OPINION OF ADVOCATE GENERAL COSMAS

delivered on 17 November 1998 *

I — Introduction

1. In this case the Court of Justice has been asked to give a preliminary ruling on two questions referred to it by the Value Added Tax Tribunal of Belfast concerning the interpretation of Article 13A(1) and (2) of Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes: uniform basis of assessment ('the Sixth Directive'). [1] It should be noted at the outset that those provisions, which govern the question of exemptions from the payment of VAT, were clarified by the Court in Case C-453/93 *Bulthuis-Griffioen*. [2] Some of the parties who have submitted observations in the present proceedings have invited the Court to re-examine the position it took in that judgment.

II — The relevant facts

2. The appellants in the main proceedings, Jennifer and Mervyn Gregg, run a business trading as 'Glenview Nursing Home'. [3] Glenview is used to provide residential care. It has 17 bedrooms, bathrooms and dining and communal areas. The Greggs employ 25 staff in the nursing home activity, [4] and the business systematically aims to make a profit. [5] Glenview Nursing Home is a residential care home and a nursing home under the relevant Northern Ireland legislation, that is to say, under the Registered Homes (NI) Order 1992 ('the Order'), [6] but is not

* Original language: Greek.

1 — OJ 1977 L 145, p. 1.

2 — [1995] ECR I-2341.

3 — The home was owned and run by the father of Mrs Gregg until April 1992, when it was transferred to Mrs Gregg. Since March 1996 she has run it in partnership with her husband.

4 — There are a 'head of home', two supervisors, 14 'care assistants', 7 'ancillary staff' and one office administrator. Accounting staff are provided by an outside firm of accountants.

5 — The Greggs charge UKL 203.00 per week for residential care. It should also be noted that the managerial and financial control of Glenview is not the Greggs' main occupation. Mr Gregg is in business supplying mobile telephones and Mrs Gregg works as a full-time catering manager at a local hospital.

6 — According to the information supplied by the national court, it is a criminal offence, under the law of Northern Ireland, to carry on a residential care home or a nursing home, in the circumstances of this case, if it has not been registered. Furthermore, under Article 3 of the Order, a 'residential care home' is defined as '... any establishment which provides or is intended to provide, whether for reward or not residential accommodation with both board and personal care for persons in need of personal care by reason of (a) old age and infirmity, (b) disablement, (c) past or present dependence on alcohol or drugs, or (d) past or present mental disorder'. Under Article 16 of the Order a 'nursing home' is defined as '... (a) any premises used or intended to be used for the reception of and the provision of nursing for, persons suffering from any illness, injury or infirmity; (b) any maternity home; and (c) any premises not falling within either of the preceding sub-paragraphs which are used, or intended to be used, for the provision of all or any of the following services namely — (i) the carrying out of any surgical procedures under anaesthesia, (ii) endoscopy; (iii) haemodialysis or peritoneal dialysis; (iv) treatment of specifically controlled techniques'.

recognised as charitable by the laws of the United Kingdom. [7]

3. For the purposes of improving the operation of their business, [8] Mr and Mrs Gregg applied to be registered for VAT under the provisions of the Value Added Tax Act 1994. The Commissioners of Customs and Excise determined that the Greggs were not entitled to be registered for VAT on the grounds that Glenview Nursing Home fell within the exemption from VAT conferred by Schedule 9, Group 7, item 4, of the Value Added Tax Act which transposed into national law the provisions on exemption from VAT contained in Article 13A of the Sixth Directive.

A — *The relevant provisions*

(a) Community law

4. Article 13A of the Sixth Directive provides as follows:

'Exemptions within the territory of the country

A. Exemptions for certain activities in the public interest

1. Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any possible evasion, avoidance or abuse:

...

(b) 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 recognised establishments of a similar nature;

...

7 — That last point is significant in relation to the question whether the factual situation falls within the scope of Article 13A(1)(g) of the Directive.

8 — They intend to extend Glenview by adding 13 rooms for the elderly and infirm and a further 12 rooms for nursing and residential care.

(g) the supply of services and of goods closely linked to welfare and social security work, including those supplied by old people's homes, by bodies governed by public law or by other organisations recognised as charitable by the Member State concerned;

...

