Arrêt de la Cour
Case C-308/01

GIL Insurance Ltd and Others

v

Commissioners of Customs & Excise

(Reference for a preliminary ruling from the VAT and Duties Tribunal, London)

(Sixth VAT Directive – Tax on insurance premiums – Higher rate applicable to certain insurance contracts – Insurance connected with the rental or sale of domestic appliances – State aid)

Summary of the Judgment

1. *Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Prohibition of the levying of other national charges which can be characterised as turnover taxes – Definition of turnover tax – Scope – Tax on insurance premiums – Excluded – Introduction of a rate identical to that of value added tax – Whether permitted with regard to the exemption of insurance transactions – No obligation to follow the procedure for the introduction of special derogating measures*

(Council Directive 77/388, Arts 13(B)(a), 27 and 33)

2. *State aid – Definition – Selectivity of the measure – System of differentiated taxation on insurance premiums – Justification because of the nature and general scheme of the system established*

(Art. 87(1) EC)

1. A tax on insurance premiums is compatible with Article 33 of Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes, which prohibits the Member States from introducing or maintaining taxes, duties or charges in the nature of turnover taxes, in so far as it is not a general tax, since it is not intended to attach to all economic transactions in the Member State concerned but applies only to a specific service, the supply of insurance; is not levied at each stage of the production and distribution process, since it is charged once only, on conclusion of the insurance contract; and does not apply to the added value of the goods and services.

Since it is compatible with Article 33 of the Sixth Directive, Article 13(B)(a) of that directive, under which insurance transactions are exempt from value added tax, does not preclude, in the case of that tax on insurance premiums, the introduction of a special rate which is identical to the standard rate of value added tax. Consequently, the procedure provided for in Article 27 of the directive, which obliges any Member State wishing to introduce special measures for derogation from that directive to seek prior authorisation from the Council, does not have to be complied with before the introduction of that rate.

(see paras 31, 35-37, 47, operative part 1-2)

2. A system of taxation of insurance premiums characterised by the existence of two different

rates cannot be regarded as constituting State aid within the meaning of Article 87(1) EC where the application of the higher rate in that system to a specific part of the insurance contracts previously subject to the standard rate is justified by the nature and the general scheme of the national system of taxation of insurance, even if the introduction of the higher rate involves an advantage for operators offering contracts subject to the standard rate.

(see para. 78)

JUDGMENT OF THE COURT (Fifth Chamber)
29 April 2004(1)

(Sixth VAT Directive – Tax on insurance premiums – Higher rate applicable to certain insurance contracts – Insurance connected with the rental or sale of domestic appliances – State aid)

In Case C-308/01,
REFERENCE to the Court under Article 234 EC by the VAT and Duties Tribunal, London (United Kingdom), for a preliminary ruling in the proceedings pending before that tribunal between
GIL Insurance Ltd,UK Consumer Electronics Ltd,Consumer Electronics Insurance Co. Ltd, Direct Vision Rentals Ltd,Homecare Insurance Ltd,Pinnacle Insurance plc,
and

Commissioners of Customs and Excise,
on the interpretation 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) and of Articles 87 EC and 88 EC,

THE COURT (Fifth Chamber),,

composed of: C.W.A. Timmermans, acting for the President of the Fifth Chamber, A. Rosas (Rapporteur) and S. von Bahr, Judges,
Advocate General: L.A. Geelhoed,
Registrar: M. Múgica Arzamendi, Principal Administrator,
after considering the written observations submitted on behalf of:

