



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

27 June 2019*

(Reference for a preliminary ruling – Taxation – Common system of value added tax (VAT) – Directive 2006/112/EC – Article 132(1)(c) – Exemptions – Medical and paramedical professions – Chiropractic and osteopathy – Article 98 – Annex III, points (3) and (4) – Medicinal products and medical devices – Reduced rate – Supply as part of therapeutic interventions or treatments – Standard rate – Supply as part of aesthetic interventions or treatments – Principle of fiscal neutrality – Maintenance of the effects of national legislation incompatible with EU law)

In Case C-597/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Grondwettelijk Hof (Constitutional Court, Belgium), made by decision of 28 September 2017, received at the Court on 16 October 2017, in the proceedings

Belgisch Syndicaat van Chiropraxie and Bart Vandendries,

Belgische Unie van Osteopaten and Others,

Plast.Surg. BVBA and Others,

Belgian Society for Private Clinics VZW and Others

v

Ministerraad,

THE COURT (Sixth Chamber),

composed of C. Toader, President of the Chamber, L. Bay Larsen (Rapporteur) and M. Safjan, Judges,

Advocate General: E. Tanchev,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Belgisch Syndicaat van Chiropraxie and Bart Vandendries, by E. Maes and M. Denef, advocaten,
- Belgische Unie van Osteopaten and Others, by B. Hermans and J. Bosquet, advocaten, and by H. Van den Keybus, advocaat,

* Language of the case: Dutch.

– Plast. Surg. BBVA and Others, by T. De Gendt, advocaat,
– the Belgian Government, by J.-C. Halleux, P. Cottin and C. Pochet, acting as Agents,
– the French Government, by D. Colas, E. de Moustier and A. Alidière, acting as Agents,
– the European Commission, by J. Jokubauskaitė and P. Vanden Heede, acting as Agents,
having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 98, Article 132(1)(b), (c) and (e), Article 134 and Annex III, points 3 and 4, of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).
- 2 The request has been made in proceedings between, on the one hand, the Belgisch Syndicaat van chiropraxie and Bart Vandendries, the Belgische Unie van Osteopaten and Others, Plast.Surg. BVBA and Others and Belgian Society for Private Clinics VZW and Others and, on the other, the Ministerraad (Council of Ministers, Belgium), concerning a request for annulment of provisions of Belgian law regarding the detailed rules for the application of value added tax (VAT) to healthcare services and to the supply of medicinal products and medical devices.

Legal framework

Directive 2006/112

- 3 Article 96 of Directive 2006/112 provides:

‘Member States shall apply a standard rate of VAT, which shall be fixed by each Member State as a percentage of the taxable amount and which shall be the same for the supply of goods and for the supply of services.’

- 4 Under Article 98 of that directive:

‘1. Member States may apply either one or two reduced rates.

2. The reduced rates shall apply only to supplies of goods or services in the categories set out in Annex III.

...’

- 5 Article 132(1) of that directive is worded as follows:

‘Member States shall exempt the following transactions:

...

- (b) hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable with 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;

...

- (e) the supply of services by dental technicians in their professional capacity and the supply of dental prostheses by dentists and dental technicians;

...'

6 Article 134 of the same directive provides:

'The supply of goods or services shall not be granted exemption, as provided for in points (b), (g), (h), (i), (l), (m) and (n) of Article 132(1), in the following cases:

- (a) where the supply is not essential to the transactions exempted;
- (b) where the basic purpose of the supply is to obtain additional income for the body in question through transactions which are in direct competition with those of commercial enterprises subject to VAT.'

7 Annex III of Directive 2006/112, entitled 'List of supplies of goods and services to which the reduced rates referred to in Article 98 may be applied' mentions, in point 3, 'pharmaceutical products of a kind normally used for health care, prevention of illnesses and as treatment for medical and veterinary purposes, including products used for contraception and sanitary protection'.

8 Point (4) of that annex lists 'medical equipment, aids and other appliances normally intended to alleviate or treat disability, for the exclusive personal use of the disabled, including the repair of such goods, and supply of children's car seats'.

