OPINION OF ADVOCATE GENERAL

POIARES MADURO

delivered on 7 March 2006 (1)

Case C-106/05

L.u.P. GmbH

v

Finanzamt Bochum-Mitte

(Reference for a preliminary ruling from the Bundesfinanzhof (Germany))

(Sixth VAT Directive – Exemptions – Article 13A(1)(b) and (c) and (2) – Medical care – Care provided in the exercise of the medical profession – Medical tests provided by a laboratory and ordered by a medical practitioner)

1. In the present reference for a preliminary ruling, the Bundesfinanzhof (Federal Finance Court), Germany, refers to the Court of Justice a question 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 (2) (the 'Sixth Directive').

2. More specifically, the question relates to the interpretation of Article 13A(1)(b) and (c) and (2) of the Sixth Directive, in order to determine the conditions that Member States may impose for exemption from value added tax ('VAT') of medical tests provided by a private external laboratory and ordered by a medical practitioner.

I – Facts, relevant law, and question referred to the Court of Justice

3. L.u.P. GmbH ('L.u.P.') is a private limited company incorporated under German law in which the sole shareholder is Dr Ingo Scharmann, a specialist in laboratory medicine. L.u.P. conducted medical tests requested by two laboratory associations in which general practitioners were partners. These latter ordered the tests as part of their medical-care provision.

4. The Finanzamt (Tax Office) Bochum-Mitte ('Finanzamt') treated L.u.P.'s services to the laboratory associations as liable to VAT. The decision to refuse exemption from VAT was confirmed by the Finanzgericht (Finance Court) because, under Paragraph 4(16)(c) of the Umsatzsteuergesetz (Law on Turnover Tax) ('the UStG') 1980/93, although L.u.P. was one of the 'other bodies providing … clinical results', its services were not, to the extent required, performed 'under medical supervision'. Furthermore, L.u.P. had not proved that, in the previous calendar year, at least 40% of its services were provided to the class of persons benefiting from Paragraph 4(15)(b) of the UStG.

5. Paragraph 4(16)(c) of the UStG provides that:

'Amongst the transactions referred to in Paragraph 1(1)(1) to (3), transactions that are closely connected with the operation of hospitals, diagnostic clinics and other establishments providing medical care, diagnoses or tests shall be exempt … if ...

(c) in the case of diagnostic clinics and other establishments providing medical care, diagnoses or tests, the services are provided under medical supervision and in the previous calendar year at least 40% of the services are provided to the persons specified in subparagraph (15)(b) …'

6. The persons specified in this latter provision are persons insured (by a social security authority), persons in receipt of social assistance and persons entitled (as war victims) to maintenance (paid by a social security authority).

7. The first sentence of Paragraph 4(14) of the UStG provides that 'activities arising from the practice of the profession of doctor, dentist, lay medical practitioner, physiotherapist, midwife or similar professional medical activity for the purposes of Paragraph 18(1)(1) of the Einkommensteuergesetz [Law on Income Tax] or from the practice of the profession of clinical chemist' are exempt from tax.

8. According to the Bundesfinanzhof, it is possible that a medical laboratory having the legal status of a private limited company may also fall within the scope of the tax exemption provided for in Paragraph 4(14) of the UStG because, according to the Bundesverfassungsgericht (Federal Constitutional Court), the principle of equal treatment precludes any difference whatever in treatment regarding exemption from VAT where that is determined solely according to the undertaking's legal status.

9. L.u.P. appealed against the decision of the Finanzgericht to the Bundesfinanzhof which, in turn, decided to refer the following question to the Court of Justice:

'Do the provisions of Article 13A(1)(b) and (2) 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 allow for the tax exemption for medical laboratory tests ordered by general practitioners to be made subject to the conditions specified in those provisions, even where medical care by such practitioners is exempt from taxation in any event?'

10. In this question, the Court of Justice is asked to interpret the Sixth Directive and, in particular, Article 13A(1), 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 such exemptions and of preventing any possible evasion, avoidance or abuse:

…

(b) hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable to those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature;

(c) the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned;

…’

11. Under Article 13A(2)(a) of the Sixth Directive, Member States may make the granting to bodies other than those governed by public law of the exemptions provided for in paragraph (1)(b) subject in each individual case ‘to the fulfilment of one or more of the’ conditions which it then states. (3)

II – **Analysis**

12. The Court of Justice has already interpreted the requirements of the Sixth Directive which are the basis of the present reference from the Bundesfinanzhof for a preliminary ruling. In any event, the Court has not yet specifically considered exactly how supplies of medical-test services fit within Article 13A(1) of the Sixth Directive, or on what terms Member States may exempt tests performed in circumstances as those in the present case.

