



Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 23 December 2015¹

Case C-40/15

Minister Finansów

v

Aspiro SA, formerly BRE Ubezpieczenia sp. z o.o. (Request for a preliminary ruling

from the Naczelny Sąd Administracyjny (Poland))

(Taxation — Value added tax — Article 135(1)(a) of Directive 2006/112/EC — Exemption for insurance transactions and related services of insurance brokers and insurance agents — Outsourcing of settlement of claims by the insurer)

1. Are services in connection with the settlement of insurance claims exempt from VAT if an insurer does not perform this task itself, but outsources it to a third party? The Court's case-law on exemption from VAT for insurance services² does not yet give a clear answer to this question.

I – Legislative framework

A – EU law

2. Under Article 2(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax³ ('the VAT directive'), 'the supply of services for consideration within the territory of a Member State by a taxable person acting as such' is subject to VAT.

3. Under Article 135(1)(a) of the VAT directive, Member States must, however, exempt the following transactions:

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

4. That provision corresponds to Article 13(B)(a) of the Sixth Directive, which applied up to 31 December 2006.⁴ The Court's case-law on the latter provision can therefore also be taken into consideration in the present case.

1 — Original language: German.

2 — See, in this regard, judgments in *CPP* (C-349/96, EU:C:1999:93); *Skandia* (C-240/99, EU:C:2001:140); *Taksatorringen* (C-8/01, EU:C:2003:621); *Arthur Andersen* (C-472/03, EU:C:2005:135); *Commission v Greece* (C-13/06, EU:C:2006:765); *J.C.M. Beheer* (C-124/07, EU:C:2008:196); *Swiss Re Germany Holding* (C-242/08, EU:C:2009:647); *BGŻ Leasing* (C-224/11, EU:C:2013:15), and *Mapfre asistencia and Mapfre warranty* (C-584/13, EU:C:2015:488).

3 — OJ 2006 L 347, p. 1.

4 — 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).

5. Directive 77/92/EEC⁵ regulated the pursuit of the activity of insurance agents and insurance brokers within the Union until 14 January 2005. Article 2(1) defines the scope, in part, as follows:

‘This Directive shall apply to the following activities ...:

- (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 [sic!] 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;

...’

6. Directive 2002/92/EC⁶ has now replaced Directive 77/92. Article 2(3) defines ‘insurance mediation’ as follows:

‘... the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim.

...

The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing an insurance contract, the management of claims of an insurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as insurance mediation.’

B – *Polish law*

7. Article 43(1)(37) of the Ustawa o podatku od towarów i usług of 11 March 2004 (‘the Polish Law on turnover tax), in the version relevant to this case, reads as follows:

‘Insurance services, reinsurance services and brokerage services for the supply of insurance and reinsurance services, and also services supplied by an insurer pursuant to insurance contracts which it has concluded for the account of another party, other than the disposal of rights acquired in the performance of insurance and reinsurance contracts, shall be exempt from tax.’

5 — 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).

6 — Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (OJ 2003 L 9, p. 3).

8. Article 43(13) of the Polish Law on turnover tax adds:

‘The tax exemption shall also apply to the supply of a service which constitutes an element of a service referred to in paragraph 1(7) and (37) to (41), which itself forms a distinct whole and is characteristic of and necessary for the supply of a service exempt under paragraph 1(7) and (37) to (41).’

II – Main proceedings and procedure before the Court

9. The main proceedings concern the question of the extent to which the activity of the Polish company Aspiro SA (‘Aspiro’) is exempt from VAT. Aspiro supplies services consisting in comprehensive settlement of insurance claims on behalf of an insurer. It acts in the name and on behalf of the insurer vis-à-vis the insured person.

10. Specifically, Aspiro receives insurance claims and conducts investigations. It establishes contact with the insured person, with whom it has no contractual relationship itself, and if necessary produces assessments and damage reports. After analysing the assembled documents, it adjusts losses and takes decisions on claims. Aspiro also conducts proceedings for recovery against third parties and handles complaints in respect of claim settlements. Aspiro performs various other administrative and technical functions in connection with these activities.

