JUDGMENT OF THE COURT

12 September 2000 *

In Case C-359/97,

Commission of the European Communities, represented by H. Michard and B. Doherty, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

United Kingdom of Great Britain and Northern Ireland, represented by J.E. Collins, Assistant Treasury Solicitor, acting as Agent, assisted by G. Barling QC and D. Anderson, Barrister, with an address for service in Luxembourg at the British Embassy, 14 Boulevard Roosevelt,

defendant,

* Language of the case: English.

APPLICATION for a declaration that by not subjecting tolls for the use of toll roads and toll bridges in the United Kingdom to value added tax, contrary to Articles 2 and 4(1), (2) and (5) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), and by failing to make available to the Commission the relevant amounts of own resources with interest for late payment as a consequence of that infringement, the United Kingdom has failed to fulfil its obligations under the EC Treaty,

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.C. Moitinho de Almeida (Rapporteur), L. Sevón, R. Schintgen (Presidents of Chambers), P.J.G. Kapteyn, C. Gulmann, J.-P. Puissochet, P. Jann, H. Ragnemalm, V. Skouris and F. Macken, Judges,

Advocate General: S. Alber,
Registrar: D. Louterman-Hubeau and H.A. Rühl, Principal Administrators,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 23 November 1999,

after hearing the Opinion of the Advocate General at the sitting on 27 January 2000,

gives the following

Judgment

1 By application lodged at the Court Registry on 21 October 1997, the Commission of the European Communities brought an action under Article 169 of the EC Treaty (now Article 226 EC) for a declaration that by not subjecting tolls for the use of toll roads and toll bridges in the United Kingdom to value added tax (hereinafter 'VAT'), contrary to Articles 2 and 4(1), (2) and (5) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1, hereinafter 'the Sixth Directive') and by failing to make available to the Commission the relevant amounts of own resources and interest for late payment as a consequence of that infringement the United Kingdom had failed to fulfil its obligations under the EC Treaty.

Legal background

2 Article 2 of the Sixth Directive provides as follows:

'The following shall be subject to value added tax:

1. the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such;

2. the importation of goods.'

3 According to Article 4(1), (2) and (5) of the Sixth Directive:

'1. "Taxable person" shall mean any person who independently carries out in any place any economic activity specified in paragraph (2), whatever the purpose or results of that activity.

2. The economic activities referred to in paragraph (1) shall comprise all activities of producers, traders and persons supplying services including mining and agricultural activities and activities of the professions. The exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis shall also be considered an economic activity.

...

5. States, regional and local government authorities and other bodies governed by public law shall not be considered taxable persons in respect of the activities or transactions in which they engage as public authorities, even where they collect dues, fees, contributions or payments in connection with these activities or transactions.

However, when they engage in such activities or transactions, they shall be considered taxable persons in respect of these activities or transactions where treatment as non-taxable persons would lead to significant distortions of competition.

In any case, these bodies shall be considered taxable persons in relation to the activities listed in Annex D, provided they are not carried out on such a small scale as to be negligible.

Member States may consider activities of these bodies which are exempt under Article 13 or 28 as activities which they engage in as public authorities.'

4 It is common ground that providing access to roads and related infrastructures (hereinafter 'roads') on payment of a toll is not one of the activities listed in Annex D to the Sixth Directive.

5 Article 13B of the Sixth Directive provides:

'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:

...

(b) the leasing or letting of immovable property excluding:

1. the provision of accommodation, as defined in the laws of the Member States, in the hotel sector or in sectors with a similar function, including

the provision of accommodation in holiday camps or on sites developed for use as camping sites;

2. the letting of premises and sites for parking vehicles;

3. lettings of permanently installed equipment and machinery;

4. hire of safes.

Member States may apply further exclusions to the scope of this exemption.

...'

6 Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (OJ 1989 L 155, p. 9), which replaced with effect from 1 January 1989 Council Regulation (EEC, Euratom, ECSC) No 2892/77 of 19 December 1977 implementing in respect of own resources accruing from value added tax the Decision of 21 April 1970 on the replacement of financial

contributions from Member States by the Communities' own resources (OJ 1977 L 336, p. 8), last amended by Council Regulation (ECSC, EEC, Euratom) No 3735/85 of 20 December 1985 (OJ 1985 L 356, p. 1), provides in Article 1:

'VAT resources shall be calculated by applying the uniform rate, set in accordance with Decision 88/376/EEC, Euratom, to the base determined in accordance with this regulation.'