13. Firstly, it must be determined whether such tests can be exempted from VAT. For that, it has to be established whether they match any of the categories set out in Article 13A(1)(b) (‘subparagraph (b)’) or in Article 13A(1)(c) (‘subparagraph (c)’) of the Sixth Directive. Then, to the extent that the test services in question are included in either of those subparagraphs, I shall consider the problem of determining the conditions which Member States may attach to such exemption.

A – *Classification of the medical-test services provided by L.u.P.*

14. It must be established, firstly, whether medical tests such as those in question in the present case may be classified as ‘medical care’ or as activities ‘closely related’ to medical care, as laid down in subparagraph (b).

15. It must be noted here that the Court has consistently held that the exemptions provided for in subparagraphs (b) and (c) are based upon independent concepts of Community law whose purpose is to avoid divergences in the application of the VAT system. (4) Furthermore, ‘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’. (5)

16. Therefore, in order to determine which supplies may be exempted pursuant to those subparagraphs, one must consider the rationale of the VAT-exemption rules laid down in subparagraphs (b) and (c). It is established in that respect that the objective shared by the exemptions laid down in subparagraph (b) and those in subparagraph (c) is to reduce the cost of

medical care and to make that care more accessible to individuals. (6) In the context of that rationale, the problem which arises is not so much whether medical-test services, in general, can be exempted pursuant to either of these subparagraphs but rather which specific scheme of exemption they will be subject to.

17. It is necessary to determine whether medical-test services must be classified as falling within any of the categories of subparagraph (b) or of subparagraph (c). In reality, not only does the scope of subparagraph (c) not include transactions closely connected with medical care but Member States may also, where the service providers concerned are not bodies governed by public law, opt to make the grant of exemption as permitted in subparagraph (b), unlike subparagraph (c), subject to specified conditions pursuant to Article 13A(2).

18. In resolving the specific problem of how medical-test services fit within subparagraph (b) or subparagraph (c), consideration of the general intention underlying both subparagraphs is not sufficient of itself. That only makes it possible to state, as the Court has already said, that the terms used in subparagraphs (b) and (c) do not call for ‘an especially narrow interpretation’. (7)

19. Regarding the possibility of applying subparagraph (b), firstly it must be determined whether the medical-test services in question are an integral part of ‘medical care’ within the meaning of that subparagraph. It is then necessary to determine whether medical-test laboratories such as L.u.P. may be covered by that subparagraph where it refers to ‘hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature’.

20. On the first aspect, the Court has already had occasion to rule on a similar question in its judgment in *Commission* v *France*. The point there was to determine whether transmitting samples to a laboratory which would subsequently perform the medical tests was subject to the exemption rules laid down in subparagraph (b). The Court held that ‘the taking of the sample and the transmission of the sample to a specialised laboratory constitute services which are closely related to the analysis, so that they must be treated in the same way as the analysis for fiscal purposes and, accordingly, must not be subject to VAT,’ (8) for they are activities closely connected with medical care, pursuant to subparagraph (b). According to the Court, the supplies of medical tests themselves therefore fell within subparagraph (b).

21. As the judgment in *Commission* v *France* shows, for an activity to fall within the exemptions in subparagraph (b), it is crucial to consider the purpose of the activity. (9) The Court has also ruled, and in the same way, in respect of subparagraph (c) that ‘it is the purpose of a medical service which determines whether it should be exempt from VAT’. (10)

22. The Court has held, therefore, that the ‘medical-care’ services referred to in subparagraph (b), and the ‘provision of medical care’ in subparagraph (c) are any ‘for the purpose of diagnosing, treating and, in so far as possible, curing diseases or health disorders’. (11) This means that, in order to be exempt under both subparagraphs (b) and (c), the service concerned must have a therapeutic aim. (12)