Belgian law

9 Article 110 of the wet houdende maatregelen inzake versterking van jobcreatie en koopkracht (Law on measures to enhance job creation and purchasing power) of 26 December 2015 (*Belgisch Staatsblad*, 30 December 2015, p. 80634, 'the Law of 26 December 2015') provides:

'Article 44 of the VAT Code, replaced by the Law of 28 December 1992 and last amended by the Law of 12 May 2014, is amended as follows:

- (a) paragraph 1 shall be replaced by the following:

"1 Services supplied in the course of their normal activity by the following persons shall be exempt from tax:

- 1. doctors, dentists and physiotherapists.

The exemption referred to in subparagraph 1 shall not apply to services supplied by doctors as part of aesthetic interventions or treatments:

- (a) where those interventions and treatments are not listed in the nomenclature of health services covered by compulsory sickness and invalidity insurance;
 - (b) where, although listed in the nomenclature of health services covered by compulsory sickness and invalidity insurance, those interventions and treatments do not meet the conditions to confer entitlement to a refund in accordance with the legislation on compulsory medical care and sickness insurance;
- 2. midwives, nurses and carers;
 - 3. practitioners of recognised and regulated paramedical professions whose paramedical services are listed in the nomenclature of health services covered by compulsory sickness and invalidity insurance.”;

(b) subparagraph 1 of paragraph 2 shall be replaced by the following:

- “1. (a) hospital and medical care and supplies of services and goods closely related thereto, carried out in the course of their normal activity by hospitals, psychiatric facilities, clinics and dispensaries.

The exemption referred to in subparagraph (a) shall not apply to hospital and medical care, or to services and goods closely related thereto supplied as part of the interventions and treatments referred to in the second subparagraph of §1(1);

- (b) the supply of transport services for sick or injured persons in vehicles specially equipped for that purpose;”.

- 10 The referring court states that, under Article 1(a) of the koninklijk besluit nr. 20 tot vaststelling van de tarieven van de belasting over de toegevoegde waarde en tot indeling van de goederen en de diensten bij die tarieven bekrachtigt (Royal Decree No 20 setting the rates of value added tax and establishing the distribution of goods and services under those rates) of 20 July 1970 (*Belgisch Staatsblad*, 31 July 1970, p. 7920), the reduced VAT rate of 6% is normally applied to medicinal products and medical devices in Belgium.

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

- 11 In May and June 2016, a number of chiropractors, osteopaths, plastic surgeons and professional associations brought before the referring court actions seeking, inter alia, annulment of Article 110 of the Law of 26 December 2015.
- 12 The actions brought by the chiropractors, osteopaths, plastic surgeons and some of their professional associations are based, inter alia, on the alleged infringement of Article 132(1)(c) of Directive 2006/112. The applicants submit that Article 110 of that law is incompatible with Article 132(1)(c) of Directive 2006/112 in so far as, without reasonable justification, it reserves the VAT exemption applicable under that provision to practitioners of regulated medical or paramedical professions, whereas the professions of chiropractic and osteopathy are not included in the category of regulated medical or paramedical professions under Belgian law.
- 13 As regards the actions brought by plastic surgeons, they are based, in particular, on the existence under Belgian law of an unjustified difference in treatment between medicinal products and medical devices supplied as part of aesthetic interventions and treatments, and those supplied as part of therapeutic interventions and treatments, since a reduced rate of VAT is applicable only to the latter.

