cannot rely on any of its provisions in order to require a special document as evidence, whereas Article 6(4) of the directive demands only the production of an invoice or other document in lieu thereof. On the other hand any such requirement exceeds the limits of what is authorized by Article 22(8) of the aforesaid Sixth Directive as regards the need to ensure that the tax is correctly levied, and is of such a nature as to make the exercise of the right to remission of tax very difficult and to give rise to double taxation, whereas the objective of the relevant provisions is precisely to avoid double taxation.

REPORT FOR THE HEARING
in Case C-96/91 *

I — Background to the proceedings and pre-litigation procedure

1. *Community legislation*

Council Directive 69/169/EEC of 28 May 1969 on the harmonization of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel (OJ, English Special Edition 1969 (I), p. 232, hereinafter 'the directive'), provided for an exemption from turnover tax on imports of goods in travellers' personal luggage if such imports had no commercial character and the total value of the goods did not exceed specific limits which varied according to whether the travel was between Member States or between third countries and the Community. Article 6 of the directive require Member States to take appropriate measures to avoid remission of tax on exports being granted to those benefiting from the exemption on imports.

That prohibition of tax remission on exports underwent gradual relaxation because of the technical difficulties it gave rise to and in order to avoid instances of double taxation. Thus Article 4 of Council Directive 72/230/EEC of 12 June 1972 (OJ, English Special Edition 1972 (II), p. 565) provided that Member States might under certain conditions and as regards sale at the retail trade stage authorize the remission of turnover tax on goods carried in the personal luggage of travellers leaving a Member State. Subsequently, Article 3 of Council Directive 78/1032/EEC of 19 December 1978 (OJ 1978 L 366, p. 28) converted that option into a requirement for the Member States.

* Language of the case: Spanish.

Finally in the current version of the directive, resulting from the above-mentioned texts and an additional amendment made by Article 1(3) of Council Directive 85/348/EEC of 8 July 1985 (OJ 1985 L 183, p. 24), Article 6 sets out in three paragraphs the arrangements for remission of tax on export of goods carried in the personal luggage of travellers leaving a Member State.

Paragraph 2 of that article imposes on Member States an obligation to take the necessary steps to permit such remission under the conditions provided for in paragraphs 3 and 4.

In accordance with paragraph 3, that remission is granted subject to limits which differ according to the category of traveller:

— for travellers whose domicile or habitual residence is situated outside the Community, each Member State may set those limits;

— for those travellers whose domicile, habitual residence or place of work is situated in a Member State, there may be remission of tax only in respect of items the individual value of which does not exceed the amount of the exemption laid down with regard to intra-Community travel, which is fixed at ECU 390 by Council Directive 88/664/EEC of 21 December 1988 (OJ 1988 L 382, p. 41);

— Member States may exclude their residents from such tax remission.

Finally, paragraph 4 states that remission of tax is to be subject:

(a) in the case of travellers domiciled outside the Community, to production of a copy of the invoice or other document in lieu thereof, endorsed by the customs of the exporting Member State to certify exportation of the goods;

(b) in the case of travellers domiciled in a Member State, to production of the same document endorsed by the customs of the Member State where final importation takes place or by another authority of that Member State competent in matters of turnover tax, proving that the turnover tax has been or will be applied.

2. *The national legislation*

The applicable Spanish provisions are contained in Article 9 of Law 30/85 of 2 August 1985 concerning value added tax and in a number of articles of the regulations adopted for the implementation of that law by Royal Decree 2028/85 of 30 October 1985.

In accordance with Article 15 of that regulation, remission of VAT paid by travellers is subject to the use of a form entitled 'special invoice', which must comply with the official form approved by the Ministry of Economic Affairs and Finance.

Article 86 of that regulation, as amended by Article 6 of Royal Decree 2105/86 of 25 September 1986, provides that remission of tax on goods exported is to be subject to production by the taxable person delivering the goods of an official standard form of invoice.

The standard forms of invoices were laid down by the Ministerial Decree of 20 December 1985 and subsequently by the Ministerial Decree of 5 December 1986, specifying the essential characteristics of the document required for remission of VAT on goods exported by travellers.

