Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

17 March 2016*

(Reference for a preliminary ruling — Taxation — Value added tax — Directive 2006/112/EC — Article 135(1)(a) — Exemption for insurance — Definition of 'insurance' transactions and of 'related services performed by insurance brokers and insurance agents' — Claims settlement services provided by and on behalf of an insurer)

In Case C-40/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland), made by decision of 19 November 2014, received at the Court on 2 February 2015, in the proceedings

Minister Finansów

v

Aspiro SA, formerly BRE Ubezpieczenia sp. z o.o.,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, A. Arabadjiev, J.-C. Bonichot, C.G. Fernlund (Rapporteur) and S. Rodin, Judges,

Advocate General: J. Kokott,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 2 December 2015,

after considering the observations submitted on behalf of:

— Minister Finansów, by B. Rogowska-Rajda, J. Kaute and M. Lubiński, acting as Agents,

— Aspiro SA, by M. Szafarowska, T. Michalik and M. Spychalski, tax advisers,

— the Polish Government, by B. Majczyna and K. Maćkowska, acting as Agents,

— the United Kingdom Government, by L. Christie and S. Brandon, acting as Agents, and by E. Mitrophanous, Barrister,

— the European Commission, by L. Lozano Palacios and M. Owsiany-Hornung, acting as Agents,

* Language of the case: Polish.

after hearing the Opinion of the Advocate General at the sitting on 23 December 2015,

gives the following

Judgment

1 This request for a preliminary ruling relates to the interpretation of Article 135(1)(a) 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 the Minister Finansów (Minister for Finance) and Aspiro SA, formerly BRE Ubezpieczenia sp. z o.o. ('Aspiro') concerning a tax ruling on the exemption from value added tax (VAT) of services for the settlement of claims provided by Aspiro for and on behalf of an insurance company.

Legal context

EU law

3 Article 135(1)(a) of the VAT Directive provides:

'Member States shall exempt the following transactions:

(a) insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents.'

4 Article 135(1)(a) corresponds to Article 13B(a) of the 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), which it replaced.

5 Article 135(1)(d) and (f) of the VAT Directive provides for the exemption of two other types of transaction:

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

…

(f) transactions, including negotiation but not management or safekeeping, in shares, interests in companies or associations, debentures and other securities, but excluding documents establishing title to goods, and the rights or securities referred to in Article 15(2).'

Polish law

6 The Law on the tax on goods and services (ustawa o podatku od towarów i usług) of 11 March 2004, in the version applicable at the time of the facts in the main proceedings (Dz. U. of 2011, No 177, position 1054, 'the Law on VAT') provides in Article 43(1), point 37:

'Insurance services, reinsurance services and brokerage services for the supply of insurance and reinsurance services, and also services supplied by an insurer pursuant to insurance contracts which it has concluded for the account of another party, other than the disposal of rights acquired in the performance of insurance and reinsurance contracts, shall be exempt from tax.'

7 Under Article 43(13) of that law:

'The tax exemption shall also apply to the supply of a service which constitutes an element of a service referred to in paragraph 1(7) and (37) to (41), which itself forms a distinct whole and is characteristic of and necessary for the supply of a service exempt under paragraph 1(7) and (37) to (41).'

The dispute in the main proceedings and the question referred

8 Aspiro, a company established in Warsaw, is liable to VAT. Aspiro supplies, in the name and on behalf of an insurance company, on the basis of a contact concluded with that company, comprehensive services for the settlement of insurance claims. Aspiro is remunerated in accordance with a flat rate, depending on the type of claim concerned.

9 The referring court makes it clear that Aspiro is neither an insurance company, nor an insurance broker, nor an insurance agent. In particular, Aspiro does not have a liability towards the insured persons. Under the contract, Aspiro performs the following 18 tasks, but delegates some of them to an external subcontractor:

— receiving insurance claims;

— registering claims in an IT system, including updating data throughout the claims procedure;

— establishing the reasons for and circumstances of the claims, including inspecting the insured asset and place where damage occurred, preparing the required documentation and taking the necessary steps to establish liability, the amount of damage suffered and amount of compensation, and all other services due to the insured person;

— conducting correspondence, as necessary, with the client, including fulfilling notification obligations in relation to injured or insured persons and exchanging correspondence with other entities involved in the process of settling the claims;

— settling substantive claims, analysing the assembled documents and taking substantive decisions on claims;

— making technical assessments and any additional damage assessments in the case of motor insurance claims;

— producing photographic documentation showing the extent of damage;

— producing copies of the documents required when making a claim;

— drawing up the comprehensive documentation necessary for the purposes of processing a claim for compensation or other services;

— archiving claim documents;

— providing insured persons with detailed information on the claims settlement procedure and their rights;

— conducting proceedings, other than court proceedings, for recovery against third parties;

— considering appeals and complaints in respect of claim settlements;

— making claim files available to the insured person concerned for inspection;

— drawing up transfers and remittances in the computer system;

— sending and receiving correspondence relating to claims settlement;

— preparing, at the client's request, a report on the handling of the claim;

— any other activity required in order to settle claims arising under insurance contracts, related to the activities referred to above.

