OPINION OF ADVOCATE GENERAL

PIKAMÄE

delivered on 14 May 2020 (1)

Case C?235/19

United Biscuits (Pensions Trustees) Limited,

United Biscuits Pension Investments Limited

v

Commissioners for Her Majesty’s Revenue and Customs

(request for a preliminary ruling from the Court of Appeal (England & Wales) (Civil Division), United Kingdom)

(Reference for a preliminary ruling — Value added tax (VAT) — Directive 2006/112/EC — Article 135(1)(a) — Exemption of insurance transactions — Pension fund management services provided to trustees by investment managers — Occupational pension scheme — Earlier national tax practice consisting in distinguishing between entities authorised by the financial supervisory authorities to carry out an insurance activity and entities not having such authorisation)

1. The present dispute before the Court of Appeal (England and Wales) (Civil Division), United Kingdom, between the trustees of an occupational pension scheme of United Biscuits (UK) Ltd and the Commissioners for Her Majesty’s Revenue & Customs, concerns the classification for value added tax (VAT) purposes of the investment management services supplied to that company for the purposes of the administration of its pension scheme.

2. The applicants in the main proceedings, United Biscuits (Pension Trustees) Ltd and UB Pension Investments Ltd, are, respectively, the trustee of an occupational pension scheme set up for the employees of United Biscuits (UK) and the trustee of UB Pension Investment Fund, the former group investment fund of that company, in which the assets of the pension scheme were invested during the period between 1989 and 2006.

3. In this case, the question arises whether investment management services supplied to that occupational pension scheme may be classified as an ‘insurance transaction’ within the meaning of Article 13(B)(a) of Sixth Directive 77/388/EEC (2) (‘the Sixth Directive’) and Article 135(1)(a) of Directive 2006/112/EC (3) and, on that basis, be exempt from VAT.

I. **Legal background**

A. **European Union law**

1. ***The VAT legislation***

4. In the words of Article 2(1)(c) of Directive 2006/112, 'the supply of services for consideration within the territory of a Member State by a taxable person acting as such' is to be subject to VAT.

5. That provision corresponds to Article 2(1) of the Sixth Directive, which was applicable until 31 December 2006.

6. Article 131 of Directive 2006/112, in Chapter 1, 'General provisions', of Title IX, 'Exemptions', of that directive, which reproduces in analogous terms the first sentence of Article 15 of the Sixth Directive, states:

'The exemptions provided for in Chapters 2 to 9 shall apply without prejudice to other Community provisions and in accordance with conditions which the Member States shall lay down for the purposes of ensuring the correct and straightforward application of those exemptions and of preventing any possible evasion, avoidance or abuse'.

7. Article 135(1) of Directive 2006/112, in Chapter 3, 'Exemptions for other activities', of Title IX of that directive, provides:

'Member States shall exempt the following transactions:

(a) insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents;

…'

8. That provision corresponds to Article 13(B)(a) of the Sixth Directive, which was applicable until 31 December 2006.

2. ***The insurance legislation***

(a) ***The First Non-life Directive***

9. The Annex to First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life insurance, (4) as amended by Council Directive 84/641/EEC of 10 December 1984, (5) ('the First Non-life Directive') provided:

'A. Classification of risks according to classes of insurance

…

18. Assistance

Assistance for persons who get into difficulties while travelling, while away from home or while away from their permanent residence.'

(b) ***The First Life Assurance Directive***

10. First Council Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations

and administrative provisions relating to the taking up and pursuit of the business of direct life assurance, (6) as amended by Directive 2002/12/EC of the European Parliament and of the Council of 5 March 2002, (7) ('the First Life Assurance Directive') provided, in Article 1:

'This directive concerns the taking up and pursuit of the self-employed activity of direct insurance carried on by undertakings which are established in a Member State or wish to become established there in the form of the activities defined below:

1. the following kinds of insurance where they are on a contractual basis:

(a) life assurance …;

(b) annuities;

(c) supplementary insurance carried on by life assurance undertakings …;

(d) the type of insurance existing in Ireland and the United Kingdom known as permanent health insurance not subject to cancellation;

2. the following operations, where they are on a contractual basis, in so far as they are subject to supervision by the administrative authorities responsible for the supervision of private insurance:

…

(c) management of group pension funds, i.e. operations consisting, for the undertaking concerned, in managing the investments, and in particular the assets representing the reserves of bodies that effect payments on death or survival or in the event of discontinuance or curtailment of activity;

(d) the operations referred to in (c) where they are accompanied by insurance covering either conservation of capital or payment of a minimum interest;

…'

11. In the words of Article 7(2) of the First Life Assurance Directive:

'Authorisation shall be given for a particular class of insurance. The classification by class appears in the Annex. Authorisation shall cover the entire class unless the applicant wishes to cover only some of the risks pertaining to such class.'

12. Article 8(1) of that directive provided:

'The home Member State shall require every assurance undertaking for which authorisation is sought to:

…

(b) limit its objects to the business provided for in this Directive and operations directly arising therefrom, to the exclusion of all other commercial business.'

13. The Annex to that directive contained a list of 'Classes of insurance', which referred, in point VII, to 'Management of group pension funds, referred to in Article 1(2)(c) and (d)'.

14. The First Life Assurance Directive was repealed and replaced by Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (8)

(‘Directive 2002/83’). Article 2 of Directive 2002/83 reproduced the provisions set out in Article 1 of the First Life Assurance Directive. Article 5(2) of Directive 2002/83 reproduced the words of Article 7(2) of the First Life Assurance Directive. Annex I to Directive 2002/83 was entitled ‘Classes of assurance’ and referred, in point VII, to ‘Management of group pension funds, referred to in Article 2(2)(c) and (d)’.

15. Directive 2002/83 was in turn repealed and replaced by Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (9) (‘the Solvency| II Directive’). Article 2(3) of that directive reproduces the content of Article 1 of the First Life Assurance Directive, in essentially the same words. Article 15(2) of the Solvency II Directive provides:

‘Subject to Article 14, authorisation shall be granted for a particular class of direct insurance as listed in Part A of Annex I or in Annex II. It shall cover the entire class, unless the applicant wishes to cover only some of the risks pertaining to that class’.

16. Annex II to the Solvency II Directive, entitled ‘Classes of life insurance’, refers, in point VII, to ‘Management of group pension funds, referred to in point (b)(iii) and (iv) of Article 2(3)’.

