OPINION OF ADVOCATE GENERAL COSMAS

delivered on 14 May 1998 *

I — Introductory remarks

1. In the present case the Court is called upon to rule on a preliminary question referred to it by the VAT and Duties Tribunal, London, concerning the interpretation of Article 13A(1)(l) of the Sixth VAT Directive [1] (hereinafter 'the Sixth Directive') and the exemption from that tax (hereinafter 'VAT') in favour of the activities of a non-profit-making organisation of persons working in the retail motor industry.

II — Legal framework

A — *Community law*

2. Article 2(1) of the Sixth Directive provides that supplies of goods and services effected for consideration within the territory of the country by a taxable person acting as such are subject to value added tax.

3. Title X contains the exemptions from VAT for certain activities. Article 13, which is entitled 'Exemptions within the territory of the country', provides at (A) as follows:

'A. Exemptions for certain activities in the public interest

1. 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:

...

(l) supply of services and goods closely linked thereto for the benefit of their members in return for a subscription fixed in accordance with their rules by non-profit-making organisations with aims of a political, *trade-union*, religious, patriotic,

* Original language: Greek.

1 — 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)

philosophical, philanthropic or civic nature, provided that this exemption is not likely to cause distortion of competition;

...' (emphasis added).

B — *National law*

4. Schedule 9 to the Value Added Tax Act 1994 (hereinafter 'VATA') exempts 'trade unions and professional bodies' from VAT.

5. So far as material, Schedule 9 provides as follows:

'1. The supply to its members of such services and, in connection with those services, of such goods as are both referable only to its aims and available without payment other than a membership subscription by any of the following non-profit-making organisations —

(a) a trade union or other organisation of persons having as its main object the negotiation on behalf of its members of the terms and conditions of their employment;

(b) a professional association, membership of which is wholly or mainly restricted to individuals who have or are seeking a qualification appropriate to the practice of the profession concerned;

(c) an association, the primary purpose of which is the advancement of a particular branch of knowledge, or the fostering of professional expertise, connected with the past or present professions or employments of its members;

(d) ...;

Notes:

(1) -(3) ...

4. Paragraph (c) does not apply unless the association restricts its membership wholly or mainly to individuals whose present or previous professions or employments are directly concerned with the purposes of the association.

5. ...'

III — Facts

A — *Objects of the Institute of the Motor Industry*

6. The Institute of the Motor Industry (hereinafter the 'Institute') was established in 1920 and is a voluntary association of persons working in the retail motor industry.

7. The objects of the Institute and the means at its disposal to achieve them, as set out in its memorandum of association, are described in the order for reference. Specifically, the primary objects of the Institute and its members are to improve the professional standard of its members and career structures in the different sectors of the industry and, consequently, to enhance public perception of the industry and the people working in it. To that end the Institute consciously responds to the industry's requirements for skills for specific personnel (from senior management level to technical levels), validates courses (organised by other institutions) for the teaching of those skills, makes awards to persons completing those courses, grades its members, disseminates information designed to keep its members up to date with developments in the industry, and keeps a job placement register.

8. More specifically, it appears from the order for reference that the Institute's object (Object (h)) is primarily 'to take steps to improve the status of approved members of the Motor Trade and secure recognition of their position'.

9. Object (h) is reflected in the Report of Council of 12 June 1996 attached to the Institute's Annual Report for the year to 31 March 1996. The report states that 'the principal activity of the Institute during the year was to progress the improvement of professional standards of individuals throughout the industry', that is to say the whole scope of the motor industry but not the manufacturing

section. That object has been pursued by two means. The Institute has established the structure and standards of qualifications and grades of membership. Previously, persons engaged in the motor industry had obtained qualifications in a variety of ways, with franchise networks often conducting their own training and certification. The system of joint certification with the Institute as an awarding body has enabled the Institute to establish recognised common standards. The objective is, therefore, the building of a career structure within the industry based on qualifications. [2]

10. The other means of achieving Object (h) is through the Institute's 'Professional Reassurance Campaign'. This involves the issue of a brass plaque to organisations whose management staff are, as to 60 per cent or more, Institute members. The plaque is designed to provide reassurance to customers and to the workforce of the organisation. [3]

11. A further object of the Institute is (Object (c)) 'to hold examinations from time to time to test the knowledge and proficiency of applicants for membership and of existing members of the Institute in commercial, legal and engineering subjects, and any other sciences, arts and other subjects which in the opinion of the Institute are necessary or desirable to recommend to its members for study and qualification'.

