# JUDGMENT OF THE COURT (First Chamber)
8 March 2001 *

In Case C-240/99,

REFERENCE to the Court under Article 234 EC by the Regeringsrätten, Sweden, for a preliminary ruling in the proceedings pending before that court brought by

**Försäkringsaktiebolaget Skandia (publ),**

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

* Language of the case: Swedish.

THE COURT (First Chamber),

composed of: M. Wathelet (Rapporteur), President of the Chamber, P. Jann and L. Sevón, Judges,

Advocate General: A. Saggio,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Försäkringsaktiebolaget Skandia (publ), by J.-M. Bexhed, Chefjurist,

— the Swedish Government, by L. Nordling, acting as Agent,

— the Commission of the European Communities, by E. Traversa and U. Jonsson, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Försäkringsaktiebolaget Skandia (publ), represented by J.-M. Bexhed and G. Lundsten, Bolagjurist; of the Swedish Government, represented by L. Nordling; and of the Commission, represented by K. Simonsson, acting as Agent, at the hearing on 12 July 2000,

after hearing the Opinion of the Advocate General at the sitting on 26 September 2000,

gives the following

## Judgment

1 By order of 10 June 1999, received at the Court on 25 June 1999, the Regeringsrätten (Supreme Administrative Court) referred to the Court for a preliminary ruling under Article 234 EC a question on the interpretation of Article 13B(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

2 That question was raised in the course of an appeal on a point of law brought by the insurance company Försäkringsaktiebolaget Skandia (publ) ('Skandia') in respect of a judgment in which the Regeringsrätten had ruled that a commitment assumed by Skandia to run the business of another insurance company, wholly owned by Skandia, would not constitute an insurance service exempt from value added tax ('VAT') under Swedish law.

### Community law

3 Article 13 of the Sixth Directive, concerning VAT exemptions within the territory of the country, provides:

'...

B. *Other exemptions*

Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions and of preventing any possible evasion, avoidance or abuse:

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

... '.

**Swedish legislation**

4 Article 13B(a) of the Sixth Directive was transposed into Swedish law by Article 10 of Chapter 3 of the Mervärdesskattelagen (1994:200) (Law on VAT) which, in the version published in the *Svensk Författningssamling* 1998, No 300, provides:

'The supply of insurance services shall be exempt from VAT.

"*Insurance services*" shall mean:

(1) services whose provision constitutes insurance business in accordance with the Försäkringsrörelselagen (1982:713) (Law on Insurance Business), with the Lagen (1989:1079) om Livförsäkringar med Anknytning till Värdepappersfonder (Law on Life Assurance linked to funds of movable assets) or with the Lagen (1998:293) om Utländska Försäkringsgivares verksamhet i Sverige (Law on Foreign Insurers operating in Sweden); and

(2) services provided by insurance brokers or other insurance agents which relate to insurance'.

5 According to the order for reference, the Swedish legislation, including the provisions referred to in Article 10 of Chapter 3 of the Mervärdesskattelagen, does not define insurance business.

6 Furthermore, since 1951 it has been possible in Sweden to obtain, in matters of taxation, a preliminary opinion which is binding upon the administrative authorities. The issues on which such opinions are sought are examined by the *Skatterättsnämnden* (Revenue Law Board). So far as opinions on VAT matters are concerned, the provisions applicable at the material time for the purposes of the proceedings before the national court are set out in Article 21 of the Mervärdesskattelagen and in the Lagen (1951:442) om Förhandsbesked i Taxeringsfrågor (Law on Preliminary Opinions on matters of tax assessment) which remained in force until 1 July 1998. Since that date the relevant provisions in relation to VAT are to be found in the Lagen (1998:189) om Förhandsbesked i Skattefrågor (Law on Preliminary Opinions on tax matters).

## Facts and the question referred for a preliminary ruling

7 Skandia is an insurance company, one of whose subsidiaries is Livförsäkringsaktiebolaget Skandia (publ) (hereinafter 'Livbolaget'). Livbolaget is wholly owned by Skandia.

8 Livbolaget is engaged in the business of life assurance, in particular, in the sector of capital insurance and insurance provision for old-age. Livbolaget and Skandia have studied the possibility of merging (in the broad sense) their insurance activities within a single company. One plan was to transfer Livbolaget's staff and operations to Skandia so that, in effect, Skandia would be conducting all Livbolaget's business, whether this consisted in the sale of insurance, the settlement of claims, the calculation of actuarial forecasts or capital management. In return, Skandia would receive from Livbolaget remuneration at market rates. Skandia would assume no liability in respect of those insurance activities. All risks would devolve wholly upon Livbolaget which would preserve its status of insurer for the purposes of Swedish civil law.

