

Case C-41/09

European Commission

v

Kingdom of the Netherlands

(Failure of a Member State to fulfil obligations – Value added tax – Sixth VAT Directive – Directive 2006/112/EC – Application of a reduced rate – Live animals normally intended for use in the preparation of foodstuffs for human and animal consumption – Supply, importation and acquisition of horses)

Summary of the Judgment

Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Member States' right to apply a reduced rate to certain supplies of goods and services

(Council Directives 77/388, as amended by Directive 2006/18, Art. 12, Annex H, and 2006/112, Arts 96 to 99(1), Annex III)

By applying a reduced rate of value added tax to all supplies, imports, and intra-Community acquisitions of horses, a Member State fails to fulfil its obligations under Article 12, read in conjunction with Annex H, of Sixth Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes, as amended by Directive 2006/18/EC, and under Articles 96 to 99(1) of Directive 2006/112/EC on the common system of value added tax, read in conjunction with Annex III thereto.

First, point 1 of Annex III authorises the application of a reduced rate of VAT only in respect of live animals normally intended for use in the preparation of those foodstuffs and, second, the objective of that provision is to facilitate the purchase of those foodstuffs by the final consumer.

With regard to the particular situation, in the European Union, of horses which, while not normally being intended for use in the preparation of foodstuffs, may nevertheless in some cases be supplied for consumption, it must be considered that, in the light of the EU legislature's objective of making essential commodities cheaper for the final consumer, point 1 of Annex III to Directive 2006/112 must be interpreted as meaning that only the supply of a horse for slaughter in order to be used in the preparation of foodstuffs may be subject to a reduced rate of VAT.

(see paras 54, 57, 68, operative part)

3 March 2011 (*)

(Failure of a Member State to fulfil obligations – Value added tax – Sixth VAT Directive – Directive 2006/112/EC – Application of a reduced rate – Live animals normally intended for use in the preparation of foodstuffs for human and animal consumption – Supply, importation and acquisition of horses)

In Case C-41/09,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 29 January 2009,

European Commission, represented by D. Triantafyllou and W. Roels, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Kingdom of the Netherlands, represented by C. Wissels, M. Noort, M. de Grave and J. Langer, acting as Agents,

defendant,

supported by:

Federal Republic of Germany, represented by M. Lumma and C. Blaschke, acting as Agents, with an address for service in Luxembourg,

French Republic, represented by B. Beaupère-Manokha, acting as Agent,

interveners,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, J. J. Kasel, A. Borg Barthet, M. Safjan (Rapporteur) and M. Berger, Judges,

Advocate General: Y. Bot,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 7 September 2010,

after hearing the Opinion of the Advocate General at the sitting on 5 October 2010,

gives the following

Judgment

1 By its application, the Commission of the European Communities requests the Court to declare that, by applying a reduced rate of value added tax (VAT) to the supply, importation and intra-Community acquisition of certain live animals, in particular horses, which are not normally intended for use in the preparation of foodstuffs for human and animal consumption, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 12, read in conjunction with Annex

H, of Sixth Council Directive 77/388/EEC 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), as amended by Council Directive 2006/18/EC of 14 February 2006 (OJ 2006 L 51, p. 12) ('the Sixth Directive'), and under Articles 96 to 99(1) of Council 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 thereto ('Annex III').

Legal context

European Union legislation

2 Directive 2006/112 repealed and replaced, with effect from 1 January 2007, existing European Union ('EU') VAT legislation, in particular the Sixth Directive.

3 According to recitals 1 and 3 in the preamble to Directive 2006/112, the recasting of the Sixth Directive was necessary in order to present all the applicable provisions in a clear and rational manner and in an improved structure and drafting which would not, in principle, bring about material change to the existing legislation.

4 Thus, Articles 96 to 99(1) of Directive 2006/112 correspond to the various provisions of Article 12 of the Sixth Directive and of Annex H thereto.

5 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.'

6 Article 97 of Directive 2006/112 provides:

'1. From 1 January 2006 until 31 December 2010, the standard rate may not be less than 15%.

2. The Council shall decide, in accordance with Article 93 of the [EC] Treaty, on the level of the standard rate to be applied after 31 December 2010.'

