

OPINION OF ADVOCATE GENERAL

MENGOZZI

delivered on 20 October 2016 (1)

**Case C-573/15**

**État belge**

**v**

**Oxycure Belgium SA**

(Request for a preliminary ruling from the Cour d'appel de Liège (Court of Appeal, Liège, Belgium))

(Reference for a preliminary ruling — Value added tax (VAT) — Directive 2006/112/EC — Principle of fiscal neutrality — Medical treatment using oxygen — Reduced rate of VAT — Oxygen cylinders and containers — Standard rate of VAT — Oxygen concentrator — Concept of disability)

**I – Introduction**

1. Having regard to the principle of fiscal neutrality, is a Member State permitted to apply value added tax (VAT) to the sale and/or hire of oxygen concentrators at the standard rate of 21% when it applies a reduced rate of 6% to the sale of medical oxygen cylinders?
2. This is, in essence, the question referred to the Court for a preliminary ruling by the Cour d'appel de Liège (Court of Appeal, Liège, Belgium), which concerns the interpretation of Article 98(1) and (2) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, (2) as amended by Council Directive 2006/138/EC of 19 December 2006 (3) ('the VAT Directive'), Annex III, points 3 and 4, of that directive and the principle of fiscal neutrality.
3. This request has been made in a dispute between the État belge (Belgian State) and Oxycure Belgium SA ('Oxycure') regarding liability to VAT for the activity of sale and/or hire of oxygen concentrators and accessories for oxygen therapy.
4. Oxygen concentrators are appliances for medical use which run on electricity and operate on the principle of concentrating oxygen in the ambient air in order to extract nitrogen from it, thereby offering a higher oxygen concentration. (4) Appliances of this kind comprise a part whose purpose is to concentrate the oxygen and a nasal cannula or oxygen mask and an oxygen intake hose, which form an integral part of the appliance. Oxygen concentrators allow home-based oxygen therapy for patients suffering from a respiratory insufficiency or other serious impairment requiring oxygen treatment whose condition can no longer be improved by the use of aerosols and bronchodilators.
5. In the main proceedings the file shows that between 1 October 2007 and 31 March 2010

Oxycure applied to the hire and sale of oxygen concentrators and their accessories a reduced rate of VAT of 6%, which the Kingdom of Belgium decided to levy on the supply and/or hire of certain medical equipment, articles or appliances in accordance with Article 98(2) and Annex III to the VAT Directive. However, according to the Belgian tax authorities, Oxycure's transactions should have been subject to the application of the standard rate of 21% pursuant to Royal Decree No 20 of 20 July 1970 setting the rates of value added tax and establishing the distribution of goods and services under those rates. (5) The Belgian tax authorities therefore sent Oxycure a demand for payment claiming almost EUR 1 300 000 in VAT and imposing a fine corresponding to 10% of the amount claimed.

6. By judgment of 25 April 2013, the Tribunal de première instance de Namur (Court of First Instance, Namur, Belgium) granted the action brought by Oxycure against the decision of the Belgian tax authorities, which it reversed. In essence, according to that judgment, oxygen concentrators satisfy the definition in section XXIII, with the title 'Miscellaneous', point 2 of table A of Royal Decree No 20, applicable to 'other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability', thus permitting transactions relating to the sale and/or hire of such appliances to benefit from the reduced rate of 6%.

7. The Belgian State appealed against that judgment at the referring court.

8. The referring court finds that oxygen concentrators are, along with medical oxygen cylinders and medical liquid oxygen tanks, one of three sources of oxygen available on the market and that those sources are all interchangeable and/or complementary. First, the court refers to a report by the Centre fédéral d'expertise des soins de santé (Belgian Health Care Knowledge Centre), according to which each source is available in a large fixed model and a small portable model. The referring court notes that the report also states that, from the point of view of clinical efficiency for the patient, all oxygen treatments are equivalent, regardless of whether the oxygen is supplied by one or other of the three sources, whether it is fixed or portable, while the differences between these methods of administration of oxygen relate to convenience issues (noise, use away from home, available volume, filling of portable model by the patient) and to the cost to society. Second, the referring court observes that the Belgian rules on compulsory health insurance schemes and claims acknowledge the complete interchangeability of these sources of oxygen, given that an emergency oxygen cylinder is included in the reimbursable cost of the oxygen concentrator.