7 Under Article 2(1) of Regulation No 1553/89:

'The VAT resources base shall be determined from the taxable transactions referred to in Article 2 of Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment as last amended by [Directive] 84/386/EEC, with the exception of transactions exempted under Articles 13 to 16 of that directive.'

8 Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom, on the system of the Community's own resources (OJ 1989 L 155, p. 1), applicable from 1 January 1989, which repealed Council Regulation (EEC, Euratom, ECSC) No 2891/77 of 19 December 1977 implementing the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources

(OJ 1977 L 336, p. 1), last amended by Council Regulation (ECSC, EEC, Euratom) No 1990/88 of 30 June 1988 (OJ 1988 L 176, p. 1), provides in Article 9(1):

'In accordance with the procedure laid down in Article 10, each Member State shall credit own resources to the account opened in the name of the Commission with its Treasury or the body it has appointed.'

9 Under Article 11 of Regulation No 1552/89:

'Any delay in making the entry in the account referred to in Article 9(1) shall give rise to the payment of interest by the Member State concerned at the interest rate applicable on the Member State's money market on the due date for short-term public financing operations, increased by 2 percentage points. This rate shall be increased by 0.25 of a percentage point for each month of delay. The increased rate shall be applied to the entire period of delay.'

Pre-litigation procedure

Procedure relating to the Sixth Directive

10 The Commission informed the United Kingdom of its arguments to the effect that VAT should be charged on tolls by letter of 27 March 1987.

11 By letter of 3 July 1987, the United Kingdom authorities replied that they could not undertake to bring about changes in the UK VAT system until the question had been discussed in the VAT committee created by the VAT Directives.

12 By letter of 20 April 1988, the Commission informed the United Kingdom Government that it considered that the failure to levy VAT on the tolls collected for the use of roads, bridges and tunnels in the United Kingdom was contrary to Articles 2 and 4 of the Sixth Directive. It gave formal notice to the United Kingdom, pursuant to Article 169 of the Treaty, that it should submit its observations on this subject within two months.

13 On 21 July 1988, the United Kingdom authorities replied that the collection of tolls in the United Kingdom did not fall within the scope of the directive, in the light of Article 4(5) thereof.

14 The Commission considered that the explanations given by the United Kingdom authorities were not satisfactory, and therefore by letter of 10 August 1989 sent the United Kingdom Government a reasoned opinion primarily to the effect that the United Kingdom was failing to fulfil its obligations under the Sixth Directive. Accordingly, it called on that Member State to take the measures necessary to fulfil those obligations within two months.

15 The United Kingdom authorities replied by letter of 8 December 1989, in which they repeated their argument that the bodies providing access to roads on payment of a toll were bodies governed by public law and levied tolls in their capacity as public authorities, with the result that they were covered by the exemption provided for by Article 4(5) of the Sixth Directive.

The procedure relating to the system of own resources

16 By letter of 27 November 1987, the Commission drew the attention of the United Kingdom authorities to the Community legislation on Community own resources. The United Kingdom was asked to calculate whether, as a result of the failure to levy VAT on tolls, any own resources accruing from VAT (hereinafter 'VAT own resources') had been underpaid for the financial years 1984, 1985 and 1986 and if so to make the appropriate amounts available to the Commission.

17 No such calculations were received in reply to that letter.

18 By letter of formal notice of 31 January 1989 the Commission initiated the procedure under Article 169 of the Treaty. In that letter the Commission requested *inter alia* that the United Kingdom authorities make the calculations necessary to ascertain the amount of VAT own resources unpaid for the financial years 1984 to 1986 and that those amounts be paid to it, with interest for late payment as from 31 March 1988. The Commission also requested that for the years subsequent to 1986 the necessary calculations be made to determine the amount of own resources due each year and that those amounts be made available to it by the first working day of August the following year, with interest for late payment where applicable.

19 In their reply of 23 March 1989 the United Kingdom authorities stated that they considered that the transactions in question were exempt from VAT by virtue of Article 4(5) of the Directive.

20 As that reply was not considered satisfactory, the Commission, by the reasoned opinion of 10 August 1989 mentioned at paragraph 14 of this judgment, also claimed that the United Kingdom had failed to comply with the Community rules relating to own resources.

