OPINION OF ADVOCATE GENERAL KOKOTT

delivered on 15 December 2005 [1]

I — Introduction

1. In these two joined cases, the Hoge Raad der Nederlanden (Netherlands Supreme Court) asks the Court for an interpretation 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 ('the Sixth Directive') [2] in relation to the exemption from tax of medical care provided by persons carrying on paramedical professions.

2. Case C-443/04 is concerned with the assessment of specific alternative methods of diagnosis and treatment, known as 'disturbance field diagnostics'. Mr Solleveld, who provided those services, is a State-recognised physiotherapist. However, the tax authority did not consider disturbance field diagnostics to be a service exempt from turnover tax, since it is not one of the activities envisaged in the definition of the profession of physiotherapist.

3. Ms van den Hout-van Eijnsbergen, the appellant in the main proceedings in Case C-444/04, is recognised as a psychotherapist under the legislation governing that profession and, furthermore, provides services typically offered within that profession. The Netherlands provisions on the exemption of medical services from VAT covered services provided by psychologists and psychiatrists, but not those provided by psychotherapists. The tax authority therefore took the view that the activities carried on by Ms van den Hout-van Eijnsbergen were taxable.

4. The circumstances in those cases have prompted the Hoge Raad to ask the Court for an interpretation of the relevant head of exemption contained in Article 13A(1)(c) of the Sixth Directive. First and foremost, it is necessary to clarify the extent of the discre-

1 — Original language: German.

2 — OJ 1977 L 145, p. 1.

tion which Member States have to recognise professions as paramedical within the meaning of that provision and to define the activities carried on in the exercise of a recognised profession.

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

...'

II — Relevant legislation

A — *Sixth Directive*

5. Article 13A(1) of the Sixth Directive, in extract, reads:

'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 — *National law*

6. Article 11(1)(g) of the Wet op de omzetbelasting (Netherlands Law on turnover tax) of 1968 (in the version applicable from 1 December 1997) provides that the following are exempt from turnover tax: 'services provided by persons carrying on an occupation in respect of which rules have been laid down by or pursuant to the Wet op de beroepen in de individuele gezondheidszorg (Netherlands Law on the different categories of health-care professionals) ("the Wet BIG")'.

7. Article 3 of the Wet BIG provides for the establishment of a register in which the members of medical professions, inter alia physiotherapists and psychotherapists, are to be entered provided they satisfy the relevant requirements.

8. The version of the Law on turnover tax relevant to Case C-444/04 is that which was in force prior to 1997. At that time, the following were exempt from turnover tax under Article 11(1)(g): 'services provided by doctors (other than veterinary surgeons), psychologists, speech therapists, healthcare assistants and midwives; services provided by members of a paramedical profession in respect of which rules have been laid down under the Wet op de paramedische beroepen (Netherlands Law on the paramedical professions)'. [3] Psychotherapists were not included in that list of professions even though they had been included in the relevant professional register in accordance with the Besluit inzake Registratie van Psychotherapeuten (Netherlands Decree on the registration of psychotherapists). [4]

9. With a view to providing a more detailed definition of physiotherapy treatments, Article 29 of the Wet BIG makes reference to the Besluit opleidingseisen en deskundigheidsgebeid fysiotherapeuten (Netherlands Decree on the training requirements and area of expertise of physiotherapists). [5] Article 5(1) of that decree states that one of the tasks of a physiotherapist is to examine patients for disturbances to the locomotor system and to treat such disturbances using physiotherapy techniques. Under Article 5(2), such techniques include treatment through exercise, massage and physical stimulation (with the exception of exposure to ionising rays).

III — Facts, procedure and questions referred

A — *Case C-444/04 (van den Hout-van Eijnsbergen)*

10. Ms van den Hout-van Eijnsbergen is a self-employed psychotherapist and is entered as such in the relevant professional register. In the period from 1992 to 1995, she did not pay turnover tax on the psychotherapy services provided by her because she took the view that those services were exempt from turnover tax.