– GIL Insurance Ltd, UK Consumer Electronics Ltd, Consumer Electronics Insurance Co. Ltd, Direct Vision Rentals Ltd, Homecare Insurance Ltd and Pinnacle Insurance plc, D. Vaughan QC, C. McDonnell and C. Simpson, Barristers, instructed by P. Steiner and S. Ager, Solicitors,
– the United Kingdom Government, by J.E. Collins, acting as Agent, and K.P.E. Lasok QC, A. Robertson and T. Ward, Barristers,
– the Commission of the European Communities, by R. Lyal and J. Flett, acting as Agents,
after hearing the oral observations of GIL Insurance Ltd, UK Consumer Electronics Ltd, Consumer Electronics Insurance Co. Ltd, Direct Vision Rentals Ltd, Homecare Insurance Ltd and Pinnacle Insurance plc, represented by D. Vaughan, C. McDonnell and C. Simpson; the Kingdom of the Netherlands, represented by S. Terstal, acting as Agent; the United Kingdom Government, represented by R. Caudwell, acting as Agent, and K.P.E. Lasok; and the Commission, represented by R. Lyal and J. Flett, at the hearing on 19 June 2003,

after hearing the Opinion of the Advocate General at the sitting on 18 September 2003,

gives the following

Judgment

1 By order of 24 July 2001, received at the Court on 6 August 2001, the VAT and Duties Tribunal, London, referred to the Court for a preliminary ruling under Article 234 EC five questions on the interpretation of Articles 27 and 33 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') and of Articles 87 EC and 88 EC.

2 Those questions were raised in proceedings between GIL Insurance Ltd and other companies, all incorporated in the United Kingdom, and the Commissioners of Customs and Excise (the competent authority in matters of value added tax) concerning the charging on insurance contracts connected with the provision of certain services of a tax on insurance premiums at a higher rate than that applicable to other insurance premiums.

Legal background

Community law

3 Under Article 13(B)(a) of the Sixth Directive:

'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'.

4 Article 27(1) and (2) of the Sixth Directive provides:

'1. The Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogation from the provisions of this Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance. Measures intended to simplify the procedure for charging the tax, except to a negligible extent, may not affect the amount of tax due at the final consumption stage.

2. A Member State wishing to introduce the measures referred to in paragraph 1 shall inform the Commission of them …'

5 Finally, under Article 33(1) of the Sixth Directive:

'Without prejudice to other Community provisions, in particular those laid down in the Community provisions in force relating to the general arrangements for the holding, movement and monitoring of products subject to excise duty, this Directive shall not prevent a Member State from maintaining or introducing taxes on insurance contracts, taxes on betting and gambling, excise duties, stamp duties and, more generally, any taxes, duties or charges which cannot be characterised as turnover taxes, provided however that those taxes, duties or charges do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.'

National law

6 Under section 31 of and Group 2 of Schedule 9 to the Value Added Tax Act 1994, which transpose the provisions of Article 13(B)(a) of the Sixth Directive in the United Kingdom, supplies of insurance and related services are exempt from value added tax (VAT) in the

United Kingdom.

7 In 1994 a tax on insurance premiums (Insurance Premium Tax, IPT) was introduced in the United Kingdom, at the rate of 2.5% (Part III, sections 48 to 74, of the Finance Act 1994). IPT is a tax on the receipt of insurance premiums by an insurer or taxable insurance intermediary.

8 Pursuant to section 21 of the Finance Act 1997, the standard rate of IPT was increased from 2.5% to 4%, and a new 'higher rate' of IPT was introduced at 17.5%.

9 The standard rate applies generally. The higher rate, which corresponded at the material time to the standard rate of VAT in the United Kingdom, applies only to insurance premiums relating to domestic appliances, motor cars and travel.

10 As regards travel, the higher rate applies only to travel insurance sold through travel agents. Travel insurance sold directly by insurers is subject to the standard rate. In *R* v *Commissioners of Customs and Excise, ex parte Lunn Poly Ltd and Another* [1999] STC 350 the Court of Appeal of England and Wales, Civil Division, held that the differential rates of tax on travel insurance constituted State aid within the meaning of Article 87(1) EC.

11 There is no information in the case-file on the application of the higher rate of IPT to motor cars.

12 As regards domestic appliances, the higher rate applies only where the insurer is connected with the supplier of the appliance, or where the insurance is arranged through the supplier, or where the supplier is paid a commission on the provision of insurance. Similar insurance sold through insurance brokers or directly by insurance companies, on the other hand, is subject to the standard rate.

13 The circumstances in which the higher rate of IPT was introduced, as regards the domestic appliance sector in particular, should be described.