B. **United Kingdom law**

17. It is apparent from the question for a preliminary ruling that, in accordance with the United Kingdom legislation on the authorisation of insurance companies, the provision of pension fund management services, including to defined benefit occupational pension funds, was a class of ‘insurance business’ when effected and carried out by an insurer carrying on an insurance business. An authorised United Kingdom insurer was therefore ‘subject to supervision by the administrative authorities responsible for the supervision of private insurance’ in accordance with the wording of Article 1(2) of the First Life Assurance Directive. A non-insurer did not require such approval in order to provide pension fund management services, including those relating to defined benefit pension funds. A non-insurer required authorisation to provide those services under other legislation.

18. As regards the VAT payable in respect of pension fund management services, it is apparent from the file submitted to the Court that during the relevant period the United Kingdom tax authorities applied VAT differently according to whether the services were provided by insurers or by non-insurers. Before 1 January 2005, that difference in treatment resulted from the legislative provisions which confined the benefit of the exemption for insurance transactions to suppliers who were authorised in their capacity as insurers. Following a legislative amendment effective from that date, the tax authorities continued, according to the referring court, to confine the benefit of that exemption to supplies of pension fund management services made by insurers, (10) although that limitation was no longer in accordance with the law.

II. **The main proceedings and the question referred**

19. United Biscuits Pension Fund is a defined benefit pension scheme whose members are the employees of United Biscuits (UK). It is managed by the trustee United Biscuits (Pension Trustees). Previously, between 1989 and 2006, the assets of the pension scheme were invested in UB Pension Investment Fund, which was managed by the trustee UB Pension Investments.

20. On 18 March 2014, the applicants in the main proceedings, in their capacity as trustees of, respectively, the pension fund and the investment fund, lodged a claim for recovery from the tax authorities of the VAT which had been paid to investment fund managers in respect of fees for the provision of pension fund management services. The claim related to the period from 1 January

1978 to 30 September 2013.

21. It is apparent from the request for a preliminary ruling that the pension fund management services provided to the applicants in the main proceedings consisted in the management of investments on their behalf. The investment managers did not contract with the applicants in the main proceedings to provide any form of indemnification against the materialisation of risk.

22. Those investment fund managers included both companies authorised to conduct insurance business under the Insurance Companies Act ('insurers') and companies not so authorised but nonetheless authorised by financial regulators to provide pension fund management services ('non-insurers').

23. During the period from 1 January 1978 to 30 September 2013, as regards supplies of pension fund management services to defined benefit pension funds, the tax authorities distinguished between those provided by insurers, which were exempt, and those provided by non-insurers, which were not exempt. (11)

24. By judgment of 30 November 2017, the High Court of Justice (England & Wales), Chancery Division, United Kingdom ('the High Court') dismissed the action brought by the applicants in the main proceedings and, in particular, held that the pension fund management services provided by non-insurers were not exempt during that period.

25. On the applicants' appeal against that judgment, the referring court wonders whether, under EU law, the provision of pension fund management services by non-insurers is exempt. It explains that the High Court has not yet made any finding of fact as to whether the supplies of pension fund management services made by insurers and non-insurers were the same or sufficiently similar for the purposes of the principle of fiscal neutrality, if engaged.

26. In those circumstances, the Court of Appeal (England & Wales) (Civil Division) decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Are supplies of pension fund management services as are provided to the applicants by (a) insurers and/or (b) non-insurers "insurance transactions" within the meaning of Article 135(1)(a) of Directive 2006/112 (formerly Article 13B(a) of the Sixth Directive)?'

III. **The procedure before the Court**

27. The applicants in the main proceedings, the United Kingdom Government and the European Commission lodged written observations.

28. At the hearing, which took place on 26 February 2019, they all submitted oral observations.

IV. **Analysis**

29. The dispute concerns whether the supply of pension fund management services by trustees who are not approved as insurers, in application of the national legislation, may be classified as an ‘insurance transaction’ for the purposes of Article 13B(a) of the Sixth Directive and Article 135(1)(a) of Directive 2006/112, and thus be exempt from VAT. Before any substantive analysis, it is appropriate to make a few preliminary observations on the subject matter of the dispute and on the principles that inspire the provisions at issue (Title A). Next, it is necessary to set out and examine the criteria established in the case-law concerning the scope of the exemption in question (Title B), in order to analyse the relationship between the provisions on VAT and the directives on insurance (Title C). Last, it is appropriate to preclude the applicability of the principles of equality and neutrality to the present case (Title D).

A. **Preliminary observations**

30. It is appropriate to make a number of preliminary observations concerning the scope of the question referred (1), before setting out certain points relating to the exemptions referred to in Article 135(1)(a) of Directive 2006/112 (2).

1. ***The scope of the question referred***

31. In the first place, it must be stated that, as is apparent from the order for reference, the dispute in the main proceedings concerns the taxation of the pension fund management services supplied to the applicants in the main proceedings between 1 January 1978 and 30 September 2013.

32. It is therefore necessary to examine the question submitted by the referring court in the light of both Article 13B(a) of the Sixth Directive and Article 135(1)(a) of Directive 2006/112, as both provisions state that ‘Member States shall exempt’ ‘insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents’. It is a fact that Article 13B of the Sixth Directive contains, in all of its versions, an additional point, according to which Member States are to apply such an exemption ‘without prejudice to other Community provisions’ and ‘under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions and of preventing any possible evasion, avoidance or abuse …’. To my mind, however, that does not alter the scope of the exemption provided for in that provision by comparison with that provided for in Article 135(1)(a) of Directive 2006/112 and therefore does not alter the following analysis. The following considerations therefore apply to both provisions. In order to assist the reader of the present Opinion, however, it is appropriate to refer to the most recent provision, namely Article 135(1)(a) of Directive 2006/112.

33. In the second place, it should be borne in mind that Article 135(1)(a) of Directive 2006/112 provides for the application, by the Member States, of an exemption from VAT to ‘insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents’.

34. Since, first, the wording of the question for a preliminary ruling refers specifically to the concept of ‘insurance transactions’ and since, second, the applicants in the main proceedings claim, both before the referring court and before this Court, that the supply of pension fund management services constitutes an ‘insurance transaction’, it is appropriate to examine that question in the light of that first part of Article 135(1)(a) of Directive 2006/112. Thus, the present Opinion will not address the second part of that provision, under which ‘related services performed by insurance brokers and insurance agents’ are to be exempted. (12)

35. The scope of the question for a preliminary ruling having thus been defined, it is appropriate

to make a few observations as regards the exemptions referred to in the first part of Article 135(1)(a) of Directive 2006/112.

