JUDGMENT OF THE COURT (Third Chamber)

8 June 2006 *

In Case C-106/05,

REFERENCE for a preliminary ruling under Article 234 EC from the Bundesfinanzhof (Germany), made by decision of 25 November 2004, received at the Court on 3 March 2005, in the proceedings

L.u.P. GmbH

v

Finanzamt Bochum-Mitte,

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, J. Malenovský, J.-P. Puissochet, U. Lõhmus and A. Ó Caoimh (Rapporteur), Judges,

* Language of the case: German.

Advocate General: M. Poiares Maduro,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 19 January 2006,

after considering the observations submitted on behalf of:

— L.u.P. GmbH, initially by R. Todtenhöfer and N. Bohn, tax advisors, and subsequently by W. Krieger, Rechtsanwalt,

— the Commission of the European Communities, by D. Triantafyllou, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 7 March 2006,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 13A(1)(b) and (c) and (2)(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) ('the Sixth Directive').

2 The reference was made in the context of proceedings between L.u.P. GmbH ('L.u.P.') and the Finanzamt Bochum-Mitte ('the Finanzamt') concerning the latter's refusal to exempt from value added tax ('VAT') medical tests carried out by L.u.P. for companies operating laboratories with which are affiliated the general practitioners who prescribed those tests in the course of the care they provide.

Legal framework

Community legislation

3 Article 13A(1)(b) and (c) of the Sixth Directive provide:

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

...

(b) hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable to those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature;

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

4 The third indent of Article 13A(2)(a) of the same directive provides:

'(2)(a) Member States may make the granting to bodies other than those governed by public law of each exemption provided for in (1)(b) ... subject in each individual case to one or more of the following conditions:

...

— [the bodies in question] shall charge prices approved by the public authorities or which do not exceed such approved prices or, in respect of those services not subject to approval, prices lower than those charged for similar services by commercial enterprises subject to value added tax'.

National legislation

5 The legislation pertaining to turnover tax (Umsatzsteuergesetz 1980/1993 (Law on Turnover Tax, 'the UStG') provides, in the first sentence of Paragraph 4(14), that 'activities arising from the practice of the profession of doctor, dentist, lay medical

practitioner, physiotherapist, midwife or similar professional medical activity for the purposes of Paragraph 18(1)(1) of the Einkommensteuergesetz [Law on Income Tax] or from the practice of the profession of clinical chemist' are exempt from tax.

6 According to the national court, a medical laboratory in the form of a private limited company (Gesellschaft mit beschränkter Haftung) may fall within that provision. According to the Bundesverfassungsgericht (Federal Constitutional Court), the principle of equal treatment precludes turnover tax exemptions from being determined solely on the basis of an undertaking's legal status.

7 Paragraph 4(16)(c) of the UStG provides:

'The following transactions covered by Paragraph 1(1)(1) to 1(1)(3) are exempt:

...

16. activities closely linked with the operation of hospitals, diagnostic clinics and other bodies providing medical care, diagnoses or tests ... , where:

...

(c) in the case of diagnostic clinics and other establishments providing medical care, diagnoses or tests, the services are provided under medical supervision

and in the previous calendar year at least 40% of the services were provided to the persons specified in subparagraph (15)(b)'.

8 The persons referred to in the latter provision are persons insured by a social security authority, persons in receipt of social assistance and persons entitled to a retirement pension (or war victims).

The dispute in the main proceedings and the questions referred for a preliminary ruling

9 L.u.P. is a private limited company under German law whose sole shareholder is Dr Scharmann, a pathologist. It carries out medical tests, inter alia, for companies operating laboratories with which are affiliated the general practitioners who prescribed those tests as part of the care they provide.

10 The Finanzamt found that those services were subject to VAT.

11 The Finanzamt's decision was upheld by the Finanzgericht on the grounds, first, that although L.u.P. is an 'other bod[y] providing medical ... tests' within the meaning of Paragraph 4(16) of the UStG, the services in question were not provided 'under medical supervision' within the meaning of that provision and, second, that L.u.P. did not establish that, for each of the previous calendar years at least 40% of its services had been provided to persons specified in Paragraph 4(15)(b) of the UStG.

