Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

8 October 2020*

(Reference for a preliminary ruling – Value added tax (VAT) – Directive 2006/112/EC – Exemptions – Article 132(1)(g) – Supply of services closely linked to welfare and social security work – Preparation of expert reports on the level of care and support needs – Taxable person appointed by the medical service of a care and support insurance fund – Bodies recognised as being devoted to social wellbeing)

In Case C-657/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesfinanzhof (Federal Finance Court, Germany), made by decision of 10 April 2019, received at the Court on 4 September 2019, in the proceedings

Finanzamt D

v

E,

THE COURT (Eighth Chamber),

composed of A. Prechal (Rapporteur), President of the Third Chamber, acting as President of the Eighth Chamber, F. Biltgen and L.S. Rossi, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Finanzamt D, by P. Kröger, acting as Agent,

– the German Government, by J. Möller and S. Eisenberg, acting as Agents,

– the European Commission, by L. Mantl and L. Lozano Palacios, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

* Language of the case: German.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 132(1)(g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1; 'the VAT Directive').

2 The request has been made in proceedings between Finanzamt D ('the tax authority') and E concerning exemption from value added tax ('VAT') in respect of the supply of services carried out by the latter, consisting in the preparation, as a subcontractor of the medical service of a care and support insurance fund, of expert reports on the care and support needs of persons insured by that fund.

Legal context

EU law

3 Article 131 of the VAT Directive, which features in Chapter 1 (entitled 'General provisions') of Title IX thereof, provides:

'The exemptions provided for in Chapters 2 to 9 shall apply without prejudice to other Community provisions and in accordance with conditions which the Member States shall lay down for the purposes of ensuring the correct and straightforward application of those exemptions and of preventing any possible evasion, avoidance or abuse.'

4 Chapter 2 of Title IX of the VAT Directive is entitled 'Exemptions for certain activities in the public interest'. That chapter comprises Articles 132 to 134 of that directive.

5 Article 132(1) of the VAT Directive provides:

'Member States shall exempt the following transactions:

…

(c) the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned;

…

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

…'

6 Article 134 of the VAT Directive provides:

‘The supply of goods or services shall not be granted exemption, as provided for in points (b), (g), (h), (i), (l), (m) and (n) of Article 132(1), in the following cases:

(a) where the supply is not essential to the transactions exempted;

…’

German law

7 Paragraph 1(1)(1) of the Umsatzsteuergesetz (Law on turnover tax), in the version applicable to the dispute in the main proceedings (BGBl. I 2008, p. 2794) (‘the UStG’), provides that supplies of goods and services effected for consideration within the territory of the country by a trader in the course of his business are to be subject to VAT.

8 Under Paragraph 4 of the UStG, the following transactions covered by Paragraph 1(1)(1) of that law are to be exempted from tax:

‘…

14. (a) the provision of medical care in the exercise of the profession of doctor, dentist, lay medical practitioner (Heilpraktiker), physiotherapist, midwife or a similar healthcare profession. …

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

15. services which statutory social security authorities …

(a) provide to each other,

(b) provide to insured persons …

15a. Services which the medical services of the health insurance (Paragraph 278 [of Book V of the Sozialgesetzbuch (German Social Code)]) … provide to each other or provide to statutory authorities under the law …

16. The provision of services closely connected with the operation of establishments engaged in the provision of care and assistance to persons in need of physical, mental or psychological help, which are provided by

…

(k) [with effect from 1 July 2013: (1)] establishments in the case of which the nursing and care costs have been reimbursed, in full or to a very significant extent, in at least 40% of cases [25% as from 1 July 2013] by the statutory social security or social welfare authorities in the preceding calendar year …’

9 Paragraph 18 of Book XI of the Social Code, in the version applicable to the dispute in the main proceedings (BGB1. I 2012, p. 2246) ('the SGB XI'), provides:

'1. Care and support insurance funds commission the medical service of health insurance schemes or other independent experts to determine whether care and support conditions are fulfilled and to assess the extent of that care and support. In the context of those examinations, the medical service or the experts appointed by the care and support insurance fund must establish, by examining the applicant, the difficulties encountered by that person in carrying out the tasks referred to in Paragraph 14(4) and the nature, extent and probable duration of the need for assistance, and must determine the existence of a serious limitation of the capacity to meet the needs of daily life … Moreover, it is also necessary to establish, as necessary, the measures which are appropriate, necessary and reasonable to eliminate, reduce or prevent an increase in the care and support needs, including services of medical re-education and rehabilitation; in that regard, insured persons may claim against the competent institution for the performance of medical re-education and rehabilitation services …

…

7. The tasks of the medical service are carried out by doctors, in close collaboration with nursing staff and other competent professionals. …'

10 Paragraph 53a of the SGB XI provides:

'The Spitzenverband Bund der Pflegekassen (Central Association of Care and Support Insurance Funds) shall lay down guidelines in the field of social care and support insurance,

1. on the cooperation of social care and support insurance funds with medical services;

2. on implementing and ensuring a uniform assessment;

3. on reports and statistics to be supplied by the medical services;

4. on ensuring the quality of the assessment and guidance supplied …;

5. on the principles of further and continuing training.

The guidelines are subject to approval by the Federal Ministry of Health. They are binding on the medical services.'

11 Section B1 of the Richtlinien des Spitzenverbandes Bund der Pflegekassen (GKV-Spitzenverband) zur Begutachtung von Pflegebedürftigkeit (Begutachtungsrichtlinien – BRi) (Guidelines of the Central Association of Care and Support Insurance Funds (association of statutory health insurance schemes) on the assessment of care and support needs (assessment guidelines)), in their version of 8 June 2009 provides, inter alia, that 'assessments are carried out by trained and qualified experts' among whom are 'doctors, nurses and other professionals who are at the disposal of the medical service to meet its ongoing workload'. Section B1 stipulates that, 'in order to respond to peaks in claims and to specific technical questions, the medical service may call upon doctors, nurses and other skilled professionals, acting as external staff.' Under that section

'where, exceptionally, private doctors, home care nurses, profit-making companies that supply health care, as well as persons carrying out an independent activity in the health care sector, are called upon, care must be taken to ensure that no conflicts of interest arise'.

12 Point 2 of the requirements regarding expert qualifications, as laid down by the Richtlinien des GKV-Spitzenverbands zur Zusammenarbeit der Pflegekassen mit anderen unabhängigen Gutachtern (Unabhängige Gutachter-Richtlinien – UGu-RiLi) (Guidelines of the Central Association of Care and Support Insurance Funds on Cooperation between Care and Support Insurance Funds and Other Independent Experts (Independent Expert Guidelines)) in their version of 6 May 2013, lays down, inter alia, 'the professional requirements' which are 'necessary for the exercise of the profession of expert, within the meaning of the guidelines on the procedure for determining the need for care and support and on the concrete form of the assessment instrument's content under [SGB XI] (BRi-Assessment Guidelines)'. According to that point 2, those conditions are fulfilled by authorised doctors in accordance with the requirements formulated in the same point.

The dispute in the main proceedings and the questions referred for a preliminary ruling

13 The defendant in the main proceedings is a registered nurse with basic medical training and a diploma in nursing, as well as further training in quality management in the care and support sector. Her professional activities also include a taxable teaching activity in relation to care and support.

14 From 2012 to 2014, the defendant in the main proceedings prepared, on behalf of the Medizinischer Dienst der Krankenversicherung Niedersachsen (medical service of the health insurance of Lower Saxony, Germany) ('the MDK'), expert reports on the care and support needs of patients in order to determine the extent of their entitlement to medical care paid for by the care and support insurance fund. During that period, the MDK furnished her with a monthly statement of services provided, without indicating VAT. The defendant in the main proceedings declared those services as being exempt from VAT.

15 As a result of a review, the tax authority formed the opinion that the activity of assessing care and support needs was exempted neither by national law nor by EU law. Consequently, by decisions of 3 February 2015, it increased the turnover declared by the defendant in the main proceedings by the net amounts invoiced to the MDK and fixed the VAT due by the latter for 2012 and 2013, as well as the payment on account of VAT for the first three quarters of 2014.

