JUDGMENT OF THE COURT (Fifth Chamber)
5 June 1997 *

In Case C-2/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Østre Landsret for a preliminary ruling in the proceedings pending before that court between

Sparekassernes Datacenter (SDC)

and

Skatteministeriet,

on the interpretation of points 3, 4 and 5 of Article 13B(d) of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization 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 COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, L. Sevón (Rapporteur), D. A. O. Edward, P. Jann and M. Wathelet, Judges,

* Language of the case: Danish.

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Sparekassernes Datacenter, by Bo Vilstrup and Artur Bugsgang, of the Copenhagen Bar,

— the Skatteministeriet (Ministry for Fiscal Affairs), by Karsten Hagel-Sørensen, of the Copenhagen Bar,

— the United Kingdom Government, by Lindsey Nicoll, of the Treasury Solicitor's Department, acting as Agent, and Christopher Vajda, Barrister,

— the Commission of the European Communities, by Hans Peter Hartvig, Legal Adviser, and Enrico Traversa, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Sparekassernes Datacenter, represented by Bo Vilstrup and Artur Bugsgang; of the Skatteministeriet, represented by Karsten Hagel-Sørensen; of the German Government, represented by Ernst Röder, Ministerialrat at the Federal Ministry for Economic Affairs, acting as Agents; of the United Kingdom Government, represented by Stephanie Ridler, of the

Treasury Solicitor's Department, acting as Agent, and Christopher Vajda; and of the Commission, represented by Hans Peter Hartvig, at the hearing on 23 May 1996,

after hearing the Opinion of the Advocate General at the sitting on 4 July 1996,

gives the following

Judgment

1 By judgment of 20 December 1994, received at the Court on 4 January 1995, the Østre Landsret referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a number of questions concerning the interpretation of points 3, 4 and 5 of Article 13B(d) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization 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, hereinafter 'the Sixth Directive').

2 The questions have been raised in proceedings between the association Sparekassernes Datacenter and the Danish Ministry for Fiscal Affairs, the Skatteministeriet, concerning the charging of value added tax (hereinafter 'VAT') on various transactions effected by the association (hereinafter 'SDC').

Relevant legislation

3 Article 13B(d) of the Sixth Directive is worded as follows:

'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 the exemptions and of preventing any possible evasion, avoidance or abuse:

...

(d) the following transactions:

1) the granting and the negotiation of credit and the management of credit by the persons granting it;

2) the negotiation of or any dealings in credit guarantees or any other security for money and the management of credit guarantees by the person who is granting the credit;

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

4) transactions, including negotiation, concerning currency, bank notes and coins used as legal tender, with the exception of collectors' items; "collectors' items" shall be taken to mean gold, silver or other metal coins or bank notes which are not normally used as legal tender or coins of numismatic interest;

5) transactions, including negotiation, excluding management and safekeeping, in shares, interests in companies or associations, debentures and other securities, excluding:

— documents establishing title to goods,

— the rights or securities referred to in Article 5(3);

6) management of special investment funds as defined by Member States.'

4 During a transitional period which expired on 1 January 1991, the Member States could continue to exempt the transactions listed in Annex F to the Sixth Directive. Those transactions included the management of credit by a person or a body other than the one which granted the credit (point 13) and the safekeeping and management of shares, interests in companies and associations, debentures and other securities or negotiable instruments, excluding documents establishing title to goods or securities referred to in Article 5(3) of the Sixth Directive (point 15).

5 In Denmark, Article 2(3)(j) of Law No 204 of 10 May 1978 on value added tax provided that the activities of banks and savings banks and financial transactions

were to be exempt from VAT. The Østre Landsret states that the exemption laid down by the 1978 Law was based on Article 13B(d) of the Sixth Directive.

