JUDGMENT OF THE COURT (Third Chamber)

17 January 2013 (*)

(Failure of a Member State to fulfil obligations – Value added tax – Directive 2006/112/EC – Application of a reduced rate – Articles 96 and 98(2) – Points 3 and 4 of Annex III – ‘Pharmaceutical products normally used for health care, prevention of illnesses and as treatment for medical and veterinary purposes’ – ‘Medical equipment, aids and other appliances normally intended to alleviate or treat disability, for the exclusive personal use of the disabled’)

In Case C-360/11,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 8 July 2011,

European Commission, represented by L. Lozano Palacios, acting as Agent, with an address for service in Luxembourg,

applicant,

v

Kingdom of Spain, represented by S. Centeno Huerta, acting as Agent,

defendant,

THE COURT (Third Chamber),

composed of M. Ileši? (Rapporteur), President of the Chamber, E. Jaraši?nas and A. Ó Caoimh, Judges,

Advocate General: N. Jääskinen,

Registrar: A. Calot Escobar,

after hearing the Opinion of the Advocate General at the sitting on 25 October 2012,

gives the following

Judgment

1 By its application, the European Commission asks the Court to declare that, by applying a reduced rate of value added tax (‘VAT’) to:

– medicinal substances which can be used habitually and suitably in the manufacturing of medicinal products;

– medical devices, material, equipment and appliances which, viewed objectively, can be used only to prevent, diagnose, treat, alleviate or cure human or animal illnesses or ailments, but which are not normally intended to alleviate or treat disability, for the exclusive personal use of the disabled;

– aids and equipment which may be used essentially or primarily to treat physical disabilities

in animals;

– and, finally, aids and equipment essentially or primarily used to treat human disabilities, but which are not intended for the exclusive personal use of the disabled;

the Kingdom of Spain has failed to fulfil its obligations under Article 98 of Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), read in conjunction with Annex III to that directive.

Legal context

European Union law

2 Article 96 of Directive 2006/112 provides:

‘Member States shall apply a standard rate of VAT, which shall be fixed by each Member State as a percentage of the taxable amount and which shall be the same for the supply of goods and for the supply of services.’

3 Article 97(1) of Directive 2006/112 states that, ‘[f]rom 1 January 2006 until 31 December 2010, the standard rate may not be less than 15%’.

4 Article 98 of that directive reads as follows:

‘1. Member States may apply either one or two reduced rates.

2. The reduced rates shall apply only to supplies of goods or services in the categories set out in Annex III.

…

3. When applying the reduced rates provided for in paragraph 1 to categories of goods, Member States may use the Combined Nomenclature to establish the precise coverage of the category concerned.’

5 Article 99(1) of the directive provides:

‘The reduced rates shall be fixed as a percentage of the taxable amount, which may not be less than 5%.’

6 Under the first subparagraph of Article 114(1) of the directive:

‘Member States which, on 1 January 1993, were obliged to increase their standard rate in force at 1 January 1991 by more than 2% may apply a reduced rate lower than the minimum laid down in Article 99 to the supply of goods and services in the categories set out in Annex III.’

7 Annex III to Directive 2006/112, entitled ‘List of supply of goods and services to which the reduced rates referred to in Article 98 may be applied’, states in points 3 and 4 as follows:

‘(3) pharmaceutical products of a kind normally used for health care, prevention of illnesses and as treatment for medical and veterinary purposes, including products used for contraception and sanitary protection;

(4) medical equipment, aids and other appliances normally intended to alleviate or treat disability, for the exclusive personal use of the disabled, including the repair of such goods, and

supply of children's car seats.'

National law

8 Paragraphs 1(5) and 1(6) of the first section of Article 91 of Law 37/1992 of 28 December 1992 (BOE No 312 of 29 December 1992, p. 44247), in the version applicable to the facts of the case ('the Law on VAT'), provides for the application of a reduced rate of VAT of 8% on deliveries and intra-community acquisitions and imports of the following goods:

'5. Medicaments for veterinary use and medicinal substances which can be used habitually and suitably in the production of medicinal products.

6. Appliances and accessories, including glasses with corrective lenses and contact lenses which, viewed objectively, can be used essentially or primarily to alleviate physical disability in humans and animals, including limitations in their mobility and communicational abilities.

Medical devices, material, equipment and appliances which, viewed objectively, can be used only to prevent, diagnose, treat, alleviate or cure human or animal illnesses or ailments.

