Conclusions
OPINION OF ADVOCATE GENERAL
RUIZ-JARABO COLOMER
delivered on 22 February 2005(1)

Case C-498/03

Kingscrest Associates Ltd
Montecello Ltd
v
Commissioners of Customs & Excise

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

(Sixth VAT Directive – Exemptions – Supplies of services and goods directly related to welfare and social security and protection of children and young persons – Bodies recognised as being of a 'social character' – Private bodies run for profit – Interpretation of Article 13A(1)(g) and (h))

1. In these proceedings, the Court of Justice is asked to consider the concept of 'charitable organisations' which is used in Article 13A(1)(g) and (h) of the Sixth Value Added Tax Directive (2) to define the scope of the exemptions for supplies of goods and services directly related to welfare and social security and the protection of children and young people. (3)

2. The VAT and Duties Tribunal is hearing a case in which an issue is whether the operation of residential care homes by a partnership is subject to tax. It has referred three questions to the Court, of which only the second merits consideration in the oral procedure, as it would have been possible to answer the first and the third by the more expeditious procedure under Article 104(3) of the Rules of Procedure, since the answers are clearly inferable from the case-law.

I – The Community provisions to be interpreted

3. Title X of the Sixth Directive governs exemptions. Article 13 contemplates, among those relating to operations within a given country, those which are available for certain activities in the public interest (part A, paragraph 1), including:

'...

(g)the supply of services and of goods closely linked to welfare and social security work, (4) including those supplied by old people's homes, by bodies governed by public law or by other organisations recognised as charitable by the Member State concerned;

(h)the supply of services and of goods closely linked to the protection of children and young persons by bodies governed by public law or by other organisations recognised as charitable by the Member State concerned;

…'

4. Under Article 13A(2)(a), it is possible, in the case of entities governed by private law, for the grant of an exemption to be made subject to one or more of the following conditions:

'– they shall not systematically aim to make a profit, but any profits nevertheless arising shall not

be distributed, but shall be assigned to the continuance or improvement of the services supplied;
–they shall be managed and administered on an essentially voluntary basis by persons who have no direct or indirect interest, either themselves or through intermediaries, in the results of the activities concerned;
–they shall charge prices approved by the public authorities or which do not exceed such approved prices or, in respect of those services not subject to approval, prices lower than those charged for similar services by commercial enterprises subject to value added tax;
–exemption of the services concerned shall not be likely to create distortions of competition such as to place at a disadvantage commercial enterprises liable to value added tax.'

II – The facts of the main proceedings and the relevant national law

5. On 22 April 1997, the companies Kingscrest Associates Limited and Montecello Limited set up, under the name 'Kingscrest Residential Care Homes' ('Kingscrest'), a partnership to operate on a profit-making basis four care homes for the elderly and two for children, registered under the Registered Homes Act 1984 and the Children Act 1989. As from 1 April 2002, the date of entry into force of the Care Standards Act 2000, the six homes were registered with the competent authority, the National Care Standards Commission.

6. The Charities Act 1993 is concerned with charities, defining them in section 96 as institutions, corporate or not, established for charitable purposes and subject to the control of the High Court. According to section 97, those purposes are to be determined 'according to the law of England and Wales'. (5)

7. Before 21 March 2002, item 9 of Group 7 in Schedule 9 to the Value Added Tax Act 1994 exempted not-for-profit welfare services provided by a company in the category mentioned above or by a public body, so that, at the material time, Kingscrest's activity was subject to tax since it always sought to earn a profit.

8. However, from that date, the Value Added Tax (Health and Welfare) Order 2002 (SI 2002/762) substituted new wording for item 9, so that grant of the exemption is no longer conditional upon the supply being otherwise than for profit, even when it is provided by a 'State-regulated' private establishment.

9. As far as the present case is concerned, Note 6 concerning Group 7 describes 'welfare services' as those directly connected with 'the provision of care, treatment or instruction designed to promote the physical or mental welfare of elderly, sick, distressed or disabled persons' and the 'care or protection of children or young persons'. If they are provided by a private 'State-regulated' institution, only the services for which it was established are taken into consideration.

10. Note 8 defines 'State-regulated' as meaning 'approved, licensed, registered or exempted from registration by any Minister or other authority pursuant to a provision of a public general Act.' (6)

11. It is undisputed that Kingscrest falls into that category, providing welfare services which are exempt from VAT as from 21 March 2002, for which reason the Commissioners of Customs and Excise cancelled its registration for VAT purposes with effect from that date.