21 As the explanations of the United Kingdom Government contained in the letter of 8 December 1989, mentioned in paragraph 15 of this judgment, were not considered satisfactory, as regards both the claim concerning infringement of the Sixth Directive and that concerning the failure to comply with the Community rules on own resources, the Commission brought this action.

Admissibility

22 The United Kingdom Government points out that the pre-litigation phase of the present procedure has lasted more than 10 years, approximately 8 years of which are accounted for by the period between the United Kingdom's reply to the reasoned opinion and the lodging of the application.

23 That length of time is excessive, particularly as the Commission seeks not merely a declaration by the Court that the United Kingdom has failed to fulfil its obligations under the Sixth Directive, but also payment of contributions to VAT own resources from the 1984 financial year together with interest for late payment.

24 Accordingly, the United Kingdom contends, the Court should declare the action inadmissible in so far as it seeks a ruling relating to the period before judgment.

25 In that connection, the United Kingdom Government points out that the Court has held, in the past, that the excessive duration of the pre-litigation procedure laid down by Article 169 is capable of infringing the rights of the defence and thus justifying a plea of inadmissibility (Case C-96/89 *Commission* v *Netherlands* [1991] ECR I-2461, paragraph 16). Moreover, the damage which would result for the United Kingdom from the Commission's conduct if that institution's application were successful would be considerable and could not have been prevented by that Member State (see, for example, Case C-96/89 *Commission* v *Netherlands*, cited above, paragraph 17).

26 First, the own resources claimed are of a far larger amount than they would have been if the proceedings had been instituted within a reasonable time. Second, the United Kingdom had no prospect of recovering retrospectively the VAT which would be necessary to make good the deficit or to recover the VAT payable by road users who should have been paying such VAT on tolls since 1984. The result would therefore be a burden on the Exchequer. Third, the United Kingdom is faced with a significant amount of interest for late payment which could largely have been avoided if the proceedings had been determined within a reasonable time. Fourth, the need for legal certainty and, having regard to the Commission's long silence, the legitimate expectations of the United Kingdom make it an abuse of process to bring an action seeking to obtain such an outcome in the present procedure. Finally, calculation of the relevant own resources would depend on imprecise and wholly unverifiable assumptions.

27 In the alternative the United Kingdom contends that if the Court rejects its contentions as to admissibility and the merits it should limit the effects of its judgment in time in such a way that the United Kingdom is not made liable for the consequences, particularly the financial ones, of its past failure to fulfil its obligations by not collecting VAT on tolls.

28 The Court observes, first, that while it has held that the rules of Article 169 of the Treaty must be applied with no attendant obligation on the Commission to act

within a specific period, in certain situations the excessive duration of the pre-litigation procedure laid down by Article 169 may make it more difficult for the Member State concerned to refute the Commission's arguments and might thus infringe the rights of defence (Case C-96/89 *Commission* v *Netherlands*, cited above, paragraphs 15 and 16).

29 However, in the present case the United Kingdom Government has not shown, or even alleged, that the unwonted length of the procedure affected the way it organised its defence.

30 Next, as the Commission explained at the hearing without being contradicted, among other things the French Republic had asked it to delay its decision to bring an action against it in order to enable the VAT regime applicable to the Channel Tunnel to be examined. According to the explanations given by the Commission, there was therefore a delay in bringing the actions against the various Member States concerned in order to ensure the same approach in all the cases. In so doing the Commission did not exercise the discretion vested in it by Article 169 of the Treaty in a manner contrary to the Treaty.

31 Finally, the United Kingdom Government could have avoided the adverse financial consequences to which it refers by making available to the Commission the amount claimed while expressing reservations as to the validity of that institution's arguments (see, to that effect, Case C-96/89 *Commission* v *Netherlands*, cited above, paragraph 17).

32 In those circumstances, the claim of the United Kingdom Government that this action should be declared inadmissible in so far as it concerns the period before judgment must be rejected.

33 The United Kingdom Government's claim in the alternative that the effects of the judgment should be limited in time presupposes a finding of failure to fulfil obligations as alleged by the Commission. The merits of the action must therefore be considered before the question of the limitation in time of the effects of the judgment can be decided.

