

JUDGMENT OF THE COURT

11 July 1985 *

In Case 107/84

Commission of the European Communities, represented by its Legal Advisers, David Gilmour and Friedrich-Wilhelm Albrecht, acting as Agents, with an address for service in Luxembourg at the office of Georges Kremlis, a member of its Legal Service, Jean Monnet Building, Kirchberg,

applicant,

v

Federal Republic of Germany, represented by Martin Seidel, *Ministerialrat*, and Professor Albert Bleckmann, acting as Agents, with an address for service in Luxembourg at its Embassy, 20-22 Avenue Emile Reuter,

defendant,

APPLICATION for a declaration under Article 169 of the EEC Treaty that the Federal Republic of Germany, by exempting from value-added tax the services provided by transport undertakings for the *Deutsche Bundespost* [Federal German Postal Service] by virtue of statutory provisions, has failed to fulfil its obligations under the EEC Treaty,

THE COURT

composed of: Lord Mackenzie Stuart, President, O. Due (President of Chamber), P. Pescatore, T. Koopmans, U. Everling, K. Bahlmann and Y. Galmot, Judges,

Advocate General: M. Darmon,
Registrar: J. A. Pompe, Deputy Registrar

after hearing the Opinion of the Advocate General delivered at the sitting on 5 June 1985,

gives the following

* Language of the Case: German.

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

- 1 By application lodged at the Court Registry on 16 April 1984 the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by exempting from value-added tax 'the services provided by transport undertakings for the *Deutsche Bundespost* by virtue of statutory provisions', the Federal Republic of Germany has failed to fulfil its obligations under the EEC Treaty.

- 2 In using those words the Commission repeated the wording of Paragraph 4 (7) of the *Umsatzsteuergesetz* [German Law on turnover taxes] of 26 November 1979 (*Bundesgesetzblatt* I, p. 1953). The Commission considers that that provision provides for an exemption wider than that permitted by Article 13 (entitled 'Exemptions within the territory of the country') of the Sixth Council Directive 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 (Directive No 77/388, Official Journal 1977, L 145, p. 1, hereinafter referred to as 'the directive'). The first paragraph of subheading A of Article 13 (entitled 'Exemptions for certain activities in the public interest') provides that 'Member States shall exempt ... (a) the supply by the public postal services of services other than passenger transport and telecommunications thereto, and the supply of goods incidental thereto'.

- 3 In support of its application the Commission argues essentially that the list of exemptions in Article 13 of the directive is exhaustive, that, according to the wording of 13 A (1) (a), the exemption relates only to the supply of services by others *by* the public postal services, and not to the supply of services by others *for* the public postal services, and that the exemption is not justified by any other provision of Article 13.

4 The Government of the Federal Republic of Germany disputes the textual interpretation adopted by the Commission. Although it is true that, in the German-language version of the provision, the expression '*die öffentlichen Posteinrichtungen*' appears to refer to the postal authority itself, the equivalent expression in the French-language version, namely '*les services publics postaux*' could equally be interpreted as referring to the whole of the activities undertaken in pursuance of the objectives of a postal system. If the provision is interpreted in that way, it does not prohibit the granting of an exemption for the aforesaid activities where they are not carried out directly by the postal authority, in this case the *Deutsche Bundespost*, but are carried out on behalf of that authority by other undertakings, in this case the *Deutsche Bundesbahn* [Federal German Railways] and the airline *Luftbansa*. Since the wording of the provision is therefore not identical in all the language versions, it should be interpreted in the light of the general scheme and purpose of the rules of which it is part.

5 As regards the general scheme of the relevant provisions of the directive, the German Government contends, first, that the exemptions provided for in the other provisions of Article 13 A (1) concern particular activities defined by reference to the objectives pursued. It would be completely inconsistent with the scheme of paragraph (1) to regard the wording of subparagraph (a) as referring solely to the activities of certain organizations and not to all the activities undertaken in pursuance of the objectives of the postal service.

6 Secondly, the German Government maintains that the interpretation proposed by the Commission would deprive subparagraph (a) of any meaning, since the public postal service, as a body governed by public law, is already exempt under Article 4 (5) of the directive and since passenger transport and telecommunications are excluded from that exemption by Annex D thereto, to which Article 4 (5) refers.

7 As regards the aim of the exemptions provided for by Article 13 A (1) of the directive, the German Government contends that that provision is intended to grant a general exemption for certain activities carried out in the public interest in order to avoid an increase in the price of services provided in connection with those activities. It would be inconsistent with that aim to tax transport services provided on behalf of the *Deutsche Bundespost* when they are performed for the same purposes as the activities engaged in directly by the *Bundespost*.

- 8 The German Government observes that the directive is not intended to harmonize the legislation of the Member States concerning the postal system but leaves them free to determine the way in which that system is to be organized. The interpretation put forward by the Commission would lead either to *de facto* harmonization or to unequal treatment of the Member States, depending on the manner in which their postal services were organized; that would be contrary to the directive's main objective, namely the establishment of a uniform basis of assessment and the collection of the Community's own resources on a comparable basis in all the Member States.
- 9 According to the German Government, the only method of ensuring observance of the principle of equality and of giving the provision at issue a uniform meaning is to interpret it as referring to all postal activities, whether they are engaged in by the postal authorities themselves or by other bodies; that must at least be the case where national law provides that, for the purposes of the criminal and civil law, the activities of those other bodies are to be treated as if they were the activities of the postal authorities themselves. That is so in the case of the transport activities engaged in by the *Deutsche Bundesbahn* and *Lufthansa* for the *Deutsche Bundespost*. They amount in fact to 'indirect postal activities'.
- 10 In order to resolve this dispute it is necessary, first, to examine the wording of the provision at issue in all the language versions. The provision does not merely empower but obliges the Member States (apart from the Hellenic Republic, which has not yet introduced value-added tax) to exempt: 'tjenesteydelser ... praesteret af det offentlige postvaesen' (Danish language version); 'de door openbare postdiensten verrichte diensten' (Dutch language version); 'the supply by the public postal services of services' (English language version); 'les prestations de services ... effectuées par les services publics postaux' (French language version); 'die von den öffentlichen Posteinrichtungen ausgeführten Dienstleistungen' (German language version); 'τις παροχές υπηρεσιών ... οι οποίες πραγματοποιούνται από τις δημόσιες ταχυδρομικές υπηρεσίες' (Greek language version); 'quando sono effettuate dai servizi pubblici postali, le prestazioni di servizi' (Italian language version).
- 11 Although it is true that in some of the language versions the expression 'public postal services' may be understood, when considered in isolation, as referring to all postal activities, the syntax of the whole phrase clearly shows that the words in