2. (a) Member States may make the granting to bodies other than those governed by public law of each exemption provided for in (1) (b), (g), (h), (i), (l), (m) and (n) of this Article subject in each individual case to one or more of the following conditions:

— they shall not systematically aim to make a profit, but any profits nevertheless arising shall not be distributed, but shall be assigned to the continuance or improvement of the services supplied,

...'.

(b) National law

5. The Value Added Tax Act 1994, Schedule 9, Group 7, item 4, which lays down the cases of exemption relevant to the present case, in application of the relevant Community provisions, exempts the following from VAT:

'The provision of care or medical or surgical treatment and, in connection with it, the supply of any goods, in any hospital or other institution approved, licensed, registered or exempted from registration by any Minister or other authority pursuant to a provision of a public general Act of Parliament or of the Northern Ireland Parliament or of a public general Measure of the Northern Ireland Assembly or Order in Council under Schedule 1 to the Northern Ireland Act 1974, not being a provision which is capable of being brought into effect at different times in relation to different local authority areas.'

B — *Procedure before the national court*

6. The Greggs appealed to the Value Added Tax Tribunal, maintaining that their situation does not fall within the exemptions of Article 13 of the Directive. In particular they consider that a prerequisite for those exemptions is that the activity must be carried on by a legal person, whereas they are merely two natural persons who are

conducting the Glenview Nursing Home business as 'partners'.[9] For that purpose they rely on the earlier decision of the Tribunal in *Kaul*.[10]

7. The national court points out that the issue in the case before it concerns the interpretation of Article 13A(1)(b) and (g) of the Sixth Directive, in particular the definitions of the terms 'bodies', 'establishments' and 'organisations' employed by the Community legislature. It asks whether the use of those terms indicates that the exemption from VAT set out in the above provisions of the Sixth Directive concerns only legal and not natural persons, even though the latter are carrying on activities in the public interest to which Article 13A(1)(b) and (g) of the Directive refer. The national court cites, first, the decision in *Kaul* in which the VAT Tribunal decided, on the basis of the reasoning of the Court of Justice in Case C-453/93 *Bulthuis-Griffioen* [1995] ECR I-2341, that since Article 13A(1)(b) of the Sixth Directive expressly refers to 'bodies' or 'establishments' the exemption provided for is confined to legal persons. The national court points out, however, that the interpretation given in *Bulthuis-Griffioen* concerned Article 13A(1)(g) and not (b) of the Sixth Directive. Nevertheless it recognises that there is a link for interpretation purposes between the two provisions and that that preliminary ruling from the Court is of some weight as far as the dispute before it is concerned. The national court is, in any case, uncertain whether the terms 'bodies' and 'establishments' do not also cover cases where a natural person is carrying on a business activity alone or with a partner, since one or more natural persons are capable of undertaking their activities 'under social conditions comparable to those applicable to bodies governed by public law' and could be described as 'duly recognised establishments'. Mention is also made of the risk of distortion of competition if exactly the same activity is treated differently for tax purposes according to the form of legal personality taken by the person carrying on the activity. Lastly it points out that the differences between the facts of the case before it and the *Bulthuis-Griffioen* case are not insignificant; that judgment concerned a single natural person acting alone, that is to say one woman and her nursery facilities, whereas in this case the Greggs are partners in a business that is clearly more substantial from the point of view of infrastructure and economic size.

III — The questions referred for a preliminary ruling

8. In view of the above, the national court referred the following questions to the Court for a preliminary ruling:

9 — The definition of 'partnership' is given in s. 1 of the Partnership Act 1890 as the 'relation which subsists between persons carrying on a business in common with a view of profit'. Under English or Northern Ireland law a partnership does not have a separate legal personality distinct from its partners.

10 — *Kaul* v *Commissions of Customs and Excise* (1996), VAT decision 14028.

'1. Is Article 13A(1) of the Sixth Directive to be interpreted as meaning that two natural persons (i.e. individuals) who carry on business in common as partners cannot claim exemption under subparagraph (b) in the circumstances summarised in the Schedule to these questions and on the assumptions that

(i) the business consists of medical care and closely related activities and

(ii) they are "duly recognised" and their activities are of a similar nature to those provided by "hospitals" and/or "centres for medical treatment or diagnosis"?

In particular, are the partners excluded from exemption because

(a) they do not constitute a "body" governed by public law;

(b) their activities are not undertaken under social conditions comparable to those applicable to bodies governed by public law?

