OPINION OF MR ADVOCATE GENERAL CRUZ VILAÇA
delivered on 15 March 1988 *

Mr President,
Members of the Court,

1. The present Treaty-infringement proceedings relate to the provisions of Italian law — Article 10 of Decree No 633 of the President of the Republic of 26 October 1972, as amended by Decree No 24 of the President of the Republic of 29 January 1979, in conjunction with Article 99 of Royal Decree No 1265 of 27 July 1934 — which exempt from VAT services provided by veterinary surgeons in the exercise of their profession.

2. According to the Commission, that exemption is contrary to the Sixth Council Directive (77/388/EEC) of 17 May 1977 on VAT, [1] in particular Article 2 thereof.

3. The basic issue in this case is the interpretation of Article 13 A (1) (c) of the Sixth Directive, which provides that the Member States are to exempt from VAT 'the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned' (in the Italian version: 'le prestazioni mediche effettuate nell'esercizio delle professioni mediche e paramediche quali sono definiti dagli Stati membri interessati').

4. During the pre-contentious phase and likewise at the hearing the Government of the Italian Republic explained its reasons for its view that it was entitled, under that provision, to exempt services provided by veterinary surgeons.

5. The Commission, considering on the other hand that the exemption was available only for medical care provided to persons, initiated the procedure provided for in Article 169 of the Treaty, relying upon four sets of arguments which are summarized in the Report for the Hearing.

6. It must be stated that the Commission's view is well founded.

7. Article 2 of the Sixth Directive imposes VAT in general terms on 'the supply of . . . services effected for consideration within the territory of the country by a taxable person acting as such'.

8. Article 4 (1) defines as a taxable person 'any person who independently carries on in any place any economic activitiy specified in paragraph 2, whatever the purpose or results of that activity'. That paragraph mentions

* Translated from the Portuguese.

1 — Official Journal 1977, L 145, p. 1.

'supplying services', including the 'activities of the professions'.

9. The provisions referred to reflect the general principle applicable to the structure of Community VAT, which is expressed in the preambles to the Second and Sixth Directives.

10. In the terms of the fifth recital in the preamble to the First Directive [2] 'a system of value-added tax achieves the highest degree of simplicity and of neutrality when the tax is levied in as general a manner as possible and when its scope covers all stages of production and distribution and the provision of services'.

11. The generalized and uniform application of VAT to taxable transactions is therefore essential to the attainment of the objectives of the tax, ensuring the neutrality of the tax treatment of internal and international transactions and guaranteeing simplicity and financial effectiveness in the application of the tax; moreover, the use of a uniform basis for calculation of the Community's own resources is thereby facilitated. [3]

12. That is the premise underlying the fourth recital in the preamble to the Second Directive, [4] which states that 'in order to enable the system to be applied in a simple and neutral manner and to keep the standard rate of tax within reasonable limits, it is necessary to limit special systems and exceptional measures'.

13. To that end, the Sixth Directive laid down for all the Member States a uniform basis of assessment for VAT and generalized the tax as far as possible.

14. In particular, the Sixth Directive laid down a uniform list of exemptions 'so that the Communities' own resources may be collected in a uniform manner in all the Member States' (11th recital).

15. For its part, the case-law of the Court is significant in that there has been a refusal to interpret broadly the exemptions provided for in the directive where no elements of interpretation are shown to exist which make it necessary to go beyond the literal purport of the provisions in which they appear, in particular Article 13. [5]

16. In the case of the exemption provided for in Article 13 A (1) (c), with which the present proceedings are concerned, even though that provision contains a reference to the definitions adopted by the Member States, it cannot be denied that the expressions used by the Community legislature have a common meaning, which circumscribes the exercise of the discretionary power of the Member States, and the objective must not be forgotten of determining 'the basis of assessment of value-added tax in a uniform manner according to the Community rules'. [6]

2 — Council Directive 67/227/EEC of 11 April 1967, Official Journal, English Special Edition 1967, p. 14.

3 — I gave a fuller account of the VAT system in my Opinion in Joined Cases 138 and 139/86 *Direct Cosmetics*, delivered at the sitting on 27 January 1988 (see [1988] ECR 3937 and page 3749).

4 — Council Directive 67/228/EEC of 11 April 1967, Official Journal, English Special Edition 1967, p. 16.

5 — See judgment of 11 July 1985 in Case 107/84 *Commission v Federal Republic of Germany* [1985] ECR 2655, paragraph 20.

6 — Judgment of 14 May 1985 in Case 139/84 *Van Dijk's Boekhuis* [1985] ECR 1405, paragraph 19.

17. Since no provision of the directive makes clear what is to be understood by the term 'the provision of medical care in the exercise of the medical . . . profession' it is necessary to rely upon the meaning attributed to that term in everyday language. In everyday language, the practice of medicine or the provision of medical care does not normally include the services of veterinary surgeons but only services provided to persons — the expression medical profession or practice must not be confused with 'health care' as a whole, a term which might indeed include the services of veterinary surgeons.

18. That would seem to be the meaning to be attributed to the Italian version of the Sixth Directive — which speaks of 'prestazioni mediche' and 'professioni mediche' without giving further details — unless there are substantive reasons for adopting a different interpretation.

19. However, no such reasons exist and furthermore all the elements of interpretation available support the Commission's conclusion.

20. That is borne out by a comparison of the Italian version with the German, Danish, French and Dutch language versions which, referring to the provision of care *to persons*, confirm *expressis verbis* that there was no intention to go beyond the ordinary meaning of the terms used.

21. The context in which the paragraph referring to the exemption at issue is placed — between the paragraph referring to hospital and medical care provided by public bodies or other hospital establishments or centres for medical treatment and the paragraph relating to supplies of human organs, blood and milk — appears to confirm (as was also emphasized by the Commission) that it was intended to cover a set of activities of a particular social and human dimension, connected with human health.[7]

22. The same approach is to be inferred, *a contrario*, from Article 28 (3) (b), in conjunction with Point 9 of Annex F, to which the Commission referred. Article 28 lays down transitional conditions which *allow* the Member States to continue to exempt certain transactions for a period which is in principle limited, provided that such exemptions already existed when the directive entered into force (which, as both parties recognize, was not the case where the services of veterinary surgeons in Italy were concerned); on the other hand, Article 13 A lays down a common list of exemptions favouring certain activities in the public interest which are *imposed* on the Member States, without any limitation as to time.

23. As they are expressly covered by the transitional conditions laid down by Article 28, the services of veterinary surgeons cannot at the same time be subject to the common system of exemptions laid down in Article 13.

24. Thus, Article 13 A (1) (c) can only be interpreted as relating exclusively to the provision of care to persons in the exercise of the medical profession and not to care administered to animals by veterinary surgeons.

7 — That is the interpretation underlying the recent judgment of 23 February 1988 in Case 353/85 *Commission* v *United Kingdom* [1988] ECR 817.

25. Moreover, the Italian Government finally conceded that its position was based on an incorrect interpretation of the directive and it therefore abandoned its defence against the Commission's allegations; at the same time, in response to a request from the Commission, it announced its intention to amend the contested legislation so as to render the services of veterinary surgeons subject to VAT.

26. Since that amendment has not been made in due time, the Court should uphold the Commission's application, declare that the Italian Government has failed to fulfil its obligations under the Treaty and order it to pay the costs.