OPINION OF ADVOCATE GENERAL

BOT

delivered on 9 July 2015 (1)

Case C?335/14

Les Jardins de Jouvence SCRL

v

Belgian State

(Request for a preliminary ruling from the cour d'appel de Mons (Belgium))

(Reference for a preliminary ruling — Taxation — Sixth Council Directive 77/388/EEC — Exemptions — Article 13A(1)(g) — Activities in the public interest — Supply of services closely linked to welfare and social security work by bodies governed by public law or by other organisations recognised as charitable — Serviced residence)

1. The present case concerns the interpretation of Article 13A(1)(g) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of legislation of Member States concerning turnover taxes — Common system of value added tax: uniform basis of assessment. (2) Under that provision, the supply of services and of goods closely linked to welfare and social security work, 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, is exempt from value added tax ('VAT').

2. This case provides the court, notably, with an opportunity to interpret the concept of 'welfare' within the meaning of Article 13A(1)(g) of the Sixth Directive, so as to determine whether the services provided by a serviced residence can be regarded as closely linked to welfare within the meaning of that provision.

3. In this Opinion, I will explain why I think that Article 13A(1)(g) of the Sixth Directive should be interpreted as meaning that a serviced residence, such as that at issue in the main proceedings, which offers persons of at least 60 years of age accommodation enabling them to live independently, together with chargeable related services, also available to non-residents, and which does not have the benefit of any financial assistance from the State, can be characterised as an 'organisation recognised as charitable' and regarded as supplying services 'closely linked to welfare', within the meaning of that provision. It will be a matter for the national court to determine whether, having regard to the object of the company providing the serviced residence in question and the nature of the services it offers, this characterisation exceeds the discretion which the provision grants to Member States for the purposes of such characterisation, and whether the activities of the serviced residence fall within the scope of welfare. In this regard, it must take account of a combination of factors enabling it to be determined whether those activities are

intended to assist persons in need. It will also be for the national court to determine whether the services offered by the serviced residence are essential to the pursuit of such activities.

I – **The legal framework**

A – *EU law*

4. Article 13A of the Sixth Directive provides as follows:

‘1. 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 exemption and of preventing any possible evasion, avoidance or abuse:

...

(g) the supply of services and of goods closely linked to welfare and social security work, 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;

...

2. (a) Member States may make the granting to bodies other than those governed by public law of each exemption provided for in points (b), (g), (h), (i), (l), (m) and (n) of Article 132(1) subject in each individual case to one or more of the following conditions:

– the bodies in question must not systematically aim to make a profit, and any surpluses nevertheless arising must not be distributed, but must 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 [VAT],

– the exemptions must not be likely to cause distortion of competition to the disadvantage of commercial enterprises subject to [VAT].

(b) The supply of services or goods shall not be granted exemption as provided for in (1)(b), (g), (h), (i), (l), (m) and (n) above if:

– it is not essential to the transactions exempted,

– its basic purpose is to obtain additional income for the organization by carrying out transactions which are in direct competition with those of commercial enterprises liable for [VAT].’

B – *Belgian law*

5. Article 44(2)(2) of the Value Added Tax Code, (3) in the version in force up to 21 July 2005, provides for an exemption from VAT in respect of supplies of services and goods closely linked to welfare, by bodies which have the care of elderly persons as their object, which are recognised as such by the competent authority and which, in the case of bodies governed by private law, operate

in social conditions comparable to those of bodies governed by public law.

6. The Programme Law of 11 July 2005, (4) which entered into force on 22 July 2005, amended this provision. The new Article 44(2)(2) thus provides for an exemption from VAT in respect of supplies of services and goods closely linked to welfare, social security work and the protection of children and young people, by public law bodies or other organisations recognised as charitable by the competent authority. This new provision expressly refers to 'bodies having the object of caring for the elderly'.

7. Article 2(1) of the decree on old people's homes, serviced residences and day care centres for the elderly, creating the Walloon council for the third age, of 5 June 1997, (5) defines an old people's home as 'an establishment intended to provide accommodation to persons of at least 60 years of age who have their usual residence there and who benefit there from communal domestic services and communal services providing assistance with daily life and, where necessary, the care of nurses or paramedics'.