6 Subsequently, Law No 802 of 19 December 1989, which amended the 1978 Law, made deposits and management of shares, debentures and other securities, the management of credit and credit guarantees by persons other than those who granted the credits and the renting of safe-deposit boxes subject to VAT as from 1 January 1991. A new VAT Law, reproducing the scheme and terminology of the Sixth Directive, was enacted on 18 May 1994.

The main proceedings

7 SDC is an association which is registered for the purposes of VAT. Most of its members are savings banks.

8 It provides to its members and to certain other customers who are connected to its data-handling network (hereinafter 'the banks') services relating to transfers, advice on, and trade in, securities, and management of deposits, purchase contracts and loans. SDC also offers services relating to its members' administrative affairs.

9 Before 1993 SDC provided the banks with services performed wholly or partly by electronic means. Those supplies of services were analogous to those which the biggest financial institutions carry out themselves using their own data-handling centres.

10 A typical SDC supply of service is described by the national court as consisting of a number of components which, added together, made up the service which a bank or its customers (hereinafter 'the customers') wished to have performed. A price was quoted for each service component appearing in SDC's products catalogue. SDC did not receive the remuneration for its supply of services from the customers but from the banks.

11 SDC performed services only at the request of a bank, a customer or other persons who were authorized, under a contract concluded with the customer, to require transactions such as payments to be effected. A customer could give information to SDC only after having been authorized to do so by a bank, in particular by the issue of a payment or credit card. SDC's name was not used *vis-à-vis* customers and SDC had not undertaken any legal obligation in regard to them. The documentation produced by SDC was sent out in the name of the bank.

12 The national court states that, in 1993, that is to say after the main proceedings had been initiated, most of SDC's activities and assets were transferred to newly-formed companies which are now controlled by SDC's members. One of those companies performs all the services in question. For organizational reasons, that company invoices SDC which in turn invoices its members.

13 The District Customs Office, by decision of 23 September 1986, and the Customs and Tax Directorate, by decision of 20 April 1990, took the view, on an application by SDC, that the services which it provided relating to certain transfers were covered by the exemption provided for by Article 2(3)(j) of the 1978 Law.

14 However, on 14 February 1992, the Momsnævn (VAT Tribunal) decided that none of the services provided by SDC were covered by the exemption.

15 By application of 27 April 1992, SDC appealed against the VAT Tribunal's decision to the Østre Landsret. That court, having concluded that the outcome of the proceedings depended on the interpretation to be given to points 3, 4 and 5 of Article 13B(d) of the Sixth Directive, decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'1) Should Article 13B(d) points 3 to 5 of the Sixth VAT Directive be interpreted as meaning that VAT exemption should be granted for services of a type described above in paragraphs 3 and 5 [of the order for reference; essentially, these are supplies of data-handling services to SDC members and to other financial institutions]?

In that connection, is the granting of exemption from VAT under Article 13B(D) points 3 to 5 precluded where a transaction within the meaning of that provision is effected, wholly or in part, electronically?

2) The wording used in Article 13B(d) points 1 to 2 of the VAT Directive is "by the person granting [the credit]" (ved den person, som har ydet lånene) and "by the person who is granting the credit" (ved den person, der har ydet kreditten). That description is not employed in Article 13B(d) points 3 to 5.

Should any importance be attached to that difference in the interpretation of Article 13B(d) points 3 to 5?

3) A. Is it significant, as far as the application of Article 13B(d) points 3 to 5 is concerned, whether transactions are effected by financial institutions or by others?

B. Is it significant, as far as the application of Article 13B(d) points 3 to 5 is concerned, whether the entire financial service is performed by a financial institution which has a relationship with a customer?

C. If it is unnecessary for the application of Article 13B(d) points 3 to 5 that the financial institution itself should perform the entire service, can the financial institution purchase transactions wholly or in part from another person with the effect that the services performed by that other person are covered by Article 13B(d) points 3 to 5, or may particular requirements be made of that other person?

4) How is the wording used in Article 13B(d) points 3 and 4 "transactions ... concerning" to be interpreted?