9 On 28 June 1995 Skandia requested a preliminary opinion from the Skatterättsnämnden on the question whether the assumption of a commitment to run Livbolaget's business activities could be regarded as the supply of insurance services for the purposes of Article 10 of Chapter 3 of the Mervärdesskattelagen, thus qualifying for exemption from VAT.

10 By decision of 15 January 1996, the Skatterättsnämnden replied that for there to be an insurance service of the kind contemplated by the above provision of the Mervärdesskattelagen there must be a service provided by an insurer, the object of which constitutes insurance business. On that basis, a commitment such as that to be assumed by Skandia, which is at issue in the main proceedings, would not constitute an insurance service, but would have to be regarded as the supply of

administrative and management services to Livbolaget. Accordingly, the commitment at issue would not be covered by the VAT exemption for insurance services.

11 Skandia challenged that preliminary opinion before the Regeringsrätten.

12 By judgment of 16 June 1997, the Regeringsrätten dismissed the action, holding in particular that the exemption provided for in Article 10 of Chapter 3 of the Mervärdesskattelagen applied solely to 'the supply of insurance services'. That expression is ordinarily taken to mean services provided directly to an insured party by an insurer. Moreover, the working documents relating to the Mervärdesskattelagen reveal an intention to clarify and limit the scope of the term 'the supply of insurance services'.

13 On 26 June 1997 Skandia appealed on a point of law to the Regeringsrätten in respect of the judgment of 16 June 1997, relying principally on the judgment of the Court of Justice in Case C-2/95 *SDC* [1997] ECR I-3017.

14 In *SDC*, the Court interpreted points 3 and 5 of Article 13B(d) of the Sixth Directive, which provide primarily for the exemption of transactions concerning, *inter alia*, transfers and payments, and of transactions in shares, interests in companies or associations, debentures and certain other securities. In paragraph 33 of the judgment, the Court expressed the view that the identity of the end customer had no bearing on the question whether a transaction was exempted by that provision and, in paragraph 57, it rejected as unfounded any interpretation restricting application of the exemption under point 3 of Article 13B(d) to services provided directly to the customer of the bank. In consequence, the Court held, in paragraph 59, that the exemption provided for in points 3 and 5 of

Article 13B(d) was not subject to the condition that the service be provided by an institution which has a legal relationship with the end customer of the bank.

15 Skandia concludes from this that, generally speaking, a service need not be provided directly to an end customer in order to qualify for exemption under Article 13B of the Sixth Directive. On that ground, the judgment of the Regeringsrätten of 16 June 1997 runs counter to the case-law of the Court of Justice on the interpretation of the Sixth Directive.

16 In the order for reference, the national court explains that the case pending before it is to be distinguished on its facts from the cases previously considered by the Court of Justice. In particular, it points out that the cooperative arrangement planned by Skandia and Livbolaget consists in the supply of services by a person who is not an insurer to a person who is neither insured nor a policy-holder; nor is it a service performed by an insurance broker or insurance agent.

17 Considering, therefore, that the case-law of the Court does not enable it to be established with certainty whether or not the commitment to be assumed by Skandia and at issue in the main proceedings constitutes an insurance transaction within the meaning of Article 13B(a) of the Sixth Directive, the Regeringsrätten decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Does an insurance company's commitment, of the kind which Skandia plans to assume, to run the business of a wholly-owned subsidiary constitute an insurance transaction or insurance transactions within the meaning of Article 13B(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment?'

## Substance

18 By its question, the national court is essentially asking whether a commitment assumed by an insurance company to carry out, in return for remuneration at market rates, the activities of another insurance company, which is its 100% subsidiary and which would continue to conclude insurance contracts in its own name, would constitute an insurance transaction within the meaning of Article 13B(a) of the Sixth Directive.

19 Article 13B(a) of the Sixth Directive makes express provision for the exemption of insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents.

20 It is common ground that Skandia plans to run Livbolaget's business operations without assuming any related liability. That means that the service to be provided by Skandia does not constitute reinsurance. Moreover, Skandia acknowledged in the proceedings before the national court that the service which it planned to provide to Livbolaget did not constitute a supply of services relating to insurance or reinsurance transactions, which would be performed by an insurance broker or an insurance agent.

21 Consequently, the Court is asked to rule solely on the interpretation of the term 'insurance transactions' for the purposes of Article 13B(a) of the Sixth Directive.