7 Article 98 of Directive 2006/112 provides:

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

2. The reduced rates shall apply only to supply 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.'

8 Article 99(1) of Directive 2006/112 states:

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

9 Annex III, under the heading 'List of supply of goods and services to which the reduced rates referred to in Article 98 may be applied', states in point 1 as follows:

'Foodstuffs (including beverages but excluding alcoholic beverages) for human and animal consumption; live animals, seeds, plants and ingredients normally intended for use in the preparation of foodstuffs; products normally used to supplement foodstuffs or as a substitute for foodstuffs'.

10 That provision corresponds to point 1 of Annex H to the Sixth Directive.

11 Point 11 of Annex III, which corresponds to point 10 of Annex H of the Sixth Directive, states as follows:

'supply of goods and services of a kind normally intended for use in agricultural production but excluding capital goods such as machinery or buildings'.

National legislation

12 Article 9 of the Law on turnover tax (*Wet op de omzetbelasting*) of 28 June 1968 (*Staatsblad* 1968, No 329; 'the Law on turnover tax') provides:

1. The tax is set at 19 %.
2. By way of derogation from paragraph 1, the tax is set at:
 - (a) 6% for the supply of goods and services appearing in Table I annexed to this law;
 - ...'

13 Points a.1 and a.4 of Table I read as follows:

'a.

1. foodstuffs, in particular:
 - (a) food and beverages normally intended for human consumption;
 - (b) products clearly intended for use in the preparation of food and beverages as referred to under point (a) and that are wholly or partly contained therein;
 - (c) products intended for use to supplement or as a substitute for food or beverages as referred to under (a), with the proviso that alcoholic drinks are not considered foodstuffs;

...

4.

- (a) cattle, sheep, goats, pigs and horses;
- (b) animals other than those referred to under point (a), clearly intended for the preparation or production of the foodstuffs referred to in point 1 above, and animals clearly intended for the breeding of such animals;

- (c) the offal of the animals referred to under (a) and (b);
- (d) products clearly intended for the reproduction of the animals referred to under (a) and (b).'

The pre-litigation procedure and the procedure before the Court of Justice

14 Considering that, by applying a reduced rate of VAT to the supply, importation and intra-Community acquisition of certain live animals, in particular horses, which are not normally intended for use in the preparation of foodstuffs for human and animal consumption, the Kingdom of the Netherlands had failed to fulfil its obligations under Article 12, read in conjunction with Annex H, of the Sixth Directive, the Commission decided to initiate the procedure provided for in Article 226 EC. By letter of 10 April 2006, the Commission gave that Member State formal notice and invited it to submit its observations in that regard.

15 In its reply of 27 June 2006, the Kingdom of the Netherlands acknowledged that the application of a reduced rate of VAT to the supply of certain live animals, as provided for in national legislation, went beyond that authorised by the Sixth Directive. It stated that a legislative proposal would be presented to the Netherlands Parliament in order to comply with that directive and that the legislative amendment would probably enter into force on 1 January 2007.

16 Since the Kingdom of the Netherlands had not enacted that draft legislation, the Commission, on 23 October 2007, sent it a reasoned opinion calling upon it to take the measures necessary to comply with that opinion within a period of two months from the date of notification of the opinion.

17 On 26 November 2007, the Kingdom of the Netherlands replied to that reasoned opinion, pointing out that the anticipated legislative proposal was under discussion in the standing finance committee of the second chamber of the Parliament. However, on 31 March 2008, that Member State informed the Commission that it did not consider it appropriate to adopt the legislative proposal at that time.

18 In those circumstances, the Commission brought the present action.

19 By orders of the President of the Court of 18 September and 20 November 2009, the Federal Republic of Germany and the French Republic respectively were granted leave to intervene in support of the forms of order sought by the Kingdom of the Netherlands.

The action

Arguments of the parties

20 The Commission notes that Articles 96 to 99(1) of Directive 2006/112, read in conjunction with Annex III, apply to supplies and, mutatis mutandis, to imports and intra-Community acquisitions.

21 According to the wording of point 1 of Annex III, live animals, seeds, plants and other ingredients can benefit from a reduced rate of VAT only where they are normally intended for use in the preparation of foodstuffs, which is not the case for horses.

22 In addition, it follows from the case-law of the Court that point 1 must be interpreted strictly, like every other provision which lays down a reduced rate of VAT.

23 Consequently, the Law on turnover tax, by providing a reduced rate of VAT for supplies of

certain live animals, in particular horses, even if they are not intended for use in the manufacture or production of foodstuffs, does not comply with the provisions of Directive 2006/112.