- 14 The referring court states, moreover, that the Council of Ministers has requested, in the alternative, that, should the provisions be annulled, their effects be maintained on a temporary basis in order to enable the Belgian legislature to bring the national legislation at issue into line with Directive 2006/112.
- 15 It is apparent from the order for reference that that request is based, first, on budgetary and administrative problems and the legal uncertainty that would be created for the recipients of the services concerned by the annulment, with retroactive effect, of the provisions at issue in the main proceedings, and secondly, on the infringement of that directive which arises from the application of the regime predating the Law of 26 December 2015.
- 16 It is in that context that the Grondwettelijk Hof (Constitutional Court, Belgium) has decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Should Article 132(1)(c) of Council Directive [2006/112] be interpreted as meaning that that provision reserves the exemption to which it refers, in the case of both conventional and non-conventional practices, to practitioners of a medical or a paramedical profession that is subject to national legislation governing the healthcare professions and who meet the requirements laid down by that national legislation, and that persons who do not meet those requirements, but who are affiliated to a professional association of chiropractors or osteopaths and who meet the requirements laid down by that association, are excluded from that exemption?
- (2) Should Article 132(1)(b), (c) and (e), Article 134 and Article 98 of Council Directive [2006/112], read in conjunction with points 3 and 4 of Annex III to that directive, in particular from the point of view of the principle of fiscal neutrality, be interpreted as meaning:
- (a) that they preclude a national provision which provides for a reduced rate of VAT to be applicable to medicinal products and medical aids supplied in connection with an operation or treatment of a therapeutic nature, whereas medicinal products and medical aids supplied in connection with an operation or treatment of a purely aesthetic nature, and closely related thereto, are subject to the normal rate of VAT;
- (b) or that they permit or require equal treatment of both the aforementioned cases?
- (3) Is there an obligation on the Constitutional [c]ourt to maintain, on a temporary basis, the effects of the ... provisions to be annulled [on account of their incompatibility with Directive 2006/112], as well as those of the provisions which, if necessary, must be annulled in whole or in part, if it follows from the answer to the first or the second question ... that those provisions are contrary to EU law, in order to enable the [national] legislature to bring them into line with EU law?’

The questions referred for a preliminary ruling

The first question

- 17 By its first question, the referring court asks, in essence, whether Article 132(1)(c) of Directive 2006/112 must be interpreted as meaning that the exemption referred to in that article is applicable only to services provided by practitioners of a medical or paramedical profession regulated by the legislation of the Member State concerned.
- 18 It should be pointed out at the outset that Article 13A(1)(c) of the 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) and Article 132(1)(c) of Directive 2006/112 must be interpreted in the same way and that, therefore, the

case-law of the Court in relation to the first of those provisions lends itself to serving as a basis for the interpretation of the second (see, to that effect, judgment of 10 June 2010, *Future Health Technologies*, C-86/09, EU:C:2010:334, paragraph 27).

- 19 It follows from a literal interpretation of Article 132(1)(c) of Directive 2006/112, that, in order to be exempt, services must satisfy two conditions, namely, first, they must constitute medical care services and, secondly, they must be carried out in the exercise of the medical and paramedical professions as defined by the Member State concerned (see, to that effect, judgments of 10 September 2002, *Kügler*, C-141/00, EU:C:2002:473, paragraph 27, and of 27 April 2006, *Solleveld and van den Hout-van Eijnsbergen*, C-443/04 and C-444/04, EU:C:2006:257, paragraph 23).
- 20 It is clear from the order for reference that the practitioners of the professions at issue in the case in the main proceedings are indeed providing medical care services, since they offer treatments which are provided for the purpose of treating and, as far as possible, curing diseases or health disorders.
- 21 In that context, the question referred seeks only to clarify the scope of the second condition referred to in paragraph 19 of the present judgment by determining whether only the professions regulated by the legislation of the Member State concerned may be considered to constitute ‘medical and paramedical professions’ within the meaning of Article 132(1)(c) of Directive 2006/112.
- 22 In that regard, it must be noted that, although that condition implies that the exemption is to apply only to certain specific professions, it is not clear from the wording of that provision that the EU legislature intended to require the Member States concerned to restrict the benefit of that exemption to the professions regulated by Member State legislation.
- 23 Indeed, according to the very wording of that provision, it does not itself define the concept of ‘medical and paramedical professions’, but refers instead to the definition adopted by the national legislation of the Member States (see, to that effect, judgment of 27 April 2006, *Solleveld and van den Hout-van Eijnsbergen*, C-443/04 and C-444/04, EU:C:2006:257, paragraph 28).
- 24 In those circumstances, in order, in particular, to ensure the correct and straightforward application of the exemption provided for in Article 132(1)(c) of Directive 2006/112, the Member States have discretion to define the professions in the context of which medical care is exempt from VAT and, in particular, to define the qualifications required to carry out those professions (see, to that effect, judgment of 27 April 2006, *Solleveld and van den Hout-van Eijnsbergen*, C-443/04 and C-444/04, EU:C:2006:257, paragraphs 29, 30 and 32).
- 25 However, that discretion is not unlimited, in that the Member States must take into account, first, the objective pursued by that provision, which is to ensure that the exemption applies only to medical care provided by practitioners with the required professional qualifications and, secondly, the principle of fiscal neutrality (see, to that effect, judgment of 27 April 2006, *Solleveld and van den Hout-van Eijnsbergen*, C-443/04 and C-444/04, EU:C:2006:257, paragraphs 31, 36 and 37).
- 26 Thus, the Member States must, in the first place, guarantee that the objective is fulfilled by ensuring that the exemption provided for in that provision applies only to medical care of a sufficient high quality (see, to that effect, judgment of 27 April 2006, *Solleveld and van den Hout-van Eijnsbergen*, C-443/04 and C-444/04, EU:C:2006:257, paragraph 37).
- 27 Although it falls to the Member States to verify that the healthcare practitioners concerned have the required professional qualifications (see, to that effect, judgment of 27 April 2006, *Solleveld and van den Hout-van Eijnsbergen*, C-443/04 and C-444/04, EU:C:2006:257, paragraphs 37 and 38), that requirement does not necessarily imply that those practitioners must belong to a profession that is

