



Press and Information

Court of Justice of the European Union
PRESS RELEASE No 91/16
Luxembourg, 8 September 2016

Opinion of the Advocate General in Case C-390/15
Rzecznik Praw Obywatelskich (RPO)

In the view of Advocate General Kokott, the exclusion of electronically supplied digital books, newspapers and periodicals from the reduced rate of value added tax is compatible with the principle of equal treatment

The VAT Directive is to that extent valid

Under the VAT Directive¹ 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 normal VAT rate, with the exception of digital books, provided that they are supplied by means of a physical medium such as a CD-ROM.⁴

The Polish Constitutional Court, before which a case has been brought by the Polish Commissioner for Civic Rights,⁵ has doubts concerning the validity of that rule. On the one hand, it has doubts as to whether the difference in taxation is compatible with the principle of equal treatment, while, on the other, it is unsure whether the European Parliament was sufficiently involved in the legislative process.

In her Opinion delivered today, Advocate General Juliane Kokott concludes that the VAT Directive is valid in so far as it applies the reduced rate of tax only to printed books, newspapers and periodicals, as well as to digital books which are supplied by means of a physical medium.

As regards the **application of the normal VAT rate to all digital publications which are supplied electronically**, it might not be possible to compare such publications with printed publications. On the one hand, the EU legislature may, in light of the fundamental objective of the VAT Directive to prevent distortions of competition, have discretion to assess the degree to which these publications are in fact in competition with one another. As the Court of Justice has already held, with regard to books, competition does not necessarily exist between their digital versions on physical supports and their paper versions. Rather, the existence of such competition is dependent on a number of factors that may not only differ from Member State to Member State, but may also vary over time. In the view of Mrs Kokott, where the factual circumstances are unclear in this way, it is primarily for the EU legislature, and not for the Court of Justice, to undertake, within the scope of its legislative discretion, the complex assessment of a competitive situation across the European Union.

On the other hand, given their very different distribution costs, there is a significant difference between digital and printed publications with regard to their need for support. This is to be considered in conjunction, with the objective of the reduced tax rate for publications, namely

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 also two reduced rates of VAT.

³ Unless these publications are wholly or predominantly devoted to advertising.

⁴ In that case a reduced rate of VAT may be applied to digital books. By contrast, if they are made available by means of downloading or streaming, the normal VAT rate applies. The normal VAT rate applies in all cases for digital newspapers and periodicals irrespective of how they are supplied.

⁵ Rzecznik Praw Obywatelskich. The Commissioner has requested the Polish Constitutional Court to examine whether the Polish provisions on the reduced tax rate for publications are constitutional.

promotion of education of EU citizens through the reading of books, newspapers and periodicals. In any event, the difference in treatment is currently justified. This results, in particular, from the legitimate legislative objective of providing for a special taxation scheme for electronic services. The principle of equal treatment is therefore not infringed.

Advocate General Kokott also takes the view that the **applicability of the reduced VAT rate to digital books supplied on a physical support, but not to digital books supplied by electronic means**, does not amount to an infringement of the principle of equal treatment. It is true that these books are, in view of the VAT Directive's objective of preventing distortions of competition, comparable inasmuch as they are in competition with one another. For the consumer, the same product is involved, namely the file of a digital book, which in both cases is not usable without an additional reading device. Comparability also exists with regard to the educational purpose pursued by the reduced tax rate, since fulfilment of that purpose depends solely on the content, not on the means of transmission, of a digital book. The difference in treatment is, however, justified, particularly in view of the special requirements⁶ of the taxation of electronic services, which are, under the VAT Directive, excluded entirely from the reduced tax rate. In order to demonstrate that the difference in taxation is proportionate, Mrs Kokott points out, inter alia, that digital books transmitted by electronic means can generally be offered at a lower price than those on physical supports, even though they are subject to a higher rate of VAT.

The **exclusion from the reduced tax rate of digital newspapers and periodicals supplied on physical supports** also does not, in her view, infringe the principle of equal treatment, as these are not comparable to printed newspapers and periodicals or to digital books on physical supports.

Finally, so far as concerns the **European Parliament's involvement in the legislative procedure**, Advocate General Kokott expresses the view that the Parliament was properly involved and that consequently there can be no doubt as to the validity of the rule of the VAT Directive which is at issue in the present case.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A request 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.

Unofficial document for media use, not binding on the Court of Justice.

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

Press contact: Holly Gallagher ☎ (+352) 4303 3355

⁶ Thus, electronic services, in comparison with conventional trade in goods, are supplied on a cross-border basis almost effortlessly and, in addition, require only a minimal physical presence, thereby making access difficult for the national tax authorities.