16 Contesting those decisions, the defendant in the main proceedings brought an action before the first-instance court, which action was essentially upheld by that court. Basing itself on Article 132(1)(g) of the VAT Directive, that court found that the preparation of expert reports in the health sector was exempted from VAT as 'a supply closely linked to welfare and social security work', within the meaning of that provision. In that context, it observed that, since November 2012, care and support insurance funds had been lawfully able to entrust independent experts with the task of assessing insured persons, with the result that, since she had been appointed by the MDK, the defendant in the main proceedings could rely on that exemption.

17 The tax authority appealed on a point of law ('*Revision*') before the referring court, arguing that the national provisions on exemption from VAT, which do not provide for an exemption as regards the assessment services at issue in the main proceedings, are compliant with EU law.

18 The referring court observes that, according to national law, the defendant in the main proceedings is not entitled to an exemption from VAT for the assessment services concerned. However, that court does not rule out that she may be able to rely directly on the exemption provided for in Article 132(1)(g) of the VAT Directive for supplies closely linked to welfare and social security work.

19 According to that court, it is, however, not certain that the defendant in the main proceedings is entitled to that exemption. In order for her to be so entitled, two conditions must be satisfied. First, as regards the condition that the services concerned must be essential and closely linked to welfare and social security work, the view could be taken that that condition is fulfilled, since services relating to the assessment of care and support needs, such as those provided by the defendant in the main proceedings, enable the care and support insurance fund concerned to assess the state of care and support needs of its insured persons in order to determine their entitlement to welfare and social security services.

20 However, there is doubt in that regard, in so far as, according the case-law of the referring court, which makes reference to the judgment of 12 March 2015, *'go fair' Zeitarbeit* (C-594/13, EU:C:2015:164), supplies of services are not regarded as being closely linked to social welfare work in cases where they are provided, not directly to the person reliant on care, but to a body for which they are necessary for the performance of its own exempt services for the benefit of that person.

21 In addition, in the judgment of 20 November 2003, *Unterpertinger* (C-212/01, EU:C:2003:625), it is stated, the Court dismissed the existence of an entitlement to an exemption under Article 132(1)(g) of the VAT Directive in a situation comparable to that here at issue in the main proceedings, characterised by the preparation of an expert report concerning a person's state of health for the purpose of awarding a disability pension.

22 Second, if it were to be accepted that services relating to the assessment of care and support needs, such as those provided by the defendant in the main proceedings, constitute supplies of services closely linked to welfare and social security work, the question then arises as to whether the supplier concerned may be classified as a body recognised as being devoted to social wellbeing by the Member State concerned and as thus fulfilling the second condition set out in Article 132(1)(g) of the VAT Directive.

23 In that regard, first, the referring court does not rule out that such recognition may be inferred from the fact that the supplier concerned provided her services as a subcontractor on behalf of a body recognised by national law, in the present case the MDK, since the concept of a body recognised by national law may also include physical persons or private profit-making undertakings. Although it is for the Member States to lay down the rules governing the recognition of such bodies and, according the case-law of the referring court, recognition as a body devoted to social wellbeing does not cover subcontractors of such a body, a different conclusion might have to be reached on the ground that, by reason of the guidelines on assessing care and support needs, there are provisions regulating recourse by the MDK to third parties for the purpose of carrying out assessments.

24 Second, if subcontracting in itself is insufficient for that purpose, the referring court is unsure whether recognition as a body devoted to social wellbeing might be inferred from the fact that the costs relating to the subcontractor are borne by social security bodies, since that assumption of costs constitutes, according to EU law, a relevant factor in that regard. However, in the present

case, those costs are borne by the fund concerned only indirectly and on a flat-rate basis, that is to say, through the MDK, which pays the subcontractor. According to the referring court's case-law, indirect financing of the costs by social security bodies may be sufficient, but doubts remain on this point, in so far as the German legislature, in transposing the VAT Directive, to some extent used the term 'remuneration' in that context, which may require a conscious and voluntary assumption of the costs by the social security bodies.

25 Third, the referring court seeks to ascertain whether, where the costs relating to a subcontractor are borne indirectly by a social security body, recognition of that subcontractor as a body devoted to social wellbeing may be subject to the actual conclusion of a contract with a welfare and social security body, or whether it is sufficient, for that purpose, that a contract may be entered into in compliance with national law. In that regard, it notes that, since 30 October 2012, national law has provided the possibility for care and support insurance funds to call upon independent experts – on behalf of the MDK – to assess the care and support needs of insured persons. Those independent experts must satisfy the qualification requirements set out in detail in the guidelines adopted by those funds. The view might be taken that, in that situation, a contract exists, in so far as it is permitted under EU law.