23. It must also be pointed out that, more recently, in particular in the judgments in *Unterpertinger* and in *D'Ambrumenil and Dispute Resolution Services*, on the application of subparagraph (c), the Court has explained that, because the therapeutic aim must not be confined within an especially narrow compass, medical services for prophylactic purposes may also be exempt: (13) 'Even in cases where it is clear that the persons who are the subject of examinations or other medical interventions of a prophylactic nature are not suffering from any disease or health disorder, the inclusion of those services within the meaning of 'provision of medical care' is consistent with the objective of reducing the cost of healthcare, which is common to both the exemption under Article 13A(1)(b) and that under (c) of that paragraph.' (14)

24. I see nothing to justify a departure from the Court's uniform and consistent reading of these two subparagraphs, as regards the nature of the activities they include. The Court's interpretation of 'provision of medical care in the exercise of the medical ... professions' as set out in subparagraph (c) must therefore correspond to the interpretation of 'medical care' in subparagraph (b). On this I would note that the Court has expressly ruled that the concept of 'medical care' as set out in subparagraph (b) covers all of the 'provision of medical care' as shown in subparagraph (c). (15) And, further, both subparagraphs are intended 'to regulate all exemptions of medical services in the strict sense' because they share a common purpose. (16)

25. Each subparagraph does indeed have its own different scope but 'the criterion for separating the field of application of the two forms of exemption laid down in Article 13A(1)(b) and (c) is less the type of service than where it is provided'. (17) Thus, under subparagraph (b), 'the services to be exempted encompass a whole range of medical care in establishments pursuing social purposes such as the protection of human health whilst, under subparagraph (c), the services to be exempted are those provided outside hospitals and similar establishments and within the framework of a confidential relationship between the patient and the person providing the care'. (18)

26. The concept of 'medical care' that is laid down in subparagraph (b) will therefore, like subparagraph (c), include 'medical services effected for a purpose other than that of protecting, including maintaining or restoring, human health'. (19) In other words, it will include both medical-curative and prophylactic care services.

27. In the field of prophylactic medical care, there will be no diagnosis of disease (20) or therapeutic action in the strict sense. A central feature is observation and examination of the user with the specific aim of preventing any future need to diagnose and treat any diseases.

28. The performance of medical tests requested by a medical practitioner is an integral part of medical observation of the user: (21) without that there can obviously be no protection of the health of individuals, including both the maintenance and the restoration of health. In other words, medical care, as a range of activities functionally intended to maintain or restore health, is a process consisting of actions intended to maintain or restore health and including, firstly, observation and examination and later, where appropriate, diagnosis and treatment. In that sense, medical tests are, when ordered by a medical practitioner, medical-care services.

29. That being so, medical-test services such as those performed by L.u.P. do, because of their purpose, fall within the concept of medical care within the meaning of Article 13A(1)(b) and (c) of the Sixth Directive.

30. It is another matter whether such medical-care activity performed by an outside analysis laboratory is, more precisely, a part of subparagraph (b) or (c). As has been said, the answer to that question depends on whether the services in question are performed outside hospitals and

similar establishments and within the framework of a confidential relationship between the patient and the person providing the care in the consulting room or at home. (22) That is, it rests more on consideration of the place where the activity is carried on than on the nature of the activity itself.

31. Here, contrary to the view suggested by the Commission in its written observations, I believe that a laboratory which performs medical tests ordered by medical practitioners – and, thus, in the manner which I have described, and supplies services of 'medical care' within the meaning of subparagraph (b) – also falls subject to that subparagraph where it refers to 'centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature'.

32. The rationale of the exemption laid down in subparagraph (b) and also in subparagraph (c) is the same, whether the tests are performed by a hospital or similar establishment or even by a medical practitioner in his consulting room (if he has the proper qualifications and technical facilities) or, on the other hand, they are performed in other establishments specifically intended for conducting medical tests. From the viewpoint of the objective of reducing the cost of medical care, a disparity of treatment there would be incomprehensible. The approach to interpretation suggested here is also the most compatible with the principle of fiscal neutrality, whereby economic operators carrying on the same activities must not be treated differently as far as the levying of VAT is concerned. (23)

33. It must also be noted that the supplying of medical tests may fall under subparagraph (c), instead of (b), where the supply is actually performed within the framework of a confidential relationship between the patient and the person providing the care. The order for reference appears to show, however, that the tests in the present case are not performed as part of such a confidential relationship between the patient and the person providing the care, as found in the case-law of the Court, which would allow them to count as part of subparagraph (c). (24)