14 IPT was introduced in 1994 to apply in principle to all insurance contracts at a single rate. The objective of such a tax was to check the trend, for suppliers of domestic appliances in particular, progressively to replace service contracts for the repair and maintenance of the appliances sold or rented, which were subject to VAT at the standard rate of 17.5%, by contracts of insurance ancillary to the contracts of sale or rental, so as to benefit from the exemption from VAT for insurance transactions.

15 The introduction of IPT at a much lower rate than the standard rate of VAT did not, however, succeed in reversing the trend described above. In 1994 the great majority of insurance policies against mechanical faults in domestic appliances were sold through the suppliers of those appliances. That is known as 'connected' insurance. Only a small proportion of insurance was sold directly by insurers to consumers.

16 The outcome for the tax authorities was a loss of income in terms of VAT receipts, and so in 1997 another rate of IPT was introduced, equivalent to the standard rate of VAT and applicable only to premiums received in relation to connected insurance policies. The reason given for the introduction of the higher rate was to prevent 'value-shifting', since the tax authorities considered that suppliers of domestic appliances could, by manipulating the prices attributed to the appliances and the corresponding insurance, take advantage of the exemption from VAT on supplies of insurance services.

17 That measure had the consequence of a change of behaviour on the part of suppliers, who reverted to ordinary service contracts for the appliances they supplied. The proportion of direct insurance also increased.

The main proceedings and the questions referred for a preliminary ruling

18 The appellants in the main proceedings ('GIL Insurance and Others') carry on business in the United Kingdom and provide insurance or related services for domestic appliances. Some of them are insurance companies. Others are rental and retail companies acting as taxable insurance intermediaries. The respondents in the main proceedings are the Commissioners of Customs and Excise, who are responsible for the administration, collection and repayment of IPT and VAT in the United Kingdom.

19 GIL Insurance and Others paid the higher rate of IPT for insurance sold in connection with the sale or rental of domestic appliances. Following the previously cited judgment of the Court of Appeal in the *Lunn Poly* case, they claimed from the respondents repayment of the amounts they had paid. Those claims were rejected. GIL Insurance and Others appealed to the VAT and Duties Tribunal.

20 Before that tribunal, GIL Insurance and Others submitted that the higher rate could not be applied to them and sought repayment of the amounts paid by way of the higher rate of IPT, arguing that:

–the higher rate was a special measure which derogated from the provisions of the Sixth Directive and therefore required prior authorisation under Article 27, an authorisation which had been neither sought nor granted;

–the higher rate could be characterised as a turnover tax prohibited by Article 33 of the Sixth Directive;

–the difference between the standard rate and the higher rate of IPT constituted State aid within the meaning of Article 87 EC, which the Commission had not been informed of in accordance with Article 88 EC.

21 The respondents in the main proceedings disputed those assertions.

22 In those circumstances, the VAT and Duties Tribunal, London, stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

'(1)Is Article 27 of the Sixth Council Directive … to be interpreted so that the prior authorisation of the Council was required before the introduction of a higher rate of tax on insurance premiums, which tax was designed to nullify the exemption for insurance services in Article 13 of the Directive; which was at a rate identical to the standard rate of [VAT]; which was administered in the same way as [VAT]; which was intended with [VAT] to form part of an inseparable whole; and where there was no tax evasion or tax avoidance?

(2)Is Article 33 of the Sixth Council Directive … to be interpreted so as to prevent a Member State from introducing a tax on insurance premiums which is calculated by reference to the services supplied; which is proportional to the price of the services supplied; which is charged at the final stage of sale to the consumer; which is passed on to the final consumer in a manner characteristic of [VAT] so that the burden of tax rests on the final consumer; which applies to the whole territory of the United Kingdom; but which does not apply generally to all transactions relating to goods and services?

(3)Is Article 87(1) EC to be interpreted so that an aid is to be held to affect trade between Member States only if it has, or is capable of having, an appreciable effect on trade between Member States? If so, what are the criteria for determining whether or not a measure has such an effect?

