



# Reports of Cases

OPINION OF ADVOCATE GENERAL  
SZPUNAR  
delivered on 15 June 2017<sup>1</sup>

## Case C-90/16

**The English Bridge Union Limited**  
v  
**Commissioners for Her Majesty's Revenue & Customs**

(Request for a preliminary ruling from the Upper Tribunal (Tax and Chancery Chamber) (United Kingdom))

(Directive 2006/112/EC – VAT – Article 132(1)(m) – Exemptions – Services closely linked to sport or physical education – Concept of ‘sport’ – Duplicate contract bridge)

### Introduction

1. ‘Consider for example the proceedings that we call “games”. I mean board-games, card-games, ball-games, Olympic Games, and so on. What is common to them all?—Don’t say: “There must be something common, or they would not be called ‘games’ ”—but look and see whether there is anything common to all.—For if you look at them you will not see something that is common to all, but similarities, relationships, and a whole series of them at that. To repeat: don’t think, but look!’<sup>2</sup>

2. The present request for a preliminary ruling from the Upper Tribunal (Tax and Chancery Chamber) (United Kingdom) raises problems comparable to those faced by Wittgenstein when he attempted to find common characteristics which define an activity as a ‘game’. Today, the term to be defined is not that of ‘games’ but that of ‘sport’ in order to establish whether – for the purposes of VAT exemption – the activity of duplicate contract bridge constitutes a ‘sport’ or not.

### Legal framework

#### EU law

3. Chapter 2 of Title IX of Council Directive 2006/112/EC<sup>3</sup> is titled ‘Exemptions for certain activities in the public interest’. Its Article 132 is worded as follows:

‘1. Member States shall exempt the following transactions:

...

<sup>1</sup> Original language: English.

<sup>2</sup> Wittgenstein, L., *Philosophical Investigations*, 1953, translated by Anscombe, G.E.M., Prentice Hall, 1999, point 66.

<sup>3</sup> Directive of 28 November on the common system of value added tax (OJ 2006 L 34, p 1, in the version applicable at the material time) (the ‘VAT Directive’).

- 1 the supply of services, and the supply of goods closely linked thereto, to their members in their common interest in return for a subscription fixed in accordance with their rules by non-profit-making organisations with aims of a political, trade-union, religious, patriotic, philosophical, philanthropic or civic nature, provided that this exemption is not likely to cause distortion of competition;
- (m) the supply of certain services closely linked to sport or physical education by non-profit-making organisations to persons taking part in sport or physical education;
- ...
- (n) the supply of certain cultural services, and the supply of goods closely linked thereto, by bodies governed by public law or by other cultural bodies recognised by the Member State concerned;
- ...'

### **United Kingdom law**

4. Group 10 of Schedule 9 to the Value Added Tax Act 1994 provides for the relevant exemption in relation to certain supplies connected to sport:

'Group 10: Sport, sports competitions and physical education

- ...1. The grant of a right to enter a competition in sport or physical recreation where the consideration for the grant consists in money which is to be allocated wholly towards the provision of a prize or prizes awarded in that competition.
2. The grant by an eligible body established for the purposes of sport or physical recreation of a right to enter a competition in such an activity.
3. The supply by an eligible body to an individual of services closely linked with and essential to sport or physical education in which the individual is taking part.'

### **Facts, procedure and questions referred**

5. Contract bridge is a trick playing card game played by four players in two competing partnerships with partners sitting opposite each other around a table. The game has four phases: dealing the cards, bidding, playing the cards, and scoring the results. Millions of people worldwide play bridge in clubs, tournaments, online and with friends.
6. Most club and tournament play involves 'duplicate bridge' in which the cards held by each player in each deal are preserved so that each partnership successively plays the same set of cards as their counterparts at other tables, with scoring based on relative performance.
7. This form of the game is played competitively at national and international level.