11. The Polish tax authorities considered that exemption from VAT is possible only in respect of the processing and settlement of claims. In contrast, it considered that all other activities are not characteristic of the activity of an insurance undertaking and are not therefore covered by the exemption under Article 43(13) of the Polish Law on turnover tax.

12. The Naczelny Sąd Administracyjny (Supreme Administrative Court), before which the dispute has now been brought, considers that EU law will determine the dispute and on 2 February 2015 referred the following question to the Court pursuant to Article 267 TFEU:

‘Must Article 135(1)(a) of the VAT directive be interpreted as meaning that services such as those in the present case, which are supplied on behalf of an insurance undertaking by a third party — in the name and on behalf of the insurer — which has no legal relationship with the insured person, are covered by the exemption referred to in that provision?’

13. In the proceedings before the Court, Aspiro, the Republic of Poland, the United Kingdom of Great Britain and Northern Ireland and the European Commission submitted written observations. Aspiro, the Polish tax authorities, the Republic of Poland and the Commission took part in the hearing on 2 December 2015.

III – Legal assessment

14. By its question the referring court is essentially seeking to ascertain whether settlement of claims which is carried out in the name and on behalf of the insurer by a third party which has no contractual relationship with the insured person is to be exempted from VAT under Article 135(1)(a) of the VAT directive.

A – Admissibility

15. Aspiro first challenges the admissibility of the question referred.

16. In its view, the main proceedings concern the interpretation of national rules on VAT exemption, the conditions for which are satisfied in its case. The VAT directive cannot be invoked against it in this regard, as the duty to interpret national law in conformity with the directive may not in any case serve as the basis for an interpretation *contra legem*. It submits that the interpretation of Article 135(1)(a) of the VAT directive is thus irrelevant to the decision in the main proceedings.

17. It is true that under Article 267 TFEU a question referred must be relevant to the decision in the main proceedings in order to be admissible. The crucial factor, however, is the assessment of the referring court,⁷ which, in principle, the Court does not review, except in the case of obvious errors.⁸

18. There are no such errors here. The main proceedings concern exemption from VAT of an insurance-related service. This is covered by Article 135(1)(a) of the VAT directive. In this regard the referring court is required under EU law to interpret national law in conformity with the directive.⁹ It does not appear that this is precluded by the wording of the relevant Polish rules. In particular, Article 43(13) of the Polish Law on turnover tax, which is at issue in the main proceedings, does not expressly exempt services like those supplied by Aspiro. That provision merely lays down abstract conditions which require interpretation and which appear to be readily amenable to consideration in the light of the requirements under EU law.

19. The question referred is therefore admissible.

B – *The answer to the question referred*

20. Services like those supplied by Aspiro are exempt under Article 135(1)(a) of the VAT directive if they relate to insurance or reinsurance transactions (see section 1) or related services performed by insurance brokers and insurance agents (see section 2).

1. Insurance and reinsurance transactions

21. The Union legislature neither defined the term ‘insurance transactions’ within the meaning of Article 135(1)(a) of the VAT directive nor referred to national law for that purpose. It has to be construed independently in the context of EU law.¹⁰

22. According to settled case-law, the essentials of an insurance transaction are that the insurer undertakes, in return for prior payment of a premium, to provide the insured party, in the event of materialisation of the risk covered, with the service agreed when the contract was concluded.¹¹ The concept also encompasses the provision of insurance cover by a taxable person who is not himself an

7 — See, for example, judgments in *Asociación Española de Banca Privada and Others* (C-67/91, EU:C:1992:330, paragraph 25); *Aprile* (C-125/94, EU:C:1995:309, paragraph 16); *PreussenElektra* (C-379/98, EU:C:2001:160, paragraph 38); *Elshani* (C-459/07, EU:C:2009:224, paragraph 40), and *Križan and Others* (C-416/10, EU:C:2013:8, paragraph 53).