9. In these circumstances, the referring court asks whether, even assuming that no section of table A of Royal Decree No 20 refers explicitly to oxygen concentrators, that table must all the same be interpreted, in the light of the principles of EU law, and in particular the principle of fiscal neutrality, to the effect that the table in question applies, at least implicitly, to these appliances in the same way as to the other sources of oxygenation.

10. The answer to this question being a matter of interpretation of EU law, the referring court decided to stay its proceedings and to refer the following question to the Court for a preliminary ruling:

'Does Article 98(1) and (2) of the VAT Directive, read in conjunction with Annex III, points 3 and 4, of the VAT Directive, having regard to, in particular, the principle of neutrality, preclude a national provision which prescribes a reduced rate of VAT for oxygen treatment by means of oxygen cylinders, whereas oxygen treatment by means of an oxygen concentrator is subject to the standard rate of VAT?'

11. That question was the subject of written observations submitted by Oxycure, the Kingdom of Belgium and the European Commission. Those interested parties also presented oral argument

and their answers to the questions put by the Court at the hearing held on 19 September 2016.

## II – Analysis

12. In my view, the answer to the question referred for a preliminary ruling by the national court must be divided into two parts. First, it must be determined whether oxygen concentrators like those at issue in the main proceedings can come under point 3 or point 4 of Annex III to the VAT Directive, which are both mentioned in the question referred to the Court. If that is the case, the question whether the principle of fiscal neutrality requires the reduced rate of VAT of 6%, which applies to the sale of medical oxygen, in gaseous or liquid form, in containers, also to be extended to the sale and/or hire of oxygen concentrators would no longer arise. Second, if oxygen concentrators may not benefit from the application of the reduced rate of VAT on the basis of point 3 or point 4 of Annex III to the VAT Directive, which seems to be implicitly assumed by the referring court, it will have to be ascertained whether the principle of fiscal neutrality may nevertheless require the Kingdom of Belgium to grant that rate to the supply and/or hire of oxygen concentrators on the ground that, from the point of view of the patient, they are interchangeable with medical oxygen, in gaseous or liquid form, supplied in containers.

### A – *The application of Annex III, points 3 and 4, of the VAT Directive*

13. It should be noted that Article 96 of the VAT Directive provides that each Member State must fix the same rate of VAT, described as standard, for the supply of goods and for the supply of services.

14. As an exception to that principle, Article 98(1) of the VAT Directive gives the Member States the option of applying either one or two reduced rates. In accordance with the first subparagraph of Article 98(2) of the VAT Directive, the reduced rates can apply only to supplies of goods and services in the categories set out in Annex III to that directive. (6)

15. Point 3 of that annex, which is mentioned in the question, refers to ‘pharmaceutical products of a kind normally used for health care, prevention of illnesses and as treatment for medical and veterinary purposes’. Point 4 of that annex, which is also referred to in the question, mentions ‘medical equipment, aids and *other appliances normally intended to alleviate or treat disability, for the exclusive personal use of the disabled*, including the repair of such goods’. (7)

16. While point 3 of Annex III to the VAT Directive permits a reduced rate of VAT to be applied to the supply of ‘pharmaceutical products’, that is to say, finished products which can be used directly by final consumers, point 4 of that annex refers to certain medical devices for specific uses. (8)

17. As exceptions to the principle that the Member States must apply a standard rate of VAT to transactions subject to VAT, points 3 and 4 of Annex III to the VAT Directive must be interpreted strictly. (9)

18. The Court has ruled, on the one hand, that points 3 and 4 of Annex III to the VAT Directive make no express reference to the law of the Member States, with the result that they must be interpreted autonomously and uniformly throughout the European Union and, on the other, that the concepts used in that annex, in particular in those points, must be interpreted in the normal sense of the terms at issue. (10)

19. In this respect it is clear from the documents before the Court and from the observations submitted by the Belgian Government that in Belgium medical oxygen supplied in containers in gaseous or liquid form benefits from the reduced rate of VAT of 6% under section XVII, point 1(a)

of table A of Royal Decree No 20, which transposes point 3 of Annex III to the VAT Directive. In other words, medical oxygen is treated as a medicament and, more broadly, a 'pharmaceutical product' within the meaning of point 3 of Annex III to the VAT Directive.

20. However, unlike medical oxygen supplied in containers, I concur with the position expressed by all the parties at the hearing before the Court that oxygen concentrators like those at issue in the main proceedings cannot fall under the concept of 'pharmaceutical products' within the meaning of point 3 of Annex III to the VAT Directive.

