Conclusions
OPINION OF ADVOCATE GENERAL
POIARES MADURO
delivered on 12 January 2005(1)

Case C-472/03

Staatssecretaris van Financiën
v
Arthur Andersen & Co. Accountants c.s.

(Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands))

(Sixth VAT Directive – Article 13B(a) – Insurance and reinsurance transactions – Exemptions – Related services performed by insurance brokers and insurance agents)

1. In this reference for a preliminary ruling, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) asks the Court a question concerning 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 (hereinafter the 'Sixth Directive'). (2)
2. The question concerns the particular issue of whether 'back-office' activities carried out by an undertaking for an insurance company are to be considered 'related services performed by insurance brokers and insurance agents' within the meaning of Article 13B(a) of the Sixth Directive.

I – Facts of the main proceedings and the question referred to the Court

3. At the material time, the defendant in the main proceedings, the Arthur Andersen & Co. Accountants c.s. group, established in Rotterdam (Netherlands) (hereinafter 'the defendant in the main proceedings'), included the private civil-law partnership governed by Dutch law, Andersen Consulting Management Consultants (hereinafter 'ACMC').
4. On 26 May 1997, Royal Nederland Verzekeringsgroep NV, Universal Leven NV (hereinafter 'UL'), a company active, through intermediaries, on the life assurance market, and ACMC concluded a 'sharing agreement', on the basis of which the latter company began to perform various back-office activities for UL. ACMC delegated responsibility for these activities to an internal division known as 'Accenture Insurance Services' (hereinafter 'Accenture'), which is established in the same building as UL.
5. These back-office activities include, in particular, the acceptance of new applications for insurance, the processing of contractual and tariff changes, the issue, administration and rescission of insurance policies, the processing of claims, the fixing and payment of commission to insurance agents, the development and administration of information technology (IT), the provision of information to UL and to agents, and the preparation of reports for policyholders and third parties, such as the Fiscale Inlichtingen- en Opsporingsdienst (FIOD) (Tax Information and

Investigation Department). Where it becomes apparent from the answers given in the application form by an applicant for insurance that a medical examination is necessary, it is UL that decides whether or not to accept the risk. Otherwise, it is Accenture that takes the decision to accept applications for life assurance and this decision binds UL. Accenture is responsible for almost all of the daily contacts with intermediaries which are necessary for the implementation of the various tasks involved.

6. In its tax declaration for the period September 1998, the defendant in the main proceedings indicated that it had paid an amount of NLG 10 000 in turnover tax, representing the difference between, on the one hand, the turnover tax calculated on the remuneration invoiced to UL in that period for the back-office activities and, on the other hand, the input VAT.

7. Considering that back-office activities are not subject to turnover tax, the defendant in the main proceedings applied for reimbursement of this NLG 10 000 from the competent inspector of taxes. This application was rejected.

8. The dispute between the defendant in the main proceedings and the Staatssecretaris van Financiën, which ultimately came before the Hoge Raad and which gave rise to the reference to the Court, has its origins in this decision of the inspector of taxes. The referring court asked the Court the following preliminary question:

‘Where a taxable person has concluded an agreement with a (life) assurance company, such as the agreement at issue between ACMC and UL, under which that taxable person undertakes, for a certain remuneration and with the aid of qualified personnel who are expert in the insurance field, most of the actual activities related to insurance – including, as a rule, the taking of decisions that bind the insurance company to enter into insurance contracts and maintaining contact with the agents and, as the occasion arises, with the insured – while the insurance contracts are concluded in the name of the insurance company and the insurance risk is borne by the latter, are the activities undertaken by that taxable person in execution of the agreement “related services performed by insurance brokers and insurance agents” within the meaning of Article 13B(a) of the Sixth Directive?’

9. This question concerns the interpretation of Article 13B(a) of the Sixth Directive, which 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’.

10. Similarly, Article 11 of the Wet op de omzetbelasting 1968 (Law of 1968 on turnover tax), of 28 June 1968 (Stbl. 329), stipulates that:

‘1. The following are exempted from tax in accordance with the conditions laid down by general administrative measures:

…

k) insurance and services supplied by insurance agents’.