(4)Is Article 87(1) EC to be interpreted so that an aid is to be held to affect trade between Member States if as a result of that aid (1) traders in one Member State reduce the volumes of the goods they import from other Member States; or (2) a trader who rents domestic appliances to customers in one Member State has a number of its rental contracts discontinued and disposes of those appliances in another Member State; or (3) insurance companies in one Member State, which provide insurance connected with the sales of domestic appliances, are placed at a competitive disadvantage with companies which sell direct insurance some of which are subsidiaries of companies in other Member States?

(5)If, in the light of the answers to Questions 3 and 4, the higher rate of insurance premium tax constitutes a State aid within the meaning of Article 87(1) EC, is Article 88 EC to be interpreted so that, where the Commission is not informed of any plans to grant such aid, the legislative measures introducing the aid should be disapplied and any tax paid under those measures should be repaid?'

Questions 1 and 2

Question 2

23 By its second question, which should be examined first, the VAT and Duties Tribunal essentially asks whether a tax on insurance premiums such as that at issue in the main

proceedings is compatible with Article 33 of the Sixth Directive.

Observations submitted to the Court

24 GIL Insurance and Others submit on this point that only the IPT charged at the higher rate is concerned. This is a special tax charged on the supply of insurance (and services related to insurance) where that is connected in a particular way with the supply of goods or services subject to VAT. This special tax was adopted in order to counteract the tax avoidance which the tax authorities thought was taking place. It should therefore be regarded as a separate tax from standard rate IPT, the latter being compatible with Article 33 of the Sixth Directive.

25 According to GIL Insurance and Others, IPT charged at the higher rate constitutes a turnover tax prohibited by Article 33 of the Sixth Directive, since it exhibits to a sufficient degree all the essential characteristics of VAT, including that concerning general applicability.

26 It is true that the higher rate of IPT does not apply to all economic transactions in the United Kingdom, since charging of it is limited to one type of transaction, namely the supply of insurance for goods and services subject to VAT. Nevertheless, IPT charged at the higher rate should be regarded as a tax of general application, in that it applies generally to insurance of a great variety of goods which constitute a substantial part of the national economy.

27 GIL Insurance and Others further submit that higher rate IPT is not a tax on contracts of insurance authorised by Article 33 of the Sixth Directive. Only standard rate IPT constitutes such a tax.

28 Higher rate IPT is inseparably linked with VAT. It burdens specifically the sale of insurance by retailers of domestic appliances in connection with the supply of goods subject to VAT at the standard rate. The link between the insurance and the supply taxed at the standard rate is an essential condition for levying it. Such a tax is ex hypothesi intended to have effects on the common system of VAT. Having regard to its purpose and effects, it compromises the functioning of the common system of VAT to such an extent that it must be held to be incompatible with Article 33 of the Sixth Directive.

29 The United Kingdom and the Commission submit that IPT, far from constituting a turnover tax prohibited by Article 33 of the Sixth Directive, constitutes a tax on contracts of insurance expressly authorised by that very provision.

Findings of the Court

30 Contrary to the submissions of GIL Insurance and Others, the compatibility with respect to Article 33 of the Sixth Directive of a tax such as IPT should be examined as a whole, with respect to its application at both the standard rate and the higher rate, since it is a single tax with two rates.

31 It is settled case-law that Article 33 of the Sixth Directive prohibits the Member States from introducing or maintaining taxes, duties or charges in the nature of turnover taxes (Case 252/86 *Bergandi* [1988] ECR 1343, paragraphs 10 and 11; Joined Cases 93/88 and 94/88 *Wisselink and Others* [1989] ECR 2671, paragraphs 13 and 14; Case C-200/90 *Dansk Denkavit and Poulsen Trading* [1992] ECR I-2217, paragraph 10; and Case C-28/96 *Fricarnes* [1997] ECR I-4939, paragraph 36).

32 Taxes, duties and charges must in any event be regarded as being such measures if they exhibit the essential characteristics of VAT, even if they are not identical to VAT in all points (see, inter alia, *Fricarnes*, paragraph 37).

