JUDGMENT OF THE COURT (First Chamber)
15 May 1990 *

In Case C-4/89

REFERENCE to the Court under Article 177 of the EEC Treaty by the commissione tributaria di primo grado di Piacenza, for a preliminary ruling in the proceedings pending before that court between

Comune di Carpaneto Piacentino and Others

and

Ufficio provinciale imposta sul valore aggiunto di Piacenza,

on the interpretation of Article 4(5) of 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 (Official Journal 1977, L 145, p. 1),

THE COURT (First Chamber)

composed of: Sir Gordon Slynn, President of Chamber, R. Joliet and G. C. Rodríguez Iglesias, Judges,

Advocate General: J. Mischo
Registrar: D. Louterman, Principal Administrator

after considering the observations submitted on behalf of

the Comune of Carpaneto Piacentino and Others, by Francesco Tesauro and Michele Avantaggiati, lawyers,

* Language of the case: Italian.

the Government of the Italian Republic, by Professor Luigi Ferrari Bravo, Head of the Department for Contentious Diplomatic Affairs of the Ministry of Foreign Affairs, assisted by Franco Favara, avvocato dello Stato, acting as Agents,

the Commission of the European Communities, by Enrico Traversa, a member of its Legal Department, acting as Agent,

having regard to the Report for the Hearing and further to the hearing on 6 March 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 28 March 1990,

gives the following

Judgment

1 By order of 22 December 1988, which was received at the Court on 5 January 1989, the commissione tributaria di primo grado di Piacenza (First Instance Tax Board, Piacenza) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty several questions on the interpretation of Article 4(5) of 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 (hereinafter referred to as 'the Sixth Directive'; Official Journal 1977, L 145, p. 1).

2 Those questions arose in proceedings between the local authority of Carpaneto Piacentino and 11 other local authorities which intervened in support of it and the Ufficio provinciale imposta sul valore aggiunto di Piacenza (Provincial Value-Added Tax Office, Piacenza) concerning the classification for the purposes of liability to value-added tax (hereinafter referred to as 'VAT') of the following transactions engaged in by the local authorities: concessions in respect of graves and cemetery vaults, sale of various fittings for vaults, sale of building land for subsidized housing and grants of building rights over land in connection with subsidized housing, contribution towards the payment of expenses incurred in installing water pipes, fees received for the concession to operate a public weigh-bridge, sales of salvaged plumbing material, sale of surplus road-making materials, sale of wood obtained from the lopping of trees lining the streets.

3 In order to resolve that dispute, the commissione tributaria di primo grado di Piacenza stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'In order to bring the Italian system of value-added tax into line with the Community provisions was the Italian legislature under an obligation by virtue of Article 1 of the Sixth Directive:

(a) to lay down the general principle set out in the first subparagraph of Article 4(5) of the Sixth Directive by stipulating specific criteria for defining the activities engaged in by local authorities in their capacity "as public authorities" by reference to the concept of "administrative functions", as defined with regard to the various branches of municipal activities by Presidential Decree No 616 of 24 July 1977 adopted pursuant to Delegating Law No 382/1985, implementing Article 118 of the Constitution;

(b) to exclude, therefore, from the range of commercial activities any activities which are deemed by law to involve the exercise of administrative functions pursuant to Presidential Decree No 616 of 24 July 1977 and the other legislative provisions referred to therein;

(c) not to subject to value-added tax, in compliance with the second subparagraph of Article 4(5), activities engaged in optionally by local authorities (management of certain public services) where they do not lead to significant distortions of competition, in so far as the same services are also provided by private individuals, as is the case, for instance, with regard to the management of pharmacies in most local authority areas and, consequently, to specify the necessary quantitative limits;

(d) to fix, pursuant to the third subparagraph of Article 4(5) of the Sixth Directive, a threshold below which there is no liability to tax in respect of the public activities listed in Annex D to the Sixth Directive (excluding the management of water supply which, being compulsory, involves the exercise of an administrative function)?'

4 All the questions referred to the Court are concerned with the interpretation of Article 4(5) of the Sixth Directive, which reads as follows:

'States, regional and local government authorities and other bodies governed by public law shall not be considered 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 these activities or transactions.

However, when they engage in such activities or transactions, they shall be considered taxable persons in respect of these activities or transactions where 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.

Member States may consider activities of these bodies which are exempt under Article 13 or 28 as activities which they engage in as public authorities.'