III – The questions referred to the Court of Justice

12. Kingscrest challenged that decision before the VAT and Duties Tribunal, claiming that the decision to grant it an exemption infringed Article 13A(1)(g) and (h) of the Sixth Directive. To enable it to give judgment, that Tribunal has referred the following questions to the Court for a preliminary ruling:

'1Is it permissible to resort to other language versions of the Sixth Council Directive 77/388/EEC to elucidate the meaning of the word "charitable" in Article 13A(l)(g) and (h), or must the word have the same meaning as in domestic law?

2If Article 13A(l)(g) and (h) are to be interpreted as applying to an organisation that is recognised as having a social character, are they to be interpreted as applying to a profit-making entity such as the Kingscrest Residential Care Homes partnership?

3Are Article 13A(l)(g) and (h) of the Directive to be interpreted as meaning that they confer on Member States a discretion to recognise for the purposes of those provisions an organisation

which is registered under the Care Standards Act 2000 (or the Registered Homes Act 1984 or the Children Act 1989) but which is not a body governed by public law and does not have the status of a “charity” under the domestic law of the Member State concerned?’

IV – Proceedings before the Court of Justice

13. Written observations were submitted within the time-limit laid down in Article 20 of the EC Statute of the Court of Justice by the United Kingdom Government, Kingscrest and the Commission, whose representatives attended the hearing on 27 January 2005 to present oral argument.

V – Examination of the questions submitted

A – *Preliminary considerations: the ‘original sin’ of Community VAT* (7)

14. It might appear surprising that an undertaking whose activity is exempted from tax should take exception to that situation and seek to be made subject to it, but the exemption affects it adversely in that, having been relegated to the status of final consumer, it cannot deduct the tax paid on purchases of the goods and services it needs to carry on its business.

15. That situation has perverse tax repercussions because the taxable person to whom the exemption applies will attempt to incorporate the negative impact thereof in the prices charged, so that objective exemptions, designed to promote certain kinds of activity or encourage the development of certain industrial sectors, bring about a result that is opposite to the one pursued, since the ‘tax benefit’ makes economic activities more expensive.

16. Not without reason, certain authors take the view that exemptions within the common system of VAT breach the principle that the tax should be of general application and upset its neutrality, (8) and they consider that it would be more appropriate to the nature of the tax to set lower rates or even minimum rates of tax, an approach that would have similar ramifications for the revenue ultimately collected but would not distort the functioning of the system. (9)

B – *The criteria for interpretation. In particular, the ‘linguistic criterion’ (Question 1)*

17. The United Kingdom court commences its dialogue with the Court of Justice with a question that expresses two doubts, both now clarified by the case-law. The first issue is whether the expression ‘charitable’ used in Article 13A(1)(g) and (h) of the Sixth Directive must be construed in the light of domestic law or in accordance with the specific needs of the Community legal order: if the answer is to the latter effect, the second doubt concerns the possibility of relying, for the purpose of interpretation, on other language versions of the provision.

18. To arrive at a solution, it is useful, as I pointed out in my Opinions of 12 July 2001 and 25 March 2004 in the *CSC Financial Services* and *Cimber Air* cases, (10) to set out the guidelines adopted for interpreting the provisions exempting certain transactions from VAT.

19. I made it clear then that, since taxation is the general rule, as set out in Article 2(1) of the Sixth Directive, exemptions constitute exceptions and must, like every release from the obligation to pay tax, be strictly interpreted, as has been recognised in the case-law, (11) but that requirement does not mean that the terms used to specify exemptions should deprive them of their intended effect. (12)

20. I also drew attention to the great importance of the principle of neutrality in the common system of VAT, which the system of exemptions undermines, in so far as it disregards the general applicability of the tax as an instrument that is conducive to competition in a single market, so that, in order to ensure that the arrangements for the tax are coherent and consistent in all the Member States, there must be a consensus that Title X of the Sixth Directive uses autonomous Community law concepts.