11. Mention should also be made of Article 2 of 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 360) and, in particular, transitional measures in respect of those activities, (3) as in force at the material time, which provides:

‘1. This Directive shall apply to the following activities falling within ex ISIC Group 630 in Annex III to the General Programme for the abolition of restrictions on freedom of establishment:

(a)professional activities of persons who, acting with complete freedom as to their choice of undertaking, bring together, with a view to the insurance or reinsurance of risks, persons seeking insurance or reinsurance and insurance or reinsurance undertakings, carry out work preparatory to the conclusion of contracts of insurance or reinsurance and, where appropriate, assist in the administration and performance of such contracts, in particular in the event of a claim;

(b)professional activities of persons instructed under one or more contracts or empowered to act in the name and on behalf of, or solely on behalf of, one or more insurance undertakings in introducing, proposing and carrying out work preparatory to the conclusion of, or in concluding, contracts of insurance, or in assisting in the administration and performance of such contracts, in particular in the event of a claim;

…

2. This Directive shall apply in particular to activities customarily described in the Member States as follows:

…

(b) activities referred to in paragraph 1(b):

…

– *in the Netherlands*:

– Gevolmachtigd agent

…'

12. Finally, Article 2 of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation, (4) which repealed Directive 77/92 with effect from 15 January 2005, provides:

'For the purpose of this Directive:

…

(3) "insurance mediation" means the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim.

These activities when undertaken by an insurance undertaking or an employee of an insurance undertaking who is acting under the responsibility of the insurance undertaking shall not be considered as insurance mediation.

…'

II – Analysis

13. In this case, the Court is once again invited to analyse the exemption provided for in Article 13B(a) of the Sixth Directive for 'insurance transactions …, including related services performed by insurance brokers and insurance agents'. The *travaux préparatoires* offer no precise justification for this exemption. It is an exemption which could only be justified by general considerations of a social, political or administrative simplification character concerning value added tax (hereinafter 'VAT'). (5) Moreover, the directive omits to provide any definitions of the concepts employed in this provision. Nevertheless, this is an area that has already been explored in the case-law of the Court, notably in the *CPP*, *Skandia* and *Taksatorringen* (6) judgments, in which the concepts of 'insurance transactions' and 'insurance brokers and insurance agents' were analysed.

14. At the outset, I would like to draw attention to an argument of the defendant in the main proceedings with which I cannot agree. This is the view that the activities carried out by ACMC for UL may not even fall within the scope of application of the Sixth Directive, since they result from a relationship of employment between two companies as referred to in Article 4(4) of the directive.

15. The information provided by the referring court does not reveal any of the elements that the Court considered in its judgment of 25 July 1991, *Ayuntamiento de Sevilla,* (7) to be characteristic of a 'contract of employment or by any other legal ties creating the relationship of employer and employee' within the meaning of Article 4(4) of the Sixth Directive. On the contrary, it seems clear that AMCM is, in accordance with the wording employed by Advocate General Tesauro in the same case, a person 'who has sufficient organisational freedom with regard to the human and material resources used in carrying out the activity in question and who bears the economic risk entailed in that activity'. (8) The argument put forward by the defendant in the main proceedings that the activities at issue do not fall within the scope of the Sixth Directive should therefore be rejected.

A – *The concept of 'insurance transaction'*

16. As the referring court has correctly held, a company such as ACMC does not carry out ‘insurance transactions’ within the meaning of Article 13B(a) of the Sixth Directive. In this respect, the Court has already had the opportunity to explain 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’. (9)

17. Even if it is possible, in accordance with this same case-law, to include within this concept ‘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’, (10) an insurance transaction within the meaning of Article 13B(a) necessarily implies the existence of a contractual relationship between the service provider who claims the exemption and the person whose risks are covered by the insurance, namely the insured. (11)

18. According to the order for reference, there is no legal relationship of insurance between ACMC and the insured persons. These relations exist exclusively between UL and the policyholders. Although there are legal relations between these two companies which may certainly be of importance for the performance of insurance transactions between UL and its customers, the activities carried out by ACMC do not, in themselves, constitute insurance transactions exempted under Article 13B(a) of the Sixth Directive.

B – *The concept of ‘related services performed by insurance brokers and insurance agents’*

19. It is common ground that Article 13B(a) of the Sixth Directive exempts not only insurance transactions but also the supply of services related to insurance transactions which are performed by insurance brokers and insurance agents. (12)

20. The wording of Article 13B(a) of the Sixth Directive shows that it is not all ‘related services [to insurance transactions]’ that are exempted. The concept of ‘related services’ would be sufficiently broad to include virtually all services which, having a link to the provision of insurance, could thus be considered to be related to those transactions. (13) However, the Community legislator has expressly limited the scope of the exemption to cover only those services which are performed by insurance brokers or insurance agents. The classification of the person claiming the exemption as an insurance broker or an insurance agent therefore constitutes a vital element in the determination of those activities related to insurance transactions which are to be exempted under Article 13B(a).

