JUDGMENT OF THE COURT (Eighth Chamber)

2 July 2015 (*)

(Reference for a preliminary ruling — Sixth VAT Directive — Exemptions for certain activities in the public interest — Article 13(A)(1)(b) and (c) — Hospital and medical care — Closely related activities — Activity of transporting human organs and samples of human origin for the purposes of medical analysis or medical or therapeutic care — Self-employed activity — Hospitals, centres for medical treatment and diagnosis — Establishment of a similar nature)

In Case C?334/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour d'appel de Mons (Belgium), made by decision of 27 June 2014, received at the Court on 9 July 2014, in the proceedings

The Belgian State

v

Nathalie De Fruytier,

THE COURT (Eighth Chamber),

composed of A. Ó Caoimh, President of the Chamber, C. Toader and C.G. Fernlund (Rapporteur), Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Ms De Fruytier, by O. D'Aout, avocat,

– the Belgian Government, by M. Jacobs and J.-C. Halleux, acting as Agents,

– the Greek Government, by K. Georgiadis and I. Kotsoni, acting as Agents,

– the European Commission, by L. Lozano Palacios, M. Owsiany-Hornung and C. Soulay, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 13(A)(1)(b) and (c) of the 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 (OJ 1977 L 145, p. 1) (‘the Sixth Directive’).

2 The request has been made in the course of proceedings between the Belgian State and Ms De Fruytier concerning liability to value added tax (‘VAT’) in respect of the latter’s activity of transporting, in a self-employed capacity, human organs and samples of human origin for various hospitals and laboratories.

Legal context

EU law

3 Article 13(A)(1)(b) to (d) of the Sixth Directive provides as follows:

‘... Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any possible evasion, avoidance or abuse:

…

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

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

(d) supplies of human organs, blood and milk’.

4 Article 13(A)(2)(a) of the Sixth Directive provides that Member States may make the granting to bodies other than those governed by public law of the exemption provided for in paragraph (1)(b) of that article subject, in each individual case, to one or more of the conditions it lays down.

5 Article 13(A)(2)(b) provides as follows:

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

– it is not essential to the transactions exempted,

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

Belgian law

6 Article 44 of the Law of 3 July 1969 establishing the Value Added Tax Code (*Moniteur Belge* of 17 July 1969, p. 7046), as applicable to the dispute in the main proceedings (‘the VAT Code’), transposes Article 13(A) of the Sixth Directive on the VAT exemption for certain activities in the public interest. It provides as follows:

‘1. Services supplied in the course of their normal activity by the following persons shall be exempt from tax:

…

(2) doctors, dentists, physiotherapists, midwives, nurses, carers, home nurses and masseurs, whose medical care services are listed in the nomenclature of health services covered by compulsory health insurance and insurance against invalidity;

...

2. The following shall also be exempt from tax:

(1) the supply of services, and the supply of goods closely related thereto, provided in the course of their normal activity by hospitals and psychiatric institutions, clinics and medical centres; the transport of sick and injured persons in specially-equipped vehicles;

…

(lb) the supply of human organs, blood and milk;

...'

The dispute in the main proceedings and the questions referred for a preliminary ruling

7 Ms De Fruytier is engaged, in a self-employed capacity, in transporting human organs and samples of human origin for various hospitals and laboratories, under the authority and responsibility of a medical doctor.

8 The Belgian tax authority decided that Ms De Fruytier's activity was subject to VAT.

9 Ms De Fruytier, being of the view that her activity should be exempt from VAT, challenged that decision before the courts. The Tribunal de première instance de Namur (Court of First Instance, Namur), by judgment of 1 June 2006, and subsequently the Cour d'appel de Liège (Court of Appeal, Liège), by judgment of 26 October 2007, ruled in favour of Ms De Fruytier and ordered the relevant abatements.

10 In consequence of the appeal in cassation brought by the Belgian State against the judgment of the Cour d'appel de Liège, the Cour de cassation (Court of cassation), by an order for reference of 18 June 2009, referred a question concerning the interpretation of Article 13(A)(1)(d) of the Sixth Directive to the Court of Justice for a preliminary ruling.

11 In its judgment in *De Fruytier* (C?237/09, EU:C:2010:316), the Court of Justice ruled that that provision must be interpreted as not applying to the activity of transporting, in a self-employed capacity, human organs and samples of human origin for hospitals and laboratories.

12 In its judgment of 16 September 2010, the Cour de cassation set aside the judgment of the Cour d'appel de Liège and, consequently, referred the case to another court of appeal, the Cour d'appel de Mons (Court of Appeal, Mons). By a judgment of 15 February 2013, that latter court declared the appeal admissible and, before ruling on the substance of the appeal, ordered the proceedings to be reopened.

