OPINION OF ADVOCATE GENERAL
BOT
delivered on 5 October 2010[1]

1. European Union legislation on value added tax ('VAT') allows Member States to apply a reduced rate to various supplies of services and supplies of goods that are specifically listed in that legislation.

2. In these proceedings for failure to fulfil obligations, the European Commission claims that the Kingdom of the Netherlands has incorrectly implemented that legislation as regards horses. It claims that that Member State has applied a reduced rate to the supply of horses regardless of the purpose for which the animal is intended to be used, although, according to the Commission, the application of this reduced rate is possible only on the supply of horses intended for human or animal consumption.

3. In this opinion, I will argue, first, that Union legislation should be understood to mean that the application of a reduced VAT rate to live animals is subject to the condition that these animals belong to a species that is generally or habitually intended for human or animal consumption.

4. I will then argue that horses cannot be considered to be so intended, since some of them are treated as domestic animals and others as competition animals. I take this to mean that as far as horses are concerned, the application of the reduced VAT rate must be subject to the condition that the horse that is the object of the transaction is destined for human or animal consumption.

5. I will therefore propose that the Court declare this action for failure to fulfil obligations to be well-founded.

I — Legal Framework

A — *European Union law*

6. The European Union legislation on VAT that is relevant to these proceedings consists

1 — Original language: French.

of the Sixth Council Directive 77/388/EEC [2] and Council Directive 2006/112/EC, [3] which repeals and replaces the Sixth Directive as of 1 January 2007.

7. According to the first and third recitals in the preamble to Directive 2006/112, the recasting of the Sixth Directive was necessary in order to present all the applicable provisions in a clear and rational manner and in an improved structure and drafting which would not, in principle, bring about material change.

8. Thus, Articles 96 to 99(1) of Directive 2006/112 correspond to the provisions of Article 12 of the Sixth Directive.

9. Article 96 of Directive 2006/112 provides that:

'Member States shall apply a standard rate of VAT, which shall be fixed by each Member State as a percentage of the taxable amount and which shall be the same for the supply of goods and for the supply of services.'

10. Article 97 of that directive provides that:

'1. From 1 January 2006 until 31 December 2010, the standard rate may not be less than 15%.

2. The Council shall decide, in accordance with Article 93 of the Treaty, on the level of the standard rate to be applied after 31 December 2010.'

11. As provided in Article 98 of Directive 2006/112, in the version that applies to these proceedings:

'1. Member States may apply either one or two reduced rates.

2. The reduced rates shall apply only to supplies of goods or services in the categories set out in Annex III.

3. When applying the reduced rates provided for in paragraph 1 to categories of goods, Member States may use the Combined Nomenclature to establish the precise coverage of the category concerned.'

2 — Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1, 'the Sixth Directive').

3 — Directive of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

12. Article 99(1) of Directive 2006/112 states:

'The reduced rates shall be fixed as a percentage of the taxable amount, which may not be less than 5 %.'

13. Annex III to that directive, headed 'List of supplies of goods and services to which the reduced rates referred to in Article 98 may be applied', comprises several points. Point 1 of that annex, which corresponds to point 1 of Annex H to the Sixth Directive, reads as follows:

'Foodstuffs (including beverages but excluding alcoholic beverages) for human and animal consumption; live animals, seeds, plants and ingredients normally intended for use in the preparation of foodstuffs; products normally used to supplement foodstuffs or as a substitute for foodstuffs.'

B — *National law*

14. Article 9 of the Netherlands Law on turnover tax (Wet op de omzetbelasting) of 28 June 1968 [4] provides that:

'1. The tax is set at 19 %.

2. By way of derogation from paragraph 2, the tax is set at:

a. 6% for the supply of goods and services appearing in Table I annexed to this Law;

…'

15. Table I of the Law on turnover tax contains a list of supplies of goods and services to which a reduced rate of 6 % provided for in Article 9(2)(a) of this law may be applied. Points a.1 and a.4 of Table I read as follows:

'a.