8. A 'serviced residence' is defined in Article 2(2) of the Decree of 5 June 1997 as 'one or more buildings, however described, which constitute a functional unit, incorporating individual accommodation which is intended for persons of at least 60 years of age, enabling them to lead an independent life, and which has the benefit of services which such persons can call on freely'. This provision also stipulates that 'the premises, facilities and communal services of the serviced residence may also be available to other persons of at least 60 years of age'.

9. In its decision to refer the matter for a preliminary ruling, the cour d'appel de Mons (Belgium) indicates that the prices charged by a serviced residence are fixed under the supervision of the Ministry of Economic Affairs.

II – **The facts of the main proceedings and the questions referred**

10. Les Jardins de Jouvence SCRL ('Les Jardins de Jouvence') is a company governed by Belgian law which was incorporated in 2004. Its objects are the commercial operation and the management of care institutions, and the pursuit of all activities relating directly or indirectly to healthcare and assistance, in particular, to the sick and to disabled elderly people.

11. On 20 October 2004, Les Jardins de Jouvence notified the VAT authority of the commencement of its business, describing this as 'letting of studio apartments intended for the able-bodied'. On 27 October 2006, it received a provisional operating licence from the competent Walloon authorities, for the period from 28 June 2006 to 27 June 2007. On 27 March 2007, at a General Meeting of the partners, it was decided that the objects of the company should be extended to 'the commercial operation of restaurants, café/brasseries, public houses, snack-bars, reception or dining halls and all similar establishments', as well as 'the commercial operation of a hairdressing, beauty and nail salon'.

12. Specifically, the company provides its tenants with accommodation designed for one or two people, comprising an equipped kitchen, a living room, a bedroom and an equipped bathroom. Furthermore, various services are offered, on a chargeable basis, to the tenants and to others who are not tenants, more specifically a bar/restaurant, a hair and beauty salon, a physiotherapy room, ergotherapeutic activities, a laundry, a pharmacy where blood samples can be taken and a doctor's surgery.

13. Les Jardins de Jouvence carried out significant building works as well as fitting-out works essential to its company objects, in order to pursue the activity of a serviced residence. The purpose of these works, which began in early August 2004 and finished in September 2006, was

to add a new building — that given over to the company's serviced residence — as an annex to the existing old people's home.

14. In the belief that the company was subject to VAT, Les Jardins de Jouvence deducted the VAT paid in respect of the construction of this new building in its tax returns for the years 2004 to 2006.

15. On 5 October and 14 November 2006, the VAT section of the authority for the taxation of businesses and revenues inspected the accounts of Les Jardins de Jouvence, with regard to the application of VAT legislation in respect of the period from 30 August 2004 to 30 September 2006. On 25 January 2007 it produced a report in which it stated that it considered that the company was an exempt taxable person for VAT purposes and that all transactions entered into by the serviced residence were exempt from VAT by virtue of Article 44(2)(2) of the VAT Code, in the version which was in force up to 21 July 2005. The authority concluded that, as an exempt taxable person, the company could not recover VAT on construction works, on the acquisition of the immovable property by reason of its intended use, or on any of its expenses. On that basis, according to the authority, Les Jardins de Jouvence was obliged to repay a sum of EUR 663 437.25 to the Belgian state, corresponding to the VAT wrongly deducted in the tax returns.

16. Furthermore, the authority considered that, as Les Jardins de Jouvence is an exempt taxable person, VAT of 12% on the works of construction of the building itself, and 21% on the landscaping works, should have been incorporated into the invoices issued by the contractors, with no right of deduction on the part the company.

17. On that basis the Belgian State claims, according to the report referred to above, the sum of EUR 436 132.69 in respect of VAT due, EUR 43 610 in respect of proportionate tax penalties, and late payment interest at the statutory rate of 0.80% per month, calculated on the VAT due from 21 October 2006.

18. By letter of 25 January 2007, the VAT inspector of Dour (Belgium) informed Les Jardins de Jouvence of his decision to close its VAT current account, with effect from 30 September 2006.

19. Following the report referred to above, on 13 February 2007 a demand for payment was served on the company, which opposed it by means of an application filed on 20 February 2007 at the registry of the tribunal de première instance de Mons. By judgment of 19 June 2012, the tribunal de première instance dismissed the action brought by the company, which, consequently, appealed.