21. In this respect, the defendant in the main proceedings claims that the activities of ACMC, as set out in the order for reference, correspond to the business of an insurance agent as set out in Directives 77/92 and 2002/92. These activities correspond in particular to those of a ‘gevolmachtigd agent’, that is to say, an insurance agent under Article 2(1)(b) of Directive 77/92, (14) which refers to ‘professional activities of persons instructed under one or more contracts or empowered to act in the name and on behalf of, or solely on behalf of, one or more insurance undertakings in introducing, proposing and carrying out work preparatory to the conclusion of, or in concluding, contracts of insurance, or in assisting in the administration and performance of such contracts, in particular in the event of a claim’.

22. This reasoning raises a preliminary question, namely whether the concepts of insurance broker and insurance agent *should automatically* be interpreted in the same way in the context of the Sixth Directive and in the context of Directives 77/92 and 2002/92, which are concerned not with VAT but with the freedom of establishment. The Court has preferred not to take an absolute position on this question. (15) The Court has, however, taken the essential elements set out in Directive 77/92 into consideration in defining the concepts of ‘insurance broker’ and ‘insurance agent’ referred to in Article 13B(a) of the Sixth Directive. (16) Taking these elements into consideration does not amount, however, to an automatic cross-reference to the definition laid down in Directive 77/92. It is without doubt essential that Directive 77/92 is taken into consideration in order to avoid the development of a concept of ‘insurance agent’ under Article 13B(a) which would risk losing all contact with legal reality and practice in the area of insurance

law. However, as the Court has stated on several occasions, the exemptions from VAT constitute independent concepts of Community law which should be placed in the context of the common system of VAT of the Sixth Directive and whose purpose is to avoid divergences in the application of the VAT system as between one Member State and another. (17)

23. Consequently, one should not dwell on what Article 2(1)(b) of Directive 77/92 describes as being activities that can be carried out by an insurance agent, with a view to concluding that a person who performs one of these activities is automatically an insurance agent within the meaning of Article 13B(a) of the Sixth Directive. It is more worthwhile to turn to the definition given by the Court in the *Taksatorringen* judgment, delivered in the field of VAT.

C – *The definition of 'insurance agent' adopted by the Court in* Taksatorringen

24. In this judgment, the Court stated that the concept of 'related services performed by insurance brokers and insurance agents' within the meaning of Article 13B(a) of the Sixth Directive 'refers only to services provided by professionals who have a relationship with both the insurer and the insured party, it being stressed that the broker is no more than an intermediary'. (18) This definition places the emphasis – in the context of an area such as the distribution of insurance products (19) which is characterised, in its *modus operandi*, by great complexity and diversity (20) – on the external action of the insurance agent, that is his position as a mediator between the policyholder and the insurance company, necessarily implying the existence of relations with both of these parties.

25. The definition adopted by the Court has the merit of simplicity in an area such as exemptions from VAT which is, without doubt, complex and full of uncertainties. To determine whether or not a person is an insurance agent, the essential criterion is thus not simply the nature of the internal activities he performs but, first and foremost, his position with regard to the persons that he puts into contact. (21)

26. Following along the same lines, Advocate General Saggio in his Opinion in *Skandia* points out that a company 'cannot be regarded as a broker or an agent, since it has no legal relationship with the insured'. He adds that it clearly follows from the provisions of Directive 77/92 and other Community texts that 'such business [as that of brokers and agents] is characterised by a *direct* relationship with the insured'. (22)

27. The defendant in the main proceedings submits that ACMC has a legal relationship with the customers of UL, inasmuch as it maintains 'indirect' relations with the insured parties. In this way, ACMC fulfils the criteria of the *Taksatorringen* judgment and qualifies as an 'insurance agent' within the meaning of Article 13B(a) of the Sixth Directive.

