

2. Must Article 5(1)(a) and (b) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks be interpreted as meaning that a provider of a paid referencing service who makes available to advertisers keywords reproducing or imitating registered trade marks and arranges by the referencing agreement to create and favourably display, on the basis of those keywords, advertising links to sites offering goods identical or similar to those covered by the trade mark registration is using those trade marks in a manner which their proprietor is entitled to prevent?

3. In the event that such use does not constitute a use which may be prevented by the trade mark proprietor under the directive or [Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark] (1), may the provider of the paid referencing service be regarded as providing an information society service consisting of the storage of information provided by the recipient of the service, within the meaning of Article 14 of Directive 2000/31 of 8 June 2000 (2), so that that provider cannot incur liability before it has been informed by the trade mark proprietor of the unlawful use of the sign by the advertiser?

(1) First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1).

(2) OJ 1994 L 11, p. 1.

(3) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1).

### Form of order sought

— Declare that, with regard to the refund of VAT to a taxable person established in another Member State or in a non-member country, even where that person has a fixed establishment, the Italian Republic has failed to fulfil its obligations under Article 1 of Eighth Council Directive 79/1072/EEC (1) of 6 December 1979 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country, and Article 1 of Thirteenth Council Directive 86/560/EEC (2) of 17 November 1986 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in Community territory, in so far as it obliges a taxable person whose registered office is in a Member State or in a non-member country but who has a fixed establishment which, during the period concerned, supplied goods or services in Italy, to obtain a refund of input VAT by means of the mechanisms provided for in those directives, rather than by means of deduction, where goods or services are purchased not through the fixed establishment in Italy but directly from the place in which that person is principally established;

— order the Italian Republic to pay the costs.

### Pleas in law and main arguments

#### Action brought on 4 June 2008 — Commission of the European Communities v Italian Republic

(Case C-244/08)

(2008/C 209/42)

*Language of the case: Italian*

By the present action, the Commission requests the Court of Justice to declare that it is incompatible with Community law for an Italian measure to oblige a person who is subject to VAT whose registered office is in a Member State or in a non-member country but who also has a fixed establishment in Italy which, during the period concerned, has supplied goods or services in Italy, to obtain a refund of input VAT by means of the mechanisms provided for in Directive 79/1072/EEC (the Eighth VAT Directive) and Directive 86/560/EEC (the Thirteenth VAT Directive) rather than by means of the normal deduction mechanism provided for as a general rule in Directive 77/388/EEC (1) (the Sixth VAT Directive), where goods or services are purchased not through the fixed establishment in Italy but directly from the place in which that person is principally established abroad.

### Parties

**Applicant:** Commission of the European Communities (represented by: A. Aresu and M. Afonso, Agents)

**Defendant:** Italian Republic

Such a measure, which makes it excessively cumbersome for the taxpayers concerned to comply with their tax obligations, is, in the Commission's view, contrary to the provisions and fundamental principles of the above-mentioned VAT directives, which provide that a foreign taxpayer who has a fixed establishment in Italy and who engages in commercial transactions in Italy from

that establishment, must be able to use the normal deduction mechanism provided for in the Sixth Directive, even if some commercial transactions are effected directly from the place in which that person is principally established.

<sup>(1)</sup> OJ 1979 L 331, p. 11.

<sup>(2)</sup> OJ 1986 L 326, p. 40.

<sup>(3)</sup> OJ 1977 L 145, p. 1 — Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment.

the first subparagraph of Article 4(5) of the Sixth VAT Directive. Those services are clearly free from value added tax where they are provided without charge. If, on the other hand, the recipient of legal aid pays a fee for the service, services provided by a State legal aid office cannot be regarded as free from value added tax.

The second subparagraph of Article 4(5) of the VAT Directive provides that bodies governed by public law are to be regarded as taxable persons in respect of the activities in which they engage as public authorities if treating them differently would lead to significant distortions of competition. Even if the State legal aid offices were regarded as acting as public authorities in this respect, the Commission considers that excluding them from liability to tax in the above cases would lead to significant distortions of competition. For that reason they should be regarded as taxable persons with respect to value added tax.

**Action brought on 3 June 2008 — Commission of the European Communities v Republic of Finland**

**(Case C-246/08)**

(2008/C 209/43)

*Language of the case: Finnish*

**Parties**

*Applicant:* Commission of the European Communities (represented by P. Aalto and D. Triantafyllou, acting as Agents)

*Defendant:* Republic of Finland

**Form of order sought**

— declare that, by failing to charge value added tax on legal advice services provided in return for part payment in accordance with the legal aid provisions by State legal aid offices (by public legal advisers acting as their employees), while the corresponding services provided by private advisers are subject to value added tax, the Republic of Finland has failed to fulfil its obligations under Articles 2(1) and 4(1), (2) and (5) of the Sixth VAT Directive 77/388/EEC <sup>(1)</sup>;

— order the Republic of Finland to pay the costs.

**Pleas in law and main arguments**

In Finland a recipient of legal aid may choose a public legal adviser or a private adviser to represent him in legal proceedings. In that situation the services provided by a public legal adviser in return for part payment are not subject to value added tax, whereas value added tax is charged on the services provided by a private adviser in return for part payment. The Commission considers that this is a case of different value added tax treatment of the same services, with effects on the Community's own resources.

The Commission argues that the services provided by State legal aid offices in legal proceedings do not fall within the scope of

**Action brought on 9 June 2008 — Commission of the European Communities v Hellenic Republic**

**(Case C-248/08)**

(2008/C 209/44)

*Language of the case: Greek*

**Parties**

*Applicant:* Commission of the European Communities (represented by E. Tserepa-Lacombe and A. Markoulli)

*Defendant:* Hellenic Republic

**Form of order sought**

The Court is asked to:

— declare that the Hellenic Republic has failed to fulfil its obligations under Article 4(2)(a) and (c), Article 5(2)(c), Article 6(2)(b) and Articles 10, 11, 12, 13, 14, 15, 17, 18 and 26 of Regulation (EC) No 1774/2002 <sup>(1)</sup> of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption;

— order the Hellenic Republic to pay the costs.