8 — See, inter alia, judgments in *Bosman* (C-415/93, EU:C:1995:463, paragraph 61); *PreussenElektra* (C-379/98, EU:C:2001:160, paragraph 39); *Omega* (C-36/02, EU:C:2004:614, paragraph 20), and *Balázs* (C-251/14, EU:C:2015:687, paragraph 26).

9 — See, for example, judgments in *Von Colson and Kamann* (14/83, EU:C:1984:153, paragraph 26); *Pfeiffer and Others* (C-397/01 to C-403/01, EU:C:2004:584, paragraph 113), and *Indėlių ir investicijų draudimas and Nemanūnas* (C-671/13, EU:C:2015:418, paragraph 56).

10 — See judgments in *CPP* (C-349/96, EU:C:1999:93, paragraph 15); *Taksatorringen* (C-8/01, EU:C:2003:621, paragraph 37); *Commission v Greece* (C-13/06, EU:C:2006:765, paragraph 9); *BGŻ Leasing* (C-224/11, EU:C:2013:15, paragraph 56), and *Mapfre asistencia and Mapfre warranty* (C-584/13, EU:C:2015:488, paragraph 27).

11 — Judgments in *CPP* (C-349/96, EU:C:1999:93, paragraph 17); *Taksatorringen* (C-8/01, EU:C:2003:621, paragraph 39); *Commission v Greece* (C-13/06, EU:C:2006:765, paragraph 10); *Swiss Re Germany Holding* (C-242/08, EU:C:2009:647, paragraph 34); *BGŻ Leasing* (C-224/11, EU:C:2013:15, paragraph 58), and *Mapfre asistencia and Mapfre warranty* (C-584/13, EU:C:2015:488, paragraph 28).

insurer but who procures such cover for his customers by making use of the services provided by an insurer.¹² In other words, the relevant factor is assumption of risk in return for payment. It presupposes a contractual relationship between the provider of the insurance service and the insured party.¹³

23. Those conditions are not met in this case. Aspiro neither provides the insured party with insurance cover by undertaking itself to cover risks nor is it in a contractual relationship with the insured party.

24. Contrary to the claims made by some parties to the proceedings, an exemption is also not possible because the service provided by Aspiro (i) forms ‘a distinct whole’ which (ii) fulfils the ‘specific, essential functions’ of the insurance transactions exempted by Article 135(1)(a) of the VAT directive.

25. Under such circumstances, as the Court has repeatedly ruled with regard to certain exemptions for financial services under Article 135(1) of the VAT directive, individual elements of an exempt service are indeed also exempt.¹⁴ This always presupposes, however, that according to the wording of the ground for exemption the exempt service can actually be broken down into separate services.¹⁵

26. That is not the case with insurance transactions, however. Article 135(1)(a) of the VAT directive does not, for example, refer generally to transactions *in the insurance business*¹⁶ or the *management of insurance policies*¹⁷ but, according to its wording, only to insurance transactions in the strict sense, as the Court has repeatedly held.¹⁸ The assumption of risk, which, according to case-law, is the sole constituent of an insurance transaction, cannot be broken down into separate services.

27. A Commission proposal for a directive, which could be construed as merely seeking to clarify that the principles developed by the Court in respect of the tax treatment of outsourced activities in the field of certain financial services also apply to insurance transactions,¹⁹ is irrelevant in this connection. As it was not adopted by the Council, it does not have legal force and is therefore irrelevant to the interpretation of the applicable law, as is the view expressed by the Commission in that proposal.

12 — See judgments in *CPP* (C-349/96, EU:C:1999:93, paragraph 22); *BGŻ Leasing* (C-224/11, EU:C:2013:15, paragraph 59), and *Mapfre asistencia and Mapfre warranty* (C-584/13, EU:C:2015:488, paragraph 30).

