

## Case C-408/06

**Landesanstalt für Landwirtschaft**

**v**

**Franz Götz**

(Reference for a preliminary ruling  
from the Bundesfinanzhof (Germany))

(Sixth VAT Directive — Economic activity — Taxable persons — Bodies governed by public law — Milk-quota sales point — Transactions of agricultural intervention agencies and staff shops — Significant distortions of competition — Geographic market)

Judgment of the Court (Third Chamber), 13 December 2007 . . . . . I - 11298

### Summary of the Judgment

1. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Economic activities within the meaning of Article 4 of the Sixth Directive (Council Directive 77/388, Art. 4)*

2. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Taxable persons*  
(Council Directive 77/388, Art. 4(5))
3. *Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Taxable persons*  
(Council Directive 77/388, Art. 4(5))

1. The activity of transferring delivery reference quantities for remuneration, carried out by milk-quota sales points, constitutes an economic activity for the purposes of Article 4 of the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes where it is permanent and is carried out in return for remuneration which is received by the person carrying out the activity. It is for the national court to determine whether the activity at issue meets those two conditions and to establish, if necessary, whether the activity is carried out by the milk-quota sales points for the purpose of receiving that remuneration, while taking account of the fact that the receipt of a payment does not, per se, mean that a given activity is economic in nature.
2. A milk-quota sales point is neither an agricultural intervention agency within the meaning of the third subparagraph of Article 4(5) of the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes, as amended by Council Directive 2001/4, read in conjunction with point 7 of Annex D thereto, or a staff shop within the meaning of the third subparagraph of Article 4(5) of the directive, read in conjunction with point 12 of Annex D to that directive.

The task of a milk-quota sales point differs significantly from that of an agricultural intervention agency, which is characterised by the purchase and the resale of the agricultural products themselves, as may be done by any economic operator, such activity taking the form inter alia of stockpiling, as is the case, inter alia, as far as cereals are concerned. The logic of the automatic liability to VAT inherent in Annex D to the Sixth Directive thus excludes from its scope

(see paras 18, 20, 21)

the activity of allocating milk quotas among the producers as the centralisation of the different offers of those producers was not the result of an operator purchasing and reselling agricultural products on the market.

Moreover, a comparison between the German, French, English, Spanish and Italian language versions of point 12 of Annex D to the Sixth Directive makes it possible to ascertain that the term 'staff shop', within the meaning of point 12 of Annex D, refers to entities responsible for selling various products and goods to the staff of the undertakings or authorities to which they are attached. That is not the task of a sales point, which is responsible for contributing to the balancing out of delivery reference quantities, with a view to limiting them, in the best interests of each producer.

(see paras 26, 31, 33, operative part 1)

3. The treatment of a milk-quota sales point as a non-taxable person in respect of activities or transactions in which it engages as a public authority, within the meaning of Article 4(5) of the Sixth Directive, as amended by Directive 2001/4, cannot give rise to significant distortions of competition, by reason of the fact that it is not faced with private operators providing services which are in competition with the public services. As that finding applies in respect of all milk-quota sales points operating within a given delivery reference quantity transfer area, defined by the Member State concerned, that area constitutes the relevant geographic market for the purpose of establishing whether there are significant distortions of competition.

(see para. 45, operative part 2)