This question seeks to ascertain whether the words "transactions ... concerning" are to be understood as meaning that VAT exemption should also be granted in cases where a person either performs only a part of the service or effects only some of the transactions within the meaning of the Directive that are necessary for the supply of the complete financial service.

5) In interpreting Article 13B(d) points 3 to 5 should significance be attached to the fact that the taxable person who requests tax exemption for transactions within the meaning of the provision effects those transactions on behalf of the financial institution in whose name the service is performed?

6) After the plaintiff's reorganization, is it significant, as far as application of Article 13B(d) points 3 to 5 is concerned, that the services in question are now provided by a company which supplies the services to the associated financial institutions?

It will be noted that the said services are invoiced by the company to the plaintiff which in turn invoices its financial institution members [reference is made here to the explanations given in the first paragraph of the order for reference].'

16 By its questions the national court is asking in effect whether points 3, 4 and 5 of Article 13B(d) of the Sixth Directive are to be interpreted as exempting from VAT supplies of services made to banks and their customers by a data-handling centre set up to serve the common interests of banks where those services contribute to the execution of transfers, to the provision of advice on, and trade in, securities, and to management of deposits, purchase contracts and loans and in the main are performed wholly or partly by electronic means.

17 It must be observed in this regard that it is not clear from either the order for reference or the observations of the parties whether SDC's services relate to transactions concerning currency, banknotes and coins. Consequently, it is not necessary to consider the interpretation to be given to point 4 of Article 13B(d).

18 The national court asks the Court in particular to explain the importance to be attached in this interpretation to the various aspects of the transactions effected by SDC.

19 Amongst those aspects it is important to distinguish (i) the persons effecting the transactions, (ii) the way in which they are effected, (iii) the contractual links between the provider of the services and the person to whom they are provided and (iv) the nature of the service provided by the data-handling centre.

Preliminary remarks on the interpretation of the exemptions set out in Article 13 of the Sixth Direction

20 Before functions of the kind performed by SDC are examined, it must be pointed out that, according to settled case-law of the Court, the terms used to describe the exemptions envisaged by Article 13 of the Sixth Directive are to be interpreted strictly since these constitute exceptions to the general principle that turnover tax is to be levied on all services supplied for consideration by a taxable person (judgment in Case 348/87 *Stichting Uitvoering Financiële Acties* [1989] ECR 1737, paragraph 13).

21 Furthermore, as the Court pointed out in its judgment in Case 235/85 *Commission* v *Netherlands* [1987] ECR 1471, paragraph 18, and its judgment in Case 348/87 *Stichting Uitvoering Financiële Acties*, cited above (paragraph 11), it is evident from the 11th recital of the preamble to the Sixth Directive that the exemptions constitute independent concepts of Community law which must be placed in the general context of the common system of VAT introduced by the Directive.

22 Finally, a comparison of the various language versions of point 3 of Article 13B(d) reveals that there are differences in terminology with regard to the phrase 'transactions ... concerning'. In view of those linguistic differences, the scope of the phrase cannot be determined on the basis of an interpretation which is exclusively textual. In order to clarify its meaning, reference must therefore be made to the context in which the phrase occurs and consideration given to the structure of the Sixth Directive (judgment in Case 173/88 *Henriksen* [1989] ECR 2763, paragraphs 10 and 11).

23 Next, it must be considered whether the two arguments based on the scheme of the Sixth Directive, concerning prevention of tax evasion and avoidance and of the risk of causing distortions of competition, which have been advanced by the parties to the main proceedings, could affect the answers to be given to the questions put by the national court.

24 As regards measures for preventing any possible evasion, avoidance or abuse, the Danish Ministry for Fiscal Affairs, relying on the introductory phrase of Article 13B of the Sixth Directive, argues that if the transactions effected by SDC were covered by the exemptions provided for by points 3 and 5 of Article 13B(d), the Member State concerned would be prevented from taking the necessary measures, because it would be impossible to verify on any objective basis the nature of each of the supplies made by SDC and because of the wholly arbitrary way in which those supplies would be defined in relation to supplies of services made by other subcontractors and in relation to auxiliary services.

