

OPINION OF ADVOCATE GENERAL

MENGOZZI

delivered on 14 May 2014 (1)

Case C-219/13

K Oy

(Request for a preliminary ruling from the Korkein hallinto-oikeus (Finland))

(Common system of value added tax — Directive 2006/112/EC — Directive 2006/47/EC — Application of a reduced rate of VAT solely to printed books, to the exclusion of books on other physical supports (CDs, CD-ROMs, USB keys) — Concrete and specific aspects — Fiscal neutrality)

I – Introduction

1. Is a national law which allows a reduced rate of value added tax (VAT) only on printed books, but not on books on other physical supports such as CDs, CD-ROMs or USB keys, contrary to the provisions of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (2) ('the VAT Directive') and the principle of fiscal neutrality?
2. That, in essence, is the question referred to the Court by the Korkein hallinto-oikeus (Finland) in the context of a dispute between the company K Oy ('K') and the Veronsaajien oikeudenvalvontayksikkö, that is to say, the Finnish tax authorities, concerning a preliminary ruling of the Keskusverolautakunta (Central Tax Board), refusing K's request, for the tax years 2011 and 2012, for a ruling that the reduced rate of VAT of 9% applicable to printed books could be applied to audio books and e-books on physical supports reproducing the text of a printed book published by that company.
3. First, the Central Tax Board took the view that only publications that are printed or produced by some comparable means, within the meaning of point 7 of the first subparagraph and the third subparagraph of Paragraph 85a of the Law on VAT (Arvonlisäverolaki) 1265/1997 are regarded as books.

4. Secondly, the Central Tax Board found that the first subparagraph of Article 98(2) of and point 6 of Annex III to the VAT Directive, as amended by Council Directive 2009/47/EC of 5 May 2009, as regards reduced rates of value added tax, (3) and the principle of fiscal neutrality did not preclude the application to the sale of books on a physical support other than paper of a standard rate of VAT, namely 23% of the taxable amount in the present case, instead of the reduced rate of 9% applied to printed books. According to the Central Tax Board, audio books and e-books on a physical support other than paper are similar, in their nature, characteristics and method of use, to similar books available in electronic form, to which reduced rates are, by virtue of the second subparagraph of Article 98(2) of the VAT Directive, not applied.

5. K then brought an appeal before the Korkein hallinto-oikeus against the Central Tax Board's preliminary ruling, seeking, first, the annulment of the ruling and, secondly, a declaration that audio books and e-books on physical supports such as CDs, CD-ROMs and USB keys or other equivalents are regarded as printed books, the sale of which is subject to a reduced rate of VAT, within the meaning of point 7 of the first subparagraph of Paragraph 85a of Law 1265/1997 on VAT.

6. After seeking the opinion of the Valtiovarainministeriö (Ministry of Finance), which in essence agreed with the position taken by the Central Tax Board, the Korkein hallinto-oikeus decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Do the first subparagraph of Article 98(2) of and point 6 of Annex III (as that point appears in Council Directive 2009/47/EC) to [the VAT Directive], when the principle of tax neutrality is taken into account, preclude national legislation under which a reduced rate of VAT is applied to printed books, but the standard rate is applied to books on other physical supports such as a CD, CD-ROM or USB key?

As regards the answer given to the question above, is it of any significance

- whether a book is intended to be read or to be listened to (an audiobook),
- whether there exists a printed book with the same content as a book or audiobook on a CD, CD-ROM, USB key or other equivalent physical support,
- that with a book on a physical support other than paper technical features provided by that support, such as search functions, can be exploited?'

7. The question was the subject of written observations from the Finnish, German, Estonian, Irish and Greek Governments and the European Commission.

8. Those interested parties also stated their views at the hearing on 13 March 2014, with the exception of the German and Estonian Governments, which were not represented.

II – Legal assessment

9. Article 96 of the VAT Directive provides that the same rate of VAT, called the standard rate, is applicable to supplies of goods and supplies of services.