8. The English Bridge Union (EBU) is the national body for duplicate bridge in England. Its shareholders are the county organisations for bridge. It organises contract bridge tournaments and charges players an entry fee to play in those tournaments. This entrance fee is subject to VAT under United Kingdom VAT law.<sup>4</sup>

9. The EBU made a claim to Her Majesty's Revenue and Customs to recover VAT which had been paid in respect of those entry fees, claiming that the fees were subject to an exemption from VAT pursuant to Article 132(1)(m) of the VAT Directive. The Commissioners for Her Majesty's Revenue and Customs refused those claims by decision of 12 February 2014. The EBU appealed against the decision. The First-tier Tribunal dismissed the EBU's appeal but gave permission to appeal to the Upper Tribunal. Following a hearing on 14 July 2015, the Upper Tribunal released its decision, on 23 July 2015, holding that a decision on a question of interpretation of Article 132(1)(m) was necessary in order to enable it to give judgment on the appeal. On 1 September 2015, it referred the following questions for a preliminary ruling to the Court of Justice: '(1) What are the essential characteristics which an activity must exhibit in order for it to be a "sport" within the meaning of Article 132(1)(m) of [the VAT Directive]? In particular must an activity have a significant (or not insignificant) physical element which is material to its outcome or is it sufficient that it has a significant mental element which is material to its outcome?

(2) Is duplicate contract bridge a "sport" within Article 132(1)(m) of the ... VAT Directive?

10. The order for reference was received at the Court registry on 15 February 2016. Written observations were submitted by the United Kingdom and Netherlands Governments, as well as by the European Commission. The EBU, the United Kingdom Government and the European Commission took part at the hearing, which was held on 2 March 2017.

## Analysis

### Question 1: 'Sport' in Article 132(1)(m) of the VAT Directive: physical and/or mental?

11. By its first question, the referring court seeks to ascertain whether, among the characteristics an activity must exhibit in order for it to be a 'sport' within the meaning of Article 132(1)(m) of the VAT Directive, a not insignificant physical element which is material to its outcome is necessary or whether it is sufficient that it has a significant mental element which is material to its outcome.

12. By virtue of Article 132(1)(m) of the VAT Directive, Member States are to exempt the transactions of 'the supply of certain services closely linked to sport or physical education by non-profit-making organisations to persons taking part in sport or physical education'.

### *General remarks on exemptions in the VAT Directive and pertinent case-law*

13. The general rule underlying the common system of value added tax, established by the VAT Directive, is that all transactions are subject to VAT. Exemptions, such as the ones contained in Article 132 of that directive are to be seen as an exception to this rule.

<sup>4</sup> As regards the position in Member States other than the United Kingdom, the parties understand that duplicate bridge is treated as a 'sport' for the purposes of Article 132(1)(m) of the VAT Directive by the tax authorities in Austria, Belgium, Denmark, France and the Netherlands. The parties understood that it is not treated as a 'sport' in Ireland or Sweden.

– *Exemptions in Article 132(1)(m) of the VAT Directive*

14. Yet, the exemptions contained in Article 132 of the VAT Directive are not optional in nature. As is apparent from the use of the prescriptive term ‘shall’, Member States are under a duty to exempt the transactions listed in Article 132 of that directive. This implies that it is in the EU interest that the listed transactions are exempt from VAT. It also means that, while exemptions as an exception to a general rule are to be construed narrowly, sight should not be lost of this EU interest. The matrix is therefore distinct from that applicable to grounds of justification or mandatory requirements under the EU fundamental freedoms and related harmonisation measures, where Member States enjoy discretion. As regards Article 132(1)(m) of the VAT Directive, there is no margin of manoeuvre for Member States. If the conditions of that provision are met, then Member States must exempt transactions. Such an obligation on Member States is, moreover, necessary in order to ensure the uniform application of the exemption throughout the European Union.

15. The Court has been called upon on numerous occasions to interpret exemptions to the VAT Directive and its predecessors. The cases can be divided into three categories.

16. First, there are cases relating to questions concerning the taxable persons that can qualify for the exemption. In this regard, the Court has consistently held that the principle of fiscal neutrality requires Member States not to allow for a differentiation dependent on the legal form or form of organisation effecting the transaction for the purpose of granting an exemption.<sup>5</sup>

17. Secondly, the Court has dealt with the issue of whether a certain activity that was related to an exempted activity was also covered by the exemption. The Court has held in *Stockholm Lindöpark*<sup>6</sup> that the letting, or in *Turn- und Sportunion Waldburg*,<sup>7</sup> that the leasing of immovable property was not directly linked to sport and thus not exempt from VAT, while the provision of a pitch or a referee are essential for the practising of the sport,<sup>8</sup> and thus covered by the VAT-exemption.

