

JUDGMENT OF THE COURT (Second Chamber)

4 June 2015 (*)

(Failure of a Member State to fulfil obligations — Common system of value added tax — Directive 2006/112/EC — Article 98(2) — Category (10) of Annex III — Reduced rate of VAT applicable to the provision, construction, renovation and alteration of housing, as part of a social policy — Category (10a) of Annex III — Reduced rate of VAT applicable to renovation and repairing of private dwellings, excluding materials which account for a significant part of the value of the service supplied — National legislation applying a reduced rate of VAT to supplies of services of installing ‘energy-saving materials’ and supplies of such materials)

In Case C-161/14,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 4 April 2014,

European Commission, represented by M. Clausen and C. Soulay, acting as Agents, with an address for service in Luxembourg,

applicant,

v

United Kingdom of Great Britain and Northern Ireland, represented by L. Christie, acting as Agent, and K. Lasok QC,

defendant,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, J.-C. Bonichot (Rapporteur), A. Arabadjiev, J.L. da Cruz Vilaça and C. Lycourgos, Judges,

Advocate General: M. Szpunar,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 26 February 2015,

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

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 supplies of services of installing ‘energy-saving materials’ and to supplies of such materials by a person who installs those materials in residential accommodation:

— to the extent that those supplies cannot be considered as ‘the provision, construction, renovation and alteration of housing, as part of a social policy’ for the purposes of Category (10) of

Annex III to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), as amended by Council Directive 2009/47/EC of 5 May 2009 (OJ 2009 L 116, p. 18) ('the VAT Directive');

- to the extent that those supplies fall outside the purview of 'renovation and repairing of private dwellings' for the purposes of Category (10a) of Annex III to the VAT Directive, and
- to the extent that those supplies, even if they fall within the purview of renovation and repairing of private dwellings for the purposes of Category (10a) of Annex III to the VAT Directive, include materials which account for a significant part of the value of the services supplied,

the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 98 of the VAT Directive, read in conjunction with Annex III thereto.

Legal context

EU law

2 Article 96 of the VAT Directive 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 98(1) and (2) of that directive is worded 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.

...'

4 Article 110 of the VAT Directive states:

'Member States which, at 1 January 1991, were granting exemptions with deductibility of the VAT paid at the preceding stage or applying reduced rates lower than the minimum laid down in Article 99 may continue to grant those exemptions or apply those reduced rates.'

The exemptions and reduced rates referred to in the first paragraph must be in accordance with Community law and must have been adopted for clearly defined social reasons and for the benefit of the final consumer.'

5 Annex III to the VAT Directive, headed 'List of supplies of goods and services to which the reduced rates referred to in Article 98 may be applied', refers in Categories (10) and (10a) thereof to the following:

'(10) provision, construction, renovation and alteration of housing, as part of a social policy;

(10a) renovation and repairing of private dwellings, excluding materials which account for a significant part of the value of the service supplied.'

United Kingdom law

6 Under Section 29A of the Value Added Tax Act 1994 ('the VAT Act'), in the version

applicable in this case, goods and services specified in Schedule 7A to that act are to be taxed at the reduced VAT rate of 5%.

7 In Part 2 of Schedule 7A to that act, Group 2, headed 'Installation of energy-saving materials', specifies:

- '1. Supplies of services of installing energy-saving materials in
 - (a) residential accommodation, or
 - (b) a building intended for use solely for a relevant charitable purpose.
- 2. Supplies of energy-saving materials by a person who installs those materials in
 - (a) residential accommodation, or
 - (b) a building intended for use solely for a relevant charitable purpose.
- ...'

Pre-litigation procedure

8 By letter of 29 September 2011, the Commission gave formal notice to the United Kingdom that it should bring to an end the incompatibility of the system of reduced VAT rates provided for in Section 29A of the VAT Act, as specified in Part 2, Group 2, of Schedule 7A to that act, with the provisions of Article 98 of the VAT Directive, read together with Annex III to that directive.

9 By letter of 29 November 2011, the United Kingdom replied that it did not agree with the Commission. The United Kingdom accepted that its legislation was contrary to EU law, but only to the extent that it provided for the application of a reduced rate of VAT to supplies of goods and services made in respect of buildings intended for charitable purposes. In that letter, the United Kingdom confirmed its intention to withdraw from the 2013 Budget the reduced rate of VAT applied to the installation of energy-saving materials in buildings intended for use solely for a relevant charitable purpose.

10 On 21 June 2012 the Commission sent to the United Kingdom a reasoned opinion in which it restated its position. In its reply of 16 August 2012, the United Kingdom maintained that its legislation complied with EU law, since the reduced rate of VAT concerning buildings intended for charitable purposes had been removed.

