Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

21 September 2017 *

(Failure of a Member State to fulfil obligations — Taxation — Value added tax — Directive 2006/112/EC — Article 132(1)(f) — Exemption for services supplied to their members by independent groups of persons — Restriction to independent groups whose members exercise a limited number of professions)

In Case C-616/15,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 20 November 2015,

European Commission, represented by M. Owsiany-Hornung and by B.-R. Killmann and R. Lyal, acting as Agents,

applicant,

v

Federal Republic of Germany, represented by T. Henze and J. Möller and by K. Petersen, acting as Agents,

defendant,

THE COURT (Fourth Chamber),

composed of T. von Danwitz, President of the Chamber, E. Juhász, C. Vajda (Rapporteur), K. Jürimäe and C. Lycourgos, Judges,

Advocate General: M. Wathelet,

Registrar: X. Lopez Bancalari, Administrator,

having regard to the written procedure and further to the hearing on 15 February 2017,

after hearing the Opinion of the Advocate General at the sitting on 5 April 2017,

gives the following

* Language of the case: German.

Judgment

1 By its action, the European Commission asks the Court for a declaration that, by restricting the value added tax (VAT) exemption to independent groups of persons ('IGPs') whose members exercise a limited number of professions, the Federal Republic of Germany has failed to fulfil its obligations under Article 132(1)(f) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

Legal context

EU law

The Sixth VAT Directive

2 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taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1, 'the Sixth Directive') was repealed and replaced from 1 January 2007 by Directive 2006/112. Article 4(5) of the Sixth Directive provided:

'States, regional and local government authorities and other bodies governed by public law shall not be regarded as taxable persons in respect of the activities or transactions in which they engage as public authorities, even where they collect dues, fees, contributions or payments in connection with those activities or transactions.

However, when they engage in such activities or transactions, they shall be regarded as taxable persons in respect of those activities or transactions where their treatment as non-taxable persons would lead to significant distortions of competition.

In any case, these bodies shall be considered taxable persons in relation to the activities listed in Annex D, provided they are not carried out on such a small scale as to be negligible.

…'

3 Article 13A of the Sixth Directive provided:

'1. Without prejudice to other Community provisions, Member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any possible evasion, avoidance or abuse:

…

(f) the supply of services by independent groups of persons, who are carrying on an activity which is exempt from VAT or in relation to which they are not taxable persons, for the purpose of rendering their members the services directly necessary for the exercise of that activity, where those groups merely claim from their members exact reimbursement of their share of the joint expenses, provided that such exemption is not likely to cause distortion of competition;

…'

4 Article 28(3) and (4) of that directive stated:

‘3. During the transitional period referred to in paragraph 4, Member States may:

(a) continue to subject to tax the transactions exempt under Article 13 or 15 set out in Annex E to this Directive;

…

4. The transitional period shall last initially for five years as from 1 January 1978. At the latest six months before the end of this period, and subsequently as necessary, the Council shall review the situation with regard to the derogations set out in paragraph 3 on the basis of a report from the Commission and shall unanimously determine on a proposal from the Commission, whether any or all of these derogations shall be abolished.’

5 Annex E of that directive, entitled ‘Transactions referred to in Article 28(3)(a)’, provided:

‘…

3. Transactions referred to in Article 13 A (1) (f) other than those of groups of a medical or paramedical nature

…’

The Eighteenth Directive 89/465/EEC

6 Under Article 1 of the Eighteenth Council Directive 89/465/EEC of 18 July 1989 on the harmonisation of the laws of the Member States relating to turnover taxes — Abolition of certain derogations provided for in Article 28(3) of the Sixth Directive, 77/388/EEC (OJ 1989 L 226, p. 21):

‘Article 1 Directive 77/388/EEC is hereby amended as follows:

1. With effect from 1 January 1990 the transactions referred to in points 1, 3 to 6, 8, 9, 10, 12, 13 and 14 of Annex E shall be abolished.

…’

Directive 2006/112

7 The first and second subparagraphs of Article 13(1) of Directive 2006/112 provides:

‘States, regional and local government authorities and other bodies governed by public law shall not be regarded as taxable persons in respect of the activities or transactions in which they engage as public authorities, even where they collect dues, fees, contributions or payments in connection with those activities or transactions.

