



Press and Information

Court of Justice of the European Union

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Judgment in Case C-360/11
Commission v Spain

By applying reduced rates of VAT beyond what is authorised under the VAT Directive, Spain has failed to fulfil its obligations under EU law

Spain applies a reduced rate to a broader range of goods than provided for under the VAT Directive in the field of pharmaceutical products and medical equipment

The VAT Directive¹ (Annex III) lists the categories of supplies of goods and services to which the Member States may apply a reduced rate of VAT.

Those categories include pharmaceutical products normally used for health care, prevention of illnesses and as treatment for medical and veterinary purposes and medical equipment, aids and other appliances normally intended to alleviate or treat disability, for the exclusive personal use of the disabled. Considering that, in that field, Spain was applying a reduced rate to a broader range of categories than provided for under the VAT Directive, the Commission issued a reasoned opinion on 25 November 2010 inviting Spain to comply with it. Spain reiterated its position that the Spanish VAT legislation² was in line with the provisions of the VAT Directive. Accordingly, the Commission decided to bring the present action.

In today's judgment, **the Court of Justice declares that Spain has failed to fulfil its obligations under the VAT Directive.**

Firstly, the Court considers that **the application of a reduced rate of VAT to medicinal substances which can be used habitually and suitably in the production of medicine is contrary to the VAT Directive.** The directive authorises the application of a reduced rate of VAT only to finished goods which may be used directly by final consumers, other than goods which may be used in the production of medicinal products, which normally require further processing. That interpretation is corroborated by the purpose of reduced rates, which is to render less onerous, and thus more accessible, certain goods regarded as being particularly necessary to final consumers – who ultimately bear the VAT. However, the Court notes that, where a medicinal substance may be marketed as a finished product without needing to be mixed with other substances – and is thus likely to be used directly by final consumers – a reduced rate of VAT may be applied.

Secondly, the Court considers that **the VAT Directive does not authorise a reduced rate of VAT to be applied to 'medical devices, material, equipment and appliances used only to prevent, diagnose, treat, alleviate or cure human or animal illnesses or ailments'.** First, the Court notes that that type of goods cannot be covered by the category provided for in Annex III to the VAT Directive relating to medical equipment, aids and other appliances normally intended to alleviate or treat disability, for the exclusive personal use of the disabled, in so far as that category relates only to human use and thus excludes veterinary use. Second, the Court considers that those goods can also not be regarded as falling within the concept of 'pharmaceutical products' within the meaning of Annex III to the VAT directive. Thus, while accepting that the concept of 'pharmaceutical product' is broader than that of 'medicinal product', the Court rejects Spain's argument that that concept may cover any medical devices, material, equipment and appliances for general use. In that regard, the Court points out, inter alia, that the application of reduced rates

¹ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

² Law 37/1992 of 28 December 1992 on value added tax (BOE No 312 of 29 December 1992, p. 44247).

of VAT seeks, in particular, to lower the cost of certain essential goods for final consumers. However, the cost of devices, appliances, material and medical and veterinary equipment is rarely borne directly by final consumers, since those products are primarily used by healthcare professionals to provide services which themselves may be exonerated from VAT.

Thirdly, the Court declares that **the application of a reduced rate of VAT to aids and equipment which may be used to treat physical disabilities in animals is contrary to the VAT Directive.**

Lastly, the Court affirms that **a reduced rate of VAT cannot be applied to apparatus and accessories used essentially or primarily to alleviate physical disability in humans, but which are not intended for the exclusive personal use of the disabled.** In that regard, the VAT Directive requires those goods to be intended for the exclusive personal use of the disabled. Therefore, the application of a reduced rate of VAT to medical devices for general use which are used in hospitals and by health-care professionals is not justified. The Court adds that that conclusion is not called into question by Spain's argument that certain devices may be used both generally and for the exclusive personal use of the disabled. In that regard, the Court reiterates its case-law that the application of a reduced rate of VAT, in the case of a product which may be put to different uses, is subject, for each supply of goods, to the product being used for its intended purpose by the purchaser.

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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