in Article 16 of the directive, even though it has not defined the concept of an undertaking otherwise than as "any person who independently carries on business".

Kutscher Mertens de Wilmars Mackenzie Stuart

Pescatore Sørensen O'Keeffe Touffait

Delivered in open court in Luxembourg on 12 June 1979.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 8 MAY 1979 [1]

Mr President,
Members of the Court,

On 11 April 1967 the Council, on the basis of Articles 99 and 100 of the EEC Treaty, adopted the First and Second Directives on the harmonization of leglislation of Member States concerning turnover taxes — Structure and procedures for application of the common system of value-added tax (Directives Nos 67/227/EEC and 67/228/EEC, Official Journal, English Special Edition 1967, p. 14 and p. 16). As a result of those Directives for harmonization, cumulative multi-stage taxes were to be abolished and a common system of value-added tax introduced in all Member States as soon as possible and in any event not later than 1 January 1970, which date was subsequently postponed to 1 January 1972 by the Third Directive on value-added tax.

Pursuant to the Second Directive the Kingdom of the Netherlands adopted on 28 June 1968 a law for the replacement of the existing turnover tax by a system of value-added tax, which entered into force on 1 January 1969 (Wet op de Omzetbelasting 1968, Staatsblad 329).

The parties to the main action which is at the root of the joined cases before the Court disagree as to whether the concept of a taxable undertaking used in that law is compatible with the Second Council Directive on the harmonization of turnover tax, which provides in Article 4:

" 'Taxable person' means any person who independently and habitually engages in transactions pertaining to the

1 — Translated from the German.

activities of producers, traders or persons providing services, whether or not for gain."

The expression "independently" is defined *inter alia* in Point 2 "Regarding Article 4" of Annex A as follows:

"The expression 'independently' is intended in particular to exclude from taxation wage-earners who are bound to their employer by a contract of service. This expression also makes it possible for each Member State not to consider as separate taxable persons, but as one single taxable person, persons who, although independent from the legal point of view, are, however, organically linked to one another by economic, financial or organizational relationships. Any Member State intending to adopt such a system shall enter into the consultations mentioned in Article 16".

Article 16 provides:

"Where a Member State must, in accordance with the provisions of this Directive, enter into consultations, it shall refer the matter to the Commission in good time, having regard to the application of Article 102 of the Treaty".

Article 7 (1) of the Netherlands Turnover Tax Law 1968, in accordance with the said Article 4, provides:

" 'Undertaking' " — (comment: therefore liable to taxation) — "means any person who independently carries on business".

It appears nevertheless from the preparatory stages of the Turnover Tax Law 1968 that the Netherlands legislature intended to give the expression "undertaking" no other meaning than that which case-law and commentators gave it under the previous taxation practice. According to the latter the expression could also cover a combination of persons who, although independent from the legal point of view, are organically linked to one another by economic, financial and organizational relationships. This construction of the so-called entity for tax purposes is the subject of the two cases which have led to the references for a preliminary ruling.

The facts of Case 181/78, *Ketelhandel P. van Paassen B.V. Staatssecretaris van Financiën*, are as follows:

The Besloten Vennootschap met beperkte Aansprakelijkheid Ketelhandel P. van Paassen B.V., plaintiff in the main action, carries on trade in steam and heating boilers. Through its subsidiary S.K.S. Siller en Jamart N.V., whose sole shareholder it is, it held all the shares in N.V. Circula, of Stiens, which until its liquidation in 1972 made boilers and supplied them to the party concerned, invoicing an amount in respect of value-added tax.

In September and October 1971 the plaintiff deducted that value-added tax under Articles 15 and 2 of the Turnover Tax Law 1968 as input tax. N.V. Circula, however, did not, prior to its liquidation, pay over the turnover tax which it included in its account to the plaintiff in 1971.

The Inspecteur der Invoerrechten en Accijnzen, the defendant in the main action, felt obliged to make an additional assessment in respect of the input tax deducted because in his view the two companies were to be considered as a single entity for tax purposes with the result that no turnover tax was payable on the deliveries and to that extent the tax included in Circula's account had been wrongly deducted. In its appeal against that assessment the plaintiff took the view that in 1971 it did not control Circula financially, organizationally and

economically in such a way that the two companies could be regarded as *one* undertaking within the meaning of Article 7 (1) of the Law. After the Inspecteur had reduced the corrective assessment — the amount in question is now only Hfl 44 034.01 — but otherwise rejected the appeal, Van Paassen brought the matter before the Tariefcommissie, which by judgment of 1 February 1977 confirmed the Inspecteur's assessment.