11 As the Commission was not satisfied with the United Kingdom's reply, it decided to bring this action.

The action

Arguments of the parties

12 While the Commission withdraws from the scope of its action the complaint with regard to the application of the reduced rate of VAT to supplies of energy-saving materials and supplies of services of installing such materials in buildings intended for use for charitable purposes, the Commission confirms that, with respect to the remainder, the national law at issue does not comply with the conditions laid down for the reduced rate of VAT as stated in Categories 10 and 10a of Annex III to the VAT Directive.

13 First, according to the Commission, Category 10 of that annex, which refers to 'provision,

construction, renovation and alteration of housing, as part of a social policy', does not cover the provision and installation of 'energy-saving materials' as referred to in Part 2, Group 2, of Schedule 7A to the VAT Act. In that regard, it is apparent from the majority of language versions of Annex III to the VAT Directive that it is the supply of housing in itself which must be part of a social policy if the services supplied are to qualify for the reduced rate of VAT. The Commission considers that social policy in the field of housing includes governmental interventions to enhance housing opportunities for people on low income and to ensure equitable access to housing, such as through the direct provision of social housing.

14 The Commission maintains that a policy of promoting the use of energy-saving materials in the general housing stock does not constitute such a social policy. The reduced rate at issue, which applies without reference to social conditions, was adopted by the United Kingdom not for reasons of exclusively social interest or, at the least, for reasons of principally social interest, but to serve environmental or energy policy objectives, in the interests of society as a whole, unconnected to the issue of housing as part of a social policy. By adopting Directive 2009/47 the Council of the European Union specifically did not accept the Commission's proposal to extend the scope of the reduced VAT rates to all renovation and repair work aiming at energy-saving.

15 Second, the Commission maintains that the provisions of national law at issue do not comply with the condition laid down in Category 10a of Annex III to the VAT Directive, which provides that a reduced rate of VAT can be applied only to the renovation and repairing of private dwellings, excluding materials which account for a significant part of the value of the service supplied.

16 As regards the scope of Category 10 of Annex III to the VAT Directive, the United Kingdom contends that it is apparent from the various language versions of that provision that operations at a reduced rate of VAT must be justified by a social policy which applies either to those operations, or to the housing in question, or to both.

17 As regards the United Kingdom, its social policy in the housing sector operates at two levels, with some initiatives that are directed generally, in the light of the problem of housing in the United Kingdom, at the entire population, and other more specific initiatives which are directed at a specific segment or group of segments of society. The application of a reduced rate of VAT to supplies of energy-saving materials and services involving installation of such materials in housing reduces the costs of improvements made to that housing. Households are thereby enabled to maintain their living standards with respect to heating and power, those two factors being very significant items of household expenditure. The United Kingdom claims that that reduced rate therefore addresses an obvious social need.

18 The United Kingdom accepts that, in the event that the Court were to hold that the provisions of national law at issue did not fall within the scope of Category 10 of Annex III to the VAT Directive, which it disputes, but fell within the scope of Category 10a of that annex, those provisions do not comply with the exclusion laid down by that provision, with regard to materials which account for a significant part of the value of the service supplied. The United Kingdom submits however that the 'installing' of the materials which are referred to by the provisions of national law at issue consists in alteration that is equivalent to either 'renovation' or 'repairing' of an existing dwelling, as referred to in Category 10a. Contrary to what is claimed by the Commission, the reduced rate of VAT laid down by those provisions of national law is not therefore applicable to the 'provision' and 'construction' of private dwellings, with respect to which, moreover, the zero rate is applicable in accordance with Schedule 8 to the VAT Act.

Findings of the Court

The complaint relating to infringement of Category 10 of Annex III to the VAT Directive

19 It must be stated that, as noted by the parties, the differences in the wording of the various language versions of Category 10 of Annex III to the VAT Directive may affect the meaning of that provision.

20 First, there are versions of Category 10, such as that in English ('provision, construction, renovation and alteration of housing, as part of a social policy'), which indicate that it is the services supplied which might be regarded as having to be part of a social policy in order to qualify for the reduced rate of VAT, whereas other versions of Category 10, such as that in French ('livraison, construction, rénovation et alteration de logements fournis dans le cadre de la politique sociale'), Spanish ('Suministro, construcción, renovación y transformación de viviendas proporcionadas en el marco de la política social') and Italian ('cessione, costruzione, restauro e trasformazione di abitazioni fornite nell'ambito della politica sociale') indicate that it is the housing which must be supplied as part of a social policy in order to qualify for the reduced rate. As regards the German language version of Category 10 ('Lieferung, Bau, Renovierung und Umbau von Wohnungen im Rahmen des sozialen Wohnungsbaus'), it suggests that the reduced rate is to be reserved to operations concerning social housing.