24 In its reply, the Commission adds that the French, Italian and English versions of point 1 of Annex III confirm that only products which are used in some way in the preparation of foodstuffs for human and animal consumption can be subject to a reduced rate of VAT.

25 In addition, the Commission states that animals are not foodstuffs. By using the expression 'live animals' in point 1 of Annex III, the EU legislature thus intended to take a whole facet of the production of foodstuffs into account. In the absence of that specific provision, the supply of live animals would have been subject to the usual rate of VAT with the result that the final processed goods which fall, for their part, within the category of foodstuffs would have been more expensive.

26 In addition, according to the Commission, point 1 may not be interpreted to mean that all supplies of horses are subject to the normal rate of VAT. That provision provides for the application of a reduced rate of VAT depending on the use of the horse and the transaction concerned. In that regard, elements such as the price and the breed of the animal make it possible to know its intended use.

27 Finally, the Commission observes that not all horses are used for agricultural purposes.

28 The Kingdom of the Netherlands submits, first, that, during the pre-litigation procedure and in its application initiating proceedings, of the other species of animal referred to in point a.4(a) of Table I of the Law on turnover tax the Commission referred only to horses. Therefore, the action must be dismissed as inadmissible with regard to the application of a reduced rate of VAT to certain live animals other than horses.

29 The Kingdom of the Netherlands claims, second, as its principal argument, that neither the Dutch language version nor any other language version of point 1 of Annex III confirms that the phrase 'normally intended for use in the preparation of foodstuffs' applies to live animals, seeds and plants. On the contrary, it follows from the German language version of the same provision that that phrase refers only to ingredients. That is the only possible interpretation, since seeds, for example, are not normally intended for use in the preparation of foodstuffs. Therefore horses, being live animals, whether or not they are normally intended for use in the preparation of foodstuffs, are covered by the aforesaid point 1.

30 In the alternative, the Kingdom of the Netherlands states that the Commission has failed to provide any factual evidence showing that horses are not normally intended for use in the preparation of foodstuffs. The Commission may not base its arguments on a presumption of any kind when requesting the Court to hold that a Member State has failed to fulfil its obligations.

31 In the further alternative, the Kingdom of the Netherlands claims that horses are normally intended for use in the preparation of foodstuffs. In that regard, it follows from the use of the adverb 'normally' in point 1 of Annex III that what must be examined is not whether every individual animal, but whether a specific category of animals, is intended for use in the preparation of foodstuffs. Any horse may be taken to the abattoir for slaughter even if the use of a horse can be changed temporarily, for example by using it as a racehorse. The Kingdom of the Netherlands refers in that regard to the order of the Court of 1 June 2006 in Case C-233/05 *V.O.F. Dressuurstal Jespers*, and to Article 20 of Commission Regulation (EC) No 504/2008 of 6 June 2008 implementing Council Directives 90/426/EEC and 90/427/EEC as regards methods for the identification of equidae (OJ 2008 L 149, p. 3), according to which equine animals are deemed, in principle, to be intended for slaughter for human consumption.

32 In addition, the Commission's approach is impracticable since it would make it necessary to check, on every supply of a horse, what its intended use is, and even more so because the buyer's intention may differ from that of the seller.

33 Finally, the Kingdom of the Netherlands considers that horses are goods of a kind normally intended for use in agricultural production. Every supply of a horse may therefore benefit from a reduced rate of VAT under point 11 of Annex III.

34 In its rejoinder, the Kingdom of the Netherlands adds that the result desired by the Commission, that is to say the application of a reduced rate of VAT to all raw materials and intermediate products, is also attained if the view is taken that point 1 of Annex III applies to all live animals. In addition, it is not possible to prove that the price of the final product would be adjusted upwards.

35 Finally, the interpretation proposed by the Commission infringes the principle of legal certainty. The taxpayer would on every occasion have to examine whether the supply of a horse would be subject to VAT at the usual or reduced rate, whereas the use of the animal could be determined only later.

36 The Federal Republic of Germany notes that, while none of the language versions cited by the Commission makes it possible to establish clearly the scope of point 1 of Annex III, it follows from the German version of that provision that the phrase 'normally intended for use in the preparation of foodstuffs' relates only to ingredients. In addition, to determine the rate of VAT applicable by reference to the purchaser's use of the horse would infringe the principle of neutrality of that tax.

37 The French Republic considers that the aforesaid point 1 allows a reduced rate of VAT to be applied to all supplies of live animals, irrespective of their use. Like plants and seeds, live animals can be distinguished from ingredients normally intended for use in the preparation of foodstuffs. In any case, horses are included in the category of live animals normally intended for use in foodstuffs.