13 In those proceedings, Ms De Fruytier claimed that, although her activities do not qualify for an exemption on the basis of Article 44(2)(1b) of the VAT Code, which transposes Article 13(A)(1)(d) of the Sixth Directive into Belgian law, they should be granted an exemption on the basis of Article 44(2)(1) of the VAT Code, which transposes Article 13(A)(1)(b) of that directive into

Belgian law. In particular, she based that reasoning on the judgment in *Commission* v *France* (C?76/99, EU:C:2001:12).

14 In those circumstances, the Cour d'appel de Mons decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Do points (b) and (c) of Article 13(A)(1) of the Sixth ... [D]irective mean that the transportation, for clinics and laboratories, of samples and organs for the purposes of medical analysis or medical or therapeutic care, by a third party who is self-employed and whose services are covered by the reimbursement made by the social security system, are not exempt from VAT as services closely related to medical services, namely, as services intended to diagnose, treat and, in so far as is possible, cure diseases or health disorders?

(2) Can the activity of transporting, for clinics and laboratories, samples and organs for the purposes of medical analysis or medical or therapeutic care, carried out by a third party who is self-employed and whose services are covered by the reimbursement made by the social security system for medical analysis, qualify for the exemption from VAT provided for in Article 13(A)(1)(b) and (c) of the Sixth ... [D]irective?

(3) Must the concept of "other duly recognised establishments of a similar nature", referred to in Article 13(A)(1)(b) of the Sixth Directive, be interpreted as covering private companies whose services consist in the transportation of [samples of human origin] for the purposes of analysis essential to the therapeutic objectives of hospitals and centres for medical treatment?'

Consideration of the questions referred

15 By its three questions, which should be examined together, the referring court asks, in essence, whether Article 13(A)(1)(b) or (c) of the Sixth Directive must be interpreted as applying to the transportation, for clinics and laboratories, of human organs and samples of human origin for the purposes of medical analysis or medical or therapeutic care, by a third party who is self-employed and whose services are covered by the reimbursement made by the social security system, and, in particular, whether such an activity may qualify for a VAT exemption as an activity closely related to services of a medical nature as provided for in Article 13(A)(1)(b).

16 It should be noted at the outset that, under the Sixth Directive, the scope of VAT is very wide in that Article 2 thereof, which concerns taxable transactions, refers not only to the importation of goods but also to the supply of goods or services effected for consideration within the territory of the Member State by a taxable person acting as such (see judgment in *Verigen Transplantation Service International*, C?156/09, EU:C:2010:695, paragraph 21 and the case-law cited).

17 Article 13 of the Sixth Directive nevertheless exempts certain activities from VAT. It is settled case-law that the exemptions referred to in that article constitute independent concepts of EU law whose purpose is to avoid divergences in the application of the VAT system as between one Member State and another (see judgment in *Verigen Transplantation Service International*, C?156/09, EU:C:2010:695, paragraph 22 and the case-law cited).

18 The settled case-law further shows that the terms used to specify the exemptions in Article 13 of the Sixth Directive are to be interpreted strictly, since they constitute exceptions to the general principle that VAT is to be levied on all goods and services supplied for consideration by a taxable person. Nevertheless, the interpretation of those terms must be consistent with the objectives pursued by those exemptions and comply with the requirements of the principle of fiscal neutrality inherent in the common system of VAT. Thus, the requirement of strict interpretation does not mean that the terms used to specify the exemptions referred to in Article 13 must be

construed in such a way as to deprive the exemptions of their intended effect (see judgment in *Verigen Transplantation Service International*, C?156/09, EU:C:2010:695, paragraph 23 and the case-law cited).

19 Medical services may fall within the scope of the exemptions provided for in Article 13(A)(1)(b) and (c) of the Sixth Directive. It is apparent from the case-law that Article 13(A)(1)(b) of the Sixth Directive covers all services supplied in a hospital environment while Article 13(A)(1)(c) thereof covers medical services provided outside such a framework, both at the private address of the person providing the care and at the patient's home or at any other place (see, to that effect, judgments in *Kügler*, C?141/00, EU:C:2002:473, paragraph 36, and *CopyGene*, C?262/08, EU:C:2010:328, point 27).

20 So far as concerns, specifically, the concept of 'medical care' in Article 13(A)(1)(b) of the Sixth Directive and that of 'the provision of medical care' in Article 13(A)(1)(c) of that directive, the Court has already held on many occasions that both are intended to cover services that have as their aim the diagnosis, treatment and, in so far as possible, cure of diseases or health disorders (see judgment in *Klinikum Dortmund*, C?366/12, EU:C:2014:143, paragraph 29 and the case-law cited).

