JUDGMENT OF THE COURT (Fifth Chamber)

20 November 2003 *

In Case C-8/01,

REFERENCE to the Court under Article 234 EC by the Østre Landsret (Denmark) for a preliminary ruling in the proceedings pending before that court between

Assurandør-Societetet, acting on behalf of **Taksatorringen**,

and

Skatteministeriet,

on the interpretation of Article 13A(1)(f) and 13B(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1),

* Language of the case: Danish.

THE COURT (Fifth Chamber),

composed of: P. Jann, acting for the President of the Fifth Chamber, A. La Pergola and S. von Bahr (Rapporteur), Judges,

Advocate General: J. Mischo,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Assurandør-Societetet, acting on behalf of Taksatorringen, by M. Svanholm and R. Philip, advokater,

— the Danish Government, by J. Molde, acting as Agent, assisted by K. Lundgaard Hansen, advokat,

— the United Kingdom Government, by G. Amodeo, acting as Agent, assisted by A. Robertson, Barrister,

— the Commission of the European Communities, by R. Lyal and N.B. Rasmussen, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Assurandør-Societetet, acting on behalf of Taksatorringen, represented by M. Svanholm and R. Philip, of the Danish Government, represented by K. Lundgaard Hansen, and of the Commission, represented by R. Lyal and T. Fich, acting as Agent, at the hearing on 27 June 2002,

after hearing the Opinion of the Advocate General at the sitting on 3 October 2002,

gives the following

Judgment

1 By order of 20 December 2000, received at the Court on 10 January 2001, the Østre Landsret (Eastern Regional Court) referred to the Court for a preliminary ruling under Article 234 EC five questions on the interpretation of Article 13A(1)(f) and 13B(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) ('the Sixth Directive').

2 Those questions have arisen in a dispute between Assurandør-Societetet (association of insurance companies), acting on behalf of Taksatorringen ('Taksatorringen'), and Skatteministeriet (the Danish Ministry of Fiscal Affairs) concerning the latter's refusal to grant exemption from value added tax ('VAT') for the activities of Taksatorringen.

Legal framework

Community legislation

3 Article 13A(1)(f) of the Sixth Directive provides as follows:

'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:...

(f) services supplied by independent groups of persons whose activities are exempt from or are not subject to value added tax, for the purpose of rendering their members the services directly necessary for the exercise of their activity, where these groups merely claim from their members exact reimbursement of their share of the joint expenses, provided that such exemption is not likely to produce distortion of competition'.

4 Article 13B(a) 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 the exemptions and of preventing any possible evasion, avoidance or abuse:

(a) insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents'.

5 Article 2(1) of Council Directive 77/92/EEC of 13 December 1976 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of the activities of insurance agents and brokers (ex ISIC Group 630) and, in particular, transitional measures in respect of those activities (OJ 1977 L 26, p. 14) provides as follows:

'This Directive shall apply to the following activities falling within ex ISIC Group 630 in Annex III to the General Programme for the abolition of restrictions on freedom of establishment:

(a) professional activities of persons who, acting with complete freedom as to their choice of undertaking, bring together, with a view to the insurance or reinsurance of risks, persons seeking insurance or reinsurance and insurance or reinsurance undertakings, carry out work preparatory to the conclusion of contracts of insurance or reinsurance and, where appropriate, assist in the administration and performance of such contracts, in particular in the event of a claim;

(b) professional activities of persons instructed under one or more contracts or empowered to act in the name and on behalf of, or solely on behalf of, one or more insurance undertakings in introducing, proposing and carrying out work preparatory to the conclusion of, or in concluding, contracts of insurance, or in assisting in the administration and performance of such contracts, in particular in the event of a claim;

(c) activities of persons other than those referred to in (a) and (b) who, acting on behalf of such persons, among other things carry out introductory work, introduce insurance contracts or collect premiums, provided that no insurance commitments towards or on the part of the public are given as part of these operations.'

National legislation

6 Article 13A(1)(f) and 13B(a) of the Sixth Directive was transposed in Danish law by Paragraph 13(1).10 and 20 of the Momslov (Law on value added tax). Under those provisions, the following are exempt from VAT:

'10. Insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents.

...