Findings of the Court

38 As a preliminary point, it must be noted that, at the hearing, the Commission explained that, of the animals referred to in point a.4(a) of the Law on turnover tax, its action concerned exclusively horses, because the majority of cattle, sheep, goats and pigs are reared for human and animal consumption.

39 Consequently, the present action must be understood to the effect that the Commission is complaining only that the Kingdom of the Netherlands applied a reduced rate of VAT to the supply, importation and intra-Community acquisition of horses.

40 The parties differ, first, on the interpretation of point 1 of Annex III, each referring to various language versions of that provision in order to support their arguments.

41 In that regard, it must be held that the meaning of point 1 is not the same in the various official languages of the European Union.

42 On the one hand, according to the German version of point 1 of Annex III ('Nahrungs- und Futtermittel (einschließlich Getränke alkoholische Getränke jedoch ausgenommen), lebende Tiere, Saatgut, Pflanzen und üblicherweise für die Zubereitung von Nahrungs- und Futtermitteln verwendete Zutaten sowie üblicherweise als Zusatz oder als Ersatz für Nahrungs- und Futtermittel

verwendete Erzeugnisse') and the Dutch version thereof ('Levensmiddelen (met inbegrip van dranken, maar met uitsluiting van alcoholhoudende dranken) voor menselijke en dierlijke consumptie, levende dieren, zaaigoed, planten en ingrediënten die gewoonlijk bestemd zijn voor gebruik bij de bereiding van levensmiddelen, alsmede producten die gewoonlijk bestemd zijn ter aanvulling of vervanging van levensmiddelen'), on which the Kingdom of the Netherlands bases its arguments, the phrase 'normally intended for use in the preparation of foodstuffs' applies only to ingredients, which means that all supplies of live animals, whatever their use, can be the subject of a reduced rate of VAT.

43 On the other hand, the English version of point 1 ('Foodstuffs (including beverages but excluding alcoholic beverages) for human and animal consumption; live animals, seeds, plants and ingredients normally intended for use in the preparation of foodstuffs; products normally used to supplement foodstuffs or as a substitute for foodstuffs'), the French version thereof ('Les denrées alimentaires (y compris les boissons, à l'exclusion, toutefois, des boissons alcooliques) destinées à la consommation humaine et animale, les animaux vivants, les graines, les plantes et les ingrédients normalement destinés à être utilisés dans la préparation des denrées alimentaires; les produits normalement utilisés pour compléter ou remplacer des denrées alimentaires') and the Italian version thereof ('Prodotti alimentari (incluse le bevande, ad esclusione tuttavia delle bevande alcoliche) destinati al consumo umano e animale, animali vivi, sementi, piante e ingredienti normalmente destinati ad essere utilizzati nella preparazione di prodotti alimentari, prodotti normalmente utilizzati per integrare o sostituire prodotti alimentari'), to which the Commission refers, may be interpreted, to different degrees, as meaning that the expression 'normally intended for use in the preparation of foodstuffs' applies not only to ingredients but also to live animals, seeds and plants.

44 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 for 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 Case C-372/88 *Cricket St Thomas* [1990] ECR I-1345, paragraphs 18 and 19; Case C-149/97 *Institute of the Motor Industry* [1998] ECR I-7053, paragraph 16; and Case C-451/08 *Helmut Müller* [2010] ECR I-0000, paragraph 38).

45 With regard to the general scheme of point 1 of Annex III, it must be noted, first, that the original wording, which was the point of reference when Annex III was drafted, is contained in point 1 of Annex H to the Sixth Directive, that annex having been added to the directive by Article 1(5) of Council Directive 92/77/EEC of 19 October 1992 supplementing the common system of value added tax and amending Directive 77/388 (OJ 1992 L 316, p. 1).

46 Point 1 of Annex III was slightly amended when the Sixth Directive was replaced by Directive 2006/112. As the Commission correctly stated at the hearing, the phrase '[f]oodstuffs ... for human and animal consumption' is followed by a semi-colon inter alia in the Danish, Dutch, French, Italian and English language versions of point 1 of Annex H to the Sixth Directive. With regard to those versions, a comma was substituted for that semi-colon in the Danish, Dutch, French and Italian language versions of point 1 of Annex III.

