JUDGMENT OF THE COURT (Sixth Chamber)
25 February 1999 *

In Case C-349/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the House of Lords for a preliminary ruling in the proceedings pending before that court between

Card Protection Plan Ltd

and

Commissioners of Customs and Excise

on the interpretation of Articles 2(1) and 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),

THE COURT (Sixth Chamber),

composed of: P. J. G. Kapteyn, President of the Chamber, G. Hirsch (Rapporteur), G. F. Mancini, H. Ragnemalm and R. Schintgen, Judges,

* Language of the case: English.

Advocate General: N. Fennelly,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Card Protection Plan Ltd, by Roderick Cordara QC and Perdita Cargill-Thompson, Barrister, instructed by Clare Mainprice, Solicitor,

— the United Kingdom Government, by John E. Collins, Assistant Treasury Solicitor, acting as Agent, and Stephen Richards and Christopher Vajda, Barristers,

— the German Government, by Ernst Röder, Ministerialrat in the Federal Ministry of Economic Affairs, acting as Agent,

— the Commission of the European Communities, by Richard Lyal and Enrico Traversa, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Card Protection Plan Ltd, represented by Clare Mainprice and Roderick Cordara, the United Kingdom Government, represented by John E. Collins and Nicholas Paines QC, and the Commission, represented by Richard Lyal, at the hearing on 24 March 1998,

after hearing the Opinion of the Advocate General at the sitting on 11 June 1998,

gives the following

Judgment

1 By order of 15 October 1996, received at the Court Registry on 21 October 1996, the House of Lords referred to the Court for a preliminary ruling under Article 177 of the EC Treaty four questions on the interpretation of Articles 2(1) and 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, hereinafter 'the Sixth Directive').

2 Those questions were raised in proceedings between Card Protection Plan Ltd ('CPP') and the Commissioners of Customs and Excise, who are responsible for the collection of value added tax (VAT) in the United Kingdom, concerning the application of an exemption from VAT under section 17 and Schedule 6, Group 2, of the Value Added Tax Act 1983.

National legislation

3 At the material time, section 17 and Schedule 6, Group 2, of the Value Added Tax Act 1983 exempted from VAT *inter alia*:

'1. The provision of insurance and reinsurance by persons permitted, in accordance with section 2 of the Insurance Companies Act 1982, to carry on insurance business.

2. ...

3. The making of arrangements for the provision of any insurance or reinsurance in Items 1 and 2.

4. The handling of insurance claims by insurance brokers, insurance agents and persons permitted to carry on insurance business as described in Item 1.'

Community legislation

4 Under Article 2 of the Sixth Directive:

'The following shall be subject to value added tax:

1. the supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such;

...'

Article 13 of the Sixth Directive, on exemptions within the territory of the country, states:

'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;

...'

5 The annex to 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 insurance (OJ 1973 L 228, p. 3), as amended by Council Directive 84/641/EEC of 10 December 1984 (OJ 1984 L 339, p. 21), provides:

'A. Classification of risks according to classes of insurance

...

18. *Assistance*

Assistance for persons who get into difficulties while travelling, while away from home or while away from their permanent residence.'

6 Council Directive 77/92/EEC of 13 December 1976 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of the activities of insurance agents and brokers (ex ISIC Group 630) and, in particular, transitional measures in respect of those activities (OJ 1977 L 26, p. 14) specifies, in Article 2, the activities of insurance agents and brokers to which that directive applies.

The main proceedings

7 CPP offers holders of credit cards, on payment of a certain sum, a plan intended to protect them against financial loss and inconvenience resulting from the loss or theft of their cards or of certain other items such as car keys, passports and insurance documents.

8 In so far as this card protection plan (hereinafter 'the Plan') provides for indemnification of the cardholder against financial loss in the event of loss or theft, CPP obtains block cover from an insurance company. The block policy was arranged by an insurance broker instructed by CPP. At the material time the insurer was Continental Assurance Company of London ('Continental'). It is CPP's customers who are mentioned in the policy as the assured. When a cardholder becomes a customer of CPP, his name is added to the schedule of the assured covered by that policy. CPP pays premiums to the insurance company in advance at the beginning of the

policy year; any necessary adjustments are made at the end of the year, according to the number of customers who have joined or left the Plan.