12. The Institute pursues this object in various ways. It awards its own vocational engineering qualifications to its members. It awards a certificate of management. It approves higher education automotive courses and programmes. It is an awarding body for

2 — For example, a person who is already in a managerial job could obtain an appropriate qualification from the Institute to demonstrate his competence and the competence of his employer company: the person aspiring to become a manager could train for and obtain the managerial qualification so as to equip him in his search for a managerial job. The same principle applies at all levels. The aim, the national court relates, is to identify what types of staff the industry needs and what their customers expect. The Institute recruits members and provides qualifications and seeks to match them to the demands of the industry. To that end the Institute keeps a job placement register.

3 — The plaque displays the names of the members of the Institute working for the organisation and contains a statement that the named employees are bound by the Institute's Code of Conduct. The plaque is 'on lease' to the organisation in question, costs £350 plus VAT on acceptance and £100 per annum plus VAT thereafter. It can be taken away from the organisation if standards fail to meet those contained in the Code of Conduct or if the organisation ceases to meet the condition that at least 60 per cent of its management staff must be Institute members. The Code of Conduct, in summary, requires members to conduct themselves with integrity and skill, to ensure that their work is performed in an efficient and honest manner, to be professional in their dealings with the public and business colleagues, to be 'professionally competent', to keep abreast of modern techniques and new legislation, 'not to misuse their office or authority for personal gain', to comply with the laws of the country, to respect confidentiality and to encourage staff to raise their educational standards. The Institute has its own disciplinary committee to deal with breaches of conduct.

NVQs [4] and SVQs. [5] Training for those qualifications is carried out by other bodies and organisations. [6] The Institute provides training for assessors.

13. Another of the Institute's objects (Object (k)) is 'to take joint action with any such other Company or Association ... by way of propaganda or otherwise which the Company may deem to be to the interest and betterment of the Motor Trade and its members'. [7]

14. The VAT and Duties Tribunal relates that, as regards the procedure for attaining its aims, Object (b) of the Institute's memorandum of association is 'to establish the work of the ... Association as a corporation recognisable by law, and if thought fit, in due course to apply for a Royal Charter or other form of incorporation into which the present corporation may merge'. [8]

15. Object (d) of the Institute is then 'to grade and divide the membership of the Institute into such divisions as may from time to time be deemed to be desirable in pursuit of the objects of the Institute'. On 1 July 1996 there were said to be 26 121 members. [9]

16. The Institute also pursues its aims by having as its objects 'to grant prizes and diplomas to members of the motor trade and allied industries' (Object (g)), and 'to organise and hold meetings for the discussion of subjects of interest to the Motor Trade, or for any other purpose in accordance with the objects of the Institute'. [10]

4 — National Vocational Qualification.

5 — Scottish Vocational Qualification.

6 — The Institute awards 30 different VQs. It has 150 correspondent bodies which deliver the training and detailed assessment required for the Institute's awards.

7 — The national court relates in that connection that, until recently, a job placement register had been kept, as a joint operation, with the Engineering Council.

8 — The Institute has not as yet applied for a Royal Charter.

9 — Of these 2 640 were Fellows. A Fellow (FIMI) is described in the Institute's brochure as 'a person qualified by experience and training to hold a senior managerial appointment'. 12 864 were Members. A Member (MIMI) is 'a person qualified by experience and training to hold a middle management position'. 8 305 were Associate Members. An Associate Member is a person qualified to work to a given set of standards without supervision. All those members are known as corporate members and have votes. Possession of an NVQ is now for the most part a necessary requirement for admission as a corporate member. There were 984 Affiliate Members. An Affiliate Member is 'a person employed or training in the industry who works to the high standards set by the Code of Conduct but who is not yet qualified for associate membership'. There are 1 181 student members. A student member is 'a person studying for a qualification which would qualify them for eventual corporate (voting) membership'. According to its director general, the Institute's aim is to recruit 50 000 members, given that about half a million persons are employed in the United Kingdom in the motor trade (leaving out the manufacturing side of the industry). At the hearing the Institute explained that the amount paid on registration varies according to the capacity of the member.

10 — The VAT Tribunal relates that there are numerous local centres run by local area committees throughout Great Britain.

17. In addition to the abovementioned aims, Object (i) of the Institute is 'subject to the laws affecting maintenance and champerty to take up and defend or pursue or prosecute any action at law or legal proceedings which in the opinion of the Institute involves a question of general importance and interest to the members of the Institute.' [11]

18. The Institute's final object (Object (v)) is 'to do all such other things as are incidental or the Institute may think conducive to the attainment of the above objects or any of them'. Under this heading the Institute publishes a range of printed materials and publications.