21 It is settled case-law that the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in that regard. Such an approach would be incompatible with the requirement of the uniform application of EU law. Where there is divergence between the various language versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (see, *inter alia*, the judgment in *Commission v Netherlands*, C?41/09, EU:C:2011:108, paragraph 44).

22 As regards the general scheme of the rules relating to VAT, it should be noted that Article 96 of the VAT Directive provides that the same rate of VAT, namely, the standard rate, is applicable to supplies of goods and services. As an exception to that principle, Article 98(1) of the VAT Directive gives the Member States the option of applying either one or two reduced rates of VAT. In accordance with the first subparagraph of Article 98(2), the reduced rates of VAT can apply only to supplies of goods and services in the categories set out in Annex III to the VAT Directive (the judgments in *K*, C?219/13, EU:C:2014:2207, paragraphs 21 and 22, and *Commission v France*, C?479/13, EU:C:2015:141, paragraph 25).

23 It must moreover be observed that Annex III refers in Category 10 thereof, regardless of language version, to the inclusion, in the category of services which may be subject to reduced rates of VAT, not of any provision, construction, renovation and alteration of housing, but only of such operations where they are related to housing or to services supplied as part of a social policy or to social housing. It is therefore apparent from the very wording of that provision that it precludes national measures which amount to permitting the application of the reduced rate of VAT to the provision, construction, renovation and alteration of all housing, with no account being taken of the restriction pertaining to the social context in which such operations must take place.

24 It must be concluded from the provisions of the VAT Directive as a whole relating to the rates system that the reduced rate of VAT cannot be decided on by the Member States except with respect to the only operations for which the EU legislature has permitted the use of that reduced rate and, consequently, with strict regard to the conditions which the legislature laid down for that purpose. In this case, the provisions in question of the VAT Directive therefore preclude national measures which extend the reduced VAT rate system to situations which are outside the social context in which the operations of provision, construction, renovation and alteration of

housing, the only operations covered by those provisions, must take place.

25 As regards the purpose of those provisions, it must be recalled that, in establishing Annex III to the VAT Directive, the EU legislature intended that essential commodities and goods and services having social or cultural objectives may be subject to a reduced rate of VAT, provided that those goods or services pose little or no risk of distortion to competition (see, to that effect, the judgment in *Commission v Netherlands*, C-41/09, EU:C:2011:108, paragraph 52).

26 It is true that the VAT Directive does not define either which services correspond to social objectives or, again, which services are supplied as part of social policy. It follows that the definition of such objectives or that social policy context is a matter of political choices for the Member States and may not be subject to scrutiny by the European Union except where, by a distortion of those concepts, it results in measures which fall, by virtue of their effect and true objectives, outside those objectives or that context (see judgments in *Commission v United Kingdom*, 416/85, EU:C:1988:321, paragraph 14, and *Commission v Ireland*, C-108/11, EU:C:2013:161, paragraph 37).

27 The Court has previously ruled that it follows from the wording of Article 110 of the VAT Directive that the Member States may invoke social reasons provided that they are 'well defined' and that the concept of social interest is not distorted, that is to say used for purposes other than social reasons (see judgment in *Commission v Ireland*, C-108/11, EU:C:2013:161, paragraph 38). There is no reason to consider that the Court should depart from such a finding as regards the application of the combined provisions of Article 98 of the VAT Directive and Category 10 of Annex III thereto.

28 It is common ground that the social objectives which may justify the adoption of the reduced rate of VAT with respect to operations relating to housing are not expressly stated in the United Kingdom legislation. No inferences can therefore be made from that legislation to enable the Court to determine that the reduced rate in question was adopted for reasons of exclusively social interest or, at least, for reasons of principally social interest (see, to that effect, the judgment in *Commission v Ireland*, C-108/11, EU:C:2013:161, paragraph 42).

29 In that regard, the United Kingdom contends in essence that, by adopting the reduced rate of VAT for supplies of services of installing energy-saving materials and supplies of such materials, its aim was to help to improve the quality of housing for people living in that housing, pursuant to its legitimate right to define a comprehensive social policy, the protection of the health of such people being one objective of that policy.

30 However, legitimate as that right may be, and while it is true that such a policy of housing improvement may produce social effects, the Court must find that the extension of the scope of the reduced rate of VAT at issue to all residential accommodation cannot be described as essentially social, as is however required by the combined provisions of Article 98 of the VAT Directive and Category 10 of Annex III thereto.