28. I cannot accept such an argument. Too much importance should not be attributed to the fact that the Court, in that judgment, did not explicitly specify that the professional relationship 'with both the insurer and the insured party' should be direct. The decisive aspect, in my view, lies in the fact that a relationship between an insurance agent and a policyholder necessarily implies the existence of an agent's *own* declarations, adopted *as such* and addressed to the policyholder before whom he presents himself as an insurance agent acting on behalf of and possibly in the name of the insurer. (23)

29. In the present case, it is evident that there is a network of insurance brokers and insurance agents who continue to handle relations with UL's clients and with whom ACMC enters into contact in the performance of its 'back office' activities for UL. According to the order for reference, it is these agents who 'have a direct link to (potential) policyholders and insured persons, rather than ACMC'. Therefore, in my opinion, the latter cannot be considered to be in a legal relationship with both the insurer and the insured.

D – *Substantial independence of the activity of insurance agent in relation to the insurer's own activity and the subcontracting by the insurer of these activities*

30. The conclusion at which I have just arrived is not inconsistent with the fact that, in the particular circumstances envisaged in the 'sharing agreement' between UL and ACMC, the latter takes part in the negotiation, the preparation and the conclusion of life assurance contracts and that it even has the power to render the insurer liable in respect of an insured person by

concluding insurance contracts in the name of UL.

31. Article 2(1)(b) of Directive 77/92 refers expressly to the professional activities of persons ‘in the name and on behalf of, or *solely* on behalf of’ (24) the insurer. In *Taksatorringen*, the Court ruled that the type of activities envisaged by this provision ‘involves the power to render the insurer liable in respect of an insured person’. (25) Relying on this case-law, ACMC considers itself to be an insurance agent in so far as it has the power to render the insurer liable. This conclusion is based on the premiss that the classification of a person as an insurance agent stems from the fact that this person has the power to render the insurer liable vis-à-vis the insured person. However, it follows from the aforementioned Article 2(1)(b) that a person may be classified as an ‘insurance agent’ even when acting ‘solely on behalf’ of the insurer. It is clear that where he is not acting ‘in the name’ of the insurer, he does not have any power to render the insurer liable in respect of third parties. An insurer is not rendered liable in respect of policyholders by the declarations of an agent who does not act ‘in the name of the insurer’ and who is thus not legally his representative. Accordingly, the power to render the insurer liable cannot be the decisive criterion for classifying a person as an insurance agent. It will not be sufficient, *per se*, to make a taxable person an insurance agent within the meaning of Article 13B(a) of the Sixth Directive. Other conditions must be fulfilled.

32. In fact, the action of a subject who concludes insurance contracts in the name of the insurer cannot be separated from the broader context of the business of distribution of insurance products, (26) which necessarily presupposes that the intermediary engages actively in finding and introducing customers and insurers. In this respect, the comments of Advocate General Fennelly at point 32 of his Opinion in the *CPP* case are worth citing. He states that ‘[t]he authors of the Sixth Directive … described persons whose named professional activity comprises the bringing together of insurance undertakings and persons seeking insurance …’. Without prejudice to a finding by the referring court, it seems that ACMC is not engaged in such an activity, even when it accepts in the name of UL the applications for life assurance contracts addressed to the latter company by potential policyholders.

33. The activity of insurance agent should therefore be viewed as a supply of services on a professional basis, which begins and ends in itself and which thus has an independent substance distinct from the business of the insurer. (27) The activity of an insurance agent cannot be confused with that of the insurer on behalf of and possibly in the name of which the agent acts. In the main proceedings, ACMC simply cooperates in the economic activity of the insurer. It does not exercise activities distinct from those usually performed within UL.

34. In this respect, I share the view put forward by the Commission in its written submissions to the effect that the activities of ACMC correspond to a pure subcontracting of activities usually performed by an insurance company.

35. Even when ACMC accepts in the name of UL applications for insurance addressed to the latter company by interested parties, it is still in any event merely a person authorised by the insurer to complete certain legal acts within the context of the preparation and conclusion of contracts of insurance. Clearly, this cannot suffice to make ACMC, or any other proxy of UL, an insurance agent.

36. In this respect, the judgment in *CSC Financial Services*, (28) even if it was delivered in the different context of the negotiation of financial products, provides important guidance. In this judgment, the Court states that the activity of negotiation ‘refers to the activity of an intermediary *who does not occupy the position of any party to a contract* relating to a financial product … [It must be] a service rendered to, and remunerated by a contractual party as a distinct act of mediation. … The purpose of negotiation is therefore to do all that is necessary in order for two parties to enter into a contract, without the negotiator having any interest of his own in the terms of the contract’. (29) Consequently, there is no negotiation, but simply subcontracting by one party of the activities of the seller of financial products to another party, when the latter ‘occupies the same position as the party selling the financial product and is not therefore an intermediary who does not occupy the position of one of the parties to the contract’. (30)

37. In the context of relations such as those between ACMC and UL, ACMC appears to be a subcontractor of UL which takes the place of the employees of the insurer for the performance of certain transactions usually performed by the insurer himself.