fact refer to the actual organizations which engage in the supply of the services to be exempted. In order to be covered by the wording of the provision the services must therefore be performed by a body which may be described as 'the public postal service' in the organic sense of that expression. That is not so, for example, in the case of a transport undertaking which, without coming into contact with the public, is merely responsible for long-distance transportation between two post offices.

- 12 Faced with such a clear provision, it is not possible to apply the exemption laid down by it to activities which, whilst pursuing the same objectives, are undertaken by bodies which cannot be regarded as 'public postal services' in the organic sense, unless there are other conclusive factors demanding an interpretation which goes beyond the actual wording of the provision.
- 13 No such factor can be found by comparing subparagraph (a) with the wording of the other provisions of Article 13 A (1). The exemptions provided for therein are defined in widely differing ways. Although it is true that the exemptions are granted in favour of activities pursuing specific objectives, most of the provisions also define the bodies which are authorized to supply the exempted services. It is therefore incorrect to state that the services are defined by reference to purely material or functional criteria.
- 14 As regards the relationship between Articles 4 and 13 of the directive, it should be emphasized that the former concerns the definition of the term 'taxable person', whilst the latter exempts the supply of certain services and goods. The first subparagraph of Article 4 (5) provides that bodies governed by public law are not to be considered taxable persons in respect of the activities or transactions in which they engage as public authorities. The final subparagraph thereof permits the Member States to treat activities of such bodies which are exempted under Article 13 as falling within that category.
- 15 It follows that, even if postal activities are assigned to bodies governed by public law, Article 13 and the reference to it contained in the final subparagraph of Article 4 (5) are necessary to exempt the whole of those activities, of which only a part may be regarded as the activities of a public authority in the strict sense. It is

therefore incorrect to state that the exemption provided for by Article 13 would be deprived of any meaning if it only applied to the activities of a body governed by public law.

16 Moreover, the exemption provided for by Article 13 is still completely meaningful where a Member State assigns postal activities to an organization which is not a body governed by public law. In this way the directive has specifically avoided influencing the manner in which the Member States organize their postal systems. Postal activities are still exempted even if they are carried out by a licensed undertaking. The provision restricts the exemption solely to the supply of services by the postal authority, whether it is a body governed by public law or a licensed undertaking, to the exclusion of services provided for the postal authority by other undertakings.

17 As regards the purpose of the exemptions provided for by Article 13, it should be observed that that provision does not mention every activity performed in the public interest but only certain activities, which are listed and described in great detail. In that regard the preamble to the directive merely states that 'a common list of exemptions should be drawn up so that the Communities' own resources may be collected in a uniform manner in all the Member States' and does not explain why the activities listed were chosen. The Commission has observed that the Federal Republic of Germany is alone in exempting the supply of services by transport undertakings to the postal authority.

18 Consequently, the arguments put forward by the German Government with regard to the purpose of the exemption and the principle of equality are not capable of supporting the interpretation which it proposes.

19 It must be added that the expression 'indirect postal activities', used by the German Government, is foreign to the general system of value-added tax as laid down in the directive; that system provides for tax to be charged on the supply of goods and services by a taxable person and does not allow the basis for the taxation of such transactions to be affected by services which are provided by other traders for the taxable person and which therefore indirectly form part of the taxable transaction.

- 20 It must therefore be concluded that the German Government has failed to show any factors relating to the interpretation of the provision which permit the exemption provided for by Article 13 A (1) (a) to be extended beyond the limits which follow from the actual wording of the provision. Since no other provision of the directive authorizes the Federal Republic of Germany to derogate from the general system of taxation which it lays down, in particular from Article 2 of the directive, by exempting the supply of services effected for consideration by transport undertakings for the *Deutsche Bundespost*, the Commission's claim that it has failed to fulfil its obligations has been established.
- 21 It must therefore be held that, by exempting from value-added tax the services provided, by virtue of statutory provisions, by transport undertakings for the *Deutsche Bundespost*, the Federal Republic of Germany has failed to fulfil its obligations under the EEC Treaty and under the provisions of the Sixth Council Directive 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.

Costs

- 22 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the defendant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

- (1) Declares that, by exempting from value-added tax the services provided, by virtue of statutory provisions, by transport undertakings for the *Deutsche Bundespost*, the Federal Republic of Germany has failed to fulfil its obligations under the EEC Treaty and under the provisions of the Sixth Council Directive 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;

(2) Orders the Federal Republic of Germany to pay the costs.

Mackenzie Stuart	Due	Pescatore	
Koopmans	Everling	Bahlmann	Galmot

Delivered in open court in Luxembourg on 11 July 1985.

P. Heim
Registrar

A. J. Mackenzie Stuart
President