

Provisional text

JUDGMENT OF THE COURT (Eighth Chamber)

24 November 2022 (*)

(Reference for a preliminary ruling – Taxation – Value added tax (VAT) – Directive 2006/112/EC – Article 132(1)(c) – Exemptions for certain activities in the public interest – Provision of medical care in the exercise of the medical and paramedical professions – Service used by an insurance company to review the accuracy of a diagnosis of serious illness and find and provide the best possible care and treatment abroad)

In Case C-458/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Kúria (Supreme Court, Hungary), made by decision of 17 June 2021, received at the Court on 22 July 2021, in the proceedings

CIG Pannónia Életbiztosító Nyrt.

v

Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága,

THE COURT (Eighth Chamber),

composed of N. Piçarra, acting as President of the Chamber, N. Jääskinen and M. Gavalec (Rapporteur), Judges,

Advocate General: N. Emiliou,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- CIG Pannónia Életbiztosító Nyrt., by I.P. Béres and A. Boros, ügyvédek,
- the Hungarian Government, by M.Z. Fehér and R. Kissné Berta, acting as Agents,
- the European Commission, by J. Jokubauskaitė and A. Tokár, 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 132(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1; ‘the VAT Directive’).

2 The request has been made in proceedings between CIG Pannónia Életbiztosító Nyrt., an insurance company governed by Hungarian law, and the Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága (Appeals Directorate of the National Tax and Customs Authority, Hungary) concerning whether services relating to health insurance contracts are subject to value added tax (VAT).

Legal context

European Union law

3 Article 131 of the VAT Directive, the sole article in Chapter 1, entitled ‘General provisions’, of Title IX of that directive, relating to VAT exemptions, provides:

‘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.’

4 Article 132 of that directive, which is included in Chapter 2, entitled ‘Exemptions for certain activities in the public interest’, of Title IX of the directive, provides in paragraph 1 thereof:

‘Member States shall exempt the following transactions:

...

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

...’

Hungarian law

5 Article 85(1) of the általános forgalmi adóról szóló 2007. évi CXXVII. törvény (Law No CXXVII of 2007 on value added tax) provides:

‘The following shall be exempt from VAT:

...

(b) the supply of services – as well as care to the wounded and the sick and their transport, closely linked to those services – and the supply of goods closely linked to those services which are provided, in the context of health care, by public operators, acting in that capacity;

(c) the supply of services – as well as care to the wounded and the sick, closely linked to those services – which are provided by bodies operating in the field of health care, including naturopathy, and acting in that capacity;

...’

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

6 Since September 2012, the applicant in the main proceedings has marketed a health insurance product under which it undertakes, subject to certain conditions, to provide to the insured natural person medical care abroad in relation to five serious illnesses. Under that contract, the insured person is not entitled to the insurance service in case of acute illness or where the illness has yet to be examined by a local health care professional.

7 In order to be able to provide the insurance services, the applicant in the main proceedings concluded, on 13 September 2012, a cooperation contract with Best Doctors España SAU ('Best Doctors'), a company incorporated under Spanish law.

8 Under that cooperation contract, Best Doctors is responsible, first, for a review by its doctors of the medical information concerning the insured natural person on the basis of the documentation sent to them, in order to ascertain whether that person is actually entitled to the insurance services (InterConsultation Service; 'the IC service').

9 Second, where the insured person is actually entitled to the insurance services, Best Doctors takes care of all the administrative formalities relating to care abroad (FindBestCare Service; 'the FBC service'). That service includes, inter alia, making appointments with the providers of medical services, organising medical treatment, hotel accommodation and travel, providing a customer assistance service and verifying whether the medical treatment is appropriate. In addition, Best Doctors is also responsible for paying medical claims and ensuring their follow-up. By contrast, Best Doctors is not responsible for covering transport and accommodation costs or health care costs.

10 Lastly, the cooperation agreement stipulates that the applicant in the main proceedings makes an annual payment to Best Doctors for each insured person, at the same frequency as the payment of the premium by that person. The annual payment is to be made even when the applicant in the main proceedings does not use the services of Best Doctors.

11 During the period from October to December 2012, Best Doctors issued three invoices in relation to which the applicant in the main proceedings did not declare any duty to pay VAT.

12 Following an inspection of VAT returns for the period from 1 May to 31 December 2012, the Nemzeti Adó- és Vámhivatal Kiemelt Adó- és Vámigazgatósága (Tax and Customs Directorate for Large Taxpayers of the National Tax and Customs Authority, Hungary), by decision of 5 May 2016, imposed on the applicant in the main proceedings an additional VAT payment of 1 059 000 Hungarian forint (HUF) (approximately EUR 3 350), a tax fine of HUF 529 000 (approximately EUR 1 700), a late payment penalty of HUF 178 000 (approximately EUR 550) and a fine for breach of tax obligations of HUF 20 000 (approximately EUR 60).