26 In those circumstances, the Bundesfinanzhof (Federal Finance Court, Germany) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) In circumstances such as those in the main proceedings, does the preparation by a taxable person of expert reports on the care and support needs of patients for the [MDK] come within the scope of Article 132(1)(g) of [the VAT] Directive?

(2) If Question 1 is answered in the affirmative:
   (a) In order for an undertaking to be recognised as a body devoted to social wellbeing within the meaning of Article 132(1)(g) of [the VAT] Directive, is it sufficient if, as a subcontractor, it supplies services to a body recognised under national law as a body devoted to social wellbeing within the meaning of Article 132(1)(g) of [the VAT] Directive?
   (b) If Question 2(a) is answered in the negative: In circumstances such as those in the main proceedings, is it sufficient that the expense incurred by the recognised body within the meaning of Article 132(1)(g) of [the VAT] Directive is borne entirely by the health insurance and care and support insurance funds in order for a subcontractor of that recognised body also to be regarded as a recognised body?
   (c) If Questions 2(a) and 2(b) are answered in the negative: In order for a taxable person to be recognised as a body devoted to social wellbeing, may a Member State subject such recognition to the condition that the taxable person has actually entered into a contract with a social security or social welfare authority, or is it sufficient if a contract with that taxable person could be entered into under national law?'

Consideration of the questions referred

27 By its questions, which should be examined together, the referring court asks, in essence, whether Article 132(1)(g) of the VAT Directive must be interpreted as meaning that:

– the preparation of expert reports on care and support needs by an independent expert on behalf of the medical service of a care and support insurance fund, which are used by that fund in

order to assess the scope of the entitlements to welfare and social security services of persons insured by it constitutes a supply of services that is closely linked to welfare and social security work;

– that provision precludes that expert from being refused recognition as a body devoted to social wellbeing, even though, first, that expert provides services concerning the preparation of expert reports on care and support needs, as a subcontractor, at the request of that medical service which is recognised as such a body, second, the costs of preparing such reports are borne indirectly, on a flat-rate basis, by the care and support insurance fund concerned, and, third, that expert has the possibility, under national law, to conclude a contract relating to the preparation of those reports directly with that fund in order to be entitled to such recognition, but has not made use of that possibility.

28 As is clear from settled case-law, the terms used to specify the exemptions in Article 132 of the VAT Directive are to be interpreted strictly. Nevertheless, the interpretation of those terms must be consistent with the objectives underlying the exemptions and must comply with the requirements of the principle of fiscal neutrality inherent in the common system of VAT. Accordingly, the requirement of strict interpretation does not mean that the terms used to specify the exemptions referred to in Article 132 must be construed in such a way as to deprive the exemptions of their intended effects (judgment of 15 November 2012, *Zimmermann*, C-174/11, EU:C:2012:716, paragraph 22 and the case-law cited).

29 With regard to the objective of the exemption provided for in Article 132(1)(g) of the VAT Directive, it is intended, by treating certain supplies of public-interest services in the social sector more favourably for purposes of VAT, to reduce the cost of those services and thus to make them more accessible to the individuals who may benefit from them (see, to that effect, judgment of 21 January 2016, *Les Jardins de Jouvence*, C-335/14, EU:C:2016:36, paragraph 41).

30 As is clear from the wording of that provision, the exemption for which it provides applies to goods and services which are 'closely linked to welfare and social security work' and 'supplied by bodies governed by public law or by other bodies recognised by the Member State concerned as being devoted to social wellbeing' (see, to that effect, judgment of 15 November 2012, *Zimmermann*, C-174/11, EU:C:2012:716, paragraph 21).

31 As regards, in the first place, the condition that the supplies of services must be closely linked to welfare and social security work, that condition must be read in the light of Article 134(a) of the VAT Directive, which requires, in any event, that the supply of goods or services concerned be essential to the transactions exempted within the scope of welfare and social security work (see, to that effect, judgment of 9 February 2006, *Stichting Kinderopvang Enschede*, C-415/04, EU:C:2006:95, paragraphs 24 and 25).