25 It is sufficient to state in this regard that the argument put forward by the Danish Ministry for Fiscal Affairs would be relevant only if a very broad interpretation of the concepts in question were adopted, without identifying the various components of the transactions involved. However, as pointed out in paragraph 20 above, such an interpretation is excluded. Consequently, and in view of the discretion which Member States enjoy, by virtue of the introductory sentence of Article 13B, in the choice of measures necessary for preventing any possible evasion, avoidance or abuse, a failure to have adopted the provisions necessary to facilitate application of an exemption may not result in a taxpayer's not being allowed an exemption (see Case 8/81 *Becker* [1982] ECR 53, paragraph 34).

26 As regards the alleged risk of distortion of competition, the Danish Ministry for Fiscal Affairs argues that, if SDC's supplies of services were exempt in part from VAT, data-handling centres offering the same services or similar services would be at a competitive disadvantage.

27 SDC, on the other hand, submits that the charging of tax on its supplies of services also produces distortions of competition since its members have to pay additional tax in the form of VAT, unlike the big financial institutions which effect the transactions concerned themselves.

28 On this point, it must be emphasized that SDC supplies and invoices services to banks which use its services. In contrast, in the case of financial institutions which perform their services directly, there is no exchange of services nor, therefore, any invoicing. As the Advocate General points out in point 57 of his Opinion, the difference involved is one of liability to tax and not one of exemption under points 3 and 5 of Article 13B(d) of the Sixth Directive, which is quite neutral since it arises from the actual nature of the transactions.

29 It must therefore be concluded that none of the arguments concerning the prevention of tax evasion or avoidance and the risk of creating distortions of competition advanced by the parties to the main proceedings can affect the answers to be given to the questions raised.

The persons effecting the transactions concerned and the way in which those transactions are effected

30 The person effecting the transactions in question and the way in which those transactions are actually effected are relevant to the answer to be given to the second part of the first question, the second question, part A of the third question and the sixth question. By these questions, the national court is asking in effect whether points 3 and 5 of Article 13B(d) are to be interpreted as meaning that the exemption is subject to the condition that the transactions be effected by a certain type of institution, by a certain type of legal person or, in whole or in part, in a particular way.

31 As regards the first aspect, all the parties participating in the proceedings consider that it is not excluded *a priori* that persons other than certain financial institutions could effect the transactions exempted under Article 13B(d). These parties therefore agree that the decisive criterion for the exemption is the type of transaction effected.

32 The transactions exempted under points 3 and 5 of Article 13B(d) are defined according to the nature of the services provided and not according to the person supplying or receiving the services. Those provisions make no reference to that person.

33 The fact that the identity of the persons effecting the transactions is irrelevant in determining the transactions exempt under points 3 and 5 of Article 13B(d) is confirmed by points 1 and 2 of Article 13B(d), which refer to 'the persons granting it' and to 'the person who is granting the credit'.

34 In paragraph 13 of its judgment in Case C-281/91 *Muys' en De Winter's Bouw-en Aannemingsbedrijf* [1993] ECR I-5405 the Court stated that where the identity of the lender or the borrower is not specified, the expression 'the granting and the negotiation of credit' in point 1 of Article 13B(d) of the Sixth Directive is in principle sufficiently broad to include credit granted by a supplier of goods in the form of deferral of payment. The Court also considered that the wording of that provision in no way suggested that the scope of that provision was limited only to loans and credits granted by banking and financial institutions.

35 As regards, more specifically, the legal form of the company supplying or receiving services, referred to in the sixth question, it must be concluded that, if the identity of the persons involved is immaterial in determining whether the service in question is exempt from VAT under points 3 and 5 of Article 13B(d), the type of legal person represented by the operators concerned is *a fortiori* immaterial.

