



Press and Information

Court of Justice of the European Union
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Judgment in Case C-390/15
Rzecznik Praw Obywatelskich (RPO)

The exclusion of digital books, newspapers and periodicals from the application of a reduced rate of VAT where they are supplied electronically is not contrary to the principle of equal treatment

The VAT Directive is valid from that point of view

Under the VAT Directive,¹ the Member States may apply a reduced rate of VAT² to printed publications such as books, newspapers and periodicals.³ Digital publications, by contrast, must be subject to the standard rate of VAT, with the exception of digital books supplied on a physical support (for example a CD-ROM).⁴

The Polish Constitutional Court, before which a case was brought by the Polish Commissioner for Civic Rights,⁵ has doubts as to the validity of that difference in taxation. It has asked the Court of Justice, first, whether that difference is compatible with the principle of equal treatment and, secondly, whether the European Parliament was sufficiently involved in the legislative procedure.⁶

By today's judgment, the Court finds first of all that, since the VAT Directive has the effect of precluding the application of a reduced rate of VAT to the supply of digital books electronically although application of a reduced rate is permitted for the supply of digital books on all physical means of support, the provisions of that directive must be regarded as establishing a difference in treatment between two situations that are, however, comparable in the light of the objective – the promotion of reading – pursued by the EU legislature when it permitted the application of a reduced rate of VAT to certain types of books.

Next, the Court examines whether that difference is justified. It points out that a difference in treatment is justified where it relates to a legally permitted objective pursued by the measure having the effect of establishing the difference and is proportionate to that objective. When the EU legislature adopts a tax measure, it is called upon to make political, economic and social choices, and to rank divergent interests or undertake complex assessments. Consequently, it should, in that context, be accorded a broad discretion, so that judicial review of compliance with such conditions must be limited to review as to manifest error. Against that background, the Court observes that the ruling out of the application of a reduced rate of VAT to the supply of digital books electronically is the consequence of the specific VAT regime for e-commerce. In the light of the constant developments to which electronic services in their entirety are subject, it was considered necessary to make electronic services subject to clear, simple and uniform rules in order that the VAT rate applicable to them may be established with certainty and, thus, that the administration of VAT by

¹ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), as amended by Council Directive 2009/47/EC of 5 May 2009 amending Directive 2006/112/EC as regards reduced rates of value added tax (OJ 2009 L 116, p. 18).

² Or even two reduced rates of VAT.

³ Unless that printed material is wholly or predominantly devoted to advertising.

⁴ In that case, a reduced rate of VAT may also be applied to digital books. On the other hand, if those digital books are transmitted by means of downloading or streaming, it is the standard rate that must be applied. In the case of digital newspapers and periodicals, the standard rate of VAT always applies, irrespective of the form in which they are supplied.

⁵ Rzecznik Praw Obywatelskich. The Commissioner for Civic Rights requested the Polish Constitutional Court to review the constitutionality of the Polish provisions relating to the reduced rate of VAT applicable to publications.

⁶ The wording of point 6 of Annex III to Directive 2006/112 as amended differs from the text in the proposal for a directive on the basis of which the Parliament was consulted.

taxable persons and national tax authorities is facilitated. By precluding the application of a reduced rate of VAT to electronic services, the EU legislature spares taxable persons and national tax authorities from an obligation to examine, for each type of those services, whether it falls within one of the categories of services that qualify for such a rate under the VAT Directive. Consequently, such a measure must be regarded as being appropriate for achieving the objective pursued by the specific VAT regime for e-commerce. Moreover, to accept that the Member States are able to apply a reduced rate of VAT to the supply of digital books electronically, as is permitted for the supply of such books on all physical means of support, would effectively compromise the overall coherence of the measure intended by the EU legislature, which consists in the exclusion of all electronic services from the possibility of a reduced rate of VAT being applied.

As regards the obligation to consult the European Parliament during the legislative procedure, the Court points out that this obligation means that the Parliament is consulted afresh whenever the text finally adopted, taken as a whole, differs in essence from the text on which the Parliament has already been consulted, except in cases where the amendments substantially correspond to a wish of the Parliament itself. The Court then examines whether fresh consultation of the Parliament was necessary so far as concerns the provision of the directive limiting the application of a reduced rate of VAT to solely the supply of books on a physical support.⁷ The Court holds in this regard that the final text of the provision concerned is nothing other than a simplification of the drafting of the text which was set out in the proposal for a directive and the substance of which has been fully preserved. The Council was thus not required to consult the Parliament afresh. The Court concludes that that provision of the directive is not invalid.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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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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⁷ Point 6 of Annex III to Directive 2006/112 as amended provides for the application of a reduced rate to the 'supply, including on loan by libraries, of books on all physical means of support (including brochures, leaflets and similar printed matter, children's picture, drawing or colouring books, music printed or in manuscript form, maps and hydrographic or similar charts), newspapers and periodicals, other than material wholly or predominantly devoted to advertising'. On the other hand, the proposal for a directive referred to the 'supply, including on loan by libraries, of books (including brochures, leaflets and similar printed matter, children's picture, drawing or colouring books, music printed or in manuscript form, maps and hydrographic or similar charts, as well as audio books, CD, CD-ROMs or any similar physical support that predominantly reproduce the same information content as printed books), newspapers and periodicals, other than material wholly or predominantly devoted to advertising'.