18. Thirdly, the Court has given a ruling on the question of which kinds of activity can be regarded as a sport. In *Žamberk*,<sup>9</sup> it held that non-organised and unsystematic sporting activities not aimed at competition fall under the exemption. In *Commission v Netherlands*,<sup>10</sup> it held that the renting of leisure boats was not to be equated with a sporting activity since their purpose could be purely recreational.<sup>11</sup> That case did not, however, deal with the definition of a sport as such, as it was not contested that boating could be a sport.

<sup>5</sup> See judgment of 14 March 2013, *Commission v France* (C-216/11, EU:C:2013:162, paragraph 20), to that effect. See also judgment of 3 April 2003, *Hoffmann* (C-144/00, EU:C:2003:192, paragraph 24), for the sporting exemption specifically: judgment of 16 October 2008, *Canterbury Hockey Club and Canterbury Ladies Hockey Club* (C-253/07, EU:C:2008:571, paragraph 30).

<sup>6</sup> Judgment of 18 January 2001 (C-150/99, EU:C:2001:34).

<sup>7</sup> Judgment of 12 January 2006 (C-246/04, EU:C:2006:22).

<sup>8</sup> Judgment of 16 October 2008, *Canterbury Hockey Club and Canterbury Ladies Hockey Club* (C-253/07, EU:C:2008:571).

<sup>9</sup> Judgment of 21 February 2013 (C-18/12, EU:C:2013:95, paragraphs 24 and 25).

<sup>10</sup> Judgment of 25 February 2016 (C-22/15, not published, EU:C:2016:118).

<sup>11</sup> Judgment of 25 February 2016 (C-22/15, not published, EU:C:2016:118, paragraph 30).

– *Other selected exemptions in the VAT Directive*

19. In *Rank Group*,<sup>12</sup> the Court held that a difference in treatment for the purposes of VAT of two supplies of services which are identical or similar from the point of view of the consumer and meet the same needs of the consumer is sufficient to establish an infringement of the principle of fiscal neutrality in the context of the exemption for gaming laid down in Article 135(1)(i) of the VAT Directive.<sup>13</sup> The question whether the activity in question constituted ‘betting, lotteries and other forms of gambling’ therefore depended on a market-orientated approach: if customers regard the services as similar, they need to be taxed the same way.

20. Regarding exemptions for medical services, the Court clarified at an early stage that services provided by veterinary surgeons,<sup>14</sup> biological analyses of genetic affinities,<sup>15</sup> and storage of stem-cells for potential future therapies<sup>16</sup> do not benefit from the definition of the VAT exemptions in Article 132(1)(b) and/or (c), whereas home-care services provided by nurses,<sup>17</sup> medical analyses by private undertakings,<sup>18</sup> and the removal and cultivation of joint cartilage cells<sup>19</sup> do fall within the definition of medical care.<sup>20</sup> From these cases it is possible to discern that the concept of ‘medical care’ does not call for an especially narrow interpretation since the exemption of activities closely related to hospital and medical care is designed to ensure that the benefits flowing from such care are not hindered by increased costs.<sup>21</sup>

21. I infer from the abovementioned case-law that the concept of ‘sport’ in Article 132(1)(m) of the VAT Directive should be interpreted in a narrow manner, while bearing in mind the purpose and objective of the exemption.

22. The term ‘sport’ is not defined in Directive 2006/112. Neither is there a Union-wide all-encompassing definition of ‘sport’ which would apply throughout the EU for every act of primary and secondary law. We must therefore resort to the classic interpretation technique of wording, system (or general scheme), context/objectives (or spirit) and history.

**Wording**

23. In the absence of a clear definition, the starting point of interpretation must be the ordinary meaning of the term ‘sport’. Here, authoritative dictionaries offer definitions in line with our intuition by clearly requiring a physical element. It is sufficient to check the definitions offered, on this side of the Atlantic,<sup>22</sup> by the *Oxford Advanced Learner’s Dictionary* (an ‘activity that you do for pleasure and that needs physical effort or skill, usually done in a special area and according to fixed rules’),<sup>23</sup> the *Cambridge Dictionary* (‘a game, competition, or activity needing physical effort and skill that is played or done according to rules, for enjoyment and/or as a job’),<sup>24</sup> the Polish *Słownik języka polskiego*

12 Judgment of 10 November 2011 (C-259/10 and C-260/10, EU:C:2011:719, paragraph 36).

13 Then Article 13(B)(f) of Directive 77/388.

14 Judgment of 24 May 1988, *Commission v Italy* (122/87, EU:C:1988:256, paragraph 9).

15 Judgment of 14 September 2000, *D.* (C-384/98, EU:C:2000:444, paragraph 22).

16 Judgment of 10 June 2010, *CopyGene* (C-262/08, EU:C:2010:328, paragraph 52).

17 Judgment of 10 September 2002, *Kügler* (C-141/00, EU:C:2002:473, paragraph 41).

18 Judgment of 8 June 2006, *L.u.p.* (C-106/05, EU:C:2006:380, paragraph 31).

19 Judgment of 18 November 2010, *Verigen Transplantation Service International* (C-156/09, EU:C:2010:695, paragraph 32).