1. foodstuffs, in particular:

a. food and beverages normally intended for human consumption;

b. products clearly intended for use in the preparation of food and beverages as referred to under point (a) and that are wholly or partly contained therein;

4 — Staatsblad 1968, No 329.

c. products intended for use to supplement or as a substitute for food or beverages as referred to under (a), with the proviso that alcoholic drinks are not considered foodstuffs;

…

4.

a. cattle, sheep, goats, pigs and horses;

b. animals other than those referred to under point (a), clearly intended for the preparation or production of the foodstuffs referred to in point 1 above, and animals clearly intended for the breeding of such animals;

c. the offal of the animals referred to under (a) and (b);

d. products clearly intended for the reproduction of the animals referred to under (a) and (b).'

II — Pre-litigation procedure

16. On 10 April 2006, the Commission sent a letter of formal notice to the Kingdom of the Netherlands relating to a possible incompatibility between the provisions of the Law on turnover tax allowing the application of a reduced VAT rate to the supply of certain live animals, in particular horses, not intended for human or animal consumption, and Article 12 of the Sixth Directive, in conjunction with Annex H to that directive.

17. In its letter in reply of 27 June 2006, the Kingdom of the Netherlands recognised that the scope of the reduced VAT rate applied to the supply of certain live animals was broader than that provided for in the Sixth Directive. It stated that a draft law would be prepared in order to bring the rate applied to these animals in line with that laid down by the Sixth Directive.

18. By letter of 23 October 2007, the Commission sent a reasoned opinion to the Kingdom of the Netherlands, on the ground that the said draft law had not been adopted.

19. By letter of 26 November 2007, the Kingdom of the Netherlands replied to this reasoned opinion that the standing committee on finance of the second chamber of Parliament had begun debating the draft law in question.

20. Having received no information from the Kingdom of the Netherlands that would allow it to conclude that this draft law had been adopted, the Commission brought this action.

III — Pleas in law and arguments of the parties

21. By its application of 29 January 2009, the Commission brought an action against the Kingdom of the Netherlands seeking a declaration that, by applying a reduced VAT rate to the supply, importation and intra-Community acquisition of certain live animals, in particular horses, which are not normally intended for use in the preparation of foodstuffs for human or animal consumption, the Kingdom of the Netherlands had failed to fulfil its obligations under Article 12 of the Sixth Directive, in conjunction with Annex H to that directive (Articles 96 to 99(1) of Directive 2006/112, in conjunction with Annex III thereto).

22. The Kingdom of the Netherlands claimed that the action should be dismissed and the Commission ordered to pay the costs.

23. The Federal Republic of Germany and the French Republic, intervening in support of the defendant Member State, also claimed that the action should be dismissed.

24. The Commission takes the view that the Law on turnover tax breaches the provisions of Articles 96 to 99(1) of Directive 2006/112, in conjunction with Annex III to that directive, because, according to the Commission, live animals, in particular horses, which are not normally intended for use in the preparation of foodstuffs, do not come under point 1 of Annex III.

25. The Commission stresses that, like any other provision on the reduced VAT rate, the terms in which the goods in point 1 of Annex III are described must be subject to strict interpretation.

26. The Commission points out that, according to the wording of point 1, the reduced VAT rate is applicable to foodstuffs intended for human and animal consumption. It argues that it appears from that wording that such rates can apply to live animals and to seeds, plants and other ingredients only if they are normally intended for use in the preparation of foodstuffs.

27. The Kingdom of the Netherlands points out that the Commission challenges point a.4.a of Table I of the Law on turnover tax, which mentions certain types of animals covered by the reduced VAT rate. However, the Commission did not explain, during the pre-litigation procedure, which live animals, other than horses, its action concerns.

28. Moreover, the Commission did not explain the reasons why these types of animals,

such as cattle and pigs, are not normally intended for use as foodstuffs either.

29. Therefore, according to the Kingdom of the Netherlands, the action should be dismissed as inadmissible, in so far as it concerns the application of a reduced VAT rate to certain live animals other than horses.

30. As regards equine animals, the Kingdom of the Netherlands puts forward four arguments in support of the dismissal of the action.

31. First, it claims that the Commission, by stating that live animals cannot be subject to a reduced VAT rate unless they are normally intended for use in the preparation of foodstuffs, is basing its argument on an incorrect interpretation of the wording of point 1 of Annex III to Directive 2006/112.