10 Aspiro lodged a request with the Finance Minister for an individual written interpretation of the Law on VAT to establish whether the claims settlement services that it provided were exempt.

11 According to Aspiro, the services that it performs, in the name and on behalf of an insurance company, on the basis of a mandate, constitute insurance services, within the meaning of Polish law. They form a distinct whole, entirely related to the business of that insurance company and indispensable to it, which does not pursue a purpose in itself. Aspiro submits that those services constitute a single supply of services, of complex nature, which must be exempted as a whole.

12 In his written interpretation of 31 August 2012, the Finance Minister only partially confirmed Aspiro's position. The Finance Minister considered that only the fifth category of services, namely settling substantive claims, including the analysis of the relevant documents and the decision as to whether the claim was covered, was an insurance activity. He found that all the other services performed by Aspiro were linked to the settlement of claims, but did not constitute insurance services. According to the Minister, they did not benefit, therefore, from the exemption, because they were of a technical and administrative nature and could be performed in the context of activities other than insurance services.

13 Aspiro brought an action against that interpretation before the Wojewódzki Sąd Administracyjny (Regional Administrative Court, Warsaw; 'WSA'). That court upheld the action and annulled the interpretation, finding that the Polish legislature had intended the exemption to extend beyond what was provided for by the VAT Directive, and held that the Finance Minister could not rely on the stricter terms of that directive against the taxable person.

14 The Finance Minister lodged an appeal in cassation against that judgment.

15 Entertaining doubts as to whether a provision such as Article 43(13) of the Law on VAT wrongly extended the provisions of Article 135(1)(a) of the VAT Directive, and whether services such as those provided by Aspiro could be exempted, the Naczelny Sąd Administracyjny (Supreme Administrative Court) decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 135(1)(a) of the VAT Directive be interpreted as meaning that services such as those in the present case, which are supplied on behalf of an insurance undertaking by a third party — in the name and on behalf of the insurer — which has no legal relationship with the insured person, are covered by the exemption referred to in that provision?'

The question referred for a preliminary ruling

Admissibility

16 Aspiro submits that the dispute in the main proceedings raises an issue of interpretation of national law only and consequently does not concern EU law. According to that company, the question referred is thus entirely irrelevant for the purposes of determining that dispute and, hence, is inadmissible. Aspiro emphasises that even in the event that Article 43(13) of the Law on VAT added an exemption that was not provided for in Article 135(1)(a) of the VAT Directive, the national authorities could not impose on a private person the stricter provisions of that directive.

17 In that regard, it must be borne in mind that, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the question put by national court concerns the interpretation of a provision of EU law, the Court is, in principle, bound to give a ruling. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see judgments in *PreussenElektra*, C-379/98, EU:C:2001:160, paragraphs 38 and 39, and *Melki and Abdeli*, C-188/10 and C-189/10, EU:C:2010:363, paragraph 27).

18 In the present case, it should be recalled that the referring court is bound, as far as possible, to interpret national law in the light of EU law (see, inter alia, judgment in *Pfeiffer and Others*, C-397/01 to C-403/01, EU:C:2004:584, paragraph 113) and, in this case, the VAT Directive. Since the referring court queries the scope of a national provision the benefit of which is relied on in the main proceedings and which transposes the VAT Directive, it is not obvious that that question referred to the Court as to the interpretation to be given to that directive is irrelevant for the determination of that dispute.

19 It follows that the reference for a preliminary ruling is admissible.

Substance

20 At the outset, it must be recalled that the terms used to specify the exemptions covered by Article 135(1) of the VAT Directive are to be interpreted strictly, since they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person (see judgment in *BGŻ Leasing*, C-224/11, EU:C:2013:15, paragraph 56).

21 In order to answer the question referred, the Court must consider whether the settlement of claims, such as that performed by Aspiro, consists of making 'insurance transactions' or is to be regarded as 'related services performed by insurance brokers and insurance agents', within the meaning of Article 135(1)(a) of the VAT Directive.