2. *The principles of interpretation of Article 135(1) of Directive 2006/112*

36. In the first place, it is settled case-law that the exemptions referred to in Article 135(1) of Directive 2006/112 are autonomous concepts of EU law the purpose of which is to avoid divergences in the application of the VAT system from one Member State to another and which must be placed in the general context of the common system of VAT. (13)

37. In the second place, it should be borne in mind that the terms used to describe the exemptions envisaged by Article 135(1) of Directive 2006/112 must be given a strict interpretation, since they constitute derogations from the general principle that VAT is to be levied on all services supplied for consideration by a taxable person. (14) It follows that, where a supply of services does not fall within the exemptions provided for in that directive, that supply is to be subject to VAT by virtue of Article 2(1)(c) of that directive. (15)

38. That being so, the interpretation of the abovementioned terms must be consistent with the objectives pursued by the exemptions provided for in Article 135(1) of Directive 2006/112 and must comply with the requirements of the principle of fiscal neutrality inherent in the common system of VAT. It follows from the latter principle that operators must be able to choose the form of organisation which, from the strictly commercial point of view, best suits them, without running the risk of having their transactions excluded from the exemption provided for in that provision. (16)

B. **The criteria relating to Article 135(1)(a) of Directive 2006/112 established in the case-law**

1. *The scope of the concept of ‘insurance transactions’*

39. As regards the material scope of Article 135(1)(a) of Directive 2006/112, in spite of a legislative proposal consisting in defining ‘insurance transactions’, (17) that provision does not thus far contain such a definition. Thus, it must be interpreted in the light of the context of which it forms part, of the purpose and the scheme of that directive, taking particularly into account the *ratio legis* of the exemption which it envisages. (18) What, then, are the material components of an insurance transaction? According to what is now a consistent definition in the Court’s case-law, (19) the essentials of insurance transactions are ‘that the insurer undertakes, in return for prior payment of a premium, to provide the insured, in the event of materialisation of the risk covered, with the service agreed when the contract was concluded’. (20)

40. Thus, it is the *assumption of risk* for consideration that allows an activity to be classified as an ‘insurance transaction’. (21) The very essence of the ‘insurance transaction’ lies in the fact that the insured protects himself against the risk of financial loss, which is uncertain but potentially significant, by means of a premium payment of which is certain but limited. (22)

41. In addition, the concept of ‘insurance transactions’ must be understood in a strict sense. In that regard, as Advocate General Kokott has already observed, Article 135(1)(a) of Directive 2006/112 ‘does not, for example, refer generally to transactions *in the insurance business* … or the *management of insurance policies* …, but, according to its wording, only to insurance transactions in the strict sense’. (23) Accordingly, the Court has held that insurance transactions must be distinguished from financial services, since there is difference between the wording of Article 135(1)(a) of Directive 2006/112, which refers only to insurance transactions in the strict sense, and Article 135(1)(d) and (f) of that directive, which refers to transactions ‘concerning’ or ‘relating to’ certain banking operations. (24)

42. Furthermore, insurance transactions necessarily imply the existence of a contractual relationship between the provider of the insurance service and the person whose risks are covered by the insurance, that is to say, the insured. (25)

43. In other words, by virtue of the case-law stated above, the exemption provided for in Article 135(1)(a) of Directive 2006/112 does not cover all transactions, but only those that satisfy those specific insurance criteria.

44. By virtue of the case-law stated above, every insurance transaction includes the following elements: a risk, a premium and the provision of a guarantee in the event of the materialisation of the risk. In other words, the exemption provided for in Article 135(1)(a) of Directive 2006/112 does not cover all transactions, but only transactions that satisfy those criteria.

45. As regards the personal scope of that provision, the Court has held that the concept of ‘insurance transaction’ is broad enough to include the provision of insurance cover by a taxable person who is not himself an insurer but who, in the context of a block policy, procures such cover for his customers by making use of the services provided by an insurer who assumes the risk insured. (26) Thus, the formal aspects of a company cannot suffice to determine whether its business activities fall within the scope of the exemption at issue or not. (27) It is the existence of a contractual relationship between the insurance service provider and the person whose risks are covered by the insurance policy, and the actual content of the activities in question, in the light of the conditions set out in points 40 to 42 of this Opinion, that are decisive for the purposes of the application of Article 135(1)(a) of Directive 2006/112. (28)

2. ***The application to the present case of the criteria established in the case-law***

46. In the present case, subject to verification by the referring court, it seems to me that the services bought by the applicants do not meet the criteria set out in points 40 to 42 of this Opinion. In fact, it is stated in the request for a preliminary ruling that ‘the [pension fund management] services provided to the [applicants] consist of the management of investments on behalf of the [applicants]’ and that ‘the investment managers do not contract with the [applicants] to provide any form of indemnification against the materialisation of risk’. When questioned on this point at the hearing, the applicants confirmed that the services in question entailed pension fund management.

47. It follows that the pension fund management services at issue do not entail the assumption of any risk by the investment managers for consideration. On the contrary, as the Commission observes, it seems that those services consist in the management of the financial assets held by the applicants. Such asset management does not in itself entail the assumption of a risk, but constitutes a distinct service necessary for the proper functioning of the pension fund managed by the applicants. Furthermore, it is apparent from the order for reference that the applicants in the main proceedings do not have any contractual insurance relationship with the beneficiaries of the pension fund. Although there are legal relations between the trustees and the investment

managers that may certainly be important for the performance of transactions for the occupational pension schemes, the activities carried out by the trustees are not in themselves exempt insurance transactions within the meaning of Article 135(1)(a) of Directive 2006/112.

48. Consequently, as is clear from the request for a preliminary ruling, the investment managers did not contract with the trustees to provide any form of indemnification against the materialisation of risk, so that the pension fund management services at issue do not entail any assumption of a risk by the investment managers for consideration. It follows that such an activity is not an 'insurance transaction' within the meaning of Article 135(1)(a) of Directive 2006/112, which it is for the referring court to verify on the basis of the elements of fact and of law before it.

49. In addition, the referring court states that the occupational pension scheme at issue in the main proceedings is 'of the kind considered by the Court of Justice in *Wheels Common Investment Fund Trustees and Others*'. (29) In that judgment, the Court held that the supplies of pension fund management services were not exempt from VAT as 'management of special investment funds' within the meaning of Article 13B(d)(6) of the Sixth Directive and Article 135(1)(g) of Directive 2006/112. However, in that case no question concerning the application of the exemption as an 'insurance transaction', referred to in the present case, was raised. It follows that, although that judgment permits an understanding of the occupational pension scheme at issue, it cannot serve as a reference for the present case.

