OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 7 July 1987 *

Mr President,
Members of the Court,

1. The Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes: uniform basis of assessment (77/388/EEC) (Official Journal 1977, L 145, p. 1) lists in Article 13 A (1) 'certain activities in the public interest' which, precisely in view of the fact that they are in the public interest, are exempt from value-added tax. The exemptions provided for are compulsory, for that is clearly the only way in which the Community can ensure that its 'own resources may be collected in a uniform manner in all the Member States' (eleventh recital in the preamble to the directive). The list refers in particular to 'the provision of medical care in the exercise of the medical and paramedical professions . . .' (Article 13 A (1) (c)).

In the United Kingdom, Item 1 of Group 7 (Health) of Schedule 6 to the Value-Added Tax Act 1983 exempts from value-added tax 'the supply of services and, in connection with it, the supply of goods . . .' by persons registered or enrolled in certain professional registers, such as medical practitioners, dentists, opticians and persons carrying on paramedical activities for the purposes of the Professions Supplementary to Medicine Act 1960. That means, for instance, that if a medical practitioner or an optician in the United Kingdom prescribes corrective spectacles for a patient and then supplies them to the patient, no value-added tax is payable either on the consultation or on the spectacles.

In these proceedings the Commission asks the Court to declare that, by exempting from value-added tax certain goods supplied in connection with or on the basis of medical or paramedical services, the United Kingdom has failed to fulfil its obligations under Article 13 A (1) (c) of the aforesaid directive.

2. In the first place, the United Kingdom has objected that the Commission's application is inadmissible. The United Kingdom contends that the Commision did not, either in its letter giving formal notice of an infringement or in its reasoned opinion, indicate with sufficient clarity the subject-matter or the scope of its charges. Nor did it give any indication of the measures which the United Kingdom was supposed to take in order to comply with the relevant provisions of Community law or of the reasons on which the Commission's request was based. In other words, the applicant did not place the United Kingdom in a position to ascertain the true nature of the infringement it was alleged to have committed, thereby impairing the United Kingdom's possibility of presenting a defence from the very outset of the proceedings.

Clearly, the United Kingdom's objection is unfounded. I would recall that, according to the scheme of the procedure under Article 169 of the EEC Treaty, the letter giving formal notice has a specific purpose, namely to oblige the Commission to inform the State concerned of the essential elements of the infringement it is alleged to have committed and to request that State to submit its observations on the factual and legal aspects of those elements. If the letter giving formal notice does not in itself lead to the settlement of the dispute, the Commission, having regard to the observations submitted by the State concerned, issues a reasoned opinion whose function is to define once and for all the subject-matter

* Translated from the Italian.

of the dispute (see the judgment of 27 May 1981 in Joined Cases 142 and 143/80 *Amministrazione delle Finanze dello Stato* v *Essevi and Salengo* [1981] ECR 1413; the judgment of 15 December 1982 in Case 211/81 *Commission* v *Denmark* [1982] ECR 4547; the judgment of 31 January 1984 in Case 74/82 *Commission* v *Ireland* [1984] ECR 317; and the judgment of 18 March 1986 in Case 85/85 *Commission* v *Belgium* [1986] ECR 1149).

The reasoned opinion, on the other hand, must be considered to contain a sufficient statement of reasons where the Commission, after summarizing the views of the national authorities, defines in sufficiently precise terms the facts and the reasons which led it to conclude that the State concerned hadfailed to fulfil its obligations (see the judgments of 14 February 1984 in Case 325/82 *Commission* v *Germany* [1984] ECR 777 and of 15 December 1982 in Case 211/81, cited above).

That being so, it is clear from its replies to the letter giving formal notice and to the reasoned opinion that the United Kingdom had fully understood the nature of the infringement which it is alleged to have committed. In other words, it was aware that the Commission had charged it with exempting from value-added tax any supply of goods connected with the provision of medical services and that the exemption in respect of the supply of corrective spectacles was merely an example, albeit a particularly glaring one. In its replies, moreover, the United Kingdom challenges point by point the Commission's argument to the effect that exemption from value-added tax extends only to the supply of medical services. Finally, it is untrue, contrary to the United Kingdom's contention, that the allegations were rendered unclear and contradictory by the applicant's acknowledgement, in the light of the United Kingdom's observations, that exemption from value-added tax also covers certain minor supplies of goods which are inseparable from the services themselves. On the contrary, that concession by the Commission shows that both parties correctly determined the subject-matter and the scope of the dispute. The application is therefore admissible.

3. With regard to the substance of the case, the United Kingdom maintains that a systematic reading of Article 13 as a whole and the principle of equality render the Commission's interpretation of indent (c) untenable. The United Kingdom argues that if the wording of indent (c) is compared with that of indent (b), and if it is borne in mind that the expression 'medical care' is used in the English version of both indents, the inescapable conclusion is that the exemption from value-added tax under indent (c) also covers goods supplied in connection with the services provided. Indent (b) exempts from value-added tax 'hospital and *medical care* and closely related activities undertaken by bodies governed by public law or, under social conditions comparable to those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognized establishments of a similar nature' (emphasis added).

In those circumstances, the Commission does not dispute that the goods supplied together with the care provided are exempt from value-added tax. However — and this is the point — is not the same kind of care also provided in the case of indent (c)? Moreover, granted that that care is provided in a private consulting room as opposed to a hospital, is the place where the service is supplied more important for tax purposes than the nature of the service? The answers to those questions are self-evident, as is the fact that the Community legislature cannot have intended to apply dissimilar treatment in respect of the same activity. The conclusion must therefore be drawn that the interpretation of indent (c), on which the applicant's charge is based, is erroneously restrictive and, conversely, that the Value-Added Tax Act 1983 is in conformity with the requirements of Community law.

