

**Action brought on 29 January 2018 — European Commission v Republic of Austria****(Case C-51/18)**

(2018/C 112/32)

*Language of the case: German***Parties***Applicant:* European Commission (represented by: N. Gossement and B.-R. Killmann, acting as Agents)*Defendant:* Republic of Austria**Form of order sought**

The applicant claims that the Court should:

1. declare that, by imposing value added tax on the royalty paid to an author of an original work of art on the basis of the resale right, the Republic of Austria has failed to fulfil its obligations under Article 2 of the VAT Directive;
2. order the Republic of Austria to pay the costs.

**Pleas in law and main arguments**

In support of the action, the applicant relies on the following arguments:

Austria levies value added tax on the royalties paid to the author of an original artistic work upon its resale, within the framework of the resale right which was introduced in Austria in the transposition of Directive 2001/84/EC<sup>(1)</sup> of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art. In doing so, Austria has infringed Article 2 of the VAT Directive.

In the context of the resale right, there is no relationship based on an exchange of services between the author and the party which is liable to pay. The share of proceeds to be returned to the author on the basis of the resale right results from the law and is created in such a way that the seller, or whoever else takes part in the resale, is required to pay a royalty to the author, without the author having to perform any sort of service in that respect. The author's service has already been provided in that respect before the resale, in that the author brought his original work onto the market in the first place.

The royalty from the resale right which is to be paid to the author does therefore not represent consideration for any of the services performed by the author, but rather the royalty depends entirely on the price paid in the resale, the amount of which cannot be influenced by the author. The author is entitled to the royalty without having to, or even being able to, undertake any service, either by action or by inaction. Consequently, the royalty from the resale right cannot be regarded as consideration for a supply of goods or services within the meaning of Article 2 of the VAT Directive.

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<sup>(1)</sup> Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art (OJ 2001 L 272, p. 32).

**Action brought on 31 January 2018 — European Commission v Republic of Bulgaria****(Case C-61/18)**

(2018/C 112/33)

*Language of the case: Bulgarian***Parties***Applicant:* European Commission (represented by: G. von Rintelen, K. Walkerová, G. Koleva, acting as Agents)