32. Moreover, it argues that neither the Dutch language version nor any other language version of this provision confirms the interpretation that the expression 'normally intended for use in the preparation of foodstuffs' applies not only to ingredients but also to live animals, seeds and plants.

33. On the contrary, from the German language version it is evident that this expression applies only to ingredients. This limitation is a logical one, given that seeds are not normally intended for use in the preparation of foodstuffs.

34. Such a limitation also follows from the fact that certain ingredients, such as pepper or nutmeg, are intended for use in the preparation of foodstuffs. Live animals, on the other hand, cannot be used in the preparation of foodstuffs, as food is produced from dead animals.

35. The Kingdom of the Netherlands takes this to mean that horses, as live animals, may come under the reduced VAT rate whether or not they are normally intended for use in the preparation of foodstuffs.

36. Secondly, and in the alternative, the Kingdom of the Netherlands points out that the Commission has adduced no factual evidence to establish that horses are not normally intended for use in the preparation of foodstuffs.

37. According to settled case-law, the Commission, when seeking a declaration by the Court that a Member State has failed to fulfil its obligations, may not rely on any presumption whatsoever.

38. Thirdly, and in the further alternative, the Kingdom of the Netherlands maintains that horses are in fact normally intended for use in the preparation of foodstuffs.

39. In that regard, the question should be not whether every horse supplied, taken individually, is intended for consumption, but whether a given category of animals is normally intended for use in the preparation of foodstuffs.

40. The Kingdom of the Netherlands argues that the category of 'equine animals' is normally intended for use in the preparation of foodstuffs, even if the use to which a particular horse is put is temporarily changed. It refers to the order of 1 June 2006 in Case C-233/05 *V.O.F. Dressuurstal Jespers*.

41. It also refers to Article 20 of Commission Regulation (EC) No 504/2008,[5] which indicates that an equine animal is deemed to be intended for slaughter for human consumption.

42. It stresses, moreover, that the position advocated by the Commission would be impossible to implement in practice, since it would make it necessary, on the supply of every horse, to verify its intended use, despite the fact that the use of the term 'normally' in point 1 of Annex III to Directive 2006/112 demonstrates that it was not the intention of the EU legislature to classify each horse individually.

43. Fourthly, and purely in the alternative, the Kingdom of the Netherlands considers that horses are goods of a sort that is normally intended for use in agricultural production, within the meaning of point 11 of Annex III to Directive 2006/112. It alleges that a large proportion of the horses bred in the Netherlands and in the rest of Europe are to be found on farms.

44. The Federal Republic of Germany adds, for its part, that making the applicable rate of VAT depend on the use to which the buyer will put the horse is contrary to the principle of the neutrality of value added tax, by virtue of which similar products must be subject to a uniform rate.

45. The French Republic, which intervened in these proceedings at the oral stage, maintained on the one hand that point 1 of Annex III to Directive 2006/112 must be understood as referring to all live animals, regardless of their use, and on the other hand,

5 — Commission Regulation (EC) No 504/2008 of 6 June 2008 implementing Council Directives 90/426/EEC and 90/427/EEC as regards methods for the identification of equidae (OJ 2008 L 149, p. 3).

that horses are in any case normally intended for human consumption.

IV — Assessment

A — *On the scope of the action*

46. By this action, the Commission seeks a declaration by the Court that the Kingdom of the Netherlands has failed to fulfil its obligations under Union law on VAT by applying a reduced rate to the supply, importation and intra-Community acquisition of certain live animals, in particular horses, which are not normally intended for use in the preparation of foodstuffs.

47. The Kingdom of the Netherlands challenged the admissibility of the action in so far as, by using the adverbial phrase 'in particular', it may apply to animals other than horses.

48. During the hearing, the Commission explained that its action should be understood as referring only to horses. This should be acknowledged. These proceedings for failure to fulfil an obligation should therefore be examined only with regard to horses.

B — *Merits*

49. Union law, let us recall, provides that Member States may apply a reduced VAT rate to the supply of the following goods: 'Foodstuffs (including beverages but excluding alcoholic beverages) for human and animal consumption; live animals, seeds, plants and ingredients normally intended for use in the preparation of foodstuffs; products normally used to supplement foodstuffs or as a substitute for foodstuffs'.

