

Re:

Failure of a Member State to fulfil obligations — Council Directives 93/36/EEC of 14 June 1993 (OJ 1993 L 199, p. 1) and 77/62/EEC of 21 December 1976 coordinating procedures for the award of public supply contracts — Failure to show existence of grounds which may justify recourse by the contracting authority to the negotiated procedure without prior publication of a contract notice — Agusta and Agusta Bell helicopters purchased for the requirements of the State Forestry Corps, the Coastguard, the Carabinieri, etc.

Operative part of the judgment

The Court:

1. Declares that, by adopting a procedure, which has been in existence for a long time and is still followed, of directly awarding to Agusta SpA contracts for the purchase of Agusta and Agusta Bell helicopters to meet the requirements of several military and civilian corps, without any competitive tendering procedure, and, in particular, without complying with the procedures provided for by Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts, as amended by European Parliament and Council Directive 97/52/EC of 13 October 1997, and previously, by Council Directive 77/62/EEC of 21 December 1976 coordinating procedures for the award of public supply contracts, as amended and supplemented by Council Directives 80/767/EEC of 22 July 1980 and 88/295/EEC of 22 March 1988, the Italian Republic has failed to fulfil its obligations under those directives;
2. Orders the Italian Republic to pay the costs.

⁽¹⁾ OJ C 281, 12.11.2005.

Judgment of the Court (Second Chamber) of 3 April 2008 (reference for a preliminary ruling from the Bundesfinanzhof, Germany) — Finanzamt Oschatz v Zweckverband zur Trinkwasserversorgung und Abwasserbeseitigung Torgau-Westelbien

(Case C-442/05) ⁽¹⁾

(Sixth VAT Directive — Articles 4(5) and 12(3)(a) — Annexes D and H — Concept of ‘supply of water’ or ‘water supplies’ — Reduced rate of VAT)

(2008/C 128/04)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt Oschatz

Defendant: Zweckverband zur Trinkwasserversorgung und Abwasserbeseitigung Torgau-Westelbien

Intervener: Bundesministerium der Finanzen

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of point 2 of Annex D and Category 2 of Annex H to Directive 77/388/EEC: Sixth Council 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) — Reduced rate for the supply of water — Payment for the installation of mains connections to end users

Operative part of the judgment

1. Article 4(5) of 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 and point 2 of Annex D thereto must be interpreted as meaning that the laying of a mains connection which consists, as in the main proceedings, in the installation of piping permitting the connection of a building's water system to the fixed water supply network forms part of the supply of water, listed in that annex, so that a body governed by public law acting as a public authority is a taxable person in respect of that transaction.
2. Article 12(3)(a) of Sixth Directive 77/388 and Category 2 of Annex H thereto must be interpreted as meaning that the laying of a mains connection which consists, as in the main proceedings, in the installation of piping permitting the connection of a building's water system to the fixed water supply network forms part of water supplies. Furthermore, Member States may apply a reduced rate of value added tax to concrete and specific aspects of water supplies, such as the laying of mains connections at issue in the main proceedings, provided that they comply with the principle of fiscal neutrality inherent in the common system of value added tax.

⁽¹⁾ OJ C 60, 11.3.2006.