47 However, according to the third recital in the preamble to Directive 2006/112, the recasting of the structure and wording of the Sixth Directive aims to ensure that the provisions are presented in a clear and rational manner, which will not, in principle, bring about material changes in the existing legislation, even if a small number of substantive amendments have, in any event, to be made in so far as that is inherent in such a recasting exercise.

48 In the absence of any substantive amendment of point 1 of Annex III, the general scheme of that provision should be examined in the light of the wording of point 1 of Annex H to the Sixth Directive, which expresses the intention of the EU legislature when it drew up the list of goods and services which may be subject to a reduced rate of VAT.

49 In that regard, from a semantic point of view, the use of a semi-colon after the phrase '[f]oodstuffs ... for human and animal consumption' clearly indicates that the phrase contained in point 1 of Annex H to the Sixth Directive is made up of three quite distinct parts. It must therefore be concluded that, since the intentions of the EU legislature are unchanged, the phrase contained in point 1 of Annex III is made up of the same three parts.

50 As pointed out by the Advocate General in point 54 of his Opinion, each of the three parts of the phrase concerns foodstuffs for human and animal consumption. The first refers to foodstuffs as such. The third part concerns products used to supplement foodstuffs or as a substitute for foodstuffs. The second part of the phrase concerns live animals, seeds, plants and ingredients, which are not themselves foodstuffs. Logically, that second part of the phrase, which is enclosed by the two others, must be understood as referring to those items only in so far as they are normally intended for use in the preparation of foodstuffs. That assessment is confirmed by the fact that, contrary to what is stated by the Kingdom of the Netherlands, some seeds and plants may normally be intended for use in the preparation of foodstuffs. Use of the terms 'live animals' in that list means that the reduced rate of VAT applies to supplies carried out before the animals are slaughtered.

51 Consequently, the general scheme of point 1 of Annex III tends to support the interpretation whereby the supply of live animals may be subject to a reduced rate of VAT only where those animals are normally intended for use in the preparation of foodstuffs.

52 With regard to the purpose of point 1 of Annex III, it should be noted that, in response to a written question asked by the Court, the Commission stated, without being contradicted on that point by the other parties, that the EU legislature, by drawing up Annex H to the Sixth Directive, 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 no or little risk of distortion to competition.

53 Referred to at the top of Annex III, even before the 'supply of water' or 'pharmaceutical products', foodstuffs belong to the category of essential commodities. By allowing foodstuffs to be taxed at a reduced rate of VAT, rather than the normal rate, the EU legislature intended to make them less expensive, and therefore more accessible, for the final consumer, who finally bears the VAT (see, *inter alia*, Case C-475/03 *Banca popolare di Cremona* [2006] ECR I-9373, paragraph 22, and Joined Cases C-283/06 and C-312/06 *KÖGÁZ and Others* [2007] ECR I-8463, paragraph 30). In order fully to attain that objective, that legislature logically extended the application of that reduced rate of VAT to items which, not themselves being foodstuffs, are normally intended for use in the preparation of those foodstuffs.

54 It follows from the foregoing, first, that point 1 of Annex III authorises the application of a reduced rate of VAT only in respect of live animals normally intended for use in the preparation of

those foodstuffs and, second, that the objective of that provision is to facilitate the purchase of those foodstuffs by the final consumer.

55 By using the adverb 'normally' in the second part of the phrase in point 1 of Annex III, the EU legislature intended to refer to animals which, usually and in general, are intended to enter the human and animal food chain. That is the case, in particular, for the cattle, sheep, goats and pigs referred to in point a.4(a) of the Law on turnover tax. All supplies of animals belonging to those species may therefore be subject to a reduced rate of VAT, without it being necessary to examine the particular situation of such-and-such an animal.

56 By contrast, it is well known that, in the European Union, the equine species is in a different situation from the species referred to in the previous paragraph. As the Advocate General noted in point 65 of his Opinion, horses are not, usually and in general, intended for use in the preparation of foodstuffs, even if some of them will be used for human and animal consumption.

57 With regard to the particular situation of horses which, while not normally being intended for use in the preparation of foodstuffs, may nevertheless in some cases be supplied for consumption, it must be considered that, in the light of the EU legislature's objective of making essential commodities cheaper for the final consumer, point 1 of Annex III must be interpreted as meaning that only the supply of a horse for slaughter in order to be used in the preparation of foodstuffs may be subject to a reduced rate of VAT.