However, when they engage in such activities or transactions, they shall be regarded as taxable persons in respect of those activities or transactions where their treatment as non-taxable persons would lead to significant distortions of competition.’

8 Article 131 of Directive 2006/112, in Chapter 1, entitled ‘General provisions’, of Title IX thereof, entitled ‘Exemptions’, 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.’

9 Article 132(1) of Directive 2006/112, which appears in Chapter 2, entitled ‘Exemptions for certain activities in the public interest’, of Title IX of the directive, provides:

‘Member States shall exempt the following transactions:

(a) the supply by the public postal services of services other than passenger transport and telecommunications services, and the supply of goods incidental thereto;

(b) hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable with 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) the supply of human organs, blood and milk;

(e) the supply of services by dental technicians in their professional capacity and the supply of dental prostheses by dentists and dental technicians;

(f) the supply of services by independent groups of persons, who are carrying on an activity which is exempt from VAT or in relation to which they are not taxable persons, for the purpose of rendering their members the services directly necessary for the exercise of that activity, where those groups merely claim from their members exact reimbursement of their share of the joint expenses, provided that such exemption is not likely to cause distortion of competition;

(g) the supply of services and of goods closely linked to welfare and social security work, including those supplied by old people’s homes, by bodies governed by public law or by other bodies recognised by the Member State concerned as being devoted to social wellbeing;

…

(i) the provision of children’s or young people’s education, school or university education, vocational training or retraining, including the supply of services and of goods closely related thereto, by bodies governed by public law having such as their aim or by other organisations recognised by the Member State concerned as having similar objects;

…

(m) the supply of certain services closely linked to sport or physical education by non-profit-making organisations to persons taking part in sport or physical education;

(n) the supply of certain cultural services, and the supply of goods closely linked thereto, by bodies governed by public law or by other cultural bodies recognised by the Member State concerned;

…’

10 Article 133, first paragraph, of Directive 2006/112 provides:

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

…

(d) the exemptions must not be likely to cause distortion of competition to the disadvantage of commercial enterprises subject to VAT.’

11 Article 135(1) of Directive 2006/112, which appears in Chapter 3, entitled ‘Exemptions for other activities’, in Title IX thereof, provides:

‘Member States shall exempt the following transactions:

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

…

(d) transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection;

(e) transactions, including negotiation, concerning currency, bank notes and coins used as legal tender, with the exception of collectors’ items, that is to say, gold, silver or other metal coins or bank notes which are not normally used as legal tender or coins of numismatic interest;

…’

German law

12 The second chapter, entitled ‘Exemption and reimbursement of tax’, of the Umsatzsteuergesetz (Law on turnover tax, ‘the UStG’) includes a list of services exempt from VAT in Paragraph 4. Under Paragraph 4(14) of the UStG, in the version applicable to the facts in the main proceedings, the following are exempt:

‘(a) the provision of medical care in the exercise of the medical and paramedical professions or the profession of doctor, dentist, lay medical practitioner, physiotherapist, midwife. The first sentence shall not apply to the supply or repair of dental prostheses … and orthodontic equipment if the trader has manufactured or repaired them in his business premises;

(b) hospital and medical care, including diagnosis, medical assessment, prevention, rehabilitation, obstetrics and hospice services and closely related activities undertaken by bodies governed by public law. …;

…

(d) the supply of other services which groups whose members exercise professions referred to in point (a) or are part of establishments referred to in point (b) furnish to their members, where those services are directly necessary for the exercise of the activities referred to in point (a) or point (b) and where the groups merely claim from their members exact reimbursement of their share of the joint expenses;

…’

Pre-litigation procedure

13 By letter of formal notice of 23 November 2009, the Commission informed the Federal Republic of Germany that it had doubts as to the compatibility of the German rules on the exemption from VAT of the supply of services by independent groups of persons (IGPs) carrying on an activity which is exempt from VAT or in relation to which they are not taxable persons, for the purpose of rendering their members the services directly necessary for the exercise of that activity.

14 The Commission stated in that letter that German law restricted that exemption to the supply of services provided by IGPs which carry on activities or professions in the health sector, whereas Directive 2006/112 does not restrict the exemption in question to groups of specific professional categories, but grants that exemption to groups of all persons if they are exempt from VAT or are not taxable persons in relation to the activity which they carry on. The Commission therefore considered that German law on turnover tax was incompatible with the objectives of the VAT Directive.