38. Moreover, I think that the argument of the defendant in the main proceedings that it is contrary to the principle of fiscal neutrality to impose VAT on these services, since this imposition makes it more difficult to have recourse to third parties to carry out services, previously performed within an insurance company, which are identical to the activities traditionally carried out by insurance agents, is of no relevance.

39. To the extent that the common system of VAT taxes only those services supplied in an independent capacity, unless they constitute transactions exempted under Article 13B(a), there will of course be a difference in treatment between those insurance companies that choose to 'externalise' their activities and those that choose to entrust these activities to their employees. This difference in treatment is, however, a normal consequence of the application of the common system of VAT and of the natural contradiction that the existence of exemptions implies for the principles of neutrality and equal treatment. This difference of treatment is, moreover, utterly justifiable. It is sufficient to consider the fact that an insurance company which decides to have the tasks necessary for the performance of insurance transactions carried out by its own employees must bear certain costs (fiscal and others, particularly those resulting from the statutory regime of salaried employment), costs of which it would be relieved if it opted for an external service provider. (31) It seems entirely normal that, in this latter case, the activity in question should be subject to the payment of VAT. (32)

40. In conclusion, the position maintained by the defendant in the main proceedings entails an obvious extension of the concept of insurance agent, as it results from the *Taksatorringen* judgment, to the extent that ACMC performs activities usually carried out within the insurance company through its own means. Moreover, the activities of ACMC do not replace the activities of the insurance intermediaries, who continue to exercise their functions and through which UL is active on the market.

41. Such an extension is not tenable, bearing in mind the settled case-law of the Court according to which 'the terms used to specify the exemptions envisaged by Article 13 of the Sixth Directive are to be interpreted strictly since they constitute exceptions to the general principle that turnover tax is levied on all services supplied for consideration by a taxable person'. (33)

III – Conclusion

42. In the light of the considerations set out above, I propose that the Court replies to the question submitted by the Hoge Raad der Nederlanden in the following manner:

Where, by virtue of a contract with an insurance company, a taxable person performs on behalf of this company certain activities linked to insurance transactions, these are not to be considered 'related services [to insurance or reinsurance transactions] performed by insurance brokers and insurance agents' within the meaning of 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, in so far as the taxable person does not have a direct relationship with the insurer and the insured party and his activities are not independent in relation to the insurer's own activities.

1 – Original language: Portuguese.

2 – OJ 1977 L 145, p. 1.

3 – OJ 1977 L 26, p. 14.

4 – OJ 2003 L 9, p. 3.

5 – See, Farmer, P., and Lyal, R., *EC Tax Law*, Oxford, 1994, p. 181.

6 – Case C-349/96 *CPP* [1999] ECR I-973; Case C?240/99 *Skandia* [2001] ECR I?1951, and Case C-8/01 *Taksatorringen* [2003] ECR I-0000.

7 – Case C-202/90 [1991] ECR I-4247.

8 – Ibidem, point 6 and the operative part of the Opinion.

9 – .*CPP,* paragraph 17, and *Skandia*, paragraphs 37 and 41. See also *Taksatorringen*,