12 L.u.P. brought an appeal on a point of law ('Revision') against that decision before the Bundesfinanzhof.

13 In its order for reference, the Bundesfinanzhof finds that the Finanzgericht was correct in finding that the services in question were not exempt under Paragraph 4(16)(c) of the UStG, since it has been established that those services were not provided in sufficient proportion to persons specified in Paragraph 4(15).

14 That court does, however, express doubts, first, as to whether the services in question must be regarded as being 'closely related activities' to 'medical care' provided by 'hospitals' within the meaning Article 13A(1)(b) of the Sixth Directive or as being 'the provision of medical care in the exercise of the medical and paramedical professions' within the meaning of Article 13A(1)(c) of that directive.

15 The Bundesfinanzhof states, first, that whilst medical tests assist in the diagnosis of patients and could thus be regarded as medical care within the meaning of Article 13A(1)(c) of the Sixth Directive, the laboratories carrying out those tests do not generally provide their services in the context of a relationship of trust, which precludes application of the exemption provided for in that provision (Case C-141/00 *Kügler* [2002] ECR I-6833, paragraph 35). That court states, second, that, although Case C-76/99 *Commission* v *France* [2001] ECR I-249, paragraph 20, indicates that medical tests are, in the Court of Justice's view, activities closely related to medical care within the meaning of Article 13A(1)(b) of that directive, the services of doctors who have prescribed those tests are, in its view, exempt under Article 13A(1)(c) of that same directive. The latter provision does not, however, apply to activities closely related to medical care.

16 According to the national court, if the services in question are exempt under Article 13A(1)(c) of the Sixth Directive, then Paragraph 4(16)(c) of the UStG does not properly transpose the provisions of that directive. Moreover, if those services fall within the scope of Article 13A(1)(b) of that directive, it queries whether the exemption of activities closely related to hospital and medical care may be refused on the basis of the conditions laid down in that paragraph and in paragraph (2) of that article, whereas the medical care itself is exempt even if it does not fulfil those conditions. The wording of Article 13A(1)(b) allows for that interpretation, but the condition laid down in that provision regarding eligible centres for treatment could also be interpreted as covering only hospital and medical care and not activities closely related thereto. Moreover, access to medical and hospital care would be made more difficult if more stringent requirements were applied to the exemption of activities closely related to that care. That situation would also be contrary to the principle of fiscal neutrality, as hospitals and other centres for medical treatment and diagnosis would be placed at a fiscal disadvantage if they did not carry out their medical tests themselves.

17 In those circumstances, the Bundesfinanzhof decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Do the provisions of Article 13A(1)(b) and (2) of the [Sixth Directive] allow for the tax exemption for medical laboratory tests ordered by general practitioners to be made subject to the conditions specified in those provisions, even where medical care by such practitioners is exempt from taxation in any event?'

The question referred

18 By its question, the national court seeks to determine the conditions which, under Article 13A of the Sixth Directive, may be imposed on the granting of the VAT exemption for medical tests carried out by laboratories governed by private law outside a centre for treatment on prescription from a general practitioner.

19 In order to answer that question, it is appropriate to determine first whether, as the national court assumes, that provision, like the national legislation at issue here, actually allows Member States to exempt such medical tests and, if so, which conditions may be imposed on that exemption.

The exemption of the services at issue in the main proceedings

20 As observed by the national court, services of a medical nature may come within the exemptions provided for in Article 13A(1)(b) and (c) of the Sixth Directive.

21 According to Article 13A(1)(b) of that directive, Member States are to exempt, inter alia, medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable to those applicable to those bodies, by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature. Article 13A(1)(c) provides for

exemption for the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned.

22 According to the Court's case-law, the criterion for drawing a clear distinction between those two tax exemptions is less the nature of the service than the place where it is provided. Article 13A(1)(b) of the Sixth Directive exempts services encompassing a range of medical care in establishments pursuing social purposes such as the protection of human health, whereas letter (c) of the same provision exempts services provided outside hospitals, be they provided at the service provider's private residence, the patient's residence or at any other location (see, to that effect, Case 353/85 *Commission* v *United Kingdom* [1988] ECR 817, paragraphs 32 and 33; *Kügler*, paragraphs 35 and 36; and Case C-45/01 *Dornier* [2003] ECR I-12911, paragraph 47).

