OPINION OF ADVOCATE GENERAL LÉGER delivered on 15 September 2005 [1]

1. These two requests for a preliminary ruling, which have been submitted to the Court by the Simvoulio tis Epikratias (Council of State) (Greece), concern the interpretation of the concept of 'activities closely related' to hospital and medical care, which appears in Article 13A(1)(b) of Sixth Council Directive 77/388/EEC. [2]

2. The question asked by the national court concerns whether the supply of telephone services and a television set by a hospital to an in-patient and the supply of meals and a bed by the hospital to persons accompanying the in-patient may be considered to be activities closely related to hospital and medical care and therefore exempt from value added tax [3] pursuant to that provision.

I — The legal context

A — *Community law*

3. The object of the Sixth Directive is to establish a system of VAT common to all the Member States. For this purpose, first, it defines taxable transactions uniformly. [4] Accordingly Article 2(1) provides that the supply of goods or services effected for consideration by a taxable person acting as such is to be subject to VAT. Under Article 4, any person who independently carries out in any place any economic activity, such as that of a person supplying services, whatever the purpose or results of that activity, is deemed to be a taxable person.

4. Secondly, Title X of the Sixth Directive contains a common list of exemptions in order, according to the 11th recital in the

1 — Original language: French.

2 — Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1, 'the Sixth Directive').

3 — 'VAT'.

4 — See Case C-305/01 *MKG-Kraftfahrzeuge-Factoring* [2003] ECR I-6729, paragraph 38, and Case C-25/03 *HE* [2005] ECR I-3123, paragraph 36.

preamble to the Directive, that the Communities' own resources may be collected in a uniform manner in all the Member States.

5. Article 13A of the Sixth Directive lists the exemptions in favour of certain activities in the public interest. Article 13A(1) 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 such exemptions and of preventing any possible evasion, avoidance or abuse:

...

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

...'

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

7. Article 13A(2)(b) reads as follows:

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

— it is not essential to the transactions exempted,

— its basic purpose is to obtain additional income for the organisation by carrying out transactions which are in direct competition with those of commercial enterprises liable for value added tax.'

B — *National law*

8. Article 18(1) of Law No 1642/1986 on the application of value added tax and other provisions (FEK, A' 125) provides as follows:

'1. The following shall be exempt from tax:

...

(d) hospital and medical care services and closely related supplies of goods and services, provided by persons operating lawfully. Services supplied in establishments offering spa therapy and medicinal springs shall be placed on the same footing as those services.

...'[5]

II — Facts

9. Diagnostiko & Therapeftiko Kentro Athinon-Ygeia AE[6] is a legal person governed by private law which has the object of providing hospital and medical care services.

10. Following an audit of Ygeia's accounts for the 1992 and 1993 tax years, the competent administrative authority found that Ygeia's income from the provision, first, of telephone services and television sets for in-patients and, second, of meals and beds for persons accompanying them should be subject to VAT. Consequently the authority adjusted Ygeia's tax liability for the two years in question.

11. The actions brought by Ygeia against the authority's decisions were dismissed by the Diikitiko Protodikio (Administrative Court of First Instance) and by the Diikitiko Efetio (Administrative Appeal Court), both of which held that the services cannot by nature be regarded as closely related to hospital and medical care because they are intended to

5 — See the order for reference, pp. 3-4 of the English version.

6 — 'Ygeia'.

facilitate patients' hospital stays and do not contribute to their care.

12. Ygeia appealed against the judgments of the Diikitiko Efetio.

III — The question referred

13. The referring court states that it is common ground that Ygeia, as a legal person governed by private law, satisfies the conditions for exemption from the tax in question in relation to the hospital and medical care which it provides. According to the court, the only question that arises is whether the services in question constitute 'activities closely related' to such care.

14. The referring court observes that this concept is not defined in Article 13A(1) of the Sixth Directive and that, in the judgment in *Commission* v *France*,[7] the Court held that the concept does not call for an especially narrow interpretation since the exemption of such activities is designed to ensure that hospital and medical care and related activities do not become inaccessible by reason of the increased cost that would follow if they were subject to VAT.