paragraphs 39 to 41.
10 – .*CPP*, paragraph 22, and *Skandia*, paragraph 38.
11 – .*Skandia*, paragraph 41.
12 – This exemption may be explained by the fact that it was not considered justifiable to impose VAT on insurance services, as this would involve taxing the services of insurance brokers and insurance agents, who perform a vital function of distribution of these services. Moreover, input VAT on such services would not be deductible by the insurers by virtue of the exemption from VAT relating to insurance transactions.
13 – See, to that effect, the Opinion of Advocate General Fennelly in *CPP*, paragraph 31.
14 – The activities of ACMC clearly do not correspond with the activity foreseen in Article 2(1)(a) of Directive 77/92 concerning the profession of broker, which is characterised by the fact that 'it … falls [on this latter] to seek out, on behalf of a policyholder, the company that is likely to offer him cover that is best suited to his needs' (Opinion of Advocate General Mischo in *Taksatorringen*, paragraph 86). It is clear that ACMC supplies its services exclusively to UL and not to the insured parties.
15 – See, in particular, *Taksatorringen*, paragraph 45, and the Opinion of Advocate General Mischo in the same case, point 89.
16 – See, Opinion of Advocate General Mischo in *Taksatorringen*, points 79 to 87. In addition, note point 32 of the Opinion of Advocate General Fennelly in the *CPP* case, to the effect that there is nothing to support the view that Article 13B(a) contains a necessary and automatic cross-reference to Directive 77/92.
17 – Judgments in Case 348/87 *Stichting Uitvoering Financiële Acties* [1989] ERC 1737, paragraph 11; *Skandia*, cited above, paragraph 23, and *Taksatorringen*, cited above, paragraph 37.
18 – Paragraph 44.
19 – The first recital of Directive 2002/92 states that '[i]nsurance and reinsurance intermediaries play a central role in the distribution of insurance and reinsurance products in the Community'.
20 – Bigot, J., and Langé, D., *Traité de Droit des Assurances, Tome 2, La Distribution de l'Assurance*, LGDJ, Paris, 1999, p. 6. The authors make reference in particular to the existence of 'quite theoretical distinctions which poorly mask a more complex reality' in the framework of the distribution of a product of great technical complexity, such as insurance.
21 – Which can be perfectly understood in the light of the presentation in Article 13B(a) of the Sixth Directive of the activities performed by an insurance agent who would benefit from the exemption from VAT which, as I have already indicated, are presented, from the perspective of their contents, as the supply of related services to insurance transactions.
22 – Points 19 and note 10 of the Opinion (emphasis added).
23 – One could imagine that an insurance agent may possibly, in the exercise of his activities as an agent acting on behalf of the insurer, communicate with potential policyholders and insured persons not personally but through a third party who intervenes on *his* behalf and passes on the insurance agent's *own* declarations addressed to policyholders. In these circumstances, he should not cease to be an 'insurance agent' within the meaning of Article 13B(a) of the Sixth Directive.
24 – Emphasis added.
25 – Paragraph 45 of the judgment making reference to point 91 of the Opinion of Advocate General Mischo in this case, where it is specified that, for the action of a party on behalf of an insurer to 'qualify him as an insurance agent, he must be party to a contract or an authorisation and act 'in the name and on behalf of, or solely on behalf of, one or more insurance companies', meaning that he must have the power to render the insurance company liable vis-à-vis the insured'.
26 – See the first recital of Directive 2002/92.
27 – In this respect see, in another context, points 36 and 37 of the Opinion of Advocate General Ruiz?Jarabo Colomer in Case C-68/03 *Lipjes* [2004] ECR I-0000 on the specific qualities of the activity of brokering, to which the judgment refers at paragraph 21.

28 – Case C-235/00 [2001] ECR I-10237.
29 – Ibidem, paragraph 39. Emphasis added.
30 – Ibidem, paragraph 40.
31 – See, by analogy, in the context of the exemption from VAT for banking transactions, the assertion of Advocate General Ruiz-Jarabo Colomer in Case C?2/95 *SDC* [1997] ECR I-3017, point 54 et seq., that ‘[i]f an undertaking engages the services of another undertaking to perform certain tasks instead of performing them itself with its own staff and equipment, it will have to pay the VAT relating to the performance of those services’. See also my Opinion in Case C?8/03 *BBL* [2004] ECR I-0000, point 24.
32 – In the judgment in Case C-108/99 *Cantor Fitzgerald International* [2001] ECR I?7257, paragraph 33, the Court stated that ‘[a] taxable person who, for the purposes of achieving a particular economic goal, has a choice between exempt transactions and taxable transactions must therefore, in his own interest, duly take his decision while bearing in mind the neutral system of VAT ... The principle of the neutrality of VAT does not mean that a taxable person with a choice between two transactions may choose one of them and avail himself of the effects of the other’.
33 – .*Stichting Uitvoering Financiële Acties*, paragraph 13, and *SDC*, paragraph 20. See, more recently, Case C-287/00 *Commission* v *Germany* [2002] ECR I-5811, paragraph 43, and *Taksatorringen*, paragraph 36. It should also be noted that at paragraph 65 of its judgment in *SDC*, the Court affirms, in the context of financial transactions, that ‘since point 3 of Article 13B(d) of the Sixth Directive must be interpreted strictly, the mere fact that a constituent element is essential for completing an exempt transaction does not warrant the conclusion that the service which that element represents is exempt’. See, in the same respect, *CSC Financial Services*, paragraph 32.