B — *Procedure before the VAT and Duties Tribunal*

19. By a decision of 15 January 1996 the Commissioners of Customs and Excise ruled that the Institute did not satisfy the conditions for exemption from VAT under Schedule 9 to VATA, so that its supplies of services to its members in return for their annual subscriptions constituted taxable supplies for VAT purposes. [12]

20. The Institute appealed against that decision to the VAT and Duties Tribunal, London.

21. In the order for reference the VAT and Duties Tribunal sets out the reasons why, in its view, the Institute cannot be brought within the purview of Schedule 9 to VATA.

22. First, the Institute cannot be regarded as a professional association for the purposes of Item 1(b) of Group 9 of Schedule 9 to VATA, because its members are drawn from too

11 — The laws on maintenance and champerty concern amounts granted to a third party participating in legal proceedings and sharing the award of damages with the interested party in the event of the successful outcome of the proceedings.

12 — The question raised concerning exemption from VAT in respect of the activities of certain organisations pursuing trade-union aims is a matter widely canvassed in English law. In an annex to its observations the Institute reproduced an extract from *Tolley's VAT Case Digest 1996* concerning cases on the professional/non-professional and/or trade-union/non-trade-union distinction under English law. Thus, an association of taxi-cab owners was held not to be a professional association or a trade union, so that members' subscriptions were not exempt from VAT because its main activity was the provision of a radio service to its members who, moreover, were not employees (Tolley's Digest, para. 13.19). Nor could the National Association of Funeral Directors claim exemption from VAT because, in the view of the competent tribunal, it was not a professional association or trade union under English law (Tolley's Digest, para. 13.18). The same was held to be true of the Civil Service Pensioners' Alliance (CSPA) (Tolley's Digest, para. 13.29). In the latter case the CSPA was held to consist of pensioners rather than workers and was not a professional organisation.

diverse a range of activities. 'Professional associations', within the meaning of that provision, consist exclusively of bodies serving the interests of persons who apply particular specialised skills enabling them to offer specialised services, whereas members of the Institute are engaged in a wide range of differing activities, the only thing they have in common being that they are all employed in the retail motor trade.

23. Nor, moreover, can the Institute, in the VAT Tribunal's view, be deemed to be an association within the meaning of Item 1(c) of Group 9, inasmuch as its primordial purpose is not the advancement of a particular branch of knowledge or the fostering of professional expertise of the profession common to all its members.

24. Finally, according to the VAT Tribunal, the Institute does not fall within the scope of Item 1(a) of Group 9 because it is not a 'trade union' whose main object is the negotiation on behalf of its members of the terms and conditions of their employment.

25. Before the VAT Tribunal the Institute submitted that it constitutes a trade union for the purposes of Article 13A(1)(l) of the Sixth Directive. In that connection it was argued on behalf of the Institute that, if the expression 'aims of a trade-union nature' read in the French language version, i. e. 'organismes ... poursuivant des objectifs de nature ... syndicale ...' covers an employers' organisation, then its scope must be much wider than that of 'trade-union' as understood in the English language. If Article 13A(1)(l) is so construed, then the Institute's supplies of goods and services must qualify for exemption from VAT.

26. However, the VAT Tribunal, relying on the ordinary meaning of the term 'trade union', as used in the English language version of Article 13A(1)(l) of the Sixth Directive, came to the conclusion that the Institute's supplies of goods and services could not enjoy exemption under that provision.

27. Moreover, the VAT Tribunal points out that the term 'syndicale' and its equivalents which are used in certain language versions, including the French version, appear to be used in a broader sense than the term 'trade-union' and its equivalents appearing in other language versions including the English one.

28. Consequently, the VAT Tribunal raises the question whether, in light of the French language version of Article 13A(1)(l) of the Sixth Directive, the Institute constitutes an 'organisation with aims of a trade-union nature' ('organisme poursuivant des objectifs de nature syndicale').

29. Furthermore, the VAT Tribunal did not consider that exemption from VAT for supplies of goods and services by the Institute to its members had the result of distorting competition, as was contended on behalf of the Commissioners.

IV — The preliminary question

30. In the context of the dispute pending before it, the VAT and Duties Tribunal, London, taking the view that a question arose as to the compatibility of the national legislation at issue with the Sixth VAT Directive, referred the following question to the Court for a preliminary ruling:

'In the light of the findings of fact in paragraphs 3-19 and 21 of the [order for reference] and in circumstances of the sort found in paragraph 21 (which is summarised below), are the services supplied by such an association, being a non-profit-making organisation, exempt from VAT as falling within the scope of Article 13A.1(l) of the Sixth Directive by virtue of the following words

"... organisations with aims of a ... trade-union ... nature ..."?