21. This assessment is based primarily on the judgment of 17 January 2013, *Commission v Spain* (C-360/11, EU:C:2013:17, paragraphs 63, 64 and 71). In that judgment the Court held that although, in the light of their normal sense, 'pharmaceutical products' included medicaments for human use, they did not, on the other hand, cover any device, equipment, appliances or material for medical or veterinary purposes. If point 3 of Annex III to the VAT Directive applied to any medical device or appliance, irrespective of the intended use thereof, the consequence would be that point 4 of that annex would be rendered meaningless. In other words, point 3 of Annex III to the VAT Directive cannot allow the exhaustive list in point 4 to be circumvented by authorising Member States to apply a reduced rate of VAT to medical devices and appliances regardless of their intended purpose. Furthermore, while the oxygen concentrators at issue in the main proceedings can be hired by patients and may thus be the subject of a multitude of supplies of services, pharmaceutical products are goods supplied and generally prescribed for individual, exclusive and single use.

22. I therefore take the view that only point 4 of Annex III to the VAT Directive could be relevant to the answer to be given to the question asked by the referring court.

23. As was mentioned above, that point of Annex III to the VAT Directive concerns only certain medical devices or appliances intended for certain specific uses. First, that point refers to medical devices and other appliances 'normally intended to alleviate or treat disability' and does not therefore designate products generally used for other purposes. (11) Second, as the Court ruled in the judgment of 17 January 2013, *Commission v Spain* (C-360/11, EU:C:2013:17, paragraphs 85 to 88), point 4 of Annex III to the VAT Directive concerns medical devices and appliances for the 'personal' and 'exclusive' use of the disabled and not devices and appliances for general use in hospitals and by healthcare professionals. This limitation of the application of a reduced rate of VAT to the exclusive personal use of final consumers is consistent with the socio-economic objective of Annex III to the VAT Directive of reducing the cost of certain goods regarded as being particularly necessary. (12)

24. It is regrettable that, failing any definition of the terms 'disability' and 'the disabled' in the VAT Directive and failing any express reference in the latter to the law of the Member States to determine their meaning, the Court did not take the opportunity in these cases of defining those terms, in particular as regards the dividing line distinguishing them from the concepts of 'illness' and 'the sick'.

25. In the context of the interpretation of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (13) and following the ratification by the European Union of the United Nations Convention on the Rights of Persons with Disabilities, (14) the Court has held that the concept of 'disability' must be understood as referring to a limitation which results in particular from long-term physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers. (15)

26. It is also in this context that the Court has held that, although the concept of 'disability' is distinct from the concept of 'illness' or obesity, illness or obesity entailing a long-term limitation which results in particular from long-term physical, mental or psychological impairments, interacting with various barriers, may hinder the full and effective participation of the person concerned in professional life on an equal basis with others and is therefore covered by the concept of 'disability' within the meaning of Directive 2000/78. (16)

27. Such a definition and such scope of the concept of 'disability', which are based on an interpretation of the concept contained in Directive 2000/78 in conformity with the provisions of the United Nations Convention on the Rights of Persons with Disabilities, are, in my view, relevant for interpreting that concept in the context of point 4 of Annex III to the VAT Directive.

28. As the Court has held with regard to the interpretation of Directive 2000/78, (17) the VAT Directive is one of the European Union acts 'in the field of independent living and social inclusion, work and employment' which are listed in the appendix to Annex II to the decision approving that United Nations convention on behalf of the European Community and which refer to matters governed by the latter.

29. As the Commission rightly asserted in its written observations, the characteristic feature of the concept of 'disability' is its long-term nature, as opposed to the diminution of certain faculties as a result of, in particular, a sporadic or temporary illness.

30. In the light of the information provided by the referring court and the observations of the interested parties, the oxygen concentrators at issue in the main proceedings would seem to meet only two of the three criteria set out in point 4 of Annex III to the VAT Directive, which must nevertheless be verified by the referring court.