13 The applicant in the main proceedings having brought an administrative appeal against that decision, the defendant in the main proceedings, by decision of 14 November 2016, annulled the tax fine in the amount of HUF 376 000 (approximately EUR 1 200) but upheld the remainder of the decision of 5 May 2016.

14 The applicant in the main proceedings brought an action against the decision of 14 November 2016 before the court of first instance. That court upheld the action in part and ordered that the case be referred back to the National Tax and Customs Authority for a new ruling.

15 The applicant and the defendant in the main proceedings each brought an appeal on a point

of law against that judgment before the Kúria (Supreme Court, Hungary), the referring court.

16 In its appeal, the applicant in the main proceedings claims, referring to the judgments of 10 June 2010, *CopyGene* (C?262/08, EU:C:2010:328), and of 18 November 2010, *Verigen Transplantation Service International* (C?156/09, EU:C:2010:695), that the essential service provided by Best Doctors, namely the IC service, has a therapeutic purpose in that it directly and unequivocally has a diagnosis aim. As for the FBC service, which is supplied after a diagnosis has been made, it is ancillary to that diagnostic activity. Consequently, the services offered by Best Doctors, taken as a whole, fulfil the conditions for exemption provided for in Article 132(1)(c) of the VAT Directive.

17 For its part, the defendant in the main proceedings contends, relying on the judgment of 20 November 2003, *Unterpertinger* (C?212/01, EU:C:2003:625), that the services supplied by Best Doctors are only indirectly linked to the therapeutic aim, with the result that they cannot be exempt from VAT under Article 132(1)(c) of the VAT Directive.

18 In those circumstances, the Kúria (Supreme Court) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Must Article 132(1)(c) of [the VAT Directive] be interpreted as meaning that a service used by an insurance company is exempt from VAT where the purpose of the service is:

- to verify the accuracy of a diagnosis of a serious illness with which the insured has been diagnosed; and
- to seek the best medical care available to treat the insured; and
- where included in the cover offered by the insurance policy and at the request of the insured, to arrange provision of the medical care abroad?’

Consideration of the question referred

19 By its question, the referring court asks, in essence, whether Article 132(1)(c) of the VAT Directive must be interpreted as meaning that services consisting in verifying the accuracy of an insured person’s diagnosis of serious illness, in order to find the best possible health care with a view to the insured person’s recovery and to ensure, where covered by the insurance contract and where the insured person so requests, that the medical treatment is provided abroad, are covered by the exemption provided for in that provision.

20 As a preliminary point, it should be borne in mind that the terms used to specify the exemptions in Article 132 of the VAT Directive are to be interpreted strictly, since they constitute exceptions to the general principle, arising from Article 2(1)(a) and (c) of the VAT Directive, that VAT is to be levied on each supply of goods and services 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. Accordingly, the requirement of strict interpretation does not mean that the terms used to specify the exemptions referred to in Article 132 must be construed in such a way as to deprive the exemptions of their intended effect (judgments of 10 June 2010, *Future Health Technologies*, C?86/09, EU:C:2010:334, paragraph 30 and the case-law cited, and of 7 April 2022, *I (VAT exemption for hospital services)*, C?228/20, EU:C:2022:275, paragraph 34).

21 As regards more specifically the exemption provided for in Article 132(1)(c) of the VAT Directive, that provision provides for the exemption of services which satisfy two conditions,

namely, first, that it constitutes ‘provision of medical care’ and, second, that it is carried out ‘in the exercise of the medical and paramedical professions as defined by the Member State concerned’ (see, to that effect, judgment of 5 March 2020, *X (Exemption from VAT for telephone consultations)*, C-48/19, EU:C:2020:169, paragraph 17 and the case-law cited).

22 As regards the first condition, to which the present request for a preliminary ruling relates, it must be borne in mind that, according to the case-law of the Court, the concept of ‘provision of medical care’ within the meaning of Article 132(1)(c) of the VAT Directive is an independent concept of EU law (see, to that effect, judgment of 20 November 2003, *Unterpertinger*, C-212/01, EU:C:2003:625, paragraph 35).

23 In addition, the Court has held that that concept is intended to cover services that have as their aim the diagnosis, treatment and, in so far as possible, cure of diseases or health disorders (judgment of 5 March 2020, *X (VAT exemption for telephone consultations)*, C-48/19, EU:C:2020:169, paragraph 28 and the case-law cited).