11. However, the tax authority considered those services to be taxable and sent Ms van den Hout-van Eijnsbergen a notice of additional assessment to turnover tax for the period in question in the amount of NLG 65 402. Her action against that notice having been unsuccessful at first instance, Ms van den Hout-van Eijnsbergen brought an appeal

3 — Stb. 1963, p. 113.
4 — Staatscourant 1986, p. 149.
5 — Stb. 1997, p. 516.

on a point of law before the Hoge Raad. By order of 15 October 2004, that court referred the following question to the Court for a preliminary ruling under Article 234 EC:

'Must Article 13A(1)(c) of the Sixth Directive be construed as meaning that psychotherapy treatments provided by a person carrying on a profession who satisfies the statutory requirements for registration ..., and is entered in the Register of Psychotherapists, are exempt from VAT, even where those interventions cannot be subsumed within the exercise, by the person carrying out those interventions, of a medical or paramedical profession as defined by the Member State concerned?'

B — *Case C-443/04 (Solleveld)*

12. Mr Solleveld is a physiotherapist and is entered as such in the register provided for in the Wet BIG. He examines the patients who come to him, who present a wide variety of physical and mental complaints, for 'focal point and disturbance field activities', paying particular attention to disturbances in the jaw and mouth. Those disturbances are investigated by means of X-rays, mouth-flow measurements and electrodermal and intra-oral tests. The basic premiss is that the teeth play an important role in illnesses affecting all parts of the body.

13. If, during the course of the examination, disturbance fields are found to exist, Mr Solleveld either treats the patient himself or refers him/her to a dentist or maxillary surgeon. The treatment administered by Mr Solleveld to his patients mainly involves soft laser applications, the prescription of homeopathic preparations and manual therapy. In addition to his activities in the area of disturbance field diagnostics, he also worked as a 'traditional' physiotherapist in the years at issue.

14. Some 40% of Mr Solleveld's patients are referred to him by doctors or dentists. Most health insurance policies reimburse the costs of treatment in the area of disturbance field diagnostics, at least where additional cover has been taken out for so-called alternative methods of treatment.

15. The Koninklijk Nederlands Genootschap voor Fysiotherapie (Royal Netherlands Association for Physiotherapy) takes the view that disturbance field diagnostics falls outside the area of activity of a physiotherapist as defined in the Besluit opleidingseisen en deskundigheidsgebeid fysiotherapeuten. The

competent health authority concurred with that assessment.

16. Following Mr Solleveld's non-payment of VAT on the ground that he considered his activity to be exempt from tax, the tax authority issued several additional notices of assessment to turnover tax amounting in total to almost NLG 64 000 for the period from 1994 to 2000. The court ruling at first instance upheld the view taken by the tax authority that the tax exemption under Article 11(1)(g) of the Wet op de omzetbelasting did not apply.

17. By order of 15 October 2004, the Hoge Raad, to which the appeal on a point of law against that decision had been made, referred the following question to the Court for a preliminary ruling under Article 234 EC:

'Must Article 13A(1)(c) of the Sixth Directive be construed as meaning that exemption from VAT is conferred in respect of interventions comprising the establishment of a diagnosis, the provision of therapeutic advice and possible provision of treatment, in the framework of [disturbance field diagnostics] even where those interventions cannot be subsumed within the exercise, by the person carrying out those interventions, of a medical or paramedical profession as defined by the Member State concerned?'

IV — Legal assessment

A — *Preliminary remark*

18. Under Article 13A(1)(c) of the Sixth Directive, the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned is exempt from VAT.

19. As the Commission rightly pointed out at the hearing, it is undisputed in the main proceedings in both cases that the persons concerned each provide medical care. That fact is not called into question even in the case of Mr Solleveld, notwithstanding that disturbance field diagnostics constitutes a method of treatment alternative to traditional medicine. An interpretation of the term 'care' — which undoubtedly has its own meaning in Community law — is therefore not required in these cases. The doubts as to interpretation relate solely to the phrase 'in the exercise of the medical and paramedical professions as defined by the Member State concerned'.