50. The dispute between the parties as to the interpretation of point 1 of Annex III to the directive raises two questions. First, is the reduced VAT rate applicable only to live animals intended for human or animal consumption, or to all live animals, regardless of their intended use? Secondly, if the first solution must prevail, is it none the less necessary that the animal being supplied should itself be intended for human or animal consumption, or is it sufficient that it belong to a species that is 'normally' intended for that purpose?

51. On the first question, the Kingdom of the Netherlands is right to maintain that, from a strictly literal point of view, the wording of that provision in German and Dutch means that the reduced VAT rate is applicable to all live animals, regardless of their use, since the condition relating to use in foodstuffs applies only to ingredients. [6]

52. On the other hand, this analysis is not borne out by the other language versions of the provision in question. If we examine the wording of this provision in the languages of the other Member States that took part in its drafting, [7] such as in the English version, [8] we see that the wording is clearly consistent with the Commission's interpretation or is closer in meaning to the latter. [9]

53. According to case-law, in the case of divergence between the various language versions, the provision in question must, in order to ensure uniform application within the European Union, be interpreted by reference to its general scheme and purpose. [10] It should

6 — In German, the provision reads as follows:
'1. Nahrungs- und Futtermittel (einschließlich Getränke, alkoholische Getränke jedoch ausgenommen), lebende Tiere, Saatgut, Pflanzen und üblicherweise für die Zubereitung von Nahrungs- und Futtermitteln verwendete Zutaten sowie üblicherweise als Zusatz oder als Ersatz für Nahrungs- und Futtermittel verwendete Erzeugnisse'.
Similarly, the Dutch version reads:
'(1) Levensmiddelen (met inbegrip van dranken, maar met uitsluiting van alcoholhoudende dranken) voor menselijke en dierlijke consumptie, levende dieren, zaaigoed, planten en ingrediënten die gewoonlijk bestemd zijn voor gebruik bij de bereiding van levensmiddelen, alsmede producten die gewoonlijk bestemd zijn ter aanvulling of vervanging van levensmiddelen.'

7 — The harmonisation of VAT rates and the addition of Annex H to the Sixth Directive come from Council Directive 92/77/EEC of 19 October 1992 supplementing the common system of value added tax and amending Directive 77/388/EEC (approximation of VAT rates) (OJ 1992 L 316, p. 1). This is a text adopted by the 'Europe of Twelve'.

8 — The English version reads as follows:
'(1) Foodstuffs (including beverages but excluding alcoholic beverages) for human and animal consumption; live animals, seeds, plants and ingredients normally intended for use in the preparation of foodstuffs; products normally used to supplement foodstuffs or as a substitute for foodstuffs.'

9 — The Italian, Greek, Spanish and Portuguese versions read as follows:
'(1) Prodotti alimentari (incluse le bevande, ad esclusione tuttavia delle bevande alcoliche) destinati al consumo umano e animale, animali vivi, sementi, piante e ingredienti normalmente destinati ad essere utilizzati nella preparazione di prodotti alimentari, prodotti normalmente utilizzati per integrare o sostituire prodotti alimentari.'
'(1) Τα τρόφιμα (περιλαμβανομένων των ποτών, εκτός των αλκοολούχων) που προορίζονται για κατανάλωση από ανθρώπους ή από ζώα, τα ζώντα ζώα, οι σπόροι, τα φυτά και τα συστατικά που χρησιμοποιούνται συνήθως στην παρασκευή τροφίμων, τα προϊόντα που χρησιμοποιούνται συνήθως για τη συμπλήρωση ή υποκατάσταση τροφίμων.'
'(1) Los productos alimenticios (incluidas las bebidas, pero con exclusión de las bebidas alcohólicas) para consumo humano o animal, los animales vivos, las semillas, las plantas y los ingredientes utilizados normalmente en la preparación de productos alimenticios; los productos utilizados normalmente como complemento o sucedáneo de productos alimenticios.'
'(1) Produtos alimentares (incluindo bebidas, com excepção das bebidas alcoólicas) destinados ao consumo humano e animal, animais vivos, sementes, plantas e ingredientes normalmente destinados à preparação de alimentos, bem como produtos normalmente destinados a servir de complemento ou de substituto de produtos alimentares.'