Paragraph 21, in summary, states that the [Institute] is a voluntary association of individuals comprising employees in the retail motor industry. The primary purposes of the [Institute and its members] are the improvement of the standards of its members at work, the improvement of career structures within the different sectors of the industry and the consequent enhancement of the public perception of the industry and the persons working within it. The [Institute] seeks to achieve these ends by responding to the requirements of the industry for skills at all levels, by validating courses (run by other institutions) that teach these skills, by making awards on completion of those courses and by grading its members, by disseminating information designed to keep its members up-to-date with developments in the industry and in their skills and by keeping a job placement register.'

V — Reply to the preliminary question

31. The Institute and the Commission take the view that the expression 'organisations with aims of a ... trade-union ... nature' in Article 13A(1)(l) of the Sixth Directive covers the Institute, adding that the French language version is wider than the corresponding English one.

32. Conversely, the United Kingdom Government takes the view that the term in question means organisations which are not necessarily trade unions but whose aims in relation to their members are of the same nature as those of a trade union to its members. Accordingly, it concludes that the expression 'organisations with aims of a trade-union nature' covers non-profit-making organisations which (a) work to defend the collective interests of their members (whether they be employees or self-employed persons) and (b) represent the interests of their members (depending on the case) vis-a-vis employers, government bodies and others. Accordingly, organisations such as the Institute do not fall within the scope of that expression.[13]

33. I should observe, then, that there are evidently discrepancies in the different language versions of the term 'trade-union' used in the English text which has a specifically narrow meaning referring to workers' trade unions and not applying to bodies such as the Institute. [14]

34. Conversely, the French language version refers to 'organismes sans but lucratif poursuivant des objectifs de nature syndicale'. However, the French term 'syndical' has a wider meaning than the English term 'trade-union'. In French it refers to matters relating to a professional organisation or association and those relating to a workers' trade union. The latter meaning corresponds to the English term 'trade-union'. Again, in French, [15] the term 'syndicat' means 'an organisation whose object is the defence of common interests', such as professional interests. [16]

35. Schematically, it may be said that the terms used in the different official languages of the Community in order to render the term

13 — See for example *Webster's Third New International Dictionary of the English Language unabridged*, 1981, under 'trade-union'.

14 — See for example Robert's *Dictionnaire alphabétique et analogique de la langue française*, sixth volume, 1972, under 'syndicale'.

15 — See Robert, op. cit., under 'syndicat'.

16 — The fact that the French term 'syndicat' has a wide meaning is also borne out by the fact that it is also used in the expression 'syndicat d'initiative' — association for the development of tourism.

in issue 'aims of a trade-union nature' are couched in either narrow or broad terms.

36. The term 'aims of a trade-union nature' which principally means 'aims of a workers' union' is the narrow rendering. The corresponding terms in the German (gewerkschaftliche), Danish (fagforeningsmæssig), Finnish (ammattijärjestöllisiä) and Greek () also reflect that narrow rendering.

37. Conversely, the term 'objectifs de nature syndicale', which includes professional associations which are not workers' unions, constitutes the broad rendering. The corresponding terms in Italian (sindacale), Dutch (syndikale), Spanish (sindical), and Portuguese (sindical) have the same meaning.

38. Where there are such linguistic discrepancies, the English version must be interpreted in the light of the other language versions, [17] in order to discover the meaning common to all the language versions.

39. The question of linguistic discrepancies in the rendering of terms or expressions in legislative texts of the Community institutions has already exercised the Court which, for example, in the *Stauder* case, [18] held that: 'When a single decision is addressed to all the Member States the necessity for uniform application and accordingly for uniform interpretation makes it impossible to consider one version of the text in isolation but requires that it be interpreted on the basis of both the real intention of its author and the aim he seeks to achieve, and in the light in particular of the versions in all four languages.' [19] The Court went on to emphasise that: 'It cannot, moreover, be accepted that the authors of the decision intended to impose stricter obligations in some Member States than in others.' [20]

40. Thus, in resolving this problem, the Court's case-law can be of assistance. In *Cricket St. Thomas*, the Court held [21] that the formulation in one of the Community's languages (in that case English) 'cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in this regard. Such an approach would be incompatible with the requirement for the uniform application of Community law.' The Court went on to emphasise that 'in the case of divergence between the language versions the provision

17 — For the solution by the Court of such a problem see Case 295/81 *IFF* v *Hauptzollamt Bad Reichenhall* [1982] ECR 3239, paragraphs 8 and 9.

18 — Case 26/69 *Stauder* v *Ulm* [1969] ECR 419.