The plaintiff appealed on a point of law against that decision to the Hoge Raad of the Netherlands, which by judgment dated 6 September 1978 stayed the proceedings and referred the following four questions under Article 177 of the EEC Treaty for a preliminary ruling on the interpretation of the Second Council Directive on the harmonization of turnover taxes:

"1. Has a Member State adopted a system such as that referred to in Point 2 'Regarding Article 4' of Annex A to the Second Directive, if it has laid down by law that turnover tax shall be levied *inter alia* on the supply of goods and services by undertakings and if the concept of an undertaking is not subsequently defined in that Law more closely than as 'any person who independently carries on business', while from the preparatory stages of the Law prior to its coming into force it is clear that the concept of an undertaking can also cover a combination of persons who, although independent from the legal point of view, are, however, organically linked to one another by economic, financial and organizational relationships?

2. If Question 1 is answered in the negative: Are the national courts nevertheless at liberty, in applying the law, to interpret the concept of an undertaking in the aforesaid manner as intended by the national legislature?

3. If Question 1 is answered in the affirmative: Did the Netherlands enter into the consultations to which reference is made in Point 2 'Regarding Article 4' of Annex A to the Second Directive?

4. If Question 3 is answered in the negative: What are the consequences for the national courts of this lack of consultation? In particular, are they at liberty, in applying the Law, to interpret the concept of an undertaking in the aforesaid manner as intended by the national legislature?"

The facts of Case 229/78, *Minister van Financiën* v *Denkavit Dienstbetoon B.V.* are as follows:

The Besloten Vennootschap Denkavit Dienstbetoon B.V., which carries on trade in cattle, was concerned in 1973 and 1974 mainly with the purchase and sale of calves for Denkavit Nederland B.V. which produces and sells milk for calves from the same address and also engages in the fattening of calves. The shares of both companies are held by the same shareholders. The companies are directed by the same persons.

Cooperation between the two companies takes the form of Denkavit Dienstbetoon B.V. buying calves as commission agent in its own name but for the account of Denkavit Nederland B.V. Again as commission agent it sells to third parties the calves which Denkavit Nederland B.V. has fattened.

Since on the basis of Article 3 (5) of the Turnover Tax Law 1968 it considered itself an independent undertaking in its

capacity as commission agent, it paid turnover tax of 4% on its turnover net of tax in respect of the sale of new-born calves to Denkavit Nederland B.V. and fattened calves to third parties, that is 3.85% of the gross selling price. On the other hand, on its purchases of new-born calves from third parties and fattened calves from Denkavit Nederland B.V. it deducted, on the basis of Article 15 of the Turnover Tax Law 1968, input tax of 4.25% of the purchase price. In its turnover tax declaration it therefore claimed repayment of the, in its view, overpaid turnover tax representing the difference between 4.25% and 3.85% of the prices at which it had effected the said purchases and sales. This claim was allowed.

The Inspecteur der Invoerrechten en Accijnzen, Amersfoort, took the view that Denkavit Dienstbetoon B.V. was not an undertaking within the meaning of the Turnover Tax Law 1968 and that it could not be regarded as a commission agent within the meaning of Article 3 (5) of that Law and he therefore imposed an additional assessment of Hfl 655 707 for the period from 1973 to 1974. By notice dated 24 June 1976 he rejected the objection which Denkavit Dienstbetoon B.V. made against this. Denkavit Dienstbetoon brought an action in respect of that notice before the Gerechtshof, Amsterdam, which by judgment dated 5 October 1977 allowed the claim.

The Minister for Finance, The Hague, appealed on a point of law against that judgment to the Hoge Raad of the Netherlands, which by a judgment dated 11 October 1978 stayed the proceedings and referred to the Court of Justice the same four questions as in Case 181/78 for a preliminary ruling under Article 177 of the EEC Treaty.

I — Before I deal with the substance of these questions it seems appropriate to make certain preliminary remarks as to the admissibility of the requests for a preliminary ruling.

