

law, on condition that the application of that law does not hinder the application or the effectiveness of Community law and does not make it impossible in practice to recover the sums improperly granted. It is for the national court to ensure the full application of Community law by setting aside or, in so far as necessary, interpreting a national rule such as the General Statute on administrative law (*Algemene wet bestuursrecht*) which prevents such application. The national court may apply the Community law principles of legal certainty and the protection of legitimate expectations when assessing the conduct of both the recipient of the amounts lost and the administrative authority, on condition that full account is taken of the interests of the European Community. The fact that the recipient of the funds is a public-law person is irrelevant in that regard.

(<sup>1</sup>) OJ C 310, 16.12.2006.

**Judgment of the Court (Fourth Chamber) of 13 March 2008 (reference for a preliminary ruling from the Niedersächsisches Finanzgericht, Germany) — *Securenta Göttinger Immobilienanlagen und Vermögensmanagement AG v Finanzamt Göttingen***

(Case C-437/06) (<sup>1</sup>)

*(Sixth VAT Directive — Taxable person simultaneously carrying out economic activities, taxable or exempt, and non-economic activities — Right to deduct input VAT — Expenditure connected with the issue of shares and atypical silent partnerships — Apportionment of input VAT according to the economic nature of the activity — Calculation of the deductible proportion)*

(2008/C 116/11)

Language of the case: German

**Referring court**

Niedersächsisches Finanzgericht

**Parties to the main proceedings**

*Applicant:* *Securenta Göttinger Immobilienanlagen und Vermögensmanagement AG*

*Defendant:* *Finanzamt Göttingen*

**Re:**

Reference for a preliminary ruling — Niedersächsisches Finanzgericht — Interpretation of Articles 2, point 1, and 17(5) of 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) — Issue of silent partnerships by a limited company on an increase in its capital — Supply for consideration within the meaning of Article 2, point 1 — Deductibility of VAT conditional on a direct and immediate link with the taxable person's business activity — Whether deductible in part under Article 17(5) of the Directive

**Operative part of the judgment**

1. Where a taxpayer simultaneously carries out economic activities, taxed or exempt, and non-economic activities outside the scope 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, deduction of the VAT relating to expenditure connected with the issue of shares and atypical silent partnerships is allowed only to the extent that that expenditure is attributable to the taxpayer's economic activity within the meaning of Article 2(1) of that directive.
2. The determination of the methods and criteria for apportioning input VAT between economic and non-economic activities within the meaning of the Sixth Directive is in the discretion of the Member States who, when exercising that discretion, must have regard to the aims and broad logic of that directive and, on that basis, provide for a method of calculation which objectively reflects the part of the input expenditure actually to be attributed, respectively, to those two types of activity.

(<sup>1</sup>) OJ C 326, 30.12.2006.

**Judgment of the Court (Seventh Chamber) of 13 March 2008 (reference for a preliminary ruling from the Consiglio di Giustizia Amministrativa per la Regione siciliana (Italy)) — *Ispettorato Provinciale dell'Agricoltura di Enna, Assessorato all'agricoltura e foreste della Regione Sicilia, Regione Sicilia v Domenico Valvo***

(Case C-78/07) (<sup>1</sup>)

*(Agriculture — Regulations (EEC) No 2328/91 and (EC) No 950/97 — Articles 17 and 18 — Compensatory allowances for permanent natural handicaps — Farmers receiving length-of-service pensions — Right to compensatory allowances — Limits)*

(2008/C 116/12)

Language of the case: Italian

**Referring court**

Consiglio di Giustizia Amministrativa per la Regione siciliana

**Parties to the main proceedings**

*Applicants:* Ispettorato Provinciale dell'Agricoltura di Enna, Assessorato all'agricoltura e foreste della Regione Sicilia, Regione Sicilia

*Defendant:* Domenico Valvo

**Re:**

Reference for a preliminary ruling — Consiglio di Giustizia Amministrativa per la Regione siciliana — Interpretation of Council Regulation (EC) No 950/97 of 20 May 1997 on improving the efficiency of agricultural structures — National legislation refusing to grant the compensatory allowance for permanent natural handicaps to farmers in receipt of a length-of-service pension

**Operative part of the judgment**

Articles 17 and 18 of Council Regulation (EC) No 950/97 of 20 May 1997 on improving the efficiency of agricultural structures confer on Member States the right to grant a compensatory allowance to a farmer who fulfils the conditions laid down in those two articles. However, those articles do not preclude a Member State from refusing payment of such an allowance where that farmer is in receipt of a pension, in particular, a length-of-service pension.

<sup>(1)</sup> OJ C 117, 26.5.2007.

**Judgment of the Court (Third Chamber) of 13 March 2008  
— Commission of the European Communities v Hellenic Republic**

(Case C-81/07) <sup>(1)</sup>

**(Failure of a Member State to fulfil its obligations — Environment — Directive 2000/59/EC — Waste reception and handling plans for ship-generated waste)**

(2008/C 116/13)

Language of the case: Greek

**Parties**

*Applicant:* Commission of the European Communities (represented by: G. Zavvos and K. Simonsson, Agents)

*Defendant:* Hellenic Republic (represented by: S. Chala and I. Pouli, Agents)

**Re:**

Failure of a Member State to fulfil its obligations — Failure to adopt, within the period prescribed, all the provisions necessary to comply with Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues — Commission declaration (OJ 2000 L 332, p. 81)

**Operative part of the judgment**

*The Court:*

1. Declares that, by failing to develop, implement and approve waste reception and handling plans for ship-generated waste and cargo residues, the Hellenic Republic has failed to fulfil its obligations under Article 5(1) and Article 16(1) of Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues.
2. Orders the Hellenic Republic to pay the costs.

<sup>(1)</sup> OJ C 69, 24.3.2007.

**Judgment of the Court (Seventh Chamber) of 1 April 2008  
— Commission of the European Communities v Grand Duchy of Luxembourg**

(Case C-417/07) <sup>(1)</sup>

**(Failure by a Member State to fulfil its obligations — Directive 2004/36/EC — Safety of third-country aircraft using Community airports — Failure to transpose within the prescribed period)**

(2008/C 116/14)

Language of the case: French

**Parties**

*Applicant:* Commission of the European Communities (represented by: R. Vidal Puig, Agent)

*Defendant:* Grand Duchy of Luxembourg (represented by: C. Schiltz, Agent)

**Re:**

Failure by a Member State to fulfil its obligations — Failure to adopt, within the prescribed period, the necessary measures to comply with Directive 2004/36/EC of the European Parliament and of the Council of 21 April 2004 on the safety of third-country aircraft using Community airports (OJ 2004 L 143, p. 76)