Substance

34 By its action the Commission claims, first, that the United Kingdom did not comply with the provisions of the Sixth Directive by failing to subject to VAT tolls collected as consideration for the use of toll roads and toll bridges, and, second, that it breached the rules relating to the system of the Communities' own resources by not paying in to the Community budget the VAT own resources relating to the sums which should have been collected by way of VAT on those tolls.

The first claim

35 The Commission submits that providing access to roads on payment of a toll by the user is an economic activity within the meaning of Articles 2 and 4 of the Sixth Directive. That activity must be considered to be a supply of services carried out by a taxable person in the course of the exploitation of property for the purpose of obtaining income therefrom on a continuing basis, within the meaning of Article 4(1) and (2) of the Sixth Directive.

36 The fact that this activity is carried out, as it is in the United Kingdom, by public or private operators under special rules cannot, in its view, remove the transactions in question from the scope of the Sixth Directive.

37 In that regard, the Commission points out that under the first paragraph of Article 4(5) of the Sixth Directive it is only in respect of activities or transactions in which they engage as public authorities that bodies governed by public law are not considered to be taxable persons. The activity at issue does not come into that category, as it does not fall within the core responsibilities of public authority which can never be delegated to private bodies, bearing in mind that the rule that bodies governed by public law are not taxable persons must be interpreted strictly.

38 Moreover, the exemption referred to in the preceding paragraph can in any event only be relied on if the activity at issue is carried out by a body governed by public law.

39 It should be noted that the Sixth Directive attributes to VAT a very wide scope by including amongst the taxable transactions defined in Article 2 not only the importation of goods but also the supply of goods or services effected for consideration within the territory of a country and by defining 'taxable person' in Article 4(1) as any person who independently carries out an economic activity, whatever the purpose or results of that activity (Case 235/85 *Commission* v *Netherlands* [1987] ECR 1471, paragraph 6).

40 'Economic activities' are defined in Article 4(2) as comprising all activities of producers, traders and persons supplying services. In particular, the exploitation

of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis is also to be considered an economic activity.

41 An analysis of those definitions shows that the scope of the term 'economic activities' is very wide, and that the term is objective in character, in the sense that the activity is considered *per se* and without regard to its purpose or results (Case 235/85 *Commission* v *Netherlands*, cited above, paragraph 8).

42 In view of the scope of the term 'economic activities' it must be held that, in providing access to roads in return for payment, operators in the United Kingdom are carrying out an economic activity within the meaning of the Sixth Directive.

43 In view of the objective character of the term 'economic activities', the fact that the activity in question consists in the performance of duties which are conferred and regulated by law in the public interest is irrelevant. Indeed, Article 6 of the Sixth Directive expressly provides that certain activities carried on in pursuance of the law are to be subject to the system of VAT (Case 235/85 *Commission* v *Netherlands*, cited above, paragraph 10).

44 It must also be remembered that according to the case-law of the Court (in particular Case 102/86 *Apple and Pear Development Council* v *Commissioners of Customs and Excise* [1988] ECR 1443, paragraph 12, and Case C-258/95 *Fillibeck* v *Finanzamt Neustadt* [1997] ECR I-5577, paragraph 12), the concept of the supply of services effected for consideration within the meaning of Article 2(1) of the Sixth Directive requires the existence of a direct link between the service provided and the consideration received.

45 As the Commission rightly submitted, providing access to roads on payment of a toll fits that definition. Use of the road depends on payment of a toll, the amount of which varies *inter alia* according to the category of vehicle used and the distance covered. There is, therefore, a direct and necessary link between the service provided and the financial consideration received.

46 Accordingly, providing access to roads on payment of a toll constitutes a supply of services for consideration within the meaning of Article 2(1) of the Sixth Directive.

47 It must therefore be ascertained whether, as the United Kingdom Government contends, the operators in question are entitled to the exemption provided for by Article 4(5) of the Sixth Directive in respect of the activity of providing access to roads on payment of a toll.

48 The first paragraph of that article provides that bodies governed by public law are not considered to be taxable persons in respect of activities or transactions in which they engage as public authorities.

49 As the Court has held on numerous occasions, it is clear from that provision, when examined in the light of the aims of the directive, that two conditions must be fulfilled in order for the exemption to apply: the activities must be carried out by a body governed by public law and they must be carried out by that body acting as a public authority (see, in particular, Case C-202/90 *Ayuntamiento de Sevilla* v *Recaudadores de Tributos de las Zonas Primera y Segunda* [1991] ECR I-4247, paragraph 18).