20. The cour d'appel de Mons, having doubts concerning the interpretation to be given to Article 13A(1)(g) of the Sixth Directive, decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is a serviced residence, within the meaning of the [Decree of 5 June 1997, which makes available] with a view to profit individual dwellings designed for one or two persons, comprising a fitted kitchen, a sitting room, a bedroom and a fitted bathroom, thereby enabling residents to lead an independent life, together with a range of optional services supplied against payment, with a view to profit, those services not being available exclusively to the occupants of the serviced residences (a restaurant/bar, a hairdressing and beauty salon, a physiotherapy room, occupational therapy activities, a laundry, a pharmacy and blood collection point and a doctor's surgery), an essentially charitable organisation which supplies 'services and goods closely linked to welfare and social security work' for the purposes of Article 13A(1)(g) of [the] Sixth Directive... ?

(2) Is the answer to Question 1 different if the serviced residence in question receives, for the

supply of the services in question, subsidies or any other form of advantage or funding from public authorities?'

III – **Analysis**

21. By its questions, which should, in my view, be considered together, the referring court essentially asks the Court whether Article 13A(1)(g) of the Sixth Directive should be interpreted as meaning that a serviced residence, such as that at issue in the main proceedings, which offers persons of at least 60 years of age accommodation enabling them to live independently, together with chargeable related services, also available to non-residents, and which does not have the benefit of any financial assistance from the State, can be characterised as an 'organisation recognised as charitable' and regarded as supplying services 'closely linked to welfare', within the meaning of that provision.

22. In reality, the provision in question lays down two cumulative conditions of eligibility for VAT exemption. First of all, the organisation in question must be recognised as 'charitable'. Secondly, the supplies of goods and services made by that organisation must be 'closely linked to welfare and social security'. (6) While the case-law on the first condition is illuminating enough to be helpful in giving a reply which will be of assistance to the referring court, the same is not true of the second condition, which, as far as I am aware, has not been interpreted to date.

A – *'Organisations recognised as charitable'*

23. As stated in the last paragraph, the case-law on the interpretation of 'organisations recognised as charitable', within the meaning of the Sixth Directive, is relatively abundant.

24. Thus, the Court has held, in relation to this concept, that in principle it is for the national law of each Member State to lay down rules in accordance with which recognition may be granted to organisations which request it. Member States have a discretion in that respect. (7)

25. However 'in order to determine the organisations which should be recognised as "charitable" for the purposes of Article 13A(1)(g) of the Sixth Directive, it is for the national authorities, in accordance with EU law and subject to review by the national courts, to take into account, in particular, the existence of specific provisions, be they national or regional, legislative or administrative, or tax or social security provisions; the public interest nature of the activities of the taxable person concerned; the fact that other taxable persons carrying on the same activities already enjoy similar recognition; and the fact that the costs of the supplies in question may be largely met by health insurance schemes or other social security bodies'. (8)

26. In the present case, I consider that serviced residences are indeed the subject of specific provisions in Belgian regional legislation.

27. It is apparent from the material on the file that Article 2(2) of the decree of 5 June 1997 specifically defines what is meant by 'serviced residence'. Furthermore, under that decree, serviced residences must obtain an authorisation from the public authorities in order to be able to open and operate. (9) In particular, such serviced residences must meet certain requirements which are also applicable to old people's homes, concerning for example the manner in which prices for accommodation or entry can be changed, accounting, minimum and maximum residential and occupancy capacities, requisite experience and qualifications and minimum requirements of activity and presence required to act as director. (10) Similarly, in order to obtain such authorisation, serviced residences must meet certain requirements as to how a permanent presence, enabling residents to be attended on when necessary, is ensured, and as to optional services which the operator is required to organise or make available at the request of residents.

(11)

28. In my view there is no doubt that the activities carried out by Les Jardins de Jouvence are public interest activities. It will be recalled that the object of the company is to rent accommodation to able-bodied persons of at least 60 years of age and to pursue all activities relating directly or indirectly to healthcare and assistance, in particular, to the sick and to disabled elderly people.

29. Les Jardins de Jouvence considers that the fact that its serviced residence operates with a view to profit and the fact that neither it nor its residents receive subsidies or financial assistance of any kind from the public authorities, in contrast to old people's homes, demonstrate that it cannot be characterised as an 'organisation recognised as charitable' within the meaning of Article 13A(1)(g), of the Sixth Directive.