15 The Federal Republic of Germany replied to the letter of formal notice by letter of 22 March 2010. In that letter, it confirmed that the German rules exempted the supply of services by IGPs only if they were provided by groups of doctors, by persons exercising paramedical professions, or by groups of hospitals or establishments of a similar nature. It asserted that the restriction was justified because it was for the national legislature to examine which professions could benefit from the exemption in question without causing distortion of competition.

16 On 7 April 2011, the Commission issued a reasoned opinion to the Federal Republic of Germany. In that reasoned opinion, the Commission expressed doubts as to the Federal Republic of Germany’s assertion that, in order to avoid distortion of competition, health activities and professions alone could benefit from the exemption in question. Furthermore, the Commission maintained that, on a number of occasions, German courts should have extended the scope of the exemption in question to professions other than those specified in German Law on turnover tax.

17 The Commission also stated that it did not understand on what basis the German legislature saw persistent distortions of competition if, in addition to the already exempt health professions, it were to grant the exemption in question to all sectors of the German economy. It maintained that the German legislature was not required to assess distortions of competition on the basis of a general analysis, but, to the contrary, that the exemption in question should be refused only if there was a genuine risk that the exemption may by itself, immediately and in the future, give rise to distortions of competition.

18 The Federal Republic of Germany replied to the reasoned opinion by letter of 6 June 2011. In that letter, it emphasised, first, the position occupied by the provision laying down the exemption in question in the scheme of the VAT Directive, namely in the chapter on exemptions for certain activities in the public interest. It concluded that the exemption could not be extended to all economic activities.

19 Second, the Federal Republic of Germany stated that the transposition into its domestic law specifically took account of the prohibition on distortions of competition by restricting that exemption to certain professions in the health sector. In that connection, that Member State stated that the German legislature had taken the view that that exemption was justified only for groups of healthcare professions.

20 Third, it observed that the Commission had not identified the professional category which was wrongly excluded from the exemption in question by German law.

21 The Federal Republic of Germany therefore refused the request made to it by the Commission to take all the measures necessary to comply with the reasoned opinion.

22 As the German rules on turnover tax continue to restrict the exemption from VAT to IGPs carrying on an activity in the health sector, the Commission announced its decision to bring the matter before the Court.

The action

Arguments of the parties

23 The Commission observes that the German legislation at issue, namely Paragraph 4(14) of the UStG, restricts the exemption laid down in Article 132(1)(f) of Directive 2006/112 to the supply of services by IGPs, whose members exercise a limited number of professions which are essentially limited to the health sector. According to the Commission, that restriction is contrary to Article 132(1)(f).

24 In the first place, the Commission takes the view that that legislation is incompatible with the scope of Article 132(1)(f) of Directive 2006/112, since it is not limited to supplies of services by IGPs whose members exercise certain specific categories of professions.

25 According to the Commission, the exemption laid down in that provision is not limited to IGPs whose members carry on activities in the public interest, but covers all IGPs whose members carry on activities exempt from VAT. It adds that even if that exemption only covered IGPs whose members carry on activities in the public interest, its scope would not be limited to IGPs whose members exercise professions in the health sector, as provided by the German legislation at issue.

26 The Commission considers that its interpretation of the scope of Article 132(1)(f) of Directive 2006/112 is supported by the wording of that provision, by the objective it pursues, by its historical context and by the judgment of 20 November 2003, *Taksattorringen* (C-8/01, EU:C:2003:621), in which the Court applied the exemption at issue to supplies of services by a group of insurance companies.

27 According to the Commission, the mere fact that the chapter in which Article 132(1)(f) of Directive 2006/112 appears is entitled 'Exemptions of certain activities in the public interest' cannot deprive the wording of that provision of its unambiguous nature. The heading of that chapter is the result of careless drafting, which is explained by the fact that the initial draft of the Sixth Directive provided for a restriction of the exemption concerned to IGPS with a medical or paramedical character.

28 Second, the Commission takes the view that the German legislation at issue cannot be justified by reference to the condition relating to the lack of distortions of competition, referred to in Article 132(1)(f) of Directive 2006/112.