Not included in this category are cosmetic products and personal hygiene products excluding sanitary towels, tampons and panty liners.'

9 Pursuant to Paragraph 1(3) of the second section of Article 91 of the Law on VAT, the 'super-reduced' rate of VAT, laid down in Article 114(1) of Directive 2006/112, which is 4% in the case of the Kingdom of Spain, is applicable to deliveries and intra-community acquisitions and imports of the following goods:

'Medicaments for human use, as well as medicinal substances, pharmaceutical forms and intermediary products which can be used habitually and suitably in the production of medicinal products.'

Pre-litigation procedure

10 By letter of formal notice of 22 March 2010, the Commission informed the Kingdom of Spain that it considered the application of the regime of reduced rates of VAT provided in paragraphs 1(5) and 1(6) of the first section of Article 91 and paragraph 1(3) of the second section of Article 91 of the Law on VAT to be in breach of its obligations under Directive 2006/112.

11 In its response of 28 May 2010, the Kingdom of Spain submitted that the application of the reduced rate of VAT to the goods referred to in those provisions of the Law on VAT was permissible under points 3 and 4 of Annex III to Directive 2006/112 and, accordingly, was in conformity with that directive.

12 In support of that conclusion, the Kingdom of Spain, first of all, relied on the need to interpret the concept of 'pharmaceutical products', within the meaning of point 3 of that Annex III, in accordance with the definition of pharmaceutical products applicable under Spanish law, which includes not only medicinal products, but also medical appliances and devices. Next, it submitted that finished medicinal products, magistral formulas, officinal formulas, active substances and pharmaceutical forms, as defined in national legislation, should be regarded as 'pharmaceutical products' within the meaning of point 3 of Annex III. Finally, the Kingdom of Spain submitted that the concept of 'disabled' within the meaning of point 4 of Annex III should be understood, in accordance with the relevant guidelines of the World Health Organisation, as referring to any person suffering from an illness resulting from disability.

13 The Commission did not consider that response convincing and, on 25 November 2010, issued a reasoned opinion calling on the Kingdom of Spain to take appropriate measures to comply with the reasoned opinion within two months of receipt thereof.

14 By letter of 31 January 2011, the Spanish authorities repeated their position that the national provisions in dispute were in conformity with Directive 2006/112.

15 Since the Commission was not satisfied with that response, it decided to bring the present action.

The action

Preliminary considerations

16 It is appropriate to analyse, at the outset, the line of argument of the Kingdom of Spain that the categories of goods and services referred to in Annex III to Directive 2006/112 are not defined clearly enough to justify the bringing of an action for failure to fulfil obligations and that, consequently, the Commission's restrictive interpretation of points 3 and 4 of that annex must not be favoured over the other possible interpretations founded, inter alia, on national law.

17 According to the Commission, by contrast, the provisions of that annex are sufficiently precise and, pursuant to the principles of uniformity and equality, they must be interpreted autonomously and uniformly at European Union level. Moreover, it submits that the Kingdom of Spain has been sufficiently informed of the extent of its obligations in the reasoned opinion which it sent it.

18 It is settled case-law of the Court that provisions which are in the nature of exceptions to a principle must be interpreted strictly (see, inter alia, Case C-399/93 *Oude Luttikhuis and Others* [1995] ECR I-4515, paragraph 23; Case C-83/99 *Commission* v *Spain* [2001] ECR I-445, paragraph 19; and Case C-41/09 *Commission* v *Netherlands* [2011] ECR I-831, paragraph 58).

19 The Court has also repeatedly held that the need for the uniform application of European Union law and the principle of equality require that the terms of a provision of European Union law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union (see Joined Cases C-424/10 and C-425/10 *Ziolkowski and Szeja* [2011] ECR I-14035, paragraph 32 and the case-law cited).

20 It is apparent from the foregoing considerations that, as submitted by the Commission, the provisions of European Union law which authorise a reduced rate of VAT to be applied must – as a possibility granted to the Member States by way of derogation from the principle that the normal rate is to be applied – be interpreted strictly. Moreover, since points 3 and 4 of Annex III to Directive 2006/112 do not expressly refer to the law of the Member States, they must be interpreted autonomously and uniformly throughout the European Union.