50. In conclusion, the services at issue supplied by the asset managers do not come within the definition of 'insurance transactions' thus far elaborated by the Court.

C. **The relationship between Article 135(1)(a) of Directive 2006/112 and the 'Insurance Directives'**

51. The applicants in the main proceedings do not deny that the fund management transactions do not satisfy the criteria established in the case-law relating to the concept of 'insurance transactions' referred to in points 39 to 44 of this Opinion. Nonetheless, they are of the view that, since that concept must be given a common interpretation in the various EU legal instruments, it must be given the same interpretation in the context of Directive 2006/112 as in the context of the First Life Assurance Directive, followed by Directive 2002/83 and the Solvency II Directive (together 'the Insurance Directives). In their submission, the word 'insurance' has a *sui generis* meaning in EU law, distinct from the concepts of risk cover in national law, and is thus an autonomous concept. Thus, that concept should be interpreted in the light of those Insurance Directives.

52. The applicants in the main proceedings observe, in particular, that investment management transactions and pension fund asset management transactions are expressly governed by those directives and that they are described as a class of insurance. They therefore maintain that the activities at issue in the main proceedings must be analysed as 'insurance transactions' within the meaning of Article 135(1)(a) of Directive 2006/112 and be exempt on that basis. They base their reasoning on paragraph 18 of the judgment in *CPP*, (30) where the Court considered that 'there is no reason for the interpretation of the term "insurance" to differ according to whether it appears in the [The First Non-life Directive] or in the Sixth Directive'.

53. Accordingly, for the purposes of the present case, it is appropriate to examine whether the definition of the concept of 'insurance transaction', within the meaning of Article 135(1)(a) of Directive 2006/112, may be extended in the manner advocated by the applicants.

1. ***The absence of a cross-reference between Directive 2006/112 and the Insurance Directives***

54. I note at the outset that no provision in the Insurance Directives or Directive 2006/112 expressly states that the concept of 'insurance transaction' must be given a common meaning for the purposes of those two bodies of legislation. The possibility of an overlap of certain common concepts of the two norms of secondary legislation may be detected in the case-law. In particular, in its judgment in *CPP*, which gave the first indication of such an overlap, the Court held that 'there is no reason for the interpretation of the term "insurance" to differ according to whether it appears in the [The First Non-life Directive] or in the Sixth Directive', (31) so that the service at issue *might* take the form of insurance transactions listed in the Annex to the First Non-life Directive. Furthermore, in its judgment in *Skandia*, (32) the Court extended the scope of that formulation, referring not only to the First Non-life Directive but also to the Insurance Directives. (33) In the context of the present case, therefore, although there is no discussion of whether the investment management transactions and pension fund asset management transactions come within the concept of 'insurance transaction', within the meaning of Article 135(1)(a) of Directive 2006/112, as interpreted in the settled case-law, the Court is called upon to determine whether that concept should have the same meaning as that found in the Insurance Directives, so that investment management services supplied for the purpose of administering a company pension scheme would be included within that concept within the meaning of that article.

55. In that regard, in the absence of explicit information on that point, it should be observed that 'it is … consistent with the practice of the Court, when interpreting individual concepts of [Directive 2006/112], to refer to relevant rules of [EU] law outside the field of tax law, in so far as they pursue concordant *objectives*'. (34) Thus, it is necessary to examine, on the one hand, the reasons why investment management transactions fall within the scope of the Insurance Directives and, on the other, the purpose and the function of the exemption from VAT for insurance transactions within the meaning of Directive 2006/112.

2. ***The grounds for including investment management transactions within the scope of the Insurance Directives***

56. The applicants maintain that the First Life Assurance Directive, which establishes rules relating to long-term insurance, includes in its scope, pursuant to Article 1(2)(c), 'management of group pension funds'. Similarly, its scope covers, as 'insurance', 'life assurance' (Article 1(1)(a) of and point I of the Annex to that directive), 'annuities' (Article 1(1)(b) of and point I of the Annex to that directive) and tontines (Article 1(2)(a) of that directive). None of those activities comes within the 'classic' definition in the case-law referred to in points 40 to 44 of this Opinion.

57. In that regard, I would observe at the outset that the concept of 'management of group pension funds' cannot be left to the discretion of each Member State, since neither Article 1(2)(c) of the First Life Assurance Directive, nor the Annex to that directive nor any provision of either Directive 2002/83 or the Solvency II Directive refers to the law of the Member States with respect to that concept. According to the Court's settled case-law, the need for a uniform application of European Union law and the principle of equality require the terms of a provision of European Union law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope normally to be given an independent and uniform interpretation throughout the European Union; that interpretation must take into account not only its wording but also its context and the objectives pursued by the rules of which it is part. (35)

58. As regards, in the first place, the terms employed by the First Life Assurance Directive, it follows from the wording of Article 1(2)(c) of that directive that a distinction should be drawn

between, on the one hand, the types of ‘insurance’ referred to in Article 1(1) (36) and, on the other hand, the ‘operations’ referred to in Article 2(2). (37) Although the former constitute insurance activities in the normal meaning of the term, the latter are related activities closely linked to those insurance activities. They are therefore ancillary transactions, which are covered by the First Life Assurance Directive and the legislation replacing it, but do not constitute insurance activities in the strict sense.

59. I observe, moreover, that that dichotomy between ‘insurance’ and ‘operations’ is the consequence of Article 8(1)(b) of the First Life Assurance Directive, in all its versions, which provides that an undertaking subject to approval is to ‘limit its business activities to the activities referred to in this directive and operations directly arising therefrom’. The distinction between ‘insurance’ and ‘operations’ is also preserved both in Directive 2002/83 and in the Solvency II Directive, (38) which refer to the concept of ‘management of group pension funds’ as an ‘operation’ (39) referred to in the preceding point. That dichotomy is also the reason why the considerations in the judgment in *González Alonso*, (40) on which the applicants in the main proceedings rely, do not apply to the present case. That judgment concerned life assurance contracts covered by Article 1(1)(a), the First Life Assurance Directive and point III of the Annex to that directive, as a class of life assurance, (41) whereas in the present case the applicants rely on an operation referred to in paragraph 2 of that article.