The nature of the services at issue in the main proceedings

23 In the present case, although the national court, in its order for reference, as well as L.u.P. and the Commission of the European Communities, in their written observations, seem to agree that medical tests such as those at issue in the main proceedings may be activities 'closely related' to 'medical care' within the meaning of Article 13A(1)(b) of the Sixth Directive, it should be ascertained whether those tests nevertheless may be 'medical care' within the meaning of that provision or 'the provision of medical care' within the meaning of letter (c) of the same article. If that is so, those tests will be exempt under the Sixth Directive, irrespective of where they are carried out, even though the latter provision does not explicitly provide for exemption of activities closely related to medical care (see *Dornier*, paragraph 47).

24 According to the Court's case-law, the exemptions envisaged in Article 13 of the Sixth Directive are to be interpreted strictly since they constitute exceptions to the general principle that VAT is to be levied on all supplies of services for consideration by a taxable person. However, the interpretation of the terms used in that provision must be consistent with the objectives pursued by those exemptions and comply with the requirements of the principle of fiscal neutrality inherent in the common system of VAT (*Dornier*, paragraph 42; and Case C-498/03 *Kingscrest Associates and Montecello* [2005] ECR I-4427, paragraph 29).

25 As the Court has previously held, the exemptions provided for in Article 13A(1)(b) of the Sixth Directive and letter (c) of the same provision both have the objective of reducing the cost of health care (*Dornier*, paragraph 43; and Case C-307/01 *D'Ambrumenil and Dispute Resolution Services* [2003] ECR I-13989, paragraph 58).

26 Regarding services of a medical nature, the case-law is to the effect that the term 'medical care' in Article 13A(1)(b) of the Sixth Directive must be interpreted as covering all provisions of medical care envisaged in letter (c) of the same provision (*Dornier*, paragraph 50), since those two provisions are intended to regulate all exemptions of medical services in the strict sense (*Kügler*, paragraph 36).

27 It follows that the concept of 'medical care' in Article 13A(1)(b) of the Sixth Directive and that of 'the provision of medical care' in letter (c) of the same provision are both intended to cover services which have as their purpose the diagnosis, treatment and, in so far as possible, cure of diseases or health disorders (see, to that effect, *Dornier*, paragraph 48).

28 In the present case, the national court expresses doubts as to whether medical tests such as those at issue in the main proceedings do constitute such care, although it acknowledges that those tests assist in the diagnosis of diseases. The Commission maintains that, on a functional and teleological interpretation of the relevant provisions of the Sixth Directive, a laboratory carrying out such tests cannot be equated with a centre for diagnosis because those tests serve merely to establish the diagnosis and, on a systematic interpretation of those same provisions, those tests could be viewed as being medical care because they serve to establish the diagnosis and are an integral part thereof.

29 It should be borne in mind that, whilst 'medical care' and 'the provision of medical care' must have a therapeutic aim, it does not necessarily follow that the therapeutic purpose of a service must be confined within a particularly narrow compass. The Court's case-law is to the effect that medical services effected for prophylactic purposes may benefit from the exemption under Article 13A(1)(c) of the Sixth Directive. Even in cases where it is clear that the persons who are the subject of examinations or other medical interventions of a prophylactic nature are not suffering from any disease or health disorder, the inclusion of those services within the meaning of 'medical care' and 'the provision of medical care' is consistent with the objective of reducing the cost of healthcare, which is common to both the exemption under Article 13A(1)(b) and that under (c) of that paragraph. Accordingly, medical services effected for the purpose of protecting, including maintaining or restoring, human health may benefit from the exemption under Article 13A(1)(b) and (c) of that directive (see, to that effect, Case C-212/01 *Unterpertinger* [2003] ECR I-13859, paragraphs 40 and 41; and *D'Ambrumenil and Dispute Resolution Services*, paragraphs 58 and 59).

30 Moreover, medical tests which, as in the present case, are prescribed by general practitioners as part of the care they provide may contribute towards maintaining human health because, like any medical service effected for prophylactic purposes,

they allow for the observation and examination of patients before it becomes necessary to diagnose, care for or heal a potential illness.