29 According to the Commission, the presence or absence of distortions of competition can be considered only in accordance with the circumstances of the case. It is impossible to determine the existence of distortions of competition in a general manner for services supplied by specific professions and for the services offered by an IGP which is directly linked to them. Therefore, it would be contrary to the full application of Directive 2006/112 if the legislature itself carries out that examination by category for whole professional sectors as the German legislature has done.

30 First, the Federal Republic of Germany argues that it follows from the wording and position of Article 132(1)(f) of Directive 2006/112 in the latter together with its historical context and the objectives it pursues, that the *ratione personae* of the exemption at issue is restricted to groups of persons carrying on certain activities in the public interest.

31 First of all, as regards the wording and position, the Federal Republic of Germany points out that that exemption appears in Article 132 of Directive 2006/112, in Chapter 2 thereof, entitled 'Exemptions for certain activities in the public interest'. It follows that the exemption laid down in Article 132(1)(f) concerns only supplies of services by IGPs whose members carry on activities in the public interest.

32 More specifically, that Member State takes the view that the exemption laid down in that provision applies only to IGPs whose members carry on the activities mentioned in Article 132(1)(b) to (e) of Directive 2006/112, which precede the exemption set out in Article 132(1)(f) thereof and which relate to the health sector. If that were not the case, the legislature would have placed the exemption at the end of Article 132 of Directive 2006/112 or in a separate article.

33 The interpretation according to which the exemption at issue concerns the activities mentioned in Article 132(1)(b) to (e) of Directive 2006/112 is supported by the use that Court made of the term 'professionals' in its interpretation of that exemption of the judgment of 11 December 2008, *Stichting Centraal Begeleidingsorgaan voor de Intercollegiale Toetsing* (C-407/07, EU:C:2008:713, paragraph 37). In Directive 2006/112, the term 'profession' is mainly used in the context of the medical professions.

34 Next, the Federal Republic of Germany submits that its arguments are confirmed by the historical background to Article 132(1)(f) of Directive 2006/112. In that connection, it points out, inter alia that in the first version of the Sixth Directive the combined provisions of Article 28(3)(a) and point 3 of Annex E sought to ensure that the exemption laid down in Article 13A(1)(f) for the supply of services by IGPs of a medical or paramedical nature was applicable, while the Member States could continue to tax similar supplies of services by other IGPs until 31 December 1989. The removal of that possibility with effect from 1 January 1990 has not changed the scope of the exemption at issue, but is aimed more at eliminating certain difficulties of a purely practical nature, outside the system of VAT.

35 Second, the Federal Republic of Germany asserts that the German legislation at issue is justified in light of the condition that the exemption at issue applies only if it is not likely to cause distortions of competition. It argues, contrary to the Commission's claims, that the national legislature may have recourse to an assessment by professional category of the risk of distortions of competition existing within certain professional categories and, thereby, restrict the exemption at issue to certain categories.

36 In that connection, that Member State recalls that that condition is not sufficiently clear or unconditional with regard to its content, and that it must be clarified at national level. The examination of that condition cannot be conferred on the tax authorities as it can be carried out only on the basis of complex economic analyses relating to each sector of activity.

37 In that context, the Federal Republic of Germany observes that it is clear from the case-law of the Court and, in particular, the judgment of 16 September 2008, *Isle of Wight Council and Others* (C-288/07, EU:C:2008:505, paragraphs 35 and 36), that the assessment of the conditions relating to the lack of distortion of competition in Article 13(1) of Directive 2006/112, which is similar to that in Article 132(1)(f) thereof, may be carried out by the national legislature.

38 The Federal Republic of Germany adds that it is for the Commission, in an action brought on the basis of Article 258 TFEU, to establish the existence of the alleged failure to fulfil obligations and to provide the Court with the information necessary to verify its existence. The Commission has failed to establish that an exemption for the supply of services by IGPs to their members does not lead to distortions of competition in sectors other than the sector in which the professions are covered by the UStG.

Findings of the Court

39 As a preliminary point, it must be stated that the Commission's action concerns only the restriction by the Federal Republic of Germany of the VAT exemption laid down in Article 132(1)(f) of Directive 2006/112 to groups whose members exercise a limited number of professions.

