OPINION OF ADVOCATE GENERAL FENNELLY

delivered on 25 May 2000 [1]

1. In this infringement action, the Commission contests the distinction drawn by the French fiscal authorities between two different forms of cooperation contract involving laboratories carrying out biological analyses of medical samples taken from patients on the instructions of their doctors. In cases where the laboratory providing the sample is obliged by French law to transmit that sample to a more specialised laboratory to have it analysed, the fixed fee that the analysing laboratory is obliged to pay to the forwarding laboratory is subject to VAT. However, where the transmission of the sample arises from a voluntary contractual arrangement, it is exempted from VAT. The Commission considers the distinction to be unjustified. In its view, all such inter-laboratory cooperation arrangements should fall to be considered as exempt from VAT pursuant to Article 13(A)(1)(b) of the Sixth VAT Directive. [2]

I — The legal and factual context

2. Article 13(A)(1)(b) of the Sixth Directive provides:

'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;

1 — Original language: English.

2 — 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 ('the Sixth Directive'), OJ 1977 L 145, p. 1.

(c) the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned ... .'

3. Under Article 261-4-1 of the French Code Général des Impôts (General Tax Code), the analysis of medico-biological samples is exempt from VAT. 1982 ministerial instructions adopted in respect of that provision provide that it is intended to exempt biological examinations designed 'to facilitate the prevention, diagnosis or treatment of human ailments'. [3]

4. Article L. 760(5), as amended, of the French Code de la Santé Publique (Public Health Code, hereinafter 'the CSP') provides that the transmission of samples between laboratories for the purposes of analysis may only occur within the framework of a 'collaboration contract'. Such contracts must provide for the nature and means of the transmission that is to occur. [4] It would appear that around nine laboratories are authorised to carry out such analyses and that they may only charge a reduced fee ('un tarif minoré') to the transmitting laboratory for the service provided. The latter remains, under Article L. 760(8) of the CSP, legally responsible to the patient both for the analysis and for billing the patient.

5. Certain analyses may not form the subject of such collaboration contracts. In this respect, Article L. 759 of the CSP provides that the performance of biological analyses that require certain special qualifications, which necessitate the use of products that are particularly dangerous or which employ techniques that are exceptionally delicate or novel, are reserved to specialised laboratories or persons. The list of laboratories thus authorised is fixed by the Minister for Health.

6. Nevertheless, to ensure countrywide coverage, patients requiring specialised analyses are permitted to go to a laboratory or nurse of their choice to have a sample taken for the purpose of having such an analysis carried out. The sample-taking laboratory (or nurse) must then arrange to transmit the sample to a specialised laboratory for analysis. In the case of samples taken by nurses, it would appear that they are usually first lodged with pharmacies or chemists before being sent on to a specialist laboratory. [5] Compulsory collaboration contracts in respect of such analyses shall hereinafter be referred to as fixed-amount contracts.

3 — See the Instruction of 6 April 1982, *Bulletin Officiel de la Direction Générale des Impôts* 3 A-7-82 (hereinafter 'Instruction 3 A-7-82').

4 — The amendment permitting the conclusion of collaboration contracts was seemingly first introduced in 1993 by Article 44-IV of Law No 93-121 of 27 January 1993, which was then further amended by Article 36 of Law No 94-43 of 18 January 1994.

5 — The present case has focused exclusively on laboratories as sample-takers. Since the identity of the person taking the sample would not appear to have any relevance for Community VAT-law purposes, I shall, for convenience, focus hereinafter on the VAT treatment of inter-laboratory arrangements.

7. Article 36 of Law No 94-43 of 18 January 1994, which amends the final paragraph of Article L. 760 of the CSP, provides that a laboratory carrying out reserved special analyses under such fixed-amount contracts must pay the laboratory which took the sample a fixed amount ('un indemnité forfaitaire') for the transmission of the sample. The level of this fee is determined by ministerial order. The (specialised) analysing laboratory bills the patient directly for the analysis carried out on the sample submitted by the transmitting laboratory. This service is not subject to VAT. In so far as the sample-taking laboratory bills the patient for the service of taking the sample, it is also not subject to VAT. However, in accordance with Instruction 3 A-7-82, VAT is due in the case of fixed-amount contracts on the transmission expenses ('honoraires de transmission') payable by the analysing laboratory to the transmitting laboratory. In other words, VAT is payable on the fixed fee paid by the analysing laboratory to the sample-taking laboratory.