15. The referring court also mentions the judgment in *Dornier*,[8] in which the Court held that the question of whether an activity falls within the concept of 'closely related activities' depends on whether or not it is ancillary in nature, that is to say, whether the service is provided to the recipients as a means of enhancing the enjoyment of other services or constitutes for them an end in itself. The referring court considers that, from this point of view, the services in question could be classified as ancillary to the care provided by Ygeia, but that this classification is not sufficient for them to be categorised as activities closely related to hospital and medical care.

16. On this point, the referring court adds that, according to the first criterion set out in Article 13A(2)(b) of the Sixth Directive, in order to be deemed closely related to hospital and medical care, an activity must be essential. As an example of applying this test, the referring court cites the judgment in *Commission* v *Germany*,[9] where the Court held that the concept of a supply of services

7 — Case C-76/99 [2001] ECR I-249, paragraph 23.

8 — Case C-45/01 [2003] ECR I-12911.

9 — Case C-287/00 [2002] ECR I-5811, paragraphs 31 and 48.

'closely related' to university education covers the supply of services or of goods *directly necessary* for education. The Court concluded that, on the basis of that test, the activities in question could not be exempted from VAT.

17. In the light of these considerations, the Simvoulio tis Epikratias decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Do services supplied by persons referred to in Article 13A(1)(b) of Directive 77/388/EEC comprising the grant of use of a telephone and a television to patients and the provision of food and a bed to persons accompanying patients come under activities closely related to hospital and medical care, within the meaning of that provision, as activities ancillary to that care but also essential to it?'

IV — Discussion

18. In essence, the referring court asks whether Article 13A(1)(b) of the Sixth Directive must be interpreted as meaning that the supply by a hospital of telephone services and a television set to an in-patient and the supply by it of meals and a bed to persons accompanying the in-patient constitute activities closely related to hospital and medical care within the meaning of that provision.

19. This question arises because the supply of telephone services and a television set, and that of meals and sleeping accommodation, are, in principle, transactions subject to VAT where they are effected for consideration by a taxable person. It is also normal, in the common system of VAT, for one and the same person to be able to carry out transactions exempt from VAT and to make taxable supplies. [10]

20. The referring court's question seeks therefore to establish whether the services in question amount, by nature, to activities closely related to hospital and medical care

10 — Where a taxpayer uses goods and services for both exempt and taxed activities, Articles 17(5) and 19 of the Sixth Directive lay down how he is to deduct input VAT paid in respect of the pursuit of his taxed activities.

and whether they must therefore always be exempt from VAT pursuant to Article 13A (1)(b) of the Sixth Directive.

21. Ygeia proposes that the reply to this question be in the affirmative. It considers, first, that the conditions set out in Article 13A(2)(b) of the Sixth Directive are not necessarily relevant for defining the concept of 'activities closely related' to hospital and medical care. According to Ygeia, the conditions in question may be conditions to which the Member States may make the exemption at issue subject in relation to service providers other than legal persons governed by public law.

22. Secondly, Ygeia considers that the services in question are not, for patients, an end in themselves, but are a means of maximising the benefit from hospital and medical care. Therefore, according to Ygeia, those services are indeed ancillary to hospital care and must be treated for VAT purposes in the same way as hospital care. Ygeia also refers to the fact that, in Greece, it is customary for members of the patient's family to accompany the patient and in that way to assist the hospital staff. Their presence puts the patient in a better psychological state and thus contributes to recovery. The same applies to the provision of telephone services and a television set because it enables the patient to remain in contact with the outside world. It follows, according to Ygeia, that the relevant test for determining whether such services are 'activities closely related' to hospital and medical care is the will of the patient himself who has asked to receive those services because he considers them necessary for his recovery.

23. Finally, Ygeia observes that, as the services in question were provided only on the hospital premises, they are not in competition with similar services offered by other undertakings liable for VAT.