21 It follows that medical services effected for the purpose of protecting, of maintaining or of restoring human health qualify for the exemption under Article 13(A)(1)(b) and (c) of the Sixth Directive. Therefore, although that provision has separate fields of application, it is intended to regulate all exemptions of medical services in the strict sense (see judgment in *Klinikum Dortmund* , C?366/12, EU:C:2014:143, paragraphs 30 and 31 and the case-law cited).

22 Whilst 'medical care' and 'the provision of medical care' must have a therapeutic aim, it does not necessarily follow that the therapeutic purpose of a service must be confined within a particularly narrow compass (see judgment in *CopyGene*, C?262/08, EU:C:2010:328, paragraph 29 and the case-law cited).

23 In the present case, it must be held that an activity such as that at issue in the main proceedings, namely transporting human organs and samples of human origin for various hospitals and laboratories, clearly does not constitute 'medical care' or 'the provision of medical care' within the meaning of Article 13(A)(1)(b) and (c) of the Sixth Directive, since it is not covered by medical services which have as their direct purpose the actual diagnosis, treatment or cure of diseases or health disorders, or the actual protection, maintenance or restoration of health (see, to that effect, the judgment in *Future Health Technologies*, C?86/09, EU:C:2010:334, paragraph 43).

24 Furthermore, the Court has already held that, unlike the wording of Article 13(A)(1)(b) of the Sixth Directive, the wording of Article 13(A)(1)(c) thereof does not contain any reference to activities closely linked to the provision of medical care, despite the fact that Article 13(A)(1)(c) immediately follows Article 13A(1)(b). Consequently, the Court has concluded that the concept of activities closely related to the provision of medical care is not relevant to the interpretation of Article 13(A)(1)(c) of the Sixth Directive (see, to that effect, judgment in *Klinikum Dortmund*, C?366/12, EU:C:2014:143, paragraph 32).

25 Therefore, as all the parties which lodged observations in the present case have submitted, it must be found that an activity such as that at issue in the main proceedings does not qualify for the VAT exemption under Article 13(A)(1)(c) of the Sixth Directive.

26 It follows from the foregoing that, to answer the questions referred, the Court must also examine whether an activity such as that at issue in the main proceedings may qualify for a VAT exemption on the basis of Article 13(A)(1)(b) of the Sixth Directive in so far as that activity may be

equated to services closely related to hospital or medical care. To that end, that activity should be examined from the perspective of the various criteria provided for in Article 13(A)(1)(b), having regard also to the additional criteria set out in Article 13(A)(2)(b) of that directive.

27 It must accordingly be pointed out that, as is apparent from the wording of Article 13(A)(1)(b) of the Sixth Directive, an activity such as that at issue in the main proceedings may only qualify for the VAT exemption on the basis of that provision, as services closely related to hospital or medical care, if, first, it is characterised as an activity ‘closely related’ to ‘hospital or medical care’ and, secondly, it is carried out either by a body governed by public law or, under social conditions comparable to those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature.

28 The Court has already held that the concept of activities ‘closely related’ to ‘hospital or medical care’ within the meaning of Article 13(A)(1)(b) of the Sixth Directive is to be interpreted as not covering activities such as the collection and transport of blood where the medical care provided in a hospital environment to which those activities are merely potentially related has not been performed, commenced or yet envisaged (see judgment in *Future Health Technologies*, C?86/09, EU:C:2010:334, paragraph 49). Therefore, transportation of samples of human origin cannot be characterised as an activity ‘closely related’ to ‘hospital or medical care’.

29 The Court has held, as regards medical services, that, in view of the objective pursued by the exemption provided for in Article 13(A)(1)(b) of the Sixth Directive, it follows that only the supply of services which are logically part of the provision of hospital and medical-care services, and which constitute an indispensable stage in the process of the supply of those services to achieve their therapeutic objectives, is capable of amounting to ‘closely related activities’ within the meaning of that provision, given that only such services are of a nature to influence the cost of health care which is made accessible to individuals by the exemption in question (see judgment in *Ygeia*, C?394/04 and C?395/04, EU:C:2005:734, paragraph 25).

30 It is for the referring court to determine, having regard to all the particulars of the disputes before it, whether or not the activity at issue in the main proceedings is indispensable.

31 Thus, in the event that the referring court concludes that the activity in question does constitute an indispensable stage in the process of the supply of hospital or medical-care services to achieve their therapeutic objectives, it is necessary to ascertain whether that activity is exercised either by a body governed by public law or, under social conditions comparable to those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature.