20. The tax exemptions provided for in Article 13 of the Sixth Directive have their own independent meaning in Community law and must therefore be given a Community definition. [6]

21. More specifically, the Court has held in settled case-law that, under the introductory sentence of Article 13A(1) of the Sixth Directive, the Member States are to lay down the conditions for exemptions in order to ensure the correct and straightforward application of the exemptions and to prevent any possible evasion, avoidance or abuse, but that those conditions cannot affect the definition of the subject-matter of the exemptions envisaged. [7] The specific conditions concerning the status or identity of the economic agent performing the services covered by the exemption required a Community definition. [8]

22. However, those findings of the Court apply only in so far as the directive shapes independent concepts of Community law and not in so far as it refers, exceptionally, to definitions given by Member States. [9] It follows from the unambiguous wording of Article 13A(1)(c) that the Member States are to define the medical and paramedical professions to which the tax exemption applies. [10]

23. However, even in such cases, the effect of the directive in approximating the laws of the Member States is not completely lost. In exercising the power to define individual terms within the directive, the Member States must observe the objectives of the

6 — Judgments in Case C-275/01 *Sinclair Collis* [2003] ECR I-5965, paragraph 22, Case C-284/03 *Temco Europe* [2004] ECR I-11237, paragraph 16, and Case C-498/03 *Kingscrest and Montecello* [2005] ECR I-4427, paragraph 22. See also in this regard the judgment in Case C-141/00 *Kügler* [2002] ECR I-6833, paragraph 25.

7 — Judgment in *Kingscrest and Montecello*, cited in footnote 6, paragraph 24, with reference to the judgment in Case C-287/00 *Commission* v *Germany* [2002] ECR I-5811, paragraph 50; see also the judgment in Case C-468/93 *Gemeente Emmen* [1996] ECR I-1721, paragraph 19.

8 — Judgment in *Kingscrest and Montecello*, cited in footnote 6, paragraph 22 et seq., with reference to the judgment in Case C-453/93 *Bulthuis-Griffioen* [1995] ECR I-2341, paragraph 18.

9 — Judgment in *Gemeente Emmen*, cited in footnote 7, paragraph 25; see also my Opinion in Case C-169/04 *Abbey National*, pending before the Court, point 36, regarding Article 13B(d)(6) of the Sixth Directive (management of special investment funds as defined by Member States).

10 — Common requirements relating to professional qualifications in a number of medical professions (e.g. doctors, dentists, midwives and nurses) have been laid down in directives in order to ensure the mutual recognition of those qualifications (see recently, in particular, Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ 2005 L 255, p. 22) which replaces a number of specialised directives). Member States are bound by those requirements in the exercise of their discretion. However, in so far as it is possible to ascertain, there is as yet no secondary legislation governing psychotherapists and physiotherapists. It is only in some Member States that the profession of physiotherapist is regarded as a profession with a specially structured course of training (see Article 11(c)(ii) in conjunction with subparagraph (i) of Annex II to Directive 2005/36).

directive and the general principles of Community law. [11]

24. As long as a Member State observes the limits of that discretion, an individual cannot rely directly on the directive in order to secure rights from the Member State. [12] The key question in the main proceedings in both cases is whether the limits of the discretion which Article 13A(1)(c) of the Sixth Directive confers on the Member States in relation to the definition of paramedical professions have been observed.

25. In order to answer the question referred in Case C-444/04 (van den Hout-van Eijnsbergen), it is necessary to clarify, in this regard, which requirements the Member States must satisfy when determining the professional groups which are to benefit from the exemption. In Case C-443/04 (Solleveld), the question is whether, when defining the professions, the Member States may also restrict the activities recognised as services provided in the exercise of a profession which are exempt from VAT.