10. By way of derogation from that principle, the first subparagraph of Article 98(2) of the VAT Directive provides that the Member States may apply reduced rates only to supplies of goods or services in the categories set out in Annex III to that directive.

11. Whereas, before it was amended by Directive 2009/47, point 6 of Annex III referred to the 'supply ... of books', that directive replaced the text of point 6 by stating that it now included the 'supply ... of books *on all physical means of support*'. (4)

12. As the Republic of Finland, like most of the Member States, (5) validly opted to apply a reduced rate of VAT to the supply of printed books — and, furthermore, did so under Article 12(3)(a) of and point 6 of Annex H to the Sixth Directive 77/388/EEC, (6) which preceded Article 98(1) of and Annex III to the VAT Directive — the question from the referring court seeks in essence to establish whether, by reason of the amendment made by Directive 2009/47, a Member State is compelled to extend the application of a reduced rate of VAT to the supply of books on physical supports other than paper, such as a CD, CD-ROM or USB key.

13. The governments that took part in the procedure propose that the reply to the question should be in the negative. In essence, they base their arguments on the fact that the reduced rates of VAT are optional and that the amendment made by Directive 2009/47 is purely technical, and also that the supply of books on a paper support is not comparable with their supply on other physical supports. Therefore, limiting the application of reduced rate of VAT to the supply of books on a paper support is not inconsistent with the principle of fiscal neutrality. In any case, the governments submit that it is for the Member States and the national courts to determine specifically whether there is competition between the different categories of books.

14. On the other hand, the Commission, in its written observations, took the view that selective application of the reduced rate of VAT to books on a paper support only conflicts with the objective pursued by the Commission and the Union legislature in adopting Directive 2009/47 amending point 6 of Annex III to the VAT Directive, which was to ensure observance of the principle of fiscal neutrality among all books, whatever their physical support, having essentially the same information content.

15. However, at the hearing the Commission wished to 'modify' its position after reading the observations of the other interested parties. Finding that it was possible that, in adopting Directive 2009/47, the Union legislature had intended to distance itself from the Commission's proposal for a directive of 7 July 2008 which led to the adoption of Directive 2009/47, (7) and not to make the reduced rate of VAT mandatory for the supply of all books, irrespective of the physical support, the Commission therefore contended that the first subparagraph of Article 98(2) of and point 6 of Annex III to the VAT Directive, as amended by Directive 2009/47, do not *necessarily* preclude a national law applying a reduced rate of VAT to printed books only, excluding books on other physical supports containing basically the same information, *in so far as the principle of fiscal neutrality is observed*.

16. For my part, I wish first to point out that, with regard to both Annex H to the Sixth Directive 77/388 and Annex III to the VAT Directive, the Court has held that the Member States are not prohibited from selective application of the reduced rate within one and the same category of services, provided that no risk of distortion of competition results, (8) that is to say, provided that it is consistent with the principle of fiscal neutrality inherent in the common system of VAT. (9)

17. The Court recently concluded from this that the exercise of the possibility granted to the Member States to apply selectively the reduced rate of VAT is 'subject to the twofold condition, first, that they isolate, for the purposes of the application of the reduced rate, only concrete and specific aspects of the category of supply at issue and, secondly, that they comply with the principle of fiscal neutrality'. (10)

18. That twofold condition is a relatively recent assertion.

19. Whereas until the judgment of 6 May 2010 in *Commission v France* (EU:C:2010:253) the Court formulated the restriction of the application of a reduced rate of VAT to ‘concrete and specific aspects’ of one and the same category of supply as a *discretion* offered to the Member States by the VAT Directive, *subject to compliance with the principle of fiscal neutrality*, (11) that judgment, confirmed by the *Pro Med Logistik and Pongratz* judgment (EU:C:2014:111), transforms it into an actual *condition, independent of compliance with the principle of fiscal neutrality*, to which the selective application of a reduced rate within the same category of supply is subject. (12)

20. Those two conditions, according to the Court, seek to ensure that Member States make use of that possibility only under conditions which ensure the correct and straightforward application of the reduced rate chosen and the prevention of any possible evasion, avoidance or abuse. (13)