33 Those characteristics are as follows: VAT applies generally to transactions relating to goods or services; it is proportional to the price of those goods or services, whatever the number of transactions carried out; it is charged at each stage of the production and distribution process; and, finally, it is imposed on the added value of goods and services, since the tax payable on a transaction is calculated after deducting the tax paid on the previous transaction (see, in particular, *Bergandi*, paragraph 15; Case C-347/90 *Bozzi* [1992] ECR I-2947, paragraph 12; and Case C-130/96 *Solisnor-Estaleiros Navais* [1997] ECR I-5053, paragraph 14).

34 Article 33 of the Sixth Directive does not, on the other hand, preclude the maintenance or introduction of a tax which does not display one of the essential characteristics of VAT (*Solisnor-Estaleiros Navais*, paragraphs 19 and 20).

35 In this respect, it is common ground that a tax such as that described by the national tribunal is not a general tax, since it is not intended to attach to all economic transactions in the Member State concerned (see, to that effect, *Solisnor-Estaleiros Navais*, paragraph 17, and Case C-208/91 *Beaulande* [1992] ECR I-6709, paragraph 16). IPT applies only to a specific service, the supply of insurance, since it is charged at the standard rate on the receipt of premiums in connection with contracts of insurance and at the higher rate solely on insurance premiums relating to motor cars, domestic appliances and travel where, in the case of the latter two sectors, the insurance contract possesses certain characteristics.

36 In any event, it is clear that IPT is not levied at each stage of the production and distribution process, since it is charged once only, on conclusion of the insurance contract, and that it does not apply to the added value of the goods and services.

37 Consequently, the answer to the second question must be that a tax on insurance premiums such as that at issue in the main proceedings is compatible with Article 33 of the Sixth Directive.

Question 1

38 By its first question, the national tribunal essentially asks whether Article 13(B)(a) of the Sixth Directive, under which insurance transactions are exempt from VAT, precludes, in the case of a tax on insurance premiums such as that at issue in the main proceedings, the introduction of a special rate which is identical to the standard rate of VAT, so that the procedure provided for in Article 27 of that directive, which obliges any Member State wishing to introduce special measures for derogation from that directive to seek prior authorisation from the Council, should have been complied with before the introduction of that rate.

Observations submitted to the Court

39 GIL Insurance and Others submit that the United Kingdom authorities should have asked the Council for authorisation to introduce a higher rate of IPT, pursuant to Article 27 of the Sixth Directive. Such a tax derogates from the provisions of that directive, since it was introduced in order to eliminate the consequences of the exemption in Article 13(B)(a) of that directive, with the stated aim of combating tax avoidance. It is common ground that the United Kingdom neither sought nor obtained authorisation to introduce the higher rate of IPT.

40 The United Kingdom submits that the authors of the Sixth Directive must have been aware of the exemption from VAT in Article 13(B)(a) for insurance transactions. They contemplated the possibility that Member States might impose a tax such as IPT despite the exemption from VAT for insurance transactions, since Article 33 of the Sixth Directive expressly provides that the directive does not prevent the maintenance or introduction by the Member States of taxes on insurance contracts which are not turnover taxes.

41 The Sixth Directive must therefore be interpreted as authorising the Member States to compensate the loss of revenue resulting from the exemption from VAT provided for in Article 13(B)(a) by applying to insurance transactions a tax other than VAT and other than any other form of turnover tax, without having to request the Council for authorisation in accordance with Article 27(1) of the directive.

42 The Commission similarly considers that, as IPT does not have the character of a turnover tax, it is expressly authorised by virtue of Article 33 of the Sixth Directive and is not incompatible with the exemption from VAT under Article 13(B)(a) of that directive. Its introduction was not therefore subject to prior authorisation in accordance with Article 27(1) of the Sixth Directive.

Findings of the Court

43 While insurance services are exempt from VAT under Article 13(B)(a) of the Sixth Directive, they may be subjected to other indirect taxes, as Article 33 of that directive states, provided that those taxes do not have the character of turnover taxes. Any Member

State is thus entitled, in those circumstances, to maintain or introduce a tax on insurance contracts and to lay down differential rates for that tax.