36 As regards the way in which the transactions concerned are effected, the Danish Ministry for Fiscal Affairs, the United Kingdom Government and the Commission

point out that the services provided by SDC consist only of electronic services and that they are not therefore covered by points 3 and 5 of Article 13B(d) of the Sixth Directive.

37 It must be stated in regard to this point that the specific manner in which the service is performed, electronically, automatically or manually, does not affect the application of the exemption. The provisions in question make no distinction in this regard. Accordingly, the mere fact that a service is performed entirely by electronic means does not in itself prevent the exemption from applying to that service. If, on the other hand, the service entails only technical and electronic assistance to the person performing the essential, specific functions for the transactions covered by points 3 and 5 of Article 13B(d), it does not fulfil the conditions for exemption. That conclusion follows, however, from the nature of the service and not from the way in which it is performed.

38 The answer to the second part of the first question, the second question, part A of the third question and the sixth question must therefore be that points 3 and 5 of Article 13B(d) of the Sixth Directive are to be interpreted as meaning that the exemption is not subject to the condition that the transactions be effected by a certain type of institution, by a certain type of legal person or wholly or partly by certain electronic means or manually.

The contractual links between the person performing the service and the person receiving it

39 By part B of its third question, the national court asks in effect whether the exemption provided for by points 3 and 5 of Article 13B(d) is subject to the condition that the entire service be performed by an institution which has a relation with the bank's end customer. In the event that the answer to this question is in the negative, the national court wishes to ascertain, by its fifth question, whether the fact that the service provided by a data-handling centre appears, to the end customer of the bank, to be a service supplied by the bank precludes the exemption.

40 SDC considers that points 3 and 5 of Article 13B(d) of the Sixth Directive also apply where the complete service is performed by a number of persons, even though they do not all have a direct relation with the customer of a financial institution.

41 The Danish Ministry for Fiscal Affairs, on the other hand, considers that the transactions envisaged in points 3 and 5 of Article 13B(d) must be effected by the taxable person on the basis of a contract concluded with the final consumer, in regard to whom he is directly responsible for performance of the final service. It follows that the services performed by SDC for the banks are excluded from the scope of the provision. Those services are in fact performed on the basis of a contract concluded with the banks, with SDC acting as subcontractor.

42 The United Kingdom Government, whose observations on this point are confined to transfers, submits that the transactions are covered by the exemption, whether they are effected by the banks themselves or by an undertaking to which they have recourse, provided that the undertaking is responsible for the conduct of the transactions, which are identifiable as separate, individual services.

43 The German Government considers that the decisive criterion for application of the exemption depends on how the financial service is characterized, irrespective whether there is a contract or a direct link between the person providing it and the final consumer. In its view, no such requirement is to be found in the wording of points 3 and 5 of Article 13B(d).

44 The Commission considers that the provisions in question are to be interpreted as meaning that the exemption provided for by points 3 and 5 of Article 13B(d) of the Sixth Directive applies only to services of a financial character concerning the matters mentioned in those provisions and supplied under a contract concluded

directly with the recipient with regard to whom the provider of the service assumes responsibility for effecting the transactions.

45 It must first be pointed out in this regard that, according to settled case-law on the concept of supply of services for consideration contained in point 1 of Article 2 of the Sixth Directive, taxable transactions, within the framework of the VAT system, presuppose the existence of a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance, the remuneration received by the provider of the service constituting the value actually given in return for the service supplied to the recipient (see, in particular, Case C-16/93 *Tolsma* [1994] ECR I-743, paragraph 14).

46 In the present case, most of the services provided by SDC involve no legal relationship between it and the end recipient, namely the customer of a member bank of SDC. In such a situation the legal relations which are formed are between the bank and its customer and between the bank and SDC.

47 The services in point in the main proceedings are the services which SDC has performed for its own customers, namely the banks, and in return for which the banks have paid remuneration. Having regard to that relationship, the services which SDC provides to the customers of the banks are therefore significant only as descriptors and as parts of the services provided by that body to the banks.