2. Is Article 13A(1) of the Sixth Directive to be interpreted as meaning that two natural persons (i.e. individuals) who carry on business in common as partners cannot claim exemption under subparagraph (g) in the circumstances summarised in the Schedule to these questions and on the assumption that the services they supply are "closely linked to welfare and social security work, including those supplied by old people's homes"?'

IV — Answers to the questions referred for a preliminary ruling

A — *Introductory remarks*

(a) Margin of interpretation with regard to the construction of the Community provisions at issue

9. It is worth making the preliminary point that, when the Community legislature laid

down the rules on the harmonisation of the laws of the Member States relating to taxes, it did not formulate the relevant provisions of the Sixth Directive in a manner that was wholly clear and consistent. Responsibility should not be attributed to the legislature itself, but to the inherent incapacity of the terminology — where synonymous terms are sought in many different languages — to express a constantly changing reality and to stamp legal concepts with a clear inter-State and durable character.

10. In particular the medical and paramedical care sector in the broad sense, which is the context for the facts of the case in the main proceedings, has undergone considerable changes in the last few decades as regards its nature, organisation and content; institutional forms of care — which is no longer regarded as being of a purely public character — display fundamental differences within each Member State; they are practically impossible to describe satisfactorily in elliptical terms such as 'organisations', 'duly recognised establishments' or 'organisations recognised as charitable'.

11. The above observation is of some significance. It allows us to pinpoint the substance of the question under examination and the appropriate method to deal with it. That cannot consist in drawing arguments from the wording of the provisions at issue and comparing them with each other. Instead of adhering to the superficial content of the Sixth Directive, it is preferable to seek its true meaning by treating it as an aggregate rational system of rules.

12. The margin for interpretation is not of course unlimited. The limits to construing a rule so as to remedy shortcomings in its wording are set by the letter of the rule itself. It would be unfortunate to produce an interpretation which attributed a meaning to a legal term that was completely different from the meaning it bears when used in daily life or in another legal context. The particular legal definition of a term may not go completely beyond its hitherto commonly accepted subject-matter.

13. Specifically regarding the Community provisions at issue, I do not concur in accepting a construction to the effect that the simple activity of a single natural person alone falls, without more, under the definition of the terms 'bodies', 'establishment' or 'organisation' (for the purposes of Article 13A(1)(b) and (g) of the Sixth Directive), even though it would seem necessary from the point of view of the system as a whole. That does not, however, mean that the possibilities of interpreting the Community provisions at issue are so restricted; the terms 'body', 'establishment' and 'organisation' employed by the legislature are not open solely to a narrow, formalistic interpretation; in other words they do not correspond to a specific legal form taken by the operator of a hospital, medical or paramedical activity.

(b) The *Bulthuis-Griffioen* case

14. Furthermore, as noted above, the starting point for the study of the legal juxtaposition under examination is the position taken by the Court in the abovementioned *Bulthuis-Griffioen* case. It is not surprising, moreover, that four Member States have intervened, seeking clarification of the position taken by the Community court in that judgment or a redefinition of the case-law position. It should be emphasised that, apart from the Netherlands, the Member States did not have the opportunity of submitting their views on the interpretation to be given to the tax exemptions under Article 13A(1)(g) of the Sixth Directive in the context of the *Bulthuis-Griffioen* case. The question whether those provisions concern solely legal and not natural persons was raised indirectly in the written observations of the Commission in the *Bulthuis-Griffioen* case and was dealt with by the Court without the other Member States being heard on that point. Also, the way in which the parties in the case under examination rely on the judgment of the Court and my Opinion in the *Bulthuis-Griffioen* case make it necessary, in my view, to explain the true meaning and material differences of the solution which was proposed and applied in that case.