24 It is the purpose of a medical service which determines whether it should be exempt from VAT pursuant to Article 132(1)(c) of the VAT Directive (see, to that effect, judgments of 20 November 2003, *Unterpertinger*, C-212/01, EU:C:2003:625, paragraph 42, and of 5 March 2020, *X (VAT exemption for telephone consultations)*, C-48/19, EU:C:2020:169, paragraph 27).

25 However, while 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. Thus, medical services provided for the purpose of protecting, including maintaining or restoring, human health may benefit from the exemption under Article 132(1)(c) of the VAT Directive (judgment of 5 March 2020, *X (VAT exemption for telephone consultations)*, C-48/19, EU:C:2020:169, paragraph 29 and the case-law cited).

26 It is in the light of those considerations that it must be determined whether services such as those at issue in the main proceedings supplied by Best Doctors are covered by the exemption provided for in Article 132(1)(c) of the VAT Directive.

27 In the first place, as regards the IC service, it is apparent from the request for a preliminary ruling that it consists, for the doctors of Best Doctors, in reviewing the medical information of the insured natural person on the basis of the documentation sent to them, in order to ascertain whether that person is entitled to the insurance services. In particular, those doctors review, by confirming or invalidating it, the diagnosis initially made by the insured person’s doctor, in order to ascertain whether he or she is really suffering from one of the five serious illnesses covered by the insurance contract.

28 It is the Court’s case-law that, where a service consists of making an expert medical report, although the performance of that service solicits the medical skills of the provider and may involve activities which are typical of the medical profession, such as the physical examination of the patient or the analysis of his or her medical history, the principal purpose of such a service is not the protection, including the maintenance or restoration, of the health of the person to whom the report relates. Such a service, whose purpose is to provide a reply to questions set out in the request for the report, is effected in order to enable a third party to take a decision which has legal consequences for the person concerned or other persons (judgments of 20 November 2003, *Unterpertinger*, C-212/01, EU:C:2003:625, paragraph 43, and of 20 November 2003, *D’Ambrumenil and Dispute Resolution Services*, C-307/01, EU:C:2003:627, paragraph 61).

29 In that regard, the Court has also held that, while it is true that an expert medical report may be requested by the person concerned and may indirectly contribute to the protection of the health

of such person, by detecting a new problem or by correcting a previous diagnosis, the principal purpose pursued by every service of that type remains that of fulfilling a legal or contractual condition in another's decision-making process (judgments of 20 November 2003, *Unterpertinger*, C?212/01, EU:C:2003:625, paragraph 43, and of 20 November 2003, *D'Ambrumenil and Dispute Resolution Services*, C?307/01, EU:C:2003:627, paragraph 61).

30 Thus, and even though, in the context of that IC service, the doctors of Best Doctors may carry out additional examinations, such as histological analyses, or use foreign medical experts, the expert report remains the main purpose of those services, their therapeutic implications being merely indirect, so that those services cannot be regarded as having a therapeutic aim.

31 It follows from the foregoing that a service such as the IC service is not covered by the concept of 'provision of medical care' within the meaning of Article 132(1)(c) of the VAT Directive, with the result that it cannot benefit from the exemption laid down in that provision.

32 In the second place, as regards the FBC service, it is apparent from the request for a preliminary ruling that that service consists of several elements, such as making appointments with medical services providers, the organisation of medical treatment, hotel accommodation and travel, a customer assistance service and verifying whether the proposed treatment is appropriate.

33 Thus, the purpose of such a service is not to protect, including maintaining or restoring, human health, within the meaning of the case-law of the Court cited in paragraphs 23 and 25 of the present judgment, but to ensure the organisation of the logistics linked to medical care abroad. As the Hungarian Government and the European Commission observe, that service is essentially administrative in nature.

34 It follows that a service such as the FBC service is not covered by the concept of 'provision of medical care' within the meaning of Article 132(1)(c) of the VAT Directive, with the result that it does not satisfy the conditions for exemption laid down in that provision.

35 Consequently, the answer to the question referred for a preliminary ruling is that Article 132(1)(c) of the VAT Directive must be interpreted as meaning that services consisting in verifying the accuracy of an insured person's diagnosis of serious illness, in order to determine the best possible health care with a view to the insured person's recovery and to ensure, where that risk is covered by the insurance contract and where the insured person so requests, that the medical treatment is provided abroad, are covered by the exemption provided for in that provision.

Costs

36 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:

Article 132(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

must be interpreted as meaning that services consisting in verifying the accuracy of an insured person's diagnosis of serious illness, in order to determine the best possible health care with a view to the insured person's recovery and to ensure, where that risk is covered by the insurance contract and where the insured person so requests, that the medical treatment is provided abroad, are covered by the exemption provided for in that

provision.

[Signatures]

* Language of the case: Hungarian.