24. I do not agree with this analysis. I consider, together with the Hellenic Republic, the Federal Republic of Germany, the Republic of Cyprus and the Commission of the European Communities, that, as the relevant Community law stands at present, none of the services in question can be regarded as an activity which is, by nature, 'closely related' to hospital and medical care.

25. However, unlike those Member States, I think that none of those services is to be systematically refused exemption from VAT. In my opinion, they must be exempted from VAT where it is found that they are essential for the treatment of the in-patient and the only relevant criterion which, in reality, appears capable of being used for determin-

ing whether they are actually necessary is a doctor's prescription. I base this position on, first, Article 13A of the Sixth Directive and, secondly, the purpose underlying the exemption of hospital and medical care in a hospital from VAT.

26. First of all, with regard to Article 13A, as the referring court observes and as the Court has found,[11] it does not define what is covered by the concept of 'activities closely related' to hospital and medical care. I likewise find no indication in the wording of Article 13A(1)(b) as to whether one or other of the services at issue is covered by the concept.

27. As the Commission points out, it may be inferred from the wording of that provision that it refers to services provided by the hospital staff because it covers services provided by 'bodies governed by public law or, under social conditions comparable to those applicable to bodies governed by public law, by hospitals'. However, I do not share the Commission's opinion that it is also clear from the wording of that provision that 'closely related activities' can consist only of services supplied to the patient himself. In my view, a literal interpretation of Article 13A(1)(b) shows that the concept of 'activities closely related' to hospital and medical care covers all services provided by a hospital which have a close connection with the hospital and medical treatment of the patient.[12]

28. Therefore it cannot be inferred from the wording of Article 13A(1)(b) of the Sixth Directive that services provided by a hospital to a close relative of the patient, such as meals and a bed, may not be exempted.

29. On the other hand, Article 13A(2)(b) of the Sixth Directive offers some guidance as to the reply to be given to the question under consideration. According to that provision, the supply of goods or services is not to be granted exemption as provided for, inter alia, in Article 13A(1)(b) if, first, it is not essential to the transactions exempted or, second, its basic purpose is to obtain additional income for the organisation by carrying out transac-

11 — See *Commission* v *France*, cited above, paragraph 22.

12 — See, to that effect, Case 353/85 *Commission* v *United Kingdom* [1988] ECR 817, paragraph 32, and *Dornier*, cited above, paragraph 33.

tions which are in direct competition with those of commercial enterprises liable for VAT.

30. Although the Court did not refer to Article 13A(2)(b) in the judgment in *Commission* v *France*, cited above, in which it ruled on the interpretation to be given to 'activities closely related' to hospital and medical care, I consider, like the referring court and the abovementioned Member States, that this provision is relevant to that interpretation. It is clear from its wording that it requires the Member States to fulfil two obligations in relation to each of the individual exemptions expressly mentioned, that is to say, those set out in Article 13A(1)(b), (g), (h), (i), (l), (m) and (n). It may also be noted that each of those individual exemptions relates to supplies of services or goods which are 'closely related' or 'closely linked' to an activity in the public interest. [13]

31. Contrary to Ygeia's hypothesis, Article 13A(2)(b) of the Sixth Directive does not therefore lay down additional conditions which would apply only in the particular situation where a Member State decides to extend the exemption to service providers other than legal persons governed by public law. If that were the case, there is every reason for thinking that those conditions would appear not in a separate point, but following the conditions set out in Article 13A(2)(a), which gives Member States the right to extend the exemption. [14] It is also clear from the wording of Article 13A(2)(b) that the two conditions which it contains are mandatory for the Member States, unlike those in Article 13A(2)(a), which are optional.

32. In view of the content of Article 13A(2)(b), the conditions which it sets out must be taken into account for interpreting the terms of the various individual exemptions to

13 — For example, Article 13A(1)(g) exempts the supply of services and of goods 'closely linked' to welfare and social security work, Article 13A(1)(h) exempts the supply of services and of goods 'closely linked' to the protection of children and young persons, and Article 13A(1)(i) exempts children's or young people's education, school or university education and vocational training or retraining, including the supply of services and of goods 'closely related' thereto, and so forth.