31. As regards the first criterion, it can be accepted, as Oxycure maintained at the hearing, that these appliances are '*normally* intended to alleviate or treat disability' (18) in accordance with point 4 of Annex III to the VAT Directive. It would seem that these medical devices are particularly suitable for mitigating and alleviating serious, long-term and often irreversible respiratory insufficiencies for which alternative treatments are no longer effective, as in cases of chronic obstructive pulmonary disease or those in the advanced stages of cystic fibrosis. (19)

32. In this regard, section XXIII, entitled 'Miscellaneous', point 2, of table A of Royal Decree No 20 appears consistent with this criterion under point 4 of Annex III to the VAT Directive. The choice made by the Kingdom of Belgium to grant the reduced rate of VAT of 6% applies only to the sale or hire of appliances to 'compensate for a defect or disability', that is to say, according to the evidence and information provided in the main proceedings, appliances generally intended to treat or alleviate disability.

33. By using the adverb 'normally' in point 4 of Annex III to the VAT Directive, the EU legislature clearly discounted the premiss (which would have been more categorical) that a reduced rate of VAT may be applied to the sale and/or hire of medical equipment only if it is *exclusively* or *solely* intended to alleviate or treat disability. Therefore, by using the adverb 'normally', the EU legislature wished to refer to medical equipment and other appliances that, usually and in general, are intended to alleviate or treat disability, without it being necessary to examine the particular situation of such-and-such an appliance. (20)

34. Furthermore, it is common ground in the main proceedings that all sources of administration of medical oxygen, including oxygen concentrators, may be provided to the persons concerned only on prescription by a doctor. This fact means that, in principle, oxygen concentrators are not,

usually and in general, intended to treat or alleviate, by means of oxygen therapy, medical conditions not covered by the concept of 'disability'.

35. The second criterion, namely, 'personal' use by the disabled, also seems to be met in so far as oxygen concentrators can be used individually by the person concerned, at home or away from the home, without need of recourse to an intermediary, in particular a health-care professional. It is true that, as was highlighted perfectly by the hearing before the Court, the question whether the oxygen concentrators at issue in the main proceedings can be described as appliances 'which are worn or carried' within the meaning of section XXIII, entitled 'Miscellaneous', point 2, of table A of Royal Decree No 20 is the subject of debate between Oxycure and the Belgian Government. However, this point of dispute is not a matter of interpretation of point 4 of Annex III to the VAT Directive but of interpretation of national law, which it is not for the Court to resolve.

36. Having said that, and coming to the third criterion, I note that point 4 of Annex III to the VAT Directive requires not only that medical equipment and appliances should 'normally' be intended to treat or alleviate disability and be for the 'personal' use of the disabled, but that they should also be for the 'exclusive' use of the disabled.

37. This criterion of exclusivity relates not to the intended purpose of the appliances (which are 'normally' intended to treat or alleviate disability) but to their use. Accordingly, in my view, this criterion excludes from the ambit of point 4 of Annex III to the VAT Directive appliances that may be used by persons other than persons with disabilities.

38. This interpretation is consistent with the socio-economic objective of the reduced rate by promoting, as far as possible, the independence of persons with a disability, including of a pathological nature.

39. The Court has ruled in this regard that it would be contrary to the objective pursued by Annex III to the VAT Directive of reducing the cost for final consumers of certain essential goods if the application of a reduced rate of VAT, in the case of a product which may be put to different uses, was subject, for each supply of goods, to the product being used for its intended purpose by the purchaser. (21) It would be impossible, moreover, for the tax authorities to determine whether the application of the reduced rate of VAT is justified in all cases, which could increase or encourage abuse or tax avoidance.

40. It is likely, as the Commission has claimed, that oxygen concentrators are used by persons who do not have a disability, in particular individuals suffering temporary respiratory illnesses.

41. Subject to verification by the referring court, it therefore seems that the oxygen concentrators at issue in the main proceedings do not fall within the ambit of point 4 of Annex III to the VAT Directive, for it appears that such appliances are not used exclusively by the disabled.

#### B – *The principle of fiscal neutrality*

42. That being said, could the principle of fiscal neutrality nevertheless result in the reduced rate of VAT being applied to these appliances, as the referring court asks?

43. I think not.

44. As the Court has ruled, the principle of fiscal neutrality may not extend the scope of a reduced rate of VAT when there is no unequivocal provision. (22) In other words, that principle permits the scope of a reduced rate to be extended only when there is an unequivocal provision. Point 4 of Annex III to the VAT Directive unequivocally excludes from the reduced rate of VAT

medical devices and appliances that are not used exclusively by the disabled.