40 Therefore, first, it is appropriate to examine the personal scope of Article 132(1)(f) of Directive 2006/112 and, second, the condition relating to the lack of distortions of competition laid down in that provision.

The scope of Article 132(1)(f) of Directive 2006/112

41 As regards the scope of Article 132(1)(f) of Directive 2006/112, the Commission's main complaint is that the exemption referred to therein is not limited to IGPs whose members carry on activities in the public interest, but covers all IGPs whose members carry on an activity exempt from VAT, including those whose members carry on economic activity in the banking and insurance sector. In the alternative, the Commission maintains that, even if that provision only covers IGPs whose members carry on activities in the public interest, its scope is not limited to IGPs whose members exercise professions in the health sector as provided by the German legislation at issue.

42 In that connection, it must be observed that the wording of that provision, which refers to the exempt activity of the members of an IGP, does not exclude the possibility that it applies to all IGPs whose members carry on an activity exempt from VAT.

43 However, according to the Court's settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objective pursued by the rules of which it is part (judgments of 26 April 2012 *Able UK*, C-225/11, EU:C:2012:252, paragraph 22, and 4 April 2017 *Fahimian*, C-544/15, EU:C:2017:255, paragraph 30 and the case law cited).

44 As regards the context of Article 132(1)(f), it must be stated that that provision appears in Chapter 2, entitled 'Exemptions for certain activities in the public interest', in Title IX of that directive. That heading indicates that the exemption provided for in that provision covers only IGPs whose members carry on activities in the public interest.

45 That interpretation is also confirmed by the structure of Title IX of that directive, which concerns 'Exemptions'. Article 132(1)(f) does not appear in Chapter 1, entitled 'General provisions' of that title, but in Chapter 2 thereof. Moreover, in that chapter a distinction is made between Chapter 2, entitled 'Exemptions for certain activities in the public interest, and Chapter 3, entitled 'Exemptions for other activities', a distinction which shows that the rules laid down in Chapter 2 for certain activities in the public interest do not apply to other activities covered by Chapter 3.

46 Article 135(1)(a) of Chapter 3, contains an exemption for 'insurance and reinsurance transactions' and (d) and (e) 'an exemption for certain transactions in the financial services sector, such as in particular, 'transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments' and (e) 'transactions, including negotiation, concerning currency, bank notes and coins used as legal tender'. Therefore, it is clear from the general scheme of Directive 2006/112 that the exemption laid down in Article 132(1)(f) of Directive 2006/112 does not apply to transactions in the insurance and reinsurance sector or to those in the financial services sector and that, consequently, the services supplied by IGPs whose members are active in those sectors are not covered by that exemption.

47 As far as concerns the objective of Article 132(1)(f) in the context of Directive 2006/112, it must be recalled that the purpose of all the provisions of Article 132 of Directive 2006/112 is to exempt certain activities in the public interest from VAT with a view to facilitating access to certain services and the supply of certain goods by avoiding the increased costs that would result if they were subject to VAT (judgment of 5 October 2016, *TMD*, C-412/15, EU:C:2016:738, paragraph 30 and the case-law cited).

48 Thus, supplies of services by an IGP is covered by the exemption in Article 132(1)(f) of Directive 2006/112 where those supplies of services directly contribute to activities in the public interest mentioned in Article 132 thereof (see, by analogy, judgment of 5 October 2016, *TMD*, C-412/15, EU:C:2016:738, paragraphs 31 to 33).

49 Furthermore, it must be recalled that the exemptions referred to in Article 132 of Directive 2006/112 are to be interpreted strictly, since they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person (see, to that effect, judgment of 5 October 2016, *TMD*, C-412/15, EU:C:2016:738, paragraph 34 and the case-law cited).

50 It follows that supplies of services which do not directly contribute to the carrying on of activities in the public interest, referred to in Article 132 of Directive 2006/112, but to the exercise of other exempt activities, in particular in Article 135 thereof, cannot be covered by the exemption laid down in Article 132(1) of that directive.

51 It follows that Article 132(1)(f) of Directive 2006/112 must be interpreted as meaning that the exemption laid down in that provision covers only IGPs whose members carry on activities in the public interest mentioned in that article. Therefore, the Commission's main complaint, that the scope of the exemption laid down in Article 132(1)(f) of Directive 2006/112 is not limited to IGPs whose members carry on activities in the public interest, must be dismissed.