20 More difficult is the situation of psychotherapy: see the judgments of 6 November 2003, *Dornier* (C-45/01, EU:C:2003:595, paragraph 50) and of 13 September 2007, *Common Market Fertilizers v Commission* (C-443/05 P, EU:C:2007:511, paragraph 46).

21 Judgment of 11 January 2001, *Commission v France* (C-76/99, EU:C:2001:12, paragraph 23).

22 Indeed, the only definition of ‘sport’ I have come across which is ambiguous about the necessity of a physical element is the Merriam-Webster Dictionary, which offers three definitions, only one out of which refers to ‘physical activity engaged in for pleasure’ see <https://www.merriam-webster.com/dictionary/sport>.

23 See [http://www.oxfordlearnersdictionaries.com/definition/english/sport\\_1?q=sport](http://www.oxfordlearnersdictionaries.com/definition/english/sport_1?q=sport).

24 See <http://dictionary.cambridge.org/dictionary/english/sport>.

(Polish language dictionary) PWN – Polskie Wydawnictwo Naukowe ('Exercises and games aimed at the development of fitness and competitive pursuit to achieve the best possible results'),<sup>25</sup> the French *Larousse* ('physical activity with a view to improving one's physical condition'),<sup>26</sup> or 'the German *Duden* ('physical activity carried out with a view to physical exercise, as a result of joy in movement and game, and following certain rules [in competition]).<sup>27</sup>

### **System**

24. Article 132(1)(m) of the VAT Directive refers to 'sport or physical education'. The United Kingdom Government and the Commission claim that the fact that the provision refers to 'sport or physical education' also implies that the term 'sport' also necessitates a physical element. Indeed, the use of the term 'or' could be taken to imply that the term 'physical education' has a scope that overlaps that of the term 'sport', in the sense that every sport must have a physical component. It might thus be inferred that, for the legislature, the two terms of 'sport' and 'physical education' were closely related, if not synonyms.

25. I am not, however, persuaded by that argument.

26. The fact that the EU legislature included 'sport' and 'physical education' in the same provision merely, in my view, indicates that the terms are related in some way or another, which does not necessarily have to be linked to the element of 'physical'. It may just as well have been the 'education' aspect of 'physical education', or any elements common to both concepts, such as health benefits, sense of community, organisational matters, or to ensure that activities the physical element of which is doubtful, but which are widely regarded as 'sport' such as shooting, archery or chess are covered by the definition<sup>28</sup> – or indeed the EU legislature's intention may merely have been to ensure that 'physical education', even though it does not habitually contain an element of competition, falls under Article 132(1)(m) of the VAT Directive. In fact, I understand this distinction to rather clarify that physical education which, for whatever reason, might not constitute a 'sport' is also covered by Article 132(1)(m) of that directive. An example which springs to mind in this respect is physical education taking place without a direct competitive element, such as training. Surely, say, football training would fall under Article 132(1)(m) of the VAT Directive?

27. In other words, one should not assume that the aim of using the expression 'sport or physical education' was to exclude activities which do not have a physical element as their defining feature.

28. Ergo, the system of the VAT Directive as a whole is inconclusive as to the question whether an activity that is predominantly based on mental instead of physical exertion can be a 'sport' within the meaning of Article 132(1)(m) of that directive.

25 My translation of 'ćwiczenia i gry mające na celu rozwijanie sprawności fizycznej i dążenie we współzawodnictwie do uzyskania jak najlepszych wyników', see <http://sjp.pwn.pl/sjp/sport;2523172.html>.

26 My translation of 'activité physique visant à améliorer sa condition physique', see <http://www.larousse.fr/dictionnaires/francais/sport/74327?q=sport#73493>.