1. In the main actions the question is apparently whether the concept of a taxable undertaking within the meaning of the Netherlands Turnover Tax Law is compatible with the relevant provisions of the Second Council Directive on value-added tax. The special nature of the cases in point lies in the fact that although the relevant Article 7 of the Netherlands Turnover Tax Law, which was adopted in execution of the said Directive; agrees in its wording with the corresponding Article 4 of the Directive, its practical effect is not the same. According to Netherlands case-law and doctrine, persons who, although legally independent, are linked to one another by economic, financial and organizational relationships are traditionally treated together as *one* taxable undertaking. This legal concept of the so-called single entity for tax purposes was intended by the Netherlands legislature to be retained in the Turnover Tax Law 1968, without however its being expressly stated in the law, as was done for example in the German turnover tax law, which expressly mentions the corresponding concept of the "Organgesellschaft".

Point 2 "Regarding Article 4" of Annex A to the Second Council Directive on value-added tax allows the adoption of such a rule and simply provides that in such a case the consultation provided for in Article 16 shall take place. That rule of Community law is the subject of the first and third questions from the court making the reference.

In this connexion I do not need especially to stress that factual questions are inadmissible in the context of a reference for a preliminary ruling under Article 177 of the EEC Treaty (see judgment of 23 January 1975 in Case 51/74 *P.J. van der Hulst's Zonen* v *Produktschap voor Siergewassen* [1975] 1 ECR 79) and that the Court does not have jurisdiction in the context of such proceedings to interpret provisions of national law or to rule on their possible incompatibility with Community law. However, in the context of the interpretation of Community law, it may provide the national court with the criteria enabling it to deal with the action before it, in particular as regards any incompatibility of national provisions with Community rules, or to interpret in accordance with Community law a law adopted in execution of a directive (cf. judgments of 23 November 1977 in Case 38/77, *Enka B.V.* v *Inspecteur der Invoerrechten en Accijnzen, Arnhem* [1977] 2 ECR 2203; and of 20 May 1976 in Case 111/75, *Impresa Costruzioni comm. Quirino Mazzalai* v *Ferrovia del Renon* [1976] 1 ECR 657).

Accordingly the first question must be understood as meaning that the national court wishes to know whether the provision of Point 2 "Regarding Article 4" of Annex A to the Second Council Directive allow the introduction of the concept of a single entity for tax purposes only if it is expressly mentioned in the law or whether the intention to introduce such a concept may be inferred from the preparatory stages of the law.

The third question according to its wording seeks a decision on an issue of fact which, as the Government of the Federal Republic of Germany in particular points out, is strictly inadmissible. However, in my view the national court is not concerned with a finding as to whether the Netherlands Government entered into any form of consultation in accordance with the obligations arising from the Second Council Directive on value-added tax, but whether consultations of the kind such as the Netherlands Government entered into satisfy the requirements of the fourth paragraph of Point 2 of Annex A to the Second Council Directive, that there shall be consultations as mentioned in Article 16. In my view there is no objection to the question so interpreted.

2. A further objection, which must also be dealt with as a preliminary matter, is made by the Netherlands Government and by the Government of the Federal Republic of Germany. Both Governments point out that the system of value-added tax particularized in the Second Council Directive had to be introduced only on 1 January 1972 and therefore they doubt whether the Member States were bound before then by the provisions of the Directive. They further point out that in Case 181/78 the measure imposing the taxation, which forms the subject-matter of the main action, occurred in 1971 and had already become definitive when the said directive entered into force.

Those objections obviously concern the problem of the relevance of this question to a decision in the case, that is the question whether the interpretation of the Council Directive with which we are concerned is material in connexion with facts such as the present. In my opinion, and let me say this immediately, there can be no doubt about this. As the Court

is aware, the Council adopted the First and Second Directives on value-added tax on 11 April 1967. The First Directive provides that the Member States shall replace their system of turnover taxes by the system of value-added tax described. Closely related to this, the Second Council Directive governs the structure and detailed rules for the application of the common system of value-added tax. Shortly thereafter both Directives were published in the Official Journal of the European Communities and notified to the Member States. Pursuant to the second paragraph of Article 191 of the EEC Treaty they took effect upon such notification.

The date mentioned in the First Directive, by which at the latest the Directive was to be translated into national law, must be distinguished from this date of entry into force. In this respect the second paragraph of Article 1 of the First Directive provides:

"In each Member State the legislation to effect this replacement shall be enacted as rapidly as possible, so that it can enter into force on a date to be fixed by the Member State in the light of the conjunctural situation; this date shall not be later than 1 January 1970".

That date was postponed to 1 January 1972 by the Third Directive on value-added tax.

