

JUDGMENT OF THE COURT
19 JANUARY 1982¹

Ursula Becker
v Finanzamt Münster-Innenstadt
(reference for a preliminary ruling
from the Finanzgericht Münster)

(Effect of directives)

Case 8/81

1. *Measures adopted by institutions — Directives — Effect — Non-implementation by a Member State — Right of individuals to rely upon the directive — Conditions*
(EEC Treaty, Art. 189)
2. *Measures adopted by institutions — Directives — Directive conferring a margin of discretion on the Member States — Provisions which are severable and may be relied upon by individuals*
(EEC Treaty, Art. 189; Council Directive 77/388)
3. *Tax provisions — Harmonization of laws — Turnover tax — Common system of value-added tax — Exemptions conferred by the Sixth Directive — Taxable persons' right of option — Implementation — Powers of the Member States — Limits*
(Council Directive 77/388, Art. 13 B and C)
4. *Tax provisions — Harmonization of laws — Turnover tax — Common system of value-added tax — Exemptions conferred by the Sixth Directive — Effects within the system of value-added tax*
(Council Directive 77/388)
5. *Tax provisions — Harmonization of laws — Turnover tax — Common system of value-added tax — Exemptions conferred by the Sixth Directive — Exemption of transactions consisting of the negotiation of credit — Possibility of individuals' relying upon the relevant provision where the directive has not been implemented — Conditions*
(Council Directive 77/388, Art. 13 B (d) 1)

¹ — Language of the Case: German

1. It would be incompatible with the binding effect which Article 189 of the EEC Treaty ascribes to directives to exclude in principle the possibility of the obligation imposed by it being relied upon by persons concerned. Particularly in cases in which the Community authorities have, by means of a directive, placed Member States under a duty to adopt a certain course of action, the effectiveness of such a measure would be diminished if persons were prevented from relying upon it in proceedings before a court and national courts were prevented from taking it into consideration as an element of Community law. Consequently, a Member State which has not adopted the implementing measures required by the directive within the prescribed period may not plead, as against individuals, its own failure to perform the obligations which the directive entails. Thus, wherever the provisions of a directive appear, as far as their subject-matter is concerned, to be unconditional and sufficiently precise, those provisions may, in the absence of implementing measures adopted within the prescribed period, be relied upon as against any national provision which is incompatible with the directive or in so far as the provisions define rights which individuals are able to assert against the State.
2. Whilst the Sixth Council Directive 77/388 on the harmonization of the laws of the Member States relating to turnover taxes undoubtedly confers upon the Member States varying degrees of discretion as regards implementing certain of its provisions, individuals may not for that reason be denied the right to rely on any provisions which owing to their particular subject-matter are capable of being severed from the general body of provisions and applied separately. This minimum guarantee for persons adversely affected by the failure to implement the directive is a consequence of the binding nature of the obligation imposed on the Member States by the third paragraph of Article 189 of the EEC Treaty. That obligation would be rendered totally ineffectual if the Member States were permitted to annul, as the result of their inactivity, even those effects which certain provisions of a directive are capable of producing by virtue of their subject-matter.
3. Article 13 C of Directive 77/388 does not in any way confer upon the Member States the right to place conditions on or to restrict in any manner whatsoever the exemptions provided for by Part B. It merely reserves the right to the Member States to allow, to a greater or lesser degree, persons entitled to those exemptions to opt for taxation themselves, if they consider that it is in their interest to do so.
4. The scheme of Directive 77/388 is such that on the one hand, by availing themselves of an exemption, persons entitled thereto necessarily waive the right to claim a deduction in respect of input tax and on the other hand, having been exempted from the tax, they are unable to pass on any charge whatsoever to the person following them in the chain of supply, with the result that the rights of third parties in principle cannot be affected.
5. As from 1 January 1979 it was possible for the provision concerning

the exemption from turnover tax of transactions consisting of the negotiation of credit contained in Article 13 B (d) 1 of Directive 77/388 to be relied upon, in the absence of the implementation of that directive,

by a credit negotiator where he had refrained from passing that tax on to persons following him in the chain of supply, and the State could not claim, as against him, that it had failed to implement the directive.

In Case 8/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht [Finance Court] Münster for a preliminary ruling in the case pending before that court between

URSULA BECKER, a self-employed credit negotiator, residing in Münster,

and

FINANZAMT MÜNSTER-INNENSTADT [Tax office, Münster Central],

on the interpretation of Article 13 B (d) 1 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment (Official Journal 1977, L 145, p. 1),

THE COURT

composed of: J. Mertens de Wilmars, President, G. Bosco, A. Touffait and O. Due (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, A. O'Keefe, T. Koopmans, U. Everling, A. Chloros and F. Grévisse, Judges,

Advocate General: Sir Gordon Slynn
Registrar: A. Van Houtte

gives the following