45. To take a different view would effectively circumvent the strict interpretation and application of exceptions to the principle, repeatedly recalled by the Court, that Member States are to apply a standard rate of VAT to transactions subject to VAT. (23)

46. That is why, contrary to what is implied by the court making the reference, the principle of fiscal neutrality does not allow the scope of the different categories set out in Annex III to the VAT Directive to be transcended or, *a fortiori*, disregarded.

47. If, on the basis of an examination of the wording and the scheme of points 3 and 4 of Annex III to the VAT Directive, the hire and/or sale of oxygen concentrators cannot fall under one or other of these points, the principle of fiscal neutrality may not override that examination.

48. As the Court has ruled on several occasions with regard to exemptions from VAT, the principle of fiscal neutrality is not a rule of primary law that can determine the validity of an exemption, but a principle of interpretation, to be applied concurrently with the principle of strict interpretation of exemptions. (24)

49. I see no obstacle to the transposing of this general interpretation of the scope of the principle of fiscal neutrality in relation to the system of reduced rates of VAT, which too requires strict interpretation.

50. As is clear from the Court's case-law, in relation to the system of reduced rates under Annex III to the VAT Directive the principle of fiscal neutrality is still fully relevant when, in a given situation, the Court and the national courts are called upon to determine whether the legitimate choice made by a Member State to apply the reduced rate of VAT selectively to 'certain concrete and specific aspects' of a single category *of a single point* of Annex III observes that principle. (25) In this case it is logical to review whether the selective application of the reduced rate of VAT results in a breach of the principle of equal treatment of supplies of similar goods or services belonging to the same category listed in Annex III to the VAT Directive. (26)

51. However, as I stated above, the principle of fiscal neutrality may not be used to transcend the categories mentioned in Annex III to the VAT Directive so as to include within their ambit supplies of goods or services which, on the basis of an examination of the wording and/or the scheme of those categories, do not fall within them.

### III – Conclusion

52. In the light of all the foregoing considerations, I propose that the Court answer the question referred for a preliminary ruling by the Cour d'appel de Liège (Court of Appeal, Liège, Belgium) as follows:

Article 98(1) and (2) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2006/138/EC of 19 December 2006, and Annex III, points 3 and 4, of that directive do not preclude a national provision by which a reduced rate of value added tax is not applied to the supply and/or hire of oxygen concentrators like those at issue in the main proceedings, inasmuch as those appliances neither constitute pharmaceutical products within the meaning of Annex III, point 3, of Directive 2006/112, as amended, nor are for the exclusive use of the disabled within the meaning of point 4 of that annex, which it is for the referring court to ascertain.

The principle of fiscal neutrality may not be interpreted as authorising the thwarting of the

respective ambits of the categories set out in Annex III, points 3 and 4, of Directive 2006/112, as amended, by granting a reduced rate of value added tax for the supply and/or hire of devices that do not satisfy the definitions laid down in those points.

1 – Original language: French.

2 – OJ 2006 L 347, p. 1.

3 – OJ 2006 L 384, p. 92.

4 – Ambient air is composed of around 20% oxygen and around 80% nitrogen.

5 – *Moniteur Belge*, 31 July 1970, p. 7920.

6 – See, inter alia, judgments of 11 September 2014, *K* (C?219/13, EU:C:2014:2207, paragraphs 21 and 22), and of 5 March 2015, *Commission v Luxembourg* (C?502/13, EU:C:2015:143, paragraph 33).

7 – Italics added.

8 – See, to that effect, judgment of 17 January 2013 (*Commission v Spain*, C?360/11, EU:C:2013:17, paragraphs 47 and 64).

9 – Judgment of 17 January 2013, *Commission v Spain* (C?360/11, EU:C:2013:17, paragraphs 18, 20 and 63).

10 – Judgment of 17 January 2013, *Commission v Spain* (C?360/11, EU:C:2013:17, paragraphs 20 and 63). See also, with regard to the second part, judgment of 4 June 2015, *Commission v Poland* (C?678/13, not published, EU:C:2015:358, paragraphs 46 and 47).

11 – Judgment of 4 June 2015, *Commission v Poland* (C?678/13, not published, EU:C:2015:358, paragraph 48).

12 – See, to that effect, judgment of 17 January 2013, *Commission v Spain* (C?360/11, EU:C:2013:17, paragraphs 48 and 86).

13 – OJ 2000 L 303, p. 16.

14 – *Treaty Series*, vol. 2515, p. 3. That convention was approved on behalf of the European Community by Council Decision 2010/48/EC of 26 November 2009 (OJ 2010 L 23, p. 35).