The date when the particular national laws on turnover tax were to enter into force does not alter the fact that the principles and conditions of the system of value-added tax contained in the Council Directives, having regard to their objective of bringing about as far-reaching as possible a harmonization of the value-added tax law to be introduced, were to become binding on the Member States when the Directives took effect, that is at the time of the preparatory stages of the laws relating to value-added tax. Their interpretation is therefore also necessary for a decision in the main action.

II — After those preliminary remarks on admissibility I can now discuss the questions themselves.

1. On *the first question* the companies take the view that the interpretation of the Netherlands Turnover Tax Law of 1968 should be undertaken not on the basis of the concept of an undertaking contained in the former Netherlands law but only on the basis of the Directive in view of the mandatory nature of the latter. The basic rule, however, apparent from Article 4 of the Second Council Directive is that in principle every undertaking is taxable. They claim that a Member State may introduce the principle of a "single entity for tax purposes" only if it makes use of the special provision by way of derogation contained in Point 2 of Annex A. From the binding effect of the directive *vis-à-vis* the Member States and from this combination of rule and exception the companies infer that a Member State may treat persons who at law are independent but who are organically linked to one another by economic, financial or organizational relationships, as a *single* taxable undertaking only if it intends formally to adopt such a system, if it has entered into the consultations provided for in Article 16, if the Commission has raised no objections to the adoption of the proposed system and if the Member State, finally, has introduced such a system expressly. In the absence of express rules such as those of the German Organgesellschaft it may be concluded that no rule within the meaning of Point 2 of Annex A to the

Directive has in fact been adopted. Further, it is said to be apparent from the lack of the prescribed consultations that the adoption in law of a single entity for tax purposes was not even intended.

These last two arguments do not convince me. First, it cannot be concluded from the failure to hold consultations or from incomplete consultations that the adoption of the legal concept of a single entity for tax purposes was not intended. Further, we learn from the Hoge Raad, on the basis of documents relating to the preparatory stages of the law, that the Netherlands legislature certainly intended to retain the single entity for tax purposes in the Turnover Tax Law of 1968. This Court is bound by that finding, since it has no jurisdiction in a reference for a preliminary ruling to interpret national law.

I can find nothing in the wording or in the underlying objective of the relevant provisions which could confirm the view of the companies with regard to the relationship of rule and exception. It is apparent from the wording that the adoption of the appropriate rule need be neither formally intended nor expressly undertaken. Further in my view Article 4 of the Directive does not stand in a relationship of rule and exception to Point 2 of Annex A. As appears from the preamble to the Second Directive the Council considered it necessary to provide for a rather large number of special provisions covering interpretation, derogations and certain detailed application procedures which have been included in the said Annex A and are part of the Directive. In particular, it was necessary to take account of the fact that terms contained in Community law and requiring interpretation, such as for example the concept of "independent", should not be subject to interpretation by the Member States, in order that a uniform application of the system of value-added tax might be assured. Therefore the Council considered itself obliged to hold as a *rule of interpretation* at Point 2 of Annex A, that the Member States are at liberty in determining liability to tax to look beyond independence from the point of view of law at the position in fact. This rule of interpretation, which is part of the Directive and thus partakes of its binding nature, gives the Member States in fact a wide discretion, as the Commission, the Netherlands Government and the Government of the Federal Republic of Germany point out. Thus it is not apparent from the meaning and purpose of the Directive that adoption of an appropriate system requires a formal measure, of whatever kind. For the introduction of a "single entity for tax purposes" within the meaning of Point 2 of Annex A it is sufficient for the legislature conclusively to have expressed that it intends to introduce such a legal concept.

2. Since the result is that the first question must be answered in the affirmative I do not consider it necessary to deal with the *second question.*

3. I can therefore turn to answering the *third question,* relating to the substance and scope of the consultations to be entered into in accordance with Article 16 of the Second Directive on value-added tax.

First, I must say something about the obligatory nature of the consultation procedure provided for in Article 16 of the Second Directive. I find this

necessary because the Commission takes the view that the said article is not very clear in respect of the obligation on a Member State to consult where such Member State does not expressly introduce a rule concerning the single entity for tax purposes but retains an already existing, established rule and that therefore it may be doubted in this case whether consultation is mandatory.