II — Background

8. Following a complaint, the Commission wrote to the French authorities on 25 January 1996 seeking an explanation of the basis upon which the fee payable in respect of fixed-amount contracts was subject to VAT. [6] The French authorities replied by citing, *inter alia*, a French Conseil d'État (Council of State) judgment in which the amounts payable in respect of the transmission of samples regarding fixed-amount contracts were described as payments for 'a business-support service' ('un service d'apport d'affaires'). [7]

9. The Commission, considering that to subject the fixed fees payable in fixed-amount contracts to VAT amounted to an infringement of Article 13(A)(1)(b) of the Sixth Directive, sent, on 7 July 1997, a letter of formal notice to France. [8]

10. The Commission decided to send a reasoned opinion to France on 5 March 1998, in which it maintained the view explained in the letter of formal notice that the distinction drawn by the French authorities was artificial, since it effectively amounted to distinction based on the means of remunerating the sample-taking laboratory. [9] Thus, in the case of collaboration contracts, the sample-taking laboratory was remunerated through the discount fee charged by the analysing laboratory because it passed on the full fee to patients, while in fixed-amount contracts its remuneration was derived from the fee paid to it by the analysing laboratory. It noted that the amounts payable were fixed publicly and that, according to the information which it had received from the sector in question, the levels of payment which had been fixed were not excessive. France was consequently requested to take the mea-

6 — DG XXI/01 D(97) 00692.

7 — See its judgment in *Syndicat Nationale des Médicins Biologistes*, No 46.088 of 30 April 1986.

8 — SG(97) D/5213.

9 — SG(98) D/1921.

sures necessary to comply with its obligations under the Sixth Directive within two months.

11. France replied by letter on 28 May 1998. In its view the Commission's complaint was unfounded; while the cooperation which occurs in the context of a collaboration contract could be classified as a classic form of subcontracting, the forwarding of samples in the context of fixed-amount contracts amounted to a form of business-support service to the analysing laboratory that was autonomous from the analysis service provided by the latter to the patient. It referred, *inter alia*, to *Skatteministeriet* v *Henriksen* [10] and *Commission* v *United Kingdom* [11] to support its view that two separate operations were involved in fixed-amount contracts.

12. The Commission, not sharing this view, brought its present application to the Court on 3 March 1999. It asks that the Court:

— declare that, by levying VAT on fixed allowances for the taking of medical samples for medical analysis, the French Republic has failed to fulfil its obligations under Article 13(A)(1)(b) of Council Directive 77/388/EEC of 17 May 1977 (the Sixth VAT Directive);

— order the French Republic to pay the costs.

III — Observations

13. The Commission argues that the notion of 'closely related activities' in the context of 'hospital and medical care' under Article 13(A)(1)(b) of the Sixth Directive includes the dispatch of a sample by the laboratory which has taken it to another laboratory for analysis, since the objective of taking the sample is that it can be analysed. No distinction should be drawn in respect of the fixed-amount contracts; sending the sample to the laboratory permitted to analyse it is ancillary and closely linked to, if not an integral part of, the biomedical analysis of that sample by the latter and falls to be considered as constituting an activity 'closely related' to 'medical care'. The Commission disputes the reliance placed by France, in reply to the reasoned opinion, on the *Henriksen* and *Corrective Spectacles* case-law. [12] The latter does not support the proposition that the persons carrying out the various operations supposedly 'closely related' to 'medical care' must be identical.

14. While taking no view on French law's reservation of the execution of certain

10 — Case 173/88 [1989] ECR 2763 (hereinafter '*Henriksen*').

11 — Case 353/85 [1988] ECR 817 (hereinafter '*Corrective Spectacles*').

12 — Loc. cit., footnotes 10 and 11 above.

analyses to specified laboratories, the Commission recalls that, although Member States may prescribe the conditions governing the availability of an exemption under Article 13(A)(1)(b) of the Sixth Directive, the determination of the substantive content of the matters covered by the exemption is a matter of Community law. In its view, the distinction at issue violates the principle of neutrality, [13] which, along with the principle of uniformity, [14] requires that the scope both of the liability to and of exemptions from VAT be interpreted as objectively as possible. As there is no tenable economic distinction between the two categories of cooperation contract, in the Commission's opinion the different structure of those contracts which is necessitated by the CSP does not justify the distinction made between them for VAT purposes.