58 It must be added that, according to settled case-law, provisions which constitute a derogation from a principle must be interpreted strictly (see, *inter alia*, Case C-399/93 *Oude Luttikhuis and Others* [1995] ECR I-4515, paragraph 23, and Case C-492/08 *Commission v France* [2010] ECR I-0000, paragraph 35). To permit a reduced rate of VAT to be applied to every supply of a horse would be to interpret point 1 of Annex III broadly.

59 Point 1 of Annex III does not therefore allow a Member State to apply a reduced rate of VAT to all supplies of live horses, whatever their intended use.

60 None of the other arguments relied on by the Kingdom of the Netherlands and the two other Member States which intervened in support of the forms of order sought by the Kingdom of the Netherlands is capable of calling that conclusion into question.

61 With regard, first, to Regulation No 504/2008 on methods for the identification of equidae, it is true that, under Article 20(1) of that regulation, an equine animal is to be 'deemed to be intended for slaughter for human consumption, unless it is irreversibly declared as not so intended' on the animal's identification document. Article 20(2) lays down that, prior to any treatment provided for, the veterinarian responsible is to ascertain the equine animal's status as an animal either intended for slaughter for human consumption, 'which is the default case', or an animal not intended for slaughter for human consumption.

62 However, it must be pointed out that the purpose of Regulation No 504/2008 is very different from that of point 1 of Annex III. That regulation takes into account the fact that a horse may be consumed by humans and provides, accordingly, rules which seek to ensure that a horse which enters the human food chain is not unfit for consumption. In that context, in order to improve the administration of veterinary medicinal products, that regulation states that an equine animal is in principle intended for slaughter for human consumption.

63 However, it is not possible to determine on the basis of Regulation No 504/2008 which horses will finally so be used. In addition, Article 20 of that regulation also states that a horse may be not intended for human consumption.

64 In those circumstances, it cannot be inferred from Article 20 of Regulation No 504/2008 that, according to the EU legislature, a horse is normally intended for use in the preparation of foodstuffs.

65 Second, with regard to the argument according to which all supplies of horses must be subject to a reduced rate of VAT pursuant to point 11 of Annex III, it must be noted that, in the Member States, horses are not used, usually and in general, in agricultural production. Reasoning analogous to that followed with regard to point 1 of that annex must therefore be applied, that is that only supplies of horses intended for use in agricultural production may be subject to a reduced rate of VAT. Point 11 of Annex III does not allow a reduced rate of VAT to be applied to all supplies of horses, any more than point 1 of that annex does.

66 Third, with regard to the argument concerning the principle of neutrality of VAT, which is said to preclude the applicable VAT rate from being determined by reference to the use of the horses, it must be borne in mind that, according to settled case-law, the principle of fiscal neutrality inherent in the common system of VAT precludes treating similar goods and supplies of services, which are thus in competition with each other, differently for VAT purposes, so that those goods or supplies must be subjected to a uniform rate (see, inter alia, Case C-267/99 *Adam* [2001] ECR I-7467, paragraph 36, and Case C-94/09 *Commission v France* [2010] ECR I-0000, paragraph 40). However, taking their respective uses into account, a horse destined for slaughter is not similar to a racehorse or a pet horse where that animal is sold as such. Therefore, as pointed out by the Advocate General in point 78 of his Opinion, those categories of horses are not in competition, meaning that they can be subject to different rates of VAT.

67 Accordingly, the action brought by the Commission must be considered well founded.

68 Consequently, it must be held that, by applying a reduced rate of VAT to all supplies, imports and intra-Community acquisitions of horses, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 12, read in conjunction with Annex H of the Sixth Directive, and under Articles 96 to 99(1) of Directive 2006/112, read in conjunction with Annex III.

Costs

69 Under Article 69(2) 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 the Netherlands has been unsuccessful in its pleas, the latter must be ordered to pay the costs.

70 In accordance with the first paragraph of Article 69(4) of the Rules of Procedure, the Federal Republic of Germany and the French Republic, which have intervened in the proceedings, must bear their own costs.

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

1. Declares that, by applying a reduced rate of value added tax to all supplies, imports, and intra-Community acquisitions of horses, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 12, read in conjunction with Annex H, of Sixth Council Directive 77/388/EEC 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, as amended by Council Directive 2006/18/EC of 14 February 2006, and under

Articles 96 to 99(1) 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 the Netherlands to pay the costs;

3. Orders the Federal Republic of Germany and the French Republic to bear their own costs.

[Signatures]

* Language of the case: Dutch.