3. *The pre-litigation procedure*

The Commission took the view that it was incompatible with Community law to require, exclusively, a special document on a standard form, without which the right to remission of VAT charged on goods carried by travellers could not be exercised, and accordingly sent the Spanish Government on 20 May 1989 a letter of formal notice requesting it to submit its observations in accordance with Article 169 of the Treaty.

The Spanish authorities replied on 21 November 1989 by sending a report to the effect that the requirement of a special invoice in a standard form for remission of VAT applicable in international travel did not infringe Community provisions relating to the harmonization of such taxes.

Having examined those arguments the Commission remained convinced that an infringement had occurred and decided to issue the reasoned opinion provided for by Article 169 of the Treaty, which was received by the Kingdom of Spain on 2 July 1990.

After requesting on 5 July 1990 an extension of the time-limit prescribed for the purpose, the Spanish authorities finally submitted their observations on 16 October 1990 in a letter maintaining the contention that the measure challenged by the Commission was not incompatible with Community law.

II — Written procedure and forms of order sought by the parties

The Commission's application was lodged at the Court Registry on 20 March 1991.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. The parties were, however, asked to produce the text of the relevant Spanish legislation including the regulation concerning the manner of invoicing VAT.

The *Commission* claims that the Court should

— declare that, by exclusively requiring the compulsory presentation of a document known as the 'special invoice' in an official standard form in order to obtain the remission of VAT in international travel, thereby preventing the exercise of that right by travellers who are in possession

of an ordinary invoice which duly complies with national legislation and with the Sixth Council Directive (77/388/EEC) of 17 May 1977, the Kingdom of Spain has failed to fulfil its obligations under Directive 69/169/EEC;

— order the Kingdom of Spain to pay the costs.

The *Kingdom of Spain* contends that the Court should:

— dismiss the application as unfounded;

— order the Commission to pay the costs.

III — Submissions and arguments of the parties

The *Commission* claims that the Spanish rules making remission of VAT under the scheme applicable to travellers subject to the use of a special document in an official standard form are contrary to the rule set out in Article 6(4) of the directive, that they contravene the purpose of that directive in restricting the exercise of a right accorded by the Community legislature and are entirely disproportionate to the objective they seek to achieve.

Article 6(4) of the directive makes remission subject solely to 'production of a copy of the invoice or other document in lieu thereof', so that a Member State cannot lay down rules refusing the benefit of that tax remission to travellers who are in a possession of an ordinary invoice or other document in lieu thereof but are unable to produce a special document in an official standard form.

Since the fundamental objective of the directive is to make travel easier through gradual simplification of frontier controls and the specific purpose of the relevant provisions is to achieve harmonization of tax remission arrangements granted at the retail trade stage in order to avoid instances of double taxation, such rules are unacceptable inasmuch as they complicate access to remission and risk giving rise to double taxation within the territory of the Community.

In this respect, the Commission claims, citing the judgment of the Court in Case C-278/82 *REWE-Handelsgesellschaft and Others* [1984] ECR 759, at paragraph 31, that the rules established by the directive are exhaustive and that the Member States retain only a restricted power to be exercised in conformity with the provisions and purpose of this directive.

Whilst it is true that under Article 22 of Directive 77/388 (OJ 1977 L 145, p. 1), hereinafter ('the Sixth Directive'), Member States have certain powers to determine the obligations to be complied with by those subject to value added tax, those powers are necessarily limited by the rules established under Community law. Thus in its judgment in Joined Cases 123 and 330/87 *Jeunehomme and Others* [1988] ECR 4537, at paragraphs 16 and 17), the Court ruled that Member States may provide for the inclusion of additional

information on the invoice as provided by the Sixth Directive, but the requirement of such particulars 'must be limited to what is necessary to ensure the correct levying of value added tax and permit supervision by the tax authorities' and that moreover 'such particulars must not, by reason of their number or technical nature, render the exercise of the right to deduction practically impossible or excessively difficult'.

The Commission claims that while the Kingdom of Spain is undeniably empowered to impose certain formalities and conditions in respect of invoicing, it cannot limit a traveller's exercise of the right to remission of tax enjoyed by him under Community law through the imposition of technical conditions which are contrary to Directive 69/169 and go beyond what is strictly necessary. The requirement of a special invoice is disproportionate to the objective of monitoring for the avoidance of fraud, which the Spanish Government claims to be pursuing.