15. France bases its defence primarily on the well-established principle that the scope of exemptions from liability to VAT is to be construed narrowly. [15] As regards collaboration contracts, the fees agreed between the transmitting and analysing laboratories are calculated so as to permit the former to make a profit. The responsibility for the analysis, however, remains with that laboratory which bills the patient and whose director signs the report of the analysis. France concludes from this that in collaboration contracts both laboratories may be regarded as involved in carrying out the bio-medical analysis of the sample and, accordingly, that the exemption properly applies. This is not true of fixed-amount contracts, where the analysing laboratory bills the patient and pays a fixed fee to the transmitting laboratory designed to cover the latter's costs. [16] France submits that that fee is designed to remunerate the contribution of the sample-taking laboratory to the turnover of the analysing laboratory and may not, therefore, be classified as 'closely related' to the actual analysis of the sample for VAT purposes.

16. France contends that a series of transactions may only be classified as a single transaction for VAT purposes if the transactions in question are legally indistinct [17] and effected between the same persons. [18] Although it is easier to demonstrate the distinctiveness of two wholly different transactions, such as the supply of goods and services in *Corrective Spectacles*, that does not mean, in its view, that two services which are economically, materially and

13 — Reliance is placed on the Opinion of Advocate General Cosmas in Case C-216/97 *Jennifer Gregg and Mervyn Gregg* v *Commissioners of Customs & Excise* [1999] ECR I-4947 (hereinafter '*Gregg*'), paragraph 29, where he stated that '[w]here ... an activity is exercised under the essential and institutional conditions provided for in the provisions of Article 13(A) of the Sixth Directive, it is properly exempt from the corresponding tax charges, regardless of ownership and its ostensible legal form'.

14 — The Commission cites paragraph 9 of the judgment in Case 203/87 *Commission* v *Italy* [1989] ECR 371.

15 — It cites, in particular, Case C-2/95 *SDC* v *Skatteministeriet* [1997] ECR I-3017 (hereinafter '*SDC*') and, as regards Article 13(A)(1)(b), Case 348/87 *Stichting Uitvoering Financiële Acries* v *Staatssecretaris van Financiën* [1989] ECR 1737 (hereinafter '*SUFA*'), paragraph 13.

16 — The costs to which France refers are those involved in preparing the sample for transportation and in forwarding it, as well as the general administrative expenses thereby incurred.

17 — France refers to Case 73/85 *Kerrutt* v *Finanzamt Mönchengladbach-Mitte* [1986] ECR I-2219 (hereinafter '*Kerrutt*'), paragraph 15, *Corrective Spectacles*, paragraph 33, paragraphs 58 and 59 of the Opinion of Advocate General Darmon in Case C-63/92 *Lubbock Fine* v *Commissioners of Customs & Excise* [1993] ECR I-6665 and paragraph 43 of my own Opinion in Case C-48/97 *Kuwait Petroleum (GB)* v *Commissioners of Customs & Excise* [1999] ECR I-2323.

18 — It refers to *Henriksen*, paragraphs 15 and 16.

legally dissociable or distinct may be classified as one.

17. Regarding the identity of parties, France observes that in *Henriksen* the lessor and lessee, respectively, of the apartment and the parking space were the same. In the present case, however, while collaboration contracts only involve the patient and the sample-taking laboratory as parties, separate relationships exist in fixed-amount contracts between, respectively, the patient and the analysing laboratory, on the one hand, and the two laboratories on the other. Moreover, *SDC* requires that, for an activity to fall within the scope of the derogation, it must possess the specific and essential function of the exempt activity, which, in its view, is not so here. [19]

18. In its reply, the Commission disputes the relevance of the fact that responsibility for the analysis in the special contracts lies with the analysing laboratory. Referring to *Card Protection Plan*, the Commission insists that the crucial factor, from the patient's perspective, is that the transmission of the sample does not constitute an end in itself but, rather, an essential step in the carrying out of an analysis. [20] It cautions against drawing analogies for the purpose of one exemption from other exemptions and insists on the need primarily for a case-by-case approach. *SDC* supports its view that it is important to look to the essence of the service provided, in this case the analysis. The forwarding of the sample constitutes a necessary technical support operation. [21]

19. In its rejoinder, France, referring to *CPP*, submits that, as in this case in respect of the forwarding of samples in fixed-amount contracts, where separate prices are paid for particular operations they should be presumed to be separate. [22] Moreover, to accept the Commission's analysis would mean that any activity whose purpose ultimately permitted or facilitated the execution of an exempt activity would fall within the scope of that exemption.

