



Reports of Cases

Judgment of the Court (Sixth Chamber) of 27 January 2021 – *Commission v Austria* (VAT – Travel agents)

(Case C-787/19)¹

(Failure of a Member State to fulfil obligations – Taxation – Value added tax (VAT) – Directive 2006/112/EC – Articles 306 to 310 – Special scheme for travel agents – Application to all types of clients – National legislation excluding travel services that are provided to taxable persons who use those services for their business – Article 73 – Taxable amount – Determination of a taxable amount on a flat-rate basis for groups of services or for all services provided during the taxable period – Incompatibility)

1. *Actions for failure to fulfil obligations – Subject matter of the dispute – Determination during the pre-litigation procedure – Different wording of the complaints without amending or extending the subject matter of the dispute – Whether permissible*

(Art. 258 TFEU)

(see paras 19-21)

2. *Actions for failure to fulfil obligations – Subject matter of the dispute – Determination during the pre-litigation procedure – Submission in the application initiating proceedings which is solely precautionary and in the alternative – Whether permissible*

(Art. 258 TFEU)

(see paras 22, 23)

3. *Harmonisation of fiscal legislation – Common system of value added tax – Special scheme for travel agencies – National legislation excluding travel services that are provided to taxable persons who use those services for their business – Determination of a taxable amount on a flat-rate basis for groups of services or for all services provided during the taxable period – Not permissible*

(Council Directive 2006/112, Arts 306 to 310)

(see paras 36-39, 41-43, 59-62, 66, operative part)

¹ OJ C 413, 9.12.2019.

4. *Harmonisation of fiscal legislation – Common system of value added tax – Right of Member States to retain certain taxes during a transitional period – Scope*

(Council Directive 2006/112, Art 370)

(see paras 44-46)

Operative part

The Court:

1. Declares that, by excluding from the special value-added-tax (VAT) scheme applicable to travel agents travel services provided to taxable persons who use those services for their business, and by authorising travel agents, in so far as they are subject to that scheme, to determine the taxable amount for VAT on a flat-rate basis for groups of services or for all services provided during a tax year, the Republic of Austria has failed to fulfil its obligations under Article 73 and Articles 306 to 310 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.
2. Orders the Republic of Austria to pay the costs.