21. The transformation of ‘concrete and specific aspects’ into an autonomous condition for applying a selective reduced rate of VAT within one and the same category referred to in Annex III to the VAT Directive makes the examination which the Court has to carry out somewhat more stringent. Such examination now becomes systematic, preceding verification of compliance with the principle of fiscal neutrality. Although, since its transformation into an actual condition for the selective application of a reduced rate of VAT, the Court has always accepted that the condition relating to ‘concrete and specific aspects’ could be met, acceptance of the new rule nevertheless implies that it may not be met, so that the Court and the national courts do not necessarily have to consider the condition of compliance with the principle of fiscal neutrality.

22. That being so, it is necessary to examine those two conditions for the selective application of a reduced rate of VAT within one and the same category referred to in Annex III to the VAT Directive.

A – *The ‘concrete and specific aspects’ within one and the same category of supply of goods*

23. In the present case none of the interested parties doubts that the first condition is met. They all appear to accept, at least implicitly, that, within the category of the supply of books on any kind of physical support, books on supports other than paper may constitute ‘concrete and specific aspects’ of that category.

24. It will be recalled that the cases in which the Court found, and had to give a ruling on, the existence of ‘concrete and specific aspects’ within one and the same category referred to by the provisions of the Sixth Directive 77/388 (particularly in Annex H) or, subsequently, by Annex III to the VAT Directive, concern activities classified both as supplies of goods and as supplies of services.

25. Accordingly, in respect of the supply of goods, the Court accepted that the French Republic was justified in limiting the application of a reduced rate solely to an account holder conferring entitlement to a minimum amount of electricity, in so far as its application was restricted to concrete and specific aspects of the supply of natural gas and electricity. (14)

26. Likewise, with regard to the supply of services, the Court has held that Member States may apply a reduced rate of VAT to concrete and specific aspects of water supplies covered by Category 2 of Annex H to the Sixth Directive 77/388, such as mains connections, (15) that the transportation of a body by vehicle constitutes a concrete and specific element in the category of supplies of services by undertakers, (16) and also that, among the services of ‘transport of passengers and their accompanying luggage’, referred to in point 5 of Annex III to the VAT

Directive, the activity of local passenger transport by taxi could be considered a concrete and specific aspect of that category in that it is identifiable, as such, separately from the other supplies covered by that category. (17)

27. It is not surprising that the Court has had to identify the criterion of 'concrete and specific aspects' capable of permitting the selective application of a reduced rate mainly in the context of the supply of services. Within categories of services which are often formulated in generic terms, such as the 'distribution of water' or 'transport of passengers and their accompanying luggage', there are generally found to be a number of operations in a series or diverse services.

28. The fact remains that, as shown by the judgment in *Commission v France* (EU:C:2003:264), which related to the supply of electricity and gas, the abovementioned case-law may apply to the supply of goods.

29. It is also necessary to know what is meant by 'concrete and specific aspects' of one and the same category referred to in Annex III to the VAT Directive, and to determine the nature of the examination entailed by the identification of such 'concrete and specific aspects'.

30. In that connection it is clear from the judgments in *Commission v France* (EU:C:2010:253) and *Pro Med Logistik and Pongratz* (EU:C:2014:111), both of which concern the supply of complex services, that the Court ascertains whether the service in question is 'as such, identifiable separately from other services' supplied by the undertakings in question (18) or in the category concerned. (19)

31. Contrary to what might have been thought, the Court does not carry out an examination of an economic nature as to whether a service is identifiable as such. In *Commission v France* (EU:C:2010:253), which concerned the transport of bodies in vehicles by undertakers, the Court rejected the Commission's argument that whether a service was 'identifiable as such' should be assessed from the viewpoint of the expectations of the average consumer and from the economic aspect, and should consist in ascertaining whether an operation comprising several elements amounted, in reality, to a single service subject to one and the same tax treatment, or rather to two or more separate services which could be taxed differently.