11 — With regard to the objectives of the directive, see the judgment in *Gemeente Emmen*, cited in footnote 7, paragraph 25; with regard to the general legal principles, see the judgment in *Kügler*, cited in footnote 6, paragraphs 55 et seq., and Case C-45/01 *Dornier* [2003] ECR I-12911, paragraph 69. For greater detail in this regard, see point 37 et seq. below.

12 — Judgments in *Kügler*, cited in footnote 6, paragraph 55, and *Dornier*, cited in footnote 11, paragraph 69).

B — *Case C-444/04 (van den Hout-van Eijnsbergen)*

1. Arguments of the parties

26. The Commission takes the view that a Member State defines a paramedical profession by adopting provisions, aimed at the protection of public health, which reserve the respective professional title for persons with specific qualifications. Such a definition is also binding on the Member States for the purposes of exemption from VAT. If entry in the Netherlands register of professional psychotherapists carried with it the exclusive right to use the relevant title, the services provided by Ms van den Hout-van Eijnsbergen would be exempt from VAT.

27. The appellant herself considers it to be discriminatory that psychologists and psychiatrists who provide psychotherapeutic services are not subject to VAT, whereas formally-trained psychotherapists were required to pay VAT until 1997.

28. By contrast, the Netherlands Government submits that the national legislation

satisfied the requirement to interpret the heads of exemption provided for in Article 13A(1) of the Sixth Directive restrictively and to make them subject to objective conditions which are easy to apply. It was not until after psychotherapeutic treatments had acquired greater significance in society that it became appropriate to exempt such services from VAT. The principle of fiscal neutrality is likewise not infringed, since all psychotherapists were treated in the same way in this regard.

2. Assessment

(a) Discretion of the Member States to define paramedical professions

29. Article 13A(1)(c) of the Sixth Directive confers on the Member States the discretion to define paramedical professions. In that connection, it is also left to the Member State to choose the legislative means by which to make use of that discretion.

30. As is clear from the introductory sentence to subparagraph 1 of the aforementioned provision, the implementing provisions must, inter alia, make possible the straightforward application of the heads of exemption. A Member State best serves that objective if, in the national provisions on VAT, it lists the professions which it regards as paramedical and the activities falling within those professions which are therefore exempt from VAT. Alternatively, the VAT rules may make reference to the legislation defining the professions in question.

31. It is true that express tax rules cannot be compulsorily required. [13] However, in order to determine which professions are regarded as paramedical professions in the Member State concerned for the purposes of exemption from VAT, other provisions may be relied on only where such tax rules do not exist.

32. The Commission, on the other hand, would like account to be taken also — irrespective of the national VAT rules — of other provisions governing professions related to health care. Treatment for VAT purposes, it submits, follows almost automatically from such provisions without there being any need for the Member State to have a separate discretion with regard to classification for VAT purposes.

13 — With regard to recognition as establishments within the meaning of Article 13A(1)(b) of the Sixth Directive, see the judgment in *Dornier*, cited in footnote 11, paragraph 67.

33. I do not share that view taken by the Commission. Article 13A(1)(c) of the Sixth Directive presupposes that a Member State has defined a particular profession *as a paramedical* profession. The Netherlands legislature has adopted legislation governing the profession of psychotherapist, but has not classified it as a paramedical profession. It is not mentioned in either the VAT legislation or the Wet op de paramedische beroepen to which the Wet op de omzetbelasting refers.

34. The mere fact that, for reasons of the protection of public health, a professional title may be held only by persons with certain qualifications has no bearing on whether a profession is to be regarded as paramedical. It would be contrary to the requirement of legal clarity expressed in the introductory sentence of Article 13A(1) of the Sixth Directive to conclude from the rules governing the register of psychotherapists that that profession is to be treated as a paramedical profession for VAT purposes.

