle is also applicable in Irish law; see, for example, *CW Shipping Ltd* v *Limerick Harbour Commissioners* [1989] ILRM 416, and was invoked as an aid to interpretation by Advocate General Sir Gordon Slynn in his Opinion in Case 218/86 *SAR Schotte* v *Parfums Rothschild* [1987] ECR 4905, p. 4911.

22 — See footnote 15 above.

In the absence of a *genus* in the indent, as discussed in the preceding paragraph, it is necessary to examine whether such veterinary activities are similar to any of the activities listed in the indent. The reference to 'other similar services' cannot be construed as a reference to the professional status of the service providers of some of the services listed, such as lawyers — since both veterinary surgeons and lawyers could broadly be classified as members of liberal professions — but, on the contrary, must be interpreted as only covering those *services* which are similar — in terms of the concrete aspects of the service actually provided — to any one of the preceding expressly listed service activities. The similarity, such as it is, between the nature of the services provided by veterinary surgeons and those of consultants, or 'consultancy bureaux' in particular, that arises from the advisory aspects of some of the work of veterinary surgeons is not sufficient, in my opinion, to bring them within the scope of the indent.

23. Besides, the legislative history, which has been described as variously as 'rather turbulent' [23] and 'rather muddled', [24] of Article 9 of the Sixth Directive provides no support for construing Article 9(2)(e), third indent, as covering veterinary services. [25] It does not, for example, indicate that the draftsman intended that all professional or otherwise independently provided services that are supplied on an intra-Community basis between taxable persons should, in the words of Article 9(2)(e), be taxed at 'the place where the customer has established his business or has a fixed establishment'. Furthermore, the seventh recital in the preamble to the Sixth Directive [26] is also of little assistance, since it indicates, as the Court confirmed in *Dudda*, that the objective of the alternative rules set out in Article 9(2) is 'to establish a special system for services provided between taxable persons where the cost of the services is included in the price of the goods'. [27] The mere fact that the Belgian services were probably incorporated by the recipients into the price of the 'goods' which they later supplied to other parties cannot

23 — Terra and Kajus, *A Guide to the Sixth VAT Directive* (IBFD, 1991), p. 356.

24 — See Farmer and Lyal, *EC Tax Law* (Oxford 1994), p. 155.

25 — From a situation where most services were deemed to be supplied at the place where the supplier was established under Article 10 of the original proposal (see OJ 1973 C 80, p. 1), the final text of the Sixth Directive, as we have seen, adopted a rule of a general nature in paragraph (1), subject to an extensive list of services in paragraph (2) whose place of supply depends essentially upon their place of performance. Although the original list (Article 16(10)(e) of the proposal), which is comparable to the present Article 9(2)(e), merely referred to 'services of consultants, engineers and planning offices, and similar services' — which was not amended in the revised Commission proposal; see Bulletin of the EC, Supp. 11-73 — it was the Council which was apparently responsible for the additional activities specified in the text as actually adopted. There is no indication that any general objective motivated the Council to include 'consultancy bureaux', 'lawyers' and 'accountants', whilst excluding 'planning offices'. Although the words for 'planning offices' used in the French and German versions of the proposal ('bureaux d'études' and 'Studienbüros') remained unchanged in the final texts adopted in those languages, the terms employed in the English and Dutch versions of the proposal were amended in the final text. Thus, in English, the reference to 'planning offices' was replaced by 'consultancy bureaux', while in Dutch the word 'studiebureaus' was replaced by 'adviesbureaus'.

26 — Quoted in footnote 8 above.

27 — Paragraph 23 of the judgment.

alone determine that the place of supply of those services was Belgium.

24. I am satisfied that, however indeterminate the scope of the notion of activities similar to those of 'consultants' or 'consultancy bureaux' might be, it cannot, on a reasonable interpretation, be construed as extending to the work of veterinary surgeons. The administration of health care to animals involves much more than purely advisory work connected with animals. It might be different if a group of veterinary surgeons established an undertaking which concentrated on providing animal-related business-advisory services to farmers, to those considering taking up farming activities or, indeed, to public authorities, but then their services would not constitute veterinary services as commonly understood. Equally, a veterinary surgeon might provide services which are genuinely of a consultancy nature; for example, he might advise persons, undertakings or bodies regularly on animal care. In any event, the national court has *not* found that this is the case with Linthorst, whose advisory work appears to be incidental to its normal veterinary activities.

25. I think that having regard, firstly, to the objectives underlying the Community VAT system and to Article 9 of the Sixth Directive in particular, and, secondly, to the overall nature of veterinary services as understood in common language, the services provided by a veterinary surgeon, who is acting as such rather than in a specialist advisory capacity, cannot be interpreted as falling within the third indent of Article 9(2)(e).

(iv) — *Article 9(1) — the place of supply*

26. As none of the provisions of Article 9(2) of the Sixth Directive is applicable, the place of supply of the services provided by the partnership is governed by Article 9(1). In *Berkholz* the Court stated that 'according to Article 9(1), the place where the supplier has established his business is a primary point of reference inasmuch as regard is to be had to another establishment from which the services are supplied only if the reference to the place where the supplier has established his business does not lead to a rational result for tax purposes or creates a conflict with another Member State'. [28] That primary point of reference in the present case is the Netherlands. The choice of the place of establishment as the place of supply for veterinary services will resolve any conflicts resulting from divergent national approaches, such as that involving, on the one hand, the Netherlands and Germany and, on the other, Belgium in the present case.

28 — Case 168/84 *Berkholz* v *Finanzamt Hamburg-Mitte-Altstadt* [1985] ECR I-2251, paragraph 17 of the judgment.

27. Moreover, it has not been suggested that the partnership in this case has a fixed establishment outside the Netherlands, whether in Belgium or elsewhere. It follows that the place of supply of its services must be where it has established its business, namely, as the national court has already found, in the Netherlands.

IV — Conclusion

28. Accordingly, I recommend that the question referred by the Gerechtshof, 's-Hertogenbosch be answered as follows:

Article 9 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, should be interpreted as meaning that the place where a veterinary surgeon who provides his services in more than one Member State should be deemed to supply his services is the place where he has established his business, unless the supplier has a fixed establishment in another Member State and provides the relevant services from that fixed establishment.