50 As regards the latter condition, it is clear from the settled case-law of the Court of Justice (Joined Cases 231/87 and 129/88 *Ufficio Distrettuale delle Imposte Dirette di Fiorenzuola and Others* v *Comune di Carpaneto Piacentino and Others* [1989] ECR 3233, paragraph 16; Case C-4/89 *Comune di Carpaneto Piacentino and Others* v *Ufficio Provinciale Imposta sul Valore Aggiunto di Piacenza* [1990] ECR I-1869, paragraph 8, and Case C-247/95 *Finanzamt Augsburg-Stadt* v *Marktgemeinde Welden* [1997] ECR I-779, paragraph 17) that activities pursued as public authorities within the meaning of the first paragraph of Article 4(5) of the Sixth Directive are those engaged in by bodies governed by public law under the special legal regime applicable to them and do not include activities pursued by them under the same legal conditions as those that apply to private traders.

51 In the light of that case-law, the Commission's argument (see paragraph 37 of this judgment) that a body acts 'as a public authority' only in respect of activities falling within the definition of public authority in the strict sense of that term, which do not include providing access to roads on payment of a toll, must be rejected.

52 The Commission, whose legal argument has thus not been upheld by the Court, has not established, or even sought to establish, that in the present case the traders in question are operating under the same conditions as a private trader within the meaning of the case-law of the Court of Justice. In contrast, the United Kingdom took pains to demonstrate that the activity in question was carried out by traders under a special legal regime applicable to them within the meaning of the same case-law.

53 Accordingly, it must be held that the Commission has failed to put before the Court the evidence required to substantiate the alleged failure to fulfil obligations as regards the condition relating to pursuance of an activity as a public authority.

54 However, as also noted in paragraph 49 of this judgment, the non-taxable status provided for in Article 4(5) of the Sixth Directive requires that the activities be carried out not only as a public authority but also by a body governed by public law.

55 In that regard the Court has held that an activity carried on by a private individual is not excluded from the scope of VAT merely because it consists in the performance of acts falling within the prerogatives of the public authority (Case 235/85 *Commission* v *Netherlands*, cited above, paragraph 21, and *Ayuntamiento de Sevilla*, cited above, paragraph 19). The Court held, in paragraph 20 of the latter judgment, that it follows that if a commune entrusts the activity of collecting taxes to an independent third party the exclusion from VAT provided for by Article 4(5) of the Sixth Directive is not applicable. Similarly, the Court held in paragraph 22 of the judgment in Case 235/85 *Commission* v *Netherlands*, cited above, that even assuming that in performing their official services notaries and bailiffs in the Netherlands exercise the powers of a public authority by virtue of their appointment to public office, they cannot enjoy the exemption provided for in Article 4(5) of the Sixth Directive because they pursue those activities, not in the form of a body governed by public law, since they are not part of the public administration, but in the form of an independent economic activity carried out in the exercise of a liberal profession.

56 In the present case it is common ground that, in the United Kingdom, the activity of providing access to roads on payment of a toll is carried out in certain cases not by a body governed by public law but by traders governed by private law. In such cases the exemption provided for by Article 4(5) of the Sixth Directive is not applicable.

57 Accordingly, the Commission's first claim must be dismissed in so far as it concerns the case where the activity of providing access to roads is carried out in the United Kingdom by a body governed by public law.

58 However, the United Kingdom Government considers that providing access to roads on payment of a toll represents a 'letting of immovable property', within the meaning of Article 13B(b) of the Sixth Directive, and as such is, in any event, exempt from VAT under that provision.

59 A wide interpretation of the concept of letting under Article 13B(b) of the Sixth Directive is supported by the fact that it can be inferred from the list of exclusions from the scope of the exemption provided for by that article that transactions as short-lived as the use of a hotel room for a single night or the letting of sites for parking vehicles fall prima facie within the definition of leasing or letting.

60 According to the United Kingdom Government, since VAT is a tax on the supply of goods and services the question arises of the nature of the principal item received as consideration for the payment. Where the right to use land is ancillary to the service provided, there is a taxable transaction. However, in the case of payment of a road toll the right to use the toll road is the chief benefit conferred, so that the transaction falls within the exemption provided for by Article 13B(b).