44 It follows from the answer to Question 2 that a tax such as IPT does not constitute a turnover tax prohibited by Article 33 of the Sixth Directive.

45 Levying it is not therefore incompatible with the exemption from VAT for insurance services provided for by Article 13(B)(a) of the Sixth Directive.

46 Consequently, such a tax cannot be regarded as a measure derogating from Article 13(B)(a) of the Sixth Directive, and there was no need for the United Kingdom authorities to have recourse to the procedure under Article 27 of the Sixth Directive.

47 The answer to the first question must therefore be that Article 13(B)(a) of the Sixth Directive, under which insurance transactions are exempt from VAT, does not preclude, in the case of a tax on insurance premiums such as that at issue in the main proceedings, the introduction of a special rate which is identical to the standard rate of VAT, since that tax is compatible with Article 33 of the Sixth Directive, so that the procedure provided for in Article 27 of that directive, which obliges any Member State wishing to introduce special measures for derogation from that directive to seek prior authorisation from the Council, does not have to be complied with before the introduction of that rate.

Questions 3 to 5

48 By its third to fifth questions, the VAT and Duties Tribunal essentially asks the Court whether the existence of different applicable rates for a tax on insurance premiums such as that at issue in the main proceedings is liable to create distortions of competition within the meaning of Article 87(1) EC, being uncertain in particular as to the content of the criterion of effect on intra-Community trade. It asks what, if appropriate, the consequences of a possible failure to notify that measure are for taxable persons paying the higher rate of the tax.

49 It should be observed that those questions are based on the assumption that the existence of two different rates for a tax such as IPT involves State aid within the meaning of Article 87(1) EC which is incompatible with Community law.

50 As the Advocate General observes in point 53 of his Opinion, if such an assumption is unfounded, Questions 3 to 5 are hypothetical and there is no need for the Court to answer them.

51 Consequently, before examining the third to fifth questions referred by the national tribunal, the Court must consider whether, because of the existence of two rates, the system of IPT constitutes State aid within the meaning of Article 87(1) EC.

Observations submitted to the Court

52 According to GIL Insurance and Others, because of the existence of two different rates, the system of IPT must be regarded as involving State aid within the meaning of Article 87(1) EC, to the benefit of the undertakings which are subject to IPT at the standard rate.

53 GIL Insurance and Others submit that they are active in fields in which there is substantial inter-State trade, namely the production and distribution of domestic appliances such as television sets and video cassette recorders and the supply of insurance covering those appliances, whether connected or direct insurance.

54 The introduction of the higher rate of IPT had the effect of noticeably distorting competition in those markets, as regards both domestic appliances and insurance services. The effect of such taxation on trade between Member States was at a sufficient level to amount to State aid.

55 In particular, application of the higher rate brought about a fall in the volumes of domestic appliances and spare parts purchased from other Member States. It hindered access to the United Kingdom insurance market by making it more difficult for insurance companies established in other Member States to use the easiest method of access to that market, namely the supply of connected insurance. Finally, it placed certain insurance companies at a disadvantage compared to others, which could have the consequence, if those companies belong to companies from other Member States, of affecting the financial

relationship between parent company and subsidiary.

56 The United Kingdom and the Commission doubt whether the existence of different rates in fact involves State aid within the meaning of Article 87(1) EC.

57 The United Kingdom observes, first, that the alleged aid measure does not correspond to the general definition of a State aid, since it does not consist in a positive benefit or a mitigation of the charges normally included in the budget of an undertaking.

58 The existence of two rates of IPT does not favour 'certain undertakings or the production of certain goods', in that the legislation does not impose the standard rate and the higher rate on discrete classes of taxpayers. In principle, in the context of the legislation on IPT, any insurance company could be liable at the same time to the standard rate and the higher rate and shift its business freely from one category to the other.