9 The services offered by CPP, which correspond to the insurance cover described in the schedule to the Continental policy, may be summarised as follows:

— payment of an indemnity in the event of fraudulent use of cards (the sum insured is UKL 750 per claim during the first 24 hours from discovery of the loss; it is unlimited after the loss has been reported to CPP);

— payment of an indemnity in respect of costs incurred by the cardholder in finding lost luggage, bags or items, when labelled with labels issued by CPP (the sum insured is UKL 25 per claim);

— payment of an indemnity for costs incurred in carrying out the formalities of making claims and assisting the police with respect to valuable articles and/or important documents whose serial numbers have been registered with CPP (the sum insured is again UKL 25 per claim);

— provision of representatives of the insurers to provide 24-hour telephone advice on access to medical services, including the arrangement of appointments for medical care abroad;

— payment of an indemnity in respect of an emergency cash advance following loss of cards, to a maximum of UKL 500 per claim, repayable within 14 days;

— payment of an indemnity for the purchase of an air ticket for the return of the cardholder from anywhere in the world to his home following loss of cards (the indemnity is a maximum of UKL 1 500 per claim, repayable within 14 days).

10 The Plan also includes other services, essentially as follows:

— maintenance by CPP of a computerised record of customers' credit cards;

— provision of a 24-hour telephone line for receiving notifications of loss, so as to allow the necessary measures to be taken for passing on the information to credit card issuers, and the supply of adhesive labels bearing that telephone number;

— provision of assistance in the event of loss to obtain replacement credit cards;

— provision of assistance in the event of change of address for notifying card-issuing companies;

— supply of pre-printed key tabs so that they may be found in the event of loss;

— supply to the customer of an annual print-out to check;

— supply of a medical card for the entry of personal medical details;

— discounts on car hire.

11 Although the Commissioners of Customs and Excise had since 1983 regarded CPP's supplies as exempt, they subjected to the standard rate of VAT for the first time in 1990 a 'specimen' contract for the supply of services concluded between CPP and one of its customers for three years in return for payment of an annual fee of UKL 16. That decision was based on two principal grounds: first, that the Plan comprised a 'package of services', all taxable, turning on the maintenance by CPP of a register of card numbers and the provision of a loss notification service in order to avoid any further liability for fraudulent use in the event of loss; and, second, that there was no direct contractual relationship between the insurance company and CPP's customers capable of creating specific legal relations in connection with the insurance policy, and hence no supply of insurance to the customer.

12 CPP contested that decision on the ground that there was a direct contractual relationship and that the supply should be wholly or largely exempt. It therefore appealed to the VAT and Duties Tribunal, London, which dismissed its appeal. After the High Court had allowed CPP's appeal in part, the Court of Appeal by judgment of 23 November 1993 dismissed CPP's appeal altogether, holding that the Plan constituted a contract for the supply of a 'card registration service' and that the insurance elements were merely incidental to that service. CPP therefore

appealed to the House of Lords, which stayed the proceedings and referred the following four questions to the Court of Justice for a preliminary ruling:

'1. Having regard to the provisions of the Sixth VAT Directive and in particular to Article 2(1) thereof, what is the proper test to be applied in deciding whether a transaction consists for VAT purposes of a single composite supply or of two or more independent supplies?

2. Does the supply by an undertaking of a service or services of the kind provided by Card Protection Plan Ltd (CPP) through the card protection plan operated by them constitute for VAT purposes a single composite supply or two or more independent supplies? Are there any particular features of the present case, such as the payment of a single price by the customer or the involvement of Continental Assurance Company of London plc as well as CPP, that affect the answer to that question?

3. Do such supply or supplies constitute or include "insurance ... transactions including related services performed by insurance ... agents" within the meaning of Article 13B(a) of the Sixth VAT Directive? In particular, for the purpose of answering that question —

(a) does "insurance" within the meaning of Article 13B(a) of the Sixth VAT Directive include the classes of activity, in particular "assistance" activity, listed in the Annex to Council Directive 73/239/EEC (the First Council Directive on non-life insurance), as amended by Council Directive 84/641/EEC?

(b) do the "related services of ... insurance agents" in Article 13B(a) of the Sixth VAT Directive constitute or include the activities referred to in Article 2 of Council Directive 77/92/EEC?

4. Is it compatible with Article 13B(a) of the Sixth VAT Directive for a Member State to restrict the scope of the exemption for "insurance ... transactions" to supplies made by persons permitted to carry on insurance business under the law of that Member State?'

Question 3

13 By Question 3, which should be considered first, the House of Lords essentially asks whether Article 13B(a) of the Sixth Directive is to be interpreted as meaning that supplies of services such as those described in the Plan which CPP provides to its customers constitute insurance transactions or related services of insurance agents.