34. On the other hand, in its written observations and at the hearing, the Commission held the view that one would have to distinguish medical-test laboratories with a direct contractual link to patients from those which deal only with the medical practitioner who requested the test. Only in the former case could medical-test services qualify for exemption as they are intended for the end-users of those services; the latter case would cover only services performed upstream of the medical-care services, that is, where the recipient would be the supplier of medical-care services and not the end-user of such services, so that they must not enjoy exemption from VAT. The Commission bases its standpoint on the Court of Justice judgments in *Commission* v *Germany*, (25)*Skandia*, (26)*CSC Financial Services* (27) and *Arthur Andersen*, (28) which regarded as taxable certain services provided in the context of subcontracted transactions ancillary to VAT-exempted supplies of services. I do not agree with the Commission's view here.

35. Firstly, that view conflicts with the standpoint expressly formulated by the Court in *Commission* v *France*, where it is stated clearly that, for the purposes of applying the exemption rules laid down in subparagraph (b), it is irrelevant 'whether the laboratory which takes the sample also carries out the analysis, or subcontracts it to another laboratory but remains responsible to [the patient] for the analysis, or, because of the nature of the analysis at issue, is obliged to send the sample to a specialised laboratory'. (29) Thus, to subcontract the performance of a medical test from one laboratory to another does not mean that the performance of that test by the subcontracted laboratory no longer qualifies for exemption as laid down in subparagraph (b).

36. The case-law relied upon by the Commission relates to other VAT-exemption rules and not the exemption benefiting activities of general public importance. And, furthermore, those cases relate to tax-exemption rules laid down for reasons other than those behind the exemptions in subparagraphs (b) and (c) for medical-care activities. (30)

37. Thus I do not feel that one should further restrict the interpretation hitherto applied to the exemption rules laid down in subparagraphs (b) and (c) – and perfectly clear, firstly in the judgment in *Commission* v *France* – for a conjectural need of greater consistency and unity with the case-law which the Commission mentions, regarding the subcontracting of certain activities ancillary to the supply of exempt services. As long as the provision of medical tests such as those in the case in hand counts, of itself and in the terms I have described, as the provision of 'medical care' performed by 'other ... establishments of a similar nature' within the meaning of subparagraph (b), I do not perceive any basis, in either the wording or the rationale of this requirement, for imposing a further restriction upon the exemption of such provision, such as that which the Commission suggests. The conditions which can be established are those to be found in Article 13A(1)(b) and (2).

B – *Conformity with Article 13A(1)(b) and (2) of the conditions which Member States may opt to impose for exemption of the services performed by bodies other than those governed by public law*

38. The Member States have the option of imposing one or more of the conditions described in Article 13A(2)(a) in the case of services performed by bodies other than those governed by public law. Article 13A(2) shows clearly that such optional conditions may be imposed only in respect of services supplied under subparagraph (b) and not those under subparagraph (c). The Sixth Directive does not take the same view of these two systems of exemption laid down in subparagraphs (b) and (c), making the services covered by subparagraph (b) subject to a priori rules on exemption that are less favourable than those prescribed for services under subparagraph (c). Member States may thus impose one or more of the conditions set out in Article 13A(2)(a) for the granting of exemption of tax for the provision by private laboratories of medical tests under subparagraph (b), but that is not the case where they are provided by medical practitioners who order tests within the scope of subparagraph (c).

39. It should be noted also – for I think it is an uncertainty which underlies the question referred by the Bundesfinanzhof – that, in respect of the services described in subparagraph (b), the power enjoyed by the Member States to impose conditions on granting exemption must not require them to treat in the same way 'medical-care' services and services 'closely related' thereto and performed by bodies other than those governed by public law. The Member States have the *power in each individual case* to impose compliance with certain conditions for granting exemption under subparagraph (b) to bodies other than those governed by public law, subject, of course, to the general principle of non-discrimination. On this, I do not think that they are required to impose exactly the same conditions on both types of services. Firstly, a Member State may simply opt not to make exemption of supply of the health services specified in subparagraph (b) subject to any of the conditions laid down in Article 13A(2)(a) when these are performed by bodies other than those governed by public law. Next, they must also have the power to establish conditions *only* for the supply of health services by private operators when these are *closely related* to hospital and medical care. Here I believe that we must remove the uncertainties as to whether the system laid down in Paragraph 4(16) of the UStG may be incompatible with the rules on exemption set out in Article 13A(1)(b) and (2)(a) of the Sixth Directive, because those national rules apparently only prescribe conditions for VAT exemption on transactions 'closely related' to hospital or medical care.