14 — Article 13A(2)(a) is worded as follows:'Member States may make the granting to bodies other than those governed by public law of each exemption provided for in (1)(b), (g), (h), (i), (l), (m) and (n) of this Article subject in each individual case to one or more of the following conditions:
— they shall not systematically aim to make a profit, but any profits nevertheless arising shall not be distributed, but shall be assigned to the continuance or improvement of the services supplied,
— they shall be managed and administered on an essentially voluntary basis by persons who have no direct or indirect interest, either themselves or through intermediaries, in the results of the activities concerned,
— they shall charge prices approved by the public authorities or which do not exceed such approved prices or, in respect of those services not subject to approval, prices lower than those charged for similar services by commercial enterprises subject to value added tax,
— exemption of the services concerned shall not be likely to create distortions of competition such as to place at a disadvantage commercial enterprises liable to value added tax.'

which it refers, that is to say, the exemptions in Article 13A(1)(b), (g), (h), (i), (l), (m) and (n).

33. This analysis of the purport of Article 13A(2)(b) is confirmed by the judgment in *Commission* v *Germany*, cited above, where the Court ruled on the question of whether research activities carried out for consideration by higher education establishments could be exempted from VAT under Article 13A(1)(i) of the Sixth Directive.

34. In those proceedings, the German Government contended that research is a service closely related to education in public higher education establishments, on the ground that because they need research in order to succeed in their teaching as it allows them to develop and convey new knowledge. The Court did not accept this analysis and found that, although research may be regarded as 'of great assistance to university education, it is not essential to attain its objective, that is, in particular, the teaching of students to enable them to pursue a professional activity'. [15]

15 — See paragraph 48. The Court also justified this conclusion on the ground that 'many universities achieve this aim without carrying out research projects for consideration and there are other ways to ensure a link between university education and professional life'.

35. This requirement, which was taken into account by the Court when interpreting the concept of 'activities closely related' to university education, as provided for in Article 13A(1)(i), also applies, in light of the content of Article 13A(2)(b), for the purpose of interpreting the concept of 'activities closely related' to hospital and medical care, referred to in Article 13A(1)(b).

36. It follows that, as the law stands at present, under the first condition in Article 13A(2)(b) of the Sixth Directive it is not sufficient in order for the services provided in a hospital to be exempt from VAT that they be potentially or actually of assistance in the patient's recovery. In accordance with that provision, only activities which are essential to hospital and medical care are activities closely related to it.

37. If we look at the services in question, none of them appears to be capable of being regarded as essential or necessary for hospital or medical care generally, that is to say, whoever the in-patient may be and whatever the reasons for his hospital treatment. Although it can hardly be denied that each of them may help more or less to improve the conditions of a hospital stay and, consequently, may assist recovery, it seems to me that the contribution to the healing

process varies considerably, depending on the individual and the reasons for his being in hospital. For example, the situation seems to differ greatly according to whether the patient is a small child or an adult and whether the reason for hospitalisation is a minor surgical operation, necessitating a short stay, or treatment of a serious illness threatening the patient's life and justifying a lengthy stay in hospital.

38. Therefore I do not think that the services in question can be regarded, by nature, as 'closely related' to hospital and medical care. They seem to differ clearly, for example, from the activity before the Court in *Commission* v *France*, cited above, which the Court found to be 'closely related' to a VAT-exempt medical analysis.

39. In that case, the Court had to consider French legislation which required certain biological analyses to be carried out only by specialised laboratories. The legislation also required the specialised laboratory that carried out the analysis to pay a fee, for transmission of the sample, to the laboratory which took the sample from the patient. The Commission's objection to this legislation was that, unlike the cost of the analysis and of the taking of the sample, the cost of transmission was subject to VAT. The Court accepted the Commission's argument in this regard and held that the transmission of the sample was an activity closely related to the VAT-exempt analysis because transmission logically took place between the act of taking the sample and the analysis. [16]

40. I also agree with the Commission that none of the services in question can be equated with providing the patient himself with meals and a bed, which does indeed appear to be, by nature, closely related to hospital treatment. It follows that none of the services in question can be systematically exempted from VAT pursuant to Article 13A (1)(b) of the Sixth Directive.