14 CPP submits that all aspects of what the customer receives under the Plan form a direct part of an 'insurance transaction' within the meaning of Article 13B(a) of the Sixth Directive. The German and United Kingdom Governments and the Commission accept that, in any event, the Plan includes elements of supplies of insurance. The United Kingdom Government states that it will be for the national court to determine whether CPP is acting as an insurance agent. In the Commission's view, it seems clear, however, that its usual activities are not those of an insurance agent in the strict or technical sense of the term.

15 It must be noted to begin with that it is settled case-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 from one Member State to another (see Case 348/87 *Stichting Uitvoering Financiële Acties* v *Staatssecretaris van Financiën* [1989] ECR 1737, paragraph 11).

16 The Sixth Directive does not define the expressions 'insurance transactions' and 'insurance agents' used in Article 13B(a).

17 With respect, first, to the interpretation of the expression 'insurance transactions', it must be observed that Directive 73/329 does not define the concept of insurance either. However, as the Advocate General states in point 34 of his Opinion, 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.

18 It is not essential that the service the insurer has undertaken to provide in the event of loss consists in the payment of a sum of money, as that service may also take the form of the provision of assistance in cash or in kind of the types listed in the annex to Directive 73/239 as amended by Directive 84/641. There is no reason for the interpretation of the term 'insurance' to differ according to whether it appears in the directive on insurance or in the Sixth Directive.

19 Moreover, it is common ground that the expression 'insurance transactions' in Article 13B(a) covers in any event cases where the transaction is carried out by the actual insurer who has undertaken to cover the risk insured against. As the United Kingdom Government has correctly pointed out, it is for the national court to determine whether CPP itself has accepted insurance obligations.

20 However, CPP acknowledges that it merely promised its customers to do what was necessary for insurance to be provided to them by a third party, and that it did not itself undertake to provide insurance cover. In this respect, the Commission has pointed out that CPP is the holder of a group policy for its customers.

21 In those circumstances, it must be noted that CPP is the holder of a block insurance policy under which its customers are the insured. It procures for those customers, for payment, in its own name and on its own account, to the extent of the services mentioned in the Continental policy, insurance cover by having recourse to an insurer. Consequently, for the purposes of VAT, there is a supply of services between Continental and CPP on the one hand, and between CPP and its customers on the other, and the fact that Continental under the terms of its contract with CPP provides insurance cover directly to CPP's customers is not material in this respect.

22 Such a supply of services by CPP constitutes an insurance transaction within the meaning of Article 13B(a). It is true that the exemptions provided for by Article 13 of the Sixth Directive are to be construed strictly (see *Stichting Uitvoering Financiële Acties*, paragraph 13). However, the expression 'insurance transactions' is broad enough in principle to include the provision of insurance cover by a taxable person who is not himself an insurer but, in the context of a block policy, procures such cover for his customers by making use of the supplies of an insurer who assumes the risk insured.

23 That interpretation is supported by the purpose of the Sixth Directive, which exempts insurance transactions but gives Member States, in Article 33, the possibility of maintaining or introducing a tax on insurance contracts. Consequently, if 'insurance transactions' refers solely to transactions performed by insurers themselves, the final consumer might have to pay not only that tax but also VAT, in the case of block policies. Such a result would be contrary to the purpose of the exemption provided for by Article 13B(a).

24 Having regard to the foregoing, there is no further need to consider whether CPP carried on the activity of an insurance agent referred to in Article 13B(a) of the Sixth Directive.

25 The answer to Question 3 must therefore be that Article 13B(a) of the Sixth Directive is to be interpreted as meaning that a taxable person, not being an insurer, who, in the context of a block policy of which he is the holder, procures for his customers, who are the insured, insurance cover from an insurer who assumes the risk covered performs an insurance transaction within the meaning of that provision. The term 'insurance' in that provision extends to the categories of assistance listed in the annex to Directive 73/239, as amended by Directive 84/641.

Questions 1 and 2

26 By its first two questions, which should be taken together, the national court essentially asks, with reference to a plan such as that offered by CPP to its customers, what the appropriate criteria are for deciding, for VAT purposes, whether a transaction which comprises several elements is to be regarded as a single supply or as two or more distinct supplies to be assessed separately.

27 It must be borne in mind that the question of the extent of a transaction is of particular importance, for VAT purposes, both for identifying the place where the services are provided and for applying the rate of tax or, as in the present case, the exemption provisions in the Sixth Directive. In addition, having regard to the diversity of commercial operations, it is not possible to give exhaustive guidance on how to approach the problem correctly in all cases.