20. Services supplied by independent groups of persons who carry on activities which are exempt from or not subject to value added tax, for the purpose of providing their members with the services directly required for the exercise of their activity. This is subject to the condition that the payment made by individual members for these services corresponds exactly to each member's share of the joint expenses and that the exemption from tax liability cannot give rise to distortions of competition.'

The dispute in the main proceedings and the questions submitted for preliminary ruling

7 According to the order for reference, Taksatorringen is an association whose members are small or medium-sized insurance companies authorised to underwrite motor-vehicle insurance policies in Denmark. The association has approximately 35 members.

8 The purpose of Taksatorringen is to assess damage to motor vehicles in Denmark on behalf of its members. The latter are required to use the services provided by Taksatorringen in respect of damage to motor vehicles incurred within Denmark.

9 The expenses involved in Taksatorringen's activity are apportioned among the members in such a way that the payments made by each member for the services provided by the association correspond exactly to that member's share of the joint expenses.

10 Members may withdraw from Taksatorringen by giving six months' notice.

11 In the case where a policy holder's vehicle has been damaged and is to be repaired at the expense of a company affiliated to Taksatorringen, the policy holder draws up a declaration of damage, which he hands over, together with the damaged vehicle, to the car-repair workshop of his choice. The workshop examines the damaged vehicle and, on conclusion of its examination, requests that the vehicle be inspected by an assessor ('the expert') from one of Taksatorringen's local assessment centres.

12 The expert estimates the damage to the vehicle after consultation with the workshop. He compiles a detailed report containing a description of the work to be carried out and information on the total expenses involved in repairing the damage. The repair work must be carried out under the conditions laid down in the expert's report. Should the workshop become aware, while carrying out the repair work, of discrepancies between the information contained in the expert's report and the actual damage, it must contact the expert in order to establish exact agreement on any amendments to be made to the assessment.

13 If the costs involved in repairing the damage to the vehicle are below DKK 20 000 (approximately EUR 2 700), the insurance company pays the amount calculated in the expert report directly to the workshop immediately after the date of completion of the work. The expert report functions as an invoice for the work in question. Should the repair costs exceed DKK 20 000, the workshop draws up an invoice, which must be approved by the expert before the insurance company makes payment to the workshop.

14 In the case of a 'total write-off', that is to say, damage involving repair costs in excess of 75% of the commercial value of the vehicle, the expert agrees with the policy holder on an amount in compensation corresponding to the value of a new purchase. The expert then draws up a compensation report, on the basis of which the insurance company pays compensation to the policy holder. Once the expert has invited tenders for the vehicle wreck, arranged for its disposal and forwarded the proceeds of the sale to the insurance company, the matter is then concluded so far as Taksatorringen is concerned.

15 The experts employed by Taksatorringen use a computerised system, known as 'Autotaks', for the purpose of damage assessment. This system has been used in Denmark since 1990 by all insurance companies that underwrite car insurance policies. Although Danish motor vehicle workshops have no right of consultation in respect of the Autotaks system, all of them have, through agreements concluded with the insurance companies, accepted the use of that system.

16 The Autotaks system is based on an international computerised system owned by a Swiss company which issues licences to users. In the case of Denmark, the rights of user in respect of the system belong to Forsikring & Pension, a sector-based association covering, *inter alia*, insurance companies, which took over activities relating to the Autotaks system from Automobilforsikringsselskabernes Fællesråd (joint council of motor vehicle insurance companies) when the latter relinquished its activities on 1 January 1999.

17 The Østre Landsret states that there is nothing to prevent an insurance company which is a member of Forsikring & Pension from engaging an independent subcontractor to carry out assessments and from authorising that subcontractor to use the Autotaks system for that purpose, in return, where appropriate, for payment of a fee to Forsikring & Pension.

18 The order for reference further states that Taksatorringen originally received, in December 1992, from the Told- og Skattestyrelse (Customs and Tax Authority), provisional authorisation to conduct its activities without being subject to prior registration for VAT purposes. Following complaints by several undertakings, this provisional authorisation was revoked on 30 September 1993. The Østre Landsret does, however, point out that it has transpired that the complainant undertakings did not carry out vehicle assessments and did not specifically plan to offer such a service.

19 Taksatorringen thereupon reapplied for VAT exemption, but its application was turned down by the Told- og Skatteregion Hvidovre (Hvidovre regional customs and tax authority) (Denmark). That refusal was confirmed by the Told- og Skattestyrelse, following which Taksatorringen brought the matter before the Momsnævn (VAT Tribunal).