31 By providing for the application of the reduced rate of VAT to all supplies of services of installing energy-saving materials and to supplies of such materials, irrespective of the housing concerned and with no differentiation among people living in that housing, in particular with no regard to levels of income, age or other criteria designed to give an advantage to those who have more difficulty in meeting the energy needs of their accommodation, the provisions of national law at issue cannot be regarded as adopted for reasons of exclusively social interest or even for reasons of principally social interest, within the meaning of EU law.

32 The effect therefore of those provisions of national law is to apply the reduced rate of VAT to

the provision, construction, renovation and alteration of any housing, with no account being taken of the restriction pertaining to the social context within which such operations must take place, in accordance with the requirements of the VAT Directive.

33 It follows from the foregoing that the complaint relating to the infringement of Category 10 of Annex III to the VAT Directive is well founded.

The complaint relating to the infringement of Category 10a of Annex III to the VAT Directive

34 It must be recalled that, under Category 10a of Annex III to the VAT Directive, a reduced rate of VAT may be applied to the renovation and repairing of private dwellings, excluding materials which account for a significant part of the value of the service supplied.

35 In that regard, it is common ground, first, that, as is, it may be said, accepted by the United Kingdom, Part 2, Group 2, of Schedule 7A to the VAT Act, by providing that supplies of services of installing energy-saving materials in residential accommodation and supplies of such materials may qualify for a reduced rate of VAT, without excluding materials which account for a significant part of the value of the service supplied, does not comply with the conditions governing the application of the VAT Directive, read together with Category 10a of Annex III thereto. The first argument relied on by the Commission in support of the second complaint is therefore well founded.

36 Second, in order to challenge the Commission's second argument that Part 2, Group 2, of Schedule 7A to the VAT Act does not confine itself to providing for the application of the reduced rate of VAT solely to operations involving renovation and repair of private dwellings as covered by Category 10a of Annex III to the VAT Directive, and allows its application therefore to the operations of provision and construction of those dwellings, the United Kingdom contends that, with respect to the latter operations, it is the so-called 'zero-rate system' which is applicable.

37 However, the documents in the file submitted to the Court, without more, make it impossible for the Court to consider that argument, relied on for the first time by the United Kingdom in its rejoinder, to have been made out and to hold that the 'zero-rate system' remained, in accordance with Article 110 of the VAT Directive, actually applicable to such operations and covered such operations in their entirety. That argument consequently is not sufficient ground to call into question the Commission's complaint that the national legislation at issue, with regard to the application of reduced rates of VAT on the conditions laid down in Article 98 of the VAT Directive, read together with Category 10a of Annex III thereto, does not limit its scope to operations of renovation and repair of private dwellings.

38 It follows from the foregoing that the complaint relating to the infringement of Category 10a of Annex III to the VAT Directive is well founded.

39 That being the case, the action brought by the Commission must be held to be well founded.

40 Consequently, the Court must declare that, by applying a reduced rate of VAT to supplies of services of installing 'energy-saving materials' and to supplies of such materials by a person who installs those materials in residential accommodation:

- to the extent that those supplies cannot be considered as 'the provision, construction, renovation and alteration of housing, as part of a social policy' for the purposes of Category 10 of Annex III to the VAT Directive;
- to the extent that those supplies fall outside the purview of 'renovation and repairing of

private dwellings' for the purposes of Category 10a of Annex III to the VAT Directive, and

– to the extent that even where those supplies fall within the purview of renovation and repairing of private dwellings for the purposes of Category 10a of Annex III to that directive, those supplies include materials which account for a significant part of the value of the services supplied,

the United Kingdom has failed to fulfil its obligations under Article 98 of the VAT Directive, read together with Annex III to that directive.

Costs

41 Under Article 138(1) of the Rules of Procedure of the Court of Justice, the unsuccessful party must be ordered to pay the costs if they have been applied for in the other party's pleadings. Since the Commission has applied for costs and the United Kingdom has been unsuccessful, the latter must be ordered to pay the costs.

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

1. Declares that, by applying a reduced rate of value added tax to supplies of services of installing 'energy-saving materials' and to supplies of such materials by a person who installs those materials in residential accommodation:

– to the extent that those supplies cannot be considered as 'the provision, construction, renovation and alteration of housing, as part of a social policy' for the purposes of Category 10 of Annex III to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2009/47/EC of 5 May 2009;

– to the extent that those supplies fall outside the purview of 'renovation and repairing of private dwellings' for the purposes of Category 10a of Annex III to that directive, and

– to the extent that even where those supplies fall within the purview of renovation and repairing of private dwellings for the purposes of Category (10a) of Annex III to that directive, those supplies include materials which account for a significant part of the value of the services supplied,

the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 98 of Directive 2006/112, as amended by Directive 2009/47, read together with Annex III to that directive;

2. Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.

[Signatures]

* Language of the case: English.