41. This analysis seems to me to be confirmed, secondly, by the purpose of the exemption provided for by that provision. As the Court has held, the exemption is intended to ensure that medical and hospital care does not become inaccessible by reason of the increased costs of providing it that would follow if it, or closely related activities, were subject to VAT. [17] According to the case-law, it is a question of exempting from VAT services which are provided in estab-

16 — See paragraph 24.

17 — See *Commission* v *France*, cited above, paragraph 23, and *Dornier*, paragraph 43.

lishments pursuing social purposes such as the safeguarding of human health and which have the object of diagnosing, treating and, so far as possible, curing diseases or health disorders. [18] Consequently the object of the exemption is to reduce the cost of medical care and to make such care more accessible to individuals. [19]

42. In order to qualify for the exemption under Article 13A(1)(b) of the Sixth Directive, the services provided in the medical establishment concerned must actually pursue a therapeutic objective. It is only in light of that objective that, according to the case-law, the concept of 'activities closely related' to hospital and medical care must not be construed too restrictively. Therefore the case-law does not support the view that the services at issue necessarily constitute activities closely related to hospital and medical care when, as we have seen, they cannot generally and systematically be considered to be services necessary or essential for hospital care.

43. In addition, as the Commission observes, the systematic exemption of the services in issue could have a result contrary to the aim of Article 13A(1)(b) of the Sixth Directive. Where a taxable person pursues a VAT-exempt activity, he in fact bears the VAT charge which he has paid by way of input tax on the purchase of goods and services necessary for that activity because he cannot pass it on to the final consumer. I have also pointed out that, where he pursues at one and the same time taxable activities and exempt activities, he can deduct the input tax only in proportion to the ratio between taxable and exempt activities. Therefore increasing the proportion of exempt activities leads to a reduction in the taxable person's rights of deduction and, consequently, to an increase in the VAT remaining payable by him. In so far as he must balance his budget, the increase in the tax liability will be reflected in a rise in the price of his VAT-exempt services. In other words, the systematic exemption of the supply of telephone services and a television set to in-patients and of accommodation services to persons accompanying them may very well result in an increase in the daily price of hospital stays.

44. Nor do I consider that the services at issue can be systematically exempted from VAT by examining them by reference to the test of whether or not they are ancillary. As the referring court observes, this test was used by the Court in *Commission* v *France*, cited above, and *Dornier* to determine whether the services at issue in those cases fell within the concept of 'activities closely related' to hospital and medical care. It is true that the concept of an 'ancillary service'

18 — See *Dornier*, paragraphs 47 and 48.

19 — Ibid., paragraph 43.

may appear broader than the requirement that an activity be essential to the pursuit of the public interest in question. According to the case-law, a service must be regarded as ancillary to a principal service if it does not constitute for customers an end in itself, but a means of enhancing the enjoyment of the principal service supplied. [20]

45. However, even on the basis of that test and assuming that it can be applied disregarding the first condition in Article 13A (2)(b) of the Sixth Directive, it seems very difficult to presume systematically that the services at issue are not an end in themselves. As I have stated, providing a patient with telephone services and a television set does not always have a therapeutic purpose. The patient may choose to obtain these services from the hospital rather than another enterprise for reasons of convenience and they may not necessarily form part of the therapeutic measures which are the reason for hospitalisation. In the same way, the use by the patient's close relatives of accommodation facilities provided by the hospital is not always necessitated by the patient's age or illness, but may also arise from the mere wish to use the accommodation facilities offered by the hospital, which are less costly and closer to the patient than equivalent services offered by another taxable person, hotel or restaurant.