20 Before the Momsnævn, Taksatorringen argued that its activity ought to be exempt from VAT on foot of Paragraph 13(1).20 of the Momslov.

21 By decision of 4 April 1997 the Momsnævn upheld the refusal by the Told- og Skattestyrelse. It took the view, inter alia, that an exemption could give rise to distortions of competition inasmuch as the assessments carried out by Taksatorringen were not in principle distinguishable from other assessments and the services which it provided could, by virtue of their nature, be offered by other, independent experts. Even if it were accepted that an exemption would not, under the conditions then obtaining, result in distortion of competition, that would be attributable, not to the nature of the services provided by Taksatorringen, but rather to the fact that the affiliated undertakings debarred themselves, pursuant to Taksatorringen's constituent articles, from engaging in such competition.

22 Taksatorringen has challenged the decision of the Momsnævn before the Østre Landsret.

23 The Østre Landsret points out that, in support of its action, Taksatorringen contends essentially that services such as those which it provides come within the exemption for insurance activities under Article 13B(a) of the Sixth Directive, or, in the alternative, that they should be exempted as being services provided as part of an insurance transaction performed by an insurance broker or insurance agent pursuant to that provision. Moreover, according to Taksatorringen, an under-

taking which meets the other conditions set out in Article 13A(1)(f) of the Sixth Directive cannot be refused VAT exemption if such exemption does not give rise to an actual distortion of competition or involve a genuine threat of such distortion.

24 According to the Østre Landsret, the parties are in agreement that, at the time when VAT exemption was refused to Taksatorringen, there was no actual or specific danger that an exemption would have given rise to a distortion of competition.

25 It was in those circumstances that the Østre Landsret decided to stay the proceedings and to refer the following five questions to the Court for a preliminary ruling:

'1. Must the provisions of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, and in particular the provision in Article 13B(a) thereof, be interpreted as meaning that assessment services which an undertaking provides for its members are to be regarded as being covered by the term "insurance transactions", within the meaning of that provision, or by the term "related services performed by insurance brokers and insurance agents"?

2. Must Article 13A(1)(f) of the Sixth VAT Directive be interpreted as meaning that exemption from VAT must be granted for services of the type which an undertaking — which otherwise meets the conditions set out in that provision for VAT exemption — provides for its members, in the case where it cannot be demonstrated that the exemption will produce actual or imminent distortion of competition but where there is merely a possibility that this might happen?

3. Does the issue of how remote the possibility of a distortion of competition may be assumed to be, or whether the possibility seems unrealistic, have any bearing on the answer to Question 2?

4. Would it be incompatible with Article 13A(1)(f) of the Sixth VAT Directive to proceed on the basis that under national law it is possible to make a tax exemption that is notified pursuant to that provision limited in time in cases where there is doubt as to whether the exemption might at a later stage distort competition?

5. Does the fact that assessment services are, so far as the largest insurance companies are concerned, provided by assessors employed by those insurance companies themselves and are thus exempt from VAT have any bearing on the answers to Questions 1 and 2?'

The first question

26 By this question, the Østre Landsret is in essence asking whether or not Article 13B(a) of the Sixth Directive is to be construed as meaning that motor vehicle damage assessments carried out, on behalf of its members, by an association whose members are insurance companies are insurance transactions or related services performed by insurance brokers or insurance agents.

Observations submitted to the Court

27 So far as the interpretation of the term 'insurance transactions' is concerned, Taksatorringen contends that it follows from paragraph 17 of the judgment in Case C-349/96 *Card Protection Plan* [1999] ECR I-973 that this term does not cover solely the risk that a given event may occur but also extends to payment of a premium to the insured party in the event that the risk insured against materialises. As assessment of the damage constitutes a necessary stage in the fixing of the compensation payable to the insured party, it ought to be treated as a necessary and inseparable step in the exercise of insurance activities and thus as coming within the concept of 'insurance transactions' under Article 13B(a) of the Sixth Directive.

28 Furthermore, the assessment of damage may be carried out both by an organisation such as Taksatorringen and by the insurance company itself without that having any significance as regards the tax exemption (see, in regard to financial institutions, Case C-2/95 *SDC* [1997] ECR I-3017).

