

Case C-13/06

Commission of the European Communities

v

Hellenic Republic

(Failure of a Member State to fulfil obligations – Sixth VAT Directive – Exemptions – Article 13B(a) – Insurance transactions – Body providing road assistance services)

Summary of the Judgment

Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Exemptions provided for in the Sixth Directive

(Council Directive 77/388, Art. 13B(a))

By levying value added tax on road assistance services that a body undertakes to provide to its members, in return for the payment by those members of a fixed annual subscription, should the risk of breakdown or accident covered by that body materialise, a Member State fails to fulfil its obligations under Article 13B(a) of Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes. Such services fall within the definition of ‘insurance transactions’ referred to in that article, and must consequently be exempt from value added tax.

(see paras 14-15, operative part)

JUDGMENT OF THE COURT (Fourth Chamber)

7 December 2006 (*)

(Failure of a Member State to fulfil obligations – Sixth VAT Directive – Exemptions – Article 13B(a) – Insurance transactions – Body providing road assistance services)

In Case C-13/06,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 9 January 2006,

Commission of the European Communities, represented by D. Triantafyllou, acting as Agent, with an address for service in Luxembourg,

applicant,

v

Hellenic Republic, represented by P. Mylonopoulos and K. Boskovits, acting as Agents, with an address for service in Luxembourg,

defendant,

THE COURT (Fourth Chamber),

composed of J.N. Cunha Rodrigues, acting as the President of the Fourth Chamber, K. Schiemann (Rapporteur) and E. Levits, Judges,

Advocate General: P. Léger,

Registrar: R. Grass,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By its application, the Commission of the European Communities asks the Court to declare that, by levying value added tax ('VAT') on services consisting in road assistance in the event of a breakdown, the Hellenic Republic has failed to fulfil its obligations under Article 13B(a) 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, 'the Sixth Directive').

2 Article 13B(a) of the Sixth Directive provides:

'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'.

3 Article 15(42) of Greek Law No 2166/1993 (FEK A' 137/24.8.1993) provides:

'... natural and legal persons supplying road assistance shall be subject to VAT in respect of the consideration they receive, either in the form of a subscription fee or as a one-off payment for the supply of road assistance services or other related individual services'.

4 Having noted that, pursuant to the said Article 15(42), car accident or breakdown services supplied by ELPA (Automobile & Touring Club of Greece) to its members in return for the payment of a fixed annual subscription gave rise to the levy of VAT on that subscription, and considering that such transactions should benefit from the exemption provided for under Article 13B(a) of the Sixth Directive, the Commission sent a letter of formal notice, on 7 July 2004, to the Hellenic Republic.

5 Since it was not satisfied with the reply received, the Commission, on 22 December 2004, issued a reasoned opinion calling on that Member State to take the necessary measures to put an end to the alleged failure to fulfil obligations.

6 In its reply of 23 February 2005 to that reasoned opinion, the Greek Government contested the infringement complained of, claiming in particular that the road assistance services in question, which are not supplied by an insurer, broker or insurance agent, do not constitute insurance transactions within the meaning of Article 13B(a) of the Sixth Directive.

7 In its application, the Commission submits that road assistance services provided by specialised bodies to their members in the event of vehicle breakdown may fall within the definition of insurance, since the risk covered refers to the uncertain event of an immobilisation of a vehicle at an unspecified place following a breakdown occurring during the period covered by the relevant subscription.

8 In its defence, the Greek Government does not deny the infringement alleged. It confines itself to stating that the Ministry of Economic Affairs and Finance intends to repeal Article 15(42) of Law No 2166/1993. In the light of its reiterated intention to amend the legislation in question, the present proceedings have no purpose and consequently the Commission should withdraw the application.

9 It is necessary, first of all, to point out that it is settled case-law that the exemptions provided for in Article 13 of the Sixth Directive constitute independent concepts of Community law whose purpose is to avoid divergences in the application of the VAT system as between one Member State and another (see, *inter alia*, Case C-349/96 *CPP* [1999] ECR I-973, paragraph 15, and Case C-8/01 *Taksatorringen* [2003] ECR I-13711, paragraph 37, and the case-law cited).

10 As regards, more specifically, the term 'insurance transactions', used in Article 13B(a) of the Sixth Directive, which is not defined in that directive, the Court has repeatedly held that the essentials of an insurance transaction are, as generally understood, that the insurer undertakes, in return for prior payment of a premium, to provide the insured, in the event of materialisation of the risk covered, with the service agreed when the contract was concluded (see, in particular, *Taksatorringen*, paragraph 39 and the case-law cited).

11 Secondly, the Court has also stated that it is not essential that the service the insurer has undertaken to provide in the event of accident/loss consists of 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 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 (OJ 1984 L 339, p. 21) ('Directive 73/239'). The Court considered, in particular, in that respect that there is no reason for the interpretation of the term 'insurance' to differ according to whether it appears in Directive 73/239 or in the Sixth Directive (*CPP*, paragraph 18).

12 In that regard, it may be noted in particular that, pursuant to Article 1(1) of Directive 73/239, the activity of direct insurance encompasses the provision of assistance referred to in Article 1(2) of that directive. The latter activity, which is provided for persons who get into difficulties while travelling, while away from home or while away from their permanent residence, consists in undertaking, against the prior payment of a premium, to make aid immediately available to the beneficiary under the assistance contract where that person is in difficulties following the occurrence of a chance event. Such aid may *inter alia* consist in the provision of benefits in kind effected, if necessary, by means of the staff and equipment of the person providing them. As

follows from Article 2(3) of Directive 73/239, such assistance can in particular take the form, in the event of a breakdown or an accident involving a road vehicle, of an on-the-spot breakdown service or the conveyance of the vehicle to a location at which repairs may be carried out.

13 Finally, as regards the fact that ELPA is not an insurer, it must be pointed out that, while noting that the exemptions provided for by Article 13 of the Sixth Directive are to be construed strictly, the Court has previously stated that the expression ‘insurance transactions’ referred to in Article 13B(a) of that directive 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 (*CPP*, paragraph 22).

14 It must be inferred from all of the foregoing that, as the Commission rightly submits, the road assistance services that a body such as ELPA undertakes to provide to its members, in return for the payment by those members of a fixed annual subscription, should the risk of breakdown or accident covered by that body materialise, fall within the definition of ‘insurance transactions’ referred to in Article 13B(a) of the Sixth Directive, and must consequently be exempt from VAT.

15 Consequently, it must be held that, by levying VAT on services consisting in road assistance in the event of a breakdown, the Hellenic Republic has failed to fulfil its obligations under Article 13B(a) of the Sixth Directive.

Costs

16 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party’s pleadings. As the Commission has asked that costs be awarded against the Hellenic Republic and the latter has been unsuccessful, the Hellenic Republic must be ordered to pay the costs.

On those grounds, the Court (Fourth Chamber) hereby:

1. **Declares that, by levying value added tax on services consisting in road assistance in the event of a breakdown, the Hellenic Republic has failed to fulfil its obligations under Article 13B(a) 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;**
2. **Orders the Hellenic Republic to pay the costs.**

[Signatures]

* Language of the case: Greek.