(b) Limits of the discretion

35. The discretion which the Member States have to define paramedical professions for the purposes of VAT legislation is not limitless. The limits ensure in particular that a Member State does not arbitrarily differentiate between paramedical professions exempt from VAT and those liable to VAT.

36. In this case, it is necessary to examine whether the Netherlands went beyond the limits of that discretion by not recognising the profession of psychotherapist as a paramedical profession and by not exempting from VAT the activities falling within that profession. That examination requires a detailed analysis of the factual and legal situation in the Netherlands in the period before 1997 and is therefore, in principle, a matter for the referring court. [14] However, the Court can give some guidance on which factors must be taken into account in this regard.

37. In exercising the discretion afforded to it, the Member State must observe the objectives of the directive and the general

14 — See the judgments in *Kügler*, cited in footnote 6, paragraph 56, and *Dornier*, cited in footnote 11, paragraph 69. In *Dornier*, the Court even concluded itself that the Member State concerned had exceeded its discretion under Article 13A(1)(b) of the Sixth Directive to recognise an establishment which must be regarded as a public hospital (paragraph 70 of the judgment).

legal principles, in particular the principles of equal treatment and fiscal neutrality. [15]

38. It is the settled case-law of the Court that the tax exemptions provided for in Article 13 of the Sixth Directive are to be interpreted restrictively since they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person. [16] In the case of the provision of medical care, however, account must also be taken of the social purpose of tax exemptions. Such services must remain affordable for everyone and not be made more expensive by VAT. [17]

39. The national legislature must not therefore cast the net of paramedical professions benefiting from the tax exemption too widely and may include only professional groups whose members are qualified to provide the relevant medical services. As the Commission and the Netherlands Government rightly point out, the general interest lies exclusively in exempting from tax care provided by qualified personnel.

40. It follows from the principle of equal treatment that members of different professional groups must be treated in the same way for tax purposes in so far as they are similarly qualified to perform certain activities. Furthermore, the principle of fiscal neutrality, which, ultimately, is simply a more specific expression of the general principle of equal treatment, precludes economic operators carrying on the same activities from being treated differently for tax purposes. [18]

41. In this case, the referring court must therefore examine whether a psychotherapist within the meaning of the Besluit inzake Registratie van Psychotherapeuten who has received training similar to that received by

15 — With regard to the objectives of the directive, see the judgment in *Gemeente Emmen*, cited in footnote 7, paragraph 25; with regard to the general legal principles, see the judgments in *Kügler*, cited in footnote 6, paragraph 55 et seq., and *Dornier*, cited in footnote 11, paragraph 69. See also the judgment in Case C-283/95 *Fischer* [1998] ECR I-3369, paragraph 27, in which the Court held that, in affording the Member States the discretion to lay down the conditions governing exemption from VAT, the Sixth Directive does not authorise them to infringe the principle of fiscal neutrality.

16 — Judgments in *Kügler*, cited in footnote 6, paragraph 28, Case C-307/01 *d'Ambrumenil and Dispute Resolutions Services Ltd* [2003] ECR I-13989, paragraph 52, *Dornier*, cited in footnote 11, paragraph 42, and *Kingscrest and Montecello*, cited in footnote 6, paragraph 29.

17 — Judgment in *d'Ambrumenil*, cited in footnote 16, paragraph 58, with reference to the judgments in Case C-76/99 *Commission* v *France* [2001] ECR I-249, paragraph 23, and *Kügler*, cited in footnote 6, paragraph 29, which concern the corresponding exemption from tax of hospital services under Article 13A(1)(b) of the Sixth Directive.

18 — Judgments in *Kügler*, cited in footnote 6, paragraph 30, and *Dornier*, cited in footnote 11, paragraph 44, as well as the judgments in Case C-216/97 *Gregg* [1999] ECR I-4947, paragraph 20, and Joined Cases C-453/02 and C-462/02 *Linneweber and Akritidis* [2005] ECR I-1131, paragraph 24.

the appellant is qualified to provide psychotherapeutic services in the same way as a psychiatrist or a psychologist.