30. I do not share that opinion. First of all, I would point out that the Member States have a discretion in recognising organisations as charitable. Secondly, it is apparent from the case-law that the meaning of 'organisation', as it appears in that provision, is wide enough to encompass private entities operating with a view to profit. (12) Finally, while the Court has provided national authorities with certain considerations to enable them to determine whether or not an organisation is recognised as being 'charitable', for the purposes of that provision, that relating to any financial assistance from the Member State is only one of the factors which they 'may' take into account. These factors do not constitute an exhaustive list of requirements which the organisation in question must meet. It is therefore on the basis of a combination of factors, making up a bundle of indicators, that the national authorities can determine whether such an organisation can be regarded as an 'organisation recognised as charitable' for the purposes of Article 13A(1)(g) of the Sixth Directive.

31. Accordingly, taking account of the matters referred to above, I consider that Les Jardins de Jouvence can be characterised as an 'organisation recognised as charitable' within the meaning of that provision. It will be for the national court to determine, having regard to the company objects of Les Jardins de Jouvence and the nature of the services it offers, whether this characterisation exceeds the discretion which that provision grants to Member States for the purposes of such characterisation.

B – *'The supply of services and of goods closely linked to welfare and social security work'*

32. In my view, the services supplied by Les Jardins de Jouvence can be excluded at the outset from services closely linked to social security work. This comprises all regimes which ensure protection by indemnifying the population against the various social risks, such as sickness, maternity, old age or accidents in the workplace. Clearly, it is not the object of Les Jardins de Jouvence to supply such services. Similarly, it is not its object to supply goods.

33. My examination of the matter thus leads me to consider the following issues. First of all, it is necessary to determine what is covered by 'welfare' within the meaning of Article 13A(1)(g) of the Sixth Directive. Secondly, I will explain what, in my view, is to be understood by the terms 'closely linked' within the meaning of that provision. Lastly, it will be necessary to determine whether the use of the conjunction 'and' between 'welfare' and 'social security work' implies that the services must be closely linked to both of these concepts. If the examination leads to the conclusion that the services supplied by Les Jardins de Jouvence do indeed fall within the scope of welfare, but that this conjunction requires them to relate simultaneously to both welfare and social security work, then it will not be possible to regard serviced residences, such as the one at issue in the main proceedings, as exempt taxable persons.

34. In relation, first of all, to welfare, I note that, although the case-law on Article 13A(1)(g) of

the Sixth Directive is relatively abundant, the Court has never given a definition of this concept in the context of the Sixth Directive. The furthest it has gone, in the judgment in *Kügler*, (13) is to indicate that 'the provision of general care and domestic help by an out-patient care service to those in a state of physical or economic dependence ... is in principle linked to social assistance, so that it falls within the concept of "services closely linked to welfare and social security work" referred to in Article 13(A)(1)(g) of the Sixth Directive'. (14)

35. Article 13A of the Sixth Directive is headed 'Exemptions for certain activities in the public interest'. It is part of Title X of the directive, which is headed 'Exemptions'. As the Court stated in its judgment in *Kingscrest Associates and Montecello*, (15) in relation to the objectives pursued by the exemptions under Article 13A(1)(g) and (h) of the Sixth Directive, it is clear from that provision that those exemptions, by treating certain supplies of services in the public interest in the social sector more favourably for the purposes of VAT, are intended to reduce the cost of those services and to make them more accessible to the individuals who may benefit from them. (16)

36. In the light of that case-law, it is my clear understanding that the exemption from VAT under Article 13A(1)(g) of the Sixth Directive is intended to facilitate access to services which are considered to have social utility, in the sense that they are intended to assist people in need, such services normally falling within the remit of the public authorities. Welfare thus underpins assistance to individuals, a point which seems to me, moreover, to be confirmed by the amendment to the French version of this provision effected by Directive 2006/112, which replaced *assistance sociale* with *aide sociale*. (17)

37. While there is settled case-law to the effect that the terms in which the exemptions in Article 13 of the Sixth Directive are couched are to be strictly interpreted, I think nevertheless that the interpretation that the Court gives to 'welfare' should not be such as to deprive the provision in which it appears of any practical effect, (18) particularly since this provision is intended to facilitate access to services which are considered to have social utility.

38. Unlike services falling within the scope of social security, welfare is characterised by the individual assessment of needs. (19) In my opinion, it is precisely because these needs are not covered by social security that it becomes necessary — even vital — to the person concerned for an organisation governed by public law or recognised as charitable by the Member State to cater for them. The same is true of taking responsibility for the needs of elderly or disabled people, which requires the provision of accommodation and care adapted to their vulnerable condition.