21. For the present purposes, Article 13 of the Sixth Directive sets out, as mentioned in the 11th recital in its preamble, a common list of exemptions to ensure that Community own resources are collected uniformly in all the Member States, from which it is to be inferred that those tax measures are independent concepts and must be defined from the viewpoint of the legal order of the European Union according to its structural needs, as recently repeated in the abovementioned judgment in *Temco Europe* (paragraph 16). (13)

22. Consequently, the wording of Article 13 can only be construed by reference to particular

categories within the domestic law of each Member State in cases where, by that means, a definition is arrived at which ensures that those words have the same scope in every corner of the Community, but, if that is not the case, it is necessary to go to a different source, which is independent from the State systems, in order to safeguard the effectiveness of Community law. In that process, the 'linguistic criterion' is an extremely useful tool because, when the essence of the concept and the reasons for its recognition are examined, with due regard to the principle of fiscal neutrality that is inherent in the common system of VAT, it is essential to have recourse to the various language versions (14) in order to decipher the meaning of the words of the Sixth Directive.

23. I would therefore suggest that the Court of Justice reply to the first question by saying that, in order to clarify the meaning of the word 'charitable' contained in subparagraphs (g) and (h) of Article 13A(1) of the Sixth Directive, reference may be made to the versions of those provisions in other official languages of the Community in order to achieve a harmonious interpretation, and the term should not have attributed to it a meaning deriving from domestic law where that would lead to disparate interpretations.

24. The last point makes it necessary to go further than is suggested by the terms of the question since, if the aim pursued is to ensure a uniform interpretation of Community law, that task is a matter of the Court of Justice, which will inform the national court, after a comprehensive examination of the various translations, that, when the provision refers to organisations recognised as charitable, it is referring, as the Commission states in its written observations, to entities which provide welfare services.

25. This approach is required not only because most versions of the Directive (15) use expressions close to the Spanish term 'carácter social' (in English, 'social nature'), (16) but also because it is more conducive to the aims of the Directive. From an analysis of Article 13A(1) it is possible to discern the intention to exempt operations which, because of their close link with the objectives properly pursued by a social and democratic State governed by the rule of law, (17) are classified as being in the public interest and relate to activities which the public authorities have traditionally promoted and managed directly or through intermediaries (postal, radio and television services, health, education, social security, protection of children and young people, the exercise of religious freedom, physical education and sports, and the promotion of culture). Against that background, it seems beyond dispute that the English expression 'charitable' refers not to ideas of charity or benevolence, which are reminiscent of private altruistic actions for the benefit of people in need, (18) but rather to a broader idea, of public scope, which may encompass unselfish activities but includes all policies of support for the most disadvantaged groups.

26. The foregoing considerations pave the way to the other questions raised by the United Kingdom court.

C – *'Social character' as opposed to pursuit of profit (Question 2)*

27. The second question seeks to clarify whether, in the context of Article 13A(1)(g) and(h) of the Sixth Directive, a private profit-making entity should be classified as being of a 'social' nature.

28. Two arguments militate in favour of a positive answer: the first is teleological and the other is systematic.

29. It should not be forgotten that exemptions are, as I pointed out in my Opinion in *CSC Financial Services*, cited above (point 18), tax benefits, in the form of economic incentives with a negative tinge. Article 13A(1) of the Sixth Directive relies on objective criteria, discharging from the tax certain events which would otherwise be subject to it, with a view to providing incentives in the sectors in question. The exemption attaches, therefore, to legal acts, not to those who carry them out, although the latter ultimately benefit from them. (19) Accordingly, when the aim is pursued of promoting and encouraging welfare work on the part of public authorities and bodies of a 'social character', it is irrelevant whether the latter operate in pursuit of profit or otherwise. The opposite solution might breach the common system of VAT and undermine the principle of neutrality, since it would leave the door open to different treatment for activities of the same kind, depending on the legal regime applicable in each Member State.

30. The structural explanation put forward by the Commission supports the foregoing reasoning, on the basis of two arguments. According to the first, when Article 13A(1) of the Sixth Directive excludes from the exemption operations by profit-making bodies, it does so expressly, as in subparagraphs (l) and (m). (20) The second is based on the fact that, otherwise, Article 13A(2)(a) would be meaningless since authorising Member States to make eligibility for exemptions under subparagraphs (g) and (h) of paragraph 1 for private companies subject to the condition that they do not systematically seek to make a profit involves admitting that the first provision includes situations in which profit is sought.