32 In the present case, the referring court notes that the supplies of services in question in the main proceedings, consisting in the drawing-up of expert reports on care and support needs, which, in principle, fulfil that condition, in so far as, according to its findings – which are shared, in essence, by the interested parties referred to in Article 23 of the Statute of the European Court of Justice which have submitted observations – those reports, drawn up by a duly trained expert, are necessary for the proper performance, by the care and support insurance fund concerned, of its welfare and social security tasks, which include the financing of care and support services for persons insured by it.

33 The referring court, nevertheless, has doubts as to whether it may be inferred from the case-law of the Court that supplies of services which, even though they are necessary to ensure the proper provision of welfare and social security services, are not, however, deemed to be closely linked to welfare and social security work in the case where they are supplied, not directly to the person reliant on care, but to another taxable person, for which they are necessary in order to enable it to carry out its own exempted supplies.

34 In that regard, first, even though it is admittedly true, as follows from the reference to supplies of services provided by old people's homes in Article 132(1)(g) of the VAT Directive, that the exemption provided for in that provision covers, inter alia, support and care services which are of direct benefit to persons covered by the welfare and social security measures concerned, neither the wording of that provision nor its purpose contains evidence that supplies of services which, without being directly supplied to those persons, are nonetheless essential for the performance of welfare and social security transactions, are excluded from that exemption. This may be the case for supplies of services, such as those in question in the main proceedings, which enable the entity responsible for the performance of those transactions to establish whether the persons concerned are entitled to benefit from supplies of welfare and social security services and properly to adopt decisions in that field.

35 First, in the light of the wording of Article 132(1)(g) of the VAT Directive, that provision does not lay down any requirement relating to the recipient of exempted transactions but attaches, by contrast, importance to the intrinsic nature of those transactions and to the status of the operator providing the services or supplying the goods concerned (see, to that effect, judgment of 21 January 2016, *Les Jardins de Jouvence*, C-335/14, EU:C:2016:36, paragraph 46).

36 Second, as the German Government emphasised, the purpose of the exemption in question in the main proceedings, which consists in reducing the costs of the transactions covered by that provision, supports the interpretation that an exemption from VAT for supplies of services such as those at issue in the main proceedings does not depend on the person to whom they are supplied, since they are an essential stage in the implementation of welfare and social security measures and subjecting them to VAT would therefore necessarily have the effect of increasing the costs of those transactions.

37 Therefore, in order for the supply of services relating to the preparation of expert reports on care and support needs to be regarded as being closely related to welfare and social security work, it is not necessary for those services to be supplied directly to persons reliant on care (see, by analogy, judgment of 14 June 2007, *Horizon College*, C-434/05, EU:C:2007:343, paragraphs 31 and 32).

38 Second, in that context, it is irrelevant that the supplies of services in question are provided by the defendant in the main proceedings, in her capacity as a subcontractor, to another taxable person, in the present case the MDK, for which they are essential in order to enable it to provide its own exempt supplies, which it carries out for the care and support insurance fund concerned.

39 In that regard, while the Court, in paragraph 28 of the judgment of 12 March 2015, '*go fair*' *Zeitarbeit* (C-594/13, EU:C:2015:164), took the view, in respect of the exemption provided for in Article 132(1)(g) of the VAT Directive, that supplies of services relating to the provision of workers to another taxable person are not, in themselves, supplies of services of general interest carried out in the social sector, it does not follow that supplies of different services, that is to say, those relating to the preparation of expert reports on care and support needs, for which it is

established that they are, in themselves, essential to enable the care and support insurance fund concerned to carry out fully its tasks of a social nature, are not closely linked to welfare and social security work on the sole ground that they are provided, on a subcontracting basis, to the MDK.

