

**Question for written answer E-008822/2011
to the Commission**

Rule 117

Helga Trüpel (Verts/ALE)

Subject: Possible infringement of EU law by the German Federal Fiscal Court's judgment XI R 44/08 of 4 May 2011

The above-mentioned judgment of the Federal Fiscal Court upholds a legal decision taken by the German Finance Office that the production of an opera by a freelance director for a professional fee is not exempt from tax under either German turnover tax law or EU law.

It would appear from a reference to existing European law that the decision could be challenged.

In a judgment by the court of first instance (Decisions of the Fiscal Courts, 2009, 156) the Fiscal Court had rejected the German practice in the light of Article 13 A 1(n) of the Sixth Council Directive 77/388/EEC and upheld the complaint of the plaintiff, who felt entitled to exemption from tax because of the fact that he was performing the same cultural tasks as the institutions that were profiting from a reduced tax rate under the turnover tax law.

The practice in question can be seen as unjustified and unequal treatment and consequently as a violation of the principles of tax neutrality and fiscal objectivity. The practice of the German tax authorities would appear to substantially contradict these fundamental principles. The room for manoeuvre contained in Article 13 1(n) appears to have been applied here in an inadmissible way. According to current practice only 'performing artists', defined as artists who appear on the stage may profit from reduced tax rates. It can certainly be argued, however, that the director is acting through the artists appearing on the stage and therefore should be accorded the same status. Consequently, the unequal tax treatment of the two groups would constitute a violation of tax neutrality and of the principle of equality.

Does the above-mentioned judgment contravene existing EU law?