31. The solution which I propose has been implicitly incorporated in the case-law. After the judgment in *Bulthuis-Griffioen* (21) did not make any pronouncement on the matter and removed the exemption for operations by natural persons, emphasising that, against that background, it would be irrelevant to rule as to the existence of a profit motive, the judgment in *Gregg* (22) corrected that initial tendency, accepting that paragraph (g) includes individuals who operate a business, so that the exemption would extend to welfare activities undertaken by profit-making organisations, because the fact of 'running a business' involves the wish to be profitable. (23) Also, in *Hoffmann* (24) it was stated that, in the context of Article 13A of the Sixth Directive, the commercial nature of a business does not prevent it from being in the public interest (end of paragraph 38) because the aim is to promote activities which are conducive to the good of society as a whole, regardless of the economic and legal regime governing the supply.

32. In short, the fact that persons operating in the areas covered by Article 13A(1)(g) and (h) of the Sixth Directive seek a profit does not constitute an obstacle to their being regarded as 'organisations of a social character' and, accordingly, there is nothing in principle to prevent a company like Kingscrest from being classified as such.

D – *The Member States' discretion as to whether to recognise a private entity as being of a 'social character' (Question 3)*

33. By its last question, the referring court wishes to ascertain whether the national authorities enjoy a degree of latitude regarding the attribution of that status to organisations not governed by public law. The Community case-law has ruled in the affirmative in two fairly recent judgments: the first in *Kügler* (25) and the second in *Dornier*. (26) A reference to those judgments will be sufficient to dispose of this question, but the question was framed in such a way, albeit merely by implication, as to disclose a doubt as to whether registration under the Care Standards Act 2000 (previously, the Registered Homes Act 1984 and the Children Act 1989) constitutes a proper exercise of that discretion. Some clarification is called for.

34. Those judgments do not grant the Member States total freedom to exercise that discretion, it being subject to Community principles, in particular that of equal treatment (*Kügler*, paragraph 56), and they identify certain elements such as the public interest in the activity undertaken by the taxable person, the fact that other taxpayers who supply the same services enjoy similar recognition and the fact that sickness insurance bodies and other social security institutions may defray to a considerable extent the cost of the services involved (paragraph 58 and 72 of *Kügler* and *Dornier* respectively).

35. It is therefore necessary to examine the meaning of this concept and put forward reliable guidelines to be used for identifying with the greatest possible accuracy the degree of latitude that is available, giving the referring court a clear framework within which to give judgment concerning the national provision, which is a matter reserved to its jurisdiction alone.

36. In the first place, it should be borne in mind that, in the domain of VAT, and more specifically in that of objective exemptions, the tax authorities must not exercise their discretionary powers in such a way as to destroy the neutrality of the tax and contravene the inherent requirement of equal treatment, and must not overlook the exceptional nature of those exemptions. There are therefore two limitations, which are 'matters of principle', as expounded by the Court of Justice: one relates to the nature of the activity, conducive to the public interest, and one requires equal VAT treatment for economic agents in comparable situations, (27) from which it may be inferred that the classification criteria must be neutral, abstract and predetermined.

37. The same conclusion follows from an examination of the structure of Article 13A of the Sixth Directive, since paragraph 1 obliges the Member States to exempt operations directly linked with welfare and social security and the protection of children and young people, provided by bodies governed by public law and by operators recognised as displaying a 'social character', a distinction being drawn regarding the latter, in paragraph 2(a), in that they may make the grant of an exemption subject to fulfilment of one or more of the conditions set out, including that of not systematically aiming to make a profit, that of being run on a voluntary basis or that of applying approved prices or prices lower that market prices.

38. I have already said that that provision does not mean that a profit-making organisation cannot be regarded as being of a 'social character' and it should now be emphasised that, as the Commission submits, there is likewise no obligation to attribute that status to any undertaking which provides services relating to the exempted activities, since such a course of action, apart from rendering both provisions pointless, would convert the exception into a general rule. Consequently, the Member States must appraise the kind of business, and also the organisational structure used for the business and the manner in which it is conducted. (28)

39. In those circumstances, a system like that provided for by the Care Standards Act 2000, which, by means of registration with the National Care Standards Commission, grants the status of 'charitable organisation' to those welfare organisations which meet the conditions laid down in the United Kingdom legislation, subject to constant monitoring by an ad hoc body, which may require the fulfilment of further conditions within the strict confines laid down by the legislature, appears to meet the requirements described earlier, although, as already indicated in *Kügler* and *Dornier* (paragraphs 57 and 74 respectively), that assessment is a matter for the referring court.