61 Contrary to the submission of the Commission, the terms 'leasing' and 'letting' as used in Article 13B(b) of the Sixth Directive do not imply a right of exclusive occupation or a fixed duration for the right to use the goods in question. Any other interpretation is incompatible with Article 13B(b)(2) of the Sixth Directive,

from which it is clear that the letting of sites for parking vehicles is prima facie leasing or letting within the meaning of that provision. A contract of that type does not imply exclusive use of the car park or even of a particular space in the car park.

62 The defendant government explains that private tolls have always been treated in the United Kingdom as consideration for the grant of a licence to pass over land, exempt from VAT by virtue of Article 13B(b), on the basis that the grantor of the licence consents to a defined and agreed interference with his rights in relation to the land. The legal analysis of a licence to pass over land is no different, for the purposes of VAT, from that of a licence to occupy a hotel room or the letting of a dwelling house.

63 It should be observed at the outset that according to settled case-law the exemptions provided for in Article 13 of the Sixth Directive have their own independent meaning in Community law (see Case 348/87 *Stichting Uitvoering Financiële Acties* v *Staatssecretaris van Financiën* [1989] ECR 1737, paragraph 11, Case C-453/93 *Bulthuis-Griffioen* v *Inspecteur der Omzetbelasting* [1995] ECR I-2341, paragraph 18, and Case C-2/95 *SDC* v *Skatteministeriet* [1997] ECR I-3017, paragraph 21). They must therefore be given a Community definition.

64 It is also settled case-law that the terms used to specify the exemptions provided for by Article 13 of the Sixth Directive are to be interpreted strictly since they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person (see, *inter alia*, *Stichting Uitvoering Financiële Acties*, cited above, paragraph 13, *Bulthuis-Griffioen*, cited above, paragraph 19, *SDC*, cited above, paragraph 20, and Case C-216/97 *Gregg* v *Commissioners of Customs and Excise* [1999] ECR I-4947, paragraph 12).

65 In that regard, it must be observed that the wording of Article 13B(b) of the Sixth Directive does not shed any light on the scope of the terms 'leasing' or 'letting of immovable property'.

66 The definition of 'letting of immovable property' under that provision is certainly wider in some respects than that enshrined in various national laws. For instance the article lists, in order to exclude it from the exemption, a contract for a hotel room ('the provision of accommodation... in the hotel sector'), which, in view of the overriding importance of the services provided by the hotelier and the control he retains over the use of the premises by patrons, is not considered, in some national laws, to be a contract to let.

67 Leaving aside the specific cases expressly listed in Article 13B(b) of the Sixth Directive, however, the term 'letting of immovable property' must be construed strictly. As pointed out in paragraph 64 of this judgment, it constitutes an exception to the general VAT rules contained in that directive.

68 Accordingly, that term cannot be considered to cover contracts where, as here, the parties have not agreed on any duration for the right of enjoyment of the immovable property, which is an essential element of a contract to let.

69 Where access to roads is provided, what interests the user is the possibility offered to him of making a particular journey rapidly and more safely. The duration of

the use of the road is not a factor taken into account by the parties, in particular in determining the price.

70 In the light of all the foregoing considerations, it must be held that by failing to subject to VAT tolls collected for the use of toll roads and toll bridges as consideration for the service supplied to users, where that service is not provided by a body governed by public law within the meaning of Article 4(5) of the Sixth Directive, the United Kingdom has failed to fulfil its obligations under Articles 2 and 4 of that directive.

The second claim

71 The Commission observes that the Community rules on the collection of VAT own resources are contained in Regulation No 1553/89, which replaced with effect from 1 January 1989 Regulation No 2892/77, as amended.

72 Where a taxable person carries out a transaction falling within Articles 2 and 4 of the Sixth Directive, the ultimate consumer of that supply of goods or services is liable to VAT, and the provisions relating to the payment of VAT own resources are correspondingly applicable to the Member State in which the VAT was collected.

73 The Commission submits that where the Sixth Directive has been breached and the basis of assessment of VAT own resources thereby reduced it must be credited with the amount of own resources attributable to the tax which should have been collected, or suffer financial disadvantage which must be made good out of the

gross domestic product. Such breaches therefore cause financial damage to the other Member States and consequently subvert the principle of equality.