32. The reason for rejecting the Commission's argument was the restriction which it would have imposed on the exercise by the Member States of the discretion left to them by the VAT Directive with regard to the application of the reduced rate of VAT, a discretion requiring the application of general and objective criteria. (20) It is also probable that an economic evaluation of whether that condition is fulfilled would have the effect of merging that examination with the question of compliance with the principle of fiscal neutrality.

33. In those circumstances, the Court considered whether the supply of a service to which the reduced rate of VAT is applied by a Member State is 'identifiable as such, separately from other services,' on the basis of formal and legal factors such as the unusual nature of the business concerned by comparison with the other services supplied by firms and/or the existence of specific legislation relating to that service or to the firms providing it. (21)

34. Those factors appear to be neither restrictive nor exhaustive.

35. Technical differences peculiar to the goods or services in question or objective differences in the use of the goods or services could just as well make it possible to identify, in one and the same category of goods or services supplied, 'concrete and specific aspects' of that category which could justify the selective application of a reduced rate of VAT.

36. In the present case, therefore, it is perfectly possible to argue, as the German and Finnish Governments claim, that, unlike books on a paper support, books on other means of support all require a special technical device for reading and are therefore likely to constitute 'concrete and specific aspects' of the category of 'supply of books on all physical means of support', which would fulfil the condition laid down by the Court's case-law.

B – Compliance with the principle of fiscal neutrality

37. According to the case-law, the principle of fiscal neutrality, which is inherent in the common system of VAT, precludes treating similar goods or services, which are thus in competition with each other, differently for VAT purposes. (22) This is therefore an expression of the general principle of equal treatment in matters relating to VAT. (23)

38. It follows that, if goods or services are similar, they must be subject to a uniform rate of VAT. (24)

39. In order to determine whether the goods or services in question are similar, account must primarily be taken of the point of view of a typical consumer, so as to establish whether those goods or services meet the same needs of that consumer, while avoiding artificial distinctions based on insignificant differences. (25)

40. The Court has also held that two supplies of services are similar where they have similar characteristics and meet the same needs from the point of view of consumers, the test being whether their use is comparable, and where the differences between them do not have a significant influence on the decision of the average consumer to use one such service or the other. (26)

41. As I have already said, in the present case the interested parties discussed at length the question whether, in adopting Directive 2009/47, which permitted the inclusion in point 6 of Annex III to the VAT Directive of books 'on all physical means of support', the Union legislature intended to ensure compliance with the principle of fiscal neutrality, on the premise that, irrespective of their form of support, all the books referred to in point 6 were similar and, consequently, were in competition with each other.

42. Whereas, in essence, the governments that submitted observations consider that the Union legislature's intention was not to deprive the Member States, including the national courts, of their discretion by compelling them to extend automatically the reduced rate of VAT, which they have the right to apply to the supply of printed books, to books published on other physical supports, the Commission took a contrary, but more qualified, view at the hearing.

43. As argued by the governments which took part in the present proceedings, neither the wording of Directive 2009/47 nor the recitals in its preamble show that the purpose of the amendment to point 6 of Annex III to the VAT Directive was to ensure compliance with the principle of fiscal neutrality within the category referred to under that point.

44. Recital 4 in the preamble to Directive 2009/47 merely states that the VAT Directive 'should ... be amended ... in order to clarify and update to technical progress the reference to books in its Annex III'.

45. No doubt it could be argued that the obligation which was felt to exist to adapt the reference to technological evolution implied that the Union legislature now considered that books published on forms of support other than paper necessarily competed with printed books and that the same

reduced rate of VAT should therefore be applied to them.

46. However, in addition to the fact that the Commission put forward no such argument, there is no objective evidence to support it in Directive 2009/47.

47. Furthermore, as the Commission also suggested, a comparison between Directive 2009/47 and the preparatory documents leading to its adoption merely strengthens the argument that the principle of fiscal neutrality does not appear, after all, to have been the objective sought by the Union legislature, even if it formed the basis, at least partly, of the Commission's proposal of 7 July 2008.