46. In addition, systematic exemption of the services in question would be contrary to the principles developed by case-law which provide a framework for interpretation of the exemptions provided for by the Sixth Directive. As all the interveners have observed, it is settled case-law that the exemptions referred to in Article 13 of the Sixth Directive must be interpreted strictly because they are exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person. [21] It must also be noted that, similarly, the Sixth Directive does not exempt from VAT every activity performed in the public interest, but only those which are listed and described in great detail. [22] Therefore the services in question can be

20 — See Joined Cases C-308/96 and C-94/97 *Madgett and Baldwin* [1998] ECR I-6229, paragraph 24, and Case C-349/96 *CPP* [1999] ECR I-973, paragraph 30.

21 — See, inter alia, Case C-2/95 *SDC* [1997] ECR I-3017, paragraph 20, Case C-141/00 *Kügler* [2002] ECR I-6833, paragraph 28, and Case C-307/01 *D'Ambrumenil and Dispute Resolution Services* [2003] ECR I-13989, paragraph 52.

22 — See Case C-149/97 *Institute of the Motor Industry* [1998] ECR I-7053, paragraph 18, Case C-384/98 *D.* [2000] ECR I-6795, paragraph 20, and *D'Ambrumenil and Dispute Resolution Services*, cited above, paragraph 54.

exempted from VAT only if they fulfil exactly the conditions laid down by Article 13A(1)(b).

47. The interpretation of this provision must also observe the principle of fiscal neutrality inherent in the common system of VAT, whereby economic operators who carry on the same activities must not be treated differently as far as the levying of VAT is concerned. [23] In this respect, contrary to Ygeia's argument and as the Member States which have lodged observations in the present proceedings correctly observe, when the hospital provides the services in question it is indeed competing with other taxable persons who provide services of the same nature, such as hotels and restaurants so far as the accommodation services supplied to persons accompanying the patient are concerned, and suppliers of telephone services and television sets. As the Federal Republic of Germany points out, patients who use a mobile phone pay VAT on the cost of the telephone services and members of their family who sleep and take their meals at a hotel pay VAT on the cost of their accommodation.

48. Finally, it is clear from the case-law that the exemptions listed in Article 13 of the Sixth Directive constitute independent concepts of Community law whose purpose is to avoid divergences in the application of the VAT system from one Member State to another. [24] This means that the concept of 'activities closely related' to hospital and medical care cannot be defined differently depending on the socioeconomic characteristics of each Member State.

49. Taking all these factors into account, I consider that the services in question cannot be generally and systematically deemed to be services closely related to hospital and medical care within the meaning of Article 13A(1)(b) of the Sixth Directive.

50. However, it cannot be ruled out that the services may, under certain circumstances, fall within the exemption in Article 13A(1)(b). As we have seen, this exemption aims to reduce the cost of healthcare, that is to say, of services which have the object of protecting, maintaining and restoring health. Consequently it is the purpose of a service which determines whether it must be exempted from VAT.

23 — See *Kügler*, cited above, paragraph 30, and *Dornier*, paragraphs 42 and 44.

24 — See Case 348/87 *Stichting Uitvoering Financiële Acties* [1989] ECR 1737, paragraph 11, *CPP*, cited above, paragraph 15, *Commission* v *France*, cited above, paragraph 21, and *D'Ambrumenil and Dispute Resolution Services*, paragraph 52.

51. It seems to me to be perfectly conceivable that, in certain circumstances, the presence of a close relative may be essential for the in-patient's treatment and that the provision of a bed and meals for that relative may prove necessary to ensure that he remains at the patient's side. This could be the case where, for example, the patient is a small child or has an illness which gives rise to serious concern.

52. Providing a patient with telephone services may enable him to remain in touch with his relatives and to obtain from them significant moral support which may appear essential in certain circumstances. Although this may seem less obvious at first sight, it is also difficult to rule out absolutely the possibility that the availability of a television set, which is a means of information and entertainment appreciated by most people, could in some cases be necessary for the treatment of an in-patient. Once again, I have in mind children who, because of a serious illness or the treatment for it, cannot have visitors or can have them only under restricted conditions. Providing these children with a television set may appear to be a means of amusement essential for their treatment in a hospital.