The United Kingdom's case is skilfully argued but, in my view, it cannot be upheld. I would recall that, in order to prevent any abuse and an oversimplified assimilation of transactions, the Sixth Directive drew a distinction between the supply of goods and the supply of services (seventh recital in the preamble). The supply of goods consists of 'the transfer [to a third party] of the right to dispose of tangible property as owner' (Article 5 (1)). The supply of services is defined in negative terms, that is to say it includes 'any transaction which does not constitute a supply of goods' (Article 6 (1)).

In practical terms, as is well known, that distinction is not easy to draw, particularly where the two transactions take place in connection with the same economic activity. In addition, whilst in other fields of law the problem is resolved by recourse to the criterion of precedence (that is to say by determining whether, in relation to the purpose of the activity concerned, the work to be done carries more weight than the goods to be supplied), in the field of taxation, which involves the imposition of financial burdens, borderline situations tend to be regulated with precision. For instance, Article 5 (5) (a) of the directive treats as supplies '... delivery by a contractor ... of movable property made or assembled by the contractor from materials or objects entrusted to him by the customer for this purpose, whether or not the contractor has provided any part of the materials used'.

Against that background, I now turn to the system of exemptions. It is significant, in my view, that the only instance of the supply of goods which is exempted as such by Article 13 is 'supplies of human organs, blood and milk' (indent (d)). All other transfers, on the other hand, are taken into consideration only in so far as they are 'closely linked' or 'incidental' to the supply of services which are, by nature, in the general or, in any event, the public interest. That is so in the case of supplies linked to welfare and social security work (indent (g)) or to the protection and education of children and young people (indents (h) and (i)).

It may therefore be said that, unless the directive expressly provides otherwise, supplies of goods are not exempt from value-added tax even where they are provided in connection with supplies of services that are so exempted. That is suitably illustrated by indent (e) which exempts 'services supplied by dental technicians in their professional capacity and dental prostheses supplied by dentists and dental technicians'. It would appear prima facie that services supplied by dentists are not exempt from value-added tax, yet that is not the case. As in the case of medical practitioners, the activities of dentists come within the scope of indent (c) and are exempt from value-added tax by virtue of that provision. On the other hand, the supply of dental prostheses was excluded by the directive which requires the supply of goods to be distinguished from the supply of services; hence an express provision was needed in order to exempt the supply of such prostheses from value-added tax.

Accordingly, in the light of the foregoing analysis, it is legitimate to conclude that, for the purposes of Article 13, the expressions 'supply of services' and 'supply of goods' must be strictly interpreted. It follows that the exemption of the activities referred to in indent (c) — that is to say care provided in the exercise of the medical profession — applies only to the supply of goods which are essential for the provision of that service. In other words, that excludes any appliances which, whilst available only with a medical prescription, may be selected and purchased after the consultation and are therefore instrumental not in enabling a medical practitioner to provide a service but in enabling the patient to recover the use of a diseased organ.

In conclusion, the United Kingdom's error lies in assimilating the commercial transfer of the goods needed to achieve the final therapeutic effect to the use of instruments which a medical practitioner cannot do without for the proper performance of his task. In civil law terms, that means transforming the practitioner's work from a duty to use certain means ('obligation de moyens') into a duty to achieve a certain result ('obligation de résultat'), that is to say taking the view that he is required to supply not only his professional skills but also the goods which are normally obtainable in certain shops and on which the patient's recovery depends. That approach, however, not only comes into conflict with the law as it stands but is also incompatible with the system established by the directive, which, for the purposes of value-added tax, clearly distinguishes between activities carried out in the exercise of a profession and the sale of goods.

As we have seen, the United Kingdom's reply to that finding is that the exemption in indent (b) in respect of 'medical care' provided in hospitals covers the supply of goods connected with such care. It follows, in its view, from the principle of equal treatment and from the consistent nature of the system that exemption should also extend to goods supplied in connection with the services referred to in indent (c).

That argument, as I said earlier, has a certain appeal. However, the United Kingdom overlooks the fact that indent (b) exempts medical care only in so far as it is provided by bodies governed by public law or other hospital establishments which must not 'systematically aim to make a profit' (first indent of Article 13 A (2) (a)). Instead, the activities listed in indent (c) of Article 13 A (1) are carried out 'in the exercise of the medical and paramedical professions' and, consequently, for gain. In my view, that difference is sufficient to justify the different fiscal treatment accorded to the two kinds of supplies and to explain why, with the exception of the United Kingdom and Ireland, no other Member State exempts from value-added tax spectacles and other appliances which are supplied in connection with the provision of professional services.

4. In the light of the foregoing considerations, I propose that the Court uphold the application submitted on 19 November 1985 by the Commission of the European Communities against the United Kingdom of Great Britain and Northern Ireland and declare that, by exempting pursuant to Item 1, Schedule 6, Group 7 (Health) of the Value-Added Tax Act 1983 supplies of goods provided in connection with the exercise of the medical and paramedical professions, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 13 A (1) (c) of the Sixth Council Directive of 17 May 1977 (77/388/EEC).

The United Kingdom should be ordered to pay the costs pursuant to Article 69 (3) of the Rules of Procedure.