

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.

### 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

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.

<sup>(1)</sup> 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 (OJ 1977 L 145, p. 1).

### 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.

## Pleas in law and main arguments

By this action the Commission asks the Court to find 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 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 ('the animal by-products regulation'). It should be noted that this action concerns two sets of infringement proceedings (Infringements 2001/5217 and 2006/2221) which arose from breach of the Hellenic Republic's obligations under specific articles of that regulation.

In particular the regulation states that once animal waste is collected, transported and identified without undue delay, it must, *inter alia*, be disposed of as waste, having been processed in the ways provided for in the Regulation in accordance with the category to which the waste belongs (Articles 4(2)(c), 5(2)(c) and 6(2)(b)). Procedures are also laid down for the disposal of specified risk material by incineration (Article 4(2)(a)). Further, the animal by-products regulation lays down the conditions governing the approval of waste processing plants, intermediate, storage, incineration and co-incineration plants, Category 1 and Category 2 processing plants, Category 2 and Category 3 oleo-chemical plants, biogas plants and composting plants (Articles 10-15). Similarly, the animal by-products regulation lays down the conditions governing the approval by the competent authorities of Category 3 material processing plants and the approval of petfood plants and technical plants (Articles 17-18). In addition, in accordance with the regulation, the competent authority must carry out at regular intervals inspections and supervision to ascertain that the regulation's provisions are being observed, on the basis of various criteria which are laid down, and to take the appropriate action in the case of non-compliance (Article 26).

On the basis of a large number of reports drawn up by the Commission's Food and Veterinary Office (FVO), the Commission points out that neither at the end of the time-limits laid down in the reasoned opinion and in the supplementary reasoned opinion nor after those dates had the Hellenic Republic taken all the requisite measures to correct the infringements with which it was charged and consequently to comply with its obligations under the above-mentioned articles of the by-products regulation.

Since 2004 the FVO has carried out a number of fact-finding trips in Greece to ascertain what defects there are in the application of the by-products regulation. Despite ascertaining that there had been some progress following the advice of the FVO and the adoption of specific legislation in October 2006 which aimed to introduce the requisite administrative measures to

apply the provisions of the by-products regulation, in particular as regards the approval of waste processing plants, the FVO inspectors repeatedly found, on-the-spot and until April 2007, when the last fact-finding trip took place, that the Greek authorities had not taken the requisite action to comply with the obligations incumbent on them under the above-mentioned articles of the by-products regulation.

It should also be pointed out that the non-implementation, or inadequate implementation, of the above-mentioned articles is due, to a large extent, to the ineffective coordination of the competent authorities at the level of the prefectural administration. Furthermore, as is clear from the response of the Greek authorities to the findings set out in the FVO's reports, the level of the controls carried out by the competent authorities and of the penalties imposed by the national legislation do not effectively ensure the effective application of the by-products regulation.

(<sup>1</sup>) OJ L 273 of 10.10.2002, p. 1.

## Action brought on 10 June 2008 — Commission of the European Communities v Italian Republic

(Case C-249/08)

(2008/C 209/45)

*Language of the case: Italian*

### Parties

*Applicant:* Commission of the European Communities (represented by: K. Banks and C. Cattabriga, Agents)

*Defendant:* Italian Republic

### Form of order sought

— Declare that:

— by failing to provide appropriate measures for the control, inspection and surveillance of fishing activities within its territory and within maritime waters subject to its sovereignty or jurisdiction, in particular with regard to compliance with the provisions governing the retention on board and use of drift-nets, and