regulated by the legislation of the Member State concerned, in so far as there may be other effective ways of checking their professional qualifications, depending on the structure of the medical and paramedical professions in that Member State.

- 28 In the second place, the Member States must observe the principle of fiscal neutrality, which precludes treating similar supplies, which are thus in competition with each other, differently for VAT purposes (judgment of 27 April 2006, *Solleveld and van den Hout-van Eijnsbergen*, C-443/04 and C-444/04, EU:C:2006:257, paragraph 39 and the case-law cited).
- 29 However, that requirement does not imply that the benefit of the exemption provided for in Article 132(1)(c) of Directive 2006/112 should necessarily apply only to practitioners of a profession that is regulated by the legislation of the Member State concerned, since it cannot be generally and absolutely ruled out that practitioners who do not belong to such a profession might have the necessary qualifications to provide a level of quality of care which is sufficient for the healthcare they provide to be regarded as similar to that provided by the members of a regulated profession, particularly if they were trained at an educational establishment recognised in that Member State.
- 30 It is also apparent from the case-law of the Court that the legislative framework of the Member State concerned is only one factor among others which must be taken into account in order to determine whether a taxable person has the professional qualifications required in order to have that exemption applied (see, to that effect, judgment of 27 April 2006, *Solleveld and van den Hout-van Eijnsbergen*, C-443/04 and C-444/04, EU:C:2006:257, paragraphs 46 and 50), which means that the condition that healthcare practitioners must belong to a regulated profession cannot necessarily be imposed on them by the Member States for that purpose.
- 31 Consequently, the answer to the first question is that Article 132(1)(c) of Directive 2006/112 must be interpreted as not restricting the application of the exemption it provides to services provided by practitioners of a medical or paramedical profession regulated by the legislation of the Member State concerned.

The second question

Admissibility

- 32 The Belgian Government submits that the second question is devoid of purpose and does not, therefore, require an answer. The Belgian legislation does not apply different rates of VAT to medicinal products and medical devices depending on their use, and does not therefore provide for the application of different rates where they are supplied as part of therapeutic interventions or treatments rather than as part of interventions or treatments for aesthetic purposes.
- 33 In that regard, it is apparent from the order for reference that, according to the referring court, the Belgian legislation at issue in the main proceedings could be interpreted in a number of ways. In that context, the second question seeks, inter alia, to determine whether, under EU law, the interpretation of that legislation according to which different rates of VAT should be applied to medicinal products and medical devices depending on their use should be disregarded.
- 34 Therefore, although the Belgian Government takes the view that such an interpretation of that legislation is, in any event, precluded, it appears that that argument is based on an interpretation of national law which differs from the interpretation adopted by the referring court.

- 35 It follows from the Court's settled case-law that it is not for the Court, in the context of the judicial cooperation established by Article 267 TFEU, to give a ruling on the interpretation of provisions of national law, or to decide whether the referring court's interpretation of those provisions is correct (judgment of 26 March 2015, *Macikowski*, C-499/13, EU:C:2015:201, paragraph 51 and the case-law cited), but to take account, under the division of jurisdiction between it and the national courts, of the factual and legislative context, as described in the order for reference, in which the questions put to it are set (see, to that effect, judgment of 15 April 2010, *Gala-Salvador Dalí and Visual Entidad de Gestión de Artistas Plásticos*, C-518/08, EU:C:2010:191, paragraph 21).
- 36 It follows that the second question must be declared admissible.