19 — *Stauder* judgment (paragraph 3). See also Case 19/67 *Sociale Verzekeringsbank* v *Van der Vecht* [1967] ECR 345.

20 — *Stauder* (paragraph 4).

21 — Case C-372/88 *Cricket St. Thomas* [1990] ECR I-1345, paragraph 18.

in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms a part'. [22]

41. Thus, it is necessary in the present case to determine the aim pursued by the Community legislature by means of the provision at issue so that it may be possible by way of a teleological interpretation to arrive at conclusions concerning the meaning of the term under examination.

42. At the outset I would observe that the purpose of the Sixth VAT Directive is the harmonisation of the laws of the Member States relating to turnover taxes by means of the creation of a common system of value added tax and a uniform basis of assessment. It was also stated (11th recital) that 'a common list of exemptions should be drawn up so that the Communities' own resources may be collected in a uniform manner in all the Member States'. It follows from that recital, as moreover the Court has repeatedly emphasised, [23] that 'the exemptions constitute independent concepts of Community law which ... should be placed in the general context of the common system of VAT introduced by the Sixth Directive'.

43. Moreover, I would observe that the basic guiding principle to be inferred from the purpose and general economy of the provisions of the directive is the subjection to VAT, as a matter of principle, of every supply of goods or services effected for valuable consideration (see Article 2). Thus, the Sixth Directive confers on VAT a wide scope of application. [24]

44. The Sixth Directive also provides for exemption from VAT, by way of exception, of certain *limitatively enumerated* activities of general interest, that is to say activities enumerated therein (Article 13). Consequently, where a general principle is derogated from, the exemption must be strictly interpreted because, as the Court has, moreover, held, [25] any interpretation which would widen the scope of Article 13(A) would be inconsistent with the aim of the provision.

22 — Case 100/84 *Commission* v *United Kingdom* [1985] ECR 1169, paragraph 17, Case C-100/90 *Commission* v *Denmark* [1991] ECR I-5089, paragraph 8, and Case C-449/93 *Rockfon* [1995] ECR I-4291, paragraph 28. On that subject, in relation to references for a preliminary ruling, see Case 30/77 *Bouchereau* [1977] ECR 617, paragraph 14, Case 173/88 *Henriksen* [1989] ECR 2763, paragraph 11, Opinion in that case of Advocate General Jacobs (paragraph 12 et seq.), and judgment in *Cricket St. Thomas*, cited above (paragraph 18) and Opinion in that case of Advocate General Tesauro (paragraph 6 et seq.).

23 — See Case C-453/93 *Bulthuis-Griffioen* [1995] ECR I-2341, paragraph 18, and Case 348/87 *Stichting Uitvoering Financiële Acties* v *Staatssecretaris van Financiën* [1989] ECR 1737, paragraph 11.

24 — Case 235/85 *Commission* v *Netherlands* [1987] ECR 1471, paragraphs 7 to 10, *Stichting Uitvoering Financiële Acties* (paragraphs 10 and 13) and *Bulthuis-Griffioen* (paragraph 19).

25 — See *Stichting Uitvoering Financiële Acties*, cited above at footnote 23 (paragraphs 13 and 14) and *Bulthuis-Griffioen* (paragraph 19).

Moreover, the Court has clarified [26] that 'Article 13 of the Sixth Directive does not provide exemption for every activity performed in the public interest, but only for those which are listed and described in great detail'. The Court has therefore declined to apply an extensive interpretation of the exemptions permitted under the Directive where there are no interpretative elements to allow extension of the exemption permitted under the relevant provisions and in particular Article 13. [27]

45. Accordingly, a systematic interpretation of the provisions of the Sixth Directive guides us to a construction of the term before the Court which is consistent with the Directive's guiding principle.

46. We come therefore to the issue, under Community law, of the definition of aims of a trade-union nature for the purposes of the Sixth Directive, that is to say, what those aims comprise.

47. I do not consider that any carrying on of an activity or pursuit of an aim which may happen to interest or concern a trade union, or a trade-union or professional organisation, can constitute aims of a trade-union nature. Nor, moreover, can the exercise of any activity on the part of its members suffice for an organisation to be said to constitute a body pursuing aims of a trade-union nature and, consequently, for it to come within the terms of the expression 'organisation with aims of a ... trade-union ... nature', in such a way as to be covered *ratione personae* by the exemption from VAT provided for in Article 13A(1)(l).

48. Accordingly, the better interpretation, in my view, of the relevant expression in Article 13 is that it refers to the substantive aims of trade-union activity and accordingly covers those non-profit-making organisations which, irrespective of their legal form, pursue such aims.