29 With regard to the concept of 'insurance brokers and insurance agents', Taksatorringen submits that reference may be made to Directive 77/92. According to Article 2(1)(b) of that directive, an 'insurance agent or broker' performs an activity which constitutes, inter alia, 'assisting' in the administration and performance of insurance contracts, in particular in the event of a claim, in the name of or on behalf of one or more insurance companies. Taksatorringen argues that the activity in which it engages comes within that definition and that it should for that reason be regarded as an insurance agent or broker for the purposes of that provision.

30 Skatteministeriet and the United Kingdom Government take the view that *Card Protection Plan*, cited above, and Case C-240/99 *Skandia* [2001] ECR I-1951 establish that assessment services such as those which Taksatorringen provides for its members cannot be treated as 'insurance transactions' within the meaning given to that term in Article 13B(a) of the Sixth Directive.

31 They argue that an insurance transaction necessarily implies the existence of a contractual relationship between the provider of the insurance service and the person whose risks are covered by the insurance, that is to say, the insured party (see *Skandia*, cited above, paragraph 41). No such contractual relationship exists between Taksatorringen and the insured parties inasmuch as Taksatorringen does not undertake any commitment with regard to the risk covered.

32 With regard to the concept of 'related services [that is to say, services related to insurance transactions] performed by insurance brokers and insurance agents', Skatteministeriet submits that this covers services which are provided, as part of their everyday activity, by persons acting as intermediaries between the insurer and the insured party during the preparation and signing of insurance contracts and who may participate in the administration and performance of such contracts in the event of a claim. The specialised assessment activities of Taksatorringen, it submits, amount to no more than the provision of a subcontracting service on behalf of its members.

33 The United Kingdom Government submits that the activities performed by Taksatorringen do not correspond to those of an insurance broker or insurance agent, within the meaning of Directive 77/92, the characteristic feature of which is that they give rise to a direct relationship with the insured parties.

34 The Commission argues that it follows from paragraphs 16 and 17 of *Card Protection Plan* that an 'insurance transaction' consists in the assumption by the insurer of a risk which would otherwise be borne by the insured party. A service consisting in the assessment of damage does not involve assumption of responsibility for a risk but constitutes a separate service necessary for the exercise of the insurance activity.

35 In regard to the concept of 'related services performed by insurance brokers and insurance agents', the Commission submits that an undertaking such as Taksatorringen is neither an 'insurance broker' nor an 'insurance agent' and that its activity is also not covered by the definition in Article 2 of Directive 77/92.

Findings of the Court

36 It should be noted at the outset that the terms used to specify the exemptions provided for by Article 13 of the Sixth Directive must be interpreted strictly, since they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person (see, in particular, Case 348/87 *Stichting Uitvoering Financiële Acties* [1989] ECR 1737, paragraph 13, and Case C-287/00 *Commission* v *Germany* [2002] ECR I-5811, paragraph 43).

37 It is settled case-law that those exemptions 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 (see, in particular, *Card Protection Plan*, paragraph 15, *Skandia*, paragraph 23, and *Commission* v *Germany*, cited above, paragraph 44).

38 The Sixth Directive does not define either of the terms 'insurance transactions' or 'related services performed by insurance brokers and insurance agents'.

39 So far as the term 'insurance transactions' is concerned, the Court has, however, ruled that the essentials of an insurance transaction are, as generally understood, that the insurer undertakes, in return for prior payment of a premium, to provide the insured, in the event of materialisation of the risk covered, with the service agreed when the contract was concluded (*Card Protection Plan*, paragraph 17, and *Skandia*, paragraph 37).

40 The Court has, admittedly, stated that the expression 'insurance transactions' did not cover solely transactions carried out by the insurers themselves but was broad enough in principle to include the provision of insurance cover by a taxable person who was not himself an insurer but, in the context of a block policy, procured such cover for his customers by making use of the supplies of an insurer who assumed the risk insured (*Card Protection Plan*, paragraph 22, and *Skandia*, paragraph 38).

41 In paragraph 41 of *Skandia*, however, the Court held that, according to the definition of insurance transactions set out in paragraph 39 of the present judgment, it appears that the identity of the person supplied with the service is relevant for purposes of the definition of the type of services covered by Article 13B(a) of the Sixth Directive and that an insurance transaction necessarily implies the existence of a contractual relationship between the provider of the insurance service and the person whose risks are covered by the insurance, that is to say, the insured party.