VI – Conclusion

40. In view of the foregoing considerations, I propose that the Court of Justice give the following answers to the questions submitted by the VAT and Duties Tribunal:

'(1)In order to clarify the meaning of the expression "charitable" contained in Article 13A(1)(g) and (h) 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, reference must be made to the other language versions of those provisions, and the term cannot be given the meaning which it has in national law if that would lead to divergent interpretations.

(2)The fact that an economic operator who carries out operations treated as exempt by Article 13A(1)(g) and (h) of the Sixth Directive aims at making a profit does not in principle constitute an obstacle to its being regarded as a "charitable organisation".

(3)The Member States enjoy a discretion as to whether to grant a private entity, for the purposes of the abovementioned provisions, the status of a "charitable organisation", but, when exercising that discretion, they must observe the principle of neutrality of VAT and the principle of equal treatment as between taxable persons and must have regard to the nature of the activity and the aims for which it is carried on, so that it is classified by reference to predetermined, objective and abstract criteria which take account of the nature of the business, its organisational structure and the manner in which it is conducted. In all cases, it is for the national court to appraise the extent to which such limitations are complied with.'

1 – Original language: Spanish.

2 – Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member Status relating to turnover taxes – Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

3 – In this Opinion, I shall use expressions such as 'welfare', 'social security' and similar terms to cover the legal acts described in the abovementioned provisions.

4 – Footnote not relevant to English version.

5 – In the order for reference (paragraph 17), it is stated that, in an 1891 decision (*Income Tax Commissioners* v *Pemsel* [1891] AC 531), the House of Lords stated that the legal meaning of the word 'charitable' is not the same as the meaning of the word in everyday language and that the

main charitable purposes in law are the relief of poverty, the advancement of education, the advancement of religion and certain other purposes beneficial to the community.
6 – It excludes provisions coming into force on different dates in relation to different local authority areas.
7 – I have borrowed this expression from I. Ibáñez García, 'Las exenciones en el IVA. Pecado original del impuesto comunitario', published in *Noticias de la Unión Europea*, 2003, No 226, pp. 103 to 115.
8 – See L.M. Pérez Herrero, *La Sexta Directiva Comunitaria del IVA*, Editorial Cedecs, Barcelona 1997, p. 201. I. Ibáñez García explains, on the basis of an example, in his work cited above (at pp. 103 and 104), that the principle of neutrality has not been supported by the pro rata rule provided for in Articles 17(5) and 19 of the Sixth Directive, even thought the Community case-law has expressed the opposite view: the judgment in Case C-306/94 *Régie Dauphinoise* [1996] ECR I?3695 states that the aim pursued by those provisions is 'to comply with the objective of complete neutrality guaranteed by the common system of VAT'.
9 – As stated by I. Ibáñez García, op. cit., p. 105.
10 – Case C-235/00 *CSC Financial Services* [2001] ECR I-10237 and Case C-382/02 *Cimber Air* [2004] ECR I-0000.
11 – Case C-185/89 *Velker International Oil Company* [1990] ECR I?2561, paragraph 19; Case C?2/95 *SDC* [1997] ECR I-3017, paragraph 20; Case C-359/97 *Commission* v *United Kingdom* [2000] ECR I?6355, paragraph 64, and Case C-240/99 *Skandia* [2001] ECR I?1951, paragraph 32. There are also three judgments of 20 November 2003 in Case C-8/01 *Assunrandør-Societetet*, Case C-212/01 *Margarete Unterpertinger* and Case C-307/01 *Peter d'Ambrumenil*, paragraphs 36, 34 and 52 respectively, none of which has yet been published in the European Court Reports. Recently, the Court of Justice reiterated the principle of strict interpretation for exemptions in its judgment in Case C-284/03 *Temco Europe* [2004] ECR I-0000, paragraph 17.
12 – As I stated in point 37 of my Opinion in *Temco Europe*; that approach is followed in the judgment, in paragraph 17.
13 – In that judgment, reference is made to Case C-358/97 *Commission* v *Ireland* [2000] ECR I?6301, paragraph 51; Case C-315/00 *Maierhofer* [2003] ECR I-563, paragraph 25; and Case C?275/01 *Sinclair Collis* [2003] ECR I-5965, paragraph 22. See, to the same effect, Case C?359/97 *Commission* v *United Kingdom* [2000] ECR I-6355, paragraph 63; Case C-326/99 *'Goed Wonen'* [2001] ECR I-6831, paragraph 47; and Case C-269/00 *Seeling* [2003] ECR I?4101, paragraph 46.
14 – Linguistic plurality and the associated problems became apparent in literature at an early stage since, as early as 1605, Miguel de Cervantes, in *El ingenioso hidalgo Don Quijote de la Mancha*, wrote 'that day happened to be a Thursday and in the inn there was nothing but a few portions of fish which in Castile they call *abadejo*, in Andalusia *bacallao*, in some other places *curadillo*, and in yet other places *truchuela*'.
15 – I refer to the official languages of the Communities as at the date of the order for reference (26 November 2003).
16 – The text in French ('caractère social'), Portuguese ('carácter social'), Italian ('carattere sociale'), German ('sozialem Charakter'), Dutch ('sociale aard'), Greek ('?????????? ??????????') and Finnish ('luonteeltaan yhteiskunnallisiksi') contain expressions similar to the Spanish term 'carácter social'. However, the Swedish ('välgörenhetsorganisationer') and the Danish ('almennyttig karakter') use terms which are closer to the English words.
17 – Academic writers speak of benefits from 'the Welfare State' (see L.M. Pérez Herrero, op. cit., p. 204).
18 – Charles Dickens, in *The Life and Adventures of Martin Chuzzlewit*, Penguin Books, 1968, p. 515, puts in the mouth of his character Tigg, who is experiencing financial difficulties, the words: 'charity begins at home, and justice begins next door'.
19 – Kingscrest endeavours to demonstrate its profit motive so as not to be affected by the exemption provision, but it errs considerably in doing so since the exemption is not subjective. The