13 — See judgments in *Skandia* (C-240/99, EU:C:2001:140, paragraph 41); *Taksatorringen* (C-8/01, EU:C:2003:621, paragraph 41); *Arthur Andersen* (C-472/03, EU:C:2005:135, paragraph 22); *BGŻ Leasing* (C-224/11, EU:C:2013:15, paragraph 58), and *Mapfre asistencia and Mapfre warranty* (C-584/13, EU:C:2015:488, paragraph 29).

14 — See judgments in *SDC* (C-2/95, EU:C:1997:278, paragraph 66); *CSC Financial Services* (C-235/00, EU:C:2001:696, paragraphs 25 to 27), and *Nordea Pankki Suomi* (C-350/10, EU:C:2011:532, paragraph 24), with regard to the current Article 135(1)(d) and (f) in relation to transfers and equity-related transactions; judgments in *Abbey National* (C-169/04, EU:C:2006:289, paragraph 70) and *GfBk* (C-275/11, EU:C:2013:141, paragraph 21), with regard to the current Article 135(1)(g) in relation to the management of special investment funds; judgment in *Ludwig* (C-453/05, EU:C:2007:369, paragraph 36), with regard to the current Article 135(1)(b) of the VAT directive in relation to the negotiation of credit.

15 — See judgments in *SDC* (C-2/95, EU:C:1997:278, paragraph 64); *CSC Financial Services* (C-235/00, EU:C:2001:696, paragraph 23); *Abbey National* (C-169/04, EU:C:2006:289, paragraph 67), and *Ludwig* (C-453/05, EU:C:2007:369, paragraph 34).

16 — See the wording of the exemption in Article 135(1)(d) of the VAT directive (‘im Geschäft’).

17 — See the wording of the exemption in Article 135(1)(g) of the VAT directive.

18 — See judgments in *Skandia* (C-240/99, EU:C:2001:140, paragraph 36) and *Taksatorringen* (C-8/01, EU:C:2003:621, paragraph 43).

19 — Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax, as regards the treatment of insurance and financial services, COM(2007) 747 final; under that Proposal, a paragraph 1a is to be inserted in Article 135 of the VAT directive with the following wording: ‘1a. The exemption provided for in points (a) to (e) of paragraph 1 shall apply to the supply of any constituent element of an insurance or financial service, which constitutes a distinct whole and has the specific and essential character of the exempt service.’

28. Lastly, no other conclusions can be drawn from the principle of fiscal neutrality, according to which similar goods or services may not be treated differently for VAT purposes.²⁰ Aspiro endeavours to invoke that principle in order to apply the Court's abovementioned case-law on outsourced elements of an exempt financial service to the exemption applicable to insurance transactions. However, as the Court has repeatedly made clear, that principle cannot extend the scope of an exemption in the absence of clear wording to that effect in the directive.²¹

29. The services provided by Aspiro do not therefore come under the definition of insurance transaction within the meaning of Article 135(1)(a) of the VAT directive. There is also no reinsurance transaction, as that is merely a particular form of insurance transaction in which two insurers are involved.²²

2. Related services

30. It must still be clarified whether Aspiro's activity is exempt because it consists in services which are related to insurance transactions and are performed by an insurance broker and an insurance agent.

a) Services related to insurance transactions

31. Under Article 135(1)(a) of the VAT directive, only 'related services' to insurance and reinsurance transactions are exempt. According to its wording, that expression is extremely broad and can in principle include all services having a link to insurance.²³ Such a link undoubtedly exists in the case of an activity like the settlement of insurance claims.

b) Service performed by insurance brokers and insurance agents

32. However, the service in question must also be performed by an insurance broker or an insurance agent in accordance with Article 135(1)(a) of the VAT directive.

33. It is true that the referring court expressly stated in the order for reference that Aspiro is neither an insurance broker nor an insurance agent. Nevertheless, in the proceedings before the Court the United Kingdom in particular has rightly argued that there are doubts whether the referring court's assessment is legally correct.