27 My translation of 'nach bestimmten Regeln [im Wettkampf] aus Freude an Bewegung und Spiel, zur körperlichen Ertüchtigung ausgeübte körperliche Betätigung', see <http://www.duden.de/rechtschreibung/Sport>.

28 I will come back to the case of these three sports below.

## *History*

29. Moreover, the drafting history of the VAT Directive does not reveal a more precise definition. The delegation of the United Kingdom remarked in the protocol of the Council of 17 May 1977 on Sixth Council Directive 77/388/EEC<sup>29</sup> that the (now) Article 132(1)(m) and (n) would need a more precise definition of the activities concerned,<sup>30</sup> but such a definition was to my knowledge never included in the VAT Directive.

## *Objectives*

30. The supply of certain services closely linked to sport or physical education by non-profit-making organisations to persons taking part in sport or physical education is considered by the EU legislature to constitute a service in the public interest which merits being exempted. Moreover, the rationale of this exemption is to be seen against the background of Article 165(1) second subparagraph, TFEU, according to which the Union is to contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.

31. When it comes to common practice in the Member States as to whether activities which lack a physical element can qualify as a sport, a rather heterogeneous picture emerges. The cardinal example in this respect is chess, an activity widely regarded as a sport,<sup>31</sup> even if not, as far as I can ascertain, in the United Kingdom.

32. Looking at the wider context, the Committee of Ministers of the Council of Europe, in 1992, issued a Sports Charter<sup>32</sup> which, in the definition of ‘sport’, specifically refers to ‘physical activity’.

33. It is true that the activities of the Council of Europe constitute a benchmark for the EU’s activities. Indeed, the EU is not only under a general obligation to establish all appropriate forms of cooperation with the Council of Europe,<sup>33</sup> but a specific obligation to foster cooperation in the fields of sport<sup>34</sup> and culture.<sup>35</sup> As regards sport, the Council of Europe constitutes, in the words of Article 165(3) TFEU a ‘competent international organisatio[n]’.

34. And yet, there is no indication that the EU legislature intended to establish a link between the term in the VAT Directive and that in the Sports Charter of 1992.

29 Directive 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)

30 See Birkenfeld, W., Forst, Ch., *Das Umsatzsteuerrecht im Europäischen Binnenmarkt*, 3<sup>rd</sup> ed., Erich Schmidt Verlag, Bielefeld 1998, p. 310.

31 To my knowledge, chess is regarded a sport in Denmark, Belgium, Italy, France and Austria. In Germany, chess is not regarded a sport but still benefits from the same exemptions due to §52. Abs 2. German Abgabenordnung. There, Bridge has been regarded not a sport but interpreted as ‘culture’ in order to be able to benefit from the same exemptions in the judgement of Finanzgericht Köln 13 K K3949/09 of 17 October 2013.

32 Recommendation R (92) 13 REV of the Committee of Ministers to Member States on the revised European Sports Charter adopted by the Committee of Ministers on 24 September 1992 at the 480th meeting of the Ministers’ Deputies and revised at their 752<sup>nd</sup> meeting on 16 May 2001, Article 2(a). It is worth pointing out, that according to Article 2(b) of the Charter, it complements the ethical principles and policy guidelines set out in: (i) the European Convention on Spectator Violence and Misbehaviour at Sports Events and in Particular at Football Matches; (ii) the Anti-Doping Convention. Both of the documents referred to deal with issues primarily linked to professional physical sport.

33 See Article 220(1) TFEU.

34 See Article 165(3) TFEU.

35 See Article 167(3) TFEU.

35. Bridge is considered a sport under the Erasmus+ programme. Erasmus+ can equally finance activities that are not necessarily exempt from VAT. In other words, while the definition of sport needs to be autonomous for the purpose of the VAT Directive,<sup>36</sup> the term does not necessarily have a universally accepted meaning across European Union law. I do not think that we can infer that the Council of Europe or the political institutions of the EU would use one definition of sport that is universal to all legal acts, in particular because the definition of the term may depend on the purpose of the act.

36. The present question is, thus, not whether sport according to some definitions needs to entail an element of physical effort or exertion but, rather, whether the activities, which benefit from the VAT exemption in Article 132(1)(m) of the VAT Directive under the term ‘sport’ necessarily need to include an element of physical effort or exertion. I shall therefore now provide essential elements for a definition of the term ‘sport’ for the purposes of Article 132(1)(m) of the VAT Directive, which reflect the overall purpose of that provision within the system of that directive.