39. The needs of such people are not necessarily just physical in nature. They may also consist in a need for financial assistance to alleviate a lack of economic resources which places them in a situation of poverty.

40. In principle, the activities of private organisations such as Les Jardins de Jouvence fall within the scope of welfare, in that they consist in providing accommodation designed for the elderly. It is true that, unlike other organisations such as old people's homes, whose residents are very often elderly people who are not independent and require medical supervision for all their everyday activities, serviced residences like Les Jardins de Jouvence offer accommodation for independent elderly people. Nevertheless, these are people who, because of changes taking place in their lives, can no longer lead them in the same way as before. They therefore choose to reside in an environment which they regard as suited to their specific needs, such as the necessity for a lift, a smaller apartment designed in such a way that falls can more easily be avoided, or even specialised home automation. A serviced residence provides an environment in which such people will be certain to find help in the event of need, and which offers them every assurance of peace of mind with regard to their wellbeing. They also know that, within such an environment, it will be mandatory for services to be offered which free them from daily tasks (such as cleaning and

cooking) or the need to travel by car, in that certain services will be available on site, such as hairdressing and nail care.

41. At the hearing, AXA Belgium SA, an intervening party in the main proceedings, stated that, in its view, activities relating to welfare must necessarily be at the expense of a public body, which, it submits, is not the case in this matter. I do not share that point of view. Amongst other things, it would be paradoxical to consider that an organisation which is not governed by public law, which operates with a view to profit and which does not receive any financial assistance, can be recognised as charitable, within the meaning of Article 13A(1)(g) of the Sixth Directive, while considering that its activity cannot be recognised as falling within welfare, precisely because it does not receive any public financial assistance.

42. In any event, I think that will be for the national court to determine whether an organisation recognised as charitable is engaged in activities within the meaning of 'welfare' in this provision. In this regard, that court will have to take account of a combination of factors which will enable it to be determined whether such activities are intended to assist people in need.

43. Next, in relation to services 'closely linked' to welfare, as referred to in Article 13A(1)(g) of the Sixth Directive, it is apparent from the case-law of the Court that this concept implies that such services are linked to a welfare activity where they are actually provided as ancillary services relating to that activity. (20)

44. In this regard, I would observe that the first indent of Article 13A(2)(b) of the Sixth Directive provides that the supply of services or goods is not to be granted exemption under Article 13A(1)(g) if it is not essential to the transactions exempted. Furthermore, the Court has stated that a service may be regarded as ancillary to a principal service if it does not constitute an end in itself, but a means of better enjoying the supplier's principal service. (21)

45. In my view, taking account of the points examined above, there is no doubt that the services offered by Les Jardins de Jouvence are closely linked to welfare, within the meaning of Article 13A(1)(g) of the Sixth Directive.

46. As has been seen, serviced residences are intended to enable elderly people to live in an environment which is adapted to their situation. The mandatory and optional services offered by Les Jardins de Jouvence enable them to enjoy the principal service in the best possible conditions, that service being the provision of suitable accommodation within a caring setting. The activity of the company seems to me to form an indivisible whole. What would be the position if it only made accommodation available to its residents? Would they then choose to live in the residence? It seems to me that the answer must be in the negative. The raison d'être of serviced residences is, as the name suggests, to offer elderly people accommodation with a selection of services, so as to enable them to live independently and with peace of mind.

47. The same does not apply, however, to the services supplied to non-residents. It is clear that, in that situation, the services are not ancillary, but completely separate from the principal service. Accordingly, in my opinion they do not fulfil the requirement, laid down by Article 13A(1)(g) of the Sixth Directive, of being 'closely linked' to welfare.

48. Lastly, concerning the use of the conjunction 'and' in that provision, I do not think that this should be regarded as having a cumulative effect. I note, in this regard, that the Court, in its judgments in *Commission* v *France* (22) and *Dornier*, (23) in relation to the exemption under Article 13A(1)(b) of the Sixth Directive, seems to have ruled out the possibility that the conjunction has a cumulative effect. In the French version of the first judgment, the Court stated that this provision does not include any definition of the concept of activities 'closely related' to hospital *or*

medical care. (24)

49. Furthermore, to confer cumulative effect on the use of that conjunction would, in my opinion, run counter to the objective pursued by Article 13A(1)(g) of the Sixth Directive, which is to ensure that the exemption of certain supplies of services of public interest which are made in the social sector can reduce the cost of those services, and thus make them more accessible to those individuals who could benefit from them.