42. Contrary to the argument advanced by the Netherlands Government, infringement of the principle of fiscal neutrality is not precluded simply because all psychotherapists have been treated in the same way. The comparison must be drawn between the *psychotherapeutic services* provided by psychiatrists and psychologists, on the one hand, and those provided by psychotherapists, on the other hand. The identity of the service provider, by contrast, is, in principle, irrelevant in assessing whether the services are similar. [19] Nevertheless, differences in the qualifications of various providers of medical services may allow conclusions to be drawn about the quality of the services themselves and thus indirectly influence the assessment of similarity.

43. For the purposes of the comparability of services, it is immaterial that psychiatrists and psychologists can offer psychotherapy in conjunction with other services, for example medication-based treatments, and that certain synergies may be achieved as a result. The fact that the profession of psychotherapist exists proves that psychotherapy must, in principle, be regarded as an independent service which can also be used separately from other therapies.

44. The question referred in Case C-444/04 must therefore be answered to the effect that Article 13A(1)(c) of the Sixth Directive confers discretion on the Member States to define paramedical professions. In exercising that discretion, the Member States must observe the objectives of the Sixth Directive and the general legal principles, in particular the principles of equal treatment and fiscal neutrality. It is for the referring court to examine whether the Member State concerned has exceeded its discretion by refraining from exempting from VAT services provided by psychotherapists but exempting corresponding services provided by psychiatrists and psychologists.

C — *Case C-443/04* (Solleveld)

45. In this case, it is necessary to clarify whether the discretion to define paramedical professions which Article 13A(1)(c) of the Sixth Directive confers on the Member

19 — Judgments in *Gregg*, cited in footnote 18, paragraph 20, and *Linneweber and Akritidis*, cited in footnote 18, paragraph 25.

States also includes the power to restrict the activities typically carried out in each profession which are exempt from tax.

particular case, it contends, there is no need to consider whether care is provided by a qualified person and whether exemption from VAT is therefore in the general interest. The uniform application of the directive is jeopardised if the tax exemption depends on the description of the care the provision of which is envisaged in the definition of a particular profession.

1. Arguments of the parties to the proceedings

46. Mr Solleveld takes the view that Article 13A(1)(c) of the Sixth Directive applies to the provision of all medical care. The Member States are not permitted to exclude individual forms of care from the tax exemption if they are provided by members of a specific paramedical professional group. Furthermore, it is unlawful to treat services in the area of disturbance field diagnostics differently for tax purposes depending on whether they are provided by a qualified physiotherapist or a doctor.

47. The Commission takes the view that the services in question are exempt from tax since they constitute medical care provided by a member of a recognised paramedical profession in the exercise of his professional activity. If physiotherapists are not authorised to provide such care under the national legislation governing their profession, the Member State must prevent them from doing so by means of legislative or disciplinary measures, not by excluding those services from exemption from VAT. In this

48. The Netherlands Government refers to the requirement that the heads of exemption must be interpreted restrictively. In its submission, it is consistent with the social objective of the provision in question to exempt from VAT only those medical services which are provided by persons qualified to provide them. The Netherlands rules are objective and straightforward. The services which are exempt can be determined by reference to the Wet BIG.

2. Assessment

49. As previously stated, the purpose of exempting medical care from VAT is to ensure that those services are not made expensive. [20] However, for the exemption to be justified, the services must meet certain

20 — See above, point 38.

quality standards; for that reason, the provision assumes that the services are provided in the exercise of a medical or paramedical profession and, therefore, by a competent person. [21]

50. It is left to the Member States to define the relevant professions. The question is, however, whether that discretion includes the power to determine the activities which are to be regarded as being performed in the exercise of a specific profession and, therefore, as exempt from tax.