52 In that connection, it must be observed that, unlike in the present case, in the judgment of 20 November 2003, *Taksatorringen* (C-8/01, EU:C:2003:621) the Court did not rule on whether the exemption laid down in Article 13A(1)(f) of the Sixth Directive (corresponding to Article 132(1)(f) of Directive 2006/112) was limited to the services supplied by an IGP whose members carried on activities in the public interest.

53 However, the Federal Republic of Germany's arguments, that the exemption referred to in Article 132(1)(f) of Directive 2006/112 is restricted to IGPs whose members exercise a professional activity in the health sector, must be dismissed.

54 First, the mere fact that the exemption relating to IGPs is laid down in Article 132(1)(f) of Directive 2006/112 does not lead to the conclusion that that exemption applies only to IGPs whose members carry on the activities mentioned in Article 132(1)(b) which appear before those mentioned in Article 132(1)(f) and which concern the health sector.

55 That exemption refers to 'the supply of services by independent groups of persons, who are carrying on an activity which is exempt from VAT or in relation to which they are not taxable persons'. In addition to the transactions carried out in the health sector, Directive 2006/112 envisages other exempt transactions in the public interest, such as transactions related to welfare and social security, education, sport and culture, laid down in Article 132(1)(g), (i), (m) and (n) respectively of Directive 2006/112.

56 Second, according to the case-law of the Court, the purpose of the exemption laid down in Article 132(1)(f) of Directive 2006/112 is 'to create an exemption from VAT in order to avoid an entity offering certain services from being required to pay that tax when it has found it necessary to cooperate with other entities by means of a common structure set up to undertake activities essential to the provision of those services' (see, to that effect, judgment of 11 December 2008, *Stichting Centraal Begeleidingsorgaan voor de Intercollegiale Toetsing*, C-407/07, EU:C:2008:713, paragraph 37).

57 However, contrary to the Federal Republic of Germany's arguments, the use by the Court of the term 'professional' in its interpretation of that exemption does not support its arguments that that exemption only covers IGPs whose members are active in the health sector. As regards Article 132 of Directive 2006/112, 'professions' or 'profession' are only employed in paragraph 1(c) and 1(e) thereof and, therefore, the use of those terms does not lead to the conclusion that the exemption laid down in Article 132(1)(f) covers only IGPs whose members are active in the health sector.

58 Third, it cannot be inferred from the legislative history of Article 132(1)(f) of Directive 2006/112 that the exemption laid down in that provision is limited to the health sector. It is true that, historically, Article 13A(1)(f) of the Sixth Directive, read together with Article 28(3)(a) and Annex E thereof, provided for the possibility to limit the exemption concerned to IGPs of a medical or paramedical nature.

59 However, the fact that the Sixth Directive provided for the possibility of derogating from that exemption only for IGPs other than those of a medical or paramedical nature indicates, contrary to the Federal Republic of Germany's arguments, that the scope of that exemption also covers IGPs whose members are active in sectors other than that of health. In any event, the possibility to derogate from the exemption in Article 13 A(1)(f) of the Sixth Directive was abolished with effect from 1 January 1990 by Article 1 of the Eighteenth Directive 89/465. It follows that, contrary to the Federal Republic of Germany's arguments, that exemption is not limited to IGPs of a medical or paramedical nature.

60 Having regard to the foregoing considerations, the complaint relied on by the Commission in the alternative, that the scope of the exemption laid down in Article 132(1)(f) of Directive 2006/112 is not limited to IGPs whose members exercise professions only in the health sector, as provided for by the German legislation at issue, must be accepted.

The condition relating to the lack of distortions of competition

61 Under Article 132(1)(f) of Directive 2006/112, the exemption laid down in that provision applies, provided that it is not likely to cause distortion of competition.

62 According to the Federal Republic of Germany, it is for the national legislature to determine the sectors of activity which may benefit from the exemption at issue without causing distortion of competition. In the present case, the German legislature considered that that exemption was justified only for IGPs whose members are active in the health sector.

63 Therefore, it is appropriate to examine whether a Member State may, having regard to the conditions relating to the absence of distortion of competition, restrict the sectors of activity to which the exemption laid down in Article 132(1)(f) of Directive 2006/112 applies by means of national legislation.