50. In this respect, it is important to note that not all services linked to welfare also fall within the concept of social security. Indeed this would be the case, according to Les Jardins de Jouvence, in relation to those services in respect of which the residents do not receive any assistance from the Institut national d'assurance maladie invalidité, the body which finances social security.

51. In the light of the foregoing, I consider that a serviced residence, such as that at issue in the main proceedings, can be regarded as supplying services 'closely linked to welfare', within the meaning of Article 13A(1)(g) of the Sixth Directive. It will be for the national court to determine whether the activities of the serviced residence fall within the scope of welfare. In this regard, it must take account of a combination of factors enabling it to be determined whether those activities are intended to assist persons in need. It will also be for the national court to determine whether the services offered by the serviced residence are essential to the pursuit of such activities.

IV – **Conclusion**

52. Having regard to all of the above considerations, I suggest that the Court should answer the Cour d'appel de Mons as follows:

Article 13A(1)(g) of the Sixth Council Directive 77/388/EEC of 11 May 1977 on the harmonisation of legislation of Member States concerning turnover taxes — Common system of value added tax: uniform basis of assessment, should be interpreted as meaning that a serviced residence, such as that at issue in the main proceedings, which offers persons of at least 60 years of age accommodation enabling them to live independently, together with chargeable related services, also available to non-residents, and which does not have the benefit of any financial assistance from the State, can be characterised as an 'organisation recognised as charitable' and regarded as supplying services 'closely linked to welfare', within the meaning of that provision.

It will be for the national court to determine:

– whether, having regard to the company objects of the serviced residence in question and the nature of the services it offers, this characterisation exceeds the discretion which that provision grants to Member States for the purposes of such characterisation;

– whether the activities of the serviced residence fall within the scope of welfare. In this regard, it must take account of a combination of factors enabling it to be determined whether those activities are intended to assist persons in need; and

– whether the services offered by the serviced residence are essential to the pursuit of such activities.

1 – Original language: French.

2 – OJ 1977 L 145, p. 1, 'the Sixth Directive'.

3 – *Moniteur belge* of 3 July 1969, p. 7046.

4 – *Moniteur belge* of 12 July 2005, p. 32180.

5 – *Moniteur belge* of 26 June 1997, p. 17043, ‘the decree of 5 June 1997’.

6 – Judgment in *Kingscrest Associates andMontecello* (C?498/03, EU:C:2005:322, paragraph 34).

7 – Judgment in *Zimmermann* (C?174/11, EU:C:2012:716, paragraph 26 and the case-law cited).

8 – Ibid. (paragraph 31 and the case-law cited). For a more recent interpretation, given by the Court after the entry into force of Council Directive 2006/12/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1 and corrigendum OJ 2007 L 335, p. 60), see the judgment in *‘go fair’ Zeitarbeit* (C?594/13, EU:C:2015:164, paragraphs 21, 26 and 29).

9 – See the first paragraph of Article 5(1) of the decree of 5 June 1997.

10 – See the second paragraph of Article 5(5) of the decree of 5 June 1997, which refers to the matters set out in Article 5(2)(1) to Article 5(2)(8).

11 – See the second paragraph of Article 5(5) of the decree of 5 June 1997.

12 – Judgment in *‘go fair’ Zeitarbeit* (C?594/13, EU:C:2015:164, paragraph 27 and the case-law cited).

13 – C?141/00, EU:C:2002:473.

14 – Paragraph 44.

15 – C?498/03, EU:C:2005:322.

16 – Paragraph 30.

17 – See Article 132(1)(g) of that directive.

18 – Judgment in *Zimmermann* (C?174/11, EU:C:2012:716, paragraph 22 and the case-law cited).

19 – See judgments in *Frilli* (1/72, EU:C:1972:56, paragraph 14); *Biason* (24/74, EU:C:1974:99, paragraph 10); and *Hosse* (C?286/03, EU:C:2006:125, paragraph 37).

20 – See judgment in *CopyGene* (C?262/08, EU:C:2010:328, paragraphs 38 and 39 and the case-law cited).

21 – Ibid. (paragraph 40).

22 – C?76/99, EU:C:2001:12.

23 – C?45/01, EU:C:2003:595.

24 – Judgment in *Commission* v *France* (C?76/99, EU:C:2001:12, paragraph 22). My italics.