10 — See, in particular, Case C-263/08 *Djurgården-Lilla Värtans Miljöskyddsförening* [2009] ECR I-9967, paragraphs 25 and 26 and the case-law cited there.

be noted that, in this case, an examination of these two criteria confirms the interpretation put forward by the Commission.

54. Thus, if we examine the general scheme of the provision in question, we see that it is made up of three phrases, each dealing with foodstuffs. Moreover, all the items on the list in the second phrase, namely, live animals, seeds and plants, may be used for feeding humans or animals, where necessary after preparation, that is, after slaughter in the case of animals.

55. As a consequence, the position of this list between two phrases referring explicitly to foodstuffs leads logically to the conclusion that each item on the list is in fact subject to the condition set out at the end of the list, after the word 'ingredients', that it be normally used in the preparation of foodstuffs.

56. Finally, this analysis is consistent with the objective sought by Annex H to the Sixth Directive or Annex III to Directive 2006/112.

57. Since VAT constitutes a tax on consumption borne entirely by the final consumer, the application of a reduced rate has the effect of reducing the price of a product purchased by the consumer, thereby making it more accessible. Annex H to the Sixth Directive and Annex III to Directive 2006/112 provide a list of transactions selected by the European Union legislature as deserving of this more advantageous tax treatment for consumers.

58. From this perspective, it is logical to place at the head of the list, under point 1 of these annexes, foodstuffs and therefore any ingredients used for their preparation, such as live animals. However, other animals that, according to prevailing customs in Europe, are not capable of being used for that purpose, such as domestic animals, do not come under point 1.

59. If the European Union legislature had wished these items to be eligible for the reduced VAT rate as well, it would have had to add an additional category to Annex H to the Sixth Directive or to Annex III to Directive 2006/112, as indeed it does under point 11 of Annex III to Directive 2006/112 for animals intended for agricultural production.

60. The objective sought by the provision at issue thus confirms, in my view, the Commission's interpretation, according to which horses are not covered by the said provision except in so far as they are intended for the preparation of foodstuffs.

61. It remains to be determined whether this condition must be verified for each particular horse. This question arises because of the use, in the second phrase in the sentence of the provision in question, of the adverb 'normally'.

62. I agree with the analysis of the Kingdom of the Netherlands according to which the use of this adverb shows that the European Union legislature intended the reduced VAT rate to apply automatically to each of the products referred to in this provision, as long as the product is habitually and generally intended for the production of foodstuffs.

63. European Union law should thus be understood to mean that as long as a product or animal can be considered to be used generally and habitually for the production of foodstuffs, the reduced VAT rate may be applied to the transactions involving these products without having to verify, for each individual transaction, that this purpose is in fact respected.

64. As a result, transactions involving animals such as cattle, goats or pigs may be subject to the reduced VAT rate because these animals, unlike domestic animals, are habitually and generally intended for consumption.

65. However, the situation of horses is different from that of the above-mentioned animals because, unlike the latter, they are not habitually and generally intended for human consumption. While it is true that certain horses are intended for human consumption, others are treated as true domestic animals. For their holder or owner, it would be as inconceivable to eat a horse or sell it to a butcher's shop as it would be to eat a cat or a dog.

66. Most importantly, many horses are intended for use in competition. They can yield considerable profit and may thus give rise to transactions involving very high sums of money. [11]

67. Admittedly, animals bred for competition may, at the end of their lives or if they fail to perform as expected, be used for slaughter. This use makes it possible for the horses to retain at least a modest value and to be cared for in an appropriate manner until their slaughter, if they are not fortunate enough to be taken in by a charitable owner who has decided to look after them until their natural death.

11 — In Deauville, France, one of the main centres in the world for the sale of race horses, the sale of 285 yearlings (young horses of 18 months) between 13 and 16 August 2010 generated a turnover of EUR 26 898 000, which represents an average price of EUR 94 379 per animal sold (www.arqana.com).

68. The possibility of such use led the European Union legislature to make provision, in order to ensure that that use does not pose any health risk, in Regulation No 504/2008 which the Kingdom of the Netherlands relies on, that any medical treatment of a horse should be prescribed on the presumption that, unless it is irreversibly declared as not so intended on the animal's identification document, the animal is intended for slaughter for human consumption.