21 Contrary to what the Kingdom of Spain submits, those findings are not invalidated by the fact that the points at issue list general categories of goods, which it is for the Member States to define subsequently in their national legislation.

22 It is sufficient to note, in that regard, as pointed out by the Advocate General in point 25 of his Opinion, that, when specifying the particular categories of goods to which they apply a reduced rate of VAT, the Member States are required to respect the limits of the categories defined in those points, as interpreted by the Court of Justice.

The first complaint, alleging the application of a reduced rate of VAT to medicinal substances which can be used habitually and suitably in the manufacturing of medicinal products

The scope of the first complaint

– Arguments of the parties

23 Both in its defence and in its rejoinder, the Kingdom of Spain contests the Commission's arguments relating to 'intermediary products', referred to in paragraph 1(3) of the second section of Article 91 of the Law on VAT.

24 In its view, the Commission's first complaint, as defined in the pre-litigation procedure and in the statement of complaints in the application, concerns only medicinal substances other that those 'intermediary products'.

25 The Commission refutes the assertions made by the Kingdom of Spain in its defence and in its rejoinder in relation to 'intermediary products', and confirms that it contests the application of a reduced rate of VAT to those products.

– Findings of the Court

26 The Court notes that, under Article 120(c) of the Rules of Procedure of the Court of Justice and the case-law relating to that provision, the application initiating proceedings must state the subject-matter of the dispute and a summary of the pleas in law on which the application is based and that that statement must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the application. It is therefore necessary for the essential points of law and of fact on which a case is based to be indicated coherently and intelligibly in the application itself and for the heads of claim to be set out unambiguously so that the Court does not rule *ultra petita* or indeed fail to rule on a claim (see Case C-343/08 *Commission* v *Czech Republic* [2010] ECR I-275, paragraph 26 and the case-law cited).

27 In the present case, the Court notes that, although the Commission repeatedly refers to 'intermediary products' in its letter of formal notice, in its reasoned opinion and in its application, it does not mention them in its statement of complaints or in its conclusions.

28 Consequently, the first complaint of the present action must be understood to the effect that the Commission is complaining that the Kingdom of Spain applied a reduced rate of VAT only to medicinal substances which can be used habitually and suitably in the manufacturing of medicinal products.

Substance

– Arguments of the parties

29 By its first complaint, the Commission considers that the application of a reduced rate of VAT to medicinal substances which can be used habitually and suitably in the production of medicinal products, as provided by paragraph 1(5) of the first section of Article 91 and paragraph 1(3) of the second section of Article 91 of the Law on VAT, is contrary to Directive 2006/112.

30 In that regard, it submits that point 3 of Annex III to that directive allows Member States to apply a reduced rate of VAT to goods which fulfil two conditions. First, they have to be 'pharmaceutical products', and second, those products have to be 'normally used for health care, prevention of illnesses and as treatment for medical and veterinary purposes'.

31 The Commission considers that medicinal substances are not final products and cannot therefore be considered to be 'normally used for health care, prevention of illnesses and as treatment for medical and veterinary purposes'.

32 According to the Commission, that conclusion is corroborated by the consideration that, if the European Union legislature had intended to include, in a point of Annex III to Directive 2006/112, not only finished products but also those used in the production of those products, it would have stated so expressly.

33 In addition, the Commission refers to the definitions set out in Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67). In its view, it is apparent from that directive that magistral and officinal formulas are finished pharmaceutical products, whereas active substances, defined as 'any substance to be included in a medicinal product', are not finished products intended for human or animal consumption.

34 By contrast, the Kingdom of Spain submits that medicinal substances are 'pharmaceutical products' within the meaning of point 3 of Annex III to Directive 2006/112.

35 It considers that, in the absence of a definition of the concept of 'pharmaceutical products' on the European Union level, the Member States may apply existing definitions in their respective national laws. In various national laws, that concept is largely defined as also including medicinal substances.

36 Moreover, the Kingdom of Spain submits that certain medicinal substances may be marketed as finished products, without it being necessary to mix them with other substances.

37 In its reply, the Commission admits that, where they are marketed as finished pharmaceutical products, with a view to being used directly by consumers, there is no reason why a reduced rate of VAT should not be applied to medicinal substances. In that regard, it refers to the case-law of the Court, pursuant to which the application of a reduced rate of VAT, in the case of a product which may be put to different uses, is subject, for each supply of goods, to the product being used for its intended purpose by the purchaser (*Commission* v *Netherlands*, paragraph 65).