IV — Analysis

20. The dispute in the present case turns largely on the scope of the principle that VAT exemptions should be narrowly interpreted. It is agreed between the parties that the medical analysis of blood or other bodily fluids taken from patients is exempt under the heading of 'closely related activities' to 'hospital and medical care' under Article 13(A)(1)(b) of the Sixth Directive. It

19 — Loc. cit., footnote 15 above, paragraph 65.

20 — Case C-349/96 *Card Protection Plan* v *Commissioners of Customs & Excise* [1999] ECR I-973 (hereinafter '*CPP*').

21 — The Commission refers in particular to paragraph 66.

22 — It refers to paragraph 31.

is also agreed that the activity of taking samples is also exempt. They disagree on the precise basis for the latter exemption. The Commission submits that the taking of the sample should be regarded as an activity that is 'closely related' to medical care, whereas the agent for France submitted at the hearing that it was exempt 'as an act of medical care' ('en tant qu'acte médicale'). This difference of view is, however, immaterial in the present case as 'the provision of medical care in the exercise of the medical and paramedical professions...' is exempt under Article 13(A)(1)(c). The core issue, therefore, is whether, having regard to the need to interpret exemptions narrowly, the structural and legal differences between collaboration and fixed-amount contracts justify the view adopted by the French authorities that the act of transmitting the sample in the latter may be regarded as a distinct act and thus subject to VAT.

21. In my opinion, while the principle of strict interpretation is an important principle when considering the scope application of VAT exemptions, it is far from being the only relevant principle. Thus, in *CPP*, the Court observed that 'the exemptions provided for by Article 13 of the Sixth Directive constitute independent concepts of Community law whose purpose is to avoid divergences in the application of the VAT system from one Member State to another'. [23] In *Bulthuis-Griffioen* v *Inspecteur der Omzetbelasting*, it stated that the exemptions 'have their own independent meaning in Community law' and that the same 'must also be true of the specific conditions laid down for these exemptions to apply and in particular of those concerning the status or identity of the economic agent performing the services covered by the exemption'. [24] More recently, in *Gregg*, the Court, although concerned with the personal scope of the references to 'other duly recognised establishments of a similar nature' and to 'other organisations recognised as charitable' in Articles 13(A)(1)(b) and (g), refused to adopt a narrow construction which would exclude from the scope of the relevant exemptions two natural persons running a business in the form of an unincorporated partnership. [25]

22. In my Opinion in *CPP*, I had occasion to note that a particularly narrow interpretation will not be given to the terms of an exemption which has been unambiguously laid down. [26] This may be illustrated by the *Muys'* [27] and *SDC* cases, which turned on the scope of some of the exemptions contained in Article 13(B)(d), which, broadly speaking, concerns credit transactions. The Court held, notwith-

23 — Loc. cit., footnote 20 above, paragraph 15; see also *SUFA*, op. cit., footnote 15 above, paragraph 11.

24 — Case C-453/93 [1995] ECR I-2341, paragraph 18.

25 — Op. cit., footnote 13 above, paragraphs 15 and 16 in particular.

26 — Paragraph 24.

27 — Case C-281/91 *Muys' en De Winter's Bouw-en Aannemingsbedrijf Staatssecretaris van Financiën* [1993] ECR I-5405 (hereinafter '*Muys*").

standing the strict-interpretation principle, that '... in the absence of any specification of the identity of the lender or the borrower, the expression "the granting and negotiation of credit" is in principle sufficiently broad to include credit granted by a supplier of goods in the form of deferral of payment'.[28] As I observed in my Opinion in *CPP*, the Court 'rejected in *Muys'* the Commission's argument that the provision was limited to loans and credits granted by financial institutions', while in *SDC* it 'emphasised the importance of "the type of transaction effected" (paragraph 31) and, referring to *Muys'*, rejected the contention that the benefit of the exemptions contained in points 3 and 5 of Article 13(B)(d) was limited to banks or financial institutions or otherwise dependent upon the specific legal form of the service supplier (paragraphs 34 and 35)'.[29]

23. The notion of 'closely related activities' in the context of 'hospital and medical care' does not, on its face, call for an especially narrow interpretation. It is clear that the underlying intention is to ensure that the benefits flowing from hospital and medical care are not hindered by the increased costs of providing such care that would follow if it, or closely related activities, were subject to VAT.[30] I consider, therefore, that all activities which are directly and intimately related to the provision of 'hospital and medical care' should, regardless of their form, be regarded as covered by the exemption.