69. In my view, that presumption does not, however, justify subjecting to a reduced VAT rate all transactions involving horses, regardless of their use. On the one hand, that presumption can be rebutted, under Article 20 of Regulation No 504/2008, thus demonstrating that the European Union legislature recognised that not all horses are intended for slaughter for human and animal consumption. On the other hand, such a presumption as regards race horses covers only a marginal aspect, in economic terms, of the animal's use. That presumption should not obscure the fact that horses, before being used for slaughter in some cases, are bred for purposes other than food production and are thus intended to yield considerable revenue if they are sold as competition animals or, in some cases, as pets.

70. It should be remembered, therefore, that the provisions of the Sixth Directive and of Directive 2006/112 at issue here were adopted precisely in order to reduce the sale price of foodstuffs and that these provisions, allowing for a VAT rate that is lower than the standard one, must be subject to a strict interpretation. [12] Those provisions, as already indicated, are not intended to support the breeding of horses in general.

71. I therefore share the view of the Commission that horses cannot be considered to be normally intended for human or animal consumption. It follows that the application of the reduced VAT rate in a transaction involving a horse must be subject to the condition that that particular horse be intended for that use.

72. In response to this analysis, the Kingdom of the Netherlands and the Federal Republic of Germany argue that fulfilment of that condition would be difficult to ensure in practice. I am not convinced by that argument.

12 — See, in particular, Case C-83/99 *Commission* v *Spain* [2001] ECR I-445, paragraphs 18 and 19, and the case-law cited there.

73. As the Commission indicates, the use of a horse that confers the right to apply the reduced VAT rate may be determined by objective criteria such as the buyer of the horse, the horse's breed and the price of the transaction.

74. This rate must therefore be applicable, for instance, if a horse is acquired by a professional of the horsemeat industry, since the buyer's professional activity allows one to presume the use to which the animal will be put.

75. Similarly, the breed of the horse may be a relevant factor, in so far as draught horses, for example, unlike lighter horses, are for the most part intended for human consumption. Finally, and most importantly, the price may itself constitute a decisive objective criterion, given that, as the Commission pointed out during the hearing, a horse for slaughter is sold by weight, whereas the price of a horse intended for a different use is a comprehensive price determined on the basis of all the characteristics of the animal, which is often quite a high figure.

76. The Federal Republic of Germany further argues that the interpretation of the provisions at issue defended by the Commission would be contrary to the principle of neutrality of VAT. I am not convinced by this argument either.

77. The principle of the neutrality of VAT, which is inherent in the common system of this tax, is incompatible, according to case-law, with treating merchandise or services that are similar, and therefore in competition, differently from each other. [13]

78. Making the VAT rate depend on the use to which a horse will be put does not seem to me contrary to this principle because that difference in use relates to distinct economic situations, in which the horses in question are not in competition with each other. Thus, a race horse or a pet horse, when sold as such, is not in competition with a horse for slaughter, and vice versa.

79. Moreover, the fact that the same horse, at different periods in its life, may have each of these uses in succession does not seem to me to contradict this analysis, since in any one of these periods it is competing only with animals that are capable of being used for the same purpose.

13 — See, in particular, Case C-267/99 *Adam* [2001] ECR I-7467, paragraphs 36 and 41.

80. I do not believe, therefore, that reserving the application of the reduced VAT rate to those horses that are specifically intended for human or animal consumption is contrary to the principle of the neutrality of VAT.

81. Moreover, the Kingdom of the Netherlands maintains that these proceedings for failure to fulfil an obligation should be rejected on the ground that the Commission failed to adduce factual evidence that horses are not normally intended for use in the preparation of foodstuffs.

82. I do not believe that this argument can be upheld. The burden of proof was not on the Commission, in my view, to adduce such evidence. Even supposing that horses in the Netherlands today are bred exclusively for food, the fact remains that it is incumbent upon the Kingdom of the Netherlands to bring its legislation into line with European Union law.