– Findings of the Court

38 The parties are in disagreement as to the interpretation to be given to the concept of 'pharmaceutical products normally used for health care, prevention of illnesses and as treatment for medical and veterinary purposes' within the meaning of point 3 of Annex III to Directive 2006/112. In particular, the issue is whether that concept may cover medicinal substances used habitually and suitably in the production of medicinal products.

39 In that regard, it should be noted, as submitted by the Commission in its application, that

point 3 of Annex III allows a reduced rate of VAT to be applied to goods which fulfil two conditions. First, they have to be ‘pharmaceutical products’, and second, those products have to be ‘normally used for health care, prevention of illnesses and as treatment for medical and veterinary purposes’.

40 The Commission argues that the concept of ‘pharmaceutical products’ within the meaning of Annex III should be regarded as being comparable to that of ‘medicinal product’ in Article 1 of Directive 2001/83.

41 However, the Court notes, as does the Advocate General in points 33 to 35 of his Opinion, that there are significant differences between those two concepts.

42 First of all, the majority of the language versions of Directive 2001/83 and Annex III to Directive 2006/112 use different terms in relation to the two concepts. Thus, in the French language version, the concepts of ‘medicinal product’ and ‘pharmaceutical product’ are referred to respectively as ‘médicament’ and ‘produit pharmaceutique’. The same is true, inter alia, of the Spanish (‘medicamento’ and ‘producto farmacéutico’), Lithuanian (‘vaistai’ and ‘farmacijos gaminiai’), Polish (‘produkt leczniczy’ and ‘produkty farmaceutyczne’), Romanian (‘medicament’ and ‘produsele farmaceutice’), Slovenian (‘zdravilo’ and ‘farmacevtski izdelki’) and Swedish (‘läkemedel’ and ‘farmaceutiska produkter’) language versions. Next, it is evident that the objectives pursued by Annex III to Directive 2006/112 differ from those pursued by Directive 2001/83, in so far as the latter seeks to harmonise the conditions for marketing medicinal products for human use. Finally, it is important to note that, whereas Directive 2001/83 applies only to medicinal products for human use, point 3 of Annex III also covers veterinary use.

43 In those circumstances, contrary to what the Commission claims, the Court finds that the concept of ‘pharmaceutical products’ within the meaning of point 3 of Annex III, while including the concept of ‘medicinal product’ within the meaning of Directive 2001/83, must be interpreted as having a broader meaning than the latter.

44 That interpretation is also in line with the concept of ‘pharmaceutical products’, used in Chapter 30 of the Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by Regulation (EU) No 1238/2010 of the European Parliament and of the Council of 15 December 2010 (OJ 2010 L 348, p. 36), which lists as pharmaceutical products not only medicinal products, but also preparations and pharmaceutical articles, such as wadding, gauze, bandages and similar articles.

45 In addition, the last sentence of point 3 of Annex III to Directive 2006/112 refers to goods which cannot be included in the concept of ‘medicinal product’ within the meaning of Directive 2001/83, such as ‘products used for contraception and sanitary protection’.

46 The fact none the less remains that, to fall within the category referred to in point 3 of Annex III, it is also necessary for goods to be ‘normally used for health care, prevention of illnesses and as treatment for medical and veterinary purposes’.

47 The result of those considerations is that point 3 of Annex III concerns only finished goods which may be used directly by final consumers, other than goods which may be used in the production of medicinal products, which normally require further processing.

48 That interpretation is corroborated by the purpose of Annex III to Directive 2006/112, which is to render less onerous, and thus more accessible to final consumers – who ultimately bear the VAT – certain goods regarded as being particularly necessary.

49 Finally, as the Advocate General stated in point 39 of his Opinion, in cases where a medicinal substance may be marketed as a finished product, without needing to be mixed with other substances, and where, consequently, it is likely to be used directly by final consumers 'for health care, prevention of illnesses and as treatment for medical and veterinary purposes', there is no reason why a reduced rate of VAT should not be applied to it.

50 In the light of the foregoing, it must be found that point 3 of Annex III to Directive 2006/112 permits a reduced rate of VAT to be applied to medicinal substances only if they are likely to be used directly by final consumers for health care, prevention of illnesses and as treatment for medical and veterinary purposes.