### *Towards a definition of sport*<sup>37</sup>

37. The meaning of the term ‘sport’ has undergone substantial changes since the first Olympic Games in Greece in ancient times and the 21<sup>st</sup> century. Originally, when the term was introduced into the English language in the 14<sup>th</sup> century, ‘sport’ meant ‘leisure’. Only later was it associated with physical activity to train the body according to fixed rules.<sup>38</sup> However, this definition which is, as seen above, still widely endorsed, is by no means universal.

38. Indeed, the SportAccord International Federations’ Union,<sup>39</sup> the International University Sports Federation<sup>40</sup> and the International Olympic Committee<sup>41</sup> expressly include mental sports or endorse activities without a physical element. The best example in this respect is chess. Where a physical element is not necessary, sport is defined by competition and the fact that equipment is provided by not just one supplier<sup>42</sup> – which excludes activities without a broad basis in civil society, such as commercial products in the market place, designed by firms for pure consumption (for instance video games).

39. In my opinion these definitions cannot be used to exhaustively delimit the term ‘sport’ in Article 132(1)(m) of the VAT Directive, but they provide a good starting point. The international status granted by the International Olympic Committee and/or SportAccord implies a certain acceptance by the public and may imply that they are generally regarded as similar to established sports. For the purpose of answering the question asked by the referring court, it is thus worth noting that, in light of the comparability criterion stated in *Rank Group*,<sup>43</sup> the acceptance by international sporting associations should be of relevance to whether an activity can, in principle, be regarded as a sport.

36 It is the Court’s settled case-law that the exemptions referred to in that article constitute independent concepts of European Union law whose purpose is to avoid divergences in the application of the VAT system as between one Member State and another, see judgment of 21 February 2013, *Zamberk* (C-18/12, EU:C:2013:95, paragraph 17).

37 McBride, F., ‘Toward a non-definition of sport’, *Journal of the Philosophy of Sport*, Volume 2, Issue 1, 1975, 4–11, argues that a definition of ‘sport’ is not necessary for philosophical purposes. Since we are dealing here with the more mundane matter of the VAT Directive, I am afraid it is necessary to try to define the term ‘sport’.

38 Harper, Douglas. ‘sport (n.)’. Online Etymological Dictionary, accessed via <http://www.etymonline.com/index.php?search=sport&searchmode=none>.

39 SportAccord International Federations’ Union, Geneva, 2016: ‘Definition of Sport’, see <http://www.sportaccord.com/about/membership/definition-of-sport.php>.

40 See the website of the FISU accessed via <http://www.fisu.net/sports/world-university-championships/chess>.

41 See the inclusion of bridge and chess in the sports recognised by the International Olympic Committee, <https://www.olympic.org/recognised-federations>.

42 See ‘Definition of Sport’, *SportAccord International Federations’ Union*, Geneva, 2016, see <http://www.sportaccord.com/about/membership/definition-of-sport.php>

43 Judgment of 10 November 2011 (C-259/10 and C-260/10, EU:C:2011:719, paragraph 36).

40. I note that the International Olympic Committee includes the non-physical sport chess among the activities granted Olympic status.<sup>44</sup> I infer from this that an activity does not necessarily need to have a physical element in order for it to be accepted as a sport. This appears to me to be only logical. A mandatory physical element would *ipso facto* exclude a number of activities which are generally regarded as a sport, even though the physical element is more than marginal and the classification of which as a sport is beyond doubt. Shooting or archery would spring to mind here.

41. However, the term ‘sport’ also needs to be interpreted in light of the purpose of the exemptions to the VAT Directive. As the title of Chapter 2 of Title IX of that directive (‘Exemptions for certain activities in the public interest’) states, an activity should be in the public interest in order to be covered by the exemption.