This view, however, conflicts with the very wording of Point 2 of Annex A to the Directive. The reference therein to the intention to adopt a system obviously means the enactment of a law by a Member State in implementation of the Directive. If it is intended to introduce the concept of a single entity for tax purposes into such a law then it is still intended to adopt such a system and it is irrelevant whether it already existed or not. Therefore it may be assumed that the consultation provided for in Article 16 is mandatory if the adoption of such a system in the law implementing the Directive is intended.

As we have heard, the Permanent Representation of the Kingdom of the Netherlands accredited to the European Communities informed the Commission in three letters of the proposed law and referred generally to the provisions of the Council Directives on the harmonization of legislation of Member States concerning turnover taxes. The draft law and the documents relating to the preparatory stages were forwarded. Only in the last letter enclosing the turnover tax law which had already appeared in the Staatsblad was there a general reference to the consultation procedure prescribed and mention of the article which stipulated such procedure. There was no reference in any of the three letters to the introduction of the single entity for tax purposes, which, as we have seen, is not apparent from the wording.

The companies and the Commission therefore in my view rightly doubt whether this information satisfies the requirement in Point 2 of Annex A to the Second Council Directive that there shall be the consultations mentioned in Article 16.

Even agreeing with the Netherlands and German Governments that the consultations laid down there need not fulfil any special formal requirements, nevertheless it cannot be denied that the substance and scope of the consultations required must be closely related to the objective which the consultations are to serve.

The objective of consultations within the meaning of Article 16 of the Directive can only be to inform the Commission of the adoption of a particular system and to give it the possibility of considering whether it exceeds the discretion allowed the Member States and thus distorts the conditions of competition between the Member States and renders subsequent further harmonization more difficult. This objective, in my opinion, is apparent from the reference to Article 102 of the EEC Treaty. Accordingly Article 16 is intended simply to ensure that the Commission can as a result of such consultations where necessary initiate the procedure under Article 102 of the EEC Treaty if there is danger of distortion of competition. It follows from the preventive nature of the last-mentioned provision that consultation must in principle take place *before* the relevant system is adopted and this also follows, moreover, from the wording of the provision in Point 2 of Annex A, to the

effect that a Member State *intending* to adopt such a system shall enter into consultations.

In order for the Commission to fulfil its task it is however necessary that the particular State should at least specify the provision of the directive requiring consultation, the Community provisions from which the draft derogates and the derogation in the draft itself. This is especially necessary if the wording of the draft law corresponds fully with the particular Community provision but its content departs therefrom.

As we learn from the documents in the case, not until its letter of 16 July 1968, with which it sent the law which had already been printed in the Staatsblad, did the Netherlands Government specifically mention that it was undertaking consultations within the meaning of the Second Council Directive, at the same time listing a number of articles in relation to which consultation was necessary. It is significant that neither Article 7 of the Netherlands Turnover Tax Law, which is in issue, nor the relevant provisions of the Directive are mentioned.

In conclusion, therefore, I disagree with the Netherlands and the German Governments and agree with the companies and the Commission that the correspondence conducted by the Netherlands Government does not satisfy the requirements of the fourth paragraph of Point 2 of Annex A to the Second Council Directive that there shall be the consultations mentioned in Article 16 of the directive.

4. I can therefore now deal with the *fourth question*, relating to the legal consequences for the effectiveness of the national law of failure to comply with the duty to consult.

Examination of the first question has shown that the rule of interpretation in Point 2 of Annex A gives the Member States a discretion in determining a "taxable person" within the meaning of Article 4 of the Second Council Directive. If they keep within the framework laid down by the Directive there can be no objection to the law in substance and the sole question which arises is whether such a system is made ineffective if there has been no proper consultation as required.

As we know there are a number of provisions in Community law requiring such consultation procedures. Article 102 of the EEC Treaty, which is expressly mentioned in Article 16 of the Second Council Directive, provides that where there is reason to fear that the adoption or amendment of a provision laid down by law may cause distortion of the conditions of competition, the Member State shall consult the Commission. Regarding the interpretation of that provision the Court has already stated in Case 6/64 *Costa* v *ENEL* (judgment of 15 July 1964 [1964] ECR 583) that the States have undertaken an obligation to the Community which binds them as States, but which does not create individual rights which national courts must protect.