42 The unavoidable conclusion is that an association, such as Taksatorringen, whose members are insurance companies and which carries out assessments of damage to motor vehicles on behalf of its members does not have any contractual relationship with the insured parties.

43 So far as concerns Taksatorringen's argument based on an interpretation by analogy of the judgment in *SDC*, cited above, which involved financial bodies, suffice it to recall that, in contrast to the case which gave rise to the judgment in *SDC*, in which the Court had to interpret Article 13B(d) of the Sixth Directive, points 3 and 5 of which refer in a general way to transactions 'concerning' or relating to certain banking operations, rather than solely to banking operations proper, the exemption provided for in Article 13B(a) of the Sixth Directive covers insurance transactions in the strict sense (see *Skandia*, paragraph 36).

44 As to whether such services are 'related services performed by insurance brokers and insurance agents', it must be stated, as the Advocate General has set out in point 86 of his Opinion, that this expression refers only to services provided by professionals who have a relationship with both the insurer and the insured party, it being stressed that the broker is no more than an intermediary.

45 With regard to Directive 77/92, without its being necessary to rule on whether the terms 'broker' and 'insurance agent' must necessarily be construed in the same manner in Directive 77/92 as they are in the Sixth Directive, suffice it to note that, for the reasons stated by the Advocate General in points 90 and 91 of his Opinion, the activity of an association such as Taksatorringen fails to satisfy the conditions of Article 2(1)(a) or 2(1)(b) of Directive 77/92. The assistance in the administration and performance of contracts of insurance referred to in Article 2(1)(a) of that directive is in addition to the activities involved in introducing persons seeking insurance and the insurance companies and in preparing and concluding insurance contracts and that referred to in Article 2(1)(b) of that directive involves the power to render the insurer liable in respect of an insured person who has incurred a loss.

46 The answer to the first question submitted must therefore be that Article 13B(a) of the Sixth Directive must be construed as meaning that motor vehicle damage assessments carried out, on behalf of its members, by an association whose members are insurance companies are neither insurance transactions nor services related to insurance transactions that are performed by insurance brokers or insurance agents within the meaning of that provision.

The second and third questions

47 By these two questions, which it is appropriate to examine together, the Østre Landsret is asking in substance whether Article 13A(1)(f) of the Sixth Directive is to be interpreted as meaning that the grant under that provision of VAT exemption to an association such as that in issue in the main proceedings, which satisfies all of the other conditions of that provision, must be refused if there is a risk, even a notional risk, that such an exemption may give rise to distortions of competition.

Observations submitted to the Court

48 Taksatorringen submits that the argument that, when Article 13A(1)(f) of the Sixth Directive is being applied, account must be taken of the distortion of competition to which an exemption from VAT might give rise in the future has the effect of depriving that provision of its purpose given that the purely hypothetical possibility can never be excluded that there may one day be a distortion of competition, irrespective of whether a damage assessment activity or any other form of activity is involved. That, it argues, could not have been the intention of the Community legislature. A refusal to exempt must be subject to a real and well-founded probability which can be shown to exist only if it is established that the exemption will give rise to an actual or specific risk that competition may be distorted.

49 Skatteministeriet argues that the exemption under Article 13A(1)(f) of the Sixth Directive must be refused where it is liable, actually or potentially, to give rise to distortions of competition. It suffices if such an exemption involves a potential risk that independent third parties may refrain from establishing themselves on the market to provide the services in question.

50 In the case in the main proceedings, it is manifestly advantageous, for purely economic reasons, to remain a member of Taksatorringen and to have the assessments in question carried out by that association rather than entrusting that task to an independent third party so long as the services which Taksatorringen provides for its members are exempt by reason of provisional authorisations granted by the Danish fiscal authorities. Those authorisations thus have the effect of preventing actual competition on the Danish market for damage assessment reports on motor vehicles and at the same time of dissuading independent third parties from seriously contemplating establishment on that market.

51 Although restrictive, this interpretation of Article 13A(1)(f) of the Sixth Directive would not, it submits, render the provision meaningless inasmuch as there are always situations in which an exemption would not be regarded as potentially preventing independent third parties from becoming established on the market in question.