31 In those circumstances, as maintained by L.u.P. at the hearing, and as acknowledged as being possible by the national court and the Commission, the Court finds that, in the light of the objective of reducing healthcare costs pursued by the above-mentioned exemptions, medical tests such as those at issue in the main proceedings, which have as their purpose the observation and examination of patients for prophylactic purposes, may constitute 'medical care' within the meaning of Article 13A(1)(b) of the Sixth Directive or 'the provision of medical care' within the meaning of letter (c) of the same paragraph (see, to that effect, *Commission* v *France*, paragraph 30).

32 This interpretation is, moreover, consistent with the principle of fiscal neutrality, which precludes treating similar supplies of services, which are thus in competition with each other, differently for VAT purposes (Case C-109/02 *Commission* v *Germany* [2003] ECR I-12691, paragraph 20; and *Kingscrest Associates and Montecello*, paragraph 54). It would be contrary to that principle to make medical tests prescribed by general practitioners subject to a different VAT scheme depending on where they are carried out when they are equivalent from a qualitative point of view in the light of the professional qualifications of the service providers in question (see, to that effect, *Dornier*, paragraph 49; and Joined Cases C-443/04 and C-444/04 *Solleveld and van den Hout-van Eijnsbergen* [2006] ECR I-3617, paragraphs 40 and 41).

The type of establishments providing the services at issue in the main proceedings

33 In the present case, the order for reference indicates that the medical tests at issue in the main proceedings are carried out outside the surgery of the general practitioner who prescribed them. In those circumstances, it is appropriate to ascertain whether those tests may come within the scope of Article 13A(1)(b) of the Sixth Directive.

34 According to the Commission, a laboratory such as that at issue in the main proceedings is not a hospital or a 'centre for medical treatment or diagnosis' within the meaning of Article 13A(1)(b) of the Sixth Directive. Nor is it another establishment 'of a similar nature' because the scheme of that provision refers to establishments equipped with a fully-developed organisational structure. Lastly, it cannot be regarded as being a centre for diagnosis because the tests serve merely to enable a diagnosis to be made.

35 That line of argument cannot be accepted. As the medical tests, in the light of their therapeutic purpose, come within the concept of 'medical care' as referred to in Article 13A(1)(b) of the Sixth Directive, a laboratory such as that at issue in the main proceedings must be regarded as being an establishment 'of a similar nature' as the 'hospitals' and the 'centres for medical treatment or diagnosis' within the meaning of that provision.

36 Furthermore, as indicated in paragraphs 31 and 32 of this judgment, both the objective of reducing health care costs contemplated in Article 13A(1)(b) and (c) of the Sixth Directive and the principle of fiscal neutrality preclude medical tests from being subject to a different VAT scheme depending on where they are carried out when they are equivalent from a qualitative point of view in the light of the professional qualifications of the service providers in question.

37 The Commission's argument that it follows from the case-law concerning exemptions that activities carried out upstream from those provided by the ultimate service provider are not exempt (Case 107/84 *Commission* v *Germany* [1985] ECR 2655, paragraph 20; Case C-240/99 *Skandia* [2001] ECR I-1951, paragraphs 40 and 41; Case C-235/00 *CSC Financial Services* [2001] ECR I-10237, paragraphs 39 and 40; and Case C-472/03 *Arthur Andersen* [2005] ECR I-1719, paragraph 39), so that only medical tests carried out by laboratories on behalf of patients in the context of a direct contractual relationship with those patients comes within the

scope of Article 13A(1)(b) of the Sixth Directive, must also be rejected, as that case-law relates to the interpretation of other exemptions, the wording and objectives of which are different from those pursued by that provision (see, to that effect, Case 107/84 *Commission* v *Germany*, paragraph 13).