The companies take the view that although Article 16 of the Directive refers to Article 102 of the EEC Treaty it is not to be inferred that the consultation procedure provided for in the Directive, like the procedure of Article 102 of the EEC Treaty, does not create

individual rights. Article 16 of the Directive, in contrast to Article 102 of the EEC Treaty, is said to make consultation mandatory and to leave the Member States no discretion. In their view, having regard to the case-law of the court on the direct effect of directives, such effect, which the national courts have to respect, must be attributed to the directive in question. Accordingly, so long as the consultations provided for have not taken place the national courts must not treat persons linked to one another by economic, financial or organizational relationships as a *single* taxable person.

The Government of the Federal Republic stresses, on the other hand, that the case-law on Article 102 of the EEC Treaty is especially significant since Article 16 of the Second Council Directive on value-added tax, according to its objectives which are apparent *inter alia* from the documents relating to the preparatory stages, provides simply a more tentative preliminary to a possible procedure under Article 102 of the EEC Treaty.

In my view these observations on the direct effect of the Second Council Directive need concern us no further. In the present case it is solely a question of interpreting the Directive as to the consequences of failure to comply with the obligation to consult. From the objective of the consultation it is apparent that the procedure is only a "preliminary" to a possible subsequent procedure under Article 102 of the EEC Treaty. This is moreover apparent from the history of the directive to which the Government of the Federal Republic refers. I have no objection to reference to the documents relating to the preparatory stages since the obligation to consult concerns only the legal relations between the Commission and the Member States, who were aware of such documents, and does not effect the interests of individuals. If infringement of the obligation to consult imposed on the Member States by Article 102 of the EEC Treaty does not have to be considered by national courts this is all the more the case for the consultation laid down by the Directive.

For the same reason I can hardly see how a breach of the obligation to consult can, as the companies think, conflict with the basic requirement of publication which is prescribed in the interests of individuals.

It is similarly unnecessary to deal with the consequences alleged by the companies to result for the Netherlands Turnover Tax Law from the adoption of the concept of a single entity for tax purposes, since the Second Council Directive on value-added tax in any event allows such a concept to be adopted. Compliance or non-compliance with the obligation to consult does not alter the matter.

For the following reasons in my view non-compliance with the obligation to consult cannot lead to a breach of the Treaty by the national law adopted in implementation of the Directive.

Regard must be had to the fact that Article 173 of the EEC Treaty indicates that only the infringement of an *essential* procedural requirement renders a legal measure unlawful.

Apart from the meaning and objective of the consultation upon which I have already given my opinion, the question

whether the obligation to consult under Article 16 of the Second Council Directive is an essential procedural requirement can best be answered by a systematic comparison of that article with other provisions, which also contain rules regarding consultation.

Article 13, for example, of the same Directive stipulates that should a Member State consider that, in exceptional cases, special measures should be adopted, it shall so inform the Commission and the other Member States. The sixth paragraph of the article then stipulates that the State concerned may not apply the proposed measures until the period for entering objections has expired or after a particular procedure has been implemented. Again, Article 93 (3) of the Treaty provides for the Commission to be informed. The last sentence thereof is to the effect that the Member State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision of the Commission.

These examples convince me that whenever implementation of the consultation procedure is intended to have such decisive effect upon the national power to legislate that the national measure may not be taken without such consultation, this must be mentioned in the particular provision regarding consultation. If this is not done then the infringement of the particular procedural requirement is not so essential as to render the national measure unlawful.

Moreover, I find this conclusion to be confirmed by the observation of the Commission on this question. The Commission also doubts that such a defect of form as that arising from lack of consultation can render the national system unlawful.

III — I therefore propose that the questions should be answered as follows:

1. The adoption of the concept of a single entity for tax purposes pursuant to Point 2 "Regarding Article 4" of Annex A to the Second Council Directive of 11 April 1967 on the harmonization of legislation of Member States concerning turnover taxes does not require that the particular Member State should mention such a system expressly in the law. It is sufficient if such an intention is clearly apparent from the preparatory stages of the law which is passed in implementation of the Directive.

2. A Member State does not satisfy the requirements as to consultation referred to in Article 16 of the said Directive if, when notifying the draft law, it fails to mention the provision of the directive requiring consultation, the Community provisions from which the draft derogates and the derogation in the draft itself. This applies in particular if the wording of the draft law corresponds to the particular provision of Community law but in fact derogates therefrom by way of its content.

3. Individuals before national courts cannot rely on the fact that the consultations required by the fourth paragraph of Point 2 of Annex A in conjunction with Article 16 of the Directive have not been properly undertaken. On the other hand, it is for the national courts to decide whether the content of a national measure exceeds the discretion given to the Member States by the Directive.