Substance

- 37 By its second question, the referring court asks, in essence, whether Article 98, Article 132(1)(b), (c) and (e) and Article 134 of Directive 2006/112, read in conjunction with points (3) and (4) of Annex III to that directive, must be interpreted as precluding national legislation which differentiates between medicinal products and medical devices supplied as part of therapeutic interventions or treatments, on the one hand, and medicinal products and medical devices supplied as part of interventions or treatments intended exclusively for aesthetic purposes, on the other hand, by excluding the latter from the benefit of the reduced rate of VAT applicable to the former.
- 38 As a preliminary point, it should be noted that, although the wording of the second question refers, inter alia, to Articles 132 and 134 of Directive 2006/112, the grounds of the order for reference relating to that question do not refer to those provisions, and state, on the contrary, that that question seeks only to establish whether EU law precludes a Member State from applying the standard rate of VAT to certain medicinal products and certain medical devices which do not qualify for the reduced rate of VAT provided for in Article 98 of that directive, read in conjunction with points (3) and (4) of Annex III to that directive, where that Member State has chosen to apply the reduced rate to other medicinal products and other medical devices.
- 39 In those circumstances, the second question must be answered by reference to Article 98 of Directive 2006/112, since the answer to that question is without prejudice both to the possible application of the VAT exemption scheme laid down in Article 132(1)(b) of that directive for medicinal products and medical devices which are essential to the activities covered by that provision, and to the possible application of the exemption scheme laid down in Article 132(1)(c) and (e) of that directive for medicinal products and medical devices which are strictly necessary at the time when the supplies covered by those provisions are made (see, to that effect, judgment of 13 March 2014, *Klinikum Dortmund*, C-366/12, EU:C:2014:143, paragraph 34).
- 40 As regards medicinal products and medical devices which are not covered by such exemption schemes, it must be recalled that, according to Article 96 of the Directive 2006/112, the same rate of VAT, that is the standard rate fixed by each Member State, is in principle applicable to supplies of goods and services (see, to that effect, judgment of 9 March 2017, *Oxycure Belgium*, C-573/15, EU:C:2017:189, paragraph 20 and the case-law cited).
- 41 By derogation from that principle, Article 98 of that directive provides for the possibility to apply reduced rates of VAT to the categories of supplies of goods and services listed in Annex III to that directive (see, to that effect, judgments of 9 March 2017, *Oxycure Belgium*, C-573/15, EU:C:2017:189, paragraph 21, and of 9 November 2017, *AZ*, C-499/16, EU:C:2017:846, paragraph 22).
- 42 As regards medicinal products and medical devices, that derogation is applicable to goods satisfying the substantive conditions set out in points (3) and (4) of that annex.