74 As regards interest for late payment the Commission notes that the Court has held that the default interest provided for by Article 11 of Regulation No 1552/89 is payable in respect of 'any delay', regardless of the reason for the delay in making the entry in the Commission's account (see, for example, Case 54/87 *Commission* v *Italy* [1989] ECR 385, paragraph 12).

75 The Commission considers that it gave the United Kingdom Government sufficient time to remedy the infringement and drew its attention to the fact that interest for late payment was due for the amounts of VAT own resources which had not been paid by the United Kingdom as a result of its failure to levy VAT on road tolls.

76 It must be observed that under Article 1 of Regulation No 1553/89 VAT own resources are calculated by applying the uniform rate to the base determined in accordance with that regulation and that under Article 2(1) of the regulation that base is determined from the taxable transactions referred to in Article 2 of the Sixth Directive.

77 Since VAT was not levied on the tolls collected as consideration for the use of certain roads in the United Kingdom, the corresponding amounts were not taken

into account in determining the VAT own resources base, with the result that the United Kingdom has thereby also breached the rules relating to the system of the Community's own resources.

78 Moreover, the interest for late payment claimed by the Commission has its basis in Article 11 of Regulation No 1552/89. As the Commission rightly pointed out, the default interest is payable regardless of the reason for the delay in making the entry in the Commission's account (see, in particular, *Commission* v *Italy*, cited above, paragraph 12).

79 However, it is necessary to consider whether the extent of the United Kingdom's obligation to make retrospective payments under the rules relating to the Communities' own resources is affected by the fact that over seven years elapsed between the notification of the reasoned opinion and the bringing of this action.

80 Despite the absence of a limitation period for the recovery of VAT in either the Sixth Directive (Case C-85/97 *SFI* v *Belgian State* [1998] ECR I-7447, paragraph 25) or in the legislation relating to the Communities' own resources, the fundamental requirement of legal certainty may have the effect of preventing the Commission from indefinitely delaying, in the course of a procedure for failure to fulfil obligations seeking the retrospective payment of own resources, the decision to bring proceedings (see, *mutatis mutandis*, Case 57/69 *ACNA* v *Commission* [1972] ECR 933, paragraph 32).

81 In that regard, it should be borne in mind that, under Article 7(1) of Regulation No 1553/89, the Member States must send the Commission a statement of the

total amount of the VAT own resources base for the previous calendar year, to which the uniform rate referred to in Article 1 is to be applied in order for VAT own resources to be determined.

82 Under Article 9(1) of Regulation No 1553/89, any corrections, for whatever reason, to the statements referred to in Article 7(1) for previous financial years are to be made in agreement between the Commission and the Member State concerned. If the Member State does not give its agreement, the Commission, after re-examining the matter, is to take whatever measures it considers necessary for the correct application of that regulation.

83 Article 9(2) of that regulation provides:

'No further corrections may be made to the annual statement referred to in Article 7(1) after 31 July of the fourth year following the financial year concerned, unless they concern points previously notified either by the Commission or by the Member State concerned.'

84 That provision does not refer to the situation in which the procedure for failure to fulfil obligations under Article 169 of the Treaty has been initiated, but demonstrates none the less the requirements pertaining to legal certainty in budgetary matters by ruling out any correction after four budgetary years have elapsed.

85 It is clear that the same considerations of legal certainty justify the application by analogy of the rule laid down by that provision where the Commission decides to initiate the procedure for failure to fulfil obligations in order to seek retrospective payment of VAT own resources.

86 Accordingly the Commission, which did not bring this action until 21 October 1997, can seek retrospective payment of VAT own resources with interest for late payment only as from the 1994 budgetary year.

87 Having regard to all the foregoing considerations, it must be held that by failing to make available to the Commission as VAT own resources the amounts corresponding to the VAT which should have been levied on tolls collected for the use of toll roads and toll bridges, together with interest for late payment, the United Kingdom has failed to fulfil its obligations under Regulations Nos 1553/89 and 1552/89.

Limitation of the effects of the judgment

88 The United Kingdom Government considers that if the Court upholds the Commission's submissions, any finding of failure to fulfil obligations must be declared to be effective only for the future.

89 First, there is nothing to prevent the Court from imposing a temporal limitation on the effects of a judgment declaring a failure to fulfil obligations, since the possibility of determining the scope of a judgment expressly provided for by Article 174 of the EC Treaty (now Article 231 EC) as regards actions for annulment has already been recognised in connection with judgments under Article 177 of the EC Treaty (now Article 234 EC).