51 In those circumstances, it must be held that the Commission's first complaint is well founded.

The second complaint, alleging the application of a reduced rate of VAT to medical devices, material, equipment and appliances which, viewed objectively, can be used only to prevent, diagnose, treat, alleviate or cure human or animal illnesses or ailments

Arguments of the parties

52 The Commission considers that the application of a reduced rate of VAT to medical devices, material, equipment and appliances which, viewed objectively, can be used only to prevent, diagnose, treat, alleviate or cure human or animal illnesses or ailments, provided for in the second subparagraph of paragraph 1(6) of the first section of Article 91 of the Law on VAT, is contrary to Directive 2006/112.

53 First, the application, by that provision of national law, of a reduced rate of VAT to medical equipment used for veterinary diagnosis and treatment is not consistent with point 4 of Annex III to Directive 2006/112, which refers only to equipment, aids and appliances for exclusive use by humans.

54 Second, in the Commission's view, point 3 of Annex III is not applicable. The concept of 'pharmaceutical products' within the meaning of that provision should be understood as being synonymous with that of 'medicinal product' within the meaning of Directive 2001/83. Therefore, those medical devices, material, equipment and appliances for general use cannot fall within the concept of 'pharmaceutical products'.

55 By contrast, the Kingdom of Spain considers that the goods referred to in the second subparagraph of paragraph 1(6) of the first section of Article 91 of the Law on VAT fall within the scope of point 3 of Annex III.

56 It contends that the category referred to in point 3 of Annex III includes not only medicinal products, but also medical devices. In support of that interpretation, it submits that Article 168 TFEU refers to both medicinal products and devices for medical usage and that, consequently, the same protection should be granted to those two categories of goods, grouped together under the term 'pharmaceutical products'.

57 In addition, it claims that such an interpretation does not render point 4 of Annex III to Directive 2006/112 meaningless. The medical devices referred to in that point, which are 'intended

to alleviate or treat disability, for the exclusive personal use of the disabled', are designed for a specific usage. It is thus not contradictory to consider that the concept of 'pharmaceutical products' within the meaning of point 3 of Annex III includes not only medicinal products, but also medical devices which are not designed for a specific usage, but which are 'normally used for health care, prevention of illnesses and as treatment for medical and veterinary purposes'.

Findings of the Court

58 The Commission accuses the Kingdom of Spain of having applied a reduced rate of VAT to the category of goods consisting of medical devices, material, equipment and appliances 'which, viewed objectively, can be used only to prevent, diagnose, treat, alleviate or cure human or animal illnesses or ailments'.

59 As submitted by the Commission, point 4 of Annex III to Directive 2006/112 does not authorise a reduced rate of VAT to be applied to that category of goods in so far as, first, it does not cover medical devices, material, equipment and appliances for general use and, second, it relates only to human and not veterinary use.

60 Also, in order to assess the validity of the Commission's second complaint, it needs to be assessed whether the goods referred to in the second subparagraph of paragraph 1(6) of the first section of Article 91 of the Law on VAT may be regarded as 'pharmaceutical products' within the meaning of point 3 of Annex III.

61 In that regard, the Court notes that, as has been stated in paragraph 43 above, the concept of 'pharmaceutical products' within the meaning of point 3 of Annex III, while including the concept of 'medicinal product' within the meaning of Directive 2001/83, must be interpreted as having a broader meaning than the latter.

62 None the less, the argument of the Kingdom of Spain that the concept of 'pharmaceutical products' may cover any medical devices, material, equipment and appliances for general use cannot be upheld.

63 Not only must the categories referred to in Annex III to Directive 2006/112 be interpreted strictly, in so far as the European Union law measure at issue is a derogating measure, in accordance with the case-law set out in paragraph 18 above, but the concepts used in that annex must also be interpreted in accordance with the normal sense of the terms at issue. It must be found that, in the light of the normal sense, in everyday language, of the concept of 'pharmaceutical products', any device, equipment, appliances or material for medical or veterinary purposes cannot be regarded as falling within that concept.

64 That interpretation is corroborated by the general scheme of Annex III to Directive 2006/112 and, in particular, the fact that, in point 4 of that annex, medical devices for specific uses are referred to specifically. As submitted by the Commission, that provision would be rendered meaningless if point 3 of Annex III were to be interpreted as authorising a reduced rate of VAT to be applied to any medical device or appliance, irrespective of the intended usage thereof.