38 The Court has held previously with respect to the exemption of samples taken by laboratories for the purpose of medical analysis that it is irrelevant, for the application of Article 13A(1)(b) of the Sixth Directive, whether the laboratory which takes the sample also carries out the analysis, or subcontracts it to another laboratory but remains responsible to the patient for the analysis, or, because of the nature of the analysis at issue, is obliged to send the sample to a specialised laboratory (*Commission* v *France*, paragraph 28). Likewise, paragraph 67 of *D'Ambrumenil and Dispute Resolution Services* indicates that medical checks intended principally to enable the prevention or detection of illness or the monitoring of the health of workers or insured persons may satisfy the conditions for exemption under Article 13A(1)(c) of the Sixth Directive, even if they take place at the request of third parties.

39 It thus follows that medical tests carried out by a laboratory governed by private law, such as the one at issue in the main proceedings, which have as their purpose the observation and examination of patients for prophylactic purposes, may come within the exemption for medical care provided for in Article 13A(1)(b) of the Sixth Directive.

40 Accordingly, it is appropriate to consider the conditions which that provision may impose on such an exemption.

The conditions for exemption

41 Under Article 13A(1)(b) of the Sixth Directive, laboratories governed by private law, such as the one at issue in the main proceedings, which come within the concept of 'other ... establishments of a similar nature' provided for in that provision, must, in order to be exempt, be 'duly recognised'.

42 As has been held previously, Article 13A(1)(b) of the Sixth Directive does not specify the conditions and procedures for that recognition. It is thus, in principle, for the national law of each Member State to lay down the rules according to which such recognition may be granted to establishments which request it. The Member States enjoy a discretion in this regard (*Dornier*, paragraphs 64 and 81).

43 Moreover, under Article 13A(2)(a) of the Sixth Directive, Member States may make the grant of the exemption provided for in Article 13A(1)(b) to bodies other than those governed by public law subject to one or more of the conditions referred to therein (see, to that effect, *Dornier*, paragraph 65). Those optional conditions may also be imposed freely and additionally by Member States for the grant of that exemption (see, to that effect, *Kingscrest Associates and Montecello*, paragraph 38).

44 According to the wording of the question referred for a preliminary ruling, the national court inquires as to whether those provisions allow for the exemption of medical tests such as those at issue in the main proceedings to be made subject to conditions to which care provided by the general practitioners who prescribed those tests is not subject in order to qualify for the exemption.

45 Suffice it to note that the wording of Article 13A(2) of the Sixth Directive makes it clear that the conditions laid down in letter (a) thereof may be applied only to medical services coming within Article 13A(1)(b) and not to care exempt under Article 13A(1)(c). The latter provision, moreover, makes the exemption of that care contingent not on the public law status of the care-providing organisation or establishment or its recognition by the Member State concerned, but on the condition that that care must be provided in the exercise of the medical and paramedical professions as defined in national legislation (*Solleveld and van den Hout-van Eijnsbergen*, paragraph 23).

46 It is thus inherent in those provisions that the exemption of medical tests may be made subject to conditions which are not imposed with respect to the doctors who prescribed those tests.

47 Moreover, and contrary to the suggestion made by the national court, it follows from both the discretion conferred on the Member States for the recognition of establishments governed by private law for the purposes of application of Article 13A(1)(b) of the Sixth Directive and from Article 13A(2)(a) thereof, which does not require the Member States to impose the conditions laid down therein but rather allows them to impose such conditions on a case-by-case basis, that those same States may, in principle, make the exemption of medical tests as medical care subject to conditions other than those used for the exemption of activities closely related to such care.

48 However, it is also clear from the case-law that it is for the national courts to examine whether the Member States, in imposing such conditions, have observed the limits of their discretion in applying Community principles, in particular the principle of equal treatment (see, to that effect, *Dornier*, paragraph 69; *Kingscrest*

Associates and Montecello, paragraph 52; and *Solleveld and van den Hout-van Eijnsbergen*, paragraph 36).

49 In the present case, the order for reference indicates that the exemption of medical tests carried out by a laboratory such as that at issue in the main proceedings is subject to two conditions under national law: first, they must be provided under the supervision of a doctor and, second, at least 40% of those services must relate to persons insured by a social security authority.

50 It may be stated at the outset that compliance with the principle of fiscal neutrality requires, first, that all of the categories of establishments governed by private law referred to in Article 13A(1)(b) of the Sixth Directive be subject to the same conditions for the purpose of their recognition for the provision of similar services. In the present case, therefore, it is for the national court to ascertain whether the national legislation complies with that requirement or whether, on the contrary, it restricts the application of the conditions in question to certain types of establishments whilst excluding others.