52 In this regard, Skatteministeriet refers to, inter alia, the situation in which, pursuant to national legislation, specific restrictions exist on the possibility of becoming established on the market, for example because that legislation confers on certain undertakings, in compliance with Community law, special or exclusive rights to provide the services which the Member State concerned wishes to exempt pursuant to Article 13A(1)(f) of the Sixth Directive.

53 Skatteministeriet points out that, once it has been confirmed that there is a potential risk that exemption under Article 13A(1)(f) of the Sixth Directive may give rise to distortions of competition, it is not for the national fiscal authorities to consider whether such a distortion of competition is to be treated as being distant. It is particularly difficult for the national fiscal authorities to carry out such an appraisal as it presupposes an in-depth knowledge of the branch of activity concerned and of the conditions of competition on the market in question, knowledge which fiscal authorities do not in general possess.

54 The Commission submits that it already follows from the words 'likely to produce distortion of competition' that the exemption provided for in Article 13A(1)(f) of the Sixth Directive is excluded from the outset in situations where there is a potential distortion of competition.

55 Furthermore, the provisions that allow a transaction to be removed from the scope of the Sixth Directive must, by reason of their derogating nature, be construed narrowly (with regard to Article 13A(1)(f) of the Sixth Directive, see *Stichting Uitvoering Financiële Acties*, cited above).

56 The final clause in Article 13A(1)(f) of the Sixth Directive thus restricts the scope of that provision to those cases alone in which there is no doubt that an exemption will not, actually or potentially, give rise to a distortion of competition. Independent providers of certain services are thus placed in the same tax situation as are independent groups of persons engaged in an exempted activity.

57 Under that interpretation, there is no distortion of competition within the meaning of Article 13A(1)(f) of the Sixth Directive in the case where the type of investment — for example, a scanner for medical purposes — and the limited

group of 'customers' who will use it are such as are liable to dissuade potential providers by reason of the economic risk of that activity, even though there may potentially be an additional provider. By contrast, an exemption for cleaning services would be liable to distort competition as there is no particular specialisation or limitation of the clientele to a clearly defined sector.

Findings of the Court

58 It is necessary at the outset to state that it is the VAT exemption in itself which must not be liable to give rise to distortions of competition on a market in which competition will in any event be affected by the presence of an operator which provides services for its members and which is prohibited from seeking profits. It is thus the fact that the provision of services by a group is exempt, and not the fact that this group satisfies the other conditions of the provision in question, which must be liable to give rise to distortions of competition in order that this exemption may be refused.

59 As the Advocate General has stressed in point 131 of his Opinion, if, irrespective of any taxation or exemption, the groups are assured of keeping their members' custom, there is no reason to take the view that it is the exemption granted them that closes the market to independent operators.

60 Moreover, it must be borne in mind that the aim of Article 13A of the Sixth Directive is to exempt from VAT certain activities which are in the public interest. That provision does not, however, provide exemption from the application of VAT for every activity performed in the public interest, but only for those activities which are listed and described in great detail in it (see, in particular, Case C-149/97 *Institute of the Motor Industry* [1998] ECR I-7053, paragraph 18, and *Commission* v *Germany*, cited above, paragraph 45).

61 It is, admittedly, true that it follows from the case-law cited in paragraph 36 of the present judgment that the terms used to designate the exemptions referred to in Article 13 of the Sixth Directive must be construed strictly.

62 It is, however, also no less true that it is not the purpose of that case-law to impose an interpretation which would make the exemptions set out in that provision more or less inapplicable in practice.

63 Consequently, although a comparative examination of the different language versions of Article 13A(1)(f) of the Sixth Directive shows that the expression 'provided that such exemption is not likely to produce distortion of competition' is not directed solely at distortions of competition which the exemption is likely to produce immediately but also at those to which it may give rise in the future, the risk that the exemption will by itself give rise to distortions of competition must none the less be real.

64 It follows that the grant of VAT exemption must be refused if there is a genuine risk that the exemption may by itself, immediately or in the future, give rise to distortions of competition.

65 The answer to the second and third questions must therefore be that Article 13A(1)(f) of the Sixth Directive must be construed as meaning that the grant of VAT exemption under that provision to an association such as that in issue in the main proceedings and which satisfies all of the other conditions of

that provision must be refused if there is a genuine risk that the exemption may by itself, immediately or in the future, give rise to distortions of competition.