42. In this regard, it appears to me that most activities commonly referred to as a sport have in common that (1) they require a certain effort to overcome a challenge or an obstacle (and are thus not purely recreational),<sup>45</sup> whether that challenge is competition against an adversary or the surpassing of individual physical or mental limits, (2) the overcoming of these challenges or obstacles (i) trains a certain physical or mental skill and (ii) thereby yields benefits for the physical or mental wellbeing of the persons engaging in the sport, and (3) such activities are usually practised not solely in a purely commercial context. Finally, (4), (local) public perception or international recognition serve as an indication pointing to the existence of a ‘sport’. In other words, ‘sport’ within the meaning of the directive, needs to be understood as meaning the training of mental or physical fitness in a way that is generally beneficial to the health and the well-being of citizens, as otherwise it would not be consistent with the purpose of the exemptions in Chapter 2 of Title IX of the VAT Directive.<sup>46</sup>

43. Finally, I should like to stress the cultural component inherent in Article 132(1)(m) of the VAT Directive. While the definition of ‘sport’ is, as seen above, an autonomous one of EU law, sight should not be lost of the fact that many sports are regional in nature and not present throughout the EU. This is, for instance, the case with hurling in Ireland or with *kumoterki*<sup>47</sup> in Poland. Also, some sports are more prevalent in some countries or regions than others. More British or French citizens participate in, say, rugby than Polish citizens. In a similar vein, it appears to me that contract bridge boasts a higher degree of participation in the United Kingdom, Ireland and the northern countries of the European Union than elsewhere. Regional perceptions should, therefore, enter into account when the term ‘sport’ is determined in an autonomous manner on an EU level.

44. It follows from the above that many activities will continue to be excluded from the term ‘sport’. The definition necessarily excludes games of chance, as there is no relation between the effort invested and the outcome, and the tasks involved do not require any mental or physical skill.

45. What does not appear to me to be compulsory is the presence of a certain physical element. It is true that few non-physical activities will reach the definition of a sport as they need to be not purely recreational, must reach a certain level of acceptance and must have the characteristics and benefits associated with most physical sports, in so far as effects on mental fitness and wellbeing should be regarded as interchangeable with physical fitness and wellbeing.

44 List of recognised sports, International Olympic Committee, <https://www.olympic.org/recognised-federations>.

45 See judgment of 25 February 2016, *Commission v Netherlands* (C-22/15, not published, EU:C:2016:118, paragraph 24)

46 Whether the activity necessary needs to be lawful in order to profit from the exemption is another question that cannot be resolved in the present case. In regards to the requirement of lawfulness and the principle of fiscal neutrality, see judgment of 11 June 1998, *Fischer* (C-283/95, EU:C:1998:276, paragraph 21).

47 Sleighs and skis are pulled along by horses. Mainly practiced in the region of Zakopane.

46. My proposed answer to the first question is, therefore, that among the characteristics an activity must exhibit in order for it to be a 'sport' within the meaning of Article 132(1)(m) of the VAT Directive, a not insignificant physical element which is material to its outcome is not necessary. It is sufficient that the activity has a significant mental element which is material to its outcome.

## **Question 2: Bridge**

47. By its second question, the referring Court would like to know whether duplicate contract bridge qualifies as a sport within the meaning of Article 132(1)(m) of the VAT Directive.

48. It is ultimately a matter for the referring court, which alone has jurisdiction to assess the facts and interpret the national legislation, to examine, in the light of the principles established in point 42 of this Opinion, whether duplicate contract bridge is a 'sport' within the meaning of Article 132(1)(m) of the VAT Directive.

49. On the basis of the information provided, however, I would propose that the answer is 'yes'.

50. Bridge is neither a game of chance, nor does its classification as a sport seem to be contrary to the principles established above. The fact that tournaments take place on an international stage and that the results of the game seem to be directly dependent on the skill and training invested in the activity, according to the findings of facts made by the referring court, point in the direction of contract bridge being a sport. Considerable mental effort and training are necessary in order to compete in duplicate contract bridge.

51. Moreover, there is a broad international acceptance of duplicate contract bridge as a sport, not least because the International Olympic Committee, in 1998, decided to classify it as a sport. It has now even been granted Olympic status<sup>48</sup> which means that it will be offered at the 2020 Olympic Games.

52. Finally, the relatively small role played by chance in obtaining the results points to duplicate contract bridge constituting a 'sport' for the purposes of the present case.

## **Conclusion**

53. In the light of the considerations above, I propose that the Court answer the question referred by the Upper Tribunal (Tax and Chancery Chamber) (United Kingdom) as follows:

- (1) Among the characteristics an activity must exhibit in order for it to be a 'sport' within the meaning of Article 132(1)(m) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (the 'VAT Directive') a physical element is not necessary.
- (2) Duplicate contract bridge as the activity at issue in the main proceedings is a 'sport' within the meaning of Article 132(1)(m) of the VAT Directive.

<sup>48</sup> See <https://www.olympic.org/recognised-federations>.