49. The fact that Article 13A(1)(l) lists a whole series of adjectives describing the types of aims which those bodies may pursue (political, trade-union, religious, patriotic, philosophical, philanthropic or civic) does not, in my view, mean that the Community legislature intended in that way to include all organisations set up in the interests of their members provided that they were non-profit-making and not likely to distort competition, as the Commission maintains. Rather it sought

26 — See Case 107/84 *Commission* v *Germany* [1985] ECR 2655, paragraph 17 and the *Stichting* judgment cited above at footnote 23 (paragraph 12).

27 — See *Commission* v *Germany*, already referred to (paragraph 20), and paragraph 16 of the Opinion of Advocate General Darmon in Case C-63/92 *Lubbock Fine* v *Commissioners of Customs & Excise* [1993] ECR I-6665, in which the Court gave judgment on 15 December 1993.

to determine which organisations of a non-profit making nature and not likely to distort competition qualify for exemption from VAT.

50. In order to identify the demarcation line in law as between aims of a trade-union nature and those of a non-trade-union nature, for the purposes of the Sixth Directive, I believe that the Court's case-law can be of assistance. In *ASTI* [28] which concerned a Community provision which was not subject to a narrow interpretation, [29] unlike Article 13 in this case, the Court held [30] that the provision in question 'constitutes a particular expression of the principle of non-discrimination in the specific field of workers' participation in trade-union organisations and activities' and that its applicability 'cannot be limited on the basis of considerations relating to the legal form of the body in question'. The Court further held that the bodies at issue in that case [31] did not include merely bodies which were 'not ... in law, trade-union organisations', but also those which 'perform similar functions as regards the defence and representation of workers' interests'. [32]

51. The decision in *ASTI* may therefore provide two elements relevant to the issue now before the Court which enables us to apply an operational criteria in approaching the term 'trade union' under Community law. Thus, the epithet 'trade-union' is proper to an organisation which, irrespective of its legal form, has as its aim the defence (safeguarding and promoting) of the interests of its members (whether workers, employers of the liberal professions or also generally persons carrying on any economic activity) and their representation. [33] Consequently, it is not sufficient for a non-profit-making organisation simply to promote the interests of its members where that does not go hand in hand with the

28 — Case C-213/90 *ASTI* [1991] ECR I-3507, paragraphs 13 to 17. See also paragraph 16 et seq. of the Opinion of Advocate General Jacobs in that case.

29 — The provision before the Court in that case was the first subparagraph of Article 8(1) of Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475), pursuant to which 'A worker who is a national of a Member State and who is employed in the territory of another Member State shall enjoy equality of treatment as regards membership of trade unions and the exercise of rights attaching thereto, including the right to vote and to be eligible for the administration or management posts of a trade union; he may be excluded from taking part in the management of bodies governed by public law and from holding an office governed by public law. Furthermore, he shall have the right of eligibility for workers' representative bodies in the undertaking.'

30 — *ASTI* (paragraph 15).

31 — The Chambre des Employés Privés of the Grand Duchy of Luxembourg, a professional association under Luxembourg law.

32 — *ASTI* judgment (paragraph 16). See also paragraph 19 of the Opinion of Advocate General Jacobs in that case. That notion of the defence and furtherance of members' interests by a professional association which goes hand in hand with the recognition of trade-union freedom (provided for, for example, in Article 24(a) of the Staff Regulations for officials of the European Communities) may be found in the judgments in Case 175/73 *Union Syndicale — Service Public Européen — Massa and Kortner* v *Council* [1974] ECR 423, paragraph 14, Case 18/74 *Syndicat Général du Personnel des Organismes Européen* v *Commission* [1974] ECR 425, paragraph 10, Case 72/74 *Union Syndicale — Service Public Européen and Others* v *Council* [1975] ECR 141, paragraphs 17 and 19, and Joined Cases C-193/87 and C-194/87 *Maurissen and Union Syndicale* v *Court of Auditors* [1990] ECR I-95, paragraph 13).

33 — I would point out that International Convention No 87 of 1948 'concerning Freedom of Association and protection of the Right to Organise' delimits the scope of workers' and employers' organisations in general terms (Article 10): furtherance and defence of their interests (for the text of that international convention see *International Labour Conventions and Recommendations*, International Labour Office, Geneva, 1992, Volume I (1919-1962), p. 435.

defence of those interests and representation of its members in regard to decision-makers affecting it. [34]

52. Consequently, the question to be determined is whether, as a consequence of that legal classification, a distinction is drawn in national legislation between the charging to VAT or exemption therefrom of supplies of goods and services to their members to the detriment of those organisations which, even though they pursue trade-union aims within the meaning of the Sixth Directive, are none the less required to pay the corresponding VAT.