28 However, as the Court held in Case C-231/94 *Faaborg-Gelting Linien* v *Finanzamt Flensburg* [1996] ECR I-2395, paragraphs 12 to 14, concerning the classification of restaurant transactions, where the transaction in question comprises a bundle of features and acts, regard must first be had to all the circumstances in which that transaction takes place.

29 In this respect, taking into account, first, that it follows from Article 2(1) of the Sixth Directive that every supply of a service must normally be regarded as distinct and independent and, second, that a supply which comprises a single service from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system, the essential features of the transaction must be ascertained in order to determine whether the taxable person is supplying the customer, being a typical consumer, with several distinct principal services or with a single service.

30 There is a single supply in particular in cases where one or more elements are to be regarded as constituting the principal service, whilst one or more elements are to be regarded, by contrast, as ancillary services which share the tax treatment of the principal service. A service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied (Joined Cases C-308/96 and C-94/97 *Commissioners of Customs and Excise* v *Madgett and Baldwin* [1998] ECR I-6229, paragraph 24).

31 In those circumstances, the fact that a single price is charged is not decisive. Admittedly, if the service provided to customers consists of several elements for a single price, the single price may suggest that there is a single service. However, notwithstanding the single price, if circumstances such as those described in paragraphs 7 to 10 above indicated that the customers intended to purchase two distinct services, namely an insurance supply and a card registration service, then it would be necessary to identify the part of the single price which related to the insurance supply, which would remain exempt in any event. The simplest possible method of calculation or assessment should be used for this (see, to that effect, *Madgett and Baldwin*, paragraphs 45 and 46).

32 The answer to the first two questions must therefore be that it is for the national court to determine, in the light of the above criteria, whether transactions such as

those performed by CPP are to be regarded for VAT purposes as comprising two independent supplies, namely an exempt insurance supply and a taxable card registration service, or whether one of those two supplies is the principal supply to which the other is ancillary, so that it receives the same tax treatment as the principal supply.

Question 4

33 If the national court holds that CPP is to be regarded as acting as an insurer who assumed the risk insured and thus performed transactions regarded by national law as unlawful, it must be borne in mind that the Sixth Directive is based on the principle of fiscal neutrality. As regards VAT, that principle, as the Court has already held, precludes, other than in cases not relevant here, lawful and unlawful transactions being treated differently (see Case C-283/95 *Fischer* v *Finanzamt Donaueschingen* [1998] ECR I-3369, paragraph 22).

34 The United Kingdom Government submits, however, that restricting the exemption to transactions of authorised insurers was justified in view of the introductory sentence of Article 13B of the Sixth Directive.

35 It must be observed that that provision, in accordance with the principle of fiscal neutrality, makes no distinction, as regards the exemption for insurance transactions it provides for, between lawful and unlawful transactions in national law. It follows that those two categories of transaction must be treated in the same fashion.

36 The answer to Question 4 must therefore be that Article 13B(a) of the Sixth Directive is to be interpreted as meaning that a Member State may not restrict the scope of the exemption for insurance transactions exclusively to supplies by insurers who are authorised by national law to pursue the activity of insurer.

Costs

37 The costs incurred by the United Kingdom and German Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main action, 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 (Sixth Chamber),

in answer to the questions referred to it by the House of Lords by order of 15 October 1996, hereby rules:

1. **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 is to be interpreted as meaning that a taxable person, not being an insurer, who, in**

the context of a block policy of which he is the holder, procures for his customers, who are the insured, insurance cover from an insurer who assumes the risk covered, performs an insurance transaction within the meaning of that provision. The term 'insurance' in that provision extends to the categories of assistance listed in the annex to 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, as amended by Council Directive 84/641/EEC of 10 December 1984.

2. **It is for the national court to determine, in the light of the above criteria, whether transactions such as those at issue in the main proceedings are to be regarded for the purposes of value added tax as comprising two independent supplies, namely an exempt insurance supply and a taxable card registration service, or whether one of those two supplies is the principal supply to which the other is ancillary, so that it receives the same tax treatment as the principal supply.**

3. **Article 13B(a) of the Sixth Directive 77/388 is to be interpreted as meaning that a Member State may not restrict the scope of the exemption for insurance transactions exclusively to supplies by insurers who are authorised by national law to pursue the activity of insurer.**

Kapteyn Hirsch Mancini

Ragnemalm Schintgen

Delivered in open court in Luxembourg on 25 February 1999.

R. Grass

Registrar

P. J. G. Kapteyn

President of the Sixth Chamber