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Official Journal of the European Union

C 87/18

Action brought on 4 February 2020 — European Commission v Federal Republic of Germany

(Case C-57/20)

(2020/C 87/23)

Language of the case: German

Parties

Applicant: European Commission (represented by: R. Pethke and J. Jokubauskaitė, 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, by applying the flat-rate scheme to all farmers as a rule regardless of whether the application of the normal VAT arrangements or the special scheme for small enterprises would give rise to difficulties for them, and by applying a flat-rate compensation tax rate which leads to a structural over-compensation of the input tax paid, the Federal Republic of Germany has infringed its obligations under Articles 296(1) and 299 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax; (1)

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order the Federal Republic of Germany to pay the costs of the proceedings.

Pleas in law and main arguments

First plea in law — Infringement of Article 296(1) of Directive 2006/112/EC

By its first plea in law, the Commission claims that, by applying the flat-rate scheme to all farmers regardless of any difficulties encountered by them in applying the normal VAT arrangements or the special scheme for small enterprises, the Federal Republic of Germany infringed Article 296(1) of Directive 2006/112.

According to Article 296 of Directive 2006/112, farmers who could benefit from the flat-rate scheme must be selected appropriately. Accordingly, as an eligibility criterion, eligible farmers

would have to encounter difficulties in applying the normal VAT arrangements or the special scheme under Chapter 1. The Federal Republic of Germany failed to select eligible farmers on the basis of that eligibility criterion.

By its second plea in law, the Commission claims that the Federal Republic of Germany infringed Article 299 of Directive 2006/112 in that the flat-rate compensation tax rate applied by it results in a structural over-compensation of the input tax actually paid by flat-rate farmers.

In the calculation, the agricultural services provided by commercial contractors are deducted from the turnover of the whole agricultural sector, on the one hand, whilst only the input tax burden on farmers subject to the normal VAT arrangements, and not the input tax burden on commercial contractors, is deducted from the input tax burden on the whole agricultural sector, on the other. This leads to a structural over-compensation due to the reimbursement at a flat rate of the flat-rate farmers' input tax.

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