



Press and Information

Court of Justice of the European Union

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Judgment in Joined Cases C-288/09 and C-289/09  
British Sky Broadcasting Group plc and Pace plc v The Commissioners for  
Her Majesty's Revenue & Customs

**Decoders with a hard disk drive – such as the Sky+ box – must be classified, for customs purposes, as set-top boxes with a communication function and not as recording apparatus**

*As a result, they are exempt from customs duties instead of being subject to a rate of 13.9%*

European Union law sets the rates of customs duties applicable to items imported from third countries into the European Union. A system of goods classification and the tariff applicable to each category are set out in the combined nomenclature, published every year by the Commission. Explanatory notes to that nomenclature, also published by the Commission, supply additional instructions on the classification of products.

The combined nomenclature is based on the international harmonised system for classification of goods and, for the most part, adopts its classification headings.

British Sky Broadcasting, the main supplier of digital satellite television services in the United Kingdom, imports a satellite television receiver known as the 'Sky+ box', manufactured for Sky by Pace. That box has a communication function, contains a hard disk drive and allows the end user to record programmes broadcast by Sky.

Sky and Pace disputed the decisions by the Commissioners for Her Majesty's Revenue & Customs to classify the Sky+ box, in accordance with the Explanatory Notes to the combined nomenclature, as a recording apparatus. They claim that the Sky+ box should be classified as a set-top box with a communication function. Recording devices are subject to customs duty at a rate of 13.9%, whilst set-top boxes are exempt from duties.

The First-tier Tribunal (Tax Chamber), which has those cases before it, has referred questions to the Court of Justice concerning the appropriate classification of the Sky+ box.

The Court's answer, in its judgment delivered today, is that **decoders with a hard disk drive, such as the Sky+ box, are to be classified as set-top boxes with a communication function rather than as recording devices.**

In that connection, the Court points out that, in the case of electrical devices, machines that have several functions and could be classified in different categories are to be classified according to the principal function of the device.

Decoders such as the Sky+ box are sold to television service-providers such as Sky, who make them available to their customers so that they can access their programmes.

Therefore, consumers subscribe to service-providers such as Sky **principally to be able to access the television programmes** offered and, in order to do so, they need a box such as the Sky+ box. **The television programme recording function, which is also available on that model, is merely an additional service.**

Consumers who choose that product are seeking, primarily, not a recording function, but rather a function of decoding television signals, although their choice may be influenced by the fact it has a

recording function or by the number of hours of programming that can be recorded. That conclusion is borne out by the fact that the Sky+ box cannot record video content from any other external source (from television receivers, cameras or video recorders), it cannot play video content from external media – such as DVDs or videotapes – and is not capable of recording video content onto external media.

It follows that **the Sky+ box is principally intended to be used to receive television signals** and that function is inherent in that device. **It thus constitutes its principal function and the recording function is only secondary.**

Consequently, the Explanatory Notes to the combined nomenclature, on which the Commissioners based their decision, must be disregarded on that point.

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**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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