51 Next, in so far as the national legislation makes the exemption of medical care such as that at issue in the main proceedings subject to those conditions, which it is for the national court to determine, it should be borne in mind that the Court has held previously that the condition requiring that the treatment be provided under medical supervision, in so far as it is intended to preclude the exemption from applying to treatment given under the sole responsibility of members of paramedical professions, goes beyond the limits of the discretion allowed to the Member States under Article 13A(1)(b) of the Sixth Directive. The term 'medical care' in that

provision covers not only treatment provided directly by doctors or other health professionals under medical supervision, but also paramedical services given in hospitals under the sole responsibility of persons who are not doctors (*Dornier*, paragraph 70).

52 It follows that, for the purposes of the exemption provided for in Article 13A(1)(b) of the Sixth Directive, a Member State may not validly make recognition of establishments governed by private law subject to a condition requiring that the tests carried out by those establishments be done under medical supervision (see, to that effect, *Dornier*, paragraphs 71 and 82).

53 As to the second condition, it is also apparent from the case-law that, in order to determine whether establishments governed by private law may be recognised for the purpose of the application of the exemption provided for in Article 13A(1)(b) of the Sixth Directive, the national authorities may, in accordance with Community law and subject to review by the national courts, take into consideration, inter alia and in addition to the public interest of the activities of the taxable person in question and the fact that other taxable persons carrying on the same activities already have similar recognition, the fact that the costs incurred for the treatment in question may be largely met by health insurance schemes or other social security bodies (*Dornier*, paragraphs 72 and 73).

54 Accordingly, in requiring, for the purpose of recognition as laboratories governed by private law for the application of that exemption, that at least 40% of the medical tests carried out by the laboratories concerned must be intended for persons insured by a social security authority, the Member State in question did not go beyond the limits of the discretion allowed to it by that provision.

55 In the light of the foregoing, the answer to the question referred must be as follows:

— Article 13A(1)(b) of the Sixth Directive is to be interpreted as meaning that medical tests which have as their purpose the observation and examination of patients for prophylactic purposes, carried out, like those at issue in the main proceedings, by a laboratory governed by private law outside a centre for treatment on prescription from general practitioners, may come within the exemption provided for by that provision as medical care provided by another duly recognised establishment of a similar nature within the meaning of that provision.

— Article 13A(1)(b) and (2)(a) of that directive does not preclude national legislation which makes the exemption of such medical tests subject to conditions which, first, do not apply to the exemption of care provided by the general practitioners who prescribed them and, second, are different from those applicable to closely related activities to medical care within the meaning of the first-mentioned provision.

— Article 13A(1)(b) of the same directive precludes national legislation which makes the exemption of medical tests carried out by a laboratory governed by private law outside a centre for treatment subject to the condition that they be carried out under medical supervision. However, that provision permits such legislation to make the exemption of those tests subject to the condition that at least 40% of those services must be intended for persons insured by a social security authority.

Costs

56 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

Article 13A(1)(b) 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 is to be interpreted as meaning that medical tests which have as their purpose the observation and examination of patients for prophylactic purposes, carried out, like those at issue in the main proceedings, by a laboratory governed by private law outside a centre for treatment on prescription from general practitioners, may come within the exemption provided for by that provision as medical care provided by another duly recognised establishment of a similar nature within the meaning of that provision.

Article 13A(1)(b) and (2)(a) of that directive does not preclude national legislation which makes the exemption of such medical tests subject to conditions which, first, do not apply to the exemption of care provided by the general practitioners who prescribed them and, second, are different from those applicable to closely related activities to medical care within the meaning of the first-mentioned provision.

Article 13A(1)(b) of the same directive precludes national legislation which makes the exemption of medical tests carried out by a laboratory governed by private law outside a centre for treatment subject to the condition that they be carried out under medical supervision. However, that provision permits such legislation to make the exemption of those tests subject to the condition that at least 40% of those services must be intended for persons insured by a social security authority.

[Signatures]