60. In addition, as regards the argument which the applicants base on the wording of Article 7(2) of the First Life Assurance Directive, read in conjunction with the Annex to that directive, a comparative examination of the language versions in which that directive was adopted (42) shows that only the Danish and English language versions describe investment management operations as a ‘class of insurance’. (43) Conversely, in German, French, Italian and Dutch language versions, Article 7(2) and the title of the Annex to that directive refer only to ‘classes’ of activity, (44) giving the impression that the ‘management of group retirement funds’ in point VII of that annex is a class of activity and not a class of insurance. (45) I accept that, in so far as the second sentence of the first subparagraph of Article 7(2) refers to the possibility that applicants may seek authorisation to ‘cover only part of the risks pertaining to such class’, it seems to refer to a class of insurance. However, it cannot be inferred that Article 7(2) classifies all the activities concerned as ‘insurance activities’. On the contrary, as the Commission has emphasised, it is precisely the reference to ‘risks’ that shows that it is the coverage of risks that constitutes, in particular, an insurance activity. It follows, in my view, that the argument based on the wording of Article 7(2) of the First Life Assurance Directive, read in conjunction with the Annex to that directive, is irrelevant.

61. In any event, according to settled case-law, where there is a divergence between the various language versions of a European Union text, the provision in question must be interpreted by reference to the general scheme and the purpose of the rules of which it forms part. (46)

62. Thus, as regards, in the second place, the general scheme and the purpose of the European Union legislation on insurance, it seems to me that the concepts of ‘management of group retirement funds’ or ‘operation’ must be understood in the light of, first, the objective consisting in coordinating the legislation of the Member States relating to the business of life assurance, which is found in the first recital of the First Life Assurance Directive, and, second, the objectives consisting in establishing a classification by class of insurance in order to determine ‘the activities subject to compulsory authorisation’ and in defining ‘the conditions for the granting or withdrawal of such authorisation’ set out in the second and fifth recitals of that directive. All of those objectives must in my view be read in conjunction with Article 1(2) of that directive, which provides that the operations referred to in that provision are to come within the scope of that directive only in so far as the activities listed ‘are subject to supervision by the administrative authorities responsible for the supervision of private insurance’. (47) The clearly deliberate use of

such words cannot be treated as irrelevant. That expression implies that the First Life Assurance Directive covers only the operations authorised by those authorities. It follows that, in order to attain the abovementioned objectives, that directive, which is a coordinating directive, covers both life assurance activities, which are the main activities of life assurance companies, and ancillary operations, which are not insurance activities in the strict sense.

63. Therefore, by way of intermediate conclusion, the fact that an operation, such as the management of group retirement funds, appears in the First Life Assurance Directive and the legislation which replaces it does not mean that it constitutes a life assurance activity within the meaning of the EU rules on insurance.

3. *The purpose of the exemption from VAT for insurance transactions within the meaning of Directive 2006/112*

64. As Advocates General Poiares Maduro (48) and Mengozzi (49) have already pointed out, no clear or explicit justification for the exemption of 'insurance and reinsurance transactions' provided for in Article 135 of Directive 2006/112 is to be found in the context of that directive or even in that of the Sixth Directive which preceded it. In their view, the legislature's decision to exempt such transactions is connected with social and political reasons and with administrative considerations. (50)

65. In the first place, as regards those social and political reasons, it is sufficient to state that Article 401 of Directive 2006/112 (and before that Article 33 of the Sixth Directive) generally does not prevent Member States from 'maintaining or introducing taxes on insurance contracts'. It was by reference to that hypothesis of double taxation, namely the imposition of both VAT and tax on insurance contracts on the same transactions, that the Court considered, in its judgment in *CPP*, that if 'the final consumer [had] to pay not only the latter tax but also VAT, in the case of block policies', 'such a result would be contrary to the purpose of the exemption provided for by Article [135(1)(a)]' of that directive. (51) As the Commission explained at the hearing, relying on the *travaux préparatoires* of the Sixth Directive, while it is the case that the genesis of Article 135(1)(a) and that of Article 401 of Directive 2006/112 are not directly linked, the fact nonetheless remains that the former provision is the consequence of the latter. The exemption for insurance transactions and related services performed by insurance brokers and insurance agents is therefore intended to prevent double taxation to the detriment of the final consumer in those cases. (52)

66. In the second place, as concerns the considerations linked with administrative difficulties, as the Commission has observed in its written observations in the present case, and as Advocate General Fennelly observed in *CPP*, (53) it is difficult to establish in advance the taxable amount for each payment of an insurance premium, as would be necessary in order to apply the current system of VAT. (54) As the Commission explained at the hearing, that is the very reason for the exemption at issue.

67. I share the views of Advocates General Poiares Maduro and Mengozzi, set out above, as regards the objectives of the exemption at issue. In the main proceedings, on the other hand, it appears that the activities carried out by the trustees in question, as already stated in points 46 to 48 of this Opinion, do not seem to be either to be performed within the framework of an insurance contract or to give rise to an amount corresponding to an insurance premium. Thus, it appears that it is the applicants in the main proceedings that bear the burden of the VAT arising in respect of those activities, and that burden, moreover, can be quantified in the light of the nature of the management services.

68. In any event, at a more general level, that twofold objective of the exemption provided for in

Article 135(1)(a) of Directive 2006/112 is separate from the objectives pursued by the insurance directives that are set out in points 62 to 66 of this Opinion, which are intended to coordinate the laws of the Member States relating to life assurance business and to establish a classification by class of business in order to determine those which are subject to compulsory approval and the detailed rules applicable to such approval. In that regard, while the insurance directives cover insurance business in the strict sense and ancillary business, such as investment, Article 135(1)(a) of Directive 2006/112 covers only insurance business in the strict sense of the term, in that such an activity involves solely the assumption of risks in a contractual framework. Furthermore, investment management transactions are covered by the insurance directives only in so far as they are carried out by an approved insurer, which does not seem to be the position in the main proceedings. So far as the VAT system is concerned, the status of the taxable person — that is to say, insurer or non-insurer — who carried out the transaction at issue seems to have no impact on the benefit of the exemption.

69. In addition, arguments of a practical order favour an interpretation that distinguishes investment management transactions, within the meaning of the insurance directives, from insurance transactions, within the meaning of Article 135(1)(a) of Directive 2006/112: the former come within the scope of the insurance directives solely in so far as a Member State opts to regulate such transactions in the same way as insurance transactions. That means that, if the applicants' arguments are taken to their logical conclusion, the meaning of the term 'insurance' for VAT purposes might differ from one Member State to another, contrary to the principle of the uniform application of Directive 2006/112.

70. Consequently, having regard to the different objectives pursued by the insurance directives and by Directive 2006/112, the scope of the concepts set out in those directives is different. There is nothing to justify extending the exemption to ancillary services which are regulated by reference to and in conjunction with insurance services. I consider that such a conclusion is not contradicted by the Court's case-law.