53. Conversely, if that condition of pursuit of trade-union aims is not met, there can be no question of an infringement of the principle of equal treatment in the sense of unequal treatment of equivalent economic activities, as the Institute maintains, according to which there are no differences as to the nature and operation of the economic activities in question when they are carried on by organisations which pursue trade-union aims and when they are carried on by organisations not having those aims, even if they are non-profit making and there is no risk of a distortion to competition. For in such a case there would be different treatment of different situations and that is not precluded by Community law.

54. Moreover, I believe that the written answer by the Commission [35] to the European Parliament (No 831/82) on the subject of exemption from VAT for organisations of a trade-union nature [36] goes in the same direction as my definition of the expression 'organisations with aims of a trade-union nature'. That reply is as follows:

'The Commission is indeed aware of the linguistic discrepancies in the wording of Article 13(A)(1)(l) of the Sixth Directive. Terms such as "syndical" and "sindacale", which cover a variety of meanings, are used in some lan-

34 — See Jean-Maurice Verdier, *Syndicats et Droit Syndical*, Vol. 1, part 5 (Liberté-Structures-Actions), Paris, Dalloz, 2nd Ed., 1987, paragraph 58, p. 202 et seq. Under French law the mission of trade unions is the study and defence of the rights and substantive and moral interests, both collective and individual, of persons referred to in their statutes (Article L.411-1 of the Code du travail — labour code). In Greece, Article 23(1) of the Constitution provides that the purpose of trade-union organisations is to safeguard and promote the financial and working interests of workers, whilst Law 1264/1982 adds to those aims the promotion of the security, social and trade-union interests of workers (see Georgios Levendis
(Collective employment law), Athens, Deltio
Ergatikis Nomothesias, 1996, para. 12, p. 122 et seq. Moreover, the trade-union organisations carry out their mission in various ways, as is borne out by the practice followed in the Member States. See in that connection Gerard Lyon-Caen, Jean Pelissier and Alian Supiot, *Droit du travail*, Paris, Précis, Dalloz, 18th Ed., 1996, p. 482 et seq.

35 — OJ 1983 C 25, p. 1.

36 — That reply was repeated by the Commission through the intermediary of the competent Commissioner in 1984 in a written answer (532/84) to the European Parliament (OJ 1984 C 308, p. 3).

guage versions while the terms used in others are very specific (e. g. "trade-union" and "gewerkschaftlich").

The Commission feels that these discrepancies should not, in practice, affect non-profit-making organisations (whether trade, employers' or employees' organisations) *whose activity is confined to representing the collective interests* of their members. In such cases, these organisations act as the collective emanation of their members whose subscriptions are then a tangible manifestation of their membership of a collective organisation and do not represent a consideration for services rendered. Such organisations should therefore be outside the scope of VAT.

Organisations of the kind referred to above whose activity is not confined to representing the collective interests of their members are liable to fall within the scope of the tax where the subscriptions charged by them do, in fact, represent a consideration for individual services supplied to members' (emphasis added).

55. Moreover, in my view, where a body acts, in accordance with its objects clause, as a lobbying or pressure group on decision-makers concerning, in the widest possible sense, the sector of activity which it represents, that body cannot be deemed to be excluded from the category of bodies having aims of a trade-union nature within the meaning of the Sixth Directive. Accordingly, it may be eligible for exemption from VAT under Article 13(A)(1)(l) of the Sixth Directive, where the two criteria mentioned in that provision are satisfied: (a) it is a non-profit-making organisation and (b) exemption in respect of its activities does not create the risk of a distortion of competition. Thus I consider that it is not sufficient for such an organisation and, more generally, any non-profit-making professional organisation to be active in providing goods and services in the common interest of its members, but rather it must have as its object the furtherance and defence of the interests of its members and their representation, as stated above.

56. In each case it is thus a question of fact for the national court to determine whether a non-profit-making organisation has as its object the defence of the interests and representation of its members in order for it to be deemed to be pursuing aims of a trade-union nature within the meaning of Article 13(A)(1)(l) of the Sixth Directive.

57. In the present case, if we examine the aims pursued by the Institute and the means used to attain them, as stated in the order for

reference, [37] we see that it seeks to improve the professional standard of its members and to improve career structures in the different sectors of the industry, and consequently to enhance public perception of the industry and the people working in it. To that end the Institute consciously responds to the industry's requirements for skills for specific personnel (from senior management level to technical levels), validates courses (organised by other institutions) for the teaching of specific skills, makes awards to persons completing those courses, grades its members, disseminates information designed to keep its members up to date with developments in the industry, and keeps a job placement register.