48 As is clear from paragraph 32 of this judgment, the identity of the provider of the service and the recipient does not affect the application of the provisions in question, except where they cover services which, by their nature, are provided to the customers of financial institutions. During the proceedings it was contended, in particular, that transfer and payment services are of that nature.

49 It is therefore necessary to consider first of all whether the provision which allows transfers to be exempt requires the exempt service to be provided directly to the end customer of the bank.

50 It must be added that the considerations relating to transfers, set out below, are also applicable to transactions concerning payments in so far as the factual circumstances and the contractual links are similar. Moreover, no distinction in this regard has been raised by the parties in the proceedings before the Court.

51 SDC contests the interpretation according to which the provision covers only the service provided to the end customer of the bank and points out that customers of banks may themselves effect transfers, or have them effected, by shops for example, without any action on the part of the bank.

52 The Danish Ministry for Fiscal Affairs, on the other hand, submits that even in the situations referred to by SDC the link between the end customer and his bank is decisive. In support of that submission it maintained that, in the situation in point in the main proceedings, it is the bank which has authorized the customer to give it orders and that the service is, on any view, provided to the customer in the bank's name.

53 On this point, it must be noted first of all that a transfer is a transaction consisting of the execution of an order for the transfer of a sum of money from one bank account to another. It is characterized in particular by the fact that it involves a change in the legal and financial situation existing between the person giving the order and the recipient and between those parties and their respective banks and, in some cases, between the banks. Moreover, the transaction which produces this change is solely the transfer of funds between accounts, irrespective of its cause. Thus, a transfer being only a means of transmitting funds, the functional aspects are decisive for the purpose of determining whether a transaction constitutes a transfer for the purposes of the Sixth Directive.

54 In cases where the customer effects a transfer or causes a transfer to be effected without any action by the bank, the specific acts which constitute the transfer are carried out either by the data-handling centre and the customer or by the data-handling centre and a third party, the latter acting at the customer's request, or by the data-handling centre acting alone pursuant to a standing order from the customer.

55 The contractual links between the bank and its customer do not diminish the role of the data-handling centre. It is from those links that the customer derives the right to have transactions effected, even if they are invoiced as services provided to the bank and also alter the bank's financial situation.

56 Moreover, if point 3 of Article 13B(d) of the Sixth Directive covered only the service which a financial institution provides to the end customer, only certain acts concerning transfer transactions could be exempt. Such an interpretation would restrict the exemption in a way which is not supported by the wording of the provision in question. That wording does not restrict the exemption to that relation and it is sufficiently broad to include services provided by operators other than banks to persons other than their end customers.

57 It follows from the foregoing that an interpretation restricting application of the exemption provided for by point 3 of Article 13B(d) to services provided directly to an end customer is unfounded.

58 As far as SDC's other functions are concerned, its role in relations with the banks and end customers is comparable to its role in a transfer. Furthermore, the other exemptions provided for by points 3 and 5 of Article 13B(d) are, like the exemption for transfers, also defined according to the nature of the services provided and not according to the identity of the persons to whom they are provided.

59 The answer to part B of the third question and to the fifth question must therefore be that the exemption provided for by points 3 and 5 of Article 13B(d) is not subject to the condition that the service be provided by an institution which has a legal relationship with the end customer. The fact that a transaction covered by those provisions is effected by a third party but appears to the end customer to be a service provided by the bank does not preclude exemption for the transaction.

Data-handling services and their character

60 By its fourth question the national court seeks to ascertain whether the VAT exemption must be granted where a person either performs only part of a complete service or carries out only certain operations necessary for the supply of a complete exempt financial service. Given that the first question concerns the exemption of the data-handling element in the services envisaged by points 3 and 5 of Article 13B(d), these questions can be examined together.

Transfers and payments

61 It is necessary to consider first of all whether the operations carried out by a data-handling centre such as SDC in the effecting of a transfer can in themselves be described as transactions concerning transfers within the meaning of point 3 of Article 13B(d) of the Sixth Directive.

