

Judgment of the Court (Seventh Chamber) of 12 May 2011 – Commission v Austria

(Case C-441/09)

Failure of a Member State to fulfil obligations – Value added tax – Directive 2006/112/EC – Application of a reduced rate – Live animals normally intended for use in the preparation of foodstuffs for human and animal consumption – Supply, importation and acquisition of certain live animals, in particular horses

Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Discretionary power of the Member States to apply a reduced rate to certain supplies of goods and services (Council Directive 2006/112, Arts 96 and 98 and Annex III) (see paras 40, 43-50)

Re

Failure of a Member State to fulfil obligations – Breach of Articles 96 and 98, read in conjunction with Annex III, of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) – Reduced rate – Supply, importation and acquisition of certain live animals (in particular horses) not intended for the preparation or production of foodstuffs for human or animal consumption.

Operative part

The Court:

1.

Declares that, by applying a reduced rate of value added tax to all supplies, imports and intra-Community acquisitions of horses, the Republic of Austria has failed to fulfil its obligations under Articles 96 and 98 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in conjunction with Annex III thereto;

2.

Orders the Republic of Austria to pay the costs;

3.

Orders the French Republic and the Kingdom of the Netherlands to bear their own costs.