83. It is settled case-law that the fact that an activity covered by a directive is not carried on in a Member State does not release the Member State in question from its obligation to transpose the directive in question. [14] The fact that this activity does not exist was held not to be relevant because, according to the Court, it is important not only to anticipate a change to that factual state, but above all to guarantee in all circumstances the effective application of European Union law. In other words, the Court considered that the Member States were obliged to adopt the legal framework permitting them to ensure the effective application of the directive concerned within the period prescribed therein, even if, on the facts, that legal framework did not have to be applied immediately.

84. In the light of that case-law, the fact that the breeding of horses for competition may not be carried on in the Netherlands and the fact that horses are not considered pets there would not exempt the Kingdom of the Netherlands from providing, in its legislation, that the application of a reduced VAT rate to transactions involving horses is subject to the condition that the horse in question be intended for human or animal consumption, because even if that were the case now, the situation might none the less change in future.

85. In view of these facts, the Commission is justified in maintaining that, by providing for the application of a reduced VAT rate to transactions involving horses without subjecting the application of that rate to the condition that the horse that is the object of the transaction be intended for human or animal consumption, the Kingdom of the Netherlands has misconstrued Article 12 of the Sixth Directive, in conjunction with Annex H

14 — See Case C-339/87 *Commission* v the *Netherlands* [1990] ECR I-851, points 22, 25 and 32; Case C-214/98 *Commission* v *Greece* [2000] ECR I-9601, points 22 to 27; Case C-372/00 *Commission* v *Ireland* [2001] ECR I-10303, point 11, and Case C-441/00 *Commission* v *United Kingdom* [2002] ECR I-4699, point 15.

to that directive and Articles 96 to 99(1) of Directive 2006/112, in conjunction with Annex III to that directive.

86. Finally, the Kingdom of the Netherlands maintains that the application of a reduced VAT rate to transactions involving horses is justified because the latter come under point 11 of Annex III to Directive 2006/112, in that they ought to be considered goods normally intended for use in agricultural production. [15] For instance, according to that Member State, a large proportion of horses bred in the Netherlands and the rest of Europe are found on farms. Similarly, the use of the adverb 'normally' in the text of point 11 of the annex is said to demonstrate that the temporary use of a horse as a race horse, for instance, does not constitute a ground for not applying that provision.

87. The Commission contests this argument. I share its view. As the Kingdom of the Netherlands itself recognises, point 11 in Annex III to Directive 2006/112 covers goods and services intended for use in agricultural production, whereas participation in horse races does not come under that activity.

15 — Point 11 of Annex III of Directive 2006/112 reads as follows: 'supply of goods and services of a kind normally intended for use in agricultural production but excluding capital goods such as machinery or buildings'.

A transaction involving a horse intended to participate in races does not, therefore, fall within the scope of that provision.

88. As a consequence, point 11 of Annex III to Directive 2006/112 cannot be used to justify the application of a reduced VAT rate to transactions involving a horse regardless of the use to which it will be put.

89. The arguments put forward by the Kingdom of the Netherlands regarding the use of the adverb 'normally' in the provision at issue ought not to call this analysis into question, because the reasoning concerning the meaning of this adverb in the context of point 1 of Annex III to Directive 2006/112 as regards horses can be transposed, in my view, to the interpretation of point 11 of the same annex.

90. In light of all the foregoing considerations, I propose that the Court declare this action for failure to fulfil obligations to be well-founded and order the Kingdom of the Netherlands to pay the costs, as required of the unsuccessful party by Article 69(2) of the Rules of Procedure.

91. The other Member States which intervened in the proceedings should be ordered to bear their own costs, pursuant to the first subparagraph of Article 69(4) of those Rules.

V — Conclusion

92. In the light of the foregoing considerations, I propose that the Court should:

— declare the present action for failure to fulfil obligations admissible and well-founded in so far as it alleges that the Kingdom of the Netherlands has applied a reduced rate of value added tax to the supply, importation and intra-Community acquisition of horses without subjecting the application of that reduced rate to the condition that the horse that is the object of the transaction be intended for human or animal consumption, in breach of Article 12 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment, in conjunction with Annex H to that directive (Articles 96 to 99(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, in conjunction with Annex III to that directive);

— dismiss the remainder of the action;

— order the Kingdom of the Netherlands to pay the costs, with the Federal Republic of Germany and the French Republic bearing their own costs.