5 Reference is made to the Report for the Hearing for a fuller account of the facts and legal framework of the main proceedings, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

6 By way of preliminary, it should be pointed out that the questions referred to the Court in this case are substantially similar to those which were the subject of the Court's judgment of 17 October 1989 in Joined Cases 231/87 and 129/88 *Ufficio distrettuale delle imposte dirette di Fiorenzuola d'Arda and Others* v *Comune di Carpaneto Piacentino and Another* [1989] ECR 3233.

First and second questions

7 The first and second questions concern the first subparagraph of Article 4(5) of the Sixth Directive.

8 It should be pointed out that, in the abovementioned judgment, the Court held that the first subparagraph of Article 4(5) of the Sixth Directive must be interpreted as meaning that activities pursued 'as public authorities' within the meaning of that provision are those engaged in by bodies governed by public law under the special legal regime applicable to them and do not include activities pursued by them under the same legal conditions as those that apply to private traders. It is for each Member State to choose the appropriate legislative technique for transposing into national law the rule of treatment as a non-taxable person laid down in that provision.

9 The only new issue raised in this case is the question whether the 'administrative functions' exercised by Italian local authorities under Presidential Decree No 616 of 24 July 1977 are to be regarded as activities engaged in by the local authorities 'as public authorities' and therefore as not subject to VAT.

10 According to the judgment of 17 October 1989 in Joined Cases 231/87 and 129/88, cited above, paragraph 15, it is the manner in which the activities are carried out that determines the scope of the treatment of public bodies as non-taxable persons. In so far as that provision makes such treatment of bodies governed by public law conditional upon their acting 'as public authorities', it excludes therefrom activities engaged in by them as bodies governed not by public law but by private law. Consequently, the only criterion making it possible to distinguish with certainty between those two categories of activity is the legal regime applicable under national law.

11 The classification by the national legislature of certain activities exercised by local authorities as 'administrative functions' may constitute an indication that those activities are subject to public law. However, as can be seen from the judgment of 17 October 1989, cited above, it is for the national court to make the appropriate classification of the activities concerned in the light of the criteria laid down by the Court.

12 The answer to the first and second questions should therefore be that the first subparagraph of Article 4(5) of the Sixth Directive must be interpreted as meaning that activities pursued 'as public authorities' within the meaning of that provision

are those engaged in by bodies governed by public law under the special legal regime applicable to them and do not include activities pursued by them under the same legal conditions as those that apply to private traders. It is for the national court to classify the activities in question in the light of that criterion.

Third question

13 In order to answer this question, it is sufficient to point out that in the judgment of 17 October 1989, cited above, the Court held that the second subparagraph of Article 4(5) of the Sixth Directive must be interpreted as meaning that the Member States are required to ensure that bodies subject to public law are treated as taxable persons in respect of activities in which they engage as public authorities where those activities may also be engaged in, in competition with them, by private individuals, in cases in which their treatment as non-taxable persons could lead to significant distortions of competition, but they are not obliged to transpose that criterion literally into their national law or to lay down precise quantitative limits for such treatment.

Fourth question

14 In order to answer this question, it is sufficient to point out that in the judgment of 17 October 1989, cited above, the Court held that the third subparagraph of Article 4(5) of the Sixth Directive must be interpreted as meaning that it does not require the Member States to transpose into their tax legislation the criterion of the non-negligible scale of activities as a condition for treating the activities listed in Annex D as taxable.

Costs

15 The costs incurred by Italian Republic and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of 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 (First Chamber),

in answer to the questions submitted to it by the commissione tributaria di primo grado di Piacenza, by order of 22 December 1988, hereby rules:

(1) The first subparagraph of Article 4(5) of the Sixth Directive must be interpreted as meaning that activities pursued 'as public authorities' within the meaning of that provision are those engaged in by bodies governed by public law under the special legal regime applicable to them and do not include activities pursued by them under the same legal conditions as those that apply to private traders. It is for the national court to classify the activities in question in the light of that criterion.

(2) The second subparagraph of Article 4(5) of the Sixth Directive must be interpreted as meaning that the Member States are required to ensure that bodies subject to public law are treated as taxable persons in respect of activities in which they engage as public authorities where those activities may also be engaged in, in competition with them, by private individuals, in cases in which their treatment as non-taxable persons could lead to significant distortions of competition, but they are not obliged to transpose that criterion literally into their national law or to lay down precise quantitative limits for such treatment.

(3) The third subparagraph of Article 4(5) of the Sixth Directive must be interpreted as meaning that it does not require the Member States to transpose into their tax legislation the criterion of the non-negligible scale of activities as a condition for treating the activities listed in Annex D as taxable.

Slynn Joliet Rodríguez Iglesias

Delivered in open court in Luxembourg on 15 May 1990.

J.-G. Giraud
Registrar

G. Slynn
President of the First Chamber