(c) The terminology used by the Community legislature in the provisions in question

15. It should be noted that the rendition into the official languages of the Community of Article 13A(1) of the Sixth Directive reveals interesting variations. Where the term 'οργανισμός' is used in Greek, or 'organisme' in French, the English text uses the terms 'body' and 'organisation'; the term 'ίδρυμα' ('établissement' in French) is given as 'establishment' in English. Conversely, in the German text, the same legal term (Einrichtung) is used in all the above cases. [11]

16. I consider that the terms 'establishment', 'body' and 'organisation' [12] are used by the draftsman of the Directive in the same sense. As the Commission rightly observed, that interpretation is reinforced by the approach taken in the above provisions in conjunction with that of Arti-

11 — The question of the existence of divergences in the rendition of terms or phrases in legislative texts of the Community institutions has already been examined by the Court. In Case 29/69 *Stauder* v *Ulm* [1969] ECR 419, paragraph 3, the Court stated: 'When a single decision is addressed to all the Member States the necessity for uniform application and accordingly for uniform interpretation makes it impossible to consider one version of the text in isolation but requires that it be interpreted on the basis of both the real intention of its author and the aim he seeks to achieve, in the light in particular of the versions in all four languages.'
It has been consistently held that 'in the case of divergence between the language versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part' (see Case C-372/88 *Cricket St Thomas* [1990] ECR I-1345, paragraph 19, and the Opinion in that case of Advocate General Tesauro (point 6 et seq.). See also Case 100/84 *Commission* v *United Kingdom* [1985] ECR 1169, paragraph 17; Case C-100/90 *Commission* v *Denmark* [1991] ECR I-5089, paragraph 8; Case C-449/93 *Rockfon* [1995] ECR I-4291, paragraph 28; Case 30/77 *Bouchereau* [1977] ECR 1909, paragraph 14; Case 173/88 *Henriksen* [1989] ECR 2763, paragraph 11).

12 — In Greek: 'ίδρυμα' and 'οργανισμός'.

cle 13A(2)(a) of the Sixth Directive; in the latter provision the term 'bodies' covers both 'bodies' and 'establishments' under Article 13A(1)(b) and 'bodies' and 'organisations' under Article 13A(1)(g). Accordingly the answer to be given to the first question referred to the Court concerning the interpretation of Article 13A(1)(b) of the Sixth Directive cannot differ from that to be given to the second question in relation to Article 13A(1)(g). Consequently it is expedient to examine the two questions together.

B — *Examination of the substance of the questions referred to the Court*

(a) The issues to be examined

17. The United Kingdom Government correctly points out that it is necessary to answer the questions on the basis of the factual and legal circumstances set out by the national court in its order for reference. In particular, in respect of the first question, certain clarifications are needed as regards the extent to which the facts of the main proceedings fall within the scope of Article 13A(1)(b) of the Sixth Directive. The following should be regarded as common ground — or at least as falling outside the scope of the first question: first, that the Glenview business consists of 'medical care and closely related activities'; secondly, that Glenview is 'duly recognised'; thirdly, that the activities carried on by Glenview are 'of a similar nature to those provided by hospitals and/or centres for medical treatment or diagnosis'. The crucial point on which the national court's question focuses is whether Glenview, which is operated by a 'partnership' — in other words, does not have legal personality — may be regarded as an 'establishment' providing care 'under social conditions comparable' to those applicable to bodies governed by public law having that same function within the meaning of Article 13A(1)(b) of the Sixth Directive.

18. In that connection, as regards the answer to the second question, there is no doubt that Glenview provides services 'closely linked to welfare and social security work, including those supplied by old people's homes', within the meaning of the Sixth Directive. The question is whether it is an 'organisation recognised as charitable by the Member State concerned'. Those are the questions which will be examined below.

(b) The arguments against application of the relevant tax exemptions to the facts of the case in the main proceedings

19. Mr and Mrs Gregg maintain that Glenview Home cannot be exempted from VAT

under Article 13A of the Sixth Directive. First they point out that according to the settled case-law of the Court those exemptions must be interpreted narrowly, since they constitute exceptions to the general principle that every economic activity is subject to tax. [13] The Greggs consider that the exemptions under subparagraphs (b) and (g) of Article 13A(1) of the Sixth Directive concern exclusively economic operators with separate legal personality and do not cover activities carried on by one or more natural persons. According to the line of argument advanced before the Court, the exemptions under Article 13A of the Directive can be divided into two categories according to the legal form taken by the operator carrying on the exempt activity: certain provisions under Article 13A(1) — such as subparagraphs (b) and (g) that are material to the present case — concern exclusively legal persons, whilst other provisions, such as subparagraphs (c), (e) and (j), concern natural persons. [14] In cases where the Community legislature intended to exempt the business activity of natural persons from tax, terms were used which clearly referred to those persons; conversely, the reference to 'establishment', 'body' or 'organisation' is indicative of an intention to restrict the scope of the exemptions granted under subparagraphs (b) and (g) of Article 13A(1) solely to legal persons. The choice of terms is, in the view of Mr and Mrs Gregg, a determinant factor from which not only the true meaning of the provisions in question can be deduced [15] but also the particular legal form that must be taken by business activities in order to be exempt from tax. According to the Greggs, the draftsman of Article 13A of the Sixth Directive did not lay down only the activities to be exempted but also the legal form of those entitled to exemption. [16]