59 Finally, it follows from the Court's case-law that an aid affects trade only where the advantage granted strengthens the position of an undertaking compared to other competing undertakings in intra?Community trade. In the present case, to assess the effect on trade of the alleged aid measure, it is necessary to examine the market of insurance for domestic appliances supplied to customers in the United Kingdom or the market of services of taxable intermediaries. The national tribunal found that GIL Insurance and Others did not operate in an intra-Community market, nor were they engaged in an activity involving intra-Community trade.

60 The Commission submits that, to determine whether or not a measure constitutes State aid within the meaning of Article 87(1) EC, it must be examined whether or not it is in the nature or general scheme of the system. According to the case-law, a measure which is justified by the nature or general scheme of the system of which it forms part does not constitute State aid within the meaning of Article 87(1) EC.

61 For the purpose of that examination, it should be established in the present case whether or not there exists a distortion of competition favouring certain undertakings in the insurance sector, which is subject to IPT. The selectivity of the measure should be assessed by reference to the standard rate of IPT, and it must be examined whether the specific measure constituted by the introduction of a higher rate of tax is in the nature or general scheme of the system.

62 In the case at issue in the main proceedings, such an assessment should take account of the Sixth Directive for several reasons. The Commission observes, first, that that directive is a Community instrument of harmonisation which refers expressly both to a mandatory derogation for insurance services and to the possibility of introducing a tax such as IPT. It submits, next, that, in the case at issue in the main proceedings, what amounts to the same thing for the consumer may be presented either as a service contract subject to the standard rate of VAT or as an insurance contract exempt from VAT but subject to the standard rate of IPT. Finally, the Commission points out that the higher rate of IPT corresponds to the standard rate of VAT.

63 An interpretation of the concept of the 'nature or general scheme of the system' suffices to enable the national tribunal to resolve the disputes pending before it. There is therefore no need to answer in greater depth the third to fifth questions.

64 At the hearing the Netherlands Government submitted observations relating solely to the fifth question. It submitted on that occasion that the higher rate of IPT was not introduced to favour certain undertakings compared to others, and stressed that, unlike classic State aid situations, the higher rate does not finance the lower rate.

Findings of the Court

65 In order to examine whether a system of tax such as that of IPT, because of the existence of two rates, constitutes State aid within the meaning of Article 87(1) EC, it must be examined whether such a system shows all the various constituent elements of the concept of State aid in that provision of the Treaty.

66 According to settled case-law, Article 87(1) EC defines State aid, which is in principle incompatible with the common market, as aid granted by a State or through State resources in any form whatsoever which distorts or threatens to distort competition by

favouring certain undertakings or the production of certain goods, in so far as it affects trade between Member States (see Case C-126/01 *GEMO* [2003] ECR I-0000, paragraph 22 and the case-law cited).

67 In this respect, it should be examined, first, whether the system of IPT is such as to favour undertakings offering insurance contracts subject to the standard rate in comparison with undertakings offering, in the domestic appliance sector, insurance contracts connected with the supply of those goods, which is disputed both by the Netherlands and United Kingdom Governments and by the Commission.

68 Article 87(1) EC requires it to be determined whether, under a particular statutory scheme, a State measure is such as to favour 'certain undertakings or the production of certain goods' in comparison with others which, in the light of the objective pursued by the system in question, are in a comparable legal and factual situation (Case C-143/99 *Adria-Wien Pipeline and Wietersdorfer & Peggauer Zementwerke* [2001] ECR I-8365, paragraph 41, and Case C-409/00 *Spain* v *Commission* [2003] ECR I-1487, paragraph 47). If that is the case, the measure concerned satisfies the condition of selectivity which is a constituent of the concept of State aid under that provision (*GEMO*, paragraph 35, and *Spain* v *Commission*, paragraph 47).

69 The concept of aid encompasses advantages granted by public authorities which, in various forms, mitigate the charges which are normally included in the budget of an undertaking (see, inter alia, Case C-310/99 *Italy* v *Commission* [2002] ECR I-2289, paragraph 51).

70 It must be observed in this respect that IPT was originally introduced as a general taxation measure applicable in principle to all insurance contracts at a single rate.

