



Press and Information

Court of Justice of the European Union

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Judgments in Cases C-189/11 Commission v Spain, C-193/11 Commission v Poland, C-236/11 Commission v Italy, C-269/11 Commission v Czech Republic, C-293/11 Commission v Greece, C-296/11 Commission v France, C-309/11 Commission v Finland and C-450/11 Commission v Portugal

The provisions of the special VAT scheme for travel agents are not limited to sales of travel services to travellers and extend to sales to any customer

The Court therefore dismisses in their entirety the Commission's actions against Poland, Italy, the Czech Republic, Greece, France, Finland and Portugal and upholds in part the action against Spain

The European Commission brought a series of infringement proceedings against eight Member States for failure to comply with their obligations under the directive on the common system of value added tax¹. The actions relate to the special scheme for travel agents.

Czech Republic, Finland, France, Greece, Italy, Poland and Portugal

The Commission considers that the special scheme for travel agents is applicable only to sales of travel services to travellers. It complains that the Member States concerned authorised the application of that scheme to sales of travel services to any type of customer.

In its judgments of today, the Court acknowledges that there are particularly significant differences between the language versions of the directive, some using the term 'traveller' and/or the term 'customer', at times varying the use of those terms from one provision to another.

The Court points out that where there are discrepancies between the various language versions of an EU instrument, the provision at issue must be interpreted by reference to the general scheme and purpose of the rules of which it forms part. In that regard, the Court considers that an approach consisting in applying the special scheme to any type of customer is the best way of achieving the aims of the scheme. It enables travel agents to benefit from simplified rules regardless of the type of customer to whom they provide their services, while encouraging a fair distribution of receipts between the Member States. Furthermore, the Court has already interpreted the word 'traveller' by giving it a meaning wider than that of final consumer.

Therefore, since it considers that the provisions of the special scheme are not limited to sales of travel services to travellers, the Court dismisses in their entirety the Commission's actions against Poland, Italy, the Czech Republic, Greece, France, Finland and Portugal.

Spain

With regard to Spain, the Court dismisses, first, the Commission's action in so far as it complains that Spain, like the other seven Member States, authorised the application of the special scheme to sales of travel services to any type of customer.

Secondly, the Commission claims that the Spanish legislation is incompatible with EU law, in so far as it excludes from the special scheme sales of travel services organised by wholesale agents but carried out by retail agents. The Court considers that complaint to be justified, since such an exclusion from the scope of the special scheme is not provided for in the directive.

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

Thirdly, the Commission claims that, contrary to EU law, the Spanish legislation allows travel agents, after consulting the customer, to mention in the invoice, under the heading 'amount of VAT included in the price', a defined percentage of the price including VAT, which is deemed to be payable by the customer and which the customer is entitled to deduct.

The Court notes that such a deduction is not provided for by the special scheme for travel agents. It recalls that the principle of the right to deduct VAT relates to the input VAT on the goods or services used by the taxable person for the purposes of his taxed transactions. In order to ensure neutrality of VAT, the amount of tax deducted must correspond exactly to the amount of the input tax due or paid. Therefore, since it considers that the Spanish legislation relates not to the exact amount of VAT on the services obtained by the taxable person, but to an amount estimated on the basis of the total amount paid by him, the Court rules that that legislation is incompatible with the method of calculating VAT and with the rules in the directive relating to the right of deduction. It also follows that the mention in the invoice of an amount corresponding to a percentage of the total price charged is not consistent with the rules in the directive relating to the content of invoices.

Moreover, the Court finds that, by allowing the possible deduction at issue only where services are provided in Spain, the Spanish legislation discriminates on grounds of nationality, which is incompatible with the common system of VAT.

Fourthly, the Court addresses the Commission's argument that the Spanish provisions providing for the possibility of making an overall determination of the taxable amount of the travel agent's margin have no legal basis in the directive. In that regard, the Court confirms that, in the travel agency sector, the taxable amount must be determined by reference to each single service supplied by the travel agent, not on an overall basis.

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 (Case [C-189/11](#); [C-193/11](#); [C-236/11](#); [C-269/11](#); [C-293/11](#); [C-296/11](#); [C-309/11](#); [C-450/11](#)) is published on the CURIA website on the day of delivery.

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