20. Mr and Mrs Gregg further cite point 10 of Annex F to the Sixth Directive, in which transactions of hospitals not covered by Article 13A(1)(b) of the Directive are expressly mentioned. The Greggs maintain that one group in the hospital care sector is not covered by tax exemptions; these are activities of that nature which are performed with the aim of making a profit. They base the above interpretation on the actual wording of Article 13A(1)(b) and consider that an undertaking which aims to make a profit cannot, by its nature, be regarded as a body operating 'under social conditions compar-

13 — See Case 235/85 *Commission* v *Netherlands* [1987] ECR 1471, paragraph 19, and Case 348/87 *Stichting Uitvoering Financiële Acties* [1989] ECR 1737, paragraphs 11 and 13.

14 — Subparagraphs (c), (e) and (j) of Article 13A(1) provide for exemptions for doctors, dentists and teachers.

15 — According to the view of Mr and Mrs Gregg, that interpretation is supported by the fact that the Community legislature did not confine itself to using the terms 'body' or 'establishment' under Article 13A(1)(b) of the Directive, but refers to 'bodies other than those governed by public law' in Article 13A(2)(a). The Greggs consider it to be clear that such a 'body' cannot be an operator without legal personality behind which there are one or more legal persons.

16 — They refer, on that point, to paragraph 13 of Case 107/84 *Commission* v *Germany* [1985] ECR 2655, in which the Court stated as follows: '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 authorised to supply the exempted services. It is therefore incorrect to state that the services are defined by reference to purely material or functional criteria.'

able' to those applicable to bodies governed by public law. Consequently Glenview, as a purely profit-making undertaking, should not fall within the scope of Article 13A(1)(b) of the Sixth Directive. [17]

21. The Greggs believe that the above line of reasoning is supported by the judgment in *Bulthuis-Griffioen*, cited above, which expressly states that a trader who is a natural person cannot claim an exemption reserved solely to 'bodies' or 'organisations'. They consider that that solution in the case-law, which was formulated in relation to Article 13A(1)(g), can and must be applied unaltered to interpret subparagraph (b) as well.

22. Lastly, in particular in respect of the exemption set out in Article 13A(1)(g) of the Sixth Directive, Mr and Mrs Gregg on the one hand rely on the conclusion reached in *Bulthuis-Griffioen*, in accordance with which 'bodies' or 'organisations' within the meaning of that provision are solely legal persons, and, on the other hand, point out that their business is not recognised by the law of Northern Ireland as 'charitable'.

(c) Refutation of the above arguments and construction of the material Community provisions

23. I consider that the above line of argument cannot be accepted. As regards the general principle according to which a provision introducing tax exemptions must be interpreted narrowly, a principle which does indeed govern the fiscal system of the Sixth Directive, [18] it is worth, first of all, underlining the fact that its application cannot automatically lead to the exclusion of natural persons from the exceptions of Article 13A(1)(b) and (g) of the Sixth Directive. Restrictive construction of an exception is not an end in itself, nor can it undermine the logic of the system that the rule requiring interpretation is endeavouring to establish. In the present case it is crucial to assess whether the use of the terms 'bodies', 'establishments' and 'organisations' implies that the operator of the activity to be exempted from the tax must have a specific legal status. That, however, is also the legal issue which cannot be avoided solely by reason of the fact that the formulation of the above legal terms was employed to introduce a derogating provision.

24. The argument that exemption from liability to tax is conferred solely on the

17 — Mr and Mrs Gregg also refer to paragraph 32 of Case 353/85 *Commission* v *United Kingdom* [1988] ECR 817. In that case the Community Court held that hospital and medical care and closely related activities were 'services [which encompassed] a whole range of medical care normally provided on a non-profit making basis in establishments pursuing social purposes such as the protection of human health'.

