JUDGMENT OF THE COURT (Sixth Chamber)
3 July 1997 *

In Case C-60/96,

Commission of the European Communities, represented by Hélène Michard and Enrico Traversa, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the same Service, Wagner Centre, Kirchberg,

applicant,

v

French Republic, represented by Catherine de Salins, Deputy Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Gautier Mignot, Foreign Affairs Secretary in the same directorate, acting as Agents, with an address for service in Luxembourg at the French Embassy, 8B Boulevard Joseph II,

defendant,

APPLICATION for a declaration that, by introducing and maintaining in force an administrative provision extending to the letting of certain forms of movable property the exemption from VAT which, pursuant to Article 13B(b) 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, is restricted exclusively to the letting of immovable property, the French Republic has failed to fulfil its obligations under Article 2 of that directive,

* Language of the case: French.

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, J. L. Murray, C. N. Kakouris, P. J. G. Kapteyn (Rapporteur) and R. Schintgen, Judges,

Advocate General: G. Cosmas,
Registrar: H. von Holstein, Assistant Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the French Republic, represented by Denys Wibaux, Foreign Affairs Secretary in the Legal Affairs Directorate of the Ministry of Foreign Affairs, acting as Agent, and the Commission, represented by Hélène Michard, at the hearing on 27 February 1997,

after hearing the Opinion of the Advocate General at the sitting on 20 March 1997,

gives the following

Judgment

By application lodged at the Court Registry on 5 March 1996, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by introducing and maintaining in force an administrative provision extending to the letting of certain forms of movable property the exemption from VAT which, pursuant to Article 13B(b) 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 (OJ 1977 L 145, p. 1; hereinafter 'the Sixth Directive'), is

restricted exclusively to the letting of immovable property, the French Republic has failed to fulfil its obligations under Article 2 of that directive.

2 Article 2(1) of the Sixth Directive provides that the supply of services effected for consideration within the territory of the country by a taxable person acting as such is to be subject to VAT.

3 Article 13B(b) of the Sixth Directive provides that, without prejudice to other Community provisions, Member States are to exempt the leasing or letting of immovable property — subject to certain exceptions — under conditions which they are to lay down for the purpose of ensuring the correct and straightforward application of the exemptions and of preventing any possible evasion, avoidance or abuse.

4 In France the supply of services for consideration by a taxable person acting as such is subject to VAT by virtue of Article 256 of the Code Général des Impôts (General Tax Code; hereinafter 'the Code').

5 Article 261-D of the Code provides that the occasional, permanent or seasonal letting of accommodation which is furnished or fitted for residential use is exempt from VAT.

6 According to an administrative circular of 11 April 1991 (hereinafter 'the administrative circular'), caravans, tents, mobile homes and light-framed leisure dwellings which are genuine fixed installations, specially adapted for residence and used exclusively as living quarters, must also be regarded as residential premises, whereas the letting by the hour, day, week or month of touring caravans, camper vans, barges, boats and so on must be regarded as the letting of corporeal movable property which is compulsorily subject to VAT.

7 In the Commission's view, the French rules infringe Article 2 of the directive in that they go beyond the scope of the exemption provided for in Article 13B(b) of the Sixth Directive, which applies solely to the letting of immovable property. Accordingly, by letter of 23 April 1993, the Commission gave the French Republic notice to submit its comments to it within two months.

8 By letter of 2 June 1993, the French Government contested the Commission's allegations.

9 Unconvinced by the French Government's arguments, the Commission maintained those charges and on 8 November 1994 sent that Government a reasoned opinion calling on it to take the necessary measures to comply with its obligations under the Sixth Directive within two months of the date of notification.

10 In its reply of 9 January 1995, the French Government concurred with the Commission's position. It also undertook to rescind the provisions of the administrative circular and set out detailed rules for the levying of VAT on such lettings. Lastly, the French Government stated that the measures taken following consultations with the operators concerned would be communicated to the Commission as soon as possible.

11 Since the Commission received no official notification that the rules at issue had indeed been amended and was informed that the French authorities were continuing to give effect to the administrative circular, it brought the present proceedings.

12 In its defence, the French Government states that, in accordance with the reasoned opinion, the administrative circular has been rescinded so that the letting of tents, caravans or mobile homes will henceforward automatically be liable to tax under Article 256 of the Code.

13 Furthermore, Article 39-I of the Finance Law (Amending Act) 1995 (Law No 95-1347 of 30 December 1995) set out the conditions on which certain of those services may qualify for a lower rate of tax. Under Article 39-II of that Law, this new provision is to apply to transactions in respect of which the chargeable event occurred on or after 1 January 1996.

14 However, the French Government acknowledges that the administrative circular continued to be applied until 1 January 1996, the date on which the period laid down in the reasoned opinion of 8 November 1994 expired.

15 As the Court has consistently held, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion and the Court cannot take account of any subsequent changes (see, in particular, Case C-289/94 *Commission* v *Italy* [1996] ECR I-4405, paragraph 20, and Case C-302/95 *Commission* v *Italy* [1996] ECR I-6765, paragraph 13).

16 Consequently, it must be held that, by introducing and maintaining in force an administrative provision extending to the letting of certain forms of movable

property the exemption from VAT which, pursuant to Article 13B(b) of the Sixth Directive, is restricted exclusively to the letting of immovable property, the French Republic has failed to fulfil its obligations under Article 2 of that directive.

Costs

17 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the French Republic has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Declares that, by introducing and maintaining in force an administrative provision extending to the letting of certain forms of movable property the exemption from VAT which, pursuant to Article 13B(b) 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, is restricted exclusively to the letting**

of immovable property, the French Republic has failed to fulfil its obligations under Article 2 of that directive;

2. Orders the French Republic to pay the costs.

Mancini Murray Kakouris

Kapteyn Schintgen

Delivered in open court in Luxembourg on 3 July 1997.

R. Grass G. F. Mancini

Registrar President of the Sixth Chamber