24. Turning to the facts of this case, I am unconvinced by the general plea advanced by the agent for France at the hearing that the transmission of medical samples could never in itself be regarded as exempt. I agree with the Commission that it is appropriate to have regard to the purpose for which samples are taken. They are ordered by doctors who are either providing 'medical care' in the exercise of their profession for the purpose of Article 13(A)(1)(c) of the Sixth Directive or providing 'hospital and medical care' for the purpose of Article 13(A)(1)(b). Where a medical practitioner suspects that a patient may be suffering from a specific illness but wishes to confirm his provisional diagnosis by ordering an analysis, the taking of the sample, which is a central and prerequisite step for the carrying out of the required analysis, should, on any normal literal reading of the notion of 'closely related activities', be viewed as sufficiently closely linked to the provision of the hospital or medical care being provided by that doctor. Even if the analysis were not requested by a medically qualified doctor but by some other duly authorised health-care worker, the classification of the activity of transmitting the sample taken should not be different. If, on the other hand, as in *D* v *W*, the purpose for which the analysis is requested is unrelated to the prevention,

28 — *Muys'*, paragraph 13.

29 — Paragraph 24.

30 — See the similar view of the purpose of the exception expressed by Advocate General Saggio in his Opinion of 27 January 2000 in Case C-384/98 *D* v *W* [2000] ECR I-6295, I-6792, paragraph 16.

diagnosis or treatment of a suspected or diagnosed disease or illness, I do not think the exemption should apply. [31]

25. France argues that the view taken by its fiscal authorities to the effect that the transmission of samples in fixed-amount contracts may be regarded as a business-support service for the analysing laboratory, because the sample-taking laboratory effectively generates business for the latter, precludes it from being classified for VAT purposes as merely ancillary to or an integral part of the carrying out of the analysis itself. In support of this view, France extrapolates two criteria from the case-law of the Court; to wit that the parties to the transactions that are supposed to constitute a single whole be the same and that those transactions not be legally and economically distinct.

26. The reliance placed by France on, in particular, the *Kerrutt*, *Henriksen* and *CPP* case-law is, to my mind, misconceived. In *Kerrutt* the Court had to consider whether the supplies of goods and services for the construction of a building by one undertaking, together with the supply of the relevant land by a separate undertaking, could be viewed as a single supply for the purposes of the transitional exemption of supplies of buildings and land under Article 28(3)(b) and point 16 of Annex F to the Sixth Directive. Not surprisingly, the Court held that 'transactions [that are] legally separate from the land transaction which was completed with another contractor, cannot be regarded as forming, together with that transaction, a unity capable of being classified as a single "supply of buildings and the land on which they stand"'. [32] In the present context, however, unlike the multifarious services involved in the construction of a building, there is essentially a single service in the medical analysis of a sample. The fact that, for public health reasons, the CSP renders the analysing laboratory responsible to the patient for the analysis cannot suffice to justify viewing the forwarding of the sample to that laboratory by a different laboratory as a separate transaction.

27. Nor does *Henriksen* underpin France's assessment. In that case, the Court had to consider whether the letting of garages could escape liability to VAT on the basis that it fell, for the purposes of Article 13(B)(b) of the Sixth Directive, outside the exception in respect of 'the letting of premises and sites for parking vehicles' to the exemption of 'the leasing or letting of immovable property...', because those lettings were connected with the letting of various nearby houses. The Court applied

31 — I agree with the view expressed by Advocate General Saggio in his Opinion in *D* v *W*, ibid., footnote 30 above, paragraphs 16 and 17, that the need strictly to interpret Article 13(A)(1)(c) of the Sixth Directive would preclude the notion of 'the provision of medical care' being construed as extending to the genetic analyses provided by a medical expert to a court for the purposes of assisting the latter to establish paternity.