The Commission observes in this context that any ordinary invoice made out in accordance with the Sixth Directive and with Spanish legislation allows tax or customs authorities to carry out all checks needed for that purpose. Such an invoice must include the following particulars: description and price of the goods, rate of the tax and the corresponding amount, the names and addresses of the vendor and purchaser, the invoice's date and place of issue and its number and series. Moreover, a traveller exercising the right to remission of value added tax is required under Spanish law to obtain from the customs an exit stamp on the invoice; the customs authorities can therefore check all the particulars required.

The statement by the Spanish Government to the effect that the requirement of a special invoice does not restrict the right to remission of tax since the taxable persons have easy and unrestricted access to the relevant forms is not borne out by the facts. The Commission submits that a traveller could be deprived of his right to remission of the tax if the taxable persons does not possess, or no longer possesses, the special invoice, it being also noted that such a traveller is not even able to obtain such a document at the customs.

Furthermore, such a measure is likely to lead in the Commission's opinion not only to double taxation within the territory of the Community but also to distortions of trade within a Member State. On the one hand, travellers living in other Member States and arriving from Spain must declare in the Member State where final importation takes place those goods with a value in excess of the exemption limit and thus to pay value added tax twice if they have not been able to obtain remission of tax on export. On the other hand, small traders and shops in particular localities where it is more difficult to obtain the official forms may find that that causes the loss of some of their customers to other traders.

Finally, the Commission points out that in the other Member States, in some cases after action was taken against them under Article 169 of the Treaty, reimbursement of value added tax is permitted in accordance with

the provisions of the directive, that is, on production by the traveller of either the ordinary invoice or, where appropriate, a document in lieu thereof.

The *Kingdom of Spain* admits that Directive 69/169 imposes on the Member States an obligation to arrange for authorizing, in the cases and conditions set out therein, remission of turnover tax on goods in the personal luggage of travellers leaving a Member State. It contends, however, that it is in no way in breach of such an obligation.

The *Spanish Government* contends that the Sixth Directive, of which it notes the fundamental importance in terms of the harmonization of the provisions covering value added tax, gives Member States the power to lay down certain rules which are necessary for checking that the tax is levied. In this context, it refers, as did the Commission, to the judgment of the Court in Joined Cases 123 and 330/87 *Jeunehomme,* which sets out the limits within which those powers of the Member States are to be exercised.

The Kingdom of Spain considers that the rules impugned by the Commission do not in any way exceed the limits thus laid down by Community law.

In its view, the required form of invoice cannot be considered a technical condition impeding effective exercise of the right to remission of tax. This standard form, intended solely to make it easier to check that the conditions required for entitlement to reimbursement have been met, sets out for this purpose the particulars which are to feature on the invoice and not the conditions themselves.

In view of the fact that any trader can and must obtain such forms under conditions similar to those applying to the declaration and payment of value added tax, the requirement to use that form of invoice cannot be regarded as excessive or likely to make it impossible in practice to exercise the right to reimbursement or remission of tax.

On the contrary, the Spanish Government contends that the use of this official document makes it possible to avoid any failure, through ignorance or error, to include certain information which is vital to the granting of this right and the absence of which would inevitably result in the rejection of an application submitted by a traveller who has not supplied all the necessary information.

IV — Responses to the request to produce documentation

The *Commission* produced the following documents:

— Article 67, 157 and 158 of Law 30/85 of 20 August 1985, instituting value added tax;

— Articles 15 and 86 of the Royal Decree of 30 October 1985 regulating value added tax;

— Article 3 of the Royal Decree of 18 December 1985 concerning the obligation to draw up and issue invoices;

— the form of invoice for the special rules governing remission of tax on exportation in international travel, adopted by the decree of 5 December 1986.

The *Kingdom of Spain* produced the following documents:

— the full text of the Royal Decree of 30 October 1985 regulating value added tax;

— the decrees of 20 December 1985 and 5 December 1986 respectively adopting various forms of invoice and the form of invoice for the special rules governing remission of tax on exportation in international travel;

— the form of invoice approved by the decree of 5 December 1986.

F. Grévisse

Judge-Rapporteur