62 The Danish Ministry for Fiscal Affairs argues that the services provided by SDC are in fact composed of various administrative or technical components which are invoiced individually. No price is fixed in advance for the transfer, the transfer of

funds or the services in their entirety. Consequently, the services provided by SDC are different from those covered by point 3 of Article 13B(d) of the Sixth Directive.

63 SDC, on the other hand, states that, in order for the exemption to apply, it is not necessary for the services supplied to be complete services but it is sufficient that the supply in question should be an element of a financial service in which various operators participate and which, taken as a whole, constitutes a complete financial service.

64 Given this difference of view, it must be noted first of all that the wording of point 3 of Article 13B(d) of the Sixth Directive does not in principle preclude a transfer from being broken down into separate services which then constitute 'transactions concerning transfers' within the meaning of that provision and which are invoiced by specifying the elements of those services. The invoicing is irrelevant for the application of the exemption in question, provided that the actions necessary for effecting the exempt transaction can be identified in relation to the other services.

65 However, since point 3 of Article 13B(d) of the Sixth Directive must be interpreted strictly, the mere fact that a constituent element is essential for completing an exempt transaction does not warrant the conclusion that the service which that element represents is exempt. The interpretation put forward by SDC cannot therefore be accepted.

66 In order to be characterized as exempt transactions for the purposes of points 3 and 5 of Article 13B, the services provided by a data-handling centre must, viewed broadly, form a distinct whole, fulfilling in effect the specific, essential functions of a service described in those two points. For 'a transaction concerning transfers', the services provided must therefore have the effect of transferring funds and entail changes in the legal and financial situation. A service exempt under the Directive

must be distinguished from a mere physical or technical supply, such as making a data-handling system available to a bank. In this regard, the national court must examine in particular the extent of the data-handling centre's responsibility *vis-à-vis* the banks, in particular the question whether its responsibility is restricted to technical aspects or whether it extends to the specific, essential aspects of the transactions.

67 It is for the national court, which is acquainted with all the facts of the case, to determine whether the operations carried out by SDC have such a distinct character and whether they are specific and essential.

68 In view of all foregoing considerations the reply to be given to the first and fourth questions concerning point 3 of Article 13B(d) of the Sixth Directive must be that this provision is to be interpreted as meaning that transactions concerning transfers and payments include operations carried out by a data-handling centre if those operations are distinct in character and are specific to, and essential for, the exempt transactions.

SDC's other functions

69 SDC's operations entitled 'Advice on, and trade in, securities' cover two types of different services. The first type consist of separate information services characterized by the supply of financial information to the banks, whilst the second type form an integral part of the system of the market in marketable securities.

70 It is apparent from the actual wording of points 3, 4 and 5 of Article 13B(d) of the Sixth Directive that none of the transactions described by those provisions

concerns operations involving the supply of financial information. Such operations cannot therefore be covered by the exemption provided for by that provision.

71 On the other hand, it is not excluded that some operations belonging to the second group are to be considered as transactions in 'shares, interests in companies or associations, debentures and other securities' within the meaning of point 5 of Article 13B(d) of the Sixth Directive. The national court points out here that SDC carries out stock exchange transactions for its members' customers by purchasing or selling securities held in customers' portfolios.

72 It is undisputed that the transactions in shares and other securities covered by point 5 of Article 13B(d) of the Sixth Directive, which excludes only management and safekeeping of securities, include transactions on the market in marketable securities.

73 Furthermore, trade in securities involves acts which alter the legal and financial situation as between the parties and are comparable to those involved in the case of a transfer or a payment.

74 However, the description provided in this regard by the national court is not sufficient to enable the Court to determine the precise nature of SDC's services concerning advice on, and trade in, securities.