58. Since, as we have seen, the term 'trade union' in Community law is proper to an organisation which, irrespective of its legal form, has as its aim the furtherance and defence of the interests of its members (whether workers, employers or the liberal professions) and their representation, it is difficult to accept that the Institute can be included amongst the bodies with aims of a trade-union nature. I would point out that the United Kingdom Government emphasises in its written observations (paragraph 19), and repeated at the hearing in reply to a question in that connection from the Court, that the Institute has never suggested that any of its members have ever turned to it for the defence and representation of their interests vis-a-vis employers or anyone else, and that the members of the Institute would, if necessary, turn to the trade unions of which they are members for that purpose.

59. Accordingly, if it were accepted that a non-profit making body, such as the Institute, constitutes an 'organisation with aims of a trade-union nature', that would be to extend the exemptions from VAT to cases not provided for by the terms of Article 13(A)(1)(l) of the Sixth Directive, which are to be strictly construed. Nor do I believe that it is possible to construe the exemption more extensively than is provided for in the relevant article. [38]

60. Furthermore, if that were to be accepted and the phrase in question were to be construed so widely, that would be likely to open the way to the overturning of the provisions of the Directive since it would offer such organisations a plausible way of gaining exemption from their obligations to pay VAT to the detriment of Community finances.

37 — I would point out that the national court held that the Institute does not constitute a 'trade union or other organisation of persons having as its main object the negotiation on behalf of its members of the terms and conditions of their employment', as required by VATA.

38 — See *Commission* v *Germany*, already cited above at footnote 27 (paragraph 20) and paragraph 16 of the Opinion by Advocate General Darmon in Case C-63/92 *Lubbock Fine* v *Commissioners of Customs & Excise*, also cited above in footnote 27.

61. In my view, a professional association such as the Institute cannot be regarded as pursuing aims of a trade-union nature within the meaning of the Directive because the result of unreasonably stretching the limits of that concept would be to water it down. Thus, organisations such as that described by the national court cannot be subsumed under the concept of 'organisations with aims of a trade-union nature' because to do so would be to alter the content of that vague legal concept with the result that it would end up being a concept having nominal value only and being without any binding legal effect and, in the final analysis, without any specific practical usefulness.

62. Finally, an argument in support of the view here advocated may also be drawn from the preparatory document which led to the adoption of the provision of Article 13 under examination, which allows us to discern the intention of the legislature. I would observe that, in the Economic and Social Committee's opinion of 31 January 1974 on the draft Sixth VAT Directive, [39] reference was made for the first time to 'the exemption of trade unions, *professional organisations, churches* etc.' (emphasis added). Thus, that opinion specifically mentioned trade unions, professional organisations, churches and stated that the same rules should govern other equivalent institutions, which it did not lay down, in so far as their activities are not governed by public law and they are not already exempted from VAT on that ground.

63. It was the Economic and Social Committee's view that exemption from VAT would be possible to the extent to which trade unions and professional organisations did not engage in competitive operations, such as commercial transactions or the giving of advice involving payments separate from the general contributions and varying according to the extent of the services rendered. In the same opinion we see that such exemption was deemed to be particularly appropriate as regards trade-union contributions since otherwise trade unions' income from contributions would be reduced by the amount of the tax without the members being able to deduct this tax, as they themselves are not taxable persons. [40]

64. In light of that opinion by the Economic and Social Committee, I would observe that the text of Article 13(A)(1)(l) determines which bodies are to be exempted, simply mentioning bodies pursuing aims of a trade-union nature and making no mention of professional aims in general. Thus that provision, as it applies, is narrowly drawn. For that reason I am led to the conclusion that only bodies pursuing aims of a trade-union nature, in the manner described above, can qualify for VAT exemption.

39 — OJ 1974 C 139, p. 15, paragraph 1 of the observations relating to Article 14 of the draft directive containing the list of exemptions from VAT.

40 — The Economic and Social Committee went on to observe that trade unions and professional organisations ought to be able to renounce exemption by opting for VAT in order to recover VAT already paid (taxes on immoveables and office equipment).

VI — Conclusion

65. In light of the foregoing analysis I propose that the Court should give the following reply to the question referred to it by the VAT and Duties Tribunal, London:

Article 13(A)(1)(l) of 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 construed as meaning that an organisation with the characteristics described in the order for reference cannot be deemed to be 'pursuing aims of a trade-union nature' and, accordingly, the services which it supplies to its members are not exempt from VAT.