40 In addition, the Court has, it is true, taken the view, in paragraph 43 of the judgment of 20 November 2003, *Unterpertinger* (C-212/01, EU:C:2003:625), in the context of Article 13A(1)(c) 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 (OJ 1977 L 145, p. 1), the wording of which was reproduced without substantial modification in Article 132(1)(c) of the VAT Directive, that a service which consists in producing an expert medical report and the purpose of which is to provide a reply to questions set out in the request for the report, but which is effected in order to enable a third party to take a decision which has legal consequences for the person concerned or for other persons, is not exempt from VAT as a 'provision of medical care', since the principal purpose of such a service is not the protection, including the maintenance or restoration, of the health of the person to whom the report relates, by means of exempted transactions, but that of fulfilling a legal or contractual condition in the decision-making process concerning the grant of a disability pension.

41 However, as the European Commission has noted, it does not follow that the preparation of expert reports on the level of a person's care and support needs, such as those in question in the main proceedings, is not essential and closely linked to the performance, by the fund concerned, of the welfare and social security transactions for which it is responsible.

42 In the second place, as regards the requirement that supplies of services, in order to be exempted, must be carried out by bodies governed by public law or by other bodies recognised by the Member State concerned as being devoted to social wellbeing, it is clear from the file before the Court that the defendant in the main proceedings is not covered by the concept of a body governed by public law, with the result that she is entitled to benefit from the exemption in question only if she is covered by the concept of 'other bodies recognised by the Member State concerned as being devoted to social wellbeing' within the meaning of Article 132(1)(g) of the VAT Directive.

43 It should be observed that Article 132(1)(g) of the VAT Directive does not specify the conditions or the procedures for recognising bodies other than those governed by public law as being devoted to social wellbeing. Consequently, it is in principle for the national law of each Member State to lay down the rules in accordance with which that recognition may be granted to such organisations, since, in that regard, the Member States have a discretion (see, to that effect, judgment of 21 January 2016, *Les Jardins de Jouvence*, C-335/14, EU:C:2016:36, paragraphs 32 and 34).

44 In that regard, it follows from the Court's case-law that, when considering whether to recognise, as being devoted to social wellbeing, bodies other than those governed by public law, it is for the national authorities, acting in accordance with EU law and subject to review by the national courts, to take various factors into account. These may include the existence of specific provisions, be they national or regional, legislative or administrative, or tax or social security provisions; the public interest nature of the activities of the taxable person concerned; the fact that other taxable persons carrying on the same activities already enjoy similar recognition; and the fact that the costs of the supplies in question may be largely met by health insurance schemes or by other social security bodies, in particular where private operators have contractual relations

with those bodies (see, to that effect, judgments of 10 September 2002, *Kügler*, C-141/00, EU:C:2002:473, paragraph 58, and of 21 January 2016, *Les Jardins de Jouvence*, C-335/14, EU:C:2016:36, paragraph 35).

45 It is only if the Member State has failed to observe the limits of its discretion that the taxable person may invoke the exemption provided for in Article 132(1)(g) of the VAT Directive in order to oppose national rules incompatible with that provision. In that case, it is for the national court to establish, in the light of all relevant factors, whether the taxable person is an organisation recognised as being devoted to social wellbeing for the purposes of that provision (see, to that effect, judgment of 15 November 2012, *Zimmermann*, C-174/11, EU:C:2012:716, paragraphs 28 and 32).

46 In the present case, although the defendant in the main proceedings supplied her services in her capacity as a subcontractor of the MDK, which, under German law, is recognised as a body devoted to social wellbeing, she has not herself been recognised as such. According to the explanations provided, in particular by the tax authority and by the German Government, independent experts may, admittedly, under the conditions set out in Paragraph 4, point 16(k) (from 1 July 2013 point 16(l)), of the UStG, be recognised as bodies devoted to social wellbeing if they have entered into a contract directly with the care and support insurance fund for the purpose of providing those services, since the direct conclusion of such a contract enables that fund itself to establish the professional skills of those experts and, thus, to guarantee the quality of the services provided. However, according to the same explanations, the defendant in the main proceedings has not concluded such a contract, with the result that she cannot rely on such recognition under German law.

47 Accordingly, the referring court seeks to ascertain, in the light of the factors which it raised in its second question, whether the Federal Republic of Germany exceeded the limits of its discretion by not providing the possibility for an independent expert who finds himself or herself in a situation such as that of the defendant in the main proceedings to be recognised as a body devoted to social wellbeing.

48 In that context, while it is for the referring court to examine that question by taking into account all of the relevant factors, it should be provided with the following clarifications.