- 43 It must be pointed out in that connection that, although point (3) of that annex covers pharmaceutical products only in so far as they are of a kind normally used for health care, prevention of illnesses and as treatment for medical and veterinary purposes, that condition does not, in itself, imply that medicinal products supplied as part of interventions or treatments intended exclusively for aesthetic purposes cannot benefit from a reduced rate of VAT, since that condition refers to the normal use of the products it covers, and not their actual use.
- 44 In that regard, it is clear from the settled case-law of the Court that the EU legislature has merely provided Member States the option to apply a reduced rate of VAT to supplies of goods and services included in the categories set out in Annex III of Directive 2006/112, and therefore that it is for the Member States to determine more precisely which of those supplies of goods and services the reduced rate is to apply to (see, to that effect, judgments of 11 September 2014, *K*, C-219/13, EU:C:2014:2207, paragraph 23, and of 9 November 2017, *AZ*, C-499/16, EU:C:2017:846, paragraph 23).
- 45 Therefore, the Member States may choose to apply a reduced rate of VAT to specific pharmaceutical products or medical devices among those mentioned in points (3) and (4) of Annex III to that directive, while applying the standard rate to other such products or devices (see, to that effect, judgment of 9 March 2017, *Oxycure Belgium*, C-573/15, EU:C:2017:189, paragraph 26).
- 46 However, where a Member State chooses to apply selectively the reduced rate of VAT to certain goods or specific services included in Annex III to that directive, it must comply with the principle of fiscal neutrality (judgment of 9 March 2017, *Oxycure Belgium*, C-573/15, EU:C:2017:189, paragraph 28 and the case-law cited).
- 47 The principle of fiscal neutrality precludes treating similar supplies of services, which are thus in competition with each other, differently for VAT purposes (judgments of 11 September 2014, *K*, C-219/13, EU:C:2014:2207, paragraph 24, and of 9 March 2017, *Oxycure Belgium*, C-573/15, EU:C:2017:189, paragraph 30).
- 48 To determine whether goods or services are similar, account must be taken primarily of the point of view of a typical consumer. Goods or services are similar where they have similar characteristics and meet the same needs from the point of view of consumers, the test being whether their use is comparable, and where the differences between them do not have a significant influence on the decision of the average consumer to use one or the other of those goods or services (judgments of 11 September 2014, *K*, C-219/13, EU:C:2014:2207, paragraph 25, and of 9 November 2017, *AZ*, C-499/16, EU:C:2017:846, paragraph 31).
- 49 In that context, it should be noted that the Court has already held, first, that not all medicinal products are necessarily to be regarded as similar for the purpose of applying the principle of fiscal neutrality (see, to that effect, judgment of 3 May 2001, *Commission v France*, C-481/98, EU:C:2001:237, paragraph 30) and, secondly, that the actual use for which supplies of goods are intended may also be taken into consideration to assess whether those supplies are similar from the point of view of the average consumer (see, to that effect, judgment of 3 March 2011, *Commission v Netherlands*, C-41/09, EU:C:2011:108, paragraph 66).
- 50 In the present case, according to the referring court, the legislation at issue in the main proceedings treats medicinal products and medical devices supplied as part of therapeutic treatments differently from medicinal products and medical devices supplied as part of aesthetic treatments. However, it should be noted that use for therapeutic purposes and use for aesthetic purposes are two clearly distinct, specific uses, which do not meet the same needs from the point of view of the average consumer.

- 51 In that context, it should be held that legislation such as that referred to by the national court differentiates between two categories of medicinal products or medical devices which do not appear to be similar for the purposes of applying the principle of fiscal neutrality.
- 52 In the light of the foregoing, the answer to the second question is that Article 98 of Directive 2006/112, read in conjunction with points (3) and (4) of Annex III to that directive, must be interpreted as not precluding national legislation which differentiates between medicinal products and medical devices supplied as part of therapeutic interventions or treatments, on the one hand, and medicinal products and medical devices supplied as part of interventions or treatments intended exclusively for aesthetic purposes, on the other hand, by excluding the latter from the benefit of the reduced rate of VAT applicable to the former.

The third question

- 53 By its third question, the referring court asks, in essence, whether, in circumstances such as those at issue in the main proceedings, a national court may make use of a national provision empowering it to maintain certain effects of a measure which has been annulled in order to maintain temporarily the effect of national provisions which it has found incompatible with Directive 2006/112 until they are made to comply with that directive, with a view, first, to limiting the risks of legal uncertainty resulting from the retroactive effect of that annulment and, secondly, to avoiding the application of a national regime which predates those provisions and is incompatible with that directive.
- 54 It is clear from the settled case-law of the Court that, under the principle of cooperation in good faith laid down in Article 4(3) TEU, Member States are required to nullify the unlawful consequences of a breach of European Union law, and that such an obligation is owed, within the sphere of its competence, by every organ of the Member State concerned (see, to that effect, judgments of 28 February 2012, *Inter-Environnement Wallonie and Terre wallonne*, C-41/11, EU:C:2012:103, paragraph 43, and of 28 July 2016, *Association France Nature Environnement*, C-379/15, EU:C:2016:603, paragraph 31).
- 55 Therefore, where the authorities of the Member State concerned find that national legislation is incompatible with EU law, while they retain the choice of the measures to be taken, they must ensure that national law is brought into line with EU law as soon as possible, and that the rights which individuals derive from EU law are given full effect (see, to that effect, judgment of 21 June 2007, *Jonkman and Others*, C-231/06 to C-233/06, EU:C:2007:373, paragraph 38).
- 56 In that context, it is for the national courts hearing an action against national legislation that is incompatible with Directive 2006/112 to adopt measures, on the basis of their national law, to avoid the implementation of that legislation (see, by analogy, judgments of 28 February 2012, *Inter-Environnement Wallonie and Terre wallonne*, C-41/11, EU:C:2012:103, paragraph 47, and of 28 July 2016, *Association France Nature Environnement*, C-379/15, EU:C:2016:603, paragraph 32).
- 57 In the case in the main proceedings, the referring court is hearing an action for annulment and wishes to know whether, while annulling the contested national provisions, it may, having regard to the circumstances at issue in the main proceedings, maintain the effects of those provisions for a temporary basis so that those provisions may be replaced by new national rules which are compatible with Directive 2006/112.
- 58 In that regard, it should be noted, in the first place, that such a solution cannot be justified by the concern to limit the risks of legal uncertainty resulting from the retroactive effect of the annulment of those provisions.