51. The wording of Article 13A(1)(c) of the Sixth Directive provides no clarification in this regard. Only in the English-language version could the wording alone be understood as meaning that the Member States also define which activities are to be regarded as falling within the definition of a particular paramedical profession. It reads as follows: *the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned.* However, it is not clear whether the phrase *as defined by the Member State* relates only to *medical and paramedical professions* or to the expression *the exercise of the medical and paramedical professions* as a whole.

52. The Commission's understanding of the expression 'in the exercise of the ... paramedical profession' is more practical, that is to say that the corresponding service must be provided as part of the professional activity and not as an additional (ancillary) occupation.

53. However, on the one hand, this still does not make it clear how the practicalities of exercising the paramedical profession are to be determined for these purposes. It is true that a number of factors could be taken into consideration in this connection, for example whether or not care is provided in a surgery. However, in that case, how are home visits to be assessed? The fact that a certain activity has nothing to do with the profession being carried on is actually a more reliable indication that the service provider is acting outside the scope of his/her profession.

54. On the other hand, the Commission fails to take account of the directive's objective that medical care is to be exempt from tax only if it is provided by persons qualified to provide it. [22]

21 — See above, point 37.

22 — See above, point 39.

55. The directive leaves to the Member States the task of defining the medical and paramedical professions whose members are qualified to provide medical services. Yet such a definition would be incomplete if it simply laid down abstract requirements setting out the qualifications which those intending to carry on a particular medical profession must possess, without also stipulating which activities fall within that profession. Not all medical and paramedical professional qualifications provide preparation for every type of care. It is obvious, for example, that a physiotherapist does not have the training required to perform surgical interventions. However, should s/he do so, it would be an infringement of the directive's objective to exempt such services from VAT. The discretion which the Member States have to define medical and paramedical professions therefore also includes the power to define the activities which a particular profession qualifies an individual to perform and, in so doing, also to restrict the exemption from VAT to those activities.

56. In this connection, the Commission proposes that the provision of care outside the technical limits of a profession should be prohibited by suitable rules in the legislation governing that profession, rather than being used as a criterion for exemption from VAT.

57. The Commission is right to state that quality is not normally assured through VAT legislation. Indeed, the Court too has consistently held that the principle of fiscal neutrality precludes any general differentiation between lawful and unlawful services. [23]

58. However, by virtue of the exemption at issue here, the VAT legislation is in fact itself pursuing an objective in the public interest. That objective requires that a service should be exempt from VAT only if it is provided by a person generally qualified to do so.

59. None the less, the Commission fears that the application of the tax exemption to medical care could vary significantly from one Member State to another if that exemption were dependent on the composition of the definition of each profession.

23 — Judgments in Case C-111/92 *Lange* [1993] ECR I-4677, paragraphs 16 and 17, *Fischer*, cited in footnote 15, paragraphs 21 and 27 et seq., Case C-158/98 *Coffeeshop 'Siberië'* [1999] ECR I-3971, paragraphs 14 and 21, and Case C-455/98 *Salumets* [2000] ECR I-4993, paragraph 19.

60. In this regard, it must be pointed out first that the Community legislature has accepted that there will be some variance between the national legal systems by granting the Member States the discretion to define medical and paramedical professions.

61. Furthermore, the principle of fiscal neutrality makes it impossible for the composition of the definitions of professions operating in a Member State to result in the tax exemption being applied in a manner which is arbitrary and at excessive variance with its manner of application in the other Member States. [24] In accordance with that principle, similar services must not be treated differently solely because they are provided by persons with a different professional background. [25] However, in the case of the provision of medical care, the personal qualifications of the service provider have a decisive influence on the quality of the service itself. Consequently, services provided by persons not qualified to provide them and services provided by appropriately qualified personnel cannot usually be regarded as similar.

24 — In this regard, see above, points 37 and 42 et seq.

25 — See in this regard point 42 above and the references in footnote 19.

