OPINION OF MR ADVOCATE GENERAL MISCHO
delivered on 20 April 1989 *

Mr President,
Members of the Court,

1. The Stichting Uitvoering Financiële Acties (hereinafter referred to as 'SUFA') is a foundation which, against reimbursement of expenses actually incurred, organizes and holds lotteries on behalf of the Stichting Algemene Loterij Nederland (hereinafter referred to as 'ALN') which distributes the proceeds amongst a certain number of social and cultural institutions affiliated to it.

2. Under the Netherlands legislation implementing the Sixth Directive on VAT,[1] in particular Article 13 thereof, SUFA had to pay VAT on the amount of the cost of the abovementioned services to ALN during the month of April 1983.

3. SUFA submitted a complaint against that taxation to the Inspector of Taxes. It then brought an action before the Gerechtshof (Regional Court of Appeal), The Hague, before lodging an appeal to the Hoge Raad (Supreme Court) of the Netherlands.

4. The Hoge Raad referred the following question to the Court of Justice for a preliminary ruling:

'Do the transactions which must be exempted from turnover tax pursuant to Article 13(A)(1)(f) of the Sixth Directive cover the activities of a foundation which consist exclusively in the organization and performance of work which is related to the activities of another foundation, against reimbursement of expenses actually incurred, where the other foundation acts as an umbrella organization for a number of bodies exercising an activity which is exempt or for which they are not taxable and, solely for those bodies, performs services as defined in the aforesaid provision of the Sixth Directive?'

5. Article 13(A)(1)(f) 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:

...

(f) services supplied by independent groups of persons whose activities are exempt from or are not subject to value-added

* Original language French

1 — Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax uniform basis of assessment (77/388/EEC) — OJ 1977, L 145, p 1

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;

. . .'.

6. The Commission is right to emphasize that the supplies of services referred to by that provision are exempt only if a whole series of conditions are met. It is evident from the order for reference and from the observations submitted to the Court that it is common ground that all those conditions are met by the services which ALN renders to its members. Moreover, the question referred by the Hoge Raad for a preliminary ruling expressly envisages that hypothesis.

7. The documents before the Court also show that SUFA supplies services, against reimbursement of the costs actually incurred, to one 'person' (ALN) whose activities are not subject to VAT. The supplies of services in issue are directly necessary for the exercise of those activities.

8. Having regard to the foregoing, the question put to the Court may be divided into two parts: whether such supplies of services carried out by one foundation on behalf of another foundation are carried out by an 'independent group of persons', in which case they must be exempt, and if not whether they must nevertheless be exempt on the ground that they are supplied exclusively to a person which does constitute such a group and enjoys an exemption for the services which it supplies to its members.

9. In its judgment of 26 March 1987 in Case 235/85 *Commission* v *Netherlands* [1987] ECR 1471, the Court stated that:

'the Sixth Directive is characterized by its general scope and by the fact that all exemptions must be expressly provided for and precisely defined' (paragraph 19 of the decision).

10. As proof of the very general scope attributed to VAT, the Court pointed out that Article 2 of the Sixth Directive, relating to taxable transactions, refers not only to the importation of goods but also to the supply of goods or services effected for consideration within the territory of a country, and that Article 4(1) defines a taxable person as any person who independently carries out any economic activity specified in paragraph 2, that is to say all activities of producers, traders and persons supplying services (paragraphs 6 and 7 of the decision).

11. It follows that any exemptions, as exceptions to the general rule that VAT is levied on all economic activity, are to be interpreted strictly and must not exceed what is expressly and clearly provided for.

12. Article 13(A)(1)(f) refers expressly only to independent groups of persons supplying services to their members. A foundation which supplies services exclusively to one other foundation is not such a case. ALN is not a member of SUFA and even if it were, SUFA would then have only a single member. A group of persons must necessarily have at least two members, whether they be natural or legal persons. SUFA cannot, therefore, enjoy an exemption for the services which it supplies on behalf of ALN.

13. However, SUFA argues that it should in fact receive exemption because it continues, in fact, to organize the lotteries on behalf of the institutions affiliated to ALN and would therefore qualify for the exemption if ALN had not been set up, and also because the activities which SUFA currently performs would certainly be exempt if they were performed by ALN.

14. Those arguments cannot be accepted. They are both based on simple hypotheses which do not correspond to the facts: ALN exists and since the time of its creation SUFA has no longer been working directly for the social and cultural institutions, but rather for ALN which alone reimburses the expenses SUFA incurs in holding lotteries.

15. Moreover, as the Court stated in its judgment of 11 July 1985 in Case 107/84 *Commission* v *Germany* [1985] ECR 2655,

'Although it is true that the exemptions (provided for under Article 13(A)(1)) are granted in favour of activities pursuing specific objectives, most of the provisions also define the *bodies* which are authorized to supply the exempted services' (paragraph 13 of the decision).

The aforesaid activities are exempt, therefore, only if they are carried out by particular bodies which, in the case of indent (f), must be 'independent groups of persons'.

16. SUFA may be regarded as constituting such a group of persons working directly on behalf of the members of ALN only if ALN is to be regarded simply as a screen between SUFA and the social and cultural institutions. That is a question of fact which falls within the jurisdiction of the national courts and it seems to have been resolved by the finding that the two bodies are independent of each other. Moreover, the two foundations do not carry out the same activities: SUFA organizes and holds the lotteries, whereas ALN obtains permission on behalf of the institutions which are affiliated to it and distributes the proceeds of the lotteries amongst those institutions.

17. For all the above reasons and for the additional reasons given in their observations by the Netherlands Government and by the Commission of the European Communities, in which I concur, I conclude that the question referred by the

Hoge Raad der Nederlanden must be answered in the negative and that the Court should rule that:

'The transactions which must be exempted from turnover tax pursuant to Article 13(A)(1)(f) of the Sixth Directive do not cover the activities of a foundation which consist exclusively in the organization and performance of work which is related to the activities of another foundation, against reimbursement of expenses actually incurred, even where the other foundation acts as an umbrella organization for a number of bodies exercising an activity which is exempt or for which they are not taxable and, solely for those bodies, performs activities as defined in the aforesaid provision of the Sixth Directive.'