48. Accordingly, although the explanatory memorandum of the proposal stated that, 'for reason[s] of neutrality', it was 'necessary' to extend point 6 of Annex III to the VAT Directive to 'books that are on CD, CD-ROMs or any similar physical medium that predominantly reproduce the same information content as printed books', (27) the text of the proposal itself was confined to pointing out the need 'to include technical adaptations in order to ... update [the provisions] to technical progress'; those adaptations should 'give the same *possibility* to apply a reduced VAT rate ... to audio books, CD's, CD-ROMs or any physical support that predominantly reproduce the same information content as printed books'. (28)

49. Therefore it can be seen, simply on reading the Proposal, that although the Commission recognised that there was a certain degree of comparability between the different physical supports mentioned above and books on a paper support, they were not entirely comparable or similar.

50. First, comparability was limited to supports other than paper 'that predominantly reproduce the same information content as printed books', which necessarily implied, as the explanatory memorandum to the proposal itself testifies, that books on supports other than paper offering additional functionalities to those of printed books, such as search engines or links with other types of equipment, were excluded. (29) Secondly, that degree of comparability or similarity did not automatically, contrary to what compliance with the principle of fiscal neutrality should in principle require, entail the extension to books on other physical supports of the reduced rate which was previously applicable to printed books only, but merely led the Commission to propose the *possibility* of such extension.

51. The fact that the Union legislature did not accept the limit contained in the Commission's proposal for a directive, to the effect that the option of extending the reduced rate of VAT applied only to physical supports that 'predominantly reproduce the same information content as printed books', and referred generically to 'books on all means of physical support', leads me to think that legislature's intention was, *a fortiori*, not to concede that all books referred to by point 6 of Annex III to the VAT Directive, as amended by Directive 2009/47, are similar, irrespective of their physical support, and to require the Member States to apply to all those books a reduced rate of VAT which is the same as that which they have a right to apply to printed books.

52. Therefore, in my opinion, the Union legislature did not intend to deprive the Member States of their discretion regarding the application, which may be selective, of the reduced rate of VAT within the category of the supply of books on all physical means of support, referred to in point 6 of Annex III to the VAT Directive, as amended by Directive 2009/47. (30)

53. In those circumstances, and in accordance with the case-law, it is for the referring court to determine whether printed books and books published on other physical supports are similar from the viewpoint of the average consumer in so far as they meet the same needs of the consumer.

54. As the interested parties rightly pointed out at the hearing, it is necessary to take as a reference the average consumer in each Member State, which is understandable because the average consumer's assessment will be likely to vary according to the different degree of penetration of new technologies in each national market and the degree of access to the technical equipment enabling that consumer to read or listen to books contained on supports other than paper.

55. In accordance with the case-law, it is for the referring court, having regard to all the information available to it, to determine whether printed books and books on supports other than paper possess similar characteristics and meet the same needs of the consumer, using the criterion of whether their use is comparable, and on the basis of the differences between them in order to determine whether or not those differences have a considerable or appreciable influence on the average consumer's decision to choose one or the other of those cultural products.

56. In that connection, the governments that took part in the present procedure submitted, without being contradicted by the Commission, that books on supports other than paper differ objectively, by virtue of their characteristics, from printed books. Those governments claim that the difference is due not only to the need for technical equipment for reading, (31) but also to the fact that the average consumer using books on supports other than paper will choose those products because of the additional applications and functions which they can offer by comparison with printed books.

57. Therefore, as the Finnish Government observed at the hearing, an average consumer's decision to buy an audio book will rarely be based merely on the reading of the text of a printed book but, more frequently, on the performance and/or reputation of the reader and the special effects or music reproduced in the audio version. Likewise, according to the German and Finnish Governments in particular, as regards books on CDs, CD-ROMs or USB keys, the average consumer will be influenced in his purchase by the additional search functions offered by such books or by the inclusion of software or other programmes in such books, unlike printed books.

58. In the light of the information available to it, it is for the referring court to determine whether those submissions are relevant with regard to the behaviour of the average consumer in Finland.