22 It should be noted that no definition of the term 'insurance transactions' is given in the Sixth Directive.

23 It is settled law that the exemptions provided for by Article 13 of the Sixth Directive constitute independent concepts of Community law whose purpose is to avoid divergences in the application of the VAT system as between one Member State and another (see Case 348/87 *Stichting Uitvoering Financiële Acties* [1989] ECR 1737, paragraph 11, and Case C-349/96 *CPP* [1999] ECR I-973, paragraph 15) and must be placed in the general context of the common system of VAT (see, to that effect, Case 235/85 *Commission* v *Netherlands* [1987] ECR 1471, paragraph 18).

24 Skandia maintains that the services which it plans to provide to Livbolaget constitute insurance transactions exempted under Article 13B(a) of the Sixth Directive.

25 It submits that the interpretation of the term 'insurance' should not differ according to whether it appears in the Community directives on insurance or in the Sixth Directive (see, to that effect, *CPP*, cited above, paragraph 18).

26 In particular, Skandia argues that for the purposes of interpreting Article 13B(a) of the Sixth Directive it is useful to consider the rules set out in Article 8(1) of First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (OJ 1973 L 228, p. 3), as amended by Article 6 of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life assurance Directive) (OJ 1992 L 228, p. 1), and of Article 8(1) of First Council Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance (OJ 1979 L 63, p. 1), as amended by Article 5 of Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third

life assurance Directive) (OJ 1992 L 360, p. 1). Those provisions require insurance companies to limit their objects to the business of insurance and operations arising directly therefrom, to the exclusion of all other commercial business.

27 Skandia concludes that all the transactions that a company operating in the insurance sector, such as itself, may carry out under the insurance directives must by definition be exempt from VAT pursuant to Article 13B(a) of the Sixth Directive.

28 Skandia also relies on *SDC*, cited above, in order to argue that, as regards the exemption provided for in Article 13B(a) of the Sixth Directive, the same rules of interpretation must be used as were applied by the Court in that judgment, which concerned the exemption of transactions covered by points 3 and 5 of Article 13B(d) of the same Directive. According to Skandia, for the purposes of the exemption of insurance transactions provided for by Article 13B(a) of the Sixth Directive, it is not necessary for a transaction to be carried out by a company which has a legal relationsip with the insurer's end customer. The services provided by one insurance company to another are therefore exempt under Article 13B(a) of the Sixth Directive and the fact that there is no legal relationship between Skandia and Livbolaget's clients has no bearing on the question whether the services which Skandia plans to perform for Livbolaget should be exempt from VAT.

29 That reasoning must be rejected on the following grounds.

30 First, it is true that, in paragraph 18 of its judgment in *CPP*, cited above, the Court held that there is no reason for the interpretation of the term 'insurance' to differ according to whether it appears in the directives on insurance or in the Sixth Directive.

31 However, it is mistaken to maintain that, in so far as the Member States must, in application of the insurance directives, require insurance companies to limit their objects to the business of insurance and operations arising directly therefrom, to the exclusion of all other commercial business, such companies effect only insurance transactions which are exempt from VAT under Article 13B(a) of the Sixth Directive.

32 Indeed, according to established case-law, the terms used to specify the exemptions provided for by Article 13 of the Sixth Directive are to be interpreted strictly, since they constitute exceptions to the general principle that turnover tax is to be levied on all services supplied for consideration by a taxable person (see to that effect *Stichting Uitvoering Financiële Acties*, cited above, paragraph 13; Case C-453/93 *Bulthuis-Griffioen* [1995] ECR I-2341, paragraph 19; Case C-346/95 *Blasi* [1998] ECR I-481, paragraph 18; and Case C-149/97 *Institute of the Motor Industry* [1998] ECR I-7053, paragraph 17).

33 Furthermore, the insurance directives allow insurance companies to carry out not only insurance transactions proper but also 'operations arising directly therefrom'.

34 Consequently, the fact that an insurance company must not engage in business other than insurance business or operations arising directly therefrom does not mean that all the transactions carried out by that company constitute, for tax purposes, insurance transactions in the strict sense, as referred to in Article 13B(a) of the Sixth Directive.

35 Secondly, the Court cannot accept the argument that, on analogy with *SDC*, cited above, it is unnecessary, for the purposes of the exemption of insurance

transactions under Article 13B(a) of the Sixth Directive, for the transaction to be carried out by a company which has a legal relationship with the end customer, that is to say, the insured.

36 It is important to note in that connection that, in contrast with the case which gave rise to the judgment in *SDC*, cited above, in which the Court had to interpret Article 13B(d) of the Sixth Directive, points 3 and 5 of which refer in a general way to transactions 'concerning' or involving certain banking operations, rather than solely to banking operations proper, the exemption provided for in Article 13B(a) covers insurance transactions in the strict sense.

