Operative part of the judgment

The Court:

1. *By contracting or maintaining in force, despite the renegotiation of the Air Transport Agreement concluded between the Kingdom of the Netherlands and the United States of America on 3 April 1957, international commitments towards the United States of America:*

   — *concerning air fares and rates charged by carriers designated by the United States of America on intra-Community routes,*

   — *concerning computerised reservations systems used or offered for use on Netherlands territory, and*

   — *recognising the United States of America as having the right to withdraw, suspend or limit traffic rights in cases where air carriers designated by the Kingdom of the Netherlands are not owned by the latter or by Netherlands nationals,*

   the Kingdom of the Netherlands has failed to fulfil its obligations under Article 5 of the EC Treaty (now Article 10 EC), Article 52 of the EC Treaty (now, after amendment, Article 43 EC), and under Council Regulations (EEC) Nos 2409/92 of 23 July 1992 on fares and rates for air services and 2299/89 of 24 July 1989 on a code of conduct for computerised reservation systems.

2. *The Kingdom of the Netherlands is ordered to pay the costs.*

3. *The French Republic is ordered to bear its own costs.*

([1]) OJ C 57, 5.3.2005.

Judgment of the Court (Third Chamber) of 29 March 2007 (reference for a preliminary ruling from the Regeringsrätten — Sweden) — Aktiebolaget NN v Skatteverket

(Case C-111/05) ([1])

(Sixth VAT Directive — Supply of goods — Article 8(1)(a) — Fibre-optic cable between two Member States running in part outside Community territory — Tax jurisdiction of each Member State limited to the length of cable installed on its territory — Non-taxation of the part lying in the exclusive economic zone, on the continental shelf or on the seabed)

(2007/C 96/10)

Language of the case: Swedish

Referring court

Regeringsrätten

Parties to the main proceedings

Applicant: Aktiebolaget NN

Defendant: Skatteverket

Re:

Reference for a preliminary ruling — Regeringsrätten — Interpretation of Article 8(1)(a) and 9(1) and (2) of 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) — Place of taxable transactions — Supply and laying of an underwater fibre optic cable between two Member States, partly in an area outside the territory of any State

Operative part of the judgment

1. *A transaction for the supply and installation of a fibre-optic cable linking two Member States and sited in part outside Community territory must be considered a supply of goods within the meaning of Article 5(1) of 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, as amended by Council Directive 2002/93/EC of 3 December 2002, where it is apparent that, after functionality tests carried out by the supplier, the cable will be transferred to the client who will dispose of it as owner, that the price of the cable itself clearly represents the greater part of the total cost of that transaction, and that the supplier's services are limited to the laying of the cable without altering its nature and without adapting it to the specific requirements of the client.*

2. *Article 8(1)(a) of Sixth Directive 77/388 must be interpreted as meaning that the right to tax the supply and laying of a fibre-optic cable linking two Member States and sited in part outside the territory of the Community is held by each Member State pro rata according to the length of cable in its territory with regard both to the price of the cable itself and the rest of the materials and to the cost of the services relating to the laying of the cable.*

3. *Article 8(1)(a) of Sixth Directive 77/388, read in conjunction with Articles 2(1) and 3 of that directive, must be interpreted as meaning that the supply and laying of a fibre-optic cable linking two Member States is not subject to VAT for that part of the transaction which is carried out in the exclusive economic zone, on the continental shelf and at sea.*

([1]) OJ C 106, 30.4.2005.