53. However, although it can quite easily be envisaged that the provision of these services may, in some situations, be considered essential for the treatment of an in-patient, it appears, on the other hand, very difficult to specify those situations in objective terms, given the enormous variety of situations which may exist in practice. It must also be remembered that the Sixth Directive aims to establish a common system of VAT and that that system must display certainty and foreseeability.[25] It would not therefore be consistent with that aim and with those requirements if the task of assessing in each individual case whether the services in question are actually necessary were left to hospitals and the competent national authorities. Consequently it is incumbent on the Court to establish an objective criterion common to all the Member States.

54. As Community law stands at present, I do not think that this criterion can be constituted by a request by the patient himself, as proposed by Ygeia, or a request by the patient's close relatives. This would not ensure that the exemption is limited to supplies which are genuinely necessary for hospital and medical care. Furthermore, the question whether the provision of one or other of the services in issue is necessary for the in-patient's treatment does appear to entail an assessment of a medical nature. It is indeed the doctor in charge of his treatment

25 — See, in particular, Case C-30/89 *Commission* v *France* [1990] ECR I-691, paragraph 23.

in the hospital who seems to be the authority best able to determine whether services such as those in issue, which are not, by nature, closely related to hospital and medical care, must nevertheless be considered essential to treatment. This criterion also has the advantage of being objective and of meeting the requirements of certainty and foreseeability.

55. Under this criterion, the supply by a hospital of telephone services and a television set to an in-patient and the supply by it of meals and a bed to persons accompanying him would thus constitute activities closely related to hospital and medical care if those facilities or the permanent presence of a close relative were prescribed by a doctor.

56. When, at the hearing, the parties were asked for their opinion on this criterion, Ygeia's representative stated that doctors never prescribe services of that kind. The Greek Government's representative stated on the other hand that the criterion could lead to abuse.

57. First of all, I conclude from the Greek Government's response that, contrary to Ygeia's submission, the criterion which I propose may be applied in practice. Secondly, I do not deny that the use of the criterion may give rise to abuse and, at the very least, to differing practice from one hospital to another. However, both that risk and that disadvantage are inherent in the application of any criterion based on human assessment and, in my view, the advantage of not categorically excluding the services in question from the ambit of the exemption outweighs the practical difficulties posed by use of the proposed criterion. It must also be remembered that the Member States may, if necessary, take appropriate measures to prevent abuse in the application of this criterion in the same way as they are called on to do by Article 13A(1) of the Sixth Directive in relation to each of the individual exemptions for which it provides.

58. If the Court agrees with my proposal, it will be for the national court to examine in the present case whether the services in question supplied by Ygeia to its in-patients were prescribed by a doctor. It must also verify that basic purpose of the supply of those services was not to obtain additional income for Ygeia, in accordance with Article 13A(2)(b) of the Sixth Directive.

59. In light of the foregoing, I propose that the reply to the question referred for a preliminary ruling should be that Article 13A (1)(b) of the Sixth Directive must be interpreted as meaning that the supply by a hospital of telephone services and a television set to an in-patient and the supply by it of meals and a bed to persons accompanying him constitute activities closely related to hospital and medical care pursuant to that provision only if the provision of those facilities to the patient or the permanent presence of a close relative at his side are prescribed by a doctor.

V — Conclusion

60. I accordingly propose that the following reply be given to the question referred to the Court by the Simvoulio tis Epikratias:

Article 13A(1)(b) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be interpreted as meaning that the supply by a hospital of telephone services and a television set to an in-patient and the supply by it of meals and a bed to persons accompanying him constitute activities closely related to hospital and medical care pursuant to that provision only if the provision of those facilities to the patient or the permanent presence of a close relative at his side are prescribed by a doctor.