18 — The Court has held that any interpretation which broadens the scope of Article 13A would be incompatible with the objective of that provision (see Case 348/87 *Stichting Uitvoering Financiële Acties*, cited in footnote 13, paragraphs 13 and 14), and that 'Article 13 of the Sixth Directive does not provide exemption for every activity performed in the public interest, but only for those which are listed and described in great detail' (see Case 107/84 *Commission* v *Germany*, cited in footnote 16, paragraph 17, and Case 348/87 *Stichting Uitvoering Financiële Acties*, paragraph 12). It has refused generally to interpret tax exemptions broadly (see Case 107/84 *Commission* v *Germany*, paragraph 20, and point 16 of the Opinion of Advocate General Darmon in Case C-63/92 *Lubbock Fine* [1993] ECR I-6665).
On that point see my Opinion in Case C-149/97 *Motor Industry* [1998] ECR I-7053, point 43 et seq.

exercise of medical, hospital or other related activities which do not systematically aim to make a profit must be rejected, on the grounds that it is based on a misinterpretation of the Community provision in question. As the Commission rightly pointed out, it is not a *conditio sine qua non* that no profit is sought for Article 13A(1) to apply. For that reason, moreover, Article 13A(2)(a) provides that 'Member States *may* make' the granting to bodies other than those covered by public law of the exemption provided for in Article 13A(1)(b) subject to the condition that they shall not 'systematically aim to make a profit'. The same conclusion follows, moreover, from the position taken by the Court in the abovementioned Case 353/85 *Commission* v *United Kingdom*, in which Article 13A(1)(b) of the Sixth Directive was construed. That case concerned services '*normally* provided on a non-profit-making basis'.[19] *A contrario*, tax exemption for profit-making activities in the area of hospital and medical care is therefore conceivable.

25. The argument that exemption under Article 13A(1)(b) of the Sixth Directive is conditional on public benefit and the non-profit-making character of the hospital or medical activity carried on cannot be founded — as the Greggs seek to do — on the passage in that provision to the effect that the activity in question must be exercised 'under social conditions comparable to those applicable to bodies (governed by public law)'. According to the Commission's arguments, that passage was not in the original proposal for the provision but was inserted by the Council, although the precise meaning was unclear; it is not, moreover, a *conditio sine qua non* for an interpretation of the provision in question. Inquiries by the Commission indicated that there were two interpretative approaches to the construction of the phrase in question. A number of Member States — including the United Kingdom — take the view that all recognised health care establishments fulfilled the condition of operating 'under social conditions comparable to those applicable to bodies governed by public law' by definition. Other Member States interpret the condition as requiring hospital establishments seeking tax-exempt status to be linked by contract or other legal relationship to the State system or to admit a specified percentage of socially-assisted patients. In any case, systematically aiming to make a profit cannot, in my view, be regarded as a factor excluding *de jure* a hospital or medical establishment from functioning under 'social conditions comparable' to those applicable to bodies governed by public law.

26. The question remains, however, as to the correct construction of the terms 'body', 'organisation' and 'establishment' employed by the Community legislature in the provisions at issue, Article 13A(1)(b) and (g) of the Sixth Directive, taking into

19 — Paragraph 32 of Case 353/85 *Commission* v *United Kingdom*.

account the position taken by the Court in *Bulthuis-Griffioen*. Properly, as the Governments of the Member States intervening in the present case and the Commission have maintained, it should be considered that the use of the above terms in no way refers to the legal form taken by the operator of the hospital or medical activity and does not in any way preempt the choice of that form. From the general structure of the system of tax exemptions, it appears clear that the reason for those exemptions from tax is the *type* and *conditions* of the supply of the specific activities, factors which do not depend on the legal personality of the operator. That assessment, contrary to Mr and Mrs Gregg's assertion, is not undermined by the position taken by the Court in Case 107/84 *Commission* v *Germany*, cited above. [20] The Community legislature may indeed, in provisions such as those in issue here, not solely define the activity to be exempted but also lay down in mandatory fashion the economic operators permitted to provide the supplies exempted from tax, but it should not be understood from the above that those operators will necessarily have to have legal personality.