32 — Paragraph 15.

the *accessorium sequitur principale* principle and held that, where 'the letting of premises and sites for parking vehicles ... is closely linked to the letting of immovable property ... so that the two lettings constitute a single economic transaction', the letting of those sites is exempt.[33] The condition enunciated by the Court was that the two transactions must be closely linked so that they may be regarded as a unity. The fact that it proceeded to hold, on the facts of *Henriksen*, that this condition was satisfied, *inter alia*, because 'both properties are let to the tenant by the same landlord', does not mean that the parties to the transactions at issue must always be the same.[34] I agree with the Commission that the identity of the parties should merely be viewed as an indication that the link between the transactions may be sufficiently close to justify their treatment as a single supply.

28. In *CPP*, which concerned whether the various services supplied in the context of a plan designed to offer holders of credit cards, on payment of a certain sum, protection against financial loss and inconvenience resulting from, *inter alia,* the loss or theft of their cards could benefit from the insurance exemption set out in Article 13(B)(a) of the Sixth Directive, the Court referred to 'the appropriate criteria for deciding, for VAT purposes, whether a transaction which comprises several elements is to be regarded as a single supply or as two or more distinct supplies to be assessed separately'. It held that 'having regard to the diversity of commercial operations, it [was] not possible to give exhaustive guidance on how to approach the problem correctly in all cases'.[35] It explained that 'where the transaction in question comprises a bundle of features and acts, regard must first be had to all the circumstances in which that transaction takes place'.[36] This is relevant for the present case, which concerns the notion of 'closely related' services, because, under Article 13(B)(a), the exemption of 'insurance and reinsurance transactions' includes 'related services...'.

29. To my mind, it follows clearly from the approach adopted in *CPP* that it is the nature and purpose of a transaction viewed from the consumer's perspective that is critical.[37] This approach is equally applicable in the present case. The patient, usually through his medical adviser, requests that a sample be taken and analysed. He is indifferent as to whether the sample-taking laboratory also carries out the analysis, subcontracts it to another laboratory but remains wholly responsible to him for the analysis, or, because of the type of analysis at issue, is obliged to transmit the sample for analysis to a specialised laboratory. The mere fact that the latter assumes clinical responsibility for the analysis and that the patient will, in those cases, receive two bills, one from it

33 — Paragraph 15.
34 — Paragraph 16.
35 — Paragraphs 26 and 27.
36 — Paragraph 28.
37 — See, in particular, paragraph 29.

and one from the sample-taking laboratory, does not suffice to unbundle the nature of the overall single sample-analysis service provided to the patient.

30. I am therefore satisfied that the sample-taking and transmission services may be regarded as 'ancillary services' which should 'share the tax treatment of the principal service', to wit that of the bio-medical analysis. They therefore satisfy the condition of being 'closely related' to 'medical care' for the purpose of Article 13(A)(1)(b) of the Sixth Directive. The Court stated in *CPP* that '[A] service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied'. [38] The sterile taking of uncontaminated samples and their secure shipment to the analysing laboratory clearly constitute two fundamental and integral steps in the conduct of a proper analysis, which is the principal public interest service at issue.

31. While the Court recognised in *CPP* that the charging of a single price, though not decisive, 'may suggest that there is a single service', this does not justify, in the present case, the *a contrario* argument employed by France, namely that the mere fact that the patient receives two bills in fixed-amount contracts justifies the discrete fiscal treatment of such contracts. [39] It is noteworthy, as regards the dual billing in the case of fixed-amount contracts, that it has not been suggested that the overall amount of the two bills would generally exceed that of the single bill received where a collaboration contract was concluded between the laboratories. More generally, I would regard France's reliance on *CPP* in particular to be somewhat misconceived. In both collaboration and fixed-amount contracts there is no bundle of services akin to those considered in *CPP* which the Commission claims should be treated identically for VAT. On the contrary, the Commission's application is based on the simple observation that the taking and forwarding of secure samples are fundamental and integral steps in the process of providing a medical analysis service. The role of the sample-taking laboratory is not comparable, as France submits, to that of an agent who introduces business to the analysing laboratory. The mere fact that under the CSP the sample-taking laboratory is not permitted to carry out certain analyses but must forward samples in those cases to a specialist laboratory does not diminish the medical-care-related nature of its work.