71 According to GIL Insurance and Others, such a measure should be regarded as aid because of the introduction of a higher rate applicable to a determined category of insurance contracts. It gives rise to an advantage for undertakings offering contracts of insurance subject to the standard rate.

72 In *Adria-Wien Pipeline and Wietersdorfer & Peggauer Zementwerke* (paragraphs 42 to 54) the Court held, following its case-law, that the condition of selectivity is not satisfied by a measure which, although conferring an advantage on its recipient, is justified by the nature or general scheme of the system of which it is part (see Case 173/73 *Italy* v *Commission* [1974] ECR 709, paragraph 33, and Case C-75/97 *Belgium* v *Commission* [1999] ECR I-3671, paragraph 33). It examined whether the distinguishing criterion used by the national legislation at issue in the main proceedings was justified by the nature and/or general scheme of the legislation, which would mean that the disputed measure was not in the nature of State aid.

73 In the present case, even on the assumption that the introduction of the higher rate involves an advantage for operators offering contracts subject to the standard rate, it must be examined whether the application of the higher rate of IPT to a specific part of the insurance contracts previously subject to the standard rate is justified by the nature and the general scheme of the system of which that tax forms part.

74 To that end, it should be observed that the national tribunal considers, in point 10(6) of its order, that the higher rate of IPT and VAT form part of an inseparable whole, which was the aim pursued in introducing the higher rate. That rate was introduced to counteract the practice of taking advantage of the difference between the standard rate of IPT and that of VAT by manipulating the prices of rental or sale of appliances and of the associated insurance. Such conduct had given rise to a loss of income in terms of VAT receipts and to shifts in the conditions of competition in the domestic appliance sector.

75 As the Advocate General suggests in point 84 of his Opinion, in view of its purpose and effect, the higher rate of IPT has the appearance of a regulatory charge intended specifically as a deterrent to the conclusion of connected insurance contracts. The introduction of a higher rate of IPT on certain contracts was not intended to confer an advantage on all operators who offer contracts of insurance subject to the standard rate of IPT, in application of the general system of taxation of insurance.

76 It should be observed that standard rate IPT does not constitute a derogation from the general system of taxation of insurance in the United Kingdom. It is not a tax scheme favouring a specified sector, since it is a system of taxation of insurance premiums intended to compensate for the fact that insurance transactions are not subject to VAT.
77 It follows, moreover, from the answers to Questions 1 and 2 that the system of IPT is compatible with the Sixth Directive.
78 In those circumstances, even on the assumption that the introduction of the higher rate of IPT involves an advantage for operators offering contracts subject to the standard rate, the application of the higher rate of IPT to a specific part of the insurance contracts previously subject to the standard rate must be regarded as justified by the nature and the general scheme of the national system of taxation of insurance. The IPT scheme cannot therefore be regarded as constituting an aid measure within the meaning of Article 87(1) EC.
79 In the light of the above considerations, there is no need to answer the third to fifth questions.

Costs
80 The costs incurred by the Netherlands and United Kingdom 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 proceedings, a step in the proceedings pending before the national tribunal, the decision on costs is a matter for that tribunal.
On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the VAT and Duties Tribunal, London, by order of 24 July 2001, hereby rules:
1.A tax on insurance premiums such as that at issue in the main proceedings is compatible with Article 33 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.
2.Article 13(B)(a) of the Sixth Directive 77/388, under which insurance transactions are exempt from value added tax, does not preclude, in the case of a tax on insurance premiums such as that at issue in the main proceedings, the introduction of a special rate which is identical to the standard rate of value added tax, since that tax is compatible with Article 33 of the Sixth Directive 77/388, so that the procedure provided for in Article 27 of that directive, which obliges any Member State wishing to introduce special measures for derogation from that directive to seek prior authorisation from the Council of the European Union, does not have to be complied with before the introduction of that rate.
Timmermans

Rosas

von Bahr

Delivered in open court in Luxembourg on 29 April 2004.
R. Grass

V. Skouris

Registrar

President

1 – Language of the case: English.