65 Moreover, the Court reiterates what it has stated above in paragraph 48, that the aim of applying reduced rates of VAT is, in particular, to lower the cost of certain essential goods for final consumers. However, the cost of devices, appliances, material and medical and veterinary equipment would rarely be borne directly by final consumers, since those products are primarily used by healthcare professionals to provide services which themselves may be exempt from VAT under Article 132 of Directive 2006/112.

66 Such an interpretation is not, furthermore, incompatible with Article 168 TFEU. In that regard, suffice it to note that, although it is true that Article 168(4)(c) TFEU refers to medicinal products and devices for medical use, the objective pursued by that provision – to set high standards of quality and safety – differs substantially from that pursued by Annex III to Directive 2006/112, as set out above.

67 It is apparent from the foregoing considerations that neither point 4 nor point 3 of Annex III authorises a reduced rate of VAT to be applied to 'medical devices, material, equipment and appliances used only to prevent, diagnose, treat, alleviate or cure human or animal illnesses or ailments'.

68 In those circumstances, the Commission's second complaint must be regarded as founded.

The third complaint, alleging the application of a reduced rate of VAT to goods used to treat physical disabilities in animals

Arguments of the parties

69 The Commission submits that the application of a reduced rate of VAT to goods used to treat physical disabilities in animals, provided for in the first subparagraph of paragraph 1(6) of the first section of Article 91 of the Law on VAT, is contrary to Directive 2006/112. As shown by the arguments raised by the Commission in the context of its first two complaints, neither point 3 of Annex III to Directive 2006/112 – limited to pharmaceutical products *stricto sensu* – nor point 4 of that annex – limited to human usage of the goods referred to – authorises the application of such a rate to those goods.

70 In its defence, the Kingdom of Spain refers to the responses given during the various stages of the pre-litigation procedure, in which it stated, in essence, that point 3 of Annex III included medical and veterinary devices and apparatus.

Findings of the Court

71 In order to assess the substance of the Commission's third complaint, it should be noted, first of all, that, as set out in paragraphs 61 to 67 above, the concept of 'pharmaceutical products' within the meaning of point 3 of Annex III to Directive 2006/112 cannot be interpreted as including medical and veterinary apparatus and devices.

72 It follows that that provision does not authorise a reduced rate of VAT to be applied to apparatus and accessories which may be used to treat physical disabilities in animals.

73 Second, it is clear from the wording of point 4 of Annex III that that provision concerns only medical equipment, aids and other appliances normally intended to alleviate or treat human disabilities. It is well known that the term 'disabled', used in the second sentence of that provision, does not refer to animals affected by a physical handicap, but only to persons.

74 In addition, as the Commission has rightly submitted, it must be considered that, if the European Union legislature had intended to include veterinary goods in the category of goods set out in point 4 of Annex III, it would have done so expressly, as is the case in point 3 of that annex.

75 It follows that neither point 4 of Annex III to Directive 2006/112 nor point 3 thereof authorises a reduced rate of VAT to be applied to apparatus and accessories which may be used to treat physical disabilities in animals.

76 In those circumstances, the Commission's third complaint must be regarded as founded.

Fourth complaint, alleging the application of a reduced rate of VAT to apparatus and accessories essentially or primarily used to treat human disabilities, but which are not intended for the exclusive personal use of the disabled

Arguments of the parties

77 The Commission submits that the application of a reduced rate of VAT to apparatus and accessories used essentially or primarily to alleviate physical disability in humans, but which are not intended for the exclusive personal use of the disabled – as provided for in the first subparagraph of paragraph 1(6) of the first section of Article 91 of the Law on VAT – is contrary to Directive 2006/112.

78 In that regard, it points out that point 4 of Annex III to Directive 2006/112 authorises the Member States to apply a reduced rate of VAT to goods which fulfil certain conditions. First, those goods must be able to be regarded as 'medical equipment, aids and other appliances' and, second, they must 'normally [be] intended to alleviate or treat disability, for the exclusive personal use of the disabled'.

79 Consequently, point 4 does not include medical equipment for general use, but only that intended for 'the exclusive personal use of the disabled'. That interpretation is also corroborated by the guidelines adopted within the VAT committee.

80 In the light of those considerations, the Commission takes the view that, in so far as the Law on VAT applies a reduced rate of VAT to apparatus and accessories 'used essentially or primarily to alleviate disability', its scope goes beyond what is authorised under Directive 2006/112.