4. *The relevance of the case-law resulting from the judgments in* **CPP** *and in* **Skandia**

71. It is true that, in the judgments in *CPP* (55) and *Skandia*, (56) the Court stated that there was no reason for the interpretation of the term 'insurance' to differ according to whether it appears in the directives on insurance or in the Sixth Directive. While a quick reading of that passage may suggest that the term 'insurance' must be given the same meaning irrespective of whether it occurs in the insurance directives or in the directives on VAT, a more thorough examination does not permit such a reading.

72. In that respect, first, as regards the consideration set out in paragraph 18 of the judgment in *CPP*, (57) it should be placed in context. In that case the Court was called upon to determine whether different services included in a credit card protection plan supplied by Card Protection Plan Ltd (CPP) came within the exemption provided for in Article 13B(a) of the Sixth Directive and could therefore be granted the exemption in whole or in part on that basis. Paragraph 18 of that judgment related specifically to the question whether 'insurance' may, in the event of a loss, provide benefits in kind rather than compensation in cash. Having regard to that context, while referring to the First Non-life Directive, the Court made clear that it was not essential that the service which the insurer had undertaken to provide in the event of loss consisted in the payment of a sum of money, as that service might also take the form of assistance in cash or in kind of the types listed in the Annex to that directive. In doing so, the Court did not in my view seek to qualify the definition, set out in paragraph 17 of that judgment, according to which 'the essentials of an insurance transaction are, as generally understood, that the insurer undertakes, in return for prior payment of a premium, to provide the insured, in the event of materialisation of the risk covered,

with the service agreed when the contract was concluded'. Consequently, when paragraph 18 of the judgment in *CPP* (58) is read in full and in conjunction with the preceding paragraph, it appears that it is not intended to call that definition into question or to suggest that the terms common to Directive 2006/112 and the insurance directives have exactly the same scope in all circumstances.

73. In paragraph 18 of the judgment in *CPP*, (59) the Court acknowledged that it could, in certain cases, have recourse to intertextual interpretation, with the consequence that concepts used in different directives might be given the same meaning. Nonetheless, first, that method of interpretation is applicable only where the objectives pursued by the directives in question are common to those directives, which is clearly not the case here, as may be seen from points 66 to 70 of this Opinion. Second, it does not follow from paragraph 18 of that judgment that the Court considers that all activities or operations referred to in the First Life Assurance Directive and in the legislation that replaces it come within the exemption provided for in Article 135(1)(a) of Directive 2006/112. On the contrary, paragraph 18 of the judgment in *CPP* (60) referred specifically to the First Non-life Directive. It must be stated that that directive did not cover ancillary transactions such as investment management transactions, and the question of the inclusion of activities other than insurance (in the normal meaning of the term) did not thus arise. The scope of paragraph 18 cannot therefore be extended to concepts that appear in other directives.

74. Second, as regards the judgment in *Skandia*, (61) the Court was requested to rule on whether a commitment assumed by an insurance company to carry out, in return for remuneration at market rates, the business activities of another insurance company, its wholly owned subsidiary, which continued to conclude insurance contracts in its own name, constituted an insurance transaction within the meaning of Article 13B(a) of the Sixth Directive. The Court stated, in particular, in paragraph 31 of that judgment, that not every activity carried out by an insurance company is necessarily an insurance transaction. It follows, to my mind, that, even where an activity is covered by the insurance directives, it does not automatically come within the concept of 'insurance transaction' within the meaning of those directives.

75. Third, no judgment of the Court has had the effect of calling into question the consistent definition of 'insurance transaction', as established in the judgment in *CPP* (62) and set out in point 39 of this Opinion, whether by reference to the insurance directives or to other texts. On the contrary, in paragraphs 40 and 41 of the judgment in *Skandia*, (63) the Court applied the criteria laid down in the judgment in *CPP* relating to the definition of insurance transaction, making clear that an insurance transaction necessarily implies the existence of a contractual relationship between the provider of the insurance service and the person whose risks are covered by the insurance, namely the insured. Thus, where an insurer performed all the functions of another insurer but without assuming liability for compensation in respect of the insurance business carried out, the transactions in question did not constitute insurance transactions for the purposes of the exemption from VAT.

D. **The principle of equality and the principle of neutrality**

76. Last, it must be made clear that the separate interpretation of the concepts at issue does not run counter to the principle of equal treatment or the principle of fiscal neutrality, which are of particular importance in the Court's case-law.

77. According to settled case-law, the principle of fiscal neutrality means that supplies of goods or services which are similar, and which are therefore in competition with each other, may not be treated differently for VAT purposes. (64) It should be borne in mind, from that aspect, that the principle of fiscal neutrality is a particular expression of the principle of equality at the level of secondary EU law and in the specific area of taxation. (65)

78. It is in the latter sense that the concept of ‘neutrality’ is relevant in the present case, since the applicants in the main proceedings claim that the pension fund management services supplied both by insurers and by ‘non-insurers’ must be treated in the same way, since the services are the same.

79. However, that line of argument is based on the false premiss that any service supplied by an insurer is automatically covered by the exemption provided for in Article 135(1)(a) of Directive 2006/112. In fact, transactions other than insurance transactions and reinsurance transactions, even though they are carried out by insurance companies, are not covered by that exemption.

80. The dispute in the main proceedings seems to be based largely on the fact that for more than 40 years the United Kingdom exempted supplies of fund management services when they were made by insurers. According to the file submitted to the Court, the tax authorities changed their practice on 1 April 2019 and now such services provided by insurers can no longer be exempted. The fact that the United Kingdom granted the exemption to those services according to the status of the taxable person, although the services in question did not meet the criteria relating to the interpretation of Article 135(1)(a) of Directive 2006/112 established in the case-law, which are set out in points 39 to 45 of this Opinion, cannot constitute an argument for changing those criteria of EU law. It follows that what is alleged to be unequal treatment cannot bring non-insurance activities within the concept of an ‘insurance transaction’ that is exempted under that provision.

81. In addition, having regard to the case-law cited in point 77 of this Opinion, the principle of fiscal neutrality means that supplies of goods or services which are similar, and which are therefore in competition with each other, may not be treated differently for VAT purposes. Under Article 135(1)(a) of Directive 2006/112, the similar services which come within the concept of ‘insurance transactions’ within the meaning of that provision, as defined in points 39 to 45 of this Opinion, are treated equally. Contrary to the applicants’ assertions, that principle of fiscal neutrality would be breached if services that do not meet the criteria of that concept could benefit from the exemption provided for in that provision.