34. According to the Court's case-law, for recognition of a person as an insurance broker or an insurance agent regard must be had not to formal status as a taxable person, but to what the activities performed *comprise*.²⁴ Consequently, in the present case it must also be examined whether the services provided by Aspiro in the field of settlement of claims comprise the activities of an insurance broker or an insurance agent for the purposes of Article 135(1)(a) of the VAT directive.

20 — See judgments in *Linneweber and Akritidis* (C-453/02 and C-462/02, EU:C:2005:92, paragraph 24); *Rank Group* (C-259/10 and C-260/10, EU:C:2011:719, paragraph 32), and *Zimmermann* (C-174/11, EU:C:2012:716, paragraph 48).

21 — See judgments in *Deutsche Bank* (C-44/11, EU:C:2012:484, paragraph 45); *Zimmermann* (C-174/11, EU:C:2012:716, paragraph 50); see also, with regard to the scope of a reduced rate of taxation, judgments in *Commission v France* (C-479/13, EU:C:2015:141, paragraph 43), and *Commission v Luxembourg* (C-502/13, EU:C:2015:143, paragraph 51).

22 — See judgment in *Swiss Re Germany Holding* (C-242/08, EU:C:2009:647, paragraph 38).

23 — See also the Opinions of Advocate General Fennelly in *CPP* (C-349/96, EU:C:1998:281, point 31) and of Advocate General Poiares Maduro in *Arthur Andersen* (C-472/03, EU:C:2005:8, point 20).

24 — See judgments in *Arthur Andersen* (C-472/03, EU:C:2005:135, paragraph 32) and *J.C.M. Beheer* (C-124/07, EU:C:2008:196, paragraph 17 et seq.).

i) Relationship with the insurer and the insured party

35. According to case-law, the provider of the service must, first, have a ‘relationship’ with both an insurer, or — in the case of insurance brokers²⁵ — more than one insurer, and the insured party.²⁶

36. That is the case with Aspiro because it both has a *de jure* relationship with the insurer and maintains a *de facto* relationship with the insured party, namely in the context of the settlement of his claims. A merely *de facto* relationship of this kind, as also typically exists between an insurance agent and an insured party, is sufficient in this regard.

ii) Performing the core activity of an insurance broker or insurance agent

37. Second, the provider of services related to insurance transactions must at least perform the core activity of an insurance broker or insurance agent. In *Arthur Andersen* the Court refers in particular to the ‘essential aspects’ of such activity, which consist in the finding of prospects and their introduction to the insurer with a view to the conclusion of insurance contracts.²⁷ It is precisely this that distinguishes the activity of an insurance broker or insurance agent.

38. Only an interpretation requiring that an activity be in regard to the conclusion of insurance contracts if it is to be exempt under the second variant of Article 135(1)(a) of the VAT directive is consistent with the requirement, confirmed in settled case-law, of strict interpretation in connection with the objective of that exemption.²⁸

39. The purpose of the exemption is not clear either from the directive itself or from the *travaux préparatoires*.²⁹ The Court has, however, established a link between the exemption under Article 135(1)(a) and Article 401 of the VAT directive. That provision permits Member States to maintain ‘taxes on insurance contracts’. The exemption for insurance transactions and related services performed by insurance brokers and insurance agents is therefore intended to prevent double taxation to the detriment of the final consumer in those cases.³⁰

40. In the light of the requirement for strict interpretation, that objective is adequately achieved if services which have a direct connection with the conclusion of an insurance contract are exempt, as only taxation of such activity would directly impose VAT on the final consumer.

41. If, on the other hand — as in the present case — an insurer outsources to a third party only some of the tasks for which it is responsible in connection with the open insurance policy, only the insurer is charged any resulting VAT. In *Arthur Andersen* the Court was thus unable to classify the mere outsourcing of the insurer’s activity as the activity of an insurance agent.³¹

25 — See judgment in *Arthur Andersen* (C-472/03, EU:C:2005:135, paragraph 29).