64 As a preliminary point, it must be observed that the Member States are not obliged to transpose that criterion literally into their national law (see, by analogy, as regards Article 4(5) of the Sixth Directive, judgment of 17 October 1989, *Commune di Carpaneto Piacentino and Others*, 231/87 and 129/88, EU:C:1989:381, paragraph 23).

65 Furthermore, in order to determine whether the application of the exemption mentioned in Article 132(1)(f) of Directive 2006/112 to a specific activity is likely to cause distortion of competition, it is certainly possible for the national legislature to lay down rules which are easily managed and supervised by the competent authorities (see, by analogy, judgment of 24 February 2015, *Sopora*, C-512/13, EU:C:2015:108, paragraph 33). Under Article 131 of Directive 2006/112, Member States are to lay down conditions to which the exemptions are subject for the purposes of ensuring the correct and straightforward application of those exemptions and of preventing any possible evasion, avoidance or abuse. However, those conditions do not concern the definition of the content of the exemptions laid down by that directive (see, to that effect, judgments of 21 March 2013, *Commission* v *France*, C-197/12, not published, EU:C:2013:202, paragraph 31, and 25 February 2016, *Commission* v *Netherlands*, C-22/15, not published, EU:C:2016:118, paragraphs 28 and 29).

66 That is precisely the effect of the German legislation at issue, by which the national legislature excluded all the services supplied by IGPS whose members carry on activities in the public interest, with the exception of IGPs whose members are active in the health sector.

67 Contrary to the Federal Republic of Germany's claims, it does not follow from the judgment of 16 September 2008, *Isle of Wight Council and Others* (C-288/07, EU:C:2008:505), that the assessment of the conditions relating to the absence of distortion of competition allows the exemption in Article 132(1)(f) of Directive 2006/112 to be limited, in a general manner to the level of national legislation. In that judgment, the Court interpreted a different provision from that at issue, namely Article 4(5), second subparagraph, of the Sixth Directive, according to which bodies governed by public law are to be considered taxable persons where treatment as non-taxable persons would lead to significant distortions of competition. In that context, the Court held, in paragraph 40 of that judgment that the treatment of bodies governed by public law as taxable persons, in accordance with that provision, results from the carrying-on, as such, of a given activity, irrespective of whether or not those bodies face competition at the level of the local market on which they engage in that activity. However, it does not follow that the condition relating to the absence of distortion of competition, mentioned in Article 132(1)(f) of Directive 2006/112 allow the scope of that exemption to be limited in a general manner.

68 As the Federal Republic of Germany observed, the assessment of the condition relating to the absence of distortion of competition may be complex. However, it has not explained how that complexity requires intervention by the national legislature excluding, in a general manner, certain activities in the public interest on the basis of that condition.

69 As the Advocate General observed in points 119 and 120 of his Opinion, as regards IGPs whose members are active in the health sector, German legislation requires an examination on a case-by-case basis by the tax authorities of that condition. It follows that the Federal Republic of Germany itself considers that such an assessment by the tax authorities is possible in the health sector. However, it has not shown how the examination of that condition relating to the absence of distortions of competition is different in sectors other than the health sector.

70 The Federal Republic of Germany's arguments according to which the Commission has not satisfied the burden of proof must also be dismissed. As that Member State acknowledged at the hearing, the issue whether it is lawful for the national legislature to restrict the sectors of activity in which the exemption at issue is applicable with regard to the condition relating to the absence of distortion of competition, is a question of law.

71 Having regard to all of the foregoing considerations, it must be held that the Commission's action is well founded.

72 Therefore, it must be held that, by restricting the VAT exemption to IGPs whose members exercise a limited number of professions, the Federal Republic of Germany has failed to fulfil its obligations under Article 132(1)(f) of Directive 2006/112.

Costs

73 Under Article 138(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Federal Republic of Germany has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds, the Court (Fourth Chamber) hereby

1. **Declares that by restricting the value added tax exemption to independent groups of persons whose members exercise a limited number of professions, the Federal Republic of Germany has failed to fulfil its obligations under Article 132(1)(f) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax;**

2. **Orders the Federal Republic of Germany to pay the costs.**

[Signatures]