22 As regards, in the first place, insurance transactions, the essentials of such transactions are, as generally understood, that the insurer undertakes, in return for prior payment of a premium, to provide the insured, in the event of materialisation of the risk covered, with the service agreed when the contract was concluded (judgments in *CPP*, C-349/96, EU:C:1999:93, paragraph 17, and *Taksatorringen*, C-8/01, EU:C:2003:621, paragraph 39).

23 The Court has stated that the expression 'insurance transactions' covers not only transactions carried out by the insurers themselves and, is, in principle sufficiently broad to include the provision of insurance cover by a taxable person who is not himself an insurer but, in the context of a block policy, procures such cover for his customers by making use of the supplies of an insurer who assumes the risk insured. However, such transactions necessarily imply the existence of a contractual relationship between the provider of the insurance service and the person whose risks are covered by the insurance, that is to say, the insured party (see judgment in *Taksatorringen*, C-8/01, EU:C:2003:621 paragraphs 40 and 41).

24 However, in the present case, a provider of services such as Aspiro does not itself undertake to ensure that the insured person is covered in respect of a risk and is not connected in any way to the insured person through a contractual relationship.

25 Consequently, even though the claims settlement service at issue in the main proceedings, such as it is described by the referring court, is an essential part of an insurance transaction in that it includes, in the present case, the determination of liability and the amount of damage, and the decision to pay or refuse compensation to the insured person, it must be held that the service — provided moreover to the insurer — does not constitute an insurance transaction, within the meaning of Article 135(1)(a) of the VAT Directive.

26 Furthermore, that finding is supported by the need, as recalled in paragraph 20 of this judgment, to interpret exemptions to the general system of VAT system strictly.

27 That finding is not undermined by the argument, made by Aspiro and the Polish Government, that it is appropriate to align the treatment of insurance transactions for the purpose of VAT with the treatment applicable to financial services. According to that company and government, since claims settlement services are a key element of the business of providing insurance, while constituting a distinct whole, they should, as with the solution adopted for financial services, benefit from the exemption laid down in Article 135(1)(a) of the VAT Directive. That analysis is, they argue, supported by the proposal for a Council directive amending Directive 2006/112 as regards the treatment of insurance and financial services (COM(2007) 747 final) presented by the Commission on 28 November 2007.

28 In that regard, it is true that the Court has held, in a judgment concerning financial institutions, that if the services provided, viewed broadly, in that case certain IT services, form a distinct whole and fulfil the specific, essential functions of the financial services described in points (d) and (f) of Article 135(1) of the VAT Directive, they benefit from the exemption laid down in that provision (see, to that effect, judgment in *SDC*, C-2/95, EU:C:1997:278, paragraph 66).

29 However, the Court has held that the analogy with financial services cannot be applied in relation to insurance transactions, emphasising the difference in wording between Article 135(1)(a) of the VAT Directive, which only refers to insurance transactions in the strict sense, and Article 135(1)(d) and (f) of that directive, which refers to transactions 'concerning' or 'relating to' certain banking operations (see, to that effect, judgment in *Taksatorringen*, C-8/01, EU:C:2003:621, paragraph 43).

30 Furthermore, since the proposal for a directive referred to in paragraph 27 above has not been adopted by the Council, it is in any event entirely irrelevant for the interpretation of the law in force and cannot therefore support an interpretation of Article 135(1)(a) of the VAT Directive based on an analogy with Article 135(1)(d) and (f) of that directive.

31 It must be noted, moreover, that the finding made in paragraph 25 above is not called into question by the principle of fiscal neutrality. As the Advocate General stated at point 28 of her Opinion, that principle cannot extend the scope of an exemption in the absence of clear wording to that effect. That principle is not a rule of primary law which can determine the validity of an exemption, but a principle of interpretation, to be applied concurrently with the principle of strict interpretation of exemptions (see, to that effect, judgment in *Deutsche Bank*, C-44/11, EU:C:2012:484, paragraph 45).

32 It is necessary to consider, in the second place, whether the supplies of services at issue in the main proceedings are 'services related' to 'insurance and reinsurance transactions, […] performed by insurance brokers and insurance agents' and can, on that basis, be exempted.

33 As regards, first, the definition of 'services related' to 'insurance and reinsurance transactions', as the Advocate General observed in point 31 of her Opinion, the term 'related' is sufficiently broad to cover different services connected with the performance of insurance transactions and, in particular, the settlement of claims, which constitute one of the essential parts of those transactions.

34 As regards, second, the condition that the services concerned must be 'performed by insurance brokers and insurance agents', it is necessary to determine whether the activities of a service provider such as Aspiro, which comprise the settlement of claims in the name and on behalf of an insurance company, may be considered to be performed by such brokers or agents.