49 First, the fact that the intervention of independent experts in the assessment of the level of care and support needs of persons insured by a care and support insurance fund is provided for in section B1 of the guidelines referred to in paragraph 11 of this judgment is insufficient as such to establish that the experts concerned are devoted to social wellbeing, in so far as the existence of specific provisions relating to supplies of services provided by them is only one factor among others to be taken into account in order to determine whether the experts concerned are devoted to social wellbeing (see, by analogy, judgment of 21 January 2016, *Les Jardins de Jouvence*, C-335/14, EU:C:2016:36, paragraph 39). That is a fortiori so in the present case, as it appears to follow from those same guidelines that it is possible to call on independent experts only ‘exceptionally’, in particular to handle ‘peaks in claims’.

50 Moreover, inferring recognition as a body devoted to social wellbeing from the mere fact that the taxable person concerned has been appointed by another taxable person already recognised as such would ultimately be tantamount to authorising the latter to exercise the discretion accorded

to the Member State and would be liable, as the German Government, in essence, observes, to allow circumvention of the criteria set by national law for the purposes of granting that recognition.

51 Second, while it is true that the fact that the costs of the supplies concerned are borne to a great extent by a social security body, such as the care and support insurance fund, is a factor which must be taken into account for the purposes of assessing the classification of the taxable person concerned as a body devoted to social wellbeing, the significance of that factor is reduced where the assumption of those costs by that fund is carried out, as in the present case, only indirectly, through the MDK, without being based on an express decision of that fund or deriving from a contract entered into by it with that taxable person for the purposes of providing those services. In that regard, the mere possibility of concluding a contract, without making use of that possibility, cannot suffice.

52 Third, it is not apparent from the file before the Court that other taxable persons governed by private law, which carry out the same activities as the defendant in the main proceedings, in circumstances similar to those of her situation, would be entitled to recognition as bodies devoted to social wellbeing. Consequently, subject to verification by the referring court, a refusal to grant, in the present case, such recognition does not appear to breach the principle of fiscal neutrality.

53 Accordingly, the circumstances noted by the referring court are not such as to establish that, in the case in the main proceedings, the Federal Republic of Germany exceeded the limits of its discretion for the purposes of that recognition, under Article 132(1)(g) of the VAT Directive.

54 In the light of all of the foregoing considerations, the answer to the questions referred is that Article 132(1)(g) of the VAT Directive must be interpreted as meaning that:

– the preparation of expert reports on care and support needs by an independent expert on behalf of the medical service of a care and support insurance fund, which are used by that fund in order to assess the scope of the entitlements to welfare and social security services of persons insured by it, constitutes a supply of services that is closely linked to welfare and social security work in so far as it is essential in order to ensure the proper implementation of transactions in that sector;

– that provision does not preclude that expert from being refused recognition as a body devoted to social wellbeing, even though, first, that expert provides his or her services concerning the preparation of expert reports on care and support needs as a subcontractor, at the request of that medical service, which is recognised as such a body, second, the costs of preparing such reports are borne indirectly, on a flat-rate basis, by the care and support insurance fund concerned, and, third, that expert has the possibility, under national law, to conclude a contract relating to the preparation of those reports directly with that fund in order to be entitled to such recognition, but has not made use of that possibility.

Costs

55 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby rules:

Article 132(1)(g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that:

– **the preparation of expert reports on care and support needs by an independent expert on behalf of the medical service of a care and support insurance fund, which are used by that fund in order to assess the scope of the entitlements to welfare and social security services of persons insured by it, constitutes a supply of services that is closely linked to welfare and social security work in so far as it is essential in order to ensure the proper implementation of transactions in that sector;**

– **that provision does not preclude that expert from being refused recognition as a body devoted to social wellbeing, even though, first, that expert provides his or her services concerning the preparation of expert reports on care and support needs as a subcontractor, at the request of that medical service, which is recognised as such a body, second, the costs of preparing such reports are borne indirectly, on a flat-rate basis, by the care and support insurance fund concerned, and, third, that expert has the possibility, under national law, to conclude a contract relating to the preparation of those reports directly with that fund in order to be entitled to such recognition, but has not made use of that possibility.**

[Signatures]