40. If the relevant German legislation requires fulfilment of the conditions set out in Paragraph 4(16)(c) of the UStG for exemption of the actual provision of ‘medical care’ carried out by ‘other ... establishments of a similar nature’ within the meaning of subparagraph (b) of the Sixth Directive, it will be helpful to examine whether the two conditions laid down in the German legislation for grant of exemption do conform to Community law.

41. The condition laid down in Paragraph 4(16)(c) of the UStG, which requires that ‘the services are provided under medical supervision’, conflicts with Community law: none of the conditions described in Article 13A(2)(a) may be interpreted as meaning that the Member States may make grant of exemption under Article 13A(1)(b), to bodies other than those governed by public law, subject to a condition of medical supervision such as that which the German legislation requires.

42. Concerning that condition, it must be noted that, in the *Dornier* judgment, the Court ruled expressly that ‘the requirement that services be performed under medical supervision, in so far as it is intended to exclude from exemption services performed on the responsibility of paramedical professionals only, exceeds the discretion left to Member States by Article 13A(1)(b) of the Sixth Directive. The meaning of “medical care” as used in this provision covers not only services supplied by medical practitioners themselves or other health professionals under medical supervision but also paramedical services supplied in hospitals under the sole responsibility of persons without the status of doctors’. (31)

43. Concerning the other condition laid down in Paragraph 4(16)(c) of the UStG, that at least 40% of services in the previous calendar year must have been provided to persons insured (by a social security authority), persons in receipt of social assistance and persons entitled (as war victims) to maintenance (paid by a social security authority), I believe that, although not explicitly laid down in the Sixth Directive, it can be regarded as central to the discretionary condition set out in the third indent of Article 13A(2)(a) under which, in order to qualify for exemption, bodies other than those governed by public law ‘shall charge prices approved by the public authorities or which do not exceed such approved prices’. Thus, if some of the users of the entity in question are insured by a social security authority, that can where relevant ensure that the prices it charges are compatible with those approved by the public authorities. Although I think it is not clear why it will be necessary for at least 40% of the entity’s users to be insured by a social security authority, I think that such a condition will be compatible with Community law, in so far as it actually does make it possible to check that the prices charged by that entity are compatible with those approved by the public authorities. It is for the national courts to consider whether that condition is a proper instrument for checking the compatibility of the prices charged by L.u.P. with those approved by the public authorities.

III – **Conclusion**

44. In accordance with the foregoing reasoning, I propose that the Court of Justice should answer the question referred by the Bundesfinanzhof as follows:

Article 13A(1)(b) 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 must be interpreted as meaning that medical-test services such as those at issue in this case are acts of ‘medical care’ performed by ‘other ... establishments of a similar nature’ within the meaning of subparagraph (b).

1 – Original language: Portuguese.

2 – OJ 1977 L 145, p. 1.

3 – These conditions are as follows: '– ... [the bodies in question] 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'.

4 – See, more recently, Joined Cases C-394/04 and C-395/04 *Ygeia* [2005] ECR I-10373, paragraph 15, and also Case C?349/96 *CPP* [1999] ECR I-973, paragraph 15, and Case 348/87 *Stichting UitvoeringFinanciële Acties* [1989] ECR 1737, paragraph 11.

5 – *Ygeia*, paragraph 15, and *Stichting Uitvoering Financiële Acties*, paragraph 13.

6 – Case C-45/01 *Dornier* [2003] ECR I-12913, paragraph 43; Case C?76/99 *Commission* v *France* [2001] ECR I-249, paragraph 23; and Case C-141/00 *Kügler* [2002] ECR I-6833, paragraph 29.

7 – *Commission* v *France*, paragraph 23, and *Dornier*, paragraph 48.

8 – *Commission* v *France*, paragraph 30.

9 – See *Commission* v *France*, paragraph 24, noting the need to consider 'the purpose for which those samples are taken', and *Ygeia*, paragraph 22.

10 – Case C-212/01 *Unterpertinger* [2003] ECR I-13859, paragraph 42, and the Opinion of Advocate General Stix-Hackl in that case, in points 66 to 68, to which the judgment expressly refers.