35 In that regard, the fact that, according to the description of the facts set out by the referring court, Aspiro is neither an insurance broker nor an insurance agent is not decisive. The formal aspects of that company cannot suffice to determine whether its business activities fall within the scope of the exemption or not.

36 As the Court has already held, it is necessary to examine the content of the activities in question, (see, to that effect, judgments in *Arthur Andersen*, C-472/03, EU:C:2005:135, paragraph 32; *Abbey National*, C-169/04, EU:C:2006:289, paragraph 66, and *J.C.M. Beheer*, C-124/07, EU:C:2008:196, paragraph 17).

37 For the purpose of this examination, two conditions are required to be met. In the first place, the service provider must have a relationship with both the insurer and the insured party (judgment in *Taksatorringen*, C-8/01, EU:C:2003:621, paragraph 44). That relationship can be only indirect if the provider is a subcontractor of the broker or agent (see, to that effect, judgment in *J.C.M. Beheer*, C-124/07, EU:C:2008:196, paragraph 29). In the second place, its activities must cover the essential aspects of the work of an insurance agent, such as the finding of prospective clients and their introduction to the insurer (see, to that effect, judgment in *Arthur Andersen*, C-472/03, EU:C:2005:135, paragraphs 33 and 36).

38 The first of those conditions is met by a service provider such as Aspiro. That service provider is in a direct relationship with the insurance company, since it performs its activities in the name and on behalf of the insurance company, and it has an indirect relationship with the insured party, in the context of the examination and management of claims.

39 On the other hand, as regards the second of those conditions, relating to the services provided by insurance brokers and agents, or their subcontractors, those services must be linked to the essential aspects of the work of an insurance broker or agent, which consists in the finding of prospective clients and their introduction to the insurer with a view to the conclusion of insurance contracts (see, in particular, judgments in *Taksatorringen*, C-8/01, EU:C:2003:621, paragraph 45; *Arthur Andersen*, C-472/03, EU:C:2005:135, paragraph 36, and *J.C.M. Beheer*, C-124/07, EU:C:2008:196, paragraph 18). As regards a subcontractor, it is necessary for it to be involved in the conclusion of insurance contracts (see, to that effect, judgment in *J.C.M. Beheer*, C-124/07, EU:C:2008:196, paragraphs 9 and 18).

40 The settling of claims by and on behalf of an insurer, such as that at issue in the main proceedings, is not linked in any way to the finding of prospective clients and their introduction to the insurer with a view to the conclusion of insurance contracts.

41 It follows that such an activity is not within 'related services performed by insurance brokers and insurance agents', within the meaning of Article 135(1)(a) of the VAT Directive.

42 In common with the services at issue in the case leading to the judgment in *Arthur Andersen* (C-472/03, EU:C:2005:135), the services claims settlement services provided by a company such as Aspiro must be regarded as not constituting the performance of services carried out by an insurance agent but as a division of the activities performed by insurance companies (see, to that effect, judgment in *Arthur Andersen*, C-472/03, EU:C:2005:135, paragraph 38).

43 Accordingly, it is not necessary to refer, as the United Kingdom Government has done, to the notion of 'insurance mediation', found in Article 2(3) of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (OJ 2003 L 9, p. 3), nor to the definitions of the business activities of insurance brokers or agents, which are referred to in Article 2(1) of Council Directive 77/92/EEC of 13 December 1976 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of the activities of insurance agents and brokers (ex ISIC Group 630) and, in particular, transitional measures in respect of those activities (OJ 1977 L 26, p. 14), which Directive 2002/92 replaced. As the Advocate General observed in paragraph 46 of her Opinion, those directives seek to promote the freedom to provide the services concerned in the European Union and pursue a different objective from that of the VAT Directive. The definitions in question cannot therefore be used as they stand for the purposes of determining, in the context of the VAT Directive, the range of transactions exempt from VAT.

44 It follows that the act of merely entrusting the handling of claims to a third party, without that outsourcing being linked to the finding of prospective clients and their introduction to the insurer with a view to the conclusion of insurance contracts, is not exempt from VAT.

45 It follows from all the forgoing considerations that the answer to the question referred is that Article 135(1)(a) of the VAT Directive must be interpreted as meaning that claims settlement services, such as those at issue in the main proceedings, provided by a third party in the name and on behalf of an insurance company, do not fall within the exemption laid down by that provision.

Costs

46 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 (First Chamber) hereby rules:

Article 135(1)(a) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that claims settlement services, such as those at issue in the main proceedings, provided by a third party in the name and on behalf of an insurance company, do not fall within the exemption laid down by that provision.

[Signatures]