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C 213/24

Action brought on 10 May 2019 — European Commission v Federal Republic of Germany

(Case C-371/19)

(2019/C 213/23)

Language of the case: German

Parties

Applicant: European Commission (represented by: J. Jokubauskaitė and R. Pethke, acting as Agents)

Defendant: Federal Republic of Germany

Form of order sought

The applicant claims that the Court should:

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declare that the Federal Republic of Germany has failed to comply with its obligations under Articles 170 and 171 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (1) and under Article 5 of Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State (2) by systematically refusing to request the information that is missing in an application for a VAT refund and, instead, immediately refusing the refund applications in such cases if such information can be provided only after the 30 September deadline.

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order Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

In support of its action, the European Commission relies on the following pleas in law:

1.

First plea in law — Infringement of the principle of neutrality of VAT

The Federal Republic of Germany infringed the principle of neutrality of VAT established in Articles

170 and 171 of Directive 2006/112 and Article 5 of Directive 2008/9, according to which, upon the acquisition of goods and upon the receipt of services, a settlement of the VAT paid at the preceding stage is to occur to the benefit of the taxable person.

The principle of neutrality of turnover tax requires that an entitlement to a refund is to be granted where the substantive conditions for that entitlement are fulfilled. Where there are doubts whether the substantive conditions for a refund are fulfilled, refund applications under Article 5 in combination with the first sentence of the first paragraph of Article 21 of Directive 2008/9 are to be refused only where requests for information from the Member State of refund under Article 20 of that directive are unsuccessful.

2.

Second plea in law — Infringement of the principle of the practical effectiveness of entitlements to VAT refunds

The interpretation of Article 20(1) of Directive 2008/9 adopted by the Republic of Germany hinders the effective exercise of the entitlement to a VAT refund by taxable persons not established in the Member State of refund. In this regard, the administrative practice of the German tax authorities undermines the rights of those taxable persons under Articles 170 and 171 of Directive 2006/112 and Article 5 of Directive 2008/9.

In order to do justice to the neutrality principle to the greatest extent possible, the practical effectiveness of Directives 2006/112 and 2008/9 requires that entitlements to VAT refunds existing in substantive terms be enforced. The legislation intended full settlement of the VAT paid at the preceding stage upon the acquisition of goods and upon the receipt of services and also thus sought to create broadly equal competition conditions for all taxable persons, including in cases of cross-border turnover. To that end, all the reasonable administrative measures provided for in the directive enabling the enforcement of entitlements to VAT refunds were to be taken.

3.

Third plea in law — Infringement of the principle of the protection of legitimate expectations

The Federal Republic of Germany's systematic refusal to request further information and supporting documentation under Article 20(1) of Directive 2008/9 infringes the principle of the protection of legitimate expectations. After receiving the confirmation that the refund application has been received, every taxable person should be confident that his application will be processed in accordance with the provisions of that directive. If that does not occur, his confidence that lawful procedures are being applied will be undermined.

(1) OJ 2006 L 347, p. 1.

(2) OJ 2008 L 44, p. 23.