27. I consider that in the special regulatory framework in which the terms 'body', 'organisation' and 'establishment' are employed, they refer to the existence of an *autonomous operator*, in the sense of a combination of human and material resources constituting a separate entity through which, in a continuous and stable fashion, primarily medical, hospital or geriatric home activity is carried on. Consequently, it is crucial to examine the operator's structure and constituent parts, not its superficial legal character. In order for there to be a 'body', 'organisation' or 'establishment' within the meaning of Article 13A of the Sixth Directive, it is necessary for there to be an institutional and organisational entity independent of — and at all events distinct from — the nature and activity of the person or persons to whom it belongs. Conversely, an entity which simply reflects the activity of one or several natural persons (for example, doctors) does not constitute a self-sufficient 'establishment', 'body', or 'organisation'. In that case there is not the necessary infrastructure (material and human) to attribute the activity performed by the hospital, medical or geriatric home to that entity and not to the natural person or persons (who own(s) or control(s) it). Consequently, where the operator of the activity described in Article 13A(1)(b) and (g) of the Sixth Directive does not have legal personality, the criterion that there should be a structure which distinguishes it from the natural person or persons who own(s) it or is/are responsible for it then constitutes the vital criterion for assessing whether there is an 'establishment', 'body' or 'organisation' entitled to tax exemption.

28. The Greggs claim that the above interpretative approach creates uncertainty in law and distorts the conditions of free competition inasmuch as, with the interpretation that there can be a 'body', 'organisation' or 'establishment' without

20 — See footnote 16 above.

autonomous legal personality, a subjective and quantitative criterion is introduced into the provision in question. In fact investigation as to the independent existence and autonomous nature of the operator of the exempt activity is a question which admits of a broad interpretative approach, when application of the tax exemption being contingent on that operator having legal personality is clearly a criterion which would give rise to the fewest legal disputes in practice. Nevertheless I consider that tailoring different tax treatment to the personality of the operator of the activity and consequently the alteration of conditions of competition on the sole basis of the legal guise of that activity is to be avoided; it does not fit in with the logic of the tax system as it stands nor is it in keeping with the actual intention of the draftsman of the Sixth Directive.

29. Moreover, in accordance with the general principle of tax neutrality, supplies of the same kind should in principle be taxed in the same way. That principle constitutes the logical basis of value added tax.[21] Where, consequently, an activity is exercised under the essential and institutional conditions provided for in the provisions of Article 13A of the Sixth Directive, it is properly exempt from the corresponding tax charges, regardless of ownership and its outward legal form. Of course the principle of neutrality can in no circumstances constitute the basis for an interpretation *contra legem* of the provisions in question; in other words it is not possible to support an interpretative position according to which the mere activity of a natural person or persons without any other infrastructure would constitute an 'establishment', 'body' or 'organisation' within the meaning of Article 13A(1)(b) and (g) of the Sixth Directive.

30. It is in the light of the above clarifications that the facts of *Bulthuis-Griffioen* should be assessed and the position taken by the Court in that case understood; I believe that the solution reached, at least as far as the final conclusion is concerned, was wholly correct. The applicant in the main proceedings appeared to run a children's nursery but it was not clear whether that nursery was the actual operator of the activity for which tax exemption was sought. In other words, it was not possible to maintain accurately that the activity in question had to be ascribed directly and independently to the nursery and that it was not simply tantamount to the contribution of the services of the applicant as a nursery teacher. Conversely, there was evidence to indicate the essential merging of the nursery with the nursery teacher who ran it; accordingly, the operator of the activities in question was ultimately directly a natural person and not any other entity which fulfilled the characteristics of a 'body' or 'organisation' in the proper sense of Article 13A(1)(g) of the Sixth Directive,

21 — For the principle of fiscal neutrality see, for instance, Case C-317/94 *Gibbs* [1996] ECR I-5339, paragraph 23, and the recent Opinion of Advocate General Fennelly in Case C-134/97 *Victoria Films* [1998] ECR I-7023, point 41.

as interpreted above. Accordingly Ms Bulthuis-Griffioen, as a natural person, could not herself be covered by the terms 'body' or 'organisation' and did not fall within the scope *ratione personae* of that Community provision. If, however, the economic operator of the activity to be exempted had not been the applicant herself but another entity, the solution given would have been different. [22]

31. With regard to the case now before the Court, on the facts as stated it is clear that Glenview Home displays features warranting recognition that it is the economic operator of the activity to be exempted, rather than Mr and Mrs Gregg, who merely own and control it. 25 members of staff are employed and there are 17 rooms, as well as common areas, in which in a stable and independent manner certain hospital, paramedical or old-age care services are provided. Accordingly it constitutes an 'establishment' under Article 13A(1)(b) of the Sixth Directive as well as a 'body' or 'organisation' under (g) of the same provision. [23]