75 The answer to be given to the first and fourth questions concerning operations entitled 'Advice on, and trade in, securities' must therefore be that services consisting in making financial information available to banks and other users are not covered by points 3 and 5 of Article 13B(d) of the Sixth Directive. As regards, more

specifically, trade in securities, point 5 of that provision is to be interpreted as meaning that transactions in shares, interests in companies or associations, debentures and other securities include operations carried out by a data-handling centre if they are separate in character and are specific to, and essential for, the exempt transactions.

76 The same applies to the management of deposits, purchase contracts and loans. As was stated in paragraph 4 of this judgment, such operations are no longer covered by the exemption since 1 January 1991, the date on which the transitional period during which the Member States could, by way of exception, maintain exemptions for the specific cases provided for in Annex F to the Sixth Directive expired.

77 The answer to the questions concerning the management of deposits, purchase contracts and loans must therefore be that the mere fact that the operations are carried out by a data-handling centre does not prevent them from constituting services covered by points 13 and 15 of Annex F to the Sixth Directive. It is for the national court to determine whether, before 1 January 1991, those operations were separate in character and specific to, and essential for, those services.

The new organizational structure

78 By its last question the national court seeks to ascertain in particular whether the fact that the services provided to the banks are performed by a company which invoices the services to SDC which in turn invoices them to the banks is significant for the purposes of the application of points 3 and 5 of Article 13B(d) of the Sixth Directive.

79 As far as this question is concerned, the importance of a legal relationship between the person providing a service and the person receiving it and the principle of mutual performance must be emphasized. However, if the service supplied is specified, if it fulfils the criteria for exemption and if the invoicing concerns only that service, the mere fact that for organizational reasons the invoicing is done through a third party does not prevent the transaction effected from being regarded as an exempt transaction.

80 There may be such invoicing if the data-handling centre which effects the transactions and the third party which invoices them in reality constitute a unit created to serve the common interests of the persons for whom its services are intended.

81 The reply to be given to the sixth question must therefore be that the mere fact that a service is invoiced by a third party does not prevent the transaction to which it relates from being exempt under points 3 and 5 of Article 13B(d) of the Sixth Directive.

Costs

82 The costs incurred by the German and the United Kingdom Governments and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions submitted to it by the Østre Landsret by judgment of 20 December 1994, hereby rules:

1. **Points 3 and 5 of Article 13B(d) of the Sixth Council Directive (77/388/EEC) of 17 May 1977, on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, are to be interpreted as meaning that the exemption is not subject to the condition that the transactions be effected by a certain type of institution, by a certain type of legal person or wholly or partly by certain electronic means or manually.**

2. **The exemption provided for by points 3 and 5 of Article 13B(d) of the Sixth Directive is not subject to the condition that the service be provided by an institution which has a legal relationship with the end customer. The fact that a transaction covered by those provisions is effected by a third party but appears to the end customer to be a service provided by the bank does not preclude exemption for the transaction.**

3. **Point 3 of Article 13B(d) of the Sixth Directive is to be interpreted as meaning that transactions concerning transfers and payments and transactions in shares, interests in companies or associations, debentures and other securities include transactions carried out by a data-handling centre if those**

transactions are distinct in character and are specific to, and essential for, the exempt transactions.

4. **Services consisting in making financial information available to banks and other users are not covered by points 3 and 5 of Article 13B(d) of the Sixth Directive.**

5. **The mere fact that transactions concerning the management of deposits, purchase contracts and loans are carried out by a data-handling centre does not prevent them from constituting services covered by points 13 and 15 of Annex F to the Sixth Directive. It is for the national court to determine whether, before 1 January 1991, those transactions were separate in character and specific to, and essential for, those services.**

6. **The mere fact that a service is invoiced by a third party does not prevent the transaction to which it relates from being exempt under points 3 and 5 of Article 13B(d) of the Sixth Directive.**

Moitinho de Almeida Sevón Edward

Jann Wathelet

Delivered in open court in Luxembourg on 5 June 1997.

R. Grass J. C. Moitinho de Almeida

Registrar President of the Fifth Chamber