82. In any event, it should be borne in mind that, according to settled case-law, the principle of fiscal neutrality is not a rule of primary law that can condition the validity of an exemption set out in Article 135 of Directive 2006/112, nor can it extend the scope of such an exemption in the absence of clear wording to that effect. (66) Thus, neither the principle of equality nor the principle of neutrality can extend the scope of the exemption provided for in Article 135(1)(a) of Directive 2006/112.

V. **Conclusion**

83. Having regard to all of the foregoing considerations, I propose that the Court should answer the question for a preliminary ruling referred by the Court of Appeal (England and Wales) (Civil Division), United Kingdom, as follows:

Article 13B(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, and Article 135(1)(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, must be interpreted as meaning that investment management services, such as those at issue in the main proceedings, supplied by a third party, do not come within the exemption provided for in those provisions.

1 Original language: French.

2 Council Directive 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 (OJ 1977 L 145, p. 1).

3 Council Directive of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

4 OJ 1973 L 228, p. 3.

5 OJ 1984 L 339, p. 21.

6 OJ 1979 L 63, p. 1.

7 OJ 2002 L 77, p. 11.

8 OJ 2002 L 345, p. 1.

9 OJ 2009 L 335, p. 1.

10 According to the applicants, that practice continued until 1 April 2019.

11 The referring court explains that, before 1 January 2005, the different treatment of those supplies of services, according to whether they were supplied by an insurer or a non-insurer, was the consequence of the national legislation. The legislative amendment that took effect on that date removed the limitation of the exemption of insurance transactions according to the status of the supplier, as that difference in treatment was no longer in accordance with the law. After that amendment, however, the national tax authorities continued in practice to make that distinction.

12 The Court held, in paragraph 44 of its judgment of 20 November 2003, *Taksatorringen* (C?8/01, EU:C:2003:621), that the expression ‘related services performed by insurance brokers and insurance agents’ in Article 13B(a) of the Sixth Directive refers only to services provided by professionals who have a relationship with both the insurer and the insured party.

13 See, in particular, judgment of 9 December 2015, *Fiscale Eenheid X* (C?595/13, EU:C:2015:801, paragraph 30 and the case-law cited).

14 See, in particular, judgments of 28 October 2010, *Axa UK* (C?175/09, EU:C:2010:646, paragraph 25); of 17 January 2013, *Woningstichting Maasdriel* (C?543/11, EU:C:2013:20, paragraph 25); of 12 June 2014, *Granton Advertising* (C?461/12, EU:C:2014:1745, paragraph 25); of 17 March 2016, *Aspiro* (C?40/15, EU:C:2016:172, paragraph 20); of 16 November 2017, *Kozuba Premium Selection* (C?308/16, EU:C:2017:869, paragraphs 39 and 45); of 25 July 2018, *DPAS* (C?5/17, EU:C:2018:592, paragraph 29); and of 19 December 2018, *Mailat* (C?17/18, EU:C:2018:1038, paragraph 37).

15 Judgment of 10 April 2019, *PSM ‘K’* (C?214/18, EU:C:2019:301, paragraph 43).

16 Judgments of 4 May 2006, *Abbey National* (C?169/04, EU:C:2006:289, paragraph 68), and of 7 March 2013, *GfBk* (C?275/11, EU:C:2013:141, paragraph 31).

17 In 2007 the Commission submitted to the Council a proposal for a directive amending Directive 2006/112 which clarified the treatment of insurance services and financial services (COM(2007) 747 final). It proposed, in particular, that a new Article 135a, containing definitions, be

inserted. ‘Insurance and reinsurance’ was defined as ‘a commitment whereby a person is obliged, in return for a payment, to provide another person, in the event of materialisation of a risk, with an indemnity or a benefit as determined by the commitment’. The proposal was not adopted by the Council and was withdrawn in 2016.

18 Judgment of 13 March 2014, ATP *PensionService* (C?464/12, EU:C:2014:139, paragraph 61 and the case-law cited).

19 Judgments of 25 February 1999, *CPP* (C?49/96, EU:C:1999:93, paragraph 17); of 8 March 2001, *Skandia* (C?240/99, EU:C:2001:140, paragraph 37); of 20 November 2003, *Taksatorringen* (C?8/01, EU:C:2003:621, paragraph 39); of 7 December 2006, *Commission* v *Greece* (C?13/06, EU:C:2006:765, paragraph 10); of 22 October 2009, *Swiss Re Germany Holding* (C?242/08, EU:C:2009:647, paragraph 34); of 17 January 2013, *BG? Leasing* (C?224/11, EU:C:2013:15, paragraphs 55 and 58); of 16 July 2015, *Mapfre asistencia and Mapfre warranty* (C?584/13, EU:C:2015:488, paragraph 28); and of 17 March 2016, *Aspiro* (C?40/15, EU:C:2016:172, paragraph 22).

20 Judgments of 25 February 1999, *CPP* (C?349/96, EU:C:1999:93, paragraph 17); of 20 November 2003, *Taksatorringen* (C?8/01, EU:C:2003:621, paragraph 39); and of 17 March 2016, *Aspiro* (C?40/15, EU:C:2016:172, paragraph 22).

21 Opinion of Advocate General Kokott in *Aspiro* (C?40/15, EU:C:2015:850, point 26).

22 See, in particular, judgment of 16 July 2015, *Mapfre asistencia and Mapfre warranty* (C?584/13, EU:C:2015:488, paragraph 42). In particular, in its judgment of 22 October 2009, *Swiss Re Germany Holding* (C?242/08, EU:C:2009:647), the Court considered that the transfer for consideration of a portfolio of life reinsurance does not constitute an insurance transaction within the meaning of Article 135(1)(a) of Directive 2006/112 and therefore does not come within the exemption provided for in that provision.

23 Opinion of Advocate General Kokott in *Aspiro* (C?40/15, EU:C:2015:850, point 26). See also judgment of 17 March 2016, *Aspiro* (C?40/15, EU:C:2016:172, paragraph 29).

24 See, to that effect, judgment of 20 November 2003, *Taksatorringen*, C?8/01, EU:C:2003:621, paragraph 43.

25 Judgments of 8 March 2001, *Skandia* (C?240/99, EU:C:2001:140), and of 17 March 2016, *Aspiro*, C?40/15 (EU:C:2016:172, paragraph 23).