11 – *Dornier*, paragraph 48; Case C-384/98 *D.* [2000] ECR I-6795, paragraph 18; *Kügler*, paragraph 38; and, most recently, *Ygeia*, paragraph 24.

12 – *D.*, paragraph 19; *Kügler*, paragraph 39; *Unterpertinger*, paragraph 40; and Case C-307/01 *D'Ambrumenil and Dispute Resolution Services* [2003] ECR I?13989, paragraph 58.

13 – *Unterpertinger*, paragraph 40, and *D'Ambrumenil and Dispute Resolution Services*, paragraph 58. See the Opinion of Advocate General Stix-Hackl in those cases, points 72 to 75, supporting the extension of activities with therapeutic aim so as to include 'also activity where the direct aim is not a cure but is intended only for prophylactic purposes' (point 72). See, also rather in this sense, *Kügler*, paragraph 40.

14 – *Unterpertinger*, paragraph 40, and *D'Ambrumenil and Dispute Resolution Services*, paragraph 58.

15 – *Dornier*, paragraph 50.

16 – *Kügler*, paragraph 36. See the Opinion of Advocate General Stix-Hackl in *Unterpertinger*, point 71, noting that ‘taken together, both forms of exemption are intended to promote access to medical care in general’.

17 – *Dornier*, paragraph 47, following the judgment in Case 353/85 *Commission* v *United Kingdom* [1987] ECR 817, paragraphs 32 and 33. In the same sense, see *Kügler*, paragraph 35.

18 – *Dornier*, paragraph 47; *Commission* v *United Kingdom*, paragraph 33; and *Kügler*, paragraph 35.

19 – *Unterpertinger*, paragraph 41, and *D’Ambrumenil and Dispute Resolution Services*, paragraph 59.

20 – Diagnosis being action whereby the doctor identifies a disease through the knowledge of its peculiar manifestations.

21 – That is so whether the medical practitioner himself carries out those examinations or tests as part of the observation or orders them to be carried out elsewhere, specifically because of the specialised nature of those tests.

22 – See point 25 above.

23 – *Kügler*, paragraph 30.

24 – See the case-law referred to in point 25 above.

25 – Case 107/84 [1985] ECR 2655, paragraph 20, which ruled that only the services provided by Deutsche Bundespost qualified for exemption as laid down in Article 13A(1)(a) of the Sixth Directive, and not the services supplied upstream and for consideration by transport undertakings on behalf of Deutsche Bundespost.

26 – Case C-240/99 [2001] ECR I-1951, paragraphs 40 and 41, where it was held that the management of insurance contracts by an entity acting on behalf of an insurance company is not exempt as being ‘insurance services’ for the purposes of Article 13B(a) of the Sixth Directive, since that entity has no contractual relations with the insured and bears no risk arising from the insurance activity.

27 – Case C-235/00 [2001] ECR I-10237, paragraphs 39 and 40. On the interpretation of the word ‘negotiation’ in the context of securities for the purposes of Article 13B(d)(5) of the Sixth Directive, the Court ruled that an intermediary will be so exempt only if it ‘does not occupy the position of any party to a contract relating to a financial product’. That being so, it is not ‘negotiation where one of the parties entrusts to a subcontractor some of the clerical formalities related to the contract, such as providing information to the other party and receiving and processing applications for subscription to the securities which form the subject-matter of the contract. In such a case, the subcontractor 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, within the meaning of the provision in question’.

28 – Case C-472/03 [2005] ECR I?1719, which held that certain ‘back office’ activities normally performed by the insurer in-house but subcontracted to an outside supplier which did not bear the insurance risk itself nor act as insurance intermediary or broker could not be exempted from tax under Article 13B(a) of the Sixth Directive.

29 – *Commission* v *France*, paragraph 28. And similarly, in *D'Ambrumenil and Dispute Resolution Services*, paragraph 67, it was held that the fact of third parties, specifically employer organisations, supervising and seeking the performance of medical examinations for an employee does not preclude those tests from being for the protection of health and, therefore, from potentially being exempt from tax.

30 – For example, on the reason for exempting insurance transactions and services carried out by insurance brokers and insurance agents, see *CPP*, paragraph 23, the Opinion by Advocate General Saggio in *Skandia*, point 23, and my own Opinion in *Arthur Andersen*, point 13.

31 – *Dornier*, paragraphs 70 and 71.