59. On the basis of the foregoing considerations, I propose that the first subparagraph of Article 98(2) of and point 6 of Annex III to the VAT Directive, in the version, as regards the latter, inserted by Directive 2009/47, must be interpreted as not precluding a national law under which a reduced rate of VAT is applied to printed books, whereas books on other physical means of support such as CDs, CD-ROMs and USB keys are subject to the standard rate of VAT, provided that, from the viewpoint of the average consumer of the Member State concerned, the latter are not similar to the former in so far as they do not meet the same needs of that consumer, which is a matter to be ascertained by the referring court.

60. For the sake of completeness, I would add that the reply which has just been given does not vary depending on the three circumstances set out by the referring court in the referred question, namely, first, whether a book is intended to be read or to be listened to (an audio book), secondly, whether there exists a printed book with the same content as a book or audiobook on a CD, CD-ROM, USB key or other similar physical product and, thirdly, whether it is possible to exploit the technical features provided by the physical support other than paper, such as search functions.

61. The referring court must assess the influence, which may be considerable or appreciable, of precisely the characteristics of books on supports other than paper on the average Finnish

consumer's decision to choose to buy those books rather than printed books.

62. If, as the Finnish and German Governments claim, those characteristics are decisive from the viewpoint of the average consumer of the Member State concerned, it is justifiable for the national law not to grant to the supply of books on supports other than paper the reduced rate of VAT applicable to printed books. On the other hand, if those characteristics have no influence, or little influence, on the average consumer's decision to buy books on supports other than paper — because what matters for that consumer is mainly the similar content of all books, irrespective of their means of support or characteristics — the selective application of a reduced rate of VAT is not justified.

III – Conclusion

63. In the light of the foregoing considerations, I propose that the Court should reply as follows to the question referred by the Korkein hallinto-oikeus:

The first subparagraph of Article 98(2) of and point 6 of Annex III to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, in the version, as regards the latter, inserted by Council Directive 2009/47/EC of 5 May 2009, must be interpreted as not precluding a national law under which a reduced rate of value added tax is applied to printed books, whereas books on other physical means of support such as CDs, CD-ROMs and USB keys are subject to the standard rate of value added tax, provided that, from the viewpoint of the average consumer of the Member State concerned, the latter are not similar to the former in so far as they do not meet the same needs of that consumer, which is a matter to be ascertained by the referring court.

The reply does not vary according to whether a book is intended to be read or to be listened to (an audiobook), whether there exists a printed book with the same content as a book or audio book on a CD, CD-ROM, USB key or other similar physical product, or whether it is possible to exploit the technical features provided by the physical support other than paper, such as search functions.

1 – Original language: French.

2 - OJ 2006 L 347, p. 1.

3 - OJ 2009 L 116, p. 18.

4 - Italics added. As all the interested parties pointed out, the present case does not therefore concern the tax treatment of digital books, that is to say, those supplied by electronic means, but only those available on a physical support of any kind.

5 - According to a Commission document summarising the VAT rates applied in the Member States of the European Union on 13 January 2014, 26 of the 28 Member States apply a reduced rate of VAT to the supply of printed books (see document taxud.c.1(2014) 48867, p. 4).

6 - Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

7 - Proposal for a Council Directive amending Directive 2006/112/EC as regards reduced rates of value added tax (COM(2008) 428 final).