26 — Judgments in *Taksatorringen* (C-8/01, EU:C:2003:621, paragraph 44); *Arthur Andersen* (C-472/03, EU:C:2005:135, paragraph 33), and *J.C.M. Beheer* (C-124/07, EU:C:2008:196, paragraph 20).

27 — See judgment in *Arthur Andersen* (C-472/03, EU:C:2005:135, paragraph 36), with regard to insurance agents; see also, to that effect, judgment in *Taksatorringen* (C-8/01, EU:C:2003:621, paragraph 45), with regard to insurance brokers.

28 — See inter alia judgments in *Stichting Uitvoering Financiële Acties* (348/87, EU:C:1989:246, paragraph 13); *Cimber Air* (C-382/02, EU:C:2004:534, paragraph 25); *PFC Clinic* (C-91/12, EU:C:2013:198, paragraph 23), and *De Fruytier* (C-334/14, EU:C:2015:437, paragraph 18).

29 — See in this regard the Opinions of Advocate General Pöiares Maduro in *Arthur Andersen* (C-472/03, EU:C:2005:8, point 13) and of Advocate General Jääskinen in *Skandinaviska Enskilda Banken* (C-540/09, EU:C:2010:788, point 22).

30 — See judgments in *CPP* (C-349/96, EU:C:1999:93, paragraph 23) and *BGŻ Leasing* (C-224/11, EU:C:2013:15, paragraph 67).

31 — See judgment in *Arthur Andersen* (C-472/03, EU:C:2005:135, paragraph 38).

42. It is true that, according to case-law, activities of an insurance broker or insurance agent which go beyond mere efforts towards the conclusion of an insurance contract can also benefit from exemption. However, this requires that they are connected with the core activity of a broker or agent, namely the finding of prospects and their introduction to the insurer.³²

43. Aspiro's activity in this case does not satisfy this condition. It is engaged solely in settlement of claims, but does not perform any activities directed at the conclusion of insurance contracts.

44. It can therefore be stated that the activity performed by Aspiro constitutes neither that of an insurance broker nor that of an insurance agent within the meaning of Article 135(1)(a) of the VAT directive because Aspiro does not perform their core activity.

iii) Directives on the free movement of insurance intermediaries

45. The same conclusion must be drawn from the directives which promote the free movement of insurance intermediaries and which are cited by the United Kingdom as proof that settlement of insurance claims forms part of the characteristic activities of insurance brokers and insurance agents. In this regard the United Kingdom refers in particular to the descriptions of activities in Article 2(1) of Directive 77/92 and Article 2(3) of Directive 2002/92.

46. There is no need to address the question whether the descriptions of activities in those directives are actually of decisive importance to the interpretation of the notions of insurance broker and insurance agent in Article 135(1)(a) of the VAT directive. Although the Court has referred additionally to Directive 77/92 in a number of rulings,³³ it should nevertheless be noted that those directives promote the free movement of insurance intermediaries,³⁴ whilst, as has been shown,³⁵ the exemption at issue serves other objectives. For example, in a similar situation the Court held that a directive facilitating the free movement of doctors was not relevant for the purposes of exemption from VAT.³⁶

47. In any case, there is nothing in Directive 77/92 or its successor, Directive 2002/92, to call into question the conclusion that settlement of claims alone does not constitute an activity of an insurance broker or an insurance agent within the meaning of Article 135(1)(a) of the VAT directive.

48. The description of the professional activities of insurance brokers and insurance agents in Directive 77/92 and the list of essential characteristics of 'insurance mediation' in Directive 2002/92 each mention *assisting* in the administration of insurance contracts in the event of a claim, that is to say assisting in the settlement of claims.³⁷ However, this merely refers to a support activity relating primarily to insurance contracts formed on the initiative of professional practitioners.

49. This must be clearly distinguished from comprehensive settlement of claims on behalf of an insurer, which is, for example, the task carried out by Aspiro in the present case. To this effect, it is also expressly stated in the third subparagraph of Article 2(3) of Directive 2002/92 that 'the management of claims of an insurance undertaking on a professional basis' is not regarded as insurance mediation within the meaning of that directive.