32 It is common ground that a transporter, such as the person at issue in the main proceedings, cannot be characterised as a ‘body governed by public law’ or fall within the definition of a ‘hospital’, a ‘centre for medical treatment’ or a centre for ‘diagnosis’, operating under social conditions comparable to those applicable to bodies governed by public law within the meaning of Article 13(A)(1)(b) of the Sixth Directive.

33 It must therefore be ascertained whether such a transporter may fall within the definition of ‘other duly recognised establishments of a similar nature’ exercising the activity in question under the same conditions, within the meaning of that provision.

34 In this respect, it is not disputed, in the case in the main proceedings, that Ms De Fruytier is engaged, in a self-employed capacity, in transporting human organs and samples of human origin for various hospitals and laboratories, but that her company cannot be treated as an establishment ‘of a similar nature’ as those which have ordered the transport services she provides.

35 It is apparent from the case-law relating to the characterisation of an operator as ‘of a similar nature’ to a hospital or a centre for medical treatment or diagnosis within the meaning of Article 13(A)(1)(b) of the Sixth Directive that, in particular, the concept of ‘establishment’ suggests the existence of an individualised entity performing a particular function (see judgment in *Gregg*, C?216/97, EU:C:1999:390, paragraph 18). The Court has also held that a laboratory governed by private law and undertaking diagnostic medical tests must be regarded as being an establishment ‘of a similar nature’ to ‘hospitals’ and ‘centres for medical treatment or diagnosis’ within the meaning of that provision since diagnostic medical tests, in the light of their therapeutic purpose, come within the concept of ‘medical care’ as referred to in that provision (see judgments in *L.u.P.*, C?106/05, EU:C:2006:380, paragraphs 18 and 35, and *CopyGene*, C?262/08, EU:C:2010:328, paragraph 60).

36 In the present case it must be held that unlike, in particular, a laboratory governed by private law and undertaking diagnostic medical tests with a therapeutic purpose, a self-employed transporter such as Ms De Fruytier is not an individualised entity performing the same type of particular function as hospitals or centres for medical treatment or diagnosis. Therefore, such a transporter cannot be characterised as ‘an establishment of a similar nature’ to those establishments or centres, within the meaning of Article 13(A)(1)(b) of the Sixth Directive, and, consequently, does not qualify for a VAT exemption on the basis of that provision.

37 Contrary to what Ms De Fruytier contends, the principle of fiscal neutrality cannot alter that conclusion. As the Court has already held, that principle cannot extend the scope of an exemption in the absence of clear wording to that effect, given that the principle in question is not a rule of primary law which can condition the validity of an exemption, but a principle of interpretation to be applied concurrently with the principle of strict interpretation of exemptions (see the judgment in *Klinikum Dortmund*, C?366/12, EU:C:2014:143, paragraph 40 and the case-law cited).

38 In short, since the activity at issue in the main proceedings does not meet the criteria provided for in Article 13(A)(1)(b) of the Sixth Directive, there is no need to examine the criteria in Article 13(A)(2)(b) of that directive.

39 Having regard to the foregoing considerations, the answer to the questions referred is that neither Article 13(A)(1)(b) of the Sixth Directive nor Article 13(A)(1)(c) thereof can be interpreted as applying to the transportation, for clinics and laboratories, of human organs and samples of human origin for the purposes of medical analysis or medical or therapeutic care, by a third party who is self-employed and whose services are covered by the reimbursement made by the social security system. In particular, such an activity does not qualify for a VAT exemption as an activity closely related to services of a medical nature as provided for in Article 13(A)(1)(b), since that self-employed third party cannot be characterised as a ‘body governed by public law’ or fall within the definition of a ‘hospital’, a ‘centre for medical treatment’ or a centre for ‘diagnosis’ or any ‘other duly recognised establishment of a similar nature’, operating under social conditions comparable to those applicable to bodies governed by public law.

Costs

40 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in

submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby rules:

Neither Article 13(A)(1)(b) of the 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, nor Article 13(A)(1)(c) thereof, can be interpreted as applying to the transportation, for clinics and laboratories, of human organs and samples of human origin for the purposes of medical analysis or medical or therapeutic care, by a third party who is self-employed and whose services are covered by the reimbursement made by the social security system. In particular, such an activity does not qualify for an exemption from value added tax as an activity closely related to services of a medical nature as provided for in Article 13(A)(1)(b), since that self-employed third party cannot be characterised as a 'body governed by public law' or fall within the definition of a 'hospital', a 'centre for medical treatment' or a centre for 'diagnosis' or any 'other duly recognised establishment of a similar nature', operating under social conditions comparable to those applicable to bodies governed by public law.

[Signatures]

* Language of the case: French.