15 – See, inter alia, judgments of 4 July 2013, *Commission v Italy* (C?312/11, not published, EU:C:2013:446, paragraph 56); of 18 March 2014, *Z.* (C?363/12, EU:C:2014:159, paragraph 76); of 18 December 2014, *FOA* (C?354/13, EU:C:2014:2463, paragraph 53), and of 26 May 2016, *Invamed Group and Others* (C?198/15, EU:C:2016:362, paragraph 31).

16 – See, to that effect, judgments of 11 April 2013, *HK Danmark* (C?335/11 and C?337/11, EU:C:2013:222, paragraphs 39 to 42 and 47), and of 18 December 2014, *FOA* (C?354/13, EU:C:2014:2463, paragraphs 56 to 60). Although it is not always clear from the Court's judgments, it is, in my view, both the physical, mental, intellectual or psychological incapacities and the limitation which they cause for individuals affected by them that must be long-term and that allow a distinction to be drawn between the concept of 'disability' and the concept of 'illness'.



17 – See judgments of 11 April 2013, *HK Danmark* (C-335/11 and C-337/11, EU:C:2013:222, paragraph 31), and of 18 March 2014, *Z.* (C-363/12, EU:C:2014:159, paragraph 74).

18 – Italics added.

19 – Cystic fibrosis is a genetic and hereditary disorder affecting the cells lining various organs, such as the respiratory tract, and altering their secretions.

20 – See, by analogy, with regard to the use of the same adverb in point 1 of Annex III to the VAT Directive, judgments of 3 March 2011, *Commission v Netherlands* (C-41/09, EU:C:2011:108, paragraph 55), and of 12 May 2011, *Commission v Germany* (C-453/09, not published, EU:C:2011:296, paragraph 45).

21 – See judgment of 17 January 2013, *Commission v Spain* (C-360/11, EU:C:2013:17, paragraphs 86 and 87).

22 – See judgments of 5 March 2015, *Commission v France* (C-479/13, EU:C:2015:141, paragraph 43), and of 5 March 2015, *Commission v Luxembourg* (C-502/13, EU:C:2015:143, paragraph 51). See also, with regard to exemptions from VAT, judgment of 13 March 2014, *Klinikum Dortmund* (C-366/12, EU:C:2014:143, paragraph 40).

23 – See, inter alia, to that effect, judgments of 17 January 2013, *Commission v Spain* (C-360/11, EU:C:2013:17, paragraph 18), and of 5 March 2015, *Commission v Luxembourg* (C-502/13, EU:C:2015:143, paragraph 38).

24 – See judgments of 19 July 2012, *Deutsche Bank* (C-44/11, EU:C:2012:484, paragraph 45); of 13 March 2014, *Klinikum Dortmund* (C-366/12, EU:C:2014:143, paragraph 40); of 2 July 2015, *De Fruytier* (C-334/14, EU:C:2015:437, paragraph 37), and of 17 March 2016, *Aspiro* (C-40/15, EU:C:2016:172, paragraph 31).

25 – See, in this regard, judgments of 8 May 2003, *Commission v France* (C-384/01, EU:C:2003:264, paragraphs 24 to 29); of 3 April 2008, *Zweckverband zur Trinkwasserversorgung und Abwasserbeseitigung Torgau-Westelbien* (C-442/05, EU:C:2008:184, paragraphs 42 and 43); of 6 May 2010, *Commission v France* (C-94/09, EU:C:2010:253, paragraphs 28 to 30); of 27 February 2014, *Pro Med Logistik and Pongratz* (C-454/12 and C-455/12, EU:C:2014:111, paragraphs 44 to 46), and of 11 September 2014, *K* (C-219/13, EU:C:2014:2207, paragraph 23).

26 – In this respect, if, contrary to the above analysis, the oxygen concentrators at issue in the main proceedings were to be considered to fall within the scope of point 4 of Annex III to the VAT Directive, the referring court would have to review, on the basis of the guidance provided by the case-law mentioned in the preceding footnote of this Opinion, whether the distinction drawn by the Kingdom of Belgium between portable medical devices and fixed medical devices (only the supply and/or hire of the former benefit from the application of the reduced rate of 6%) relates to ‘concrete and specific aspects’ of the category set out in point 4 of that annex and observes the principle of fiscal neutrality.