- 59 Even assuming that overriding considerations of legal certainty were capable of leading, by way of exception, to a provisional suspension of the ousting effect which a directly applicable rule of EU law has on national law that is contrary thereto, such a suspension must be excluded from the outset in this case, in so far as the referring court has not mentioned any concrete evidence capable of establishing specific potential legal uncertainty (see, by analogy, judgment of 8 September 2010, *Winner Wetten*, C-409/06, EU:C:2010:503, paragraph 67).
- 60 In particular, merely referring to the budgetary and administrative problems which might arise from the annulment of the contested provisions in the case in the main proceedings is not sufficient to establish overriding considerations of legal certainty (see, by analogy, judgments of 18 October 2012, *Mednis*, C-525/11, EU:C:2012:652, paragraph 44, and of 10 April 2014, *Emerging Markets Series of DFA Investment Trust Company*, C-190/12, EU:C:2014:249, paragraph 111).
- 61 In the second place, as regards the fact that the annulment of those provisions would lead to the application of a national regime which predates those provisions and is incompatible with Directive 2006/112, it should be noted that the Court has held that a national court can exceptionally be authorised to make use of a national provision empowering it to maintain certain effects of an annulled national measure in so far as certain conditions are satisfied. Those include the requirement that the measure in question correctly transposes an EU law obligation (see, to that effect, judgments of 28 February 2012, *Inter-Environnement Wallonie and Terre wallonne*, C-41/11, EU:C:2012:103, paragraph 63, and of 28 July 2016, *Association France Nature Environnement*, C-379/15, EU:C:2016:603, paragraph 43).
- 62 However, in the case in the main proceedings, it does not appear that the contested provisions correctly transpose EU law.
- 63 It follows that the answer to the third question is that, in circumstances such as those at issue in the main proceedings, a national court may not make use of a national provision empowering it to maintain certain effects of a measure which has been annulled in order to maintain temporarily the effect of national provisions which it has found incompatible with Directive 2006/112 until they are made to comply with that directive, with a view, first, to limiting the risks of legal uncertainty resulting from the retroactive effect of that annulment and, secondly, to avoiding the application of a national scheme which predates those provisions and is incompatible with that directive.

Costs

- 64 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 (Sixth Chamber) hereby rules:

1. **Article 132(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as not restricting the application of the exemption it provides to services provided by practitioners of a medical or paramedical profession regulated by the legislation of the Member State concerned.**
2. **Article 98 of Directive 2006/112, read in conjunction with points (3) and (4) of Annex III to that directive, must be interpreted as not precluding national legislation which differentiates between medicinal products and medical devices supplied as part of therapeutic interventions or treatments, on the one hand, and medicinal products and medical devices**

supplied as part of interventions or treatments intended exclusively for aesthetic purposes, on the other hand, by excluding the latter from the benefit of the reduced rate of value added tax (VAT) applicable to the former.

- 3. In circumstances such as those at issue in the main proceedings, a national court may not make use of a national provision empowering it to maintain certain effects of a measure which has been annulled in order to maintain temporarily the effect of national provisions which it has found incompatible with Directive 2006/112 until they are made to comply with that directive, with a view, first, to limiting the risks of legal uncertainty resulting from the retroactive effect of that annulment and, secondly, to avoiding the application of a national scheme which predates those provisions and is incompatible with that directive.**

[Signatures]