32. However, there is a legal impediment to Glenview's exemption from tax under Article 13A(1)(g) of the Directive, as the national court pointed out in the order for reference, inasmuch as the home is not recognised as 'charitable' under United Kingdom law. I would point out that the need for recognition as charitable by the Member State is a precondition laid down in the Community provision at issue for tax exemption. For its part, the Commission expresses the view that, on the basis of the

22 — From that point of view I abide by the position for which I argued in *Bulthuis-Griffioen*, in particular at points 13 to 15 of my Opinion, in which I stated that 'whenever the provisions of Article 13 lay down that an exempt activity must be performed by an "organisation" the exemption provided for is not applicable when the economic operator is a natural person' (point 13) and that 'a trader who, like the applicant, carries on tax exempt activities as a natural person does not fall within the personal scope of the relevant provision contained in Article 13A(1)(g) of the Sixth Directive inasmuch as such a trader cannot be characterised as "an organisation" within the meaning of the provision in question' (point 15). It is true that in that case the Court added a further factor to the interpretation of the Community provision in question; in paragraph 20 of the judgment it expressly stated that under Article 13A(1)(g) '... the exemption may be claimed *only by legal persons...*'. I have already explained the reasons why I consider that it is not necessary for the status of 'establishment', 'body' or 'organisation' within the meaning of the Sixth Directive to depend on the existence of an autonomous legal personality in the operator of the activity for exemption. I wholly concur with the operative part of the judgment in *Bulthuis-Griffioen* — according to which a trader who is a natural person cannot claim exemption under the relevant provision which expressly reserves the exemption to bodies governed by public law or other organisations recognised as charitable by the Member State concerned — and I do not see any reason why any doubt should be cast upon it.

23 — I emphasised the need to examine only the characteristics of the operator seeking the exemption on the basis of the Sixth Directive and the characteristics of the activity carried on but not the legal form taken by the operator in my recent Opinion in Case C-149/97 *Motor Industry* (14 May 1998) in connection with the interpretation of Article 13A(1)(l) of the Sixth Directive. At point 48 of the Opinion there is an express statement regarding the need to interpret the provision at issue: 'Accordingly, the better interpretation, in my view, of the relevant expression in Article 13 is that it refers to the substantive aims of trade-union activity and accordingly covers those non-profit-making organisations which, *irrespective of their legal form*, pursue such aims'.

other evidence in the file, Glenview should be registered as a charitable old-age home. I do not think, however, that further examination of that issue is expedient inasmuch as, in accordance with the foregoing analysis, I believe that Glenview Home clearly falls within the scope of application of Article 13A(1)(b) of the Sixth Directive.

33. To recapitulate, as regards the Community provisions at issue, I do not concur in a construction to the effect that the simple activity of one or more natural persons falls, without any other condition and without there being an independent economic operator with a separate infrastructure, within the scope of the terms 'body', 'organisation' or 'establishment' (in the sense of Article 13A(1)(b) and (g) of the Sixth Directive), even though it might be necessary from the point of view of the overall system, for reasons of fiscal neutrality. That does not, however, mean that the possibilities available to the court to which it falls to interpret the law for construing the Community provisions at issue are non-existent; the terms 'body', 'organisation' and 'establishment' employed by the legislature do not admit solely of a narrow and formalistic interpretation, in other words they do not correspond to a specific legal form taken by the operator of the hospital, medical or paramedical activity.

V — Conclusion

34. In view of the above, I would suggest that the Court confine itself to answering only the first question referred to it, and reply as follows:

Under the relevant provisions of Community law, an entity which has the necessary material basis and infrastructure to carry on directly and independently an activity in the area of hospital and medical care and is duly recognised under national law should be regarded as an 'establishment' providing hospital and medical care 'under social conditions comparable' to those applicable to bodies governed by public law within the meaning of Article 13A(1)(b) of the Sixth

Directive (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), even if it does not have legal personality but operates as a partnership under the law of Northern Ireland; accordingly, it is exempt from value added tax provided the other conditions laid down by the above provisions of the Sixth Directive are also satisfied.