32 — See judgment in *J.C.M. Beheer* (C-124/07, EU:C:2008:196, paragraph 18).

33 — See judgments in *Taksatorringen* (C-8/01, EU:C:2003:621, paragraph 45); *Arthur Andersen* (C-472/03, EU:C:2005:135, paragraph 31), and *J.C.M. Beheer* (C-124/07, EU:C:2008:196, paragraph 19).

34 — A Commission proposal (COM(2012) 360 final) to recast Directive 2002/92, which also contains a clear extension of the notion of 'insurance mediation', pursues the objective of improving consumer protection (see recital 9 in the preamble and Article 2(3) of the directive in the version in the Commission proposal).

35 — See above, point 39.

36 — See judgment in *Unterpertinger* (C-212/01, EU:C:2003:625, paragraph 37).

37 — See Article 2(1)(a) and (b) of Directive 77/92 and the first subparagraph of Article 2(3) of Directive 2002/92.

c) Interim conclusion

50. All in all, it follows that settlement of insurance claims, as practiced by Aspiro, is also not exempt as related services to insurance or reinsurance transactions performed by insurance brokers or insurance agents under Article 135(1)(a) of the VAT directive.

3. Principle of fiscal neutrality

51. Lastly, it must be clarified whether the overall conclusion reached is contrary to the principle of fiscal neutrality, which has particular importance in the Court's case-law.

52. It follows from that principle that traders must be able to choose the form of organisation which, from the strictly commercial point of view, best suits them, without running the risk of having their transactions excluded from the exemption provided for in Article 135(1)(a) of the VAT directive.³⁸ That freedom of organisation for insurers could be called into question because they cannot transfer the processing of claims to another undertaking without being charged VAT. That VAT is charged because, as has been explained, the services of the other undertaking are not exempt from VAT under Article 135(1)(a) of the VAT directive and, on account of the exemption of its own transactions under that provision, the insurer generally has no right of deduction in respect of the services of the other undertaking under Article 168(a) of the VAT directive.

53. However, these consequences stem from the fact that the exemption granted to the insurer — except for insurance activities outside the Union³⁹ — does not give a right of deduction. This deliberate choice by the Union legislature restricts the insurers' freedom of organisation as such. Any service obtained from a third party generally results in the insurer being charged VAT. As Advocate General Poiares Maduro has already stated, this is an inherent consequence of the common system of VAT.⁴⁰

54. Accordingly, it would be contrary to the legislature's intention if any activity outsourced by an insurer were to be included in the exemption for insurance transactions, as this would also apply, for example, to an insurer's office supplies obtained from a third party, since it is also an expression of its form of organisation not to produce the required office supplies within the undertaking itself.

55. Consideration can therefore be given to the freedom of organisation of the taxable person only in so far as there is also an exemption for the outsourced activity. This depends in turn on the wording, scheme and objectives of the exemption. In this case, consideration of these aspects has revealed that merely outsourcing the processing of claims to a third party, which does not perform any activity with a view to the conclusion of insurance contracts, is not covered by the exemption referred to in Article 135(1)(a) of the VAT directive.

38 — Judgment in *J.C.M. Beheer* (C-124/07, EU:C:2008:196, paragraph 28).

39 — See Article 169(c) of the VAT directive.

40 — See Opinion of Advocate General Poiares Maduro in *Arthur Andersen* (C-472/03, EU:C:2005:8, point 39).

IV – Conclusion

56. I therefore propose that the question referred by the Naczelny Sąd Administracyjny be answered as follows:

Settlement of insurance claims which is carried out in the name and on behalf of an insurer by a third party which has no contractual relationship with the insured person and whose activity does not include the finding of prospects and their introduction to the insurer with a view to the conclusion of insurance contracts does not come under the exemption referred to in Article 135(1)(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.