32. France also contends that to accept that the forwarding of a sample constituted a

38 — Paragraph 30. The Court referred to Joined Cases C-308/96 and C-94/97 *Commissioners of Customs and Excise* v *Madgett and Baldwin* [1998] ECR I-6229, paragraph 24.

39 — Paragraph 31.

necessary and sufficiently close link in the chain leading to the actual carrying out of the analysis would potentially mean that all the goods supplied to the sample-taking or analysing laboratories, which are later used by them for the purpose of their laboratory work, would also be covered by the exemption. [40] I do not accept this 'floodgates' form of argument. I agree with the Commission that the general principle that exceptions from liability to VAT be interpreted narrowly would preclude such a broad construction of the exemption. Goods supplied to the laboratories by third parties who take no direct part in the various steps involved in the taking and carrying out of a bio-medical analysis of a sample would not therefore fall to be considered within its scope. As the Court pointed out in respect of Article 13(A)(1)(c) of the Sixth Directive in *Corrective Spectacles*, 'apart from minor provisions of goods which are strictly necessary at the time when the care is provided, the supply of medicines and other goods, such as corrective spectacles prescribed by a doctor or by other authorised persons, is physically and economically dissociable from the provision of the service'. [41]

33. Finally, in a VAT case, where the public health distinction made by the CSP between the two types of collaboration contract is not in issue, it is also important to consider the economic fundamentals underlying the supposed difference in nature of the two types of contract at issue. In other words, for the fiscal distinction drawn by the French fiscal authorities to be justified, it should be founded upon a plausible economic distinction. France maintains that there is such a distinction between the fee which the analysing laboratory must pay to the sample-taking laboratory in a fixed-amount contract and the discounted-fee system operating in respect of collaboration contracts, whereby the analysing laboratory charges a reduced fee to the sample-taking laboratory which then includes the full analysis fee on the bill it later charges to the patient. This distinction, if it exists at all, amounts in effect to one that is without a difference. As the Commission's agent pointed out at the hearing, for economic purposes the two methods of payment are identical. In the case of fixed-amount contracts, the patient receives a bill from the sample-taking laboratory which will only include a charge for the taking of the sample. The Court was explicitly informed at the hearing by the agent for France that the analysing laboratory is precluded from passing on the financial burden of the fee paid by it to the sample-taking laboratory in the separate bill that it later presents to the patient for the analysis. Thus, the patient will apparently pay that laboratory fully for the analysis only. [42] Contrariwise, in collaboration contracts, the bill received from the sample-taking laboratory by the patient will include both a full analysis fee and a fee for the taking of the sample. Nevertheless, the purpose in the fixed-amount contract and the collaboration contract of,

40 — France poses the rhetorical question whether the purchase of test paper (a reactive) would not have to be considered exempt given that it is no less indispensable for carrying out analyses than the transmission of samples.

41 — Paragraph 33.

42 — The Court has not been told who, if anyone, compensates the analysing laboratory for the fee paid to the sample-taking laboratory. It would seem likely, however, that the shortfall is made up by the public authorities as otherwise the specialised laboratories would all probably be run at a loss which could not continue indefinitely.

respectively, the fixed amount and the discounted fee is indistinguishable, to wit to remunerate the sample-taking laboratory for the role it plays in the analysis process. There is consequently no economic rationale for differentiating between them.

34. I am therefore satisfied that no meaningful distinction, for VAT purposes, may be based on the different structure of fixed-amount and collaboration contracts. The fact that in fixed-amount contracts the forwarding of the sample to the analysing laboratory is compulsory and the latter is placed directly in a relationship with the patient, by being made legally responsible for the analysis and for billing him (at least for that part of the overall analysis procedure which comprises the actual medico-biological analysis), does not justify the view taken by the French fiscal authorities that the transmission of samples in such contracts may be regarded as a discrete transaction for VAT purposes, with the result that the fixed amount payable therefor may be subject to VAT. The order sought by the Commission should therefore be granted.

V — Conclusion

35. Accordingly, I recommend that the Court:

(1) Declare that, by levying VAT on fixed allowances for the taking of medical samples for medical analysis, the French Republic has failed to fulfil its obligations under Article 13(A)(1)(b) of 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;

(2) Order the French Republic to pay the costs.