26 Judgments of 25 February 1999, *CPP* (C?349/96, EU:C:1999:93, paragraph 22); of 20 November 2003, *Taksatorringen* (C?8/01, EU:C:2003:621, paragraphs 40 and 41); of 17 January 2013, *BG? Leasing* (C?224/11, EU:C:2013:15, paragraph 59); and of 16 July 2015, *Mapfre asistencia and Mapfre warranty* (C?584/13, EU:C:2015:488, paragraph 30).

27 In the judgment of 17 March 2016, *Aspiro* (C?40/15, EU:C:2016:172), the Court was called upon to examine whether the activity consisting in settling claims in the name and on behalf of an insurance company might be considered to be performed by ‘insurance brokers and insurance agents’, within the meaning of Article 135(1)(a) of Directive 2006/112.

28 See, to that effect, judgment of 17 March 2016, *Aspiro* (C?40/15, EU:C:2016:172, paragraph 35 et seq.).

29 Judgment of 7 March 2013, C?424/11, EU:C:2013:144.

30 Judgment of 25 February 1999, C?349/96, EU:C:1999:93

31 Judgment of 25 February 1999 (C?349/96, EU:C:1999:93, paragraph 18).

32 Judgment of 8 March 2001 (C?240/99, EU:C:2001:140).

33 Judgment of 8 March 2001 (C?240/99, EU:C:2001:140, paragraph 30).

34 Opinion of Advocate General Kokott in *TNT Post UK* (C?357/07, EU:C:2009:7, point 50). Emphasis added. At the time, the reference was to the Sixth Directive.

35 Judgment of 4 September 2014, *Vnuk* (C?162/13, EU:C:2014:2146, paragraph 42).

36 Namely life assurance, annuities, supplementary insurance carried on by life assurance undertakings and the type of insurance existing in Ireland and the United Kingdom known as permanent health insurance. I note that all these types are classified by the directive itself as ‘insurance’.

37 The directive mentions tontines, capital redemption operations based on actuarial calculation, management of group pension funds and operations carried out by insurance companies such as those referred to in Chapter 1, Title 4 of Book IV of the French ‘Code des assurances’.

38 See Article 2(3)(b) and (c) of the Solvency II Directive.

39 See Article 2(2) of Directive 2002/83 and Article 2(3)(b)(iii) of the Solvency II Directive.

40 Judgment of 1 March 2012 (C?166/11, EU:C:2012:119).

41 See, in particular, paragraphs 29 and 30 of that judgment.

42 Namely the following languages: Danish, German, English, French, Italian and Dutch.

43 Article 7(2) of the First Life Assurance Directive refers to ‘forsikringsklasse’ in Danish and to ‘class of insurance’ in English. The Annex to that directive is entitled ‘Inddeling efter klasse’ and ‘Classes of Insurance’, respectively.

44 Article 7(2) of the First Life Assurance Directive and the Annex to that directive refer to ‘Einteilung nach Zweigen’ in German, ‘Classification par branche’ in French, ‘classificazione per ramo’ in Italian and ‘Indeling per branche’ in Dutch.

45 The list of ‘classes of insurance’ is preserved in the directives that succeeded the First Life Assurance Directive (see paragraph VII of Annex I to Directive 2002/83 and paragraph VII of Annex II to the Solvency II Directive).

46 See, to that effect, judgments of 23 November 2006, *ZVK*, C?300/05 (EU:C:2006:735, paragraph 16 and the case-law cited); of 24 October 2013, *Haasová* (C?22/12, EU:C:2013:692, paragraph 48); and of 24 October 2013, *Drozdovs* (C?277/12, EU:C:2013:685, paragraph 39).

47 In the case of the legislation that replaces the First Life Assurance Directive, that applies *'in so far as they are subject to supervision by the administrative authorities responsible for the supervision of private insurance'* (Article 2(2) of Directive 2002/83), and '*where they are on a contractual basis, in so far as they are subject to supervision by the authorities responsible for the supervision of private insurance*' (Article 2(3)(b) of the Solvency II Directive).

48 Opinion of Advocate General Poiares Maduro in *Arthur Andersen* (C?472/03, EU:C:2005:8, point 13).

49 Opinion of Advocate General Mengozzi in *Swiss Re Germany Holding* (C?242/08, EU:C:2009:300, point 25).

50 Opinions of Advocate General Poiares Maduro, delivered on 12 June 2005, in the case that gave rise to the judgment of 3 March 2005, *Arthur Andersen* (C?472/03, EU:C:2005:135, point 13), and of Advocate General Mengozzi in *Swiss Re Germany Holding* (C?242/08, EU:C:2009:300, point 25).

51 Judgment of 25 February 1999 (C?349/96, EU:C:1999:93, paragraph 23).

52 Opinion of Advocate General Kokott in *Aspiro* (C?40/15, EU:C:2015:850, point 39).

53 Opinion of Advocate General Fennelly in *CPP* (C?349/96, EU:C:1998:281, point 26).

54 As the Commission explains in paragraph 30 of its observations, the premium paid by the insured person is made up of two components: (i) the remuneration of the service provided by the insurer and (ii) a contribution to a pool of capital which is then invested and used to cover risks as and when they occur; that contribution, however, is not made in consideration for any service and cannot therefore be subject to VAT. The Commission acknowledges that the total amount of premiums paid can be analysed and broken down into the two components mentioned, but that can in general be done only a posteriori. Thus, the taxable amount cannot be established in advance for each payment of an insurance premium, as would be necessary in order to apply the current system of VAT.

55 Judgment of 25 February 1999, *CPP* (C?349/96, EU:C:1999:93, paragraph 18).

56 Judgment of 8 March 2001, *Skandia* (C?240/99, EU:C:2001:140, paragraph 30).

57 Judgment of 25 February 1999 (C?349/96, EU:C:1999:93).

58 Judgment of 25 February 1999 (C?349/96, EU:C:1999:93).

59 Judgment of 25 February 1999 (C?349/96, EU:C:1999:93).

60 Judgment of 25 February 1999 (C?349/96, EU:C:1999:93).

61 Judgment of 8 March 2001 (C?240/99, EU:C:2001:140).

62 Judgment of 25 February 1999 (C?349/96, EU:C:1999:93).

63 Judgment of 8 March 2001 (C?240/99, EU:C:2001:140).

64 See, in particular, judgment of 15 November 2012, *Zimmermann* (C?174/11, EU:C:2012:716, paragraph 48 and the case-law cited).

65 See, to that effect, judgment of 29 October 2009, *NCC Construction Danmark* (C?174/08, EU:C:2009:669, paragraph 44).

66 See, to that effect, judgment of 19 July 2012, *Deutsche Bank* (C?44/11, EU:C:2012:484, paragraph 45).