judgment in Case C-174/00 *Kennemer Golf* [2002] ECR I-3293 appears to classify it thus, in conceding that the aim of the exemption in subparagraphs (h) to (p) of Article 13A(1) of the Sixth Directive consists in granting preferential treatment to certain bodies whose activities are directed towards non-commercial purposes (paragraph 19); but, when examined closely, that statement, which was merely *obiter dictum*, is in line with the opposite view, since the ultimate cause of the exemption lies in the nature of the tasks carried out. For J.F. Pont Clemente, in *La exención tributaria (análisis jurídico general con especial aplicación al Impuesto sobre transmisiones patrimoniales y al IVA*, Editorial EDERSA, 1986, pp. 26 and 27), when the law distinguishes certain acts and – despite the fact that they are subject to tax, because the law so provides – grants an exemption for them, that can be regarded only as an objective exemption. On the contrary, if the legislature exempts from tax a person or category of person – who, if that exclusionary provision were not there, would have to fulfil the obligation – it creates a subjective exemption. The first category precludes the emergence of a legal tax relationship, whereas the latter merely relieves the exempted person of an obligation, a fact which does not prevent the obligation from attaching two others.

20 – Subparagraph (l) refers to 'non-profit-making organisations with aims of a political, trade-union, religious, patriotic, philosophical, philanthropic or civic nature', whereas subparagraph (m) refers to services 'supplied by non-profit-making organisations to persons taking part in sport or physical education'.

21 – Case C-453/93 *Bulthuis-Griffioen* [1995] ECR I-2341.

22 – Case C-216/97 *Gregg* [1999] ECR I-4947.

23 – The reasoning developed by Advocate General Cosmas in point 24 et seq. of his Opinion in *Gregg* is interesting.

24 – Case C-144/00 *Hoffmann* [2003] ECR I-2921.

25 – Case C-141/00 *Kügler* [2002] ECR I-6833, paragraph 54.

26 – Case C-45/01 *Dornier* [2002] ECR I-0000, paragraph 69.

27 – It is not without purpose that the last indent of Article 13A(2)(a) of the Sixth Directive precludes the Member States from causing, in the exercise of their discretion, distortions of competition detrimental to commercial undertakings that are liable to the tax.

28 – These observations do not detract from the objective character of the exemption, which still takes account of the nature of the activity, although they limit it subjectively, requiring the fulfilment of certain conditions by the bodies providing the exempt services in order for the benefit of the exemption to be operative.