81 In addition, the Commission considers that, in its response to the letter of formal notice, the Kingdom of Spain gave an excessively broad meaning to the concept of 'disabled', considering that concept to be synonymous with 'illness'.

82 The Kingdom of Spain contests the interpretation of the concept of 'disabled' proposed by the Commission. It contends that, in the absence of a uniform definition at the European Union level of that concept, it is necessary to apply the most recent concepts established by the World Health Organisation. Applying those concepts, it would be necessary to regard as a disabled person, any person incapacitated by an illness. Such a definition would also make it possible to consider persons affected by illnesses such as AIDS, cancer and renal insufficiency to be disabled persons, which would thus prevent persons with such illnesses from enduring the discrimination to which they might be subject. That interpretation cannot be different simply because the present case concerns a tax issue.

83 The Kingdom of Spain contends, moreover, that it is difficult to differentiate between medical devices so as to determine those which are and are not used for disabled persons, illustrating once again the difficulties in basing a failure to fulfil obligations on the provisions of Annex III to Directive 2006/112 by reason of their lack of precision. Finally, it reiterates that the guidelines of the VAT committee, to which the Commission refers in its application, are not binding.

Findings of the Court

84 In order to address the Commission's fourth complaint, it is necessary to determine whether point 4 of Annex III to Directive 2006/112 may be applied to apparatus and accessories which are not intended for the exclusive personal use of the disabled, but which are used essentially or

primarily to alleviate their disabilities.

85 In that regard, the Court finds that it is apparent from the very meaning of the words ‘personal’ and ‘exclusive’ in point 4 of Annex III that that point does not relate to devices for general use.

86 Thus, the objective, referred to above in paragraph 48, of reducing the cost for final consumers of certain essential goods does not justify the application of a reduced rate of VAT to medical devices for general use which are used in hospitals and by health-care professionals.

87 That conclusion is not called into question by the Kingdom of Spain’s argument that certain devices and apparatus may be used both generally and for the exclusive personal use of the disabled. In that regard, it is sufficient to note that the Court has held that the application of a reduced rate of VAT, in the case of a product which may be put to different uses, is subject, for each supply of goods, to the product being used for its intended purpose by the purchaser (see, by analogy, *Commission* v *Netherlands*, paragraph 65).

88 It follows that a reduced rate of VAT – under point 4 of Annex III to Directive 2006/112 – may not be applied to apparatus and accessories used essentially or primarily to alleviate physical disability in humans, but which are not intended for the exclusive personal use of the disabled.

89 In those circumstances, the fourth complaint must be regarded as founded and, consequently, the Commission’s action must be upheld.

90 In the light of all of the foregoing considerations, the Court finds that, by applying a reduced rate of VAT to

– medicinal substances which can be used habitually and suitably in the manufacturing of medicinal products;

– medical devices, material, equipment and appliances which, viewed objectively, can be used only to prevent, diagnose, treat, alleviate or cure human or animal illnesses or ailments, but which are not normally intended to alleviate or treat disability, for the exclusive personal use of the disabled;

– aids and equipment which may be used essentially or primarily to treat physical disabilities in animals;

– and, finally, to aids and equipment essentially or primarily used to treat human disabilities, but which are not intended for the exclusive personal use of the disabled,

the Kingdom of Spain has failed to fulfil its obligations under Article 98 of Directive 2006/112, read in conjunction with Annex III thereto.

Costs

91 Under Article 138(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party’s pleadings. Since the Commission has applied for costs and the Kingdom of Spain has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds, the Court (Third Chamber) hereby:

1. **Declares that, by applying a reduced rate of value added tax to**

– **medicinal substances which can be used habitually and suitably in the manufacturing of medicinal products;**

– **medical devices, material, equipment and appliances which, viewed objectively, can be used only to prevent, diagnose, treat, alleviate or cure human or animal illnesses or ailments, but which are not normally intended to alleviate or treat disability, for the exclusive personal use of the disabled;**

– **aids and equipment which may be used essentially or primarily to treat physical disabilities in animals;**

– **and, finally, to aids and equipment essentially or primarily used to treat human disabilities, but which are not intended for the exclusive personal use of the disabled,**

the Kingdom of Spain has failed to fulfil its obligations under Article 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 Kingdom of Spain to pay the costs.**

[Signatures]

* Language of the case: Spanish.