The fourth question

Observations submitted to the Court

66 Taksatorringen and Skatteministeriet submit that it is clear from the preparatory documents relating to Paragraph 13(1).20 of the Momslov that, where doubt exists as to whether an exemption is liable to give rise subsequently to a distortion of competition, the exemption may be granted subject to a limitation in time.

67 Taksatorringen, Skatteministeriet and the Commission are in agreement that the possibility of granting such a temporary exemption is compatible with Article 13A(1)(f) of the Sixth Directive.

Findings of the Court

68 There is nothing in the Sixth Directive to justify the conclusion that national legislation which allows a temporary exemption to be granted where doubt exists as to whether that exemption is liable at a later date to give rise to distortions of competition is incompatible with Article 13A(1)(f) of the Sixth Directive, provided that the exemption is renewed only for as long as the person concerned satisfies the conditions of that provision.

69 The answer to the fourth question must therefore be that national legislation which allows a temporary exemption to be granted where doubt exists as to whether that exemption, such as that in the case in the main proceedings, is liable at a later date to give rise to distortions of competition is compatible with Article 13A(1)(f) of the Sixth Directive, provided that the exemption is renewed only for as long as the person concerned satisfies the conditions of that provision.

The fifth question

70 By this question, the Østre Landsret is essentially asking whether the fact that large insurance companies have the assessments of damage to motor vehicles carried out by their own experts, thereby avoiding liability to VAT, may have a bearing on the answers to be given to the first three questions.

Observations submitted to the Court

71 Taksatorringen contends that, from the point of view of VAT, there ought to be no difference according to whether the assessment of damage caused to motor vehicles is carried out within the insurance company or whether the company entrusts a service provider such as Taksatorringen with that task.

72 Taksatorringen points out in this regard that the large insurance companies in Denmark themselves carry out the assessment of damage to motor vehicles, whereas this is not financially possible for small and medium-sized undertakings in view of the resources involved. If the latter undertakings were required to pay VAT for the assessment services provided by Taksatorringen, the large insurance companies would enjoy a competitive advantage in view of the fact that they do not have to pay VAT on their assessments.

73 In the opinion of Skatteministeriet and the Commission, the fact that VAT does not apply to assessments carried out by the experts employed by large insurance companies has no bearing on the interpretation of the provisions here in issue.

Findings of the Court

74 It should be noted in this regard that, in its analysis for the purpose of replying to the first three questions, the Court took account of all aspects of the provision in question and the VAT system in its totality. It follows that the fact that large insurance companies have the assessments of damage to motor vehicles carried out by their own experts, thereby avoiding VAT liability in respect of the provision of such services, cannot have any independent bearing on the interpretation of the provisions of Article 13A(1)(f) and 13B(a) of the Sixth Directive.

75 The answer to the fifth question must therefore be that the fact that large insurance companies have the assessments of damage to motor vehicles carried out by their own experts, thereby avoiding VAT liability in respect of the provision of such services, is not such as to have any bearing on the answers to be given to the first three questions.

Costs

76 The costs incurred by the Danish and United Kingdom Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Østre Landsret by order of 20 December 2000, hereby rules:

1. **Article 13B(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover**

taxes — Common system of value added tax: uniform basis of assessment must be construed as meaning that motor vehicle damage assessments carried out, on behalf of its members, by an association whose members are insurance companies are neither insurance transactions nor services related to insurance transactions that are performed by insurance brokers or insurance agents within the meaning of that provision.

2. Article 13A(1)(f) of Sixth Council Directive 77/388 must be construed as meaning that the grant of exemption from value added tax under that provision to an association such as that in issue in the main proceedings and which satisfies all of the other conditions of that provision must be refused if there is a genuine risk that the exemption may by itself, immediately or in the future, give rise to distortions of competition.

3. National legislation which allows a temporary exemption to be granted where doubt exists as to whether that exemption, such as that in the case in the main proceedings, is liable at a later date to give rise to distortions of competition is compatible with Article 13A(1)(f) of Sixth Directive 77/388, provided that the exemption is renewed only for as long as the person concerned satisfies the conditions of that provision.

4. The fact that large insurance companies have the assessments of damage to motor vehicles carried out by their own experts, thereby avoiding liability for value added tax in respect of the provision of such services, is not such as to have any bearing on the answers to be given to the first three questions.

Jann La Pergola von Bahr

Delivered in open court in Luxembourg on 20 November 2003.

R. Grass

Registrar

V. Skouris

President