37 When called upon in *CPP*, cited above, to interpret the term 'insurance transactions' in Article 13B(a) of the Sixth Directive, the Court held in paragraph 17 of the judgment that the essentials of an insurance transaction are, as generally understood, that the insurer undertakes, in return for prior payment of a premium, to provide the insured, in the event of materialisation of the risk covered, with the service agreed when the contract was concluded.

38 In the same judgment, after observing in paragraph 19 that it was common ground that the expression 'insurance transactions' in Article 13B(a) of the Sixth Directive covered in any event cases where the transaction was carried out by the actual insurer who undertook to cover the risk insured against, the Court held in paragraph 22 that 'insurance transactions' did not cover solely transactions carried out by the insurers themselves but was broad enough in principle to include the provision of insurance cover by a taxable person who was not himself an insurer but, in the context of a block policy, procured such cover for his customers by making use of the supplies of an insurer who assumed the risk insured.

39 In paragraph 21 of the judgment in *CPP*, cited above, the Court held that a company such as Card Protection Plan Ltd — the applicant in the main

proceedings in that case — could be regarded as performing insurance transactions covered by the exemption in so far as it was the holder of a block insurance policy under which its customers were the insured. It thus procured for those customers, for payment, in its own name and on its own account, insurance cover by having recourse to an insurer, the Continental Assurance Company of London. For the purposes of VAT, therefore, a reciprocal agreement to supply services had been entered into between the insurer, Continental Assurance Company of London, and Card Protection Plan Ltd, on the one hand, and between Card Protection Plan Ltd and its customers on the other. That meant that a legal relationship had been created between Card Protection Plan Ltd, which offered insurance cover, and the insured, namely the persons whose risks were covered by the insurance.

40 However, it is clear that no such legal relationship would exist between Skandia and Livbolaget's clients in the context of the scheme postulated by the two companies in the main proceedings. Skandia would have no contractual relationship with persons insured with Livbolaget and would assume no liability in respect of the insurance business carried out, since all risks would devolve wholly upon Livbolaget which would preserve its status of insurer for the purposes of Swedish civil law.

41 According to the definition of insurance transactions set out in paragraph 17 of the judgment in *CPP* and cited in paragraph 37 of this judgment, it appears that the identity of the person supplied with the service is relevant for the purposes of the definition of the type of services covered by Article 13B(a) of the Sixth Directive and that an insurance transaction necessarily implies the existence of a contractual relationship between the provider of the insurance service and the person whose risks are covered by the insurance, namely the insured.

42 Furthermore, the fact that Article 13B(a) of the Sixth Directive mentions transactions other than insurance transactions, namely 'related services performed by insurance brokers and insurance agents', supports the argument that 'insurance transaction' cannot be broadly construed so as to encompass — as Skandia maintains — all services provided by insurance companies. If the term 'insurance transactions' were indeed open to such an interpretation, 'related

services' would be understood as implicit in the concept of insurance transactions, and the addition of that specification in Article 13B(a) would be wholly redundant.

43 It follows from the above considerations that a cooperative arrangement under which one insurance company runs the business of another insurance company in return for remuneration at market rates, but without assuming the related liabilities, and the latter company concludes insurance contracts in its own name, does not constitute an insurance transaction within the meaning of Article 13B(a) of the Sixth Directive. Such an activity, remunerated at market rates, constitutes a service effected for consideration within the meaning of Article 2(1) of the Sixth Directive, and is accordingly subject to VAT.

44 In the light of the foregoing, the answer to the question referred for a preliminary ruling must be that a commitment assumed by an insurance company to carry out, in return for remuneration at market rates, the business activities of another insurance company, which is its 100% subsidiary and which would continue to conclude insurance contracts in its own name, does not constitute an insurance transaction within the meaning of Article 13B(a) of the Sixth Directive.

## Costs

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

On those grounds,

THE COURT (First Chamber),

in answer to the question referred to it by the Regeringsrätten by order of 10 June 1999, hereby rules:

**A commitment assumed by an insurance company to carry out, in return for remuneration at market rates, the business activities of another insurance company, which is its 100% subsidiary and which would continue to conclude insurance contracts in its own name, does not constitute an insurance transaction within the meaning of Article 13B(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment.**

Wathelet Jann Sevón

Delivered in open court in Luxembourg on 8 March 2001.

R. Grass

Registrar

M. Wathelet

President of the First Chamber