62. It is for the referring court to examine whether the Netherlands tax authority took sufficient account of the principle of fiscal neutrality in this particular case when classifying disturbance field diagnostics for tax purposes.

63. However, this raises the issue that this form of medical care may not be readily classifiable as a medical or paramedical profession, because it is a new and alternative method of treatment. In addition, this method seems to be based on an interdisciplinary approach, since it uses diagnoses and treatments in the mouth and jaw area to address mental and physical disturbances which, in conventional medicine, are treated by members of a variety of professional groups, for example, physiotherapists in the case of impairments of the locomotor system.

64. It would be incompatible with the spirit and purpose of Article 13A(1)(c) of the Sixth Directive if a service which is indisputably to be regarded as the provision of medical care

none the less ended up being subject to VAT because it does not fit into any of the traditional definitions of professions. [26]

65. In order to prevent that from happening, national provisions which lay down the areas of activity falling within a particular profession must not be interpreted too restrictively. Rather, it must be ensured that they are sufficiently flexible to include new and interdisciplinary methods of treatment too. In this regard, professions which require comprehensive training will, as a rule, allow greater flexibility than professions which require a lower standard of qualifications.

66. By extension, it could be argued that activities in the area of disturbance field diagnostics are in any event exempt from VAT if they are provided by a doctor or dentist, since the members of those professions have received comprehensive medical training. On the other hand, the question arises whether doctors and dentists are in fact better qualified in this regard than physiotherapists. For, it is clear from the order for reference that patients are often referred to Mr Solleveld specifically by doctors who clearly cannot (or will not) use that method themselves.

67. It is unclear whether services in the area of disturbance field diagnostics would in fact be exempt from tax under Netherlands law if they were provided by a doctor. Mr Solleveld takes the view that they would be. At the hearing, the Netherlands Government would not commit itself even when expressly questioned on the matter. If the referring court were to be convinced that medical activities in this area are exempt from VAT, it would have to consider whether corresponding services provided by a physiotherapist are to be regarded as similar, because members of that profession are qualified to perform those activities in the same way as doctors. If that is the case, the principle of fiscal neutrality requires that they be treated in the same way.

68. If, under the existing rules, a recognised form of care falls within the scope of activity of neither a medical nor a paramedical profession, consideration must also be given to whether the service provider possesses special qualifications to practise the new method of treatment, for example because s/he has successfully completed specific training in that method.

26 — This might, however, raise the question whether such services can actually be regarded as care.

69. In short, it must be concluded that Article 13A(1)(c) of the Sixth Directive permits the Member States to define which forms of medical care are to be regarded as being activities falling within a particular medical or paramedical profession and, as such, exempt from VAT. However, those definitions must be sufficiently flexible to allow alternative and interdisciplinary methods of treatment recognised as care likewise to be classified as falling within the ambit of one or more professional groups. In the exercise of that power, the Member States must also observe the principle of fiscal neutrality.

V — Conclusion

70. I therefore propose that the Hoge Raad should answer the questions referred as follows:

Case C-444/04

Article 13A(1)(c) of the Sixth Directive confers on the Member States the discretion to define paramedical professions. In the exercise of that discretion, the Member States must observe the objectives of the Sixth Directive and the general legal principles, in particular the principles of equal treatment and fiscal neutrality. It is

for the referring court to consider whether the Member State concerned has exceeded its discretion by refraining from exempting from VAT services provided by psychotherapists but exempting corresponding services provided by psychiatrists and psychologists.

Case C-443/04

Under Article 13A(1)(c) of the Sixth Directive, a Member State has the power to define which forms of medical care are to be regarded as being activities falling within a particular medical or paramedical profession and, as such, exempt from VAT. However, those definitions must be sufficiently flexible to allow alternative and interdisciplinary methods of treatment recognised as medical care likewise to be classified as falling within the ambit of one or more professional groups. In the exercise of that power, the Member States must also observe the principle of fiscal neutrality.