90 Second, the conditions for such a limitation are met here. A judgment declaring failure to fulfil obligations which takes effect before the date of its delivery would require the United Kingdom to pay to the Commission a considerable amount, with interest for late payment, which would have to be provided out of its general resources, since the money could not be recovered from those who used the toll roads and bridges during the period in question. Those financial consequences have been made considerably more acute by the long period of inaction on the part of the Commission following the reply of the United Kingdom to the reasoned opinion, from which the United Kingdom was also entitled to infer that the arguments it had put forward against the reasoned opinion had been accepted as stating the legal position correctly, or at the very least, that the Commission would not be bringing proceedings against it on the ground of the alleged infringement. It was thus in good faith and on the basis of a sincere and entirely reasonable interpretation of the relevant rules, brought to the attention of the Commission by the United Kingdom during the pre-litigation procedure, that VAT was not levied on tolls in the United Kingdom. In that regard the United Kingdom invokes the principles of legal certainty and the protection of legitimate expectations. Finally, calculation of the relevant own resources would depend upon imprecise and wholly unverifiable assumptions.

91 It must be observed that limiting the effects of a judgment ruling on a matter of interpretation appears to be quite exceptional. The Court has taken such a step only in certain specific circumstances, where there was a risk of serious economic repercussions owing in particular to the large number of legal relationships entered into in good faith on the basis of rules considered to be validly in force, and where it appeared that both individuals and national authorities had been led to adopt practices which did not comply with Community law by reason of objective, significant uncertainty regarding the implications of Community provisions, to which the conduct of other Member States or the Commission may even have contributed (Joined Cases C-367/93 to C-377/93 *Roders and Others* v *Inspecteur der Invoerrechten en Accijnzen* [1995] ECR I-2229, paragraph 43).

92 Even if such considerations may serve to justify a limitation in time of the effects of a judgment under Article 169 of the Treaty, it is sufficient to note that, in the

present case, the United Kingdom authorities cannot reasonably argue that they were led to adopt conduct contrary to Community legislation because of objective, significant uncertainty regarding the implications of Community provisions.

93 First, most Member States where road use is subject to payment levy VAT on the tolls collected for that purpose. Second, at the latest from the time when the procedure for failure to fulfil obligations was initiated against the United Kingdom alleging precisely that the VAT exemption for road tolls was incompatible with Community law, that Member State should have taken the measures necessary to avoid the alleged adverse effects and difficulties.

94 In that regard, even if the period which elapsed between the United Kingdom's reply to the reasoned opinion and the bringing of this action appears prima facie to be unusually long, it is not alleged that during that time the Commission expressed an intention to abandon the procedure for failure to fulfil obligations. On the contrary, as the Commission pointed out at the hearing before the Court without being contradicted, every year that institution demanded the own resources in question from the Member States which did not levy VAT on tolls collected for road use.

95 Finally, the United Kingdom could have avoided the consequences of the delays attributable to the Commission by calculating and making available to the Commission the amounts claimed (see *inter alia*, to that effect, Case C-96/89 *Commission* v *Netherlands*, cited above, paragraph 39).

96 The United Kingdom's request that the effects of the present judgment be limited must therefore be dismissed.

Costs

97 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the Commission has applied for an order for costs against the United Kingdom and the latter has been unsuccessful in the main, the United Kingdom must be ordered to bear the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that by failing to subject to value added tax tolls collected for the use of toll roads and toll bridges as consideration for the service supplied to users, where that service is not provided by a body governed by public law within the meaning of Article 4(5) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States**

relating to turnover taxes — Common system of value added tax: uniform basis of assessment, and by failing to make available to the Commission of the European Communities as own resources accruing from value added tax the amounts corresponding to the tax which should have been levied on those tolls together with interest for late payment, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Articles 2 and 4 of that directive and under Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax and Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources;

2. Orders the United Kingdom of Great Britain and Northern Ireland to bear the costs.

Rodríguez Iglesias	Moitinho de Almeida	Sevón	
Schintgen	Kapteyn	Gulmann	Puissochet
Jann	Ragnemalm	Skouris	Macken

Delivered in open court in Luxembourg on 12 September 2000.

R. Grass — Registrar

G.C. Rodríguez Iglesias — President