- 8 - See, in particular, judgments in *Commission v France* (C?94/09, EU:C:2012:253, paragraph 25) and *Pro Med Logistik and Pongratz* (C?454/12 and C?455/12, EU:C:2014:111, paragraph 43).
- 9 - See, to that effect, judgments in *Zweckverband zur Trinkwasserversorgung und Abwasserbeseitigung Torgau-Westelbien* (C?442/05, EU:C:2008:184, paragraph 43); *Commission v France* (EU:C:2010:253, paragraph 26); and *Pro Med Logistik and Pongratz* (EU:C:2014:111, paragraph 44).
- 10 - See, in particular, to that effect, judgments in *Commission v France* (EU:C:2010:253, paragraph 30), and *Pro Med Logistik and Pongratz* (EU:C:2014:111, paragraph 45).
- 11 - See judgments in *Commission v France* (C?384/01, EU:C:2003:264, paragraphs 25 and 26) and *Zweckverband zur Trinkwasserversorgung und Abwasserbeseitigung Torgau-Westelbien* (EU:C:2008:184, paragraph 43).
- 12 - See judgments in *Commission v France* (EU:C:2010:253, paragraph 30), and *Pro Med Logistik and Pongratz* (EU:C:2014:111, paragraph 45).
- 13 - See, to that effect, judgment in *Pro Med Logistik and Pongratz* (EU:C:2014:111, paragraph 45).
- 14 - See judgment in *Commission v France* (EU:C:2003:264, paragraphs 28 and 29). That case concerned Article 12(3)(b) of the Sixth Directive 77/388. Generally speaking, I note that natural gas and electricity fall within the Treaty provisions relating to the free movement of goods: see in this respect, in particular, judgment in *Commission v France* (C?159/94, EU:C:1997:501, paragraphs 43 to 50).
- 15 - Judgment in *Zweckverband zur Trinkwasserversorgung und Abwasserbeseitigung Torgau-Westelbien* (EU:C:2008:184, paragraph 43).
- 16 - Judgment in *Commission v France* (EU:C:2010:253, paragraph 39).
- 17 - Judgment in *Pro Med Logistik and Pongratz* (EU:C:2014:111, paragraph 50).
- 18 - Judgment in *Commission v France* (EU:C:2010:253, paragraph 35).
- 19 - Judgment in *Pro Med Logistik and Pongratz* (EU:C:2014:111, paragraphs 47 and 50).
- 20 - Judgment in *Commission v France* (EU:C:2010:253, paragraphs 33 and 34).
- 21 - See judgments in *Commission v France* (EU:C:2010:253, paragraphs 35 to 38) and *Pro Med Logistik and Pongratz* (EU:C:2014:111, paragraphs 48 and 49).
- 22 - See, in particular, judgments in *The Rank Group* (C?259/10 and C?260/10, EU:C:2011:719, paragraph 32), and *Pro Med Logistik and Pongratz* (EU:C:2014:111, paragraph 52).
- 23 - See, in this respect, judgment in *NCC Construction Danmark* (C?174/08, EU:C:2009:669, paragraph 41 and the case-law cited).
- 24 - See judgment in *Commission v France* (C?481/98, EU:C:2001:237, paragraph 22).
- 25 - See, to that effect, judgments in *The Rank Group* (EU:C:2011:719, paragraph 43), and *Pro Med Logistik and Pongratz* (EU:C:2014:111, paragraph 53).

26 - *Pro Med Logistik and Pongratz*, paragraph 55 and cases cited.

27 - Point 5.3, p. 9, of the proposal for a directive cited in footnote 7 above.

28 - Recital 6 in the preamble to the proposal for a directive (emphasis added).

29 - See the proposal for a directive, point 5.3, p. 9. That is also corroborated by the guidelines arising from the meetings of the VAT committee, 92nd meeting of 7 and 8 December 2010, doc A — taxud.c.1(2011)157667-684, which reproduces almost word for word the definition of ‘books on all physical means of support’ in the proposal for a directive. As that document itself also indicates, the guidelines are not binding for the Commission or the Member States.

30 - That it was not the Union legislature's intention to compel the Member States to extend to books on a physical support other than paper the reduced rate of VAT which 26 of them allow on the supply of printed books seems to me to be borne out by the fact that 14 of those Member States, that is to say, a majority, decided to retain the standard rate on the supply of books on other physical supports. For these statistics, see the table on page 4 of the document taxud.c.1(2014) 48867, cited in footnote 5 above, which sets out the situation regarding the VAT rates applied in the Member States as at 13 January 2014.

31 - As the German and Estonian Governments observed in essence, the price of technical reading equipment of that kind (computer, tablet, etc.) may also be an important factor in the average consumer's choice.